

1 Memorandum of Understanding

2 BETWEEN

3 Fisheries and Oceans Canada (“DFO”)

4 AND

5 The Canadian Nuclear Safety Commission (“CNSC”)

6 FOR the Cooperation and Administration of the *Fisheries Act*

7 and the *Species at Risk Act*

8 Related to Regulating Nuclear Materials, Energy Developments, and Existing Facilities

9
10 April 2023

11 **1.0 INTRODUCTION**

12 **Whereas:**

- 13 (a) the *Constitution Act, 1867* assigns to the federal government exclusive jurisdiction for
14 sea coast and inland fisheries, and the *Fisheries Act* sets out the powers and duties of
15 the Minister of Fisheries, Oceans, and the Canadian Coast Guard with respect to the
16 conservation and protection of fish and fish habitat, including by preventing pollution.
17 The administration and enforcement of the pollution prevention provisions of the
18 *Fisheries Act* are a shared responsibility between the Minister of Fisheries, Oceans and
19 the Canadian Coast Guard and the Minister of Environment and Climate Change
- 20 (b) Fisheries and Oceans Canada (“DFO”) is responsible for the administration and
21 enforcement of the *Fisheries Act*, including the fish and fish habitat protection
22 provisions (sections 34 to 42.1) and pollution prevention provisions (subsections 36(3)
23 to 36(6)), as they pertain to the conservation and protection of fish and fish habitat from
24 the impact of human activities. With respect to the pollution prevention provisions, DFO
25 is responsible for the administration and enforcement of subsections 36(3) to 36(6)
26 pertaining to aquaculture facilities and the control or eradication of any aquatic invasive
27 species or aquatic species that constitute a pest to the fisheries;
- 28 (c) the *Species at Risk Act* (“SARA”) identifies the Minister of Fisheries, Oceans and the
29 Canadian Coast Guard as the competent minister with respect to aquatic species,
30 other than those individuals in or on federal lands administered by the Parks Canada
31 Agency. As such, DFO is responsible for the administration and enforcement of the
32 SARA with respect to such species and has powers and duties with respect to
33 protecting them and to provide for their recovery;
- 34 (d) the *Nuclear Safety and Control Act* (“NSCA”) assigns powers and duties to the
35 Canadian Nuclear Safety Commission (“CNSC”) to regulate the production, possession
36 and use of nuclear substances, prescribed equipment and prescribed information in
37 order to prevent unreasonable risk to the health and safety of persons, the environment
38 and national security, and to achieve conformity with Canada’s international obligations
39 regarding the peaceful use of nuclear energy;
- 40 (e) the CNSC is responsible for regulatory reviews, approvals, and environmental
41 protection related to all facilities and activities subject to the NSCA and, as such, is
42 committed to fostering and developing a collaborative approach to fish and fish habitat

- 43 protection that is consistent across Canada;
- 44 (f) DFO is responsible for conducting regulatory reviews for *Fisheries Act* authorization
45 requests, as defined in the *Authorizations Concerning Fish and Fish Habitat Protection*
46 *Regulations*, for proposed works, undertakings or activities that may impact fish and
47 fish habitat;
- 48 (g) DFO and the CNSC are committed to undertaking a process of early, effective and
49 meaningful engagement and consultation concerning contemplated Crown conduct that
50 may adversely affect established or potential Aboriginal and treaty rights in relation to
51 regulatory decisions under the *Fisheries Act* (e.g., potential issuance of Authorizations),
52 the SARA (e.g., potential issuance of permits contemplated by the Fish and Fish
53 Habitat Protection Program (FFHPP) and/or the NSCA (e.g., issuance of licences for
54 nuclear facilities and activities); and,
- 55 (h) DFO and the CNSC are committed to communicating and coordinating regulatory
56 activities under the NSCA, the *Fisheries Act*, the SARA, and in relation to Indigenous
57 consultation in an effort to improve the efficiency and effectiveness of the review of
58 applications and information for all proposed works, undertakings, and/or activities at
59 facilities subject to the NSCA.

