

Appendix B
Copy of Fisheries Act (FA) Authorization



Fisheries and Oceans Pêches et Océans
Canada Canada

P.O. Box 1006
Dartmouth, Nova Scotia
B2Y 4A2

Your file *Votre référence*

AUG 05 2016

Our file *Notre référence*
16-HMAR-00051

Mr. Donald MacDonald, Senior Project Engineer
DFO-SCH Gulf / Eastern NS
2920 HWY 104
Antigonish, Nova Scotia
B2G 2K6

Dear Mr. MacDonald:

Subject: Fisheries Act Authorization – SCH Ballantyne's Cove

Pursuant to paragraph 35(2)(b) of the *Fisheries Act*, the Minister of Fisheries and Oceans Canada authorizes the carrying on of your proposed work, undertaking or activity that results in serious harm to fish arising from infilling 3806 square metres (m²) of fish habitat to construct a containment berm and dredging of 1678 m² of marine habitat at Ballantyne's Cove Small Craft Harbour, Antigonish County, Nova Scotia. A paragraph 35(2)(b) *Fisheries Act* authorization is attached.

Failure to comply with any of the terms or conditions of the attached Authorization may lead to prosecution under the *Fisheries Act*.

A copy of this Authorization should be kept on site while the work is in progress and upon request be provided to relevant federal or provincial officials. Work crews should be familiar with, and able to adhere to, the conditions.

If you or anyone conducting work on your behalf has any questions please contact Rugi Jalloh at our Dartmouth office at 902-401-0897, by fax at 902-426-1489, or by email at Rugi.Jalloh@dfo-mpo.gc.ca.

Yours sincerely,

Morley Knight
Regional Director General
Maritimes Region

Attachment: Authorization

Cc: Rugi Jalloh, FPP
 Troy Young, PWGSC
 Paul MacDonald, DFO-S

Canada



PARAGRAPH 35(2)(b) FISHERIES ACT AUTHORIZATION

Authorization issued to

Small Craft Harbours (*hereafter referred to as the "Proponent"*)

Attention to: Mr. Donald MacDonald, DFO-SCH Gulf / Eastern Nova Scotia, 2920 Highway 104,
Antigonish, NS. B2G 2K6

Location of Proposed Project

Nearest community (city, town, village):	Antigonish
Municipality, district, township, county:	Antigonish County
Province:	Nova Scotia
Name of watercourse, waterbody:	Ballantyne's Cove
Longitude and latitude, UTM Coordinates:	43° 29'00" N, 65°31' 00" W

Description of Proposed Project

The proposed project of which the work, undertaking or activity authorized is a part involves:

The construction of a 4,200 square metre (m²) containment cell and rock berm situated outside the harbour basin on the west side of the west breakwater at Ballantyne's Cove - Small Craft Harbour (SCH) Facility. The containment cell will have a capacity of approximately 8,000 cubic meters (m³) with an elevation of +3 metres (m). Approximately 3,806 m² of the footprint will be located below the ordinary high water mark (OHMW). The berm will be constructed of corestone, filterstone and armourstone placed by an excavator. In addition to the construction of the containment cell, the project also includes the dredging of 11,190 m² of harbour basin to an elevation of -2.3 m. Of the total harbour basin to be dredged, approximately 15% or 1678 m² is considered to be non-maintenance dredging. Dredging methods may include floating operation unit or land-based platforms which will be determined through the project tendering process and the dredge spoils will be disposed of in the proposed containment cell creating a service area.

Description of Authorized work(s), undertaking(s) or activity(ies) likely to result in serious harm to fish

The work(s), undertaking(s), or activity(ies) associated with the proposed project described above, that are likely to result in serious harm to fish, are:

- Infilling below the OHMW to construct a containment cell and rock berm; and
- Non-maintenance dredging and sediment removal activities

The serious harm to fish likely to result from the proposed work(s), undertaking(s), or activity(ies), and covered by this authorization includes

- Destruction of 3806 m² of marine fish habitat consisting primarily of silt and sand (soft bottom) as a result of the placement of fill material on the seabed.
- Permanent alteration of 1678 m² of marine fish habitat consisting of macrophyte coverage and eelgrass as a result of dredging.

