

NOVA SCOTIA AQUACULTURE REVIEW BOARD
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By Nova Scotia Aquaculture Review Board at 5:36 pm, Sep 19, 2023

INTERVENOR STATUS APPLICATION

Instructions - download this document prior to filling it in.

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: 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:

The Ecology Action Centre (the “EAC”) is Atlantic Canada’s oldest and largest non-profit environmental organization.

Please refer to counsel’s submission below for further information about how the hearing will substantially and directly impact the EAC.

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

Please refer to counsel’s submission below for further information about the EAC’s interests in the proposed lease site, including personal and legal interests in addition to commercial and economic interests.

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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:

Please refer to counsel's submission below for further information about the EAC's interests in the hearings related to Kelly Cove Salmon Ltd.'s application.

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

Please refer to counsel's submission below for further information that the ARB should consider in its assessment of this intervenor status application.

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.

Mike Kofahl

Signature of Applicant

September 19, 2023

Date

HOW TO SEND YOUR APPLICATION TO THE BOARD:

Upon completing the application form, you have two choices on how to submit your application to the Board.

- To send this document electronically after filling in the form, either click on the "Send Via Email" button OR [click on this link](#) to save it and open an email for you to attach it to.
- To print the document on your printer and send via Canada Post or courier, select the "PRINT" button .

Send Via Email

PRINT

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;



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September 19, 2023

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SUBMITTED VIA EMAIL

Re: Application for Intervenor Status related to applications by Kelly Cove Salmon Ltd. for a boundary amendment and two new marine finfish aquaculture licenses and leases in Liverpool Bay

Dear members of the Nova Scotia Aquaculture Review Board,

I am legal counsel for the Ecology Action Centre (the “**EAC**”). Please accept the following submission as part of the EAC’s application for intervenor status for the upcoming Aquaculture Review Board (“**ARB**”) hearings (the “**Hearings**”) with respect to an application by Kelly Cove Ltd. (“**KCS**”) for a boundary amendment to AQ#1205 and two new marine finfish aquaculture licenses and leases for AQ#1432 and AQ#1433 in Liverpool Bay, Queens County (together, the “**Lease Sites**”).

The EAC is a registered charity, a not-for-profit society incorporated in Nova Scotia, and an independent civil society organization that plays an important role in public policy and decision-making on matters of environmental interest, and in the promotion of democratic, participatory, and community-based engagement on topics of environmental concern. The EAC's primary role is to hold governmental policies, processes, and actions accountable to the public interest regarding the use of shared natural space and resources.

The EAC is Nova Scotia's oldest and largest environmental charity, with more than 50 years of experience on conservation and sustainable livelihood issues in the Maritimes. The EAC's Marine Program, focusing specifically on the protection of ecosystems and coastal livelihoods and the sustainable use of shared marine resources, has a 30-plus year history of work on marine and fisheries policy at regional, national and international scales and advises the Government of Canada on international fisheries negotiations.

The EAC has more than a decade of experience advocating for sustainable aquaculture development in the province that is based on science and precautionary regulation and policy. Its work has included efforts to reduce or eliminate the ecological risks associated with open net-pen finfish farming operations and engagement on the development of the legislative and policy regime now governing aquaculture in Nova Scotia. Additionally, the EAC is involved in the economic development and direct

marketing of sustainable fisheries and aquaculture products, including farmed shellfish and seaweed, to establish sustainable employment opportunities in coastal communities throughout the province. For example, through its Kelp Kurious project, the EAC supports small-scale regenerative seaweed farming and small-scale seaweed product entrepreneurs to develop community-based economic opportunities and sustainable sources of income. Beyond engagements within coastal communities, the EAC has also participated on and advised the Aquaculture Regulatory Advisory Committee to the Minister of Fisheries and Aquaculture.

Finally, the EAC is a member-based organization that represents many people in Nova Scotia who support the organization's regulatory positions and who have an interest in sustainable use and protection of the marine environment. Its province-wide membership has an interest in marine environmental protection and includes local members who reside in proximity to the Lease Sites.

The EAC is substantially and directly affected by the Hearings for the Lease Sites in Liverpool Bay and must therefore be granted intervenor status as set out in subsection 23(4) of the *Aquaculture Licence and Lease Regulations* (the "**Regulations**"). By ensuring that the EAC participates as a full party in the Hearings, the Board can ensure that the EAC's interests and the aforementioned public interests are represented in relation to the impact of the proposed developments on waters held in trust for all Nova Scotians. No single stakeholder or individual community member is positioned to speak as fully to these concerns.

