# JOINT REVIEW PANEL HEARING ORDER OH-4-2011 RESPECTING THE ENBRIDGE NORTHERN GATEWAY PROJECT FILE NO: OF-FAC-OIL-N304-2010-01 01

## Fisheries and Oceans Canada:
## Response to the Joint Review Panel's Information Request No. 1 to Fisheries and Oceans Canada

### 1.1 Freshwater Fish and Fish Habitat Risk Assessment – Risk Ranking

**Requester:** Joint Review Panel

**Reference**: Fisheries and Oceans Canada and Canadian Coast Guard Written Evidence, Volume 2 – Part 2 (A2K4S2) (Adobe pages 22 and 23 of 60).

**Preamble:** In the above reference, Fisheries and Oceans Canada (DFO) notes that Northern Gateway has proposed to use a risk management framework, which is based on DFO's Habitat Risk Management Framework, to classify risks. DFO further states that from its perspective, the approach appears to be suitable for most pipeline crossings.

However, DFO further remarks that it has identified some examples where crossings of important anadromous fish habitat have received a lower risk rating using Northern Gateway's framework than DFO would have assigned. In addition, DFO has identified some instances where the proposed crossing method could be reconsidered to better reflect the risk rating.

**Request:** Please provide a list of watercourse crossings with important anadromous fish habitat where DFO would have assigned a higher risk rating than was assigned by Northern Gateway and where DFO thinks the proposed crossing method ought to be reconsidered to better reflect the risk rating. For those crossings listed, indicate the risk rating assigned by DFO along with the justification and the recommended crossing method based on DFO's assigned risk rating.

**Response:** DFO reviews impacts to fish and fish habitat and proposed mitigation measures through the lens of its legislative and policy framework. DFO's Risk Management Framework (RMF) establishes a structured approach to assessing risks to fish and fish habitat and identifying appropriate risk management outcomes and mitigation measures. An aquatic effects assessment, that includes pathways of effects (POE) analysis and consideration of proposed mitigation, is undertaken to identify residual negative effects. Then,

a risk assessment based on the scale of negative effect (extent, duration and intensity) and the sensitivity of fish and fish habitat (species sensitivity, species dependence on habitat, rarity and habitat resiliency) is undertaken to categorize the risk. The appropriate approach to managing risks to fish and fish habitat is based on the risk categorization. For example, where high risks are anticipated DFO may prefer that the Proponent use a method that avoids or reduces the risk such as directional drilling beneath a watercourse to install the pipeline. If low risks are anticipated other methods such as open-cut trenching across the watercourse may be appropriate.

Northern Gateway has proposed a risk management approach which is based on DFO's RMF to evaluate potential risks to fish and fish habitat and suggest appropriate watercourse crossing methods. DFO reviewed Northern Gateway's risk management approach and is generally satisfied with the proposed approach. With respect to Northern Gateway's assessment of particular watercourse crossings, DFO has identified some crossings where we may categorize the risk higher than Northern Gateway's assessment (see examples below). However, DFO notes that Northern Gateway continues to refine the pipeline route and we anticipate that assessment of risk will be an iterative process and, if the project is approved and moves to the regulatory permitting phase, DFO will continue to work with Northern Gateway to determine the appropriate method and mitigation for each watercourse crossing. In DFO's view, Northern Gateway's approach is flexible enough to be updated if new information becomes available.

As DFO has not conducted a complete review of all proposed crossings, we are unable to submit a comprehensive list as requested; however, this work will continue and, should the project be approved, our review will continue into the regulatory permitting phase. While there may be differences in opinion regarding the risk categorization for some proposed watercourse crossings, DFO will continue to work with Northern Gateway to determine the appropriate risk rating and level of mitigation required. DFO is of the view that the risk posed by the project to fish and fish habitat can be managed through appropriate mitigation and compensation measures. Under the current regulatory regime, DFO will ensure that prior to any regulatory approvals, the appropriate mitigation measures to protect fish and fish habitat will be based on the final risk assessment rating that will be determined by DFO.

Example 1) Tributary to the Kitimat River, KP 1158.4 (Rev R), Site 1269

<u>Northern Gateway Rating</u>:
RMF: Low Risk

<u>DFO Rating</u>:
RMF: Medium to High Risk

Rationale: This is a coastal coho salmon spawning stream that is quite short in length. It has several historic culverts in poor repair which are already impacting the reported run of approximately 100 spawning salmon. Works can be completed in the dry as this stream dries up during the summer. DFO is of the opinion that the risk rating is higher than that proposed by Northern Gateway due to the sensitivity of incubating eggs and juveniles of coho salmon to sediment and the importance of riparian vegetation for this type of habitat.

Example 2) Tributary to the Kitimat River, KP 1111.795 (Rev R), Site 1207

Northern Gateway Rating:
RMF: Medium Low Risk

DFO Rating:
RMF: Medium to High Risk

Rationale: In DFO's view the risk rating for this watercourse is higher than that proposed by Northern Gateway because this stream is high value off-river rearing habitat for juvenile salmon such as coho salmon. This type of fish habitat is vulnerable to effects of sedimentation and loss of riparian vegetation.

### 1.2 Species at Risk – Humpback Whale Status

**Requester:** Joint Review Panel

**Reference:** North Coast Cetacean Society Written Evidence, Part 3 – Occurrence of humpback whales (*Megaptera novaeangliae*) in the Confined Channel Assessment Area Between Wright Sound and Caamaño Sound from North Coast Cetacean Society Observations for the period 2004 to 2011 (A2K7R2) (Adobe page 2 of 34)

**Preamble:** According to the above reference, four areas of critical habitat were proposed for humpback whales in coastal British Columbia in the Draft Recovery Strategy released in 2010, including the Confined Channel Assessment Area from Wright Sound to Caamaño Sound. However, humpback whales have recently been re-assessed by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) and were redesignated 'Special Concern' but remain 'Threatened' under the *Species at Risk Act* (SARA). A draft recovery strategy for the humpback whale has been prepared.

It is unclear if humpback whales are still protected as a Schedule 1 status species under the SARA and whether a recovery strategy has been finalized.

**Request:** Please provide an update on the status of humpback whales under SARA and an update on the status of the Final Recovery Plan for the humpback whale.

**Response:** The North Pacific Humpback Whale has been listed as Threatened under the *Species At Risk Act* since 2005. A draft recovery strategy for the species was prepared for consultation purposes in 2010 but it was not finalized. The Committee on the Status of Endangered Wildlife in Canada (COSEWIC) re-assessed the species in 2011 and downgraded its risk status to the Special Concern category. In light of this downgrade, DFO is reviewing next steps with respect to the classification of the species under the *Species At Risk Act* and the status of the recovery strategy.