

# **DFO Written Submission to SCOFO on Enforcement of the *Fisheries Act***

**JUNE 17, 2019**

## **Introduction**

The *Fisheries Act* is the main federal statute for managing Canadian fisheries resources, as well as for managing, conserving and protecting Canadian fish and fish habitat. The Conservation and Protection (C&P) program of Fisheries and Oceans Canada (DFO) is mandated to enforce the Act and its associated regulations, such as the *Marine Mammal Regulations*, *Aquaculture Activities Regulations* and the *Aquatic Invasive Species Regulations*.

## **Overview of C&P**

As the enforcement and compliance organization of the Department, C&P is a large and complex program. It is comprised of the National Fisheries Intelligence Service, Enforcement Operations and Program and Operational Readiness. Fishery officers are the core of the program, with approximately 610 officers operating from 108 detachments and offices from coast to coast to coast.

Fishery officers are the face of the Department and are often the only federal presence in many remote coastal communities. As federal peace officers, fishery officers are required to complete intensive training, which is administered jointly with the Royal Canadian Mounted Police, before they are armed and operational. Once in the field, they undertake a broad range of compliance and enforcement activities in support of the Department's program objectives, based on intelligence from our National Fisheries Intelligence Service and C&P's "three pillar" approach, which focuses on:

- Pillar 1 – education, stewardship and stakeholder engagement;
- Pillar 2 – monitoring, control and surveillance; and,
- Pillar 3 – major cases and special investigations.

Under Pillar 1, education and outreach is an important component of compliance and enforcement, and C&P makes an effort to engage and liaise with fishers, Indigenous communities, unions, industry groups and the public more generally at events such as conferences, fish and wildlife shows, and schools. This outreach has proven to be very effective in encouraging compliance as most people will voluntarily comply with rules when they have a good understanding of them.

Monitoring, control and surveillance activities under Pillar 2 are the traditional core of the program, and include activities such as land-based and at-sea patrols, air surveillance, ongoing fishery monitoring, inspections and the issuance of tickets, citations or other enforcement action.

As noted earlier, fishery officers are designated as peace officers under the *Criminal Code of Canada* for the administration of the *Fisheries Act*, and as such they have the power to undertake inspections, including entering private property, and they can search persons, vehicles, vessels or buildings. They are also authorized to seize such things as fish, vehicles, vessels or other goods, and execute warrants, and arrest and detain offenders.

As part of their Pillar 2 activities, fishery officers play an active role in commercial and recreational fisheries, patrolling inland and coastal waters, and inspecting fishing vessels to ensure compliance with quota allocations or catch limits, licence conditions, fishing times and gears, and reporting requirements. C&P activities in support of fish and fish habitat protection may include regular and targeted habitat patrols of coastline, river, road networks and terrain, and ensuring compliance with section 35 of the *Fisheries Act* and any habitat authorizations issued by the Department.

Pillar 3 in C&P's enforcement approach is major cases and special investigations, where our emphasis is on intelligence-led enforcement directed to key priorities and risk areas. Activities include more in-depth investigations and intelligence assessments and analysis to mount major investigations into severe violations of the law, typically involving large scale non-compliance, collusion between multiple players and sometimes linked to organized criminal activity.

### **International Enforcement of Illegal, Unreported and Unregulated (IUU) Fishing**

Canada is a signatory to the international Port State Measures Agreement (PSMA), which came into force on June 5, 2016 and is now awaiting ratification. The overall objective of the PSMA is to prevent fish products that have been obtained illegally from getting to market; it sets global minimum standards for actions that signatories must take when a foreign vessel, known or suspected to have engaged in or supported illegal fishing, seeks to enter a port or use port services.

Combatting IUU fishing was a priority of Canada's 2018 G7 presidency agenda on healthy oceans, and the Charlevoix Blueprint included a number of related actions. Canada is actively involved in supporting high seas enforcement through counter IUU sea and air patrols, including joint inspector exchanges and ship rider opportunities to leverage resources in a collaborative multi-national effort. DFO is also exploring a number of new technologies and initiatives through public-private partnerships to support the detection and tracking of IUU fishing activity, and has emerged as a leader in the use of digital forensics (the practice of extracting and examining electronic evidence) in the fight against IUU fishing.

