



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Applicant's Guide Supporting the *Authorizations Concerning Fish and Fish Habitat Protection Regulations* 2019

Canada 

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Disclaimer

The Applicant's Guide Supporting the Authorizations Concerning Fish and Fish Habitat Protection Regulations is not a substitute for the *Fisheries Act* or the *Species at Risk Act* or their Regulations. In the event of an inconsistency between this guide and the Acts or their Regulations, legislation will prevail.

1.0 Context

The 2019 legislative amendments to the *Fisheries Act* were part of the Government of Canada's commitment to review environmental and regulatory processes. In 2015, the mandate letter of the Minister of Fisheries, Oceans and the Canadian Coast Guard included a commitment to review the changes made in 2012 to the *Fisheries Act*, in order to restore lost protections and incorporate modern safeguards. As a result of these changes, modifications to the former Applications for Authorization under Paragraph 35(2)(b) of the *Fisheries Act Regulations* (hereafter the former regulations) were required to align these supporting regulations with the scheme of the new or amended provisions of the *Fisheries Act*.

Consequently, the former regulations were repealed and replaced by the *Authorizations Concerning Fish and Fish Habitat Protection Regulations* (hereafter the Regulations). The Regulations align with the 2019 amendments of the *Fisheries Act* and among others, introduce a new scheme to support requests to amend, suspend, or cancel existing authorizations.

2.0 Introduction

As of August 28, 2019, new fish¹ and fish habitat² protection provisions (FFHPP) of the *Fisheries Act* came into force. Of them there are two are key prohibitions:

- Subsection 34.4(1) of the *Fisheries Act* prohibits the carrying on of a work, undertaking or activity, other than fishing, that results in the death of fish, and
- Subsection 35(1) of the *Fisheries Act* prohibits the carrying on of a work, undertaking or activity that results in the harmful alteration, disruption or destruction of fish habitat.

However, under paragraphs 34.4(2)(b) and 35(2)(b) of the *Fisheries Act*, the Minister of Fisheries and Oceans (the Minister) may issue an authorization with any terms and conditions in relation to a proposed work, undertaking or activity that may, respectively, result in the death of fish or the harmful alteration, disruption or destruction of fish habitat.

In support, the Regulations identify the information and documentation that must be submitted with an application for an authorization for the purpose of paragraphs 34.4(2)(b) and 35(2)(b) of the *Fisheries Act*. The Regulations also set out the process and time limits that will be followed in the processing of applications. The Regulations also set out the information and documentation that must be submitted by an applicant requesting amendment, suspension,

1 The *Fisheries Act* includes the following definitions (subsection 2(1)):

“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.

2 “fish habitat” means water frequented by fish and any other areas on which fish depend directly or indirectly to carry out their life processes, including spawning grounds and nursery, rearing, food supply and migration areas.

cancellation or reinstatement of his/her already issued authorization as well as related time limits.

2.1 Purpose

This guide is intended to provide an applicant seeking an authorization for the purpose of paragraphs 34.4(2)(b) and 35(2)(b) of the *Fisheries Act* with guidance on how to develop and submit an application in accordance with the Regulations, or to request the amendment, suspension, in whole or in part, or the cancellation of an authorization already in their possession

This guide should be read in conjunction with other Federal Acts and Regulations which may be relevant to the proposed work, undertaking or activity, including the:

- [Species at Risk Act](#)
- [Aquatic Invasive Species Regulations](#)
- [Impact Assessment Act](#)

You can check for aquatic species at risk in the vicinity of your project with the [Aquatic species at risk map](#). If your project could result in prohibited effects on an aquatic species at risk, your *Fisheries Act* authorization may act as a *Species at Risk Act* permit, and you must include the [Information Required For The Consideration Of The Approval Of Activities That Are Otherwise Prohibited Under The Species At Risk Act](#) in your application for authorization.

3.0 Submitting an application for authorization

All applicants are encouraged to engage Fisheries and Oceans Canada (DFO) early in the planning process to confirm whether an authorization is required to carry on their work, undertaking or activity and to discuss the requirements set out in the Regulations before submitting such an application.

All applications must be made in writing to the Minister and sent to one of the [DFO regional offices](#).

3.1 Application forms

To facilitate the submission of initial applications or requests to amend, suspend, cancel or reinstate an authorization, the following forms are available:

Initial application:

- [Application Form for the Issuance of an Authorization under Paragraphs 34.4\(2\)\(b\) and 35\(2\)\(b\) of the Fisheries Act \(Non-Emergency Situations\)](#)
- [Application Form for the Issuance of an Authorization under Paragraphs 34.4\(2\)\(b\) and 35\(2\)\(b\) Fisheries Act Authorization \(Emergency Situations\)](#)

Amending, suspending or cancelling Paragraphs 34.4(2)(b) and 35(2)(b) *Fisheries Act* Authorizations:

- [Form for Authorization Holders to Request an Amendment to an Authorization](#)

- [Form for Authorization Holders to Request the Suspension or Cancellation of an Authorization](#)
- [Form for Authorization Holders to Request the Reinstatement of a Suspended Authorization](#)

An applicant must attach all supporting information and relevant documentation, as required, to the appropriate application form. If this information was provided to DFO during preliminary discussions and the applicant chooses not to re-submit the information, the applicant must appropriately reference the information or titles of documents previously submitted, as well as identify the submission date and any appropriate reference number in their application.

4.0 Application requirements for non-emergency situations

Subsection 2(1) of the Regulations specifies that an application for this authorization must include the following:

- the information and documentation listed in schedule 1 (See section 4.1 of this guide); and
- where applicable, a financial guarantee to cover the costs of implementing the offsetting plan referred to in section 16 of schedule 1. This guarantee can be an irrevocable letter of credit issued by a recognized Canadian financial institution, or another equivalent financial guarantee, including a performance bond (See section 4.3 of this guide).

After assessment of the application and upon time limits prescribed by the Regulations, the Minister will either issue the authorization or notify the applicant in writing that the authorization is denied [see subsections 4(1) to 4(5) of the Regulations].

Applicants should use the [Application Form for the Issuance of an Authorization under Paragraphs 34.4\(2\)\(b\) and 35\(2\)\(b\) of the Fisheries Act \(Non-Emergency Situations\)](#).

4.1 Prescribed information requirements

Schedule 1 of the Regulations set out the information requirements and documentation³ which must accompany a non-emergency application for authorization.

Contact information

“1 The applicant’s and, if applicable, their representative’s name, address and telephone number.”

[Schedule 1, section 1]

The applicant must provide their full legal name and primary mailing address and if possible a valid email address. The applicant must also sign the application.

If relevant, the applicant must also provide a representative and the role of this representative in

³ Provisions of the Regulations or the *Fisheries Act* are featured in text boxes throughout this guide. The information that follows is intended to explain the requirements of the Regulations to potential applicants and to help them meet these requirements. They do not include information from other Acts that may apply.

relation to the application.

When the applicant is a company, the full legal registered name of the company and the company's representative must be identified. This representative must sign the application.

Description of proposed work, undertaking or activity

"2 A detailed description of the proposed work, undertaking or activity and, if applicable, a detailed description of the project of which the proposed work, undertaking or activity is a part, including

- a. the purpose of the proposed work, undertaking or activity and, if applicable, the project;**
- b. the associated infrastructure;**
- c. any permanent or temporary structure involved; and**
- d. the construction methods, building materials, explosives, machinery and other equipment that will be used."**

[Schedule 1, section 2]

This information is required to provide background about the applicant's proposed work, undertaking or activity in or around water that is likely to result in death of fish or harmful alteration, disruption or destruction of fish habitat. The "purpose" of the proposed work, undertaking or activity must also be identified to explain the reason or goal to be achieved by carrying on the initiative and to add context as to why it is required. When a proposed work, undertaking or activity is part of a larger project, the applicant must also include a description of the overall project, including its overall "purpose".

