

Recent Analysis Shows Canada was Losing Fish Habitat Before 2012 Budget Bills

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Matter Commented On: [Standing Committee on Fisheries and Oceans' Review of the Fisheries Act RSC 1985, c F-14](#)

Back in October of last year, we appeared before the Standing Committee on Fisheries and Oceans (FOPO) in the context of its review of the 2012 changes to the habitat protection provisions of the *Fisheries Act*. Shortly after our appearance it occurred to us that it would be useful, using the best evidence available in the short time that was left, to provide FOPO – indeed all Canadians – with some quantifiable estimate of the state of fish habitat protection in Canada (the deadline for public submissions was November 30th, 2016).

Consequently, we returned to Professor Olszynski's original access to information request from 2015 that provided the evidentiary basis for his article “From ‘Badly Wrong’ to Worse: An Empirical Analysis of Canada's New Approach to Fish Habitat Protection Laws” (2015) [28\(1\) J Env L & Prac 1](#)). Briefly, Professor Olszynski obtained all of the subsection 35(2) authorizations issued by DFO's two largest regions (Pacific, Central and Arctic) over a six-month period (May 1 to October 1) for the years 2012, 2013, 2014. Generally speaking, each authorization contains information about the project proponent, project type (*e.g.* a bridge, a mine, a dam), project location, the size and kind of impacts to habitat, and the amount of compensation or offsetting habitat required – if any. We recorded the total area that each project was authorized to impact (in m²), as well as the total amount of compensation habitat required. Of the 86 authorizations in 2012, eight authorized impacts that were not described in terms of area (*e.g.* the proponent was authorized to destroy 1,500 eelgrass plants, or to dewater a stream killing all its fish); these were excluded from our analysis, leaving us with 78 authorizations.

The results can be found in a [paper recently accepted for publication](#) by the *Canadian Journal of Fisheries and Aquatic Science* (and a draft of which we sent to FOPO before the November 30th deadline). Our analysis suggests that during the six month period in 2012 alone, DFO authorized a net loss of almost 3,000,000 m² of fish habitat (based on 78 authorizations). We found that 67% of projects were assigned “compensation ratios” less than one (meaning they were required to create or enhance less habitat than they were allowed to impact). Further, we found that there was no clear relationship between project size (as measured by impact area) and compensation ratio, meaning that there was no evidence that small projects were being unfairly targeted by the previous law. Notably, previous research has recommended a compensation ratio of 2:1 – meaning that regulators should require projects to compensate twice as much as they were allowed to impact. The projects we examined fell far short of that recommendation.

To put this in context, during our appearance Mr. Robert Sopuck (Member of Parliament for Dauphin-Swan River-Neepawa) indicated that between 2013 and 2016 the [Recreational Fisheries Conservation Partnerships Program \(RFCPP\)](#) resulted in the restoration of an estimated

2,400,000 m² of habitat, and a further 2,000 linear kilometers. Within a six month period in 2012 alone, the likely losses due to just the projects we examined (just 78) would have more than offset the gains produced by this program. Bearing in mind that DFO has issued roughly 5,000 authorizations in the past decade, the potential loss of fish habitat in Canada is staggering.

Our findings are cause for considerable concern, and confirm that even under the previous law, Canada was not adequately protecting fish habitat. Within our paper, we include four key recommendations to improve Canada's ability to protect fish habitat and ensure sustainability of Canadian fisheries:

- 1) Restore the previous, unambiguous language of subsection 35(1) of the *Fisheries Act*, so that harmful alteration, disruption, or destruction of fish habitat is unambiguously disallowed without the Minister's or regulatory approval;
- 2) Establish a public registry of authorizations, so that ATIP requests are not required to assess the state of Canadian fish habitat;
- 3) The Government of Canada should recommit to the principle of no net loss of productive capacity of fish habitat, with a high priority placed on minimizing impacts on intact habitat;
- 4) A further commitment should be made to public education on the importance of fish habitat and how to protect it, and to support community groups who are engaging in this activity.

We provide additional context, reasoning, and justification for each of these recommendations in our paper.

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