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Public Works and Government Services Canada  
Containment Cell Construction  
Pinkney's Point SCH  
Yarmouth County, NS  
Project No. R.095776.001

Appendix A

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Appendix A  
Fisheries Act Authorization



Fisheries and Oceans  
Canada

Pêches et Océans  
Canada

PO Box 1006, P500  
Dartmouth, NS  
B2Y 4A2

DEC 13 2018

*Our file*  
18-HMAR-00112

Gary Hubbard  
215 Main Street  
Yarmouth, NS  
B5A 1C6

Dear Gary Hubbard:

**Subject: Fisheries Act Authorization # 18-HMAR-00112 - Pinkney's Point SCH - Containment Cell Construction, Yarmouth County, Nova Scotia**

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 construction of a 13,794 m<sup>2</sup> containment cell at Pinkney's Point Small Craft Harbour to be utilized for the disposal of dredged material from Small Craft Harbours. 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 Edward Parker at our Dartmouth office at 902-402-0298 or by email at [Edward.Parker@dfo-mpo.gc.ca](mailto:Edward.Parker@dfo-mpo.gc.ca).

Yours sincerely,

Mary-Ellen Valkenier  
Regional Director General  
Maritimes Region

Attachments (2):

1. Authorization
2. Notification Form for Completion of Authorized Work(s), Undertaking(s) or Activity(ies)

Cc: T. McFarland, PSPC

**Canada**



## **PARAGRAPH 35(2)(b) FISHERIES ACT AUTHORIZATION**

### **Authorization issued to**

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

Attention to:

Gary Hubbard  
DFO Small Craft Harbours  
215 Main Street  
Yarmouth, Nova Scotia  
B5A 1C6

### **Location of Proposed Project**

Nearest community (city, town, village):	Melbourne
Municipality, district, township, county:	Yarmouth County
Province:	Nova Scotia
Name of watercourse, waterbody:	Little River Harbour
Longitude and latitude, UTM Coordinates:	43.704193°N, 66.055147°W

### **Description of Proposed Project**

The proposed project of which the work, undertaking or activity authorized is a part involves the construction of a containment cell on the North side of the developed and active Pinkney's Point Small Craft Harbour facility. The containment cell will be utilized for the disposal of dredged material from Pinkney's Point Small Craft Harbour and other Small Craft Harbours.

### **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 marine fish habitat for the construction of a containment cell on the North side of the existing Pinkney's Point Small Craft Harbour facility.

### **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 13,794 m<sup>2</sup> of intertidal and subtidal marine fish habitat consisting of rocky intertidal with macroalgae habitat and sandflat beach as a result of construction of a containment cell.
- The death of sessile or non-motile fish as a result of physical injury caused by placement of infill material.

## **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, 2023.

If the Proponent cannot complete the work, undertaking or activity during this period, Fisheries and Oceans Canada (DFO) must be notified in advance of the expiration of the above time period. DFO 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. DFO 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. An erosion and sediment control plan will be developed for the site that minimizes risk of sedimentation to the marine environment.
  - 2.2.2. A water quality management program is to be developed and carried out by the successful contractor.
  - 2.2.3. All rock material, coming from outside the site, that will be used for the project must be free of excessive fines, clean, non-ore bearing, non-toxic material (i.e., free of fuel, oil, grease and/or other contaminants) from a provincially-approved non-watercourse source.
  - 2.2.4. Turbidity levels shall not exceed 8 NTUs above the background level when background levels are between 8 and 80 NTUs OR exceed 10% above background levels when background is > 80 NTUs. Background levels shall be measured in the closest undisturbed area adjacent to the work. Background and in-plume turbidity samples shall be measured in as close a timeframe as technically possible. Turbidity monitoring shall be carried out in accordance with subsection 3.2.1 below.
  - 2.2.5. Avoid work during periods which Environment and Climate Change Canada has issued rainfall or wave warning for the work area.
  - 2.2.6. Wherever possible, machinery will operate from a barge or from land or infrastructure above the high water mark in a manner that minimizes disturbance.
  - 2.2.7. Project machinery will not access beaches, dunes, or coastal wetlands. These areas shall not be used as staging areas for the project.
  - 2.2.8. Equipment will be washed, maintained and fuelled in areas that avoid the potential for deleterious substances to enter the marine environment or local watercourses.
  - 2.2.9. 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. All spills

or leaks must be promptly contained, cleaned up, and reported to the 24-hour environmental emergencies reporting system (1-800-565-1633).

- 2.3 Contingency measures: Additional sedimentation controls (e.g. working at low tide) 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 within 30 days the authorized work is complete, 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 the attached Completion of Authorized Work(s), Undertaking(s) or Activity(ies) and monitoring details.
- 3.2 Other monitoring and reporting conditions:
  - 3.2.1 Turbidity monitoring (measuring NTUs) shall take place each day the activity is occurring and there is sediment observed in the water from onsite activities. In-plume samples shall be obtained within the eelgrass bed approximately midway through daily activities within a minimum distance as safely possible and at a maximum of 30 metres of in-water activity. If the in-plume measurement exceeds 8 NTUs another turbidity measurement shall be taken at a background location (at least 100 metres outside the plume).
  - 3.2.2 Weekly turbidity reports shall be sent to DFO's Fisheries Protection Program (FPP) from the start of the in-water work and shall include, but not be limited to, the following information: date, time, weather conditions, in-water activity, GPS location where the sample was taken, and measurement in NTUs. To ensure accurate records, consistency in methods and instruments must be maintained.

**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) because offsetting measures have already been 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 Department of Fisheries and Oceans Small Craft Harbours, Pinkney's Point Harbour, Melbourne, Yarmouth County, Nova Scotia, Containment Cell Construction', dated October 2, 2018. This document was approved by DFO-FPP and is attached to this authorization. The offsetting plan proposes to withdraw 15,387 m<sup>2</sup> of habitat credits from the Cheverie Creek Habitat Bank, Hants County, Nova Scotia.
- 4.3 Offsetting criteria to assess the implementation and effectiveness of the offsetting measures: N/A - project already completed and shown to be functioning as required.
- 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 - project already completed and shown to be functioning as required.

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 SARA 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.

DEC 13 2018

Date of Issuance: \_\_\_\_\_

Approved by: \_\_\_\_\_



Mary-Ellen Valkenier  
Regional Director General  
Maritimes Region  
Fisheries and Oceans Canada