

COLUMN
PERSPECTIVE

Regaining Lost Protections: Status of the Revisions to the Canadian Fisheries Act

J.G. Imhof | Trout Unlimited Canada, 100 Stone Road West, Suite 304, Guelph, ON, Canada N1G 5L3

N.W. Lapointe | Canadian Wildlife Federation, 350 Michael Cowpland Dr, Ottawa, ON, Canada, K2M 2W1

S. Metikosh | Fish Habitat Solutions Inc, Calgary, AB, Canada

C.T. Hasler | The University of Winnipeg, Winnipeg, MB, Canada. E-mail: c.hasler@uwinnipeg.ca

The *Fisheries Act* (Act), a long-standing Act protecting fisheries in Canada, was changed in 2012 to redefine its central purpose to the management of fisheries in Canada. Along with this refocus were changes that appeared to reduce protections for habitat and all fish. After an outcry by scientists, Indigenous peoples, and environmental organizations, the Act was revised in 2019 to “restore lost protections” thought to have been lost in the 2012 changes. To a large degree most of the “lost protections” have been restored, while other portions of the 2012 Act have been maintained. Challenges remain under the amended Act in efficiently implementing development and conservation projects while achieving the newly clarified purpose of the Act—the conservation and protection of fish and fish habitat.

INTRODUCTION

The *Fisheries Act* (Act) is one of the oldest pieces of Canadian legislation, dating back to 1868. The Act essentially remained unchanged for almost 100 years until it was amended to incorporate the pollution prevention and fish habitat protection provisions in 1970 and 1977, respectively. This was the first time that the Canadian federal government recognized that managing fisheries was not enough and protection of water quality and aquatic habitat were necessary to protect fisheries.

Guidance on the application of the habitat protection provisions of the *Fisheries Act* was provided by the *Policy for the Management of Fish Habitat* (Habitat Policy; Fisheries and Oceans Canada 1986). The Habitat Policy, with its goal of *net gain* and its underlying tenet of *no net loss* of productive capacity of fish habitat (NNL), was the basis of the regulatory approach used by Fisheries and Oceans Canada (DFO) to manage development projects affecting fish habitat for more than 25 years. The harmful alteration, disruption, or destruction of fish habitat (HADD) was prohibited under the Act unless authorized. Authorizations were issued on the condition that NNL was achieved by compensating (i.e., offsetting) losses in productive capacity arising from their project.

Between 1986 and 2012, DFO’s project review and approval process was criticized by industry, scientists, and environmental groups. Industry criticisms centered on the overly restrictive prohibition against HADD, inconsistency within and among DFO Regions, and lack of transparency. In contrast, environmental groups expressed concern that DFO officials were using quasi legal mechanism such as Letters of Advice (LOA) and Operational Statements to avoid the requirement for a lengthy process associated with *Fisheries Act* authorizations (Kwasniak 2004) and the requirement for environmental review under the *Canadian Environmental Assessment Act*. Additionally, an audit of the Habitat Protection Program by

the Auditor General of Canada concluded that DFO failed to implement the Habitat Policy and confirm whether a *net gain* in habitat was being achieved (Auditor General of Canada 2009). Internal reviews revealed that authorizations and associated offsets were failing to achieve NNL because less habitat was restored on average than was lost, and created or restored habitat was generally less productive (Harper and Quigley 2005; Quigley and Harper 2006a). Furthermore, compliance with offset requirements detailed in authorizations was low (Quigley and Harper 2006b).

In 2012, the federal government responded to these concerns by amending the Act to reduce emphasis on habitat and refocus the Act on protection of fisheries. Most notably, the general prohibition against HADD was repealed and replaced with a prohibition against serious harm to fish that were part of, or supported a commercial, recreational, or Aboriginal fishery or their habitat. Repealing the prohibition against HADD was perceived by both scientists and the public at large as weakening the environmental protection provided by the Act (Favaro et al. 2012; Hutchings and Post 2013).

