

September 19, 2016

Department of Environment and Climate Change
Fourth Floor, West Block, Confederation Building
P.O. Box # 700, St. John's, NL
A1B 4J6

Attention: Honourable Perry Trimper
Minister, Environment and Climate Change

Dear Minister Trimper:

Re: Decision – Project Reg. # 1834
Placentia Bay Aquaculture Project
Appeal – s. 107 Environmental Protection Act

The Salmonid Council of Newfoundland and Labrador (SCNL), further to s.107 of the Environmental Protection Act (the “Act”), appeals the Minister’s decision (the “Decision”) to release the above-captioned project (the “Project”) without first requiring an environmental impact statement further to Part X of the Act. The Appeal is based on the following:

Grounds of Appeal:

- (I) Section 51 of the Act requires “...*criteria prescribed by regulation...*” to be considered in the decision to release the Project from any further review under the Act. The screening criteria to be considered is as set forth at s. 23 of the Environmental Assessment Regulations, 2003 (the “Regulations”).

Section 23 (1) of the Regulations contemplates release without further review under Part X of the Act only where “...*there are no environmental or public concerns...*” and “...*the environmental effects of the undertaking will be mitigated under the Act of the Province or of Canada.*”

There is no question that there is significant public concern about the potential environmental effects of the Project. The Minister, at a recent meeting with SCNL officials concerned about the Decision (the “Meeting”), advised that more than 200 separate written submissions from concerned individuals and groups had been received. This unprecedented response reflects the broad cross-section of NL’s population that may be negatively affected by the environmental fallout of the Project. This includes wild fish harvesters, production workers, recreational salmon anglers, outfitters and others in the tourism industry, first nations groups and environmentalists.

Similarly, when the criteria set forth in ss. 23 (1) (c) through (g) are considered in the context of the sheer magnitude of the Project; the environmentally sensitive location of the same; the proximity to other important and sensitive aquatic resources; the catastrophic historical

environmental effects of similar undertakings in other jurisdictions; and the untested mitigation proposals, it cannot reasonably be concluded that there are no environmental concerns associated with the Project.

Further, without a thorough environmental impact assessment all the potential impacts of the Project will not even be identified, to say nothing of mitigated. Nor will proposed mitigation efforts, such as they are, be tested and evaluated. It cannot, therefore, reasonably be said that the effects of the Project will be mitigated.

Section 25 (1) of the Regulations is noteworthy in that it serves to underscore the necessity of the conditions precedent as established under s. 23 (1) (a) and (b). Specifically s. 25 (1) provides that where the Minister determines that there “... (a) *may be significant negative environmental effects; or (b) is significant public concern, **the minister shall require an environmental impact statement.***”

In short, the application of the mandatory screening criteria set forth in ss. 23 (1) (c) through (h) and ss. 23 (2) (a) through (e) cannot reasonably lead to a conclusion that either of the s. 23 (1) (a) or (b) statutory conditions precedent to the Decision have been met. The Decision, therefore, does not comply with the Act. Further, s. 25 (1) requires that the Minister, should he wish to continue consideration of the Project, must require an environmental impact statement.

- (II) At the Meeting the Minister also noted that the Project came within the ambit of the Act only because of the “on land” component of the same. The position as regards the “in ocean” components of the Project was that other agencies and/or authorities would address potential issues through various licensing, permit and/or approval processes. This position appears to have contributed to the Decision.

To the extent that this may have contributed to the Decision it is submitted that the position is not consistent with the regulatory regime established under the Act. Specifically, section 29 of the Regulations requires registration of the whole undertaking of a project such as the one under consideration here. There is nothing in the section, the remaining Regulations, or the Act that contemplates the separation of the undertaking into various components and delegating the Minister’s gatekeeper duties under the Act to other agencies/authorities.

Part X of the Act establishes a powerful environmental review threshold process for undertakings of this nature. The Act also, quite clearly, establishes the Minister as the gatekeeper for this process.

Section 68 of the Act requires the release of an undertaking prior to the issuing licenses, permits, or approvals. Clearly, subsequent licensing, permit and/or approvals processes that may be required by other authorities/agencies are not part of the statutory threshold process. They are secondary in nature. To that end these warrant little, if any, consideration when the Minister undertakes the gatekeeper duties mandated by the Act.

In short, all aspects of the Project must be considered in the context of mandatory screening requirements by the Minister in undertaking his gatekeeper duties as mandated under Part X of the Act. Further, as previously noted, release of the Project without further environmental review can only occur where conditions precedent to the same exist, which is not the case here.

Remedy Sought:

Consideration of the Project under Part X of the Act leaves the Minister with two options. First, the Minister may outright reject the Project as registered. This is the option that SCNL would prefer. SCNL also recognizes that the Minister, should he wish to continue consideration of the Project, can do so by requiring an environmental impact statement.

Yours in Conservation,

Donald Hutchens, P.Eng. (retired)
President - SCNL