

McKiggan Hebert

LAWYERS

January 31, 2022

File No. 8463-056

Via email: EA@novascotia.ca

Environmental Assessment Branch
Nova Scotia Environment and Climate Change
P.O. Box 442,
Halifax, Nova Scotia
B3J 2P8

Dear Sir/Madam,

Re: Northern Pulp Nova Scotia Corporation – Draft Terms of Reference for the Preparation of an Environmental Assessment Report – Pictou Landing First Nation Comments

Pictou Landing First Nation (“PLFN”) makes the following comments on the proposed draft terms of reference (“TOR”) for an environmental assessment report in respect of a project Northern Pulp Nova Scotia Corporation (“Northern Pulp”) registered on December 7, 2021 for environmental approval under the **Environment Act**, 1994-95, c. 1. Northern Pulp seeks to restart production at its kraft pulp mill at Abercrombie Point, Nova Scotia (the “Mill”) which has been shuttered since January 31, 2020 following the closure of the pulp effluent treatment facility at Boat Harbour (the “Boat Harbour Treatment Facility”). The current project is comprised of the construction of a new effluent treatment facility, discharge pipeline and in-plant changes to the Mill (the “Restart Project”) as detailed in the environmental assessment registration document (the “EARD”) filed by Northern Pulp with Nova Scotia Department of Environment and Climate Change (“NSECC”).

Pictou Landing First Nation submits these comments on its own behalf and on behalf of the Mi’kmaq communities represented by the Kwilmu’kw Maw-klusuagn Negotiations Office (“KMKNO”) namely, Acadia First Nation, Annapolis Valley First Nation, Bear River First Nation, Eskasoni First Nation, Glooscap First Nation, Membertou First Nation, Paq’tnkek First Nation, Potlotek First Nation, Wadmatcook First Nation We’kowma’q First Nation (the “KMKNO Communities”).

Environmental Assessment and s. 35 Consultation

By letter dated December 7, 2021, NSECC initiated a formal consultation with PLFN and the Assembly of Nova Scotia Mi’kmaq Chiefs pursuant to the Crown’s duty to consult under s. 35 of the **Constitution Act, 1982** in respect of the pending decision of the Minister of Environment whether to grant approval for the NP Restart Project pursuant to the **Environment Act**. In the letter NSECC advised that: “During the EA approval process, the Province will rely upon the

process set out in the Environment Act and Regulations to fulfil the Crown's duty to consult the Mi'kmaq for this approval."

This language suggests that the proposed consultation will be carried out entirely within the environmental assessment process. While PLFN has some concerns with this approach, which it will address separately with NSECC, for present purposes, PLFN acknowledges that these submissions form part of the consultation record.

Current Context

For most members of Pictou Landing First Nation, the past two years has been the only period in their lifetime that they have witnessed clean air over their Reserve and clean waters of the Northumberland Strait adjacent their community. The Mill had been operating for over five decades without their lawful consent, spewing various contaminants into the air and discharging many more in wastewater that made its way to the Boat Harbour Treatment Facility adjacent the Reserve and not the Northumberland Strait. There was a dramatic improvement when Northern Pulp stopped pulp production at the Mill just before January 31, 2020. There was a collective sigh of relief, like a great burden had been lifted from their shoulders: whatever the adverse health impacts from past exposures to contaminants from the Mill may be, they were at least assured that things would not be compounded by the effect of additional pollutants.

The past two years has also brought a measure of peace to the Pictou Landing First Nation. From the first days and weeks after the Mill opened in 1967 and millions of gallons of toxic wastewater began pouring into Boat Harbour on a daily basis, killing all life in the estuary, the community has fought for environmental justice and for the right to live in a healthy environment on their ancestral lands. The community spent an inordinate proportion of its scarce financial and human resources in this pursuit. The Mill became a symbol of racial injustice, and environmental racism in particular, writ large.

Suddenly, on January 31, 2020, the legislated closure date of the Boat Harbour Treatment Facility under the ***Boat Harbour Act***, S.N.S. 2015, c. 4, the impossible happened – the battle was over. After decades of government promises, the Boat Harbour Treatment Facility had closed. PLFN had won. While Northern Pulp sought legal redress and PLFN sought intervenor status in the court proceedings Northern Pulp commenced, those skirmishes eventually fizzled out and Northern Pulp retreated. For the first time in 53 years closing the Boat Harbour Treatment Facility did not consume the energy of entire community. While another crisis did, the Covid19 pandemic, the community has been otherwise enjoying relative peace.

Aboriginal Title, Aboriginal Rights and Treaty Rights

PLFN is, of course, a Mi'kmaq community. It currently occupies about 700 acres of the Reserve lands at Pictou Landing. These lands are a tiny part of the traditional territory of PLFN. However, to date not a single piece of land in Nova Scotia has been recognized by the federal or provincial governments or determined by a court of competent jurisdiction to be Aboriginal title lands. The

closest thing to a recognition of Aboriginal title was the finding by the former Nova Scotia Provincial Court Chief Judge Patrick Curran in *R v Marshall*, 2001 NSPC 2 at 143, where he wrote: “the Mi’kmaq of the 18th century on mainland Nova Scotia *probably had aboriginal title to lands around their local communities*, but not to the cutting sites”.

During the 18th century the historical record is clear that the ancestors of Pictou Landing First Nation lived generally in the area around Boat Harbour, referred to as “A’s’e’k” in Mi’kmaq. Indeed, maps made in the middle of the century show burial grounds as far south as Indian Cross Point, where ironically, the pipeline leading from the Mill to Boat Harbour would eventually be built.