1. The Ecology Action Centre is substantially and directly affected by the Hearings because of its on-going engagement with respect to the Lease Sites in Liverpool Bay.

Section 23(4) of the *Regulations*, which are made under the *Fisheries and Coastal Resources Act* (the "**FCRA**"), require the Aquaculture Review Board (the "**ARB**" or "**Board**") to grant intervenor status to any person requesting it, who, in the opinion of the Board, "is substantially and directly affected by the hearing".¹ An intervenor becomes a full party to the adjudicative hearing.² In making its decision on an intervenor application, the Board must consider all the factors set out in section 3 of the *Regulations*.

To date, subsection 23(4) of the *Regulations* has not been judicially considered. The Nova Scotia Supreme Court ("**NSSC**") has interpreted section 119(1) of the *FCRA*, which deals with legal standing under the legislative regime, and the ARB has interpreted intervenor standing under the *Regulations* based on the reasoning of the NSSC in those decisions.

In *Brighton v Nova Scotia (Agriculture and Fisheries)*, the NSSC was asked to decide an appeal, made under section 119(1) of the *FCRA*, of a decision by the Minister of Fisheries and Aquaculture (the "**Minister**") to approve a licence and lease application by Aquafish Technology Incorporated to operate a finfish net cage aquaculture farm in Northwest Cove, Nova Scotia. The appeal was made by "a group of concerned citizens" that was comprised of twelve individuals from Northwest Cove, Southwest Cove, Mill Cove and Hubbards (the latter is located in a different county). In a decision for the court, Justice MacDonald considered whether the appellants met the threshold of "aggrieved persons" under the *FCRA*. Justice MacDonald determined the appellants were aggrieved persons, and provided the following commentary (underlining added):³

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

² *Ibid*, s 22.

³ *Brighton v Nova Scotia (Agriculture and Fisheries)*, 2002 NSSC 160, para 7.

Because the Appellants filed no documentation to show that they have been directly prejudiced by this decision, the Respondent Crown suggests that they do not meet the threshold of “aggrieved persons” so as to have standing to prosecute this Appeal. I reject this submission. One need look no further than to the voluminous record to quickly realize that the Appellants were most interested in the outcome of this application and directly involved in the process. In fact the Minister saw fit to write many of them personally when his decision was announced (Volume IV, Tab 449). Given the scope of the FCRA generally and the circumstances surrounding this process in particular, the Appellants meet the standard contemplated under s. 119. They have standing to process this Appeal.

It is particularly noteworthy that Justice MacDonald determined that the appellants’ involvement in the licencing process for the specific site under the FCRA was indicative of their status as aggrieved persons. It is also noteworthy that one of the successful appellants was not located in the same county as the proposed aquaculture site or the other appellants. Proximity to the proposed aquaculture site was a determinative factor of whether the appellants were “aggrieved”.

In *Specter v. Nova Scotia (Fisheries and Aquaculture)* (“**Specter**”), the NSSC was asked to decide an appeal, also made under section 119(1) of the FCRA, of a decision of the Minister to approve lease and licence amendments for three KCS aquaculture sites which involved the relocation and size increases of aquaculture sites in Shelburne Harbour. The appellants were residents of Shelburne who were actively involved in the amendment process and had expressed concerns about water quality and other issues associated with fish farms.⁴ The appellants owned and lived on property that fronted Shelburne Harbour, where the aquaculture sites were located.

In considering whether the appellants in *Specter* were “aggrieved persons”, Justice Leblanc, for the NSSC, set out an analytical framework to be used when determining whether an applicant rose to the level of being an interested party (underlining added):⁵

“Public interest groups and individual advocates have usually been denied standing to challenge administrative action that raises environmental concerns, for lack of an identifiable special interest of their own” (Donald JM Brown Y John M Evans, *Judicial Review of Administrative Action in Canada*, loose-leaf (Toronto: Canvasback, 2010) _4.3443. For example, in *Friends of Public Gardens v. Halifax (City)* (1985), 1985 CanLII 5635 (NS SC), 68 NSR (2d) 433, 13 Admin LR 272 (SCTD), the applicant was denied standing to challenge the City of Halifax’s decision not to designate certain properties near the Halifax Public Gardens as “heritage property”.

