



Fisheries and Oceans
Canada

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Canada

A Proponent's Guide To *Fisheries Act* Reviews For Federally Funded Infrastructure Projects

Habitat Management Directorate
Fisheries and Oceans Canada

April 2009
Version 1.0

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Table of Contents

1.	Federally Funded Infrastructure Projects and the <i>Fisheries Act</i>	1
2.	Purpose of This Document	1
3.	Proponent Responsibilities in Developing and Submitting Infrastructure Funding Proposals	2
4.	DFO Review and Approval of Infrastructure Project Proposals	2
5.	Review Under Canada's <i>Fisheries Act</i>?	3
6.	Project Review by DFO	3
7.	Project Approval Decisions Under the <i>Fisheries Act</i>	6
7.1.	No Impact to Fish or Fish Habitat – the <i>Fisheries Act</i> does not apply	6
7.2.	Low Risk to Fish and Fish Habitat – the <i>Fisheries Act</i> does apply, No DFO Review Required	6
7.2.1.	Using DFO Operational Statements	7
7.2.2.	Using Other Standard Practice Tools	7
7.2.3.	Information Requirements for Projects Not Requiring DFO Review and Approval ...	9
7.3.	Potential Impact to Fish and Fish Habitat – the <i>Fisheries Act</i> does apply, DFO Review Required	9
7.3.1.	Standard Mitigation Measures Adequately Address Risk to Fish and Fish Habitat ..	9
7.3.2.	Additional Mitigation Measures Are Required to Avoid Harm to Fish and Fish Habitat – Issuance of a DFO “Letter of Advice”	10
7.3.3.	Harmful Alteration, Disruption or Destruction (HADD) of Fish Habitat Cannot be Avoided – Authorization for a HADD and Compensation Are Required.....	10
7.3.4.	Unacceptable Impacts – Project Cannot Proceed as Designed.....	10
8.	Follow-up and Monitoring	12
	Appendix A: Information Submission Requirements for Projects Reviewed by DFO	13
	Appendix B: Developing and Implementing a Compensation Plan for a HADD Authorized Under the <i>Fisheries Act</i>	15
	Appendix C: National List of Operational Statements for Activities with Low Risk to Fish and Fish Habitat	18
	Appendix D: DFO Regional Contacts	26

1. Federally Funded Infrastructure Projects and the *Fisheries Act*

On January 27, 2009 the federal government announced an increase in federal funding for infrastructure projects across Canada. The intent of the increased funding is to stimulate economic activity and to provide funding for projects that will be initiated in 2009 and 2010. Information on funding programs is available from Infrastructure Canada.

(<http://www.buildingcanada-chantierscanada.gc.ca/index-eng.html>)

Any infrastructure project receiving federal funding must meet all federal regulatory requirements. This includes the requirements of the habitat protection provisions of the federal *Fisheries Act*. In accordance with federal government direction, Fisheries and Oceans Canada (DFO) is committed to facilitate project reviews that respect the timeframes for project funding and implementation identified by Infrastructure Canada while protecting fish and fish habitat.

2. Purpose of This Document

This Guide provides information for Proponents, and their project design teams, on requirements for ensuring infrastructure projects funded by the various federal funding programs comply with the *Fisheries Act*. The *Fisheries Act* continues to apply fully to all infrastructure projects in or around water that are likely to result in harm to fish and fish habitat.

This Guide is based on the existing DFO Habitat Management "Risk Management Framework" (http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/modernizing-moderniser/risk-risques_e.asp) and project approval process and has been developed to provide specific guidance on the application of these processes to federally funded infrastructure projects. This Guide will assist Proponents in understanding the various requirements of the *Fisheries Act* and identify when DFO should be involved in their project review and approval.

Infrastructure Canada has identified a requirement for Proponents to identify, as part of their funding application, all projects that have elements that are:

- on, under, over, through or across a water body such as a wetland, stream, river or lake; and
- within 30 metres of a water body.

These criteria will help Proponents identify and address the potential impacts of their proposed project on fish and fish habitat and ensure their compliance to the *Fisheries Act*.

Not every project is likely to result in harm to fish and fish habitat, and therefore not every project will require review or approval pursuant to the *Fisheries Act*. This Guide is intended to provide information on the application of the *Fisheries Act* to assist Proponents in the effective development and review of their infrastructure project plans.

There is specific information available that defines the technical terms used in this Guide and how they are applied (for instance "normal high water mark" as used by DFO). For this and other detailed information on the *Fisheries Act* and its application you should refer to DFO's Fish Habitat Management website (<http://www.dfo-mpo.gc.ca/habitat/habitat-eng.htm>); or see Appendices C and D for links to regional DFO websites).

This Guide will be reviewed periodically in order to maximize its relevance and effectiveness.

3. Proponent Responsibilities in Developing and Submitting Infrastructure Funding Proposals

Proponents have a responsibility to determine if their project may or will have an impact on fish and fish habitat and to identify what measures are necessary to mitigate or compensate for any of these impacts. In many cases, this will require the advice and participation of a fish habitat specialist or other qualified environmental service provider¹ during the project design and implementation. If a project is likely to, or will have, an impact on fish and fish habitat it is in the Proponent's best interest to engage a fish habitat specialist early in the planning process so that your project can adequately avoid, mitigate or compensate for its effects on fish or fish habitat. Ensuring that this is taken into account in the development of a project and request for infrastructure funding will facilitate any required review and approval by DFO staff.

DFO is committed to conserving, protecting and improving fish habitat. Federal funding for infrastructure projects provides an opportunity for Proponents to incorporate the design and construction of features that will not only maintain but potentially improve or increase fish habitat resources. Proponents are encouraged to work with DFO, other federal regulatory bodies such as Transport Canada, Navigable Water Protection Program, the Provinces and Territories and other qualified environmental service providers early in the project planning and design stages so that the secondary benefits of enhancing Canada's fishery can be achieved through the participation of the federal government in funding the national infrastructure program.

It is important to note that in some provinces, notably New Brunswick, Prince Edward Island and Nova Scotia, provincial agencies provide the first level of review for projects that may impact on fish and fish habitat. Information on these provincial processes can be found in Appendix C. In all provinces, however, when site specific advice or authorization is needed it must be requested from DFO (see Section 7.3).

4. DFO Review and Approval of Infrastructure Project Proposals

When impacts to fish and fish habitat will occur, or it is uncertain if such negative impacts can be avoided, DFO will review the development proposal to evaluate the potential impacts and ensure compliance with the *Fisheries Act*. Through the review process DFO (and/or the Provincial government where collaborative agreements are in place) may provide advice and propose additional mitigation measures or alternative designs to avoid or reduce potential impacts to fish and fish habitat. When this advice is integrated into the project design, the impacts to fish and fish habitat can be avoided or mitigated and the project can proceed according to the design, without a *Fisheries Act* authorization from DFO.

When there are going to be known and unavoidable harmful impacts to fish or fish habitat, Proponents are expected to address these impacts to the maximum extent possible and develop fish habitat compensation measures to offset any residual impacts (post mitigation) associated with their projects. Fish habitat compensation measures are required by DFO before an Authorization for harm to fish habitat can be issued under the *Fisheries Act*. DFO's ability to conduct a timely and effective review of all projects that will affect fish habitat depends on the project Proponent's consideration of DFO requirements during project planning, siting, design and

¹ "Qualified environmental service providers" and "experienced and qualified environmental firms and individuals" as used in this Guide refer to a company, organization or individual that specializes in fisheries issues and that has the required experience and expertise in assessing and managing fish and fish habitat issues at the project location. They should also have previous experience in matters relating to the habitat provisions of the *Fisheries Act*. The terms do not refer to a specific technical or professional designation.

construction, and the timely provision of all the necessary information and analysis outlined in this Guide and other referenced documents.

