



Canada's *Fisheries Act*

The Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*

If you are planning to do any work in or near water, or doing any activity that may damage fish habitat and/or cause a deleterious substance (see Part B: Definitions) to enter that water, your project may affect fish habitat and harm the fish that live in our streams, lakes and oceans. In these circumstances, you may be in violation of Canada's *Fisheries Act* and you should seek advice and/or approval from Fisheries and Oceans Canada and/or Environment Canada.

www.dfo-mpo.gc.ca/habitat



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Canada 

Under the federal *Fisheries Act*,

- The harmful alteration, disruption or destruction of fish habitat is prohibited without prior authorization (section 35); and
- No person may pollute water frequented by fish (section 36)

These two and the other habitat protection and pollution prevention sections of the *Fisheries Act* are meant to conserve and protect fish habitat. They apply to all Canadian freshwater and marine fisheries waters. These include rivers, streams, ditches, lakes, estuaries, salt marshes, coastal waters and marine offshore areas. They also apply to works or undertakings on areas that are not normally under water such as shorelines, riverbanks, seasonally inundated flood plains and on privately owned land.

Under the *Constitution Act* (1982), the federal government has jurisdiction over Canada's inland and coastal fisheries. The federal *Fisheries Act* gives the Minister of Fisheries and Oceans the legislative authority to protect fish and fish habitat from destructive activities in marine and inland waters. It is one of the oldest acts in Canada, given Royal Assent in 1868, and is still one of the strongest pieces of environmental legislation. The *Fisheries Act* is an important tool for the sound management of Canada's fisheries resources and supporting habitat. Violations of the Act can result in substantial fines, the risk of imprisonment and a requirement to cover the costs of returning the damaged habitat to its original state. Fisheries and Oceans Canada has constitutional responsibility to enforce the Act, in co-operation with other federal, provincial and territorial government agencies, for the benefit of all Canadians.

This document explains how various activities can harm fish habitat and describes how the habitat protection and pollution prevention sections of the *Fisheries Act* can be applied to conserve and protect fish and fish habitat from the adverse effects of human activities.

This document is intended to provide general guidance only and is not a substitute for the *Fisheries Act*. In the event of an inconsistency between this document and the Act, the latter prevails.

Individuals with specific legal concerns are urged to seek advice from legal counsel and/or contact the nearest Fisheries and Oceans Canada regional office (*see back cover*).

If you need to find a habitat protection or pollution prevention section of the *Fisheries Act* quickly within this document, please refer to the index on page 15 where page numbers are referenced for each section office. For more detailed information, please visit the DFO web site, at www.dfo-mpo.gc.ca/habitat.

Canada's Fisheries Act

The Habitat Protection and Pollution Prevention Provisions of the Act

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PART A: ENSURING FISH FOR THE FUTURE

1. What is “fish habitat”?

To sustain fish production for the use and employment of present and future generations, it is critical to conserve and protect the aquatic systems that produce the fish.

These systems are referred to as “fish habitat” and include those components of the environments that fish need to live, grow and reproduce. The *Fisheries Act* defines “fish habitat” as:

**“Spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes.”
(Section 34(1))**

Fish habitat is not only the water in rivers, lakes, streams and oceans and the quality of that water, but also includes surrounding plants, life forms and structures such as gravel beds and large woody debris that interact to make fish life possible. The federal *Fisheries Act* protects natural and man-made fish habitat, such as a drainage ditch that has become frequented by fish.

2. Why protect fish habitat?

No fish habitat means no fish. Fish need healthy places to live, grow and reproduce. Many people, however, do not

automatically recognize the value of fish habitat. They will readily support the protection of a scenic river valley, but a muddy tidal flat, which is also fish habitat, is more likely to be dredged, paved or otherwise destroyed without recognizing the significance of the economic and social loss. Fish habitat is essential to the sustained production of fish that support our commercial, aboriginal and recreational fisheries.

3. What activities damage habitat?

Unfortunately, fish habitat can be destroyed without much visible evidence. For example, the eggs of salmon and trout cannot survive just anywhere; they must be laid in gravel beds in streams or lakes. Take away the gravel and the stream or lake will flow as before, but it will no longer support spawning habitat. Any project that upsets the physical, chemical and biological balance of fish habitat may permanently damage it, causing reductions in fish production and social and economic losses to Canadians. Common threats to fish habitat are associated with:

- Removing streamside vegetation
- Removing sand or gravel from beaches, riverbanks or streambeds
- Diverting, dyking and channelizing streams
- Dredging tidal flats and marshland
- Filling foreshore, marshes and flood plains
- Clearing land for agriculture or urban development

- Building causeways, wharves, marinas and reservoirs
- Polluting with sediment, pesticides, oil and other contaminants
- Discharging industrial and municipal waste
- Logging and log storage
- Constructing buildings, pipelines, transmission lines, roads and railways
- Constructing and operating hydroelectric power facilities
- Mining and discharging mine effluent
- Mining the seabed and accidents at offshore oil and gas extraction facilities

4. How do I comply with the law?

If you are planning work in or near water, you should contact staff at your local Fisheries and Oceans Canada (DFO) office (*see back cover*). If it was necessary for you to apply for provincial permits to conduct your work, a description of your project may already have been referred to DFO by the permitting agency. DFO will need the following information to review your project:

- the plans and specifications (What is your project? When are you planning to undertake it? How are you going to do the work?)
- its potential impacts on fish habitat
- proposed measures to minimize or prevent impacts on fish habitat by following industry Best Management Practices, published guidelines or other professional advice

No fish habitat means no fish. Fish need healthy places to live, feed and reproduce. Many people, however, do not automatically recognize the value of fish habitat.



