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Court File No.: T-840-25
Vancouver Registry

FEDERAL COURT

BETWEEN:

Save Miramichi Salmon Inc.

PLAINTIFF

AND:

Attorney General of Canada

DEFENDANT

STATEMENT OF CLAIM TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

March 13, 2025

Issued by:


(Registry Officer)

**SORAYA PREMJI
REGISTRY OFFICER
AGENTE DU GREFFE**

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CLAIM

1. This is an action against the Crown brought pursuant to Section 48 of the *Federal Courts Act*.
2. The plaintiff, Save Miramichi Salmon Inc. is, a company, duly incorporated pursuant to the laws of the Province of New Brunswick, with its head office at McNamee, New Brunswick, Canada and has an address for service at 1600 – 1095 West Pender Street, in the city of Vancouver, in the Province of British Columbia.
3. The plaintiff brings these proceedings to save a national treasure, the Atlantic salmon of the Miramichi river.
4. The defendant is a minister of the Crown and the most senior legal officer of His Majesty the King, and has an address for service at 900 – 840 Howe Street, in the city of Vancouver, in the Province of British Columbia.
5. The defendant is named pursuant to Section 23 of the *Crown Liability and Proceedings Act*.
6. The Minister of Fisheries, Oceans and the Canadian Coast Guard (the “Minister”) is a minister of the Crown, responsible for the management of Canada’s fisheries and oceans under the *Fisheries Act* and the *Oceans Act*.
7. The Department of Fisheries and Oceans (the “Department”, or “DFO”) is a department of His Majesty’s government, and is established pursuant to the *Department of Fisheries and Oceans Act*. The Department operates under the supervision of the Minister.

Save Miramichi Salmon Inc

8. The plaintiff is a not-for-profit company, incorporated pursuant to the laws of New Brunswick, for the purpose of advocating for the protection and survival of the

Atlantic salmon populations of the Miramichi River.

9. The plaintiff's members are individuals who hold rights and interests in the Miramichi River, including various proprietary, business interests and private and public rights of fishery and who are interested in the survival and wellbeing of the fisheries on the Miramichi River, including Atlantic salmon and striped bass native to and/or frequenting the Miramichi River.

Canada's Fishery

10. Canada's fishery is a common property resource which belongs to all Canadians.
11. Access to Canada's fishery resource is based on a variety of rights of differing priority, including Aboriginal and Treaty rights, proprietary rights in non-tidal waters, and public rights of fishery in tidal waters.
12. Under the *Fisheries Act*, *Oceans Act*, and *Department of Fisheries and Oceans Act*, the Minister and the Department are charged, by Parliament, with a duty to manage and conserve Canada's fishery for the benefit of all Canadians, in the public interest.
13. The Minister's and the Department's said duty to manage and conserve the fishery is defined by law and Canada's international obligations, and requires the Minister and the Department to, *inter alia*:
 - a. Take reasonable care to collect, assemble and consider all available scientific evidence in making decisions concerning the management of Canada's fishery;
 - b. Make reasonable efforts to protect and conserve all species of fish in their native habitats;
 - c. Make reasonable efforts to maintain the ecological and biological diversity of Canada's fishery, and to ensure that the management of one species of fish does not cause material harm to, or extirpation of, populations of other

native species of fish;

- d. Make reasonable efforts to mitigate the effects of human interaction with the fishery, including, *inter alia*:
 - i. maintaining balance between competing marine animal species affected by human interaction; and
 - ii. taking steps, urgently if the circumstances demand, to protect and rehabilitate stocks of fish at risk of extirpation and extinction as a result of human intervention and/or actions; and
- e. Apply the precautionary approach to decision- and policy-making, specifically management measures must anticipate, prevent, and attack causes of environmental degradation and, where there is a lack of “full scientific certainty”, not allow that uncertainty to postpone implementing measures to prevent further environmental degradation.

Atlantic Salmon

14. Atlantic salmon (*salmo salar*), referred to as “the King of Fish”, are a species of salmon native to waters throughout the North Atlantic Ocean. Atlantic salmon is endemic to the Miramichi River system.
15. Atlantic salmon have frequented the Miramichi River since the end of the last ice age and are of significant cultural and economic importance to Canadians, including, but not limited to, Indigenous Canadians and non-Indigenous communities on the Miramichi since European settlement. Historically, annual Atlantic salmon runs in the Miramichi River were upwards of 1,000,000. In 2000, the river was home to 50% of all Atlantic salmon in the western Atlantic and as recently as 2011, supported 90% of Atlantic salmon fishing in New Brunswick.
16. Adult Atlantic salmon can grow to sizes of more than a meter in length and up to 30 kilograms in weight.

