



Fisheries and Oceans
Canada

Pêches et Océans
Canada

PRACTITIONERS GUIDE

TO WRITING A SUBSECTION
35(2) *FISHERIES ACT*
AUTHORIZATION FOR
DFO HABITAT
MANAGEMENT STAFF

VERSION 1.0



FISHERIES AND OCEANS CANADA

Canada

The intent of this Practitioners Guide is to provide direction and advice to Fisheries and Oceans Canada (DFO) Habitat Management Program (HMP) staff in the planning, writing and issuance of a Subsection 35(2) *Fisheries Act* Authorization. This Guide is part of a series of Practitioners Guides that support the Habitat Management Program in making transparent and consistent decisions during the regulatory review of works or undertakings that affect fish and fish habitat across Canada. These Guides are intended for internal use by HMP staff. If you have any concerns, omissions, corrections or comments on this Guide or any Practitioner Guide, please refer them to your regional representative of the national Policy & Guidelines Working Group. To access the membership of the Policy & Guidelines Working Group, please visit the Habitat Management Intranet site at: http://oceans.nrc.dfo-mpo.gc.ca/habitat/home_e.asp.

Cette publication est également disponible en français.

TABLE OF CONTENTS

INTRODUCTION	1.0	4
THE PURPOSE OF THIS GUIDE	1.1	4
REGULATIONS	1.2	4
POLICY FRAMEWORK	2.0	5
WHEN AN AUTHORIZATION CAN BE ISSUED	2.1	5
HADD will not occur or is not likely to occur	2.1.1.	5
The HADD has been minimized	2.1.2.	5
HADD is acceptable	2.1.3.	5
Terms for compensatory habitat are acceptable	2.1.4.	5
Environmental assessment requirements	2.1.5	6
WHEN AN AUTHORIZATION SHOULD NOT BE ISSUED	2.2	6
WHAT IS BEING AUTHORIZED	2.3	6
PROPONENT RESPONSIBILITIES	2.4	6
Requesting an Authorization	2.4.1	6
Providing information	2.4.2	6
PREPARING TO WRITE AUTHORIZATIONS	3.0	7
Understanding the proposed works or undertakings	3.1	7
Financial security	3.2	9
Relevant Environmental Assessment legislation	3.3	9
WRITING AUTHORIZATIONS	4.0	10
TITLE	4.1	10
RECIPIENT OF AUTHORIZATION	4.2	10
LOCATION OF PROJECT	4.3	10
VALID AUTHORIZATION PERIOD	4.4.	11
Valid Authorization period for HADD	4.4.1	11
Valid Authorization period for other conditions	4.4.2	11
DESCRIPTION OF PROPOSED WORKS OR UNDERTAKINGS	4.5	11
CONDITIONS OF AUTHORIZATION	4.6	11
Description of the Proponent Plan	4.6.1	12
Mitigation	4.6.2	12
Habitat Compensation	4.6.3	12
Monitoring	4.6.4	13
Financial Security	4.6.5	13
Signing Authority	4.7	14
Amendments	4.8	14
Proponent amendments	4.8.1	14
DFO amendments	4.8.2	14
POST AUTHORIZATION CONSIDERATIONS	5.0	15
Proponent to stop works	5.1	15
Drawing on letters of credit	5.2	15
Enforcement	5.3	15
APPENDIX I: SAMPLE AUTHORIZATION	6.0	16

LIST OF TABLES

TABLE 1. A method for identifying a) the description and location of works or undertakings; b) the schedule of works or undertakings; and c) a description of the HADD that results from works or undertakings.

INTRODUCTION

1.0

1.1 THE PURPOSE OF THIS GUIDE

This guide provides direction and advice to DFO habitat practitioners in the planning, writing, and issuance of a subsection 35(2) *Fisheries Act* authorization ("Authorization"). The decision to issue an Authorization is only made once a series of criteria have been met. In summary, these criteria are:

- ▶ the harmful alteration, disruption or destruction of fish habitat ("HADD") is likely despite contemplated preventive measures;
- ▶ the HADD is acceptable to DFO;
- ▶ an adequate fish habitat compensation has been proposed; and
- ▶ a relevant environmental assessment¹ has been completed.

Subsection 35(1) of the *Fisheries Act* is a straightforward prohibition. It states:

"No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat."

However, pursuant to subsection 35(2) the Minister of Fisheries and Oceans may authorize a HADD. Subsection 35(2) of the *Fisheries Act* states:

"No person contravenes subsection (1) by causing the alteration, disruption or destruction of fish habitat by any means or under any conditions authorized by the Minister."

Therefore, when the conditions of an Authorization are followed the proponent has not contravened subsection 35(1) and is not liable for prosecution under that section of the *Fisheries Act*.

