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Submission in Response to the Review of Changes to the Fisheries Act

To: The Standing Committee on Fisheries and Oceans

From: Elizabeth May, O.C. Member of Parliament Saanich-Gulf Islands

Date: November 30, 2016

This brief is prepared as a contribution to the Committee's Review of Changes to the Fisheries Act, which was gutted with the implementation of the omnibus budget bill, Bill C-38, in 2012.

Though I am heartened to see that the Liberal government is moving forward to repeal some of these changes, Canadians continue to live under C-38's broken process when it comes to environmental assessment.

With the passage of time, people tend to forget that the National Energy Board never had a mandate to conduct environmental reviews prior to C-38, neither did the Canadian Nuclear Safety Commission, nor the Atlantic provinces' Off-Shore Petroleum Boards. The repeal of the original Canadian Environmental Assessment Act has caused a series of flawed and illegitimate reviews that place the new government in an untenable position.

It would have been preferable to reinstate environmental laws as they existed in 2006 and conduct a review and consultation based on those acts. The current drawn-out consultation process creates the risk of more projects entering a hopelessly flawed process. The longer these bad laws remain, the more new projects start at the front end of an unfixable and unfair process.

Canada deserves better.

I call upon the government to repeal changes to the federal Fisheries Act found in spring 2012's omnibus budget bill C-38. To protect precious fish habitat, we must restore the habitat protection provisions of the Fisheries Act, destroyed in Bill C-38.

Prior to the changes made in 2012, the act prohibited harmful alteration, disruption or destruction (HADD). Amendments to section 35(1) of the Fisheries Act changed the legislation to prohibit the permanent alteration or destruction of fish habitat, and the prohibition was merged with the previous

stand-alone prohibition against destruction of fish. This broadened the act, and completely undermined the ability of the Fisheries Act to protect our waterways and their biodiversity. As well, whereas it used to apply to all fish and fish habitat, it now only applies to fish and their habitat that are part of, or support, commercial, recreational, and aboriginal fisheries. Changes to the Fisheries Act in 2012 have also weakened the government's ability to charge companies for destroying fish habitat.

In an open letter to then Prime Minister Stephen Harper, scientists from across the country said:

“Habitat destruction is the most common reason for species decline. All ecologists and fisheries scientists around the world agree on these fundamental points, and the Fisheries Act has been essential to protecting fish habitats and the fisheries they support in Canada.”

The damage wrought by these changes is extensive. The very thorough brief of Dr. Martin Z. Olszynski is entirely persuasive. I also urge the committee to follow the excellent recommendations of West Coast Environmental Law, as presented by Linda Nowlan, and FLOW, with research from Tony Maas. The Habitat 2.0 recommendations, in particular, deserve support.

The C-38 re-classifications of types of fisheries meriting protection as “commercial, recreational and aboriginal” deserve special mention. For those members of the Committee who did not serve in the 41st Parliament, you need to know the source of this new legal regime. It is not based on evidence or sound public policy analysis. In fact, it came from industry lobbying – word for word. To my knowledge in the last forty years of evolving environmental law, this is the first time in Canadian history that laws have been literally dictated to government by industry.

The effect is to deprive any fishery without human utilization from consideration.

The Fisheries Act is one of Canada's oldest pieces of environmental legislation and it must be strengthened to ensure the success of our coastal communities, our economy, First Nations, Metis and Inuit rights of utilization, and our country's natural resources. All opposition parties in 2012 fought hard against the omnibus budget bill, Bill [C-38](#), which destroyed habitat protection under the Fisheries Act. Those devastating changes are not yet reversed. It is my sincere hope that this government will no longer delay on this matter.

Recommendations:

- Repeal changes to the federal Fisheries Act found in spring 2012's omnibus budget bill C-38.
- Remove the exemption of the Fisheries Act in the C-38 changes to the National Energy Board Act when pipelines are involved, as well as removal of the Species at Risk Act and Navigable Waters Act.
- Strengthen the Fisheries Act to:
 - Require evaluation of threats to fish stocks and include provisions to protect fish stocks and the marine environment;
 - Make protection of critical stocks and habitat mandatory;

- Require that the management and conservation of wild fisheries take precedence over aquaculture, wherever there are conflicts;
- Increase penalties for contravening the Fisheries Act
- Improve public participation in decision making, under the principles of the Oceans Act, in particular engaging coastal communities in local fisheries management.
- Implement the Wild Salmon policy
- Transfer the promotion of aquaculture to Agriculture and Agri-Food Canada and restore DFO's role in protecting coastal eco-systems from the threat posed by open-pen aquaculture
- Make fish-friendly flood control an aspect of climate adaptation.

Thank you for the opportunity to provide these points. I am very happy to meet with the committee and staff to provide more detailed background to any of these points.

Elizabeth May, O.C.