

Federal Authority Advice Record (FAAR)**FAAR Response must be submitted by February 6, 2025**

Sussex Region Flood Diversion Project – Town of Sussex.

Registry File: 89179

Department/Agency	Fisheries and Oceans Canada (DFO)
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1. Is it probable that your department or agency exercise a power, perform a duty or function, or provide financial assistance, related to the project to enable it to be carried out in whole or in part?

As relevant,

- a) Specify the applicable Act of Parliament and that power, duty or function, or describe the financial assistance provided.

An authorization under sections 34.4(2)(b) and 35(2)(b) of the *Fisheries Act* may be required for the proposed works, undertakings or activities if the project is likely to result in the death of fish or the harmful alteration, disruption or destruction of fish habitat; however additional information is required to determine if an authorization is required.

DFO also assesses if projects will result in prohibited effects on listed aquatic species at risk, their critical habitat and/or residences, under sections 32, 33 and subsection 58(1) of the *Species at Risk Act*. Based on the initial project description, there is no critical habitat or residences of species at risk in the project area. However, additional information is required to determine the risk of encountering a listed aquatic species at risk.

- b) Describe any associated Indigenous or public consultation, including timelines.

If a *Fisheries Act* authorization or a permit under the *Species at Risk Act* is required, DFO has a duty to consult, and where appropriate, accommodate, Indigenous groups. Consultation would begin after an application for an authorization is received by DFO.

DFO does not engage with the public prior to issuing an authorization, however information on authorizations, once issued, are made available on the *Fisheries Act* registry.

DFO will support the Impact Assessment Agency during consultations, Indigenous and public, on matters relevant to our mandate.

- c) Describe any associated requirements (e.g., alternative means, offsetting) that may be coordinated with the impact assessment process, if an impact assessment is required, to meet the target of five years or less to complete any required federal impact assessment and permitting.

If an authorization under the *Fisheries Act* is required, an offsetting plan to counterbalance the impacts to fish and fish habitat will be required.

2. Is your department or agency in possession of specialist or expert information or knowledge with respect to the project beyond what is described in the [Memorandums of Understanding with IAAC](#)?

As relevant,

- a) Specify the specialist or expert information or knowledge that is specifically related to the project and may be relevant to the conduct of an impact assessment of the project, 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).

DFO has specialist or expert information or knowledge of fish and fish habitat, including aquatic species at risk and aquatic invasive species. DFO can also provide specialist or expert information or knowledge on assessing the impacts of projects on fish and fish habitat as well as providing information to avoid and mitigate adverse effects of projects on fish and fish habitat.

- b) Provide an overview of any information received or exchanged with the proponent or other party in relation to the project (e.g., about methodology, guidance, or data).

DFO has not received information or any previous contact with the proponent or other parties in relation to the project.

3. Based on the mandate and expertise of your department or agency as well as information and knowledge in its possession, including the Initial Project Description, are you of the opinion that the project may cause adverse effects within federal jurisdiction or direct or incidental adverse effects?

- a) Identify adverse effects within federal jurisdiction that may be caused by the project.

The project may result in residual death of fish and/or residual harmful alteration, disruption and destruction of fish habitat during the construction of the diversion channels and the control intake structures and due to fish stranding when flood waters recede.

- b) Identify any non-negligible adverse effects directly linked or necessarily incidental to a federal authority's exercise of a power or performance of a duty or function, or to a federal authority's provision of financial assistance to a person for the purpose of enabling the project to be carried out, in whole or in part.

DFO is not aware of any non-negligible adverse effects that could result from issuing a Fisheries Act authorization.

- c) Identify any adverse impact that the designated project may have on the rights of Indigenous groups.

If there are residual adverse impacts to fish and fish habitat, Aboriginal and Treaty rights may be impacted. In such were the case, DFO would consult with Indigenous groups to understand how the impacts to their rights before issuing a Fisheries Act authorization.

- d) Identify and describe means other than an impact assessment that may address the adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that may be caused by the carrying out of the project, including how these effects

would be addressed. Other means may include any power, duty or function exercised by your department or agency, as well as existing legislations, regulations, standards, processes, or guidelines by any jurisdiction that your department or agency has knowledge of.

