

NOVA SCOTIA AQUACULTURE REVIEW BOARD
60 RESEARCH DRIVE, BIBLE HILL, NS B6L 2R2
Aquaculture.Board@novascotia.ca

RECEIVED

By Nova Scotia Aquaculture Review Board at 2:13 pm, Sep 19, 2023

INTERVENOR STATUS APPLICATION

Instructions

Please submit this form to the Aquaculture Review Board (Board) no later than **ten (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 16h30 pm (local Nova Scotia time) on the deadline date.

A person applying for intervenor status for multiple applications 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 may 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).**

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

Lease Number:

AQ#1205x, 1432, 1433

Hearing Date:

Feb 5, 2024 and onwards

- Name of Applicant:

Protect Liverpool Bay Association

- Civic Address:

██████████ Brooklyn, NS, ██████████

- Mailing Address:
(if different than above)

- Phone Number(s):

Please communicate via counsel at the phone number in the attached submission.

- Email Address*:

██████████ lease communicate via counsel at the email addresses in the attached submission.

- 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:

See attached submission.

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

See attached submission.

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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:

See attached submission.

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

See attached submission.

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.

Sarah McDonald Digitally signed by Sarah McDonald
Date: 2023.09.19 09:31:01 -03'00'

Signature of Applicant

Sept 19, 2023

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;

James Gunvaldsen Klaassen & Sarah
McDonald

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File No.: 1012

September 19, 2023

Sent via email to: aquaculture.board@novascotia.ca

Nova Scotia Aquaculture Review Board
60 Research Drive
Bible Hill, Nova Scotia
B6L 2R2

Dear Aquaculture Review Board members,

Re: Application for intervenor status re AQ#1205x, AQ#1432, AQ#1433

We are counsel for the Protect Liverpool Bay Association (“PLBA”). Please accept this submission as PLBA’s Intervenor Status Application for the upcoming Aquaculture Review Board hearing regarding Kelly Cove Salmon Ltd. (“**Kelly Cove**”)’s application for a boundary amendment to AQ#1205, and for new aquaculture sites AQ#1432 and AQ#1433.

PLBA is a grassroots community group based in Brooklyn, Nova Scotia and is incorporated as a non-profit society under the laws of Nova Scotia. Brooklyn is a suburban community in the Region of Queens Municipality and is located on the eastern shore of Liverpool Bay.

PLBA has hundreds of members and supporters among the local community. Its membership is comprised largely of Queens County residents and business owners who are concerned about the impact of marine-based salmon farming on the region’s economic prosperity, social wellbeing, and coastal environment. Many of PLBA’s members own property on Liverpool Bay or frequently recreate in the Bay or on Beach Meadows Beach (which is located less than 500 metres from AQ#1205). As a result, their properties, livelihoods, and lifestyles may be severely affected by Kelly Cove’s proposed projects.

PLBA was originally founded in September 2018 by concerned area residents, in response to the news that Kelly Cove was planning to dramatically expand its fish farming operations in Liverpool Bay. PLBA’s mission is “[t]o promote prosperity, social wellbeing, and environmental sustainability of our coastal community by preventing the expansion of open net fin fish farms.”

PLBA's objectives include preventing the expansion of open net pen fish farms, educating the community about healthy marine environments, and protecting natural, balanced ecosystems.

Should PLBA be granted intervenor status for the upcoming ARB hearing, the organization intends to submit lay and expert evidence on all eight factors the Board must consider pursuant to s 3 of the *Aquaculture Licence and Lease Regulations* (the "**Regulations**").

PLBA squarely meets the test for intervenor status before the ARB as set out in s 23(4) of the *Regulations*. PLBA should therefore be granted intervenor status for the upcoming hearing.

