

MEMORANDUM FOR THE ADM, OCEANS AND HABITAT

**UPDATE ON THE ENVIRONMENTAL ASSESSMENT PANEL REVIEW
FOR THE WHITES POINT QUARRY AND MARINE TERMINAL PROJECT**

(Information Only)

SUMMARY

- On March 24, 2003, DFO received the proponent's project description, consisting of a 152-hectare basalt quarry, processing facility and marine shipping terminal.
- On June 26, 2003, the Whites Point Quarry and Marine Terminal Project was referred to the Minister of the Environment by the Minister of Fisheries and Oceans for an environmental assessment (EA) review by a panel pursuant to sub-section 21(b) of the *Canadian Environmental Assessment Act* (CEAA). A joint federal-provincial review process is currently underway under the direction of a Joint Review Panel.
- DFO and Transport Canada (TC) are the Responsible Authorities (RAs) for the EA by virtue of their regulatory responsibilities under the *Fisheries Act* and *Navigable Waters Protection Act* (NWPA) and, along with the other federal authorities, will be providing technical advice to the Joint Review Panel.
- DFO provided comments on the Environmental Impact Statement (EIS), which was released on April 28, 2006 for a 97-day public review period.
- The two weeks of Panel Hearings commenced on June 16, 2007, in Digby, N.S. DFO presented to the Panel, on June 20, on the potential impacts on fish habitat from: blasting on marine mammals, fish and lobster; shipping impacts on marine mammals; invasive species; and construction activities.
- At the conclusion of the presentation, DFO was asked by the Panel to provide additional information on lobster catches in the area, species listed under the *Species at Risk Act* (SARA) potentially found in the area, and how they may be impacted by the project and an assessment of the ecological risk of blast residues in the marine environment. The information was provided to the Panel prior to the end of the hearings.

Background

- On March 24, 2003, DFO received the proponent's (Bilcon of Nova Scotia Corporation) project description, consisting of a 152-hectare basalt quarry, processing facility and deepwater marine shipping terminal with a 50-year lifespan. The proponent proposed that a total of 120 hectares of the 152-hectare site would be quarried.
- DFO determined that the proposed construction of the marine terminal would likely cause a harmful alteration, disruption or destruction (HADD) to fish habitat and therefore an authorization under sub-section 35(2) of the *Fisheries Act* would be required. As well, an approval would likely be required for the marine terminal under section 5(1) of the *Navigable Waters Protection Act*. These regulatory requirements are triggers for an environmental assessment under the *Canadian Environmental Assessment Act*.
- The proposal is also subject to an Environmental Impact Assessment under the *Nova Scotia Environment Act*. On March 31, 2003, both levels of government agreed that a joint federal-provincial EA process would be used.
- On June 26, 2003, due to the level of potential environmental effects, the then-Minister of Fisheries and Oceans, Robert Thibault, referred the proposed project to the Minister of the Environment for referral to a review panel pursuant to section 21(b) of the *CEAA*.
- On November 5, 2004, Canada and Nova Scotia announced that a joint federal-provincial review panel had been established for the Whites Point Quarry and Marine Terminal Project.
- On April 28, 2006, the Joint Panel announced the beginning of the comment review period on the adequacy of the Environmental Impact Statement (EIS) filed by Bilcon of Nova Scotia Corporation. The public was invited to submit written comments on the EIS by August 11, 2006.
- The 36 pages of comments from DFO included concerns with the potential behavioural impacts of noise on marine mammals (particularly impacts on endangered species and the requirements under the *Species at Risk Act*), effects of blasting on lobster, and conflicts with inshore fishing activities. The scientific research on the behavioural impacts of noise on these marine mammals and fish are limited, therefore conclusive opinions on the potential impacts from the quarry (i.e. blasting) on these species cannot be made at this time. Given the low frequency of blasting (once every two weeks) and the mitigation measures proposed (monitoring for whales prior to blasting), it is expected that any impacts would be minimal. However, given the uncertainties, DFO has requested that monitoring be conducted

on behavioural impacts to marine mammals (particularly for species at risk) and for any impacts on lobster if the project proceeds. Monitoring for impacts on species at risk is also a requirement of the *Species at Risk Act*.

- The Panel Hearings began in Digby on June 16, 2007 and ended on June 30, 2007. The hearings were attended by members of the public, various non-governmental organizations, Aboriginal organizations, political organizations and various levels of government. DFO presented to the Panel on June 20 on the potential impacts on fish habitat from: blasting on marine mammals, fish and lobster; shipping impacts on marine mammals; invasive species; and construction activities.
- The Panel and the public asked questions of the ten representatives from DFO, including those from Science, Habitat Protection and Sustainable Development, Oceans and Coastal Management, and the Area Office Conservation and Protection. DFO staff were able to respond to all questions.
- At the conclusion of the presentation, DFO was asked by the Panel to provide additional information on lobster catches in the area, species listed under SARA potentially found in the area and how they may be impacted by the project, and an assessment of the ecological risk of blast residues in the marine environment. The information was provided to the Panel prior to the end of the hearings.

Analysis / DFO Comment

- DFO's presentation focused on the potential environmental impacts of the project and the EIS information shortcomings. The main issues noted during the presentation were limitations with the blast noise propagation models, limited knowledge of behavioural impacts of noise on marine mammals and uncertainty of the impacts of blasting on lobster. It was recommended that additional monitoring for noise and impacts of noise was required if this project were to proceed.
- The presentation was well received by the Panel as the Panel Chair noted at the end of DFO's session, "It has been extremely useful to us and very valuable." The local community group opposed to the project posted the following comment on its website after DFO's presentation: "There was some other really interesting stuff today. A lot of it came from the Department of Fisheries and Oceans."
- DFO's presentation and the transcripts of the hearings can be found at: http://www.ceaa.gc.ca/010/0001/0001/0023/hearings_e.htm.

Recommendations / Next Steps

- The Joint Review Panel has concluded the information-gathering necessary to complete its report to governments. The report will outline the Panel's conclusions on the environmental assessment and will be submitted to the federal Environment Minister and the provincial Minister of Environment and Labour on or before October 13th.
- If the project proceeds, the department will be involved in assisting and reviewing monitoring plans for blast noise and its potential effects on marine mammals and lobsters, as well as other aspects of the project related to DFO's mandate.

(original signed by:)

Faith G. Scattolon

M. McLean / M. Murphy / lj