



# United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Bishop Henry Whipple Federal Building  
1 Federal Drive  
Fort Snelling, MN 55111-4056

*file*  
*original - Fisheries MSA*  
*file 1301.1*  
*cc: Director Cool*  
*Sharon Hanshue*  
*Def*

IN REPLY REFER TO:

FWS/AF

MAR 17 2003

Mr. K. L. Cool  
Director  
Department of Natural Resources  
Box 30444  
Lansing, Michigan 48909

Attention: Dr. Kelley D. Smith, Chief, Fisheries Division

Dear Mr. Cool:

Attached is your agency's copy of the fully executed Memorandum of Agreement for cooperation in the construction, operation, and maintenance of sea lamprey barriers on select streams in Michigan. This agreement establishes the policy framework for new sea lamprey barriers in Michigan and will allow for progress on an integrated approach to management of sea lamprey populations in Michigan waters.

We appreciate the cooperation of all parties in the development of this Agreement and look forward to its use to expedite delivery of an expanded barrier design and construction program to stop upstream migration of sea lampreys while allowing for the passage of desirable fish.

If you have questions related to this document please contact me at (612) 713-5102.

Sincerely,

  
Gerry A. Jackson  
Assistant Regional Director

Attachment

## MEMORANDUM OF AGREEMENT

THIS AGREEMENT made in triplicate  
BETWEEN

THE GREAT LAKES FISHERY COMMISSION  
(hereinafter referred to as the "Commission")

AND

THE UNITED STATES FISH AND WILDLIFE  
SERVICE  
(hereinafter referred to as the "Service")

AND

THE MICHIGAN DEPARTMENT OF  
NATURAL RESOURCES  
(hereinafter referred to as the "Department")

WHEREAS, the U.S. Section of the Commission is authorized by the Great Lakes Fishery Act of 1956, 16 U.S.C. §§ 931 *et seq.* (as amended), to carry out the obligations of the United States under the Convention on Great Lakes Fisheries between the United States of America and Canada, signed at Washington D.C., September 10, 1954;

WHEREAS, the Commission is authorized by the Great Lakes Fishery Act to contract with the Service to conduct a program of sea lamprey control in U.S. waters of the Great Lakes;

WHEREAS, the Department has jurisdiction over fishery management in Michigan tributary streams and waters of the Great Lakes (Article IV, Section 52 of the Constitution of 1963, Michigan; Executive Order 1991-92; and Section 324.503 and 324.47701 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended); and

WHEREAS, the Commission, Service and Department are desirous of cooperating in a program for the construction, operation and maintenance of sea lamprey barriers on select streams situated in the State of Michigan;

NOW THEREFORE, the parties hereto do hereby mutually understand and agree as follows:

1. In this agreement,

- (a) "Sea Lamprey Barrier" means a structure designed, installed in a Great Lakes tributary and operated during the period of sea lamprey migration for the single purpose of prohibiting passage of sea lamprey, but which permits the passage of desirable fish as agreed to by the Department or Service. Sea Lamprey Barrier can also mean an existing structure (dam) modified for the same purpose.