In some cases, DFO staff may inspect your project site and provide you with written comments on the project.

More information about preventing and minimizing impacts on fish habitat is provided in the brochure, *Guidelines for Attaining No Net Loss*, and other DFO Publications, Reports and Guidelines. This information may also be obtained by contacting a local DFO office (*see back cover*). You may need to amend your project plans to prevent harm to fish habitat before commencing work. It is your responsibility to obtain technical advice and make the necessary changes. If DFO staff believes that your project will have negative impacts on fish habitat, they will provide guidance on:

- a) Ways to avoid the damage by relocating and redesigning the project.
- b) Ways to minimize the damage. **Advice from DFO staff does not authorize harm to fish habitat.** You may wish to apply for a subsection 35(2) authorization if your project is likely to harm fish habitat. If you do not apply for a s. 35(2) authorization and your project does result in a harmful alteration, disruption or destruction of fish habitat you may be convicted with causing an offence under subsection 35(1) of the *Fisheries Act*.
- c) How to apply for a s. 35(2) authorization. More information about section 35(2) authorizations is provided in the brochure, *What the Law Requires*, or visit DFO's web site, at www.dfo-mpo.gc.ca/habitat

When substances such as, oil, sediment, paint and other deleterious substances are discharged into water frequented by fish they have the potential to be toxic to fish and their habitat. If you feel that your work or undertaking may cause a deposit of a deleterious substance in water frequented by fish please contact your regional Environment Canada office (call 1-800-668-6767 or visit EC's national web site, www.ec.gc.ca). If you would like more information pertaining to the impact of deleterious substances to fish and fish habitat and how these impacts may be avoided please contact your local DFO office (*see back cover*).

PART B: FISHERIES ACT HABITAT PROTECTION AND POLLUTION PREVENTION PROVISIONS

The following are extracts from the *Fisheries Act* and relate to protecting fish and fish habitat from the adverse effects of human activities. Where specific penalties are not listed, refer to the "Penalties (general) and court orders" section found on pages 14 and 15. These extracts follow a sequence designed for ease of reference. The section numbers provided are those of the Act, but this is not a complete listing of all sections. **The following is not a substitute for the *Fisheries Act*. In the event of an inconsistency between this document and the Act, the latter prevails.**

Individuals with specific legal concerns are urged to seek advice from legal counsel and/or contact the nearest Fisheries and Oceans Canada regional office (*see back cover*). An unofficial copy of the entire *Fisheries Act* can be obtained from the Justice Canada web site (canada.justice.gc.ca/en/index.html)

1. Definitions

Canadian Fisheries Waters:

Section 2: In this Act, "Canadian fisheries waters" means all waters in the fishing zones of Canada, all waters in the territorial sea of Canada and all internal waters of Canada.

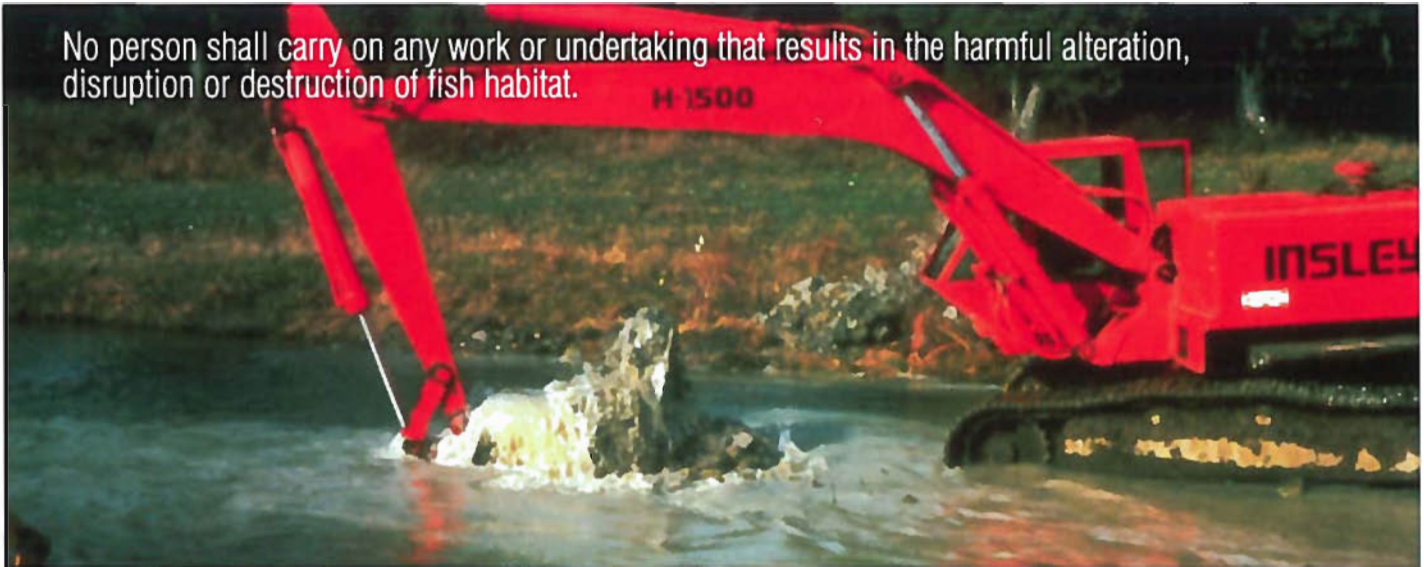
Fish:

Section 2: "Fish" includes:

- a) parts of fish,
- b) shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals, and
- c) the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals;

Fish Habitat:

Section 34(1): For the purpose of sections 35 to 43, "fish habitat" means spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes.



