

APPENDIX F

FEDERAL COORDINATION REGULATIONS CORRESPONDENCE

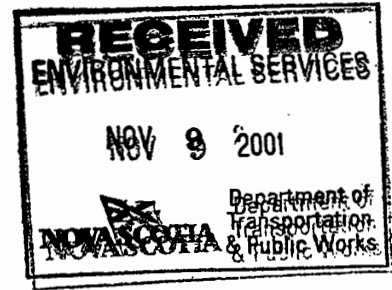


**Canadian Environmental
Assessment Agency**

TD Centre
Suite 1030
1791 Barrington Street
Halifax, Nova Scotia
B3J 3L1

**Agence canadienne
d'évaluation environnementale**

Centre TD
Bureau 1030
1791, rue Barrington
Halifax (Nouvelle Écosse)
B3J 3L1



November 6, 2001

Elizabeth Pugh, P. Eng.
Nova Scotia Department of
Transportation & Public Works
P.O. Box 186
Halifax, Nova Scotia
B3J 2N2

Dear Ms. Pugh:

**RE: FEDERAL COORDINATION REGULATION
HIGHWAY 104 AT ANTIGONISH**

On September 12, 2001, the project description for the captioned project was distributed to Transport Canada, Environment Canada and DFO in accordance with the requirements of the Federal Coordination Regulations.

All departments have now responded with the following determinations:

DEPARTMENT	RESPONSE
Transport Canada	Likely to require an environmental assessment
Environment Canada	Not likely to require an environmental assessment
Fisheries and Oceans - CCG	Likely to require an environmental assessment
Fisheries and Oceans - Habitat	Likely to require an environmental assessment

.../2



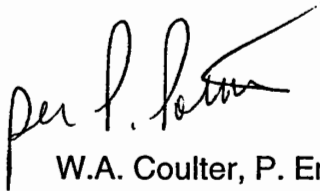
Elizabeth Pugh, P. Eng.
Nova Scotia Department of
Transportation & Public Works

November 6, 2001

It is suggested that you invite Transport Canada, Environment Canada and DFO to provide expert advice pertaining to their mandates during the preparation of terms of reference and subsequent steps in the environmental assessment process.

Please advise if you wish to discuss further.

Yours truly,



W.A. Coulter, P. Eng.
Regional Director

cc: Regent Dickey, P. Eng., Transport Canada
Ian McCracken, Environment Canada
James Leadbetter, DFO - Habitat
Jon Prentiss, DFO - Canadian Coast Guard
Chris Daley, NSDOEL

encl: Letter and attachment - Jim Leadbetter to Bill Coulter, October 10, 2001
Letter - Ian McCracken to Bill Coulter, September 24, 2001

Nombre de pages: 2

**Programs and Divestiture
Programmes et Cessions**

**FACSIMILE TRANSMITTAL FORM
POUR TÉLÉCOPIEUR**

BORDEREAU DE TRANSMISSION

TRANSMITTED FROM TRANSPORT CANADA, OTTAWA TRANSMIS DE TRANSPORTS CANADA, OTTAWA	FAX: (613) 990-9639 TÉLÉC: Date : 17 October 2001	VERIFICATION: VÉRIFICATION:
TO: Bill Coulter À: CEAA NUMÉRO DE TÉLÉCOPIEUR: (902) 246-6550 FAX NUMBER:		
FROM/DE: Régent Dickey TELEPHONE NO.: (613) 991-6452		
SPECIAL INSTRUCTIONS - INSTRUCTION SPÉCIALES Bill, Please find reply to your Federal Coordination Regulations on project Highway 104 at Antigonish. As per our last meeting, TC will act as AR. No formal request for the province is yet received to fund this project under Fed/Pro. Agreement. If you have any question please do not hesitate to call me at (613) 292-8442. Regards Regent Dickey Surface Program		

