ENVIRONMENTAL GUIDE FOR FISHERIES – MAINTENANCE WORKS

2025

Ministry of Transportation

MINISTRY OF TRANSPORTATION

Environmental Guide for Fisheries – Maintenance Works

Part of the Environmental Standards and Practices

ISSUED BY:
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Acknowledgements

This guide was developed to support the MTO's Environmental Guide for Fisheries, and its MTO Fisheries Protocol outlined with the guide. The guide was designed in consultation with various groups within MTO, including the MTO Regional Fisheries Working Group. Historical contributions to the guide also included Fisheries and Oceans Canada, and the Ministry of Natural Resources. It is intended to be a living document that will be reviewed and revised as necessary.

Comments and Suggestions

The Ministry of Transportation welcomes comments and suggestions on ways to improve the document with the objective of providing a practical and pragmatic approach to environmental management in the Province of Ontario. MTO anticipates that changes will be warranted to clarify, improve, and incorporate new information.

The format of the document is designed to accommodate such changes. Such revisions and amendments will be incorporated in later editions of this document. MTO will not formally respond to unsolicited comments submitted in response to the document.

Version History

Version #	Date	Description of Major Change
1.0	June 2009	Environmental Guide for Fisheries: Appendix B Implementing the Protocol for Highway Maintenance Activities
2.0	April 2020	The guide was redesigned as a standalone document, with updated information to reflect updated MTO processes and policies, the Fisheries Protocol, and changes to legislation, including the *Fisheries Act*.
3.0	January 2025	Amended to reflect the non-renewal of the MTO/DFO/MNR Fisheries Protocol and agreement with Fisheries and Oceans Canada and the Ontario Ministry of Natural Resources. Former Annex 2 stepwise process of Fisheries Protocol renamed to MTO Fisheries Protocol and procedures retained. Amended emergency situations/emergency work notification procedures to the Department of Fisheries and Oceans. Guidance on Indigenous engagement and MTO's duty to consult. Minor editorial changes.

Disclaimer

Cette publication hautement spécialisée (Environmental Guide for Fisheries – Maintenance Works) n'est disponible qu'en anglais conformément au Règlement 671/92, selon lequel il n'est pas obligatoire de la traduire en vertu de la Loi sur les services en français. Pour obtenir des renseignements en français, veuillez communiquer avec le ministère des Transports de l'Ontario au : 416-585-6310.

Table of Contents

List of Figures

1. OVERVIEW

The Ministry of Transportation (MTO) has developed a series of documents that support the delivery of transportation projects in and around fish and fish habitat. The Environmental Guide for Fisheries – Maintenance Works (Fisheries Maintenance Guide) was developed for MTO and MTO Service Providers to provide an overview of the requirements for typical maintenance projects. This guide outlines the tasks and decision points for Steps 1-3, 5, and 8 of the MTO Fisheries Protocol described within the Environmental Guide for Fisheries and provides general information on species at risk and emergency notification procedures.

The companion documents listed below provide a comprehensive review of fisheries requirements and should be referred to for additional details.

1.1 COMPANION DOCUMENTS

The Fisheries Maintenance Guide has been developed as a standalone document that focuses solely on typical MTO maintenance projects. For projects that require a fisheries assessment, best management practices, or for information on MTO requirements for protecting fish and fish habitat on provincial transportation undertakings, the following documents should be consulted. They can be accessed online through the MTO Technical Documents website. To find these documents, type "Fisheries" into the search field.

MTO ENVIRONMENTAL GUIDE FOR FISHERIES

The MTO Environmental Guide for Fisheries (Fish Guide) provides direction, guidance, and documentation with respect to protecting fish and fish habitat on provincial transportation projects and undertakings. It guides MTO staff and MTO Service Providers through each step of the MTO Fisheries Protocol and ultimately, to determine whether a project is likely to result in the death of fish or harmful alteration, disruption, or destruction (HADD) of fish habitat. The Fish Guide also provides direction on additional fisheries information required to be collected and documented to support MTO project needs (such as the Environmental Assessment process), provides information related to provincial and federal requirements for works impacting aquatic species at risk or their habitat, and what to do in emergency situations.

MTO ENVIRONMENTAL GUIDE FOR FISHERIES – BEST MANAGEMENT PRACTICES

Step 3 of the MTO Fisheries Protocol identifies specific works that, when properly undertaken, pose minimal risk to fish and fish habitat. The MTO Environmental Guide for Fisheries – Best Management Practices (Fisheries BMPs) provides MTO staff and MTO Service Providers with the necessary procedures on how to undertake common activities in a manner that avoids harmful impacts to fish and/or fish habitat. It provides

detailed requirements on the permissible scope of work, operational constraints, and mitigation measures that must be followed.

2. WHAT DO FISH HAVE TO DO WITH ROAD MAINTENANCE?

2.1 THE FEDERAL FISHERIES ACT AND THE DEATH OF FISH OR HARMFUL ALTERATION, DISRUPTION, DESTRUCTION OF FISH HABITAT

It is important for people who work near lakes, rivers, or other waterbodies that may contain fish, to be aware of the federal *Fisheries Act*, specifically sections 34.4(1) and 35(1) related to the death of fish or the harmful alteration, disruption, or destruction (HADD) of fish habitat. This section applies to all waterbodies in Canada that are linked directly or indirectly to fish and fish habitat. Some important points to note about death of fish or HADD of fish habitat:

- Even small changes to aquatic systems have the potential to create negative effects and these can result in the death of fish or HADD of fish habitat.
- Most waterbodies in Canada are likely to support fish and fish habitat either directly or indirectly. Even in watercourses with no fish present, activities in and/or near a waterbody can sometimes create problems downstream or nearby where fish are present.

> 34.4 (1) No person shall carry on any work, undertaking or activity, other than fishing, that results in the death of fish.
>
> 35 (1) No person shall carry on any work, undertaking or activity that results in the harmful alteration, disruption, or destruction of fish habitat.

- If the death of fish or HADD of fish habitat is likely, a *Fisheries Act* authorization may be required from Fisheries and Oceans Canada (DFO). Federal charges and fines can be laid if death of fish or HADD of fish habitat occurs without an authorization in place. If the death of fish or HADD of fish habitat is likely, refer to the Fish Guide for additional information.

- While many MTO maintenance activities may appear to be simple and straightforward, care is still needed to ensure that potential harmful impacts to fish and fish habitat are considered prior to the work, undertaking, or activity and are mitigated in order to prevent the death of fish or HADD of fish habitat from occurring. Below are two examples of potentially harmful impacts:

- Culvert replacements: if not properly sized and embedded, the culvert can create a barrier to fish passage, preventing fish from reaching their important feeding or spawning grounds.
- Ditch clean-outs: pike like to spawn in roadside ditches that may contain water during a brief period in the spring. Ditch clean-outs may impact their habitat and breeding.

2.2 MITIGATION MEASURES – WHY THEY ARE IMPORTANT?

While many routine maintenance works may seem harmless, even a small change in the underwater environment can cause problems for fish, especially in sensitive habitats. These changes are usually avoided when certain actions are taken at the worksite to mitigate (lessen/eliminate) any negative effects. These are referred to as "mitigation measures" and can include things like installing erosion control blankets and avoiding the time of year when fish are spawning.

2.3 MITIGATION MEASURES FOR EROSION AND SEDIMENT CONTROL

Erosion and sediment control (ESC) measures help protect fish and fish habitat by minimizing or eliminating sediments from entering the waterbody. Studies on sediment and silt (dirt) in the water show that the input of silt and sediment from a typical worksite reaches much higher levels than occur naturally, including during rain events. Since fish breathe underwater, the increase in fine material can easily choke them, much like humans can choke on the smoke from a fire. Fish deaths may not be noticed at the site, as the fish can die slowly and float downstream. In addition, these high levels of silt and sediment can bury their waterbody bed nests (redds), killing eggs, and can also smother other important habitat features.

Examples of Erosion Control Measures

- ✓ Covering disturbed areas quickly with straw or mulch
- ✓ Reducing the amount of time soil is exposed, e.g., by planting vegetation as soon possible
- ✓ Erosion control blankets
- ✓ Gravel sheeting
- ✓ Keep water off exposed soils by constructing slope drains and diversion ditches

Examples of Sediment Control Measures

- ✓ Sediment fence barriers / berm barriers
- ✓ Fibre rolls
- ✓ Sediment basins / traps
- ✓ Filter bags
- ✓ Turbidity curtains

An ESC plan should be developed before works, undertaking or activities begin with focus on preventing/minimizing erosion as the primary goal, with sediment control used near receptors (i.e., waterbodies, ditches etc.) as necessary and appropriate. Plans are site-specific and typically involve a combination of erosion and sediment control measures, also called a "treatment train". For projects with large areas of exposed earth, it is recommended that the plan incorporate temporary erosion control measures that can remain in place until vegetation or other cover can be established. A vegetated site tends to be a stabilized site.

MTO's Environmental Guide for Erosion and Sediment Control During Construction of Highway Projects outlines effective measures for sediment and erosion control. This guide can be accessed online through the MTO Technical Documents website by typing "erosion" into the search field. You should familiarize yourself with the document and apply ESC methods as required throughout your projects.

2.4 IN-WATER WORK TIMING WINDOWS – WHY THEY ARE IMPORTANT?

In-water work timing windows protect fish during their most sensitive time periods which are critical to their survival. Fish are particularly sensitive to any disturbance in the water during spawning and when the eggs are developing. During this time, adult fish may abandon spawning activities if conditions are not ideal, while developing eggs can easily be smothered.

