

LEGAL
SCANNED
APR 02 2019

Habitat Bank Arrangement:

PORT OF VANCOUVER HABITAT BANK

Between

VANCOUVER FRASER PORT AUTHORITY

AND

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Minister of Fisheries and Oceans on behalf of Fisheries and Oceans Canada (“DFO”)

March 29, 2019

PATH Number: 19-HPAC-00125

1. INTRODUCTION

This document sets out the principles of the mutual understanding between **Vancouver Fraser Port Authority (“VFPA”)** and Fisheries and Oceans Canada (“DFO”) (hereafter referred to as “the Participants”) for the **Port of Vancouver Habitat Bank (“Habitat Bank”)**.

WHEREAS:

- a. Fisheries and Oceans Canada (DFO) is responsible for the administration of the *Fisheries Act*, more specifically the fisheries protection provisions including sections 6, 20, 21, 35, 37, and 38 related to the conservation and protection of Canada's marine and freshwater fisheries resources and their habitats from the impact of human activities. The purpose of the fisheries protection provisions, as set out in section 6.1 of the *Fisheries Act*, is to provide for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries;
- b. DFO is responsible for the administration of the *Species at Risk Act* ("SARA") with respect to aquatic species other than those individuals in or on federal lands administered by the Parks Canada Agency and, in that capacity, the Minister of Fisheries and Oceans has powers and duties with respect to protecting aquatic species listed under that Act and providing for their recovery;
- c. The Fisheries Protection Policy Statement's goal is to promote compliance with the *Fisheries Act* in order to contribute to the purpose set out in section 6.1 of the *Fisheries Act*;
- d. This Arrangement does not commit DFO to the authorization of any future work, undertaking or activity requiring an authorization under paragraph 35(2)(b) of the *Fisheries Act*, or permit any future project requiring a permit under sections 73 and 74 of the *Species at Risk Act*. All future projects will be reviewed on their own merit and a decision on whether to authorize or permit will be made independent of the existence of a habitat bank arrangement. This Arrangement, and any related communications between DFO and VFPA do not constitute a representation or commitment of any kind regarding authorization of any future projects by DFO. This Arrangement, and any related communications, moreover does not constitute a commitment that any habitat credits that may be issued will be acceptable in the context of future applications for *Fisheries Act* authorizations or SARA permits.
- e. VFPA is a port authority established by the Government of Canada pursuant to the *Canada Marine Act* and is accountable to the federal Minister of Transport. VFPA has a mandate to facilitate Canada's trade objectives, ensuring goods are moved safely, while protecting the environment and considering local communities. In fulfilling the mandate, VFPA carries out a variety of duties, including infrastructure development to support growth and efficient operations. The Habitat Bank can support such infrastructure development when habitat credits are acceptable in the context of future *Fisheries Act* authorizations or SARA permits.

- f. The Participants entered into a Working Agreement dated July 31, 2012 (“Working Agreement”) relating to the procedures for development and operation of a VFPA-led habitat bank for a five (5) year trial period which was extended by the Participants to March 31, 2019;
- g. VFPA has undertaken several habitat creation and enhancement projects in consultation with DFO pursuant to the Working Agreement, which are included in Annex E (“Existing Projects”); and
- h. This Arrangement will replace the Working Agreement and the Existing Projects will be managed pursuant to this Arrangement.

THEREFORE, the Participants agree to the following arrangement (“Arrangement”).

2. PURPOSE

To support VFPA in fulfilling its mandate (referred to in paragraph e above) by facilitating infrastructure development when habitat credits from the Habitat Bank can be applied to meet future offsetting requirements for such development.

To replace the Working Agreement with this Arrangement and to establish revised principles for the continuation and management of the Habitat Bank by:

- establishing a working relationship between the Participants based on trust, accountability and information sharing;
- establishing a clear understandable Arrangement for managing the Habitat Bank; and
- increasing certainty in the administration of the Habitat Bank.

3. OTHER GENERAL INFORMATION

The activities carried out under this Arrangement will be consistent with:

- *Fisheries Protection Policy Statement* (2013);
- *Fisheries Productivity Investment Policy: A Proponent’s Guide to Offsetting* (2013);
- *Fisheries Protection Program’s Interim Guide to Proponent-led Habitat Banking* (October, 2016);
- any relevant Species at Risk Recovery Strategies and management considerations; and
- any relevant Fisheries Management Objectives.

4. SCOPE

The scope of this Arrangement is limited to the continuation and administration of the Habitat Bank described in Annex A, and including Habitat Banking Projects proposed in accordance with Annex B and the Existing Projects (described in Annex E). For the purposes of this Arrangement, a “Habitat Banking Project” shall mean a “conservation project” as defined in *Fisheries Protection Program’s Interim Guide to Proponent-led Habitat Banking* (October, 2016).

5. ROLES AND RESPONSIBILITIES

The roles and responsibilities of the VFPA are:

- Jointly managing the performance of the Arrangement with DFO;
- Identifying, designing, constructing, monitoring, maintaining, and protecting Habitat Banking Project sites;
- Meeting all other applicable federal, territorial, provincial and municipal requirements that apply to Habitat Banking Projects;
- Reporting on performance of Habitat Banking Projects;
- Accurately maintaining a copy of the habitat credit ledger; and
- Preparing and submitting Progress Reports for the Arrangement.

