Overview of the Canadian Cattlemen’s Association (CCA)

The Canadian beef industry is dominated by small to medium-sized family owned operations managing vast areas of this country’s landscape. It is important, therefore, to effectively engage this demographic in discussions about regulatory and reporting burden, cost of implementation, and penalties for non-compliance.

Background

The report by the Standing Committee on Fisheries and Oceans (SCFO) on the review of changes made in 2012 to the Fisheries Act had the following two recommendations:

Recommendation 8
That Fisheries and Oceans Canada put sufficient protection provisions into the Fisheries Act that act as safeguards for farmers and agriculturalists, and municipalities.

Recommendation 9
That Fisheries and Oceans Canada work with the farm community and rural municipalities to provide incentives and expert advice to conserve and enhance fish habitat and populations and utilize the enforcement approach as a last resort.

Furthermore, the Government of Canada agreed with these particular recommendations. Even though the report clearly identified these problems, Bill C-68 has not addressed them. It is not sufficient to have statements such as: The Government of Canada will continue to implement a compliance and enforcement process for these activities that is proportional to the scale and risk of the activity.

Past recommendations

The CCA has participated throughout the review process for the Fisheries Act as well as the review of Bill C-68. There are a couple of messages that continue to be especially relevant:

- Point number one relates to man-made agriculture structures. Drainage ditches, man-made reservoirs, and irrigation channels have previously been subject to the same rules and guidelines as rivers, lakes, and oceans. We saw these changes as a positive adjustment, since these man-made agriculture structures clearly do not pose the same level of risk to fisheries or value to habitat. If there were to be further changes to the act, the CCA would encourage the exclusion of man-made agriculture structures as habitat for fish.
Point number two is to streamline the process for small and low-risk projects. Cattle producers may at times undertake small, low-risk projects. It is important that the level of application burden, reporting burden, or need for the act to be triggered at all, reflect the size of the risk.

**Major Area of Concern – Fish Habitat and Deemed Habitat (s.2(2))**

Prior to the changes in 2012, some judges had concluded that there should be some limitation on the definition of fish habitat. Justice Curtis, for example, adopted the reasons of Justice Van der Hoop in *R. v. Fraser River Harbour Commission* (1983), 3 F.P.R. 398 (BC Co. Ct) when he held that:

> The legislature could not have intended that all lands, however distant from water, connected to fisheries that could be proven to have some influence on water quality in relation to fisheries be subject to section 35(1) of the Act; that would include entire watersheds.

The proposed *Fisheries Act* expands substantially on the scope that was already too expansive. It is an extremely small list of water bodies that would not be either fish habitat or deemed fish habitat. This, in turn, means the prohibitions apply almost everywhere and to almost all activities.

The CCA and its producers are not against protecting water bodies. This is not at issue. Water is critical for raising cattle and managing farms and ranches. Furthermore, everyone recognizes the importance of having sufficient water quality and quantity, whether for people, livestock, or fish. What is at issue is how to manage water and water flows. The current Bill C-68 essentially detaches water flows from fish and fish habitat. This will result in the potential for significantly more activities associated with cattle production to be in contravention of the *Fisheries Act* despite limited impact on actual fish populations. This is particularly true given the expanded scope of fisheries, from commercial, recreational, and Aboriginal fisheries. A couple of examples will demonstrate the potential scope of the new ‘deeming’ provision.

**Example 1 - Cattle crossing an agricultural ditch to move between pastures**

The agricultural ditch has no fish and is not connected at the surface to any water body with fish. However, the deeming provision only requires “quantity, timing and quality of the water flow that are necessary to sustain the freshwater or estuarine ecosystems of a fish habitat.” The quantity, timing and quality of water flow could be comparable to other agricultural ditches that support fish populations.

In crossing the agricultural ditch, the quantity and quality of the flow of water could be altered as well as potentially other characteristics of the ditch banks and stream bed. According to section 35 (1) as the agricultural ditch would be deemed habitat, any harmful alteration or disruption (habitat alteration, disruption or destruction - HADD) would be prohibited. As the HADD provision does not require “serious harm,” it is sufficient to non-permanently alter the fish habitat to result in the potential for enforcement by DFO.

This activity could, in theory, be permitted under section 35(2) either as a class or individually. However, for an individual to obtain an authorization is not a reasonable regulatory burden given the low potential for harm to any fish population from this activity. The track record for developing either regulations or code of practices is poor. Thus, it is not sufficient to suggest that Canadian cattle producers should rely upon these documents being developed quickly to avoid the need for individual authorizations.
Fencing all riparian areas is not a solution due to costs, impracticality, as well as the need for cattle to seasonally access riparian areas in most circumstances. There are good means to engage producers to protect waterways and many producers have improved their practices over time. Strict enforcement across all water bodies will not result in a more sustainable and healthy environment.

