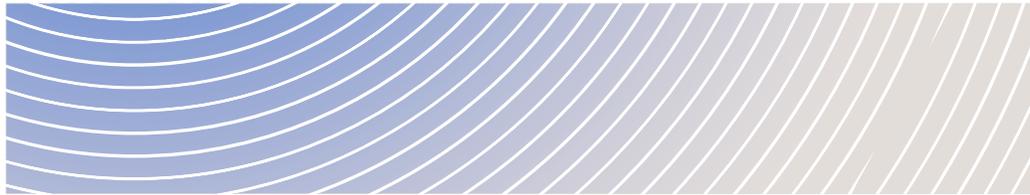




Permitting Plan



UPPER BEAVER GOLD PROJECT

April 20, 2022

Table of Contents

1.	Introduction	3
2.	Project Description	3
3.	Required Regulatory Instruments Identification and Justification	3
3.1.	Authorization under paragraphs 34.4(2)(b) or 35(2)(b) of the <i>Fisheries Act</i>	4
3.2.	Authorization to use waters frequented by fish as a Tailings Impoundment Area under subsection 5(1) of the <i>Metal and Diamond Mining Effluent Regulations</i>	4
3.3.	Approvals under the <i>Canadian Navigable Waters Act</i>	4
3.4.	License for explosives and magazines under subsection 7(1) of the <i>Explosives Act</i>	5
3.5.	Authorization under subsection 73(1) of the <i>Species at Risk Act</i>	5
4.	Contact Information.....	6
5.	Interpretation	6
6.	Summary Table – Anticipated Regulatory Activities	6
	Appendix 1. Information on Potentially Applicable Regulatory Instruments	8
A1.	Authorization under paragraphs 34.4(2)(b) or 35(2)(b) of the <i>Fisheries Act</i>	8
A2.	Authorization to use waters frequented by fish as a Tailings Impoundment Area under subsection 5(1) of the <i>Metal and Diamond Mining Effluent Regulations</i>	10
A3.	Approval of works under the <i>Canadian Navigable Waters Act</i>	13
A4.	License for explosives and magazines under subsection 7(1) of the <i>Explosives Act</i>	18
A5.	Permit under subsection 73(1) of the <i>Species at Risk Act</i>	20



1. Introduction

On December 16, 2021, the Impact Assessment Agency of Canada (the Agency) decided that an impact assessment is required for Upper Beaver Gold Project (the Project) pursuant to section 16(1) of the *Impact Assessment Act* (the IAA).

This 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 Environment and Climate Change (the Minister) 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. Project Description

Agnico Eagle Mines Limited is proposing the construction, operation, decommissioning and abandonment of an underground and open-pit gold and copper mine located 20 kilometres northeast of Kirkland Lake, in Ontario. As proposed, the Upper Beaver Gold Project includes an on-site metal mill and structures for diverting water. The maximum ore production capacity of the mine is 15,000 tonnes per day, and the maximum ore input capacity of the metal mill is approximately 10,000 tonnes per day, with a mine life of about 16 years. The Project would require the diversion of over 90 million cubic metres of water per year from Beaverhouse Lake downstream to the Misema River.

3. Required Regulatory Instruments Identification and Justification

Based on the [Detailed Project Description](#) submitted to the Agency by the proponent on December 6, 2021, and information provided by the Federal Authorities, five regulatory instruments may be required for the Project, should the Minister issue a Decision Statement to the proponent allowing the Project to proceed.

The following regulatory instruments may be required for the Project:

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

An authorization under paragraphs 34.4(2)(b) and 35(2)(b) of the *Fisheries Act* may be required for proposed works, undertakings or activities that could result in the death of fish or harmful alteration, disruption or destruction of fish habitat.

The Project may have effects on fish and fish habitat due to project components and activities such as blasting, dewatering of York Lake, dams, water diversion structures, the tailings storage facility, waste rock stockpiles, overburden stockpiles, and ore stockpiles.

3.2. Authorization to use waters frequented by fish as a Tailings Impoundment Area under subsection 5(1) of the *Metal and Diamond Mining Effluent Regulations*

An authorization may be required through a decision by Governor in Council to add water bodies frequented by fish to schedule 2 of the *Metal and Diamond Mining Effluent Regulations* (MDMER) designating them as tailings impoundment areas and allowing for the deposit of waste rock, acutely lethal effluent or effluent of any pH and containing any concentration of a deleterious substance that is prescribed in section 3 of the MDMER in these water bodies. The Project involves a stockpile of mine waste covering waters frequented by fish (minor tributaries of Victoria Creek and possibly other waterbodies).

