60 Research Drive, Bible Hill, NS, B6L 2R2 aquaculture.board@novascotia.ca 902-722-1426

DECISION ON INTERVENOR STATUS **NSARB 2023-001**
NSARB-2023-001-INT-001

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: Applications made by **KELLY COVE SALMON LTD.** for a **BOUNDARY AMENDMENT and TWO NEW MARINE FINFISH AQUACULTURE LICENSES and LEASES** for the cultivation of **ATLANTIC SALMON (*Salmo salar*) - AQ#1205x, AQ#1432, AQ#1433 in LIVERPOOL BAY, QUEENS COUNTY.**

BEFORE: Jean McKenna, Chair
Bruce Morrison, Board Member
Roger Percy, Board Member

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

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

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

REVIEW OF APPLICATION:

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

The Board has reviewed the Intervenor Application of Stew and Cheryl Horton, as well as the response of the Proponent, Kelly Cove Salmon, dated September 19. Kelly Cove opposes the application.

The Hortons own three properties fronting on Liverpool Bay, including their family home on [redacted] Street in Liverpool, a property "currently being developed as a new home site", and an investment property (four-unit, short term vacation rental). The latter 2 are in Brooklyn.

The primary focus of their objection to the proposed sites is the impact of the view "big, ugly, fish farms" on their properties.

There is no question that the new farms will be in view of the properties. However, Kelly Cove, in preparing their response, has determined the actual distance of the pens from the properties:

Address	**PID**	**Distance to Coffin Island (1205)**	**Distance to Brooklyn (1432)**	**Distance to Mersey Point (1433)**
[redacted], Brooklyn	70087473	3.9km	2.3km	2.8km
[redacted], Brooklyn	70277488	3.9km	2.3km	2.8km
[redacted], Liverpool	70022413	5.2km	3.5km	3.4km

Kelly Cove argues that the circumstances presented by the Hortons does not establish that they are "substantially and directly affected: by the proposed farms: they rely on the guidance in the decision of Leblanc, J. in **Specter v Nova Scotia,** 2011 NSSC 333, which was followed in the decision of the Board in Town Point Consulting Inc, (Decision on Intervenor Status, NSARB 2022-001, 2022-002, and NSARB 2022-003 (Town Point); and Kelly Cove Salmon, NSARB 2021-001, Decisions on Intervenor Status INT-001, INT-002, INT-003 and INT-004:)

In Specter v Nova Scotia, 2011 NSSC 333, Justice Leblanc held that the test for intervenor status is whether the applicant has an economic, commercial, legal, or personal interest in a decision that delineates them from the concerns of the general public so as to make them a “person aggrieved.” Justice Leblanc held 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.*** **[emphasis added]**

As previously referenced, the Board must consider the factors enumerated in Section 3 of the Regulations to determine whether an applicant is substantially and directly affected by the hearing. The factors are as follows:

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) sustainability of wild salmon;
h) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation;

As argued by Kelly Cove:

> The Hortons' properties are 2.3km or more in distance from each of the sites. They assert that they will suffer "loss of income and personal enjoyment due to the desecration of a pristine coastline with unsightly fish farms." Put differently, the Hortons oppose the Application because they do not want to see "big ugly fish pens" in Liverpool Bay. Respectfully, this is not a factor the Board must consider. **This Application is not a platform for general opposition to marine aquaculture**.

The Board agrees. The Board also notes that the cages have a very low profile, which, even if visible, would not impact the sightlines from the properties.

Unlike some land-based properties, in the marine environment there is no "zoning" that protects the rights of adjacent property owners to a particular style or size of an adjacent property.

As well, some may see the presence of these cages as "ugly", simply by way of their personal opinion of open pen aquaculture as a negative; others may see them from the perspective of a sustainable food source. But the personal, emotional response to aquaculture (negative or positive), is not determinative. What is determinative is the consideration of the eight statutory factors. The concern of the Hortons does not demonstrate a "direct and substantial" impact in considering those factors.

