

December 21, 2023

NWB Reference 2AM-DOH1335

Mohammad Ali Shaikh
Nunavut Water Board
PO Box 119
Gjoa Haven, NU X0B 1J0

Dear Mr. Shaikh:

HOPE BAY PROJECT DFO Comments Received on the 2022 Annual Report

Agnico Eagle has been working with the DFO towards a solution for the outstanding issues DFO has with the Hope Bay 2022 Annual Report. Agnico Eagle has provided detailed information supporting our claim that we are meeting the Terms and Conditions (T&C) of the Nunavut Impact Review Board (NIRB) Project Certificate (PC).

Comment number DFO-1 is related to PC 009.

Agnico Eagle has included the required monitoring protocol in Section 4 of the recently updated *Shipping Management Plan* and baseline data collection for the monitoring protocol commenced in 2023. The monitoring program is designed to assess disturbance to marine wildlife resulting from vessel noise in Roberts Bay. Direct monitoring of marine wildlife presence/absence before, during, and after shipping activity provides data to assess potential disturbance in Roberts Bay. The Standard Operating Procedure (SOP) and data entry form for marine wildlife monitoring was included as a separate document (*Hope Bay Marine Mammal Monitoring SOP*). The data collected in 2023 will be provided to NIRB as part of the 2024 Wildlife Mitigation and Monitoring Plan (WMMP) Report.

As noted by DFO in their comments and stated in the *Shipping Management Plan* “appropriate indicators and thresholds to determine if negative impacts on marine wildlife are occurring will be established after at least two years of data collection”. Year one (1) of the data collection is currently in progress and the monitoring protocol is considered in development because thresholds cannot be reliably developed until sufficient observation data is available to determine the overall frequency of marine mammal sightings in Roberts Bay. Thresholds for mitigations will be based on the number of marine mammal sightings during initial monitoring as well as any incidental sightings or interactions with marine mammals. Agnico Eagle welcomes feedback on the marine mammal monitoring methods and will work with DFO to determine indicators and thresholds after the first two years of monitoring; the frequency of marine mammal sightings will guide future monitoring decisions, indicators, thresholds and adaptive management.

The monitoring protocol is focused on assessing potential disturbance to marine wildlife rather than monitoring underwater noise, as per PC 009, T&C 33. There is no requirement in T&C 33 for Agnico Eagle

to contact DFO prior to baseline data collection, nor is there a requirement for underwater noise modeling. Agnico Eagle is currently meeting the requirements under PC 009, T&C 33 and feels this issue is resolved.

Furthermore, the Agnico Eagle Hope Bay Mine has been in Care and Maintenance since March 2022. A total of one cargo vessel and one fuel vessel visited the site in 2022. Only one cargo vessel visited the site in 2023.

Comment number DFO-3 is related to Marine Wildlife Mitigation and includes PC 009, T&C No.31 and 32, as well as PC 003, T&C No. 27:

Per the above noted T&Cs, all vessels supplying the Hope Bay Project are required to avoid sensitive habitat, as identified in the *Shipping Management Plan*, Section 2 (PC 009, T&C 31), and to report any vessel strikes, Section 5.1 (T&C 32). Also, vessel crew are required to scan for sightings of marine mammals during shipping and to record incidental sightings (Section 3). Additionally, Agnico Eagle asks vessels to confirm sightings of marine mammals (minimum once per day). Results are reported to NIRB in the annual WMMP Report.

Agnico Eagle has been attempting to work with DFO to ensure “that marine mammal mitigation measures common for all vessels in the Canadian Arctic are applied to project-contracted vessels as appropriate” (PC 009, T&C 31). Through these comments, DFO is demanding Agnico Eagle implement Marine Mammal Observer Program. However, there is no T&C related to the Hope Bay Project requiring a Marine Mammal Observer Program on shipping vessels nor is it common across all vessels in the Canadian Arctic. The NIRB directly addressed this issue *Nunavut Impact Review Board Final Hearing Report Phase 2 Hope Bay Belt Project, NIRB File No. 12MN001* (NIRB 2018), stating “with respect to potential cumulative effects on marine mammals, the Board is of the view that it would be most appropriate for the Government of Canada to establish and implement standardized requirements that would pertain to all certified vessels transiting through Arctic waters, rather than placing the onus on proponents”. If a marine observer program becomes a required standard mitigation for avoiding marine wildlife on shipping vessels, Agnico Eagle will participate in this program alongside all other vessels in the Canadian Arctic.

PC 009, T&C 31 and 32, as well as PC 003, T&C 27 have specific objectives which are clearly outlined in the *Shipping Management Plan* and addressed in the annual WMMP report (incidental sightings, reporting vessel tracks to confirm avoidance of sensitive habitat, and incident reporting). Agnico Eagle is currently meeting the requirements under PC 009, T&C 31 and 32, as well as PC 003, T&C 27 and we feel this issue is resolved.

Comment number DFO-4 is related to Aquatic Invasive Species, specifically related to shipping activities (i.e., ballast water, biofouling).

Agnico Eagle requires the shipping companies contracted to supply the Hope Bay mine through the annual sea-lift operations to comply with the Ballast Water Regulations, which reduces the risk of invasive species being introduced as a result of mine related shipping activities.

