



Fisheries and Oceans Pêches et Océans
Canada Canada

867 Lakeshore Road
Burlington, Ontario
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July 24, 2019

Your file *Votre référence*
19-HCAA-00936

Our file *Notre référence*
19-HCAA-00936

Eric Jacobsen
President, Tower Arctic Ltd.
1502 Federal Road,
Iqaluit, X0A 0H0

Subject: Low-Level Water Crossing, Clyde River, Airside Surface Rehabilitation Project – Serious Harm to Fish, Prohibited Effects on Listed Aquatic Species at Risk, and Introduction of non-Indigenous Species Can Be Avoided or Mitigated

Dear Mr. Jacobsen:

The Fish and Fish Habitat Protection Program (the Program) of Fisheries and Oceans Canada (DFO) received your proposal on July 23, 2019. We understand that you propose to:

- Use an existing low-level water crossing for vehicles;
- Complete in-water work prior to September 1, 2019; and
- Monitor suspended sediment at the crossing and implement mitigation measures should sediment at the site be disturbed.

You may be aware of recent changes to the *Fisheries Act* as a result of the passage of Bill C-68, *An Act to amend the Fisheries Act and other Acts in consequence*, on June 21, 2019. While these changes have not affected our review of your proposal, further modifications to the *Fisheries Act* expected to come into force in the near future could affect the current assessment of your proposal. These anticipated changes include, among other things:

- Protection for all fish and fish habitats;
- The repeal of the current prohibition against causing serious harm to fish that are part of, or support a commercial, recreational or Aboriginal fishery, and;
- The restoration of the previous prohibitions against the harmful alteration, disruption or destruction of fish habitat, and against causing the death of fish by means other than fishing.

Therefore, the advice provided in this correspondence may not adequately protect fish and fish habitat in accordance with the anticipated changes to the *Fisheries Act*, if your project is conducted on or after the date on which the future legislative modifications enter into force. You are encouraged to consult our website (<http://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>) for further information on changes to the *Fisheries Act* and for guidance to help you to determine whether additional assistance should be sought from the Program to remain compliant with the Act.

Our review considered the following information:

- Information Received by email on, July 23 and July 24, 2019

Your proposal has been reviewed to determine whether it is likely to result in:

- serious harm to fish that are part of or support a commercial, recreational, or Aboriginal fishery, which is prohibited under subsection 35(1) of the *Fisheries Act* (unless authorized);
- effects to listed aquatic species at risk, any part of their critical habitat or the residences of their individuals in a manner which is prohibited under sections 32, 33 and subsection 58(1) of the *Species at Risk Act* (unless authorized), and;
- the introduction of aquatic species into regions or bodies of water frequented by fish where they are not indigenous, which is prohibited under section 10 of the *Aquatic Invasive Species Regulations* (unless authorized).

Provided that your plans are implemented in the manner, and during the timeframe, described, the Program has determined that your proposal will not result in serious harm to fish, prohibited effects on listed aquatic species at risk, or the introduction of non-indigenous species. As such, an authorization under the *Fisheries Act* or a permit under the *Species at Risk Act* is not required.

Should your plans change, if you have omitted some information in your proposal, or if you have not completed implementation of your plans as of the day on which *An Act to amend the Fisheries Act and other Acts in consequence* comes fully into force, further review by the Program may be required. Consult our website (<http://www.dfo-mpo.gc.ca/pnw-ppe/index-eng.html>) or consult with a qualified environmental consultant to determine if further review may be necessary. It remains your responsibility to avoid causing serious harm to fish in compliance with the *Fisheries Act*, avoid prohibited effects on listed aquatic species at risk, any part of their critical habitat or the residences of their individuals in compliance with the *Species at Risk Act*, and prevent the introduction of non-indigenous species.

It is also your Duty to Notify DFO if you have caused, or are about to cause, serious harm to fish that are part of or support a commercial, recreational or Aboriginal fishery. Such notifications should be directed to <http://www.dfo-mpo.gc.ca/pnw-ppe/CONTACT-eng.html>,

We request that you please notify this office at least 10 days before starting your project (to be used in accordance with the regional monitoring plan). A copy of this letter should be kept on site while the work is in progress. It remains your responsibility to meet all other federal, territorial, provincial and municipal requirements that apply to your proposal.

If you have any questions with the content of this letter, please contact Sara Eddy at our Burlington office at 905-336-4535, or by email at Sara.Eddy@dfp-mpo.gc.ca. Please refer to the file number referenced above when corresponding with the Program.

Yours sincerely,

Lucas Coletti
Biologist
Fish and Fish Habitat Protection Program