



Integrated Land Management Bureau

FAX HEADER

Date: June 7, 2007

To: Richard Post
Forest Practices Board

Fax #: 250-387-7009

From: Brian Fuhr
Planning Team Leader, ILMB

Phone: 250-847-7533

Fax #: 250-847-7347

Total # of pages: 6 (including header)

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING, MADE THIS 16 DAY OF May, 2007

Between:

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
as represented by the Minister of Fisheries and Oceans Canada**

and

BC MINISTRY OF AGRICULTURE AND LANDS

and

BC MINISTRY OF FORESTS

Concerning Whales and Helicopter Log Drops in the North Coast

PREAMBLE:

In the spirit of cooperation and for the benefit of the North Coast of British Columbia, Fisheries and Oceans Canada, the BC Ministry of Agriculture and Lands and the Ministry of Forests wish to work in partnership to develop mechanisms to avoid impacts of forestry operations or similar developments on whales and their associated habitats. This MoU evolved from the Forest Practices Board Complaint Investigation 040565, and the resultant report, *Humpback Whales and Helicopter Log Drops in the North Coast* (FPB/IRC/113).

1. Purpose of Memorandum of Understanding:

The parties wish to establish a cooperative and mutually beneficial relationship in order to facilitate sustainable development of the forest resource while minimizing the chances of harmful disturbance to whale species that migrate, feed or rear in the North Coast. This Memorandum of Understanding (MOU) sets forth each of the parties' responsibilities.

2. Duration of MOU:

This MOU will commence on May 28, 2007, and will remain in effect until the earlier of: (a) May 1, 2009; or (b) the MOU is cancelled. This two year period is recommended to monitor the effectiveness of this MoU and allows for review at the end of the above term.

3. Responsibilities of the Parties:

The parties agree that their responsibilities under this MOU will be as follows:

The Minister: This Agreement confirms the commitment by DFO to provide information regarding legislation and guidelines related to whale disturbance. This information may be amended from time to time as new information becomes available. DFO will define *disturbance* as it relates to **Section 7 of the Marine Mammal Regulations (SOR/93-56)**. The relevant regulation and notes on its interpretation are found in Appendix A of this MoU. Any enforcement action related to the above regulations is a responsibility of Fisheries and Oceans Canada.

The Ministry of Agriculture and Lands: The Agreement confirms the commitment by the Ministry of Agriculture and Lands to append a copy of this MoU to related tenures (e.g. helicopter log drop and storage areas) that the Ministry issues. This information is intended to ensure that proponents are aware of the relevant legislation within the Marine Mammal Regulations and guidelines related to disturbance of whales.

The Ministry of Forests and Range: The Agreement confirms the commitment by the Ministry of Forests and Range to pass on whale habitat information to major forest tenure holders operating within the North Coast Forest District (DNC) as it becomes available to DNC staff.

4. Amendment or Cancellation of the MOU:

This MOU may be amended at any time in writing with both parties' consent. This MOU may be cancelled by either party upon sixty (60) days written notice to the other party except where the cancellation is for cause, i.e. a material and significant breach of any of the provisions of this MOU, it may be cancelled upon delivery of written notice to the other party.

5. No Legal Effect

This MOU is not intended to constitute an agreement that will be legally binding on either party, and it is not intended to be relied upon by the parties to create any legal rights or obligations.

Signed on behalf of Fisheries and Oceans, Canada

B. Shogard
Signature of North Coast Area Chief, Oceans, Habitat & Enhancement

Date: 22 May 2007

Siegi Kriegel
Signature of North Coast Area Director

Date: MAY 28 2007

Siegi Kriegel

Signed on behalf of the BC Ministry of Agriculture and Lands

F. O'Brien
Regional Manager

Date: June 1 / 07

Signed on behalf of the BC Ministry of Forests

Dave Bensch
District Manager, North Coast

Date: May 28, 2007

Appendix A

Marine Mammal Regulations

Prohibitions

7. No person shall disturb a marine mammal except when fishing for marine mammals under the authority of these Regulations.

For a complete copy of these regulations see:

<http://laws.justice.gc.ca/en/showdoc/cr/SOR-93-56///>

Interpretation of the Regulation

Disturbance of marine mammals is contrary to the Fisheries Act and depending on the species may also be contrary to the provisions of the Species at Risk Act. In both cases, there are prohibitions against disturbing marine mammals.

Note: the marine mammal regulations are being amended. Here is the link to the proposed amendment:

http://www-comm.pac.dfo-mpo.gc.ca/pages/consultations/marinemammals/documents/bulletin-dec02_e.htm#proposed

An individual may be able to obtain a permit that will allow for a disturbance, however, the section of the Species at Risk Act (and the proposed Marine Mammal Regulations of the Fisheries Act) will be applied judiciously and all alternatives to the disturbance must be considered prior to the issuance of a permit.

