



Update on Bill C-68

Proposed Amendments to the *Fisheries Act*

Fall, 2018



Presentation overview

Background

Update on the Parliamentary Process

Program Revitalization

Update on Regulatory and Policy
Changes under Consideration

Next Steps

Work to date

Standing Committee on Fisheries and Oceans

- In 2016-17, the Parliamentary Standing Committee on Fisheries and Oceans reviewed and provided recommendations on the 2012 changes to the *Fisheries Act*.
- The Government Response supported all recommendations and described opportunities to restore lost protections and incorporate modern safeguards into the Act.
- www.parl.gc.ca/Committees/en/FOPO

DFO engagement

- DFO complemented the Standing Committee's review by engaging with Indigenous peoples, provinces and territories, stakeholders and the Canadian public: [Let's Talk Fish Habitat](http://LetsTalkFishHabitat)

Parliamentary Process

- On February 6, 2018, the Government of Canada introduced a bill in Parliament that proposed amendments to the *Fisheries Act*.
- On June 20, 2018, the House of Commons gave Third Reading to Bill C-68, and approved amendments, and referred it to the Senate where it is in Committee Study.
- www.parl.ca/DocumentViewer/en/42-1/bill/C-68/third-reading

Overview of the Bill

8 Key Areas

1. Provisions to modernize the *Fisheries Act*
2. Reconciliation with Indigenous peoples
3. Fish and fish habitat protection provisions
4. Enforcement provisions
5. Fisheries management provisions
6. Provisions to create a fisheries management order power
7. Biodiversity protection provisions
8. Cetaceans in captivity provisions

Reconciliation with Indigenous Peoples

Rights of Indigenous Peoples (Sections 2.3 and 2.4)

- **Section 2.3** New provision providing certainty that nothing in the *Fisheries Act* is to be construed as abrogating or derogating from the protection provided for the rights of the Indigenous people of Canada by the recognition and affirmation of those rights in section 35 of the *Constitution Act, 1982*.
- **Section 2.4** New obligation on the Minister to consider any adverse effects that decisions may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*.

Traditional knowledge (TK) of Indigenous peoples of Canada (Sections 2.5, 34.1 and 61.2)

- **Section 2.5** enables the Minister to consider, when making decisions, among other things, TK that has been provided.
- For decisions, such as authorizations/permits and recommendations on certain regulations, **Section 34.1** requires the Minister to consider the TK that has been provided.
- **Section 61.2** Provides for the protection of traditional knowledge when provided to the Minister and clarifies those circumstances, and conditions where appropriate, where the Minister may disclose that information.

Reconciliation with Indigenous Peoples

Partnering with Indigenous Peoples of Canada (Sections 4.1 and 4.2)

- Amendments to **Subsection 4.1(1)** will expand the Minister's authority to enter into agreements with Indigenous governing bodies and any body established under a land claims agreements (such as a co-management body).
- **Subsection 4.2(1)** expands the equivalency provision to include laws made by Indigenous governing bodies.
- The amendments to subsections 4.1(1) and 4.2(1) are supported by new definitions (subsection 2(1)):
 - **Indigenous governing body** means a council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the Constitution Act, 1982.
 - **laws** includes the by-laws made by an Indigenous governing body.

Fish and fish habitat protection provisions

- The prohibition against causing serious harm to fish is repealed as well as the definitions of "commercial", "recreational" and "Aboriginal" in relation to a fishery.
- Prohibitions against causing the **death of fish** (other than by fishing) and the **harmful alteration, disruption or destruction of fish habitat** are introduced.
- Definitions have been modified to clarify key terms.
- New tools are enabled including **ecologically significant areas**, as well as measures relating to **authorization and permitting of works, undertakings and activities**, establishment of **standards and codes of practice**, creation of **fish habitat banks** by a proponent of a project, and establishment of a **public registry**.

Fish and fish habitat protection provisions

Factors to consider (Section 34.1)

Factors that the Minister must consider prior to recommending to the Governor-in-Council regulations or the Minister exercising powers related to authorizations, permits, orders or Ministerial regulations.

- (a) the **contribution to the productivity of relevant fisheries**
- (b) **fisheries management objectives**;
- (c) whether there are **measures and standards**:
- (d) the **cumulative effects**
- (e) any **fish habitat banks**
- (f) whether any measures and standards to offset the harmful alteration, disruption or destruction of fish habitat give priority to the **restoration of degraded fish habitat**;
- (g) **traditional knowledge** of the Indigenous peoples of Canada that has been provided to the Minister; and
- (h) any other factor that the Minister considers relevant.

