

THE FISHERIES ACT HAS CHANGED, ARE YOU COVERED?

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VIRTUAL ENVIROTECH 2020

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INTEGRATED
SUSTAINABILITY

WATER | WASTE | ENERGY

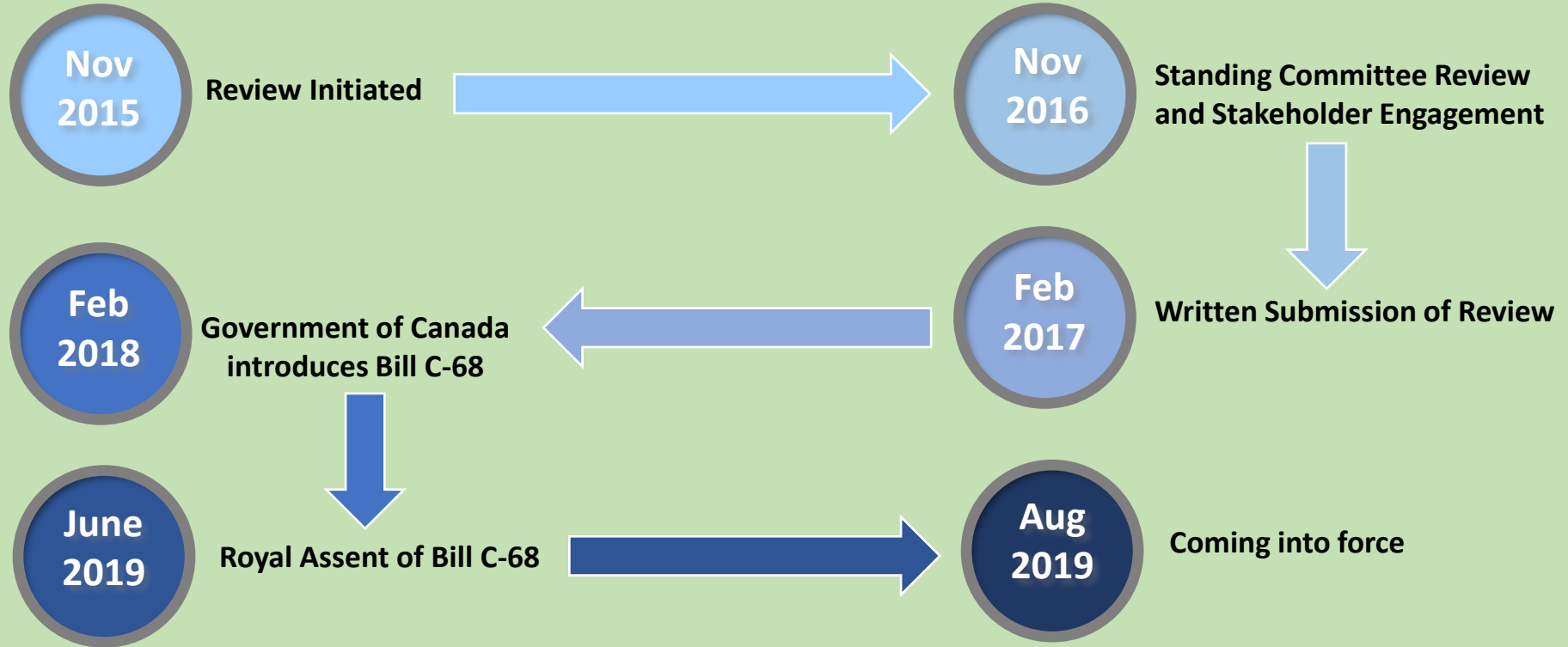


OVERVIEW

- How Did We Get Here?
- Major Changes
- Letters of Advice
- Case Study
 - DFO Request for Review

 CANADA	
CONSOLIDATION	CODIFICATION
Fisheries Act	Loi sur les pêches
R.S.C., 1985, c. F-14	L.R.C. (1985), ch. F-14
Current to May 17, 2020 Last amended on August 28, 2019	À jour au 17 mai 2020 Dernière modification le 28 août 2019
Published by the Minister of Justice at the following address: http://laws-lois.justice.gc.ca	Publié par le ministre de la Justice à l'adresse suivante : http://lois-laws.justice.gc.ca