However, adjacent landowners have been granted standing to challenge the issuance of permits or government decisions governing land use. In *Oakland/Indian Point Residents Assn. v. Seaview Properties Ltd.*, 2008 NSSC 209, the Court allowed the applicant standing to challenge a subdivision plan and development permits, noting that some of the members of the applicant association were adjacent landowners to the proposed condo development at issue. In *Lord Nelson Hotel Ltd. v. Halifax (City)* (1972), 1972 CanLII 1160 (NS CA), 4 NSR (2d) 753, 33 DLR (3d) 98 (CA) [Lord Nelson Hotel], the Court of Appeal found that an adjacent landowner had standing to challenge the City of Halifax’s re-zoning of neighbouring property.

⁴ *Specter v Nova Scotia (Fisheries and Aquaculture)* 2011 NSSC 333, para 6.

⁵ *Ibid*, paras 59-62

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.

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”.

In its recent decisions, the ARB has taken an approach to intervenor applications that has focused heavily on the physical proximity of applicants to aquaculture sites at issue. However, Justice Leblanc’s analytical framework does not equate proximity with having a direct or personal interest. In that case, the applicants all happened to be adjacent landowners, but proximity is only one factor that may be considered when assessing an applicant’s legal standing.

The Hearing for the Lease Sites will substantially and directly affect the Ecology Action Centre’s ongoing legal, organizational, and membership interests in aquaculture regulatory enforcement and monitoring, and the development of sustainable aquaculture in the local region and the province. The Hearing for the Lease Sites will have direct implications for its marine conservation, including work related to wild Atlantic salmon and other species at risk, and its own aquaculture projects. While the EAC is not located adjacent to the Lease Sites, its work and membership, and therefore its interests, will be impacted by the Lease Sites. Based on a textual, contextual, and purposive analysis of the legislative framework for aquaculture in Nova Scotia (which follows), and the EAC’s extensive and documented history working on aquaculture, including in Liverpool Bay, the EAC is directly and substantially affected by the Hearing.

2. The Hearing will be determinative of the use of public space and public resources and the objective of the *FCRA* and the *Regulations* is the participation of individuals and groups who have an interest in the public space and public resources; the EAC is a group with such an interest.

As noted by Justice Leblanc in *Specter*, whether an applicant for intervenor status for an adjudicative hearing is directly and substantially affected requires a textual, contextual, and purposive analysis of the applicable legislation. This analysis begins with an examination of the general purposes of the *FCRA*, the specific purposes of its aquaculture provisions, and the requirements of the *Regulations* for adjudicative hearings and intervenors.

The *FCRA* has long been the key provincial statute under which aquaculture is managed and regulated in Nova Scotia. The purposes of the Act are found in section 2, and are as follows (underlining added):

- (a) consolidate and revise the law respecting the fishery;
- (b) encourage, promote and implement programs that will sustain and improve the fishery, including aquaculture;
- (c) service, develop and optimize the harvesting and processing segments of the fishing and aquaculture industries for the betterment of coastal communities and the Province as a whole;
- (d) support the sustainable growth of the aquaculture industry;
- (e) expand recreational and sport-fishing opportunities and eco-tourism;
- (f) foster community involvement in the management of coastal resources;

- (g) provide training to enhance the skills and knowledge of participants in the fishery, including aquaculture;
- (h) increase the productivity and competitiveness of the processing sector by encouraging value-added processing and diversification.

The aspects of the general purpose section of the *FCRA* that are most relevant for aquaculture licencing and leasing include to manage the aquaculture industry for “the betterment of coastal communities and the Province as a whole” (subsection c), to “foster community involvement in the management of coastal resources” (subsection d), and to support the “sustainable growth of the aquaculture industry” (subsection f). These purposes speak to the inevitable public nature of aquaculture and its implications for the sustainable management of public coastal resources.

The focus on the public aspects of the regulatory regime created by the *FCRA* is echoed in Part V of the *FCRA* – the part dedicated specifically to aquaculture. Part V’s purposes are stated to be the following (underlining added)⁶:

- (a) recognize that aquaculture is a legitimate and valuable use of the Province’s coastal resources;
- (b) ensure aquaculture is conducted under conditions and in accordance with controls that protect the environment;
- (c) provide a predictable and efficient regulatory environment for business and public confidence;
- (d) ensure equity, fairness and compatibility in access to, and utilization of, public water resources for aquaculture;
- (e) ensure that members of the public have access to information with respect to the regulatory process and an opportunity to participate in the process;
- (f) ensure that regulations governing aquaculture are achievable, contain incentives for compliance and are enforceable;
- (g) ensure that coastal communities derive positive social and economic benefits from aquaculture;
- (h) ensure that aquaculture is conducted with due regard to the health, well-being and recovery of species at risk; and
- (i) ensure that the regulation of aquaculture contributes to the productive development of the Province’s coastal resources.