Section 27.1 of the MDMER requires the development and implementation of a fish habitat compensation plan to offset the loss of fish habitat that would occur as a result of the use of a water body frequented by fish for the deposit of a deleterious substance such as mine waste.

3.3. Approvals under the Canadian Navigable Waters Act

Canadian Navigable Waters Act (CNWA) prohibits the construction or placement of any “works” in a navigable waterway that may interfere with the public right to navigation without complying with the requirements of the CNWA.

An approval is required for any major work on navigable waters, whether listed or not in the Schedule to the CNWA (paragraph 5(1)(a)). An approval is required for a work, other than a minor work (subsection 4(1)), on navigable waters listed in the Schedule (paragraph 5(1)(b)). A work, other than a major work or a minor work, on a navigable water body that is not listed in the Schedule to the CNWA, requires either an approval (paragraph 10(1)(a)) or a public notice and a deposit of information (paragraph 10(1)(b)). An exemption from the Governor in Council (section 24) is required for the deposit of stone in navigable waters or in a watercourse flowing through navigable waters (section 22) and for the dewatering or lowering of water levels in navigable waters (section 23).

Based on the Detailed Project Description, an approval under the CNWA may be required.

3.4. License for explosives and magazines under subsection 7(1) of the *Explosives Act*

Based on the information available regarding the Project's activities, at this time, it is not expected that Natural Resources Canada will be required to issue an authorization or license under the *Explosives Act*.

3.5. Authorization under subsection 73(1) of the *Species at Risk Act*

Based on the information available regarding the project activities, it is not expected that Environment and Climate Change Canada will be required to issue a permit under the *Species at Risk Act* (SARA).

The Detailed Project Description notes that no species at risk have been identified on the project site; however, the Project may displace existing terrestrial habitat for species at risk, and a SARA permit may be required for terrestrial species at risk where prohibitions are in force. Any new regulations or orders affecting species at risk, their residences and critical habitat that may come into effect will be posted on the [SARA Public Registry](#). The proponent is encouraged to consult the SARA Public Registry periodically.

4. Contact Information

If you have questions or need information, please contact:

Upper Beaver Gold Project
 Impact Assessment Agency of Canada
 Ontario Regional office
 Email: UpperBeaver@iaac-aeic.gc.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. Summary Table – Anticipated Regulatory Activities

These tables assume that the proponent will submit applications to federal departments for review during the Impact Assessment phase. The proponent may choose to submit any particular application at another phase, including after the impact assessment decision.

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

Metal and Diamond Mining Effluent Regulations, subsection 5(1)						
ACTIVITY	RESPONSIBILITY	IMPACT ASSESSMENT PHASE				
		Planning	Impact Statement	Impact Assessment	Decision	Post-Decision
Information gathering and consultation with the public and Indigenous peoples	Proponent	X	X	X	X	X
Submission of application	Proponent			X		
Analysis of the information and application	Environment and Climate Change Canada			X		
Consultation with the public and Indigenous peoples	Environment and Climate Change Canada			X		
Regulatory decision	Treasury Board					X

Canadian Navigable Waters Act						
ACTIVITY	RESPONSIBILITY	IMPACT ASSESSMENT PHASE =				
		Planning	Impact Statement	Impact Assessment	Decision	Post-Decision
Information gathering and consultation with the public and Indigenous peoples	Proponent	X	X	X	X	X
Submission of application	Proponent			X		
Analysis of the information and application	Transport Canada			X		
Consultation with the public and Indigenous peoples	Transport Canada			X		
Regulatory decision	Transport Canada					X

Appendix 1. Information on Potentially Applicable Regulatory Instruments

A1. Authorization under paragraphs 34.4(2)(b) or 35(2)(b) of the *Fisheries Act*

A1.1 Description

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

Subsection 34.4(1) of the *Fisheries Act* prohibits the carrying on of 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 and Oceans may issue an authorization with conditions relating to the carrying on of the work, undertaking or activity that result in death of fish.

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. Under paragraph 35(2)(b) of the *Fisheries Act*, the Minister of Fisheries and Oceans may issue an authorization with conditions relating to the carrying on of the work, undertaking or activity that results in the harmful alteration, disruption or destruction of fish habitat.

