

Office of the Deputy Minister

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AR16611

October 16, 2007

Mr. Robert Lambe Regional Director General Central and Arctic Region Fisheries and Oceans Canada 520 Exmouth Street Sarnia, Ontario N7T 8B1

Dear Mr. Lambe:

Enclosed are three original copies of the Class "A" Working Agreement, developed by the Joint Technical Issues Working Group in Alberta. We understand that your staff have kept you informed during the development process and that Fisheries and Oceans Canada's interested are reflected in the Agreement.

These copies contain our original signatures. We are forwarding the three original copies of the document for your signature. Once signed, please return two copies for our departments' records.

Thank you for your cooperation and support in connection with the development of this working agreement. We look forward to the continued successes of the Joint Technical Issues Working Group.

Yours truly,

Original signed by

Original signed by

Deputy Minister Alberta Environment

Brad Pickering Deputy Minister Alberta Sustainable Resource Development

Enclosures

cc: Tom Olson, Department of Fisheries and Oceans Canada Ken Crutchfield, Sustainable Resource Development Keith Leggat, Environment

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- Alberta Sustainable Resource Development
 - Alberta Environment
 - Fisheries and Oceans Canada •

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Preamble:

The *Water Act*, Codes of Practice (the Code) are the responsibility of Alberta Environment and they set out a regulatory mechanism that governs certain activities within the regulatory scope of the Act. To facilitate the Codes, a series of maps were developed that designate the class of mapped water bodies as Class A, B, C, or D based on the "sensitivity" of fish habitats and their known distribution.

<u>Class 'A' watercourses</u> are critical fish habitat protection areas and represent a very small percentage of watercourses in Alberta. It is, therefore, important these areas be protected if the continued viability of fish communities in these watercourses is to be assured.

For Class 'A' watercourses, the majority of activities were prohibited from occurring under the Code. In 2005, a legal opinion stating that proponents could apply for an Approval, if they were unable to follow the Code, resulted in a direct challenge to the Code of Practice prohibition on activities in Class 'A' watercourses. This opinion was also contrary to the general understanding that Class 'A's represented a "no-go" zone and that they were protected from the effects of activities.

Within the Fisheries and Oceans Canada *Risk Management Framework*, Class 'A' watercourses would be considered as highly sensitive; projects within this matrix category are subject to a site specific review.

For Alberta Sustainable Resource Development, the *Public Lands Act* (Alberta) regulates activities that may affect the bed and shores of watercourses. The coordination of regulatory efforts across relevant agencies is considered an important objective of the department.

The intent of this working agreement is to ensure protection of Class 'A' watercourses by managing activities to avoid any potential <u>risks</u> to Class 'A' watercourses.

Parties Involved:

This working agreement sets forth the cooperative goals of Fisheries and Oceans Canada (DFO) - Prairies Area, Alberta Sustainable Resource Development (ASRD), and Alberta Environment (AENV), collectively referred to as the Participating Organizations.

Definitions:

Defined terms used in this agreement are identified at first use by underlining; the definitions for these terms are listed in Appendix A. In the event of any conflict between a definition in this document and that of any of the affected legislations, the legislated definition prevails.

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Scope of Application:

This working agreement applies to:

- 1. Any <u>watercourses</u> or portion of a watercourse within Alberta designated as a Class 'A' watercourse on an Alberta *Water Act*, Code of Practice <u>Management Area Map</u>,
- 2. Activities (as defined for this agreement) directly associated with Class 'A' watercourses in Alberta, undertaken by individuals, groups and associations, villages, local and municipal governments, and provincial and federal government agencies.
- 3. <u>New and replacement</u> works proposed for Class 'A' watercourses. <u>Repair</u> activities are not subject to this agreement.

Purpose:

The purpose of this Working Agreement is to:

- 1. Promote a high level of protection for Class 'A' watercourses,
- 2. Provide guidance and a process for consultation and provision of advice to assist and guide decision-making for Class 'A' watercourses within existing regulatory processes.
- 3. Establish a co-operative working arrangement between and among federal and provincial regulatory agencies on Class 'A' watercourses,
- 4. Provide clarity for stakeholders regarding activities in Class 'A' watercourses, and
- 5. Acknowledge and preserve the respective mandates and regulatory responsibilities of the Participating Organizations (summary provided in Appendix B).