Disturbance can be broadly defined as an activity that alters, disrupts or prevents a marine mammal from carrying out its normal life processes. Marine mammal life processes include: rest, forage, feed, communicate and socialize with its group, mate and care for young. (Lien, 2001). In more practical terms, as applied to helicopter logging activities under this MoU, this would most commonly be an activity that causes whales to alter course or leave the area.

Below are excerpts pertaining to viewing activities, taken from the proposed Marine Mammal sections of the Fisheries Act. Section 9 refers to water based observation and Schedule V refers to aerial observation.

Distances less than these could be interpreted as disturbance:

Approaches to Marine Mammals

9. (1) *Subject to subsections 9(3), 9(4) and 9(5) no person shall approach within 100 metres of any cetacean or walrus.*

(2) *Subject to subsections 9(3), 9(4) and 9(5) no person shall approach to within a distance or in a manner to a seal or sea lion haul out or raft of sea lions or sea otters that disperses the aggregation.*

Schedule V (5) (a) No one shall operate an aircraft for purposes of aerial marine mammal observation at an altitude of less than 1000 feet.

This minimum approach is consistent with NOAA and the regulations in adjacent jurisdictions - Alaska and Washington State.



File: 97250-20/040565

August 2, 2007

Eamon O'Donoghue
Regional Manager
Integrated Land Management Bureau
Ministry of Agriculture and Lands
Integrated Land Management Bureau
Bag 5000
Smithers, BC V0J 2N0

Dave Bewick
District Manager
Ministry of Forests and Range
North Coast Forest District
125 Market Place
Prince Rupert, BC V8J 1B9

Bruce Shepherd
Area Chief
Fisheries and Oceans Canada
417 2nd Avenue West
Prince Rupert, BC V8J 1G8

Dear Participants:

Re: Response to the Board's recommendation in the *Humpback Whales and Helicopter Log Drops on the North Coast* complaint investigation.

I thank the Integrated Land Management Branch of the Ministry of Agriculture and Lands for its June 7, 2007, response to the Board's recommendation in its investigation report 040565 entitled *Humpback Whales and Helicopter Log Drops on the North Coast*. Thank you also for providing a copy of the memorandum of understanding between the governments of British Columbia and Canada.

The memorandum is in effect as of May 28, 2007 until May 28, 2009. The Board is satisfied with the memorandum as an acceptable response to the Board's recommendation at this time. However, I have decided to adjust the recommendation to ask that both the Integrated Land Management Bureau and Fisheries and Oceans Canada provide an additional response to the Board when the memorandum expires in 2009. My rationale is as follows.

The Board's investigation report noted that Humpback whales use specific coastal areas for migration, rearing and feeding, and that some forestry operations may conflict with

these uses. It is our understanding that some high value and frequently-used whale habitat areas may be readily identifiable. The *Forest and Range Practices Act* contains provisions to reduce potential impact to wildlife, including whales and whale habitat. For example, since the North Pacific Humpback Whale is a threatened species, there is a legal basis for the provincial government to consider its designation as species-at-risk, or regionally important wildlife and to correspondingly establish wildlife habitat areas under section 10 of the *Government Actions Regulation*. This designation and establishment could ensure that high-value habitats such as feeding and rearing areas are protected from potentially harmful forest practices. With that in mind, the Board originally recommended that:

The Ministry of Environment, Ministry of Agriculture and Lands (Integrated Land Management Bureau) and the Ministry of Forests and Range, engage with the Federal Department of Fisheries & Oceans to examine the habitat needs of the Northern Pacific Humpback Whale, and determine whether mechanisms are needed to protect important coastal habitats where there is a potential for forestry operations, specifically log drops and storage areas, to have negative impacts on the whales migration routes, feeding and rearing areas.

The preamble to your memorandum of understanding states that Fisheries and Oceans Canada will provide information to the BC Government and will develop mechanisms to avoid impacts of forestry operations on whales and their habitats. However, the body of the memorandum indicates that the sharing of information is limited to whale disturbance only. It is not clear how, in the next two years, Fisheries and Oceans might develop additional mechanisms to protect habitat, or whether additional mechanisms beyond the existing provincial and federal legislation are warranted.

We appreciate that the Ministry of Agriculture and Lands has agreed to attach the memorandum of understanding and the federal regulation summary to its applicable tenures and permits (albeit not as a condition of use). However, it is the Board's view that helicopter log drops and marine log handling areas constitute forest practices. It is an obligation of the BC Government to utilize the *Forest and Range Practices Act* as necessary to manage forest practices that are potentially harmful to other resource values, such as wildlife.

The Board recognizes the potential of the memorandum of understanding to lay the groundwork for a deeper consideration of the Board's original recommendation by initially sharing information between the two governments.

