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Cc: Dianne Saxe, Environmental Commissioner of Ontario

Re: **Provincial Policy Objectives for Managing Effects of Cage Aquaculture Operations on the Quality of Water and Sediment in Ontario's Waters - EBR Registry Number: 012-7186**

And re: Application Guidelines for Cage Aquaculture Facilities - EBR Registry Number: 012-5045

We are writing today in response to the above noted policy proposals. These submissions were developed by Canadian Environmental Law Association and Environmental Defence and are endorsed by the signatories below.

We are deeply concerned about the proposed policy initiatives, and ask that no new or expanded cage aquaculture licences be authorized until appropriate consideration is given to the wisdom of expanding such operations in Ontario's water bodies. If it is determined that such expansion is in keeping with Ontario's legislative direction on protecting and restoring the ecological health of the Great Lakes – St. Lawrence River Basin, we ask that rigorous standards, monitoring and reporting protocols, and compliance regimes be developed and implemented before any renewed, new or expanded operations are authorized.

No clear policy direction on open cage aquaculture

Since the decision notice regarding "Policies and procedures on aquaculture under the Fish and Wildlife Conservation Act (FWCA) and regulations" in 2004, when the Ministry of Natural Resources and Forestry's decision notice on the Environmental Registry explicitly stated that cage aquaculture was "not part of this policy suite", there has yet to be a clear policy developed to guide open cage aquaculture in Ontario.¹ The above noted proposals outline the application guidance and the general directions for provincial water quality objectives, without a comprehensive policy proposal for ensuring that cage

¹ MNRF, [Policies and procedures on aquaculture under the Fish and Wildlife Conservation Act \(FWCA\) and regulations, EBR Registry Number: PB00E6001](#). Proposal posted February 04, 2000. Decision posted August 24, 2004.

aquaculture operations do not unduly interfere with public rights and ecological health. The Environmental Commissioner of Ontario has commented on this lack of policy direction.²

We are concerned that Ontario intends to move forward with expanding open cage aquaculture in the Great Lakes Basin, particularly given that other Great Lakes jurisdictions are not permitting such activities. In fact, Michigan is considering a ban on cage aquaculture in the Great Lakes.³ Great Lakes organizations in the US are supportive of such a policy direction as it is consistent with the public trust doctrine.⁴

The expansion of open cage aquaculture in the Great Lakes Basin may not be consistent with Ontario's recent legal commitments. Ontario has recently enacted the *Great Lakes Protection Act, 2015*. The purpose is "to protect and restore the ecological health of the Great Lakes-St. Lawrence River Basin".⁵ Open cage aquaculture is known to have environmental impacts including "nutrient pollution (eutrophication) and the corresponding potential for algal blooms, oxygen depletion, and degradation of benthic habitat in the vicinity of open cage operations".⁶ Further, there are impacts associated with application of pesticides and antibiotics, and the potential that escapes will impact the wild fish populations. These additional impacts are not addressed in the proposals. Authorizing new and expanded open cage aquaculture licences may not be consistent with protecting and restoring the ecological health of the Basin.

As well, Ontario has made commitments regarding nutrient pollution in the Great Lakes through the [2014 Canada-Ontario Agreement on Great Lakes Water Quality and Ecosystem Health](#), the Ontario Great Lakes Strategy, including the [12-point plan to fight algal blooms](#), and the [Lake Friendly Accord](#). All of these commitments aimed at reducing nutrient pollution, while these proposals contemplate increasing nutrient pollution without a clear strategy for ensuring that overall ecological health will not be compromised.

Federally and internationally, there is increased recognition that open cage aquaculture threatens wild fish species and, more alarming, endangered fish species.⁷ Such impacts are not evaluated or assessed in the above noted proposals. Given that both Ministries' Statements of Environmental Values contain commitments to taking an ecosystem approach, all aspects of the impacts of open cage aquaculture must be considered in determining the policy direction.⁸

² Environmental Commissioner of Ontario. 2011. "[Missing in Action: Ontario's oversight of cage aquaculture.](#)" *Engaging Solutions, ECO Annual Report, 2010/11*. Toronto: The Queen's Printer for Ontario. 32-33.

³ Michigan Legislature, [House Bill 5255 \(2016\)](#).

⁴ See, for example, [FLOW's submissions](#) in support of the proposed law.

⁵ [Great Lakes Protection Act, 2015, SO 2015, c 24](#), s 1(1)(a).

⁶ MoECC, Provincial Policy Objectives for Managing Effects of Cage Aquaculture Operations on the Quality of Water and Sediment in Ontario's Waters, pp 5-6.