Of course, without fish spawning and young hatching, fish populations can decline rapidly, even in just one year. For some species, the eggs are laid and hatch quite quickly. For others, such as brook trout, eggs remain in the redd over the winter, and for this reason, in-water work is not possible from fall to early summer when the newly hatched young have left the "nest".

In Ontario, the Ministry of Natural Resources (MNR) has the responsibility for setting in-water work timing window guidelines. These guidelines are determined on a case-by-case basis according to the species of fish in the waterbody, whether those fish spawn in the spring or fall, and the location of waterbody. It is important that in-water work is planned to avoid the restricted activity in-water work timing windows to reduce harmful impacts to fish and fish habitat.

3. HOW DO I DECIDE IF I CAN GO AHEAD WITH MY WORK?

3.1 THE PROCESS FOR REVIEW OF MAINTENANCE WORKS

The administration required to review MTO projects beyond Step 3 of the MTO Fisheries Protocol can be a complex process. For maintenance works however, a simpler approach can be followed, allowing most of these works to go ahead without a detailed review. The steps below, taken from the MTO Fisheries Protocol (see Figure 1), help to identify works that can go ahead without further review by MTO and DFO from those that should be forwarded to your MTO contract administrator for additional review. This guide focuses on the steps and guidance needed specifically for maintenance projects. The flow diagram of the process provided in Figure 1, has been modified accordingly from the original; greyed out sections are steps where more in-depth assessment is required and are not typical for maintenance works.

Certain maintenance activities have the potential to trigger MTO's duty to consult. The duty to consult is the Crown's legal obligation to consult an Indigenous community when it is contemplating conduct that may adversely affect the community's established or credibly asserted Aboriginal or treaty rights (e.g., fishing). The duty to consult may be triggered for a maintenance activity due to potential impacts to fish and fish habitat. MTO has internal processes (including MTO's 'Process for Assessing and Fulfilling MTO's Duty to Consult in Maintenance: Indigenous Relations Roles and Responsibilities') to determine any duty to consult requirements that may apply to maintenance activities. Maintenance activities must be conducted in accordance with any duty to consult requirements identified by MTO in the contract documents. Any questions regarding duty to consult can be directed to the MTO contract administrator. Additional information regarding MTO's duty to consult is provided in the Fish Guide.

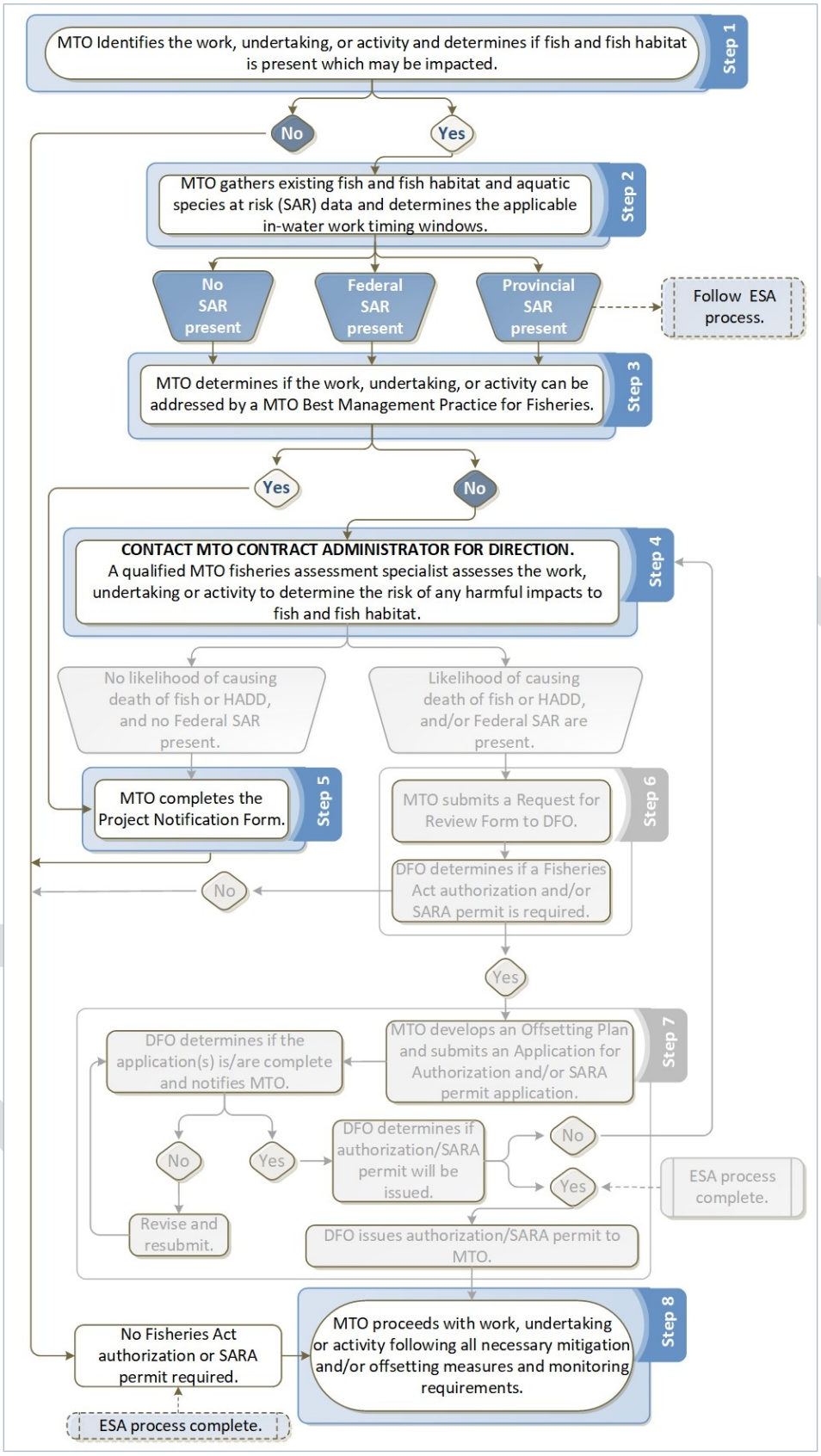

Figure 1. Flow Diagram of the MTO Fisheries Protocol – Modified

STEP 1: WILL THE WORK AFFECT FISH HABITAT?

Step 1 is intended to be a rapid screening to identify works that are not likely to result in the death of fish or HADD of fish habitat as they are far enough away from a waterbody and/or fish habitat and don't need further review. However, keep in mind that even if a project meets the requirements below, in rare cases, there may be additional requirements under other applicable legislation, including the federal *Species at Risk Act* and the Ontario *Endangered Species Act*. If there are any concerns or when in doubt, contact your MTO contract administrator.

WHO MAY COMPLETE THE DETERMINATION IN STEP 1?

This step may be completed by MTO or MTO Service Providers as there are no specific qualification requirements.

UNDERTAKE THE FOLLOWING TASKS:

1a	Determine if the work/undertaking/activity is occuring in an artificial waterbody that is not connected to a waterbody containing fish at any time of the year.
1b	Determine if the work/undertaking/activity is located beyond 30 m of the high water level of a waterbody and mitigation can prevent any harmful impacts on the waterbody.
1c	Determine if the work/undertaking/activity is located within 30 m of the high water level of a waterbody and is a type of Routine MTO Works (Table 1) and all the necessary mitigation measures identified in OPSS 182 can be applied.

TASK 1a: Determine if the work/undertaking/activity is occurring in an artificial waterbody (e.g. stormwater management pond) that is not connected to a waterbody containing fish at any time of the year.

Definition of waterbody: any permanent or intermittent, natural or constructed body of water, including lakes, ponds, wetlands, and watercourses, but not including stormwater management ponds.

- ✓ Determine if the project area is in a waterbody using various MNR and Natural Resources Canada, such as:
    - Canadian National Topographic System (NTS) produced by Natural Resources Canada (NRC), available online through NRC Toporama mapping site at the NRC website.
    - Ontario Ministry of Natural Resources
    - Ontario Ministry of Natural Resources Topographic Maps

- ✓ If appropriate, undertake field visits during the spring to identify presence of small streams that flow only when water levels are high (ephemeral) and are not identified on NTS maps.

TASK 1b: Determine if the work/undertaking/activity is located beyond 30 m of the high water level of a waterbody and mitigation can prevent any harmful impacts on the waterbody.

Most people think of fish habitat as the part of a waterbody that is underwater during the summer; however, the areas that are regularly flooded (for instance during during rain events, and spring high water levels), including ditches are also important as changes to these areas can have an affect on the entire waterbody. As shown in Figure 2, the high water level is defined as the elevation of the top of the bank of the channel. In watercourses this refers to the "bank-full channel" which is often the 1:2 year flood flow return level. In inland lakes and wetlands, it refers to those parts of the waterbody bed and banks that are frequently flooded by water that leaves a mark on the adjacent land and where the natural vegetation changes from predominately aquatic vegetation to terrestrial vegetation.

- ✓ Determine if the project is located more than 30 m from the high water level, using Figure 2.

TASK 1c: Determine if the work/undertaking/activity is located within 30 m of the high water level of a waterbody and is a type of Routine MTO Works and all the necessary mitigation measures identified in Ontario Provincial Standard Specification 182 General Specification for Environmental Protection for Construction in and Around Waterbodies and on Waterbody Banks can be applied appropriately.

The MTO Fisheries Protocol identifies a number of routine activities (see Table 1) that occur within the MTO right-of-way (ROW), which includes the shoulders and paved areas, is not within the waterbody and can be mitigated to prevent sediment/debris from entering the water. If you have any questions as to whether an activity is a routine MTO work, contact your MTO contract adminstrator.