Across Canada, DFO has established relationships, and in some cases Agreements, with Provincial governments, other environmental organizations and experienced and qualified firms and individuals that can work with a Proponent to assist in the development of a project proposal. As discussed in this Guide, a Proponent can facilitate compliance to the *Fisheries Act* through the use of qualified professionals outside of DFO.

5. Review Under Canada's *Fisheries Act*?

Canada's *Fisheries Act* gives DFO the authority to conserve and protect fish and fish habitat. The *Act* applies to all lands and water in Canada, including private property, in every Province and Territory. The *Act* defines fish habitat as "*spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly to carry out their life processes*". No one may carry out any work in or near Canadian waters that result in fish mortality or in the harmful alteration, disruption or destruction of fish habitat (HADD) without authorization from DFO. The *Fisheries Act* also gives DFO the authority to order adequate fish passage and water flows to support fish. DFO has developed and implemented an effective system to assist Proponents in identifying their requirements with regard to approvals under the *Fisheries Act*. The DFO website provides an overview for Proponents of the process to be followed to ensure compliance with the *Fisheries Act*. (<http://www.dfo-mpo.gc.ca/habitat/habitat-eng.htm>). Although this process is consistent across the country, specific project review processes may vary between provinces and territories to reflect the collaborative streamlining undertaken by DFO and the relevant provincial or territorial government (See Appendices C and D for links to regional tools and information).

It is important to note that in carrying out its responsibilities under the habitat protection provisions of the *Fisheries Act*, DFO must also ensure that the requirements of the *Species at Risk Act*, the *Canadian Environmental Assessment Act* and other environmental assessment regimes are met, and that potentially affected Aboriginal groups are consulted where appropriate.

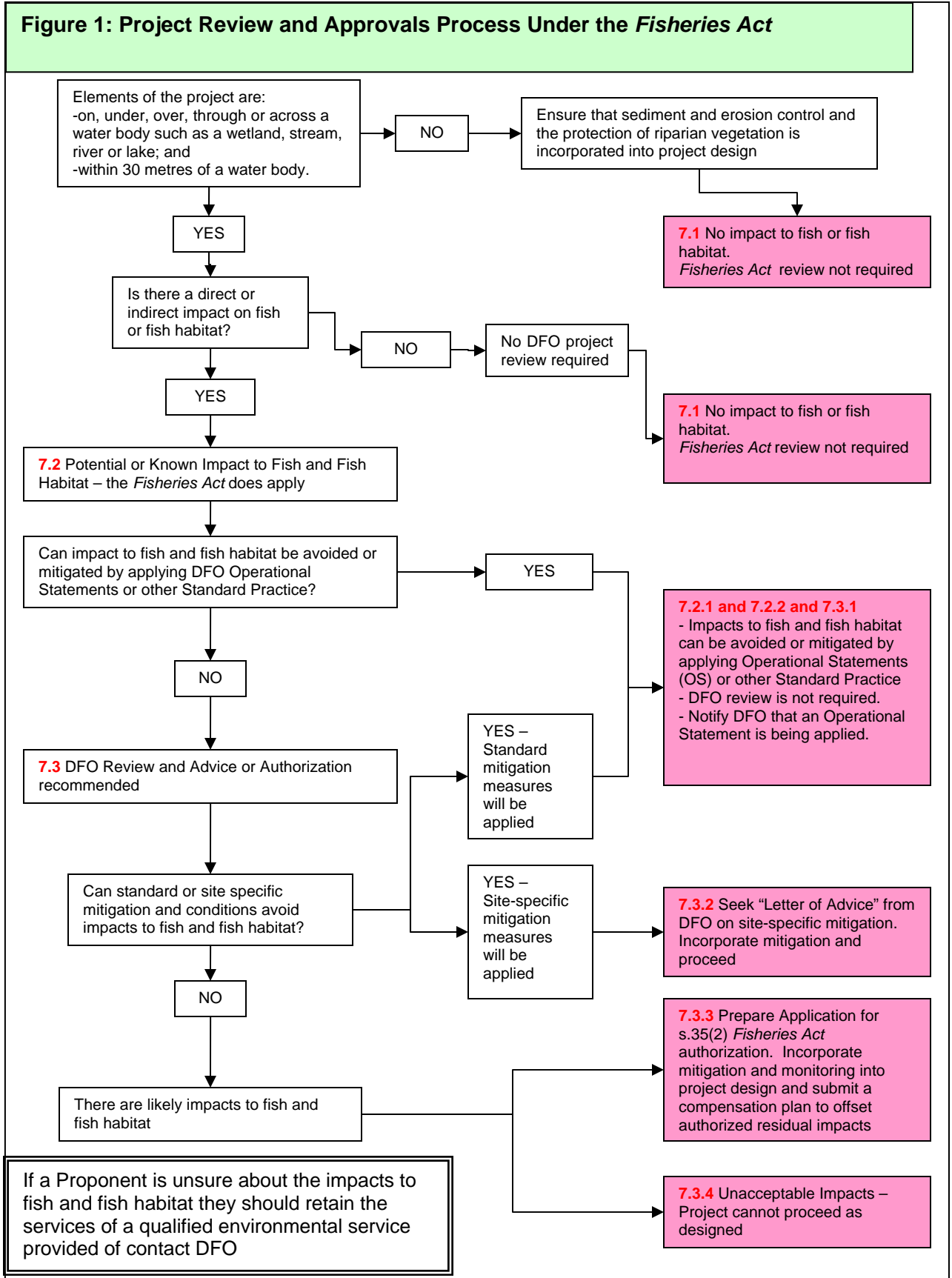
6. Project Review by DFO

There are three potential outcomes with respect to fish and fish habitat that determine the level of project review required by DFO under the *Fisheries Act*, and consequently the level of DFO involvement in the project review and approval process. The three potential outcomes are:

1. No impact to fish or fish habitat – **the *Fisheries Act* does not apply.**
2. Risk to fish and fish habitat is LOW if DFO Operational Statements, Provincial guidelines, other Standard Practice, best management practices, or other standard mitigation tools are properly applied- **DFO Review and Approval Not Required.**
3. Risk to fish and fish habitat is uncertain, MODERATE or HIGH and DFO Operational Statements Provincial guidelines, other Standard Practice, best management practices, or other standard mitigation tools will not be able to address all potential harmful impacts to fish and fish habitat - **DFO Review Required.** From the DFO review, three possible outcomes can occur:
 - Mitigation measures (included in the project design or proposed by DFO) are adequate to avoid harm to fish and fish habitat – **Issuance of a DFO "Letter of Advice"**.

- Residual harm to fish and fish habitat cannot be avoided but the impacts to fish and fish habitat are acceptable – **Authorization for a HADD and Habitat Compensation Are Required.**
- Unacceptable impacts to fish and fish habitat– **Project Cannot Proceed as Designed.**

Figure 1, “Project Review and Approval Process Under the *Fisheries Act*”, identifies the various review and approval processes that a project may be subject to. As noted above, there are benefits associated with engaging experienced and qualified firms and individuals to develop a project in such a manner as to avoid or effectively mitigate any harmful impacts to fish and fish habitat. When projects are planned and designed to avoid harmful impacts to fish and fish habitat, Proponents can proceed with their project without the need for DFO review and approval. When projects cannot be designed to fully avoid negative impacts to fish and fish habitat, Proponents should request DFO advice or authorization prior to proceeding with the project.



