



Fisheries and Oceans
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Pêches et Océans
Canada

Modernizing the *Fisheries Act*

Bill C-32





Context

- Since 1868, the *Fisheries Act* has served Canadians well.
- There is a consensus that the *Fisheries Act* needs to be updated to reflect the evolving fisheries and fish habitat management system such as:
 - A greater role for fish harvesters in the management of the resource
 - Stability and predictability in access and allocation decisions
 - Decision-making in the fisheries sector needs to be transparent
 - Maintaining the habitat protection and pollution prevention provisions
 - Enforcement needs to be modernized in order to be effective
- Bill C-45 (tabled December 13, 2006) provided the tools to meet the needs of a modern, economically competitive and ecologically sustainable industry. It died on the Order Paper September 14, 2007 with prorogation of Parliament.



Since Tabling of Bill C-45

- » Contact has been made with 1,300 stakeholders from across Canada, as well as letters to 16,000 licence holders
- As a result of these activities, feedback on Bill C-45 has been received from 380 stakeholders representing a cross-section of fisheries interests
- DFO received a range of stakeholders' views on the legislative proposal and direction for fisheries and fish habitat management in Canada.
- Not everyone agreed with every section of Bill C-45
- However, everyone agreed to the need to modernize the *Fisheries Act*



What We Heard

- **Broad Consensus on changes to Bill C-45:**
 - Need to recognize fisheries as a common property resource
 - Licensing and allocation considerations, especially “adjacency” and “historical participation”, should be mandatory rather than optional (“may”)
 - Declaring licences non-transferable in legislation counter to fish harvesters’ needs
 - Allocating fish to organizations under Fisheries Management Agreements may lead to privatization or favouritism
- **Polarized views on other provisions:**
 - Providing access and allocation stability vs. risk of privatizing the resource
 - Conflicting interests of recreational sector vs. commercial sector
 - Strong habitat provisions to protect environment vs. industry need for predictable, timely and transparent decision-making
 - Moving away from patriarchal management system vs. giving too much discretion / power to bureaucrats and industry organizations



What We Heard: Conclusions

- Four categories of comments:
 - Those that we cannot accommodate
 - Those with strong opposing views
 - Those where a policy/regulation solution is more appropriate
 - Those with broad consensus



A New Legislative Proposal

- This new legislative proposal:
 - Builds on Bill C-45 bill text, now in public domain for 11 months
 - Incorporates changes to Bill C-45 that reflect broad consensus on 4 key areas among stakeholders, caucus members and Opposition MPs
 - Add reference to the fisheries as a “common property resource” in the Preamble
 - Amend s.25 to clarify that conservation is the first priority in access and allocation - and all other considerations become “musts” rather than “mays”
 - Amend s. 30(1) to remove “licence confers privileges” and “non-transferability” language
 - Amend s.43(2)(g) to remove “quota of fish” as part of a fisheries management agreement
 - Responds to the near unanimous support for a modernized *Fisheries Act*
 - Confirms well-established policy directions and jurisprudence (e.g. public right to fish)
- Some concerns have been / will be addressed in policy: integrated fisheries; trust agreements; role of fishery officers in habitat enforcement (inland provinces);
- Committee stage: presents opportunity to resolve proposals where no consensus exists, and introduce technical amendments



Elements of C-32

General Application

Application principles governing the exercise of responsibilities under the Act including Agreements with provinces, Programs and Projects and Advisory Panels

Part 1

Establishes a new framework for the proper management and control of fisheries including a new licensing regime and greater stability and transparency in access and allocation in fisheries, issuance of fisheries management orders and agreements with groups that participate in a fishery

Part 2

Provides for the better conservation and protection of fish and fish habitat with enforceable conditions of authorizations and enhanced regulation-making ability for streamlining reviews. Bill increases requirements related to reporting and taking corrective actions

Part 3

Provides new authorities necessary to control the impact of aquatic invasive species on domestic fish populations



Elements of C-32

Part 4

Provides the necessary powers to administer and enforce the Act with enhanced fishery officers and inspectors powers and new Alternative Measures Agreements provisions

Part 5

Establishes the Canada Fisheries Tribunal: licence sanctions for fisheries violations and appeals of licence decisions

Part 6

Miscellaneous regulation-making authorities for the Governor in Council required for the administration of the Act

