



PRACTITIONERS GUIDE

FOR WRITING LETTERS
USED IN *FISHERIES ACT*
REVIEWS FOR
DFO HABITAT
MANAGEMENT STAFF

VERSION 1.1



FISHERIES AND OCEANS CANADA

The purpose of the *Practitioners Guide to Writing Letters Used in Fisheries Act Reviews* is to help Habitat Management practitioners when writing letters as part of the referral process under the *Fisheries Act*. This Guide is part of a series of Practitioners Guides that support the Habitat Management Program (HMP) 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 Habitat Management practitioners. If you have any comments on this Guide or any Practitioner Guide, please refer them to your regional Habitat Management Manager. To access other HMP guidelines, please visit the Habitat Management Intranet site at:
http://oceans.nrc.dfo-mpo.gc.ca/habitat/guidelines_e.asp

Cette publication est également disponible en français.

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PURPOSE OF THIS GUIDE



The intention of this guide is to help Habitat Management practitioners when writing letters as part of the referral review process under the *Fisheries Act*. This guide will help practitioners prepare letters by applying a fair and consistent referral review process across Canada, while recognizing the need for local discretion.

This guide covers a range of “typical” letters that practitioners may use in their referral review process. The letters in this guide pertain only to the **pre-development** referral review process. Examples of enforcement letters, protocols or orders are not included here.

DFO generally receives the following types of referrals for review. Those where:

- ▶ There are no effects to fish and fish habitat.
- ▶ Negative effects to fish and fish habitat **can** be avoided by implementing additional fish habitat protection measures.
- ▶ Negative effects to fish and fish habitat **cannot** be avoided by implementing additional fish habitat protection measures.
- ▶ The referral contains insufficient information for the fish habitat review.

This guide includes a variety of letters often used in the referral review process and not just the typical “Letter of Advice”.

LEGAL AND POLICY FRAMEWORK



Habitat Management practitioners review development proposals to find if there are concerns with respect to the habitat protection provisions of the *Fisheries Act*. Usually the main focus of the review is on subsection 35(1), whether the proposal is likely to result in the harmful alteration, disruption or destruction of fish habitat (HADD).

Subsection 35(1) states:

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

Whereas, subsection 35(2) 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 or under regulations made by the Governor in Council under this Act.

In other words, no offence is committed under subsection 35(1) if a subsection 35(2) Authorization is issued by DFO.

Practitioners review referrals to assess whether any of the proposed works or undertakings in the proposed plan will contravene subsection 35(1) of the *Fisheries Act*. DFO will advise the proponent of how to avoid any negative effects to fish habitat. This is done by providing additional fish habitat protection measures or by requesting redesign or relocation of those works or undertakings that are of concern.

Subsection 35(2) Authorizations are only issued when a HADD is likely to occur as a result of a work or undertaking and when relocation, redesign or additional fish habitat protection measures will not prevent a HADD. Please refer to the *Practitioners Guide to Writing a Subsection 35(2) Fisheries Act Authorization* for more information on using and writing Authorizations.

When practitioners write letters to proponent advising them of the additional fish habitat protection measures required to avoid a HADD, it is important that these are not construed as a subsection 35(2) Authorization or a subsection 37(2) order. The language in these letters should not imply that the proponent has been authorized to cause a HADD or ordered to modify or restrict any work or undertaking. Refer to Table 1 to determine the most appropriate form of correspondence with a proponent.

TABLE 1 : Difference between providing advice, writing standard letters and issuing Authorizations and orders

Type of Correspondence	Pertinent Section(s) of <i>Fisheries Act</i>
Advice Provided	Proactive advice on DFO’s file review process, ways to protect fish and fish habitat and the decision of DFO’s file review when an Authorization or order does not apply. The letters may suggest additional fish habitat protection measures that will likely avoid negative effects to fish and fish habitat.
Authorization	A subsection 35(2) Authorization avoids contravening subsection 35(1), contains legally binding conditions and a schedule during which the HADD is acceptable.
Order	Pursuant to subsection 37(2), an order may be issued requesting modifications or restrictions to plans, works or undertakings when an unauthorized HADD is imminent or occurring and the proponent is uncooperative in protecting fish and fish habitat. Note: these orders require approval from Governor in Council.

TYPICAL ELEMENTS OF REFERRAL LETTERS



The following elements of referral letters give Habitat Management practitioners a nationally standardized tool to correspond with proponents when Authorizations and orders are not needed. This guidance is also summarized in Table 2.

3.1 RECIPIENT

The letter should be addressed to the proponent of the project. This ensures that the proponent is aware of the results of DFO's review and if they have to take proactive measures to avoid negative effects to fish and fish habitat.

However, there are instances where the letter could go directly to another party, such as when DFO is providing advice to a Responsible Federal Authority as part of a CEEA review or where there are working arrangements in place between DFO-HMP and another agency (e.g., province). It is also reasonable and courteous to copy letters to consultants, contractors, federal and provincial agencies and other authorities that may be interested in, or benefit from, the advice provided.