The *Fisheries Act* and associated regulations, policies and guidelines may address the adverse impacts of the project on fish and fish habitat. The **Fish and Fish Habitat Protection Policy Statement** (<https://www.dfo-mpo.gc.ca/pnw-ppe/policy-politique-eng.html>) explains the fish and fish habitat protection provisions of the *Fisheries Act* and outlines how DFO implements these provisions. DFO's **Project Near Water** website (<https://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>) provides information on measures to protect fish and fish habitat, standards and codes of practice that help avoid and mitigate adverse impacts to fish and fish habitat. The website also outlines DFO's regulatory process. If all adverse impacts cannot be avoided and mitigated, an authorization may be granted under the **Authorizations Concerning Fish and Fish Habitat Protection Regulations** (<https://www.gazette.gc.ca/rp-pr/p2/2019/2019-08-21/html/sor-dors286-eng.html>). When applying for an authorization, offsetting is required to counterbalance the unavoidable impact to fish and fish habitat. The Policy for Applying Measures to Offset Impacts to Fish and Fish Habitat Under the *Fisheries Act* (<https://www.dfo-mpo.gc.ca/pnw-ppe/reviews-revues/policies-politiques-eng.html>) provides more offset guidance.

If the project is likely to affect an aquatic listed species at risk, the *Species at Risk Act* allows permitting under certain conditions. Information on Permitting under the *Species at Risk Act* can be found at <https://www.dfo-mpo.gc.ca/species-especes/sara-lep/permits-permis/index-eng.html>.

Both the issuance of an authorization under the *Fisheries Act* and the issuance of a permit under the *Species at Risk Act* are crown conduct and trigger the duty to consult Indigenous groups.

- e) Identify whether and how an impact assessment would provide added value to understand and address adverse effects within federal jurisdiction — and the direct or incidental adverse effects — that may be caused by the project, including supporting federal authorizations that may be required.

An impact assessment would provide a whole of government approach to consultation with Indigenous groups. In addition, an impact assessment may be better suited to assess the cumulative impacts of the project.

4. Based on the mandate, experience and expertise of your department or agency, and on the Initial Project Description, what are the **key issues** related to the project?

Please use Table 1 to respond to this question.

If IAAC decides an impact assessment is required, IAAC will consider the information to develop project-specific draft Tailored Impact Statement Guidelines focused on key issues, establish the scope of the impact assessment, and develop plans.

5. What additional information the proponent could provide that would give confidence that concerns or uncertainty regarding potential effects can be addressed through means other than an impact assessment, or that available means and evidence can be relied upon to simplify information requirements of the proponent, if an impact assessment is required?

Please use Table 2 to respond to this question.

These clarifications and additional information may be asked of the proponent in the Summary of Issues. The proponent's response on how it intends to address the issues may be used by IAAC to decide if an impact assessment is required and, if so, develop simplified project-specific draft Tailored Impact Statement Guidelines, and develop plans.

Angeline LeBlanc

Name of Departmental / Agency
Responder

Senior Biologist, Regulatory Reviews
Fish and Fish Habitat Protection
Program, Fisheries & Oceans Canada

Title of Responder

2025-06-02

Date

Table 1: Key Issues to inform the impact assessment process

This table should outline key issues to inform the impact assessment process, including whether an impact assessment is required and, if so, the scope of the assessment.

IAAC asks that federal authorities align expert advice with IAAC’s approach to scoping and tailoring to key issues based on the project-specific context, and clearly focus on the prevention and mitigation of significant adverse effects within federal jurisdiction. Measured advice from federal authorities on key issues and solutions — and on the scope and detail of any recommended information and studies — will enable IAAC to focus assessments on issues that are important to participants and to decision-makers.

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 and material to decision-making include:

- adverse effects within federal jurisdiction and direct or incidental adverse effects that may be to some extent significant, based on available evidence, including federal experts’ knowledge and experience with past project assessments;
- potential impacts on Indigenous peoples and their rights, based on Indigenous Knowledge and perspectives or experience with past project assessments;
- effects on key species or habitats (e.g. at risk, important to Indigenous communities, commercial importance, provide important ecosystem function);
- issues or adverse effects within federal jurisdiction or direct or incidental adverse effects that may result from novel project activities, components or technology;
- effects within federal jurisdiction or direct or incidental adverse effects with large uncertainties, including in the effectiveness of mitigation measures;
- adverse effects within federal jurisdiction and direct or incidental adverse effects where known and effective mitigation measures are limited or unproven;
- 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.

If an impact assessment is required, it will be focused on key federal issues anticipated to be material to decision-making. Potential effects that do not represent key issues, may not be within the scope of the impact assessment or may require simplified information requirements for proponents. In identifying key issues and providing advice on whether additional information or studies are required, federal authorities should consider whether potential effects can be managed using well understood mitigation measures or existing guidance, whether a mean other than an impact assessment exists to address and manage the effects and of any gaps in the existing body of evidence.