Part 7

Transitional provisions, consequential amendments and coordinating amendments and repeals certain other Acts. Acts to be repealed: *Fisheries Improvement Loans Act*, *Fisheries Development Act*, *Atlantic Fisheries Restructuring Act*, *Great Lakes Fisheries Convention Act*



What's Next

- Consultation will not end with tabling

- The Bill will most likely be referred to the House of Commons Standing Committee on Fisheries and Oceans.
- The role of the Committee is to review the text of the Bill and approve or modify it. It is at this stage that the Committee may invite individuals and representatives of organizations that have an interest in the legislation to provide comments either in writing or by personal appearance.
- Witness Information:

http://cmte.parl.gc.ca/cmte/CommitteeWitnesses.aspx?Lang=1&PARLSES=391&JNT=0&SELID=e10_&COM=0

- A Guide for Witnesses Appearing Before Committees of the House of Commons:
<http://www.parl.gc.ca/information/about/process/house/WitnessesGuides/witness-e.htm>
- Preparing a Submission to a House of Commons Committee:
<http://www.parl.gc.ca/information/about/process/house/WitnessesGuides/guide-brief-e.htm>



What's Next

- Implementation
 - Following Royal Assent of the Bill, stakeholders will be engaged in the development of policies and regulations for the implementation of the Bill.
 - Many sections of the Bill require publication prior to implementation that will allow stakeholder input.
 - Examples include
 - Fisheries management agreements
 - Allocation orders
 - Fisheries management orders



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Bill C-32

A decorative banner at the bottom of the page. On the left, it shows a close-up of a red maple leaf. On the right, it features the word "Canada" in a white serif font, with a small Canadian flag icon above the letter 'a'.

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Accountability and Good Governance



Accountability and Good Governance

Context

- At present the Act does not provide direction to the Minister or the Department on the goals, objectives and management principles that should underlie fisheries and fish habitat management.
- Stakeholders continue to seek greater predictability, stability, and transparency in decision-making.
- A framework of values and guiding principles would bring the *Fisheries Act* into line with modern accountability and good governance practice and be consistent with the government's commitment on accountability in general.
- Would also provide strong support for Fisheries Management Renewal objectives, both in general and in particular to promote strong conservation outcomes.
- Proposed sections are contained in the preamble, purpose clause and management principles.
- The Minister and the Department would remain fully accountable for fisheries and fish habitat management to Parliament and Canadians.



Accountability and Good Governance

Preamble

- A preamble is used to recite the circumstances giving rise to the legislation at the beginning of the Act
- Preamble recognizes the following key values:
 - conservation and protection of fish habitat and pollution prevention
 - sustainable fisheries management, as a common property resource, for the benefit of all Canadians
 - importance of a clear Ministerial framework for accountability to Parliament
 - interjurisdictional cooperation and public engagement
 - existing Aboriginal and treaty rights and the importance of fisheries to many Aboriginal communities
 - goal of stable access and allocation
 - importance of maintaining the public character of fisheries and fish habitat management



Accountability and Good Governance

Purpose Clause

- A purpose clause is a provision, placed at the beginning of a set of provisions, that declares the purposes or objectives of those provisions.
- The proposed purpose of the *Act* is:
 - *to provide for the sustainable development of seacoast and inland fisheries, through the conservation and protection of fish and fish habitat.*



Accountability and Good Governance

Application Principles

- Fisheries and Fish Habitat Management Principles that would be applied to all decisions and administrative actions taken under the authority of the Act:
 - **Take into account** sustainable development and ecosystem approach in fisheries management and protection of fish and fish habitat
 - **Seek to** apply precautionary approach
 - **Take into account** scientific information in fisheries management and protection of fish and fish habitat
 - **Seek to be consistent** with constitutional protection for existing aboriginal or treaty rights
 - **Consider** traditional knowledge to the extent that it has been shared
 - **Endeavour to act** in cooperation with other governments and bodies created under land claims agreement
 - **Encourage** Canadians' participation in decision-making



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Programs and Projects



Programs and Projects

Context

- Currently, authorities to undertake programs and projects and to provide funding or other forms of financial assistance are spread across several statutes.
- Proposed amendments would streamline provisions in one legal framework, in line with the purposes of the *Fisheries Act*.