It is preferable to address the letter directly to the proponent and copy appropriate parties. The letter should only be addressed to another party where working arrangements or agreements exist between DFO and another agency that precludes sending the letter directly to the proponent.

3.2 SUBJECT LINE

It is useful to add a concise subject line to reflect the decisions being made by the practitioner about the proposed works or undertakings (e.g., include the Referral Title description to identify the proposed project).

3.3 FILE NAME AND NUMBER

Referrals received by DFO are given a file number in order to provide better client service and easily track the proposal. Use the referral categorization list in the Habitat Referral Tracking System (HRTS) to describe the type of work in the file name.

3.4 UNDERSTANDING OF THE PROPOSAL

A section called the *Understanding of the Proposal* describes the proposed works and the potential effects to fish and fish habitat. The dimensions and timing of the work(s) and any fish habitat protection measures that are included in the plans should also be referenced here. Based on the information in the plan, some examples of statements that can be used are:

- ▶ The dock will be installed at lot x, concession xy, County of Northwind, Tiny Township, Municipality of Cottage Country on Canada Lake.
- ▶ The dock will be 5 metres long by 3 metres wide, anchored to the shore by cantilever built above the high water mark and supported by four (4) posts.
- ▶ The proposal does *not* include any dredging.

When the proposed work(s) are well defined, it is clear to the proponent and the Habitat Management practitioner what has been assessed. It is important to note when those works typically associated with projects, which are known to have negative effects to fish and fish habitat, are not part of the original proposal. For example, mechanical dredging negatively affects fish and fish habitat. It is clearly stated that this is **not included** in the proposal.

If the proponent volunteers to complete fish enhancement works as part of their plan, it should be outlined in this section and not in additional fish habitat protection measures (Section 3.6).

This section should also include the timeframe to complete the proposed works and the appropriate in-water work window at the proposed location. This ensures that the advice in the letter is not open-ended in time. The advice in the letter is time-dependent since the habitat conditions at the site may change over time. A statement that includes both the work window and the completion dates should look like:

- ▶ The construction will occur between June and September in 2004 or 2005.

It is preferable to incorporate in the plan those measures to avoid negative effects to fish habitat, as discussed and agreed upon by the proponent and the Habitat Management practitioner.

3.5 IDENTIFICATION OF PLANS

List all the background information that was used to make the *Fisheries Act* decision. This includes reports (include full title, author and page and figure numbers if necessary) and drawings and correspondence (i.e., letters and faxes). The most current versions of these pieces of information should be referenced. For example:

As outlined in:

- ▶ The report entitled “Fish Habitat Assessment for Salmonid Lake” dated June 12, 2004.
- ▶ The engineering diagram titled “Public Dock, Salmonid Lake. Drawings P-2, N-1, N-2, and N-3 Dated June 16, 2004”.
- ▶ Fax dated June 17, 2004 titled “Re: Public Dock, Salmonid Lake – Construction Sequencing”.

The proponent should be aware that if the plan changes the advice in the letter may no longer apply and they should contact DFO in such a situation.

3.6 SECTION 35 OF THE FISHERIES ACT

The previous sections of this guide focus on describing the proposal to quickly define the scope of the project and track this referral. With the logistics accounted for, the focus of the letter is on the subsection 35(1) *Fisheries Act* review and decision that a HADD is not likely to result from the proposed work(s). In some cases, additional fish habitat protection measures may be suggested to avoid a HADD.

■ Additional Fish Habitat Protection Measures

This section of the letter lists the fish habitat protection measures that DFO suggests are implemented so a HADD will not likely result. These measures are additional to any fish habitat protection measures already in the proponent's plan.

These additional measures should be discussed with the proponent so that they understand them. Ideally, these measures should be included in the proponent's plan and therefore do not need to be listed in the letter. If the proposal also includes habitat enhancement work this should be referenced in the Understanding the Proposal (Section 3.4) and not here. Enhancement works are not necessarily measures that will avoid a HADD.

Below are examples of common fish habitat protection measures that will likely avoid a HADD.

- ▶ In-water work or undertakings be completed between July 15th and August 30th.
- ▶ Use and maintain sediment and erosion control measures during all phases of the proposed work to prevent sediment from leaving the work site.
- ▶ Follow the fish habitat protection measures outlined in the attached Operational Statement "*Insert appropriate Operational Statement, guideline or fact sheet*".
- ▶ Keep all woody debris and bottom substrate below the high water mark intact.

Additional measures in a letter of advice are a proactive tool that advises the proponent on how to avoid a HADD.

