



Environment Canada  
Environnement Canada

Regional Director General  
Pacific and Yukon Region  
201 - 401 Burrard Street  
Vancouver, BC  
V6C 3S5

August 3, 2004

Mr. Paul Macgillivray  
A/Regional Director General  
Fisheries and Oceans Canada  
200 - 401 Burrard Street  
Vancouver, BC V6C 3S5

Dear Mr. Macgillivray:

Thank you for your letter of July 9, 2004 advising me of DFO's decision to reduce its Habitat Management role in issues related to section 36 of the *Fisheries Act* in Pacific Region. As you note, Environment Canada and DFO have a long history of collaborative and productive working relationships on this issue. I recognize that your decision has been preceded by program changes and financial pressures in DFO Pacific Region. Nevertheless, it raises a number of questions about how section 36 can continue to be effectively administered, given that EC does not have the capacity to fully absorb the water quality functions that DFO is withdrawing from.

The changes you outline will have unavoidable implications for a number of programs and activities which contribute to fish habitat and water quality protection in our region. I have attached a preliminary list of issues that we believe need further discussion with respect to ongoing administration of section 36 of the *Fisheries Act*. We would welcome an opportunity to meet with DFO to better understand your strategy for a revised role, to receive an update on your organization, and to identify the elements of a transition plan.

I note in your letter that you have asked the Manager of your Habitat Management Division to arrange a meeting. Our contact in this regard is Lisa Walls, A/Manager, Pollution Prevention and Assessment Division (604-666-2799). I trust that this meeting can be arranged in the near future.

Sincerely,

Don Fast  
Regional Director General  
Environment Canada  
Pacific & Yukon Region

Attachment

cc: M.D. Nassichuk  
B. Stemshorn



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COM: D. ANTCLIFFE

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## EC-DFO S. 36 Issues

1. EC-DFO MOU
2. Regional Working Agreement
3. Potential amendments to *Fisheries Act* (e.g., change ministerial accountabilities)
4. DFO provision of fishery resource and habitat information including fishery values - *list*
5. Expert witness support - ?
6. Provision of DFO science information/support - ?
7. DFO participation in "policy" development issues
8. Role of Fishery Officers (e.g., emergency response; fishery resource information)
9. DFO participation on committees
10. Role of DFO Legal Services (e.g., Eurocan file)
11. Enforcement
12. DFO participation in Pacific Environmental Science Centre
13. Other specific files with active DFO engagement:

- Contaminated sites/sediments (e.g., Koppers, False Creek)
- Aquaculture
- Municipal wastewater
- Mining (e.g., Britannia, Tulsequah)
- Coastal dioxin monitoring program
- Environmental Assessment
- Misc. industry
- Fish processing
- Emergency response
- Investigations
- Pesticides
- Yukon Placer

Mr. Don Fast, Regional Director General  
Environment Canada  
Suite 200 - 401 Burrard Street  
Vancouver, BC  
V6C 3S4

Dear Mr. Fast:

**SUBJECT: HABITAT MANAGEMENT'S ROLE IN SECTION 36 OF THE  
FISHERIES ACT**

I am writing to you concerning the Fisheries and Oceans (DFO) Habitat Management role in Section 36 of the *Fisheries Act* in Pacific Region.

Over the years, Habitat Management has had a long-standing and productive working relationship with Environment Canada (EC) on the administration of S. 36 (prohibition against deposition of deleterious substances). This relationship has been necessitated in part because, although S. 36 is administered by EC on behalf of DFO, our Minister remains accountable to Parliament for the entire *Fisheries Act*, and because of the inextricable linkages between S. 36 and S. 35 (harmful alteration of fish habitat).

The 1985 DFO-EC Memorandum of Understanding (MOU) on S. 36 empowers EC to administer and enforce S.36 with the support of DFO, while the 1987 Pacific DFO-EC Regional Working Agreement (RWA) describes in more detail the roles and responsibilities of EC and DFO in this regard. While the RWA has provided essential direction to DFO-EC in the past, I believe that both EC and DFO in Pacific Region acknowledge that it is outdated.

Recently, DFO Pacific Region has lost considerable water quality expertise through attrition and program changes. The region is also facing severe financial pressures and is reducing its involvement in all regional programs. To this end, our S. 36 support role to EC is being reduced to a regional water quality coordinator function that will continue to provide advice on DFO's core habitat responsibilities. It is our understanding, based on initial discussions with EC, that your Department's primary

needs include: provision of information and advice regarding the presence and relative importance of fisheries resources and fish habitat; fish habitat protection requirements and priorities; and identification of situations where pollution is affecting DFO's ability to meet its conservation goals for the fisheries resource, including those of stock protection and management, and fish habitat protection. In addition to meeting these essential EC needs, DFO will continue to provide advice on matters where there are both S. 36 and S. 35 implications, and maintain some level of habitat involvement in Regional Environmental Emergencies planning and the management of contaminated fisheries.

I recognize that a reduced DFO Habitat Management role in S. 36 may have implications for various EC programs. Accordingly, I have asked the Manager, Habitat Management Division, to arrange a meeting with EC to communicate this decision and begin working with EC on a Transition Plan for this fiscal year. The plan may include establishment of a mechanism for identification and prioritization of water quality issues, improved communication between EC and DFO field staff, and joint DFO and EC water quality sampling programs.

While this decision is specific to the Habitat Management's role in S. 36, other branches (e.g., conservation and protection) will need to be considered during the development and implementation of the Transition Plan. It may also be necessary to revise our Department's role in S. 36 in the future, in accordance with national direction on the delivery of S. 36.

I remain optimistic that the Transition Plan and its products will render this a manageable decision for both Departments, and will contribute to the federal government's Smart Regulation initiative. I also appreciate your understanding of the very difficult restructuring decisions that our Region must implement in the upcoming years.

Yours sincerely,

Paul Macgillivray  
A/Regional Director General  
Pacific Region

cc: S. Farlinger, Regional Director, Oceans, Habitat & Enhancement  
G. Savard, Regional Director, Conservation & Protection  
R. Wex, DG, Habitat, NHQ  
P. Cuillerier, DG, Conservation & Protection

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