



12 June 2012

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The Honourable Peter Kent  
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**RE: Association of Professional Biology advice to government regarding Bill C-38 and requests to meet for further discussion**

Dear Ministers,

The Association of Professional Biology (APB) hereby provides our advice on the proposed changes to environmental legislation in Bill C-38. The APB consists of qualified registered biology professionals who hold membership with the College of Applied Biology. As such, we are governed under BC's *College of Applied Biology Act* and its associated rules and Code of Ethics. The APB works to support the practice and profession of registered biology professionals through ensuring the application of sound biological science and stewardship principles remain a central tenet to natural resource management and decision making. Since 1980, our members have collaborated with a range of related professions and government in ongoing policy and legislative reform around the management of British Columbia's natural resources, including those within the scope of the Bill C-38.

Attached with this letter is a position paper crafted by the APB to advise the government on opportunities to improve the proposed changes in Bill C-38. In summary, the paper concludes with the following recommendations:

- 1. Remove all of the environmental components from the current Bill C-38 and provide an appropriate time period for a scientific panel to provide unbiased detailed recommendations to assist government with improving these components;**
  - a. additionally, since SARA is designed for cooperation between the Federal and Provincial governments, obtain input by the inter-ministerial Canadian Endangered Species Conservation Council on this aspect of the proposed changes prior to enactment; and**
- 2. include an appropriately qualified Registered Professional Biologist on the scientific panel.**



Additionally, we realize that the APB needs to provide a more complete introduction about our niche in natural resource management to your respective ministries. We will be contacting your offices to formally request time to introduce the APB to you and elaborate on these recommendations. We also plan to discuss how the framework of professional biology, which is well established in British Columbia, can assist the federal government in managing biological aspects of resource management. Encouraging the application of biological science and increasing the use of biology professionals across the country will improve policies and facilitate better resource management decisions for true long-term prosperity.

Sincerely,

**Association of Professional Biology**

Domenico Iannidinaro, MBA, RPF, RPBio, PEng

President

Email: [president@professionalbiology.com](mailto:president@professionalbiology.com)

cc:

The Right Hon. Stephen Harper, Prime Minister

Susan Patey LeDrew, P.Biol., President, Alberta Society of Professional Biologists

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The Association of Professional Biology represents approximately 1,000 Registered Professional Biologists (RPBio) and Registered Biology Technologists (RBTech) employed by industry, government and non-government organizations in all aspects of biology. We help members maintain competence and achieve high professional standards; advance the development and application of sound biological principles in the management and conservation of BC's natural resources; and foster public understanding of impacts of human and other activities on natural resources.



## **Position Paper on Proposed Changes to Canada's Environmental Legislation Under Bill C-38: *The Jobs, Growth, and Long-term Prosperity Act***

The Association of Professional Biology believes in a constructive balance between a responsible, entrepreneurial private sector and an effective civil service. Supporting this balance in the management of natural resources in Canada inevitably involves expert input from registered members of self regulating professions<sup>1</sup> to formulate science-based advice prior to conducting activities across the landscape. Through its history, the APB has learned that effective public consultation elicits important information that assists natural resource professionals and policy makers to create positive regulatory change. When properly combined, scientific advice and public input can generate robust policy language that spurs innovation and balances critical values.

We believe there is a high risk that the proposed Bill C-38 may not achieve the necessary balance between responsible economic development, environmental conservation, and social well-being. Specifically, we herein respectfully provide our position on those revisions being proposed to the *Fisheries Act*, *Canadian Environmental Assessment Act (CEAA)*, *National Energy Board Act (NEB)*, and *Species At Risk Act (SARA)*.

### **Revisions to the *Fisheries Act***

In March 2012, the APB provided recommendations to the Minister of Fisheries and Oceans about maintaining the current provisions for fish habitat protection in the *Fisheries Act*. The APB is concerned that Bill C-38 proposes to eliminate clauses relating to the prohibition of activities that result in the degradation of fish habitat and their replacement with clauses for protection of fish *only if they have human value*.

The overwhelming body of scientific evidence supports the view that the protection of habitat is one of the most effective means of ensuring the welfare and sustainability of plant and animal populations, and nowhere is this more important than at the land/water interface, which often contains areas of the highest biodiversity. Protection of fish habitat captures the needs of a vast array of other aquatic and upland species, many of which are at risk precisely because of previous aquatic habitat "alteration, disruption and destruction".