(1) Legal Context

The *Regulations* require the ARB to grant intervenor status to "[...] any person requesting it who, in the opinion of the Review Board, is substantially and directly affected by the hearing."¹

The test for intervenor status before the ARB has not yet been judicially interpreted – however, Nova Scotia's Supreme Court has made it clear that standing provisions under the *Fisheries and Coastal Resources Act* ("**FCRA**" or the "**Act**") must be interpreted broadly and liberally.²

In recent decisions on applications for intervenor status,³ the ARB has applied the Nova Scotia Supreme Court's decision in *Specter v Nova Scotia (Fisheries and Aquaculture)*. In that case, Justice LeBlanc had to determine whether two individuals had standing under the *FCRA* to appeal the Minister's decision to approve amendments to aquaculture licences held by Kelly Cove. Subsection 119(1) of the *FCRA* provides that "[a] person aggrieved by a decision of the Minister may, within thirty days of the decision, appeal on a question of law or on a question of fact, or on a question of law and fact, to a judge of the Supreme Court of Nova Scotia [...]" The key question was therefore whether the appellants were "persons aggrieved."

In making his decision, Justice LeBlanc opined on the test for standing:

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 [...]

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."⁴

¹ *Aquaculture Licence and Lease Regulations*, NS Reg 347/2015, s 23(4).

² *Specter v Nova Scotia (Fisheries and Aquaculture)*, 2011 NSSC 333 at paras 56-72 [*Specter*]; *Brighton v Nova Scotia (Agriculture and Fisheries)*, 2002 NSSC 160 at para 7.

³ See *Kelly Cove Salmon*, NSARB 2021-001, and *Town Point Consulting Inc.*, NSARB 2022-001, 2022-002, and 2022-003.

⁴ *Specter*, *ibid* at paras 61-62.

Justice LeBlanc's comments are directly applicable to the "substantially and directly affected" test outlined in s 23(4) of the *Regulations*. As in *Specter*, the ARB must ask whether PLBA and its members have an economic, commercial, legal, or personal interest in the hearing that is distinct from the concerns of the general public. As the Board noted in its most recent decision in *Town Point Consulting Inc.*, organizations whose members include adjacent landowners have been granted standing to challenge decisions governing land use.⁵

(2) PLBA's Members

Many, if not most, of PLBA's members will be substantially and directly affected on an individual basis by Kelly Cove's proposed new and expanded salmon farming sites in Liverpool Bay.

A particularized description of the impacts of Kelly Cove's proposed new and expanded sites on each of PLBA's members would have caused this submission to become unwieldy. We have therefore provided an overview of the projects' impacts on a small sample of the members who will be substantially and directly affected by the sites. Those impacts are described in detail below.

PLBA submits that the described impacts are representative of the effects of Kelly Cove's proposed projects on the majority of PLBA's members. These impacts are sufficient to meet the "substantially and directly affected" test. PLBA should therefore be granted intervenor status in this proceeding.

(a) Brian Muldoon & Stan Wentzell – Brooklyn, NS,

Brian Muldoon and Stan Wentzell's residence overlooks Liverpool Bay and is a short walk from Beach Meadows Beach. Although Mr. Muldoon and Mr. Wentzell began residing on the property in April 2015, the home has been in Mr. Wentzell's family since 1840. Since April 2015, the two men have invested a substantial amount of money in renovations to their home.

Mr. Muldoon and Mr. Wentzell enjoy spending time in the outdoors on and around their property. They frequently walk on the beach and sit on the rocks along the coast. They also swim and sea kayak in Liverpool Bay. On occasion, they invite guests to fish for mackerel and pollock from the rocks along the shore.

Kelly Cove's existing open pen salmon farming site at Coffin Island (AQ#1205) is approximately 500-700 metres from Mr. Muldoon and Mr. Wentzell's property. The current site already impacts Mr. Muldoon and Mr. Wentzell's ability to enjoy their property and to engage in recreational activities in the water and along the shore. For example, large yellow navigational buoys filled with Styrofoam and marked as Cooke's property have escaped from the Coffin

⁵ *Town Point Consulting Inc.*, *supra*, citing *Oakland/Indian Point Residents Assn. v Seaview Properties Ltd.*, 2008 NSSC 209.

