

July ,2010

Regional Habitat Regulatory Decision Framework

Habitat Management Program
Fisheries and Oceans Canada, Pacific Region

Purpose:

The purpose of this framework is:

1. To provide a clear and unambiguous regional framework for categorizing and prioritizing project proposals that are submitted to DFO for a regulatory review under the Fisheries Act (referrals)
2. To enhance file management, facilitate assessments of referral workloads and support decisions on timeliness of project reviews
3. To improve client communications

The Framework:

Context and Challenges

A significant proportion of the Pacific Region Habitat Management Program is dedicated to regulatory review of works or undertakings referred to DFO that have the potential to negatively affect fish and fish habitat. In many parts of the region the current referral process is not sustainable and exceeds DFO capacity to service.

The clientele of the habitat program is very diverse as are the types, complexity, scope and size of projects that may be referred to DFO for review from other regulatory agencies, proponents or their clients. Across the region there are also significant differences in: DFO capacity and classification levels; size(s) of management area(s); nature and number of referrals received; and local relationships or partnerships that have been established to streamline referral management.

New energy sectors such independent hydro-power production; wind farms, shale oil and gas and coal bed methane exploration are emerging in BC and along with the infusion of federal economic stimulus funding under the “Build Canada” infrastructure programs are creating significant new demands for DFO regulatory project reviews.

Over the last decade habitat management responsibilities have also expanded significantly and now include additional regulatory obligations under legislation such as CEAA, SARA, and the Yukon Environmental and Socio-Economic Assessment Act. The habitat management program in Pacific Region also faced a series of FTE reductions over this period.

July ,2010

Legal decisions and changes to partnerships, have also had significant implications for the habitat program. Following the 1989 Supreme Court decision (Friends of the Oldman River Society vs Canada) the department deployed staff into non anadromous areas of South and North Eastern BC which had not previously been serviced. This expanded service delivery into these areas was accomplished by relocating existing staff without increasing the regional habitat FTE complement. Prior to 2000 DFO and the Provincial Ministry of Environment (MOE) had (subject to a 1986 agreement) a number of informal working relationships in many parts of the region which supported collaborative project reviews and worksharing. The province often led the reviews of projects affecting provincially managed fish species while DFO led on projects affecting habitats of federally managed species. Following a series of resource reductions in 2001 BC MOE de-emphasized its role in fish habitat referrals leaving DFO with the responsibility for regulatory reviews of projects affecting all fish habitat in BC.

These demands and pressures on the program, along with increasing expectations and demands for improved client service, more process transparency and enhanced predictability have created a number of significant and unique challenges for the habitat regulatory program in Pacific Region.

Framework Context and Scope

This regulatory decision framework is one response to these challenges. This framework used in conjunction with new referral management tools such as the new HMP internet site, a new DFO Project Review Application Form, new BMP's for certain activities (ie: marine log dump reactivations and helilog dumps), ROS's creates the foundation for improving the DFO referral management process .

This framework focuses on conventional "referrals" or formal requests for regulatory reviews or decisions under the Fisheries Act. Requests for guidance, verbal advice or, approvals in principle constitute a considerable workload but are not considered regulatory project "reviews". They are a public service staff have historically provided and one we will only be able to continue to provide where resources permit. The advice and direction on the new HMP website was designed to reduce these demands on staff time.

This framework is also built with recognition of the unique suite of local tools, alternate delivery mechanisms and partnerships that have evolved over time in each of the areas to support streamlined referral management. The framework respects these local area based processes, while trying to ensure the work done through such processes is recognized and credited.

Some DFO streamlining tools like BMP's , AWP's, ROS's and similar provincial tools (ie: Water Act Section 9 notifications for works in and about a stream) include a requirement for notification. Such notifications are only considered referrals requiring a review if the proponent is advising us they cannot comply with all the important mitigation measures outlined in these documents.

July ,2010

This framework also does not address Major Projects. These are managed by dedicated EAMP staff and are subject to other legislated or agreement based processes, timelines, service standards and process improvement initiatives. .

This referral decision management framework will not address resourcing capacity challenges facing the regional habitat management regulatory program. Where the number of mandatory regulatory reviews outstrips DFO capacity, there will be reductions to client services. These are being risk managed by prioritizing our referrals, focusing our our available resources on our highest priorities and informing clients as soon as possible if their project will not receive a DFO review. Tools such as the HMP website should help temper client expectations as it provides them with direction and criteria to determine if they need a review;, access DFO information requirements and complete application forms on line; and obtain guidance on planning and mitigation measures..

Framework Overview

The decision framework and its supporting elements are complementary to, and consistent with, the National Habitat Risk Management Framework.

