



Fisheries and Oceans
Canada

Pêches et Océans
Canada



Fish and Fish Habitat Protection Program – Pacific Region

Amended *Fisheries Act*

Coming Into Force of the Fish and Fish Habitat Protection Provisions

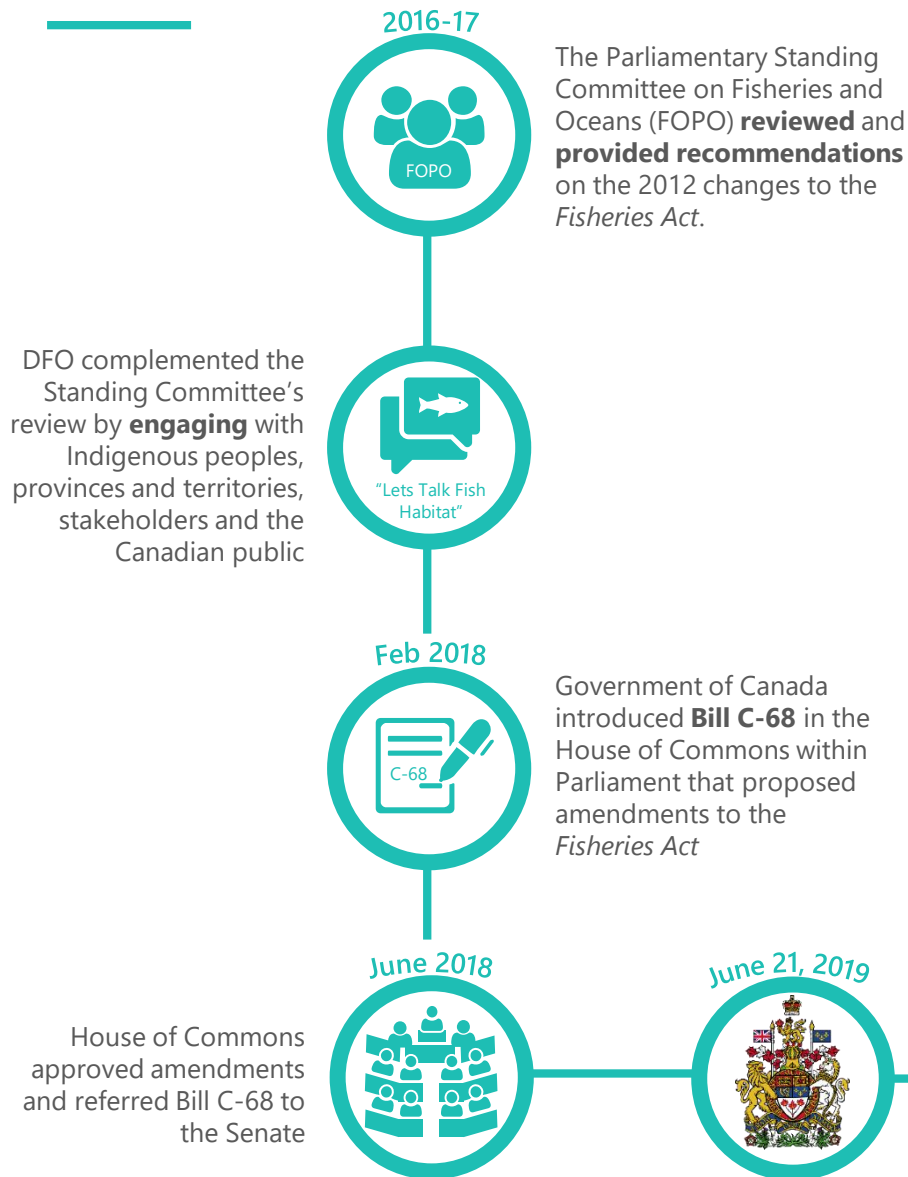
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Overview

- Context
- Overview of the modernized *Fisheries Act*
- Fish and Fish Habitat Protection Provisions
- New Program Information and Website
- Road to Projects Near Water
- Indigenous Reconciliation, Engagement, and Knowledge
- Indigenous Habitat Participation Program
- What do changes mean for you?
- Moving Forward

TIMELINE



CONTEXT

As part of the Government of Canada's Review of Environmental and Regulatory Processes, a review of the 2012 changes to the *Fisheries Act* was initiated.

The *Fisheries Act* Review aimed to:

- Restore lost protections and incorporate modern safeguards;
- Provide better certainty for industry;
- Ensure the long term sustainability of marine resources; and
- Make sure that the *Fisheries Act* provides strong and meaningful protection of fish and fish habitats

2012 *FISHERIES ACT*

Protection for commercial, recreational or Aboriginal fisheries	Uncertainty around requirements for development projects	No provisions referencing the independence of inshore fishers	No provisions specifically designed to protect marine biodiversity	No provisions to include Indigenous participation in decision making	No provisions to restore degraded habitat and rebuild fish stocks
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Bill C-68, an Act to amend the *Fisheries Act*, received **Royal Assent** and became law, with the majority of amendments entering into force on this date.





