



The Modernized *Fisheries* Act

Fish and Fish Habitat Protection Program

First Nations Fisheries Council of B.C. - Fisheries Indigenous Knowledge Forum

Vancouver, BC

October 29-30, 2019



Overview

- Context
- Timeline and Context of the *Fisheries Act* Review
- Overview of the modernized *Fisheries Act*
- Indigenous Reconciliation and Indigenous Knowledge
- Indigenous Habitat Participation Program
- Process for the Consideration of Indigenous Knowledge
- Implications on *Access to Information Act*
- Fish and Fish Habitat Program Changes
- Moving Forward



TIMELINE

2016-17



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

DFO complemented the Standing Committee's review by engaging with Indigenous peoples, provinces and territories, stakeholders and the Canadian public



Feb 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 to **came into force**.

CONTEXT

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:

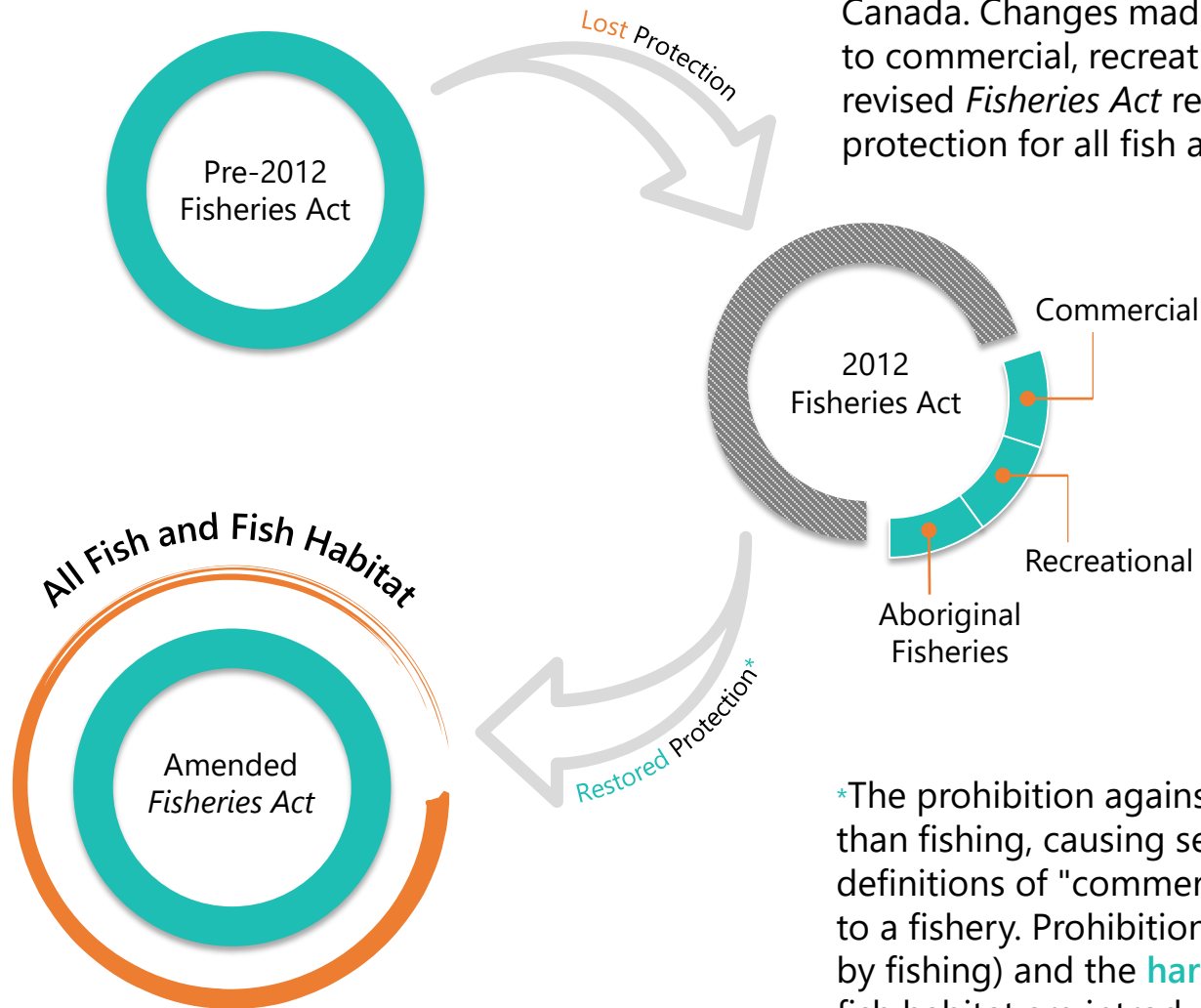
- Restore lost protections and incorporate modern safeguards;
- Provide better certainty for industry;
- Ensure the long term sustainability of marine resources; and
- Make sure that the *Fisheries Act* provides strong and meaningful protection of fish and fish habitats