7. Project Approval Decisions Under the Fisheries Act

7.1. No Impact to Fish or Fish Habitat – the Fisheries Act does not apply

Not all infrastructure projects will result in harm to fish and fish habitat. Some projects will not be in or near water and will have no impact on fish or fish habitat. Projects that may be near or in water, if planned, sited, designed and constructed properly by experienced and qualified firms or individuals, may be undertaken in a manner that avoids impacts to fish and fish habitat. The *Fisheries Act* allows for these projects to proceed without the Proponent contacting DFO for review or authorization.

The following question has been identified as a first step to identifying projects to which the *Fisheries Act* could typically apply:

- Are all components of the project a minimum of 30 metres or more away from the normal high water mark of a water body?

If the response to this question is yes, a project can usually proceed without notifying DFO, as the *Fisheries Act* does not likely apply. It remains the responsibility of the Proponent, however, to ensure that indirect impacts to fish and fish habitat are avoided through implementation of sediment and erosion control measures, protection of riparian vegetation, and prevention of the release of harmful substances into any water bodies.

If the answer to the question is no, there may be an impact on fish or fish habitat and the Proponent should seek the advice of a qualified environmental service provider or individual. Where impacts to fish and fish habitat cannot be avoided, or the avoidance of impacts is uncertain, a site-specific DFO review may be required. Conversely, where impacts can be avoided through project planning, siting and design (see 7.2 below) a site-specific DFO review may not be required.

7.2 Low Risk to Fish and Fish Habitat – the Fisheries Act does apply, No DFO Review Required

The following sections provide guidance on how to apply DFO Operational Statements and other standard mitigation tools to protect fish and fish habitat for projects that pose low risk to fish and fish habitat.

If a Proponent is planning to do work in or near water they should be aware of the potential impact their proposed project may have on fish and fish habitat. DFO has developed activity specific Operational Statements that can be used in different provinces and territories to mitigate potential fish habitat impacts from "low risk" activities. Other known and accepted tools and standard approaches such as Federal or Provincial Guidelines for activities affecting fish habitat, Erosion and Sediment Control Plans, water intake fish screening, activity specific Best Management Practices, design, construction and operating standards, etc. can also be effective in mitigating impacts to fish and fish habitat if applied properly.

7.2.1. Using DFO Operational Statements

Operational Statements have been developed by DFO to help Proponents plan and design their project to avoid impacts to fish and fish habitat. Operational Statements have been developed to address specific activities with “low risk” of affecting fish and fish habitat. Application of these Operational Statements will avoid or mitigate impacts to fish and fish habitat. By following the advice in these documents it is not necessary for a proposal to undergo project-specific DFO review and approval.

A “National List of Operational Statements” has been developed and is presented in Appendix C. Please refer to the DFO website (http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/modernizing-moderniser/epmp-pmpe/index_e.asp) to review the list of activities that are covered by Operational Statements. From this web page, the Proponent can select the Province or Territory where a proposed project will be carried out to find both the approved current Operational Statements for the project location, DFO notification forms, and the contact information for local DFO offices should further information be required.

Proponents may refer to “**Figure 2: Project Review and Approvals Process Using Operational Statements or Standard Practice**” for additional information on the project planning, design and approval requirements.

7.2.2. Using Other Standard Practice Tools

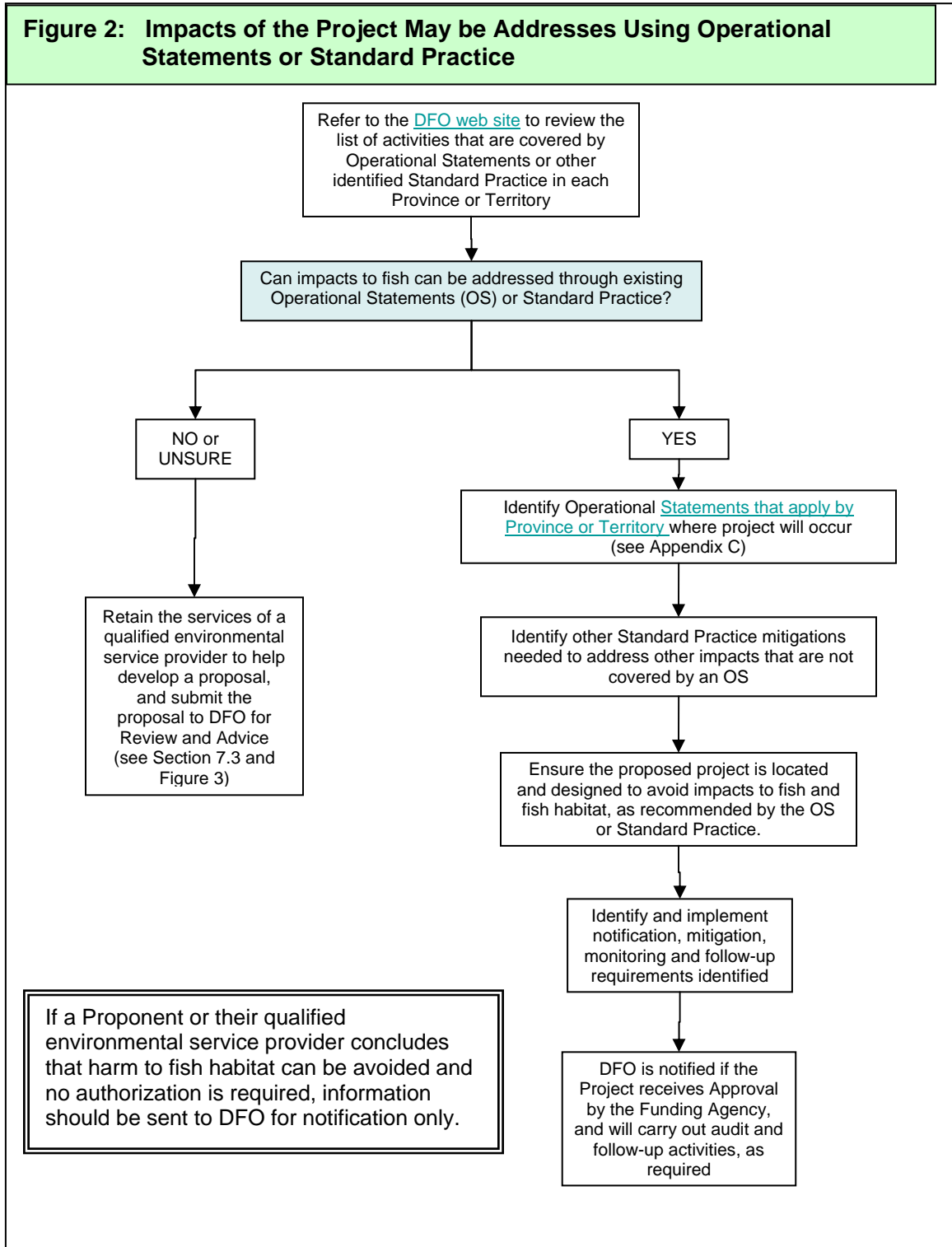
In addition to Operational Statements, other Standard Practice tools and guidance, or project review processes may exist in different Provinces, Territories and/or Municipalities. These processes may include a one-window referral (project review) process where the Province or Territory is the first point of contact to review a proposed project, and is permitted to take into account fish and fish habitat issues to meet the requirements of the *Fisheries Act*. DFO has identified Agreements to established one-window approach on the Operational Statements website. (http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/modernizing-moderniser/epmp-pmpe/index_e.asp)

Other tools and guidance may include best management practices and approved work practices that outline acceptable practices to follow when carrying out certain activities. To access those tools that have been identified by DFO working in cooperation with Provincial or Territorial governments, go to the DFO Operational Statements website and select the appropriate Province or Territory to check if identified Standard Practice processes apply to a proposed project.

