

OBTAINING A FISHERIES ACT AUTHORIZATION

FACT SHEET

L-1

Shoreline areas provide habitat for a variety of aquatic organisms including fish. The nearshore area is where many fish species lay their eggs, feed and seek protection from predators. Changes or disruptions to these areas can threaten their survival. If you own or lease waterfront property, you can help protect the fish populations in your lake or river by protecting fish habitat along your shoreline. This fact sheet provides information about the process for applying for a Section 35 *Fisheries Act* authorization for works or undertakings in or around water where fish habitat may be negatively affected.

Be aware of the *Fisheries Act* and other legislation

The federal *Fisheries Act* provides for the protection of fish habitat, which is defined as “spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes.”

Under the *Fisheries Act*, no one may carry out any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat (HADD), unless authorized by the Minister of Fisheries and Oceans Canada. The Act also states that no one is permitted to deposit a deleterious (harmful) substance into water containing fish. Violations to the *Fisheries Act* can result in substantial fines, and/or the risk of imprisonment. If found guilty, then the violator may also be required to cover the costs of restoring the habitat at the site and/or be required to fulfill other court ordered remedies. Other legislation that may also be relevant is outlined in the introductory Fact Sheet: *Working Around Water? What you should know about Fish Habitat.*

What to consider

If you are planning a project in or near water, consider the following questions before proceeding:

- ❖ Will the project affect fish habitat?
- ❖ Could it affect groundwater discharge or recharge areas?
- ❖ Could there be downstream or upstream effects?
- ❖ Is there dredging or in-filling involved?
- ❖ Will sand or gravel be added or removed from a beach, riverbank or stream?
- ❖ Could fish be killed (by means other than fishing, e.g. with explosives)?



- ❖ Is a culvert, dam, bridge, boat launch or dock being replaced or installed?
- ❖ Is a dam or reservoir being created or operated?

These are typical examples of works or undertakings requiring review and possible approval under the fish habitat protection provisions of the *Fisheries Act*. Other activities in or around water may also require approval.

Before starting any aspect of a project (including purchasing materials or land), discuss your project with your local regulatory authority(ies). See the Contact information on this fact sheet for the regulatory authority(ies) in your province. Your agency contact will help you determine if your project could cause harmful alterations, disruptions or destructions

of fish habitat. You may need to determine the sensitivity of the fish habitat in relation to your project. It is likely that constraints may be imposed to reduce or eliminate harmful impacts to fish habitat. Where projects cannot be redesigned or relocated to avoid a HADD, a sub-section 35(2) *Fisheries Act* Authorization may be required from Fisheries and Oceans Canada (DFO).

The preferred option is to avoid adversely affecting fish habitat by redesigning your project or relocating to a less sensitive area. If this is possible, a *Fisheries Act* section 35 Authorization may not be required.

Keep in mind that approval from one government agency does not guarantee that you will be able to obtain approval from another agency.

As well as the *Fisheries Act*, your provincial regulatory authority(ies) have legal requirements that may affect how to proceed with projects in and around water. Remember you should obtain all approvals before starting work.

Applying for Authorization

In cases where relocation, redesign or other avoidance measures are not feasible or practical, you should complete an "Application for Authorization for Works or Undertakings Affecting Fish Habitat." Application forms are available on-line at http://www.dfo-mpo.gc.ca/canwaters-eauxcan/aboutus-anotresujet/habitat-info/pa_regulatory_e.asp or from your local DFO District Office or your provincial regulatory authority(ies).

Information you will need to submit

The application should include:

- ❖ Your name, address, telephone number, and if available, a fax number and e-mail address
- ❖ Waterbody name and location of the work site including lot and concession numbers, county, township, municipality, and if known, latitude and longitude
- ❖ Type of activity being proposed, such as bridge, culvert, or gravel removal
- ❖ Rational for the project
- ❖ Proof of ownership for each of the properties where the work will be done and the most recent legal survey(s)
- ❖ Detailed description of the work site including a signed and dated site map or sketch with dimensions indicating the location of existing buildings, property lines and the average annual high-water mark
- ❖ A copy of your plans - a description of construction details, timing, building techniques and materials. Also describe any alternative designs considered
- ❖ List of equipment to be used
- ❖ Photographs of the work site and the surrounding shoreline during ice free conditions will facilitate the processing of your application
- ❖ Proposed start and end date for the project
- ❖ Description of the substrate at the work site indicating approximate percentages of sand,

silt, clay, rock, gravel and aquatic vegetation, etc.

- ❖ Description of existing fish habitat and fish communities (species names) at or near the site
- ❖ An evaluation of potential impact on fish and fish habitat and how you intend to reduce or compensate for any alteration of fish habitat
- ❖ If explosives are to be used, the name of the contractor, start and end date of work, and explosive details as outlined in the application
- ❖ List of federal, provincial, or municipal government agencies you have contacted or that have contacted you.

When an authorization is required, your application must include plans for mitigating and compensating any loss in the capacity of habitat to produce fish. DFO cannot issue an authorization unless the proponent develops and presents a habitat compensation plan. For advice on the appropriate mitigation or compensation measures, contact your local DFO District Office.

What's next?

Fisheries and Oceans Canada will review your project proposal and will determine whether an authorization can be issued based on the information provided. If an authorization can be issued, then an Environmental Assessment under the *Canadian Environmental Assessment Act* (CEAA) is required. That review must be completed before an authorization is issued. For more information on this issue, refer to Fact Sheet L-3: *Working Around Water? CEAA Environmental Assessment and the Fisheries Act*.

An authorization will contain legally enforceable conditions which require you to undertake specific mitigation, compensation and monitoring activities. If you do not follow these conditions, you may be found in violation of section 35 of the Act. As mentioned earlier, offences under section 35 can result in substantial fines and/or the risk of imprisonment. If found guilty, then the violator may also be required to cover the costs of restoring the habitat at the site and/or be required to fulfill other court ordered remedies.

Don't delay!

Submit your application for authorization as soon as possible to avoid project delays. You, as the proponent, have certain responsibilities. Obtaining a section 35 *Fisheries Act* Authorization, does not guarantee that you will be able to obtain approval from another agency as different agencies have different regulatory responsibilities. In some instances, you may have to contact more than one agency. Getting all approvals before starting work can save you delays later on. Early consultation with approval agencies can save you time and money by identifying the problems within your design that will likely not be approved. The introductory Fact Sheet: *Working Around Water? What you should know about Fish Habitat* outlines the legislation that may also be relevant to works on or undertakings in or around water.

Working together to protect fish habitat

A goal of the fish habitat management program is to achieve a net gain in fish habitat. You can help accomplish this goal by working with agency staff to ensure that the fish populations in our lakes, rivers and streams are sustained for future generations.

Contact information

www.dfo-mpo.gc.ca/canwaters-eauxcan

Canada

Cette publication est également disponible en français.

Contact information – Ontario

Before starting any aspect of a project (including purchasing materials or land), discuss your project with your local Conservation Authority (CA) or, if there is no CA in your area, your local Ontario Ministry of Natural Resources (OMNR) office. If your proposed project is in an area under Parks Canada jurisdiction, contact your local Parks Canada office. These three organizations are all working in partnership with Fisheries and Oceans Canada in Ontario to protect and conserve fish habitat.

Working together to protect and conserve Ontario's aquatic resources



Fisheries and Oceans Canada / Pêches et Océans Canada

www.dfo-mpo.gc.ca/canwaters-eauxcan



Parks Canada / Parcs Canada

www.pc.gc.ca

Ontario

www.mnr.gov.on.ca



www.conservation-ontario.on.ca