

WATERPOWER CANADA BRIEF TO THE HOUSE STANDING COMMITTEE ON FISHERIES AND OCEANS (FOPO)

Recommendations on the Fisheries Act Review from the
Hydropower Industry

November 6, 2025



About WaterPower Canada

Founded in 1998, WaterPower Canada is the national association representing the waterpower industry. Its members span the breadth of the sector and include publicly- and privately-owned hydropower producers, manufacturers, developers, engineering firms and other organizations.

Operating over 600 facilities across Canada, WaterPower Canada members represent more than 95% of the country's waterpower installed capacity, advocating for the responsible development and use of waterpower to meet our present and future electricity needs in a sustainable manner.

Waterpower provides more than 60% of Canada's electricity, ensuring our electricity grid is one of the cleanest globally.

Executive Summary

The *Fisheries Act* and the associated regulatory framework, which represents several regulations and departmental policies, are the principal regulatory challenges for the hydro industry and hinder clean energy projects around the country.

Since the 2019 amendments to the Act, a new focus on individual fish (rather than fish populations), combined with the failure to develop the appropriate regulatory tools to address low-risk activities and the permitting of existing facilities has resulted in significant challenges for hydropower producers:

- The need to apply for Fisheries Act Authorizations (FAAs) for every activity, however minor, and for every existing facility, creating a tremendous **administrative burden** and **legal risk**;
- **Disproportionate and costly requirements** for impact studies on fish and plans to offset even the most infinitesimal impact on fish;
- **A lack of transparency, consistency and predictability** in decision-making by the Department of Fisheries and Oceans (DFO);
- **Unreasonable delays** in obtaining authorizations.

The use of Fisheries Act authorizations as the only compliance tool has created regulatory risk, legal liability and delays for ongoing operations at existing facilities, for the expansion and refurbishment of those facilities, and for green field developments. While the 2019 Fisheries Act provided alternative regulatory approaches to deal with low-risk activities, those approaches have not been developed.

WaterPower Canada therefore recommends the following legislative changes to the Fisheries Act to provide clearer guidance to DFO in its management of our industry's activities:

- 1) Restore the Fisheries Act focus on the constitutional obligation to the management of fisheries rather than individual fish.
- 2) Restore the public interest as a required factor in decision making.
- 3) Reduce red-tape and regulatory overlap by recognizing relevant provincial legislation and regulations that regulate activity near and in water.

We urge the Committee to recommend restoring the focus of the *Fisheries Act* on the protection and sustainability of fisheries and fish populations according to its constitutional responsibility, to ensure that the public interest is considered in decision-making and to eliminate duplication of authorization processes by facilitating collaboration with provincial authorities and the recognition of their processes.

Introduction

WaterPower Canada is pleased to participate in the Committee's review of the *Fisheries Act*. The Act and its application have tremendous impact on our members' ability to provide Canadians with the clean electricity their homes and businesses require, and we welcome this opportunity to make recommendations to improve the regulatory framework for their activities.

We similarly participated in the previous review of the Act in 2018. The concerns we had then have now materialized and our industry has been experiencing the issues we anticipated for nearly 6 years. We hope this review of the Act will help alleviate the burden and risk imposed on waterpower producers nation-wide and help move Canada forward on its path to meet Canada's growing energy demand with clean energy.

This submission contains the following pieces:

- Our comments and recommendations with respect to the legislation, further to our appearance before the Committee on November 27, 2024.
- Our answers to a question posed then by Committee member Robert Morrissey (see Appendix 1).
- A list of examples of the concrete impacts the Act's wording and interpretation have had on our members across the country (Appendix 2).

Context: The Fisheries Act and associated regulatory framework are hindering clean energy projects across the country

The *Fisheries Act* and the associated regulatory framework, which represents several regulations and departmental policies, are the principal regulatory challenges for the hydro industry.

Since hydro facilities are in and use water, maintaining and growing hydro infrastructure requires working with the Department of Fisheries and Oceans for assessment and permitting purposes. Since the Fisheries Act was amended in 2019, many members have been impacted by delays and unproductive red tape which have led to increased uncertainty, unpredictability, and a lack of transparency in the issuance of Fisheries Act Authorizations.

It is currently impossible for members to quantify the cost of an FAA or predict how long the process might take.

