

Modernizing the Fisheries Act: Sustaining healthy fisheries, waters and economies



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The Government of Canada’s commitment to renewing the Fisheries Act is an unprecedented opportunity to put in place a legal and policy framework that will protect, restore and sustain Canada’s fisheries – and the rivers, lakes and oceans that support them – for generations to come.

The 32 recommendations included in the report submitted by the House of Commons Standing Committee on Fisheries and Oceans (FOPO) on February 24, 2017 provide a sound basis for restoring lost protections to the Fisheries Act, and are generally supported by our environmental and conservation organizations. Our individual submissions include recommendations not covered by the Standing Committee’s report and we have highlighted those priority recommendations below. As discussed in the meeting between Minister Leblanc and NGO representatives on May 11, 2017, there is significant opportunity to go beyond restoring lost protections to truly modernize Canada’s Fisheries Act to respond to the challenges and opportunities of the 21st century.

This briefing note is a follow-up to that meeting. It includes four outcomes and five specific areas of reform for a new Fisheries Act that would enable supporting policies and programs to sustain healthy fisheries, waters and economies for generations to come.

OUTCOMES OF A NEW FISHERIES ACT

The Fisheries Act, Canada’s oldest environmental legislation, has traditionally been more punitive than aspirational. To leave a legacy, we need a new Fisheries Act for the future that focuses on sustainable outcomes for fish and fish habitat that includes more fish and healthy rivers, lakes and streams.

1. Measurable improvements in fish habitat. Habitat protection and restoration are anchors of sustainable fisheries.

Degradation and loss of habitat poses one of the greatest risks to freshwater and anadromous fishes in Canada. A new Fisheries Act should focus on reducing habitat loss and degradation, and direct efforts and resources to fish habitat restoration. As noted by the Minister in his testimony to the Standing Committee of Fisheries and Oceans: “...quite simply put, without fish habitat there will ultimately be no fisheries.”

2. Fish stocks that are recovering and are sustained over the long-term.

The number of freshwater and marine species identified as species at risk has grown steadily over recent years. Marine populations have declined by more than 50% since 1970, and 19 stocks are listed in the critical zone of which only three have rebuilding plans. Many recreational fish species in Canada are either in decline or maintained primarily by stocking. Of the 711 species assessed at some level of risk by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC), 158 are fishes, the vast majority

of which are freshwater species. A new Fisheries Act should result in rebuilding marine and freshwater fish stocks, within the context of modern fisheries management principles.

3. Resources and capacity for effective implementation.

Significant reductions in staff and budgets of DFO over the past decades have dramatically reduced the capacity to implement and enforce the Fisheries Act and supporting policies and programs. According to the Public Service Alliance of Canada (PSAC), as of March 2015, 889 DFO staff across the country were impacted by workforce readjustment since 2012. The Department also lost \$100 million in its budget during that time period. Ensuring that a new Fisheries Act results in actions to protect

and restore fish habitat as well as rebuild and sustain fisheries will require investments in DFO capacity. Critical to a new approach to habitat protection and fisheries management will be effective partnerships among a broad range of sectors, including NGOs, and integration across federal agencies and other orders of government, including Indigenous governments.

4. Transparent decision-making and information sharing.

A lack of clarity on why and on what information basic decisions are made has eroded the public's trust in federal environmental regulatory oversight. A new Fisheries Act should rebuild the public's trust by enhancing transparency and openly sharing information.

RECOMMENDATIONS FOR A NEW FISHERIES ACT

1. Make sustainability the foundation of the legislation.

FOPO's report cited evidence from numerous witnesses and written submissions regarding a lack of clear purpose or preamble to the Act, and raised questions about the focus and intent of the factors intended to guide the Minister in issuing authorizations and making regulations (s. 6). Important principles in a new Fisheries Act should include sustainable fisheries, the precautionary principle, the principle of intergenerational equity, ecosystem based management, and a polluter pays principle. These principles must be binding principles that apply to all decisions made under the Act.

2. Restore and strengthen habitat protections.

Support exists across sectors and interests for correcting the detrimental 2012 amendments that changed the nature of the Act's prohibition on causing harm to fish habitat, and narrowed the applicability of that prohibition to only those fish that are part of or support a commercial, recreational or Aboriginal fishery. But there is significant opportunity to go beyond just reversing 2012 changes to the Act. Restoring, modernizing and effectively implementing habitat protections in a new Fisheries Act can be accomplished by:

