

December 14, 2004

Randy Alexander, Regional Manager
Environmental Protection Division - Vancouver Island Regional Office
Ministry of Water, Land and Air Protection
2080-A Labieux Road
Nanaimo, B.C. V9T 6J9
FAX: 250-751-3103

RE: Application for Permit under Provisions of the *Environmental Management Act* by Dr. Gidon Minkoff of Sablefin Hatcheries Ltd., Salt Spring Island

Mr. Alexander,

The Hul'qumi'num Treaty Group is in receipt of Dr. Minkoff of Sablefin Hatcheries Ltd.'s application for a permit under the *Environmental Management Act* [RSBC 2004], dated September 15, 2004. We understand that this permit application has been referred by the Ministry to all our six First Nation member communities, whom we represent but reserve the right to independent comment on this application.

Following our meeting discussion on November 29, 2004, while the Hul'qumi'num Treaty Group acknowledges the Environmental Appeal Board's wrongful dismissal of our Penelakut Elders' appeal, the Hul'qumi'num Treaty Group must reiterate to the Ministry of Water, Land and Air Protection that Sablefin Hatcheries Ltd.'s permit application, if approved as is, unjustly infringes our *Constitutionally*-protected aboriginal rights at Syuhe'mun. Consequently, we expect that British Columbia must reconcile our aboriginal rights in its final decision.

The Hul'qumi'num Treaty Group submits that the Ministry must uphold the Honour of the Crown, as explained by the Supreme Court of Canada (SCC) in its recent decisions of *Haida Nation* and *Taku-Tlingit*, in its decision pending on Sablefin Hatcheries Ltd.'s permit application to discharge its effluent into our ancient village and burial ground at Syuhe'mun. The SCC reinforced the legal duty of the Crown to consult and accommodate First Nations in decisions that may infringe upon aboriginal rights in Canada. The Crown's duty arises when it has knowledge, real or constructive, of the potential existence of aboriginal title and rights that may be adversely affected by government action. As stated, the Crown 'cannot cavalierly run roughshod' over First Nations interests, but must reconcile aboriginal title and rights in good-faith through fair negotiated dealings. The Supreme Court of Canada affirms that the very 'Honour' of the Crown is at stake in its duty to reconcile aboriginal rights and title in all land and resource management decisions prior to treaty settlement.

Our Penelakut Elders have articulated and declared the existence of our aboriginal rights

at Syuhe'mun during the appeal board hearing in 2004. The Penelakut Elders continue to assert the following aboriginal rights at Syuhe'mun under s.35 of the *Constitution Act*:

1. An aboriginal right to preserve, maintain and access their sacred cemeteries and burial grounds, including the site at Syuhe'mun;
2. An aboriginal right to preserve the sanctity of their sacred burial sites from desecration or defilement by culturally inappropriate use and disturbance of the land;
3. An aboriginal right to practice and manifest their spiritual and religious traditions, customs and practices governing the appropriate care of, and responsibilities to, the Ancestors interred in their sacred burial grounds;
4. An aboriginal right to respect and maintain their customary laws governing the care, and responsibilities to, the Ancestors interred in sacred burial grounds; and
5. An aboriginal right to harvest from the area.

It is a plain fact that Syuhe'mun is the burial place of many of our Coast Salish Ancestors on Salt Spring Island. The archaeological site at Syuhe'mun (DfRu-002) represents physical evidence of a substantial ancient settlement built by past populations over millennia, which holds great heritage significance for our Hul'qumi'num people today. Our Hul'qumi'num people continue to use Syuhe'mun as an important resource harvesting location for marine and intertidal resources. These are uncontested facts and thereby, we submit, are strong evidence of our aboriginal rights.

It is our position that the Environmental Appeal Board mischaracterized and misinterpreted the nature of our Coast Salish culture continuity of beliefs, practices, and traditions associated with the Dead. Honour and respect for one's family Ancestors is at the root of all Hul'qumi'num family and ceremonial life, social organization and customary law. Respecting the Dead is fundamental to the social status, health and spiritual well-being of families, who are obligated to care for and maintain relations with their deceased Ancestors. Only persons with the inherited family rights are allowed to contact the Dead. As the Dead can inflict powerful harm upon the Living for any disrespectful deed, the physical unearthing of a burial site and its skeletal remains is considered an unspeakable act of desecration that threatens the very balance of relations between the Living and their Ancestors. It is our customary law that the Dead are respected and their burial grounds are not physically disturbed. This customary law represents the continuity of spiritual and ceremonial practices that maintain our relationship with our Coast Salish people and our Ancestors throughout our traditional territory.

On September 15, 2004, Dr. Minkoff of Sablefin Hatcheries Ltd. announced in a public notice of its application for a permit under the *Environmental Management Act* inviting public comment. By way of this application, Sablefin Hatcheries Ltd. proposes to replace their existing 15-month 'approval' with a permanent permit. In response, we understand that the Penelakut Tribe, the Islands Trust, numerous environmental organizations, private citizens, even the State of Alaska have sent letters to WLAP stating their opposition to this application.

We further understand that Sablefin Hatcheries Ltd. proposes in its application to increase its discharge of industrial effluent into our ancient burial site at Syuhe'mun (DfRu-002) from 619 m³/day a to 2,618 m³ /day a four-fold increase above its current operational rate.

For these reasons in our November 29th meeting with the Ministry, the Hul'qumi'num Treaty Group and Penelakut Elders proposed the following main recommendations for the Ministry to reconcile its decision on Sablefin Hatcheries Ltd. application: 1) use of alternative waste disposal systems; 2) non-disturbance of ancient burial ground at DfRu-002; and 3) delivery of Ministry environmental assessment information.