- ✓ 30 m distance is measured using the same method as in 1b.
- ✓ Determine if the project is covered under the Routine MTO Works (Table 1).
- ✓ Review all appropriate mitigation measures within the following MTO documents:
    - OPSS.PROV 182 - General Specification for Environmental Protection for Construction in and Around Waterbodies and on Waterbody Banks
    - MTO's Environmental Guide for Erosion and Sediment Control During Construction of Highway Projects

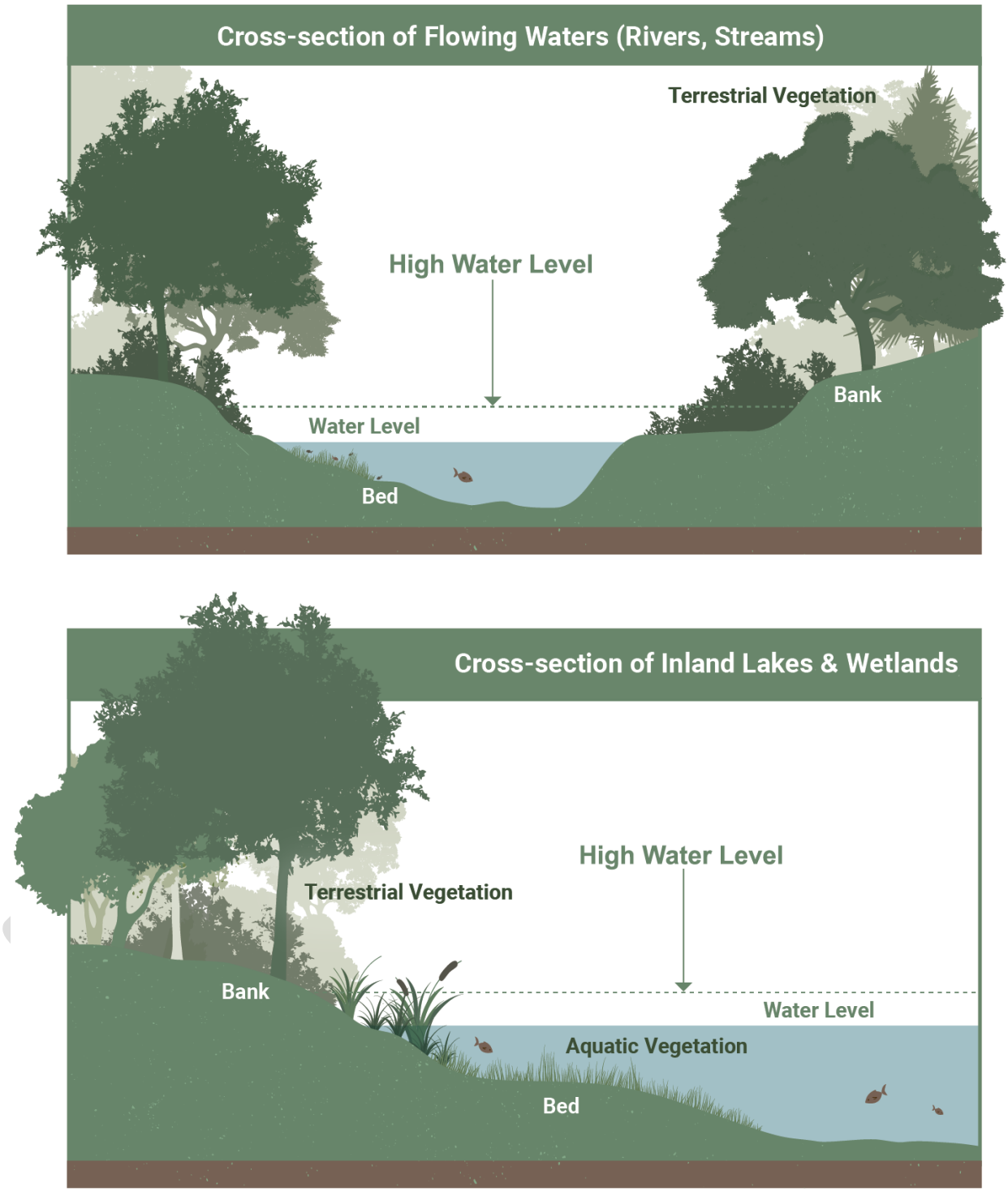

Figure 2. Determining High Water Level. Source: Modified from DFO

Table 1. Routine MTO Works

Maintenance Category	Maintenance Activity
Drainage	• Curb and gutter maintenance and repair • Catch basin and ditch inlet cleanout • Erosion control and repair • General drainage maintenance • Sub drain inspection and cleanout
Electrical	• Electrical Inspection & Maintenance • Electrical Installation
MTO Facilities: Maintenance/Patrol Yard/ Rest Area & Picnic Sites	• Building Maintenance • Mowing • Storage of Materials (sand, etc.)
Roadway and Right-of-Way	• Acoustic barrier installation, repair, and replacement • Concrete barrier installation, repair, and replacement • Debris, litter, and graffiti control • Dust suppression • Fence installation, repair, and replacement • Geotechnical surveys (i.e., boreholes) above the high water level; no SAR habitat • Granular shoulder and roadway grading • Gravel surface and shoulder repair • Guide rail and energy absorbing system installation, repair and replacement • Milling and resurfacing • Pavement marking application • Posthole and crack repair • Roadway and shoulder sweeping • Snow fence installation and removal • Surface treatments • Utility trenching
Signage	• Sign installation • Sign inspection & management

Maintenance Category	Maintenance Activity
Structural* ***Excludes any in-water works. See Fisheries BMP for Bridge Maintenance where in-water work is required.**	• Bridge inspection, cleaning and washing • Bridge deck sweeping • Bridge deck repairs (asphalt, concrete, timber deck surfaces) • Erosion control • Expansion joint maintenance and repair (including bearings and bearing seats) • Inspection • Removal and application of protective coatings
Vegetation* ***Excludes clearing. See Fisheries BMP for Maintenance of Riparian Vegetation in ROW.**	• Grass control (for aesthetics and safety) • Weed control (incl. spraying herbicide when appropriate) • Brush control • Tree and shrub maintenance • Ground cover (placement, maintenance, and rehabilitation)
Winter	• De-icing • Direct Liquid Application • Snow plowing • Sanding and Salting • Snow Removal from bridges

MTO FISHERIES PROTOCOL DECISIONS

Assessment Results for Tasks at Step 1	Proceed to MTO Fisheries Protocol Step
If you responded **"**YES" to <u>any</u> of the above criteria (Task 1a, 1b, or 1c)	**Step 8**. Proceed with the work/undertaking/activity following all necessary mitigation requirements
If you responded "NO" to <u>all</u> of the above criteria	**Step 2.** Gather Existing Fisheries Information
If the work/undertaking/activity is an Emergency Work	Proceed to **Emergency Work** process as defined in the MTO Fisheries Protocol

STEP 2: GATHERING OF EXISTING FISHERIES INFORMATION

Background data collection is to be completed in Step 2 of the MTO Fisheries Protocol to confirm timing windows, fish community and habitat present, waterbody type and applicable in-water work timing window(s), if aquatic invasive species are present or the potential to introduce new invasive species and if there are applicable fisheries management objectives. Background data should cover the defined study area.

WHO MAY GATHER EXISTING FISHERIES DATA AND UNDERTAKE FIELD INVESTIGATIONS IN STEP 2?

Gathering of existing fisheries data may be completed by MTO or MTO Service Providers as there are no specific qualification requirements.

UNDERTAKE THE FOLLOWING TASKS:

2a	**(i)**	Determine if there is existing fisheries data/mapping available that has been collected within the last 10 years and contact MNR to ensure the information is still valid.
	(ii)	Contact MNR to obtain relevant fisheries information and in-water work timing windows.
2b		Supplement background fisheries information from additional sources as necessary.
2c		Obtain aquatic species at risk (SAR) information using federal and provincial mapping tools/database.

TASK 2a(i): Determine if there is existing fisheries data/mapping available that has been collected within the last 10 years and contact MNR to ensure the information is still valid.

The first step of background data collection is to determine if existing fish and fish habitat is available.

- ✓ Through the MTO contract administrator, contact MTO Environmental Delivery to determine if any reports of MTO surveys conducted within the past 10 years are available.
- ✓ Access the Geospatial Ontario (GEO) database and review available aquatic data for the location(s).
    - Click on the link for the Ontario GeoHub.
    - Click “Plants and Animals”.

- Enter your search term in the search field (e.g. aquatic)
- The most helpful data layer for most MTO work is the Aquatic Resource Area Line Segment available at:

  https://geohub.lio.gov.on.ca/datasets/lio::aquatic-resource-area-line-segment/explore

  - Zoom to the appropriate location and click the watercourse line for fisheries information. Note that if no fish species are listed, it does not necessarily mean that fish are not present, and you will still need to verify the data (or lack of data) with MNR.

✓ Contact MNR to ensure data is valid using the form letter template available in Appendix A: Request for Information from MNR. The request should include:

- Brief description of the maintenance project/activity.
- Location of work – GPS coordinates and map (Google Earth or NTS map).
- Waterbody(ies) affected by the project.

✓ When requesting MNR to confirm existing fisheries information, the template table should have all available data obtained from the existing fisheries information filled in prior to sending to MNR.

✓ Under the MTO Fisheries Protocol, MNR will confirm this information within 30 working days.

TASK 2a(ii): Contact MNR to obtain relevant fisheries information and timing windows.

If MTO and GEO data is not available, contact MNR to obtain relevant fisheries information and timing windows. Requests for information to MNR to obtain fisheries information and/or timing windows must be accurate and complete to ensure there is no delay in processing the request.

✓ Contact MNR to request all relevant fish and fish habitat information and in-water work timing windows using the process described in Step 2a(i).

