



## DRAFT PERMITTING PLAN FOR THE MARTEN FALLS COMMUNITY ACCESS ROAD PROJECT IMPACT ASSESSMENT December 19, 2019

### 1. Introduction

On November 29, 2019, the Impact Assessment Agency of Canada (the Agency) determined that an impact assessment is required for the Marten Falls Community Access Road Project pursuant to subsection 16(1) of the *Impact Assessment Act*.

This draft Permitting Plan was developed by the Agency to outline the permits, licences and authorizations (regulatory instruments) that may be required for the project should the Minister of the Environment and Climate Change issue a decision statement to the proponent with enforceable conditions to allow the project to proceed.

The Agency may revise the Permitting Plan during the impact assessment process in response to new information or advice from the proponent, regulators, jurisdictions or other participants in the process, and in order to accommodate any changes with respect to the project that may occur during the assessment.

### 2. Description of the Marten Falls Community Access Road Project

Marten Falls First Nation is proposing the construction and operation, including maintenance, of an all-season multi-use community access road approximately 190 to 230 kilometres in length, connecting the northern end of Painter Lake forestry road to the community of Marten Falls. Marten Falls First Nation is located at the junction of the Albany and Ogoki rivers, approximately 170 kilometres northeast of Nakina, Ontario. As proposed, the Marten Falls Community Access Road Project could enable future access to potential mineral development activities in the Ring of Fire area.

### 3. Required Regulatory Instruments Identification and Justification

According to the Detailed Project Description submitted by the proponent to the Agency on November 9, 2019, regulatory instruments may be required for the project should it receive a decision statement from the Minister of Environment and Climate Change that allows the proponent to proceed. The procedural aspects are summarized in section 7 of this plan.

#### **Authorization under paragraphs 34.4(2)(b) or 35(2)(b) of the *Fisheries Act***

Works, undertakings or activities affecting fish and fish habitat include installation of water crossings (e.g. bridges or culverts), which may cause changes to water flows and fish passage (harmful alteration), disruption of fish habitat during construction, destruction of fish habitat as a result of excavation and/or infilling, introduction of sediment to waterbodies or watercourses, and death of fish. Some activities may require authorization under the *Fisheries Act*.

#### **Licence for explosives and magazines under subsection 7(1) of the *Explosives Act***

Explosives storage, primarily for the development of quarries, are proposed for this project. Surface magazines at mine sites or quarries are licensed by the Ministry of Labour in Ontario, as is the use of explosives. Magazines in other locations are licensed by NRCAN under subsection 7(1)(a) of the *Explosives Act*.

The proponent has not indicated the need for a Factory Licence, which would be required for the manufacturing of explosives.

#### **Approvals under the *Canadian Navigable Waters Act***

Approval is not required for minor works (section 4(1)). Approval is required for major works on any navigable waterway, whether it is listed on the Schedule to the Act or not (section 5(1)(a)). Approval is required for works, other than a minor work, on a navigable waterway listed on the Schedule (section 5(1)(b)). Works, other than a minor work or a major work, on a navigable waterway not listed in the Schedule to the Act require either approval (section 10(1)(a)) or notice and deposit (section 10(2)(b)). A Governor in Council exemption (section 24) is required for depositing of stone in navigable waterways or any waterway that flows into a navigable waterway (section 22) and for dewatering or lowering of water levels on any navigable waterway (section 23).

### **Permit for use of Indigenous Lands under subsection 28(2) of the *Indian Act***

A permit may be required for the non-exclusive use and occupation of a portion of reserve land for the purpose of construction, operating and maintaining the road and right of way.

### **Authorization under paragraph 73(1) of the *Species at Risk Act***

A permit is required by those persons conducting activities affecting species listed on Schedule 1 of the *Species at Risk Act* as Extirpated, Endangered, or Threatened and which contravene the Act's general prohibitions where they are in force. These project activities include, but are not limited to: species surveys, site preparation, construction of temporary and permanent works and infrastructure, activities that create sensory disturbances (e.g., noise, artificial lighting, vibration, vehicular traffic), vehicular traffic during all project stages, creation of new roads, rail lines or powerlines, infilling of wetlands and watercourses, and any monitoring that requires capture or release of individuals.

## **4. Information on Required Regulatory Instruments**

### **4.1. Authorization under paragraphs 34.4(2)(b) or 35(2)(b) of the *Fisheries Act***

#### **4.1.1. Description**

This authorization is the responsibility of Fisheries and Oceans Canada (DFO).

