

Navigating Change Under the Amended Fisheries Act



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Presentation Overview

- Background
- *Fisheries Act* Amendments
 - Objectives
 - Definitions
 - Old vs. New
- New Review Approach
- Case Studies
- Take Home Messages

Background

- *Fisheries Act*
 - First passed by Parliament in 1868
 - Has always included provisions to protect fish
 - Habitat protection added in 1977



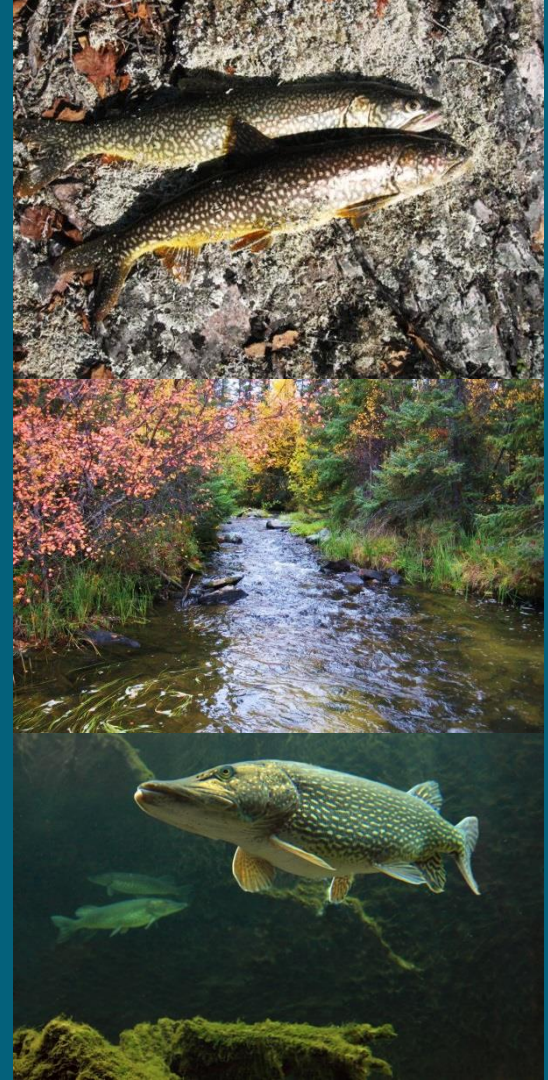


Fisheries Act Amendments

- Proposed in 2012
- Came into effect end of 2013
- Focus shifted from the prohibition of HADD to prohibition of serious harm to fish

Objectives

- Manage threats to CRA fisheries
- Enhanced compliance and protection
 - Legal requirements vs. policy
- Clarity, certainty and consistency
 - Standards, regulations
- Enhanced partnerships





Definitions

- Modified definitions
 - Fish habitat expanded to include any other areas
- New definitions:
 - Serious harm to fish
 - Commercial, recreational, and Aboriginal fisheries

Old vs. New

Former Act

- Applied to works or undertakings
- Prohibitions against killing fish and HADD of fish habitat
- "fish" meant all fish and "habitat" meant all habitat

Amended Act

- Applies to works, undertakings, or activities
- Prohibition against serious harm to fish
- Prohibition applied to fish (and their habitat) that are part of, or support, a CRA fishery

Old vs. New

Former Act

- All projects reviewed for impacts, advice provided on a project-by-project basis

Amended Act

- Focus on managing serious threats to sustainability and ongoing productivity of CRA fisheries ↓
New Review Approach

New Review Approach

- Proponents follow self-assessment process
 - Criteria where review not required
- Projects must be planned to avoid impacts
 - Measures to avoid harm; PoE diagrams



New Review Approach

- Project submitted to DFO if serious harm to fish cannot be avoided
 - Residual impacts require Authorization under Subsection 35(2)



Case Study #1

- Road upgrade project in SW Saskatchewan
 - ROW intersects a fish-bearing tributary to the North Saskatchewan River
 - Extension of existing large diameter culvert
 - Info collected included water quality, hydrology, fish community, aquatic habitat assessment/ mapping

Case Study #1: Study Area



Case Study #1

- Large and small-bodied species caught
- Suitable spawning habitat present, but not impacted by project footprint
- Existing culvert identified as a potential barrier under high flows





Case Study #1

- Self assessment completed:
 - Potential fish passage issues due to hydraulic velocities in the culvert
- Request for Review submitted to DFO

Case Study #1

- Two mitigation options presented
- Additional info requested by DFO
- Redesign was considered but could not fully mitigate residual impacts
- LOI issued for installation of a new structure to restore fish passage

Case Study #2

- Large-scale civil construction project crossing a major watercourse
 - Installation of permanent and temporary structures in fish-bearing waters
 - Lack of detailed project-specific info on fish and fish habitat, but access to existing info

Case Study #2: Study Area



Case Study #2

- Project sent to DFO for review by owner early in design stage
 - Authorization not required
- Project re-submitted to DFO for review after redesign
 - Notice of Authorization or “Letter F” issued; habitat offsetting plan required

Case Study #2

Key Steps in Preparing an Offsetting Plan

- Step 1: Characterize residual serious harm
- Step 2: Select offsetting measures
- Step 3: Determine the amount of offsetting required
- Step 4: Establish monitoring and reporting requirements
- Step 5: Submit plan to DFO

Case Study #2

Step 1: Characterize residual serious harm

- *Challenge: Quantify project impacts without detailed info*
 - Habitat area used to quantify serious harm
 - Limited site-specific info available
 - In-stream substrate types determined and suitability ratings assigned

Case Study #2

Step 2: Select offsetting measures

- *Challenge: Lack of suitable options for offsetting*
 - Measures should follow guiding principles
 - Accepted types of offsetting measures
- *Challenge: Project timeline*
 - Months, not years

Case Study #2

Step 3: Determine the amount of offsetting required

- *Challenge: Lack of site-specific info on fish presence and habitat utilization*
 - Fish species grouped into reproductive guilds
 - Two representative species chosen
 - Target life stages linked to substrate type

Case Study #2

- Step 4: Establish monitoring and reporting requirements
 - Will be included as conditions of the authorization
- Step 5: Submit plan to DFO
 - Time limit of 90 days
 - Plan must include a letter of credit



Take Home Messages

- Onus is now on the proponent to understand impacts
- Proponents should consider the Act early in the planning process to avoid delays
- Collect site-specific info
- If in doubt, contact DFO

One Last Thing

- Fisheries Act amendments are being reviewed
- Online public consultation ends November 2016
- Website at letstalkfishhabitat.ca



Questions?

