

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: *Fisheries and Coastal Resources Act*, SNS 1996, c 25

– and –

IN THE MATTER OF: An Application by KELLY COVE SALMON LTD. for a boundary amendment and expansion for the cultivation of Atlantic salmon (*Salmo salar*) - AQ#1205x in Liverpool Bay, Queens County

BOOK OF AUTHORITIES ON BEHALF OF KELLY COVE SALMON LTD**November 14, 2025**

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I N D E X

Case Law

- A. *Rattling Beach*, NSARB 2021-001
- B. *Town Point*, NSARB 2022-001-002-003

Legislation

- C. Part V of *Fisheries and Coastal Resources Act*, SNS 1996, c 25, ss 43-64
- D. *Aquaculture License and Lease Regulations*, NS Reg 347/2015
- E. *Aquaculture Management Regulations*, NS Reg 348/2015

TAB A

DECISION and ORDER

NSARB 2021-001

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: application made by **KELLY COVE SALMON LTD.** for a **BOUNDARY AMENDMENT TO MARINE FINFISH LICENCE AND LEASE AQ#1039** in **ANNAPOLIS BASIN, DIGBY COUNTY.**

BEFORE: Jean McKenna, Chair
Michael McKinnon, Board Member
Richard Patterson, Board Member

HEARING DATE: November 15 to 18, 2021

DECISION DATE: January 28, 2022

[1] The application of Kelly Cove Salmon Ltd. (KCS) for an amendment to lease AQ#1039 (Rattling Beach) was heard by the Board, November 15 to 18, 2021, in Yarmouth, Nova Scotia. Rattling Beach is located on the Annapolis Basin. The application is for an amendment to the boundaries, in order to bring the farm infrastructure entirely within the lease. The farm has been in operation on the site since 2004. The number and configuration of cages, as well as the farmstock, has not changed since then, and will not change with the boundary amendment.

The issue:

[2] The issue in this case is straightforward. What, if any, impact will the proposed “operation” (a boundary amendment only) have, in considering the eight factors set out in s. 3 of the *Aquaculture Lease and Licence Regulations* (**O.I.C. 2015-338 (October 26, 2015), N.S. Reg. 347/2015 amended to O.I.C. 2019-322 (effective November 12, 2019), N.S. Reg. 186/2019**), made pursuant to the *Fisheries and Coastal Resources Act*, **S.N.S. 1996, c. 25**. (“the Act”).

[3] The short answer is none, with the possible exception of 3(b), the contribution of the proposed operation to community and provincial economic development. This “proposed operation” consists only of redrawing a line on the water, so to speak. If the application is refused, the farm would continue to exist, but the cages, and therefore the production of stock would be reduced by 80%, with an obvious consequential negative impact on economic development.

[4] However, the applicant and the intervenor, perhaps with an abundance of caution, have approached the question as though it is “should the farm exist at all”. Since that approach was taken, and a great deal of material has been generated on both sides of the question, we will also examine the issue from the broader perspective.

Facts:

[5] In 2004, KCS acquired lease AQ#1039, and installed an array of 20 cages. Some portions of the farm infrastructure were located outside of the original lease boundaries, including some cages or portion of cages, and the moorings. The lease dimensions had been created in 1993. There was no evidence before the Board of criteria used by the Province in creating the original site dimensions in 1993, however there was no issue taken by the Province then, or since, with the number and array of cages on the lease, or with the stocking density or quantity of salmon. As well, then, and in 2004, the regulations did not require the mooring lines to be within the lease boundaries, and perhaps the government of the day did not turn their mind to the dimensions needed to encompass moorings as well as cages.

[6] The array of cages and stocking density has not changed since 2004 and will remain unchanged should the application be allowed. If the application is not allowed, KCS would have to place all moorings and all cages within the original boundary, which would necessarily reduce the number of cages on the farm to three or four from the present 20.

[7] In 2008, the Province, in discussion with the aquaculture industry, decided to bring all older pre-2008 sites into boundary compliance simply by amending the boundaries to encompass the mooring lines and anchors.

[8] Accordingly, KCS applied for amendments to its three Shelburne Harbour farms; it was told by the Province to complete those changes before commencing application for its Rattling Beach farm. Those amendments were approved in 2011 by the Province.

[9] KCS was ready to proceed with boundary amendment application for Rattling Beach, but the Province directed KCS to wait until 2012, and then later, until 2013, to do the Rattling Beach amendments. However, in 2013, the Province placed a moratorium on all applications pending completion of the just commissioned Doelle-Lahey report on aquaculture.

[10] The Commission consulted with numerous interested parties, including the Atlantic Salmon Federation, the Nova Scotia Aquaculture Association, the Ecology Action Centre, the Nova Scotia Fisheries Sector Council, the Union of Nova Scotia Municipalities, the Nova Scotia Salmon Association, and the Coastal Coalition of Nova Scotia. Members of the public were encouraged to participate, including Ronald Neufeld, (who later filed a 3-volume affidavit in this matter “in support of” Intervenor Dr. Hemming). At the time Mr. Neufeld had been expressing concerns about the boundary violations at the Rattling Beach site. On December 19, 2013, Barry McPhee, Acting Executive Director of the Nova Scotia Department of Fisheries and Aquaculture (DFA), in responding to his concerns, stated “I would encourage you to participate in the Doelle–Lahey panel”. Whether he did or not is unknown.

[11] In 2014, the report, “A New Regulatory Framework for Low Impact / High Value Aquaculture in Nova Scotia” (the Doelle – Lahey Report”) was issued. Although some participants, including the Ecology Action Centre, had called for a moratorium on marine open pen sites, a moratorium was not recommended. The authors concluded:

“In this report, we conclude that a fundamental overhaul of the regulation of aquaculture in Nova Scotia is called for. We conclude that this overhaul should be guided by the idea that aquaculture that integrates economic prosperity, social well-being and environmental sustainability is one that is low impact and high value. By this, we mean aquaculture that combines two fundamental attributes: it has a low level of adverse environmental and social impact, which decreases over time; and from the use of coastal resources it produces a positive economic and social value, which is high and increases over time. A number of participants in our process urged us to conclude that marine-based fin-fish facilities – and more particularly, salmon farms – cannot be sustainably operated, and to recommend that a permanent moratorium be imposed on this kind of aquaculture. Our conclusion, after careful consideration of the state of the science and opportunities to reduce impacts through effective regulations, is that the regulatory framework should not be prohibitory at a provincial scale. Instead, we recommend fundamental changes to the regulation of aquaculture, which we conclude can address the serious and legitimate concerns raised without foreclosing the opportunity associated with this sector of the industry.”

[12] The legislation and regulations were altered in 2015 following the release of the Doelle – Lahey Report, and KCS was finally advised to either reconfigure its gear within the existing lease boundaries or to apply for an adjudicative boundary amendment:

1) License holder shall submit a scheduled re-alignment plan on or before October 26, 2016 to Nova Scotia Environment. The scheduled re-alignment plans must receive approval from NSE and will be required to provide the detailed steps the license holder plans to take to move all equipment and produce back within the lease boundaries and must also provide the proposed schedule for completion of these tasks; or

2) License holder shall submit an application for an adjudicative or administrative amendment on or before October 26, 2016 to DFA's Aquaculture Division. The format for these applications and review process is stipulated in the new *Aquaculture License and Lease Regulations*. DFA should be contacted for specific questions about these processes.

[13] The directive was issued by the Nova Scotia Department of Environment (NSE). KCS chose the latter option.

[14] As noted, KCS would not be adding or altering the infrastructure on site, nor changing the farm stock volume. This brings us to this hearing, some 13 years after the initial amendment plan, and some four years after Kelly Cove embarked on the new process by way of its application of November 22, 2017.

Chronology:

[15] In 2004, KCS acquired the Rattling Beach lease and license, and installed an array of 20 cages. That array continues to exist; however, some cages and most moorings are, and always were, outside the lease boundaries. According to the evidence of Jeffrey Nickerson, Business Development Manager of KCS, GPS technology in 2004 was somewhat less accurate than it is today.

[16] In 2007, Mr. Ronald Neufeld moved to Port Wade on the Annapolis Basin, close to another KCS lease site, and some 2-3 km across the basin from Rattling Beach.

[17] In 2008, the Province, in consultation with the aquaculture industry in Nova Scotia, recognized that a number of farms in the province were operating outside of their boundaries. A decision was made that they should be brought back into compliance through boundary amendments.

[18] In 2010-2011, KCS applied for, and was granted, amendments to the boundaries of three sites that it operated in Shelburne Harbour. The Province had directed KCS to delay its application for the Rattling Beach amendments until Shelburne was complete. When that was completed, KCS was instructed by the Province to wait until 2012, and then again, until 2013, to pursue the Rattling Beach amendment.

[19] In 2012, when KCS began to install a new farm on the Port Wade site, Mr. Neufeld became interested in the Rattling Beach operations. He concluded that portions of the Rattling Beach farm fell outside the original lease boundaries (this was never in dispute; it had been known since at least 2008). He brought his concerns to his MLA, Hon. Stephen McNeil (later, Premier Stephen McNeil). He met with Mr. McNeil and also raised his concern with various staff people.

[20] In 2013, the Province placed a moratorium on any further applications pending completion of the work of the Doelle-Lahey Commission. Mr. Neufeld continued to express his concern about the boundaries to DFA. In December 2013, he was advised by DFA that they were working with the operator on the issue, and he was encouraged to participate in the Doelle –Lahey panel. There is no evidence to show that he did so. He does not appear to have expressed his concerns to KCS directly.

[21] In 2014, Mr. Neufeld continued to investigate the Rattling Beach site. He took measurements with his hand-held GPS, and the odometer in his vehicle. He moved from Port Wade to Shelburne, although he states in his affidavit that he continued to periodically contact former neighbours regarding the Rattling Beach site. (Although his affidavit is filed in support of the Hemming intervention, he does not at any point mention Dr. Hemming or Dr. Hemming's issues regarding an alleged impact of Rattling Beach farm on his property). Mr. Neufeld became active with the "Protect Liverpool Bay" community group, who with some other groups, including Healthy Bays Network, (HBN), St. Mary's Bay Protectors (SMBP) oppose all marine open pen farming.

[22] In November 2014, the Doelle – Lahey report was released.

[23] In 2015, the governing legislation and regulation was amended (the *Act*, supra).

[24] On April 27, 2016, KCS submitted an application for renewal of its licence and lease for the Rattling Beach site. In 2016, Ronald Neufeld had been living in the Shelburne area for some two years but continued to voice his concern with the operation of the farm. Specifically, and solely, that the farm was operating outside of the lease boundaries.

[25] On July 11, 2016, DFA renewed the lease and licence for the site, but noted that all equipment and product were to be within the lease boundaries, and that KCS would be required to submit either a boundary amendment application or a site realignment application to NSE on or before October 26, 2016. A similar directive had been issued by NSE in May 2016. The difference between the two directives was that DFA required that the submission be made to NSE, while the NSE required the submission be made to DFA.

[26] On October 26, 2016 Kelly Cove submitted its applications.

[27] On March 17, 2017, KCS held a public information meeting in Digby. It was properly advertised in the community. It was attended by approximately ten members of the public who generally supported the proposal. Mr. Neufeld, still vigorously focusing on Rattling Beach boundaries, complained that the public meeting should have taken place before the application was made. He did not attend the public meeting.

[28] On August 17, 2017, DFA informed KCS that the development plan submitted would have to be revised, and that a scoping report would have to be completed (the scoping would include the aforementioned public meeting).

[29] On November 22, 2017, KCS submitted its revised Application Package, including the Development Plan along with its Baseline Assessment Report Addendum, Boundary Amendment Addendum and its Scoping Report.

[30] On December 4, 2017, DFA confirmed receipt of KCS's request for an aquaculture boundary amendment with respect to AQ#1039 and advised that the application would proceed to the internal review stage of the renewal process.

Legislative framework:

[31] Boundary amendments are governed by s.49 of the *Act*:

49 The Review Board shall, with respect to marine areas not designated as aquaculture development areas, make decisions with respect to

(a) an application for an aquaculture licence or aquaculture lease;

(b) where an existing aquaculture licence or aquaculture lease authorizes the production of shellfish or aquatic plants but not finfish species, an application to amend the aquaculture licence or aquaculture lease to authorize the production of a finfish species; and

c) an application to amend an aquaculture licence or aquaculture lease to change the boundaries of an existing aquaculture site if the change results in an increase in the area of the aquaculture site. 2015, c. 19, s. 9.

This section brings this matter to the Board.

[32] However, the Administrator appointed under the *Act* is empowered to make some decisions without the necessity of proceeding with the full process and ultimate involvement of the Review Board:

54A (1) The Minister shall appoint an employee of the Department to act as Administrator and make decisions with respect to

(a) applications for aquaculture licences or aquaculture leases in designated aquaculture development areas only;

(b) applications for aquaculture licences for land-based aquaculture sites;

(c) applications to amend aquaculture licences or aquaculture leases except those applications referred to in clauses 49(b) and (c);

[33] Thus, an application such as the one currently before the Board, **must** go through the formal Board process, including the steps leading up to it.

[34] In order to reach a decision on an application, the Board must consider eight factors as set out in s. 3 of the regulations:

(a) the optimum use of marine resources;

(b) the contribution of the proposed operation to community and Provincial economic development;

(c) fishery activities in the public waters surrounding the proposed aquacultural operation;

(d) the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation;

(e) the other users of the public waters surrounding the proposed aquacultural operation;

(f) the public right of navigation;

(g) the sustainability of wild salmon;

(h) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquaculture operation;

[35] Although the application in the case does not involve any change whatsoever of gear, species, farm stock, farm methods, or infrastructure, the legislation requires KCS to go through the same lengthy process as it would if it was applying for an entire new operation as opposed to simply bringing its boundaries into compliance.

[36] It is notable that the section 3 factors refer to “the proposed operation”. Applying the factors in this case, which does not contemplate a new “operation”, does result in an awkward and cumbersome fit for what actually entails drawing an invisible line on the water around an operation that has been in place since 2004. “Operation” is not defined in either the *Act* or *Regulations*, and this process is not included in the category of administrative amendments. However, KCS is clearly required by statute to go through the process and apply the eight factors to the facts of the case. The statutory requirements follow:

Consultations on adjudicative amendment application

14 (1) On receipt of a completed application for an adjudicative amendment, the Minister must appoint an employee of the Department to undertake consultations with any of the following as required under the laws of the Province or of Canada with respect to the application:

- (a) a department or agency of the Government of Nova Scotia;
- (b) a department or agency of the Government of Canada.

(2) In addition to any required consultation referred to in subsection (1), the Minister may appoint an employee of the Department to undertake consultations with any person, group of persons or organization that the Minister considers necessary in the circumstances.

[37] Bodies consulted by DFA in this case included:

1. Fisheries and Oceans Canada
2. Canadian Food Inspection Agency
3. Transport Canada
4. Environment and Climate Change Canada
5. Nova Scotia Environment
6. Nova Scotia Department of Agriculture
7. Nova Scotia Community, Culture and Heritage
8. Nova Scotia Department of Lands and Forestry
9. Nova Scotia Department of Fisheries and Aquaculture (Inland Fisheries)
10. Office of Aboriginal Affairs (Now L'Nu Affairs)

[38] Mr. Nathan Feindel is the Manager of Aquaculture Development and Marine Plant Harvesting with DFA. He testified that the consultation process involved an ongoing dialogue with the various network partners, in particular with the Federal Department of Fisheries and Oceans (DFO). There was a series of communications between DFA and DFO beginning in March 2018 until December 2020, resulting in DFO's Initial Letter of Advice, dated October 11, 2019, attaching the Canadian Science Advisory Secretariat report dated August 2019 (the "CSAS Report") and DFO's Addendum Letter of Advice dated December 1, 2020.