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
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Restored Lost Protections



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*



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



Indigenous Habitat
Participation Program (IHPP)



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



Indigenous Habitat
Participation Program (IHPP)



IHPP Contributions Component – Three Areas

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?

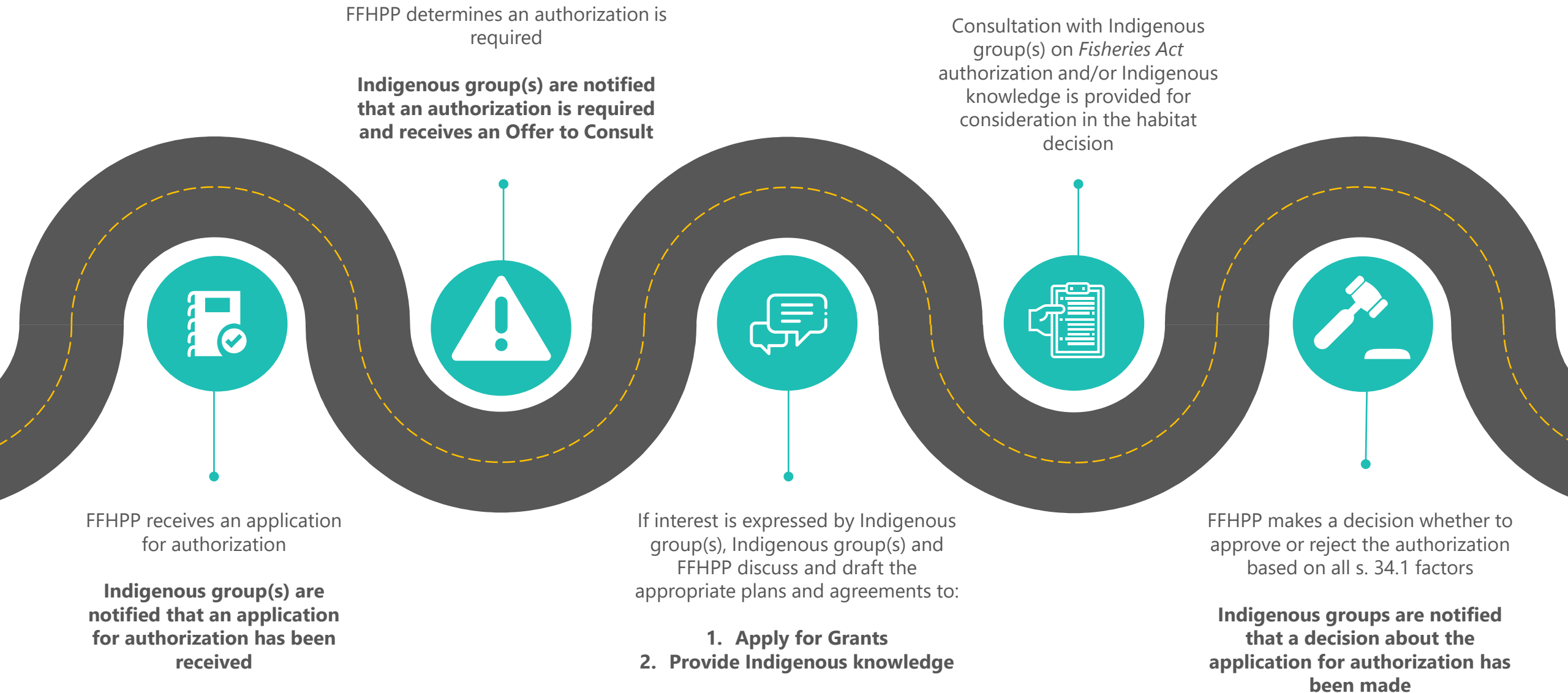
- Bi-annual application process



Indigenous Habitat
Participation Program (IHPP)



Consideration of Indigenous knowledge in habitat decisions





Interaction with the *Access to Information Act*

- 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*.



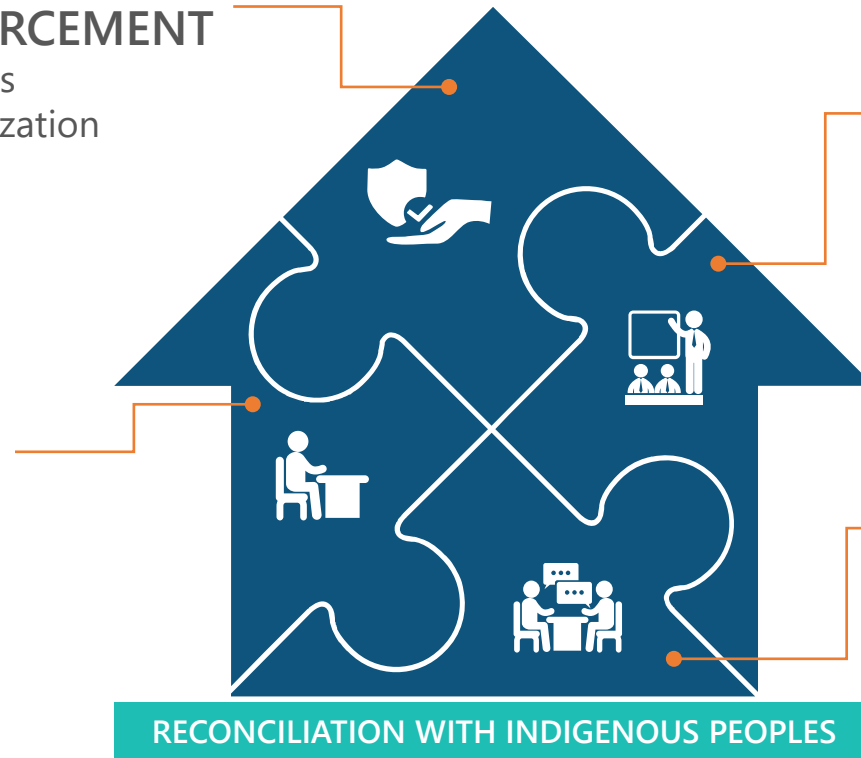
The Revitalized Fish and Fish Habitat Protection Program (FFHPP)

REGULATORY AND ENFORCEMENT

- Review of development projects
- Provision of advice and authorization
- Enforcement of compliance

