

# ONTARIO FEDERATION OF ANGLERS & HUNTERS

P.O. Box 2800, 4601 Guthrie Drive, Peterborough, Ontario K9J 8L5  
Phone: (705) 748.6324 • Fax: (705) 748.9577 • Visit: [www.ofah.org](http://www.ofah.org) • Email: [ofah@ofah.org](mailto:ofah@ofah.org)



*Ontario Conservation Centre*

OFAH FILE: 420/462

May 30, 2022

Fish and Fish Habitat Protection Program  
Fisheries and Oceans Canada  
867 Lakeshore Road  
Burlington, Ontario  
L7S 1A1

Subject: Seeking input to continue modernizing and/or developing 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 ongoing consultation under the Fish and Fish Habitat Protection Program's (FFHPP) Wave Two Engagement and offer the following feedback on the Death of Fish Position Statement, Ecologically Significant Areas Framework, Existing Facilities and Structures Position Statement, and the Engagement Framework.

## **Death of Fish Position Statement**

Interpretations and definitions for the management of death of fish (other than by fishing) are provided in the *Fisheries Act* and the *Species at Risk Act*; however, the position statement would benefit by broadening the scope of "death of fish." For example, the action or fact of dying or being killed suggests a clearly defined cause-and-effect relationship, but there are also underlying chronic, indirect, and/or sublethal stressors that can lead to the eventual death of fish that should be acknowledged in the position statement. Furthermore, in line with Fisheries and Oceans Canada's (DFO) legislative responsibility, cumulative effects should also take a more prominent role. Stressors caused by minor works, undertakings, or activities (WUAs) are far too often going unnoticed or unaccounted for because of what is perceived as an insignificant impact. However, when aggregated together, the ecological threat is magnified and death of fish is a potential serious outcome (Lapointe et al., 2014).

Wording can be strengthened to uphold the purpose of the *Fisheries Act*. For example, DFO's approach to the application of the statement includes "*promoting*" regulatory compliance and proponents will be "*encouraged*" in the development of management measures and monitoring plans, but DFO should be enforcing compliance and management measures and monitoring plans should be mandatory. Furthermore, terms like "self-monitoring" and "self-regulation" should be avoided because this approach puts too much onus in the hands of proponents who may be self-serving and doesn't provide us with confidence that death of fish will be avoided. Furthermore, random audits should be integrated into DFO's environmental regulatory framework and earmarked for adequate resourcing and funding to enhance enforcement and allow for routine inspections and performance evaluations.

## **Ecologically Significant Areas Framework**

### Establish advisory councils

Provincial and territorial advisory councils should be formed to oversee the assessment and review of candidate Ecologically Significant Areas (ESAs) that would be brought forward to DFO for evaluation. The responsibility and decision-making authority should rest with DFO including the final listing and management of the ESA. Whether through policy or regulation, a mechanism should be in place to facilitate partnerships and restoration, rehabilitation, recovery, and/or management activities. The advisory councils should involve key stakeholders including provincial and territorial governments, conservation NGOs (that specifically deal with fish and wildlife conservation and traditions of fishing and hunting), conservation authorities (or similar agencies), Indigenous representation, commercial fishing organizations, academia, and other relevant (established) agencies or interested parties. Final listing of the ESA should be posted to the Gazette or similar public forum for additional input.

### Key criteria

In some instances, there is added value in transitioning areas protected at provincial and territorial levels to federal ESA designations and other examples where composite protections (i.e., having both provincial/territorial and federal designations), could be beneficial as well. For example, a fish sanctuary in Ontario provides protections against overexploitation and combined with an ESA classification, this could also help avoid the sanctuary from being undermined by development projects. Conversely, overlap between provincial/territorial and federal jurisdictions also has the potential to cause conflicts and could be disadvantageous at times. Therefore, good intergovernmental communication, collaboration, and coordination will be essential in achieving overarching conservation goals and objectives for ESAs.

Types of fish habitat and unique criteria and approaches to their conservation and protection should be subdivided and categorized. Qualifications for determining significance of an area may vary substantially depending on the type of habitat, waterbody type, thermal regime, and other important aspects for fish to carry out their life processes. Some key criteria to be considered may include: size and size relative to other features (i.e., a small feature in a disturbed area can be more significant); ecological and hydrological functions (e.g., proximity to other habitats, natural linkages and connectivity, size and shape, community and species biodiversity); uncommon characteristics or features; economic and social functional values; unique communities and species (e.g., species at risk, special habitats, educational or scientific value); degree of naturalness or degree of human-induced disturbances; and restoration potential and value (i.e., features that can be restored should have a higher value compared to areas that cannot be rehabilitated).