Operational changes also weakened protections for fish and fish habitat concurrent with the 2012 changes to the Act. DFO’s fisheries biologist and enforcement staff capacity was reduced by 33% (e.g., Langer 2012). There was concern that this reduction in enforcement and fisheries protection review staff would reduce opportunities to capture violations (Hutchings and Post 2013; Olzynski and Grigg 2015). There was also a push to rely more on LOAs, which provided guidance on avoidance and mitigation measures but did not require that proponents offset residual impacts.

Not all changes in the Act were perceived as clear issues at the time, though could be interpreted as exclusionary. The 2012 Act included the provision for the establishment of regulations to control aquatic invasive species and the prevention of their import. In addition, there were increased fines for contravention

of the Act (see Hutchings and Post 2013) and designation of ticketable offenses. Increased requirements to report violations and take corrective measures when there was an unauthorized killing of fish were also included. Additionally, the prohibition against projects and undertakings was expanded to include activities that could harm fish and fish habitat.

In response to concerns over lost protections, the Liberal Party of Canada made restoration of lost protections under the *Fisheries Act* part of their platform in the 2015 Federal Election. Bill C-68, *An Act to Amend the Fisheries Act*, was tabled in the House of Commons in February 2018 and came into force in August 2019. This article provides an overview and discussion from fisheries scientists and professionals of the content of the revised Act, how well it recaptured “lost protections,” and our review of the steps being undertaken by DFO to implement the Act. Terminology is described in Table 1.

THE AMENDED 2019 ACT

The 2019 amendments broadened the application of the Act and reinforced its role as the foremost piece of federal legislation protecting the aquatic environment in Canada. The major amendments included:

- reinstating the prohibition against HADD;
- reinstating the general prohibition against causing the death of fish by means other than fishing;
- introducing a new set of criteria that must be considered when making decisions; and
- establishing a public registry of records related to the administration of the habitat protection and pollution prevention provisions.

In addition, the amended Act enabled:

- establishment of standards and codes of practice for the protection of fish and fish habitat and prevention of pollution;
- agreements to establish habitat banks; and,
- new fee structures and the ability to charge fees for various services.

There were also additional and significant changes in the Act that we discuss below.

Broadened Application

A new upfront clause stating a clear *Purpose* of the Act (Section 2.1), has broadened the application of the Act, “... to provide a framework for (a) the proper management and control of fisheries; and (b) the conservation and protection of fish and fish habitat, including by preventing pollution.” Although the management of fisheries was always intrinsically recognized as the purpose of Act, extension of the Act to environmental protection has often been challenged due to a lack of a clearly stated, overarching purpose. This explicit statement confirms the Act’s primary role as environmental legislation. This purpose also provides context for criteria that the Minister shall or may consider when making various decisions under the Act.

The application of the Act is further broadened by the restored fishery definition, which includes all species of fish, whether they are fished for or not. Also under the amended Act, “...water frequented by fish and any other areas on which fish depend directly or indirectly to carry out their life processes” now appears at the beginning of the definition of habitat and is followed by the traditional listings of habitat functions (i.e., spawning grounds, rearing, food supply, and migration areas).

This emphasis at the outset takes on a more ecosystem-based view of fish habitat and broadens the scope of the habitat protection provisions. Consequently, under the amended Act, any water, including riparian habitat, that has fish or can support fish directly or indirectly is now considered fish habitat. This presumably includes riparian habitat, which indirectly supports fish through filtration, shading, bank stability, and provisioning of insects, organic matter, and woody structure.

Section 2.5 of the amended Act lists factors or principles that may be considered when making decisions, including several that are relevant to conservation. These include application of a precautionary approach and an ecosystem approach, sustainability of fisheries, scientific information, and Indigenous and community knowledge. The intersection of sex and gender with other identity factors was an additional discretionary consideration added in the amended Act. This allows the Minister to consider how women, men, and gender-diverse people may be affected by decisions made under the Act and is the first time that federal environmental legislation has identified sex, gender, and other identity factors as relevant considerations in decision making (Koshan 2018).

