



Environmental Assessments & Major Projects  
Oceans, Habitat and Species at Risk Branch, Maritimes Region  
Fisheries and Oceans Canada  
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Our file/Notre référence  
**08-HMAR-MA7-00179**

June 11, 2009

Marielle Thillet  
c/o David Riffe  
Environmental Lead – Deep Panuke Project  
Encana Corporation  
Suite 700, Founders Square  
1701 Hollis Street  
Halifax, Nova Scotia  
B3J 3M8

Dear Marielle Thillet:

**RE: Response to your request for confirmation in writing that the Deep Panuke Project offshore pipeline installation works or undertaking (including landfall works or undertaking) does not trigger a requirement for a Subsection 35(2) Authorization pursuant to the *Fisheries Act***

This letter outlines Fisheries and Oceans Canada's (DFO) response to your request for confirmation in writing that the Deep Panuke Project offshore pipeline installation works or undertaking (including landfall works or undertaking) does not trigger a requirement for a Subsection 35(2) Authorization pursuant to the *Fisheries Act*. As part of the Deep Panuke Project, EnCana Corporation proposes to install a pipeline in the nearshore and offshore waters of Nova Scotia (and associated landfall works or undertaking). Installation of the pipeline is to be carried out by Allseas from June 21 to late-November 2009 (the installation schedule may change due to unforeseen circumstances).

In regard to the associated landfall works or undertaking that is required for pipeline installation, DFO has already determined that construction and removal of the nearshore berm does not require a Subsection 35(2) Authorization pursuant to the *Fisheries Act*. My records indicate that this determination, including measures that DFO proposed to accompany the works or undertaking, was directed in writing to the attention of Marielle Thillet (Environmental Lead – Deep Panuke Project) on September 2, 2008. The use of explosives in support of trenching activities did require a Section 32 Authorization pursuant to the *Fisheries Act*, including conditions of Authorization. My records indicate that the Authorization for the use of explosives

was directed in writing to Marielle Thillet on August 29, 2008, with an amendment to the Authorization directed in writing to Marielle Thillet on January 21, 2009. Fisheries and Oceans Canada has reviewed EnCana Corporation 2009 Landfall Marine Blasting Report for DFO (Follow-up to Section 32 Permit) for the Deep Panuke Project (DMEN-P21-RP-EH-90-0003.01U), and have concluded that the use of explosives occurred within the conditions of the Section 32 Authorization.

Fisheries and Oceans Canada has also reviewed and provided comments on the EnCana Corporation 2009 Pipeline Installation Environmental Protection Plan/Environmental Effects Monitoring Plan (EPP/EEMP) for the Deep Panuke Project (DMEN-P21-RP-EH-90-0002.01U). In general, DFO believed that the proposed bests practice, compliance, and mitigation outlined in the EPP/EEMP were suitable measures to minimize conflict between the works and undertaking with marine species (including species at risk), marine habitat, and other ocean users. That being said, DFO did propose specific suggestions to be considered in the EEP/EEMP prior to occurrence of the proposed pipeline installation works or undertaking. Comments on the EPP/EEMP were provided in writing to Eric Theriault, Canada-Nova Scotia Offshore Petroleum Board, on June 1, 2009.

In consideration of the above-mentioned correspondence and short-term, transient nature of the pipeline installation works or undertaking, DFO has determined that the proposed works or undertaking is not likely to cause a residual Harmful Alteration, Disruption, or Destruction of Fish Habitat. Thus, DFO has concluded that the offshore pipeline installation works or undertaking does not require a Subsection 35(2) Authorization pursuant to the *Fisheries Act*. Note that despite this conclusion, should the proposed works or undertaking due to weather conditions, different soil or other natural conditions, or for any other reason appear in the opinion of DFO likely to cause greater impacts than has previously been indicated, DFO may direct Encana Corporation (the Project Proponent) and its agents and contractors to suspend or alter works and activities associated with the pipeline installation to avoid or mitigate adverse impacts to fish and fish habitat. Fisheries and Oceans Canada may also direct the Proponent and their agents and contractors to carry out at the Proponent's expense any works or activities deemed necessary by DFO to avoid or mitigate further adverse impacts to fish and fish habitat. In circumstances where DFO is of the view that greater impacts may occur than were contemplated by the parties, DFO may also modify or rescind this conclusion. If this conclusion is to be changed than the Proponent will be given an opportunity to discuss any proposed modifications or rescission.

If you have any questions or concerns regarding the content of this response please do not hesitate to contact me by telephone, 902-426-3150, or by email, Kristian.Curran@dfo-mpo.gc.ca, at a time convenient to you.

Sincerely,



Kristian Curran  
A/Environmental Assessor