

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

August 26th, 2019

Sent by Mail & E-mail

David Dufour
Senior Consultation Analyst, Quebec Regional Office
Canadian Environmental Assessment Agency / Government of Canada
901-1550, avenue d'Estimauville
Québec, Quebec G1J 0C1
By e-mail: david.dufour@Canada.ca

Re: Impacts of the proposed Contrecoeur port terminal expansion project on the exercise of inherent and Section 35(1) rights of the Mohawks of Kahnawà:ke

Mr. Dufour,

Introduction

The Mohawk Council of Kahnawà:ke ("MCK") welcomes the opportunity to provide the following assessment of the impacts of the proposed Contrecoeur port terminal expansion project ("Project") on the exercise of inherent and aboriginal rights of the Mohawks of Kahnawà:ke. The MCK has had the benefit of reviewing the Port of Montreal's April 2019 response to the first set of questions from the CEAA. 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 Contrecoeur project.

Part 2 of this submission provides an analysis of the impact of the Contrecoeur 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 copper redhorse;
- Aboriginal harvesting and food sovereignty rights;
- Aboriginal language, cultural and cultural heritage property rights;
- Impacts to health/safety of Mohawk Territory of Kahnawà:ke and SSSL lands

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 to the Great Lakes, which includes the project area.

The ancestors of present-day Mohawks of Kahnawà:ke have historically used and occupied territories along the St. Lawrence River, including near Tiohtià:ke, present day Montreal². As such, we assert interests to the territory within and in proximity to the Project area.

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 both upstream and 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 project.

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

¹ See: MCK Report "Contrecoeur Port Terminal Expansion Project: Mohawk Occupation and Utilization of the Territory in Prehistoric and Historic Times", dated December 2018; Letter from Chief Christine Zachary Deom to Stéphanie Belliard Hogue, CEAA, dated March 19, 2018; 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; letter from Chief Christine Zachary Deom to Genevieve Dionne, SNC Lavallin (for Port of Montreal), dated June 21, 2017..

² MCK Report "Contrecoeur Port Terminal Expansion Project: Mohawk Occupation and Utilization of the Territory in Prehistoric and Historic Times", dated December 2018

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, redhorse, 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.

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.³ 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 1993.⁴

³ 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.

⁴ 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.

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.⁵ 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.

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.⁶

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.⁷ 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 has 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.⁸ 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

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 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.

⁷ 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.

⁸ 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.

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

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.⁹

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.¹⁰

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.¹¹ 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 polybrominated 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.¹² 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

⁹ 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.

¹⁰ 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.

¹¹ 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.

¹² 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 Contrecoeur 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 upstream and downstream of 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 Proponent's approach to environmental assessment fails to consider the role of the proposed port expansion project in the continued industrialization and ecological decline of the St. Lawrence River, and the cumulative impacts of the Project on our rights.

Part 2: Analysis of the impact of the Contrecoeur 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)¹³. 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 *Oben:ton Karihwatehkwen**

We assert inherent and aboriginal governance (jurisdictional) rights to the St. Lawrence River, including the Contrecoeur 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 to the Great Lakes, which includes the project area. 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 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-existence¹⁴. As part of our governance rights, we have a responsibility to care for

¹³ R. v. Adams, [1996] 3 SCR 101

¹⁴Summary of Two Row Wampum Treaty relationship taken from: <https://cinclamasamericas.org/new-releases-claiff19/2016/the-grandfather-of-all-treaties> (accessed online on August 19, 2019).

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.

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 Contrecoeur. 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 the Contrecoeur project 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, the Contrecoeur port expansion 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 Strategy¹⁵. 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.¹⁶

We remain concerned that the lack of a Regional Environmental Assessment makes it virtually impossible for individual project proponents, including the Port of Montreal, 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.

The MCK is 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 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.

¹⁵ See letter from Chief Christine Zachary Deom to the CEAA, dated March 19, 2018.

¹⁶ 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 (ACEE), mars 2016, p.15.