Deleterious Substance:

Section 34(1): For the purposes of sections 35 to 43, “deleterious substance” means

- a) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man or fish that frequent that water, or
- b) any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man or fish that frequent that water, and without limiting the generality of the foregoing includes
- c) any substance or class of substances prescribed pursuant to paragraph 34(2)(a),
- d) any water that contains any substance or class of substances in a quantity or concentration that is equal to or in excess of a quantity or concentration prescribed in respect of that substance or class of substances pursuant to paragraph 34(2)(b), and

- e) any water that has been subjected to a treatment, process or change prescribed pursuant to paragraph 34(2)(c).

Deposit:

Section 34(1): For the purpose of sections 35 to 43, “deposit” means any discharging, spraying, releasing, spilling, leaking, seeping, pouring, emitting, emptying, throwing, dumping or placing.

Section 40(5)(a): A “deposit” as defined in subsection 34(1) takes place whether or not any act or omission resulting in the deposit is intentional.

Obstruction:

Section 2: “Obstruction” means any slide, dam or other obstruction impeding the free passage of fish.

Water Frequented by Fish:

Section 34(1): “Water frequented by fish” means Canadian fisheries waters.

Section 40(5)(b): no water is “water frequented by fish,” as defined in subsection 34(1), where proof is made that at all times material to the proceedings the water is not, has not been and is not likely to be frequented in fact by fish.

2. What is against the law?

2.1 Damage to fish habitat

Section 35(1): No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.

Authorization

Section 35(2): No person contravenes subsection (1) by causing the alteration, disruption or destruction of fish habitat by any means or under any conditions authorized by the Minister or under regulations made by the Governor in Council under this Act.

Penalties

Section 40(1): Every person who contravenes subsection 35(1) is guilty of

- a) an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding three hundred thousand dollars and, for any subsequent offence, to a fine not exceeding three hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both;
- b) an indictable offence and liable, for a first offence, to a fine not exceeding one million dollars and, for any subsequent offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years, or to both.

No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.



2.2 Pollution

Environment Canada (EC) has been assigned responsibility for administration and enforcement of the Pollution Prevention Sections of the *Fisheries Act*. The key pollution prevention section is subsection 36(3), which prohibits depositing deleterious substances into Canadian fisheries waters. Deleterious substances are oils, sediment, paint and other substances or materials that will degrade or alter water quality so that the water is rendered or is likely to be rendered deleterious to fish. If you have any concerns or questions about deleterious substances please contact your regional Environment Canada office (call 1-800-688-6767 or visit EC's national web site, www.ec.gc.ca).

Section 36(3): Subject to subsection 36(4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substance or any other deleterious substance that results from the deposit of the deleterious substance may enter any such water.

Section 36(4): No person contravenes subsection 36(3) by depositing or permitting the deposit in any water or place of

- a) waste or pollutant of a type, in a quantity and under conditions

authorized by regulations applicable to that water or place made by the Governor in Council under any Act other than this Act; or

- b) a deleterious substance of a class, in a quantity or concentration and under conditions authorized by or pursuant to regulations applicable to that water or place or to any work or undertaking or class thereof, made by the Governor in Council under subsection 36(5).

Section 36(1): No one shall

- a) throw overboard ballast, coal ashes, stones or other prejudicial or deleterious substances in any river, harbour or roadstead, or in any water where fishing is carried on;
- b) leave or deposit or cause to be thrown, left or deposited, on the shore, beach or bank of any water or on the beach between high and low water mark, remains or offal of fish or of marine animals; or
- c) leave decayed or decaying fish in any net or other fishing apparatus.

Duty to report spills

Section 38(4): Where, out of the normal course of events, there occurs a deposit of a deleterious substance in water frequented by fish or a serious and imminent danger thereof by reason of any condition, and where any damage or danger to fish habitat or fish or the use by man of fish results or may reasonably

be expected to result therefrom, any person who at any material time

- a) owns the deleterious substance or has the charge, management or control thereof; or
- b) causes or contributes to the causation of the deposit or (danger thereof, shall, in accordance with any regulations applicable thereto, report such occurrence to an Inspector or such other person or authority as is prescribed by the regulations.

Duty to prevent or minimize damage

Section 38(5): Every person referred to in paragraph 38(4)(a) or (b) shall, as soon as possible in the circumstances, take all reasonable measures consistent with safety and with the conservation of fish and fish habitat to prevent any occurrence referred to in subsection 38(4) or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result therefrom.

Penalties

Section 40(2): Every person who contravenes subsection 36(1) or (3) is guilty of

- a) an offence punishable on summary conviction and liable for a first offence, to a fine not exceeding three hundred thousand dollars and, for any subsequent offence, to a fine not exceeding three hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both; or



b) an indictable offence and liable, for a first offence, to a fine not exceeding one million dollars and, for any subsequent offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years, or to both.

Section 40(3): Every person who

- a) fails to provide the Minister with any material or information requested pursuant to subsection 37(1) within a reasonable time after the request is made,
- b) fails to provide or submit any material, information or report that is to be provided or submitted under regulations made pursuant to subsection 37(3),
- c) fails to make a report that he is required to make under subsection 38(4),
- d) carries on any work or undertaking described in subsection 37(1)
 - (i) otherwise than in accordance with any material or information relating to the work or undertaking that he provides to the Minister under subsection 37(1),
 - (ii) otherwise than in accordance with any such material or information as required to be modified by any order of the Minister under paragraph 37(2)(a), or
 - (iii) contrary to any order made by the Minister under subsection 37(2),
- e) fails to take any reasonable measures that he is required to take under

subsection 38(5) or fails to take such measures in the required manner is guilty of an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding two hundred thousand dollars and, for any subsequent offence, to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both.

