



Review of the Changes to the *Fisheries Act*

Fisheries Protection Program

Pacific Region

Fall 2016



Presentation Overview

- Background – *Fisheries Act* and Review
- 2012 Changes to the *Fisheries Act*
- Fisheries Protection Program
- Departmental Policy and Project Review
- Ways to Provide Your Views
- Next Steps





Background – Fisheries Act and Review





Changes to the *Fisheries Act*, 2012

- Changes to the *Fisheries Act* were made through two Omnibus Bills which passed through Parliament and received Royal Assent on June 29, and December 14, 2012, respectively.
- Although some amendments to the *Fisheries Act* came into force upon Royal Assent of Bill C-38, final amendments from both bills have been in force since November 25, 2013.



Mandate for the Review

- The Prime Minister mandated the Minister of Fisheries, Oceans and the Canadian Coast Guard and the Minister of Transport to:
 - “review the previous government’s changes to the *Fisheries Act* and the *Navigable Water Protection Act*, restore lost protections and incorporate modern safeguards”.
- A review of Environmental and Regulatory Processes was announced by Ministers on June 20, 2016 and includes:
 - *Canadian Environmental Assessment Act*;
 - *National Energy Board Act*;
 - *Navigation Protection Act*; and,
 - *Fisheries Act*.



Standing Committee on Fisheries and Oceans

- The Minister asked the Parliamentary Standing Committee on Fisheries and Oceans to undertake the review of the *Fisheries Act* and to provide a report and recommendations early in 2017.
- The Standing Committee on Fisheries and Oceans agreed to undertake the review. The Standing Committee expects to submit its report to Parliament by February 28, 2017.
- <http://www.parl.gc.ca/Committees/en/FOPO>