[39] As part of the network consultation, on March 20, 2018, the application documents were provided to the Office of Aboriginal Affairs (OAA, now Office of L'Nu Affairs.) That office is the government department which advises all departments on Mi'kmaq consultation. It advised DFA that consultation with the Mi'kmaq was not necessary, as "„there was no new equipment, species, harvesting methods, yield, or structural change associated with the project".

[40] Ultimately, all network consultations were finally completed, with none of the network partners having any issues with the proposal. A summary of the outcomes is attached as Appendix "A" to these reasons.

[41] On February 5, 2021, following completion of the internal review, DFA submitted the application to the Review Board. The lengthy delay from the time from KCS submitting the application, to referral to the Review Board, was apparently the result of difficulty in getting response from some of those bodies, as well as requests for further information from some of those bodies. Dealing with DFO was particularly time consuming. The delay was certainly unreasonable, however the process, and the regulations, were new.

Review Board proceedings:

[42] Parties to the proceedings are Kelly Cove Salmon Ltd., the Nova Scotia Department of Fisheries and Aquaculture, and the intervenor, Dr. Gregory Hemming. Parties are entitled to call witnesses, present documentary evidence and examine and cross examine witnesses.

[43] Anyone who can show in an unsworn application that satisfies the Board that they are "**substantially and directly affected by the hearing**" can become an intervenor, and thereby a party. Similar language is employed in most legislation and practice rules in many fields of litigation and is certainly not unique to the Nova Scotia fisheries and aquaculture regulatory regime. The rationale for the restriction is set out in the decision of Leblanc, J., in *Specter v Nova Scotia* 2011 NSSC 333, stated:

"In my view, how the test for standing is phrased is largely irrelevant. It does not matter whether a statute uses the phrase, "person aggrieved", "person directly affected", or "direct and personal interest". What matters is the interpretation that is given to these phrases. This necessarily involves a textual, contextual, and purposive analysis of the applicable legislation. Involved in this interpretation is the concern of courts that an overly broad interpretation will allow mere "busybodies" to flood the courts with litigation challenging public decisions."

[44] This Board does not consider the unsuccessful intervenors (St. Mary's Bay Protectors (SMBP), Ecology Action Centre (EAC), and Healthy Bays Network (HBN)) in this case to be 'busybodies'. However, their interest was in opposition to marine open pen aquaculture in general (as can be seen from much of the material that they eventually put before the Board as members of the public) and not focused in any way on this site or the impact of a boundary amendment.

[45] Without becoming a party, a member of the public can otherwise participate. The regulations permit members of the public, who may not be "substantially and directly affected by the hearing" to give a sworn oral statement at the conclusion of the hearing, or to submit an unsworn written statement. Such individuals do not have the legislated status of a "party", in that they are not able to call witnesses, or participate in examination or cross examination of witnesses. They may, however, be questioned by the parties if they make an oral statement.

[46] Dr. Hemming was granted intervenor status by decision dated March 25, 2021. In Dr. Hemming's application, he stated that he was "rewilding" his property, and that his property was on the shores of the Annapolis Basin and located approximately 2.5 km from the farm. He said that the Rattling Beach boundary amendment would impact on his rewilding project. He therefore claimed that he would be "substantially and directly affected".

[47] However, shortly after the Board granted intervenor status to Dr. Hemming, Mr. Robert Grant, solicitor for KCS, pointed out that in fact, Dr. Hemming's property was actually some 14.5 km away from Rattling Beach. Nonetheless, having reached a decision based on Dr. Hemming's (unsworn) application, the Board was prepared to allow Dr. Hemming to continue to act as an intervenor, where his location, and any possible impact would be subjected to his sworn evidence, and that of any other witnesses that he might choose to call. As it was, neither the location, or possible impact on his "rewilding project", was ever addressed by any of his witnesses in the course of the hearing, nor did he himself file an affidavit or testify, although he was present throughout (discussed below).

[48] An intervenor application was filed on behalf of St. Mary's Bay Protectors (SMBP) by Gwen Wilson. SMBP, a community group with a general interest in opposition to open pen aquaculture, formed in response to lease options in St. Mary's Bay. On March 19, 2021, the SMBP application was rejected. Ms. Wilson also submitted a request to make an oral sworn statement at the hearing but was not present when called during the hearing.

[49] Healthy Bay Network (HBN) also filed an intervenor application. HBN, located out of Pleasantville on the south shore of Nova Scotia, said that it represents various community organizations across the province, united in opposition to open pen aquaculture. They showed no specific or implicit "substantial and direct affect" of the proposed boundary expansion of the KCS site; they were concerned with the broader concept of open pen farms. Their application for intervenor status was rejected on March 24, 2021. Mr. Ronald Neufeld of Protect Liverpool Bay Association (PLBA) later filed an affidavit purported to be in support of Dr. Hemming's submissions as an intervenor. Mr. Derek Purcell of HBN also subsequently filed a written submission. Neither addressed Dr. Hemming's location or issue or mentioned Dr. Hemming.

[50] The Ecology Action Centre's (EAC) Simon Ryder Burrige applied for intervenor status. While it expressed a broad interest in open pen aquaculture, it did not establish a substantial and direct connection to the KCS site, or particularly, to the boundary amendment. Its application was rejected on March 24, 2021. Mr. Ryder Burrige later filed his own affidavit ostensibly "in support of" Dr. Hemming who had been give party status; he also provided a written public submission. He made no reference to Dr. Hemming, Dr. Hemming's farm location, or Dr. Hemming's rewilding concern in his affidavit, rather mostly just expressed the EAC general opposition to open pen salmon farms.

[51] It is essential to point out that the role of this Board is not to provide a platform for general opposition to, or support of, open pen aquaculture in general. Rather, we must consider **this** application (KCS / Rattling beach farm) in relation to **this** site, and the impact, if any, of changing the lease boundary. To this question, and this question only, we must apply the eight factors set out in S..3 of the regulations. There may be many other actual or potential lease / licence sites within the coastal waters of the province, with varying characteristics. Some may be suitable, some unsuitable. There may be many potential operators, of varying experience, knowledge, infrastructure, and skill sets. But to repeat, in this hearing we must consider the merits of the Rattling Beach boundary amendment, and more particularly, the potential impact of **this** boundary amendment application. At the end, we must decide whether to allow the amendment, and allow the farm to continue to operate as it has since 2004, or reject the application, thereby requiring it to contain its entire infrastructure within the lease boundary as originally drawn in 1994. Unfortunately, much of the evidence and argument on the current application was not so focused, but will be addressed.

Application of the eight factors:

[52] The simple answer to each of the eight factors, is really to paraphrase the answer provided to DFA by OAA; as there are no new equipment, species, harvesting methods, yield, or structural change associated with the project, there can be no impact of the boundary expansion on any of the factors.

[53] However, since so much information gathering and evidence has now been laid before the Board, and since we are required by statute to consider the eight factors, we will do so in some detail. In so doing, we will also consider whether reducing the size of the farm would have any impact. We must keep in mind that there are only two answers: either we allow the amendment, or refuse it, thereby resulting in a smaller lease than what has been utilized since 2004.

a) The optimum use of marine resources:

[54] The utilization of this small section of the Annapolis Basin has been in place since 2004, without challenging or in any way restricting other uses. To put some perspective on it, the boundary amendment would officially extend the site boundary a further 160 m into the 23,000 m long Annapolis Basin (from the tidal power plant at the mouth of the Basin, to Rattling Beach), without changing a mooring or cage position.

[55] The use of the site to efficiently produce thousands of kg of food is surely an optimum

use of the small portion of the Annapolis Basin. Salmon farming converts feed to food much more efficiently, and with a much smaller footprint, than does, for example beef production.

[56] We conclude that the re-drawing of the boundary to encompass the infrastructure represents the optimum use of marine resources.

b) The contribution of the proposed operation to community and Provincial economic development

[57] The evidence of Jeffrey Nickerson establishes that the farm as currently operated, makes a considerable contribution to the economic well-being, in particular to the town and region of Digby. The parent company, Cooke Aquaculture, employs 205 full time, year-round Nova Scotians on its several leases in Nova Scotia. It has an annual Nova Scotia payroll of ten million dollars, and approximately 10% of its overall return relates to the Digby operation. Jobs include feed and maintenance technicians, fish health and environmental management professionals, technical support and administrative positions. KCS's operations in the Annapolis Basin represent approximately 30% of the value brought over to the Digby wharf. KCS also employs and contracts with a variety of local suppliers including divers, mechanics, boat repair facilities, hardware providers, welders, heavy equipment operators, crane operators, marine suppliers, distribution companies, environmental consultants, electricians, boat brokers, boat builders, engine suppliers, hotels, restaurants and ferries. It also employs people at the feed manufacturing facility in Truro, which supplies its Nova Scotia and New Brunswick farm operations. Mr. Nickerson testified that KCS contracts with three hatcheries in Nova Scotia for the supply of Atlantic salmon smolts and Rainbow/Steelhead trout (one of the three hatcheries supplies only trout), and also works with the Millbrook First Nation Fish Hatchery.

[58] To allow the application will allow this economic contribution to continue. There was no evidence on behalf of the other parties as to the impact of refusing the application, although Mr. Nickerson did speak to the inevitable reduction in production (from 20 cages down to three or four) if it was necessary to move the farm operations entirely inside of the original lease boundaries,. It is easy to conclude that the result would at best, reduce the economic contribution, and at worse, make it unviable.

[59] We are satisfied that this farm does make a genuine contribution to community and Provincial economic development.

c) Fishery activities in the public waters surrounding the proposed aquacultural operation;

[60] As noted above, the only evidence of any interference with other fishery operations at this site was the occasional entanglement of lobster gear with mooring lines, and KCS assisted fishers with clearing gear. KCS does not, in any way, prohibit any other type of fishing within the utilized area, and no objection was raised by any fishers, whether by intervention, written, or oral statement.

[61] The Board is satisfied that this farm does not cause any significant negative impact to other fishery activities.

d) The oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation:

[62] Section 4 of the Development Plan addresses in detail the oceanographic and biophysical characteristics of the public waters surrounding the farm, including the wind conditions, waves, tides, currents, salinity, temperature, oxygen, bathymetry, baseline monitoring and site design. This site would be considered a high energy site, and KCS is experienced with operations of such sites.

[63] All conditions are continuously monitored in real time, in person and remotely, and reported as required. The DFA Environmental Monitoring Program (EMP), explained by Jessica Feindel, DFA Manager of Aquaculture Operations, monitors marine finfish operations and examines the relationship between the operation and surrounding marine environment. The EMP is a risk-based program to monitor the impact of organic deposition on the sea floor (e.g. the fecal matter and waste feed from the farm).

[64] Ms. Feindel explained that the EMP reviews data to ensure that the conditions below the pens are monitored to ensure that oxic conditions are maintained on the sea floor beneath the cages. As this site has been in operation for many years, the Board has the advantage of seeing, not only what should occur, or might occur, but what has occurred. Ms. Feindel testified that the Rattling Beach farm has experienced only two hypoxic conditions between 2004 and 2020, once in 2011 and once in 2017. She had no concern, as the farm immediately corrected the issue that had caused the conditions. In 2011, it replaced the netting material, thereby reducing the organic debris accumulated during net cleaning. It also began to use remotely operated ROV's to ensure net cleaning occurred more regularly.

[65] The later incident was the result of a broken feed hose, which was repaired. The farm also implemented staff training, equipment, and practices to allow earlier detection.

[66] There was no evidence before the Board to indicate that reducing the farm operation to fit the original 1994 boundaries would have any impact, other than reducing the size of the footprint.

e) The other users of the public waters surrounding the proposed aquacultural operation;

[67] Other users include recreational boaters, kayakers, and fishers. Although the site is described as Rattling Beach, there is no actual "beach" near the site; the bottom drops off rapidly from the shoreline.

[68] The Kwilmu'kw Maw-klusuaqn (KMKNO) filed a written submission. The KMKNO works on behalf of most of the Nova Scotia Mi'kmaq communities in negotiations and consultation with the federal and provincial governments. Its involvement, and particularly that of the Bear River community, was said to relate to traditional harvesting within the area of the proposed boundary. The details of the consultation issue will be dealt with below. However,

there is no evidence that harvesting, whether by Mi'kmaq or any other fishers have been disrupted by the use of the site by KCS since the onset of operations in 2004.

[69] KMKNO also referenced the use of beaches along the Annapolis Basin as summer campsites. However, there is no “beach” area near the Rattling Beach site, as the shoreline follows the contours of the adjacent hillside and drops off precipitously.

[70] KMKNO also referred to possible archeological artifacts on the site, however it did not advert to any evidence that would suggest the presence of the cages would interfere with any archeological material, as the only portion of the infrastructure that touches the seabed are the mooring anchors.

[71] The St. John / Digby ferry operates from a wharf nearby, and when the amendment was first proposed, the ferry operators expressed concern. However, those concerns were alleviated when they realized that the farm itself, including infrastructure, would not expand beyond its actual operations over the years.

[72] There has been no evidence presented to suggest that the amendment of the boundary to incorporate the farm as it has existed since 2004, would have any impact on other users. Nor is there any evidence to suggest that refusing the application, thereby reducing the size of the physical farm operation, would be beneficial. The Board is satisfied that other users of these water will not be negatively impacted by this boundary amendment.

f) The public right of navigation

[73] Transport Canada was consulted as part of the network agency review process. Transport Canada reported there had been no issues with the current farm location and no issues with the proposed alteration to its boundaries to accommodate the existing infrastructure. As noted, the operators of the Digby / St. John ferry initially expressed concern, however, they had initially understood the action infrastructure would be expanded. In the result, with no changes actually occurring, there are no longer any concerns.

[74] We conclude that allowing the farm to continue as it is presently located will have no impact on the public right of navigation.

g) The sustainability of wild salmon:

[75] While evidence was heard on all of the eight criteria, the focus of dispute was the sustainability of wild salmon. Within that element, the concerns addressed were primarily risk of “sea lice” and other pathogens potentially contaminating a wild salmon population, and escaped farm salmon introgression with wild salmon.

[76] In his final written submission on behalf of the applicant, Mr. Robert Grant summarized the position of KCS:

“The evidence before the Board strongly supports the conclusion that neither the Rattling Beach Farm nor the proposed amendment to the lease boundaries at Rattling

Beach will pose a risk to wild salmon or to the sustainability of wild salmon. Kelly Cove submits the evidence supports the following conclusions:

- (a) There is no population of wild salmon likely to come into close enough proximity to the Rattling Beach Farm to be affected by it;
- (b) The infrastructure, procedures and training for the Rattling Beach Farm operation are effective in keeping farmed fish within its pens, from introduction to harvesting, thereby mitigating risk of introgression with wild salmon, if they are present;
- (c) Salmon sea lice are historically not a problem at Rattling Beach and there is an array of treatments and management tools available to address potential infestations;
- (d) Given that the cycle for farmed salmon at this Farm coincides with that of wild salmon (if they are present), the risk associated with sea lice is exceedingly low;
- (e) Farmed fish are vaccinated and healthy when they are introduced to the Farm and are carefully monitored by veterinarians throughout their growth for prevention and treatment of disease. The risk of transmittal of disease to wild salmon, if they are present, is exceedingly low.

[77] Sea lice are a parasite of sorts, that exist in the wild salmon population. They particularly pose a risk to smolts, who's small body mass makes them more vulnerable. They are typically present on wild salmon, and they require a marine environment to thrive. When wild salmon leave the salt water to spawn in freshwater rivers, they lose the sea lice.

