

s.19(1)



Fisheries and Oceans Canada
Pêches et Océans Canada

FISHERIES ACT - DIRECTION to Take Immediate Corrective Measures Pursuant to subsection 38 (7.1) of the Fisheries Act



TO CONSERVE AND PROTECT

Date: June 8, 2022

To: Deep Water Recovery Ltd.

5084 Island Hwy S,
Union Bay, BC
V0R 3B0

This is a legal direction pursuant to subsection 38(7.1) of the *Fisheries Act*.

Description of Occurrence:

Fisheries and Oceans Canada – Conservation and Protection (DFO – C&P) has reasonable grounds to believe that a harmful alteration, disruption or destruction of fish habitat occurred and will continue to occur or is about to occur as a result of the vessels grounding and tracked machines working within the intertidal area located at your worksite at 5084 Island Hwy S, Union Bay BC. These works, undertakings or activities have resulted in a contravention of subsection 35(1) of the *Fisheries Act*.

Subsection 35(1) of the *Fisheries Act* states:

35(1) No person shall carry on any work, undertaking or activity that results in the harmful alteration, disruption or destruction of fish habitat.

Based on observations made during the site visit on February 3 2022, DFO-C&P has determined that the following harmful alteration, disruption or destruction of fish habitat is likely to result or to continue if immediate corrective measures are not taken:

- **The two vessels moored adjacent to the jetty have a combined footprint of approximately 1,650 m2 based on the length and beam of the vessels. Impacts from**



both vessels come from the disruption of habitat where they are grounded and additional shading impacts reducing primary productivity in the intertidal zone. Both vessels would have also resulted in the death of epifaunal organisms with their footprints.

- **Tracked equipment access into the mid intertidal zone has resulted in the harmful alteration of greater than 1,000 m² of mid intertidal habitat. It is unknown how far or to what elevation into the intertidal zone the equipment were driven. The observed tracks were outside of the disturbance footprint associated with barge removal. The footprint may be greater as not all intertidal areas could be assessed due to the tide height at the time of the site inspection. Habitat impacts from the equipment access included disturbance and compaction of the substrate. This resulted in changes to the existing intertidal community through changes in habitat complexity from compaction of the substrates and crushing of organisms that provided additional roughness and complexity (e.g., barnacles, oysters). The operation of equipment below the high water mark would have also resulted in the death of bivalves and other infaunal organisms from crushing. The reduction in habitat complexity and crushing would reduce the productivity of the mid-intertidal zone including the abundance of epifaunal and infaunal organisms and how the habitat can be used by fish to carry out their life processes.**

Both of these impacts were not identified as a Works, Undertaking or Activity (WUA) in the previous submission to DFO for creation of the ramp (19-HPAC-00287). It was stated that barges would be floated in on a high tide for removal with minimal disturbance near the high water mark. Operation of equipment below the high water mark was also not identified as a WUA in the previous submission to DFO for creation of the ramp.

Immediate Corrective Measures to be Taken:

Fishery Officer Shaun Tadei is satisfied on reasonable grounds that immediate action is required to take corrective measures consistent with public safety and with the conservation and protection of fish and fish habitat to prevent the occurrence or to counteract, mitigate or remedy any adverse affects that result from the occurrence or might reasonably be expected to result from it.

Pursuant to subsection 38(7.1) of the *Fisheries Act*, you are hereby *Directed* by Fishery Officer Shaun Tadei to take the following corrective measures pursuant to subsection 38(7.1) of the *Fisheries Act*:



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Canada Canada

- **Immediately remove all the vessels that are continuously grounding out in the intertidal area; either from the water or moved to an area deep enough to prevent the continuous grounding of the vessels.**
- **Come up with a plan to have the vessels staged in an area that removes the vessel from the water without heavy machinery working below the high water mark and inside of the intertidal area.**
- **A plan must be developed to address the aforementioned corrective measures. The plan shall be designed, planned and implemented with the assistance/guidance of a Qualified Environmental Professional (QEP) to ensure further harmful alteration, disruption or destruction of fish habitat does not occur while complying with this Direction. The plan shall be in place prior to any work occurring, unless otherwise directed by a Fishery Officer, and it must be submitted to Fishery Officer Shaun Tadei. A copy of the plan must be kept onsite to assist Fisheries and Oceans staff who may monitor the works.**
- **These corrective measures must be fully implemented within 77 days of receipt of this Direction September 1 2022**

In the absence of grounding barges and other disturbance in the affected intertidal habitat is expected to be recolonized and recover over time but it is expected to take more than one year before the affected areas provide similar functions as prior to the aforementioned activities.

Compliance with this Direction does not preclude any legal action DFO may take with respect to this matter. This Direction does not release you from responsibilities or approvals that may be required under other federal, provincial/territorial or municipal legislation.

DFO will conduct site visits to ensure compliance with this *Fisheries Act* Direction.

Should you have any questions related to this Direction, please contact Fishery Officer Shaun Tadei.

Name of Fishery Officer designated under Section 5 of the *Fisheries Act*:

Shaun Tadei _____
Fishery Officer



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Signature

Date: June 8, 2022

Fisheries and Oceans Canada
Conservation and Protection
Pacific Region
304-60 Front Street
Nanaimo BC
V9R5H7
Phone: 250 616 6227
E-mail: shaun.tadei@dfo-mpo.gc.ca

PATH No.: 21-HPAC-01541
NETS No.: 2022 00210

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Failure to comply with the whole or any part of the direction of a Fishery Officer under subsection 38(7.1) is a contravention of subsection 40(3)(g) of the *Fisheries Act*.

