

MEMORANDUM OF UNDERSTANDING

BETWEEN

**BRITISH COLUMBIA
CONSERVATION OFFICER SERVICE**



AND



**DEPARTMENT OF FISHERIES AND OCEANS
CONSERVATION AND PROTECTION
PACIFIC REGION**

RESPECTING

MUTUAL ASSISTANCE

MEMORANDUM OF UNDERSTANDING

INDEX

<u>SECTION</u>		<u>PAGE</u>
	Title Page	1
	Index Page	2
1.0	General	3
2.0	Agreement Authority	4
3.0	Interpretation	4
4.0	Subject Matter	5
5.0	Designations	6
6.0	Training	6
7.0	Sharing of Information	7
8.0	Dispute Resolution	8
9.0	Notice	8
10.0	Term of Agreement	8
11.0	Monitoring	8
12.0	Liability	9
	Signatories	10
Annex 1	Special Conservation Officer Powers	11

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, AS
REPRESENTED BY THE DIRECTOR, CONSERVATION AND
PROTECTION OF THE DEPARTMENT OF FISHERIES AND
OCEANS, CONSERVATION AND PROTECTION, PACIFIC REGION

(“DFO”)

AND:

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
BRITISH COLUMBIA, AS REPRESENTED BY THE CHIEF
CONSERVATION OFFICER OF THE BRITISH COLUMBIA
CONSERVATION OFFICER SERVICE

(“COS”)

THE PARTIES AGREE AS FOLLOWS:

SECTION 1.0 GENERAL

- 1.1. The purpose of this Memorandum of Understanding (MOU) is to describe terms and procedures for the provision of mutual assistance between the COS and the DFO with respect to enforcement action.
- 1.2. The Parties agree to work closely in a spirit of cooperation to develop effective working relationships to facilitate fulfilment of their respective mandates.
- 1.3. The Parties agree to take the steps necessary, within their respective organizations, to uphold the intent and spirit of this MOU.
- 1.4. This MOU reflects the good faith and spirit of cooperation of the Parties. Sections 7.3, 7.4, 7.5, 7.6, 12.1, 12.2, 12.3, 12.4, and 12.5 are legally binding, but the balance of the MOU is not.
- 1.5. The singular includes the plural and the plural includes the singular if consistent with the context.

- 1.6. Nothing in this MOU is intended to replace or change any obligation that either Party is bound to or required to perform by operation of law.
- 1.7. This MOU is to be interpreted to not conflict with or derogate from federal or provincial statutes, and to be subject to them. If any provision of this MOU conflicts with or derogates from any federal or provincial statute, the provision is without effect.

SECTION 2.0 AGREEMENT AUTHORITY

- 2.1. This MOU is entered into by the Director, Conservation and Protection, Department of Fisheries and Oceans, Pacific Region, for the purpose of establishing a cooperative working agreement between DFO and the COS.
- 2.2. This MOU is entered into by the Chief Conservation Officer under authority of s. 135 of the *Environmental Management Act*, SBC 2003, c. 53 for the purpose of establishing a cooperative working agreement between the COS and DFO.

SECTION 3.0 INTERPRETATION

- 3.1. In this MOU each of the following terms has, unless the context otherwise requires, the meaning set out beside it:
 - 3.1.1. **“Chief CO”** means the person appointed as the Chief Conservation Officer, British Columbia Conservation Officer Service.
 - 3.1.2. **“Conservation Officer”** means a person who is a member of the Conservation Officer Service as set out in the *Environmental Management Act* (British Columbia) but does not include a Special Conservation Officer or Auxiliary Conservation Officer.
 - 3.1.3. **“Minister”** means the Minister of Fisheries and Oceans, Canada.
 - 3.1.4. **“Director, C&P”** means the person appointed as the Director, Conservation and Protection, Pacific Region, within the Department of Fisheries and Oceans.
 - 3.1.5. **“Fishery Officer”** means a person designated as a Fishery Officer pursuant to subsection 5(1) of the *Fisheries Act* (Canada) but does not include a Fishery Guardian.
 - 3.1.6. **“MOU”** means this memorandum respecting mutual assistance.
 - 3.1.7. **“Special Conservation Officer”** means a person designated by the Chief CO as a special conservation officer under section 106 (3) (b) (iii) of the *Environmental Management Act* (British Columbia).

SECTION 4.0 SUBJECT MATTER

4.1. OBJECTIVES

The objectives of this MOU are to

- 4.1.1. Facilitate the achievement of the conservation, protection, and enforcement goals of the respective Parties.
- 4.1.2. Provide good service to the public.
- 4.1.3. Respect the existing mandates, roles, and responsibilities of the Parties.
- 4.1.4. Maximize effectiveness of coverage without duplication of effort.
- 4.1.5. Provide a framework for harmonious working relationships among the Parties and for resolution of conflict.
- 4.1.6. Clarify the roles and responsibilities of each Party respecting mutual assistance.

