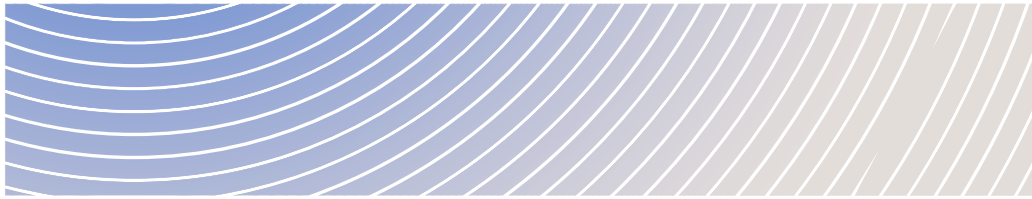


Permitting Plan



NOVADOR GOLD MINE PROJECT

August 13, 2024



Impact Assessment
Agency of Canada

Agence d'évaluation
d'impact du Canada

Canada



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1. Introduction

On May 6, 2024, the Impact Assessment Agency of Canada (IAAC) issued an opinion that an impact assessment is warranted for Novador Gold Mine Project (the Project).

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

Although federal authorities may be prohibited from issuing authorizations during the impact assessment process, certain information and consultation requirements for federal authorizations can potentially be completed at the same time as the impact assessment. In some cases, the same information may be used to inform both the impact assessment and federal authorizations. The proponent may choose to work concurrently on complementary federal regulatory processes, as established by responsible federal authorities, while the project is undergoing the impact assessment. Collecting this additional information during the assessment process may expedite subsequent federal authorizations, should the project proceed.

IAAC 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

Probe Gold Inc. is proposing the construction and operation of a new open-pit and underground gold mine, located about 25 kilometres east of Val-d'Or, in Quebec. As proposed, the Novador Gold Mine Project would have a maximum ore production capacity of 24,000 tonnes per day with an estimated lifespan of 12.5 years. The project would include an ore processing plant, access roads, waste rock and overburden piles, and a tailings storage facility.



3. Required Regulatory Instruments Identification and Justification

The following regulatory instruments may be required for the project:

3.1 Authorization under paragraphs 34.4(2)(b) and 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.

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 of the Fisheries Act

An authorization may be required for any project where the proposed disposal of mine waste would affect waters frequented by fish.

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.

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 body¹ frequented by fish for the deposit of a deleterious substance such as mine waste.

3.3 Approvals under the Canadian Navigable Waters Act

Based on project information provided to date, Governor in Council approval and/or exemption may be required under the *Canadian Navigable Waters Act* (CNWA).

The CNWA prohibits the construction or installation, without prior approval, of any “works” in a navigable waterway that might interfere with the public right of navigation.

¹ Water bodies include all waters, including watercourses, that are frequented by fish.



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 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 or other submersible materials or wastes in navigable waters or in a watercourse flowing through navigable waters (sections 21 and 22) and for the dewatering or lowering of water levels so that navigation is impossible in navigable waters (section 23).

3.4 Permits for migratory bird nests: Permits to relocate or destroy migratory bird nests under the *Migratory Birds Regulations, 2022*

The *Migratory Birds Regulations, 2022* (MBR 2022) protect migratory birds and their eggs and nests by prohibiting activities that may harm them. Unless a person has a permit or is authorized under the Regulations, they are prohibited from engaging in the following activities:

- capture, kill, take, injure or harass a migratory bird or attempt to do so;
- destroy, take or disturb an egg; and
- damage, destroy, remove or disturb a nest, nest shelter, eider duck shelter or duck box, unless the following exceptions apply:
 - the nest does not contain a live migratory bird or a viable egg; and
 - the nest was not built by a species listed in Schedule 1.

The nests of species listed in Schedule 1 are protected at all times, unless the following conditions are met:

- a notice of the unoccupied nest has been submitted/received via the Abandoned Nest Registry; and
- the waiting time stipulated in the Regulations has passed, during which time the nest has not been occupied by a migratory bird.

In certain situations, it may be possible to obtain a permit to relocate or destroy the unoccupied nest of a Schedule 1 species.

3.5 Permit under subsection 73(1) of the Species at Risk Act

A permit under subsection 73(1) of the *Species at Risk Act* (SARA) may be required if the project may affect wildlife species listed on Schedule 1 of SARA, as extirpated, endangered or threatened, any part of their critical habitat or the residences of their individuals, in a manner prohibited under subsection 32(1), section 33, subsection 58(1), and section 61 of SARA.