Overview of the modernized *Fisheries Act*

1

Provisions to
Modernize the
Fisheries Act

2

Reconciliation with
Indigenous Peoples

3

Fish and Fish Habitat
Protection Provisions

4

Enforcement Provisions

5

Fisheries Management
Provisions

6

Stock Rebuilding Plans

7

Biodiversity Protection

8

Cetaceans in Captivity
Provisions

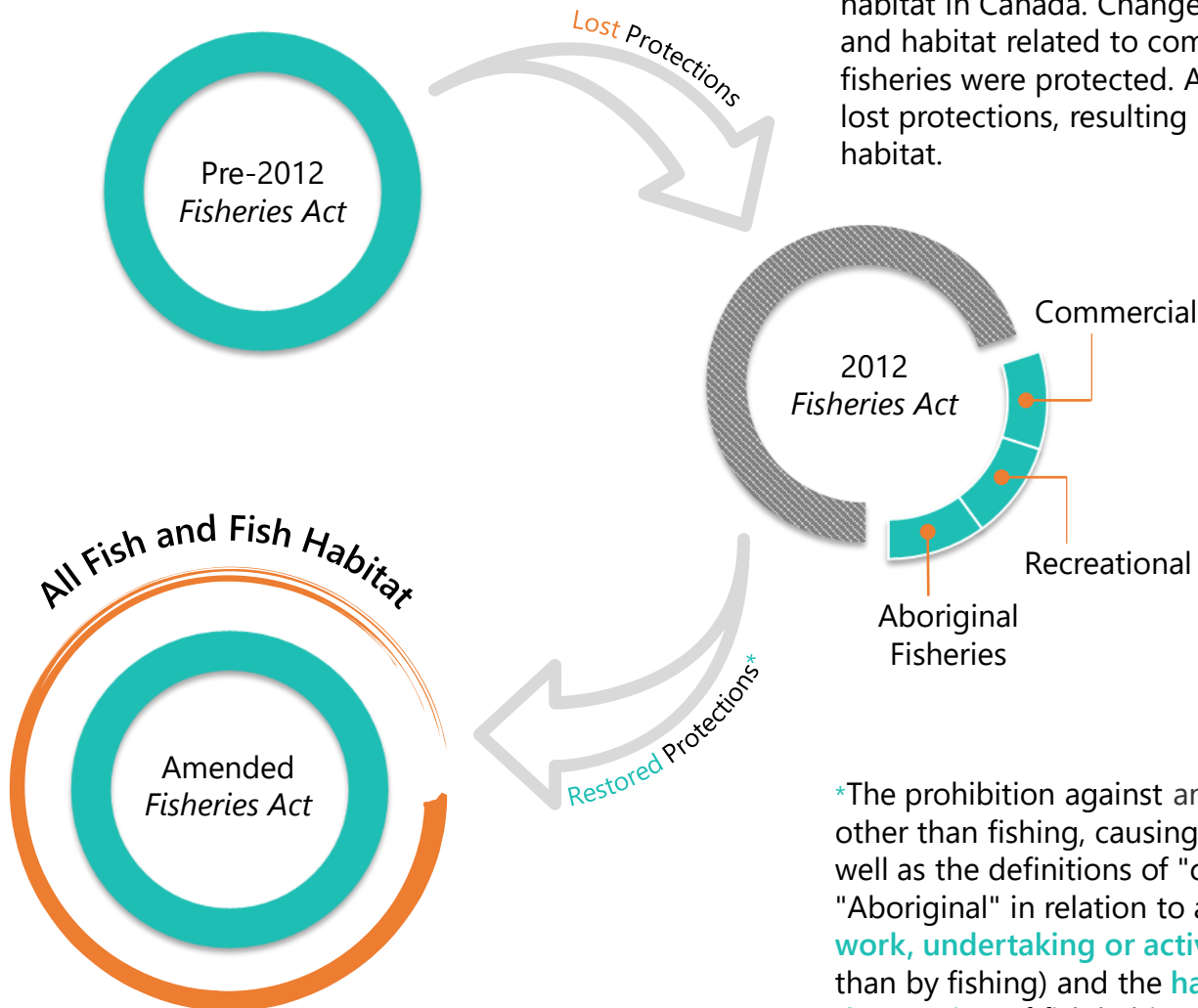
BILL C-68 OVERVIEW

A number of **key areas** were addressed in the bill, including **Provisions to Modernize**, **Reconciliation with Indigenous Peoples**, **Fish and Fish Habitat Protection Provisions** and applicable **Enforcement Provisions**



Restored Lost Protections

Prior to 2012 the *Fisheries Act* protected all fish and fish habitat in Canada. Changes made in 2012 saw that only fish and habitat related to commercial, recreational or Aboriginal fisheries were protected. A revised *Fisheries Act* restores these lost protections, resulting in full protection for all fish and fish habitat.



*The prohibition against any work, undertaking or activity other than fishing, causing serious harm to fish is repealed as well as the definitions of "commercial", "recreational" and "Aboriginal" in relation to a fishery. Prohibitions against **any work, undertaking or activity** causing the **death of fish** (other than by fishing) and the **harmful alteration, disruption or destruction** of fish habitat are introduced.