2.3 Destruction of fish

Section 32: No person shall destroy fish by any means other than fishing except as authorized by the Minister or under regulations made by the Governor in Council under this Act. The Guidelines for the Use of Explosives In or Near Canadian Fisheries Waters guides proponents whose works or undertakings involve the use of confined or unconfined explosives in or near water, to ensure that they comply with the legal obligations of the *Fisheries Act*.

3. Obligations of owners, operators, developers and project proponents

Federal law protecting Canadian fisheries waters does not mean that fisheries management agencies will oppose every project affecting fish habitat. However, each project's impact on fish and/or fish habitat must be considered before the work or undertaking begins. The Minister may request plans, specifications or reports for scrutiny by

Fish Habitat Management staff. In most cases, early consultation between the developer and Fisheries and Oceans staff will make it possible to devise a plan that meets the needs of all concerned.

For more information, consult the *Policy for the Management of Fish Habitat* which is available from the Fisheries and Oceans Canada.

3.1 Fish guards and screens

Section 30(1): Every water intake, ditch, channel or canal in Canada constructed or adapted for conducting water from any Canadian fisheries waters for irrigating, manufacturing, power generation, domestic or other purposes shall, if the Minister deems it necessary in the public interest, be provided at its entrance or intake with a fish guard or a screen, covering or netting so fixed as to prevent the passage of fish from any Canadian fisheries waters into the water intake, ditch, channel or canal.

Section 30(2): The fish guard, screen, covering or netting referred to in subsection (1) shall

- a) have meshes or holes of such dimensions as the Minister may prescribe; and
- b) be built and maintained by the owner or occupier of the water intake, ditch, channel or canal referred to in subsection (1), subject to the approval of the Minister or of such officer as the Minister may appoint to examine it.

No person shall destroy fish by any means other than fishing except as authorized by the Minister or under regulations made by the Governor in Council under this Act.

Section 30(3): The owner or occupier of the water intake, ditch, channel or canal referred to in subsection (1) shall maintain the fish guard, screen, covering or netting referred to in that subsection in a good and efficient state of repair and shall not permit its removal except for renewal or repair.

Section 30(4): During the time in which a renewal or repair referred to in subsection (1) is being effected, the sluice or gate at the intake or entrance of the water intake, ditch, channel or canal shall be closed in order to prevent the passage of fish into the water intake, ditch, channel or canal.

Penalties

Section 69: Every owner or occupier of a water intake, ditch, channel or canal referred to in subsection 30(1) who refuses or neglects to provide and maintain a fish guard, screen, covering or netting in accordance with subsections 30(1) to (3), permits the removal of a fish guard, screen, covering or netting in contravention of subsection 30(3) or refuses or neglects to close a sluice or gate in accordance with subsection 30(4) is guilty of an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding two hundred thousand dollars and, for any subsequent offence, to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both.

3.2 Fish-ways or canals

Requirements

Section 20(1): Every obstruction across or in any stream where the Minister determines it to be necessary for the public interest that a fish-pass should exist shall be provided by the owner or occupier with a durable and efficient fish-way or canal around the obstruction, which shall be maintained in a good and effective condition by the owner or occupier, in such place and of such form and capacity as will in the opinion of the Minister satisfactorily permit the free passage of fish through it.

Section 20(3): The place, form and capacity of the fish-way or canal to be provided pursuant to subsection (1) must be approved by the Minister before construction thereof is begun and, immediately after the fish-way is completed and in operation, the owner or occupier of any obstruction shall make such changes and adjustments at his own cost as will in the opinion of the Minister be necessary for its efficient operation under actual working conditions.

Section 20(4): The owner or occupier of every fish-way or canal shall keep it open and unobstructed and shall keep it supplied with such sufficient quantity of water as the Minister considers necessary to enable the fish frequenting the waters in which the fish-way or canal is placed to pass through it during such times as are specified by any fishery officer, and, where leaks in a dam cause a fish-way therein to be inefficient, the Minister may require the owner or occupier of the dam to prevent the leaks therein.

Payment for

Section 20(2): Where it is determined by the Minister in any case that the provision of an efficient fish-way or canal around the obstruction is not feasible, or that the spawning areas above the obstruction are destroyed, the Minister may require the owner or occupier of the obstruction to pay to him from time to time such sum or sums of money as he may require to construct, operate and maintain such complete fish hatchery establishment as will in his opinion meet the requirements for maintaining the annual return of migratory fish.

Section 21(1): The Minister may authorize the payment of one-half of the expense incurred by an owner or occupier in constructing and maintaining any fish-way or canal and, after a fish-way or canal that has been duly approved by the Minister has been built at the cost of the owner or occupier of any obstruction, or after the owner or occupier has paid one-half the cost thereof and the fish-way or canal thereafter proves to be ineffective, the total cost of any change in the fish-way or canal or any new fish-way or canal required to enable the

fish to pass by the obstruction shall, except as provided in subsection 20(3), be paid by Her Majesty.

Section 21(2): The Minister, in order to procure the construction of any fish-way or canal, pending proceedings against any owner or occupier for the punishment imposed by this Act, may make and complete the construction forthwith, and may authorize any person to enter on the premises with the necessary workmen, means and materials for that purpose and may recover from the owner or occupier the whole expense so incurred by action in the name of Her Majesty.

3.3 Obstructions

Section 27: No one shall

- damage or obstruct any fish-way or canal built, constructed or used to enable fish to pass over or around any obstruction;
- do anything to stop, impede or hinder fish from entering or passing the fish-way or canal or to stop, impede or hinder fish from surmounting any obstacle or leap; or
- fish in any manner within twenty-five yards downstream from the lower entrance to any fish-way, canal, obstacle or leap.

