

A PROTOCOL CONCERNING
THE INSPECTION AND MONITORING OF
YUKON PLACER MINING
(hereafter, the "Agreement")

BETWEEN

Yukon Department of Energy, Mines and Resources,
as represented by the Deputy Minister
(hereinafter "EM&R")

AND

Fisheries and Oceans Canada,
as represented by the Regional Director General
(hereinafter "DFO"),

collectively, the Parties.

WHEREAS the Parties have worked together to develop an approach to more effectively and efficiently regulate the placer mining industry in Yukon in relation to compliance with the *Fisheries Act* (Canada) R.S.C. 1985, c.F-14,

DFO and EM&R agree as follows:

1. DEFINITIONS

In this Agreement

- 1.1. "EM&R Inspector" means a person employed by EM&R who is designated as an inspector pursuant to section 38 of the *Fisheries Act* for the purpose of enforcing the fish habitat protection and pollution prevention provisions of the *Fisheries Act* as they relate to placer mining in Yukon,
- 1.2. "EM&R Analyst" means a person employed by the EM&R who is designated as an analyst pursuant to section 38 of the *Fisheries Act* for the purpose of enforcing the fish habitat protection and pollution prevention provisions of the *Fisheries Act* as they relate to placer mining in Yukon,

- 1.3. "DFO Habitat Inspector" means a person employed by the DFO who is designated as an inspector pursuant to section 38 of the *Fisheries Act* for the purpose of enforcing the fish habitat protection and pollution prevention provisions of the *Fisheries Act*, and
- 1.4. "Fishery Officer" means a person employed by the DFO who is designated as a fishery officer pursuant to subsection 5(1) of the *Fisheries Act* for the purpose of enforcing that Act.

2. PURPOSE

The purpose of this Agreement is as follows:

- 2.1. to confirm the respective roles and responsibilities of DFO and EM&R in applying the fish habitat protection and pollution prevention provisions of the *Fisheries Act* to Yukon placer mining activities;
- 2.2. to minimize disruption to placer mining activities through coordinated enforcement efforts; and
- 2.3. to provide support to the Minister of DFO in respect of enforcement of the *Fisheries Act*.

3. TERMS AND CONDITIONS

The undersigned agree to the following.

- 3.1. Nothing in this Agreement is intended to replace or change any obligation that either Party is bound to or required to perform by operation of law.
- 3.2. After EM&R staff has successfully completed appropriate training, DFO agrees to consider designating individual EM&R staff as EM&R Inspectors or EM&R Analysts under the *Fisheries Act*. EM&R agrees to provide proof of successful completion of appropriate training to the Minister of DFO to assist him/her in determining whether to appoint each of the recommended EM&R staff as EM&R Inspectors or EM&R Analysts.
- 3.3. Upon being designated as an EM&R Inspector or EM&R Analyst, DFO shall provide each designated person with a certificate specifying the powers that person may exercise.
- 3.4. The Minister of EM&R agrees to direct EM&R Inspectors and EM&R Analysts to provide assistance to DFO in enforcing the fish habitat protection and pollution prevention provisions of the *Fisheries Act* in both exigent and non-exigent situations, and to a standard that is consistent with the *Fisheries Act* Habitat Protection and Pollution Prevention Provisions Compliance and Enforcement Policy and other applicable policies that DFO has in place for the protection of fish and its habitat. To assist in fulfilling this obligation, DFO shall provide EM&R with current copies of each of the applicable

policies and agrees to provide EM&R with any amendments or alterations to these policies as soon as practicable after the amendment or alteration is made by DFO.

- 3.5. The cost of training referenced in paragraph 3.2, as well as the cost of administering and performing EM&R Inspector and EM&R Analyst responsibilities, as detailed in this Agreement, will be at the expense of EM&R.
- 3.6. The costs associated with administering and performing DFO responsibilities as detailed in this Agreement will be at the expense of DFO.

