



Overview of the Proposed Changes to the *Fisheries Act*

June 2018



Presentation overview

Context

Overview of the Bill C-68

Looking forward

Introducing Bill C-68

- As part of the Government of Canada's Review of Environmental and Regulatory Processes, a review of the 2012 changes to the *Fisheries Act* is underway. Including how 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.
- On February 6, 2018, the Government of Canada introduced a bill in Parliament that proposes amendments to the *Fisheries Act*. *Details on Bill C-68 can be found at the following website:*
<http://www.dfo-mpo.gc.ca/campaign-campagne/fisheries-act-loi-sur-les-peches/index-eng.html>

Engagement to date

- In 2016, the Minister asked the **Parliamentary Standing Committee on Fisheries and Oceans (SCOFO)** to review the 2012 changes to the *Fisheries Act*.
- DFO complemented the SCOFO review by engaging with Indigenous peoples, provinces and territories, stakeholders and the Canadian public: <http://www.dfo-mpo.gc.ca/habitat/fa-lp/consultation-eng.htm>
- DFO supported all the SCOFO recommendations to restore lost protections and incorporate modern safeguards into the Act.
- **Bill C-68, A Fisheries Act for the Future** was tabled in the House of Commons in February, 2018 and SCOFO was subsequently asked to review the Bill and write a report
- The additional changes to Bill C-68 were contained in the SCOFO Report: <http://www.ourcommons.ca/DocumentViewer/en/42-1/FOPO/report-13> and minor amendments were made during 3rd reading by the House

Reconciliation with Indigenous Peoples

- In 2015, the Prime Minister sent mandate letters to the Ministers to support a renewed, nation-to-nation relationship based on recognition of rights, respect, co-operation and partnership.
- In 2017, the Prime Minister announced the Working Group of Ministers on the Review of Laws and Policies Related to Indigenous Peoples.

www.canada.ca/en/privy-council/services/review-laws-policies-indigenous.html

- Also in 2017, the Minister of Justice announced the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples to guide the review of laws and policies.

www.justice.gc.ca/eng/csj-sjc/principles-principes.html

- The department, Fisheries and Oceans Canada and the Canadian Coast Guard, has begun a review of all the laws and policies administered by the department. This review identified amendments to the *Fisheries Act* that will help to advance reconciliation with Indigenous Peoples.

Overview of Bill C-68

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. Marine Mammals in captivity provisions

Provisions to modernize the *Fisheries Act*



A new purpose for the *Fisheries Act* (Section 2.1)

A purpose for the *Fisheries Act* is included in the Bill in order to guide the Minister in applying the Act.

2.1 The purpose of this Act is 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.

New considerations for decision-making

(Section 2.5)

*2.5 Except as otherwise provided in this Act, when making a decision under this Act, the Minister **may** consider, among other things,*

*(a) the application of a **precautionary approach** and an **ecosystem approach**;*

*(b) the **sustainability** of fisheries;*

*(c) **scientific information**;*

*(d) **Indigenous knowledge** of the Indigenous peoples of Canada that has been provided to the Minister;*

*(e) **community knowledge**;*

New considerations for decision-making

(Section 2.5)

*(f) **cooperation** with any government of a province, any Indigenous governing body and any body — including a co-management body — established under a land claims agreement;*

*(g) **social, economic and cultural factors** in the management of fisheries;*

*(h) the preservation or promotion of the **independence of licence holders** in commercial inshore fisheries; and*

(i) the intersection of sex and gender with other identity factors.

Other provisions to modernize the Act

(Sections 4.01, 12 and 92,)

- Enable the establishment of **advisory panels** (Section 4.01).
- Institute **fees** to recover costs for services provided (Subsection 12(1)).
- **Review** the *Fisheries Act* every 5 years (Section 92).

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*.

Indigenous knowledge (IK) 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, IK that has been provided.
- For decisions, such as authorizations/permits and recommendations on certain regulations, **Section 34.1** requires the Minister to consider the IK that has been provided.
- **Section 61.2** Provides for the protection of Indigenous knowledge when provided to the Minister and clarifies those circumstances, and conditions where appropriate, where the Minister may disclose that information.