Agreement:

The Participating Organizations hereby recognize and agree that:

- 1. <u>Class 'A' watercourses</u> are critical fisheries habitat^[1] and/or are a buffer for this critical habitat.
- 2. Due to their sensitive nature, these areas should not be exposed to risk of negative impacts from development activities.
- 3. Negative impacts from activities in Class 'A' watercourses pose a risk to the continued viability of Class 'A' watercourses and their fish communities.
- 4. To coordinate the exchange and review of relevant information in accordance with the protocol outlined in Appendix C.

In undertaking this agreement, the Participating Organizations agree to consult with each other to ensure consistency of approach and to follow the principles agreed to by the Province of Alberta and Fisheries and Oceans Canada on 29 May 2001, as follows:

- *I.* The ecological integrity of Alberta's fish habitat will be sustained.
 - Fish and fish habitat in Alberta will be protected.
 - Alberta sets the Fisheries Management Objectives for Alberta.
 - Fish habitat and resource priorities will be based on Alberta's Fish Conservation Strategy and Fisheries Management Objectives.
 - The Fish Conservation Strategy for Alberta endorses, as a working guideline, the federal Policy for the Management of Fish Habitat.

¹ It is recognized that "Critical habitat" has also been defined under the federal Species at Risk Act. The SARA definition does not apply to this agreement.

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- *II.* Fish habitat decisions will recognize the needs of future generations and today's economic, social and cultural needs, (i.e., sustainable development).
- *III.* Regulatory decision-making processes and requirements will be clear, transparent, predictable, accountable and timely.
- IV. Application of resources available for fish habitat management will be optimized through collaborative mechanisms.
- V. An effective means of achieving economically viable and ecologically sustainable fishing and aquaculture industries is through cooperative pursuit of consistent, coordinated, and integrated policies, initiatives and programs.

Given the difficulty in assessing the risks and consequences of activities and undertakings on the aquatic environment, the Participating Organizations agree to make decisions using an approach that employs <u>adaptive management</u> and <u>precautionary management principles</u>, to the extent possible and that ensures the greatest potential for sustaining the aquatic environment in Class 'A' watercourses. As additional knowledge of Class 'A' watercourses or new or innovative methods of habitat protection becomes known, such knowledge will be incorporated in resource management planning and the information considered in decision-making.

Aboriginal Considerations:

Nothing in this agreement abrogates or derogates from any Aboriginal, treaty, or other rights of Aboriginal People, including self-government.

Term and Amendment of this Agreement:

This Agreement may be amended in writing at any time by the mutual consent of the Participating Organizations. The amendments will be addressed at meetings of the Joint Technical Issues Working Group and confirmed by exchange of letters among the Participating Organizations specifying the amendments and the effective date for such amendments. In the absence of any other review and amendments, this Agreement will be reviewed within five years of the date on which it was signed.

The Participating Organizations may terminate this Agreement with three months written notice to the other Participating Organizations.

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Alberta Environment
Fisheries and Oceans Canada

Signatures: Participating Organizations

Government of Canada: Fisheries and Oceans Canada

Original signed by

Nov 23 2007 Date

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Bob Lambe, Regional Director General Central and Arctic Region

Government of Alberta: Alberta Sustainable Resource Development

Original signed by

JUL 2 5 2007

Brad Pickering, Deputy Minister

Date

Government of Alberta: Alberta Environment

Original signed by

NOV 1 5 2007

Date

Peter Watson, Deputy Minister

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APPENDIX A

DEFINITIONS FOR THE PURPOSES OF THIS AGREEMENT, TO THE EXTENT THAT THEY ARE CONSISTENT WITH LEGISLATIVE DEFINITIONS

- <u>Note</u>: in the event of any conflict between a definition in this document and that of any of the affected legislations, the legislated definition prevails.
- *"Activity,"* means the placing, constructing, installing, repairing, replacing or removing of a <u>watercourse crossing</u>, <u>line crossing</u> or <u>outfall structure</u> that discharges to a watercourse. [this definition has been adapted from the Alberta *Water Act*]
- "Adaptive management," means a systematic process for continually improving management policies and practices by learning from the outcomes of operational programs.
- "Class 'A' watercourse(s)," means the classification assigned on a Water Act, Code of Practice management area map to the highest sensitivity fish habitat in Alberta's watercourses. These are habitat areas that are sensitive enough to be damaged by any type of activity within the watercourse and they include known habitats that are critical to the continued viability of a population of fish species in the area.

