

**Federal Authority Advice Record (FAAR)**

**FAAR Response must be submitted by August 14, 2024**

Black Bear Power Plant Project – Kiwetinohk Energy Corp.

Registry File: 88747

Department/Agency	Fisheries and Oceans Canada
Lead Contact	Lisa Wren, Team Leader, Triage and Planning
Full Address	867 Lakeshore Road, Burlington, ON L7S 1A1
Email	<a href="mailto:Lisa.Wren@dfo-mpo.gc.ca">Lisa.Wren@dfo-mpo.gc.ca</a>
Telephone	905-973-8392
Alternate Contact	Deborah Silver, <a href="mailto:Deborah.Silver@dfo-mpo.gc.ca">Deborah.Silver@dfo-mpo.gc.ca</a>

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1. a) 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 the Act of Parliament and that power, duty or function .

A *Fisheries Act* paragraph 35(2)(b) Authorization will be required if the project is likely to cause the harmful alteration, disruption, or destruction to fish habitat and/or a *Fisheries Act* paragraph 34.4(2)(b) Authorization if the project is likely to result in the death of fish.

DFO has reviewed the project information available at this time. There is insufficient information to determine whether the project will result in adverse effects; however, components of the project do have the potential to result in the harmful alteration, disruption or destruction of fish habitat and/or the death of fish, if not conducted in a manner to avoid such adverse effects. As such, the project may require authorization under the *Fisheries Act*. If an authorization were to be issued, it would include conditions in relation to the aforementioned effects.

DFO also reviews projects for effects to listed aquatic species at risk, any part of their critical habitat or the residences of their individuals in a manner which is prohibited under sections 32, 33 and subsection 58(1) of the *Species at Risk Act*. Aquatic species at risk and their critical habitat are present in the vicinity of the project area and a permit could be required if the project could result in effects to listed aquatic species at risk or any part of their critical habitat.

- b) Please describe any Indigenous or public consultation that will be undertaken in relation to the exercise of that power, duty or function, including when it would take place.

Should DFO consider issuing a *Fisheries Act* s.34.4(2)(b) and/or 35(2)(b) authorization for the project, consultation with Indigenous groups would be undertaken.

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2. Is your department or agency in possession of specialist or expert information or knowledge in its area of expertise that may be relevant to the conduct of an impact assessment of the project?

Specify the specialist or expert information or knowledge.

DFO can provide specialist or expert information or knowledge on assessment of impacts on fish and fish habitat. The Department may provide information to the proponent in order to avoid and mitigate the negative impacts of the proposed works, undertakings or activities.

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3. Has your department or agency considered 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 that would allow the project to proceed in whole or in part?

Specify.

No. DFO has not yet exercised a power or performed a duty or function 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.

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4. Has your department or agency had previous contact or involvement with the proponent or other party in relation to the project? (for example: an enquiry about methodology, guidance, or data; introduction to the project)

Provide an overview of the information or advice exchanged.

DFO has not had any previous contact or involvement with the proponent or other parties in relation to the Project.

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5. Does your department or agency have additional information or knowledge on the project not specified above, including information on the geographic, environmental, economic or social context of the project? (e.g. location of protected or sensitive areas, previous history between local communities and proponent or similar projects, local or regional social or economic concerns)?

Specify as appropriate.

DFO does not have any additional information of knowledge on the project.

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6. Based on the mandate and area(s) of expertise of your department or agency, what are the key issues related to the project?

For each key issue:

- Describe the potential effect or the nature of the issue, including any relevant context;
- Provide the rationale and/or evidence for why it is a key issue;
- Provide advice on how to address the issue, including any information or studies that should be required in the Tailored Impact Statement Guidelines, potential mitigation measures, and/or regulatory requirements relevant to the issue;
- Provide a concise, plain-language summary of the issue for inclusion in the Summary of Issues.

The information provided will be considered by the Impact Assessment Agency of Canada (IAAC) and may be used to inform its decision on whether an impact assessment is required and, where appropriate, for next steps in the impact assessment process including to develop project-specific draft Tailored Impact Statement Guidelines.

Please use Table 1 to respond to this question.

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7. Where possible, identify any additional information the proponent could include in the response to the Summary of Issues and, if IAAC requires it, in their Detailed Project Description, that would:

- Give confidence that minor issues or effects could be addressed and managed by clear measures, existing guidelines, other regulatory processes or other existing tools;
- Inform the decision as to whether an impact assessment is required; or
- Aid in tailoring the Tailored Impact Statement Guidelines, if IAAC decides an impact assessment is required.

These clarifications and additional information will be included as specific questions in the Summary of Issues provided to the proponent.

Please use Table 2 to respond to this question.

