



Habitat Management Division
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Your file: *Votre référence*

Our file: *Notre référence*

May 29, 2003

Mr. Paul G. Buxton, Project Manager
Global Quarry Products
P.O. Box 2113
Digby, N.S.
B0V 1A0

Dear Mr. Buxton:

RE: Whites Point Quarry Blasting Plan

The Department of Fisheries and Oceans (DFO) has reviewed the document **Whites Point Quarry Blasting Plan**, submitted November 18, 2002 by Nova Stone Exporters Inc., and the additional information submitted January 28, 2003 and March 28, 2003. DFO has concluded the proposed work is likely to cause destruction of fish, contrary to Section 32 of the Fisheries Act which states:

“No person shall destroy fish by any means other than fishing except as authorized by the Minister.”

Works or undertakings resulting in the destruction of fish, by means other than fishing, are prohibited unless Authorized by the Minister of Fisheries and Oceans. An application for a Section 32 Authorization is attached for your submission if you wish to proceed with the proposed work as outlined in the blasting plan. It is important for you to consider that the species of concern is inner Bay of Fundy Atlantic salmon, which is listed endangered by the Committee on Status of Endangered Wildlife in Canada (COSEWIC). The review of your application will include consideration of the recovery plan of this species and an application for a Section 32 Authorization may not necessarily be approved.

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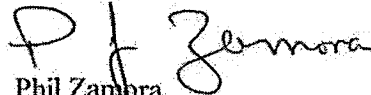
Also, the 3.9-hectare quarry is within the larger area of the proposed **Whites Point Quarry and Marine Terminal, Digby County, Nova Scotia**, which is currently undergoing an environment assessment (EA) under the Canadian Environmental Assessment Act (CEAA). DFO is the federal authority conducting this EA and is subject to laws governing this CEAA assessment including Section 5(2)(d) which requires that an EA of a project be completed before a federal authority "*under a provision prescribed pursuant to paragraph 59(f), issues a permit or licence, grants an approval or takes any other action for the purpose of enabling the project to be carried out in whole or in part.*"

A Fisheries Act Section 32 Authorization is in the Law List Regulations of CEAA and therefore DFO would not be able to issue a Section 32 Authorization for the four-hectare blasting plan until the CEAA assessment for **Whites Point Quarry and Marine Terminal, Digby County, Nova Scotia** has been completed.

You may wish to redesign the blasting plan to mitigate the potential destruction of endangered fish and some other potential harmful effects to endangered marine mammals that have been identified by DFO Scientists during our review. If so, please forward a revised blasting plan, including all mitigation techniques and monitoring methods to be used, to DFO for review. I have attached an addendum, which outlines DFO's concerns for potential harmful effects to fish and fish habitat from blasting at Whites Point. The revised plan should also state clearly, the purpose of the blast and the intended use of the blasted rock.

If you have any questions regarding the review of the blasting plan, feel free to contact me at (902) 426-4692.

Sincerely,



Phil Zamora
Habitat Management Division

Attachment Addendum: DFO Concerns – Potential Harmful Effects of Blasting at
Whites Point
Application of Section 32 Authorization

cc. M. McLean
D. McDonald
T. Wheaton
C. Myra
B. Petrie

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Addendum: DFO Concerns – Potential Harmful Effects of Blasting at Whites Point**Fish species**

Although the protection of most fish is achieved by DFO "Guidelines for the Use of Explosives in or Near Canadian Fisheries Waters" – 1998, the presence of species at risk requires a closer examination than a guideline can provide.

The inner Bay of Fundy Atlantic salmon is listed endangered by the Committee on Status of Endangered Wildlife in Canada (COSEWIC). Historic fishing, scientific sampling and theoretic modeling indicates that there could be migrating or resident iBoF Atlantic salmon in the Whites Point, Digby Neck area from May until October.

The coastal area of Digby Neck on the Bay of Fundy is a known area of cooler oceanic water entering the Bay of Fundy. These currents enter through the trough north of George's Bank, are driven to the surface and circulate in a counter clockwise pattern. The cooler portions are located toward the mouth of Bay of Fundy and are preferred habitat areas for Atlantic salmon. These cool water areas fluctuate monthly. Habitat area, suitable for Atlantic salmon, is available in this area during May and June and again in October and November. During July to September the cool water south of Digby Neck is perhaps critical to iBoF salmon. In general from December to April there is virtually no habitat suitable for Atlantic salmon in that area and few migrating Atlantic salmon.

Of particular note is the fact that Atlantic salmon, both post-smolt (50 to 150 g) and adult, (1000 to 2500 g) tend to travel in very close proximity to the shoreline. In fact, many shore mounted stake nets were once fished in the inter tidal zone along the southeast shore of the Bay of Fundy. This fishery was a consistent source of tagged smolt, many from inner Bay of Fundy rivers. The fisheries were closed or restricted since 1983.

Based on these observations it is likely that Atlantic salmon of iBoF could be found in close proximity to the shore line of Whites Point from May to October.

Habitat Management Division (HMD) have calculated that a horizontal set back distance from the shore line of 500 meters would be required to protect iBoF Atlantic salmon of the size that could be found at Whites Point from May to October.

The recovery plan for iBoF Atlantic salmon is described in the document titled **National Recover Strategy for iBoF Atlantic salmon (salmo salar) Populations 2002** and a recovery team is also in place. The recommendations of this recovery strategy must be considered explicitly.

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Marine Mammals

The following table shows the marine mammals at risk found in the Bay of Fundy (BoF) that need consideration for potential harmful effects from blasting at Whites Point.

| <u>Species</u> | <u>Found in BoF</u> | <u>Species at Risk Status</u> |
|-----------------------------------|---------------------|-------------------------------|
| Northern Right Whale | June – November | Endangered |
| Blue Whale (occasional sightings) | June – November | Endangered |
| Harbour porpoise | All Year | Threatened |
| Fin whale | All Year | Special Concern |
| Minke whale | All Year | Special Concern |
| Humpback whale | June- November | Special Concern |

The blasting proposal reveals an active whale watching activity and the presence of humpback and right whales at 5 miles from shore. The presence of an endangered species within a few miles of the site requires special consideration. The recommendations of the **Canadian North Atlantic Right Whale Recovery Plan** must be considered explicitly.

Marine mammals are well known to be acoustic animals that react to and are adversely affected by noise. The distance of disturbance of marine organisms by sound may well be beyond the 500m suggested in the proposal.

Additional information submitted for the blasting plan suggested that a colony of Harbour seals at Crowell's Cove is within 3 Km of the blasting. DFO is concerned that there may be potential harmful effects on the colony during the breeding season.

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