



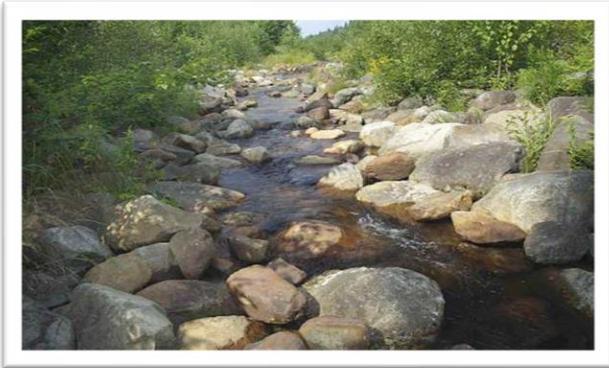
Fisheries Act Modernization and the Role of Robust Management Systems, Audits and Verification

Presentation to the AAC by Paulette Hall
Oak Island, September 18, 2022

Lake Laberge, Yukon Territory, Canada. Shutterstock

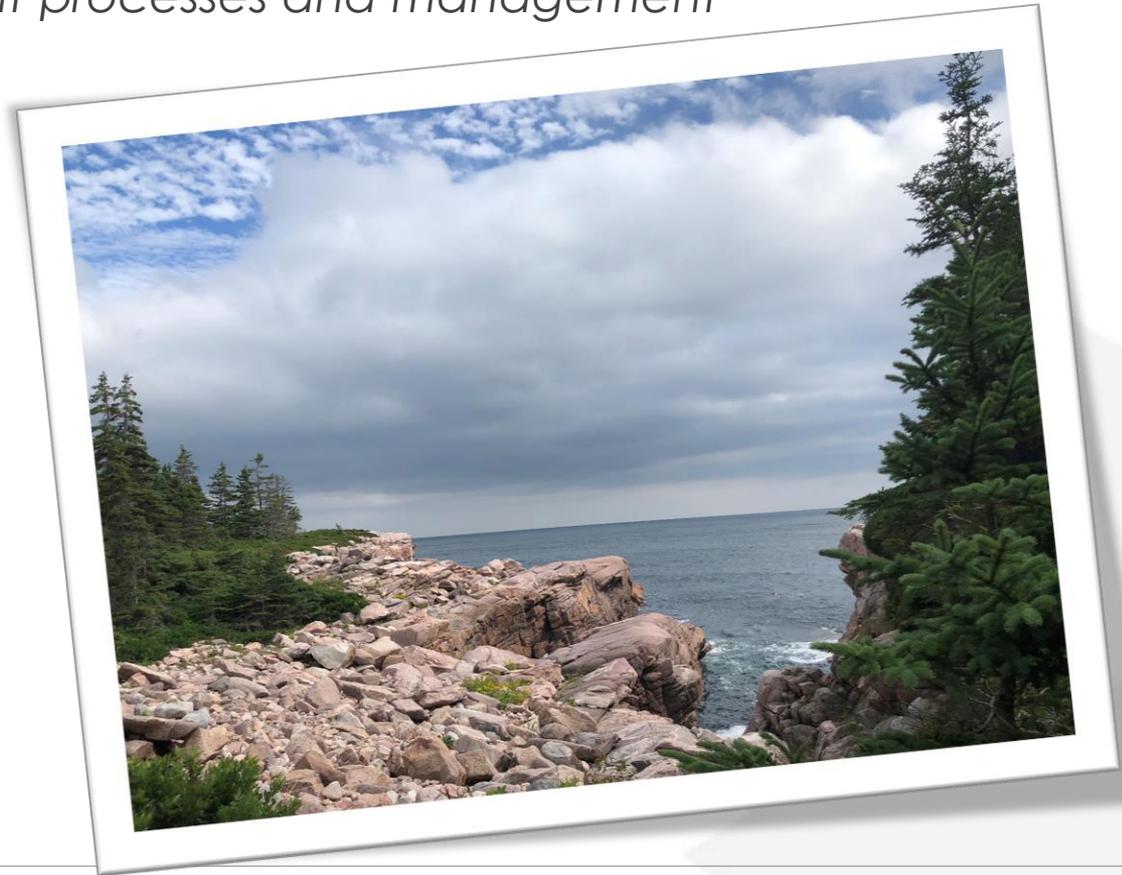
PRESENTATION OBJECTIVES

1. Provide context and explain the new the *Fisheries Act*
2. *Share experience on the role of audits in DFO's program delivery*



OVERVIEW OF PRESENTATION

- Modernization of the *Fisheries Act*
- Auditing of *assessment processes and management measures*
- *Questions*



DFO MANDATE

DFO has four **core responsibilities**:

Fisheries

Ensure Canada's fisheries, including aquaculture, are protected, managed sustainably and support Indigenous participation, and that the national network of harbours is open and in good repair

Aquatic ecosystems

Protect Canada's oceans, freshwater, and aquatic ecosystems and species from the negative impact of humans and invasive species through sound science and in collaboration with Indigenous communities

Marine navigation

Maintain waterways year round so they are safely navigable by mariners and all Canadians

Marine operations and response

Respond to maritime incidents, such as search-and-rescue and environmental emergencies, through our Coast Guard fleet and in collaboration with Indigenous communities

Departmental Results Framework for the Aquatic Ecosystems Sector:

1. Negative impacts on Canada's oceans and other aquatic ecosystems are minimized or avoided
2. Scientific information on Canada's oceans and other aquatic ecosystems is available to inform management decisions
3. Improved relationships with, involvement of, and outcomes for Indigenous peoples

TIMELINE

2016-17



The Parliamentary Standing Committee on Fisheries and Oceans (FOPO) reviewed and provided recommendations on the 2012 changes to the *Fisheries Act*.

DFO complemented the Standing Committee's review by engaging with Indigenous peoples, provinces and territories, stakeholders and the Canadian public



Feb 2018



Government of Canada introduced Bill C-68 in the House of Commons within Parliament that proposed amendments to the *Fisheries Act*

June 2018



House of Commons approved amendments and referred Bill C-68 to Senate

June 21, 2019



Bill C-68, an Act to amend the *Fisheries Act*, received Royal Assent and became law, with the majority of amendments entering into force on this date.

August 28, 2019



Fish and Fish Habitat Protection Provisions to come into force.

CONTEXT

As part of the Government of Canada's Review of Environmental and Regulatory Processes, a review of the 2012 changes to the *Fisheries Act* was initiated.