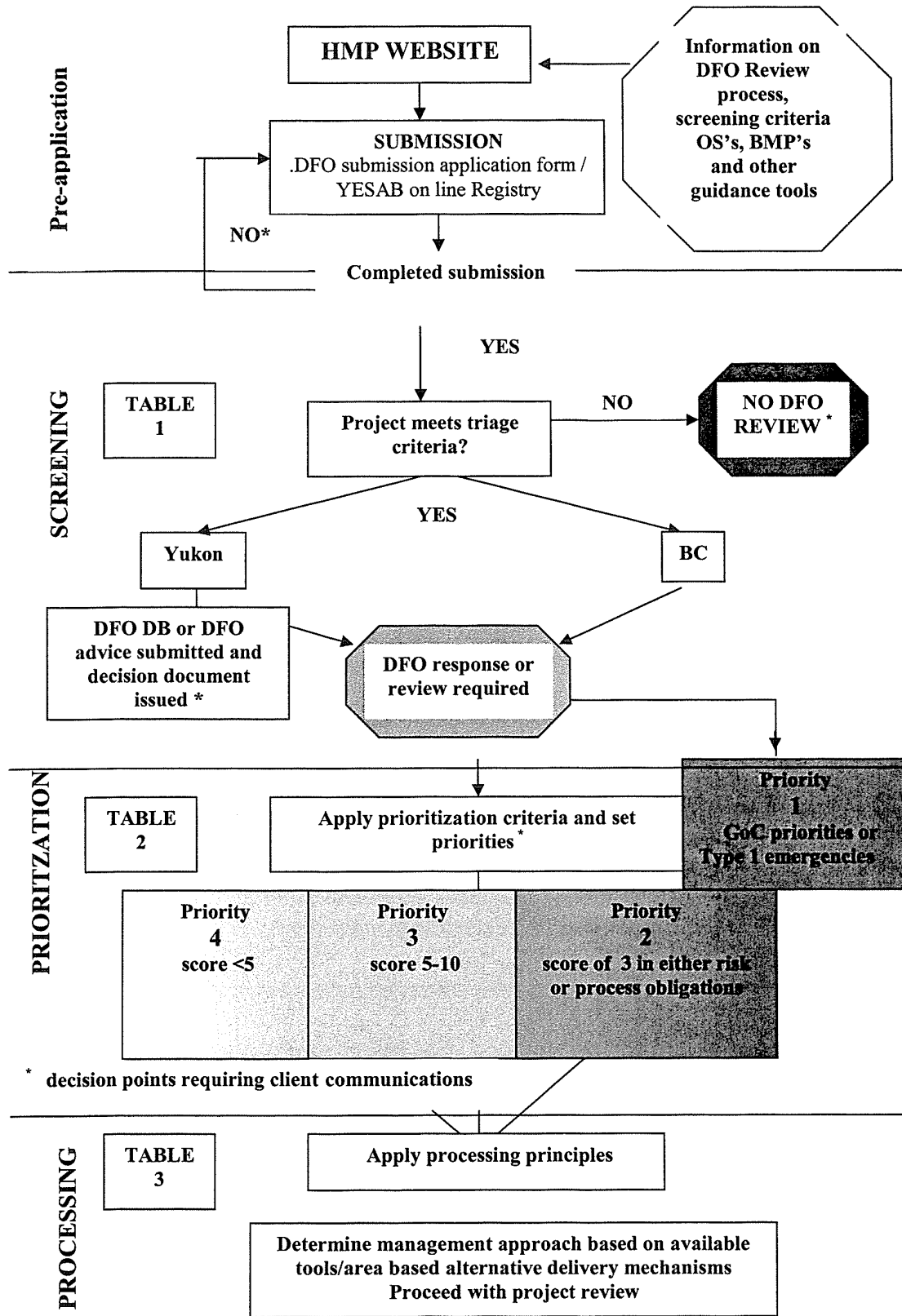
Several principles have been adopted that will assist in making this framework a useful tool for setting priorities and identifying those we will and will not be able to process.. This information is required to support resource requests, rationalize and justify timelines for project reviews and meet our national reporting and administrative requirements. The principles which have been agreed to include:

1. All referrals that are sufficiently well developed to be triaged will be entered into PATH.
2. Each area will have a designated location for referral receipt and every referral will be prioritized in PATH no less than weekly.
3. Every file will have a decision recorded in the proper field in PATH.

The framework is a “living document” that will be revised as necessary based on lessons learned during implementation.

Referral Triage and prioritization process

The triage and prioritization framework consists of: a series of coarse filters, prioritization criteria, and processing principles , which can be found in Tables 1 through 3 respectively at the end of this document .The process is further explained in the following flowchart .



Step # 1 - Adequacy of information

The first step is to determine if a review is possible – in other words if the information provided is sufficient to permit project prioritization or review. The HMP website and the new Project Review Application Form (PRAF) which is available on the HMP website should form the basis of all new submissions. The form has been designed to support rapid triage and prioritization..

Some collaborative referral management processes (such as Environmental Review Committees with local governments , or interagency project review committees such as FREMP) may receive and refer project submissions in different formats. Regardless of the referral stream or proposal format DFO will not commence a review on a project until we have sufficient information to prioritize it, initiate a PATH file and commence a review. The PRAF outlines the information required. Staff are encouraged to direct proponents and other referral agencies to our new “Working Around Water” website for direction and guidance on preparing submissions for DFO reviews or decisions.

Where proponents need to be advised that their application is incomplete and cannot be processed staff can employ the “incomplete application” template letter . The content of this letter can be conveyed by mail, email, or verbally (phone call).

Project submissions are not considered referrals and are not “in the queue” until all information required to triage and prioritize the project proposal has been provided. **While these will not be entered into PATH** some mechanism for tracking the number of these we receive will need to be developed in each area. This is required to support strategic monitoring; track the number of applications we receive but cannot review because information was inadequate; and to evaluate the effectiveness of the advice on our website.

Step #2 – Initial screening- coarse filter (Table 1)

The second step in the triage and prioritization process is to determine if a DFO review is required. This determination is based on potential impacts to fish and fish habitat, legal or process obligations, established Government of Canada priorities and availability of alternate delivery mechanisms.

The intent of the coarse filter is to focus staff efforts on only those projects that require a review. Only projects that meet at least one of the coarse filter criteria in Table 1 and for which there is no alternate management mechanism will be prioritized or subjected to further review.

Where a project is low risk and a review is not required the client should be provided with a low risk as proposed National template letter as soon as possible to permit them to proceed.

Prioritization process

Step # 3 - Establishing priorities for processing (Table 2)

The information required to triage and prioritize a project should be provided by the proponent in their completed DFO Project Review Application Form or other submission format considered acceptable by DFO. If information is insufficient follow Step #1. If the project is sufficiently well described to permit a review prioritize according to the procedure below.

The first priorities for review (Priority #1) include: emergencies that represent high risk to fish and fish habitat and require immediate attention; and established Government of Canada priorities. The latter currently only include federally funded infrastructure projects. These will be identified on an ongoing basis by RHQ and will be posted to Section 4.1.3 of the HMP intranet home page. These are “mandatory” projects that must be processed as soon as possible. Where infrastructure projects are low risk and do not require a DFO review employ the “low risk as proposed national template letter” “as soon as possible to permit us to close the file

The remaining proposals that have been screened, and are “reviewable” are then arrayed against the criteria outlined in Table 2, and scored to determine relative processing priority. Highest score for any criteria is 3 while moderate is 2 and low receives a score of 1.

Relative priorities for the remaining bins will be determined as follows:

Priority #2- projects that score a 3 in either relative risk or process obligations

Priority #3 –projects with a cumulative score of 5-10

Priority #4- projects with a cumulative score <5

Step #4 - Applying processing principles (Table 3)

Prioritized referrals will be managed in accordance with the processing principles in Table 3.

Step # 5 – Conducting the review

This framework provides the basis for consistent referral prioritization, however the actual management of the referrals may vary from area to area in recognition of the differing array of referral management partnerships and streamlining processes (ie alternate delivery mechanisms with other agencies or organizations) that have evolved in each area over time.