Activities that may affect species at risk include, but are not limited to : wildlife inventories that may affect individuals or residences, site preparation (clearing, grading, deforestation, stripping of vegetative cover, site access, blasting), construction and operation of temporary and permanent works and infrastructure, creation of new roads, railroads, or power lines, filling of wetlands or waterways, any monitoring that requires the capture or release of individuals, and sensory disturbance effects.

The proponent is encouraged to:

- consult the [Species at risk public registry](#) periodically for any new regulations or prohibition orders affecting species at risk, their residences and critical habitat that may come into effect; and
- understand all general prohibitions and permitting requirements under the SARA including the [Guidelines for permitting under Section 73 of SARA](#).

Additional SARA resources are listed in the Appendices of the Tailored Impact Statement Guidelines for the Project.

4. Information on Required Regulatory Instruments

Find in the following section, information on applicable regulatory instruments.

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

4.1.1 Description

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 (DFO) 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 DFO 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.

4.1.2 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.



It is required to submit a request of project review to DFO using the [Request for Review form](#). This form must be submitted to the following email address: dfo.habitatquebec.mpo@dfo-mpo.gc.

An authorization will be required if DFO considers that the Project may result in the death of fish or in harmful alteration, disruption or destruction of fish habitat despite the avoidance and mitigation measures put in place. These residual effects must be offset, which requires that an offsetting plan be developed. For more details on the process for requesting an authorization, the proponent is invited to consult the following section of the DFO website, in the tab Projects Near Water: [Request a review of your project near water: Step 5. Apply for project authorization](#).

It should be noted that 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 the [projects near water](#) website in order to take notice of the changes made and ensure compliance of the Project with the new provisions of the modified Act.

A permit under subsection 73(1) of SARA may be required from DFO if the proposed project can affect aquatic species at risk listed on Schedule 1 of SARA or on any element of their critical habitat or the residence of their individuals in a manner that is prohibited under subsection 32(1), section 33 and subsection 58(1) of SARA.

For any additional questions on the processes for requesting a review and an authorization to DFO, please contact the DFO regional office by phone at 1-877-722-4828 or by email at dfo.habitatquebec.mpo@dfo-mpo.gc.

4.1.3 References

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>

Authorizations Concerning Fish and Fish Habitat Protection Regulations (SOR/2019-286)

<https://laws-lois.justice.gc.ca/eng/regulations/SOR-2019-286/index.html>

Codes of practice to prevent the death of fish or the harmful alteration, disruption or destruction of fish habitat for certain works or activities

<https://www.dfo-mpo.gc.ca/pnw-ppe/practice-pratique-eng.html>

Fisheries Act, R.S.C. 1985, c F-14

<https://laws-lois.justice.gc.ca/eng/acts/F-14/>

Pathways of Effects of activities or works on fish and fish habitat

<https://www.dfo-mpo.gc.ca/pnw-ppe/pathways-sequences/index-eng.html>

Permits Authorizing an Activity Affecting Lister Wildlife Species Regulations

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

Policy for applying measures to offset adverse effects on fish and fish habitat under the *Fisheries Act*

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

4.1.4 Contact information

For more detailed guidance on this authorization, please contact the DFO regional office in Quebec:

Fish and Fish Habitat Protection Program

Fisheries and Oceans Canada

Phone: 1-877-722-4828

Email: dfo.habitatquebec.mpo@dfo-mpo.gc

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

4.2.1 Description

Subsection 36(3) of the *Fisheries Act* prohibits the deposit of deleterious substances into waters frequented by fish unless authorized by regulation. The 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.

ECCC is responsible for administering and enforcing the MDMER. DFO provides expert advice to ECCC on fish and fish habitat as well as on the compensation plan for habitat loss related to Tailings Impoundment Areas.

4.2.2 Regulatory process

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 waters frequented by fish, or has any questions about the process for listing water bodies on Schedule 2 of the MDMER, consult the [Guide To The Regulatory Process For Listing Water Bodies Frequented By Fish In Schedule 2 Of The Metal And Diamond Mining Effluent Regulations](#), or contact the Mining and Processing Division within ECCC 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.

Review of information and consultation

Following the submission of the Alternatives Assessment Report and the Fish Habitat Compensation Plan, ECCC, with the support of DFO, will review the information to determine if 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 communities and the public relative to the proposed listing of water bodies to Schedule 2 of the MDMER.

Treasury Board decision

The decision to list a water body to Schedule 2 of the MDMER is made by the Treasury Board, on the recommendation of the Minister of 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 approval process for proposed amendments to Schedule 2 of the MDMER, and aims to shorten the approval time for publication in Part II of the *Canada Gazette*. To ensure that the proposed modification is able to meet the conditions, a number of operational measures must be implemented as part of, or in conjunction with, the Impact Statement, as described in the document [Streamlining the approvals process for metal mines with Tailings Impoundment Areas](#). 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.

