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June 26, 2018

Your files      Votre référence  
MV2005L2-0015

Our file      Notre référence  
03-HCAA-CA6-00057

Mackenzie Valley Land and Water Board

**Attention: Angela Love**

7<sup>th</sup> Floor, 4922 48<sup>th</sup> St.

P.O. Box 2130

Yellowknife, NT X1A 2P6

Dear Angela Love,

**Subject: De Beers Gahcho Kue - March 2018 Amendment Applications - Geotechnical (MV2005L2-0015 and MV2005C0032) (MVLWB)**

The Fisheries Protection Program of Fisheries and Oceans Canada (DFO-FPP) would like to thank the Mackenzie Valley Land and Water Board (MVLWB) for the opportunity to provide final interventions on De Beers' (the Proponent) March 2018 Amendment Applications for the Gahcho Kue Project. As outlined in the draft work plan provided on the Online Review System, reviewers are invited to submit final interventions for the March 2018 amendment applications to the MVLWB by June 25, 2018

DFO-FPP has reviewed De Beers' proposal in regards to its mandate to maintain the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries. Please see the attached submission for DFO-FPP's final interventions and recommendations.

If you or any other parties have any questions respecting this intervention, please contact Laura Watkinson at 867-669-4920, or by email at [Laura.Watkinson@dfo-mpo.gc.ca](mailto:Laura.Watkinson@dfo-mpo.gc.ca). Please refer to the file number referenced above when corresponding with the Program.

Yours sincerely,

Bev Ross  
Regional Manager, Regulatory Reviews  
Fisheries Protection Program  
Central & Arctic Region  
Fisheries and Oceans Canada

03-HCAA-CA6-00057

Copy: Mark D'Aguiar, DFO  
Laura Watkinson, DFO



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# **FISHERIES AND OCEANS CANADA**

## **Final Interventions**

De Beers Gahcho Kue - March 2018 Amendment  
Applications (MV2005L2-0015 and MV2005C0032)  
(MVLWB)

Submitted to: **Mackenzie Valley Land and Water  
Board**

June 26, 2018

DFO File No.: 03-HCAA-CA6-00057

MVLWB File No.: MV2005L2-0015 and MV2005C0032

**Canada** 

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## Executive Summary

Gahcho Kue (The Project) is a diamond mine owned by De Beers Group of Companies (De Beers or the Proponent) within the North Slave Region of Northwest Territories. The Project is currently in operation and involved the dewatering of Kennady Lake for the mining of 3 separate pits: Hearne, 5034 and Tuzo pits.

The Fisheries Protection Program (Program) of Fisheries and Oceans Canada (DFO-FPP) is responsible on behalf of the department for regulatory review of proposed developments occurring in or near Canadian fisheries waters. The Program has reviewed the Application and supporting documents for the Water Licence amendment applications for the Gahcho Kue Project, and is providing DFO-FPP's comments based on our mandate under the *Fisheries Act* to maintain the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries, including marine mammals and their habitat. DFO-FPP's primary focus in reviewing developments in and around fisheries waters is to ensure that works, undertakings and activities are conducted in compliance with the applicable provisions of the *Fisheries Act*.

The fisheries protection provisions of the *Fisheries Act* (2013), specifically subsection 35(1), state that "*No person shall carry on any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery or to fish that support such a fishery.*" However, under paragraph 35(2)(b) of the *Fisheries Act*, the Minister of Fisheries and Oceans may issue an authorization with terms and conditions in relation to a proposed work, undertaking or activity that may result in serious harm to fish. Serious harm to fish is defined in Section 2 of this Act as the death of fish, or permanent alteration to or destruction of fish habitat.

DFO-FPP is providing the following final intervention comments in response to the Mackenzie Valley Land and Water Board's (MVLWB) draft work plan provided in correspondence dated April 13, 2018. The final interventions in this submission are categorized under the following general topics: Offsetting Plan and Freshwater Environment.

### Offsetting Plan

De Beers has submitted an updated Offsetting Plan, which was developed to address the proposed changes as part of the March 2018 De Beers Gahcho Kue Amendment Applications. DFO-FPP will continue to work with De Beers to finalize an Offsetting Plan, which accounts for any potential additional losses due to the amendment applications.

