

**Background: Comparison between the habitat protection and pollution prevention provisions of the proposed  
Bill C-45 and the current Fisheries Act, F-14\***

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<b>Note</b>	<b>C-45</b>	<b>F-14</b>
The definition of “fishery” has been changed	3. “fishery” means a fishery described in terms of a species of fish; a place where fishing may be carried on; a period during which fishing may be carried on;	2. "fishery" includes the area, locality, place or station in or on which a pound, seine, net, weir or other fishing appliance is used, set, placed or located, and the area, tract or stretch of water in or from which fish may be taken by the said pound, seine, net, weir or other fishing appliance, and also the pound, seine, net, weir, or other fishing appliance used in connection therewith;
The definition of “Fish habitat” has been changed	3. “fish habitat” means any area on which fish depend directly or indirectly in order to carry out their life processes, including spawning ground, nursery areas, rearing areas, food supply areas and migration areas.	2. "fish habitat" means spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes;
C-45 does not include a definition of “Waters frequented by fish” or “Canadian fisheries waters.”	N/A	34. "water frequented by fish" means Canadian fisheries waters. 2. "Canadian fisheries waters" means all waters in the fishing zones of Canada, all waters in the territorial sea of Canada and all internal waters of Canada;
Section 6.(f) could affect enforcement of the pollution prevention provisions. Note the use of the word, “must”.	6. The Minister and every person engaged in the administration of this Act or the regulation must (f) endeavour to act in cooperation with other governments and bodies established under land claims agreements;	N/A

\* Ordered by clause. This list does not include changes to the fisheries licencing system.

Note	C-45	F-14
There is a clause encouraging public participation.	6. The Minister and every person engaged in the administration of this Act or the regulation must (g) encourage the participation of Canadians in the making of decisions that affect the management of fisheries and the conservation or protection of fish or fish habitat.	N/A
There is a new section on Agreements with provinces.	Sections 7-10.	N/A
There appears to be a series of clauses that enable the federal government to establish subsidies for fishing and aquaculture industries.	<p>11. The Minister may undertake programs and projects, whose objective may include any of the following:</p> <p>(a) improving the abilities of a fishing enterprise or an organization, including a fishers' union or an aboriginal organization, with regard to business management and the management of its harvesting fish;</p> <p>(c) improving the economic viability of a fishery or of the aquaculture sector ...</p> <p>12. (1) The Minister may, in order to facilitate the implementation of a program or project,</p> <p>(a) make grants and contributions;</p> <p>(b) make loans;</p> <p>(c) guarantee the repayment of any financial obligation, or provide loan insurance or credit insurance in respect of such an obligation.</p>	N/A
This clause seems to give unusually broad power to the Minister to collect information.	15. (1) The Minister may, for the purpose of conducting research, creating an inventory of data, formulating objectives and codes of practice, issuing guidelines or assessing or reporting on the state of fisheries or fish habitat, require any person to provide the Minister with any information that is in that person's possession, or to which the person may reasonably be expected to have access, that the Minister considers relevant to <p>(a) the conservation or protection of fish or fish habitat;</p> <p>(b) the proper management or control of fisheries or</p>	N/A

<b>Note</b>	<b>C-45</b>	<b>F-14</b>
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	<p>the sustainable development of aquaculture; or  (c) the prevention of pollution of waters frequented by fish.</p>	
<p>The definition of “deleterious substance” has been changed.</p>	<p>56. The following definitions apply in this Part.</p> <p>“deleterious substance” means</p> <p>(a) any substance — including water that has been treated, processed or changed by heat or other means from a natural state — that, if added to any waters, would be deleterious, or likely to be deleterious, to fish or fish habitat or to the use by humans of fish that frequent those waters;</p> <p>(b) any prescribed substance or any substance of a prescribed class of substances;</p> <p>(c) any water that contains any prescribed substance, or any substance of a prescribed class of substances, in a quantity or concentration that equals or exceeds a quantity or concentration that is prescribed for that substance or class of substances; or</p> <p>(d) any water that has been subjected to a prescribed treatment, process or change.</p>	<p>deleterious substance" means</p> <p>(a) any substance that, if added to any water, would degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water, or</p> <p>(b) any water that contains a substance in such quantity or concentration, or that has been so treated, processed or changed, by heat or other means, from a natural state that it would, if added to any other water, degrade or alter or form part of a process of degradation or alteration of the quality of that water so that it is rendered or is likely to be rendered deleterious to fish or fish habitat or to the use by man of fish that frequent that water,</p> <p>and without limiting the generality of the foregoing includes</p> <p>(c) any substance or class of substances prescribed pursuant to paragraph (2)(a),</p> <p>(d) any water that contains any substance or class of substances in a quantity or concentration that is equal to or in excess of a quantity or concentration prescribed in respect of that substance or class of substances pursuant to paragraph (2)(b), and</p> <p>(e) any water that has been subjected to a treatment, process or change prescribed</p>