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.

Other provisions (Section 7)

- **Subsection 7(2)** Clarifies the authority to make regulations to enable the Minister to issue classes of licences (e.g., those licences issued under the *Aboriginal Communal Fishing Licences Regulations*) for a period greater than nine years.

Fish and fish habitat protection provisions



Objectives

- 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**.

Definition for fish habitat (Section 2)

- The definition of “**fish habitat**” is 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.

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** by the fish or fish habitat that is likely to be affected;
- (b) **fisheries management objectives**;
- (c) whether there are **measures and standards**:
 - (i) to avoid the death of fish or to mitigate the extent of their death or offset the effects of their death;
 - (ii) to avoid, mitigate or offset the harmful alteration, disruption or destruction of fish habitat;

Factors to consider (Section 34.1)

(d)) the **cumulative effects** of the carrying on of the work, undertaking or activity referred to in a recommendation or an exercise of power, in combination with other works, undertakings or activities that have been or are being carried on, on fish and fish habitat;

(e) any **fish habitat banks**, within the meaning of section 42.01, that may be affected;

(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) **Indigenous knowledge** of the Indigenous peoples of Canada that has been provided to the Minister; and

(h) any other factor that the Minister considers relevant.

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).

Prohibition against the death of fish and the harmful alteration, disruption or destruction of fish habitat (Sections 34.4 and 35)

- The prohibition against causing serious harm to fish is repealed.
- Its replacement is a prohibition that prohibits causing the death of fish, by means other than fishing, and prohibits causing the harmful alteration, disruption and destruction of fish habitat (HADD).

Permits and designated projects

(Section 35.1)

- A new instrument has been added to the bill to enable the Minister to issue permits for certain designated project types.
- A list of designated projects will be established by regulations 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*.
- This new permitting scheme will complement, not replace, the current practice of issuing Letters of Advice and authorizations.
- 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 (ESA)

(Section 35.2)

- The existing provisions related to ESAs have been replaced with a new authorization regime with respect to the new death of fish and HADD provisions.
- ESAs are intended to be established through regulations to protect sensitive, highly productive, rare or unique areas.
- In an ESA, the carrying on of works, undertakings or activities that are prescribed by regulations, is prohibited unless authorized.
- Before authorizing such a work, undertaking or activity, the Minister must first be satisfied that avoidance and mitigation required to achieve conservation and protection objectives for the ESA exist, and if so, are to be included as conditions of the authorization.

Habitat banking

(Sections 42.01, 42.02, 42.03 and 42.04)

New provisions establish 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.

Public registry (Sections 42.2 - 42.5)

- A new provision requires the establishment of a public registry that will provide public access to records related to the fish and fish habitat protection provisions of the *Fisheries Act*.
- The registry shall only contain publicly available records or records that would be disclosed in accordance with the *Access to Information Act*.

Other fish and fish habitat protection provisions

(Sections 34.3, 37, and 43, Clauses 51 and 52)

Other changes to the fish and fish habitat provisions include:

- Fish passage, flow and obstructions (Section 34.3);
- Plans and specifications (Section 37);
- Regulation-making authorities for Aquatic Invasive Species (Subsection 43(1)); and
- Transitional provisions for Authorizations (Clauses 51 and 52).

Enforcement provisions



Objectives

- Update and strengthen **enforcement powers**.
- Enhance **fishing gear compliance**.
- Improved **authority of the courts** for the receipt of evidence, seizure and forfeiture.
- Clarification of authority to **cancel and suspend licences for unpaid fines**.
- Establish an **alternative measures agreements** regime.

