

MEMORANDUM OF UNDERSTANDING

BETWEEN

Fisheries and Oceans Canada

AND

Canadian Nuclear Safety Commission

FOR

Cooperation and Administration of the *Fisheries Act*
and the *Species at Risk Act* Related to Regulating
Nuclear Materials and Energy Developments

December 16, 2013

Memorandum of Understanding

BETWEEN:

Fisheries and Oceans Canada ("DFO")

AND

The Canadian Nuclear Safety Commission ("CNSC")

1. Introduction

Whereas:

- (a) the *Constitution Act, 1867* assigns to the federal government exclusive jurisdiction for sea coast and inland fisheries and the *Fisheries Act* sets out the powers and duties of the Minister of Fisheries and Oceans with respect to the conservation and protection of fish and fish habitat, specifically the fisheries protection and pollution prevention provisions;
- (b) Fisheries and Oceans Canada ("DFO") is responsible for the administration of the *Fisheries Act*, 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;
- (c) the *Species at Risk Act* ("SARA") identifies the Minister of Fisheries and Oceans as the competent minister 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;
- (d) the *Nuclear Safety and Control Act*, assigns powers and duties to the Canadian Nuclear Safety Commission ("CNSC") to regulate the use of nuclear energy and materials to protect the health, safety and security of Canadians and the environment; and to respect Canada's international commitments on the peaceful use of nuclear energy;
- (e) DFO and the CNSC have respective responsibilities for regulatory reviews and approvals and environmental protection related to Class I nuclear facilities and uranium mines and mills and as such are committed to fostering and developing a collaborative approach to fish and fish habitat protection that is consistent in all parts of Canada;
- (f) the Government of Canada, as represented by DFO and CNSC, is committed to undertaking a process of early, effective and meaningful engagement and consultation concerning contemplated Crown conduct that may adversely affect established or potential Aboriginal and treaty rights in relation to regulatory decisions under the *Fisheries Act* (e.g., issuance of Authorizations), SARA (e.g., issuance of permits) and/or the *Nuclear Safety and Control Act* (e.g., issuance of licences for nuclear facilities); and

- (g) DFO and the CNSC are committed to improve the efficiency and effectiveness of the review of applications for licences for Class I nuclear facilities and uranium mines and mills through coordination of regulatory activities under the *Nuclear Safety and Control Act*, the *Fisheries Act*, SARA, as well as Aboriginal consultations.

Therefore, DFO and the CNSC (the “Parties”) agree to the following Memorandum of Understanding (“MOU”):

2. Guiding Principles

- (a) The Parties will use the provisions of this MOU to help support the Government of Canada’s regulatory process improvement objectives through coordination of work activities to :
 - (i) Facilitate effective and efficient use of government resources in order that regulatory decisions are made in a timely manner by applying a one-project one-review approach;
 - (ii) Promote clarity and consistency of the regulatory decision making process; and
 - (iii) Ensure responsibilities for mitigation, monitoring and reporting, compliance and enforcement, follow-up monitoring, and Aboriginal consultation are addressed.
- (b) Decisions with respect to the issuance of paragraph 35(2)(b) *Fisheries Act* Authorizations remains DFO’s responsibility until and unless the CNSC is prescribed as a person or entity for granting such authorizations, in accordance with paragraph 35(2)(c), pursuant to regulations made by the Governor in Council under subparagraph 43(1)(i.3).
- (c) Conservation and protection of fish and fish habitat, and listed aquatic species at risk and their critical habitat, will be managed in accordance with the DFO’s regulatory and policy frameworks for the application of the fisheries protection provisions of the *Fisheries Act* and SARA respectively.

