



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Position Statement

The Management of Existing Facilities and Structures under the *Fisheries Act* and the *Species at Risk Act*

May 2023

Canada

Published by:
Fisheries and Oceans Canada
200 Kent Street
Ottawa, Ontario
K1A 0E6

The Management of Existing Facilities and Structures under
the *Fisheries Act* and the *Species at Risk Act*

Également disponible en français : La gestion des
installations et structures existantes sous le régime de
la *Loi sur les pêches* et de la *Loi sur les espèces en péril*

© His Majesty the King in Right of Canada, 2023

Cat. No. Fs23-706/2023E-PDF ISBN 978-0-660-48159-3

Table of contents

Departmental Position Statement	3
Purpose	3
Disclaimer	3
Scope	3
Application of the Position Statement – Responsibilities of Owners/Operators	5
Application of the Position Statement –The Department’s Approach	6
Appendix 1. Legislative Context	10
Appendix 2. Provisions of the <i>Fisheries Act</i> , the <i>Species at Risk Act</i> and the <i>Aquatic Invasive Species Regulations</i>	12

Departmental Position Statement

The fish and fish habitat protection provisions of the *Fisheries Act*, in combination with relevant provisions of the *Species at Risk Act* and the *Aquatic Invasive Species Regulations*, apply to the ongoing operation, modification, maintenance, decommissioning or any other work, undertaking or activity associated with an existing facility or structure in or near water frequented by fish, including a facility or structure that was constructed prior to the enactment of these provisions and associated regulations.

Purpose

The purpose of this statement is to outline the position and approach of Fisheries and Oceans Canada (the Department) with respect to the application of the fish and fish habitat protection provisions of the *Fisheries Act*, in combination with relevant provisions of the *Species at Risk Act* and the *Aquatic Invasive Species Regulations*, to an existing facility or structure, in or near water frequented by fish,¹ including a facility or structure that was constructed prior to the enactment of these provisions.

This Position Statement replaces the previous position statement ‘Application of the Habitat Protection Provisions of the *Fisheries Act* to Existing Facilities and Structures’ (2007).

Disclaimer

The ‘Position Statement for the Management of Existing Facilities and Structures under the *Fisheries Act* and the *Species at Risk Act*’ is not a substitute for the *Fisheries Act*, the *Species at Risk Act*, or associated regulations. In the event of an inconsistency between this Position Statement and the *Fisheries Act*, the *Species at Risk Act*, and associated regulations, the legislations and regulations will prevail.

Background

Across Canada, there are thousands of existing facilities and structures located in or near water frequented by fish, that vary greatly in scale and complexity,² from small stream crossings to major hydroelectric dams. These facilities and structures may cause impacts to fish and fish habitat, including to listed aquatic species at risk, their critical habitat and residences.

Scope

This position statement interprets:

- The fish and fish habitat protection provisions³ of the *Fisheries Act*, in combination with relevant provisions of the *Species at Risk Act* and the *Aquatic Invasive Species*

1 Subsection 34(1) of the *Fisheries Act* defines “water frequented by fish” as Canadian fisheries waters. According to its definition in subsection 2(1), “Canadian fisheries waters” means all waters in the fishing zones of Canada, all waters in the territorial sea of Canada and all internal waters of Canada.

2 Examples of existing facilities and structures include: hydro dams and spillways; irrigation canals and reservoir systems; old mill dams; powerhouses; tidal gates and aboiteau; causeways; in-line ponds; industrial and municipal water withdrawals; instream barriers; aquatic invasive species barriers; fishways; culverts (i.e. with and without fish passage); arches, bridges and others.

3 See the [Fish and Fish Habitat Protection Policy Statement](#) (2019) for details respecting the Department’s position and approach dealing with these provisions.

Regulations, that protect fish and fish habitat, including listed aquatic species at risk,⁴ their critical habitat and residences and specifically the provisions outlined in [Appendix 2](#).