As noted earlier, experienced and qualified environmental firms and individuals can also assist a Proponent in identifying additional acceptable mitigation measures and other relevant tools or processes that will address fish and fish habitat issues and identify project planning, siting, design and construction requirements, and required mitigation. If the Proponent is able to avoid impacts to fish and fish habitat, the project can proceed without DFO review and approval.

Proponents are encouraged to submit project proposals to DFO for review if they are uncertain whether or not they will be able to incorporate the advice provided in an Operational Statement or other Standard Practice. Project proposals should also be submitted for review by DFO if the Proponent feels that the proposed development may have an impact to fish and fish habitat that they have not been able to fully avoid.

Proponents may refer to “**Figure 2: DFO Project Review and Approvals Process Using Operational Statements or Standard Practice**” for additional information on the project planning, design and approval requirements. Ensuring that all relevant information and analysis is submitted to DFO is vital to achieving a timely review of a project.



7.2.3. Information Requirements for Projects Not Requiring DFO Review and Approval

The federal government has identified the importance of complying with relevant legislation in the delivery of the increased federal funding for infrastructure projects across Canada. When using Operational Statements, DFO requests that the Proponent send the notification form attached on the last page of each Operational Statement to DFO to assist in monitoring the effectiveness of the Operational Statements for protecting fish habitat. Also, DFO may choose to audit projects to ensure conformity with the conditions of the Operational Statements or other Standard Practice Tools.

7.3 Potential Impact to Fish and Fish Habitat – the Fisheries Act does apply, DFO Review Required

There are three situations when a project proposal should be submitted to DFO for advice and any required Authorization. These situations are:

1. The Proponent is uncertain that they can follow the advice and implement the mitigation in an Operational Statement or other Standard Practice Tools to fully avoid impacts to fish and fish habitat.
2. The Proponent feels that the project may result in harmful impacts to fish and fish habitat.
3. The Proponent knows that the project will result in harmful impacts to fish and fish habitat.

DFO has developed a “[Proponents Guide to Information Requirements for Review under the Fish Habitat Protection Provisions of the *Fisheries Act*” \(\[http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/water-eau/requirements-exigences/index_e.asp\]\(http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/water-eau/requirements-exigences/index_e.asp\)\). Proponents not familiar with the application of the *Fisheries Act* should refer to this document for specific instruction on the requirements to submit information for review by DFO when a detailed review is recommended. It is in the Proponent's best interest to ensure that DFO information requirements for the project are met upon submission of their funding application. A summary of “Information Requirements for Projects Reviewed by DFO” is presented in Appendix A. Detailed requirements and additional information is provided on the DFO website as noted above.](http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/water-eau/requirements-exigences/index_e.asp)

Proponents may refer to “**Figure 3: Operational Statements and Standard Practices Do Not Apply – Project Referred to DFO for Review and Approval**” for additional information on the project planning, design and approval requirements.

It is important that Proponents submitting their projects to DFO for review clearly identify when the project is being funded under the federal Building Canada Plan, and under which specific program the funds are being provided. This will allow DFO to identify and track federally funded infrastructure project reviews, as well as ensure that the appropriate environmental assessment process is followed for these projects.

7.3.1 Standard Mitigation Measures Adequately Address Risk to Fish and Fish Habitat

Upon review of the information submitted, DFO may determine that standard measures that are set out in Operational Statements or other Standard Practices (Provincial Regulations, guidebooks, industry specific codes of practice or other mechanisms) are adequate to avoid all impacts to fish and fish habitat. In such a case, the Proponent

would be referred to the appropriate Operational Statement, references or information, which if incorporated into the project plan, would not require DFO review or authorization.

7.3.2 Additional Mitigation Measures Are Required to Avoid Harm to Fish and Fish Habitat – Issuance of a DFO “Letter of Advice”

Where it is clear that standard mitigation measures alone will not address all potential harmful effects to fish and fish habitat, additional site specific measures and conditions may need to be specified by DFO. In these cases the project should be referred to DFO who will provide guidance and advice in the form of a “Letter of Advice”. By following the measures outlined in a “Letter of Advice” the Proponent can proceed and avoid the need for authorization under the *Fisheries Act*.

7.3.3 Harmful Alteration, Disruption or Destruction (HADD) of Fish Habitat Cannot be Avoided – Authorization for a HADD and Compensation Are Required

DFO's first preference is always to avoid the harmful alteration, disruption or destruction (HADD) of fish habitat through relocation, redesign and mitigation. Where it is clear that despite efforts to relocate, design or mitigate, the project will result in impacts to fish habitat, a *Fisheries Act* authorization will be required.

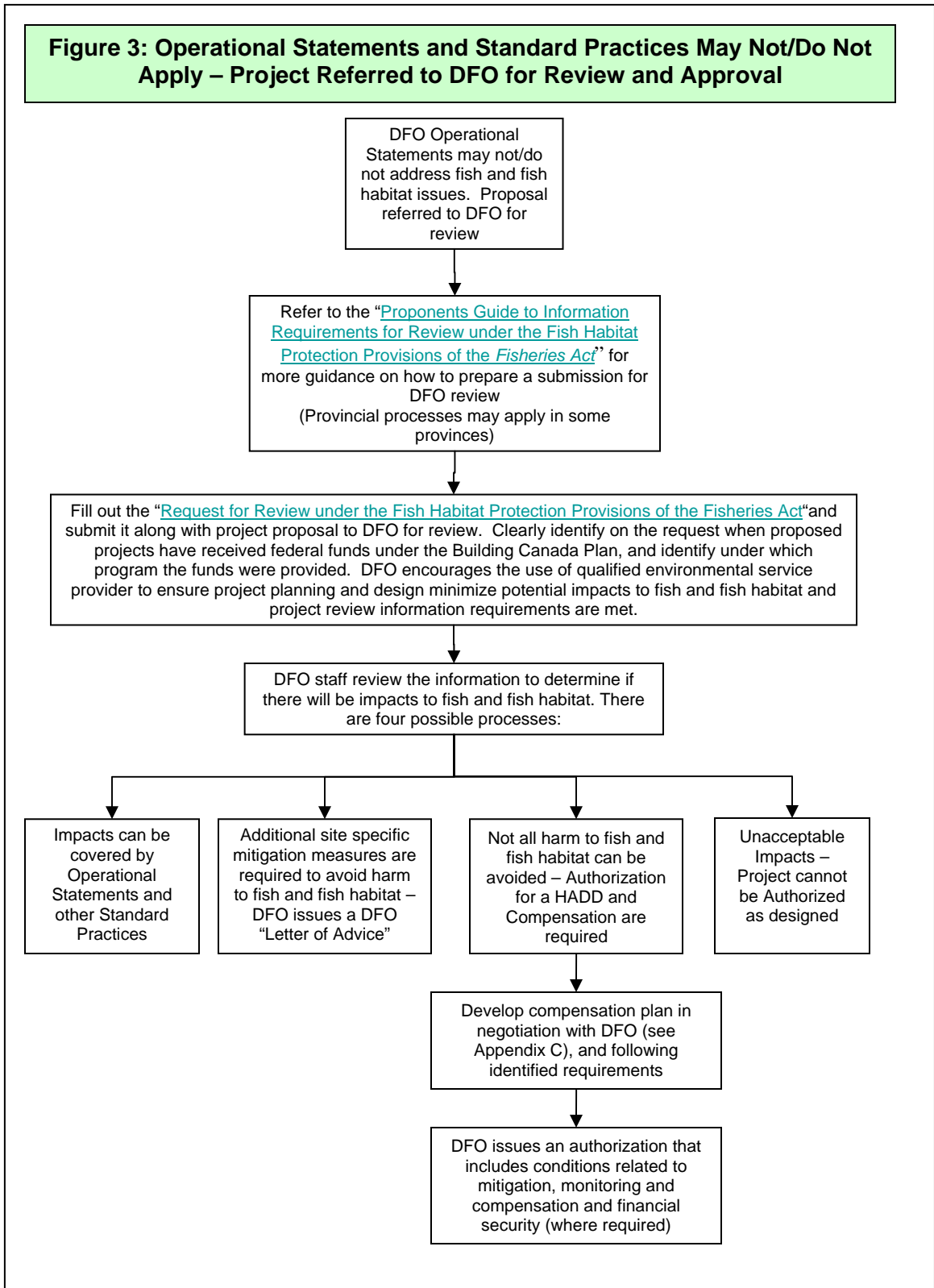
For DFO to contemplate authorization, the HADD must be considered acceptable. Acceptability is a function of the feasibility of alternate designs or project siting, nature and severity of the residual impact, the value/sensitivity of habitat affected, and the adequacy of compensation.