There seems little doubt that PLFN has a strong Aboriginal title claim to an area greater than its current 700 Reserve lands, which has neither been defined nor recognized, but may well include Abercrombie Point where the Mill is located.

Turning from Aboriginal title to Aboriginal and Treaty Rights, Pictou Landing First Nation is a fishing community. It operates in several commercial fisheries pursuant to licences from the Department of Fisheries and Oceans Canada (“DFO”). In addition, it engages in a food, social and ceremonial fishery as well as a moderate livelihood commercial fishery pursuant to its Treaty Rights under the *Treaty of Peace and Friendship* of 1760 as affirmed in *R. v. Marshall*, [1999] 3 S.C.R. 456. The moderate livelihood fishery is referred to by the PLFN as the “Netukulimk” fishery and is carried out in many areas including within Pictou Harbour between the Harvey A. Veniot Pictou Causeway and the East River.

“Netukulimk” is described on the website of the Unama’ki Institute of Natural Resource as follows: “Netukulimk is the use of the natural bounty provided by the Creator for the self-support and well-being of the individual and the community. Netukulimk is achieving adequate standards of community nutrition and economic well-being without jeopardizing the integrity, diversity, or productivity of our environment.”

The PLFN Netukulimk as it is currently operated follows a set of principles adopted by PLFN Chief and Council. Individual fishers fish pursuant to Netukulimk fishery licences issued by Chief and Council. Most importantly, the Netukulimk is operated as of right and is not exercised pursuant to the authority of, or licences issued by, DFO.

PLFN Valued Ecosystem Components

When Northern Pulp registered its former project for a new effluent treatment facility, PLFN raised concerns about the potential impacts of that project on its Aboriginal and Treaty rights, including its right to live on reserve and claimed Aboriginal title lands free from environmental contamination. The concerns raised by PLFN with respect to Northern Pulp’s former project are a matter of public record in the earlier environmental assessment process and also form part of the formal consultation record relating to the earlier proposed project.

Of particular concern were potential impacts of the discharged effluent on the waters of the Northumberland Strait, where PLFN carries out fishing activities, and the impact of air contaminants emitted from the Mill which, if the new effluent treatment facility had been approved, would have continued for decades to come.

The social, cultural and economic impact of the project on PLFN and its members is also of concern.

Status Quo and Cumulative Impacts

The current “status quo” is that the Mill is not operating. The proposed changes, if Northern Pulp implements them, would result in the Mill becoming operational once again. The proper baseline against which to compare the impacts of the proposed project is the current status quo, and not the status quo that existed more than two years ago, prior to January 31, 2020 when the Mill was operating.

In ***Nova Scotia (Aboriginal Affairs) v. Pictou Landing First Nation***, 2019 NSCA 75, the Nova Scotia Court of Appeal dismissed a Crown appeal from the decision of the Nova Scotia Supreme Court on a judicial review, thereby requiring the Crown to consult with PLFN prior to making any decision on providing funding to Northern Pulp to build the former proposed effluent treatment facility. The Province had argued, that the Court could only consider whether the proposed project would have any new adverse impacts on the rights of PLFN and could not take into account the adverse impacts that had been ongoing since 1967. PLFN argued that a decision to fund the new treatment facility amounted to a decision to allow the Mill to operate and for it to discharge contaminants into the water and air for decades to come and these impacts must be taken into account. The Court of Appeal agreed with PLFN:

[161] **Continuing breach or novel impact:** Northern Pulp submits that the chronology back to the 1960s, set out in Chief Paul’s second Affidavit, is “historical impact” that is not to be addressed by current consultation. Northern Pulp says effluent or emissions after January 30, 2020 would be merely a “continuing breach” without a “novel adverse impact” from the current proposal, as discussed in ***Carrier Sekani***, para. 49 and ***Chippewas of the Thames***, paras. 41-42.

[162] I respectfully disagree. The 2015 ***Boat Harbour Act*** means that, as of January 30, 2020, the effluent and emissions “must cease” unless there is a New ETF and a new Industrial Approval. *That was the new legal baseline as of 2015.* It was a partial accommodation by the Crown to PLFN. As discussed, the Funding Agreements of 2016 and 2017 constitute Crown conduct that potentially impacts whether there will be a New ETF and new Industrial Approval for the period after January 30, 2020. *The adverse impact would be caused by the contaminants discharged after January 30, 2020. Given the new legal baseline of a partial accommodation, this is a novel impact.* *[emphasis added]*

PLFN will make more detailed submissions on the scope of the consultation in this matter in response to the December 7, 2021 letter from NSECC referred to above. For present purposes, PLFN points out that, to the extent that the scope of the current environmental assessment is limited to comparing the proposed operation of the Mill to the status quo before January 31, 2020 when the Mill was operational, or to considering less than the full impact of the entire Mill operations on valued ecosystem components, and not just proposed project pieces in isolation, the scope of the consultation on this project will be broader than the scope of this environmental assessment.

It would make sense that the scope of consultation under s. 35 and the scope of the current environmental assessment be explicitly aligned, and we suggest that the scope be clarified in the draft TOR this regard.

PLFN Comments on Language of the Draft TOR

Pictou Landing First Nation is grateful to EXP Consulting which has reviewed the draft TOR and provided input to PLFN to inform these comments.

