

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: applications made by **KELLY COVE SALMON LTD.** for a **BOUNDARY AMENDMENT** to **AQ#1039** in **ANNAPOLIS BASIN, DIGBY CONTY** for the **SUSPENDED CULTIVATION** of **ATLANTIC SALMON.**

BEFORE: Jean McKenna, Chair
Michael McKinnon, Board Member
Richard (Dick) Patterson, Board Member

An application has been made under section 23 of the Aquaculture Licence and Lease Regulations by **Gregory Heming** for intervenor status at the adjudicative hearing referenced above.

The Nova Scotia Aquaculture Review Board has the authority to grant intervenor status under section 23 of the Aquaculture Licence and Lease Regulations. Subsection 23(4) of those regulations provides as follows:

(4) The Review Board must grant intervenor status to any person requesting it who, in the opinion of the Review Board, is substantially and directly affected by the hearing.

REVIEW OF APPLICATION:

As part of its considerations in determining whether an intervenor applicant is substantially and directly affected by a hearing, the Board references the factors set out in section 3 of the Aquaculture Licence and Lease Regulations.

In his original application, Mr. Heming referenced potential impact on his property on the Annapolis River, but in response to a follow up from the Board, he clarified that his property is actually located on the Annapolis Basin, and has provided maps detailing his property location. He states that he is a landowner living on an 1830's farmstead on the Annapolis River approximately 2.5 km directly downstream from the aquaculture lease site #1039.

In his application documents, he stated “I currently do not use the proposed aquaculture lease site #1039, but I am concerned that any future recreational or commercial operation I might envision could be affected by the existing aquaculture operation that is noncompliant.”

He added further detail, requested by the Board:

“I have dedicated a portion (approx 4 acres) of my land to a rewilding project in consultation with the Clean Annapolis River Project. My homestead sits on 15 acres. The intention of what I am calling Mountains and River Preservation Area (MARPA) is to demonstrate and monitor how rewilding land that had once been cleared (4 acres) interfaces with marshland (8 acres). The remaining 3 acres is dedication to my house and garden. The plan, to be as scientific as possible, requires a close observation and evaluation of biodiversity on the land. That said, any changes to the water in the Basin will affect plant life and bird life in the marsh and in the rewilded area. I planted 32 trees - ash, maple, butternut, black walnut, birch last fall and will plant approximately 200 plugs this spring. I have a weather station tied into COGS to measure weather, rain, and temperature, and have flown, and will continue to fly drones to photograph changes in the land over the years.”

In the previous decisions on this file, (Healthy Bays Network, Ecology Action Centre, St. Mary's Bay Protectors) the Board has followed the reasoning of Leblanc, J., in *Specter v. Nova Scotia (Fisheries and Aquaculture)*, 2011 NSSC 266:

[61] "In my view, how the test for standing is phrased is largely irrelevant. It does not matter whether a statute uses the phrase, “person aggrieved”, “person directly affected”, or “direct and personal interest”. What matters is the interpretation that is given to these phrases. This necessarily involves a textual, contextual, and purposive analysis of the applicable legislation. Involved in this interpretation is the concern of courts that an overly broad interpretation will allow mere “busybodies” to flood the courts with litigation challenging public decisions.

[62] The key question to ask is whether a potential applicant has an economic, commercial, legal, or personal interest in a decision that is sufficiently delineated from the concerns of the general public so as to make them a “person aggrieved”.

On reaching a conclusion on a site application, the Board is required to consider:

“... (d) the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation.
(e) the other users of the public waters surrounding the proposed aquacultural operation;”

(Aquaculture Licence and Lease Regulations, NS Reg. 347/2015)”

Mr. Heming's property touches on the Annapolis Basin, although some distance from the Rattling Beach site. He argues that his rewilding project could be impacted by any change in the oceanic and biophysical characteristics of the Annapolis Basin. He therefore has a specific personal interest in the potential impact of the Rattling Beach site and is therefore "delineated from the concerns of the general public", such that he should have the opportunity to establish what, if any, impact the expansion would have on his own property.

DECISION:

The application of Gregory Heming for intervenor status is granted.

Further to section 22 of the Aquaculture Licence and Lease Regulations, Gregory Heming is a party to the adjudicative hearing referenced above.

Pursuant to subsection 23(5) of the Aquaculture Licence and Lease Regulations, a decision made by the Board with respect to intervenor status is final.

DATED at Halifax, Nova Scotia this 25th day of March, 2021.



Jean McKenna
Chair, Nova Scotia Aquaculture Review Board

Nova Scotia Aquaculture Review Board
P.O. Box 2223, Halifax, Nova Scotia, B3J 3C4

AQUACULTURE.BOARD@NOVASCOTIA.CA

INTERVENOR STATUS APPLICATION

Instructions

Please submit this form to the Aquaculture Review Board (Board) no later than ***ten calendar (10) days*** after the publication date of the public hearing notice. You may attach additional pages if necessary.

Intervenor Status Applications will only be processed if they are received by the Board on or before 4:30 pm (local Nova Scotia time) on the deadline date, without leave of the Board.

A person applying for intervenor status for more than one application must complete and submit individual Intervenor Status Applications forms for each application.

Pursuant to s.23 of the *Aquaculture Licence and Lease Regulations*, the Board will decide on this Intervenor Status Application within ten (10) days of receipt and will notify you of the decision no later than five (5) days after the decision is made.