The purpose section for Part V repeatedly highlights that aquaculture operations utilize the “Province’s coastal resources” and reflect the reality that an important function of the legislative regime is to ensure the public’s confidence in a regulatory environment for aquaculture that protects the environment and ensures appropriate public participation.

The EAC has had, and continues to have, a strong interest in seeing aquaculture sites, including the Liverpool Lease Sites, deliver on these stated legislative purposes. That is why the EAC, as a provincial, not-for-profit organization working on marine environmental stewardship issues and conducting aquaculture projects, is directly and substantially affected by the Hearings.

To further contextualize the EAC’s work within the purposes of the *FCRA*, it is prudent to return to the section 3 factors of the *Regulations*, which the ARB must consider as part of its review of an intervenor application. Those factors are as follows:⁷

⁶ *Fisheries and Coastal Resources Act*, SNS 1996 c 25, s. 43A.

⁷ *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; and
- (h) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation.

The reference to the “optimum use of marine resources”, as understood by the text, context, and purpose of the *FCRA*, should be viewed as a requirement that the ARB consider whether KCS’s boundary amendment and two new proposed aquaculture sites will be an optimum use of *public* marine resources that contribute generally to coastal communities deriving positive social and economic benefits. The optimum use of *public* marine resources must include consideration of whether the proposed sites in Liverpool Bay are conducted in conditions that allow for the protection of the environment broadly. An applicant who can demonstrate that they have an interest in seeing the Liverpool Bay aquaculture sites contribute to the optimum use of marine resources is directly affected. The EAC is such an applicant.

The ARB’s consideration of the contribution of KCS’s proposed sites to community and provincial economic development must also be broad in nature and include consideration of the effects of the Lease Sites on communities beyond immediately adjacent properties. Similarly, effects on the public right of navigation and the sustainability of wild salmon also need to be considered generally within the context of coastal communities throughout the province.

A broad approach to consideration of factors (a), (b), (f), and (g) is warranted by virtue of the general and specific purposes of the *FCRA* and because the factors are positioned as topics of general public interest. The remaining factors may be considered more narrowly, as indicated by the text that they be considered in the context of the “public waters surrounding the proposed aquaculture operation”. Put another way, a textual, contextual, and purposive analysis of the section 3 factors reveals that the objective of the legislation is for the ARB to consider some factors broadly (i.e., the impact of the Lease Sites on the general use of public space and public resources throughout the province), and others within a more localized context.

By virtue of its work, the EAC has an interest in the use of public space and public resources; the Lease Sites will impact that space and those public resources, and therefore, the EAC has a direct and substantial interest in the Hearings.

3. The Ecology Action Centre’s has economic, commercial, legal, or personal interests in the Hearings and they are sufficiently delineated from the concerns of the general public.

As the NSSC noted in *Specter*, the key question to consider when examining whether a party ought to be granted standing 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.

3.1 *The EAC's interests in the Hearings align with the Section 3 factors.*

The EAC's work is directly relevant to multiple section 3 factors, and therefore, it has a direct and substantial interest in the Hearing. Specifically, the EAC has an interest in the optimum use of marine resources (factor "a"), the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation (factor "d"), the sustainability of wild salmon (factor "g"), and the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation (factor "h").

With respect to the optimum use of marine resources and the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation, the EAC works on marine issues that include marine protected areas, ecologically or biologically significant areas, nature reserves, wilderness areas, important bird areas, provincial parks, species at risk, and general marine ecological health. For example, the EAC has an official position on all fishery advisory committees in the region, and advises regulators on sustainable fishing measures, management policies, and monitoring and control frameworks (advice that was also provided to the Doelle-Lahey Panel). The EAC is also an official advisor to the Canadian government on negotiating positions at several Regional Fisheries Management Organizations, including ICCAT, NAFO and IATTC. The EAC is a leader in the development of eelgrass mapping and monitoring programming in Nova Scotia, including through the coordination of the Atlantic Eelgrass Network. Eelgrass is a key coastal habitat that acts as a nursery for many of our province's most important commercial fish species. Finally, the EAC has conducted research and partnered with industry, communities, and academics on sustainable use and protection of coastal and offshore marine resources, and has worked with community managed fisheries and aquaculture to support market access and economic opportunities. The EAC's interest in this work must be considered with regard to the optimum use of marine resources at the Lease Sites.