FEDERAL COORDINATION REGULATIONS
Sections 4 & 6
RECORD OF DETERMINATION

**CEAA / ACEE
RECEIVED**

OCT 29 2001

HIGHWAY 104 AT ANTIGONISH - NOVA SCOTIA

ATLANTIC REGION

2001-501

FEDERAL AUTHORITY: TRANSPORT CANADA
NAME & TITLE: REGENT DICKEY, HWY AGREEMENT MGT
SIGNATURE: Regent Dickey DATE: 11 / 10 / 2001
dd / mm / yy

Is your Department / Agency:

(a) likely to require an environmental assessment of the project

(b) not likely to require an environmental assessment of the project

(c) in possession of specialist or expert information or knowledge that is necessary to conduct the environmental assessment of the project

Does your Department / Agency

(d) require additional information to make a determination under items (a), (b) or (c)

If the answer to (a) is "yes"

- Indicate the "trigger" under section 5 of the *Canadian Environmental Assessment Act*
Trigger: likely to fund this project through Fed/Prov Ag.
- Identify the contact person for the environmental assessment if different from above.
Name & Title: _____
Address: _____
Telephone/Fax: _____
e-mail: _____

If the answer to (d) is "yes", the Regulations require that the additional information be requested within 10 days after making the determination.

Please return by fax to:
CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY
Fax Number: (902) 426-6550

Environmental Protection Branch
16th Floor, Queen Square
45 Alderney Drive
Dartmouth, NS B2Y 2N6

CEAA / ACEE
RECEIVED

SEP 28 2001

File No.: 4194-82/2

September 24, 2001

ATLANTIC REGION Data File: C:\BARB\EA Corresp\2001\2001-291.doc

2001-437.

Bill Coulter
Regional Director
Canadian Environmental Assessment Agency
TD Centre Suite 1030
1791 Barrington Street
Halifax, NS B3J 3L1

Dear Mr. Coulter:

RE: **Project Description: Highway 104 Upgrade** **EAS 2001-291**
Antigonish, NS

Introduction

As requested, staff of Environment Canada (EC) have reviewed the documentation regarding the above-noted project proposal, which was forwarded to our office with your memorandum of September 11, 2001. From the information provided, it is understood that the proponent intends to upgrade Highway 104 near Antigonish by diverting through traffic from a two-lane uncontrolled access roadway to a divided four-lane, controlled access, highway. The proposed alignment, closely paralleling the existing roadway, will extend 15 km between Addington Forks Road and Taylor Road. It is further understood that there is no acid-generating rock in the vicinity of the project.

Determination

Based on the project description, it is not likely that EC has any powers, duties or functions in relation to the proposed project under section 5 of the CEAA, that would require an environmental assessment. However, as indicated below, EC has in its possession specialist knowledge and information which may be of assistance.

Mandate

As you are aware, EC is responsible for administering several statutes such as the *Department of Environment Act*, *Fisheries Act* (Section 36), *Canadian Environmental Protection Act*, *Canada Water Act*, *Canada Wildlife Act*, and the *Migratory Birds Convention Act* which are focussed on promoting sustainable development, protecting the environment, conserving certain renewable resources and reporting on environmental conditions. EC is also the lead federal department in promoting a variety of federal policies and programs concerning the environment including the: Federal Policy on Wetland Conservation; A Wildlife Policy for Canada; Federal Water Policy; Toxic Substances Management Policy; and, Pollution Prevention - A federal strategy for action.



Environment
Canada

Environnement
Canada

Canada



It is understood that a number of studies/investigations will be required to identify and quantify possible project/environment interactions in order to develop mitigative measures and an Environmental Management Plan (Section 6.0). EC supports the proponent's plan to carry out surveys of flora and fauna (which should include species at risk), and migratory birds within the project area, as well as a detailed wetlands impact analysis. In the interest of facilitating the timely exchange of information and early attention to issues of particular concern to EC, the following preliminary guidance is offered. It is requested that this guidance be conveyed to the proponent in the anticipation of the need for an environmental assessment that reflects both federal and provincial requirements.

Preliminary Review Comments

EC Legislation and Policies

Based on EC's understanding of the project description, the following departmental legislation and policies are highlighted. The proponent should describe measures that are being taken to ensure compliance with the legislation, as well as those that demonstrate consideration of pertinent environmental policies.

