



Proposed Updates to the Applications for Authorization Regulations (SOR/2013-191)

Public consultation: 25 July – 21 September, 2018



Presentation overview

Context

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Overview of the proposed amendments

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Context

- This consultation is being launched while Bill C-68 is still under review by the Senate
- Fisheries and Oceans Canada is currently in the process of developing regulations, policies and other program instruments to support the modifications to the *Fisheries Act* should Bill C-68 receive Royal Assent.
- This will ensure preparedness for the coming into force of the amended *Fisheries Act*.
- This development of possible tools is being undertaken through engagement and early discussions with Canadians.

Consultation Paper: Approach to a key regulation under the proposed fish and fish habitat provisions of the *Fisheries Act*

Background

- The *Applications for Authorization under Paragraph 35(2) (b) of the Fisheries Act Regulations* were enacted in 2013.
- The regulation details the information and documentation that must be submitted by an applicant requesting such an authorization; and the timeline to process the application.
- The proposed amendments aim to:
 - Reflect the changes proposed in Bill C-68
 - Introduce updates to improve the process of administering the current Regulations

The Proposed Amendments

1. Reflecting new and amended provisions that would be part of the *Fisheries Act*
2. Amending, suspending or cancelling authorizations
3. Using certified habitat credits in the place of, or in addition to offsetting plan
4. Expanding ways to request financial security
5. Requiring geographic coordinates of the proposed offsetting measures
6. Notifying Indigenous communities

1- Reflecting new and amended provisions that would be part of the *Fisheries Act*

- These proposed amendments to the *Applications for Authorization Regulations* are basically housekeeping measures to reflect the proposed changes in Bill C-68.
- Examples:
 - *Remove references to “commercial, recreational or Aboriginal fishery”, and replace “serious harm” for “death of fish” and “harmful alteration, disruption or destruction of fish habitat”*

1- Reflecting new and amended provisions that would be part of the *Fisheries Act*

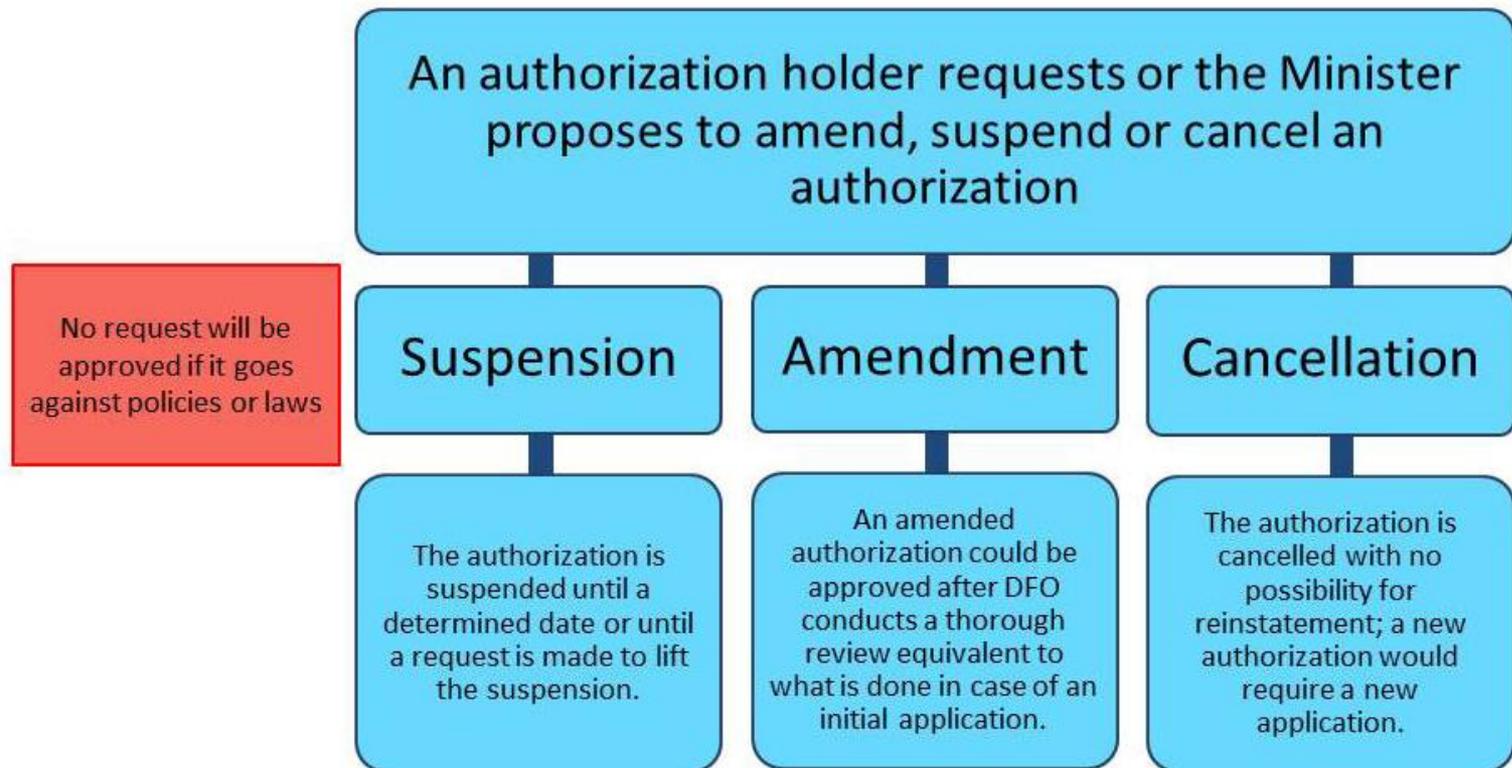
- Discussion question:
 - **Do you have any suggestions on the amendments related to the proposed changes to the *Fisheries Act* contained in Bill C-68?**