4. LEAD RESPONSIBILITY

- 4.1. EM&R Inspectors will assume a lead role in the inspection and monitoring of placer mines in Yukon for the purposes of assessing compliance with the fish habitat protection and pollution prevention provisions of the *Fisheries Act*.
- 4.2. Notwithstanding 4.1, efforts will be made to conduct joint inspections involving Fishery Officers and DFO Habitat Inspectors and EM&R Inspectors.
- 4.3. EM&R Inspectors will inspect all operating placer mines in Yukon for compliance with the *Fisheries Act* at least once per mining season, while sluicing is in progress.
- 4.4. Notwithstanding paragraph 4.3, EM&R Inspectors will inspect more than once per mining season, at relevant times, operating placer mines in Yukon where fish habitat compensation, restoration or mitigation measures are required to be undertaken by the operator of the placer mine pursuant to a water licence issued under the *Waters Act* (Yukon) or an authorization issued under subsection 35(2) the *Fisheries Act*, or where non-compliance with the *Fisheries Act* was found in a previous inspection.
- 4.5. The EM&R Inspector will request the assistance of a Fishery Officer or a DFO Habitat Inspector in order to determine the adequacy of fish habitat compensation, restoration or mitigation actions undertaken pursuant to the *Fisheries Act*.
- 4.6. If during an inspection an EM&R Inspector has reasonable grounds to believe there is a violation of the *Waters Act*, compliance with the *Fisheries Act* will also be assessed if the alleged violation reasonably relates to the fish habitat protection or pollution prevention provisions of the *Fisheries Act*.
- 4.7. In any case where EM&R Inspectors evaluate compliance pursuant to the *Fisheries Act*, a Habitat Incident Investigation Report shall be completed and forwarded by the appropriate EM&R Inspector to the Conservation and Protection Supervisor at the DFO Yukon Transboundary Area Office.

- 4.8. If an EM&R Inspector believes a Habitat Impact Analysis is required, EM&R will submit a request to conduct this analysis to the Conservation and Protection Supervisor at the DFO Yukon Transboundary Area Office.
- 4.9. In conducting investigations involving fish habitat compensation, restoration or mitigation or potential violations of the *Fisheries Act*, EM&R Inspectors may request the assistance of a Fishery Officer or a DFO Habitat Inspector.
- 4.10. If in the course of an inspection, an EM&R Inspector sees that mining waste water is being discharged from a settling facility or that sediment-laden water is flowing from within the boundaries of a mine site into a natural or restored water course, the EM&R Inspector will collect appropriate water and effluent samples.
- 4.11. EM&R Analysts will ensure that all samples taken by an EM&R Inspector are analyzed appropriately and that the results are reported as soon as practicable to the Conservation and Protection Area Chief at the DFO Yukon Transboundary Area Office.
- 4.12. The EM&R Client Services and Inspections Branch will prepare a report for each inspection which identifies the status of compliance with any applicable fish habitat compensation, restoration or mitigation plans of the operator of the placer mine and describes the relevant sampling data collected by EM&R. Copies of these inspection reports will be sent as soon as practicable to the Area Chief of Conservation and Protection at the DFO Yukon Transboundary Area Office.
- 4.13. In instances where there appears to be a violation of either subsections 35(1) or 36(3) of the *Fisheries Act*, or where fish habitat compensation, restoration or mitigation requirements are not met as required in an authorization issued under subsection 35(2) of the *Fisheries Act* or a water licence issued under the *Waters Act*, the following process shall be implemented.
 - 4.13.1. The EM&R Inspector will immediately notify the placer operator and determine the most appropriate course of action following consideration of the *Fisheries Act* Habitat Protection and Pollution Prevention Provisions Compliance and Enforcement Policy and any other applicable policies;
 - 4.13.2. the EM&R Inspector will notify the Area Chief of Conservation and Protection at the DFO Yukon Transboundary Area office of the details surrounding the non-compliance as soon as practicable, and;
 - 4.13.3. where corrective measures are required the site will be inspected after a stipulated time period to determine if the problem has been resolved and if compliance has been achieved.
- 4.14. A monthly non-compliance report will be prepared by the EM&R Client Services and Inspections Branch for the months of May to October inclusive, and shall be forwarded as soon as possible to the DFO Yukon Transboundary Area office and retained on file by EM&R Client Service and Inspection Branch for a minimum of two years. This report will describe placer

operations inspected to date, list instances of non-compliance with the *Fisheries Act*, identify action taken in cases of non-compliance, and explain the reason such action was taken.