17. Unlike Pacific salmon, Atlantic salmon are iteroparous, meaning they are capable of spawning multiple times throughout their lives.
18. Atlantic salmon are also anadromous, meaning they spend their life travelling between fresh and salt water. Adult salmon typically return to their natal river and spawn in shallow, gravel-bottomed fresh (i.e. non-tidal) water during the months of October to November, before returning to the ocean the following spring. Adult Atlantic salmon spawn in freshwater from the Miramichi headwaters all the way to the lower non-tidal end of the river.
19. Atlantic salmon eggs incubate over winter and hatch into fry in the spring.
20. When Atlantic salmon fry grow to approximately 5 to 8 centimetres in length, they are called parr, which rear in fluvial and lacustrine habitats for between two and seven years, the length of time being determined by a variety of environmental and genetic factors.
21. Eventually, parr become "smolts", whereby their bodies adapt to living in salt water. It is during this time, which typically occurs in spring to early summer, that Atlantic salmon begin their first migration to the ocean. During this time, smolts are approximately 10 to 20 centimetres in length.
22. Once smolts reach the ocean, they complete their maturation into adult Atlantic salmon. Adults then return to their natal streams and habitat to spawn every one to three years.
23. Fry, parr and smolts are highly vulnerable to predation by larger piscivorous fish.
24. Worldwide, Atlantic salmon have been in decline since the 1980s. However, until in or around 2010, Atlantic salmon populations on the Miramichi River were considered to be stable, sustainable, and healthy relative to other populations around the world.

Striped Bass

25. Atlantic striped bass (*Morone saxatilis*) are a species of rockfish which live throughout the Atlantic coast of North America, including the Gulf of St. Lawrence.
26. Striped bass are commercially and recreationally significant fish and, historically, were subject to significant commercial harvest.
27. Striped bass are also anadromous, meaning they live in the ocean before returning to fresh or brackish water in the spring to spawn.
28. On the Miramichi River, striped bass have historically spawned in tidal waters of the Northwest Miramichi River system only, although much smaller spawning assemblages have probably occurred in other Gulf of St. Lawrence rivers, including the Southwest Miramichi.
29. Striped bass are large and have long lifespans. Adults can live up to 30 years and can grow to be up to one and a half feet in length and 35 kilograms in weight.
30. Mature striped bass, including spawning bass, are voracious piscivorous feeders, feeding on a wide variety of small and juvenile fish.
31. Adult striped bass have few, if any, natural predators beyond humans.
32. Striped bass have not, until recently, been numerically significant in the Miramichi River beyond the head of tide, located around Quarryville (Southwest), New Brunswick, on the Main Southwest Miramichi at the confluence of the Little Southwest and the Northwest Miramichi.
33. Because of geographical separation and historic numbers, and standing net and sport fisheries, striped bass did not, historically, have a significant impact on the number of Atlantic salmon smolts migrating to the ocean, feeding only on a limited number of smolts during the annual migration, primarily from the Northwest and Little Southwest Miramichi systems.
34. In the 1980s, populations of striped bass in the Miramichi River were considered

stable and healthy despite being significantly lower than they are today.

Striped Bass – Management

35. In the 1990s, the Minister and the Department determined that striped bass populations in the Gulf of St. Lawrence were critically low.
36. As a result of this determination, the Minister and the Department instituted a series of restrictive management measures which protected striped bass in the Gulf of St. Lawrence from harvest and mortality including, *inter alia*, a complete cessation of Indigenous, recreational and commercial catching of striped bass.
37. Beginning in or around 2010, populations of striped bass in the Gulf of St. Lawrence had substantially recovered from perceived critical levels.
38. Despite some easing of restrictions beginning around 2012, management of striped bass to date has remained restrictive and has permitted populations to continue to grow beyond historic levels.
39. As with any other commercial species, the Department manages striped bass to achieve Maximum Sustainable Yield (“MSY”), being the population level which produces the largest number of new “recruits”, which are potential new fish entering the fishery.
40. The Department and the Minister currently also maintain a “limit reference point” for the striped bass fishery (being a minimum number of spawning adults which DFO must maintain in the ecosystem) of 330,000 spawning adult bass.
41. The limit reference point is not supported by the weight of available evidence, which instead demonstrates that the maximum bass population required to maintain Miramichi Atlantic salmon populations at sustainable levels is, conservatively, 100,000.
42. The Department does not maintain a corresponding cap which determines at which point the striped bass population must be reduced.

