

THE AMENDED FISHERIES ACT: A NEW REALITY FOR BIOLOGY PROFESSIONALS

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EMA of BC: Bill C-38 – Understanding the Changes
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The Amended Fisheries Act : A New Reality for Biology Professionals



1. Overview of Practice of Professional Biology in BC
2. Pre-Amended Fisheries Act focus: 'habitat'
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4. Managing Resources in this changing legal environment

Photo credits: Barb Faggetter, Pamela Zevit, Eric White and istockphoto



Overview of Practice of Professional Biology in BC

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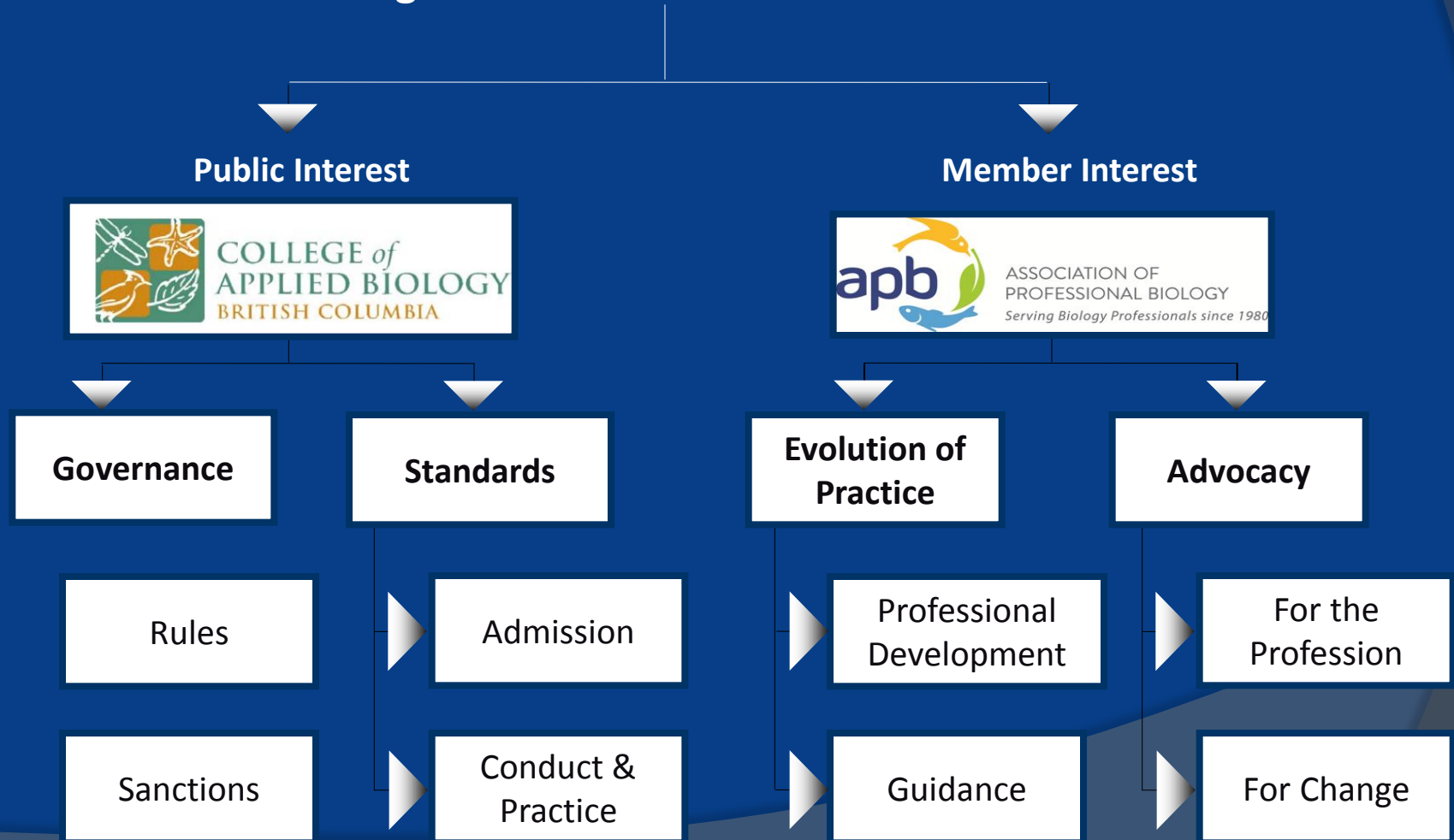
Two organizations