The CEAA, in its first round of questions to Port of Montreal, did acknowledge our concern by stating that First Nations are asking the Government of Canada and Quebec to conduct a regional strategic study to assess the cumulative effects of navigation on the St. Lawrence River. The CEAA then went on to discuss the suggestion advanced by certain groups to set up a permanent consultation table where local stakeholders from all sectors could contribute to the responsible and sustainable development of Contrecoeur port development, and other port expansion projects, and that this initiative would contribute to efforts under the St. Lawrence Action Plan.¹⁷ We underline that such a consultation table cannot be considered as a substitute for a regional strategic study of cumulative impacts on the St. Lawrence River. Furthermore, CEAA, Canada and Quebec have not approached the MCK with this suggestion and we do not have any details about this potential measure (i.e. no information on mandate, scope and composition of this consultation table). Therefore, we are not in a position to comment on the suitability of this suggestion as a means to even partially address our concerns.

Without a Regional Environmental Assessment, it is impossible for us to assess with precision what the impacts will be from the Contrecoeur 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 Contrecoeur project will add to existing impacts on water quality, wetlands, fish, and fish habitats.

Aboriginal fishing and stewardship rights generally

We consider that the Contrecoeur project as proposed will have serious impacts on both the River and wetland habitats. The cumulative impacts of industry, agriculture, urbanization, and shipping have damaged and fragmented large areas of aquatic and wetland habitat in the St. Lawrence River. The impact of the Project on wetland and aquatic habitats, and the inadequacy of mitigation measures proposed by the proponent, degrade the Mohawk Nation's ability to exercise our stewardship responsibilities towards the River.

Impacts to wetlands

The Mohawk Nation considers wetlands as essential components of the St. Lawrence River ecosystem. The MCK believes that the remnant wetlands of the upper St. Lawrence River valley must be kept intact, and that further losses will lead to unacceptable declines in biodiversity and ecosystem function. The Contrecoeur project will diminish remnant wetlands by removing riparian vegetation and by diverting stream drainages. The remaining wetlands will be no more than fragments -- isolated from one another and from former forest/agricultural lands by the yards, roads, walls, and other infrastructure at site. The MCK considers that for amphibians, reptiles, birds, and mammals, which require connected habitats, the overall losses to habitat will be far larger than what is indicated by the acreages provided in the EIS. While no construction activities appear

¹⁷ CEAA. 2019. Projet d'agrandissement du terminal portuaire de Contrecoeur. Première demande d'information. 28 May 2018. p. 124.

to be occurring directly in the designated critical habitat for the Western Chorus Frog, it is clear that increased noise, air pollution, light and vehicular activity, the diversion and channelization of waterways, and the construction of large impermeable surfaces adjacent to this critical habitat will have negative consequences for the viability of this population. If wetland habitats are to be created elsewhere, the MCK requests the proponent not only compensate for acreages lost, but realize real gains in ecological quality and function. We believe that reducing impacts through mitigation is insufficient to fully allay this concern and that some form of direct compensation is required.

At a meeting between the Proponent and MCK on February 22, 2019, the Proponent undertook to compensate “at least double” the acreage that would be lost, and that the MCK could be involved in discussions related to the selection of the compensation projects. The MCK requires additional consultation regarding this issue in consideration of the factors we have outlined above.

Impacts to fish habitats

The proponent has stated that 16.3 ha of fish habitat will be modified due to the deepening of the approach area, and that 8.3 ha of habitat will be lost due to wharf construction. In addition, several streams will be modified through culverts and diversions. In addition to these direct impacts, the dredging work will impact fish habitats in the downstream area, between the future wharf and the existing wharf.

The MCK considers that the direct loss and indirect effects of the Project on fish habitat, including aquatic grass beds, constitute major losses of fish habitat. The nearshore areas and the aquatic grass beds in the Project area are rearing and feeding habitat for many species of fish, including sturgeon and other species harvested by members of our Nation.

