

STRENGTH
PEACE
UNITY

Mohawk Council of Kahnawake

P.O. Box 720
Kahnawake Mohawk Territory J0L 1B0

Tsi Ietsenhaientahkhrwa
"OFFICE OF THE COUNCIL OF CHIEFS"



Tel.: (450) 632-7500
Fax: (450) 632-7276
Website: www.kahnawake.com

SENT BY CANADA POST & EMAIL: pierre-olivier.emond@canada.ca

19 Seskéha/August 2019

Pierre-Olivier Emond
Project Manager
Canadian Environmental Assessment Agency
901-1550, avenue d'Estimauville
Québec, Quebec G1J 0C1

Re: Impacts of the proposed Beauport 2020 project on the exercise of inherent and Section 35(1) rights of the Mohawks of Kahnawà:ke

Greetings Mr. Emond,

Introduction

The Mohawk Council of Kahnawà:ke ("MCK") welcomes the opportunity to provide the following assessment of the impacts of the proposed Beauport 2020 project on the exercise of inherent and aboriginal rights of the Mohawks of Kahnawà:ke. The MCK has had the benefit of reviewing the latest information submitted by the proponent in the updated project information and environment impact statement documents forwarded to the MCK by the Canadian Environmental Assessment Agency ("CEAA") on June 3, 2019. The MCK has also used this phase of the project review as an opportunity to apply the methodology proposed by CEAA for assessing impacts on aboriginal and/or treaty rights in the meeting between the MCK and CEAA on February 27, 2019.

This submission is divided into two parts. Part 1 provides the context in which the impacts stemming from the project will occur. In this part, we outline the relevant historical and present day context for assessing this project. This part also provides context for the geographic and temporal scope for the MCK's review of impacts stemming from the project, which in turn provides the necessary context for the cumulative effects assessment that must take place regarding the impacts from the Beauport 2020 project.

Part 2 of this submission provides an analysis of the impact of the Beauport 2020 project to the rights of the Mohawks of Kahnawà:ke and builds on the previous submissions by the MCK regarding this project¹. More specifically, the project's impacts on the following inherent and aboriginal rights (within the meaning of s. 35(1) of the *Constitution Act, 1982*):

- Aboriginal governance rights;
- Aboriginal fishing and stewardship rights generally;
- Aboriginal fishing and stewardship rights related to sturgeon;
- Aboriginal fishing and stewardship rights related to striped bass;
- Aboriginal fishing and stewardship rights related to American Shad;
- Aboriginal harvesting and food sovereignty rights;
- Aboriginal language/cultural rights.

Finally, this submission also contains an Annex document that summarizes the project impacts in accordance with the criteria proposed by CEAA for assessing impacts on aboriginal and/or treaty rights in the meeting between the MCK and CEAA on February 27, 2019.

Part 1: Determining the context in which impacts on the exercise of rights will occur

Historical context

The Kaniatarowanenne, also known as St. Lawrence River, is an integral part of the Mohawk territory, and has been since time immemorial. The Mohawk Nation's historical connections to the River extend deep into our pre-contact history. Within the Iroquois Confederacy, the Mohawks are the keepers of the Eastern Door and are responsible to address the issues that arise from the east, from the mouth of the St. Lawrence River, including the project area, up to the Great Lakes.

The ancestors of present-day Mohawks of Kahnawà:ke have historically used and occupied territories along the St. Lawrence River, including present-day Quebec City. Evidence of historic Mohawk land use exists in proximity to the project area. From an archaeological standpoint, major sites of Iroquoian origins have been excavated at Cap-Tourmente, Royarnois and Place Royale in Quebec City. Smaller sites have also been located especially around the Cap-Tourmente area. The area around Beauport is a testament of significant occupation and utilization of the territory by Iroquoians since prehistoric times.

¹ See: Letter from Chief Christine Zachary Deom to Céline Lachapelle, dated March 3, 2017; letter from Chief Christine Zachary Deom to Minister Catherine McKenna, Minister Marc Garneau, Minister Jean D'Amour, and Minister Isabelle Melançon, dated December 12, 2017 and letter from Chief Ross Montour to Pierre-Olivier Émond, dated January 23, 2019.

The influence of these Iroquoian settlements was felt all the way to the lower north shore and Gaspé areas of the St-Lawrence River. Many hunting and fishing archaeological sites along with historical evidence provided by Jacques Cartier attest to this state of affairs at time of European contact.

While there are debates on the question of the ethnicity of these Iroquoian people, archaeological research indicates that these people appear to be of the same cultural heritage as the people from Hochelaga. Mohawk oral tradition indicates that the people from Hochelaga are ancestors of the present day Mohawks of Kahnawà:ke. Therefore, a significant number of archaeological sites around the Beauport area of Iroquoian origin were or may have been related to the ancestors of the present day Mohawks of Kahnawà:ke, which also aligns with Mohawk oral history on historic land use. As such, we assert interests to the territory within and in proximity to the project area².

Accordingly, the St. Lawrence River valley has always been a key hunting, fishing and trading ground for our Nation. We are therefore particularly concerned about the impacts that this project could have on the St. Lawrence River's ecosystem and fish populations from the project area to Mohawk fishing territories that extend downstream beyond the Mohawk Territory of Kahnawà:ke. This historical background contextualizes the rights assertions that the MCK has advanced since the beginning of consultations on this project³.

The severe industrial, urban and agricultural impacts to the conditions that support the exercise of Mohawk rights on the St. Lawrence River

The St. Lawrence River, including its wetlands and many of its tributaries, has long supplied our Nation with an abundance of fish and game. When the air, water, and land were clean, we depended on this watershed for sustenance. The St. Lawrence River flowed uninterrupted from the upper reaches to the salt water. Eels and other fish migrated in great numbers through our territory. We harvested eels, sturgeon, walleye, perch, and many other species of fish. Large expanses of coastal marsh supported muskrat, beaver, waterfowl, among other animals, and our medicines grew in abundance. Our water was clean to drink and our gardens provided us with corn, beans, squash, and a variety of fruits and vegetables.

It is important to point out that until the 1950s, hunting, fishing, trapping and horticulture sustained our families, and were the basis for Mohawk livelihoods. Since contact, we have experienced many changes, but as long as our foods were abundant and safe to eat, we were able to adapt our cultural practices to new economic and environmental conditions. The harvesting, processing, and sharing of foods in family groups allowed us to maintain healthy bodies and minds, and it sustained our language and our systems of traditional governance and law.

² For more information on Mohawk Traditional territory and Iroquoian archaeological sites within proximity to the project area, please see letter from Chief Ross Montour to Pierre-Olivier Emond, Canadian Environmental Assessment Agency, dated January 23, 2019.

³ These were described more fully in the MCK's letter from Chief Christine Zachary Deom to Céline Lachapelle of the Canadian Environmental Assessment Agency of March 3, 2017.

Traditional land use, which includes harvesting for food and for trade or sale, was at the core of our way of life and values. We harvested at many sites along the St. Lawrence River, and depended on an intact ecosystem, that stretched from what is now known as Lake Ontario to the salt water estuary of the St. Lawrence River. Migratory fish and birds moved throughout the St. Lawrence River and the river's coastal wetlands. This entire region supplied us with an abundance of wild foods and medicines. Networks of sharing and commerce connected Kahnawà:ke to other communities, both Indigenous and non-Indigenous.

Harvesters expect high quality meat, fish, and water, and suspicions of contamination are generally met with significantly reduced traditional land use of an area, until the harvesters themselves see signs of recovery. We also require healthy fish and wildlife populations that can be reliably and sustainably harvested. Today, it is extremely difficult to find fish and game in the places, and in the quantities that would allow us to support our families with safe, healthy foods.

The ecological damage to the St. Lawrence River has included alteration of the river's flow patterns, degradation of water quality, riverbank denaturalization and erosion, and a decline in plant and animal communities. Major excavation and shoreline modification has taken place for navigation, erosion control, and industrial development. In the 20th century, more than 175 million m³ of sediment were dredged and dumped in the river and dredging for channel and harbor maintenance and expansion continues to this day.⁴ Sediments from dredging activities have damaged seagrass beds and other fish habitats.

The dams that were constructed on the St. Lawrence River reduce the natural water level variations needed to maintain healthy wetlands. The dams also obstruct the movement of migratory fish, such as sturgeon, shad, and eel. These structures disrupt the river's food web and have caused devastating declines to one of the most important components of the ecosystem – the American eel – for which recruitment in the St. Lawrence River population has declined by over 99% since 1993.⁵ Adult eels, having spent 12 or more years maturing in inland waters, must navigate the turbines of many hydro dams on their downstream migration, including two hydro dams on the St. Lawrence River. These two dams alone cause a cumulative mortality on the St. Lawrence River of more than 40% of the population.⁶ Shad is another species of migratory fish that suffers very high mortalities when passing downstream through dam turbines.

