



ASSOCIATION OF  
PROFESSIONAL BIOLOGY

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June 28, 2018

The Honourable Dominic LeBlanc  
Minister, Fisheries and Oceans Canada  
200 Kent Street  
Station 15N100  
Ottawa, ON K1A 0E6

By email: [min@dfo-mpo.gc.ca](mailto:min@dfo-mpo.gc.ca)

Dear Minister LeBlanc,

**RE: Review and Implementation of Bill C-68 Amendments to the Fisheries Act**

On May 3, 2018 Fisheries and Oceans Canada provided the Association of Professional Biology (APB) with a special briefing on Bill C-68: “An Act to amend the Fisheries Act and other Acts in consequence”.

We were invited to provide feedback on the proposed amendments, in recognition of the integral role that biology professionals play in Canada’s environmental assessment and regulatory review processes. We present herein the results of a recent members' survey, as a possible foundation for further APB input in your review and implementation of a revised Fisheries Act.

The APB represents over 500 biology professionals in British Columbia, many of whom are intimately familiar with the Fisheries Act and the challenges in its implementation. Our membership is comprised of knowledgeable, experienced and accredited scientists who, through the College of Applied Biology Act (2002), have formally stipulated professional accountability for stewardship of aquatic and terrestrial ecosystems and biological resources, within a framework made up of Registered Biology Professionals.

Our APB members' survey focused on soliciting feedback for three aspects proposed under the Fish and Fish Habitat Protection Provision Objectives, specifically: Standards and Codes of Practice (Section 34.2); Ecologically Significant Areas (ESAs, Section 35.2); and Habitat Banking (Sections 42.01 – 42.04).

The majority of our survey respondents expressed support for the proposed provisions. Detailed survey results are attached for your consideration, with recommendations summarized briefly here for your reference.

1. 90% of respondents support adding provisions for a set of proposed standards and codes of practice, provided these are *science-based* and not derived from political motivations.
  - a. Subjective decision-making should not be left under sole jurisdiction of the Minister's consideration. Standards and decisions must be apolitically supported by scientific evidence. The process must include measures that avoid the realization or perception of political bias for authorization of works in Ecologically Significant Areas.
  - b. Standards and practices need to be clear, comprehensive, detailed, and accessible, so that Qualified Environmental Professionals (QEPs) and proponents are confident that activities and practices are acceptable.
  - c. Clear definitions must correspond with detailed requirements for riparian setbacks for all land use activities and for all types of streams, including degraded streams.
  - d. Efficiencies can be achieved if standards and codes aligned with, or are established by, each province.
  
2. 79% of respondents support establishment of Ecologically Significant Areas (ESAs), but there needs to be an assessment process to avoid undesirable outcomes, including excess pressure on other areas because sustainable development is excluded from ESAs.
  - a. Improved success in implementing ESAs will require the identification and address of barriers that have existed so far, including liability, conflicts with socioeconomic development, and lack of political will.
  - b. The ESA approach can be better promoted and implemented by integrating with the Critical Habitat approach of the federal Species at Risk Act (SARA), in species at risk planning documents and provincial online tools related to land management.
  - c. ESAs can be identified by multi-agency committees applying agreed-upon criteria for prioritization; for example, value as habitat, value to First Nations, etc.
  - d. A definition of fish habitat that gives comprehensive consideration for fish passage and ecosystem functions that extend beyond riparian areas (e.g., estuaries and off-channel habitat affecting water quality and contamination associated with drainage) should be considered within the bounds of an ESA.
  
3. 71% of respondents support provisions for habitat banking, though there may be unanticipated consequences of monetizing habitat such that it becomes a corporate asset, for example, as merger and acquisition to capture credits to offset liabilities.

We would like to thank Pacific Region staff for engaging the APB on this important milestone in the management and conservation of Canada's fisheries.

We look forward to sharing our perspectives and contributing further practical input as Fisheries Act amendments move from review to Royal Assent, and ultimately to implementation.