Fish and Fish Habitat Provisions Introduces



PROTECTION REQUIREMENTS

Protection for **ALL** fish and fish habitat*



AUTHORITIES FOR IMPROVED REGULATORY CLARITY

Designated projects, codes of practice, habitat banking, modernized regulatory framework for authorization of projects



PROHIBITION SECTION 35

Return of former prohibitions against “**death of fish, other than fishing**” and “**harmful alteration, disruption or destruction**” of fish habitat



RESTORATION

Increased focus on **habitat restoration**



LIST OF CONSIDERATION FACTORS

Clarified authority for **broad considerations** when making fisheries management decisions



TRANSPARENCY

Online public **registry** for increased transparency



Definition:

*Fish and Fish Habitat



Water frequented by fish and any other areas on which fish depend directly or indirectly in order to carry out their life processes, including spawning grounds and nursery, rearing, food supply and migration areas

While flow is not directly reference in the definition, it does allow for the continue consideration of flow in decision making.



Death of Fish

“ No person shall carry on any **work, undertaking or activity** that results in the **death of fish** other than fishing.

SECTION
34.4 (1)

Harmful Alteration, Disruption or Destruction (HADD)

“ No person shall carry on any **work, undertaking or activity** that results in the **harmful alteration, disruption or destruction** of fish habitat

SECTION
35 (1)





Consideration Factors for Fish and Fish Habitat Protection

SECTION 34.1 (1)

Before recommending to the Governor-in-Council regulations or exercising powers related to authorization, permits, orders or Ministerial regulations the Minister **must consider**

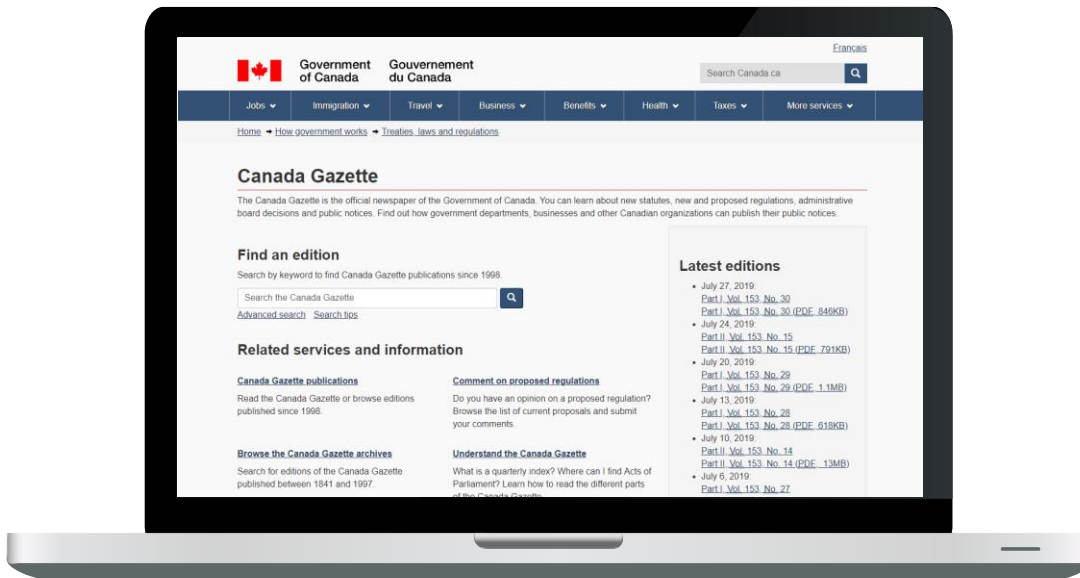
- Contribution to Productivity of Relevant Fisheries
 - Fisheries Management Objectives
 - Whether there are Measures and Standards
 - Cumulative Effects
 - Any Fish Habitat Banks
 - Whether any Measures and Standards to offset the Harmful Alteration, Disruption or Destruction of fish habitat give priority to the restoration of degraded fish habitat
 - Indigenous knowledge of the Indigenous peoples of Canada that has been provided to the Minister
 - Any other factor that the Minister considers relevant
-
-



Standards & Codes of Practice

Formal guidance documents that are published, or where notice is given, in *Canada Gazette, Part II* that **provide certainty** for project proponents and **reduce** the potential for **cumulative effects** from a large number of small impacts

SECTION 34.2



- ➔ May establish for the avoidance of the death of fish, and harmful alteration, disruption or destruction of fish habitat
- ➔ Outlines **specific procedures, practices or standards** in relation to works, undertakings or activities during various phases of the project's life cycle (e.g., construction, operation, maintenance, decommissioning)



Permits and Designated Projects

SECTION 35.1

A new instrument to enable permits to be issued for certain designated project types. This new permitting scheme will complement the current practice of issuing Letters of Advice and Authorizations

- ➔ A **list of designated projects** will be established by regulation made by the Governor-in-Council
- ➔ The authority for issuing permits for designated projects **cannot be delegated**
- ➔ For designated projects, **failure to have a permit** for works, undertakings or activities that are associated with the project would be **in non-compliance** under the *Fisheries Act*
- ➔ Permits will bring **regulatory clarity** and enable future cost recovery





Ecologically Significant Areas

SECTION 35.2

Intended to be established through regulations to protect sensitive, highly productive, rare or unique areas. The 2012 provisions related to ESAs have been updated.