[78] Much of this issue must necessarily be addressed by way of expert opinion evidence. The limits regarding the admissibility of expert opinion are reflected in the law of evidence, common law, statute and by way of civil procedure rules in most jurisdictions. It is also addressed directly in the *Act*:

30 (3) A party is not entitled to present the evidence of an expert witness at an adjudicative hearing unless

- (a) the evidence is in the form of a report that includes the expert's name, address and qualifications, along with a statement of the substance of the expert's proposed evidence; and
- (b) the party has provided the evidence to the Review Board and each of the other parties as required by subsection (5).

[79] Jonathan Carr was called to offer expert opinion evidence "on behalf of" intervenor Gregory Hemming. Mr. Carr's qualifications were not challenged, and his report was properly tendered. Mr. Carr is employed by the Atlantic Salmon Federation as Vice president of Research and Environment and is well qualified to provide expert opinion on the potential

impact of open pen salmon on the wild salmon population. His affidavit contained the expert opinion prepared by himself and Dr. Sutton, also of the Atlantic Salmon Federation.

[80] In his written document Mr. Carr expressly limited his opinion to three issues:

1. What impacts, if any, has the farm had on Atlantic salmon?
2. Will the **continued operation** of the farm impede wild Atlantic salmon recovery efforts?
3. Are there steps the applicant could take to avoid or mitigate impacts on wild salmon in the event that the application is approved?

[81] We note, again, that we are not here to address the “continued operation” of this farm. We are here to consider what might be the impact of the boundary amendment, considering the eight factors. It is notable that Mr. Carr (although well qualified to offer opinion evidence on salmon farming, and its potential impact on wild salmon), did not address this issue directly, nor did he address the specific concern expressed by his ostensible client, Dr. Hemming, in his successful intervenor application (Dr. Hemming's rewilding of his property some 14.5 km from the Rattling Beach site). Nor does Mr. Carr address the actual subject of this application, i.e. whether the impact of allowing or refusing this boundary amendment would impact wild salmon population. Rather, he spoke primarily to the “continued operation” of the farm.

[82] In cross examination, Mr. Carr agreed that before any attempts were made at salmon aquaculture in the basin, the Bear and Annapolis Rivers were almost entirely devoid of a wild salmon population. By 1994, the population was so low that it was not sustainable.

[83] He acknowledged that commercial salmon fishing was abolished in the area, and was eventually, recreational, and Indigenous fishing, but the salmon did not return to the rivers.

[84] He agreed that regarding the Basin, there were other probable factors that impacted the presence of salmon in the basin and feeder rivers. He agreed that the increased acidity of the rivers, from acid rain, coupled with the naturally acidic soil in the area would affect the salmon presence. He acknowledged that the tidal power dam at the mouth of the Annapolis River impeded / prevented salmon return as did agricultural runoff from the numerous farms in the area. He acknowledged that until it ended in May 2018, commercial salmon fishing, particularly off Greenland and the Faroe Islands had had a massive impact on the wild salmon population. He agreed that IUU (illegal, unauthorized, unregulated) fishing continued to impact the Atlantic salmon population.

[85] His expert opinion relies extensively on international research, on open pen salmon farming in general. His desired remedy would seem to be stopping open pen aquaculture operations altogether, or alternatively, imposing conditions on the operator. His views are reflective of the position of unsuccessful intervenor applicants Mr. Neufeld and Mr. Ryder – Burrige of the Ecology Action Centre. As noted, both Mr. Neufeld and Mr. Ryder–Burrige filed affidavits ostensibly in support of Dr. Hemming. Dr. Hemming did not file an affidavit himself, nor did he testify.

Sea lice

[86] According to Mr. Carr, sea lice on farm salmon could potentially contaminate wild salmon which pass in the vicinity of the Rattling Beach pens, either as mature salmon, returning in the fall to the Annapolis or Bear River to spawn, or as smolts returning from the rivers to the sea in the spring. He relies heavily on studies done in Norway, which is a world leader in salmon aquaculture. The industry in Norway produces approximately € 6.5 billion in revenue annually, and a single farm will often be larger than all of the existing farm sites in Nova Scotia, combined. He agreed in cross examination that the Norwegian farms are located in close proximity to each other, in the confines of the narrow Norwegian Fjords, such that wild salmon travelling to or from rivers would have to pass multiple farm sites to reach their destination. He also agreed that the various farm sites in Norway would, at any given time, contain different growth stages of the fish, from smolt to adult.

[87] He did not dispute, and acknowledged, that KCS stocked smolt in all of their cages at the site in the spring of the year, and that the stock remained there until harvest, approximately 18 months later. He also agreed that when those smolt were initially placed in the cages, they were coming from a freshwater environment, where they had been grown, and they would therefore be lice free. Any subsequent contamination would have to be by way of transfer from wild fish on the journey to spawn in the rivers. In the result, at least in the spring of year one, there would be no risk of contamination from farm fish to wild smolt leaving the rivers on the way to the sea.

[88] When the farm fish were approaching maturity the following spring, any wild smolt leaving the rivers could be vulnerable to lice which may have later been transferred to the farm fish from wild fish. However, he agreed that the very powerful tidal flow from the Annapolis Basin to the Bay of Fundy, through the “gap” would tend to move any wild smolt through quickly, reducing the opportunity for contamination. Mr. Carr acknowledged that there was likely only a “low chance” that smolts returning to the sea from the Annapolis Basin would be contaminated by sea lice from the pens.

[89] The return of wild salmon (if any) to the rivers generally occurs in the fall. In year one of the farm fish, the wild salmon would potentially introduce sea lice to the farm salmon. In year two, any wild smolt leaving the rivers could potentially be contaminated by lice from farm fish, but this would typically take place in late fall, when the lice on both wild and farm fish would be lower as a result of lower water temperatures. The evidence is that the wild fish reaching the ocean would eventually become contaminated with lice count much heavier than those monitored on the Rattling Beach farm.

[90] KCS uses cage monitoring to control sea lice infestation.

[91] Dr. Anthony Snyder is an aquatic animal health veterinarian with DFA. Dr. Snyder stated in his affidavit that KCS’s FMP, sets the tolerance limit for lice contamination. It was approved by DFA, and sets out the action threshold for sea lice as follows: (a) April, May and June: 0.5 female adult louse per fish; (b) July – September: one adult female louse per fish; and (c) October – December: 0.5 female adult louse per fish. This tolerance level is actually much more conservative than that required by DFA, and is much, much lower than the counts in mature wild salmon, over 14 per fish.

[92] KCS monitors and is required to report counts on a weekly basis, from April 1 until January 15. In the event that the tolerance limits are exceeded, interventions used, (in order of effectiveness success) include (a) mechanical treatments such as fresh water, warm bath water or high-pressure water (hydolicer) to remove the lice from the fish, (b) in-feed treatments, all of which need to be approved by Health Canada for use; and (c) harvesting.

[93] Interventions must be approved by DFA.

[94] KCS is also considering the use of lumpfish as a cleaner fish in the pens (the use of lumpfish is being considered in the future, but, although in use in Newfoundland, it has yet to be approved for use in Nova Scotia).

[95] Dr. Snyder also stated in his affidavit that other farm practices to control impact of lice and other pathogens include, in addition to the monitoring program, a multi-factorial approach to address finfish pests including control of stock and density, ensuring proper space between the farms and good husbandry. The three-month fallow period between harvest and restocking the farm also mitigates against sea lice as there is no host in the pen.

[96] Dr. Snyder stated in his affidavit that the stocking density on this site is 25 kg. / m (3) and meets the Nova Scotia standard. He also states that the cage array of 20 is suitable for this site.

[97] The intervenor states in its closing submissions that, at the time of the hearing, KCS was experiencing a sea lice infestation at the Rattling Beach site. That is not correct.

[98] Mr. Nickerson stated in his direct evidence, that shortly before the hearing, KCS's Victoria Beach farm experienced an increase in sea lice. KCS notified DFA and consulted with its veterinary staff to implement a treatment plan to address the sea lice. The treatment plan began with enhanced monitoring, followed by an in-feed treatment. At the time of the hearing, KCS was about to use its \$15 million treatment vessel to utilize a warm water bath to remove the sea lice from the fish at Victoria Beach. The lice would be removed, collected, and disposed of at an onland compost facility.

[99] In the event that treatment was unsuccessful, the fish would be harvested.

[100] At the same time, as a precaution, KCS intensified its sea lice monitoring at the Rattling Beach site.

Introgression of escaped farm salmon with wild salmon:

[101] The farm is stocked with smolt bred from the St. John River strain. One expressed concern by Mr. Carr, is with the potential impact of introgression of farm salmon into wild salmon as a result of "escapees" from the cages. KCS has had minimal events of possible escapes; on one occasion, a hole was seen in the site of one of the pens, however, they quickly had staff on site to repair the damage.

[102] On another occasion, a seal was found within the outer containment net, but outside of the cage itself. No damage was seen to the cage, and there was no indication of any escapes. Here again, KCS uses state of the art mitigation, which appears to be successful. KCS uses containment engineering as well as age monitoring to avoid such losses. They now use a steel lined netting twine to prevent seals simply chewing through the cage, and as noted, they also use an outer “containment” net. They have remotely viewed cameras, operating 24 hours a day.

[103] KCS maintains detailed sanitation practices, both in transferring fish when stocking, and in harvesting the fish.

[104] They are already intending to begin a genetic tracing approach in 2023 (recommended as an option by Mr. Carr, who apparently didn't realize this), where the farm fish is identified before being transferred to the cages. This will enable source identification of any possible escapees, or introgression, in fish offsite. Mr. Carr notes that it is a practice followed in the State of Maine, where Cooke Aquaculture operates the majority of salmon farms. Mr. Carr strongly supports this practice, although he agrees that it needs to be accompanied by river monitoring, which does occur in Maine, but has yet to be undertaken in Nova Scotia. Such a practice would have to be approved by DFO.

[105] As with health management of its farm stock, the actions in this regard are not entirely altruistic – healthy fish are needed for healthy production levels, as are fish quantities. There is no motivation for a good fish farmer to take a casual approach to managing quantity and quality of its product.

[106] And the mitigation practices are not simply left up to the devices of KCS. As testified by Dr. Snyder and Jessica Feindel, the Province actively regulates and monitors this and other farms in the province.

[107] The operator is required to produce a farm management plan. The FMP regulatory requirements contain very extensive, detailed provisions, controlling the farm operations:

Farm Management Plan and record of amendments

5 (1) An aquaculture licence holder must prepare a Farm Management Plan in accordance with these regulations.

(1A) Before the initial stocking of their aquaculture site, an aquaculture licence holder must notify the Minister that they have prepared their Farm Management Plan, and make it available for review and approval by the Minister.

(2) An aquaculture licence holder must keep a record of any amendments to their Farm Management Plan, to be provided as required as part of an audit under Section 38.

Required content for Farm Management Plan

6 (1) A Farm Management Plan must include any information required by the Minister, including sections for all of the following:

- (a) fish health management, in accordance with Section 9;
- (b) environmental monitoring, in accordance with Sections 10 to 13;
- (c) farm operations, in accordance with Section 14;
- (d) containment management, in accordance with Section 15, for holders of aquaculture licences for finfish in marine aquaculture sites.

(2) Each procedure contained in a Farm Management Plan must include any of the following that apply with respect to that procedure:

- (a) critical control points;
- (b) critical control limits;
- (c) details about how the procedure is to be monitored;
- (d) details about corrective actions to be taken.

(3) The Minister may establish minimum requirements for the procedures referred to in subsection (2)

Adherence to Farm Management Plan

8 An aquaculture licence holder must adhere to the procedures contained in their Farm Management Plan and must keep records that

- (a) verify adherence to the procedures; and
- (b) demonstrate that effective action was taken at critical control points.

Fish health content

9 (1) The fish health section of a Farm Management Plan must include any information and procedures the Minister requires to ensure the effective management of fish health at an aquacultural operation, including all of the following:

- (a) for a holder of an aquaculture licence for shellfish, shellfish husbandry;

(b) for a holder of an aquaculture licence for finfish, all of the following:

- (i) finfish husbandry and welfare,
- (ii) veterinary care and disease surveillance practices,
- (iii) culling and mass stock depopulation practices;

(c) biosecurity measures;

(d) general emergency measures, other than culling or mass stock depopulation practices.

(2) In addition to the procedures required by subsection (1), the fish health section of a Farm Management Plan for an aquacultural operation in which trout or salmon is farmed at a marine aquaculture site must include procedures for managing sea lice.

(3) The holder of an aquaculture licence for finfish in a marine aquaculture site must prepare an updated fish health section of their Farm Management Plan for approval for each production cycle, at a time determined by the Minister.

Environmental monitoring content for finfish in marine aquaculture site

10 (1) For a holder of an aquaculture licence for finfish in a marine aquaculture site, the environmental monitoring section of a Farm Management Plan must include any information and procedures the Minister requires to ensure the effective environmental monitoring of the site, including all of the following:

- (a) processes for measuring oxyc conditions within the boundaries of the site and at any other locations determined by the Minister;
- (b) the monitoring schedule and associated process for reporting results;
- (c) sampling locations for each monitoring event;
- (d) processes for assessing and reporting on the stocking levels associated with monitoring events;
- (e) a mitigation plan.

(2) Any information resulting from the environmental monitoring procedures required by subsection (1) must be submitted by the aquaculture licence holder to the Minister on annual basis, at a time determined by the Minister.

Farm operations content

14 The farm operation section of a Farm Management Plan must include any information the Minister requires to ensure the responsible operation of an aquacultural operation, including information and procedures that are consistent with industry best practices relating to all of the following:

- (a) storing and disposing of feed, fuel, lubricants and chemicals;
- (b) removing and disposing of accumulated refuse and decommissioned farm supplies and equipment;
- (c) retrieving any gear or debris from the aquacultural operation that has broken loose;
- (d) interactions with wildlife;
- (e) maintaining the site in good order;
- (f) noise.

Containment management content

15 The containment management section of a Farm Management Plan for a holder of an aquaculture licence for finfish in a marine aquaculture site must include information and procedures related to all of the following:

- (a) operating procedures that limit the risk of a breach;
- (b) processes for installing and maintaining infrastructure in place to limit the risk of a breach;
- (c) responses to breaches;
- (d) areas of potential impact if a breach occurs;
- (e) management of the site if unusual events or severe weather occurs;
- (f) schedules for reporting all of the following:
 - (i) initial farm stocking,
 - (ii) inventory levels during production,

(iii) audits of the containment management system;

(g) proof of a professional engineer's approval of the design of the structures in place for containment management;

(h) a finfish marking plan.

[108] There has been no evidence before the Board that would suggest that there has been any breach of the FMP conditions required, and in fact, all of the evidence is that it has been fully compliant. It has been pro-active, and has invested heavily, to follow international best practices.

Precautionary principle (Spraytech SCC)

[109] Mr. Carr, particularly in cross-examination, accepts and approves of all mitigation efforts taken by KCS. However, he states in his written summary:

There is insufficient information provided to **conclusively determine** whether the existing farm has had or is currently having a negative impact on wild Atlantic salmon. Based on available information, it is reasonable to conclude the farm has likely had a negative impact on wild Atlantic salmon, the magnitude of which remains unknown.

[110] The intervenor argues that this reflects the "precautionary principle", as referred to by the Supreme Court of Canada in **114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)**, [2001] 2 S.C.R. 241, 2001 SCC 40 and it should be applied, and that the KCS application should be refused.