**Example 2 - Flooding causes changes to the flow of water in a creek**

A rancher clears a brush line to erect a fence across sloped rangelands. Shortly after the fence is complete a heavy rain results in flooding that carries debris and soil to a creek some distance away. As a result of the debris and soil combination a temporary damming effect ensues in the creek and the water flows along an alternative route before re-joining the original route. The high sediment load also impacts the water quality.

The flow of water was sufficient to sustain a fish so therefore it would be deemed fish habitat and therefore it is not necessary to prove that this is fish habitat. Thus, altering the stream flow would be prohibited under section 35(1). As this was not a predictable event, there is no potential to obtain an authorization in advance. Furthermore, it is possible to be charged under subsection 36(3) for depositing a deleterious substance due to the temporary high sediment load.

As can be seen by these examples, this is the most significant expansion of the definition of fish habitat and was done without any consultation or engagement with stakeholders. What started as West Coast Environmental Law Association’s proposal evolved to an NDP and Green party amendment and became part of the *Fisheries Act* when Liberal party members of the FOPO committee supported the amendment.

Rather than reducing the regulatory burden on agricultural industries and communities, this provision has the potential to vastly increase the regulatory burden. This is especially true when combined with the change back to HADD whereby temporary alterations are once again prohibited. There is no linkage to significant impacts on fish populations or a fishery incorporated into the *Fisheries Act* such that minimal changes to environmental flows could be prosecuted and yet not result in significant harm. Additionally, agricultural man-made water bodies continue to be treated as the same as natural habitat, which is not appropriate given their different value to fish and impact on a fishery.

As there is limited scientific information and no existing policy work outside of Quebec on what changes to environmental flows result in harm to fish habitat, the change will result in confusion and will require considerable resources to assist agricultural industries and communities in interpreting the provision combined with the prohibitions.

This work has to commence prior to the changes coming into force. The current consultation document is focused on the regulations associated with HADD authorizations. Authorizations are not the solution for day to day activities of cattle producers. Only exceptional projects should require an authorization for the project. There are tools within the *Fisheries Act* to ensure the regulatory burden is proportional to the environmental impact; however, it takes time to develop these tools.

**Canadian Council of Ministers of the Environment (CCME) Report on Environmental Flows**

The CCME commissioned a lengthy report on Environmental Flow Needs (EFN) Approaches, Successes and Challenges. The report does not even consider the federal regime. As provincial and
territorial jurisdictions have authority over river and stream flows, the federal government’s EFN information and approach was not included in the jurisdictional scan. The report demonstrates the complexity of the issue and the challenges for regulating the issue and concludes that there are significant challenges in both the determination and implementation of environmental flows.

The jurisdictions with more effective EFN approaches have considerable research and policy work to support regulatory regimes. Canada needs considerable work before we are ready to implement such an approach and it should be the provinces leading this initiative. The major recommendation was, as a first step, in any provincial or territorial environmental flow program the jurisdiction assesses the status of environmental flow protection on all streams, rivers, and lakes, and regularly communicate the general status of the extent of environmental flow management for all water resources to citizens and policy makers. CCA supports the development of tools and protocols to assess the current status.

**Recommendations**

1. Remove subsection 2(2) - the deeming habitat provision
2. Address the regulatory burden on agricultural sector by providing a streamlined process and approval exemption criteria for small and low risk activities
3. Establish clear and enforceable guidelines for artificial infrastructures or exempt artificial infrastructures
4. In alignment with the 2012 recommendations of the SCFO, that Fisheries and Oceans Canada put sufficient protection provisions into the *Fisheries Act* that act as safeguards for farmers and agriculturalists, and municipalities
5. In alignment with the 2012 recommendations of the SCFO, that Fisheries and Oceans Canada work with the farming community and rural municipalities to provide incentives and expert advice to conserve and enhance fish habitat and populations and utilize the enforcement approach as a last resort. Programs such as Cows and Fish are an important means of reducing impacts on fish from cattle ranching and should be supported

The Canadian Cattlemen's Association appreciates your time and consideration of our recommendations. We are willing to meet with you and your staff to discuss our submission further. Should you have any questions regarding our contribution or would like to discuss in a more formal meeting, please contact Brady Stadnicki at stadnickib@cattle.ca or by phone (613) 233-9375.

Sincerely,

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Duane Thompson  
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