3. PURPOSE

- (a) The Parties will work together in the development of work plans and protocols to improve the efficiency and effectiveness of regulatory reviews of applications and decision-making related to the roles and responsibilities of each Party for:
 - (i) Reviewing and assessing applications to the CNSC for Class I nuclear facilities and uranium mines and mills for potential impacts to fish and fish habitat, including listed aquatic species and their critical habitat under the SARA;
 - (ii) Ensuring that CNSC’s assessment of applications considers the intent and requirements of the *Nuclear Safety and Control Act*, the *Fisheries Act*, and the *Species at Risk Act*;

- (iii) Coordinating of Aboriginal consultation activities; and
 - (iv) Auditing and reporting on the discussions and actions taken under this MOU.
- (b) This MOU will clarify and facilitate the implementation of CNSC's role related to application of DFO's fisheries protection policies and operational approaches to Class I nuclear facilities and uranium mines and mills.
 - (c) Work coordinated under this MOU will enable DFO and CNSC to propose regulations that would prescribe the CNSC as a person or entity who would be authorized to issue *Fisheries Act* Authorizations.
 - (d) Subsection 36(3) of the *Fisheries Act* related to deposit of deleterious substances into fish bearing waters is administered by the Minister of the Environment and is outside the scope of this MOU.

4. WORK TO BE COORDINATED

- (a) The Parties will establish, wherever possible, clear, comprehensive and harmonized policies, standards, guidelines, procedures and/or protocols to guide and measure regulatory performance related to:
 - (i) Reviewing applications for Class I nuclear facilities and uranium mines and mills for potential impacts to fish and fish habitat;
 - (ii) Developing and improving technical capacity through training and other knowledge transfer mechanisms for assessing impacts to fish and fish habitat including the development of protocols and engagement with Practitioners from DFO Fisheries Protection and Species at Risk Programs;
 - (iii) Sharing the results of new methods, measures and/or best practices for the protection of fish and fish habitat;
 - (iv) Verifying compliance with fish and fish habitat protection conditions including the sharing of monitoring and/or auditing information obtained from actions taken pursuant to this agreement;
 - (v) Coordinating of Aboriginal consultation activities to address federal Crown obligations for Aboriginal consultation;
 - (vi) Communicating with the Major Projects Management Office, northern review boards, and Northern Projects Management Office; and
- (b) The Parties will establish a working group consisting of principal contacts to oversee the development and implementation of the Terms of Reference set out in Annex 1 and the Annual Review under paragraph 6 of the MOU.
- (c) **The CNSC agrees to:**
 - (i) Conduct reviews of licence applications for potential impacts to fish and fish habitats, to ensure that the assessment process considers the intent and requirements of the *Fisheries Act*, SARA, and their associated regulatory and policy frameworks;
 - (ii) Further develop their expertise and provide expert advice to the Proponent for identifying impacts to fish and fish habitat, and include

as conditions in its licence, any appropriate measures to avoid, mitigate, or offset those impacts;

- (iii) Inform DFO in a timely manner of all applications where a *Fisheries Act* Authorization is anticipated and to recommend for inclusion therein any appropriate conditions to avoid, mitigate, or offset impacts to fish and fish habitat, and any monitoring and reporting requirements;
- (iv) Inform DFO of any non-compliance with a condition relating to fish and fish habitat in an CNSC licence;
- (v) Contact DFO for review and advice if potential impacts to a listed aquatic species at risk or its critical habitat are identified in any application;
- (vi) Work within the "whole of government" approach to manage the federal Crown's duty to consult with Aboriginal peoples; and
- (vii) Provide an annual report to DFO, including:
 - a. actions and decisions made under this MOU, with a list of all licence applications and particulars pertaining to them, including the status, location, name of applicant, work proposed, anticipated effects on fish and fish habitat, and conditions required; and
 - b. results of CNSC compliance program applied to approved licences, any corrective actions required, and any anticipated results of the corrective actions.

(d) DFO agrees to:

- i) Review, in a timely manner, all licence applications referred to DFO that CNSC determines are likely to require a *Fisheries Act* Authorization and issue an authorization where appropriate;
- ii) Support the "whole of government" approach to Aboriginal consultation and when required, undertake specific Aboriginal consultation activities related to the proposed issuance of *Fisheries Act* Authorizations;
- iii) Inform CNSC, where appropriate, of any review or investigation by DFO of a non-compliance incident under DFO's jurisdiction that may have occurred at a facility or project regulated by CNSC;
- iv) Assist in developing the professional and technical capacity of the CNSC by sharing knowledge, electronic training modules and participate in the development of appropriate standards, tools, frameworks and operational guidance materials as it is developed for application of the fisheries protection provisions of the *Fisheries Act* and specific provisions of SARA; and
- v) Review applications referred to DFO for potential impacts to a listed aquatic species at risk or their critical habitat as identified through the CNSC assessment process and provide advice or approval according to the relevant provisions of SARA or any relevant regulations.