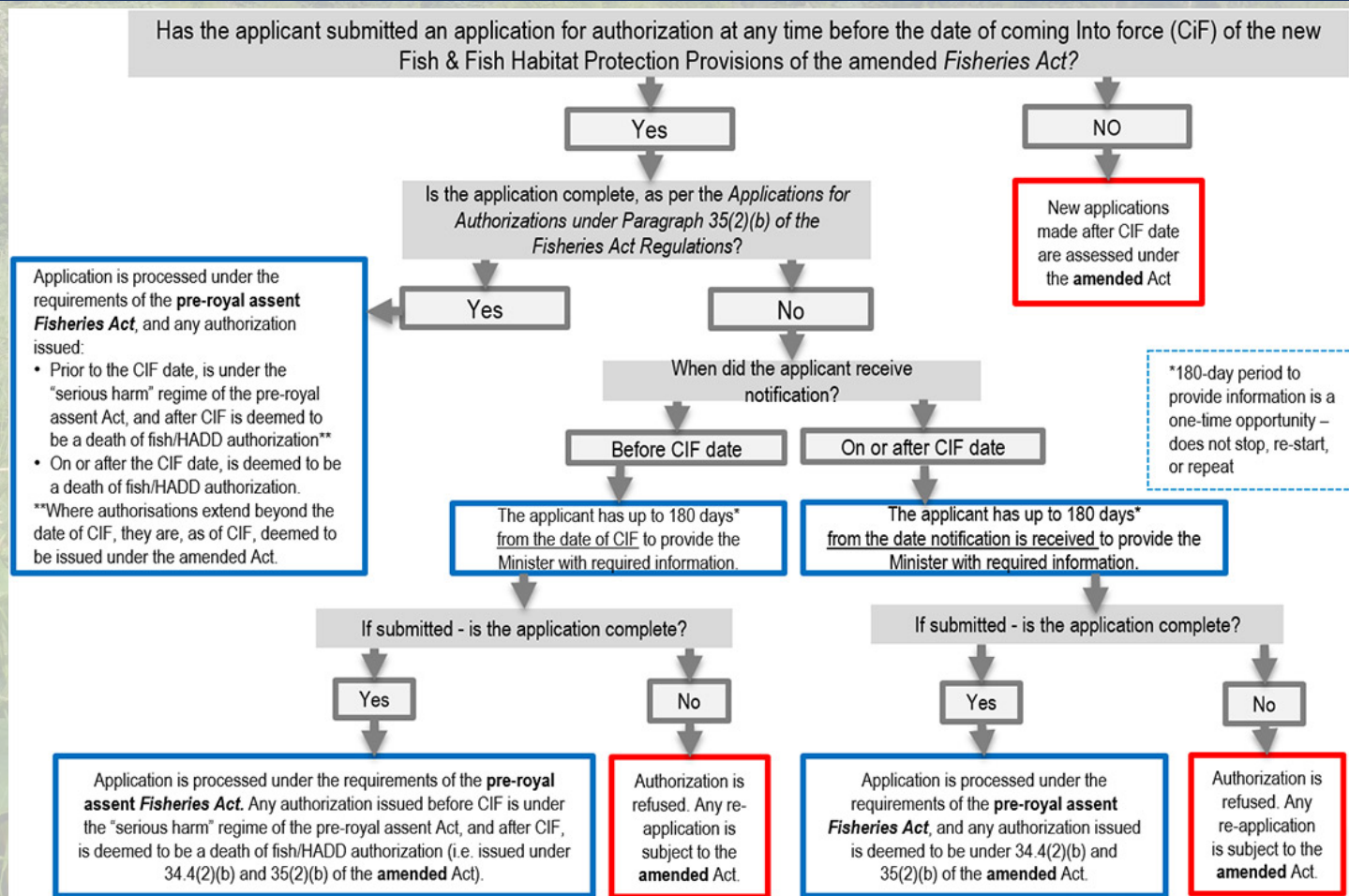
HOW DID WE GET HERE?



