

October 17, 2012

\_\_\_\_\_  
Member of the Legislative Assembly, \_\_\_\_\_

Re: NWT dialogue on federal changes to environmental legislation

Dear \_\_\_\_\_,

We would like to call on you as a member of the Legislative Assembly representing the interests of your riding to contribute to an informed and inclusive public dialogue about how federal changes to environmental regulations will impact Treaty and Aboriginal rights and all citizens of the Northwest Territories.

In its omnibus budget bill, Bill C-38, passed in June 2012, the federal government has significantly weakened the federal environmental regulation framework and invited provinces and territories to fill the gap, without providing any financial resources to do so. For example, to “streamline” projects, the federal government has rewritten sections of the *Fisheries Act*, removing protection for fish habitat. Many projects, including offshore oil and gas exploration, will now be exempted from environmental screening. Cabinet can now overrule National Energy Board and environmental assessment decisions without making their rationale public. The legislation provides Cabinet with authority to disregard expert evidence in favour of political discretion. Authority is being shifted from the northern people to Ottawa.

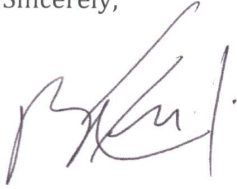
Long before the omnibus budget bill alarmed people across Canada, the federal government had been actively driving forward plans to eradicate NWT’s regional regulatory boards. The federal government was moving ahead with recommendations made by Mr. McCrank and Mr. Pollard in spite of opposition from people in the north.

Changes are also being proposed to the NWT regulatory management framework. *The Mackenzie Valley Resource Management Act* was agreed upon by people in the north and was informed by approximately forty years of collaborative dialogue. The current system can be made to work.

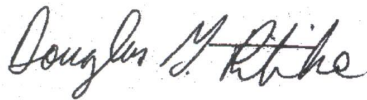
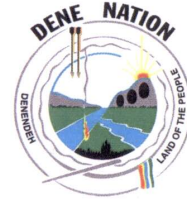
People are not convinced that one big board will increase efficiency and clarity. In fact, it may well create more uncertainty for the north. Aboriginal people question the legality of the proposed changes. Undefined new wording in environmental legislation will create uncertainty for industry. NWT citizens deserve to understand what the changes imply for

We would like to encourage you to raise these important issues in the 3<sup>rd</sup> session of the 17<sup>th</sup> Legislative Assembly. Thank you for your anticipated positive response and cooperation in working together to clarify how these changes will impact NWT residents.

Sincerely,



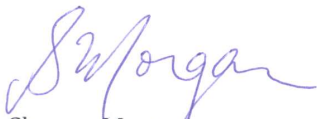
Bill Erasmus  
Dene National Chief  
Assembly of First Nations Regional Chief NWT



Doug Ritchie  
Director, Ecology North



Kris Brekke,  
Executive Director,  
Canadian Parks and Wilderness Society, NWT Chapter



Shauna Morgan  
Alternatives North



*Alternatives North*

## **Amended Fisheries Act Implications in the NWT**

The Fisheries Act is currently our only tool for protecting fish habitat and contributes significantly to protection of water quality in NWT and in trans-boundary watersheds. Changes to the *Fisheries Act* were included in the budget bill, Bill C-38, passed in June 2012. Changes were made without consultation of Canadians and without the consent of Aboriginal peoples. These changes were passed in spite of strong opposition across Canada.

The amended *Fisheries Act* presents uncertainties for residents in the NWT and brings significant responsibilities for the GNWT upon devolution:

- The scope of the *Fisheries Act* has been narrowed to protect only commercial, recreational and Aboriginal fisheries. Many fisheries and water bodies that contribute to the health of our greater ecosystems could be damaged. How will it be decided that certain NWT lakes and rivers are less valuable and thus open to pollution or destruction?
- The amended federal *Fisheries Act* weakens Department of Fisheries and Oceans (DFO) oversight and subsequently weakens permitting practice in the NWT. The DFO will no longer monitor nor regulate many industrial activities. This could mean that bridges, culverts, dams and road construction could damage fish habitat, migration and spawning areas.
- Unlike the provinces, the GNWT does not have a legislative framework to protect fisheries. The GNWT now carries a significant burden to pick up responsibilities that have been quickly and quietly discarded by the federal government.
- There will be substantial economic cost required to meet the monitoring and regulatory gaps created by the changes to federal legislation. It is not clear how the Government of Northwest Territories will cover these costs.
- The Federal Minister can now create regulations broadly exempting projects (no matter how much damage they cause) or bodies of water from the prohibition against serious harm to fisheries.

