

ATTACHMENT: July 14, 2023

**Federal Authority Advice Record: Designation Request under the IAA
Response due by August 3, 2023**

Port au Port-Stephenville Wind Power and Hydrogen Generation Project (also known as Project Nujio'qonik)

Department/Agency	Fisheries and Oceans Canada (DFO)	
Lead Contact	Kimberley Keats, Team Lead, Impact Assessment and Major Projects	
Full Address	Northwest Atlantic Fisheries Centre 80 East White Hills Road PO Box 5667 St. John's, NL A1C 5X1	
Email	Kimberley.Keats@dfo-mpo.gc.ca	
Telephone	(709) 699-8883	
Alternate Departmental Contact	Jason Kelly Jason.Kelly@dfo-mpo.gc.ca (709) 730-2185	Northwest Atlantic Fisheries Centre 80 East White Hills Road PO Box 5667 St. John's, NL A1C 5X1

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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?

Yes, DFO has an interest in this project; the project has the potential to impact fish and fish habitat.

DFO has **not** exercised a power, performed a duty or function under any Act of Parliament or taken any course of action.

DFO has, however, provided advice to the Proponent to avoid or mitigate impacts on fish and fish habitat through two requests for review for access road construction/upgrades on sites (A4 and A5) to install two Meteorological Evaluation Towers (MET) on the Port au Port peninsula.

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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.

Yes, the Proponent may be required to apply to DFO for an Authorization under Sections 34.4(2) and 35(2) of the *Fisheries Act* to cause death of fish by means other than fishing or

harmful alteration, disruption, or destruction (HADD) of fish habitat; however, additional information is required to determine the requirement for an Authorization.

DFO may also provide advice to the Proponent and to other regulatory authorities, on measures to avoid, mitigate, or offset impacts to fish and fish habitat.

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.

Yes, should the Proponent require an Authorization under the fish and fish habitat protection provisions of the *Fisheries Act*, DFO is required to consult with Indigenous groups and will consider any adverse effects that the decision may have on the rights of the Indigenous peoples. DFO would also encourage the Proponent to engage with Indigenous groups and the public on the fish habitat offsetting plan.

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/expert information, and is able to provide knowledge and advice related to the protection of fish and fish habitat, fisheries, species at risk, marine mammals, sea turtles and other aquatic resources.

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.

Yes, the Proponent registered the Port au Port-Stephenville Wind Power and Hydrogen Generation Project (Project Nujio'qonik GH2) with the Government of Newfoundland and Labrador on June 21, 2022. DFO is a member of the Environmental Assessment Committee.

DFO has also engaged directly with the Proponent primarily to discuss requirements for baseline data collection for both freshwater and marine environments, and potential impacts to fish and fish habitat.

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 the 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 project has the potential to adversely affect fish and fish habitat and/or a species at risk; however, these adverse effects can be managed through the issuance of a *Fisheries Act* authorization and associated offsetting, if required, and/or a species at risk permit.

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:

- effects to fish and fish habitat;
- effects to wildlife, including migratory birds and species at risk;
- effects to the marine environment (e.g., disruption of historic contamination);
- accidents or malfunctions (e.g., ammonia or hydrogen leaks);
- alternative means of carrying out the project were not adequately considered;
- cumulative effects from past drilling, mining, milling, and accidents and malfunctions in the area,
- mistrust in the proponent and the provincial process (e.g., perceived project-splitting);
- effects to Indigenous peoples (e.g., country foods, current use);
- effects to climate change from upstream and downstream impacts of hydrogen and ammonia production; and
- inadequate public and Indigenous engagement on the Project.

If yes, please specify the program or authority.

Yes, in considering an “Application for Authorization” under Section 35(2) of the *Fisheries Act*, DFO is required to consult with Indigenous groups regarding potential impacts to fish and fish habitat on Indigenous rights, traditional use of land, and cumulative effects. When designing measures to avoid, mitigate, or offset the death of fish or HADD within the freshwater and marine environments, concerns expressed by Indigenous groups and proponent-led public engagement will be taken into consideration prior to issuance of a *Fisheries Act* Authorization.

Prior to issuing an Authorization, DFO would engage with the Proponent to minimize impacts to fish and fish habitat and species at risk (freshwater/marine), which includes consideration of alternative means of carrying out the project (e.g., redesign, relocate).

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 is not currently involved in any engagement or consultations with Indigenous groups concerning the exercise of their rights protected by Section 35 of the *Constitution Act, 1982*.

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 regarding Projects Near Water can be found on the following website:

<https://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>

The information includes measures, standards, and codes of practice that should be followed to protect fish and fish habitat. The website also outlines the process to apply for an Authorization under Section 35(2) of the *Fisheries Act*.

Kimberley Keats

Name of departmental / agency responder

A/ Manager, Fish and Fish Habitat Protection Program, DFO

Title of responder

August 1, 2023

Date