■ Fisheries Act Subsection 35(1) Review

The letter should clearly state that this review only applies to subsection 35(1) of the *Fisheries Act*. A typical letter of advice states that DFO **believes that** (with or without additional measures) **a HADD is not likely to occur**. Other conclusions may be reached in the process of referral review. For example, more information may be needed from the proponent or the HADD may be deemed unacceptable to DFO. These findings should be clearly stated in the letter. Appropriate wording is included in the template letters.

Provide information on Section 35 of the *Fisheries Act* related to the advice in the letter.

3.7 OTHER REVIEW REQUIREMENTS

Although the focus of referrals is typically on subsection 35(1), it is important to consider the other sections of the *Fisheries Act* while reviewing referrals. If other sections apply (i.e., section 32 Authorization or section 20 or 30 approval) than any additional requirements of the proponents should be clearly stated in the letter after the subsection 35(1) decision. For example:

“During our review, we found that the proposed work may cause fish to be killed by means other than fishing. This contravenes section 32 of the Fisheries Act and requires an Authorization from the Minister of Fisheries and Oceans. We will need more information from you to continue the review. Please fill out the attached application form and return it to DFO.”

The proponent should be notified both in the subject line of the letter and after the description of proposal if there are requirements under other sections of the *Fisheries Act*. In some cases, the proposal may be acceptable under subsection 35(1) but *unacceptable* under another section of the *Fisheries Act*.

Clearly note any additional requirements that are needed from the proponent to fulfil any other sections of the *Fisheries Act*.

3.8 ADDITIONAL REQUESTS RELATED TO THE FISHERIES ACT

Any additional requests not related to the avoidance of negative effects to fish and fish habitat but relevant to the proposed plan should be included at the end of the letter. This could include monitoring or requests for notification of key project milestones (e.g. onset of in-water work). These are voluntary actions and are not required to avoid negative effects to fish habitat. For example:

“We request that you notify us no less than 10 working days before starting the work and that a copy of this letter is kept on site while works are in progress.”

Additional requests in the letter of advice should be kept separate from the request for additional measures to avoid negative effects on fish habitat.

TABLE 2: General guidance on the necessary elements in letters to proponents.

Element of Letter	General Rules to Follow	Rationale
Recipient	Send letter to the proponent and their contractor(s) when no other agency is reviewing the file and DFO is not requested to provide expert advice under CEAA. The source of the proposal, if different from the proponent, should also be copied.	It should be clear that the proponent has to give DFO any updated plans for review and to ensure the plans are implemented as proposed. Any changes to the plan itself should also be mentioned in the letter.
Subject Line	Specifies the Habitat Management practitioners decision regarding the proposed works or undertakings.	This line should be concise so the proponent is clear what the practitioners decision is.
File Name and Number	File name and number assigned by DFO.	Allows DFO and the proponent to identify and track individual proposals.
Understanding the Proposal	Summarize the potential effects to fish and fish habitat.	Clarifies DFO's understanding of the works or undertakings.
Identification of Plans	Reference all information or plans that were used to review the proposal.	Identifies the specific plans that were used during the review to assess the potential negative effects to fish and fish habitat.
Additional Fish Habitat Protection Measures	Include only the fish habitat protection measures that will not likely result in a HADD. These do not include those in the original plan.	Lists additional fish habitat protection measures that will not likely result in a HADD when properly implemented.
Section 35 Decision	Clearly state that the review only applies to subsection 35(1) of the <i>Fisheries Act</i> . Only include the decision based on the original plan and any additional measures that will likely avoid a HADD. Ensure the rationale for the decision is well documented in the file.	The practitioner must be confident that a HADD is not likely to occur from the proposed plan and additional fish habitat protection measures.
Information on Other Relevant Sections of the <i>Fisheries Act</i>	Also consider sections 20, 22, 27, 30, 32 and 36 of the <i>Fisheries Act</i> while reviewing the proposal. If there are concerns, they should be clearly stated in the letter with advice on how the proponent should proceed.	Informs the proponent and/or responsible authorities of the need to meet the other habitat protection provisions of the <i>Fisheries Act</i> .
Additional Requests Related to <i>Fisheries Act</i> Section 35	You may want to include additional requests separate from measures to avoid a HADD.	Additional requests should not be confused with measures to avoid a HADD. They can only be requested and not required.

