



Fisheries Protection Program: An overview of the Regulatory Review Process

DFO Pacific Region

Fraser Basin Council

**Lower Mainland Flood Management Strategy
Workshop**

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Overview

- Who is the Fisheries Protection Program?
- Proponent Self-Assessment
- Request for Review
- Application for Authorization



Who is the Fisheries Protection Program?

- FPP seeks to maintain the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries and is DFOs lead for the administration of the ‘fisheries protection provisions’ of the *Fisheries Act* and certain provisions of the *Species at Risk Act*.



What does FPP do?

- Review activities that may affect fish and fish habitat;
- Issuing authorizations and permits, when appropriate, with conditions for offsetting, monitoring, and reporting;
- Ensuring compliance with the *Fisheries Act* and the *Species at Risk Act*.
- If an Authorization may adversely affect Aboriginal or Treaty rights, FPP consults with potentially affected Indigenous peoples, and as appropriate, applies measures to minimize or mitigate these adverse effects.



Fisheries Protection Provisions

Subsection 35(1) Fisheries Protection Provision of the *Fisheries Act*:

- prohibit works, undertakings or activities which result in “Serious Harm to fish” (i.e. death of fish, permanent alteration, or destruction of fish habitat).

Proponents are encouraged to avoid and mitigate to the extent possible.



Policy Statement: Serious Harm to Fish

The Subsection 35(1) prohibition will be applied to those projects that have the potential to cause serious harm to fish.

- DFO interprets **serious harm to fish** as:
 - the **death** of fish;
 - a **permanent alteration** of fish habitat of a size, duration or intensity that reduces the ability of fish to use the habitat to carry out one or more of their life processes;
 - the **destruction** of fish habitat of a size, duration or intensity such that the habitat cannot be used by fish to carry out one or more of their life processes.
- Projects requiring authorization are those likely to result in a **localized effect** to fish populations or fish habitat in the vicinity of the project.



Regulatory Review Process

1. Proponent Self-assessment

- FPP does not provide site specific review and advice for projects that would not result in threats to fish and fish habitat and do not affect the on-going sustainability and productivity of fisheries

2. Regulatory Review

- Submission of a 'Request for Review' when they cannot avoid or mitigate impacts

3. Authorization

- If serious harm to fish is likely, submit an Application for Authorization
- Terms and conditions to avoid, mitigate, offset and monitor



Proponent Self-assessment

- What is “self assessment”:
 - Measures to avoid causing harm to fish and fish habitat
 - Criteria for no DFO review
 - Water body list
 - Project specific list

If a project cannot avoid serious harm to fish or is likely to contravene one of the SARA prohibitions with respect to aquatic species, and is not included in either of the criteria, DFO recommends submitting a [request for review](#).



Regulatory Review

- FPP conducts a risk based assessment of projects based on habitat types, species present, scale of impact and likelihood of causing serious harm.
- FPP provides site specific advice where self- assessment tools cannot help proponents avoid or mitigate effects.
- If impacts cannot be avoided and/or mitigated and there will be **residual serious harm to fish**, FPP will request an Application for Authorization from the proponent.
- DFO recommends that those projects (works, undertakings or activities) that are likely to cause a **localized effect** are the ones that will require an Authorization.



Localized Effect

- Described in the Fisheries Protection Policy Statement (Oct 2013).
- Residual impacts of a spatial scale, duration or intensity that cause the death of fish that may negatively affect the population of fish in the vicinity of the project, or that diminish or eliminate the ability of fish to use habitats in the vicinity of the project to carry out one or more of their life process.
- For aquatic **species at risk**, killing of individuals, destruction of critical habitat or destruction or damage to residences result in a localized effect.



Authorization

- The information to be provided in the Application for Authorization is prescribed in the Applications for Authorizations under Paragraph 35(2)(b) of the Fisheries Act Regulations.
- These Regulations also provide time limits for DFO to undertake it's review.
- Hierarchy of measures for addressing serious harm to fish:
 1. **Avoid** – location, technology, timing
 2. **Mitigate** – best available measures, practically and technically feasible
 3. **Offset** – counterbalance unavoidable serious harm to fish



Guidance on Offsetting

**Fisheries Productivity
Investment Policy:
A Proponent's Guide
to Offsetting**

November 2013

- aims to maintain or enhance sustainability and ongoing productivity of fisheries through avoiding, mitigating and offsetting
- outlines the proponent's responsibility to avoid and, when it is unavoidable, to engage affected parties to select appropriate offsets
- recognizes the importance, and challenges of, determining equivalency, effectiveness, and identifying appropriate options in some environments
- designed to provide flexibility in offset choices guided but is guided by clear principles and informed by science



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Questions?

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