



Fisheries and Oceans  
Canada

Pêches et Océans  
Canada

# REVIEW OF THE 2012 CHANGES TO THE *FISHERIES ACT:*

## *Restoring Lost Protections and Incorporating Modern Safeguards*

### WHAT WE HEARD FROM INDIGENOUS GROUPS AND RESOURCE MANAGEMENT BOARDS

(1 APRIL 2016 – 28 FEBRUARY 2017)

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## INTRODUCTION

On November 13, 2015, the Prime Minister mandated the Minister of Fisheries, Oceans and the Canadian Coast Guard to review the previous government's changes to the *Fisheries Act*, restore lost protections and incorporate modern safeguards. The Parliamentary Standing Committee on Fisheries & Oceans (the Standing Committee) was asked to examine the 2012 changes to the *Fisheries Act* and to engage with Canadians on their views of the changes.

The Standing Committee heard from 50 witnesses, which included two Indigenous groups and one Resource Management Board (represented by two individuals). The Standing Committee also received 188 written submissions of which 40% were from Indigenous groups. Eight resource management boards established under land claims agreements also made submissions, either individually or jointly. These boards considered the implications of the changes to the *Fisheries Act* to the beneficiaries (i.e., Indigenous groups) of the agreements under which the boards were established.

In addition to the Standing Committee's process, the Fisheries and Oceans Canada (DFO) engaged directly with Indigenous groups and Resource Management Boards. Funding was provided to support the participation of Indigenous groups in the review.

Between August 2016 and January 2017, DFO officials participated in more than 90 meetings with Indigenous groups and various Resource Managements Boards. The Department took note of specific comments or feedback on the changes to the *Fisheries Act* from those meetings. In some cases, meetings were with individual Indigenous groups or Resource Management Boards, while in other cases, with multiple groups or boards in meetings coordinated by regional organizations. Altogether, the Department and the Standing Committee received 149 written submissions from Indigenous groups.

Most Indigenous groups provided context for their interests in the review and in particular, their connection to their traditional territories and traditions relative to lands and waters and fisheries resources. Some also provided historical information on the effects of development in their traditional territories.

The Department has considered the comments and recommendations directly pertaining to the 2012 changes to the *Fisheries Act*. Detailed comments received from Indigenous groups from Resource Management Boards are summarized separately.

Please note that the intent of this document is to summarize the input and recommendations provided by commenters. As such, comments were consolidated, summarized and may have been simplified. As such, individual comments may not be readily identified.

## **ORGANIZATION OF THIS REPORT BY THEME**

Fisheries and Oceans Canada has categorized the information received from Indigenous peoples and Resource Management Boards under four key themes:

Theme 1 - 2016-2017 Engagement

Theme 2 - Regulatory and Compliance Activities

1. Recommended changes to the *Fisheries Act*
2. Policy and program
3. Monitoring, enforcement and reporting

Theme 3 - Partnering and Collaboration

Theme 4 - Planning and Integrated Management



Comments received from Indigenous groups and Resource Management Boards concerning engagement itself are addressed under the first theme, Indigenous Engagement. The theme of Regulatory and Compliance Activities includes recommendations for modernizing legislation, policies and programs to enable a robust modern regulatory framework for the delivery of fish and fish habitat protection under the *Fisheries Act*. It also includes recommendations related to monitoring threats to fish, fish habitat and fisheries to ensure compliance with the *Fisheries Act*, and related to reporting on the outcomes of activities to manage these threats. The

majority of comments received from Indigenous groups and Resource Management Boards falls under Themes 1 and 2.

The theme of Partnering and Collaboration addresses recommendations for DFO to leverage capacity, build expertise, and create opportunities to achieve greater fish and fish habitat protection outcomes. The theme of Planning and Integrated Management addresses the process of managing fisheries in a sustainable manner, while fostering economic prosperity for those who depend on fisheries for their livelihoods.

## CHAPTER 1: INDIGENOUS GROUPS

### THEME 1 – 2016-2017 ENGAGEMENT

Indigenous groups expressed appreciation that the Government of Canada is working towards fulfilling its commitment to review the 2012 changes to the *Fisheries Act* and for having had the opportunity to meet with regional DFO officials. However, there was also criticism about the engagement process. Some of the more common comments on the process included:

- The Standing Committee process was too short and disrespectful;
- The delays and limited funding for participation in the review precluded meaningful input;
- The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was not followed;
- Engagement opportunities were not genuine and some felt that the input would not be seriously considered or would carry little weight;
- There was no input sought on the scope of the review;
- There was no access to DFO data on fish habitat protection activities; and
- The process did not support the participation of small and remote communities.

Overall, there was a strong feeling that this process would not be considered as fulfilling the Crown's Duty to Consult with Indigenous peoples.

Going forward, many groups felt strongly that they needed to be engaged on any legislative proposals to amend the *Fisheries Act* and also wanted to be consulted on changes to policy related to fish and fish habitat protection under the *Fisheries Act*. A separate consultation process was requested to review how the 2012 changes have re-focused DFO's objectives and day-to-day operations. Many groups requested written responses on how their comments were considered. One suggestion included implementing an independent expert panel (with Indigenous representatives) to incorporate feedback to strengthen the *Fisheries Act*.

Some groups recommended that the government immediately re-instate the pre-2012 version of the *Fisheries Act* until a more fulsome review and consultation could be undertaken. It was also noted that some community members had expected more materials, workshops, and meetings with government officials.

It was recommended that there be a whole-of-government approach to the reviews of the, environmental assessment processes under *Canadian Environmental Assessment Act, 2012*, the *Navigation Protection Act* and the changes to the *Fisheries Act*, and National Energy Board modernization should be coordinated and timelines for review should be harmonized. That coordinated review should consider: Indigenous rights; Indigenous traditional knowledge; ecosystem approach; project monitoring; best available scientific information; accommodation, and the free, prior, and informed consent (FPIC) principle.

### **INDIGENOUS (ABORIGINAL) RIGHTS**

One of the stronger messages conveyed across the comments was the need for the federal government to ensure that any law, program or policy did not abrogate or derogate the rights of Indigenous peoples. Some suggested that the *Fisheries Act* include a non-derogation clause to make it clear that this legislation does not over ride Aboriginal rights. Some identified the importance of aligning the *Fisheries Act* with the Aboriginal and treaty rights under Section 35 of the *Constitution Act, 1982* and with Final Agreements and Self-Government Agreements. The message was also conveyed that the feedback from Indigenous communities should not be combined with other parties under the term "stakeholder".