Existing habitat provisions of the *Fisheries Act* have resulted in important innovations that have contributed to sustainable development practices in Canada. While there is always room for improvement, the Department of Fisheries and Ocean's no net loss policy, driven by the habitat

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<sup>1</sup> E.g. Biology Professionals, Forest Professionals, Engineers & Geoscientists, and Agrologists



provisions of the *Fisheries Act*, has led to proactive actions that effectively compensate for habitat affected by development projects.

Additionally, the loss of the current habitat provisions could reduce or eliminate the effectiveness of Canada's *Policy for Conservation of Wild Pacific Salmon*. Canadians cannot rely on hatcheries and fish farms to supply the commercial and sport fishing industries. The production of wild pacific salmon and other fishes in quality aquatic habitat is a free good with enormous economic value.

At a practical level, the *Fisheries Act* changes shift the focus of aquatic conservation from "prevention" to after-the-fact "prosecution and remediation". Past experience has shown that it is less costly and more effective to prevent habitat degradation than to attempt rehabilitation after harm has been done. One likely effect of the proposed changes will be less emphasis on field verification of species presence, habitat quality and the increase in use of desktop studies of pre-existing, sometimes obsolete data to determine whether no "adverse effect on a fish of economic, cultural or ecological value" is likely to occur. Not only will the knowledge of resource values be uncertain, but the net effect of human development on those values is likely to remain uncertain. Moreover, the ambiguous and subjective wordings in the proposed changes, such as "*serious* harm", "*permanent* alteration and destruction", and "commercial, recreational, aboriginal fishery *or fish that support such a fishery*", are likely to cause real problems in enforcement, court interpretations and in scoping potentially significant impacts in project review processes.

## Revisions to the CEA and NEB Acts

In BC, the Provincial major projects review process has been recognized by the Federal government as equivalent to the CEA Act process since 1995. With one notable exception, the APB believes that proposed changes to the CEA and the NEB Acts are unlikely to have any significant impact on the way in which major project reviews are carried out in BC. We expect that most environmental reviews in BC will continue to be carried out through the Provincial process with Federal participation, except in those very limited areas under exclusive Federal jurisdiction.<sup>2</sup>

Where the APB believes that that proposed changes to the CEA and the NEB Acts are *likely* to have a significant impact is in the current NEB panel review process for the Enbridge Northern Gateway project. In 2010, the Provincial government accepted a *neutral, arms-length* review by the NEB as equivalent to the Provincial review process. It appears that Bill C-38 will affect that agreement by substituting the Federal Cabinet as decision-maker in place of the independent NEB.

From our perspective, the fundamental flaw in the NEB review process for the Northern Gateway project relates to a gap between pipeline design, risk analysis and cumulative effects. Both pipeline and tanker spill risk analyses of the Northern Gateway project were based on a minimum throughput of 525,000 bpd of bitumen and 193,000 bpd of condensate. The sizes of the proposed pipelines are equivalent to

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<sup>2</sup> However, this may not be the case in other provinces and territories that rely more fully on the Federal process. We are concerned that projects solely within federal jurisdiction may be considered with less rigorous scientific review.



850,000 bpd bitumen and 275,000 bpd condensate; all that is needed to meet this maximum design capacity is the installation of pumps that, under NEB rules, *do not require environmental review*. Full capacity would imply about 340 tankers/year travelling Douglas Channel. Concurrently, Kinder Morgan is expected to raise its pipeline production from 300,000 bpd to 850,000 bpd, which would increase tanker traffic in Burrard Inlet, the Strait of Juan de Fuca and northward along the coast from 71 tankers/year to almost 400. Full potential production of both projects could therefore result in a total of about 750 tankers a year on the BC coast but the two projects will be reviewed in isolation of one another and there are no apparent plans for a comprehensive, aggregate risk assessment of their cumulative potential impact.