5. FINANCIAL ARRANGEMENTS

This MOU will not impose any financial responsibilities on the Parties, except that each will be responsible for their respective costs incurred related to the implementation of the MOU.

6. ANNUAL REVIEW OF MOU

- (a) The Parties will meet together at least once each fiscal year that this MOU is in force to review its content and assess the effectiveness of activities under this MOU. This meeting will include discussion of improvements to the procedures for referring and assessing licence applications that have the potential to harm fish or modify fish habitat.
- (b) Proposals for changes to this MOU can be made at any time, and appropriate amendments made as may be agreed upon.

7. LEGAL LIABILITY

- (a) This MOU is an expression of the mutual intentions of the Parties and is not legally binding on them or enforceable against them.
- (b) It is agreed and acknowledged that any enforcement action under the *Fisheries Act* or the *Species at Risk Act* is at the sole discretion of DFO and may be referred to the Attorney General of Canada for consideration for prosecution.
- (c) If there is any conflict or inconsistency between this MOU and any obligations under any Act of Parliament, including but not limited to the *Nuclear Safety and Control Act*, *Fisheries Act* and *SARA*, the obligations under the Act of Parliament shall prevail.

8. PRINCIPAL CONTACTS

Correspondence relating to this MOU is to be sent to the respective points of contact designated below. Either Party may unilaterally revise its point of contact by written notice to the other Party at any time.

(a) For DFO:

Christine Loth-Bown
Director General
Ecosystem Programs Policy
Fisheries and Oceans Canada
200 Kent Street,
Ottawa, Ontario K1A 0E6
Fax: (613) 998-8158

(b) For CNSC:

Patsy Thompson
Director General
Canadian Nuclear Safety Commission
Directorate of Environmental and Radiation Protection and Assessment
280 Slater Street
PO Box 1046, Station B
Ottawa, Ontario K1P 5S9
Fax: (613) 995-5086

9. TERM OF THE MOU

- (a) This MOU will be in force from the date of final signature of both Parties and will remain in effect until cancelled by either Party acting under paragraph 10.
- (b) This MOU may be amended from time to time by mutual written agreement of the Parties under paragraph 6 – Annual Review of MOU.

- (c) This MOU may also be amended, by mutual written agreement, should the CNSC be prescribed as a person or entity authorized to grant Authorizations pursuant to a regulation made by the Governor-in-Council under subparagraph 43(1)(i.3) of the *Fisheries Act*.


10. PROVISION FOR CANCELLATION

This MOU may be cancelled unilaterally by either Party by providing six (6) months written notice of the intention to cancel to the other Party or by mutual agreement with any agreed period of notice.

11. SIGNATORIES

The Parties hereto have signed the Agreement, in counterpart, on the dates indicated below.


Approved by:



Matthew King
Deputy Minister,
Fisheries and Oceans Canada

DEC 16 2013

Date



Michael Binder
President
Canadian Nuclear Safety Commission

DEC 16 2013

Date

ANNEX 1 –TERMS OF REFERENCE

The Parties will:

1. Convene on a regular basis to draft and manage the implementation of an annual work plan that has been approved by the members of the working group (principal contacts);
2. Establish additional sub-working groups as required that include regional and headquarters staff of the CNSC and DFO and relevant partners and stakeholders, on the individual elements of the work plan as outlined in paragraph 4;
3. Convene operational level meetings as required of regional and headquarters members to address specific concerns and define priorities for the coming year's work plan;
4. Foster exchange and collaboration across the various energy infrastructure and regulatory sectors;
5. Review and evaluate the content and effectiveness of activities conducted under this MOU; and
6. Prepare and deliver a draft annual report on results achieved under the MOU for approval by the Deputy Minister of DFO and the President of the CNSC. The results will also be identified in the Parties' Annual Reports, including DFO's Annual Report to Parliament.