### Additional ESA candidate considerations

Establishing triggers and thresholds will be important for identifying viable candidate ESAs. What constitutes an ESA and what are the essential building blocks? What ecological values will be given to each criterion? An evaluation framework will need to be formed to facilitate a systematic, hierarchical approach to organizing and designating ESAs. They should be based on sound data accompanied by rigorous landscape-level planning that identifies critical fish habitats that are essential for maintaining the health of the aquatic community.

ESAs may not be used directly to regulate fishing but other legislation and provisions under the *Fisheries Act* could be leveraged to meet management or conservation and protection objectives such as prohibitions against fishing. Within the limits of the resource, angling is a sustainable activity compatible with the proposed ESA designations; moreover, the decision to allow or prohibit fishing in protected areas should be scientifically defensible. Special protections and designations can unintendedly shut important stakeholders, like anglers, out of the process of conserving fish and fish habitat and helping achieve conservation goals and objectives, including restoration, recovery, and rehabilitation. It can take years to move through the arduous process of reinstating resource-based activities, all the while, potentially the greatest stewards and assets for ESAs, anglers, become disconnected from the fisheries they are so passionate about.

### Concerns over international commitments

A major concern of ours is that ESAs will be designated sporadically and for political reasons. DFO states ESAs may be counted towards Canada's marine and inland waters conservation targets of twenty-five per cent by 2025 and thirty per cent by 2030. Protecting these areas is necessary for the ongoing sustainability and productivity of Canada's fisheries. However, arbitrarily choosing targets has the potential to result in uninformed or ill-advised decisions for meeting international commitments. Areas requiring protection should receive such, while ones that do not require protection should not be lumped into special designations for the sake of meeting percentage-based targets. The identification and establishment of significant areas must be based on sound ecological, economic, social factors and criteria, and not based on emotion or political agendas. Our worry is that Canada will unnecessarily impose restrictions in areas that may not benefit from long-term protection and conservation, and we caution the government on the potential ramifications within the recreational angling community and other stakeholder groups. Targets do not need to lead to a loss of angling and protecting an area should not automatically mean that angling should not occur.

### Existing Facilities and Structures Position Statement

The OFAH is pleased the position statement is more comprehensive with the addition of the *Species at Risk Act* and the *Aquatic Invasive Species Regulations* as well as specifically referencing "decommissioning": an integral end-of-life component for the management of facilities and structures. But we are concerned about the countless facilities and structures across the landscape that are individually or cumulatively causing death of fish or harmful alteration, disruption or destruction (HADD) of fish habitat with no authorizations or offsetting requirements in place. Leaders in fisheries conservation have expressed the need to integrate several key principles into the planning process to reverse the ongoing losses, including: 1) conducting assessments to determine baselines for fish and fish habitat, and identifying associated threats; 2) establishing goals and objectives for recovery; 3) determining ecological limits and thresholds for degradation; 4) creating action plans and having timelines for achieving those goals; and 4) on-the-ground implementation.

Solutions for bringing existing facilities and structures into compliance is difficult to determine. From tens of thousands of perched culverts to armoured shorelines, addressing every smaller structure across the landscape is impractical. An approach could involve random auditing and enforcement, coupled with strategies for replacements, retrofits, and other changes. Conversely, larger facilities and structures like major hydroelectric dams would require a different set of strategies for addressing the scale of death of fish and HADD. It would be unreasonable to expect proponents to bring every operational aspect into compliance in one fell swoop; however, fixing a predetermined subset on an annual basis could be a suitable middle ground or triaging the projects that are currently having the greatest impact on fish and fish habitat. Successful frameworks used in other jurisdictions have opted to implement a licensing system for dams that come with an expiration, and upon reissuance, various conditions are set out including operational restrictions, offsetting requirements, and monitoring and assessment plans. As legislation evolves and changes over time, the licensing system mainstreams compliance during the operational life cycle of long-lived facilities and structures, including decommissioning.

Another red flag is the duty to notify provisions when a WUA results in the death of fish or HADD. Aspects of these provisions can be subjective, and without having preestablished triggers/thresholds, it is challenging to know under what circumstances the notification should occur. Putting the onus on proponents to reach out to DFO leads us to believe many are likely turning a blind eye. Without adequate compliance monitoring, follow-up, enforcement and consequences, many facilities and structures are going unchecked and unaccounted for at the expense of our fisheries. Furthermore, a significant proportion of owner/operators of smaller facilities and structures may be unaware of the duty to notify requirements; therefore, a targeted education and awareness component should be structured into the framework as well.

