Ecology Action Centre

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December 1, 2016

Sent via email to **ENVI@parl.gc.ca**

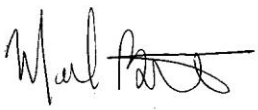
Ms. Deborah Schulte, M.P.
Chair, Standing Committee on Environment and Sustainable Development
House of Commons
Ottawa, ON
K1A 0A6

Dear Chair Schulte:

Re: Written comments of Ecology Action Centre to the Standing Committee on Environment and Sustainable Development in the review of CEPA 1999

Please find below our analysis and recommendations for consideration in your review of CEPA. The Act needs modernizing both to reflect changes in technology and in society's values. We wish you well in your work.

Sincerely,



Mark Butler
Policy Director

Ecology Action Centre Submission to the Standing Committee on Environment and Sustainable Development, December 1, 2016

Overview

The EAC is based in Nova Scotia and works on issues from the municipal to international level. The Centre does not have a dedicated toxics program but our work intersects with the Canadian Environmental Protection Act and its application in a number of ways from reducing the use of pesticides in the forest and aquaculture industry to challenging the approval of genetically engineered salmon to opposing the siting of polluting industries and waste sites in vulnerable communities.

In this brief we comment on the following four topics:

1. Genetically-engineered organisms or animate products of technology
2. Environmental Justice
3. Use of Pesticides in the Aquaculture Industry
4. National Pollutant Resource Inventory

The EAC strongly endorses the submissions from the following organizations and individuals:

1. EcoJustice, Environmental Defence and Equiterre particularly with respect to their recommendations on environmental justice and public participation.
2. Dr. Dayna Nadine Scott, Faculty of Environmental Studies, York University
3. Canadian Environmental Law Association

Please note recommendations are bolded in the text below.

1. Genetically-engineered Organisms or Animate Products of Technology

The EAC presented to the Standing Committee on Environment and Sustainable Development on October 27, 2016 and in that submission provided background on our opposition to the approval by ECCC of the commercial production of genetically engineered salmon[1].

Gene editing technologies, such as CRISPR have made the altering of a species genome relatively cheap and easy. It is our assessment that genetically engineered organisms with wild counterparts will become a growing threat to global biodiversity as biotech companies seek approval for other GE organisms[2]. The concern and opposition to GE species with wild counterparts is only likely to grow.

In view of the fact that GE salmon could be the first GE animal sold for human consumption, we are stunned by the federal government's approach to public engagement and environmental assessment on GE salmon most notably: 1)the complete absence of any public consultation with stakeholders, indigenous communities or the general public on the approval of GE salmon; and 2)the decision by ECCC to grant approval to AquaBounty and other biotech companies to

[1] In advance of that presentation Mark Butler provided the Clerk of the Committee with his speaking notes.

[2] CBC's Science Program Quirks and Quarks produced a feature on GE organisms and new gene editing technologies in which Queen's University Professor Udo Schuklenk identified the threat to nature from GE organisms as his top concern. See http://www.cbc.ca/radio/quirks/quirks-quarks-for-jan-2-2016-1.3378142/crispr-the-genetic-engineering-revolution-1.3378171

begin commercial production of GE salmon based solely on an environmental assessment of the export of eggs to Panama(as requested by the company) and no assessment whatsoever of commercial production[3].

We support the recommendations in EcoJustice's submission on improving public notification and participation in decisions regarding the regulation of GE organism specifically Recommendations 19 through 24.

As a result of our legal challenge to the approval of GE Salmon in federal court we discovered that there is a lack of clarity on if and how GE organisms can be transferred between companies or other parties. The Committee should address this ambiguity in the following fashion:

Provide clear rules on how and under what circumstances the right to introduce a new substance or organism is transferable.

Provide clear rules on how new uses are to be approved by the party introducing the substance or organism and by others they may sell the substance to

We would also recommend changing the name of Part 6 from Animate Products of Biotechnology to a term more widely used such as Genetically Engineered or Modified Organisms.

That said, we are not certain that these changes alone will fix the lack of transparency and the minimal opportunity for public input in the regulation of GE organisms found in CEPA. As non-lawyers we found Part 6 of CEPA to be obtuse, contradictory, out-dated and intimidating. The potential for the average citizen, small business, municipal government, indigenous community or community group to comprehend or to be able to have any meaningful input into the regulation of GE organisms in Canada seems extremely low.

EAC has participated in many environmental assessments over the years and while we have some harsh words for the current federal EA process and are recommending some major changes to that Act, we believe that public participation and assessment in CEPA could be enhanced through connecting or integrating a modernized CEAA with a modernized CEPA. The Committee should consider the integration of the new substances process with federal environmental assessment under a modernized Canadian Environmental Assessment Act.