The amended Act also establishes a set of mandatory factors to be considered before any permits, authorizations, or orders are issued, or regulations developed in relation to fish and fish habitat protection or pollution prevention (34.1 (1)). This requirement was established in 2012, but the factors changed in 2019. The ambiguous consideration of public interest was removed, and the concept of ongoing productivity was replaced with the contribution to productivity of fisheries by the fish and fish habitat to be affected. Other factors that shall be considered include measures related to avoidance, mitigation, and offsetting, including habitat banking, and whether these measures prioritize restoration of degraded habitat, cumulative effects, fisheries management objectives, and Indigenous knowledge.

The broadened application of the Act addresses many of the concerns voiced regarding the 2012 changes. The return to a strong focus on habitat and all fish along with a more ecosystem-based approach reflects the key scientific principles articulated by Lapointe et al. (2014).

Regulatory Framework and Authorizations

Under the new regulatory framework, proponents use online guidance to decide whether their projects require reviews (available: <https://bit.ly/3aRyKPk>). Submission of a project for review is voluntary. The intent of the project-by-project review is to determine whether a proposed project is likely to result in death of fish or HADD, considering avoidance and mitigation measures described in the project description and supporting documents submitted by the proponent. Should the DFO review conclude that the project is likely to result in death of fish or HADD, the proponent is requested to submit an application for an authorization. The Authorizations Concerning Fish and Fish Habitat Protection Regulations (Fisheries and Oceans Canada 2019b) set out the application and review process. The regulations specify the information that must be provided in the application, including a description of the potential adverse effects on fish and fish habitat, details of offsetting plans, and monitoring plans to demonstrate effectiveness of offsets, records of consultations undertaken, and financial securities guaranteeing offsetting plans. The regulations also set out mandatory timelines and schedules for review and issuance or denial of authorizations and mechanisms for amending, suspending, and cancelling authorizations.

Table 1. Descriptions of terms related to the *Fisheries Act*. Details were derived from the *Fish and Fish Habitat Protection Policy Statement* (Fisheries and Oceans Canada 2019a) and other documents available on Fisheries and Oceans Canada projects near water website (available: <https://bit.ly/2QKBsPR>).