Comment 1:

1.3 Proposed Project, p. 10

PLFN: Please recite that the Mill is currently not operating and has not been operating for 2 years since the former treatment facility at Boat Harbour was closed as required by the ***Boat Harbour Act***, as an accommodation to Pictou Landing First Nation pursuant to the Crown's duty to consult and accommodate PLFN in light of the historical injustices occasioned by the construction and operation of the treatment facility next to the PLFN community without its informed consent.

Please recite that if implemented, the project will mean the reopening of the Mill and its continued operation for several decades. The exact predicted/planned economic life of the Mill should be included in Northern Pulp's environmental assessment report.

Comment 2:

2.0 Preparation and Presentation of the EA Report, p. 12

In preparing the EA Report, as applicable, NPNS may refer to comments from the above-noted parties during the EA review of the previous Replacement Effluent Treatment Facility project, for both the EARD and the Focus Report previously submitted by NPNS, to identify and include the supplementary information required to provide a comprehensive and complete assessment of the potential effects of the project.

PLFN: Please add: "However, where earlier comments directly or by implication conflict with any comments on the current project, both comments must be included."

Comment 3:*3.0 Project Description, p. 13*

Describe each component of the project, including site preparation, construction, commissioning, operation, maintenance, and decommissioning, as it is planned through its full life cycle. Components include:

- *changes to existing mill infrastructure and in-mill improvements;*
- *effluent treatment facility (ETF);*
- *land-based sections of pipeline; and*
- *marine-based sections of pipeline and the diffuser.*

PLFN: Please add: “In addition, describe the commissioning, operation, maintenance and decommissioning of the existing mill as a whole in sufficient detail to allow the reader to understand how the mill, as modified by the proposed project, the effluent treatment facility and the pipeline and diffuser operating as a whole will have an impact on the environment and the valued ecological components.”

Comment 4:*3.3 Project Design and Components, p. 14*

Describe the design plans and appropriate design standards for all project components, associated and ancillary works, and other characteristics that will assist in understanding the project, including: all planned changes to mill infrastructure and in-mill improvements, the ETF, land and marine based sections of effluent pipeline and the diffuser. All associated infrastructure and components must be detailed. In cases where existing equipment are proposed to be re-purposed, converted or modified to support the proposed project, provide detailed assessments and engineering re-design plans to address the suitability for the proposed purpose, condition of equipment and life expectancy, including the effect of gases and chemicals proposed to be collected on mill equipment and infrastructure. Also discuss environmental controls planned for the project and how environmental protection, conservation, best management practices (BMPs), and best available technology have been considered in the design.

PLFN: Replace with: “Describe the current mill. Describe the design plans and appropriate design standards for all project components, associated and ancillary works, and other characteristics that will assist in understanding the project, including: all planned changes to mill infrastructure and in-mill improvements, the ETF, land and marine based sections of effluent pipeline and the diffuser. All associated existing infrastructure and components must be detailed. In cases where existing equipment are proposed to be re-purposed, converted or modified to support the proposed project, provide detailed assessments and engineering re-design plans to address the suitability for the proposed purpose, condition of equipment and life expectancy, including the

effect of gases and chemicals proposed to be collected on mill equipment and infrastructure. Provide detailed assessment of the mill life expectancy of the mill as a whole, assuming the project is carried out, including identifying any limiting factors such as existing equipment not directly implicated in the project. Also discuss environmental controls planned for the project and how environmental protection, conservation, best management practices (BMPs), and best available technology have been considered in the design.

Comment 5:

3.3 Project Design and Components, p. 15

In addition to the above, this section will include, but not be limited to information on the following project design components:

PLFN: Add:

Changes to the Existing Mill Infrastructure and Processes since mill closure in January 2020

Identify all changes to the existing mill infrastructure structure, including but not limited to any runoff or storm water controls, that have or will change the operation of the mill upon startup.

Comment 6:

3.3 Project Design and Components, p. 15

“A waste dangerous goods management plan to accommodate for worst case scenario within design of the proposed ETF, including releases of black liquor, major equipment malfunctions, etc. It is important to note that the ETF is not proposed to treat waste dangerous goods based on the information provided in the EARD and in accordance with requirements of ECC. Additional details relating to disposal of waste goods and construction materials may be required.”

PLFN: Please include a requirement for Northern Pulp to provide a full and complete waste dangerous goods management plan for its entire mill operations with its EA report. Please make it clear that referencing existing EMS and SOPs is insufficient. If existing or proposed EMS or SOPs are referenced it is expected that their contents will be included in or with the EA Report. Please also include a requirement to address specifically mercury contamination on the mill site as a whole.

Comment 7:

3.3 Project Design and Components, p. 18

“Leak detection technologies for the entire marine-based pipeline. Provide details on the sensitivity of detection technologies, staff training plans, maintenance and inspection

frequencies, methodologies and response protocols, including during periods of ice coverage; and”

PLFN: In previous reports submitted by Northern Pulp to NSECC in respect of the former project, elements of the leak detection system were not specified and instead Northern Pulp deferred the design to the construction contractor which would be selected at a later stage. It should be made clear that this would not be acceptable in the EA Report for the current project. The TOR, at minimum, should reference the need for a preliminary design since it is impossible to provide a fair assessment of the potential impacts of the pipeline, if key details pertaining to construction and leak detection are omitted.

Comment 8:

3.3 Project Design and Components, p. 19

“Storage areas for fuels, explosives and dangerous goods”

PLFN: Please add: “including all fuel dispensing locations for all phases and elements including marine work.”

Comment 9:

3.6 Decommissioning and Reclamation, p. 19

Describe the proposed plans for decommissioning the project, including all infrastructure and reclamation of any impacted site. The EA Report shall also discuss the post-decommissioning land use options of the property.

