



Standing Committee on Fisheries and Oceans
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RE: Review Changes to the Fisheries Act

The previous government made changes to the Fisheries Act with a focus on commercially valuable fish species ignoring the biological fact that all fish, whether for commerce or sport require a healthy habitat. Fish habitat occupies the entire column of water within most lakes and rivers in Canada. A healthy habitat supports a diversity of life within an aquatic ecosystem which in turn supports the viability of fish. This is demonstrated by the ecological pyramid where the primary producers at the bottom or base of the pyramid provide the largest biomass to support the existence of a fish population. That biomass has to be healthy, and that health is only maintained when habitat is free of toxins and other deleterious substances. It is also true when works or projects interfere with the health and movement of fish species which we have tried to address in the Navigable Waters Protection Act or the Navigation Protection Act with a recommendation that these Acts must be considered when any activity triggers their application. This includes CEAA.

Currently, the sections of the Fisheries Act which address fish protection and pollution prevention fall under sections 34(1) to 43. We will address aspects of various sections of the Act from sections 34 to 43 as follows:

The prohibition in the previous version of the federal Fisheries Act against the “harmful alteration, disruption or destruction of fish habitat” (HADD) was a much needed legal tool to preserve marine biodiversity and maintain sustainable fisheries. The amendments weakened this protection, collectively appearing to narrow the Act from protecting fish habitat to protecting fisheries with the potential to undermine an ecosystem-based approach to fisheries management, according to the judicial Commission of Inquiry into the decline of sockeye salmon in the Fraser River.

Section 35(1) should include all fish species that are endemic to the relevant water body, not just the species that contribute to commerce. A diversity of fish species, whether commercially viable or not, support the fish populations we exploit, and thus the health of a fishery by their very existence. They form part of the biomass of trophic levels within the ecological pyramid.

35(2) Any exceptions described within this section must be based on scientific examination to assess the potential harm to fish habitat and if potential harm is demonstrated, then no exception should be made. Also, the scale of the work, project, undertaking or activity must be considered pursuant to Canadian Environmental Assessment Act (currently being amended). Also with respect to section 35(2)(a) the word “prescribed” should be removed. The inclusion of “prescribed” implies that the Minister may decide to select Canadian fisheries waters by way of a Schedule as was done in the Navigation Protection Act (currently under review). All waters should be included as potentially being fisheries waters, i.e. fish habitat.



Section 36 and related subsections - we are suggesting the removal of the words “where fishing is carried on”. The rules should apply to all waters whether fishing is carried on or not. There should be no exceptions (by regulation or by Ministerial order) to allow or permit the deposit of a deleterious substance into fish bearing waters or any waters which are potentially support fish habitat and support diverse ecosystems. Fish bearing waters are not restricted to single river or lake as identified by the Schedule Parts 1 and 2 of NPA. All fish habitat are present and supported within watersheds.

Section 37 and related subsections - we are suggesting the removal of the wording that limits fish species affected, which, by default, means fish habitat, “that are part of a commercial, recreational or Aboriginal fishery or to fish that support such a fishery”. This implies that the only fish species of value are those based on commercial activity or have commercial value, ignoring all other values. The inclusion of all waters or aquatic systems will by default cover the aforementioned fisheries and their commercial value.

Section 38 and related subsections - we are suggesting the removal of the words “that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery”. For the same reasons as mentioned above.

Section 43 and related subsections – This section describes the powers for formulating Regulations as they apply to the Fisheries Act. We are concerned about subsection 43(i), (i.1) to (i.4) which suggests that protection of spawning grounds are to exclude those spawning grounds that do not fall under the definition of fisheries described as “commercial, recreational and Aboriginal”. The only exclusion from protection should be invasive fish species or non-indigenous species in Canadian Waters.

Similarly section 43(1)(n) - we suggest that the definition of invasive species should include all non-indigenous fish species in Canadian waters.

There is one glaring omission and that is regulations that address the impact of climate change, or in the least an acknowledgement that climate change is having an impact on the changing locations or migration of our indigenous fish species in Canadian waters. Some species are disappearing and/or reappearing in different waters or migrating to new habitats. For example, salmon species finding their way into the Canadian Arctic and becoming adapted/or not, to new habitats of other rivers.

Thank you for considering the above recommended changes to strengthen the Fisheries Act. Please keep us posted on the outcome/process.

Sincerely,

Olga Schwartzkoph, Director
Rivershed Society of British Columbia

cc. Minister of Transport
Minister of Fisheries and Oceans
Minister of the Environment