- (b) "Multi-use Barrier" means a sea lamprey barrier designed and installed to prohibit the passage of sea lamprey and also to provide passage of desirable fish as agreed to by the Department and Service. It is operated for these dual uses during the period of sea lamprey migration by the Service and may be operated by the Department for specific fishery management objectives, such as egg collection during periods of time other than the sea lamprey migration.
2. Before the construction of a barrier is undertaken pursuant to this agreement, the parties agree that appropriate site access or ownership must be secured. Where the site for a proposed Sea Lamprey Barrier or Multi-use Barrier is on public land owned by the State of Michigan and managed by the Department, the administration and control of the lands necessary for the site will remain with the Department. Access to a site necessary for the operation and maintenance of the barrier will be conveyed to the Service by operational lease agreement, subject to the approval of the Director of the Department.
  3. The Commission, either directly or through the Service, and with the written authorization of the Director of the Department, will provide all funds necessary to design, plan, construct, operate and maintain new and existing Sea Lamprey Barriers, and to decommission the Sea Lamprey Barriers and restore free-flowing stream conditions as described in paragraph 6. Existing Sea Lamprey Barriers (Appendix 1) will be operated and maintained by the Service; or the Commission will provide funds to a third party contractor named by the Department to operate and maintain existing barriers as mutually agreed. Costs to construct new or operate and maintain new and existing multi-use barriers will be shared as described in paragraph 5. The design and construction of barriers will be supervised by a registered professional engineer and follow established protocols (Sea Lamprey Barrier Life Cycle and Operational Protocols 2000. Great Lakes Fishery Commission).
  4. The parties agree that it may be mutually beneficial to engage the U.S. Army Corps of Engineers (USACE) to plan, design, acquire lands on behalf of the Department and Commission, and construct new Sea Lamprey Barriers under Section 1135 or 206 of the Water Resources Development Act. In such cases, the Commission will provide funds for Sea Lamprey Barriers to USACE in accordance with cost share agreements specified for Section 1135 or 206 projects. The Commission and Department agree to act as the local co-sponsors for the project until completed, including the Commission accepting title of land that has been acquired by the USACE for this purpose, followed by gift of the acquired land to the Department. The Commission agrees to fund the acquisition of land by purchase or lease by USACE and to reimburse payment in lieu of taxes paid by the Department for such land. Upon project completion, the Service agrees to operate and maintain the sea lamprey barrier under terms of paragraphs 2, 3 and 5 as appropriate.

5. When a Multi-use Barrier is constructed under this agreement:

- (a) The design, planning and construction costs thereof shall be shared by the parties as follows: the Commission shall pay an amount equal to the cost of planning, designing and construction of a Sea Lamprey Barrier and the Department shall pay additional design and construction cost attributable to the Multi-use Barrier.
- (b) The costs of operating and maintaining any such Multi-use Barrier for sea lamprey control and desirable fish passage will be borne by the Service as outlined in paragraph 3.
- (c) The costs of operating and maintaining a Multi-use Barrier for purposes other than sea lamprey control and desirable fish passage will be borne by the Department.
- (d) The Department agrees to pay the Commission the costs referred to in paragraph 5(a) and 5(c) promptly upon receiving invoices for these costs from the Service.
- (e) Invoices for costs submitted under paragraph 5(a), and 5(c) shall be prepared, certified and issued by the U.S. Sea Lamprey Barrier Coordinator, an employee of the Service.

6. When the parties hereto agree that a Sea Lamprey Barrier or Multi-use Barrier is no longer necessary or is ineffective for sea lamprey control, or that losses in stream biodiversity due to the placement of the barrier exceed the benefits of that barrier, including losses inferred to have been caused by lampricide treatment;

- (a) The Department may require the Commission to remove the barrier and to restore the site to its preconstruction condition. The cost of the removal and restoration shall be paid by the Commission. If the project site was subject to an operational lease agreement with the Department, the lease will terminate upon completion of restoration.
- (b) The Department may require that any such barrier remain in place, and if the barrier was constructed on State land, the operating lease agreement will be terminated and the Department will be responsible thereafter for operation and maintenance of the barrier.
- (c) If the Department requires that a barrier be left in place, the Department may require the Commission to effect repairs or other modifications to the satisfaction of the Department prior to transfer of lease payment obligations to the Department or termination of the operating lease agreement.

7. Separate Memoranda of Agreement shall be developed for each barrier project or group of similar barrier projects that describe specifically the shared cost responsibilities of each party (if any) for construction, operation, and maintenance of

the barrier project(s) to achieve biological objectives and protect the aquatic environment and fishery resource.