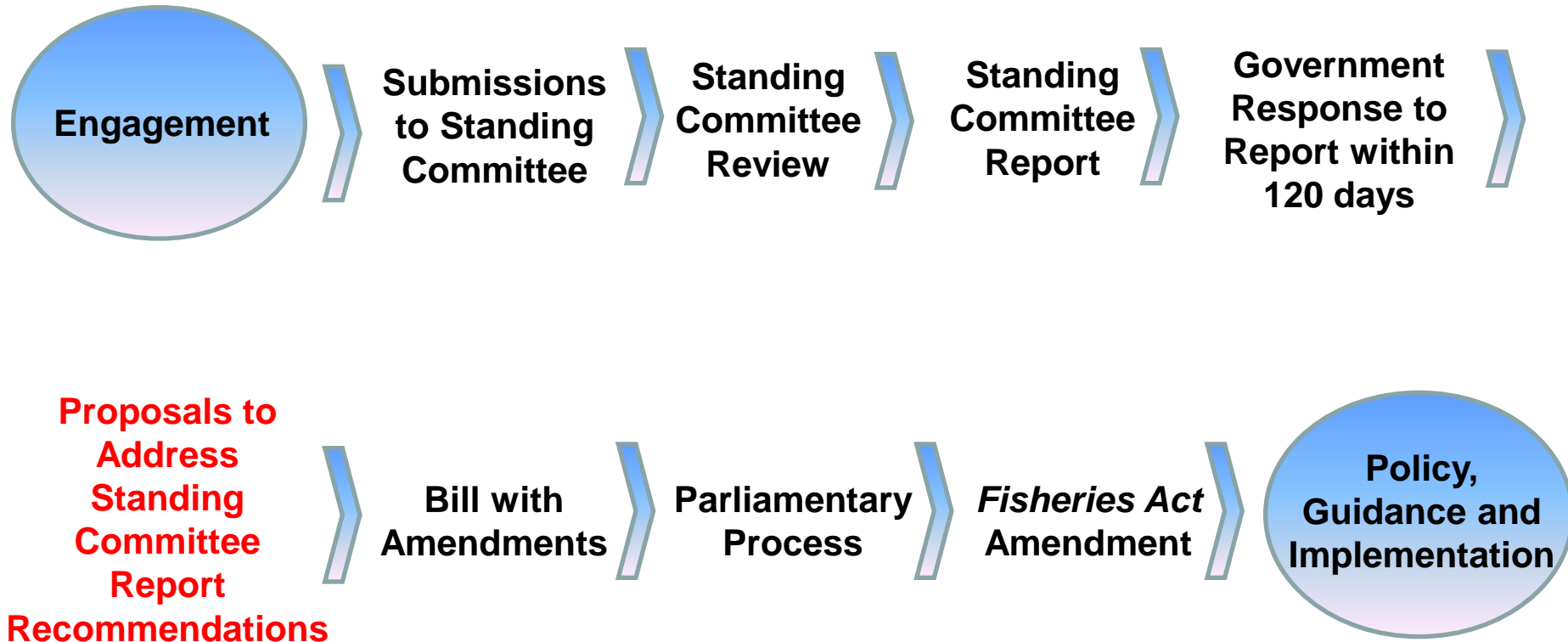


Scope of the Review

- The review will focus on legislative changes to the *Fisheries Act* which are of concern to stakeholders and Indigenous groups:
 - the scope of application of the *Fisheries Act*, and specifically the **serious harm to fish prohibition**;
 - how the prohibition is implemented to protect fish and fish habitat;
 - the **definition** of serious harm to fish, and the definitions of **commercial, recreational, and Aboriginal fisheries**;
 - the use of **regulatory authorities** under the *Fisheries Act*, and other related provisions of the Act; and
 - the **capacity** of Fisheries and Oceans Canada to deliver on fish and fish habitat protection through project review, monitoring, and enforcement.



Phases of the Review Process





2012 Changes to the Fisheries Act





Fisheries Protection Provisions

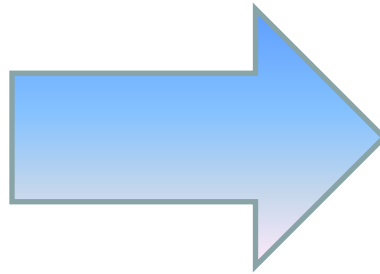
Key Changes Under Review

- The fisheries protection provisions and related provisions:
 - Section 35: Serious Harm to Fish prohibition
 - Section 2: Definitions in Section 2
 - Sections 20, 21: Fish passage, flow and obstructions
 - Section 6 Factors to consider in decision-making
 - Section 6.1 Purpose
 - Section 37: Plan and specification requirements, in reference to Ecologically Significant Areas
 - Sections 38 to 40: Compliance and Protection
 - Section 43: Regulatory Authorities



Section 35 and Serious Harm to Fish

Pre-2012



Post-2012

Merged the former Sections 32 and 35.

32 No person shall **kill fish** by any means other than fishing.

35 (1) No person shall carry on any work or undertaking that results in the **harmful alteration, disruption or destruction of fish habitat**. (HADD).

35. 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.

2. For the purposes of this Act, serious harm to fish is the **death of fish or any permanent alteration to, or destruction of, fish habitat**.



Definitions (Section 2)

- No change to definition of Fish, Fish Habitat now includes 'any other areas' in its definition.
- The terms are used only in reference to Section 35 of the *Fisheries Act* and related provisions and set out the scope of its application.
 - **Commercial**, in relation to a fishery, means that fish is harvested under the authority of a licence for the purpose of sale, trade or barter.
 - **Recreational**, in relation to a fishery, means that fish is harvested under the authority of a licence for personal use of the fish or for sport.
 - **Aboriginal**, in relation to a fishery, means that fish is harvested by an Aboriginal organization or any of its members for the purpose of using the fish as food, for social or ceremonial purposes or for purposes set out in a land claims agreement entered into with the Aboriginal organization.



Section 35 Ministerial Authorization

- **Subsection 35(2)** - A person may carry on a work, undertaking or activity that results in serious harm to fish without contravening the prohibition if the person is authorized under the Act.
- The most common method of authorization is the issuance of a project specific Ministerial authorization with conditions.
- Other legislative mechanisms that can be used to issue a Section 35(2) authorization under the *Fisheries Act* includes the development of regulations and using existing approvals.