- a. Removing reference to the concept of “serious harm” from the Act and returning section 35(1) language on the HADD prohibition to the wording in the Act as of June 29, 2012, which read: “No person shall carry on any work, undertaking or activity that results in the harmful alteration or disruption, or the destruction, of fish habitat”.
- b. Removing the requirement that fish be a part of, or support, a commercial, recreational or Aboriginal fishery in order for their habitat to be protected and restoring the applicability of the Act to all native fish, fisheries and their habitat.
- c. Addressing long-standing gaps in fish habitat protections that will not be covered simply by restoring HADD, including:
 - *Habitat and ecological impacts of aquaculture and fishing activities;*
 - *environmental flow protections and strengthened requirements for fish passage around barriers;*
 - *reducing watershed fragmentation by ensuring that culverts and other watercrossings are placed and designed to allow fish passage;*
 - *mechanisms to deal with the cumulative impacts of small projects; and*
 - *protection of riparian zones along water bodies.*
- d. Adding a ‘net gain’ requirement in watersheds and coastal areas where habitat restoration is possible.
- e. Including a requirement for the Minister to report to parliament on whether regional objectives for fish and fish habitat are being achieved and the trend overtime, as well as reporting on compliance and enforcement. Address the shortcomings

detailed in the 2009 Commissioner of the Environment Report.

- f. Restoring HADD should include regulatory guidance so as not to restrict legitimate habitat restoration activities undertaken by conservation proponents in the same way as occurred under the pre-2012 legislation.

3. Improving governance and decision-making.

A new Fisheries Act should ensure greater clarity on how and on what basis decisions are made, enable a long-term and strategic approach to fisheries management, and engage a diversity of interests and actors in protecting and restoring fish and fish habitat. This can be accomplished by:

- a. Enhancing transparency by embedding in legislation a requirement that the location and status of all works, notifications, undertakings and activities and the status of authorizations be reported in a publicly accessible database. This database should be paired with key ecological data and other public knowledge including the location of aquatic species and essential habitats, and up-to-date monitoring of fish stocks, habitat conditions and aquatic species at risk and their status. Such a database should not be limited to the context of the Fisheries Act and fisheries management, but be part of a cross-departmental database that integrates information related to all federal environmental regulatory processes (i.e. species at risk, environmental assessments) and incorporates a wide range of ecological and cultural information.
- b. Placing greater emphasis on regional and integrated planning by complementing the regulatory approach under the Fisheries Act with a greater focus on assessing

and addressing cumulative impacts and ecosystem-based planning backed by sound science and knowledge. This can be achieved through tools such as regional environmental assessment and/or by better integrating the Fisheries Act with watershed and coastal planning.

- c. Creating a new and broadly representative advisory committee that ensures oversight of evidence-based decision making, collaboration and compliance made up of agricultural, government, fisheries (Indigenous, commercial and recreational), environmental, conservation and science professionals (FOPO Rec. 15). This committee can interface with the Ministry and all stakeholders to provide and review evidence to support management decisions and consultation.
- d. Fully implementing an equal rights co-governance framework for fisheries management that meets constitutional and treaty commitments to First Nations require that the Ministry fully implement an equal rights co-governance framework for fisheries management. All new environmental legislation should also comply with the UN Declaration on the Rights of Indigenous Peoples and require Free, Prior and Informed Consent (FPIC). Unfortunately the FOPO committee's report fell short of this imperative, which needs to be rectified in the revision of the Act.

4. Ensuring resources and capacity are in place to effectively administer, implement and enforce a new Fisheries Act.

Adequate people and money are required to support proponents in authorizations processes, to conduct science and monitoring, to manage partnerships, and to ensure the rules are enforced in a fair, effective and efficient manner (FOPO Rec 21-25).

- a. A continuous commitment to ongoing monitoring, both of baseline ecological and project related environments, must be ensured by the Ministry in order to enable the determination of changes due to local or regional activities and both natural and anthropogenic threats (FOPO Rec. 31).
- b. Achievement of our shared goals for sustainable fisheries can be reached by instituting formal partnerships that will increase capacity and cooperation among stakeholders engaging in habitat restoration and stock assessment and enhancement initiatives (FOPO Rec. 31).
- c. Integration with other federal policy initiatives, such as Agriculture and Agri-Food Canada's development of the Next Agricultural Policy Framework and Infrastructure Canada's administration of the Green Infrastructure Program. Integration with these policy and program initiatives would help leverage additional financial resources for achieving the new Fisheries Act objectives and implementation, including fish habitat restoration and protection projects.

5. Include a legal requirement to rebuild fish stocks.

A new Fisheries Act must include a clear legal requirement for restoration and rebuilding of depleted marine and anadromous fish stocks, accompanied by detailed direction and timelines for rebuilding plans. In addition, there should be a requirement for the Minister of Fisheries, Oceans and the Canadian Coast Guard to report to Parliament, and to Canadians, on the status of Canada's fish stocks and on management decisions made for stocks in the critical zone. Such an approach would bring Canada in line with global leaders in fisheries management and provide increased transparency with respect to the status of Canada's fish populations.