


Considered at September 20, 2021 Environmental Protection Committee Meeting

 Fisheries and Oceans Canada Pêches et Océans Canada



Canada 



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Manager of Regulatory Watershed Operations



Speaker

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Overview



Information Session



Fisheries Act in a Glance



Projects Near Water – The Process



Intersections with Province of BC – Looking Ahead

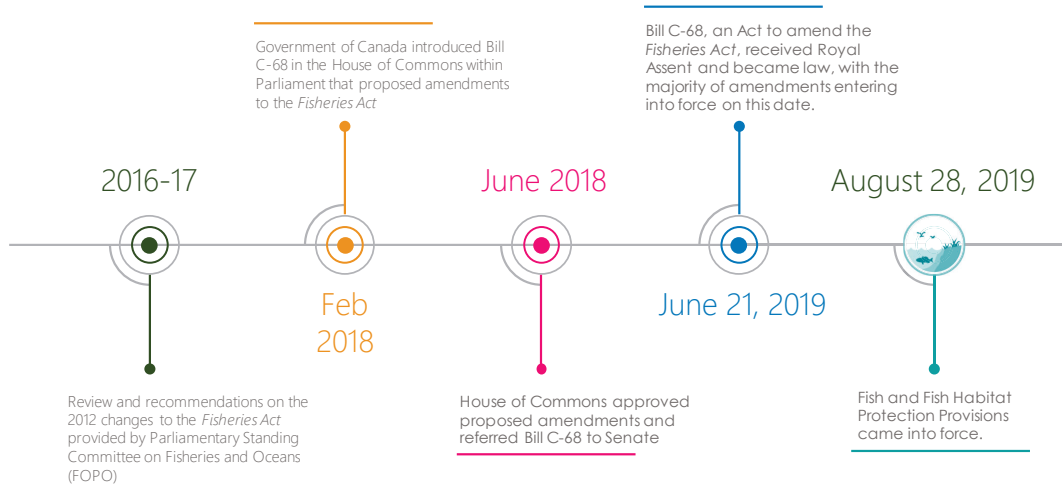


Questions?

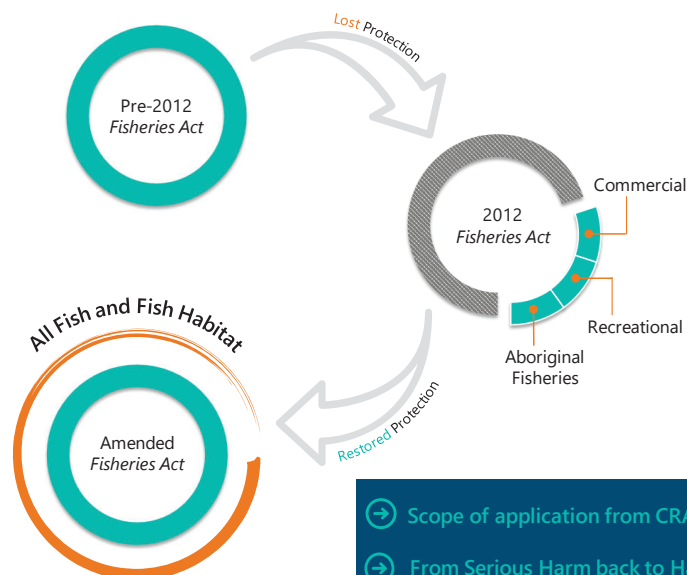
Fisheries Act
In a Glance

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Timeline



Restored Lost Protections



- Scope of application from CRA to All Fish & Fish Habitat
- From Serious Harm back to Harmful Alteration, Disruption or Destruction (HADD)
- Improved Resources for Fish Habitat, C&P and Science

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Harmful Alteration, Disruption or Destruction

SECTION
35 (1)

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



➔ Harmful Alteration, Disruption or Destruction (HADD)

- Defined in the policy as any temporary or permanent change to fish habitat that directly or indirectly impairs the habitat's capacity to support one or more life processes of fish.