A1.2 Regulatory Process

The Fish and Fish Habitat Protection Program from DFO ensures compliance with the provisions of the *Fisheries Act* and the *Species at Risk Act* (SARA). The program considers any proposed work, undertaking or activity that may result in adverse effects on the fish and its habitat.

New provisions of the *Fisheries Act* regarding the protection of fish and fish habitat came into force on August 28, 2019. The proponent is encouraged to consult DFO's [Projects near water](#) website to understand the changes made and ensure compliance of the Project with the new provisions of the *Fisheries Act*.

A1.2.1 Application submission

It is recommended to request a review of the Project to DFO using the Request for Review form, available on DFO's [Request a review of your project near water](#) website.

An authorization will be required if DFO considers that the Project may result in the death of fish (paragraph 34.4(2)(b)) or in harmful alteration, disruption or destruction of fish habitat (paragraph 35(2)(b)). In order to seek an authorization, the proponent must submit an application to the Minister of Fisheries and Oceans in accordance with the *Authorizations Concerning Fish and Fish Habitat Protection Regulations* (hereafter the Fish and Fish Habitat Regulations). This application is transmitted to the relevant regional office of DFO.

A1.2.2 Application Analysis and Consultation

Once an application for authorization is received, it is reviewed to ensure the information and documentation are complete. The information and documentation that must be submitted in an application for authorization are laid out in Schedule 1 of the Fish and Fish Habitat Regulations. 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;
- offsetting plan (if required);
- summary of public and Indigenous engagement activities; and
- financial guarantees to cover the cost for the implementation of the offsetting plan.

A decision as to whether the information is complete must be issued 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.

A1.2.3 Regulatory Decision

The authorization decision under the *Fisheries Act* is made during the 90-day period following the notification that the application is complete and adequate. 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 if additional or amended information is required to make the decision. Therefore, this decision can only be made after the Minister of the Environment and Climate Change's Decision Statement relative to the impact assessment is posted on the Canadian

Impact Assessment Registry Internet Site (the Registry). Several factors are taken into consideration when making a determination as to whether to issue an authorization, as described in section 34.1(1) of the *Fisheries Act*.

A1.3. 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/regulations/SOR-2019-286/index.html>

Applicant's Guide to *Support the Authorizations Concerning Fish and Fish Habitat Protection Regulations*

<http://www.dfo-mpo.gc.ca/pnw-ppe/reviews-revues/applicants-guide-candidats-eng.html>

Request a review of your project near water

<http://www.dfo-mpo.gc.ca/pnw-ppe/reviews-revues/request-review-demande-d-examen-001-eng.html>

A1.4 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

Fisheries and Oceans Canada

1028 Parsons Road SW

Edmonton, AB T6X 0J4

Email: DFO.OPMiningOilandGasSouth-Exploitationminierepetroliereetg.MPO@dfo-mpo.gc.ca

A2. Authorization to use waters frequented by fish as a Tailings Impoundment Area under subsection 5(1) of the *Metal and Diamond Mining Effluent Regulations*

A2.1 Description

Subsection 36(3) of the *Fisheries Act* prohibits the deposit of deleterious substances into waters frequented by fish unless authorized by regulation. The *Metal and Diamond Mining Effluent Regulations* (MDMER) authorize the deposit of deleterious substances under specific conditions, and include provisions to allow the use of waters frequented by fish for the disposal of mine waste. In order

to authorize the storage of mine waste in waters frequented by fish, an amendment to Schedule 2 of the MDMER is required to designate those waters as Tailings Impoundment Areas (TIA).

Environment and Climate Change Canada (ECCC) is responsible for administering and enforcing the MDMER. Fisheries and Oceans Canada (DFO) provides expert advice to ECCC on fish and fish habitat as well as on the compensation plan for habitat loss related to TIAs.

A2.2 Regulatory Process

A2.2.1 Filing the Information

It is the responsibility of the proponent to identify all water bodies affected by the disposal of mine waste, confirm the presence or absence of fish in these water bodies, provide the method used to document the presence or absence of fish, and provide information regarding the connectivity of these water bodies to other water bodies with fish. If the proponent intends to deposit waste rock or effluent containing any concentration of deleterious substances into water frequented by fish, or if the proponent has any questions regarding the process for listing water bodies on Schedule 2 of the MDMER, please contact the Mining and Processing Division by email at MDMER-REMMMD@ec.gc.ca.