Subsection 34.4(1) of the *Fisheries Act* states: No person shall carry on any work, undertaking or activity, other than fishing, that results in the death of fish. Under paragraph 34.4(2)(b) of the *Fisheries Act*, the Minister of Fisheries, Oceans, and the Canadian Coast Guard may issue an authorization with conditions relating to the carrying on of the work, undertaking or activity.

Subsection 35(1) of the *Fisheries Act* prohibits carrying on any work, undertaking or activity that results in the harmful alteration, disruption or destruction of fish habitat. However, under paragraph 35(2)(b) of the *Fisheries Act*, the Minister of Fisheries, Oceans, and the Canadian Coast Guard may issue an authorization with conditions relating to the carrying on of the work, undertaking or activity that results in harmful alteration, disruption and destruction to fish habitat.

#### **4.1.2. Regulatory Process**

##### **4.1.2.1. *Application Submission***

In order to seek an authorization<sup>1</sup> under paragraph 34.4(2)(b) and/or paragraph 35(2)(b) of the *Fisheries Act*, the proponent must submit an application to the Minister of Fisheries, Oceans, and the Canadian Coast Guard in accordance with the *Authorizations Concerning Fish and Fish Habitat Protection Regulations* (hereafter the Regulations). This application is transmitted to the relevant regional office of Fisheries and Oceans Canada.

The Regulations are in place to identify the information and documentation that must be submitted in an application for authorization. Among others, the following information is required when submitting an application:

- description of proposed work, undertaking or activity;
- phases and schedules;
- location (maps);
- description of fish and fish habitat (aquatic environment);
- description of effects on fish and fish habitat;
- measures and standards to avoid or mitigate death of fish or harmful alteration, disruption or destruction of fish habitat;
- residual death of fish or harmful alteration, disruption or destruction of fish habitat after the implementation of avoidance and mitigation measures;

<sup>1</sup> Transition provisions that apply to fish and fish habitat protection provisions—linked to the amended *Fisheries Act* in force on August 28, 2019—are not described in this document. Please consult the *Projects Near Water* website for more information or to contact the relevant DFO regional office (<https://www.dfo-mpo.gc.ca/pnw-pppe/index-eng.html>).

- offsetting plan (if required);
- summary of public and Indigenous engagement activities; and
- financial guarantee to cover the cost for the implementation of the offsetting plan.

#### 4.1.2.2. *Application Analysis and Consultation*

The second stage consists of the review of the information and documentation submitted in the application for completeness and adequacy. This review must be undertaken within 60 days of receipt of the application. If the application is incomplete or inadequate, the applicant will be informed and provided an opportunity to provide the information or documentation to complete the application. Once the application is deemed complete and adequate, the applicant will be notified.

#### 4.1.2.3. *Regulatory Decision*

The authorization decision under the *Fisheries Act* is made during the 90-day period following the notification of receipt of a complete and adequate application, assuming that the Minister's decision statement relative to the impact assessment is posted on the Canadian Impact Assessment Registry Internet Site (the Registry) at this time. The process for reviewing the application can be ceased under certain circumstances, which may include: awaiting the outcome of other federal requirements, such as a federal impact assessment; addressing requirements under the *Species at Risk Act*; consultation with Indigenous peoples relative to the potential effects of the authorization decision on Aboriginal and treaty rights; and additional or amended information required to make the decision.

#### 4.1.3. References

*Fisheries Act (R.S.C. 1985, c F-14)*. [https://laws-lois.justice.gc.ca/eng/acts/F-14/Authorizations\\_Concerning\\_Fish\\_and\\_Fish\\_Habitat\\_Protection\\_Regulations\\_\(SOR/2019-286\)](https://laws-lois.justice.gc.ca/eng/acts/F-14/Authorizations_Concerning_Fish_and_Fish_Habitat_Protection_Regulations_(SOR/2019-286).). <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-286/index.html>  
*An Applicant's Guide to Support the Authorizations Concerning Fish and Fish Habitat Protection Regulations*. <https://www.dfo-mpo.gc.ca/pnw-ppe/reviews-revues/applicants-guide-candidats-eng.html>

#### 4.1.4. Contact Information

For more detailed guidance on this authorization, please contact the DFO Fish and Fish Habitat Protection Program:

Fish and Fish Habitat Protection Program - Linear Development  
 Fisheries and Oceans Canada  
 650-2010 12th Avenue  
 Regina, SK S4P 0M3  
 Email: DFO.CA\_Linear\_Development-Developpement\_Lineaire\_CA.MPO@dfo-mpo.gc.ca

## 4.2. **Approval of works under the Canadian Navigable Waters Act**

### 4.2.1. Description

Transport Canada is the lead department for the administration of the *Canadian Navigable Waters Act* (CNWA), where the Minister of Transport is responsible for the approval of works that may interfere with navigation. The mandate of the CNWA is focused on assessing impacts of a work/project on navigation.