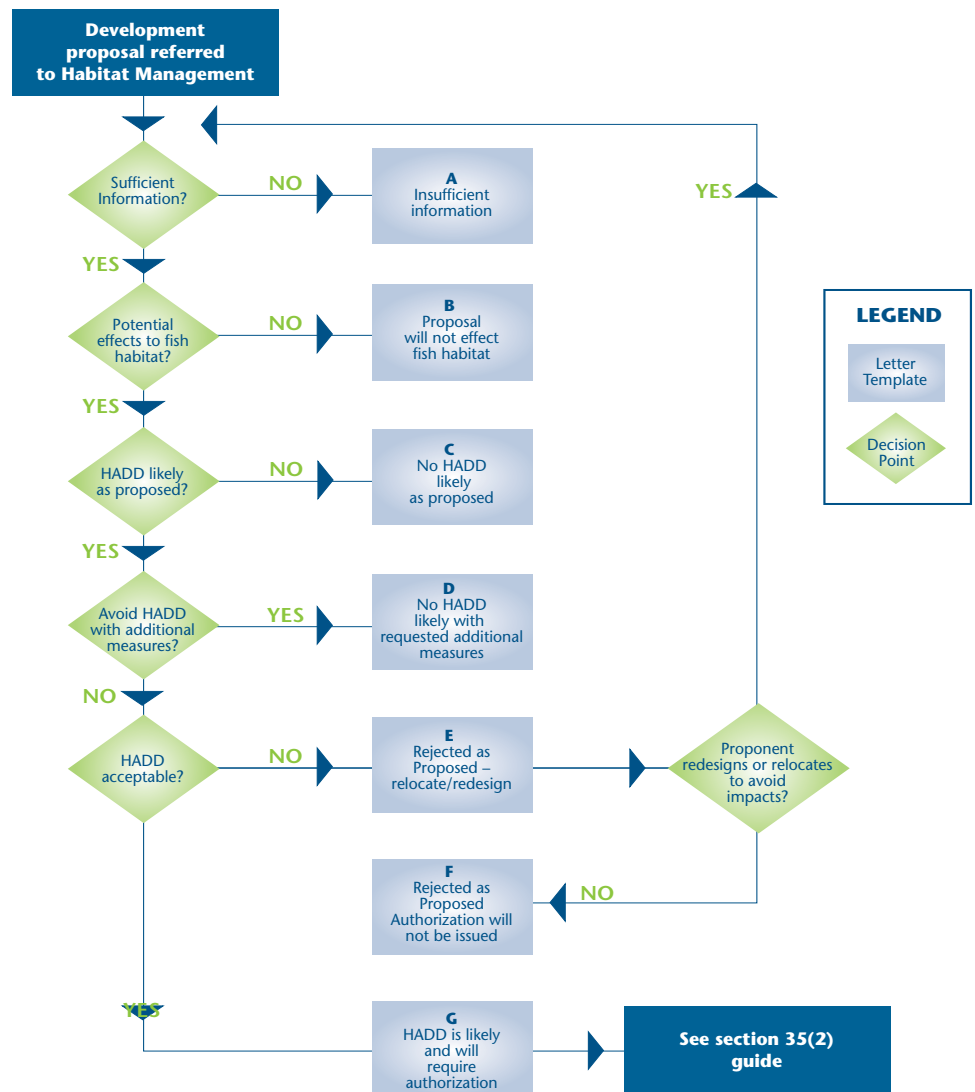
SUMMARY DESCRIPTION OF LETTER TEMPLATES



Letter templates have been prepared for the most commonly used letters. A flow chart consistent with the file review process explains when it is appropriate to use a certain template (Figure 1). These templates are a tool for Habitat Management practitioners to respond quickly to proponents when an Authorization or order is not necessary. These templates are a standardized way to deliver information that is consistent with the *Fisheries Act* and the *Policy for the Management of Fish Habitat*. The templates are flexible to address case specific requirements that may occur. These templates are described in this section and examples are in the appendix.

It is important to inform the proponent early in the review process when an Authorization is not needed (see also Figure 1).

FIGURE 1: Process for deciding when to use a template letter in the appendix



4.1 INSUFFICIENT INFORMATION (LETTER A)

This letter is used when there is insufficient information in the plan to assess the potential effects to fish and fish habitat. This letter is used when fish habitat information is not included or the plan does not fully describe the extent and timing of the proposed works in relation to fish and fish habitat.

4.2 NO CONCERNS. NOT IN OR NEAR FISH HABITAT (LETTER B)

This letter is used when the proposed plans have no potential effects to fish or fish habitat. The Habitat Management practitioner should be confident that there are no potential effects to fish or fish habitat when using this letter.

4.3 NO HADD LIKELY AS PROPOSED (LETTER C)

This letter advises the proponent that the proposed works or undertakings will likely avoid a HADD. The practitioner should be confident that the plan contains all necessary measures and will not likely cause a HADD. In some cases, the proposed works will not likely result in a HADD or the plan already includes measures that will likely avoid a HADD to fish habitat. As a result, this letter should not list any additional fish habitat protection measures to avoid a HADD. Letter D should be used if additional fish habitat protection measures are needed to likely avoid a HADD.

