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# CANADA'S FISH HABITAT LAW

**IF YOU ARE PLANNING WORK NEAR WATER,  
BETTER CHECK THE FISHERIES ACT FIRST – AND  
AVOID PROBLEMS LATER**

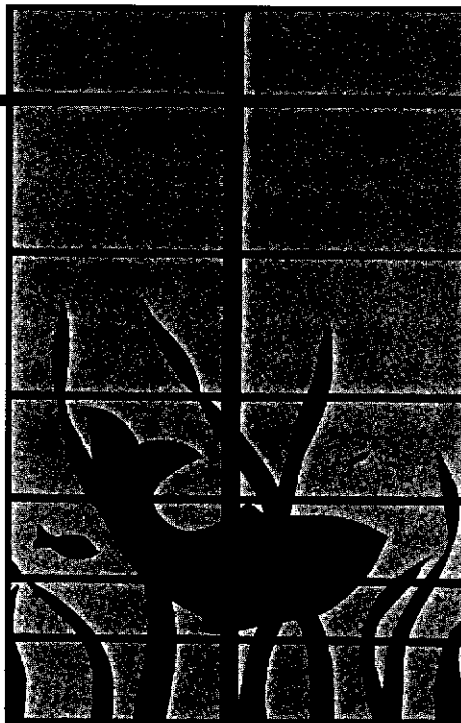
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Anyone buying property or planning work that might have some impact on coastal waters, salt marshes, streams, river beds, lakeshores or marine offshore areas should first inquire how Canada's fisheries habitat protection laws could affect their plans.

Protection of fish and those natural environmental systems that support fish is provided for under the federal *Fisheries Act*. This Act dates back to Confederation and is a strong tool to ensure the sound management of this valuable resource. Responsibility for the enforcement of the Act is not only to Parliament, but also to the clients and users of the fishery, the people of Canada.

## **WHAT IS A "FISH HABITAT"?**

While one way of conserving fish for the future is through direct management of the harvest, it is also critical that the natural systems that produce the fish be protected from



harm. These systems are referred to as "fish habitat" and this leaflet will describe the nature of the protection which the *Fisheries Act* provides.

The term "fish habitat" covers a great variety of environments where fish live. The *Fisheries Act* defines them as:

"Spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly

or indirectly in order to carry out their life processes."(Section 34(1))

In other words, the habitats include not only the water in rivers, lakes, streams and oceans, but also the quality of that water and the total surroundings in which plants and other life forms interact to make fish life possible.

## **MONEY IN THE BANK**

Fish are an important part of Canada's renewable resource base. Commercial and recreational fisheries contribute an estimated \$7 billion annually to the national economy in 1988 dollars. Other less tangible social benefits, such as support for traditional lifestyles in small, remote communities, also flow from the fishery base. For these reasons, it is important that fish and their supporting habitat be protected.

One problem up to now has been that most people do not automatically recognize the value of fish habitat. It is easy to enlist

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public support to protect a majestic river valley or a favorite swimming beach. An ordinary marsh or a smelly tidal flat is far more likely to be dredged, paved over or otherwise destroyed as a fish habitat without the public realizing that something of significant economic and social value has been lost. And yet fish habitats are vital assets to Canadians – in fact, money in the bank. They are essential to the survival of fish and represent the bedrock of our commercial and recreational fisheries. They are as essential to those industries as topsoil is to farming.

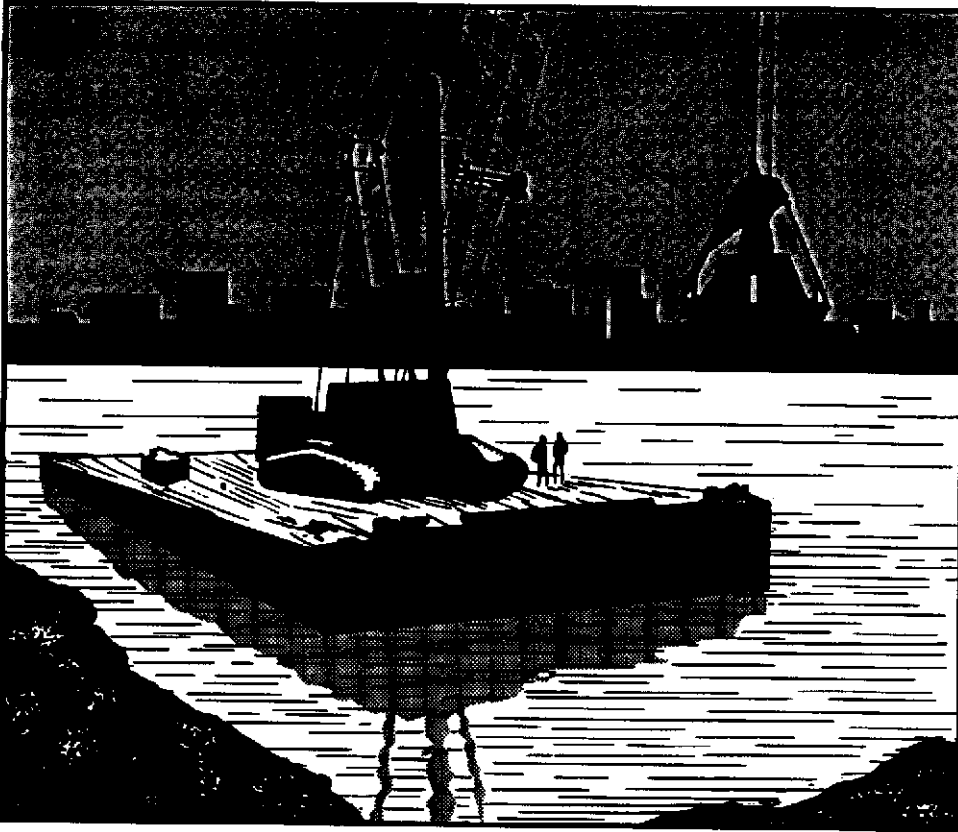
Another problem is that a fish habitat can be wiped out without much visible evidence of the destruction. For example, the eggs of salmon and trout cannot survive just anywhere – they must be laid in streams where there is a bed of gravel. Take away the gravel and the stream will flow as before on the surface, but it will not be a spawning stream. Some fish, and the food organisms on which they depend, need fast-running water to survive, and if the water is dammed they may be lost. Landfilling and paving over marshes can cut off the flow of nutrients and food which fish need for growth.

## WHAT HARMS HABITAT?

Fish habitat can be damaged in ways both obvious and obscure and by changes big and small. A multi-million dollar hydro project can take its toll, but so can a poorly installed culvert on a farm lane that blocks fish migration by crossing a salmon or trout stream.