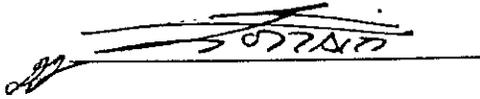
8. This agreement may be terminated after six (6) months by mutual consent given in writing and signed by the parties hereto, otherwise this agreement shall be perpetual.
9. Amendments to this agreement may be developed in writing and agreed to by the parties.
10. As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other parties in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. The Commission and the Department shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.
11. Each party agrees that it will be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other party and the results thereof. Each party, therefore, agrees to the extent authorized by applicable law (as specified below), the Service and Commission will assume all risks and liability to itself, its agents, or employees, for any injury to persons or property resulting from any operations of its agents or employees under this agreement, and for any loss, cost, damage, or expense resulting at any time from any and all causes due to any acts, or negligence, or the failure to exercise proper precautions of or by itself or its own agents to this Agreement.

The liability of the Service and the Commission will be governed by the Federal Tort Claims Act (28 U.S.C. 2761 *et. seq*) and (16 U.S.C. ' 937).

The liability of the Department will be governed by applicable Michigan law.

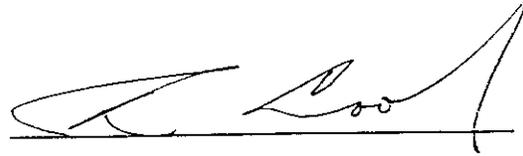
12. Each party agrees that its obligations under this agreement are contingent on Congressional or State legislative appropriations, as applicable.

IN WITNESS THEREOF the parties have executed this agreement; the Commission under the hand of the Executive Secretary, the Service under the hand of the Regional Director, Great Lakes and Big Rivers Region and the Department under the hand of the Director of the Michigan Department of Natural Resources.



C.I. Goddard  
Executive Secretary  
Great Lakes Fishery Commission

Date: Feb 27, 2003



K. L. Cool  
Director  
Department of Natural Resources  
State of Michigan

Date: 2-11-03



William Hartwig  
Regional Director  
U.S. Fish and Wildlife Service

Date: March 11, 2003

## Appendix 1

The Commission will provide funds to the Service or to a third party contractor named by the MDNR Fisheries Division to operate, inspect and maintain sea lampreys barriers and their appurtenances including, but not limited to, the following:

- steel sheet piling, concrete, stoplogs, draw-down gates, projecting steel lips attached to dam crests, walkways, access stairways, electrical service and fish passage devices;
- bank erosion control at or near abutments;
- access roads, and canoe portages;
- gates, fences, and other security devices;
- signs and buoy lines and their annual installation and removal;
- annual installation and removal/adjustment of stoplogs and adjustable crest gates;
- removal of accumulation of logs, sediment and debris

Eligible structures include dedicated Sea Lamprey Barriers on the following list. Other state-owned structures that function as sea lamprey barriers may qualify, as determined by the U.S. Sea Lamprey Barrier Coordinator, for example, Shelldrake Dam on the Betsy River (Chippewa County).

**Major repairs and other individual projects expected to cost more than \$1,000 must be approved by the U.S. Barrier Coordinator before being undertaken.**  
**Please contact Ellie Koon at 231-845-6205, fax 231-843-8468, e-mail [Ellie\\_Koon@fws.gov](mailto:Ellie_Koon@fws.gov)**

<b>Sea Lamprey Barriers Owned by the State of Michigan</b>				
LAKE & STREAM	COUNTY	YEAR BUILT	MDNR DISTRICT	MDNR FISHERIES DIVISION CONTACT
<b>Lake Superior</b>				
Miners R.	Alger	1978	4	Eastern LS MU Supervisor
Misery R.	Ontonagon	1984	1	Western LS MU Supervisor
<b>Lake Michigan</b>				
Betsie R.	Benzie	1974	6	Northern LM MU Supervisor
Whitefish R. (W.)	Alger	1980	3	Eastern LS MU Supervisor
Little Manistee R.	Manistee	1982	6	Northern LM MU Supervisor
Davs R.	Delta	1983	3	Eastern LS MU Supervisor
Jordan R.	Charlevoix	1988	5	Northern LM MU Supervisor
Pere Marquette R.	Mason	1988	6	Northern LM MU Supervisor
<b>Lake Huron</b>				
Au Gres R. (E. Br.)	Arenac	1983	7	Northern LH MU Supervisor
Albany Cr.	Chippewa	1985	4	Northern LM MU Supervisor