60 **Therefore**, DFO and the CNSC (the “Participants”) concur with the following memorandum of
61 Understanding (“MOU”):

62 **2.0 DEFINITIONS**

63 The following definitions apply to this MOU:

64 **Aquatic invasive species** means a species set out in Part 2 or 3 of the Aquatic Invasive
65 Species (AIS) Regulations.

66 **Aquatic species at risk** means an aquatic species listed in Schedule 1 of the SARA.

67 **Fish** means fish, shellfish, crustaceans, marine animals in all life stages (i.e., eggs, sperm,
68 spawn, larvae, spat, juvenile, adult) and their parts, as defined in the *Fisheries Act*, and includes
69 aquatic species at risk as defined in SARA.

70 **Fish habitat** means water frequented by fish and any other areas on which fish depend directly
71 or indirectly to carry out their life processes, including spawning grounds and nursery, rearing,
72 food supply and migration areas, as defined in the *Fisheries Act* and includes critical habitat and
73 the residence of individuals as defined in SARA.

74 **Harmful alteration, disruption or destruction** of fish habitat is any temporary or permanent
75 change to fish habitat that directly or indirectly impairs the habitat’s capacity to support one or
76 more life processes of fish.

77 **Licensed (nuclear) activity** means an activity described in any of paragraphs 26(a) to (f) of the
78 NSCA that a licence authorizes the licensee to carry on, namely,:

- 79 (a) possess, transfer, import, export, use or abandon a nuclear substance, prescribed
80 equipment or prescribed information;
- 81 (b) mine, produce, refine, convert, enrich, process, reprocess, package, transport, manage,
82 store or dispose of a nuclear substance;
- 83 (c) produce or service prescribed equipment;
- 84 (d) operate a dosimetry service for the purposes of this Act;
- 85 (e) prepare a site for, construct, operate, modify, decommission or abandon a nuclear
86 facility; or,

87 (f) construct, operate, decommission or abandon a nuclear-powered vehicle or bring a
88 nuclear-powered vehicle into Canada.

89 **Nuclear energy** means any form of energy released in the course of nuclear fission or nuclear
90 fusion or of any other nuclear transmutation.

91 **Nuclear facility** means any of the following facilities, namely,:

- 92 (a) a nuclear fission or fusion reactor or subcritical nuclear assembly;
- 93 (b) a particle accelerator;
- 94 (c) a uranium or thorium mine or mill;
- 95 (d) a plant for the processing, reprocessing or separation of an isotope of uranium, thorium
96 or plutonium;
- 97 (e) a plant for the manufacture of a product from uranium, thorium or plutonium;
- 98 (f) a plant for the processing or use, in a quantity greater than 10^{15} Bq per calendar year, of
99 nuclear substances other than uranium, thorium or plutonium;
- 100 (g) a facility for the disposal of a nuclear substance generated at another nuclear facility;
- 101 (h) a vehicle that is equipped with a nuclear reactor;
- 102 (i) any other facility that is prescribed for the development, production or use of nuclear
103 energy or the production, possession or use of a nuclear substance, prescribed
104 equipment or prescribed information; and
- 105 (j) where applicable, the land on which the facility is located, a building that forms part of, or
106 equipment used in conjunction with, the facility and any system for the management,
107 storage or disposal of a nuclear substance.

108 and includes, where applicable, the land on which the facility is located, a building that forms
109 part of, or equipment used in conjunction with, the facility and any system for the
110 management, storage or disposal of a nuclear substance.

111
112 **Proponent** means a company that has applied for an approval or authorization from the CNSC
113 or DFO.

114 **Work, undertaking, activity** means human actions that may impose pressures on fish
115 and fish habitat.

