



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Fisheries Protection Program: An overview

DFO Pacific Region

May, 2014



Overview

- Amendments to the *Fisheries Act*
- National Policy - Fisheries Protection Policy Statement
- Program Changes
- Regulatory Process
- FPP website



Amendments to the *Fisheries Act*

- Amendments to the *Fisheries Act* passed through Parliament and received Royal Assent on June 29 and December 14, 2012
- All amendments in effect as of November 25, 2013
- Fisheries and Oceans Canada (DFO) is transforming its approach to fisheries protection in order to:
 - Focus the Act's regulatory regime on managing threats to the sustainability and ongoing productivity of Canada's commercial, recreational and Aboriginal fisheries;
 - Provide enhanced compliance and protection tools for these fisheries
 - Provide clarity, certainty and consistency of regulatory requirements through the use of tools such as standards and regulations; and
 - Enable enhanced partnerships with agencies and organizations that are best placed to provide fisheries protection services to Canadians.



Amendments to the Fisheries Act

The New Prohibition

- Previous regime included two prohibitions: section 32 (killing of fish) and section 35 (harm to fish habitat).
- A **new** prohibition merges these two sections (sections 32 and 35) into a **single prohibition** (section 35 (1))

“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.”

“serious harm to fish” is defined in the Act as “the death of fish or any permanent alteration to, or destruction of, fish habitat.”
- The prohibition is only applied to commercial, recreational or Aboriginal fisheries – it is designed to **protect those fisheries** and **the fish and fish habitat that support those fisheries**.



Amendments to the Fisheries Act

Purpose and Section 6 Factors

- The '**Purpose**' section 6.1 outlines the overarching purpose for decision-making under the Fisheries Protection sections:
 - 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:

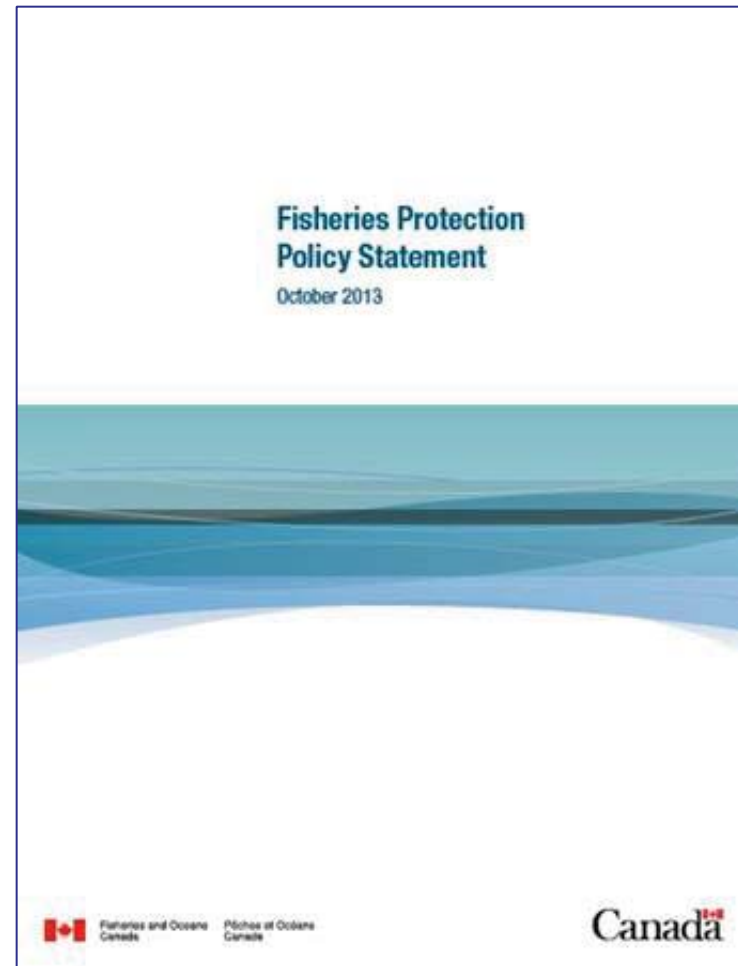
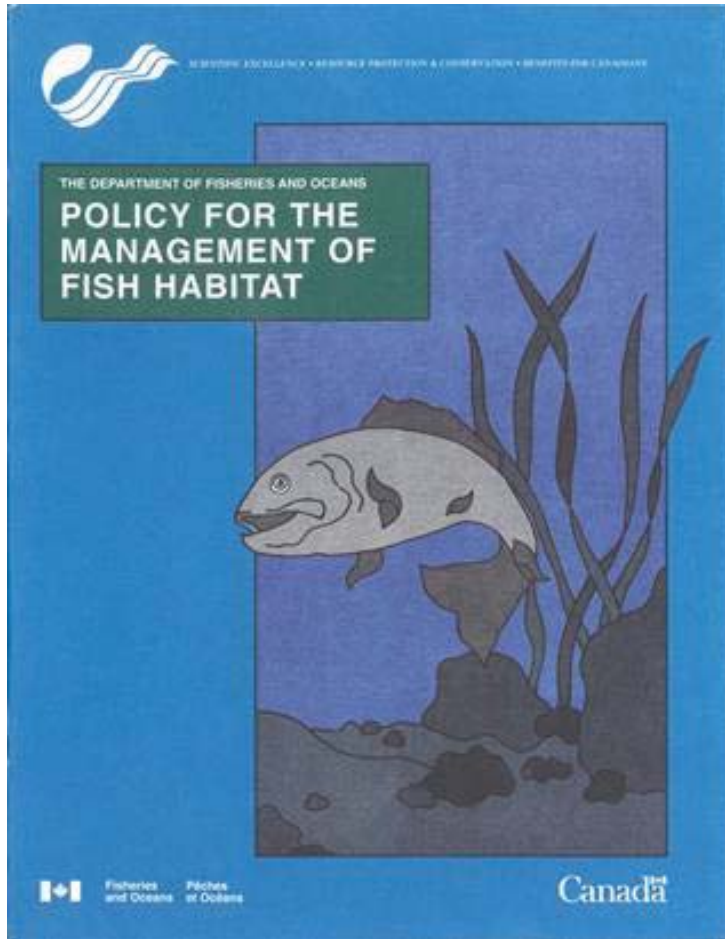
 - a) the contribution of the relevant fish to the ongoing productivity of commercial, recreational or Aboriginal fisheries;
 - b) fisheries management objectives;
 - c) measures and standards to avoid, mitigate or offset serious harm to fish that are part of or support a commercial, recreational or Aboriginal fishery; and
 - d) the public interest.



