

# Notice of Determination

**Moncton – October 10<sup>th</sup>, 2023** – Fisheries and Oceans Canada- Small Craft Harbours (DFO-SCH) has determined that the proposed wharf reconstruction at Little Judique Ponds is not likely to cause significant adverse environmental effects. DFO-SCH can therefore proceed with the project.

This determination was based on a consideration of the following factors:

- impacts on rights of Indigenous peoples;
- community and indigenous knowledge;
- comments received from the public; and
- technically and economically feasible mitigation measures.

Mitigation measures taken into account for this determination are:

- All construction personnel will be responsible for reporting any unusual materials unearthed during project activities to the Construction Supervisor. In those situations where the find is believed to be an archaeological resource, the Construction Supervisor will immediately stop work in the vicinity of the find and notify his/her immediate supervisor and the SCH Project Manager. In the event of the discovery of human remains or evidence of burials, the excavation work will immediately cease and nearest law enforcement agency will be contacted immediately by the SCH Project Manager and/or the Construction Supervisor.
- The contractor shall obtain all necessary permits (e.g. Waste Disposal Permit, etc.) and adhere to applicable legislation
- All posted speed limits will be strictly adhered to as well as seasonal weight restrictions.
- The number of truck trips will be limited to the minimal extent possible.
- The Harbour Authority will coordinate all construction/vessel activities within the harbour for the duration of the project so as to avoid unnecessary interference with fishers/harbour users. Any and all stipulations of federal, provincial, or municipal authorities or their officers must be strictly followed.
- Storage of construction material will be done so to minimize visual impacts (i.e., minimize storage time, limit pile height, etc.) on neighbouring properties.
- On site, crews must have emergency spill clean-up equipment adequate for the activity involved, and it must be on site. Spill equipment will include, as a minimum, at least one 250 L (i.e., 55 gallon) overpack spill kit containing items to prevent a spill from spreading; absorbent

booms, pillows, and mats; rubber gloves; and plastic disposal bags. All spills or leaks must be promptly contained, cleaned up, and reported to the 24-Hour Environmental Emergencies Report System (1-800-565-1633).

- Operate machinery on land above the high-water mark in a manner that minimizes disturbance to the banks of the waterbody.
- Ensure that the excavated material is stockpiled at a distance and/or secured with silt fence so that re-entry into the water following weather events is prevented.
- Develop a response plan that is to be implemented immediately in the event of a spill of a deleterious substance.
- Ensure that machinery arrives on site in a clean condition and is maintained free of fluid leaks, invasive species and noxious weeds.
- Wash, refuel and service machinery and store fuel and other materials for the machinery in such a way as to prevent any deleterious substances from entering the water.
- Regularly monitor the waterbody for signs of sedimentation during all phases of the work, undertaking or activity and taking corrective action if required.
- Dispose of all waste materials (including construction, demolition) above the high-water mark of nearby waterbodies to prevent entry.
- Ensure that building material used in the watercourse is handled and treated in a manner to prevent the release or leaching of substances into the water that may be deleterious to fish
- Employ suitable operational and engineering controls (e.g., silt curtain), as approved by the SCH Project Manager, around the work area.
- To minimize the possibility of fish habitat contamination and the spread of aquatic invasive species, all construction equipment which will be immersed into the water or has the possibility of coming into contact with such water during the course of the work, must be cleaned and washed to ensure that they are free of marine growth and invasive species.
- Maintain an on-going log of past and present usage and wash downs of all equipment to illustrate mitigation measures undertaken against fish habitat contamination by invasive species.
- Weather conditions are to be assessed on a daily basis to determine the risk of extreme weather in the project areas. Avoid work during periods which Environment and Climate Change Canada has issued rainfall or wave warning for the work area.
- An Erosion and Sediment Control Plan will be developed for the site that minimizes risk of sedimentation to the marine environment.
- Any construction-related material used must be clean and non-toxic (i.e., free of fuel, oil, grease, and/or any contaminants).
- Construction waste or any miscellaneous unused materials must be recovered for either disposal in a designated facility or placed in storage. Under no circumstances will materials be deliberately thrown into the marine or terrestrial environment.