116 **3.0 PURPOSE AND GUIDING PRINCIPLES**

- 117 (a) The purpose of this MOU is to outline a framework for collaboration and sharing of
118 information related to nuclear facilities and activities subject to the NSCA through
119 coordination of regulatory activities under the NSCA, *Fisheries Act* and SARA.
- 120 (b) This MOU will clarify and facilitate the implementation of the CNSC's supporting role
121 related to the application of DFO's aquatic species at risk, and fish and fish habitat
122 conservation and protection policies for nuclear facilities and activities.
- 123 (c) The Participants will implement this MOU to help support the Government of Canada's
124 regulatory process improvement objectives through the coordination of work activities
125 to:
 - 126 (i) Facilitate effective and efficient use of government resources in order that
127 regulatory decisions are made in a timely manner, subject to legislative and
128 regulatory requirements;
 - 129 (ii) Promote clarity and consistency of the regulatory decision-making process;
 - 130 (iii) Encourage responsibilities for mitigation, monitoring and reporting, compliance

- 131 and enforcement, follow-up monitoring, and Indigenous consultation are
132 addressed; and,
- 133 (iv) Maintain collaboration between the Participants during the review of projects of
134 mutual interest.
- 135 (d) Conservation and protection of fish and fish habitat, and aquatic species at risk and
136 their residences and critical habitat, will be managed in accordance with the NSCA,
137 Commission decisions, and in accordance with DFO's regulatory and policy
138 frameworks for the application of the SARA and the fish and fish habitat protection,
139 and pollution prevention provisions of the *Fisheries Act* for which DFO is responsible.
- 140 (e) The Participants will make every reasonable effort to resolve any conflicts that arise
141 from this MOU via the Working Group. Failing resolution at the working level, conflicts
142 may be referred for resolution to the principal contacts named in Section 9.0.

143 **4.0 SCOPE**

- 144 (a) This MOU applies to:
- 145 (i) All information and documentation related to nuclear facilities or works,
146 undertakings, and/or activities regulated by the CNSC.
- 147 (b) This MOU does not apply to:
- 148 (i) Proposed works, undertakings, and/or activities that relate to the deposit of
149 deleterious substances into fish bearing waters outlined in subsections 36(3) to
150 36(6) of the *Fisheries Act* and administered by the Minister of Environment and
151 Climate Change;
- 152 (ii) Proposed works, undertakings, and/or activities that relate to the control or
153 eradication of any aquatic invasive species or aquatic species that constitute a pest
154 to the fisheries, as outlined in subsections 36(3) to 36(6) of the *Fisheries Act* and
155 administered by the Minister of Fisheries, Oceans and the Canadian Coast Guard;
156 and
- 157 (iii) Proposed and existing ancillary works, undertakings, and/or activities located
158 outside a nuclear facility and not regulated by the CNSC (e.g., access roads,
159 airstrips).

160 **5.0 ROLES AND ACTIVITIES**

- 161 (a) **All Participants will:**
- 162 (i) Work together to improve the efficiency and effectiveness of regulatory reviews of
163 applications and decision-making by each Participant by:
- 164 1. Coordinating Indigenous consultation activities, when possible; and,
165 2. Tracking, examining, and reporting on discussion and actions taken under
166 this MOU.
- 167 (ii) Jointly develop, whenever possible, clear and comprehensive policies, standards,
168 guidelines, procedures, work plans, and/or protocols, as needed, to guide and
169 examine regulatory performance related to:
- 170 1. Information sharing and other knowledge transfer mechanisms for assessing
171 impacts to fish and fish habitat, including the development of protocols and
172 engagement between the Participants, as well as any other applicable

