

**Interim
Operational Working Arrangement
on
Enforcement of Section 36(3) Fisheries Act
between
Environment Canada and Department of Fisheries and Oceans

Pacific & Yukon

February 1, 2006**

ROLES AND RESPONSIBILITIES

The Fisheries Act is enforced through designated Fishery Officers, Inspectors and Fishery Guardians. In British Columbia and the Yukon this enforcement is carried out by two primary agencies:

- Fisheries and Oceans Canada (DFO)
- Environment Canada (EC)

The federal Minister of Fisheries and Oceans has the legislative responsibility for the administration and enforcement of the Fisheries Act and reports annually to Parliament on the administration and enforcement of the fish habitat protection and pollution prevention provisions of the Act. However, in 1978 the Prime Minister assigned to the Minister of the Environment responsibility for the administration and enforcement of subsection 36(3) of the Fisheries Act, which deals with the deposit of deleterious substances into water frequented by fish. Then, in 1985, in order to help ensure co-ordination, a Memorandum of Understanding between the Department of Fisheries and Oceans (DFO) and Environment Canada (EC) was signed, outlining the responsibilities of both departments for the administration and enforcement of the pollution prevention provisions of the Fisheries Act. In the Pacific and Yukon Region these responsibilities are further outlined in a regional working agreement between the two departments signed in 1987. For further clarity the two departments jointly developed the Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act. This policy was implemented in 2001.

Environment Canada:

EC has been identified as the lead agency for the enforcement of section 36(3) of the Fisheries Act and is prepared to undertake enforcement action (Inspection, Response, Investigation, Prosecution) in cases where there has been an identified, significant deposit of a deleterious substance into waters frequented by fish. It is EC's practice to notify the appropriate Conservation & Protection (C&P) Supervisor when a deposit of deleterious substance into waters frequented by fish has occurred in their geographic area.

EC's level of response to any pollution incident is guided by the Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act and the following factors:

- Whether the spill originated from a federally regulated industrial plant, source, operation
- Whether the spill resulted from the transportation of dangerous/hazardous goods (truck/train)
- The level of training/experience in dealing with industrial operations or transport of dangerous goods
- The timely reporting and initial response from the responsible party
- The severity of the discharge (volume, duration etc.)
- The nature of the substance (toxic etc.)
- The nature of the receiving environment (sensitive fish habitat, presence of endangered species, fisheries etc.)
- The nature and level of impact (e.g. fish kill or damage to fish habitat or damage to migratory birds or migratory bird habitat)
- The cause of the incident
- Ability to physically respond in a timely manner in order to obtain necessary evidence
- Available resources (staff, financial, transportation etc.)
- Availability of other agencies able/willing to undertake preliminary response (DFO, B.C. Ministry of Environment, YTG Conservation Officers etc.)

Department of Fisheries and Oceans:

DFO is the lead agency for the enforcement of section 35 of the Fisheries Act (harmful alteration, disruption or destruction of Fish habitat - HADD) and sediment issues. In addition, Fishery Officers may undertake enforcement action pursuant to section 36(3) at their discretion or at the request of Environment Canada. (as per 1985 MOU between DFO and DOE, 1987 Regional Working Agreement, 2001 Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act)

RESPONSE PROTOCOL FOR SPILLS/SECTION 36(3) ENFORCEMENT

How does occurrence and spill information get distributed?:

The Provincial Emergency Program (PEP) in Victoria, EC and CCG/ MCTS in Vancouver together maintain the 24 Hr / 7 day spill reporting network in BC. When a spill report is received by any of these three agencies, it is automatically fanned out to the other two. In addition, PEP notifies the closest Provincial Ministry of Environment Office and EC conducts a federal government "fan out". The fan out from PEP is in the form of a Dangerous Goods Incident Report (DGIR). These reports are not restricted to toxic spills and may relate to incidents such as sediment.

The contact numbers to know:	P.E.P.	1 800 663 3456
	M.C.T.S.	1 800 889 8852 or (604) 666-6011
	E.C.	(604) 666-6100

For the Yukon Territory; the Emergency Measures Organization (the EMO) and the Environmental Programs Branch – Yukon (EPB) are jointly responsible for operating and managing the Yukon Spill Line.