[111] In **Spraytech**, the Court was considering the jurisdiction of a municipality to impose a pesticide control bylaw. While not weighing the application of the principle, it agreed that it could justify the municipal intervention into pesticide control. The Court stated:

The interpretation of By-law 270 contained in these reasons respects international law's "precautionary principle", which is defined as follows at para. 7 of the *Bergen Ministerial Declaration on Sustainable Development* (1990):

In order to achieve sustainable development, policies must be based on the precautionary principle. Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

[112] The precautionary principle does not prohibit development; it requires mitigation measures even in an absence of "full scientific certainty" of "serious or irreversible damage".

[113] In this case, despite Mr. Carr's ongoing reliance on what he describes as "absence of evidence", we note the oft-stated concept that it is impossible to prove a negative. Aside from that, the Board has heard an abundance of evidence that even before regulatory and statutory change (and since), this site has been well managed, and indeed, has strong mitigation efforts in place. All farms are closely regulated and monitored by professional staff at DFA. As well, we remind, again, that what is proposed here is only a boundary change to incorporate what has been in place over the years.

[114] In this case, Mr. Carr has produced no evidence that the dimensions of the Rattling Beach farm as it now sits, without any change in its infrastructure or production, will have any impact on any local salmon population. He has shown however, the possibility of a risk to salmon by the presence of any salmon farm. We find that appropriate mitigation is in place to deal with potential damage.

[115] The Board is satisfied that the re-drawing of the lease boundaries will have no impact on the sustainability of wild Atlantic salmon.

h) The number and productivity of other aquaculture sites in the public waters surrounding the proposed aquaculture operation;

[116] There is one other salmon site in the basin, the "Port Wade" site, also operated by KCS. There are also clam and rockweed lease and licenses. More recently, the Bear River First Nation was awarded four or five experimental oyster leases in the Annapolis Basin. There is no evidence to suggest that these leases could be impacted in any way by allowing the Rattling Beach boundary to be expanded.

[117] In its submissions, the intervenor argues that KCS has been in "serious violation" of its licence for 17 years; in the result the application should be refused. Approval, he argues, leaves KCS unaccountable (paragraph 98, Intervenor submissions). With respect, that is very much an overstatement. In fact, the sole "violation" has been openly and transparently operating outside of the site boundaries (primarily by mooring location), without any apparent impact on other users. Moreover, in his focus on open pen aquaculture in general rather than this application in particular, the intervenor has failed to address any impact of such a violation, on wild salmon populations.

[118] Not only has the operation been openly operating outside its lease boundaries since 2008, KCS has been attempting to move forward an application for boundary amendment when the Province decided that all equipment should be within the original lease boundaries.

[119] Its cage arrays, numbers and stocking volumes have satisfied the Province and have been approved at every stocking event.

[120] KCS acknowledges that it is operating outside its lease boundaries; It is what brings this matter to the Board. It has been attempting to amend since 2008 and its efforts were repeatedly postponed by the Province. It has on the other hand, throughout its operations, fully complied with the requirements of its FMP and has set its own high standards.

Duty to consult the Nova Scotia Mi'kmaq

[121] Was there a duty to consult in this case? The foundation and nature / extent of the duty was described by the Supreme Court of Canada, in **Haida Nation v. British Columbia (Minister of Forests)**, [2004] 3 S.C.R. 511, 2004 SCC 73

“The foundation of the duty in the Crown’s honour and the goal of reconciliation suggest that the duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates **conduct that might adversely affect it**: “ (emphasis added)

[122] The duty was again articulated in **Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council**, 2010 SCC 43 (CanLII), [2010] 2 SCR 650

The Court reiterated the elements of the duty:

The Court in *Haida Nation* answered this question as follows: the duty to consult arises “when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it” (para. 35). This test can be broken down into three elements: 1) the Crown’s knowledge, actual or constructive, of a potential Aboriginal claim or right; (2) contemplated Crown conduct; and (3) the potential that the contemplated conduct may adversely affect an Aboriginal claim or right.

The Court went on to consider the issue of the crown conduct:

“The question is whether there is a claim or right that potentially may be adversely impacted by the *current* government conduct or decision in question. Prior and continuing breaches, including prior failures to consult, will only trigger a duty to consult if the present decision has the potential of causing a novel adverse impact on a present claim or existing right. This is not to say that there is no remedy for past and continuing breaches, including previous failures to consult. As noted in *Haida Nation*, a breach of the duty to consult may be remedied in various ways, including the awarding of damages. To trigger a fresh duty of consultation — the matter which is here at issue — a contemplated Crown action must put current claims and rights in jeopardy”.

[123] As noted above, as part of the network consultation, on March 20, 2018, DFA provided the application documents to the Office of Aboriginal Affairs (OAA) (now L’Nu Affairs). That office advised that “Aboriginal consultation is necessary on amendments to existing projects only when the crown anticipates new or novel impacts (established or potential) on Aboriginal or treaty rights. No new equipment, species, harvesting methods, yield, or structural change is associated with this proposed boundary amendment, therefore OAA does not recommend consulting with the Mi’kmaq on Aquaculture Boundary Amendment Application 1039”.

[124] In accordance with that advice, the Province did not initiate formal consultation.

[125] However, that is not to say that KCS did not engage the Mi’kmaq.

[126] Mr. Jeffery Nickerson is the Business Development Manager with KCS. In his affidavit, he describes several informal contacts with Bear River First Nation. In his affidavit, he details direct contact with First Nations:

As detailed in section 5.1.7 of Kelly Cove Salmon's Application Package filed in support of this application, the Bear River First Nation, Acadia First Nation and Annapolis Valley First Nation are located near the Rattling Beach farm. In January 2018, I attended the annual Sea Farmers Conference at The Hotel Halifax. The conference was organized by the Aquaculture Association of Nova Scotia. I am (and was at the time) the vice president of the Association. Several First Nations were in attendance with both Eskasoni First Nation and Waycobah First Nation speaking of their interest and experience in aquaculture. Also in attendance was Chief Dee Potter of Bear River First Nation. During the lunch break, I introduced myself to Chief Potter and we had a short discussion. I told her there could be ways our organization and her community could work mutually together, such as helping to market some of their product through our distribution network, and/or advising and assisting them if they pursued aquaculture in the area. She mentioned they were interested in farming oysters in the Annapolis Basin and St. Mary's Bay. They have since acquired several oyster leases. I also offered salmon to Bear River First Nation for ceremonies as we have done over the years for other First Nations. We ended the conversation with an agreement to meet in the future, but, despite a number of attempts, I have not been able to successfully contact her to arrange the meeting.

I had a similar conversation with then Chief Googoo of Waycobah First Nation at the SeaFarmers Conference. Since then, we have developed a relationship with Waycobah First Nation where we provide expertise on marine cage farming and processing their trout. Additionally, we market all of their trout for them. In return, they have taught us much about the Mi'kmaq culture and traditions. I also met Chief Gerald Toney of Annapolis Valley First Nation at the SeaFarmers Conference. As with Chief Potter, I told him that there could be ways for us to work together. Chief Toney and I planned to meet again to continue our discussion. Chief Toney also agreed to meeting with me to discuss the application and Kelly Cove Salmon's operations in Nova Scotia. More recently, my colleague Ms. Hewitt advised me, and I verily believe, that she emailed Chief Potter's office on or about February 12, 2019 and stated that Kelly Cove Salmon would like to meet to discuss the application and Kelly Cove Salmon's operations in Nova Scotia. On or about February 19, 2019, Ms. Hewitt received a reply from Chief Potter's office which stated, "I'll be in touch with a date as soon as one becomes available. I will say that right now we are quite busy with the end of the fiscal year fast approaching". Ms. Hewitt advised me, and I verily believe, that on or about, February 12 and 14, 2021, she called Chief Robinson to discuss Kelly Cove Salmon's operations in Nova Scotia. We have received no response. At no time since Kelly Cove Salmon has been operating at Rattling each has the Bear River First Nation, the Acadia First Nation or the Annapolis Valley First Nation contacted Kelly Cove Salmon with comments or concerns "

[127] Nothing further was heard from any First Nations community directly, or from the KMKNO, until April 1, 2021, in the form of correspondence from Ms. Twila Gaudet, Director of

Consultation for the KMKNO, to Mr. Robert Ceschiutti, Manager of Licensing and Leasing with DFA . She stated:

“The purpose of this letter is to request consultation under the *Terms of Reference Mi'kmaq-Nova Scotia – Canada Consultation process*. . It has been brought to our attention that Kelly Cove Salmon Ltd. have been operating unlawfully outside it's intended boundary for the past 15 years in the Annapolic Basin . Therefore in this case, where the boundary ammendment will allow this ongoing operation which has impeded traditional harvesting and the exercising of \mi'kmaq rights in that location and surronuding area , consultation should have been initiated on this aquaculture lease as well.. The basin has always served as an important resource to the Mi'kmaq. Bear River Community who continue to utilize the area for traditional practices. Also, the Mi'kmaq continuously state their concerns regarding threats to our wild stock, including risk of exposure to contagious disease, virus , and parasites when it comes to operations such as Kelly Cove Salmon Ltd. Thus consultation is expected and required and the boundary amendment should not be approved.”

[128] On April 26, 2021, Mr. Ceschiutti responded, explaining that as there were no changes in current production levels, species harvested, gear in use, or location to occur, there could be therefore no new anticipated adverse impacts to established or credibly asserted Aboriginal or treaty rights, and that consultation was not required.

[129] Nothing further was heard from the KMKNO until August 26, 2021, just prior to the scheduled hearing of August 31. Ms. Gaudet, in a letter to the Board, reiterated her concerns and asked that the application be denied until meaningful consultation has taken place, and that a declaration be made by the Board as to their “unlawful operation” (although outside of the regulated time limit for public written comments, in the circumstances, Ms. Gaudet's letter was placed on the record as a written public comment).

[130] The hearing date was adjourned, due to an unforeseeable event effecting one of the panel members, and was reconvened on November 15, 2021.

[131] KMKNO filed a further written comment with the Board on November 1, 2021. Ms. Gaudet stated that if the farm operations continue, all Mi'kmaw will be negatively affected, particularly Bear River. She again refers to traditional harvesting, and the use of beach areas on the basin. She speaks of the traditional porpoise harvest, and the underwater archeology at the site. As noted above, there is no beach area at the Rattling Beach site. Basin porpoise have been classified as endangered, and there is no porpoise harvest in the basin.

[132] As noted, impact on underwater archeology would not be impacted, as only the anchors actually contact the seabed.

[133] She also references concern about impact on the health of other species. There is no evidence before the Board that other species will be impacted by simply re-aligning the boundary.

[134] The Board agrees that in this case there was a knowledge of the history of First Nations, particularly Bear River, in the basin, and the rivers flowing into it. However, as was stated in advice from OAA, acting as the provincial government body with expertise on the issue of consultation, there was no Crown conduct, anticipated or real, that might impact the rights that existed.

[135] If, however, we are wrong in that regard, and there was a duty to consult, that duty was met, although perhaps not in a formal sense.

[136] In *Haida Nation*, McLachlin, C.J. described the content of the duty, when a duty is found to exist.

“The content of the duty, however, varies with the circumstances, as discussed more fully below. **A dubious or peripheral claim may attract a mere duty of notice, while a stronger claim may attract more stringent duties.** The law is capable of differentiating between tenuous claims, claims possessing a strong *prima facie* case, and established claims. Parties can assess these matters, and if they cannot agree, tribunals and courts can assist. Difficulties associated with the absence of proof and definition of claims are addressed by assigning appropriate content to the duty, not by denying the existence of a duty. “

[137] We conclude that in the facts of this case, the duty was on the low end of the scale, and notice was sufficient. That “notice” took the form of Mr. Nickerson’s (and later his office) discussions and engagement with Chief Robinson, and was supplemented by the public meeting held by the applicant (who do not have a duty to consult), and also by the transparent and very publicly accessible information on the application. Certainly, direct contact with the KMKNO would have been preferable, in a formal sense, but the contact was made directly with the Chief of the First Nations community which could be most impacted by any adverse activity. It was open to Chief Robinson, at that time, to reach out to the KMKNO to press for formal consultation, and we do not fault her for not doing so.

[138] We therefore conclude that there was non-duty to consult, as the mere redrawing of the lease boundary could not be seen to have any potential adverse impact on First Nations’ rights. If we are wrong in that regard, we conclude that consultation was at the very low end of the scale, and notice was sufficient to meet that duty.

[139] We also note that the impacts alleged by the KMKNO are vague, and non-specific as to potential adverse impacts on Aboriginal rights. For example, it does not explain how this ongoing operation has impeded traditional harvesting, and the exercise of traditional rights. Ms. Gaudet asserts that “it was brought to her attention”, that Kelly Cove has been operating “unlawfully” outside its boundaries for the past 15 years. We have no information as to who, what, or how, the matter was brought to her attention just prior to April 1, 2021.

[140] Finally, we note that her concerns relate to what she considers prior and continuing breaches, not “novel adverse impacts. Such breaches, if any, do not generate a duty to consult (*Haida Nation, supra.*).

Public written comments

[141] Public comments were received from:

- (a) Andre Thiffault dated March 9, 2021;
- (b) Ronald Neufeld dated April 24, 2021;
- (c) Derek Purcell on behalf of Healthy Bays Network dated April 25, 2021;
- (d) Simon Ryder-Burbidge on behalf of the Ecology Action Centre dated April 25, 2021;
- (e) Wendy Watson on behalf of the Association for the Preservation of the Eastern Shore dated August 9, 2021; and
- (f) Twila Gaudet, Director of Consultation on behalf of Kwilmu'kw Maw-klusuaqn Negotiation Office ("KMKNO") dated November 1, 2021.

[142] Mr. Thiffault lives adjacent to the property. He was concerned with noise, fish escapes, "massive fish die-offs", antibiotics, and a site offensive to tourists' views. He suggested that KCS followed the rule, only when they knew they were being watched. He wanted the operation removed. However, the evidence at the hearing negated most of those concerns. We note we have heard no concerns expressed by the many tourism operators in the area, including from Digby Pines Resort, one of the prime tourist facilities in Nova Scotia. We can appreciate that noise can certainly be a factor, but have heard almost no evidence on that factor, other than a complaint at the Port Wade site, where KCS agreed to make an adjustment to its blower, and we trust that DFA and KCS will keep a close eye and make best efforts to mitigate noise where possible.

[143] Mr. Neufeld, in addition to his three-volume affidavit, also filed a written comment. He argues that there is little, if any, economic benefit to Nova Scotia from the farm. He describes his own personal observation of sea lice at the Port Wade site, pointing to two incidents since 2012 confirming sea lice. The evidence heard in the course of the hearing noted above counter his concerns with sea lice. He speaks to fish escapes and says that escapes from Rattling Beach have been devastating to the Bear River wild salmon. He refers to a television documentary. His comment is entirely factually incorrect; as noted above, since 1994, long before salmon were ever farmed at Rattling Beach, Atlantic Salmon were almost non-existent in Bear River, and there is no evidence, even from Mr. Carr, or any other sworn witness, of any "massive fish escape".

[144] In addition to his affidavit filed "on behalf of" Dr. Hemming, Mr. Ryder – Burrridge of the Ecology Action Centre, also filed written comments. Again, part of the concerns expressed were in relation to non-compliance with lease boundaries. As noted repeatedly, in the course of the hearing, and in this decision, that is what brings us here.

[145] In his written comment, Mr. Snyder-Burrridge attempts to introduce his "expert" opinion on several issues. As noted above, admissibility of expert opinion evidence is restricted. Section 30 (3) (a) and (b) of the regulations (noted above) set criteria on the admissibility of expert opinion. In addition, the general rules of evidence apply, that is, that expert opinion evidence can only be provided by an individual who qualified. (such as Mr. Carr). Mr. Ryder Burrridge, although very focused on the plight of wild salmon in general, is not qualified to give expert opinion evidence.