WHAT ARE SOME OF THE MAJOR CHANGES?

- Reverting to the prohibition against the “harmful alteration or disruption, or destruction” (HADD) of fish habitat, which is designed to provide protection for all fish species and fish habitat
- Additional changes

TRANSITIONAL PERIOD



LETTERS OF ADVICE



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Central & Arctic Region
Fish and Fish Habitat
Protection Program
501 University Crescent
Winnipeg, MB R3T 2N6

Région du Centre et de l'Arctique
Programme de la protection
du poisson et de son habitat
501 University Crescent
Winnipeg, MB R3T 2N6

Your file / Votre référence

Our file / Notre référence

ATTENTION:

Subject: [REDACTED] River Intake at [REDACTED] – Implementation of Measures to Avoid and Mitigate Serious Harm to Fish and Prohibited Effects on Listed Aquatic Species at Risk

Dear [REDACTED]:

The Fish and Fish Habitat Protection Program (the Program) of Fisheries and Oceans Canada (DFO) received your proposal on [REDACTED]. We understand that you propose to:

- Install a water intake system in the [REDACTED] River located on the south bank approximately [REDACTED] km southwest of [REDACTED] AB;
- Operate 7 fixed screened, manifold intakes leading to a central pump location;
- Annually withdraw [REDACTED],000 m³ at a max diversion rate of [REDACTED] m³/s [REDACTED] L/s);
- Withdraw water year-round on a 5-year licence.

Our review considered the following information:

- Request for Review form and supplemental information submitted by Robert Best (Integrated Sustainability) on [REDACTED];
- Response to DFO's Request for Additional Information sent by R. Best on [REDACTED];
- Recommendations sent by Alberta Environment and Parks (AEP) on [REDACTED], [REDACTED] and a response to recommendations from R. Best on [REDACTED];
- Several emails and phone calls among [REDACTED] (DFO) and R. Best.

Your proposal has been reviewed to determine whether it is likely to result in *serious harm to fish* which is prohibited under subsection 35(1) of the *Fisheries Act* unless authorized. Your proposal has also been reviewed to determine whether it is likely to affect listed aquatic species at risk, any part of their critical habitat or the residences of their individuals

LETTERS OF ADVICE

DFO Guidance with respect to Letters of Advice

- Recommendation to have previous Letters of Advice reviewed by a qualified professional
- Letters of Advice received prior to 28 August 2019, are **NOT** “grandfathered”

CASE STUDY – ALBERTA

- What is the typical process for getting a surface water licence approved in Alberta?
 - Water Act application
 - Public Lands Act application or written approval from landowner
 - First Nations consultation
 - **DFO review**