The *Fisheries Act* Review aimed to:

- Restore lost protections and incorporate modern safeguards;
- Provide better certainty for industry;
- Ensure the long term sustainability of marine resources; and
- Make sure that the *Fisheries Act* provides strong and meaningful protection of fish and fish habitats

2012 FISHERIES ACT

Protection for commercial, recreational or Aboriginal fisheries	Uncertainty around requirements for development projects	No provisions referencing the independence of inshore fishers	No provisions specifically designed to protect marine biodiversity	No provisions to include Indigenous participation in decision making	No provisions to restore degraded habitat and rebuild fish stocks
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OVERVIEW OF FISH AND FISH HABITAT COMPONENTS OF THE *FISHERIES ACT*

Changes to the *Fisheries Act* will help:



Restore protections for fish and fish habitat



Enhance marine protection and habitat restoration



Provide clarity around project development and help reduce the regulatory burden on industry



Strengthen the role of Indigenous peoples in project reviews, monitoring, and policy development while also promoting the recognition of rights, respect, co-operation and partnership

FISHERIES ACT, FISH AND FISH HABITAT PROTECTION PROVISIONS MODERNIZATION

New purpose section - Proper management and control of fisheries, and conservation and protection of fish and fish habitat

Protection for all fish and fish habitat - Return of former prohibitions against “death of fish” and “harmful alteration, disruption or destruction” (HADD) of fish habitat

Definitions - modified to clarify key terms

Factors to consider - Broader considerations for decision making



FISH AND FISH HABITAT PROVISIONS OF THE *FISHERIES ACT*



HARMFUL ALTERATION, DISRUPTION
OR DESTRUCTION

SUBSECTION
35 (1)



No person shall carry on any [work, undertaking or activity](#) that results in the [harmful alteration, disruption or destruction](#) of fish habitat



Death of Fish

SUBSECTION
34.4 (1)

No person shall carry on any [work, undertaking or activity](#), other than fishing, that results in the [death](#) of fish.

FISHERIES ACT

FISH AND FISH HABITAT PROTECTION PROVISIONS MODERNIZATION (CONT)

New tools were added including:

Ecologically
significant
areas



Measures relating
to authorization &
permitting of
works,
undertakings
& activities



Establishment
of a public
registry



Establishing
of standards
and codes of
practice



Creation of fish
habitat banks
by a
proponent of a
project



FISHERIES ACT

DEFINITION OF FISH HABITAT, SECTION 2

- The definition of “**fish habitat**” was modified to clarify that fish habitat includes “water frequented by fish”:

“fish habitat means water frequented by fish and any other areas on which fish depend directly or indirectly in order to carry out their life processes, including spawning grounds and nursery, rearing, food supply and migration areas”.

- Ensures definition includes all fish habitats in Canada, where fish are found

FISH PASSAGE, FLOW & OBSTRUCTIONS

SECTION 34.3

- Minister has authority to:
 - Order water flows downstream of obstructions
 - Specify the characteristics of those water flows to permit the free passage of fish
 - Make Regulations
- May order the owner of an obstruction to:
 - Undertake studies related to the obstruction's impacts on fish and fish habitat
 - Remove an obstructions
 - Construct a fish way
 - Transport fish beyond an obstruction
 - Install fish stops or diverters, guards or screens to exclude fish from an area
- The Minister may also order the protection of the above mitigation measures.



CONSIDERATION FACTORS

SECTION 34.1(1)

Before recommending to the Governor-in-Council regulations or exercising powers related to authorization, permits, orders or Ministerial regulations the

Minister **must consider**

1. Contribution to Productivity of Relevant Fisheries
 2. Fisheries Management Objectives
 3. Whether there are Measures and Standards
 4. Cumulative Effects
 5. Any Fish Habitat Banks
- 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
 - Indigenous knowledge of the Indigenous peoples of Canada that has been provided to the Minister
 - Any other factor that the Minister considers relevant

FISHERIES ACT

STANDARDS AND CODES OF PRACTICE, SECTION 34.2

- The Minister may establish standards and codes of practice for the avoidance of the death of fish and HADD, the conservation and protection of fish or fish habitat, and the prevention of pollution
- These are to be formal documents that are published, or where notice is given, in the *Canada Gazette* (www.gazette.gc.ca)
- They can specify procedures, practices or standards for avoiding the death of fish or the HADD of fish habitat in relation to works, undertakings or activities during various phases of their life cycle (e.g., construction, operation, maintenance, decommissioning)



PERMITS AND DESIGNATED PROJECTS

SECTION 35.1

A new instrument to enable permits to be issued for certain designed project types. This new permitting scheme will complement the current practice of issuing Letters of Advice and authorizations

- ➔ A list of designated projects will be established by regulation made by the Governor in Council
- ➔ For designated projects, failure to have a permit for works, undertakings or activities that are associated with the project would be prohibited under the *Fisheries Act*
- ➔ The authority for issuing permits for designated projects cannot be delegated
- ➔ Permits will bring clarity to the regulation of projects and enable future cost recovery

ECOLOGICALLY SIGNIFICANT AREAS

SECTION 35.2

Intended to be established through regulations to protect sensitive, highly productive, rare or unique areas. The existing provisions related to ESAs have been replaced with a new authorization regime with respect to the new death of fish and harmful alteration, disruption or destruction provisions

➔ The carrying on of works, undertakings or activities that are prescribed by regulations, is prohibited unless authorized within an ESA

➔ Before authorizing such work, undertaking or activity, satisfactory avoidance and mitigation required to achieve conservation and protection objectives for the ESA must exist and be included as conditions of the authorization

HABITAT BANKING

SECTION 42.01 TO 42.04

Formalized in law the regime for, proponent-led fish habitat banking*, a type of offsetting measure that creates, restores, or enhances fish habitat in advance of a project being developed

- ➔ Establishes a proponent-led fish habitat banking scheme, including,
 - Definitions of key terms
 - A system for the creation, allocation and management of a proponent's habitat credits
 - Certificates validating a proponent's credits; and
 - Clarity that habitat credits are only to be used within a specific service area.
- ➔ Does not allow for third-party or market-based habitat banking

*Fish Habitat Banking

An area of a fish habitat that has been created, restored or enhanced by the carrying on of one or more conservation projects within a service area and in respect of which area has certified any habitat credit

AUTHORIZATIONS

Application for Authorization of the *Fisheries Act* was enacted in 2013. The regulation detailed **the information and documentation required by applicant requesting authorization and the processing timelines.**

Modifications to the Application Regulation reflects changes in in the modernized *Fisheries Act* and introduce updates to improve the process of administering the new regulations, including,



Reflecting new and amended provisions that are part of the Fisheries Act



Amending, suspending or cancelling authorizations



Using certified habitat credits in the place of, or in addition to offsetting plan



Expanding ways to request financial security



Requiring geographic coordinates of the proposed offsetting measures

FISHERIES ACT

POLICIES

Fish and Fish Habitat Protection Policy Statement (August 2019)

Includes the Department's interpretation of the:

- Fish and fish habitat protection provisions of the *Fisheries Act*
- Exceptions under subsections 34.4 (2) and 35(2) of the *Fisheries Act*
- Section 34.1 Factors the Minister must consider before issuing a *Fisheries Act* authorization
- Consequences of non-compliance with the fish and fish habitat protection provisions
- Monitoring and Reporting

<https://dfo-mpo.gc.ca/pnw-ppe/policy-politique-eng.html>

FISHERIES ACT

POLICIES (CONT)

Policy for Applying Measures to Offset Adverse Effects on Fish and Fish Habitat Under the *Fisheries Act* (December, 2019)



Includes:

- Guidance on undertaking effective measures to offset death of fish and the harmful alteration, disruption or destruction of fish habitat, consistent with the fish and fish habitat protection provisions of Canada's *Fisheries Act*
- Measures to offset for the protection of fish and fish
- Preparing an offsetting plan

