



Audit of the Implementation of the *Fisheries Act* Internal Audit Report

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Introduction

Context

Fisheries and Oceans Canada safeguards Canada's waters and manages its fisheries and oceans resources. Its mission is to provide Canadians with economically prosperous maritime and fisheries sectors, more sustainable aquatic ecosystems, and safe, secure, and navigable waters.

The *Fisheries Act* is the main federal legislation for managing Canadian fisheries resources. Its purpose is to provide a framework for the proper management and control of fisheries and the conservation and protection of fish and fish habitat including by preventing pollution. The *Fisheries Act* is one of Canada's first pieces of legislation, receiving royal assent and becoming law in 1868.

The *Act* was most recently amended on June 21, 2019 via Bill C-68, *An Act to amend the Fisheries Act*. The amended *Fisheries Act* aims to:

- Restore protections for fish and fish habitat;
- Enhance marine protection and habitat restoration;
- Better manage projects affecting fish and fish habitats through a new permitting framework;
- Increase transparency of departmental decision-making on projects through a public registry;
- Strengthen Indigenous people's role in project reviews, monitoring, and habitat decisions;
- Keep the benefits of fishing in the hands of independent fish harvesters and their local area; and
- Clarify and update enforcement powers to address emerging fisheries issues.

The Federal Government allocated \$458.7M to the Department over a five year period through to 2023-24 to support implementation of the amended *Fisheries Act* through two streams of activities:

- Stream One: \$351.3M over five years from 2018-19 to 2022-23. \$284.2M to implement policy, program, and regulatory improvements to implement restoring lost protections to fish and fish habitat and \$67.1M to undertake marine spatial planning.
- Stream Two: \$107.4M from 2019-20 to 2023-24 and \$17.6M in ongoing funding towards prescribing regulations on 181 major fish stocks and implementing DFO's Precautionary Approach for depleted stocks through rebuilding plans.

Implementation of the Department's commitments under the amended *Fisheries Act* involves four sectors: Aquatic Ecosystems; Fisheries and Harbour Management; Ecosystems and Oceans Science; and Strategic Policy. See Table 1 below for a description of DFO sector areas of activity responsibility under the amended *Act*. All seven DFO regions are involved with implementing *Fisheries Act* programs and activities.

Implementation of the *Fisheries Act* was selected for audit in the Department's 2020-2022 Risk-Based Audit Plan due to senior management's request for assurance over the Department's readiness and capacity to implement and deliver its commitments under the amended *Act*. The audit planning phase began in February 2021. The audit objective and scope were determined following the completion of a risk assessment which assessed inherent and residual risk areas related to the Department's implementation of the amended *Fisheries Act*. See Audit Scope and Approach for further details. Senior management approved the audit terms of reference in June 2021.

**Table 1 – Description of DFO sector areas of activity responsibility under the *Fisheries Act*.**

Aquatic Ecosystems (AE)	Under Stream One funding, AE administers the Fish and Fish Habitat Protection Program (FFHPP) whose objective is to conserve, protect and restore existing fish and fish habitats. Under the FFHPP and in support of the <i>Fisheries Act</i> , AE sector is developing regulations, policies, standards, codes of practice and a public registry aimed to improve departmental decision-making transparency to stakeholders.
Fisheries and Harbour Management (FHM)	Under Stream Two funding, FHM: prescribes regulations over the 181 major fish stocks and develops guidance to implement fish stock provisions, rebuilding plans for critical stocks, and sustainable stock management measures. FHM is the DFO sector responsible for the enforcement of the <i>Fisheries Act</i> .
Ecosystems and Oceans Science (EOS)	Under Streams One and Two, EOS provides science-based advice and data to: <ul style="list-style-type: none">▪ The AE sector through the Freshwater Habitat Science Initiative (FHIN) program to support the science advice needs of the FFHPP (Stream One). EOS also supports the FFHPP through the Freshwater Habitat Steering Committees (FHAB);▪ The FHM sector in support of the fish stock provisions, specifically through input on stock assessments, rebuilding plans, and monitoring and data collection activities, as well as through national stock assessment guidelines (Stream Two).
Strategic Policy (SP)	Under Stream One funding, SP develops departmental Indigenous engagement guidance. Under Stream Two funding, SP develops policies, guidelines and regulations in support of implementing fish stock provisions and rebuilding plan activities.