Hydro dams have also fragmented populations of sturgeon, reducing their access to spawning grounds and other critical habitats these fish need to complete their life cycles.

⁴ Dumont, Pierre and Yves Mailhot. 2013. "The St. Lawrence River Lake Sturgeon: Management in Quebec, 1940s – 2000s" In Nancy Auer and Dave Dempsey, eds. *The Great Lake Sturgeon*. East Lansing: Michigan State University Press. p. 101-132.

⁵ MacGregor, R., et al. 2009. "Natural heritage, anthropogenic impacts, and biopolitical issues related to the status and sustainable management of American eel: a retrospective analysis and management perspective at the population level." *American Fisheries Society Symposium* 69. p. 713-740.

⁶ MacGregor, R., et al. 2009. "Natural heritage, anthropogenic impacts, and biopolitical issues related to the status and sustainable management of American eel: a retrospective analysis and management perspective at the population level." *American Fisheries Society Symposium* 69. p. 713-740.

Excessive nutrient discharge from farms and cities has caused excess aquatic plant growth in slow moving sections of the St. Lawrence River, and despite efforts to curb these discharges, water quality continues to be a concern both upstream and downstream of Kahnawà:ke. The nutrient-fueled growth of toxic cyanobacteria has caused fish habitats to deteriorate and has contributed to declines in fish populations.⁷

Encroachment on the St. Lawrence River floodplain has degraded, eliminated, and fragmented wetlands important for sustaining ecosystem function and biodiversity. Wetlands filter and retain water that would otherwise pollute and flood downstream areas. Wetlands also act as nurseries for fish, waterfowl, amphibians, and reptiles. The loss of submerged and emergent vegetation in wetlands has led to declines in the animals that depend on wetlands for food and shelter. Invasive species, including Phragmites, are diminishing the biodiversity in wetlands that remain intact. In the river's coastal flood zone, an intensification of agriculture, and the overall shift from pasture and hayfields to annual crops such as corn and soybean, means that these coastal zones now constitute poor wildlife and fish spawning habitats.⁸ Corn and soy agriculture also require significant amounts of fertilizers and pesticides, severely degrading water quality and fish habitats.

The resource sufficiency threshold was passed with the building of the Seaway and expansion of shipping

One of the most profound changes to our territory and way of life have come about as a direct consequence of the shipping industry on the St. Lawrence River. While the River has been dredged for construction of a navigation channel since the 19th century, the building of the Seaway brought a sharp increase in industrial impacts to our territory.

The construction of the Seaway in the 1950s was accompanied by the large-scale industrialization of the region.⁹ This added to the industrialization of the River and Great Lakes that had already occurred before that time. As a consequence, our harvesting has been severely reduced, and we no longer have reasonable access or sufficient opportunity to exercise our inherent right to hunt, fish, and gather plants. The expansion of shipping on the River and the associated increase in contamination, the degradation of habitat and water quality, and the incursion of invasive species, have also interfered with our ability to exercise our governance rights and stewardship responsibilities.

The impacts of shipping on our territory can be summarized as follows.

1. The building of the Seaway

⁷ Working Group on the State of the St. Lawrence Monitoring. *Overview of the State of the St. Lawrence 2014*. St. Lawrence Action Plan. Environment Canada, Québec's ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques, Québec's ministère des Forêts, de la Faune et des Parcs, Parks Canada, Fisheries and Oceans Canada, and Stratégies Saint-Laurent. 52 p.

⁸ Hudon, C. Jean, M. and G. Letourneau. 2018. "Temporal (1970-2016) changes in human pressures and wetland response in the St. Lawrence River (Quebec, Canada)." *Science of the Total Environment* 643: 1137-1151.

⁹ St. Regis Mohawk Tribe Environment Division. 2013. *St. Lawrence River Environment Natural Resource Damage Assessment: Restoration and Compensation Determination Plan and Environmental Assessment*. 498 p.

Prior to the St. Lawrence Seaway, access to the river for fishing, transit, trade and recreation constituted a fundamental part of what it meant to be Kahnawakehró:non. The River was a rich, year-round source of food. Fish and berries were mainstays of our diet, and fishing was an important source of income for many Kahnawakehró:non. We swam in the River, it was our source of drinking water, and we had businesses on the waterfront that catered to non-Indigenous people. The River was the hub for economic activity, recreation, and social life of the community. The construction of the Seaway cut off access to the River, displaced our people and attempted to destroy our connection with the River. The environmental implications of Seaway construction were unmeasured and immeasurable, with traumatic effects on our social, cultural, economic, and spiritual life that continue to this day.

The Seaway replaced our vibrant, flowing river front with an industrial canal. This reduced the quality and flow of water, and some of the islands in the River, including their trees, berries, and other resources, were filled in or submerged. Many of our local fishing spots simply disappeared. Fish became less plentiful, and many of the fish that remained showed signs of disease and could not be eaten. Residential and farm lands in Kahnawà:ke were appropriated to make way for the Seaway channel, and arable farm land was covered with clay dredged from the River. Before the Seaway was built, the community was tightly knit and structured around the River's edge, with a large forestry area that lay to the south, east, and west. The construction of the Seaway required the re-routing of roads and highways, bounding the community from the land side and boxing us in an even tighter enclosure than we were before.

One token of "compensation" was to ensure that the water in the Recreation Bay area in Kahnawà:ke was "kept fresh" so that it could continue to act as a gathering place and provide access to the river for the exercise of traditional activities and of our aboriginal fishing rights. Now, due to excessive sedimentation and nutrient loading, the bay is experiencing eutrophication. This situation, along with existing ship and non-Indigenous usages of the Seaway has resulted in limited access and uses of the River at this site. Limited access to the River is also available at other points in Kahnawà:ke, for example the "North Wall" area is used as a gathering site and to exercise our fishing rights. However, access to this area is challenging as the Seaway has bisected the community and a lengthy detour is required. Furthermore, when ships pass through our territory, a lift bridge is raised, disrupting circulation and access to the area each time a ship passes (approximately 3,200 times last year).

2. The expansion of shipping and the large-scale industrialization of the St. Lawrence River valley

The construction of the Seaway between 1954 and 1959 was an important step in the large-scale industrialization of the area. Since the 1950s Kahnawà:ke has experienced the continued ecological decline of the St. Lawrence River associated with urbanization. The repeated dredging of the navigation channel, the building of dams, and the industrialization of the region have resulted in contamination of the water, habitat destruction and fragmentation, and the introduction of large numbers of aquatic invasive species. Ships passing through the navigation channel are also an important cause of shoreline erosion.

At many places along the length of the St. Lawrence River, material dredged from the navigation channel was deposited on the side of the channel and used to construct artificial islands. Shorelines created in this way do not favor the establishment of wetlands. Erosion of the dredge deposits has increased the sediment load of the water, increasing the turbidity of water and releasing contaminants.¹⁰

The building of the Seaway coincided with the development of hydro-electric power along the River. The power generated by dams stimulated the expansion of heavy industry, and at the same time, Seaway transport. Upriver from Kahnawà:ke, near Akwesasne, where Alcoa had already been operating since 1950, companies such as General Motors and Reynolds established large industrial plants. Consequently, the River became a dumping ground for PCBs, polychlorinated dibenzofurans, dioxins, polyaromatic hydrocarbons, fluorides, aluminum, and a variety of heavy metals.¹¹

These pollutants have contaminated the water, fish and wildlife in the downstream area, particularly in Lake St. Francis and Lake St. Louis. Kahnawà:ke continues to experience the toxic legacy of industry on the St. Lawrence River, with levels of mercury and PCBs in certain populations of piscivorous fish species (walleye, sucker, and pike) at or near the limits for safe consumption set by Health Canada.¹² For example, the Kahnawà:ke Environment Protection Office still encourage the consumption of fish as a healthy option for community members, however, it is recommended to limit this consumption to one fish meal per week for certain species due to high mercury levels.

While the levels of certain industrial pollutants have been decreasing since the 1990s, new industrial contaminants, such as the flame-retardant polybromiated diphenyl ethers (PBDEs), are showing increasing concentrations in water and sediments. Contaminants such as pharmaceuticals (including hormones), pesticides, and personal care products are emerging sources of contamination. These chemicals interfere with the life cycles of fish and amphibians and are adding to our concerns about the health of the River and the safety of the water and our traditional foods.

