

Recent Changes to the Fisheries Act Have Changed the Landscape for Mitigation Banking in Canada



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Recent Changes to the Fisheries Act: A Missed Opportunity for Mitigation Banking in Canada



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1. Background
2. Changes to the Fisheries Act
3. Proponent-Led Habitat Banking
4. Where to from Here?
5. Questions

Outline



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Background

Background

- US: Clean Water Act
- Canada: Fisheries Act



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Fisheries Act

- 1868
- Only legal way to kill fish is by fishing
- Administered by Department of Fisheries and Oceans (DFO)
- Harmful alteration or destruction of habitat or death of fish (HADD)
- Permit/Authorization requires mitigation (restoration of lakes / streams)
- Permittee responsible mitigation
- No mitigation banking
- No in-lieu fee program



Changes to the Fisheries Act

Fisheries Act

- Rewritten in 2012 by Conservative Gov't
- Largely in response to what they considered overreaching by DFO
- Narrowed definition of fish (CRA)
- No habitat banking



Fisheries and Oceans
Canada



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Fisheries Act

- Rewritten in 2019 by Liberal Gov't as part of an attempt to strengthen DFO
- Changes:
 - Original Definition of Fish
 - Habitat Banking
- Habitat banking was restricted to **PROPONENT-LED BANKING**
- No 3rd party banking
- Adding 3rd party banking would require a change to the Act



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Proponent-led Habitat Banking

Proponent-Led Habitat Banking

- DFO is actively promoting habitat banking as the best way to mitigate impacts
- “Good for linear infrastructure companies”
- Habitat credits are generally measured in m^2
- Devil is in the details



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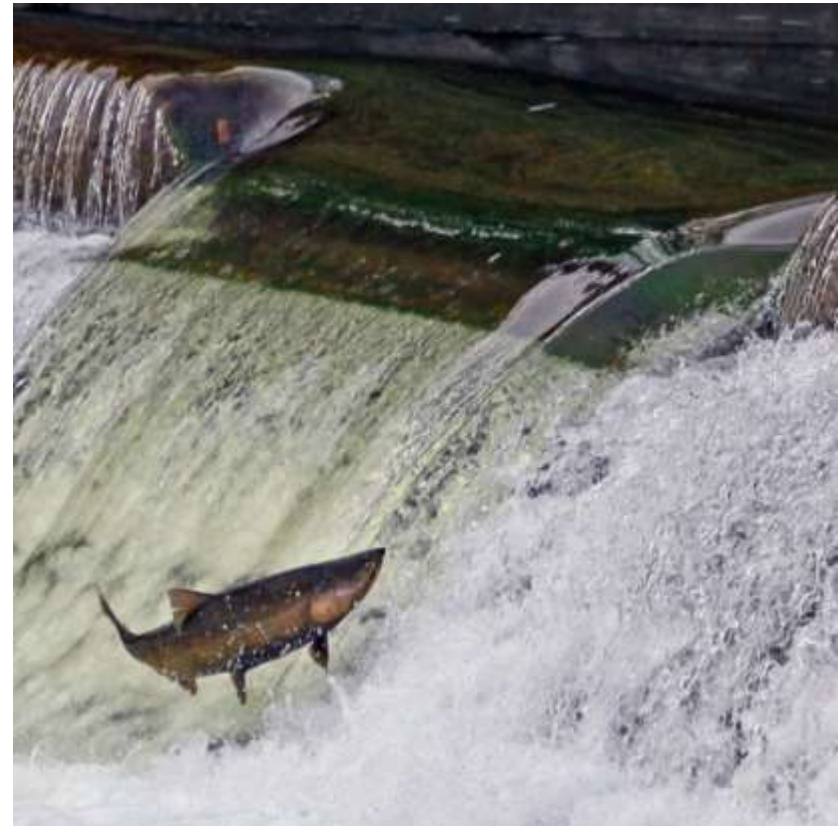
Hanging Culverts

- Illegal under the Fisheries Act so fixing hanging culverts cannot be used to generate credits for a bank