The Port of Montreal, in its response to the first round of questions from the CEAA, states that aboriginal people understand the ecology of the River in holistic terms, in that a development at one location may impact the River as a whole. The Proponent then goes on to say (1) that the Project is located along the navigation channel in an industrialized zone with strong currents, and that the site is therefore not frequented by fishers, (2) that no spawning grounds have been identified in the Project area and (3) that the total area of fish habitat affected by the Project is 23.4 hectares. This analysis leaves out any consideration of cumulative impacts, and it appears to be unaware of our Nation’s stewardship responsibilities towards the River.¹⁸

The Proponent suggests that standard work practices -- such as time limits for in-water works, clearly delimiting the dredging area, maintaining the free movement of fish during the construction phase, and so on -- constitute mitigation or even compensation for harm to fish and fish habitat. While these measures will help limit the scale of the impact, the net result is still the direct loss of habitat and habitat connectivity, with indirect impacts extending well beyond the immediate project site.

The proponent acknowledges the impact of past development and identifies some of the resulting stresses and negative impacts that have occurred. The MCK believes that the proposed Project and future expansions of the port will further deteriorate the quality of habitat and viability of species in

¹⁸ Port of Montreal. 2019. Agrandissement du terminal portuaire de Contrecoeur – Étude d’impact environnemental – Addenda 2 – Réponses à la première série de questions de l’ACÉE | Administration portuaire de Montréal. April 2019. P. 1257.

the region. As such, MCK continues to have concerns about these impacts and requires additional information on how they will be addressed.

The MCK has concerns about the extent of damage to grass beds located downstream of areas that will be repeatedly dredged (over a period of three years). Dredging will increase flow and sedimentation rates, and re-suspend contaminants, affecting grass bed habitats and invertebrate prey. It is therefore unclear to the MCK how the proponent proposes to protect grass beds downstream of dredging activities. The proponent has suggested that interrupting the dredging work when TSS reach a particular level will help to protect the grass beds, but the MCK questions whether this measure will make any difference to overall sediment transport or the long-term health of downstream grass beds.

The proponent has indicated that only 0.4 ha of grass beds will be lost as a result of the Project, but has also indicated that 0.7 ha will be altered or will disappear as the result of sediment transport and increased water speeds. The MCK considers this a large loss of aquatic grass bed habitat, and requires that the proponent find ways of reducing the area of impact on aquatic grass bed habitats. The MCK is particularly concerned about the effect of dredging on water speeds in the downstream grass beds in the channels of the Contrecoeur Archipelago, that are heavily used by copper redhorse. Changes to water depth within the River will alter hydrological conditions, which will impact the suitability of fish habitats. The information we have received thus far does not detail how hydrological changes will affect the habitat functions of fish habitats.

The MCK emphasizes that any analysis of the Project's effect on fish habitat must take into account more frequent and prolonged periods of low-water flows in the St. Lawrence River that have been observed over the past fifteen years. Lower water levels will reduce the availability of quality habitats, and may also lead to an increase in dredging activities, which will cause additional damage fish habitat. The interactive impacts of climate change and the port expansion must be considered when evaluating the cumulative effects of the Project on fish and their habitats.

The MCK requests information on the proponent's plans for compensation measures. How does the proponent plan to re-create the complex hydrological and ecological conditions of the aquatic grass bed habitats affected by the Project?

The MCK also requires that the proponent compensate for the loss of connectivity in nearshore fish habitats caused by the construction of the new wharf.

The MCK requests that fish habitat compensation measures be implemented as locally as possible, and not through the fish habitat bank in the Boucherville Islands.

The MCK requests information on how contaminants stemming from run-off water from the port (in its construction and operational phases) will affect fish health, and the extent to which long-term exposure to underwater noise and vibrations from the port will affect the movements and feeding behavior of fish in the Project area. To be clear, the MCK requests information on the long-term

effects of underwater noise on fish populations, and not just the temporary physiological effects mentioned in the Proponent's response to the first round of questions from the CEEA.¹⁹

Impacts to freshwater mussels resulting from the Project are poorly explained in the provided documentation. Given the presence of at least one endangered mussel species a plan for avoiding impacts and/or compensation for lost habitat for these species is outstanding.

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

If approved, the Contrecoeur 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.²⁰ We also consider that the frequency with which non-native species are delivered to the St. Lawrence River increases the invasion risk. If 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 CEEA 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.

¹⁹ Port of Montreal. 2019. Agrandissement du terminal portuaire de Contrecoeur – Étude d'impact environnemental – Addenda 2 – Réponses à la première série de questions de l'ACÉE | Administration portuaire de Montréal. April 2019. P. 1268.

