



Implementation of the Amended Fisheries Act and the Fisheries Protection Program

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Banff, Alberta



Changes to Fisheries Act

- Royal Assent was given to *Fisheries Act* amendments on June 29, 2012 (Bill C-38, *The Jobs, Growth and Long Term Prosperity Act*) and on December 14, 2012 (Bill C-45, *The Jobs and Growth Act*).
- The Fisheries Protection Policy Statement was approved by the Minister of Fisheries and Oceans and it is effective as of November 25, 2013. The policy statement will be reviewed at least every 10 years.



What are the changes?

- OLD FA:
 - No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.
- NEW FA:
 - No person shall carry on any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery.



Changes to FA – changes to the Habitat Management Program

- Different focus of the FA caused changes to the structure of DFO Program(s);
- Habitat Management Program ceased to exist;
- Fisheries Protection Program created
- Different focus, new organizational structure
- Need to develop a lot of new tools and operational procedures



New Structure

- FPP Regulatory Review Unit:
 - Triage Group (Burlington);
 - Mining, Oil and Gas and Linear Development Group:
 - Edmonton (all MP Ontario, Manitoba, Saskatchewan, Alberta;
 - Yellowknife (NWT/Nunavut MP)
 - Iqaluit (Nunavut)
 - Regina (Linear Development)
 - Hydro and Flows (Winnipeg – all Hydro and Flow Projects from 4 provinces and 2 territories)
 - Marine and Coastal Development (Burlington)
 - Client Liaison, Partnership, Standards and Guidelines



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The *Fisheries Act* and new policy



CANADA

CONSOLIDATION

CODIFICATION

Fisheries Act

Loi sur les pêches

R.S.C., 1985, c. F-14

L.R.C. (1985), ch. F-14

Current to January 23, 2014

À jour au 23 janvier 2014

Last amended on November 25, 2013

Dernière modification le 25 novembre 2013

Published by the Minister of Justice at the following address:
<http://laws-lois.justice.gc.ca>

Publié par le ministre de la Justice à l'adresse suivante :
<http://lois-laws.justice.gc.ca>

Fisheries Protection Policy Statement

October 2013



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Fisheries Protection Policy Statement

- Replaces the Policy for the Management of Fish Habitat
- Focuses on DFO's regulatory role in managing threats related to habitat degradation and loss, and flow alteration
- Explains the fisheries protection provisions and outlines how DFO will implement these provisions, with emphasis on:
 - Serious harm to fish (Section 35 prohibition)
 - Scope of application of the prohibition
 - Framework for decision-making (Sections 6 and 6.1)
- Will be supported by more detailed policy and operational guidance



Serious harm to fish

- The *Fisheries Act* definition:
 - the death of fish, or a permanent alteration to, or destruction of fish habitat
- Authorization is required when projects are likely to result in a localized effect to fish populations or fish habitat in the vicinity of the project
- DFO's policy interpretation of serious harm to fish is:
 - the **death of fish**;
 - a **permanent alteration to fish habitat** of a spatial scale, duration and intensity that limits or diminishes the ability of fish to use such habitats as spawning grounds, or as nursery, rearing, or food supply areas, or as a migration corridor, or any other area in order to carry out one or more of their life processes;
 - the **destruction of fish habitat** of a spatial scale, duration, and intensity that fish can no longer rely upon such habitats for use as spawning grounds, or as nursery, rearing, or food supply areas, or as a migration corridor, or any other area in order to carry out one or more of their life processes.



Framework for decision-making

- The purpose for decision-making is to provide for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries
- A new section 6 guides decision-making related to the Fisheries Protection Provisions
- Four factors must be considered by the Minister before making decisions:
 - a) the contribution of the relevant fish to the ongoing productivity of commercial, recreational or Aboriginal fisheries;
 - b) fisheries management objectives;
 - c) measures and standards to **avoid, mitigate or offset** serious harm to fish that are part of or support a commercial, recreational or Aboriginal fishery; and
 - d) the public interest.



