

Memorandum of Understanding

Between the Department of Fisheries and Oceans and the Department of the Environment on the subject of the administration of Section 33 of the *Fisheries Act*.

Ottawa, Ontario
May, 1985

Memorandum of Understanding

Between: the Department of Fisheries and Oceans (Canada) as represented by the Deputy Minister of that Department, of the first part;

And: the Department of the Environment (Canada) as represented by the Deputy Minister of that Department, of the second part.

WHEREAS the Minister of Fisheries and Oceans has responsibility under the *Government Organization Act (1979)* to manage sea coast and inland fisheries;

AND WHEREAS the Minister of the Environment has responsibility under the *Government Organization Act (1979)* for the preservation of natural environment, including the marine environment;

AND WHEREAS the *Government Organization Act (1979)* assigns to the Minister of Fisheries and Oceans the legislative responsibility for the *Fisheries Act* R.S.C. 1970, c.F-14 and regulations;

AND WHEREAS by Prime Ministerial instruction, the provisions of Section 33 of the *Fisheries Act* related to deleterious substances and the regulations pursuant to that section (hereinafter referred to as Section 33) were to be administered for an interim period by the Minister of State (Environment) and his officials;

AND WHEREAS the Parties desire to continue this administrative arrangement respecting Section 33 of the *Fisheries Act* until further notice;

AND WHEREAS Section 33 of the *Fisheries Act* is intended to protect fish and fish habitat from actions that cause or may cause the pollution of waters and is therefore of interest to both Parties in fulfilling their respective mandates.

THEREFORE THE PARTIES AGREE:

1. To cooperate and communicate openly and regularly with each other at appropriate official levels on any and all matters relating to the administration of Section 33 and on such other matters that may be mutually agreed upon.
2. For each province and territory where the federal government is directly responsible for the management of the fisheries resources, the Parties in their regions shall hold their senior managers responsible for communicating on matters of substance and concern to the Parties related to Section 33, such as the following:
 - notifications, assessments, and investigations with respect to major development projects;
 - departmental positions on major development projects;
 - actions proposed by agents of provincial governments;
 - plans to release public statements;
 - plans to consult with the public;
 - plans to monitor and audit approved projects, and the results therefrom;
 - identification of fishery resource or habitat information required to support protection actions;
 - requirements for scientific criteria on which protection action and regulations may be based;
 - identification of research needs;

- funding and coordination of research and monitoring programs;
 - proposals to seek injunctions in the courts;
 - proposed regulations and amendments to existing regulations;
 - proposed policies on fish habitat and environmental quality; and
 - annual program reviews.
3. Where regional working level officials representing the Parties are unable to reach agreement on a course of action for any issue, the matter shall be referred for arbitration by each Party to the Regional Director-General of Fisheries and Oceans and the Regional Director of the Environmental Protection Service, and if the matter is not resolved at that level, to headquarters Assistant Deputy Ministers as described in clause 5.
 4. Decisions respecting the disposition of a project application or respecting any contemplated enforcement action pursuant to Section 33 shall not be disclosed or publicly discussed by either Party, any of their officials, or by any persons privy to those decisions, until such time as the Parties have discussed the matter and have jointly otherwise determined, using such formal and informal procedures that may be agreed upon locally by the Parties.
 5. At headquarters in Ottawa the Assistant Deputy Minister, Pacific and Freshwater Fisheries (DFO) and the Assistant Deputy Minister, Environmental Protection Service (DOE) will meet as required; but at least annually to:
 - a. deal with issues on which there is no resolution at the regional level;
 - b. consider proposed regulations and amendments to existing regulations pursuant to Section 33; and
 - c. discuss national policy issues of concern to the Parties.
 6. For minor issues and emergency situations where fish habitat, including water quality, is being or may be adversely affected, the Parties may mutually determine such informal procedures as are needed at headquarters or in regions for purposes of rapidly communicating with each other and generally meeting the terms of this agreement.
 7. This Memorandum of Understanding will not require additional resources for either Party, as each Party regularly allocates funds and human resources as part of its A-Base for purposes of administering a fish habitat management program in the case of the Party of the first part and Section 33 in the case of the Party of the second part.
 8. Notwithstanding any of the above, but subject to clause 3, the Party of the first part, given its legislative position respecting Section 33, reserves the right to take action directly in circumstances where the fisheries resource is being affected by the deposit of a deleterious substance and also where the Party of the second part is unable or unwilling to take such action.
 9. The operation of this Memorandum of Understanding shall be reviewed annually by the Parties.
 10. If deemed appropriate by both Parties, working agreements may be developed in a particular region, similar for example to that existing between the Parties in Atlantic Canada, and these may be appended as annexes to this Memorandum of Understanding.
 11. This Memorandum of Understanding may be amended at any time on mutual consent of the Parties.

IN WITNESS WHEREOF, the representatives of the Parties hereto have executed this Memorandum of Understanding this 6 day of May, 1985.

Original signed by
Art May

Deputy Minister of Fisheries and Oceans

Original signed by
Jacques Guerin

Deputy Minister of the Environment