<b>Note</b>	<b>C-45</b>	<b>F-14</b>
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<p>The clauses that deal with fish passage appear to be changed. See also impacts on EAs, below.</p>	<p>57. (1) If the Minister considers that doing so is necessary to ensure the free passage of fish or the protection of fish or fish habitat, the owner or person who has the charge, management or control of an obstruction or any other thing that is detrimental to fish habitat must, on the Minister's request and within the period specified by the Minister, conduct studies, analyses, samples and evaluations, and provide the Minister with any document or other information relating to them, to the obstruction or other thing or to the fish or fish habitat that is affected or is likely to be affected by the obstruction or other thing.</p> <p>(2) If the Minister considers that doing so is necessary to ensure the free passage of fish or the protection of fish or fish habitat, the owner or person who has the charge, management or control of an obstruction or any other thing that is detrimental to fish habitat must, on the Minister's request, within the period specified by the Minister and in accordance with any specifications of the Minister,</p> <ul style="list-style-type: none"> <li>(a) remove the obstruction or thing;</li> <li>(b) construct a fishway;</li> <li>(c) implement a system of catching fish before the obstruction or thing, transporting them beyond it and releasing them back into the water;</li> <li>(d) install a fish stop or a diverter to prevent the destruction of fish or to assist in the free passage of fish;</li> <li>(e) install a fish guard, a screen, a covering, netting or any other device to prevent the passage of fish into any water intake, ditch, channel or canal;</li> <li>(f) maintain the flow of water that the Minister considers sufficient to permit the free passage of fish; or</li> <li>(g) permit the escape, into the water below the</li> </ul>	<p>pursuant to paragraph (2)(c);</p> <p>22. (1) At every obstruction, where the Minister determines it to be necessary, the owner or occupier thereof shall, when required by the Minister, provide a sufficient flow of water over the spill-way or crest, with connecting sluices into the river below, to permit the safe and unimpeded descent of fish.</p> <p>(2) The owner or occupier of any obstruction shall make such provision as the Minister determines to be necessary for the free passage of both ascending and descending migratory fish during the period of construction thereof.</p> <p>(3) The owner or occupier of any obstruction shall permit the escape into the river-bed below the obstruction of such quantity of water, at all times, as will, in the opinion of the Minister, be sufficient for the safety of fish and for the flooding of the spawning grounds to such depth as will, in the opinion of the Minister, be necessary for the safety of the ova deposited thereon</p> <p>26. (1) One-third of the width of any river or stream and not less than two-thirds of the width of the main channel at low tide in every tidal stream shall be always left open, and no kind of net or other fishing apparatus, logs or any material of any kind shall be used or placed therein.</p> <p>27. No one shall</p>
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Note	C-45	F-14
<p>See EA comments below. It does not appear as though these conditions are determined through an EA process.</p>	<p>obstruction or thing, at all times of the quantity of water that the Minister considers sufficient for the safety of fish or for the flooding of fish habitat to an appropriate depth.</p> <p>(3) The owner or person referred to in subsection (2) must, with regard to anything mentioned in that subsection, on the Minister's request</p> <p>(a) during the thing's construction, implementation, installation, modification or repair, make any provision that the Minister considers necessary for the free passage of fish or the protection of fish or fish habitat;</p> <p>(b) operate and maintain the thing in a good and effective condition and in accordance with any specifications of the Minister; and</p> <p>(c) modify or repair the thing in accordance with any specifications of the Minister.</p> <p>(4) No person shall</p> <p>(a) do anything to prevent or unduly obstruct the free passage of fish;</p> <p>(b) damage or obstruct any fishway, fish stop or diverter constructed or installed on the Minister's request; or</p> <p>(c) damage, remove or permit the removal of any fish guard, screen, covering, netting or other device installed on the Minister's request, unless the removal is required for modification, repair or maintenance.</p>	<p>(a) damage or obstruct any fish-way or canal built, constructed or used to enable fish to pass over or around any obstruction;</p> <p>(b) do anything to stop, impede or hinder fish from entering or passing the fish-way or canal or to stop, impede or hinder fish from surmounting any obstacle or leap; or</p> <p>(c) fish in any manner within twenty-five yards downstream from the lower entrance to any fish-way, canal, obstacle or leap.</p>
<p>The harmful alteration of fish habitat clause in F-14 has been changed.</p>	<p>59. (1) No person shall carry on any work or undertaking that results in the harmful alteration or disruption, or the destruction, of fish habitat.</p> <p>(2) No person contravenes subsection (1) if</p> <p>(a) the alteration, disruption or destruction is authorized by the Minister and is done in accordance with the conditions established by the Minister; or</p> <p>(b) the work or undertaking is carried on in accordance</p>	<p>35. (1) No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.</p> <p>(2) No person contravenes subsection (1) by causing the alteration, disruption or destruction of fish habitat by any means or under any conditions authorized by the</p>