The roles and responsibilities of DFO are:

- Jointly managing the performance of the Arrangement with VFPA;
- Reviewing, providing advice and confirming Habitat Banking Project proposals;
- Reviewing Progress Reports, validating habitat credit balances in the habitat credit ledger, and processing habitat credit ledger transactions;
- Verifying the reported results of Habitat Banking Project performance in the Progress Reports;
- When appropriate, carrying out direct monitoring (i.e., a site visit to gather and analyse samples or information in order to directly verify compliance and effectiveness) and/or carrying out indirect monitoring (i.e., an assessment of information provided in Progress Reports to verify compliance and effectiveness) of Habitat Banking Project sites; and
- Reviewing and processing Progress Reports of the Arrangement.

The Participants shall fulfill their responsibilities under this Arrangement in accordance with the provisions of federal, provincial and territorial laws and regulations that govern their activities. Should a Participant not be able to perform a function under this Arrangement, the affected Participant will immediately contact the other signatories of this Arrangement so that early resolution can be reached.

6. MANAGEMENT PROVISIONS

This Arrangement establishes the following management provisions for the administration of the Habitat Bank:

- The accountability lies with the office of signatories of the Arrangement: Director, Container Terminal Construction, Vancouver Fraser Port Authority and Regional Director, Ecosystems Management, DFO Pacific Region.
- The day to day administration of the Arrangement will be carried out by: Manager, Infrastructure Habitat Development, Vancouver Fraser Port Authority and Manager, Integrated Planning, Fish and Fish Habitat Protection Program, DFO Pacific Region.

7. ADMINISTRATION OF THE HABITAT BANK ARRANGEMENT

- Specific details related to the principles of the administration and operation of the Habitat Bank are included in Annex A;
- Habitat Banking Projects that are proposed for development are to be submitted for review and confirmation by DFO using the “Project Confirmation” template set out in Annex B;
- Habitat credits held within the Habitat Bank shall be tracked using the “Habitat Credit Ledger” template and frequency set out in and described in Annex C;
- Progress Reports shall be prepared and submitted annually in accordance with the requirements of Annex D;
- Existing Projects that were either constructed or proposed for construction under the terms of the Working Agreement are identified in Annex E; and
- Indigenous consultation and engagement related to the use of habitat credits is described in Annex F.

8. SHARING OF INFORMATION

While this Arrangement is in effect and at all times thereafter, each of DFO and VFPA and any officers, employees or agents of each of them shall treat all information, data, documents, reports and materials acquired or to which access have been given in the course of, or incidental to, the performance of this Arrangement as confidential, subject to the federal *Access to Information Act* and the *Privacy Act*. With the exception of the Arrangement, the annexes to the Arrangement and annual Progress Reports, which VFPA may disclose from time to time, the Participants shall not disclose or permit to be disclosed such information, data, documents, reports and materials, unless:

- the Participants agree to the disclosure;
- the disclosure is part of the application and review process of VFPA’s Project and Environmental Review for a proposed Habitat Banking Project, which would include disclosure of project-specific information, engagement information for

public/stakeholder and Indigenous groups and technical content, and the posting of on-line information;

- the disclosure is part of the application and review process by DFO for a proposed development project that would utilize habitat banking credits as offsetting, which would include disclosure of project-specific information, engagement information for public/stakeholder and Indigenous groups and technical content, and the posting of on-line information;
- the disclosure is part of an application and review process of other regulatory agencies (such as Environment and Climate Change Canada for Disposal at Sea permit or exemption) for a proposed Habitat Banking Project, which would include disclosure only as required by such agencies;
- the disclosure relates to consultation and engagement with Indigenous groups as part of the Indigenous Consultation and Engagement Process set out in Annex G;
- the disclosure is to a third party as part of the Habitat Bank Administration as described in Annex A;
- the disclosure is required by law;
- the information was obtained from the public; or
- the information is available to the public.

9. CONSULTATION AND ENGAGEMENT

The Participants will collaborate on an approach to meaningfully engage and consult with Indigenous groups having regard to the process being undertaken by VFPA's Habitat Enhancement Program for the development of Habitat Banking Projects and the involvement of Indigenous groups that is described in Annex G.

10. DIFFERENCES IN INTERPRETATION AND APPLICATION

The Participants will endeavor to resolve issues regarding the implementation of this Arrangement in a timely manner using mechanisms available to the Participants. Where an issue remains unresolved, the pre-eminent jurisdiction responsible for the matter under consideration will make the final determination and seek concurrence from Director, Container Terminal Construction, Vancouver Fraser Port Authority and Regional Director, Ecosystems Management, DFO Pacific Region.

11. PROGRESS REPORTS

The VFPA will prepare progress reports using the form described in Annex D ("Progress Report") on the achievements and challenges encountered during the reporting period of this Arrangement as it relates to the purposes identified in section 2 of this Arrangement.

The Progress Report should be submitted within ninety (90) calendar days from the conclusion of each year. A year will be considered to run from January 1 to December 31.

The Progress Report will be submitted to the Office of signatories of the Arrangement, Director, Container Terminal Construction, Vancouver Fraser Port Authority and Regional Director, Ecosystems Management, DFO Pacific Region, for their concurrence.

All Progress Reports will conform to the requirements set out in Annex D.

12. REVIEW

At the end of each five (5) year period during which this Arrangement is in effect, the Regional Director, Ecosystems Management, DFO Pacific Region, may establish a review team consisting of Manager, Infrastructure Habitat Development, Vancouver Fraser Port Authority and Manager, Integrated Planning, Fish and Fish Habitat Protection Program, DFO Pacific Region, or an appropriately qualified and mutually agreed to third party to review the effectiveness of activities under this Arrangement. This review team will report to the Regional Director, Ecosystems Management, DFO Pacific Region, within six (6) months of being established.

13. AMENDMENT

The Arrangement may be amended at any time in writing and by mutual consent of the Participants. An amendment will be confirmed by an exchange of letters, signed by the Participants, setting out the amendment and its effective date.

