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Your file / *Votre référence*

EA0809-004

Our file / *Notre référence*

09-HCAA-CA-00014

November 9th, 2011

Mackenzie Valley Environmental Impact Review Board
#200 Scotia Centre
5102-50th Avenue
Yellowknife, NT
X1A 2N7

Via e-mail to:

chubert@reviewboard.ca

**RE: DFO Response to Tlicho Government Information Request for Fortune
Mineral Ltd.'s proposed Nico Mine Project**

Fisheries and Oceans Canada (DFO) is pleased to provide the Mackenzie Valley Environmental Impact Review Board (MVEIRB) with our response to the Tlicho Government Information request (TG#33).

Should the Review Board or the Tlicho Government have any questions about our response, 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.

Sincerely,

on behalf of
Larry Dow

Area Director
Western Arctic Area
Fisheries and Oceans Canada

cc Laura Duncan, Tlicho Government
Corrine Gibson, Fisheries and Oceans Canada
Rick Walbourne, Fisheries and Oceans Canada
Bev Ross, Fisheries and Oceans Canada

DFO Response to Tlicho Government Information Requests #33

Source: Tlicho Government (TG#33)

To: Department of Fisheries and Oceans

Subject: No Net Loss of Fisheries Habitat

Preamble:

The Tlicho Government read with concern recent statements by DFO officials to the Cohen Commission (<http://www.cohencommission.ca/>) that the “no net loss” principle, in place in the *Fisheries Act* since 1986, which holds that development projects can only be approved by DFO if a proponent can provide compensation for any habitat damage, is only a “guiding principle” and does not require the DFO to measure just how much fish habitat is being lost or created. The Commission also heard that the DFO is working to develop a policy to measure habitat loss, but has yet to complete this exercise.

Tlicho Government Request:

1. Please clarify whether Fortune Minerals will be required by the DFO to replace any lost fish habitat as a requirement of DFO’s approval of the proposed development.
2. Please clarify how the DFO will measure the potential loss of fish habitat from the proposed development, and when this measurement will be complete prior to the end of the environmental assessment.
3. Please identify when the federal policy on measuring fisheries habitat loss will be made public and whether in its absence the department can complete the required measurements of habitat loss on which its approvals hinge.

Department of Fisheries and Oceans (DFO) Response:

1. Based on the information provided by Fortune Minerals to date in their environmental impact statement, DFO has not identified any activities or components of the project that require an authorization and/or permit under the *Fisheries Act*. Should additional information about the project come forward during the environmental assessment identifying impacts to fish habitat, DFO may determine that an authorization for the harmful alteration, disruption or destruction (HADD) of fish habitat under ss.35(2) of the *Fisheries Act* is required. If an authorization under the *Fisheries Act* is required, the guiding principle stated in the 1986 *Policy for the Management of Fish Habitat* (<http://www.dfo-mpo.gc.ca/habitat/role/141/1415/14155/fhm-policy/index-eng.asp>) will apply. DFO will only consider authorizing a HADD of fish habitat if the environmental assessment process deems the project to be acceptable and if the impacts can be compensated, to the extent possible, to achieve no net loss of fish habitat. DFO prefers that the HADD of fish habitat be avoided through implementation of appropriate mitigation measures, redesign or relocation of the project.

2. In information request #6, submitted to the Review Board on October 7th, DFO asked Fortune Minerals to summarize the potential net changes in habitat units available in Lou Lake and Peanut Lake, as a result of the construction of the water intake and outfall respectively, including areas and rationales for the selected habitat suitability indices (HSIs). If it is determined that a ss.35(2) *Fisheries Act* authorization is required for impacts to fish habitat associated with the water intake and outfall structures, these calculations would be used to assist DFO in determining the quality and quantity of the habitat lost. Both habitat quality and quantity are considered when DFO evaluates habitat compensation measures.
3. The Policy for the Management of Fish Habitat and its guiding principle of ensuring no net loss of the productive capacity of fish habitat has been in place since 1986. DFO is currently working on modernizing this policy but, in the mean time, will continue to work under the current approved version. Therefore, DFO will continue to require fish habitat compensation for any authorized fish habitat losses.