

ONTARIO FEDERATION OF ANGLERS & HUNTERS

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Ontario Conservation Centre

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Fish and Fish Habitat Protection Program
Fisheries and Oceans Canada
867 Lakeshore Road
Burlington, Ontario
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Subject: Position Statement on the Consideration of Cumulative Effects on Fish and Fish Habitat in Support of Decision-Making under 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. Please consider our comments on the *Position Statement on the Consideration of Cumulative Effects on Fish and Fish Habitat in Support of Decision-Making under the Fisheries Act* ("position statement"). Although we support and appreciate much of this document, some sections remain unclear and require further elaboration.

It is unclear to the OFAH whether cumulative effects will only be considered for projects requiring authorization or will be extended to projects not requiring authorization as well.

The "position statement" document asserts that its scope is limited to considering cumulative effects on fish and fish habitat when "making a decision to issue or refuse an authorization" related to death of fish or harmful alteration, disruption or destruction of fish habitat (HADD). The implication of only considering the aggregated impacts of smaller projects for the authorization of larger scale projects and/or bigger threats is very concerning to the OFAH and its conservation partners. Fisheries and Oceans Canada ("DFO") has a legal obligation to consider cumulative effects when making prescribed works regulations. As such, there should be standalone consideration of cumulative effects of projects managed in this way as well as including them in the broader decision-making process for projects that require authorization.

Considering the above, we also find the information provided in section 4.1 to be inconsistent. Despite the assertion that cumulative effects will only be considered where authorization is required, the position statement also states that projects in or near water not requiring authorization but managed by DFO will be considered for cumulative effects. Is DFO suggesting that thresholds will also be considered for projects that are not managed by authorizations but fall under, for example, letters of advice and codes of practice? If this in fact is an exception to the above rule, the OFAH would be very supportive of this approach because many projects managed this way are causing death of fish or HADD without consideration of cumulative effects.

From our perspective, cumulative effects should extend beyond those projects which require authorization to include routine projects that fall under prescribed works, permitted via letters of advice, or managed under codes of practice. Projects requiring authorization typically have full reviews, are more closely managed, and have offsetting requirements, whereas smaller scale, routine projects don't have the same administrative oversight and compensation requirements. Harm to fish habitat is therefore going unchecked and unaccounted for with smaller projects and must be addressed.

Moving forward, we ask that the DFO make these aspects of the position statement clearer, outlining how cumulative effects will be considered, with specific emphasis on which types of projects the position statement and future policies apply to.

There are inconsistencies with the ecosystem-based approach when considering cumulative effects.

Section 5 of the position statement states that consideration of cumulative effects does not extend to assessing the state of an ecosystem more broadly. At the same time, DFO also suggests that the Fish and Fish Habitat Protection Program (“FFHPP”) may apply an ecosystem approach when considering cumulative effects. This messaging appears to be contradictory as it sounds as though DFO is proposing both a project-based and a regional-based assessment framework. Since the latter offers a more holistic approach to cumulative effects assessments and typically does not limit the geographic scale of a project (which could lead to oversight of other, potentially expanding impacts elsewhere in an ecosystem), we recommend DFO remove any ambiguous language and specifically identify that, among other things, an ecosystem-based approach will be applied when considering cumulative effects.

DFO has the resources to assess cumulative effects at the regional or ecosystem level (e.g., watershed) including leveraging the *Fisheries Act* Registry. The OFAH feels that making notifications mandatory for all project types, including projects that fall under letters of advice, codes of practice, or prescribed works, would facilitate tracking on the public registry, create a broader ecosystem understanding of cumulative effects, and support effective decision-making.

It appears DFO intends to consider projects not requiring authorization for cumulative effects, but it is unclear which potential outcome will be applied.

The first outcome outlined in section 5.1 states that no additional measures are required where cumulative effects on fish and fish habitat are unlikely. This includes projects where the effects are of a small spatial and temporal scale and all adverse effects are sufficiently addressed through avoidance, mitigation, or offsetting measures.

In previous communications, DFO has suggested that impacts of routine projects on fish and fish habitat are predictable, localized, or of short duration, and can typically be managed through best-practice project design and the use of standard avoidance and mitigation measures. At the same time, DFO acknowledges that the death of fish or HADD are unlikely to be fully avoided by routine projects. What does this mean for the fate of routine projects and the overall consideration for cumulative effects? How will DFO determine whether the residual harm from these projects is accumulating? How will the management of these projects change if this is found to be the case?

Our primary concern is that DFO may default to the first outcome, wherein, cumulative effects will not be considered for routine projects and no additional measures will be required. Certainly, when evaluating one small project, the impact would likely never make a significant contribution, whereas a class of projects on a landscape level would produce much more significant impacts. This must be considered in the development of standards and codes of practice, regulations, policies, and position statements for such projects. In order to effectively determine cumulative effects, the OFAH recommends mapping out the distribution and frequency of projects for each proposed class under the prescribed regulations, using appropriate spatial and temporal scales.

This could be done prior to proposing the regulation by reviewing the past distribution and frequency of these projects and assessing whether the effects have accumulated. As a way of informing the review of individual projects, there may also be value in conducting assessments on an ongoing basis. Alternatively, cumulative effects assessments could be completed after the regulation has passed to confirm whether harm is aggregating as a result.

DFO should remove discretionary language to provide more certainty when taking into account other threats to fish and fish habitat.

We appreciate that DFO is including other threats to fish and fish habitat that may be relevant to the consideration of cumulative effects including habitat degradation, habitat modification, aquatic invasive species, overexploitation of fish, pollution, and/or climate change. However, we recommend discarding the discretionary language being used in this section (i.e., “...may also choose to take into account...”) and replacing it with “will also choose to take into account.” If the Minister must consider the cumulative effects of a proposed project, then shouldn’t all threats to fish and fish habitat be considered? From our perspective, conducting a comprehensive review of the identified threats is necessary for a thorough evaluation of cumulative effects.

The OFAH would also like to request clarification: What assessment tools/mechanisms will be developed for evaluating external threats in the context of cumulative effects and how projects will be managed and/or authorized? What thresholds are being considered, how will they be defined and measured, and what will be the outcomes for projects when cumulative effects of external threats have been reached or exceeded?

The 'Potential Outcomes when Considering Cumulative Effects' are subjective.

The approaches included in section 5.1 are extremely vague, making it difficult to discern exactly what factors are currently being considered. Specifically, how does DFO intend to scale projects in terms of their contributions towards cumulative effects and the categories they would fall under? We recommend DFO provide more information on the range of projects, elaborate on details about their contributions towards cumulative effects, and provide specific rationale for how projects will be assessed and, subsequently, categorized. This section would also benefit from additional clarification around the 'additional measures' being considered. For example, exactly what measures will be taken if a contribution or significant contribution towards cumulative effects on fish and fish habitat is likely (i.e., outcomes 2 and 3)?

Closing remarks

The OFAH fully supports integrating external threats into the evaluation of cumulative effects, but also feels it is necessary to use stronger, less discretionary language in the position statement and provide further clarification where needed. DFO recognizes cumulative effects to be the combined impact of multiple pressures. Regardless of authorization, any project that causes death of fish or HADD is actively contributing to overall cumulative effects and is therefore significant. For this reason, we feel that an approach that integrates, identifies, and monitors a range of stressors would be better aligned with the FFHPP and the new purpose of the *Fisheries Act*: a framework for the conservation and protection of fish and fish habitat. The OFAH looks forward to further developments on cumulative effects and strategies for addressing these impacts. Thank you for your time and consideration of our comments.

Yours in Conservation,



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AW/jb

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