The form of an Authorization is established in the regulations. One heading of the form reads "Conditions of Authorization", and it is under this heading that practitioners should include conditions under which the HADD can be authorized. It is important that these conditions are clear and easily interpreted not only by the proponent, but also for any DFO official who may be monitoring the works or undertakings. This is especially important given that, on the one hand, failure to comply with the conditions will invalidate the Authorization and, on the other hand, an ambiguously drafted condition may be interpreted by courts in a manner unintended by DFO.

1.2 REGULATIONS

The form for an Authorization is prescribed under the *Fisheries Act Fishery (General) Regulations* Schedule VII (Subsection 58(2)), and is generated automatically through HRTS. The decision to issue an Authorization is made at the discretion of the habitat practitioner. The content of each Authorization will be determined by the habitat practitioner according to the type of project and its associated effects to fish habitat.

¹ Note: The *Canadian Environmental Assessment Act* (CEAA) applies unless it is specifically excluded by other legislation. Other environmental assessment legislation may apply to the Northwest Territories, Nunavut and the Yukon. For information about CEAA refer to: http://www.dfo-mpo.gc.ca/habitat/media/ceaa_guide/index_e.htm. For information about environmental assessment legislation in Nunavut: <http://aulak.polarnet.ca/nirb/> ; for Northwest Territories: <http://www.mveirb.nt.ca/> ; for Yukon: <http://www.gov.yk.ca/depts/eco/dap/yeaa.html>

The project review process is described in detail in the ***Practitioners Guide for Letters Used in Fisheries Act Review***. This section summarizes the decision steps followed prior to issuing an Authorization.

2.1 WHEN AN AUTHORIZATION CAN BE ISSUED

In undertaking project reviews, DFO's first preference is for the proponent to avoid the HADD. However, in some situations, where a HADD is unavoidable, the habitat practitioner must consider the following factors prior to issuing an Authorization.

■ 2.1.1 *HADD will not occur or is not likely to occur*

The habitat practitioner must determine if the HADD is likely to occur as a result of works or undertakings despite contemplated preventive measures. In some instances, DFO may determine that a HADD will not occur after appropriate preventive measures have been applied and therefore no Authorization is required.

■ 2.1.2 *The HADD has been minimized*

Before deciding to issue an Authorization, the habitat practitioner, in co-operation with the proponent should ensure that the extent of the HADD that is to occur has been minimized through mitigation, relocation or redesign. Once the practitioner is satisfied that the HADD has been minimized to the extent that is reasonable and practical, then the habitat practitioner must determine if the residual HADD is acceptable.

■ 2.1.3 *HADD is acceptable*

Following DFO Policy critical fish habitat is afforded the highest level of protection. The habitat practitioner determines whether the habitat in question is critical fish habitat. This determination is based on several factors, such as: the habitat's importance in sustaining valuable fisheries, including commercial, recreational or aboriginal fisheries; its rareness; its high productive capacity; and the sensitivity of certain life stages it supports. HADD of this habitat type is, in general, unacceptable and should not be authorized by DFO.

In addition, if after application of mitigation measures and any possible relocation or redesign, the magnitude and/or duration of the residual HADD remains unacceptable, then an Authorization should not, in general, be issued.

■ 2.1.4 *Terms for compensatory habitat are acceptable*

A detailed description of habitat compensation is provided in the ***Practitioners Guide to Habitat Compensation***. In keeping with DFO Policy, each Authorization should outline the compensation works that are required to satisfy the habitat practitioner that a "No Net Loss" in the productive capacity of fish habitat will occur in relation to the HADD being authorized.

■ 2.1.5 Environmental assessment requirements

Upon determining that DFO may issue an Authorization for HADD of fish habitat, regulatory requirements under the *Canadian Environmental Assessment Act* (CEAA) or other environmental assessment legislation applicable to the federal government must be met.² DFO must ensure that the requirements of this legislation are met before issuing an Authorization.

2.2 WHEN AN AUTHORIZATION SHOULD NOT BE ISSUED

An Authorization should not be issued in the following situations:

- ▶ Where the HADD is unacceptable.
- ▶ Where the HADD has already occurred or is occurring. Authorizations cannot be issued retroactively.
- ▶ Where the works or undertakings violate *Fisheries Act* subsection 36(3), or
- ▶ Where projects are authorized pursuant to regulations, including a section 36 regulation.³
- ▶ When an environmental assessment under CEAA or other applicable environmental assessment has not been completed.

2.3 WHAT IS BEING AUTHORIZED

An Authorization only authorizes the HADD **that results from** authorized works or undertakings. It should be clear in each Authorization exactly what is being authorized.

