

ATTACHMENT October 25, 2022

Federal Authority Advice Record: Designation Request under IAA

Response due by November 15, 2022

Sugar Creek Peat Harvesting Project

Department/Agency	Fisheries and Oceans Canada
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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 not taken any actions that would allow the project to proceed in whole or in part.

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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 Project to enable it to proceed?

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

DFO may issue a *Fisheries Act* paragraph 35(2)(b) Authorization if the project is likely to cause the harmful alteration, disruption, or destruction (HADD) of fish habitat and/or if the project is likely to result in the death of fish (DoF).

Based on the information provided by the Agency it is unclear at this time the scale and extent of HADD or DoF. Additional fish and fish habitat, and flow data for all watercourses impacted by the project would be required to fully assess impacts.

If it is determined that an IA is not required, DFO recommends that the proponent submit a Request for Review form to DFO's Ontario and Prairie Region Triage Unit (DFO.OPHabitat.MPO@dfo-mpo.gc.ca) for review under the *Fisheries Act*. Guidance on requesting a review can be found at: <https://www.dfo-mpo.gc.ca/pnw-ppe/reviews-revues/request-review-demande-d-examen-001-eng.html>

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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 Project, will it involve public and Indigenous consultation?

Specify as appropriate.

If DFO determines that a *Fisheries Act* Authorization is required, the authorization process may trigger a duty to consult given the contemplated crown conduct may have a potential adverse impact on potential or established Indigenous or Treaty rights recognized and affirmed by section 35 of the *Constitution Act*, 1982.

The *Fisheries Act* now gives explicit consideration under section 2.4, where the Minister must consider any adverse effects that the decision (under paragraphs 34.4(2)(b) and 35(2)(b)) may have on the rights of Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act*, 1982. The precise nature of consultation activities is dictated by developing a shared understanding with each respective community, and determining a mutual path forward. Feedback from Indigenous groups, such as those concerns raised by Fisher River Cree Nation regarding impacts to spawning habitat in Sugar Creek for this project, would be incorporated into DFO's assessment of impacts, and contribute to methods used to mitigate, offset, and monitor impacts within the bounds of DFO's mandate.

Regarding public consultation, DFO does not engage the public on a project-by-project basis when considering a decision under paragraphs 34.4(2)(b) and 35(2)(b) of the *Fisheries 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.

DFO has specialist and expert information and knowledge on the assessment of impacts to fish and fish habitat, death of fish, aquatic species at risk, and aquatic invasive species as linked to legislative and regulatory responsibilities under the *Fisheries Act*, *Species at Risk Act* and *Aquatic Invasive Species Regulations*. As well, DFO may advise on measures to avoid, minimize and mitigate the negative impacts of the proposed works, undertakings or activities.

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.

DFO has not had any previous contact or involvement in relation to this 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.

- Yes, there is the potential for impacts to fish and fish habitat based on the information provided. However, this assessment is greatly hampered by the limited description of baseline and impacts currently available, and as such DFO is taking the precautionary approach in this response.
 - If granted, Authorizations under the *Fisheries Act* include a list of conditions that dictate avoidance, mitigation, and offsetting requirements commensurate with project impacts. Monitoring to validate impacts and verify efficacy of mitigation measures are also part of Authorization conditions.
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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 Project could result in potential:

- **adverse effects to areas within federal jurisdiction, including Indigenous peoples and lands, species at risk, and fish and fish habitat;**

No additional authority exists separately from what is outlined above.

- **alteration of the land and hydrological and ecological functions of groundwater, surface water, and wetlands in Fisher River Cree Nation (FRCN) traditional territory;**

No additional authority exists separately from what is outlined above. The regulatory processes for a *Fisheries Act* authorization would consider impacts to fish and fish habitat associated with changes in water quantity. Specifically related to the assessment of flow alterations on fish and fish habitat adjacent to and within peat harvesting areas, and the ecological flows required to sustain fish and fish habitat.

Based on the email correspondence dated October 24, 2022, the proponent estimated that approximately 300,000 m³ of water will be drained during the initial drainage period. To apply this quantity to the framework above, additional information regarding the duration and seasonality of these flow changes would need to be provided to DFO, along with the aforementioned information regarding characterizing fish and fish habitat downstream.