- 173 regulatory or policy frameworks of relevance for the protection of fish and fish
174 habitat;
- 175 2. Joint inspections at nuclear facilities to strengthen inspections conducted by
176 each Participant, to support the Participants' mandates and ensure regulatory
177 oversight of fish- and fish habitat- related components;
- 178 3. Indigenous consultation; and,
179 4. Public communication activities.
- 180 (iii) Establish a Working Group consisting of working-level staff from DFO and the CNSC
181 to conduct reviews of the MOU as set out in Section 7.0 and to develop and
182 implement the Terms of Reference set out in Annex 1, with oversight from the
183 principal contacts set out in Section 10.0 as needed.
- 184 **(b) The CNSC will:**
- 185 (i) Support DFO by conducting technical reviews of reports developed by proponents to
186 meet reporting requirements as set out in the conditions of a *Fisheries Act*
187 Authorization and/or SARA permit, and providing DFO with technical reviews and
188 comments for DFO's consideration;
- 189 (ii) Share information on site inspection observations related to DFO's mandate, as well
190 as ongoing information as it relates to the status of projects of mutual interest;
- 191 (iii) Transfer knowledge of past fish and fish habitat project reviews relating to
192 impingement and entrainment monitoring study design and acceptability of data;
- 193 (iv) Inform DFO without delay of any concerns and/or potential non-conformity with a
194 condition relating to fish and fish habitat as set out in a CNSC licence; and,
- 195 (v) Be the Crown Consultation Coordinator when both the CNSC and DFO have
196 regulatory decisions requiring Indigenous consultation on the same project.
- 197 **(c) DFO will:**
- 198 (i) Lead all project reviews related to fish and fish habitat and aquatic species at risk and
199 their habitat;
- 200 (ii) Undertake Crown consultation activities related to the proposed issuance of *Fisheries*
201 *Act* Authorizations or SARA permits;
- 202 (iii) Follow DFO's regulatory review process and review, in a timely manner, all
203 applications for nuclear facilities and proposed works, undertakings, and activities sent
204 to DFO from proponents for potential impacts to fish and fish habitat and aquatic
205 species at risk or their critical habitat, and provide advice or issue *Fisheries Act*
206 authorizations or SARA permits, where appropriate, according to the relevant
207 provisions of the *Fisheries Act*, including the *Aquatic Invasive Species Regulations*, or
208 the SARA;
- 209 (iv) Share information related to CNSC-regulated facilities, with both CNSC staff and the
210 Commission at regular intervals related, but not limited to, the status of projects of
211 mutual interest and the status of any occurrences, including the status of Indigenous
212 consultation activities and issues and concerns raised by Indigenous Nations and
213 communities with respect to *Fisheries Act* Authorization or SARA permit decisions;
- 214 (v) Inform the CNSC in a timely manner of any FFHPP's planned site inspections and/or
215 compliance monitoring to allow for coordinated and joint inspections; and,

216 (vi) Inform the CNSC, where appropriate, of any project that has been referred to DFO
217 Conservation and Protection officers related to a non-compliance incident that may
218 have occurred at a facility or any work, undertaking, and/or activity regulated by the
219 CNSC.

220 (d) **DFO and the CNSC** will not share privileged information nor Indigenous knowledge
221 without written approval from the Indigenous Nation or community in question, as set out
222 in section 61.2 of the *Fisheries Act*.

223 **6.0 REVIEW AND AMENDMENT OF MOU**

224 The Participants will meet together at least once each fiscal year that this MOU is in effect to
225 review its content and assess the effectiveness of collaboration and information sharing under
226 this MOU and discuss potential improvements, as needed.
227

228 Proposals for changes to this MOU can be made at any time, and appropriate amendments may
229 be made, if both Participants concur.
230

231 Participants will conduct a review of this MOU within five (5) years of the MOU's coming into
232 effect, and every five (5) years subsequent.

233 **7.0 FINANCIAL ARRANGEMENTS**

234 This MOU will not impose any financial responsibilities on the Participants. Each Participant will
235 be responsible for their respective costs incurred related to the implementation of the MOU.

236 **8.0 LEGAL DISCLAIMER**

237 This MOU is an expression of the mutual intentions of the Participants and is not legally binding
238 on them or enforceable against them.

239 It is agreed and acknowledged that any enforcement action under the *Fisheries Act* or the
240 SARA is at the sole discretion of DFO and may be referred to the Attorney General of Canada
241 for consideration for prosecution.