## **RECONCILIATION**

Some recommended including reconciliation principles in the *Fisheries Act* to facilitate and promote consent-based decision-making processes (e.g., co-management/co-governance) that have the flexibility to reconcile pre-existing sovereignty and Indigenous jurisdictional authority. Comments requested acknowledgement of Indigenous (Aboriginal) rights and the need for Canada to reconcile with its Indigenous peoples, and to work toward co-management of the country's fish and fish habitat.

## **USE OF INDIGENOUS INFORMATION**

The following recommendations were received around the use of Indigenous traditional/ecological knowledge to inform environmental and regulatory reviews:

- Recognize/incorporate contemporary and traditional Indigenous knowledge;
- Give due deference and respect to Indigenous laws, values and practices;
- The Crown and Indigenous people should jointly decide on fisheries management objectives; and
- Identify culturally appropriate measures and standards to avoid, mitigate or offset impacts to fish and fish habitat.

## **CONSULTATION AND ENGAGEMENT IN DECISION-MAKING**

Many comments were received on the need to consult with Indigenous groups at nearly every step in the regulatory review process, including:

- Project-specific review (including early phases in project planning processes and studies so that input can influence outcomes);
- Development of policy and legislation;
- Acting on the current *Fisheries Act* provisions (e.g., establishing ecologically significant areas, exercising Ministerial discretion, etc.); and
- Providing opportunities for consultation on projects outside of traditional lands that may affect Indigenous groups.

A consultation protocol was recommended to be developed to include:

- Manageable timelines that allow for more valuable participation from Indigenous groups;
- Increased capacity funding and training for Indigenous people;
- Roles for Indigenous people in consultation, decision-making, monitoring and implementation;

- Mandatory information-sharing procedures;
- Notification procedure established with Chiefs and Councils;
- Indigenous community meeting requirements;
- Funding to hire third-party expert reviewers (engineers, biologists, environmental scientists, lawyers, etc.);
- Mitigation and accommodation requirements; and
- Monitoring and follow-up requirements.

It was recommended to establish a Section 35 of the *Constitution Act, 1982* Rights Compliance Office that would address:

- Preparation of Section 35 of the *Constitution Act, 1982* compliance plan for each project;
- Compliance monitoring throughout each project;
- Emergency preparedness and relief action;
- Technical and scientific mentorship program to fully develop local expertise;
- Elder and traditional knowledge advisory committee;
- Easily accessible funding for Indigenous participation and consultation; and
- Contracting capacity for scientific, traditional and local expertise





It was also recommended to create an Independent Indigenous Nations Office, established under the Canadian Environmental Assessment Agency. This Office would create a Section 35 consultation plan, act as a single window for proponents working around water, and would help proponents ensure that they have contacted the right Indigenous groups.

Additional consultation-related feedback included:

- For decisions that may affect rights and interests, Indigenous groups should be engaged well in advance of a decision, co-develop and agree on the engagement process, and be adequately resourced (capacity and funding) to engage and/or participate in the decision-making process;
- Any delegation of consultation to the provinces must be communicated;
- That only Indigenous peoples can assess the effects of projects on their rights, activities and interests;
- Manage fisheries and impacts to fish and fish habitat to reflect constitutionally protected rights, recognizing that protection of fish habitat is crucial to protecting Indigenous rights;
- A request for a broad recognition and respect of Indigenous rights in the *Fisheries Act*, with enshrined consultation requirements for decision-making included and clarified, where required;
- Relationships need to be cultivated – a systematic and comprehensive approach is required that captures the values, interests and concerns of Indigenous groups;
- Make genuine efforts to demonstrably incorporate Indigenous concerns and interests into decisions. Ensure meaningful consultation, accommodation and consent-seeking process with Indigenous groups;
- In its current form, the *Fisheries Act* adversely affects the right of Indigenous groups to be consulted and accommodated in several ways, including the absence of provisions pertaining to the consultation and accommodation of Indigenous groups. A legal consultation mechanism must be incorporated into the Act;
- The *Fisheries Act* should enable collaborative governance and management of fish, fish habitat and fisheries;
- Elders and “Oral Traditional Evidence” should be given equal weight to Western experts and evidence;
- DFO should provide a clear statement regarding what DFO considers to be an impact to Indigenous and treaty rights, relative to the *Fisheries Act* and fish habitat protection provisions;
- Indigenous groups should be consulted separately from the public;

- Develop regulations to guide the assessment of applications for authorization, which require consultation with Indigenous groups and consideration of cumulative effects and the effectiveness of mitigation measures;
- The project review protocol should be similar to that adopted by the Canadian Environmental Assessment Agency. This should incorporate modalities of consultation with Indigenous groups based on the consultation protocol established by the Assembly of First Nations Quebec-Labrador (as an example);
- Departmental staff working in traditional territories should be trained to understand the legislative situation of each Indigenous group;
- Clarify triggers, funding and timelines for consultation;
- Require public notices and direct communications with Indigenous groups;
- Any standards or requirements for proponents should make clear the obligations the proponent has to consult with Indigenous peoples and, if no duty arises or the proponent is not responsible for discharging it, should encourage proponents to consult with the appropriate Indigenous communities as a moral and ethical responsibility.





### RECOMMENDED CHANGES TO THE FISHERIES ACT

#### PURPOSE AND APPLICATION PRINCIPLES

A number of comments identified the need for the *Fisheries Act* to include a preamble, purpose and principles like other modern laws. One suggestion was to develop this through the formation of a committee of stakeholders and Indigenous people to review and develop opening statements to make the purpose of the *Fisheries Act* clear and less open to misinterpretation.

Overall, it was recommended that the *Fisheries Act* should emphasize concepts such as sustainable development, and the protection and conservation of fish and fish habitat for future generations. Principles and objectives suggested for consideration included:



- Sustainable fisheries or fish populations;
- Precautionary approach;
- Ecosystem approach;
- Evidence-based decision-making;
- Protection of aquatic ecosystem function, health and integrity;
- Protection of biodiversity and genetic diversity within and between fish populations;
- Long-term sustainability of fisheries; and
- Indigenous reconciliation, with the requirement for

decisions to be made considering how they affect Indigenous rights and the reliance of Indigenous peoples on ecosystems for the exercise of constitutionally protected rights.

#### “ABORIGINAL FISHERIES”

One of the more contentious changes to the *Fisheries Act* in 2012 was the introduction of the terms “commercial”, “recreational” and “Aboriginal” in relation to a fishery and their associated definitions. While there was full consensus among Indigenous respondents that this change was problematic, there was a divergence of views on how to remedy it. The majority of respondents called for a repeal of the concept and definitions, but many provided suggestions for improving the legislation if the concept were retained. Those groups that made a case for keeping the definition of “Aboriginal” in relation to a fishery felt that if revised, it would allow for a broader application of Section 35 of the *Constitution Act, 1982*.