2.4 PROPONENT RESPONSIBILITIES

■ 2.4.1 Requesting an Authorization

It is the proponent's decision whether or not to proceed with the works or undertakings. If the proponent chooses to proceed with the works or undertakings then they are responsible for requesting an Authorization from Fisheries and Oceans Canada. The *Fishery (General) Regulations*, Schedule VI (Subsection 58(1)) provides the proponent with application details and minimum information requirements. However, additional details will aid habitat practitioners in the efficient preparation and writing of the Authorization.

■ 2.4.2 Providing information

It is recommended that the information requested from the proponent be prepared in a format that permits clear understanding and identification of which activities are likely to result in the HADD. One method of accomplishing this is to request a schedule, indicating the timing of the activities and their phases (see Section 3.1 for more details).

² Note: For information about CEAA refer to: http://www.dfo-mpo.gc.ca/habitat/media/ceaa_guide/index_e.htm. For information about environmental assessment legislation in Nunavut: <http://aulak.polarnet.ca/nirb/> ; for Northwest Territories: <http://www.mveirb.nt.ca/> ; for Yukon: <http://www.gov.yk.ca/depts/eco/dap/yeaa.html>

³ Note: Policy advice should be sought for major projects where Section 35 may apply in addition to Section 36 regulation

PREPARING TO WRITE AUTHORIZATIONS

3.0

3.1 UNDERSTANDING THE PROPOSED WORKS OR UNDERTAKINGS

The process of writing an Authorization requires detailed understanding of the proposed works or undertakings and of the proposed compensation to achieve no net loss of fish habitat. While a great deal of information is available in the reports and in the compensation plans submitted by the proponent, there are key elements that must be included in the Authorization.

A recommended method for preparing to write an Authorization is to develop with the proponent, a schedule of the proposed works or undertakings, including a description and location of the works or undertakings and resultant HADD (See Table 1). This will give practitioners and proponents a clear understanding of what is being authorized, and the timelines involved. This will also be of value in meeting CEEA requirements.

In many cases, only one row of the table may be relevant, for example, where the HADD is only associated with the construction phase of the works or undertakings. However, particularly for more complex works or undertakings, it is important to think through all aspect of their sequencing to ensure that all potential HADDs have been clearly identified.

TABLE 1: A method for identifying a) the description and location of works or undertakings; b) the schedule of works or undertakings; and c) a description of the HADD that results from works or undertakings.

Development phases	Description and location of works or undertakings that result in HADD	Schedule	Description of HADD that results from works or undertakings
Construction	Clearing of right-of-way as noted on diagram XX.	Jul 15, 2004 - Aug 15, 2004	The excavation of 200 m ² of stream channel at the crossing site.
	Construction of a water diversion structure. Dewatering the channel to isolate the worksite as noted on diagram XX.	Jul 21, 2004 - Aug 15, 2004	Dewatering of 50 m length (150 m ²) of Fish Creek for 12 days.
	Placement of in-water structures as noted on diagram XX.	Aug 1, 2004 - Aug 30, 2004	The permanent loss of 50 m ² of shallow riverbed used as fish habitat by resident fish.
Operation	Flow regulation of Trout River by Hydro-Electric Corporation.	Drawdown period	Dewatering of 5,000 m ² of Trout River for 25 days.
Maintenance during period of use	Annual dredging of Pike River as noted on diagram XX.	Aug 1-30, 2004 Aug 1-30, 2005 Aug 1-30, 2006 Aug 1-30, 2007	The removal of approximately 500m ³ of channel substrate on an annual basis.
	Removal of large woody debris complex as noted on diagram XX.	July 15, 2004 - Aug 15, 2004	The removal of 20 m ³ of large woody debris used as fish habitat.
Decommissioning / Abandonment	Dredging of channel and removal of woody debris as part of the decommissioning of in-channel structures in the Pickerel River as noted on diagram XX.	Mar 15, 2007 - June 30, 2007	The removal of 100 m ³ of channel substrate and woody debris used as fish habitat.

Note: Some works or undertakings result in HADD at only one development phase while others result in HADD at multiple development phases.

3.2 FINANCIAL SECURITY

To assure that the proponent complies with conditions of an Authorization, DFO may request financial security as a condition of the Authorization. “Letters of credit” are financial instruments that secure the obligation of the proponent to complete specific conditions of the Authorization. Irrevocable letters of credit are preferred over other forms of security. The letter of credit is written by a financial institution of the proponent’s choice that is approved by DFO. If the proponent defaults on a condition of an Authorization, DFO may then use the funds from a letter of credit to ensure the condition is met.

A letter of credit requires a cost estimate from the proponent for specific conditions of the Authorization (e.g. mitigation measures, compensation works, monitoring). The amount greater than the estimated cost of completing the works, both to allow for additional expenses that could be incurred by DFO to complete the work (administration, mobilization, cost of external expertise, etc.), and to allow for the margin of error and cost overruns. It should fit normal contracting procedures and, on long-term projects, allow for inflation protection (e.g. over 10 years this could amount to 20-30% of the cost).