Section 6 Factors

- A new Section 6 guides decision-making related to the Fisheries Protection Provisions. It's purpose is to:
 - "to provide for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries"*
- 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.



Other 2012 Changes

Fish Passage and Flow (Sections 20-21)

- The provisions were updated and consolidated into two sections; new definitions of a “fishway” and “obstruction”.
- The Minister has authority to order removal of an obstruction; to improve or control fish passage; to reduce fish mortality; and/or improve flows to areas below an obstruction.

Regulatory Authorities (Section 43)

- Regulations on the information requirements and time limits for applications made under the *Fisheries Act* – in force since November 25, 2013;
- Prescribed water bodies, establish ecologically significant areas; develop agreements with, or provide for equivalency, with provinces and territories; delegation of authority

Compliance and Protection (Sections 37-40)

- New enforceable conditions (Section 37, Subsection 40(3)), duty to notify and take corrective measures (Section 38), increased penalties and fines, environmental damages fund



Fisheries Protection Program





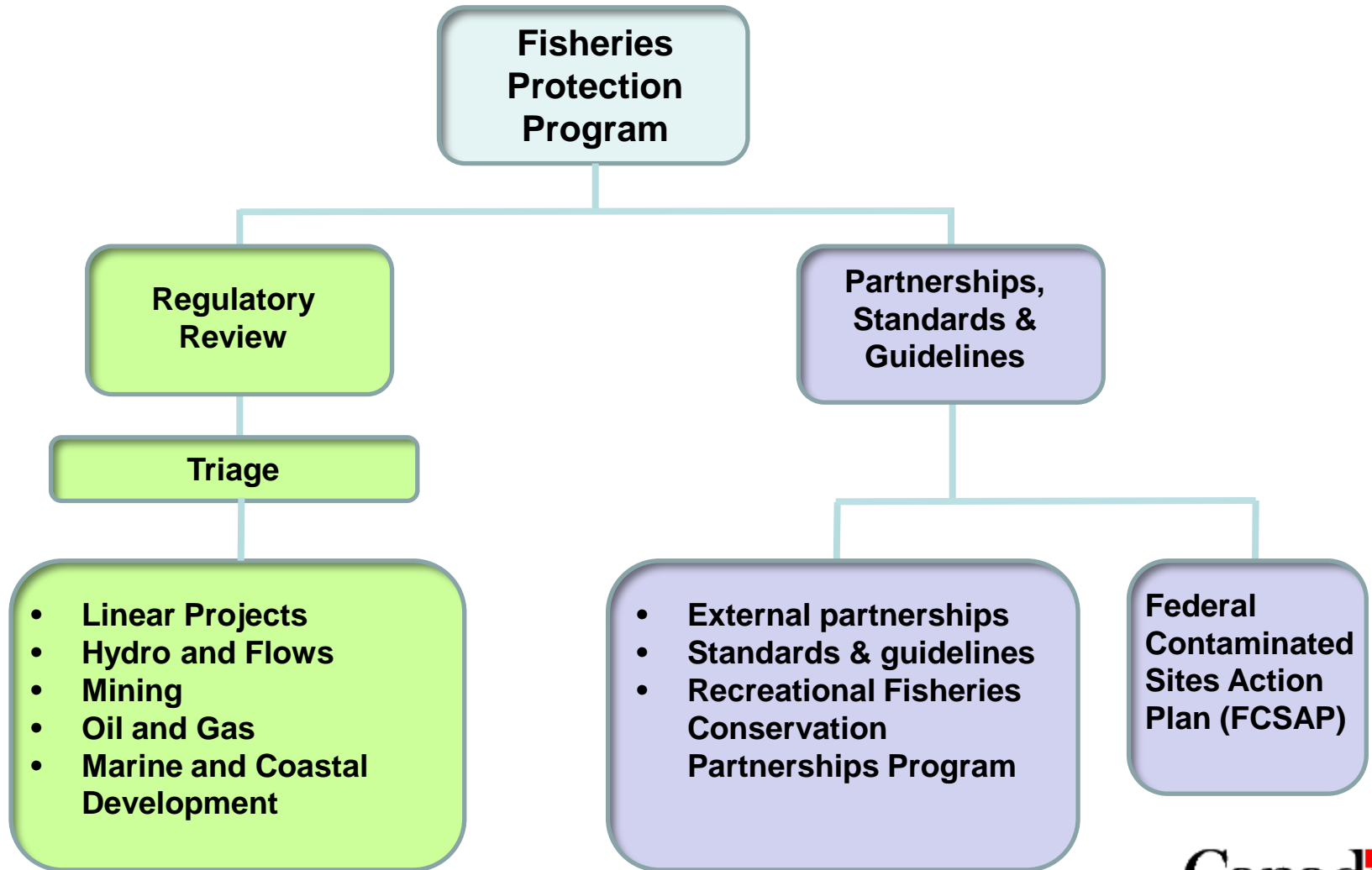
Fisheries Protection Program

- DFO's **Fisheries Protection Program (FPP)** replaced the former Habitat Management Program.
- Services to Canadians are delivered out of sixteen offices within the Department's six regions:
 1. Pacific (BC and Yukon)
 2. Central and Arctic (NWT, Nunavut, Alberta, Saskatchewan, Manitoba and Ontario)
 3. Québec
 4. Maritimes (Nova Scotia)
 5. Gulf (New Brunswick, and Prince Edward Island)
 6. Newfoundland and Labrador



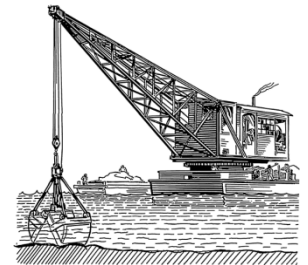
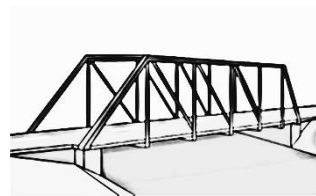


Organizational Structure





Departmental Policy and Project Review





Fisheries Protection Policy Statement

Replaced the *Policy for the Management of Fish Habitat*.