Fisheries and Oceans
Canada



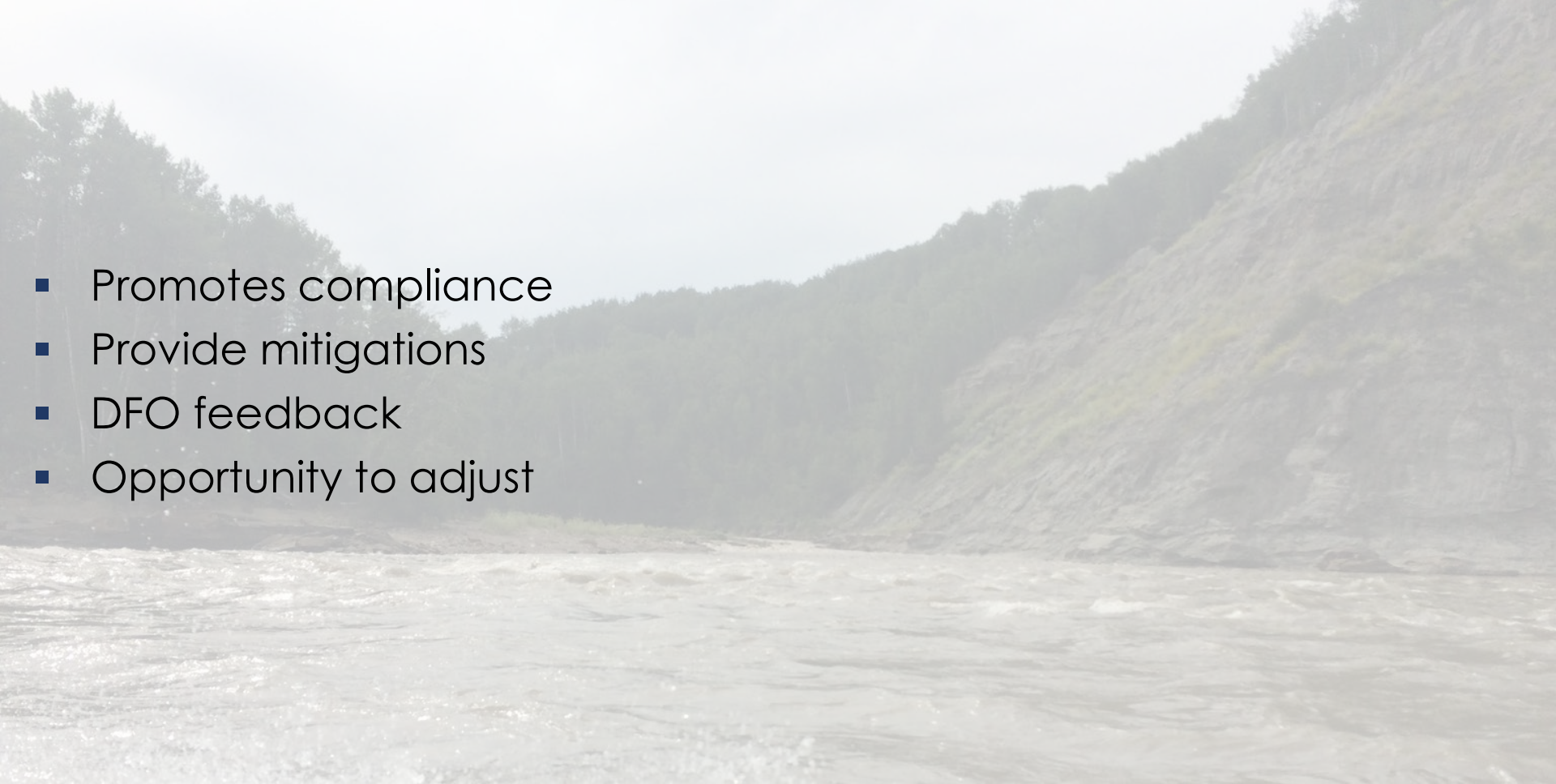
DFO REQUEST FOR REVIEW PROCESS

- What is it?
- Is it required?
- What is the process?
- How long does it take?
- What if I choose to not submit my project for DFO review?



WHAT IS IT?

- Promotes compliance
- Provide mitigations
- DFO feedback
- Opportunity to adjust



REQUIRED OR NOT?

- The requirement to have a project reviewed (or not) by DFO has not changed
- “Self-assessment” process has been updated
- Two main elements to consider:
 - Does the waterbody in question require a review?
 - Can your project follow **all** of the measures to protect fish and fish habitat?

WATERBODY SPECIFIC

- A project review by DFO is not required for waterbodies that include:
 - artificial waterbodies that aren't connected to a waterbody that contains fish at any time during any given yearor
 - any other waterbody that:
 - doesn't contain fish at any time during any given year
 - isn't connected to a waterbody that contains fish at any time during any given year



MEASURES TO PROTECT FISH AND FISH HABITAT

- If you can follow **ALL** measures to protect fish and fish habitat, you do not need to request a project review
- Measures most relevant to water withdrawals from fish bearing waterbodies

