

## Canada – Prince Edward Island

### MEMORANDUM OF UNDERSTANDING ON FISH HABITAT MANAGEMENT (“MOU”)

**Between:** The Government of Canada as represented by the Department of Fisheries and Oceans (“DFO” or “Canada”)

**And:** The Government of Prince Edward Island as represented by the Department of Fisheries, Aquaculture and Environment (“DFAE” or “Prince Edward Island”)

(also referred to individually as “Party” and collectively as “Parties”)

**Whereas**, the *Constitution Act, 1867* assigns to Canada exclusive jurisdiction for sea coast and inland fisheries, and; whereas the *Fisheries Act* sets out the powers and duties of DFO with respect to the conservation and protection of fish habitat;

**Whereas**, the *Constitution Act, 1867* assigns to the provinces exclusive jurisdiction over matters dealing with property and civil rights, and the management of public lands, and matters of a local or private nature in the province and; whereas, based on these heads of power, the provinces may regulate certain aspects relating to fisheries and fish habitat such as conveyances, leases, and resource usage and protection;

**Whereas**, DFAE manages “Provincially owned” lands, water and recreational fisheries in non-tidal waters through various legislation, policies and guidelines, and has established laws and policies that provide for the integration of fish habitat protection and conservation considerations and measures in its decision making processes;

**Whereas**, Canada and the provinces have entered into an *MOU on Inter-jurisdictional Cooperation with Respect to Fisheries and Aquaculture* that provides both the foundation for the Canadian Council of Fisheries and Aquaculture Ministers (CCFAM) and sets out the principles of cooperation; and

**Whereas**, Canada and Prince Edward Island are committed to conserve and protect fish habitat required to sustain the province’s fisheries resources and to collaborate and share responsibilities in the delivery of habitat management activities in Prince Edward Island, where it is of mutual interest;

**Therefore**, DFO and DFAE agree to the following MOU:

## 1.0 Purpose and Objectives

This MOU is intended to facilitate a collaborative approach in increasing certainty, consistency, efficiency and effectiveness in the conservation, protection and enhancement of fish habitat in Prince Edward Island through the implementation of federal and provincial legislation, regulations, policies and programs identified in Annex 1. The MOU and associated protocols will also better articulate the roles and responsibilities of the Parties towards improving the conservation and protection of fish habitat and will enhance services to the public.

## 2.0 General Provisions

- 2.1 Fish habitat conservation, restoration and enhancement in Prince Edward Island will be managed in accordance with the DFO Policy for the Management of Fish Habitat (1986).
- 2.2 The regulatory and legal decision making authority of DFO and DFAE are not delegated or otherwise affected by this MOU.
- 2.3 The Parties may jointly fund and support projects and initiatives that sustain program priorities, but there will be no transfer of resources between the Parties for services agreed to by them.
- 2.4 The Parties will explore and pursue opportunities for the appointment or designation by each Party, under their respective legislation, of appropriate and qualified staff of the other Party to undertake fish habitat enforcement of the legislation under which they are appointed or designated.
- 2.5 Nothing in this MOU abrogates or derogates from any Aboriginal treaty or other rights of Aboriginal People including self-government.
- 2.6 For the purpose of this MOU, the following definitions apply:

“**Fish**” includes:

- (a) Parts of fish,
- (b) Shellfish, crustaceans, marine animals and any parts of shellfish, crustaceans or marine animals, and
- (c) The eggs, sperm, spawn, larvae, spat and juvenile stages of fish, shellfish, crustaceans and marine animals.

“**Fish habitat**” means spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes.

### **3.0 Scope of Application**

3.1 This MOU applies to all fish habitats in Prince Edward Island. The initial areas of focus will be in fresh water, with progressive expansion throughout tidal waters of interest to the Parties.

3.2 The MOU will concentrate in six (6) priority areas or key activities agreed upon by the Parties, listed below and described in Annex 2:

- Regulatory (Habitat Protection/Compliance);
- Integrated Resource Planning;
- Community Outreach/Stewardship;
- Scientific Support;
- Information Management;
- Habitat Restoration and Enhancement.

It is understood that these priority areas may change with time or additional priorities may be added in the future with the agreement of the Parties.

3.3 The Parties will collaborate on the development of protocols for the (6) priority areas identified in (3.2). These protocols will be completed within 12 months of the signing of this MOU.

### **4.0 Management Provisions**

4.1 The Parties will establish a Canada/ Prince Edward Island Fish Habitat Management Committee (“Committee”) consisting of the following members:

- The Regional Director General, Gulf Region; the Area Director, Prince Edward Island; the Regional Director, Oceans and Science, and the Regional Manager, Oceans and Habitat, of the Department of Fisheries and Oceans will represent Canada as the officers designated to implement this MOU on behalf of Canada.
- The Deputy Minister, the Director of Fish and Wildlife, the Director of Fisheries and Aquaculture and the Director of Water Resources of the Department of Fisheries, Aquaculture and Environment will be the officers designated to implement this MOU on behalf of Prince Edward Island.