Conditions of Authorization

The above-described work, undertaking or activity that is likely to result in serious harm to fish must be carried on in accordance with the following conditions.

1. Conditions that relate to the period during which the work, undertaking or activity that will result in serious harm to fish can be carried on

The work, undertaking or activity that results in serious harm to fish is authorized to be carried on during the following period:

From date signed by Regional Director General to December 31, 2020.

If the Proponent cannot complete the work, undertaking or activity during this period, Fisheries and Oceans Canada-Fisheries Protection Program (DFO-FPP) must be notified in advance of the expiration of the above time period. The Proponent may, where appropriate, provide written notice that the period to carry on the work, undertaking or activity has been extended.

The periods during which other conditions of this authorization must be complied with are provided in their respective sections below. The Proponent may, where appropriate, provide written notice that these periods have been extended, in order to correspond to the extension of the period to carry on a work, undertaking, or activity.

2. Conditions that relate to measures and standards to avoid and mitigate serious harm to fish

2.1 Sediment and erosion control: Sediment and erosion control measures must be in place and shall be upgraded and maintained, such that release of sediment is avoided at the location of the authorized work, undertaking, or activity.

2.2 List of measures and standards to avoid and mitigate serious harm to fish:

2.2.1. All fill material that will be used for fill purposes must be clean, non-toxic material (i.e., free of fuel, oil, grease and/or other contaminants) from a non-watercourse source, except those materials that are composed of dredged spoils from the adjacent harbour sediments to be placed inside of the containment cell after its construction.

2.2.2. Total suspended sediment levels shall not exceed 8 NTUs above background levels at 100 m from the nearest edge of the infill site over a 24 hour period when background levels are between 8 and 80 NTUs. Total suspended sediment levels shall not increase more than 10% above background levels at 100 m from the nearest edge of the infill site when background is > 80 NTUs. Background levels shall be measured at least 500 m from the project site in a non-disturbed area and upstream from any sediment movement.

2.2.3. An emergency response plan will be developed to be implemented in the event of sediment release or spill of a deleterious substance. An emergency spill kit will be on-site.

- 2.2.4. An Erosion and Sediment Control Plan will be developed for the site that minimizes risk of sedimentation to the marine environment.
- 2.2.5. Avoid work during periods which Environment Canada has issued rainfall or wave warning for the work area.
- 2.2.6. Wherever possible, machinery will operate on land or above the high water mark or from a floating barge in a manner that minimizes disturbance to the shoreline.
- 2.2.7. Equipment will be washed, maintained and fuelled in areas that avoid the potential for deleterious substances to enter the marine environment or local watercourses.
- 2.2.8. Project machinery will not access beaches, dunes, or coastal wetlands. These areas shall not be used as staging areas for the project.
- 2.3 Contingency measures: Additional sedimentation controls shall be put in place if monitoring required in condition 3 below indicates that the measures and standards to avoid and mitigate serious harm to fish are not successful.
- 2.4 Dates by which these measures and standards shall be implemented: Measures and standards to avoid and mitigate serious harm to fish shall be implemented, as necessary, prior to, during and after construction activities.

3 Conditions that relate to monitoring and reporting of measures and standards to avoid and mitigate serious harm to fish

- 3.1 Monitoring of avoidance and mitigation measures: The Proponent shall monitor the implementation of avoidance and mitigation measures referred to in section 2 of this authorization and report to DFO-FPP within 30 days that the work authorized has been completed, and indicate whether the measures and standards to avoid and mitigate serious harm to fish were conducted according to the conditions of this authorization. This shall be done, by:
 - 3.1.1 Demonstration of effective implementation and functioning: Providing dated photographs and inspection reports to demonstrate effective implementation and functioning of mitigation measures and standards described above to limit the serious harm to fish to what is covered by this authorization.
 - 3.1.2 Contingency measures: Providing details of any contingency measures that were followed, to prevent impacts greater than those covered by this authorization in the event that mitigation measures did not function as described.
 - 3.1.3 Completing and submitting to DFO-FPP the attached Completion of Authorized Work(s), Undertaking(s) or Activity (ies) and monitoring details within 30 days.

