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Your file / Votre référence  
EA0809-002

Our file / Notre référence  
YK-08-00114

September 28<sup>th</sup>, 2010

Mackenzie Valley Environmental Impact Review Board  
#200 Scotia Centre  
5102-50<sup>th</sup> Avenue  
Yellowknife, NT  
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**Via e-mail to:**  
[chubert@reviewboard.ca](mailto:chubert@reviewboard.ca)

**RE: DFO Response to the Information Request from the Mackenzie Valley  
Environmental Impact Review Board regarding the Prairie Creek Mine  
Development**

Fisheries and Oceans Canada (DFO) is pleased to provide the Mackenzie Valley Environmental Impact Review Board (Review Board) with our response to the August 26<sup>th</sup> 2010 information request directed to government agencies regarding the Prairie Creek Mine project.

The Review Board is requesting that government parties describe their regulatory instruments or formal agreements that may be applicable to the Prairie Creek Mine Development (the project), including the purpose or intent of these regulatory instruments and how they may be used to mitigate adverse effects associated with the development.

DFO has legal responsibilities under the *Fisheries Act*, the *Species at Risk Act* (SARA), the *Oceans Act* and relevant regulations to ensure that Canada's oceans and inland waterways and resources are protected. The *Fisheries Act* provides our main legal framework for regulating impacts on fish and fish habitat associated with works, undertakings, operations and activities occurring in or around fresh and marine waters throughout Canada.

Below is a brief description of some of the regulatory and other DFO guidance materials that may be applicable to the Prairie Creek Mine development:

**Habitat Protection Provisions under the *Fisheries Act***

There are four main habitat protection provisions under the *Fisheries Act* that cover a wide range of powers, authorities and duties to regulate impacts to fish and fish habitat that may be applicable to this project, notably:

- Section 20 - Installation of fish passage to permit the free passage of fish;
- Section 22 - Maintenance of a sufficient flow of water;
- Section 32 - Prohibition to destroy fish by any means other than fishing;

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- Section 35 - Prohibition of works or undertakings that may results in the harmful alteration, disruption or destruction of fish habitat unless authorized by the Minister; and

DFO also administers jointly with Environment Canada the pollution prevention provision under Section 36 of the *Fisheries Act* that prohibition the deposit deleterious substances into waters frequented by fish, unless authorized under regulations.

In the NWT, projects that could affect fish and fish habitat are evaluated, mainly through the environmental assessment process, to ensure compliance with the *Fisheries Act*. Under section 35 of the *Fisheries Act*, DFO can issue an Authorization permitting the harmful alteration, disruption or destruction of fish habitat (HADD) under certain conditions specific to a project or activity. The proponent and DFO will examine various options for the design, implementation and operation of the project with the aim of minimizing or eliminating adverse impacts on fish and fish habitat. A section 35 Authorization is only issued when the HADD has been assessed and deemed acceptable. In most cases, compensatory habitat is required to offset the authorized lost or damaged habitat, according to the *Policy for the Management of Fish Habitat* (<http://www.dfo-mpo.gc.ca/habitat/role/141/1415/14155/fhm-policy/index-eng.asp>).

DFO Authorizations are legally binding and enforceable and include a number of conditions that generally pertain to the following areas:

- Valid Authorization period;
- Conditions that relate to the Proponent's plan(s);
- Mitigation;
- Monitoring and Reporting;
- Compensation;
- Monitoring and Reporting of Compensation; and
- Financial Securities

It should be noted that the conditions of an Authorization (including the requirement for Fish Habitat Compensation and financial securities) only pertain to the authorized works that alter, disrupt or destroy fish habitat, and do not apply to other parts of the project.

## **Other Technical Guidelines and Operational Statements**

DFO also has Operational Statements (OS) that were developed for routine projects that are likely to pose a low risk to fish and fish habitat. A project may proceed without a DFO approval if all the conditions in the *Measures to Protect Fish and Fish Habitat*, listed in the applicable OS, are met. The use of OS is not mandatory but provides advice on how to be in compliance with the *Fisheries Act*. The following are some of the Northwest Territories Operational Statements that may be applicable to the project:

- Bridge Maintenance
- Clear Span Bridges
- Culvert Maintenance
- Ice Bridges and Snow Fills
- Mineral Exploration Activities
- Temporary Stream Crossings

All NWT OS can be found at: <http://www.dfo-mpo.gc.ca/regions/central/habitat/os-eo/provinces-territoires-territoires/nt/index-eng.htm>

DFO also has a suite of technical guidance documents to assist proponents in mitigating impacts to fish and fish habitat, including:

- Freshwater Intake End-of-Pipe Fish Screens (<http://www.dfo-mpo.gc.ca/habitat/role/141/1415/14155/pipe/index-eng.asp>)
- Working Near Water Considerations for Fish and Fish Habitat Reference and Workshop Manual (Available upon Request)
- The DFO Protocol for Winter Water Withdrawal from Ice Covered Waterbodies in the Northwest Territories and Nunavut (Available upon Request)

Currently, the Prairie Creek mine has one *Fisheries Act* Authorization for repairs to the access road at four locations near the mine site, that were assessed as part of their Phase III drilling program (EA0405-002). The authorized works were completed this summer; however the compensation is still outstanding. Canadian Zinc Corporation is developing appropriate compensation in consultation with DFO.

Pending the review of Canadian Zinc Corporations responses to our information request, on July 2<sup>nd</sup>, 2010, DFO still requires additional information in order to determine if “the project” will require an authorization(s) under the *Fisheries Act*.

DFO trusts that this information will be of assistance to the Review Board and if you have any questions, please feel free to contact Sarah Olivier at (867) 669-4919, by fax (867) 669-4940, or email at [Sarah.Olivier@dfo-mpo.gc.ca](mailto:Sarah.Olivier@dfo-mpo.gc.ca).

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah Olivier". The signature is fluid and cursive, with the first name "Sarah" and last name "Olivier" clearly distinguishable.

On behalf of  
Beverley Ross  
Regional Manager, Environmental Assessment for Major Projects  
Central and Arctic Region  
Fisheries and Oceans Canada

cc Kelly Burke, Fisheries and Oceans Canada  
Lorraine Sawdon, Fisheries and Oceans Canada