

Lax Kw'alaams Aquatic Habitat Offsetting Policy 2023



PREAMBLE

Lax Kw'alaams relies on our lands, waters, and features for our identity, culture, and food. As Lax Kw'alaams relies on these lands, waters and features we maintain the right to defend our existence. This existence relies on ecosystem services, production of food, and the cultural and spiritual services that the lands, waters, and features provide. The lands, waters, and features in our Territory are to be protected in a manner that aligns with the values and needs of First Nations Peoples as dictated by our Laws (Ayaawx) and supported by UNDRIP and Canadian case law.

OBJECTIVES

The objectives are:

- a. To require adequate offsetting procedures which are guided by the Indigenous knowledge, and Laws (Ayaawx) of Lax Kw'alaams alongside proven and agreed upon science.
- b. To encourage proponents, developers and institutions operating within Lax Kw'alaams Territory to work in a collaborative and consistent manner in addressing offsetting concerns of Lax Kw'alaams.
- c. To eliminate the use of artificial rock reef construction within any waterbody in the Lax Kw'alaams territory and waters without the explicit and written consent of Lax Kw'alaams.
- d. To eliminate the transplant of eelgrass without further scientific studies indicating that damage to eelgrass donor beds is not occurring.
- e. Habitat offsetting projects must meet Lax Kw'alaams section 35.1 Rights to ensure access for food, social and ceremonial purposes is protected and ensured.
- f. To codify the Indigenous knowledge of ecosystem services and habitat values that are most relevant to Lax Kw'alaams people now and in the future, which includes but is not limited to seasonal fluctuations in the natural environment (refer to Appendix A).

PRINCIPALS

Habitat offsetting is a last resort approach when it comes to project planning and development and must be guided by principles that reflect both western science and Indigenous knowledge. All proponents must display that the hierarchy of steps is followed; habitat offsetting policies without the hierarchy of steps will be rejected (refer to Hierarchy of Steps).

- a) They must take into account the maintenance of Lax Kw'alaams needs and future livelihood and connection to the natural environment, assessing all resources which may be impacted by the project and the offset.
- b) Access is a key requirement for exercising Rights and maintaining the identity of Lax Kw'alaams, refer to Appendix C.
- c) They must promote the resilience of natural resources and encourage sustainable use of healthy and well-managed ecosystems and salvage as much of the ecosystem as possible (refer to Appendix B)

- d) They must represent a cost dis-incentive against further degradation of our territory by development and poor regulatory decision-making.
- e) They must begin to repair the damage done to Lax Kw'alaams' Lands and Waters.
- f) They must target measurable ecosystem functions enhanced in accordance with Lax Kw'alaams values and Laws (Ayaawx).
- g) Proponents must evaluate all species in the environment and Lax Kw'alaams will determine which keystone species are important for salvage or preservation.
- h) Any offsets must be in close proximity and be available for access by Lax Kw'alaams members.
- i) Habitat offsets are to have agreed upon timespans for habitat offsetting recovery.
- j) Each hectare of wetland, marine, or aquatic habitat loss or disruption will be valued at \$50,000 per year in perpetuity for when habitat is lost or disrupted, this will be put into an offsetting bank.
- k) The reduction of any habitat for the creation or mitigation of a project's impact to the environment is not acceptable to Lax Kw'alaams.
- l) Offsets must be of a like-for-like nature. For example impacts to abalone habitat must be replaced with abalone habitat.

Rock reef creation in the past has not had added value or been additive to Lax Kw'alaams values or Rights and has diminished Lax Kw'alaams resources and Rights, including Sec 35(1) Rights. Lax Kw'alaams does not support rock reef creation. The act of rock reef creation through obscuring other types of functioning habitat is not value added or additive. Lax Kw'alaams values and the fisheries objectives for a specific location will drive the goals in the hierarchy of steps and types of offsetting. In rare circumstances rock reef creation may be a good choice for offsetting after considering the entire Hierarchy of Steps as outlined above and taking into account the existing ecosystem using Indigenous knowledge and science.

HIERARCHY OF STEPS

In project design there is a hierarchy of steps to follow in order to minimize harm to the environment. Proponents are expected to follow and show due diligence in following the hierarchy of steps:

1. Design & Engage - Proponents are to design and engage Lax Kw'alaams on all projects. These projects should be designed not to harm the environment, based on agreed upon measurements of impact.
2. Avoidance - Choose routes and methods that minimize harm to the environment and Lax Kw'alaams values.
3. Mitigation - Where costs and engineering allow mitigation should be done to minimize harm to ecosystems.
4. Accommodation / Compensation - Where mitigation is inadequate to resolve the harm to the environment, Indigenous values, and or impacts to the Rights of Lax Kw'alaams; accommodation or compensation may be acceptable.
5. Offsetting - is done to enable projects that have significant residual negative environmental effects. Offsetting is for otherwise un-approvable projects since a finding of significant residual negative effects tends to eliminate the possibility of approval by Lax Kw'alaams or any Minister.

Dependant on Lax Kw'alaams values and Indigenous knowledge certain habitats within Lax Kw'alaams territory may carry a higher value for the people, precipitating the need for more creative ways of aquatic habitat offsetting. This will require that the hierarchy of steps from design to offsetting is done with participation and approval from Lax Kw'alaams Band.

DEFINITIONS

For the purposes of this document an artificial rock reef is a rock reef which is intentionally constructed to offset development impacts or construction activities.

Artificial rock reef

Rocks dumped or placed into the waters, salt or brackish, which is done for the purpose of development offsetting aquatic habitat.

Collaboration

Collaboration with Lax Kw'alaams must involve Lax Kw'alaams in project design, scientific research, studies, and directives in an open manner which defines project goals including broad monetary goals (not including proprietary information) from the project, and respects Lax Kw'alaams Rights, values and Laws (Ayaawx). Please refer to the Government of Canada's guidance on collaboration: <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/practitioners-guide-impact-assessment-act/collaboration-indigenous-peoples-ia.html>

GUIDELINES

Guidelines will be made available if it is agreed that offsetting will be required.

This policy is a living document and will be updated as needed.

APPENDICES

Appendix A

Ecosystem services:

Water filtration,
Carbon sequestration,
Archaeological preservation,
Human food,
Filtration and sequestration of contaminants,
Maintenance of ecosystem stability and continuity,
Spiritual value,
Medicinal harvesting

Appendix B

Salvage:

Species of importance to Lax Kw'alaams:

Refer to the Lax Kw'alaams Valued Species List, due to the confidential nature of this document applicable portions of the list will be shared with proponents.

Species of importance to the ecosystem:

Keystone species such as those that maintain the fundamental processes of environment, such as Rockweed, proponents must evaluate all species in the environment and Lax Kw'alaams will determine which Keystone species are important for salvage or preservation.