242 If there is any conflict or inconsistency between this MOU and any obligations under any Act of
243 Parliament, including but not limited to the NSCA, the *Fisheries Act*, and the SARA, the
244 obligations under the Act of Parliament shall prevail.

245 **9.0 PRINCIPAL CONTACTS**

246 The principal points of contact under this MOU, and responsible for its administration, are
247 designated below.

248 (a) **For DFO:**
249 Director General
250 Ecosystems Management
251 Fisheries and Oceans Canada
252 200 Kent Street,
253 Ottawa, Ontario K1A 0E6
254

255 (b) **For the CNSC:**
256 Director General
257 Directorate of Environmental and Radiation Protection and Assessment
258 Canadian Nuclear Safety Commission
259 280 Slater Street

260 PO Box 1046, Station B
261 Ottawa, Ontario K1P 5S9
262

263 Via the MOU Working Group, the Participants will exchange and maintain appropriate lists of
264 contacts to facilitate the implementation of activities described in this MOU.

265 **10.0 DURATION, WITHDRAWAL, AND TERMINATION OF THE MOU**


- 266 (a) This MOU will be in effect from the date of final signature by the Participants and will be
267 reviewed every five (5) years until cancelled by either Participant.
- 268 (b) Amendments to the MOU can be made at any time with concurrence from both
269 Participants, as described in Section 7.
- 270 (c) This MOU may be canceled unilaterally by either Participant by providing six (6) months
271 written notice of the intention to cancel to the other Participant or by mutual concurrence
272 with any agreed period of notice.
- 273 (d) This MOU replaces the *2013 Memorandum of Understanding between Fisheries and*
274 *Oceans Canada and Canadian Nuclear Safety Commission for Cooperation and*
275 *Administration of the Fisheries Act and the Species at Risk Act Related to Regulating*
276 *Nuclear Materials and Energy Developments.*

277 **11.0 SIGNATORIES**

278 The Participants hereto have signed this MOU, in counterpart, on the dates indicated below.
279 Signed in duplicate in English and French, both versions being equally authentic.

280 Approved by:

281

282 
283 _____
284 for Annette Gibbons
285 Deputy Minister
286 Fisheries and Oceans Canada

Sept-28-2023

Date

287 **Velshi,**
288 **Rumina** 
289 _____
Digitally signed by Velshi, Rumina
DN: C=CA, O=GC, OU=CNSC-CCSN,
CN="Velshi, Rumina"
Reason: I am approving this document
Location:
Date: 2023.08.22 10:38:07-04'00'
Foxit PDF Editor Version: 12.1.2

August 22, 2023

Date

290 Rumina Velshi
291 President
292 Canadian Nuclear Safety Commission

293

294 This MOU comes into effect on the latest date noted above.

295 **ANNEX 1 – TERMS OF REFERENCE FOR THE MEMORANDUM OF**
296 **UNDERSTANDING WORKING GROUP**

297 The Working Group will:

- 298 1. Convene on a regular basis to draft clear and comprehensive policies, standards,
299 guidelines, procedures, work plans, and/or protocols and to develop an approach to
300 manage and implement the MOU in a manner that has been agreed-upon by the
301 members of the Working Group and approved by the principal contacts;
- 302 2. Establish additional sub-Working Groups, as required, that include regional and
303 headquarters staff of the CNSC and DFO and relevant partners and stakeholders to
304 foster exchange and collaboration across the various energy infrastructure and
305 regulatory sectors;
- 306 3. Convene meetings, as required, between regional and headquarters staff of DFO and
307 the CNSC to discuss and address, as they arise, any specific concerns and/or emerging
308 priorities that may not be adequately addressed by the approved approach to manage
309 and implement the MOU, as outlined in paragraph 1; and,
- 310 4. Review and evaluate the content and effectiveness of activities conducted under this
311 MOU.