- 4.15. An annual inspection report for each calendar year, ending December 31, shall be prepared by the EM&R Client Services and Inspections Branch and be sent to the DFO Yukon Transboundary Area Office as soon as possible after its preparation. A copy of the report shall be retained on file by EM&R Client Service and Inspection Branch for a minimum of two years. This report will describe placer operations inspected, record the results of those inspections, summarize the operators' sampling records, summarize problem areas where compliance was not achieved and present results of enforcement actions.
- 4.16. In addition to 4.15, the EM&R Client Service and Inspections Branch will forward to the Area Chief of Conservation and Protection, a summary of any enforcement action taken in relation to subsections 35(1), 36(3) and 38(6) of the *Fisheries Act*. This is required as DFO must report annually to Parliament on these activities.
 - 4.16.1. The report will cover a period from April 1st of the previous year to March 31st of the current year and will be forwarded to the Area Chief of Conservation and Protection at the DFO Yukon Transboundary Area office by April 30th in the current year.
- 4.17. The EM&R Client Services and Inspections Branch will maintain necessary files and records in a manner that enables reasonable access to, and interpretation and synthesis of, information on licence conditions, the description of mine sites, topographic conditions, and inspection data.
- 4.18. The Parties agree to exchange information related to the administration of this Agreement, such as compliance reports submitted by placer operators, that relate to the subject of this Agreement, any control orders, approvals, amendments or renewals issued to any placer operations as a result of this Agreement and annual inspection reports and statistics on enforcement actions. The Parties further agree to exchange confidential business and personal information to the extent permitted by their respective privacy and/or access to information legislation and to fully respect the legislated confidentiality requirements of each Party and in accordance with Annex A.
- 4.19. Responses to alleged violations under the *Fisheries Act* initiated by EM&R Inspectors will be carried out in accordance with the *Fisheries Act* Habitat Protection and Pollution Prevention Provisions Compliance and Enforcement Policy.
 - 4.19.1. Where a response referred to in 4.19 is the laying of an information, prior to referring the matter to Justice Canada, approval for laying the information shall first be obtained from the Area Chief of Conservation and Protection at the DFO Yukon Transboundary Area office


- 4.20. DFO will endeavour to provide opportunities for EM&R Inspectors to complete the required technical and operational training necessary to fulfill their responsibilities under the *Fisheries Act*.
- 4.21. EM&R will endeavour to provide DFO with opportunities to complete the technical and operational training to undertake operational inspections in accordance with EM&R's operational procedures.

5. TERMS OF AGREEMENT


- 5.1. The Parties agree that this Agreement shall only come into effect if a sufficient number of EM&R staff are designated as Inspectors, to enable Yukon to fulfill its obligations under this Agreement. Yukon agrees to provide proof of successful completion of appropriate training to the Minister to assist him/her in determining whether to appoint the recommended EM&R staff, on a case-by-case basis, as Inspectors and Analysts.
- 5.2. The Area Chief of Conservation and Protection at the DFO Yukon Transboundary Area office and the EM&R Chief Mining Inspector shall review, annually, by March 31 of each year, the effectiveness of this Protocol in the previous year.
- 5.3. Matters not resolved by those involved in the annual review shall be forwarded to the Yukon Transboundary Area Director (DFO) and the Director of Client Services and Inspection (EM&R).
- 5.4. This Agreement may be amended, in writing, at any time upon agreement by the Yukon Transboundary Area Director (DFO) and the Director of Client Service and Inspection (EM&R).
- 5.5. This Agreement may, at the request of any of one Party, be terminated upon 6 months notice by any one Party.
- 5.6. This Agreement may be signed in counterparts and if executed in counterparts shall come into effect on the date of the latter signature.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties below;


Witness

 JUL 04 2005
per: Paul Sprout, RDG
Fisheries and Oceans Canada
Pacific Region


Witness


per: Deputy Minister of Energy, Mines
and Resources

ANNEX A

EXCHANGE OF INFORMATION

These provisions protect the confidentiality of the exchange of information provided under this Agreement and specify the limitations which apply to the use of this information by the receiving government.