More than 180 species of invasive aquatic organisms have established themselves in the Great Lakes – St. Lawrence River system. Since the Seaway opened in 1959, over 65% of these introductions have been attributed to ballast water release.¹³ Invasive species have disrupted chemical, physical, and biological processes in the St. Lawrence River. Invasive species alter nutrient dynamics, predator-prey relationships, and compete with non-invasive species for habitat, thereby directly impacting the River's food webs and causing declines in fish harvested by our Nation. Invasive

¹⁰ Hudon, C. Jean, M. and G. Letourneau. 2018. "Temporal (1970-2016) changes in human pressures and wetland response in the St. Lawrence River (Quebec, Canada)." *Science of the Total Environment* 643: 1137-1151.

¹¹ St. Regis Mohawk Tribe Environment Division. 2013. *St. Lawrence River Environment Natural Resource Damage Assessment: Restoration and Compensation Determination Plan and Environmental Assessment*. 498 p.

¹² Working Group on the State of the St. Lawrence Monitoring. 2015. *Overview of the State of the St. Lawrence 2014*. Environment Canada and Québec's ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques. 52 p.

¹³ Ricciardi, A. 2006. Patterns of invasion in the Laurentian Great Lakes in relation to changes in vector activity. *Diversity and Distributions* 12: 425-433.

species also undermine efforts to improve water quality and restore St. Lawrence River wetlands and fish populations.

Geographic and temporal scope for analysis of impacts to rights from the Beauport 2020 project

Given the foregoing, the MCK is considering the project's potential impacts on the rights described in this submission from the project's location up to and including Mohawk fishing sites that extend downstream beyond the Mohawk Territory of Kahnawà:ke. Impacts from this project to the ecosystem and fish habitats/populations along this entire span of the St. Lawrence river is part of our project review.

In terms of temporal scope, the MCK submits that the assessment of cumulative effects on our rights and interests must be based on traditional land use activities and opportunities that existed prior to the construction of the St. Lawrence Seaway.

Given this scoping, the Proponent's consideration of cumulative effects does not address our concerns as it is more limited in scope. The MCK notes that DFO also stated that the Proponent's cumulative effects assessment was lacking, but that DFO mainly asked the Proponent to consider the cumulative effects on the local, estuarine segment of the River and does not ask the Proponent to analyze cumulative effects on the River as a whole.

Part 2: Analysis of the impact of the Beauport 2020 project to our rights

When it comes to the St. Lawrence River and fisheries related issues, we remind you that we have established and constitutionally protected aboriginal fishing rights within the meaning of s. 35(1) of the Constitution Act (1982)¹⁴. Furthermore, the Mohawks of Kahnawà:ke also assert other rights, including, but not limited to, aboriginal title, governance rights (including environmental stewardship), gathering and commercial trading rights over the St. Lawrence River as inherent and s. 35(1) rights under the Constitution Act (1982).

Aboriginal Governance Rights

Governance framework based on Ohen:ton Karihwatehkwen

We assert inherent and aboriginal governance (jurisdictional) rights to the St. Lawrence River, including the Beauport 2020 project area. Within the Iroquois Confederacy, the Mohawks are the keepers of the Eastern Door and are responsible to address the issues that arise from the east from the mouth of the St. Lawrence River, including the project area, up to the Great Lakes. In accordance with the Two Row Wampum treaty relationship, Mohawk jurisdiction continues to apply independently and in parallel to the Crown. The Two Row Wampum is the most important diplomatic

¹⁴ R. v. Adams, [1996] 3 SCR 101

instrument in our history. Wampum belts were among the first documented agreements between First Nations and European settlers. The Two Row Wampum belt consists of two rows of

purple beads separated by three rows of white. The white symbolizes the river of life or the land that we all now share. The two purple rows symbolize the Haudenosaunee and the Europeans traveling side by side, never interfering with each other's journey. Subsequent agreements were predicated upon this one. Each nation recognized the other's sovereignty and ecological stewardship was central to that co-existence¹⁵. As part of our governance rights, we have a responsibility to care for and protect the St. Lawrence River ecosystem. We take our responsibility as stewards of the lands and waters for future generations seriously.

When considering the impact of projects, the Mohawks of Kahnawà:ke base decision-making on respect for all parts of the natural world. In our language Ohen:ton Karihwaterhkwen means "the words that come before all else." It is the opening address at gatherings, schools, ceremonies and the beginning and end of each day, to remind us of the important responsibility we all share to ensure that the cycles of life continue and to remind us that all of Creation is sacred and interconnected. We acknowledge that every part of the natural world has importance, not only for the benefits they provide for human survival, but also for the role they play within the web of life.

The Ohen:ton Karihwaterhkwen is the basis of our approach to environmental assessment because it outlines the roles and responsibilities of all of the components of the natural world, including humans. These components are as follows: The People; The Earth, Our Mother; The Plants, Berries, and the Three Sisters; The Waters; The Fishes; The Trees; The Animals; The Birds; The Winds; The Thunderers, Our Grandfathers; The Sun, Elder Brother; The Moon, Our Grandmother; The Stars; The Four Beings; and Our Creator. The purpose of each component, how humans benefit from it, and the role assigned by the Creator are recited. In this way, we give thanks and re-orient our minds to show respect and understanding of our relatives – the non-humans as well as the natural elements. Reciting the "words that come before all else" was our first instruction from the Creator, and as a ceremonial practice it reinforces the relationships and conditions that promote health and a healthy environment. The Ohen:ton Karihwaterhkwen is also an environmental code that is based on Kanien'kehá:ka (Mohawk) traditional laws and practices. Its underlying philosophy provides us with a framework for categorizing and assessing the health of the environment, including the impacts of current actions on future environmental health.

In all environmental decision-making, we consider the principle of the Seven Generations. Any decisions taken today must consider the impact of the selected actions on the next seven generations. By anticipating the consequences of our actions, seven generations into the future, we ensure that our actions reflect our responsibility to maintain the cycles of life.

¹⁵Summary of Two Row Wampum Treaty relationship taken from: <https://cinclamasericas.org/new-releases-claiff19/2016/the-grandfather-of-all-treaties> (accessed online on August 19, 2019).

The approach we take to environmental assessment reflects our jurisdictional responsibilities and our inherent and aboriginal rights as Indigenous peoples in this territory. In assessing the impacts of projects we are guided by the knowledge that the lands and waters are inseparable from who we are as Kanien'kehá:ka. Our decision-making is informed by the following principles:

- (1) The timeframe of our connection to the St. Lawrence River -- from the time immemorial to the end of time -- requires us to consider the long-range consequences of human actions and environmental change. We depend on this place -- the St. Lawrence River -- to keep us alive as Indigenous peoples.
- (2) All of the existing connections between species and their habitats have a role to play in maintaining functioning food webs and ecological health, and must be respected and maintained as parts of a living ecosystem.

Our responsibilities towards the River require us to carefully consider the cumulative effects of projects such as Beauport 2020. Completing an analysis of cumulative effects before any further projects with direct and serious impacts on fish habitat are approved is critically important for the continued exercise of our harvesting rights, and for fulfilling our stewardship responsibilities towards the River. Many existing and proposed activities along the St. Lawrence River constrain our ability to exercise our rights, through their impacts on the water, wetlands, and the aquatic ecosystem. These activities include urban development, agricultural and industrial activities, bridge construction and repairs, port expansions, maintenance of the navigation channel, and other activities related to the shipping industry.

Lack of Regional Assessment incompatible with application of governance framework

As an assessment of the regional (St. Lawrence River – wide) impacts of Beauport 2020 has not been carried out, the Mohawks of Kahnawà:ke are unable to carry out our stewardship responsibilities under Kanien'kehá:ka (Mohawk) law. Under these circumstances, Beauport 2020 is not compatible with our management initiatives and traditional laws.

MCK reiterates that we strongly believe that a Regional Environmental Assessment (or Regional Impact Assessment) of the entire St. Lawrence River is required to fully understand the impact of multiple concurrent port expansions and other developments planned for the River and outlined in the Quebec Maritime Strategy¹⁶. In setting out its Quebec Maritime Strategy, Quebec only consulted with the maritime industry and its own government departments. The MCK was one of many groups that argued that the cumulative impacts of the Project must be assessed in consideration of all port construction and expansion projects that are being considered.¹⁷

¹⁶ See letter from Chief Christine Zachary Deom to Minister Catherine McKenna, Minister Marc Gagneau, Minister Jean D'Amour, and Minister Isabelle Melançon, dated December 12, 2017

¹⁷ See for example : Stratégies Saint-Laurent, Avis de Stratégies Saint-Laurent portant sur le projet Beauport 2020 déposé à l'Agence canadienne d'évaluation environnementale (ACÉE), mars 2016, p.15.

