

Date: February 14, 2020

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2/4/2020

Fisheries and Oceans
CanadaPêches et Océans
Canada

Agnico Eagle Mines Limited's "Whale Tail Pit Expansion" Project

Presentation to the
Nunavut Water Board
Public Hearing, Baker Lake, NU
February 12-13, 2020

Canada

Overview of Presentation

1. **Fisheries and Oceans Canada (DFO) –
Fish and Fish Habitat Protection Program
(FFHPP)**
 - Mandate, Legislation and Policy
2. Final Comment Submission and
Recommendations
3. Conclusions
4. Questions and Comments

DFO - Fish and Fish Habitat Protection Program (FFHPP) Mandate

The **mandate** of the Fish and Fish Habitat Protection Program is to conserve and protect fish and fish habitat.

Sub-Section 34.4 (1) of the Fisheries Act states that:
"No person shall carry on any work, undertaking or activity, other than fishing, that results in the death of fish."

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DFO - Fish and Fish Habitat Protection Program (FFHPP) Mandate (continued)

The **mandate** of the Fish and Fish Habitat Protection Program is to conserve and protect fish and fish habitat.

Sub-Section 35 (1) of the Fisheries Act states that,
"No person shall carry on any work, undertaking or activity that results in the harmful alterations, disruption or destruction of fish habitat."

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FFHPP – Legislation

- **Fisheries Act**
 - Section 35
 - Prohibits harmful alteration, disruption or destruction of fish habitat (HADD)
 - Allows for authorization with terms and conditions to address death of fish and/or HADD
 - Sections 29, 34
 - Requirement for sufficient water, fish passage
- **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)**

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FFHPP – Policy

Fisheries and Fish Habitat Protection Policy Statement (August 2019)

- Guidance on implementing the fish and fish habitat protection provisions of the *Fisheries Act*

Policy for Applying Measures to Offset Adverse Effects on Fish and Fish Habitat Under the *Fisheries Act* (November 2019)

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

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Final Written Submission & Recommendations

Fisheries and Oceans Canada's comments are focused on the three following areas:

1. Fish Passage

- impacts of road widening to watercrossings

2. Water Use

- Water use volume requirements and source lakes

3. Downstream Environment

- accounting for changes in fish habitat

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Fish Passage - Issue

- DFO acknowledges AEM's submission of information related to fish passage as part of the concurrent NIRB and NWB processes
- DFO has acknowledged AEM's commitments to ensuring fish passage requirements are met and that discussions regarding fish passage will continue during the permitting stage
- DFO notes that AEM has provided the Request for Review for the proposed culvert extensions and widening of the haul road, along with estimated velocities for fish passage

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Fish Passage - Recommendations

DFO-FFHPP recommends the Proponent:

3.1.1

Continue to work with DFO-FFHPP to ensure that all watercourse crossings over fish bearing watercourses are able to adequately enable fish passage

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Water Use – Issue

- Calculation of available volumes, monitoring of withdrawal from waterbodies, and accounting of volumes taken from all potential water sources remains important to DFO
- DFO open to continued discussion regarding approaches to calculations, consistent approaches, and reporting
- DFO will continue discussions with AEM regarding the fish-out methodology and data requirements, notably given benefits to increasing knowledge of northern aquatic ecosystems

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Water Use- Recommendations

DFO-FFHPP recommends the Proponent:

3.2.1

Commit to meeting with DFO prior to water withdrawals to discuss expectations regarding under ice volume calculations, monitoring of withdrawals, and communication prior to reporting as part of *Fisheries Act* Authorisations.

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Water Use – Recommendations (continued)

3.2.2

For Whale Tail Lake South Basin information provided Dec 5 in Table 1:

- a) Provide the rationale for the recalculation of South Whale Tail Lake Basin total lake volume and available under-ice volume;
- b) provide calculation details; and,
- c) clarify why 156.75masl was selected.

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Water Use – Recommendations (continued)

3.2.3.

Commit to meeting with DFO to discuss requirements related to fish outs, including collection of data to support research (e.g. conducted under the existing *Fisheries Act* Authorisation for the approved project, as well as future initiatives)

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Downstream Environment - Issue

- DFO requested quantitative information regarding the changes to water levels and surface area for downstream waterbodies; information provided
- DFO notes adequate monitoring is key to verifying AEM's predictions that impacts will fall within natural variation
- DFO open to continued discussion regarding approaches to calculations, monitoring and reporting
- DFO is supportive of discussions related to *Fisheries Act* Authorization approval process (Commitment #21)

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Downstream Environment - Recommendations

DFO-FFHPP recommends the Proponent:

3.3.1

Clarify that information provided in December 4th, 2019 Technical Memo Addendum in Response to Technical Comment DFO 3.4 Addendum will also be included in the Final Offsetting Plan.

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Downstream Environment - Recommendations (continued)

3.3.2

Clarify why median values have been selected (vs. means with error estimates).

3.3.3

Clarify why monitoring of waterbodies A12, A15 and A76 is not required to verify predictions. From an adaptive management perspective, clarify why monitoring for lakes further downstream of A76 to Nodes 1 and 2 is not required.

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Downstream Environment - Recommendations (continued)

3.3.4

- Provide examples of what approaches to monitoring are to be included in the Final Offsetting Plan with regards to verifying predictions in downstream percent changes in water levels, surface area and volumes.

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Downstream Environment - Recommendations (continued)

3.3.5

Clarify where information on the natural variation in surface area/ volume from lakes listed in 3.4.7 other than A16, A15 A12 and A67, can be located.

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Conclusion

Fisheries and Oceans Canada will continue to work with the AEM and stakeholders, including potentially impacted communities, to ensure that:

- Concerns related to fish passage, fish habitat status, water withdrawals, downstream impacts and offsetting are addressed; and,
- Appropriate mitigation measures, follow-up, and monitoring programs are implemented

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