| Term | Description | Relevant Section/ Paragraph | Authority |
|---|---|---------------------------------------|---|
| Authorization | Legislated approval for carrying out a work undertaking or activity (WUA) without contravening the general prohibitions against death of fish or harmful alteration, disruption, or destruction (HADD). Authorizations include offsetting requirements. | 34.4 (2) (b) 35 (2) (b) | Discretionary power of the Minister to authorize death of fish or HADD. |
| Prescribed works undertakings or activities | A WUA or class of WUAs prescribed by regulations that can be carried out without contravening the general prohibitions against death of fish or HADD if carried out according to conditions set out in the regulations. This does not necessarily involve offsetting. | 34.4 (2) (a) 35 (2) (a) | Authority to make Regulations provided by paragraph 34.1 (4) and 35 (4). |
| Prescribed waters | Canadian fisheries waters prescribed by regulations where WUAs can be carried out without contravening the general prohibitions against death of fish or HADD if the work is carried out according to conditions set out in the regulations. Offsets are not necessarily required. | 34.4 (2) (a) 35 (2) (a) | Authority to make Regulations provided by paragraph 34.1 (4) and 35 (4). |
| Designated project | Projects or classes of projects that may affect fish and fish habitat designated by regulations and cannot proceed without a permit. Similar to an authorization, but always required. Permits will presumably include offsetting requirements. | 35.1 | Authority is provided in paragraph 43 (1) (i.5) and in paragraph 43 (4). |
| Offset | Measures to counterbalance death of fish or HADD resulting from carrying on works, undertakings or activities authorized under the <i>Fisheries Act</i> . Suitability and availability of measures to offset death of fish or HADD must be considered before authorization (and presumably designated project permits) can be issued. | 34.1 (1) (c) (i) 34.1 (1) (c) (ii) | Legislated requirement for Minister to consider whether suitable measures to offset death of fish or HADD are available. |
| Habitat bank | An area of a fish habitat that has been restored, enhanced, or created by one or more conservation projects within a service area (i.e., geographic area that includes the habitat bank, the conservation project(s) and the WUA) and where the Minister has certified any habitat credit. | 42.02 (1) 42.02 (2) | Minister empowered to enter into habitat bank arrangements and to establish a system for the creation, allocation, and management of habitat credits in relation to a conservation project. |
| Habitat credit | A unit of measure that is agreed to between any proponent and the Minister. | 42.02 | Minister empowered to enter into habitat bank arrangements and to establish a system for the creation, allocation, and management of habitat credits in relation to a conservation project. |
| Standards and codes of practice | Specific procedures, practices or standards in relation to WUAs. <ul style="list-style-type: none"> • A standard sets a limit or establishes procedures and specifications for avoiding death of fish and HADD. • Codes of practice describe best practices to avoid death of fish and HADD. A project review is not required when the conditions and measures set out in this code of practice and all applicable measures to protect fish and fish habitat are applied. | 34.2 | Minister empowered to establish standards and codes of practice to: avoid the death of fish and HADD; conserve and protect fish and fish habitat; and prevent pollution. |
| Public registry | Registry established to provide the public access to records relating to protection of fish and fish habitat and prevention of pollution. Registry must contain: <ul style="list-style-type: none"> • Agreements with provincial governments or Indigenous governments • Standards and codes of practice • Ministerial order • Authorizations • Permits • Fish habitat restoration plans A registry (Release 1.0) was made available to the public on March 31, 2020. | 42.242.3 (1) | Legislated ministerial responsibility. |
| Letters of advice | Letters sent by DFO to proponents confirming that their proposed WUAs were reviewed by DFO and advising them that the WUAs would not result in death of fish or HADD if indicated avoidance and mitigation measures are implemented. Consequently, an authorization was not required. | 34.4 35 (1) | Internal department policy. |

Prescribed Versus Designated Projects

The ability to prescribe projects or types of projects through regulations provides additional potential to streamline the review and approval process. Under the new regimen, prescribed works could be removed from the project review

queue and managed through a streamlined permitting process instead.

A new category, designated projects, has also been introduced. Designated projects are expected to be large projects (e.g., hydro dams, mines, pipelines) likely to result in adverse

effects on fish and fish habitat and will be identified through regulation. A permit will be required at the outset before any designated project can proceed. Unlike the fish and fish habitat protection provision of the Act, where project can proceed without an authorization but proponents risk prosecution should death of fish or HADD result, a permit is mandatory for all designated projects. Proceeding without a permit is a violation regardless of whether the project has adverse effect on fish or fish habitat. This is the first time that an affirmative regulatory requirement has been introduced into the fish and fish habitat provision of the Act.

Standards and Codes of Practice

The amended Act provides new authority for the Minister to establish standards and codes of practice as formal guidance and specify procedures and practices to avoid death to fish and HADD, conserve fish and fish habitat, and prevent pollution. Through this ministerial power, projects undertaken according to the codes of practice can proceed without review or approval and not risk contravention of the Act. Six interim codes of practice have been published to date and these are based on the pre-2012 operational statements.

A Public Registry

A public registry is being established that will provide public access to records related to the fish and fish habitat protection and pollution prevention provision of the Act. The content of the registry will include both obligatory records and any other records the Minister considers appropriate. Obligatory records include: agreements with provincial governments and Indigenous governing bodies; codes of practice; authorizations; permits for designated projects; and fish habitat restoration plans for ecologically significant areas.