We remain concerned that the lack of a Regional Environmental Assessment makes it virtually impossible for individual project proponents, including the Port of Quebec, to provide adequate information on what the potential impact of this project will be on the rights and interests of the Mohawks of Kahnawà:ke. We note that the Port of Quebec, in its letter to the MCK on 26 April 2019, has indicated that it is willing to collaborate and participate in regional strategic studies. We submit that the CEAA should interpret this undertaking as an indication that it is not too late to move forward with such studies prior to any individual project approvals being granted.

The MCK remains concerned about Canada's lack of commitment and the CEAA's lack of mandate to undertake a regional strategic environmental assessment for the St. Lawrence River. In its letter of 11 April 2019, the CEAA states only that it will "pursue its efforts and collaboration with other federal and provincial authorities" for such an assessment, and that additional consultations will follow.

In response to the MCK's consistent raising of this issue, we are often referred to Transport Canada's Cumulative Effects of Marine Shipping Oceans Protection Plan (OPP) study. While the MCK believes that this study is worthwhile, it remains insufficient to satisfy the requirement for a Regional Environmental Assessment for the St. Lawrence River. The study proposed by Transport Canada does not address the MCK's concerns, as it considers the impact of only one activity (shipping), and the timeline for the completion of this study extends beyond the construction schedule proposed by the project proponent. Furthermore, the study is limited to consideration of existing data on marine shipping, which does not include the latest information stemming from the planned port expansions, nor any other cumulative impacts since no new data pertaining to these potential impacts will be collected.

The MCK's concern therefore, is that the Crown and the CEAA are taking an approach of approving the projects first, and then partially considering the impacts after the projects are approved. The MCK submits that this approach is contrary to the Crown's legal obligations of assessing and accommodating project impacts on Indigenous rights *prior* to project approvals being granted.

Without a Regional Environmental Assessment, it is impossible for us to assess with precision what the impacts will be from the Beauport 2020 project. Therefore, our specific comments regarding certain aspects of the EIS are submitted on a without prejudice basis, and we firmly believe that a Regional Environmental Assessment is required in order for the Crown to complete a full and comprehensive consultation process with the Mohawk Nation regarding the impacts of this and other projects that are taking place within the context of the implementation of the Quebec Maritime Strategy.

As detailed in part 1 of this impact assessment, since the 1950s, the community's threshold for cumulative impacts to aboriginal fishing rights on the St. Lawrence River has been breached. Many of the impacts likely to flow from the Beauport 2020 project will add to existing impacts on water quality, wetlands, fish, and fish habitats.

Aboriginal fishing and stewardship rights generally

Impacts to fish habitat and migration generally

We consider that the Beauport 2020 project as proposed will have serious impacts on fish and fish habitat, and will interfere with our harvesting and stewardship rights for many generations into the future. The DFO has also determined that the Project would destroy habitats that support migratory species targeted by aboriginal fisheries¹⁸. We are alarmed by the conclusion of the proponent in the April 2019 information document for the online consultation, that the cumulative effect of the project is insignificant to sturgeon, and of limited significance to shad. The cumulative effect of the project on striped bass, a species that is currently the target of considerable recovery efforts, is not addressed directly in the consultation document.

The MCK has a number of serious concerns about the cumulative effects of the proposed Beauport 2020 port expansion on migratory fish.

Sturgeon, shad, and striped bass migrate between the fluvial estuary near Quebec City and the upper St. Lawrence River near Montreal. These migratory species will be impacted by the port expansion project, and we will see the effects on fish populations and the health of the ecosystem in the upper reaches of the river.

As described in the EIS, the area of the proposed development is a rich nursery, rearing, feeding, and staging habitat for many species of fish. The proponent predicts that there will be a loss of 137,530m² of aquatic habitat, including 1,940m² of aquatic beds used as a feeding and refuge area for fish at low tide, the modification of 129,020m² of habitat in the dredging area, and disruption of the aquatic environment from suspended particles, altered hydraulic environments, and underwater light and noise. Sturgeon, striped bass, and shad will lose important habitats, suffer exposure to contaminants from the dredging, dike construction, and caissons installation, and experience disturbances on an ongoing basis during the operations phase of the Project.

¹⁸See DFO letter to CEEA dated May 28, 2019, "Avis de pêches et Océans Canada visant à déterminer si les renseignements contenus dans le document de réponse du promoteur (12 avril 2019) concordent avec la demande d'information du 8 juin 2018", projet Beauport 2020.

The MCK predicts that the Project will result in a reduction in migratory fish populations at Mohawk traditional use sites, and that the mitigation measures the proponent plans to implement during the construction phase are entirely insufficient to address effects on fish populations. The mitigation measures detailed in the EIS are in fact no more than standard work practices for construction in aquatic environments, and include procedures such as a restricted time period for in-water work, limiting run-off, monitoring water quality during the work, etc.

The MCK understands that a multi-species compensation plan is being developed to offset the destruction of habitat and the permanent modifications resulting from the Beauport 2020 project. Lost or altered fish habitats in the St. Lawrence River are not fully replaceable and re-creatable. We are concerned about how offsetting seems to be taking the place of tight regulation and protection of the St. Lawrence River ecosystem. Since compensation measures will happen off-site or after the damage has already been done, the existence of offsetting as an option means that earlier stages of the mitigation hierarchy – the avoidance or minimization of harm – are not always fully considered.

Impacts associated with invasive species/ ballast water stemming from increased shipping

If approved, the Beauport 2020 port expansion will likely to lead to an increased volume in overseas ships entering into the St. Lawrence River, which in turn increases the risk of aquatic invasive species from ballast water.

We recognize that ballast water exchange regulations have greatly reduced but not eliminated the risk of aquatic species introductions, but our Kanien'kehá:ka (Mohawk) approach to governance requires us to consider the impact of our actions for seven generations into the future, and to carefully consider to pathways by which ecosystem-wide impacts may occur. The introduction of invasive species has done irreparable damage to the Great Lakes – St. Lawrence ecosystem, and we are gravely concerned about the cumulative impact of any future invasions.

While no new known aquatic invasive species attributed to ballast water have been discovered in the St. Lawrence River – Great Lakes since 2006, this fact must be interpreted with caution. Most ships entering the St. Lawrence River are loaded with cargo and carry only residual water and tank sediments. We remain concerned about the possibility for new introductions via residual water and sediment in ballast water tanks, in particular through viable dormant eggs and cysts, which may not be killed by tank flushing (salinity stress). These dormant stages can be re-suspended when the ship re-ballasts, only to be discharged before the ship takes on new cargo.

We believe that this pathway for the introduction of new aquatic invasive species must be seriously considered, because since 1993, when mandatory ballast water exchange regulations were implemented, benthic organisms with broad salinity tolerance that could produce a resting stage have dominated the new invaders.¹⁹ We also consider that the frequency with which non-native species are delivered to the St. Lawrence River increases the invasion risk. If a container port is built at Beauport

¹⁹ Ricciardi, Anthony. 2006. Patterns of invasion in the Laurentian Great Lakes in relation to changes in vector activity. *Diversity and Distributions* 12: 425-433.

and shipping from Eurasian ports increases, propagules of exotic species will have an increased chance of establishing viable populations and invading the St. Lawrence River – Great Lakes system.

The risk of invasive species is not addressed by the proponent in the EIS. In its letter of 11 April 2019, the CEAA responded to our request for additional information on how the threat of invasive species is being handled by referring us to Transport Canada's regulations on the control and management of ship ballast water and sediments. We consider this response inadequate, as it does not address our concerns about the pathways that remain – in spite of the ballast water regulations – for new invasions into the St. Lawrence River – Great Lakes as a result of overseas shipping activity. The MCK requests that the proponent conduct a risk analysis of the effects of increased overseas ship traffic at the Beauport terminal on the introduction of aquatic invasive species.

Impacts from potential increases in shipping in the St. Lawrence Seaway

The Proponent has informed MCK that it is not anticipated that the port expansion will result in any increases in ships using the St. Lawrence Seaway through the Mohawk Territory of Kahnawà:ke. While this may currently be the case based on the anticipated vocation for the port expansion, there is no guarantee that the increased capacity resulting from this expansion will never result in an increase in ships in the St. Lawrence Seaway. The vocation could change in the future and increases in ships using the St. Lawrence Seaway could conceivably result from this port expansion in the future.

This is especially concerning given that the government of Canada is in the process of conducting a review of the St. Lawrence Seaway and is looking at ways to increase its usage. It is therefore possible that additional shipping may take place in future resulting from this project.