4.4 NO HADD LIKELY WITH ADDITIONAL FISH HABITAT PROTECTION MEASURES (LETTER D)

This letter advises the proponent that the proposed works will not likely result in a HADD **if** additional fish habitat protection measures suggested by the practitioner are implemented. This letter is only used when the practitioner is confident that a HADD will likely be avoided when additional fish habitat protection measures are implemented. **It must be stated in the letter that the works will not likely result in a HADD when the additional fish habitat protection measures are implemented.**

4.5 REJECTED AS PROPOSED. UNACCEPTABLE HADD, RELOCATE/REDESIGN (LETTER E)

This letter is used when DFO determines that the proposed works will cause an unacceptable HADD that will not be authorized. The practitioner outlines the unacceptable effects to fish habitat in the letter. However, it might be possible to achieve an acceptable HADD by relocating and/or redesigning the proposal. The proponent can then decide how or if they will relocate or redesign to reduce or eliminate these effects and request a new review.

4.6 REJECTED AS PROPOSED. UNACCEPTABLE HADD, NO AUTHORIZATION ISSUED (LETTER F)

This letter tells the proponent that the proposed works will result in an unacceptable HADD to fish habitat. It should be used when relocation, redesign or additional measures to reduce the negative effects to fish habitat are not possible and the proposal will result in an unacceptable HADD that cannot be authorized.

4.7 DEVELOPMENT PROPOSAL WILL RESULT IN A HADD, OUTLINE OF PROCESS TO PROPONENT (LETTER G)

This letter notifies the proponent that the development proposal received by DFO will result in a HADD to fish habitat and that they should apply to DFO for Authorization. The letter describes the Authorization process and informs the proponent that DFO's preferred option is always to avoid a HADD. The proponent can decide if they wish to seek Authorization or redesign and/or relocate the project to avoid a HADD.

REFERENCES



Department of Fisheries and Oceans. 1986. *Policy for the Management of Fish Habitat*. Ottawa. http://www.ncr.dfo.ca/publication_e.htm

Department of Fisheries and Oceans. 1995. *Directive on the Issuance of Subsection 35(2) Authorizations*.

Department of Fisheries and Oceans. 1998. *Habitat Conservation and Protection Guidelines*, 2nd edition. Ottawa. http://www.ncr.dfo.ca/publication_e.htm

The House of Commons of Canada. 1985. *Fisheries Act*. <http://laws.justice.gc.ca/en/F-14/index.html>

APPENDIX: LETTER TEMPLATES

6.0 

Letter A: Request for additional information. Insufficient information

Letter B: No concerns. Not in or near fish habitat

Letter C: No HADD likely as proposed

Letter D: No HADD likely with additional fish habitat protection measures

Letter E: Rejected as proposed. Unacceptable HADD, request for relocation/redesign

Letter F: Rejected as proposed. Unacceptable HADD, no Authorization issued

Letter G: Development proposal will likely result in a HADD, outline process to proponent



(SENDER'S FULL ADDRESS)

(D MMMM YYYY)

Your file Votre référence

Our file Notre référence
(REF / FILE NO.)

(SALUTATION) (GIVEN NAME) (SURNAME)
(TITLE)
(RECIPIENT'S FULL ADDRESS)

Dear (SALUTATION) (SURNAME):

Subject: Insufficient information to assess the potential effects to fish habitat.

Fisheries and Oceans Canada (DFO) received your proposal on (RECEIVE DATE), concerning (REFERRAL DESCRIPTION). To expedite future correspondence or inquiries, please refer to your referral title and file numbers when you contact us.

Referral File No.: (REF / FILE NO.)
Habitat File No.: (HABITAT NO.)
Referral Title: (REF. TITLE)

The information in your proposal is not sufficient to determine whether the proposed works will result in a harmful alteration, disruption or destruction (HADD) of fish habitat. The information needed to complete the review is listed on the attached sheet. Please ensure these items are forwarded to me at the above address. Any additional technical or site specific information that you consider relevant to your proposal should also be provided. Once this additional information is received, we can continue reviewing the project under the habitat protection provisions of the *Fisheries Act*.

Please note that causing a HADD without an Authorization is an offence under subsection 35(1) of the *Fisheries Act*. Subsection 35(1) states: "no person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat."

If you have any questions concerning the above, or if my understanding of the proposal is either incorrect, incomplete, or if there are changes to the proposed work, please contact myself directly or (ASSESSOR) at our (OFFICE) office by telephone at (TELEPHONE), by fax at (FACSIMILE) or by e-mail at (E-MAIL).

Yours sincerely,

(GIVEN NAME) (SURNAME)
(TITLE)

Attachment(s): List of information needed to complete the review.

Canada



(SENDER'S FULL ADDRESS)

(D MMMM YYYY)

Your file / Votre référence

Our file / Notre référence (REF / FILE NO.)

(SALUTATION) (GIVEN NAME) (SURNAME) (TITLE) (RECIPIENT'S FULL ADDRESS)

Dear (SALUTATION) (SURNAME):

Subject: Proposed works or undertakings are not in or near fish habitat.

Fisheries and Oceans Canada (DFO) received your proposal on (RECEIVE DATE), concerning (REFERRAL DESCRIPTION). To expedite future correspondence or inquiries, please refer to your referral title and file numbers when you contact us.