This has had an impact across all types of works:

- a) **New projects**, which are required to provide reliable capacity and additional energy to the grid, will be delayed and potentially displaced by fossil fuel fired facilities;
- b) **Capacity expansions at existing facilities**, which could provide cost-effective additional firm capacity with minimal effect on their environmental footprints but also suffer from long delays in permitting;
- c) **The ongoing operation of existing facilities**, which are now considered non-compliant by DFO since the 2019 amendments to the Act;
- d) **Maintenance and repair work**, which must be carried out at all facilities. Some of these activities include dam safety measures, which are potentially significant public safety matters.

As Canada's energy needs are quickly rising and are forecasted to double by 2050, this is in turn impacting Canadian households and businesses who rely on reliable and affordable electricity.

Waterpower is the cornerstone of Canada's electricity system, supplying 60% of its electricity, integrating variable renewables, and ensuring reliable service for customers from coast to coast to coast. It is poised to remain a pillar of Canada's clean energy future with large projects like Churchill Falls and Gull Island, as well as the planned refurbishment and expansion of many of the country's 600 existing facilities.

Taken together, individual refurbishments and expansions represent a large enough undertaking to be considered a national interest project. Collectively, they are critical to Canada's energy security and to the nation building initiatives afoot in other sectors to grow the country's economy.

Hydro producers are proud environmental stewards

WaterPower Canada members pride themselves as responsible environmental stewards and have a long history of working with federal and provincial agencies, and with First Nations, to ensure their non-emitting facilities minimize adverse environmental effects.

Environmental protection has evolved tremendously over the last decades, and our members are keenly supportive of ensuring that their activities' impact on watersheds is as minimal as possible. Hydropower producers strive to continually improve environmental outcomes, notably by supporting active and sustainable fisheries through such means as fish passages and conservation aquaculture, and by complying with and exceeding the many local, provincial and federal requirements for water and environmental protection when building and refurbishing facilities.

However, our members tell us that the focus on individual fish in the implementation of the Fisheries Act since 2019 amendments to the Act has introduced an untenable regulatory burden and prompted DFO personnel to focus on trivial activities.

Some aspects of the regulatory and administrative burden the hydro industry grapples with call for solutions that are correspondingly administrative or regulatory. As such, we have continuously engaged with DFO to try and resolve them at those levels¹. A limited number of solutions to minor issues are now being contemplated or addressed by DFO, including some that came from the recent Red Tape Review².

The crux of the issue our industry faces, however, stems from the Fisheries Act itself. Legislative change is therefore required to empower DFO to correct the overburdening of the industry at the regulatory or administrative level. DFO has echoed this perspective.

The following recommendations are therefore crucial in enabling change to cascade into DFO's many policies and regulations. We hope you will consider recommending these changes to the *Fisheries Act*.

Recommendations

1. Restore the Act's focus on the Department of Fisheries and Oceans' constitutional obligation to fisheries

Our overarching concern with the Fisheries Act stems from the introduction of 'conservation and protection of fish and fish habitat' into the Act's purpose statement in 2019.

¹ The hydro industry's issues were most recently listed and described in a letter to Deputy Minister Annette Gibbons (<https://waterpowercanada.ca/wp-content/uploads/2025/07/Annette-Gibbons.pdf>).

² DFO's Red Tape Review identifies the formalization of Best Management Practices to reduce reliance on FAA's for low-risk activities.

Protecting every individual fish, regardless of whether they are typically harvested, or belong to a protected, invasive or endangered species, entails disproportionate permitting, monitoring and offset requirements and imposes an unreasonable administrative and financial burden on both government and hydropower producers, with few demonstrable environmental benefits.

The purpose statement of the Act states that:

2.1 The purpose of this Act is to provide a framework for

(a) the proper management and control of fisheries; and

(b) the conservation and protection of fish and fish habitat, including by preventing pollution.

Having conservation of fish and fish habitat (b) in the Act's purpose statement has been a fundamental issue for hydro power producers since Section 34.4(1) of the Fisheries Act further states that:

No person shall carry on any work, undertaking, or activity, other than fishing, that results in the death of fish [...]

Section 34.4(2) then lists the exceptions to this rule, which in operational terms, means that exceptions can be made if and only if:

1. The installation is considered a prescribed work, or;
2. The Minister (or the Department as a prescribed entity) authorizes fish death (via a Fisheries Act Authorization (FAA))

Regulations on prescribed works (PWWR) were expected to be issued to allow hydro installations to undertake routine and low-impact activities with standard work requirements. Unfortunately, despite much engagement with DFO in the past six years, such regulations have still not been created, leaving the cumbersome Fisheries Act Authorizations process as the only compliance tool, no matter how minor the undertaking.