14. FINANCIAL ARRANGEMENT

This Arrangement will not impose any additional financial responsibilities on the Participants, except that each Participant will be responsible for the staff and funding costs it incurs in its own interests, related to the support of the Arrangement.

15. DURATION, WITHDRAWAL AND TERMINATION

This Arrangement is in effect from the date first written above for a period of fifteen (15) years. VFPA can request renewal of the Arrangement for an additional defined term (of no less than five (5) years) by providing one year's written notice to the other Participant. If this Arrangement is not renewed at the expiration of the term or a renewal, and provided that VFPA is not in breach of this Arrangement, the Participants will continue to apply the terms of this Arrangement to all Habitat Banking Projects that are either deposited in the Habitat Bank or have been confirmed by DFO in accordance with Annex B.

16. LEGAL DISCLAIMER

This Arrangement is an expression of the mutual intentions of the Participants and is not legally binding or enforceable against them.

17. NOTICE

All notices to be given under this Arrangement shall be in writing and shall be sent by prepaid registered mail or electronic transmission addressed to the Party entitled to receive the same, or delivered to such party as follows:

- if to VFPA:

Vancouver Fraser Port Authority (VFPA)
100 The Pointe
999 Canada Place
Vancouver, British Columbia
V6C 3T4

Attention: Director, Container Terminal Construction
E-mail:

with a copy to:

Attention: Director, Legal Services
E-mail:

- if to DFO:

Fisheries and Oceans Canada (DFO)
Pacific Region, Ecosystems Management Branch
Suite 200 – 401 Burrard Street
Vancouver, BC
V6C 3S4

Attention: Regional Director
E-mail:

18. GENERAL

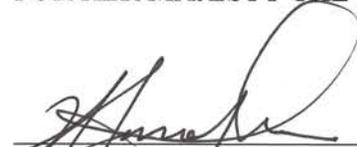
VFPA is entering into this Arrangement on its own behalf and not as agent of Her Majesty in Right of Canada.

EFFECTIVE DATE AND SIGNATURE

This Arrangement has been signed by the Regional Director of DFO Pacific Region of Fisheries and Oceans on behalf of Her Majesty the Queen in Right of Canada and by the VFPA on the dates noted below.

SIGNED IN THE PRESENCE OF:

FOR HER MAJESTY THE QUEEN IN RIGHT OF CANADA

fe. 

Cheryl Webb
Regional Director
Ecosystems Management
DFO Pacific Region



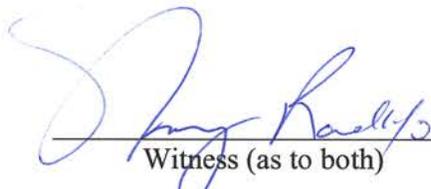
Witness

Date **MAR 29 2019**

FOR VANCOUVER FRASER PORT AUTHORITY



Robin Silvester
President and CEO



Witness (as to both)



Mark Gustafson
Corporate Secretary

Date **MAR 26 2019**

This Arrangement comes into effect on the date that both Participants have signed above.

ANNEX A

**HABITAT BANK DESCRIPTION AND THE PRINCIPLES FOR THE MANAGEMENT
OF THE PORT OF VANCOUVER HABITAT BANK**

ANNEX A:

HABITAT BANK DESCRIPTION AND THE PRINCIPLES FOR THE MANAGEMENT OF THE PORT OF VANCOUVER HABITAT BANK

Information Required	Description
<p>Habitat Bank Location (“Service Area”)</p>	<p>The Service Area of the Habitat Bank will include Habitat Banking Projects situated geographically within the lands and waters managed by VFPA and within the navigational jurisdiction of VFPA pursuant to its Letters Patent, as amended from time to time. The Service Area includes the Fraser River Estuary and its tributaries, Burrard Inlet, the Strait of Georgia and its associated inlets (See Figure 1.0 below) and will include other areas as established from time to time as mutually agreed to by the Participants.</p> <p>Figure 1.0 Service Area of the Habitat Bank</p> 
<p>Habitat Bank Administration</p>	<p>The Habitat Bank is a long-term initiative, comprised of Habitat Banking Projects, that is used to proactively create, restore or enhance fish habitat to benefit fish and wildlife species. Consistent with VFPA’s mandate, this enables VFPA to balance future infrastructure development opportunities with a healthy environment.</p> <p><u>Site Selection:</u> Habitat Banking Projects for the Habitat Bank will generally be selected based on the following considerations and criteria:</p>

- (a) Need: Locations characterized by low productive capacity for species and stocks of interest or species at risk will be considered as a priority for the Habitat Bank. The intent is to develop or improve habitat capacity in the Service Area where habitat is needed and in support of applicable DFO policies.
- (b) Habitat Productivity: Emphasis will be placed on creation of high value habitat types that support a large number of ecological services and species functions (e.g., eelgrass beds and low marshes). The value of productivity will be assessed in the context of “need” (see (a) above).
- (c) Site location: Sites for the Habitat Bank will be selected based on their proximity to potential development areas with significant or rare ecological habitats or where onsite habitat compensation opportunities may be limited.
- (d) Feasibility and cost: Coastal zone processes, river hydraulics, biological productivity and ecological functioning are amongst the factors that will be used to determine the feasibility of habitat creation. In some areas it may not be possible to achieve stable self-functioning habitat due to ongoing influences of physical processes. Further, some habitat creation options may be possible but only at extreme high cost. Consideration may be given if these habitat types are critical for endangered or threatened species and the habitat credit applied to the Habitat Bank recognizes the increased cost of development.

