



Fisheries and Oceans  
Canada

Pêches et Océans  
Canada

# POSITION STATEMENT

on *the Management*  
of *Fish Mortality*

October 2009

Fisheries and Oceans Canada



Canada

This document is subject to periodic revision. Please refer to DFO's web site at [www.dfo-mpo.gc.ca/habitat/habitat-eng.htm](http://www.dfo-mpo.gc.ca/habitat/habitat-eng.htm) for the most recent version.

Published by:  
Fisheries and Oceans Canada  
Ottawa, Ontario  
K1A 0E6  
[www.dfo-mpo.gc.ca](http://www.dfo-mpo.gc.ca)

*Également disponible en français.*

DFO/2009-1629  
Cat. No. Fs23-550/2009E-PDF  
ISBN 978-1-100-14005-6  
© Her Majesty the Queen in Right of Canada 2009

The purpose of this statement is to outline the position of Fisheries and Oceans Canada (DFO) with respect to regulating the destruction of fish by means other than fishing.

## Departmental Position Statement

*DFO shall apply its powers and authorities for regulating the destruction of fish by means other than fishing in a manner that conserves and protects Canada's fisheries resources and the ecological, economic, social, and cultural benefits these resources provide to Canadians, while recognizing other legitimate demands placed on water resources.*

### BACKGROUND

DFO is responsible to deliver the Government of Canada's constitutional authority for sea coast and inland fisheries and its responsibility for the conservation and protection of fish and fish habitat as defined through powers, authorities, duties and functions of the *Fisheries Act*.

The *Fisheries Act* provides the powers and authorities to regulate the destruction of fish by means other than fishing. Section 32 of the *Fisheries Act* is the principle section that relates to the regulation of the destruction of fish by means other than fishing. It is a general prohibition which states: "No person shall destroy fish by any means other than fishing except as authorized by the Minister or under regulations made by the Governor in Council under this Act."

Other sections which may also be applied to regulating fish mortality include:

- Subsection 21(4): Provides the authority to require the owner/occupier of an obstruction to install and maintain such fish stops or diverters above or below the obstruction to prevent the destruction of fish or assist their ascent.
- Section 22: Can be applied to regulate impacts to fish associated with the alteration of water flow. Subsection 22(3) speaks specifically to the "flooding of the spawning grounds (...) necessary for the safety of ova".
- Section 30: Can be used to prevent fish mortality by requiring fish guards or screens, covering or netting be placed at the entrance of any water intake, ditch, channel or canal constructed or adapted for conducting water from any Canadian fisheries waters.



The deposit of deleterious substances may also result in fish mortality. Section 36 of the *Fisheries Act* prohibits the deposit of such substances unless permitted through regulations made under S.36 (5) of the *Fisheries Act*. Environment Canada administers the pollution prevention provisions of the *Fisheries Act*, including Subsection 36(5) which provides for the development of regulations permitting the deposit of deleterious substances in waters frequented by fish.

DFO is also responsible for the administration of the *Species at Risk Act* (SARA) as it applies to aquatic species other than those on federal lands administered by Parks Canada.

DFO exercises its authority primarily through reviewing development proposals and monitoring data relative to existing facilities and providing advice on appropriate mitigation measures to avoid impacts on fish and fish habitat.

DFO has the power to authorize or develop regulations to permit the destruction of fish by means other than fishing, and use enforcement measures to address situations of non-compliance. The decision to issue an Authorization under S.32 of the *Fisheries Act* may require DFO to conduct an environmental assessment under the *Canadian Environmental Assessment Act*.

## SCOPE

This *Position Statement* applies to:

- Fish as defined in Section 2 of the *Fisheries Act* as the a) parts of fish (b) shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals, and (c) the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals;
- Activities, works and/or undertakings or operations of facilities and structures which are either proposed or existing;
- Canadian fisheries waters as defined under Section 2 of the *Fisheries Act*;
- The application of those sections of the *Fisheries Act* which can be applied to regulate the destruction of fish by means other than fishing. (i.e. Sections 21, 22, 30, 32 and 36(5)).



## APPLICATION PRINCIPLES

1. DFO will apply a risk-based approach to the management of impacts to fish and fish habitat, including the destruction of fish by means other than fishing.
2. The destruction of fish by means other than fishing should be avoided by considering options to redesign or relocate activities, works or undertakings, or through the use of appropriate mitigation measures.
3. The destruction of fish by means other than fishing may be authorized, providing it does not conflict with or compromise achieving fisheries management objectives. DFO reserves the right not to issue authorizations for the destruction of fish by means other than fishing where they conflict with or compromise achieving fisheries management objectives.
4. Where the destruction of fish by means other than fishing is unavoidable, compensatory measures may be considered as part of a solution to maintaining the ecological, economic, social, and cultural benefits of Canada's fisheries resources.
5. An adaptive management approach may be applied as a means of dealing with uncertainty associated with proposed mitigation measures. This may involve specific studies to assess and monitor impacts over a period of time. Additional measures may be required, or operations modified, where impacts are found to be greater than anticipated.
6. Consistent with the principles of the precautionary approach, the absence of full scientific certainty shall not be used as a reason to postpone taking action in cases where there is the threat of serious or irreversible harm to fisheries resources.
7. Impacts to aquatic species at risk shall be managed in accordance with the *Practitioners Guide to the Species at Risk Act (SARA) for Habitat Management Staff*. To the extent possible, DFO will administer its *Fisheries Act* and *Species at Risk Act* responsibilities in an integrated manner. The destruction of fish by means other than fishing may be authorized, providing it does not compromise or conflict with SARA recovery strategies or plans and the SARA permitting preconditions have been met.
8. The proponent is responsible for the cost, for achieving compliance with all relevant laws pertaining to destruction of fish by means other than fishing (e.g. *Fisheries Act*, SARA, etc.).
9. Where the destruction of fish by means other than fishing is known to be occurring without a Fisheries Act Authorization or in contravention of a regulation made by the Governor in Council, DFO will apply the principles outlined in the following documents:
  - *Application of the Habitat Protection Provisions of the Fisheries Act to Existing Facilities and Structures*. ([www.dfo-mpo.gc.ca/oceans-habitat/habitat/policies-politique/operating-operation/position/index\\_e.asp](http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/policies-politique/operating-operation/position/index_e.asp));
  - *Habitat Compliance Decision Framework*. ([http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/policies-politique/operating-operation/compliance-conformite/index\\_e.asp](http://www.dfo-mpo.gc.ca/oceans-habitat/habitat/policies-politique/operating-operation/compliance-conformite/index_e.asp)).