Definition:

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



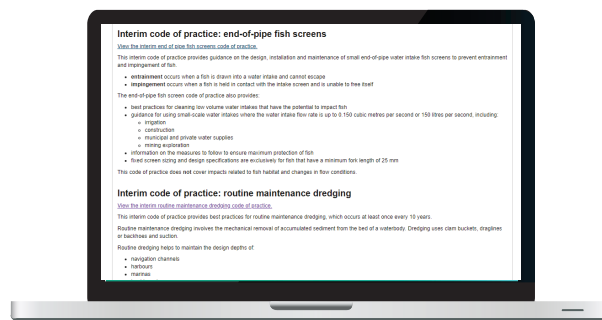
Standards & Codes of Practice

SECTION
34.2

Guidance documents that are published, in *Canada Gazette*, that **provide certainty** for project proponents and **avoid cumulative effects** from a large number of small impacts

Codes of Practice (COPs) are

- Best management practices
- Determined to be effective and practical
- Measures to **avoid** HADD and/or death of fish
- Good understanding of the works and activities being proposed
- National guidance
- Information and tools (e.g., Measures, end-of-pipe screen size tool)
- Notification form



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Other Changes

Permits and Designated Projects

A **special class of works, undertakings or activities** that are likely to result in the death of fish or the harmful alteration, disruption or destruction of fish habitat. The Department's intention is to **support** proponents of **large scale projects** by providing clarity as to the role of the Department in relation to the prohibitions.

Ecologically Significant Areas

Set out management objectives for the conservation and protection of fish and fish habitat **within these areas**; and, prescribe the classes or types of works, undertakings and activities that **will always require a review** by the Minister. These works, undertakings and activities will be assessed against the conservation and protection objectives for the area.

Prescribed Works and Water Regulations

Proponents who were to carry on these prescribed works, undertakings or activities, or carry them on in prescribed waters, and who were to do so in a manner that is in accordance with the **conditions set out in regulation**, could do so without contravening the subsection 34.4(1) or subsection 35(1) prohibitions. Works, undertakings or activities to which such regulations would apply, **would not require a 'site-specific review'** by the Department.