Sincerely,

*Pamela Hengeveld*

Pamela Hengeveld  
Chair, Advocacy Committee  
Association of Professional Biology



Mark Thompson  
President, Association of Professional Biology

Cc: The Honourable Fabian Manning, Senator  
Chair, Senate Standing Committee, Fisheries and Oceans  
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Cc: Nancy Vohl, Procedural Clerk / Greffière à la procédure  
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Cc: Andrew Thomson, Regional Director  
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Cc: Loriena Melnick, Senior Fisheries Protection Biologist  
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Cc: The Honourable George Heyman  
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***APB Member Survey:  
Bill C-68 Fish and Fish Habitat Protection Provision Objectives***

**1. Do you support adding provisions for a set of proposed standards and codes of practice (Section 34.2)?**

30 responses (27 in support)

**Comments:**

1. Would very much welcome this; found the previous DFO Operational Statements effective and useful, hopefully would be similar.
2. Provided that these standards are sufficiently supported by scientific evidence, they would provide certainty to proponents as to acceptable activities and construction methods. However, a permitting or authorization mechanism to allow exceptions to these standards and codes is important to allow for situations in which their application may not be feasible or appropriate.
3. One of course assumes they will be based on objective, empirical criteria and not political motivation(s).
4. I have watched impacts to fish and fish habitat accumulate over my more than 30 year career as a professional biologist. In BC, a lot of the environmental assessments and work on the ground is completed by junior professionals or professionals-in-training who do not know where to find resources and are under pressure to keep costs low and do what clients want them to do. I used to be a supporter of voluntary compliance approaches but now I find myself longing for regulations with clear standards and procedures.
5. Standards and codes of practice may be arbitrarily introduced by the party in power at any time, in order to advance a particular political agenda. Standards and codes of practice should be established by each Province in order to best manage the local fisheries resources. Professional reliance and more enforcement of current practices would likely be more effective in achieving objectives. A process-based strategy to prevent HADD's may not be as effective as a results-based strategy.
6. The standards and codes of practice will assist QEPs in providing consistent recommendations that they are confident are following best practice. It would be helpful to the QEPs if the standards were similar to the provincial standards.



7. DFO should look at developing standards/codes of practice for regular construction and maintenance activities that local governments and private property owners undertake such as watercourse maintenance, bank repairs, culvert & bridge replacements/ installments, storm water outfalls, etc.

## **2a. Do you support the approach of establishing Ecologically Significant Areas (ESAs; Section 35.2)?**

29 responses (23 in support)

### **Comments:**

1. My support for ESA establishment would depend on their extent and distribution. Given the government's propensity to prioritize social values over science (i.e. tanker ban on north coast), I am concerned that ESA establishment may exclude areas suitable for development. This could lead to excess pressure on areas that are not included in the ESA designation.
2. Broad definition of fish habitat under the FA should cover ESAs as this is not just waters frequented by fish. Not sure if an ESA designation would really help sensitive areas; how would it be enforced etc? There are also SARA critical habitat areas that need to be linked into the FA.
3. This has potential to grow and accumulate over time into something that eliminates meaningful economic opportunities over just about any "special" or "unique" area, however any various proponents and succeeding generations may define them. There should be a periodic review and assessment clause so redundant or non-constructive areas are returned to general sustainable use, especially if an assignment as an ESA is especially damaging to other sustainable economic productivity.
4. ESAs should exist with NO opportunity to authorize work within them. Again, avoidance and mitigation measures look good on paper, but are likely not going to be effective in the field. It also, once again, grants the Minister a type of arbitrary power to authorize works that might support their political agenda.

## **2b. ESAs were enabled in the previous (2012) version of the Fisheries Act. To date no ESAs have ever been proposed or implemented - do you have any suggestions as to how this provision could be better promoted and utilized and or the types of habitat or habitat associations that could/should constitute an ESA?**

