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Subject: A Canadian Aquaculture Act – Discussion Paper

The Ontario Federation of Anglers and Hunters (OFAH) is Ontario's largest, non-profit, fish and wildlife conservation-based organization, representing 100,000 members, subscribers and supporters, and 725 member clubs. We appreciate the opportunity to comment on Fisheries and Oceans Canada's (DFO) discussion paper, "A Canadian Aquaculture Act" and would like to highlight the following points for consideration.

The OFAH supports sustainable aquaculture that is highly regulated in the interest of protecting wild fish, fish habitat, and fisheries. Our primary interest is in Ontario and our comments reflect that interest. First and foremost, the conservation of our fisheries and the environment must be prioritized. By building on the fundamental principles in the *Fisheries Act* and adapting them to the proposed *Aquaculture Act*, DFO can provide more relevant legislation and adequate safeguards for a growing and evolving industry. It is our understanding the questions provided under each "element" of the discussion paper are meant to help guide responses. In some instances, we have answered the questions directly, while for other sections, we have given general feedback for consideration.

An overarching concern we have with the proposal is the perceived shift away from fish stock conservation and fish habitat protection as evidenced by using terms like "farming," "commercial industry" and "agri-food sector." We are opposed to this approach as the primary focus of the Act should consist of shared goals for the conservation of healthy aquatic ecosystems and cannot be led by industry-driven mandates.

Element 1: Application, Purpose, and Definitions
The proposed preamble is sufficiently broad; however, it may benefit from including and elaborating on the Federal Government's role in oversight and coordination of aquaculture governance with provinces and territories. Other important themes that could be highlighted in the preamble include respecting intergovernmental relations and communications, and jurisdictional roles and responsibilities at federal, provincial, and territorial levels. In the *Aquaculture Act* discussion paper, it states "the Act would also be forward looking by being inclusive of emerging aquatic species for cultivation, as well as enabling aquaculture in Canadian offshore waters." This statement is concerning and unclear and coupled with enabling aquaculture in offshore waters, the approach is unsettling.

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Under the *Fish and Wildlife Conservation Act* in Ontario, "aquaculture" means the breeding or husbandry of fish, and the verb "culture" has, with respect to fish, a corresponding meaning. In defining aquaculture in the proposed federal *Aquaculture Act*, the Government of Canada should consider definitions in existing provincial and territorial legislation to ensure consistency and to reduce any unintended conflicts in the wording. Because of its broad application and potential confusion, DFO should avoid using the term "farming" in the definition of aquaculture. For example, in Ontario, the definition of aquaculture has been applied in management and enforcement discussions for over a decade and has stood up well considering the variety of aquaculture practices in the province. We recommend the Act use a term like "aquaculture species," supported by a whitelist of species eligible to be held in aquaculture facilities (rather than a list of prohibited species). This facilitates business certainty for the industry and protection of the aquatic environment. A framework to facilitate the decision-making process for adding new species to the list would be beneficial and must be science-based and driven by risk assessments.

DFO should also adopt a regional lens for the cultivation of species. For example, on the west coast, there have been issues related to Atlantic Salmon from aquaculture escapees. Cultivation should only include native and/or naturalized species. Exploring opportunities for "emerging aquatic species" must exclude non-indigenous species and/or species with invasive tendencies. The consideration for species being proposed for cultivation must do so using a lens for aquatic invasive species, including conducting a risk assessment, which should be based on the almost certain likelihood of escapees from cage aquaculture. We also consider the regulatory burden on a facility should be tied to the level of risk it has in the species it hosts, and facilities should also require a suitability assessment for culturing "higher risk" species. These considerations should be broadly addressed at the federal level, as well as having these aspects integrated into regulation at provincial and territorial levels.

Without seeing a draft of the Act and regulations, it is challenging to suggest definitions or overarching factors that should be included in the *Aquaculture Act*. That said, one challenge experienced by the Ministry of Natural Resources and Forestry (MNRF) in Ontario was being able to clearly articulate the difference between depositing fish into waters and depositing fish into an impounding device in the same waters. The issue hinged on the ability of the device to adequately hold the fish. To suggest placing a fish into a device is not depositing them into the water is insufficient; there needs to be some modifier that addresses the device's ability to contain the fish and protect against escapement securely and reliably.