Non reviewable and optionally reviewable projects lists (Appendix 1)

Accompanying the framework is a list of non reviewable and optionally reviewable project types. These are either inherently low risk or are activities and works for which best management practices have been developed, that if adopted should avoid or mitigate a HADD.

Projects generally include a range of different activities, works or undertakings some of which may not be addressed by best practices guides or approved work practices. Where all elements of a project are not addressed by the guidance document and/or all potential impacts cannot be mitigated using the advice in the guides the referral should be prioritized for review.

Other process risk considerations

There are a number of other factors or considerations that do not necessarily affect a projects priority but may influence when the project enters the queue, the decision to authorize; the compensation that will be required in the event of an authorization and the rigor and scrutiny a project review will receive. These additional process risk factors include:

Uncertainty –there is a lack of confidence or significant uncertainty in the information provided or conclusions drawn (eg; there are acknowledged knowledge gaps; mitigation or compensation measures are new, novel or untested.)

Risk/Potential for Failure- based on assessments of similar works or expert opinion there is a high potential for the proposed works to fail to operate as designed and intended, or there is significance risk to habitat, other resources or public safety if the works fail

Proponent or consultant history- The proponent or consultant have previously demonstrated an inadequate understanding of Fisheries Act requirements, an inability to properly assess risk, a lack of knowledge of common and appropriate mitigation measures or an unwillingness to comply with required measures.

Client Service Standards

One of the objectives of this framework is to improve client communications by advising proponents as soon as possible if their project is unlikely to receive a review. This is expected to ultimately be a time saving for staff as failure to do this often requires the investment of considerable staff resources to manage client expectations later.

A series of template client communications letters have been developed – the use of which will be triggered by the ability to forecast timelines for commencing a review.

July ,2010

The client service standards do not establish timeframes for decisions, as it is recognized that this is dependent upon many factors, over which DFO has no control. These factors include: project size and location, project complexity, degree of uncertainty regarding feasibility of proposed mitigation or compensation measures; level of client sophistication / knowledge, proponents ability and willingness to secure professional advice, quality of professional advice, willingness to implement required mitigation or compensation measures, and EA requirements.

The client standards do however establish a standard of 90 days as a reasonable timeframe for informing clients if (or possibly when) they will receive a review.

While incoming referral workloads are extremely variable and the number of projects in each BIN are never be static, implementing client service standards will require we gauge on a regular and timely (ie: weekly or biweekly) basis the size of the queue by BIN in order to determine whether (or when) a review of projects in BINS 3 and 4 might commence. The service standard is to commence a review within 90 days. Where it's apparent based on queue size in BINs 1 and 2 and assessment capacity that projects in BINS 3 or 4 cannot have a review commence within 90 days staff should be advised to issue the template "no review being conducted" letter.

Depending on the situation, the queue sizes, the ability to forecast timelines and available assessment capacity some areas may be able to issue a "review will commence in X time" or "review is delayed" template letter.

Service standards for triage and client communications

Time to triage- within 1 week of receipt

Time to inform proponents that their submission is incomplete and cannot be processed further until required information is provided- immediately following triage.

Time to inform proponents their project is low risk and can proceed without further review- immediately following triage.

Time to inform clients who will receive any of the "no review" "review will commence in X weeks/months" or "review is delayed" template letter - within 2 weeks of triage

Application of the Framework

This framework rationalizes project prioritization decisions and reduces ambiguity in decision-making, however it is simply a guide and professional judgment and extenuating circumstances will continue to influence priorities for project review.

July ,2010

This framework is intended to be adaptive and will be reviewed frequently and revised as necessary to incorporate new considerations and experience.

Implementation Support Tools

As indicated earlier, some implementation support tools have been developed while others can only be developed over the longer term as resources permit.

HMP website

An important tool that supports implementation of this framework is the new regional Habitat Management internet site. This framework relies extensively on proponents (and their agents) self screening to determine if a DFO review is required. The website provides the necessary guidance to make this determination and assists clients in navigating the regulatory review process. The website has been designed to clarify the review process, provide clients with a standardized project review application form, and provide guidance and direction via documents and tools such as BMP's, approved work practices, area based timing windows, compensation planning checklists and advice on when to retain services of qualified environmental professionals. By September 1,2010 the site will also identify referral receipt centers in each area for submission of electronic applications.

File management

Referral triage and prioritization requires a rapid assessment of the clients submission, entry of tombstone data and priority bin information into PATH, and distribution of client communications letters (as appropriate).

All referrals which are screened in will be entered into PATH. The PATH data entry protocols for referral triage are to be employed to create a prioritized PATH file for every potentially reviewable project.

The new website which guides clients through the preliminary screening process should eliminate frivolous and low risk projects. The new electronic Project Review Application form will also improve submission quality, permit us to rapidly triage projects, complete basic PATH tombstone data entry and expedite reviews.

NOTE: Areas are responsible for establishing electronic and hardcopy file management systems for their areas that can be supported with available resources. Regardless of the systems adopted or developed, they must support:

- a) referral information entry into PATH,
- b) access to hard hardcopy referral documents and supporting information
- c) rapid assessment of referrals awaiting review by priority BIN

July ,2010

d) rapid communication to clients whose projects are incomplete or will not receive a review.

Provision of advice for Moderate Risk Projects

The bulk of DFO regulatory reviews are Letters of Advice. A review of the first 6 months of habitat referral and EA decisions entered into PATH for 2008-09 indicated that 55% (152/274) of referrals were Letters of Advice (LOAs) to proponents while 29% (81/274) was advice to other agencies. The results from 2009-10 indicate that 83% of referrals constituted advice to proponents or others.

Advice ranges from identifying standard mitigation measures and practices (simple LOA) to summarizing the full array of site specific measures and conditions, that have been negotiated with proponents on project siting, design, operation and monitoring (detailed LOA). A number of activities that are typically managed using LOA's with common mitigation requirements will be examined as candidates for best practices guidelines.

Detailed LOA's and authorizations

These projects are generally high risk. PATH does not differentiate between simple and complex LOA's so it is not possible to analyze the relative workload associated with a letter of advice. The review of PATH data for 2008-09 did however indicate that only 9% of referrals entered into PATH were authorizations, whereas 12% of all referrals entered in 2009-10 were authorizations. While this would appear to represent a small percentage of overall workload, the time and effort associated with developing an authorization can be significant. Several improvement initiatives need to be pursued to both alleviate process related workloads and improve regional consistency for managing these types of high risk projects. The initiatives which have already been implemented include: webbased advice for reducing impacts and understanding the need for a DFO review; amendments to the CEAA exclusion list regulations; streamlined FA authorization and decision signoff templates and procedures.