43. Furthermore, the Gulf of St. Lawrence striped bass can sustain a productive and viable fishery at much lower population numbers.
44. As a result of the restrictive management of the striped bass fishery by the Department, striped bass populations have rapidly grown and have expanded into watersheds and areas of the Miramichi River which they historically did not frequent, including freshwater areas frequented by Atlantic salmon fry, parr and young smolts.
45. Striped bass populations in the Gulf of St. Lawrence now far exceed historic populations within the region. As of 2024, the population was estimated to be 352,000 or more adult spawners. In 2022, the striped bass population was estimated to be 472,000 and 550,000 in 2023, meaning in the last three years, the bass population has exceeded the maximum population required for a sustainable Miramichi Atlantic salmon population by three- to five-fold.
46. The restrictive management measures have eroded the natural separation and ecological balance between striped bass and Atlantic salmon populations in the Miramichi River and as a result, the bass have become significant predators of juvenile Atlantic salmon fry, parr and young smolts.

Atlantic Salmon – Decline and Cause

47. In or around 2010, Atlantic salmon returns to the Miramichi River began to decline rapidly. Between 2010 and 2024, the river's salmon population declined by approximately 96%.
48. The decline in Atlantic salmon in the Miramichi River corresponds to the rapid growth of striped bass, a known predator of juvenile salmon, in the same areas.
49. In 2019, the Standing Committee on Fisheries and Oceans issued a report identifying the rapid increase in the Gulf of St. Lawrence striped bass population as placing strain on struggling Atlantic salmon populations. The Parliamentary committee recommended DFO implement management measures that prioritize

the long-term balance of fish species in the Miramichi River, including establishing upper and lower limit reference point thresholds which should be adjusted according to justifiable scientific evidence.

50. As of the date of the filing of this claim, populations of Atlantic salmon native to the Miramichi River are at critically low levels and are at risk of extirpation without urgent and immediate action.
51. The elevated levels of striped bass in the Gulf of St. Lawrence are a direct cause of, or are materially contributing to, the decline of Atlantic salmon populations in the Miramichi River.
52. Further, and in the alternative, Miramichi Atlantic salmon populations are declining because of human interactions including, *inter alia*, habitat loss and climate change.

Minister's Breach of Duty

53. The said MSY for striped bass has been established and maintained without full consideration of all relevant circumstances and evidence, including, *inter alia*:
 - a. Evidence which demonstrates striped bass populations are sustainable at much lower spawner levels;
 - b. Population modelling that identifies the appropriate level and nature of the extractions of striped bass from the Gulf of St. Lawrence and the Miramichi River;
 - c. Current evidence that striped bass predation is having a significant effect on the Miramichi Atlantic salmon fishery; and
 - d. Such further particulars which are revealed on discovery and advised by counsel.
54. The said limit reference point and ongoing restrictive management of the striped bass fishery have been established and maintained, in breach of the Minister's

duties under the *Fisheries Act*, without full consideration of all relevant circumstances and evidence, including, *inter alia*:

- a. Evidence which demonstrates striped bass populations are sustainable at much lower spawner levels;
 - b. Population modelling that identifies the appropriate level and nature of the extractions of striped bass from the Gulf of St. Lawrence and the Miramichi River;
 - c. Current evidence that striped bass predation is having a significant effect on the Miramichi Atlantic salmon fishery; and
 - d. Such further particulars which are revealed on discovery and advised by counsel.
55. Reliance by the Minister or the Department on assessments conducted by the Canadian Science Advisory Secretariat to inform the said limit reference point and ongoing restrictive management of the striped bass fishery, while excluding the weight of peer-reviewed scientific evidence, is unreasonable as those risk assessments are out of date, fail to meet the standards of peer-reviewed science and are fatally flawed.
56. At all material times since 2012, the Minister and the Department, and each of them, have been, or ought to have been, aware that the significant populations of striped bass in the Gulf of St. Lawrence have had and continue to have, a serious and material impact on the health of Atlantic Salmon populations native to the Miramichi River and have, in breach of their duties under the *Fisheries Act*, failed to take steps to control the said striped bass populations.
57. In the alternative, at all material times since 2012, the Minister and the Department, and each of them, have been, or ought to have been, aware that there is clear evidence that the significant populations of striped bass in the Gulf of St. Lawrence have had and continue to have, a serious and material impact on the health of

Atlantic salmon populations native to the Miramichi River and have, in breach of their duties under the *Fisheries Act*, failed to take steps to control the said striped bass populations.