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. However, if additional information is required (e.g., missing data, missing information on the cost of the Tailings Impoundment Area or the Fish Habitat Compensation Plan, etc.), or if significant concerns have been raised by affected groups, the regulatory process may take longer.

4.2.3 References

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>

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/mining-effluent/metal-diamond-mining-effluent/tailings-impoundment-areas/guide-process-listing-water-bodies-fish-schedule-2.html>

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

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

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-effluent/metal-diamond-mining-effluent/tailings-impoundment-areas/approvals-process-metal-mines-impoundment-areas.html>

4.2.4 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-remmd@ec.gc.ca



4.3 Approval of works under the *Canadian Navigable Waters Act*

4.3.1 Description

Transport Canada (TC) 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 application of the CNWA is focused on assessing impacts of a work or project on navigation.

The CNWA requires work owners 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 are dams, bridges, weirs, causeways, aerial cables and ferry cables. Some of these works can also meet criteria listed of the designated physical activities project list of IAAC.

Navigability assessment

TC must determine navigability for the water bodies and watercourses within the footprint of a project that have proposed prohibited activities (total or partial dewatering or throwing/depositing). In order for TC to complete a navigability 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. The navigability assessment conducted by the Navigation Protection Program (NPP) must address two overarching principles: the use of the watercourse and the accessibility of the watercourse. 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 TC to facilitate the navigability assessment for any water bodies or watercourses that have proposed prohibited activities or the construction of works. The proponent should note that it may take one to two years to complete the Governor in Council order exemption process, so it is essential that this information be provided to TC as soon as possible.



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, including canoes and kayaks. If the proponent plans to lower the water level of a navigable water, they must obtain an Order in Council from the Governor in Council by submitting an exemption application to the NPP.

Major works and in any navigable water

As per subsection 5(1) of the CNWA, an owner who proposes to construct a major work in any navigable water must make an application for approval to TC.

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;
- causeways; and
- aquaculture facilities.

Works in navigable waters listed on the Schedule

A schedule of navigable waters is established under the CNWA to identify navigable waters where a proponent must apply to TC. As per paragraph 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 on the Schedule, which may interfere with navigation, must apply to TC's NPP for approval.

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 (paragraph 10(1)(a)); or
- seek authorization through the public resolution process (paragraph 10(1)(b)).

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 in accordance with section 9.1 of the CNWA.

4.3.2 Approval Process

Application analysis and consultation

At the time of application analysis for approval, the NPP 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;
- 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.

During the analysis and prior to any regulatory decision, the proponent may be asked to participate in consultations, led by TC, with the Indigenous peoples concerned.

Application submission for works

There are different requirements for owners of works regarding approval, 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 approval to TC, the owner may be required to deposit information on the proposed work, and 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, as for minor works covered by subsection 3(1) of the Minor Works Order, the owner/proponent is required to deposit information and a public notice on TC's registry.

Regulatory decision

The Minister of Transport can only issue a decision under the CNWA once the Minister of ECCC has issued a decision statement under the IAA. However, proponents are allowed to submit a request for approval for the NPP to complete the analysis pending the impact assessment decision.



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.

4.3.3 Exemption process

The Governor in Council can issue an exemption to the body of water from the application of these prohibitions if they believe that it is in the public interest. The proponent must demonstrate that the exemption would be in the public interest. The proponent will need to provide all the necessary information to support the exemption, including information on all factors that affect the public interest, including:

- project description;
- impacts to navigation and description of alternatives;
- consultation information;
- environmental assessment; and
- rationale that supports the exemption.

Once the proponent has submitted all of the necessary documentation, TC will assess the application to ensure the completeness of the documentation provided, and complete additional consultations as required. TC will then complete a navigation impact assessment. TC will determine if there is a duty to consult with and accommodate Indigenous communities impacted by the prohibited activities. TC will then prepare a submission to seek approval of the exemption from Cabinet. Once the submission is approved, the Order in Council will be published in the *Canada Gazette*, Part II, and the proponent will be notified of the decision.