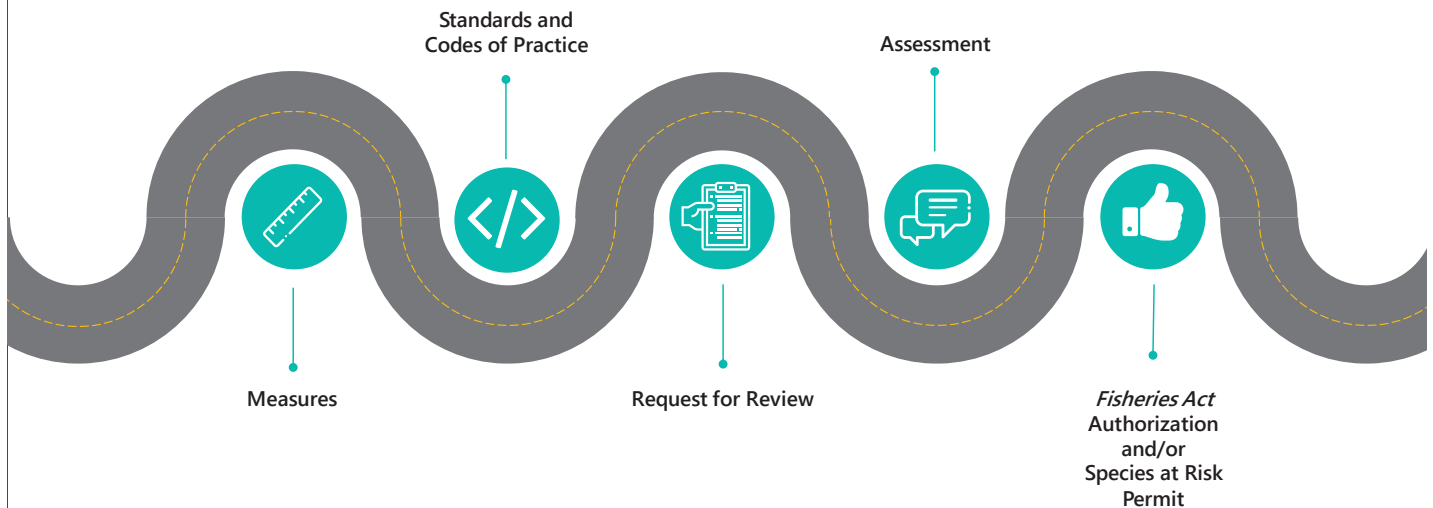


Projects Near Water
The Process

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Road to Projects Near Water



Summary of Process Flow

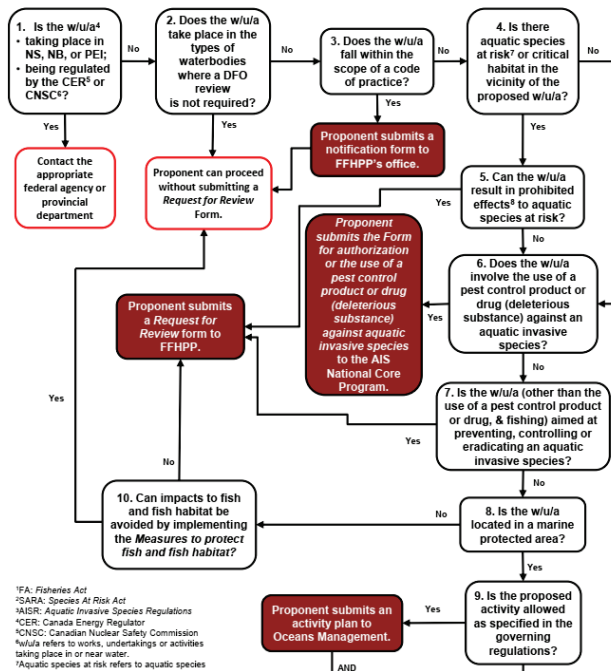
Projects Near Water website	Request for Review	Application for Authorization / Permit	Authorization / Permit Decision
<p>Provides measures to avoid impacts to fish and fish habitat</p> <p>If use code of practice, notify DFO</p> <p>If impacts cannot be avoided or aquatic species at risk is involved, contact DFO for a Request for Review</p>	<p>Submit information on project, measures to avoid / mitigate impacts on fish and fish habitat</p> <p>DFO will review to determine compliance with the <i>Fisheries Act</i>, <i>Species at Risk Act</i> and <i>Aquatic Invasive Species Regulations</i></p> <p>Letter of Advice indicating work is in compliance with the <i>Fisheries Act</i> OR Letter indicating that a <i>Fisheries Act</i> authorization or <i>Species at Risk Act</i> permit is required – proponent to apply for authorization/permit following regulations</p>	<p>Application reviewed for completeness, adequacy – proponent addresses gaps</p> <p>60 day time limit applies to application under <i>Fisheries Act</i> regulations</p> <p>When application complete and adequate, other requirements considered</p>	<p>Before authorization or permit decision can be made:</p> <ul style="list-style-type: none"> • Address duty to consult • <i>Species at Risk Act</i> requirements • Outcome of federal environmental/impact assessment • Other requirements <p>90 day time limit for <i>Fisheries Act</i> authorization decision begins when the above are addressed</p> <p>Consider S. 34.1 Factors</p> <p>Decision – issue authorization, with conditions or refuse, with explanation</p>

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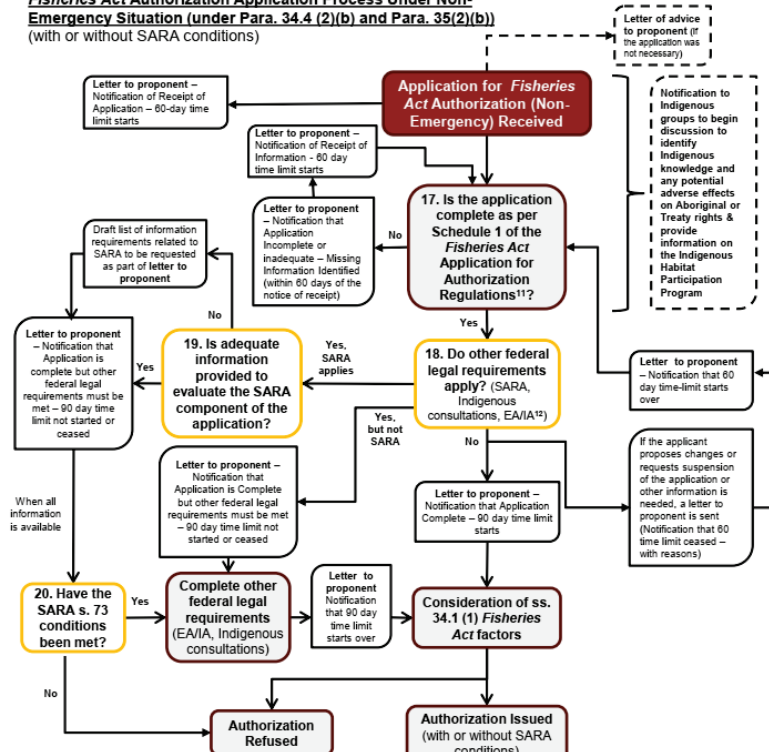
FFHPP Regulatory Review Process Map (FA¹, SARA², AISR³)