Only records that are publicly available or disclosable under the *Access to Information Act* will be kept in the public registry and this should increase transparency of the Act and approvals for public review. No plans have yet been announced to include requests for review, review results, or projects undertaken following codes of practice in the registry.

Habitat Banks

The amended Act includes a new subsection enabling the establishment of habitat banks. Although habitat banking is not a new concept and several habitat banks were already approved by DFO, no legal mechanism for establishing a habitat bank had been set out prior to the amended Act. The amendments provide the Minister the authority to establish a system for creating, allocating, and managing habitat credits and issuing certificates with acquired habitat credits. This provides regulators and proponents with an additional efficient, transparent, and timely means for offsetting adverse effects of projects on fish and fish habitat. At this time no regulations have been established for the banks, nor are there provisions for third-party banks as are used in other jurisdictions (third-party banks are offsets created by environmental practitioners rather than developers and are sold to developers for their offsetting need).

Fish and Fish Habitat Protection Policy Statement

In August 2019, the DFO released their *Fish and Fish Habitat Protection Policy Statement* (Policy Statement; Fisheries and Oceans Canada 2019a). The Policy Statement provides the purpose, objectives, principles, and structure for the operationalization of the Act. Principles are especially important because

they provide a touchstone for all decisions and are based on the intent of the Act, as well as administrative and scientific standards. The principles articulated in the statement are:

- avoid harm to fish and fish habitat;
- promote sound decision making;
- enable best-placed delivery;
- consistency; and,
- consider the ecosystem context.

Under the Policy Statement, projects that may cause the death of fish or HADD should be reviewed.

DISCUSSION

The 2019 Act is in many ways stronger than the 2012 Act, but past implementation issues have not necessarily improved (e.g., Kwasniak 2004; Auditor General of Canada 2009). However, for the first time, the Act has a stated purpose, creating the context for all statements and provisions in the Act. This clarity and conservation objective is new and welcome.

It would appear that many of the “lost protections” from changes in the 2012 Act were restored in the 2019 Act, yet longstanding insufficiencies in the conservation of fish habitat remain. Some of the 2012 changes were retained because they provided clearer and stronger protections for fish and fish habitat. Retention of the 2012 self-assessment process is not necessarily a bad thing, since it can allow projects not likely to result in death of fish and HADD to proceed. However, to meet the intent of the Act, there needs to be more scrutiny and enforcement. Enabling and guiding proponents to operate independently can be more efficient than reviewing projects individually, though monitoring and enforcement is required to ensure compliance and understand how guidance is being interpreted. Mandatory project registration is also needed, so that DFO can track these projects and audit a subset to ensure that they are carried out in a manner that avoids death of fish and HADD. Many of these projects occur around water, in riparian systems, and peripheral to water, and their potential cumulative impacts are not tracked or assessed. A public registry of these projects would also enable concerned citizens who observe projects in and around water to review conditions and requirements, and report violations to DFO.

A major contributor to the net loss of habitat has been DFO’s failure to ensure that offsets associated with authorizations were sufficient and effective (Harper and Quigley 2005; Quigley and Harper 2006a). Reviews of offset effectiveness have noted that greater than 1:1 ratios are needed (Business and Biodiversity Offsets Programme 2012; Clarke and Bradford 2014). To address uncertainties, time lags, and risks of offset failures, Minns (2006) estimated that ratios as high as 8:1 may be needed, and a minimum ratio >2:1 is needed. Fisheries and Oceans Canada is initiating several public engagement initiatives on the implementation of the amended Act, including offsetting, which will create an opportunity to establish a sufficient minimum ratio for offsets. Some of these issues are considered in the new offsetting policy (Fisheries and Oceans Canada 2019c); however, minimum ratio requirements are absent.