2- Amending, suspending or cancelling authorizations

- Bill C-68 proposes to modify the *Fisheries Act* to include a power for the Minister to amend, suspend or cancel authorizations.
- The amendments also include new authorities that would enable regulations that set out a clear process for project proponents to keep their authorizations up to date.
- The proposed amendments to the *Applications for Authorization Regulations* would set out the manner and circumstances by which an authorization may be amended, suspended or cancelled.

2- Amending, suspending or cancelling authorizations

Figure 1: Proposed framework for the Review to Amend, Suspend or Cancel an Authorization



2- Amending, suspending or cancelling authorizations

- Discussion question:
 - **Do you have any suggestions on amendment, suspension or cancellation of an authorization by the minister, including timelines?**

3- Certified habitat credits in the place of, or in addition to offsetting plan

- Bill C-68 proposes to amend the *Fisheries Act* to provide the Minister with the authority to administer a habitat banking scheme as possible means to offset anticipated adverse effects on fish and fish habitat.
- Since proponent-led habitat banking would be formalized under Bill C-68, the *Applications for Authorization Regulations* would be amended to reflect these changes.
- This amendment would allow for the acceptance of certified habitat credits in the place of or in addition to the offsetting plan required by the regulation.

3- Certified habitat credits in the place of, or in addition to offsetting plan

- Discussion question:
 - **Do you have any views about the use of certified habitat credits?**

4- Expanding ways to request financial security

- In the current *Applications for Authorization Regulations*, an irrevocable letter of credit issued by a recognized Canadian financial institution to cover the costs of implementing the offsetting plan is required at the time of the application.
- DFO is exploring whether additional forms of financial security would meet our policy objective while expanding options for proponents.
- One example of a financial security being considered is performance bonds.

4- Expanding ways to request financial security

- Discussion question:
 - **Do you have any suggestions or comments on various approaches to financial securities required for an offsetting plan?**

5- Requiring geographic coordinates of the proposed offsetting measures

- Currently an application for an authorization to carry on a proposed work, undertaking or activity must contain the geographic coordinates of this project.
- The amendment proposed here would require the same precision in describing the location of the offsetting measures the proponent is proposing.