4.2 The Committee will meet annually or more frequently, as agreed to by the Parties, to fulfill the specific purposes of this MOU; namely to:

- Advise the signatories to this MOU and make appropriate recommendations to their respective governments;
- Establish sub-committees as required, and assign them specific duties;

- Provide for the development and delivery, where possible, of clear, consistent and comprehensive harmonized policies, standards, guidelines and procedures to ensure integrated conservation and protection of fish habitat;
  - Co-ordinate communications between the parties and other relevant agencies;
  - Oversee the implementation and ongoing delivery of short and long-term commitments and projects agreed to under this MOU;
  - Monitor, and evaluate the implementation and ongoing delivery of this MOU;
  - Pursue co-operative arrangements with all orders of government, First Nations, industry and other non-government organisations to advance the objectives of this MOU and provide for their input;
  - Establish standing and ad hoc working groups or other mechanisms and allocate resources to carry out specific assignments including the implementation of joint projects to advance the objectives of this MOU.
- 4.3 The Committee will submit an annual report on the implementation of this MOU and on specific activities related to the administration and enforcement of the fish habitat provisions of the *Fisheries Act* and watercourse protection provisions of the Provincial *Environmental Protection Act*.

The report will be sent to the Minister of Fisheries and Oceans and to the PEI Ministers responsible for Fisheries and Aquaculture, and Environment within one month after year-end. A year will be considered to run from April 1 to March 31.

## **5.0 Priorities of the Committee**

- 5.1 During the first year of the MOU, the Committee will:
- Co-ordinate work activities to ensure the comprehensive and effective protection of fish habitat and that decisions are made in an efficient and timely manner;
  - Develop protocols on specific work activities to clarify responsibilities and set standards for the execution of particular functions;
  - Identify fish habitat inventory/ information and research needs and priorities;
  - Develop mechanisms for involving stakeholders in the execution of the MOU.

## **6.0 Dispute Resolution**

Canada and Prince Edward Island will resolve issues regarding the implementation of this MOU in a timely manner using mechanisms available at the staff and senior executive level and through the Committee. This mechanism will be clearly outlined in the protocols developed from this MOU.

**7.0 Term**

- 7.1 The signatures of the Parties will initiate this MOU.
- 7.2 Either Canada or Prince Edward Island can terminate this MOU on three months notice to the other Party.
- 7.3 The MOU can be amended at any time with the concurrence of both Parties.
- 7.4 The MOU will be reviewed by an independent party three years after its coming into force to evaluate its effectiveness and to make appropriate recommendations or required adjustments.

**8.0 Signatures**

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**The Honourable Robert G. Thibault  
Minister of Fisheries and Oceans Canada**

**Government of Canada**

**Date**

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**The Honourable Chester Gillan**

**Minister of Environment  
Government of  
Prince Edward Island**

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**The Honourable Greg Deighan**

**Minister of Fisheries and Aquaculture  
Government of  
Prince Edward Island**

**Date**

## ANNEX 1

As stated in Section 1.0 (Purpose and Objectives), this MOU will be achieved in the province of Prince Edward Island through the implementation of the following federal and provincial legislation, and the regulations and policies thereto, including, but not limited to:

### FEDERAL

- Habitat Protection Provisions of the *Fisheries Act*, including:

*Section 35: Harmful Alteration, Disruption, Destruction of Fish Habitat;*

*Section 20: The Need for Safe Fish Passage;*

*Section 21, 22: Minimum Flow Requirements;*

*Section 30: Fish Guards and Screens;*

*Section 32: Destruction of Fish.*

- Policy for the Management of Fish Habitat (1986);
- Habitat Conservation and Protection Guidelines;
- Decision Framework for the Determination and Authorization of Harmful Alteration, Disruption or Destruction of Fish Habitat;
- Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act;
- Federal Wetlands Policy.

### PROVINCIAL

- Environmental Protection Act, including:

*Section 9: Environmental Impact Assessment;*

*Section 10: Watercourse/Wetland Alterations;*

*Section 11: Watercourse Buffer Zones;*

*Section 13 : Wastewater Treatment;*

*Section 20 : Discharge of Contaminants.*

- Wildlife Conservation Act;
- Agricultural Irrigation Policy;
- Manure Management Guidelines;
- Watercourse / Wetlands Alteration Guidelines;
- Atlantic Canada Standards and Guidelines Manual for the Collection, Treatment and Disposal of Sanitary Sewage;
- Impoundment Management Guidelines

## ANNEX 2

### Priority Areas (Key Activities)

#### 1. Regulatory (Habitat Protection/Compliance)

- Review development proposals (referrals) to assess compliance with legislation and policies.
- A priority in the first year of the MOU will be to develop an effective dispute resolution mechanism as described in (6.0).

#### 2. Integrated Resource Planning

- Define and establish fish habitat objectives at the watershed management planning level. For the purposes of this agreement, watershed management planning is a holistic, long term strategy that defines objectives on a watershed basis and is used to restore, maintain and enhance the physical, chemical and biological integrity of aquatic ecosystems, protect human health and provide sustainable economic growth.

#### 3. Community Outreach/Stewardship

(Public Information and Education; Cooperative Action)

- Design/implement proactive communication strategies to relay specific information and educational material;
- Conduct public consultations;
- Maintain and develop cooperative arrangements.

#### 4. Scientific Support

(Scientific Research; Habitat Monitoring)

- Conduct and communicate research in support of regulatory, integrated watershed management and community outreach activities;
- Ascertain effectiveness of decisions/techniques related to both referrals and integrated watershed projects.

#### 5. Information Management

- Manage program information and data

#### 6. Habitat Restoration and Enhancement

- Identify priorities; establish and develop projects for habitat restoration and improvement;
- Provide advice and guidance on habitat restoration and improvement activities;
- Monitor/evaluate effectiveness of habitat restoration and improvement activities.