All information provided to the Board on this form and any additional pages submitted (the "form information") will become a part of the record of the hearing. Should your application for intervenor status be accepted, the form information will be disclosed to the other parties to the hearing.

You are also advised that the form information may be subject to an access request under the *Freedom of Information and Protection of Privacy Act* ("FOIPOP") and may, as a result, be released unless the information is exempt from disclosure under FOIPOP.

Please refer to the *Aquaculture Licence and Lease Regulations*, s.23 (attached) for more information on Intervenor Status Requests.

Application

Please read the entire application before responding. **(Print clearly or type).**

1. Please identify the aquaculture lease application that you are requesting intervenor status for:

Lease Number: Hearing Date:

2. Name of Applicant:

3. Civic Address:

4. Mailing Address: (if different than above)

5. Phone Number(s):

6. Email Address*:

7. Preferred method of communication: email* Mail Other: _____

*Unless otherwise notified, email will be the preferred method of communication

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8. Specifically describe how the proposed aquaculture activities may substantially and directly affect you:

As a landowner living on a 1830's farmstead on the Annapolis River approximately 2.5 km directly downstream from the aquaculture lease site #1039;

and as a former two-term (2012-2020) municipal councillor representing Annapolis County District 5 (which includes a 30 km stretch of the Annapolis River from the Digby Gut to the town of Annapolis Royal);

and as the former chairperson of the Annapolis County Economic Development Committee (2013-2020), the Annapolis County Climate Change Action Committee (2013-2020) and the Forestry Advisory Committee (2016-2020);

and as an ecologist with a PhD in Human Ecology and Northern Studies, my life and my livelihood - along with that of the 1400 constituents I represented for 8 years - is directly impacted by any and all activities in and around the Annapolis River Basin.

9. Describe your existing uses, if any, of the proposed lease site, and state whether the identified uses are recreational or commercial:

I currently do not use the proposed aquaculture lease site #1039, but I am concerned that any future recreational or commercial operation I might envision could be affected by the existing aquaculture operation that is noncompliant.

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10. Describe your existing uses, if any, of the area surrounding the proposed lease site, and state whether the identified uses are recreational or commercial:

I do not have any existing uses of the area surrounding lease site #1039 except that I am currently engaged in an scientific/ecological effort to rewild a portion of my farmstead along the Annapolis River to create a protected area - Mountain and Rivers Protected Area - as a demonstration rewilding project to measure current and projected biodiversity, to evaluate the amount of carbon sequestration, and to estimate the value of carbon credits on the international carbon offset market.

11. Please provide any other information which you consider relevant to your application for intervenor status including any affiliations, if any:

My doctoral work in human ecology, "Ecological Integrity, Community and the Human Prospect," is a serious look at rural community prosperity, local employment, place-based education, and climate change through an ecological and socioeconomic lens. Over the course of the last thirty years I have devoted much of my time and energy to promoting a dialogue on the inter-connectedness of environment, economics, rural community development and politics. I have done so as a journalist, academic, published author, community activist, businessman and elected representative.

In this capacity and as founder and senior advisor of The Centre for Local Prosperity - a registered charity and think tank here in Nova Scotia - I have spoken.

12. Declaration

By signing and submitting this form, I acknowledge that I have read, understand and accept the above statements regarding the collection, use, and disclosure of the personal information provided on this form. I also hereby certify that the information provided on this form is true and correct to the best of my knowledge and belief.

Sig



March 12, 2021
Date

For Internal Office Use Only

Notice Date: March 3, 2021

Date Received: March 15, 2021

Decision Date: March 25, 2021

Decision: Approved Denied

Decision Notes: _____

Applicant Notification Sent: March 30, 2021

Notification to Parties Sent: March 30, 2021

Additional Information on Intervenor Requests

Excerpt from the Aquaculture Licence and Lease Regulations

Request for intervenor status

23 (1) *A person may request intervenor status from the Review Board.*

- (2) A request under subsection (1) must be in writing in a form determined by the Review Board and must be submitted to the Review Board no later than 10 days after the date that notice of the adjudicative hearing is published under Section 19.*
- (3) No later than 10 days after the date it receives a request for intervenor status, the Review Board must decide whether to grant or refuse the request.*
- (4) The Review Board must grant intervenor status to any person requesting it who, in the opinion of the Review Board, is substantially and directly affected by the hearing.*
- (5) A decision made by the Review Board with respect to intervenor status is final.*
- (6) No later than 5 days after deciding on a request for intervenor status, the Review Board must provide notice of its decision to the person requesting intervenor status and, if the request is granted, to each of the parties to the proceeding.*

In making decisions on intervenor request, the Board will reference the regulated factors below to determine whether the intervenor applicant is directly and substantially affected by the hearing pursuant to section 23(4) above.

Excerpt from the Aquaculture Licence and Lease Regulations

Factors to be considered in decisions related to marine aquaculture sites

3 *In making decisions related to marine aquaculture sites, the Review Board or Administrator must take all of the following factors into consideration:*

- (a) the optimum use of marine resources;*
- (b) the contribution of the proposed operation to community and Provincial economic development;*
- (c) fishery activities in the public waters surrounding the proposed aquacultural operation;*
- (d) the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation;*
- (e) the other users of the public waters surrounding the proposed aquacultural operation;*
- (f) the public right of navigation;*
- (g) the sustainability of wild salmon;*
- (h) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation;*