That does not mean that the Horton's are not entitled to have their concerns considered. Intervenor status brings with it the status of a party, allowing an individual or body, not only to testify, but to call witnesses including qualified experts, and cross examination of witnesses. The Hortons will still have the opportunity to make an oral submission at the conclusion of the hearing or submit the same in writing. While their expressed concerns are not sufficiently substantial to grant them the status of a party, that does not mean that a final decision has been made as to the significance of those concerns. But they have not convinced the Board that they qualify for full party status.

DECISION:

The application 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 **4th** day of **October, 2023.**

Jean McKenna,
Chair, Nova Scotia Aquaculture Review Board

60 Research Drive, Bible Hill, NS, B6L 2R2 aquaculture.board@novascotia.ca 902-722-1426

DECISION ON INTERVENOR STATUS **NSARB 2023-001**
NSARB-2023-001-INT-002

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: Applications made by **KELLY COVE SALMON LTD.** for a **BOUNDARY AMENDMENT and TWO NEW MARINE FINFISH AQUACULTURE LICENSES and LEASES** for the cultivation of **ATLANTIC SALMON (*Salmo salar*) - AQ#1205x, AQ#1432, AQ#1433 in LIVERPOOL BAY, QUEENS COUNTY.**

BEFORE: Jean McKenna, Chair
Bruce Morrison, Board Member
Roger Percy, Board Member

An application has been made under section 23 of the Aquaculture Licence and Lease Regulations by the **Kwilmu'kw Maw-Klusuaqn Negotiation Office (KMKNO)** for intervenor status at the adjudicative hearing referenced above.

REVIEW OF APPLICATION:

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.

In considering standing for intervenor groups, Leblanc, J. in **Specter v Nova Scotia (Fisheries and Aquaculture) 2011 NSC 333** commented**:**

> [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".

The KMKNO is somewhat unique among applicants. Office of Aboriginal Affairs (now L'Nu) was consulted as part of the DFA requested review of the applications by Municipal, Provincial and Federal agencies, and concerns were identified, and TOR consultation at the "moderate" level were recommended.

Concerns included the following:

- The proponent, Kelly Cove Salmon Ltd. is proposing to more than triple the amount of farmed Atlantic Salmon in Liverpool Bay, Nova Scotia – total biomass, if all applications are approved, could reach 10 million Kg.
- Proposed sites will comprise a total footprint of 122.1 ha in Liverpool Bay.
- Numerous other fisheries, including commercial and Aboriginal fisheries, are known to have occurred or currently occur in Liverpool Bay.
- The Mersey River system, which drains into Liverpool Bay, is a known river of significance to the Mi'kmaq.
- The proponent has committed to employing management strategies to reduce the risk of fish escapes including building infrastructure strong enough to withstand weather, currents, ice flow etc.
- Cages will be designed to minimize farmed fish and wildlife interactions and will include predator deterrents.
- Site #1205 is immediately proximal to Coffin Island (nesting grounds for birds, migratory resting spot, duck habitat, etc.).
- Site #1205 is less than [redacted] km from a known Mi'kmaq archaeological site at Coffin Island; #1433 is less than [redacted] from two known Mi'kmaq archaeological sites in Liverpool.
- The proponent will require an NPA authorization from Transport Canada.
- Proposed sites are located approximately 30 km from Ponhook Lake IR 10 (Acadia FN).
- Limited engagement with the Mi'kmaq of Nova Scotian has been undertaken to date.

In its application for status, KMKNO suggests reduction of available area to fish, impact to Mi'kmaw archeological heritage, access to waterways, interference with the aesthetics and serenity of the “cultural hot spot”. They argue that the “active consultation” with the Department has not adequately addressed their concerns.

It can be inferred from the decision of the Supreme Court of Canada in **Clyde River (Hamlet) v Petroleum Gas Services Inc, 2017 SCC 40**, that the Board can be asked to consider the adequacy of consultation, and this intervenor application would appear to be such a request.

DECISION:

The application is allowed.