Section 29(1): No one shall erect, use or maintain in any of the Canadian fisheries waters, where subject to any exclusive right of fishery or not, any net, weir or other device that unduly obstructs the passage of fish.

Removal of

Section 21(3): Where an unused obstruction or a thing detrimental to fish exists and the owner or occupier thereof does not after notice given by the Minister remove it, or if the owner is not resident in Canada, or his exact place of residence is unknown to the Minister, the Minister may, without being liable to damages, or in any way to indemnify the owner or occupier, cause the obstruction or thing detrimental to fish to be removed or destroyed and, where notice has been given to the owner or occupier may recover from the owner or occupier the expense of the removal or destruction.

Section 29(2): The Minister or a fishery officer may order the removal of or remove any net, weir or other device that, in the opinion of the Minister or fishery officer, unduly obstructs the passage of fish.

3.4 Minimum water flow

Section 21(4): The Minister may require the owner or occupier of any obstruction to install and maintain such fish stops or diverters, both above and below the obstruction, as will in his opinion be adequate to prevent the destruction of fish or to assist in providing for their ascent.

Section 22(1): At every obstruction, where the Minister determines it to be necessary, the owner or occupier thereof shall, when required by the Minister, provide a sufficient flow of water over the spill-way or crest, with connecting sluices into the river below, to permit the safe and unimpeded descent of fish.

Section 22(2): The owner or occupier of any obstruction shall make such provision as the Minister determines to be necessary for the free passage of both ascending and descending migratory fish during the period of construction thereof.

Section 22(3): The owner or occupier of any obstruction shall permit the escape into the river-bed below the obstruction of such quantity of water, at all times, as will, in the opinion of the Minister, be sufficient for the safety of fish and for the flooding of the spawning grounds to such depth as will, in the opinion of the Minister, be necessary for the safety of the ova deposited thereon.

Penalties

Section 66: Every owner or occupier of an obstruction across or in any stream who refuses or neglects to provide and maintain a fish-way or canal in accordance with section 20, to install and maintain fish stops or diverters in accordance with subsection 21(4) or to provide for a sufficient flow of water and the free passage of fish in accordance with section 22 is guilty of an offence punishable on summary conviction and

liable, for a first offence, to a fine not exceeding two hundred thousand dollars and, for any subsequent offence, to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both.

3.5 Minister may request plans, specifications, and modifications

Section 37(1): Where a person carries on or proposes to carry on any work or undertaking that results or is likely to result in the alteration, disruption or destruction of fish habitat, or in the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substances that results from the deposit of that deleterious substance may enter any such waters, the person shall, on the request of the Minister or without request in the manner and circumstances prescribed by regulations made under paragraph 37(3)(a), provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine

- a) whether the work or undertaking results or is likely to result in any alteration, disruption or destruction of fish habitat that constitutes or would constitute an offence under subsection 40(1) and what measures, if any, would prevent that result or mitigate the effects thereof; or
- b) whether there is or is likely to be a deposit of a deleterious substance by reason of the work or undertaking that constitutes or would constitute an offence under subsection 40(2) and what measures, if any, would prevent that deposit or mitigate the effects thereof.

Section 37(2): If, after reviewing any material or information provided under subsection 37(1) and affording the persons who provided it a reasonable opportunity to make representations,

the Minister or a person designated by the Minister is of the opinion that an offence under subsection 40(1) or (2) is being or is likely to be committed, the Minister or a person designated by the Minister may, by order, subject to regulations made pursuant to paragraph 37(3)(b), or, if there are no such regulations in force, with the approval of the Governor in Council,

- a) require such modifications or additions to the work or undertaking or such modifications to any plans, specifications, procedures or schedules relating thereto as the Minister or a person designated by the Minister considers necessary in the circumstances,
- b) restrict the operation of the work or undertaking, and with the approval of the Governor in Council in any case, direct the closing of the work or undertaking for such period as the Minister or a person designated by the Minister considers necessary in the circumstances.

Offer to consult and interim orders

Section 37(4): Where the Minister or a person designated by the Minister proposes to make an order pursuant to subsection 37(2), he shall offer to consult with the governments of any provinces that he considers to be interested in the proposed order and with any departments or agencies of the Government of Canada that he considers appropriate.

Section 37(5): Nothing in subsection (4) prevents the Minister or a person designated by the Minister from making an interim order pursuant to subsection 37(2) without the offer of consultation referred to in subsection (4) where he considers that immediate action is necessary.

Where the Minister or a person designated by the Minister proposes to make an order pursuant to subsection 37(2), he shall offer to consult with the governments of any provinces that he considers to be interested in the proposed order and with any departments or agencies of the Government of Canada that he considers appropriate.



3.6 Other obligations

- Authorizations (see 2.1 Damage to Fish Habitat)
- Duty to assist fishery officers and guardians (see 4.1 Fishery officer and guardian powers)
- Duty to assist inspectors (see 4.2 Inspector powers)
- Duty to prevent or minimize damage (see 2.2 Pollution)
- Duty to report spills (see 2.2 Pollution)
- Liability of employers and corporate officers (see 4.5 Penalties [general] and court orders)

4. Enforcement

The Conservation and Protection Program at DFO is responsible for monitoring compliance with legislation and regulations regarding the conservation of fisheries resources and fish habitat. The Minister of Fisheries and Oceans appoints Fishery Officers to enforce fisheries regulations and management plans as well as the habitat provisions of the *Fisheries Act*. In addition to protecting fish habitat, Fishery Officers conduct at-sea patrols in coastal and inshore areas, monitor catches, conduct forensic investigations and audits, conduct inland patrols and provide information to fishermen regarding government policies and regulations. Environment Canada is

responsible for the enforcement of the pollution prevention sections of the *Fisheries Act*. The enforcement and compliance monitoring activities of the Fishery Officers and Environment Canada are vital to protecting Canada's fish and fish habitat. If you have any enforcement concerns please contact your local DFO office (see back cover) or Environment Canada (www.ec.gc.ca).