Although the framework for prescribed works in the *Fisheries Act* mirrors the concept of Minor Works in the *Canadian Navigable Waters Act*, DFO maintains that **prescribed works regulations (PWWR) cannot be created because of legal impediments**. Without a legal pathway to creating such a crucial piece of the regulatory framework, the 2019 Fisheries Act is simply unworkable for hydro.

Similarly, fisheries management objectives (FMOs), which are prescribed as a decision-making factor in **Section 34.1(1) of the Fisheries Act have failed to be developed in six years**. DFO has indicated that the overlap between federal and provincial jurisdictions on fisheries management has prevented FMOs from being developed. Although the Act **requires consideration of the 'contribution to the productivity of relevant fisheries** by the fish or fish habitat likely to be affected' [emphasis added], it has not been possible to adjust the existing regulatory framework to provide a mechanism for addressing this factor in accordance with legislation.

Facing these fundamental roadblocks to completing the regulatory framework further to the 2019 Fisheries Act Review, our industry concludes that the focus on the protection of individual fish is impractical and that the Act's focus must return to fisheries and fish populations.

Consequences: Fisheries Act Authorizations required for everything under the sun

Compliance with the 2019 Act now results in an unreasonably costly and lengthy process to authorize even the most routine activities with *de minimis* effects on fish and fish habitat. With *Fisheries Act* authorizations

as the only available compliance tool, they are now required for any activity with the potential to affect individual fish or fish habitat.

Given their reliance on water, hydro installations are located in fish habitat and their operations may at times result in the death of a limited number of fish. In many cases this occurs without impacting the health of Canada's fisheries. Furthermore, environmental monitoring has demonstrated that increases in overall fish populations often occur as a result of hydro developments but as currently drafted, the *Fisheries Act* Authorization regulations do not recognize these benefits and require offset plans to address the death of every single fish.

The absence of prescribed works regulations or of any specified threshold of acceptable fish death that would be compatible with operating a hydroelectric facility has meant that **waterpower producers have had to apply for Fisheries Act Authorizations (FAA) or request for review for *every activity that could potentially impact any fish or any area of fish habitat*, including on facilities that have been operating for decades and for activities that have infinitesimal effects.**

Protecting every single fish specimen has also meant that **existing facilities were rendered non-compliant overnight in 2019 and now require an authorization to operate.** The impact this has had is manifold:

- The additional administrative work and costs for hydro producers have become incalculable in some cases.
- Hydropower producers are vulnerable to non-compliance, and therefore to **legal, financing and reputational risk.**
- In turn, the workload this created for DFO staff has resulted in unreasonable delays in delivering authorizations to operators.

Furthermore, the *Fisheries Act Regulations* have the same information and procedural requirements for any authorization, including detailed and extensive documentation requirements and a detailed offset plan. These requirements, including detailed offset plans to address any potential effect, apply to any undertaking, large or small.

Many FAAs now take multiple years to be granted despite a requirement to issue an authorization within two years, due to constant 'clock stopping' and iterative requests for new information by DFO.

Disproportionate impact assessment, monitoring and offsets requirements that are costly for operators and Canadians

The legal obligation to protect individual fish has also led to unpredictable, costly and often conflicting interpretations of the law by DFO staff, as well as unduly stringent requirements to assess project impacts on fish and to offset every fish death.

Offset plans are systematically required by DFO staff despite language in Section 34.1 (1) (c) of the *Fisheries Act*, which lists:

(c) whether there are measures and standards

(i) to avoid the death of fish **or** to mitigate the extent of their death **or** offset their death, **or**

(ii) to avoid, mitigate **or** offset the harmful alteration, disruption or destruction of fish habitat

Notwithstanding the clear language of the Act, which allows consideration of the significance of the effect [34.1 (1) (a)] and whether an offset is provided [34.1 (1) (c)], the regulations as drafted do not provide flexibility in considering these factors.

As a result, DFO also now routinely requires multi-year, multi-million-dollar studies to assess and monitor impacts on fish for minor undertakings.

Those requirements are often disproportionate to the magnitude of the harm posed by the facility and can exceed the operator's financial capacity to implement them while earning a return and keeping electricity affordable for Canadian families and businesses. Operators often have no choice but to pass the costs on to Canadians, running the collective costs into the billions of dollars.