4.3.4 References

Applicant Guide - Application for an Exemption

<https://npp-submissions-demandes-ppn.tc.canada.ca/content/doc/Application%20for%20an%20exemption%20%E2%80%93%20Applicant%20Guide.pdf>

Apply to the Navigation Protection Program

<https://tc.canada.ca/en/programs/navigation-protection-program/apply-navigation-protection-program>

Canadian Navigable Waters Act

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

Exemption under the *Canadian Navigable Waters Act*

<https://tc.canada.ca/en/programs/navigation-protection-program/exemption-under-canadian-navigable-waters-act>

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>



4.3.5 Contact information

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

Navigation Protection Program
Transport Canada
801-1550, avenue d'Estimauville
Québec (Quebec) G1J 0C8
Phone: 1-877-646-6420
Email: ppnque-nppque@tc.gc.ca

4.4 Permits for migratory bird nests

4.4.1 Background

If there is a need to damage, disturb, destroy, or remove a nest of a species listed in Schedule 1 of the *Migratory Birds Regulations, 2022 (MBR 2022)*, this can be done when:

- a notice regarding the unoccupied nest has been received by ECCC, and
- the nest has remained unoccupied by a migratory bird from the time the notice is received by ECCC for the duration of time indicated in the Schedule 1 for that species, and can therefore be deemed abandoned (12, 24 or 36 months, depending on the species).

ECCC only needs to be informed, through a notification, if there is a desire to damage, destroy, disturb or remove an abandoned nest of a Schedule 1 species.

Otherwise, the nest can be left undisturbed, and there is then no requirement to submit a notification.

All notifications for unoccupied nests of Schedule 1 species are to be submitted through the Abandoned Nest Registry. Registrants will need to provide basic information about themselves and about the unoccupied nest.

The waiting period established in Schedule 1 starts on the day that the unoccupied nest notification is submitted through the Abandoned Nest Registry portal. The prohibitions are lifted once the designated time-period has passed (12, 24 or 36 months depending on the species), and if the nest has not been reused by migratory birds during this time, the nest is then no longer protected from being damaged, disturbed, removed or destroyed. There is no requirement to inform ECCC of this action.

It is the responsibility of the person submitting a notification of an unoccupied nest to ensure that verifications of nest occupation/abandonment must occur during a period when such a nest could reasonably be expected to be in use.

It is the responsibility of this person to inform ECCC, by sending an e-mail to AvisNid-NestNotifications@ec.gc.ca, that the nest has become occupied again by a migratory bird, which would cancel the abandonment notification. If the nest again becomes unoccupied, and the person still wishes to destroy the nest, they must submit a new notification, which would start the time clock over again.



4.4.2 Permits to relocate or destroy migratory bird nests

There are permits available under the MBR 2022 in some limited circumstances.

If you are not able to wait the designated period to destroy or relocate a nest of a species listed on Schedule 1, or need to destroy or relocate a nest of another species of migratory bird when it contains a live bird or viable egg, and have taken appropriate mitigation, a permit may be available. The MBR 2022 continue to allow for the issuance of Damage and Danger as well as Scientific permits, which may apply in specific limited situations.

The MBR 2022 maintains a permit for nest relocation (section 71), and expands the activity eligibility under section 70 from egg removal and destruction to now also include nest removal and destruction. These permits may be available in certain limited situations, when due diligence can be demonstrated, to relocate or destroy a nest when it contains a live bird or egg, or, for species listed on Schedule 1 of the MBR 2022, to do so before the designated waiting period has ended.

In certain situations, where it has been demonstrated that appropriate research informing migratory bird conservation will be conducted, a Scientific permit to relocate or destroy a nest may also be available.

4.4.3 References

Damage or Danger Permits for Nest Destruction - Section 70 of the *Migratory Birds Regulations* (specifically for Pileated Woodpecker nesting cavities)

<https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/dod-permits-nest-destruction-pileated-woodpecker-nesting-cavities.html>

Damage to the Use of the Land within Section 71 of the *Migratory Birds Regulations* (specifically for Pileated Woodpecker nesting cavities)

<https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/damage-use-land-pileated-woodpecker-nesting-cavities.html>

Fact sheet: Nest Protection under the Migratory Birds Regulations, 2022

<https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/fact-sheet-nest-protection-under-mbr-2022.html>

Migratory bird permit application forms

<https://www.canada.ca/en/environment-climate-change/services/migratory-bird-permits/application-forms.html>

Pileated Woodpecker Cavity Identification Guide

<https://www.canada.ca/en/environment-climate-change/services/avoiding-harm-migratory-birds/pileated-woodpecker-cavity-identification-guide.html>

Scientific permits

<https://www.canada.ca/en/environment-climate-change/services/migratory-bird-permits/scientific-permits.html>



4.4.4 Contact information

For more information on migratory bird permits, please contact the ECCC Canadian Wildlife Service regional office:

Canadian Wildlife Service
Environment and Climate Change Canada
801-1550, avenue d'Estimauville
Québec (Quebec) G1J 0C3
Email: PermisSCFQuebec-CWSQuebecPermit@ec.gc.ca

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

4.5.1 Description

Persons conducting activities affecting species listed on Schedule 1 of SARA as extirpated, endangered or threatened species, and that are at risk of contravening SARA's general or critical habitat prohibitions, are required to obtain a permit under subsection 73(1) of SARA.

