

St. Marys River, Ontario

**Dredging Administrative Controls
Guidance Document**

July 2016

Table of Contents

Why are we focused on dredging activities in the St. Marys River?	2
What is the St. Marys River Guidance Document for dredging and related activities?	3
Objectives	4
For proponents considering dredging projects:	4
Geographic scope of the Protocol	5
What are some examples of approvals that need to be obtained?	6
What is the process to obtain approval for dredging activities?	7
What should a proponent consider before submitting an application?	8
What guides an agency's decision?	8
Where can more information be obtained?	9
For agencies involved in the permitting process:	10
Appendix A: Decision making process	11
Appendix B: Applicable legislation as it relates to dredging activities	11

This Protocol Guidance document does not substitute for local, provincial and federal laws and regulations that apply to dredging. This is only a summary. Project proponents are advised to contact the relevant authorities, and to review and abide by the appropriate legislation.

This Protocol Guidance document follows the outline of the one developed for the Cornwall Sediment Strategy in 2003 (French, 2003).

Why are we focused on dredging activities in the St. Marys River?

The St. Marys River is a 112 km waterway bordering Canada and the United States. The river is the outflow of Lake Superior to Lake Huron, and is an important shipping channel within the Great Lakes – St. Lawrence Seaway. The St. Marys River is an Area of Concern (AOC) identified in the Canada-U.S. Great Lakes Water Quality Agreement. An AOC is a location that has experienced significant environmental degradation and impaired beneficial use. Canada and the United States have committed to developing and implementing a remedial action plan to address environmental degradation through a collaborative, scientific, and ecosystem-based approach.

One of the environmental issues in the St. Marys River AOC is contaminated sediment in areas of the river resulting from past pollution. Contaminants of concern include petroleum hydrocarbons, polycyclic aromatic hydrocarbons, oils, grease, and trace metals. Although studies have shown that the contaminants are covered with layers of cleaner sediment, it is important that proponents of dredging projects consider potential environmental impacts, follow best management practices, and obtain appropriate regulatory permits and approvals as needed.

This document provides information to proponents considering dredging projects in Canadian waters of the St. Marys River, and encourages coordination and cooperation among the different authorities and government agencies that have a responsibility in the approval, permitting and planning process.

Levels of contaminants vary with location within the St. Marys River AOC. As a result, the restrictions on dredging and related activities, and the conditions under which dredging and related activities may be carried out, will also vary with location. In some cases, contaminant levels may result in the denial of an application if appropriate mitigation measures cannot be implemented.

What is the St. Marys River Guidance Document for Dredging and Related Activities?

The *St. Marys River Dredging Administrative Controls document* is a tool that provides guidance to proponents considering dredging projects, and to the agencies involved in the permitting process. Administrative controls for dredging fall into two broad categories:

- a) Environmental assessment and planning
- b) Regulatory approvals and permitting

The environmental assessment and planning processes are comprehensive exercises involving several agencies. These processes are used to forecast, assess and mitigate potential impacts of dredging activities.

Permit approvals processes (for example, work and building permits) tend to involve a less comprehensive review and approval process, typically a single agency, and have limited scope and review.

Both types of administrative controls have the potential to play key roles in minimizing the disturbance of sediments within the St. Marys River AOC when dredging operations are being implemented.

Objectives

The objectives of the St. Marys River Dredging Administrative Controls are:

- to outline the dredging administrative approach to minimize the disturbance, exposure or resuspension of contaminated sediment;
- to establish principles that will guide decisions;
- to summarize the roles and responsibilities of the proponent and agencies involved;
- to provide guidance for proponents submitting dredging project applications needing permits; and
- to summarize agency mandates and to promote a common review process for regulatory activities that have the potential to disturb contaminated sediment.

For proponents considering dredging projects

This guidance document provides information to proponents considering dredging projects on the Canadian side of the St. Marys River AOC [see Figure 1]. It outlines the considerations that government agencies will take into account while evaluating dredging activities, or any other type of development or activity that could disturb sediment; such as filling, covering, piling, or scouring. It provides information on the type of activities that require approval, outlines the review process for applications, identifies the authorities/agencies to contact, and articulates the principles of sound decision-making.

Applicants who submit a proposal for dredging or other works should be aware that each of the applicable regulations and guidelines must be approved. There may be cases in which one agency, responsible for issuing a permit or authorization pursuant to specific legislation, may approve an application but that is not necessarily sufficient for the undertaking to proceed (i.e. another agency may decline the proposal).

Geographic scope of the Protocol



Figure 1: St. Marys River Area of Concern

What are some examples of approvals that need to be obtained?

