

RECEIVED February 20, 2024

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: *Fisheries and Coastal Resources Act, SNS 1996, c 25*

- and -

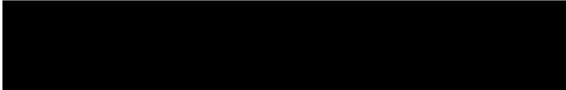
IN THE MATTER OF: An Application by KELLY COVE SALMON LTD. for a boundary amendment and two new finfish aquaculture licenses and leases for the cultivation of Atlantic salmon (*Salmo salar*) - AQ#1205x, AQ#1432, AQ#1433, in Liverpool Bay, Queens County (**the "Application"**)

Affidavit of William Alexander Sandy Nicholson affirmed on February 20, 2024

I affirm and give evidence as follows:

1. I am William Alexander (Sandy) Nicholson of Liverpool, Nova Scotia.
2. I have personal knowledge of the evidence affirmed in this affidavit except where otherwise stated to be based on information and belief.
3. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
4. On behalf of the Queens Recreational Boating Association (o/a Brooklyn Marina) "QRBA", I provide my expert opinion in response to the Affidavit filed by Eric MacIntosh affirmed January 18, 2024 to the Nova Scotia Aquaculture Review Board in connection with KCS's Application to expand its Atlantic salmon operations at Coffin Island (AQ#1205X) and for two new Atlantic salmon aquaculture farms at Mersey Point (AQ#1433) and Brooklyn Point (AQ#1432) in Liverpool Bay.
5. My response to the affidavit of Eric MacIntosh affirmed on Jan 18/2024 to the proposed expansion upon a) other users of the public waters, and b) the public right of navigation on Liverpool Bay is set out in my report for the Nova Scotia Aquaculture Review Board attached as **Exhibit "A"**.
6. Summary of my relevant experience is included in the introduction section of the referenced **Exhibit "A"**.

AFFIRMED before me at Liverpool
Nova Scotia, this 20th day of February 2024



Commissioner of the Province of Nova Scotia

CRAIG M. HARDING
A Barrister of the Supreme Court
of Nova Scotia



William Alexander (Sandy) Nicholson

EXHIBIT "A"

This is Exhibit "A" referred to in the
Affidavit of William Alexander (Sandy)
Nicholson sworn to before me this _20th_
day of February 2024



CRAIG M. HARDING
A Barrister of the Supreme Court
of Nova Scotia

Report for the Nova Scotia Aquaculture Review Board in response to affidavit of Eric MacIntosh affirmed on Jan 18/24

With respect to the Application filed by Kelly Cove Salmon Limited for a boundary amendment and two new finfish aquaculture licenses and leases for the cultivation of Atlantic salmon (*Salmo salar*), Coffin Island AQ#1205x, Brooklyn Point AQ#1432, and Mersey Point AQ#1433, in Liverpool Bay, Queens County

William Alexander (Sandy) Nicholson

February 20, 2024

INTRODUCTION

1. On behalf of the Queens Recreational Boating Association (o/a Brooklyn Marina) "QRBA", I provide my expert opinion in response to the Affidavit filed by Eric MacIntosh affirmed January 18, 2024 to the Nova Scotia Aquaculture Review Board in connection with KCS's Application to expand its Atlantic salmon operations at Coffin Island (AQ#1205X) and for two new Atlantic salmon aquaculture farms at Mersey Point (AQ#1433) and Brooklyn Point (AQ#1432).

2. To prepare my report, I have reviewed and considered the locations of the proposed sites in Liverpool Bay, the nature and extent of other uses and factors that may affect the public right of navigation in Liverpool Bay, which is a body of water with which I am very familiar for pleasure in sailing and motor vessels. Growing up in Liverpool (3rd generation) and retiring here since 2018 I am familiar with navigation and the prevailing wind patterns of Liverpool Bay.

RELEVANT EXPERIENCE

1. Racing primarily and cruising sailboats for 50 years across Eastern Canada, Ontario, Massachusetts, Maryland and the Florida Keys in USA, and the Bahamas.
2. Various positions on-board including:
 - a. Tactician - using all available data (including wind speed and direction, tide, waves, currents, and navigational inputs) to always achieve maximum strategic advantage on the racecourse (from start to finish). Employ the race strategy, advise the helmsman on steering techniques, monitor sail trim, and made sail selection decisions to keep the vessel moving at maximum speed. Use navigational tools to sail the most advantageous course.
 - b. Helmsman – steering the sailing vessel as safely and quickly as possible in all conditions.