²⁰ Ricciardi, Anthony. 2006. Patterns of invasion in the Laurentian Great Lakes in relation to changes in vector activity. *Diversity and Distributions* 12: 425-433.

The MCK requests that the proponent conduct a risk analysis of the effects of increased overseas ship traffic at the Contrecoeur 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 anticipating that the port expansion will result in any increases in ships using the St. Lawrence Seaway through the Mohawk Territory of Kahnawà:ke since ships will only come from the estuary and will return to there. While this may currently be the case based on the anticipated vision 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 vision 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. There could also be adverse impact to the ability to exercise traditional, spiritual and recreational activities, such as gathering, fishing, swimming, navigation and paddling, since increased ship passages would limit access and the safe usage of the River for these activities; adverse impact for the safety of the community, since increased ship passages would 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 would 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.

In its analysis of the impact of losses to fish habitat on aboriginal fisheries, the Proponent states that the area of the Contrecoeur port has been identified as a feeding site for juvenile lake sturgeon, but that just one portion of this habitat will be affected by the Project, and that similar habitat may be found nearby.²¹ This analysis ignores the cumulative effects that have resulted in the current threatened status of the St. Lawrence River lake sturgeon population. Juvenile lake sturgeon are

²¹ Port of Montreal. 2019. Agrandissement du terminal portuaire de Contrecoeur – Étude d’impact environnemental – Addenda 2 – Réponses à la première série de questions de l’ACÉE | Administration portuaire de Montréal. April 2019. P. 1258.

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.²²

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 Contrecoeur 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.

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 stewardship and fishing rights related to copper redhorse

Our conservation and stewardship responsibilities require us to protect environments to the degree that they support the most vulnerable components of the ecosystem.

The area of the Project is considered feeding habitat for the copper redhorse, an endemic, endangered species that occurs in the St. Lawrence River watershed only in the vicinity of Montreal. The copper redhorse is very sensitive to high levels of pollution, siltation, and turbidity, and the decline of species of Catostomidae is an indicator of habitat degradation.²³ The cumulative impacts of urbanization, agriculture, dams, and shipping have left this species in a perilous state.

The effect of agricultural pollution in the Richelieu watershed, where large quantities of 30 different pesticides are used on almost the entire row crops grown there, has severely degraded water quality in the critical spawning habitat of copper redhorse.²⁴ Concentrations of PAH, PCB, furans and dioxins exceeding water quality guidelines have been detected at the mouth of the Richelieu River, and in the Yamaska River. Deterioration of habitat and water quality (due primarily to excess phosphorus from agricultural sources) is linked to the possible extirpation of copper redhorse from the Yamaska River.²⁵

At one time the copper redhorse was fished commercially and there was a strong market demand for it. The Mohawk Nation historically fished the copper redhorse, and bones of fish in the family

²² 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.

²³ Emery, Erich B. Thomas P. Simon and Robert Oviés. 1999. "Influence of the family Catostomidae on the metrics developed for a Great River index of biotic integrity." In: Thomas P. Simon, ed. *Assessing the Sustainability and Biological Integrity of Water Resources Using Fish Communities*. Boca Raton: CRC Press. p. 203-224.

²⁴ DFO. 2012. Recovery Strategy for the Copper Redhorse (*Moxostoma hubbsi*) in Canada [Proposed]. *Species at Risk Act* Recovery Strategy Series. Fisheries and Oceans Canada, Ottawa. xi+60 pp.

²⁵ COSEWIC. 2014. COSEWIC assessment and status report on the Copper Redhorse *Moxostoma hubbsi* in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa. xiii + 80 pp.

Catostomidae (to which the copper redhorse belongs) can be found in the archaeological remains at Pointe-du-Buisson, an ancestral and current Mohawk fishing site on the upper site Lawrence River.²⁶ Grass beds downstream of the Project in the Contrecoeur Archipelago are known to be highly frequented by copper redhorse, and constitute critical adult feeding habitat for this species. The proponent correctly points out that according to telemetry studies the copper redhorse has not been observed in the immediate Project area. This is likely a direct consequence of permanent habitat alterations caused by dredging of the navigation channel. The navigation channel appears to have cut off access to grass bed habitats upstream of the existing port in the south channel of the River.

