

Scaling up Protections – Government of Canada Tables Fisheries Act Amendments

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On Tuesday, February 6, 2018, the Government of Canada tabled Bill C-68 comprising 56 pages and entitled [An Act to amend the Fisheries Act and other Acts in consequence](#).¹ The proposed amendments would return a number of protections that existed in the Act prior to June, 2012. The proposed amendments also include new protections, increased transparency through an on-line registry and enhanced enforcement and monitoring capacity.

The *Fisheries Act*² (Act) is the main federal statute protecting and managing Canadian fisheries resources. In 2012, the Conservative government made significant amendments to the Act. Those legislative amendments came into force in November 2013.

After the Liberal party formed a new federal government in November 2015, Prime Minister Justin Trudeau sent a mandate letter to the Minister of Fisheries, Oceans and the Canadian Coast Guard (Minister).³ The mandate letter included “[working] with the Minister of Transport to review the previous government’s changes to the Fisheries and Navigable Waters Protection Acts, restore lost protections, and incorporate modern safeguards” as one of the Minister’s priorities.

In September 2016, the House of Commons Standing Committee on Fisheries and Oceans agreed to review and study the amended Act. In February, 2017, the Standing Committee on Fisheries and Oceans issued its report, “Review of Changes made in 2012 to the *Fisheries Act*: Enhancing the Protection of Fish and Fish Habitat and the Management of Canadian Fisheries”.⁴

¹ Department of Fisheries and Oceans Canada, Bill C-68: *An Act to amend the Fisheries Act and other Acts in consequence* (February 6, 2018), online, DFO <<http://www.parl.ca/DocumentViewer/en/42-1/bill/C-68/first-reading>>.

² RSC 1985 c F-14.

³ Office of the Prime Minister, “Minister of Fisheries, Oceans and the Canadian Coast Guard Mandate Letter” (August 19, 2016), online: Office of the Prime Minister: <<https://pm.gc.ca/eng/minister-fisheries-oceans-and-canadian-coast-guard-mandate-letter>>.

⁴ Department of Fisheries and Oceans Canada, “Review of Changes made in 2012 to the Fisheries Act: Enhancing the Protection of Fish and Fish Habitat and the Management of Canadian Fisheries” (February 2017), online, DFO: <<http://www.ourcommons.ca/Content/Committee/421/FOPO/Reports/RP8783708/fopor06/fopor06-e.pdf>>.

Building on the Standing Committee's report, Bill C-68 includes the following key highlights:

Protection

- ◆ Including a new purpose section – to provide a framework for the proper management and control of fisheries and the conservation and protection of all fish and fish habit, including pollution prevention
- ◆ Reintroducing the prohibition against activities that cause harmful alteration, disruption and destruction (HADD) of fish habitat
- ◆ Reintroducing the prohibition against killing fish by means other than fishing
- ◆ Removing all references to commercial, recreational and Aboriginal fisheries and replacing them with references to fish and fish habitat
- ◆ Powers to create short term emergency measures to respond to unforeseen threats to the management of fisheries and to the conservation of fish
- ◆ Identification (through regulation) and protection of fish and fish habitat in ecologically significant areas

Restoration

- ◆ Introducing new provisions specific to rebuilding fish stocks
- ◆ Introducing new measures prioritizing fish habitat restoration as part of development project reviews

Indigenous Partnerships & Reconciliation

- ◆ Providing a new duty for the Minister to consider any adverse effects that a decision may have on the rights of Indigenous peoples of Canada contained in section 35 of the *Constitution Act, 1982*
- ◆ Providing a new ability for the Minister to consult with Indigenous governing bodies

Decision Making

- ◆ Introducing new considerations for Ministerial decision making, including: application of a precautionary approach; the sustainability of fisheries; scientific information; traditional Indigenous knowledge; community knowledge; social, economic and cultural factors in the management of fisheries; and cooperation with any government of a province, any Indigenous governing body and any body – including co-management body – established under a land claims agreement

Transparency & Consultation

- ◆ A requirement to publicly release information on project decisions, orders, authorizations, permits and restoration plans through an online registry
- ◆ A new ability for the Minister to establish advisory panels

Permitting & Enforcement

- ◆ Clarity on which types of projects require authorizations through permitting and codes of practice
- ◆ Providing for the use of alternative measures instead of fines where there is an alleged offence
- ◆ Enhanced monitoring and enforcement capacity and allowing for private prosecutions

Review

- ◆ Requiring that the Act be reviewed every five years

Our firm will be reviewing the proposed amendments in more detail including those areas which are subject to further public consultation and regulation. Please stay tuned for a more in-depth article in the near future.

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