To complete this requirement, the applicant must provide information about all of the phases (e.g. construction, operation, maintenance and closure) for each proposed work, undertaking or activity, including details about the construction methods, associated infrastructure, permanent and temporary structures, building materials, machinery and equipment. For example, the construction of permanent structures may require the construction of temporary structures such as dikes, in conjunction with activities such as the withdrawal of water, land clearing, excavation, grading, infilling, blasting, dredging, installing structures, draining or removing debris from water. At the same time, the equipment and materials to be used might include hand tools, backhoes, gravel, blocks or armour stone, for which the applicant would be required to provide the average diameter. The applicant would also be required to indicate if the concrete to be used would be pre-cast or poured at the site.

"3 If physical works are proposed, the project engineering specifications, scale drawings and dimensional drawings."

[Schedule 1, section 3]

When physical structures in or around water are proposed, the applicant must provide the technical drawings and specifications of those works for which an authorization is being sought. Engineering specifications should be stamped and approved by an accredited engineer where appropriate.

Note: Technical drawings and specifications may be referenced in the resulting authorization.

Phases and schedule

“4 A description of the phases and the schedule of the proposed work, undertaking or activity and, if applicable, the project of which the proposed work, undertaking or activity is a part.”

[Schedule 1, section 4]

An applicant must describe the schedule for carrying on the proposed work, undertaking or activity, and if applicable, of the project. At a minimum, the schedule should identify the proposed start and end dates for carrying out each proposed work, undertaking or activity and, when applicable, the respective phase (e.g. construction, operation, maintenance and closure).

In some cases, the applicant may also need to identify other information such as the expected life span of permanent and temporary structures, availability of specialized machinery, and sequence of actions specific to the proposed work, undertaking or activity.

Note: An authorization may provide specific period(s) for the carrying on of the proposed work, undertaking or activity.

Location

“5 A description of the location of the proposed work, undertaking or activity and, if applicable, of the location of the project of which the proposed work, undertaking or activity is a part, including

- a. geographic coordinates;
- b. a small-scale plan identifying the overall location and boundaries;
- c. a large-scale site plan indicating the size and spatial relationship of the planned facilities, infrastructure and other components and of any existing structures, landmarks, water sources or water bodies and other geographic features; and
- d. the name of any watersheds, water sources and water bodies that are likely to be affected and the geographic coordinates of the water sources and water bodies.”

[Schedule 1, section 5]

This information is required to describe and illustrate the location of an applicant's proposed work, undertaking or activity, and to provide geographical and spatial context about the project. The information also provides an understanding of how existing and proposed works, undertakings or activities will be situated.

The applicant must provide a description of the location of each proposed work, undertaking or activity to be authorized and, if applicable, of the project, including:

- Geographic co-ordinates of the proposed work, undertaking or activity (i.e., Latitude and Longitude or Universal Transverse Mercator (UTM) Grid co-ordinates with zone);
- A small-scale site plan showing the overall location of the project, project boundaries, access routes (e.g. via road, water, air) to the site and, if applicable, the nearest communities;
- A large-scale site plan or diagrams indicating the high water mark and the location, size,

and nature (e.g. floating or fixed) and landmarks.. In a marine setting, the applicant should depict the approximate location of the site on a nautical chart or to show the relation of the site to sea marks or other navigational aids. These plans, maps or diagrams should be at an appropriate scale to help demonstrate the relative size of the proposed works, undertakings or activities, the proximity to the watercourse or water body, and the distance from existing structures;

- Aerial photographs or satellite imagery of the water source(s) and water body(ies), if available; and
- Names of the watershed(s), water source(s) and/or water body(ies) likely to be affected and their geographic coordinates.

“6 The name of the community nearest to the location and the name of the county, district or region and the province in which the proposed work, undertaking or activity will be carried on.”

[Schedule 1, section 6]

The applicant must reference the community nearest to the location of the proposed work, undertaking or activity as means to provide a general reference point. When possible, the applicant should use geographical names recognized by the [Geographical Names Board of Canada](#).

Consultations

“7 A description and the results of any consultations undertaken in relation to the proposed work, undertaking or activity, including with Indigenous communities or groups and the public.”

[Schedule 1, section 7]

If applicable, the applicant must include information about any consultation already undertaken prior to submitting the application. These consultations would have to have related to the work, undertaking, or activity for which an authorization would be sought. The description should provide an overview of consultations, if any, held with Indigenous groups and/or with the public at large.

Description of fish and fish habitat

“8 A detailed description of the fish and fish habitat found at the location of the proposed work, undertaking or activity and within the area likely to be affected by the proposed work, undertaking or activity, including

- a. the type of water source or water body;
- b. the characteristics of the fish habitat and how those characteristics directly or indirectly support fish in carrying out their life processes;
- c. the fish species that are present and an estimate of the abundance of those species; and
- d. a description of how the information provided under paragraphs (a) to (c) was obtained, including the sources, methods and sampling techniques used.”

[Schedule 1, section 8]

The applicant must describe the fish and fish habitat present at the site of the proposed work, undertaking or activity, as well as other areas that may be affected. The current state of the fish and fish habitat⁴ must also be identified.

In describing the fish and fish habitat, it is important for applicants to include information about the fish species present, fish life-cycle stages (e.g. juvenile, yearling, adult, etc.), fish habitat (e.g. biological, chemical and physical features), and the various functional relationships within the fish habitat. When possible, these descriptions should be supported with observed chemical, biological and physical data.

Note: The spatial scope for assessing fish and fish habitat should encompass all areas potentially affected by the proposed work, undertaking or activity, not just the direct physical footprint of the work, undertaking or activity.

The following is a non-exhaustive and non-prescriptive list of some common attributes which an applicant may use to characterize the fish and fish habitat identified in schedule 1, paragraphs 8(a) to (c) of the Regulations:

- Type of water source or watercourse (e.g. groundwater, river, lake, marine, estuary, etc.);
- The flood plain as well as its potential to provide for spring spawning for fish;
- The conditions and requirements for migration and local movements of the fish species present;
- The characteristics of the fish habitat and how those characteristics directly or indirectly support fish in carrying out their life processes:
 - Substrate characterization – types of substrate (e.g. bedrock, boulder, cobble, gravel, etc.), predominant substrate type (e.g. 80% cobble, 20% gravel, etc.) and maps of the substrate;
 - Aquatic and riparian vegetation characterization – prevalent types of vegetation (e.g. rooted, submerged, emergent, etc.), relative abundance of vegetation (e.g. 10% cattails, 80% grass, 10% sedge), predominant vegetation (e.g. by species or types), and vegetation densities (e.g. type of vegetation/area);
 - Flow characterization – if the flow is controlled or natural and permanent or intermittent, including current and tide (e.g. marine environment, etc.);
 - Physical water body – average depth of water for water bodies, bathymetry of water bodies, bathymetric maps where available, channel width (i.e., from the high water mark), shore and bank slope angle, etc.;

4 Fish and fish habitat as defined by the *Fisheries Act*, subsection 2(1):

“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.

“fish habitat” means water frequented by fish and any other areas on which fish depend directly or indirectly to carry out their life processes, including spawning grounds and nursery, rearing, food supply and migration areas.

- o Bank and shore characterization – slope of shore bank; and
- o Other information about water quality and the biological community that would assist in understanding the fish habitat i.e. spawning grounds and nursery, rearing, food supply and migration areas.
- Fish species characterization – fish species known or suspected to be in the area, including any aquatic species at risk listed under the [*Species at Risk Act*](#) or the [*Aquatic Invasive Species Regulations*](#); and
- Estimate of fish abundance – number of fish present, year class for each species, etc.