Island site and smashed on Mr. Muldoon and Mr. Wentzell's shoreline, leaving thousands of tiny pieces of Styrofoam strewn about the property.

Mr. Muldoon and Mr. Wentzell can also hear and see the large automatic feeder, which is the size of a two-story building and is constantly present on the Coffin Island site when there are salmon in Kelly Cove's pens. The two men say that the automatic feeder's generator hums constantly, and that they can hear it from their property when the wind blows toward them. On hot days, Mr. Muldoon and Mr. Wentzell can smell the fish farm from their home.

Mr. Muldoon and Mr. Wentzell own a house next door to their residence, which they use as a short-term rental through the website Airbnb. Their rental property is popular – they have guests staying at the house year-round and are generally fully booked through the summer months. Guests frequently enjoy walking on the beach, sitting on the rocks by the shore, swimming, kayaking, and fishing. Because Kelly Cove's Coffin Island site is visible from the property, guests frequently ask about the fish farm and express concerns about its impacts.

Mr. Muldoon and Mr. Wentzell are concerned that Kelly Cove's proposed expansion of its existing site and addition of new sites in Liverpool Bay will result in increased impacts to their properties and their ability to recreate in the water and along the shore. Given their proximity to the existing site and to the newly proposed sites, they anticipate that their property values will decline significantly if Kelly Cove's applications are approved.

Mr. Muldoon and Mr. Wentzell are also concerned that the popularity of their Airbnb will decline, as guests will no longer be able to enjoy recreational activities on and around the property to the extent they once did. For instance, they are worried that guests will be uncomfortable swimming or fishing in waters in such close proximity to large industrial salmon farming sites and will be restricted in their ability to kayak around Liverpool Bay. This could have a significant and negative impact on Mr. Muldoon and Mr. Wentzell's income.

(b) Randi Dickie – Brooklyn, NS,

Randi Dickie, a retired nurse and former councillor for the Regional Municipality of Queens, owns two properties in the immediate vicinity of Kelly Cove's proposed new and expanded salmon farms in Liverpool Bay (specifically AQ#1205 and AQ#1432). The first is a single-family home in Brooklyn, and the second a log cabin in Beach Meadows facing the salt marsh and creek area. The log cabin was handed down by family members to Ms. Dickie and her husband over 50 years ago, when they were young adults. Nowadays, Ms. Dickie generally resides in her family home for most of the year and spends three to four months in the summer living in her log cabin.

Ms. Dickie's log cabin is a two-minute walk from Beach Meadows Beach, and her family home is only a six- or seven-minute drive from the same beach. Ms. Dickie therefore walks the beach frequently in all seasons, and swims at the beach in the summer. In previous years, Ms. Dickie and her husband would canoe or kayak from their cabin out to Coffin Island, or even to Brooklyn or Mersey Point.

Ms. Dickie's family and friends have gathered regularly at her cabin and at Beach Meadows Beach over the years and continue to do so today. Her grandchildren, family, and friends spend numerous hours at Beach Meadows Beach, where they swim, surf, body board, and engage in many other beach and water-based activities.

Ms. Dickie is primarily concerned about the adverse impacts of Kelly Cove's proposed new and expanded fish farms on her lifestyle and her ability to engage in recreational activities on Beach Meadows Beach and in the surrounding waters. Among other things, she is worried about the smell, the visual impacts associated with the automatic feeder, the accumulation of waste and toxins in the water, the impacts on local wildlife such as shorebird populations, and the proliferation of algae overgrowth. Of course, these concerns also extend to Ms. Dickie's family's ability to enjoy their time at Beach Meadows Beach, and to spend time in the water without fear of exposure to pesticides, antibiotics, and other substances associated with salmon farms.

