

2025 04 11

Annette Gibbons
Deputy Minister
Fisheries and Oceans Canada
200 Kent Street
Ottawa, ON K1A 0E6

Email: Annette.Gibbons@dfo-mpo.gc.ca

Re: 2025 Offset Policy¹

Dear Ms. Gibbons,

We are writing in relation to the recently released “Policy for Applying Measures to Offset Harmful Impacts to Fish and Fish Habitat” (the Policy) and to express our profound disappointment that the concerns expressed by WaterPower Canada during consultations were not reflected in the Policy.

We further can’t help but observe that the Policy was released one day before the writ for the April 28 federal election was issued, a mere five days after Minister Thompson was appointed Minister of Fisheries, Oceans and the Canadian Coast Guard, and during the proroguing of Parliament that interrupted the Fisheries Act Review of the FOPO committee. We feel that important national interest considerations were not adequately taken into account in this process, with potentially significant consequences on clean energy development.

WaterPower Canada is the national trade association representing Canada’s hydropower industry. We represent public and private power producers, equipment manufacturers, engineering and construction firms, and others associated with the hydropower sector.

WaterPower Canada provided detailed comments to DFO regarding the draft policy in writing in November 2023 and provided further feedback during the last two joint WaterPower Canada / Electricity Canada / DFO workshops on May 30, 2024, and November 21, 2024, where the proposed revisions to the offset policy were discussed. In both these events, DFO staff stated revisions were under development or internal review and our understanding and expectation was that they would be shared with us before they were finalized. We were surprised by this lack of engagement on the revised draft before publication, given our significant interest and previous efforts to work with DFO in good faith to improve the policy.

Despite the robust communication between DFO and WPC, neither our recommendations regarding the approaches used in the policy, nor our concerns expressed about the impact of the policy on the hydropower industry and Canada’s clean energy objectives have been addressed in this final draft.

¹ [offsetting-policy-politiques-mesures-compensation-eng.pdf](#)

While DFO's announcement 'What's New in the 2025 Policy for Applying Measures to Offset Harmful Impacts to Fish and Fish Habitat'² states that:

'Flexibility has been introduced into the policy to encourage proponents to focus their offsetting measures on what is most beneficial for fish and supports restoration priorities and fisheries management objectives.'

WPC sees no such flexibility in this policy. In fact, as it is now written, the 2025 Policy is considerably more restrictive than the 2019 version. We have outlined our specific concerns below:

1.0 Fisheries Productivity and Fisheries Management Objectives

The 2025 Policy states that only **two** of the factors enumerated in Section 34.1 (1) of the *Fisheries Act* are the focus of the policy (factors (c) and (f), as noted below)³. This limited focus is inconsistent with the requirements of the *Act*, given that approval of an offset plan is granted pursuant to Section 34.4 (2) (b) of the *Act*, and Section 34.1 (1) requires that **all** factors be considered before exercising power pursuant to section 34.4 (2) (b).

For convenience, following is Section 34.1 (1) of the *Fisheries Act*:

Factors

34.1 (1) *Before recommending to the Governor in Council that a regulation be made in respect of section 34.4, 35 or 35.1 or under subsection 35.2(10), 36(5) or (5.1), paragraph 43(1)(b.2) or subsection 43(5) or before exercising any power under subsection 34.3(2), (3) or (7), paragraph 34.4(2)(b) or (c), subsection 34.4(4), paragraph 35(2)(b) or (c) or subsection 35(4), 35.1(3), 35.2(7) or 36(5.2), or under subsection 37(2) with regard to an offence under subsection 40(1), the Minister, prescribed person or prescribed entity, as the case may be, **shall consider the following factors:***

- (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;*

² [What's new in the 2025 Policy for Applying Measures to Offset Harmful Impacts to Fish and Fish Habitat](#)

³ [Policy For Applying Measures to Offset Harmful Impacts to Fish and Fish Habitat](#), p. 24/25

- (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. (emphasis added)*

Given the construction of this section, specifically the use of “shall consider” and “and” in the list, all the factors listed in the section must be considered in decision making.

WaterPower Canada has pointed out on multiple occasions that DFO staff appear to be unwilling to include all the 34.1 (1) factors in their guidance documents, and we are concerned that DFO staff are selecting some of the decision-making criteria without considering the broader issues noted in 34.1 (1) (a) and (b).

This issue is discussed in further detail in Section 1.0 of our November 2023 detailed comments regarding the Policy⁴, and in correspondence addressed to you dated September 16, 2024⁵. We are quite concerned that compliance with the decision-making requirements in the *Fisheries Act* by DFO personnel has been raised several times and has yet to be adequately addressed.