The CNWA requires owners of "works" to comply with requirements of the Act for the protection of navigation on navigable waters. As per section 2 of the CNWA, a work includes "(a) any structure, device or other thing, whether temporary or permanent, that is made by humans, including a structure, device or other thing used for the repair or maintenance of another work; and (b) any dumping of fill in any navigable water, or any excavation or dredging of materials from the bed of any navigable water." Examples of works include dams, bridges, weirs, causeways, aerial cables, and ferry cables

The CNWA uses a list of waterways (known as the "Schedule") to identify navigable waters where project proponents must apply to Transport Canada for approval. The current Schedule lists 189 navigable waters, including three oceans. There are

different requirements for owners of works regarding approvals, deposit of information and public notice depending on the type of work, and if the work is located on a navigable water listed on the Schedule. With any application to Transport Canada, the owner is required to deposit information on the proposed work, and to invite interested persons to provide written comments on the owner's proposal to the Minister within 30 days after publication of the notice, or within any other period specified by the Minister. If the owner chooses not to apply to Transport Canada for approval of works, other than a minor work or a major work, on navigable waterways not listed on the Schedule, the owner is instead required to deposit information on the proposed work, and to invite interested persons to provide written comments. This deposit and notice public resolution process requires a 30 day comment period. For works that do not interfere with navigation, the owner is required to deposit information on Transport Canada's registry and publish a public notice (a 30 day comment period is not required).

Before issuing an approval, the Navigation Protection Program is required by law to consider the following assessment factors:

- the characteristics of the navigable water in question;
- the safety of navigation in that navigable water;
- the current or anticipated navigation in that navigable water;
- the impact of the work on navigation, including as a result of its construction, placement, alteration, rebuilding, removal, decommissioning, repair, maintenance, operation or use (this includes impacts of construction methodology, including temporary works, on navigation);
- the impact of the work, in combination with other works, on navigation, if the Minister is provided with, or has in his or her possession, information relating to that cumulative impact;
- any Indigenous knowledge that has been provided to the Minister;
- any comments that he or she receives from interested persons within the period provided for under subsection (4);
- the record of compliance of the owner under this Act; and
- any other information or factor that he or she considers relevant.

The Navigation Protection Program attaches terms and conditions to the approval of a work to mitigate risks to navigation.

#### *4.2.1.1. Major Works and in any Navigable Water*

As per section 5(1)(a) of the CNWA, owners of major works on any navigable waterway, whether it is listed on the Schedule to the Act or not, are required to apply to Transport Canada. The following classes of works established in the Major Works Order, which are designated as likely to substantially interfere with navigation on any navigable water:

- Water control structures;
- Bridges;
- Ferry cables;
- Causeways; and
- Aquaculture facilities.

#### *4.2.1.2. Works in navigable waters listed on the Schedule*

A schedule of waterways is established under the CNWA to identify navigable waters where project proponents must apply to Transport Canada. As per section 5(1)(b) of the CNWA, the owner of a work - other than a minor work - in, on, over, under, through or across any navigable water that is listed in the schedule, which may interfere with navigation, must apply to Transport Canada.

#### *4.2.1.3. Works in navigable waters not listed on the Schedule*

- Owners of works - other than a minor work or a major work – in, on, over, under, through or across a navigable water that is not listed in the schedule, which may interfere with navigation, have the option to:
  - (a) either apply to the Minister of Transport for CNWA approval (section 10(1)(a)); or
  - (b) conduct a public resolution process by depositing information and publishing a public notice (section 10(1)(b))

- Owners of works - other than a minor work or a major work – in, on, over, under, through or across a navigable water that is not listed in the schedule, which would not interfere with navigation may proceed if (section 9.1):
  - (a) the work, or its construction, placement, alteration, rebuilding, removal or decommissioning, would not interfere with navigation; and
  - (b) the owner deposits information and publishes a public notice before beginning the construction, placement, alteration, rebuilding, removal or decommissioning of the work.