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**20th** day of **October 2023.**

Jean McKenna,
Chair, Nova Scotia Aquaculture Review Board

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DECISION ON INTERVENOR STATUS **NSARB 2023-001**
NSARB-2023-001-INT-004

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: Applications made by **KELLY COVE SALMON LTD.** for a **BOUNDARY AMENDMENT and TWO NEW MARINE FINFISH AQUACULTURE LICENSES and LEASES** for the cultivation of **ATLANTIC SALMON (*Salmo salar*) - AQ#1205x, AQ#1432, AQ#1433 in LIVERPOOL BAY, QUEENS COUNTY.**

BEFORE: Jean McKenna, Chair
Bruce Morrison, Board Member
Roger Percy, Board Member

An application has been made under section 23 of the Aquaculture Licence and Lease Regulations by the **Queens Recreational Boating Association (Brooklyn Marina)** for intervenor status at the adjudicative hearing referenced above.

REVIEW OF APPLICATION:

The group offers recreational boating and sailing activity to local and visiting boaters. The marina has 60 rented boat slips as well as 300 feet of visitor docking facilities.

The focus of their concern is that the proposed sites will interfere with the ability to navigate in Liverpool Bay. They argue that sailing vessels require tacking room, and given the prevailing westerly winds, entering and leaving the Bay will be impeded.

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.

In considering standing for intervenor groups, Leblanc, J. in **Specter v Nova Scotia (Fisheries and Aquaculture) 2011 NSC 333** commented**:**

> "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".
>
> [60] 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.
>
> [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".

The Board must consider the factors enumerated in Section 3 of the regulations to determine whether an applicant is substantially and directly affected by the hearing. The factors are as follows:

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) sustainability of wild salmon;
h) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation;

In the case of Brooklyn Marina, they should not be described as "busybodies". They do have "an identifiable special interest of their own", in particular, the potential impact of the project on the navigability of Liverpool Bay. Their evidence on that issue can prove to be informative and helpful to the Board and to Kelly Cove.

DECISION:

The application is granted.

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 **20th** day of **October 2023.**

Jean McKenna,
Chair, Nova Scotia Aquaculture Review Board

60 Research Drive, Bible Hill, NS, B6L 2R2 aquaculture.board@novascotia.ca 902-722-1426

DECISION ON INTERVENOR STATUS **NSARB 2023-001**
NSARB-2023-001-INT-005

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: Applications made by **KELLY COVE SALMON LTD.** for a **BOUNDARY AMENDMENT and TWO NEW MARINE FINFISH AQUACULTURE LICENSES and LEASES** for the cultivation of **ATLANTIC SALMON (*Salmo salar*) - AQ#1205x, AQ#1432, AQ#1433 in LIVERPOOL BAY, QUEENS COUNTY.**

BEFORE: Jean McKenna, Chair
Bruce Morrison, Board Member
Roger Percy, Board Member

An application has been made under section 23 of the Aquaculture Licence and Lease Regulations by **Margaret Perry** 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:

Ms. Perry and her husband are residents of Fall River, Nova Scotia. They purchased property at [redacted], Mersey Point, in January 2023 Their use of the property is recreational, however, she states that they will build a retirement home there and rent the existing structure as short-term rentals.

She alleges that they are concerned about the wildlife on the Bay, and that there will be impact caused by pollution She says that there will be noise, pollution, and debris from the sites, and that with hurricane activity, there will be fish escapes and death. She says that

their ability to kayak will be impacted, and that they will not use the water for swimming if there is a mega fin fish site nearby as they feel the water will be contaminated and unsafe.

On behalf of Kelly Cove, it is pointed out that the closest site to the Perry property (AQ 1433, Mersey Point) is 1134 M distant. AQ 1432 (Brooklyn) is 1879M away, and AQ 1205 (Coffin Island) is 3577M away.

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.

In considering standing for intervenor groups, Leblanc, J. in **Specter v Nova Scotia (Fisheries and Aquaculture) 2011 NSC 333** commented**:**

> "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".
>
> [60] 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.
>
> [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."

There are many properties, residential, commercial, industrial, and recreational, adjoining or in very close proximity to the very large Liverpool Bay. But that status, including that of Margaret Perry, is not sufficient, alone, to permit intervenor status, nor is their particular use of the waters necessarily significant to do so.

Intervenor status creates not just an opportunity to have one's concerns heard and considered. It creates full party status, including representation by counsel (if desired), ability to prove its case by calling witnesses, both lay and expert, and submitting documents and other evidence.

On an application for intervenor status, the Board must consider whether such processes are necessary for an individual to have their concerns heard. As the Board continues to point out, the process permits the opportunity to be effectively heard through either written submissions or oral comments at the hearing.