YUKON SPILL LINE (867) 667-7244

This is the single point of contact for reporting all spills in the Yukon and is operative 24 hours a day, seven days a week. This spill line receives spill reports and distributes information to a wide variety of affected and responsible agencies including Environment Canada and DFO in the Yukon.

When a spill is reported to the Yukon Spill Line, the Duty Officer on duty obtains, from the person reporting the spill, the information required, and contacts the Lead Agency to provide them with the particulars of the spill, as identified on the Initial Spill Report. The Lead Agency then responds and further distributes information to a wide variety of affected and responsible agencies including Environment Canada and DFO. The Lead Agencies for spill response in the Yukon are responsible for ensuring that personnel are available to respond to spills, and follow up with other members of the Yukon Spill Committee. Officers should familiarize themselves with the procedures in place for their area of responsibility as it does vary depending on circumstances and availability of resources.

In what circumstances does a response agency become the lead?

If the spill is on land or from land into fresh water the lead agency is the Ministry of Environment. EC may also receive this info and respond if fish or fish habitat has been affected or human health/safety is compromised.

If the spill is on federal land, is caused by a federal activity, is international in scope or is land based into marine water the lead agency is EC.

Marine shore areas and estuaries are a combined lead role. BC Ministry of Environment and EC assume a shared responsibility for most spills, but are limited in attendance by staff and travel time.

If the spill is from a ship source to the marine environment the lead agency is generally Transport Canada.

If the spill is related to a deposit of sediment (or a HADD) into fish bearing waters, DFO is the lead agency.

In the Yukon the lead agency is determined in accordance with the "Yukon Spill Agreement".

When will DFO be asked to assist?

Should a circumstance arise where EC has identified an incident which requires an immediate enforcement response and, due to limited staffing levels and/or in remote locations it may not be practical/possible for EC to attend the scene during the preliminary stages, they may contact the local DFO Conservation & Protection (C&P) detachment to request assistance. Subject to operational requirements, regional DFO will make every effort to assist. Such assistance will, in most cases, consist of providing a "first responder" role and the collection of legal samples, documentation of the scene, taking of statements and other enforcement actions as required. In the event that DFO is unable to assist EC as first responders to an incident upon request by EC, due to tasking of all available resources to higher priority activities, DFO will immediately inform EC of this inability to respond. This will enable EC to activate appropriate contingency measures.

A request to assist will usually be in the form of direct contact with the C&P Supervisor (or senior officer available) for the area. The routine receipt of DGIRs is not considered a request for assistance. DFO will determine whether it is able to assist/attend based on the following considerations:

- A health and safety assessment for staff and the public
- The level of risk to the fisheries resource
- The availability of staff
- The availability of logistical and supporting resources
- An assessment of the risk to DFO operations created by deviating from prior planned activities

Who will investigate?

Where DFO has been requested to assist in this manner; upon conclusion of the preliminary response EC, in consultation with DFO, will assume responsibility for the completion of the investigation. Should DFO wish to remain involved in the ongoing investigation they shall, to the extent that they desire, participate as full partners in the investigation.

In some circumstances, upon consultation between EC and DFO, it may be appropriate/desirable for DFO to assume responsibility as lead agency for the completion of the investigation up to and including prosecution, if appropriate under the circumstances. Examples of such circumstances could include a localized spill event in a location with DFO, but no EC, presence and where most or all of the evidence required is readily available to the Fishery Officer in that area; or a spill event for which the local Fishery Officer may have previous involvement or knowledge which would assist in expediting the investigation. In these cases EC will provide all necessary assistance and/or advice required and may participate as partners in the investigation.

Nothing in this protocol is intended to prevent DFO Fishery Officers from taking unilateral enforcement action where they become aware of a deposit of a deleterious substance in their detachment area (e.g. via public complaint, local knowledge, personal observation etc.). Should this occur, DFO will have full responsibility and authority to act as lead agency unless, in consultation and agreement with EC, it is mutually determined that EC will assume that role. When DFO undertakes to conduct an investigation under section 36(3) they should notify EC in order to ensure that no duplication of efforts is taking place and that any assistance that may be required is obtained. Contact information for EC is listed in Appendix B to this document.