Other opportunities which will be examined as resources permit include: more activity specific guidelines/BMP's; negotiations with the province of BC and YESAB for streamlining referral routing and management; and simplified EA screenings.

General process management requirements

Longer term initiatives that need to be pursued to streamline all project reviews and reduce referral management workloads include: agreements with the provincial or territorial government to manage certain referral streams, work share, or improve guidance to industry; development of a professional reliance model and training of environmental consultants; industry based partnerships focused on development and application of BMP's for streamlining referrals, enhanced habitat inventory, mapping and

July ,2010

classification tools and possibly greater use of industry funded DFO referral management positions also need to be explored.

Some effort may also be required to develop new low risk management tools such as ROS however this effort should be minimal.

As this framework promotes greater reliance on proponents and their agents to self identify the effects and risks associated with their projects, and to incorporate available mitigation advice into project designs there is a need to link this framework in particular those projects not undergoing a detailed review to the HCM program to assess effectiveness of the various approaches and tools we are employing.

Summary

The Regional Decision Framework:

1. Is consistent with the Fish Habitat Risk Management Framework
2. Limits obligatory DFO reviews to only those projects for which we have a legal mandate, a process obligation or an agreement based review/response commitment.
3. Establishes priorities for other project reviews based on relative risks to: fish and fish habitat, processes and partnerships as well as regional departmental management priorities.
4. Increases reliance on proponents and environmental professionals to assess risks, determine effects, and ascertain if a DFO review or authorization is required
5. Recognizes that capacity limits our ability to review all incoming referrals in a timely manner and establishes both principles for determining processing priorities and client communication standards to inform proponents when DFO will not be providing project specific advice or guidance on their project, .
6. Employs all currently available management and streamlining tools
7. Identifies additional implementation tools and mechanisms that will improve process efficiencies and effectiveness.

Table 1- Screening considerations

The DFO Project Review Application Form (PRAF) submitted by proponents forms the basis for the DFO screening and prioritization. Where other formats are being employed sufficient information must be provided by the proponent to permit an initial screening and triage of the referral

Only projects which meet at least one of the first 5 coarse filter criteria and do not have an alternate delivery mechanism in place will be prioritized or considered for further review

Coarse filter criteria

1. Project is within 30 m of a waterbody/ watercourse¹ and/or involves vegetation removal within 30 m of a waterbody
2. Project involves in-water works
3. Project will have downstream impacts on water quality or quantity
4. DFO must respond based on legal or agreement based process obligations.

Examples include:

LEGAL OBLIGATIONS

- a. An authorization under the Fisheries Act is requested or required
- b. Another federal regulatory agency requests a DFO review or input pursuant to legislation (ie: NWPA, CEA Act, NEB Act)

AGREEMENT BASED COMMITMENTS

- a. BC MOE requests a DFO review or authorization
- b. The YTG identifies DFO as a decision body under YESEA
- c. Project is identified for review via a collaborative referral management partnership (ie: FREMP/BIEAP; municipal ERC's)
- d. Project is an RAR variance which requires a DFO review

5. Project is a Government of Canada priority²

Alternate delivery mechanisms

Projects that meet any of the following criteria **do not require DFO review** :

- a. **DFO ROS's** – projects to which DFO Operational Statements apply
- b. **Non reviewable activities** on the DFO non reviewable projects list

- c. **Gov't/gov't referral management agreements/arrangements** – projects another level of government or agency have agreed to review and to which they will apply mitigation measures acceptable to DFO, Examples include:
- Instream work projects for which a Regional MOE office agrees to apply Standards and BMP's for instream works that "meet or beat" DFO requirements as part of their Water Act Section 9 instream works approvals
 - Projects in non anadromous fish habitat that do not require an authorization and that the YTG Fisheries Branch or BC MoE Ecosystems Branch agree to review
 - Track 1 (lower risk) projects in BIEAP/FREMP areas that will be managed by the Vancouver Port Authority.
 - Highways ditching and brushing activities along watercourses in North Coast that comply with the management plan and conditions laid out in the agreement between Ministry of Transportation and Infrastructure, MoE and DFO North Coast
 - Local governments agricultural ditch maintenance works in Lower Fraser Area that are supported by a protocol agreement with DFO
- d. **DFO/Industry Approved Work Practices (AWP's) or Best Management Practices (BMP's)*** – projects for which DFO has an agreement or arrangement with a specific industry sector, crown corporation or other partner to: apply AWP's or BMP's acceptable to DFO; monitor compliance; and report. Examples include:
- DFO/ BCTC/BC Hydro protocol agreement (and associated activity specific AWP's)
 - DFO/CFP/BCTS BMP's for marine helilog drops and log dump reactivations;
 - DFO/ MoFR /MoE /COFI Fish Stream Crossing Guidebook/ BMP's
 - Terrasen Gas riparian maintenance works on ROW's in the Lower Fraser Area, that are supported by the 5 year informal agreement between DFO/Terrasen Gas
 - Alcan riparian management works on ROW's between Kemano and Kitimat that comply with the management plan and informal agreement between Alcan/DFO North Coast.

* For these to be considered alternate delivery mechanisms (which eliminate the need for a DFO review) proponents must be able to comply with all the key conditions in the guidebook, management plan or best practices documents. Where they cannot, these will become referrals requiring review.

- e. **Plan based mitigation provisions**- projects for which measures acceptable to DFO for protection of fish habitat have been incorporated into a water, land, estuary or foreshore management plan and will become conditions of a regulatory permit, license, order, lease, approval or operational protocol applied by a partner agency or crown corporation. Examples include:
- BC Hydro works or maintenance activities approved pursuant to an authorized Water Use Plan
 - Activities managed or regulated by another agency or level of government pursuant to a DFO endorsed estuary management plan (ie: Track 1 FREMP/BIEAP projects)
 - Lake and foreshore activities managed or regulated by a local government pursuant to a integrated lake management plan endorsed by DFO and supported by an MOU or management partnership (ie SLIPP, East Kootenay Lake Management Partnership)

* For these to be considered alternate delivery mechanisms (which eliminate the need for a DFO review) the planning and management partners must be able to ensure DFO required conditions outlined in the management plan will be met and/or incorporated into their permit, license, order , lease, approval, or operating protocols. Where they cannot, these will become referrals that are subject to DFO review.