Suggestions for improving the existing use of these terms included:

- Clarifying the definitions of commercial, recreational and Aboriginal fisheries, especially Aboriginal fisheries, which should reflect the scope of Indigenous fisheries established through court decisions and under the *Constitution Act, 1982* (e.g., include sale, trade, barter, commercial, traditional, and ceremonial uses of fish);
- Indigenous groups should be consulted on the definitions;
- Use of the term “Indigenous” rather than “Aboriginal”;
- If terminology is used to reflect First Nations, terminology must also be used to reflect Métis;
- There should be a differentiation between Aboriginal and treaty First Nations;
- “Aboriginal” in relation to a fishery should be listed first to reflect the higher priority it has over commercial and recreational interests;
- Some groups indicated that conservation should be the first priority;
- The concept of recreational fisheries (catch and release) is inconsistent with the traditional values of some Indigenous groups;
- The reference to “land claims agreement entered into with the Aboriginal organization” is too narrow. The definition should be broadened to make reference to Indigenous and treaty rights to harvest fish, which may be held by Indigenous people and not just by “Aboriginal organizations”.



### OTHER DEFINITIONS

Many Indigenous groups made recommendations for refining other definitions in the *Fisheries Act*. These recommendations included:

#### Fish habitat

- Redefine the term as spawning grounds, nursery areas, rearing areas, migration areas, and other areas including food sources, water, benthic habitats, and riparian areas upon which fish depend directly or indirectly in order to carry out their life processes;
- The definition should also include cover, sufficient water flows and volumes, and environmental flows; and
- Include areas such as wetlands, overwintering habitats, and aquifers that provide ecosystem services which benefit fish and riparian vegetation.



#### Fish

- Redefine the term as fish, intertidal bivalves and other shellfish, crustaceans and marine animals, excluding cetaceans, and the parts of fish, intertidal bivalves and other shellfish, crustaceans and marine animals, excluding cetaceans, and the eggs, sperm, spawn, larvae, spat, juvenile stages and adult stages of fish, intertidal bivalves and other shellfish, crustaceans and marine animals, excluding cetaceans.

#### Add a definition of Aboriginal government

- To mean the representative governing body or institution that is authorized to execute and implement agreements entered into under the *Fisheries Act* on behalf of one or more Indigenous peoples. This would be used in section 4.1(1) and in various other sections of the Act (e.g., entering into partnerships).

### **SCOPE OF APPLICATION OF SECTION 35 OF THE FISHERIES ACT**

DFO has heard from Indigenous peoples that the 2012 changes to the *Fisheries Act* provide less protection for fish and fish habitat. There have been many recommendations on how to restore lost protections, which included:

- A return to section 32 (prohibiting the killing of fish by means other than fishing) and section 35 (prohibiting the harmful alteration, disruption and destruction of fish habitat - HADD) in the *Fisheries Act* but in the phrase “work, undertaking or activity”, keep the word “activity”.
- Terminology needs to be clear – remove “permanent” from alteration; or alternatively, if the term “permanent” remains, it must be defined;
- Remove “serious” from harm to fish;
- Scope of the provision should address non-permanent effects and sub-lethal effects;
- Recommend that not only the size or productivity of a fishery or fish population be protected under the *Fisheries Act*, but also that the quality of fish is also protected (e.g., mercury levels in fish need to be considered);
- Section 32 must be expanded from killing of fish to include stress, injury, quality and condition of fish, or lowered productivity rates;
- Respect the limitations of the lack of full information and adopt a clause considering HADD of fish habitat that is likely to occur.
- Clear enforceable criteria for defining HADD of fish habitat;
- Scope of protection should be based on ecological considerations, not economic considerations;
- The prohibitions should apply to all fish;
- Instead of “fish” use the phrase “fish species that support” to ensure that species such as lake trout in unfished lakes are still protected;
- Remove the sections in the *Fisheries Act* allowing the Minister to exclude areas and fisheries (e.g., paragraph 43(1) (i.01) (excluding fisheries) and subsection 43(5) (excluding waters) should be repealed);
- Include new works, undertakings or activities in the *Fisheries Act* that require authorization:
  - Any project that has the potential to modify > 5% of the volume of a waterbody in either time or space, should require an environmental assessment and approval under the *Fisheries Act*;
  - Any project that produces pollution which has the potential to enter ground or surface waters should require an environmental assessment and approval under the *Fisheries Act*; and

- Projects that have the potential to disrupt groundwater volume and direction should require environmental assessment and approval under the *Fisheries Act*.

### **FACTORS THE MINISTER MUST CONSIDER (SECTION 6)**

The Minister of Fisheries, Oceans and the Canadian Coast Guard must take into account the factors set out in Section 6 of the *Fisheries Act* before a regulation is made or a Ministerial power is exercised, such as the issuance of a Paragraph 35(2)(b) authorization or a request to provide for fish passage or sufficient flow. Many comments were received regarding the types of factors that should be taken into consideration. These are captured below:

- Compliance with Section 35 of the *Constitution Act*, 1982 and the United Nations Declaration on the Rights of Indigenous People (UNDRIP), including:
  - Recognition and incorporation of Indigenous knowledge;
  - Principles of reconciliation and protection of inherent rights;
  - Cultural sustainability;
  - Indigenous rights to fish should be given priority over other users of the fisheries. This should be the first Section 6 factor. One group was more specific and noted Indigenous rights to fish for food (excluding commercial) should be the first factor;
  - Respect for Indigenous laws – work in cooperation with Indigenous governments (Indian bands and governments established under modern treaties/land claims agreements);
  - Add a list of all Indigenous agreements and modern treaties;
  - Consistency with priority of Indigenous and treaty fishing rights, cultural significance of fish species or areas to Indigenous peoples (requires seeking their input);
  - Strong support to limit discretion and ensure remaining discretion does not infringe Indigenous rights;
  - Indigenous fisheries management objectives need to be accounted for.
- Strong support to include the no net loss and net gain approaches to sustainable development;
- Authorization discretion is too broad and the considerations are too narrow;
- The 2012 changes to the *Fisheries Act* provided very wide latitude for Ministerial discretion. Additional regulations and agreements make the regime very complex, difficult to understand and uncertain for Inuvialuit and others including industry. Serious consideration should be given to simplifying and rationalizing this system in the interests of a clear understandable management regime; and
- Clarify how factors are weighted, especially in the absence of information.