Class 'A' watercourses also incorporate a buffer, that includes the lowermost section, up to 2 kilometers, of contributory watercourses (tributaries). Activity within these buffers may adversely affect the downstream Class 'A' fish habitat.

[this term is not currently defined in legislation]

- *"Decision-maker(s),"* means the authority to approve or reject a project that resides with the Minister or his designates under the *Water Act*, the *Public Lands Act*, the *Fisheries Act* (Canada), or other relevant legislation. [this term is not currently defined in legislation]
- *"Fisheries Management Objective,"* means the population and habitat priorities/targets that provide direction for management of fish populations or habitats. The appropriate goals and objectives described in *A Fish Conservation Strategy for Alberta: 2006-2010* and species management plans will be used as a default where watercourse specific Fisheries Management Objectives do not exist. [this term is not currently defined in legislation]
- "Harmful Alteration, Disruption, or Destruction (HADD) of Fish Habitat," means any change in fish habitat that reduces its capacity to support one or more life processes of fish. [as defined in the federal Practitioners Guide to the Risk Management Framework for DFO Habitat Management Staff]
- *"Management Area Map,"* means a map adopted by the Director under section 5(2) of the *Water Act*, Codes of Practice. [as defined in the Alberta *Water Act*, Codes of Practice]
- *"Line Crossing"* means a pipeline crossing, telecommunications line crossing, or transmission line crossing. [as defined in the Alberta *Water Act*, Codes of Practice]
- "Outfall Structure," means a pipe or structure in, on, under, or adjacent to a watercourse, that is constructed for the discharge of precipitation that has fallen and been collected, or liquid or water-carried wastes, to a watercourse, and includes any associated permanent or

temporary structure and mitigative measures associated with the outfall structure at the site. [as defined in the Alberta *Water Act*, Codes of Practice]

- *"Pipeline Crossing,"* means a pipe under a watercourse for the transmission of any substance, including any associated permanent or temporary structure and mitigative measures associated with the pipeline crossing at the site. [as defined in the Alberta *Water Act*, Codes of Practice]
- "Precautionary management principle" means the cost effective measures and actions, including future courses of action, which ensure prudent foresight, reduce or a void risk to the resources, the environment, and the people, to the extent possible, taking explicitly into account existing uncertainties and the potential consequences of being wrong. [this definition was developed by the United Nations to address fish declines throughout the world (Code of Conduct for Responsible Fisheries. Food and Agriculture Organization of the United Nations (FAO) 1995)].
- "Remove" means to take away an existing works so that it no longer affects the aquatic environment. [this term is not currently defined in legislation]
- *"Repair,"* means the maintenance or structural restoration of a works for the preservation its original status, which results in or may result in an adverse effect on the aquatic environment. [this definition has been adapted from the Alberta Water (Ministerial) Regulation]
- "Replacement," means a new works constructed to take the place of an existing works, to enhance its performance, or to meet new operational requirements, which results in or may result in an adverse effect on the aquatic environment. [this term is not currently defined in legislation]
- *"Risk,"* means the expected impact of a development proposal on the productive capacity of fish habitat. [as defined in the federal *Practitioners Guide to the Risk Management Framework for DFO Habitat Management Staff*]
- *"Risk Assessment"* means the process of identifying, measuring and predicting the likelihood of an unwanted event from occurring. Risk Assessment takes into account the probability of the event occurring, the consequences of the event, and the degree of uncertainty involved.
- "Telecommunication Line Crossing," means a pipe, cable or an arrangement of lines, wires, or other conductors by which telephone or electronic data is transmitted or received, or both, that is or will be installed under a watercourse, including any associated permanent or temporary structure and any mitigative measures associated with the telecommunication line crossing at the site. [as defined in the Alberta *Water Act*, Codes of Practice]
- *"Transmission Line Crossing,"* means a line under a watercourse for the transmission or distribution of electric energy, including any associated permanent or temporary structure and any mitigative measures associated with the transmission line crossing at the site. [as defined in the Alberta *Water Act*, Codes of Practice]