The Board is satisfied that the concerns of Margaret Perry, which are certainly genuine, can readily be dealt with in one of those methods.

DECISION:

The application 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 **20th** day of **October, 2023.**

Jean McKenna,
Chair, Nova Scotia Aquaculture Review Board

60 Research Drive, Bible Hill, NS, B6L 2R2 aquaculture.board@novascotia.ca 902-722-1426

DECISION ON INTERVENOR STATUS **NSARB 2023-001**
NSARB-2023-001-INT-006

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: Applications made by **KELLY COVE SALMON LTD.** for a **BOUNDARY AMENDMENT and TWO NEW MARINE FINFISH AQUACULTURE LICENSES and LEASES** for the cultivation of **ATLANTIC SALMON (*Salmo salar*) - AQ#1205x, AQ#1432, AQ#1433 in LIVERPOOL BAY, QUEENS COUNTY.**

BEFORE: Jean McKenna, Chair
Bruce Morrison, Board Member
Roger Percy, Board Member

An application has been made under section 23 of the Aquaculture Licence and Lease Regulations by the **23 Fishermen of Liverpool Bay** (14 inshore/offshore fishers who are vessel owner operators and 9 crew) for intervenor status at the adjudicative hearing referenced above.

REVIEW OF APPLICATION:

They maintain that AQ#1432 and 1433, in particular, will displace them from their current traditional fishing areas. They say these sites will create new navigational hazards, and that the associated buoys will break away periodically, creating more navigational hazards. They say that 1433 is particularly exposed and will be subject to high winds and cage failures. They argue that the environmental impact of additional fish will result in more waste feed and excrement, attracting predators, as well as loss or contamination of fish stocks.

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.

In considering standing for intervenor groups, Leblanc, J. in **Specter v Nova Scotia (Fisheries and Aquaculture) 2011 NSC 333** commented**:**

"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".

[60] 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.

[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".

The Board must consider the factors enumerated in Section 3 of the regulations to determine whether an applicant is substantially and directly affected by the hearing. The factors are as follows:

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) sustainability of wild salmon;
h) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation;

There is no question that the 23 Fishermen group does have an interest that delineates them from the concerns of the general public. These concerns, if established, would have a "substantial and direct effect "on them.

DECISION:

The application is granted.

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 **20th** day of **October 2023.**

Jean McKenna,
Chair, Nova Scotia Aquaculture Review Board

60 Research Drive, Bible Hill, NS, B6L 2R2 aquaculture.board@novascotia.ca 902-722-1426

DECISION ON INTERVENOR STATUS **NSARB 2023-001**
NSARB-2023-001-INT-007

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: Applications made by **KELLY COVE SALMON LTD.** for a **BOUNDARY AMENDMENT and TWO NEW MARINE FINFISH AQUACULTURE LICENSES and LEASES** for the cultivation of **ATLANTIC SALMON (*Salmo salar*) - AQ#1205x, AQ#1432, AQ#1433 in LIVERPOOL BAY, QUEENS COUNTY.**

BEFORE: Jean McKenna, Chair
Bruce Morrison, Board Member
Roger Percy, Board Member

An application has been made under section 23 of the Aquaculture Licence and Lease Regulations by the **Region of Queens Municipality (RQM)** for intervenor status at the adjudicative hearing referenced above.

REVIEW OF APPLICATION:

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.

In considering standing for intervenor groups, Leblanc, J. in **Specter v Nova Scotia (Fisheries and Aquaculture) 2011 NSC 333** commented**:**

> "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".

[60] 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.

[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".

The Board must consider the factors enumerated in Section 3 of the regulations to determine whether an applicant is substantially and directly affected by the hearing. The factors are as follows:

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) sustainability of wild salmon;
h) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation;

The RQM extends from East Port Medway in the east to Granite village in the west. The bulk of the population lives and works along the Atlantic coast. Liverpool is the main population centre. The application expresses several concerns, all of which oppose the project. Many of those concerns would not delineate the entity from 'the general public', and in that regard, RQM would appear to be acting as a spokesperson. The role of spokesperson is also alleged by the "Protect Liverpool Bay" group.