4.1 Fishery officer and guardian powers

Arrest

Section 50: Any fishery officer, fishery guardian or peace officer may arrest without warrant a person who that fishery officer, guardian or peace officer believes, on reasonable grounds, has committed an offence against this Act or any of the regulations, or whom he finds committing or preparing to commit an offence against this Act or any of the regulations.

Entry without liability for trespass

Section 52: In the discharge of his duties, any fishery officer, fishery guardian or other person accompanying him or authorized to such effect by the fishery officer may enter on and pass through or over private property without being liable for trespass.

Inspection

Section 49(1): Subject to section 49(2), for the purpose of ensuring compliance with this Act and the regulations, a fishery officer or fishery guardian may enter and inspect any place, including any premises, vessel or vehicle, in which the officer or guardian believes on reasonable grounds there is any work or undertaking or any fish or other thing in respect of which this Act or the regulations apply and may

- a) open any container that the officer or guardian believes on reasonable grounds contains any fish or other thing in respect of which this Act or the regulations apply;
- b) examine any fish or other thing that the officer or guardian finds and take samples of it;
- c) conduct any tests or analyses and take any measurements; and
- d) require any person to produce for examination or copying any records, books of account or other documents that the officer or guardian believes on reasonable grounds contain information that is relevant to the administration of this Act or the regulations.



Section 49(1.1): In carrying out an inspection of a place under subsection (1), a fishery officer or fishery guardian may,

- a) use or cause to be used any data processing system at the place to examine any data contained in or available to the data processing system;
- b) reproduce any record or cause it to be reproduced from the data in the form of a print-out or other intelligible output and remove the print-out or other output for examination or copying; and
- c) use or cause to be used any copying equipment at the place to make copies of any record, book of account or other document.

Section 49(1.3): A fishery officer or fishery guardian who takes a sample under paragraph (1)(b) may dispose of it in any manner that the officer or guardian considers appropriate.

Duty to assist fishery officer or guardian

Section 49(1.2): The owner or person in charge of a place that is inspected by a fishery officer or fishery guardian under subsection (1) and every person found in the place shall

- a) give the officer or guardian all reasonable assistance to enable the officer or guardian to carry out the inspection and exercise any power conferred by this section; and

- b) provide the officer or guardian with any information relevant to the administration of this Act or the regulations that the officer or guardian may reasonably require.

Warrant required to inspect private dwelling

Section 49(2): Where any place, premises, vessel or vehicle referred to in subsection (1) is a dwelling-house, a fishery officer or fishery guardian may not enter that dwelling-house without the consent of the occupant except under the authority of a warrant.

Search

Section 49.1(1): A fishery officer with a warrant issued may enter and search any place, including any premises, vessel or vehicle, in which the officer believes on reasonable grounds there is

- a) any work or undertaking that is being or has been carried on in contravention of this Act or the regulations;
- b) any fish or other thing by means of or in relation to which this Act or the regulations have been contravened; or
- c) any fish or other thing that will afford evidence in respect of a contravention of this Act or the regulations.

Section 49.1(2): Where on *ex parte* application a justice of the peace is satisfied by information on oath that there are reasonable grounds to believe

that there is in any place referred to in subsection (1) any fish or other thing referred to in subsection (1), the justice may issue a warrant authorizing the fishery officer named in the warrant to enter and search the place for the thing subject to any conditions that may be specified in the warrant.

Section 49.1(5): In carrying out a search of a place under this section, a fishery officer may exercise any power mentioned in subsection 49(1), (1.1) or (1.3).

Warrant not required to search under exigent circumstances

Section 49.1(3): Notwithstanding subsection (1), a fishery officer may exercise the power of search referred to in that subsection without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

Section 49.1(4): For the purposes of subsection (3), exigent circumstances include circumstances in which the delay necessary to obtain the warrant would result in danger to human life or safety or the loss or destruction of evidence.

A fishery officer or fishery guardian who takes a sample may dispose of it in any manner that the officer or guardian considers appropriate.



Seizure

Section 51: A fishery officer or fishery guardian may seize any fishing vessel, vehicle, fish or other thing that the officer or guardian believes on reasonable grounds was obtained by or used in the commission of an offence under this Act or will afford evidence of an offence under this Act, including any fish that the officer or guardian believes on reasonable grounds

- a) was caught, killed, processed, transported, purchased, sold or possessed in contravention of this Act or the regulations; or
- b) has been intermixed with fish referred to in paragraph (a).

Trespass: see *Entry without liability for trespass*

4.2 Inspector powers

Section 38(3): An inspector may, at any reasonable time, enter any place, premises, vehicle or vessel, other than a private dwelling-place or any part of any place, premises, vehicle or vessel used as a permanent or temporary private dwelling-place, where the inspector believes on reasonable grounds that any work or undertaking resulting or likely to result in the deposit of a deleterious substance in water frequented by fish or in any place under any conditions referred to in subsection 37(1) is being, has been or is likely to be carried on,

and the inspector may, for any purpose related to the enforcement of this section, conduct inspections, including examining any substance or product found therein, taking samples thereof and conducting tests and measurements.