The proportion of projects likely to result in a HADD that require an authorization and associated compensation measures, in general, is relatively small. However, where a HADD is likely to occur as a result of project works or undertakings, it is important that an authorization be obtained. The Proponent is required to gather the appropriate information and request DFO review of their project proposal following the process described in Appendix A. In order for DFO to issue an Authorization an effective habitat compensation plan must also be developed and implemented to offset the authorized impacts to fish habitat. Appendix B provides information on the process and considerations for developing and implementing a fish habitat compensation plan for infrastructure works.

Harming fish or fish habitat without a *Fisheries Act* authorization is an offence under the *Act*, and carries significant penalties.

7.3.4 Unacceptable Impacts – Project Cannot Proceed as Designed

DFO will not issue an authorization under the *Fisheries Act* where the harm to fish and fish habitat is considered unacceptable, due to the scale or severity of the impacts or the critical or important nature of the habitat impacted. Accordingly, Proponents are strongly encouraged to examine all location and design options for their project at the conceptual project design stage to avoid this outcome.



8. Follow-up and Monitoring

DFO will require project monitoring that is proportionate to the risk to fish and fish habitat. Proponents are encouraged to include the details of the proposed monitoring as part of the contracts put in place for project implementation and as part of the overall project cost. In some cases, monitoring should be completed as a sub-contract or by an independent contractor. The use of a separate contractor increases the independence of the monitoring and the integrity of the monitoring results.

There are two main types of monitoring: compliance monitoring and effectiveness monitoring. Compliance monitoring ensures that the work is carried out in accordance with the approvals and conditions identified during the project review. Effectiveness monitoring ensures that mitigation measures, habitat compensation measures and other conditions are functioning as intended, and are effectively protecting fish and fish habitat.

In addition to Proponent monitoring, DFO may conduct its own audits, inspections and monitoring for both compliance and effectiveness assessments of projects to ensure conformance with identified mitigation measures, and to evaluate their effectiveness.

Appendix A: Information Submission Requirements for Projects Reviewed by DFO

Fisheries and Oceans Canada (DFO), in conjunction with all involved federal departments, is committed to ensuring federal infrastructure projects are reviewed and approved in a timely and effective manner. The process below identifies the Information Submission Requirements that the Proponent must meet in order for their project to be reviewed in a timely and effective manner. Proponents are encouraged to provide all required information as early in the process as possible so that there will be no unnecessary delays in project reviews.

The information in this Appendix supports the text in Section 7.3 of the "Proponents Guide to Federally Funded Infrastructure Projects and the *Fisheries Act*" and provides additional information and guidance to Proponents.

Proponents are encouraged to retain the services of a qualified environmental service provider to examine siting, design and mitigation alternatives for projects likely to result in impacts to fish and fish habitat. Obtaining sound technical advice and guidance on these alternatives from qualified professional early in the planning process will often accelerate DFO's review.

Proponents should submit their project proposal to DFO for review if:

- they are uncertain that they can follow the advice in one of the following:
 - an Operational Statement, or other Standard Practice tool or process, that may exist in different Provinces, Territories and/or Municipalities; or
 - A one-window referral (project review) process where the Province or Territory is the first point of contact to review a proposed project, and is permitted to take into account fish and fish habitat issues to meet the requirements of the *Fisheries Act*. DFO has identified Agreements to established one-window approaches on the Operational Statements website. (http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/modernizing-moderniser/epmp-pmpe/index_e.asp)
- they proposed development may or will result in negative impacts to fish and fish habitat.

Step 1: Project planning and document preparation

The information below is requested by DFO to understand the nature and scope of the project and determine if there are any potential negative impacts to fish and fish habitat related to the proposed project:

- Contact information for Proponent, Contractor and Consultants;
- Location of the proposed development;
- Description of the aquatic environment, including drawings and photographs of the aquatic environment; and
- Description of the proposed development, including fish and fish habitat protection measures.

Proponents should refer to the "Proponents Guide to Information Requirements for Review under the Fish Habitat Protection Provisions of the *Fisheries Act*" (http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/water-eau/requirements-exigences/index_e.asp) for more assistance on how to describe a proposed project for review by DFO. Additional information may be required depending on the location, scale and complexity of the proposed development and the ability to feasibly mitigate impacts associated with the project. Where an authorization is required, additional information in the form of a conceptual habitat compensation plan, financial securities and monitoring program may be required.

Step 2: Submit an “Infrastructure Funding” proposal

In order to initiate a review of a project proposal, the Proponent is required to fill out the “Request for Review under the Fish Habitat Protection Provisions of the Fisheries Act” (http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/water-eau/requirements-exigences/form-formulaire_e.asp).

The Proponent submits the request along with the project proposal to DFO for review. The Proponent should include the information in Sections A and B directly on the Form. The information in Sections C and D can either be included on the Form, where the project is complex or has many elements, or can be included within the development proposal submission.

The request should clearly identify when federal funds under the Building Canada Plan have been provided, and under what specific program.

Documents can be sent by mail, fax or email attachment to the local DFO Office. A copy of the documents should be retained as part of the project file.

Proponents are required to respect all municipal, provincial, territorial or federal legislation that applies to the work being carried out in relation to the proposed project. If the proposed project is in a province where there is a joint referral process between provincial agencies and DFO, the Proponent is to contact the province with the proposed project plans and any additional information required under the provincial process.

If a Proponent has any questions regarding these information requirements they should contact the local DFO Office.

Step 3: The review process

DFO staff will review the information provided to determine if there will be impacts to fish and fish habitat. There are three possible processes:

1. If there is **No Fish Habitat** at or near the proposed development, DFO staff will advise that the project may proceed as there are no concerns with respect to the *Fisheries Act*.
2. If the impacts to **Fish and Fish Habitat can be avoided** – DFO staff may provide advice on how to avoid impacts by recommending standard mitigation measures or by providing site-specific advice to address anticipated impacts (including relocation or redesign options) for the proposed project.
3. If the impacts to **Fish and Fish Habitat are unavoidable** – DFO staff will either conclude that the impacts to fish and fish habitat associated with the project proposal are acceptable and can be authorized, or that the impacts are unacceptable and the project cannot be authorized as proposed. Any *Fisheries Act* authorization issued will include a number of requirements and conditions such as mitigation measures, requirements for compensatory habitat to offset the loss of fish habitat associated with the project, and monitoring and reporting requirements.

Note that in certain circumstances, severe impacts to sensitive fish and fish habitats may be deemed by DFO to be unacceptable. In these cases, a *Fisheries Act* Authorization would not be issued for the proposed development.