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New Policy Statement





Fisheries Protection Policy Statement

Sets out:

Purposes: To set out how DFO and its regulatory partners will apply the Fisheries Protection Provisions

To guide the development of regulations, standards and directives

To provide guidance to proponents on the application of the Provisions

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

Objectives: To provide consistent guidance through regulations, standards and directives

To make regulatory decisions in a timely manner



Policy Statement: Serious Harm to Fish

- The Subsection 35(1) prohibition will be applied to those projects that have the potential to cause serious harm to fish.
- DFO interprets **serious harm to fish** as:
 - the **death of fish**;
 - a **permanent alteration** of fish habitat of a size, duration or intensity that reduces the ability of fish to use the habitat to carry out one or more of their life processes;
 - the **destruction of fish habitat** of a size, duration or intensity such that the habitat cannot be used by fish to carry out one or more of their life processes.
- Projects requiring authorization are those likely to result in a localized effect to fish populations or fish habitat in the vicinity of the project.



Policy Statement: Scope of application

- Fisheries Protection Policy Section 8.1:

Fish that are part of commercial, recreational or Aboriginal fisheries are interpreted to be those fish that fall within the scope of applicable federal or provincial fisheries regulations as well as those that can be fished by Aboriginal organizations or their members for food, social or ceremonial purposes or for purposes set out in a land claims agreement.

- Most water bodies in Canada contain fish, or fish habitat, that are part of, or support, a commercial, recreational or Aboriginal fishery, and thus are subject to the prohibition against causing *serious harm to fish*
- Some water bodies may not contain fish or provide fish habitat that are part of or support commercial, recreational or Aboriginal fisheries. Such water bodies may not require authorization