<b>Note</b>	<b>C-45</b>	<b>F-14</b>
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	with the conditions set out in the regulations or with any other authorization issued under this Act.	Minister or under regulations made by the Governor in Council under this Act.
The pollution prevention provisions have been changed.	<p>60. (1) No person shall</p> <p>(a) throw overboard ballast, stones or other substances that are detrimental to fish habitat in any waters frequented by fish ...</p> <p>(2) Subject to subsection (3), no person shall deposit or permit the deposit of a deleterious substance in waters frequented by fish or in any place under any conditions where the deleterious substance, or any other deleterious substance that results from the deposit of the deleterious substance, might enter such waters.</p> <p>(3) No person contravenes subsection (2) by depositing or permitting the deposit of, in any waters frequented by fish or place,</p> <p>(a) waste or pollutant of a type, in a quantity and under conditions authorized by regulations applicable to those waters or that place made by the Governor in Council under any Act other than this Act; or</p> <p>(b) a deleterious substance of a class, in a quantity or concentration and under conditions authorized by or under regulations applicable to those waters or that place, or to any work or undertaking or class of works or undertakings, made by the Governor in Council under any of paragraphs 63(d) to (i).</p>	<p>36. (1) No one shall</p> <p>(a) throw overboard ballast, coal ashes, stones or other prejudicial or deleterious substances in any river, harbour or roadstead, or in any water where fishing is carried on;</p> <p>(3) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substance or any other deleterious substance that results from the deposit of the deleterious substance may enter any such water.</p>
The powers of inspection are changed and moved to a different section of the Act.	Part IV.	Section 38.
The new Act allows for new and different kinds of regulations.	63. The Governor in Council may make regulations for the conservation and protection of fish and fish habitat	

