

ONTARIO FEDERATION OF ANGLERS & HUNTERS



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Fish and Fish Habitat Protection Program
Fisheries and Oceans Canada
867 Lakeshore Road
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Subject: Seeking input to modernize or develop new policies, frameworks, instruments and guidance to further implement the fish and fish habitat protection provisions of the *Fisheries Act*

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 provide comment on Fisheries and Oceans Canada's (DFO) Fish and Fish Habitat Protection Program (FFHPP) engagement documents posted to the "talkfishhabitat" website. In some instances, direct feedback to questions in the discussion papers and fact sheets have been provided, whereas other responses give general guidance to assist DFO in the conservation and protection of fish and fish habitat.

You will note from our comments that cumulative effects are a significant concern of our organization. This has less to do with largescale projects that warrant authorizations under the *Fisheries Act* and will likely receive meaningful attention and suitable offset; rather, we are concerned that multiple stressors, which might otherwise be considered negligible, can accumulate or work together to create a larger impact. There are many smaller scale projects that currently avoid authorizations, but are causing death of fish or harmful alteration, disruption, or destruction of fish habitat (HADD): death by a thousand cuts. This is likely due to a combination of things such as an ineffective review process, administrative capacity (including monitoring and enforcement), or proponents not adhering to measures to reduce their impact on fish and fish habitat.

We emphasize the need for a mitigation hierarchy that first prioritizes avoidance and mitigation measures before compensation. However, we also recognize these approaches are not always feasible, thus other alternatives must be considered such as traditional offsets of high-quality, high-functioning habitats. Projects that avoid authorizations currently do not require offsetting and this is contributing to cumulative effects. However, using traditional offsets in these instances would result in many smaller scale, one-off compensation projects that would arguably not have the intended ecosystem-level benefits. This is why we suggest exploring in-lieu fee programs to support the funding of larger habitat projects to offset these cumulative losses, where appropriate. This approach would require DFO oversight to ensure proponents do not treat this fee as a way to circumvent avoidance and mitigation measures. Many of our concerns presented here can be further supported and effectively tracked and monitored under the *Fisheries Act* Registry; however, if not done correctly, our fisheries will inevitably suffer.

Cumulative Effects

Question 1: How could the FFHPP better understand cumulative effects on fish and fish habitat? What information will the Program need?

The FFHPP should consider developing a publicly accessible, landscape management tool used to track works, undertakings, or activities (WUAs) that may result in the death of fish or HADD (i.e., *Fisheries Act* Registry). This will be important for projects requiring authorizations, but the OFAH also urges DFO to consider monitoring cumulative effects of projects that fall under regulatory approaches other than authorizations (codes of practice, prescribed works, letters of advice). By themselves, these projects may appear to be relatively benign; however, unaccounted-for activities that go unmonitored and untracked have the potential to have serious ecological consequences individually, as well as adding up to significant impacts across all projects on a waterbody (e.g., shoreline hardening). The discussion paper broadly considers cumulative effects to be the combined impact of multiple pressures. Only a small portion of these activities will require an authorization, but all projects causing death of fish or HADD contribute to overall cumulative effects. Thus, an approach that integrates, identifies, and monitors a range of stressors is better aligned with the FFHPP.

The landscape management tool for tracking cumulative effects on fish and fish habitat should be made available online and provide useful project-related information to better understand the impact they may have (type of WUAs, authorization, permit or other notification mechanism, start/end dates, measures and standards implemented, pertinent documentation, etc.). The FFHPP will also have to develop relevant landscape-level thresholds for cumulative effects that can be widely applied to various environments (e.g., urban, rural, pristine). DFO would need to define evidence-based, quantitative thresholds to inform the regulatory decision-making process. This framework would guide the path forward for reducing the impact of the stressor(s), move the ecosystem away from thresholds, and towards a more resilient state. To do so, thresholds must also be further supported by routine auditing and mechanisms to regain habitat losses, otherwise, the commitment to address cumulative effects will be toothless in its implementation.

