



Fisheries and Oceans  
Canada

Pêches et Océans  
Canada

Pacific Region  
Ecosystem Management Branch  
3190 Hammond Bay Road  
Nanaimo, BC  
V9T 6N7

Région du Pacifique  
Direction de la gestion des écosystèmes  
3190, rue Hammond Bay  
Nanaimo, (C.-B.)  
V9T 6N7

Our file    Notre référence  
24-HPAC-00369

July 31, 2024

ATTENTION - the following property owners on Salt Spring Island, BC:

Bruce and Patricia Sanders 239 Quarry Drive	Ethan Wilding 434 Baker Road	Heidi Kuhrt and David Demner 235 Quarry Drive	Jeremy and Claire Sicherman 431 Baker Road
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Via email: [brucersanders@gmail.com](mailto:brucersanders@gmail.com), [tricialsanders3@gmail.com](mailto:tricialsanders3@gmail.com), [wilding@protonmail.com](mailto:wilding@protonmail.com),  
[info@heidikuhrt.com](mailto:info@heidikuhrt.com), and [jeremy@sgplodge.com](mailto:jeremy@sgplodge.com)

Dear Bruce Sanders, Patricia Sanders, Ethan Wilding, Heidi Kuhrt, David Demner, Jeremy Sicherman and Claire Sicherman:

**Subject: Erosion Mitigation, Booth Inlet, Vesuvius – Implementation of Measures to Avoid and Mitigate the Potential for Prohibited Effects to Fish and Fish Habitat**

The Fish and Fish Habitat Protection Program (the Program) of Fisheries and Oceans Canada (DFO) received your original proposal on March 25, 2024, and an updated proposal on July 3, 2024. We understand that you propose to install shoreline protection along approximately 400 meters of shoreline generally fronting four properties located at 235 Quarry Drive, 239 Quarry Drive, 434 Baker Road, and 431 Baker Road in Vesuvius Bay on Salt Spring Island, BC. The project includes:

- the removal of invasive plant species and the planting of native riparian plants along the backshore;
- placement of a beach nourishment berm consisting of alluvial/fluvial pebble to cobble-sized material supplemented with sand and gravel in the upper tidal and backshore zone; and
- placement of boulders/non-uniform rock clusters along the low-tide terrace beneath the beach nourishment berm for shoreline erosion protection.

We understand the following aquatic species listed under the *Species at Risk Act* may use the area in the vicinity of where your proposal is to be located:

- Killer Whale (Northeast Pacific southern resident population) and Northern abalone, both listed as Endangered;
- Killer Whale (Northeast Pacific offshore & transient populations) listed as Threatened; and
- Bluntnose sixgill shark, longspine thornyhead, roughey rockfish (type I & II), tope, yelloweye rockfish (inside & outside waters populations), grey whale, harbour porpoise, humpback whale, and steller sea lion, all listed as Special Concern.

Our review considered the following information:

- *Request for Review Form* including *Appendix A – Photo Log, and Appendix B - Maps*, signed by Robert Kirk of Corvidae Environmental Consulting Inc., received by email on March 25, 2024;
- *Engineer Drawings*, by Aurora Professional Group Inc., dated March 6, 2024;
- *Responses to DFO and an Updated Application Package*, by Corvidae Environmental Consulting Inc., received by email on July 3, 2024; and
- *Commentary on potential for ‘crush’ or ‘smother’ of existing organisms within near shore low-tide terrace*, by Thomas R Elliot (P. Geo., P. Ag.), received by email on July 3, 2024.

Your proposal has been reviewed to determine whether it is likely to result in:

- the death of fish by means other than fishing and the harmful alteration, disruption or destruction of fish habitat which are prohibited under subsections 34.4(1) and 35(1) of the *Fisheries Act*; and
- effects to listed aquatic species at risk, any part of their critical habitat or the residences of their individuals in a manner which is prohibited under sections 32, 33 and subsection 58(1) of the *Species at Risk Act*.

The aforementioned outcomes are prohibited unless authorized under their respective legislation and regulations.

To avoid and mitigate the potential for prohibited effects to fish and fish habitat (as listed above), in addition to the measures you've provided in the *Responses to DFO and an Updated Application Package* (received on July 3, 2024), we also recommend implementing the measures listed below. If there is a conflict between the proposed measures as set out in the information that was submitted to the Program and the following measures, the following measures shall prevail.

- Complete in-water work within the least risk timing windows for Area 17 – Nanaimo (Summer Window: June 1 - September 1; Winter Window: December 1 - February 15).
- Only conduct works, undertakings and activities during daylight hours and when weather conditions permit visual observations of fish and marine mammals.
- Avoid conducting in-water work during periods of adverse weather.
- Minimise the duration of in-water works.
- Clearly delineate the boundaries of the eelgrass bed prior to the start of construction to ensure that all equipment avoids the eelgrass bed. No spudding down or anchoring is to occur within the eelgrass bed.
- Ensure vessels are not operating in shallow water causing direct physical disturbance to the seabed/habitat from propeller scour.
- Water-based equipment is not to ground upon the seabed except for the use of anchors or spuds needed to keep the equipment in place.
- Minimize movements/repositioning of barges and subsequent spudding and anchoring to minimize direct, physical disturbance to the seabed.
- If there is a risk of harm to a marine mammal from direct contact, temporarily suspend construction until there is no longer risk of harm from direct contact, or the individual has not been resighted for 30 minutes.
- Vessels must maintain a minimum distance of 100 m from whales, porpoises, and dolphins (or 200 meters away if these marine mammals are in resting position or with a