Why this Audit is Important

The amended *Fisheries Act* commits the Department to deliver on activities that are of importance to Canadians, such as protecting fish and their habitats, marine conservation, support for local fisheries, and increased involvement in fish conservation, protection, and management by Indigenous peoples.

Implementing the Department's commitments under the amended *Fisheries Act* is a horizontal initiative within the Department involving contributions of four sectors and all seven regions. Delivery and achievement of some commitments depend on collaboration and inputs from other sectors and regions, such as science data input into fish stock assessments, fish stock rebuilding plans, incorporating indigenous knowledge into decision-making, and regulatory and other guidance to support policy development and engagement with stakeholders.

The Department is currently at the mid-point of implementing its commitments under the amended *Fisheries Act*. Some National Headquarters (NHQ) sectors and regions have noted that discussions have begun towards planning for the next round of Treasury Board funding proposals. The mid-point period provides a timely opportunity for the Department to assess its progress to date and re-evaluate options and strategies for enhancing planning, coordination, and oversight in support of commitment delivery and outcome achievement, both within and between sectors and regions.



Audit Objective

The objective of this audit was to determine whether the Department has a management framework in place to support the implementation of its commitments under the amended *Fisheries Act*.

Audit Scope and Approach

The audit covered the period from June 2019 to May 2021. The audit also considered information after May 2021 to perform an analysis of oversight, operational planning and managing implementation risk.

See Appendix A for Lines of Enquiry and Audit Criteria.

The audit's scope covered aspects of DFO's governance, planning and implementation activities at NHQ and within the regions over the implementation of the Department's *Fisheries Act* commitments. During the audit planning phase, we conducted a risk assessment to focus the audit on the areas of highest risk, which identified the following:

- Oversight over departmental commitments; and
- Operational planning and managing implementation risk.

Audit work was carried out through:

- Interviews with departmental NHQ and regional officials from AE, EOS, FHM and SP sectors;
- Review of applicable legislation, specifically the *Fisheries Act*;
- Review and analysis of DFO guidelines, policies and plans developed to support the implementation of its commitments under the amended *Fisheries Act*; and
- Review of Deputy Minister-chaired, NHQ sector, and regional committee agendas, presentations and records of decision.

Conclusion

The Department had a framework in place to support the implementation of its commitments under the amended *Fisheries Act* through sectoral, regional and departmental committees as well as operational and resource plans. There are opportunities for the Department to enhance and strengthen its ability to implement its commitments under the amended *Fisheries Act*:

- Adopt an integrated approach to support the planning, coordination, and implementation of common *Fisheries Act* priority activities;
- Address operational planning and implementation challenges at NHQ and in regions resulting from staffing gaps, vacant positions, and future funding uncertainty; and
- Finalise the regulations, guidance, policies, and engagement tools required to implement the Department's *Fisheries Act* commitments.

Statement of Conformance

This audit was conducted in conformance with the International Standards for the Professional Practice of Internal Auditing as supported by the results of the Quality Assurance and Improvement Program of Fisheries and Oceans Canada's Internal Audit Directorate.



Audit Findings and Recommendations

This section presents the findings for the audit's two lines of enquiry:

- Oversight over Departmental Commitments; and
- Operational Planning and Managing Implementation Risk.

Effective governance enables oversight and management of risks that may prevent the Department from achieving its objectives. Oversight is particularly important for initiatives that take place across sectors and regions, so that there is effective coordination, implementation efforts are timely and take place as intended, and due diligence in decision-making is exercised. Executive-level committees often perform this governance and oversight role, and as such, the Department should have established governance to oversee the implementation of its commitments under the amended *Fisheries Act*.