### **Fisheries Act amendments and the impact on enforcement**

Legislative changes were made to the *Fisheries Act* in 2012, which resulted in numerous program changes in the Department and an overall reduction and re-focussing of DFO's efforts to protect fish and fish habitat. The program reductions that occurred in parallel with the 2012 changes to the *Fisheries Act* translated to a substantial decrease in enforcement

capacity. In total, over 90 fishery officer positions were eliminated across the country.

With fewer front-line fishery officers, C&P reallocated its program efforts to cover new priorities, consequently drawing effort away from traditional front-line tasking, including routine monitoring, patrolling and habitat enforcement. Stakeholders and environmental organizations publically criticized the Department for the decrease in time spent on habitat enforcement and compliance activities.

In 2017, the House of Commons Standing Committee on Fisheries and Oceans (SCOFO) released a report on the [Review of Changes Made in 2012 to the \*Fisheries Act\*: Enhancing the Protection of Fish and Fish Habitat and the Management of Canadian Fisheries](#). Fisheries and Oceans welcomed SCOFO's recommendations related to enforcement, including the need for significant investments in hiring more field personnel to improve habitat enforcement (Recommendation 21), and a recommendation to meaningfully resource the monitoring, compliance and enforcement components of the Department (Recommendation 22).

### *New resources*

As a result of new funding, DFO is currently re-establishing front-line fishery officer positions to ensure appropriate habitat-related enforcement capacity across the country. Included in Bill C-68 are new investments in a total of 51 new fishery officer positions.

Thirty of these new officers are front-line operational positions that will be distributed across the country to focus on increasing our habitat enforcement activities. We anticipate all of these positions to be fully staffed by the end of this fiscal year. They will focus on increased habitat compliance monitoring and enforcement across the country, through increased enforcement hours dedicated to habitat patrols and investigations. There will also be greater national consistency, coordination and reporting on habitat cases. The program will have increased cooperation with provinces and territories, Indigenous groups and within DFO on habitat enforcement.

With the renewed focus on habitat protection in the *Fisheries Act*, an increase in habitat-related major investigations is also expected. Dedicated major case management teams are currently being established to manage and support the investigation and prosecution of a growing number of complex habitat cases. Habitat violation investigations and prosecutions by their nature tend to be complex and lengthy, and require dedicated human and financial resources over sustained periods. The ongoing Mount Polley and recently-settled Obed Mountain mine cases serve as notable examples where C&P has struggled to maintain sustained resources over multiple years, and only at a cost to other enforcement operations. Case management teams will be fully staffed by the end of this fiscal year and, supported by digital forensics examiners, they will be prosecuting habitat major cases as appropriate.

Also included in Bill C-68 are new investments in C&P's digital forensics capacity. Digital forensic investigation is a crucial component in C&P's modern enforcement approach and supports both the habitat enforcement and the major case management teams. Digital

forensics examiners provide the capacity to access, extract and collect evidence which is increasingly stored in digital form such as on computers, hard drives, tablets, and cell phones. Given the widespread use of electronic devices, this is a critical modern investigative tool necessary for discovering, documenting and securing habitat violation evidence using modern technology. C&P had already successfully established its National Digital Forensics Service, but the existing staff complement can not meet the demand for this this service. With new funding, four additional digital forensics examiners are being hired and will operate in conjunction with dedicated case management teams.

It will be of interest to the Committee to know that the new investments under Bill C-68 are complemented by other new investments under a range of government initiatives, including Integrity Investments stemming from the comprehensive review exercise, the Oceans Protection Plan, Aquatic Invasive Species strategy, the *Oceans Act* and Marine Conservation Targets, and the cetaceans strategy. In total, the new investments will result in more than 120 new fishery officer and other positions within the C&P program being created and staffed across Canada.

