

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 the **Healthy Bays Network (HBN)** 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:

In their own words, HBN describe their mandate as:

“We are an incorporated, not-for-profit, province-wide network of groups. We act as a coalition and represent the viewpoints of communities, providing them with a greater ability to be heard on local matters decided at the provincial level. As explained below, the Aquaculture Review Board (ARB) hearing on the Kelly Cove Salmon (KCS) application for Site # 1039 and the proposed aquaculture activities substantially and directly affect HBN’s effort to pursue our mandate and ensure strong regulation of aquaculture within our bays. As a diverse, province-wide network, we bring a community-led perspective to the issues that are the focus of this Hearing. Nova Scotians from our many small coastal communities are connected emotionally, culturally, socially, and economically with their environments. Despite this deep connection, many feel out of their depth and unable to participate in these provincial decision-making processes. Even those community organizations that are willing to get involved often feel resource limited and unable to participate in a meaningful way without outside assistance. HBN was formed to help connect rural NS communities and

provide them with a greater voice in these types of proceedings. Our membership is substantially and directly affected by the proposed aquaculture activities because decisions made via this hearing will set a precedent and have influence on future decisions throughout the province.”

“It is acknowledged that the proponent is required to hold an information session regarding the proposed aquaculture activities, however, this session is not a decision-making forum. The ARB Hearing is the only opportunity for communities to formally and directly table comments and concerns. Cross examination of witnesses is permitted and recorded, allowing communities to have real influence on how their coastal resources are managed in an aquaculture context. Because HBN is the voice for coastal community concerns, it is our duty to intervene in these hearings to ensure these concerns are clearly articulated. As of the date of this application, these concerns encompass factors (a) through (f) inclusive of Section 3 of the Aquaculture License and Lease Regulations. Failure to formally enter these concerns into the record and for your consideration will substantially and directly jeopardize our ability to pursue our mandate both locally and province-wide. We represent the views of coastal communities. We speak for those who cannot speak for themselves. We believe that this Hearing will set a precedent. For these reasons, the Healthy Bays Network will be substantially and directly affected by this Hearing and thus, deserves to be an intervenor in this matter.”

“As a community advocate, we represent diverse viewpoints and interests that are a cross section of NS coastal communities. The HBN and its members are united in their interest in the sustainable use of our shared coastal resources, which includes the proposed lease site. Our membership includes both recreational and commercial users of coastal waters throughout NS. Presenting the collective knowledge and experience in the context of this proposed lease site would benefit the proceedings of this Hearing.”

The decision of Justice Leblanc in *Specter v Nova Scotia* 2011 NSSC 333 is the guiding authority on the issue. In considering a request for standing, Justice Leblanc noted as follows:

[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”.

[63] The interests of adjacent property owners may fall into any of these categories. What may set adjacent property owners apart from other potential applicants is that

their proximity to the place affected by a decision makes them sufficiently different from other potential applicants."

HBN argues that any decision in this matter will set a precedent for future applications. With respect, that is not so. Every application will have its own, unique, factual, factors. This is not a "one size fits all" process. The common thread is the consideration of the factors set out in the Aquaculture Licensing and Lease Regulations, s.3:

"(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"

Those factors must be considered in relation to the site in issue before it.

The Board notes the interest and advocacy of HBN in the aquaculture industry in the province, in general. However, the issue in this Review Board hearing is not a forum to challenge aquaculture in general, but rather, it must focus only on the site in question. That is the mandate of this Board. HBN has not shown that it, as a body, will be "substantially and directly affected" by the allowance or disallowance of the application by Kelly Cove Salmon Ltd. that is before us.

HBN, and/or its individual members will have some opportunity to express their point of view, through oral or written submissions.

DECISION:

The application of the Healthy Bays Network for intervenor status is denied.

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 24th 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:

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

Nova Scotia Aquaculture Review Board
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AQUACULTURE.BOARD@NOVASCOTIA.CA

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:

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

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.