Among the most common threats posed to fish habitat are those associated with:

- removal of sand or gravel from beaches, riverbanks or streambeds,
- industrial and municipal waste discharges,
- stream diversion,
- dredging or filling of tidal flats or marshland,
- dredging for deep-sea port construction,
- accidents during the development of offshore oil and gas reserves,



- seabed mining,
- introduction of silt, contaminants and other pollutants,
- land clearing to provide for agricultural or urban development,
- improper use of pesticides,
- construction of electric power installations,
- diking and stream channelization,
- building of causeways, wharves, marinas and reservoirs,
- logging and log storage, and
- pipelines, transmission lines, road and rail construction.

These projects and many others may do irreparable damage and can cause social and economic losses to fisheries if not carefully planned. So may any project that upsets the physical, chemical and biological balance of fish habitats.

## CHECK BEFORE STARTING

The existence of federal laws relating to the aquatic environment does not mean that fisheries management personnel will be

blocking every project affecting fish habitats. It does mean, however, that the project's impact on fisheries will have to be considered before the activity begins.

The Minister responsible for the *Fisheries Act* can require a developer to submit complete information, including plans, specifications, studies and samples, for scrutiny by fisheries management authorities. If these show possible dangers to fish habitat, the Minister can order that the plans be changed.

Failure to comply with the law may result in fines of up to \$1,000,000 or up to three years imprisonment on conviction after indictment.

In most cases, early consultation between the developer and the government officials responsible for fish habitat management will make it possible to devise a plan that meets the needs of all concerned. Fish habitat experts can provide advice and assistance that may well improve the project for the developer, even while enhancing the fisheries resource base.

The following are extracts from the *Fisheries Act* and relate only to the protection of fish habitat. The extracts have been slightly modified in some cases and follow

a sequence designed for easy reference to the habitat provisions of the Act.

## DEFINITIONS

### Canadian Fisheries Waters:

**Section 2:** In this Act, "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.

### Fish:

**Section 2:** "Fish" includes:

- (a) parts of fish,
- (b) shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals, and
- (c) the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals;

### Obstruction:

**Section 2:** "Obstruction" means any slide, dam or other obstruction impeding the free passage of fish.

### Fish Habitat:

**Section 34(1):** For the purpose of sections 35 to 43, "fish habitat" means spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes.

### Deleterious Substance:

**Section 34(1):** For the purposes of sections 35 to 43, "deleterious substance" means

- (a) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the

quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, or

(b) any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water,

and without limiting the generality of the foregoing includes

(c) any substance or class of substances prescribed pursuant to paragraph (2)(a),

(d) any water that contains any substance or class of substances in a quantity or concentration that is equal to or in excess of a quantity or concentration prescribed in respect of that substance or class of substances pursuant to paragraph (2)(b), and

(e) any water that has been subjected to a treatment, process or change prescribed pursuant to paragraph (2)(c).

**Deposit:**

**Section 34(1):** For the purpose of sections 35 to 43, "deposit" means any discharging, spraying, releasing, spilling, leaking, seeping, pouring, emitting, emptying, throwing, dumping or placing.

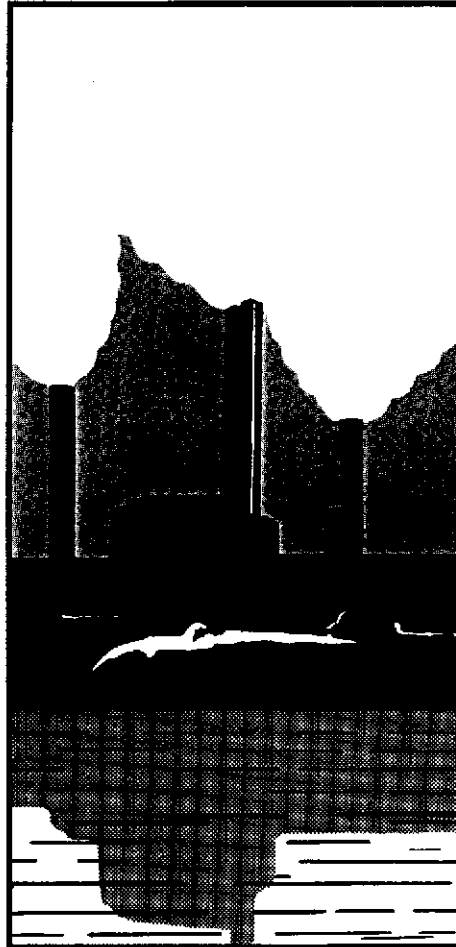
**Water Frequented by Fish:**

**Section 34(1):** "Water frequented by fish" means Canadian fisheries waters.

**Further Explanation:**

**Section 40(5):**

(a) A "deposit" as defined in subsection 34(1) takes place whether or not any act or



omission resulting in the deposit is intentional; and

(b) no water is "water frequented by fish", as defined in subsection 34(1), where proof is made that at all times material to the proceedings the water is not, has not been and is not likely to be frequented in fact by fish.

**THE NEED FOR SAFE FISH PASSAGE**

**Section 20(1):** Every obstruction across or in any stream where the Minister determines it to be necessary for the public interest that a fish-pass should exist shall be provided by the owner or occupier with a durable and efficient fish-way or canal around the obstruction, which shall be maintained in a good and effective condition by the owner or occupier, in such place and of such form and capacity as will in the opinion of the Minister sat-

isfactorily permit the free passage of fish through it.

**Section 20(3):** The place, form and capacity of the fish-way or canal to be provided pursuant to subsection (1) must be approved by the Minister before construction thereof is begun and, immediately after the fish-way is completed and in operation, the owner or occupier of any obstruction shall make such changes and adjustments at his own cost as will in the opinion of the Minister be necessary for its efficient operation under actual working conditions.

**Section 20(4):** The owner or occupier of every fish-way or canal shall keep it open and unobstructed and shall keep it supplied with such sufficient quantity of water as the Minister considers necessary to enable the fish frequenting the waters in which the fish-way or canal is placed to pass through it during such times as are specified by any fishery officer, and, where leaks in a dam cause a fish-way therein to be inefficient, the Minister may require the owner or occupier of the dam to prevent the leaks therein.

**Section 21(1):** The Minister may authorize the payment of one-half of the expense incurred by an owner or occupier in constructing and maintaining any fish-way or canal and, after a fish-way or canal that has been duly approved by the Minister has been built at the cost of the owner or occupier of any obstruction, or after the owner or occupier has paid one-half the cost thereof and the fish-way or canal thereafter proves to be ineffective, the total cost of any change in the fish-way or canal or any new fish-way or canal required to enable the fish to pass by the obstruction shall, except as provided in subsection 20(3), be paid by Her Majesty.

