

MEMORANDUM FOR THE MINISTER

**UPDATE ON THE JOINT PANEL REVIEW REPORT
FOR THE WHITES POINT QUARRY AND MARINE TERMINAL PROJECT**

(Information Only)

SUMMARY

- On March 24, 2003, Fisheries and Oceans Canada (DFO) received Bilcon of Nova Scotia Corporation's (the proponent) project description, consisting of a 152-hectare basalt quarry, processing facility and marine shipping terminal at White's Point, Digby County, Nova Scotia.
- DFO and Transport Canada (TC) are Responsible Authorities (RAs) for the Environmental Assessment (EA) by virtue of their regulatory responsibilities under the *Fisheries Act* and *Navigable Waters Protection Act* (NWPA) related to the proposed marine terminal component of the proposal.
- On June 26, 2003, DFO as lead RA referred the Whites Point Quarry and Marine Terminal Project to the Minister of the Environment for a referral to a review panel pursuant to sub-section 21(b) of the *Canadian Environmental Assessment Act* (CEAA). A federal-provincial EA was conducted by a Joint Review Panel (the Panel). RA's and other federal departments provided technical advice to the Panel.
- The Panel Report was just released to the public on October 23, 2007. The Panel recommended that the Nova Scotia Minister of Environment and Labour reject the White's Point Quarry and Marine Terminal proposal and recommended to the Government of Canada (GoC) that the Project is likely to cause adverse environmental effects that cannot be justified in the circumstances.
- DFO, as an RA, along with TC, are required to lead the GoC's Response to the Joint Panel Report. The Province of Nova Scotia has indicated that they will be issuing their decision before November 22, 2007, (possibly as early as November 15th). Your office has indicated a desire to proceed with the federal response as quickly as possible. The federal government decision process requires that we obtain Cabinet approval on the GoC Response. DFO, TC and the Canadian Environmental Assessment Agency (the Agency) are working on developing a Memorandum to Cabinet on the GOC's Response.
- We would be pleased to provide you with an oral briefing at your convenience.

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Background

- DFO determined that the proposed construction of the marine terminal would likely cause a harmful alteration, disruption or destruction 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 NWPFA. These regulatory requirements are triggers for an EA under the CEAA.
- The proposal is also subject to an Environmental Impact Assessment (EIS) under the *Nova Scotia Environment Act*. On March 31, 2003, both levels of government agreed to a joint federal-provincial EA process. In June 2003, the then Minister of Fisheries and Oceans 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 Panel announced the beginning of the comment review period on the adequacy of the EIS filed by Bilcon of Nova Scotia Corporation. The public was invited to submit written comments on the EIS by August 11, 2006. DFO provided comments on the EIS. The 36 pages of comments from DFO included concerns with the potential behavioral 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 Panel Hearings were held in Digby, N.S. between June 16, 2007 and June 30, 2007. DFO presented its technical advice and views to the Panel on June 20, 2007. The hearings were attended by members of the public, various non-governmental organizations, Aboriginal organizations, political organizations and various levels of government.

Analysis / DFO Comment

- The Panel released its report on October 23, 2007. The Panel found that the project would have a significant adverse effect on a valued environmental component represented by the "core values" of the affected communities. The Panel concluded, based on an analysis of the burdens and benefits, that the burdens outweighed the benefits and that it would not be in the public interest to proceed with the Whites Point Quarry and Marine Terminal development.
- The first recommendation from the Panel is directed at the provincial Minister of Environment and Labour to reject the proposal and at the GoC recommending that the Project is likely to cause significant adverse environmental effects that cannot be justified in the circumstances. Of the remaining six panel recommendations, four were directed at Nova Scotia to improve its planning processes, consultation and quarry regulations; one was directed at the Agency with respect to developing guidance on adaptive management; and the last recommendation was directed at TC regarding the need to revise ballast water regulations. .../3

Recommendations / Next Steps

- DFO, as a Responsible Authority under CEAA, along with TC, are required to lead the GoC's Response to the Panel Report. Provincial officials have indicated that an announcement would be desirable prior to November 22, 2007, (the start date of the provincial legislature) and possibly as early as November 15th 2007. Provincial officials anticipate that the recommendation to the Minister of Environment and Labour will be to accept the Panel's conclusion to reject the proposal. The provincial decision process is simply a decision made by the provincial Minister of Environment and Labour.
- Your office has indicated a desire to proceed with the federal response as quickly as possible. Coinciding the federal announcement with the provincial announcement poses some challenges for the federal government since the federal process requires that we obtain Cabinet approval on the GoC Response which typically requires several months to complete. In this case a Memorandum to Cabinet along with the federal response would need to be ready early next week for an interdepartmental meeting and then Cabinet committee meetings the following week.
- DFO, TC and the Agency are currently working on developing a Memorandum to
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- Since the Province of Nova Scotia has ultimate jurisdiction over the development of its natural resources, a decision announcement first by Nova Scotia followed later by a supporting decision announcement by the federal government would be considered appropriate in this case. Cabinet approval of the GoC's Response could be forthcoming within a reasonable timeframe following the Provincial decision announcement.

Michelle d'Auray

S. Dean / B. Hood / G. Flood/D. McBain/W. Moore/ jp



Government of Canada
Fisheries and Oceans

Gouvernement du Canada
Pêches et Océans

MECTS # 2007-005-00585

To: Michelle d'Auray
Pour:

Date:

Object: UPDATE ON THE JOINT PANEL REVIEW REPORT
FOR THE WHITES POINT QUARRY AND MARINE TERMINAL PROJECT

[Objet:

From / De: David McBain, DG

Via: Wayne Moore, A/ADM / SMA

Your Signature
Votre signature

Information

For Comments
Observations

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POINT-DIGBY QUARRY\MEMO FOR MINISTER_ OCT 26 2007 - WPQ EA PANEL
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