<https://dfo-mpo.gc.ca/pnw-ppe/reviews-revues/policies-politiques-eng.html>

FISHERIES ACT

GUIDANCE (CONT)

Applicant's Guide Supporting the "Authorizations Concerning Fish and Fish Habitat Protection Regulations" August 2019

Includes:

- Guidance on how to develop and submit an application in accordance with the Regulations, or to request the amendment, suspension, or the cancellation of an authorization already in their possession

<http://www.dfo-mpo.gc.ca/pnw-ppe/reviews-revues/applicants-guide-candidats-eng.html>



MODERNIZED WORK UNITS

REGULATORY REVIEW & ADVICE

- Legislative & policy frameworks
- Compliance promotion & monitoring
- Regulatory review & authorizing
- Environmental/impact assessment
- Indigenous consultation

REPORTING TO CANADIANS

- Monitoring effectiveness of measures
- Public reporting
- Better digital service for users
- Continuous improvement

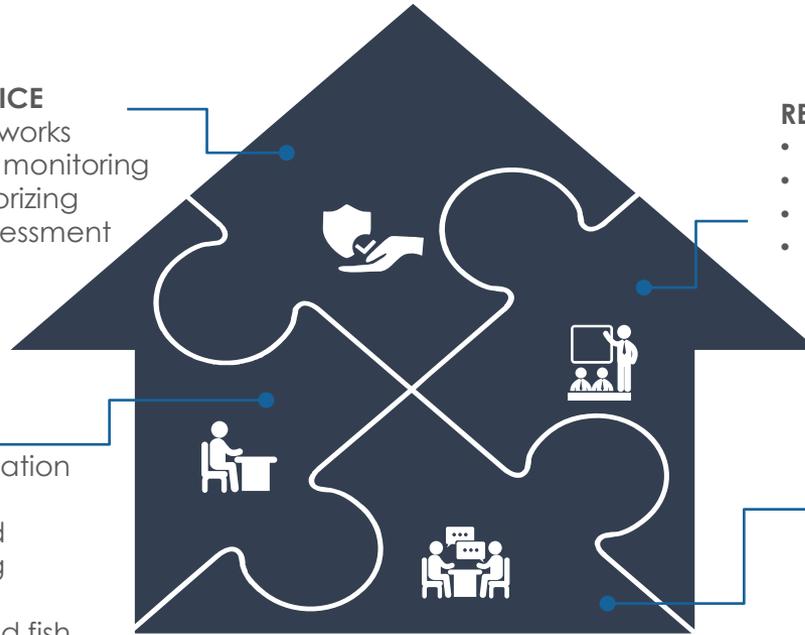
INTEGRATED PLANNING

- Identification of conservation priorities and objectives
- Influencing, leading and participating in planning processes
- Assessing state of fish and fish habitat

ENGAGEMENT & PARTNERSHIPS

- Consultation
- Outreach
- Building and maintaining relationships
- Grants and contributions

RECONCILIATION WITH INDIGENOUS PEOPLES



RECONCILIATION: PRINCIPLES & PRACTICES

Section 2.3

“This Act is to be construed as upholding the rights of Indigenous peoples recognized and affirmed by section 35 of the *Constitution Act, 1982*, and not as abrogating or derogating from them”

Indigenous peoples of Canada has the meaning assigned by the definition aboriginal peoples of Canada in subsection 35(2) of the *Constitution Act, 1982*



Section 2.4

“When making a decision under this Act, the Minister shall consider any adverse effects that the decision may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*”

RECONCILIATION: ONGOING PROJECTS

DUTY TO CONSULT AND ACCOMODATION

- Section 35 of the Constitution Act, 1982 provides for the protection of Aboriginal and Treaty rights. As such, when the Fish and Fish Habitat Protection Program contemplates conduct (such as issuing a *Fisheries Act* authorization or SARA permit, policy development) that may adversely affect potential or established Section 35 Aboriginal and/or Treaty rights, the Program has a duty to consult with Indigenous people in order to understand those effects and to accommodate (i.e., avoid, mitigate and offset), as appropriate
- There may also be consultation obligations set out in land claims agreements and modern treaties which must be followed, as well as protocols with individual Indigenous Nations or communities



RECONCILIATION: ONGOING PROJECTS

CONSIDERATION OF INDIGENOUS KNOWLEDGE

Consideration of Indigenous Knowledge in Decisions Paragraph 34.1(1)(g)

- Obligation requiring the Minister to consider, when making certain decisions related to the fish and fish habitat protection and pollution prevention provisions of the *Fisheries Act*, the Indigenous knowledge of the Indigenous peoples of Canada that has been provided to the Minister.

Non-Disclosure of Confidential Indigenous Knowledge Paragraph 61.2(1)-(4)

- Provision to manage the confidentiality of Indigenous knowledge provided to the Minister by limiting disclosure, except under specified circumstances.

Interaction with the Access to Information Act

- Indigenous knowledge provided in confidence under the *Fisheries Act* that cannot be disclosed under the *Fisheries Act* cannot be disclosed even if requested under the *Access to Information Act*

RECONCILIATION: INDIGENOUS PARTNERING

Agreements

Section 4.1(1) Enables agreements with an Indigenous governing body or a body established under a land claims agreement, including a co-management body

Equivalency of Laws

Section 4.2(1) Amended provision to enable a declaration of equivalency of a provision of a law of an Indigenous governing body to a provision of the regulations of the *Fisheries Act*. This would result in the provision of the Act or its regulations not applying in the territory governed by that Indigenous governing body and the provision of the law of the Indigenous governing body continuing to apply. Application of this provision is contingent on agreements under section 4.1

REGULATORY & COMPLIANCE

Regulatory & Compliance Vision: Develop and implement approaches to ensure compliance with, and effectiveness of, the fish and fish habitat protection provisions of the *Fisheries Act*

Mandated Activities

- Develop legislative frameworks, standards, guidelines, and tools
- Coordinate and partner with other governmental departments and agencies
- Review development projects
 - Work with proponents to avoid, mitigate and, if necessary, offset harmful impacts to fish and fish habitat
- Make decisions and provide expert advice on authorizations, permits, and impact and environmental assessment
- Undertake a nationally consistent risk-based monitoring program that measures compliance with the *Fisheries Act* and associated tools, as well as examines the success of avoidance, mitigation and offsetting measures in order to
 - report on progress towards meeting objectives
 - adapt and improve program effectiveness

REGULATORY & COMPLIANCE: PRINCIPLES & PRACTICES

Projects Near Water website

Provides measures to avoid impacts to fish and fish habitat

If use code of practice, notify FFHPP

If impacts cannot be avoided or aquatic species at risk is involved, contact FFHPP for a Request for Review

Request for Review

Submit information on project, measures to avoid / mitigate impacts on fish and fish habitat

FFHPP will review to determine compliance with the *Fisheries Act*, *Species at Risk Act* and *Aquatic Invasive Species Regulations*

Letter of Advice indicating work is in compliance with the *Fisheries Act*
OR
Letter indicating that a ***Fisheries Act* authorization or *Species at Risk Act* permit is required** – proponent to apply for authorization/permit following regulations