Through regular liaison meetings between DFO and VFPA representatives, potential Habitat Banking Projects will be identified and discussed.

DFO’s confirmation of the appropriateness of a proposed Habitat Banking Project for inclusion in the Habitat Bank will be achieved through submitting the project for review and confirmation by DFO using the “Project Confirmation” template set out in Annex B.

Habitat Credits:

Habitat credit valuation will be established specifically for each Habitat Banking Project. This valuation will include the unit of measure and the value of the credits to be deposited in the Habitat Bank. A description of the approach and the analysis performed will be included in the preparation of the “Project Confirmation” using the template set out in Annex B.

Habitat Banking Projects will be recorded as a deposit into the Habitat Bank on the Habitat Credit Ledger upon completion of construction of the Habitat Banking Project using the template set out in Annex C.

	<p>The actual productive value of a particular Habitat Banking Project will be determined immediately prior to its proposed use as credit to offset a development project.</p> <p>VFPA shall, either through ownership, lease, licence or other agreement, ensure that a Habitat Banking Project site is protected at least until the withdrawal of the habitat credits from the Bank that are associated with the Habitat Banking Project site.</p> <p><u>Third Parties:</u></p> <p>VFPA may develop Habitat Banking Projects for inclusion in the Habitat Bank in collaboration with third parties. Once included in the Habitat Bank, such Habitat Banking Projects will be treated in the same manner as other Habitat Banking Projects that have been placed into the Habitat Bank.</p> <p>VFPA may enter into agreements with third parties to allow withdrawal of habitat credits, as defined by this Arrangement, when such an agreement facilitates development activities that support VFPA in fulfilling its mandate.</p>
<p>Bank Establishment Date</p>	<p>July 31, 2012 for a five (5) year trial period under the terms of the Working Agreement, which was executed on September 10, 2012, and which was extended by the Participants to March 31, 2019, and which was replaced by this Arrangement for a term of fifteen (15) years from the date this Arrangement comes into effect.</p>

ANNEX B

FORM OF PROJECT CONFIRMATION

The following document template (titled Project Confirmation) will be used to identify and confirm that a proposed Habitat Banking Project is appropriate and confirmed for development and deposit in the Habitat Bank.



PORT of
vancouver

Habitat Enhancement Program



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Project Confirmation

PROJECT NAME:

Terminology used:

- “**Arrangement**” refers to the arrangement between Fisheries and Oceans Canada and Vancouver Fraser Port Authority for the management and administration of the Vancouver Fraser Port Authority Habitat Bank
- “**DFO**” refers to Fisheries and Oceans Canada
- “**FPIP**” refers to *Fisheries Productivity Investment Policy: A Proponent’s Guide to Offsetting (2013)*
- “**VFPA**” refers to Vancouver Fraser Port Authority
- “**Project**” refers to the proposed _____
- “**QEP**” refers to a Qualified Environmental Professional

Preamble:

In accordance with the Arrangement, this Project Confirmation will be used to confirm that:

- VFPA consulted and negotiated with DFO on the suitability of the above-referenced Project for habitat banking purposes.
- DFO agrees, in principle, that the above-referenced Project would be acceptable as fish habitat as identified herein.
- DFO agrees that the identified type of fish habitat and the approximate quantity of fish habitat would be suitable for habitat banking.
- The Project meets the terms of the Arrangement with regard to need, fish habitat, productivity, site location, feasibility/cost, and ownership/tenure.
- DFO acknowledges that VFPA has developed the project concept and will move to final design as identified in the attached drawings.

This Project Confirmation is used to support the conditions and requirements of the Arrangement and does not alter or modify the Arrangement in any manner. This Project Confirmation will also be used to confirm that the Project, if constructed as proposed, meets the objectives of the FPIP. An assisted assessment has determined that a DFO regulatory review pursuant to the Fisheries Act is not required for the Project. This assessment was conducted by a QEP in accordance with guidance from DFO’s Projects Near Water web site and DFO’s “Science Advice for Managing Risk and Uncertainty in Operational Decisions of the Fisheries Protection Program” (2014). As would be expected for a viable habitat enhancement opportunity, this assessment concluded that the Project will not result in Serious Harm to fish that contribute to commercial, recreational or Aboriginal (CRA) fisheries.

As the Project proceeds, VFPA will maintain responsibility to ensure that the Project has undergone appropriate reviews and assessments, including those mandated by applicable environmental assessment legislation (e.g., Species at Risk Act, if applicable) and any other VFPA-mandated reviews and assessments.

Project Overview:	
<ul style="list-style-type: none"> • <i>Description of the proposed project and how the proposed project will result in the creation of fish habitat that will provide long-term benefits for targeted species of fish such as salmon, aquatic species at risk or other species that may utilize the project area.</i> • <i>Description and valuation of the ecological functions that the proposed project will include.</i> • <i>Brief description of the proposed construction activities, including how they will be undertaken to avoid and mitigate any impacts to fish and fish habitat.</i> • <i>Brief description of the proposed timing for project completion, including post-construction monitoring.</i> 	
Water feature name:	
Location of Works	
Regional district/ land use authority:	
City/municipality:	
Lat./Long.	
Property ownership:	
Description of Pre-Construction Values	
<ul style="list-style-type: none"> • <i>Description of pre-construction habitat values and conditions, including biophysical attributes</i> • <i>Description of pre-construction use of the area, including site history as appropriate</i> 	
Description of Proposed Activities	
<ul style="list-style-type: none"> • <i>Detailed description of construction activities and design approach</i> • <i>Includes attachment of design drawings, and proposed habitat area for construction</i> • <i>Description of construction methodology and detailed mitigation measures</i> 	
Overall work schedule:	
Least risk work window:	
Potential Habitat Gains and Anticipated Affected Areas	