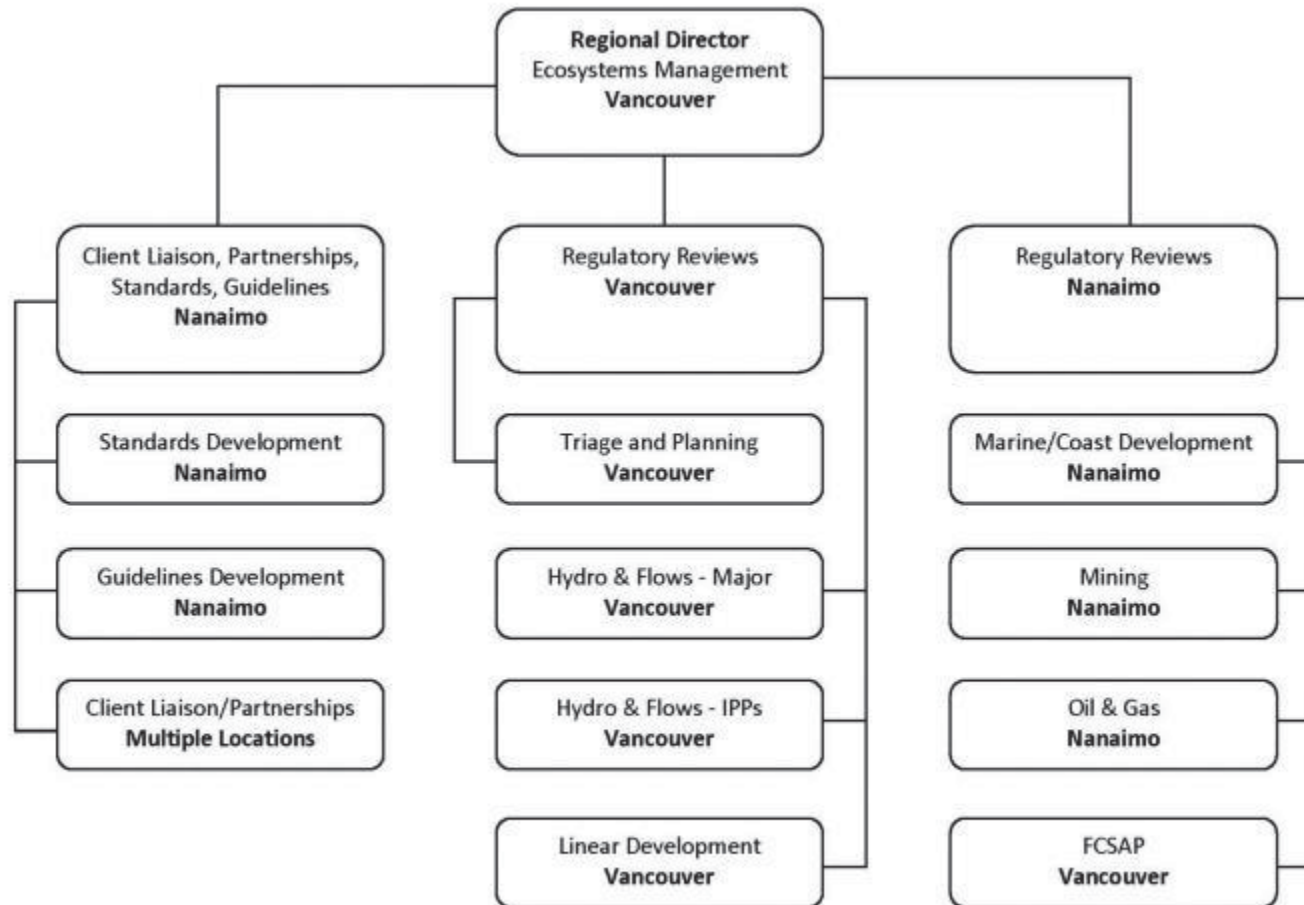


Fisheries Protection Program

- DFO's Fisheries Protection Program has replaced the former Habitat Management Program
- Services have been consolidated in 16 regional Fisheries Protection Units across Canada to review project submissions and monitor DFO-approved projects
- The Fisheries Protection Program has 2 groups; a Regulatory Group and a Partnerships / Standards / Guidelines (PSG) Group
- The Regulatory group is organized into fishery protection units (see next slide) and all project reviews and occurrences are centralized with a Regional Triage unit.
- The PSG Group will focus on non-regulatory activities.