This position statement applies to:

- A person who carries on, owns or has the charge, management or control of an existing facility or structure including the operation, modification, maintenance, decommissioning of that facility or structure or any other associated work, undertaking or activity.
- Effects on fish⁵ and fish habitat⁶ arising from the ongoing operation, modification, maintenance, decommissioning or any other work, undertaking or activity associated with an existing facility or structure.

4 Subsection 2(1) of the *Species at Risk Act* defines “aquatic species” as a wildlife species that is a fish, as defined in section 2 of the *Fisheries Act*, or a marine plant, as defined in section 47 of the *Fisheries Act*. The term “aquatic species at risk” will be used to refer to aquatic species listed under Schedule 1 of the *Species at Risk Act*, as endangered, threatened, or extirpated and are located outside of lands administered by Parks Canada.

5 Subsection 2(1) of the *Fisheries Act* defines “fish” to include: parts of fish, shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals, and the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals.

6 Subsection 2(1) of the *Fisheries Act* defines “fish habitat” as water frequented by fish and any other areas, on which fish depend directly or indirectly to carry out their life processes, including spawning grounds and nursery, rearing, food supply and migration areas.

Application of the Position Statement – Responsibilities of Owner/Operator

A person who carries on, owns or has the charge, management or control of an existing facility or structure:

- Is responsible for ensuring that the ongoing operation, modification, maintenance, decommissioning or any work, undertaking or activity associated with an existing facility or structure, is in compliance with the *Fisheries Act* and the *Species at Risk Act*. However, if the construction of the existing facility or structure precedes the enactment of the fish and fish habitat protection provisions of the *Fisheries Act*⁷ or relevant provisions of the *Species at Risk Act*,⁸ then impacts resulting from the construction (i.e., death of fish or harmful alteration, disruption or destruction of fish habitat from the construction of the facility or structure) are outside the scope of these provisions.
- Must notify the Department in the event of the death of fish and/or the harmful alteration, disruption or destruction of fish habitat that is not authorized under the *Fisheries Act*, or of a serious or imminent danger of such an occurrence [respectively, subsections 38(4) and 38(4.1) of the *Fisheries Act*]. The person will be required to take corrective measures to prevent the occurrence or to counteract, mitigate or remedy any adverse effects that result from the occurrence or that might reasonably be expected to result from it [subsection 38(6) of the *Fisheries Act*].
- Is encouraged to work proactively and cooperatively with the Department to identify and evaluate impacts on fish and fish habitat, including to listed aquatic species at risk, their critical habitat and residences, resulting from the ongoing operation, modification, maintenance, decommissioning of, or any other work, undertaking or activity associated with, an existing facility or structure.
- Is encouraged to work with the Department to develop approaches⁹ to achieve compliance with the *Fisheries Act* and the *Species at Risk Act*, by avoiding, mitigating or offsetting harmful impacts to fish and fish habitat, including to listed aquatic species at risk, their critical habitat and residences, caused by the ongoing operation, modification, maintenance, decommissioning or any work, undertaking or activity associated with an existing facility or structure.
- Is encouraged to adopt the important, and recommended, practice of engaging with Indigenous peoples early in the planning phases of proposed modifications, maintenance or the decommissioning of an existing facility or structure, or changes to its operation or to any work, undertaking or activity associated with an existing facility or structure, and in the development of avoidance, mitigation, offsetting and monitoring plans. Indigenous knowledge can inform the design of measures to manage impacts on fish and fish habitat, including to listed aquatic species at risk, their critical habitat and residences.

7 The prohibitions respecting the destruction of fish by means other than fishing, and the harmful alteration, disruption or destruction of fish habitat, were introduced in the *Fisheries Act*, in 1977.

8 The prohibitions in the *Species at Risk Act* came into force in 2004.

9 Approaches (e.g., memorandums of understanding) to achieve compliance with the *Fisheries Act* and the *Species at Risk Act* can prioritize facilities or structures that are undergoing modifications, maintenance or decommissioning or are subject to the renewal of provincial permits, licenses, or other government approval.