- *Description of habitat gains, and anticipated affected habitat, table format*

Habitat Type	Potential Habitat Gain (m ²)	Anticipated Affected Habitat (m ²)	Comments
<i>X Habitat Type</i>			
Habitat Gains and Affected Habitat			

Fish Productivity Investment Policy Considerations

- *Description and high-level summary of how the proposed project is expected to comply with FPIP objectives, based on project characteristics, ecology of relevant fisheries species, fisheries management objectives, and any local restoration priorities.*
- *This includes a review of readily available online information including DFO fisheries management plans and other documents as required*
- *Description and rationale for how the proposed project meets the following 4 Principles of the FPIP:*
 - **Principle 1:** *Offsetting measures must support fisheries management objectives or local restoration priorities.*
 - *Rationale:*
 - **Principle 2:** *Benefits from offsetting measures must balance Project impacts.*
 - *Rationale:*
 - **Principle 3:** *Offsetting measures must provide additional benefits to the fishery.*
 - *Rationale:*
 - **Principle 4:** *Offsetting measures must generate self-sustaining benefits over the long-term.*
 - *Rationale:*

Post Construction Monitoring Plan

- *An as-built survey will be provided to document and confirm the size of the created habitat, following construction.*
- *VFPA will ensure that post-construction monitoring is undertaken in accordance with standard DFO requirements to confirm that created fish habitats are functioning as intended.*
- *A Post-Construction Monitoring Plan for the Habitat Enhancement Program has been created to outline monitoring requirements for habitat banking project sites.*
- *Monitoring will include assessments of site stability, proper physical function, planting success, and achievement of the desired biological objectives.*
- *VFPA to provide an estimate of predicted time for the vegetation at the site to become well established*

Attachments

- *Design Drawings (attachment)*

Signed on behalf of Vancouver Fraser Port Authority:

Habitat Enhancement Program
Vancouver Fraser Port Authority

Date: _____

ANNEX C

HABITAT CREDIT LEDGER

The following template shall be used to record and track the credits associated with each Habitat Banking Project that has been deposited in the Habitat Bank. The completed Habitat Credit Ledger will be submitted to DFO at the following frequency:

- with each Annual Report; and
- following a transaction in the Habitat Bank (withdrawal or deposit of credits).

ANNEX D

FORM OF PROGRESS REPORTS

The following reports will be used to document and communicate the status of the Habitat Bank on an annual basis:

- Annual Report for VFPA's Habitat Bank; and
- Annual Habitat Monitoring Report for VFPA's Habitat Bank.

Each report will be submitted to DFO on annual basis and shall include the detail as provided in the following Outline of Content.

ANNUAL REPORT FOR VFPA'S HABITAT BANK

– Outline of Content

<u>SECTION</u>	<u>CONTENT</u>
1. Table of Contents	
2. Terminology Used	<ul style="list-style-type: none">• Descriptions of terminology used in the report
3. Executive Summary	<ul style="list-style-type: none">• Identification of purpose of Annual Report• Statement of commitment between Participants for a working relationship built on trust, accountability and information sharing• Overview of annual transactions and current credits
4. Introduction	<ul style="list-style-type: none">• Background on the Habitat Bank• Acknowledgement of reporting requirements under the terms of the Arrangement
5. Administration of the Habitat Bank	<ul style="list-style-type: none">• Tracking processes and responsibilities• Activities started/completed in Reporting Period• Annual Review• VFPA and DFO Liaison Activities• Achievements in Reporting Period
6. Credits in the Habitat Bank	<ul style="list-style-type: none">• Summary of the credits in the Habitat Bank and the transaction that were performed in the reporting year
7. General Ledger	<ul style="list-style-type: none">• Overview of the General Ledger
8. Habitat Balance Sheet	<ul style="list-style-type: none">• Overview of the Habitat Balance Sheet
9. Anticipated Program for 20XX [Next Year]	<ul style="list-style-type: none">• Projects Currently under Construction• Priority Projects for 20XX
10. Management Issues and Opportunities	<ul style="list-style-type: none">• Challenges and issues encountered• Obstacles• Potential remedial measures for implementation next year
11. Indigenous Engagement Activities	<ul style="list-style-type: none">• Summary of Indigenous engagement activities performed within the reporting year on Habitat Banking Projects

<u>ANNUAL REPORT FOR VFPA'S HABITAT BANK</u>	
– Outline of Content	
<u>SECTION</u>	<u>CONTENT</u>
12. Public and Key Stakeholder Engagement Activities	<ul style="list-style-type: none"> • Summary of public and key stakeholder engagement activities performed within the reporting year on Habitat Banking Projects
<u>Appendices</u>	
Appendix A	Summary of VFPA and DFO Meetings in the Reporting Year
Appendix B	As-Built Reports
Appendix C	Credit Transaction Reports
Appendix D	Map of Sites in the Habitat Bank
Appendix E	General Ledger
Appendix F	Habitat Balance Sheet
Appendix G	Map of Sites Proposed for Next Year

ANNUAL HABITAT MONITORING REPORT FOR VFPA'S HABITAT BANK

– Outline of Content

<u>SECTION</u>	<u>CONTENT</u>
1. Terminology Used	<ul style="list-style-type: none">• Descriptions of terminology used in the report
2. Introduction	<ul style="list-style-type: none">• Background of the Habitat Bank• Acknowledgement of reporting requirements under the terms of the Arrangement
3. Types of Monitoring	<ul style="list-style-type: none">• Description of the various types of monitoring that is used for the administration of the Habitat Bank
4. 20XX Monitoring Results	<ul style="list-style-type: none">• Overview of monitoring results for each Habitat Banking Project (Detailed reports are included in Appendix A)
5. Next Year's Habitat Monitoring Report	<ul style="list-style-type: none">• Overview of next year's anticipated habitat monitoring
<u>Appendices</u>	
Appendix A	Habitat Banking Project Monitoring Reports
Appendix B	Monitoring Status and Proposed Monitoring Schedule

ANNEX E

EXISTING PROJECTS

The Habitat Banking Projects that are identified herein represent the status of the Habitat Bank and projects planned for the Habitat Bank as of the Effective Date of this Arrangement.