Should this be the case, there will be adverse impacts to the ability to exercise fishing rights on the St. Lawrence River in proximity to our "reserve" lands, since increased ship passages will limit access to the River from the Recreation Bay and North Wall access points; adverse impact to the ability to exercise traditional, spiritual and recreational activities, such as gathering, fishing, swimming, navigation and paddling, since increased ship passages will limit access and the safe usage of the River for these activities; adverse impact for the safety of the community, since increased ship passages will result in greater risk of accidents, malfunctions and spills that could impact the exercise of aboriginal rights, the integrity of Kahnawà:ke's traditional territory, reserve lands, and land claim lands and adverse impacts to health, since increased ship passages will result in a direct increase in visual and noise pollution in the community.

Therefore, the MCK is concerned about whether the Crown can ensure/guarantee that this port expansion would never result in an increase in ships passing through the St. Lawrence Seaway. If no such guarantee is possible, the MCK is concerned whether the Crown can provide assurances that additional consultation and accommodation obligations would arise if a change in the port's vocation occurs in the future.

Aboriginal fishing and stewardship rights related to Sturgeon.

Sturgeon is a particularly important species for the Mohawks of Kahnawà:ke. The lake sturgeon occurring from the Beauharnois Dam at the head of Lake St. Louis to the limits of the brackish water form a single genetic stock. Within this zone, sturgeon undertake long spawning migrations. While many of the major spawning grounds are located in the upper sections of the river, the lower sections of the river, including the upper estuary near Orleans Island, constitute crucial habitat for juvenile sturgeon.

The confirmed presence of juvenile feeding habitat in the grass beds of Beauport Bay and in the St. Charles River estuary suggests that the Beauport project will have significant effects on the St. Lawrence River lake sturgeon stock. The Beauport project will cause major perturbations to sturgeon habitat as well as permanent habitat loss in areas of juvenile sturgeon feeding and rearing habitat. In the updated EIS, the proponent argues that the project has insignificant effects on lake sturgeon because adult sturgeon prefer deeper habitats and only occasionally move into Beauport Bay. This ignores the importance of the Project area as an aggregation site for juvenile sturgeon.

Although lake sturgeon in the St. Lawrence River undergo long spawning migrations, juvenile lake sturgeon are sedentary and do not readily adapt to habitat alterations. The integrity of local habitat for both juveniles and adults is considered to be essential for survival of lake sturgeon populations.²⁰

Recent improvements to the state of the St. Lawrence River lake sturgeon – which is listed by COSEWIC as threatened, and is on the Liste des espèces de la faune susceptibles d'être désignées comme menacées ou vulnérables in Quebec – have come about only through careful management and protective measures. The MCK strongly opposes the further degradation of sturgeon habitat, including the losses resulting from the proposed Beauport 2020 project, that will only add to decades of cumulative impacts from toxic outflows, dredging, and other industrial activity. Although the decline of the St. Lawrence River lake sturgeon population has slowed, the population has not recovered to historic levels of abundance.

The proponent's analysis of cumulative impacts on lake sturgeon considers only local projects in its list of sources of cumulative effects. The analysis also does not consider the fact that the lake sturgeon population of the River constitutes a single genetic stock, with upriver spawning migrations. We therefore disagree with the proponent's claim that the project has an insignificant cumulative effect on sturgeon. In the most recent round of questions to the Proponent, DFO has determined that the Proponent has not adequately described the movement of lake sturgeon in the St. Lawrence River,

²⁰ COSEWIC 2006. COSEWIC assessment and update status report on the lake sturgeon *Acipenser fulvescens* in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa.

and the effect of the project on aboriginal fisheries. The MCK supports DFO's demand that the Proponent revise the sections of the impact assessment accordingly²¹.

We also point out that climate change models predict reduced flow in the St. Lawrence River, reducing the quality of known sturgeon spawning areas, feeding grounds, and deep-water refuges. Given these impacts, the MCK opposes any industrial activity that would cause additional losses to sturgeon habitat.

Aboriginal fishing and stewardship rights related to Striped bass

The MCK's focus on the striped bass is currently from a stewardship perspective based on the principles of the Ohen:ton Karihwatehkwen. Striped bass has been successfully re-introduced to the St. Lawrence River, but its numbers are still very low. The species is in the early stages of recovery and sustainable use is not yet possible. The proponent claims that only one striped bass spawning ground has been recognized, on the Riviere du Sud. The bay of Beauport is now recognized by the scientific community as a second spawning site following confirmation of striped bass eggs and larvae in this area.

As currently proposed, the new wharf would be constructed on top of a rare pre-spawning staging area for striped bass, thereby directly impacting reproduction and jeopardizing the recovery of this species throughout its range. In fact, in its most recent round of questions to the Proponent, the DFO states that the Project would destroy the spawning site for striped bass in the Beauport area. The MCK supports DFO's demand that the proponent specify how the Project, which will destroy one of the few known habitats of striped bass, is consistent with the 2019 Recovery and Action Plan for the striped bass of the St. Lawrence River, and the status of striped bass as a protected species under the Species at Risk Act. We also support DFO's demand that the proponent explain the effect that the destruction of a striped bass spawning site on aboriginal fisheries²².

We are particularly concerned with the survival and recovery of this species because the St. Lawrence River population was extirpated and is only slowly becoming re-established within our territory. In keeping with the Ohen:ton Karihwatehkwen, we believe that having a self-sustaining population of this species, which requires a range of intact habitats, is vital to the ability of this species to carry out its original instructions. A healthy striped bass population will help to restore ecological stability to the River and increase the River's resilience to climate change and future disturbances.

The cumulative impacts of the Project on striped bass are unacceptable to the MCK, given the historic and ongoing effects of shipping in important striped bass habitat.

²¹ See DFO letter to CEAA dated May 28, 2019, "Avis de pêches et Océans Canada visant à déterminer si les renseignements contenus dans le document de réponse du promoteur (12 avril 2019) concordent avec la demande d'information du 8 juin 2018", projet Beauport 2020.

²² See DFO letter to CEAA dated May 28, 2019, "Avis de pêches et Océans Canada visant à déterminer si les renseignements contenus dans le document de réponse du promoteur (12 avril 2019) concordent avec la demande d'information du 8 juin 2018", projet Beauport 2020.

The Port of Quebec has already caused extensive loss to juvenile striped bass habitat, as described in the Recovery Strategy for striped bass:

In 2004, an inventory was conducted of several sites where juvenile striped bass had been captured before the disappearance of the species and this revealed that some of these sites had undergone major changes. The most remarkable seems to be the fishing zone in Saint-Grégoire de Montmorency, where striped bass of all sizes had once been caught (A. Michaud, extirpated population technician/biologist, pers. comm.1990). This area is just downstream of what was once the Maizerets Flats and the Bay of Beauport, an important wetland adjacent to Quebec City. Between 1945 and 2008, in the area between the Saint-Charles River and the Île d'Orléans bridge, an estimated 360 ha of aquatic and riparian habitat was lost due to backfilling for the port of Quebec City and the construction of a highway in the 1970s (Robitaille *et al.* 1988).²³

The proponent is also planning to undertake the activity (dredging) in the location (the Quebec section of the River) that is considered responsible for extirpation of the striped bass in the St. Lawrence River. As stated in the COSEWIC assessment and status report for striped bass:

“The most important annual dredging operation is the maintenance of a 9.7 km² navigation channel in the vicinity of Île d'Orléans. Since the mid-1800s, hundreds of million of cubic meters of sediment have been dredged in the Québec section of the St. Lawrence River to create navigation channels and harbors (Villeneuve and Quilliam 2000, cited in Hatin *et al.* 2007). The loss or alteration of habitat quality by dredging activities during the construction of the seaway may have contributed to the extirpation of the St. Lawrence River DU [designatable unit].²⁴

The EIS recognizes the relationship between dredging and the disappearance of striped bass but attributes the extirpation of striped bass to the improper disposal of dredged sediments. While dredging and sediment disposal practices may have changed in recent years, maintenance dredging of the shipping lane continues, and will increase in coming years due to an increase in marine traffic, the presence of increasingly large vessels, and decreasing water levels.²⁵

Since the Project expects to attract an increased volume of larger ships, and since the port expansion, once completed, will require periodic dredging, the Project can be expected to have a significant

²³ Robitaille, J., M. Bérubé, A. Gosselin, M. Baril, J. Beauchamp, J. Boucher, S. Dionne, M. Legault, Y. Mailhot, B. Ouellet, P. Sirois, S. Tremblay G. Trencia, G. Verreault and D. Villeneuve. 2011. Recovery Strategy for the Striped Bass (*Morone saxatilis*), St. Lawrence Estuary Population, Canada. Species at Risk Act Recovery Strategy Series. Ottawa : Fisheries and Oceans Canada, p.13

²⁴ COSEWIC. 2012. COSEWIC assessment and status report on the Striped Bass *Morone saxatilis* in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa, p. 19.