If the listing of a fish-bearing water body is required, the proponent must develop an Alternatives Assessment Report in accordance with ECCC's [Guidelines for the Assessment of Alternatives for Mine Waste Disposal](#), to demonstrate that the disposal of waste into waters frequented by fish is the best option from an environmental, technical, economic and socio-economic perspective. In addition, the proponent is required to develop a Fish Habitat Compensation Plan to compensate for the loss of fish habitat resulting from the disposal of mine waste.

Providing this information during the impact assessment can reduce the time required for the regulatory amendment process under the MDMER; however, timing is determined by the proponent.

A2.2.2 Review of Information and Consultations

Following the submission of the Alternatives Assessment Report and the Fish Habitat Compensation Plan, ECCC, with DFO's support, will review the information to determine whether it is complete and sufficient to support the amendment to Schedule 2 of the MDMER. During this phase, additional information may be requested from the proponent.

Once the information requirements are complete for both documents, the proponent will participate in consultations (led by ECCC and supported by DFO) with impacted Indigenous groups, local communities and stakeholders relative to the proposed listing of water bodies to Schedule 2 of the MDMER.

A2.2.3 Treasury Board Decision

The decision to add a water body to Schedule 2 of the MDMER is made by the Treasury Board, on the recommendation of the Minister of the Environment and Climate Change.

ECCC prepares the file for the regulatory amendment that includes the regulatory text describing the water bodies (e.g., name and location) and the Regulatory Impact Analysis Statement (RIAS) which is an evidence-based, non-technical synthesis of expected impacts, positive and negative, of the proposed amendment to Schedule 2 of the MDMER. The RIAS is published in the *Canada Gazette* with the text of the proposed regulation.

If the proposed amendment is approved by the Treasury Board, it is published in Part I of the *Canada Gazette* for a 30-day public comment period. In some cases, the proposed amendment may meet conditions for exemption from publication in Part I of the *Canada Gazette*, and will be submitted to Treasury Board for publication in Part II of the *Canada Gazette*. This approach provides for a more efficient regulatory system for project reviews, and aims to shorten the approval time for publication in Part II of the *Canada Gazette*. A Schedule 2 amendment may be exempt from pre-publication in the *Canada Gazette*, Part I, if it meets the conditions outlined in the Streamlining the Approvals Process for Metal Mines with Tailings Impoundment Areas policy (the Streamlining policy).

If the conditions for exemption from publication in Part I of the *Canada Gazette* are met, and the Treasury Board approves the exemption, the amendment to Schedule 2 of the MDMER will be published in Part II of the *Canada Gazette*.

If the conditions for exemption from publication in Part I of the *Canada Gazette* are not met, ECCC will publish the proposed amendments in the *Canada Gazette*, Part I, for a 30-day comment period. Following the end of the comment period, ECCC prepares the final regulatory package to make a final recommendation to the Treasury Board. If the regulatory amendment is approved by the Treasury Board, it becomes law on the day it is registered. The regulatory amendment and the Regulatory Impact Analysis Statement are then published in the *Canada Gazette*, Part II.

A2.2.4 Timelines

The regulatory amendment process generally requires a period of 12 to 18 months following the completion of the Schedule 2 consultations, depending on whether the Streamlining policy is applied.

A2.3 References

Metal and Diamond Mining Effluent Regulations (SOR/2002-222)

<https://laws-lois.justice.gc.ca/eng/regulations/SOR-2002-222/FullText.html>

Streamlining the Approvals Process for Metal Mines with Tailings Impoundment Areas

<https://www.canada.ca/en/environment-climate-change/services/managing-pollution/sources-industry/mining/approvals-process-metal-mines-impoundment-areas.html>

Guide To The Regulatory Process For Listing Water Bodies Frequented By Fish In Schedule 2 Of The Metal And Diamond Mining Effluent Regulations

<https://www.canada.ca/en/environment-climate-change/services/managing-pollution/sources-industry/metal-diamond-mining-effluent/guide-process-listing-water-bodies-fish-schedule-2.html>

Guidelines for the Assessment of Alternatives for Mine Waste Disposal

<https://www.canada.ca/en/environment-climate-change/services/managing-pollution/publications/guidelines-alternatives-mine-waste-disposal.html>