Purpose

To set out how DFO and its regulatory partners will apply the fisheries protection provisions, and guide the development of regulations, standards and directives.

To provide guidance to proponents on the application of the fisheries protection provisions.

Goal

To provide for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries

Objectives

Provide consistent guidance through regulations, standards and directions. Enable regulatory decisions in a timely manner.



Policy Interpretation of Serious Harm to Fish

Through the *Fisheries Protection Policy Statement*, the Department interprets the term “serious harm to fish” as:

- The **death of fish**;
- A **permanent alteration** to fish habitat of a spatial scale, duration or 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, or 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.



Projects Near Water Website

Information on the Fisheries Protection Program can be found on DFO's Projects near Water website including:

- Self assessment guidance
- Request for Review
- Application for Authorization
- Guidance
- Contact information

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Projects Near Water

[Does my project need a review?](#)
[Measures to Avoid Harm](#)
[Request a review or an authorization](#)
[Fisheries Protection Program](#)

Regulatory Partnerships
 Program Changes
 Guidance Documents
 Recreational Fisheries Conservation Partnerships Program
 Contaminated Sites

[Contact Us](#)
[Report a Violation](#)

Projects Near Water

The *Fisheries Act* requires that projects avoid causing [serious harm to fish](#) unless authorized by the Minister of Fisheries and Oceans Canada. This applies to work being conducted in or near waterbodies that support fish that are part of or that support a commercial, recreational or Aboriginal fishery. Following the [measures to avoid harm](#) will help you comply with the *Act*.

Self-Assessment: Does DFO need to review my project?

