



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Central and Arctic Region
520 Exmouth Street
Sarnia, Ontario
N7T 8B1

Région du centre et de l'arctique
520 rue Exmouth
Sarnia (Ontario)
N7T 8B1

MAY 02 2019

Your file Votre référence

Our file Notre référence

16-HCAA-01206

Picton Terminals Ltd. (ABNA Investments Ltd.)
Attention: Ben Doornekamp
588 Scotland Road
Odessa, ON KOH 2HO

Dear Mr. Doornekamp,

Subject: *Fisheries Act* Authorization

Pursuant to paragraph 35(2)(b) of the *Fisheries Act*, the Minister of Fisheries and Oceans Canada authorizes the carrying on of your proposed work, undertaking or activity that results in serious harm to fish arising from shoreline infill in Picton Bay Terminal. A paragraph 35(2)(b) *Fisheries Act* authorization is attached.

Failure to comply with any of the terms or conditions of the attached Authorization may lead to prosecution under the *Fisheries Act*.

A copy of this Authorization should be kept on site while the work is in progress and upon request be provided to relevant federal or provincial officials. Work crews should be familiar with, and able to adhere to, the conditions.

If you or anyone conducting work on your behalf has any questions, please contact Caroline Boros at 905-336-4435, or by email at caroline.boros@dfo-mpo.gc.ca.

Yours sincerely,

Scott Gilbert
A/Regional Director General
Central and Arctic Region
Fisheries and Oceans Canada

ATTACHMENT: *Fisheries Act* AUTHORIZATION

Canada



PARAGRAPH 35(2)(b) FISHERIES ACT AUTHORIZATION

Authorization issued to

Picton Terminals Ltd. (ABNA Investments Ltd.)
Attention: Ben Doornekamp
588 Scotland Road
Odessa, ON K0H 2H0

(hereafter referred to as the "Proponent")

Location of Proposed Project

Nearest community (city, town, village): Picton
Municipality, district, township, county: Prince Edward County
Province: Ontario
Name of watercourse, waterbody: Picton Bay, Lake Ontario
Latitude and Longitude Coordinates: 44°02'14" N, 77°07'46" W

Description of Proposed Project

The proposed project of which the work, undertaking or activity authorized is a part involves:

Infilling a portion of a privately leased water lot to facilitate the operation of the existing port. This shall be accomplished by installing a sheet pile wall around the existing 'dolphin' structures and backfilling with clean aggregate material.

Description of Authorized work(s), undertaking(s) or activity(ies) likely to result in serious harm to fish

The work(s), undertaking(s), or activity(ies) associated with the proposed project described above, that is likely to result in serious harm to fish, is:

- Infilling of the shoreline into the Bay of Quinte near Picton Bay.

The serious harm to fish likely to result from the proposed work(s), undertaking(s), or activity(ies), and covered by this authorization includes

- The destruction to a maximum of 620 square metres (m²) of fish habitat.

Conditions of Authorization

The above described work, undertaking or activity that is likely to result in serious harm to fish must be carried on in accordance with the following conditions.

1. **Conditions that relate to the period during which the work, undertaking or activity that will result in serious harm to fish can be carried on**

The work, undertaking or activity that results in serious harm to fish is authorized to be carried on during the following period:

From: **Date of Issuance** of the Authorization to **March 14, 2020**.

If the Proponent cannot complete the work, undertaking or activity during this period, Fisheries and Oceans Canada (DFO) must be notified in advance of the expiration of the above time period. DFO may, where appropriate, provide written notice that the period to carry on the work, undertaking or activity has been extended.

The periods during which other conditions of this authorization must be complied with are provided in their respective sections below. DFO may, where appropriate, provide written notice that these periods have been extended, in order to correspond to the extension of the period to carry on a work, undertaking, or activity.

2. **Conditions that relate to measures and standards to avoid and mitigate serious harm to fish**

2.1 Sediment and erosion control: Sediment and erosion control measures must be in place and shall be upgraded and maintained, such that release of sediment is avoided at the location of the authorized work, undertaking, or activity.

2.1.1 All erosion and sediment controls shall be in place and functioning around the area of planned daily work and offsetting activity prior to work commencing and shall be removed once the site is stabilized.

2.1.2 Erosion and sediment control measures shall be inspected daily and repaired or upgraded as required and temporary measures removed once the site is stabilized.