Municipalities, of course, have no jurisdiction over marine matters, i.e., activity and lands below the ordinary high-water mark. However, they do have jurisdiction and control over land-based activities which relate to marine activities. Those aspects referenced in this application are a municipal park, (Beach Meadows Park), apparently owned and operated by RQM. They argue that AQ 1025 in particular will substantially and directly impact their park.

They also reference their "branding", as "Queen's Coast – seek Nature's Rewards", and they argue that the sites, in this particular portion of the municipality, will negatively impact the quality of that brand.

This would bring then within the criteria of a potential "substantial and direct impact", and their application is therefore allowed.

The Board reminds this, and other intervenors, to be mindful of s. 30(2) of the Regulations:

> (2) The Review Board may exclude anything it considers to be hearsay, irrelevant, immaterial, or unduly repetitious from the evidence presented at an adjudicative hearing.

In the interests of efficiency, the Board reminds RQM and other 'spokesperson ' bodies, such as "Protect Liverpool Bay" to keep this instruction in mind in their evidence and presentation, including examination of witnesses for other parties,

DECISION:

The application is allowed.

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 **20th** day of **October 2023.**

Jean McKenna,
Chair, Nova Scotia Aquaculture Review Board

60 Research Drive, Bible Hill, NS, B6L 2R2 aquaculture.board@novascotia.ca 902-722-1426

DECISION ON INTERVENOR STATUS **NSARB 2023-001**
NSARB-2023-001-INT-009

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: Applications made by **KELLY COVE SALMON LTD.** for a **BOUNDARY AMENDMENT and TWO NEW MARINE FINFISH AQUACULTURE LICENSES and LEASES** for the cultivation of **ATLANTIC SALMON (*Salmo salar*) - AQ#1205x, AQ#1432, AQ#1433 in LIVERPOOL BAY, QUEENS COUNTY.**

BEFORE: Jean McKenna, Chair
Bruce Morrison, Board Member
Roger Percy, Board Member

An application has been made under section 23 of the Aquaculture Licence and Lease Regulations by **Catherine Collins and Douglas Frantz** 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:

Ms. Collins and Mr. Frantz are residents of Lunenburg Nova Scotia.

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.

In considering standing for intervenor groups, Leblanc, J. in **Specter v Nova Scotia (Fisheries and Aquaculture) 2011 NSC 333** commented**:**

> "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".
>
> [60] 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.
>
> [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".

As they must, Ms. Collins and Mr. Franz acknowledge that they do not live in the area. They believe "that the ocean belongs to all of us, not one particular private company...". They say that their argument to be included as intervenors is that "...as investigators, we can attest to the historic and worldwide business practices of this company, Cooke Aquaculture".

They describe themselves as "investigators". Section 8 of the application document asks an applicant to "describe your existing uses, if any, of the area surrounding the proposed lease site, and state whether the identified uses are recreational or commercial". They candidly respond "N/A".

While their views of Cooke Aquaculture are interesting, there is nothing in their status application to indicate that they would in any way be "substantially and directly" affected by this hearing. They are certainly open, however, to make a written or oral statement at the hearing, as set out in sections 20 and 32 of the Regulations, providing it is relevant,

DECISION:

The application 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 **20th** day of **October, 2023.**

Jean McKenna,
Chair, Nova Scotia Aquaculture Review Board

60 Research Drive, Bible Hill, NS, B6L 2R2 aquaculture.board@novascotia.ca 902-722-1426

DECISION ON INTERVENOR STATUS **NSARB 2023-001**
NSARB-2023-001-INT-010

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: Applications made by **KELLY COVE SALMON LTD.** for a **BOUNDARY AMENDMENT and TWO NEW MARINE FINFISH AQUACULTURE LICENSES and LEASES** for the cultivation of **ATLANTIC SALMON (*Salmo salar*) - AQ#1205x, AQ#1432, AQ#1433 in LIVERPOOL BAY, QUEENS COUNTY.**

BEFORE: Jean McKenna, Chair
Bruce Morrison, Board Member
Roger Percy, Board Member

An application has been made under section 23 of the Aquaculture Licence and Lease Regulations by **Protect of Liverpool Bay Association (PLBA)** for intervenor status at the adjudicative hearing referenced above.

