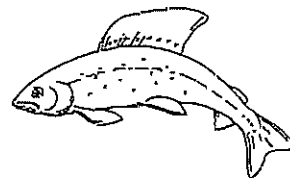


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FAX

FAX TRANSMISSION

Fish Habitat Management
Suite 101, 5204-50th Ave.
YELLOWKNIFE, NT
X1A 1E2

FAX: (867) 669-4940

PAGE 1 of 3DATE: Oct.15, 2002

TO:

<u>NAME</u>	<u>ORGANIZATION</u>	<u>FAX NUMBER</u>
<u>Louie Azzolini</u>	<u>MVEIRB</u>	<u>766-7074</u>

Re: Response to IR

FROM: Julie Dahl
TELEPHONE: (867) 669-4911

Fisheries
and OceansPêches
et Océans

Fish Habitat Management
Suite 1, 5204-50th Avenue
Yellowknife, Northwest
Territories
X1A 1E2

Your file: *Votre référence*Our file: *Notre référence*

October 15, 2002

Louie Azzolini
Environmental Assessment Officer
Mackenzie Valley Environmental Review Board
P.O. Box 938
Yellowknife, NT

**Re: Response to the MVEIRB Information Request, Reference: The
DFO's response to IR 1.1.69**

The following is the response of the Department of Fisheries and Oceans to the information request issued to the Department on behalf of the NSMA.

The MVEIRB submitted an IR on behalf of the NSMA which asked DFO to explain its grounds for "neglecting" to consult the NSMA in regards to the development of a No-Net-Loss strategy with De Beers, the issuing of water and fish sampling permits, and approval to place rocks in Snap Lake as part of a habitat creation program.

DFO finds the IR submitted by the MVEIRB to be inappropriate and outside of the scope of the EA. DFO does not interpret the role of an Environmental Assessment as that of a forum for establishing aboriginal rights or determining whether there has been an infringement of those rights. It is unclear how the question as posed and any answer the DFO can provide will assist the MVEIRB in its determination of significant environmental effects of the DeBeers project. However, given that a concern regarding DFO's process has been raised by the NSMA, DFO will endeavor to address that concern here.

A legal obligation on the Crown to consult with the NSMA has not been established. Nevertheless, DFO continues to be well aware of the political and social environment within which the Department must operate and strives to develop and maintain positive relationships with all aboriginal groups. DFO will therefore seek to involve the NSMA on DFO activities related to major developments that may concern them. Any discussions will be without prejudice to future positions the Crown may take on the existence of s. 35 (*Constitution Act*) rights and any corresponding consultation obligations with the NSMA.

In light of this approach, DFO intends to develop a procedure that will ensure a meaningful exchange between DFO and aboriginal groups in the NWT. In the interim, aboriginal groups can assist the DFO by identifying any specific concerns and how DFO might address these concerns in the context of our decision-making capacity.

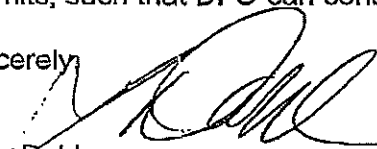
For clarification, DFO has not yet "developed" a No Net Loss strategy, otherwise referred to as a fish habitat compensation strategy with DeBeers. As part of the environmental impact assessment package provided to all reviewers, DeBeers included calculations for losses and gains in fish habitat. DFO has yet to determine the full extent of potential impacts to fish habitat, hence has yet to determine if an authorization is required. All reviewers are free to review and comment on the approach proposed by DeBeers such that an appropriate fish habitat

compensation strategy can be developed. DFO would welcome comments from any aboriginal group on DeBeers' proposed impacts to fish habitat and the approach to habitat compensation.

In their submission the NSMA describe habitat compensation efforts (placing rock in Snap Lake) that were required with respect to the bulk sampling program previously undertaken by Winspear. These activities were not undertaken within the scope of the project proposal from DeBeers that is the subject of the current Environmental Assessment.

The only "approvals" that have therefore been issued for the DeBeers project currently under review have been scientific licenses to allow for the collection of baseline fish and fish habitat data in 4 lakes and streams in the project area. This information is required to enable DFO to ensure that mitigation proposals are adequate to protect these resources from the effects of development or to identify fish habitat that may be impacted and must be compensated for by the proponent if an authorization is issued. In the settled land claim areas, DFO's consultation process involves the Aurora Research Institute, the Renewal Resource Boards and Hunters and Trappers associations. No such process is in effect in the unsettled land claim areas. DFO would welcome input from aboriginal groups who may be affected by the issuance of such permits, such that DFO can consider and address these concerns where possible.

Sincerely,



Julie Dahl
Area Chief, Habitat
DFO – Habitat Management
Western Arctic Area

Canada