



National Energy Board and Fisheries and Oceans Canada Memorandum of Understanding 2013

What is the mandate of the NEB?

The National Energy Board (NEB) promotes safety and security, environmental protection and efficient energy infrastructure and markets in the Canadian public interest. In carrying out its duties, the NEB is responsible for conducting environmental assessments, as well as monitoring and compliance activities to ensure the environment is protected during all stages of a project's lifecycle under the NEB's regulation.

How will the Memorandum of Understanding (MOU) affect the review process of federally regulated pipeline and power line applications?

During its review of pipeline and power line applications, the NEB will assess the potential impacts of a project to fish and fish habitat, including aquatic species at risk in a manner that considers the intent and requirements of the *Fisheries Act* and the *Species at Risk Act* (SARA).

If no authorizations or permits are required under the *Fisheries Act* or SARA, project applicants will not be required to make a separate submission to Fisheries & Oceans Canada (DFO) for their review.

How will the MOU affect authorizations under the *Fisheries Act*?

The NEB will continue to assess project applications and determine if mitigation strategies are needed to reduce or prevent impacts to fish or fish habitat. If a project could result in serious harm to fish, then the NEB will inform DFO that a *Fisheries Act* authorization under paragraph 35(2)(b) is likely to be required. DFO will review and issue an authorization when appropriate, prior to project construction. Authorizations issued by DFO would relate specifically to those watercourses where serious harm as defined by the *Fisheries Act* is likely, and not the entire project.

How will the MOU affect permits under SARA?

The NEB will assess a project application for potential impacts to aquatic species at risk. DFO will be contacted by the NEB if it is determined that an impact to SARA-listed aquatic species may potentially occur. When appropriate and prior to construction, DFO will review and issue permits under SARA, should the project be approved by the NEB.

What happens when the NEB determines that the project will likely require an authorization under the *Fisheries Act* or that there are potential impacts to an aquatic species at risk?

The NEB will notify DFO, copying the company, that an authorization for serious harm under the *Fisheries Act* is likely to be required. The NEB will then review the company's draft application for Fisheries Act Authorization to ensure that all required information, mitigation, monitoring plans and offsetting measures are adequate. Once the NEB has determined that the package is adequate, the application for Fisheries Act Authorization will need to be submitted to DFO by the company.

Should an aquatic species at risk be present, the NEB will notify DFO who will then comment on any potential impacts.

Is the environmental assessment process different now that the MOU has been signed?

The process remains unchanged. The NEB has always taken into account how projects could potentially impact fish and fish habitat when conducting environmental assessments and this practice will not change.

What if a project has been approved by the NEB, but crossing specific designs were not submitted to DFO for final review?

In some cases, a project has received Board approval with the understanding that final crossing design reviews are to be conducted prior to construction to ensure compliance with the *Fisheries Act*. From this point forward, these crossing-specific reviews will be conducted by NEB staff to determine if serious harm to fish is likely. If likely, the company will be required to submit an Application for Authorization under paragraph 35(2)(b) of the *Fisheries Act* to DFO prior to initiating construction.

Will the NEB issue a letter to the applicant stating that a project will not require an authorization under the *Fisheries Act* or a permit under the *Species at Risk Act*?

If the NEB's assessment determines that a project will not require an authorization under the *Fisheries Act* or that there are no potential impacts to aquatic species at risk, no correspondence will be issued. Any NEB Order or Certificate may contain additional requirements for the protection of fish and fish habitat.

Will NEB staff require additional training to implement this MOU?

NEB staff have the technical expertise to determine potential effects to fish and fish habitat. When reviewing applications, the NEB has always been required to take environmental protection into account, and this includes potential impact to fish and fish habitat.

NEB staff have been provided with an update on the aspects of the new Fisheries Protection Provisions of the *Fisheries Act* as well as associated DFO policies. This will ensure consistency across the two departments.

Will this MOU reduce environmental protection?

No, the NEB has always considered impacts to fish and fish habitat and aquatic species at risk when making its decisions. The initial assessment of impacts of federally regulated pipeline and power line projects to fish and fish habitat will now become the sole responsibility of the NEB.

Does the MOU affect the Filing Manual requirements for applications?

No, this MOU does not affect the NEB's Filing Manual requirements for applications. The Filing Manual provides guidance on the information necessary to assess the environmental impacts of a project and outlines all necessary fish, fish habitat and aquatic species at risk requirements that must be submitted by applicants.

How can the public comment on an application and its impact to fish, fish habitat and aquatic species at risk?

Should a person like to participate or comment on an application, please refer to the section titled Public Participation and Land Matters on the NEB Web site.

If the project cannot be completed as originally applied-for or an issue is encountered during construction, who do I contact?

Please contact the NEB immediately if construction plans change or if there is an issue associated with an NEB-regulated activity at a watercourse.

What are the reporting requirements for spills or any potentially harmful materials entering a water body?

Spills and pipeline emergencies should be reported to the Transportation Safety Board's 24-hour hot line at (819) 997-7887. For all other emergencies, please call the NEB at (403) 807-9473.

If required as part of an NEB Order or Certificate, where should regulated companies send completed monitoring reports?

All monitoring reports related to fish, fish habitat and species at risk requirements should be submitted to the NEB in the same manner as other environmental monitoring reports, as they would be a condition of the NEB Order or Certificate.

Has the Operations and Maintenance (O&M) notification process for watercourse crossings changed?

From now on, information that companies used to provide to DFO must now be submitted to the NEB along with their O&M notification. Companies are required to provide information on the watercourse, potential fish habitat and crossing techniques, including measures to avoid harm are to be followed and any other proposed mitigation to reduce or eliminate potential effects. The NEB will then determine if any of the proposed activities will cause a serious harm to fish under the *Fisheries Act*, similar to the application process.

If the NEB determines that a project would pose a risk to fish or fish habitat, the Board will notify DFO and the company will subsequently be required to submit an Application Form for Paragraph 35(2)(b) *Fisheries Act* Authorization to DFO prior to proceeding.