- Is encouraged to submit a request for review, if the scope of the ongoing operation, modification, maintenance, decommissioning or any other work, undertaking or activity associated with an existing facility or structure does not entirely fall within the [The Measures to Protect Fish and Fish Habitat](#) or [Standards and Codes of Practice](#).

Application of the Position Statement - The Department's Approach

The Department's approach to the application of this statement will include:

- Promoting regulatory compliance through communication with the person who carries on, owns or has the charge, management or control of the operation, modification, maintenance, decommissioning or any other work, undertaking or activity associated with an existing facility or structure, in order to clarify the requirements of the provisions and approaches outlined in this statement.
- Applying an evidence informed risk-based approach to determine the likelihood and extent of potential impacts to fish and fish habitat and the implications on the conservation and protection of fish (including listed aquatic species at risk) and fish habitat, that are likely to result from the ongoing operation, modification, maintenance, decommissioning or any other work, undertaking or activity associated with an existing facility or structure. This approach will be informed by the best available information. In doing so, the Department will determine if the risk to fish and fish habitat and listed aquatic species at risk, their critical habitat and residences is best managed by:
 - Referring the person who owns or has the charge, management or control of an existing facility or structure to applicable best practices (e.g.: [The Measures to Protect Fish and Fish Habitat](#), or [Standards and Codes of Practice](#)).
 - Providing advice on how to avoid or mitigate impacts to fish and fish habitat, including listed aquatic species at risk, their critical habitat and residences.
 - Requesting that the person who owns or has the charge, management or control of an existing facility or structure, submit an application for authorization¹⁰ under paragraphs 34.4(2)(b) and 35(2)(b) of the *Fisheries Act*, and, where applicable, an application for a permit under sections 73 and 74 of the *Species at Risk Act*. A record of any consultations with Indigenous groups, undertaken by the person, must also be included in the application for authorization. The Department reserves the right to not issue an authorization that, for example, conflicts with or compromises:
 - » Meeting section 73 pre-conditions of the *Species at Risk Act*.
 - » *Species at Risk Act* recovery strategies or plans.
 - » The exercise of Aboriginal and treaty rights – if impacts on those rights cannot be avoided, measures to accommodate will be sought through consultation

¹⁰ Legislative considerations and conditions under both the *Fisheries Act* and the *Species at Risk Act* for a *Fisheries Act* authorization, can be found in the Appendices. Where applicable, the *Fisheries Act* authorization will have the same effect as a permit under section 73 of the *Species at Risk Act*, as described in section 74 of the *Species at Risk Act*.

with affected Indigenous groups.

- » The conservation and protection of fish and fish habitat, including listed aquatic species at risk, their critical habitat and residences.
- Requesting information as provided for under subsections 34.3(1) or 37(1) and issuing ministerial orders, under subsections 34.3(2)/(and 3) or 37(2), respectively of the *Fisheries Act*.
- Issuing directions for corrective measures under subsection 38(7.1) of the *Fisheries Act*, to the person who carries on, owns or has the charge, management or control of the operation, modification, maintenance, decommissioning or any other work, undertaking or activity associated with an existing facility or structure, in order to implement all reasonable measures consistent with public safety and with the conservation and protection of fish and fish habitat, to prevent the occurrence or to counteract, mitigate or remedy any adverse effects that result from the occurrence or might reasonably be expected to result from it.
- Taking preventive, eradication or control measures with respect to non-indigenous and aquatic invasive species or issuing directions for such measures under sections 19, 22, 25, 26 or 27 of the *Aquatic Invasive Species Regulations*.
- Being guided by the following three approaches in its risk-based approach:
 - The precautionary approach – The Department will apply the precautionary approach^{11, 12} by exercising caution when scientific information is absent, uncertain, unreliable or inadequate and, will not use the absence of adequate scientific information as a reason to postpone or fail to take action to avoid impacts on fish and fish habitat, including to listed aquatic species at risk, their critical habitat and residences.
 - The ecosystem approach – The Department will apply the ecosystem approach to better conserve and protect fish and fish habitat, including listed aquatic species at risk, their critical habitat and residences. Processes linking ecosystems and species are complex, and an action taken in one location may have unforeseen consequences elsewhere and may only be evident over time. The ecosystem approach is a strategy that integrates the management of land, water and living resources, promoting conservation and sustainable use in an equitable way.¹³
 - The adaptive management approach – The Department will apply the adaptive management approach, as part of the ecosystem approach to manage uncertainties associated with complex ecosystem processes. An adaptive management approach is one that incorporates new information to assess and monitor impacts over a period of time and determine the effectiveness of management measures. The use of an adaptive management approach may result