Element 2: Leases, Licences, and Fees

This "element" does not apply to Ontario, because the province is the primary regulator; that said, moving forward it will be important the jurisdictional authorities of the Government of Ontario are maintained. In Ontario, aquaculture leases take the form of Land Use Permits under the *Public Lands Act* while licences and fees are made under the FWCA. If DFO shifts the responsibility for aquaculture to an agriculture or industry department, and Ontario follows suit, the MNRF would lose aquaculture licence revenue in the provincial Fish and Wildlife Special Purpose Account (SPA). As aquaculture continues to grow in the province, this would not only be a significant loss to the already underfunded SPA, but it also further separates the aquaculture industry from fish and wildlife management and undermines a fish conservation-first approach.

A proposed modification to the *Aquaculture Act* includes a mechanism to enable alternative forms of aquaculture. The discussion paper also elaborates on a new leasing and licensing system to facilitate the development of novel or experimental aquaculture methods. "Element 2" may not directly apply to the regulatory framework in Ontario; however, proposals such as these do not provide us with confidence that our fisheries will be conserved in the face of "experimental" aquaculture methods. There should be more details and elaboration on these aspects, as well as ensuring adequate safeguards are in place to give us greater confidence that fisheries will be protected.

Revocation of leases and licences must be an authority of the competent Minister (delegated) based on real damage or potential risks to the aquatic environment and must not rely on prosecution and conviction. The threshold for a court conviction, and the various opportunities for a prosecution to fail, make relying on court orders a haphazard affair at best.

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Element 3: Indigenous Reconciliation
The OFAH respects the government's commitment to reconciliation with Indigenous peoples. Enabling participation using regulatory methods under the *Aquaculture Act* is a step in the right direction. We have no specific comments on mechanisms that could be included under the *Aquaculture Act*, or Indigenous-specific provisions or elements that could be considered. However, any stakeholders that participate in aquaculture should fall under the same federal, provincial, and territorial regulatory regime. This approach is critical to upholding the elements contained in the proposed *Aquaculture Act*, will enable and support area-based oversight and management of aquaculture, will ensure the efficacy of the legislation, and most importantly, will help protect the environment.

Element 4: Cooperation
We are satisfied the proposed *Aquaculture Act* will reflect intergovernmental cooperation with respect to agreements and delegation currently under the *Fisheries Act*. Any proposed changes should consider modernizing the Act in a way that consolidates multiple laws and policies, streamlines regulations, provides greater regulatory consistency, and creates long-term conditions to support the growing aquaculture sector in Canada. We would like to see evidence that federal, provincial, and territorial levels of government are working together on addressing aquaculture policy and regulation, as well as ensuring mechanisms are implemented to facilitate cooperation and transparency.

Enabling the requirement for public registry of aquaculture operations is a critical step to informing and engaging the public. Not only should this be done at the federal level, but provinces and territories should also be required by regulation to provide public reporting of aquaculture operations. This will help facilitate area-based oversight of aquaculture, will facilitate discussions on the spatial allocation of aquaculture sites, and will help to ensure openness with other users of the aquatic resource.

To foster inter-jurisdictional cooperation, we urge that the Canadian Council of Fisheries and Aquaculture Ministers, federal, provincial, and territorial ministers, to have routine meetings and collaborate after the *Aquaculture Act* comes into force. DFO may also want to consider establishing a working group of stakeholders and interested parties to improve consultation and engagement on the *Aquaculture Act*, and to help address any shortcomings, identify aspects of the legislation that are functioning well, etc.

By the provincial definition, including laws and rules in Ontario, community hatcheries and education facilities are considered aquaculture and require licences to culture fish. To better enable community engagement in aquaculture, we recommend that DFO also consider applying a finer scale approach to facilitate opportunities at this level (e.g., funding opportunities, grant programs). Fish stocking and community engagement are two very important components of fisheries management in Ontario. The Community Hatchery Program, for example, helps raise and stock fish, contributes to greater recreational angling opportunities, and helps rehabilitate fish populations.