#### 4.2.2. Regulatory Process

##### *4.2.2.1. Application Submission*

The proponent must apply under the CNWA with an Application for Approval, along with all required documents. The application process is done online through Transport Canada’s web-based External Submission Site. The submission timing depends on the proponent who should consider their operational needs and the time required to process the application. The proponent shall describe the proposed work that could affect navigation and potential alternatives and mitigation strategies to ensure continued navigability.

The minimum information needed to apply for an approval is:

- a completed Application for Approval;
- a map showing the work’s exact project location;
- the legal site description and position of the work in latitude and longitude;
- the plan view drawings (top down) with all related dimensions;
- the profile view drawings (side view) with all related dimensions;
- the general arrangement drawing (depicting new and entire existing work);
- a detailed project description;
- the construction methodology explaining how the work will be done; and
- the expected start and end dates.

Transport Canada will assess both the nature and degree of the potential interference. For Navigation Protection Program purposes, “nature” identifies the source of the interference and “degree” indicates the severity of potential navigation impacts. Transport Canada will look at a variety of factors, including:

- Characteristics of the navigable water;
- Safety of navigation;
- Current or anticipated navigation in the navigable water;
- Impact of the work on navigation in that navigable water as a result of its construction, placement, alteration, repair, rebuilding, removal, decommissioning, maintenance, operation or use (this includes impacts of construction methodology, including temporary works, on navigation);
- the impact of the work, in combination with other works, on navigation, if the Minister is provided with, or has in his or her possession, information relating to that cumulative impact;
- any Indigenous knowledge that has been provided to the Minister;
- any comments that he or she receives from interested persons within the period provided for under subsection (4);
- the record of compliance of the owner under this Act; and
- any other information or factor that he or she considers relevant.

##### *4.2.2.2. Application Analysis and Consultation*

The request is then analyzed by Transport Canada to see if the file is complete and if the work will have an impact on navigation. Transport Canada may conduct a site visit and may request additional information.

Transport Canada will also consult with the public and Indigenous groups. Transport Canada will seek information regarding potential negative impacts on potential or established Aboriginal or treaty rights related to Transport Canada's conduct. Information may be provided by the proponent or by Indigenous groups, if possible as part of the federal IA process or, if this is not possible, through departmental Indigenous consultation processes.

Upon receipt of a completed application, the Minister of Transport may issue a decision under the CNWA during the 90-day period following the Minister of Environment and Climate Change's decision relative to the impact assessment if the CNWA application and review process is complete by the time the impact assessment decision is taken. The Minister of Transport may issue terms and conditions with an approval of a work to mitigate navigation safety risks and protect the public right to navigation.

#### 4.2.3. References

*Canadian Navigable Waters Act (R.S.C., 1985, c. N-22)*. <https://laws.justice.gc.ca/eng/acts/N-22/>  
*A Guide to the Navigation Protection Program's Notification, Application and Review Requirements*.  
<https://www.tc.gc.ca/eng/programs-673.html>  
*Apply to the Navigation Protection Program*. <https://www.tc.gc.ca/eng/programs-623.html>

#### 4.2.4. Contact Information

For more detailed guidance on the CNWA approval process, please contact the Transport Canada office in Ontario.

Navigation Protection Program  
Transport Canada, Marine Office  
100 South Front Street, 1st Floor  
Sarnia, ON N7T 2M4  
Phone: 519-383-1863  
Fax: 519-383-1989  
Email: NPPONT-PPNONT@tc.gc.ca

### **4.3. Licence for explosives and magazines under subsection 7(1) of the *Explosives Act***

#### 4.3.1. Description

This licence is the responsibility of Natural Resources Canada (NRCan).

Under section 6 of the *Explosives Act*, it is prohibited to make or manufacture any explosive, either wholly or in part, except in a licensed factory or to store any explosive in a magazine that is not a licensed magazine.

Under subsection 7(1), the Minister may issue licences for factories and magazines.

The Minister may make any licence, permit or certificate referred to in subsection 7(1) subject to any term or condition (in addition to those prescribed by the regulations) that the Minister considers necessary for the safety of any person or property, including, without limiting the generality of the foregoing, compliance with security or safety standards in respect of any factory or magazine or any class thereof that are supplementary to but not inconsistent with those provided for under paragraph 5(g.1).