Avoidance = project planning

Unavoidable = DFO Review

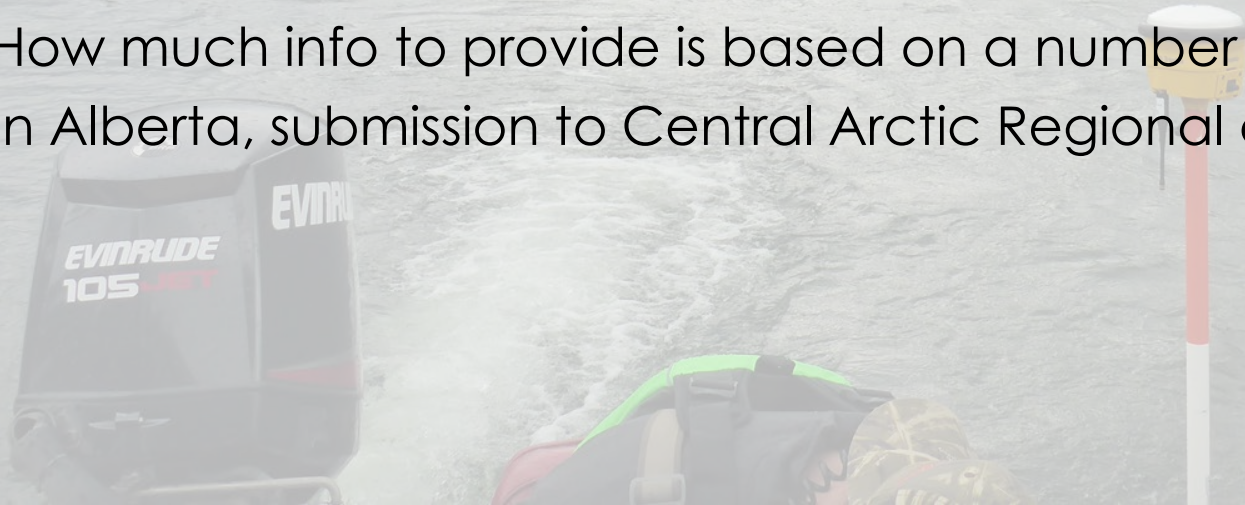
INHERENT NEED FOR DFO REVIEWS

- Water withdrawals from fish bearing waterbodies are often unable to meet **ALL** the measures to protect fish and fish habitat



WHAT IS THE PROCESS?

- DFO Request for Review PDF form
- Should be completed by a qualified professional
- How much info to provide is based on a number of variables
- In Alberta, submission to Central Arctic Regional office



WHAT TYPE OF INFORMATION IS REQUIRED?

Provide a detailed description of biological and physical characteristics of the proposed project site. This description should include information on aquatic species at risk* (<https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry.html>), their residence* and critical habitat* if found in the area. An overview of the distribution of aquatic species at risk and the presence of their critical habitat within Canadian waters can be found here <http://dfo-mpo.gc.ca/species-especes/sara-lep/map-carte/index-eng.html>

Include representative photos of affected area (including upstream and downstream area) and clearly identify the location of the project.

E) Potential Effects of the Proposed Project

Have you reviewed the Pathways of Effects (PoE) diagrams (<http://www.dfo-mpo.gc.ca/pnw-ppel/pathways-sequences/index-eng.html>) that describe the type of cause-effect relationships that apply to your project?

☐ Yes ☐ No

If yes, select the PoEs that apply to your project.

- | | |
|---|---|
| <input type="checkbox"/> Addition or removal of aquatic vegetation | <input type="checkbox"/> Placement of material or structures in water |
| <input type="checkbox"/> Change in timing, duration and frequency of flow | <input type="checkbox"/> Riparian Planting |
| <input type="checkbox"/> Cleaning or maintenance of bridges or other structures | <input type="checkbox"/> Streamside livestock grazing |
| <input type="checkbox"/> Dredging | <input type="checkbox"/> Structure removal |
| <input type="checkbox"/> Excavation | <input type="checkbox"/> Use of explosives |
| <input type="checkbox"/> Fish passage issues | <input type="checkbox"/> Use of industrial equipment |
| <input type="checkbox"/> Grading | <input type="checkbox"/> Vegetation Clearing |
| <input type="checkbox"/> Marine seismic surveys | <input type="checkbox"/> Wastewater management |
| <input type="checkbox"/> Organic debris management | <input type="checkbox"/> Water extraction |
| <input type="checkbox"/> Placement of marine finfish aquaculture site | |

Will there be changes (i.e., alteration) in the fish habitat? ☐ Yes ☐ No ☐ Unknown

If yes, provide a description.

