

V. LEGISLATION GOVERNING FISHERIES AND OCEANS [§31.5]

A. IMPORTANT FISHERIES ACT PROVISIONS [§31.6]

The *Fisheries Act* establishes three key prohibitions that may have an impact on a target's business.

Section 34.4 prohibits any work, undertaking, or activity, other than fishing, that results in the death of fish.

Section 35 prohibits any work, undertaking, or activity that results in the harmful alteration, disruption, or destruction of fish habitat. The term "fish habitat" is defined in s. 2 as "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". Consequently, fish habitat can encompass streams and riparian areas adjacent to streams.

Section 36 prohibits the deposit of a deleterious substance in water frequented by fish. Any business that discharges ("deleterious substances" include sediment, concrete waste water, food processing effluents, and agricultural discharges) anything deleterious into a fishbearing waterway will be affected.

The *Fisheries Act* and regulations provide a method for applying for an authorization to allow for the alteration of fish habitat. Fisheries and Oceans Canada applies a "net gain" policy requiring the creation of habitat to compensate for habitat which has been destroyed. The guiding principle is "no net loss".

The courts have interpreted ss. 35 and 36 prohibitions liberally. Any business that operates on or near fish-bearing waters should be concerned with any spill or activity that may potentially affect fish or fish habitat in an adverse way, even if the spill or activity is authorized by a provincial authority. For example, an entity may have a provincial permit under the *Environmental Management Act*, S.B.C. 2003, c. 53 (the "*EMA*"), allowing the discharge of waste into fish-bearing waters. However, a provincial *EMA* permit does not constitute a defence to charges under s. 36 of the federal *Fisheries Act*.

The *Fisheries Act* also includes provisions:

- (1) requiring that, when making a decision under the Act, the Minister of Fisheries, Oceans and the Canadian Coast Guard

- (the “Minister”) consider any adverse effects that the decision may have on the rights of the Indigenous Peoples of Canada recognized and affirmed by s. 35 of the *Constitution Act, 1982*;
- (2) respecting the consideration and protection of Indigenous knowledge of the Indigenous Peoples of Canada;
 - (3) authorizing the making of agreements with Indigenous governing bodies to further the purpose of the *Fisheries Act*;
 - (4) empowering the Minister to establish advisory panels and to set fees, including for the provision of regulatory processes;
 - (5) providing measures for the protection of fish and fish habitat with respect to works, undertakings, or activities that may result in the death of fish or the harmful alteration, disruption, or destruction of fish habitat, including in ecologically significant areas;
 - (6) empowering the Minister to make regulations for the purposes of the conservation and protection of marine biodiversity; and
 - (7) empowering the Minister to make fisheries management orders prohibiting or limiting fishing for a period of 45 days to address a threat to the proper management and control of fisheries and the conservation and protection of fish.

B. RIPARIAN AREAS PROTECTION ACT [§31.7]

The provincial *Riparian Areas Protection Act* and the Riparian Areas Protection Regulation can have a significant effect on development in riparian areas adjacent to streams. If a property has a stream on it, or near it, the local municipality and regional district should be contacted regarding any requirements for an environmental assessment.

VI. INFORMATION SHEET FOR FISHERIES AND OCEANS SEARCHES [§31.8]

Address:

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