

ATTACHMENT:
Federal Authority Advice Record: Reconsideration for designation
Response due by August 13, 2021
 Proposed Vista Coal Mine expansion physical activities

Department/Agency	Fisheries and Oceans Canada (DFO)
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1. Has your department or agency considered whether it has an interest in the proposed physical activities; exercised a power or performed a duty or function under any Act of Parliament in relation to the physical activities; or taken any course of action (including provision of financial assistance) that would allow the physical activities to proceed in whole or in part?

Specify as appropriate.

Nothing new to add from previously issued FAAR.

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2. Is it probable that your department or agency may be required to exercise a power or perform a duty or function related to the physical activities to enable it to proceed?

If yes, specify that power, duty or function and its legislative source.

Nothing new to add from previously issued FAAR.

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3. If your department or agency will exercise a power or perform a duty or function under any Act of Parliament in relation to the physical activities, will it involve public and Indigenous consultation?

Specify as appropriate.

If a *Fisheries Act* Authorization issuance is required as a result of the proposed physical activities, Fisheries and Oceans Canada must consider any adverse effects that the decision may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the Constitution Act, 1982 and have a duty to consult with all Indigenous communities affected by the proposed physical activities.

Fisheries and Oceans Canada are not required to consult with the public when issuing *Fisheries Act* Authorizations.

4. Has your department or agency had previous contact or involvement with the proponent or other parties in relation to the physical activities?

Provide an overview of the information or advice exchanged.

Nothing new to add from previously issued FAAR.

5. Is your department or agency in possession of specialist or expert information or knowledge that may be relevant to any potential adverse effects within federal jurisdiction caused by the physical activities or adverse direct or incidental effects stemming from the physical activities?

Specify as appropriate.

Nothing new to add from previously issued FAAR.

6. From the perspective of the mandate and area(s) of expertise of your department or agency, does the physical activities have the potential to cause adverse effects within federal jurisdiction or adverse direct or incidental effects as described in section 2 of IAA? Could any of those effects be managed through legislative or regulatory mechanisms administered by your department or agency? If a licence, permit, authorization or approval may be issued, could it include conditions in relation to those effects?

Specify as appropriate.

Yes. The physical activities have the potential to cause adverse effects to fish and fish habitat including the harmful alteration, disruption, or destruction of fish habitat, or death of fish which are regulated under the *Fisheries Act*. In addition, the physical activities have the potential to cause adverse effects to populations and the critical habitat of a federally listed species at risk, Athabasca River Rainbow Trout, protected under the *Species at Risk Act*.

Some adverse effects from the physical activities could be managed through the issuance of a *Fisheries Act* Authorization and/or a *Species at Risk Act* permit which could include conditions to avoid, mitigate, or offset impacts to fish and fish habitat resulting from the proposed physical activities.

DFO notes that impacts to the survival and recovery of Athabasca River Rainbow Trout as a result of deleterious substances may result from the proposed activities. It is outside of DFOs mandate to review or regulate deleterious substances, however given the species at risk present in the project area we must perform our due diligence in noting the risk. There is a general prohibition against the release of deleterious substance, but in the absence of an impact assessment there is no federal mechanism to review the merits of proposed mitigation measures, or generate conditions that would be put in place to prevent release of contaminants either through effluent discharge, surface water runoff, or migration through groundwater. There is also no federal mechanism to require monitoring to ensure that contaminants do not reach fish and fish habitat in a manner that becomes deleterious.

Clayton James

Name of departmental / agency responder

Senior FFHPP Biologist

Title of responder

August 13, 2021

Date