¹ waterbodies/watercourses includes all permanently wetted areas such as: oceans, rivers, streams and lakes as well as intermittently wetted features such as intertidal areas, floodplains, ephemeral channels or wetlands that are used by fish during certain times or provide food, nutrients and flows to downstream fish bearing areas.

² Currently includes "Building Canada" federally funded infrastructure projects. Lists of these projects are maintained on the Habitat Intranet site (Section 4.1.3)

Table 2 - Project prioritization criteria*

CRITERIA	RELATIVE RATING		
	HIGH (3)	MODERATE (2)	LOW (1)
Relative Risk to Fish and Fish Habitat	High	Moderate	Low
Legal or process obligations and time sensitivity	A DFO review or response is <u>required</u> pursuant to federal legislation and may have established comment or review timelines	A DFO review or response is <u>expected</u> based on agreements or arrangements with other agencies, referral management partners or industry sectors and may be time sensitive	Non obligatory and non time sensitive reviews
Stocks and level of conservation concern	Project affects at least one of the following: <ul style="list-style-type: none"> • Stocks or species managed by DFO (ie salmon or marine species) • Stocks or areas with elevated federal conservation concern (ie: high priority WSP CU's, MPA's, RCA's, NMCA's), • Federal SARA listed aquatic species, 	Project affects <ul style="list-style-type: none"> • provincial red or blue listed fish species 	Project affects: <ul style="list-style-type: none"> • all other species or • non fish bearing waterbodies
Established Regional/Area Priority	The project type or activity is either: <ul style="list-style-type: none"> • A priority in regional or area work plans or • Submitted by a referral management partner 	Project is publicly funded and is in the public interest or provides an essential public service	All other requests for project review

* See Appendices 2, 3 and 4 for elaboration on each of these criteria.

Table 3- Referral Processing Principles

Referral processing will be governed by the following principles

1. Processing will proceed through priority bins as capacity permits
2. All projects in BINs #1, and 2 must be reviewed
3. Projects in BIN #1 should be reviewed as soon as possible and where they are low risk the file should be concluded as quickly as possible by advising the proponent or originating agency that the project is low risk as proposed
4. Well planned and designed projects that have incorporated appropriate mitigations should be identified during triage as low risk, and the client should be advised the project is low risk as proposed as soon as possible to allow them to proceed and to close the file.
5. Species affected and time in queue will be used to differentiate between projects in a bin where scores are equal and further refinement is necessary:
6. Projects will not queue jump unless there are exceptional extenuating circumstances (ie: legal challenges, injunctions, new GoC priorities)
7. Client communications standards outlined in this document will be followed
8. Where DFO has committed to or actively participates in a collaborative project review process the timelines will be respected to the maximum extent possible.

Appendix 1 - Non-Reviewable or Optionally Reviewable Activities (v 1.0)

Non-Reviewable Activities are those that due to their nature are considered low risk or for which mitigation measures have been identified that if complied with, would prevent a HADD.

The Referral Prioritization Framework relies on this non-reviewable projects list as one tool to assist DFO staff in prioritizing and managing referrals.

Optionally reviewable activities includes a number of activities for which Best Management Practices (BMP's) exist, which if followed would prevent a HADD- however where all conditions cannot be met or a moderate risk persists these could necessitate a review. These have therefore been identified for optional review.

Likewise there are some activities that are not low risk but due to extenuating circumstances may require that a review and/or negotiation of all conditions for authorization be delayed. These have been identified as **deferred reviews**.

Compliance or effectiveness monitoring should be linked to these activities in order to confirm assumptions regarding risk and ability of mitigation measures to effectively address the risks. Outcomes from monitoring will be used to reevaluate and revise this list as appropriate.

Non-reviewable activities

1. All activities to which Regional Operational Statements apply (e.g)
 - (i) Aquatic Vegetation Removal in Lakes
 - (ii) Public Beach Maintenance
 - (iii) Bridge Maintenance
 - (iv) Clear-Span Bridges
 - (v) Culvert Maintenance
 - (vi) Directional Drilling
 - (vii) Dock and Boathouse Construction in Freshwater Systems *
 - (viii) Dry Open-cut Stream Crossings
 - (ix) Ice Bridges and Snow Fills *
 - (x) Isolated Ponds
 - (xi) Maintenance of Riparian Vegetation in Existing Rights-of-Way
 - (xii) Off-Bottom Deepwater Shellfish and Kelp Aquaculture
 - (xiii) On and Near-Bottom Intertidal Shellfish Aquaculture
 - (xiv) Overhead Line Construction
 - (xv) Punch and Bore Crossings
 - (xvi) Routine Maintenance Dredging for Navigation *
 - (xvii) Small Moorings

- (xviii) Temporary Ford Stream Crossing
- (xix) Underwater Cables in Freshwater Systems

2. All activities to which DFO/Industry protocol agreements and associated AWP's/ BMP's apply (e.g.):
 - (i) DFO/BCTS/CFPA Marine log handling activities that comply with:
Best Management Practices for Helicopter Log Drop Sites in Marine Waters of British Columbia or
Best Management Practices for Re-activated Log Dumps in Marine Waters of British Columbia
 - (ii) DFO/MOE/BCH/BCTC Approved Work Practices for:
managing riparian vegetation in and adjacent to ROW's,
maintenance of submarine powerline cables and grounding grids in marine and coastal foreshore areas
routine electrical cable maintenance in freshwater and marine coastal areas
3. Crown land tenure applications and transfers
4. STP upgrades that do not involve new outfalls, foreshore or subtidal works
5. Ice roads constructed with clean water and snow
6. MOF Special Use Permits notifications
7. MOF Timber Mark permits
8. MOF Root Buck/log salvage permits
9. MOTH subdivision referrals
10. Land-based erosion control measures and materials with no surface water discharges to fish bearing waters
11. Debris removal on an Intake or Dam face
12. Maintenance of small docks, wharves, boat launches- where work is restricted to the current footprint. * This does not apply to replacement of historic structures that created an unauthorized HADD.
13. Rock placement to maintain or upgrade existing bank and flood protection structures (i.e. dykes, revetments, berms, banks) - where rock placement is within the existing structural footprint and meets timing windows.