INTEGRATED PLANNING

- Restoration
- Offsetting
- Habitat Banking
- Ecologically Significant Areas



REPORTING TO CANADIANS

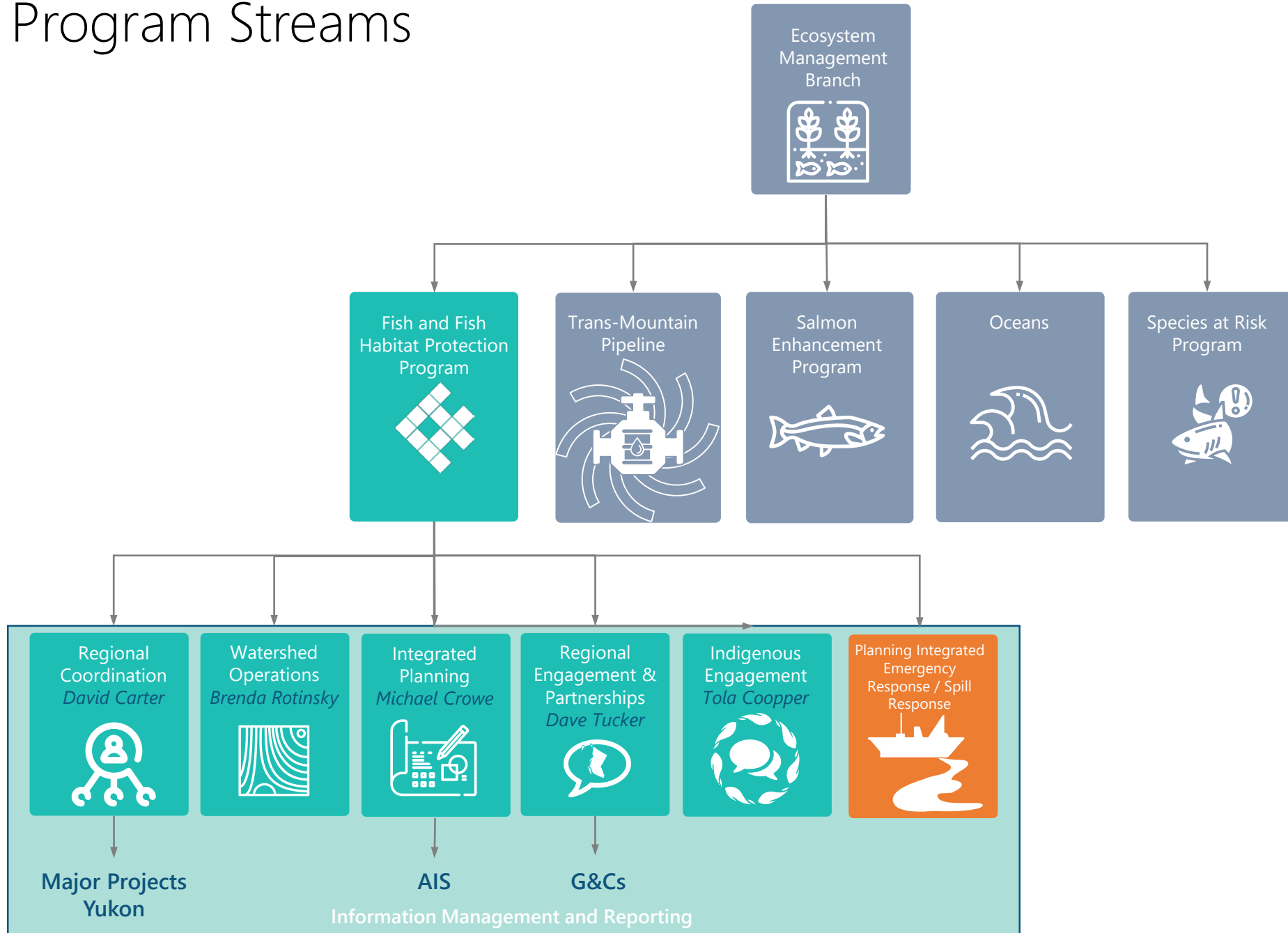
- Monitoring compliance and effectiveness
- Reporting
- Public Registry

ENGAGEMENT

- Consultation
- Outreach
- Partnerships



Program Streams





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



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

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



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



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