There are many different methods and attributes available for an applicant to use in order to characterize fish and fish habitat. The following information should, therefore, be included in the application for an authorization:

- All sources of information used;
- All sampling techniques used;
- All modelling techniques used; and
- All other approaches used to describe the fish and fish habitat.

Applicants are also encouraged to use methods such as those recognized by DFO or provinces and territories, and/or other scientifically defensible methodologies and techniques, whenever possible. It is also recommended that applicants support their descriptions of the fish habitat with the use of detailed drawings, such as plans or maps, sonar imaging and photographs of the fish habitat features, whenever possible.

Description of effects on fish and fish habitat

“9 (1) A detailed description of the likely effects of the proposed work, undertaking or activity on fish and fish habitat. The description must include

- a. fish species that are likely to be affected and the life stages of the individuals of those species;
- b. the extent and type of fish habitat that is likely to be affected;
- c. the probability, magnitude, geographic extent and duration of the likely effects on fish and fish habitat; and
- d. a description of how the information provided under paragraphs (a) to (c) was derived, including the methodologies used.”

[Schedule 1, Subsection 9(1)]

The objective of this information is to identify anticipated effects on fish and fish habitat that are likely to be caused by the proposed work, undertaking or activity, including whether they are a direct or indirect result of the proposed work, undertaking or activity.

Prior to the application of any mitigation or avoidance techniques, the applicant must consider how each proposed work, undertaking or activity would affect fish and fish habitat. The

description must include quantitative and/or qualitative information about the fish species and fish habitat likely to be affected. Some examples of likely effects may include direct mortality to fish and injury to fish, avoidance behaviour, reduced reproductive success, habitat loss, change to flow, changes to habitat function, reduction in prey availability, or change to fish passage.

Note: The spatial scope for assessing fish and fish habitat should encompass all areas potentially affected by the proposed work, undertaking or activity, not just the direct physical footprint of the work, undertaking or activity.

The assessment must also include the following:

- Identification of fish species potentially affected by the proposed work, undertaking or activity (e.g. walleye, rock bass, Arctic char, Atlantic salmon, grey seal, American lobster, etc.);
- Of the affected fish, identification of the life stages potentially affected (e.g. juvenile, yearling, adult, etc.);
- Identification of the type of fish habitat potentially affected (e.g. spawning habitat – gravel and cobble, feeding and pupping/rearing areas, side channel slough, small tributaries, ice floes, etc.), and an estimate of the size of the affected area (e.g. number of square metres or hectares);
- Description of the potential effect(s) (e.g. mortality of fish from entrapment, delayed migration of spawning adults, reduction in prey availability, reduced feeding availability, effects of obstructions or encroachment into water bodies, etc.);
- Probability or likelihood of the potential effect occurring (e.g. probability of fish strike from turbines for specific fish sizes, probability of disturbance of nursing marine mammals, probability of sediment plume within a distance from source, etc.);
- Description of the magnitude of the potential effect (i.e., the intensity or severity of the effect including estimated number of fish potentially affected or qualitative effects, e.g. low, medium, high);
- Spatial extent of the potential effect (e.g. localized to a number of metres from the work, channel reach or lake region, entire watershed, etc.); and
- Duration of the potential effect (e.g. duration of delay to fish migration in hours, days, months or years).

The information to be provided by the applicant must also describe the methods and techniques used to conduct the assessment. All methods and techniques used should be scientifically defensible.

“9(2) A detailed description of

- a. **how the effects referred to in subsection (1) are likely to result in the death of fish or the harmful alteration, disruption or destruction of fish habitat; and**
- b. **the extent of the elements referred to in paragraph (a).”**

[Schedule 1, Subsection 9(2)]

The purpose of this information is to differentiate and identify the likely death of fish or the harmful alteration, disruption or destruction of fish habitat based upon the effects identified in response to Schedule 1, subsection 9(1) of the Regulations. This description is important as it specifically identifies which potential effects will require the application of measures and standards to avoid the death of fish or to mitigate the extent of their death, and, to avoid or mitigate the harmful alteration, disruption or destruction of fish habitat.

Note: The information required for Schedule 1, subsection 9(2) of the Regulations is about the death of fish or the harmful alteration, disruption or destruction of fish habitat likely to result from the carrying on the proposed work, undertaking or activity prior to the consideration of the implementation of measures and standards to avoid or mitigate those effects.

The information should be presented by the applicant in a format which identifies the following:

- The proposed work, undertaking or activity that is likely to result in the death of fish or the harmful alteration, disruption or destruction of fish habitat;
- The specific effects identified for schedule 1, subsection 9(1) (as noted above) that are likely to result in the death of fish or the harmful alteration, disruption or destruction of fish habitat;
- Quantitative (metrics) or qualitative description of the death of fish or the harmful alteration, disruption or destruction of fish habitat (e.g. number or percentage of dead fish, number of square metres of permanently altered fish habitat, number of square metres of degraded spawning habitat for a specific species, etc.); and
- An explanation of the likelihood of the proposed work, undertaking or activity to result in the death of fish or the harmful alteration, disruption or destruction of fish habitat (e.g., there is probability, in percentage, that an area of habitat destruction will occur during the dam construction from infilling of spawning habitat for the footprint of the dam structure).

Note: Applicants are encouraged to consult DFO's policies which are available online., or by contacting the [Department's regional offices](#) whose contact information is posted on the same website.

Measures and standards

“10 A detailed description of the measures and standards that will be implemented, including an analysis of the expected effectiveness of those measures and standards, to

- a. **avoid the death of fish or to mitigate the extent of their death; or**
- b. **avoid or mitigate the harmful alteration, disruption or destruction of fish habitat.”**

[Schedule 1, section 10]

The hierarchy of measures, as described in the DFO policy emphasizes that efforts must be made by an applicant to prevent (avoid) impacts first. When avoidance is not possible, then efforts must be made to minimize (mitigate) impacts. After these actions, any residual impacts must be addressed by offsetting measures.

The applicant must provide comprehensive information about all of the best available measures and standards that are proposed to avoid the death of fish or to mitigate the extent of their

death or to avoid or mitigate the harmful alteration, disruption or destruction of fish habitat. The provision of a comprehensive list of proposed measures and standards to avoid the death of fish or to mitigate the extent of their death or to avoid or mitigate the harmful alteration, disruption or destruction of fish habitat is important as these measures and standards may be referenced as conditions of the authorization.

Note: Measures and standards to avoid the death of fish or to mitigate the extent of their death, or to avoid or mitigate the harmful alteration, disruption or destruction of fish habitat are not offsetting measures. Offsetting measures should be identified for the information requirements in Schedule 1, section 16 of the Regulations. Also monitoring or research associated with the project is not considered mitigation (section 11 in schedule 1 of the Regulations addresses monitoring associated with the project).

The information about measures and standards should include the following:

- A statement to demonstrate how avoidance measures were first considered prior to the proposed mitigation measures;
- Details which describe the best available measures and standards to be applied;
- Details which describe how the measures and standards will be applied to avoid the death of fish or to mitigate the extent of their death or, to avoid or mitigate the harmful alteration, disruption or destruction of fish habitat.;
- Analysis of the effectiveness of the measures and standards proposed, including the expected outcomes (i.e., qualitative characterization and quantitative metrics to avoid the death of fish or to mitigate the extent of their death or to avoid or mitigate the harmful alteration, disruption or destruction of fish habitat);
- Identification of when the expected outcomes will be achieved;
- Identification of all methods used to assess the effectiveness of the identified measures and standards; and
- Indication of the reference of any standard used.