**Section 21(2):** The Minister, in order to procure the construction of any fish-way or canal, pending proceedings against any

owner or occupier for the punishment imposed by this Act, may make and complete the construction forthwith, and may authorize any person to enter on the premises with the necessary workmen, means and materials for that purpose and may recover from the owner or occupier the whole expense so incurred by action in the name of Her Majesty.

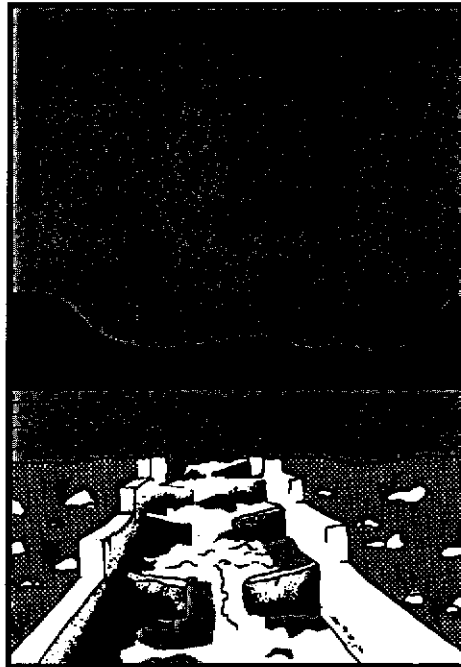
**Section 21(3):** Where an unused obstruction or a thing detrimental to fish exists and the owner or occupier thereof does not after notice given by the Minister remove it, or if the owner is not resident in Canada, or his exact place of residence is unknown to the Minister, the Minister may, without being liable to damages, or in any way to indemnify the owner or occupier, cause the obstruction or thing detrimental to fish to be removed or destroyed and, where notice has been given to the owner or occupier, may recover from the owner or occupier the expense of the removal or destruction.

## MINIMUM FLOW REQUIREMENTS

**Section 21(4):** The Minister may require the owner or occupier of any obstruction to install and maintain such fish stops or diverters, both above and below the obstruction, as will in his opinion be adequate to prevent the destruction of fish or to assist in providing for their ascent.

**Section 22(1):** At every obstruction, where the Minister determines it to be necessary, the owner or occupier thereof shall, when required by the Minister, provide a sufficient flow of water over the spill-way or crest, with connecting sluices into the river below, to permit the safe and unimpeded descent of fish.

**Section 22(2):** The owner or occupier of any obstruction shall make such provision as the Minister determines to be necessary for the free passage of both ascending and



descending migratory fish during the period of construction thereof.

**Section 22(3):** The owner or occupier of any obstruction shall permit the escape into the river-bed below the obstruction of such quantity of water, at all times, as will, in the opinion of the Minister, be sufficient for the safety of fish and for the flooding of the spawning grounds to such depth as will, in the opinion of the Minister, be necessary for the safety of the ova deposited thereon.

## Penalties:

**Section 66:** Every owner or occupier of an obstruction across or in any stream who refuses or neglects to provide and maintain a fish-way or canal in accordance with section 20, to install and maintain fish stops or diverters in accordance with subsection 21(4) or to provide for a sufficient flow of water and the free passage of fish in accordance with section 22 is guilty of an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding two hundred thousand dollars and, for any subsequent offence, to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both.

## RECOVERY OF COSTS FOR OBSTRUCTION TO FISH PASSAGE

**Section 20(2):** Where it is determined by the Minister in any case that the provision of an efficient fish-way or canal around the obstruction is not feasible, or that the spawning areas above the obstruction are destroyed, the Minister may require the owner or occupier of the obstruction to pay to him from time to time such sum or sums of money as he may require to construct, operate and maintain such complete fish hatchery establishment as will in his opinion meet the requirements for maintaining the annual return of migratory fish.

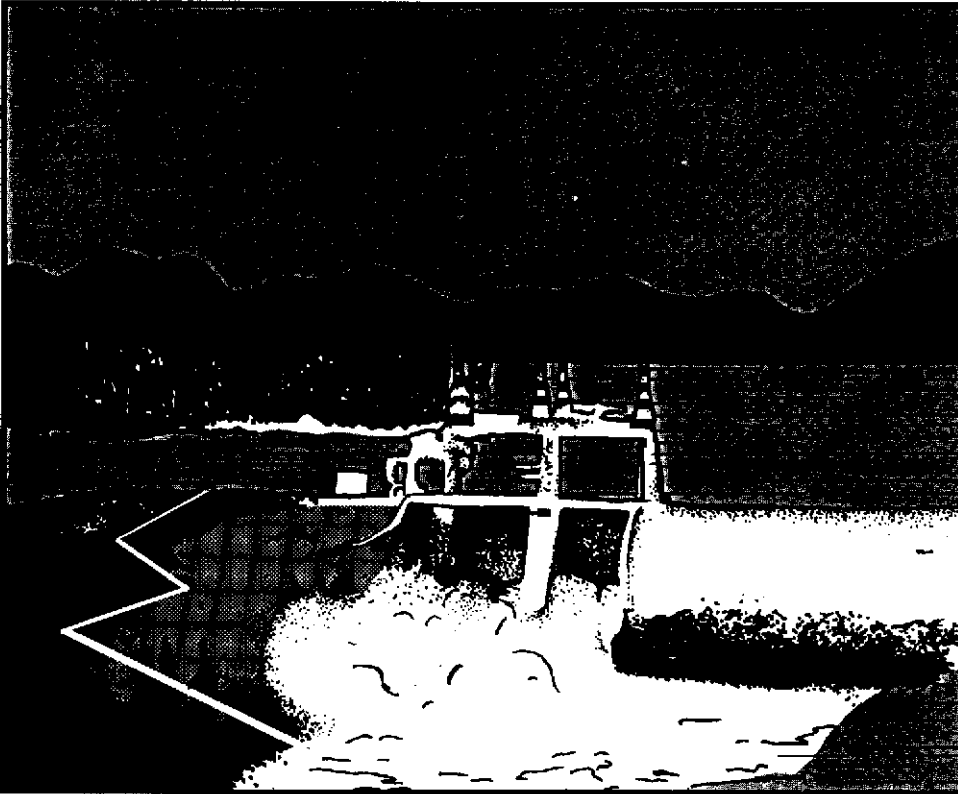
## PROTECTION OF FISH IN OR NEAR FISH-WAYS

**Section 27:** No one shall

- (a) damage or obstruct any fish-way or canal built, constructed or used to enable fish to pass over or around any obstruction;
- (b) do anything to stop, impede or hinder fish from entering or passing the fish-way or canal or to stop, impede or hinder fish from surmounting any obstacle or leap; or
- (c) fish in any manner within twenty-five yards downstream from the lower entrance to any fish-way, canal, obstacle or leap.

**Section 29(1):** No one shall erect, use or maintain in any of the Canadian fisheries waters, where subject to any exclusive right of fishery or not, any net, weir or other device that unduly obstructs the passage of fish.