The EAC has a direct and substantial interest in seeing *public* marine resources used optimally, and the Hearing, and by extension, the Lease Sites, have implications for that interest, including for the local and provincial areas of its work in this regard. For example, the Lease Sites will have implications for local and cumulative effects on marine resources that will affect and interact with other natural and anthropogenic activities and processes. The EAC has strong interests – including economic, commercial, legal, and personal – in the Hearing because of the implications of the Lease Sites at Liverpool Bay on its work related to stewardship of the marine environment in the local region and the province, and its ongoing projects, including ones that overlap with the geographic area of the Lease Sites.

The Hearing will also have ramifications for the EAC's work on protecting species at risk in the area. The organization's work has focused on fish populations currently within the "critical zone" as defined under the federal *Fisheries Act*, some of which could be directly impacted by the Lease Sites. In particular, the EAC continues to work with partner organizations, individuals, and communities in the vicinity of the Lease Sites to protect and conserve the wild Atlantic salmon populations. The Hearing, and its outcome in relation to the expansion of the Lease Sites, will directly impact these interests. As explained above, the EAC's interest in the sustainability of wild salmon must be viewed broadly within the context of the legislated purposes of the *FCRA*.

Additionally, the EAC has long advocated for a robust and effective regulatory framework for aquaculture activities, and enforcement and monitoring of the aquaculture industry. As part of its mandate, the EAC serves as a public interest watchdog on the implementation of and compliance with provincial regulations. More specifically, the EAC's Marine Program Director Shannon Arnold has served on the ministerial Aquaculture Regulatory Advisory Committee (the "**RAC**") for the past two years,

following the participation of other EAC staff in similar roles since its creation. Given that role, the EAC has a specific legal interest in this Hearing because of its potential ramifications for future regulatory compliance.

Finally, the EAC also has a membership base that gives the EAC a mandate to engage on aquaculture, and members living in the vicinity of the Lease Sites whose interests are specifically affected. The EAC represents more than 4,100 members from communities all across Nova Scotia who look to them to speak on their behalf in decision-making processes that hold the potential to impact the environment. More specifically, the EAC represents hundreds of individuals that live on Nova Scotia's South Shore, with several in close proximity to the Lease Sites. Each of these members expects the EAC to ensure that the marine and coastal ecosystems they rely on are properly protected and sufficiently represented during aquaculture development processes. The EAC will provide an avenue for its membership generally, and for the specific members living near the Lease Site, to have their interests accounted for within the decision-making process.

The EAC's longstanding interest in protection of the marine environment for the benefit of the public, and in upholding the administration and enforcement of laws that protect the marine environment for the benefit of the public, underscores the EAC's substantial and direct interest in the Hearing.

3.2 *The EAC's engagement on aquaculture generally, and on work in Liverpool Bay specifically, is sufficient to set it apart from the general public.*

The EAC has been actively engaging in aquaculture issues in Nova Scotia for many years. Its role, expertise, and interest in aquaculture was acknowledged a decade ago during the Independent Aquaculture Regulatory Review for Nova Scotia by the Doelle-Lahey Panel. The panel, which was appointed in April 2013, was mandated to lead the development of a regulatory framework for the aquaculture industry that would integrate environmental protection, social wellbeing and economic opportunity.⁸ The panel's mandate required it to seek advice from key industry sectors, conservation groups, the Mi'kmaq and subject matter experts.⁹ During the Doelle-Lahey Panel's review, it convened a Nova Scotia Aquaculture Regulatory Review Roundtable (the "**Roundtable**"), which was created to provide the panel with advice on the following (underlining added):

- (a) issues related to sustainable development of aquaculture with respect to environmental protection, social wellbeing and economic opportunity, and
- (b) the development of recommendations regarding a new regulatory framework.¹⁰

The Panel also met monthly with an Advisory Committee. The EAC had representation on both the Roundtable and the Advisory Committee. One of the final recommendations of the Doelle-Lahey Panel was that an ongoing Regulatory Advisory Committee be created and meet at least once a year to advise the Department of Fisheries and Aquaculture on the implementation of aquaculture regulations, changes to the regulatory framework in the future, significant policy issues, and overall effectiveness of

⁸ Meinhard Doelle & William Lahey, A New Regulatory Framework for Low-Impact/High-Value Aquaculture in Nova Scotia: The Final Report of the Independent Aquaculture Regulatory Review for Nova Scotia (Halifax, NS: Province of Nova Scotia, 2014) at 20-23, p 1.

