

March 24, 2006

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**Subject: RISKS OF ENVIRONMENTAL PROCESS MODERNIZATION PLAN**

On February 16, 2006, several British Columbia non-governmental organizations attended an information session provided by Fisheries and Oceans (DFO) habitat staff on the Environmental Process Modernization Plan (EPMP). This letter summarizes the concerns and recommendations of the Pacific Marine Conservation Caucus, in consultation with Sierra Legal Defence Fund, regarding the EPMP consultation process. This letter also summarizes some of our concerns with the EPMP policy itself.

It was made clear by DFO staff that their presentation on February 16, 2006 was an information session only, and not a consultation. To date, EPMP consultation with the B.C. conservation community entails “one-way” communication and a failure to provide documentation necessary for informed input. The DFO staff also made clear that a national consultation process had already occurred, including consultation with various industry groups. Members of the B.C. conservation community were not represented in these consultations.

Our specific concerns with EPMP consultation include:

- We are concerned that due to the stage of implementation and the nature of consultation to date, our comments and concerns will have little influence on this approach, process and associated policy.
- We were not consulted prior to EPMP implementation or given equal status to industry representatives and other non-governmental organizations that do not speak for our interests.
- The online workbook for public input into the EPMP, which closed on March 15, 2006, provided very little opportunity to evaluate issues and express concerns specific to habitat protection.
- The workbook was heavily biased towards the efficiency of the environmental review process for industry and was limited to very restricted questions.
- We are concerned that the lack of direction and definitive plans for future consultations will result in continued EPMP implementation without meaningful input from the conservation sector.
- We see no studies that will demonstrate that this initiative will live up to the DFO claims of achieving better habitat protection, consistency or efficiency.

Although our group will provide additional input on the EPMP policy itself, we can summarize our major concerns as follows:

- 1) reduced ability to hold proponents legally responsible for habitat destruction
- 2) loss of enforcement will and capacity; and
- 3) further departure from ecosystem-based management.

The EPMP management approach, with its use of operational statements and a risk management framework, will reduce the DFO's ability to enforce the *Fisheries Act* against those who violate it. In contrast to a management approach based on robust regulatory oversight, the EPMP seeks to extricate DFO from the "bureaucratic" task of providing guidance on compliance.

We believe that an important part of the DFO's mandate is to ensure proponents act lawfully. From this perspective, two worrisome features of the EPMP are that it does not require proponents even to contact DFO before commencing a work or undertaking, and that the use of operational statements are voluntary.

For example, should a proponent submit an operational statement, received by the DFO without comment, and later in the course of its work cause a HADD, the DFO's ability to hold the proponent legally accountable may be reduced. As a result, the EPMP lessens the likelihood of successful prosecutions of regulatory offenders. Indeed, DFO staff at the information session confirmed that they had considered this issue, but stated that as this defense already existed, the EPMP was not creating new problems. We do not agree with this DFO conclusion and strongly recommend that the DFO should be strengthening its enforcement capacity, rather than reinforcing existing problems.

A reduction in enforcement will and capacity severely undermines any attempt to protect habitat. Habitat policy requires deterrents in the form of effective, clear, and comprehensive regulations with sufficient monitoring and enforcement capacity. The DFO is attempting to implement the EPMP within an environment of dwindling enforcement capacity and greatly reduced commitment to prosecution. The presentations by DFO at the February 16, 2006 meeting gave little indication of the consequences for not complying with the new management framework or operating standards. It is unclear what the consequences are for reported infractions and even less clear how DFO will have the capacity to monitor and identify unreported offences.

The EPMP segregates development activities, habitat and ecosystems for planning, monitoring, and assessment resulting in a very restricted approach to habitat protection. This parceling of habitat assessment is not an ecosystem-based management approach. It risks an increase in the cumulative loss of habitat with reduced capacity to effectively monitor and respond to this loss.

An adequate review of this policy requires further information from the DFO. This includes a detailed breakdown of DFO habitat resources and their allocation from 2001 to 2007, which are relevant to evaluating the potential of any habitat policy. We also require copies of the DFO reports, backgrounders, and research studies used to demonstrate the effectiveness and need for the EPMP. During the 2004 judicial inquiry into missing Fraser River sockeye salmon, DFO staff testified that such reports and studies existed.

Overall, we urge the Minister and the DFO to adopt greater transparency and to provide opportunities for meaningful engagement with the BC conservation community regarding the EPMP. We would like to be able to gauge whether our concerns are being addressed, and to monitor what changes will be made to the EPMP implementation after the information session and future consultation processes.

Sincerely,



Vicky Husband and Craig Orr  
Co-chairs, Pacific Marine Conservation Caucus

cc: Hon. Loyola Hearn, Minister of Fisheries and Oceans  
Hon. Rona Ambrose, Minister of Environment  
Paul Sprout, DFO, Regional Director General (Pacific)  
Paul Macgillivray, DFO, Associate Regional Director General  
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