11 Canada Privy Council Office, 2003. A Framework for the Application of Precaution in Science-based Decision-Making about Risk.

12 Principles of the precautionary and the ecosystem approach can be found in the Department's [Sustainable Fisheries Framework: A fishery decision-making framework incorporating the precautionary approach](#).

13 Secretariat of the Convention on Biological Diversity. 2004. The Ecosystem Approach, (CBD Guidelines) Montreal: Secretariat of the Convention on Biological Diversity 50 p.

in the application of contingency measures or modification of operations, where impacts to fish and fish habitat, including to listed aquatic species at risk, their critical habitat and residences are found to be different, than anticipated.

- Applying relevant program policies and guidance (e.g., Position Statement – The Management of Death of Fish (other than fishing) under the *Fisheries Act* and the *Species at Risk Act*).
- Carrying out meaningful consultations when the duty to consult is triggered and where appropriate, meaningfully accommodate the potentially affected Indigenous group to the Department’s proposed Crown conduct (e.g., proposed decisions to authorize or permit, or orders requiring modifications to an existing work, undertaking or activity). If any impacts occur on listed aquatic species at risk, their critical habitat and residences, that are found in an area where a Wildlife Management Board perform functions, or on reserve lands under the *Indian Act*, the Department must also consult the Wildlife Management Board or the band before authorizing the activity.
 - During consultations, Indigenous knowledge may be provided to the Department. Prior to making a decision about whether or not to issue a *Fisheries Act* authorization, Indigenous knowledge provided¹⁴ will be considered alongside the other factors set out in subsection 34.1(1) of the *Fisheries Act*.
- Continuing to recognize any authorizations issued under previous iterations of the *Fisheries Act*¹⁵ that were valid on August 28, 2019, the date on which the current fish and fish habitat protection provisions¹⁶ came into force, including those that have the same effect as permits issued under the *Species at Risk Act* (as described in section 74). These authorizations continue to apply, as will those authorizations issued after the coming into force of the fish and fish habitat protection provisions of the *Fisheries Act*.¹⁷
- Taking enforcement actions that are fair, predictable, and consistent, using rules, sanctions and processes founded in law. The Department will prioritize enforcement actions by considering:
 - The extent of impacts to fish and fish habitat, including to listed aquatic species at risk, their critical habitat and residences, that are caused by the ongoing operation,

14 Indigenous knowledge provided in confidence relative to a *Fisheries Act* decision will not be disclosed unless an exception set out in section 61.2 of the *Fisheries Act* applies.

15 Bill C-68 includes transitional provisions (clauses 52 and 53) related to authorizations and applications for authorizations made under section 35(2)(b) of the pre-royal assent *Fisheries Act*. For further information and guidance, refer to <https://www.dfo-mpo.gc.ca/pnw-ppe/guidance-ligne-directrice-eng.html>.

16 See the [Fish and Fish Habitat Protection Policy Statement](#) (2019) for details respecting the Department’s position and approach dealing with these provisions.