PLFN: Replace the word “project” with “mill” since a substantial component of the project will be integrated with the mill as a whole and the mill will continue to operate for some period during its economic viability. In assessing the and weighing any perceived benefits of the project, the eventual decommissioning of the mill as a whole must be taken into account.

Comment 10:

3.5 Operation, p. 19

Describe the operation of all project components and supporting infrastructure to all components. The description of the operation shall include but not be limited to the following:

PLFN: Replace with: Describe the operation of the mill and all project components and supporting infrastructure to all components. The description of the operation shall include but not be limited to the following:

Comment 11:

Section 8.0 Assessment Methodology, p. 21

PLFN: Please add: “The assessment methodology must include best practices for analyzing (a) the cumulative effects that are likely to result from the operation of the mill in combination with other physical activities that have been or will be carried out and (b) the intersection of sex and gender with other cultural and identity factors.”

PLFN is particularly interested how the project in all phases, including operation of the mill following project completion, will impact on Mi’kmaq youth, women and gender minorities.

Comment 12:

9.0 EXISTING ENVIRONMENT, p. 21

Provide a baseline description of the environment in the vicinity of the project and all other areas that could be impacted by the project.

PLFN: Add: “and the continued operation of the mill as a whole, once it is restarted.”

Comment 13:

9.0 EXISTING ENVIRONMENT, p. 22

For the EA Report, the spatial boundaries must include the project footprint and relevant receiving environments such as airsheds and watersheds. Temporal boundaries must address applicable guidelines, standards and regulatory requirements and include project construction, operation, decommissioning and post-decommissioning.

PLFN: Insert underlined words as follows: “For the EA Report, the spatial boundaries must include the project footprint and relevant receiving environments for air emissions from mill operations, runoff water and effluent such as airsheds and watersheds. Temporal boundaries must address applicable guidelines, standards and regulatory requirements and include project construction, operation (including mill operation), decommissioning of the mill and post-decommissioning.

Comment 14:

Section 9.2.1 Groundwater, p. 23

“Provide a description of the regional and local hydrogeology of the study area. A discussion of groundwater uses in the study area, including both current and likely potential future uses must be provided. Provide a map showing all water supply wells locations and potentially affected watercourses within 500 metres of the project.”

Section 9.2.2 Surface Water, p. 23

“Provide a map of all watercourses located on the subject property. Provide detailed sampling results from all baseline groundwater and surface water quality monitoring networks, inclusive of the Mill Monitoring Network and the Industrial Landfill Monitoring Network. Account for the full list of potential contaminants of concern in the freshwater and marine systems within the project footprint.”

While existing monitoring data from the Mill Monitoring Network and the Industrial Landfill Monitoring Network is to be included in the assessment of watercourses, the same should be utilized in the hydrogeological study referenced in Section 9.2.1.

Comment 15:

9.2.3 Marine Water, p. 23

Provide baseline studies that characterize environmental conditions representative of the full study area (e.g., multiple locations) for all four seasons and accounting for yearly variations, including but not limited to: climate, water quantity (e.g., current profiles, water column stratification, wave height, tide levels), and water quality (e.g., temperature, salinity, chemical and physical water quality).

PLFN: Please add: The study area shall include Boat Harbour and shall be based on current conditions and conditions anticipated after remediation as outlined in the Environmental Impact Statement prepared by Nova Scotia Lands Inc. dated November 17, 2020.

Comment 16:

9.3.2 Air Quality, p. 25

For the study area, provide a review of baseline ambient air quality and meteorological data, including annual and seasonal climatic conditions for the region. Include scenarios for ambient air quality data for current conditions (e.g., without mill in operation) and one reflecting historical data from when the mill was in operation.

PLFN: Remove: and one reflecting historical data from when the mill was in operation. The only relevant baseline is the current baseline. Analyzing baseline air emissions when the mill previously in operation prior to January 31, 2020, would only serve to introduce data that was collected during a period when the mill had a continuous adverse environmental impact on PLFN which was imposed upon PLFN without its consent and which remained unabated for over five decades. The only proper baseline is the current baseline.

Comment 17:

9.3.3 Ambient Noise and Light Levels, p. 26

Describe existing ambient light levels at the project site and at any other areas where project activities could have an environmental effect on light levels. Describe night-time illumination levels during different weather conditions and seasons.

PLFN: Please add underlined wording: “Describe existing ambient light levels at the mill site, the project site and at any other areas where project activities could have an environmental effect on light levels. Describe night-time illumination levels during different weather conditions and seasons during all phases including during operation of the mill.” Delete repeated 3rd paragraph: “*Describe existing ambient light levels at the project site and at any other areas where project activities could have an environmental effect on light levels. Describe night-time illumination levels during different weather conditions and seasons.*”

Comment 18:

Section 9.4.2 Freshwater Aquatic and Marine Environment, 27

“Any baseline studies should be undertaken during appropriate spatial and temporal scales and identify and delineate sensitive or important habitats that may be impacted from the installation of the pipeline.”

PLFN: Please clearly outline the spatial and temporal scales that are expected by NSECC. If left undefined, the minimum level of assessment may not be undertaken. Specifically, if all four seasons are expected to be monitored and assessed then this should be clearly set out.