Signature of Applicant

Date

For Internal Office Use Only

Notice Date: _____

Date Received: _____

Decision Date: _____

Decision: ☐ Approved ☐ Denied

Decision Notes: _____

Applicant Notification Sent: _____

Notification to Parties Sent: _____

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;*

Healthy Bays Network ARB intervenor application | Rattling Beach (1039)

1. Lease Number 1039 Hearing Dates: 10-13 May 2021
2. the Healthy Bays Network
3. c/o Derek Purcell, [REDACTED], Pleasantville, NS B0R 1G0
4. N/A
5. [REDACTED]
6. [REDACTED] [@hotmail.com](mailto:[REDACTED]@hotmail.com)
7. Prefer e-mail communication.

Q8. *Specifically describe how the proposed aquaculture activities may substantially and directly affect you:*

The mandate of the Healthy Bays Network (HBN) is to pursue a future of healthy bays throughout our province, encompassing healthy ecosystems and freedom from industrial contamination. Currently HBN is focused on addressing the impacts of open net-pen aquaculture.

We are an incorporated, not-for-profit, province-wide network of groups. We act as a coalition and represent the viewpoints of communities, providing them with a greater ability to be heard on local matters decided at the provincial level. As explained below, the Aquaculture Review Board (ARB) hearing on the Kelly Cove Salmon (KCS) application for Site # 1039 and the proposed aquaculture activities substantially and directly affect HBN's effort to pursue our mandate and ensure strong regulation of aquaculture within our bays.

As a diverse, province-wide network, we bring a community-led perspective to the issues that are the focus of this Hearing. Nova Scotians from our many small coastal communities are connected emotionally, culturally, socially, and economically with their environments. Despite this deep connection, many feel out of their depth and unable to participate in these provincial decision-making processes. Even those community organizations that are willing to get involved often feel resource limited and unable to participate in a meaningful way without outside assistance. HBN was formed to help connect rural NS communities and provide them with a greater voice in these types of proceedings. **Our membership is substantially and directly affected by the proposed aquaculture activities because decisions made via this hearing will set a precedent and have influence on future decisions throughout the province.**

It is acknowledged that the proponent is required to hold an information session regarding the proposed aquaculture activities, however, this session is not a decision making forum. The ARB Hearing is the only opportunity for communities to formally and directly table comments and concerns. Cross examination of witnesses is permitted and recorded, allowing communities to have real influence on how their coastal resources are managed in an aquaculture context. Because HBN is the voice for coastal community concerns, it is our duty to intervene in these hearings to ensure these concerns are clearly articulated. As of the date of this application, these concerns encompass factors (a) through (f) inclusive of Section 3 of the Aquaculture License and Lease Regulations.

Failure to formally enter these concerns into the record and for your consideration will substantially and directly jeopardize our ability to pursue our mandate both locally and province-wide.

We represent the views of coastal communities. We speak for those who cannot speak for themselves. We believe that this Hearing will set a precedent. For these reasons the Healthy Bays Network will be substantially and directly affected by this Hearing and thus, deserves to be an intervenor in this matter.

***Q9.** Describe your existing uses, if any, of the proposed lease site, and state whether the identified uses are recreational or commercial:*

It would be difficult to describe existing uses of the proposed lease site since the operators have had exclusive use of these public waters for the last fifteen years.

***Q10.** Describe your existing uses, if any, of the area surrounding the proposed lease site, and state whether the identified uses are recreational or commercial:*

As a community advocate, we represent diverse viewpoints and interests that are a cross-section of NS coastal communities. The HBN and its members are united in their interest in the sustainable use of our shared coastal resources, which includes the proposed lease site. Our membership includes both recreational and commercial users of coastal waters throughout NS. Presenting the collective knowledge and experience in the context of this proposed lease site would benefit the proceedings of this Hearing.

***Q11.** Please provide any other information which you consider relevant to your application for intervenor status including any affiliations, if any:*

Please consult our website at: <https://www.healthybays.ca/> to learn more about our mandate, activities, and those whose views we represent.

12. Declaration

Please see application.