✓ MNR will endevour to provide the available information within 30 working days. This will include:

- Fish community and habitat present.
- Waterbody type and applicable in-water work timing window(s).
- If aquatic invasive species are present or the potential to introduce new invasive species or expand the range of current invasive species.
- If there are applicable fisheries management objectives.

TASK 2b: Supplement background fisheries information from additional sources as necessary.

The type of information needed will vary from project to project depending on the nature of the project. For project locations with limited or out of date information available from MTO and MNR, the following sources may provide additional fisheries information:

- ✓ MTO's Environmental Guide for Fisheries – Appendix B: Supplemental Sources of Data contains links to various sources of information, including government, non-profit organizations, and local sources of information. This document is available on the MTO Technical Documents website.

TASK 2c: Obtain aquatic species at risk (SAR) information using federal and provincial mapping tools/database.

All work in and/or around an area where aquatic species at risk may be present must follow all provinical and/or federal requirements, including obtaining all necessary permits and licenses.

3.1.1.1 ONTARIO SPECIES AT RISK

The scope of the MTO Fisheries Protocol excludes the provincial *Endangered Species Act* (ESA). Should you determine that an Ontario species at risk is present, you must follow the ESA processes outlined in your contract, the MTO Best Management Practices Manual for Species at Risk Protection During Maintenance Work, as well as the MTO Maintenance Standard Specifications (MSS) 1002 – Environmental Management. This should be undertaken concurrently with the MTO Fisheries Protocol process to minimize impacts to the project schedule.

A list of provincial aquatic species at risk can be found at Species at Risk in Ontario and additional information can be obtained from NHIC The Make a Natural Heritage Area Map and GEO.

3.1.1.2 FEDERAL SPECIES AT RISK

Endangered, threatened, or extirpated aquatic species and aquatic species of special concern are listed in Schedule 1 of the federal *Species at Risk Act* (SARA).

DFO has developed a set of Aquatic Species at Risk Maps showing waterbodies where federal aquatic species at risk may be present.

To determine the presence of federal SARA Schedule 1 aquatic species:

- ✓ Federal aquatic SAR information can be obtained through DFO's Aquatic Species at Risk Maps and the federal Species at Risk Public Registry. Federal aquatic SAR information can be obtained through DFO's Aquatic Species at Risk Maps and the federal Species at Risk Public Registry.

If “Endangered” or “Threatened” federal aquatic species at risk or their critical habitat are identified, a review by DFO and SARA permit may be required. However, proceed to Step 3 to determine whether a Fisheries BMP may still be applicable. Contact your MTO contract administrator for directions if needed.

The SARA prohibitions do not apply to species designated as “Special Concern” in SARA Schedule 1 and therefore do not require additional SARA review. However, the presence of these sensitive species must be taken into consideration when carrying out the work/undertaking/activity in the waterbody(ies).

MTO FISHERIES PROTOCOL DECISIONS

Assessment Results for Key Tasks at Step 2	Proceed to MTO Fisheries Protocol Step
If a provincial aquatic species at risk is identified	Follow *Endangered Species Act* process. **Step 3:** Do the Fisheries BMPs Apply?
If a federal aquatic species at risk is identified	**Step 3:** Do the Fisheries BMPs Apply?
If no aquatic species at risk is identified	**Step 3:** Do the Fisheries BMPs Apply?

STEP 3: DO THE MTO BEST MANAGEMENT PRACTICES FOR FISHERIES APPLY?

The purpose of Step 3 is to determine the applicability of Fisheries BMPs for addressing the work/undertaking/activity. The Fisheries BMPs have been developed to streamline the regulatory review process for common, low-risk activities in or near a waterbody by identifying the necessary mitigation measures needed to avoid the death of fish and HADD to fish habitat.

WHO MAY COMPLETE THE DETERMINATION IN STEP 3?

This step may be completed by MTO or MTO Service Providers as there are no specific qualification requirements.

UNDERTAKE THE FOLLOWING TASKS:

3a	Determine if the work/undertaking/activity can be addressed by a Fisheries BMP
3b	Determine if all measures outlined in the Fisheries BMP can be followed and implemented

Task 3a: Determine if the work/undertaking/activity can be addressed by an MTO Fisheries Best Management Practice.

Each Fisheries BMP contains details on when it can be used, and the operational contraints and protection measures that need to be followed (as applicable).

- ✓ Fisheries BMPs have been developed for the following works/undertakings/activities:
    - Beaver Dam Removal
    - Bridge Maintenance
    - Clear Span Bridges
    - Culvert Maintenance
    - Like for Like Culvert Replacement
    - Ditch Maintenance Within 30 m of a Waterbody
    - Maintenance of Riparian Vegetation in ROW
    - Temporary Watercourse Crossing
- ✓ Review the Scope of Work described in the relevant Fisheries BMP to determine whether the Fisheries BMP can be applied to the proposed work/undertaking/ activity.
- ✓ When determining Fisheries BMP applicability for the work/undertaking/activity consider if a field investigation is required (e.g., when no background data exists).

Task 3b: Determining if ALL the operational constraints and protection measures outlined in the Fisheries BMP can be followed and implemented.

Activities that are carried out in accordance with all of the operational constraints, protection measures and submission requirements of each Fisheries BMP are considered to be in compliance with the *Fisheries Act* and the MTO Fisheries Protocol and may proceed without further review to Step 5 (Project Notification). If uncertain, proceed to Step 4.

- ✓ The Fisheries BMPs outline all the operational constraints and protection measures that must be in place, including in-water work timing windows and erosion and sediment control measures.
- ✓ If applicable, activities shall comply with the federal *Species at Risk Act* and the provincial *Endangered Species Act* as outlined in the MTO Fisheries Protocol.
- ✓ A MTO Project Notification Form shall be completed prior to the commencement of work. It shall be signed by the appropriate individual then submitted to and retained by the appropriate office. For further details on required signatures, please refer to Appendix H of the Fish Guide.

If it is not possible to complete all operational constraints and protection measures, you must contact your MTO contract administrator. Be sure to note which measure(s) cannot be completed and why.

If it is possible to complete all listed operational constraints and protection measures, you must complete the notification and submission requirements outlined in each BMP.

MTO FISHERIES PROTOCOL DECISIONS

Assessment Results for Key Tasks at Step 3	Proceed to MTO Fisheries Protocol Step
If all applicable operational constraints and protection measures outlined in the BMP can be followed	**Step 5:** Complete the MTO Project Notification Form
If all applicable operational constraints and protection measures outlined in the BMP cannot be followed or if uncertain	**Step 4:** Fisheries Assessment process. Contact your MTO contract administrator

DFO Standards and Codes of Practice

DFO has developed a series of Standards and Codes of Practice that can be applied to a project to comply with the fish and fish habitat protection provisions of the *Fisheries Act*.

Standards and Codes of Practice can relate to works, undertakings and activities during various phases of their life cycle, such as construction, operation, maintenance, or decommissioning.

MTO's Fisheries BMPs were developed prior to DFO's Standards and Codes of Practice. The conditions under which an MTO Fisheries BMP can be applied, as well as the fisheries protection measures contained within the BMPs meet or exceed those outlined in DFO's Standards and Codes of Practice.

When an MTO Fisheries BMP is applicable to the nature and scope of the MTO works, it should be followed under the MTO Fisheries Protocol. If an MTO Fisheries BMP does not exist, the relevant DFO Code of Practice should be used instead. Except for the DFO End-of-Pipe Fish screen Code of Practice which is applicable to all MTO projects in fish-bearing watercourses, any use of a DFO Code of Practice must be documented on the MTO Project Notification Form, just as an MTO Fisheries BMP would be.

More information and the list of Standards and Codes of Practice can be found on DFO's website: https://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html

STEP 4: FISHERIES ASSESSMENT PROCESS

If all operational constraints and protection measures outlined in the Fisheries BMP cannot be followed, contact your MTO contract administrator for further direction as Step 4 requires a fisheries assessment to be undertaken by an MTO fisheries assessment specialist.

To learn more about the fisheries assessment process, see the Fish Guide for additional details.

STEP 5: SUBMIT THE MTO PROJECT NOTIFICATION FORM

If you have determined that a Fisheries BMP applies, and you can meet all the operational constraints and protection measures, you can now complete the MTO Project Notification Form as outlined in each Fisheries BMP and forward it to your MTO contract administrator. The notification form can be found in Appendix B: MTO Project Notification Form and is available online on the MTO Technical Documents website.

STEP 8: PROJECT IMPLEMENTATION

After submitting the MTO Project Notification Form to your MTO contract administrator, you can commence the work based on your contract specifications, mitigation measures, BMPs and other legislated requirements.

4. WHAT IF THERE IS AN EMERGENCY SITUATION IN OR NEAR A WATERBODY?

Below is a summary of how MTO addresses emergency situations with regard to legislative obligations for fish and fish habitat.

Figure 3 provides a visual summary of the steps and various notification requirements that are typically undertaken when MTO or an MTO Service Provider identifies an emergency situation during highway maintenance operations and that may impact fish and fish habitat. These steps may occur concurrently as they are often carried out by different individuals during an emergency.

Details of the reporting and notifications and procedures are provided in the sub-sections below.

If additional guidance and support with emergency situations is needed, please contact your MTO contract administrator who can reach out to the local MTO Environmental Delivery or MTO Environmental Policy Office on your behalf.