[146] Mr. Ryder Burrridge also takes issue with the process, which excluded EAC from intervenor status. He states:

” In our view, a submission like that which follows is not necessarily easily put together by individual citizens, communities or other local entities near open net-pen aquaculture sites. Such reviews can be timely, costly or out-of-reach for many who might wish to bring constructive arguments to bear. This is a role that the EAC adopts on behalf of concerned citizens and communities who care deeply about the natural environment in Nova Scotia, but who cannot fully participate in processes like this one due to time or resource constraints “

[147] With respect, there is nothing to prevent EAC or any other body or individual from offering support to a party / intervenor. Indeed, that appears to have happened in this case, by way of “piggy-backing” on Dr. Hemming's status. It is notable that nowhere in evidence offered on behalf of Dr. Hemming is his name even mentioned nor is his particular concern, and he did not file an affidavit or testify. He also did not explain the “mistake” in his application, regarding his property distance from the Rattling Beach farm.

[148] Mr. Ryder Burrridge also expresses concerns regarding willingness / ability of DFA to apply and enforce the requirements of the act and regulations.

“The ARB must consider the multi-year noncompliance of AQ#1039 as part of its assessment of the optimum use of marine resources and reject the proponent’s application for lease expansion until such time as proper regulatory enforcement protocols and site re-alignments have taken place. “

[149] With respect, the evidence before the Board clearly establishes that KCS has been pressing to correct the lease boundary since 2008, and that is what brings us here. As well, the evidence makes it abundantly clear that DFA has reporting requirements, and professional staff who are fully engaged in ensuring proper operation of all aspects of this and other farms throughout the province.

[150] Mr. Derek Purcell of HBN filed a written comment. He acknowledged the information and documents available on the webpage and appreciated the transparency.

[151] He expressed a concern regarding the noise. He did say that when he visited the area and spoke to some local residents, they were not concerned about noise, but did say perhaps they were just used to it. He asks that a “releasable” condition be attached to the FMP, regarding noise, and quantification. The issue of noise is not a matter than could be affected by allowing a new line to be drawn on the water. However, as noted, we do suggest that KCS and DFA ensure that noise is minimized to the extent possible.

[152] Mr. Purcell goes on to express concerns regarding the lease boundary violations, and that the application be refused until these violations are resolved. Again, we emphasize that the precise reason that we are here, is to consider the boundary issue, which KCS has been trying to address since 2008.

[153] Mr. Purcell then wanders into the field of expert opinion. He is not qualified to offer

expert opinion, nor does his opinion meet the statutory requirements. He goes on to attack DFO practice in protecting Atlantic salmon. While we do not agree that there is any issue whatsoever regarding those efforts (note the greatest delay in bringing this application forward was the detailed interaction with DFO), this request is well beyond the mandate of this Board. He also expresses concerns about the lack of data available to DFA in their review, but with respect, we have volumes of data before us to allow this Board to reach a conclusion.

[154] He also expresses concerns about cumulative effects of antibiotics, etc. in the basin, and again, the DFO threshold. We note the detailed evidence before the Board regarding use of chemical treatment of the fish, the approvals necessary, and the rarity of use. We also have detailed evidence regarding the mitigation efforts to control accumulation of debris beneath the cages (referred to above).

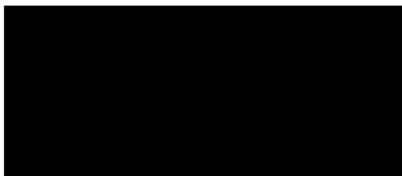
[155] He then discusses impact on wild salmon. We have reviewed above, the impact, and we agree that the mitigation efforts, and controls and limits set by DFA and other enforcement bodies, are reasonable.

[156] Wendy Watson Smith of the Association for Preservation of the Eastern Shore also filed a written statement. She challenged issues she has had with leases in Ship Harbour and Owls Head Harbour, and argues that the action of DFA / DFO into "potential organic loading, pesticides, and drugs on other fish stock in the Annapolis Basin. She maintains that DFA is not capable of regulating the industry. However, the evidence before the Board shows a highly regulated industry with ongoing, effective interaction with KCS.

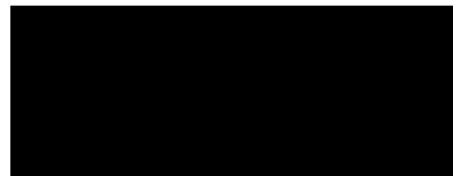
[157] The Board is satisfied that there will be no negative, or any, impact of this amendment on any of the eight statutory conditions. As noted, to apply the conditions to a lease amendment which is in effect, re-drawing a line on the water, is a difficult fit. It has generated an enormous amount of material, which would be relevant to a case involving new activity.

[158] The application of Kelly Cove Salmon Ltd. for an amendment to the boundary of lease AQ#1039 is allowed.

DATED at Halifax, Nova Scotia this **28th** day of **January**, 2022.



Jean McKenna, Chair



Richard Patterson, Board Member



Michael McKinnon, Board Member

DISTRIBUTION: Alison Campbell, Solicitor on behalf of the Department of Fisheries and Aquaculture
Robert Grant, Solicitor on behalf of Kelly Cove Salmon Ltd.
Sarah McDonald, Solicitor on behalf of Dr. Gregory Hemming

SCHEDULE A

SUMMARY OF NETWORK CONSULTATIONS

[i] The following are summaries of the individual network agency consultations DFA undertook regarding the adjudicative boundary amendment application for lease #1039. Please see the appendices outlined in Table 1 to review the associated documents related to each of the following network agency summaries.

[ii] **Fisheries and Oceans Canada (DFO)** reviewed the application according to their legislative mandate, which includes the Fisheries Act, Species at Risk Act (SARA), Oceans Act and applicable regulations. Some initial questions were raised in discussions by DFO requiring clarification from the applicant. These questions are outlined and addressed in KCS Addendum Report, which was provided to DFA and DFO for review. DFO completed its review and submitted a Letter of Advice (LOA) accompanied by a Canadian Science Advisory Secretariat (CSAS) Science Response. The LOA provided a summary of the results of DFO's risk assessment to inform of risks posed to fish and fish habitat and identify where additional avoidance and mitigation measures could be applied.

[iii] Clarification was required/requested by DFA on DFO's LOA and CSAS response. DFO submitted a modified table with responses and also submitted an Addendum to the LOA that provide additional context related to site specifics and DFO's review process.

[iv] The application was reviewed by various DFO sections to assess the following: the deposit of deleterious substances, serious harm to fish or fish habitat, and the killing, harming or harassing of aquatic species listed under SARA and the destruction of their critical habitat.

[v] The assessment by DFO was supported by a modelling exercise that described the "Predicted Exposure Zones for Deposits of Deleterious Substances". DFO's review was also supported by an assessment of "Fish and Fish Habitat" of the area based on their databases and expert knowledge to determine what fish and fish habitat were in the area and if it was susceptible to aquaculture effects. Finally, DFO looked at a number of "Pathways of Effects" that considered potential aquaculture related stressors and their potential effects on fish and fish habitat. These potential stressors included physical alteration of habitat structure, alteration in light, noise, release of nutrients and organic material, release of chemicals, release of farmed fish, and the release of pathogens and sea lice.

[vi] DFO determined that, because no critical habitat was identified in the predicted exposure zones, the Annapolis Basin and the proposed lease boundaries, it is unlikely that the residual negative effects will result in further serious harm to fish or fish habitat; or the killing, harming or harassing of aquatic species listed under SARA or the destruction of their critical habitat.

[vii] Based on DFO's assessment of the application; information, advice, and recommendations were provided to DFA which were considered by the department in a number of ways. DFO provided some recommendations which DFA referred to the applicant as information awareness recommendations for the applicant to consider to ensure they were compliant with

DFO's legislated mandate. This was accomplished by providing DFO's letter of advice and associated documents to the applicant. DFO also provided advice and recommendations to the DFA regarding sections of the Marine Finfish Farm Management Plan (FMP). The FMP for licence/lease #1039 (which is currently approved for implementation) will be re-reviewed by DFA after a decision on the application is made by the Nova Scotia Aquaculture Review Board (NSARB). DFO did identify that information which will reside in the FMP may have informed a more precise assessment of the residual risk of the application. However, DFO advised that the information was not needed as the residual risk was below the thresholds of unacceptable impacts. If the application is approved, DFA will work with DFO to ensure the advice and recommendations provided are appropriately incorporated into the FMP for licence/lease #1039. DFA also considered the advice, recommendations and information provided by DFO directly into DFA's review and recommendations to the board.

[viii] **Canadian Food Inspection Agency (CFIA)** reviewed the application and did not raise any questions with the proposed operation regarding their mandate. Transport Canada (TC) reviewed the application and identified concerns regarding the proximity to the ferry terminal and an expansion towards the terminal. DFA provided additional context and clarification to TC regarding the application and that the current configuration was not an expansion beyond what TC had reviewed through their Navigation Protection Program (NPP). TC confirmed with the applicant that the current gear configuration on site is what was approved in 2017 through TC's NPP and is currently marked accordingly. TC also followed up with the Princess of Acadia ferry operator and confirmed that there are no issues with the proposed amendment and no complaints had been received to date. TC concluded that there were no outstanding concerns with the proposed boundary amendment.

[ix] **Environment and Climate Change Canada (ECCC) –Canadian Shellfish Sanitation Program (CSSP)** reviewed this application and did not raise any questions with the proposed operation regarding their mandate. CSSP is not relevant to marine finfish applications.

[x] **Environment and Climate Change Canada (ECCC) -Canadian Wildlife Services Division (CWS)** reviewed the application and had comments requiring clarification. The additional information requested by CWS was provided by the applicant and DFA. Upon review of the additional information, CWS determined that there were no further comments.

[xi] Based on CWS's assessment of the application; information, advice, and recommendations were provided to DFA which were considered by the department in a number of ways. CWS provided some recommendations DFA referred to the applicant, which were an information awareness recommendation for the applicant to consider to ensure they were compliant with CWS's legislated mandate. CWS also provided advice and recommendations, which DFA will incorporate into the FMP, as necessary. The FMP for licence/lease #1039 (which is currently approved for implementation) will be re-reviewed by DFA after a decision on the application is made by the NSARB. If the application is approved, DFA will work with CWS to ensure the advice and recommendations provided are appropriately incorporated into the FMP for licence/lease #1039. DFA also considered the advice, recommendations and information provided by CWS directly into DFA's review and recommendations to the board.

[xii] **Nova Scotia Environment (NSE)** reviewed the application and did not raise any questions or concerns with the proposed boundary amendment with regards to their mandate.

[xiii] **Nova Scotia Department of Agriculture** reviewed the application and determined that due to the straightforward nature of the boundary amendment to the existing site, they did not have any concerns or objections with the application from an agricultural perspective.

[xiv] **Nova Scotia Communities, Culture and Heritage (CCH)** reviewed the application and did not have any archaeological concerns as no gear, notably anchors, will be moved to support the boundary amendment. It is advised that if any archeological artifacts are recovered or observed at any time, a Coordinator of Special Places Program at CCH should be contacted. This can be accomplished by incorporating a Standard Operating Procedure (SOP) for reporting to CCH, into the applicant's FMP.

[xv] **Nova Scotia Department of Lands and Forestry - formally Department of Natural Resources** reviewed the application and noted that the proposed expansion lies within the Department of Natural Resources' designated Significant Habitat for overwintering wildfowl. However, the Department indicated that due to the limited extent of this development, it should not impact the biodiversity interests of the Significant Habitat area.

[xvi] **Nova Scotia Department of Fisheries and Aquaculture - Inland Fisheries Division** reviewed the application but due to the marine environment where this site is located, the department did not have any concerns from an inland fisheries perspective.

SUMMARY OF CONSULTATIONS WITH THE MI'KMAQ OF NOVA SCOTIA

[xvii] Nova Scotia Department of Fisheries and Aquaculture provided the application and associated documents to the Office of Aboriginal Affairs (OAA) for their review to provide advice to DFA on requirements regarding consultation with the Mi'kmaq of Nova Scotia. It was recommended that consultation with the Mi'kmaq was not necessary for the aquaculture boundary amendment application #1039 as no new equipment, species, harvesting methods, yield or structural change are associated with the proposal.

TAB B

DECISION and ORDER

NSARB 2022- 001-002-003

NOVA SCOTIA AQUACULTURE REVIEW BOARD

IN THE MATTER OF: applications made by **TOWN POINT CONSULTING INC.** for **NEW MARINE SHELLFISH LICENCES/LEASES AQ#1442, AQ#1443 and AQ#1444** in **ANTIGONISH HARBOUR, ANTIGONISH COUNTY** for the **SUSPENDED CULTIVATION** of **AMERICAN OYSTERS**.

BEFORE: Jean McKenna, Chair
Coleen Morrison, Vice Chair
Roger Percy, Board Member

HEARING DATES: **Session 1** June 7 to June 10, 2023
Session 2 September 26 to 28, 2023

DECISION DATE: January 5, 2024

[1] In 2013, the Province of Nova Scotia created a commission to review and make recommendations as to the development of aquaculture in Nova Scotia. In 2014, the commission released its report. (**The Final Report of the Independent Aquaculture Regulatory Review for Nova Scotia** [The Doelle-Lahey Panel])

[2] The Commission had consulted with numerous interested parties, including the Atlantic Salmon Federation, the Nova Scotia Aquaculture Association, the Ecology Action Centre, the Nova Scotia Fisheries Sector Council, the Union of Nova Scotia Municipalities, the Nova Scotia Salmon Association, and the Coastal Coalition of Nova Scotia. Members of the public were encouraged to participate,

[3] Although some participants, including the Ecology Action Centre had called for a moratorium on marine open pen sites, a moratorium was not recommended. The authors concluded:

“In this report, we conclude that a fundamental overhaul of the regulation of aquaculture in Nova Scotia is called for. We conclude that this overhaul should be guided by the idea that aquaculture that integrates economic prosperity, social well-being and environmental sustainability is one that is low impact and high value. By this, we mean aquaculture that combines two fundamental attributes: it has a low level of adverse environmental and social impact, which decreases over time; and from the use of coastal resources, it produces a positive economic and social value, which is high

and increases over time. A number of participants in our process urged us to conclude that marine-based fin-fish facilities – and more particularly, salmon farms – cannot be sustainably operated, and to recommend that a permanent moratorium be imposed on this kind of aquaculture. Our conclusion, after careful consideration of the state of the science and opportunities to reduce impacts through effective regulations, is that the regulatory framework should not be prohibitory at a provincial scale. Instead, we recommend fundamental changes to the regulation of aquaculture, which we conclude can address the serious and legitimate concerns raised without foreclosing the opportunity associated with this sector of the industry.”

[4] In response, the Province generated a new legislative and regulatory framework governing aquaculture in Nova Scotia (**Fisheries and Coastal Resources Act 1996 c.25 as amended**).

[5] The purpose of the legislation is as set out in the Act:

Part 43A The purpose of this Part is to

- (a) recognize that aquaculture is a legitimate and valuable use of the Province’s coastal resources;
- (b) ensure aquaculture is conducted under conditions and in accordance with controls that protect the environment;
- (c) provide a predictable and efficient regulatory environment for business and public confidence;
- (c) ensure equity, fairness and compatibility in access to, and utilization of, public water resources for aquaculture;
- (d) ensure that members of the public have access to information with respect to the regulatory process and an opportunity to participate in the process;
- (e) ensure that regulations governing aquaculture are achievable, contain incentives for compliance and are enforceable;
- (f) ensure that coastal communities derive positive social and economic benefits from aquaculture;
- (g) ensure that aquaculture is conducted with due regard to the health, well-being and recovery of species at risk; and
- (h) ensure that the regulation of aquaculture contributes to the productive development of the Province’s coastal resources. 2015, c. 19, s. 5

[6] That framework included the creation of this Board (Aquaculture Review Board), which is independent of government. The Board conducts hearings into, *inter alia*, applications for new aquaculture development, such as this one. The Board's mandate is set out in the Act and Regulations:

Public Hearing

[7] **51** Where the Minister refers an application to the Review Board, the Review Board shall hold a public hearing as prescribed. 2015, c. 19, s. 9.