4.2. DFO ASSISTANCE TO COS

- 4.2.1. DFO agrees to provide assistance with respect to carrying out the COS mandate in both exigent and non-exigent situations when practicable.
- 4.2.2. DFO agrees to direct Fishery Officers who become aware of potential violations falling within the enforcement mandate of the COS to report the details to the local Conservation Officer.
- 4.2.3. DFO agrees to advise the local Conservation Officer when it undertakes initial enforcement action with respect to potential violations falling within the enforcement mandate of the COS.

4.3. COS ASSISTANCE TO DFO

- 4.3.1. COS agrees to provide assistance with respect to carrying out the DFO mandate in both exigent and non-exigent situations when practicable.
- 4.3.2. COS agrees to direct Conservation Officers who become aware of potential violations falling within the enforcement mandate of DFO to report the details to the local C&P Supervisor.
- 4.3.3. COS agrees to advise the local C&P Supervisor when it undertakes initial enforcement action with respect to potential violations falling within the enforcement mandate of the DFO.

4.4. OPERATIONAL GUIDELINES

- 4.4.1. The Parties agree to collaboratively develop Operational Guidelines for the implementation of this MOU.

SECTION 5.0 DESIGNATIONS

5.1. ELIGIBILITY

- 5.1.1. COS recognizes that DFO is a resource management organization with an infrastructure necessary to support professional law enforcement activities, and therefore, all Fishery Officers are acknowledged as a class of persons suitable for appointment as Special Conservation Officers.
- 5.1.2. DFO recognizes that COS is a resource management organization with an infrastructure necessary to support professional law enforcement activities, and therefore, all Conservation Officers are acknowledged as a class of persons suitable for appointment as Fishery Officers.

5.2. PROCESS FOR DESIGNATION

- 5.2.1. The Chief CO agrees to consider designating the class of Fishery Officers as Special Conservation Officers for the duration of their status as Fishery Officers in the employ of DFO. The Chief CO reserves the right to rescind a Special Conservation Officer designation at any time.
 - 5.2.1.1. The Chief CO agrees to normally authorize Special Conservation Officers to exercise the powers and perform the duties of the specified official under any of the Acts or regulations listed in Annex 1. The Chief CO agrees to provide each Special Conservation Officer with a certificate verifying their designation and, if the powers of the Special Conservation Officer are limited, specifying the powers that the Special Conservation Officer may exercise.
- 5.2.2. The Minister agrees to consider designating the class of Conservation Officers as Fishery Officers for the duration of their status as Conservation Officers. The Minister reserves the right to rescind a designation at any time.
 - 5.2.2.1. The Minister agrees to normally authorize Fishery Officers to exercise the powers and perform the duties of a Fishery Officer under the *Fisheries Act (Canada)*. The Minister agrees to provide each Fishery Officer with a certificate verifying their designation and, where the powers of the Fishery Officer are limited, specifying the powers that the Fishery Officer may exercise.

SECTION 6.0 TRAINING

- 6.1. The purpose of this section is to encourage and develop efficient, cooperative law enforcement practices and is not intended to interfere with the training program of either Party.
- 6.2. In order to promote efficient and safer work environments, and to promote the ability of the staff of both Parties to work together in the roles of enforcement, each Party agrees to endeavour to maintain the highest professional natural resource training standards.

- 6.3. Opportunities for joint training between the Parties will be encouraged.
- 6.4. The Parties agree to work jointly to ensure the most productive and efficient training delivery and results, where practicable.
- 6.5. Each Party is encouraged to develop and enhance its professional natural resource enforcement training standards in conjunction with other natural resource agencies.