### Freshwater Environment

Proposed changes to the Gahcho Kue project have the potential to cause additional *serious harm* to fish as defined by the *Fisheries Act*. The changes include the loss of Stream D1, which will require a constructed stream diversion. De Beers has committed to submitting a DFO

'Request for Review', once further details of the stream diversion are known and prior to construction of the diversion. In addition, changes to water usage may cause additional *serious harm* to the downstream flows in the KLM watershed, downstream of Area 8, having the potential to negatively affect the downstream flow mitigation currently implemented.

## 1 Introduction

This technical review submission summarizes Fisheries and Oceans Canada (DFO) – Fisheries Protection Program’s (FPP) assessment and recommendations concerning the proposed Gahcho Kue Amendment Applications (the Project). The purpose of these interventions is to provide expert advice to the Mackenzie Valley Land and Water Board (MVLWB) regarding the completeness of the water licence amendment application and identify potential impacts to fish and fish habitat associated with the project changes.

This submission focuses on a technical assessment of the Application for a Type “A” Water License for the Back River Project. The objective being to analyse the updated plans and/or revised information presented by Sabina Gold & Silver Corporation (the Proponent or Sabina) in support of the water licence, and reflects DFO-FPP’s mandate.

## 2 Mandate, Relevant Legislation and Policy

The *Constitution Act* (1982) provides the Federal Government with exclusive authority for coastal and inland fisheries within Canada’s territorial boundaries. DFO exercises this power through the administration of the *Fisheries Act* and some aspects of the *Species at Risk Act*. Under the *Fisheries Act*, DFO is responsible for the management, protection and conservation of fish (which include marine mammals as defined by the *Fisheries Act*) and their habitats. The Minister of Fisheries, Oceans and the Canadian Coast Guard is one of the competent ministers under the *Species at Risk Act* (SARA).

In general, DFO-FPP undertakes the review of proposed project in and around fisheries waters to ensure that works, activities and undertakings are conducted in such a way that the proponents are in compliance with the applicable provisions of the *Fisheries Act*.

The mandate of DFO-FPP is to maintain the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries. Sub-section 35 (1) of the *Fisheries Act* states that “No person shall carry on any work, undertaking or activity that results in *serious harm to fish* that are part of a commercial, recreational, or Aboriginal fishery or to fish that support such a fishery.”

Fisheries and Oceans Canada interprets *serious harm to fish* as:

- the **death of fish**;
- a **permanent alteration** to fish habitat of a spatial scale, duration or intensity that limits or diminishes the ability of fish to use such habitats as spawning grounds, or as nursery,

rearing, or food supply areas, or as a migration corridor, or any other area in order to carry out one or more of their life processes;

- the **destruction of fish habitat** of a spatial scale, duration, or intensity that fish can no longer rely upon such habitats for use as spawning grounds, or as nursery, rearing, or food supply areas, or as a migration corridor, or any other area in order to carry out one or more of these life processes.

However, under Paragraph 35 (2) (b) of the *Fisheries Act*, the Minister of Fisheries, Oceans and the Canadian Coast Guard may issue an authorization with terms and conditions in relation to a proposed work, undertaking or activity that may result in serious harm to fish. Subject to the consideration of the four factors in Section 6 of the *Fisheries Act*:

1. The contribution of the relevant fish to the ongoing productivity of commercial, recreational or Aboriginal fisheries;
2. Fisheries management objectives;
3. Whether there are measures and standards to avoid, mitigate or offset serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or that support such a fishery; and
4. The public interest.

DFO-FPP is guided by the “Fisheries Protection Policy Statement (2013)”, which is intended to provide guidance to Canadians and ensure compliance with the *Fisheries Act*. The *Fisheries Protection Policy Statement* strengthens the Federal Government’s ability to address key threats to the productivity and sustainability of our fisheries, through standards and guidelines to avoid, mitigate, and offset impacts to fisheries.