52 (1) Upon receiving a decision of the Review Board made pursuant to Section 49, the Minister shall, in accordance with the decision,

- (a) issue the aquaculture licence or aquaculture lease;
- (b) issue the aquaculture licence or aquaculture lease, subject to any conditions the Review Board considered appropriate;
- (c) reject the application for the aquaculture licence or aquaculture lease; or
- (d) amend the aquaculture licence or aquaculture lease.

[8] The Board is independent of the Minister, and the Minister is bound by the conclusions and direction of the Board.

[9] In reaching a conclusion, the Board is required to consider the factors set out in s. 3 of the Regulations:

3 In making decisions related to marine aquaculture sites, the Review Board or Administrator must take all of the following factors into consideration:

- (a) the optimum use of marine resources;
- (b) the contribution of the proposed operation to community and Provincial economic development;
- (c) fishery activities in the public waters surrounding the proposed aquacultural operation;
- (d) the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation;
- (e) the other users of the public waters surrounding the proposed aquacultural operation;

- (f) the public right of navigation;
- (g) the sustainability of wild salmon;
- (h) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation.

[10] Town Point Consulting (TPC) is a corporation created by Ernie Porter, for the purpose of pursuing the development of oyster aquaculture in Antigonish Harbour. Mr. Porter is a resident of "Town Point", a peninsula near the mouth of the Harbour. He is an engineer by profession and was former Chairmen and President of Lindsay Construction until his retirement.

[11] In accordance with the regulations, TPC applied for an option to lease in Antigonish Harbour. The application was granted on March 28th, 2019, for a period of six months. As per section 8 of the Aquaculture Licence and Lease Regulations, the option to lease was extended for an additional six months, expiring on March 28, 2020.

[12] In accordance with section 11 of the Aquaculture Licence and Lease Regulations, the application was received by the Department of Fisheries and Aquaculture (DFA) on January 27, 2020, prior to the expiry of the option to lease.

[13] The application was for three marine aquaculture licences and leases for the suspended cultivation of American oyster (*Crassostrea virginica*) in Antigonish Harbour, Antigonish County:

- AQ#1442 Antigonish Harbour, Antigonish County (3.2 ha)
- AQ#1443 Antigonish Harbour, Antigonish County (20.21 ha)
- AQ#1444 Antigonish Harbour, Antigonish County (13.38 ha)

[14] Pursuant to the regulatory requirements, TPC conducted the required scoping process. In this case, Mr. Porter initially contacted his immediate neighbours, and later expanded the contact to more remote residents, as well as to wild oyster harvesters. He recorded notes of these meetings. He invited anyone interested to come to his property and view his proposal and the progress to date.

[15] Dr. David Garbery is head of the Department of Aquatic Resources at St. Francis Xavier University. Dr. Garbery was initially concerned about the potential impact of the farm on the ecology of the harbour. He also was concerned about information and misinformation circulating in the community at large and proposed a community information meeting which included presentations by Mr. Porter, scientists, and a group organized in opposition to the project, "Friends of Antigonish Harbour" (FOAH). The meeting was well publicized and well attended.

[16] The application was reviewed, in accordance with the regulations, by “stakeholders”, Fisheries and Oceans Canada, Canadian Food Inspection Agency, Transport Canada, Environment and Climate Change Canada – Canadian Shellfish Water Classification Program, Environment and Climate Change Canada – Canadian Wildlife Service, Nova Scotia Department of Environment (now Department of Environment and Climate Change), Nova Scotia Communities, Culture and Heritage (now Department of Communities, Culture, Tourism and Heritage), Nova Scotia Department of Agriculture, Nova Scotia Department of Lands and Forestry (now Department of Natural Resources and Renewables), Office of Aboriginal Affairs (now Office of L’nu Affairs) and Nova Scotia Municipal Affairs (now Department of Municipal Affairs and Housing).

[17] On December 22, 2022, the application was accepted by the Minister as complete and was forwarded to the Board. The hearing was conducted in Antigonish, NS, on June 7-10, 2023, and Sept. 26-28, 2023.

[18] Seventeen applications for Intervenor Status were received by the Board, and status was granted to all of them. Some of the individual applicants for intervenor status who are opposed to the application are also members of FOAH. As FOAH was granted intervenor status, they clearly could not be represented individually and also as a member of the organization, and so chose to 'withdraw' from FOAH and seek status on their own. Moreover, given the considerable overlap in the positions, the Board then determined that a number of individual applicants, as well as the five commercial fishermen, would be consolidated into three groups, as follows:

- **Group 1:** Mary Jo MacDonald, Patrick MacDonald, Lucy MacDonald, Richard Wilgenhof, Alena Wilgenhof, Sian Newman-Smith, Rick Turner, Rowan McLean, Peter Bowler, Colleen Bowler, Friends of Antigonish Harbour, Sheila MacKinnon Hudon, William Hudon, May Goring, Manfred Goring, Antigonish Harbour Watershed Association, Rod Brady, and Mike MacDonald
- **Group 2:** Bill Brophy, Tim Brophy, Duncan Brophy, Daryl Beaton, and Brendon Doyle
- **Group 3:** Mark Genuist, Stephen Feist, and the Community Liaison Committee

[19] Three citizen groups were included in the decision for Intervenor status.

[20] The Antigonish Harbour Watershed Association describes itself as

“...an informal community group to advocate for the environmental health of Antigonish Harbour”.

It anticipates significant environmental impact by the TPC project, which it describes as a “large commercial operation”. As a volunteer citizens group, AHWA does data collection in conjunction with the “Community Aquatic Monitoring Program” (CAMP) near the proposed lease sites. Its application was filed by Susan Ross. Ms. Ross did not testify at the hearing.

[21] The Friends of Antigonish Harbour (FOAH) is a group of citizens opposed to the project, for a variety of reasons. FOAH's application was filed by Peter Bowler, (who individually was granted status along with his wife, Colleen Bowler). Colleen and Peter Bowler are from Texas, USA, and are seasonal residents of Town Point. Their property borders that of Ernie Porter. FOAH's application states that it was

“...formed to protect the environmental health of the sensitive ecology of Antigonish Harbour, ensure the safe access to Antigonish Harbour by First Nations, local commercial and recreational fishermen, boaters, birdwatchers and other recreational users.”

They allege “dramatic” reduction in use of the area by recreational and commercial users, and loss of property value as well as potential rental income from some of their waterfront properties. They are adamantly opposed to the proposal.

[22] The Community Liaison Committee (CLC) is an organization created when the proposal first became public (see reference above to Dr. David Garbery). It describes itself as follows:

“The Community Liaison Committee (CLC) is made up of a number of people who are directly and indirectly affected by this proposal. The committee includes people who live on the Antigonish Harbour; fish either commercially or recreationally in the Harbour; use the Antigonish Harbour for recreation, sailing and kayaking and conduct academic research in the Harbour. The Committee members are interested in the impact that this project will have on the Antigonish Harbour, the immediate community, the Antigonish area, and the province of Nova Scotia. This committee includes Councilors from the Municipality of the County of Antigonish, a local fisher, two residents who live on Antigonish Harbour, two members from the Antigonish Boat Club, a St. Francis of Xavier professor, the former CAO for the Town of Antigonish and concerned citizens”.

The members of the CLC include:

- Stephen Feist - CLC Chair: Past CAO for the Town of Antigonish and active member of a number of community groups; he is current president of the Antigonish Boat Club
- Sean Day - Co-Chair: Former Planner at the Town of Antigonish, past president of the Antigonish Boat Club which operates from Seabright on Antigonish Harbour
- Dr. David Garbury: Biology Professor at St. FX and head of the Aquatic Resources Program,
- Hughie Stewart: Deputy Warden of the Municipality of the County of Antigonish
- Owen McCarren: Warden of the Municipality of the County of Antigonish and recently retired as Area Manager of the Dept. of Natural Resources.
- Archie Mackenzie: fisherman, quarry operator, and an active member of several fishing-related organizations.
- Marc Genuist: a retired CBC journalist who has lived in Antigonish part-time for 15 years and permanently for 5 years. Marc and his partner live in Town Point. Their

waterfront property has a direct view over two of the proposed lease sites of the harbour. They use the harbour regularly to swim and kayak.

- Jim Lerikos, past president of The Antigonish River Association, Director, and past president of the Antigonish Eastern Shore Tourist Association.
- Dr. Roger Porter, a member of the Antigonish River Association and The Ecology Action Center.
- Paul MacIsaac, Senior Aquatic Operations Technician at Dalhousie University, Faculty of Agriculture.
- Ryan Smith: Local resident and former executive assistant for Randy Delory, a previous MLA for Antigonish region.

The CLC application was filed by Stephen Feist and was represented at the hearing by Marc Genuist and Stephen Feist, who both testified at the hearing.

[23] Subsequently, several intervenors from Group 1 withdrew and renounced their intervenor status, as follows:

- Mary Jo MacDonald, Patrick MacDonald, Alena Wilgenhof, Sian Newman-Smith, Rick Turner, Rowan McLean, Colleen Bowler, Shiela MacKinnon Hudon, William Hudon, May Goring, Antigonish Harbour Watershed Association and Rod Brady.

[24] It was argued during the hearing that Mr. Porter had attempted to block a certain Mr. Ed Pencer from becoming a member of the CLC. Mr. Porter did say in an e-mail that he was not comfortable with Mr. Pencer, however he testified that this related to a negative piece that Mr. Pencer had written in a local newspaper. Mr. Porter, in any event, would have no control over who would or wouldn't form part of CLC, and Mr. Pencer was pressed to join (he did not).

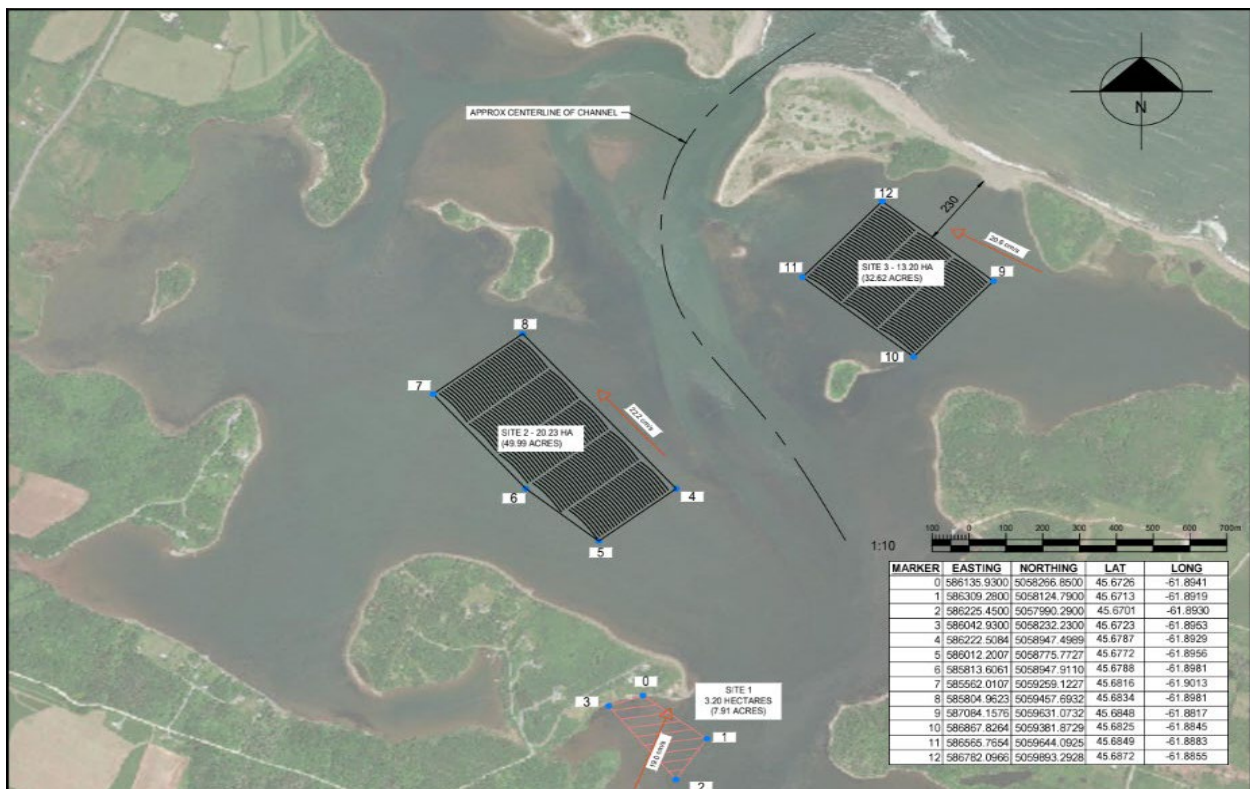
[25] The individual applicants for status expressed a variety of concerns, for and against the application. The interests included recreational uses of the harbour (canoeing, kayaking, sailing, fishing etc.), impact on view from properties, impact on property value, impact on local tourism, impact on commercial fishing, impact on the ecology of the harbour, and contribution (or lack thereof) to the local economy.

Analysis

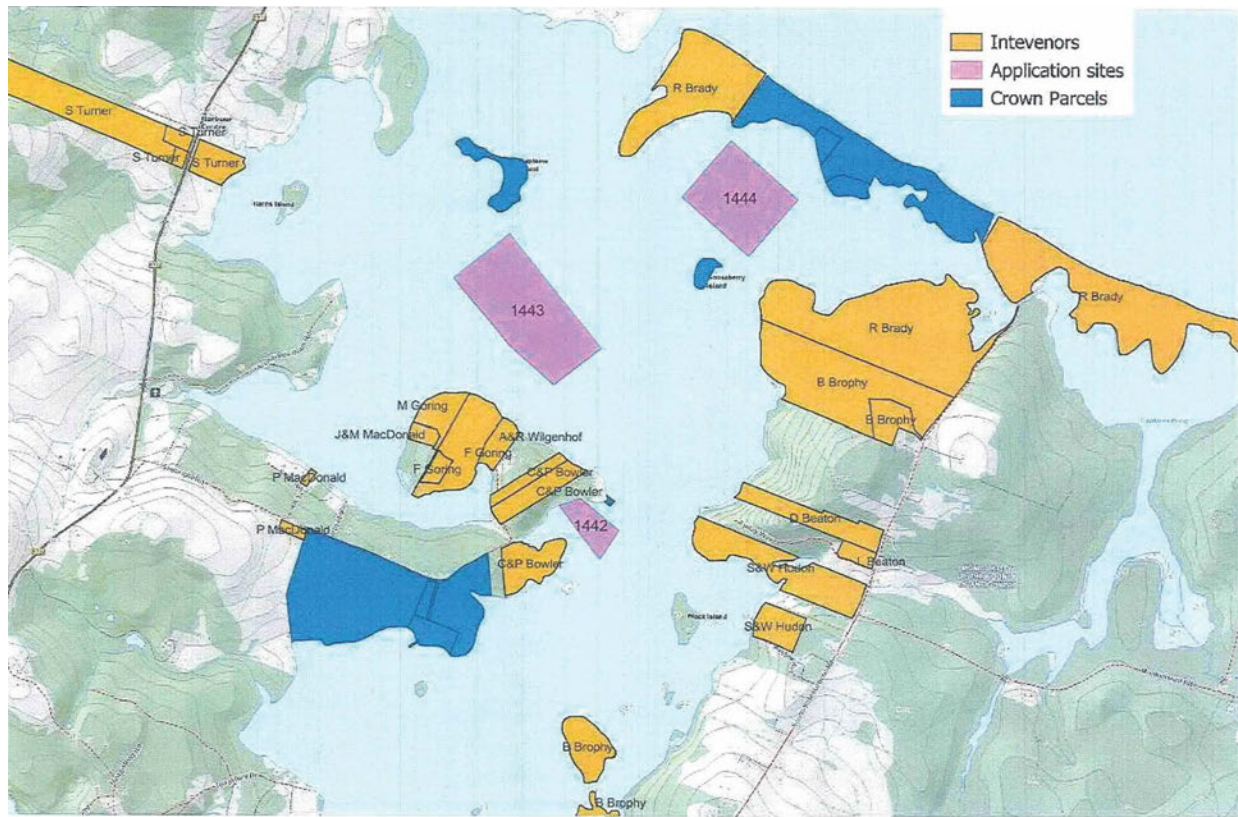
[26] The harbour maps below depict the proposed site locations, as well as the locations of property owned by the various individual intervenors. The lease area boundaries together constitute approximately 2% of the entire area of Antigonish Harbour. The BOBR cages are arranged in rows, with 10m spacing between each row. There is a 20m gap between the parallel cages and the edge of the lease. Less than 1% of the harbour could be potentially "shaded", and visible if the proposed lease sites and corresponding licences are approved. The anchoring system would be contained underwater, within the lease boundaries. The lease boundaries, anchors, etc. would all be marked in accordance with the requirements of Transport Canada.