Ms. Dickie and her husband want to ensure that their log cabin stays in their family once they pass on, and for generations to come. They hope that their descendants, and the descendants of their extended family, can continue to enjoy the cabin and the surrounding area (including Beach Meadows Beach) as Ms. Dickie and her husband have for decades. Ms. Dickie is concerned that Kelly Cove's proposed salmon farming projects, if approved, will compromise the health and aesthetics of the local environment and undermine her family's enjoyment of the area around Liverpool Bay.

(c) Eric Goulden – Brooklyn, NS,

Eric Goulden resides directly behind Beach Meadows Beach, on Liverpool Bay. Kelly Cove's current site at Coffin Island is visible from Mr. Goulden's property.

Mr. Goulden enjoys various recreational activities in and around the waters of Liverpool Bay. He walks the beach daily and enjoys swimming in the summer months. His children and grandchildren also visit frequently, and his grandchildren love to play on the beach and swim in the water. Mr. Goulden considers his property and Beach Meadows Beach to be very special places for his family, and is concerned about the environmental and aesthetic impacts of an expanded salmon farming site at Coffin Island.

Mr. Goulden has spent many years developing properties in the Liverpool area and has made a major contribution to the area's economy. He anticipates that the new and expanded net pen operations will have deep and negative effects on the local economy and community if Kelly Cove's applications are approved. The presence of a large industrial aquaculture operation in Liverpool Bay will be seen as a negative factor for people who may otherwise want to live and do business in the community. He has already seen the accumulation of Styrofoam pieces from broken buoys, and fragments of mooring lines and nets littering the beaches near his property due to severe weather. The increased activity and larger infrastructure associated with the expansion and the two new sites will magnify the negative environmental and aesthetic impacts on his property and surrounding area. In addition, Mr. Goulden is concerned that pollutants in the water and the debris from damaged fish farm infrastructure due to severe weather will be

detrimental to the beauty of the waters and beaches and to his family's ability to enjoy recreational activities there.

(d) Josh Morash, Brooklyn, NS,

Josh Morash lives on an 18-acre property near the mouth of Liverpool Bay, in direct proximity to Kelly Cove's proposed new salmon farm AQ#1432. Mr. Morash's parents originally purchased the property in 1980, in order to create a life for their five sons that was filled with outdoor activity, breathtaking scenery, and a love for the ocean. As a result, Mr. Morash grew up spending significant amounts of time there and has a deep connection to the area.

Mr. Morash now owns a property appraisal company in the area and lives on the property with his young family. He and his family enjoy beautiful views of the ocean that will be jeopardized by the large new salmon farm Kelly Cove proposes to operate immediately offshore of their property. Mr. Morash has significant concerns about the impact of AQ#1432, as well as the other new and expanded sites Kelly Cove has proposed for Liverpool Bay, on the local environment and his family's ability to enjoy their property and the surrounding area.

Mr. Morash and his family have been enjoying the coastal area near Liverpool bay - from Fralic Cove to East Berlin - recreationally for many years. They enjoy aquatic activities such as boating, swimming, and fishing. Mr. Morash is worried that the Kelly Cove's new and expanded salmon farms will impede his family's ability to swim and enjoy the Bay without fear of negative health impacts. Because there are no barriers between the pens and the surrounding environment, Mr. Morash is concerned that the fish feed, fecal matter, and chemicals from pesticides will contaminate the water quality, endangering both the local aquatic life and his family's ability to enjoy the water.

Mr. Morash is also concerned about the aesthetic impacts of AQ#1432 on his ability to enjoy his property, including the noise pollution that will be created by the automated fish feeders. The loud and persistent noise will disrupt the serenity of the property. In addition, both the aesthetic and environmental impacts of the proposed salmon farming projects will negatively impact the value of Mr. Morash's property.

(e) Tom Raddall, Mersey Point, NS

Tom Raddall purchased his property (7+ acres) on the west side of Liverpool Bay in 1988 and built his home shortly afterward. Tom and his family have been swimming and boating recreationally in the harbour in front of their home for many years. The warmer shallow waters in the lee of the prevailing winds on the Mersey Point side has been a popular anchorage site for the Raddall family and for many other recreational boaters and sport fishers from the Brooklyn Marina and beyond. The ideal prevailing conditions also make the area the preferred navigational channel used by small boats to move out to open waters.