Policy for Applying Measures to Offset Adverse Effects on Fish and Fish Habitat

<https://dfo-mpo.gc.ca/pnw-ppe/reviews-revues/policies-politiques-eng.html>

A2.4 Contact Information

For more detailed guidance on this authorization, please contact the ECCC Mining and Processing Division:

Mining and Processing Division
Environmental Protection Branch
Environment and Climate Change Canada
351 St. Joseph Boulevard, 18th Floor
Gatineau QC K1A 0H3
Email: MDMER-REMMMD@ec.gc.ca

A3. Approval of works under the *Canadian Navigable Waters Act*

A3.1 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 or project on navigation.

The CNWA, requires owners of “works” to comply with requirements of the CNWA for the protection of navigation on navigable waters. As per 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 are dams, bridges, weirs, causeways, aerial cables, ferry cables among many other types of structures that can meet the above definition. Some of these works can also meet criteria listed of the

designated physical activities project list of the IAA. The CNWA also requires a Governor in Council exemption for any proposed prohibited activities (throwing or depositing of materials, dewatering of a navigable waterbody).

A3.1.1 Prohibited Activities

As per section 23(1) of the CNWA, it is prohibited to take any action that lowers the water level of a navigable water or any part of a navigable water to a level that extinguishes navigation for vessels of any class that navigate, or are likely to navigate, the navigable water in question. If the proponent plans to dewater a navigable waterbody, they must apply for a Governor In Council Exemption.

Transport Canada must determine navigability for the waterways within the footprint of the project that have proposed prohibited activities (dewatering or throwing/depositing). In order for Transport Canada to complete a navigation assessment in a timely and efficient manner, the department must develop a comprehensive understanding of its potential conduct in the project as early as possible. In determining whether a waterway is navigable, these questions are asked:

- What are the physical characteristics (e.g. size and depth)?
- Is it used for transport or travel for commercial or recreational purposes?
- Is it used for transport or travel by Indigenous peoples?
- Is it likely to be used in the future?
- Was it used in the past?
- Is there public access by land or water?
- Are there two or more waterfront owners?
- Is the Crown the only waterfront owner?

The proponent is responsible for providing the information to Transport Canada to facilitate the navigability assessment for any bodies of water that have proposed prohibited activities. The proponent should note that Governor in Council Exemption can potentially take 1-2 years and it is therefore critical that this information be provided to Transport Canada as soon as possible.

A3.1.2 Major Works and in any Navigable Water

As per section 5(1) of the CNWA, owners of major works that may interfere with navigation are required to apply to Transport Canada. The following classes of works established in the Major Works Order are designated as likely to substantially interfere with navigation on any navigable water:

- Water control structures;
- Bridges;
- Ferry Cables, excluding the repair and replacement of existing ferry cables;
- Causeways;
- Aquaculture facilities.

A3.1.3 Works in navigable waters listed on the Schedule

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. 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.

A3.1.4 Works in navigable waters not listed on the Schedule

The owner of a work – other than a major work or a minor work – in, on, over, under, through or across any navigable water that is not listed on the Schedule, which may interfere with navigation, has the option to either:

- apply to the Minister of Transport; or
- seek authorization through the public resolution process.

The owner of a work – other than a major work or a minor work – in, on, over, under, through or across any navigable water that is not listed on the Schedule, which is not likely to interfere with navigation, may proceed if:

- the work, or its construction, placement, alteration, rebuilding, removal or decommissioning, would not interfere with navigation; and
- the owner deposits information and publishes a public notice before beginning the construction, placement, alteration, rebuilding, removal or decommissioning of the work.

A3.2 Regulatory Process

A3.2.1 Application Submission

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. 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).

The application process is done online through Transport Canada's 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.

A3.2.2 Application Analysis and Consultation

Transport Canada analyzes the application 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.

Should Transport Canada have a role in this Project and it is determined that there will be the potential for adverse impacts to section 35 Aboriginal and/or Treaty rights as a result of Transport Canada's Crown Conduct, the department will consult with Indigenous communities. Where possible, consultation activities will be coordinated with other departments, ministries, and the proponent to streamline the consultation process. Information may be provided by the proponent or by Indigenous communities, if possible, as part of the federal impact assessment process. If information is missing or coordination of consultation is not feasible, Transport Canada will consult independently with Indigenous communities to address questions or concerns related to Transport Canada's role in the project.