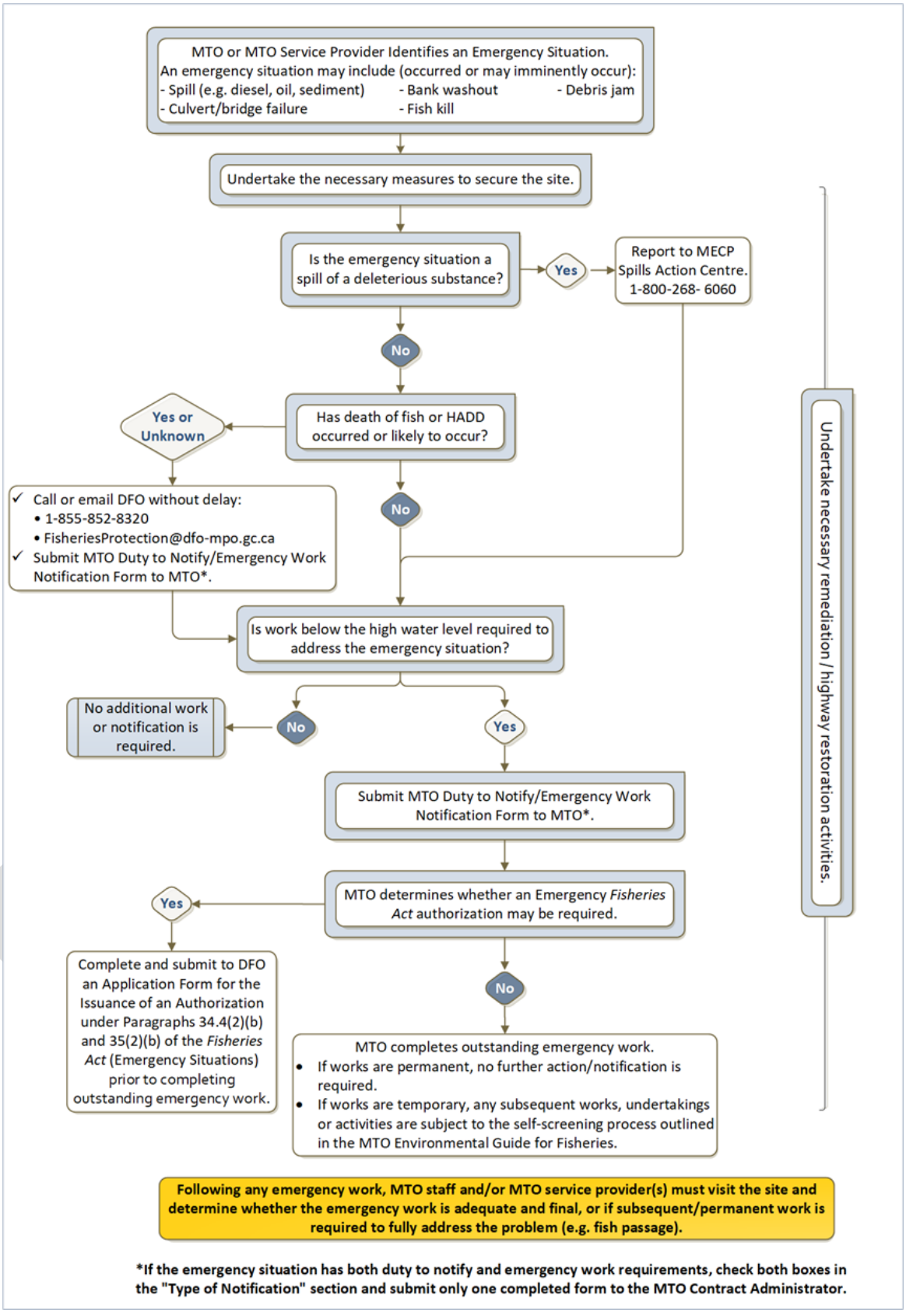

Figure 3. Summary of Fisheries Emergency Procedures During Highway Maintenance Operations

4.1 DUTY TO NOTIFY – THE DEATH OF FISH OR HARMFUL ALTERATION, DISRUPTION OR DESTRUCTION OF FISH HABITAT

If you are working on a site, and something goes wrong that could be creating problems for fish and fish habitat, it is important to contact your MTO contract administrator immediately. The *Fisheries Act* Sections 38(4) and 38(4.1), require that DFO be notified when the death of fish or the harmful alteration, disruption, or destruction (HADD) of fish habitat that has not been authorized (permitted) occurs, or when there is imminent danger of the death of fish or HADD of fish habitat occurring.

This includes situations where there has been a fish kill, or infrastructure failure that results in, or may imminently result in, death of fish or HADD of fish habitat. If the death of fish or HADD of fish habitat is the result of the deposit of a deleterious substance (e.g., a spill, sediment release etc.), the duty to notify obligations are addressed through the spills reporting process. See Section 4.2 below for further details.

You or your MTO contract administrator must contact by phone or email DFO's Fish and Fish Habitat Protection Program - Ontario and Prairie region without delay and provide details of the incident, associated mitigation/remedial action being undertaken, and site contact information should they need to follow-up. DFO contact information is provided in Section 5 of this guide.

Important information:

- Photos of the incident should be taken when it is safe to do so. If contacting DFO by email, the photos should be included in the notification. If contacting DFO by phone, they may send a follow-up email requesting photos.
- The DFO phone line is a voicemail system only. Therefore, when calling DFO to notify them of the death of fish or HADD of fish habitat, you will need to leave a message with all of the relevant incident, location, and contact details.

A "MTO Duty to Notify/Emergency Work Notification Form", available on the MTO Technical Documents website, must also be completed and submitted as soon as practicable. Typically, the MTO Service Provider will send the completed form to the MTO contract administrator. Upon receipt, the MTO contract administrator must then forward this form to their appropriate MTO Environmental Delivery contact and the MTO Environmental Policy Office. This form is not sent to DFO. Due to regional differences, alternate contacts may complete the form and send to the appropriate MTO contacts. Please confirm with your MTO contract administrator the appropriate process for your area.

NOTE: If the emergency situation has both duty to notify and emergency work requirements, check both boxes in the "Type of Notification" section and submit only one completed form to the appropriate MTO contact(s).

4.2 SPILLS REPORTING

There are various provincial and federal statutes addressing spills to the environment and the release of pollutants and deleterious substances, including sediment, into waterbodies including:

- Federal *Fisheries Act*, Section 36(3), which prohibits 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.
- Ontario *Water Resources Act*, Section 30(1), which prohibits the discharge of any material of any kind into or in any waters or on any shore or bank thereof or into or in any place that may impair the quality of the water of any waters.
- Ontario *Environmental Protection Act*, Part X which prohibits the discharge of pollutants to the environment.

All spills and sediment releases into a waterbody (or imminent danger of these occurring) must be reported to the MECP Spills Action Centre (SAC) by phone:

- 416-325-3000
- Toll-free: 1-800-268-6060
- TTY: 1-855-889-5775

The SAC is available 24 hours a day, seven days a week.

The potential for impacts to fish and/or fish habitat must be noted during the call so that the SAC knows to notify appropriate agencies with whom they have spills reporting agreements in place, including Environment and Climate Change Canada (ECCC). ECCC will then notify DFO of any reported spills where there may be anticipated impacts to fish and/or fish habitat.

The reporting of spills to the SAC fulfills spill reporting requirements under provincial and federal legislation, as well as the duty to notify obligations under the Section 38(4) of the *Fisheries Act* in the event the spill results in the death of fish or HADD of fish habitat. However, if the impacts to fish and fish habitat resulting from the spill or release of sediment are (or are likely to be) significant, it is recommended that in addition to contacting the SAC, DFO be contacted directly to ensure that they receive timely

notification of the death of fish or HADD of fish habitat that has occurred, or may imminently occur, as a result of the spill.

If after the initial clean up there is additional remedial work in or around waterbodies, the work should be evaluated to determine if it meets the requirements of emergency work as described below, or if it should be self-assessed through the MTO Fisheries Protocol process.

Always remember that:

- ✓ Reasonable corrective action must be taken and documented.
- ✓ Spill kits must be retained on site to deal with any unexpected release of deleterious substances.
- ✓ Harmful impacts or potentially harmful impacts to fish and/or fish habitat should be noted during the call.

More information on spills reporting can be found at the following MECP website: https://www.ontario.ca/page/report-pollution-and-spills

4.3 MTO EMERGENCY WORK

Emergency work usually involves immediate action to repair damage to highway facilities or deal with situations where there is imminent risk to the public, environment, or property.

Emergency Work is defined as:

1) An emergency repair of a highway facility undertaken immediately after an accident, natural disaster (including beaver dam failure), catastrophic structural failure, or on detection of an imminent failure, including containment, cleanup, and disposal of cleanup material,

   OR

2) A project that is required to address a situation where there is an imminent risk to life, public health or safety, the environment, damage, or loss of property,

   AND

3) The work under either 1) or 2) above will take place within approximately two-weeks of being identified.

   - Work that will not occur within that period, or additional work required after the emergency situation is over, is not considered emergency work and must follow the MTO Fisheries Protocol review process outlined in Steps 1-3 of this document.

Examples of emergency work include stabilizing banks, installation of new culverts if one is failing, removal of debris to stop flooding that is occurring or is imminent, etc. Once the immediate emergency situation has been addressed and water levels have receded, or the site is stabilized, then the site must be assessed to determine if additional work is required.

The MTO contract administrator should be advised of any potential issues and discussions should occur if additional work is needed. For example, this may include inspecting the site to ensure rock protection is adequate or requires more material. Or it may include inspecting the installed culvert to confirm that there are no concerns with culvert sizing, embedment, fish passage, etc. If there are any questions or concerns, discuss with the MTO contract administrator.

Emergency work in and around waterbodies are not exempt from the requirements of the *Fisheries Act* and can cause the death of fish or HADD of fish habitat. Legally, a Fisheries Act authorization cannot be issued following the completion of work. Until MTO has a *Fisheries Act* authorization, it may be in a position of non-compliance.