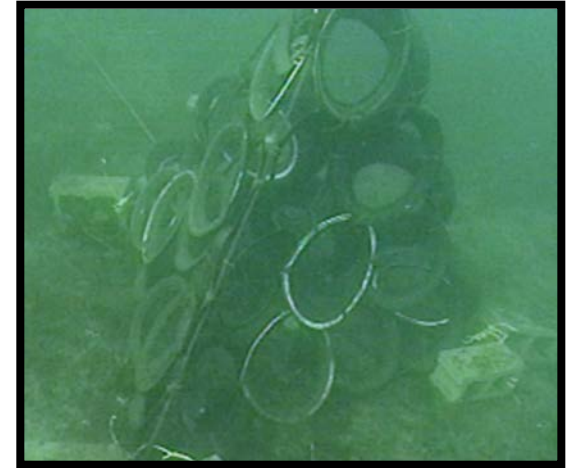
The Operational Approach

- The DFO project review process involves three main phases:
 - proponent self-assessment (based on avoidance measures, best practices)
 - project-specific regulatory review
 - application for authorization, including identification of appropriate offsets
- Emphasis is on avoiding serious harm to fish, and when unavoidable, ensuring appropriate offsets



Fisheries protection program at DFO

- general advice, via self-assessment tools, and project reviews to help proponents avoid serious harm to fish
- where serious harm to fish is unavoidable and requires an authorization, conditions of the authorization are enforceable
- offsetting is a required and enforceable condition of a project authorization





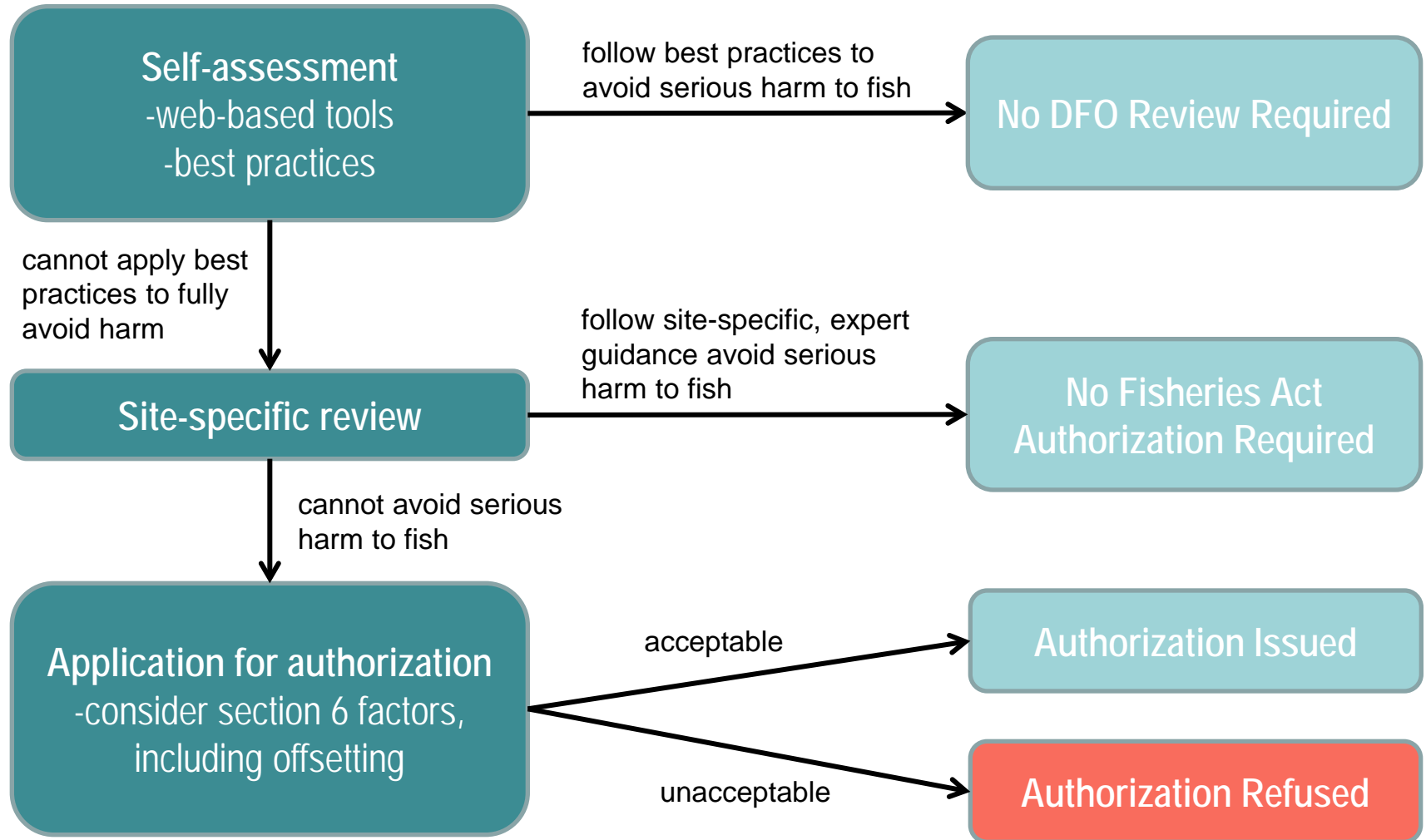
Guiding principles of offsetting

1. Support fisheries management objectives or local restoration priorities
2. Benefits from offsetting measures should balance project impacts
3. Offsetting measures should provide additional benefits to the fishery
4. Offsetting measures should generate self-sustaining benefits over the long term