17 A person who carries on, owns or has the charge, management or control of an existing facility or structure, who requests an amendment, suspension or cancellation to their existing *Fisheries Act* authorization, would need to comply with the requirements of the current fish and fish habitat protection provisions of the *Fisheries Act* and relevant provisions of the *Species at Risk Act* (where applicable), regardless when their *Fisheries Act* authorization was originally issued. Further, under subsection 73(8) of the *Species at Risk Act*, the Department can amend or revoke a permit (including *Fisheries Act* authorizations that have the same effect as *Species at Risk Act* permits), to ensure the survival or recovery of a listed aquatic species at risk (where applicable). The *Fisheries Act* also provides authorities for the Minister to amend, suspend, or cancel valid authorizations (as set out under subsections 34.4(5) and 35(5) of the *Fisheries Act*) at the request of the authorization holder, or on the Minister’s initiative. Refer to The [Authorizations Concerning Fish and Fish Habitat Protection Regulations](#) (SOR/2019-286), for further information.

modification, maintenance, decommissioning or any other work, undertaking or activity associated with an existing facility or structure;

- Whether or not the alleged offence is a repeat occurrence; and
- Other situational factors to achieve compliance.

Appendix 1. Legislative Context

The Department administers the fish and fish habitat protection provisions of the *Fisheries Act*, in combination with relevant provisions of the *Species at Risk Act* and relevant provisions of the *Aquatic Invasive Species Regulations*, in order to conserve and protect fish and fish habitat.

Works, undertakings or activities (other than fishing) that result in the death of fish, the harmful alteration, disruption or destruction of fish habitat or prohibited effects to listed aquatic species at risk, their critical habitat or residences, are offences under the *Fisheries Act* and the *Species at Risk Act* (if listed aquatic species at risk or their habitat are also implicated) unless otherwise excepted under subsections 34.4(2) and 35(2) of the *Fisheries Act* and by way of (among other things) a permit issued under section 73 of the *Species at Risk Act*, or an authorization issued under another Act of Parliament having the same effects as a permit issued under section 73 (as described in section 74 of the *Species at Risk Act*). The most common exception to the *Fisheries Act* prohibitions, applied by the Department, is the issuance of a Ministerial authorization under paragraphs 34.4(2)(b) and 35(2)(b) of the *Fisheries Act*.

If listed aquatic species at risk, their critical habitat or residences are also affected by the work, undertaking or activity, the *Species at Risk Act* requires that several conditions outlined in section 73, are met before the activity can be authorized.¹ Included amongst these requirements, subsection 73(3) states that the permit may only be issued if the Minister is of the opinion that:

- a. All reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted;
- b. All feasible measures will be taken to minimize the impact of the activity on the species, their critical habitat and residences (i.e. measures to mitigate and offset adverse impacts); and
- c. The activity will not jeopardize the survival or recovery of the species.

The deposit of deleterious substances could also result in the death of fish, the harmful alteration, disruption or destruction of fish habitat or prohibited effects to listed aquatic species at risk, their critical habitat or residences. Subsection 36(3) of the *Fisheries Act* prohibits the deposit of deleterious substances in water frequented by fish, unless the deposit is authorized by regulations. Fisheries and Oceans Canada and Environment and Climate Change Canada share the responsibility for the administration and enforcement of the pollution prevention provisions of the *Fisheries Act* [subsections 36(3) to (6)]. The designation order² formally designates the Minister of the Environment as legally responsible for the administration and enforcement of the pollution prevention provisions of the *Fisheries Act*. However, the Minister of Fisheries and Oceans retains administration and enforcement responsibilities in relation to aquaculture facilities or the control or eradication of any aquatic

¹ If approval for a proposed work, undertaking or activity is sought under both the *Fisheries Act* and the *Species at Risk Act*, and authorization is granted, a *Fisheries Act* authorization will generally be issued and will include the necessary considerations and conditions so as to comply with section 74 of the *Species at Risk Act*. Note that even if the conditions can be met, the Minister has the discretion not to issue a permit.