The reinstatement of prohibition against HADD restores protections lost in 2012, but challenges remain. The courts have been clear that the term “harmful” only applies as a modifier to the alteration of fish habitat, leaving all disruption and destruction of habitat prohibited. Disruptions are particularly difficult to manage because they almost always occur when managing projects, and there is no current delineation within regulation

or policy of the duration, spatial extent, or magnitude of disruption or alteration that constitute HADD. Restoration projects present unique challenges, in that disruption is temporary, but projects result in longer term *net gain* in habitat.

The 2019 Act still includes consideration of complicated environmental issues, such as environmental flows in Section 34.3, though not as prominently as was proposed in earlier drafts of the 2012 Act. Under the Act, the Minister has the discretionary power to consider whatever factor they believe to be relevant. This could include precautionary and ecosystem approaches among the factors that may be considered before decision are made. Cumulative effects must be considered, and could lead to a denial of an authorization, at least in theory if not in practice. In all considerations, the Act enables the creation of specific regulations and policies subject to the political will of the government.

Minns (2015) suggested that any activities with residual effects that accumulate should be considered to cause HADD if they reduce the productive capacity of aquatic environments. Contribution to the productivity of the relevant fishery is mentioned in terms of factors to be considered, as is consideration for cumulative effects. The cumulative effects of many small, degradative changes still arguably constitute HADD, and no strategy has yet been identified by DFO to address this omission.

The use of LOAs continues. Their usage is appropriate when LOAs guide proponents to avoid death of fish and HADD. Proponents are still liable to prosecution if death of fish or HADD occur. In other cases, DFO uses LOAs in an extra-regulatory manner (Olszynski 2015), by advising proponents to proceed with projects that result in the destruction of 100–1000 m² or greater of fish habitat (Third et al. 2021). Individual authorizations and associated offsets are not feasible for all small projects that cause death of fish or HADD, but the department can make use of several new (as of 2012 and 2019) mechanisms, such as regulations prescribing works and waters to manage projects in a streamlined and appropriate manner. Efforts are underway to develop some of these tools, but implementation is slow. Nearly 2 years after revisions to the Act, LOAs continue to be the primary mechanism used by DFO to approve projects and avoid regulatory gridlock. To achieve the new conservation purpose of the Act, the department must rapidly close this gap. Mechanisms to address the cumulative effects of any residual impacts resulting from these projects must also be identified and implemented.

Codes of practice represent a new tool that may be effective for managing projects to avoid death of fish and HADD. To date this is not evident in the six interim codes of practice that have been produced. All codes of practice include mitigation actions, implying varying levels of residual effects are possible, which could lead to cumulative loss. Proponents are given the option to notify DFO of projects undertaken following codes of practice, but this is not mandatory, and such projects are not slated for inclusion in the new public registry. Who develops the standards and codes of practice is also important because not all expertise on environmental management and design resides within DFO. The Act does say that the Minister *may* consult with any interested person when preparing codes of practice. It is hoped that those organizations with expertise in some of the identified practices will be invited to assist DFO with development of codes of practice.

Presently there are no clear and streamlined approaches to address approvals of works that are carried out by

conservation non-government organizations focused primarily on restoring damaged fish habitat. Unlike development projects, restoration complements the purpose of the Act. The use of *Prescribed Works* under the Act could identify and establish special classes of works, undertakings, or activities that would expedite restoration works. Well-designed codes of practice that inform and improve restoration projects so that death of fish and HADD are avoided. These tools would streamline reviews, expedite projects by organizations that focus on restoring habitat, and reduce the necessary burdens on NGOs and regulatory staff.

An engagement process is underway as a first step toward developing prescribed works and codes of practice, and fact sheets and discussion papers have been released (available: www.talkfishhabitat.ca). Progress is slow however, and as of yet there is no indication that these tools will be used for restoration projects specifically.