Element 5: Environmental Protection
It appears to us there is no mention of fish-borne pathogens and diseases under this element. Pathogen and disease testing must be required by regulation and results must be publicly reported. This is a shortfall in the Ontario aquaculture program where pathogens must only be reported if detected. However, if testing is not made a regulatory requirement, then there is no reliability or accountability in the reporting process.

Our main concerns in Ontario are with open water cage facilities but, in general, without proper oversight and monitoring of all types of operations in the aquaculture sector, there could be serious ecological consequences. There are several key areas of concern that are associated with aquaculture operations that the OFAH would like to call attention to including: 1) the loss or degradation of fish habitat; 2) the deleterious ecological impacts resulting from the intentional or unintentional introduction of non-indigenous species; 3) the loss of genetic fitness of indigenous species through inter-breeding with fish; 4) the spread of fish pathogens that could impact self-sustaining natural fish populations; and 5) the harvest of wild fish or gametes for the purpose of aquaculture that could impact self-sustaining natural populations. The aquaculture framework must include strategies that address these concerns, including the transport of live fish, to reduce the environmental risks to fisheries.

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Element 6: Enforcement and Alternative Compliance Measures

Federal, provincial, and territorial governments must consider and develop regulatory mechanisms that enable policies for aquaculture, facilitate the development of best management practices, ensure enforcement and compliance monitoring, and allow for emergency responses (e.g., escapes of live imports of non-indigenous species). But without adequate funding, resourcing, and support at all levels of government, the *Aquaculture Act* and associated regulations will be toothless in its implementation, and Canada's fisheries will likely suffer.

We recommend that DFO conduct a crosscutting review of the *Aquaculture Activities Regulations* and integration with invasive species legislation to reduce duplication and help streamline the approach. Further consideration must be given to industry self-reporting requirements, enhancing auditing exercises, as well as enabling regulatory mechanisms for developing environmental baselines and ensure ongoing monitoring of aquaculture operations. These aspects feed into and support compliance and enforcement at the federal, provincial, and territorial levels.

In Ontario, cage-culture, aquaculture licence conditions are extremely technical and complex, particularly related to nutrient loading. MNRF enforcement staff do not have the training or expertise to properly monitor compliance to these conditions. Similarly, DFO fisheries officers are unprepared for this sort of compliance monitoring. To overcome these shortcomings, the OFAH recommends DFO establish a compliance and enforcement framework that incorporates education, monitoring and inspections, and scalable enforcement actions.

Education is the first step needed to assist industry in compliance, and prior to enforcement, what is absent under this heading is the deployment of trained inspectors whose responsibility is to ensure compliance. A scalable approach to enforcement could, for example, result in a warning for a first administrative offence, while a second could trigger a "ticket" and a third involve court appearance and a DFO hearing. By providing clear direction, the public and industry will better understand expectations, priorities, and consequences. Furthermore, the Act should also include a provision where licence renewal will be refused if the applicant has outstanding penalties, royalties, or other fees owing to the government.

There are two modern enforcement authorities missing from the *Fisheries Act* that ought to be included in the new *Aquaculture Act*. The first is known as a "production order" for documents and records. A production order is used to require a person, who is not the accused, to produce specific documents or records related to an investigation for the prosecution. Without this authority enforcement officers are required to get a search warrant and intrude into a (third party) person's home or place of business to get supporting evidence. Since aquaculture is a commercial enterprise, securing business records is a common requirement to support a prosecution, but can be made difficult without having a production order. The second missing authority provides the ability to leave seized goods in place. Section 35 (4) of the *Ontario Invasive Species Act* sets it out this way: "…an enforcement officer may leave a thing that he or she seizes in the custody of the occupant of the building or other place in which it was seized." This is an important provision considering the significant volumes of live fish, large impounding devices, and other specialized gear that may be seized during an investigation.

Element 7: Regulations

The OFAH would like to emphasize several foundational principles and legislative components that should be reflected in the proposed *Aquaculture Act*.

