

**INTERDEPARTMENTAL MEMORANDUM OF UNDERSTANDING
BETWEEN
FISHERIES AND OCEANS CANADA, ENVIRONMENT CANADA
AND
HEALTH CANADA REGARDING COOPERATION IN THE IMPLEMENTATION OF
POLLUTION PREVENTION PROVISIONS OF THE *FISHERIES ACT***

This Memorandum of Understanding (MOU)

BETWEEN FISHERIES AND OCEANS CANADA (hereinafter referred to as DFO represented by the Deputy Minister of Fisheries and Oceans)

AND ENVIRONMENT CANADA (hereinafter referred to as EC represented by the Deputy Minister of Environment)

AND HEALTH CANADA (hereinafter referred to as HC represented by the Deputy Minister of Health)

1. INTRODUCTION

WHEREAS the Designation Order (DO) made under section 43.2 of the *Fisheries Act* designates the Minister of the Environment as the Minister responsible for the administration and enforcement of subsections 36 (3) to (6) of the *Fisheries Act* for all purposes and subject matters, except for the following for which the administration and enforcement remains with the Minister of Fisheries and Oceans: (a) the construction, operation, modification and decommissioning of, and other activity in relation to, an aquaculture facility, and any resulting effects of those activities on the waters frequented by fish; and b) the control or eradication of any aquatic invasive species or aquatic species that constitute a pest to the fisheries;

AND WHEREAS the Pollution Prevention Provisions of the *Fisheries Act* are intended to control the deposit of deleterious substances affecting fish, fish habitat or the use of fish and are therefore of interest to Fisheries and Oceans Canada, Environment Canada and Health Canada in fulfilling their respective mandates;

AND WHEREAS the Participants agree that collaboration and timely sharing of information is central to the efficient implementation of this MOU;

Therefore, the Participants

have agreed to the following understanding:

2. PURPOSE

The purpose of this MOU is to foster effective cooperation and communication among the Participants in carrying out operational responsibilities under this MOU, all in support of the nationally consistent and efficient administration and enforcement of the Pollution Prevention Provisions of the *Fisheries Act*.

3. SCOPE

This MOU applies to the administration and enforcement of the Pollution Prevention Provisions of the *Fisheries Act*.

4. OPERATIONAL ACTIVITIES AND RESPONSIBILITIES

(1) Participants will carry out operational activities and responsibilities within the scope of this MOU pertaining to the following areas: (a) enforcement, (b) science, (c) mining, (d) notifications of unauthorized deposits, and other areas as may be necessary for the efficient implementation of this MOU.

(2) Participants undertake to provide timely notification and initiate appropriate consultation whenever the proposed activities of one Participant could directly affect the activities and responsibilities of the others.

(3) To support Participants in carrying out their operational activities and responsibilities, the Participants shall jointly establish Detailed Implementation Plans and/or Procedures for enforcement, science, and mining.

4.1. Enforcement Responsibilities

(1) Environment Canada and Fisheries and Oceans Canada will collaborate to ensure the coordinated administration and enforcement of the *Fisheries Act* Pollution Prevention Provisions in a transparent, fair, predictable, and consistent manner based on sound science and risk-based principles and in accordance with any Detailed Implementation Plan or Procedures established under paragraphs 4.1 (2), 4.3(2) and 4.5 of this MOU.

(2) Environment Canada, Fisheries and Oceans Canada, and Health Canada will develop a Detailed Implementation Plan for enforcement activities, addressing in particular roles and responsibilities during investigations and prosecutions, including provision of appropriate information, expert testimony, facilities, personnel and material resources.

(3) Environment Canada, Fisheries and Oceans Canada, and Health Canada will work together to ensure that Fishery Officers, Inspectors, and Guardians have the necessary training and designation to carry out their powers, duties and functions.

4.2. Science

(1) Environment Canada, Fisheries and Oceans Canada, and Health Canada will cooperate in the sharing of scientific information relevant to the administration and enforcement of the Pollution Prevention Provisions of the *Fisheries Act*.

(2) Participants will collaborate in the provision of expert advice and other science activities needed to assess risks, monitor and support the development of mitigation tools related to the administration and enforcement of the Pollution Prevention Provisions of the *Fisheries Act*.

(3) With respect to aquaculture specifically, Environment Canada, Fisheries and Oceans Canada, and Health Canada will establish a 3-year science-based research and advisory process to develop and examine options, as well as make a recommendation for cost-effective, risk-based, post-deposit monitoring and remedial actions for drugs and pesticides, which may be incorporated into Fisheries and Oceans' *Aquaculture Activities Regulations* and/or its related standards. Environment Canada, Fisheries and Oceans Canada, and Health Canada will develop a Detailed Implementation Plan to establish the interdepartmental process and to direct the work and deliverables of the group.