Signature of
Responsible Party or Representative

Date: June 8 / 22



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**FISHERIES ACT - DIRECTION to Take Immediate Corrective Measures
Pursuant to subsection 38 (7.1) of the Fisheries Act**

AMENDMENT TO DIRECTION SERVED JUNE 8 2022



s.19(1)

Date: March 15, 2023

To: Deep Water Recovery Ltd.

5084 Island Hwy S,
Union Bay, BC
V0R 3B0

This is a legal direction pursuant to subsection 38(7.1) of the *Fisheries Act*.

Description of Occurrence:

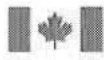
Fisheries and Oceans Canada – Conservation and Protection (DFO – C&P) has reasonable grounds to believe that a harmful alteration, disruption or destruction of fish habitat occurred and will continue to occur or is about to occur as a result of the vessels grounding and tracked machines working within the intertidal area located at your worksite at 5084 Island Hwy S, Union Bay BC. These works, undertakings or activities have resulted in a contravention of subsection 35(1) of the *Fisheries Act*.

Subsection 35(1) of the *Fisheries Act* states:

35(1) No person shall carry on any work, undertaking or activity that results in the harmful alteration, disruption or destruction of fish habitat.

Based on observations made during the site visit on February 3 2022, DFO-C&P has determined that the following harmful alteration, disruption or destruction of fish habitat is likely to result or to continue if immediate corrective measures are not taken:

- **The two vessels moored adjacent to the jetty have a combined footprint of approximately 1,650 m2 based on the length and beam of the vessels. Impacts from both vessels come from the disruption of habitat where they are grounded and**



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additional shading impacts reducing primary productivity in the intertidal zone. Both vessels would have also resulted in the death of epifaunal organisms with their footprints.

- **Tracked equipment access into the mid intertidal zone has resulted in the harmful alteration of greater than 1,000 m² of mid intertidal habitat. It is unknown how far or to what elevation into the intertidal zone the equipment were driven. The observed tracks were outside of the disturbance footprint associated with barge removal. The footprint may be greater as not all intertidal areas could be assessed due to the tide height at the time of the site inspection. Habitat impacts from the equipment access included disturbance and compaction of the substrate. This resulted in changes to the existing intertidal community through changes in habitat complexity from compaction of the substrates and crushing of organisms that provided additional roughness and complexity (e.g., barnacles, oysters). The operation of equipment below the high water mark would have also resulted in the death of bivalves and other infaunal organisms from crushing. The reduction in habitat complexity and crushing would reduce the productivity of the mid-intertidal zone including the abundance of epifaunal and infaunal organisms and how the habitat can be used by fish to carry out their life processes.**

Both of these impacts were not identified as a Works, Undertaking or Activity (WUA) in the previous submission to DFO for creation of the ramp (19-HPAC-00287). It was stated that barges would be floated in on a high tide for removal with minimal disturbance near the high water mark. Operation of equipment below the high water mark was also not identified as a WUA in the previous submission to DFO for creation of the ramp.

Immediate Corrective Measures to be Taken:

Fishery Officer Shaun Tadei is satisfied on reasonable grounds that immediate action is required to take corrective measures consistent with public safety and with the conservation and protection of fish and fish habitat to prevent the occurrence or to counteract, mitigate or remedy any adverse affects that result from the occurrence or might reasonably be expected to result from it.

Pursuant to subsection 38(7.1) of the *Fisheries Act*, you are hereby *Directed* by Fishery Officer Shaun Tadei to take the following corrective measures pursuant to subsection 38(7.1) of the *Fisheries Act*:

- **Immediately remove all the vessels that are continuously grounding out in the intertidal area; either from the water or moved to an area deep enough to prevent the continuous grounding of the vessels.**



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- Come up with a plan to have the vessels staged in an area that removes the vessel from the water without heavy machinery working below the high water mark and inside of the intertidal area.
- A plan must be developed to address the aforementioned corrective measures. The plan shall be designed, planned and implemented with the assistance/guidance of a Qualified Environmental Professional (QEP) to ensure further harmful alteration, disruption or destruction of fish habitat does not occur while complying with this Direction. The plan shall be in place prior to any work occurring, unless otherwise directed by a Fishery Officer, and it must be submitted to Fishery Officer Shaun Tadei. A copy of the plan must be kept onsite to assist Fisheries and Oceans staff who may monitor the works.
- These corrective measures must be fully implemented within 85 days of receipt of this Direction June 8, 2023

In the absence of grounding barges and other disturbance in the affected intertidal habitat is expected to be recolonized and recover over time but it is expected to take more than one year before the affected areas provide similar functions as prior to the aforementioned activities.

Compliance with this Direction does not preclude any legal action DFO may take with respect to this matter. This Direction does not release you from responsibilities or approvals that may be required under other federal, provincial/territorial or municipal legislation.

DFO will conduct site visits to ensure compliance with this Fisheries Act Direction.

Should you have any questions related to this Direction, please contact Fishery Officer Shaun Tadei.

Name of Fishery Officer designated under Section 5 of the Fisheries Act:

Shaun Tadei

Fishery Officer

[Redacted signature line]

Signature

Date: March 15, 2023

Fisheries and Oceans Canada
Conservation and Protection
Pacific Region
304-60 Front Street
Nanaimo BC

PATH No.: 21-HPAC-01541
NETS No.: 2022 00210

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Canada

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Phone: 250 616 6227

E-mail: shaun.tadei@dfo-mpo.gc.ca

Failure to comply with the whole or any part of the direction of a Fishery Officer under subsection 38(7.1) is a contravention of subsection 40(3)(g) of the *Fisheries Act*.

A large grey rectangular box redacting the signature of the responsible party.

Date: MAR 15 2023.

W **Signature of**
Responsible Party or Representative