

Reviewing The Fisheries Act: An Indigenous Perspective

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IN WHAT IS NOW CALLED CANADA, Indigenous peoples have lived under and continue to live under the oppression of the settler colonial government, including its many legislative acts and regulations.

For Indigenous peoples who live on the vast coastline, Canada's Fisheries Act has been and continues to be one of the most oppressive and one of the most contentious of these acts.

The Fisheries Act was originally introduced in 1857 and is one of the oldest pieces of legislation still in place today. It has been deployed to displace Indigenous peoples' and nation's governance systems, fisheries, and economies.

THE COASTAL INDIGENOUS FISHERY

Indigenous Nations have for thousands of years sustained themselves, with rich and vibrant cultures and identities which were inseparable and inextricably linked to the lands and waters. As an example, the Straits Salish peoples understood the salmon to have a human spirit and considered them to be their relatives. The Straits Salish Reef Net Fishery, a sophisticated, capable, sustainable and effective fishing method allowed Indigenous nations to live in balance with the lands and waters for thousands of years. Salmon was a central part to this lifestyle. For Indigenous Nations, fish and fishing were governed by laws and beliefs that were embedded into Indigenous languages and worldviews, centered on conservation for future generations. Long before there was an industrial commercial fishery in British Columbia, Indigenous Nations had their own economies, with nation-to-nation trade and even trade with European settlers. As the industrial commercial fisheries emerged, Indigenous Nations were displaced.

The Fisheries Act facilitated this displacement by imposing restrictions on Indigenous fishing practices, ultimately criminalizing individuals and communities, while supporting the growth and expansion of the non-Indigenous fishery.

THE EMERGENCE OF CANADA'S NEW FISHERIES ACT

The present Fisheries Act deals primarily with management and control of fisheries, conservation, and the protection of fish and fish habitat. There have been several attempts to revise the Fisheries Act, and numerous amendments. In 2016, Prime Minister Trudeau mandated the Minister of Fisheries, Oceans (DFO) and the Canadian Coast Guard to **review** the previous government's changes to the Fisheries Act and "restore lost protections

and incorporate modern safeguards; provide better certainty for industry; ensure the long-term sustainability of marine resources; and, make sure that the Fisheries Act provides strong and meaningful protection for our fish and waters.”

Under “incorporating modern safeguards” the review referenced inclusion of Indigenous people in the proposed changes. Through 2016 and 2017, DFO and the federal government held engagement opportunities for Indigenous Nations to gain more information about the review process and provide their feedback and recommendations on The Fisheries Act, with particular regard to habitat protections and modernization of the Act. The First Nations Fisheries Council **coordinated** much of this consultation. In the end, a draft Bill to amend the Fisheries Act was tabled in Parliament in February 2018. At the time of writing is being reviewed by the Senate.

INCLUDING INDIGENOUS KNOWLEDGE AND PERSPECTIVES

As a result of these consultations and the long history of activism of First Nations around control of their fisheries, the federal government - in this supposed era of reconciliation - has actually included some proposed amendments to the Act that are meant to support a renewed relationship and re-insert Indigenous perspectives on fish and fish habitat management. The proposed changes would:

- Require consideration of provided Indigenous traditional knowledge on habitat decisions, and would protect that knowledge from being disclosed once provided to the Minister;
- Require consideration of adverse effects on the rights of Indigenous peoples when making decisions under the Fisheries Act;
- Enable agreements with “Indigenous governing bodies” to carry out the stated purposes of the Act;
- Before establishing any standards and codes of practice fish management, the Minister may consult with any Indigenous governing body;
- Enable the creation of advisory panels which may include Indigenous representation;
- Provide certainty for harvesters by enabling new regulations that would allow the issuance of leases or licences for a period greater than nine years.

Further to these proposals the Department of Fisheries and Oceans has **stated** that it will also introduce a modernized fish habitat protection program, which is meant to enhance partnering opportunities with Indigenous communities regarding the conservation and protection of fish habitat. DFO has also stated that it will support reconciliation through its ongoing relationships with Indigenous communities, and with its programs that support Indigenous communities in the exercise of its Aboriginal and treaty rights.

LIMITATIONS OF THE FISHERIES ACT

The proposed changes have a lot of value, on the surface. But there are concerns remaining.

First, regarding the inclusion of Indigenous peoples in the management of fisheries, many of the proposed changes merely encourage Indigenous participation. Certainly the DFO must “consider” Indigenous knowledge but there is nothing in the legislation that binds the department to integrate that knowledge into policy. The same can be said for the rights of Indigenous peoples.

And since those rights are the subject of ongoing debate, this consideration provision may be difficult to implement, even if symbolically important.

Finally, on the issue of consultation, there is nothing in the law that requires the Minister to consult with Indigenous peoples, but rather, the law suggests the Minister “may” consult. Taken together, the proposed changes to encourage Indigenous participation, but do not require it in any substantive form.

Second, the situation for BC’s wild salmon is desperate, as they continue to return to our waters in low numbers. This is due in large part by industry over-fishing. Because so many wild salmon populations are at historic lows, even the few fisheries that still allowed to operate impact the salmon populations which are endangered or threatened.

In management decisions, DFO often has to decide between conservation and industry fishing, and deals with pressure from both sectors. And despite policies designed to make conservation the highest priority, DFO seems to operate with the primary mandate to create fishing opportunities and to allow the maximum allowable catch to be taken.

So not much will change with the proposed amendments to the Fisheries Act, unfortunately. Despite the Minister’s consideration of Indigenous people’s knowledge and rights, the fishery industry lobby will continue to have disproportionate influence and the status quo will be maintained.

Historically, the Fisheries Act, and Canadian government policy generally have ignored Indigenous people’s prior ownership of land and resources including fish. While there have been some positive court rulings (the Gladstone case in 1996 to [Ahousaht](#) in 2018) plus the symbolic steps to include Indigenous peoples in this new Fisheries Act, I think we have to acknowledge that any real reconciliation needs to recognize and reinstate Indigenous authority and jurisdiction over their homelands and fisheries.