Comment 19:

9.5 Agriculture, Aquaculture and Forestry Resources, p. 28

Describe all commercial, recreational and Aboriginal fisheries (including food social ceremonial (FSC) as well as commercial), aquaculture, seafood processing and seafood buying operations, and harvesting (e.g., marine plants, shellfish) in the study area

PLFN: Insert the underlined wording as follows: “Describe all commercial, recreational and Aboriginal fisheries (including food social ceremonial (FSC), moderate livelihood and Netukulimk commercial, as well as other commercial), aquaculture, seafood processing and seafood buying operations, and harvesting (e.g., marine plants, shellfish) in the study area”

As noted above the PLFN Netukulimk fishery is regulated by PLFN.

Comment 20:

9.6 Socio-Economic Conditions, p. 28

Describe the current socio-economic conditions of the study area, including population demographics and economic conditions (including Aboriginal Peoples).

PLFN: Please add: “Include a detailed analysis of the impact of the operation of the mill and of the former Boat Harbour Treatment Facility on PLFN since 1967 so that cumulative effects can be considered. Provide description of methodology.”

Comment 21:

10.0 ADVERSE EFFECTS AND ENVIRONMENTAL EFFECTS ASSESSMENT, p. 29

Describe the effects of the project on the environment during all phases of the project (e.g., site preparation, construction, commissioning, operation, maintenance, and decommissioning), including any environmental change on health, socio-economic conditions, archaeology, reserve lands and the current use of land for traditional purposes by the Mi’kmaq of Nova Scotia. The effects assessment shall also consider impacts of the environment (including weather and climate) on the project, including a discussion of how potential climate change will impact all components of the project.

PLFN: Add underlined words: Describe the effects of the project on the environment during all phases of the project (e.g., site preparation, construction, commissioning, operation including mill operation, maintenance, and decommissioning, including mill decommissioning), including any environmental change on health, socio-economic conditions, archaeology, reserve lands and the current use of land for traditional purposes by the Mi’kmaq of Nova Scotia. The effects assessment shall also consider impacts of the environment (including weather and climate) on the project, including a discussion of how potential climate change will impact all components of the project.

Comment 22:

10.2.3 Marine, p. 32

The study must clearly identify the scenarios included for consideration and justify the exclusion of reasonable alternative scenarios (e.g., the number of ports on the effluent diffuser, and the geographic extent of the modeling). The study must consider the tidal nature of the Pictou Harbour, its tributaries (the West River, Middle River and East River of Pictou), the presence of the Harvey A. Veniot Pictou Causeway, as well as potential for interaction with waste effluents from other industrial and municipal sources.

PLFN: Please add: “The study must identify any impacts on Boat Harbour in its current state and its proposed remediated.”

Comment 23:*10.3.2 Air Quality, p. 35*

Describe the sources, types and estimated quantities of air emissions from the project for all potential air contaminants of concern for all project phases (construction, operation and decommissioning) under routine conditions and in the case of malfunctions and accidental events on a seasonal and annual basis.

PLFN: Please add words underlined as follows: “Describe the sources, types and estimated quantities of air emissions from the project for all potential air contaminants of concern for all project phases (construction, operation and decommissioning, including operation decommissioning of the mill) under routine conditions and in the case of malfunctions and accidental events on a seasonal and annual basis.

Comment 24:*10.3.2 Air Quality, p. 35*

Provide a full statistical analysis for the ambient air quality monitoring data obtained at the Pictou monitoring station for the mill pre- and post-hibernation periods. Describe how the proposed project emissions compare to the pre-hibernation emissions and the associated predicted changes in air quality.

PLFN: Remove the words with ~~strike-through~~ and insert underlined words as follows: Provide a full statistical analysis for the ambient air quality monitoring data obtained at the Pictou monitoring station and the monitoring station maintained by Nova Scotia Lands within the PLFN community, for the period from January 31, 2020 to current ~~mill pre- and post-hibernation periods~~. Describe how the proposed project emissions and emissions from a restarted mill compare to ~~the pre-hibernation~~ emissions during that period and the associated predicted changes in air quality.

For the reasons outlined elsewhere above, the relevant baseline air data is only available during the last two-year period, since the mill ceased pulp production. That is the only period currently free from the adverse impacts of previous environmental racism.

Comment 25:*10.7 Socio-Economic Conditions, p. 40*

PLFN: Please add: Include an analysis of the cumulative effects of past operation of the mill and related infrastructure, including the Boat Harbour Treatment Facility and include an analysis of the intersection of sex and gender with other cultural and identity factors.

11.0 PROPOSED MITIGATION, p. 40

Describe all measures that have, or will be, taken to avoid or mitigate negative impacts, and maximize the positive environmental effects of the project

PLFN: Please add: “, including of the operation of the restarted mill.”

Comment 26:

11.3.2 Air Quality, p. 42

Describe measures to avoid, minimize or otherwise mitigate effects on biological receptors during all phases of the project (vegetation, fish, wildlife, country foods and human health).

PLFN: Please add the underlined words: “Describe measures to avoid, minimize or otherwise mitigate effects on biological receptors during all phases of the project, including the operation of the restarted mill (vegetation, fish, wildlife, country foods and human health).”

Comment 27:

13.0 EVALUATION OF THE ADVANTAGES AND DISADVANTAGES TO THE ENVIRONMENT, p. 46

Present an overall evaluation of the advantages and disadvantages to the environment, including the VECs, during the construction, operation and decommissioning phases of the project. The evaluation of the disadvantages shall include an examination and justification of each disadvantage.

PLFN: Please add underlined words: “Present an overall evaluation of the advantages and disadvantages to the environment, including the VECs, during the construction, operation and decommissioning phases of the project, including operation and decommissioning of the mill. The evaluation of the disadvantages shall include an examination and justification of each disadvantage.