Map A – Adjacent Property Owners



Map B – Application Sites



Map C – Overlay of Adjacent Property Owners and Application Sites

Consideration of the eight factors:

[27] As noted above, the Board is required to consider the eight factors set out in s. 3 of the Regulations. Specifically:

- (a) the optimum use of marine resources;
- (b) the contribution of the proposed operation to community and Provincial economic development;
- (c) fishery activities in the public waters surrounding the proposed aquacultural operation;
- (d) the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation;
- (e) the other users of the public waters surrounding the proposed aquacultural operation;
- (f) the public right of navigation;

- (g) the sustainability of wild salmon;
- (h) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation.

Factor a) the optimum use of marine resources.

[28] This issue will be addressed following review of the remaining factors.

b) the contribution of the proposed operation to community and Provincial economic development.

[29] Mr. Porter, in his evidence, testified that it anticipated employment of 10 individuals with a fully built out farm. It also plans to use the newly developed “BOBR” equipment for growing, TPC in its submissions argues that the operations will provide employment to local harvesters, residents, and countless indirect benefits to local businesses from the sale of oysters; maintenance and repair of equipment; provision of necessary farm services and supplies, the local design and fabrication of the Oyster-Matic work platform (developed by Ernie Porter for use with BOBR aquaculture facilities); tourism and recreational potential, etc. If granted, TPC says that the oyster farm will make a genuine contribution to community and provincial economic development.

[30] In its application, TPC says that:

“... construction of the proposed depuration facility is the largest construction component of the project and would be a welcome addition to the project list for Bio-Novations, Kells Enterprises, Quality Concrete, Highland Building Supplies, and many other local companies. In total, this building project would represent an injection of about \$1.5 million into the local economy. Construction of the marine portion of the farm would represent a further expenditure of about \$780k for materials and equipment excluding labour and HST. This investment would be distributed over the first three years of farm operation. One of the most significant and beneficial aspects of the development of this farm is employment. We estimate during the development of the farm in the first three years there will be direct wages paid of about \$370,000.00 in addition to our own sweat equity. This does not include wages to employees of contractors who may be hired to work on the land-based nursery and depuration facility. Then, after the farm settles into the routine of managing the fully developed operation, wages will be about \$350k annually. The productivity of the proposed farm is planned to be between two and three million oysters per year.

[31]

The farm gate value of the product after the farm reaches full production is expected to be \$1.0-1.5 million at wholesale prices annually. We plan to work with our marketing partner, Afishionado Fish Mongers, to develop markets in larger centres outside of Nova Scotia and in the process realize a portion of the marketing value of our product. At this point, the unit price should increase from about \$0.50 to about \$0.75 which would increase the farm gate value of farm production to be between \$1.5 and \$2.25 million annually. This represents a significant increase in economic output from this marine resource than is presently realized from collection of natural production alone.

[32]

Each sale of BOBR and Oyster-Matic for an operation capable of producing one million oysters per year would generate about \$350,000.00 in sales of Canadian made products. We plan to market this technology first in Atlantic Canada, then North America and ultimately internationally. Our farm will be a key player in establishing the viability and performance comparison of our technology relative to competing systems. We cannot accurately predict the economic activity resulting from this cooperation but expect it to be greater than the farm itself".

[33] The opposing Intervenor Groups (Groups 1 and 2), argue that the contribution, if any, to economic development is overstated, that few will be employed, directly or indirectly. and that there will be a negative impact on tourism.

[34] In their brief, they challenge TPC as follows:

- There is no "close analysis" by TPC on how many positions would be seasonal versus "off-season", and that seasonal workers are a limited resource in Nova Scotia
- While Mr. Porter has asserted the operation will add \$1-2 Million annually to the GDP, he has offered no evidence for this representation.
- The evidence adduced in the Cranford Report that the low current speeds measured at the lease sites restricts the supply of food particles to the oyster and limits oyster stocking densities and growth seriously undermines the asserted economic contribution that the operation will make to the community or Province.
- Although Mr. Porter testified that the lease sites, if approved, would act as the principal demonstration site for the BOBR technology, a new form of suspended culture technology created by Mr. Porter in partnership with Mr. Philip Docker. He also testified that the BOBR system would generate economic value from an "oyster tourism" perspective. TPCI included various opinion articles that spoke generally to oyster farm tourism in other regions of Canada and the United States. However, the opponent group argues that the BOBR units had been in use at the lease sites in Merigomish

Harbour owned by Mr. Docker for approximately four years, since 2019, but that TPC “opted” not to call Mr. Docker as a witness (but neither did Intervenor Groups 1 and 2).

- The opponents argue that Mr. Porter did not provide evidence of any significant volume of BOBR sales resulting from the BOBR use in Mr. Docker’s Aquaculture Leases despite what they describe as an online marketing page.
- They maintain that TPC has not provided the Board with sufficient evidence on which to make a finding of what this contribution would be.
- The opponents say that any contribution to the local economy would be offset by the negative impact on the anticipated losses to the five commercial fishermen, (part of the opponent group), as well as the wild oyster harvesters. such as Jamie Davidson who wrote to the Board, the opponents argue diminution of tourism revenue based on converting the existing natural harbour into an “industrial site”.
- The opponents argue that there is a negative impact on tourism. They maintain that tourism is drawn to the area by the natural environment and beautiful views. They see the presence of “industrial” oyster aquaculture as being very much a negative. This is contrasted with the evidence (and common knowledge) of the impact of oyster farming on PEI tourism where it is part of the “branding” of the island.

[35] The Board is satisfied that the evidence of Town Point does provide a reasonable 'forecast' of the economic benefit to the surrounding community. The initial proposed investment, while of short duration, is reasonably projected, and is as detailed as possible in its application documents. While the future success and direct benefit is less precise, only the proposed number of oysters started on the site can be seen as an absolute. The growth rate projected by TPC's expert could prove to be wrong (as suggested by Dr. P. Cranford), however that is a risk to be faced by TPC, who relies on the evidence of Dr. Garbery and Dr. Grant.

[36] There is undisputed evidence that the growth using the BOBR system is much better than the more traditional system used in shellfish aquaculture.

[37] A negative impact on tourism has not been clearly established by the opponents to the project.

[38] While waterfront property owners do have views of the harbour, public views from the roads alongside the harbour are limited, and the best viewing sites and tourist attractions are from Mahoney's Beach and Dunn's Beach. As well, the low profile of the BOBR units minimizes their visibility. Furthermore, mere visibility does not equate to the subjective description of 'unsightly'.

Factor c) Fishery activities in the public waters surrounding the proposed aquacultural operation.

Factor e) The other users of the public waters surrounding the proposed aquacultural operation.

Factor f) The public right of navigation.

[39] These three factors will all be addressed together in this section.

[40] In the application package, TPC reported the following as “other users of the public waters surrounding the proposed aquaculture operation”:

- Commercial oyster harvesters
- Commercial lobster fishermen
- Recreational fishers
- Recreational power boaters
- Recreational sail boaters
- Kayakers, canoers, and paddle boarders
- One existing oyster leaseholder
- Float plane operator

[41] The intervenors in Group 2 include five commercial fishermen who are based in Antigonish Harbour: Bill Brophy, Tim Brophy, Duncan Brophy, Daryl Beaton and Brendan Doyle. Mr. Bill Brophy testified on behalf of the group.

[42] In preparing his application, Mr. Ernie Porter contacted Bill Brophy, who spoke to him on behalf of the Brophy family. Mr. Porter had asked him to review “the enclosed plan, to ensure it does not impede your normal transit route. If you feel this layout may be a concern, please let us know.... we would be available to meet with you....”

[43] Mr. Brophy did attend the public meeting organized by CLC and did not express particular concerns at that time. Darrell Beaton had a short telephone discussion with Mr. Porter, and according to a notation by Mr. Porter in the application package, he had no concerns, as long as their route for lobster fishing was not obstructed. He was very busy at the time and did not have time to meet. None of the other fishermen, responded.

[44] Darrell Beaton later filed a written submission. As an intervenor, he is not entitled to separately make a written submission, however, part of his comment was that contrary to Mr. Porter's notation in the application package, he did not agree with the application. On that basis, the Board decided to allow his written submission.

[45] Although initially supportive, Mr. Beaton had apparently come to believe that AQ#1444 would in fact block his route from his lobster berth (next to Dunn's Beach) to the bay. He felt that a portion of AQ#1444 would block his transit route to lobster fishing.

[46] This was inconsistent with the testimony of Bill Brophy.

[47] Mr. Brophy testified "on behalf of" the five fishermen. He has lived all his life on the harbour, his home is on the south side of the harbour, just southeast of Gooseberry Island. He said that the five commercial fishermen variously fish lobster, crab, tuna, herring, mackerel, and groundfish. He fishes for lobster, tuna, and crab. Lobster is usually fished in St George's Bay (outside of Antigonish Harbour), from May 1-June 30, although there is a minimal amount of lobster fishing in the harbour at the end of the season. Snow crab is fished off Chetticamp, and the boats remain there through the season, which begins "when the ice is gone". Tuna is fished "everywhere, from August 1 until September or October.

[48] We conclude that the only actual commercial fishing in the harbour is the minimal amount of lobster fishing late in the season.

[49] Mr. Brophy's lobster boat has a 660-horsepower engine and draws three-to-four feet. He said if the aquaculture gear was sunk, for instance to allow passage through the northern route in an unusual ice condition, he was not sure if it would interfere with passage, it would depend on depth.

[50] All five fishermen in Group 2 have employees for crew, from one to four, depending on the fishery.

[51] One of his routes to the bay runs parallel to Dunn's Beach, and the other runs southerly, between Gooseberry Island and the shore, then northerly through the channel to the west of Captains' Island. However, although both routes are shown on a map created by Mark MacDonald for FOAH, Mr. Brophy confirmed that he has actually only used the much shallower northern route on one occasion. That was in 2017, when the crab season opened early as a result of some right-whale presence, while Antigonish Harbour was still blocked by ice. To get to the crab fishery off Chetticamp, he had to use the northern route.

[52] The regular route is not normally blocked by lease AQ#1444, however, he testified the fishermen set out in the early morning, when there is little light, and there may be fog present, making electronic navigation difficult. In addition to using electronic navigation, they depend on navigating off the visibility of the trees on Gooseberry Island.

[53] Mr. Brophy did testify that if the lease boundary was moved back beyond the sand spit which extends northeasterly from Gooseberry Island, he would have no problem. In fact, Mr. Porter, in his submissions post hearing, has indicated that he would be willing to shift his proposed southeast boundary to accommodate concerns about interference with the Gooseberry Island route.

[54] Mr. Brophy also said they had concerns about possible loose gear or floating lines, which could be caught in a propeller. He acknowledged that lobster gear sometime broke free, at least in St. George's Bay, although not in the Harbour. However very little lobster fishing was done in the Harbour.

[55] There was no evidence as to the existence of any such loose gear, or how it would be dealt with by TPC. No doubt that is an issue that could be dealt with at such time as it might occur. Unlike loose gear from lobster fishing, etc., it would be immediately identifiable as TPC gear.

[56] Mr. Brophy also confirmed that the usual lobster fishing took place in St. George's Bay, and that there was only sporadic fishing inside the harbour, in the late season.

[57] In May of 2022, Darrell Beaton observed a marker buoy in the channel which runs to the northeast of lease AQ#1443. He retrieved it and the attached technical instrument anchored in place (on the bottom) with a heavy chain. He mentioned it to Mr. Brophy, but neither took any steps to identify the owner, or the purpose. He apparently saw the chain as a potential hazard to navigation (despite the fact that it was on the bottom). Mr. Brophy testified that he himself had sailed through and over it several times without incident. Mr. Beaton simply tossed the device and gear behind his shed. Although Mr. Brophy testified that there were no markings or contact information on the instrument, a photograph presented to him at the hearing shows that there were in fact two telephone numbers.

[58] Mr. Brophy testified that they had at some point in July of 2022, reported it to a federal fisheries officer, and he claims that they contacted Transport Canada after the Town Point application was filed.

[59] In fact, the instrument had been placed by DFA, along with three others. It was an Acoustic Doppler Current Profiler, ("ADCP"); a form of current meter, one of four that had been placed. It is a very costly piece of technical equipment. The records of three of those current meters were included in the affidavit of Nathan Feindel of DFA. Those records demonstrate results for three locations (Ferry Point, Antigonish Harbour, and Reef Island.), for a 48-day period, in June 2022. Information about the missing device did not become known until shortly before the hearing was underway. In July of 2023, Dr. Jeffrey Barrell of the federal

Department of Fisheries and Oceans (DFO), confirmed that it was the missing instrument, and at that point, he was able to download data collected up until the time of its removal.

[60] Dr Barrell, for privacy reasons, was unwilling to disclose the name of the individual who had removed this very valuable instrument but did say that the person was a member of one of the intervenors in the current application.

[61] We were subsequently informed by Mr. Rogers, counsel for the intervenor group that includes the five commercial fishermen, that the individual was Mr. Beaton. Data from the instrument was allowed in evidence and was included in the affidavit of Nathan Feindel.

[62] A review of the evidence and documents satisfies the Board that as long as the usual navigation routes are not obstructed, there will be minimal, if any, impact on the commercial fisherman, and that it is the intention of TPC to accommodate their locations, in particular AQ#1444, to the extent that there is any impact.

Wild oyster harvesters

[63] Other commercial users of the Harbour include several wild oyster harvesters. They were consulted by TPC, and on August 7, 2019. They (Ken Fraser, Mike MacIntosh, Jamie Davison, and Steven Taylor) had reached a written agreement with TPC on the lease locations. The agreement required TPC to ensure that TPC "...stay a minimum of 50 feet offshore and avoid all areas identified as past harvest areas, generally any area of greater low tide depth of 3 feet will be acceptable". However, in correspondence to the Board, on April 30, 2023, Mr. Davison said that TPC leases would include areas that have low tide depth of less than three feet, and that TPC had therefore broken the agreement.