Reminder – It is the Proponent's responsibility to ensure that they protect fish and fish habitat. Failure to comply with the habitat protection provisions of the *Fisheries Act* can lead to enforcement and legal action.

Appendix B: Developing and Implementing a Compensation Plan for a HADD Authorized Under the *Fisheries Act*

A habitat Compensation Plan is only required when it has been determined that a project will result in a harmful alteration, disruption or destruction (HADD) of fish habitat and the project must be Authorized under the *Fisheries Act*. A Compensation Plan is to be designed to offset the losses in productive capacity of fish habitat associated with the authorized HADD. Proponents are encouraged to engage a fish habitat specialist or other qualified environmental service provider for advice and guidance in the design and implementation of a Compensation Plan.

This Appendix provides guidance to Proponents in developing compensation plans to offset the harmful alteration, disruption, or destruction (HADD) of fish habitat, resulting from a work or undertaking. This guidance material builds on the principles outlined in the 1986 "Policy for the Management of Fish Habitat" (http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/policies-politique/operating-operation/fhm-policy/index_e.asp) and the "Practitioners Guide to Writing a Subsection 35(2) Fisheries Act Authorization". (http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/policies-politique/operating-operation/authorization-autorisations/index_e.asp) Additional guidance is also provided in the DFO "Practitioners Guide to Habitat Compensation". (http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/policies-politique/operating-operation/compensation/index_e.asp)

Background

DFO's preference is to avoid the HADD of fish habitat through project relocation, redesign and impact mitigation, wherever possible. Where a HADD cannot be avoided, compensation measures are necessary to achieve the Guiding Principle of No Net Loss (NNL), as specified in the 1986 Policy. Proponents are required to compensate for the HADD as a condition of Subsection 35(2) *Fisheries Act* Authorizations.

Compensation is defined in the Policy as:

"The replacement of natural habitat, increase in the productive capacity of existing habitat, or maintenance of fish production by artificial means in circumstances dictated by social and economic conditions, where mitigation techniques and other measures are not adequate to maintain habitats for Canada's fisheries resources."

In accordance with the Habitat Policy and DFO guidance documents, the hierarchy of preferences to be considered for achieving NNL through compensation are:

1. Create or increase the productive capacity of like-for-like habitat in the same ecological unit;
2. Create or increase the productive capacity of unlike habitat in the same ecological unit;
3. Create or increase the productive capacity of habitat in a different ecological unit; and
4. As a last resort, consider artificial production techniques to maintain a stock of fish.

In unique and rare situations DFO may also consider deferred compensation or restoration of previously impacted sites that are not in the same geographic location as the project.

Information Considerations

In developing a Compensation Plan, Proponents should strive to identify compensation methods in accordance with the first two preferences stated above. However, all proposed compensation plans should be clearly linked to benefits for the fisheries resource, and the HADD for which the

Authorization is being sought. Whether NNL is achieved through strict adherence to the preferences, or through some innovative combination of available options, the most important consideration is ensuring that the proposed compensation works will have a tangible benefit to the fisheries resource.

In developing compensation plans to offset the losses associated with a HADD, there are a number of factors that should be considered:

- The type of habitat that is being harmfully altered, disrupted, or destroyed;
- Habitat sensitivity, uniqueness, rarity and abundance at the impacted site;
- The temporal nature of the impact (permanent or temporary impacts)
- Habitat quality, supply and function, at both the impact and compensation sites;
- Fisheries management objectives, fishery use, or potential;
- First Nations traditional uses and ecological knowledge;
- Watershed impacts;
- The presence of Species at Risk (or critical habitat for Species at Risk);
- The type and quality of compensatory habitat being proposed; and
- The risk of failure and the time lag until compensatory habitats are fully functional.

Information Requirements

When submitting a Compensation Plan for review, the following information should be included to ensure an efficient review and Authorization of the project:

- A description of the compensation site and planned works. This should include photographs and sketches/drawings of the site identifying the approximate location (geographic coordinates), area, number and dimensions of compensation works and structures.
- Details of the fish habitat at the compensation site, and the fish that presently utilize the site.
- Identification of the factors limiting the productive capacity and habitat function of the area in which the compensation works are being proposed.
- If applicable, identification of established stakeholder groups, and confirmation that consultation has occurred where necessary.
- The option chosen from the hierarchy of preferences (stated above), and/or a rationale as to why a combination of the preferences was chosen.
- Detailed description(s) of proposed compensation works including drawings outlining the nature and location of compensation works and plans or drawings for any constructed works or structures.
- Characterization of the habitat gains expected from the compensation works [i.e. the type and amount of habitat to be created, the species that will benefit, the habitat function or capacity that will be created, improved or enhanced, and how such gains will offset the HADD].
- If habitat ratios (compensatory habitat : impacted habitat) were used in developing the Compensation Plan, a description of how the ratios are intended to offset the losses associated with the HADD should be provided.
- The timeline for implementing the compensation works.
- The construction details [i.e. machine access routes, mitigation measures to prevent additional HADD during construction, construction methods, etc].
- Issues that could compromise the success of the compensation works [i.e. site accessibility, downstream fish obstructions, etc.].
- Confirmation of land tenure, legal right of access, and management authority for compensation works. If applicable, please include signatures of any affected landowners.
- Environmental inspection and monitoring commitments [for example, a description of compliance and effectiveness monitoring that will take place in relation to the compensation works, a description of post-compensation monitoring, etc.].

- A copy of "as-build drawings".

Itemized cost(s) of compensation measures may be required. If DFO requires a Letter-of-Credit to cover the costs of mitigation, compensation, and monitoring measures for the project the Proponent would then be required to provide Compensation Plan costing details.

Appendix C: National List of Operational Statements for Activities with Low Risk to Fish and Fish Habitat

A series of Operational Statements (OS) has been developed to streamline the Habitat Management Program's (HMP) regulatory review of low risk activities. The OS outlines measures and conditions to avoid the harmful alteration, disruption or destruction (HADD) to fish habitat and maintain compliance with subsection 35(1) of the *Fisheries Act*. Proponents are not required to submit their proposal for review by DFO if all impacts to fish habitat caused by a project are addressed and the Proponent incorporates the measures and conditions outlined in the OS into the project plans. Proponents are asked to complete the Notification Form for work associated with the OS, and send it to the local DFO office.

The Operational Statements were developed by the HMP and were adapted in each DFO Region to complement existing Provincial and Territorial legislation and standards and specific environmental conditions. The OS also reflect input from federal, provincial and territorial regulatory partners and stakeholders (e.g., industry, resource users, etc.).

An Operational Statement may apply to a variety of infrastructure projects. Use the links below (where available) to review the individual OS that have been developed for use in each Province or Territory. All Operational Statements are available electronically on the DFO website.

Newfoundland and Labrador

The following Operational Statements have been approved for use in Newfoundland and Labrador and are available electronically on the DFO website.

[AQUATIC VEGETATION REMOVAL](#)
[BEACH CREATION](#)
[BEAVER DAM REMOVAL](#)
[BRIDGE MAINTENANCE](#)
[CLEAR SPAN BRIDGES](#)
[COTTAGE LOT DEVELOPMENT](#)
[CULVERT MAINTENANCE](#)
[DOCK AND BOATHOUSE CONSTRUCTION](#)
[HIGH-PRESSURE DIRECTIONAL DRILLING](#)
[ICE BRIDGES AND SNOW FILLS](#)
[ISOLATED POND CONSTRUCTION](#)
[MAINTENANCE OF RIPARIAN VEGETATION IN EXISTING RIGHTS-OF-WAY](#)
[MOORINGS](#)
[OVERHEAD LINE CONSTRUCTION](#)
[PUBLIC BEACH MAINTENANCE](#)
[PUNCH AND BORE CROSSING](#)
[ROUTINE MAINTENANCE DREDGING](#)
[SUBMERGED LOG SALVAGE](#)
[TEMPORARY STREAM CROSSING](#)
[UNDERWATER CABLES](#)
[NOTIFICATION FORM](#)

The Proponent is asked to send the notification form (attached on the last page of each Operational Statement) to DFO to assist in monitoring the effectiveness of the Statements at protecting fish habitat.