**Section 29(2):** The Minister or a fishery officer may order the removal of or remove any net, weir or other device that, in the opinion of the Minister or fishery officer, unduly obstructs the passage of fish.



### Penalties:

Refer to general penalties section on Page 12.

## FISH GUARDS AND SCREENS

**Section 30(1):** Every water intake, ditch, channel or canal in Canada constructed or adapted for conducting water from any Canadian fisheries waters for irrigating, manufacturing, power generation, domestic or other purposes shall, if the Minister deems it necessary in the public interest, be provided at its entrance or intake with a fish guard or a screen, covering or netting so fixed as to prevent the passage of fish from any Canadian fisheries waters into the water intake, ditch, channel or canal.

**Section 30(2):** The fish guard, screen, covering or netting referred to in subsection (1) shall

- (a) have meshes or holes of such dimensions as the Minister may prescribe; and
- (b) be built and maintained by the owner or

occupier of the water intake, ditch, channel or canal referred to in subsection (1), subject to the approval of the Minister or of such officer as the Minister may appoint to examine it.

**Section 30(3):** The owner or occupier of the water intake, ditch, channel or canal referred to in subsection (1) shall maintain the fish guard, screen, covering or netting referred to in that subsection in a good and efficient state of repair and shall not permit its removal except for renewal or repair.

**Section 30(4):** During the time in which a renewal or repair referred to in subsection (1) is being effected, the sluice or gate at the intake or entrance of the water intake, ditch, channel or canal shall be closed in order to prevent the passage of fish into the water intake, ditch, channel or canal.

### Penalties:

**Section 69:** Every owner or occupier of a water intake, ditch, channel or canal referred to in subsection 30(1) who refuses or neglects to provide and maintain a fish guard, screen, covering or netting in

accordance with subsections 30(1) to (3), permits the removal of a fish guard, screen, covering or netting in contravention of subsection 30(3) or refuses or neglects to close a sluice or gate in accordance with subsection 30(4) is guilty of an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding two hundred thousand dollars and, for any subsequent offence, to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both.

## DESTRUCTION OF FISH

**Section 32:** No person shall destroy fish by any means other than fishing except as authorized by the Minister or under regulations made by the Governor in Council under this Act.

### Penalties:

Refer to general penalties section on Page 12.

## DESTRUCTION OF FISH HABITAT

**Section 35(1):** No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.

**Section 35(2):** No person contravenes subsection (1) by causing the alteration, disruption or destruction of fish habitat by any means or under any conditions authorized by the Minister or under regulations made by the Governor in Council under this Act.

### Penalties:

**Section 40(1):** Every person who contravenes subsection 35(1) is guilty of

- (a) an offence punishable on summary conviction and liable, for a first offence, to



a fine not exceeding three hundred thousand dollars and, for any subsequent offence, to a fine not exceeding three hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both; or

- (b) an indictable offence and liable, for a first offence, to a fine not exceeding one million dollars and, for any subsequent offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years, or to both.

### DISCARD OF MISCELLANEOUS MATERIALS

**Section 36(1):** No one shall

- (a) throw overboard ballast, coal ashes, stones or other prejudicial or deleterious substances in any river, harbour or roadstead, or in any water where fishing is carried on;
- (b) leave or deposit or cause to be thrown, left or deposited, on the shore, beach or bank of any water or on the beach between high and low water mark, remains or offal of fish or of marine animals; or
- (c) leave decayed or decaying fish in any net or other fishing apparatus.

### POLLUTION OF FISH HABITAT

**Section 36(3):** Subject to subsection 36(4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substance or any other deleterious substance that results from the deposit of the deleterious substance may enter any such water.

**Section 36(4):** No person contravenes subsection 36(3) by depositing or permitting the deposit in any water or place of

- (a) waste or pollutant of a type, in a quantity and under conditions authorized by

regulations applicable to that water or place made by the Governor in Council under any Act other than this Act; or

- (b) a deleterious substance of a class, in a quantity or concentration and under conditions authorized by or pursuant to regulations applicable to that water or place or to any work or undertaking or class thereof, made by the Governor in Council under subsection 36(5).

### Penalties:

**Section 40(2):** Every person who contravenes subsection 36(1) or (3) is guilty of

- (a) an offence punishable on summary conviction and liable for a first offence, to a fine not exceeding three hundred thousand dollars and, for any subsequent offence, to a fine not exceeding three hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both; or
- (b) an indictable offence and liable, for a first offence, to a fine not exceeding one million dollars and, for any subsequent offence, to a fine not exceeding one million dollars or to imprisonment for a term not exceeding three years, or to both.

### OBLIGATIONS OF PROPONENTS

**Section 37(1):** Where a person carries on or proposes to carry on any work or undertaking that results or is likely to result in the alteration, disruption or destruction of fish habitat, or in the deposit of a deleterious substance in water frequented by fish or in any place under any conditions where that deleterious substance or any other deleterious substances that results from the deposit of that deleterious substance may enter any such waters, the person shall, on the request of the Minister or without request in the manner and circumstances prescribed by regulations made under paragraph 37(3)(a), provide the Minister with such plans, specifications, studies, procedures, schedules, analyses, samples or other information relating to the work or undertaking and with such analyses, samples, evaluations, studies or other information relating to the water, place or fish habitat that is or is likely to be affected by the work or undertaking as will enable the Minister to determine

- (a) whether the work or undertaking results or is likely to result in any alteration, disruption or destruction of fish habitat that constitutes or would constitute an offence under subsection 40(1) and what measures, if any, would prevent that result or mitigate the effects thereof; or
- (b) whether there is or is likely to be a deposit of a deleterious substance by reason of the work or undertaking that constitutes or would constitute an offence under subsection 40(2) and what measures, if any, would prevent that deposit or mitigate the effects thereof.

### POWERS OF THE MINISTER

**Section 37(2):** If, after reviewing any material or information provided under subsection 37(1) and affording the persons who provided it a reasonable opportunity to make representations, the Minister or



a person designated by the Minister is of the opinion that an offence under subsection 40(1) or (2) is being or is likely to be committed, the Minister or a person designated by the Minister may, by order, subject to regulations made pursuant to paragraph 37(3)(b), or, if there are no such regulations in force, with the approval of the Governor in Council,

(a) require such modifications or additions to the work or undertaking or such modifications to any plans, specifications, procedures or schedules relating thereto as the Minister or a person designated by the Minister considers necessary in the circumstances,

(b) restrict the operation of the work or undertaking,

and with the approval of the Governor in Council in any case, direct the closing of the work or undertaking for such period as the Minister or a person designated by the Minister considers necessary in the circumstances.