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 that could be included in the 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:</i></p> <ul style="list-style-type: none"> • <i>whether it is an adverse effect within federal jurisdiction, or a direct or incidental adverse effect;</i> • <i>the pathway of effects;</i> • <i>nature and complexity of the issue</i> • <i>rationale and evidence on why it is a key project-specific issue;</i> • <i>if applicable, Indigenous or public concerns or perspective;</i> • <i>if applicable, potential for differential effects among diverse population groups;</i> • <i>scientific evidence or Indigenous Knowledge, including from past project experience, which supports inclusion as a key issue.</i> 	<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"> • <i>Any mean, including powers, duties or functions that your department or agency has or any regulatory framework of a jurisdiction that may mitigate, manage, or set conditions related to the issue;</i> • <i>Standards, guidance or policies for mitigating effects or any standard and well-understood mitigation measures that would address the effect, including follow-up monitoring activities;</i> • <i>Commitments the proponent could make to respond to the issue;</i> • <i>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</i> <p><i>Where available, please refer to existing text in the Tailored Impact Statement Guidelines template.</i></p>	<p><i>Provide a concise, plain language synopsis of the key issue and any questions or directions for the proponent. that IAAC may include in the Summary of Issues.</i></p>
DFO-01	Section 4.1.4.3	Fish and Fish Habitat	The description of fish and fish habitat does not provide enough detail regarding the fish species present within the watercourses that will be impacted by the project, specifically Trout Creek and Parsons Brook. DFO cannot fully assess the potential effects on fish and fish habitat and if these effects can be mitigated.	To enable DFO to determine the impacts of the project on fish and fish habitat, the proponent should provide more detailed information on the fish and fish habitat that could be impacted by the project. The proponent should 1) Provide a list of fish species present in the watercourses that will be impacted by the works (Trout Creek and Parsons Brook), including timing when they are present.	Characterization of fish and fish habitat should be detailed enough to determine the potential impacts of the project.

				2) Provide a habitat use or suitability evaluation for fish present and habitat function (e.g. spawning, nursery, migration route, foraging, etc).	
DFO-02	Section 3.3	Fish and Fish Habitat	There are not enough details on the description of work, activities or undertakings, including but not limited to detailed plans, duration and periods of execution and work methods. DFO cannot fully assess the potential effects on fish and fish habitat and if they can be effectively mitigated.	To fully understanding the impacts of the project on fish and fish habitat, the proponent should provide, for each component of the project in or near water: 1) Detailed engineering plans. 2) A schedule for the duration and periods of execution. 3) The methods of execution.	The proponent should provide a detailed descriptions of all components of the project.
DFO-03	Table 12	Fish and Fish Habitat	Currently there is insufficient information regarding the fish and fish habitat and the components of the project for DFO to determine if the impacts and mitigation measures proposed are adequate.	DFO suggests that the proponent consult DFO's measures to protect, fish and fish habitat and standards and codes of practice and identify any that can be implemented. In addition, the proponent should identify any site specific mitigation measures that could be implemented. DFO recommends that the proponent consult the Pathways of Effects to determine the potential effects of the project.	Detailed characterization of fish and fish habitat, specifics of the construction methods and applicable mitigation measures are required to determine if the project will require a Fisheries Act authorization.

Please insert additional rows as necessary.

Table 2. Clarifications or additional information the proponent could provide

This table should outline clarifications or information the proponent could provide to address areas of concerns or uncertainty during the Planning phase to support the decision on whether an impact assessment is required and, if an impact assessment is required, to support simplified information and studies that would be required in the Tailored Impact Statement Guidelines.

Comment ID	Relevant section of the Initial Project Description	Description of concern or uncertainty	Clarification or additional information	Plain language summary that could be included in the Summary of Issues
<p>Please identify comments by organization and comment number. e.g.: IAAC-01</p>	<p>If the comment is related to a specific section of the Initial Project Description, please provide a reference. You may also choose to copy the relevant text here.</p>	<p>Provide a description of the area of concern or uncertainty the proponent could address (e.g. in their response to Summary of Issues, and, if IAAC requires it, in their Detailed Project Description) that would demonstrate or increase confidence that the issue will be addressed through a mean other an impact assessment such as existing regulatory frameworks (from any jurisdiction), clear measures or existing guidelines or tools .</p>	<p>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 as to how they intend that could be provided to address the concern or uncertainty, for example:</p> <ul style="list-style-type: none"> • Clarifications to elements of the project description (e.g. components, activities, locations or alternatives); • Proposed project design changes that could avoid effects; • Evidence that could be presented to demonstrate there is no effect pathway of effect or that effects would be negligible; • Evidence that standard mitigation measures will address potential adverse effects within federal jurisdiction and, if applicable, direct or incidental adverse effects; • Commitments the proponent could make to address the issue, including the implementation of federal operational policies or guidance documents. 	<p>Provide a concise, plain language synopsis of the issue and of the question or direction for the proponent that IAAC may include in the Summary of Issues.</p>

Please insert additional rows as necessary.