



Building on Progress Toward Healthy and Equitable Fisheries in Canada

OCEANA CANADA BRIEF TO THE STANDING COMMITTEE ON FISHERIES AND OCEANS REVIEW OF FISHERIES ACT



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Oceana Canada is an independent charity established to restore Canada's oceans to be as rich, healthy, and abundant as they once were. We are committed to ending overfishing, rebuilding overfished stocks and increasing fisheries management transparency for the benefit of coastal communities, Indigenous Peoples and all who rely on abundant, healthy fisheries. Oceana Canada supported the amendments to the *Fisheries Act* in 2019 and championed the new section 6 – Fish Stock Provisions which, for the first time, required stocks to be managed sustainably and for depleted fish populations to be rebuilt. Around the world, legal requirements to sustainably manage and rebuild fisheries is the catalyst for fisheries recovery—and the social, cultural, and economic benefits that come along with it.

Progress in implementing the changes to the Act has been slow, and key gaps have emerged that Oceana Canada believes must be fixed with simple amendments. Additionally, some Fisheries and Oceans Canada (DFO) fisheries management policies need to be updated to better implement the intention of the Act. These changes will help ensure the new Fish Stocks Provisions are successful in reversing the long-term decline of fish stocks in Canada and returning them to abundance.

For the long-term prosperity of Canada's fisheries, Oceana Canada recommends the following amendments to the *Fisheries Act*:

1. End overfishing by amending section 6.1 to require stocks to be managed to the healthy zone and ensure transparency.
2. Ensure that the rebuilding provisions apply to all federally managed fish stocks by setting a date of December 31, 2026, by which all stocks must be listed under the Fish Stocks provisions in section 6.3.
3. Require accountability by DFO through an annual report to parliament on the status and trends of all federally managed fish stocks.
4. Authorize the Minister, when entering into co-management arrangements with Indigenous governments, with those who choose to do so, to support the pairing of Indigenous Knowledge Systems and western-based science in decision making through amendments to sections 2.5 and 7.

Additionally, Oceana Canada recommends that the Committee direct the Minister of Fisheries to make the following important policy changes:

- Modernize the Precautionary Approach Policy to take an ecosystem-based approach in fisheries advice and decision-making, including pairing with Indigenous Knowledge Systems (IKS). This includes implementation of climate-adaptive approaches in fisheries management and prioritizing rebuilding forage fish.

- Modernize the Forage Fish Policy to apply to all federally managed forage fish stocks and to require the identification of minimum stock biomass and maximum harvest caps.
- Ensure the Fishery Monitoring Policy is fully implemented for all managed fish stocks in Canada and account for all sources of fishing activity in management decision-making. Modify the policy to include the collection and storage of Indigenous knowledge, while following the principles of data sovereignty.

RATIONALE

Oceana Canada recommendations on legislative amendments:

1. **End overfishing by amending section 6.1 to require stocks to be managed to the healthy zone and ensure transparency.**

The current text of section 6.1 requires the Minister to “promote the sustainability of the stock.” The term “sustainability” is not defined in the Act. The lack of definition has led directly to debates about whether the intent of this provision is to keep stocks in the cautious zone, return them to the healthy zone, or simply ensure stocks are just out of the critical zone. DFO has recently authorized harvests of northern cod and capelin, both of which have been determined by DFO to be very low in the cautious zone and trending back towards critical depletion. These decisions clearly indicate that DFO has concluded that 6.1 does **not** require returning a stock to the healthy zone or minimizing the risk of decline. This amendment will eliminate the current ambiguity of the section and make clear that the goal of the Fish Stock Provisions is to manage stocks to healthy levels, not simply getting the stock marginally and temporarily out of the critical zone.

Suggested wording for an amendment:

6.1 (1) In the management of fisheries, the Minister shall implement measures to maintain ~~federally major~~ managed fish stocks at or above the level necessary to promote the ~~sustainability~~ return of the stock to the healthy zone, taking into account the biology of the fish and the environmental conditions affecting the stock.