When more than one sector or region is involved in the delivery of an activity, an integrated approach to planning helps to: align priorities; optimise the effective and efficient deployment of staff time and program resources; manage risks; and increase the likelihood of outcome achievement. As such, we expected that the Department would have undertaken operational, resource and risk planning to enable the implementation of its commitments under the amended *Fisheries Act*.

There was no committee mandated to oversee the implementation of the amended *Fisheries Act* as a whole. However, sectors responsible for the implementation of the amended *Fisheries Act* had individually established executive-level decision-making committees inclusive of NHQ and regional executives. These committees performed oversight to support implementation of the Department's commitments under the amended *Fisheries Act*.

The AE, EOS and FHM sectors had developed operational and resource plans to implement their *Fisheries Act* activities at the NHQ and regional levels. However, operational implementation challenges resulting from a number of factors were creating delays and impacting the Department's ability to implement its *Fisheries Act* commitments.

Detailed Findings and Analysis

Most NHQ sectors responsible for the implementation of the Act had established committees to coordinate and oversee the implementation of their sector-level *Fisheries Act* priorities.

The AE, EOS and FHM sectors had established an executive-level committee to coordinate and oversee their sector's implementation of its priorities, including those under the amended *Fisheries Act* priorities. The committees and their mandates at the time of the audit were as follows:

- The Aquatic Ecosystems Sector Coordinating Committee (AESCC) worked towards ensuring the integration, coordination, and advancement of policy issues and delivery of programs in fulfilment of relevant departmental accountabilities for the AE sector;
- The Fisheries Management Oversight Committee (FMOC) was responsible for planning and operationalising senior executive decisions to fisheries management for the FHM sector; and
- The Science Executive Committee (SEC) had the role of providing strategic direction on departmental science matters for the EOS sector.



Although the SP sector had not established a sector-level committee to oversee its *Fisheries Act* activities, it collaborated with AE, FHM, and EOS on developing guidelines to implement fish stock provisions and incorporate Indigenous knowledge.

Records of decision for AESCC and FMOC recorded regular meetings that included discussions, advice and suggestions from members. SEC did not prepare formal agendas or records of decision for its meetings, but maintained a listing of meetings, presentations and action items related to the sector's *Fisheries Act* activities. Documenting committee discussions is an important governance practice that enables ongoing monitoring of recommendations and actions to improve program delivery, oversight and the management of risks.

The AESCC, FMOC and SEC were sector-specific committees with oversight primarily related to *Fisheries Act* activities occurring within their own sectors.

DFO also had five senior executive-level committees whose memberships included all sectors and regions, including three at the ADM level chaired by the Deputy Minister and two at the DG level. Of these committees, only one, the ADM-level Departmental Management Committee, had an oversight role over the implementation of the *Fisheries Act*, as part of its overall responsibility for overseeing Departmental priorities.

A review of agendas and records of decision for these five committees from June 2019 through to September 2021 indicated that formal updates on the *Fisheries Act* implementation were provided throughout this time frame to all committees except the Departmental Management Committee. In our view, priorities such as the implementation of the *Fisheries Act* could benefit from discussion at this Committee in regard to helping address the implementation challenges identified in the forthcoming sections.

Three NHQ sectors developed operational and resource plans to implement their activities under the amended *Fisheries Act*, both at NHQ and regional levels.

The AE, FHM and EOS sectors had each developed operational and resource plans to implement their activities in support of the amended *Fisheries Act*, both at NHQ and in regions.

SP management at NHQ and in the regions noted that they had not developed operational plans for their *Fisheries Act* activities. The sector acknowledged the benefit of doing so to assess internal capacity and to help ensure delivery of internal priorities while also responding to requests for input from other sectors.

NHQ sectors responsible for the implementation of the Act were collaborating through multi-sector forums to implement and deliver specific departmental commitments under the amended *Fisheries Act*.