The approvals required will vary depending on the location and type of activity proposed. Table 1 provides examples, but the list is not exhaustive and additional activities may require a permit or approval. It is the responsibility of the proponent to contact the appropriate authorities. See Appendix B for additional information on applicable legislation.

Table 1: Examples of dredging activities and potential permit or approval requirements

Activity	Submissions/Approvals	Agency	Legislation
Development or placing or dumping of fill or the straightening, changing, diverting or interfering with the existing channel of a river, creek, stream or watercourse or interference with a wetland.	Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation Permit	Sault Ste. Marie Region Conservation Authority	Ontario Regulation 176/06, <i>Conservation Authorities Act</i>
Removal and transport of dredged materials (contaminated or not) to the appropriate disposal site(s).	Waste Generator Registration Number, Environmental Compliance Approval	Ministry of the Environment & Climate Change	Regulation 347, General Waste Management, <i>Environmental Protection Act</i>
Collection, treatment, and discharge of water and sewage/water takings of greater than 50,000 litres/day.	Section 53 Environmental Compliance Approval Permit to Take Water	Ministry of the Environment & Climate Change	<i>Ontario Water Resources Act</i>
Dredging for private boat access \geq 4m wide by 10m long, or is not routine maintenance for a marina, and cannot avoid causing serious harm to fish.	Request project review under <i>Projects Near Water</i> section of DFO's website	Fisheries & Oceans Canada	<i>Fisheries Act</i>
Dredging project that may have an impact to aquatic species at risk or their critical habitat (see Appendix C).	Authorization under Section 73 SARA Permit	Fisheries & Oceans Canada	<i>Species at Risk Act</i>
Dredging that does not meet the criteria and specific terms and conditions for construction under the <i>Minor Works Order</i> , or works that risk a substantial interference with navigation.	Must submit a <i>Notice to the Minister</i> and <i>Notice of Works</i> that details project and likely interferences with shipping and boating activities.	Transport Canada	<i>Navigation Protection Act</i>
Dredging project that may have an impact to species at risk and their habitat (see Appendix D).	Approval	Ministry of Natural Resources & Forestry	<i>Endangered Species Act</i>
Building, constructing, dredging, filling, or removal of aquatic vegetation on shorelands or on Crown land under water.	Work Permit	Ministry of Natural Resources & Forestry	<i>Public Lands Act</i>
Dams, channelizations (including dredging, diverting or enclosing a channel), diversions, bridges and culverts	Work Permit and/or Approval	Ministry of Natural Resources & Forestry	<i>Lakes and Rivers Improvement Act</i>

What is the process to obtain approval for dredging activities?

Every proponent must follow these steps for any dredging, development or site alteration activity in the St. Marys River:

Step 1

Contact the Sault Ste. Marie Region Conservation Authority (SSMRCA) – to determine if the proposed activity is within or will affect the St. Marys River watershed the proponent should contact the SSMRCA. Initial discussions with the SSMRCA will help to determine the feasibility of the proposed activity. Note that if the dredging project falls outside of the SSMRCA jurisdiction then the MNRF should be the first point of contact.

All property owners and proponents of activities must obtain the appropriate permits and authorizations, and should apply best management practices when doing work in or near the St. Marys River.

Step 2

Complete and submit applications to appropriate agencies – the number of permits to be obtained will depend on the size, location and duration of the project and the requirements of each individual agency. Become familiar with the decision-making process (see Appendix A) and be prepared to modify the project if necessary. Complete the permit application(s), include any additional requirements or conditions, and submit to the appropriate agencies. These may include:

- Sault Ste. Marie Region Conservation Authority
- Ministry of Environment and Climate Change
- Fisheries and Oceans Canada
- Ministry of Natural Resources and Forestry
- Transport Canada

Step 3

Agency(ies) Review Application – each agency will review the application in accordance with their own regulatory requirements and may discuss it with other authorities/agencies. Each agency involved should provide the other agencies with copies of their comments/permits.

Step 4

Notification to Proponent of Decision – each agency will contact the proponent with a decision to approve or deny the proposed work.

The proponent cannot start the project without the appropriate permits and authorizations.

Step 5

Monitoring Compliance – proponents are responsible for ensuring that the project meets all of the terms and conditions of approval throughout the construction and post-construction phases. Any agency may visit the project site to ensure compliance.

What should a proponent consider before submitting an application?