A secondary issue under Bill C-38 relates to review time-lines (deadlines) in both the CEA Act (24 months) and the NEB Act (15 months) processes. The BC Environmental Assessment Process has had legislated time-lines since the process was enacted in 1995. The question being asked is whether 24 or 15 months is an adequate time in which to review a project proposal. The important consideration is, "To review what?" Our experienced members consider 24 months to be a reasonable time to review a final feasibility design submitted after continuous consultation through the CEA process. Whether 15 months is adequate for NEB projects is uncertain because of their potential size and complexity, but it appears that there is more opportunity to extend deadlines under the NEB Act if required.

Regardless of established time-lines, feasibility design will take as long as is necessary to produce a competent project proposal worthy of review. Three of the major reasons that projects remain "in preparation" for long periods are:

- proponent inexperience;
- lack of adequate project design information (e.g. hydrological/meteorological and environmental baseline data), particularly where inventory data is out of date or lacking; and
- continual, significant changes to project design.

Whenever a project enters the process (and this applies equally to both Federal and Provincial processes), the deadline clock "starts ticking" when a final feasibility design is submitted for review and "stops ticking" if there are major design changes or additional information requirements arise during review. This is the principle of the "time-lines" in the Provincial process, which have worked quite well. In practice: the more constructive the proponent's participation in the process, the shorter the review and decision time.

The time-lines provisions in Bill C-38 attack the wrong problem. Bill C-38 seems to address frustration with delays in approval of projects caused by lengthy review processes. However, in our members' experience, most of the "time-wasting, delays and inefficiencies" in the process stem from inexperience and unrealistic expectations *on the part of proponents*, particularly unsophisticated companies inexperienced in project design or legal obligations. We understand that, in BC, projects have tended to remain in-process for such reasons as: feasibility design still in progress, proponent inability or reluctance to supply the information legally required to adjudicate and/or permit the proposal; significant and



continual changes to project design; or proponent stubbornness in continuing to promote a project with significant unresolved issues and impacts.

Proponent efficiency aside, meaningful reviews of biological resources do require appropriate amounts of time to accommodate the seasonal and behavioral constraints inherent in collecting the baseline biological data needed to determine potential impacts and to plan for effective mitigation. From the APB's perspective, our members have a legal obligation to ensure they meet a professional standard of care by practicing applied biology with attention, caution, prudence, and due diligence. That is achieved in part by assuring the level of effort expended (including time taken) is appropriate to the task and the potential risks.

### **Revisions to the *Species At Risk Act***

The main change to the *Species At Risk Act* (SARA) relates to the maximum time limits on Ministerial agreements and permits regulating an "activity that affects a listed wildlife species or any part of its critical habitat". Changes proposed in Bill C-38 would allow unspecified time-limits (criteria not apparent) to be established in the agreement or in the permit itself. We believe that the 5-year (agreements) and 3-year (permits) time limits were consistent with a conservative approach, and represented an appropriate monitoring period for adjustments to occur through adaptive management. Longer allowable permit periods, unless very carefully considered, may preclude timely adjustment and, due to individual variability in species life histories, act to compromise survival and residence habitat to the detriment of the affected species.

Since the SARA is binding on both the Federal and Provincial governments, we suggest that, before being presented to Parliament, the proposed changes to the Act first obtain input by the inter-ministerial Canadian Endangered Species Conservation Council.

### **Recommendations:**

As noted in the cover letter to this position paper, the APB recommends that you:

- 1. Remove all of the environmental components from the current Bill C-38 and provide an appropriate time period for a scientific panel to provide unbiased detailed recommendations to assist government with improving these components;**
  - a. additionally, since SARA is designed for cooperation between the Federal and Provincial governments, obtain input by the inter-ministerial Canadian Endangered Species Conservation Council on this aspect of the proposed changes prior to enactment; and**
  
- 2. include an appropriately qualified Registered Professional Biologist on the scientific panel.**



In closing, the APB represents about 1,000 registered biology professionals who act to ensure that ecosystem values are conserved to the benefit of biological resources and the public. Aspects of the proposed legislative changes could substantially impede our ability to achieve this. We are professionals dedicated to building and refining tools to ensure that economic efforts succeed without untenable impacts to people and the ecosystems that sustain them. Bill C-38 risks losing decades of effort by biology professionals, scientists, voters, stakeholders and concerned citizens. Efforts to improve Canada's environmental legislation and policies should be premised on ensuring that the management of ecosystem values is based on sound science and stewardship principles.