1) Use of Alternative Waste Disposal Systems

While both the Ministry and Environmental Appeal Board argue that Sablefin Hatcheries Ltd.'s waste disposal system may be environmentally-sound, from our First Nations' perspective, the Crown's permission to use our Ancestors' burial ground as a natural filter for industrial effluent is a cultural disaster.

Under the new *Environmental Management Act*, the Ministry retains the authority to prohibit the use of operational works:

85 (4) The minister may not extend or renew an interim order.

(5) Whether or not an interim order has been made or has expired, if a declaration has been made under subsection (1), the Lieutenant Governor in Council, after notifying the person affected, but without the necessity of holding a hearing, may make an order

(a) restricting, modifying or prohibiting the operation of the work or undertaking or the use of the product or resource, or

(b) requiring the person to do anything that the Lieutenant Governor in Council requires to be done in relation to the work or undertaking or the use of the product or resource

We argue that to reconcile our aboriginal rights to care for and protect our Dead at Syuhe'mun, it is our preference that the Minister should not grant Sablefin Hatcheries Ltd. a new permit or extend its temporary approval. Rather, the Ministry should direct Sablefin Hatcheries Ltd. to develop alternative waste disposal systems for its hatchery that do not continue to disturb our archaeological burial site and desecrate our ancient human remains. The existing waste disposal system should reasonably be given time to be gradually dismantled and the installed wells and pipes be removed from the DfRu-002 site.

If the Ministry chooses to extend Sablefin Hatcheries Ltd. temporary approval, however, the amount of effluent discharge should remain at current levels, for reasons outlined below.

2) Non-Disturbance of Ancient Burial Ground at DfRu-002

The hydrogeological report prepared on behalf of Sablefin Hatcheries Ltd. by Lowen Hydrogeology Consulting, dated October 27, 2004, clearly states that the proposed increase in injection flow capacity is unfeasible using existing infrastructure and that new injection wells are required. The installation of new wells and the connection of the four existing wells to its utility pipe system will directly cause physical disturbance of our ancient burial site and the continued destruction of our archaeological heritage at Syuhe'mun.

As the Ministry is aware, Sablefin Hatcheries Ltd. has previously installed at least six of its ten wells (two test wells and four injection wells) at DfRu-002 without notification and without legal receipt of a site alteration permit or permit amendment from the Archaeology and Registries Services Branch, Ministry of Sustainable Resource Management. We have serious concerns that by awarding the permit to Sablefin Hatcheries Ltd. that the Crown is effectively condoning this corporation's illegal activity, which only encourages future illegal expansion of their works. We do not believe that the Ministry of Water, Land and Air Protection should continue to condone this illegal activity, or continue to aid and abet Sablefin Hatcheries Ltd. to profit from its actions in contravention of the provincial *Heritage Conservation Act* [RSBC 1996].

To reconcile our aboriginal rights, we recommend that the Ministry does not permit Sablefin Hatcheries Ltd. to increase its injection flow capacity under the existing waste disposal system or allow for the further placement of works on the tombolo. Any allowance to increase effluent volume will consequently lead to increased physical disturbance of our ancient burial site at Syuhe'mun, which we state to the Ministry is a direct infringement of our asserted aboriginal rights.

The Hul'qumi'num Treaty Group and Penelakut Tribe made several other requests on behalf of respecting our Ancestors, such as the development of a protocol for the Elders and community members to visit Syuhe'mun; a written guarantee by Sablefin Hatcheries Ltd. that no further digging or alteration of the site for the placement of works; and the establishment of a commemorative Coast Salish burial house and grave figure at Syuhe'mun. We understand that these accommodations also demand the commitment of Third Parties but request that the Ministry take a leadership role in conducting these negotiations.

3) Delivery of Environmental Monitoring Information and Assessment Reports

The Environmental Appeal Board did support that Penelakut Elders maintain aboriginal rights to harvest marine resources at Syuhe'mun. The Hul'qumi'num Treaty Group continues to state our concerns to the Ministry about environmental pollution related to this experimental hatchery project that may affect the health of our marine resources and contaminate our important marine harvesting locations in the southern Gulf Islands. For this reason, the Hul'qumi'num Treaty Group-membership requests that the Ministry deliver all environmental assessment reports and monitoring information concerning Sablefin Hatcheries Ltd. during the course of its operation until its cease. In addition,

that the Ministry provide time and resources for the interpretation and discussion of this data.

In conclusion, the Hul'qumi'num Treaty Group wishes to build a respectful and cooperative future with the Crown in British Columbia. We do not believe that for the Crown to permit industry to pollute and destroy our ancient cemetery at Syuhe'mun is a respectful course of Honour for the Crown. While the Ministry may feel that many of these issues raised in this matter are beyond the scope of the *Environmental Management Act*, the Hul'qumi'num Treaty Group argues that the reconciliation of our aboriginal title, rights and interests fall directly in the scope of the Crown duty to protect our Constitutionally-protected s. 35 rights.

Respectfully,

Robert Morales, Chief Negotiator
Hul'qumi'num Treaty Group

cc. Honourable Geoff Plant, Attorney General and Minister for Treaty Negotiations
(250-387-6411)

Honourable Bill Barrisoff, Ministry of Water, Land and Air Protection (250-387-1356)

Honourable George Abbott, Ministry of Sustainable Resource Management (250-356-8273)

Honourable Kevin Falcon, Ministry of Transportation (250-356-2290)

Dan Goodleaf, Chief Negotiator, Federal Treaty Negotiation Office (604-775-7149)

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Chief and Councils of the Hul'qumi'num Treaty Group