

MEMORANDUM OF AGREEMENT  
among the

Maryland Department of Natural Resources  
Virginia Department of Game and Inland Fisheries  
Government of the District of Columbia  
*Interstate Commission on the Potomac River Basin*  
Potomac River Fisheries Commission  
U.S. Army Corps of Engineers  
U.S. Fish and Wildlife Service  
National Biological Service  
U.S. Environmental Protection Agency  
National Park Service  
NOAA National Marine Fisheries Service and  
Montgomery County, Maryland

on  
LITTLE FALLS DAM FISH PASSAGE

I. PURPOSE

This Memorandum of Agreement (Agreement) establishes a general framework for cooperation and participation among the Maryland Department of Natural Resources, the Virginia Department of Game and Inland Fisheries, the Government of the District of Columbia, the Interstate Commission on the Potomac River Basin, the Potomac River Fisheries Commission, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the National Biological Service, the U.S. Environmental Protection Agency, the National Park Service, the NOAA National Marine Fisheries Service, and Montgomery County, Maryland, in reestablishing migratory and anadromous fish access and restoring a migratory fish population in an historic spawning habitat upstream of Little Falls Dam on the Potomac River in Montgomery County, Maryland. Collectively, the parties to the Memorandum of Agreement will be referred to as Cooperators.

II. BACKGROUND

Little Falls Dam is located in the Potomac River 2 miles upstream from the District of Columbia. Constructed in 1959, the Dam is owned and operated by the U.S. Army Corps of Engineers and is used to divert water from the river for some of the water supply needs of the District of Columbia and parts of northern Virginia and Maryland. A fish passageway (fishway) over the Little Falls Dam was constructed in 1959, but failed to pass fish due to

design and location flaws. Since its construction, the Dam has blocked fish migrations of American and hickory shad, striped bass and white perch from 10 miles of spawning and nursery habitat up to Great Falls, the historic natural boundary to migration.

This agreement formalizes an ongoing multi-agency effort to provide a functioning passageway for migratory and anadromous fish to migrate past the Little Falls Dam. Establishing fish passage at Little Falls will meet several specific commitments made by state and Federal agencies and other groups:

- The Executive Council of the Chesapeake Bay Program signed *Directive 93-4* on September 15, 1993, formalizing the Fish Passage Goals Policy which specifies a five-year target for opening 582 river miles in major tributaries of the Chesapeake Bay to fish passage. The Executive Council is the top policy making body of the Chesapeake Bay Program, and is made up of the governors of Maryland, Virginia and Pennsylvania, the mayor of the District of Columbia, the Administrator of the U.S. Environmental Protection Agency, and the chair of the Chesapeake Bay Commission.
- Twenty-three Federal and regional agencies, 3 states, the District of Columbia, and the Chesapeake Bay Commission signed the *Agreement of Federal Agencies on Ecosystem Management in the Chesapeake Bay* on July 14, 1994. The signatories agreed to support full implementation of the Chesapeake Bay Program's Habitat Restoration Strategy and related plans by providing technical assistance in fish passage design, providing stock for restoring newly opened spawning habitat, and determining needs for restoring upstream spawning habitat.
- Fulfillment of this agreement will also promote the purposes of the Potomac Vision and Coastal America.

### III. AGREEMENT

The Cooperators will appoint representatives to a Little Falls Fish Passage Task Group (Task Group) that will promote and coordinate efforts to (1) reestablish migratory fish access to habitat upstream of Little Falls Dam through design and construction of a fish passage at Little Falls Dam, (2) monitor the migratory fish populations in the Potomac River near Little Falls Dam, (3) restore the migratory fish population by stocking migratory fish species in the Potomac River upstream of Little Falls Dam, and (4) pursue funding of Task Group restoration activities through the use of agency authorities and programs.

IT IS MUTUALLY AGREED AND UNDERSTOOD BY AND AMONG THE COOPERATORS THAT:

- A. Specific work projects or activities that involve the transfer of funds, services or property among the Cooperators will require the execution of separate agreements or contracts, contingent upon the availability of funds. Each subsequent agreement or arrangement involving the transfer of funds, services, or property among the Cooperators must comply with all applicable federal, state, and local statutes and regulations, including those statutes and regulations applicable to procurement activities, and must be independently authorized by appropriate statutory authority.
- B. This MOA in no way restricts the Cooperators from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.
- C. Nothing in this MOA shall obligate the Cooperators to expend appropriations or enter into any contract or other obligations.

IV. AUTHORITIES

The agencies enter into this Agreement under the authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the Anadromous Fish Conservation Act (16 U.S.C. 757a et seq.) and the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

V. DISCLAIMER

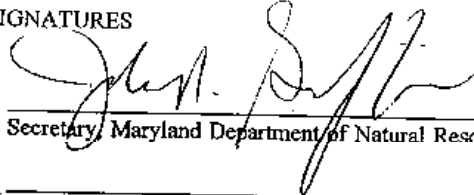
Nothing in this agreement diminishes the independent authority or coordination responsibility of each agency in administration of its statutory obligations, nor does it financially incur any cooperator beyond agreements made under mutual consent. It is intended to facilitate authorities and financial support through the cooperative mechanisms of the Task Group.

This MOA is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the Task Group, its agencies, its officers, or any person.

VI. DURATION

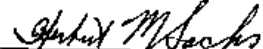
This Memorandum of Agreement becomes effective on the date of signature by all parties. It may be modified or amended upon written request of any party hereto and the subsequent written concurrence of all the Cooperators. Cooperator participation in this MOA may be terminated with the 60-day written notice of any party to the other Cooperators. Unless terminated under the terms of this paragraph, this MOA will remain in full force for the duration of the project.

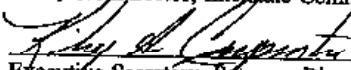
VII. SIGNATURES

  
Secretary, Maryland Department of Natural Resources

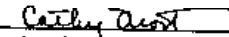
Secretary, Virginia Department of Game and Inland Fisheries

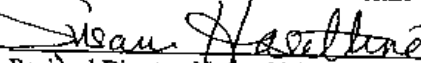
Mayor, Government of the District of Columbia

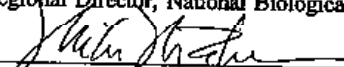
  
Executive Director, Interstate Commission on the Potomac River Basin

  
Executive Secretary, Potomac River Fisheries Commission

District Engineer, U.S. Army Corps of Engineers, Baltimore District

  
Regional Director, U.S. Fish and Wildlife Service

  
Regional Director, National Biological Service

  
Regional Administrator, U.S. Environmental Protection Agency

Regional Director, National Park Service

Regional Director, NOAA National Marine Fisheries Service

County Executive, Montgomery County, Maryland