² <https://laws-lois.justice.gc.ca/eng/regulations/SI-2014-21/page-1.html>

invasive species or aquatic species that constitute a pest to the fisheries that are subject to the *Aquatic Invasive Species Regulations*.

The *Aquatic Invasive Species Regulations* were made under the authority of subsections 34(2), 36(5), 43(1) and (2) of the *Fisheries Act* and came into force in 2015 to protect fish and fish habitat from the threat of aquatic invasive species. The *Aquatic Invasive Species Regulations* provide a suite of regulatory tools that can be used by federal, provincial and territorial authorities to prevent the introduction of aquatic invasive species into Canadian waters and to control and manage their establishment and spread, if introduced. These tools include prohibitions, directions, measures,³ and licenses to fish for invasive species. The death of fish and/or the harmful alteration, disruption or destruction of fish habitat resulting from activities authorized under the *Aquatic Invasive Species Regulations* [i.e. under paragraphs 34.4(2)(d) and (e) and 35(2)(d) and (e) of the *Fisheries Act*], are not offences under subsections 34.4(1) and 35(1) prohibitions of the *Fisheries Act*. However, certain requirements and conditions of the *Species at Risk Act* may still apply.

Before considering whether to issue an authorization, the Minister is required under section 2.4 of the *Fisheries Act* to consider any adverse effects that the decision may have on the rights of the Indigenous peoples of Canada (recognized and affirmed by Section 35 of the *Constitution Act, 1982*) and is required to consider the factors (including provided indigenous knowledge) set out under subsection 34.1(1) of the *Fisheries Act*, as applicable. The Department consults with Indigenous peoples when asserted or established Aboriginal and treaty rights may be adversely impacted by its proposed Crown conduct (e.g., proposed decisions to authorize or permit, or orders requiring modifications to an existing work, undertaking or activity). Before issuing a permit under the *Species at Risk Act*, the Department must also consult Wildlife Management Boards or bands under the *Indian Act* in cases where subsections 73(4) or (5) of the *Species at Risk Act* apply.

The information, documentation requirements and time limits for processing applications for *Fisheries Act* authorizations under paragraphs 34.4(2)(b) and 35(2)(b), including when the time limits cease to apply and start over, are set out in the *Authorizations Concerning Fish and Fish Habitat Protection Regulations* (SOR/2019-286⁴).

Similarly, the *Permits Authorizing an Activity Affecting Listed Wildlife Species Regulations*⁵ establish the information requirements for *Species at Risk Act* permit applications, the time limit for the review of the submitted documents and the circumstances when the time limit stops, restarts or does not apply.

3 Preventive, eradication or control measures are put in place to prevent, eradicate or control non-indigenous and aquatic invasive species in waters frequented by fish. Non-indigenous aquatic species and aquatic invasive species threaten indigenous fish through competition, predation or habitat impacts. Preventive, eradication or control measures are not equivalent to measures that avoid, mitigate or offset impacts on indigenous fish or fish habitat.

4 [https://laws-lois.justice.gc.ca/eng/regulations/SOR-in te 2019-286/page-1.html](https://laws-lois.justice.gc.ca/eng/regulations/SOR-in%20te%202019-286/page-1.html)

5 <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2013-140/FullText.html>

Appendix 2. Provisions of the *Fisheries Act*, the *Species at Risk Act* and the *Aquatic Invasive Species Regulations*

Table 1. Provisions of the *Fisheries Act*, the *Species at Risk Act*, and the *Aquatic Invasive Species Regulations* that protect fish and fish habitat, including Listed Aquatic Species at Risk, their critical habitat, and residences