There was support for the Section 6 factors, but wide ranging opinions on the wording of additional factors that could be added:

- Conservation and protection of fish and fish habitat;
- Restoration and/or enhancement of degraded fish habitat;
- Restoration and/or rebuilding depleted fish stocks;
- Ecosystem-based management approach;
- Ecological integrity and ecological impacts to populations and habitats;
- The contribution of the relevant fish and fish habitat to the health and functioning of ecosystems;
- Adopting the precautionary principle when managing risk and uncertainty;
- Application of evidence-based decision-making that includes best available information from science and Indigenous traditional knowledge, with equal weight afforded to both;
- Respect Indigenous rights and interests related to fish and fish management;
- Sustainability of fish populations – principles of sustainability (and define sustainability);
- Likely climate change effects on impacted fish stocks and ecosystems;
- Consideration of potential cumulative effects of decisions (with reference to watershed or regional plans where available);
- Consistency with international standards and commitments on marine governance;
- State of watersheds and sub watersheds;
- Nutritional, cultural, social and economic significance of the fish species and ecosystems;
- The potential role of the relevant fish and fish habitat to future fisheries including any environmental protection objectives and requirements, including those of land claims agreements;
- Replace “public interest” with “public concern” in the factors; and
- Reflect better conservation and protection of fish and fish habitat so that the Minister and Cabinet cannot use political interpretation of “in the public interest” to authorize – should be carefully worded such that Indigenous interests are not infringed upon.

### **AUTHORIZATION REQUIREMENTS**

Subsection 35(1) of the *Fisheries Act* prohibits the carrying on of a work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery or to fish that support such a fishery. However, under Paragraph 35(2)(b) of the *Fisheries Act*, the Minister of Fisheries and Oceans (the Minister) may issue an authorization with terms and conditions in relation to a proposed work, undertaking or activity that may result in serious harm to fish.



Comments on this authorization approach are included below:

- Before an authorization is issued, DFO should physically inspect the site to determine the true impact of works associated with the request for authorization (especially important with larger projects); and
- DFO should include a project list similar to that under the *Canadian Environmental Assessment Act*, 2012, which lists those types of projects that must be reviewed in regulations.

#### **DISCRETIONARY POWERS OF THE MINISTER**

- Many Indigenous groups indicated that they felt the discretionary powers of the Minister and the Governor in Council are too large and could easily undermine Indigenous fishing rights. It was recommended that the discretionary powers granted to the Minister and the Governor in Council be reduced and more clearly defined (such as those under sections 4.1, 4.2, 35(4), 35(5.2) and 43(5) of the *Fisheries Act*). There was support for repealing subsections 43(1)(i.01) and 43(5) of the *Fisheries Act*.

## **POLICY AND PROGRAM**

#### **IMPLEMENT DFO POLICY**

It was recommended that relevant sections of DFO's numerous policies on habitat protection, such as the *Policy for Conservation of Wild Pacific Salmon*, *Wild Atlantic Salmon Conservation Policy*, *Policy for Managing the Impacts of Fishing on Sensitive Benthic Areas*, and *Ecological Risk Assessment Framework for Coldwater Corals and Sponge Dominated Communities* be incorporated directly into the *Fisheries Act*. This was viewed as providing a stronger safety net for all fish in the country, and help fill the “legislative vacuum” as these policies do not have the force of law.

#### **REVIEW OF LOWER-RISK PROJECTS**

Lower-risk projects can be of great concern over time, as small impacts can contribute to large cumulative effects. Many comments and concerns were received regarding lower-risk projects:

- DFO needs to apply clear, enforceable standards to regulate smaller projects that cause cumulative effects;
- Develop a standards-based approach and incorporate these standards into *Fisheries Act* policy. Standards must incorporate objective science in conjunction with traditional knowledge;

- Concerns were raised about the approach of proponent self-assessment and suggestions included eliminating self-assessment and listing or publicly reporting all self-assessed projects so that the projects can be monitored by communities;
- Implement a streamlined offsetting process for lower-risk activities;
- Make it mandatory to review all projects that may have an impact on fish habitat; and
- Require proponent to notify Indigenous groups when working in water.

#### **INDUSTRY-SPECIFIC PROJECTS**

- Canada should work with Indigenous groups to develop industry-specific regulations under the *Fisheries Act* for their regions; and
- There should be minimum standards for development, alteration, water transfer and similar activities that have the potential to alter aquatic and riparian ecosystems, and improved capacity of the *Fisheries Act* to make such standards.



#### **CAPACITY - FISHERIES PROTECTION PROGRAM AND CONSERVATION & PROTECTION**

Many comments have been received from Indigenous groups concerning the reduced capacity of DFO. Comments ranged from increasing enforcement staff, to creating opportunities for Indigenous peoples to contribute to monitoring and compliance.

They included:

- Bridge capacity gap by working with local Indigenous groups. This can fill stewardship, monitoring and compliance roles.
- DFO could provide contribution partnership funding to capacity building; money is needed to hire fisheries experts to take part in the environmental assessment process and co-review of *Fisheries Act* applications;
- Build capacity and partnerships with Conservation and Protection (i.e., DFO's enforcement staff) and Indigenous groups for increased Fishery Guardians to monitor and enforce within traditional areas;
- Create mechanisms for Indigenous Guardians, provinces and local governments to assist with evaluating, monitoring and enforcement of projects;
- It was often noted that DFO is not enforcing the new *Fisheries Act*, based on the lack of charges being laid;
- DFO should hold the provinces accountable for the destruction of fish habitat that they are allowing and permitting;
- Provide DFO enough capacity to move away from proponent self-assessment. This should include resources and funds to evaluate all projects or works under federal jurisdiction such that cumulative effects can be identified, assessed and monitored;
- Reinstate smaller DFO regional/satellite offices;
- Address known regulatory gaps to ensure DFO, in collaboration with Indigenous groups, is capable of responding to all activities that are harmful to fish and fish habitat and able to determine effects (e.g., ongoing collection of baseline data to support determination of changes due to activities);
- The federal government should restructure the responsible Program within DFO to provide more meaningful, and regionally applied regulatory oversight of the *Fisheries Act* and any associated or harmonized application of the *Species at Risk Act*;
- DFO must utilize restorative justice forums as a meaningful approach to punitive measures for *Fisheries Act* charges in consultation with the local Indigenous groups;
- DFO has given enforcement of riparian covenants to the province and the province is not enforcing them; and
- DFO's 1-800 number leads people to an answering machine and calls are returned three weeks later.