Planning based non reviewable activities

1. BC Hydro operations, maintenance activities or works specifically authorized pursuant to a facility specific *Water-use Plan* (WUP).
2. Gravel removal done within the context and compliant with conditions in a pre-approved annual or multi-year gravel management agreement or plan.
3. Agricultural ditch maintenance works that comply with conditions in a protocol agreement with DFO.
4. River, lake, estuary or marine foreshore works or activities that comply with mitigation measures or conditions outlined in a DFO endorsed management plan for the area

Projects for which guidelines apply – review optional.

1. Routine farming and agricultural practices that are consistent with DFO endorsed environmental protection guidelines such as:
Environmental farm planning drainage management guidelines
Environmental farm planning grazing management guidelines.
Environmental farm planning- riparian management guidelines
Environmental farm planning- nutrient management guidelines
Environmental farm planning- irrigation assessment guidelines
2. Construction of small boat moorage that is consistent with DFO endorsed guidelines such as:
BC MOE guidelines for small boat moorage on lakes , and small boat launch construction on lakes,
DFO South Coast guidelines for marine and freshwater construction of docks and floats
3. Vegetation management on existing flood protection structures- that is consistent with Environmental Guidelines for Vegetation Management on Flood Protection Works to Protect Public Safety and the Environment (DFO/MELP 1999)
5. Integrated shoreline and bank stabilization works that are consistent with DFO endorsed guidelines such as;
Okanogan region Lakeshore stabilization BMPs
Columbia basin Lakeshore erosion protection BMP's.
Marine Foreshore designs as per Green Shores Canada guidelines.
DFO South Coast guidelines for marine foreshore erosion control works.

July ,2010

Washington State Integrated Streambank Protection Guidelines
Shoreline Structures Environmental Design (2002) guidebook

6.Regular agricultural ditch maintenance on constructed channels” that complies with DFO endorsed Agriculture Ditch Maintenance guidelines . Note watercourse inventories and classifications to which these guidelines will apply must have been endorsed by DFO.

7.Selective vegetation maintenance (danger tree /blowdown removal, ROW management) that complies with Best Practices for tree topping, limbing and removal in riparian areas

8. Single pedestrian trail or pathway construction and maintenance that complies with the advice and guidance in the Access Near Aquatic Areas (1996) guidebook

9. Bridge maintenance or washing activities that complies with .
Pacific Region guidelines for protecting fish habitat during bridge maintenance (BC)
Yukon, bridge washing guidelines (Yukon)

10. Beaver dam removal that complies with:
Provincial guidelines for beaver and beaver dam management (BC)
Territorial guidelines for the management of beaver in fish-bearing streams (Yukon)

11. Short term emergency water withdrawals from non drought prone systems by fire departments, MOT or industry that comply with:.
Best Management Practices for Installation and Maintenance of Water Line Intakes
Freshwater Intake End of Pipe Fish Screen Guidelines and
Guidelines for sizing screens at end of pipe diversions

12. Routine maintenance of existing public utilities (i.e. outfalls, culverts) –where works are limited to existing footprints
Reminder: An OS exists for culvert maintenance .

13. Recreational winter activities on Yukon lakes that comply with
Guidelines for recreational events on frozen lakes or rivers in the Yukon

14. Pipeline watercourse crossings that comply with DFO endorsed best practices guidelines

Deferred reviews

1. Instream works emergencies.

Note: all instream work emergencies should be assessed and managed in accordance with the emergency protocols outlined in Section 7.8.4 of the BC Ministry of Environment Standards and Best Practices for Instream Works Guidebook.

Some “emergencies” can and should have been addressed through proper planning, however exigent circumstances will arise that require flexibility, specifically where the emergency represents an imminent threat and significant risks to human health, safety or property (i.e. major flooding or fire affecting homes or businesses) public infrastructure (i.e. damage to bridges, highways, railroads, flood protection structures), or the environment (i.e. contaminant spills) and timelines do not permit a thorough assessment. In such cases a one page letter outlining commitments to mitigations/ compensation should be requested and an emergency authorization issued (where required) as soon as possible. In these circumstances a full review and negotiation of compensation options may need to be deferred until the emergency has been addressed. Financial security should be considered if there is a history of non-compliance by the proponent or there is a high risk that required compensatory works will not be constructed in a timely fashion post emergency.

2. Avalanche management activities- similar to instream works emergencies – where these must proceed immediately to protect human health, safety or property and the activity will negatively affect fish habitat a letter of commitment to compensation can be sought and an emergency authorization issued. The review and negotiation of compensation measures may need to be deferred, until the avalanche hazard has been addressed.

APPENDIX 2- INFORMATION FOR SCREENING AND APPLYING PRIORITIZATION CRITERIA

Screening criteria

1. Government of Canada priorities- Currently this only includes federally funded infrastructure projects, the most current list of which are posted to the Habitat Intranet site – link- [Habitat Intranet site \(Section 4.1.3\)](#)) and are updated regularly by RHQ
2. The definition that should be used is that in Section 7.8 of the BC MOE Water Act [Standards and Best Practices for Instream Works Guide](#)
3. Legal obligations and agreement based commitments to review are presented below in Appendix 3. NOTE: As many of the agreement based commitments are area based and may not have been identified to RHQ this list may be incomplete. To ensure all triage staff have access to the most current and accurate list of relevant agreements areas are requested to advise RHQ of any gaps or omissions.
4. Alternate delivery mechanisms are approaches that have been developed to eliminate the need for a DFO project review. They generally require a partner agency, company or organization commit to implementing approved work conditions as outlined in a best practices document, management plan or operating protocol. Examples of alternate delivery mechanisms are identified in Appendix 4 below.
NOTE: some areas may have additional mechanisms in place with local partners which may not have been captured. For this list to remain current and relevant any additional area based alternate delivery mechanisms should be identified to RHQ.

Interpretation and application of prioritization criteria in Table 3

1. Relative risk* to fish and fish habitat.

Relative risk is based on the National Habitat Risk Management Framework (ie: combination of effect severity and habitat/species sensitivity). The basic information required to determine relative risk (ie: species and habitat type affected, nature, duration, magnitude of impacts) should be readily available from a complete Project Review Application Form (or alternate acceptable submission format). Wherever possible this will be augmented by the assessors local knowledge.

High risk- are projects where both effect severity and habitat/species sensitivity are high.

Moderate risk - are typically projects where both effect severity and habitat/species sensitivity are moderate but may include projects where one axis is high and other low.

Low risk- are typically projects where both effect severity and habitat/species sensitivity are low but could potentially include projects where one axis is extremely high and other extremely low.