## OFFER TO CONSULT AND INTERIM ORDERS

**Section 37(4):** Where the Minister or a person designated by the Minister proposes

to make an order pursuant to subsection 37(2), he shall offer to consult with the governments of any provinces that he considers to be interested in the proposed order and with any departments or agencies of the Government of Canada that he considers appropriate.

**Section 37(5):** Nothing in subsection (4) prevents the Minister or a person designated by the Minister from making an interim order pursuant to subsection 37(2) without the offer of consultation referred to in subsection (4) where he considers that immediate action is necessary.

## DUTY TO REPORT

**Section 38(4):** Where, out of the normal course of events, there occurs a deposit of a deleterious substance in water frequented by fish or a serious and imminent danger thereof by reason of any condition, and where any damage or danger to fish habitat or fish or the use by man of fish results or may reasonably be expected to result therefrom, any person who at any material time

(a) owns the deleterious substance or has the charge, management or control thereof, or  
(b) causes or contributes to the causation of the deposit or danger thereof,  
shall, in accordance with any regulations applicable thereto, report such occurrence to an inspector or such other person or authority as is prescribed by the regulations.

## DUTY TO PREVENT OR MINIMIZE DAMAGE

**Section 38(5):** Every person referred to in paragraph 38(4)(a) or (b) shall, as soon as possible in the circumstances, take all reasonable measures consistent with safety and with the conservation of fish and fish habitat to prevent any occurrence referred to in subsection 38(4) or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result therefrom.

## Penalties:

**Section 40(3):** Every person who

(a) fails to provide the Minister with any material or information requested pursuant to subsection 37(1) within a reasonable time after the request is made,

(b) fails to provide or submit any material, information or report that is to be provided or submitted under regulations made pursuant to subsection 37(3),

(c) fails to make a report that he is required to make under subsection 38(4),

(d) carries on any work or undertaking described in subsection 37(1)

(i) otherwise than in accordance with any material or information relating to the work or undertaking that he provides to the Minister under subsection 37(1),

(ii) otherwise than in accordance with any such material or information as required to be modified by any order of the Minister under paragraph 37(2)(a), or  
(iii) contrary to any order made by the Minister under subsection 37(2),

(e) fails to take any reasonable measures that he is required to take under subsection

38(5) or fails to take such measures in the required manner

is guilty of an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding two hundred thousand dollars and, for any subsequent offence, to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both.

## POWER TO MAKE REGULATIONS

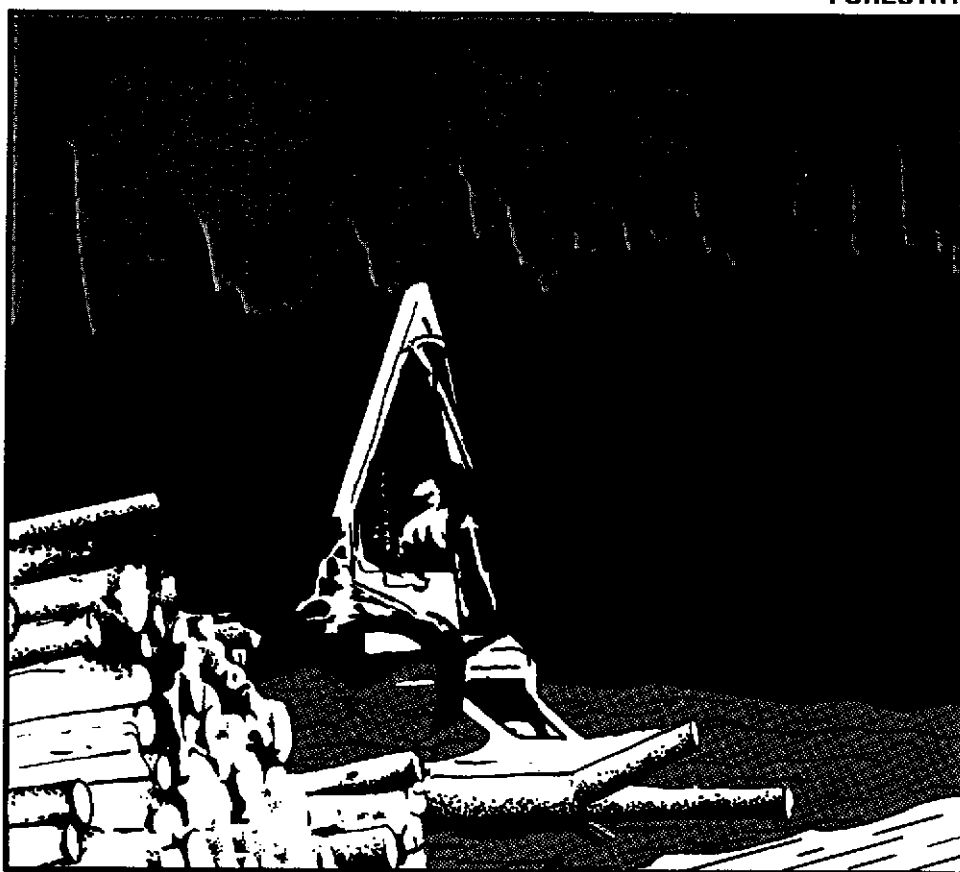
**Section 34(2):** The Governor in Council may make regulations prescribing

- (a) substances and classes of substances,
- (b) quantities or concentrations of substances and classes of substances in water, and
- (c) treatments, processes and changes of water

for the purposes of paragraphs (c) to (e) of the definition "deleterious substance" in subsection 34(1).

**Section 36(5):** The Governor in Council may make regulations for the purpose of paragraph 36(4)(b) prescribing

- (a) the deleterious substances or classes thereof authorized to be deposited notwithstanding subsection 36(3);
- (b) the waters or places or classes thereof where any deleterious substances or classes thereof referred to in paragraph (a) are authorized to be deposited;
- (c) the works or undertakings or classes thereof in the course or conduct of which any deleterious substances or classes thereof referred to in paragraph (a) are authorized to be deposited;
- (d) the quantities or concentrations of any deleterious substances or classes thereof referred to in paragraph (a) that are authorized to be deposited;
- (e) the conditions or circumstances under which and the requirements subject to which any deleterious substances or classes thereof referred to in paragraph (a) or any quantities or concentrations of those deleterious substances or classes thereof are authorized to be deposited in any



waters or places or classes thereof referred to in paragraph (b) or in the course or conduct of any works or undertakings or classes thereof referred to in paragraph (c); and

- (f) the persons who may authorize the deposit of any deleterious substances or classes thereof in the absence of any other authority, and the conditions or circumstances under which and requirements subject to which those persons may grant the authorization.

**Section 37(3):** The Governor in Council may make regulations

- (a) prescribing the manner and circumstances in which any information or material shall be provided to the Minister without request under subsection 37(1); and
- (b) prescribing the manner and circumstances in which the Minister or a person designated by the Minister may make orders under subsection 37(2) and the terms of the orders.