Under the Ballast Water Regulations, all vessels are required to have a *Ballast Water Management Plan*. The *Ballast Water Management Plan* is written in accordance with the requirements of Regulation B-1 of the International Convention for the Control and Management of Vessels' Ballast Water and Sediments and aims to prevent, minimize, and ultimately eliminate the risk of introducing harmful aquatic organisms and pathogens from vessels' ballast water and associated sediments, while protecting vessel's safety.

The hulls of shipping vessels are typically coated with anti-fouling agents to discourage marine organisms from attaching to the hull. Regulations around anti-fouling agents are generally related to managing of the coatings themselves and not control of the organisms.

DFOs comment confirms that "the Shipping Management Plan does comply with Ballast Water Regulation" and Agnico Eagle is using standard and acceptable practices common for all vessels in the Canadian Arctic, complying with the requirements and shipping regulations related to the concerns DFO has expressed, including Project Certificate Terms and Conditions, the *Shipping Act*, the and the Ballast Water Regulations. Agnico Eagle feels this issue is resolved.

We appreciate your consideration in this matter.

Sincerely,



Manon Turmel
Permitting & Regulatory Affairs Superintendent

Attachment: Relevant Terms and Conditions

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Project Certificate 009, Term and Condition 33:

Term and Condition No.	33.
Category:	Marine Environment - Noise Monitoring
Responsible Parties:	The Proponent
Project Phase:	All Phases
Objective:	To ensure that project activities and project-related marine shipping do not cause unacceptable noise exposure to marine wildlife.
Term or Condition:	The Proponent shall develop a monitoring protocol for assessing disturbance to marine wildlife resulting from project-related underwater noise in Roberts Bay, and to facilitate assessment of the potential short term, long term, and cumulative effects of project-related noise (including vessel noise in Roberts Bay) on marine wildlife. The Proponent is expected to work with Fisheries and Oceans Canada to determine appropriate indicators and thresholds that can be used to determine if negative impacts on marine wildlife are occurring, and adaptive management measures to mitigate adverse impacts of project-related noise.
Reporting Requirements:	The monitoring protocol should be incorporated into an appropriate management plan and shall be provided to the Nunavut Impact Review Board (NIRB) prior to commencement of construction and project-related shipping, with summary discussion of associated implementation included within annual reporting to the NIRB.

Project Certificate 009, Term and Condition 31:

Term and Condition No.	31.
Category:	Marine Environment – Marine Wildlife Mitigation
Responsible Parties:	Proponent, Fisheries and Oceans Canada, and Environment and Climate Change Canada
Project Phase:	All Phases
Objective:	To ensure that marine shipping activities avoid adversely impacting seabirds and marine mammals.

Term or Condition:	The Proponent shall provide its contracted vessel operators with maps and descriptions of key marine bird habitats as well as information on sensitive marine mammal habitats in the Northwest Passage, updated annually to include newly published information as it becomes available. The guidance package shall specify that, subject to vessel safety requirements, key wildlife habitats shall be avoided by a distance of at least 500 metres, and wildlife are to be given the right of way. The Proponent shall work with Fisheries and Oceans Canada to ensure that marine mammal mitigation measures common for all vessels in the Canadian Arctic are applied to project-contracted vessels as appropriate.
Reporting Requirements:	The Proponent shall demonstrate its compliance with this Term and Condition within its Plan and shall comment on the effectiveness of these measures within its associated annual reporting to the Nunavut Impact Review Board.

Project Certificate 009, Term and Condition 32:

Term and Condition No.	32.
Category:	Marine Shipping – Vessel strikes
Responsible Parties:	Proponent
Project Phase:	All Phases
Objective:	To ensure that marine shipping activities avoid seabirds and marine mammals.
Term or Condition:	The Proponent shall ensure that shippers retained for project related shipping immediately report any accidental contact by project vessels with marine mammals or seabird colonies to Fisheries and Oceans Canada and Environment and Climate Change Canada respectively. The Proponent shall also ensure that the circumstances of the incident are investigated to determine if additional mitigative measures are required.
Reporting Requirements:	A summary of any vessel strikes, and any adaptive management steps undertaken, shall be included in the Proponent's annual report to the Nunavut Impact Review Board.

Project Certificate 003, Term and Condition 27:

REVISED Term and Condition No. 27	27
Category:	Wildlife Mitigation and Monitoring Plan including Cumulative Effects Assessment

Responsible Parties:	The Proponent
Project Phase:	All phases
Objective:	To assess the environmental impact of the Project on wildlife and compare these effects to the impact predicted in the 2005 FEIS and the 2015 Amendment Application
Term or Condition:	The Proponent shall update and revise the Wildlife Mitigation and Monitoring Plan (WMMP) to reflect Project terms and conditions and shall revise the Wildlife Mitigation and Monitoring Plan and submit to the Nunavut Impact Review Board (NIRB) for review. The NIRB may consult with relevant Government departments and the Nunavut Wildlife Management Board prior to approving the revised WMMP. The revised WMMP must be submitted within three (3) months after the updated Project Certificate is issued. The Proponent must also submit an updated plan on an annual basis which must also be approved by NIRB.
Reporting Requirements:	The Proponent is to report to the NIRB in its annual report

Commentary: Monitoring measures included in the Wildlife Mitigation and Monitoring Plan should be appropriate to confirm impact predictions, monitoring impacts, and to support adaptive implementation of mitigation measures. Specific to caribou, during construction and operations the Proponent must annually review relevant available data from on site and caribou collar data and shall consider revisions to the Wildlife Mitigation and Monitoring Plan.