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;
- 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 following general prohibitions apply on all federal lands in Canada.

On private, provincial or territorial land, the general prohibitions apply only to:

- aquatic species listed as endangered, threatened or extirpated in Schedule 1 of SARA;
- migratory birds listed in the *Migratory Birds Convention Act, 1994* and also listed as endangered, threatened or extirpated in Schedule 1 of SARA.

In some circumstances, the general prohibitions could also be applied, through an order (subsection 34(2) of SARA), to other species listed as endangered, threatened or extirpated in Schedule 1 when found on private, provincial or territorial land to protect the species and its residence.



Critical habitat prohibitions

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

- the species is an aquatic species;
- the species is a migratory bird protected by the *Migratory Birds Convention Act, 1994*;
- the critical habitat (for species that are not aquatic species or migratory bird species) is on federal land, in the exclusive economic zone of Canada or on the continental shelf of Canada.

The prohibition against the destruction of a critical habitat component (SARA section 58(1)) does not automatically apply. On federal land, it requires the Minister to issue an order or publish a description of critical habitat in the *Canada Gazette*. On non-federal lands, the prohibition against the destruction of a critical habitat component of a species listed as threatened or endangered applies when the Governor in Council issues a protection order under section 61 of SARA designating all or part of the critical habitat. The Governor in Council may also issue an emergency order under section 80 of SARA for the protection of a species at risk.

In the case of migratory birds protected by the *Migratory Birds Convention Act, 1994* and listed on Schedule 1 of SARA as endangered, threatened or extirpated species, for which the description of critical habitat includes a nest, these nests are protected on non-federal land (as set out in the following protection statement: <https://species-registry.canada.ca/index-en.html#/documents/1638>).

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.

Responsibilities

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

- PCA is responsible for considering permit applications with respect to listed individuals in or on federal lands administered by PCA, including aquatic species (as defined by SARA) as well as terrestrial species.

- DFO is responsible for considering permit applications with respect to listed 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;
 - marine plants, including all benthic and detached algae, marine flowering plants, brown algae, red algae, green algae and phytoplankton.
- ECCC is responsible for considering permit applications with respect to all listed individuals that are not under the responsibility of PCA or DFO, this includes
 - all listed terrestrial species on federal land and on any land affected by a protection order issued under SARA; and
 - for migratory birds protected by the *Migratory Birds Convention Act, 1994*; wherever they are found.

If a competent department issues an authorization, licence or permit under another federal Act, authorizing 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 pre-conditions described under subsection 73(3) of SARA are met.

4.5.2 Regulatory Process

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

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 4.1.4 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.

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.

Application analysis and consultation

An analysis of the application is conducted by ECCC, PCA, or DFO, 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.

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.

This 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 73(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 SARA 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 Impact Assessment Act (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.



4.5.3 Reference

Aquatic species at risk map

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

Guide to the *Species at Risk Act* (SARA) : Information for businesses

https://publications.gc.ca/collections/collection_2014/ec/En14-172-1-2007-eng.pdf

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>

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 Act (S.C. 2002, c. 29)

<https://laws-lois.justice.gc.ca/eng/acts/S-15.3/>

Species at Risk Public Registry

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

4.5.4 Contact information

For more detailed guidance on permits for aquatic species at risk, please contact the DFO regional office in Quebec:

Fish and Fish Habitat Protection Program
Fisheries and Oceans Canada

Phone: 1-877-722-4828

Email: dfo.habitatquebec.mpo@dfo-mpo.gc.ca

For more detailed guidance on permits for terrestrial species at risk, please contact the ECCC's Canadian Wildlife Service regional office:

Canadian Wildlife Service
Environment and Climate Change Canada
801-1550, avenue d'Estimauville
Québec (Quebec) G1J 0C3
Email: permislep.gc@ec.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. Contact Information

IAAC office designated for administering the impact assessment of the project is:

Quebec Regional Office
Impact Assessment Agency of Canada
901-1550, avenue d'Estimauville
Québec (Quebec) G1J 0C1
Phone: 418-649-6444
Email: novador@iaac-aeic.gc.ca