The OFAH acknowledges this approach will be challenging in already stressed locations such as urban environments (i.e., that have already reached or surpassed thresholds). Special circumstances and/or alternatives may be needed for these types of situations (e.g., offsetting, habitat restoration program). For example, DFO could consider implementing a proponent-pays system (i.e., in-lieu fees), where funding is allocated to a conservation bank and used to fund largescale habitat projects. On the other hand, we don't want to see "pristine" areas have thresholds that are too relaxed that allow harm to accumulate as long as thresholds are not exceeded. A socio-ecological balance between development and the conservation of fish and fish habitat, with the smallest overall footprint and the least amount of harm, must be the end goal.

Question 2: What types of measures could the FFHPP recommend to reduce a work, undertaking or activity's contribution towards a cumulative effect?

The framework to reduce the impact of a WUA towards a cumulative effect will be project dependent. For this reason, the measures need to be sufficiently broad to encompass all types of projects and scenarios. Reviewing and learning from past and present project authorizations and habitat conditions will help in understanding the tools needed to reduce a WUA's contribution towards a cumulative effect. Recognizing specific actions that can lessen the degree of impact will also be necessary. A wide variety of alternatives for common project types should be developed including avoidance measures, project relocation (to less stressed landscapes), appropriate offsets and/or proponent-led conservation funding, best management practices, etc. These measures will hinge on pre-determined environmental baselines and manageable indicators and will require ongoing monitoring and assessment to ensure the contribution of the WUA towards a cumulative effect is reduced.

Question 3: How can the FFHPP assist responsible authorities in the assessment of a proposed project and help to avoid, mitigate and manage further impacts to fish and fish habitat?

The discussion paper states that "the FFHPP does not propose to manage threats to fish and fish habitat not subject to the *Fisheries Act*." DFO will need to provide additional clarity on these types of threats to better assist responsible authorities in the assessment of a proposed project. Because these threats can contribute to cumulative effects caused by activities that do fall under DFO jurisdiction, the FFHPP will have to incorporate this knowledge to some extent.

The FFHPP could consider developing a guidance document to help other responsible authorities involved in the process including government agencies such as (in the case of Ontario), the Ministry of Natural Resources and Forestry and the Ministry of the Environment, Conservation, and Parks and Indigenous communities. The OFAH wants to see the primary responsibility rest with DFO, but to also have the appropriate policy framework that crosscuts provincial and territorial jurisdictions and their unique considerations and mandates. To this, the FFHPP should consider involving Aquatic Habitat Canada to encourage and assist governments, local communities, Indigenous organizations, industry stakeholders and conservation organizations to more effectively protect and restore aquatic ecosystems.

Offsetting and Fish Habitat Banking

The questions included in the Engagement Paper are primarily geared towards proponents; as such, the OFAH does not have any direct responses to them. Instead, we have highlighted below several key recommendations on how to create more robust policies on offsetting and fish habitat banking.

Establishing effective offsetting ratios

As evidenced by a DFO study, nearly ninety percent of compensation projects causing HADD in Canada did not result in a net gain in habitat productivity (Quigley and Harper, 2006). The most effective way to achieve net gains in habitat productivity is by establishing greater than 1:1 offsetting ratios; best accomplished by using 5:1 ratios (habitat gained:habitat lost of similar habitat/productivity). Higher ratios should be a requirement because offsets typically do not function as well as natural habitats and are critical in cases where considerable uncertainty exists about the chances of success. This approach (higher ratios) also assists in the recovery of habitat losses during the time lag between implementation and when an offset becomes functional. The policy does acknowledge that additionality is needed to compensate for time lags and uncertainty. However, the amount of additionality is not specified, and proponents inherently exaggerate the productivity of their offsets. For these reasons, establishing sufficient, minimum offset ratios is important for avoiding subjective and unsubstantiated claims of habitat gains. To ensure offsets are generating beneficial outcomes, there should be routine auditing of these projects.

Launch in-lieu fee programs - where it makes sense

There are many singular, localized, and typically smaller scale projects that currently avoid authorizations, but are causing death of fish or HADD including projects that fall under Standards and Codes of Practice (SCoPs) or Prescribed Works and Waters Regulation. These WUAs are contributing to cumulative effects and must be compensated for. Providing the option for in-lieu fee programs and amalgamating proponent paid funds into a conservation bank (in certain instances) has the potential to produce greater habitat gains on an ecosystem-level (i.e., implementation of larger, higher functioning habitats). We acknowledge this approach may not be suitable for every offset, but where it makes sense, in-lieu fee programs may reduce regulatory burden for DFO and proponents and may be a suitable alternative to traditional offsets.

