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Memo

To: Greg Savard, A/Director, OHEB
Barry Rosenberger, Area Director, BCI
Karen Calla, OHEB, RHQ

Date: May 19, 2006

Subject: BC Interior RAR Update

The following is an outline of issues and approaches arising from the RAR in the BC Interior Area. At this point we understand that some of our assumptions or understanding may be incorrect. We have documented the issues as we see them at this point in an attempt to highlight some of the challenges and to allow us to focus on what can be done to resolve them.

Issues

1) RAR Implementation Uncertainty

- It is our understanding that DFO has not yet signed off on the RAR.
- We also understand that the RAR has been approved by the province.
- DFO staff are uncertain as to how to proceed.
- DFO Area staff have not received training in our roles, responsibilities and the administration of the RAR.
- For the time being, DFO are dealing with RAR issues in salmon habitat as they arise but are generally advising project proponents that DFO's position is that the Land Development Guidelines should be used as the guidance that meets DFO's standard until such time as the RAR is signed off by DFO.
- In non-salmon habitat, DFO is directing proponents back to the province as they typically lead issues in non-salmon habitat.
- This is creating confusion and uncertainty for proponents and local governments.
- Area staff were advised that issues raised during consultations would be addressed, that DFO Science staff would be involved the Science Paper, and that there would be a subsequent follow up to discuss the Science Paper. Area staff are not clear on the current status of these issues.
- We are not certain that DFO is in agreement with RAR assessment methods. It may endorse something that we don't believe meets our habitat management objectives.

2) Roles and Responsibilities and Increased Workload

- BCI staff are already getting requests from proponents for information on RAR issues in non-salmon habitat that would have previously been addressed by provincial staff.

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- We are getting request from QEP's regarding variances and we are getting requests to review and verify notifications. It is important to note that not all variances under the RAR are issues where HADD is likely. Current RAR protocols direct all variances to DFO which could result in our staff reviewing unimportant issues (this has already occurred). Furthermore, our understanding of current protocols also requires that DFO provide a response, even if we have no concerns with the project. We are concerned about potential workload implications.
- It appears that all requests for variance require a response from DFO before the local government can approve the works. This commits DFO to spend time on lower risk and lower priority activities which is inconsistent with the direction we have been taking under EPMP which is to focus on higher risk issues.
- DFO does not have expertise in non-salmon habitat. We have typically worked with the province to determine the suitability of proposed HADD's, and to determine appropriate compensatory options. DFO can't respond effectively to these issues without consulting with the province.
- The result is that DFO staff are now the primary contact for issues that were previously addressed by the province, which increases our workload. We still have to work with the province to make appropriate decisions on non-salmon habitat issues, so we now will have to consult with them to allow us to make decisions pursuant to their Regulation. This is terribly inefficient.
- The province is still the lead for non-salmon fish habitat issues for non-RAR files. This creates a significant inconsistency.

RAR Weaknesses

- It is our understanding that there is no requirement for a QEP to take the RAR training course and as such, there is no specific accreditation and accountability under the RAR. We believe this is problematic as it appears there is little consequence for a QEP if they make poor determinations.
- It is our understanding that a local government can advance a proposal through the RAR process if they decide that complying with the RAR standards constitutes "undue hardship". This is not specifically defined, so there is wide latitude for how this is applied. In the few we have seen so far, it appears that this flexibility is being used where a proponent does not want to comply with the RAR standards, as opposed to can not comply.
- The RAR separates the riparian components of a development from the other elements which still require approval under Section 9 of the Water Act. Previously there was some efficiency because all elements of a development project were addressed under the Water Act review process. For DFO this means that for RAR areas we may receive multiple referrals for the same project (one under the RAR, and one under the Water Act). We may also still receive referrals for projects screened out through the RAR process but still require review under the Water Act.
- In the past, it was common to negotiate a Restrictive Covenant on a property when a development was proposed which stayed with the title of the property and did not need to be renewed when the property changed hands. The SPEA

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assessment under the RAR doesn't go with the property title so we lose the benefit of having a riparian setback linked to the property title.

