

***Fisheries Act* Regulations Authorize Deposits of Deleterious Substances into Water Frequented by Fish**

By [Julie Abouchar](#), Partner and Certified Environmental Law Specialist
© Willms & Shier Environmental Lawyers LLP



March 10, 2014

Draft regulations released on February 15, 2014 create a policy framework enabling the federal government to make regulations exempting certain activities from the general Fisheries Act prohibition against polluting water frequented by fish. These regulations will bring certainty to some industries whose discharges are regulated provincially and authorized by Provincial permit yet do not comply with the broad Fisheries Act prohibition. The 30-day comment period for the draft ends on March 17, 2014.

The draft [Regulations Establishing Conditions for Making Regulations under Subsection 36\(5.2\) of the Fisheries Act](#) permit future regulations to be made in three circumstances:

- 1 to manage aquaculture, aquatic pests and aquatic invasive species
- 2 to enable aquatic research on pollution prevention for water frequented by fish
- 3 to manage activities, waters and deleterious substances already effectively controlled by other federal and/or provincial instruments.

The draft regulations also allow federal authorities to effectively delegate, in certain cases, oversight over discharges to water bodies to provincial and territorial authorities. The Government states that the risk to water frequented by fish is expected to be “negligible” and that the proposed regulations will allow “for a more effective and efficient management of responsibilities under the Act.”

Managing Aquaculture, Aquatic Pests and Aquatic Invasive Species

The Minister of Fisheries and Oceans may make regulations authorizing the deposit of deleterious substances for the purposes of aquaculture, aquatic pests and aquatic invasive species. This provides the Government with a policy tool to manage deposits of deleterious substances that are already well managed, including substances already regulated at the federal level (for example, through the *Pest Control Products Act* and the *Food and Drugs Act*).

Enabling Aquatic Research

The Minister of the Environment may make regulations authorizing the deposit of deleterious substances to enable aquatic research contributing to the development of knowledge around pollution prevention for water frequented by fish. Processes must be in place to

- ♦ verify that the research contribute to the development of knowledge around pollution prevention for water frequented by fish and be supervised by a qualified person

- ◆ make research findings available to the public
- ◆ avoid harmful effects (other than what is required to obtain valid scientific results) and contain waters within boundaries, and
- ◆ if relevant, ensure remediation within 20 years of project completion.

Managing Deposits of Deleterious Substances Already Managed Federally/Provincially

The Minister of the Environment may make regulations authorizing the deposit of deleterious substances already managed by provincial and/or federal regulating authorities. The deposits or source of the deposits must

- ◆ meet or exceed certain conditions relating to the *Canadian Water Quality Guidelines for the Protection of Aquatic Life* (CWQG), their site-specific application, or science-based guidelines that offer protection similar to the CWQG
- ◆ be subject to an enforcement and/or compliance regime, and
- ◆ the whole of the deposit must not be acutely lethal to fish.

Additionally, the effects on fish, fish habitat and the use by man of fish associated with the deposit must be document or evaluated.

[Julie Abouchar](#) is a partner at Willms & Shier Environmental Lawyers LL in Toronto and is certified as a Specialist in Environmental Law by The Law Society of Upper Canada. She can be reached at 416-862-4836 or by e-mail at jabouchar@willmsshier.com.

The information and comments herein are for the general information of the reader only and do not constitute legal advice or opinion. The reader should seek specific legal advice for particular applications of the law to specific situations.