- The **College of Applied Biology (CAB)** is the “public interest”
 - College of Applied Biology Act
- The **Association of Professional Biology (APB)** is a voluntary “member interest” organization.
 - Voluntary membership – available to College members



Overview of Practice of Professional Biology in BC

Overview of the Practice of Professional Biology in BC: CAB – APB Organizational directives and focus



Overview of Practice of Professional Biology in BC

APB has been the “voice” for Biology Professionals in British Columbia since 1980.



- assist biology professionals to
 - maintain competence and achieve high professional standards; and.
 - advance the development and application of sound biological principles in resource management and conservation
- evolve the practice of applied biology through advocacy and providing professional development opportunities and guidance



Overview of Practice of Professional Biology in BC

APB on Bill C-38

Recommendations to Ottawa:

1. Remove all the environmental components from the current Bill C-38 and provide an appropriate time period for a scientific panel to provide unbiased detailed recommendations to assist government with improving these components; and,
2. include an appropriately qualified Registered Professional Biologist on the scientific panel

Bill C-38 is now law (**as the** 'Jobs, Growth and Long-term Prosperity Act, SC 2012) and we await proclamation.



Pre-Amended

Fisheries Act focus: 'habitat'

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Fisheries Act focus: 'habitat'

“protect fish and fish habitat” (water, food, shelter, cover and spawning grounds)

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



Pre-Amended

Fisheries Act focus: 'habitat'

No authorization for:

Harmful

Alteration;

Disruption; and/or

Destruction.

...unless the Minister
authorized you to do so
and then you had to
replace with habitat
similar or better, usually
in the same vicinity.

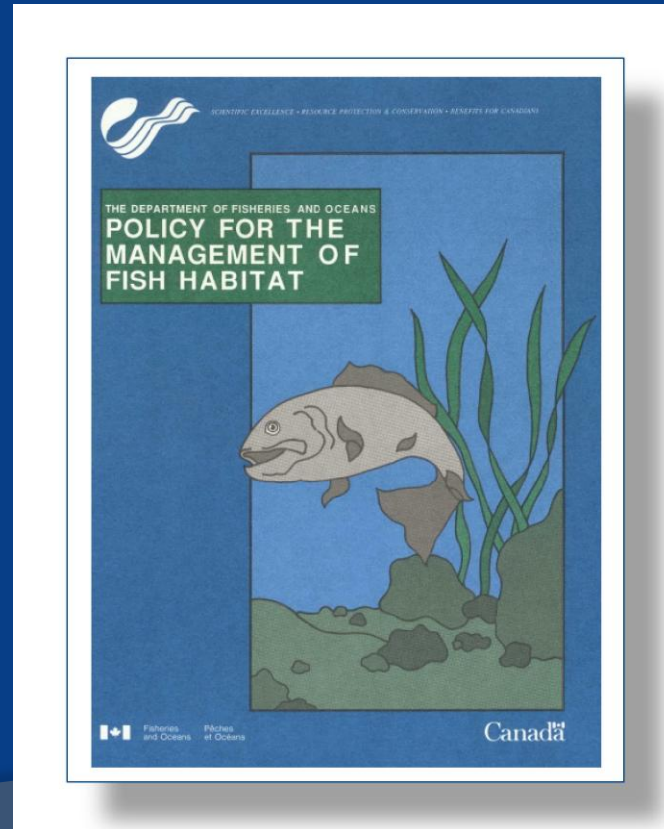


Pre-Amended

Fisheries Act focus: 'habitat'

Since 1986, DFO direction

- Policy for Management of **Fish Habitat**:
 - Net gain
 - No Net Loss



Pre-Amended

Fisheries Act focus: 'habitat'

- Measuring 'habitat' parameters (stream flow, stream quality, shelter, food, cover, spawning quality/quantity, etc), was a very robust system to ensure protection of the species needs for survival
- usually this data was not difficult to collect both before and after anthropogenic influences.