- The RAR does not direct proponents to provide DFO with enough information to make an efficient assessment of the proposed project. It results in increased work for DFO having to work with the proponent to get them to give us enough information to assess a potential HADD.
- RAR removes the province from making determinations regarding decisions that affect non-salmon habitat. This leaves a gap as the province has localized knowledge, the expertise in the habitat needs of non-salmon species, and also set the fishery management objectives which is one of the measures used to determine the relative priority and sensitivity of an issue.
- We believe there are notable risks from reduced government oversight, in particular endorsing that HADD determination be made by the proponent's consultant as opposed to a neutral 3rd party such as a federal agency, provincial agency or Conservation Authority type group. This has not occurred before in this Region as far as we are aware and we believe that it is reasonably foreseeable that consultants retained by a project developer will be under pressure to conclude assessments in their clients favour. If this occurs we believe a lower standard of habitat protection is a likely result.
- We are uncertain about the accountability of QEP's in this process. What happens if a QEP makes a HADD determination DFO doesn't agree with? Are there means to sanction a QEP's designation under RAR for making bad calls on HADD?

RAR Benefits

- The RAR provides for a minimum riparian reserve standard that is an improvement in parts of our Area where the Local Government has not implemented one of their own. The RAR also provides useful guidance on sediment and erosion control and for options to protect riparian areas through various types of barrier.
- We expect the RAR will result in efficiencies for DFO when the project is obviously a HADD, and when it is clearly not a HADD. The issues and uncertainty are around those projects that fall somewhere in between.

Implementation Approaches

- A RAR response is required immediately in BCI to address uncertainty for DFO staff and other stakeholders. BCI will discuss with RHQ and intend to advise proponents and local governments of the following:
 - DFO has not signed off on the RAR
 - If a QEP makes a determination that a RAR variance is not a HADD, do not submit the project to DFO.
 - If a QEP makes a determination that a project may result in HADD and the project is in salmon habitat, the project should be submitted to DFO with the information in the attached "*Project Review Information Requirements*".

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- If a QEP makes a determination that a project may result in a HADD and the project is in non-anadromous fish habitat, the QEP should contact the Ministry of Environment and have them provide a written response with regard to whether the project will result in HADD, if the HADD is acceptable based on local conditions and fishery management objectives, and options for suitable compensatory measures. Once this is obtained, if the HADD was deemed acceptable by the Ministry of Environment, the project can then be submitted to DFO with the information in the attached “*Project Review Information Requirements*”.
- BCI will work with the Regional RAR Implementation Team once it is established.
- BCI will approach B.C. Ministry of Environment representatives in the Kamloops and Penticton offices and discuss the possibility of having RAR referrals and notifications routed through existing referral committee processes. If this is accepted, it would improve the process and efficiency of DFO in obtaining provincial input and expertise to make informed decisions on non-salmon habitat issues. This would also address the issue of uncertainty for proponents as there would be agreement between DFO and Ministry of Environment about where to direct RAR issues in the Area and would allow for one review of a project uniting the RAR, Water Act and Fisheries Act process.
- BCI will seek to obtain a list of QEP’s operating in our Area and send them our existing Project Review Information Requirements (attached). This will include a request that the QEP submit this information to us when they submit a request for variance requiring Authorization. This approach will address the current problem of the RAR information template not providing DFO staff with enough information to make informed decisions. It will greatly improve DFO’s efficiency in our review and response.
- Projects requiring a RAR variance that are low risk or are non-HADD issues are a significant workload concern as noted above. We will investigate the following approaches to address this:
 - We will see if it is possible to have the QEP determine that a project requiring a variance is a non-HADD, and if so have it proceed without requiring review or endorsement from DFO. Our current understanding is that the local government can not approve a variance without approval from DFO. The intent of this approach will be to divert low risk files, but not have a DFO endorsement applied to something we have not assessed.
 - If the above is not possible, we will see if it possible to develop a response that satisfies RAR requirements, but does not provide a DFO endorsement either. The letter would be along the lines of “*based on the QEP’s determination that this project will not result in HADD, DFO is not going to review this project – the proponent can proceed if they choose, but remains accountable for not causing HADD. The proponent does not have the Authorization from DFO to cause HADD.*” This approach will still be a workload for DFO to administer, but will enable DFO to respond to low risk RAR variances without having to review and assess each file.