²⁵ Robitaille, J., M. Bérubé, A. Gosselin, M. Baril, J. Beauchamp, J. Boucher, S. Dionne, M. Legault, Y. Mailhot, B. Ouellet, P. Sirois, S. Tremblay G. Trencia, G. Verreault and D. Villeneuve. 2011. Recovery Strategy for the Striped Bass (*Morone saxatilis*), St. Lawrence Estuary Population, Canada. Species at Risk Act Recovery Strategy Series. Ottawa : Fisheries and Oceans Canada, p.12.

cumulative impact on the recovery of striped bass. The striped bass Recovery Team states that shipping-related dredging “warrants a high level of concern.”²⁶

Aboriginal fishing and stewardship rights related to American shad

American shad migrate from the estuary to the upper St. Lawrence River near Montreal. The proponent points to the repeat-spawning strategy of shad, its use of multiple spawning grounds, and its tolerance of a range of biophysical conditions to argue that the Beauport project would have a limited cumulative effect on this species.

The MCK requests further information on how this conclusion was reached. The repeat-spawning behaviour of shad is an adaptation mechanism to counter uncertain conditions, but this life-history strategy also comes with costs to survival. The fact that shad are repeat spawners does not mean that these fish are not seriously affected by industrial impacts, especially when the impacts are cumulative and affect the entire extent of the migratory range. If the reasoning of the proponent were correct, then the repeat-spawning strategy would have allowed this species to make a comeback in the St. Lawrence River once it was no longer over-exploited. In fact, the Great Lakes – upper St. Lawrence River population of this species is still very low and is considered to be in decline.²⁷

The EIS states that the Project area is significant for shad as a rearing area for juveniles and that it may be a staging area for reproductive purposes. The proponent assumes that the loss of juvenile feeding habitats and pre- or post-spawning habitats will not have significant effects on the population. The MCK requests further information on why this assumption was made in its analysis of cumulative effects.

The MCK believes that the proponent must more carefully consider the cumulative effect of the Project on American shad.

Aboriginal Harvesting and food sovereignty rights

The cumulative ecological impacts on the St. Lawrence River, including the major impacts from the shipping industry, have left the Mohawks of Kahnawà:ke with a depleted River ecosystem and restricted access to the resources that support our culture and way of life. As detailed in part 1 above, since the 1950s, our threshold for damage to the St. Lawrence River has been surpassed; the current state of and access to the River no longer supports our inherent and section 35(1) aboriginal rights to fish and to exercise our stewardship responsibilities.

One of the pathways by which the Beauport 2020 project will further limit the exercise of our culture and way of life is through its impact on our fisheries, and by extension, our food sovereignty. Food

²⁶ Robitaille, J., M. Bérubé, A. Gosselin, M. Baril, J. Beauchamp, J. Boucher, S. Dionne, M. Legault, Y. Mailhot, B. Ouellet, P. Sirois, S. Tremblay G. Trencia, G. Verreault and D. Villeneuve. 2011. Recovery Strategy for the Striped Bass (*Morone saxatilis*), St. Lawrence Estuary Population, Canada. Species at Risk Act Recovery Strategy Series. Ottawa : Fisheries and Oceans Canada, p.12.

²⁷ COSEWIC 2006. COSEWIC assessment and update status report on the lake sturgeon *Acipenser fulvescens* in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa.

sovereignty expands on the notion of food security (having enough food to eat), by including the abilities and responsibilities of Indigenous communities to make decisions about their food systems and through food, to practice relationships to territory.²⁸

Given the ecosystem-wide impacts of continued expansion to the shipping industry, the effects on fish populations of the proposed container port at Beauport may be especially acutely felt by younger members of our community, who have had limited access to fish from the River within their lifetime. This presents large inequities in the impact of this project, since future generations of Kahanwakeró:non (residents of Kahnawà:ke) will be disproportionately affected if fish populations in the River fail to recover and/or show further declines.

The foods that make up for a shortfall in “country foods” such as fish tend to be high in sugar and fat. The inability to access traditional foods therefore has links to diseases such as diabetes, stroke, heart disease, high blood pressure, cancer and obesity.²⁹

Given that the cumulative effects of Beauport 2020 will impact migratory fish along the length of the St. Lawrence River, the project is likely to interfere with access to fish in multiple fishing locations, both upstream and downstream of Kahnawà:ke. We still have some examples of traditional land based economy in Kahnawà:ke, but culturally-significant foods, such as fish from the St. Lawrence River, are difficult to access in the community. Kahanwakeró:non (residents of Kahnawà:ke) are returning to horticulture, maple-sugaring, hunting, and fishing, but this resurgence is at risk if the health of the St. Lawrence river continues to degrade.

Our traditional land users have high standards for the quality of the fish that they harvest, and when processing their catch, they are continually monitoring the health of the fish. Most fishers will not harvest or use fish when they have even a suspicion of contamination. If there is concern about the sustainability of a fish population, fishers will stop harvesting until they see that the population is showing signs of recovery.

The viability of fishing as a regular practice in Kahnawà:ke depends on our ability to reliably access healthy populations of fish. We also require enough in the way of fish resources to be able to revitalize trading relationships with neighbouring and Indigenous communities, thereby supporting reciprocal relationships between communities and the sharing of environmental responsibilities. Our community simply cannot absorb further declines in fish populations, such as those likely to result from the proposed Beauport 2020 project.

²⁸ Delormier T., et al. 2017. “Reclaiming food security in the Mohawk community of Kahnawà:ke through Haudenosaunee responsibilities.” *Maternal and Child Nutrition* 13(S3): e12556.

²⁹ McIvor, O. and A. Napoleon. 2009. “Language and culture as protective factors for at-risk communities.” *Journal of Aboriginal Health*. November 2009: 6-25; Alfred, T. 2013. “Cultural impact study: assessment and overview of the effects of environmental contamination on the Mohawks of Akwesasne.” p. K-13. In: St. Regis Mohawk Tribe Environment Division. 2013. *St. Lawrence River Environment Natural Resource Damage Assessment: Restoration and Compensation Determination Plan and Environmental Assessment*.

Aboriginal Language and cultural rights

Our foods and harvesting practices are at the core of cultural continuity, linking past, present, and future. The revitalization of language, cultural practices, and knowledge system depends on our connection to the land and water, and on our continued harvesting, processing, and consumption of traditional foods such as fish.

Fishing and other land-based activities encourage inter-generational transfer of cultural and spiritual knowledge, as well as language. It is only by continuing to harvest on the River that we can continue to exercise our responsibilities towards the fish, as well as the ancestors that passed on a way of life to us. Being unable to fulfill these responsibilities has severe emotional and psychological impacts on us as Indigenous peoples.³⁰

Harvesting fish allows families to spend time on the water, and to connect with culturally and spiritually important places along the River. By spending time on the land and water, observing, listening to, and copying their elders, children and youth learn about proper relationships between humans and non-humans. Teachings about environmental terminology, harvesting and processing techniques, and ways of relating to the environment go hand in hand with these activities.

The structure of our language carries the basis of our culture, including its matrilineal organization, our connections to cycles and seasons, and our relationship with others and the environment. The language comes alive through activities on the land and water. If we are limited in our ability to harvest because fish are contaminated, or in low abundance, it is difficult for us to pass on core values and ways of living to our youth.

Furthermore, as outlined in the section on aboriginal fishing rights, there is the possibility that the project could result in increased shipping in the St. Lawrence Seaway in the future. While not currently planned by the Proponent, this could result in adverse impacts to language and cultural rights, since increased ship passages will result in decreased usage of the River, less fishing opportunities and direct increase in visual and noise pollution which could have impacts to the transmission of language and culture.

Sharing is an important cultural value that depends on sufficient quantities of high-quality fish and other traditional foods to sustain us and our social relationships. Traditional foods are often shared within and between families, which strengthens our community. Sharing traditions that depend on the availability of country foods are difficult to sustain when community members are concerned about the quality and quantity of fish that is available at traditional use sites.

³⁰ Alfred, T. 2013. "Cultural impact study: assessment and overview of the effects of environmental contamination on the Mohawks of Akwesasne." In: St. Regis Mohawk Tribe Environment Division. 2013. *St. Lawrence River Environment Natural Resource Damage Assessment: Restoration and Compensation Determination Plan and Environmental Assessment*.

Conclusion

The MCK is opposed at the approval of the Beauport 2020 project in its current form. The MCK believes that the Project's impacts are incompatible with the application of the MCK's governance, fishing and stewardship rights. The absence of the Regional Impact Assessment and impacts to the striped bass are unacceptable to the MCK based on the application of the Ohen:ton Karihwatehkwen.

