



25 March 2012

The Honourable Keith Ashfield
Minister of Fisheries and Oceans
200 Kent Street
13th Floor, Station 13E228
Ottawa, ON K1A 0E6
via email: min@dfo-mpo.gc.ca

RE: Association of Professional Biology Advice to Government Regarding Potential Amendments to Section 35 of the Fisheries Act

Dear Minister Ashfield,

The Association of Professional Biology (APB) hereby writes to you to provide our advice on purported changes to the *Fisheries Act*, in particular the removal of habitat protection from Section 35. The APB consists of qualified registered biology professionals who hold membership with the College of Applied Biology. As such, we are governed under BC's *College of Applied Biology Act* and its associated rules and Code of Ethics. The APB works to support the practice and profession of registered biology professionals through ensuring the application of sound biological science and stewardship principles remain a central tenet to natural resource management and decision making. Since 1980, our members have collaborated with a range of related professions and government in ongoing policy and legislative reform around the management of British Columbia's natural resources, including those within the scope of the Federal *Fisheries Act* (the "Act").

With alterations to the Act under review, the APB herein highlights some specific aspects that form part of any thorough review your ministry undertakes for such important legislation. Changes should:

1. reflect the significance of the application of sound biological principles in the management and conservation of natural resources and the ecological goods and services benefits they provide;
2. respect the importance of recommendations made by qualified registered biology professionals to adequately protect and maintain fisheries resources and the ecological processes and systems they depend upon; and
3. eliminate conflicts and encourage consistency with other legislation such as the Federal *Species At Risk Act*, BC *Wildlife Act*, BC *Fish Protection Act* or similar legislation across the country.



Why habitat provisions should stay in the Act

It is well documented that protection of **habitat is the most effective means to avoid species decline** and extinction and ensure populations remain resilient to future and ongoing impacts, such as climate change and the cumulative effects of human activities. This is reflected in the *Species At Risk Act* (SARA), which acknowledges that “the habitat of species at risk is key to their conservation”. The relationship between functional, intact ecosystems and increased biodiversity has also been clearly demonstrated in scientific literature. However, the conclusion of the 2012 Royal Society of Canada’s Expert Panel Report entitled *Sustaining Canada’s Marine Biodiversity: Responding to the Challenges Posed by Climate Change, Fisheries, and Aquaculture* was that “Canada has fallen well short of the progress made by most developed nations in fulfilling national and international commitments to sustain marine biodiversity”. The removal of habitat from the Act risks narrowing its focus onto only a limited number of species or stocks and thereby seriously impairing the ability of qualified registered biology professionals to assist decision makers’ find solutions to protect the broader fisheries resource. This would have serious ramifications for maintaining the full economic and cultural values that are derived from functioning diverse ecosystems.

Focusing Section 35(1) of the Act on “fish” rather than “fish habitat” could reduce the capacity of qualified registered biology professionals to provide appropriate recommendations for avoiding deleterious impacts to fish populations. It is a significantly higher hurdle for a professional to demonstrate that an “adverse effect” on a fish population will occur as a result of a specific activity than it is for that professional to quantify the trade-offs of habitat, which case law and research have helped define over decades. Professional recommendations about habitat could be more readily disregarded by decision makers even if it is clear, based on sound biological science, that a particular alteration to habitat is likely to have an “adverse effect” on a population of fish deemed to be “of economic, cultural or ecological value”. Moreover, qualified registered biology professionals may no longer be asked for advice about proposed activities that may cause indirect “adverse effects” to fish as a result of habitat degradation.

The effectiveness of many other pieces of legislation relies, in part, on habitat which is protected under Section 35(1) of the Act. For example, riparian areas protected under the current Act and provincially under the BC *Fish Protection Act* (S. 12) also serve to protect the habitat of aquatic specialists and species such as those protected under the *Migratory Birds Convention Act* and the provincial *Wildlife Act* and *Forest & Range Practices Act*. In the marine environment, rare and globally unique ecological communities, such as sponges and cold water corals, which presently have little or no protection, are afforded some degree of protection through the Act. Unlike provincial or municipal legislation, protection of habitat by the Act is broad and well-known in its scope, being applicable on all lands in the country, whether they are privately-owned, provincially managed, or tenured for industrial purposes. Removing habitat protection from the Act would remove a keystone from the structures of related existing provincial, regional and municipal regulations. Improving consistency of fisheries management across the country is more likely to succeed by keeping habitat management frameworks consistent.



Our advice to you here regarding the purported changes to the Federal *Fisheries Act* is fundamental to success of fisheries resource management in Canada. The Association of Professional Biology recognizes that legislation must evolve as new science and information becomes available to ensure that species and ecological process receive necessary protection while striving to meet the needs of society. As qualified registered biology professionals our members are well placed to be part of that dialogue with a number of jurisdictions. We continue to be recognized by legislators and decision makers for our contribution to ensuring that sound biological science and resource stewardship forms part of ongoing regulatory and practice requirements. The Association would be happy to offer its expertise on this issue as part of an open and transparent consultative framework – one which ensures that relevant legislation continues to evolve to the benefit and well being of Canada's natural resources and public interests.

Sincerely,

Association of Professional Biology

Domenico Iannidinardo, MBA, RPF, RPBio, PEng

President

Email: president@professionalbiology.com

cc:

The Right Hon. Stephen Harper, Prime Minister

The Honourable Joe Oliver, Minister of Natural Resources

The Honourable Peter Kent, Minister of the Environment

The Honourable James Moore, Minister of Canadian Heritage and Official Languages

Honourable Don McRae, Minister of Agriculture

The Association of Professional Biology represents approximately 1,000 Registered Professional Biologists (RPBio) and Registered Biology Technologists (RBTech) employed by industry, government and non-government organizations in all aspects of biology. We help members maintain competence and achieve high professional standards; advance the development and application of sound biological principles in the management and conservation of BC's natural resources; and foster public understanding of impacts of human and other activities on natural resources.