The amount of finances secured can be reduced over time, or after a certain progress point is achieved, in order to lower the burden on the proponent. Conversely, should the risk of failure persist, the security could be renewed in order to ensure compensation is completed in entirety, provided the ability to do so is set out in the original Authorization.

The letter of credit should be obtained for the full period over which the specific conditions of the Authorization will be carried out. The financial security should explicitly outline the conditions that must be met by the proponent for the financial security to be reduced and released.

Key provisions and an example of a “letter of credit” are provided in the ***Practitioners Guide to Habitat Compensation***.

3.3 RELEVANT ENVIRONMENTAL ASSESSMENT LEGISLATION

As noted in Section 2.1.4, the requirements of CEAA or other applicable environmental assessment legislation must be met.

WRITING AUTHORIZATIONS

4.0

The format for an Authorization is prescribed in the *Fishery (General) Regulations*, Schedule VII (Subsection 58(2)). The following sections provide further information on this format.

4.1 TITLE

The title of the Authorization is, "Authorization for Works or Undertakings affecting Fish Habitat". No variations of this title should be used.

4.2 RECIPIENT OF AUTHORIZATION

The Authorization is issued to the principal party behind the works or undertakings. Contractor(s) could be provided a copy of the Authorization, however, it is ultimately the principal's responsibility to ensure that the Authorization and its conditions are distributed to, and understood by contractors or any other persons carrying out the work.

The name of the person, corporation, government department that is considered to be the authorized party should be listed. Ensure current contact information is included in the Authorization such as the name, address and contact telephone number of the authorized parties.

To ensure that you have the proper name of a corporation and that it is a legal entity, a corporate name search can be done with the relevant provincial or federal Registrar of corporations. If the entity is not a corporation, in general, its individual owner should be the recipient of the Authorization.

4.3 LOCATION OF PROJECT

"Project" is a term that is not referred to in section 35 of the *Fisheries Act*. For the purposes of the Authorization this term should be considered as a totality of all works and undertakings that are subject to the Authorization. No other meaning applies to this term.

Ensure the location of the works or undertakings that are subject to the Authorization is sufficiently detailed to be able to find the site. Inspections may be conducted for compliance monitoring purposes by either DFO-Habitat staff or DFO-Compliance and Enforcement staff.

Latitude and longitude coordinates and other relevant data, including total affected area, should be recorded with the necessary accuracy. If the area is dispersed, indicate the latitude and longitude coordinates of all individual works or undertakings in the description. Also refer to Proponent Plans and/or reference the location on maps of the area (such as NTS 1:50,000 maps).

For the description, indicate the location of the nearest large community and the affected or proximal waterway in one or two sentences.

4.4 VALID AUTHORIZATION PERIOD

■ 4.4.1 *Valid Authorization period for HADD*

The “Valid Authorization Period” is the period for which Authorization for the harmful alteration, disruption or destruction of fish habitat is given. Ensure the dates of all periods when the works will cause HADD are documented. Consider all the development stages and indicate the timing of these stages in the Authorization. In so doing, the specific timeframe for works or undertakings that result in HADD is established. The proponent cannot cause HADD outside the specified period.

■ 4.4.2 *Valid Authorization period for other conditions*

The Authorization should also specify the time schedule in respect of any other conditions. This can be done in conjunction with drafting these conditions under the heading “Conditions of Authorization”. If these periods are longer than the period for which Authorization for HADD is given, then the phrase “the valid Authorization periods for the other conditions of this Authorization are set out below” should be included.

4.5 DESCRIPTION OF PROPOSED WORKS OR UNDERTAKINGS

It is important to describe very specifically what works or undertakings are being authorized. The works or undertakings set out under this heading should be those that cause the authorized HADD. These will have been identified during the preparatory phase as outlined in Section 3 (Table 1).

Ensure that a detailed diagram of the location(s) where the harmful alteration is being authorized is referenced in this section. The referenced diagram should show the area, in square metres, and a description of the fish habitat that is affected.

If the project is large and complex there may be several works or undertakings resulting in a HADD over different time periods. Major projects may include multiple stream crossings, channel diversions or construction of water impoundment structures, site preparation and abandonment impacts. It is necessary to list these works or undertakings individually so that anyone undertaking compliance monitoring is clear on the HADD that is authorized.

4.6 CONDITIONS OF AUTHORIZATION

Conditions set out under the heading “Conditions of Authorization” should address all requirements and limitations that DFO intends to impose on the proponent, the breach of which could result in prosecution under the *Fisheries Act*. The object is to identify the exact extent of the authorized HADD, the parameters within which the proponent is allowed to cause HADD, and to enable DFO staff to quickly determine compliance at the time of the site visit (See Section 5.0).

The conditions of the Authorization should be numbered sequentially in bullet form so that each point and each section is clearly outlined and easily referenced. This is especially important for compliance monitoring or when completing amendments.