Table 1 – Habitat Banking Projects currently deposited in the Habitat Bank

Table 2 – Habitat Banking Projects that have been proposed by VFPA and accepted by DFO as appropriate for development and deposit into the Habitat Bank

Table 1.0 – Habitat Banking Projects Deposited to VFPA Habitat Bank

No.	SITE	LOCATION	BANKED AREA (m ²)	STATUS
1.	Salt Marsh Restoration – TFN (3.1 & 3.2)	Delta (Tsawwassen)	6,635 m ² (salt marsh)	<ul style="list-style-type: none"> • Work is complete • Monitoring is in progress
2.	Salt Marsh Restoration - Boundary Bay (3.3, 3.4 & 3.5)	Delta (Boundary Bay)	56,357 m ² (salt marsh)	<ul style="list-style-type: none"> • Work is complete • Monitoring is in progress
3.	Glenrose Tidal Marsh	Delta	10,778 m ² (tidal freshwater marsh)	<ul style="list-style-type: none"> • Work is complete • Monitoring is in progress
4.	Riverfront Park Tidal Marsh	Vancouver	1,481 m ² (brackish marsh)	<ul style="list-style-type: none"> • Work is complete • Monitoring is in progress
5.	Gladstone Park Tidal Marsh	Vancouver	3,181 m ² (brackish marsh)	<ul style="list-style-type: none"> • Work is complete • Monitoring is in progress
6.	Timberland Basin Habitat	Surrey	1,146 m ² / 2,777 m ² (tidal freshwater marsh / tidal freshwater mudflat)	<ul style="list-style-type: none"> • Work is complete • Monitoring is in progress
7.	New Brighton Park Shoreline Habitat Restoration Project	Vancouver	9,872 m ² (salt marsh, marine tidal channel & mudflat, cobble/boulder beach, and marine riparian)	<ul style="list-style-type: none"> • Work is complete • Monitoring is in progress

Table 2.0 – Habitat Banking Projects Proposed by VFPA and accepted by DFO as appropriate for the Habitat Bank

No.	SITE	LOCATION	APPROX. GROSS AREA (ha.)	STATUS
1.	Cates Landing Habitat Restoration	North Vancouver	~1.0 ha	• Complete
2.	Maplewood Marine Restoration Project	North Vancouver	~7.0 ha	• Permitting and approvals in progress
3.	Tsawwassen Eelgrass Project	Delta	~4.3 ha	• Permitting and approvals in progress
4.	South Arm Jetty Tidal Marsh Project	Richmond	~44.0 ha	• Permitting and approvals in progress
5.	Westham Island / Canoe Pass Tidal Marsh Project	Ladner	~4.0 ha	• Permitting and approvals in progress
6.	McDonald Tidal Marsh Project	Richmond	~2.8 ha	• Permitting and approvals in progress
7.	Point Grey Tidal Marsh Project	Vancouver	~41.0 ha	• To be advanced in future years
8.	Steveston Island Tidal Marsh Project	Richmond (Steveston)	~6.5 ha	• To be advanced in future years

ANNEX F

INDIGENOUS CONSULTATION AND ENGAGEMENT: USE OF HABITAT CREDITS TO MEET OFFSETTING REQUIREMENTS OF A *FISHERIES ACT* AUTHORIZATION

Consultation with Indigenous peoples is required when Fisheries and Oceans Canada (DFO) makes a regulatory decision that may adversely impact potential or established Aboriginal or treaty rights, Indigenous groups and their related interests. Under the fisheries protection provisions of the *Fisheries Act*, a regulatory decision occurs when DFO contemplates the decision to authorize a work, undertaking or activity under section 35(2)(b) of the *Fisheries Act*. Indigenous consultation will normally take place after DFO has received an Application for Authorization and determined that the information requirements set out in the *Applications for Authorization* under Paragraph 35(2)(b) of the *Fisheries Act Regulations* have been met.

DFO will consult on the work, undertaking or activity being authorized under section 35(2)(b) of the *Fisheries Act* and any other aspects of the Authorization that have the potential to adversely impact potential or established Aboriginal or treaty rights, and related interests. The goal of these consultations will be to identify measures to avoid, minimise, or if required accommodate for, potential impacts of the work, undertaking or activity on the rights or interests of Indigenous peoples through mitigation and offsetting to be incorporated into the Authorization.

As the purpose of utilizing habitat banking credits is to meet offsetting requirements of an Authorization issued under section 35(2)(b) of the *Fisheries Act*, the proposed use of habitat banking credits is subject to Indigenous consultation.