Application for Authorization / Permit

Application reviewed for completeness, adequacy – proponent addresses gaps

60 day time limit applies to application under *Fisheries Act* regulations

When application complete and adequate, other requirements considered

Authorization / Permit Decision

Before authorization or permit decision can be made:

- Address duty to consult
- *Species at Risk Act* requirements
- Outcome of federal environmental/impact assessment
- Other requirements

90 day time limit for *Fisheries Act* begins when the above are addressed

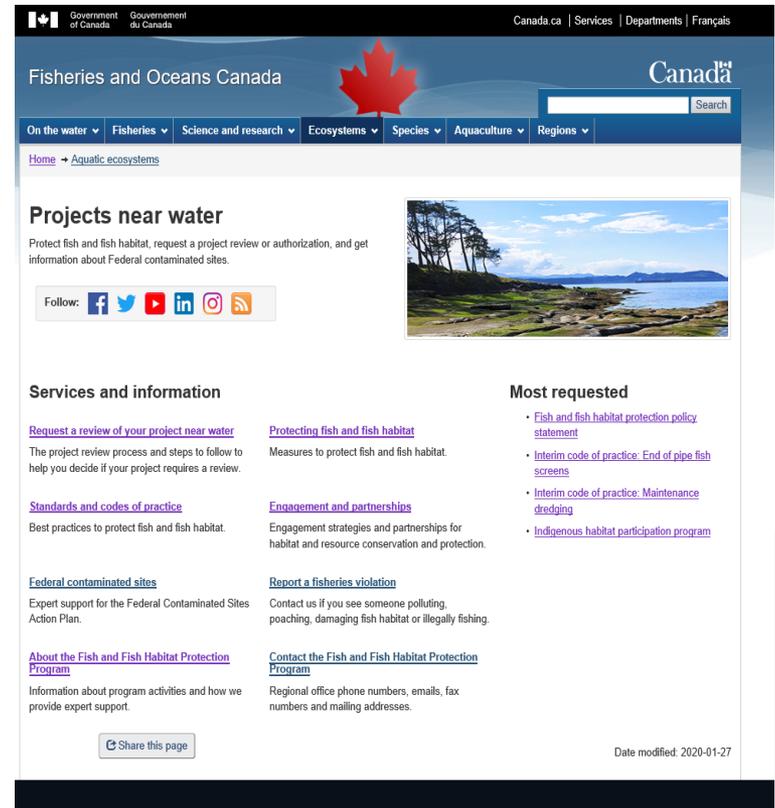
Consider S. 34.1 Factors

Decision – issue authorization, with conditions or refuse, with explanation

REGULATORY & COMPLIANCE: PRINCIPLES & PRACTICES

PROJECTS NEAR WATER WEBSITE

- No longer direct proponents to the concept of Self-Assessment
- Measures to avoid impacts to fish and fish habitat are provided on the website
- Proponents who cannot avoid impacts using the avoidance measures provided are advised to submit a request for review



The screenshot displays the Fisheries and Oceans Canada website. The header includes the Canadian flag, the text 'Government of Canada / Gouvernement du Canada', and navigation links for 'Canada.ca', 'Services', 'Departments', and 'Français'. The main navigation bar features 'Fisheries and Oceans Canada' and a search bar. Below this, a secondary navigation bar lists categories: 'On the water', 'Fisheries', 'Science and research', 'Ecosystems', 'Species', 'Aquaculture', and 'Regions'. The main content area is titled 'Projects near water' and includes a sub-header 'Protect fish and fish habitat, request a project review or authorization, and get information about Federal contaminated sites.' A 'Follow:' section with social media icons (Facebook, Twitter, YouTube, LinkedIn, Instagram, RSS) is present. A large image of a rocky shoreline with trees and water is shown. The 'Services and information' section lists links for 'Request a review of your project near water', 'Protecting fish and fish habitat', 'Standards and codes of practice', 'Engagement and partnerships', 'Federal contaminated sites', 'Report a fisheries violation', 'About the Fish and Fish Habitat Protection Program', and 'Contact the Fish and Fish Habitat Protection Program'. A 'Most requested' section lists 'Fish and fish habitat protection policy statement', 'Interim code of practice: End of pipe fish screens', 'Interim code of practice: Maintenance dredging', and 'Indigenous habitat participation program'. A 'Share this page' button and a 'Date modified: 2020-01-27' timestamp are also visible.

Projects Near Water: <http://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>

REGULATORY & COMPLIANCE: PRINCIPLES & PRACTICES

MODERNIZATION OF OFFSETTING AND HABITAT BANKING

- The 'Policy for Applying Measures to Offset Impacts to Fish and Fish Habitat Under the *Fisheries Act*' (2019) provides guidance on how to apply measures to avoid, mitigate and offset to manage the risks posed by the adverse effects on fish and fish habitat that result from works, undertakings and activities
- The Department is modernizing its offsetting policy to incorporate habitat banking activities, align with the modernized *Fisheries Act*, and address implementation challenges
- In doing so, more specific objectives are:
 - improving clarity and consistency with international best practices
 - providing a consistent approach to avoiding, mitigating and offsetting adverse effects
 - moving towards a measurable performance-based approach
 - standardizing administrative requirements for fish habitat banking

Engagement on Tools

Platform [Home \(talkfishhabitat.ca\)](http://talkfishhabitat.ca)

Wave 2 Winter /Spring Topics

- Cumulative Effects
- Prescribed Works and Water Regulation
- Ecologically Significant Areas
- Death of Fish Position Statement
- Existing Facilities and Structures Position Statement
- Framework to Identify Restoration Priorities

REGULATORY & COMPLIANCE: ONGOING PROJECTS

STANDARDS AND CODES OF PRACTICE

- Codes of practice are being developed to provide nationally consistent, streamlined guidance for avoiding and mitigating impacts from common, well understood works, undertakings and activities
 - Standardized avoidance and mitigation measures being developed to improve clarity and consistency in FFHPP guidance and advice
 - Building on previous and existing guidance (e.g. DFO operational statements, provincial guidelines, industry best practices)
- Two interim codes of practice posted on Projects Near Water website (August 2019)
 - End-of-pipe fish protection screens for small water intakes
 - Routine maintenance dredging

REGULATORY & COMPLIANCE: ONGOING PROJECTS

PRESCRIBED WORKS AND WATERS REGULATION

- DFO's Fish and Fish Habitat Protection Program is proposing the development of a Prescribed Works and Waters Regulation
- This regulation would provide better protection of fish and fish habitat while providing increased regulatory efficiency in managing potential impacts of routine works and works conducted on minor waters by:
 - Providing a streamlined authorization process for proponents of particular classes or projects if they are able to implement pre-established mandatory conditions
 - Incentivizing the adoption of best available practices at the planning and design phases of a project
 - Establishing mandatory project notifications. Notifications would enable DFO to better track and report on projects taking place on the landscape
- This regulation is expected to take between 2 and 4 years to complete and will be developed in accordance with the *Cabinet Directive on Regulation*