4.3. Mining

(1) Environment Canada is responsible for the administration and enforcement of the *Metal Mining Effluent Regulations* (MMER) including recommending amendments to the Governor in Council that provide for authorizing the deposit of waste rock or effluent into Tailings Impoundment Areas under section 5.

(2) Environment Canada and Fisheries and Oceans will develop a Detailed Implementation Plan and/or Procedures on reviews related to proposed Tailings Impoundment Areas subject to sections 5 and 27.1 of the MMER. Until such an Implementation Plan has been finalized, EC's and DFO's roles and responsibilities with respect to Reviews under the MMER shall continue as outlined in DFO's "Interim Guidance on Coordination with Environment Canada on Reviews under the *Metal Mining Effluent Regulations*" (April 2014).

4.4. Unauthorized Deposits

(1) Environment Canada¹ and Fisheries and Oceans are each responsible to receive written reports and verbal notifications related to unauthorized deposits of deleterious substances in relation to their respective subject-matters under the Designation Order.

(2) Environment Canada and Fisheries and Oceans both have inspectors and fishery officers designated with authority for taking or directing corrective measures in the event of an unauthorized deposit of deleterious substances in relation to their respective subject-matters.

4.5. Other Operational Activities/Responsibilities

In addition to the Detailed Implementation Plans and/or Procedures described under paragraphs 4.2(3) and 4.3(2) of this MOU, the Participants may develop other Detailed Implementation Plans and/or Procedures with respect to any statutory amendments to the Pollution Prevention Provisions of the *Fisheries Act*, or for other operational activities or responsibilities as may be needed to support the efficient implementation of this MOU.

¹ Environment Canada has designated specific individuals to receive reports under the *Deposit Out of the Normal Course of Events Notification Regulations*.

5. GOVERNANCE

- (1) An Executive Committee comprised of Deputy Ministers of the participating departments shall be struck.
- (2) The chair of the Executive Committee will serve for a one-year term, and this role will rotate among the three members beginning with Fisheries and Oceans. The Executive Committee is to review progress under this MOU, provide direction, receive reports, resolve disputes and make amendments to this MOU as they see fit.
- (3) The Executive Committee will meet within one year of the signature of this MOU and then at least annually thereafter.
- (4) The Executive Committee shall be supported by an Advisory Committee comprised of Assistant Deputy Ministers, or equivalent, from the participating departments reflective of the activities under this MOU, not to exceed six members, with no more than two members from any one participating department.
- (5) The Advisory Committee shall meet at least once a year with a chair selected from the Advisory Committee members on a rotating basis. The chair of the Advisory Committee will serve for a one-year term, and shall be an Assistant Deputy Minister, or equivalent, from the same department as the chair of the Executive Committee.
- (6) The Executive Committee and Advisory Committee shall be supported by officials in the participating departments as appropriate.

6. DETAILED IMPLEMENTATION PLANS/PROCEDURES

- (1) Participants shall establish Implementation Committees for the development and oversight of each Detailed Implementation Plan or Procedure for the activities as identified in this MOU or other areas in accordance with any Detailed Implementation Plan or Procedures established under paragraph 4.5 of this MOU.
- (2) Each Implementation Committee shall meet at least once a year, or as required, for the efficient implementation of its Detailed Implementation Plans or Procedures.
- (3) All Detailed Implementation Plans and/or Procedures, and subsequent amendments to them, must be reviewed and approved by the Executive Committee on the recommendation of the Advisory Committee before they may be put into effect.

7. PROGRESS REPORTING

The Advisory Committee shall report annually to the Executive Committee regarding progress under this MOU, after consultation with each implementation Committee.

8. REPORT TO PARLIAMENT

Environment Canada and Fisheries and Oceans will collaborate in the production, under section 42.1 of the *Fisheries Act*, of a report to Parliament on the administration and enforcement of the Pollution Prevention Provisions of the Act.

9. INTERPRETATION/DISPUTE RESOLUTION

(1) Prior to engaging the Executive Committee, disputes regarding the interpretation of this MOU or any impasse in its application shall be resolved using all efforts reasonable.

(2) In the event of a conflict between the MOU and any Detailed Implementation Plans and/or Procedures made pursuant to it, this MOU shall prevail.