It is important to note that DFO officers cannot assume that, after having responded to an incident independently or having taken unilateral enforcement action, EC can/will assume responsibility for the continuing investigation. This will be contingent on available resources and competing priorities as well as the factors mentioned above. DFO officers should be prepared, if they decide to initiate an investigation, to carry it through to its conclusion (utilizing the various compliance options as per the Compliance and Enforcement Policy) unless the investigation has been initiated at the request of EC.

HEALTH AND SAFETY
(APPLICABLE TO ALL RESPONDERS)

Before attending the scene of a spill, responders must be aware of potential health and safety issues at the site. All requirements of the Canada Labour Code Part II must be considered and met. In addition, officers should consult all departmental health and safety documentation concerning the substance and/or incident, including Task Hazard Analyses and Safe Work Procedures. Officers should also consult the Emergency Response Guidebook and/or MSDS if the substance name or substance ID number is known. The Emergency Response Guidebook and MSDS will provide information on the safe handling of the substance. In addition, Environment Canada can provide health and safety information and sampling advice to officers prior to any on scene response. Officers should not attempt to sample a substance or the contaminated receiving environment unless the substance involved is known and its hazards are understood.

If officers choose to attend a scene, they should locate the On Scene Commander, announce their presence and follow any instructions that are provided. If they are the first agency responder at the site, they should contain the scene, contact the appropriate agency responsible and wait for assistance or directions.

Officers should not attempt to conduct sampling if the substance or the site is dangerous to human health unless necessary precautions have been taken to mitigate these risks. It is often preferable to have on scene experts or, in the event of an industrial facility, trained and equipped company employees collect the samples on your behalf.

DURATION and MODIFICATION

This Arrangement shall remain in effect from the date executed by the signatories and until such time as it is amended or terminated. This Arrangement, and any Annexes which may subsequently be made thereto, may be amended or terminated at any time by mutual agreement of the parties. This Arrangement is subject to the continued application of the compliance and enforcement provisions of the:

- MOU 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 (May, 1985)

and the:

- Regional Working Agreement between the Department of Environment and the Department of Fisheries and Ocean for Administration of Section 33 of the Fisheries Act in British Columbia and Yukon (May, 1987)

and the:

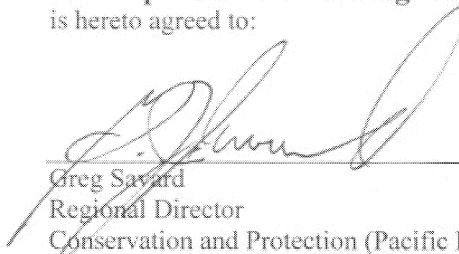
- Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act (November 2001)

Participation of either party in this Arrangement may be terminated upon 90 days notice in writing to the other Party.

The Parties shall meet, no less than once per year prior to March 31, in order to review the operation of this arrangement and to consider any amendments that may be required.

SIGNATORIES


This Operational Working Arrangement on Enforcement of Section 36(3) Fisheries Act
is hereto agreed to:



Greg Savard
Regional Director
Conservation and Protection (Pacific Region)
Fisheries and Oceans Canada

Feb. 3/06

Date



Martin Pomeroy
Regional Director
Environmental Enforcement Division
Environment Canada (Pacific and Yukon)

3-2-06

Date

APPENDIX A

OVERVIEW OF AGENCIES RESPONSIBLE FOR SPILL RESPONSE IN BRITISH COLUMBIA AND THE YUKON TERRITORY

The Provincial Emergency Program (P.E.P.) is a branch of the Attorney General's Office, they are the primary contact point for all pollution occurrences as well as other types of emergencies. There are PEP Area Coordinators, volunteers in most communities; whose primary purpose is civil disaster support i.e. evacuations, search & rescue, fire. They rarely act as first responders to obtain information, but some are also involved as local Fire or Police and in these situations may go on scene. The BC Spill Reporting Regulation requires that spills be reported to PEP.

Environment Canada (E.C.) is the Federal agency responsible for the administration and enforcement of section 36(3) of the Fisheries Act including response and enforcement related to the deposit of deleterious substances into waters frequented by fish. Environment Canada is responsible for all federally licensed facilities and discharges from land to the marine waters. (*note: native reserves are generally considered federal lands; however, First Nations Settlement Lands in the Yukon are not).