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 the Minister receives from interested persons within the period provided for under subsection 7(4);

- the record of compliance of the owner under CNWA; and
- any other information or factor that he or she considers relevant.

A3.2.3 Regulatory Decision

If the Project proposes a Prohibited Activity (dewatering of a navigable waterbody, throwing or depositing of materials), the proponent must submit an Application for a Governor in Council (GiC) Exemption. The Exemption process can take 1-2 years from submission of the completed Application for Exemption. The timeline is subject to the processes and requirements of the GIC and is independent of the IAA. If the Project proposes to construct, place, alter, rebuild, remove or decommission a work in, on, over, under, through or across any navigable water, the works will be subject to the CWNA and may require approval by the Minister of Transport. .

The Minister of Transport issues terms and conditions with the approval of a work to mitigate navigation safety risks and protect the public right to navigation.

A3.3 References

Canadian Navigable Waters Act

<https://www.tc.gc.ca/eng/canadian-navigable-waters-act.html>

Guide to the Navigation Protection Program's Notification, Application and Review Requirements

<https://tc.canada.ca/en/programs/guide-navigation-protection-program-s-notification-application-review-requirements>

Apply to the Navigation Protection Program

<https://tc.canada.ca/en/marine/apply-npp>

Navigation Protection Program External Submission Site

<https://npp-submissions-demands-ppn.tc.canada.ca/>

A3.4 Contact Information

For more detailed guidance on the CNWA approval process, please contact the Transport Canada regional office:

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

A4. License for explosives and magazines under subsection 7(1) of the Explosives Act

A4.1 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 of Natural Resources may issue licences for factories and magazines.

The Minister of Natural Resources 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 regulations) that the Minister of Natural Resources 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).

A4.1 Regulatory Process

A4.1.1 Application Submission

The process requires the proponent to submit an application to NRCan for an explosives factory and magazine pursuant to the *Explosives Act*. The timing of the application depends on the proponent.

Several types of plans or drawings are required: area plan, site plan, building layout, process schematics, and piping, instrumentation and equipment layout drawings. The area and site plans are the two that can be considered mandatory.

The area plan should clearly show the location of the site and any neighbouring vulnerable features or hazardous facilities such as dwellings, power lines, and other explosives operations.

A site plan is required for each site. The plan must include:

- distances between operations, including washing/maintenance facilities, ammonium nitrate (AN) storage, fuel storage, vehicle parking areas, fences/barriers, and magazines;
- distances to offices and welfare or administrative areas;
- distances to roads and public thoroughfares; and

- distances to dwellings and other assembly points, as well as operating pits, mine facilities, and similar installations.

At a minimum, a spill contingency plan, emergency response plan, and site evacuation plan is required. Supporting documentation, such as operating or maintenance procedures must be shown to be available, where applicable. In specific cases, other documents may be required to support the licence, e.g., a hazard analysis or a risk assessment.

A4.1.2 Application Analysis

Following the submission of the application, NRCan reviews it to ensure that all necessary information is available.

A4.1.3 Regulatory Decision

Once an impact assessment decision has been rendered and a Notice of Decision has been posted on the Registry, NRCan may issue a decision pursuant to the *Explosives Act* for an explosives factory or magazine within 30 days following receipt of a complete application.

A4.2 References

Explosives Act (R.S.C. [1985], c. E-17)

<https://laws-lois.justice.gc.ca/eng/acts/E-17/index.html>

Explosives Regulations, 2013 (SOR/2013-211)

<https://laws-lois.justice.gc.ca/eng/regulations/SOR-2013-211/page-1.html>

NRCan, 2014, Guidelines for Bulk Explosives Facilities, Minimum Requirements, 63 pages

<https://www.nrcan.gc.ca/sites/www.nrcan.gc.ca/files/explosives/pdf/2015/G05-01E.pdf>

A.4.3 Contact Information

For more detailed guidance on this licence, please contact the NRCan regional office:

Natural Resources Canada
588 Booth St,
Ottawa ON K1A 0E4
Email: ea-ee@nrcan-rncan.gc.ca

A5. Permit under subsection 73(1) of the *Species at Risk Act*

A5.1 Description

Permits are required by those persons conducting activities affecting wildlife species listed on Schedule 1 of SARA as extirpated, endangered, or threatened and which contravene SARA's prohibitions where they are in force.

