

Proposed New Fisheries Act

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The Canadian Chamber has been consistent in its message that all levels of government must embrace the importance of economic development as a fundamental cornerstone of the future economic prosperity of communities, the provinces and Canada.

The Fisheries Act has two primary impacts on economic development. The first is the role of the Act in habitat protection and pollution prevention, reporting and mitigation. The Act's broad reaching habitat provisions and project approval processes have significant impacts on economic activity across Canada. The second important economic role of the Act is to regulate access to fisheries resources.

The proposed new Fisheries Act, introduced as Bill C-45 in the last Parliament, falls short in making changes that will provide the timeliness, certainty and predictability needed for sound business planning and economic development from both the habitat protection and fisheries management perspectives.

The habitat protection and pollution prevention, reporting and mitigation provisions of the proposed Act (sec. 56-62), as well as related liability and enforcement provisions (sec. 64-67) are not substantially different from those which appear in the present Fisheries Act. The new act would remain the strongest piece of environmental legislation in Canada. One improvement is that an "alteration" or "disruption" must be determined by the Department of Fisheries and Oceans (DFO) to be harmful for the general prohibition on harmful alteration, disruption or destruction (HADD) of fish habitat to apply. However, the proposed Act makes no distinction between temporary and permanent HADD.

Most critically, the Act does not contain any decision criteria or statutory time lines for decision making for HADD authorizations. Such time lines are necessary for business planning so that investors are not left wondering whether projects will proceed for, in some cases, years. The Act leaves the issues of the basis for decision making and streamlining regulatory approvals to either regulations or policy and, because of this, falls short in providing the certainty required for economic development.

The chamber has been consistent in its support for the Environmental Process Modernization Program (the "EPMP") which was recently launched by the DFO. While the chamber believes that the EPMP may address some of the concerns identified by our members, this will only be successful if the legislative, regulatory and policy basics are in place to both reasonably protect fish habitat and foster economic development.

The Canadian Chamber has also supported amending the Fisheries Act to include equivalency provisions for provincial habitat protection regulations. While this has been done, it has been done in a way that appears to be meaningless since equivalency will only be deemed to exist when there are exact mirror regulations existing both federally and provincially. Thus, for example, B.C.'s forest practices code could not apply since there are no mirror regulations federally.

The provisions of the proposed Act with respect to managing fisheries also fall short of providing the type of security of access to fisheries resources required in a modern business supplying food products to domestic and international markets. Canada's fisheries are a common property resource, belonging to all the people of Canada and managed by the DFO. However, public ownership of the resource does not preclude recognition that individuals and companies have interests that need protection if enterprises are to be economically successful and deliver benefits to all Canadians. A stable licensing regime with secure access is essential to developing competitive businesses that can access capital and investment to meet the

increasingly stringent requirements of the global marketplace. The Canadian Chamber also recognizes the concerns of the recreational sector with respect to continued access to fisheries resources for all Canadians for recreational purposes. This access needs to be protected in a manner consistent with recreational use and with clear and transparent mechanisms for change.

Many other jurisdictions have been able to maintain the common property nature of fisheries while still providing a modern legislative basis for recreational and Aboriginal fisheries as well as providing more certainty for the business interests of commercial licence holders. The proposed Act fails in this regard by making access to fishing licences less certain than the current *Fisheries Act*, not more. This is in contrast to commercial fishery access agreements which have been negotiated with Aboriginal groups, in BC in particular, through the treaty process which call for 25 year access privileges, renewable on an evergreen basis after 15 years. The proposed Act does not contemplate an equivalent certainty of access for commercial fishermen who are not part of treaties, creating an “un-level playing field” in the business of fishing.

Recommendations

That the federal government:

1. Substantially amend or re-table the proposed *Fisheries Act* with changes to provide for greater certainty with respect to the decision criteria, interpretation of HADD provisions, and specific time frames for habitat approvals and to provide greater certainty for access to fisheries resources.
2. Formally recognize the importance of modernization of the *Fisheries Act* to economic development in Canada and to make this objective one of the guiding principles of the new Act.