**Section 38(9):** The Governor in Council may make regulations prescribing

- (a) the person or authority to whom or which a report is to be made under subsection 38(4), the manner in which the report is to be made, the information to be contained therein and the circumstances in which no report is required to be made;
- (b) the manner in which inspectors may take any measures or give any directions under subsection 38(6) and the conditions to which such measures or directions are subject;
- (c) the manner and circumstances in which any measures taken or directions given under subsection 38(6) may be reviewed, rescinded or varied; and
- (d) any other matters necessary for or incidental to carrying out the purposes and provisions of this section.

**Section 43:** The Governor in Council may make regulations for carrying out the purposes and provisions of this Act and in particular, but without restricting the generality of the foregoing, may make regulations

- (b) respecting the conservation and protection of fish;

- (h) respecting the obstruction and pollution of any waters frequented by fish;
- (i) respecting the conservation and protection of spawning grounds;
- (l) prescribing the powers and duties of persons engaged or employed in the administration or enforcement of this Act and providing for the carrying out of those powers and duties.

## DESIGNATION OF PROTECTED FISH AREAS

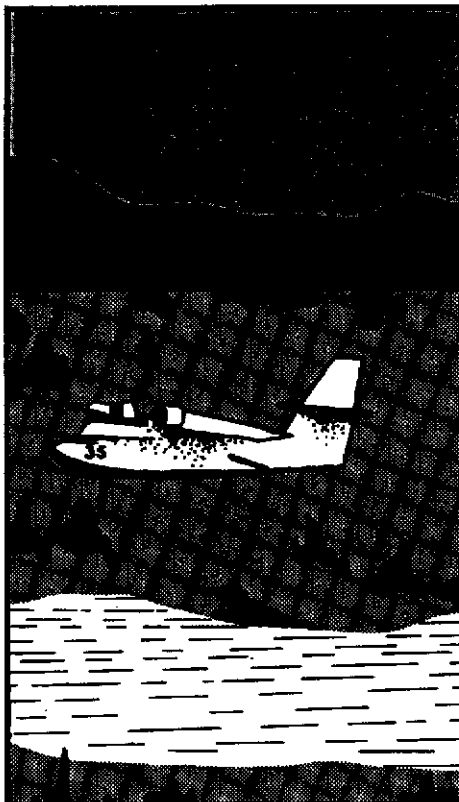
**Section 57:** The Minister may authorize any river or other water to be set apart for the natural or artificial propagation of fish.

## POWERS OF INSPECTORS

**Section 38(1):** For the purposes of this section, the Minister may designate as an inspector or analyst any person who, in the opinion of the Minister, is qualified to be so designated.

**Section 38(3):** An inspector may, at any reasonable time, enter any place, premises, vehicle or vessel, other than a private dwelling-place or any part of any place, premises, vehicle or vessel used as a permanent or temporary private dwelling-place, where the inspector believes on reasonable grounds that any work or undertaking resulting or likely to result in the deposit of a deleterious substance in water frequented by fish or in any place under any conditions referred to in subsection 37(1) is being, has been or is likely to be carried on, and the inspector may, for any purpose related to the enforcement of this section, conduct inspections, including examining any substance or product found therein, taking samples thereof and conducting tests and measurements.

**Section 38(3.1):** An inspector with a warrant issued under subsection (3.2)



may at any reasonable time enter any place, premises, vehicle or vessel, other than a private dwelling-place or any part of any place, premises, vehicle or vessel used as a permanent or temporary private dwelling-place, where the inspector believes on reasonable grounds that an offence under subsection 40(2) is being or has been committed and search that place, premises, vehicle or vessel for evidence of the offence.

**Section 38(3.2):** Where on *ex parte* application a justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that there is in any place, premises, vehicle or vessel referred to in subsection (3.1)

- (a) anything on or in respect of which an offence under subsection 40(2) is being or has been committed, or
- (b) anything that there are reasonable grounds to believe will afford evidence with respect to the commission of an offence under subsection 40(2),

the justice of the peace may issue a warrant under his hand authorizing the inspector named therein to enter and search the place, premises, vehicle or vessel for any such

thing subject to such conditions as may be specified in the warrant.

**Section 38(3.3):** In exceeding a warrant issued under subsection (3.2), the inspector named therein shall not use force unless the inspector is accompanied by a peace officer and the use of force has been specifically authorized in the warrant.

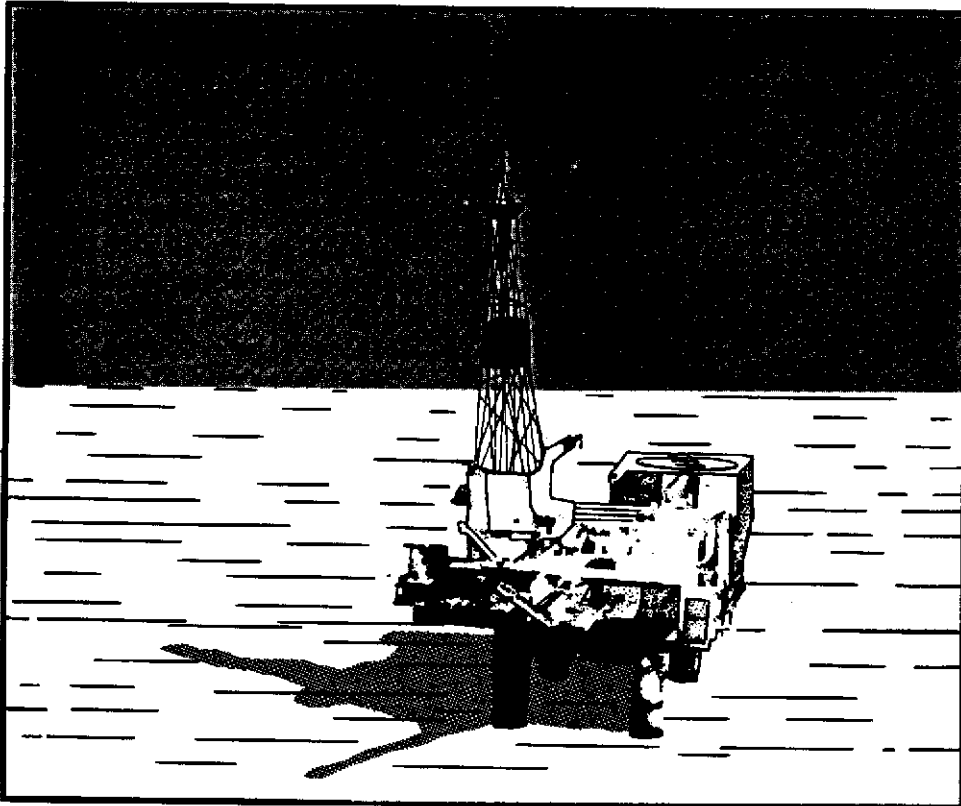
**Section 38(3.4):** An inspector may exercise the powers of entry and search referred to in subsection (3.1) without a warrant issued under subsection (3.2) if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

**Section 38(6):** Where an inspector, whether or not a report has been made under subsection 38(4), is satisfied on reasonable grounds that there is an occurrence referred to in subsection 38(4) and that immediate action is necessary in order to carry out any reasonable measures referred to in subsection 38(5), he may, subject to subsection (7) and the regulations, take any such measures or direct that they be taken by any person referred to in paragraph 38(4)(a) or (b).

