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**BILL C-38 Amendments to the
*Fisheries Act: A New Era in Canada?***

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THE *FISHERIES ACT*

- First passed in 1866
- Had a prohibition respecting the unauthorized habitat alteration, disruption and destruction (“HADD”) in force in 1977
- Bill C-38 amendments in force in 2012 (some to be ordered in force later)

Bill C-38 – The *Jobs, Growth and Long-Term Prosperity Act*

- Federal government position – fish protection policies outdated and unfocused in terms of balancing environmental and economic results
- Some amendments are controversial
- Some Canadian scientists are concerned that they weaken the *Fisheries Act*

Staged Approach

- First Set of Amendments
 - Now in force
 - Include minor expansion of the HADD provision to include “activities” (as well as works or undertakings that are subject to the prohibition)
 - 35(1). No person shall carry on any work, undertaking or activity that results in harmful alteration or disruption, or the destruction of fish habitat

Staged Approach

- Second Set of Amendments
 - To come in force on a date ordered by the Governor in Council
 - Include major change to the HADD provision to focus on “serious harm” to certain fish
 - “Serious harm” includes the death of certain fish and permanent alteration of fish habitat
 - 35. No person shall carry out any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery

Circumstances Currently Prohibited Will No Longer Be Prohibited

- *R. v. High*: convicted of contravening the HADD prohibition
- No evidence of dead fish
- No permanent fish habitat alteration
- Under the former HADD provision the accused was convicted
- Under s.35 of the *Fisheries Act* (to come into force) no charges would be approved

Deleterious Substance Prohibition

- Prohibition of deposit of deleterious substances (ss.36(3))
- Administered and enforced by Environment Canada
- Amendments related to regulations which may be passed in order to authorize the deposit of deleterious substances

Reporting

- Reporting obligations
- Respecting an occurrence that results in serious harm to fish (ss.38(1) – (10))

Enforcement

- Minimum and maximum penalties
- Distinction between accused:
 - Individuals
 - Small revenue corporations
 - Other corporations
- Significant fines may be imposed

Inspector's Directions

- Increased power to issue directions
- Previously inspectors had power to issue directions to take correcting measures
- Amendments provide:
 - That both inspectors and fisheries officers have the power to issue directions
 - Situations where directions may be issued are expanded to include where a HADD has occurred or where there is serious danger of an occurrence

Enforcement

- Minimum and maximum penalties
- Distinction between accused:
 - Individuals
 - Small revenue corporations
 - Other corporations
- Significant fines may be imposed

Summary

1. Bill C-38 makes several changes
2. Two sets of amendments
3. Compliance obligations may change:
 - First set of amendments: involves slight broadening of HADD provision
 - Second set of amendments: circumstances previously prohibited may not be prohibited

Summary

4. Deleterious substances – new provisions providing power to pass regulations authorizing the deposit of deleterious substances
5. Reporting obligations regarding an occurrence that causes serious harm to fish
6. Significant penalties may be imposed
7. Increased powers given to issue directions to take corrective measures

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