- An effective, precautionary approach must be used for the regulation of aquaculture at federal, provincial, and territorial levels of government.
- DFO must consider other important pieces of legislation in the development of the *Aquaculture Act*, and regulations made under the Act, including but not limited to: The *Fisheries Act*, the *Canadian Environmental Protection Act*, the *Species at Risk Act*, and the *Pest Control Products Act*.
- It is proposed that the *Aquaculture Act* potentially enhance the environmental prohibitions found under the *Fisheries Act*. We urge the Government of Canada to elaborate on these prohibitions in a way that builds off protections described in the *Fisheries Act* by specifically addressing all impacts related to aquaculture, including activities that may result in harmful alteration, disruption, or destruction of fish habitat.

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- The *Aquaculture Act* should provide minimum regulatory guidance that applies to all Canadian jurisdictions, including safeguards and national standards for provincial and territorial governments to follow. These measures should not supersede existing provincial and territorial legislation; rather, provide a framework that respects the environment while supporting industry.
- We recommend that the Act provide guidance and direction where other legislation does not exist at the provincial and territorial levels, like the applicability of the *Species at Risk Act*.

Element 8: Public Reporting and Legislative Review

New powers have been incorporated into the *Fisheries Act* that include establishing a public registry for the purpose of facilitating access to records; the public reporting requirements for aquaculture should be no different. At a minimum, Canadians must be made aware of the following via a public registry: location of the aquaculture operation; size of the facility; aquatic species being cultivated; type of operation (open water cage, land-based); environmental impact studies; monitoring and assessment data; infractions, fines, penalties; escapees, pathogens, chemicals, and treatments being used; and actions being implemented to address events that cause harm to fish and fish habitat.

Any aquaculture-related event that causes harm to fish and fish habitat must be broadly and effectively communicated using various platforms for disseminating information to Indigenous peoples, stakeholders, and the public. This may include, but not limited to, the use of social media, communications directly through the online public registry, notification mailouts to people and communities directly impacted by these events, and any other means deemed appropriate to enhance public awareness and communication. DFO should be required to provide information on mitigation efforts underway and update these regularly and follow up with the results of any investigations and charges.

The *Fisheries Act* now includes a legislated 5-year review period and the *Aquaculture Act* should consider a similar timeline for review. Ongoing review and auditing of legislation is a good thing, because it will help to increase adaptability and transparency, but a review with the intent to change the legislation every five years is more likely to undermine the successful interpretation and implementation of the Act.

Additional Topics

It is our understanding the relevant sections of the *Fisheries Act* associated with aquaculture will be elaborated on and finetuned for the purposes of the proposed *Aquaculture Act*. That said, considering the recent changes made to the *Fisheries Act*, we urge DFO to ensure that the development of an *Aquaculture Act* will not involve significantly overhauling recent changes made to the *Fisheries Act*. Rather, once the *Aquaculture Act* is in force, we recommend removing the relevant sections from the *Fisheries Act* or provide clarity to those sections about which takes precedence.

There may be additional opportunities to broaden the scope of the *Aquaculture Act* and explore intersections with other pieces of legislation like the *Species at Risk Act*. Policy development could be used to help govern this space, but it may be important to look at expanding the regulatory framework to include the cultivation of species at risk for the purposes of rehabilitation and recovery, and/or enhancement of fish stocks through aquaculture (e.g., stocking).

<u>Closing Remarks</u>

In conclusion, we hope these considerations are adequately reflected in future consultation and engagement on the proposed federal *Aquaculture Act*. It is our firm belief that in moving forward DFO must uphold their commitment to protecting fish and fisheries by building off key foundational principles and legislative components of the *Fisheries Act* for the creation of Canada's first-ever *Aquaculture Act*. There is a need for federal legislation to fill gaps by offering a baseline of consistency that reflects fundamental regulatory oversight needed for environmental protections, but this should not replace or alter those jurisdictions with existing and effective policies in place (i.e., administrative replacement). We stress the importance of implementing modern safeguards for the conservation of our fisheries which, in our belief, can also be done in a way that allows for aquaculture to thrive sustainably.

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We would like to thank the Government of Canada again for the opportunity to provide comments on this important legislative development.

Yours in Conservation,

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