■ 4.6.1 *Description of the Proponent Plan*

The Proponent Plan is the actual referral or project description submitted by the proponent which outlines their proposed plans. A description of the Proponent Plan should be written as a condition. Reference should be made to the most recent version of the Proponent Plan (project report, environmental management plan, and engineering plan) and for more complex projects can include the project schedule (see Section 3.1 for details). Reference should be specific enough to allow ready reference to the details in the attached Proponent Plan. As a final check, ensure that any changes to the Proponent Plan are reflected in the Authorization.

When writing the **Proponent Plan** specifications the following type of **conditions** should be included at a minimum:

- ▶ A liability clause confirming that the proponent is responsible for design, workmanship and safety of all work.
- ▶ Reference to the most recent version of the Proponent Plan (project report, environmental management plan, and engineering plan).

■ 4.6.2 *Mitigation*

It is important to include those mitigation measures that prevent non-residual impacts to fish habitat and water quality. These mitigation measures should be included as conditions. If applicable, indicate when these mitigation measures are to be applied. When writing the **mitigation** specifications the following type of **conditions** should be included at a minimum:

- ▶ A description of the measures that will be followed to prevent deleterious substances (sediments, contaminants, etc.) from entering water during works and after works have been completed.
- ▶ A description of the timing of works or undertakings to avoid sensitive periods in the life history of fish species.

■ 4.6.3 *Habitat Compensation*

Compensatory fish habitat or habitat improvement requirements should be put into Authorizations as conditions. A "compensation agreement" separate from an Authorization is not an acceptable option. For information on determining adequate compensation refer to the *Practitioners Guide to Habitat Compensation*.

When writing the **habitat compensation** requirements the following type of **conditions** should be entered:

- ▶ A detailed description of compensatory works including reference to compensation plans and reports.
- ▶ The timelines for completion of compensatory works.
- ▶ The criteria that will be used to evaluate the success of the compensation works.
- ▶ A clause indicating the proponent's responsibilities should the compensation project fail to meet the evaluation criteria.

■ 4.6.4 Monitoring

There are two elements of monitoring: compliance monitoring and effectiveness monitoring. The objective of compliance monitoring is to document how the proponent fulfilled the conditions of the Authorization for the proponent plan, the mitigation, and the habitat compensation works. The objective of effectiveness monitoring is to document whether the mitigation conditions were effective in preventing impacts to fish habitat and whether the compensation measures were effective in achieving “no net loss” of fish habitat. Both compliance monitoring and effectiveness monitoring need to be identified as conditions of the Authorization.

It is important to ensure the timelines for monitoring the project and the compensation works are clearly stated in the Authorization. Reference to the schedule of works or undertakings will assist in determining the requirements for monitoring.

When writing the project monitoring requirements the following types of conditions should be entered that relate to the **proponent plan** and the **mitigation**:

- ▶ That works or undertakings are being conducted according to, and within the schedule of, the Proponent Plan.
- ▶ That all mitigation measures and structures (e.g. sediment control works, fish passage structures, fish screens, etc.) are functioning as intended.
- ▶ That the proponent applies all necessary measures in the event that mitigation measures or structures do not function as intended.

The following types of conditions should be entered for **the compensation works**:

- ▶ That compensation works are conducted according to, and within the schedule of, the Proponent Plan.
- ▶ That the proponent applies all necessary measures in the event compensatory habitat does not function as intended.
- ▶ That physical or biological criteria are established to demonstrate the effectiveness of the compensation work in achieving “no net loss” of fish habitat.

■ 4.6.5 Financial Security

DFO staff must decide on a case by case basis if financial security is required. Guidance on when financial security is required will be provided in the **Practitioners Guide to Letters of Credit**.

Where financial security is required it must be included in the conditions of the Authorization. The following conditions relating to financial security should be included in the Authorization:

- ▶ The value of the letter of credit.
- ▶ The conditions by which funds can be withdrawn.
- ▶ The duration of the letter of credit.
- ▶ A program of release of the letter of credit.

4.7 SIGNING AUTHORITY

The person in DFO who signs an Authorization should be in a position with the capacity “appropriate” to signing the Authorization. As a minimum, an Authorization should be signed at least one level higher than the person writing the Authorization to provide a “double check” on the wording and content.

4.8 AMENDMENTS

■ 4.8.1 *Proponent amendments*

Authorizations may only be amended under limited circumstances. For example, a proponent may be unable to undertake the works or the compensation program in the time specified in the initial Authorization and request amendment to the dates. Provided there is reasonable justification for these changes and the timing does not affect fish or fish habitat beyond that which was initially contemplated, then a letter from DFO, indicating the specific timing condition that has changed, may be sent to the proponent. In this case, refer specifically to the Authorization condition to be changed and state what the new condition will be:

- ▶ The valid Authorization period will be changed from [date] to [date].
- ▶ The following numbers condition(s) in Authorization No. XXX shall be changed to read:
 - 3.1 All in-water works must be completed by [date].
 - 5.1 The period of monitoring will be changed to [date].
- ▶ All other conditions stipulated in the original Authorization No. XXX signed on [date] shall remain the same.