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Lisa Wren

Name of Departmental / Agency  
Responder

Team Leader, Triage and Planning

Title of Responder

August 14, 2024

Date

**Table 1: Key Issues to inform the impact assessment process**

The IAAC asks that federal authorities align expert advice with IAAC’s approach to tailoring by project, which focuses on key project issues, clearly focused on the prevention of adverse effects within federal jurisdiction. In identifying key issues, federal authorities should be mindful of the project’s context (size, scope, location), Indigenous Knowledge and perspectives, and public concerns. Key issues that may be relevant to the decision include:

- adverse effects within federal jurisdiction and direct or incidental adverse effects that may be to some extent significant, based on federal experts’ knowledge and experience with past projects;
- potential impacts on Indigenous Peoples and their rights, based on Indigenous Knowledge and perspectives or experience with past projects;
- effects on key species or habitats (e.g. at risk, important to Indigenous communities, commercial importance, provide important ecosystem function);
- issues or effects that may result from novel project activities, components or technology;
- effects with large uncertainties, including in the effectiveness of mitigation measures;
- adverse effects within federal jurisdiction or direct or incidental adverse effects where mitigation measures are limited;
- positive effects, including where project may support other governmental priorities, including reconciliation with Indigenous Peoples; and
- key concerns raised by Indigenous groups or local communities.

Effects that are anticipated to be minor or which can be managed using well understood mitigation, existing guidance, and/or other regulatory processes may have simplified information requirements or may be removed entirely. Measured advice from federal authorities on key issues and solutions—and on the scope and detail of any required information and studies—will enable IAAC to focus assessments on issues that are important to participants and to decision-makers.

Comment ID	Relevant section of the Initial Project Description	Valued Component or Factor to Consider	Description of Key Issue (Context and Rationale)	Advice	Plain language summary for inclusion in Summary of Issues
<p><i>Please identify comments by organization and comment number.</i></p> <p>e.g.: IAAC-01</p>	<p><i>If the comment is related to a specific section of the Initial Project Description, please include that reference.</i></p>	<p><i>Identify valued component(s) or factor to consider—within the mandate of your department or agency—to which the potential effect or issue applies.</i></p>	<p><i>Provide a brief description of the issue and rationale for being a key issue.</i></p> <p><i>Include, where relevant,:</i></p> <ul style="list-style-type: none"> <li>• the pathway of effects;</li> <li>• relevant context on why it is a key issue;</li> <li>• key uncertainties that should be addressed in the impact assessment;</li> <li>• Indigenous or public concerns or perspective;</li> <li>• potential for differential effects among diverse subgroups;</li> <li>• scientific evidence or Indigenous Knowledge, including from past project experience, which supports inclusion as a key issue.</li> </ul>	<p><i>Where applicable, briefly provide solutions on how to address the potential issue or effects including:</i></p> <ul style="list-style-type: none"> <li>• Information or studies required to describe and characterize the potential effect; including any guidance for data collection and/or analysis or existing data sources to inform the assessment;</li> <li>• Any means, including any powers, duties or functions, that your department or agency has that may mitigate, manage, or set conditions related to the issue or effect;</li> <li>• Guidance or policies for mitigating effects or any standard and well-understood mitigation measures that would address the effect, including follow-up monitoring activities; and/or</li> <li>• Commitments the proponent could make to respond to the issue.</li> </ul> <p><i>Where available, please refer to existing text in the Tailored Impact Statement Guidelines template.</i></p>	<p><i>For issues to be included in the Summary of Issues, provide a concise, plain language synopsis of the key issue and any questions or directions for the proponent.</i></p>
DFO-01	<p>1 Project Information, and subsections</p> <p>9.1.3 Water Supply</p> <p>9.2.2 Infrastructure Construction</p> <p>14 Physical and Biological Environment, and subsections</p> <p>19 Impacts to Environmental Components, and subsections</p>	Fish and Fish Habitat	<p>A <i>Fisheries Act</i> paragraph 35(2)(b) Authorization will be required if the project is likely to cause the harmful alteration, disruption, or destruction to fish habitat and/or a <i>Fisheries Act</i> paragraph 34.4(2)(b) Authorization if the project is likely to result in the death of fish. Fisheries and Oceans Canada (DFO) reviews projects to ensure compliance with the <i>Fisheries Act</i>.</p> <p>The Project may result in the harmful alteration, disruption, or destruction of fish habitat through the installation of the proposed natural gas pipeline, transmission line, and/or equipment watercourse crossings, as well as water withdrawal. Currently, there is insufficient information on the methods of construction and proposed mitigation measures for DFO to understand potential effects on fish and fish habitat.</p>	<p>We request that you visit our <a href="#">website</a> to determine if DFO needs to review your project.</p> <p>DFO suggests that the proponent take the following steps to inform a full understanding of the project’s potential effects on fish and fish habitat:</p> <ul style="list-style-type: none"> <li>• Review the <a href="#">Pathways of Effects</a> associated with the project to determine potential impacts;</li> <li>• Identify whether any <a href="#">standards or codes of practice</a> can be implemented; <ul style="list-style-type: none"> <li>▪ Ensure the project meets the description (Section 1) of the works, undertakings and activities addressed by the code of practice;</li> <li>▪ Ensure the project meets all conditions (Section 2) of the code of practice;</li> </ul> </li> </ul>	<p>Potential impacts to fish and fish habitat as a result of the project are not fully understood. There is the potential for the harmful alteration, disruption, or destruction of fish habitat, dependent on construction methods. Specifics of the locations, construction methods, and the application of mitigation measures are required to determine if residual effects trigger the requirement for a <i>Fisheries Act</i> Authorization.</p>