Section 38(3.1): An inspector with a warrant issued under subsection (3.2) may at any reasonable time enter any place, premises, vehicle or vessel, other than a private dwelling-place or any part of any place, premises, vehicle or vessel used as a permanent or temporary private dwelling-place, where the inspector believes on reasonable grounds that an offence under subsection 40(2) is being or has been committed and search that place, premises, vehicle or vessel for evidence of the offence.

Section 38(3.2): Where on *ex parte* application a justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that there is in any place, premises, vehicle or vessel referred to in subsection (3.1)

- a) anything on or in respect of which an offence under subsection 40(2) is being or has been committed, or
- b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence under subsection 40(2), the justice of the peace may issue a warrant under his hand authorizing the inspector named therein to enter

and search the place, premises, vehicle or vessel for any such thing subject to such conditions as may be specified in the warrant.

Section 38(3.3): In exceeding a warrant issued under subsection (3.2), the inspector named therein shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

Section 38(3.4): An Inspector may exercise the powers of entry and search referred to in subsection (3.1) without a warrant issued under subsection (3.2) if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

Inspector's direction

Section 38(6): Where an inspector, whether or not a report has been made under subsection 38(4), is satisfied on reasonable grounds that there is an occurrence referred to in subsection 38(4) and that immediate action is necessary in order to carry out any reasonable measures referred to in subsection 38(5), he may, subject to subsection (7) and the regulations, take any such measures or direct that they be taken by any person referred to in paragraph 38(4)(a) or (b).



Section 38(7): Any requirement or direction of an inspector under this section that is inconsistent with any requirement or order of a pollution prevention officer under the *Canada Shipping Act* is void to the extent of the inconsistency.

Penalties

Section 40(3): Every person who
f) fails to comply with the whole or any part of a direction of an Inspector under subsection 38(6), is guilty of an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding two hundred thousand dollars and, for any subsequent offence, to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both.

4.3 Limitation period for laying charges

Section 82(1): Proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within but not later than two years after the time when the Minister became aware of the subject-matter of the proceedings.

4.4 Defence of due diligence

Section 78.6: No person shall be convicted of an offence under this Act if the person establishes that the person
a) exercised all due diligence to prevent the commission of the offence; or
b) reasonably and honestly believed in the existence of facts that, if true, would render the person's conduct innocent.

4.5 Penalties (general) and court orders

Section 78: Except as otherwise provided in this Act, every person who contravenes this Act or the regulations is guilty of
a) an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding one hundred thousand dollars and, for any subsequent offence, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year, or to both; or
b) an indictable offence and liable, for a first offence, to a fine not exceeding five hundred thousand dollars and, for any subsequent offence, to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding two years, or to both.

Section 78.1: Where any contravention of this Act or the regulations is committed or continued on more than one day, it constitutes a separate offence for each day on which the contravention is committed or continued.

Liability of employers and corporate officers

Section 78.2: Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted.

Section 78.3: In any prosecution for a offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused.

The *Fisheries Act* is one of the oldest acts in Canada, given Royal Assent in 1868, and is still one of the strongest pieces of environmental legislation.



Section 78.4: In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by a person in respect of any matter relating to any operations under a lease or licence issued to the accused pursuant to this Act or the regulations, whether or not the person is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused.

Section 79: Where a person is convicted of an offence under this Act and the court is satisfied that as a result of committing the offence the person acquired monetary benefits or monetary benefits accrued to the person, the court may, notwithstanding the maximum amount of any fine that may otherwise be imposed under this Act, order the person to pay an additional fine in an amount equal to the court's finding of the amount of those monetary benefits.

Court order provisions

Section 79.2: Where a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing any one or more of the following prohibitions, directions or requirements:

- a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;
- b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to any fish, fishery or fish habitat that resulted or may result from the commission of the offence;
- c) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;
- e) directing the person to pay the Minister an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the Minister as a result of the commission of the offence;
- d) directing the person to perform community service in accordance with any reasonable conditions that may be specified in the order;
- f) directing the person to pay Her Majesty an amount of money the court considers appropriate for the purpose of promoting the proper management and control of fisheries or fish habitat or the conservation and protection of fish or fish habitat;
- g) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement mentioned in this section;
- h) directing the person to submit to the Minister, on application by the Minister within three years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances; and
- i) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act.

4.6 Recovery of Crown costs

Section 42(1): Where there occurs a deposit of a deleterious substance in water frequented by fish that is not authorized under section 36 or a serious and imminent danger thereof by reason of any condition, the persons who at any material time

- a) own the deleterious substance or have the charge, management or control thereof, or

b) are persons other than those described in paragraph (a) who cause or contribute to the causation of the deposit or danger thereof, are, subject to subsection 42(4) in the case of the persons referred to in paragraph (a) and to the extent determined according to their respective degrees of fault or negligence in the case of the persons referred to in paragraph (b), jointly and severally liable for all costs and expenses incurred by Her Majesty in right of Canada or a province, to the extent that those costs and expenses can be established to have been reasonably incurred in the circumstances, of and incidental to the taking of any measures to prevent any such deposit or condition or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result therefrom.

Section 42(2): All the costs and expenses referred to in subsection (1) are recoverable by Her Majesty in right of Canada or a province with costs in proceedings brought or taken therefor in the name of Her Majesty in any such right in any court of competent jurisdiction.