The “Fisheries Productivity Investment Policy: A Proponent’s Guide to Offsetting (2013)” provides guidance on undertaking effective measures to offset serious harm to fish that are part of or that support a commercial, recreational or Aboriginal fishery, consistent with the fisheries protection provisions of the *Fisheries Act*. The objective of offsetting is to counterbalance unavoidable *serious harm to fish* and the loss of fisheries productivity resulting from a project. For more information, see: <http://www.dfo-mpo.gc.ca/pnw-ppe/pol/index-eng.html>

The *Species at Risk Act* (SARA) is intended to prevent Canadian indigenous species, subspecies and distinct populations of wildlife from being extirpated or becoming extinct. SARA facilitates the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and manage species of special concern (to prevent them from becoming

endangered or threatened). The Minister of Fisheries, Oceans and the Canadian Coast Guard is the competent minister for listed aquatic species that are fish as defined in the *Fisheries Act* Section (2) and for marine plants as defined in the *Fisheries Act*, Section 47.

Environmental and Climate Change Canada (ECCC) is responsible for the administration and enforcement of the pollution prevention provisions of the *Fisheries Act*, Sections 34 and 36-42 on behalf of DFO.

For more information, see: <http://www.dfo-mpo.gc.ca/pnw-ppe/pol/index-eng.html>

### 3 Interventions

#### 3.1 Offsetting

<b>Review Comment Number</b>	3.1 Offsetting
<b>Subject/Topic</b>	Offsetting additional habitat losses
<b>References</b>	<ul style="list-style-type: none"> <li>• 2018 De Beers Gahcho Kue – Amendment Applications – Attachment 3: Environmental Screening Assessment, section 4.6.3: pg. 96.</li> <li>• De Beers Proponent Responses to Fisheries and Oceans Canada, May 21, 2018, Mackenzie Valley Land and Water Board Online Review System, Response to Comment 1.</li> </ul>
<b>Summary</b>	<p>DFO-FPP notes that De Beers has an existing <i>Fisheries Act</i> Authorization for the Gahcho Kue’ project which authorized the serious harm to fish resulting from the dewatering of Kennady Lake and construction of dykes, which included the Permanent alteration and destruction of habitat within the dewatered areas of Kennady Lake. As part of the <i>Fisheries Act</i> authorization, DFO-FPP also notes that Condition 4.1 requires that “<i>Fish Habitat shall be re-established in Kennady Lake at mine closure through the re-filling of Kennady Lake and breaching of dykes, allowing fish to migrate back to the lake and utilize fish habitat that was de-watered but not physically altered during mine operation</i>”.</p> <p>In De Beers’ Gahcho Kue Amendment Applications, Attachment 3: Environmental Screening Assessment, section 4.6.3: pg. 96, it states “<i>As the design of the West Mine Rock Pile as part the mine plan, the area of Kennady Lake that will be re-established as fish habitat at closure will be smaller due to the extension of the rock pile into Area 5</i>”.</p>
<b>Importance of issue to the impact assessment process</b>	It is important to understand potential additional negative impacts that may be caused by the amendments and that permanent impacts are effectively offset.
<b>Detailed Review Comment</b> <b>1. Gap/Issue</b> <b>2. Disagreement with conclusion</b> <b>3. Reasons for disagreement with conclusion</b>	<p>As part of the De Beers Gahcho Kue Amendment Applications, the proposed increase in pit size is anticipated to decrease the surface area of Kennady Lake at closure (will be smaller compared to surface area under the current approved plan), which subsequently reduces the area available as fish habitat at closure. These changes will impact condition 4.1 of the existing <i>Fisheries Act</i> authorization and as a result will require updated accounting / quantification of the serious harm caused by the decreased lake area available at closure, and additional offsetting.</p> <p>DFO-FPP notes that De Beers has acknowledged the implications of their mine plan changes on their existing Fisheries Act authorization and provided DFO-FPP with an updated Offsetting plan ‘Gahcho Kue’ Mine 2018 Offsetting Plan Update’ in February 2018. DFO-FPP also notes that</p>