Our key recommendation for the Committee is therefore to restore the focus of the Fisheries Act on fisheries and their sustainability rather than on individual fish.

We therefore propose for the Purpose Statement to be amended as follows:

2.1 The purpose of this Act s to provide a framework for

(a) the proper management and control of fisheries; and

*(b) the **[proper management and]** conservation ~~and protection~~ of fish **[populations]** and fish habitat, including by preventing pollution.*

and that the section of the Fisheries Act relating to death of fish be amended as follows:

*34.4 (1) No person shall carry on any work, undertaking or activity, other than fishing, **[that results in significant harm to fisheries and fish populations]**.*

Restoring the focus of the Fisheries Act on fish populations rather than individual fish will realign the Act with the federal government's constitutional responsibility for fisheries, mandate the consideration of risk levels, and provide clarity to DFO regarding Parliament's priorities for fisheries management and avoiding unnecessary red tape.

It would also address the finding of the Canada Electricity Advisory Council that:

An over-abundance of caution on federal permitting, reviews and approvals undermines the clean energy transition³.

We believe this finding accurately describes the problem with the current *Fisheries Act* and **given DFO's inability to address this issue since the *Fisheries Act* was amended six years ago, that further clarity in the *Fisheries Act* itself is required.**

2. Include consideration of public interest among the Act's decision-making factors

Subsection 34.1(1) of the *Fisheries Act* contains decision-making factors that are meant to help determine whether activities may be carried out that impact fisheries, fish, or fish habitat:

- (a) the contribution to the productivity of relevant fisheries by the fish or fish habitat that is likely to be affected;*
- (b) fisheries management objectives;*
- (c) whether there are measures and standards*
 - (i) to avoid the death of fish or to mitigate the extent of their death or offset their death, or*

³ Powering Canada a Blueprint for Success - Canada Electricity Advisory Council (waterpowercanada.ca), page 99.

- (ii) *to avoid, mitigate or offset the harmful alteration, disruption or destruction of fish habitat;*
- (d) *the cumulative effects of the carrying on of the work, undertaking or activity referred to in a recommendation or an exercise of power, in combination with other works, undertakings or activities that have been or are being carried on, on fish and fish habitat;*
- (e) *any fish habitat banks, as defined in section 42.01, that may be affected;*
- (f) *whether any measures and standards to offset the harmful alteration, disruption or destruction of fish habitat give priority to the restoration of degraded fish habitat;*
- (g) *Indigenous knowledge of the Indigenous peoples of Canada that has been provided to the Minister; and*
- (h) *any other factor that the Minister considers relevant.*

These factors apply to Fisheries Act authorizations [paragraphs 34.4(2)(b) or (c) and 35(2)(b) or (c)] and the conditions set out in those authorizations, which include any offset plans required for those authorizations.

Prior to the 2019 Fisheries Act, consideration of public interest was included in this list, requiring decision-makers to balance the cost and effort of a decision against the benefits derived from it. For our industry, this would require considering the importance of a hydropower facility for the energy supply of a community, province or region, or the impact of monitoring, mitigation and offset costs on electricity rates).

Similarly, decarbonization, a foremost example of public interest, is not included as a decision-making factor, and no guidance has been provided to the Minister of Fisheries to make it a factor they would consider as one of the “other factors to be considered by the Minister.”

The exclusion of the public interest as a decision-making factor has thus removed any consideration of cost, the importance of electricity as an essential public service, or its broader environmental benefits. This is one of the reasons why expenditures of billions of dollars in offset activities for existing facilities are required, leading to a complete disconnect between the policies of different departments.

Considering the importance of hydropower facilities to Canada’s energy needs and efforts to reduce GHG emissions, we recommend restoring the consideration of public interest among the Act’s decision-making factors in article 34.1(1).

INSERT: (h) the public interest

~~(h)~~ (i) any other factor that the Minister considers relevant.

Given that not providing Canadian communities with reliable low emissions electricity is not an option, hydropower producers need their activities recognized as being in the public interest.

3. Eliminate Duplication and Red Tape by Recognizing Relevant Provincial Legislation

Provincial legislation addresses many activities that occur near and in water, and the current federal regulatory framework requires both federal and provincial authorizations for the same activity. This is an unnecessary duplication and we recommend that the *Fisheries Act* be amended to recognize the equivalence of provincial permitting to authorize near-water and in-water work.