ANNEX G

INDIGENOUS CONSULTATION AND ENGAGEMENT: HABITAT BANKING PROJECT DEVELOPMENT BY HEP

Overview and Purpose

Indigenous consultation and engagement is a key element for the successful delivery of Habitat Banking Projects undertaken by VFPA's Habitat Enhancement Program (HEP). This Annex describes the process implemented by HEP for developing Habitat Banking Projects and identifies key points during the process for input and involvement by Indigenous groups. HEP's consultation and engagement with Indigenous groups aims to identify and address project-related impacts, to design and implement appropriate mitigation measures, and to explore opportunities for Indigenous involvement such as participation in field studies and/or employment, training and contracting. Subject to the discretion and direction of applicable regulatory agencies, including VFPA, HEP also aims to undertake consultation with Indigenous groups in accordance with the requirements of regulatory processes that are applicable to the Habitat Banking Project (such as VFPA's Project and Environmental Review Process).

Habitat Banking Project Development Process

The development of Habitat Banking Projects is achieved through six basic project management phases that are used to guide and control the project from start to finish.

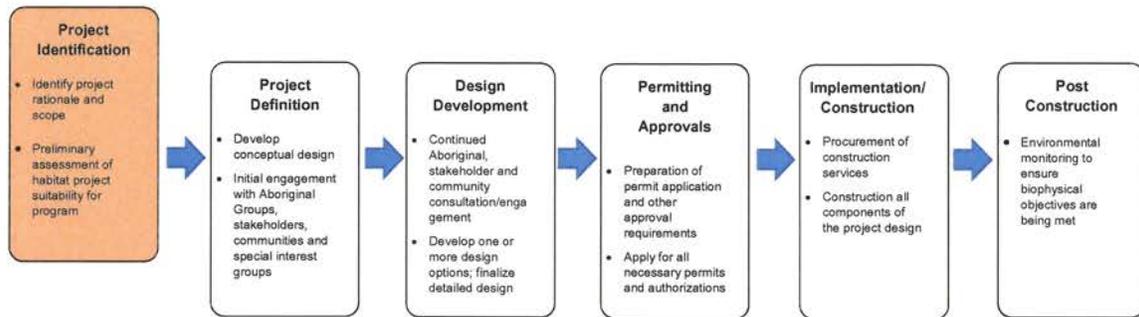
Commencing with the identification of a potential project, the process provides for the structured development and advancement of all required components required for project delivery.

- Phase 1 (**Project Identification**) - The “idea” or the vision of what could be achieved.
- Phase 2 (**Project Definition**) - What are the project objectives? Constraints?
- Phase 3 (**Design Development**) - How will the project objectives be achieved?
- Phase 4 (**Permitting and Approvals**) - Obtaining formal permission to perform the work.
- Phase 5 (**Implementation/Construction**) - Construction of the habitat project.
- Phase 6 (**Post Construction**) - Ensuring long-term success of the habitat project.

The illustration below depicts these six key project management phases and provides the key tasks associated with each.



Phase 1 - Habitat Banking Project Identification

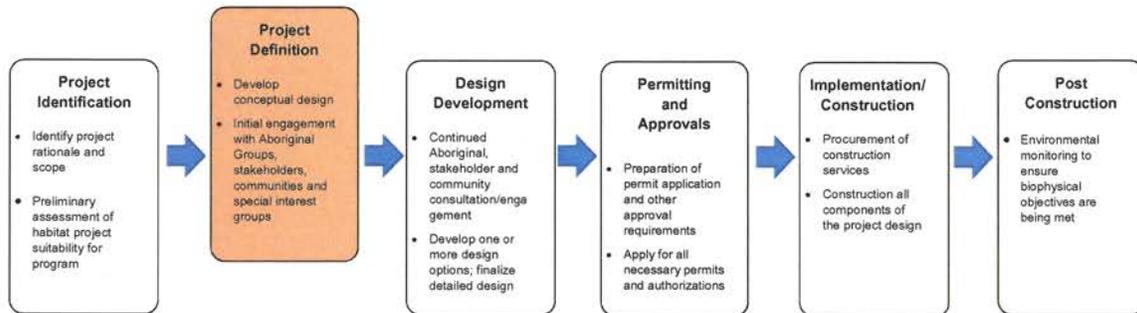


The identification of potential Habitat Banking Projects is a critical component of the project delivery process. Considerations include habitat need, habitat productivity, feasibility, cost, land tenure, DFO confirmation and Indigenous matters.

Indigenous Consultation and Engagement

- *HEP seeks input from Indigenous groups on identification of potential habitat enhancement sites*
- *HEP seeks input from Indigenous groups on Habitat Banking Projects identified by others*
- *Indigenous groups share available traditional knowledge, information and studies*

Phase 2 - Habitat Banking Project Definition

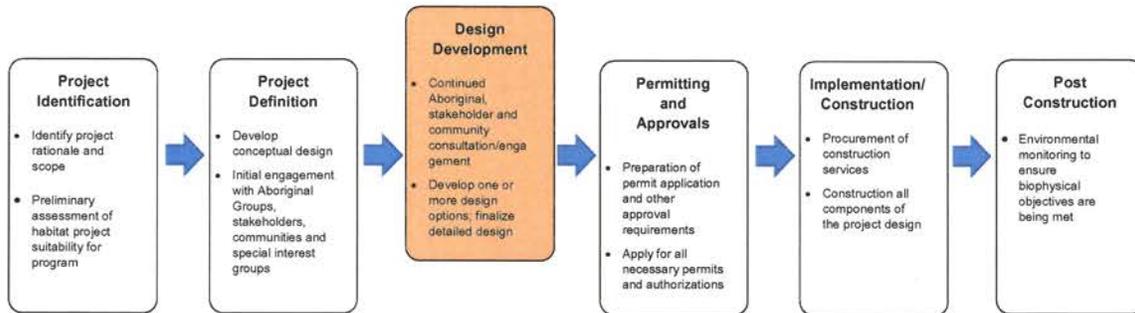


The development of conceptual designs is key in defining what a Habitat Banking Project could include. Using these concept designs, initial engagement and consultation on specific project features can commence.