Is there likely to be a harmful alteration, disruption or destruction of habitat used by fish? ☐ Yes ☐ No ☐ Unknown

Is there likely to be destruction or loss of habitat used by fish? ☐ Yes ☐ No ☐ Unknown

What is the footprint (area in square meters) of your project that will take place below the high water mark?

Is your project likely to change water flows or water levels? ☐ Yes ☐ No ☐ Unknown

If your project includes withdrawing water, provide source, volume, rate and duration.

If your project includes a water control structure, provide the % of flow reduction.

If your project includes discharge of water, provide source, volume and rate.

Will your project cause death of fish? ☐ Yes ☐ No ☐ Unknown

If yes, how many fish will be killed (for multi-year project, provide average)? What species and lifestages?

What is the time frame of your project?

The construction will start on MM/DD/YYYY and end by MM/DD/YYYY

If applicable, the operation will start on MM/DD/YYYY and end by MM/DD/YYYY

If applicable, provide schedule for the maintenance

If applicable, provide schedule for decommissioning

Are there additional effects to fish and fish habitat that will occur outside of the time periods identified above? ☐ Yes ☐ No

(If yes, provide details)

Can you follow appropriate Timing Windows (<http://www.dfo-mpo.gc.ca/pnw-ppel/timing-periodes/index-eng.html>) for all your project activities below the High Water Mark? ☐ Yes ☐ No

(If no, provide explanations.)

Have you considered and incorporated all options for redesigning and relocating your project to avoid negative effects to fish and fish habitat?

☐ Yes ☐ No

If yes, describe.

Have you consulted DFO's Fish and Fish Habitat Protection Measures Habitat (<https://www.dfo-mpo.gc.ca/pnw-ppel/measures-mesures-eng.html>) to determine which measures apply to your project? ☐ Yes ☐ No

Will you be incorporating applicable measures into your project? ☐ Yes ☐ No

If yes, identify which ones. If no, identify which ones and provide reasons.

Have you considered whether DFO standards and codes of practice apply to your project? ☐ No ☐ Yes

If Yes, include a list.

Have you considered other avoidance and mitigation measures? ☐ No ☐ Yes

If Yes, include a list.

Are there any relevant measures that you are unable to incorporate? ☐ Yes ☐ No

(If yes, identify which ones.)

What harmful effects to fish and fish habitat do you foresee after taking into account the avoidance and mitigation measures described above?

Do these include effects on aquatic species at risk? ☐ Yes ☐ No

If yes, please describe, including how many individuals will be harmed, harassed, or otherwise affected by the project, and how?

Do these include effects on areas identified as their residence or critical habitat? ☐ Yes ☐ No

If yes, please describe

Are there any aquatic invasive species in the vicinity of your project area? ☐ Yes ☐ No

(If yes, identify which ones.)

Does your project aim to, or will it be likely to, effect any of these aquatic invasive species? ☐ Yes ☐ No

If yes, how?

TIMELINE FOR RESPONSE

- Triage department response (4-8 weeks)
- If project specific review is required (4-8 week review period)
- Recent experience with delays due to COVID-19 and limited DFO staff with full accessibility to servers (timelines about 1.5X)

WHAT IF I DON'T SUBMIT MY PROJECT FOR REVIEW?

- AER inspections planned for Spring and Summer 2020
- DFO to coordinate on an inspection blitz
- **Worst-case scenario**



HOW MUCH AND HOW LONG TO COMPLETE?

- How much?



- How long?



FINAL THOUGHTS

- We have prepared, submitted, and received approval for over 20 term licences in Alberta and British Columbia
- We've had the opportunity to be in close contact with both the provincial and federal regulators
 - Pick up the phone
 - Ask the questions
 - Get second opinions

The *Fisheries Act* has changed,
are **you** covered?



CONTACT INFO

Integrated Sustainability

If you have any questions regarding this presentation or the services that we provide, please contact us at the below:

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