Programs and Projects

Programs and Projects

- Relevant provisions in outdated statutes would be repealed.
- Proposed amendments would include financial authorities relating to commercial, recreational or Aboriginal fisheries, as well as fish habitat and aquaculture.
- Could be used to:
 - support business management, harvest management, training and mentoring
 - improving the economic viability in the fishery or aquaculture sector
 - restoring, improving or conserving fish habitat
- Also proposed provisions for entry into agreements or other arrangements with governments or other entities.



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Cooperation with Provinces and Territories



Cooperation with Provinces and Territories

Context

- The government is committed to increased collaboration with provinces and territories.
- DFO already has several formal intergovernmental arrangements in place (e.g., habitat management, management of inland fisheries, cooperation agreement).
- Although these agreements are legally sound, there has never been an overarching legal framework which secures the consistency of these arrangements.
- The proposed approach is consistent with agreement powers found in other federal statutes.
- There has been strong interest among all jurisdictions in improving efficiency of program delivery through closer cooperation.
- The proposed approach reflects and builds on the *1999 Agreement on Interjurisdictional Cooperation*, signed by all jurisdictions.



Cooperation with Provinces and Territories

Delegation

- Act would maintain provision for the delegation of ministerial powers (e.g. to a minister of a provincial or territorial government who already administers freshwater fisheries).



Cooperation with Provinces and Territories

Agreements with Provinces

- Agreements with Provinces can be renewed every five years and be used to:
 - establish roles, powers, duties, processes
 - facilitate collaboration and enhance communication
 - facilitate direction-setting and joint action
 - provide basis for joint engagement of public or trilateral arrangements with stakeholders
 - establish framework of principles, goals and objectives to guide respective programs
 - establish new programs / maximize the efficiency and effectiveness of respective programs
 - reduce overlap and harmonize programs
 - establish standards, guidelines and codes of practice
- Where a provincial regulation is deemed *equivalent* in operating effect to a federal regulation, with GiC approval, the latter may be declared not to apply in that province.



Licensing and Allocation



Licence and Allocation

Context

- A stable access and allocation approach is an objective of Fisheries Management Renewal and will improve the business operating environment of resource users.
- Resource users seek defined rules for applying clear access and allocation principles, longer-term access, stability in sharing arrangements and fair and transparent processes for settling disputes.
- Support remains for the Minister to retain authority over licensing policy and allocation decision-making.
- Proposed amendments would enhance stability, predictability and transparency to the current decision-making processes and would include longer-term licences.



Licence and Allocation

Considerations (Licence & Allocation)

- Under the new Act, the Minister would retain his full ability to decide access and allocation in the coastal fisheries, but at a level of policy, not by deciding individual cases.
- However, the Minister would be obliged to take the following guiding principles into account:
 - the need to conserve and protect fish and fish habitat
 - the compliance of fishers in the fisheries with the requirements of the Act; and,
 - the importance to fishers of secure access to the fishery and of allocation stability.
 - fairness to individuals, between communities and between regions;
 - fishers' adjacency to the fishery and their historical participation;
 - economic viability;
 - best use of fish to fulfill fishery's economic, social and cultural potential;
 - importance of maintaining public access to the fishery; and,
 - other considerations that the Minister considers relevant.



Licence and Allocation

Licensing Provisions

- Move away from regime where licences are issued by the Minister.
- Minister could set policy, that would be binding on DFO, for the issuance of licences, including eligibility criteria.
- Licences would be issued by licence officers, delegated by the Minister, in accordance with the licensing policies and regulations.
- Ability for the Department to withhold licences under specified conditions, e.g. where the licence holder has entered into agreements intended to bypass Minister's licensing policy.
- Statutory right of appeal (to tribunal) when licence is denied.
- Fees set by ministerial order, parallel to the *Oceans Act*.
- Licences are *not* property.



Licence and Allocation

Allocation Provisions

- Minister would retain full authority to decide access and allocation in coastal fishery
- Allocation orders:
 - New instrument to allow Minister to allocate, *for up to 15 years*, shares of fish to fleets or groups in commercial, recreational and aboriginal fisheries/
 - Process would be transparent with requirement to publish.
 - Authority for Minister to name advisory body to hold public consultations, develop and provide public recommendations on allocations.
 - Allocation instrument would not create rights, liabilities or restrictions and the Minister could still take any action needed for conservation and orderly management of the fishery.
 - Ability to rescind, alter or replace allocation: future Minister would not be bound, would be subject to certain process requirements (public notification).