	<p>De Beers has committed to working with DFO-FPP to update the offsetting plan, acknowledging (on pg. 96 of the Environmental Screening Assessment) that <i>"Finalization of the offsetting plan with DFO will include the quantification of habitat losses and gains expected to be achieved through offsetting measures, and to demonstrate that the gains will counterbalance the losses predicted to occur as a result of the Mine's activities."</i></p> <p>In addition, in their response to DFO's comments on May 21, <i>"De Beers does acknowledge that the offsetting of impacts will also need to account for more offsetting off-site rather than on-site. De Beers will continue to work with DFO to ensure the off-setting plan addresses this need."</i></p> <p>DFO is currently reviewing the offsetting plan updates to determine if the additional losses are adequately accounted for and offset. DFO will continue to work with De Beers to ensure that additional losses are appropriately offset.</p>
<b>Recommendation/Request</b>	<p><b>Recommendation 3.1.1:</b> DFO recommends that De Beers continue to work with DFO-FPP to update their offsetting plan to account for any additional serious harm resulting from the proposed mine changes.</p>

### 3.2 Stream Diversion

<b>Review Comment Number</b>	3.2 Stream Diversion
<b>Subject/Topic</b>	Stream Diversion replacing the reconnection of stream D1
<b>References</b>	<ul style="list-style-type: none"> <li>• 2018 De Beers Gahcho Kue - Amendment Applications – Attachment 3: Environmental Screening Assessment, section 4.6.3: pg. 92.</li> <li>• De Beers Proponent Responses to Fisheries and Oceans Canada, May 21, 2018, Mackenzie Valley Land and Water Board Online Review System, Response to Comment 3.</li> </ul>
<b>Summary</b>	<p>DFO notes on page 92 of the Environmental Screening Assessment that <i>"the D watershed cannot be reconnected at closure through the existing flow paths to Kennady Lake (i.e., Lake and Stream D1). Instead a diversion channel will be constructed to allow for the D watershed to be reconnected to Kennady Lake at closure."</i></p> <p>In addition, DFO-FPP also notes that restoration of flows to Lake D1 and Stream D1 were a condition (Condition 4.1) of the <i>Fisheries Act</i> authorization. As such, if the existing flow paths originally provided habitat for fish and cannot be restored at closure, these additional losses may need to be accounted for.</p> <p>DFO-FPP acknowledges that De Beers has provided an updated Offsetting Plan 'Gahcho Kue' Mine 2018 Offsetting Plan Update' which is currently</p>

	under review to determine if all additional serious harm is adequately accounted for and offset.
<b>Importance of issue to the impact assessment process</b>	It's important that DFO be provided with all project details for a stream diversion in order to appropriately assess the additional impacts.
<b>Detailed Review Comment</b> 1. <b>Gap/Issue</b> 2. <b>Disagreement with conclusion</b> 3. <b>Reasons for disagreement with conclusion</b>	<p>DFO acknowledges DeBeers' diversion channel proposal but notes that detailed engineering designs for the proposed diversion channel have not yet been provided.</p> <p>DFO-FPP acknowledges that in their response to DFO's comments on May 21, De Beers committed to <i>"provide additional information to DFO in a Request for Review related to the design of the proposed diversion channel, including information related to fish passage and use, once further design details are available"</i> and <i>"De Beers is committed to continuing to engage DFO with respect to the accounting of losses and gains in the Updated Offsetting Plan, including for lake and stream D1."</i></p> <p>DFO-FPP acknowledges De Beers' commitment to provide the necessary information as part of a Request for Review once details become available. DFO-FPP will await De Beers' Request for Review for the stream diversion.</p>
<b>Recommendation/Request</b>	<b>Recommendation 3.2.1:</b> DFO recommends that De Beers continue to work with DFO-FPP in regard to the proposed stream diversion and will await De Beers' DFO 'Request for Review'.

### 3.3 Water Usage

<b>Review Comment Number</b>	3.3 Water Usage
<b>Subject/Topic</b>	Increased water usage and effects on the downstream flow
<b>References</b>	<ul style="list-style-type: none"> <li>• 2018 De Beers Gahcho Kue - Amendment Applications – Attachment 3: Environmental Screening Assessment, section 2.4.6.2: pg. 25.</li> <li>• Water Licence MV2005L2-0015, September 24, 2014, Part D &amp; Schedule 3: Part D</li> <li>• De Beers Proponent Responses to Fisheries and Oceans Canada, May 21, 2018, Mackenzie Valley Land and Water Board Online Review System, Response to Comment 2.</li> <li>• AEMP Response Plan to Low Action Level - Fish and Fish Habitat community, December 2017</li> <li>• De Beers Gahcho Kue Update to Amendment Application – Water Intake Volume Change request, April 30, 2018</li> <li>• <i>Fisheries Act</i> 35 (2)(b) Authorization No. 03-HCAA-CA6-0057.1, June 30, 2014</li> <li>• Mackenzie Valley Land and Water Board (MVLWB) Online Review</li> </ul>