⁹ *Ibid.*

¹⁰ *Ibid*, p 2.

the framework.¹¹ The provincial government accepted this recommendation and formed a committee of representatives to provide advice on regulating aquaculture in Nova Scotia; the EAC is represented on the RAC and is active in advising the province about regulation of aquaculture.

In response to the Report of the Independent Aquaculture Regulatory Review Panel (the “**Doelle-Lahey Report**”) and as a commitment to implement its recommendations, the government of Nova Scotia released new regulations under the *FCRA*, including the *Regulations* that set out the ARB’s process. The key role that public participation plays generally under the Act outlines the importance of including environmental and conservation groups in decision-making processes on aquaculture. The EAC’s participation during the Doelle-Lahey Panel process, and through the development of the current regulatory regime, highlights the high degree of interest that the organization has in the important work of the ARB, including the upcoming hearing for the Lease Sites.

Under a legislative framework that encourages and requires public engagement in aquaculture issues and decision-making, the EAC has set itself apart from the general public because of its engagement province-wide on the key aspects of aquaculture development that also affect each individual site. The EAC has expertise and knowledge of the cumulative impacts of aquaculture as an industry within the province that is applicable to the Liverpool Lease Sites and which sets the EAC apart from the general public.

4. The Hearing will be precedent setting and the Ecology Action Centre is sufficiently affected that it must have access to the procedural and substantive rights provided to intervenors.

The need for public engagement and opportunities for their input into aquaculture related decision-making was affirmed by the Doelle-Lahey Panel. The key role that public participation plays generally under the Act outlines the importance of including environmental and conservation groups in decision-making processes on aquaculture. The EAC’s participation during the Doelle-Lahey Panel process, and in the development of the current regulatory regime, highlights the high degree of interest that the organization in the ARB’s work (and in particular, the Hearings).

The EAC recognizes that the *Regulations* provide opportunities for the public to participate in an adjudicative hearing of the Board by submitting written comments or by making a sworn or affirmed statement at the adjudicative hearing. However, these public participation opportunities are not sufficient to address the impacts on the EAC’s direct and substantial interests in the Hearings.

The Hearings will be precedent setting because they will be the first time the ARB considers new aquaculture operations since the Doelle-Lahey Report was released and the *Regulations* and ARB adjudicative hearing process were established. The process and outcomes of the Hearings will be precedent setting for the province and will have long-term implications for the regulation of aquaculture throughout the province.

The text of subsection 23(4) is particularly pertinent in this regard. It reads (underlining added):

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.

¹¹ *Ibid*, p xxi.

In this regard, the Hearings are not only important with respect to the Lease Sites that are the subject of the process, but also because they have relevance for – and impact the interests of – the EAC as a result of their wide-ranging, and precedent setting consequences.

5. Concluding Remarks

The EAC's objectives and mandate, with respect to the marine environment, and its engagement on aquaculture issues around the province cause it to have legal and personal interests in the Hearing for the Lease Sites that are markedly different from the general public and which are direct and substantial.

EAC has conducted enormous amounts of work related to aquaculture regulation, including engaging in the Doelle-Lahey Report process and subsequent development process of the current regulatory regime (including the ARB). Its members generally have an interest in seeing aquaculture effectively regulated, and those members in the vicinity of the proposed aquaculture site expansion have specific interests with respect to decision-making about aquaculture in their local environment.

The EAC is substantially and directly affected by the Hearing because the Lease Sites impact the optimal use of the marine resources, impact community and provincial economic development, and impact the sustainability of wild salmon. The EAC has clearly defined interests in the impact of the Lease Sites on these factors, and its interests must be considered in view of the text, context, and purpose of the legislative regime governing aquaculture. The EAC's proximity to the Lease Sites is not determinative for the purpose of considering the sufficiency of effects on the EAC's interest.

The EAC is also substantially and directly affected by the Hearing because the Lease Sites will impact other aspects of its work, particularly the oceanographic and biophysical characteristics of the public waters surrounding the Lease Sites, and other users of the public waters surrounding the Lease Sites.

Therefore, it is my respectful submission that the ARB must grant the EAC intervenor status.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kofahl', written in a cursive style.

Mike Kofahl
Staff Lawyer
East Coast Environmental Law