5- Requiring geographic coordinates of the proposed offsetting measures

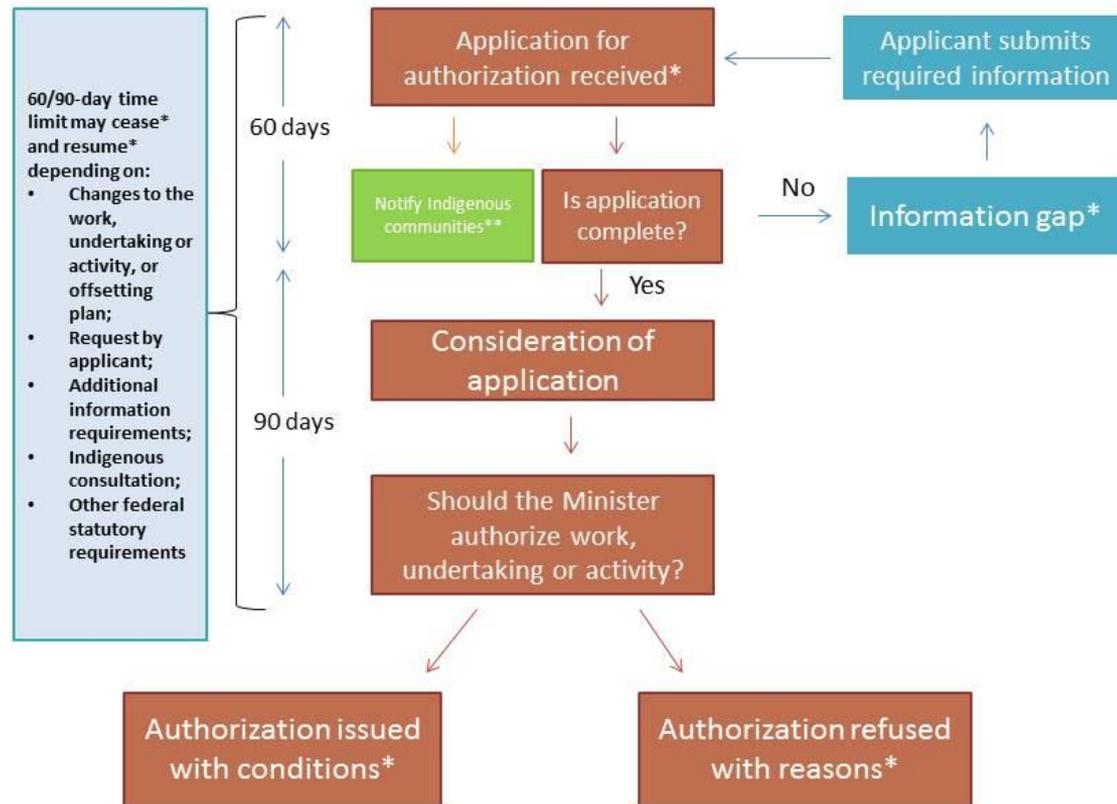
- Discussion question:
 - **Do you support the proposal to require geographical coordinates in the description of offsetting measures?**

6-Notifying Indigenous Communities

- With the proposed amendment to the *Applications for Authorization Regulations*, once an application is received the Minister would be required to notify any Indigenous community of an application for authorization when the proposal:
 - can have potential adverse effects on their rights;
 - can affect their communities; or
 - will take place in their traditional territories.
- The proposed notification process is not intended to replace the Crown's common law duty to consult—DFO will continue meet its duty to consult and uphold the honour of the Crown in relation to decisions that have the potential to cause adverse impacts on Aboriginal or Treaty rights.

6-Notifying Indigenous Communities

Figure 3: Process for the Review of an Application under the *Applications for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations* (Proposed Amendment).