However, as there is inadequate time to conduct an assessment to determine the potential for death of fish or HADD of fish habitat, it shall be presumed that the possibility exists. Therefore, in all situations where emergency work in or near a waterbody will take place, a MTO Duty to Notify/Emergency Work Notification Form shall be submitted by email to MTO to determine the likelihood of the death of fish or HADD of fish habitat and if federally listed endangered or threatened aquatic species at risk or their habitat are present. If assessment has identified that the emergency work, undertaking, or activity is likely to result in the death of fish or HADD of fish habitat, or if there are federally listed aquatic species at risk, MTO completes and submits to DFO by email an Application Form for the Issuance of an Authorization under Paragraphs 34.4 (2)(b) and 35 (2)(b) of the *Fisheries Act* (Emergency Situations).

The most commonly encountered MTO emergency work include:

- Beaver dam removal.
- Like-for-like culvert replacement due to a culvert failure or washout.
- Debris removal to protect MTO infrastructure such as bridges and culverts.
- Removal of material from a waterbody following an embankment failure or other release of sediment or aggregate material.

In these examples, while there is potential for the death of fish or HADD of fish habitat to have occurred as a result of the incident (see Duty to Notify above), the emergency work that is required to address the incident is unlikely to result in additional death of fish or HADD of fish habitat, and therefore typically only requires the completion and submission of the MTO Duty to Notify/Emergency Work Notification Form. As with the duty to notify requirement, this form is typically completed and submitted by the MTO

Service Provider to the MTO contract administrator who will forward the form to MTO Environmental Delivery and the MTO Environmental Policy Office. DFO does not need to be notified of emergency work that is unlikely to result in the death of fish or HADD. Again, if there is both emergency work and a duty to notify required, submit only one copy of the completed MTO Duty to Notify/Emergency Work Notification Form with both boxes checked under “Type of Notification”.

Emergency Work Procedures

As time is critical, it is imperative that MTO initiate these emergency procedures as quickly as possible. These tasks may occur concurrently.

Task 1: Secure the site.

MTO's or the MTO Service Provider’s first actions shall be to immediately take the necessary measures to secure the site.

Securing the site includes, but is not limited to:

- ✓ Preventing access to the area of the incident except by MTO staff and/or Service Providers responding to the incident (e.g., lane or full road closures).
- ✓ Installing erosion and/or sediment control measures to prevent additional erosion/sedimentation into the waterbody if the incident is related to an embankment, or channel bank failure.
- ✓ Implementing other mechanisms to minimize or prevent further deterioration of the situation.

Task 2: Confirm that the work is an emergency and commence work.

MTO’s priority is to ensure the safety of the travelling public and restore the highway to its intended use. We must also meet legislative requirements for the protection of fish and fish habitat, and therefore maintenance work must meet several conditions to be considered Emergency Work.

- ✓ Determine if the work is an emergency using the definitions at the beginning of sub-section 4.3.
- ✓ Commence the necessary remediation/restoration work (e.g., culvert installation, removal of accumulated sediment or debris etc.).

Task 3: Notify the appropriate individuals at MTO about the emergency work.

In the event of an emergency situation that requires emergency work in or around a waterbody:

- ✓ Complete the MTO Duty to Notify/Emergency Work Notification Form (Appendix C) and submit without delay to the MTO contract administrator.
- ✓ The MTO contract administrator shall submit this form to MTO Environmental Delivery and the MTO Environmental Policy Office, upon receipt.

- ✓ Submission information:
    - Identify in the subject line of the email, “MTO Emergency”; and,
    - Include photo(s) to help describe the site and situation.
- ✓ MTO will review the notification form and contact the MTO contract administrator if any additional information is needed to assist in determining whether an emergency *Fisheries Act* authorization may be required. During this time remedial actions and mitigation shall continue.

Note: While *Fisheries Act* authorizations cannot be issued after work is completed, it may be determined that an authorization is needed for any remaining work following the initial stabilization/remediation of the site. If this occurs, your MTO contract administrator will provide further direction prior to the carrying out of any additional work.

Notification of Indigenous Communities: In addition to notification/reporting requirements associated with environmental legislation/regulation, there may be a need for MTO to notify Indigenous communities of an emergency situation or emergency work that may adversely impact fish or fish habitat. MTO staff notified of an emergency or emergency work should contact their regional Indigenous Liaison Specialist for advice on whether notification to Indigenous communities is required.

5. AGENCIES CONTACT LIST

FISHERIES AND OCEANS CANADA, CENTRAL AND ARTIC REGION		
CONTACT	**ADDRESS**	**TELEPHONE**
All Ontario	Fisheries Protection Program Fisheries and Oceans Canada 867 Lakeshore Road Burlington, ON L7S 1A1 **Email:** DFO.OPHabitat.MPO@dfo-mpo.gc.ca	**Tel:** 1-855-852-8320

MINISTRY OF TRANSPORTATION	
CONTACT	**ADDRESS**
Environmental Policy Office – Head Office	Garden City Tower 301 St. Paul Street, 2nd Floor St. Catharines, ON L2R 7R4 **Email:** enviromgmtMTO@ontario.ca

MINISTRY OF NATURAL RESOURCES
CONTACT INFORMATION AND LOCATIONS FOR WORK CENTRES
Online: https://www.ontario.ca/page/ministry-natural-resources-work-centres

MINISTRY OF THE ENVIRONMENT, CONSERVATION AND PARKS	
CONTACT	**TELEPHONE (AVAILABLE 24/7)**
Spills Action Centre	In Toronto: 416-325-3000 Toll-free: 1-800-268-6060 TTY: 1-855-889-5775

6. GLOSSARY

Term	Definition
Aquatic Invasive Species	Means aquatic organisms that, upon introduction to areas or waters where they do not originate naturally, could have harmful effects on fish or fish habitat in Canada or the use of fish by Canadians.
Aquatic Species at Risk	Means a fish and/or a freshwater mussel provincially or federally listed as extirpated, endangered, threatened species or species of special concern. For the purpose of this guide, species of special concern are not afforded protection under SARA.
Aquatic Vegetation	Means a plant that grows partly or wholly in water whether rooted in the waterbody bed, floating without anchorage or rooted along a waterbody bank.
Artificial Waterbodies	Means a waterbody that is not connected to a waterbody that contains fish at any time during any given year, such as: private ponds, commercial ponds (e.g., stocked fishing ponds, stormwater management ponds, irrigation ponds or watercourses, roadside drainage ditches and quarries and aggregate pits).
Contractor (MTO)	Means the individual, business or corporation that is contracted by MTO to undertake construction of a project and/or undertake maintenance works.
Contract Administrator (MTO)	Means the individual, business or corporation hired by MTO as a liaison between the contractor and MTO and is responsible for the day-to-day administration of the contract and compliance of the contractor with the terms and conditions of the contract.
Critical Habitat (SARA)	Means, as defined by the *Species at Risk Act* as the habitat that is necessary for the survival or recovery of a listed wildlife species and that is identified as the species' critical habitat in the recovery strategy or in an action plan for the species.
Culvert	Means a conduit, usually covered by fill, whose primary function is to convey surface water through an embankment.
Debris	Means branches, stumps, logs, boulders, ice build-up, garbage or any other organic or inorganic materials that prevent the passage of water and/or fish, or that damage or impair the proper functioning of infrastructure.
Deleterious	Means, as defined by the *Fisheries Act*, any substance that, if

Term	Definition
Substance	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. Note that sediment is considered a deleterious substance.
Ditch	Means part of the highway drainage system that generally conveys water for short periods of time following precipitation or snowmelt and typically outlet to a waterbody that may support fish and fish habitat.
Duty to Consult	Refers to the Crown's constitutional obligation to consult an Indigenous community when it has knowledge of an established or credibly asserted Aboriginal or treaty right and contemplates conduct that may adversely affect that right. Aboriginal rights are practices, customs or traditions integral to the distinctive culture of the Indigenous community (e.g., rights to hunt, fish, trap, gather). Treaty rights are specific rights of Indigenous peoples set out in the treaties they entered into with Crown governments.
Emergency Situation	Means an accident, natural disaster, catastrophic structural failure, spill, or other incident that has occurred, or may imminently occur, and which poses an imminent risk to life, public health or safety, the environment, damage, or loss of property.
Emergency Work (MTO)	Means an emergency repair of a highway facility undertaken immediately after an accident, natural disaster (including beaver dam failure), catastrophic structural failure, or on detection of an imminent failure, including containment, cleanup and disposal of cleanup material; or a project that is required to address a situation where there is an imminent risk to life, public health or safety, the environment, damage or loss of property.
***Endangered Species Act* (ESA)**	Means provincial legislation enacted to protect species that are at risk and their habitats, and to promote the recovery of species that are at risk.
Entrainment	Means when a fish is drawn into a water intake and cannot escape.
Erosion	Means the process by which the natural (earth) or unnatural (embankment, slope protection, structure, etc.) land surface is naturally worn away by the actions of water, wind, ice or other