### **AVOIDANCE/MITIGATION/OFFSETTING**

Maintaining or enhancing the ongoing productivity and sustainability of fish and fish habitat can be achieved through a number of approaches, including offsetting harm of development activities. Some comments were received that indicated how the avoidance-mitigation-offsetting regime could be improved:

- Avoid harm, whenever possible, and maintain the productivity of Canada’s fisheries by avoiding impacts. The term “avoid” must be replaced by the term “prevent”;
- Offsetting does not work in pristine areas – money should be put toward research and data collection;
- Mitigation measures are not always effective – the proponent should be required to implement true adaptive management plan;
- The *Fisheries Act* needs to outline the purpose of offsetting;
- Larger compensation ratios for offsetting are required (at least 2:1 or 3:1 of 6:1 ratios) (e.g., Harper and Quigley study);
- Offsetting should be created before impacts are allowed;
- Restrict the practice of offsetting – treat as a last resort; and
- Some Indigenous groups requested that proponents be required to submit an Avoidance and Mitigation Plan regardless of whether an authorization is required and to provide such plans to the Indigenous groups for projects within their respective traditional territories and domestic fishing areas.

### **MONITORING, ENFORCEMENT AND REPORTING**

Many comments related to monitoring and enforcement activities undertaken by the Fisheries Protection Program and the Conservation and Protection Program and included the following:

- A coherent monitoring system supported with GIS mapping system accessible by partners and public is needed;
- Simplify and clarify the avenues of communication for reporting infractions directly to DFO;
- Create a mechanism for follow-up and enforcement to streamline coordination of DFO response and allow for immediate penalties for infractions;
- DFO should implement ticketing for minor offences;
- Add section in the *Fisheries Act* that allows for stop-work orders;
- Minimum and maximum fines for offences need to be added for Section 40 offences. Specifically there needs to be minimum and maximum fines for duty to notify, authorization non-compliance and failure to adhere to corrective measures;

- There should be no maximum fine with proportional penalty based on damage and value of company;
- Project licenses should also be revoked for major offences;
- Develop a program in conjunction with Indigenous groups to allow for collaboration with Indigenous groups to manage fish habitat, monitor projects and enforce *Fisheries Act* provisions;
- Simplify and clarify the role of the provincial governments and legislation in enforcing the *Fisheries Act*;
- The federal government must ensure that enforcement of the *Fisheries Act* changed or otherwise is carried out appropriately and completely for the benefit of all Canadians, not just a moneyed few and provincial and municipal governments who believe that they have the right to harm fish and fish habitat without fear of consequence or action by the federal government under its own legislative responsibility;
- Changes to the *Fisheries Act* must be accompanied by adequate resources to enforce the Act. Enforcement should focus on large-scale industrial and land development projects including intensive agricultural, energy sector, urban development, large-scale recreational development, rural land use development and similar activities that have the greatest potential to have major impacts to the inland, freshwater fishery and fish habitat;
- Members of the agriculture industry should be subject to the same rules and standards as other proponents;
- Suggest that all major projects must undergo a 5-10 year review by DFO scientists. And if DFO finds a project is causing serious harm to fish or fish habitat, DFO has the authority to order changes so that the harm can be corrected.
- DFO should take a much more active role in monitoring the health of rivers and lakes; and
- Environmental Damages Fund – up to 10% of fines should be directed to improvement, protection and restoration. A roster of groups (including Indigenous groups) should be established that can benefit from the funding.

### **IMPROVE MONITORING**

There was consensus among groups that self-assessment was insufficient to ensure compliance with the *Fisheries Act* and that DFO must ensure that the advice, guidance, and conditions of approvals are being followed. Some suggested follow-up monitoring of development projects be included in the *Fisheries Act* to ensure self-assessment and project approvals achieve intended outcomes. Some groups felt that compliance monitoring should be done independently of proponents and that a database of self-assesses projects be publicly available.

### **TRANSPARENCY/REGISTRY**

It was recommended that an online registry be developed to record and provide a centralized and accessible portal for information on all applications to DFO for authorizations, as well as related DFO decisions. Conditions of DFO authorizations should also be made publicly available.

### **FUTURE REVIEWS OF THE FISHERIES ACT**

The suggestion was put forward to add provisions for the ongoing analysis of the *Fisheries Act*, as well as the establishment of a regular period of review of the Act to help it remain relevant in a changing legislative and biophysical environment. This idea was also referred to as taking an adaptive management approach which includes scheduled reviews to assess changes to the *Fisheries Act* and supporting policy statements. Many groups requested that a more fulsome review of the *Fisheries Act* be conducted, that must be consistent with UNDRIP.



Partnering and collaborating with Indigenous groups on fish and fish habitat issues is a priority for the federal government.

### **JOINT COMMITTEE/SECRETARIAT**

A number of groups suggested forming a Joint Secretariat with the Crown and Indigenous groups, or some similar body, to allow for a more strategic approach to fisheries related matters, policy development and legislative change. Some commenters also indicated that they must be consulted in the development of any such committee, emphasizing as well that an advisory committee cannot replace the duty to consult that the Crown owes to Indigenous groups. The following recommendations on the form and function of partnering and collaboration were received:

- Make it mandatory to include Indigenous groups in project reviews;
- The Department incorporate an education component to ensure that both Proponents and DFO's own staff better understand Aboriginal and treaty rights;
- The following sections of the *Fisheries Act* should all require input from Indigenous groups: 7(1) and (2), 35(3) and (4), 36(5), 45;
- Convene a panel of experts, with Indigenous groups holding at least half of the seats, to discuss gaps in knowledge and strategies for better management of systems with incomplete science;
- Incorporate provisions into the *Fisheries Act* with respect to Treaties and Final Agreements and case law related to the definition of Aboriginal rights and title;
- Indigenous groups should determine potential impacts on their rights;
- The *Fisheries Act* does not clearly outline Indigenous rights to fisheries access and management, nor does it define consultation requirements for the Crown;
- The Government should develop a process that provides opportunities and financial support to Indigenous groups and uses traditional knowledge for determining key ecologically significant areas within their traditional territories; and
- DFO should reinstate the Aboriginal Inland Habitat Program. DFO should consult with indigenous groups on ways to improve and enhance this program.