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

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

REVIEW OF APPLICATION:

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

Protect Liverpool Bay Association (PLBA) has applied for Intervenor Status in the above noted matter. PLBA is described in submissions from its counsel, James Gunvaldsen Klaassen and Sarah McDonald, as a “grassroots community group”, which is incorporated as a non-profit society. It says that it has hundreds of members and supporters among the local community; residents

and business owners who are “concerned about the impact of marine based salmon farming on the region's economic prosperity, social well-being, and coastal environment”. It argues that its members' properties, livelihoods, and lifestyles may be severely affected by Kelly Cove Salmon’s proposed projects.

Founded in 2018, PLBA candidly states in its application that its mission is to “prevent the expansion of open net fish farms.” In support of its application, it relies upon the decision of Leblanc, J. in Specter v Nova Scotia (Fisheries and Aquaculture) 2011 NSC 333:

> “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”.
>
> [60] 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.
>
> [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."

As previously referenced, the Board must consider the factors enumerated in Section 3 of the regulations to determine whether an applicant is substantially and directly affected by the hearing. The factors are as follows:

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) sustainability of wild salmon;
h) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation;

No doubt, some of the members of the PLBA may have interests that are too remote to be considered as being "substantially and directly affected" by the projects, while others may in fact fall into that category. The members do not meet the test simply by being united in their opposition to marine based aquaculture. However, in the interests of efficiency, if a single body can present those interests that are relevant to the factors contained in s. 3 of the regulations, those concerns can be dealt with by a single entity, in this case the PLBA. Accordingly, the PLBA is granted intervenor status.

DECISION:

The application is granted.

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 **6th** day of **October 2023.**

Jean McKenna,
Chair, Nova Scotia Aquaculture Review Board

60 Research Drive, Bible Hill, NS, B6L 2R2 aquaculture.board@novascotia.ca 902-722-1426

DECISION ON INTERVENOR STATUS **NSARB 2023-001**
NSARB-2023-001-INT-011

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: Applications made by **KELLY COVE SALMON LTD.** for a **BOUNDARY AMENDMENT and TWO NEW MARINE FINFISH AQUACULTURE LICENSES and LEASES** for the cultivation of **ATLANTIC SALMON (*Salmo salar*) - AQ#1205x, AQ#1432, AQ#1433 in LIVERPOOL BAY, QUEENS COUNTY.**

BEFORE: Jean McKenna, Chair
Bruce Morrison, Board Member
Roger Percy, Board Member

An application has been made under section 23 of the Aquaculture Licence and Lease Regulations by **Leslie Clarke** 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:

Ms. Clarke is a resident of Eastern Shore Road, Nova Scotia. She has lived in the area for 48 years. She maintains that the existing 14 pens in AQ- 1205 have “substantially and directly” affected her She alleges that broken gear debris and dead fish litter the shore, fish who harbour disease infecting wild fish, parasitic lice from the fish polluting the waters, and even invading bathing suits. She says that waste generated by the fish cause pollution that the basin is too shallow to handle, and that the fish freeze and die. She says that the existing pens threaten food supply, and the local commercial fishery.

Her existing use is that she must look at the existing site, she swims, walks, and runs on the beach "Meadows Beach", and she has to listen to the noise of the automatic fish feeder. She questions the employment that may be created. Her property is not on the water, but she says that the existing site is visible from Eagle Point Head to Western Head Light. She is a member of the Protect Liverpool Bay Association.

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.

In considering standing for intervenor groups, Leblanc, J. in **Specter v Nova Scotia (Fisheries and Aquaculture) 2011 NSC 333** commented**:**

> "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".
>
> [60] 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.
>
> [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".

In the process of determining intervenor status in the context of the Aquaculture Licence and Lease Regulations, the Board does not weigh the merits of the allegations. We must simply ask ourselves, whether the interests of the applicant are "sufficiently delineated from the concerns of the general public. In the case of Ms. Clarke, they are not. While she is passionate about the cause (as is demonstrated by her assertions), that is not sufficient to grant intervenor status.