In this specific case, in not considering “relevant fisheries” as per 34.1 (1)(a), DFO staff would be neglecting opportunities for targeted offsets for fish of importance to First Nations, commercial, and recreational fishers.

2.0 Consultation with Provinces

In our November 2023 comments, WPC recommended the Policy provide for coordination and substitution of offsetting measures and priorities with provincial authorities where Canada and provinces have concurrent jurisdiction on such matters.

Canada and the provinces must harmonize environmental assessment and permitting processes to provide regulatory certainty to investors, allow for the maintenance of hydroelectric facilities, and provide clean baseload energy to meet the country’s rapidly expanding power requirements. We are disappointed that this recommendation has not been considered in the policy.

As discussed in our September 14, 2024 letter, the consideration of fisheries management objectives, specifically those of the provincial fisheries manager, should be a key consideration when establishing any requirements for offsets. For existing facilities where populations are stable and healthy and the provincial fisheries manager does not see a requirement for offsetting, no further action should be required. Duplication of oversight resources and processes is not a prudent use of public funds and leads to unnecessary complication of federal and provincial management.

3.0 Treatment of Projects Having both Positive and Negative Impacts on Fish Habitat and Productivity

⁴ [WaterPower Canada DFO Submission Nov 30 2023.pdf](#)

⁵ [English Letter DFO-DM Fisheries Act Interpretation Final.pdf](#)

WPC requested that the DFO provide clarity on how offsetting requirements for hydroelectric projects would be considered, but the Policy provides no such advice.

Since the *Fisheries Act* was amended in 2019, WaterPower Canada has consistently requested clarity in the form of a regulation to provide guidance for the hydropower industry and DFO officials on recommended approaches for existing and new developments.

No such guidance has been published, leaving applications to be determined by criteria that often appears to be subjective in many cases. This lack of regulatory certainty has already impacted potential developments which have been shelved by their proponents. The lack of formal guidance also leaves individual DFO staff assessors to rely on their own personal risk tolerances or previous experience to inform the development of offsetting requirements, neither of which contribute to a strong, predictable regulatory framework that encourages investment.

4.0 Counterbalancing Project Impacts

We are pleased that expectations of generating net benefits to fish and fish habitat rather than offsetting negative impacts were not included in the final version of the Policy and thank DFO for taking this recommendation into consideration.

5.0 Accounting for Uncertainties

The final policy continues to put the onus for external factors unrelated to a project and beyond the control of a proponent, such as climate change, flash floods, droughts, impacts from other industries, and overfishing on project developers in developing offsetting measures.

Passing this responsibility onto the hydropower industry is unreasonable and unjust. These external factors adversely affect natural fish populations and habitats, and fish mortality and disruption of habitat would have occurred absent any development.

6.0 Measures to Offset are in Addition to What Would Have Otherwise Occurred

Waterpower Canada requested clarification on how DFO would treat projects that have both positive and negative effects on fish and fish habitat, such as hydropower development, but the Policy fails to provide the necessary clarity on this point.

In our view, the introduction of Additionality and trying to understand why a proponent is undertaking its project and benefits to fish and fish habitat is misguided.

It unnecessarily conflates the impacts, benefits, mitigation, and offsets when the overarching issue stated in Section 34.1 (1) of the *Fisheries Act* is:

“the contribution to the productivity of relevant fisheries by the fish or fish habitat that is likely to be affected”

Regardless of the motivation for undertaking activities associated with a project, the net effects on fish and fish habitat should be the determining factor.

While the *Fisheries Act* provides a framework for the proper management and control of fisheries and the conservation and protection of fish and fish habitat, we can find no support in the *Fisheries*

Act that empowers DFO to examine a proponent's rationale for a project or undertaking that would empower DFO and then determine whether positive aspects of that project should be excluded in determining offset requirements.

7.0 Measures to Offset Should Generate Self-sustaining Benefits that Last Over the Long Term.

We pointed out in our November 2023 comments that expectations without any maintenance requirements might be desirable in theory but may not be achievable in practice. This observation was not incorporated into the final policy in a meaningful way. Given that self-sustaining benefits cannot be guaranteed in the long term in natural water bodies, it is unrealistic to set such an expectation for offset structures.

We also recommended that adaptive management be incorporated into the Policy, and it is extremely concerning that this recommendation was similarly ignored. Given the authority of the Minister to require additional measures in the future, we maintain this approach would be preferable to trying to predict all possible outcomes at the outset.