Legislation/Regulation and Provision(s)	Description of Provision ¹
<p><i>Fisheries Act</i> - Subsection 34.1(1)</p>	<p>Framework of Considerations</p> <p>Lists factors to guide the Minister of Fisheries and Oceans decision-making functions. Examples of these factors include:</p> <p>Factor (a) – the contribution to the productivity of relevant fisheries by the fish ... that is likely to be affected;</p> <p>Factor (b) – fisheries management objectives.</p> <p>Factor (c) – whether there are measures and standards to avoid, mitigate or offset the death of fish ... ;</p> <p>Factor (d) – the cumulative effects of the carrying on of the work, undertaking or activity referred to in a recommendation or an exercise of power, in combination with other works, undertakings or activities that have been or are being carried on, on fish ... ;</p> <p>Factor (e) – any fish habitat banks...;</p> <p>Factor (f) – whether any measures and standards to offset the harmful alteration, disruption or destruction of fish habitat give priority to the restoration of degraded fish habitat;</p> <p>Factor (g) – Indigenous knowledge of the Indigenous peoples of Canada that has been provided to the Minister;</p> <p>Factor (h) – Any other factor the Minister considers relevant.</p>

¹ See the [Fish and Fish Habitat Protection Policy Statement](#) (2019) for details respecting the Department's position and approach dealing with the fish and fish habitat protection provisions of the *Fisheries Act*.

Legislation/Regulation and Provision(s)	Description of Provision ¹
Fisheries Act - Subsection 34.3	<p>Ministerial Powers</p> <p>Under subsection 34.3(1) to require a person or owner who carries on, owns or has the charge, management or control over existing obstructions² or any other thing detrimental to fish passage to carry out studies and to provide information to the Minister. Under subsection 34.3(2) to order that person or owner to provide for the free passage of fish or the protection of fish and fish habitat including with respect to flows downstream of the obstruction. Under subsection 34.3(3) to order that person or owner to modify, maintain or repair the obstruction or any other thing detrimental to fish passage, as required.</p>
Fisheries Act - Subsection 34.4(1)	<p>Prohibition Against Causing the Death of Fish</p> <p>A prohibition against a person carrying on any work, undertaking or activity, other than fishing, that results in the death of fish.</p>
Fisheries Act - Subsection 35(1)	<p>Prohibition Against Causing the Harmful Alteration, Disruption or Destruction of Fish Habitat</p> <p>A prohibition against a person carrying on any work, undertaking or activity that results in the harmful alteration, disruption or destruction of fish habitat.³</p>
Fisheries Act - Section 37	<p>Ministerial Powers</p> <p>Under subsection 37(1) to require plans or specifications from a person who carries on or proposes to carry on any work, undertaking or activity that results or is likely to result in the death of fish, and under subsection 37(2) to order changes or restrictions to, or the closure of the work, undertaking or ending of the activity.</p>

² Subsection 2(1) of the *Fisheries Act* defines an obstruction as any slide, dam or other thing impeding wholly or partially the free passage of fish.

³ Harmful alteration, disruption or destruction is any temporary or permanent change to fish habitat that directly or indirectly impairs the habitat's capacity to support one or more life processes of fish. From the [Fish and Fish Habitat Protection Policy Statement](#) (2019).

Legislation/Regulation and Provision(s)	Description of Provision ¹
Fisheries Act - Subsection 38(4) and 38(4.1)	<p>Duty to Notify</p> <p>The duty of the person who carries on, owns or has the charge, management or control of a work, undertaking or activity to notify, without delay, the Department in the event of the death of fish or the harmful alteration, disruption or destruction of fish habitat that is not authorized under the <i>Fisheries Act</i>, or of the imminent danger of such an occurrence.</p>
Fisheries Act - Subsection 38(6)	<p>Duty to take Corrective Measures</p> <p>The duty of the person identified under subsections 38(4), to take corrective measures that are consistent with public safety and with the conservation and protection of fish and fish habitat to prevent the occurrence, or to counteract, mitigate or remedy any adverse effects that result from the occurrence or might reasonably be expected to result from it.</p>
Fisheries Act - Subsection 38(7.1)	<p>Directions for Corrective Measures</p> <p>Allowing an inspector or fishery officer to issue directions for corrective measures, to the person [identified under subsections 38(4) or 38(4.1)] who carries on, owns or has the charge, management or control of the operation, modification, maintenance, decommissioning or any other work, undertaking or activity associated with an existing facility or structure, in order to implement all reasonable measures consistent with public safety and with the conservation and protection of fish and fish habitat, to prevent the occurrence or to counteract, mitigate or remedy any adverse effects that result from the occurrence or might reasonably be expected to result from it [subsection 38(6)]. An inspector or fishery officer may...take any of those measures at the expense of the person or direct that person to take the measures at their expense.</p>