Kelly Cove's proposed site AQ#1433 would be located in the Bay right offshore from Mr. Raddall's home. It would occupy and obstruct a significant portion of the navigation channel and the prime fishing grounds currently used and enjoyed by Mr. Raddall and many others. The

waters off Mr. Raddall's property, including the site of AQ#1433, are very shallow. With weather patterns becoming more violent and extreme, this site would be very vulnerable to damage. Mr. Raddall has measured the loss of oceanfront soil/land in front of his property since moving there and to date he has lost 45 feet of property due to erosion.

In severe weather, the waves and wind push debris as much as 100 feet up on to the shore at Mr. Raddall's property. If AQ#1433 is built, the significant waves and ocean surges during storms like Hurricane Fiona will also most certainly result in waste effluent (uneaten food and feces) as well as buoys, nets and other debris from the facility being pushed high up onto his property where it will decompose and accumulate.

AQ#1433 will be a new site containing 20 open fish pens. Coupled with a noisy two storey feeding barge just offshore from Mr. Raddall's home, the facility would be both visually and acoustically offensive to Mr. Raddall and his family. The impact of this industry location would result in a significant decline in his property value as well.

As a practicing local dentist, Tom is also very concerned about the broader negative economic impact of this proposal on the Liverpool economy, and on his ability to attract qualified support staff for his practice and indeed his ability to sell his practice as he is currently trying to do.

To summarize, Mr. Raddall's property, his professional livelihood and his long-standing recreational use of the harbour would be directly impacted by Kelly Cove's new salmon farming site proposed as AQ#1433.

(f) Larry Cochrane, Hunts Point, NS,

Mr. Cochrane has lived on a property overlooking Liverpool Bay for the past seven years. Mr. Cochrane chose to build his home on a property that overlooks Liverpool Bay in order to enjoy an unobstructed view of the Bay from his home, which required a significant financial investment. He is worried that his view will be ruined by the buoys and feeding barges associated with the proposed sites AQ#1432 and 1433. He is also concerned that large fish farms in close proximity to his home will negatively impact the financial value of his property.

In addition, Mr. Cochrane has enjoyed the Bay recreationally since he moved to the area. He regularly goes boating in the Bay and is worried that Kelly Cove's proposed new and expanded salmon farms in Liverpool Bay will cause significant pollution of the water that would make the recreational activities he enjoys unsafe.

Mr. Cochrane has also been an avid salmon fisherman for over 40 years. He began fishing for salmon on the Medway River when he was a teenager. Unfortunately, the Medway River has since been closed to salmon fishing as a result of drastically declining salmon returns. As a member of the Medway River Salmon Association, Mr. Cochrane has participated in activities aimed at restoring the salmon population in the area, such as liming the Medway River to try to lower its acidity. However, Mr. Cochrane is very concerned that dramatically increasing the number of farmed salmon in relatively close proximity to the Medway River will undermine ongoing salmon conservation and restoration efforts.

Mr. Cochrane understands that open net pen salmon farms can have significant impacts on wild salmon populations, including through the spread of sea lice and disease from farmed fish to their wild counterparts. He is worried that Kelly Cove's proposed new and expanded salmon farms will lead to the extirpation of the few remaining salmon left in the Medway River and destroy any hope of restoring a healthy salmon population and thriving salmon fishery to the area.

(3) Conclusion

PLBA represents numerous members of the local community who will be substantially and directly affected by Kelly Cove's applications for new and expanded fish farms in Liverpool Bay. In our respectful submission, the Board must grant intervenor status to SMBP in accordance with s 23(4) of the *Regulations*.

Sincerely,



James Gunvaldsen Klaassen
Barrister & Solicitor



Sarah McDonald
Barrister & Solicitor

cc. Protect Liverpool Bay Association