- All equipment to be used in or over the marine environment is to be free from leaks or coating of hydrocarbon-based fluids and/or lubricants harmful to the environment. Hoses and tanks are to be inspected on a regular basis to prevent fractures and breaks.
- Visual monitoring of the turbidity will be required on a daily basis in the vicinity of the project to ensure that the turbidity is limited. If excessive change occurs in the turbidity that differs from the existing conditions of the surrounding water body (i.e., distinct colour difference) as a result of the project activities, the work must stop immediately to determine if further mitigation measures are required.
- All hazardous substances (any substance that is poisonous, exhibits flammability, corrosive, reactive or toxic) shall be stored and handled in a manner which is not harmful to human life and will not pollute the environment.
- Lights are to be shielded and aimed downwards and in the opposite direction of bird nesting habitats.
- All work to be conducted in accordance with the *Migratory Birds Convention Act*, which outlines that no migratory bird nests or eggs will be moved or obstructed during the construction or operational phase of the project. Should construction be planned between April and August, a site visit and/or nest survey shall be conducted to ensure no impact to migratory birds or species at risk (e.g Barn Swallows). Should additional migratory birds or species at risk be identified on or near the project site, additional mitigation measures (e.g. timing or buffers) and federal/provincial coordination may be required.
- The Canadian Wildlife Service (CWS) Birds and Oil Response Plan Guidance will be followed in the event of a petroleum spill in or near the water.
- Should nests or chicks of migratory birds or raptors be encountered during work, immediately stop work in that area and notify Departmental Representative for directives to be followed. Should a nest site be discovered:
  - o The nest site and neighbouring vegetation will not be disturbed until nesting is completed.
  - o Work undertaken immediately adjacent to such areas will be minimized until nesting is completed.
  - o Should a migratory bird or raptor nest be encountered during work, activity in the vicinity of the nest should be halted. The nest location shall be protected with a buffer zone appropriate to the species as determined in consultation with the appropriate regulators (ECCC-CWS for species protected under the MBCA; provincial department of natural resources for raptors). The buffer shall stay in place until August 31st or the time when chicks have naturally fledged from the area. A nest shall not be marked, or the tree/shrub in which it is situated, using flagging tape or other similar material; this increases the visibility of the nest and the risk of predation.
- Contractors must ensure that food scraps and garbage are not left at the work site.
- Coastal habitats outside the project area must not be accessed by heavy equipment nor used as staging areas.

- Do not approach concentrations of seabirds, waterfowl, or shorebirds when accessing the construction site, accessing wharves, or transporting supplies.
- Site personnel shall watch for dens or nests within and near the project site during construction activities. Should any nests, den, burrow or terrestrial species be observed on site, buffers may be applied and maintained during construction and/or protection measures may need to be implemented, as per applicable regulations or laws. Any animal injuries and/or deaths must be reported to SCH immediately after they occur.
- Use site isolation measures (e.g. silt boom or silt curtain) for containing suspended sediment within the project footprint.
- Fuel storage and refueling of equipment will take place on a flat, level and impermeable surface and will utilize a spill tray.
- Contractors must ensure that litter/garbage (including food scraps) are not left at the work site or in coastal areas.
- Ensure that all in-water activities, or associated in-water structures, do not interfere with fish passage, constrict the channel width, or reduce flows.
- Dust control should be provided for construction activities and open soil areas, primarily by using fresh water. Waste oil or other petroleum products shall not be used for dust control under any circumstances. Where and when applicable (e.g., during a dry summer), other agents such as calcium chloride may be used for dust suppression. The use of calcium chloride will be in accordance with the guidelines outlined in Environment Canada's Best Practices for the Use and Storage of Chloride-Based Dust Suppressants, referring to how, when and quantity to apply.
- All dust control agents shall be stored in areas away from water bodies and contained, to prevent entry into water bodies.
- Potentially affected landowners will be informed of the project's anticipated impacts and duration.
- Excessive idling of motorized equipment/vehicles will not be permitted.
- Fine-grained soils and granular materials will be transported in covered trailers or trucks to reduce airborne particulates.
- All machinery must be muffled at all times. Contractor should avoid any sharp or loud noises (e.g. not blow horns or whistles) and should maintain constant noise levels. If necessary, trucks may be required to avoid the use of "hammer" braking along specific sections of the route, while radio communication should replace whistle blasts and horns.

DFO-SCH is satisfied that that the carrying out of the project is not likely to cause significant adverse environmental effects.

## **Contacts**

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