1. *Fisheries Act* (Section 36)

- the deposit of a deleterious substance into waters frequented by fish is prohibited.

2. *Canadian Environmental Protection Act*

- regulations, notices, codes of practice, guidelines (e.g. Canadian Environmental Quality Guidelines (1999)) and priority substance assessment program (<http://www.ec.gc.ca/CEPARRegistry/regulations/>).

3. *Migratory Birds Convention Act* and associated Regulations

- Migratory birds, their eggs, nests and young are protected under the Act and Regulations (Migratory birds include those species listed in the Canadian Wildlife Service Occasional Paper No. 1 "Birds Protected in Canada under the Migratory Birds Convention Act" (1991). The Act and regulations include the following prohibitions:
 - "no person shall disturb, destroy or take a nest, egg, nest shelter, eider duck shelter or duck box of a migratory bird" without a permit;
 - "no person shall deposit or permit to be deposited oil, oil wastes or any other substance harmful to migratory birds in any waters or any area frequented by migratory birds".

Relevant Environmental Assessment Guidelines (http://www.ec.gc.ca/guide_e.html)

- Migratory Birds Environmental Assessment Guideline (1998)
- Environmental Assessment Guideline for Forest Habitat of Migratory Birds (1998).

4. Federal Policy on Wetland Conservation and associated Implementation Guide for Federal Land Managers (http://www.cws-scf.ec.gc.ca/public_e.html).

- In support of the objective of "promoting the conservation of Canada's wetlands to sustain their ecological and socio-economic functions, now and in the future", the Federal Government strives for the goal of **No Net Loss of wetland function on federal lands or when federal funding is provided**. No Net Loss can be achieved by following a hierarchical sequence of mitigation alternatives: avoidance, minimization and compensation. The best and least disruptive approach to mitigation of environmental effects is impact

avoidance. Avoidance refers to elimination of adverse effects on wetland functions, by altering the siting or the design of a project. Minimization refers the reduction or control of adverse effects via modification of the project or implementation under special conditions. Compensation refers to the replacement of unavoidably lost wetland functions, through enhancement of existing wetlands, or, as a last resort, creation of new wetlands.

Relevant Environmental Assessment Guideline (http://www.ec.gc.ca/guide_e.html)

- Wetlands Environmental Assessment Guideline (1998).

5. Species at Risk

- Information on species at risk in the general project area can be obtained from the following sources:
 - Atlantic Canada Conservation Data Centre (contact Stefen Gerriets at 506-364-2657 or sgerriets@mta.ca)
 - Committee on the Status of Endangered Wildlife in Canada (<http://www.speciesatrisk.gc.ca>)
 - Nova Scotia Museum of Natural History and the Nova Scotia Department of Natural Resources.

6. Pollution Prevention - A Federal Strategy for Action (<http://www.ec.gc.ca/pollution/strategy/en/p4.cfm>)

- Pollution prevention can be defined as the use of processes, practices, materials, products or energy that avoid or minimize the creation of pollutants and waste, and reduce overall risk to human health or the environment.

Issues of Concern to Environment Canada

The following issues should be addressed in an environmental assessment of this project:

Meteorological and hydrological influences on the project

(e.g. sizing of culverts and other structures at two major and several minor water crossings)

- sensitivity of the project to variations in meteorological and hydrological conditions including extreme events;
- potential implications of climate change and related effects on the operation, decommissioning or abandonment of the project.

Impacts of effluents and site drainage from all activities associated with the project

- sources, characteristics and estimated quantities of contaminants (e.g. de-icing agents, suspended solids) released to receiving waters;
- changes to the quality of receiving waters taking into account Section 36 of the *Fisheries Act* and the CCME Canadian Environmental Quality Guidelines (as they pertain to the protection of aquatic life);
- changes to the quality of migratory bird habitat and impacts on migratory birds and species at risk (if any).