#### 4.3.2. Regulatory Process

##### 4.3.2.1. Application Submission

Companies or individuals requiring licences for user magazines should submit applications to the Explosives Regulatory Division of NRCan based on guidelines and standards available on NRCan's website<sup>2</sup>.

An application for a user magazine licence requires site, magazine and explosives information including:

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<sup>2</sup> <https://www.nrcan.gc.ca/application-forms-fees-acquisition-storage-sale/9835>

- type and size of magazine;
- the maximum quantity and types of explosives to be stored; and,
- distances between magazines and vulnerable places (e.g, public highways/waterways, other magazines, dwellings, bulk storage of flammable substances).

Minimum required distances between explosives magazines and vulnerable places are determined by the quantity and type of explosives stored according to Quantity Distance Principles.

Applications for user magazine licences may also include a Criminal Record Check or equivalent, and Fire Safety Plan and Security Plan. Applications and fee payments are submitted through an online Electronic Licence Management System (eLMS) or through the Division's four regional offices.

#### 4.3.2.2. *Application Analysis*

Inspectors with the Explosives Regulatory Division review applications and will contact applicants in cases of incomplete information.

#### 4.3.2.3. *Regulatory Decision*

Once an impact assessment decision has been rendered and a Notice of Decision has been posted on the Canadian Impact Assessment Registry, NRCan may issue a license for a user magazine(s) within 30 days following receipt of a complete application.

#### 4.3.3. References

*Explosives Act (R.S.C., 1985, c. E-17)*. <https://laws-lois.justice.gc.ca/eng/acts/E-17/>  
*Explosives Regulations, 2013 (SOR/2013-211)*. <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2013-211/index.html>  
*Standard, Explosives-Magazines for Industrial Explosives, 2015, Canada/Bureau de Normalisation du Québec*.  
<https://www.bnq.qc.ca/en/standardization/protection-and-safety/magazines-for-industrial-explosives.html>  
*Standard, Explosives-Quantity Distances, 2015, Canada/Bureau de Normalisation du Québec*.  
<https://www.bnq.qc.ca/en/standardization/protection-and-safety/explosives-quantity-distances.html>

#### 4.3.4. Contact Information

For more detailed guidance on this licence, please contact Headquarters, Explosives Regulatory Division, Explosives Safety and Security Branch:

588 Booth Street, 4th Floor  
 Ottawa, ON, K1A 0E4  
 Tel.: 613-948-5200  
 Fax: 613-948-5195  
 Email: [ERDmms@nrcan.gc.ca](mailto:ERDmms@nrcan.gc.ca)

### 4.4. **Permit for Use of Indigenous Lands under the *Indian Act***

#### 4.4.1. Description

Under subsection 28(2) of the *Indian Act*, the Minister of Indigenous Services, may by permit in writing, authorize any person for a period not exceeding one year, or with the consent of the council of the band for any longer period, to occupy or use a reserve or to reside or otherwise exercise rights on a reserve.

#### 4.4.2. Regulatory Process

##### 4.4.2.1. *Negotiation of the Terms of the Permit and Band Council Resolution*

Negotiation of the terms of the permit between the Band and the proponent depends on resolution of the issues between the

parties. The mitigation measures set out in the Impact Assessment Report might have to be incorporated into the permit, whether as schedule(s) to the permit or as special term(s). The Band Council Resolution may advise Indigenous Services Canada that negotiations are underway and may request for a standard template of the permit (e.g., permit for access, utility, etc.). The terms should be negotiated in advance of requesting Indigenous Services Canada to issue a permit, and may be negotiated in advance of the Impact Assessment Report.

The Band Council votes a resolution requesting Indigenous Services Canada to issue a permit.

#### 4.4.2.2. *Preparation and Review of the Permit*

Indigenous Services Canada prepares the draft permit for the purposes of review and comments by the Band and the proponent. It may take a minimum of 4 to 6 weeks to negotiate the terms of the permit, depending on the complexity. Survey requirements must also be met, as described in “Chart A – Guideline for Minimum Land Description Requirements” of the *Indian Lands Registration Manual*.

The Band Council, the proponent and their respective legal counsel review the draft permit and formulate comments on this subject. It should be noted that the Band and the proponent negotiate the crucial aspects of the permit, but that Indigenous Services Canada must approve the permit.

