



Fisheries and Oceans Pêches et Océans
Canada Canada

PO Box 1006, P500
Dartmouth, NS, B2Y 4A2

DEC 11 2019

Our file Notre référence

19-HMAR-00328

Gary Hubbard
DFO Small Craft Harbour
215 Main Street
Yarmouth, NS, B5A 1C6

Subject: Containment Cell Expansion, Newellton SCH – *Fisheries Act* Authorization

Dear Gary Hubbard,

Pursuant to Paragraphs 34.4(2)(b) and/or 35(2)(b) for the Authorization for work/undertaking/activity resulting in harmful alteration, disruption or destruction of fish habitat under the *Fisheries Act*, Fisheries and Oceans Canada's Fish and Fish Habitat Protection Program authorizes the carrying on of your proposed work, undertaking or activity that results in:

- the death of fish by other means than fishing and the harmful alteration, disruption or destruction of fish habitat which are prohibited under subsections 34.4(1) and 35(1) of the *Fisheries Act*.

The proposed containment cell expansion at the Newellton Small Craft Harbour Facility in Newellton, Nova Scotia, will result in the destruction of up to 4400 m² of fish habitat and incidental death of fish. The Authorization under paragraph(s) 34.4(b) and/or 35(2)(b) of the *Fisheries Act* 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 must be kept on site while the work is in progress and upon request be provided to relevant federal or provincial officials. Work crews must be familiar with, and able to adhere to, the conditions.

If you or anyone conducting work on your behalf has any questions, please contact Jennifer FitzGerald at our Dartmouth office at 902-225-6944, or by email at Jennifer.Fitzgerald@dfo-mpo.gc.ca.

Canada 

Yours sincerely,



Mary-Ellen Valkenier
Regional Director General
Maritimes Region

Attachments (2):

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

cc:

Scott Burley, Environmental Specialist, Public Services and Procurement Canada
Chris Sperry, DFO C&P Chief, Southwest Nova Scotia



Fisheries and Oceans Pêches et Océans
Canada Canada

PATH No.: 19-HMAR-00328

Other DFO File No.: 19-SCH-328

PARAGRAPHS 34.4(2)(B) AND/OR 35(2)(B) FISHERIES ACT AUTHORIZATION

Authorization issued to:

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

Fisheries and Oceans Canada Small Craft Harbours
Attention: Gary Hubbard
215 Main Street
Yarmouth, NS B5A 1C6

Location of Proposed Project

Nearest community (city, town, village): Newellton
Municipality, district, township, county: Cape Sable Island, Shelburne County
Province: Nova Scotia
Name of watercourse, waterbody: Barrington Passage, Atlantic Ocean
Longitude and latitude, UTM Coordinates: 43.471430 N, -65.633580 W

Description of Proposed Project

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

The expansion of an existing dredge material containment cell at a developed and active DFO Small Craft Harbour facility in Newellton, Shelburne County, Nova Scotia. The containment cell, which is reaching its maximum capacity, will be utilized for the disposal of dredged material from the Newellton DFO-SCH facility and potentially other Small Craft Harbours on Cape Sable Island.

The footprint of the existing containment cell is 9,870 square meters (m²). The proposed expansion will increase the existing footprint up to an additional 4,400 m²s.

A berm will be constructed which will be offset from the exterior of the existing containment cell, creating additional capacity. The berm will be constructed using core material with single armourstone units placed at regular intervals along the berm crest. The core stone from the existing berm will be salvaged and incorporated into the new design. The berm will be constructed at +4.2 metre elevation with an exterior slope of 1.5:1. The rock material will be placed by dump trucks as well as excavators working from the existing containment cell, the harbour bottom at low tide, and/or the berm as it is being constructed. The new containment

cell design will incorporate a channel located along the exterior of the east side of the new containment cell to accommodate the outflow lines of the neighboring fish plant.

Description of Authorized work(s), undertaking(s) or activity(ies) likely to result in the death of fish by other means than fishing:

The work(s), undertaking(s), or activity(ies) associated with the proposed project described above, that are likely to result in the death of fish by other means than fishing, are:

- Expansion of the existing containment cell at the DFO-SCH facility at Newellton, Shelburne County, Nova Scotia.

Description of Authorized work(s), undertaking(s) or activity(ies) likely to result in the harmful alteration, disruption or destruction of fish habitat:

The work(s), undertaking(s), or activity(ies) associated with the proposed project described above, that are likely to result in the harmful alteration, disruption or destruction of fish habitat, are:

- Expansion of the existing containment cell at the DFO-SCH facility at Newellton, Shelburne County, Nova Scotia.

The death of fish by other means than fishing and/or harmful alteration, disruption, and destruction of fish habitat likely to result from the proposed work(s), undertaking(s), or activity(ies), and covered by this authorization includes:

- Destruction of up to 4400 m² of silty sand substrate and nominal macroalgal communities as a result of infilling due to the expansion of an existing containment cell.
- The incidental death of sessile, non-motile, or infaunal fish species such as Blue Mussel, clams and crabs.

Conditions of Authorization

The above described work, undertaking or activity must be carried on in accordance with the following conditions.