A5.1.1 General Prohibitions

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; and
- 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.

Under sections 34 and 80 of SARA, prohibitions relative to individuals and residences may apply on lands other than federal lands for species that are not aquatic species or migratory birds protected under the *Migratory Birds Convention Act, 1994* under an Order in Council.

A5.1.2 Critical Habitat Prohibitions

Under subsections 58(1) and 61(1) of SARA, no person shall destroy any part of the critical habitat of any listed endangered species or of any listed threatened species — or of any listed extirpated species if a recovery strategy has recommended the reintroduction of the species into the wild in Canada.

The Act requires that critical habitat on federal lands, or for aquatic species anywhere, be legally protected. A ministerial Order may be used to bring the SARA prohibitions relative to critical habitat into force in these circumstances.

Under sections 61 and 80 of SARA, prohibitions relative to critical habitat may apply on non-federal lands under an Order in Council.

A5.1.3 Applicable situations

Under section 73, the competent minister may enter into an agreement or issue a permit authorizing a person to engage in an activity affecting any listed endangered, threatened or extirpated 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:

- The activity is scientific research relating to the conservation of the species and conducted by qualified persons;
- The activity benefits the species or is required to enhance its chance of survival in the wild;
- Affecting the species is incidental to the carrying out of the activity.

A5.1.4 Responsibilities

Responsibility for implementing SARA lies with the Ministers responsible for DFO, Parks Canada Agency (PCA) and ECCC.

- DFO is responsible for considering permit applications with respect to aquatic species (as defined by SARA), other than individuals of species in the waters situated on federal lands administered by the PCA. 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 all benthic and detached algae, marine flowering plants, brown algae, red algae, green algae and phytoplankton.
- PCA is responsible for considering permit applications with respect to individuals in or on federal lands administered by PCA, including aquatic species (as defined by SARA) as well as terrestrial species.
- ECCC is responsible for considering permit applications with respect to all individuals that are not under the responsibility of PCA or DFO. This includes all terrestrial species on federal land and any land affected by a protection order issued under SARA, and for migratory birds wherever they are found.

If a competent department issues an authorization, licence or permit under another federal Act, authorizing a person or organization to engage in an activity affecting a listed wildlife species, any part of its critical habitat or the residences of its individuals, this authorization, licence or permit can act as a SARA permit, provided that the competent minister is of the opinion that the requirements of subsections 73(2) to (6.1) are met and complies with the requirements of subsection 73(7).

A5.2 Regulatory process

Proponents must submit an application to the DFO, ECCC or PCA Regional Office in a manner and form satisfactory to these organizations.

A5.2.1 Application submission for an aquatic species at risk

To seek a permit under SARA from DFO, the proponent must submit an application to the relevant regional office of the Fish and Fish Habitat Protection Program (refer to section A.1.4 of the Permitting Plan for contact information). 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.

A5.2.2 Application submission for a terrestrial species at risk

To obtain a permit from ECCC, proponents must submit an application using the Species at Risk Permit System found on the [Species at Risk Public Registry](#) and provide the required information detailed in the application.

A5.2.3 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 competent minister 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:

- All reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted;
- 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;
- The activity will not jeopardize the survival or recovery of the species.

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

A5.2.4 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 subsections 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;
- The activity described in the permit application is modified before the permit is issued or refused.

For activities requiring a decision under the 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 fauna and flora 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 fauna and flora 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 Canadian Wildlife Service on survey plans.

A5.3 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

<https://laws-lois.justice.gc.ca/eng/regulations/SOR-2013-140/index.html>

Permitting for aquatic species at risk under SARA

<https://www.dfo-mpo.gc.ca/species-especes/sara-lep/permits-permis/index-eng.html>

Permitting for terrestrial species at risk under SARA

<https://wildlife-species.canada.ca/SPLEP-SARAPS/index.cfm?fuseaction=home.main&>

Species at Risk Public Registry

<https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry.html>

Guidelines for permitting under Section 73 of SARA

<https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/policies-guidelines/permitting-under-section-73.html>

A5.4 Contact Information

For more detailed guidance on the Species at Risk permitting process, please contact the regional Environment and Climate Change Canada office:

Canadian Wildlife Service, Ontario Region

Email: wildlifeontario@ec.gc.ca