The channel, which meets the shoreline in the area of the existing port, has therefore fragmented habitat that copper redhorse once used to move between feeding areas, and between spawning and feeding sites. This habitat fragmentation has a large cumulative effect on copper redhorse because of the major deterioration of habitat and water quality in the Richelieu and Yamaska Rivers.

At a meeting on February 22, 2019 between MCK and the Proponent, the Proponent indicated a willingness to participate in copper redhorse recovery strategy works and that the MCK could be involved in these works. This is a positive undertaking and given that the Contrecoeur port expansion will benefit from the continued maintenance of the navigation channel, the MCK believes that the Proponent must compensate for this loss of connectivity, and work to improve conditions for copper redhorse in other parts of its range.

The MCK requests that the proponent work with other parties, including the MCK, and find creative ways to improve water quality and habitat in the Richelieu watershed. This may include working with partners to (1) reduce the input of nutrients and pesticides into watercourses and/or (2) establish riparian strips that can significantly filter nutrients and pesticides coming from agricultural activities, and/or (3) reverse shoreline alterations and the destruction of grass beds in the Richelieu River.

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.

In its response to the first round of questions from the CEEA, the Proponent states that the Project does not impact aboriginal fisheries because the Project site has long been owned by the Port of Montreal, and that the proposed port expansion does not change that fact.²⁷ This analysis is simplistic and overlooks the cumulative ecological impacts of the shipping industry on the River. It

²⁶ 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. xi + 107 pp.

²⁷ Port of Montreal. 2019. Agrandissement du terminal portuaire de Contrecoeur – Étude d'impact environnemental – Addenda 2 – Réponses à la première série de questions de l'ACÉE | Administration portuaire de Montréal. April 2019. P. 1262.

also ignores the historic erosion of our harvesting and food sovereignty rights, to which the Contrecoeur Project contributes, and from which the Port of Montreal benefits.

In Table 143-11, the Proponent lists food security as an indicator of aboriginal health, and describes food security only in negative terms, as “*Faibles revenus, monoparentalité, etc.*”²⁸ The Proponent concludes that the anticipated effect of the Project on food security is that the Project will have economically positive outcomes for aboriginal communities. While the Proponent indicated at a meeting on February 22, 2019 that they would assess their procurement processes to increase potential involvement of First Nations, the MCK has not received any update on this or any other measure that could concretely result in an economic benefit to Kahnawà:ke or its community members stemming from this Project. Therefore, the MCK rejects this analysis of the impacts of the Contrecoeur project on our harvesting and food sovereignty rights.

One of the pathways by which the Contrecoeur 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 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.²⁹

Given the ecosystem-wide impacts of continued expansion to the shipping industry, the effects on the River of the proposed container port at Contrecoeur may be felt more acutely 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.³⁰

Given the cumulative effects of an expanded port at Contrecoeur, 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

²⁸ Port of Montreal. 2019. Agrandissement du terminal portuaire de Contrecoeur – Étude d'impact environnemental – Addenda 2 – Réponses à la première série de questions de l'ACÉE | Administration portuaire de Montréal. April 2019. P. 1286.

²⁹ 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.

³⁰ 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*.

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 that may result from the proposed Contrecoeur port expansion project.

Aboriginal Language, culture and cultural heritage property rights

Transmission of language and culture

The Proponent has not taken into account the effect of the Project on our aboriginal language and cultural rights. In Table 143-11, the Proponent lists “cultural continuity” as a social determinant of aboriginal health, but concludes that the Project will not affect this determinant of health.³¹

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.³²

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.

³¹ Port of Montreal. 2019. Agrandissement du terminal portuaire de Contrecoeur – Étude d’impact environnemental – Addenda 2 – Réponses à la première série de questions de l’ACÉE | Administration portuaire de Montréal. April 2019. P. 1287.

³² 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*.

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.

