

MEMORANDUM OF UNDERSTANDING

BETWEEN

Fisheries and Oceans Canada

AND

Conservation Ontario

FOR

***Cooperation for Fisheries and Aquatic Resource
Protection in Ontario***

[September 29, 2014]

Memorandum of Understanding

BETWEEN:

Fisheries and Oceans Canada ("DFO")

AND

Conservation Ontario ("CO")

1. Introduction

Whereas:

- (a) The *Constitution Act, 1867* assigns to the federal government exclusive jurisdiction for sea coast and inland fisheries and the *Fisheries Act* sets out the powers and duties of the Minister of Fisheries and Oceans with respect to the conservation and protection of fish and fish habitat, specifically the fisheries protection and pollution prevention provisions;
- (b) Fisheries and Oceans Canada ("DFO") is responsible for the administration of the *Fisheries Act*, specifically the fisheries protection provisions including Sections 6, 20, 21, 35, 37, and 38 related to the conservation and protection of Canada's marine and freshwater fisheries resources and their habitats from the impact of human activities; before DFO exercises ministerial powers as they relate to commercial, recreational and Aboriginal fisheries in the Fisheries Protection sections of the Act, DFO must consider the contribution of the relevant fish to the ongoing productivity of commercial, recreational or Aboriginal fisheries, fisheries management objectives, measures and standards to avoid, mitigate or offset serious harm to fish that are part of or support a commercial, recreational or aboriginal fishery; and the public interest.
- (c) The Species at Risk Act (SARA) identifies the Minister of Fisheries and Oceans as the competent minister with respect to aquatic species other than those individuals in or on federal lands administered by the Parks Canada Agency and, in that capacity, the Minister of Fisheries and Oceans has powers and duties with respect to protecting aquatic species listed under that Act.
- (d) The *Conservation Authorities Act* states the objectives of a Conservation Authority (CA) are to establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals. As well, all CAs are responsible for administering "Development, Interference and Alteration Regulations" (Ontario Regulations 42/06 and 146/06 to 182/06) consistent with the "Content Regulation" Ontario Regulation 97/04 of the *Conservation Authorities Act*. CAs have responsibilities to regulate development and activities in or

adjacent to river or stream valleys, Great Lakes and large inland lakes, shorelines, watercourses, hazardous lands and wetlands or the straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream, watercourse or wetland. CAs review projects proposed in their watershed jurisdictions during the planning and/or early design stages and may provide technical advice and information related to fisheries and aquatic resources as watershed management agencies under the *Conservation Authorities Act*. CAs may also provide advice and information related to fisheries and aquatic resources to municipalities on policy documents and planning and development applications, as part of their public commenting body role under the *Planning Act* and may provide additional technical advice related to their mandates as determined under the terms of service agreements with municipalities. Finally, CAs may provide advice and information related to fisheries and aquatic resources as part of their role as commenting bodies under other provincial legislation and provincial plans such as the *Environmental Assessment Act*.

- (e) Under Section 312 of the *Corporations Act* (1990), the Association of Conservation Authorities of Ontario (hereafter Conservation Ontario or "CO") was issued letters patent of continuation on March 4, 2005. These letters patent authorize its continuation to the same extent as if it has been incorporated under this Act and specify that the objects of the corporation are to: Promote and represent the interests of Conservation Authorities in Ontario, to support and enhance an effective conservation network in the Province of Ontario, to promote watershed-based conservation and resource management in Ontario, to provide a forum for discussion of the issues affecting watershed-based conservation and resource management and for other purposes not inconsistent with these objects.
- (f) CO's by-laws further specify that CO shall be governed by its Council, consisting of representatives appointed and designated by its members (Conservation Authorities) as voting delegates; and by its Directors.
- (g) To carry out their mandate under the *Conservation Authorities Act*, Conservation Authorities have prepared watershed, subwatershed and shoreline management plans (many of which contain specialized fish and aquatic resource management objectives, technical information, strategies, policies and programs).

Therefore, DFO and CO (the "Parties") agree to the following Memorandum of Understanding ("MOU"):

2. Guiding Principles

- (a) The parties are committed to client service and will work together to improve the efficiency and effectiveness the delivery of their respective programs in Ontario.
- (b) Conservation and protection of fish and fish habitat and listed aquatic species at risk and their critical habitat will be managed in accordance with the DFO's regulatory and policy frameworks for the application of the

fisheries protection provisions of the *Fisheries Act* and *Species at Risk Act* respectively.

- (c) Conservation Authorities, where resources allow, will continue to provide technical advice and information related to fisheries and aquatic resources during the planning and / or early design of projects in their jurisdictions as part of their responsibilities under their legislated mandates (description in section 1d of this MOU)

3. PURPOSE

(a) DFO and the Conservation Authorities have respective responsibilities for regulatory reviews and approvals and aquatic resource protection related to works, undertakings and activities in Ontario and will work together to develop a collaborative approach to fisheries and aquatic resource protection that is consistent in Ontario;

(b) The Parties will work together in the development of protocols to improve the efficiency and effectiveness of regulatory reviews of applications and decision-making related to the roles and responsibilities of each Party for:

- (i) Ensuring that opportunities are utilized to make proponents aware of the new fisheries protection program requirements of the *Fisheries Act* and any relevant regulatory requirements under the *Species at Risk Act*;
- (ii) Ensuring that opportunities are utilized to make proponents aware of the requirements of the *Conservation Authorities Act*;
- (iii) Communicating fisheries and aquatic resource data, policies and management objectives; and
- (iv) Reporting on the discussions and actions taken under this MOU.