Examples of commonly accepted avoidance measures include the use of alternative designs and/or locations to avoid negative effects altogether. Some examples of common mitigation measures include installing sediment and erosion control measures, taking measures to prevent damage to the bed or banks, adhering to fisheries timing windows, using appropriately sized screens on water intakes to prevent fish mortality or planting vegetation in the riparian area.

“11 A detailed description of the monitoring measures that will be implemented to assess the effectiveness of the measures and standards referred to in section 10.”

[Schedule 1, section 11]

The objective of effectiveness monitoring is to document whether the proposed measures and standards (identified in relation to Schedule 1, section 10 of the Regulations) employed by an applicant are effective.

Details about the monitoring measures to be put in place by the applicant should describe the following:

- Objectives of the measures and standards (e.g. reduction of death of fish or harmful alteration, disruption or destruction of fish habitat);
- The monitoring indicators to be used (e.g. physical habitat, vegetation, invertebrates, fish abundance, fish community composition, etc.);
- The methods or techniques to be used (e.g. before–after design, spatial, multi-year sampling etc.);
- Rationale for selecting the monitoring method or techniques;
- The timing/frequency of the monitoring; and
- The date(s) for submitting the monitoring report(s).

“12 A detailed description of the contingency measures that will be implemented if the measures and standards referred to in section 10 do not meet their objectives.”

[Schedule 1, section 12]

Contingency measures are planned secondary measures which will be implemented by the applicant if the planned avoidance and mitigation measures do not meet their objectives.

The applicant must describe the contingency measures to be taken if, over the course of the monitoring, it is determined that avoidance and mitigation measures are found to not be functioning as intended. The description of the contingency measure should also describe any monitoring actions which would be taken to ensure that contingency measures are performing as planned.

“13 A quantitative and detailed description of the death of fish referred to in subsection 9(2) after the measures and standards referred to in paragraph 10(a) are implemented.”

[Schedule 1, section 13]

14 A quantitative and detailed description of the harmful alteration, disruption or destruction of fish habitat referred to in subsection 9(2) after the measures and standards referred to in paragraph 10(b) are implemented.”

[Schedule 1, section 14]

The quantitative and detailed description—of the death of fish and of the harmful alteration, disruption or destruction of fish habitat from schedule 1, subsection 9(2)—refers to the elements that remain after the standards and measures, described in response to Schedule 1, section 10, are in place.

It is important that an applicant describes and quantifies residual death of fish or harmful alteration, disruption or destruction of fish habitat as this establishes the framework to account for offsets to death of fish or harmful alteration, disruption or destruction of fish habitat on which the offsetting plan will be focused. The Minister will use this information as part of their decision about whether to issue an authorization.

The information presented by an applicant must quantify the death of fish or the harmful alteration, disruption or destruction of fish habitat remaining after implementation of standards and measures in relation to each proposed work, undertaking or activity, as well as each phase of their implementation. Some examples include the number of fish killed, area and quality of

habitat destroyed, harmfully altered or disrupted, duration of the mortality event, duration of the disruption, and the degree of the disruption or alteration (e.g. degraded quality: high/ medium/ low).

Note: It is recommended that applicants include a summary of the information in response to Schedule 1, sections 10 to 14 of the Regulations.

Habitat credit

“15 The number of habitat credits that the applicant plans to use to offset the death of fish referred to in section 13 and the harmful alteration, disruption or destruction of fish habitat referred to in section 14, as well as the number of any certificate referred to in paragraph 42.02(1)(b) of the Act.”

[Schedule 1, section 15]

Habitat credits⁵ from existing fish habitat banks⁶ can be used to offset the death of fish or the harmful alteration, disruption or destruction of fish habitat within the specified service area.⁷ Habitat credits can be accumulated in fish habitat banks through the implementation of conservation projects⁸ including habitat creation, enhancement or restoration. The positive benefits for fish and fish habitat that have accumulated in the habitat bank are counted as habitat credits.

The applicant may withdraw certified credits from an existing fish habitat bank in their possession to offset the death of fish or the harmful alteration, disruption or destruction of fish habitat resulting from the proposed work, undertaking or activity within the same service area. The terms and conditions of a habitat bank are predetermined in a bilateral arrangement between the proponent and DFO.

For more information on habitat banking, offsetting and habitat credits [please consult DFO's guidance available online](#).

Offsetting plan

“16 A detailed description of a plan to offset the death of fish referred to in section 13 and the harmful alteration, disruption or destruction of fish habitat referred to in section 14 that were not offset by the habitat credits referred to in section 15, including

- a. the geographic coordinates of the location where offsetting measures will be implemented;
- b. a small-scale site plan identifying the general location and boundaries of the location

5 The *Fisheries Act* section 42.01 includes the following definitions:

“habitat credit means a unit of measure that is agreed to between any proponent and the Minister under section 42.02 that quantifies the benefits of a conservation project”

6 “fish habitat bank means an area of fish habitat that has been created, restored or enhanced by the carrying on of one or more conservation projects within a service area and in respect of which area the Minister has certified any habitat credit under 42.01(1)(b)”

7 “service area means the geographical area that encompasses a fish habitat bank and one or more conservation projects and within which area a proponent carries on a work undertaking or activity”

8 “conservation project” means a work, undertaking or activity that is carried on by a proponent for the purpose of creating, restoring or enhancing fish habitat within a service area in order to acquire habitat credits”

- where the measures will be implemented;
- c. a detailed description of the measures and how those measures will meet their objectives;
 - d. a detailed description of the monitoring measures that will be implemented to assess the effectiveness of the measures referred to in paragraph (c);
 - e. a detailed description of the contingency measures and associated monitoring measures that will be implemented if the measures referred to in paragraph (c) do not meet their objectives;
 - f. a detailed description of any adverse effects on fish and fish habitat that could result from the implementation of the plan;
 - g. a detailed description of the measures and standards that will be implemented to avoid or mitigate the adverse effects and how those measures will meet their objectives;
 - h. the timeline for the implementation of the plan;
 - i. an estimate of the cost of implementing each element of the plan; and
 - j. if the implementation of the plan requires access to lands, water sources or water bodies that are not owned by the applicant, a description of the steps that are proposed to be taken to obtain the authorization required for the applicant, the Department of Fisheries and Oceans and anyone authorized to act on the Department's behalf to access the lands, water sources or water bodies in question. This information is not required if the applicant is Her Majesty in right of Canada, Her Majesty in right of a province or the government of a territory."

[Schedule 1, section 16]

DFO's approach to offsetting is set out in its [Policy for applying measures to offset adverse effects on fish and fish habitat under the *Fisheries Act*](#).

An applicant's offsetting plan must include the geographic coordinates and a small scale site plan identifying the general location and boundaries of where the proposed offsetting measures will be implemented.

The plan must also include a detailed description of the proposed offsetting measures and how those measures will meet the objectives. The analysis of the measures should describe the methodology used and be based on scientifically defensible methods and techniques.

In certain circumstances, the implementation of proposed offsetting measures may result in adverse impacts to fish and fish habitat and may require additional measures and standards to avoid or reduce the adverse effects. When this is the case, the applicant's offsetting plan must include a description of proposed measures and standards to be used in order to avoid these adverse effects to fish and fish habitat, and an analysis which demonstrates how the proposed measures and standards will avoid or mitigate the anticipated adverse effects. An example of such a scenario is the use of timing windows when working around water.

The objective of effectiveness monitoring is to determine whether the proposed offsetting measures will be effective in offsetting the death of fish or the harmful alteration, disruption or destruction of fish habitat. The description of the monitoring measures to be undertaken by the

applicant as part of the offsetting plan should include a schedule of each monitoring element. Monitoring should also cover the timeframe to allow for the demonstration that the offsetting measures are functioning as intended.