Furthermore, and in consideration of these impacts, the MCK believes that the proponent has not adequately demonstrated the necessity of the Project. As we have indicated in previous correspondence, at the February 22, 2017 meeting, the Proponent explained to us that the primary rationale for the Project is to generate additional revenues to pay for a significant infrastructure deficit (MCK was informed that this deficit is over \$300 million). While the MCK does not question the necessity of repairs to the existing infrastructure, the MCK does question whether port expansion is the most effective way to address this issue.

The MCK requires a meeting with the Crown to discuss our position on this Project and next steps on how our position will be considered.

In Peace and Friendship,

**ON BEHALF OF THE OFFICE OF THE COUNCIL OF CHIEFS
MOHAWK KAḤNAWÀ:KE**

<Original signed by>

Chief Ross Montour
Consultation Committee Portfolio, Mohawk Council of Kahnawà:ke

RM/fw/bm/081919/POEmond

cc. Mr. Anick Métivier, Quebec Port Authority, by e-mail: anick.metivier@portquebec.ca
Ms. Marcia Vergara, CEAA, by e-mail : marcia.vergara@canada.ca

Annex 1: Application of Criteria for determination of impacts to the inherent and aboriginal rights of the Mohawks of Kahnawà:ke stemming from the Beauport 2020 project

Aboriginal Governance Rights

Likelihood. (High)

Extent. (High) The impact to governance rights will occur over a regional area. At the time of European contact, we exercised a high degree of influence over the St. Lawrence River. We harvested at many sites along the St. Lawrence River, and depended on an intact ecosystem, that stretched from what is now known as Lake Ontario to the salt water estuary of the St. Lawrence River. Migratory species such as shad, lake sturgeon, and striped bass travel from the Project site to upper reaches near Kahnawà:ke.

Duration/frequency/reversibility. (Moderate) The impact to our governance rights is likely to persist for generations to come, as it will limit our ability to influence the long-term recovery of vulnerable fish populations that depend on the length of the River. The timeframe of our connection to the St. Lawrence River – from the time immemorial to the end of time – requires us to consider the long-range consequences of human actions and environmental change. We depend on the St. Lawrence River to keep us alive as Kanien'kehá:ka (Mohawk) people. In all environmental decision-making, we consider the principle of the Seven Generations. Any decisions taken today must consider the impact of the selected actions on the next seven generations.

Stewardship/nationhood and Way of life (values, practices traditions). (High) The Project interferes with the relationships and conditions that promote health and a healthy environment, and is contrary to the Ohen:ton Karihwaterkwén (“words that come before all else”). As an assessment of the regional (St. Lawrence River – wide) impacts of Beauport 2020 has not been carried out, the Mohawks of Kahnawà:ke are unable to fulfill our stewardship responsibilities under Kanien'kehá:ka (Mohawk) law. The Ohen:ton Karihwaterkwén is an environmental code that is based on Kanien'kehá:ka (Mohawk) traditional laws and practices. Its underlying philosophy provides us with a framework for categorizing and assessing the health of the environment, including the need to carefully examine the pathways by which ecosystem-wide impacts may occur. The Ohen:ton Karihwaterkwén also leads us to consider intricate ecological connections that may not be readily apparent when considering only a localized area.

The fact that Beauport 2020 is being assessed without an analysis of regional cumulative effects is therefore contrary to our traditional law. We remain concerned that the lack of a regional strategic environmental assessment makes it virtually impossible for individual project proponents, including the Port of Quebec, to provide adequate information on what the potential impact of this project will be on the rights and interests of the Mohawks of Kahnawà:ke. We underline that a study under Transport Canada's Cumulative Effects of Marine Shipping Oceans Protection Plan (OPP) is insufficient to satisfy the requirement for a Regional Environmental Assessment for the St. Lawrence River. The study proposed by Transport Canada does not address the MCK's concerns, as the timeline for the completion of this study extends beyond the construction schedule proposed by the project proponent. Furthermore, the study only intends to consider existing data on marine shipping, which will not include obtaining data to

assess information stemming from the planned port expansions, nor any other cumulative impacts data gaps that may exist.

Regional/historic/cumulative context. (High) There are multiple other land uses in our territory that limit the expression of our aboriginal governance right to manage and protect the St. Lawrence River. The River is already highly impacted by urban development, agricultural and industrial activities, dams, bridge construction and repairs, port expansions, maintenance of the navigation channel, and other activities related to the shipping industry. For more than 70 years, our aboriginal governance rights have been sidelined by the ongoing large-scale industrialization of the region. The expansion of shipping and industry that took place after the Seaway was built took no account of our right to make decisions about the River and how we want to live as Kanien'kehá:ka (Mohawk) people in our territory. Historic and ongoing increases in contamination, degradation of habitat and water quality, incursions of invasive species, have also interfered with our ability to exercise our governance rights and stewardship responsibilities.

Aboriginal Fishing Rights General

Likelihood. (Moderate)

Extent. (Moderate) Impacts to fishing rights will occur over a regional area. Sturgeon, shad, and striped bass migrate between the fluvial estuary near Tianontari:kon (Quebec City) and the upper St. Lawrence River near Tiohtià:ke (Montreal). These migratory species will be impacted by the port expansion project, and we will see the effects on fish populations and the health of the ecosystem in the upper reaches of the river. The MCK predicts that the Project will result in a reduction in migratory fish populations at Mohawk traditional use sites. While not anticipated at this time, the project may also result in increased shipping in the St. Lawrence Seaway, which could adversely impact fishing opportunities at preferred TLU locations.

Duration/frequency/reversibility. (Moderate) Given the cumulative impacts of past and existing industries, set-backs to the ongoing recovery of migratory fish species may be difficult to reverse. Sturgeon, striped bass, and shad are species that are still in a vulnerable state and in various stages of rebuilding their populations. Even if environmental conditions for these species improve, the recovery of these species to historic population levels can be expected to take many more decades to complete. This time frame will be further extended if these species lose habitat, suffer exposure to contaminants from the dredging, dike construction, and caissons installation, and experience disturbances on an ongoing basis during the operations phase of the Project.

Stewardship/nationhood. (High) The approach of Beauport 2020 to dealing with Project impacts on fisheries is contrary to the approach given to us by the Creator in the Ohen:ton Karihwaterkwén, and it is contrary to the principle of the Seven Generations. The Proponent suggests that following standard construction practices that limit damage to aquatic environments during in-water work can be considered mitigation measures. The Proponent also expects to develop compensation plans designed to replace the areas of lost fish habitat. Lost or altered fish habitats in the St. Lawrence River are not fully replaceable and re-creatable. We are concerned about how offsetting seems to be taking the place of regulation and protection of the St. Lawrence River ecosystem. Since compensation measures will happen off-site or after

the damage has already been done, the existence of offsetting as an option means that earlier stages of the mitigation hierarchy – the avoidance or minimization of harm – are not always fully considered. We believe that the proponent has not adequately demonstrated the necessity of the project. We therefore consider that there is a large gap between the mitigation/compensation measures outlined by the proponent, and our Kanien'kehá:ka (Mohawk) stewardship requirements.

Regional/historic/cumulative context. (High) The Mohawks of Kahnawá:ke have direct experience with how the building of the Seaway and the expansion of shipping pushed our environment past the threshold needed for us to exercise our aboriginal and inherent right to fish. Some of the changes we can expect to see if the Beauport 2020 project is approved will follow the pattern of slow but cumulative erosion of our ability to fish, that we have experienced since the 1950s. Many cumulative impacts become evident only with time, and have cascading effects through the food web. We expect that port expansion projects such as Beauport will cause damage to migratory fish populations that can only be understood cumulatively, in the context of past, present and future expansion of shipping and agricultural, urban, and industrial development.

Way of life (values, practices traditions). (Moderate) The use of migratory fish at multiple traditional use sites is an integral part of our cultural history, and today fishing sustains our connection to the River as Kanien'kehá:ka (Mohawk) people. If further declines to migratory species occur, there may no longer be the possibility for harvesters to switch between harvesting different species depending on their abundance and seasonal availability. Given our concerns about contamination from upriver sites, and the precarious state of many fish populations in the River, even small changes to the abundance and health of migratory fish can lead harvesters to cease fishing and participating in this way of life.

Impact inequity. (Moderate) Given the ecosystem-wide impacts of continued expansion to the shipping industry, the effects on fish populations of the proposed container port at Beauport may be especially acutely felt by younger members of our community, who have had limited access to fish from the River within their lifetime. This presents large inequities in the impact of this project, since future generations of Kahanwakeró:non (residents of Kahnawá:ke) will be disproportionately affected if fish populations in the River fail to recover and/or show further declines.