DFO has arrangements with some federal agencies and provincial governments who provide project reviews and advice for certain types of projects under the fisheries protection provisions of the *Fisheries Act*. If your project is regulated by the National Energy Board or the Canadian Nuclear Safety Commission, or takes place in New Brunswick, Nova Scotia or Prince Edward Island, consult our guidance on [regulatory partnerships](#) before contacting DFO.

For all other projects, follow the guidance below.

- ▶ **Types of waterbodies where DFO review is not required**
- ▶ **Project activities and criteria where DFO review is not required**

If your project **IS NOT** in one of the above waterbody types, and its activities **ARE NOT** listed above, nor does it meet the associated criteria (if applicable), you may submit a [request for review](#) to DFO before proceeding further.

If you are **UNSURE** about whether your project requires DFO review, you can seek support from a [qualified environmental professional](#). Projects near water must also comply with the [pollution prevention provisions](#) of the *Fisheries Act* and the [Species at Risk Act](#).

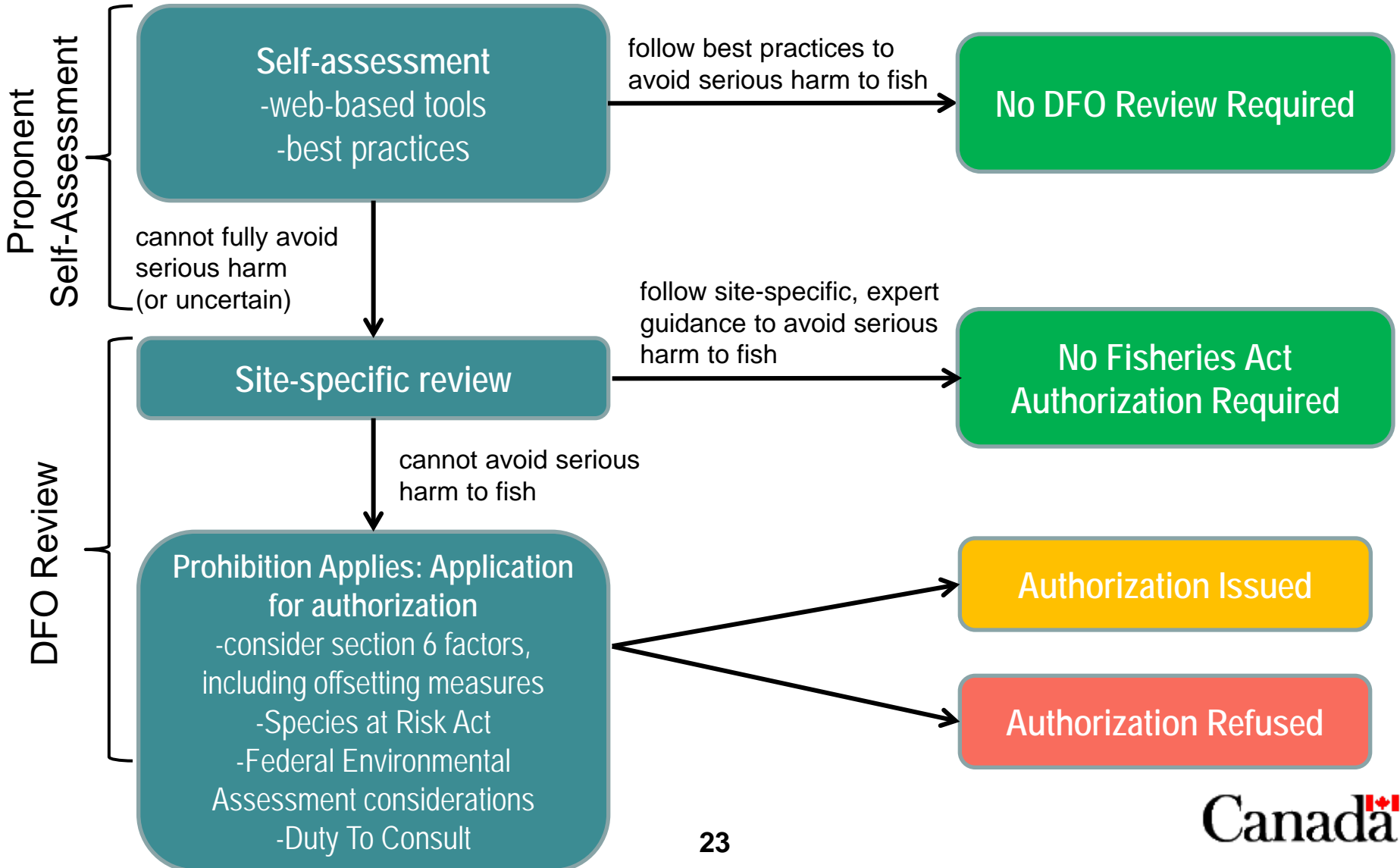
In all cases, it is your responsibility to ensure you follow any additional [requirements from other federal, provincial and municipal jurisdictions](#).