Guidance to proponent (FFHPP Website)

May 2020



Fisheries Act Authorization Application Process Under Non-Emergency Situation (under Para. 34.4 (2)(b) and Para. 35(2)(b)) (with or without SARA conditions)

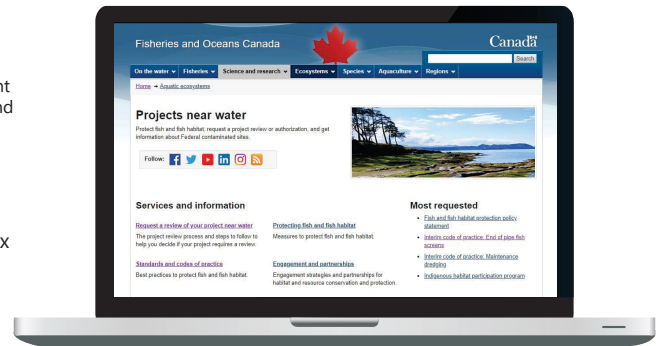


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New Program Information & Website

- The website has been updated for a greater client-focused and easier navigation
- You can find guidance and policy
 - Fish and Fish Habitat Protection Program Policy Statement
 - Policy for Applying Measures to Offset Impacts to Fish and Fish Habitat Under the *Fisheries Act*
 - Codes of Practice
 - SARA permitting process
- Continue to submit projects to Referrals Pacific Inbox ReferralsPacific@dfo-mpo.gc.ca – one window
- For reporting compliance issues continue to use the ORR line in BC 1-800-465-4336 or email: DFO.ORB-ONS.MPO@dfo-mpo.gc.ca



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



Measures

Access the website to find measures on how to best plan your work, undertaking, or activity in a manner that avoids impacts to fish and fish habitat.

You're responsible for reviewing the list of measures and implementing those that are applicable to your project

- Prevent the death of fish
- Maintain riparian vegetation
- Work on land
- Maintain fish passage
- Ensure sediment control
- Prevent entry of deleterious substances in water

If you can't completely implement the protection measures, [check if your project needs a review](#).



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Standards and Codes of Practice

Access the 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.

Steps

- 1 Review the description in the code of practice
- 2 Determine if you can apply this to your project
- 3 Review the measures and apply all that are applicable
- 4 Request that you notify us when you use a code of practice

Six Interim Codes of Practice

1. End-of-pipe fish screens
2. Routine maintenance dredging
3. Temporary stream crossings
4. Beaver dam removal
5. Culvert maintenance
6. Temporary coffer dams and diversion channels

[Request a project review](#) if code of practices aren't applicable to your work



Request for Review

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

When you submit your project plans for us to review we will

- Identify the risks to fish and fish habitat
- Work with you to manage the impacts in the best way possible

Steps in the Process

- 1 Consider location, timing and design to avoid impacts
- 2 Consider mitigation measures to limit impacts
- 3 Regulatory review
 - If impacts can be avoided or adequately mitigated, project approval is not required. ([Letter of Advice](#))
 - If death of fish and HADD will likely result, you are required to obtain an [Authorization Paragraph 34.4\(2\)\(b\) or 35\(2\)\(b\)](#)

[Applicant's guide to submitting an application for authorization](#)

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Assessment

DFO assesses the risk of the works, undertakings and activities to temporarily or permanently impair the habitat's capacity to support one or more life process of fish and what type of instrument is appropriate to manage that risk.

- 1 ***Fish and Fish Habitat Sensitivity***
 - Consideration of species at risk
 - Conservation status
 - Habitat rarity and resilience
 - Species dependence on the habitat.
- 2 ***The spatial extent of the area affected by the WUA in relation to the spatial extent of the habitat components affected***
 - How much similar habitat is available nearby?
 - What is the overall scale of the project?
- 3 ***The persistence of the residual pressures on the habitat components.***
 - How long does it take for the habitat to recover?
 - Temporary vs permanent effects?



