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June 24, 2021

The Honourable Jonathan Wilkinson
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Honourable Minister Jonathan Wilkinson,

As the spokesperson for the local commercial fisheries, I am requesting to designate a project under the Impact Assessment Act. Specifically, I am requesting designation for the Highway 101 Twinning Three Mile Plains to Falmouth Phase 2: Aboiteau and Bridge Construction. The proponent is the Province of Nova Scotia, specifically the Nova Scotia Department of Transportation and Active Transit (formerly Transportation and Infrastructure Renewal).

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This project is proposed for the Highway 101 crossing of the Avon River between Windsor and Falmouth, Nova Scotia. As part of the ongoing twinning of Highway 101, the Province of Nova Scotia has proposed to construct highway bridges over the Avon River and a new gated structure (what the proponent refers to as an aboiteau) downstream of these bridges to control tidal flow. A Community Liaison Committee (CLC) was established for this project and their website contains an overview of the project: <https://hwy101windsor.ca/>. The initial provincial environmental assessment can be found here: <https://novascotia.ca/nse/ea/highway-101-twinning-three-mile-plains-to-falmouth.asp>.

I am requesting this project be designated for the following reasons:

The initial environmental assessment describes the project as upgrading the existing aboiteau structure: “the causeway at the Avon River will be widened and elevated in conjunction with upgrading of the aboiteau; therefore, a bridge structure is not required at this location”. The province now intends to construct a completely new gated structure downstream of the existing gated structure and leave the existing structure in place. This would establish two structures, both of which would inhibit fish passage to varying degrees. As a result of both the expanded footprint of the proposed river crossing infrastructure and the addition of a second barrier to fish passage that I believe this project has stepped beyond the scope of its initial environmental assessment. Further, the proposed project is to be constructed directly on prime commercial

fishing grounds. If built on the proposed location, the project will physically displace the fishers that rely on this area to make a living with no compensation being offered.

1. Is the project near a threshold set in the Project List?

Yes. The project is near a threshold for section 49 b), 50 and 58 of the Physical Activities Regulations: SOR/2019-285

2. Is the project near or in an environmentally or otherwise sensitive location?

Yes. The project is located within the Southern Bight-Minas Basin, which is a RAMSAR designated wetland of international importance and a Western Hemisphere Shorebird Reserve.

3. Does the project involve new technology or a new type of activity?

No.

4. Does the project have the potential to cause adverse effects that are of concern to you and fall within federal jurisdiction?

Yes. This project has the potential to cause adverse effects specifically in regard to:

- effects on fish and fish habitat;

The proposed project would establish two barriers to fish passage on the Avon River. These barriers would diminish the rivers contribution to the productivity of various fisheries, increase the cumulative effects of barriers to fish passage in this area (such as the barrier built across the mouth of the Halfway River in 2019) and impede the ability to maintain at all times the characteristics of the water and the water flow downstream of the proposed project. Both an expert panel and ongoing, multi-year joint study at the Windsor causeway between the commercial fisheries, Mi'kmaq and academia has shown that saltwater entry is required to pass all species. A similar study on the recently installed Halfway River barrier is showing that structures designed to provide fish passage through restricted tidal flow, given the forces at play within the Bay of Fundy, fail to provide efficient fish passage and result in death and damage to fish.

- effects on aquatic species, as defined in subsection 2(1) of the *Species at Risk Act*; changes to the environment that occur in a province or territory other than the one where the project is taking place;

DFO's 2010 Recovery Strategy for the inner Bay of Fundy Atlantic Salmon that barriers exist on at least 25 major rivers around the Bay of Fundy, specifically listing the Avon causeway-dam type barrier as among the most substantial. The strategy further states that these barriers have caused or are thought to have caused a wide range of ecological effects on the rivers and their estuaries. The Avon was historically well known as an important salmon river but the latest crash in its iBoF salmon population has been attributed to the construction of various dams in the area,

including the Windsor causeway. Note that the 2010 Recovery Strategy for the inner Bay of Fundy Atlantic Salmon provides detail on the impacts resulting from the construction of the Petitcodiac River causeway in 1968 where they state the causeway construction is estimated to have reduced the total iBoF Salmon production by at least 20 percent, which may have affected the persistence of the entire iBoF designated unit. There is reason to believe that a similar situation unfolded on the Avon due to the construction of the Windsor causeway, thus also impacting the persistence of the entire iBoF designated unit. If this project is approved, it will perpetuate a severe limitation on salmon recruitment within the Avon river, which will negatively impact the persistence of the overall designated unit, including in neighboring provinces. This would also result in cumulative effects, for example a continued reduction in upstream and inland nutrient transfer via salmon migrations, which would also occur in neighboring provinces.

- effects on migratory birds;

At low tide in the Minas Basin, expansive mudflats are exposed, which enable migratory birds to feed on a rich abundance of invertebrates such as corophium. The construction of the Windsor causeway and current operations of the existing gated structure eliminated tidal flow to a considerable portion of the Avon, which both reduced habitat for these invertebrates, an eliminated a substantial area of productive feeding grounds for these birds. This proposed project would secure this loss of these feeding grounds for the foreseeable future and continue this negative impact to migratory birds.

- changes to the environment that could affect the Indigenous peoples of Canada;
- any change occurring to the health, social or economic conditions of the Indigenous peoples of Canada;

Firstly, the proposed project would establish a second barrier to fish passage thus amplifying the infringement of Mi'kmaq rights that was initiated with the construction of the original causeway in 1968. Note that the initial causeway was constructed without consultation or approval from First Nations. Fundamentally, the structures infringe on the ability for the Mi'kmaq to utilize their right to fish. The initial environmental assessment in 2017 states "it is anticipated that areas for fishing and gathering are available for Mi'kmaq use outside of the Project Development Area. It is therefore expected that these resources can be readily accessed by the Mi'kmaq for traditional use in adjacent areas." There is currently zero effective or efficient fish passage provided at any of the numerous existing aboideaux and dams in the surrounding area. As such, access to fish habitat is increasingly being reduced in this region. It is felt that the initial environmental assessment neglected to consider these cumulative effects nor the impact those cumulative effects have on the ability for the Mi'kmaq to exercise their rights. Specifically, this proposed project would impact the Mi'kmaq's ability to fish for food, social, ceremonial or moderate livelihood purposes thus negatively impacting the social and economic conditions of the Indigenous peoples of Canada.

5. Does the project have the potential to cause adverse effects that are directly related or incidental to a federal authority either (i) making a decision that would permit the

carrying out, in whole or in part, of the project or (ii) providing financial assistance for the purpose of enabling the project to be carried out, in whole or in part?

Yes, through decisions made by the Department of Fisheries and Oceans and through financial assistance (in part) provided by Infrastructure Canada through the Disaster Mitigation and Adaptation Fund.

6. Does the project have the potential to cause adverse impacts on the section 35 rights of the Indigenous peoples of Canada?

Yes. As discussed, the proposed project would establish a second barrier to fish passage thus amplifying the infringement of Mi'kmaq rights that was initiated with the construction of the original causeway in 1968. The proposed barrier itself combined with the lack of passage provided by numerous surrounding structures is depleting the access to habitat and subsequently the fish populations in this area. As such, the ability for the Mi'kmaq to exercise their right to fish is being infringed.

I was made aware of this project through my service to my fishing industry as their spokesperson and through my work on barrier issues around the province.

Thank you for your consideration on this matter,
Darren Porter

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