

APPENDIX

This schedule accompanies – and is incorporated by reference in – a letter of objection from the Friends of Port Mouton Bay over the signature of its authorized officers/directors and written in support of this application.

REMEDY SOUGHT

The setting aside of the Administrator's decision on the grounds that he failed to comply with the mandates of his enabling legislation, rendering his decision null and void and without jurisdiction; or (in the alternative only) for the Minister to set aside the decision and restart the process.

REASONS

To determine whether the Administrator's decision was in compliance with his duties under the regulations of the Act, one must go to the Administrator's mandate as prescribed by the relevant regulations.

The following reference is to s.3 of the Regulations:

“Factors to be considered in decisions related to marine aquaculture sites

3. In making decisions related to marine aquaculture sites, the... Administrator **must take all** of the following factors into consideration:” (*emphasis is that of the author of this submission*)

- (a) **the optimum use of marine resources;**

SUBMISSION:

Is the continuation of open-net fin-fish farming the “optimum use” of the marine resource encompassed by the leased area?

The answer to that question must be derived from the evidence before the Administrator. What was the evidence?

Without the sole exception of the bare statement of the Applicant, every one of the 15 representations concludes that ‘fish-farm’ use was not optimum.

While one might dismiss ever one of those 15 opinions seriatim as being the opinions of NIMBYs, one could do so by ignoring the substantive evidence obtained from:

1. a reputable, published, peer-reviewed scientist who presents unpaid/volunteered direct site-experience and study results (and who

works from the same institution as the individual cited and funded by the Applicant);

2. the physical study, observation and experience of fishers and the communities surrounding the Bay of the detriment of fish-farm location at the site previously;
3. the public, debated, unanimous resolutions of the full Council of the Regional Municipality of Queens
4. the representations of a major investor in the local tourism sector in the interpretation of its customer base.
5. The accumulation of the scientific, pictorial and anecdotal studies, resident on the website of the Friends of Port mouton Bay to which specific reference was made.

Included by the presenters as examples of “optimum use” of the marine resource encompassed by the leased area were uses that were not only pre-existing and mutually compatible - and therefore to be valued all the more for their complimentary cumulative impacts:

- a. clean waters;
- b. undisturbed (by noise, debris, nitrogen load, artificial additives, algae, flotsam) waters;
- c. unimpaired lobster habitat and nursery area (free from the impacts described by fishers direct experience and by the published studies referenced or included by presenters’ site-specific submissions);
- d. unimpaired and unimpeded eco-tourism for sea-going yachts anchoring in the lee of the island;
- e. kayak and boat tours
- f. tourist operations and clean ecology, both physical and visual;
- g. the income and spin-off benefits of employment and reputation of the region generated by the foregoing compared to that ‘claimed’ (and never established – but even if it were, it would pale in comparison) by the Applicant;
- h. certainty of local lobster buyers/exporters that their product was coming from ‘certified’ waters;
- i. the declared will of the residents of Queens County and the communities surrounding the Bay, including Port Mouton itself, by successive resolutions and representations of successive Municipal Councils of Queens County.

It is submitted that the Administrator failed to consider the submissions or, alternatively, failed to correctly identify the ‘optimum use’ in accordance with the duty mandated by this section 3(a).

- (b) the contribution of the proposed operation to community and Provincial economic development;

SUBMISSION:

There is a total absence of evidence before the Administrator of such 'contributions' and a known, document history of failed promises of such.

It is submitted that the Administrator failed to consider or acknowledge the complete absence of any evidence of contribution to community and Provincial economic development by this proposed lease, contrary to the duty mandated by this section 3(b).

- (c) fishery activities in the public waters surrounding the proposed aquacultural operation;

SUBMISSION

The sole evidence before the Administrator on this point establishes negative impact on the lobster habitat and fishery respectively both near-field and inside the Bay.

It is submitted that the Administrator failed to consider the evidence and submissions related to the fishery activities in the public waters surrounding the proposed aquacultural operation, contrary to the duty to do so mandated by this section 3(c).

- (d) the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation;

SUBMISSION

The sole evidence before the Administrator on this point establishes negative impact on the nitrogen load, the fatal presence of copper residue in the micro-layer causing death to lobster larvae, the presence of fecal mat depositions, the loss of eel-grass, etc. in the public waters surrounding the proposed aquacultural operation as disclosed by the studied accumulated history of the operation submitted by professionals in writing and by reference to peer-reviewed materials.

SUBMISSION

It is submitted that the Administrator failed to consider the evidence and submissions related to the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation, contrary to the duty to do so stated in this section 3(d).

- (e) the other users of the public waters surrounding the proposed aquacultural operation;

SUBMISSION

As detailed above, it is submitted that the Administrator failed to consider the evidence and submissions related to the other users of the public waters

surrounding the proposed aquacultural operation, contrary to the duty to do so stated in this section 3(e).