Referral File No.: (REF / FILE NO.)
Habitat File No.: (HABITAT NO.)
Referral Title: (REF. TITLE)

It is our understanding that your proposal consists of:

- (List proposed works or undertakings and related activities)

as outlined in the following plans:

- (List relevant documents, engineering diagrams, letters, faxes, conversations, etc.)

If the above plans have changed since the time of submission, the advice in this letter may no longer apply and you should consult with us to determine if further review is needed.

We have concluded that the proposed works are not in or near fish habitat and will not likely affect fish or fish habitat. No further review pursuant to the habitat protection provisions of the Fisheries Act is needed.

Please note that this letter of advice does not release you from the responsibility to obtain any other federal (for example, the Navigable Waters Protection Act), provincial or municipal approvals. If you have any questions concerning the above, or if my understanding of the proposal is either incorrect, incomplete, or if there are changes, please contact myself directly by telephone at (TELEPHONE), by fax at (FACSIMILE) or by e-mail at (E-MAIL).

Yours sincerely,

(GIVEN NAME) (SURNAME) (TITLE)

Attachment(s):

c.c.:





(SENDER'S FULL ADDRESS)

(D MMMM YYYY)

Your file Votre référence

Our file Notre référence
(REF / FILE NO.)

(SALUTATION) (GIVEN NAME) (SURNAME)
(TITLE)
(RECIPIENT'S FULL ADDRESS)

Dear (SALUTATION) (SURNAME):

Subject: Proposed works or undertakings will likely avoid negative effects to fish habitat.
Note: *this would **not** be appropriate wording for the subject line if there are requirements under other sections of the Fisheries Act. The new wording should refer only to those relevant sections of the Act.*

Fisheries and Oceans Canada (DFO) received your proposal on (RECEIVE DATE), concerning (REFERRAL DESCRIPTION). To expedite future correspondence or inquiries, please refer to your referral title and file numbers when you contact us.

Referral File No.: (REF / FILE NO.)
Habitat File No.: (HABITAT NO.)
Referral Title: (REF. TITLE)

It is our understanding that your proposal consists of:

- *(List proposed works or undertakings and related activities)*

as outlined in the following plans:

- *(List relevant documents, engineering diagrams, letters, faxes, conversations, etc.)*

If the above plans have changed since the time of submission, the advice in this letter may no longer apply and you should consult with us to determine if further review is needed.

We have concluded that a harmful alteration, disruption or destruction (HADD) of fish habitat is not likely to occur if you implement your plans as proposed. A subsection 35(2) *Fisheries Act* Authorization is not necessary. However, failure to properly implement the measures outlined in your plans may result in contravention of subsection 35(1) of the *Fisheries Act*, which states: *"no person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat."*

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This letter of advice does not allow the deposit of deleterious substance (section 36 of the *Fisheries Act*) into waters frequented by fish nor does it release you from the responsibility to obtain any federal (for example, the *Navigable Waters Protection Act*), provincial or municipal approvals that may be needed.

Clearly note any additional requirements that are needed from the proponent to fulfil any other sections of the *Fisheries Act*. See Section 3.7 *Other Review Requirements*.

We request that you notify us at least 10 working days before starting the work and that a copy of this letter be kept on site while works are in progress. If you have any questions concerning the above, or if my understanding of the proposal is either incorrect, incomplete, or if there are changes to the proposed works or undertakings, please contact myself directly by telephone at (TELEPHONE), by fax at (FACSIMILE) or by e-mail at (E-MAIL).

Yours sincerely,

(GIVEN NAME) (SURNAME)
(TITLE)

Attachment(s):

c.c.:



(SENDER'S FULL ADDRESS)

(D MMMM YYYY)

Your file Votre référence

Our file Notre référence
(REF / FILE NO.)

(SALUTATION) (GIVEN NAME) (SURNAME)
(TITLE)
(RECIPIENT'S FULL ADDRESS)

Dear (SALUTATION) (SURNAME):

Subject: Proposed works or undertakings will not likely result in negative effects to fish habitat if additional protection measures are implemented. **Note:** *this would **not** be appropriate wording for the subject line if there are requirements under other sections of the Fisheries Act. The new wording should refer only to those relevant sections of the Act.*

Fisheries and Oceans Canada (DFO) received your proposal on (RECEIVE DATE), concerning (REFERRAL DESCRIPTION). To expedite future correspondence or inquiries, please refer to your referral title and file numbers when you contact us.

Referral File No.: (REF / FILE NO.)
Habitat File No.: (HABITAT NO.)
Referral Title: (REF. TITLE)

It is our understanding that your proposal consists of:

- *(List proposed works or undertakings and related activities)*

as outlined in the following plans:

- *(List relevant documents, engineering diagrams, letters, faxes, conversations, etc.)*

If the above plans have changed since the time of submission, the advice in this letter may no longer apply and you should consult with us to determine if further review is needed.