Comment 28:

Section 15.1 Public Consultation, p. 49

For any consultation undertaken with the general public, the EA Report must describe existing, ongoing and proposed consultation and information sessions.

PLFN: Please add: “For the purpose of the EA Report consultation with or activities involving the Environmental Liaison Committee (ELC) will not be considered consultation with the general public and if consultation with or activities involving the ELC is referred in the EA Report it must be distinguished clearly from consultation with the general public.”

Comment 29:

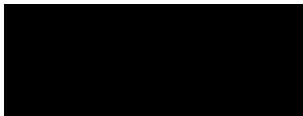
General Comment re Industrial Approval Process

PLFN: In various of the above comments, PLFN has suggested that the TOR be clear that the environmental assessment of the project will take into account the impacts of the operation of a restarted mill operation compared to the current status quo. It is insufficient to leave operational issues concerning the mill as a whole to later stages of the project, i.e. the industrial approval stage following environmental approval.

If other issues arise, PLFN will be in touch accordingly.

Yours very truly,

McKiggan Hebert



Per: Brian Hebert



Pictou Landing First Nation

March 1, 2022

Honourable Steven Guilbeault

Minister, Environment and Climate Change Canada

House of Commons

Ottawa, ON K1A 0A6

Dear Minister Guilbeault,

Re: Request for Designation – Northern Pulp Nova Scotia Corporation New Effluent Treatment Project - Impact Assessment Act ss 9(1), 9(2), 22(s)

On behalf of Pictou Landing First Nation, I ask that you designate the Northern Pulp Nova Scotia Corporation (“Northern Pulp”) effluent treatment project (the “Project”) under subsection 9(1) of the *Impact Assessment Act* (IAA). Details of the Project can be found in the environmental assessment registration document (the “EARD”) that Northern Pulp submitted to the Nova Scotia Department of Environment and Climate Change (“NSECC”) on December 7, 2021. The EARD can be found on the NSECC website at this link: <https://bit.ly/3BrMz36>.

Current Context

I would like to provide a little background.

Pictou Landing First Nation is a Mi’kmaq community. We are located on the shores of the Northumberland Strait (the “Strait”) in Pictou County, Nova Scotia. Many of our community members have been living through unprecedented times these past two years. Not just because of Covid19, but because they have been able to breathe clean air and see clean water in the Strait for the first time in over half a century. I am one of them.

The pulp mill currently owned by Northern Pulp (the “Mill”), had been operating since 1967 and was responsible for fouling our air and polluting our waters. For over 50 years the prevailing winds carried airborne contaminants from the Mill stacks to us, and wastewater was piped to Boat Harbour, next to our community, where it was “treated” and released into the Strait only a few hundred meters from our lands. The treatment process released sulphates which initially turned paint on our houses black and which stank so much it was nauseating.

To make matters worse, the Mill had been thrust upon us. We were never fully informed about the impact it would have on our community, our health and our way of life. In fact, our Chief and Council at the time were deceived and told that there would be no adverse impacts from the Mill whatsoever. The riparian rights in the waters of Boat Harbour were trampled upon by the Province of Nova Scotia which had agreed with the owners of the Mill to receive the wastewater from the Mill at Boat Harbour. Canada,



Pictou Landing First Nation

as holder of the legal title to our reserve lands, purported to transfer our riparian rights to Boat Harbour to Nova Scotia by Order-in-Council, but the O-I-C had no force or effect because the riparian rights were not first surrendered by our community as was required by the *Indian Act*.

And yet, for decades the province openly accepted pulp wastewater from the Mill and discharged it into Boat Harbour polluting the waters of Boat Harbour in the process and interfering with our riparian rights to have the waters of Boat Harbour remain in their natural state.

In our community there was a collective sigh of relief on January 31, 2020 when Northern Pulp ceased pulp production at the Mill. It meant that no more pollution would flow into Boat Harbour as intended by the 2015 *Boat Harbour Act*. Additionally, because Northern Pulp had no other option of treating its wastewater, the Mill had to stop production and suddenly there was no more air pollution either.

While we still feared for the effects of five decades of pollution on our community, we were at least assured that there would be no new contaminants in our air and water – at least for the time being.

The past two years has brought a measure of peace to Pictou Landing First Nation. From the first days and weeks after the Mill opened in 1967 our community has fought for environmental justice and for the right to live in a healthy environment on our ancestral lands. The Mill became a symbol of racial injustice and environmental racism and remains so to this day. We have spent an inordinate proportion of our scarce financial and human resources on seeking justice.

For the first time in 53 years, we had clean air and clean water and, despite the Covid19 pandemic, relative peace.

Northern Pulp has now registered a new Effluent Treatment Facility project for approval under the Nova Scotia Environment Act. If implemented as proposed, the Mill would become operational again and contaminants will again spread by air over our community and wastewater will be discharged into Pictou Harbour where we have active fisheries and harvest seafood and which leads to the Northumberland Strait and to more of our fishing grounds.

We understand that the purpose of an environmental assessment is to determine what adverse impacts, if any, the project may be on the environment, including on our fisheries, the air over our community and the water that surrounds us. For the reasons set out below we urge you to designate the project so that an impact assessment under the *Impact Assessment Act* can proceed.

Designation of Effluent Treatment Facility

While an effluent treatment facility is not listed in the *Physical Activities Regulations* and therefore not subject automatically to a Federal Impact Assessment, subsection 9(1) of the IAA allows you to designate projects not covered by the *Regulations* if the project may cause direct or incidental adverse effects within federal jurisdiction or public concerns related to those effects warrant the designation. We say this is such a project.