58. At all material times, the Minister and the Department, and each of them, have been or ought to have been aware that their management of the striped bass fishery and their failure to maintain the balance between striped bass and Atlantic salmon populations in the Miramichi River, have been in breach of their said duties under the *Fisheries Act*.
59. At all material times since 2012, the Minister and the Department, and each of them, have maintained their policy of protecting striped bass at the expense of Atlantic salmon with knowledge of, and in spite of, the negative impacts declining Atlantic salmon populations would have on various rights-holders, including but not limited to:
 - a. Guides and outfitters;
 - b. Owners of non-tidal private fisheries;
 - c. The recreational pleasure of anglers who fish recreationally in Crown-owned non-tidal fisheries under licence or lease from the Province of New Brunswick; and
 - d. Indigenous nations and peoples.
60. On or about November 21, 2024, the plaintiff made demand of the Minister and the Department to take immediate action to address the critical status of Miramichi Atlantic salmon and to revisit their management of the Gulf of St. Lawrence striped bass and Miramichi Atlantic salmon in accordance with a comprehensive integrated management plan.
61. The Minister's and the Department's ongoing decision to manage the Gulf of St. Lawrence striped bass fishery to the detriment of other fisheries including, in particular, the Miramichi Atlantic salmon, and to not implement a recovery strategy

for Atlantic salmon in a timely manner, has been and is guided by considerations which are capricious and extraneous to the purposes of the *Fisheries Act*, including *inter alia*:

- a. Partisan considerations;
 - b. Administrative convenience; and
 - c. Such further particulars which are revealed upon discovery.
62. To date, despite demand by the plaintiff, and in reckless or intentional disregard of the facts, evidence and their duties under the *Fisheries Act*, the Minister and the Department have neglected or refused to implement any, or any adequate, measures to reduce striped bass populations in the Gulf of St. Lawrence and re-establish balance between bass and other species of fish, including, *inter alia*, Atlantic salmon, and have instead maintained rules and policies designed to protect the Gulf of St. Lawrence striped bass at the expense of Atlantic salmon.
63. Further, to date and despite demand by the plaintiff and in reckless or intentional disregard of the facts, evidence and their duties under the *Fisheries Act*, the Minister and the Department have unreasonably, and without lawful justification, neglected or refused to implement any, or any adequate, measures to stabilize the population of Atlantic salmon in the Miramichi River.

ORDERS SOUGHT

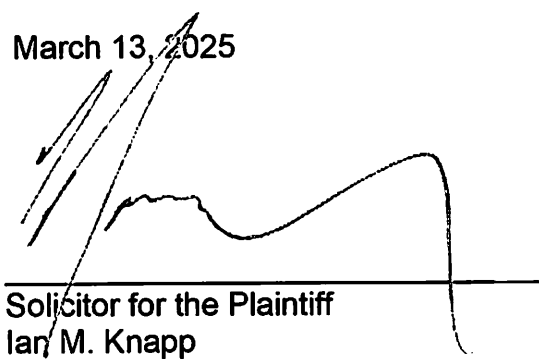
64. An order, pursuant to Section 18.4 of the *Federal Courts Act*, that, to the extent that parts of this proceeding are in the nature of judicial review, the case be treated and proceeded with as an action;
65. A declaration that the Minister's and the Department's ongoing maintenance of a limit reference point of 330,000 spawning adults of striped bass in the Gulf of St. Lawrence is based on errors of law and fact and is thus unreasonable;
66. A declaration that the Minister and the Department's ongoing maintenance of what

constitutes the Maximum Sustainable Yield of striped bass in the Gulf of St. Lawrence is based on errors of law and fact and is thus unreasonable;

67. A declaration that the Minister and the Department's ongoing failure to permit an expanded commercial striped bass fishery in the Gulf of St. Lawrence is based on errors of law and fact and is thus unreasonable;
68. A declaration that the Minister's and the Department's ongoing failure to take steps to rehabilitate Atlantic salmon populations in the Miramichi River is unreasonable;
69. An order that the Minister and the Department forthwith reconsider the acceptable target population levels of and management approach to striped bass which should be maintained in the Gulf of St. Lawrence;
70. An order that the Minister and the Department forthwith, and without further delay, implement a plan to rehabilitate Atlantic salmon populations in the Miramichi River;
71. A declaration that the *Fisheries Act* imposes a duty on the Minister to manage, conserve, and develop the fishery on behalf of all Canadians in the public interest;
72. A declaration that the Minister and the Department have breached their said duty to manage, conserve, and develop the fishery on behalf of all Canadians in the public interest by;
 - a. either intentionally or recklessly, permitting one species of fish, to wit striped bass, to threaten another, to wit Atlantic salmon, without lawful justification; and
 - b. failing to act in a timely manner to rehabilitate Atlantic salmon populations in the Miramichi River which have been threatened by human activity, including *inter alia*, regulatory protection of striped bass; and
73. An order for costs.

The Plaintiff proposes that this action be tried at Miramichi City, New Brunswick

March 13, 2025

A handwritten signature in black ink, appearing to read 'Ian M. Knapp', is written over a horizontal line. The signature is somewhat stylized and overlaps the line.

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