Another important element to C&P's increased enforcement capacity is the recent award of a five-year, \$128 million contract to PAL Aerospace, an international aerospace and defence company based in St. John's, Newfoundland and Labrador, to enhance the national Fisheries Air Surveillance and Enforcement (FASE) program. Under the contract, the FASE program will be operated from three bases of operation (in St. John's, Newfoundland and Labrador; Halifax, Nova Scotia; and Campbell River, British Columbia) that will host four surveillance aircraft, including two long-range aircraft. These planes will be used to support enforcement activities under the *Fisheries Act* and the North Atlantic Fisheries Organization, as well as conducting air surveillance of Marine Protected Areas (MPAs), North Atlantic right whales in the Gulf of St. Lawrence and Bay of Fundy, and Southern Resident killer whales along the coast of British Columbia. The new aircraft will be in service no later than September 1, 2020.

### ***Enforcement related amendments***

In addition to re-establishing C&P monitoring, control and surveillance (MCS) capacity, various enforcement-related amendments are proposed to the *Fisheries Act* through Bill C-68. The proposed amendments modernize and strengthen our enforcement options, thereby enabling fishery officers to better protect fish and fish habitat.

One of the noteworthy amendments is the inclusion of a new authority to enter into Alternative Measures Agreements to address contraventions. Alternative Measures Agreements are an alternative to prosecution that focuses on the rehabilitation of offenders. In some cases, because of the nature and circumstances of the offence and the offender, the public interest may be better served by a resolution outside of the traditional criminal process.

Similar regimes already exist in other legislation such as the *Species at Risk Act* and C&P already uses alternative measures agreements in some parts of the country for commercial,

recreational, and Indigenous fisheries and for habitat issues. Including such provisions in the *Fisheries Act*, however, will clearly establish solid grounds to expand its use across Canada.

## **Looking forward**

It is important to note that C&P works with a variety of partners, such as the Coast Guard, the Royal Canadian Mounted Police, Canadian Border Services Agency, Environment and Climate Change Canada, Parks Canada and provincial conservation departments, to enforce the *Fisheries Act*. Our partners play a key role in ensuring safe and orderly fisheries and we will continue to work collaboratively with them going forward.

Enforcement of the *Fisheries Act* remains our key priority and with the recent re-investments in the program, C&P is well positioned to support the Government's priority to restore lost habitat protections. In 2020 and beyond, following staffing of the new positions, C&P will be able to increase habitat enforcement patrols across the country. Fishery officers will be more visible "on the ground" which will respond to public concern about habitat enforcement and help deter and prevent habitat degradation by potential offenders. Case management teams will be investigating and prosecuting major habitat cases, with the support of digital forensic evidence.

In addition to monitoring and surveillance activities, fishery officers will also continue their Pillar 1 efforts by conducting educational and stewardship activities with communities, stakeholders, provinces and territories, and Indigenous people in order to promote adherence to the legislation, including the amended habitat provisions.

The Department will also continue to invest in the ongoing safety of its growing cadre of fishery officers with the establishment of Operational Communications Centres. This initiative is part of C&P's ongoing radio modernization project, which will equip fishery officers with modern digital radios that will facilitate better, more secure communications and improve officer safety in the field.

More broadly, C&P will complete an expansion of its National Fisheries Intelligence Service (NFIS) to implement a fully operationalized, intelligence-led enforcement approach that can detect organized and / or sophisticated individuals and entities that engage in fisheries offences, particularly fraud and collusion. NFIS collects and analyzes information to produce strategic and tactical intelligence products that support and inform operational enforcement activities.

In conclusion, DFO is enhancing its enforcement program by adding to its complement of C&P fishery officers and implementing a range of modernization initiatives involving new technologies and capacities that will improve and enhance its ability to prevent, deter and disrupt illegal activity in the fisheries sector. This will facilitate improved conservation and protection of fish and marine mammals and their habitats, as well as enhance capacities to address the emerging threats to species at risk and from aquatic invasive species.