
**Submission from the Ecology Action Centre
on the Review of the Fisheries Act
Submitted November 30th, 2016**

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Introduction

Canada's *Fisheries Act* is one of the most important pieces of legislation in this country, from coast to coast to coast and across inland and freshwater ecosystems. As such the efforts to restore the fisheries and include modern safeguards present a once in a generation opportunity to truly modernize the *Act*, and not only restore environmental protections but truly modernize the legislation so that it is effective in helping Canada meet our international obligations of sustainable fisheries management and biodiversity protection in aquatic environments.

By 2018, on the 150th anniversary of the *Fisheries Act*, Canadians should be able to celebrate modern and strong *Fisheries Act*. Implementation of this legislation must be well resourced, and with a view to fixing existing shortcomings in our fisheries management system, management of cumulative impacts in aquatic habitats and ensuring adherence to modern and well defined principles of fisheries management. This new legislation should become an important part of the work we have to do to reconcile with First Nations and Inuit peoples. The *Fisheries Act* will be modernized in tandem with other related pieces of legislation including the *Canadian Environmental Protection Act*, the *Navigation Protection*

Act, and the Oceans Act to provide a coherent and comprehensive set of laws that ensure conservation and sustainable use of our marine resources.

The Ecology Action Centre is supportive and aligned with the majority of presentations to the Fisheries and Oceans Standing Committee, including other environmental organizations, First Nations and some aspects of private sector submissions. We highlight below 9 key recommendations, and include as appendices a report completed in 2010, following 5 years of consultation between DFO and environmental and conservation organizations in Canada regarding improvement of the implementation of the fish habitat protection provisions in the former *Fisheries Act*. We also include an appendix on key wording from other pieces of legislation from which Canada can borrow as we include modern safeguards.

Our recommendations span both restoring lost protections and introducing modern safeguards.

Restoring Lost Protections

Recommendation 1: The language around Harmful Alteration, Disruption and Destruction – HADD be reinstated. The *Fisheries Act* has been one of the strongest environmental laws in Canada because of case law. With the changes to the HADD language, we lose those legal precedents. The addition of “activities” was an improvement made in 2012, and should be kept.

Recommendation 2: We firmly believe that there are new ways of ensuring that fish habitat is protected and that in fact we return to the intentions of the 1986 No Net Loss Policy. Today's digital platforms make the one window approach easy, and also allow for geospatial referencing of HADD permits and restoration activities. We recommend that a new Fisheries Act is enforced partly through easily accessible information and mapping. Specifically, all project approvals and permits should be added to a publicly accessible database, to facilitate cooperation around habitat protection, to better monitor and manage cumulative impacts and for the government to be able to make a decision around an authorization when fish habitat is already facing too many threats. (See Appendix 1 for practical recommendations for improving habitat protection).

Recommendation 3: The changes made through the Aquaculture Activity Regulations¹, regarding pesticide use in the open net pen aquaculture industry, be considered as part of “lost protections”, particularly with the removal of enforcement by Environment and Climate Change Canada. An increase in pesticide use directly impacts other marine species – including lobster.

Incorporating Modern Safeguards

On modern safeguards, the *Fisheries Act* has the potential to be a significant legislative tool to help Canada meet its commitments under the United Nations Fish Stocks Agreement, the Convention on Biological Diversity (CBD), the Sustainable Development Goals (SDGs)² – particularly Goal 14 on Oceans. As well, the *Fisheries Act* in its current state does not enable the Sustainable Fisheries Framework³ policy suite. This needs to be rectified and is a critical aspect of modernizing the Act.

Recommendation 4: First and foremost, we have an obligation to add basic principles of good fisheries and oceans management, many of which Canada has championed in international agreements and management of fisheries in areas beyond national jurisdiction and within some of our own policies. These include:

- the precautionary principle,
- the ecosystem approach,
- transparency,
- co-management and
- commitment to science-based decision-making.

Including these in the *Fisheries Act* is important for coherence and continuity international agreements, as well as enables these principles in our own management of fisheries and their habitats. These principles will also help to enable many policies within the Sustainable Fisheries Framework – and therefore provide a legal basis for these policies. They will also allow us to measure our progress towards international obligations (Aichi Target 6 and SDG 14 as specific examples).

Recommendation 5: Impacts of fishing on fish habitat need to be regulated by the *Fisheries Act*. This is already happening through the implementation of the Sensitive Benthic Areas Policy, however this policy is not currently enabled by the Fisheries Act and is not cross

¹ <http://www.dfo-mpo.gc.ca/aquaculture/management-gestion/aar-raa-eng.htm>

² <https://sustainabledevelopment.un.org/?menu=1300>

³ <http://www.dfo-mpo.gc.ca/fm-gp/peches-fisheries/fish-ren-peche/sff-cpd/overview-cadre-eng.htm>

referenced in the *Oceans Act*, making these closures temporary in nature, even if the intention is for permanent protection. It is no longer acceptable, given Canada's obligations through the United Nations Sustainable Fisheries Resolutions 61/105 and subsequent resolutions, that the only industry exempt from the habitat protections of the *Fisheries Act* is the industry that depends most on healthy and productive fish habitat. Canada needs to bring its policy commitments into law.