The delivery and achievement of some departmental commitments under the amended *Fisheries Act* depends on collaboration and input from all sectors and regions, including:

- Fish stock and fish habitat assessments (AE, FHM and EOS), Stream One;
- Fish stock rebuilding plans (FHM, SP and EOS), Stream One;
- Regulation, policy, and guidance development (FHM, AE and SP), Streams One and Two; and
- Engagement with Indigenous peoples and industry (all), Streams One and Two.

Involved sectors created coordination forums to implement amendments to the *Fisheries Act*:

- The National Fish Stocks Provisions Working Group (NFSWG), led by the FHM sector, involved the AE, EOS, and SP sectors in the development of advice and guidance for the consistent implementation of fish stock provisions and associated regulations in a coordinated and integrated manner.
- The Freshwater Habitat Steering Committee (FHAB), led by EOS, involved the AE sector. Through FHAB and the Freshwater Habitat Science Initiative (FHIN), EOS' Canadian Science Advisory Secretariat (CSAS) provided science advice to support the FFHPP.

There were operational planning and implementation challenges at NHQ and in regions resulting from capacity gaps and future funding uncertainty.

All NHQ and regional sector respondents identified resource gaps that were impacting the implementation of funded program and activity priorities under the amended *Fisheries Act*. Specifically, respondents noted:

- Full-time equivalent staff (FTE) gaps, vacancies and lack of expertise to deliver on work plan objectives. Examples of gap areas identified included FTEs for undertaking stock assessments and rebuilding plans, meeting demands for science advice, and engaging with stakeholders.
- Regional FTE resources funded under the *Fisheries Act* had been directed towards other regional operational priorities.
- Hiring activities were occurring for positions without confirmed future permanent funding as part of internal efforts to manage staffing gaps.

We did not conduct a detailed staffing review to assess the extent of this condition across the Department. However, this issue was frequently raised across our interviews. The AE, FHM and EOS sectors at the regional level partially attributed FTE gaps and vacancies to the inability to offer indeterminate positions because of the lack of permanent funding.

Planning, coordination and implementation of common *Fisheries Act* priority activities by NHQ stakeholders lacked an integrated approach.

There have been delays in completing policies and guidance related to regulatory matters, cumulative effects, habitat banking, rebuilding plans, and engagement with Indigenous peoples and the use of Indigenous knowledge. Finalising policies and guidance depends on planning, coordination and the provision of timely feedback between sectors at NHQ and regional levels.

Although collaborative relationships existed between sectors, they planned and implemented activities independently of one another and collaborated on an as-needed basis. For example, apart from fish stock provisions or science advice, we did not find evidence of integrated planning or work plan alignment between sectors at NHQ or in the regions for common *Fisheries Act* priority activities such as developing regulations, policies, or guidance and engaging with stakeholders.

Work to develop cross-sectoral Indigenous knowledge interim guidance was continuing. However, resource capacity challenges within sectors and regions have impacted their ability to undertake cross-sector planning and coordination activities in this area. COVID-19 working restrictions also impacted the Department's ability to conduct engagement activities with Indigenous peoples. Delays in finalising Indigenous engagement guidance have led to some regions developing their own interim guidance.

COVID-19 working restrictions and vessel availability also impacted the ability to conduct science data collection activities. In addition to the staffing issues noted above, this places at risk the Department's ability to access timely data to inform the development of information stock assessments and rebuilding plans which are core activities under the amended *Fisheries Act*.

NHQ and regional staff across the AE, EOS, FHM, and SP sectors indicated that it would be beneficial for all regional sectors to have an understanding of the work plans of other regional sectors, as would clarifying roles and responsibilities within and between sectors. This could be achieved through discussion of sector priorities and activities requiring coordination between sectors at regional management forums including working groups, task teams, and operational committees.

An integrated approach between the AE, EOS, FHM and SP sectors would:

- improve the planning, coordination, and implementation of common *Fisheries Act* priority policies and activities such as Indigenous engagement, use of Indigenous knowledge, and using science information to support stock assessments and rebuilding plans.
- effectively and efficiently coordinate the implementation of common initiatives between sectors and regions and help to manage the risk of delivery delays on priority activities.