## **ROLES OF INDIGENOUS GROUPS**

Many Indigenous groups saw themselves as well suited for taking on some of the roles currently conducted by DFO. Those activities that were most commonly cited were project review and monitoring activities. Some specific comments included:

- DFO should appoint Fishery Officers/Guardians to any Indigenous community which desires such a position. This would help to further the Nation-to-Nation relationship and provide Indigenous communities with more oversight and control in managing local fisheries;
- Provide for Indigenous groups to be made fishery officers;
- Canada should delegate enforcement and monitoring powers to Indigenous groups;
- It was noted that many Indigenous communities are starting “Indigenous Guardian” programs that work with the government and private sectors to help participate in the environmental adjudication, review and monitoring of projects or initiatives;
- Capacity is an ongoing concern and a real barrier for meaningful community participation. Revisions to the *Fisheries Act* should require proponents to provide resources for community-based projects and studies, as well as training for community members;

- There should be an evolution towards a co-management and co-governance model for fish and fish habitat with Indigenous groups;
- Some Indigenous groups noted that they must be recognized as a third order of government with inherent rights and interests and jurisdictional authority over title lands and resources – provisions that provide for government-to-government agreements under the *Fisheries Act* must include Indigenous groups, as well as provinces and territories;
- Restore annual federal funding for freshwater research, including opportunities for Indigenous participation in management, monitoring and protection, including direct participation in fish and fish habitat studies;
- Convene expert panels, with Indigenous groups, to discuss gaps in knowledge and strategies for better management of systems with incomplete science;
- Proponents need to work closer with Indigenous groups to develop culturally appropriate mitigation;
- Eliminate existing loopholes that allow our oceans, estuaries, waterways, and fisheries to be affected by activities that are not subject to, or do not receive, DFO or Indigenous oversight;
- Proponents should hire Indigenous groups to collect baseline data. If it is identified that private contractors with a specific expertise pertaining to any aspect of fish and fish habitat assessment are not available through the Indigenous community, the community should be involved in the contractor selection process;
- Create opportunities for Indigenous governments to create their own fisheries legislation; and
- Increase Indigenous engagement at the strategic policy level.

## **CO-MANAGEMENT / CO-GOVERNANCE**

- Strong support was indicated for formalized co-management/co-governance arrangements including support for adding Indigenous groups and Governments to Subsections 41(1) and 41(2) of the *Fisheries Act*.

## **DECISION-MAKING PROCESSES**

Fisheries and Oceans Canada is keen to leverage capacity and create opportunities to achieve greater fish and fish habitat protection outcomes for Canadians, by collaborating with Canadians. Fisheries and Oceans Canada is also committed to building the nation-to-nation relationship with Indigenous peoples.



The following recommendations were made on how to ensure that Indigenous groups are incorporated into the Department's decision making:

- Indigenous groups should have a role in the decision-making process;
- Creation of a process through which Ministerial decisions could be challenged by Indigenous groups where there is a potential treaty rights infringement;
- Establish clear and binding mechanism to consider and apply traditional Indigenous ecological knowledge in decision-making;
- DFO should be required to provide written reasons regarding its consideration of the Section 6 factors;
- Canada must ensure that its decision making under the *Fisheries Act* is consistent with the many international standards on marine governance it has committed to meeting including: *Law of the Sea Convention (1982)*, *United Nations Agreement on Straddling and Highly Migratory Fish Stocks (1999)*, *Convention on Biological Diversity (1992)* and *Rio Declaration of Environment and Development (1992)*;
- Commitment for the support of and serious consideration of First Nations Land Use plans in decision-making;
- Consider potential repercussions on Indigenous fishing rights in the assessment of a project; and
- Engage with Indigenous groups and public stakeholders, not just those directly affected.

## **AGREEMENT WITH PROVINCES**

There were varying views on the provisions in the *Fisheries Act* that provide for the Minister to enter into agreements with provinces and allocate fish to a province for financing scientific and fisheries management activities (e.g., Sections 4.1 and 10(1) of the *Fisheries Act*).

Some groups felt equivalency agreements with the provinces were unacceptable, although the majority of commenters who raised this issue wanted Indigenous groups to be specifically referenced in these sections so that they could be delegated authorities for managing portions of the *Fisheries Act*. Many comments suggested that monitoring and enforcement activities be delegated to Indigenous groups. Others recommended clear provisions that allow for delegation of fish habitat management similar to the way recreational fisheries are managed.

## **ROLES OF OTHERS**

- Simplify and clarify role of the provincial governments and legislation in enforcing the *Fisheries Act*; and

- Consider running a certification program of professional biologists (R.P.Bio, P.Biol or equivalent), to allow for professional reliance.



## PLANNING AND INTEGRATED MANAGEMENT



### RESTORATION/STEWARDSHIP

There was broad interest in restoration and habitat stewardship activities as they contribute to achieving or maintaining a balance between the conservation of fish and fish habitat and develop projects:

- Collaboratively work with Indigenous groups, provinces, and municipalities to ensure holistic and harmonious watershed planning between jurisdictions;
- DFO should engage in proactive measures that lead to habitat protection and reduce harm and destruction and provide this type of support to Canada, i.e., tools such as the DFO Habitat Conservation and Stewardship Program (2000-2005); and
- A modernized *Fisheries Act* should require mandatory rebuilding of depressed fish populations.



## ECOLOGICALLY SIGNIFICANT AREAS

An ecologically significant area is one that needs special protection because of its ecological features, sensitivity, and/or value. The 2012 changes to the *Fisheries Act* introduced the legislative authority to define ecologically sensitive areas for protection (under Section 37), and this provision has not yet been used. The Department received some comments regarding ecologically significant areas with respect to the *Fisheries Act*, including:

- Designation of "ecologically significant areas" (Section 37) should be done in collaboration with Indigenous groups and should include fish-related cultural aspects (culturally significant/valued components to Indigenous groups);
- Subsection 37(3) should be revised to consider "sensitive areas". Sensitivity should include cultural values – Indigenous groups should be consulted when establishing these areas;
- Identify, with Indigenous groups, "NO GO" areas that are critically important to fish and fish habitat (e.g., terminus spawning grounds, headwater areas, nursery areas, riparian areas, wetlands and sensitive or critical habitat, estuaries, deltas);
- Ecologically significant areas should require enhanced protections – not simply the need for notification;
- A provision providing for consultation with Indigenous groups regarding ecologically sensitive areas under Subsection 37(3) should be added;
- DFO should apply the *Fisheries Act* to existing hydro-electric projects. This could be done through designating areas downstream of dams as ecologically significant areas;
- The *Fisheries Act* should acknowledge the central importance of estuaries and deltas to Canada's aquatic biodiversity and commit to creating Estuary Management Plans for each of Canada's high value estuaries and deltas, when modernizing the *Fisheries Act*; and
- The Peace-Athabasca Delta and the Athabasca River should be designated as "ecologically significant habitat".



