Overview

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- Timeline and Context of the Fisheries Act Review
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- Indigenous Reconciliation and Indigenous Knowledge
- Indigenous Habitat Participation Program
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- Implications on Access to Information Act
- Fish and Fish Habitat Program Changes
- Moving Forward
As part of the Government of Canada’s Review of Environmental and Regulatory Processes, a review of the 2012 changes to the *Fisheries Act* was initiated.

The *Fisheries Act* Review aimed to:

- Restore lost protections and incorporate modern safeguards;
- Provide better certainty for industry;
- Ensure the long term sustainability of marine resources; and
- Make sure that the *Fisheries Act* provides strong and meaningful protection of fish and fish habitats.

**CONTEXT**

The Parliamentary Standing Committee on Fisheries and Oceans (FOPO) reviewed and provided recommendations on the 2012 changes to the *Fisheries Act*.

**TIMELINE**

- **February 2018**: Government of Canada introduced Bill C-68 in the House of Commons within Parliament that proposed amendments to the *Fisheries Act*.
- **June 2018**: House of Commons approved amendments and referred Bill C-68 to Senate.
- **June 21, 2019**: Bill C-68, an Act to amend the *Fisheries Act*, received Royal Assent and became law, with the majority of amendments entering into force on this date.
- **August 28, 2019**: Fish and Fish Habitat Protection Provisions came into force.

**2012 FISHERIES ACT**

- Protection for commercial, recreational, or Aboriginal fisheries
- Uncertainty around requirements for development projects
- No provisions referencing the independence of inshore fishers
- No provisions specifically designed to protect marine biodiversity
- No provisions to include Indigenous participation in decision making
- No provisions to restore degraded habitat and rebuild fish stocks

DFO complemented the Standing Committee’s review by engaging with Indigenous peoples, provinces and territories, stakeholders and the Canadian public through the "Let’s Talk Fish Habitat" initiative.

Government of Canada introduced Bill C-68 in the House of Commons within Parliament that proposed amendments to the *Fisheries Act*.
Prior to 2012 the *Fisheries Act* protected all fish and fish habitat in Canada. Changes made in 2012 saw that only fish and habitat related to commercial, recreational or Aboriginal fisheries were protected. A revised *Fisheries Act* restores these lost protections, resulting in full protection for all fish and fish habitat.

The prohibition against *any work, undertaking or activity* other than fishing, causing serious harm to fish is repealed as well as the definitions of "commercial", "recreational" and "Aboriginal" in relation to a fishery. Prohibitions against causing the death of fish (other than by fishing) and the harmful alteration, disruption or destruction of fish habitat are introduced.
Overview of the modernized *Fisheries Act*

1. Provisions to Modernize the *Fisheries Act*
2. Reconciliation with Indigenous Peoples
3. Fish and Fish Habitat Protection Provisions
6. Stock Rebuilding Plans
7. Biodiversity Protection

BILL C-68 OVERVIEW

A number of key areas were addressed in the bill, including Provisions to Modernize, Reconciliation with Indigenous Peoples, Fish and Fish Habitat Protection Provisions and applicable Enforcement Provisions.
✓ Consideration of Indigenous Knowledge in Decisions (s. 34.1)

• Obligation requiring the Minister to consider, when making certain decisions related to the fish and fish habitat protection and pollution prevention provisions of the *Fisheries Act*, the Indigenous knowledge of the Indigenous peoples of Canada that has been provided to the Minister.

✓ Protection of Confidential Indigenous Knowledge from Disclosure (s. 61.2)

• Provides for the protection of Indigenous knowledge when provided to the Minister and clarifies those circumstances, and conditions where appropriate, where the Minister may disclose that information.
Indigenous Engagement

Engagement with Indigenous peoples is ongoing in Pacific Region on the implementation of the changes related to the consideration of Indigenous Knowledge when making Fisheries Act authorization decisions and how to protect Indigenous knowledge from further disclosure.

Departmental Guidance Framework on Indigenous Knowledge

- Led by Indigenous Affairs and Reconciliation (IARD) and a Departmental Policy Committee consisting of implicated DFO-CCG sectors
- Will be aligned with FFHPP and other Government work on Indigenous knowledge

Interdepartmental Indigenous Knowledge Policy Framework

- Interdepartmental Task Team is leading the development of an Indigenous Knowledge Policy Framework for Project Reviews and Regulatory Decisions in relation to the Indigenous knowledge provisions set out in the Fisheries Act and the legislation contained within Bill C-69.

The Indigenous Relations team at NCR is participating in the development of both of these documents to ensure alignment with FFHPP guidance.
Indigenous Habitat Participation Program (IHPP)

Purpose of the IHPP

• $50M over five years – Grant and Contribution funding
• To support the participation of Indigenous people in the conservation and protection of fish and fish habitat

IHPP has two components:

1. Grants – to support the participation of Indigenous people in consultation related to Fisheries Act and Species at Risk Act authorization/permit decisions

2. Contributions - to support the participation of Indigenous peoples in three areas:
   a. Engagement
   b. Capacity Building
   c. Collaborative Activities
IHPP Grants Component

Purpose of the Grants Funding

• To support Indigenous participation in the consultation process related to the duty to consult for decisions to authorize and/or permit works, undertakings or activities under the *Fisheries Act* and/or *Species at Risk Act*.