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- "Wildlife Management Objectives," means the population and habitat priorities/targets for a lake and/or adjacent riparian areas that provide direction for the management of wildlife populations or habitats in or adjacent to the lake. The appropriate goals and objectives described in the Fish and Wildlife Policy for Alberta (1982), the Fish and Wildlife Strategic Plan (1991) and species management plans will be used as a default where lake specific Wildlife Management Objectives do not exist. [this term is not currently defined in legislation]
- *"Watercourse,"* means a river, brook, stream or other natural water channel and the bed along which this flows. [as defined in the Alberta *Water Act*, Codes of Practice]
- "Watercourse Crossing" means a bridge or other structural or temporary crossing that traverses a watercourse, including any associated permanent or temporary structure and any mitigative measures associated with the watercourse crossing at the site. [this definition has been adapted from the Alberta Water Act, Codes of Practice]
- "Works," means any structure, device, contrivance or part thereof that results from an activity, including the land and mitigative measures associated with it. [as defined in the Alberta Water Act, Codes of Practice]

APPENDIX B

APPLICABLE LEGISLATION / ROLES AND RESPONSIBILITIES

Applicable Legislation^[2]

Any activities or undertaking in Class 'A' watercourses must comply with applicable provincial and federal legislation and receive appropriate approvals and authorizations. This legislation includes, but is not limited to the *Water Act* (Alberta), *Public Lands Act* (Alberta), *Wildlife Act* (Alberta), *Fisheries Act* (Canada), *Canadian Environmental Assessment Act* (Canada) and the *Species at Risk Act* (Canada). Some of the provisions of the legislation, relevant to activities in Class A watercourses are summarized below. The summary is not exhaustive.

• Water Act

The *Water Act* regulates activities that may affect the aquatic environment or may interfere with the present or future development, conservation or management of water. The *Water Act*, its regulations, and the Codes of Practice, regulates watercourse, pipeline, telecommunication and transmission line crossings as well as outfall structures. These Codes of Practice prohibit new activities in Class 'A' watercourses.

A *Water Act* approval is required for any activity in Class 'A' watercourses. The proponent should contact the nearest district office of Alberta Environment to apply for an approval.

• Public Lands Act

The *Public Lands Act* (Alberta) regulates activities that occur on public land, including the bed and shores of most permanent and naturally occurring water bodies and watercourses. The Act prohibits: disturbances that are likely to result in injury to the bed or shore of any watercourse or land in its vicinity; any act that may injuriously affect watershed capacity or the creation of any condition on public land which is likely to result in soil erosion. An authorization under the *Public Lands Act* is required where a person does anything that injures or destroys, or is likely to injure or destroy the surface of the public land in a disposition. An approval under the Alberta *Public Lands Act* is also required where the activity will alter or modify the existing configuration of Crown-owned bed and shore of a water body (e.g., erosion and sedimentation, damage to the bed and shore). This requirement does not apply to a right-of-way administered by a Ministry other than Sustainable Resource Development.

• Wildlife Act (Alberta)

The Wildlife Act (Alberta) regulates activities relating to Alberta's wildlife. The Act prohibits disturbance, harassment, capture of any animals listed provincially as Endangered or Threatened. Numerous aquatic species have approved for listing as either endangered or threatened.

• Fisheries Act (Canada)

The Fisheries Act (Canada), and the associated regulations and policies, prohibits the harmful alteration, disruption or destruction of fish habitat unless Authorized. The Act defines fish habitat as "spawning grounds and nursery, rearing, food supply and

² References to legislation and regulations cited throughout this document are based on content on the issue date of this guideline. Up-to-date information on amendments or other changes are available from the Alberta Queen's Printer (provincial legislation); Government of Canada Publications or Department of Justice Canada (federal legislation); and from government departments administering the legislation. Original Acts and regulations should be consulted for all purposes of interpreting and applying the law.

migration areas on which fish depend directly or indirectly to carry out their life processes."

An Authorization under Section 35(2) of the federal Fisheries Act is required for any activity that contravenes Subsection 35(1). This section prohibits the Harmful Alteration, Disruption, and Destruction (HADD) of fish habitat. This working agreement does not apply to any other provisions of the Fisheries Act, such as the killing of fish by means other than fishing (s. 32) or the deposit of deleterious substances (s. 36(3)).