Aboriginal Fishing and Stewardship Right related to Sturgeon

Likelihood. (Moderate)

Extent. (Moderate) The lake sturgeon occurring from the Beauharnois Dam at the head of Lake St. Louis to the limits of the brackish water form a single genetic stock. Within this zone, sturgeon undertake long spawning migrations. While many of the major spawning grounds are located in the upper sections of the river, the lower sections of the river, including the upper estuary near Orleans Island, constitute important habitat for juvenile sturgeon. The Project area is an important feeding ground and aggregation site for juvenile sturgeon that hatch in the upper reaches of the River.

Duration/frequency/reversibility. (Moderate) Juvenile sturgeon are sedentary and do not adapt readily to habitat disturbances. If the juvenile sturgeon occupying the Project area have lowered survival and reproduction, the Project can be expected to have impacts on successive generations of sturgeon in the St. Lawrence River.

Stewardship/nationhood. (High) See entry on stewardship/nationhood under “aboriginal fishing rights general.” In addition, Sturgeon is a particularly important species for the Mohawks of Kahnawà:ke.

Regional/historic/cumulative context. (High) Recent improvements to the state of the St. Lawrence River lake sturgeon have come about only through careful management and protective measures. The MCK strongly opposes the further degradation of sturgeon habitat, including the losses resulting from the proposed Beauport 2020 project, that will only add to decades of cumulative impacts from pollution, dredging, dam construction and other industrial activity. Climate change models predict reduced flow in the St. Lawrence River, further reducing the quality of known sturgeon spawning areas, feeding grounds, and deep water refuges. Although the decline of the St. Lawrence River lake sturgeon population has slowed, the population has not recovered to historic levels of abundance.

Way of life (values, practices, traditions). (Moderate) The lake sturgeon is one of the most commonly harvested species by fishermen in our community. See entry on way of life under “aboriginal fishing rights general.”

Impact inequity. (Moderate) See entry on impact inequity under “aboriginal fishing rights general.”

Aboriginal Fishing and Stewardship rights related to Striped Bass

Likelihood. (High)

Extent. (High) As currently proposed, the new wharf would be constructed on top of a rare pre-spawning staging area for striped bass, thereby directly impacting reproduction and jeopardizing the recovery of this species throughout its range. The bay of Beauport is now recognized by the scientific community as a second spawning site following confirmation of striped bass eggs and larvae in this area. This means that the Project will have implications for the species throughout its migratory range.

Duration/frequency/reversibility. (High) We are particularly concerned with the survival and recovery of this species because the St. Lawrence River population was extirpated, and is only slowly becoming re-established within our territory. Any setback in the fragile recovery of this species (time required before sustainable use is possible) could prove irrecoverable.

Stewardship/nationhood. (High) In keeping with the Ohen:ton Karihwaterhkwen, we believe that having a self-sustaining population of this species, which requires a range of intact habitats, is vital to the ability of this species to carry out its original instructions. A healthy striped bass population will help restore ecological stability to the River and make it more resilient to climate change and future disturbances.

Regional/historic/cumulative context. (High) Since the Project expects to attract an increased volume of larger ships, and since the port expansion, once completed, will require

periodic dredging, the Project can be expected to have a high cumulative impact on the recovery of striped bass. The cumulative impacts of the Project on striped bass are unacceptable to the MCK, given the historic and ongoing effects of shipping in important striped bass habitat. The Port of Quebec has already caused extensive loss to juvenile striped bass habitat, as described in the Recovery Strategy for striped bass. The proponent is also planning to undertake the activity (dredging) in the location (the Quebec City section of the River) that is considered responsible for extirpation of the striped bass in the St. Lawrence River. While dredging and sediment disposal practices may have changed in recent years, maintenance dredging of the shipping lane continues, and will increase in coming years due to an increase in marine traffic, the presence of increasingly larger vessels, and decreasing water levels.

Way of life (values, practices, traditions). (Moderate) The Mohawks of Kahnawà:ke also expect to resume fishing this species once it is sustainable to do so.

Impact inequity. (Moderate) See entry on impact inequity under “aboriginal fishing rights general.”

Aboriginal Fishing and Stewardship rights related to Shad

Likelihood. (Unknown) The MCK is missing information on cumulative effects to evaluate the likelihood of impacts on aboriginal fishing and stewardship rights related to shad.

Extent. (High) American shad migrate from the estuary to the upper St. Lawrence River near Tiohtià:ke (Montreal). Impacts on habitats used by shad at Beauport will affect the population throughout its migratory range.

Duration/frequency/reversibility. (Unknown) The MCK has insufficient information on cumulative effects to evaluate the duration and reversibility of impacts.

Stewardship/nationhood. (High) See entry on stewardship/nationhood under “aboriginal fishing rights general.”

Regional/historic/cumulative context. (Unknown) The MCK has insufficient information on cumulative effects. The EIS states that the Project area is significant for shad as a rearing area for juveniles and that it may be a staging area for reproductive purposes. The MCK does not accept the reasoning of the proponent that because shad are repeat spawners they are not seriously affected by industrial impacts.

Way of life (values, practices, traditions). (Moderate) The Mohawks of Kahnawà:ke expect to resume fishing this species once it is sustainable to do so.

Impact inequity. (Moderate) See entry on impact inequity under “aboriginal fishing rights general.”

Aboriginal Harvesting and Food Sovereignty Rights

Likelihood. (Moderate)

Extent. (High) Given that the cumulative effects of Beauport 2020 will impact migratory fish along the length of St. Lawrence River, the project is likely to interfere with access to fish in multiple fishing locations, both upstream and downstream of Kahnawà:ke.

Duration/frequency/reversibility. (Moderate) The resurgence of our traditional harvesting practices is at risk if the health of the St. Lawrence river continues to degrade. We still have some examples of traditional land based economy in Kahnawà:ke, but culturally-significant foods, such as fish from the St. Lawrence River, are difficult to access in the community, and harvesters will discontinue harvesting (and discontinue passing knowledge of harvesting on to the next generation) if the diversity, quality, and abundance of fish available in the River no longer supports the practice.

Stewardship/nationhood. (Moderate) We require enough in the way of fish resources to be able to revitalize harvesting for both commercial and personal consumption in a sustainable manner. See also the entry on stewardship/nationhood under “aboriginal fishing rights general.”

Regional/historic/cumulative context. (High) Most fishers will not harvest or use fish when they have even a suspicion of contamination. If there is concern about the sustainability of a fish population, fishers will stop harvesting until they see that the population is showing signs of recovery. The cumulative ecological impacts on the St. Lawrence River, including the major impacts of the shipping industry, have left the Mohawks of Kahnawà:ke with a depleted River ecosystem and restricted access to the resources that support our culture and way of life. As detailed in part 1 above, since the 1950s, our threshold for damage to the St. Lawrence River has been surpassed; the current state of the River no longer supports our inherent and section 35(1) aboriginal rights to fish and to exercise our stewardship responsibilities.

Way of life (values, practices, traditions). (Moderate) When impacts on migratory fish limits harvesting opportunities, we have little control over our food systems and through food, the ability to practice relationships to territory. The foods that make up for a shortfall in “country foods” such as fish tend to be high in sugar and fat. The inability to access traditional foods therefore has links to diseases such as diabetes, stroke, heart disease, high blood pressure, cancer and obesity.

Impact inequity. (Moderate) See entry on impact inequity under “aboriginal fishing rights general.”

Aboriginal Language and Cultural Rights

Likelihood. (Moderate)

Extent. (High) See entry on “extent” under “aboriginal harvesting rights and food sovereignty.”

Duration/frequency/reversibility. (Moderate) See entry on duration/frequency/reversibility under “aboriginal harvesting rights and food sovereignty”

Stewardship/nationhood. (Moderate) Teachings about environmental terminology, harvesting and processing techniques, and ways of relating to the environment go hand in hand with fishing and hunting. The structure of our language carries the basis of our culture, including its matrilineal organization, our connections to cycles and seasons, and our relationship with others and the environment. The language comes alive through activities on the land and water. If we

are limited in our ability to harvest because fish are contaminated, or in low abundance, it is difficult for us to pass on core values and ways of living to our youth.

Regional/historic/cumulative context. (High) The historic denial of our rights to language and culture means that it is all the more important that we continue to practice fishing and other traditional land use activities. See also the entry on regional/historic/cumulative context under “aboriginal fishing rights general.”

Way of life (values, practices, traditions). (Moderate) It is only by continuing to harvest on the River that we can continue to exercise our responsibilities towards the fish, as well as the ancestors that passed on a way of life to us. Being unable to fulfill these responsibilities has severe emotional and psychological impacts on us as Indigenous peoples. Sharing is an important cultural value that depends on sufficient quantities of high-quality fish and other traditional foods to sustain us and our social relationships.

Impact inequity. (Moderate) See entry on impact inequity under “aboriginal fishing rights general.”