Enhancing monitoring and assessment plans

Monitoring of offsets is embedded within policy, but DFO asserts 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.

This is a major threat to fisheries because understanding the performance of offsets, and thus the associated habitat gains or losses hinges on appropriate effectiveness monitoring plans that consider all project phases. For example, environmental baselines are critically important for gauging success of an offset; however, survey effort is often insufficient, lacks standardization, and the data inaccurate, setting the stage for unknown habitat losses and/or gains. Losses inevitably occur during the implementation stage as well, but without having adequate thresholds to measure these impacts, fish and fish habitat suffer. Because baseline information is deficient from the outset, once the offset is fully implemented there is no ruler to accurately measure performance. There must be clear and adequate quantitative performance criteria for offsetting plans that consider all project phases.

Every offsetting plan should be goal-oriented and include transparent conservation objectives, as well as having appropriate follow-up with checks, balances, and consequences to hold proponents accountable. This can be facilitated using a SMART framework – Specific, Measurable, Achievable, Realistic and Time-sensitive [performance objectives]. This approach assists in the establishment of effectiveness criteria to determine the success of the goals and objectives set out in the offsetting plan. There are other examples where DFO has applied the SMART approach for fisheries management and should consider adopting the same policies for offsetting plans, particularly the monitoring and assessment component.

Integrated science-based approach

Offsetting science is relatively new, and we are still learning what works best. One way to refine our understanding is through an integrated management and science approach that is flexible and experimental. DFO should consider developing a formal research policy for offsetting plans by establishing a framework for proponents that includes partnerships with academia to help answer questions and unknowns related to offsetting. Projects will have to be carefully chosen, but the OFAH sees value in enhancing offsetting strategies using creative and progressive thinking.

Prescribed Works and Waters Regulation

Question 1: What are your views on the proposed scope of application of the proposed regulation? Are there other objectives or outcomes that you would like to see addressed by this proposed Regulation?

The Consultation Paper does not provide us with confidence that fisheries will be adequately conserved and places greater emphasis on removing barriers and red tape for proponents and freeing up responsibilities for DFO. For example, streamlining approval processes, reducing time DFO devotes to reviewing routine projects, or creating regulatory efficiencies, leads us to believe routine projects may not be given sufficient oversight. Failing to have a pulse on these projects could be a major misstep on achieving conservation and protection of fish and fish habitat and DFO’s legislative obligation to consider cumulative effects. On its own, the degree of risk posed by a routine project may be low, but multiple stressors from high numbers of routine projects can cause significant losses in fisheries productivity over the long-term. We acknowledge more impactful projects require stringent management in comparison to routine projects; however, greater investments in staffing and resourcing would lend itself to a more holistic approach that balances various project types and associated risks. This can be achieved by enacting section 12 of the amended *Fisheries Act*, which gives DFO the ability to fix fees to recover costs incurred in relation to the administration of the Act and enable DFO to then conduct site-specific reviews.

We fully support implementing standardized, science-based offsetting measures and believe adoption of “best available practices” should be made mandatory, as opposed to encouraging or incentivising proponents. DFO is proposing to move away from site-specific reviews for routine projects, but this will call into question the agency’s ability to monitor compliance with conditions prescribed in the Regulation. How will DFO track and account for these projects? How will DFO determine if appropriate measures and practices to avoid the death of fish or HADD have been adequately considered/implemented? This approach leaves too much in the hands of the proponent, whose primary interest is not the conservation and protection of fish and fish habitat. The OFAH supports the proposal for establishing mandatory, enforceable conditions, with a caveat that there will be appropriate follow-through from DFO on the backend. This is best achieved by increasing capacity with administrative and on-the-ground staffing, conducting random site inspections, and ensuring compliance with applicable penalties.

Question 2: What are your views on the prescribed classes being considered? Are there other classes of works, undertakings or activities that you would like to see included in the proposed Regulation?