Canadian Environmental Assessment Act (Canada)

The Canadian Environmental Assessment Act ensures that the environmental effects of projects are carefully reviewed so that projects do not cause significant adverse environmental effects. Projects that require an Authorization under the Fisheries Act trigger a review under this Act.

Species at Risk Act (Canada)

The first phase of the Species At Risk Act (SARA) came into force June 2003. The purposes of SARA are to prevent Canadian indigenous species, subspecies and distinct populations of wildlife from being extirpated or becoming extinct, to provide for the recovery of species that are extirpated, endangered or threatened as a result of human activity; and to manage species of special concern to prevent them from becoming endangered or threatened.

Roles and Responsibilities of Participating Organizations

Alberta Sustainable Resource Development

Fish and Wildlife Division

The Fish and Wildlife Division (FWD) of ASRD is responsible for establishing Fisheries Management Objectives and Wildlife Management Objectives within the province, for classifying the sensitivity of Alberta watercourses which enables the delivery of the Water Act, Codes of Practice, and for ensuring compliance under the Wildlife Act.

Lands Division

The Lands Division is responsible for administering the Public Lands Act.

Forestry Division

The Forests Division is responsible for administering the Public Lands Act and the Timber Harvest Planning and Operating Ground Rules. They also have the delegated authority to monitor compliance to the Water Act.

Alberta Environment .

Alberta Environment will be responsible for administering the Water Act.

Fisheries and Oceans Canada

Fisheries and Oceans Canada is responsible for ensuring activities administering the Fisheries Act, the Canadian Environmental Assessment Act, and the Species at Risk Act.

APPENDIX C

ALBERTA & DFO PROTOCOL FOR COORDINATING AND REVIEWING APPLICATIONS FOR ACTIVITIES PROPOSED FOR CLASS 'A' WATERCOURSES.

This protocol provides the framework for determining how activities associated with Class 'A' watercourses will be reviewed and the presentation of recommendations to <u>decision-makers</u>.

Application Referral and Review Process

1. Applications

- (1) Applications will be subject to the following regulatory requirements.
 - (a) An approval under the *Water Act* is required for all activities in all Class 'A' watercourses in Alberta.
 - (b) A disposition amendment under the *Public Lands Act* is required where the proposed activities are outside the original authorized disposition boundaries.
 - (c) Under the *Fisheries Act*, an Authorization <u>is required</u> for activities in Class 'A' watercourses if the activity is likely to result in a HADD.
- (2) Five hardcopies or a single electronic copy of the application and all of its supporting documentation are required to be submitted by the proponent.
- (3) Approval/authorization applications for activities in Class 'A' watercourses will be received using a 'one-window' approach. Under this approach, the agency receiving the application will distribute copies of the application to representatives of the other Participating Organizations in a timely manner. Appropriate representatives of the Participating Organizations can include, but are not limited to:
 - (a) Alberta Environment regional approvals coordinator.
 - (b) Alberta Sustainable Resource Development Lands Division area or regional land use operations personnel.
 - (c) Fisheries and Oceans Canada Senior Habitat Biologists.

2. Scope of Information

- (1) Project Description: in order to adequately describe the project and its effects, the following information may be required to support the application. The actual information requirements will be related to the nature of the project and its location.
 - (a) Project Plans (for primary and all contingencies)
 - 1. exact location of activity on Class A watercourse
 - 2. general design plans for the proposed project,
 - 3. detailed plans for specific parts of the activity or project that may affect Class 'A' watercourses, including:
 - A. rationale for locating the project in a Class 'A' watercourse,
 - B. alternative locations considered and rationale for rejecting these alternative locations,
 - C. proposed construction method and scheduling,
 - D. proposed precautionary measures to be undertaken to protect the environment, and
 - E. reclamation measures associated with the proposed project.
 - (b) Construction Monitoring and Reporting plan
 - 1. a description of the monitoring and reporting, including environmental sensitivities and performance measures, that are to be conducted during the construction of the project to monitor changes in the aquatic environment caused by construction and allow for a suitable response,

