

Mr. Michael J. Crosbie, QC
McInnes Cooper
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10 Fort William Pl
PO Box 5939
St. John's NL A1C 5X4

Dear Mr. Crosbie:

Re: Appeal of Placentia Bay Atlantic Salmon Aquaculture Project by Grieg NL Nurseries and Grieg NL Seafarms Ltd release from further requirements under the *Environmental Protection Act*

I acknowledge the letter of appeal dated August 31, 2016 wherein the Atlantic Salmon Federation (ASF) appealed my decision to release the Placentia Bay Atlantic Salmon Aquaculture Project (the Project). I understand your letter of appeal was submitted on behalf of the ASF in accordance with Section 107 of the *Environmental Protection Act*. The protection of the environment depends on organizations like the ASF who have demonstrated in this appeal its commitment to environmental issues.

The submission made by the ASF was considered carefully. The results of the review of the appeal document are outlined below. Before responding to the specific arguments raised in the appeal I must first respond to two important context setting aspects of the appeal letter – the first regarding the *Environmental Protection Act* and the second respecting decision options available under the Act.

The Environmental Protection Act

The purpose of Part X of the Act is described in s. 46:

46. The purpose of this Part is to

- (a) protect the environment and quality of life of the people of the province; and
- (b) facilitate the wise management of the natural resources of the province,

through the institution of environmental assessment procedures before and after the commencement of an undertaking that may be potentially damaging to the environment.
[emphasis added]

The environmental assessment procedures employed by the Department of Environment and Climate Change (ECC) are intended to fulfill this purpose and their application is clearly evident in the significant review undertaken related to this project.

The following is a summary of the environmental assessment procedures which were carried out:

- The land-based Recirculation Aquaculture System (RAS) Hatchery for Atlantic salmon in the Marystown Marine Industrial Park was registered on October 1, 2015. The project was halted until a description of the entire project, including the salmon hatchery, the sea cage components and triploid fish was registered as a single undertaking (announced November 20, 2016). The original project description was subsequently withdrawn (announced February 19, 2016).
- The complete project was registered on February 19, 2016 including the construction and operation of a land-based Recirculation Aquaculture System (RAS) Hatchery for Atlantic Salmon in the Marystown Marine Industrial Park and 11 marine-based farms in Placentia Bay. The deadline for public comments was March 26, 2016; and the minister's decision was due by April 5, 2016.
- Given high public interest and requests for additional time to comment, the department and the proponent agreed to extend the deadline for public comments to April 16, 2016; and the minister's decision to April 26, 2016. The review of the undertaking was further extended on May 19, 2016 to enable more time for agency response and needed clarification from key agencies, including the Department of Fisheries and Oceans (DFO). No date was set at that time, as ECC did not wish to constrain time available for thorough consideration by those agencies, and thorough review and assessment of their responses. A decision deadline was subsequently communicated to the public and was met.
- More than 200 submissions were received from the public (which included submissions from a number of groups and associations), and comments were received from 25 reviewing agencies, including Department of Fisheries and Oceans Canada (DFO), then Department of Fisheries and Aquaculture (currently FFA), other divisions within ECC including the Wildlife Division and Pollution Prevention Division. Follow-up dialogue occurred with many of the reviewing agencies, including multiple meetings with DFO and FFA as we sought to ensure clarity on various aspects of their review of the project registration.

Decision Options

The Appellant notes three decision options that are available to the Minister

- (a) An environmental preview report is required;
- (b) An environmental impact statement is required; or
- (c) The undertaking may be released.

In addition to the above, there is a provision (section 50) by which a proposal can be rejected altogether if the undertaking is contrary to law or to a policy that the Lieutenant-Governor in Council has declared to be the policy of the government of the province. With respect to section 50, the Minister has sole discretion to determine that an undertaking is contrary to law or policy. All options were examined, based on the comprehensive assessment process described above, in arriving at the decision taken to release the project with conditions.

