



The modernized *Fisheries Act*: Coming into force of the fish and fish habitat protection provisions

August 28, 2019



PRESENTATION OVERVIEW

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Overview of the modernized *Fisheries Act*

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CONTEXT

In 2015, the Minister of Fisheries, Oceans and the Canadian Coast Guard (DFO) was mandated to review the previous government's changes to the *Fisheries Act*, restore lost protections, and incorporate modern safeguards:

- The federal review of Environmental and Regulatory Processes was initiated shortly after, setting the stage for a whole of Government approach
- In 2016, the House of Commons Standing Committee on Fisheries and Oceans launched a study to review the 2012 changes to the *Fisheries Act*
- To support the Standing Committee's review, DFO undertook complementary engagement with Canadians

CONTEXT

- The outcome helped to inform the development of Bill C-68 (*An Act to amend the Fisheries Act and other Acts in consequence*):
 - tabled in Parliament in February 2018
 - received Royal Assent on June 21, 2019
- The modernized *Fisheries Act* provides a framework for the conservation and protection of fish and fish habitat by:
 - restoring lost protections and incorporating modern safeguards
 - providing certainty for industry, stakeholders, and Indigenous groups
 - promoting the long-term sustainability of aquatic resources
 - ensuring protection for Canadian fish and waters

OVERVIEW of the modernized *Fisheries Act*

- Clarified authority to consider social, economic and cultural factors when making fisheries management decisions, including promoting and protecting **independence in the inshore fisheries**
- Better ability to **protect biodiversity** over the long-term
- Increased focus on **partnering and collaboration with Indigenous peoples** and partners
- New obligations to **maintain major fish stocks** and implement **plans to rebuild depleted major stocks**

OVERVIEW of the modernized *Fisheries Act*

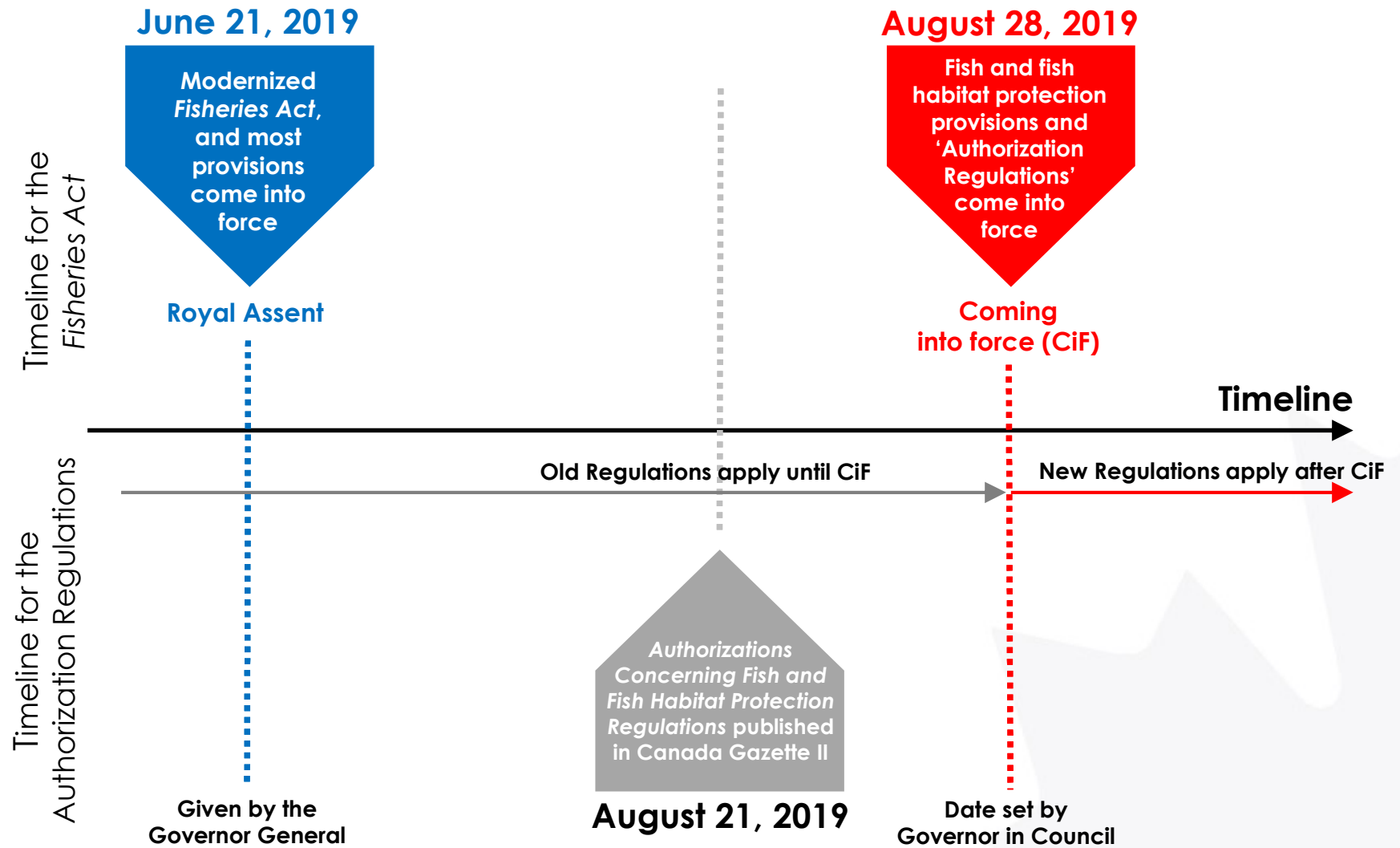
- **New purpose section** - proper management and control of fisheries, and conservation and protection of fish and fish habitat
- **Protection for all fish and fish habitat** - return of former prohibitions against “death of fish” and “harmful alteration, disruption or destruction” (HADD) of fish habitat
- **Factors to consider** - broader considerations for decision making
- Authorities to **improve regulatory clarity** - designated projects, codes of practice, habitat banking
- **Online registry** for increased transparency