Contingency measures are planned secondary measures which would be implemented if the planned offsetting measures did not meet their objective(s). The applicant must provide a description of the contingency measures to be taken if, over the course of the monitoring, it is determined that offsetting measures proposed to offset the residual death of fish referred to in section 13 and the residual harmful alteration, disruption or destruction of fish habitat referred to in section 14 are found to not be functioning as intended. The description of the contingency measure should also describe any monitoring actions which would be taken to ensure that contingency measures are performing as planned.

The applicant's timeline included in the offsetting plan should include start and end dates for implementing the offsetting measures. In complex offsetting plans, it may also be necessary to describe the timing for the various offsetting measures.

The applicant's cost estimate will be used to determine the monetary value of the letter of credit or another equivalent form of financial guarantee (see section 4.3 of this guide). The estimate should include the cost for implementing all elements of the offsetting plan, including elements related to monitoring and maintenance of offsetting features. The estimate should also consider any additional expenses that could be incurred by DFO to complete the offsetting plan (e.g. costs for additional project management, costs for inflation, etc.).

In addition, the offsetting plan must include a brief explanation of the steps that will be undertaken by the applicant to secure access to the lands, water sources and water bodies required for implementing the offsetting measure(s). This is not required when the applicant is Her Majesty in right of Canada, Her Majesty in right of a province or the government of a territory.

4.2 Other available information

Although the applicant is not required to submit the following information with their application, it may serve to facilitate DFO's review. Applicants are encouraged to submit additional information regarding the following:

- Fisheries management objectives in place for the relevant water body;
- Results from the consideration of how the proposed work, undertaking or activity and offsetting plan align with fisheries management objectives; and
- Any information relevant to other factors listed under Section 34.1 of the *Fisheries Act*.

4.3 Financial guarantee

A financial guarantee is required when submitting an application for authorization to cover the cost of implementing the offsetting plan referred to in section 16 of schedule 1. This financial guarantee must be sufficient to cover the cost for implementing all elements of the offsetting plan, including monitoring measures.

DFO uses financial guarantees to provide a financial assurance mechanism in the event that an offsetting plan is not completed. This allows the Department to access funds to ensure the

implementation of the offsetting plan or elements of the plan which have not been implemented by the applicant in the timeframe allotted in their authorization.

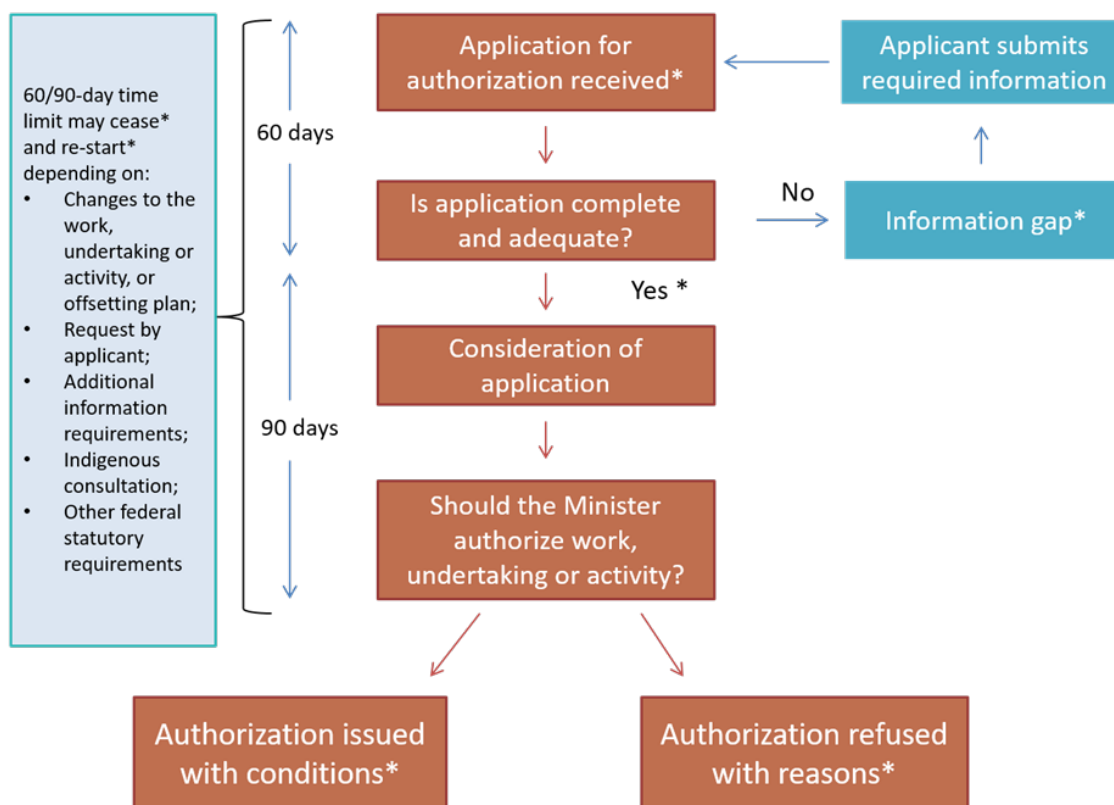
This guarantee can be an irrevocable letter of credit issued by a recognized Canadian financial institution, or another equivalent financial guarantee, including a performance bond. The former is to be addressed to the Receiver General for Canada as the beneficiary on behalf of Fisheries and Oceans Canada. An example of a letter of credit is provided in Annex A.

The amount of financial guarantee is determined by the cost estimates set out/described in an applicant's offsetting plan. See Annex B for information on how to determine the amount of financial guarantee required. It is strongly recommended that an applicant discuss the amount of their financial guarantee with DFO before their application is submitted.

The Regulations exempt an applicant who is Her Majesty in right of Canada, Her Majesty in right of a province or the government of a territory from the requirement of providing financial guarantee.

4.4 Processing of applications

Section 4 of the Regulations set out the procedures and time limits for processing applications under non-emergency situations. A flow chart of the general process is illustrated in Figure 1.



*Regulations require the Minister to notify the applicant

Figure 1: Process for the Review of an Application for paragraphs 34.4(2)(b) and 35(2)(b) Fisheries Act Authorization (Non-Emergency Situations)

4.5 Time limits: 60 and 90 day

The Regulations provide for two time limits by which the Minister must abide when reviewing applications:

- From the date of receipt of an application, the Minister has 60 calendar days to determine if the application is complete, incomplete or inadequate, and to notify the applicant of this determination. If the application is not complete or inadequate, the notification will identify the information or documentation that must still be provided by the applicant. [Subsection 4(3)]; and
- From the date of the notification that the application is complete, the Minister has 90 calendar days to either issue the authorization or notify the applicant in writing that the authorization is refused. [Subsection 4(5)]

The time limits established in the Regulations apply to the Minister and not to the applicant.

4.6 Time limit ceases to apply

The time limit for reviewing the application (either the 60- or 90-day time limit) ceases to apply if one of the circumstances set out subsection 4(6) of the Regulations should occur.

“4 (6) The time limit referred to in subsection (3) or (5) ceases to apply if

- a. the applicant proposes amendments to their application;**
- b. the applicant requests in writing that the processing of the application be suspended;**
- c. circumstances require that information or documents other than those referred to in subsection 2(1) be obtained or that amendments to the information or documents submitted by the applicant be made before an authorization can be issued or a notification of refusal can be given;**
- d. consultation is required before an authorization can be issued or a notification of refusal can be given; or**
- e. an Act of Parliament, a regulation made under an Act of Parliament or a land claims agreement provides that a decision be made or that conditions be met before an authorization can be issued or a notification of refusal can be given.”**

[Subsection 4(6)]

The applicant proposes amendments to their application - (Regulations, paragraph 6(a))

If the applicant proposes amendments to their application, additional or amended information or documentation may be required before a decision on the authorization application can be made. In such a case, the time limit will cease. The processing of the application and applicable time limit will restart when the required information or documentation is provided.

