



## Submission to the Standing Committee on Fisheries and Oceans on its Review of Changes to the Fisheries Act

MiningWatch Canada

November 30, 2016

### Introduction

MiningWatch Canada was created in 1999 as a co-ordinated public interest response to the threats to public health, water and air quality, fish and wildlife habitat, and community interests posed by irresponsible mineral policies and practices in Canada and around the world. It is supported by twenty-seven Canadian environmental, social justice, Indigenous, and labour organisations.

The impact of mining on water and on fish and fish habitat is profound, and is central to the concerns that mining-affected communities across Canada have brought to MiningWatch related to water quality and flows but also individual and community health as well as the economic, cultural, social, and spiritual well-being of Indigenous and non-Indigenous communities alike.

Mining is essentially a waste management industry; typically, only a tiny percentage of the material that's mined is actually marketable. The rest is waste, often contaminated with heavy metals and other contaminants liberated by processing and at risk of leaching or spilling into the environment. At the same time, mining activities in most of Canada have to be dewatered, displacing massive amounts of water, which may also be contaminated.

All stages of mining – from exploration, to development and operation, to decommissioning and closure – contaminate and divert water and can destroy fish habitat, even entire water bodies, sometimes permanently. In the worst cases, mine sites must be monitored, and mine water controlled and treated, in perpetuity – forever. For examples, Environment Canada's second & third *National Assessment of Environmental Effects Monitoring Information from Metal Mines Subject to the Metal Mining Effluent Regulations (MMER)* clearly show impacts on fish and fish habitat downstream from mines in Canada.<sup>1</sup>

The *Fisheries Act* is a keystone law in Canada's legislative framework for protecting the environment and allowing the pursuit of sustainable development. Far beyond simply regulating fisheries, it can, and should, protect all aspects of aquatic habitat. In so doing, because water is so fundamental to all ecological cycles as well as human survival and well-being, the *Fisheries Act* provides a crucial link to everything from environmental assessment to protecting human health.

We would submit that changes to the *Fisheries Act* need to be made in three key areas:

1. Restore the strong prohibition on the harmful alteration, disruption or destruction of fish habitat;

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<sup>1</sup> <http://ec.gc.ca/esee-ees/default.asp?lang=En&n=F2078C08-1>

2. Strengthen regulation under the *Act*'s pollution protection provisions; and
3. Strengthen monitoring and enforcement.

### **Restore the strong prohibition on the harmful alteration, disruption or destruction of fish habitat**

The government has promised to “restore lost protections.” As this Committee has heard from many intervenors, protecting fish habitat was a crucial function of the pre-2012 *Fisheries Act*. (Section 35, the key habitat protection provision of the Act, prohibited any work or undertaking that would cause the Harmful Alteration, Disruption or Destruction (HADD) of all fish habitats (not just those subject to fisheries), unless authorized by the Minister of Fisheries and Oceans or through regulations under the Act.) Others, including West Coast Environmental Law, Ecojustice, and the Ecology Action Centre as well as several highly qualified individuals, have made detailed arguments affirming the importance of this provision to the integrity of fish ecology and the health of fish populations. We support their submissions.

Section 35 of the pre-2012 *Fisheries Act* also provided a critical link to the environmental assessment process. Logically enough, any action by the government to allow such activities triggered an environmental screening. The 2012 version of the *Canadian Environmental Assessment Act* doesn't provide for screenings, but that *Act* is also under review by an expert panel. From a public interest perspective, for the sake of fish and fish habitat, and for a meaningful possibility of a sustainable relationship between Canadians and our waters, that link must be restored. We are not advocating a return to the pre-2012 *Canadian Environmental Assessment Act* “self-assessment” screening process, but there clearly needs to be a mechanism to identify and register “any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat,” in the words of the old Section 35(1), and allow it to be subjected to an environmental assessment where this is appropriate, whether by decision of an environmental assessment authority or by designation as part of a list of undertakings with potentially serious environmental consequences. That linkage is only possible if the *Fisheries Act* “trigger” exists.

### **Strengthen regulation under the *Act*'s pollution protection provisions**

Section 36(3) of the *Fisheries Act*, the key pollution prevention provision, prohibits the deposit of deleterious substances into waters frequented by fish, unless authorized by regulation under the *Fisheries Act* or other federal legislation. This is a very powerful protection measure, and appropriately so given the importance of aquatic ecosystems and their vulnerability to contamination. We are currently using this provision to initiate charges against the Province of British Columbia and the Mount Polley Mining Corporation over the 2014 collapse of the tailings dam at the Mount Polley mine, which sent some 20 million tonnes of wastes into Polley Lake, Quesnel Lake, and the Fraser River watershed in Canada's worst environmental mining disaster to date.