An outstanding issue faced by DFO is how to determine whether the outcomes of authorized projects meet the objectives of the Act, its regulations, and its policies. Monitoring the status of fish habitat nationwide should be a top priority, but has yet to be implemented. Without information on short- and long-term outcomes of projects, it is difficult to establish a baseline of habitat health in Canada and determine the efficacy of the program. Equally important is the monitoring of development projects to confirm their effects and measure the efficiency and effectiveness of avoidance, mitigation, and offsetting measures. Such knowledge is important to the continuing improvement of habitat science, management, and policy development.

An additional issue that requires clarification relates to how the Aquatic Invasive Species (AIS) provisions added in 2012 will be enacted through the Act. Included in this issue is the concern that there is no federal mechanism for adding species to the black list (species currently on the list are based on Manitoba and Ontario lists), and that a white-listing approach was not used. A white-list approach is superior for preventing AIS because it only allows species to be imported and transported within Canada if they have been screened to confirm they pose a low risk of establishing. Currently it is not clear how this list and concerns for new AIS will be rolled out for the rest of Canada.

Fisheries and Oceans Canada has recognized the need to re-invest in staff, especially for review and approvals. As a result, DFO has been revising its field and regional structure and hiring new staff over the past 3 years. The amended Act gave DFO new powers to charge fees for cost recovery and for providing regulatory processes. Given the current conditions, there remains a challenge of how to balance increased protection with an increased work load that may create regulatory grid lock as DFO hires and trains new staff. As fish and fisheries practitioners, we need to ensure that professionals working to develop proposals and regulators that provide reviews and assessments have a good understanding of how ecosystems function with some levels of practical experience. Therefore scientific training and the acquisition of practical experience with fisheries and aquatic ecosystem management is needed now more than ever by all parties so that good proposals, based on good science, can proceed expeditiously; and poor proposals can either be improved or rejected. Training should include related scientific disciplines that also are important to healthy aquatic ecosystems such as: hydrology, geomorphology, hydrogeology, engineering, water chemistry, and sedimentology to name a few.

CONCLUSIONS

Perhaps the single most important improvement of the 2019 Act is the upfront statement of *Purpose* of the Act at the beginning of the legislation (Section 2.1). The *Purpose*, which appears immediately after definition of terms in the Act provides the clear framework to which all pieces of the legislation, policy, and guidance documents must adhere and reduces the potential for mis-interpretation or major inconsistencies in the application of regulations. The practical application and success of the *Purpose* is yet to be determined. It is unclear whether use of various streamlining approaches such as codes of practice will truly ensure protection and conservation of fish and fish habitat or will be viewed simply as a means towards managing departmental resources and streamlining requirements for business.

The restoration of the prohibition against HADD clearly returns the major focus of the Act back to protection of fish and habitat. The focus on all fish, not just those that make up a commercial, recreational, or Aboriginal fishery ensures an ecosystem-based approach. One major loss that was not restored was the policy goal of *net gain* of habitat, which may continue to contribute to cumulative loss.

Although the amended Act was signed into law in June 2019 and the major policy structure was released in August and November 2019 (*Fish and Fish Habitat Protection Policy Statement*; Fisheries and Oceans Canada 2019a; *Authorizations Concerning Fish and Fish Habitat Protection Provisions*; Fisheries and Oceans Canada 2019b), there are many specific guidance documents, a public registry, regulations, and codes of practice that must be developed to expedite implementation of the Act. However, an Act is now in place that has recaptured some of the key lost protections from 2012 and with the ongoing recovery of DFO staffing levels, fisheries and aquatic ecosystem protection and restoration should advance.

ACKNOWLEDGMENTS

We thank John Post and Martin Olszynski for comments on a previous version of this Perspective. This publication is a contribution from the policy committee of the Canadian Aquatic Resources Section of the American Fisheries Society.