If, after you have reviewed the information above (and have sought professional advice if needed), you still have questions about whether your project requires DFO review, you can contact your [regional Fisheries Protection Office](#).

This information was last updated on February 27, 2014. It is strongly recommended that you visit this website often to receive the most recent DFO advice.

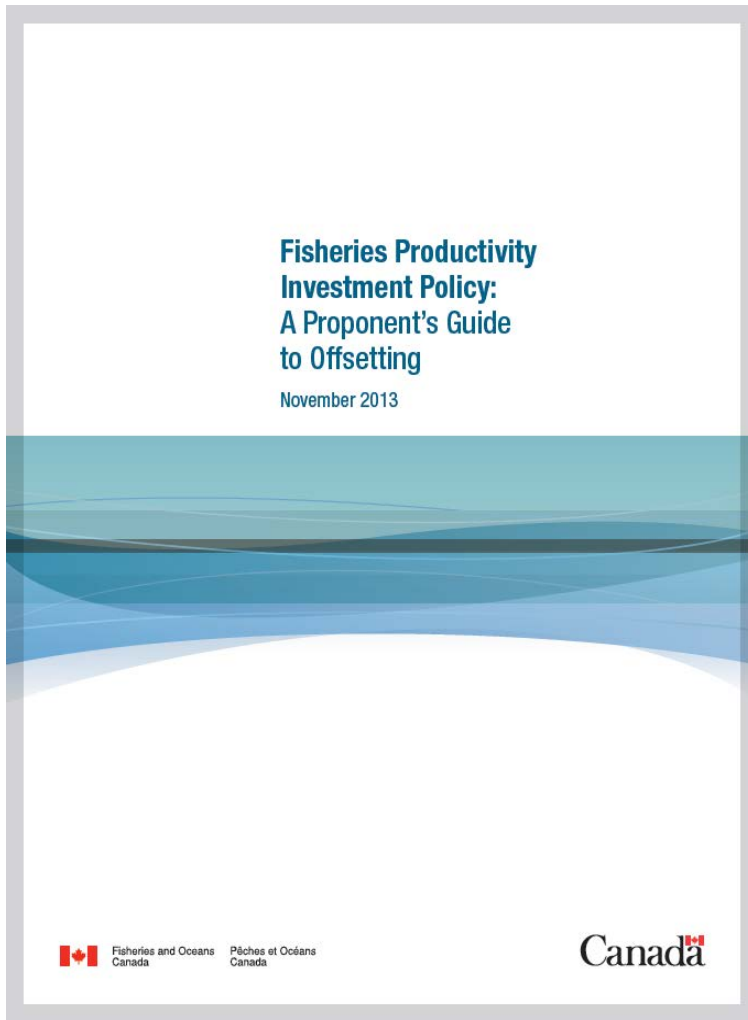


Review and Decision Making Process





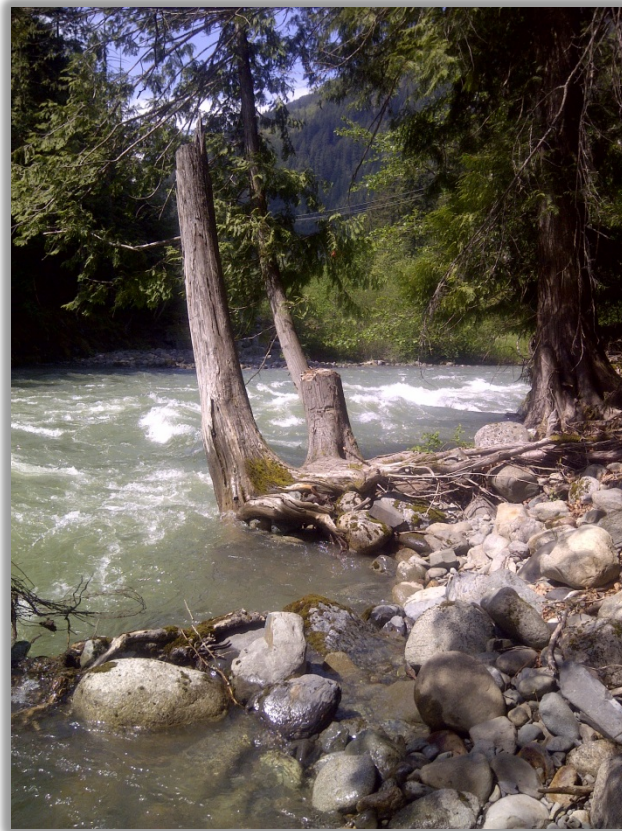
Fisheries Productivity Investment Policy



- Outlines the proponent's responsibility to avoid serious harm to fish whenever possible. When unavoidable, to mitigate and engage affected parties to select appropriate offsetting measures.
- Designed to provide flexibility in offset choices guided by clear principles and informed by science.
- Recognizes the importance and challenges of determining offsetting equivalency and identifying appropriate options in some environments.



Ways to Provide Your Views





Approach to the Review Process

- All Canadians are encouraged to participate in the review process.
- Participation in the review process:
 - As witnesses via application to the Standing Committee
 - Provision of written submission to the Standing Committee.
 - Engagement opportunities:
 - Indigenous groups
 - Provinces and Territories
 - Public



Process for Making Submissions

- **Direct input via the Standing Committee:** The Committee will begin its review in Fall 2016. Details will be available at:
<http://www.parl.gc.ca/Committees/en/FOPO>