Two recommendations flow from this. First, the prohibition on the deposit of deleterious substances needs to be preserved, as does the facility for anyone to lay charges, as it is an important ‘backstop’ or failsafe in cases where the relevant authorities do not have adequate information or for some other reason are unable or unwilling to lay charges. Second, in order to present a reasonable deterrent, the maximum fines must be increased to maintain some proportionality *vis-à-vis* the revenues and resources of potential offenders. If the maximum fine is \$6 million for each violation, but the operator is grossing dozens or hundreds of million dollars per year, then paying a fine is less of a deterrent, even for multiple counts of violation.

As such, it was particularly disturbing to witness, in recent years, two fairly large mining companies, Teck Resources and Cliffs Resources, being respectively fined only \$3.0 and \$7.5 million for repeated pollutant discharges and multiple offences under the Fisheries Act. Those two fines have been described as the ‘largest environmental fines’ ever given in Canada’s history<sup>2</sup>. Yet those fines pale in comparison to the market capitalization of those two companies (\$2 billion for Cliffs and \$19 billion for Teck), let alone their CEO’s yearly salaries and compensation (\$11 million for Cliffs’ CEO and \$10 million for Teck’s)<sup>3</sup>.

The Metal Mining Effluent Regulations (MMER) also need to be strengthened. The MMER set out the conditions under which the owners or operator of a mine may release certain contaminants and deposit deleterious substances into waters frequented by fish. In addition to setting out the authorized limits of nine (and only nine) deleterious substances, the regulations include a schedule of permitted “Tailings Impoundments Areas (TIAs)” – water bodies (i.e. lakes) where the deposit of tailings is authorized – basically the loss of fish habitat by smothering associated with tailings. For a lake to be authorized to be used for tailings deposit, the MMER needs to be amended, with approval from the Governor in Council and Cabinet. We and a number of Canadian organizations have participated in Environment Canada’s 10-year review of the MMER, and in 2015 made detailed recommendations of how to strengthen it. We also continue to oppose to the discharge of mine tailings into fish-bearing waters and the destruction of lakes for use as TIAs.

### **Strengthen monitoring and enforcement**

In 2005, MiningWatch Canada published the study, “Protecting Fish/Protecting Mines: What is the real job of the Department of Fisheries and Oceans?”<sup>4</sup>, showing how the Department of Fisheries and Oceans – the federal agency mandated to manage and protect fish and fish habitat in inland waters as well as oceans – had allowed extensive destruction of fish habitat from mining development, ignoring its own mandate as well as public concern and advice from independent scientists. Since then, the situation has only gotten worse as the Department’s capacity for monitoring and verification of impacts to fish and fish habitat has diminished, as well as its capacity for scientific study. This has been widely observed and denounced; it is important for the government to take this opportunity to rebuild that capacity, and even to go further and build Canada’s fishery science into an example for the world, befitting a country with such immense amount of fresh water.

At the same time, the intention of enforcement needs to be toughened up considerably. Documenting violations does little good if no enforcement action is taken, or if enforcement is interpreted as politely requesting and industrial operator (like a mining company) to comply. Repeatedly. Without even a threat of charges being laid, or permits suspended. This is less a question of capacity than of political direction, and the public – and especially Indigenous people who depend on fisheries for physical, cultural, and social sustenance – are less and less willing to see such violations go unpunished.

Thank you for your consideration.

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<sup>2</sup> <http://www.theglobeandmail.com/news/british-columbia/teck-metals-fined-34-million-for-polluting-bcs-columbia-river/article28962151/>, <http://www.theglobeandmail.com/news/national/cliffs-bloom-lake-mine-hit-with-record-75-million-environmental-fine/article22210209/?1478899561242>

<sup>3</sup> <http://www1.salary.com/CLIFFS-NATURAL-RESOURCES-INC-Executive-Salaries.html>, <http://www.canadianbusiness.com/lists-and-rankings/richest-people/top-100-highest-paid-ceos-2015/>

<sup>4</sup> [http://miningwatch.ca/sites/default/files/Protecting\\_Fish\\_0.pdf](http://miningwatch.ca/sites/default/files/Protecting_Fish_0.pdf)