REGULATORY & COMPLIANCE: ONGOING PROJECTS

RISK MANAGEMENT

- FFHPP is looking to develop a modernized approach to managing risk in regulatory decision-making
- Currently testing initial risk management concepts and tools nationally
- Objectives for a modernized risk management approach include:
 - developing nationally consistent methodology, criteria, tools and guidance
 - built-in regional flexibility to address bio-geographical differences
 - integration of AIS and SAR decision-making processes
 - alignment with recognized international risk management standards and best practice
 - consideration of best available science and practitioner experience and expertise
 - engagement with external partners, stakeholders and Indigenous groups

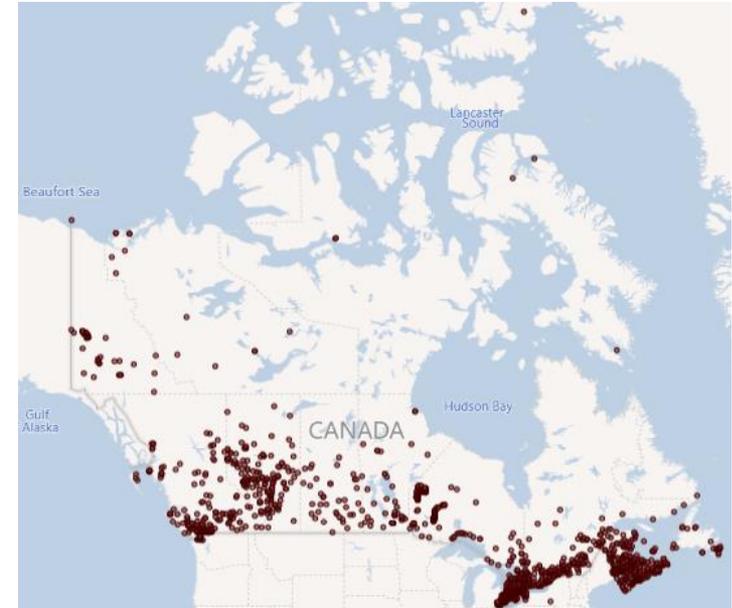
REGULATORY & COMPLIANCE: ONGOING PROJECTS

REGULATORY REVIEW

Table 1: Referrals Received by Primary Impact and Region

Region	Central & Arctic	Gulf	Maritimes	NFLD & Lab	Pacific	Québec	Grand Total
No Potential Impact	33	52	23	23	4	12	147
Changes in Flows / Water Levels	14	7	9	3	10	4	47
Deposition of Non-Deleterious Substances	5	1			7		13
Dredging / Excavating	243	30	18	7	53	10	361
Fish Mortality	30	2	4		3	5	44
Fish Passage	73	46	30	16	5	24	194
Infilling / Footprint	240	50	52	19	207	47	615
Watercourse Alteration	9	7	11		44	1	72
TBD	350	1	43	4	5	30	433
Grand Total	997	196	190	72	338	133	1,926

Figure 1: Referrals Received by Geographic Distribution



Notes and Caveats

- This report only includes projects received after the Coming-into-Force (CIF) of the amended *Fisheries Act* on August 28, 2019
- Geographic Information was not available for every project, but all projects were plotted in Figure 1 if a point was available

REGULATORY & COMPLIANCE: ONGOING PROJECTS

CONSIDERATION OF CUMULATIVE EFFECTS

- DFO must consider cumulative effects before issuing an Authorization and when reviewing major projects
- Interim guidance was issued in August 2018 to support DFO staff when considering cumulative effects under the *Fisheries Act*
- DFO HQ and Regions are collaborating on a public facing Policy on the Consideration of Cumulative Effects under the *Fisheries Act*
- First phase of engagement expected April – December 2020

REGULATORY & COMPLIANCE: ONGOING PROJECTS

IMPACT ASSESSMENT ACT AND FEDERAL ASSESSMENT REGIMES

- FFHPP is the departmental lead for participating in the assessment of projects under the *Impact Assessment Act*, and other federal assessment regimes
- As a Federal Authority, DFO has responsibilities to provide advice to support assessments initiated under the *Impact Assessment Act*. These include Impact Assessments of designated projects, Regional Assessments, Strategic Assessments and Environmental Assessments of projects on federal lands
- In Northern Canada, DFO also has responsibilities to provide advice and make decisions to support environmental and impact assessments under the following legislation and agreements:
 - *Mackenzie Valley Resource Management Act*
 - *Inuvialuit Final Agreement*
 - *Nunavut Planning and Project Assessment Act*
 - *Yukon Environmental and Socio-Economic Assessment Act*

REGULATORY & COMPLIANCE:

SPECIES AT RISK ACT INTEGRATION

- Under the *Species at Risk Act* (SARA), a permit is required in order to undertake an activity that would otherwise violate the SARA prohibitions
- Prohibited activities are those that kill, harm or harass a SARA-listed species, or destroy its residence or critical habitat
- For activities that intersect with both the Fish and Fish Habitat Protection Provisions of the *Fisheries Act* and the SARA, DFO implements a one-window approach
- The reviews of referrals and applications that are submitted to DFO under the *Fisheries Act* and SARA, are coordinated

REGULATORY & COMPLIANCE: AQUATIC INVASIVE SPECIES

- The regulatory processes for projects near water now considers aquatic invasive species
- DFO's Aquatic Invasive Species National Core Program will be reaching out to provinces, territories, partners and stakeholders to provide training on the *Aquatic Invasive Species Regulations*
- Further discussions with provinces and territories to clarify roles and responsibilities will be planned.



SERVING PEOPLE IN CANADA: PRINCIPLES & PRACTICES

- Parliamentarians and the public receive transparent, clear and useful information on the results that the Department has achieved and the resources used to do so
- Canadians have timely access to government information
- Service delivery is digitally enabled and meets the needs of Canadians
- Financial and non-financial performance information is provided for estimates and parliamentary reporting (a legislative requirement)
- Enhance the understanding of the results the Department seeks to achieve, does achieve, and the resources used to achieve them