Culture heritage property and archaeology

The MCK also remains concerned with the archaeological works and cultural heritage property issues stemming from this project. The archaeological potential for the project area was deemed high by the Proponent. In December 2018, the MCK submitted a report entitled “Contrecoeur Port Terminal Expansion Project: Mohawk Occupation and Utilization of the Territory in Prehistoric and Historic Times” to the Proponent.

In this report, we described our interest in the project area, as traditional Mohawk Territory and also that the ancestors of the present-day Mohawks of Kahnawà:ke played a central role in the history of the project area in the past century. This demonstrated our strong interest in any archaeological works, findings and interpretations that may take place in the project area that relate to that time period.

We therefore assert a strong interest in any Iroquoian artifacts from all time periods that may be uncovered as a result of the project. We agree with the recommendations to proceed to an archaeological inventory of the area affected by the Port expansion plans as proposed by Arkéos and the Ndakinna Bureau reports. However, no archaeological permits may be issued without our consent and until such time as an acceptable protocol is put into place. We require the presence of a Mohawk archaeological monitor to be part of the inventory process. Any Iroquoian artifacts discovered during the archaeological inventory or the construction phase should be subject to an artifact management or repatriation agreement that includes the MCK. Finally, the MCK must be provided with funding and an opportunity to comment and provide its views on any reports that are completed regarding any eventual findings.

In April 2019, the MCK did receive a draft protocol from the Proponent pertaining to any archaeological findings that may occur during the works. This draft protocol does not meet the MCK's requirements and does not sufficiently accommodate our rights to any Iroquoian cultural heritage property or human remains that could be uncovered during the works. The draft protocol essentially provided that concerned Indigenous nations would be kept informed of any findings and barring any evident cultural affiliation, that Parks Canada would have sole jurisdiction to determine next steps and management of any artifacts or remains. This is unacceptable to MCK. The MCK must be provided full opportunity to determine/assess cultural affiliation of any artifacts or remains that may be found. Based on our determination and the nature of what is found, our consent may be required regarding any next steps pertaining to the management, repatriation and potential reburial of any artifacts or remains that are found. The MCK cannot and will not agree in advance that Parks

Canada or any other party will have the authority to make these determinations and decisions without our consent.

Until such time as this issue is resolved, the MCK does not consent to the archaeological works associated with this project proceeding.

Impacts to health/safety of Mohawk Territory and SSSL lands

According to the Proponent, it is anticipated that the project will cause an increase of approximately 1% in the traffic on Highway 30 (West of A730), but only in approximately 25 years from now, when the terminal will operate at full capacity. The Proponent has also been asked to participate in a regional study conducted by the *Ministère des Transports du Québec* (“MTQ”) regarding the traffic on Highway 30³³.

While the 1% figure may not appear significant, the MCK is concerned about the potential cumulative increase in rail/road traffic through the Mohawk traditional territory, the Territory of Kahnawà:ke and its Seigneurie of Sault St. Louis (“SSSL”) land grievance lands as a result of this and other projects. Our traditional territory and SSSL lands have already been heavily impacted and developed. Kahnawà:ke has already been heavily impacted by the presence of the St. Lawrence Seaway, Highways (132, 138 and 30), rail lines, hydro lines and other invasive infrastructure. The MCK is concerned about the health, safety and quality of life impacts of increased rail/road traffic through the Mohawk Territory of Kahnawà:ke and SSSL lands. More specifically, the MCK is concerned with air quality and CO₂ emissions, traffic, visual pollution, increased risks of accidents, including involving the shipment of dangerous goods/materials.

The MCK notes that the Crown (including the MTQ) has not yet directly involved us in any consultation or discussion pertaining to increase in rail/road traffic, including the Highway 30 study that the Proponent has participated in.

Conclusion

The MCK does not currently support this project. Additional information and measures are required to address the many issues outlined in this assessment. The impacts and potential project impacts on our rights and interests must be considered from the perspective of accommodation as opposed to simply from the perspective of applying standard mitigation measures.