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The current project is the second put forward by Northern Pulp to replace the Boat Harbour treatment facility. The first proposal was submitted for approval to NSECC and, while it was eventually withdrawn, this was not before NSECC received thousands of submissions from the public in Nova Scotia, New Brunswick and Prince Edward Island. You will recall that hundreds of fishermen from all three maritime provinces converged on Pictou Harbour to remonstrate against the proposed effluent treatment facility. The Northumberland Strait is a shared resource among the three provinces.

Under the current proposal, Northern Pulp still intends to discharge millions of litres of treated effluent every day into Pictou Harbour which opens to the Northumberland Strait. We are concerned about the adverse impacts of the effluent on the waters where we exercise our Treaty rights to fish in our traditional territory.

In addition to the adverse impacts on water, a new treatment facility brings with it the continuation of pulp mill operations for decades to come. The pulp mill has emitted pollutants into the air which make their way to our community nearby.

Subsection 9(2) of the IAA allows that you may, before designating a project for Impact Assessment, consider the adverse impacts that a physical activity may have on the rights of the Indigenous peoples of Canada — including Indigenous women — recognized and affirmed by section 35 of the *Constitution Act, 1982*.

The Federal government's duties to Indigenous peoples warrant a Federal Impact Assessment as this project will certainly have adverse impacts on our Treaty and Aboriginal rights.

In 2019, in the matter of *Nova Scotia (Aboriginal Affairs) v. Pictou Landing First Nation*, 2019 NSCA 75, the Nova Scotia Court of Appeal took note of an indemnity agreement between Northern Pulp and the Province of Nova Scotia, which on its face requires the province to reimburse Northern Pulp for any amounts Northern Pulp may have to pay as a result of the closure of the Boat Harbour treatment facility. If the Province is liable, one way to mitigate that liability is to allow a new treatment facility to be built and the Mill to continue operations. This creates a potential conflict between Nova Scotia's dual roles as indemnitor and regulator. As such, we are worried that a provincial assessment may not be free from bias.

Additionally, there are elements of the proposed project that cannot adequately be evaluated by a provincial assessment. Pictou Landing First Nation is particularly interested how the project in all phases, including operation of the mill following project completion, will impact Mi'kmaq youth, women and gender minorities. Therefore, I specifically look forward to a federal impact assessment which would take note of the intersection between gender identity and Indigeneity, under subsection 22(s) of the *Impact Assessment Act*.



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Impact Assessment Agency Guidelines

Using the guidelines available at <https://www.canada.ca/en/impact-assessment-agency/services/policy-guidance/designating-project-impact-assessment-act.html> I provide the following information:

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

No

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

Yes

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

Yes.

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

Yes, the project has the potential to cause adverse effects in the following areas of federal jurisdiction:

- Effects on fish and fish habitat: Historically, the Mill has had a devastating effect on fish and fish habitat as a result of the discharge of effluent into Boat Harbour. Pictou Landing is particularly concerned about the effect that the project could have on fish and fish habitat, especially to the extent that such effects could impact the community's Treaty and Aboriginal fisheries in the area.
- Changes to the environment that could affect the Indigenous peoples of Canada: Pictou Landing First Nation is, of course, a Mi'kmaq community. These lands are a tiny part of the traditional territory of Pictou Landing First Nation and are of great importance to the community. In addition to the effects on its Treaty and Aboriginal fishing rights, Pictou Landing First Nation is concerned about the potential impacts of this project on its Aboriginal and Treaty rights, including its right to live on reserve and claimed Aboriginal title lands free from environmental contamination. A new effluent treatment facility will mean the Mill will re-start its operation. This will end the current status quo, which was the status quo prior to 1967 when the Mill began operations. There is presently no pollution coming from the Mill. The proposed terms of reference for the environmental impact assessment (the "Draft TOR") prepared by NSECC suggests that in assessing the impacts of the project, the NSECC will use as baseline the status quo as it existed before the Mill ceased operations in January 2020 i.e. when it was previously polluting. NSECC (at section 9.3.2 of the Draft TOR, found at page 25) asks for data relating to this earlier



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period. The Draft TOR can be found at this link: <https://bit.ly/3I8ebNk>. NSECC has not made it clear in the Draft TOR that it will assess all of the impacts from a re-started Mill should the project be implemented or whether it will isolate the adverse impacts attributable to the new treatment facility only and ignore the overall impact from the Mill, treating the operating Mill as part of the status quo. This makes a big difference and our community's more detailed comments on this aspect of the Draft TOR are attached.

- Effects on aquatic species, as defined in subsection 2(1) of the *Species at Risk Act*: A review of the area adjacent the proposed project area on the Nova Scotia Provincial Landscape Viewer shows a large area identified as significant habitat for species at risk (see attached).
 - Effects on migratory birds: A review of the area adjacent the proposed project area on the same Nova Scotia Provincial Landscape Viewer shows a large area identified as significant habitat for migratory birds (see attached).
 - Changes to the environment that occur in a province or territory other than the one where the project is taking place: The Northumberland Strait is a shared resource. Waters move around across inter-provincial boundaries. As noted above, the previously proposed project drew intense reaction from fishers in all three Maritime provinces and collectively generated thousands of comments from the public in all three provinces.
 - Any change occurring to the health, social or economic conditions of the Indigenous peoples of Canada: The social, cultural and economic impact of the project on Pictou Landing First Nation and its members is of concern. Pictou Landing First Nation is particularly interested how the project in all phases, including operation of the mill following project completion, will impact on Mi'kmaq youth, women and gender minorities. Further, any project that will continue the ongoing worries about health indefinitely into the future, will be detrimental to the community. It must be taken into account that the Mill operated all those years without our consent and to our continual detriment. We are traumatized. Like any other trauma victims, reliving the trauma cause intense pain and suffering. If the Mill operated for decades more, we will be forced to relive the trauma every single day. The history must be taken into account.
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, the project will touch upon several areas of federal jurisdiction and several departments will be involved, just as they were in the first proposed project: Health Canada, Transport Canada, Fisheries and Oceans Canada, Environment Canada.