Enforcement powers and designations

(Sections 38, 49, 56.1, 79.61 and 87.1)

- Add clarity around **roles and liability**:
 - Role of analysts is expanded to cover the whole Act, and they can issue a “certificate” as evidence in Court (Section 56.1);
 - Fishery guardians are authorized to receive notifications of occurrences (Section 38); and
 - Officials, and individuals accompanying them, are exempt from personal liability for carrying out their duties in good faith (Section 79.61).
- Update and strengthen **enforcement powers**:
 - Power to stop and detain vessels or vehicles (Subsection 49(4));
 - Authority to exercise inspection and enforcement powers on Canadian fishing vessels in foreign ports or in foreign waters (Section 87.1); and
 - Duty to keep records for catch certification purposes (Subsection 61(3.1)).

Enhance fishing gear compliance

(Sections 24, 29 and 43)

- Clarify that fish harvesters must not only ensure that their fishing gear does not obstruct navigation, but also that the equipment attached to it (such as ropes) does not result in an obstruction for other vessels (Section 24).
- Clarify that fishing gear, including logs, rocks or other such items can not be used to obstruct the passage of fish (Section 29).
- Authorize Governor in Council to make regulations respecting the variation of fishing gear or equipment. This will provide greater flexibility for DFO to vary gear in response to changing conditions in a fishery (Paragraph 43(1)(m)).

Default of payment of fines

(Sections 7 and 9)

- Amendments will be made to enable the Minister to suspend, cancel or refuse to issue a lease or licence to someone who is in default of payment of a fine or fines related to a contravention of the *Fisheries Act* or the regulations.

Authority of courts (Sections 71, 71.01 and 72)

- Amendments to enable Courts to **extend the detention** of a seized thing beyond the initial period of 90 days, including any **proceeds** realized from disposing of a seized thing (Subsection 71(4)).
- Amendments are also proposed to enable Courts to order forfeiture of:
 - fish or other things that are **unlawful to possess**, or **illegal fishing gear** or equipment found in Canadian fisheries waters or any part of its continental shelf (Section 71.01); and
 - fish proven to have been caught in contravention of the Act (or the proceeds of its disposition) in cases where the **person is discharged absolutely or conditionally, or when the court orders a stay of the proceedings** (Subsection 72(3)).

Alternative measures agreements (AMAs)

(Sections 86.1 to 86.96)

- Effectively address contraventions without the need for a costly and potentially arduous court process.
- Certain conditions must be met before AMAs can be used:
 - sufficient evidence to proceed with a charge;
 - offence is not obstruction or false declaration; and
 - offender accepts responsibility for the offence and the outcome of the facilitation.
- AMAs involve the development of a plan to remedy the effects of the offence. Charges at issue are stayed pending the negotiation/ implementation of the conditions of the AMA.
- However, it is an offence to contravene an AMA.

Fisheries management provisions



Strengthening the inshore policies

(Sections 2.5 and 9)

- New considerations for decision-making:
 - social, economic and cultural factors; and
 - the preservation or promotion of independence in commercial inshore fisheries.
- Amendment to Section 9 giving new authority to suspend or cancel licences if the Minister determines that the licence holder:
 - is in breach of licence conditions;
 - has unpaid fines; and
 - has entered into an agreement that contravenes any provision of the Act or regulations.

Strengthening the inshore policies

(Section 43)

- New provisions to allow the Governor in Council to make regulations:
 - Respecting the management of fisheries for social, economic or cultural purposes;
 - Respecting when the holder of a licence needs to be on-board and perform the licenced activities;
 - Respecting the issuance, suspension and cancellation of licences to licence holders that are party to an agreement that contravenes the regulations and to corporations; and
 - Respecting the use and control of the rights and privileges under a licence.

Rebuilding fish stocks (Sections 6.1 and 43)

- A new requirement for the Minister, in the management of fisheries, to take into account whether there are measures in place aimed at rebuilding depleted stocks, including measures to address habitat restoration where, in the opinion of the Minister, the loss or degradation of fish habitat is a contributing factor in the stock's decline.
- New authority to allow the Governor in Council to make regulations regarding the rebuilding of fish stocks.
 - The Department is considering options for developing new regulations that could specify the circumstances when a rebuilding plan is required, as well as timeline and rebuilding plan components.