DFO acknowledges the potential for routine projects to cause death of fish or HADD, but despite the impacts being predicable, localized in nature and/or short in duration, the reality is an inevitable and incremental loss of habitat. We appreciate these new conditions and measures could be more efficient for proponents and DFO, but even with clear standards and guidance, there will be residual losses in habitat productivity over time in areas with high numbers of projects. As an example, outlined in the Consultation Paper, site-specific offsetting requirements may not be required where fish populations being affected by the project can recover. However, we argue the time needed for recovery is where the loss in fisheries productivity has occurred, thus requiring appropriate offsetting.

Proposed mandatory project notifications are a must if DFO moves away from site-specific reviews and authorizations for routine projects causing death of fish or HADD. This approach requires additional duty and responsibility for regular monitoring, reporting, and detailed updates to DFO from the proponent, and through the Registry as well. This will help ensure proponents are strictly adhering to the conditions and measures provided in the proposed Regulation. Coupled with this requirement, it is vital that sufficient and effective offsetting is made mandatory for routine projects for the regulation to be effective in achieving the conservation purpose of the Act. Because offsetting residual impacts for a routine project likely would not result in the desired ecosystem-level effect, pooling in-lieu fees into a conservation bank could be leveraged in a way that does.

Question 3: What are your views on the prescribed minor waters being considered? Are there other minor waters that you would like to see included in the proposed regulation?

In general, the OFAH is supportive of the proposed classes of waterbodies which are not expected to contribute to the achievement of established fisheries management objectives or otherwise provide significant opportunity for the conservation and protection of fish and fish habitat. That said, we would like to highlight some concerns for your consideration.

Scoping of “fisheries management objectives,” in the case of Ontario, should also extend to goals and objectives outlined in fisheries management plans (FMPs) for Fisheries Management Zones (FMZs), the Great Lakes, Provincially Significant Inland Fisheries, and significant tributaries (e.g., Grand River, Credit River). The paper narrowly defines Fisheries Management Objectives as “social, ceremonial, and cultural uses of fish identified by Indigenous peoples.” The OFAH acknowledges the importance of fishery resources to Indigenous peoples and recognizes the uses that are listed; however, limiting the purview in this way is a disservice to Ontario’s fisheries and the work done by numerous stakeholders, including Indigenous communities. NGOs, conservation authorities, government agencies, associations (i.e., cottage), outdoors clubs, and other organizations have contributed to the establishment of fisheries management plans through various working groups (e.g., FMZ advisory councils, committees). It will be important for DFO to not only consider these fisheries management plans when dealing with prescribed minor waters, but also collaborate with the relevant provincial government and/or municipally funded agency (i.e., MNRF, conservation authority).

WUAs impacting the proposed classes of minor waters may appear innocuous in terms of their standalone impact on fish and fish habitat. This may be true in many instances, but some activities could have a broader, connecting reach to significant waterbodies, negatively impacting fisheries management objectives or compromise fish and fish habitat in a way that contravenes the *Fisheries Act*. To explain, an intermittent roadside ditch may provide little in the way of fish and fish habitat, but silt from a WUA in a ditch could easily be transported to a waterbody that has established fisheries management goals and objectives or that may contribute to the greater conservation and protection of fish and fish habitat. To this, we would like to suggest a requirement to have proponents conduct a thorough review and detailed reporting of potential residual harm to non-minor classes of waters resulting from the WUA.

Standards and Codes of Practice

The OFAH does not have any specific feedback on the six interim SCoPs, but generally, we would like to identify that all the current SCoPs result in the death of fish and HADD. These SCoPs would be better scoped under the Prescribed Works and Waters Regulation. SCoPs should only be made available to those projects that can fully avoid death of fish or HADD.

The criteria for SCoPs set out in the engagement fact sheet permit certain WUAs so long as habitat components can recover rapidly such that the function of the habitat/life processes of the fish is maintained. Suggesting a state of recovery must occur is indicative of an impairment to habitat productivity, and thus, should require appropriate offsetting to make up for these losses. Unless “rapid recovery” is defined and the WUA shown to not result in the death of fish or HADD, then the proponent must be required to compensate for these losses. Similarly, the table mentions WUAs that are of short duration and produce minimal disturbance are permitted so long as the SCoPs are adhered to. But again, pointing out that a disturbance has occurred is reflective of an impairment to fish and fish habitat that must be compensated for. In-lieu fees would be an appropriate mechanism for funding restoration to address the cumulative effects of death of fish and HADD.