→ The carrying on of works, undertakings or activities that are prescribed by regulations, is prohibited unless authorized within an ESA

→ Before authorizing such work, undertaking or activity, satisfactory avoidance and mitigation required to achieve conservation and protection objectives for the ESA must exist and be included as conditions of the authorization





Habitat Banking

Formalized in law the regime for, proponent-led fish habitat banking*, a type of offsetting measure that creates, restores, or enhances fish habitat in advance of a project being developed

SECTION
42.01 to
42.04

- Establishes a **proponent-led fish habitat banking scheme**, including,
- Definitions of key terms
 - A system for the creation, allocation and management of a proponent's habitat credits
 - Certificates validating a proponent's credits; and
 - Clarity that habitat credits are only to be used within a specific service area.

- Does **not allow** for **third-party or market-based** habitat banking



Definition:

*Fish Habitat Banking

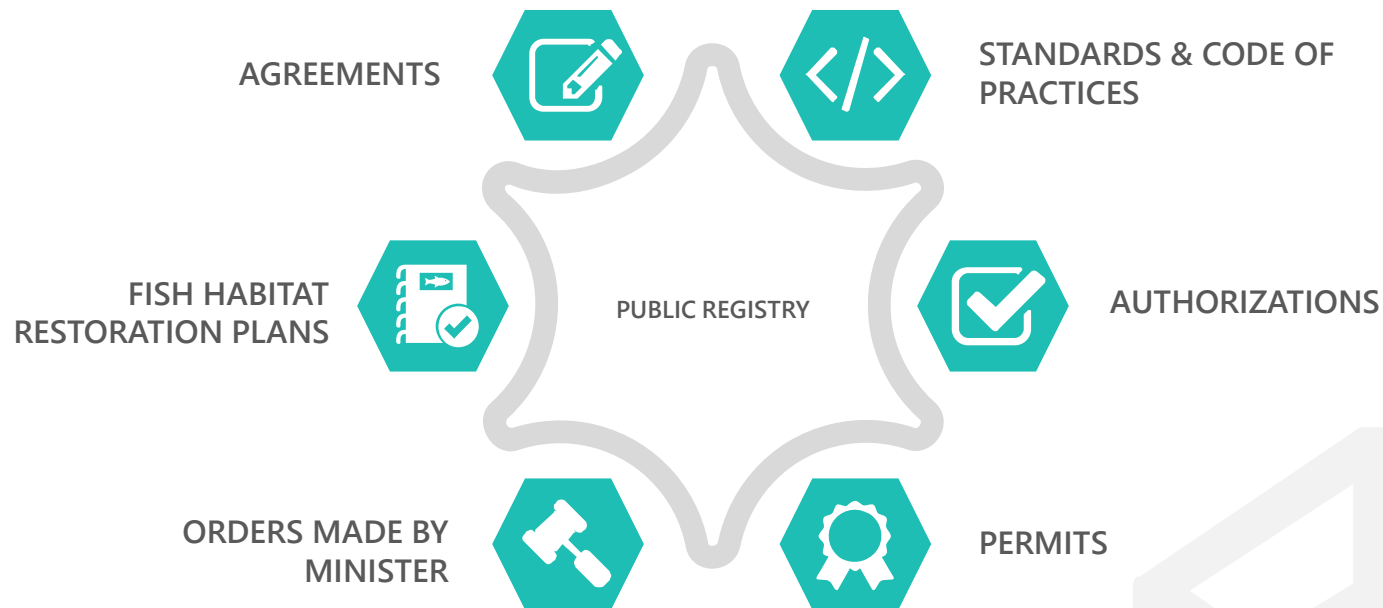
“ An area of a fish habitat that has **been created, restored or enhanced** by the carrying on of one or more conservation projects within a service area and in respect of which area has certified any habitat credit



Transparency

“ Establish a **public registry** for the purpose of facilitating access to records

SECTION 42.2





Applying the Fish and Fish Habitat Protection Provisions

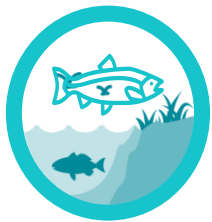
The Department will employ a risk-based approach to determine the likelihood and severity of potential impacts to fish and fish habitat of a given work, undertaking or activity:



Less emphasis on the concept of self-assessment



Hierarchy of preference:
Avoid > Mitigate > Offset



All fish species are considered



Spatial, temporal and sensitivity
criteria for assessment of risk.
Precautionary approach

2012-2019



2020 →

- Measures to avoid harm
- Self-assessment criteria
- National standards and guidelines initiatives

- Standardized measures to protect fish and fish habitat
- Codes of practice
- Prescribed works regulations



The Revitalized Fish and Fish Habitat Protection Program (FFHPP)

Over 200 new staff positions across Canada,
with an emphasis on five themes of work

REGULATORY AND ENFORCEMENT

- Review of development projects
- Provision of advice and authorization
- Enforcement of compliance

