

Fish and Fish Habitat Protection Program
Fisheries and Oceans Canada
Talkfishhabitat.ca

Subject: Modernizing Offsetting and Fish Habitat Banking and Interim Policy for Establishing Fish Habitat Banks

The Canadian Nuclear Association (CNA) is a non-profit organization established in 1960 to represent the nuclear industry in Canada and promote the development and growth of nuclear technologies for peaceful purposes. The CNA is the voice of the Canadian nuclear industry. We have nearly 100 members, representing over 70,000 Canadians employed directly or indirectly in exploring and mining uranium, generating electricity, advancing nuclear medicine, and promoting Canada's worldwide leadership in science and technology innovation.

Many of our members carry out projects and activities in and near fish habitat and as such have considerable experience with offsetting and fish habitat banking. The CNA appreciates the opportunity to provide input into the modernization of the Fisheries Act and DFO's offsetting and habitat banking policy.

CNA is supportive of the use of offset credits and the creation of proponent led fish habitat banks and we have provided input in the past, including the following reports: Fish Habitat Banking in Canada: Opportunities and Challenges (March 2011) and Best Practices for Advancing the Application of Habitat Conservation Banking in Canada (October 2013). Although these reports were prepared in 2011 and 2013 and there has clearly been progress made in some areas (engagement with Indigenous communities, quantitative loss calculation, offset valuation), the CNA believes that the attached reports were a good summary of the state of knowledge at the time. The CNA believes the majority of the details and recommendations still apply. It is therefore our view that these documents can provide a useful reference for the current policy review.

In our previous comments, the CNA has stressed the importance of clear guidance and consistent interpretation of residual impacts and benefits. It is clear that DFO has tried to do this in the Interim Policy for Establishing Fish Habitat Banks, but in our members experience, it is still extremely challenging and time consuming to develop a Fish Habitat Bank agreement and this is a limiting factor for proponents planning and implementing projects. DFO and industry need to continue to work together to establish a simple, progressive and effective framework that can provide a consistent basis for Fish Habitat Bank Arrangements.



While CNA is supportive of habitat banking it is not clear to us what gives DFO the authority to enter into a habitat banking agreement prior to a request for review. Without this, how can a habitat bank be created several months or even years in advance of an anticipated HADD requiring an Authorization. In addition, it is not clear what will be required, if anything, to formalize existing fish habitat banks created in advance of the 2019 changes to the Act. Would existing documentation have to conform with 42.02(3), or will this be addressed on a case-by-case basis?

Further, a habitat bank could conceivably be applied to project authorizations both for a HADD, or for death of fish. Therefore, there needs to be clear processes for determining equivalency and comparing losses and benefits using one or more metrics. The document focuses on fish habitat, but there is little reference to fish habitat productivity. There needs to be clarity on how credits will be earned for both habitat and productivity benefits.

CNA notes that the Interim Policy suggests many benefits of habitat banking to accelerate the Authorization process, however the government and this policy needs to better acknowledge that habitat bank development front-loads project costs and certain risks borne by the proponent and their shareholders. In other words, if more closely evaluated from the perspective of the proponent, there are fewer incentives to habitat banking than this document implies. Without additional means to reduce financial risks, habitat banking may be underutilized in favour of conventional compensation approaches.

The CNA is concerned that the creation of fish habitat banks will be reduced by the requirement to have the bank fully functional before it is applied, or by restrictions on the use of credits outlined in the Interim policy. We agree that the Minister's decision to authorize or permit a future HADD cannot be fettered, and that the ability to use credits for offset cannot be absolute. However, to encourage a proponent to consider the complexity, cost and uncertainty of a habitat banking arrangement, the Interim Policy should describe what criteria DFO will use to determine the acceptability for use of credits. If the proponent takes on the cost and risk to develop a habitat bank, then the proponent should have the ability to sell or transfer this asset in the event that the future project or Authorization does not proceed.

CNA would also note that, while the Interim Policy outlines the administrative process related to habitat banking, detailed information regarding implementation and management is absent. The interim policy states that the department and the proponent should mutually agree upon the value of a habitat credit and the unit of measure, it is not clear how that is to be done. In our view, this aspect of habitat credit value, indicators and performance targets within a habitat banking agreement is oversimplified. DFO should develop a short-list of desirable units of measure, indicators and performance targets that are appropriate to the scale and complexity of the habitat bank and the likely Authorizations that will utilize the habitat bank. Measures that apply to residual impacts to habitat, for example, may not be well suited for impacts resulting in fish mortality.

Proponents may seek to apply their habitat bank to counterbalance losses to either fish habitat, or a combination. From this perspective, a weight of evidence approach, using more than one measure, indicator or performance target may be appropriate; however, this may complicate offset valuation.