4 Conditions that relate to the offsetting of the serious harm to fish likely to result from the authorized work, undertaking or activity

- 4.1 Letter of credit: Not applicable (N/A) – offsetting measures already completed.
- 4.2 Scale and description of offsetting measures: Offsetting measures shall be carried out in accordance with the measures set out in the Proponent’s offsetting plan for the Department of Fisheries and Oceans Small Craft Harbours Ballantynes Cove Harbour, Ballantynes Cove, Antigonish County, Nova Scotia dated May 17, 2016 approved by DFO-FPP and attached to this authorization. The offsetting plan proposes to withdraw 5854 m² of habitat credits from the Waugh’s River Fish Passage project.
- 4.3 Offsetting criteria to assess the implementation and effectiveness of the offsetting measures: N/A
- 4.4 Contingency measures: N/A – project already completed and shown to be functioning as required.
- 4.5 The Proponent shall not carry on any work, undertaking or activity that will adversely disturb or impact the offsetting measures.
- 4.6 Other conditions related to offsetting: N/A

5 Conditions that relate to monitoring and reporting of implementation of offsetting measures (described above in section 4):

- 5.1 Schedule(s) and criteria: The Proponent shall conduct monitoring of the implementation of offsetting measures according to the approved timeline and criteria below: N/A
- 5.2 List of reports to be provided to DFO: N/A
- 5.3 Other monitoring and reporting conditions for offsetting: N/A

Authorization Limitations and Application Conditions

The Proponent is solely responsible for plans and specifications relating to this authorization and for all design, safety and workmanship aspects of all the works associated with this authorization.

The holder of this authorization is hereby authorized under the authority of Paragraph 35(2)(b) of the *Fisheries Act*, R.S.C., 1985, c.F. 14 to carry on the work(s), undertaking(s) and/or activity(ies) that are likely to result in serious harm to fish as described herein. This authorization does not purport to release the applicant from any obligation to obtain permission from or to comply with the requirements of any other regulatory agencies.

This authorization does not permit the deposit of a deleterious substance in water frequented by fish. Subsection 36(3) of the *Fisheries Act* prohibits the deposit of any deleterious substances into waters frequented by fish unless authorized by regulations made by Governor in Council.

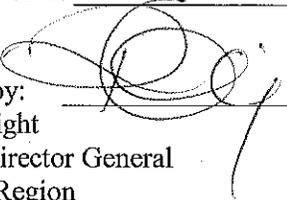
This authorization does not permit the killing, harming, harassment, capture or taking of individuals of any aquatic species listed under the *Species at Risk Act* (SARA) (s. 32 of the SARA), or the damage or destruction of residence of individuals of such species (s. 33 of the SARA) or the destruction of the critical habitat of any such species (s. 58 of the SARA).]

At the date of issuance of this authorization DFO has determined that impacts from the work, undertaking, or activity proposed, to aquatic species listed under the *Species at Risk Act* are not likely.

The failure to comply with any condition of this authorization constitutes an offence under Paragraph 40(3)(a) of the *Fisheries Act* and may result in charges being laid under the *Fisheries Act*. This authorization must be held on site and work crews must be made familiar with the conditions attached.

This authorization cannot be transferred or assigned to another party. If the work(s), undertaking(s) or activity(ies) authorized to be conducted pursuant to this authorization are expected to be sold or transferred, or other circumstances arise that are expected to result in a new Proponent taking over the work(s), undertaking(s) or activity(ies), the Proponent named in this authorization shall advise DFO in advance.

Date of Issuance: **AUG 05 2016**

Approved by: 
Morley Knight
Regional Director General
Maritimes Region
Fisheries and Oceans Canada