Ministry of Forests and Range
Ministry of Agriculture & Lands
Fisheries and Oceans Canada
August 2, 2007
Page 3

In accordance with section 131 of the *Forest and Range Practices Act*, the Board recommends that:

Both the Integrated Land Management Bureau and Fisheries and Oceans Canada report to the Board on the application and outcome of the May 28, 2007, Memorandum of Understanding between the Government of Canada and the Government of British Columbia. Specifically, the Board requests that the two agencies report on what information and guidelines were shared and implemented under the term of the memorandum. This should include an analysis of whether additional mechanisms are warranted to protect whale habitat where there is a potential for forestry operations, specifically log drops and storage areas, to have negative impacts on whale migration routes, feeding and rearing areas.


Under section 132 of the *Forest and Range Practices Act*, the Board requests that the Integrated Land Management Bureau and Fisheries and Oceans Canada report on their implementation of this recommendation by December 1, 2009.

If you have any questions or concerns please contact Fred Parker, Executive Director at (250) 356-1683.

Yours sincerely,

A handwritten signature in black ink that reads "Bruce Fraser". The signature is written in a cursive, flowing style.

Bruce Fraser, PhD
Chair



BRITISH COLUMBIA
The Best Place on Earth
DEC 04 2009

RECEIVED by:
Original Fred Parker
File # _____

ACTION:	COPIES:
	Bruce F.
	Directors - Done WFP Dec 04
	Al Patt - Done WFP "
	R Post - Done WFP. "

NIA Int: FYI Int:



November 30, 2009

Dr. Bruce Fraser, Chair
Forest Practices Board
3rd Floor, 1675 Douglas Street
PO Box 9905 Stn Prov Govt
Victoria BC V8W 9R1

Dear Dr. Fraser:

Please accept this letter as the Integrated Land Management Bureau's (ILMB) response to the adjusted Board recommendation regarding humpback whales and helicopter log drops on the North Coast, as articulated in your letter dated August 2, 2007.

Adjusted Recommendation:

Both ILMB and Fisheries and Oceans Canada report to the Board on the application and outcome of the May 28, 2007 Memorandum of Understanding between the Government of Canada and the Government of British Columbia. Specifically, the Board requests that the two agencies report on what information and guidelines were shared and implemented under the term of the memorandum. This should include an analysis of whether additional mechanisms are warranted to protect whale habitat where there is a potential for forestry operations, specifically log drops and storage areas, to have negative impacts on whale migration routes, feeding and rearing areas.

Report on Application and Outcome of May 28, 2007, Memorandum of Understanding (MOU)

Since May 2008, ILMB has been appending copies of the MOU to all new tenures applications for helicopter log drops. ILMB intends to continue to append this information to future tenures.

All parties have indicated an interest in continuing the MOU. To this end, ILMB has drafted a revised MOU that is currently being circulated for review and approval. Fisheries and Oceans Canada is expected to have additional information on humpback whale habitat available in the near future. The intent is to include this in the MOU via amendment when it becomes available. ILMB will provide you with copies of the new MOU and the amended MOU (that includes this additional information) when complete.

In terms of additional actions that have been taken since the MOU was signed, in July 2008, Fisheries and Oceans Canada, the Coast Forest Products Association and BC Timber Sales, developed "Best Management Practices for Helicopter Log Drop Sites in Marine Waters of British Columbia". The objective of these Best Management Practices (BMPs) are to describe the applicable conditions and measures to incorporate for a helicopter log drop operation to avoid

negative impacts to fish, fish habitat and marine mammals. The BMPs will be referenced in the MOU provided to the appropriate tenure applicants.

(http://www.for.gov.bc.ca/ftp/TST/external/!publish/EMS2/Supplements/BMP_helicopter.pdf)

It is believed that the above actions and readily available information have raised awareness of this potential issue. ILMB will continue to work with Fisheries and Oceans Canada and the Ministry of Forests and Range to monitor this issue.

If the Board has any questions regarding this response, please contact Dave Tudhope at (250) 356-7643 or Tamsin Mills at (250) 847-7512.

Sincerely,



Eamon O'Donoghue
Regional Executive Director
Northern Interior Region, ILMB

pc; Honourable Pat Bell, Minister of Forests and Range and
Minister Responsible for the Integrated Land Management Bureau
Steve Carr, Chief Executive Officer, ILMB
Gary Townsend, ADM, Regional Operations Division, ILMB
Bill Warner, Regional Executive Director, Northern Interior Forest Region, MFR
Diane Medves, Director, Forest Practices Branch, MFR
Bruce Sieffert, Director, Land and Marine Resource Support, ILMB
Dave Bewick, District Manager, North Coast Forest District, MFR
Brian Fuhr, Planning Team Leader, ILMB
Kristine Weese, Forest Practices Board Liaison, Okanagan Shuswap Forest District, MFR
Holly Pulvermacher, Oceans, Habitat and Enhancement, BC North Coast, Fisheries and
Oceans Canada