1. **Conditions that relate to the period during which the work, undertaking or activity can be carried on**

The work, undertaking or activity that is/are authorized to be carried on during the following period:

From the date signed by the Regional Director General to December 31, 2022.

If the Proponent cannot complete the work, undertaking or activity during this period, Fisheries and Oceans Canada – Fish and Fish Habitat Protection Program (DFO-FFHPP) must be notified in advance of the expiration of the above time period. An application for amendment, suspension or cancellation of the authorization should be submitted to DFO-FFHPP.

The periods during which other conditions of this authorization must be complied with are provided in their respective sections below.

2. Conditions that relate to measures and standards to avoid and mitigate impacts to fish and fish habitat

2.1 Sediment and erosion control: Sediment and erosion control measures must be in place and upgraded/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 impacts to fish and fish habitat

- 2.2.1 Turbidity levels must not exceed 8 Nephelometric Turbidity Units (NTUs) above the background level when background levels are between 8 and 80 NTUs OR exceed 10% above background levels when background is greater than 80 NTUs. Background levels to be measured in the closest undisturbed area adjacent to the work. Background and in-plume turbidity samples to be measured in as close a timeframe as technically possible. Turbidity monitoring must be carried out in accordance with subsection 3.2.1 below;
- 2.2.2 All material used in the project must be non-ore bearing, non-toxic (i.e., free of fuel, oil, grease and/or other contaminants), and be from a provincially approved non-watercourse source;
- 2.2.3 Do not work during periods which Environment and Climate Change Canada has issued any storm surge, wind and wave warning for the work area;
- 2.2.4 Machinery must be operated from a barge or from land or infrastructure above the ordinary high water mark in a manner that minimizes disturbance;
- 2.2.5 Project machinery must not access beaches, dunes, or coastal wetlands;
- 2.2.6 All equipment to be used in must be clean, in good repair such that it does not release a deleterious substance (fuel, oil, lubricants and/or other contaminants) into waters frequented by fish;
- 2.2.7 Machinery must be washed, refueled and serviced in such a way as to prevent any deleterious substances from entering the marine environment or watercourse and;
- 2.2.8 A response plan must be developed that is to be implemented immediately in the event of a sediment release or spill of a deleterious substance. An emergency spill kit will be kept on site. All spills or leaks must be promptly contained, cleaned up, and reported to the 24-Hour Environmental Emergencies Report System (1-800-565-1633).

- 2.2.9 On-site blasting or use of explosives is prohibited without written approval of DFO-FFHPP;
- 2.3 Contingency measures: Additional sedimentation controls must be put in place if monitoring required in section 2.2.1 or monitoring required in section 3 below indicates that the measures and standards to avoid and mitigate impacts to fish and fish habitat are not successful.
- 2.4 Dates by which these measures and standards are to be implemented: Measures and standards to avoid and mitigate impacts to fish and fish habitat must 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 impacts to fish and fish habitat**
- 3.1 Monitoring of avoidance and mitigation measures: The Proponent must monitor the implementation of avoidance and mitigation measures referred to in section 2 of this authorization and indicate whether the measures and standards to avoid and mitigate impacts to fish and fish habitat 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 impacts to fish and fish habitat 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.
- 3.2 Other monitoring and reporting conditions:
- 3.2.1 Visual monitoring of turbidity: If turbidity outside the zone of influence (100 feet / 30 metres) changes from the existing conditions of the surrounding water (i.e., distinct changes in water clarity), the work will stop and contingency measures (e.g., changes in the timing of work according to the tidal cycle, additional screening of material, slowing the rate of equipment, phasing work, etc.) will be implemented as required.
- 3.2.2 Completion of Authorized Work(s), Undertaking(s) or Activity(ies): The proponent shall report to DFO-FFHPP within 30 days that the work authorized has been completed by submitting the attached completion of Authorized Work(s), Undertaking(s) or Activity(ies) form.
- 4. Conditions that relate to offsetting**
- 4.1 Letter of credit: Not applicable (N/A), offsetting measures already completed.

- 4.2 Scale and description of offsetting measures: The 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 Newellton Harbour, Newellton, Shelburne County, Nova Scotia Containment Cell Construction", dated November 4, 2019. This was approved by DFO-FFHPP and is attached to this authorization. The offsetting plan proposes to withdraw 1119 m² of habitat credits from the Fox Harbour Offsetting Bank for the enhancement of American Lobster habitat at Fox Harbour, 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 impact the offsetting measures.
5. **Conditions that relate to monitoring and reporting of implementation of offsetting measures (described in section 4):**
- 5.1 Schedule(s) and criteria: N/A – the project is already completed and shown to be functioning as required.
- 5.2 List of reports to be provided to DFO-FFHPP: 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(s) 34.4(2)(b) and/or 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 impacts to fish and fish habitat 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).


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 said Act..

This authorization must be held on site and work crews must be made familiar with the conditions attached. On onsite or teleconference, pre-construction meeting with DFO-FFHPP staff, the project proponent(s) and all contractors involved in the authorized work(s), undertaking(s) or activity(ies) must occur to discuss the conditions of this authorization.

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-FFHPP in advance.

DEC 11 2019

Date of Issuance: _____

Approved by: 
Mary-Ellen Valkenier
Regional Director General, Maritimes Region
Fisheries and Oceans Canada