Chantal Cardinal  
Committee Clerk  
Standing Committee on Fisheries and Oceans  
Senate of Canada  
Ottawa Ontario

Dear Ms. Cardinal:

On behalf of the Government of Manitoba, please accept this correspondence as our written submission to the Standing Senate Committee on Fisheries and Oceans for its study of Bill C-68 (An Act to amend the Fisheries Act and other Acts in consequence).

As part of our broader commitment to sustainable development, fish population and habitat conservation are important priorities for the Government of Manitoba. Manitoba exercises responsible management of fish stocks, and of habitat under our administration and control, through the Manitoba Fishery Regulations under the Natural Resources Transfer Act (1930). In cooperation with our stakeholders, these regulations, under the federal Fisheries Act, enable the Government of Manitoba to address fish management issues in a way that specifically considers local and regional conditions, needs, and priorities. Manitoba takes a balanced approach that supports community economic and social development objectives which rely on and contribute to healthy and sustainable fisheries, while managing the impacts of development in ways that mitigate significant harm to fish stocks and habitat.

Manitoba is concerned that, as it is currently written, Bill C-68 could lead to serious restrictions on future projects with a connection to Manitoba’s waters, particularly given the importance of Manitoba’s abundant bodies of water for the province’s economy and ecology. This applies, for example, to hydroelectric generation projects, as well as to transmission lines, both of which support the transition to a low-carbon economy and to reducing emissions in Manitoba and in other jurisdictions. Further, Manitoba is concerned that Bill C-68 will have adverse implications for critical flood protection projects that reduce the risk of health and safety issues and adverse impacts of floods on communities, homes, and livelihoods.

Bill C-68 does not sufficiently distinguish between significant and insubstantial development impacts on fisheries and fish habitats. This lack of clarity puts important projects at risk of onerous and time-consuming review processes that will not meaningfully improve fishery health. Additionally, the expansion of the definition of fish habitat to include water flows and sites that could sustain fish poses serious concerns for Manitoba’s hydroelectric and agricultural sectors.
More broadly, Manitoba is concerned that Bill C-68, considered in conjunction with Bill C-69 (An Act to enact the Impact Assessment Act and the Canadian Energy Regulator Act, to amend the Navigation Protection Act and to make consequential amendments to other Acts), may have the effect of discouraging development and investment through increased cost risk for projects, lengthier and more onerous regulatory burdens for proponents, and uncertainty about jurisdictional roles, without significantly improving conservation outcomes.

The Government of Manitoba has identified the following issues with Bill C-68 that must be addressed prior to the passage of the legislation.

1. **Clarity on jurisdiction and responsibility:** Interjurisdictional cooperation is a critical factor for continued healthy fisheries and fish habitat management. Provincial authority over resources, as delegated by the 1930 Natural Resources Transfer Act, and The Manitoba Fisheries Regulation (1987), establishes the roles and responsibilities that have enabled Manitoba to carry out sound conservation practices. We are concerned that Bill C-68, in its current form, does not provide sufficient clarity about continuing federal-provincial roles required for certainty, including the addition of potential fisheries management agreements with Indigenous governing bodies. Manitoba requires clearer recognition of, and greater weight assigned to, provincial fishery management objectives under the current Act (i.e. Section 6 – Factors To Be Taken into Account), where provinces have management authority over fishes and their habitat. In the same vein, there needs to be greater clarity in legislation to differentiate between stocks that are managed by the federal government and those that are managed by provinces.

2. **Distinction between significant and insubstantial impact:** It is Manitoba's position that the Fisheries Act should be focused on providing for effective fisheries management and habitat protection. As drafted, there are serious concerns that the current ability of governments to manage fisheries would be circumscribed by the legislative change being considered. It is our view that it is critical for The Fisheries Act to be limited in scope to activities that have the potential to significantly affect fish populations and habitat. The Purpose of the Act (Section 2.1) is articulated in part as "the conservation and protection of fish and fish habitat", which is a return to a previous legislative environment that equated the protection of every fish with fishery management. Manitoba is concerned that this approach will create unnecessary and onerous review processes that will not contribute to fishery sustainability and result in added costs to business and government that ultimately hinder economic growth. For instance, hydroelectric generation that supports shared low carbon economy objectives, cannot operate without some alteration of fish habitat or the occasional incidental killing of fish.