SERVING PEOPLE IN CANADA: ONGOING PROJECTS

ANNUAL REPORT TO PARLIAMENT

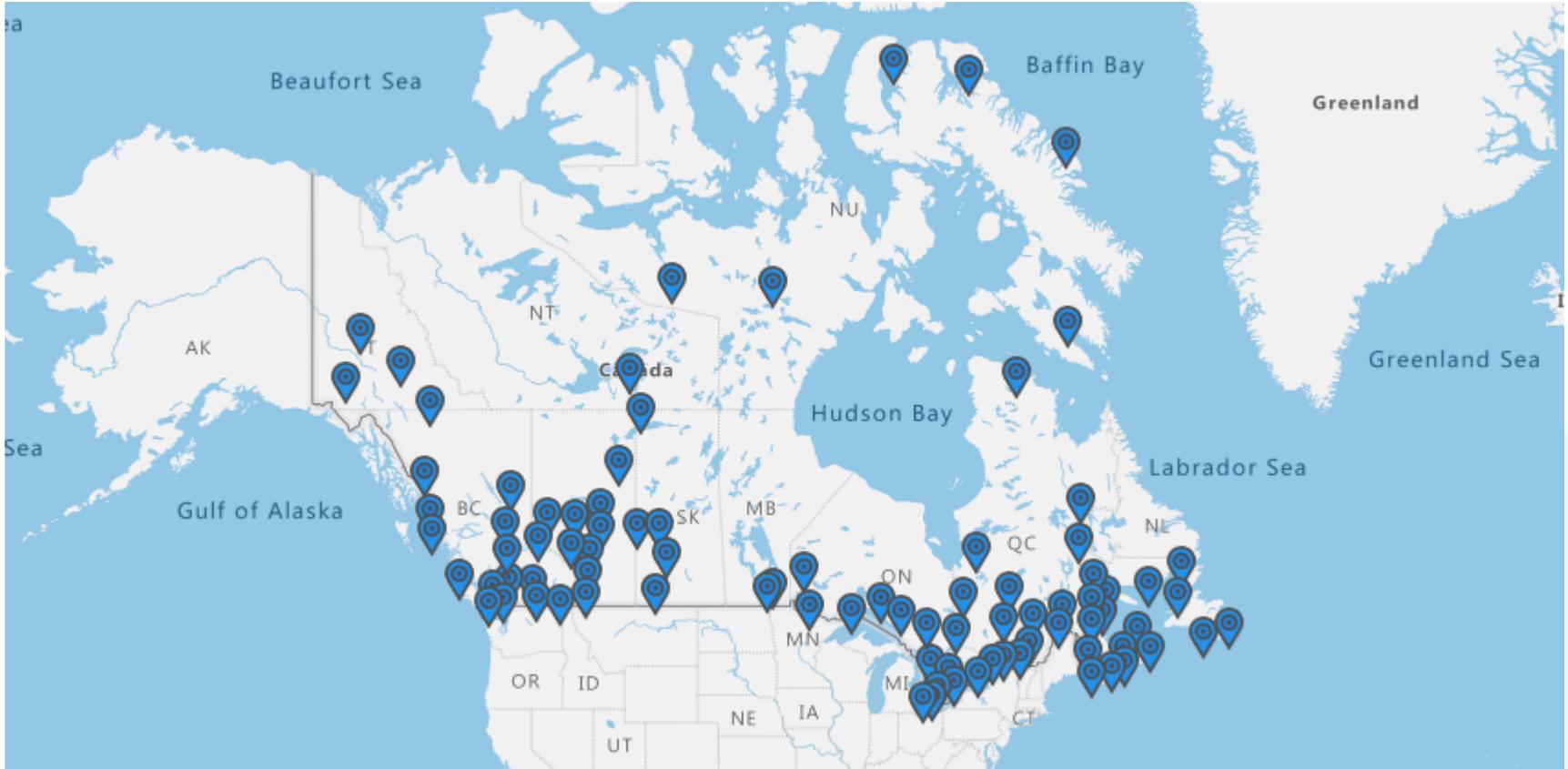
- The Annual Report to Parliament on the Administration and Enforcement of the Fisheries Protection and Pollution Prevention Provisions of the *Fisheries Act* is an annual legislative requirement
- Section 42.1(1) and 42.1 (2) of the *Fisheries Act*
- **42.1 (1)** The Minister shall, as soon as feasible after the end of each fiscal year, prepare and cause to be laid before each house of Parliament a report on the administration and enforcement of the provisions of this Act relating to fish and fish habitat protection and pollution prevention for that year
- **42.1(2)** The annual report shall include a statistical summary of convictions under section 40 for that year
- <http://publications.gc.ca/site/eng/9.505666/publication.html>

SERVING PEOPLE IN CANADA: ONGOING PROJECTS

PUBLIC REGISTRY

- A new requirement under the amended *Fisheries Act* is to build an online *Fisheries Act* (FA) Registry that facilitates access to records about projects (under any of sections 34 to 42.1) as well as regulatory process information
- A phased approach is being used to build the FA Registry – Phase I will see the release of information on Authorizations post-Coming into Force (CiF)
- Phase I FA Registry portal to be accessible online via the Common Project Search by early summer 2020: <https://common-project-search.canada.ca/>
- To meet commitments to transparency and open data, the first release of data on Authorizations is scheduled for March 9, 2020 through the Open Government portal: <https://search.open.canada.ca/en/od/>
- Letters of notification will be sent to proponents who've received project authorizations post-CiF to advise that limited project information will be made publicly accessible

Fisheries Act Registry



POINTS OF CONTACTS, RELATED & REFERENCE LINKS

More Information:

- [A modernized Fisheries Act for Canada](#)
- [talkfishhabitat.ca](#)
- [Projects near water website](#)
- Email: DFO.NCRFFHPP-PPPHRCN.MPO@dfo-mpo.gc.ca