## **FISH PASSAGE / FLOWS / SECTIONS 20/21**

Certain projects or undertakings may cause physical or physiological impediments to fish movement or migration, and some measures, when taken, can mitigate these impacts. Some comments were received about fish passage with respect to past impacts due to dam construction, with the common theme that fish passage should generally not be compromised. Suggestions were received for how to improve the *Fisheries Act* with respect to fish passage and flows, such as:

- Include proponent requirements or a mechanism for the proponent to be provided with guidance for the optimization of mitigation for fish passage among projects and systems;
- Implement sufficient, government-led, regional fisheries movement studies to enable the Minister to place the impacts of projects on fish movement into a greater, population-level and cumulative context over time;
- The term “functioning” fish way could be added to Sections 20-21 to force proponents to maintain fish ways;
- Require proponents of projects with the potential impact fish passage to fund monitoring programs to prove that fish passage is not being affected;
- Clarify what information would be considered necessary for the Minister to invoke Sections 20 or 21 of the *Fisheries Act* to request further studies, with a precautionary approach that can respond adequately to Indigenous groups’ and public concerns;
- Expand the definition of “barriers” to fish movement beyond simple “obstructions” or “things” to include full or partial barriers caused by behavioural impacts to fish (e.g., avoidance of underwater noise) and environmental barriers to passage (e.g., pollution, water temperature, unfavorable a biotic conditions);
- Implement government-funded studies on flows and water volumes needed for various species of fish (in different systems and seasons) to guide the *Fisheries Act*'s requirements for the maintenance of "sufficient water levels" to enable the free and safe passage of fish. Indigenous groups should conduct these surveys in their own territories;
- Require fish passage for all future undertakings or activities; and implement a long-term plan to restore fish passage across the country in partnership with affected Indigenous communities;
- Require consultation with Indigenous groups for all fish passage schemes that takes into account Indigenous knowledge;
- Indigenous communities should have the authority to request that “fishways” be installed at any obstructions they deem to be impeding the passage of fish within Indigenous traditional territory; and

- Paragraph 29(1)(b) prohibits obstructing more than 2/3 of a river, yet Indigenous groups often fully obstruct rivers for fishing and counting weirs. There is uncertainty as to whether this prohibition had to do with maintaining navigation. Provisions should be made to allow Indigenous groups to block off an entire river for fishing and fish counting.

## **ISSUES RAISED OUTSIDE OF SCOPE OF THE FISHERIES PROTECTION PROVISIONS**

A number of Indigenous groups raised issues that were outside of the stated scope of the review of the 2012 changes to the *Fisheries Act* (the Fisheries Protection Provisions).

These issues included:

- Regulation of aquaculture and concerns over open-pen fin-fish aquaculture;
- Cohen Commission Recommendations;
- Invasive aquatic plant control;
- Administration and enforcement of the pollution prevention provisions of the *Fisheries Act*, including concerns over discretion to authorize the deposit of deleterious substances should be addressed;
- Memoranda of Understanding between DFO and each of the National Energy Board and Canadian Nuclear Safety Commission are problematic;
- Improved regulation of projects that pose risk to groundwater;
- Need for increased scientific research on the decline of wild salmon stocks and freshwater ecosystems;
- Triggers and leads for environmental assessments under the *Canadian Environmental Assessment Act, 2012*;
- Linkages between the *Fisheries Act* and Land Claims Agreements and Modern Treaties, including coordination of project reviews;
- Capacity for meaningful Indigenous community participation in engagement and partnering; and
- Various comments on fisheries management, stock rebuilding, interjurisdictional fisheries management of cross-border fisheries, consideration of climate change, co-management and establishment and management of Indigenous fisheries, to identify a few.



## CHAPTER 2: RESOURCE MANAGEMENT BOARDS

### THEME 1 - 2016-2017 ENGAGEMENT

Many Resource Management Boards expressed appreciation for having the opportunity to submit comments to DFO and or the Standing Committee on Fisheries and Oceans. Some Boards commended the Government of Canada on the open, transparent, and collaborative process that has been initiated for this legislative review. However, the Boards would like to ensure they are appropriately engaged and consulted in all phases of the review in accordance with their respective Land Claim Agreements, and expect to be further engaged and consulted moving forward. Also it was stated that if a Board makes a recommendation to the Minister, the Minister must respond in a manner and according to the timelines established by the Final Agreements.

Resource Management Boards advised that increased resources and capacity would enable them to engage with DFO in line with Land Claim Agreements and to participate in co-management on habitat related issues.

There were a number of comments on the need for the Government of Canada to consult with Indigenous groups on just about every step in the process, including project-specific review, development of policy and legislation and acting on virtually all of the current *Fisheries Act* provisions (e.g. , setting of Ecologically Significant Areas, exercising Ministerial discretion, etc.), including early engagement in the project planning process and studies so that the input can influence the outcomes.



## REGULATORY AND COMPLIANCE ACTIVITIES



Resource Management Boards provided extensive and detailed comments on the legislative basis of DFO's regulatory and compliance activities (the 2012 changes to the *Fisheries Act*), as well as on DFO's regulatory and compliance procedures and capacity.

### **RECOMMENDED CHANGES TO THE *FISHERIES ACT***

The majority of Resource Management Boards felt that changing the prohibition from “harmful alteration disruption or destruction” (HADD) of fish habitat to “serious harm to fish” is confusing, a narrowing of scope, unacceptable, or a reduction in protection of Canada's fisheries. Many Boards supported a return to HADD generally and also supported reintroducing Section 32 (the prohibition against the killing of fish by means other than fishing) into the *Fisheries Act*. Boards also recommended stronger protections for fish, fish habitat and marine biodiversity and enhanced protections for critical fish habitats.

Concern was noted with the use of “commercial, recreational, and Aboriginal fisheries” wording in Section 35 and a return to “all fish” as per the previous version of Section 35 was recommended. Many Resource Management Boards agree that Indigenous fisheries deserve special attention in the *Fisheries Act*. It was also recommended that the scope of the *Fisheries Act* should take into account future and/or potential fisheries and the needs of future generations.

It was noted that there are a number of times in the *Species at Risk Act* where Duty to Consult obligations are mentioned, including federal responsibilities to northern management boards, and it was recommended that it should be the same with the *Fisheries Act*. Additionally, it was recommended that Final Agreements should be referenced and acknowledged in the *Fisheries Act*.

Suggestions were made that the purpose set out in Section 6.1 of the *Fisheries Act* should be refocused on protecting fish and fish habitat rather than protecting fisheries. Resource Management Boards also made a number of recommendations that identify potential application principles that should be incorporated into the *Fisheries Act*. These principles include the following:

- Recognition of, and conformity with, constitutionally protected Aboriginal and Treaty rights;
- Decision-making based upon up to date science and where applicable, traditional ecological knowledge and community knowledge;

- Application of the precautionary approach and ecosystem management, guided by environmentally sound principles;
- Avoidance and mitigation of cumulative detrimental effects to fish and fish habitat; and
- Recognition of climate change challenges in the protection of fish, fish habitat and marine biodiversity.