Changes to Organization

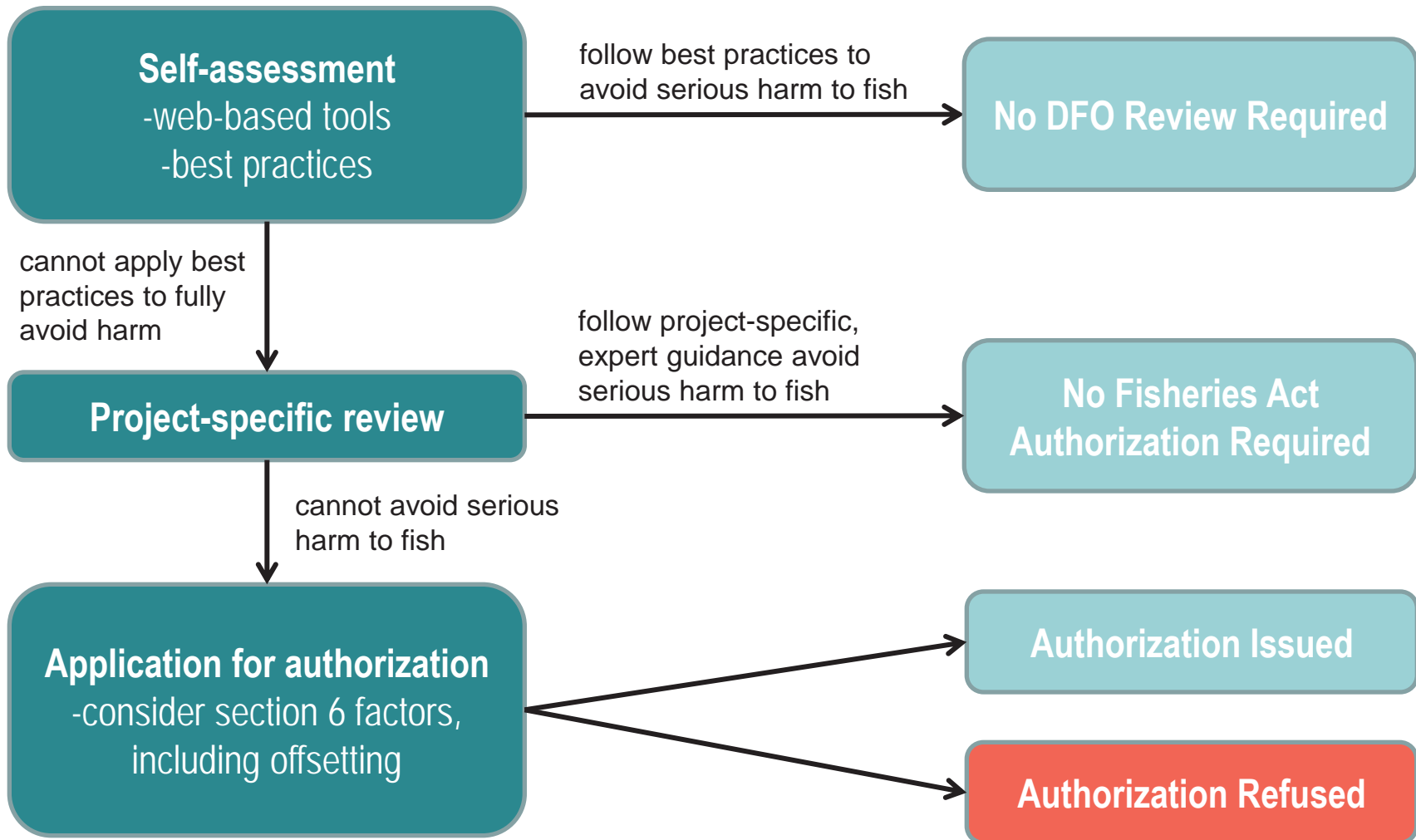


Additional Program staff are located in the Nanaimo, Vancouver, Prince Rupert and Whitehorse Service Delivery Points, but are not illustrated on this simplified organization chart.

- More information is available from Program Contacts on the [Projects Near Water in BC and Yukon](#) website.



Overview of the Project Review Process





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

- Self assessment guidance
- Project review application
- Authorization request forms
- Contact information

The screenshot shows the DFO website page for 'Projects Near Water'. A yellow arrow points to the 'Ecosystems' menu item in the navigation bar. The page content includes a sidebar with links like 'Does my project need a review?', 'Measures to Avoid Harm', and 'Request a review or an authorization'. The main content area is titled 'Projects Near Water' and contains a 'Self-Assessment: Does DFO need to review my project?' section with detailed text and links.



DFO Fisheries Protection Program website

The screenshot shows the website's navigation structure. A yellow arrow on the left points to the 'Projects Near Water' menu item in the left sidebar. Another yellow arrow on the right points to the 'Types of waterbodies where DFO review is not required' link in the main content area. A third yellow arrow at the bottom points to the 'Project activities and criteria where DFO review is not required' link.