Amended Fisheries Act focus:
prevention of 'serious harm'

Amended Fisheries Act focus: prevention of 'serious harm'

Section 35. (1) No person shall carry on 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.

“**Serious Harm**”
is defined as
“**death** of fish or
any **permanent**
alteration to, or
destruction of,
fish habitat.”



Amended Fisheries Act focus: prevention of 'serious harm'

Hypothetical example:

- Hydro project causes significant diversion on a stream preventing passage of salmon to spawning grounds
 - phenotype of salmon extirpated

Instead of having to prove habitat for salmon may have been destroyed, DFO must interpret significant ambiguities in the new amended language



Amended Fisheries Act focus: prevention of 'serious harm'

Considering "Serious Harm"

'The fish coming upstream were not killed (no death)' (rather the phenotype itself was prevented from reproducing either by the diversion or some other agent)

'Other causes may have prevented the salmon from reaching spawning grounds' (e.g death from a piscine virus)

'The river system (fish habitat) itself may not be "permanently" altered or "destroyed"'

Amended Fisheries Act focus: prevention of 'serious harm'

The situation is a snap shot in time, over time most altered biological ecosystems can recover in one form or another -may not be “permanently” destroyed....

even though the species (genetics/ phenotypes) in question, may not fully recover.

Amended Fisheries Act focus: prevention of 'serious harm'

....to fish considered part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery.

Under the new definition any other species of fish in this system potentially may not be considered for impacts from "serious harm".



Amended Fisheries Act focus: prevention of 'serious harm'

Only considering “fish considered part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery

leaves a significant gap in managing for the important ecosystem components that were covered off by “habitat” requirements in the pre-amended version.

Managing Resources in this changing legal environment

Managing Resources in this changing legal environment

“serious harm” test will require:

- A need for a rebuild of the current DFO infrastructure;
- New baseline analyses* on what constitutes “serious harm” under various conditions;
- Cases argued through our legal courts, setting precedence; and,
- Natural resource professionals (including biology professionals), standing by the principles of intellectual honesty, competency, integrity, independence and accountability.



Managing Resources in this changing legal environment

Add recent DFO staff reductions

- The department in B.C. has half the habitat staff it had a decade ago.
- All but five of the province's fisheries field offices will be cut as part of a \$79 million (5.8%) cut to the department's operational budget,
- This includes the offices in Prince George and Smithers that would have had the lead in monitoring Northern Gateway pipeline effects.
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Read more: <http://www.vancouversun.com/business/promises+science+later+budget+disembowelled+former+officer/7113922/story.html#ixzz25nfK7fVu>



Managing Resources in this changing legal environment

Misalignment even under **pre-amended** version of section 35 of the Fisheries Act:

Recent a government biologist (member of the CAB and APB) was referenced in the Vancouver Sun (August 27, 2012) criticizing lack of enforcement on detrimental environmental activities

.....that provincial staff in the south coast region have “significantly inadequate resources” to manage run-of-river projects, “that enforcement action is minimal, and that “there has been virtually no accountability for unexpected impacts to fish and fish habitat.”

Read more: <http://www.vancouversun.com/college+disputes+assertion+that+biased+conduct+river+biologists+goes+unchecked/7151084/story.html#ixzz25IT2PQP4>



Managing Resources in this changing legal environment

Two possibilities:

1. Amended approach will never work; or
2. Amended approach will prove itself as time tests it.

One certainty:

- Biology Professionals (and other resource professionals) must more so than ever ensure they:
 - exercise good judgment and discretion;
 - recognize limits of their expertise;
 - maintain high levels of public trust; and,
 - show diligence in the balance of duties to client and society.



Thank you!

For more information on our Association, please visit:

www.professionalbiology.com

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