We have concluded that the proposed works and undertakings are adequate to protect fish and fish habitat provided that the work is carried out as described in your plans and the following additional mitigation measures are implemented:

- (Additional Measure 1)
- (Additional Measure 2)
- (Additional Measure 3)

By implementing these additional measures and those already outlined in your plans, it is our opinion that the proposed works and undertakings will not likely result in the harmful alteration, disruption or destruction (HADD) of fish habitat, which is prohibited unless authorized by DFO. These are recommendations to ensure that the proposed works will likely not result in a HADD of fish habitat. Therefore a subsection 35(2) Authorization is not necessary.

.../2

Canada

You could contravene subsection 35(1) of the *Fisheries Act* if a HADD of fish habitat results from any change in your proposed plan or from failure to properly implement these additional measures. Subsection 35(1) states, “no person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.”

This letter of advice does not permit the deposit of a deleterious substance (section 36 of the *Fisheries Act*) into waters frequented by fish nor does it release you from the responsibility to obtain any other federal (for example, the *Navigable Waters Protection Act*), provincial or municipal approvals.

Clearly note any additional requirements that are needed from the proponent to fulfil any other sections of the *Fisheries Act*. See Section 3.7 Other Review Requirements.

If these plans have changed since the time of submission, the advice in this letter may no longer apply and you should consult with us to determine if further review is needed.

We request that you notify us at least 10 working days before starting the work and that a copy of this letter be kept on site while work is in progress. If you have any questions concerning the above, or if my understanding of the proposal is either incorrect, incomplete, or if there are changes to the proposed works or undertakings, please contact myself directly by telephone at (TELEPHONE), by fax at (FACSIMILE) or by e-mail at (E-MAIL).

Yours sincerely,

(GIVEN NAME) (SURNAME)

(TITLE)

Attachment(s):

c.c.:



(SENDER'S FULL ADDRESS)

(D MMMM YYYY)

Your file Votre référence

Our file Notre référence
(REF / FILE NO.)

(SALUTATION) (GIVEN NAME) (SURNAME)
(TITLE)
(RECIPIENT'S FULL ADDRESS)

Dear (SALUTATION) (SURNAME):

Subject: Proposed works or undertakings will result in unacceptable effects to fish habitat. It might be possible to relocate and/or redesign the proposal to avoid these effects.

Fisheries and Oceans Canada (DFO) received your proposal on (RECEIVE DATE), concerning (REFERRAL DESCRIPTION). To expedite future correspondence or inquiries, please refer to your referral title and file numbers when you contact us.

Referral File No.: (REF / FILE NO.)
Habitat File No.: (HABITAT NO.)
Referral Title: (REF. TITLE)

It is our understanding that your proposal consists of:

- *(List proposed works or undertakings and related activities)*

as outlined in the following plans:

- *(List relevant documents, engineering diagrams, letters, faxes, conversations, etc.)*

If the above plans have changed since the time of submission, the advice in this letter may no longer apply and you should consult with us to determine if further review is needed.

We have concluded that the proposed works or undertakings are likely to result in an unacceptable harmful alteration, disruption or destruction (HADD) of fish habitat and we will not issue an Authorization at this time. The HADD of fish habitat is prohibited unless authorized by DFO. Authorizations are not issued unless the HADD is acceptable and suitable measures to compensate for the effects on fish habitat are implemented by the proponent.

.../2

Canada

The following effects have been determined to be unacceptable HADD's and should be reduced or eliminated:

- *Negative effect 1 - (e.g. The bridge pier as proposed is to be located on salmonid spawning habitat. Eliminate the destruction of this habitat.)*
- *Negative effect 2 - (e.g. The placement of sand below the high water mark will cover the diverse substrate located at the site and will likely migrate off site potentially covering other important habitat. Eliminate the placement of sand below the high water mark.)*
- *Negative effect 3 - (e.g. Reduce, or eliminate if possible, the infilling of 2000 m² of littoral habitat.)*

If the works proceed as proposed, you may be contravening subsection 35(1) of the *Fisheries Act*, which states: "*no person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.*"

If you wish an Authorization, the plan should be revised to reduce these negative effects to fish habitat. This revised plan should be submitted for further review and consideration for Authorization.

If you have any questions concerning the above, please contact myself directly or (ASSESSOR) at our (OFFICE) office by telephone at (TELEPHONE), by fax at (FACSIMILE) or by e-mail at (E-MAIL)

Yours sincerely,

(GIVEN NAME) (SURNAME)
(TITLE)

Attachment(s):

c.c.:



(SENDER'S FULL ADDRESS)

(D MMMM YYYY)

Your file Votre référence

Our file Notre référence
(REF / FILE NO.)