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Fisheries and Oceans Canada

Canada

On the water | Fisheries | Science and Research | Ecosystems | Species | Aquaculture | Regions

Home » Projects Near Water

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

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**



Self Assessment advice

▼ Project activities and criteria where DFO review is not required

If your project activities are listed below and they meet the associated criteria (if applicable), your project does not require DFO review. You are still required to avoid causing [serious harm to fish](#) by following best practices such as those described in the [measures to avoid harm](#).

- ▶ [Bridges, Causeways and Culverts](#)
- ▶ [Cottage, Boating and Recreation](#)
- ▶ [Harbours and Marine Commercial Activities](#)
- ▶ [Drainage, Flood Control, Stormwater and Wastewater Management](#)
- ▶ [Flow Management](#)
- ▶ [Water Diversion and Dewatering](#)
- ▶ [Water Taking](#)
- ▶ [Other Activities](#)

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.



Measures to avoid harm

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

Measures to Avoid Causing Harm to Fish and Fish Habitat

If you are conducting a project near water, it is your responsibility to ensure you avoid causing serious harm to fish in compliance with the *Fisheries Act*. The following advice will help you avoid causing harm and comply with the Act.

PLEASE NOTE: This advice applies to all project types and replaces all "Operational Statements" previously produced by DFO for different project types in all regions.

Measures

- ▶ **Project Planning**
- ▶ **Erosion and Sediment Control**
- ▶ **Shoreline Re-vegetation and Stabilization**
- ▶ **Fish Protection**
- ▶ **Operation of Machinery**



Project Review & Authorization Request

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](#)

Reviews and Authorizations

Project Review

If your project is unable to meet [the criteria](#), you must submit your project proposal to DFO for review (DFO has arrangements with some federal agencies and provincial governments who provide project reviews and advice for certain types of projects. 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).

[Request for Review - Form and Guidance](#)

Project Authorization

If, after a project review, it is determined that your project will cause serious harm to fish that are part of or that support a commercial, recreational or Aboriginal fishery, you may apply for an Authorization (Paragraph 35(2)(b) *Fisheries Act* Authorization from the Minister of Fisheries and Oceans).

[Applicant's Guide to Submitting an Application for Authorization under Paragraph 35\(2\)\(b\) of the Fisheries Act](#)
[Frequently Asked Questions](#)

[Application Form for Authorization \(Normal Circumstances\)](#)

If your project must be conducted without delay in response to an emergency, you may apply for an Emergency Authorization. The emergency situations are:

- The project is required as a matter of national security
- The project is being conducted in response to a national emergency where special temporary measures are being taken under the federal *Emergencies Act*
- The project is required to address an emergency that poses a risk to public health or safety or to the environment or property.

[Application Form for Authorization \(Emergency Circumstances\)](#)



Authorization process – new Regulation

- The first Regulation under the amended FA for Information Requirements and Timelines for FA Authorizations is in force as of Nov 25.
- 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*.



Program information and Guidance Documents

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](#)

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](#)
- [Applicant's Guide to Submitting an Application for Authorization under Paragraph 35\(2\)\(b\) of the Fisheries Act](#)
- Annual Report to Parliament on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*
 - [Annual Report 2012-2013](#) (Request an Annual Report from a previous year [here](#))