Given the *Fisheries Act* already has provisions giving DFO the authority to designate works, undertaking, and activities likely to result in the death of fish or the harmful alteration, disruption, or destruction of fish habitat and to require permits with specified conditions, recognition of provincial equivalency would not undermine DFO's ability to manage specific concerns.

We therefore recommend the following amendment to sections 4.1 of the *Fisheries Act*:

4.1 (1) The Minister **must seek to** enter into an agreement with any government of a province, any Indigenous governing body and any body — including a co-management body — established under a land claims agreement, to further the purpose of this Act, including an agreement with respect to one or more of the following:

(a) facilitating cooperation between the parties to the agreement, including facilitating joint action in areas of common interest, reducing overlap between their respective programs and otherwise harmonizing those programs;

(b) facilitating enhanced communication between the parties, including the exchange of scientific and other information; and

(c) facilitating public consultation or the entry into arrangements with third-party stakeholders.

We also recommend the following change to 34.4(2) and 35 (2) of the Act:

INSERT: (h) the work, undertaking or activity is carried on in accordance with a permit issued by a province of Canada authorizing near-water or in-water work, and the work, undertaking, or activity is carried out in accordance with the conditions prescribed in that permit, and also where such work, undertaking, or activity has not been designated by the Minister pursuant to Section 35.1 (1) of the *Fisheries Act*.

This approach would enable a 'one-project one-review' approach, with a backstop for DFO intervention and permitting conditions in situations where circumstances warrant.

Conclusion

The 2019 Act's focus on individual fish rather than fisheries without the implementation of regulations to guide the application of decision-making criteria has created significant regulatory impact for the hydropower industry despite the essential nature of hydropower for Canadian communities.

While the focus on individual fish in the 2019 Act was heralded as an 'additional protection', the challenges that we predicted in 2018 have come to fruition: unnecessary time and resources are being wasted on minor issues and power generation operators are exposed to legal and financial risk.

We urge the Committee to recommend restoring the focus of the *Fisheries Act* on the protection and sustainability of fisheries and fish populations according to its constitutional responsibility, to ensure that the public interest is considered in decision-making and to eliminate duplication of authorization processes by mandating collaboration with provincial authorities and the recognition of their processes.

Summary of recommendations

1. **Focus on fisheries:** Restore the Act's focus on the Department of Fisheries and Oceans' constitutional obligation to fisheries and their sustainability rather than on preventing any impacts on individual fish.
2. **Consider public interest :** Considering the importance of hydropower facilities to Canada's energy needs and efforts to reduce GHG emissions, restore the consideration of public interest among the Act's decision-making factors in article 34.1(1).
3. **Mandate federal-provincial collaboration and eliminate duplicative authorization processes** by amending the Act to recognize the equivalence of provincial permitting to authorize near-water and in-water work.

APPENDIX 1

Response to Robert Morrissey's Questions Posed to WaterPower Canada at its November 2024 FOPO Committee Hearing

M. Morrissey,

We are grateful for the opportunity to appear before the FOPO committee on November 27, 2024 and for the exchange that took place with Committee members.

On that occasion, you requested we provide the Committee with information on the areas in which WaterPower Canada members would wish to see greater clarity and how such clarity could be achieved. You also asked for more detail about how fish population change is measured. We provide the requested information below.

We are providing this information as a complement to our brief to the Committee, which addresses issues pertaining strictly to the *Fisheries Act* it is tasked to review.

Request #1: Provide details on the areas where the hydropower industry needs clarity from Fisheries and Oceans Canada (DFO)

1. Lack of clarity regarding the application of factors in section 34.1(1)

The hydropower industry suffers from a lack of clarity in how factors outlined in Section 34.1(1) of the Act are applied. The Act says that the Minister *shall* consider, but in practice, consideration of the different factors does not seem to be systematic but rather seems to vary according to the DFO employee responsible for an application and to the region in which the authorization application is submitted.

Moreover, there are no formal, published guidelines for factors a) and b). Fisheries Management Objectives have not been issued that would guide consistent application.

