

OCT 19 2018

File # 2.1129.0045  
Reg. #1975

Mr. Bill Bryden  
P.O. Box 63  
Lumsden, NL  
A0G 3E0

Dear Mr. Bryden:

**Re: Indian Head Hatchery Expansion Project Section 107 *Environmental Protection Act* Appeal**

Thank you for your Notice of Appeal undated and received on September 20, 2018.

**Background**

On July 17, 2018, Northern Harvest Smolt Ltd (NHS) registered an undertaking for the expansion and upgrading of the Indian Head Hatchery owned by NHS at Stephenville, NL. According to the registration document, the improvements will provide more smolt at a higher quality in order to fully utilize the existing licensed NHS marine sea farms.

As per the routine process, the registration document was circulated to all provincial and federal government departments/agencies on the environmental assessment screening committee for their review. No department/agency thought that further assessment through an environmental preview report (EPR) or an environmental impact statement (EIS) was necessary. At the same time, the public was provided with a 35-day review period. The comments received from both government experts and the public were considered, including your own submissions dated July 24, 2018 and August 21, 2018.

As a result of this review, on September 4, 2018 the Indian Head Hatchery Expansion Project was released subject to conditions, the details of which can be found at: [https://www.mae.gov.nl.ca/env\\_assessment/projects/Y2018/1975/index.html](https://www.mae.gov.nl.ca/env_assessment/projects/Y2018/1975/index.html).

**Appeal**

Section 107 of the *Environmental Protection Act* provides that a person who is aggrieved by a decision made under the *Act* may appeal that decision in writing to the Minister within 60 days of receipt of that decision.

On September 20, 2018, the Department of Municipal Affairs and Environment (this Department) received your appeal pursuant to section 107. You wrote, in part:

*I am writing to ask for an appeal of the decision to release the EA Reg. 1975 - Indian Head Hatchery and associated open net pens from a complete project description as per required under the environmental assessment act. I am also appealing for the Minister to require an EIS. Summarizing your appeal you wrote: I ask the government to review this decision to not require the inclusion of open net pens as part of the Marine Harvest expansion plans in Stephenville NL (Reg #1975) and require all components of the undertaking to be thoroughly registered and described including open net pens using these fish that require NL government permits and management. I also ask the Minister to require an EIS.*

### **Project Splitting**

The undertaking as registered proposes to expand and upgrade the existing Indian Head Hatchery. While this expansion and upgrading will provide more smolt to fully utilize the existing licensed NHS marine sea farms, the focus of the undertaking is the existing physical structure of the hatchery.

As per section 29 of the *Environmental Assessment Regulations*, an undertaking involving marine sea farms is required to be registered only where there is the construction of shore-based facilities, other than wharves and storage buildings. In this Province, marine sea farms and hatcheries have developed both independently and with each other. For example, at Hopeall Fish Farm Hatchery, the hatchery serves as a supplier to other companies' marine sea farm and therefore there is no marine sea farm connected to the project. Similarly, at the hatchery facility which is the subject of this undertaking in Stephenville and at the St. Alban's Salmon Hatchery, marine sea farms utilizing the smolt grown at these hatcheries were operating prior to the hatchery construction.

Aquaculture activities in Newfoundland and Labrador are subject to federal regulation under the mandates of Fisheries and Oceans Canada, Transport Canada, Environment and Climate Change Canada, Health Canada, and the Canadian Food Inspection Agency. For example, the federal *Aquaculture Activities Regulations* provide conditions under which aquaculture operators can install, operate, maintain, and remove an aquaculture facility, as well as how they take measures to treat their fish for disease and parasites, and deposit organic matter.

The aquaculture industry is also subject to provincial legislation under the mandates of the Department of Fisheries and Land Resources and this Department. The 33 NHS marine sea farm sites, intended to be stocked with fish coming from the hatchery expansion, are existing licensed sites that went through the licensing process, which included a provincial and federal review process and an environment review and public consultation prior to license.

The NHS Indian Head Hatchery was registered as an undertaking for environmental assessment with this Department in November 2010 and released from review with

conditions in January 2011. The facility was constructed in 2011 and began producing smolt in 2012 exclusively for the NHS marine sea farms. The facility operates under an aquaculture license AQ1087 issued by the Department of Fisheries and Land Resources.

Furthermore, NHS advises that while they do intend to increase production, that the increase will occur on fully licensed sites that have not been stocked to their full licensed capacity and that they have not submitted any plans to expand site perimeters or capacity of any of its sites. Therefore, the hatchery expansion does not create any increase in the marine environmental footprint that has not already been evaluated and approved.

The Department of Fisheries and Land Resources advise that it is standard for hatcheries to produce less than the maximum production capacity in response to annual demand. A review by the Department of Fisheries and Land Resources demonstrates that without the expansion, NHS will be required to continue sourcing smolt from out-of-province hatcheries for all year classes, which is not ideal from a biosecurity, economic, and performance perspective.