If the proponent proposes changes to works or undertakings, then determine whether there is reasonable justification for these changes and whether the HADD exceeds that which was initially authorized. If the amendment is acceptable then follow the same procedure as above. If, however, the proponent proposes changes to works or undertakings resulting in a HADD greater than initially authorized, then a new Authorization is required and the existing Authorization would no longer be valid.

■ 4.8.2 *DFO amendments*

The ability to amend or rescind the Authorization is to be written as a condition of the Authorization (See Appendix 1: Sample Authorization. Condition No. 1). DFO can only amend an Authorization when there is reason to believe that the works or undertakings will cause greater impacts than previously contemplated by DFO. If the authorization is to be amended, the Proponent should be given an opportunity to discuss any proposed modifications.

POST AUTHORIZATION CONSIDERATIONS

5.0

There are several circumstances where the conditions of an Authorization may not be met. These include, but are not limited to, the following:

- ▶ Creating a HADD beyond what was specifically authorized.
- ▶ Failure to implement mitigation measures.
- ▶ Failure to complete compensatory works.
- ▶ Failure to monitor.

In each situation consultation with the proponent should be pursued to determine whether an acceptable solution can be sought to meet the conditions of the Authorization. If the proponent is unwilling or unable to address the issue several options exist.

5.1 PROPONENT TO STOP WORKS

This will be written as a condition of the Authorization (see sample Authorization). The proponent should be made aware of their responsibility to meet this condition. DFO should also provide to the proponent the nature and the extent of the impacts in question and explain how they are greater than the parties previously contemplated and authorized.

5.2 DRAWING ON LETTERS OF CREDIT

The conditions of the Authorization will state how and when funds can be withdrawn from the letter of credit. Typically, funds can be withdrawn by DFO if there is any evidence that mitigation/compensation works did not function as intended, or that monitoring was not satisfactorily completed, and actions are required to correct the problem.

5.3 ENFORCEMENT

By clearly defining the conditions in the Authorization, both compliance monitoring and potential enforcement actions are made more efficient by DFO enforcement officers. All file information, documentation, photographic evidence, and a description of how the conditions of the Authorization have been invalidated should be gathered in order to provide them to the investigating officer.

APPENDIX 1: SAMPLE AUTHORIZATION

6.0

This sample Authorization is for a development proposal where the HADD being authorized occurs only during the construction phase.



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Page 1

AUTHORIZATION FOR WORKS OR UNDERTAKINGS AFFECTING FISH HABITAT

Authorization No.

Authorization issued to:

Name: Ms. Proponent

Attention: Ms. Proponent

Address: 204 Main Street, South Bay, ABC Province, Canada

Telephone: (101) 222-2222

FAX: (101) 222-2223

Location of Project

The (work/undertaking) is located within the Municipality of South Bay, ABC Province, Canada on east side of the Eggwhite River.

Latitude and longitude: 50° 08' 59" N - 95° 39' 52"W

Valid Authorization Period

The valid authorization period for the harmful alteration, disruption or destruction of fish habitat associated with the (work/undertaking) is:

From/De: (insert date) **To/À :** (insert date)

The valid authorization periods for the other conditions of the authorization are as set out below.

Description of Works or Undertakings (Type of work, schedule, etc.)

The harmful alteration, disruption or destruction of fish habitat hereby authorized is the (insert description of HADD) affecting (insert the area of fish habitat in square metres) of fish habitat for the (insert description of work/undertaking) on the Eggwhite River (as described in Schedule 1).

AUTHORIZATION FOR WORKS OR UNDERTAKINGS AFFECTING FISH HABITATAuthorization No.

Conditions of Authorization/Conditions de l'autorisation

1. The conditions of this Authorization notwithstanding, should the above works or undertaking, due to weather conditions, different soil or other natural conditions, or for any other reason, appear, in the opinion of the Department of Fisheries and Oceans ("DFO") likely to cause greater impacts than the parties previously contemplated, then DFO may direct the Proponent, and its agents, and contractors, to suspend or alter works and activities associated with the project, to avoid or mitigate adverse impacts to fisheries resources. DFO may also direct the Proponent and its agents, and contractors, to carry out at the Proponent's expense any works or activities deemed necessary by DFO to avoid or mitigate further adverse impacts to fisheries resources. In circumstances where DFO is of the view that greater impacts may occur than were contemplated by the parties DFO may also modify or rescind this authorization. If the authorization is to be changed the Proponent will be given an opportunity to discuss any proposed modifications or rescission.

