



Agnico Eagle Mines Limited's “Whale Tail Pit Expansion” Project Water Licence Amendment Application

**Presentation to the
Nunavut Water Board**

Technical Meeting, Baker Lake, NU
October 29-30, 2019

Overview of Presentation

Fisheries and Oceans Canada (DFO) – Fish and Fish Habitat Protection Program (FFHPP)

1. Legislation and Policy
2. Technical Comments: Issues and Clarifications
3. Conclusions
4. Questions and Comments

FFHPP – Legislation

The new *Fisheries Act* (2019):

As of **August 28th, 2019**, new Fish and Fish Habitat Protection Provisions (FFHPP) of the *Fisheries Act* came into force:

Section 34.4(1)

- prohibits the carrying on of any work, undertaking or activity, other than fishing, that results in the death of fish

Section 35(1)

- prohibits the harmful alteration, disruption or destruction of fish habitat

FFHPP – Legislation

Bill C-68

- On February 6, 2018, the Government of Canada introduced in Parliament Bill C-68, *An Act to Amend the Fisheries Act and other Acts in Consequence*
- On June 21, 2019 the new *Fisheries Act* received royal assent and became law
- On August 28, 2019, the Fish and Fish Habitat Protection Provisions came into force. This project assessment began under the older *Fisheries Act* (2012) but will be assessed in the regulatory phase under the new *Fisheries Act* (2019)

FFHPP – Legislation

Species at Risk Act

- Sections 32, 33, 58
 - Prohibits killing, harming, harassing, capturing or taking of listed species, destruction of residence, critical habitat

Nunavut Land Claims Agreement (Article 12)

FFHPP – Policy

Fish and Fish Habitat Protection Program Policy Statement (2019)

- Guidance on undertaking effective measures to offset death of fish and the harmful alteration, disruption or destruction of fish habitat

Policy for Applying Measures and Standards to Offset Impacts to Fish and Fish Habitat Under the *Fisheries Act* (2019)

- Guidance on how to apply measures and standards to offset for impacts to fish and fish habitat

Technical Comments & Requests

Fisheries and Oceans Canada's Technical Comments focus on three areas:

1. Fish Passage

- Accounting of potential impacts to fish and fish habitat as result of haul road widening

2. Water Use

- Accounting of all source waterbodies and water withdrawal volumes

3. Downstream Environment

- Quantification of / accounting for changes in fish habitat

Fish Passage - Issue

- DFO noted concerns regarding fish passage calculations during the NIRB process, and the need for additional information regarding impacts to fish and fish habitat (Technical Comments 2.1.1 and 2.1.2)

DFO Clarification 2.1.1 and 2.1.2

- Previous assessment of the works, undertakings and activities associated with a 6.5m wide road, not the proposed 15m wide road; accounting of impacts is required
- Existing LoA was issued under the previous *Fisheries Act* (2013); the updated *Fisheries Act* (2019) is the current legislation which needs to be followed
- DFO is satisfied with AEM's Response

Water Use - Issue

- DFO noted missing / inconsistent values related to the accounting of volumes from freshwater sources, and uncertainty regarding which waterbodies will be utilized as sources, and when (Technical Comments 2.2.1, 2.2.2, and 2.2.3)

DFO Clarifications 2.2.1, 2.2.2 and 2.2.3

- DFO notes that the response to DFO IR2 provided re-calculated volumes for water withdrawal due to errors in calculations and incorrect volumes provided in the Main Application Document
- Uncertainty remains regarding the accounting of all water withdrawal sources, timing of withdrawals from various sources, and the associated volumes
- DFO not satisfied with response

DFO Clarification 2.2.2

- For example, DFO notes the variability in the precision / accuracy of under ice volumes for Nemo Lake = uncertainty

DFO-IR2:

6,170,000m³

DFO-TC2.2:

6,169,226m³

Technical Memo reporting on Condition 3.1:

5,850,000m³

DFO recalculation:

5,850,764m³

Clarification re: calculation of volume needed

DFO Clarification 2.2.3

- Incomplete understanding of all source waterbodies leads to uncertainty
- Clarity is needed to assess potential impacts to fish and fish habitat: which waterbodies are sources, what time period(s), and what volumes
- Agnico states that withdrawals will not exceed a 5cm decrease for shallow ponds that are unlikely to support fish throughout the year; e.g. A113, which contains fish (e.g. Table 3.2-1; DFO-FWS-3.2)

Downstream Environment - Issue

- DFO noted uncertainty with regards to the potential impacts of downstream changes in water levels, and how differences in bathymetry may influence the amount of littoral / shore habitat potentially impacted (Technical Comment 2.31)

DFO Clarification 2.3.1

- Agnico indicates reply to 3.4.7 will be updated with 2019 bathymetry data of **3** lakes: Lake A76, A12 and A15; however, DFO 3.4.7 lists **22** downstream lakes
- Clarification why Lakes A76, A12 and A15 are considered representative, and why they provide conservative predictions of downstream impacts
- DFO acknowledges revised predictions will be submitted with the Fish Habitat Offsetting Plan as part of the *Fisheries Act* Authorization application, and commitment to apply mitigation
- DFO partially satisfied with response

Conclusion

- Fisheries and Oceans Canada requests additional clarifications to assist with assessment of potential impacts to fish and fish habitat
- Concerns related to accuracy and precision = uncertainty
- Concerns related to accounting of waterbodies = uncertainty
- Uncertainty impacts DFO's ability to assess potential impacts to fish and fish habitat

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