2.1.3 All fill material to be used in construction shall be clean and free of debris prior to placement.

2.2 List of measures and standards to avoid and mitigate serious harm to fish: Described below, and as set out in the proponent's plan for the Picton Terminals Project, Attachment AF4, received by email on February 23, 2017:

2.2.1 In-water works shall not be conducted from **March 15 to July 15** of any given year.

2.2.2 Visually monitor and ensure there are no fish present in the infilling project area during works.

2.2.3 In-water construction shall be conducted on calm days and staged to mitigate sediment moving off-site.

2.2.4 Machinery shall be washed, refueled and serviced in such a way as to prevent any deleterious substances from entering the water.

2.3 Contingency measures: Described below, and as set out in the proponent's plan for the Picton Terminals Project, Attachment AF4, received by email on February 23, 2017, shall be put in place if monitoring required in condition 3 below indicates that the measures and standards to avoid and mitigate serious harm to fish are not successful.

2.3.1 Should fish (dead or alive) be observed in the work area, works shall cease and fish shall be excluded and isolated from the work area prior to fill operations recommencing.

2.3.2 Should re-suspended sediment be observed migrating outside of the work site, work shall cease and the issue corrected prior to work recommencing.

- 2.4 Dates by which these measures and standards shall be implemented: Measures and standards to avoid and mitigate serious harm to fish shall be implemented prior to the commencement of the project and maintained through to completion of the project.
3. **Conditions that relate to monitoring and reporting of measures and standards to avoid and mitigate serious harm to fish**
- 3.1 Monitoring of avoidance and mitigation measures: The Proponent shall monitor the implementation of avoidance and mitigation measures referred to in section 2 of this authorization and report to DFO on or before April 30, 2020 and indicate whether the measures and standards to avoid and mitigate serious harm to fish were conducted according to the conditions of this authorization. This shall be done, by:
- 3.1.1 Demonstration of effective implementation and functioning: Over the implementation period of the works, provide dated photographs from the same vantage point(s), direction and angle of view with locations indicated on a plan view map; details of fishes captured and relocated; inspection reports to demonstrate effective implementation and functioning of mitigation measures (e.g., water colour during various work activities and stages); and, standards described above to limit the serious harm to fish to what is covered by this authorization.
- 3.1.2 Contingency measures: Providing details of any contingency measures that were followed to prevent impacts greater than those covered by this authorization in the event that mitigation measures did not function as described.
- 3.2 Other monitoring and reporting conditions: Not Applicable
4. **Conditions that relate to the offsetting of the serious harm to fish likely to result from the authorized work, undertaking or activity**
- 4.1 Letter of credit: DFO may draw upon funds available (\$52,000.00) to DFO as the beneficiary of the letter of credit provided to DFO as part of the application for this authorization, to cover the costs of implementing the offsetting measures required to be implemented under this authorization, including the associated monitoring and reporting measures included in section 5, in instances where the Proponent fails to implement these required measures.
- 4.2 Scale and description of offsetting measures: Shall be carried out in accordance with the description below and measures set out in the Proponent's Offsetting Plan for the Picton Terminals Project, AF2a, AF2b and AF3, received by email on July 30, 2018 (*hereafter referred to as the "Offsetting Plan"*), approved by DFO:
- 4.2.1 Nearshore habitat features shall be created by **March 14, 2020** on the north east water lot by depositing gravel, rubble and boulders for a minimum of 515 m² which includes:
- 4.2.1.1 A bed of clean rock shall be placed in the offsetting area first ranging in size between 25 and 50 cm and roughly 1 m in depth.
- 4.2.1.2 Clean large boulders shall be randomly placed on top of the bed of rock and shall be up to 1 m in size.
- 4.3 Offsetting criteria to assess the implementation and effectiveness of the offsetting measures: All fish habitat offsetting measures shall be completed and functioning according to the criteria below and as set out in the Proponent's Offsetting Plan approved by DFO:
- 4.3.1 All nearshore habitat features shall be shown to be constructed as designed and stable, and shall be assessed by in-water visual inspection and underwater imagery.
- 4.3.2 All nearshore habitat features shall be available to fishes immediately post-construction and shall be assessed for fish presence including a minimum of two (2) native taxonomic fish

families observed in the offsetting area using in-water visual inspection and underwater imagery.

4.4 Contingency measures: If the results of monitoring as required in condition 5 indicate that the offsetting measures are not completed by the date specified and/or are not functioning according to the above criteria in condition 4.3, the Proponent shall give written notice to DFO and shall implement the contingency measures and associated monitoring measures, as set out within the approved Offsetting Plan, to ensure the implementation of the offsetting measures is completed and functioning as required by this authorization.