REFERENCES

- Auditor General of Canada. 2009. Chapter 1: protecting fish habitat. Report of the Commissioner of the Environment and Sustainable Development, Spring 2009, Ottawa.
- Business and Biodiversity Offsets Programme. 2012. Standard on biodiversity offsets. Business and Biodiversity Offsets Programme, Washington, D.C.
- Clarke K. D., and M. J. Bradford. 2014. A review of equivalency in offsetting policies. Canadian Science Advisory Secretariat Research Document, 2014/109, Ottawa.
- Favaro B., J. D. Reynolds, and I. M. Côté. 2012. Canada's weakening aquatic protection. *Science* 337:154.
- Fisheries and Oceans Canada. 1986. The policy for the management of fish habitat. Fisheries and Oceans Canada, Ottawa.
- Fisheries and Oceans Canada. 2019a. Fish and fish habitat protection policy statement, August 2019. Fisheries and Oceans Canada, Ottawa.
- Fisheries and Oceans Canada. 2019b. Authorizations concerning fish and fish habitat protection regulations, November 2019. Fisheries and Oceans Canada, Ottawa.
- Fisheries and Oceans Canada. 2019c. Policy for applying measures to offset adverse effects on fish and fish habitat under the *Fisheries Act*, December 2019. Fisheries and Oceans Canada, Ottawa.
- Harper D. J., and J. T. Quigley. 2005. No net loss of fish habitat: a review and analysis of habitat compensation in Canada. *Environmental Management* 36:343–355.

- Hutchings J. A., and J. R. Post. 2013. Gutting Canada's *Fisheries Act*: no fishery, no fish habitat protection. *Fisheries* 38:497–501.
- Koshan J. 2018. Bills C-68 and C-69 and the consideration of sex, gender and other identity factors. *Alberta Law Blog* (May 2). Available: <https://bit.ly/2QIWBKq> (March 2021).
- Kwasniak A. 2004. Slow on the trigger: the Department of Fisheries and Oceans, the *Fisheries Act* and the *Canadian Environmental Assessment Act*. *Dalhousie Law Journal* 27:347–377.
- Langer O. 2012. DFO habitat staff cuts. *Watershed Sentinel* (July 4). Available: <https://bit.ly/3e28bJn> (March 2021).
- Lapointe N. W. R., S. J. Cooke, J. G. Imhof, D. Boisclair, J. M. Casselman, R. A. Curry, O. E. Langer, R. L. McLaughlin, C. K. Minns, J. R. Post, M. Power, J. B. Rasmussen, J. D. Reynolds, J. S. Richardson, and W. M. Tonn. 2014. Principles for ensuring healthy and productive freshwater ecosystems that support sustainable fisheries. *Environmental Reviews* 22:110–134.
- Minns C. K. 2006. Compensation ratios needed to offset timing effects of losses and gains and achieve no net loss of productive capacity of fish habitat. *Canadian Journal of Fisheries and Aquatic Sciences* 63:1172–1182.
- Minns C. K. 2015. Canadian fish habitat management: symptoms and remedies. Pages 15–22 in N. Fisher, P. Leblanc, C. A. Rose, and B. Sadler, editors. *Managing the impacts of human activities on fish habitat: the governance, practices, and science*. American Fisheries Society Symposium 78, Bethesda, Maryland.
- Olzynski M., and A. Grigg. 2015. Assessing Canada's habitat/fisheries protection regime: A near total abdication of responsibility? *Alberta Law Blog* (May 15) Available: <http://ablawg.ca/?p=5720> (March 2021).
- Quigley J. T., and D. J. Harper. 2006a. Compliance with Canada's *Fisheries Act*: a field audit of habitat compensation projects. *Environmental Management* 37:336–350.
- Quigley J. T., and D. J. Harper. 2006b. Effectiveness of fish habitat compensation in Canada in achieving no net loss. *Environmental Management* 37:351–356.
- Third L. C., N. W. R. Lapointe, and D. R. Browne. In Press. Project review under Canada's 2012 *Fisheries Act*: Risky Business for Fisheries Protection. *Fisheries* 46(6):288–297. [AFS](#)