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Section	Intent	Page
20	The Minister may require fish-ways to be constructed.	8, 9
21	The Minister may authorize payment, order construction or removal or require fish stops or diverters for fish-ways.	8, 9
22	The Minister may require sufficient flow of water for the safety of fish and flooding of spawning grounds as well as free passage of fish during construction.	9, 10
27	Prohibits the damage or obstruction of fish-ways, the impediment of fish to fish-ways and nearby fishing.	8
30	The Minister may require fish guards or screens to prevent the entrainment of fish at any water diversion or intake.	7, 8
32	Prohibits the destruction of fish by any means other than fishing.	8
35	Prohibits works or undertakings that may result in harmful alteration, disruption or destruction of fish habitat, unless authorized by the Minister or under regulations.	2, 4, 5
36	Prohibits the deposit of deleterious substances into waters frequented by fish, unless authorized under regulations.	2, 6
37	The Minister may request plans and specifications for works or undertakings that might affect fish or fish habitat. The Minister may, by regulations or with Governor-in-Council approval, make orders to restrict or close works or undertakings that may harmfully alter fish habitat or lead to the deposit of deleterious substances.	9
38	Gives the Minister the authority to appoint inspectors and analysts and describes inspectors' powers, including entry, search and the power to direct preventative, corrective or cleanup measures. Provides for regulations that require reporting of abnormal deposits of a deleterious substance or substances that occur in contravention of the general prohibition, regulations or site-specific authorizations.	6, 12, 13
40	Sets out penalties in case of a contravention of: sections 35 or 36; failing to provide information or to undertake a project in compliance with s.37; or failing to make a report or to otherwise comply with s.38.	5, 6, 8, 13
42	Those causing the deposit of deleterious substances in waters frequented by fish are liable for costs incurred by Her Majesty. Also, the Minister shall prepare an annual report on administration and enforcement of the fish habitat protection and pollution prevention provisions of the <i>Fisheries Act</i> as well as a statistical summary of convictions under s.40.	14, 15

If you are planning work in or near water, you should contact Fish Habitat Management Program staff at your local Fisheries and Oceans Canada (DFO) office.



Regional Habitat Management Program Location Offices

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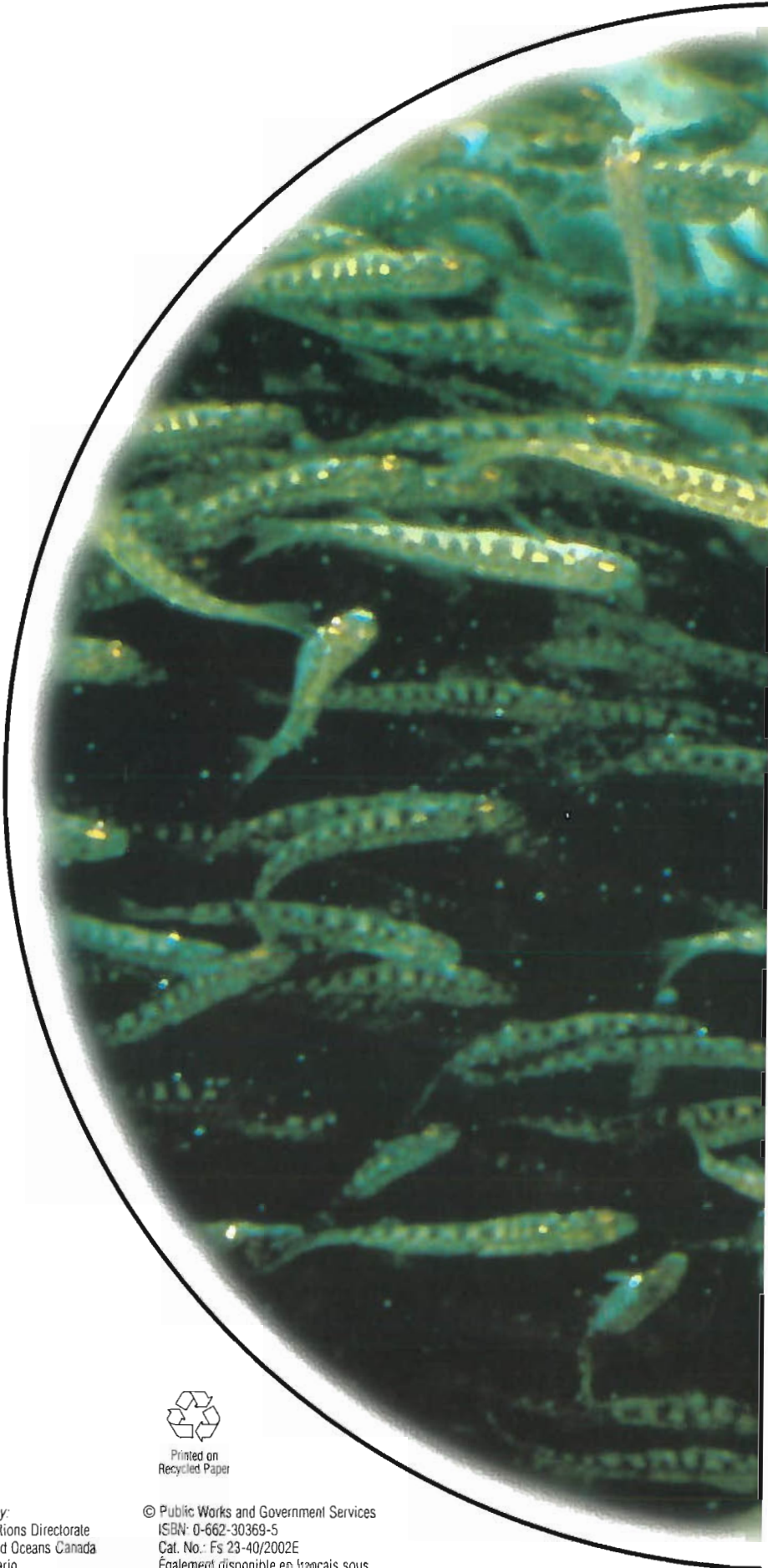
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