Appeal Argument

The Appeal presents several arguments, through which the key scientific concerns are presented as:

- Use of a non-native strain
- Potential for escapes
- Interaction with wild salmon population
- Presence of a threatened nature population; and
- Sea lice concerns

As noted previously, following review of public submissions, the registration document, numerous research and policy documents, agency submissions and subsequent clarification requests (written and in person), the resultant analysis was examined in light of the four options available regarding the form of decision. The thoroughness of the assessment, full consideration of the concerns raised (which align with those referenced in the appeal document) and consideration of the findings in light of the four options available arrived at the decision to release with conditions.

Public concern was considered in the assessment process and that concern was clearly acknowledged.

The main concerns identified during the assessment of the undertaking focused around:

- Status of the wild salmon population in Placentia Bay and the South Coast,
- Escapes and their direct and indirect impacts to wild salmon,
- Disease and disease transfer,
- Parasites and parasite transfer,
- Waste products (feed, fecal matter, drifting pesticides (e.g. Salmosan)
- Site Locations, and
- Contingency Plan if the project does not work.

The department carefully considered the concerns and evidence presented during the review process regarding these matters. The Department is certainly aware that wild salmon on the south coast of the Province have been determined to be threatened. The health of our wild salmon was an important consideration throughout our review. In that regard, the key agencies informing our analysis were DFO and FFA. As I am sure you are aware, DFO is the lead federal regulatory authority for aquaculture. Provincially, FFA is responsible for the administration of the *Aquaculture Act* and associated policies and procedures, including the issuance of an aquaculture license, which is informed by a provincial and federal referral process.

As such, both DFO and FFA played an integral part in the assessment of this project. This was the case because the assessment clearly indicated that the greatest concerns expressed by the public related to the potential for escapes and the impact those escapes may have on the wild salmon population. DFO engaged its Introductions and Transfers Committee (ITC) in providing their comments on this project. The ITC is a committee comprised of provincial (including FFA) and federal aquaculture specialists, scientists, policy experts and other disciplines as required. The ITC conducts a risk assessment based on available science and policy and makes a recommendation whether to permit the transfer of non-native species into Newfoundland and Labrador waters to the Regional Director General (RDG) who advises up to the federal Minister of Fisheries and Oceans. The federal minister makes the final decision.

DFO also engaged the Canadian Science Advisory Secretariat (CSAS). CSAS coordinates the production of peer-reviewed science advice for DFO and communications of the results of the scientific review and advisory processes. The ITC recommendation was then peer-reviewed by the Canadian Science Advisory Secretariat (CSAS) with the final report published as the *Proposed Use of European-Strain Triploid Atlantic Salmon in Marine Cage Aquaculture in Placentia Bay, NL* available at http://www.dfo-mpo.gc.ca/csas-sccs/Publications/ScRS/2016/2016_034-eng.pdf.

Not only was the CSAS report considered by DFO in the discharge of their responsibilities and in the provision of their comments to the province on this project, but it was also reviewed in entirety by ECC as part of our overall project assessment. This is evident in two of the conditions applied to the release:

- o Only triploid Atlantic salmon are permitted to be used.
- o The Department requires an annual progress report regarding the phased approach from using mixed sex triploids to the use of all female triploids.

The latter condition was informed by substantive discussions with DFO regarding their jurisdiction over the transfer of non-native species into NL waters and their stated intent to require the proponent to move to all female triploids as part of the federal permitting process. My condition ensures that I am aware of the progress being made in that regard.

23(1) b of the Regulations grants the Minister the discretion to release an undertaking where “*the environmental effects of the undertaking will be mitigated under an Act of the province or of Canada*”. This was a critical element in the decision to release the project. In that regard, the ASF appeal suggests that the undertaking should not have been released because the NL Aquaculture Act and regulations and the *Canadian Fisheries Act* and Aquaculture Activities Regulations “do not contain sufficient provisions to require the Ministers of DFO/DFA to collect further information, develop mitigation measures...”. The strength of the regulatory and permitting regime of DFO and FFA was thoroughly explored during the assessment of the project. Both DFO and FFA provided substantive information during the assessment regarding the extensive nature of the further permitting and licensing requirement to which this project will be subjected after release of the project from the environmental assessment process.

