"Self-Assessment" of Alberta Transportation Projects under the Federal Fisheries Act

SUMMARY
This document describes the process for determining when Alberta Transportation projects need to be submitted to Fisheries and Oceans Canada (DFO) for review. For Alberta Transportation projects, a Professional Biologist (P. Biol.) makes the determination on whether or not:

a) Fish are present in the waterbody that are part of or could support a commercial, recreational or Aboriginal (CRA) fishery; and
b) "Serious harm" to fish can be avoided, with implementation of mitigation measures.

If the Professional Biologist concludes that there are no fish present in the waterbody that are part of or could support a CRA fishery, then there is no need for the project to be submitted to DFO for review.

If the Professional Biologist concludes that serious harm can be avoided, with implementation of mitigation measures, then there is no need for the project to be submitted to DFO for review.

If the Professional Biologist concludes that a CRA fishery does or could exist, and serious harm cannot be avoided or residual serious harm remains, even with implementation of mitigation measures, then the project administrator of Alberta Transportation is responsible for submitting the project to DFO for review.

BACKGROUND
Significant changes to the federal Fisheries Act came into force in November 2013. Most notably, the Act now prohibits works, undertakings or activities that result in serious harm to fish that are part of or could support a commercial, recreational or Aboriginal (CRA) fishery, unless authorized by the Minister of Fisheries and Oceans Canada (DFO).

For the Act to apply there must be a CRA fishery, or a connection to a CRA fishery in the watershed. The fishery may consist of sport fish, or there may only be forage fish such as minnows present that serve as food for larger-sized fish species in the watershed. As well, fish need not be present at all times in a given waterbody. Fish may make only seasonal use of a waterbody, for example spawning in the spring. There is no requirement that a CRA fishery is actively exploited to be covered under the Act. The determination on whether a CRA fishery exists should be made by the Professional Biologist.

Serious harm to fish as defined in the Act is the death of fish or any permanent alteration to, or destruction of, fish habitat.

DFO provides further interpretation of serious harm to fish in their Fisheries Protection Policy Statement:

- a permanent alteration to fish habitat of a spatial scale, duration or intensity that limits or diminishes the ability of fish to use such habitats as spawning grounds, as nursery, rearing, or food supply areas, or as a migration corridor, or any other area in order to carry out one or more of their life processes;

- the destruction of fish habitat of a spatial scale, duration, or intensity that fish can no longer rely upon such habitats for use as spawning grounds, or as nursery, rearing, or food supply areas, or as a migration corridor, or any other area in order to carry out one or more of their life processes.
The current DFO policy emphasises protection of the productivity and sustainability of fisheries through avoidance of “serious harm” to fish, rather than meeting the former guiding principle of “no net loss of habitat.”

The DFO website recommends consulting with a qualified environmental professional if a proponent is unsure whether a project requires a DFO review. For Alberta Transportation projects, a Professional Biologist is a qualified environmental professional. A Professional Biologist (P. Biol.) is defined in the Professional Biologist Regulations of Alberta.

SELF-ASSESSMENT OF A PROJECT
“Self-assessment” is the review carried out by a Professional Biologist to determine whether or not a project can avoid “serious harm” to fish, with the implementation of mitigation measures identified by the Professional Biologist. These mitigation measures may be identified in collaboration with project engineers.
Under the “self-assessment” process, many routine and “low-risk” projects are eliminated from the need for DFO review if the risk of serious harm to fish can be eliminated with high confidence.
The DFO website provides some guidance regarding types of waterbodies, and types of project activities whereby a project may not require review by DFO. The assessment by the Professional Biologist should include the nature, magnitude, and likelihood of occurrence of project impacts on fish and fish habitat, and any associated uncertainties. As well, the Professional Biologist should identify mitigation measures to avoid or reduce any anticipated negative effects, and describe the extent and significance of any residual effects.
Finally, the Professional Biologist should offer a conclusion on whether it is likely that serious harm to fish can be avoided, with the implementation of mitigation measures, and prior to consideration of any offsetting (compensation) activities.

SUBMISSION OF A PROJECT TO DFO FOR REVIEW
For Alberta Transportation projects, a project should be submitted to DFO for review by the Alberta Transportation project administrator only when the Professional Biologist has concluded that both of the following two conditions apply: a) fish are present in the waterbody that are part of or could support a commercial, recreational or Aboriginal (CRA) fishery; and b) serious harm to fish cannot be avoided or residual serious harm remains, even with implementation of mitigation measures. A Request for Review form is available on the DFO website.

CONTACT
Contact: John Englert (780 644-5412), Environmental Management Services, Technical Standards Branch, Alberta Transportation.
This bulletin is effective immediately.

Recommended:  

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Approved:  

Bill Kenny  
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