An applicant should contact DFO to determine their requested amendments warrant submission of additional or amended information.

The applicant requests in writing that the processing of the application be suspended - (Regulations, paragraph 6(b))

If the applicant requests, in writing, that the processing of the application be suspended, the time limit will cease until the applicant requests, in writing, that the processing of the application be resumed and time limit restarted.

In the event that an applicant determines that the proposed work, undertaking or activity will not be carried out, the applicant should inform the Minister so that the application process may be closed.

Circumstances require that additional information be obtained - (Regulations, paragraph 6(c))

A proposed work, undertaking or activity or related aspects of a project may be under review by other federal, provincial or territorial agencies or environmental assessment bodies. These processes may influence details of the proposed work, undertaking or activity, or the offsetting plan included in the application for a *Fisheries Act* authorization. If these processes affect an application such that additional or amended information is required to support the Minister's review, the process and time limits ceased.

This provision may also apply in relation to unique aspects of a proposed work, undertaking or activity that may require further information or documentation beyond that included in schedule 1 of the Regulations.

The Minister will communicate with the applicant when the process and time limit have ceased and identify the information or documentation required to resume the process and to restart the time limit.

Consultation is required - (Regulations, paragraph 6(d))

Consultation with Indigenous groups occurs when the Crown proposes conduct (such as the issuance of paragraph 34.4(2)(b) or 35(2)(b) *Fisheries Act* authorization) that has the potential to adversely impact Aboriginal or Treaty rights. The time limit for processing an application will cease in cases when DFO is required to undertake Indigenous consultation. This will provide DFO with the time necessary to carry out meaningful consultation.

Note: In most cases, DFO will be able to inform an applicant if there is a requirement to meet the duty to consult relatively early in the review of the application.

Other Federal Requirements - (Regulations, paragraph 6(e))

Prior to making a decision with respect to paragraphs 34.4(2)(b) or 35(2)(b) *Fisheries Act* authorization, DFO may be required to meet the requirements of other federal legislations or regulations or, requirements set out in a land claims agreement. These may include:

- [*Impact Assessment Act*](#)
- Section 73 or 74 of the [*Species at Risk Act*](#)
- Section 75, 76 or 77 of the [*Yukon Environmental and Socio-economic Assessment Act*](#)
- Section 118 of the [*Mackenzie Valley Resource Management Act*](#)
- Article 12, Part 10, Paragraph 12.10.1 of the [*Nunavut Land Claims Agreement*](#)
- Chapter 18, Section 18.10.1 of the [*Eeyou Marine Region Land Claim Agreement*](#).

Note: In most cases, DFO will be able to inform an applicant if the Department must meet other

federal requirements relatively early in the review of the application.

4.7 Notice of cessation

When a time limit ceases to apply as a result of the circumstances set out in subsection 6(c), (d) or (e) of the Regulations, as described above, the Minister will notify the applicant with the reasons for the cessation, as well as the next steps to resume the process (subsection 4(7))

4.8 Time limit starts over and notice

“4 (8)The time limit referred to in subsection (3) or (5) starts over as soon as all of the following conditions have been met:

- a. all information or documents in support of the proposed amendments have been received, in the case referred to in paragraph (6)(a);**
- b. the Minister receives a request in writing that the processing of the application be resumed, in the case referred to in paragraph 6(b);**
- c. the information or documents referred to in paragraph (6)(c) have been obtained or amended;**
- d. the consultation referred to in paragraph (6)(d) has been conducted;**
- e. the decision has been made or the conditions have been met, in the case referred to in paragraph (6)(e).”**

[Subsection 4(8)]

When all of the above mentioned conditions have been met, the time limit can be restarted. The Minister must notify the applicant in writing of the day on which the time limit starts over (subsection 4(9)).

5.0 Applications for emergency situations

In the emergency situations prescribed in section 3 of the Regulations, an applicant requires their application to be considered immediately by DFO such that the proposed work, undertaking or activity can be carried on without delay.

Section 3 and schedule 2 of the Regulations set out the information requirements to be submitted by an applicant when they are applying for an authorization to carry on a work, undertaking or activity in response to emergency situations. This information is the basic information required to process applications under emergency situations.

Unlike applications received under non-emergency situations, applications for authorizations made in response to emergency situations are processed without time limits. The Department will process these applications on a priority basis, consistent with any other federal legislation that may apply.

The applicant should use the [Application Form for paragraphs 34.4\(2\)\(b\) and 35\(2\)\(b\) Fisheries Act Authorization \(Emergency Situations\)](#).

5.1 Information to be provided

Contact information

"1 The applicant's and, if applicable, representative's name, address and telephone number."

[Schedule 2, section 1]

The applicant must provide their full legal name and primary mailing address and if possible a valid email address. The applicant must sign the application.

If relevant, the applicant must also provide a representative and the role of this representative in relation to the application.

When the applicant is a company, the full legal registered name of the company and the company's representative must be identified. This representative must sign the application.

Nature of the matter of National Security, National Emergency or Emergency

"2 A detailed description of the proposed work, undertaking or activity, a description of the applicable situation referred to in paragraphs 3(a) to (c) of these Regulations and the reasons why the proposed work, undertaking or activity needs to be carried on without delay."

[Schedule 2, section 2]

Note: National security and national emergencies are those which are declared by the federal government in relation to public security, public health, and public safety, typically declared under an Act, a Regulation or an Order. Other emergencies may include situations when there is potential for immediate damage to property, the environment, or to public health and safety that requires the carrying on of the proposed work, undertaking or activity.

The applicant must describe the nature of the emergency which requires the proposed work, undertaking or activity to be carried on without delay.

Timeline

"3 The timeline for carrying on the proposed work, undertaking or activity."

[Schedule 2, section 3]

The applicant must provide the dates and duration for carrying on the proposed work, undertaking or activity. The timeline information in an application must also describe all temporal aspects about the proposed work, undertaking or activity.

Location

"4 A description of the location of the proposed work, undertaking or activity, including its geographic coordinates and the name of any water sources and water bodies that are likely to be affected."

[Schedule 2, section 4]

The applicant must provide the location of the proposed work, undertaking or activity, including:

- Geographic co-ordinates of the proposed work, undertaking or activity (i.e., Latitude and Longitude or Universal Transverse Mercator (UTM) Grid co-ordinates with zones);
- The names of any water sources and water bodies that are likely to be affected;
- Description of the proposed work, undertaking or activity in relation to landmarks, high water mark, etc.; and/or
- Site plans or maps.

Death of fish and harmful alteration, disruption and destruction of fish habitat

“5 A detailed description of the death of fish and the harmful alteration, disruption or destruction of fish habitat that are likely to result from the proposed work, undertaking or activity”

[Schedule 2, section 5]

The applicant must identify and explain the anticipated death of fish or harmful alteration, disruption or destruction of fish habitat that is likely to be caused by the carrying on of the proposed work, undertaking or activity. If possible, applicants must also describe the fish species potentially affected, how they may be affected, and the type of fish habitat that may be affected.

Other available information

Although the applicant is not required to submit other information, should additional information be available about the location of the proposed work, undertaking or activity including the fish or fish habitat or the potential effects on fish and fish habitat, it may serve to facilitate DFO's review. For example, details of any measures and standards that an applicant plans to implement to avoid or mitigate impacts to fish and fish habitat during the carrying on of the proposed work, undertaking or activity would be beneficial.

6.0 Amending, suspending or cancelling an authorization at the request of the authorization holder

The Minister can amend, suspend or cancel previously issued authorizations (see subsections 34.4(5) and 35(5) of the *Fisheries Act*).

