

# ONTARIO FEDERATION OF ANGLERS & HUNTERS



*Ontario Conservation Centre*

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Fisheries & Oceans Canada  
Email: [FPP-PPP.XNCR@dfo-mpo.gc.ca](mailto:FPP-PPP.XNCR@dfo-mpo.gc.ca)

Dear Sir or Madam:

The Ontario Federation of Anglers and Hunters (OFAH) is Ontario's largest non-profit, conservation-based organization representing 100,000 members, subscribers and supporters, and 740 member clubs. We have reviewed the Consultation Paper ("approach to key regulations under the proposed fish and fish habitat provisions of the Fisheries Act") and have answered the questions presented in the document, as well as providing additional insight and recommendations. The continued engagement on Bill C-68 and the proposed amendments to the Fisheries Act is appreciated, and we hope to remain actively involved throughout the process.

**Question 1:** DO YOU HAVE ANY SUGGESTIONS ON THE AMENDMENTS RELATED TO THE PROPOSED CHANGES TO THE FISHERIES ACT CONTAINED IN BILL C-68?

During the teleconference on the status of Bill C-68 and update on regulations and policy consultations, Fisheries and Oceans Canada (DFO) provided clarity on Question 1 of the consultation paper, suggesting the following reworded question: **"Do you have any thoughts on how the language in the proposed amendments in the Fisheries Act is reflected in the regulations?"**

- To strengthen the provisions for the amendment, suspension, or cancellation of an authorization, additional language for the establishment of environmental and biological thresholds should be outlined in Schedule 1 of the Applications for Authorization Regulations.
- There should be additional language incorporated into the Offsetting Plan of the Applications for Authorization Regulations for proponents planning on exchanging habitat credits and using a habitat banking system.
- Additional language should be incorporated into the proposed amendments, as well as being reflected in the regulations, that require offsetting plans to achieve a ratio of greater than 2:1 (area gain:area loss).
- Regulations and associated policies should prescribe where offsetting plans and the exchange of habitat credits may occur (i.e. within the same waterbody, watershed, etc.).
- The DFO is exploring additional forms of financial security such as performance bonds. These opportunities should be expanded upon in the "Required information and documentation" of the regulations. Exceptions for restoration projects that achieve net gains in habitat productivity should also be included in this section.
- Include language regarding the proposal to require geographical coordinates in the description of offsetting measures.
- Provide clearer requirements for communication with Indigenous communities about an Application for Authorization within their traditional territory.

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**Question 2:** DO YOU HAVE ANY SUGGESTIONS ON AMENDMENT, SUSPENSION OR CANCELLATION OF AN AUTHORIZATION BY THE MINISTER, INCLUDING TIMELINES?

The OFAH supports the provisions for amending, suspending, or cancelling authorizations. As described in the consultation paper, projects can evolve in unexpected ways, therefore it is important for the DFO and the proponent to be able to adaptively manage them. Given the cost and complexity of development projects, it is in the best interest of all parties to ensure conditions are outlined prior to the initiation of a project. Clearly identifying the manner and circumstances, as well as outlining the process for both the proponent and Minister will reduce uncertainty and mitigate conflicts.

A quantitative system should be established that incorporates environmental and biological thresholds (i.e. limit reference points) in the terms and conditions of an authorization. This will assist in situations where an amendment, suspension, or cancellation of a project is being considered. Predetermined abiotic thresholds (i.e. water flow, turbidity, temperature, etc.) or biological thresholds (i.e. fish populations) could be incorporated into authorizations to serve as triggers for review of an authorization. If proponents exceed specified values, the Minister would have the ability to enact provisions to suspend or cancel the project. Thresholds would give proponents certainty regarding the conditions under which they could expect a suspension or cancellation, as well as clear levels that should be avoided. This will help reduce harmful alteration, disruption, or destruction (HADD) of fish habitat while providing the DFO with transparent and defensible rationale for making decisions to suspend or cancel authorizations.

Authorizations should require detailed monitoring assessments outlining methods, frequency, and reporting required by the proponent to determine environmental and biological thresholds. During instances where they are not well understood, baseline surveys should be conducted and submitted as part of the Applications for Authorization.