2. Obligatory reviews and time sensitivity

High - are projects that are subject to **federal legislation or regulations** and **require** DFO review or response generally within a specified timeframe. Examples are presented in Appendix 3 below.

Moderate- are projects which DFO **is expected to review** based on either an **agreement or an arrangement with another level of gov't, another agency or an industry partner**. These may have associated review or response timelines. Examples are presented in Appendix 3 below. Many referral management agreements / arrangements are area based and local triage and assessment staff we need to be familiar with those in their area that can influence referral prioritization.

Low- are projects with no legal obligation or agreement based review commitment and no established timelines for review.

3. Species/area conservation concern

High- includes:

- Species that support federally managed fisheries and have an elevated level of conservation concern. Local stock assessment staff may be able to identify local stocks of concern however other tools include the Departmental Salmon Stock Outlook which can be used until wild salmon stock CUs are prioritized. The outlook which is updated annually can be found on the DFO internet site @ <http://www-ops2.pac.dfo-mpo.gc.ca/xnet/content/salmon/webdocs/SalmonStockOutlook2009.htm>. A copy of both the 2009 and 2010 outlook are attached below



2009 Salmon
tlook_VERS_2 Jai



Microsoft Word
Document

- Areas of high federal fish and habitat conservation concern, which include:
 - Watersheds, sub-watersheds, foreshore areas or sites identified as sensitive (or high value) through local planning or inventory processes. Some examples include high productivity or high value areas in the FREMP/BIEAP habitat atlas, Columbia - Shuswap RD watershed atlas, Lake Windermere habitat area atlas,
 - BC fisheries sensitive watersheds
 - Rockfish Conservation Areas
 - Marine Protected Areas
 - National Marine Conservation Areas located in Gwaii Haanas and the Southern Strait of Georgia.
- SARA listed aquatic species

Moderate- are any

- provincially managed red or blue listed fish species

Low - are all other species or non fish bearing watercourses

4.. Regional/Area Priority

High – includes:

- Project types or activities that have been identified in regional or area work plans as a priority– these will change from year to year and between areas.

Regional priorities for 2010-11 include: Cohen Fraser Sockeye Judicial Review, Federal infrastructure projects, Hydro activities (BC Hydro WUP authorizations + IPP regional action plan); Aquaculture (regulation and changes to program delivery), HCM, WSP Strategy 2 implementation and DFO/MOE BC/YK partnerships. Staff conducting the triage should also be familiar with the priorities identified in their area workplans for the current year

- Projects that are subject to a collaborative or coordinated referral review process (i.e., DFO/local government Environmental Review Committees, FREMP/BIEAP Environmental Review Committee ; SLIPP Technical Review Committee etc).– these are generally local interagency partnerships

July ,2010

that have evolved over time in areas to streamline regulatory reviews or referral processing.

Moderate- are government funded projects that are in the public interest or provide essential public services. These include but are not limited to: major public transportation projects (highways, bridges, rapid transit, ports, publicly owned railways), public infrastructure (sewer and water treatment or distribution systems, gas trunk lines, electrical generation or transmission systems), major flood protection works (dykes, pumping stations, maintenance dredging) or other essential public services.

Low- are all other requests for review

APPENDIX 3 – LEGAL OBLIGATIONS OR AGREEMENT BASED COMMITMENTS TO REVIEW

<u>LEGAL OBLIGATIONS TO REVIEW</u>	<u>RELEVANT LEGISLATION</u>
Projects for which an authorization , directive or order under the Fisheries Act is requested or required	Fisheries Act (Sec 35(2)) or Section 32), or Section 20,22,30 or 37
Federal EA's in BC where there is a DFO trigger or DFO receives an FCR letter from another federal RA or the CEA Agency	CEA Act
Projects affecting an aquatic SARA listed species, that may contravene Section 33 (damage or destroy their residence) or Section 58 (destroy critical habitat) and/or require a SARA Section 73 permit.	SAR Act Can/BC Agreement on Species at Risk
NEB request for DFO participation in a panel hearing	NEB Act
EA's in the Yukon for which DFO or YESSAB has identified DFO as a decision body.	Yukon Environmental and Socio-economic Assessment Act (YESAA), Canada/Yukon final umbrella agreement (and associated regulations) Canada/Yukon Agreement on Environmental Assessment Cooperation
OTHERS?	OTHERS?
<u>NATIONAL AND REGIONAL AGREEMENT BASED OBLIGATIONS TO REVIEW</u>	<u>RELEVANT AGREEMENT /ARRANGEMENT</u>
Federally funded infrastructure projects	DFO/Infrastructure Canada/TC/Industry Canada Interdepartmental DM committee agreement on Infrastructure

EA's in BC undergoing a joint CEAA/BCEAO review	Can/BC Agreement on Environmental Assessment Cooperation
Variances to the Riparian Area Regulation in areas to which RAR applies (ie: Lower Mainland, East coast of Vancouver Island and Sunshine Coast, Southern Interior)	DFO, MOE and UBCM Intergovernmental Cooperation Agreement on Implementation of the Riparian Area Regulation
Major natural resource projects (MPMO projects)	DFO/NRCAN/TC/Industry Canada Interdepartmental DM committee agreement for MPMO
<u>LOCAL/AREA AGREEMENT BASED OBLIGATIONS TO REVIEW</u>	<u>RELEVANT AGREEMENT/ARRANGEMENT</u>
Construction/maintenance works associated with stream crossings on the Alaska highway	DFO (NEBC) / PWGSC Agreement on the Alaska highway
<u>Non-routine</u> oil and gas development projects in NEBC	DFO /BC Oil and Gas Commission Protocol Agreement on protecting fish habitat and streamlining regulatory processes in NEBC (2007)
Track 2 or 3 projects affecting fish habitat in the Fraser River Estuary and Burrard Inlet	FREMP /BIEAP MOU between DFO/EC/MOE/TC, Metro Vancouver and Port Authorities respecting coordinated management of BIEAP/FREMP
Development and maintenance projects in municipalities with whom DFO has an Environmental Review Committee that represent a potential HADD	MOU's or informal working arrangements between DFO and various municipalities respecting operation of joint Environmental Review Committees (ERC's) and collaborative project reviews
Foreshore development projects in specified East Kootenay Lakes (ie: Windermere, Moyie, Monroe, Columbia, Wasa, Tie/Rosen): a) that require an EA (ie: orange foreshore class)	Management Partnership for various East Kootenay Lakes that involves DFO, MOE, Transport Canada, Regional District of East Kootenay, District of Invermere, Interior Health Authority, Intertribal Fisheries Commission/ various