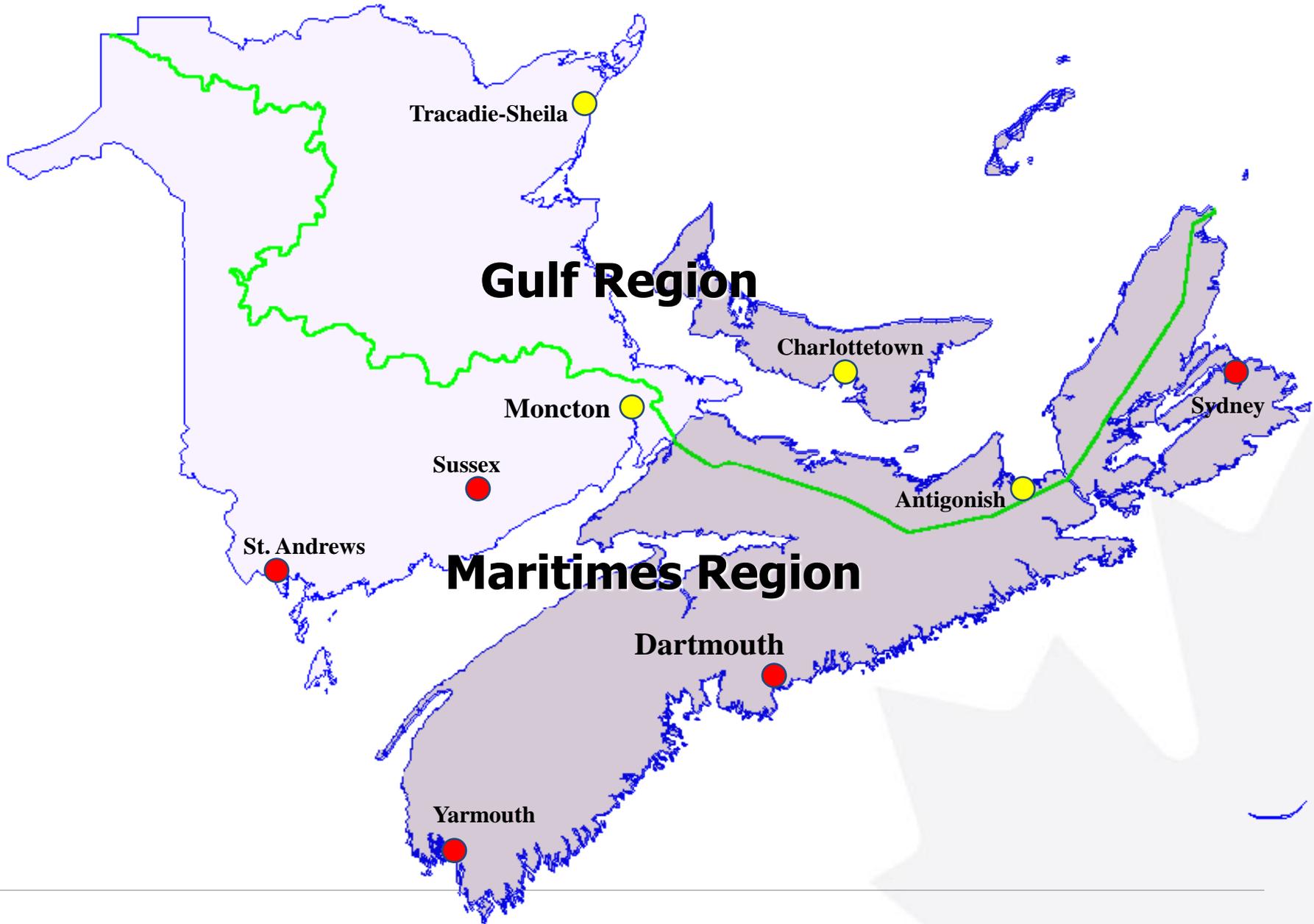




Auditing of assessment processes and management measures

- Context
- Areas of Collaboration
- Regulatory Verification and Audits
 - Description
 - Examples
- Recommendations
- Conclusion





Relevant Legislation

Fisheries Act; Species at Risk Act, Oceans Act, Impact Assessment Act

- DFO - is a federal regulator of works, undertakings and activities occurring in, or near fresh and marine waters
- Program performance and benefits to Canadians:
 - Program Compliance
 - compliance
 - conformity
 - effectiveness
 - the status of fish and fish habitats in Canada
- Commissioner of the Environment and Sustainable Development 's audits

Context – Province

- Acts, regulations and guidelines are in place that also contribute to the prevention of environmental effect of human activities
-

Management Systems

- Joint Development of Watercourse and Wetland Alteration Technical Guidelines for approximately 30 types of works/undertakings in and near water (Dept. Env., Natural Resources NB-PEI)
 - DFO Codes of Practices
-

Areas of Collaboration

Integrated delivery of a multi-jurisdictional environmental system:

- Referral System implemented
 - DFO comments taken into account in provincial response to proponent. (i.e permit with conditions of approval, modification required or refusal of project)
-

Areas of Collaboration

- Certification Process: certified timber harvesting contractors may proceed under a blanket approval for certain types of works.
 - Opportunity to conduct audits and verifications
-

Areas of Collaboration-Governance

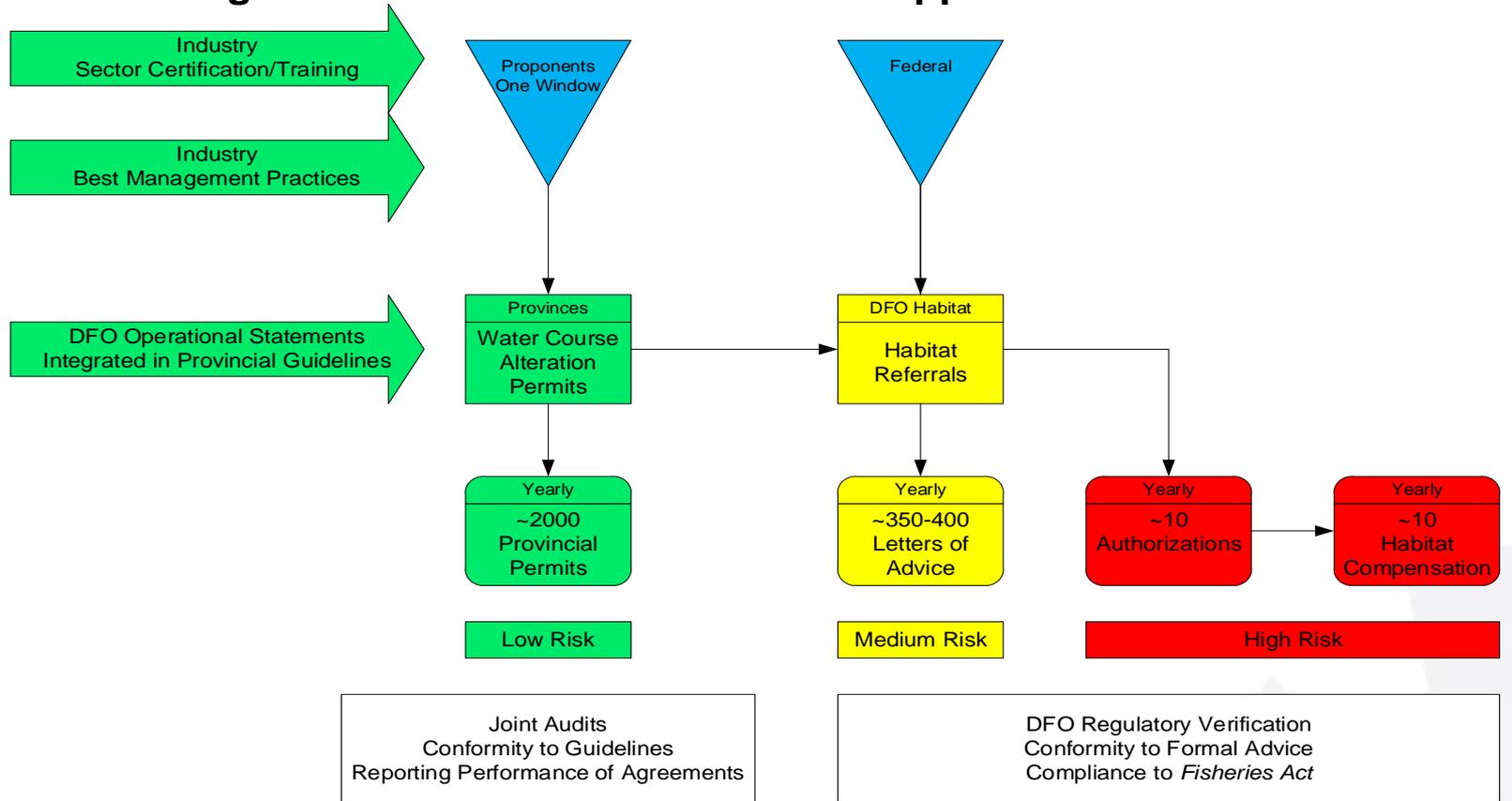
- MOU Federal-Provincial governments
- Fed/Prov Committees set up to deal with specific issues as they arise
- Working level co-operation on enforcement of federal or provincial legislation