- (f) the public right of navigation;

SUBMISSION

Further, it is submitted that the Administrator failed to give any or adequate consideration to the evidence and submissions related to the public right of navigation by private yachts seeking tourist visits and anchorage free from industrial operation, by kayak and tourist boat tours to freely and safely navigate the Bay and to the extreme navigational hazards to both fishing and recreational traffic due to free-floating, derelict, cage structures, large lease-marker buoys and loose-fitting cables, contrary to the duty to do so stated in this section 3(f).|

- (g) the sustainability of wild salmon;

SUBMISSION

As detailed above, it is submitted that the Administrator failed to give any or adequate consideration to the evidence and submissions related to the sustainability of wild salmon, ignoring the evidence of BC Royal Commission reports and current resulting legislation in the province, as well as the representations before him from Salmon Fishery representatives, contrary to the duty to do so stated in this section 3(g).

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

SUBMISSION

Evidence was before the Administrator as to the Bay being too shallow; the Bay not flushing adequately or frequently; the resulting depositions that remained on the bottom of the Bay (sometimes in depositional 'sinks'); to prior escapes; to flotsam; to pollution of the adjoining shore-line.

All of the above attest to the fact that the irrelevant (in this case) criterion of the proximity of other farms is simply a 'throw-in' in order to salvage one positive, supportable statement and clearly not a factor for consideration.

The relevant consideration is, rather, - as all representations referenced - the lack of suitability of this site no matter where it is in proximity to other sites.

GENERAL OBSERVATIONS REGARDING THE INADEQUACY OF THE DECISION OF THE ADMINISTRATOR:

Misinformation and/or mis-statements of fact in the Decision Document resulted in failure/denial of natural justice in the proceeding:

1. "15 submissions were received"

More than 15 submissions re AQ#0835 were submitted and acknowledged by NSDFA. On the other hand, only 15 submissions were posted with the decision.

2. "Also, there were no reported escapes from AQ#0835 over the most recent tenure of the site"

A large number of rainbow trout escaped from AQ#0835 in April 2014.

<https://www.saltwire.com/business/fish-escape-from-fish-farm-in-port-mouton-bay-114455/?location=nova-scotia>

Lack of context/evidence for several Environmental monitoring results referenced:

3. "Over the most recent tenures of the site, Environmental Monitoring results showed the following results: 2009 (Oxic), [Farm was emptied of fish for disposal early in 2009] 2010 (Oxic), [Farm fallowed] 2011 (Hypoxic A [Farm fallowed], 2012 (Oxic) [Farm fallowed until mid 2012], 2013 (Oxic) [EMP data not audited and questionable due to lack of correspondence to other measures in laboratory procedures and field observations], 2014 (Hypoxic A), 2015 (Oxic) [Massive fish kill in early winter of 2015 – EMP conducted in April 2015], 2016 (Inactive), 2017 (Oxic), 2018 (Inactive); 2019 (Inactive)"

4. "Reference stations sampled within the bay outside of the lease boundaries have consistently demonstrated maintenance of Oxic conditions, thus suggesting limited far-field benthic impacts".

EMP reference stations have not captured the effects of accumulated waste in sheltered depositional areas of inner Port Mouton Bay which are beyond the EMP Reference stations. For example, Cullain et al.2018) found the highest amount of organic matter in sediments, strong sulphur smell and black sediments at a station 300 m from the fish farm – even after 5 months of fish farm inactivity.

5. "This study suggested that lobster catch rates decreased in connection with the operation of the site. A review of several studies looking at this topic suggests differing conclusions".

No other published studies have been conducted in Port Mouton Bay to compare lobster catch rates with periods of farm activity and farm inactivity during the lobster catch season. Recent studies by DFO on lobster telemetry and catches were conducted in Port Mouton Bay in the

summer of 2019 (out of lobster catch season) which confirmed the presence of lobster in the fish farm area after 4 years of farm inactivity. Fishermen also observed during spring 2019 that lobsters were present here in good numbers for the first time in many years in this once prime lobster fishing area.

6. "Concerns were also raised with respect to the potential negative impacts of AQ#0835 on the local tourism industry; however, no specific information was provided that indicated that the past operation of AQ#0835 had a detrimental effect on tourism activities"

Considerable photographic evidence was submitted to demonstrate the presence and effects of aquaculture waste on local beaches. A 'reasonable man' would surely deduce / infer from the evidence that such visuals and obstructions are detrimental to site reputation, tourism, ecological reputation and tourism activities. To find otherwise is unreasonable.

7. "As such, the Nova Scotia Department of Fisheries and Aquaculture (NSDFA) initiated modelling exercises to inform future biomass decisions. Any future stocking applications with respect to AQ#0835 will take the outcomes of this study into consideration. The modelling exercise does not fully preclude the farming of Rainbow trout in this site."

This last sentence is vague. If there was evidence of this fact, it has not been disclosed in the application process, resulting in lack of transparency and absence of opportunity to refute.