- The proponent is responsible for ensuring all applications are completed and all approvals are granted before any work commences.
- Failure to obtain the correct permits prior to the work could be a violation of one or more of the above noted Acts, which can result in fines or a term of imprisonment, and the proponent may be required to restore/rehabilitate the disturbed area and/or to remove unapproved structures.
- Be aware that permits usually include conditions, such as the time of year when the work can be done.
- A change in location may help avoid areas with contaminated sediment. Certain types of construction or dredging techniques, and the use of certain materials, may help alleviate problems in dealing with contaminated sediment. Contact a qualified professional to discuss ways of reducing your impacts on the St. Marys River.
- Projects that cannot be relocated or redesigned and may potentially disturb sediments must have a plan that indicates how contaminated sediment will be handled, removed and disposed of in a safe and environmentally protective manner.
- Preventing disturbance is critical when planning a dredging activity. The application should include how the proponent will ensure that there will be as little disturbance, exposure or re-suspension of sediments as possible.
- Be prepared. When emergency and disaster situations occur, the impacts must be monitored and appropriate actions taken to mitigate further re-suspension of contaminated sediment. The application should outline what measures will be taken, including materials and equipment on site, to deal with an unforeseen spill or escape of contaminated materials.
- The proponent of any activity is responsible for worker safety and all costs associated with the project. Examples of potential costs include (but are not limited to) application fees, engineering reports, and the removal, handling and disposing of contaminated sediment.

What guides an agency's decision?

Each agency will review the dredging application according to their mandate and legislative authority and may discuss the proposed activity with other parties. All activities will likely be assessed based upon the application of the Decision Making Process (See Appendix A) and the following design criteria in decreasing order of priority: Relocation, Redesign and Remediation. If the proponent disagrees with the decision or any of the conditions of approval they should contact the appropriate agency(ies) to consider their options in accordance with the provisions of the applicable legislation as noted in the decision.

Where can I obtain more information?

For more information on specific applications please contact the appropriate agency:

Sault Ste. Marie Region Conservation Authority
1100 Fifth Line East
Sault Ste. Marie, Ontario P6A 6J8
(705) 946-8530
Email: nature@ssmrca.ca

Ministry of Natural Resources and Forestry
64 Church Street
Sault Ste. Marie, Ontario P6A 3H3
(705) 949-1231
For inquiries relating to work permits:
1-855-613-4256
Email: mnr.rasc@ontario.ca

Ministry of the Environment and Climate Change
Sault Ste. Marie Area Office
70 Foster Drive, Suite 110
Sault Ste. Marie, Ontario P6A 6V4
(705) 942-6354

Fisheries and Oceans Canada
Fisheries Protection Program
867 Lakeshore Road
Burlington, Ontario L7S 1A1
1-855-852-8320
Email: FisheriesProtection@dfo-mpo.gc.ca
Web: www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html

Transport Canada
Navigation Protection Program
100 S Front Street, 1st Floor
Sarnia, Ontario N7T 2M4
(519) 383-1863
Email: NPPONT-PPNONT@tc.gc.ca
Web: www.tc.gc.ca/eng/programs-621.html

For agencies involved in the permitting process:

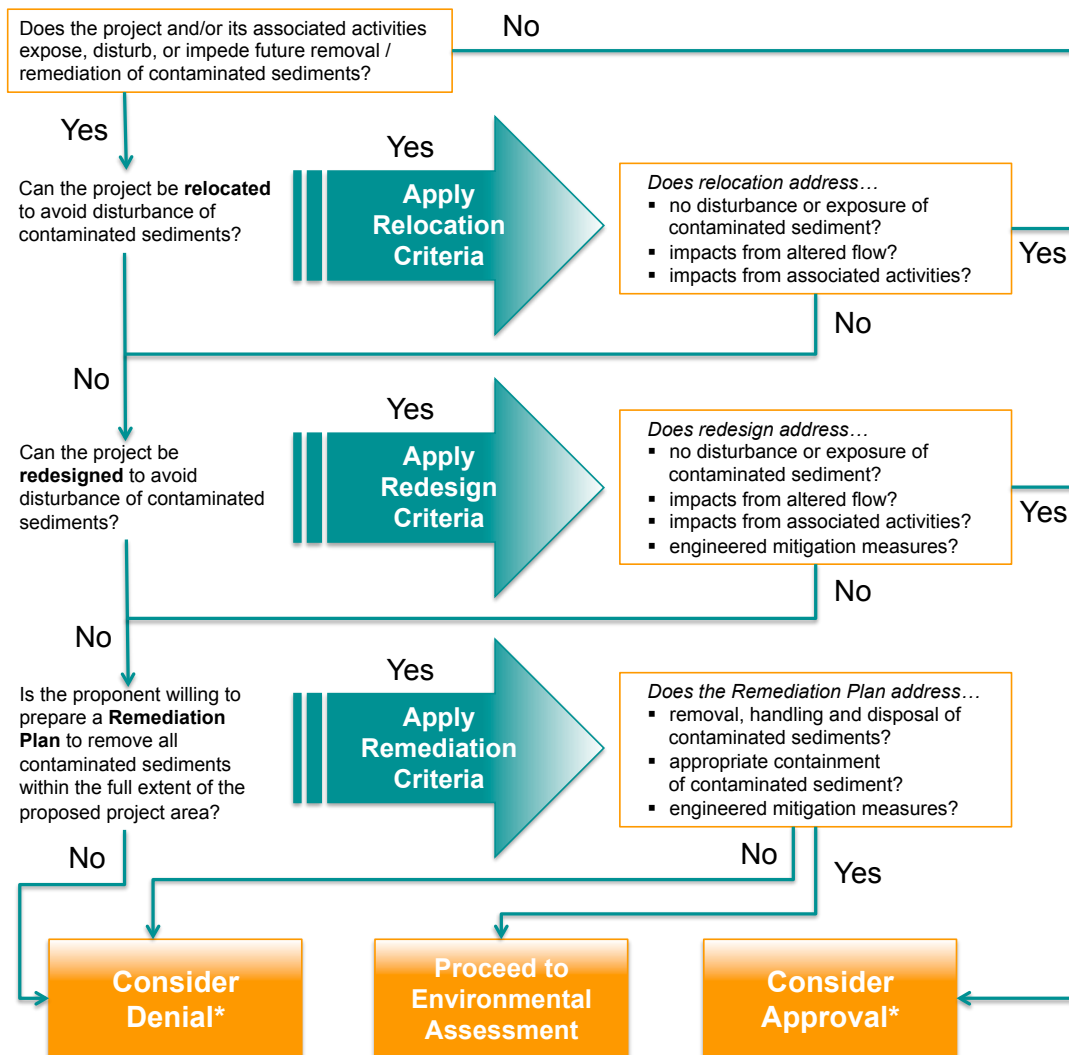
One of the objectives of this document is to support a coordinated approach by agencies with regulatory responsibility for dredging and related activities in the St. Marys River.

Table 2: Agency Roles and Responsibilities

	SSMRCA	MOECC	DFO	MNRF
Coordinate Process				
• Participates in the implementation of a coordinated application review process by all parties	✓	✓	✓	✓
• Participates in meetings and discussions as required	✓	✓	✓	✓
Notification/Circulation				
• Refers proponents to appropriate agencies	✓	✓	✓	✓
• Provides guidance document to assist proponents throughout the process	✓	✓	✓	✓
• Notifies appropriate agencies when applications are received	✓	✓	✓	✓
• Responds to requests for information in a timely manner	✓	✓	✓	✓
Review Application				
• Reviews application and provides input in accordance with jurisdiction	✓	✓	✓	✓
• Provides scientific information and technical data with respect to the impact of activities on contaminated sediment		✓		
• Reports to other agencies on findings of its review and recommendations before making a decision on approval.	✓	✓	✓	✓
• Provides notice of final decision to the parties and to the proponent.	✓	✓	✓	✓
Monitoring - Activities				
• Monitors compliance of activity with conditions of approval, if applicable	✓	✓	✓	✓

Appendix A: Decision making process

The “Decision Making Process”¹ outlined below summarizes the process for reviewing of all dredging project applications in the St. Marys River Area of Concern involving the participating agencies.



*Pending consideration of all applicable legislation

¹ Adapted from the “Decision Making Process” flow chart in the Cornwall Sediment Strategy – Administrative Controls Protocol (2005) found at: <https://www.rca.on.ca/view.php?id=40>

Appendix B: Applicable legislation as it relates to dredging activities

The provincial **Conservation Authorities Act** and the Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Ontario Regulation 176/06 (Sault Ste. Marie Region Conservation Authority) requires approval of any activities that may result in development such as the construction of buildings habitable or non-habitable, site alterations (filling, excavating) shoreline alteration (dredging, shorewalls, decks, groynes), interference with a wetland or a watercourse (bridges, culverts).

The provincial **Public Lands Act** (Ministry of Natural Resources & Forestry) provides that no person shall dredge or fill shorelands or work on Crown land without a work permit. “Shorelands” are defined as lands covered or seasonally inundated by the water of a lake, river, stream or pond and may include private, municipal or Crown lands. It is important to note that the MNRF enforces timing restrictions for in-water work. This is to prevent fisheries from suffering and means that NO in-water work can occur during spawning and incubation periods for fish. For more information on MNRF’s in-water work timing window guidelines visit: www.ontario.ca/document/water-work-timing-window-guidelines

The provincial **Lakes and Rivers Improvement Act** (MNRF) requires a work permit and/or approval for dams, channelizations (including dredging, diverting, enclosing a channel), diversions, bridges and culverts. There is a two-phase approval process. The first phase involves location approval and is subject to an ecological review. Once the location is approved, the proponent must provide the MNRF with plans and specification drawings that have been approved by an engineer. Copies of the work permit application form are available at Service Ontario Centres.