Dams

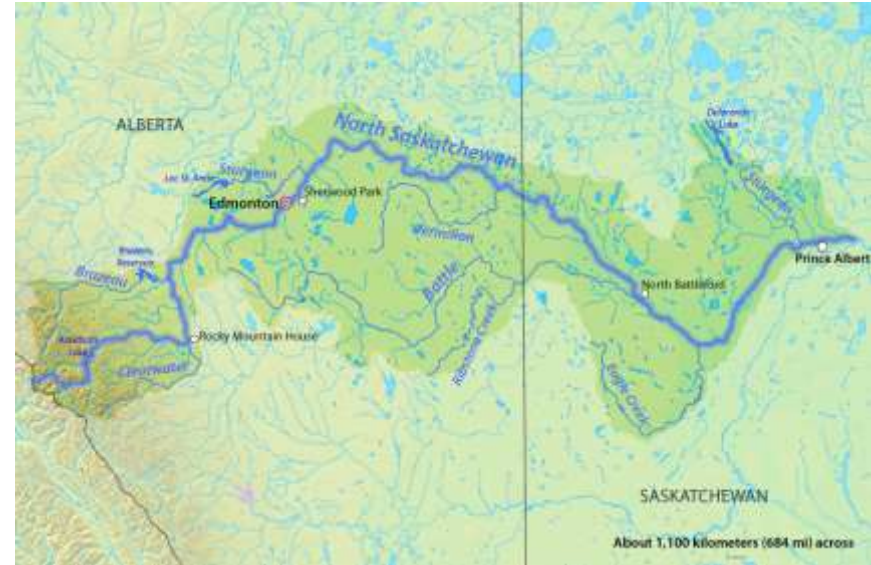
- Dam removal cannot be used to generate credits for a bank
- Even if the dam was built prior to the requirement for mitigation, the operator is now being directed to provide offsetting
- Kakabeka Fall Generating Station was opened in 1906 must provide mitigation



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Service Area

- Despite stating that habitat banking is perfect for linear infrastructure companies, DFO is not being generous with service areas
- Very small
- One exception (sturgeon on North Saskatchewan)



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Credit Release Schedule

- No credits until the end of the first year
- Not generous

2025																												
January							February							March							April							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	
28	29	30	1	2	3	4	26	27	28	29	30	31	1	23	24	25	26	27	28	1	30	31	1	2	3	4	5	
5	6	7	8	9	10	11	2	3	4	5	6	7	8	2	3	4	5	6	7	8	6	7	8	9	10	11	12	
12	13	14	15	16	17	18	9	10	11	12	13	14	15	9	10	11	12	13	14	15	13	14	15	16	17	18	19	
19	20	21	22	23	24	25	16	17	18	19	20	21	22	16	17	18	19	20	21	22	20	21	22	23	24	25	26	
26	27	28	29	30	31	1	23	24	25	26	27	28	1	30	31	1	2	3	4	5	27	28	29	30	1	2	3	
May							June							July							August							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	
27	28	29	30	1	2	3	1	2	3	4	5	6	7	28	29	1	2	3	4	5	25	26	27	28	29	30	1	2
4	5	6	7	8	9	10	8	9	10	11	12	13	14	6	7	8	9	10	11	12	3	4	5	6	7	8	9	
11	12	13	14	15	16	17	15	16	17	18	19	20	21	13	14	15	16	17	18	19	10	11	12	13	14	15	16	
18	19	20	21	22	23	24	22	23	24	25	26	27	28	20	21	22	23	24	25	26	17	18	19	20	21	22	23	
25	26	27	28	29	30	31	29	30	1	2	3	4	5	27	28	29	30	31	1	2	24	25	26	27	28	29	30	
31	1	2	3	4	5	6	28	29	30	1	2	3	4	26	27	28	29	30	31	1	31	1	2	3	4	5	6	
September							October							November							December							
S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	S	M	T	W	T	F	S	
7	8	9	10	11	12	13	5	6	7	8	9	10	11	2	3	4	5	6	7	8	7	8	9	10	11	12	13	
14	15	16	17	18	19	20	12	13	14	15	16	17	18	9	10	11	12	13	14	15	14	15	16	17	18	19	20	
21	22	23	24	25	26	27	19	20	21	22	23	24	25	16	17	18	19	20	21	22	21	22	23	24	25	26	27	
28	29	30	1	2	3	4	26	27	28	29	30	31	1	23	24	25	26	27	28	29	28	29	30	31	1	2	3	



Post-construction Monitoring

- Comprehensive and expensive
 - Fish
 - Benthics
 - Water Quality
 - Geomorphic stability
 - Vegetation
- In many cases, more monitoring for banking projects than for project specific mitigation



Consult with Indigenous Communities

- Reconciliation requires consultation with Indigenous Communities
 - First Nations (630)
 - Metis
 - Inuit
 - All affected communities must concur



Innovation

- Need data to determine how best to restore fish habitat
- Proponents must provide the required habitat credits
- Proponents stick with approaches that have worked in the past
- No incentive to innovate



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Secrecy

- DFO will not share the terms of a negotiated habitat bank and proponents are also forbidden
- Only way to see terms is to file under the Access to Information and Privacy (ATIP = Freedom of Information (FOI))



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Overall Assessment

- DFO has fumbled the ball on rollout of proponent-led habitat banking
- DFO has not seized the opportunity offered by 3rd party banking



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Where to from here?

2019 Fisheries Act

- Must be reviewed after 5 years
- Lobbying for changes has begun
- Canadian Wildlife Federation (CWF) is leading the effort
- Support from every sector except the engineering design sector



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Pilot Project

- CWF is developing a 3rd party banking project
- Proponent needs habitat credit
- Indigenous community involvement = reconciliation



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Summary

- DFO and the Fisheries Act will not succeed in using banking to protect and restore fish and fish habitat until they bring market forces to bear
- Hopeful !!



Questions?

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