Fish and Fish Habitat Protection Program

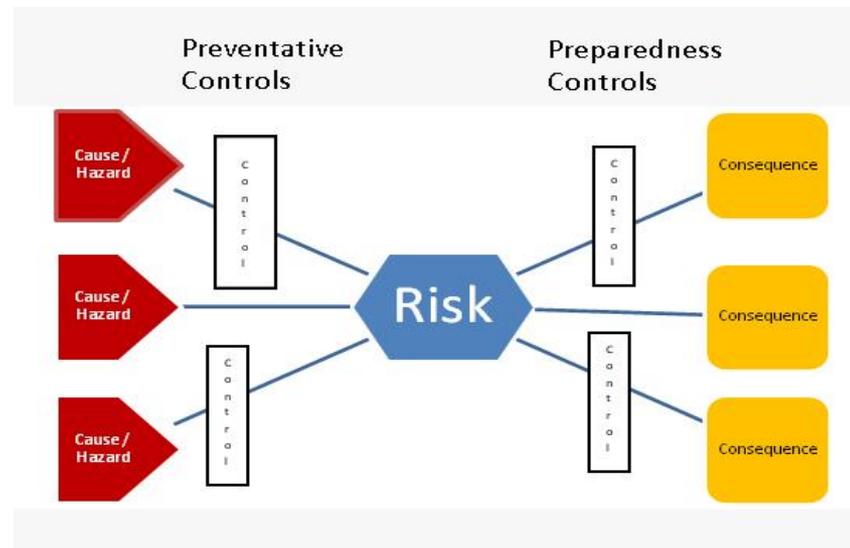
- A Risk Management Framework
 - Pathways of Effects
 - Streamlined Regulatory Review Processes
 - Foster Partnering
 - Monitoring and audit components
 - Regulatory Verification and Performance Audits
 - Enforcement Actions (Conservation and Protection)
 - Environmental Effect Monitoring (Science)
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Gulf Region and Provinces One-Window Approach



Audit of assessment process and management measures

- To assess the effectiveness of implemented controls (management measures)
- To assess effectiveness of the administrative processes



QA Element

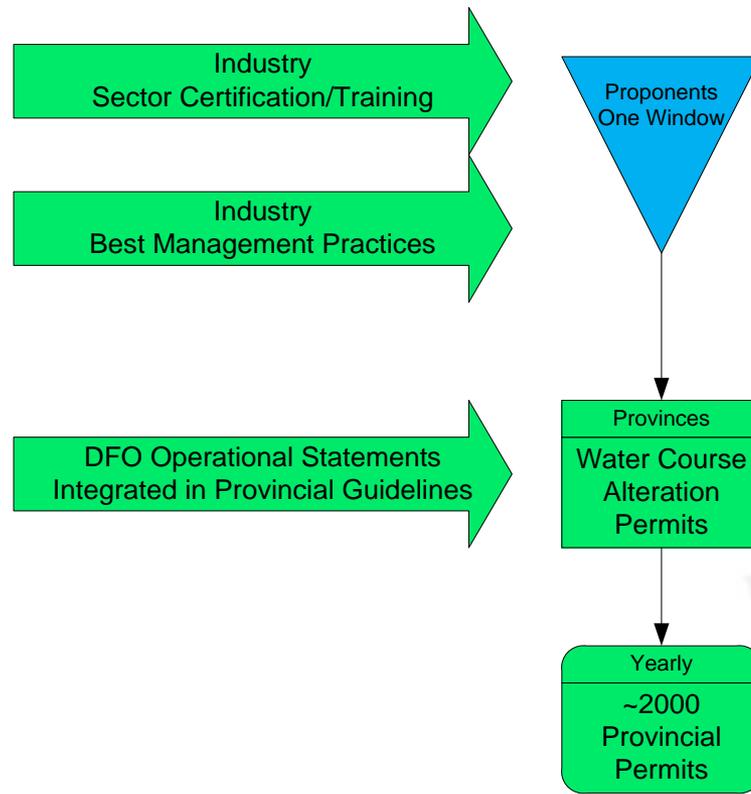
Regulatory Verification of Management Measures

- Once a project is approved, the on-site verification of the conditions listed in Authorizations, Letters of Advices or Low-Risk Tool (Permits, guidelines,)
 - Assess conformity to conditions and compliance to regulatory requirements
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Regulatory Verification of Management Measures

- Where there are non-conformities to the advice, corrective actions may be necessary
 - Requires follow-up
 - Where there is a potential non-compliance with the act, an investigation is triggered
 - decision framework
 - May lead to enforcement actions
-

Assessment Process



Audits

- Elements of the audit:
 - Audit Plan (Objective, scope, team, auditee)
 - Checklist
 - Findings
 - Reporting
 - Follow-Up (Corrective Actions)
 - Clear policies/procedures for conducting audits
 - Ensure audit team has qualifications to perform work (use of technical expert)
 - Documentation and communication of results
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Audits

To verify conformity with agreement,
joint audits with regulatory partner:

- Self-Permits , Watercourse Alteration Notification Process and Transportation self-permitting process;
 - *Joint Audit (DFO, TC, EC) on overwintering sites for aquaculture*
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Joint Federal and Provincial Audit – A Culvert Example

Steps undertaken for joint audit with partner:

1. Approval at governance committee;
 2. Meetings with partner and auditee to agree on:
 - objective and scope of audit,
 - resources,
 - roles/responsibilities,
 - reporting mechanisms,
 - etc.
- 

Joint Federal and Provincial Audit – A Culvert Example

- Scope
 - Following permitting agreement criteria between two provincial departments;
 - Following permitting agreement criteria between provincial Environment Department and DFO; and,
 - Following DFO's fish passage criteria.



Joint Federal and Provincial Audit – A Culvert Example

3. Field component/ Findings

- Stream slope $\leq 0.5\%$ (50% non-conforming);
- Drop (19% non-conforming).



Joint Federal and Provincial Audit – A Culvert Example

Steps undertaken for joint audit with partner:

4. Preparation of report, with recommendations.
5. Reporting of results to partner and auditee;
5. Inform and request correction action plan on critical non-conformities;
6. Finalize report and tabled it to governance committee.

Joint Federal and Provincial Audit – A Culvert Example

Steps undertaken for joint audit with partner:

5. Reporting of results to partner and auditee;
6. Inform and request correction action plan on critical non-conformities;
7. Finalize report and tabled it to governance committee.

Joint Federal and Provincial Audit – A Culvert Example

Key elements for success:

- Development of audit plan, including roles/responsibilities of all parties involved;
- Equal understanding of audit process by all parties;
- Auditee's response (and timely);
- Tools to gather objective evidence beside site inspection and review of documents;
- Engagement of partner and auditee at every step.

Recommendations

- Planning – of audit activities
 - Audit Programme to be develop :
 - the types and number of performance audits covering the whole of every audited entity's operations,
 - criteria are needed for determining the range of audit activities which, within the audit period or cycle, will provide a complete verification of all elements
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Recommendations

- Audit approval
 - Include a clear statement of the objectives and scope of the audit;
 - Resources (skills and quantum);
 - Project management and reporting
 - Communication of the findings and reporting;
 - Decision on disclosure of the report
 - Engagement to resolve any non-conformities through corrective action and follow-up;
 - Documented
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Conclusion

- Audit is an indicator of the performance of the implemented management plan
 - Multiple audits (audit programme) coupled with environmental effects monitoring program is an indicator of the effectiveness of the ecosystem based management framework
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Thank You

Questions?