Authorization

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

- 1 Follow the guidance contained in the [Authorizations Concerning Fish and Fish Habitat Protection Regulations](#).
- 2 Fill out the appropriate form: emergency or normal.
- 3 Work with the assessor to ensure you are providing complete and adequate information.
- 4 If an aquatic species at risk or its critical habitat are affected by the project, the authorization can also act as a SARA permit. (Section 73 pre-conditions)

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Authorization Timelines (Normal)



Timeline Ceases to Apply (Stop the Clock):

- Application is incomplete
- Application is inadequate
- Indigenous Consultation
- Applicant proposes amendments to their application
- Applicant requests in writing to suspend application processing
- Another decision needs to be made first (IA, Treaty decision, etc)



! IMPORTANT !

Works cannot be authorized after they have been completed

[Authorizations Concerning Fish and Fish Habitat Protection Regulations](#)

Intersections with Province of BC

Looking Ahead

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Regional Coordination



- Activity-Based
- Reactive
- Regulatory Focus



- Centralized with focus on watershed-based delivery
- Responsive & Proactive Functions
- Engagement with Indigenous, partners, and stakeholders

What does this mean?

- Improved capacity to
 1. Build watershed knowledge both for regulatory and proactive planning activities
 2. Focus on integrated planning, internal frameworks, and partnership initiatives
 3. Engage IGs in program development and capacity building
- Explore other areas and mechanisms to expand program outcomes through Grants & Contributions and Engagement
- Adapt to shifting program and regional needs and priorities

Regional Coordination

DFO-BC Fish Habitat Committee (Primary Body for DFO-BC Habitat Coordination)

- ➔ Collaborative arrangement between DFO and MOE/FLNRORD that reports to their respective executive (ADM or RD or ROG)
- ➔ Members bound by mandates recognized in collective, consensus-based recommendations and decisions
- ➔ Works towards development and delivery of clear and coordinated operational policies, legislation and programs to achieve the sustainable management of fish habitat in BC
- ➔ Focused on intersection of authorities under the federal Fisheries Act and provincial statutes related to the protection of fish habitat in BC
- ➔ Forum for:
 - discussion of complex and sensitive issues with aim of minimizing conflicts;
 - dispute resolution recourse to executive; and
 - improving bilateral understanding of organizational mandates and operational procedures
- ➔ Work plan identifies areas of common interest and work plan priorities for shared management of fish habitat in BC
- ➔ Provision issue-specific working groups with defined membership and resources:
 - comprised of experienced, skilled members
 - focused on high priority Issues
 - leads attend fish habitat committee meetings to present information, report on milestones and solicit direction

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Regional Coordination

DFO-BC Fish Habitat Committee

→ Areas of Common Interest (AOCIs)

- Agriculture
- Aquatic Invasive Species
- Aquatic Species at Risk
- Best Management Practices, Non- or Pre-regulatory Guidance
- Coastal & Estuary Management
- Cumulative Effects Assessment & Reporting
- Drought, Water Use & Environmental Flows
- Dyking & Flood Management
- Fish Passage
- Forestry & Fire Management
- Grants & Contributions Funding Prioritization Evaluation and Support
- Indigenous Consultation Coordination
- Large Lake Management
- Marine Planning & Coordination
- Regulatory Process Coordination (incl. Offsetting & Habitat Banking)
- Restoration
- Urban Development
- Watershed & Land Use Planning

→ Proposed approach to AOCIs

- Identify existing groups, initiatives or projects that can serve as Fish Habitat Committee sub-forums for AOCIs
- Confirm and prioritize AOCIs without existing groups, initiatives or projects
- Assign operational leads
- Define membership, terms of reference and frequency of meetings
- Set timeline and schedule for report of outcomes, deliverables and recommendations to Fish Habitat Committee

→ Expected focus for AOI working groups

- Jurisdictional scans (AOI legislation, policy, process and practice summaries for AOCIs)
- Identifying DFO-BC alignment & coordination opportunities and potential AOI gaps / areas of misalignment
- Shared advice on next steps to improved alignment & coordination
- Review, update, creation and recommendation of operational tools and guidance

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

General Indigenous Engagement Unit Email

✉ DFO.Pacific_FFHPP_IIEU-UEA_PPPH_Pacificue.mpo@dfo-mpo.gc.ca

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Questions?