Our members are concerned that at present, there is insufficient science advice available from DFO to defensibly quantify offset benefits, especially in circumstances where benefits are to be measured as production. Further direction in this area is warranted to support the implementation of this policy. If industry is expected to take the lead on these matters, or if DFO and industry will be working together to develop defensible approaches to apply to existing or new Authorizations, then this additional work needs to be acknowledged, possibly in the evaluation of offset benefits or as a complementary measure. Further, though quantification may be calculated at shorter term intervals (e.g., annual benefit), there needs to be a greater focus on counterbalancing residual impacts over the duration of the Authorization assuming that other factors will result in natural variability in both negative and positive effects. This is particularly true where the effects are associated with death of fish, for example from impingement or entrainment resulting from water use.

The habitat credit, evaluation, certification and release system needs to be responsive to new information and needs of the proponent and the Fisheries Act. The credit system described in the policy and support documents suggest that an offset needs to be fully functional prior to credits being earned. Similarly, the Interim Policy says that habitat credits are released once the department's evaluation and certification confirms the habitat credits are providing the intended benefits. This implies that the certification process is known and transparent prior to submitting a habitat bank proposal. It is not reasonable to expect that a habitat bank is fully functional before it can be applied. Rather, the credit certification process should be based on meaningful milestones and progress points.

The evaluation and certification system should be more progressive (milestones) rather than "back-end" loaded. For example, a portion of the credits should be issued upon construction of agreed to portions of the habitat bank, additional credits may be earned as offset functions are improving, and the remaining credits may be earned when the offset is fully functional at target levels. If DFO suggests that additional credits need to be applied as a risk-management measure (e.g., as an offset matures), then the requirement to apply the additional credits should be removed once the risk is abated.

Proposed creation, restoration and enhancement techniques need to be well-understood and reliable. When uncertainties surrounding the residual project impacts or offset benefits exist, the additional area or duration of offset to be applied needs to be reasonable and agreeable to both parties. Increases in the area or duration of an offset bank to be applied must be designed to be removed once the residual impacts are addressed or performance targets are achieved.

The credit ledger needs to consider that certain residual impacts, such as death of fish, may be temporary, relative to the life of the proponent Projects and/or habitat bank. Therefore, the ledger system needs to include not only credit and withdrawal transactions, but also re-instatement of applied credits back to the habitat bank for residual impacts that are not permanent.

DFO and the proponent will need to discuss and agree on maintenance expectations with consideration of natural succession. Well-functioning habitat banks will be resilient and dynamically stable and will be subject to change due to natural and anthropogenic processes beyond the influence of the proponent.

While the CNA agrees that habitat banks should be in the same watershed where possible, this expectation would be subject to how watershed boundaries are defined. Limiting projects to the same watershed and limiting the use of third-party habitat banking in the same watershed limits the opportunities a proponent can draw on and may eliminate viable and worthwhile offset initiatives that could meet fish management objectives. This is particularly true in the uranium mining sector where operations are located in pristine environments where local offsetting options are often more limited.

As such, the policy needs to be accompanied by a map depicting the major watershed units. Restricting projects to smaller watersheds should generally be limited to circumstances where the affected species have a limited distribution that is defined by natural barriers to movement, especially considering that impacts to SARA or other listed species are addressed under separate legislation.

The document does not adequately describe expectations for land ownership. In many areas it is expected that conservation projects may be developed in collaboration with other organizations that own the land but are not the proponent.

It is the CNA's view that third party habitat banking can play an important role in increasing fish habitat. CNA would urge DFO to incorporate as much flexibility as possible in the Interim Policy and to plan for a fully third-party habitat banking framework in advance of the next review of the Act. In the interim, it is imperative that habitat banks are treated as proponent asset and therefore companies need to have the ability to sell, barter or trade these assets, no different than any other assets. Otherwise, they represent a substantial investment risk until such time that the credits have been earned and applied. Until that point, they may be construed as a liability.

As noted in our previous submissions to Parliamentary Committees, another area of concern is the lack of recognition for restoration or conservation programs that organizations have voluntarily funded and supported for years.

Without the ability for third parties to be create and manage habitat banks, there is a possibility this will lead to the diversion of resources from these established programs to projects that are eligible for offsets without regard to project effectiveness or value. While this is understandable for a new project, it is inconsistent with the purpose of the Act to disrupt existing projects and to discourage initiatives that support the purpose of the Act.

In conclusion, I would like to reiterate that the CNA supports the review of DFOs Offsetting and Fish Habitat Banking policies. We believe that while positive strides have been made more work remains to maximize the potential benefits of offsets and Fish Habitat Banking and we look forward to continuing to work with DFO on these critical policies.

Sincerely,



Steve Coupland

Director of Regulatory and Environmental Affairs
Canadian Nuclear Association