Engagement Framework

The OFAH appreciates DFO’s mandated commitment to consultation and engagement through governing with openness, effectiveness, and transparency; however, in our opinion, the attempt to modernize the framework has fallen short in some areas. The “engagement intensities” (sharing, working together, entrusting) are confusing and require too much explanation as evidenced by the “engagement continuum key concepts” table. Stakeholders get lost in the extraneous details and lose sight of the actual purpose of the framework and where we fit in the overall picture. There is a need to modernize traditional engagement strategies by moving away from reactive approaches, but it does not need to be unnecessarily structured and formalized in this way.

Stakeholder participation has been shown to enhance the environmental decision-making process, but this is strongly contrasted by good decisions being dependent on the quality of the participatory process (Reed, 2008). After sifting through the concepts of the Engagement Framework and reflecting on how we have been engaged and consulted on various topics under the FFHPP, overall, it has been well done. DFO has made a good effort in diversifying engagement through webinars, online meetings, and breakout sessions. There have been regular email updates that help keep us abreast of FFHPP proceedings. We appreciate discussion and consultation papers that include questions to help guide the engagement process. Surveys do not function as well because responses require input, review, and approvals from higher levels within organizations. It would be more appropriate to have the opportunity to download surveys and/or the survey questions to pre-fill the responses.

Fisheries Act Registry

The OFAH sees the *Fisheries Act* Registry as a critical tool for the conservation and protection of fish and fish habitat in Canada. The amended *Fisheries Act* offers an opportunity to rethink DFO’s risk-based approach to managing projects through the Registry. There should be provisions that allow for all types of projects that may harm fish and fish habitat to be tracked through the Registry including projects that fall under SCoPs or Prescribed Works and Waters Regulation, as well as restoration projects stemming from offset plans or habitat creation initiatives. This approach should also consider, on an ecosystem level, cumulative effects from multiple projects, and the associated tolerances and thresholds on a single system or in a given area (e.g., watershed).

Canadians must be made aware of and be provided searchable, online access to project records via the Registry that includes, at a minimum, the following information: name of proponent; location and footprint of the operation; type of operation; relevant documents associated with the project (i.e., EIS, monitoring and assessment reports, offsetting plans); infractions, fines, penalties; agreements, SCoPs, authorizations, permits; and other records relating to the habitat protection and pollution prevention provisions of the Act. We support the use of a mapping tool to oversee and select projects across Canada that also provides information on a project’s status (“completed” vs “in progress”). A function to allow for notifications about projects would also be beneficial, as well as enabling the public to make comments on projects directly through the Registry portal. The Registry could also include a significant outreach effort for training and information for small companies, as well as provide best management practices to avoid causing death of fish or HADD. This aspect could be beneficial to, for example, aggregate or landscape businesses that sell gravel and sand, and contractors who are involved either directly or indirectly in hardening shorelines or building docks.

Closing Remarks

Government commitment and cooperation, at all levels, is essential to success and often boils down to adequate staffing and resourcing. Overarching themes of self-regulation and self-policing leads us to believe the monitoring of projects will be placed on the backburner. With this in mind, and without adequate auditing and oversight by DFO, this will consequently lead to failure to enforce the habitat protection provisions of the *Fisheries Act* and the continued degradation of Ontario’s fisheries. This is especially significant in the face of climate change uncertainty.

There are projects that do not require authorizations, but are causing death of fish or HADD, contributing to cumulative effects across the landscape at the expense of our fisheries, and not being adequately addressed by DFO and proponents. With new powers included in the *Fisheries Act* and a legislative responsibility to consider these collective habitat losses, the time is now to seek alternative strategies such as in-lieu fees. This approach will help in the conservation and protection of fish and fish habitat across Canada and can be strengthened by a robust Registry to track various project types and risks with openness, effectiveness, and transparency: DFO's mandated commitment to governance.

We appreciated the enhancements that have been made to the *Fisheries Act*, provisions that will help ensure the ongoing productivity of our fisheries, and the continued proceedings under the FFHPP. But, with a promise to "open government and engagement" by the Government of Canada, the OFAH wants to see the consultation and engagement turned into real actions; otherwise, this is just an expression in words but not backed by deeds. Thank you for your time and consideration.

Yours in Conservation,



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