- c. Race tuning and speed – continually optimize the mast configuration and sail shape for maximum speed, working with different crew positions and crew leaders.
3. Sailed in regattas on many different sail boats over many years including: Chester Race Week, Round the Island PEI, Race Regatta East Bay and West Bay Cape Breton, Shediac New Brunswick to Charlottetown, Pictou Race, Charlottetown Race Week, Armdale Yacht Club opening regatta, Bedford Basin Yacht Club regatta, Shearwater Yacht Club regatta, Prince of Wales Regatta and Wenonah Cup (Royal Nova Scotia Yacht Squadron) and opening regatta, Liverpool Bay races.
4. Professional Sailing and Power Yacht Broker for 6 years employed by Ocean Yacht Sales Limited, Halifax and Chester, NS. At the time it was one of the largest yacht brokerages in Canada selling cruising and racing sailboats ranging from 23 feet to 60 feet in length. Responsibilities included launch, commission, test sail and race various boats and to participate in the various regattas in Eastern Canada with clients and prospective clients.
5. Past President of the Premier Class Association – 2017/2018 - (former governing body for large racing sailboats in the Maritime Provinces) under the auspices of the Royal Nova Scotia Yacht Squadron. The function of the association was to set rules and regulations including safety equipment and handicapping in various yachting regattas in Eastern Canada and to represent the interests of its sailing members with various yacht clubs. This also included a) the Marblehead (Massachusetts) to Halifax Race as a biennial offshore yacht race of approximately 360 nautical miles consisting of 100 to 150 large sailboats, b) St. Pierre and Miquelon offshore race also in similar distance, and c) Chester Yacht Club host of the largest keelboat regatta in Canada.
6. Instructor – taught adult sailing for beginners at the Bedford Basin Yacht Club.
7. CTV Atlantic night anchor and news ResEdit in mid to late 1970's and concurrently news editor for CHUM Group Halifax radio stations C100 FM and CJCH AM.
8. Morning news broadcaster for McLean Hunter's Maritime Broadcasting radio stations FM101 and CHNS AM. Responsibilities included reporting on Province House (provincial political news) as well as regional and federal politics. My Province House reports were syndicated and sold other local radio stations across Nova Scotia.
9. Sales Director of the Sou'wester commercial fishing publication. Oldest and largest subscription-based publication in Canada. Member of the editorial board.

Response to the Affidavit of Eric MacIntosh

Throughout the referenced affidavit, Mr. MacIntosh assumes that “any person who is reasonably competent and experienced in handling a vessel should be capable to sail comfortably into and out of Liverpool Bay”. At the Brooklyn Marina approximately half of the 70 boating members are either first time boat owners or casual boaters with limited experience, as it is the objective of the QRBA to assist members with the development of skills in different aspects of boating and boat related activities and to serve as a recreational and family-oriented outlet for all ages. It cannot be assumed that all recreational boaters are competent and experienced.

Comments are made to the relevant sections (“s#”) of Mr. MacIntosh’s affidavit.

1. Sections s14 to s19: SAILING AND AQUACULTURE IN SHELBURNE HARBOUR

While Mr. MacIntosh may have sailing experience and knowledge of Shelburne Harbour, I challenge his opinion as to what constitutes recreational boating safety and enjoyment by users in Liverpool Bay. The locations are completely different as are the associated risks and recreational experiences.

s16: The comment that one can "Sail between the cages where there are gaps" would be impossible and not a reasonable tactic under any condition. Sailing between the cages and the shoreline in Shelburne may be a possibility but not between the actual cages as there would be a danger to the boater and carry a high risk of entanglement.

s17: Disagree with his statement that it would be "*... difficult to get snarled up in if you stay 20 feet away. The cages are not an issue for sailing or boating.*" There is a high risk of entanglement if vessels stray within the lease areas especially by recreational sailors or boaters in distress. It may be difficult even under perfect conditions with an experienced helmsman and crew. Risk of entanglement remains in all cases.

s18: Statement of opinion. Not having issues with the cages in Shelburne cannot be applied to Liverpool Bay. They are geographically different in all respects with Shelburne harbour being rated the third best natural harbour in the world behind San Francisco, USA, and Sydney, Australia while Liverpool Bay is much narrower and smaller in size. These represent totally different boating conditions.