Recommendation 6: In order to honestly and accountably abide by modern principles of fisheries management, there is a need to reduce the level of Ministerial discretion currently in the Act. Put simply, it is impossible to follow scientific advice, the precautionary approach and the ecosystem approach, when there is such a high level of discretion. Our fisheries resources have already been negatively impacted when political decisions are made in the absence of evidence and long-term benefits to Canadians.

Recommendation 7: Canada's fisheries are incredibly important culturally, socially and economically to coastal communities, First Nations, Inuit, recreational fishers to name a few. Our country was founded in part because of our abundance of fisheries resources. I live in Nova Scotia and fisheries were our largest export this past year. Without our wild fisheries, our province – and other coastal provinces would be much less self sufficient and resilient, than we are today. A modern *Fisheries Act* must include provisions that require rebuilding of depleted fish stocks, and timelines and targets for this rebuilding. An annual report to Parliament on the progress towards these efforts should also be mandated. Several recently reports – the Royal Society of Canada in 2012⁴, a report released by Oceana in 2016 and co-authored by Dr. Julia Baum and Dr. Susanna Fuller,⁵ and finally the October 2016 report of the Auditor General of Canada⁶ all show significant short comings in the management of Canadian fisheries, and discrepancies in existing Canadian fisheries law as compare to other developed fishing nations. As well, fish populations that are considered threatened and endangered by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) are not properly protected or managed under the Fisheries Act (see Appendix 2 for Missing the Safety Net by McDevitt Irwin et al 2015 and published in the Canadian Journal of Fisheries and Aquatic Sciences. Our *Fisheries Act* should be a tool to recover these species and currently our legislation lags well behind that of the United States through the *Magnuson Stevens Act* and the European Union through the Common Fisheries Policy, as examples of developed fishing nations, with whom we share fish populations. Including rebuilding Finally, Canada does not have an adequate legal framework within which to meet its commitments

⁴ <http://rsc.ca/en/expert-panels/rsc-reports/sustaining-canadas-marine-biodiversity>

⁵ <http://www.oceana.ca/en/publications/reports/heres-catch-how-restore-abundance-canadas-oceans>

⁶ http://www.oag-bvg.gc.ca/internet/English/parl_cesd_201610_02_e_41672.html

under the *Fisheries Act* should fully enable Canada meeting its commitments under Aichi Target 6 of the Convention on Biological Diversity (CBD) which reads: ...” that overfishing is avoided, recovery plans and measures are in place for all depleted species, fisheries have no significant adverse impacts on threatened species and vulnerable ecosystems and the impacts of fisheries on stocks, species and ecosystems are within safe ecological limits.” (See Appendix 3 for examples of other legal provisions that should be incorporated into Canada’s *Fisheries Act*).

Recommendation 8: Fisheries are a public resource – one of the very few in Canada. As such, they must be managed for the public good, with economic benefiting as many Canadians as possible, and particularly our coastal communities and independent fishermen. This ensures that the wealth created naturally in our oceans remains in our communities. A modernized *Fisheries Act* should enable existing policies such as the Policy for Preserving the Independence of the Inshore in Canada’s Atlantic Fisheries⁷, Atlantic Canada and elements of the Atlantic Fisheries Policy Review⁸ as well as the Aboriginal Fisheries Strategy.

Recommendation 9: Ensure that the new Act has a strong and well-articulated purpose. A law of its importance should not be purposeless, as it has been since 1986. This purpose should ensure that current and future policy frameworks are enabled by the act, including those on desired conservation and social and economic outcomes.

The modernization of Canada’s *Fisheries Act* is an important and bold undertaking. It must be done properly and with a view to the future of our public fisheries resources and marine environmental protection.

Appendix 1 Synthesis of ENGO – DFO Workshop Recommendations from 2006-2009 on the Delivery of Habitat Management Program by Fisheries and Oceans Canada

Appendix 2. McDevitt Irwin et al 2015. Missing the Safety net: Evidence for inconsistent and insufficient of fisheries management measures for at risk marine fish in Canada.

Appendix 3: Other relevant legislation in Canada and internationally that should serve to inform Canada’s modernization of the *Fisheries Act*

⁷ <http://www.dfo-mpo.gc.ca/fm-gp/initiatives/piifcaf-pifpcca/piifcaf-policy-politique-pifpcca-eng.htm>

⁸ <http://www.dfo-mpo.gc.ca/fm-gp/policies-politiques/afpr-rppa/framework-cadre-eng.htm>