 - DFO will provide background information on the changes to the *Fisheries Act* and template letters for the submission of comments to the Minister or Standing Committee.
- **Direct engagement with DFO:** Input will be provided to the Minister and Standing Committee.
- **Information sharing - via public consultation tool:**
<http://www.letstalkfishhabitat.ca>



Next Steps





Expected Timelines

- Fall 2016:** Engagement with Indigenous groups and organizations requiring consultation under land claims agreements
Provinces and territories engagement in the review of the changes to the *Fisheries Act* through Canadian Council of Fisheries & Aquaculture Ministers.
Online engagement tool to seek public input on the review of the changes to the *Fisheries Act* will be launched in October, 2016.
- Winter 2016-2017:** Minister will present the views of the Department, Indigenous groups, the Provinces and Territories and the public to the Standing Committee.
- Early 2017:** Submission of Standing Committee's report to Parliament (February 28, 2017)
120 days for Government of Canada response to report
- Spring 2017:** Development of proposed changes and engagement / consultation.



For More Information

Visit the Government of Canada's Review of Environmental and Regulatory Processes website:

- <https://www.canada.ca/en/services/environment/conservation/assessments/environmental-reviews/fish-habitat-protection.html>

Regional Contacts:

- Tola Cooper, Team Lead Pacific, Review of the Changes to the *Fisheries Act*
Tola.Cooper@dfo-mpo.gc.ca
- Loriena Melnick, Sr. Fisheries Protection Biologist Lorien.Melnick@dfo-mpo.gc.ca
- Suzanne Thorpe, Sr. Fisheries Protection Biologist Suzanne.Thorpe@dfo-mpo.gc.ca