Amendments to Bill C-68

The amendments to Bill C-68 are located here:

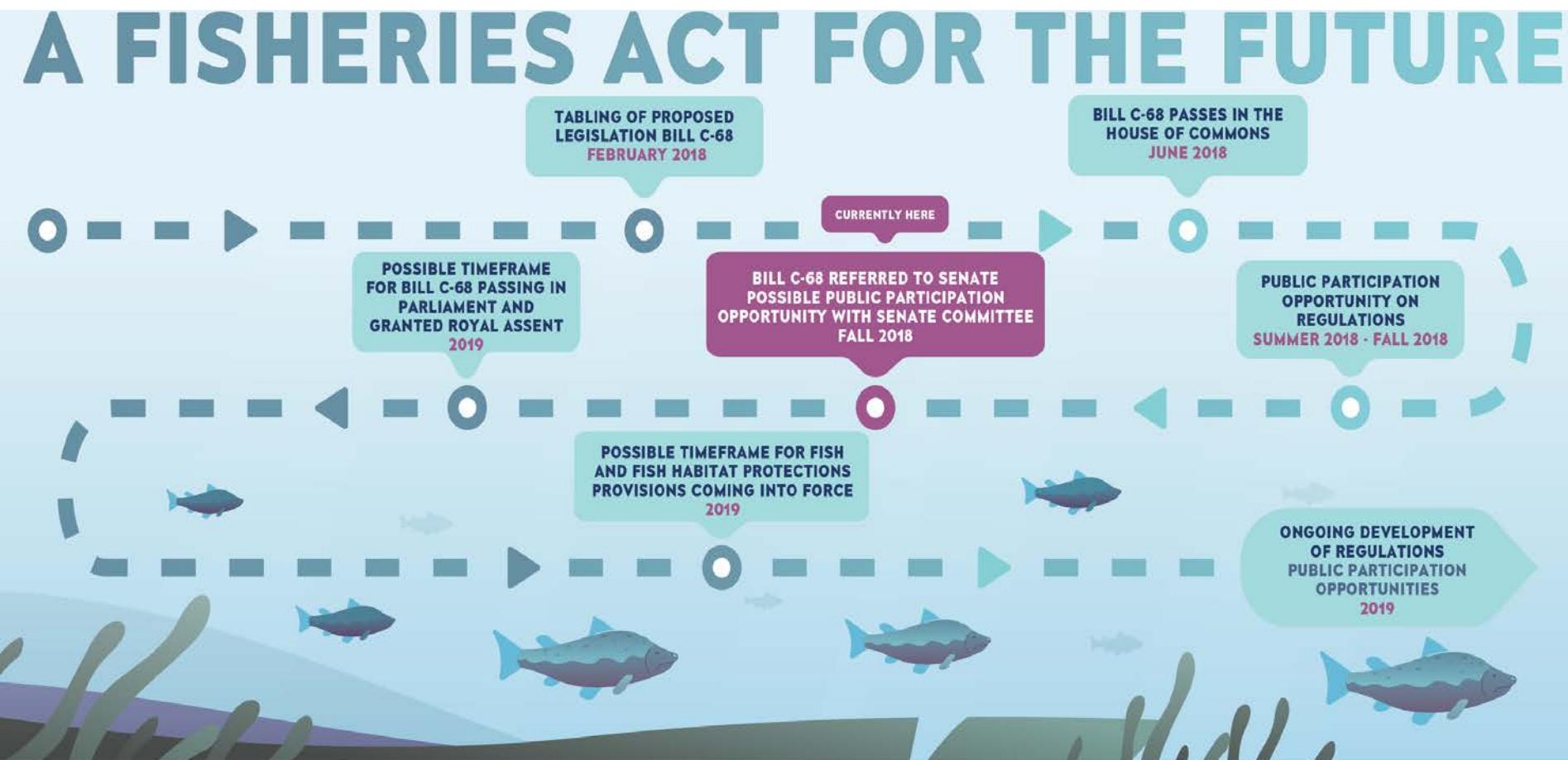
- <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-68/third-reading>

Overview:

- Further modernize and clarify the language of the *Fisheries Act*
 - Ex. "Traditional knowledge" is replaced by "Indigenous knowledge" throughout the Act
- Refine the definition of flow with respect to fish habitat
 - For the purposes of this Act, the quantity, timing and quality of the water flow that are necessary to sustain the freshwater or estuarine ecosystems of a fish habitat are deemed to be a fish habitat.
- Provide new guidance on the management of depleted fish stocks
- Revise and update the Transitional Provisions

Parliamentary process

- The Bill is subject to the parliamentary process.