Note	C-45	F-14
<p>(iii) provides a way to regulate the kind of treatment rather than the quality of the water</p> <p>Subsection 63(e) could mean that some waters are more protected than others.</p> <p>63(f) could mean that whole industries are exempted.</p> <p>Subsection 63(i) could mean that someone other than the Minister could authorize the deposit of deleterious substances.</p> <p>Subsection 63(o) could create a way to over-ride an inspector's decision.</p>	<p>and the prevention of the obstruction or pollution of any waters frequented by fish, including regulations</p> <p>(a) prescribing, for the purposes of the definition "deleterious substance" in section 56,</p> <p>(i) substances or classes of substances,</p> <p>(ii) quantities or concentrations of substances or classes of substances in water, and</p> <p>(iii) treatments, processes and changes in water;</p> <p>...</p> <p>(d) prescribing the deleterious substances or classes of those substances that are authorized to be deposited despite subsection 60(2);</p> <p>(e) prescribing the waters or places or classes of waters or places where any deleterious substances or classes of those substances referred to in paragraph (d) are authorized to be deposited;</p> <p>(f) prescribing the works or undertakings or classes of works or undertakings in the course or conduct of which any deleterious substances or classes of those substances referred to in paragraph (d) are authorized to be deposited;</p> <p>(i) prescribing the persons who may authorize the deposit of any deleterious substances or classes of those substances in the absence of any other authority, and the conditions or circumstances under which and requirements subject to which those persons may grant the authorization;</p> <p>...</p> <p>(o) prescribing the circumstances and manner in which any measures taken or requirement that measures be taken under subsection 62(5) may be reviewed, rescinded or varied.</p>	
<p>The limitation period for civil liability is longer.</p>	<p>No [civil proceedings may be commenced] later than five years after the day on which the occurrence to</p>	<p>42 (6) No proceedings may be commenced under subsections (1) to (3) at any time later</p>

Note	C-45	F-14
	which the proceedings relate could reasonably be expected to have become known to Her Majesty in right of Canada or a province or to the person who has incurred loss of income, as the case may be.	than two years after the occurrence to which the proceedings relate could reasonably be expected to have become known to Her Majesty in right of Canada or a province or to any licensed commercial fisherman, as the case may be.
Part 3 creates a new section that regulates the export, import, transportation, and release of aquatic invasive species.	Part 3	N/A
Part of the standard for obtaining a warrant has changed.	[The justice must be satisfied that] 79(2)(c) entry to the dwelling-place has been refused or there are reasonable grounds to believe that entry will be refused.	Previously, proof of refusal was not necessary.
An entirely new Alternatives Measures Agreements and ticketing section has been added.	Section 130-148	N/A
It is not entirely clear what happens to alternative measures in the case of a private prosecution. An Information must be laid before alt. measures can be used, so Bill C-45 creates an entirely new substitute for prosecutions initiated by citizens.	131.(1) Alternative measures may be used only if doing so is not inconsistent with the purposes of this Act and the following conditions are met: a) the measures are part of a program of alternative measures authorized by the Attorney General after consulting with the Minister; ... c) an information has been laid in respect of the offence; (d) the Attorney General, after consulting with the Minister, is satisfied that the measures would be appropriate, having regard to the nature of the offence, the circumstances surrounding its commission and the following factors ...	N/A
There is a provision that could encourage public participation, which could include both ENGOS	133. (2) Any governmental or non-governmental body may supervise compliance with an alternative measures agreement.	N/A.

<b>Note</b>	<b>C-45</b>	<b>F-14</b>
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and industry lobby organizations.		
There is a provision for confidentiality in the alt. measures process that might limit disclosure of information that would traditionally be released during a court proceeding.	<p>135. (3) Subject to subsection (4), the following information that is to be part of an alternative measures agreement or a report referred to in subsection (2) must be set out in a schedule to the agreement or to the report:</p> <ul style="list-style-type: none"> <li>(a) trade secrets of any person;</li> <li>(b) financial, commercial, scientific or technical information that is confidential information and that is treated consistently in a confidential manner by any person;</li> <li>(c) information the disclosure of which could reasonably be expected to result in material financial loss or gain to any person, or could reasonably be expected to prejudice any person's competitive position; or</li> <li>(d) information the disclosure of which could reasonably be expected to interfere with any person's contractual or other negotiations.</li> </ul> <p>(5) The schedule is confidential and must not be filed with the court.</p>	N/A
Alternative measures agreements can be modified by the Attorney General.	<p>137. (1) The Attorney General may, on application by the alleged offender and after consulting with the Minister, vary an alternative measures agreement in one or both of the following ways, if the Attorney General considers doing so appropriate owing to a material change in the circumstances since the agreement was entered into or last varied:</p> <ul style="list-style-type: none"> <li>(a) by making any changes to the agreement or to its terms and conditions; and</li> <li>(b) by decreasing the period during which the agreement is to remain in force or relieving the alleged offender, either absolutely or partially or for any period that the Attorney General considers desirable, of compliance with any term or condition that the</li> </ul>	N/A

