

MEMORANDUM OF UNDERSTANDING

between

The CANADIAN ELECTRICITY ASSOCIATION
and
FISHERIES AND OCEANS CANADA

PREAMBLE

WHEREAS the Canadian Electricity Association (CEA) is the national trade association of the Canadian electricity industry, and, as such, is responsible for representing the industry to the Government of Canada and its agencies and for advancing the interests of the industry, including its capacity to deliver reliable, affordable electricity to Canadians and its environmental performance, as documented under its national voluntary Environmental Commitment and Responsibility (ECR) Program (Annex 1),

and

WHEREAS the CEA, in the context of its national mandate and its role in the administration of the ECR Program, is committed to aiding its members in their efforts to conserve and protect Canada's fish and fish habitat resources and comply with the *Fisheries Act*, and is further committed to attaining that end by working cooperatively, on behalf of its members, with Fisheries and Oceans Canada (DFO),

and

WHEREAS the CEA and DFO recognize that CEA members, who often manage diverse generation portfolios with technologies that have different environmental impacts, must constantly balance protection of fish and fish habitat resources with other social, environmental, and economic objectives that Canadians consider important, all in the context of comprehensive provincial and federal regulatory and policy frameworks,

and

WHEREAS the DFO is responsible for the conservation and protection of Canada's marine and freshwater fish and fish habitat resources from the impact of human activities, and assumes this constitutional responsibility through the authority of the *Fisheries Act* (Habitat Management Provisions itemized in Annex 2), guided by the "Policy for the Management of Fish Habitat" (Habitat Policy, Annex 3) and other related regulatory and

policy documents, and fulfills this responsibility through implementation of its Habitat Management Program's Key Activities (Annex 4),

and

WHEREAS DFO recognizes that the success of national efforts, including the development and implementation of an effective, efficient, and consistent Habitat Management Program, requires that it cooperate with a variety of organizations across the country, including industry associations,

and

WHEREAS DFO desires, in particular, to cooperate with Canada's electricity industry in order to better conserve and protect the fish and fish habitat resources associated with electricity generation in Canada in a manner consistent with the requirements of the *Fisheries Act* and related regulatory and policy documents, including the Habitat Policy, and, thus, to help better achieve the goals and overall objective of the Habitat Management Program,

THEREFORE the CEA and DFO agree to establish a cooperative working relationship through this "Memorandum of Understanding" (CEA-DFO MOU), in order to facilitate regular national and regional consultation, collaborate in the development of standard fish and fish habitat conservation and protection requirements consistent with the objectives of the *Fisheries Act*, the Habitat Policy, and related regulatory and policy documents, undertake joint stewardship initiatives, develop joint education and training materials, and establish joint research programs, all with the intent of better protecting the fish and fish habitat resources associated with electricity generation in Canada.

1. CONSULTATION

The CEA and DFO agree that, in order to exchange information, resolve conflicts, and develop and implement initiatives described in this CEA-DFO MOU, they must undertake to consult regularly. To this end, the CEA and DFO jointly commit to:

- (1) conduct an annual senior level meeting between industry executives and DFO officials to monitor progress under the CEA-DFO MOU;
- (2) convene twice annual operations level meetings to define priorities, review progress, discuss specific concerns, advance stewardship, education and training and research initiatives, and share ideas on fish habitat management;
- (3) encourage and facilitate meetings between electricity industry and DFO regional representatives in regions across Canada.

2. COMPLIANCE WITH THE *FISHERIES ACT*

The CEA and DFO agree that compliance with the *Fisheries Act* is best achieved through the development of a National *Fisheries Act* Compliance Framework for Electricity Generation that describes legally based and scientifically sound fish and fish habitat conservation and protection requirements which are to be applied consistently across Canada, with appropriate recognition of local and regional differences. Therefore, the CEA and DFO agree to cooperate in developing such a national compliance framework.

3. STEWARDSHIP

The CEA and DFO agree to work together to encourage and coordinate fish habitat stewardship initiatives across the nation. These stewardship initiatives will be consistent with the objectives of the relevant regulatory and policy documents and the priorities of the Habitat Management Program and with the priorities of the CEA and its member companies. When mutually agreed upon, they will be developed and implemented at the local level by CEA member companies and regional representatives of DFO. Where possible, the CEA and DFO agree to involve other government agencies in these local initiatives. The CEA and DFO further agree to publicize such joint initiatives and, in such publicity, to recognize the respective role of each party.

4. EDUCATION AND TRAINING

The CEA and the DFO agree, with respect to electricity generation and fish and fish habitat conservation and protection, to coordinate development of programs and materials used for public education and staff training. To this end, the CEA agrees to encourage the inclusion of DFO habitat management training materials in staff training programs of its member utilities. The DFO, for its part, agrees to include CEA materials on electricity generation practices in its staff training programs. Both parties agree that their public education programs and materials about electricity will identify known effects of electrical generation on fish and fish habitat, while also highlighting the many innovative approaches being taken across the country to protect fish and fish habitat. The CEA and DFO also agree to develop joint public education materials and programs about fish and fish habitat conservation and protection and electricity generation.