Lessons learned for future *Fisheries Act* funding submissions and activity planning between NHQ and the regions.

Regional sector interviews indicated that during the previous planning and funding submission processes for Stream One and Two *Fisheries Act* Treasury Board submissions:

- Consultations occurred with NHQ. Due to timelines imposed by Finance Canada, regions were engaged later in the identification of funding needs and NHQ did not provide a clear explanation on regional funding allocations. This did not provide sufficient time for the assessment of regional capacity to deliver sector work plan activities in support of departmental commitments.
- Costs beyond FTEs and operations and maintenance (O&M) were not identified, including the costs for providing science advice, IM/IT investments, internal communications, and stakeholder engagement costs such as travel. NHQ and regions have been funding these costs without additional FTEs or operational funding.

With initial Stream One and Stream Two funding set to expire within the next two years, sectors are planning for the renewal of their programs under the amended *Fisheries Act*. A new funding submission costing process was introduced in November 2018.

In developing future *Fisheries Act* funding submissions and activity planning between NHQ and the regions, NHQ should follow the Department's new Costing of Memoranda to Cabinet and Treasury Board Submissions process and principles to:

- Engage with regions early in the planning process to identify funding needs and to consider all relevant costs beyond FTEs and O&M such as science advice, IM/IT, communications, and engagement costs.
- Increase transparency in the decision-making process for regional funding allocations.

Why this Matters

Four DFO sectors and all seven regions are involved in the implementation of the amended *Fisheries Act*. However, oversight was separated by sector and stakeholders were not coordinating and integrating common priority activities.

As a result, sectors did not have an understanding of one another's plans or the ability to plan for how to provide cross-sectoral support on common priority activities. In addition to regional funding gaps, this increases the challenge for regional sectors to meet their priorities and to support other sectors in delivering common priority activities.

Lack of integration has also created a higher risk of the ineffective and inefficient use of resources such as operational funding and staff time, along with a higher risk that priority activities will be delayed, negatively impacting the Department's abilities to achieve its commitments as planned under the amended *Fisheries Act*.

Applying lessons learned while following the Department's costing process and protocols for future *Fisheries Act* funding submissions would help to mitigate the



re-occurrence of resource pressures on those tasked with implementing the Department's commitments under the amended *Fisheries Act*.

Recommendation

Recommendation 1:

The Assistant Deputy Ministers of: Aquatic Ecosystems; Fisheries and Harbour Management; Ecosystems and Oceans Science; and Strategic Policy, in collaboration with the regional directors general (RDGs) should leverage existing governance forums to facilitate the integration of planning, coordination and implementation of common *Fisheries Act* priority activities.

Recommendation 2:

The Assistant Deputy Ministers of: Aquatic Ecosystems; Fisheries and Harbour Management; Ecosystems and Oceans Science; and Strategic Policy, in collaboration with the regional directors general (RDGs) should ensure that for future *Fisheries Act* funding submissions:

- a) The Department's Costing of Memoranda to Cabinet and Treasury Board Submissions principles are fully followed; and
- b) Engagement occurs between NHQ sectors and the regions to assess internal capacity and delivery needs (inclusive of FTE, O&M, and all direct program costs) to deliver on departmental and sector-specific commitments.



Appendix A: Lines of Enquiry and Audit Criteria

The audit criteria were developed from the following sources:

- *Fisheries Act*.
- Review of departmental plans, policies, guidelines and regulations related to the *Fisheries Act*.
- Treasury Board Secretariat, “Guide to Departments on the Management and Reporting of Horizontal Initiatives” (January 2018).
- Office of the Comptroller General of Canada – Audit Criteria related to the Management Control Framework.