	System (ORS), De Beers Gahcho Kue - AEMP Response Plan to Low Action Level - Fish Habitat and Community (MV2005L2-0015), DFO comments and recommendations January 23, 2018.
<b>Summary</b>	<p>DFO-FPP notes that Schedule 3, Part D, condition 1b of Water Licence MV2005L2-0015 states that De Beers is permitted to withdraw up to “27,000 (twenty seven thousand) cubic meters (m<sup>3</sup>) annually, during the operational phase of Operations”. On March 16, 2018, De Beers requested to change condition 1b to: “35,000 (thirty-five thousand) cubic meters (m<sup>3</sup>) annually, during the operational phase of Operations;” and in De Beers’ more recent ‘Update to Amendment Application – Water Intake Volume Change request’ on April 30, 2018, it states: “This request is to increase the camp intake from the previously requested 35,000 m<sup>3</sup> to 45,000 m<sup>3</sup>”. To clarify, De Beers is therefore now requesting to increase the camp intake from the currently permitted 27,000 m<sup>3</sup> to an updated 45,000 m<sup>3</sup> annually.</p> <p>In addition, under Part D of the Water Licence, it states: “The Licensee [De Beers] may only obtain fresh Water from Area 8 or Lake N11”.</p> <p>DFO notes that the increase in water withdrawal will be taken primarily from Area 8 as well as from Lake N11, also recognizing that water is taken from Lake N11 to increase flows downstream of Area 8.</p> <p>DFO also notes that on December 19, 2017, De Beers submitted the 2017 AEMP Response Plan – Fish Habitat and Community, to the MVLWB, in response to the exceedance of a Low Action Level related to flow mitigation. On page 3-7 from section 3.2 of the 2017 AEMP Response Plan – Fish Habitat and Community, De Beers reports “The 2017 results confirm that Arctic Grayling YOY were not present in Streams K5 and L1a in the summer and were not distributed within the downstream KLM watershed similar to previous or baseline years.”</p> <p>On January 23, 2018, DFO provided comments to the board as well as the following recommendation: “DFO recommends an increase in the amount of water released in 2018 as per condition 2.4.2 of Fisheries Act 35 (2)(b) Authorization No. 03-HCAA-CA6-0057.1. DFO also recommends that De Beers conduct an assessment to determine whether the current flow augmentation is adequate and provide a contingency plan should arctic grayling continue to decline.”</p> <p>DFO-FPP notes that De Beers does not plan to increase the amount of water released in 2018 as part of the downstream flow augmentation as recommended by DFO-FPP and as per condition 2.4.2 of Fisheries Act 35 (2)(b) Authorization No. 03-HCAA-CA6-0057.1.</p>
<b>Importance of issue to the impact assessment process</b>	It is important to understand potential additional negative impacts associated with increased water usage and ensure adequate mitigations are being applied or that additional losses to fish and fish habitat will be accounted for.