#### 4.4.2.3. *Band Council Resolution and Regulatory Decision*

The Band Council publishes a resolution to give its consent to the final form of the permit. Indigenous Services Canada makes its regulatory decision after the Minister of Environment and Climate Change’s decision statement.

#### 4.4.3. References

*Indian Act (R.S.C., 1985, c. I-5)*. <https://laws-lois.justice.gc.ca/eng/acts/I-5/>

*Indian Lands Registration Manual*. <https://www.aadnc-aandc.gc.ca/eng/1100100034806/1100100034808#ChartA>

#### 4.4.4. Contact Information

For more detailed guidance on this permit, please contact the Ontario regional office:

Indigenous Services Canada  
100 Anemki Place Suite 101  
Fort William First Nation ON P7J 1A5  
Tel: 807-623-3534  
Fax: 807-623-3536  
Email: [aadnc.infopubs.aandc@canada.ca](mailto:aadnc.infopubs.aandc@canada.ca)

### 4.5. **Permit under the *Species at Risk Act***

#### 4.5.1. Description

Permits are required by those persons conducting activities affecting species listed on Schedule 1 of the *Species at Risk Act* (SARA) as Extirpated, Endangered, or Threatened and which contravene the Act’s general prohibitions where they are in force.

Pursuant to sections 32 and 33 of SARA (general prohibitions), it is prohibited to:

- kill, harm, harass, capture or take an individual of a species listed under SARA as extirpated, endangered or threatened;
- possess, collect, buy, sell or trade an individual of a species listed under SARA as extirpated, endangered or threatened, or any part or derivative of such an individual;
- damage or destroy the residence of one or more individuals of a listed endangered or threatened species or of a listed extirpated species if a recovery strategy has recommended its reintroduction into the wild in Canada.



The general prohibitions apply to federal species (migratory birds, as defined by the *Migratory Birds Convention Act, 1994*, and aquatic species covered by the *Fisheries Act*) everywhere in Canada and to other listed species where found on federal land. Permits are also required by those persons conducting activities that contravene the Act's critical habitat destruction prohibitions (subsection 58(1)). Prohibitions may be in force on land other than federal land pursuant to other orders or regulations under SARA including, but not limited to, under s.34, 53, 59, 61, 71 and 80.

Under section 73, the competent minister may enter into an agreement or issue a permit authorizing a person to engage in an activity affecting a listed wildlife species, any part of its critical habitat, or the residences of its individuals if the proposed activity falls under one or more of the following purposes:

- (a) the activity is scientific research relating to the conservation of the species and conducted by qualified persons;
- (b) the activity benefits the species or is required to enhance its chance of survival in the wild;
- (c) affecting the species is incidental to the carrying out of the activity.

Responsibility for implementing SARA in Canada lies with the Ministers responsible for Environment and Climate Change Canada (ECCC), Parks Canada Agency (PCA), and Fisheries and Oceans Canada (DFO).

- DFO is responsible for issuing permits for aquatic species (as defined by SARA), other than species in waters found on federal lands administered by the Parks Canada Agency.
- PCA is responsible for issuing permits for species that occur on federal lands administered by the Agency, including aquatic species (as defined by SARA) as well as terrestrial species.
- ECCC is responsible for issuing permits for all listed species not described above. This includes for all terrestrial species on federal land and any land affected by a SARA protection order, and for migratory birds wherever they are found.

#### 4.5.2. Regulatory Process

##### *4.5.2.1. Application Analysis and Consultation*

An analysis of the application is conducted by ECCC, PCA, or DFO upon receipt of the application, although there may be occasions when the reviewing department or agency will require additional information. A focus of the analysis is on how the application meets the pre-conditions listed under subsection 73(3). Authorizations may be issued only if the competent minister is of the opinion that all three of the following pre-conditions are met:

- (a) all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted
- (b) all feasible measures will be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals
- (c) the activity will not jeopardize the survival or recovery of the species

During this analysis stage, and before the regulatory decision, ECCC may undertake additional Indigenous consultations, as required under s. 73(4) and s. 73(5).

##### *4.5.2.2. Aquatic Species at Risk*

SARA Permits for aquatic species at risk must be obtained from DFO. An "aquatic species" under SARA includes:

- Fish, shellfish, crustaceans and marine animals including any parts thereof;
- all of their life stages, such as eggs, sperm, spawn, larvae, spat and juvenile stages of fish; and
- marine plants, including algae and phytoplankton.