Pursuant to the *Environmental Protection Act* "environmental assessment" means a process by which the environmental effect of an undertaking is predicted and evaluated before the undertaking has begun or occurred. The marine sea farm sites associated with this undertaking have been evaluated in accordance with the established licensing process and existed prior to the proposed expansion of the hatchery. No modifications to the existing license marine sea farms are required. As a result, section 29 is inapplicable and the marine sea farm component of the undertaking will not require registration under the *Environmental Protection Act*.

You have quoted a number of sections of the decision of the Newfoundland and Labrador Supreme Court - Trial Division in its July 20, 2017 decision in *Atlantic Salmon Federation (Canada) v Newfoundland (Environment and Climate Change)*. That decision arose out of an application which challenged the Minister's decision to register the Placentia Bay Atlantic Salmon Aquaculture Project [Grieg] and the decision to release that project from further environmental assessment with conditions. It must be considered however, that in that case the court was dealing with a project distinguishable from this undertaking. The Grieg project required new cage sites in order to support the hatchery production and this involved the use of the Aqualine Midgard cage system and European-strain triploid Atlantic salmon; both being new to the Newfoundland and Labrador salmon aquaculture industry. In addition, the Grieg project proposes to locate the cages within Placentia Bay, the first time that any salmon aquaculture facilities have been constructed in Placentia Bay. Unlike the Grieg project, the Indian Head Hatchery is an expansion, and not a new development and the sea farms identified in the registration are licensed to receive the strain of fish and the approximate number of fish the hatchery expansion will be able to supply.

### **Requirement for an Environmental Impact Statement (EIS)**

The undertaking was examined as per section 50(1) of the *Environmental Protection Act* and a determination was made under section 51(1) to release the undertaking. In releasing the undertaking because the environmental effects of the undertaking will be mitigated under an act of the province or Canada, section 23(1) (c)-(h) and section 23(2) (a)-(e) of the *Environmental Assessment Regulations* were considered. Specifically this Department considered issues of concern relating to the environmental effects of the undertaking, including the management of hatchery waste, management and disposal of solid waste, potential contamination of groundwater and soil by hydrocarbons and metals, as well as the need for water quality monitoring, hydrogeologic assessment and real time water quality monitoring, treating and transferring diseases, and use of feed with chemicals.

This Department also considered, as required, whether or not licences, certificates, permits, approvals, or other required documents of authorization will mitigate these environmental effects. In doing so, it was identified that:

- A waste management plan, which includes solid waste disposal, will require approval by the Pollution Prevention Division. Waste management must also meet requirements of an aquaculture licence application.
- Effluent leaving the hatchery must conform to the *Environmental Control Water and Sewage Regulations, 2003* and any analyses completed for the purposes of compliance determination will be subject to the *Accredited Laboratory Policy*.
- Pursuant to the *Water Resources Act, 2002*, permits will be required for drilled wells, work in any body of water. A water use licence will also be necessary and water quality monitoring will inform any mitigations for contamination remediation.
- The undertaking is required to adhere to the *Aquaculture Activities Regulations*.

Although the proponent provided water quality and quantity monitoring information, the undertaking was found to be lacking in the required details for hydrogeological assessment and real-time water quality monitoring. Provision of this information requires continued involvement and consultation with the Water Resources Management Division. As such, additional information will be obtained through conditions of release as per the Minister's discretion under section 56(c) of the *Environmental Protection Act*.

Section 25 of the *Environmental Assessment Regulations* sets the criteria that must be considered for the requirement of an Environmental Impact Statement (EIS), including where there "*may be significant negative environmental effects*" or there is "*significant public concern*". As described above, there was no significant negative environmental effects of the hatchery operation identified. Those environmental effects that were identified will be addressed through existing regulations and conditions of release. Furthermore, there was no significant public concern raised during the environmental assessment of the hatchery or during the public review of your appeal.

Twenty-three public comments on the undertaking were received during the registration phase of the environmental assessment. Approximately 75% of the 23 comments submitted were in support of the undertaking and support was indicated across a variety of categories, including the general public, industry, and municipal governance. You indicate that there are significant concerns from a coalition of environmental non-governmental organizations but responses were received from only one self-identified non-governmental conservation group. As your submission did not indicate any affiliation, it was categorized as general public. Regardless of categorization, points raised in each submission with respect to the expansion and operation of the hatchery were acknowledged, investigated, and contributed to the identification and mitigation of environmental effects.

This Department received ten public submissions on your appeal document, all of which were in support of my September 4, 2018 decision to release the undertaking.

**Decision**

For all of these reasons, and after fully considering all your arguments and comments, pursuant to section 107 of the *Environmental Protection Act*, I am dismissing your appeal.

If you have any questions concerning this matter, please contact Dr. Susan Squires, Director, Environmental Assessment Division, at (709) 729-0673 or [susansquires@gov.nl.ca](mailto:susansquires@gov.nl.ca).

Sincerely,

A handwritten signature in blue ink, appearing to read "Andrew Parsons", is written over the typed name and title.

**ANDREW PARSONS, QC**  
Minister of Municipal Affairs and Environment