I. Information to be Exchanged

1. Subject to any obligations provided for in law the Parties to this Agreement agree to provide to each other all information necessary to effectively achieve the objectives of this Agreement.

II. Types of information to be Exchanged

2. Information that may be exchanged between the Parties to effectively achieve the objectives of this Agreement includes personal information in the possession of the Parties, as defined in section 3 of the *Privacy Act* R.S.C. 1985, c.P-21, as amended, and in the *Access to Information and Protection of Privacy Act*, R.S.Y. 2002, c.1, as amended, and third party information. Such information may be exchanged within the limits and restrictions of these Acts and other applicable legislation.

III. Terms and Conditions Governing the Exchange and Use of Personal Information, Third Party Information, and other Confidential Information

3. Each Party undertakes to fully maintain, respect and protect the confidentiality of the information exchanged under this Agreement and agrees not release such information to any person unless such release is authorized in this Agreement or by law. Information released by law includes information when used in conjunction with an application to obtain a search warrant from the courts or for use in the prosecution of an offence.
4. Neither Party to this Agreement is to disclose to a third party, or another government agency, board or department, Crown corporation, law enforcement agency or organization, any personal information, third party information or other information obtained in confidence from the other Party, unless the other Party expressly consents to the disclosure or makes the information public. Information made public in accordance with this Agreement may be used for any purpose. A Party may specify terms and conditions of disclosure after consultation with the Party receiving the information.
5. The Parties agree that any personal, third party or otherwise confidential information exchanged is to be only used or disclosed for the purpose of

administering this Agreement or enforcing any law or carrying out a lawful investigation or for subsequent use which is consistent therewith. The Parties agree not to disclose or to use information furnished for purposes other than those authorized in this Agreement without the prior consent of the other Party.

6. The Parties agree to exchange personal, third party or otherwise confidential information provided that:
 - i) statutory authority does not explicitly prohibit the exchange of the information;
 - ii) the information is of a type intended to be exchanged under this Agreement; and
 - iii) the designated contact of the Party receiving the information signs a firm commitment on behalf of the Party not to disclose or further exchange the information, subject to any law that requires or compels disclosure. This commitment is to contain an assurance that protects the information from release and that in the event of improper disclosure of personal, third party or otherwise confidential information, the exchange of confidential information is to be discontinued forthwith and the Party receiving the information assumes sole liability for the unauthorized disclosure.
7. Any request from the EM&R for personal, third party information or otherwise confidential information is to be directed in writing to the DFO Yukon Transboundary Area Director.
8. Any request from DFO for personal, third party information or otherwise confidential information is to be directed in writing to the Director of Client Services and Inspection Branch of EM&R.
9. The exchange of information may be discontinued by a Party, in their absolute discretion, forthwith, if that Party discovers that the other Party has been improperly disclosing personal, third party or otherwise confidential information.
10. The Parties agree that the information exchanged under this Agreement shall be collected, administered, maintained, destroyed or disposed of in accordance with:
 - i) in the case of DFO, the *Privacy Act (Canada)*, the Government Security Policy and supporting operating directives and guidelines, covering administrative, technical and physical safeguarding of the personal information, third party information, and otherwise confidential information exchanged between the Parties.
 - ii) in the case of Yukon, the *Access to Information and Protection of Privacy Act (Yukon)*, and supporting operating directives, policies and guidelines covering

administrative, technical and physical safeguarding of the personal information, third party information, and otherwise confidential information exchanged between the Parties.

11. Each Party will promptly notify the other Party of an unauthorized disclosure or use and will furnish the other Party with such details of the unauthorized disclosure or use of which the Party has knowledge. In the event of such an occurrence, the Party responsible for the security of the information will promptly take all reasonable measures to prevent a recurrence of the event.
12. The Parties will, separately or jointly, on a periodic basis, conduct a review of the practices and procedures employed in the information management process under this Agreement to ensure compliance with this Agreement.

