



Fisheries and Oceans  
Canada

Pêches et Océans  
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Your file *Voire référence*

EA1011-001

Our file *Notre référence*

10-HCAA-CA-00026

January 17, 2012

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

**Via e-mail to:**  
[pmercredi@reviewboard.ca](mailto:pmercredi@reviewboard.ca)

**RE: DFO Response to Lutsel K'e Dene First Nation for Avalon Rare Metals Inc.'s proposed Thor Lake Rare Earth Element Project**

Fisheries and Oceans Canada (DFO) is pleased to provide the Mackenzie Valley Environmental Impact Review Board (MVEIRB) with our response to the Lutsel K'e Dene First Nation's Information Request (#11).

Should the Review Board or the Lutsel K'e Dene First Nation have any questions about our response, please feel free to contact Pete Cott at (867) 669-4913, by fax (867) 669-4940, or email at [Pete.Cott@dfo-mpo.gc.ca](mailto:Pete.Cott@dfo-mpo.gc.ca).

Sincerely,

Larry Dow  
A/ Area Director  
Western Arctic Area  
Fisheries and Oceans Canada

cc Mike Tollis, Lutsel K'e Dene First Nation  
Corrine Gibson, Fisheries and Oceans Canada  
Rick Walbourne, Fisheries and Oceans Canada  
Pete Cott, Fisheries and Oceans Canada  
Bev Ross, Fisheries and Oceans Canada  
Julie Dahl, Fisheries and Oceans Canada

## **DFO Response to Lutsel K'e Dene First Nation #11**

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**Source:** Lutsel K'e Dene First Nation (#11)

**To:** Department of Fisheries and Oceans

**Subject:** Fisheries Authorization Permitting the harmful alteration, disruption or destruction of fish habitat (HADD)

**Preamble:**

Section 35 of the *Fisheries Act* provides for the protection of fish and fish habitat. Under the Act, no one may carry out any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat (HADD) unless authorized by the Minister of Fisheries and Oceans Canada.

35. (1) No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.

(2) No person contravenes subsection (1) by causing the alteration, disruption or destruction of fish habitat by any means or under any conditions authorized by the Minister or under regulations made by the Governor in Council under this Act (*Fisheries Act, R.S.C., 1985, c. F-14*).

**Request:**

1. What means and/or conditions are being considered by DFO and how will they satisfy DFO's No Net Loss and Fish Compensation policy?

2. Will DFO provide the MVEIRB a draft of its proposed Fisheries Authorization before the conclusion of the environmental assessment?

**Department of Fisheries and Oceans (DFO) Response:**

1. Based on the information provided by Avalon Rare Earth Metals Inc. to date in their Developer's Assessment Report and in their January 10<sup>th</sup>, 2012 response to Fisheries and Oceans Information Requests dated December 19<sup>th</sup>, 2011, 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. As referenced above, a Fisheries Authorization is not anticipated to be required for this project.