The provincial **Environmental Protection Act** (Ministry of the Environment & Climate Change) requires a generator registration number if the dredged sediment is classified as a waste. Additional requirements may apply, depending on the waste classification. For information on how to classify dredged material visit: www.ontario.ca/document/registration-guidance-manual-generators-liquid-industrial-and-hazardous-waste

The provincial **Ontario Water Resources Act** (MOECC) provides approval for the collection, treatment and discharge of water and sewage. The Act also requires a Permit to Take Water for any water takings greater than 50,000 litres per day. For more information and to download application forms visit: www.ontario.ca/environment-and-energy/permits-take-water

The provincial **Endangered Species Act** (MNRF) requires a permit to move species at risk individuals and/or encroach on their habitat. These permits are required for all activities proposed within existing or potential species at risk habitat. Under the Act, the MNRF can grant different types of permits or other authorizations

with conditions that are aimed at protecting and recovering species at risk. There are five types of permits issued under the Act including (1) health and safety, (2) protection and recovery, (3) social or economic benefit to Ontario, (4) Aboriginal, and (5) overall benefit. For more information on getting a permit/authorization visit: www.ontario.ca/environment-and-energy/how-get-endangered-species-act-permit-or-authorization

The federal **Navigation Protection Act** (Transport Canada) has a *Minor Works Order* that allows for works – such as dredging – to be implemented if they meet established criteria and specific terms and conditions for construction. Proponents are responsible for assessing their own proposed project to ensure it meets the criteria and that all legal requirements set out in the Minor Works Order are met. Works meeting the assessment criteria are classed as “designated works” under the Act, and may proceed as long as they comply with the legal requirements. Otherwise, proponents must provide a “Notice to the Minister (of Transport)” and “Notice of Works” that details the work and identifies likely interferences with shipping and boating activities, and a decision to approve or deny the project will be made. For more information visit: www.tc.gc.ca/eng/programs-621.html

The federal **Fisheries Act** requires that projects avoid causing serious harm to fish unless authorized by the Minister of Fisheries and Oceans. This applies to work being conducted in or near waterbodies that support fish that are part of or that support a commercial, recreational or Aboriginal fishery. To protect fish and fish habitat, efforts should be made to avoid, mitigate and/or offset harm. Projects in or near water must also comply with the pollution prevention provisions of the *Fisheries Act*, and with the federal **Species at Risk Act** (DFO) under which an agreement or permit is required before a project starts if it is believed it may impact aquatic species at risk or their critical habitat.

If a project cannot avoid serious harm to fish, and is not included in the criteria below, proponents must submit a request for review. For this, consult DFO’s website (www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html), specifically the section “Projects Near Water”.

- Project activities and criteria where DFO review is not required for dredging:
 - Dredging for private boat access:
 - area being dredged is less than 4 meters in width (including the side sloping) and 10 meters in length (measured out from the shore)
 - Marina routine maintenance dredging
 - no temporary or permanent increase in existing footprint below the High Water Mark
 - dredging material is deposited and stabilized on land (no open water disposal)
 - dredging has occurred in the last 10 years

Appendix C: Federally Regulated Species at Risk that may be impacted within the St. Marys River AOC

- Lake Sturgeon (Great Lakes - Upper St. Lawrence populations) is currently being considered for listing under the federal Species at Risk Act (SARA). Currently, protection is afforded through the federal Fisheries Act. If listed under the SARA, it will be afforded additional protection. They are found in the river within the AOC.
- Northern Brook Lamprey (Great Lakes - Upper St. Lawrence populations) has been identified as Special Concern by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). It is listed under the federal Species at Risk Act (SARA) and was afforded protection under SARA as of March 2009. Additional protection is afforded through the federal Fisheries Act.
- Silver Lamprey (Great Lakes – Upper St. Lawrence populations) is under consideration under the Species At Risk Act, and has Special Concern status through COSEWIC.

Appendix D: Provincially Regulated Endangered Species that may be impacted within the St. Marys River AOC

- Lake Sturgeon is listed as threatened in the Great Lakes-Upper St. Lawrence River population. They are found in the river within the AOC.