

FISHERIES ACT AUTHORIZATION COMPLIANCE - OVERSIGHT, MONITORING, AND DOCUMENTATION

Special Provision No. 199F58

April 2012

1.0 SCOPE

This Special Provision describes measures to assist the Contractor in complying with the requirements of the Contract relating to protection of fish and fish habitat and installation of mitigation and compensation measures in regards to oversight, monitoring, and documentation.

2.0 REFERENCES

This Special Provision refers to the following publications:

Ministry of Transportation Publication

MTO/DFO/OMNR Protocol for Protecting Fish and Fish Habitat on Provincial Transportation Undertakings, 2006

For a copy of this document refer to:

[http://www.raqs.mto.gov.on.ca/techpubs/eps.nsf/9ea013f0de8096ba8525729700557ad1/23a2e04ea02f849f852572b300578de7/\\$FILE/Fisheries_Protocol_2006_FINAL.pdf](http://www.raqs.mto.gov.on.ca/techpubs/eps.nsf/9ea013f0de8096ba8525729700557ad1/23a2e04ea02f849f852572b300578de7/$FILE/Fisheries_Protocol_2006_FINAL.pdf)

MTO Environmental Guide for Fish and Fish Habitat, as amended

For a copy of this document refer to:

[http://www.raqs.mto.gov.on.ca/techpubs/eps.nsf/9ea013f0de8096ba8525729700557ad1/513d053ea7596f88852572b300578ded/\\$FILE/MTO%20Fish%20Guide%20June%202009%20Final.pdf](http://www.raqs.mto.gov.on.ca/techpubs/eps.nsf/9ea013f0de8096ba8525729700557ad1/513d053ea7596f88852572b300578ded/$FILE/MTO%20Fish%20Guide%20June%202009%20Final.pdf)

Federal Government Publication

Fisheries Act, R.S.C, 1985, c. F-14, as amended

For a copy of this document refer to:

<http://laws.justice.gc.ca/en/F-14/index.html>

3.0 DEFINITIONS

For the purposes of this Special Provision, the following definitions apply:

Compensation: means the replacement of natural habitat, increase in the productivity of existing habitat, or maintenance of fish production by artificial means in circumstances dictated by social and economic conditions, where mitigation techniques and other measures are not adequate to maintain habitats for Canada's fisheries resources.

DFO: means the federal Department of Fisheries and Oceans.

HADD: means Harmful Alteration, Disruption or Destruction of fish habitat as prescribed under the *Fisheries Act (Canada)*.

Fisheries Protocol: means MTO/DFO/OMNR Protocol for Protecting Fish and Fish Habitat on Provincial Transportation Undertakings, 2006.

Fisheries Act Authorization: means the formal acceptance of a HADD assessment from the Department of Fisheries and Oceans, Canada, with terms and conditions and may include a Compensation Plan.

Mitigation: means actions taken during the planning, design, construction and operation of works and undertakings to alleviate potential adverse effects on the productive capacity of fish habitats.

OMNR: means the Ontario Ministry of Natural Resources.

Qualified Fisheries Assessment Specialist: means a person approved under the Fisheries Assessment Specialty in MTO's Registry Appraisal and Qualification System (RAQS/MERX).

Qualified Fisheries Contract Specialist: means a person approved under the Fisheries Compliance During Contracts Specialty in MTO's Registry Appraisal and Qualification System (RAQS/MERX).

RAQS: means MTO's Registry, Appraisal and Qualification System (RAQS/MERX).

Scientific Collector's Permit: means a licence provided by OMNR under Ontario Regulation 261/05 Fish and Wildlife Conservation Act, for the collection of fish for scientific purposes.

4.0 QUALIFICATIONS

4.1 Submissions

The name(s) of RAQS/MERX Qualified Fisheries Contracts Specialists and Qualified Fisheries Assessment Specialists retained by the Contractor for this Contract shall be provided to the Contract Administrator a minimum of 10 Working Days prior to the commencement of work at each location where a Fisheries Act Authorization applies.

5.0 COMPLIANCE MEASURES

5.1 General

The Contractor shall hire a Qualified Fisheries Contracts Specialist and where necessary a Qualified Fisheries Assessment Specialist, from the lists of approved Consultants in RAQS/MERX available online at the following links, to perform the duties specified in this Special Provision with respect to the protection of fish and fish habitat, and the installation of mitigation and compensation measures:

<https://www.raqs.mto.gov.on.ca/login/raqs.nsf/English/Graphic/frmViewApprovedConsultants?OpenForm&Start=1&Count=1000&Expand=2.6.8&Seq=5>

<https://www.raqs.mto.gov.on.ca/login/raqs.nsf/English/Graphic/frmViewApprovedConsultants?OpenForm&Start=1&Count=1000&Expand=2.6.7&Seq=6>

5.2

Qualified Fisheries Contracts Specialist Duties

The Qualified Fisheries Contracts Specialist shall undertake the following tasks as outlined in the MTO Environmental Guide for Fish and Fish Habitat, as summarized below:

- a) Work with other Contractor staff to protect fish and fish habitat;
- b) Work with other Contractor staff in the development of related strategies and plans outlined elsewhere in the Contract (e.g. waterbody and fisheries protection strategy required for “Work in Waterbodies and on Waterbody Banks” / Erosion and sediment control plans);
- c) Liaise with the Owner, the Contract Administrator, and Regulatory Agency representatives (as necessary) regarding Fisheries Act Authorization requirements;
- d) Be on-site to ensure the proper installation, functioning and decommissioning (as appropriate) of all compensation and mitigation measures referred to in the Fisheries Act Authorization as specified in Table B, including providing field fit advice and necessary corrective actions for issues of non-compliance as agreed to by the Owner;
- e) Complete and submit all monitoring documentation as specified in Table A;
- f) Capture and relocate fish as necessary under a Scientific Collector’s Permit that shall be obtained a minimum of 30 days prior to in-water works, from OMNR;
- g) Inspect erosion and sediment control measures within 24 hours after a rain event;
- h) Review Contractor change proposals for compliance with the Fisheries Act, and undertake any necessary fisheries assessments / HADD determination as per the Fisheries Protocol. If the Fisheries Protocol requires the completion of a Comprehensive Fisheries Assessment, it must be conducted by a Qualified Fisheries Assessment Specialist; and
- i) Prepare and submit to the Contract Administrator, once agreed to by the Owner, all the necessary documentation for the Owner to submit to DFO to request a formal amendment to the Fisheries Act Authorization(s).

Table A – Qualified Fisheries Contracts Specialist - Monitoring Documentation

Documentation Name	Warrant for Completion	Distribution
MTO Construction Inspection Checklist	Every day that a Fisheries Contracts Specialist is on site	Within 1 business day of inspection, submit 4 copies of checklist to Contract Administrator.
MTO Non - Compliance Summary	Friday of each week when the Contractor is not in compliance with the Fisheries Act Authorization	By the following Monday after a non-compliance submit 4 copies of summary to Contract Administrator.
MTO Construction Monitoring Report	Annually by December 31 st on multi-year construction projects and/or at the end of construction	By November 1, submit 3 copies of a draft Report to Contract Administrator. By December 15, submit 4 copies of a final report incorporating MTO comments on the draft to Contract Administrator.

The above noted documents and requirements for completion can be obtained from the MTO Environmental Guide for Fish and Fish Habitat – Section 10.

Table B – Qualified Fisheries Contracts Specialist – Oversight Requirements

Waterbody	Mitigation/Compensation Measure	Measures to Protect Fish and Fish Habitat – Item Title and Code	Minimum Frequency
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*	**	***	****
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