



Memorandum – Amendment To Risk Assessment Table (Fisheries Act Item)

Date: March 15, 2022 **Project No.:** 300054639.0000
Project Name: Lake Erie Connector Project - Due Diligence Review
Client Name: Six Nations of the Grand River Development Corporation (SNGRDC)
To: Nicole Kohoko
From: Cory Jones

In the Revised Final Submission to SNGRDC of our due diligence review of the Lake Erie Connector Project, Table i (Executive Summary) and the comprehensive Table 6: Summary of Re-Assessment of Risk Categorization, contained an item relating to Regulatory and Approvals Process; Permits and Approvals – Fisheries Act, that was carried through from the initial assessment to the Final Report as a “Medium Risk” item.

The identified gap which led to the original Medium Risk assessment stated:

Written confirmation, through records of correspondence with DFO to clearly confirm that no permitting/approvals under the new Fisheries Act are required by the Proponent seems to be missing from documentation.

Following this assessment, ITC Lake Erie provided further information regarding the Fisheries Act requirements and the Canada Energy Regulator (CER) process as it pertained to this project. Namely:

The CER is responsible for assessing potential impacts to fisheries from proposed CER regulated pipeline and power line applications. The CER has an agreement to refer applicants to DFO for work activities that fall within critical habitat for species at risk. Review of the critical habitat identified in the DFO's Aquatic species at risk map, indicates that the LEC does not cross any critical habitat, and therefore there is no basis for referral by LEC to the DFO regional office of any request under the new Fisheries Act. The Project work as proposed occurs outside of the current distribution of Silver Chub, although it falls at the eastern edge of the historical distribution of Silver Chub. The HDD installation of the HVDC cables beneath the shoreline would avoid disturbing shoreline and shallow (0-5 metres) water fish habitat, including habitat that is potentially suitable for Silver Chub and other spring spawners. The CER Election Certificate does not include or note any requirements related to Fisheries Act Authorization

(FAA) or permitting under SARA. In the CER Reasons for Decision on the LEC Project, the CER Board was of the view that the Project is not expected to result in effects to aquatic SAR.

The CER Election Certificate and conditions of approval do include various conditions that address the mitigation of potential effects on fish and fish habitat which include:

- Condition 11, HDD and Contingency Plan;*
- Condition 13, Blasted in-Water Excavation and Backfill Material;*
- Condition 19, Adherence to In-Water Restricted Activity Timing Windows;*
- Condition 20, EPP (filing of final updated EPP); and*
- Condition 26, Qualified Aquatic Specialist.*

When the EPP is filed under Condition 20 noted above, the CER will have the opportunity to determine if there are any further matters to refer to DFO.

Neegan Burnside retained some concerns regarding the impacts to the project given the nature of the work understood to be completed, so while the explanation reduced some of the concerns, the item remained at a Medium Risk categorization.

Agreement to Change Area of Concern to a Low Risk

In a subsequent video conference meeting, Janine Ralph of HDR was able to further articulate the process by which this portion of the project would take place and provide further assurances to minimize the potential project risk. As a result of this discussion, it was agreed to lower the identified Risk to a low risk status, as well as include the following further information to Table i (Reason for Risk, addition underlined)

Neegan Burnside acknowledges that the Canada Energy Regulator (CER) has a Memorandum of Understanding with the Fisheries and Oceans Canada, and previously assessed impacts to fisheries finding that the project was not expected to result in effects to aquatic SAR. The LEC project, including the area of the project (1.6 km) where bedrock will need to be blasted/trenched, does not cross critical fish habitat. There are conditions of the CER approval that address mitigation of potential effects on fish and fish habitat, which will be addressed within the final environmental protection plan (EPP) for the Project. However, since the CER decision was issued, no correspondence is available to confirm no Harmful Alteration, Disruption or Destruction (HADD) of fish habitat according to the Department of Fisheries and Oceans Canada during blasting, trenching and the excavation of 1.6 km of lakebed in bedrock, and that no requirements under the New Fisheries Act (2019) apply to this Project.

In addition, ITC also requested the following addition to the proposed remedy as a response (addition underlined)

SNGRDC may wish to ask the Proponent to confirm there will be no HADD of fish habitat during blasting, trenching and excavation of 1.6 km of lakebed and to confirm no requirements under the New Fisheries Act (2019) apply to this Project.

When the updated final Environmental Protection Plan is filed with the CER, ITC will request that the CER confirm, in writing, that there will be no HADD of fish habitat for the portion of the cable installation in bedrock, and that no requirements under the new Fisheries Act (2019) apply to this Project.

Given the assurance and confidence in the process these further discussions and additions to the narrative of the risk have made, we are comfortable in reducing the identified Fisheries Act item in Table i and Table 6 from a Medium Risk to a Low Risk item.

cj:

cc: John Heathers, SNGRDC
Jennifer Vandermeer, Neegan Burnside Ltd.

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