The holder of an exiting authorization can request that their authorization be amended, suspended, in whole or in part, or cancelled. The procedure for the this process is presented in sections 5, 6 and 7 of the Regulations and in sections 6.1 to 6.4 of this guide.

The holder of a suspended authorization can request in writing to the Minister that their authorization be reinstated whether the suspension was made at the request of the applicant or initiated by the Minister. Information on requesting the reinstatement of an authorization can be found in subsection 9(5) of the Regulations and in section 6.5 of this guide.

The timelines for reviewing an authorization holder's request to amend, suspend or cancel an authorization are described in section 8 of the Regulation. They are identical to the timelines for an initial application for authorization.

6.1 Application requirements to request an amendment

“5 The holder of any authorization may request to amend the authorization. The request must be submitted to the Minister in writing and must include:

the file numbers indicated on the original authorization;

a description of the amendment;

the up-to-date information and documentation listed in Schedule 1 or 2, as the case may be, that are necessary to support the request; and

a detailed description of the likely effects of the amendment on fish and fish habitat, if not otherwise submitted”

[Section 5]

Authorization holders seeking to amend her/his existing authorization in whole or in part should use the [Form for Authorization Holders to Request an Amendment to an Authorization](#).

File number(s) associated with the original authorization

The authorization holder must provide the file number(s) associated with the original authorization to ensure the previously submitted information is properly referenced when reviewing the request for an amendment.

Description of the amendment

The authorization holder must provide a detailed description of the proposed amendment. This information is required to provide background about the proposed changes to the previously authorized work, undertaking or activity.

Updated prescribed information

The holder of the authorization requesting an amendment must provide the information and documents that appear in Schedule 1 or 2 of the Regulations if they are necessary for the amendment requested. If the information and documents supporting the original application - and now necessary for the change request - have become obsolete, the holder of the authorisation must provide updates. A description of the information and documentation required for an application for authorization is provided in sections 4.1 and 5.1 of this guide.

Detailed description of the likely effects of the amendment on fish and fish habitat

This description is intended to identify the effects, direct or indirect, on fish and fish habitat that may be caused by the requested amendment. Refer to section 4.1 of this guide for more details on type of information expected to describe the effects: “[Description of Effects on Fish and Fish Habitat](#)”.

6.2 Application requirements to request a suspension

“6 The holder of any authorization may request to suspend the authorization in whole or in part. The request must be submitted to the Minister in writing and must include

the file numbers indicated on the original authorization;

- the period of suspension requested, if any;**
- the reason for requesting the suspension; and**
- a detailed description of the likely effects of the suspension on fish and fish habitat.”**

[Section 6]

Authorization holders seeking to suspend an existing authorization in whole or in part should use the [Form for Authorization Holders to Request the Suspension or Cancellation of an Authorization](#).

File number(s) associated with the original authorization

The authorization holder must provide the file number(s) associated with the original authorization to ensure the previously submitted information is properly referenced when reviewing the request for a suspension.

Requested suspension period

The authorization holder must provide the start and end date for which he/she wishes for the authorization to be suspended if this period is known. At any time during the suspension the authorization holder can request in writing to have the suspension period extended or to have the authorization reinstated.

Reason for requesting suspension

The authorization holder must provide a detailed description of the reason for which they are requesting a suspension, in whole or in part of the authorisation. This information is required to provide background about the circumstances that arose that require the relevant works, undertakings or activities to be suspended.

Detailed description of the likely effects of the suspension on fish and fish habitat

This description is intended to identify the effects, direct or indirect, on fish and fish habitat that may be caused by the requested suspension. Refer to the “[Description of Effects on Fish and Fish Habitat](#)” in section 4.1 of this guide for more details on type of information to submit to describe these effects.

6.3 Application requirements to request a cancellation

“7 The holder of any authorization may request to cancel the authorization. The request must be submitted to the Minister in writing and must include

- the file numbers indicated on the original authorization;**
- the requested cancellation date;**
- the reason for requesting the cancellation; and**
- a detailed description of the likely effects of the cancellation on fish and fish habitat.”**

[Section 7]

Authorization holders seeking to cancel an existing authorization should use the [Form for](#)

[Authorization Holders to Request the Suspension or Cancellation of an Authorization.](#)

File number(s) associated with the original authorization

The authorization holder must provide the file number(s) associated with the original authorization to ensure the previously submitted information is properly referenced when reviewing the request for a cancellation.

Requested cancellation date

The authorization holder must provide the date on which they are requesting for the authorization to be cancelled. Upon cancellation the authorization cannot be reinstated.

Reason for requesting cancellation

The authorization holder must provide a detailed description of the reason for which they are requesting a cancellation. This information is required to provide background about the circumstances that arose that require authorization to be cancelled.

Detailed description of the likely effects of the cancellation on fish and fish habitat

This description is intended to identify the effects, direct or indirect, on fish and fish habitat that may be caused by the requested cancellation. Refer to the "[Description of Effects on Fish and Fish Habitat](#)" in section 4.1 of this guide for more details on type of information to submit to describe these effects.

6.4 Confirmation of receipt and time limits

Confirmation of receipt

"8(1) The Minister must, on receipt of a request referred to in sections 5 to 7, send to the authorization holder a confirmation of receipt that indicates the date of receipt."

60-day time limit

"8(2) Subject to subsections (5) and (7), the Minister must, within a period of 60 days beginning on the day on which the request is received, notify the authorization holder in writing that the request is complete, incomplete or inadequate. If the request is incomplete or inadequate, the notification must specify the information or documents to be provided."

Subsection (2) applies again

"8(3) The Minister must, on receipt of any information or documents set out in the notification, send to the authorization holder a confirmation of receipt that indicates the date of receipt. Subsection (2) applies again to the request, except that the period begins on the date indicated in the confirmation of receipt."

Time limit ceases to apply

"8(5) The time limit referred to in subsection (2) or (4) ceases to apply if

- a. the authorization holder proposes amendments to the request to amend, suspend or

- cancel;
- b. the authorization holder requests in writing that the processing of the request be suspended;
 - c. circumstances require that information or documents other than those referred to in sections 5 to 7 be obtained or that amendments to the information or documents submitted by the authorization holder be made before the Minister amends, suspends or cancels the authorization;
 - d. consultation is required before the authorization can be amended, suspended or cancelled; or
 - e. an Act of Parliament, a regulation made under an Act of Parliament or a land claims agreement provides that a decision be made or that conditions be met before the authorization can be amended, suspended or cancelled.”

[subsections 8(1), (2), (3) and (5)]

The same processes and rules that apply to the initial application for an authorisation also apply to a request for amendment, suspension, or cancellation. Those processes are described at section 4.4 to 4.8 of this guide.

6.5 Notice of amendment, suspension or cancellation

Minister's decision

“8(4) Subject to subsections (5) and (7), the Minister must, within a period of 90 days beginning on the date of the notification of the authorization holder that the request is complete, either amend, suspend or cancel the authorization or notify the authorization holder in writing of the refusal to do so.”

[subsection 8(4)]

The Minister has 90 days from the date that the notice is given that an application is complete, to render his or her decision. The Minister will send the holder of the authorization written notice of his or her decision to amend, suspend, or cancel the authorization, or the refusal to do so. This notice would include the effective date and, in the case of a suspension, the duration if known. Any part of the initial authorization that was unaffected by the amendment or suspension would remain valid and continue to take effect until the expiry of the authorization.