- **adverse effects to fish habitat and spawning within the Sugar Creek watershed system;**

No additional authority exists separately from what is outlined above.

- adverse effects to wildlife populations, migration patterns, and wildlife habitat;
- significant adverse impacts on the treaty and aboriginal rights of FRCN, as well as significant adverse effects on FRCN's health, social, and economic conditions;
- change to FRCN's ability to develop its land and economic plans;
- impacts to locations of cultural and historical importance to FRCN and other Indigenous communities;
- adverse effects to the Fisher Bay Provincial Park and Proposed Expansion that is underway;
- contribution to climate change due to loss of peatland carbon storage and sequestration area; and
- **cumulative effects of existing peat harvesting operations in the area, which were not considered in previous provincial licensing processes and are likely irreversible or not restorable for well over 100 years.**

No additional authority exists separately from what is outlined above; however in accordance with section 34.1(1)(d) of the *Fisheries Act*, DFO is required to consider 'the cumulative effects of the carrying on of the work, undertaking or activity referred to in a recommendation or an exercise of power, in combination with other works, undertakings or activities that have been or are being carried on, on fish and fish habitat'.

If yes, please specify the program or authority.

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.

No, DFO does not have specific information about Indigenous groups interests in the vicinity of the project. DFO is not currently engaging with Indigenous communities on this project or nearby projects

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.

Common Topic	DFO Guidance
Assessing potential impacts to fish and fish habitat	Projects near water (dfo-mpo.gc.ca)

<p>Selecting an appropriate study design with the ability to detect changes in fish and fish habitat throughout the duration of the Project (e.g., baseline data collection, monitoring).</p>	<p>A review of functional monitoring methods to assess mitigation, restoration, and offsetting activities in Canada (dfo-mpo.gc.ca)</p> <p>Science advice on operational guidance on functional monitoring: Surrogate metrics of fish productivity to assess the effectiveness of mitigation and offsetting measures (dfo-mpo.gc.ca)</p> <p>Assessing the Effectiveness of Fish Habitat Compensation Activities in Canada: Monitoring Design and Metrics (dfo-mpo.gc.ca)</p>
<p>The regulatory processes for a <i>Fisheries Act</i> authorization would consider impacts to fish and fish habitat associated with changes in water quantity. Specifically related to the assessment of flow alterations on fish and fish habitat adjacent to and within peat harvesting areas, and the ecological flows required to sustain a fishery. We recommend liaising with DFO on requirements associated with this pathway of effect.</p>	<p>Framework for Assessing the Ecological Flow Requirements to Support Fisheries in Canada (dfo-mpo.gc.ca)</p>
<p>Characterizing the fish-bearing status of a watercourse (e.g., occupancy), in particular in habitat suspected of being fishless (e.g., fens or bogs), using sufficient lines of evidence.</p>	<p>Status of fish-bearing habitat should include convincing evidence that fish do or do not utilize the habitat for any life stages. If significant uncertainty still exists with regards to the status of fish-bearing waters following baseline data collection, DFO may choose to utilize the precautionary principle and assume fish may occupy the habitat. DFO suggests the following types of information would help determine the fish-bearing status of a watercourse:</p> <ul style="list-style-type: none"> • More than one year of data utilizing multiple gear types in different seasons; • A detailed accounting of fish habitat and potentially limiting features for fish occupancy (e.g., substrate type, thermal regime, water quality and quantity, etc.); • Detailed documentation of potential fish barriers; • A review of previous studies from the area (e.g., raw data, literature, technical reports); and, • Rationale for the selected methods based on the species and life-history stage expected to be present, along with any uncertainties or limitations of the methods.
<p>Characterizing Palustrine Habitats</p>	<p>Detailed classification of palustrine habitat types and accounting of areas which are being disturbed or destroyed as the result of the peat harvesting operation are necessary to determine potential impacts to fish and fish habitat.</p>

Amelia Corrigan

Name of departmental / agency responder

Fisheries Biologist – Mining, Oil and Gas South

Title of responder

November 8, 2022

Date