4.4.1 Scale and description of contingency measures:

4.4.1.1 Should offsetting measures (described in condition 4.3) be deemed unstable or deficient by year two (2) of monitoring, adjustments or replacements to the offsetting measure(s) shall be implemented by the Proponent within one (1) year to rectify the offsetting measures.

4.4.1.2 Should the two (2) native taxonomic fish families not be identified in the offsetting area an additional year of monitoring shall be implemented, adding spring and fall observations.

4.4.1.3 Should the offsetting measures not meet the predicted results in terms of habitat functionality potential additional contingency offsets shall be determined through consultation with DFO.

4.4.2 Monitoring measures to ensure offsetting contingency is completed and/or functioning as required:

4.4.2.1 Unstable or deficient offsetting: Two (2) additional years of inspection, monitoring and reporting to ensure stability and configuration of repaired offsetting is functioning as designed.

4.5 The Proponent shall not carry on, or allow, any work, undertaking or activity that will adversely disturb or impact the offsetting measures.

4.6 Other conditions related to offsetting: Not Applicable

5. Conditions that relate to monitoring and reporting of implementation of offsetting measures (described above in section 4):

5.1 Schedule(s) and criteria: The Proponent shall conduct monitoring of the implementation of offsetting measures according to the approved timeline and criteria below and as set out within the approved Offsetting Plan:

5.1.1 List of timeline(s) and monitoring and reporting criteria:

5.1.1.1 Form and stability of the nearshore habitat features shall be assessed through visual inspections annually for 2 years following construction, starting in 2020.

5.1.1.2 Fish presence shall be monitored at the offsetting features at minimum in the late spring or early summer annually for 2 years, starting in 2020.

5.1.1.2.1 The effectiveness of the offset measures shall be assessed by a qualified biologist.

5.1.1.3 An annual digital photographic record of pre-construction, during construction and post-construction conditions shall be compiled using the same vantage points and direction, referenced on a map, to show that the approved works have been completed and are stable in accordance with the Offsetting Plan for all project phases of construction until project and monitoring completion.

5.2 List of reports to be provided to DFO: The Proponent shall report to DFO on whether the offsetting measures were conducted according to the conditions of this authorization by providing the following:

5.1.2 Written reports to include, but not limited to, criteria listed in conditions 5.1.1.1 - 5.1.1.3 shall be submitted in an annual report to DFO on or before **November 30, 2020 and 2021**.

5.3 Other monitoring and reporting conditions for offsetting: Not Applicable

Authorization Limitations and Application Conditions

The Proponent is solely responsible for plans and specifications relating to this authorization and for all design, safety and workmanship aspects of all the works associated with this authorization.

The holder of this authorization is hereby authorized under the authority of Paragraph 35(2)(b) of the *Fisheries Act*. R.S.C., 1985, c.F. 14 to carry on the work(s), undertaking(s) and/or activity(ies) that are likely to result in serious harm to fish as described herein. This authorization does not purport to release the applicant from any obligation to obtain permission from or to comply with the requirements of any other regulatory agencies.

This authorization does not permit the deposit of a deleterious substance in water frequented by fish. Subsection 36(3) of the *Fisheries Act* prohibits the deposit of any deleterious substances into waters frequented by fish unless authorized by regulations made by Governor in Council.

This authorization does not permit the killing, harming, harassment, capture or taking of individuals of any aquatic species listed under the *Species at Risk Act* (SARA) (s. 32 of the SARA), or the damage or destruction of residence of individuals of such species (s. 33 of the SARA) or the destruction of the critical habitat of any such species (s. 58 of the SARA).

At the date of issuance of this authorization DFO has determined that impacts from the work, undertaking, or activity proposed, to aquatic species listed under the *Species at Risk Act* are not likely.

The failure to comply with any condition of this authorization constitutes an offence under Paragraph 40(3)(a) of the *Fisheries Act* and may result in charges being laid under the *Fisheries Act*. This authorization must be held on site and work crews must be made familiar with the conditions attached.

This authorization cannot be transferred or assigned to another party. If the work(s), undertaking(s) or activity(ies) authorized to be conducted pursuant to this authorization are expected to be sold or transferred, or other circumstances arise that are expected to result in a new Proponent taking over the work(s), undertaking(s) or activity(ies), the Proponent named in this authorization shall advise DFO in advance.

Date of Issuance: MAY 02 2019

Approved by: 

Scott Gilbert
A/Regional Director General
Central and Arctic
Fisheries and Oceans Canada