The appeal notes, in reference to the federal and provincial legislation (DFO and FFA), that “These acts and regulations have not been sufficient to prevent previous net-pen aquaculture

developments from significantly impacting wild salmon populations in NL“. This fails to recognize two important differences regarding the project namely 1) the cage technology to be utilized and 2) the use of triploid salmon.

The appeal notes a recent decision regarding three soft-shell clam farms for which an EIS was ordered, implying that to do so for those projects and not apply the same requirement to this project was inconsistent. Every project registered is unique and must be considered on its own merits. As is evident in the decision letter regarding those projects, (see [http://www.env.gov.nl.ca/env/env_assessment/projects/Y2016/1830/1830%20_min_let_eis_req%20\(4\).pdf](http://www.env.gov.nl.ca/env/env_assessment/projects/Y2016/1830/1830%20_min_let_eis_req%20(4).pdf)) a comprehensive description of the project was not provided, and many aspects identified in the review of the registration related to areas that are not captured under another Act of the province or of Canada. As such, the only opportunity for additional public comment or additional review to determine if the environmental effects were acceptable or could be reasonably mitigated, was via an EIS. This is not the same circumstances as the aquaculture project in question, as clearly explained above.

The principles of sustainable development, the precautionary principle, and stakeholder involvement were applied in the assessment process. This is evident in the conditions applied to the release by Environment and Climate Change, and these principles will continue to apply through the application of DFO and FFA’s legislative and permitting processes.

As a final point, the environmental legislation of the Province grants the responsible Minister a considerable amount of authority and discretion. There are many examples within the Act where such discretion is clearly evident. This is especially true for environmental assessments. For example, the Minister has the sole discretion to determine whether an activity is an undertaking that may have a significant effect on the environment. Section 2 (mm) states that an:

“undertaking” includes an enterprise, activity, project, structure, work or proposal and a modification, abandonment, demolition, decommissioning, rehabilitation and an extension of them that may, in the opinion of the minister, have a significant environmental effect.”
[emphasis added]


Throughout the Act and the Regulations, language such as “in the opinion of the Minister” or “as determined by the Minister” is used. That language signifies that the minister has discretion over a certain area of activity. This is important to consider when looking at the language pertaining to environmental assessment. The legislature has granted the Minister the discretion or authority to release an undertaking by use of the language “determines” in s. 25 of the Regulations. The question is whether the Minister is of the opinion that there are environmental effects of significant public concern. This context is often overlooked in the heat of debate. An organization or individual may have come to a different conclusion regarding the release of an undertaking than the Minister. However, the difference of opinion does not mean that the Minister has acted outside his authority or discretion.

The province ensures that projects, which should proceed are released in a manner in which the risks to the environment are satisfactorily addressed through appropriate terms and consideration attached to permits and authorizations issued by the responsible federal and provincial agencies.

The Department is satisfied that the environmental assessment for the Placentia Bay Atlantic Salmon Aquaculture project, carried out in collaboration with numerous departments and

agencies, was carried out fully and diligently and considered all the risks that the undertaking raised. It is my conclusion from this review that the decision to release the Project was consistent with the requirements of the *Environmental Protection Act* and with my responsibilities as enunciated in the Act. My original decision is upheld.

Sincerely,



PERRY TRIMPER, MHA
District of Lake Melville
Minister

cc: Honourable Dwight Ball, Premier
Honourable Dominic LeBlanc, Minister of Fisheries and Oceans Canada
Honourable Steve Crocker, Minister of Fisheries, Forestry and Agrifoods