**Section 38(7):** Any requirement or direction of an inspector under this section that is inconsistent with any requirement or order of a pollution prevention officer under the *Canada Shipping Act* is void to the extent of the inconsistency.

## Penalties:

**Section 40(3):** Every person who (f) fails to comply with the whole or any part of a direction of an inspector under subsection 38(6), is guilty of an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding two hundred thousand dollars and, for any subsequent offence, to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding six months, or to both.



## POWERS OF FISHERY OFFICERS

**Section 49(1):** For the purpose of ensuring compliance with this Act and the regulations, a fishery officer or fishery guardian may enter and inspect any place, including any premises, vessel or vehicle, in which the officer or guardian believes on reasonable grounds there is any work or undertaking or any fish or other thing in respect of which this Act or the regulations apply and may

- (a) open any container that the officer or guardian believes on reasonable grounds contains any fish or other thing in respect of which this Act or the regulations apply;
- (b) examine any fish or other thing that the officer or guardian finds and take samples of it;
- (c) conduct any tests or analyses and take any measurements; and
- (d) require any person to produce for examination or copying any records, books of account or other documents that the officer or guardian believes on reasonable grounds contain information that is relevant to the administration of this Act or the regulations.

**Section 49(1.1):** In carrying out an inspection of a place under subsection (1), a fishery officer or fishery guardian may,

- (a) use or cause to be used any data processing system at the place to examine any data contained in or available to the data processing system;
- (b) reproduce any record or cause it to be reproduced from the data in the form of a print-out or other intelligible output and remove the print-out or other output for examination or copying; and
- (c) use or cause to be used any copying equipment at the place to make copies of any record, book of account or other document.

**Section 49(1.2):** The owner or person in charge of a place that is inspected by a fishery officer or fishery guardian under subsection (1) and every person found in the place shall

- (a) give the officer or guardian all reasonable assistance to enable the officer or guardian to carry out the inspection and exercise any power conferred by this section; and
- (b) provide the officer or guardian with any information relevant to the administration

of this Act or the regulations that the officer or guardian may reasonably require.

**Section 49(2): Summary:** *However a fishery officer or fishery guardian may require a warrant to enter a private dwelling.*

**Section 49.1(1):** A fishery officer with a warrant issued may enter and search any place, including any premises, vessel or vehicle, in which the officer believes on reasonable grounds there is

- (a) any word or undertaking that is being or has been carried on in contravention of this Act or the regulations;
- (b) any fish or other thing by means of or in relation to which this Act or the regulations have been contravened; or
- (c) any fish or other thing that will afford evidence in respect of a contravention of this Act or the regulations.

**Section 49.1(2):** Where on *ex parte* application a justice of the peace is satisfied by information on oath that there are reasonable grounds to believe that there is in any place referred to in subsection (1) any fish or other thing referred to in subsection (1), the justice may issue a warrant authorizing the fishery officer named in the warrant to enter and search the place for the thing subject to any conditions that may be specified in the warrant.

**Section 49.1(3):** Notwithstanding subsection (1), a fishery officer may exercise the power of search referred to in that subsection without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be practical to obtain the warrant.

**Section 50:** Any fishery officer, fishery guardian or peace officer may arrest without warrant a person who that fishery officer, guardian or peace officer believes, on reasonable grounds, has committed an offence against this Act or any of the regulations, or whom he finds committing or preparing to commit an offence against this Act or any of the regulations.

**Section 52:** In the discharge of his duties, any fishery officer, fishery guardian or other person accompanying him or authorized to such effect by the fishery officer may enter on and pass through or over private property without being liable for trespass.

**Section 56:** Gurry grounds may be designated or defined by any fishery officer. (*Gurry may be defined as the waste parts of fish; for example, the head, tail, fins and entrails.*)

## SEIZURE OF EQUIPMENT

**Section 51:** A fishery officer or fishery guardian may seize any fishing vessel, vehicle, fish or other thing that the officer or guardian believes on reasonable grounds was obtained by or used in the commission of an offence under this Act or will afford evidence of an offence under this Act, including any fish that the officer or guardian believes on reasonable grounds

- (a) was caught, killed, processed, transported, purchased, sold or possessed in contravention of this Act or the regulations; or
- (b) has been intermixed with fish referred to in paragraph (a).

## GENERAL PENALTIES

**Section 78:** Except as otherwise provided in this Act, every person who contravenes this Act or the regulations is guilty of

- (a) an offence punishable on summary conviction and liable, for a first offence, to a fine not exceeding one hundred thousand dollars and, for any subsequent offence, to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding one year, or to both; or
- (b) an indictable offence and liable, for a first offence, to a fine not exceeding five hundred thousand dollars and, for any subsequent offence, to a fine not exceeding five



hundred thousand dollars or to imprisonment for a term not exceeding two years, or to both.

**Section 78.1:** Where any contravention of this Act or the regulations is committed or continued on more than one day, it constitutes a separate offence for each day on which the contravention is committed or continued

**Section 78.2:** Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the punishment provided for the offence, whether or not the corporation has been prosecuted.

**Section 78.3:** In any prosecution for a offence under this Act, it is sufficient

proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused.

**Section 78.4:** In any prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by a person in respect of any matter relating to any operations under a lease or licence issued to the accused pursuant to this Act or the regulations, whether or not the person is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused.