To seek a permit under SARA from DFO, the proponent must submit an application to the Fish and Fish Habitat Protection Program (contact information found in section 4.1.4 of this document). The timing of when the application is submitted is determined by the proponent. If the proponent is also seeking a *Fisheries Act* Authorization, the process to apply for a SARA

permit can be combined with the process to seek a *Fisheries Act* Authorization.

#### 4.5.2.3. *Non-Aquatic Species at Risk*

Proponents must submit an application to the competent minister in a manner and form that is satisfactory to that minister. The following information is required in the application:

- Names of listed species that will be affected.
- Description, purpose (research, benefit for species, or incidental) and objective of activity.
- Detailed location of the activity (maps, UTM coordinates, border number for archeological sites, latitude and longitude coordinates)
- Planned start and end dates.
- A description of: field collection methods, study techniques, project design, animal handling activities.
- Supporting documentation, such as information provided as part of environmental assessments, industry standards, and research protocols, etc.
- When applicable, copies of other relevant permits, authorization (e.g., provincial permits, Canadian Council on Animal Care approved animal protocols or equivalent).
- Documentation in support of the project from the Band Council, or First Nation if it takes place on a reserve or any lands managed or owned by Crown-Indigenous Relations and Northern Affairs Canada.
- Any information that the applicant may have on whether asserted aboriginal rights could be affected and any consultation/engagement work that they have done with Indigenous Peoples.
- An explanation of any uncertainty associated with the impacts of the project on the species, its critical habitat or the residences of its individuals and the effectiveness of any proposed mitigation measures.

#### 4.5.2.4. *Regulatory Decision*

The *Permits Authorizing an Activity Affecting Listed Wildlife Species Regulations* specify that the competent minister must issue a permit or notify the applicant that the permit has been refused within 90 days following the receipt of the application. This time limit is suspended if the application is incomplete and the applicant is notified. The time limit suspension ends when all the information is received from the applicant.

The Regulations also specify that the 90-day time limit does not apply in the following circumstances:

- Additional consultations are necessary, including consultations with wildlife management boards and bands under the *Indian Act* which are required by subs. 73(4) and (5) of SARA;
- Another Act of Parliament or land claims agreement requires that a decision be made before the competent minister issues or refuses to issue a permit.;
- The terms and conditions of a permit previously issued to the applicant have not been met;
- The applicant requests or agrees that the time limit not apply; or
- The activity described in the permit application is modified before the permit is issued or refused.

For activities requiring a decision under the IAA, permit applications are not subject to the 90-day timeline because another Act of Parliament requires that a decision be made before the competent minister issues or refuses to issue a SARA permit. These applications can be reviewed concurrently with the impact assessment to facilitate alignment of the authorization securing processes.

If wildlife surveys are necessary to obtain more baseline information about SARA listed species at risk that may be impacted by a project, SARA permits may be required if these surveys affect individuals of species, their residence or critical habitat (for example, if they require capture, handling, fencing, baiting, disturbing of normal behaviour, etc.). Permit applications for these baseline surveys would be subject to the 90-day timeline.

It is the proponent's responsibility to identify and carry out all species at risk surveys necessary to support the permit application and review, and to monitor for additional species being listed during the planning of their project. Proponents are invited to consult early with the CWS on survey plans.

#### 4.5.3. References

*Species at Risk Act (S.C. 2002, c. 29).* <https://laws-lois.justice.gc.ca/eng/acts/S-15.3/>  
*Permits Authorizing an Activity Affecting Listed Wildlife Species Regulations (SOR/2013-140).* <https://laws-lois.justice.gc.ca/eng/regulations/SOR-2013-140/index.html>  
*Permitting under the Species at Risk Act for aquatic species at risk.* <https://www.dfo-mpo.gc.ca/species-especes/sara-lep/permits-permis/index-eng.html>  
*Permits, agreements and exceptions for Species at Risk Act.* <https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/permits-agreements-exceptions.html>  
*SARA E-permitting System.* <https://wildlife-species.canada.ca/SPLEP-SARAPS/index.cfm?fuseaction=home.main&lang=En>  
*Guidelines for Permitting Under Section 73 of the Species at Risk Act.* <https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/policies-guidelines/permitting-under-section-73.html>

#### 4.5.4. Contact Information

For more information on the Species at Risk permit for aquatic species, please contact the Fish and Fish Habitat Protection Program (details found in section 4.1.4 of this document).