7.0 Amending, suspending or cancelling an authorization initiated by the Minister

7.1 Circumstances and representations

Amendment, suspension or cancellation by Minister

“9(1) The Minister may, on the Minister's own initiative, amend or suspend, in whole or in part, or cancel any authorization if

- a. the Minister has reasonable grounds to believe that the conditions established by the Minister in the authorization have not been or will not be met;

- b. the Minister has reasonable grounds to believe that the authorization was obtained by fraudulent or improper means or by the misrepresentation of a material fact;
- c. the Minister becomes aware of new information that demonstrates that the death of fish or the harmful alteration, disruption or destruction of fish habitat is or will be significantly greater than anticipated by the Minister at the time of issuance of the authorization; or
- d. the authorization holder has not paid a fine imposed on them under the Act.”

[subsection 9(1)]

Notice and representations

“9(2) If the Minister intends to amend or suspend, in whole or in part, or cancel the authorization, the Minister must notify the authorization holder in writing of this intention and give the authorization holder an opportunity to make written representations.”

[subsection 9(2)]

The Minister may, on his or her own initiative, amend, suspend, in whole or in part, or cancel in whole an authorization under the circumstances specified in the Regulations. If this is the case, the authorization holder will be granted the opportunity to make written representations to the Minister.

7.2 Suspension to prevent the imminent death of fish or the imminent harmful alteration, disruption or destruction of fish habitat

“9(3) Despite subsection (2), the Minister may suspend an authorization, in whole or in part, without giving the authorization holder an opportunity to make written representations if the suspension is required to prevent the imminent death of fish or the imminent harmful alteration, disruption or destruction of fish habitat.”

[subsection 9(3)]

Under circumstances where the Minister has to prevent the imminent death of fish or the imminent harmful alteration, disruption or destruction of fish habitat he or she will be able to suspend an authorization without giving the authorization holder an opportunity to provide written representations.

7.3 Notice of amendment, suspension or cancellation

“9(4) If the authorization is amended or suspended, in whole or in part, or cancelled by the Minister, the Minister must notify the authorization holder of the amendment, suspension or cancellation, its effective date and, in the case of a suspension, the duration.”

[subsection 9(4)]

Once a decision had been reached, the Minister will provide the authorization holder with written notice of his or her decision to amend, suspend or cancel an authorization, which would have to include the effective date and, in the case of a suspension, the duration, if known. Any part of the initial authorization that was unaffected by the amendment or suspension would remain valid and continue to take effect until the expiry of the authorization

7.4 Reinstatement of a suspended authorization

“9(5) The Minister may reinstate the authorization at the expiry of the period indicated in the notice of suspension or, on written request, at any time during the suspension if the matter that gave rise to the suspension has been resolved or corrected. The Minister may require the authorization holder to submit a request for amendment in order to reinstate the authorization.”

[subsection 9(5)]

The Minister may reinstate a suspended authorization at the expiry of the period indicated in the notice of suspension or, upon written request, at any time during the suspension.

The holder of a suspended authorization who wishes to have it reinstated must use the [Form for Authorization Holders to Request the Reinstatement of a Suspended Authorization \(PDF, 389 KB\)](#). This request for reinstatement may be necessary because the notice of suspension did not include a reinstatement date or because the holder wishes to reinstate it before the date indicated on the notice of suspension if the matter that gave rise to the suspension has been resolved or corrected.

The holder of an authorization could also, at the request of the Minister, be required to submit a request for the amendment of their authorization.

Annex A: Letter of Credit Template

Financial Institution: **{Name and Address}**

Applicant: **{Name and Address of Applicant}**

Letter of Credit Number: **{Provided by Financial Institution}**

Date of Issue: **{Date required}**

DFO Referral File No.: **{REF/FILE NO.}**

IRREVOCABLE STANDBY LETTER OF CREDIT

Beneficiary: **{Receiver General for Canada on behalf of Fisheries and Oceans Canada}**

Dear Sir or Madam:

We hereby authorize you to draw upon the **{Financial Institution, address}** for the account of our Customer {Applicant}, up to the sum total of **#{amount}** Canadian Dollars available on demand as follows:

Pursuant to the request of our Customer, we the **{Financial Institution}** hereby establish and give to you an irrevocable Standby Letter of Credit (the "Credit") in your favour in the total amount of **#{amount}**. The Credit may be drawn on, by you, at any time and from time to time upon written demand by you. We will honour any such demand made by you without inquiring whether you have a right as between yourself and our Customer to make such demand and without recognizing any claim, instructions, direction or notification to the contrary from the Customer.

Provided, however, that you are to deliver to us at such time as a demand for payment is made upon us, a sight draft purported to be signed by you, agreeing and/or confirming that monies drawn pursuant to this Credit will be retained and used by you to meet our Customer's obligations in connection with offsetting and monitoring as set out in the **{Offsetting Plan Name}, {Version No. (if available)}**, dated **{date of plan}**. This original Letter of Credit must also be presented at the time for endorsement of the claim paid and will be returned to you.

It is understood and agreed that the obligation of the undersigned under this Credit is an obligation to pay money only and that in no circumstances shall the undersigned be obliged to perform or cause to perform any of our Customer's actual obligations to you.

Conditions:

- The sum total of this Credit shall be reduced from time to time as advised by written notice given to this Branch from time to time by you.
- The Credit will continue until **{MM/DD/YYYY}** and will expire at the Branch address at the close of banking business on that date.
- This Credit is irrevocable until that date.
- This Credit shall be deemed to be automatically extended for one year from the present or any future expiration date hereof, unless 30 days before any such date we give you written notice that we elect not to consider this Credit renewed for any such additional period. Upon receipt of such notice, you may draw upon, accompanied by a signed sight draft, the amount to be retained and used by you to meet obligations incurred or to be

incurred in connection with the Authorization.

- Partial drawings on this Credit are permitted.
- Upon successful completion of **{Applicant}** responsibilities under the offsetting and monitoring conditions of the Authorization, as determined by Fisheries and Oceans Canada, the original Letter of Credit shall be returned to **{Financial Institution, address}** for cancellation.

{Signatures of responsible officials}

Annex B: Determining the amount of the Letter of Credit, or another equivalent financial guarantee, including a Performance Bond

It is an applicant's responsibility to supply a cost estimate to implement the offsetting plan that they submitted with an application for a paragraphs 34.4(2)(b) and 35(2)(b) *Fisheries Act* authorization. It is DFO's responsibility to ensure that the letter of credit issued by a recognized Canadian financial institution, or another equivalent financial guarantee, such as a performance bond, to cover the costs required to complete this offsetting plan.

An applicant should follow three basic steps to ensure that their estimate accurately reflects the costs that will be incurred to complete the offsetting plan.

1. **Verify the offsetting plan costs:** This includes labour, project supervision, equipment, materials, report preparation and printing, property purchase or lease, monitoring, and maintenance.
2. **Determine any additional costs to complete the offsetting plan** if the implementation of the plan must be managed by DFO. This includes project management costs, seasonal adjustment, availability of local expertise, inflation protection, etc.
3. **Establish the total estimate:** This is the sum total of the offsetting plan costs and any additional costs.

Examples of additional costs

The following is a list of potentially relevant factors to consider when estimating additional costs, which would typically increase according to the size and complexity of the offsetting plan:

1. **Increased project management:** Additional project management costs may be incurred if a third party is required to complete the offsetting plan on schedule and within the allocated budget.
2. **Seasonality:** The costs of completing a plan may vary by the time of year. It may also be more expensive to complete an aspect of a plan at a different time of the year than was originally planned.
3. **Available local expertise:** Per diem travel and living expenses associated with non-local contractors may significant increase overall costs (e.g. as much as 20–30%).
4. **Inflation protection:** Applicants should consider the impact of inflation on overall costs for longer-term plans. It is suggested that applicants use the consumer price index to calculate the annual inflation rate of the total project costs, and to add this amount to their letter of credit or another equivalent financial guarantee, including a performance bond.