Provisions to create a fisheries management order power



Objective (section 9.1)

- To respond quickly and effectively to urgent and unexpected threats to the conservation and protection of fish, such as the threats faced by the North Atlantic Right Whale in 2017.
- When threats to the conservation and protection of fish arise during the fishing season (i.e., after a licence has been issued), the Department currently amends licence conditions and issues variation orders under the *Fisheries Act* to modify operational requirements.
- These tools are not effective in addressing all urgent and unanticipated threats because the process to amend licence conditions is burdensome and variation orders are limited in scope by the regulations.

Fisheries management order power (section 9.3)

- The intent of the proposed fisheries management order power is to supplement licence conditions and variation orders with a flexible and efficient tool to respond to emergent issues that arise during a fishery.
- These measures would be time-limited and are not intended as long-term solutions.
- Measures could include a pause on fishing activity using a specific gear type in a designated area over a period not exceeding 45 days.

Considerations/implementation

- As an example, the proposed amendments would provide the authority to establish targeted fisheries management measures to protect transiting North Atlantic Right Whales, while also minimizing the impact on ongoing fisheries.
- The fisheries management order power comes into force on royal assent of the Bill.

Biodiversity protection provisions



Creating marine refuges (Section 43.3)

- The proposed amendments would support the creation of marine refuges, to contribute to Canada's achievement of its marine conservation targets.
- The new provisions would also:
 - Support MPA network development and implementation of the Sensitive Benthic Areas Policy; and
 - Increase transparency and effectiveness of fisheries management by making it clear which management measures are contributing to long term biodiversity protection.

Creating marine refuges (Section 43.3)

- Section 43.3(1) of the Bill proposes a new authority to make Biodiversity protection regulations.
- These would allow for restrictions on fishing activities to effectively protect elements of marine biodiversity that fall within the Minister's mandate.
- The intent is to apply these regulations in marine waters.
- Marine refuges that contribute to Canada's Marine Conservation Targets would be designated under these regulations.
- Prohibitions may be applied to fishing of one or more species, populations, stocks or assemblages of fish, and any particular type of fishing gear or equipment or fishing vessel.
- Regulations may also specify which classes of persons or vessels the prohibitions apply to (e.g., the Minister can exclude certain fisheries from the prohibitions should they not compromise biodiversity conservation objectives of the area).

Creating marine refuges (Section 43.3)

- New biodiversity protection regulations are meant to be applied on a year round basis and over the long-term for biodiversity protection purposes.
- Section 43.3(2) of the Bill specifies that in instances of conflict, the new biodiversity protection regulations take precedence over provisions of other fisheries regulations.
 - For example, they take precedence over Variation Orders made by the Regional Director General of a DFO region.

Cetaceans in captivity



Cetaceans in captivity

(Section 23.1 and 43)

- To prohibit the fishing of a cetacean with the intent to take it into captivity, unless authorized by the Minister, including when the animal is injured, in distress or in need of care.
- To provide the Minister with the authority to make regulations regarding the import of fish (which includes cetaceans).