For more information on the Species at Risk permit for non-aquatic species at risk, please contact the regional office of Canadian Wildlife Service:

Ontario Region  
Canadian Wildlife Service  
Environment and Climate Change Canada  
335 River Road  
Ottawa, Ontario, K1V 1C7  
Phone: (613) 990-8355  
Fax: (613) 990-8400  
E-mail: [ec.wildlife.ontario.ec@canada.ca](mailto:ec.wildlife.ontario.ec@canada.ca)

### **5. Interpretation**

This Permitting Plan is not a legal document and does not change any existing federal, provincial, or Indigenous legislative or regulatory jurisdiction, right, power, privilege, prerogative or immunity by virtue, nor does it create any new legal powers, duties or legally binding obligations.

### **6. Contact Information**

The Agency office designated for administering the impact assessment of the project is:

Impact Assessment Agency of Canada  
Ontario Regional Office  
55 York Street, 6th Floor  
Toronto, ON M5J 1R7  
Tel.: 416-952-1576  
Email: [IAAC.MartenFalls.AEIC@canada.ca](mailto:IAAC.MartenFalls.AEIC@canada.ca)

## 7. Summary Table – Anticipated Regulatory Activities

<b>Fisheries Act paragraphs 34.4(2)(b) or 35(2)(b)</b>						
		IMPACT ASSESSMENT (IA) PHASE				
ACTIVITY	RESPONSIBILITY	Planning	Impact Statement	IA	IA Decision	Post-IA Decision
Information gathering and consultation of the public and Indigenous peoples	proponent	X	X	X	X	X
Submission of application	proponent			X	X	X
Analysis of the information and application	Fisheries and Oceans Canada			X	X	X
Consultation of the public and Indigenous peoples	Fisheries and Oceans Canada			X	X	X
Regulatory decision	Fisheries and Oceans Canada					X

<b>Canadian Navigable Waters Act</b>						
		IMPACT ASSESSMENT (IA) PHASE				
ACTIVITY	RESPONSIBILITY	Planning	Impact Statement	IA	IA Decision	Post-IA Decision
Information gathering and consultation of the public and Indigenous peoples	proponent	X	X	X	X	X
Submission of application	proponent			X	X	X
Analysis of the information and application	Transport Canada			X	X	X
Consultation of the public and Indigenous peoples	Transport Canada			X	X	X
Regulatory decision	Transport Canada					X

<b>Explosives Act subsection 7(1)</b>						
		IMPACT ASSESSMENT (IA) PHASE				
ACTIVITY	RESPONSIBILITY	Planning	Impact Statement	IA	IA Decision	Post-IA Decision
Information gathering and consultation of the public and Indigenous peoples	proponent	X	X	X	X	X
Submission of application	proponent			X	X	X
Analysis of the information and	Natural Resources Canada			X	X	X
Consultation of the public and Indigenous peoples	Natural Resources Canada			X	X	X
Regulatory decision	Natural Resources Canada					X

<b>Indian Act subsection 28(2)</b>						
		IMPACT ASSESSMENT (IA) PHASE				
ACTIVITY	RESPONSIBILITY	Planning	Impact Statement	IA	IA Decision	Post-IA Decision
Information gathering and consultation of the public and Indigenous peoples	proponent	X	X	X	X	X
Submission of application	proponent			X	X	X
Analysis of the information and application	Indigenous Services Canada			X	X	X
Consultation of the public and Indigenous peoples	Indigenous Services Canada			X	X	X
Regulatory decision	Indigenous Services Canada					X

<b>Species at Risk Act section 73</b>						
		IMPACT ASSESSMENT (IA) PHASE				
ACTIVITY	RESPONSIBILITY	Planning	Impact Statement	IA	IA Decision	Post-IA Decision
Information gathering and consultation of the public and Indigenous peoples	proponent	X	X	X	X	X
Submission of application	proponent			X	X	X
Analysis of the information and application	DFO, ECCC, PCA			X	X	X
Consultation of the public and Indigenous peoples	DFO, ECCC, PCA			X	X	X
Regulatory decision	DFO, ECCC, PCA					X

DFO = Fisheries and Oceans Canada; ECCC = Environment and Climate Change Canada, PCA = Parks Canada Agency