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Fisheries Management Orders



Fisheries Management Orders

Context

- Fisheries Management Orders would replace the current power to make variation orders.
- They may be made by Minister or delegated province.
- FMOs will support a more streamlined system:
 - currently, variation orders require hundreds of pages of Schedules to the regulations;
 - the replacement of variation orders with FMOs will reduce this regulatory burden.



Fisheries Management Orders

Fisheries Management Orders

- Every person to whom the FM orders apply must comply.
- Fisheries Management Orders would set closed times, fish size and weight limits, in a more timely fashion.
- The orders will prohibit:
 - catching and retaining fish in quantities that exceed a max. number allowed by the order
 - catching fish that are smaller or larger than limits allowed by the order
 - fishing for specified species during closed times
 - harvesting marine plants during closed times



Fisheries Management Agreements



Fisheries Management Agreements

Context

- In keeping with the desires of stakeholders, and to advance a conservation ethic, Fisheries Management Renewal seeks to increase the role of resource users and their organizations in the management of coastal fisheries (shared stewardship based on co-management).
- There has never been a statutory framework that articulates what the ad hoc array of fisheries management arrangements (integrated Fisheries Management Plans, Joint Project Agreements, etc) may cover.
- A new Act could provide authority to Minister to enter into legally binding fisheries management agreements.
- Primary focus would centre on the mechanics of co-management (who can participate, to what extent can the Minister alter agreements for the protection and sustainable use of the resource, etc.).



Fisheries Management Agreements

Fisheries Management Agreements

- Legally binding agreements would provide a greater opportunity for collaboration between DFO and responsible groups (e.g. commercial fleets, Aboriginal groups).
- Agreements would specify:
 - whom the agreement concerns
 - harvesting rules
 - supporting programs and services
 - monitoring and other activities to be undertaken by other parties
 - planning structures and processes
 - funding arrangements
 - sanctions formula
- Agreements could be concluded with commercial, recreational, or Aboriginal organizations.



Aquaculture Considerations



Aquaculture Considerations

Context

- Proposed amendments drafted in the context of up-coming comprehensive FPT governance renewal negotiations on aquaculture.
- Proposed amendments will facilitate the harmonization of the FPT legal and regulatory framework for aquaculture.



Aquaculture Considerations

Aquaculture Considerations

- The following proposed Fisheries Act amendments would contribute significantly to the negotiation and implementation of an agreement with Provinces:
 - Clarified and improved authorities related to deliberate movement of aquatic organisms for aquaculture purposes;
 - Leasing provisions for aquaculture helping to address jurisdictional gaps (i.e., off-shore aquaculture on federal lands);
 - Aquaculture specifically included in a new provision to support the funding of projects and programs for economic development, management and industry adjustment.
 - Improved provision for the control of aquatic invasive species; and
 - New provisions concerning deemed equivalency helping to formalize the results of governance negotiations on regulatory harmonization.



Aquatic Invasive Species



Aquatic Invasive Species

Context

- Harm from living aquatic organisms including from the entry and spread of aquatic invasive species (AIS) is a significant and increasing problem:
 - harm to native aquatic species and habitat
 - large and increasing financial costs (lost revenue, damage to infrastructure, control measures)
- Current authorities under the *Fisheries Act* to control AIS are limited:
 - export and transport of fish, licencing of activities related to fishing
 - no destruction powers (“rapid response measures”)
 - narrow scope of species that can be managed
 - authorities for Sea Lamprey Control Program control measures are not clear
- Several oversight groups have questioned DFO’s ability to manage AIS (SCOFO, CESD, DFO Audit and Evaluation).