When DFO makes decisions, Section 34.1(1) of the *Fisheries Act* outlines 8 factors that are to be applied when decision makers exercise their powers under the Act:

- a) *the contribution to the productivity of relevant fisheries by the fish or fish habitat that is likely to be affected;*
- b) *fisheries management objectives;*
- c) *whether there are measures and standards*
 - i. *to avoid the death of fish or to mitigate the extent of their death or offset their death, or*
 - ii. *to avoid, mitigate or offset the harmful alteration, disruption or destruction of fish habitat;*

- d) *the cumulative effects of the carrying on of the work, undertaking or activity referred to in a recommendation or an exercise of power, in combination with other works, undertakings or activities that have been or are being carried on, on fish and fish habitat;*
- e) *any fish habitat banks, as defined in section 42.01, that may be affected;*
- f) *whether any measures and standards to offset the harmful alteration, disruption or destruction of fish habitat give priority to the restoration of degraded fish habitat;*
- g) *Indigenous knowledge of the Indigenous peoples of Canada that has been provided to the Minister; and*
- h) *any other factor that the Minister considers relevant.*

WaterPower Canada members are seeking greater clarity regarding management thresholds, in how factors a) and b) are applied and on what guidance is provided to decision makers in relation to these factors.

We believe that to effectively consider these factors, the Department needs to have identified:

- (i) which fisheries are relevant;
- (ii) what effects (positive or negative) to the productivity of those fisheries arise from the impact on fish or fish habitat; and
- (iii) how the effects on productivity will contribute to or detract from achieving relevant fisheries management objectives.

We have observed decisions from some regions of Canada where the required actions to address very minor impacts on fish or fish habitat are disproportionately large, with little consideration given to the proportionality of the remedial action compared to the impact on fish and fish habitat.

We believe this stems from the unconditional prohibition on the death of fish or impact on habitat in the Act with no consideration to the impact on the overall population of fish in question.

2. Lack of clarity around management objectives for existing hydropower facilities where fish populations have been established for many years and do not cause new impacts

While the guidance requested in the previous section is needed for all categories of facilities and works, our members urgently need clarity regarding the fisheries located near **existing facilities** in particular.

The oldest operating hydropower generation in Canada is over 100 years old, and today some 600 hydropower facilities are in operation across Canada. Many of these facilities support sustainable fish populations and recreational and indigenous fisheries.

With the prohibition on the death of fish in the 2019 *Fisheries Act*, these facilities are not in compliance of the Act if they cause the death of a single fish and do not have a *Fisheries Act* Authorization.

In 2018, we recommended that “regulatory tools should make clear that all existing facilities that do not cause new impacts on fisheries are deemed to comply with the *Fisheries Act*.” This recommendation was not implemented.

In the absence of regulations, DFO personnel are therefore seeking Fisheries Act Authorizations for each existing facility. As a condition of approval, DFO requires extensive studies and offset programs, but the Department has not identified or communicated the specific objectives that they are seeking to address, beyond the general prohibitions in the *Fisheries Act*.

Given the significant cost this represents to electricity consumers, which would be billions of dollars, Industry is seeking greater clarity on what DFO's management objectives are for existing facilities, and how DFO personnel relate offset measures and other proponent efforts to the benefit to relevant fish populations.

3. Lack of clarity around how DFO weighs the importance of combatting climate change when considering *Fisheries Act* Authorizations.

Under the previous administration, all federal ministers have received the *Cabinet Directive for Clean Growth Projects*, but DFO has not communicated how that directive will be considered in addressing approval of projects.

The Department has also indicated that they do not consider the Directive when considering upgrades to existing hydroelectric facilities. Those existing facilities produce over 60% of Canada's electricity supply and could be upgraded to provide additional clean electricity with less impact than a greenfield site, if regulatory burdens were not prohibitive.

The benefits of a clean energy development that helps reduce our dependence on fossil fuel with minor effects on fish and fish habitat should be considered in project approval with conditions that ensure the ongoing sustainability of relevant fish populations.

Climate change measures are in the public interest, which, as we indicated in our brief, we believe should be reinstated as a decision-making criterion in section 34.1(1) of the Act.

4. Lack of clear alignment between departmental management objectives and provincial fisheries priorities and objectives.

Some provincial governments play an important role in fisheries management, and DFO decision-making is not necessarily aligned with those objectives in those provinces. This creates uncertainty for industry when DFO decision-makers have one set of priorities and provinces have another.

In situations where DFO's focus is on individual fish and the province has identified certain fish populations as priorities, this can result in industry investment in offset programs and other enhancements that aren't aligned with community priorities.

Request #2: Explain how a ‘change’ to a fish population is measured if you are advocating for population-based measures.