*Regulations require the Minister to notify the applicant

**Regulations could be amended so the Minister would have to notify Indigenous communities

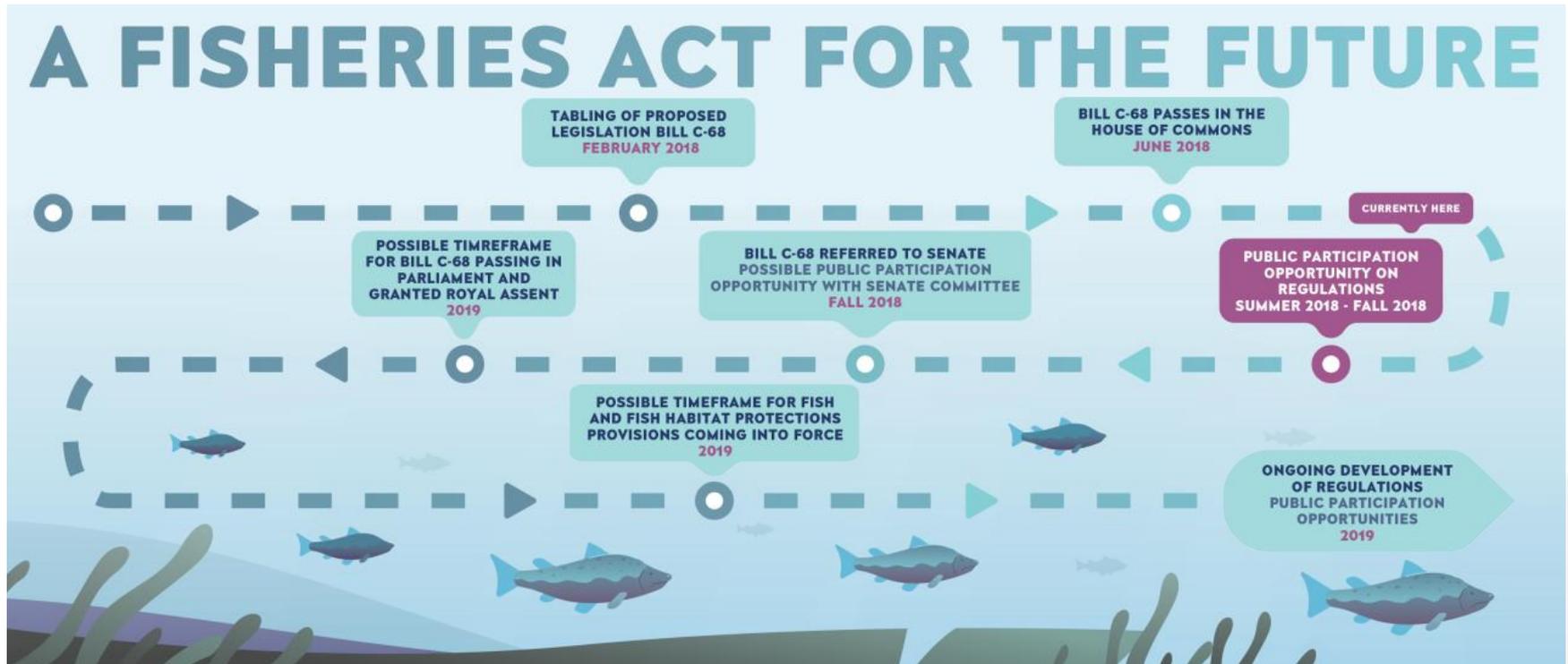
6-Notifying Indigenous Communities

- Discussion question:
 - **Do you have any suggestions regarding this proposed requirement for communication with Indigenous communities about an application for authorization?**

Next Steps

- Submit your comments on the [Consultation Paper](#) anytime before September 21st, 2018 by mail or email to:
 - Ecosystem Management Directorate
Mail stop: 10W085
200 Kent St
Ottawa ON K1A 0E6
Email: FPP-PPP.XNCR@dfo-mpo.gc.ca
- DFO will review the comments received as part of this consultation and propose specific amendments to the *Applications for Authorization Regulations*.
- The proposed amendments will be pre-published in Part I of the Canada Gazette as draft regulations for public comments.

Next Steps



Other links:

- [Bill C-68](#)
- [A Fisheries Act for the future](#)