

ATTACHMENT: July 28, 2021

Federal Authority Advice Record: Designation Request under IAA

Response due by August 18, 2021

Touquoy Mine Expansion Project

Department/Agency	Fisheries and Oceans Canada
Lead Contact	Chris Burbidge, Acting Section Head, Marine Developments
Full Address	P.O. Box 1006, Dartmouth, NS B2Y 4A2
Email	christopher.burbidge@dfo-mpo.gc.ca
Telephone	902-233-9731
Alternate Departmental Contact	Mike Wambolt, Acting Regional Manager Michael.Wambolt@dfo-mpo.gc.ca 902-402-5851

1. Has your department or agency considered whether it has an interest in the Project; exercised a power or performed a duty or function under any Act of Parliament in relation to the Project; or taken any course of action (including provision of financial assistance) that would allow the Project to proceed in whole or in part?

Specify as appropriate.

Fisheries and Oceans Canada (DFO) has responsibilities related to the conservation and protection of fish and fish habitat and aquatic species at risk. DFO conducts regulatory reviews of proposed works, undertakings, and activities (WUAs) under the *Fisheries Act* and *Species at Risk Act* (SARA) to determine whether they are likely to result in prohibited effects to fish and fish habitat and/or aquatic species at risk. DFO has an interest in the Project because the proposed WUAs have potential to result in adverse effects to fish and fish habitat.

DFO has not exercised a power or performed a duty or function under any Act of Parliament in the relation to the Project, or taken any course of action, that would allow the Project to proceed in whole or in part.

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 Project to enable it to proceed?

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

It is possible that the proposed WUAs associated with the Project may require an authorization under sections 34.4 and/or 35 of the *Fisheries Act* for the death of fish and/or the harmful alteration, disruption or destruction of fish habitat. DFO has not yet completed a regulatory review of the proposed WUAs under the *Fisheries Act*, so DFO cannot advise the Agency on whether a *Fisheries Act* authorization is required at this time.

The Southern Upland population of Atlantic Salmon and the Eastern Canadian population of American Eel are currently under consideration for listing under SARA. Both of these species have been identified within the project area. Should a decision be made to list one or both of these species under SARA, then one or more project activities may require a SARA permit.

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 Project, will it involve public and Indigenous consultation?

Specify as appropriate.

Should a *Fisheries Act* authorization be required for the Project, DFO will consult with potentially affected Indigenous groups upon receipt of a complete and adequate application for authorization prior to making a decision on whether to issue an authorization.

DFO does not conduct public engagement as part of the *Fisheries Act* authorization application process. Information associated with an application for *Fisheries Act* authorization cannot be released to a third party informally as required under the federal *Access to Information Act*.

4. 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 Project or adverse direct or incidental effects stemming from the Project?

Specify as appropriate.

Yes, DFO is in possession of specialist and expert information and knowledge that may be relevant to the status of fish and fish habitat and aquatic species at risk as well as potential adverse effects to them from the proposed project WUAs.

5. Has your department or agency had previous contact or involvement with the proponent or other parties in relation to the Project?

Provide an overview of the information or advice exchanged.

On July 12, 2021, the Environmental Assessment (EA) Branch of Nova Scotia Environment and Climate Change (NS ECC) sent DFO the Environmental Assessment Registration Document and supporting documents for the Project's provincial EA under the *Environment Act* and requested the Department's review and comments. DFO provided comments to NS ECC on the EA documents on August 16, 2021 (see attached).

On August 11, 2021, the proponent submitted a Request for Review to DFO for the Project.

6. From the perspective of the mandate and area(s) of expertise of your department or agency, does the Project 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.

The Project has potential to cause adverse effects to fish and fish habitat. The Project also has potential to cause adverse effects to aquatic species at risk should a future decision be made to list Southern Upland Atlantic Salmon and/or American Eel under SARA. Effects that result in the death of fish and/or the harmful alteration, disruption or destruction of fish habitat could potentially be managed under sections 34.4 and 35 of the *Fisheries Act*. Effects that result in prohibited effects to aquatic species at risk could potentially be managed under section 73 of SARA.

The deposit of deleterious substances in water frequented by fish are managed by Environment and Climate Change Canada under section 36 of the *Fisheries Act*.

Fisheries Act authorizations and SARA permits include conditions related to avoidance, mitigation, and offsetting measures and monitoring and reporting.

7. Does your department or agency have a program or additional authority that may be relevant and could be considered as a potential solution to concerns expressed about the Project? In particular, the following issues have been raised by the requestor: The potential to cause adverse effects in areas of federal jurisdiction, including water quality, fish and fish habitat, species at risk, migratory birds, and Mi'kmaq of Nova Scotia.

If yes, please specify the program or authority.

No.

8. Does your department or agency have information about the interests of Indigenous groups in the vicinity of the Project; the exercise of their rights protected by section 35 of the Constitution Act, 1982; and/or any consultation and accommodation undertaken, underway, or anticipated to address adverse impacts to the section 35 rights of the Indigenous groups?

If yes, please specify.

Yes. DFO has information related to Indigenous fisheries that may overlap with the project area. DFO has not undertaken any consultation with Indigenous groups related to the Project. Should DFO receive an application for *Fisheries Act* authorization related to the project WUAs, DFO will initiate consultation with Indigenous groups.

9. If your department has guidance material that would be helpful to the proponent or the Agency, please include these as attachments or hyperlinks in your response.

Information about DFO's regulatory role is available on the Department's Projects Near Water website: <https://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>

Guidance material that may be useful to the proponent or the Agency is available here: <https://www.dfo-mpo.gc.ca/pnw-ppe/reviews-revues/request-review-demande-d-examen-006-eng.html>

Chris Burbidge

Name of departmental / agency responder

A/Section Head, Marine Developments
Regulatory Reviews-Ecosystems
Management, DFO Maritimes

Title of responder

August 18, 2021

Date