The condition of a fish population in a hydroelectric reservoir is measured by scientists using the same techniques as used for commercial fisheries:

- measuring catch per unit effort,
- conducting mark-recapture studies,
- assessing age-class distribution,
- and by assessing the health of the fish specimens taken for monitoring.

Studies to assess these indicators of population health are regularly undertaken by industry to monitor the health of fish populations, and they are a regular feature of long-term aquatic monitoring programs for hydroelectric facilities.

In considering any requirement for mitigation, the significance of fish mortality by hydropower facilities should be considered before determining whether remedial measures are required.

Conclusion

In addition to an undue regulatory burden arising as a result of changes to the Fisheries Act in 2019, the hydropower industry suffers from a lack of clarity and consistency in DFO’s interpretation of the new framework.

While we make suggestions for legislative change in our brief, which we believe are fundamental in recognizing hydro’s contribution to Canada’s national interest, we also advocate for greater clarity in DFO’s decision-making framework through ministerial directives and departmental policies and statements. We believe this can help lighten processes at the operational level.

Together, these legislative, regulatory and administrative changes are crucial to remediating the current dysfunction related to the Act and its interpretation. To illustrate the consequences the 2019 changes to the Act have had on our members, we provide a series of examples in Annex 2.

APPENDIX 2

Examples of DFO's unreasonable interpretation and administration of the Fisheries Act as sent to Deputy Minister Annette Gibbons and Minister Joanne Thompson

The following examples have been collected from members in all regions:

1. DFO staff turnover resulting in 7 lead biologists since 2017 when discussion on renewing the existing FAA first began.
2. One file had three different assessors in two years and the proponent has had to bring the individuals up to speed each time on the authorizations that DFO issued. No progress has been made on the file during this time to address issues and deliverables.
3. One FAA took 4 ½ years to obtain for a 9-month refurbishment project.
4. In one case, DFO indicated that the extended delays coming from their end may mean having to do even more offsetting, despite their role in those delays.
5. "We have been pursuing an amendment to a project FAA, a simple request to extend it for the life of the project after it was issued for the project's construction and early operations. Despite regular follow up and being passed around different assessors for a couple of years, DFO responded days before the FAA expired to say they will require new monitoring terms and conditions for an initial 20-year period. This of course mean additional costs. The long-term monitoring conducted to date has not shown any negative impacts [to fish population]. We are considering withdrawing the request and operating without an FAA because of the challenges we're experiencing."
6. For storage weirs that aren't used anymore and need to be dismantled for the area to be returned to its natural state, DFO requires an FAA and related offsets for the habitat that is lost as a result of undoing the flooding.
7. Some members have been asked to offset fluctuating reservoir levels in reservoirs that have been in operation and fluctuating for 100 years.
8. In an area where minnow fish get stranded in low water years, a member has to fish 50-100 minnows out the area and move them to a better area to avoid fish deaths. The cost of this procedure is \$30,000 once or twice a year.
9. In one facility, three years of data collection have cost ~\$375,000 and another year is planned.
10. In another, total costs for offsetting and pre- and post-project monitoring were \$400,000 for an initial project cost estimate of \$5,000.
11. Some members have seen their application delayed because DFO weighed in on archeology discovered on the project site, a provincial jurisdiction.

12. Some applications were made with nearly a decade of monitoring data from an advanced qualified environmental professional (QEP). DFO mandated additional data collection despite the years of data showing that fish population, productivity, and biomass have improved since projects began operating. The member proceeded with the additional monitoring at significant time and cost, which supported the conclusions of the original monitoring. DFO has still not confirmed that the extensive data provided is sufficient to make a decision.

13. DFO has been pushing for expensive invertebrate monitoring despite the limited scientific value for the projects or the requested IFR amendments. DFO's own scientific branch states that it is more beneficial to monitor the fish themselves as per a 2016 memo. DFO maintains that they will not proceed with the applications unless invertebrate monitoring is added.

14. DFO has proposed a proponent conduct a costly Instream Flow Study (IFS) despite one already being in their baseline and Long-Term Monitoring Plan (LTMP) data. IFS studies are normally performed when an entirely new project is being constructed, and the member is only seeking to change a minor flow value in one area of a creek.

15. For reservoirs designed to have fluctuating levels from day one and where the local ecosystem has adapted to such fluctuating conditions, DFO has asked to offset reservoir fluctuation in order to issue an FAA.