There was wide support for keeping Section 6 of the *Fisheries Act*, which sets out factors that the Minister must consider before a regulation is made or a Ministerial power is exercised, such as the issuance of a Paragraph 35(2)(b) authorization or a request to provide for fish passage or sufficient flow. There were concerns, however, that the current *Fisheries Act* afforded the Minister far too much discretion and the list of factors being considered is too vague. Some Boards felt additional considerations are needed to strengthen this part of the Act. The factors most commonly cited for consideration in making *Fisheries Act* decisions included:

- Duty to Consult obligations;
- The relevant terms of land claims agreements;
- Ecosystem-based management approach;
- Adopting the precautionary principle;
- Respect Indigenous rights and interests related to fish and fish management;
- Climate change effects on affected fish stocks and ecosystems;
- Consideration of potential cumulative effects of decisions;
- The principles of sustainable development; and
- Whether there are measures and standards to avoid, mitigate or offset the harmful alteration, disruption or destruction of fish habitat

There was support for the expanded powers in Sections 37 to 39 that were added to the *Fisheries Act* in 2012. These powers include the requirement to submit plans and specifications, the requirement to comply with conditions in a *Fisheries Act* authorization, and the duty to notify, report occurrences and take corrective actions to mitigate serious harm to fish. It was suggested that these expanded powers and improvements should remain in any recommended amendments to the legislation.

## **POLICY AND PROGRAM**

Resource Management Boards noted concern that DFO has no way to track and monitor self-assessed projects. They also indicated that the self-assessment guidance is open to interpretation and proponents may end up carrying out projects that pose a risk to fish and fish habitat. Boards suggested that systematic oversight of proponent-conducted self-assessments



be incorporated into the *Fisheries Act* and that any self-assessment of a project should require notification of DFO or other authorities (which could be partners such as the Yukon or First Nation governments or regional Board offices in that traditional territory).

The Boards also suggested that the Online Self-Assessment tool should include the DFO Operational Statements for proponents (now called "Measures to Avoid Causing Harm to Fish and Fish Habitat" on the DFO website) better defined, made obviously accessible, and written in clear language.

Resource Management Boards noted that DFO staff reductions have imposed serious limits on DFO's capacity to contribute expertise and to effectively participate in project review and licensing processes. They noted that the project review process in the North is unique and that the same approach that is applied in provinces may not work effectively. Participants expressed that they would like to be able to talk to someone local who is familiar with northern streams and fish.

Boards also advised that they rely on Government partners to provide reliable and timely scientific information to make sound decisions however, the lack of capacity and engagement with DFO partners in the North has left Boards with limited ability to provide meaningful information on regulatory project review.

## **MONITORING, ENFORCEMENT AND REPORTING**

There was support for an online registry to be developed to record and provide a centralized and accessible portal for information on all applications to DFO for authorizations, as well as DFO decisions. Additionally, the Boards recommended that and that the DFO bolster its monitoring and enforcement capacity.



Input from Resource Management Boards included a strong emphasis on cooperation with other governments and relevant land claim regulatory agencies.

Boards advised that fisheries and fish habitat management centers on land and water management and thus effective partnerships between DFO and provinces and territories which have responsibility for land and water management in their jurisdictions is essential for fisheries protection programs. Indigenous groups are the major land managers, with clearly defined

rights to harvest stated in the land claims Final Agreements. Their involvement, as partners, is essential to ensure there are no gaps. However, since the federal government has the mandate and responsibility for fisheries management under the Constitution and *Fisheries Act*, Resource Management Boards have indicated that DFO must be prepared to resource and fund their partners who agree to help deliver part of this mandate.

Boards also advised that partnerships are critical to the effective administration of provisions of the *Fisheries Act* and fisheries protection programs. As mandated in Final Agreements, First Nation Governments must be fully included in the partnership. This remains a work in progress that must be facilitated and routinely resourced via consultations and workshops as part of the ongoing fisheries protection program delivery.

The creation of an environmental data acquisition and dissemination program was suggested and it was noted that Fisheries and Oceans Canada, proponents and Indigenous groups can all contribute to this program by pooling the knowledge acquired on ecosystems.

Resource Management Boards have indicated great concern with respect to Paragraph 4.1(2)(h) and Section 4.2 of the *Fisheries Act* regarding the equivalency provisions of the *Fisheries Act*.

Some Boards advised that there is great opportunity to utilize Subsection 5 (1) in conjunction with Section 4.4 to enter into agreements to fulfill the purposes of the *Fisheries Act*. This is an example where two sections of the Act could create significant opportunity and capacity building for Indigenous groups if training and meaningful, long-term resources are committed.



There was support for the concept of Ecologically Significant Areas and suggestions were provided to strengthen or clarify this concept. It was also suggested that designation of "ecologically significant areas" should be done in collaboration with Resource Management Boards.

Concern over the Ministers' and the Governor in Council's discretionary powers was a prominent theme within many of the comments, and was often associated with references to specific sections of the *Fisheries Act*. Comments included:

- Concerns with Paragraph 43(1) (i.01) (excluding fisheries) and Subsection 43(5) (excluding waters) which allows for the Minister to exclude areas from the definition of a fishery. It was suggested that these provisions be repealed; and
- The Minister’s absolute authority cannot abrogate responsibility or compromise the necessary and mandated consultation with respect to the Crown’s Duty to Consult with potentially affected Indigenous groups.

## CONCLUSION AND NEXT STEPS

Fisheries and Oceans Canada appreciates the time taken by Indigenous groups and Resource Management Boards to contribute to the review of the changes to the *Fisheries Act*, participating in both the process set out by the Standing Committee on Fisheries and Oceans and engaging directly with the Department. Indigenous groups and Resource Management Boards provided significant input into the engagement process to date, which has offered valuable insight from their unique perspectives.



The Department continues to reflect on these recommendations and take these submissions into account. The Department commits to considering this input as the review of the changes to the *Fisheries Act* moves forward.

In addition to the comments on the review of the 2012 changes to the *Fisheries Act*, Indigenous groups and Resource Management Boards provided comments related to deleterious substances, fisheries management, linkages to Land Claims and treaties, and linkages to the *Canadian Environmental Assessment Act, 2012*. This input is only covered briefly in this summary as the issues fall outside of the scope of the review of the 2012 changes to the *Fisheries Act*. This input has been reviewed by the Department and provided to the relevant sectors of DFO or Environment and Climate Change Canada.