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Timing of amendments

- The majority of the amendments to the *Fisheries Act* enter into force upon Royal Assent.
- But for a few exceptions, however, the new fish and fish habitat protection provisions would enter into force subsequent to Royal Assent, at a date set by the Governor in Council.
- In preparation, Fisheries and Oceans Canada is currently in the process of developing regulations, policies and other program instruments to support the modifications to the *Fisheries Act* should Bill C-68 receive Royal Assent.
- This will ensure preparedness for the coming into force of the amended *Fisheries Act*.
- This development of possible tools is being undertaken through engagement and early discussions with Canadians.

Why and How – Program Revitalization

- Fisheries and Oceans Canada (DFO) has begun to reorganize the Fisheries Protection Program (FPP) to enhance its current program delivery and to position the Department to support the proposed amendments to the *Fisheries Act*, should they come into force.
- Resources announced in Budget 2018 to expand the Fisheries Protection Program have been approved.
 - This includes capacity for Science and C&P
- There will be growth and re-organization as the program transitions from the Fisheries Protection Program to the **Fish and Fish Habitat Protection Program (FFHPP)**.

Why and How – Program Revitalization

- The focus of the FFHPP will be on enhancing the conservation and protection of fish and fish habitat, with new resources dedicated to Integrated Planning and Partnerships and Engagement efforts with external stakeholders and Indigenous Organizations.
- **Implementation of these changes will be a phased process that will occur over the next 2-3 years.**
- Stakeholders, partners, Indigenous organizations, proponents and clients will receive updates as the transition moves ahead. During this time, enhancements will be made to the existing program to ensure it is responsive to its clients needs and to better support conservation and protection of fish and fish habitat.
- Any further questions on these program changes can be directed to Brad Fanos, Director, Fish and Fish Habitat Protection, Pacific Region.

Fish and fish habitat protection activities

Regulatory and Enforcement

- Review of development projects
- Provision of advice and authorization
- Enforcement of compliance

Integrated Planning

- Restoration
- Offsetting
- Habitat Banking
- Ecologically Significant Areas

Engagement

- Consultation
- Outreach
- Partnerships

Reporting to Canadians

- Monitoring compliance and effectiveness
- Reporting
- Public Registry

Reconciliation with Indigenous Peoples

Bill C-68 and Program Implementation

- Amendments to the *Fisheries Act* proposed in Bill C-68 are currently before the Senate.
- In order to align with the new provisions in Bill C-68 and to continuously improve and update current regulations, pre-consultation on the Applications for Authorization Regulations have been initiated. Formal consultations would commence should Bill C-68 receive Royal Assent.
- The Department will continue to engage indigenous groups, stakeholders and partners on any changes to DFO's regulatory process that should result from Bill C-68. For now, the regulatory process remains unchanged.

Updating the Applications Regulations

- Amendments to the Applications for Authorization Regulations are being considered in preparation for possible changes, should Bill C-68 receive Royal Assent, in order to align with the new provisions in Bill C-68 and to reflect the lessons learned from implementation of the current regulations.
- A Consultation Paper outlining these proposed changes was posted on DFO's website and input was invited over the summer.
- The regulation details the information and documentation that must be submitted by an applicant requesting such an authorization; and the timeline to process the application.

The Proposed Amendments

1. Reflecting new and amended provisions that would be part of the *Fisheries Act*
2. Amending, suspending or cancelling authorizations
3. Using certified habitat credits in the place of, or in addition to offsetting plan
4. Expanding ways to request financial security
5. Requiring geographic coordinates of the proposed offsetting measures
6. Notifying Indigenous communities

Engagement Plan for Fall/Winter 2018-2019

- Fall / Winter 2018- 2019 (Expected)
 - Paper introducing regulatory intent on Designated Projects regulation
 - Two regulations will be developed to support the rebuilding of fish stocks.
- Engagement on other regulations, program and policy ideas (TBD)
 - Indigenous Knowledge
 - Standards and Codes of Practice
 - Routine projects regulations can specify procedures and practices for authorizing residual harm during any phase of a project.
- Royal Assent (TBD)
- Coming Into Force (expected June 2019)

Thank-you for your interest and attention

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More Information:

- [Bill C-68](#)
- [A Fisheries Act for the future](#)

DFO's Observe, Record, Report (ORR) line: 1-800-465-4336