We remain extremely concerned about the Crown’s approach to impact assessment and the potential review/approval of the many port expansion projects on a “project-by-project” basis and the impact that this approach will have on our rights and interests. Many of the potential measures that have been proposed require additional direct consultation with MCK. For example, the suggestion discussed by CEAA pertaining to the creation of a permanent consultation table has never been raised with MCK. Some of the other undertakings made by the Proponent that suggest potential MCK involvement require additional discussion on details for our participation and anticipated outcomes stemming from such involvement. Furthermore, the draft protocol provided by the Proponent pertaining to any archaeological findings that may occur during the works is not acceptable to MCK.

³³ Information obtained from Proponent at a meeting on February 22, 2019.

The MCK requires additional meetings with the Crown and Proponent to discuss our issues and concerns.

In Peace and Friendship and in the spirit of Reconciliation,

<Original signed by>

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

cc. Ms. Marcia Vergara, CEAA, by e-mail: marcia.vergara@canada.ca
Mr. Claude Deschambault, Port of Montréal, by e-mail: deschambaultc@port-montreal.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 Contrecoeur 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.

Duration/frequency/reversibility. (High) The impact to our governance rights is likely to persist for generations to come, as the Project will limit our ability to influence decisions about uses of the River and the long-term recovery 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 Karihwaterhkwen ("words that come before all else"). As an assessment of the regional (St. Lawrence River-wide) impacts of the Contrecoeur project 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 Karihwaterhkwen 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 Karihwaterhkwen also leads us to consider intricate ecological connections that may not be readily apparent when considering only a localized area.

The fact that the Contrecoeur project 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 Montreal, 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, and incursions of invasive species have also interfered with our ability to exercise our governance rights and stewardship responsibilities.

Aboriginal Fishing Rights General

Likelihood. (Unknown – Regional Strategic Assessment of cumulative effects needed)

Extent. (Unknown – Regional Strategic Assessment of cumulative effects needed) The Contrecoeur project will entail direct losses of fish habitat and indirect effects on fish habitat, during both the construction and operational phases of the Project. The nearshore areas and the aquatic grass beds in the Project area are rearing and feeding habitat for many species of fish, including sturgeon and other species harvested by members of our Nation. These habitat losses may impact fish populations, and 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 Traditional Land Use (“TLU”) locations.

Duration/frequency/reversibility. (Unknown – Regional Strategic Assessment of cumulative effects needed) The MCK believes that the proposed Project and future expansions of the port will further deteriorate the quality of habitat and viability of species in the region, which may be difficult to reverse given the cumulative impacts to the River. The MCK emphasizes that any analysis of the Project's effect on fish habitat must take into account more frequent and prolonged periods of low-water flows in the St. Lawrence River that have been observed over the past fifteen years. Lower water levels will reduce the availability of quality habitats, and may also lead to an increase in dredging activities, which will cause additional damage fish habitat. The interactive impacts of climate change and the port expansion must be considered when evaluating the cumulative effects of the Project on fish and their habitats.

Stewardship/nationhood. (High) The approach of the Port of Montreal to dealing with Project impacts on fisheries is contrary to the approach given to us by the Creator in the Ohen:ton Karihwaterhkwen, 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 therefore consider that there is a gap between the mitigation/compensation measures outlined by the Proponent, and our Kanien'kehá:ka (Mohawk) stewardship requirements.

Regional/historic/cumulative context. (Unknown – Regional Strategic Assessment of cumulative effects needed) The Mohawks of Kahnawà: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. Many cumulative impacts become evident only with time. The Project contributes to a loss of habitat connectivity in nearshore fish habitats, and habitats downstream of the Project site will be altered by the construction and operation of the new terminal, through impacts that include hydrological changes, sediment and contaminant transport, and underwater noise. We expect that port expansion projects such as Contrecoeur will cause damage to 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) Fishing 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 fish populations decline in the segment of the River where the Contrecoeur port is located, there may no longer be the possibility for harvesters to switch their harvesting between different species, and between different sites, depending on fish 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 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 Project 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 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.

Aboriginal Fishing and Stewardship Right related to Sturgeon

Likelihood. (Unknown – Regional Strategic Assessment of cumulative effects needed)

Extent. (Unknown – Regional Strategic Assessment of cumulative effects needed) 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. The Project area known to be a feeding ground for juvenile sturgeon.