KEY MILESTONES of the coming into force of the modernized *Fisheries Act*

The changes to the *Fisheries Act* come into force in **two phases**:

- **June 21, 2019 - Royal Assent** is when most of the provisions in Bill C-68 came into force:
 - new purpose of the Act (section 2.1)
 - new Indigenous provisions (sections 2.3 and 2.4)
 - new considerations for decision making (section 2.5)
- **August 28, 2019 - Coming into force of the fish and fish habitat protection provisions:**
 - New factors to consider (section 34.1)
 - Authorities to publish standards and codes of practice (section 34.2)
 - Management of obstructions (section 34.3)
 - Death of fish (section 34.4) and HADD prohibitions (section 35)
 - Designation of projects (section 35.1)
 - Establishment of ecologically significant areas (section 35.2)
 - Habitat banking provisions (sections 42.02 - 42.04)
 - Establishment of a public registry (sections 42.2 - 42.4)

KEY MILESTONES of the coming into force of the modernized *Fisheries Act*



MODIFICATIONS to the Applications Regulations

- These are the only regulations that are needed at CiF of the modernized Act
- They detail the information and documentation that must be submitted by an applicant requesting an authorization, and the timeline to process it
- They modify the 2013 *Applications for Authorization under Paragraph 35(2) (b) of the Fisheries Act Regulations* to:
 - Reflect the changes in Bill C-68
 - Introduce updates to improve the process of administering the current Regulations
- The new regulations - **Authorizations Concerning Fish and Fish Habitat Protection Regulations** - were published in the *Canada Gazette*, Part II on **August 21, 2019**, and came into force on **August 28, 2019**
- Engagement on the new regulations:
 - In July 2018, DFO published a Consultation Paper seeking input on its intent to propose changes to the Regulations
 - In April 2019, a follow-up Discussion Paper, containing detailed information about the proposed Regulations was published online for public comment

Transitional provisions for applications for paragraph 35(2)(b) *Fisheries Act* authorizations

An application for authorization has been received prior to the coming into force date of the new fish and fish habitat protection provisions of the amended *Fisheries Act*

Yes

Is the application complete?

Yes

Processed under the **pre-Royal Assent *Fisheries Act***, and any authorization issued:

1. Prior to the CiF date, will be a 'SH' authorization under the **pre-Royal Assent Act** and **deemed** to be a HADD/DoF authorization under the **amended Act**.
2. On or after the CiF date, will be **deemed** a HADD/DoF authorization under the **amended Act**.

No

DFO notified the applicant

Before CiF

The applicant has **180 days starting** on the **CiF** date to provide the required information.

On or after CiF

The applicant has **180 days from** the date of **notification** to provide the required information.

Is the application complete?

Yes

Processed under the **pre-Royal Assent *Fisheries Act***, and any authorization issued is **deemed** to be a HADD/DoF authorization under the **amended Act**.