Legislation/Regulation and Provision(s)	Description of Provision ¹
Species at Risk Act - Subsection 32(1)	<p>Prohibition Against the Killing an Individual of a Listed Aquatic Species at Risk</p> <p>A prohibition against a person killing, harming, harassing, capturing or taking an individual of a species that is listed on Schedule 1, as extirpated, endangered or threatened.</p>
Species at Risk Act - Subsection 33	<p>Prohibition Against Damaging or Destroying the Residence of One or More Individuals of Listed Aquatic Species at Risk</p> <p>A prohibition against a person damaging or destroying the residence of one or more individuals of a species that is listed on Schedule 1, as endangered or threatened, or of a species listed as extirpated if a recovery strategy has recommended its reintroduction into the wild in Canada.</p>
Species at Risk Act - Subsection 58(1) ⁴	<p>Prohibition Against Destroying the Critical Habitat of a Listed Aquatic Species at Risk</p> <p>A prohibition against a person destroying any part of the critical habitat of a species that is listed on Schedule 1, as endangered or threatened, or of a species listed as extirpated if a recovery strategy has recommended its reintroduction into the wild in Canada.</p>
Aquatic Invasive Species Regulations - Section 6	<p>Prohibition Against Importing Members of a Species</p> <p>A prohibition against a person importing members of a species listed in Part 2 of the schedule, including any genetic material capable of propagating the species.</p>

⁴ In instances where critical habitat identified in the species' recovery strategy or an action plan is found in specific federally protected areas described in subsection 58(2) of the Act, subsection 58(1) of the *Species at Risk Act* is triggered 90 days after a description of the critical habitat is published in the *Canada Gazette*. For all other areas of critical habitat, subsection 58(1) is triggered when a Critical Habitat Order is made by the Minister.

Legislation/Regulation and Provision(s)	Description of Provision ¹
<i>Aquatic Invasive Species Regulations</i> - Section 7	<p>Prohibition Against Possessing Members of a Species</p> <p>A prohibition against a person possessing members of a species listed in Part 2 of the schedule, including any genetic material capable of propagating the species.</p>
<i>Aquatic Invasive Species Regulations</i> - Section 8	<p>Prohibition Against Transporting Members of a Species</p> <p>A prohibition against a person transporting members of a species listed in Part 2 of the schedule, including any genetic material capable of propagating the species.</p>
<i>Aquatic Invasive Species Regulations</i> - Section 9	<p>Prohibition Against Releasing Members of a Species</p> <p>A prohibition against a person releasing or engaging in any activity that may lead to the release of aquatic invasive species in water frequented by fish.</p>
<i>Aquatic Invasive Species Regulations</i> - Section 10	<p>Prohibition Against Introducing Members of a non-indigenous Species</p> <p>A prohibition against a person introducing a non-indigenous aquatic species in waters frequented by fish.</p>
<i>Aquatic Invasive Species Regulations</i> - Sections 19, 22, 25, 26 and 27	<p>Powers</p> <p>Allowing various prescribed persons and Fishery Officers and Guardians to take a variety of measures or to issue directions for preventive, eradication or control purposes with respect to non-indigenous and listed aquatic invasive species.</p>