



# Modernizing the *Fisheries Act*



## Elements of a New *Fisheries Act*

### Outline

- Accountability and Good Governance
- Cooperation with Provinces and Territories
- Programs and Projects
- Advisory panels
- Information management
- Licensing and Allocation
- Fisheries Management Orders
- Fisheries Management Agreements
- Conservation and Protection of Fish Habitat and Pollution Prevention
- Aquatic Invasive Species
- Administration and Enforcement
- Administrative Sanctions Regime and Canada Fisheries Tribunal



## Accountability and Good Governance

### Preamble

- A preamble is used to recite the circumstances giving rise to the legislation at the beginning of the Act
- The preamble recognizes the following key values:
  - conservation and protection of fish habitat and pollution prevention
  - sustainable fisheries management for the benefit of all Canadians
  - importance of a clear Ministerial framework for accountability to Parliament
  - interjurisdictional cooperation and public engagement
  - the constitutional protection of existing Aboriginal and treaty rights and the importance of fisheries to many Aboriginal communities
  - goal of stable access and allocation
  - importance of maintaining the public character of fisheries and fish habitat management
  - public participation
  - importance of deterring illegal fishing



## Accountability and Good Governance

### Purpose Clause

- This is a provision, placed at the beginning of a set of provisions, that declares the purposes or objectives of those provisions.
- The purpose of the *Act* is:
  - *to provide for the sustainable development of Canada's seacoast and inland fisheries, through the conservation and protection of fish and fish habitat and the proper management and control of fisheries.*



## Accountability and Good Governance

### Application Principles

- Fisheries and Fish Habitat Management Principles that would be applied to all decisions and administrative actions taken under the authority of the Act:
  - Take into account **sustainable development and an ecosystem approach** in fisheries management and protection of fish and fish habitat
  - Seek to apply a **precautionary approach**
  - Take into account **scientific information** in fisheries management and protection of fish and fish habitat
  - Seek to manage consistent with **constitutional protection** for existing aboriginal or treaty rights
  - Consider **traditional knowledge** to the extent that it has been shared
  - Endeavour to act in **cooperation with other governments** and bodies created under land claims agreement
  - Encourage Canadians' **participation in decision-making.**



## Cooperation with Provinces and Territories

### Agreements with Provinces

- Agreements with Provinces can:
  - be used to establish roles, powers, duties, processes
  - facilitate collaboration and enhance communication
  - facilitate direction-setting and joint action
  - provide basis for joint engagement of public or trilateral arrangements with stakeholders
  - establish framework of principles, goals and objectives to guide respective programs
  - establish new programs / maximize the efficiency and effectiveness of respective programs
  - reduce overlap and harmonize programs
  - establish standards, guidelines and codes of practice
  - Can be renewed every 5 years
- Where a provincial regulation is deemed *equivalent* in operating effect to a federal regulation, with GiC approval, the latter may be declared not to apply in that province.
- Act would also maintain a provision for the delegation of ministerial powers (e.g. to a minister of a provincial or territorial government who already administers freshwater fisheries).



## Other Provisions: Programs and Projects

### Programs and Projects

- Outdated statutes will be repealed but relevant provisions will be kept in the new Act.
- Amendments include financial authorities relating to commercial, recreational or Aboriginal fisheries, as well as fish habitat and aquaculture.
- Could be used to:
  - support business management, harvest management, training and mentoring
  - improving the economic viability in the fishery or aquaculture sector
  - restoring, improving or conserving fish habitat
- Also provisions for entry into agreements or other arrangements with governments or other entities.



## Other Provisions: Advisory Panels

### Advisory Panels

- The *Fisheries Development Act* (FDA) authorizes the creation of advisory committees to carry out the purposes and provisions of the Act but with a narrow purpose: the development of the commercial fisheries.
- The new Act includes a general power for the Minister to establish advisory panels for a wide variety of purposes under the Act.
- It also establishes who may be appointed and address administrative requirements such as the authority to pay members.



## Other Provisions: Information management

### Information management

- Under the previous Act, the Minister's ability to solicit information is restricted to fisheries management issues.
- In the renewed Act, the Minister has the authority to collect information to conduct research, collect data and reporting on the state of fisheries and fish habitat
- This information is relevant to:
  - the conservation and protection of fish and fish habitat,
  - proper management and control of fisheries, the sustainable development of aquaculture; and
  - the prevention of pollution in waters frequented by fish.



## Licence and Allocation

### Considerations (Licensing & Allocation)

- The Minister is obliged to take the following guiding principles into account when establishing allocations and setting regulations for the exercising of licensing powers:
  - the need to conserve and protect fish and fish habitat;
  - the compliance of fishers in the fisheries with the requirements of the Act; and,
  - the importance to fishers of secure access to the fishery and of allocation stability.



## Licence and Allocation

### Considerations (Licence & Allocation)

- Other factors the Minister may take into account:
  - fairness to individuals, between communities and between regions;
  - fishers' adjacency to the fishery
  - fishers historical participation in a fishery;
  - economic viability;
  - best use of fish to fulfill fishery's economic, social and cultural potential;
  - importance of maintaining public access to the fishery; and,
  - other considerations that the Minister considers relevant.