INTEGRATED PLANNING

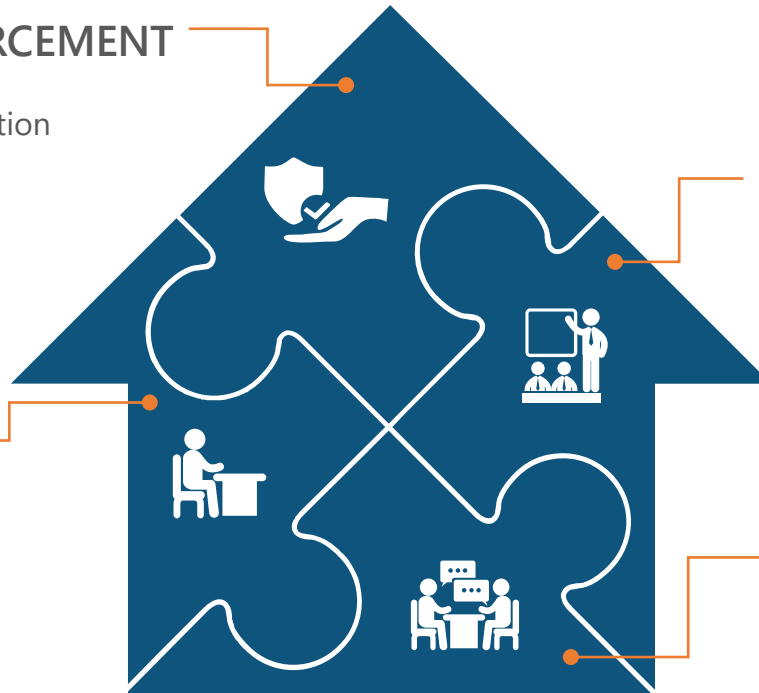
- Restoration
- Offsetting
- Habitat Banking
- Ecologically Significant Areas

REPORTING TO CANADIANS

- Monitoring compliance and effectiveness
- Reporting
- Public Registry

ENGAGEMENT

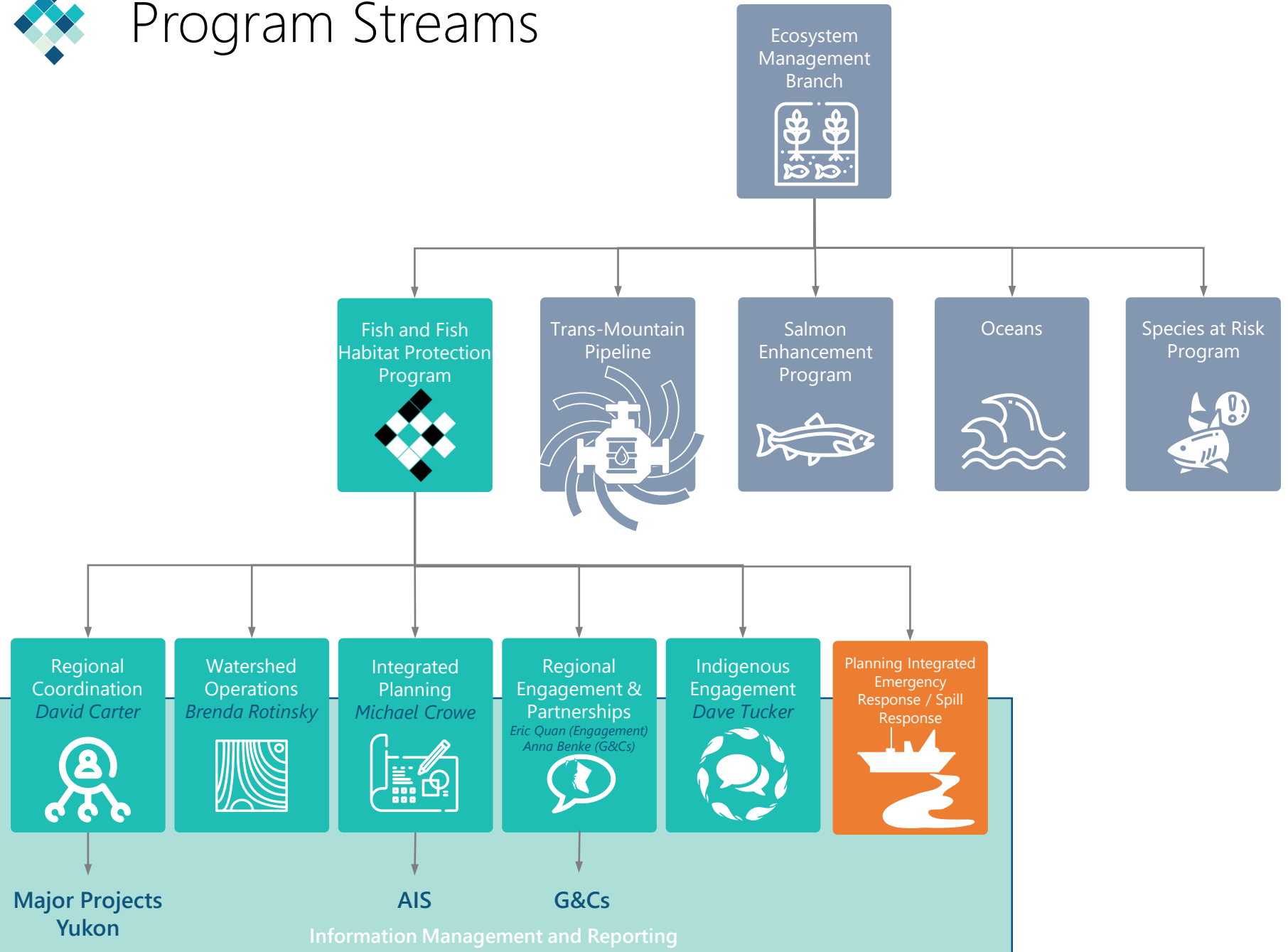
- Consultation
- Outreach
- Partnerships