SECTION 7.0 SHARING OF INFORMATION

- 7.1. The Parties agree to adopt practices in the sharing and security of information and data that are consistent with existing agreements between the Government of Canada and the Province of British Columbia, such as the *Sub-agreement to the Canada-British Columbia Agreement on the Management of Pacific Salmon Fishery Issues Respecting Fisheries Information Coordination and Sharing*.
- 7.2. So that each Party is aware of the interests of the other and is better able to fulfil commitments pursuant to this MOU, each Party agrees to provide the other, in a timely manner, with up-to-date information on matters relevant to this MOU.
- 7.3. Each Party agrees not to disclose, for other than law enforcement purposes not barred by section 7.4, any information supplied by the other Party without prior consent of the other Party, except as required by law.
- 7.4. A Party may supply information to the other Party and clearly indicate that the information must not be disclosed, other than as specified by the supplying party, without the consent of the Party supplying the information. In these circumstances, the Party receiving the information agrees to not disclose the information, other than as specified, without the prior consent of the supplying party, except as required by law.
- 7.5. If one of the Parties is required by law to disclose information supplied by the other Party, they must immediately notify the other Party and provide details of the information to be disclosed. This is intended to protect sensitive information that may be contained within a document, which could compromise an ongoing investigation, reveal a sensitive investigative technique, or identify a confidential source.
- 7.6. All information and documentation provided to, collected by, delivered to, or compiled by, or on behalf of the DFO and COS in the performance of their duties and responsibilities, shall be dealt with subject to and in accordance with all applicable provisions of the federal and provincial statutes, particularly the *Privacy Act*, R.S.C. 1985, c. P_21, and the *Access to Information Act*, R.S.C. 1985, c. A_1 and the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165.

SECTION 8.0 DISPUTE RESOLUTION

8.1. The Parties agree that any new issue, matter of general concern or dispute arising from this MOU is to be dealt with by a joint management group consisting of the following position holders or their delegates:

Director, Conservation and Protection, DFO, Pacific Region
Chief Conservation Officer, COS

SECTION 9.0 NOTICE

9.1. All notices or communications provided for in this MOU will be in writing and will be mailed or delivered. For the purposes of Delivery of Notice, the addresses for delivery are:

**For the
Conservation Officer Service:**

Chief Conservation Officer
PO Box 9376,
Stn Prov Govt
Victoria, BC V8W 9M5

**For the
Department of Fisheries and Oceans:**

Director, Conservation and Protection
DFO – Pacific
Suite 200 – 401 Burrard St.
Vancouver, BC V6C 3S4

Or at another address if a Party has advised in writing.

9.2. Any such notice or communication given by mail is deemed to have been delivered 72 hours after having been deposited in the mail service with first class postage prepaid. If given by personal delivery, then the notice or communication is deemed effective when delivered.

SECTION 10.0 TERM OF AGREEMENT

- 10.1. This MOU comes into effect when signed by both Parties.
- 10.2. This MOU may be amended by written agreement duly executed by the Parties to this MOU.
- 10.3. This MOU remains in effect until replaced by another agreement or terminated in accordance with section 10.4.
- 10.4. Either Party to this MOU may terminate it upon provision of sixty days written notice to the other Party of its intention to terminate.

SECTION 11.0 MONITORING

11.1. The Parties agree to assess the effectiveness of this relationship on an annual basis, within the context of annual operational planning and review processes.

- 11.2. The Parties agree to review, and revise as appropriate, the Operational Guidelines for implementation of this MOU, within the context of annual operational planning and review processes.

SECTION 12.0 LIABILITY

- 12.1. Subject to section 12.2, each Party agrees to waive all claims against the other Party in respect of damage caused to its personnel or its property by personnel or agents (excluding contractors) of that other Party arising out of, or in connection with, the implementation of this MOU.
- 12.2. Section 12.1 does not apply to damage resulting from reckless acts or reckless omissions, wilful misconduct or gross negligence of a Party, its personnel or agents.
- 12.3. If one Party receives notice of a claim by a third party for damage of any kind, caused by one of the Party's personnel or agents arising out of, or in connection with the implementation of this MOU, the receiving Party agrees to notify the other Party as soon as practicable.
- 12.4. In the event of a notice of claim as described in section 12.3, the Parties agree to consult and attempt to resolve the claim. The Parties may elect to apportion financial responsibility between themselves to satisfy the claim.
- 12.5. The provisions of sections 12.1, 12.2, 12.3, 12.4 and 12.5 survive the termination of this MOU.

Signed on behalf of the Conservation Officer Service

Original signed by:

Mark A. Hayden
Chief Conservation Officer
Conservation Officer Service
Province of British Columbia
Victoria, British Columbia

Date

Signed on behalf of the Department of Fisheries and Oceans

Original signed by:

Robert Martinolich
A/Director, Conservation and Protection
Pacific Region
Department of Fisheries and Oceans
Government of Canada
Vancouver, British Columbia

Date

ANNEX 1

Special Conservation Officer Powers

(See original text of legislation for full description of powers)

In this Annex, the reference to an Act, or to a portion of an Act, includes regulations made under the Act and, in the case of a portion of an Act, regulations that apply to that portion of the Act.	
Official	Act or Regulation
Member of the Conservation Officer Service	<i>Environmental Management Act</i> , but not including section 129 or COS Authority Regulation (B.C. Reg. 318/2004)
conservation officer	<i>Firearm Act</i>
peace officer	<i>Offence Act</i> , Sections 28, and 46 only
officer	<i>Water Act</i>
conservation officer	<i>Wildlife Act</i>