## **Other changes to lands and water management in Bill C-38 Implications in the NWT**

Bill C-38, the Omnibus Budget Bill, was passed in June 2012 despite widespread opposition across Canada. It is a 450-page document that will have sweeping effects on many aspects of Northerners' lives. It is much more than a "Budget" Bill. It changes 57 existing laws, creates 3 new laws, and eliminates 7 agencies.

- Key protections for traditionally harvested animals such as caribou and fish are removed. For instance, permits on projects threatening critical habitat for species-at-risk are now open-ended. Project proponents used to have to apply for renewal every three or five years. This means that even if there is a dangerous decline in status of a species-at-risk, there will be no way to review a permit already granted for a project that may be threatening the species. Also, pipeline projects are specifically exempted from having to protect species-at-risk and their habitat.
- The new *Canadian Environmental Assessment Act* could block concerned Aboriginal people or organizations from participating in environmental impact reviews of projects if they are not considered to be "directly affected".
- Cabinet now has the power to overrule decisions made by the National Energy Board and by the Minister on environmental assessments. Even if a project is expected to cause significant adverse effects, Cabinet can declare them "justified in the circumstances" and keep its reasons confidential.
- Bill C-38 removes environmental screening for all offshore projects that are not on a "designated project" list. Projects that will no longer be checked for environmental impacts include offshore oil & gas exploration, and offshore pipelines that are within an area that was previously studied by a review panel (such as the Mackenzie Gas Project JRP).

## **Proposed changes to the Mackenzie Valley Resource Management Act (MVRMA) and NWT land and water boards**

The Federal Government has been moving ahead with a plan to amalgamate NWT's regional land and water boards in spite of strong opposition from NWT citizens. Currently there are regional boards (Sahtu, Gwich'in and Wek'èezhii) as well as the Mackenzie Valley Land and Water Board.

This proposed changes have and will continue to create uncertainty for Aboriginal people, all NWT citizens and industry. It raises many questions about how changes to the NWT's land management framework will impact devolution negotiations and implementation.

- In the Agreement in Principle on devolution, the Government of Northwest Territories agreed to inherit mirror legislation from the federal government. Since the Agreement in Principle, much of that legislation has changed through Bill C-38. Additionally, changes specific to the Mackenzie Valley Resource Management Act are anticipated to come from Ottawa in a bill very soon. It is not clear how these changes impact devolution. Nor is it known what participation, if any, the Government of Northwest Territories has had in drafting this changed legislation, even though it is what the Territory will inherit when devolution occurs.
- Many of the delays in NWT's regulatory system can be tracked back to unfulfilled federal responsibilities. For example, only one regional land use plan is in place in all of NWT. The federal government's policy disregards the implementation of Treaty and Aboriginal rights issues resulting in outstanding negotiations that slow the regulatory process as reflected in the Akaitcho and Dehcho regions. In devolution, the Government of Northwest Territories will be inheriting an *incomplete* management framework. It is not clear what economic implications this will hold for the territory.
- The current system for managing land is enshrined in legal agreements made between Aboriginal governments, the Government of Canada and the Government of Northwest Territories. Aboriginal people do not believe that the proposed changes can be made legally. Such questions will result in increased uncertainty for industry proposing projects in the north.
- It is widely believed that the proposed changes will reduce regional influence on land management.
- Independent analyses have shown that regulatory approvals are held up by unfinished land use plans, unresolved treaty and Aboriginal rights issues and federal delays in appointing Land and Water Board members.