Intervenor status goes well beyond simply bringing those concerns to a Board hearing. It entitles the intervenor to full party status, with the ability to retain legal counsel, call witnesses, including experts, cross examine the witnesses for other parties, submit documents, and make full and final argument. However, it is not the only means for an individual to bring their own concerns to the attention of the Board.

The Regulations permit individuals to make written or oral submissions without the need to acquire full intervenor status. Providing they represent the individual's own knowledge and experience, (as opposed to, for example hearsay, or expert opinion evidence which they may not be qualified to express, or which does not comply with the regulations) they are admissible.

They must of course be relevant to the factors set out in in s. 3 of the regulations.

DECISION:

The application 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 **20th** day of **October, 2023.**

Jean McKenna,
Chair, Nova Scotia Aquaculture Review Board

60 Research Drive, Bible Hill, NS, B6L 2R2 aquaculture.board@novascotia.ca 902-722-1426

DECISION ON INTERVENOR STATUS **NSARB 2023-001**
NSARB-2023-001-INT-012

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: Applications made by **KELLY COVE SALMON LTD.** for a **BOUNDARY AMENDMENT and TWO NEW MARINE FINFISH AQUACULTURE LICENSES and LEASES** for the cultivation of **ATLANTIC SALMON (*Salmo salar*) - AQ#1205x, AQ#1432, AQ#1433 in LIVERPOOL BAY, QUEENS COUNTY.**

BEFORE: Jean McKenna, Chair
Bruce Morrison, Board Member
Roger Percy, Board Member

An application has been made under section 23 of the Aquaculture Licence and Lease Regulations by the **South Queens Chamber of Commerce (SQCC)** for intervenor status at the adjudicative hearing referenced above.

REVIEW OF APPLICATION:

The SQCC mentions that it represents 87 small businesses and individuals in the Liverpool Bay Area. Member businesses include Business, Financial, Family and Professional Services, Education, Real Estate, Legal, Hotel & Tourism, Entertainment and Music, Restaurant & Bars, Sports & Recreation, Retail, Construction, Beauty, Health & Wellness, Government and Not for Profit Organizations, Transportation, Publishing, Agriculture & Environmental Services, and Community Supporters.

The SQCC asserts specific concerns of four of the 87 members:

1. Liverpool Adventure Outfitters, primarily focused on kayak tourism in Liverpool Bay
2. Bear Cove Resources, in East Berlin (seaweed harvesters and processers)
3. Rumco Developments, who are proposing a real estate development “The Point on the Mersey” (location unspecified), and
4. Covey Island Boatworks, in Point Mersey Commercial Park.

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.

In considering standing for intervenor groups, Leblanc, J. in **Specter v Nova Scotia (Fisheries and Aquaculture) 2011 NSC 333** commented**:**

> "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".
>
> [60] 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.
>
> [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".

The Board must consider the factors enumerated in Section 3 of the regulations to determine whether an applicant is substantially and directly affected by the hearing. The factors are as follows:

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) sustainability of wild salmon;
h) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation;

The Chamber specifically speaks to the concerns of four of its 87 members. While the four may or may not experience a "substantial and direct" impact as the result of the application, the same cannot be said of the SQCC as a whole. While its members have voted to oppose the application, that opposition does not bring the organization itself into intervenor status.

It may be that some members of the group, including the four named entities, will choose to make a written or oral statement, to express their particular concerns.

DECISION:

The application 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 **17th** day of **October 2023.**

Jean McKenna,
Chair, Nova Scotia Aquaculture Review Board

60 Research Drive, Bible Hill, NS, B6L 2R2 aquaculture.board@novascotia.ca 902-722-1426

DECISION ON INTERVENOR STATUS **NSARB 2023-001**
NSARB-2023-001-INT-013

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: Applications made by **KELLY COVE SALMON LTD.** for a **BOUNDARY AMENDMENT and TWO NEW MARINE FINFISH AQUACULTURE LICENSES and LEASES** for the cultivation of **ATLANTIC SALMON (*Salmo salar*) - AQ#1205x, AQ#1432, AQ#1433 in LIVERPOOL BAY, QUEENS COUNTY.**

BEFORE: Jean McKenna, Chair
Bruce Morrison, Board Member
Roger Percy, Board Member

An application has been made under section 23 of the Aquaculture Licence and Lease Regulations by **Emily Ferguson** for intervenor status at the adjudicative hearing referenced above. Ms. Ferguson describes her use of the Bay as "recreational – time at the beach, swimming, fishing".

