

Via email to: FPR-RPP@dfo-mpo.gc.ca



#201 – 159 King Street
Peterborough, Ontario
K9J 2R8
Telephone: (705)749-3622
Fax (705)749:6522

April 26, 2013

Ray O'Flaherty
Legislation and Regulatory Affairs, Fisheries and Oceans Canada
200 Kent Street,
Ottawa, Ontario K1A 0E6

Re: Governor in Council proposal to make the annexed *Application for Authorization under Paragraph 35(2)(b) of the Fisheries Act Regulations* Canada Gazette, Part I, posted March 28, 2013

Dear Mr. O'Flaherty, and Members of Parliament,

Please find below, comments from the Federation of Ontario Cottagers' Associations (FOCA) regarding the proposed Regulations related to the Application for Authorization under Paragraph 35 (2)(b) of the Fisheries Act.

Since the reforms to the Fisheries Act were announced in 2012 as part of Bill C-38, the *Budget Implementation Act*, our organization has been concerned with the ongoing efficacy and delivery of Federal fisheries management and protection.

Our concerns remain, especially with regard to the delivery of habitat protection provisions so important to a thriving fishery. As we have stated in the past, the previous Act included important and explicit prohibitions (in Section 35) for the harmful alteration, disruption or destruction of fish habitat (HADD), which has been the basis for ensuring aquatic resources are not impacted by shoreline or in-water projects. This capability must be retained so that our fisheries are able to thrive.

With regard to the current proposed regulations:

This first proposed regulation primarily serves to define the administrative requirements related to getting an authorization under the Act. In other words, the regulation describes what information a proponent must provide to DFO in an application but only IF the Act applies in your location, and IF your type of project is applicable to the Act, and IF you are going to cause serious harm to fish.

This proposed regulation puts an onus and obligation on the applicant to: a) know that the Fisheries Act applies and that they are obliged to make an application (we are mindful of the fact that the definitions of what waters, what kind of work, and the

interpretation of “serious harm”, are as yet undefined); b) to have the required background information on the fishery (species types, and amounts), and the nature and amount of fish habitat that will be affected.

If in fact a proponent can determine that they have to apply for authorization, the information required to complete an application will likely have to come from somewhere, and in the case of Ontario, most likely the Ministry of Natural Resources (OMNR). The role of OMNR, Conservation Authorities or other service delivery partners is, to our knowledge, unknown/unconfirmed at this time.

A second serious concern relates to the defined timeline for DFO to respond to an applicant (90 days), with either a denial, or approval. One immediate question is what happens when a (understaffed) DFO fails to respond in this defined timeframe? Does the proposal get de facto approval?

So as it stands, this first regulation leaves a number of unanswered questions which FOCA poses to your department, for your consideration, and response.

We remain interested in the subsequent Fisheries Act regulations, yet to come, which will define other critical aspects of a functional Fisheries Act, including:

- the role and responsibility of Provincial or other enforcement and technical partners,
- the definition of what types of activities (or “undertakings”) are subject to the Act,
- how lakes and rivers will be classified,
- which waters will be exempted from the Act,
- how will the determinations be made of what is “ecologically significant”.

The devil, they say, is in the details. As it stands there are many details missing, details which will either inform and support sound fisheries policy, or will be weak, ineffective, or impractical.

We hope these comments are useful in your policy development efforts and we look forward to some public dialogue on this important matter. To date we observe there has been no public discussion from DFO about how best to go forward on fisheries oversight. This is a missed opportunity to engage the many informed and interested individuals and organizations in Canada who have a role in supporting our aquatic environments.

Sincerely,

A handwritten signature in black ink, appearing to read "Terry Rees". The signature is fluid and cursive, with a large initial 'T' and 'R'.

Terry Rees, Executive Director
Federation of Ontario Cottagers' Associations, Inc.
Peterborough, ON
705-749-3622
trees@foca.on.ca

keith.ashfield@parl.gc.ca
barry.devolin@parl.gc.ca
bruce.stanton@parl.gc.ca
Jay.Aspin@parl.gc.ca
john.baird@parl.gc.ca
jim.flaherty@parl.gc.ca
claudio.gravelle@parl.gc.ca
daryl.kramp@parl.gc.ca
Kellie.Leitch@parl.gc.ca

ben.lobb@parl.gc.ca
larry.miller@parl.gc.ca
gordon.oconnor@parl.gc.ca
glenn.thibeault@parl.gc.ca
peter.vanloan@parl.gc.ca
fin.donnelly@parl.gc.ca
lawrence.macaulay@parl.gc.ca
Elizabeth.May@parl.gc.ca
dean.delmastro@parl.gc.ca