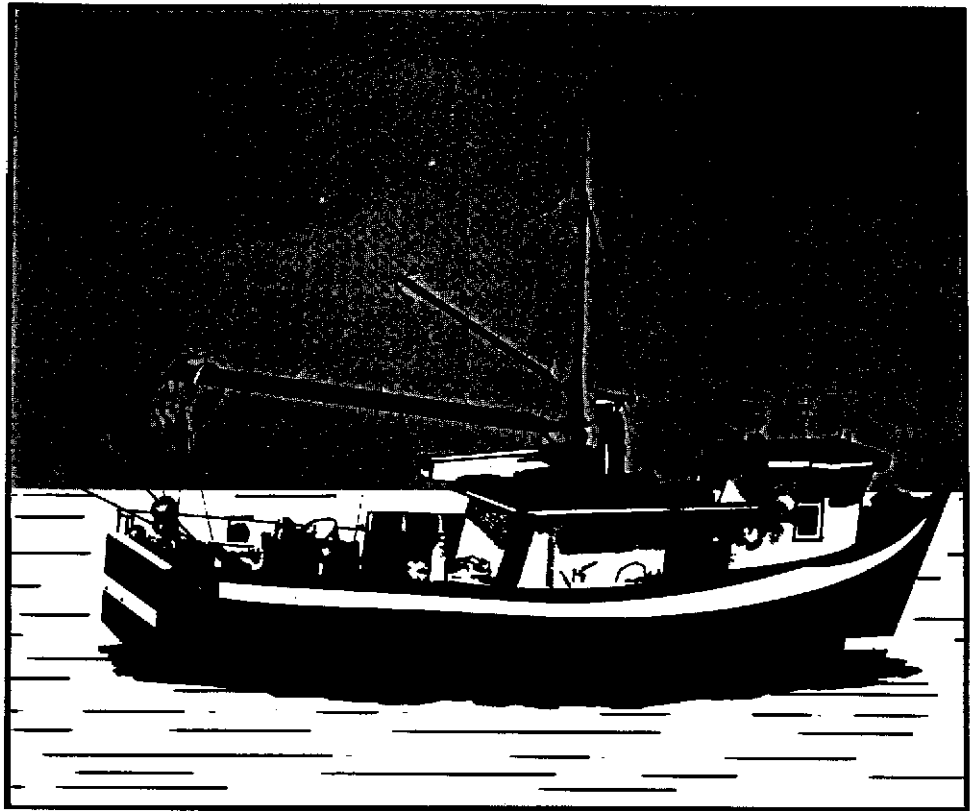
**Section 78.6:** No person shall be convicted of an offence under this Act if the person establishes that the person

- (a) exercised all due diligence to prevent the commission of the offence; or
- (b) reasonably and honestly believed in the existence of facts that, if true, would render the person's conduct innocent.

**Section 79:** Where a person is convicted of an offence under this Act and the court is satisfied that as a result of committing the offence the person acquired monetary benefits or monetary benefits accrued to the person, the court may, notwithstanding the maximum amount of any fine that may otherwise be imposed under this Act, order the person to pay an additional fine in an amount equal to the court's finding of the amount of those monetary benefits.

**Section 79.2:** Where a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing any one or more of the following prohibitions, directions or requirements:

- (a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;
- (b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to any fish, fishery or fish habitat that resulted or may result from the commission of the offence;
- (c) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;
- (d) directing the person to pay the Minister an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the Minister as a result of the commission of the offence;
- (e) directing the person to perform community service in accordance with any reasonable conditions that may be specified in the order;
- (f) directing the person to pay Her Majesty an amount of money the court considers appropriate for the purpose of promoting the proper management and control of fisheries or fish habitat or the conservation and protection of fish or fish habitat;
- (g) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement mentioned in this section;
- (h) directing the person to submit to the Minister, on application by the Minister within three years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances; and
- (i) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act.



## APPEAL ON CONVICTION

**Section 86:** *Summary: This section provides that the Criminal Code appeal provisions apply to any order and any decision not to make an order under subsection 71.1(1), subsection 72(1), (2), or (3) or section 79, 79.1, 79.2 or 79.3 as well as any sentence passed by the court under the Fisheries Act.*

## RECOVERY OF CROWN COSTS

**Section 42(1):** Where there occurs a deposit of a deleterious substance in water frequented by fish that is not authorized under section 36 or a serious and imminent danger thereof by reason of any condition, the persons who at any material time

- (a) own the deleterious substance or have the charge, management or control thereof, or
- (b) are persons other than those described in paragraph (a) who cause or contribute to

the causation of the deposit or danger thereof, are, subject to subsection 42(4) in the case of the persons referred to in paragraph (a) and to the extent determined according to their respective degrees of fault or negligence in the case of the persons referred to in paragraph (b), jointly and severally liable for all costs and expenses incurred by Her Majesty in right of Canada or a province, to the extent that those costs and expenses can be established to have been reasonably incurred in the circumstances, of and incidental to the taking of any measures to prevent any such deposit or condition or to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result therefrom.

**Section 42(2):** All the costs and expenses referred to in subsection (1) are recoverable by Her Majesty in right of Canada or a province with costs in proceedings brought or taken therefor in the name of Her Majesty in any such right in any court of competent jurisdiction.

## CIVIL LIABILITIES FOR INCOME LOSS BY FISHERMEN

**Section 42(3):** Where, as a result of a deposit that is not authorized under section 36, a deleterious substance enters water frequented by fish, the persons described in paragraphs 42(1)(a) and (b) are, subject to subsection 42(4) in the case of the persons described in paragraph 42(1)(a) and to the extent determined according to their respective degrees of fault or negligence in the case of the persons described in paragraph 42(1)(b), jointly and severally liable for all loss of income incurred by any licensed commercial fisherman, to the extent that the loss can be established to have been incurred as a result of the deposit or of a prohibition to fish resulting therefrom, and all such loss is recoverable with costs in proceedings brought or taken therefor in any court of competent jurisdiction.

**Section 42(4):** The liability of any person described in paragraph 42(1)(a) is absolute and does not depend on proof of fault or negligence but no such person is liable for any costs and expenses pursuant to subsection 42(1) or loss of income pursuant to subsection 42(3) if he establishes that the occurrence giving rise to the liability was wholly caused by

- (a) an act of war, hostilities, civil war, insurrection or a natural phenomenon of an exceptional, inevitable and irresistible character; or
- (b) an act or omission with intent to cause damage by a person other than a person for whose wrongful act or omission he is by law responsible

**Section 42(5):** Nothing in this section limits or restricts any right of recourse that any person who is liable pursuant to this section may have against any other person.



## LIMITATION PERIOD FOR LAYING CHARGES

**Section 82(1):** Proceedings by way of summary conviction in respect of an offence under this Act may be instituted at any time within but not later than two years after the time when the Minister became aware of the subject-matter of the proceedings.

## APPLICABILITY TO THE CROWN

**Section 3(2):** This Act is binding on Her Majesty in right of Canada or a province.

The above are extracts only. If required, the exact legal wording contained in the *Fisheries Act* is available from fisheries offices listed on page 16.

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## PROVINCIAL/ TERRITORIAL FISHERIES CONTACTS

In Alberta, Saskatchewan, Manitoba and Ontario, where the fisheries are administered by the provincial government, contact the appropriate provincial fisheries management agency.

In British Columbia and Yukon, in areas which support purely freshwater fish species, contact the appropriate provincial or territorial fisheries management agency.

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