2. Sections s20 to s35: NAVIGATION IN LIVERPOOL BAY

s20: Totally agree that Liverpool Bay is open and easily sailed and wish to preserve it as such. Sailors and other boaters look for sheltered safe anchorage with easy access and egress close to the ocean. Liverpool Bay offers this.

s29/s34: Statement of opinion. The proposed multi-hectare fish farms obstruct the entrance into Liverpool Bay, and their supporting ground tackle and anchors significantly narrows the usable space (side to side) in the harbour for visiting and resident boaters. Since the prevailing winds are generally south-southwest-southeast, it requires boats going out of the harbour or in sailboat racing to be traveling directly into the wind. As sailboats cannot sail directly into the wind, they must sail at an angle (tack) of about 45% back and forth to reach a desired upwind destination or race mark. The two fish farms at the entrance into Liverpool Bay reduce the waters at their intersection down to a stated 880 meters apart, thus a sailboat traveling at an average of 6 knots in the proposed area between pens, would have only 6 minutes to execute a safe tack maneuver. This conclusion applies to knowledgeable experienced sailors in ideal conditions, and if such conditions are not ideal or with less experienced sailors, tacking safely would require more time and distance.

It is important to understand that in a racing scenario there would be several boats on the same course at the same time, heading for the same mark, crossing each other at essentially the same speed. Timelines for action are compressed and risks to boats and crew increase significantly.

The risk also increases if wind, sea state or visibility are more extreme in either racing or pleasure boating.

s30/s31: This assumes ideal wind speed and direction.

3. Sections s36 to s40: KCS' PROPOSED SITES

s37: Even with the current fish farm footprint (site #1205) it is difficult to navigate between the fish farm and Coffin Island in a power boat, let alone with a proposed expansion or under sail. It would be difficult to sail and safely tack in such a narrow channel and local sailors avoid these waters altogether. The situation is much different than Shelburne and Mr. MacIntosh's experience cannot be directly applied to Liverpool Bay.

s38/s39/s40: Statements of opinion. It is not appropriate to apply conditions in Shelburne to those in Liverpool Bay.

4. Sections s41 to s54: THE EFFECTS OF THE PROPOSAL ON OTHER USERS OF THE PUBLIC WATERS IN LIVERPOOL BAY

s41/s42: Statement of opinion. At present there are no restrictions to navigating, sailing and power boating. The restrictions that would result from the proposal would direct negative impact and pose a safety risk when conditions are not ideal, with less experienced boaters or boaters in distress.

s44: Even with current fish farm footprint (site #1205) it is difficult to travel between the fish farm and Coffin Island even in a power boat, let alone sailing and with a proposed expansion. It would be impossible to sail and safely tack in such a narrow channel. No local sailor would ever attempt sailing in these waters.

s45: Sailing in the channel between Coffin Island is not comparable to accessing Herring Cove and the Brooklyn Marina.

s46/s47/s48/s49: Statements of opinion. It is not appropriate to apply conditions in Shelburne to those in Liverpool Bay.

s50/s51: Statements of opinion. Mr. MacIntosh's opinions are personal, and entanglements can occur. It would not be safe for a vessel to approach the leased area. Sailing between the cages in the proposal for Liverpool Bay would not be possible based on the proposed design and I reiterate that it is not appropriate to apply conditions in Shelburne to those in Liverpool Bay.

s52/s53: Statement of opinion. I want to retain the existing navigational waters as they are. The leased fish farm sites are to be treated as out of bounds and not safe zones. In direct contradiction to his statement, they raise a risk of entanglement to all boaters and we are aware that they have in fact occurred in Shelburne harbour.

5. Sections s55 to s58: CONCLUSIONS

s55/s56/s57/s58: Statements of opinion. Boating conditions in Shelburne cannot be directly applied to those in Liverpool Bay. Being able to navigate in restricted waters does not correlate to an enjoyable, relaxing boating or sailing experience, and any suggestion that it would result in an increase in recreational boating or add to the safety of participants is strictly his opinion, inappropriate and invalid.