Impacts of toxic substances

- sources, characteristics and estimated quantities of toxic substances (e.g. products used in the construction, operation and maintenance of the highway);
- probability of an accident or malfunction (e.g. spillage from fuel storage facilities) and consequences of an accident for environmental quality, migratory birds, species at risk and related habitat.

Impacts of land use changes on biodiversity with attention to impacts on migratory birds, species at risk, and their habitats including wetlands

- loss and fragmentation of habitats;
- loss of wetland functions.

Presence of species at risk

- the presence of species at risk in the area should be confirmed by field surveys carried out by professional biologists at the appropriate time of year *in habitats potentially harbouring species at risk*.

(Note: There are inconsistencies in the project description with respect to the presence of species at risk. For example, Section 4.1 states that “there are no known occurrences of rare and/or endangered plant or animal species within the project area”. Section 5.1 indicates that “although there are no known rare or endangered plant or animal species within the corridor for the proposed alignment, there are known occurrences within the broader study area”. Appendix A suggests that “several species of rare plants and animals exist in the study area”.)

Cumulative Effects

- other projects or activities that have been or are likely to be carried out, in addition to the proposed highway project, must be considered where there is a potential for cumulative effects. From EC’s perspective, attention to cumulative effects should be focussed on establishing how project-induced effects on ecosystem components (e.g. species at risk, migratory birds, habitats, wetland functions, hydrological regime, environmental quality) would be compounded by other projects and activities impacting these same attributes.

Mitigation and Monitoring

A mitigation and monitoring strategy should be prepared to facilitate management of the identified adverse environmental effects including cumulative environmental effects. Such a strategy should reflect a clear priority on impact avoidance and minimization opportunities (e.g. pollution prevention). A contingency plan that would facilitate a rapid and effective response to an accidental event (e.g. spill, malfunction) should also be an integral part of a mitigation and monitoring strategy.

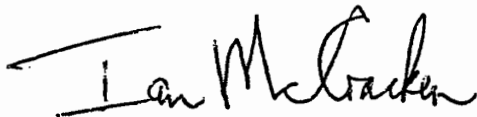
Provisions for verifying the accuracy of impact predictions, and the effectiveness of mitigation measures, during project implementation should be outlined. The proponent should be prepared to adopt alternative mitigative measures and to take corrective actions accordingly.

Editorial Comments

It should be pointed out that the *Migratory Birds Convention Act* is incorrectly referred to as the *Migratory Birds Conservation Act* in Section 7.0.

I trust the above comments will be of assistance. We look forward to the identification of opportunities to participate in the federal environmental assessment that may be required. In the interim, if you have any questions, please give me a call at (902) 426-9662.

Yours truly,

A handwritten signature in black ink that reads "Ian McCracken". The signature is written in a cursive style with a long horizontal line extending to the left from the start of the name.

Ian McCracken
Environmental Assessment Science Advisor
Pollution Prevention Division (Atlantic Region)

cc B. Jeffrey
E. Hundert
R. Gautreau



Fisheries and Oceans
 Canada
 Coast Guard

Pêches et Océans
 Canada
 Garde côtière

**NAVIGABLE WATERS PROTECTION / PROTECTION DES EAUX NAVIGABLES
 MARITIMES REGION / RÉGION DES MARITIMES**

From: Jon Prentiss NWP Officer Navigable Waters Protection Maritimes Region	Canadian Coast Guard P.O. Box 1000 Dartmouth, Nova Scotia B2Y 3Z8	De: Jon Prentiss Agent LPEN Protection des eaux navigables Région des Maritimes	Garde côtière canadienne C.P. 1000 Dartmouth, (Nouvelle-Écosse) B2Y 3Z8
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Facsimile / Télécopieur (902) 426-7585 Tel. N° / N° De Tél. (902) 426-2714	Email/Courrier électronique prentisj@mar.dfo-mpo.gc.ca
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DATE: September 25, 2001	TOTAL NUMBER OF PAGES INCLUDING COVER SHEET 2
	CEAA / ACEE RECEIVED
	SEP 25 2001

Your file / Votre référence	Our file / Notre référence 8200-01-2387
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	Name / Nom CEA Agency	DEST. FACSIMILE N°: Número de FAC-SIMILE 426-6550	TEL. NO NO DE TEL. 2001-429
	Name / Nom Carol Sampson - DFO	DEST. FACSIMILE N°: Número de FAC-SIMILE 426-1489	TEL. NO NO DE TEL. 426-5132

Re/Sujet: FCR - ROD Highway 104 at Antigonish, N.S.