Nova Scotia

In Nova Scotia, the Department of Environment (NSE) is first point of contact for review of activities that occur in or near freshwater. The following activities require an Approval by the Province of Nova Scotia. NSE will contact DFO if further review is required with respect to fish habitat.

- constructing or maintaining a culvert
- constructing or maintaining a bridge which is in the water course, or using equipment closer than 3 metres from the water course
- constructing or maintaining a causeway, wharf, weir, fishway or other instream structure
- removing material from a surface water course
- diverting a water course from its natural channel
- installing or maintaining fishing equipment, fishway, counting fence, fish habitat improvement structure, aquaculture cage or any similar structure in a water course
- dredging or any other modification of a surface water course
- installing or maintaining a pipeline, cable or other equipment in a surface water course
- placing rock or other erosion protection material in a surface water course
- any other alteration of a surface water course or the flow of the water.

More information on how to apply for a permit may be found on Nova Scotia's Environment Watercourse Alteration Approval website. (<http://www.gov.ns.ca/snsmr/paal/el/paal181.asp>)

In Nova Scotia, the Department of Natural Resources (DNR) is first point of contact for review of activities that occur in or near saltwater. The following activities require a Permit by the Province of Nova Scotia. DNR will contact DFO if further review is required with respect to fish habitat.

- Beaver Dam Removal
- Wharf Construction
- Boat Ramp Construction
- Repair to Existing Wharves
- Breakwater Construction
- Infilling
- Bank Protection
- Moorings

Prince Edward Island

In Prince Edward Island, the Department of Environment, Energy and Forestry (DEEF) is the first point of contact for all works in and near water. The "Watercourse and Wetland Alteration Guidelines" are used in Prince Edward Island (PEI) to protect fish and fish habitat from development activities that occur in or near the water. These Guidelines were developed by the Provincial government in partnership with Fisheries and Oceans Canada (DFO). The Province and DFO recently updated the Guidelines to incorporate the measures that are in the Operational Statements. By following the advice in the Guideline and by following the application process and complying with the conditions of the Provincial permit, the Proponent will also be in compliance with *Fisheries Act* requirements. DEEF will refer certain proposals to DFO during the review process if further advice respecting fish habitat is required.

The following Operational Statements are incorporated into the "Watercourse and Wetland Alteration":

- Aquatic Vegetation Removal
- Beaver Dam Removal
- Bridge Maintenance
- Clear Span Bridges
- Culvert Maintenance
- Directional Drilling
- Dock Construction
- Isolated Ponds
- Maintenance of Riparian Vegetation in Existing Rights-of-Way
- Overhead Line Construction
- Underwater Cables
- Punch and Bore Crossing

The following website provides access to access PEI's "Watercourse and Wetland Alteration Guidelines" (<http://www.gov.pe.ca/infopei/index.php3?number=20117>).

New Brunswick

The New Brunswick Department of Environment (NB ENV) is the first point of contact for all proposed works in and near water. The "Watercourse and Wetland Alteration Technical Guidelines" are used in New Brunswick to protect fish and fish habitat from development activities that occur in or near the water. These Guidelines were developed by the Provincial government (NB ENV) in partnership with DFO. The Province and DFO recently updated the Guidelines to incorporate the measures that are in the Operational Statements. By following the advice in the Guideline, the Proponent will also be in compliance with *Fisheries Act* requirements. NB ENV will refer certain proposals to DFO during the review process if further advice respecting fish habitat is required.

The following Operational Statements are incorporated into the "Watercourse and Wetland Alteration Technical Guidelines" and therefore it is not necessary to contact DFO for approval before carrying out the following activities:

- Beaver Dam Removal
- Bridge Maintenance
- Clear Span Bridges
- Culvert Maintenance
- High-Pressure Directional Drilling
- Dock Construction
- Ice Bridges and Snow Fills
- Isolated Pond Construction
- Submerged Log Salvage
- Maintenance of Riparian Vegetation in Existing Rights-of-Way
- Overhead Line Construction
- Punch and Bore Crossings
- Underwater Cables

Aquatic Vegetation Removal is an activity that is currently not included in the "Watercourse and Wetland Alteration Technical Guidelines". The Proponent should follow the conditions and measures in this Operational Statement to protect fish and fish habitat. The Proponent is asked to send the notification form (attached on the last page of each Operational Statement) to DFO to assist in monitoring the effectiveness of the Statements at protecting fish habitat. More information on Aquatic Vegetation Removal can be found at the following website.

http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/modernizing-moderniser/epmp-pmpe/nb/veg_e.asp

In addition, the Province may issue a “provisional” permit for certain proposed works of low risk to fish and fish habitat, which do not require DFO review. By following applicability clauses and pre-determined conditions, the Proponent will meet DFO (*Fisheries Act*) and provincial requirements. These include the following works:

- Beaver dam management and removal;
- Centerline clearing;
- Construction of by-pass ponds;
- Construction of dugout ponds;
- Culvert maintenance/replacement (NB Department of Transportation);
- Cutting of non-marketable woody vegetation;
- Existing boat launching ramps, ferry landings, and recognized fords;
- Geotechnical investigations;
- Instream data collection devices;
- Pipeline and cable crossings and outfall pipes;
- Removal of man made obstructions and alterations;
- Retaining walls;
- Rip-rap/armour stone;
- Selective harvesting;
- Surface runoff and drainage changes; and,
- Water intake structures.

Quebec

The following Operational Statements have been approved for use in Quebec and are available electronically on the DFO website.

[AQUATIC VEGETATION REMOVAL](#)
[BEACH CREATION FOR RESIDENTIAL USE](#)
[BRIDGE MAINTENANCE](#)
[CLEAR SPAN BRIDGES](#)
[DOCK CONSTRUCTION](#)
[HIGH-PRESSURE DIRECTIONAL DRILLING](#)
[ICE BRIDGES AND SNOW FILLS](#)
[ISOLATED POND CONSTRUCTION](#)
[MAINTENANCE OF RIPARIAN VEGETATION IN EXISTING RIGHTS-OF-WAY](#)
[MOORINGS](#)
[OVERHEAD LINE CONSTRUCTION](#)
[PUBLIC BEACH MAINTENANCE](#)
[PUNCH AND BORE CROSSING](#)
[ROUTINE MAINTENANCE DREDGING](#)
[SUBMERGED LOG SALVAGE](#)
[UNDERWATER CABLES](#)
[NOTIFICATION FORM](#)

The Proponent is asked to send the notification form (attached on the last page of each Operational Statement) to DFO to assist in monitoring the effectiveness of the Statements at protecting fish habitat.

Ontario

A Proponent's Guide to *Fisheries Act* Reviews for Federally Funded Infrastructure Projects

The following Operational Statements have been approved for use in Ontario and are available electronically on the DFO website.