Term	Definition
	geologic agents.
Fish	Means, as defined by the *Fisheries Act*, parts of fish, shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals, and the eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans, and marine animals.
Fish Habitat	Means, as defined by the *Fisheries Act*, 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.
Fisheries BMP (MTO)	Means a Best Management Practice that has been endorsed by MTO and that is intended to provide MTO staff and Service Providers direction on how to undertake routine activities in a manner that avoids impacts to fish and fish habitat.
Harmful Alteration, Disruption, or Destruction of Fish Habitat (HADD)	Means, as interpreted by DFO in the *Fish and Fish Habitat Protection Policy Statement*, any temporary or permanent change to fish habitat that directly or indirectly impairs the habitat's capacity to support one or more life processes of fish.
High Water Level	Means the elevation of the top of the bank of the channel. In watercourses this refers to the "bank-full channel" which is often the 2-year flood flow return level. In inland lakes and wetlands, it refers to those parts of the waterbody bed and banks that are frequently flooded by water that leaves a mark on the adjacent land and where the natural vegetation changes from predominately aquatic vegetation to terrestrial vegetation.
Impingement	Means when a fish becomes entrapped and is held in contact with the intake screen and is unable to free itself.
In-Water Work	Means any work, activity or undertaking occurring at or below the high water level that may impact the waterbody bed or flow in the waterbody.
In-Water Timing Windows	Means a restriction to in-water work related to an activity during certain periods in order to protect fish from harmful impacts of works or undertakings in and around water during spawning migrations and other critical life stages. They are established by the Ontario Ministry of Natural Resources.
Maintenance	Means the activities required to keep the roadway in a safe,

Term	Definition
	passable condition and prolong the life of the infrastructure.
Mitigation	Means, as defined by DFO *Fish and Fish Habitat Protection Policy*, measures to reduce the spatial scale, duration, or intensity of harmful impacts to fish and fish habitat when such impacts cannot be avoided.
MTO Environmental Delivery	Means the MTO environmental staff in the region the work, undertaking, or activity is occurring. Typically, the contact will be the MTO Environmental Planner.
Perched Culvert	Means a culvert structure which has an outlet with invert elevation at or above the elevation of the waterbody bed.
Realigning (waterbody)	Means the construction of a new watercourse or a new alignment which may include the clearing, widening, and/or deepening of the existing watercourse.
Right-of-Way	Means the strip of land within the limits of which a roadway is built and is usually indicated by a fence line or bush line.
Riparian Vegetation Areas	Means trees, shrubs and other vegetation on waterbody bank from the high water level upland for 30 metres.
Sediment	Means soils or other surface material transported by wind or water as a result of erosion. Sediment is considered a deleterious substance.
Service Provider (MTO)	Means consultants, contract administrators, and contractors hired by MTO to assist in the planning, design, construction, operations, and maintenance of provincial transportation projects.
***Species at Risk Act* (SARA)**	Means federal legislation enacted to prevent Canadian indigenous species, subspecies, and distinct populations from becoming extirpated or extinct, to provide for the recovery of endangered or threatened species and encourage the management of other species to prevent them from becoming at risk.
Spill	Means the release or discharge of a pollutant, contaminant, or other deleterious substance, including sediment, into the natural environment. For the purpose of this guide, the areas of concern are those areas in or near a waterbody, or that may discharge to a waterbody. They are established by the Ontario Ministry of Natural Resources
Waterbody	Means any permanent or intermittent, natural, or constructed

Term	Definition
	body of water including lakes, ponds, wetlands, and watercourses, but does not include stormwater management ponds.
Waterbody Bank	Means the area of slope adjacent to a waterbody, from the high water level to the top of slope.
Waterbody Bed	Means the bottom and sides of the waterbody over which the water flows, up to the high water level.
Watercourse	Means a stream, creek, river, or channel, including ditches, in which the flow of water is permanent, intermittent, or ephemeral.
Watercrossing (MTO)	Means a culvert or bridge structure used on a roadway to cross a waterbody.
Wetlands	Means lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the earth's surface.

APPENDIX A: MNR INFORMATION REQUEST/REQUEST TO CONFIRM

HOW TO COMPLETE THE MNR INFORMATION REQUEST/REQUEST TO CONFIRM: LETTER AND TABLE TEMPLATES

To help process a request for information, or to confirm existing information regarding fisheries, MNR requires specific information about the site(s). The letter template advises MNR of an MTO activity in and/or around a waterbody(ies) while the table provides the details for the specified locations.

Instructions

1. Complete the letter template.
2. Fill out the first column in the table: the waterbody name and location(s). If necessary, attach multiple tables.
3. Fill out any other available information from existing MTO reports, GEO data etc. (if applicable)
4. Locate a Google Earth map or MTO project map identifying each waterbody
5. Submit letter, table, and the map to MNR. Contact information is provided in Section 5 above
6. MNR will provide the information outlined in the table within 30 working days

Note: An electronic version of the forms and templates are available on the MTO Technical Documents website.

Letter Format Template

Date

Address

Re:

Attention: [CONTACT NAME]

In accordance with the MTO Fisheries Protocol and understanding between the Ministry of Transportation (MTO) and the Ministry of Natural Resources (MNR), this letter is to provide notification to the MNR MTO is undertaking the following works:

> [INSERT WORK/UNDERTAKING/ACTIVITY DETAILS; i.e., type of activity and a concise description of the proposed work in and around waterbodies].

Please see the attached for details regarding the [INSERT THE NAMES AND LOCATION OF WATERBODY (IES)] within the project limits.

> [INSERT one of the follow two paragraphs based on the data request need].

As per Step 2 of the MTO Fisheries Protocol within the MTO Environmental Guide for Fisheries (2025), we are requesting that MNR complete the attached table that includes information on fish community and habitat.

OR

We have data on file in relation to these watercourses (attached) from (insert YEAR) and are requesting that MNR confirm whether these data are still valid and provide updated information where applicable.

We look forward to MNR's response to our request within **30 working days.**

[Name]

[Title]

MNR INFORMATION REQUEST/REQUEST TO CONFIRM: TABLE FORMAT TEMPLATE
MTO PROJECT TITLE:

Location	**Waterbody Name***	**Waterbody GPS*** (Attach Google Earth map)	**Watercourse Classification** (i.e., warmwater, coldwater)	**Habitat Information** (Include details/locations for aquatic invasive species, fish passage barriers, known spawning habitats, groundwater upwellings, migratory corridors, etc.)	**Historical Data** (Include details on the historical fish species present.)	**MNR Fisheries Objectives** (If applicable, include details)	**In-Water Work Timing Windows for Construction** (Provide dates)

*Applicant **must** complete these columns as part of the submission.
Where information is available from other sources, include in the appropriate column with source reference prior to submission to MNR.

APPENDIX B: MTO PROJECT NOTIFICATION FORM

PROCEDURES FOR COMPLETING AN MTO PROJECT NOTIFICATION FORM FOR MAINTENANCE WORKS

PART 1: PROPONENT INFORMATION

- The MTO office, address, telephone number and, if applicable, the name, address, and telephone number of the MTO Service Provider and MTO project manager.

PART 2: PROJECT INFORMATION

- Identify whether there are any federal or provincial species at risk present and the location.
- Provide a description of fish and fish habitat present at the worksite and attach a completed Fish and Fish Habitat Existing Conditions Summary Table.
- Provide a description of the location of the proposed work, undertaking, or activity, including its geographic coordinates and the name of any waterbody(ies) that are likely to be affected along with the proposed work, undertaking, or activity and the proposed start and completion dates.
- Attach a site map, site photos, or any drawings, or any other documents that may be of use.

PART 3: TYPE OF NOTIFICATION

- Check the appropriate box as to whether a determination has been made at Step 3 to follow a Fisheries BMP.

PART 4: MEASURES TO AVOID DEATH OF FISH OR HARMFUL ALTERATION, DISRIPTION OR DESTRUCTION OF FISH HABITAT – ONLY TO BE COMPLETED FOLLOWING DIRECTION FROM THE MTO CONTRACT ADMINISTRATOR.

- Check the boxes of all the applicable mitigation measures and contract provisions to be used and list any additional mitigation measures and contract provisions in the appropriate areas.

PART 5: SIGNATURE

- If a determination that there is no likelihood of the work resulting in the death of fish or harmful alteration, disruption or destruction of fish habitat made at Step 3, and the project is proceeding using an MTO BMP, MTO or an MTO Service Provider shall sign the form.
- If a determination has been made at Step 4, a fisheries assessment specialist shall check the appropriate box and sign the form.

PART 6: SUBMISSION REQUIREMENTS

- The MTO Project Notification Form shall be signed by the appropriate individual and retained by Maintenance Service Providers. For further details on required signatures, please refer to Appendix H of the Fish Guide.
- MTO Regional Operations Office is responsible for retaining the MTO Project Notification forms completed by the Maintenance Service Providers for annual auditing purposes in accordance with the MTO Fisheries Protocol.

Note: An electronic version of the MTO Project Notification Form is available online on the MTO Technical Documents website.