Overview of the project review process





Proponent self-assessment

- Self-assessment tools on the DFO website
 - <http://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>
- Determine whether the project fits the following:
 - Types of water bodies where DFO review is not required
 - Project activities and criteria where DFO review is not required
- Follow "*Measures to avoid harm*"
- Where unsure, a qualified environmental professional should be consulted



Application for authorization

- Where expert advice indicates need for authorization, a formal application is required
 - Information requirements and time limits defined under regulations
 - Offsetting plan, monitoring plan, and letter of credit required
- DFO decision to authorize based on consideration of section 6 factors
 - Contribution of relevant fish
 - Fisheries management objectives
 - Avoid, mitigate, offset
 - The public interest



Authorization Process

- Authorizations are required for projects that are likely to result in serious harm to fish
- A formal process for applying for authorizations follows information requirements and defined time limits set under *Fisheries Act* regulations
 - *An information guide for proponents is available on the DFO website*
- Authorizations will include conditions to avoid, mitigate and offset the serious harm to fish
- Failure to abide by these conditions will be a contravention of the *Fisheries Act*.



Authorization Process

- Applications for Authorization must be made in Writing to the Minister
- Under normal Circumstances, application must include Prescribed information set out in Schedule 1 & irrevocable Letter of Credit to guarantee implementation of offsetting plan
- Time Limits: 60/90 Days:
 - 60 days from date of application to determine completeness of application;
 - 90 days from date of notification to issue Authorization or deny Authorization
- Authorization under Emergency Circumstances:
 - In response to National Security/Emergency, or Emergencies where immediate damage to property/environment/public health or safety imminent;
 - Application processed without Time limits, on a priority basis;
 - Applicants do not need to provide an offsetting plan and letter of credit at the start of the process



Operational Approach

- Existing Protocols
 - Remain in place and should be referred to when needed.
- Contacting DFO
 - FisheriesProtection@dfo-mpo.gc.ca
 - 1 855 852-8320
 - <http://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>



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Thank you

- For more information: <http://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>



The screenshot shows the Fisheries Protection Program website. The header includes the Government of Canada logo and navigation links. The main content area is titled "Fisheries Protection Program" and includes sections for "Program Changes", "Guidance Documents", "Recreational Fisheries Conservation Partnerships Program", and "Expert Support for Contaminated Sites". A sidebar on the left lists various project-related links.

Home > Projects Near Water > Fisheries Protection Program

Projects Near Water

- Does my project need a review?
- Measures to Avoid Harm
- Request a review or an authorization
- Fisheries Protection Program**
- Program Changes
- Guidance Documents
- Partnership Funding
- Contaminated Sites
- Contact Us
- Report a Violation

Fisheries Protection Program

The mandate of the Fisheries Protection Program is to maintain the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries.

Program Changes

On November 25, 2013, the fisheries protection provisions of the [Fisheries Act](#) came into force. Our website has been updated with new information and requirements. For an overview of the changes to the Act, see [Changes to the Fisheries Act](#).

Guidance Documents

- [Pathways of Effects](#)
- [Fisheries Productivity Investment Policy: A Proponent's Guide to Offsetting](#)
- [Fisheries Act](#)
- [Fisheries Protection Policy](#)
- [Applications for Authorization under Paragraph 35\(2\)\(b\) of the Fisheries Act Regulations](#)
- [Annual Report 2011-2012](#) (Request an Annual Report from a previous year [here](#)).

Recreational Fisheries Conservation Partnerships Program

The [Recreational Fisheries Conservation Partnerships Program](#) forms a key component of the Government of Canada's conservation agenda as outlined in Budget 2013 and aligns with the Government's commitment to better protect Canada's fisheries as reflected in the recent changes to the *Fisheries Act*.

Expert Support for Contaminated Sites

[DFO Expert Support for the Federal Contaminated Sites Action Plan \(FCSAP\)](#)

Date modified: 2013-11-25

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