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CRITICAL ASPECTS OF A MODERN FISHERIES ACT

Bill C-45, an Act to amend the existing federal *Fisheries Act*, is to be before the house during this Parliamentary session. In anticipation of the house debate and eventual hearings before the Standing Committee on Fisheries and Oceans, we have compiled the following list of principles and provisions that should be in any sound and modern fisheries act. These principles and practices are based on established principles of environmental law including: ecosystem based management, sustainable development, precautionary principle, polluter pays, and intergenerational equity. These principles are also drawn from examples of fisheries laws in other jurisdictions that are known for ecologically and socially responsible fisheries.

1. **An effective fisheries act must take an ecosystems approach that integrates the management of conservation and marine resources.** The Bill fails to take an ecosystems based approach to regulation of fisheries that integrates the management of marine resources. Instead the Bill maintains the approach taken by the existing *Fisheries Act*, that of managing a single resource – the commercial fishery - through the management of individual fish stocks, without regard to conservation and protection of marine ecosystems or the management of other marine resources. A better approach is taken by the as yet unimplemented *Canada Oceans Act* of 1996. The *Oceans Act* calls for integrated management plans that integrate the management of all activities or measures in or affecting estuaries, coastal waters, and marine waters under Canadian jurisdiction.
2. **Environmental Assessment of major fisheries activities.** Environmental assessment should be required for major fisheries activities including: fisheries management plans, opening new areas to fishing or new fishing methods, approval of new fishing techniques and gear types, annual fisheries openings and allocation of quota.

3. **Protect fish habitat from the harmful effects of fishing.** Existing and proposed fisheries law in Canada does not protect fish habitat from the harmful effects of fishing destructive fishing practices. Fisheries legislation must address the need for ocean mapping and the Identification of essential fish habitat. A provision aimed at protecting fish habitat from fishing should include conditions for opening a new area to fishing and the authorization of a new gear type.
4. **Restrict harmful fishing practices.** Harmful fishing practices should be a defined term in a new act. The definition must be consistent with the existing *Fisheries Act* prohibition on destruction of fish habitat, and the recent United Nations declarations on sustainable fisheries. Such a provision should focus on harm to fish habitat and also harm to other marine species. Beyond a certain threshold of harm, certain practices should not be allowed. Less harmful practices should be encouraged through allocation of quota. More harmful practices discouraged by withholding quota.
5. **Marine Protected Areas are a part of proper fisheries management.** Canada has committed to complete a network of protected areas by 2012. The new fisheries act should acknowledge and support that goal. Integrated fisheries management means addressing such things a protected areas and ocean zoning as and integral part of proper fisheries management.
6. **Interpretive principles must apply to all decisions made under the Act.** Important principles of environmental law and fisheries management include: sustainable fisheries, the precautionary principle, the principle of intergenerational equity, ecosystem based management, and restricting destructive fishing practices. These principles must be binding principles that apply to all decisions made under the Act.
7. **Public participation must be a meaningful part of fisheries decision-making.** In a modern statute it is important that the public, and in particular local communities, have a voice when it comes to major fisheries decisions. In particular it is important to have provisions that require and support regional advice and guidance from the fishing, scientific, and local communities. Bodies such as a fisheries tribunal, are particularly amenable to public participation. It must be clear in the Act how members of the public can participate before such a tribunal.
8. **Public participation is a valid part of effective fisheries enforcement.** The existing *Fisheries Act* allows concerned citizens to bring private prosecutions for violations of the Act. It does this through provisions in the Fisheries “General” Regulation. It is unclear whether the same will be reproduced in potential regulations under the new fisheries management scheme. Effective enforcement in a country the size of Canada demands that the concerned public play a role in fisheries enforcement. The new act must make this clear, and spell out the means through which citizens can assist fisheries officers in protecting both the marine environment and our valuable fisheries.

9. **Allocation provisions must address the desire to maintain and protect fishing communities.** There are provisions in other fisheries management legislation aimed at protecting the requiring the holder of certain kinds of licences to actually be the people out fishing. Such provisions could go a long way to addressing the concerns about individual transferable quota (“ITQs”) in the Canadian system. ITQs have been heralded in other jurisdictions, particularly in the United States, as a means of addressing overcapacity in the fishery and reducing over fishing. In Canada however, and in particular on the East Coast, ITQs have raised concerns about the concentration of quota in the hands of a few owners of large fishing fleets. Provisions that seek to address and protect the traditional small boat fishery will help create truly sustainable fisheries, those that balance ecological and community needs.

10. **Clear legislative provisions must address and regulate aquaculture.** The rules governing aquaculture and its environmental impacts must be included in our fisheries legislation, and not simply in regulation. Only legislative provisions will be debated in Parliament and evaluated by the Standing Committee for Fisheries and Oceans. Regulations are developed and passed largely by the government behind closed doors.