Briefing Note on Bill C-68, Amendments to the Fisheries Act

The Nation’s Presentation to The Committee

1. Introduction

The Territory set out in Treaty 2 is a territory defined in the Treaty itself by its lakes and rivers. In describing its boundaries, The Treaty mentions the mouth of the Winnipeg River, Lake Winnipeg, Berens River, Lake St. Martin, Lake Manitoba, Lake Winnipegosis, Waterhen Lake, the Shell River, the rapids in the Assiniboine River. It contains Lake Dauphin and Clear Lake.

We express our appreciation to Prime Minister Justin Trudeau for having mandated the Minister of Fisheries to protect the Lake Winnipeg Basin. A large area of the southern basin lies in Treaty 2 Territory and historically has been a major aspect of our natural economy and lives. We also appreciate his mandating the Minister of Fishers that it was time for a renewed nation-to-nation relationship with us, based on respect, cooperation and partnership and recognition of our rights. We are here today as part of the Spirit and Intent of Treaty 2, here as part of our mutual commitment to live together in peace and friendship.

We also appreciate Canada for certain provisions in the Act to respect the inherent rights we had prior to Treaty and which were not abandoned or altered by the Treaty, and which are protected by s. 35 and 52 of the Constitution of Canada, 1982. Those sections provide that the proposed new Fisheries Act must be consistent with those rights, since any conflict of this new Act with those rights will be of no force and effect.

We appreciate Canada joining with is to ensure that there is, first, proper management and control of our fisheries, second that there is conservation and protection of fish and fish habitat in Treaty 2 Territory, including by preventing pollution. None of those objectives come even close to being met today. We are concerned that the proposed new Fisheries Act will have almost no impact in changing that situation.

We recommend that the Committee amend the Bill to ensure that the process of authorization of projects in and near Water Bodies which might result in the death of fish or harmful alteration, disruption or destruction of fish habitat be broadened to include “spawning and migration of fish” involving us. It is easily conceivable that a project which does not actually kill fish or alter habitat might cause significant disruption of spawning or other migratory habits and requirements of fish that the entire fishery could be severely diminished.
Having said that, we are concerned about the definition of “indigenous governing bodies” and how that definition is applied. Who says who is and who is not an “indigenous governing bodies?” Who decides? Is a strong fishers’ organization less qualified to advise the Minister than the head of another organization?

Consequently, we strongly recommend that the Bill be amended by adding the proviso, “if that province has laws that are deemed equivalent to those provisions or regulations with the proviso that such declaration has no force and effect in relation to rights and interests protected by s. 35 of the Constitution Act 1982 and subject to s. 91(24) of the British North America Act 1982.

We assume that Clause 6 of Bill C-68 extending the application of this declaration of equivalent provisions to the laws of Indigenous bodies that are in effect in the territories governed by these bodies (amended section 4.2(1)) is not intended to apply to “Treaty 2 Territory” or the “Territory set out in Treaty 2.

We support the repeal of the definitions of “Aboriginal” in the new Act. The term is the product of the Doctrine of Discovery, and while it is unfortunately used in the Constitution of Canada 1982, should not otherwise be uttered with respect to the People of Treaty 2 Territory.

We wish to be sure that the term “fish habitat” defined in Clause 1(5) is interpreted to mean “fish habitat” as it was at the time of settlement, including those areas which have since settlement been utterly destroyed by “civilization” and today are no longer “fish habitat”, but which could be restored to being “fish habitat”.

The principal fish habitat is water. When that water is poisoned with chemicals, sewage, garbage – fish die. They get diseased. Deformed. They are unable to be what the Creator intended them to be.

Run-off water from fields along the Missouri River! hundreds of miles away in the United States has been diverted into the Assiniboine and then is diverted again into Lake Manitoba and into Lake Winnipeg. Remember in our part of this Great Turtle Island, water flows north into Hudson’s Bay and from there into the Arctic and Atlantic Oceans.

Fishing and the protection of fish is an inherent right long before the settlers came to our beautiful territory and the full responsibility to protect the fish is from the creator.

2. The Facts

We regret that we must use this occasion with two matters which are very upsetting to us.

The Department of Fisheries maintains that “the new Fisheries Act reflects what we heard from . . . over a hundred meetings with partners, stakeholders and Indigenous groups. . .

Although our Nation, our Treaty 2 Territory, is a nation of fisheries, fishers, and fish habitats, although this Bill affects our rights, our fisheries, our interests and the future of our children, we were totally unaware until recently that a Fisheries Act affecting all those things even existed and was at this advanced stage in the legislative process. No one thought we should be informed or
even consulted. No one thought we might have a contribution to make to improve the legislation. No one thought that this bill would have a strong effect on our rights and interests. We thank the Committee for at least considering our submission at this late date.

The Department states in its media releases that the proposed Act would “strengthen the role of Indigenous peoples in project reviews, monitoring and policy development;” While there are some very positive points in the Bill, we can find little in the Bill which would “strengthen the role” of our people with regard to our fisheries and our rights and our involvement in project reviews, monitoring and policy development. We ask the Department to point out where that evaluation is in error.

At the same time, we feel that this Bill generally is positive, an improvement, and we do not wish to delay its passage, however our Laws must be respected and adhered to.

Having said all this, made all of these recommendations, the sad fact is that very little of your good work will apply in our Treaty 2 Territory.

