

Comments from the Hunting, Fishing and Trapping Coordinating Committee

DFO's Engagement on the Fish and Fish Habitat Protection Program (FFHPP) – Wave 1

The following comments are provided by the Hunting, Fishing and Trapping Coordinating Committee (HFTCC) in the context of the Department of Fisheries and Oceans (DFO) engagement with Indigenous Peoples, partners, and stakeholders regarding the Fish and Fish Habitat Protection Program (FFHPP). Through this engagement, DFO's general intent is to develop new policies, tools and guidance documents, or update existing ones, to further implement the fish and fish habitat protection provisions of the modernized Fisheries Act. The engagement is divided into four streams:

- **Stream 1:** The modernization of the *Policy to offset adverse effects* and the *Policy for the Establishment of fish Reserves* (in particular, to increase the establishment of habitat reserves as a method of compensation).
- **Stream 2:** Development of draft regulations for works and waters (to codify “best environmental practices”, i.e., standardized measures to avoid and mitigate potential impacts to fish and fish habitat).
- **Stream 3:** “Cumulative Effects” (how they are defined, how they are interpreted by the Minister, what types of information are required to assess them, etc.)
- **Stream 4:** Standards and codes of practice (to prevent fish kills or the harmful alteration or destruction of fish habitat, to conserve and protect fish and fish habitat, and to prevent pollution).

The present submission focusses on streams 1 and 3. While the HFTCC is not commenting on streams 2 and 4 at this stage¹, it reserves the right to do so during the second wave of DFO's engagement on the FFHPP².

Stream 1: Modernizing Offsetting and Fish Habitat Banking

The HFTCC would like to emphasize the importance of raising promoters' awareness towards the priority order of measures against harmful alteration, disruption or destruction of fish habitat (HADD). Economic and logistic arguments are too often used to justify HADD. Considering technical and scientific advances, proponents should demonstrate that all efforts have been made to avoid and mitigate the impacts of their projects before contemplating offsetting measures.

- 1) To reach the objective of no net loss, the priority should first be put on the restoration for offsetting the HADDs.

Enhancing fish habitat can be an interesting option in specific situations. For example, stream enhancements to facilitate the upstream migration of arctic char in Nunavik has proven to be an effective measure to reduce habitat fragmentation and is therefore a widespread practice

¹ The draft regulations, standards and codes of practice contemplated under streams 2 and 4 were not yet available as part of this first wave of DFO's engagement. The HFTCC prefers having such drafts in hand before providing its comments.

² The HFTCC understands that the second wave of engagement with Indigenous Peoples, partners, and stakeholders regarding the FFHPP will take place over the calendar year 2022.

that is now part of the Nunavik Inuit culture. However, the creation of habitat is based on the notion that natural habitat and ecosystems can be improved by human intervention. Past practices in habitat creation and enhancements have often shown that results are hard to predict and measure. A good example is the creation of brook trout spawning ground: most large-scale monitoring show that this practice often have little to no measurable effect on fish population dynamics.

Evaluating the impacts of a project on fish and fish habitat is challenging. Measuring the size of the affected area is often the easy option although it can be a poor indicator if it doesn't consider the services rendered by the habitat. It can lead to projects that increase a given habitat area but negatively affect the whole ecosystem (e.g. dams, instream removal of sand or gravel banks). The main metric to evaluate quality of habitat should be the level of its natural integrity. In this sense, creation and enhancement of natural habitats should be approached with caution. They should be regarded as a human intervention that has the potential for unpredictable effects on ecosystem dynamics. They should be considered in very specific situations where an aspect of the habitat function can be improved without negative impacts on the rest of the ecosystem (e.g. improving fish passage where there is a partial obstacle or a newly created obstacle to fish migration).

- 2) Increase flexibility over the “one for one, on-site” principle in remote regions with low fish habitat degradation. In Nunavik, meaningful offsetting opportunities are often lacking, especially in the context of the first recommendation to prioritize restoration. If restoration opportunities are hard to come by, offsetting plans often turn towards unnecessary enhancement projects in the region or towards restoration, enhancement or habitat creation outside of the region. Nationwide, such approach might be perceived as no net loss, but the negative impacts end up not being compensated locally. The vastness of the territory and the low level of fish habitat degradation should not be used as an excuse to tolerate negative impacts of development projects in the region.

Options that should be explored for more flexibility include:

- Offsetting for other fish species or other habitat characteristics. A special attention should be paid to species reserved exclusively to the Native people and to species that are culturally important to local communities.
 - Higher proportions of offsetting plans dedicated to scientific research and knowledge acquisition that could help support management, development of best practices and decision-making.
- 3) Integrated planning of offsetting and banking over large territorial units should be developed. Communities should be systematically consulted and involved, and social acceptability should be secured, so that the proponent's planning is compatible with their fish management objectives and that the project makes sense for the nearby communities. DFO should therefore collaborate with Indigenous Nations and communities, outside of the project-specific approval process, to identify meaningful offsetting/compensation measures in areas likely to be subject to development activities (including for scientific research and knowledge acquisition, as stated above).

- 4) Special attention should be given to the monitoring process to assess the effectiveness of offsetting plans. Additional measures should be identified in cases where the offsetting measures end up being inadequate.

Stream 3: Cumulative Impacts

- 1) The cumulative impacts to be assessed by project proponents, and by the Minister as per section 34.1(1) of the Fisheries Act, are changes to the environment due to combined past, present and future human actions. For instance, the Naskapi area of interest, which includes part of the Labrador Trough, has experienced a long history in mining development. In this context, assessment of cumulative impacts becomes essential for any future projects in the Schefferville region. These assessments are generally underestimated by the project proponents, which is mainly due to the issue of unavailability of data and information at the time of the preparation of their impact study. At stake is also the expertise needed to “calculate” an effect in accordance with its regional and local context. For instance, are proponents really in a position to take into account the regional impacts on fish populations resulting from recreational fishing, in addition to the impacts related to their own project?

Assessments of cumulative impacts that rest solely on proponents have a much higher chance of being incomplete. Ideally, cumulative impacts should be the subject of a strategic study at the regional level and carried out by an independent entity, rather than by the proponents involved. These studies could be carried out at fixed intervals (for example at every 10 or 15 years). Given that data required to carry out cumulative impact assessments are often not easily accessible to proponents (or organizations likely to carry out strategic analysis), part of the solution would be to require from them a “contribution to the assessment of cumulative impacts”. The proponents would commit to provide the data gathered from their projects, which is necessary for future cumulative impact assessments (regardless of which organization would carry out these assessments).

Stronger collaboration between the provincial and federal governments, government departments, organizations and academia will be needed to effectively assess the cumulative impacts of development projects on fish and its habitat.

- 2) Finally, the territory covered by the JBNQA offers a prime example of how *past* human activity plays into “cumulative effects”. This territory has been significantly transformed by a major hydro-electric complex between 1971 and 2014, which involved the development of the hydraulic resources of a watershed of approximately 250,000 square kilometers. Further, to the south, the landscape has been extensively modified by logging operations over an equivalent area of 15,000 sq. km, and several thousand kilometers of roads used to haul timber. In other words, fish and fish habitat have been profoundly changed in this territory in the last half century. Yet, the Fisheries Act has played a very limited role in the history of either hydro-electric development or forestry. The HFTCC believes that a strong case can be made for a retrospective assessment of impacts on fish and fish habitat.

General comment for streams 1 and 3: The new policies that will emerge from streams 1 and 3 should address the question of how DFO intends to coordinate shared responsibilities with the provincial government in cases of parallel jurisdictions observed in fish and fish habitat protection and management.