Despite suggestions to the contrary, the federal government does have the jurisdiction to engage in broad information gathering processes, such as a Strategic Environmental Assessment, to inform decisions under CEPA[4]. As stated by MacLean et al: 'The federal government's jurisdiction to make decisions based on the integration of social, economic, and environmental considerations is far broader than commonly understood.' This jurisdiction or authourity would allow the federal government to conduct a SEA on the introduction of a GE organism such as Atlantic salmon and its implications for biodiversity, Indigenous rights and other sectors of the economy namely recreational and commercial fishing, tourism and aquaculture. In having this discussion it is important to make the distinction information gathering, say in the form of a SEA, and decision-making for which the jurisdiction ambit would be narrower.

Specifically we recommend the following:

[3] AquaBounty submitted a request to export 100,000 eyed eggs to Panama. They received approval from ECCC for commercial production which could involve the production of hundreds of millions of adult fish of which 1-5% could be fertile.
[4] Jason MacLean et al, "Polyjural and Polycentric Sustainability Assessment: A Once-in-a-Generation Law Reform Opportunity" (2016) 30 J. Env. L. & Prac. forthcoming.

In the case of individual projects that propose to use a substance new to Canada, new substance notifications should trigger a project-level environmental assessment. These assessments should be carried out under a reformed CEAA, provide meaningful involvement for the public, and include an assessment of alternatives.

In the case of a new industry or new type of activity, such as the introduction of a new living organism into Canada, new substance notifications should trigger a strategic environmental assessment. The SEA should be a legislative public process under a reformed CEAA rather than a Cabinet Directive which is currently the case.

To conclude as with CEAA an project assessments, the Committee should keep in mind that an applicant and by extension the regulator has an obligation to demonstrate sustainability benefit of permitting new substance or organism; it is not enough to demonstrate that the 'risk is manageable', society needs to be convinced there is a net benefit or net contribution to sustainability at a societal level.

2. Environmental Justice

Revisions to CEPA should address environmental racism and the disproportionate location of polluting industries and landfills in or adjacent to vulnerable communities. In Nova Scotia, research has shown that a higher percentage of African Nova Scotians and First Nations communities live beside landfills. Although these populations only make up 1.2 percent and 0.8 percent of Nova Scotia's total population respectively, 46 percent of the waste sites have been located within enumeration areas with African Nova Scotian and First Nation populations exceeding these percentages.[5]

More recent mapping of the proximity of African Nova Scotian and Indigenous communities to waste and toxic sites has been undertaken by the Environmental Noxiousness, Racial Inequalities and Community Health Project. The ENRICH Project is a collaborative community-based project investigating the cause and effects of toxic industries situated near Mi'kmaq and African Nova Scotian communities.[6] Given our experience in Nova Scotia we are very supportive of the Committee taking substantive steps in a modernized CEPA to prevent the disproportionate impact of toxic pollution on vulnerable communities.

We support the recommendations 1 through 5 made by Ecojustice and their partners in their submission.

3. Pesticide Use In the Conventional Aquaculture Industry

A critical aspect of restoring lost protections to the Fisheries Act is repealing the Aquaculture Activity Regulations (AARs) that came into force in August 2015. These regulations were effectively developed by the former government following charges by Environment and Climate Change Canada for illegal pesticide use in the open net open aquaculture industry. The AARs now make it easier to use pesticides for application in salmon farming, specifically to treat infestations of sea lice. Release of pesticides into the marine environment should not be permitted under Section 36 of the Fisheries Act regarding deleterious substances. As well it is not clear if pesticides for sea lice control are permitted under Part 5 of CEPA. Finally, the permitting of pesticides for use in salmon farms would seem to contravene the intended purpose of the London Protocol (in force 1972, amended 2006) which restricts dumping at sea, and includes the application of a "precautionary approach" as a general obligation; a "reverse list" approach is adopted, which implies that all dumping is

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[5] Lori Ann Fryzuk, Environmental Justice in Canada: An Empirical Study and Analysis of the Demographics of Dumping in Nova Scotia. School for Resource and Environmental Studies Dalhousie University Halifax, Nova Scotia 1996 www.collectionscanada.ca/obj/s4/f2/dsk3/ftp04/mq24966.pdf.

[6] http://www.enrichproject.org/map/

prohibited unless explicitly permitted. **We would like clarification as to whether the AARs contravene the London Protocol, Section 36 of the Fisheries Act and Part 5 of CEPA.**

4. **National Pollutant Resource Inventory**

We support the suggested improvements to the NPRI listed in Recommendation 25 of Ecojustice and partners' submission. The descriptions of the current situation with respect to NPRI and the setting out of rationales in Sections A to H in support of the recommendations are well founded and well- reasoned. We consider that the implementation of the recommendations would improve the ability of NPRI to support environmental protection.