10. REVIEW

Participants shall conduct a review of this MOU along with any associated Detailed Implementation Plans and/or Procedures within 5 years of the MOU's coming into force, and every 5 years subsequent.

11. AMENDMENT

This MOU may be modified at the request of any of the Participants, subject to the approval of the Executive Committee.

The Executive Committee may make amendments to this MOU as they see fit.

12. FINANCIAL ARRANGEMENTS

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

13. DURATION AND TERMINATION

(1) Upon coming into force, this MOU replaces the 1985 MOU between DFO and EC and nullifies the following sub-agreement:

- *The Health Canada, Environment Canada, and Fisheries and Oceans Canada Interdepartmental Agreement on the Regulation and use of Pest Control Products in Aquaculture (2009).*

(2) Any other sub-agreements or arrangements made under or subject to the 1985 MOU between DFO and EC will stay in place until the relevant Detailed Implementation Plans and/or Procedures have been approved and are in force. In the event of an inconsistency between an existing agreement or arrangement and the terms of the Designation Order or this MOU, the Designation Order shall prevail. For the purpose of interpretation/dispute resolution paragraph 9 of this MOU shall apply.

(3) This MOU, along with associated Detailed Implementation Plans and/or Procedures, may be terminated with 180 days written notification by any Participant, as represented by their Deputy

Minister, to the other Participants.

14. PUBLICATION OF THE MOU

The MOU will be published as part of Canada's Action Plan on Open Government.

15. CONTACT INFORMATION

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Carolyn Blain, (819) 420-7680

Director General, Aquaculture Management Directorate, Fisheries and Oceans Canada
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A/Director General, Environmental Assessment Directorate, HC Pest Management Regulatory Agency
Scott Kirby, (613) 736-3980

16. DEFINITIONS/GLOSSARY

"Aquaculture" means the cultivation of fish as defined in the *Fisheries Act*.

"Aquaculture facility" means the physical structures, conveyances (including vessels, boats, and barges) and floating and anchored equipment used in the cultivation of fish. This includes land-based components of aquaculture, as well as hatcheries and net cleaning facilities.

"Advisory Committee" means the interdepartmental Assistant Deputy Minister-level committee established in support of the Executive Committee as described in section 5 of this MOU.

"Designation Order" means the *Order Designating the Minister of the Environment as the Minister Responsible for the Administration and Enforcement of Subsections 36(3) to (6) of the Fisheries Act, SI/2014-21*.

"Executive Committee" means the interdepartmental Deputy Minister-level committee established for the oversight of this MOU as described in section 5.

"Implementation Committee" means an interdepartmental committee established for the purposes of developing and administering a Detailed Implementation Plan and/or Procedures as described in section 6 of this MOU.

"Detailed Implementation Plan and/or Procedures" means a document developed by an Implementation Committee as required by the participants and necessary for the efficient implementation of this MOU as described in sections 4 and 6 of this MOU.

"Participants" means Fisheries and Oceans Canada, Environment Canada and Health Canada and is used synonymously with the term "participating departments" in this MOU.

"Pest" means an animal, a plant or other organism that is injurious, noxious or troublesome, whether directly or indirectly, and an injurious, noxious or troublesome condition or organic function of an animal, a plant or other organism.

"Pollution Prevention Provisions" means subsections 36(3) to (6) of the *Fisheries Act* and all other provisions of the Act listed in section 3 of the Designation Order.

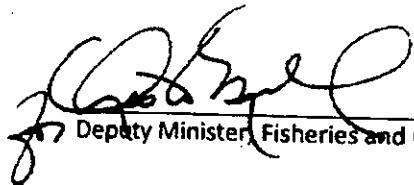
"Tailings Impoundment Area" means a water body referred to in the *Metal Mining Effluent Regulations*.

17. DISCLAIMER

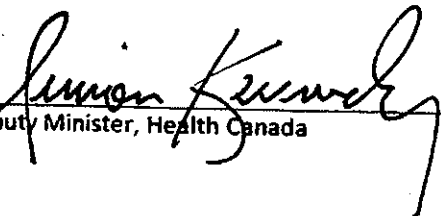
This MOU is not intended to be legally binding, and is not enforceable in any domestic or international court or tribunal.

18. EFFECTIVE DATE AND SIGNATURES

This MOU comes into force with the final signature of approval and will remain in force unless it is terminated.


Deputy Minister, Fisheries and Oceans Canada JUL 13 2015
Date


Deputy Minister, Environment Canada OCT 23 2015
Date


Deputy Minister, Health Canada JUL 30 2015
Date