• Directed funding – Indigenous groups/communities whose Aboriginal and treaty rights may potentially be affected by FFHPP decisions for works, undertakings or activities under the *Fisheries Act* and/or SARA will be invited to apply for funding.
  • Funding is a procedural safeguard for the consultation process
  • Consultation process to be acceptable to FFHPP and Indigenous group
  • Consultation process will influence funding amounts

When is Grants Funding available?

• Funding open year round and available across Canada
Purpose of Contributions Funding

To support the participation of Indigenous peoples in three areas:

1. **Engagement** - to support Indigenous participation in FFHPP led engagement on development of regulations, policy and programming changes
2. **Capacity Building** - to support Indigenous capacity building in inland communities • will focus on inland areas of Canada, where the provinces manage fisheries and DFO is responsible for managing impacts on fish and fish habitat under the *Fisheries Act*.
3. **Collaborative Activities** - to support Indigenous partners in collaborative activities on conservation and protection of fish and fish habitat.

When is Contributions Funding available?

• Bi-annual application process
Consideration of Indigenous knowledge in habitat decisions

FFHPP receives an application for authorization

Indigenous group(s) are notified that an application is required and receives an Offer to Consult

Indigenous group(s) are notified that an authorization is required

If interest is expressed by Indigenous group(s), Indigenous group(s) and FFHPP discuss and draft the appropriate plans and agreements to:

1. Apply for Grants
2. Provide Indigenous knowledge

Consultation with Indigenous group(s) on Fisheries Act authorization and/or Indigenous knowledge is provided for consideration in the habitat decision

FFHPP makes a decision whether to approve or reject the authorization based on all s. 34.1 factors

Indigenous groups are notified that a decision about the application for authorization has been made
• Through Bill C-68, there was a consequential amendment to the *Access to Information Act*. 

• Indigenous knowledge provided in confidence under the *Fisheries Act* that cannot be disclosed under the *Fisheries Act* cannot be disclosed even if requested under the *Access to Information Act*. 
The Revitalized Fish and Fish Habitat Protection Program (FFHPP)

**RECONCILIATION WITH INDIGENOUS PEOPLES**

**REGULATORY AND ENFORCEMENT**
- Review of development projects
- Provision of advice and authorization
- Enforcement of compliance

**INTEGRATED PLANNING**
- Restoration
- Offsetting
- Habitat Banking
- Ecologically Significant Areas

**ENGAGEMENT**
- Consultation
- Outreach
- Partnerships

**REPORTING TO CANADIANS**
- Monitoring compliance and effectiveness
- Reporting
- Public Registry
Summary: Consideration of Indigenous knowledge that has been provided to the Minister under the *Fisheries Act*

**“May” consider (s. 2.5)**

- Applies to **any decision** made under the *Fisheries Act*

  (e.g., decisions made by other DFO programs – resource management, stock assessment, etc.)

- Must be protected if provided in confidence

**“Must” consider (s. 34.1(g) )**

- Specific to **habitat decisions** made under the *Fisheries Act*

  (i.e., decisions made by FFHPP)

- Must be protected if provided in confidence

  Funding available through the IHPP Contributions Program
Moving Forward

1. Co-plan and collaborate with interested Indigenous groups to develop long-term guidance on Indigenous knowledge policies and procedures for FFHPP.

2. Develop processes to notify Indigenous communities when the Department has received applications for authorization for projects affecting fish and fish habitat.

3. Engagement on policy, program and regulatory initiatives related to the fish and fish habitat protection provisions of the *Fisheries Act*.

4. Explore interests of Indigenous peoples in agreements/partnering with FFHPP to co-deliver the conservation and protection of fish and fish habitat.
THANK YOU

For more information please visit https://www.dfo-mpo.gc.ca or contact one of our Pacific Region’s Indigenous engagement unit contacts

Links:
Bill C-86 A Fisheries Act for the Future

INDIGENOUS ENGAGEMENT UNIT

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Consideration of Indigenous knowledge in habitat decisions

START

FFHPP receives an application for authorization

Indigenous group(s) are notified that an application for authorization has been received*

Are Indigenous group(s) interested in applying for a grant?

Yes

Indigenous group(s) and FFHPP discuss and draft a Grant Consultation Approach and Grant Application

Grant Agreement

Indigenous groups receive grant to participate in consultation on the authorization

FFHPP makes a decision whether to approve or reject the authorization based on all s. 34.1 factors

Indigenous groups are notified that a decision about the application for authorization has been made

FINISH

Indigenous group(s) provide Indigenous knowledge for consideration in the habitat decision

Indigenous knowledge is returned or stored as agreed upon in the Indigenous knowledge acceptance form

Indigenous groups are notified that an offer to consult has been received*