*We have no way of knowing, but our hunch is that neither was the Committee informed of the situation which we face, and that the Committee – you Senators individually – are being asked to contribute to the continuance of grave injustices.*

The protection, ownership, allocation, use and management of fish and fish habitat, in Manitoba, are governed by a) the Canadian constitution, b) treaties and c) federal and Manitoba legislation. Treaty No. 2 provided for a portion of the lands in the territory to be taken up for immigration and settlement providing compensation was paid by Canada. The Constitution of Canada provides that any law of Canada which contradicts that arrangement is of no force and effect.

Presumably, maybe, fishing in waters totally surrounded by such settlement lands would be considered as part of “immigration and settlement” and would be under jurisdiction of the settlers’ governments. Presumably, decisions or activities which impacted on lakes, rivers and streams partly within settler lands and partly within “lands reserved for the Indians” would be governed by negotiated agreements between the parties and by agreements for joint management.

It could be reasonably argued that compensation would be paid by Canada for the use made by settlers of waters and/or for fish taken by settlers.

Fish swim. They migrate. The move upstream to spawn. Their young need certain kinds of habitat to survive. In our case, we know how fish swim from Lake Winnipeg up through the Dauphin River into Lake St. Martin and then perhaps hundreds of kilometres to other locations where they lay the spawn for their next generation. An impact on fisheries habitat anywhere along that journey affect the fisheries both up and down stream.


Over the years, the impacts have been so negative that the very productive fisheries which once sustained our lives have virtually disappeared.

That was 1871. And until 1930, Canada administered and controlled those lands which it called ‘Crown lands’ (although the Treaty is clear those lands remained our lands) and continued to be our lands when Manitoba and Saskatchewan were subsequently created,

However, the *Constitution Act of 1930* pretended to give legal effect to Natural Resources Transfer Agreements in each of the prairie provinces.

These agreements assumed the right to transfer administrative control of Crown lands and resources to provincial governments, in order that the Governments of Manitoba, Saskatchewan and Alberta would be in the same position as the other provinces of Canada with respect to their land base.

4. **Mixed Federal and Provincial Jurisdiction**

It is true that the Canadian Parliament has exclusive constitutional jurisdiction to make laws for the conservation of fish, including setting fishing seasons, quotas, size limits and gear restrictions. It does this under the authority of the *Fisheries Act (Canada)* and regulations to that Act; while the Legislature of Manitoba claims to maintain constitutional jurisdiction to make laws relating to the use and allocation of fish in Crown (Manitoba) waters as part of the public property. This would include the right to determine who can fish on “provincial Crown land” (licensing), what conditions may be included in a licence and what fee would be paid for the licence. This authority is exercised under *The Fisheries Act of Manitoba* and regulations to that Act.

Simply put, those matters dealing with the conservation of the fish resource are addressed by the *Fisheries Act (Canada)* and the *Manitoba Fishery Regulations* made under the Act. Those matters relating to property rights in fish on Manitoba Crown land (water) are covered by *The Fisheries Act (Manitoba)* and regulations to that Act.

5. **Fish Management and Administration**

While Canada in practice retains ultimate legal authority and responsibility for fish and fish habitat conservation matters, most of the day-to-day management and administration of federal fisheries regulations has effectively been delegated to Manitoba officials the Minister of Water Stewardship, the Director of Fisheries and fishery officers employed by Manitoba. They are the ones who arrest us when we exercise our rights.

Under the *Manitoba Fishery Regulations (Canada)*, the Manitoba Minister of Water Stewardship and the Director of Fisheries have been given the authority to vary close times, quotas and gear types established under those regulations, where we can take the fish, who can eat them. Changes to the *Manitoba Fishery Regulations (Canada)* are proposed by the Minister of Water Stewardship to Fisheries and Oceans Canada. Fisheries and Oceans Canada then reviews the proposed changes and forwards them for approval by Federal Cabinet (Governor in Council).
The First Nations in Treaty 2 Territory are not even aware that all this is happening and has happened until we are arrested.

Legislative responsibility for management of fish habitat has not been specifically legislatively delegated to Manitoba officials. However, Manitoba Water Stewardship continues to manage habitat as an adjunct to other fish management activities. And knowing this, the federal Government does not get involved in fish management nor habitat management in Manitoba.

6. Giving Birth to the New/Old Paradigm

Certain principles which have applied by First Nations in Treaty 2 Territory may provide some comfort in how to emerge from this morass of legal neglect and denial.

- The parties need to work together to engineer the move from the status quo to the inevitable. First Nations in Treaty 2 Territory is willing to set a sad and unconscionable history aside so as to accommodate the realities faced by both federal and provincial governments, and in this matter, the private sector in some cases.

- The morass is very deep and complex. Transition planning is required by all parties. First Nations in Treaty 2 Territory are willing to restore law and order 100% over a ten-year period, 10% of the task at a time might be required and would be acceptable.

- Fulfilment of fiduciary duties by both federal and provincial governments is required. The irresponsibly neglect and mismanagement and lack of management have caused severe damage which must be restored to the original condition of the fisheries. Capacity has been lost and must be restored. Cultural damage must be repaired. This will involve such measures of restoration of water quality, habitat restoration, etc. 10% each year.

- Canada and Manitoba, as well as First Nations in Treaty 2 Territory, will begin to benefit, 10% year by year. Benefits in tourism, value of products, health, world recognition, economic development, employment, savings in social costs.

First Nations in Treaty 2 Territory are determined to get started on this restoration project. In the next 365 days. In its dealings with Bill C-68 and in the course of its other business in this session of Parliament, the Committee has the power to ask questions, get answers, make recommendations and generally, to put Canada back on the track for reconciliation regarding fisheries and fish habitat.

First Nations in Treaty 2 Territory await that answer and the fulfilment of the opportunity offered to us all.

We thank the Committee for hearing our words. We invite you to visit us in Treaty 2 Territory.