In order to focus the legislation at a population level and on material harm, Manitoba urges that Section 2.1 be amended to "the purpose of this Act is to provide a framework for the proper management and control of fisheries with due consideration for the conservation and protection of fish and fish habitat, including by preventing pollution."
3. **Inclusion of water flow in fish habitat definition**: The proposed amendment to Subsection 2.2 that indicates that the quantity, timing, and quality of water flow is fish habitat is concerning. It is Manitoba’s position that flow considerations are already sufficiently addressed as part of the broader definition of fish habitat, and there is a lack of clarity on how this would interact with existing provincial fish management objectives and with interprovincial regulations and cooperation. Without this clarity, Manitoba is concerned that a literal interpretation of this section will lead some to assert that all natural flows are fish habitat that must be protected. This in turn could lead to unreasonable and excessive restrictions on hydroelectric infrastructure development.

If this provision is retained, this amendment will be at odds with the structured discretion for decision making that the Minister is assigned in “Considerations for decision making” and “Factors” sections. In effect, this risks setting those who want to protect all flows as “fish habitat” against those who would see the Minister’s decisions needing to be balanced considering broader factors including the “public interest” in hydropower generation.

In order to ensure that sound water-flow management does not unnecessarily impose regulatory uncertainty or financial costs, Manitoba recommends that the revised fish habitat definition be deleted and the original Bill C-68 version be reinstated; “fish habitat means water frequented by fish and any other areas on which fish depend directly or indirectly to carry out their life processes, including spawning grounds and nursery, rearing, food supply and migration areas”.

4. **Broadening of fish habitat definition to include sites that could sustain fish**: The existing definition of fish habitat under the Fisheries Act is limited to spawning grounds and other areas fish depend on to carry out life processes. Manitoba is concerned that the expanded definition will bring into scope bodies of water that are not fish habitat, but may join fish habitat temporarily due to heavy precipitation. That could mean, for example, that excess rainfall on farmland may fall under this definition, and drainage activities would then require a permit from the federal Department of Fisheries and Oceans. Such a requirement would conflict with provincial authorities, and would also not be consistent with the meaning or intent of the Act.

It is our view that the Act should be clarified to avoid any such misinterpretation in enforcement or interpretation, and in a way that respects the established provincial responsibility for fishery management and prerogative to maintain productive lands.

In summary, it is Manitoba’s view that Bill C-68 (An Act to amend the Fisheries Act and other Acts in consequence), as it is currently written, includes elements that do not adequately distinguish between insignificant and material impacts on fisheries and fish habitat, and expands the definition of fish habitat in ways that may have broader unintended consequences and which would diminish the ability of governments to manage fisheries effectively. It will also introduce the potential for confusion about the responsibilities of jurisdictions, both among jurisdictions themselves, and among project proponents and
opponents. It is Manitoba’s position that providing the necessary legislative framework for fishery protection requires amendments to Bill C-68 that focuses the purposes of The Fisheries Act on matters related to fishery management at a population level. Manitoba encourages the Standing Senate Committee on Fisheries and Oceans to consider these changes to Bill C-68 to address these concerns.

It is important that Parliament amends Bill C-68 to address Manitoba’s identified concerns. Manitoba is optimistic that through clarification of key clauses in the legislation, and a collaborative process that involves detail-focused dialogue between provincial and federal officials, many of these concerns can be addressed prior to the legislation coming into force.

Highest regards,

[Signature]

Rochelle Squires
Minister
Sustainable Development