<p><b>Detailed Review Comment</b></p> <ol style="list-style-type: none"> <li>1. <b>Gap/Issue</b></li> <li>2. <b>Disagreement with conclusion</b></li> <li>3. <b>Reasons for disagreement with conclusion</b></li> </ol>	<p>DFO-FPP notes that the increased water withdrawal from Area 8 could have negative impacts in the areas downstream of Area 8 due to compounded decreased flow. The downstream flow mitigation plan was implemented to mitigate effects to fish and fish habitat, and particularly arctic grayling, from the reduction of flow downstream of Area 8, due primarily to the dewatering of Kennady Lake in support of the Gahcho Kue mine. Due to the absence of arctic grayling in 2017, reported in De Beers' 2017 AEMP Response Plan – Fish Habitat and Community, DFO-FPP recommended that De Beers increase flows for the 2018 year, as quoted above. De Beers does not plan to increase the amount of water released in 2018 as part of the downstream flow augmentation and DFO-FPP is concerned that the increased water usage will result in a further reduction in flows within the downstream KLM watershed.</p> <p>Additionally, DFO-FPP notes that the downstream flow mitigation plan may no longer be an effective plan to mitigate negative impacts to arctic grayling in the area downstream of Area 8. As part of the recommendations provided to the MVLWB on January 23, 2018, DFO also recommended that <i>“De Beers conduct an assessment to determine whether the current flow augmentation is adequate and provide a contingency plan should arctic grayling continue to decline.”</i></p> <p>In light of the additional water withdrawal and potential reduction in flows, DFO-FPP reiterates this recommendation to re-assess the efficacy of the downstream flow mitigation plan. The assessment should include but not be limited to updated water volumes for Area 8, anticipated changes to flow volume and velocity with additional water usage, consideration of reduced input to Area 8 from Lake N11 due to increased water withdrawal from Lake N11 and a robust contingency plan in the event the arctic grayling are again absent in the 2018 year.</p> <p>The current flow augmentation provided as part of the downstream flow mitigation plan may not be adequate to provide suitable access and spawning habitat for arctic grayling. DFO notes that inadequate flows in the downstream streams may result in additional serious harm to fish, not yet accounted for in the offsetting plan. DFO may require De Beers to submit a new ‘Application for a <i>Fisheries Act</i> authorization’ to account for any additional serious harm to fish caused by the inadequate flows seen in the streams should arctic grayling presence continue to decline.</p>
<p><b>Recommendation/Request</b></p>	<p><b>Recommendation 3.3.1:</b> DFO-FPP recommends that De Beers conduct an assessment to determine the efficacy of the downstream flow mitigation plan and whether the current flow augmentation is adequate. The assessment should include but not be limited to updated water volumes for Area 8, anticipated changes to flow volume and velocity with additional water usage, consideration of reduced input to Area 8 from Lake N11 due to increased water withdrawal from Lake N11 and a robust contingency plan in the event the arctic grayling are again absent in the 2018 year.</p>

	<p><b>Recommendation 3.3.2:</b> DFO-FPP recommends that De Beers continue to work with DFO to resolve the downstream flow and arctic grayling presence issue and ensure appropriate mitigation is enacted. In addition, if the downstream flow mitigation plan is no longer a viable option, DFO-FPP recommends that De Beers recognize the potential need to submit a new 'Application for a <i>Fisheries Act</i> authorization' to account for previously unanticipated losses to the area downstream of Area 8 or the KLM watershed.</p>
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### 3.4 Additional References

- DFO (Fisheries and Oceans Canada). (2010). DFO Protocol for Winter Water Withdrawal from Ice-Covered Waterbodies in the Northwest Territories and Nunavut. 3 p.

## 4 Summary of Recommendations

<b>Offsetting</b>		
<b>1. Offsetting</b>		
<b>1</b>	Ref. 3.1.1	DFO recommends that De Beers continue to work with DFO-FPP to update their offsetting plan to account for any additional serious harm resulting from the proposed mine changes.
<b>Freshwater Environment</b>		
<b>2. Stream Diversion</b>		
<b>3</b>	Ref. 3.2.1	DFO recommends that De Beers continue to work with DFO-FPP in regard to the proposed stream diversion and will await De Beers' DFO 'Request for Review'.
<b>3. Water Usage</b>		
<b>4</b>	Ref. 3.3.1	DFO-FPP recommends that De Beers conduct an assessment to determine the efficacy of the downstream flow mitigation plan and whether the current flow augmentation is adequate. The assessment should include but not be limited to updated water volumes for Area 8, anticipated changes to flow volume and velocity in light of additional water usage, consideration of reduced input to Area 8 from Lake N11 due to increased water withdrawal from Lake N11 and a robust contingency plan in the event the arctic grayling are absent in the 2018 year.
<b>5</b>	Ref. 3.3.2	DFO-FPP recommends that De Beers continue to work with DFO to resolve the downstream flow and arctic grayling presence issue and ensure appropriate mitigation is enacted. In addition, if the downstream flow mitigation plan is no longer a viable option, DFO-FPP recommends that De Beers recognize the potential need to submit a new 'Application for a <i>Fisheries Act</i> authorization' to account for previously unanticipated losses to the area downstream of Area 8 or the KLM watershed.