8.0 Complementary Measures

We also note that our recommendation on not limiting complementary measures to an arbitrary limit as part of an offset plan was largely ignored. While an exception was created for consideration, an extensive list of limitations was added.

9.0 Interpretation of the Precautionary Principle

Finally, we note that our recommendation regarding inclusion of a reference to the Precautionary Principle was ignored. Instead, references to the Precautionary Principle were deleted from the final version of the Policy.

As noted in our November 2023 comments, the Precautionary Principle is referenced by Environment and Climate Change Canada:

*"The government's actions to protect the environment and health are guided by the precautionary principle, which states that 'where there are threats of serious or irreversible damage, **lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.**'"*⁶ (emphasis added)

Given the importance of this point, we have repeated our comments from November 2023 below:

This approach exists to address the fact that science and information does not need to be perfect to allow for a decision to be made, including a decision to issue an authorization, especially when it relates to a project which has social or environmental benefits that would be deferred if the project is not allowed to proceed in a timely manner, as would be the case for a clean power project.

WPC members frequently encounter requests for more information and greater certainty from Fisheries and Oceans staff, and we believe this stance by staff is contrary to the

⁶ [Guide to understanding the Canadian Environmental Protection Act: chapter 3 - Canada.ca](#)

Precautionary Principle. In such cases, demands for further detail and study serves to delay decision making, and ultimately the benefits associated with the project.

We recommend that guidance for DFO staff on the appropriate use of the precautionary principle be developed and that the department prioritize timely decision making with follow up and adaptive management as required.

The draft Policy also does not consider the cost and effort associated with offset plans compared to the benefits to fish and fish populations. While this would be required if the policy were established in Regulations, the potential cost of offset plans and delays associated with slow decision making are substantial and result in direct costs to hydroelectric operators and their customers. Consequently, the cost of offset efforts should be commensurate with the benefits achieved.

Paradoxically, DFO's insistence to seek additional modelling and collect additional data serves to delay the implementation of initiatives that would improve fish populations and fish habitat, fomenting degradation of conditions compared to what could otherwise be achieved.

10.0 Third Party Banking and Credit Trading

While DFO has not developed any regulations specific to the operation of third-party habitat banking, we are not aware of any provisions of the Act that prevent it. We believe that Section 42.04 which allows for regulations respecting the creation, certification, management, and allocation of credits could be used to establish regulations for third-party banking and the trading or marketing of habitat credits. We would like to hear whether DFO has advanced the potential development of such regulations.

In the absence of regulations provided in Section 42.04, agreements enabled under Section 42.02 provide DFO the ability to manage the trading or transfer of credits on a case-by-case basis. We suggest there is potential to develop credit trading on a pilot or sector specific basis through collaboration with the electricity sector and its trade associations.

11.0 Specific Guidance for existing Hydropower facilities should be developed.

This recommendation has not been incorporated into the 2025 Policy, and it is unfortunate this issue has not been advanced since the *Fisheries Act* was amended in 2019.

As we have discussed on several occasions, the offsetting requirements applied to decades-old hydroelectric facilities require additional considerations and flexibility that may not be appropriate for a policy of such broad applicability. Our members are eager to begin working with DFO on the development of an annex or appendix to this policy that is specific to existing hydroelectric facilities. We are interested to hear how you would like to proceed with the development of such an annex.

12.0 Making the Policy Less Restrictive and More Responsive to Priorities

Based on our review of the 2025 Policy, we cannot identify any examples of how this was achieved.

Our members continue to experience frustration with the lack of clarity and meaningful guidance, as well as the unending requests for further information that do not appear to translate into project approvals by DFO personnel, and in many cases span over several years without resolution.

While we are disappointed with the final offsetting policy and the way it was rolled out, we remain interested in working proactively with DFO to develop policy that ensures both the sustainable management of fisheries resources and the needs of Canadian electricity consumers.

WaterPower Canada believes that all the issues outlined herein would be relatively simple to resolve and looks forward to working with DFO on solutions that will improve the process of approvals for all stakeholders who will be impacted by this policy.

Kind regards,



Lorena Patterson
President and CEO

- cc. Kate Ladell, Director General, Ecosystems Management, Fisheries and Oceans Canada
Mollie Johnson, Deputy Secretary to the Cabinet, Plans and Consultations, Privy Council Office
Debbie Scharf, Assistant Secretary to the Cabinet, Clean Growth, Privy Council Office
André Bernier, Director General, Electricity Resources Branch, NRCan
Francis Bradley, President and CEO, Electricity Canada