**Question 3:** DO YOU HAVE ANY VIEWS ABOUT THE USE OF CERTIFIED HABITAT CREDITS?

The OFAH supports the general concept of habitat banking as a means to offset habitat alteration and destruction, but we are unsure who is responsible for the certification of credits. To be successful, any habitat banking system must ensure high quality, additional habitat credits (i.e. greater than 2:1 ratio of habitat area gained to habitat area lost). Additionality is a critical component for the establishment of a functioning environmental market. Mechanisms for additionality testing must be in place to avoid flooding environmental markets with non-additional habitat units (i.e. credits that do not provide added value). The implementation of control and management strategies for monitoring and evaluating markets is critical to the establishment of a system that works. Checks, balances, and consequences need to be arranged to ensure habitat banks perform as anticipated. A registration system to help track conservation projects, habitat banks, and the exchange of credits is necessary, and should be made available to the public, where appropriate.

Exchange of habitat credits, in most instances, should be in-kind replacement (i.e. "like-for-like") that achieves an overall net gain of that commodity. For example, if the activities of a proponent result in HADD of Walleye spawning habitat, the credits needed to compensate the work should come from a conservation project involving the creation of Walleye spawning habitat within the same service area. In order to contribute to additionality, a greater number of habitat credits should always be maintained "in the bank" relative to the number of habitat units harmed. The system should also be expanded to support third-party habitat banking, or the transfer of credits between proponents.

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The delineation of service areas and the geographical and spatial extent should not be arbitrarily determined. The DFO should consider restricting service area boundaries to natural geomorphological features such as watersheds. The exchange of habitat credits through conservation projects should occur at, or in close proximity to, the area that is being impacted/harmed (i.e. within the service area where the HADD is occurring). Conservation projects that are created under the habitat banking system should receive some level of protection from future HADD to ensure its continued contribution to fisheries conservation.

**Question 4: DO YOU HAVE ANY SUGGESTIONS OR COMMENTS ON VARIOUS APPROACHES TO FINANCIAL SECURITIES REQUIRED FOR AN OFFSETTING PLAN?**

It is important to expand ways to request financial security in the Applications for Authorization Regulations. However, the options being considered must meet the DFO policy objectives and ensure the offsetting plan is completed, but more importantly, functioning. Financial security arrangements should include some aspect of perpetuity to ensure the long-term functioning of offsetting plans. There should be a policy in place for how financial security arrangements are treated if an offsetting project fails. If an offset fails to perform as expected and agreed upon, any consequences for the proponent should be clearly laid out in the authorization.

Aside from performance bonds, what other financial securities are being considered? The available options for proponents should be well understood and identified prior to the implementation of the regulations. Alternatively, DFO should facilitate further policy development to elaborate on what financial security options proponents may pursue.

An irrevocable letter of credit issued by a recognized Canadian financial institution to cover the costs of implementing an offsetting plan is required by all applicants. The OFAH would like to suggest separating applicants into two categories: 1) proponents (e.g. developers) conducting activities that result in HADD, and 2) third-party applicants (e.g. conservation authorities) whose activities are for restoration purposes that achieve net gains. The current financial assurance mechanism results in significant delays for restoration projects, compromising the ability to achieve gains in habitat productivity. It is important to consider exemptions in order to expedite the authorization process for conservation organizations, Indigenous organizations, and governments, when their works, undertakings, or activities are for restoration purposes that support additionality. For this suggestion to be successful there needs to be a clear description and criteria established to outline exactly what constitutes a "restoration project." True restoration initiatives must be stand-alone, and exclusive of any development projects.

**Question 5: DO YOU SUPPORT THE PROPOSAL TO REQUIRE GEOGRAPHICAL COORDINATES IN THE DESCRIPTION OF OFFSETTING MEASURES?**

The OFAH supports the proposal to require geographical coordinates in the description of offsetting measures as a means of tracking and measuring additionality. However, rather than a set of coordinates for a single point, we suggest that applicants be required to delineate and provide the boundaries of the offsetting project. This information should be made publically available except in instances where sensitive species/habitats are present, in which case the location of the offset should not be disclosed.

**Question 6: DO YOU HAVE ANY SUGGESTIONS REGARDING THE PROPOSED REQUIREMENT FOR COMMUNICATION WITH INDIGENOUS COMMUNITIES ABOUT AN APPLICATION FOR AUTHORIZATION?**

The OFAH supports the Government of Canada's commitment in the proposed amendment to the Applications for Authorization Regulations to require the Minister to notify any Indigenous community located within the vicinity of the proposal about the received application. However, there are still many unknowns with respect to the engagement process and the potential impacts this may have on proponents.