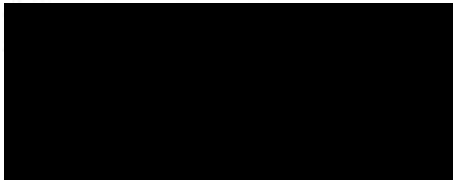
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6. Does the project have the potential to cause adverse impacts on the section 35 rights of the Indigenous peoples of Canada?

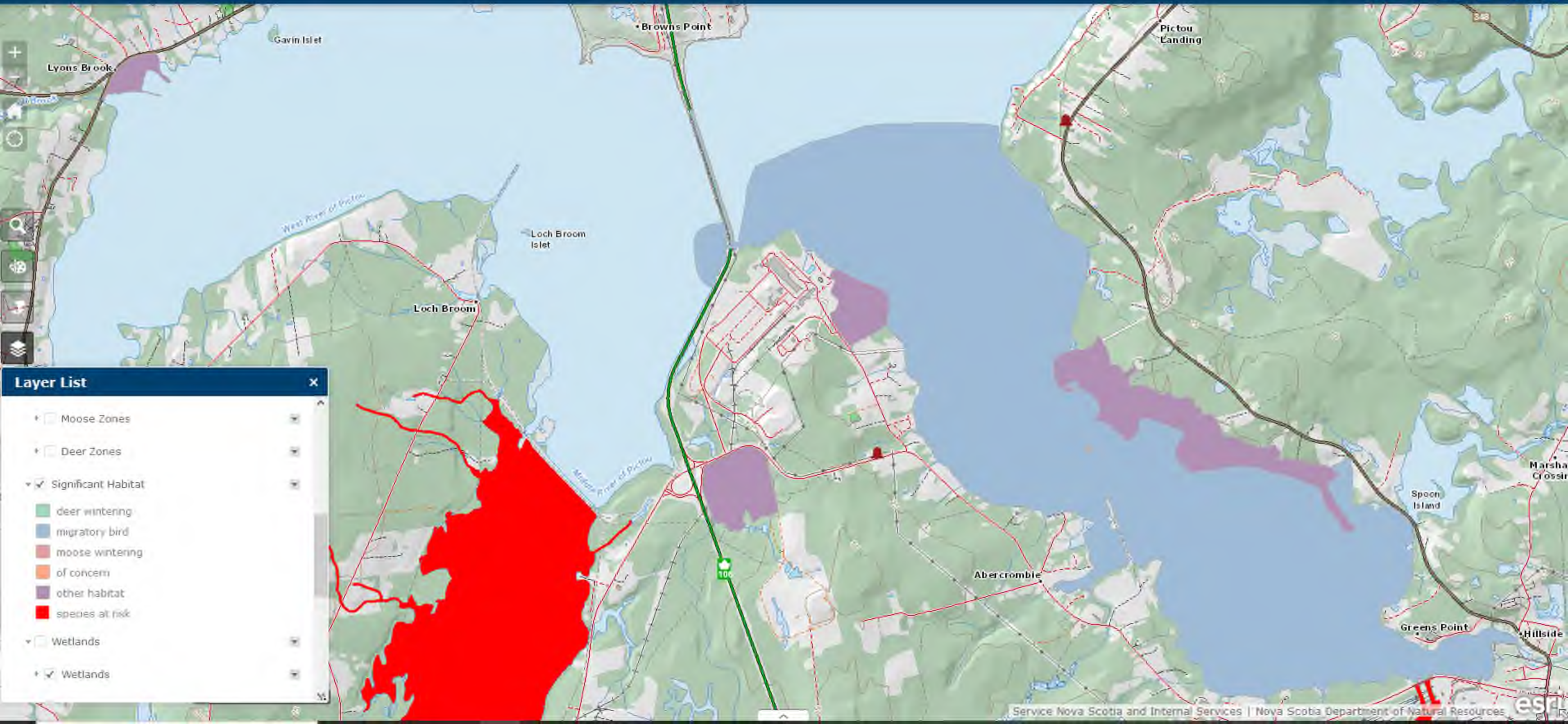
Yes. See above.

In summary, for decades our community has been subjected to the adverse impacts of the Mill currently owned by Northern Pulp. The Mill has now been closed for over 2 years. We have seen the environmental benefits that the closure of the Mill has brought to the community. We fear a restarted Mill will revive the harmful environmental impacts of the past. IF so, this would be a huge psychological blow to Pictou Landing First Nation as it faces the prospect of being re-traumatized daily for decades to come. I urge you to designate this project under the *Impact Assessment Act*.

Sincerely,



Chief Andrea Paul



Layer List

- Moose Zones
- Deer Zones
- Significant Habitat
 - deer wintering
 - migratory bird
 - moose wintering
 - of concern
 - other habitat
 - species at risk
- Wetlands
 - Wetlands