⁷ See, for example, the recent International Council for the Exploration of the Sea Study of Impacts of Sea Lice and Escapes on Wild Salmon: ICES. 2016. [Report of the Workshop to address the NASCO request for advice on possible effects of salmonid aquaculture on wild Atlantic salmon populations in the North Atlantic \(WKCULEF\)](#), 1-3 March 2016, Charlottenlund, Denmark. ICES CM 2016/ACOM:42. 44 pp.

⁸ [MNRF, Statement of Environmental Values](#), "An ecosystem approach to managing our natural resources enables a holistic perspective of social, economic and ecological aspects and provides the context for integrated resource

Finally, expanding open cage aquaculture has the potential to interfere with public rights, including navigation. Recreational users of Ontario's water bodies ought to be expressly considered in any policy direction that has the potential to interfere with their use in order to ensure that any duties to the public trust are being upheld.

Rather than expanding open cage aquaculture in Ontario's water bodies, closed containment aquaculture ought to be considered as a potentially preferred policy option. In any event, clear and comprehensive policy direction needs to be developed in advance of implementation of the proposals for water quality objectives and the application process.

Lack of rigorous standards, monitoring and reporting protocols, and compliance regimes

Even if it is wise to continue with expanding open cage aquaculture operations in Ontario's water bodies, the proposals have several shortcomings.

First, an arbitrary threshold is set at the maximum existing feed allocation for a current aquaculture operations, with no environmental justification for it. The reader is left with the impression that existing operations are well-understood and therefore can be assessed on the basis of proposed objectives, while "larger operations" are not. We doubt that this understanding accords with reality.

Second, it is unclear how the objectives will be realized through licensing conditions or, indeed, through denial of applications for licences. Current licences are not readily available to the public (unlike sewage works Environmental Compliance Approvals, which are generally available by hyperlink from the Environmental Registry decision notice). MNR's lack of transparency is inconsistent with the Ontario government's commitment to Open Government and prevents the public from having an understanding of the number, size, scale, and conditions imposed on existing operations. We are pleased that "MOECC will make this water and sediment quality monitoring data publicly available in a manner consistent with the Province's Open Data practices"⁹; however, this information needs to be made available immediately for existing operations in order for the public to understand the current situation.

Third, lake-wide and/or local targets must be developed *before* any new or expanded authorizations are reviewed or permitted. In the proposal, it is suggested that "...proposed operation [be] situated, sized and designed such that, if properly managed, it would meet the provincial water and sediment quality policy objectives for cage aquaculture operations, including any lake-wide or local nutrient loading targets established by the Province."¹⁰ Rather than only considering such targets if they exist, Ontario ought to proactively ensure targets are established in advance of continuing to expand open cage aquaculture operations.

management" and [MoECC, Statement of Environmental Values](#), "The Ministry adopts an ecosystem approach to environmental protection and resource management. This approach views the ecosystem as composed of air, land, water and living organisms, including humans, and the interactions among them".

⁹ MoECC, Provincial Policy Objectives for Managing Effects of Cage Aquaculture Operations on the Quality of Water and Sediment in Ontario's Waters, p 10.

¹⁰ MoECC, Provincial Policy Objectives for Managing Effects of Cage Aquaculture Operations on the Quality of Water and Sediment in Ontario's Waters, p 9.

Fourth, although open cage aquaculture licences are listed as Class I proposals for instruments, which triggers public participation and third party appeal rights under the *Environmental Bill of Rights, 1993* (EBR), such applications have been shielded from those rights by MNRF's interpretation of section 32 (eg, that because the operation requires a disposition of public lands and is assessed as Category A under the Class Environmental Assessment for Resource Stewardship and Facility Development Projects, they are exempted from the EBR public participation provisions). This is extremely disappointing on multiple grounds. Category A has no public scrutiny at all. The exemption in section 32 of the EBR was intended to alleviate proponents from having to undergo multiple public processes for the same project. As open cage aquaculture does not benefit from public input, it is not consistent with the purpose of section 32 to only post them as information notices on the Environmental Registry. Further, Category A is intended for projects with minimal and well understood environmental impact and little public concern. It is our contention that this is not the case for open cage aquaculture operations. Ontario will benefit from a transparent, open, and accountable process that allows the public to scrutinize and provide input on proposed open cage aquaculture operations.

We recommend that no new or expanded cage aquaculture licences be authorized until such time as a fulsome policy is developed, with adequate public engagement. If you wish to discuss any of our concerns, we would be happy to meet with you at your convenience.

Sincerely,

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Canadian Environmental Law Association

Keith Brooks
Campaign Director
Environmental Defence

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Further, the following Great Lakes organization also endorses these submissions:

Liz Kirkwood
Executive Director
FLOW (For Love Of Water)