4. WORK TO BE COORDINATED

(a) The Parties will establish, wherever possible, clear, comprehensive and harmonized standards, guidelines and procedures to guide and measure regulatory performance related to:

- (i) Advice to be provided to planning and development proponents regarding fisheries and aquatic resource protection and potential related *Fisheries Act*, *Species at Risk Act* and *Conservation Authorities Act* requirements;
- (ii) Developing and improving technical capacity through training and other knowledge transfer mechanisms regarding fisheries and aquatic resource protection;
- (iii) Sharing the results of new methods, measures and/or best practices for fisheries and aquatic resource protection.

(b) The Parties will establish a working group consisting of principal contacts to oversee the development and implementation of an annual workplan to

accomplish work to be coordinated (paragraph 4 of the MOU) .This working group will also conduct an annual review as outlined under paragraph 6 of the MOU.

(c) DFO agrees to:

- i) Refer Proponents where appropriate to the local CA to obtain information that may be available on the aquatic environment and fisheries management objectives, priorities and strategic offsetting options, if DFO determines that a project requires an Authorization and offsetting under the *Fisheries Act* and/or where necessary for a permit under the *Species at Risk Act*;
- ii) Inform CO, where appropriate, of any review or investigation by DFO of a non-compliance incident under DFO's jurisdiction that may have occurred in a Conservation Authority's jurisdiction;
- iii) Assist in developing the professional and technical capacity of CO and CAs by providing training opportunities and communication materials related to implementation of the *Fisheries Act*, *Species at Risk Act* and associated regulatory and policy frameworks; and
- iv) Consult with CO regarding the development of new standards and guidelines for application of the fisheries protection provisions of the *Fisheries Act*, and the *Species at Risk Act* where appropriate.

(d) CO agrees to:

- (i) Assist CAs in ensuring that the watershed stakeholders they interact with as part of their responsibilities as a watershed management agency under the *Conservation Authorities Act* (as described in 1d) are aware of the *Fisheries Act*, *Species at Risk Act* and associated regulatory and policy frameworks;
- (ii) Coordinate training for DFO staff in Central and Arctic Region regarding Conservation Authorities and their relationship to DFO's mandate;
- (iii) Coordinate, compile *and communicate* information, questions and concerns from individual CAs for presentation to DFO where appropriate;
- (iv) Facilitate communication between CAs and DFO to provide information that may be available on aquatic resource and/or fisheries management objectives, priorities and strategic offsetting options, to DFO and project proponents where DFO determines an offsetting plan is required as part of a proponent's application for authorization under the *Fisheries Act*; and/or where necessary for the issuance of a permit under the *Species at Risk Act*
- (v) Liaise with DFO and CAs to assist CAs in further developing knowledge related to aquatic resources in their watersheds and, as resources allow, use the available information to provide advice to the Proponent for appropriate measures to offset impacts, where DFO requires an offsetting plan;
- (vi) Inform DFO where appropriate of projects that could result in serious

harm to a commercial, recreational, or aboriginal fishery or have the potential to contravene the *Species at Risk Act*.

5. FINANCIAL ARRANGEMENTS

This MOU will not impose any financial responsibilities or limitations on the Parties. Each party will be responsible for their respective costs incurred related to the implementation of the MOU.

6. ANNUAL REVIEW OF MOU

- (a) The Parties will meet together at least once each fiscal year that this MOU is in force to review its content and assess the effectiveness of activities under this MOU.
- (b) Proposals for changes to this MOU can be made at any time, and appropriate amendments made as may be agreed upon.

7. LEGAL LIABILITY

- (a) This MOU is an expression of the mutual intentions of the Parties and is not legally binding on them or enforceable against them.
- (b) It is agreed and acknowledged that any enforcement action under the *Fisheries Act* and the *Species at Risk Act* is at the sole discretion of DFO and may be referred to the Attorney General of Canada for consideration for prosecution.
- (c) It is agreed and acknowledged that any enforcement action under the *Conservation Authorities Act* is at the sole discretion of the Conservation Authorities.
- (d) If there is any conflict or inconsistency between this MOU and any obligations under any Act of Parliament, including but not limited to the *Fisheries Act* and the *Species at Risk Act* the obligations under the Act of Parliament shall prevail.

8. PRINCIPAL CONTACTS

Correspondence relating to this MOU is to be sent to the respective points of contact designated below. Either Party may unilaterally revise its point of contact by written notice to the other Party at any time.

- (a) **For DFO:**
Tom Hoggarth
Team Leader-Client Liaison, Partnerships, Standards & Guidelines
Central and Arctic Region
Fisheries and Oceans Canada
867 Lakeshore Road, PO Box 5050
Burlington, Ontario L7R 4A6
Fax: 905-336-6285
- (b) **For CO:**
Bonnie Fox
Manager, Policy and Planning
Conservation Ontario
Box 11, 120 Bayview Parkway
Newmarket, ON L3W 4W3

Fax: 905-895-0751

9. TERM OF THE MOU

- (a) This MOU will be in force from the date of final signature of both Parties and will remain in effect until cancelled by either Party acting under paragraph 10.
- (b) This MOU may be amended from time to time by mutual written agreement of the Parties under paragraph 6 – Annual Review of MOU.


10. PROVISION FOR CANCELLATION

This MOU may be cancelled unilaterally by either Party by providing six (6) months written notice of the intention to cancel to the other Party or by mutual agreement with any agreed period of notice.

11. SIGNATORIES

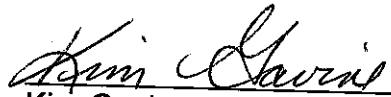
The Parties hereto have signed the Agreement, in counterpart, on the dates indicated below.

Approved by:



Dave Burden
Regional Director General,
Central and Arctic Region
Fisheries and Oceans Canada

NOV 25 2014
Date _____



Kim Gavine
General Manager
Conservation Ontario

Oct 27/14
Date _____