RECONCILIATION WITH INDIGENOUS PEOPLES



Program Streams





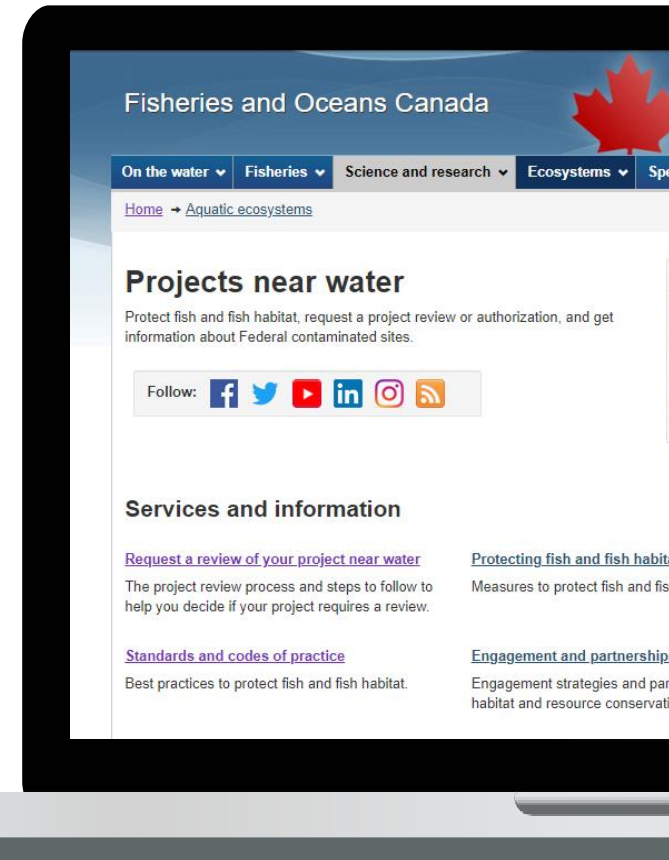
New Program Information & Website

2019 Fish and Fish Habitat Protection Program Policy Statement

- Explains the fish and fish habitat protection provisions, and how the regulatory and non-regulatory tools will be interpreted and applied
- Used by officials of the Department and the Department's regulatory partners
- Applies to proponents of existing or proposed works, undertakings or activities that may result in harmful impacts on fish or fish habitat

The website has been updated for Coming into Force to be more client-focused and easier navigation

- No longer direct proponents to the concept of Self-Assessment.
- Measures to avoid impacts to fish and fish habitat will still be provided on the website.
- Proponents that cannot avoid impacts using the avoidance measures provided will be advised to submit a request for review.
- A revised Request for Review form will be available on the website.



Projects Near Water: <http://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>



Road to Projects Near Water

Access website to find standards and codes of practice that specify procedures, minimum requirements, the potential impacts to be managed, and the measures to implement to ensure the protection of fish and fish habitat

Currently, two Interim Codes of Practice:

- Small Scale End of Pipe Fish Screens
- Routine Maintenance Dredging

DFO will then work with the proponent to assess the risk to fish and fish habitat and provide guidance on how to comply with the *Fisheries Act*



Access website to find measures on how to best plan their works, undertakings, or activities in a manner that avoids impacts to fish and fish habitat



If the impacts cannot be avoided, and a code of practice does not apply, proponents will submit a request for review



If, after the application of avoidance and mitigation measures, the proponent's works, undertakings, or activities will result in residual impacts to fish or fish habitat, proponents will be directed to complete an application for a *Fisheries Act* authorization



- Application Form for Authorization
- Applicant's Guide Supporting the Authorizations Concerning Fish and Fish Habitat Protection Regulations
- Offsetting Guide (Policy for Applying Measures and Standards to Offset Impacts to Fish and Fish Habitat Under the Fisheries Act)



Application for Authorization

The Regulations for the Authorization of the *Fisheries Act* were enacted in 2013. The regulations detailed the information and documentation required by applicants requesting an authorization. It also included the timelines required for processing these requests. The modifications to the Application Regulations reflect changes made in the modernized *Fisheries Act*, and introduces updates to improve the process of administering the new Regulations. This includes:



Reflecting new and amended provisions that are part of the *Fisheries Act*



Amending, suspending or cancelling authorizations



Using certified habitat credits in the place of, or in addition to offsetting plan



Expanding ways to request financial security



Requiring geographic coordinates of the proposed offsetting measures

Reconciliation with Indigenous Peoples

✓ Rights

- This act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them (s. 2.4).
- New obligation to consider any adverse effects that Ministerial decisions may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982* (s. 2.5).