Section 6.1(2) of the *Fisheries Act* allows the Minister to override scientific advice for socio-economic or cultural reasons. While this flexibility is important, its current wording lacks sufficient safeguards, enabling decisions that increase the risk of stock decline. This was evident in recent decisions to reopen the commercial fishery for northern cod, where the Minister chose the highest-risk option provided by DFO for setting the quota, despite clear scientific advice and guidance to minimize the risk of decline. No justification was provided to show that this quota was essential to mitigate adverse cultural or socio-economic impacts compared to other viable options. To further safeguard fish stocks from overfishing and collapse while also ensuring decisions are guided by transparency and evidence, the language needs to be clear. Requiring the Minister to implement measures with a high likelihood ($\geq 75\%$) of avoiding the critical zone, and to publish the rationale and evidence justifying when that is not possible, is consistent with implementation guidance. This strengthens accountability, aligns with precautionary principles, and prioritizes long-term sustainability while still considering socio-economic and cultural factors. This amendment addresses weaknesses in the current framework, ensuring that decisions are

evidence-based and transparent, safeguarding both fisheries and communities dependent on them.

Suggested amendment wording:

6.1 (2) -- If the Minister is of the opinion that it is not feasible or appropriate, for cultural reasons or because of adverse socio-economic impacts as demonstrated in an impact analysis, to implement the measures referred to in subsection (1), the Minister shall set a limit reference point and implement measures to avoid the stock declining to or below its LRP (critical zone) with a high to very high likelihood ($\geq 75\%$); taking into account the biology of the fish and the environmental conditions affecting the stock.

Additionally, we recommend that the committee direct the Minister and their department to develop a set of regulations to interpret section 6.1, similar to the regulations developed to guide implementation of section 6.2. Regulations should address:

- **Requiring the Minister to justify socioeconomic and/or cultural exemptions:** Evidence, such as through an impact analysis, must be provided. Demonstrating that the proposed management measures taken under 6.1(2) are necessary to mitigate adverse cultural or socio-economic impacts, and that it is the most viable option compared to alternative measures.
 - **Requiring the Minister to, whenever possible, prevent future stock decline:** Any decision must avoid causing the specified major fish stock to decline to or below its Limit Reference Point (LRP) with a high to very high likelihood ($\geq 75\%$).
 - **Require the Minister to avoid exceedance of removal reference:** Any decision must avoid exceeding the stock's Removal Reference (RR) with a moderately high to very high likelihood ($> 50\%$), based on best available data.
2. **Ensure that the rebuilding provisions apply to all federally managed fish stocks by setting a date of December 31, 2026, by which all stocks must be listed under the Fish Stock Provisions in section 6.3.**

As the Committee will be aware, only stocks that are listed under regulations as per section 6.3 enjoy the protections afforded by 6.1 and 6.2. Five years after the Act coming into force, a scant thirty stocks (out of almost 200) are listed, with draft regulations to add an additional sixty-five. Only three rebuilding plans that meet the new regulatory requirements have been published to date, leaving at least twenty-seven federally managed critically depleted fish stocks in Canada without a comprehensive rebuilding plan in place. Oceana Canada has calculated that at the current pace, it would require sixteen years for all stocks to be listed. While it is unclear what timeframe Parliament envisaged when it passed the revised Act in 2019, we consider it is highly unlikely that it intended a sixteen-year period for stock listing. While one may argue that rebuilding plans compliant with the regulations can be developed before stocks are listed, there is no evidence to date that this has occurred or will occur. Parliament's intent with respect to this provision has clearly not been respected. This situation can be remedied with a simple amendment to section 6.3 adding an end date requiring that the Governor in Council shall prescribe all federally managed fish stocks by December 31, 2026.

Suggested amendments:

6.3 The Governor in Council shall prescribe all The federally managed fish stocks referred to in sections 6.1 and 6.2 through regulations no later than December 31, 2026.

3. Require accountability by DFO through an annual report to parliament on the status and trends of all federally managed fish stocks.

