

Revised Fisheries Act changes could undo decades of damage iPolitics

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Fisheries Act changes could undo decades of damage, say experts

DFO Minister Dominic LeBlanc currently examining advice from fisheries committee

James Munson

The Fisheries Act was designed with good but flawed intentions, said former Department of Fisheries and Oceans (DFO) lawyer Martin Olszynski.

Now, with a mammoth review of Canadian environmental legislation underway, Ottawa has a chance to give it a major course correction.

“This is 2017,” said Olszynski, who worked inside DFO’s legal services unit from 2007 to 2013. “It is a unique opportunity to think about what kind of regulatory regime and legal framework we want to have in the 21st century, bearing in mind everything we’ve learned with the first generation of environmental laws.”

Fisheries and Oceans Minister Dominic LeBlanc has in front of him a 76-page report from the Standing Committee on Fisheries and Oceans recommending a host of major expansions to the Fisheries Act’s powers and applications.

DFO doesn’t collect enough information to know whether fish habitat has been declining, rising or staying the same under the Fisheries Act’s watch. The report’s recommendations give LeBlanc the power to at least stem or stabilize a decline — and maybe one day move the direction toward increasing fish habitat too, said Olszynski.

“The question is will we be able to flat line that degradation — keep it neutral, no net loss — or do we, depending on how rigorous and what Parliament does with these recommendations from the committee, get to a place where we say, ‘Let’s make up for lost ground too.’”

The political rationale for reforming the Fisheries Act is turning back the clock on changes made by the Conservatives in 2012 — but the act’s flaws go back to its inception.

Passed in 1977, the act has the stated goal of achieving a net gain in fish habitat — meaning, through its mishmash of project approvals, rehabilitation programs and conservation efforts, Canada is supposed to be increasing the overall size of fish habitat across the country.

That likely isn’t happening, and any attempt to figure that out for certain is stymied by the fact DFO “does not measure habitat loss or gain. It has limited information on the state of fish

habitat across Canada ... (and) cannot determine the extent to which it is progressive towards (its 1986) policy's long-term objective of a net gain in fish habitat," according to a 2009 auditor general report on the act, as quoted in recent a recent study by Olszynski.

But net gain "has to be there," said Olszynski, to guide policy-makers as they implement the act. What needs to change is the machinery of implementing the act, "the architecture that you need to get there," he said.

The legislation likely stemmed the tide of degradation that preceded its coming into force, but more recent tweaks and reforms — made to appease industry complaints it was too burdensome — weakened it greatly, he said.

"The degradation would have really picked up in the 2000s," he said. "That was the beginning of (DFO) really abdicating its responsibility and adopting this idea of (a risk-based approach) and not reviewing projects," he said.

The 2012 changes — wrapped up in the Conservatives' contentious omnibus budget bill that caused a political firestorm at the time — were the most dramatic yet, not least because they changed the act's focus from prohibiting "any work or undertaking that results in harmful alteration, disruption or destruction fish habitat" to prohibiting "any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery."

Narrowing the act's focus to fisheries that matter to people outraged biologists at the time. The Liberals included a reversal of those changes as part of a review to environmental laws now underway. LeBlanc, the DFO minister, said his office is under a 180-day deadline to response to the fisheries committee report released on February 23 that was mandated with studying the 2012 changes.

"We just got the report a week and a half ago, and we are going through it very carefully, so it's hard to be more specific at this point," LeBlanc said Tuesday, regarding a response.

The report, which has 32 recommendations, goes far beyond recommending reversing Conservative policy. Among the ideas the committee suggests, the creation a public registry of departmental data on fish habitat health would be the most powerful expansion of the Fisheries Act, said Olszynski — a view backed up Brett Favaro, a professor of environmental science at Memorial University.

"It is just a culture of secrecy that I don't think is acceptable when you have a public resource which is fish and fish habitat," said Favaro, about the problem's plaguing the act's implementation. A public registry — coupled with increased monitoring, as recommended by the committee — would settle some of the perennial debates between industry and scientists over fish health, he said.

“If you sincerely believe that the Fisheries Act is being inappropriately used — they’re being overly punitive, they’re making people restore way too much — the only way to know what for certain is to actually look at what the authorizations are saying,” said Favaro, referring to the permits DFO gives project proponents impacting fish habitat.

Such a public registry should include the location and status of projects “that have been flagged by the Department of having a potential to cause harm to fish and fish habitat (authorizations, monitoring results and convictions) and their cumulative effects, the location of different aquatic species, up-to-date monitoring of aquatic species at risk and their status and the status of authorizations,” the report says.

With it, Canadians would be able to see the status of fish habitat across Canada, and “it’s widely accepted that ... transparency fosters accountability and that usually leads to better environmental performance,” said Olszynski, who is now a professor at the University of Calgary.

The Mining Association of Canada, as well as Manitoba Hydro, told the committee that the 2012 changes actually expanded DFO’s application of the act. In an interview earlier this year, [mining association president Pierre Gratton told *iPolitics*](#) the department wasn’t given enough expertise and staff to figure out how the changes were supposed to work.

The Conservatives heavily dissented from the committee’s final report and said the changes they made in 2012 helped the environment while protecting industry.

“We are concerned that the changes being recommended by our Liberal colleagues may have a chilling effect on much-needed development projects, especially in rural areas,” MPs Mel Arnold and Robert Sopuck said in a news release.

MP Scott Simms, chair of the fisheries committee, did not return a request for comment.