Please find enclosed ROD for above project.

Should you have any questions, please do not hesitate to contact me.

Signature

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FEDERAL COORDINATION REGULATIONS

Sections 4 & 6

RECORD OF DETERMINATION

HIGHWAY 104 AT ANTIGONISH - NOVA SCOTIA

FEDERAL AUTHORITY: NAVIGABLE WATERS PROTECTION ACT (NWPA)
 NAME & TITLE: JOHN PRENTISS NWP OFFICER
 SIGNATURE: [Signature] DATE: 25 / 09 / 01
 [mm / dd / yy]

Is your Department / Agency:

(a) **likely to require an environmental assessment of the project**
 (b) **not likely to require an environmental assessment of the project**
 (c) **In possession of specialist or expert information or knowledge that is necessary to conduct the environmental assessment of the project**

Does your Department / Agency:

(d) **require additional information to make a determination under items (a), (b) or (c)**

If the answer to (a) is "yes"

- Indicate the "trigger" under section 5 of the *Canadian Environmental Assessment Act*
 Trigger: 5(1)
- Identify the contact person for the environmental assessment if different from above.
 Name & Title: HABITAT MANAGEMENT DIVISION - DFO
 Address: 70 CAROL CAMPBELL - R.I.O.
1 CHALLENGER DRIVE, DARTMOUTH, N.S.
 Telephone/Fax: P. 426. 5132 FAX 426. 1469.
 e-mail: _____

If the answer to (d) is "yes", the Regulations require that the additional information be requested within 10 days after making the determination.

Please return by fax to:
CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY
 Fax Number: (902) 426-6550



Habitat Management Division
P.O. Box 1006
B505, 5th Floor
Dartmouth NS
B2Y 4A2

Your file Votre référence

Our file Notre référence
01-G6-109

October 10, 2001

Mr. Bill Coulter, P. Eng.
Regional Director
Canadian Environmental Assessment Agency
Suite 1030 TD Center
Halifax Nova Scotia
B3J 3L1

Dear Mr. Coulter:

RE: Project Description, Highway 104 at Antigonish

This is in response to your letter of September 11, 2001, attached to which was the above projects description and a "Record of Determination" form pursuant to Sections 4 & 6 of the Federal Coordination Regulation (FCR). As per your request our Department has reviewed the project description and completed the FCR form (attached).

The Habitat Management Division (HMD) of the Department of Fisheries and Oceans (DFO) administers sections of the Fisheries Act that can serve as a Law List Trigger under the Canadian Environmental Assessment Act (CEAA).

During our review of the project description it was noted that the proposed highway alignment will either cross or directly impact on the following highly sensitive fisheries watercourses: (1) Briley Brook where structures would be required in the headwater tributaries which are over-wintering areas for Atlantic salmon, trout and other fish species. Briley Brook has been the subject of a highly successful fish habitat restoration project focusing on spawning and rearing habitat for Atlantic salmon and brook trout. There has been an eightfold increase in salmon spawning in Briley Brook since 1992. (2) The West

...2/



River where a major bridge structure would be required. The West River has the highest juvenile Atlantic salmon densities per unit area of any watershed in the Maritimes. The proposed crossing site is also a critical migration route, holding area and fishing area for salmon, trout, gaspereau and other fish species. (3) South River where a major bridge will be required. The South River contains a diverse fishery including Atlantic salmon, sea trout, brown trout, rainbow trout, striped bass, gaspereau and other fish species. The area north of the existing highway 104 is a highly productive salt marsh critical to both the freshwater and marine fisheries resource.