Audit Criteria	Conclusion
Line of Enquiry 1 – Oversight over Departmental Commitments	
Criterion 1.1: The Department has established governance to provide oversight over the implementation of its commitments under the amended <i>Fisheries Act</i> .	Partially Met
Line of Enquiry 2 – Operational Planning and Managing Implementation Risk	
Criterion 2.1: The Department has undertaken operational, resource and risk planning to enable the implementation of its commitments under the amended <i>Fisheries Act</i> .	Partially Met



Appendix B: Management Response and Action Plan

Recommendation	Action Plan	Responsible Manager(s)	Deliverables	Planned Completion Date
Recommendation 1: The Assistant Deputy Ministers of: Aquatic Ecosystems; Fisheries and Harbour Management; Ecosystems and Oceans Science; and Strategic Policy – in collaboration with regional directors general (RDGs) should leverage existing governance forums to facilitate the integration of planning, coordination and implementation of common <i>Fisheries Act</i> priority activities.	<p>Management agrees with this recommendation.</p> <p>To date, significant work has been undertaken to advance cross-sectoral/regional <i>Fisheries Act</i> implementation activities through an integrated approach for planning, coordinating and implementing common <i>Fisheries Act</i> priority activities.</p> <p>In striving for continual improvement, key sector heads implicated in <i>Fisheries Act</i> implementation will coordinate to provide bi-annual updates on cross-cutting <i>Fisheries Act</i> activities to the Departmental Management Committee (DMC).</p> <p>Management will also leverage other existing governance structures as appropriate. This includes leveraging the Program Operations Committee and the Policy Integration Committee to ensure that an integrated approach for planning, coordinating and implementing common <i>Fisheries Act</i> priority activities is considered through these tables.</p> <p>Workplans will also be shared with all implicated sectors and regions each fiscal year to further ensure alignment of priorities across various work objectives while reducing</p>	<p>Director General, Ecosystems Management, Aquatic Ecosystems</p> <p>Director General Fisheries Policy, Strategic Policy</p> <p>Director General, Fisheries Resource Management</p> <p>Director General, Ecosystem Science</p>	<p>1. Share sector workplans and clarify roles and responsibilities within the workplans at the beginning of the fiscal year.</p> <p>2. Bi-annual updates to the Departmental Management Committee, outlining multi-sector/regional <i>Fisheries Act</i> implementation activities.</p>	<p>Starting in fiscal year 2022-23 and continuing until all activities have been completed</p>



Recommendation	Action Plan	Responsible Manager(s)	Deliverables	Planned Completion Date
	delays and overlaps in implementation.			
<p>Recommendation 2: The Assistant Deputy Ministers of: Aquatic Ecosystems; Fisheries and Harbour Management; Ecosystems and Oceans Science; and Strategic Policy – in collaboration with regional directors general (RDGs) should ensure that for future <i>Fisheries Act</i> funding submissions</p> <p>a) The Department's Memorandum to Cabinet and TB Submission costing processes principles are fully followed; and</p> <p>b) Engagement occurs between NHQ sectors and the regions to assess internal capacity and delivery needs (inclusive of FTE, O&M and all direct program costs) to deliver on departmental / sector-specific commitments.</p>	<p>Management agrees with this recommendation.</p> <p>The department is implementing improvements to its costing processes as well as a new budget submission process designed to enhance engagement on all issues for budget consideration (which will include future funding submissions related to the implementation <i>Fisheries Act</i>).</p> <p>These improvements include: strengthening of the CFO Sector costing unit; adjustments to the Memorandum to Cabinet and TB Submission processes to ensure greater engagement in supporting of costing; and more detailed review of business cases by the Strategic Policy Sector in support of funding requests with improved articulation of scope and resources impacts.</p> <p>These new processes will be followed for future <i>Fisheries Act</i> funding requests.</p>	<p>Director General, Strategic Policy and Priorities, Strategic Policy</p> <p>Director General, Budget, Planning and Financial Management, Chief Financial Officer Branch</p>	<p>Additional resources dedicated to the CFO Sector costing unit, including the creation and staffing of the position of Director of Costing Services.</p> <p>Presentations to FIMC of enhancements to the costing process to be used by Sectors and Regions in support of future funding submissions</p> <p>Commencement of New Process including Budget Coordinator form established</p>	<p>Completed</p> <p>Presented to FIMC June 2021</p> <p>SP commencement of new process – Completed Aug 2022</p>