[Notification Form](#)
[Timing Windows](#)
[Beach Creation for Residential Use](#)
[Beaver Dam Removal](#)
[Bridge Maintenance](#)
[Clear-Span Bridges](#)
[Culvert Maintenance](#)
[Dock and Boathouse Construction](#)
[High-Pressure Directional Drilling](#)
[Ice Bridges and Snow Fills](#)
[Isolated or Dry Open-cut Stream Crossings](#)
[Isolated Pond Construction](#)
[Maintenance of Riparian Vegetation in Existing Rights-of-Way](#)
[Moorings](#)
[Overhead Line Construction](#)
[Public Beach Maintenance](#)
[Punch & Bore Crossings](#)
[Routine Maintenance Dredging](#)
[Submerged Log Salvage](#)
[Temporary Stream Crossing](#)
[Underwater Cables](#)

The Proponent is asked to send the notification form (attached on the last page of each Operational Statement) to DFO to assist in monitoring the effectiveness of the Statements at protecting fish habitat.

Manitoba

The following Operational Statements have been approved for use in Manitoba and are available electronically on the DFO website.

[Notification Form](#)
[Timing Windows](#)
[Aquatic Vegetation Removal](#)
[Beach Creation for Residential Use](#)
[Beaver Dam Removal](#)
[Bridge Maintenance](#)
[Clear-Span Bridges](#)
[Culvert Maintenance](#)
[Dock and Boathouse Construction](#)
[High-Pressure Directional Drilling](#)
[Ice Bridges and Snow Fills](#)
[Isolated or Dry Open-cut Stream Crossings](#)
[Isolated Pond Construction](#)
[Maintenance of Riparian Vegetation in Existing Rights-of-Way](#)
[Moorings](#)
[Overhead Line Construction](#)
[Public Beach Maintenance](#)
[Punch & Bore Crossings](#)
[Routine Maintenance Dredging](#)
[Submerged Log Salvage](#)
[Temporary Stream Crossing](#)

[Underwater Cables](#)

The Proponent is asked to send the notification form (attached on the last page of each Operational Statement) to DFO to assist in monitoring the effectiveness of the Statements at protecting fish habitat.

Saskatchewan

The following Operational Statements have been approved for use in Saskatchewan and are available electronically on the DFO website.

[Notification Form](#)

[Timing Windows](#)

[Creeks and Rivers with Trout Species in Saskatchewan](#)

[Beaver Dam Removal](#)

[Bridge Maintenance](#)

[Clear-Span Bridges](#)

[Culvert Maintenance](#)

[High-Pressure Directional Drilling](#)

[Ice Bridges and Snow Fills](#)

[Isolated or Dry Open-cut Stream Crossings](#)

[Isolated Pond Construction](#)

[Maintenance of Riparian Vegetation in Existing Rights-of-Way](#)

[Moorings](#)

[Overhead Line Construction](#)

[Public Beach Maintenance](#)

[Punch & Bore Crossings](#)

[Routine Maintenance Dredging](#)

[Submerged Log Salvage](#)

[Temporary Stream Crossing](#)

[Underwater Cables](#)

The Proponent is asked to send the notification form (attached on the last page of each Operational Statement) to DFO to assist in monitoring the effectiveness of the Statements at protecting fish habitat.

Alberta

The following Operational Statements have been approved for use in Alberta and are available electronically on the DFO website.

[Notification Form](#)

[Beaver Dam Removal](#)

[Bridge Maintenance](#)

[Clear-Span Bridges](#)

[Culvert Maintenance](#)

[High-Pressure Directional Drilling](#)

[Ice Bridges and Snow Fills](#)

[Isolated or Dry Open-cut Stream Crossings](#)

[Isolated Pond Construction](#)

[Maintenance of Riparian Vegetation in Existing Rights-of-Way](#)

[Moorings](#)

[Overhead Line Construction](#)

[Punch & Bore Crossings](#)

[Routine Maintenance Dredging](#)

[Submerged Log Salvage](#)
[Temporary Stream Crossing](#)
[Underwater Cables](#)

The Proponent is asked to send the notification form (attached on the last page of each Operational Statement) to DFO to assist in monitoring the effectiveness of the Statements at protecting fish habitat.

British Columbia and Yukon Territory

The following Operational Statements have been approved for use in British Columbia and the Yukon Territory and are available electronically on the DFO website.

[Aquatic Vegetation Removal in Lakes](#) *
[Public Beach Maintenance](#)
[Bridge Maintenance](#) *
[Clear-Span Bridges](#) *
[Culvert Maintenance](#) *
[Directional Drilling](#)
[Dock and Boathouse Construction in Freshwater Systems](#) *
[Dry Open-cut Stream Crossings](#)
[Ice Bridges and Snow Fills](#) *
[Isolated Ponds](#)
[Maintenance of Riparian Vegetation in Existing Rights-of-Way](#)
[Off-Bottom Deepwater Shellfish and Kelp Aquaculture](#)
[On and Near-Bottom Intertidal Shellfish Aquaculture](#)
[Overhead Line Construction](#)
[Punch and Bore Crossings](#)
[Routine Maintenance Dredging for Navigation](#) *
[Small Moorings](#)
[Temporary Ford Stream Crossing](#)
[Underwater Cables in Freshwater Systems](#)

* Overlaps with provincial Water Act or its regulations

The Proponent is asked to send the notification form (attached on the last page of each Operational Statement) to DFO to assist in monitoring the effectiveness of the Statements at protecting fish habitat.

Northwest Territories

The following Operational Statements have been approved for use in the Northwest Territories and are available electronically on the DFO website.

[Notification Form](#)
[Timing Windows](#)
[Bridge Maintenance](#)
[Clear-Span Bridges](#)
[Culvert Maintenance](#)
[Dock and Boathouse Construction](#)
[High-Pressure Directional Drilling](#)
[Ice Bridges and Snow Fills](#)
[Isolated or Dry Open-cut Stream Crossings](#)
[Maintenance of Riparian Vegetation in Existing Rights-of-Way](#)
[Moorings](#)
[Overhead Line Construction](#)

[Punch & Bore Crossings](#)
[Routine Maintenance Dredging](#)
[Temporary Stream Crossing](#)
[Underwater Cables](#)

The Proponent is asked to send the notification form (attached on the last page of each Operational Statement) to DFO to assist in monitoring the effectiveness of the Statements at protecting fish habitat.

Nunavut

The following Operational Statements have been approved for use in Nunavut and are available electronically on the DFO website.

[Notification Form](#)
[Timing Windows](#)
[Bridge Maintenance](#)
[Clear-Span Bridges](#)
[Culvert Maintenance](#)
[Ice Bridges and Snow Fills](#)
[Moorings](#)
[Routine Maintenance Dredging](#)
[Temporary Stream Crossing](#)

The Proponent is asked to send the notification form (attached on the last page of each Operational Statement) to DFO to assist in monitoring the effectiveness of the Statements at protecting fish habitat.

Appendix D: DFO Regional Contacts

The DFO Fish Habitat Management Program (FHMP) is delivered across Canada in over 65 offices which are organized into six Regions. All staff work both horizontally across their respective Regions and vertically with National Headquarters to ensure cohesive and predictable application of the Program.

The six **Regions** are:

- **Pacific** (British Columbia and the Yukon);
- **Central and Arctic** (Alberta, Saskatchewan, Manitoba, Ontario, Northwest Territories and Nunavut);
- **Quebec;**
- **Maritimes** (Nova Scotia and southern New Brunswick – waters flowing from Nova Scotia and New Brunswick into the bay of Fundy);
- **Gulf** (northern New Brunswick, northern Nova Scotia and Prince Edward Island – Waters flowing into the Gulf of St. Lawrence); and
- **Newfoundland and Labrador.**

There is an interactive Map on the DFO website (http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/aboutus-afropos/regions/index_e.asp) that will assist Proponents in finding their local DFO office.