15 responses

1. By listing critical habitat of SARA- and/or COSEWIC-listed species.



2. These ESAs should be treated similar to CWS Critical Habitat Areas for Species At Risk, documented, identified, mapped and protected as per established Recovery Strategies for SAR.
3. Habitat values and species at risk should be prioritized over "pristine or untouched areas" during ESA establishment. Pristine areas can be protected through park establishment, if that is considered suitable. I suspect the reason ESA designation has not gained traction is concern as to how much of the land base may be removed from potential development. Prioritizing the areas that are the most important is the only way to achieve industry buy-in and thus political will.
4. ESAs could be promoted by COSEWIC listings, SARA listed species recovery plans, and by provincial land management planning tools.
5. No.
6. Not at this time- other than be very, very careful. There are many factors and agendas at play and many unanticipated consequences possible/likely. The reason no ESAs have gone ahead probably turns on potential liabilities and the risk(s) of legally actionable misfires. If this turns into an exercise to dodge accountability for bad decisions, the effect on fisheries and fisheries management and economic opportunities in the marine sector may be devastating.
7. Ultimately, environmental protection takes will. We can change regulations and blame previous regulatory regimes, but ultimately, the energy we waste on that is energy we can't spend on protecting habitat and species. The way that governments were pushed to implement Critical Habitat for Species at Risk was through the courts. Perhaps ESAs would be implemented as mandatory and then if governments don't do this in a reasonable time frame, then court action opportunities will be available.
8. If the government of Canada and other professional organizations have not acted on establishing ESAs, they will likely not change now.
9. Probably most of the obvious potential ESAs (e.g. Fraser estuary, rockfish and forage fish breeding areas, etc.) were not designated as ESAs because of the significant conflicts with adjacent or superimposed human uses and associated socioeconomic factors. Suggestion: need to reconcile these conflicts.
10. There should be a framework based on a set of goals or priorities that the ESAs are meant to address, and then criteria under each for whether or not a site fits the criteria. It should not just be based on importance as salmonid habitat, but also consider FN values for sacredness etc. That way, ESAs will include some sites that may be currently degraded but have the potential for restoration because there is strong impetus in the community.



11. In the self-assessment process. The QEP determines it.
12. I think that DFO should establish regional committees comprised of provincial, local government, regional government and NGO representatives that work together to determine what are the highest value habitats in the region.
13. Estuaries and off-channel habitat should be assessed and proposed opportunistically.

#### **4. Do you support including provisions for Habitat banking (Sections 42.01, 42.02, 42.03 and 42.04)?**

28 responses (20 in support)

##### **Comments:**

1. Given that these are somewhat confusing, there are again likely to be unanticipated consequences. For example, one might see monetization of habitat as something that will become a corporate asset in and of itself, and perhaps lead to M&A activities to capture them to offset other liabilities.
2. This is laughable. 'Habitat Credits'? This sounds like a kin to the carbon credit scheme where an entity can abuse pollute one resource or area, in exchange for not polluting another.

#### **5. Other provisions you wish to provide input on?**

##### **Comments:**

1. Many of Canada's Pacific fisheries are already widely acknowledged global leaders in sustainable use from both an ecological and economic perspective. Reasons for why changes are necessary are to some degree manufactured by parties with their own agendas and potential conflicts of interest. Some provisions of what is being proposed are likely to detrimentally impact the sustainability of commercial fishing operations from one or the other or both perspectives. Again, periodic review, assessment and re-assignment of individual areas and cumulative 'changes' at intervals short enough that corrections can be made before they completely get out hand should be part of the package.
2. Provide authority to charge offenders under the Canadian Criminal Code, or institute fines that will significantly affect the operations of the offender. Has anyone in this country ever been sent to jail for environmental offences? Maybe it's time.



3. With 99% of the world's fisheries already gone, maybe it's time to use a heavy hand of enforcement.
4. Section 2.5: the use of the term 'may' in this section leaves the door open for the minister to override the need to, for example, apply the precautionary principle and ecosystem approach and to incorporate the weight of scientific evidence (and consider inherent uncertainties in cases where there is insufficient scientific evidence). The collapse of some fisheries (e.g. cod, etc.) and the ill-advised authorization of introducing non-native species (e.g. Atlantic salmon on the Pacific coast) speaks loudly to the dangers associated with such ministerial discretion.
5. There needs to be some special considerations to degraded habitat, such that not all strong provisions and actions are for mitigating damages to pristine and functional habitat. Ideally, projects occurring in degraded habitat would necessitate actual habitat improvements after the project is implemented. I didn't really see that in the Act as it is. Also, definitely need provisions for monitoring and proving effectiveness of habitat restoration post-project.
6. NGOs should have more input in DFO decisions, e.g., fish farming.
7. DFO should provide clear direction on riparian setback requirements for all land use activities, including agriculture.