✓ Indigenous Knowledge

- Consider Indigenous knowledge when provided when making decisions, among other things (s. 34.1 and 2.5).
- For authorization decisions and recommendations on certain regulations, Indigenous knowledge must be considered when provided.
- Provides for the protection of Indigenous knowledge when provided to the Minister and clarifies those circumstances, and conditions where appropriate, where the Minister may disclose that information.

✓ Partners

- Expanded authority to enter into agreements with Indigenous governing bodies and any body established under a land claims agreements (such as a co-management body) to further the purpose of the Act.
- Expands the equivalency provision to include laws made by Indigenous governing bodies.

✓ Other Provisions

- Authority to make regulations to issue classes of licences (e.g., those licences issued under the *Aboriginal Communal Fishing Licences Regulations*) for a period greater than nine years.





Indigenous Engagement

Engagement with Indigenous peoples is ongoing in Pacific Region on the consideration of Indigenous Knowledge in habitat-related decision making under the *Fisheries Act* and how to protect that knowledge

A whole of government approach which would support the Federal departments' legislated responsibility to consider Indigenous Knowledge in relation to the review of project and related decision making.

Indigenous Knowledge Policy Framework

Engagement with Indigenous peoples to seek their guidance on how to implement the changes related to the consideration of Indigenous Knowledge when making *Fisheries Act* authorization decisions and how to protect Indigenous knowledge from further disclosure.

Indigenous Knowledge in Fish Habitat-Related Decisions Making

Indigenous Habitat Participation Program (IHPP)

New \$50 million grants and contributions program is intended to provide funding to

- Support Indigenous peoples' participation in consultations in relation to *Fisheries Act* and *Species at Risk Act* project authorizations
- Support Indigenous peoples' participation in the development of regulatory, program and/or program initiatives related to the fish and fish habitat protection provisions of the *Fisheries Act*
- Ensure Indigenous peoples' have the capacity to Support partnerships; and Achieve mutual objectives related to the conservation and protection of fish and fish habitat.



Indigenous Habitat Participation Program (IHPP)

Purpose of the IHPP

- \$50M over five years – Grant and Contribution funding
- To support the participation of Indigenous people in the conservation and protection of fish and fish habitat

IHPP has two components:

1. **Grants** – to support the participation of Indigenous people in consultation related to *Fisheries Act* and *Species at Risk Act* authorization/permit decisions
2. **Contributions** - to support the participation of Indigenous peoples in three areas:
 - a. Engagement
 - b. Capacity Building
 - c. Collaborative Activities



Indigenous Habitat
Participation Program (IHPP)



IHPP Grants Component

Purpose of the Grants Funding

- To support Indigenous participation in the consultation process related to the duty to consult for decisions to authorize and/or permit works, undertakings or activities under the *Fisheries Act* and/or *Species at Risk Act* (SARA).
- Directed funding – Indigenous groups/communities whose Aboriginal and treaty rights may potentially be affected by FFHPP decisions for works, undertakings or activities under the *Fisheries Act* and/or SARA will be invited to apply for funding.
 - Funding is a procedural safeguard for the consultation process
 - Consultation process to be acceptable to FFHPP and Indigenous group
 - Consultation process will influence funding amounts

When is Grants Funding available?

- Funding open year round and available across Canada



Indigenous Habitat
Participation Program (IHPP)



IHPP Contributions Component – Three Areas

Purpose of Contributions Funding

To support the participation of Indigenous peoples in three areas:

1. Indigenous communities participation in **engagement** to provide guidance and advice for the implementation of the fish and fish habitat protection provisions of the *Fisheries Act*
2. **Capacity Building** including technical capacity in inland areas of Canada where provinces manage the fisheries but where DFO manages fish and fish habitat protection.
3. **Collaborative Activities** on fish and fish habitat related to planning, protection, monitoring, conservation, management, and data collection.

When is Contributions Funding available?

- Bi-annual application process



Indigenous Habitat
Participation Program (IHPP)



Consideration of Indigenous knowledge in habitat decisions

FFHPP determines an authorization is required

Indigenous group(s) are notified that an authorization is required and receives an Offer to Consult

Consultation with Indigenous group(s) on the *Fisheries Act* authorization and/or Indigenous knowledge is provided for consideration in the habitat decision



FFHPP receives an application for authorization

Indigenous group(s) are notified that an application for authorization has been received

If interest is expressed by Indigenous group(s) to consult on the *Fisheries Act* authorization, Indigenous group(s) and FFHPP discuss and draft the appropriate plans and agreements to:

1. Provide Indigenous knowledge, and/or
2. Apply for Grants

FFHPP makes a decision whether to approve or reject the authorization based on all s. 34.1 factors (including Indigenous knowledge if provided)

Indigenous groups are notified about the decision on the application for authorization