- (c) Long-term Monitoring and Reporting plan
 - a description of the monitoring and reporting, including inspection and maintenance procedures, that are to be conducted after the proposed project has been completed to insure the project and associated works (e.g. erosion control measures, mitigation measures, etc) are functioning as intended and designed.
- (2) Aquatic Environmental <u>Risk Assessment</u>: to facilitate the comprehensive review of the potential risks to the aquatic environment resulting from a proposed project on a Class 'A' watercourse, the proponent is required to provide a report that contains:
 - (a) a synthesis of the environmental information used for the assessment.
 - (b) an assessment of risk to Class 'A' watercourses that is based on
 - (c) a complete description of the potential hazards resulting from:
 - 1. the project and its contingencies
 - 2. the incremental environmental effects resulting from the project combined with the influences of existing activities.
- (3) Information related to the project and used to support the assessment of risk to Class 'A' watercourses.
 - (a) Qualified professional who is a member of regulated professional organization.
 - (b) Within the scope of expertise for that professional practice.
- (4) The Review Panel may, at any time after receipt of the application and its supporting information, require the proponent to submit any additional information respecting the proposed activity that the Review Panel considers necessary for the review of the proposed activity in order to provide advice to the decision-maker..

3. Coordination of Information

- (1) Each agency will be responsible for making all appropriate agency information available to the other agencies for the review.
 - (a) AENV will determine if resource or water management objectives exist for a particular Class 'A' watercourses.
 - (b) Fish and Wildlife Division of ASRD will make available existing Fisheries Management Objectives or Wildlife Management Objectives, or such documents being developed for the proposed project area.
 - (c) Lands Division of ASRD will make available any information on reservations or notations on file for the proposed project area.
- (2) The agency initially receiving the application will initiate a meeting, conference call, or other contact amongst representatives of each Participating Organization. The purpose of the contact will be to:
 - (a) ensure coordination of information amongst agencies.
 - (b) review available information, subject to the requirements outlined in Section 4.
 - (c) ensure that there is no conflict, and no inadvertent contravention of legislation administered by other agencies.

4. Review Panel

- (1) The review panel will consist of four members representing:
 - (a) Fisheries and Ocean Canada
 - (b) Alberta Environment
 - (c) Lands Division, Alberta Sustainable Resource Development
 - (d) Fish and Wildlife Division, Alberta Sustainable Resource Development

- (2) Review panel members will be designated by their respective agencies and will provide provincial-level oversight for the review of proposed projects on Class 'A' watercourses.
- (3) The review panel will also draw on appropriate representatives to allow for area specific knowledge to be represented in the review.
- (4) Alternate members will be identified to allow reviews to be undertaken in a timely manner.
- (5) The Review Panel will review outstanding projects in a timely manner.

5. Review

- (1) The purpose of the Review Panel is to evaluate the application and its supporting information to provide opinions, advice, and/or evidence regarding the proposed activities to the decision-maker with respect to:
 - (a) the assessment of risk to Class 'A' watercourses.
 - (b) the likelihood and possible extent of any adverse effect on the aquatic environment
 - (c) the objective of this agreement.
 - (d) the proposed mitigation and other mitigation that is possible for the proposed project.
 - (e) compliance with the legislation for which they are responsible, and
 - (f) the status regarding all current resource management objectives, including Fisheries Management Objectives, Wildlife Management Objectives, management plans (provincial or municipal), or a water management plan adopted under the *Water Act* (or other legislation).
- (2) Where Review Panel feels it necessary and appropriate, a meeting with the proponent to clarify any matter relating to the proposed project will be arranged

6. Results

- (1) The Review Panel will prepare a concise results document that
 - (a) describes whether the project, as described in the application and its supporting material, meet the review criteria outlined in Section 5.
 - (b) documents other concerns or comments regarding the project that may be relevant to the decisions made by each Participating Organization.
- (2) Each Participating Organiz ation is responsible for ensuring the results document, the application and its supporting information are available to the decision-maker, in the event the decision-maker has not participated directly in the review.
- (3) Each decision-maker may engage in further dialogue with the Review Panel for further clarification of issues as necessary.
- (4) Each decision-maker, upon reaching their decision, will provide to the review panel and the proponent, their decision and the rationale for the decision.
- (5) In general, if the decision is to proceed with issuing an approval, coordinators of the approval document may target coordinating the conditions based on advice from the Participating Organization collated during the review process for the final official documents for example DFO Authorizations, AENV Approvals, SRD Disposition.