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. (Unknown – Regional Strategic Assessment of cumulative effects needed) Recent improvements to the state of the St. Lawrence River lake sturgeon have come about only through careful management and protective measures. 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 Copper Redhorse

Likelihood. (High)

Extent. (Moderate) Grass beds downstream of the Project in the Contrecoeur Archipelago are known to be highly frequented by copper redhorse, and constitute critical adult feeding habitat for this species. The dredging and construction work can be expected to negatively impact these critical feeding areas for copper redhorse.

Duration/frequency/reversibility. (High) We are particularly concerned with the survival and recovery of copper redhorse because it is an endemic species that is only found in the segment of the River. If the population experiences further declines, there is a real possibility that the species will be lost forever.

Stewardship/nationhood. (High) In keeping with the Ohen:ton Karihwatehkwen, we believe that having a self-sustaining population of copper redhorse species, which requires a range of intact habitats, is vital to the ability of this species to carry out its original instructions. A healthy copper redhorse 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) The cumulative impacts of urbanization, agriculture, dams, and shipping have left the copper redhorse in a perilous state. The navigation channel appears to have cut off access to grass bed habitats upstream of the existing port in the

south channel of the River. The shipping channel, which meets the shoreline in the area of the existing port, has fragmented habitat that copper redhorse once used to move between feeding areas, and between spawning and feeding sites. This habitat fragmentation has a large cumulative effect on copper redhorse because of the major deterioration of habitat and water quality in the Richelieu and Yamaska Rivers. The proposed port expansion project adds to these cumulative impacts through further dredging work to connect the new terminal to the shipping channel, and through the maintenance dredging and use of the existing shipping channel and port area. 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 negatively impact the recovery of copper redhorse.

Way of life (values, practices, traditions). (Moderate) The Mohawk Nation historically fished the copper redhorse, and bones of fish in the family Catostomidae (to which the copper redhorse belongs) can be found in the archaeological remains at Pointe-du-Buisson, a Mohawk fishing site on the upper site Lawrence River. 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. (Unknown – Regional Strategic Assessment of cumulative effects needed)

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 the River limit 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, Culture and Cultural Heritage Property Rights

Likelihood. (Moderate-High) Language and Culture rights (Moderate). Cultural Heritage Property (High) since there is high archaeological potential.

Extent. (Unknown – Archaeological inventory not completed and Regional Strategic Assessment of cumulative effects needed to determine full extent)

Duration/frequency/reversibility. (Moderate-High) See entry on duration/frequency/reversibility under “aboriginal harvesting rights and food sovereignty” for language and culture rights. For cultural heritage property rights, duration/frequency/reversibility is potentially high depending on what is uncovered. Furthermore, lack of acceptable protocol pertaining to management of potential artifacts and human remains means that impacts could be permanent and irreversible.

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-High) Cultural Heritage Property (High) The management of our cultural heritage property is of paramount importance, in particular if human remains are uncovered. The repatriation and reburial of human remains in accordance with our traditions is of the highest value/importance for all community members.

Language and Culture (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.”

Impacts to health/safety of Mohawk Territory and SSSL lands

Likelihood. (Moderate)

Extent. (Unknown – Regional Strategic Assessment of cumulative effects needed)

Duration/frequency/reversibility. (Moderate) Impacts to health, safety and quality of life, in particular with respect to CO₂ emissions are of significant duration, frequency and may not be reversible. Once there is increased usage of highways and rail networks, it is unlikely that usage will decrease in the future.

Stewardship/nationhood. (Moderate) The MCK is responsible to manage its traditional territory and SSSL lands for future generations. Increased pollution and health/safety risks are incompatible with our obligation to consider seven generations ahead. See also the entry on stewardship/nationhood under “aboriginal fishing rights general.”

Regional/historic/cumulative context. (High) Mohawk traditional territory, Kahnawà:ke and SSSL lands are already heavily developed and impacted by rail/road traffic. The effects of climate change are currently being felt by community members.

Way of life (values, practices, traditions). (Moderate) Resulting impacts to health, safety and quality of life, in particular resulting from increased CO₂ emissions, traffic and visual pollution impact all facets of life, including the impacts to the ability to carry out traditional land use activities and associated impacts to transmission of language, culture and values.

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