Environment Canada's ability to respond to spill reports in a timely fashion is presently limited due to staffing levels and distribution, hence their occasional reliance on other federal dept's to provide first response capability and gather time sensitive evidence. They are however prepared, subject to resource availability and other considerations, to respond on scene anywhere in BC should the situation warrant their presence.

The Provincial Environmental Emergency Response Officers (EERO) are BC Ministry of Environment (formerly Ministry of Water Land and Air Protection - W.L.A.P.) staff who are responsible for spills onto lands and freshwaters upstream of the tidal waters fishing boundaries; this includes those into freshwater not considered fish habitat.

The Department of Fisheries and Oceans (D.F.O.) is responsible for responding to habitat destruction and/or alteration incidents (s. 35) related to sediments and land use activities. (DFO has primary role to determine if fish are affected) In addition; DFO may take on the role of lead investigator of any Sec 36 violation to which they have unilaterally responded or by mutual agreement with EC in instances where the response has been at EC's request. The 1985 Regional MOU between EC and DFO allows DFO to proceed as necessary regarding any violation involving fish bearing waters.

The DFO radio room maintains 24/7 spill reporting capability. If/when the Radio Room receives a referral from the public respecting a spill, this information is passed on to PEP. In cases where the information is received from CCG (usually by way of FAX) this information is forwarded by fax to the appropriate DFO office.

The Canadian Coast Guard (C.C.G.) is responsible for safety and remedial response to pollution from vessels. They are the primary contact for pollutants (primarily oil spills) to the marine environment in order to ensure that any spill is properly evaluated and responded to. This activity is coordinated through the duty officer at Marine Communications & Traffic Services (M.C.T.S. - formerly called VTS)

Transport Canada – Ship Safety, is responsible for enforcement activities regarding pollutants from vessels. Ship Safety, is responsible for enforcing the *Canada Shipping Act* and the relevant pollution prevention regulations for oil and hazardous substances.

Yukon Emergency Measures Organization - The Yukon EMO ensures that the Yukon 24 hour Spill Report Line (667-7244) is operational and functions in accordance with the Yukon Spill Agreement.

Yukon Environmental Programs Branch - The Yukon Department of Environment works in conjunction with EMO to operate the Spill report Line. They also act as Lead Agency in occasions where their jurisdiction or legislation deems it so. Response is by their Environmental Officers or, in cases where circumstances warrant investigation, Yukon Conservation Officers.

APPENDIX B CONTACT INFORMATION

Environment Canada

24/7 Spill Reporting Line	On Call Officer (24 hours)	(604) 666-6100
Head, Emergencies Section, Environment Canada	Fred Beech	(604) 666-0370
Head, Inspections Section, Environment Canada (Vancouver)	Ken Wile	(604) 666-3056
Head, Investigations Section, Environment Canada (Vancouver)	John Dyck	(604) 666-3647
Head, Enforcement, Central and Northern BC, Environment Canada (Prince George)	Brock Bailey	(250) 561-6902
Head, Enforcement, Environment Canada (Yukon)	George Balmer	(867) 667-3406
Regional Director, Environmental Enforcement Division, Pacific & Yukon Region	Martin Pomeroy	(604) 666-0002
Coordinator, Emergencies Planning, Prevention & Liaison (Yukon)	Nathalie Lowry	(867) 667-3405

Department of Fisheries and Oceans

DFO Radio Room	Monitored 24 Hours	(604) 666-3500
C&P Area Chief, Lower Fraser	Herb Redekopp	(604) 666-2807
C&P Area Chief B.C. Interior	Randy Nelson	(250) 851-4956
C&P Area Chief, South Coast	John Lewis	(250) 756 7159
C&P Area Chief, North Coast	Scott Coultish	(250) 627-3402
C&P A/Area Chief, Yukon & Trans- boundary	Henri Ragletti	(867) 393-6728
Regional Director, Conservation and Protection, Pacific Region	Greg Savard	(604) 666-0604

Other Contacts

BC Spill Report (P.E.P.)	Monitored 24 Hours	1-800-663-3456
Yukon Spill Report Centre	Duty Officer (24 hours)	(867) 667-7244
CANUTEC	24 Hour Emergency Line	(613) 996-6666