Aquatic Invasive Species

Aquatic Invasive Species

- Proposed amendments will broaden the authorities to allow AIS to be prevented and controlled in a comprehensive manner.
- Prohibitions against export, import, or transport of AIS, or release of AIS into waters frequented by fish
 - exemption from the prohibitions for activities that are allowed through the regulations
- Proposed new authority for destruction of AIS:
 - AIS listed in the regulations
 - AIS not listed in the regulations but meet the definition of AIS (“rapid response” mechanism for emergency situations)
- Proposed authority to make regulations with respect to the conservation of fish and fish habitat from the threat of AIS.
- Proposed penalties for offences involving AIS.
- Maintained authorities for existing programs that address risks from living organisms (e.g introduction and transfers)



Conservation and Protection of Fish Habitat and Pollution Prevention



Habitat Protection & Pollution Prevention

Context

- No proposed change in general prohibitions on harmful alteration, disruption or the destruction of fish habitat.
- Modest proposed changes to the existing habitat protection & pollution prevention provisions.
- Proposed amendments are consistent with policy directions with the Environmental Process Modernization Plan (EPMP) and support its implementation.
- Proposed amendments respond to a range of stakeholders' views.



Habitat Protection & Pollution Prevention

Conservation and Protection of Fish, Fish Habitat & Pollution Prevention

- Habitat Management:
 - general prohibition on harmful alteration, disruption or the destruction of fish habitat remains unchanged
 - greater clarity for industry (e.g. clearer fish passage sections) with no reduction in environmental protection and the role for environmental assessment
 - new regulation-making power which can help improve timelines
 - enforceable conditions to an authorization (compensation, mitigation measures and monitoring) separately from the enforcement of the general prohibition
 - modernized powers for inspectors and alternative measures agreements: new measure for handling offences
- Pollution Prevention:
 - revised definition of “deleterious substance” would clarify that it is the substance itself and not the water in which the substance can be found that is defined as deleterious or not to fish or fish habitat



Habitat Protection & Pollution Prevention

Conservation and Protection of Fish, Fish Habitat & Pollution Prevention

- No delegation of habitat protection provisions to provinces.
- Possibility of equivalency as part of provincial agreements.
- Improved information and agreement powers.
- Ability to form advisory bodies.
- Better integration of fish management and habitat conservation and protection.



Administration and Enforcement



Administration & Enforcement

Context

- Proposed amendments to improve effectiveness and modernize the Act.



Administration & Enforcement

Administration and Enforcement

- Possible changes to inspector authority:
 - current Act only allows for inspectors for pollution prevention
 - renewed Act would expand powers to habitat inspectors
 - new inspectors are not peace officers
 - new tools to access information and provide direction to mitigate impacts
- Alternate measures:
 - in cooperation with Attorney General and Department of Justice
 - alternative to costly court proceedings



Administration & Enforcement

Administration and Enforcement

- Fishery officers would continue to hold the principal powers and authorities; superfluous duties removed or provisions amended to allow other departmental agents exercise the responsibilities
- Fishery officers and habitat inspectors would enjoy certain protections when their duties necessarily put them in the position of being in violation of the Act.
- Inspector powers would be modernized and made more consistent with those in CEPA, 1999 and have been extended to functions associated with renewed habitat protection provisions.



Administrative Sanctions Regime & Canada Fisheries Tribunal



Administrative Sanctions

Context

- An administrative sanctions system is an important element of a modernized compliance regime, a key objective of Fisheries Management Renewal. There is broad support for using administrative sanctions as the primary tool for handling violations by licence holders.
- Current Act only allows the Minister to suspend or cancel licences for breaches of licence conditions, not for breaches of regulations or general prohibitions of the Act.
- DFO must proceed through provincial courts for all other infractions.
- In many jurisdictions, there are no arrangements in place between DFO and provinces and territories to handle the issuing of tickets for violation of the Act and its regulations.
- Industry has sought an administrative sanctions regime for many years.
 - Administrative sanctions were employed in the fisheries on a limited scale during the 1990's and were broadly supported by industry. However, the courts determined that DFO did not have sufficient legislative authority to apply administrative sanctions and the practice was discontinued.



Canada Fisheries Tribunal

Canada Fisheries Tribunal

- An arm's length administrative tribunal, operating on the east and west coasts, to apply licence sanctions and associated supplemental monetary penalties to licensed holders and process tickets for minor infractions.
- Might apply to Aboriginal fisheries matters
- Administrative Sanctions:
 - system to be established by the Tribunal as the primary tool for handling minor or major violations by licence holders in coastal communities;
 - administrative sanctions will provide:
 - additional deterrence
 - administrative fairness
 - credibility within the fishing community
 - expert decision-making
 - operational efficiency
- Tribunal would also hear appeals from people who have been denied a licence.