2. Conditions that relate to the **proponent plan**:
 - 2.1. Ms. Proponent (the "Proponent") confirms that all plans and specifications relating to this authorization have been duly prepared and reviewed by appropriate professionals working on behalf of Ms. Proponent. Ms. Proponent acknowledges that (s)he is solely responsible for all design, safety and workmanship aspects of all the works associated with this Authorization.
 - 2.2. The construction must comply with those criteria as identified within this Authorization. Harmful alteration, disruption or destruction of fish habitat other than that specifically identified within this Authorization is not permitted.
 - 2.3. Works will be conducted following the practices outlined in the following reports:
 - 2.3.1. Engineering Plans by P. Builder (P. Eng.), Contracting Inc. dated (insert date)
 - 2.3.2. Construction plans dated (insert date) and submitted to DFO.
 - 2.3.3. Environmental Management Plans written by Environmental Management Consulting Ltd. dated (insert date) and submitted to DFO.
 - 2.3.4. Add any other relevant proponent plan details.

AUTHORIZATION FOR WORKS OR UNDERTAKINGS AFFECTING FISH HABITAT

Authorization No. _____

3. Conditions that relate to the **mitigation** of potential harmful alteration, disruption or destruction of fish habitat. The following measures shall be implemented:

FOR EXAMPLE PURPOSES ONLY.

- 3.1. No instream work or any construction activity within **xx** meters of Eggwhite River shall occur outside Fishery Work Window of **(insert date)** to **(insert date)**, without the specific written permission from the Department of Fisheries and Oceans.
- 3.2. Sediment and erosion control measures shall be in place and shall be upgraded and maintained as required to prevent entry of sediment or sediment-laden water into the watercourse.
- 3.3. All machinery must be clean and in good working condition and no fuels, lubricants or construction wastes are to enter the watercourse.
- 3.4. **Insert any other relevant mitigation-specific conditions.**

4. Conditions that relate to the **compensation** for the loss of **xxx** square metres of fish habitat.

FOR EXAMPLE PURPOSES ONLY.

- 4.1. **(Insert the area of fish habitat to be created in square metres)** shall be created as compensatory fish habitat.
- 4.2. The compensatory fish habitat described above shall be completed as described more specifically in the attached letter and document "*Eggwhite River Habitat Compensation Plan*" by Environmental Management Consulting Ltd. dated **(insert date)**, and the attached sketch map, both of which are attached to this authorization as Schedule B.
- 4.3. All fish habitat compensatory works shall be completed before **(insert date)**.
- 4.4. If at any time the Proponent becomes aware that the compensatory habitat is not completed and/or functioning as described in the habitat compensation plan, the Proponent shall carry out any works which are necessary to ensure the compensatory habitat is completed and/or functioning as described in the habitat compensation plan.

AUTHORIZATION FOR WORKS OR UNDERTAKINGS AFFECTING FISH HABITATAuthorization No.

- 4.5. The Proponent confirms that they shall leave the compensatory habitat undisturbed. After the compensatory habitat has been created the Proponent shall not carry on any work or undertaking that will adversely disturb or impact the compensatory habitat.
- 4.6. **Insert any other relevant compensation-specific conditions.**
5. Conditions that relate to the **monitoring** of the proponent plan, the mitigation and the compensation, the "Monitoring Program".

FOR EXAMPLE PURPOSES ONLY.

- 5.1. The proponent will undertake a Monitoring Program and will report to DFO, on or by **(insert date)**, whether works were conducted within the schedule of the proponent plan and whether the mitigation measures outlined in the proponent plan and this authorization (Section 2) were followed, by:
- 5.1.1. Providing dated photographs of the works and the completed project.
 - 5.1.2. Providing dated photographs of the sediment control works and details of how they functioned to prevent sediment entry into the watercourse.
 - 5.1.3. Providing details of any contingency measures that were followed in the event that mitigation measures did not function as described in the proponent plans.
 - 5.1.4. **(Insert any other relevant work/undertaking-specific monitoring conditions)**
- 5.2. The proponent will report to DFO on an annual basis for **xxx** years (i.e. on or by **(insert dates)**), that the compensation works were conducted according to, and within the schedule of, the habitat compensation plan by:
- 5.2.1. Providing dated photographs of the completed habitat compensation project.
 - 5.2.2. Providing details of how the compensatory habitat was functioning after completion.
 - 5.2.3. Providing a description of the contingency measures that were followed if, during the Monitoring Program, it was determined that the compensatory habitat was not functioning as described in the proponent plans.
 - 5.2.4. **(Insert any other relevant compensation-specific monitoring conditions)**

AUTHORIZATION FOR WORKS OR UNDERTAKINGS AFFECTING FISH HABITAT

Authorization No. _____

6. Conditions that relate to the **financial security**.

FOR EXAMPLE PURPOSES ONLY

- 6.1. The proponents shall deliver by (insert date) a letter of credit from a Canadian Bank in the sum of (insert amount), and valid until (insert date), which shall be in a form acceptable to DFO.
- 6.2. DFO may withdraw funds from the letter of Credit to retain an independent contractor to undertake any activity described in the conditions should these not be completed by the Proponent.
- 6.3. DFO will reduce the sum of the letter of credit by (insert amount) on an annual basis should all conditions be met and the habitat compensation works are functioning as intended.
7. Written notification of the commencement of works or undertakings shall be provided to DFO **xx** days prior to the initiation of those works or undertakings.