## Licence and Allocation

### Allocation Provisions

- The Minister retains full authority to decide access and allocations in coastal fisheries.
- Allocation orders:
  - A new instrument to allow the Minister to allocate, *for up to 15 years*, shares of fish to fleets or groups in commercial, recreational and aboriginal fisheries.
  - Process is transparent with a requirement to publish.
  - Authority for Minister to name an advisory body to hold public consultations, develop and provide public recommendations on allocations.
  - Allocation instrument does not create rights, liabilities or restrictions and the Minister could still take any action needed for conservation and proper management of the fishery.
  - Ability to rescind, alter or replace allocation: future Minister would not be bound; would be subject to certain process requirements (public notification).



## Licensing and Allocation

### Licensing Provisions

- Minister sets regulations for the issuance of licences, including eligibility criteria.
- Licences will be issued by licence officers, designated by the Minister, in accordance with these regulations.
- Ability for the Department to withhold licences where the licence holder has
  - Failed to submit required information
  - Entered into agreements intended to bypass licensing regulations.
  - Failed to pay all fees as part of a Fisheries Management Agreement
  - Failed to pay fines, fees or penalties
- Statutory right of appeal (to the tribunal) when a licence is denied.
- Fees set by ministerial order, parallel to the *Oceans Act*.



## Fisheries Management Orders

### Fisheries Management Orders

- Fisheries Management Orders set closed times, fish size and weight limits, in a more timely fashion than the current power to make variation orders.
- Every person to whom the FM orders apply must comply.
- The orders will prohibit:
  - catching and retaining fish in quantities that exceed a maximum number allowed by the order
  - catching fish that are smaller or larger than limits allowed by the order
  - fishing for specified species during closed times
  - harvesting marine plants during closed times



## Fisheries Management Agreements

### Fisheries Management Agreements

- Legally binding agreements provide a greater opportunity for collaboration between DFO and responsible groups (e.g. commercial fleets, Aboriginal groups) to increase the role of resource users and their organizations in the management of coastal fisheries (shared stewardship).
- Agreements may specify:
  - whom the agreement concerns
  - harvesting rules
  - supporting programs and services e.g. scientific research
  - monitoring and other activities to be undertaken by other parties
  - planning structures and processes
  - funding arrangements
  - sanctions formula
  - provision to allocate fish to the organization, to fund activities under the agreement
- Agreements could be concluded with commercial, recreational, or Aboriginal organizations.



## Habitat Protection & Pollution Prevention

# Conservation and Protection of Fish, Fish Habitat & Pollution Prevention

- General prohibition on harmful alteration, disruption or the destruction (HADD) of fish habitat and the associated penalties remain, with the following improvements:
  - Clarification that both an “alteration” or “disruption” must be harmful for the prohibition to apply;
  - Conditions of HADD Authorizations are now enforceable;
  - New regulation-making powers to clarify the basis upon which decisions are made and to streamline regulatory approvals.
- Clearer and expanded powers and requirements for providing information and taking corrective actions
- Changes to authorities and powers of Inspectors to address certain compliance issues related to the Habitat Protection Provisions so Fishery Officers can focus on areas where they are most needed.
- Other provisions applicable to fish habitat protection include:
  - Deemed equivalency with provincial regulations;
  - Alternative Measures Agreements.



## Aquatic Invasive Species

### Aquatic Invasive Species (AIS)

- Clear authorities to allow AIS to be prevented and controlled in a comprehensive manner.
- Prohibitions against export, import, or transport of AIS, or release of AIS into waters frequented by fish
  - exemption from the prohibitions for activities that are allowed through the regulations
- Authority for destruction of AIS:
  - AIS listed in the regulations
  - AIS not listed in the regulations but meet the definition of AIS (“rapid response” mechanism for emergency situations)
- Authority to make regulations with respect to the conservation of fish and fish habitat from the threat of AIS.
- Penalties for offences involving AIS.
- Authorities for existing programs that address risks from living organisms (e.g introduction and transfers).



## Administration & Enforcement

### Administration and Enforcement

- Fishery officers continue to hold the principal powers and authorities; superfluous duties removed or provisions amended to allow other departmental agents to exercise the responsibilities.
- Fishery officers and habitat inspectors will enjoy certain protections when their duties necessarily put them in the position of being in violation of the Act (e.g. undercover operations to buy illegally caught fish).
- Inspector powers modernized and made more consistent with those in CEPA and scope extended to functions associated with renewed habitat protection provisions found in Part II.
- Alternative measures developed in cooperation with Attorney General and Department of Justice as an alternative to costly court proceedings.



## Canada Fisheries Tribunal

### Canada Fisheries Tribunal

- An arm's length administrative tribunal to apply licence sanctions and associated supplemental monetary penalties to license holders.
- Administrative Sanctions:
  - The tribunal will be the primary tool for handling minor or major violations of licence holders in coastal communities;
  - administrative sanctions will provide:
    - additional deterrence
    - administrative fairness
    - credibility within the fishing community
    - expert decision-making
    - operational efficiency
- The tribunal will also hear appeals from people who have been denied a licence.