b) where there is a risk of HADD and either no BMP exists or will not be complied with (yellow foreshore class)	community and rate payers associations
<p>Foreshore development projects in Kootenay Lake:</p> <p>a) that require an EA (ie orange foreshore class)</p> <p>b) where there is a risk of HADD and either no BMP exists or will not be complied with (yellow foreshore class)</p>	Informal Kootenay Lake Management Partnership involving DFO/MOE/Regional District and First Nations (agreement pending)
Foreshore development projects in Slocan Lake that cannot comply with standard BMPs and may cause a HADD	Informal arrangement between DFO/MOE/ and the Slocan Lake Stewardship Society in BC Interior- SE BC
Floodplain bylaw variances submitted by the Regional District of Central Kootenay	Informal arrangement between DFO/MOE and the Regional District of Central Kootenay in BC Interior- SE BC
ILMB tenuring applications and MOE Water Act referrals that require an EA or FA authorization	Informal arrangement between DFO/MOE/ILMB in BC Interior- SE BC
BC Hydro facility exigent operating conditions that will cause a HADD or destruction of fish	Working agreement between BCH and DFO in BC Interior –SE BC
OTHERS ? TO BE IDENTIFIED BY AREAS	OTHERS ? TO BE IDENTIFIED BY AREAS

APPENDIX 4 – ALTERNATE DELIVERY MECHANISMS- these are alternate approaches or management tools that eliminate the need for a DFO review

ALTERNATE DELIVERY MECHANISMS	ENABLING AGREEMENTS/MOU'S or INFORMAL WORKING ARRANGEMENTS	GEOGRAPHIC APPLICABILITY
Project types covered by an Operational Statement	Regional Operational Statements	Entire Pacific Region
Projects in non anadromous fish habitat that do not require an authorization and that another territorial or provincial Fisheries or Environmental Protection agency agrees to review	Canada/Yukon final umbrella agreement (and associated regulations) Informal working agreements with BC MoE regional offices	Yukon Okanogan OTHERS?
Riparian vegetation management and marine foreshore/lakeshore activities undertaken by BC Hydro or BCTC <u>that comply with approved work practices (AWP's)</u>	DFO/BC Hydro/BCTC/BC MOE Protocol Agreement for works in and around water and associated AWP's for: <ul style="list-style-type: none"> Managing Riparian Vegetation Managing certain marine foreshore/lakeshore activities 	Marine foreshores and lakeshores
Marine log dump reactivations or helilog drops <u>that comply with</u> DFO endorsed best practices guidelines	Informal arrangement between DFO, Coastal Forest Products Ass'n and BCTS	Marine areas in BC
Forestry or oil& gas <u>open bottom</u> stream crossing structures that do not a) disturb instream habitat b) encroach on stream	FPC Agreement between MoFR, MOE, MEMPR and DFO to apply the DFO/MOE/MOFR/COFI/OGC Fish Stream Crossing Guidebook	Crown lands in BC

channels or c) cause excessive loss of riparian habitat. Forestry or oil/gas <u>closed bottom</u> structures with a)<6% gradient, b) located on bedrock c) have channel widths <2.5 m and d) are not located in critical or important habitat		
Type 1 (low risk) FREMP/BIEAP projects managed by the Vancouver Port Authority	FREMP/BIEAP/DFO MOU	Fraser River Estuary and Burrard Inlet-Lower Fraser Area
Coal mine developments in the Upper Elk Valley that comply with the conditions in a 5 year mine development agreement	DFO/MOE/Teck Coal Ltd. Upper Elk Valley mine development agreement (pending)	BC Interior SE BC
Foreshore lake development projects on East Kootenay Lakes, Kootenay Lake and Slocan Lake that comply with established shoreline classification and associated management guidelines	East Kootenay Lake Management Partnership Informal Kootenay Lake Management Partnership (agreement pending) Informal arrangement between DFO/MOE and Slocan Lake Stewardship Society	BCInterior SE BC
CP Rail routine maintenance works in SE BC that comply with conditions in a 5 year maintenance works management plan	CP Rail/DFO/MOE Routine Maintenance Works Management Agreement (pending)	BCInterior SE BC
Instream works (Section 9 WA applications) and ILMB tenuring applications that can	Informal DFO/ MoE/ILMB working arrangements in SE BC	BCInterior SE BC

comply with standard BMP's		
ALCAN ROW riparian management projects in North Coast that comply with established DFO BMP's and Standard Operating Practices (SOP's)	Informal arrangement between Alcan and DFO NC	North Coast – between Kemano and Kitimat
Terrasen Gas ROW riparian management projects in the Lower Fraser Area (LFA) that comply with established DFO BMP's outlined in agreement	5 year renewable agreement between DFO and Terrasen Gas	Lower Fraser Area
Lower Fraser River gravel removal activities that comply with conditions in a gravel management plan authorized by DFO	2004 Letter of Agreement between DFO and LWBC	Lower Fraser Area
Local government agricultural ditch maintenance projects in the Lower Fraser Area (LFA) that comply with the conditions in a protocol agreement with DFO	Informal arrangements and protocol agreements between DFO and various local gov'ts in the lower mainland	Lower Fraser Area
Ministry of Transportation and Infrastructure ditching and brushing activities along highways in North Coast that comply with established DFO BMP's	Informal arrangement between MoTH, MoE and DFO in North Coast	North Coast
Instream works authorized or permitted by MOE under Section 9	Informal arrangements between DFO and MOE- typically area based	Throughout BC

July ,2010

of the Water Act that “meet or beat” DFO mitigation requirements		
OTHERS? TO BE IDENTIFIED BY AREAS	OTHERS ? TO BE IDENTIFIED BY AREAS	

TRIAGE SUMMARY SHEET

Project Name:

Triage Date:

Triaged by:

SCORING

RELATIVE RISK:

LEGAL/PROCESS OBLIGATIONS:

SPECIES/CONSERVATION CONCERN:

ESTABLISHED PRIORITY:

TOTAL SCORE =

BIN # =

* BIN ASSIGNMENT

BIN #1- All "Build Canada" infrastructure funded projects and type 1 emergencies

BIN #2- projects scoring 3 in either Relative Risk or Legal/Process obligations

BIN # 3- -projects with a cumulative score of 5-10

BIN # 4- projects with a cumulative score <5