The holder of this authorization is hereby authorized under the authority of Section 35(2) of the *Fisheries Act*, R.S.C., 1985, c. F. 14, to carry out the work or undertaking described herein. This authorization is valid only with respect to fish habitat and for no other purposes. It does not purport to release the applicant from any obligation to obtain permission from or to comply with the requirements of any other regulatory agencies.

Failure to comply with any condition of this authorization may result in charges being laid under the *Fisheries Act*.

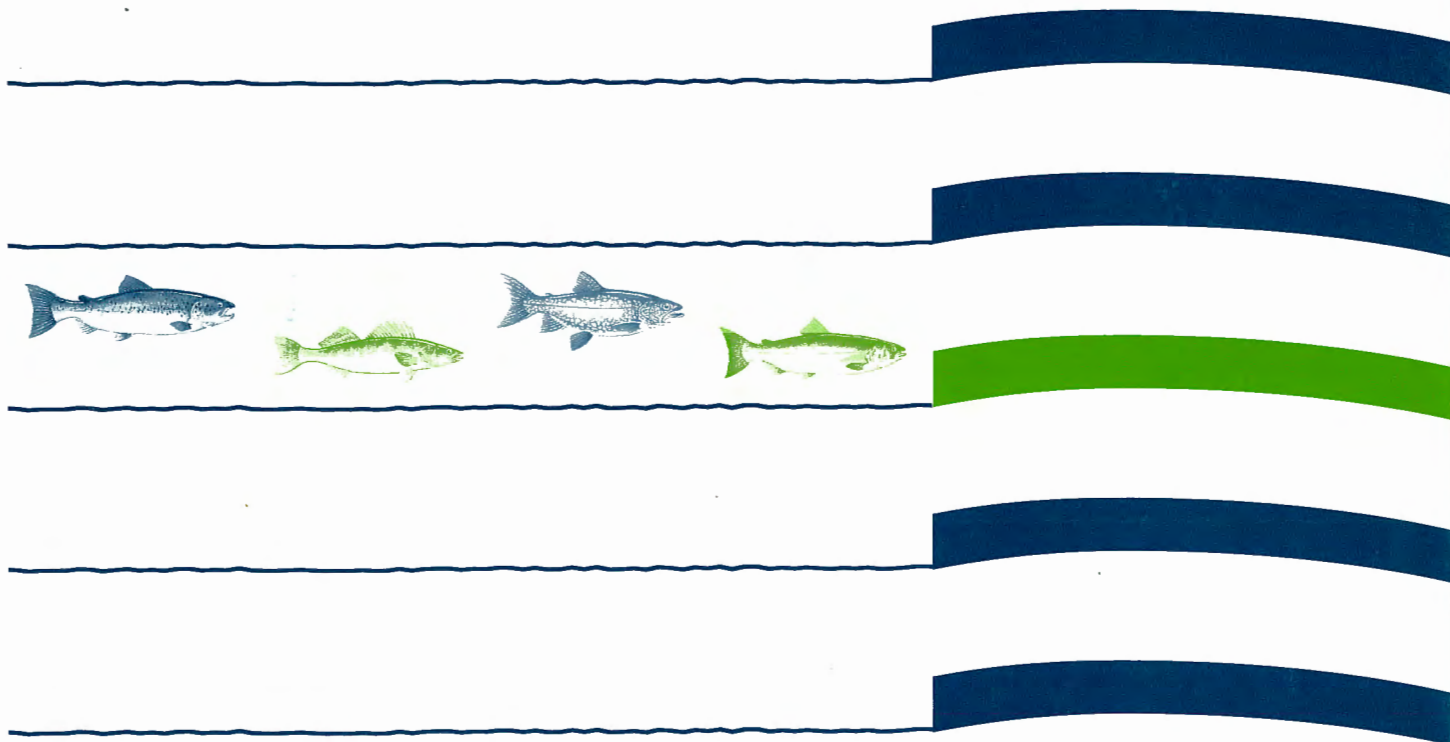
This authorization form should be held on-site and work crews should be made familiar with the conditions attached.

Date of issuance: _____

Approved by: _____

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