(SALUTATION) (GIVEN NAME) (SURNAME)
(TITLE)
(RECIPIENT'S FULL ADDRESS)

Dear (SALUTATION) (SURNAME):

Subject: Proposed works or undertakings will result in unacceptable effects to fish habitat.

Fisheries and Oceans Canada (DFO) received your proposal on (RECEIVE DATE), concerning (REFERRAL DESCRIPTION). To expedite future correspondence or inquiries, please refer to your referral title and file numbers when you contact us.

Referral File No.: (REF / FILE NO.)
Habitat File No.: (HABITAT NO.)
Referral Title: (REF. TITLE)

It is our understanding that your proposal consists of:

- *(List proposed works or undertakings and related activities)*

as outlined in the following plans:

- *(List relevant documents, engineering diagrams, letters, faxes, conversations, etc.)*

If the above plans have changed since the time of submission, the advice in this letter may no longer apply and you should consult with us to determine if further review is needed.

We have concluded that the proposed plan will likely result in the unacceptable harmful alteration, disruption or destruction (HADD) of *(Enter details why this is an unacceptable HADD i.e., important or extensive amounts of fish habitat)*. The HADD of fish habitat is prohibited unless authorized by DFO. Authorizations will not be issued unless the HADD is found to be acceptable.

We do not consider the loss of this type and amount of habitat to be acceptable at this site and we will not issue an Authorization. If the works proceed as proposed you may be contravening subsection 35(1) of the *Fisheries Act*, which states: "no person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat."

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Canada

If you have any questions concerning the above, or should you wish to revise your proposal to minimize or eliminate effects to fish habitat please contact myself directly or (ASSESSOR) at our (OFFICE) office by telephone at (TELEPHONE), by fax at (FACSIMILE) or by e-mail at (E MAIL).

Yours sincerely,

(GIVEN NAME) (SURNAME)
(TITLE)

Attachment(s):

c.c.:



(SENDER'S FULL ADDRESS)

(D MMMM YYYY)

Your file Votre référence

Our file Notre référence
(REF / FILE NO.)

(SALUTATION) (GIVEN NAME) (SURNAME)
(TITLE)
(RECIPIENT'S FULL ADDRESS)

Dear (SALUTATION) (SURNAME):

Subject: The development proposal will likely result in the harmful alteration, disruption or destruction (HADD) of fish habitat. The process to apply to DFO for Authorization for a HADD is outlined below. **Note:** this would **not** be appropriate wording for the subject line if there are requirements under other sections of the Fisheries Act. The new wording should refer only to those relevant sections of the Act.

Fisheries and Oceans Canada (DFO) received your proposal on (RECEIVE DATE), concerning (REFERRAL DESCRIPTION). To expedite future correspondence or inquiries, please refer to your referral title and file numbers when you contact us.

Referral File No.: (REF / FILE NO.)
Habitat File No.: (HABITAT NO.)
Referral Title: (REF. TITLE)

It is our understanding that your proposal consists of:

- (List proposed works or undertakings and related activities)

as outlined in the following plans:

- (List relevant documents, engineering diagrams, letters, faxes, conversations, etc.)

If the above plans have changed since the time of submission, the advice in this letter may no longer apply and you should consult with us to determine if further review is needed.

We have concluded that your proposed works will likely result in the harmful alteration, disruption or destruction (HADD) of fish habitat. The HADD of fish habitat is prohibited unless authorized by DFO. Authorizations are not issued unless acceptable measures to compensate for the habitat losses are implemented by the proponent.

You should apply to DFO if you wish a 35(2) Authorization. Attached is a copy of this application for your convenience.

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Please be advised that subsection 35(2) of the *Fisheries Act* has been included in the list of laws that trigger the *Canadian Environmental Assessment Act* (CEAA). This means that DFO is required to conduct an environmental assessment of your project, as prescribed by the CEAA, before deciding to issue an Authorization. Your application and supporting documentation will be included in the Canadian Environmental Assessment Registry.

DFO prefers to avoid the HADD of fish habitat. The point(s) below outline the aspects of the proposal that will likely result in a HADD. If the plan is revised to avoid these effects, than a HADD is not likely and an Authorization and CEAA review are not needed.

- (Negative effect 1)
- (Negative effect 2)

Please resubmit your proposed plan for review if you wish to redesign or relocate your project to avoid a HADD.

Clearly note any additional requirements that are needed from the proponent to fulfil any other sections of the *Fisheries Act*. See Section 3.7 *Other Review Requirements*.

If you have any questions concerning the above, please contact myself directly or (ASSESSOR) at our (OFFICE) office by telephone at (TELEPHONE), by fax at (FACSIMILE) or by e-mail at (E-MAIL).

Yours sincerely,

(GIVEN NAME) (SURNAME)
(TITLE)

Attachment(s): Application for Authorization for Works or Undertakings affecting Fish Habitat

c.c.:



NOTES