- calf), with the exception of populations of killer whales where the minimum distance is 400 m. In addition, vessels may not position themselves in the path of killer whales.
- Complete material placement for the boulder clusters and beach nourishment berm when the site is dewatered by a low or falling tide. In addition:
    - Salvage motile invertebrate species prior to material placement, and as needed throughout the other construction works, and return to nearby waters.
    - Salvage colonized rocks (i.e., boulders and large cobbles) where possible within the intertidal footprint, temporarily relocate outside of the project footprint, and replace within the project footprint at similar or lower elevations/depths to facilitate recolonization of the site.
    - Material placement for the beach nourishment berm is to be limited to the upper intertidal zone and backshore area.
    - Equipment used to distribute the beach nourishment material and boulder clusters should be sited as close to the shoreline bank as possible to limit disturbance in the intertidal beach area. Identify and clearly mark access corridors below the high-water mark to minimize machinery disturbance in the intertidal zone.
    - Construction activities are not to result in the trapping or stranding of fish. Any rutting caused by machine/truck access should be graded smooth before tidal inundation.
    - Use only clean, non-acid generating and non-metal leaching rock for the beach nourishment berm and boulder cluster arrays.
  - Retain a qualified professional to survey areas for the presence of forage fish (i.e., Pacific sand lance and surf smelt) spawning prior to and during construction. Use accepted methods for surveying for intertidal spawning forage fish. If forage fish spawning is detected, temporarily suspend work until a subsequent survey indicates that no incubating embryos are present.
  - Plainfin midshipman (*Porichthys notatus*) may use the underside of boulders in the intertidal zone to spawn and nest from mid-May to mid-August. If works are conducted during this time, survey boulders in the mid- to low-intertidal zone to ensure no plainfin midshipman are present. If plainfin midshipman are present, additional mitigation measures may be required to avoid harm to, or mortality of, plainfin midshipman and their eggs and/or embryos.
  - Develop and implement an erosion and sediment control plan to avoid the introduction of sediment into any waterbody during all phases of the work, undertaking or activity.
  - Implement the riparian planting plan for the site.
  - Develop and implement a spill response plan to reduce the risk of deleterious substance discharge into fish habitat.
  - Ensure equipment is in good working condition and free of leaks prior to conducting works in or near fish habitat.

Provided that you incorporate these measures into your plans, the Program is of the view that your proposal is not likely to result in the contravention of the above-mentioned prohibitions and requirements.

Should your plans change or if you have omitted some information in your proposal, further review by the Program may be required. Consult our website (<http://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>) or consult with a qualified environmental consultant to determine if further review may

be necessary. It remains your responsibility to remain in compliance with the *Fisheries Act*, the *Species at Risk Act* and the *Aquatic Invasive Species Regulations*.

It is also your Duty to Notify DFO if you have caused, or are about to cause, the death of fish by means other than fishing and/or the harmful alteration, disruption or destruction of fish habitat. Such notifications should be directed to the DFO-Pacific Observe, Record and Report phone line at 1-800-465-4336 or by email at [DFO.ORR-ONS.MPO@dfo-mpo.gc.ca](mailto:DFO.ORR-ONS.MPO@dfo-mpo.gc.ca).

Please notify the Program by email at [Vanessa.Smith@dfo-mpo.gc.ca](mailto:Vanessa.Smith@dfo-mpo.gc.ca) at least 10 days before starting your project, ensuring your file number and appropriate on-site contact information is included. We recommend that a copy of this letter be kept on site while the work is in progress. It remains your responsibility to meet all other federal, provincial, and municipal requirements that apply to your proposal.

Please note that this Letter of Advice does not provide relief from the obligations set out in the government of British Columbia's Riparian Areas Protection Regulations (RAPR) and cannot be construed to provide authorization pursuant to section 3(2) of the RAPR, for any work, undertaking or activity within the Riparian Assessment Area. For more information on the RAPR, including contacts, please visit: <https://www2.gov.bc.ca/gov/content/environment/plants-animals-ecosystems/fish/aquatic-habitat-management/riparian-areas-regulation>.

Please note that the advice provided in this letter will remain valid for a period of one year from the date of issuance. If you plan to execute your proposal after the expiry of this letter, we recommend that you contact the Program to ensure that the advice remains up-to-date and accurate. Furthermore, the validity of the advice is also subject to there being no change in the relevant aquatic environment, including any legal protection orders or designations, during the one-year period.

If you have any questions with the content of this letter, please contact Vanessa Smith at our Nanaimo office by email at [Vanessa.Smith@dfo-mpo.gc.ca](mailto:Vanessa.Smith@dfo-mpo.gc.ca). Please refer to the file number referenced above when corresponding with the Program.

Yours sincerely,

Michael Lockhart  
Senior Fisheries Biologist, Coastal Watershed Regulatory Operations  
Fish and Fish Habitat Protection Program

c.c.: Rob Kirk (Corvidae Environmental Consulting Ltd.) at [robk@corvid.pro](mailto:robk@corvid.pro)  
Julie Budgen (Corvidae Environmental Consulting Ltd.) at [julieb@corvid.pro](mailto:julieb@corvid.pro)