No

New application is required under the **amended Act**.

CiF – Coming into force

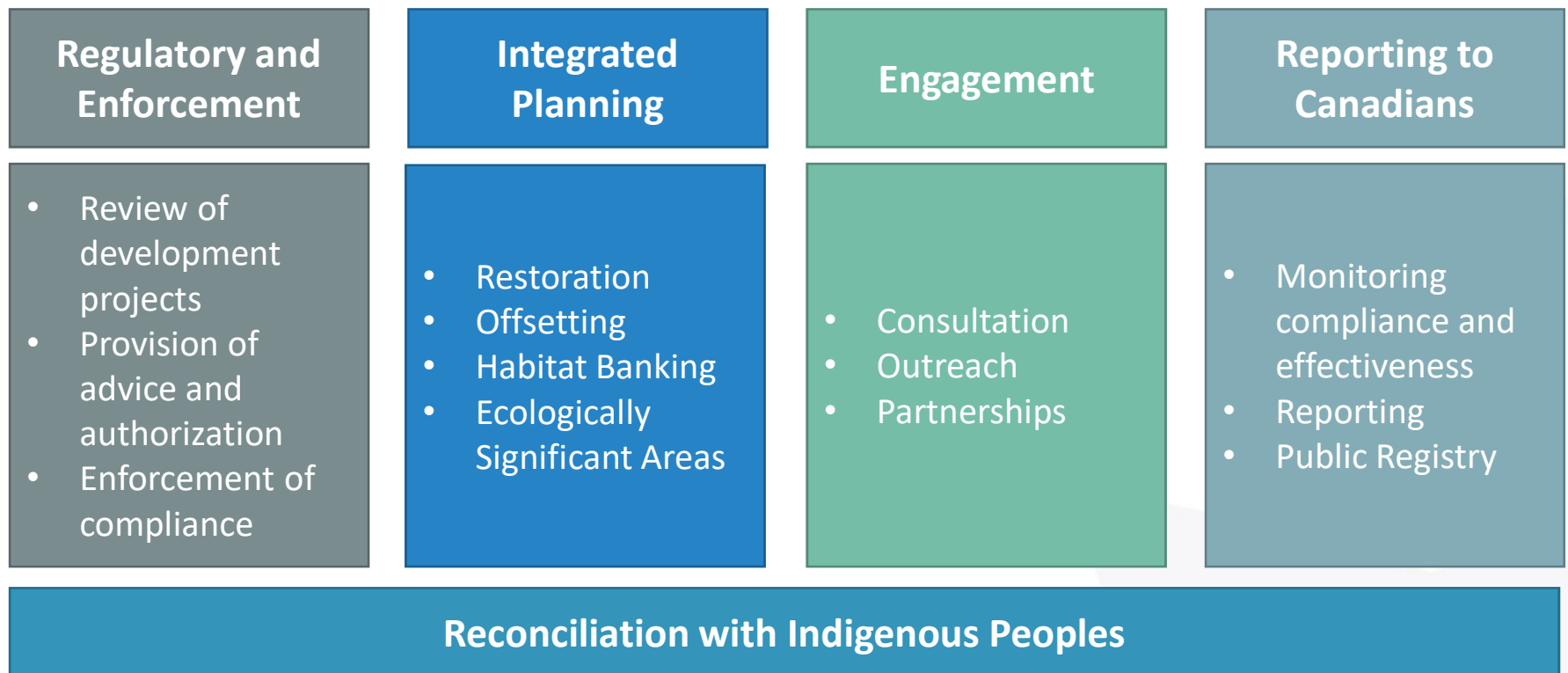
DoF – Death of fish

HADD – Harmful alteration, disruption or destruction of fish habitat

SH – Serious harm

THE REVITALIZED Fish and Fish Habitat Protection Program (FFHPP)

Over 200 new staff positions across Canada, emphasis on five themes of work



THE REVITALIZED Fish and Fish Habitat Protection Program (FFHPP)