In most progressive fisheries management regimes around the world, management authorities report to their legislatures regarding the status of commercial fish stocks and the effectiveness of measures to conserve them. Notable examples include the United States, Australia, and the European Union. Canada is a global laggard in this area. Canadians have no regular and systematic access to information about the status of all federally managed fish stocks, how management decisions have been made with respect to them and how scientific information, and other forms of evidence, have been used to support these decisions. Fisheries management in Canada remains very much in the dark. Importantly, there is no mechanism for holding the Minister or DFO accountable for these decisions or for the implementation of the fisheries management policies. This lack of transparency makes it virtually impossible to know the overall state of the resource, the amount of fish harvested, in any given year. This exacerbates conflict around contentious fisheries and fundamentally undermines the credibility of public trust in decisions.

This situation could be fixed by amending the *Act* to require the Minister to table an annual report to parliament outlining the status and trends of all federally managed fish stocks including how science advice is incorporated in management decisions. This requirement could also stipulate that the Framework must be re-examined and updated every five years or as needed. The amendment will require Fisheries and Oceans to table a report which includes annual catch data for all section 6 stocks. This would have the *de facto* effect of legally mandating the implementation of the Fisheries Monitoring Policy, which is essential to producing such data but which is currently not implemented for any stock as revealed by the [Office of the Auditor General's 2023](#) report. This approach allows Parliament and Canadians to call Ministers to account with respect to the advice considered and the management measures implemented for all fish stocks but regarding those in the Critical or Cautious zones in particular.

4. Authorize the Minister, when entering into co-management arrangements with Indigenous governments, with those who choose to do so, to support the pairing of Indigenous Knowledge Systems and western-based science in decision making through amendments to sections 2.5 and 7.

The Act stipulates that the Minister *may* consider Indigenous knowledge that is provided to them but there is no requirement that they do so and no requirement that the Minister support the collection and safeguarding of such knowledge or a consideration of it on an equal footing with western-based science. Building trust between DFO and Indigenous rightsholders, building shared engagement in decisions and working as equal partners in fisheries management is difficult for most Indigenous organizations under these circumstances. The Government of Canada's [Action Plan](#) on the United Nations Declaration on the Rights of Indigenous Peoples Act (UNDRIP) explicitly includes, at item 40, a commitment to: "Develop and employ mechanisms that respect and incorporate Indigenous Knowledge as a distinct knowledge system in the management of fisheries, fish habitat, conservation, marine safety and protection of the marine environment" and

identifies DFO as the lead agency for doing so. The *Fisheries Act* offers no support for the achievement of this goal.

Section 2.5 should be amended to require that fisheries management decisions affecting Indigenous rightsholders are inclusive of Indigenous Knowledge Systems and publicly document the process through which they have done so. A provision of this nature would not only empower Indigenous rightsholders in decision-making but would spur knowledge co-production and information sharing in ways that would have important long-term positive effects on fisheries management outcomes as well as the government's broader reconciliation agenda.

Section 7 of the *Act* reserves to the Minister the "absolute discretion" to issue fishing licenses or leases. This provision has made it essentially impossible for the Minister to share fisheries management decision making authorities via co-management arrangements lying outside the context of land claim agreements. While DFO has made commendable efforts on both coasts to negotiate collaborative arrangements with rightsholders they have yet to bear fruit in any widespread and enduring way. Co-management, or co-governance, remain elusive goals for DFO and rightsholders alike. Section 7 is a major part of the reason why; successful fisheries management arrangements with rightsholders require legal foundations that at minimum do not block or impair shared decision-making and, ideally, actively support it. The *Fisheries Act* does neither.

Suggested amendments to section 7:

- Require the Minister to enter into fisheries co-management arrangements with rightsholders with respect to their traditional territory, as opposed to simply authorizing a Minister to enter into various agreements with Indigenous groups should the Minister feel so inclined; and
- Authorize the Minister to share decision making authority with rightsholders in co-management arrangements, as opposed to maintaining the Minister's "absolute discretion" for all fisheries decisions.

Direct the Minister of Fisheries to make the following three important policy changes:

Modernize the Precautionary Approach (PA) Framework to take an ecosystem-based approach in fisheries advice and decision-making, including pairing with Indigenous Knowledge Systems (IKS). This includes implementation of climate-adaptive approaches in fisheries management and prioritizing rebuilding forage fish.