Some of these challenges could be overcome by having stronger direction in the position statement. For example, one section points to the legislative requirement to notify DFO when unauthorized death of fish or HADD occurs. In contrast, the position statement mentions proponents are encouraged to work proactively with DFO to identify impacts and achieve compliance. How does encouraging proponents to be proactive differ from situations where there is a legislative responsibility to notify DFO? For structures constructed prior to 1977, the position statement says, “impacts resulting from the original construction are outside the scope of these provisions.” Habitat losses associated with a structure’s footprint or sedimentation during the original construction would be out of scope but how are contemporary and ongoing habitat alterations being addressed, including decommissioning? Despite the 1977 cut-off, ongoing operational needs for dams often include water level and flow management which disrupts fish and fish habitat and therefore should be within the scope of the position statement: how is DFO addressing these types of situations?

### **Engagement Framework**

The FFHPP team states that it wants to engage with parties in a way that is meaningful, consistent, and predictable; however, aspects to the approach have fallen short. The OFAH values the *talkfishhabitat* website as an accessible, online hub/directory for the program and associated products and materials. However, the various modules become available at different times, the deadlines vary, the supporting documents (i.e., technical papers, fact sheets, presentations, position statements) and feedback tools (i.e., comment boxes, surveys) are posted to the website sporadically, and there has been confusion around the original key closing dates for feedback in both Wave One and Wave Two. As updates or changes are made to the modules or new documents become available, stakeholders should be receiving notifications and reminders, there needs to be better consistency for how and when documents are posted to the website and closing dates for feedback need to be unambiguous. During the first wave of consultations, we highlighted challenges associated with survey formats because responses typically require review, input, and approvals from multiple staff within agencies before being finalized. It would be more appropriate to have the opportunity to download the survey directly from the *talkfishhabitat* website and/or formalize an alternative approach to surveys, especially when participants “favour traditional discussion papers and fact sheets.”

After the Wave One engagement, we are uncertain if our feedback is being taken into consideration or integrated into policies, frameworks, instruments, and guidance to further implement the fish and fish habitat protection provisions of the *Fisheries Act*. For example, the OFAH proposed a fee-in-lieu offsetting framework for minor WUAs causing death of fish or HADD. As evidenced by the FAQs for the Prescribed Works and Waters Regulation, the legislation apparently “does not currently allow fee-in-lieu options for offsetting” and the analysis needed to review the broader implications of a fee-in-lieu program is “beyond the scope of this exercise.” Aside from the FAQs, we are unaware of a document outlining how feedback has been meaningfully considered/implemented. As such, we recommend the FFHPP team draft a report that outlines the feedback heard and how it was (or wasn’t) integrated into the program. Our concern is that the consultation process could be perceived as a box-ticking exercise to satisfy bureaucratic requirements as opposed to assessing the actual merit of the input received and using this information to shape the various modules of the FFHPP.

### **Closing Remarks**

After the 2012 amendments to the *Fisheries Act*, the OFAH was a founding member of a conservation working group that collaborated and provided advice to DFO as well as participating in the preceding national workshops on the Fisheries Protection Program. At the time, there were advancements made to the *Fisheries Act*, but this was overshadowed by concerns over lost protections. Hope was renewed with Bill C-68 and the implementation of the new *Act* which took action to strengthen the legislation and incorporate modern safeguards.

There is an opportunity unlike any other in the history of one of Canada's oldest pieces of legislation to conserve and protect fish and fish habitat across the country. But the ecological integrity of our fisheries is continuing to weaken, the biodiversity of aquatic communities is degrading, and, in the face of a changing climate, we urge DFO to make greater commitments to the fish and fish habitat protection provisions of the *Fisheries Act*. Stronger wording should be incorporated into policies and frameworks, proponents need be made more accountable for their WUAs, and ongoing losses to fish and fish habitat need to be reversed and prioritized more effectively and efficiently. The OFAH appreciates the consultation under the FFHPP's Wave Two Engagement but there is room for improvement, and we want all stakeholder feedback to be meaningfully considered.

Yours in Conservation,



Adam Weir  
Fisheries Biologist

AW/jb

cc: OFAH Board of Directors  
OFAH Fisheries Advisory Committee  
Angelo Lombardo, OFAH Executive Committee  
Matt DeMille, OFAH Director, Policy & Programs  
Mark Ryckman, OFAH Manager, Policy  
Chris Robinson, OFAH Manager, Programs  
OFAH Policy & Programs Staff

**References**

Lapointe, N; Cooke, SJ; Imhof, JG; Boisclair, D; Casselman, JM; Curry, RA; Langer, OE; McLaughlin, RL; Minns, CK; Post, JR; Power, M; Rasmussen JB; Joseph, B; Reynolds, JD; Richardson, JS; and Tonn, WM. 2014. Principles for ensuring healthy and productive freshwater ecosystems that support sustainable fisheries. NRC Research Press. Environ. Rev. 22: 110–134 (2014) dx.doi.org/10.1139/er-2013-0038.