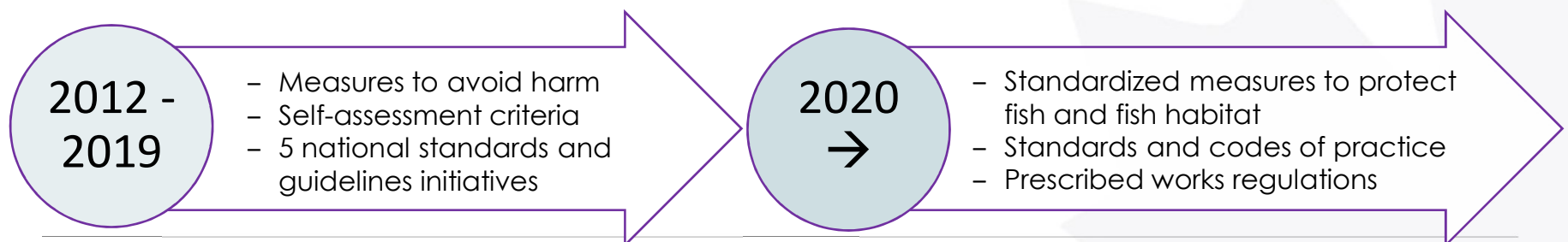
New tools and guidance available for the regulatory review of projects and the protection of fish and fish habitat

- **2019 Fish and Fish Habitat Protection Program Policy Statement** ✓ **Available at CiF**
 - Explains the fish and fish habitat protection provisions, and how the regulatory and non-regulatory tools will be interpreted and applied
 - Used by officials of the Department and the Department's regulatory partners
 - Applies to proponents of existing or proposed works, undertakings or activities that may result in harmful impacts on fish or fish habitat
- Updated **Projects near water website** (client-focused, easier navigation) ✓ **Available at CiF**

THE REVITALIZED Fish and Fish Habitat Protection Program (FFHPP)

When applying the following fish and fish habitat protection provisions, the Department will employ a **risk-based approach** to determine the likelihood and severity of potential impacts to fish and fish habitat of a given work, undertaking or activity:

- the prohibition against causing the death of fish, by means other than fishing (section 34.4)
- the prohibition against causing the harmful alteration, disruption or destruction of fish habitat (section 35)
- the framework for considerations to guide the Minister's regulatory decision-making (section 34.1)
- ministerial powers to ensure the free passage of fish or the protection of fish or fish habitat with respect to existing obstructions (section 34.3)



THE REVITALIZED Fish and Fish Habitat Protection Program (FFHPP)

- Proponents contemplating works, undertakings or activity in or near water can consult DFO's **Projects near water** website, to access:
 - **Measures to Protect Fish and Fish Habitat** to determine how best to plan their work, undertaking or activity in a manner that avoids impacts to fish and fish habitat ✓ **Available at CiF**
 - **Standards and codes of practice** that specify procedures, minimum requirements, the potential impacts to be managed, and the measures to implement to ensure the protection of fish and fish habitat
 - 2 interim codes of practice:** ✓ **Available at CiF**
 - **Small scale end of pipe fish screens**
 - **Routine maintenance dredging**
- If the impacts cannot be avoided, and a code of practice does not apply, proponents submit a request for review:
 - **Request for review form and guidance** ✓ **Available at CiF**
- DFO will then work with the proponent to assess the risk to fish and fish habitat and provide guidance on how to comply with the *Fisheries Act*

THE REVITALIZED Fish and Fish Habitat Protection Program (FFHPP)

- If, after the application of avoidance and mitigation measures, the proponent's works, undertakings, or activities will result in residual impacts to fish or fish habitat, proponents will be directed to complete an application for a *Fisheries Act* authorization:
 - **Application forms for authorizations:** ✓ **Available at CiF**
 - Emergency circumstances
 - Normal circumstances
 - Suspension or cancellation of authorization
 - Reinstatement of authorization
 - Amending authorization
 - **Applicant's Guide** Supporting the *Authorizations Concerning Fish and Fish Habitat Protection Regulations* ✓ **Available at CiF**
 - **Offsetting Guide** (Policy for Applying Measures and Standards to Offset Impacts to Fish and Fish Habitat Under the *Fisheries Act*)

NEXT STEPS

- Engage with stakeholders and partners on the process for compliance with the modernized *Fisheries Act*
- Answer your technical questions about the requirements related to *Authorizations Concerning Fish and Fish Habitat Protection Regulations*
- Receive your feedback and questions about the newly released tools and guidance, and revise where necessary
- Continue to engage on the development of regulations, policies and other instruments to support implementation of the modernized *Fisheries Act*

Thank-you for your interest and attention

More Information:

- [A modernized *Fisheries Act* for Canada](#)
- [Projects near water website](#)
- Email: FPP-PPP.XNCR@DFO-MPO.GC.CA