MTO PROJECT NOTIFICATION FORM

MTO Project Title:		**MTO Project W.P. No.:**
PART 1: PROPONENT INFORMATION		
Ministry of Transportation Office:		**MTO Region:**
Mailing Address:		
City/Town:	**Province:** Ontario	**Postal Code:**
MTO Service Provider:		**MTO Project Manager:**
Telephone #:		**Telephone #:**
Email:		**Email:**
PART 2: PROJECT INFORMATION		
Federal or Provincial aquatic species at risk (SAR) present within project limits: **YES ☐ NO ☐** **List Species:**		**SAR Location:**
Summary of Fish and Fish Habitat Present at the Worksite, if applicable (i.e. species, substrate type, vegetation; refer to Templates D2A and 2B):		
Location of Project:		**Geographic Coordinates (Lat/Long):**
Name of Nearest Community:		**Name of Waterbody(ies):**
Description of Works/Undertakings/Activities:		
Proposed Start and End Date of Works/ Undertakings/Activities:		**In-water Works Timing Window:**

Attached Documents and Photos (check all that apply)

☐ **Site Map**	☐ **Site Photos**	☐ **Drawings**	☐ **Template D1**
☐ **Template D2A**	☐ **Template D2B**	☐ **Template D3**	☐ **Template D4**
☐ **Impact Drawing**	☐ **Other:**		

PART 3: TYPE OF NOTIFICATION

☐ **Step 3 – MTO Fisheries Best Management Practice(s)** **(COMPLETE PARTS 1-3 AND 5 ONLY)** **Which Fisheries BMP(s) are you following?**	☐ **Step 4 - No likelihood of the Death of Fish or Harmful Alteration, Disruption or Destruction (HADD) of Fish Habitat** **(COMPLETE ALL PARTS)**

Rationale (for applicability of Fisheries BMP or No Death of Fish or HADD of Fish Habitat determination):

PART 4: MEASURES TO PROTECT FISH AND FISH HABITAT (CHECK APPLICABLE MEASURES TO BE INCLUDED IN CONTRACT)

Mitigation Measures	Applicable Contract Provisions
Timing Constraints: ☐ Temporary in-water will be completed during the in-water work timing window	**OPSS.PROV 182** ☐ SSP101F23 – Table A
Dewatering/ Flow Passage Control: ☐ All in-water work shall be completed in the dry by isolating and dewatering the work area or by temporary flow control around the work area	☐ OPSS.PROV 517 ☐ SSP 517F01
Erosion and Sediment Control: ☐ Vegetation removal shall be limited to only the extent required for the proposed works ☐ Use of effective sediment and erosion control measures shall be implemented and maintained to function as intended ☐ Sediment and erosion controls shall remain in place and maintained until such time as the vegetation has	☐ OPSS.PROV 804 ☐ SSP 804F02 ☐ OPSS.PROV 805 ☐ SSP 805F01 ☐ Operational Constraint – Erosion and Sediment Control NSP # (from CPS):_____

taken sufficiently to provide adequate protection for the watercourse	☐ NSSP ENVR0012 ☐ NSSP ENVR0013 ☐ NSSP ENVR0015 ☐ NSSP ENVR0016
Culvert Installation: ☐ Culvert(s) shall be embedded a minimum of 10% ☐ Low flow channel shall be installed to ensure fish passage	**OPSS.PROV 182** ☐ OPSS.PROV 823
Protection of Fish: ☐ Safe fish passage shall be maintained/provided ☐ Any fish trapped in the isolated area during de-watering shall be captured and released as directed in the Licence to Collect Fish for Scientific Purposes ☐ Water intakes or outlet pipes shall have screens to prevent entrainment or impingement of fish	**OPSS.PROV 182**
Equipment and Machinery: ☐ All equipment shall be clean and in good working order (no leaks of fuel, grease or oils) ☐ A spill management plan shall be kept on site ☐ Areas for refuelling and maintenance of machinery shall be 30m or as far away as practicable from any waterbody	**OPSS.PROV 100** **OPSS.PROV 182**
Materials Management: ☐ All construction debris, including removed sheet piling and litter shall be removed on a regular basis ☐ Stockpiles shall be located and isolated to ensure material will not enter any watercourse ☐ Excess materials shall be disposed of in accordance with the Contract Documents	**OPSS.PROV 100** **OPSS.PROV 180** **OPSS.PROV 182**
Site Restoration: ☐ All disturbed areas shall be restored to original site conditions or better	**OPSS.PROV 182** ☐ OPSS 802 ☐ OPSS.PROV 803

	☐ OPSS.PROV 804 ☐ SSP 804F02
Oversight: ☐ An MTO fisheries contracts specialist shall monitor the site for compliance with the contract documents relating to the protection of fish and fish habitat and installation and maintenance of mitigation measures	☐ SSP 101F23 – Table B
Additional Mitigation Measures (list measures):	**Additional Contract Provisions (list relevant Special Provisions, Items, OPSSs, OPSDs, etc.):** ☐ SSP 101F23 – Table C

PART 5: SIGNATURE	
I, the undersigned, have reviewed the fish and fish habitat information and the proposed mitigation measures. In accordance with the MTO Fisheries Protocol, I have identified that the proposed works will not likely result in the death of fish or the harmful alteration, disruption, or destruction of fish habitat.	
Name:	☐ **Fisheries assessment specialist** *(check if applicable)*
Signature:	**Date:**

Ontario

APPENDIX C: MTO DUTY TO NOTIFY/EMERGENCY WORK NOTIFICATION FORM

This form is submitted to MTO only and shall include all the information outlined below.

Part 1: Notification Details

- Indicate whether the form is being submitted as a duty to notify of death of fish or HADD of fish habitat, or for undertaking emergency work, or both.
    - If submitted as a duty to notify, verify that DFO has been contacted by phone or email.
- Date the notification is being submitted.
- MTO Contract # associated with the work for which the notification form is being submitted, if applicable.
- MTO region where the emergency situation has occurred.

Part 2: Reporting Information

- Person reporting the emergency situation and contact details.
- Name and contact details of the person in the field who is directly dealing with the emergency situation.
- MTO Contract Administrator.

Part 3: Incident Information

- Description of the incident.
- Date and time of the incident.
- Details on the location of the site including geographic coordinates, name of the nearest community and waterbody.
- Indicate the types of impacts that have occurred or are about to occur by checking the appropriate box(es).
- Describe any other relevant details of the incident including the cause (if known or suspected), approximate area of impact or material loss/deposit, known fish species/habitat present or impacted etc.
- Describe the work/activities that are being or have been immediately implemented to address the emergency situation. E.g. Road closure, mitigation measures, damming/pumping etc.
- Indicate whether photos are attached. Where feasible, photos to help describe the site and the situation should be submitted with the notification form, or as a follow-up. Where it is unsafe to take photos immediately, photos should be taken and submitted when it is safe to do so, even if this means after the situation has been stabilized.

Part 4: Emergency Work

- A description of the proposed repair work/activities that will be undertaken, including timelines, size, and type of materials (existing and replacement, if applicable), site restoration details etc.
- Describe the mitigation measures that have been, or will be, implemented to protect the waterbody(ies).
- Indicate whether the work/activity can follow a Fisheries BMP.
- Identify whether the emergency work is temporary or final by checking the appropriate box. Following any emergency work, MTO staff and/or MTO Service Provider(s) must visit the site and determine whether the emergency work is adequate and final, or if subsequent/permanent work is required to fully address the problem (e.g. fish passage).
- Proposed start and end dates of the emergency work.

Part 5: Other Agencies Contacted

- Name(s), contact information and dates other agencies were contacted (e.g. MECP Spills Action Centre, DFO for federal aquatic species at risk, or MECP for provincial aquatic species at risk).

An electronic version of MTO Duty to Notify/Emergency Work Notification Form is available online on the MTO Technical Documents website.

MTO DUTY TO NOTIFY / EMERGENCY WORK NOTIFICATION FORM

SUBMISSION REQUIREMENTS

The MTO Contract Administrator shall send the completed form to MTO Environmental Delivery and the MTO Environmental Policy Office, enviromgmtMTO@ontario.ca.

PART 1: NOTIFICATION DETAILS

TYPE OF NOTIFICATION: ☐ **DUTY TO NOTIFY** ☐ **EMERGENCY WORK**

If Duty to Notify, check box to confirm DFO has been notified by phone/email ☐

Date of Notification:	Time of Notification:
MTO Contract #:	MTO Region:

PART 2: REPORTING INFORMATION

Person Reporting:	Field Contact:
Telephone #:	Telephone #:
Email:	Email:
MTO Contract Administrator:	
Telephone #:	
Email:	

PART 3: INCIDENT INFORMATION

Date of Incident:	Time of Incident:
Location of Site:	Geographic Coordinates (Lat/Long):
Nearest Community (city/town):	Name of Waterbody(ies): Type (watercourse, lake/pond, ditch):

Type of Incident:

☐ Bank failure
☐ Erosion and Sediment Control failure
☐ Debris build-up/jam
☐ Other (specify):
☐ Culvert failure
☐ Beaver dam breach
☐ Hwy shoulder failure

Indicate if any of the following impacts have occurred or are about to occur:

☐ Fish Kill (if yes, approximately how many): ____
☐ Sediment deposition in channel
☐ Bank failure
☐ Obstruction of fish passage through:
☐ Modification of flows
☐ Channel ☐ Culvert
☐ Other (specify):

Additional Incident Details:
(Describe any other relevant details of the incident including cause of the incident (if known or suspected), approximate area of impact or material loss/deposit, known fish species/habitat present or impacted etc.)

Immediate Actions Taken:
(Describe the activities/works that are being / have been immediately implemented. E.g. road closure, mitigation measures, damming / pumping etc.)

Photos: ☐ Attached

(Where feasible, it is recommended that the photos be submitted with the form or as follow up)

PART 4: EMERGENCY WORK

Description of Proposed Emergency Work:
(Be as specific as possible. Describe what work will be undertaken within the next two weeks. E.g. culvert replacement (include existing and new culvert diameter / length / type), slope restoration (include material / method), road / road bed restoration (include material / method) etc.):

Mitigation measures:
(Describe what measures have been or will be implemented to address the immediate issue. E.g. sediment fence, turbidity curtain, check dam, fish salvage etc.):

Indicate which of the Fisheries BMP(s) will be followed (if applicable):

☐ Beaver Dam Removal ☐ Bridge Maintenance ☐ Ditch Maintenance Within 30 m of a Waterbody ☐ Riparian Vegetation Maintenance in Existing Right-of-Way	☐ Culvert Maintenance ☐ Like-for-Like Culvert Replacement ☐ Temporary Watercourse Crossing
The Emergency Work is (check one): ☐ Temporary (additional work will be required)	 ☐ Final (no additional work required)

PART 5: OTHER AGENCIES NOTIFIED	
Other Agency(ies) Notified: Yes ☐ No ☐	Agency(ies) Notified:
Date Notified:	Incident Report No. (if issued by notified Authority):

Ontario