Indigenous Consultation and Engagement

- *HEP consults Indigenous groups on preferred engagement activities for project (e.g., Aboriginal Technical Design Committee)*
- *HEP consults Indigenous groups on project concept*
- *HEP identifies potential habitat values (i.e., credit estimates) that could be created and engages with interested Indigenous Groups*
- *Indigenous groups share Traditional Knowledge with HEP*
- *HEP identifies opportunity for involving Indigenous groups in field studies and assessments*
- *HEP commences planning for Indigenous involvement throughout project (e.g., contracting, employment and training opportunities)*

Phase 3 - Design Development

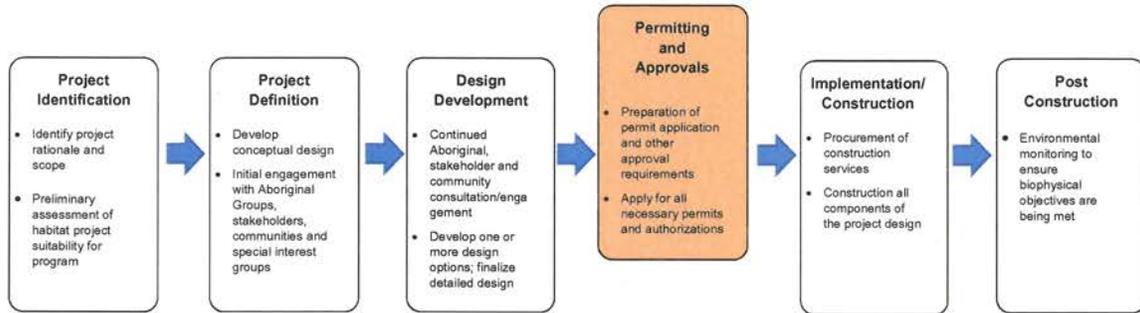


In the design phase, one or more designs are developed and evaluated. Through an iterative design process, a final design is selected and is refined to include all details necessary for construction.

Indigenous Consultation and Engagement

- *HEP consults Indigenous groups on the design options*
- *HEP considers Indigenous feedback and refines design of project where appropriate (including selection of plant species)*
- *Where required, HEP undertakes further consultation with Indigenous groups on the design*
- *HEP finalizes the design*
- *HEP shares final design with Indigenous groups*
- *HEP confirms habitat values (i.e., credits) and consults with Indigenous groups*
- *HEP obtains DFO confirmation of appropriateness of habitat project for the Habitat Enhancement Program*
- *HEP plans for continued Indigenous involvement in subsequent phases*

Phase 4 - Permitting and Approvals

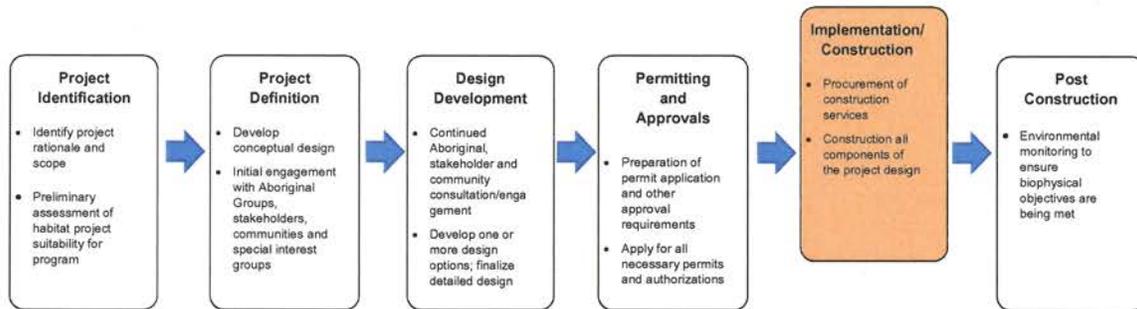


Permits and approvals that are required must be addressed on a project-by-project basis as regulatory requirements and land ownership can vary significantly.

Indigenous Consultation and Engagement

- *HEP engages with Indigenous groups in relation to permits and approvals*
- *HEP develops a summary of permits and approvals required and shares with Indigenous groups*
- *HEP seeks Indigenous input and support on permit applications*
- *HEP notifies Indigenous groups on submission of permit applications*
- *Regulators and permitting authorities may undertake Indigenous consultation*
- *HEP plans for continued Indigenous involvement in subsequent phases*

Phase 5 - Implementation/Construction



The Habitat Banking Project takes shape during the Implementation/Construction Phase.

Indigenous Consultation and Engagement

- *HEP identifies approach to procurement and determines opportunities for Indigenous involvement/benefits*
- *HEP monitors conditions of approval/permits and any commitments to Indigenous groups*
- *HEP continues to keep Indigenous groups updated on progress of construction (e.g., sharing of construction monitoring reports)*
- *HEP plans for continued Indigenous involvement in Post Construction Phase*

Phase 6 - Post Construction



Indigenous Consultation and Engagement

- *HEP considers opportunities for enhanced integration of Indigenous input and identification of priorities into planning for post construction monitoring*
- *HEP shares Post Construction Monitoring Plan with Indigenous groups*
- *Potential contracting opportunities for Indigenous groups (e.g., maintenance, monitoring)*
- *HEP explores opportunities for enhanced sharing of information (e.g., data collection such as potential DNA analysis, fish use data etc.)*
- *HEP engages Indigenous groups regarding other types of reporting that the HEP can share that communicates project benefits and information of importance to Indigenous communities*