

**Friends of Davie Bay** <http://daviebay.com>

**December 13, 2009**

## **THE LEGAL BASIS FOR AN ENVIRONMENTAL ASSESSMENT**

According to the January 2008 report prepared by Ecologic Consulting, Duncan, BC (hired by Lehigh Northwest Cement Ltd), the proposed load out facility “crosses one of the more ecologically sensitive and fragile ecosystems within the project area”. Ecologic Consulting monitored for blue and red listed species of birds, plants, insects, and amphibians.

They concluded that seven species have a high potential for breeding within the project area: Red-legged Frog, Pacific Sideband snail, Western Pine Elfin butterfly, Green Heron, Band-tailed Pigeon, Barn Swallows, and Great Blue Heron. The Red-legged Frog and Great Blue Heron are both federally listed by COSEWIC as species of special concern. The other five species are provincially blue-listed. Great Blue Herons, Band-tailed Pigeons, and Pacific Sideband snails were observed by Ecologic Consulting scientists during their brief on-site visit.

Ecologic Consulting identified several red-listed plant communities or habitat types in the proposed project area including Douglas-fir/Arbutus, Douglas-fir/dull Oregon grape, western red cedar- Douglas-fir/Oregon beaked-moss, and western red cedar/common snowberry. A more complete and thorough environmental assessment is called for in light of these findings as well as field studies completed by scientists brought in by Friends of Davie Bay (see letter from botanist and mycologist Adolf and Oluna Ceska).

The Marine Habitat Assessment completed by Ocean Dynamics Canada Ltd was less complete and in fact missed several important habitats and species observed by scientists brought in by Friends of Davie Bay. Ocean Dynamics Canada was charged to give special consideration in their monitoring to important habitats and species, including eelgrass beds, kelp beds, and intertidal/subtidal bivalve beds.

Critical habitats are defined as eelgrass beds, lingcod spawning habitats in 30 metres of water or less, and anadromous spawning areas. Ocean Dynamics Canada did not find eelgrass beds in their survey, however scientists brought in by Friends of Davie Bay found healthy eelgrass beds throughout Davie Bay which will be impacted by construction of, use and cleaning of the proposed load out facility (see photo attached of view of eelgrass bed from the island which will be impacted by the load out facility).

Ocean Dynamics Canada Ltd identified the Rockfish Conservation Area (RCA) at the proposed site (adapted from the DFO website [http://www.pac.dfo-mpo.gc.ca/recfish/Restricted\\_Areas/RCAs/Area\\_16\\_page\\_e.htm](http://www.pac.dfo-mpo.gc.ca/recfish/Restricted_Areas/RCAs/Area_16_page_e.htm)).

Sensitive habitat is defined as rockfish rearing and nursery areas and anadromous rearing areas associated with salmon bearing streams. Davie Bay is included in an area designated as a RCA by the DFO in part because of its sheltered, rocky habitat favored by rockfish and used as a rockfish rearing and nursery area. DFO employee and RCA expert Gary Logan in a personal email communication with Scott Wallace of the David Suzuki Foundation said:

“I have been involved in the development of a response to the off-loading site in Davie Bay. The suggested site is within an RCA. The RCA's are a fish management tool and as such are not part of the terrestrial land planning process. Having said this, the RCA network will only work if the designated areas are kept in a somewhat pristine condition to ensure maximum productivity from those fish spawning within the closed areas. To follow through, I have also suggested that in order to maintain the high level of productivity, industrial activity such as those proposed should be avoided. This opinion was requested by Scott Northrup of the DFO's office in Nanimo.”

This proposed load out facility would be the first such facility ever allowed in any of the 164 RCA's in BC. This fact, along with the presence of eelgrass beds and rearing and nursery areas should trigger a specific survey designed by DFO in order to assess the

extent of eelgrass beds and rockfish rearing and nursery habitat. ***The Fisheries Act provides for the protection of fish and fish habitat. Under the Act, no one may carry out any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat (HADD) unless authorized by the Minister of Fisheries and Oceans Canada. In most instances where a work or undertaking will result in a HADD, DFO must also conduct an assessment under the Canadian Environmental Assessment Act (CEAA) prior to issuing an authorization under the Fisheries Act.*** Not to have done so demonstrates a clear lack of responsibility to Section 35(2) authorization under the Fisheries Act for this project. The law protecting fish and fish habitat evokes HADD, which requires an environment assessment by the DFO. This has clearly been ignored. In another precedent-setting case this year, the Georgia Strait Alliance, the Wilderness Committee and the David Suzuki Foundation took the government to court, saying the strategy to save the Nooksack dace was doomed to fail because DFO did not identify habitat crucial to the survival of the species. Judge Campbell agreed, saying critical habitat is mandatory in recovery strategies drafted under SARA.

Ocean Dynamics Canada Ltd identified the extensive sport fishing and prawn trap fishery and salmon migration routes in front of Davie Bay adapted from the SHIM website at [http://www.cmNBC.ca/atlas\\_gallery/sensitive-habitat-inventory-and-mapping-shim](http://www.cmNBC.ca/atlas_gallery/sensitive-habitat-inventory-and-mapping-shim)

The extensive sport fishing and prawn trap fishery routes are of particular concern for safe transport.

The close proximity of salmon migration routes demonstrates the potential for the unique sheltered areas of Davie Bay to provide critical habitat for salmon.

## **SUMMARY:**

1. This quarry project will destroy a sensitive area that provides habitat to blue and red-listed species
2. An extensive eel grass bed has been identified in close proximity to the load out facility; this should trigger a Section 35 (2) authorization (HAAD) and a full environmental assessment.
3. This proposed load out facility would be the first such facility ever allowed in an RCA.
4. DFO has failed to meet its mandate to protect critical habitat.

To:

Hon John Baird, Minister of Transport, Infrastructure, and Communities. [mintc@tc.gc.ca](mailto:mintc@tc.gc.ca)

Hon Jim Prentice, Minister of the Environment. [jim.prentice@ec.gc.ca](mailto:jim.prentice@ec.gc.ca)

Hon Gail Shea, Minister of Fisheries and Oceans. [Shea.G@parl.gc.ca](mailto:Shea.G@parl.gc.ca)

Hon Barry Penner, Minister of the Environment, [Barry.Penner@gov.bc.ca](mailto:Barry.Penner@gov.bc.ca)

Hon Pat Bell, Minister of Forests and Range, [for.minister@gov.bc.ca](mailto:for.minister@gov.bc.ca)

Robert Sisler, Regional Manager, Environmental Transport Canada [robert.sisler@tc.gc.ca](mailto:robert.sisler@tc.gc.ca)

Karen Christie, Project Assessment Director, Ministry of Environment, BC

Linda Sullivan, Senior Environmental Officer, Transport Canada [lindasullivan@tc.gc.ca](mailto:lindasullivan@tc.gc.ca)