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It is important for the DFO to be the sole party responsible for identifying which Indigenous communities may be impacted, and subsequently notified about the received application. There should be consideration regarding the spatial and geographic extent as to which communities must be notified. The identification and establishment of clear triggers for engagement and notification should be implemented in order to reduce confusion.

It is also important to provide additional opportunities for communities to contribute to the Minister's review of applications, but the process remains unclear. What happens if an Indigenous community has a concern? How are the Applications for Authorization time limits affected? At what point during the process may communities provide input? What requirements and responsibilities will be assumed by the proponent? The regulatory framework must clearly outline these steps, and contain transparent rules and processes involving all parties including the government, Indigenous communities, and the proponent.

**Question 7: ARE THERE ANY OTHER CHANGES TO THE APPLICATIONS FOR AUTHORIZATION REGULATIONS THAT YOU WOULD SUGGEST?**

The carrying on of a work, undertaking, or activity that results in serious harm to fish, or the proposed amendments to include the harmful alteration, disruption, or destruction of fish habitat, have the same inevitable outcome – harm to fish and fish habitat. The Applications for Authorization under Paragraph 35(2)(b) provide the Minister of Fisheries and Oceans Canada the ability to issue authorizations with conditions. However, if the associated offsetting plan does not result in a net gain in habitat productivity, these authorized activities threaten fisheries and ultimately our recreational opportunities.

The DFO's Quigley and Harper (2006) studied the effectiveness of fish habitat compensation for projects resulting in HADD in Canada in achieving "no net loss." Approximately 63 percent of projects resulted in net losses in habitat productivity, only 12 percent of projects achieved a net gain, while the remainder achieved no net loss. Until offsetting projects can effectively and consistently achieve "no net loss," a functioning habitat banking system will not work and habitat will continue to be at a deficit.

Institutional approaches should be enhanced using the best available compensation science in order to improve our ability to replicate ecosystem function and achieve gains in habitat productivity. The DFO asserts that a lack of baseline data and limited monitoring assessments are exacerbating losses in habitat productivity. These concerns are coupled with poor compliance rates, and an inability to conduct reviews to determine whether gains or losses have occurred. Spatial, temporal, and functional considerations are not adequately addressed in authorizations, and largely do not capture long-term and cumulative ecosystem effects.

Strategies must be implemented to strengthen offsetting plans to support a functioning habitat banking system, reduce harm to fisheries, and increase habitat productivity. There are various considerations to achieve these goals, outlined in Quigley and Harper (2006), including a multimetric approach that incorporates all of the interconnected elements of aquatic habitats. The development and implementation of a quantitative system to evaluate ecological success is imperative. Successes will largely be dependent on the implementation of compensation ratios larger than 2:1 (as previously described). If the overarching policy goal is to achieve net gains, 5:1 ratios should be used (Quigley and Harper 2006), especially in cases where considerable uncertainty exists about the chances of success. Larger compensation ratios will improve the success of offsetting plans, but these projects should be continually monitored to ensure long-term functionality. Increased capacity to support additional monitoring and enforcement of projects will help ensure compliance and that habitat gains are being achieved. Various project alternatives (i.e. redesign, relocation, etc.) must be scrutinized and considered before moving forward with offsetting plans.

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**Conclusion**

Thank you for the continued engagement and the opportunity to comment. The proactive approach the DFO has adopted for consulting with stakeholders in the development of these regulations is appreciated. Additionally, the DFO should consider establishing a working group and/or conducting workshops with national and provincial conservation organizations. We hope to be given the same opportunity to provide comments on other regulations and policy development aspects of the proposed amendments to the Fisheries Act. I would be pleased to discuss the recommendations presented in this submission document directly with representatives from the DFO.

Yours in Conservation,



Adam Weir  
Fisheries Biologist

AW/gh

cc: OFAH Fisheries Advisory Committee  
Angelo Lombardo, OFAH Executive Director  
Matt DeMille, OFAH Manager, Fish & Wildlife Services  
Mark Ryckman, OFAH Manager, Policy  
Chris Robinson, OFAH Manager, Conservation Programs

**References**

Quigley JT and Harper DJ. 2006. Effectiveness of Fish Habitat Compensation in Canada in Achieving No Net Loss. Environmental Management Vol. 37, No. 3, pp. 351-366.