Looking forward



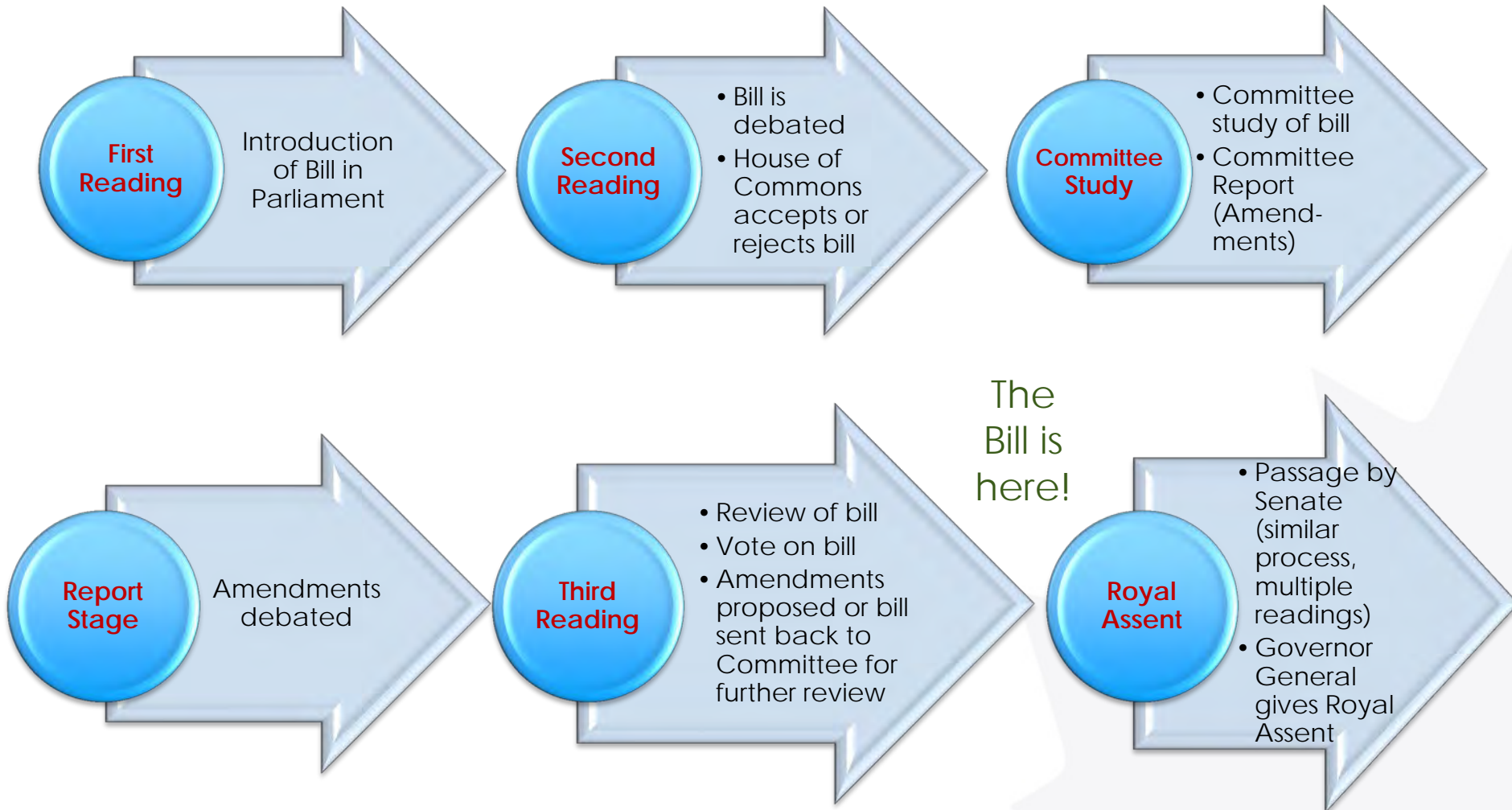
Timing of amendments

- The majority of the amendments to the Fisheries Act in Bill C-68 enter into force upon Royal Assent.
- But for a few exceptions noted below, 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.
- The following provisions, related to the management of fish and fish habitat, enter into force upon Royal Assent:
 - Authority for fishery guardians to receive notifications;
 - Expanded authorities for managing Aquatic invasive species; and
 - Minor revision to the English definition of Aboriginal to refer instead to Indigenous.

Parliamentary process

- The bill is subject to the parliamentary process. It was amended slightly after the SCOFU review and during 3rd reading in the house and then referred to the Senate. For more information, visit:
<http://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=9630814>
- Policy and regulatory changes will be needed to operationalize the amended Act, informed by engagement with provinces, territories, Indigenous peoples and stakeholders.
- To support reconciliation with Indigenous peoples, we will continue working hand-in-hand to ensure that feedback informs future regulatory, policy and program development.

Parliamentary process



Participating in the parliamentary process

- A member of the Canadian public who wishes to express his/ her views or comment on a bill before the House can write or phone his/her Member of Parliament. Any correspondence addressed to a Member of Parliament is free of postage.

www.ourcommons.ca/Parliamentarians/en/members/addresses