Recreational Fisheries Conservation Partnerships Program

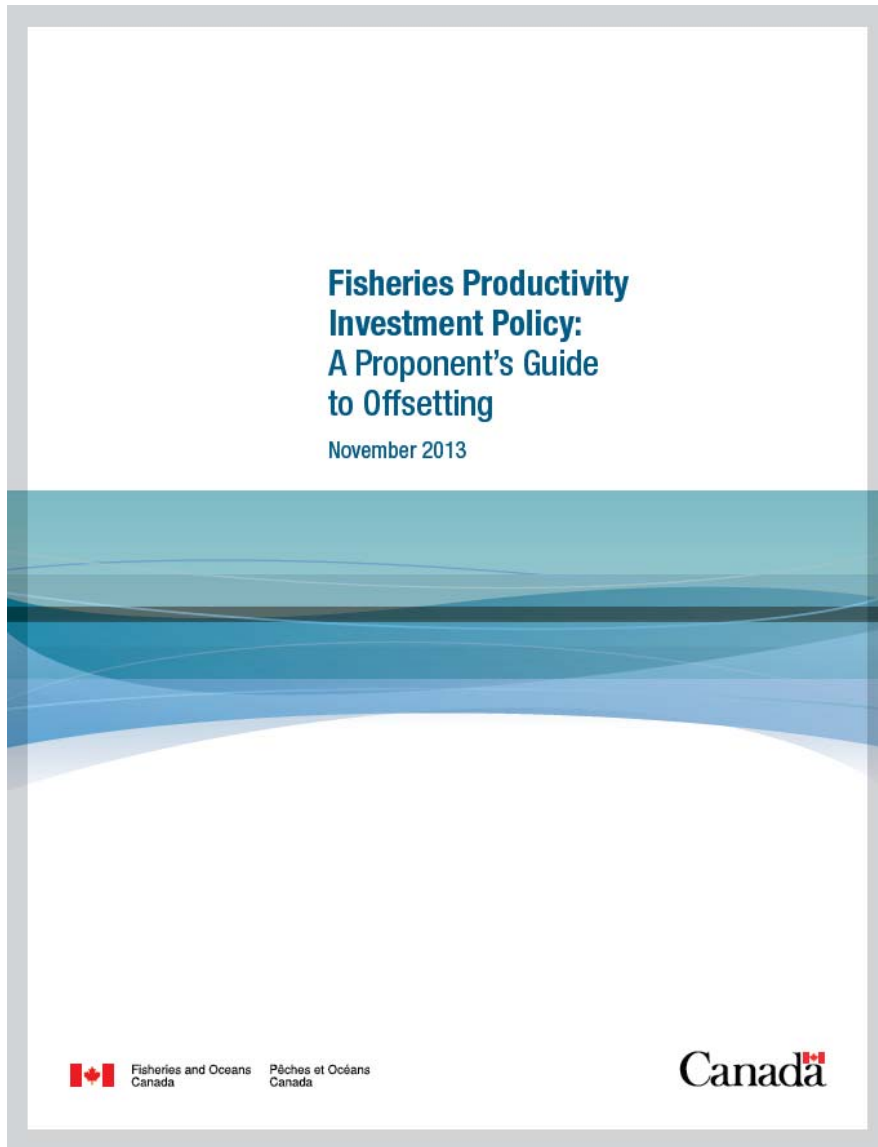
The [Recreational Fisheries Conservation Partnerships Program](#) forms a key component of the Government of Canada's conservation agenda as outlined in Budget 2013 and aligns with the Government's commitment to better protect Canada's fisheries as reflected in the recent changes to the *Fisheries Act*.

Expert Support for Contaminated Sites

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



Guidance on Offsetting



- aims to maintain or enhance sustainability and ongoing productivity of fisheries through avoiding, mitigating and offsetting
- outlines the proponent's responsibility to avoid and, when it is unavoidable, to engage affected parties to select appropriate offsets
- recognizes the importance, and challenges of, determining equivalency, effectiveness, and identifying appropriate options in some environments
- designed to provide flexibility in offset choices guided but is guided by clear principles and informed by science



Guiding Principles of Offsetting

Principle 1:

Support fisheries management objectives or local restoration priorities

Principle 2:

Benefits from offsetting measures should balance project impacts

Principle 3:

Offsetting measures should provide additional benefits to the fishery

Principle 4:

Offsetting measures should generate self-sustaining benefits over the long term



FPP Contact

Projects Near Water	Contact the Fisheries Protection Program
Does my project need a review?	<input type="button" value="Expand all"/> <input type="button" value="Collapse all"/>
Measures to Avoid Harm	
Request a review or an authorization	▶ Alberta
Fisheries Protection Program	▼ British Columbia
Regulatory Partnerships	Triage & Planning Unit
Program Changes	Fisheries Protection Program
Guidance Documents	Ecosystem Management Branch
Recreational Fisheries Conservation Partnerships Program	Fisheries and Oceans Canada
Contaminated Sites	200 - 401 Burrard Street
▶ Contact Us	Vancouver, British Columbia V6C 3S4
Report a Violation	Telephone: Toll free 1-866-845-6776
	Email: ✉ ReferralsPacific@dfo-mpo.gc.ca
	▶ Manitoba
	▶ New Brunswick
	▶ Newfoundland and Labrador
	▶ Northwest Territories
	▶ Nova Scotia
	▶ Nunavut
	▶ Ontario
	▶ Prince Edward Island
	▶ Québec
	▶ Saskatchewan
	▶ Yukon