The PA Framework currently lacks the flexibility to fully implement ecosystem-based fisheries management and the broader relational values of Indigenous Knowledge Systems (IKS), as envisioned in the *Fisheries Act's* guidance under Section 2.5 to "consider" the application of an ecosystem approach and Indigenous knowledge. Although the PA policy includes aspirational language for incorporating ecosystem considerations, in practice, management decisions remain focused on single stocks of commercial value, often emphasizing short-term objectives over long-term environmental sustainability. This includes accounting for climate change effects on marine ecosystems which requires implementation of climate-adaptive approaches in fisheries management and prioritizing rebuilding forage fish.

Most stock assessments and management decisions operationalized under the PA Framework have yet to explicitly account for uncertainty in species productivity trends due to climate change. Climate change can't be stopped overnight. But adaptive fisheries management can help mitigate its impacts.

- Implement climate change vulnerability and risk assessments into fisheries management decisions that reflect science advice while maintaining fish biomass levels and size structures that support resilience to climate change.
- Explicitly link protected areas and fisheries management strategies in a manner more consistent with ecosystem-based approaches and Indigenous knowledges.
- Shift decision making from a maximum sustainable yield (MSY) focus to reference points that embrace broader socio-ecological objectives, including Indigenous perspectives on desired ecosystem states and higher local abundances required for the continuity of cultural practices.

Modernize the Forage Fish Policy to apply to all federally managed forage fish stocks and to require the identification of minimum stock biomass and maximum harvest caps.

In 2009, DFO established a Policy on New Fisheries for Forage Species which details management approaches specifically designed to support forage species' role in marine food webs. The policy does not apply to existing fisheries, just to "new" forage fisheries, of which there have been none that pass the policy's criteria. Therefore, the management of all existing fisheries does not accommodate for the natural fluctuations in recruitment and abundance experienced by forage fish stocks.

The Rebuilding and Sustainability provisions in the *Fisheries Act* need to be interpreted more conservatively for forage fish. The Limit Reference Point (LRP), or a proxy value, should be set at more precautionary levels to account for uncertainties and at a greater biomass than for a stock managed under a single-species approach, as is typical under the PA Framework. If this approach was taken, the harvest rate would then apply only to the stock biomass that is above the LRP or minimum biomass threshold, and harvesting the stock below the LRP would be prohibited.

A forage fish policy must include:

- A minimum stock biomass to safeguard recruitment potential;
- A maximum harvest cap to protect the stock against overfishing when conditions are unfavourable.

Ensure the Fishery Monitoring Policy is fully implemented for all managed fish stocks in Canada and account for all sources of fishing activity in management decision-making. Modify the policy to include the collection and storage of Indigenous knowledge, while following the principles of data sovereignty.

Effective monitoring ensures the timely collection of reliable data about how much of each kind of fish is being caught. This, in turn, allows decision-makers to set appropriate seasonal catch limits that protect the industry over the long term. Inadequate monitoring can lead to overfishing, creating devastating consequences for the ocean, fisheries, and the coastal communities they support.

The 2019 federal Fishery Monitoring Policy promised to close monitoring gaps throughout the sector. But in November 2023, the Office of the Auditor General of Canada highlighted DFO's

failure to implement the policy in any of the 156 stocks examined. The Fishery Monitoring Policy has yet to be fully implemented in any fishery and includes little reference to the inclusivity of Indigenous Knowledge Systems.

- Ensure the Fishery Monitoring Policy is implemented for all federally managed fish stocks in Canada.
- Modify the policy to include the collection and storage of Indigenous knowledge, while following the principles of data sovereignty.
- Enforce the 2019 Fisheries Monitoring Policy to ensure transparency in all fishing activities, including recreational and bait, to support science-based decision-making.

About Oceana Canada

Oceana Canada was established as an independent charity in 2015 and is part of the largest international advocacy group dedicated solely to ocean conservation. Oceana Canada has successfully campaigned to ban single-use plastics, end the shark fin trade, make rebuilding depleted fish populations the law, improve the way fisheries are managed and protect marine habitat. We work with civil society, academics, fishers, Indigenous Peoples and the federal government to return Canada's formerly vibrant oceans to health and abundance. By restoring Canada's oceans, we can strengthen our communities, reap greater economic and nutritional benefits and protect our future. Find out more at www.oceana.ca.