5. RESEARCH AND MONITORING

The CEA and DFO recognize the importance of research and monitoring in providing the scientific knowledge necessary for the effective conservation and protection of fish and fish habitat. Therefore, in order to better understand the impacts of electricity generation facilities on fish and fish habitat, assess the effectiveness of measures taken to protect and

conserve fish and fish habitat, and improve the performance of electricity generation facilities with respect to the protection, conservation, and enhancement of fish and fish habitat, they agree to exchange information and develop research and monitoring priorities together. The CEA and DFO also agree that, whenever warranted by budget considerations and mutual advantage, they will initiate joint research and monitoring efforts. The CEA and DFO further agree to publicize such joint initiatives and, in such publicity, to recognize the respective role of each party.


6. REVIEW AND ADMINISTRATION OF THE AGREEMENT

The CEA and DFO agree to prepare and present an annual report to the Minister of Fisheries and Oceans and the CEA Executive Committee describing progress in implementing the CEA-DFO MOU and the contribution of initiatives launched under the CEA-DFO MOU to the sustainable management of fish and fish habitat resources and electricity generation in Canada. The results will be identified in the Department's Annual Report to Parliament on Habitat Management.

The signatures of the parties will initiate this CEA-DFO MOU. Either the CEA or DFO can terminate this MOU on three months written notice to the other party. This MOU will be reviewed by respective senior executives three years after the date of its coming into force to evaluate its effectiveness and to make appropriate mutually acceptable adjustments as required. Additionally, the MOU can be amended at any time with the approval of both parties.

The CEA and DFO will resolve issues regarding the implementation of this MOU in a timely manner using mechanisms available at the staff and senior executive levels of both organizations.

GOVERNMENT OF CANADA


Dr. Peter Harrison, Deputy Minister
Fisheries and Oceans Canada

Jul 04 2002, 2002

CANADIAN ELECTRICITY
ASSOCIATION


Hans R. Konow, President & CEO

June 21, 2002

ANNEX 1

Summary of the CEA Environmental Commitment and Responsibility (ECR) Program

Background

The Environmental Commitment and Responsibility (ECR) Program was established in 1997 by electric utilities, through the Canadian Electricity Association (CEA), to report on environmental performance on a national, industry-wide basis. Participation in the ECR Program became a requirement of corporate utility membership with CEA 1998.

At the core of the ECR Program is an open commitment to adopting four environmental performance principles that electric utilities integrate into their daily business activities:

1. *To be more efficient in our use of resources.*
2. *To reduce the adverse environmental impact of our business.*
3. *To be accountable to our constituents.*
4. *To ensure that our employees understand the environmental implications of their actions and have the knowledge and skills and to make the right decisions.*

These principles are translated into specific measures and indicators which are tracked each year to demonstrate the industry's commitment to improved performance.

The aggregated results are compiled into an Annual Report on the electricity industry, which is shared with utility customers, business partners and all other stakeholders. Each utility's results are verified, at least once every five years, by an independent outside body.

Objectives

The ECR Program recognizes that the industry and individual companies have to conduct their business with due respect and care for the natural environment and societal expectations in order to remain accountable to stakeholders.

The implementation of the ECR Program results in a healthier environment, improved corporate performance, and long-term profitability and economic benefits. The Program fosters this by complementing each electrical utility member's own environmental program(s). Specifically the program is designed to achieve the following objectives and benefits:

- Improved environmental performance and credibility
- Partnership opportunities in Public Policy development and implementation
- Creation of marketing and trade advantages
- Increased efficiency and cost reduction through improved management and reporting
- Business opportunities and profitability

Monitoring and Reporting

A Public Advisory Panel provides an independent overview each year to ensure the integrity and credibility of the Program. Each utility prepares an ECR Progress Report which is signed off by the CEO and submitted by March 31 each year. The Progress Reports are then compiled to form the basis of the Annual Report, which is publicly released in September of each year. The Annual Report communicates performance based on industry level results, using the Indicators, and provides the status of EMS implementation.

The Panel reviews each individual report to develop an assessment of the industry's progress on implementing the Program. This evaluation forms the basis for their "letter to the industry", which is included in the Annual Report.

ANNEX 2

Habitat Provisions of the Fisheries Act

- Section 20: Ensures safe passage for fish
- Section 21: Ensures fishways constructed around obstructions
- Section 22: Minister can require that appropriate measures are taken at dams and other obstructions to ensure fish passage and to maintain sufficient flows to protect fish habitat downstream
- Section 28: Prohibits hunting or killing of fish by explosives
- Section 30: Ability to require fish guards or screens at water diversions or intakes
- Section 32: Prohibits the destruction of fish by any means other than fishing
- Section 35: Prohibits works or undertakings that result in the harmful alteration, disruption or destruction of fish habitat, except when authorized by the Minister or his designate
- Section 36: Prohibits the deposit of deleterious substances in water frequented by fish, except where authorized by Regulations
- Note: Section 36 is administered by Environment Canada on behalf of the Minister of Fisheries and Oceans and does not form part of this Agreement
- Section 37: Allows the Minister to request plans and specifications where harmful alteration of habitat or the deposit of a deleterious substance may occur. Where unauthorized deposit of a deleterious substance disruption of habitat is likely, the Minister may order appropriate corrective action

ANNEX 3

Federal Government Fish Habitat Management Regulatory and Policy Documents

Habitat protection provisions of the *Fisheries Act*

Policy for the Management of Fish Habitat, 1986

Habitat Conservation and Protection Guidelines

Decision Framework for the Determination and Authorization of Harmful Alteration, Disruption or Destruction of Fish Habitat