<b>Note</b>	<b>C-45</b>	<b>F-14</b>
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	agreement specifies.	
	143. The Minister may make regulations respecting the alternative measures that may be used for the purposes of this Act, including regulations (a) excluding specified offences under this Act from the application of those measures;	N/A
There is a new section allowing for the use of tickets to deal with violations.	144. (1) In addition to the procedures set out in the Criminal Code for beginning a proceeding, a proceeding in respect of any prescribed offence may be begun by a fishery officer, fishery guardian or inspector (a) completing a ticket that consists of a summons portion and an information portion; (b) delivering the summons portion of the ticket to the accused or mailing it to the accused at the accused's latest known address; and (c) filing the information portion of the ticket with a court of competent jurisdiction before or as soon as possible after the summons portion has been delivered or mailed.	N/A
A regulation needs to be written prescribing the sections of the Act to which tickets can apply.	148. The Governor in Council may make regulations for carrying out the purposes of this Part, including regulations (a) respecting the manner of disposing of things under section 87, including the manner and form of giving notices in relation to the disposition; (b) respecting the manner in which the proceeds of fines and the proceeds of the disposition of forfeited things are to be distributed; (c) prescribing offences under this Act to which section 144 applies and respecting the manner in which those offences may be described in tickets; and (d) prescribing the amount of the fine for each offence prescribed under paragraph (c), which may not exceed	N/A

Note	C-45	F-14
	\$2,000.	
The structure of the Canada Fisheries Tribunal is similar to the CNSC – the Chairperson is also the CEO.	Part 5	N/A
It is not clear if the conflict-of-interest provisions for the Tribunal would prevent conflicts-of-interest w/ polluters or developers.	154. (1) A person is not eligible to be appointed or to continue as a Tribunal member if the person is, directly or indirectly, engaged — as owner, shareholder, director, officer, partner or otherwise — in a fishing enterprise, or is a member of a fisheries organization or holds an office in one.	N/A
The manner in which the Tribunal would release decisions seems vague.	166. (1) The Tribunal must publish its decisions and orders in the manner that it considers appropriate.	N/A
The impact of the Tribunal on pollution prevention or habitat destruction enforcement depends on what is written into the regulations.	173. A major violation is (a) a contravention of a provision of this Act or the regulations that is prescribed by regulations made under subparagraph 206(1)(c)(i); 174. A minor violation is (a) a contravention of a provision of this Act or the regulations that is prescribed by regulations made under subparagraph 206(1)(d)(i);	N/A.
The burden of proof for a Tribunal proceeding is “balance of probabilities”.	Section 194.	N/A
The maximum monetary penalty following a Tribunal decision is \$30,000. The Tribunal may order an additional monetary penalty equal to the amount of any financial benefit accrued to a person in the commission of the violation.	Section 198(1)(c) and 199.	N/A
There is no reference to either	N/A	Fisheries Act EA triggers:

<b>Note</b>	<b>C-45</b>	<b>F-14</b>
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<p>consequential or coordinating amendments in C-45, so there does not appear to be any federal environmental assessment trigger.</p>		<p>(a) subsection 22(1) [fish passage/spillway]  (b) subsection 22(2) [fish passage/migration]  (c) subsection 22(3) [water levels/spawning]  (d) section 32 [destroy fish any means]  (e) subsection 35(2) [harmful alteration]  (f) subsection 37(2) [harmful alteration]</p>
<p>There is no longer a clause or regulation granting half the fine to the informant in a private prosecution.</p>	<p>N/A</p>	<p>Fishery (General) Regulations  62. (1) Where an information is laid by a person in circumstances other than those referred to in section 60 or 61 relating to an offence under the Act, the payment of the proceeds of any penalty imposed arising from a conviction for the offence shall be made  (a) one half to the person; and  (b) one half to the Minister or, where all of the expenses incurred in the prosecution of the offence are paid by a provincial government, to that provincial government.</p>