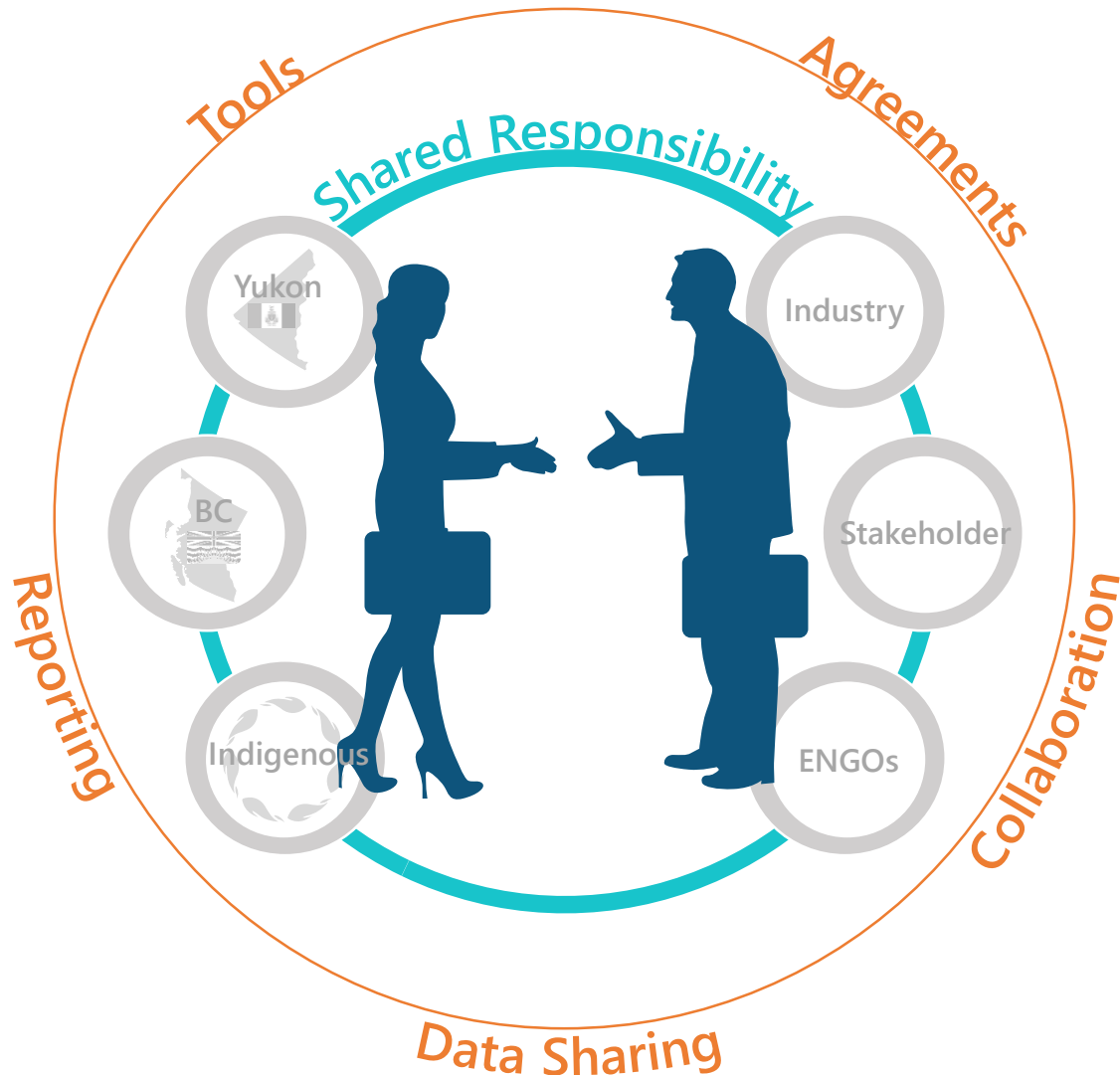


Interaction with the *Access to Information Act*

- Through Bill C-68, there was a consequential amendment to the *Access to Information Act*.
- Indigenous knowledge provided in confidence under the *Fisheries Act* that cannot be disclosed under the *Fisheries Act* cannot be disclosed even if requested under the *Access to Information Act*.



What do these changes mean for you?





Moving Forward



Engage with stakeholders and partners on the process for compliance with the modernized *Fisheries Act*

Answer your technical questions about the requirements related to Authorizations Concerning Fish and Fish Habitat Protection Regulations



Receive your feedback and questions about the newly released tools and guidance, and revise where necessary



Continue to engage on the development of regulations, policies and other instruments to support implementation of the modernized *Fisheries Act*



THANK YOU

For more information please visit <https://www.dfo-mpo.gc.ca>
or contact one of our **Pacific Region's engagement units**

More Information at:

- A Modernized *Fisheries Act* for Canada
- Projects Near Water



GENERAL FFHPP EMAIL

✉ FFP-PPP.XNCR@dfo-mpo.gc.ca

INDIGENOUS ENGAGEMENT UNIT

✉ DFO.Pacific_FFHPP_IEU-
UEA_PPPH_Pacifique.MPO@dfo-mpo.gc.ca

DAVID TUCKER

Manager Indigenous Engagement

✉ David.Tucker@dfo-mpo.gc.ca

☎ 604-353-7219

