

2014 Railroad Environmental Conference

Understanding Changes to the Fisheries Act and the Impact on Rail Industry Projects

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Regulatory Setting

- Federal Fisheries Act, administered by Fisheries and Oceans Canada (DFO)
- Created in 1868; amended in 1970s
- 2012 amendments intended to provide tools to facilitate regulatory streamlining and increase efficiency
- Fisheries Protection Policy Statement (November 2013)



<http://www.dfo-mpo.gc.ca/index-eng.htm>

Revisions of the Act

- Previously stated in Section 35 (1):

No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.

- This text was removed in 2012 and replaced with the following:

*No person shall carry on any work, undertaking or activity that results in **serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery.***



“Serious Harm to Fish”

- **Death of fish**
- **Permanent alteration** to fish habitat of a spatial scale, duration or intensity that limits or diminishes the ability of fish to use habitat
- **Destruction of fish habitat** of a spatial scale, duration, or intensity that fish can no longer rely upon habitat for critical life functions



<http://questgarden.com/119/30/6/110225141920/index.htm>

Impacts of the Revisions

- Onus is on the proponent for project self-assessment to ensure compliance with the Act and regulations
- Illegal to cause serious harm to fish that are part of a **commercial, recreational, or Aboriginal fishery** or to fish that support such a fishery without an Authorization
- 'Operational Statements' are no longer applicable



<http://www.bigrivermagazine.com/highlightsND10.html>



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Point of Contact

PAST

- Partnership agreements with provincial agencies
- Partners screened projects or activities for impacts to fish and/or fish habitat

PRESENT

- DFO is direct point of contact in all but 3 provinces (NB, NS, PEI)

Project Self-Assessment

- Onus now on the proponent to conduct a self-assessment to determine when DFO needs to be contacted for a project Review or Authorization under Section 35(2)(b)






When is DFO Contact NOT Required?

- Approved marine disposal or dumping sites that have been used in the past 10 years
- Tailings Impoundment Areas
- Artificial waterbodies that are not connected to a waterbody that contains fish at any time during any given year
- Any other waterbody that does not contain fish at any time during any given year



When is DFO Contact NOT Required?

If the project activities are listed below and they meet the associated criteria (if applicable), a DFO review is not required:

- Bridges, Causeways and Culverts 
- Cottage, Boating and Recreation
- Harbours and Marine Commercial Activities
- Drainage, Flood Control, Stormwater and Wastewater Management 
- Flow Management
- Water Diversion and Dewatering 
- Water Taking
- Other Activities

Activity and Criteria

- **Culverts**

Maintenance, Repairs, Replacement or Removal



Replacement:

- No new fill placed below the High Water Mark
- Channel realignment is not required
- No narrowing of the channel
- No complete obstruction to fish passage during timing windows
- Provides for fish passage if restricted by existing structure
- Work can be done in isolation of flowing water

Measures to Avoid Harm

- Best Management Practices
- Project Planning (timing)
- Erosion and Sediment Control
- Shoreline Re-vegetation and Stabilization
- Fisheries Protection
- Operation of Machinery



When is DFO Contact Required?

- Project is in a waterbody type or activity type that is not listed (e.g. natural watercourse, lake)
- Proponent is responsible to contact DFO to request a Review or Authorization, as appropriate



<http://www.pikeangling.com/gallery/1/>



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Screening Outcomes

No impact to fish or
fish habitat



Proceed; no
requirement for
DFO involvement

Identified activity that
can meet criteria



Proceed; no
requirement for
DFO involvement

Not an identified waterbody,
activity or cannot meet
criteria



Submit a Request
for Review

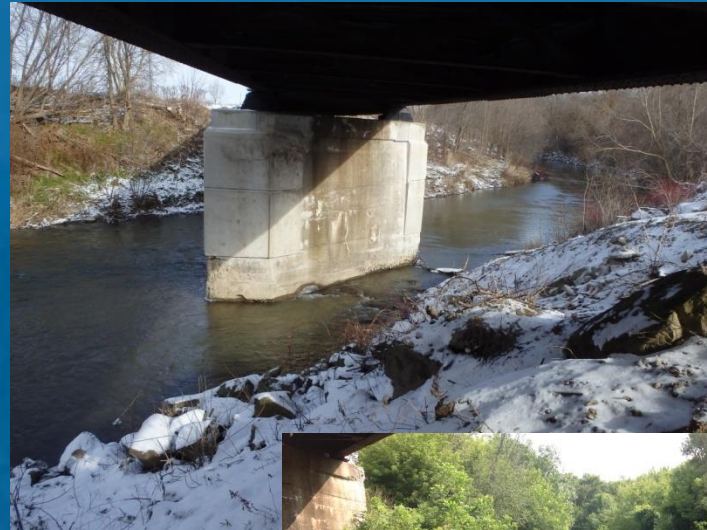


Recommendations provided;
Authorization issued or refused



Case Study: Bridge Footing Repair

- Initiated in 2013
- Limited to one footing and the nearshore
- Self-assessment indicated works met criteria
 - *no increase in footprint*
 - *no placement of new fill below high water mark*
- Identified SAR considerations
- Submitted to DFO; no further action required



CLOSING

- Early consideration of Act implications can save projects time and money
- Know your contacts
- Assume a minimum of 4 weeks for project Reviews
- Authorization will be needed if your project will cause serious harm to fish that are part of or that support commercial, recreational or Aboriginal fishery



NPR.org