				<ul style="list-style-type: none"> <li>▪ Ensure you can apply the identified measures to protect fish and fish habitat (Section 3);</li> <li>• Identify the <a href="#">standard avoidance and mitigation measures</a> that can be implemented; and,</li> <li>• Identify all residual effects on fish and fish habitat through a detailed consideration of potential effects and proposed mitigation measures.</li> </ul> <p>If the project involves in-water work (including, but not limited to, water withdrawal, activities to isolate the site from open water, or watercourse crossings to access project sites), is not in one of the listed exempted waterbody types or does not fall within the standards and codes of practice, and cannot follow all of the applicable measures to protect fish and fish habitat, DFO recommends that the proponent submit a <a href="#">Request for Review</a>.</p>	
DFO-02	18 Federal, Provincial, Legislative or Other Regulatory Requirements	Aquatic Species at Risk	<p>A <i>Species at Risk Act</i> permit may be required if you wish to undertake an activity that affects a listed aquatic species at risk, any part of their critical habitat or the residences of their individuals in a manner which is prohibited under sections 32, 33 and subsection 58(1) of the <i>Species at Risk Act</i>.</p> <p>Although the proponent states “there will be no potential effects to...aquatic species, as defined in the <i>Species at Risk Act</i>...”, the Project occurs in the vicinity of listed aquatic species at risk distribution and their critical habitat, and may include activities which could affect those species and/or their habitat. Currently, there is insufficient information on the methods of construction and proposed mitigation measures for DFO to understand potential effects to aquatic species at risk.</p>	<p>We request that you review the <a href="#">Aquatic Species at Risk map</a> to confirm the distribution of listed aquatic species at risk and/or critical habitat at the project sites.</p> <p>If the project involves in-water or near-water (within 30m of a watercourse) work within the mapped distribution of aquatic species at risk or their critical habitat, DFO recommends that you submit a <a href="#">Request for Review</a> before proceeding further.</p>	<p>Potential impacts to aquatic species at risk and their critical habitat as a result of the project are not fully understood. There is the potential for impacts to those species and/or their habitat dependent on construction methods. Specifics of the locations and construction methods are required to determine if the project may result in impacts to a listed aquatic species at risk, any part of their critical habitat or the residences of their individuals in a manner which is prohibited under sections 32, 33 and subsection 58(1) of the <i>Species at Risk Act</i>, and may trigger the requirement for a <i>Species at Risk Act</i> permit.</p>
DFO-03		Aquatic Invasive Species	<p>Fisheries and Oceans Canada also reviews projects for the introduction of aquatic species into regions or bodies of water frequented by fish where they are not indigenous, which is prohibited under section 10 of the <i>Aquatic Invasive Species Regulations</i></p>	<p>The proposed works do not occur within an Aquatic Invasive Species control zone.</p>	<p>Based on the information received, DFO understands the project will not likely result in the introduction of aquatic invasive species.</p>

Please insert additional rows as necessary.

Table 2. Clarifications or additional information the Proponent could include in the response to Summary of Issues

Comment ID	Relevant section of the Initial Project Description	Description of Issue, Concern or Uncertainty	Clarification or additional information	Plain language summary for inclusion in Summary of Issues
<p><i>Please identify comments by organization and comment number.</i></p> <p>e.g.: IAAC-01</p>	<p><i>If the comment is related to a specific section of the Initial Project Description, please provide a reference.</i></p> <p><i>You may also choose to copy the relevant text here.</i></p>	<p><i>Provide a description of the issue, concern or uncertainty the proponent could address in their response to Summary of Issues and, if IAAC requires it, in their Detailed Project Description that would give confidence that the issue will be addressed and managed, by clear measures, existing guidelines, regulatory processes or other existing tools, and thus be the subject of simplified information requests in the guidelines, or simply be removed.</i></p>	<p><i>Provide recommended clarification or additional information to be included in their response to the Summary of Issues and, if IAAC requires it, in their Detailed Project Description to address the issue, concern or uncertainty, for example:</i></p> <ul style="list-style-type: none"> <li><i>• Clarifications to elements of the project description (e.g. components, activities, locations or alternatives);</i></li> <li><i>• Proposed project design changes that could avoid effects;</i></li> <li><i>• Evidence that could be presented to demonstrate there is no effect, pathway of effect or that effects would be negligible;</i></li> <li><i>• Evidence that standard mitigations will address potential effects</i></li> <li><i>• Commitments the proponent could make to respond to the issue, including the implementation of federal operational policies or guidance documents.</i></li> </ul>	<p><i>For issues to be included in the Summary of Issues, provide a concise, plain language synopsis of the issue and of the question or direction for the proponent.</i></p>
N/A	N/A	N/A	N/A	N/A

*Please insert additional rows as necessary.*