In addition to sensitive fisheries watercourses being crossed, virtually the entire length of the proposed highway alignment is located on highly erodable, fine grained, clay/silt soils. The nature of these soils, the volumes of earth which must be moved, the rolling terrain adjacent to the proposed watercourse crossings all greatly increase the potential for adverse effects on the fisheries resource during construction of the highway.

Based on the above our Department has concluded that the above three watercourse crossings and potentially others along the alignment will likely result in the harmful alteration, disruption or destruction of fish habitat (HADD), contrary to section 35(1) of the Fisheries Act which states:

"No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat".

DFO will, therefore, be obligated to ensure an assessment pursuant to the Canadian Environmental Assessment Act (CEAA) is carried out for any of the above watercourse crossings where a HADD is anticipated to occur.

For clarification this letter confirms that based on our review of the project description for the construction of Highway 104 at Antigonish, an Environmental Assessment (EA) is *likely* with regard to the Fisheries Act under CEAA. In addition, DFO confirms it is in possession of expert information and knowledge, with respect to the fish and fish habitat, that is necessary to conduct the environmental assessment of this project.

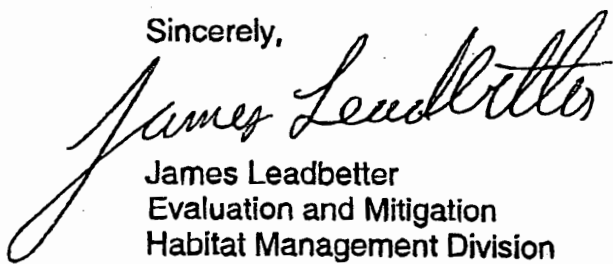
It should be noted, however, that our Department must reserve our final determination on whether a Fisheries Act Authorization and a supporting CEAA screening will be required on each of the fisheries stream crossings until we have received and reviewed the following: (1) the final design drawings of all watercourse crossing structures; (2) the aquatic study of all watercourse crossings referred to in the project description.

The scope of the CEAA screening(s) for any Fisheries Act Authorization(s) will likely be limited to the watercourse found within the right-of-way and the immediate approach areas.

Thank your for the opportunity to review and comment on this proposal.

If your have any questions with respect to these comments please contact me at (902) 426-6027.

Sincerely,



James Leadbetter
Evaluation and Mitigation
Habitat Management Division
Maritimes Region

- cc: C..MacInnis
- E. Pugh
- B. Jeffrey
- M. Donovan

FEDERAL COORDINATION REGULATIONS

Sections 4 & 6

RECORD OF DETERMINATION

HIGHWAY 104 AT ANTIGONISH - NOVA SCOTIA

FEDERAL AUTHORITY: Fisheries & Oceans Canada Fisheries Act
NAME & TITLE: James Leadbetter Evaluation & Mitigation Officer
SIGNATURE: James Leadbetter DATE: 10 / 10 / 01
dd / mm / yy

Is your Department / Agency:

(a) likely to require an environmental assessment of the project

(b) not likely to require an environmental assessment of the project

(c) in possession of specialist or expert information or knowledge that is necessary to conduct the environmental assessment of the project

Does your Department / Agency

(d) require additional information to make a determination under items (a), (b) or (c)

If the answer to (a) is "yes"

- Indicate the "trigger" under section 5 of the *Canadian Environmental Assessment Act*
Trigger: 5(1)(d)
- Identify the contact person for the environmental assessment if different from above.
Name & Title: Same as above
Address: Fisheries and Oceans Canada, Habitat Management
B2V 4A2 Division 8505 5th St. P.O. Box 106 Dartmouth N.S.
Telephone/Fax: tel 902 426 6027 fax 904 426 1489
e-mail: leadbetterj@mar.dfo-mpo.gc.ca

If the answer to (d) is "yes", the Regulations require that the additional information be requested within 10 days after making the determination.

Please return by fax to:
CANADIAN ENVIRONMENTAL ASSESSMENT AGENCY
Fax Number: (902) 426-6550