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:

Ms. Ferguson is a resident of Brooklyn, Nova Scotia. While Ms. Ferguson is requesting intervenor status, the gist of her application is a wish to better understand the proposal. She very commendably is open minded and seeking clear information.

Intervenor status means that an individual or group actually becomes a party, and as such, is able to call witnesses (including qualified experts), introduce exhibits, cross examine witnesses called by another party, and make closing argument to support their position.

Ms. Ferguson's approach can be better served, through contacting the Board Clerk, who can assist her in navigating the voluminous documents on the Aquaculture Review Board website. We will not grant her intervenor status, because in reality, that is not what she seeks.

As noted, her interest in the process is highly commendable, as is her effort to become part of a Community Liaison committee. It is also open to her to make a written or oral submission at the hearing.

DECISION:

The application 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 **20th** day of **October, 2023.**

Jean McKenna,
Chair, Nova Scotia Aquaculture Review Board

60 Research Drive, Bible Hill, NS, B6L 2R2 aquaculture.board@novascotia.ca 902-722-1426

DECISION ON INTERVENOR STATUS **NSARB 2023-001**
NSARB-2023-001-INT-015

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: Applications made by **KELLY COVE SALMON LTD.** for a **BOUNDARY AMENDMENT and TWO NEW MARINE FINFISH AQUACULTURE LICENSES and LEASES** for the cultivation of **ATLANTIC SALMON (*Salmo salar*) - AQ#1205x, AQ#1432, AQ#1433 in LIVERPOOL BAY, QUEENS COUNTY.**

BEFORE: Jean McKenna, Chair
Bruce Morrison, Board Member
Roger Percy, Board Member

An application has been made under section 23 of the Aquaculture Licence and Lease Regulations by the **Ecology Action Centre (EAC)** for intervenor status at the adjudicative hearing referenced above.

REVIEW OF APPLICATION:

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.

The Board must consider the factors enumerated in Section 3 of the regulations to determine whether an applicant is substantially and directly affected by the hearing. The factors are as follows:

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) sustainability of wild salmon;
h) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation;

The EAC argues that it is "substantially and directly affected" by the hearing. They rely on the decision of MacDonald, A.C.J. in **Brighton v Nova Scotia (Agriculture and Fisheries) (2002NSSC 160).** Justice MacDonald considered whether the appellants met the threshold of "aggrieved persons" under the FCRA.

> 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.

EAC also rely on the decision of Leblanc, J. in on **Specter v. Nova Scotia (Fisheries and Aquaculture 2011 NSSC 333).**

They argue:

> 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.

In considering standing for intervenor groups, Leblanc, J. in **Specter v Nova Scotia (Fisheries and Aquaculture) 2011 NSC 333** commented**:**

> "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".

[60] 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.

[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".

Both **Brighton** and **Specter** were decided prior to the unofficial moratorium on new aquaculture in Nova Scotia, and prior to the Doelle – Leahey report (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)** . It was in the creation of that report that the EAC had an advocacy role Regulatory and legislative changes were made since that time, that have generated the present process. Furthermore, **Brighton** and **Specter** were both considered in the previous application of EAC for intervenor status.

EAC acknowledges the Board's previous decision on intervenor status.

> "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."

In the Kelly Cove decision, (NSARB 2021-001), EAC's application was rejected. The rejection was not based on proximity alone.

> "The EAC has not identified any "individuals that live in proximity to AQ#1039", nor have they quantified "proximity" or "near the lease site". While such individuals may, or may not, on their own, potentially qualify for intervenor status, their membership in EAC does not qualify EAC itself to become an intervenor. Nor does EAC's past and ongoing advocacy create an interest in the decision in relation to AQ#1039. The Review Board's mandate is to consider the application of the eight factors set out in the Aquaculture Licence and Lease Regulations, s. 3, as they apply to this site. **It is not a forum in which to debate the merits of aquaculture in general."**

DECISION:

The application 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 **20th** day of **October 2023.**

Jean McKenna,
Chair, Nova Scotia Aquaculture Review Board