[64] Mr. Davison was not called to testify. It is not clear to the Board why it was that why he concluded that TPC had broken the agreement, as there was then and is now, no gear in the water, although a review of the navigation chart does seem to show the Northeastern edge of AQ#1443 impinging in one portion on noted depths of less than 3 feet. However, the actual BOBR units would be some 20m from the parallel edge of the lease.

[65] The sketch signed by Mr. Davison and the others was not drawn with precision. However, although we are not clear on where his harvest area is located, the Board is satisfied that it would not be a difficult matter to slightly adjust whatever portion of the oyster farm might impact the wild oyster harvest locations.

[66] Ernie Porter in his testimony acknowledged that the agreement existed, and does agree to avoid the harvest areas, with depth as a guideline.

Recreational fishermen

[67] Several members of the public, in either intervenor applications or written submissions, state that they were recreational fishermen in the harbour. Some had concerns, some did not. Most did not describe what species they fished, or where. Mr. Bowler in his evidence said that he was a recreational fisherman and included a photo of him fishing in his presentation materials. There was no specific filed evidence regarding what species were fished, or where the fishing took place, although Mr. Bowler did say that it was “where the fish were”, which is at the mouth of the harbour. The Board is satisfied that the leases will not interfere with recreational fishers, and if indeed they fish in the leased areas, given the distance between lines of BOBR units, and the ability to navigate through the sites the impact will be minimal.

Piping Plover habitat

[68] Piping Plover are small shorebirds. There are two subspecies of Plover in North America. The *melodus* subspecies breeds along the Atlantic coast of Canada and the United States while the *circumcinctus* subspecies breeds near the Great Lakes and in the Prairie Provinces (exhibit 69 – Piping Plover *melodus* subspecies (*Charodrius melodus melodus*): recovery strategy (amended) and action plan, 2022).

[69] Both subspecies nest in similar beach conditions from the low water mark to the upper beach and dune crest and are not considered to react differently to potential disturbances.

[70] Piping Plover currently receive protection under **the Migratory Bird Convention Act (MCBA - SS:58 (5.1 & 5.2) SNS 1998 c. 11 as amended.**

-habitat protection on non-federal lands) and the **Nova Scotia Endangered Species Act.**

[71] Plovers are designated endangered species under both the **Nova Scotia Species at Risk Act (S.N.S. 1998, c.11)** and federally under the **Species at Risk Act (SARA -S.C. 2002, c2).**

[72] Dunn’s Beach is listed as critical habitat for Plover.

[73] In the process of preparing its application, TPC contacted Birds Canada for information regarding potential impact on piping plover habitat. Birds Canada responded, pointing out some potential issues, and in December 2019, TPC retained the services of Dillon Consulting to further evaluate the issues.

[74] On January 16, 2020, TPC obtained a report from Dillon Consulting “**Assessment of Potential Impacts to Nesting Piping Plovers as a Result of a Proposed Marine Shellfish Aquaculture Lease Site in Antigonish Harbour, Nova Scotia**”. In that report, it was

concluded that the proposed 230 m distance from AQ#1444 to the Dunn's Beach dune crest was sufficient to prevent any potential disturbance of piping plovers.

[75] On October 7, 2020, as part of the network consultation process, DFA forwarded a copy of the TPC application package to Rachel Gautreau, Environment and Climate Change Canada, Canadian Wildlife Service (CWS). A reply was requested by December 7. A follow up reminder was sent on November 24. Ms. Gautreau responded on the same day, indicating they would respond shortly. She also mentioned that FOAH had been in contact with her.

[76] On December 7, 2020, Ms. Gautreau responded: "The proposed lease is also less than 300 m from Gooseberry Island, a nesting island for 2 species of gulls. We recommend that proposed lease AQ#1444 be relocated to an alternate location at least 300 m from all areas of Dunn's Beach Sandspit and Gooseberry Island". She also recommended no access to Dunn's Beach or Gooseberry Island by project staff, and / or equipment.

[77] On March 3, 2021, TPC responded to DFA: "We understand the sensitivity of plover habitat on Dunn's Beach. The scientists we have consulted on this matter stated that plovers use the ocean facing beach and are unlikely to use the harbour side of the beach. They also stated that a 200m buffer is reasonable and has been demonstrated to work in other situations involving more disruptive operations adjacent to plover habitat. Is it possible to revise the requirement for a 300m setback and agree on a 250m buffer instead, given that this buffer would be from the harbour side of the beach and plovers use the ocean side which is further away. Some portions of Dunn's Beach are wooded with a boulder harbour shore – not plover habitat. Is it necessary to apply the setback requirements to these portions of the Dunn's Beach peninsula? "

[78] TPC also asked for data regarding the presence of nesting gulls on Gooseberry Island, as Mr. Porter stated that his expert, Dr. Tony Miller, had only ever noted black backed gulls nesting there, and that species were not usually disturbed unless they were approached on foot.

[79] On March 9, 2021, DFA contacted Ms. Gautreau, provided the TPC response, and suggested a meeting within a week, with DFA to discuss options. Ms. Gautreau did not respond and DFA sent follow-up correspondence to Ms. Gautreau on May 17, May 27, June 21, and July 16th. On October 28, 2021, Ms. Gautreau responded. She did not offer any further information justifying the recommended 300m buffer zones. She provided data showing the last recorded observation of nesting gulls on Gooseberry, in 2013. She expressed annoyance that Mr. Porter and an expert from St Francis Xavier had walked on Gooseberry Island (Mr. Porter testified that they had walked below the low water mark, while doing a video to demonstrate their point).

[80] Chris Kennedy, the author of the 2020 Dillon report, was qualified as an expert on piping plovers. He testified that both plover subspecies nest in similar beach conditions from

the low water mark to the upper beach and dune crest. He explained that this is because the seaward side creates the more sandy, grassy conditions favored for nesting. The species are not considered to react differently to potential different disturbances.

[81] Mr. Kennedy walked Dunn's Beach a week prior to the hearing. He testified that he observed an abandoned plover's nest at the western tip of Dunn's Beach (a sandy, grassy area). He also noted commercial fishing vessels at "Captain's Pond", adjacent to the eastern end of the beach. He said that research shows the level of disturbance of nesting plovers as highest for pedestrian traffic, then for pets, and then predation by other species (such as gulls).

[82] He considered the CWS-recommended 300m buffer zone for the plovers to be excessive. He did not see the need for any buffer zone to protect the gulls on Gooseberry Island and noted that it was not an active colony.

[83] It should be noted however that existing marine aquaculture leases for American oyster co-exist in proximity to protected and ecologically sensitive areas in other parts of the Maritimes where plover habitat exists (e.g., Melmerby Beach Park, N.S., Waterside Beach Provincial Park, N.S., and Darnley Basin, Malpeque, PEI.).

[84] As noted above, in their network response to the oyster lease application for AQ#1444, CWS (exhibit 10, appendix E) suggested that "boats and equipment should stay at least 300m from Dunn's Beach sandspit and Gooseberry Island during spring and summer...". No basis for this recommendation was ever provided. However, Dunn's Beach now has a provincial park designation. It is a popular site for recreation and is frequented by pedestrians and kayakers. The Board viewed the site, it showed a well-used ATV-sized track along the rocky dune crest, with a primarily sandy and grassy section on the outer side.

[85] Mr. Kennedy noted that there is currently other infrastructure in the protected beach area (an active commercial wharf) and users that regularly transit close to these sites by boat (fishermen, recreational boaters including sea-do users, and kayakers). This was confirmed by a number of witnesses, including fisherman Bill Brophy.

[86] The lease is located within the harbour while critical plover habitat is situated on the spit and ocean side of the beach.

[87] The closest point to AQ#1444 is a forested area which would eliminate any potential chances of plover disturbance in that location from activity on the water. Also, according to the proponent's application, all project development work and ongoing operations will occur from the water and there will be no onshore activities at Dunn's Beach.

[88] Ironically, gulls on Gooseberry, which CWS would like to protect, are a known predator of piping plovers. Gulls are already habituated to boat traffic and are unlikely to be disturbed should nesting occur in the future (exhibit 36).

[89] The 2020 Dillon Consulting Limited study (exhibit 23) included a literature review and assessment of Antigonish Harbour. As noted, biologist Chris Kennedy concluded “the current lease sites are unlikely to cause disturbance to plovers”.

[90] It appears that plovers flush from their nests most frequently by off leash pets, humans and much less by vehicular traffic. Set-back distances are normally established on a case-by-case basis. Literature is scarce about appropriate distances to protect plover. In Alberta, for example, they range from 50-200m for oil industry activities (AMEP 2011). Environment Canada recommends an upper limit of 250m for the oil industry (EC 2009). This 250m setback is for the most obtrusive industry activities. Nowhere is there reference to buffers of 300m. The US Fish and Wildlife Service recommends 50m buffers around nests on their Atlantic coastline (USFWS 1994).

[91] In light of the conflicting opinions in the CWS and Dillon reports, the DFA requested a report from the Centre for Marine Applied Research (CMAR). On May 5, 2023, CMAR provided a report which considered the CWS recommendations for 300m buffer zones around Gooseberry Island and Dunn's Beach. They commented:

“The Canadian Wildlife Service (CWS) has recommended 300m buffers around piping plover (*Charadris melodus*) habitat and historical nesting areas of two gull species, the herring gull (*Larus argentatus*) and great black-backed gull (*Larus marinus*), relative to a proposed oyster lease in Antigonish Harbour, Nova Scotia. Piping plovers are known to nest on Dunns Beach, within 300 m of the northern boundary of one of the proposed lease areas (#1444). The two gull species have historically nested on Gooseberry Island within 300 m of the southern boundary of the proposed lease area, but do not appear to have nested there the previous few years.

There are three possible options for the potential implementation of these buffers. The first option would be to implement both buffers out of an abundance of caution. This option would make culture on proposed lease AQ#1444 untenable as only 16% of the proposed lease could be used for culture. The second option would be to implement only the buffer around the piping plover habitat. This would enable culture on a smaller portion of the lease area (7.72 hectares) and provide an opportunity to study possible interactions with the piping plovers to inform future buffer status. Finally, the third option would be to negate both CWS proposed buffers, ensure aquaculture best practices and mitigation steps are followed, while studying potential interactions with the piping plovers to inform any future management decisions including buffers. “

[92] It is questionable whether any buffer zone is reasonable, considering all the other activities that take place. The evidence was that the beach is regularly used for recreation by kayakers, walkers, and picnickers, while jet skis and commercial fishers travel through the waters. This activity will no doubt increase now that the beach has been designated as a provincial park. We also note that plovers are land based, and that the TPC operation would be water based. However, to possibly minimize the risk, the Board finds that the compromise position of TPC is preferable, that is, a 250m buffer from the bay side, beginning at the dune crest, but with monitoring taking place to ensure there is no active nesting in the harbour side. There should be no presence of work or equipment anywhere on Dunn's Beach.

[93] Should plover activity be observed in that area (between the dune crest and the harbour), active operation of AQ#1444 should cease until such time as the plover activity has ended. This can be incorporated into the farm management plan. This reflects the fact that the noted observation of any plover nesting (an abandoned nest) took place at the extreme tip of Dunn's Beach.

[94] We also consider the proximity of oyster aquaculture to other locales, as noted in the first Dillon report. It provides the opportunity for further research on the impact, if any, of adjacent aquaculture on plovers. Ultimately, the farm management plan can provide the best outcome.

[95] There will be no buffer around Gooseberry Island, but as with Dunn's Beach, there should be no presence of work or equipment on Gooseberry Island.

Recreational boaters / power boats, canoes, kayaks, and sail boats

[96] Mark MacDonald testified as to overlay maps that he had created for FOAH. He also testified as to his personal recreational use. He no longer sails although he once did. He is a kayaker and testified that a favorite summer activity is to paddle across to Dunn's beach and spend time there. He also was involved with the individuals, who in 2019 placed buoys, demarking what is described on one of his maps as "NAV", covering most of Graham's Cove, and then out into the deeper portion of the harbour adjacent to Town Point (Map C, Mark MacDonald affidavit). He admitted that the "navigation area was one which he, as well some other individuals including Richard Wilgenhof, had marked and forwarded to Transport Canada, asking that it be designated a "navigation area". This was done in 2019 in response to Ernie Porter's proposed oyster farm. The requested navigation area cuts off the southwestern corner of site AQ#1443.

[97] There was no response other than acknowledgement of receipt by Transport Canada, nor was there any evidence as to what if any impact that designation would have had on the farm, or any other use of the harbour.

[98] Access to Graham's Cove is not blocked by AQ#1443, nor is the apparent main navigation channel out of the harbour.

[99] Mark MacDonald's daughter, Lucy MacDonald, was unavailable to testify, but was permitted to file her affidavit, which described her use of the harbour with her small dinghy-style sailboat. She says that her access to the harbour is impeded, although an examination of the Transport Canada navigation charts does not support that position. She does not mention how often she sails, nor does she explain how sailing a small dinghy with a centreboard retractable keel could be impacted. Although certainly the BOBR coverage would slightly restrict sailing in at most 1% of the harbour, mostly in shallow areas, the main channel is undisturbed.

[100] As well, the leases themselves only occupy 2% of the harbour, and the BOBR units, only a small portion of that area.

[101] Mr. Bowler also testified as to some kayaking. He admits that he is not an experienced kayaker and at present, would not have the skill to paddle through the TPC BOBR arrays.

[102] Richard Wilgenhoff also testified. His property crosses Town Point with access to the harbour and to Graham's Cove. He purchased his property in 2003 and moved there permanently in 2018. He has a guest house on the property and has thoughts of someday possibly using it as a vacation rental property. He has a "speed boat" and a "rubber boat", and his wife has a sailboat. His speed boat draws two feet, the sailboat has a retractable keel, He has a boat launch on the harbour side of the property, and a dock and a mooring in Graham's Cove. The launch is only used in the spring and fall. AQ#1443 does not overlap his launch area, although he suggests it could impact if launching in poor conditions. He agreed that he would not normally launch in difficult conditions, although the conditions could change quickly. As with the Lucy MacDonald evidence, the navigation charts do not support his argument. It in fact demonstrates some 600 feet of water from the edge of AQ#1443.

[103] As noted, he was one of the individuals that participated in marking the proposed "navigation area", and he agreed that Mr. Porter had changed the original lease location in response to their initial concerns.

[104] Marc Genuist, (CLC) is an avid kayaker, not just locally, but also in PEI and New Brunswick. He testified that he often kayaks in and around various oyster farms, without difficulty. He also volunteers and teaches kayaking at the local boat club.

[105] Stephen Feist (CLC Chair) is an avid kayaker and sailor. In his affidavit, he states that the proposed lease areas would not impact on his uses. He also says that there is very little recreational boating in the harbour.

[106] Many of the written submissions came from recreational kayakers and boaters, who do not see the sites as having any impact on them. As noted above, there is a 10m gap between each row of BOBR's, and 20m from the edge of the lease.

[107] The Board is satisfied that the leases will not significantly (if at all) impact commercial fishing, recreational fishing, or navigation.

Factor g) the sustainability of wild salmon

[108] There was no evidence presented that the sites would have any impact on wild salmon.

[109] Several submissions were received regarding the potential impact on Mi'kmaq rights and concerns. As well, Mr. Bowler in his application for intervenor status, expressed concerns for First Nations access to the harbour. One written submission expressed such concerns, however, Paqtnekek Mi'kmaw Nation, which farms oysters in Pomquet Harbour, submitted strong support for the project.

Factor d) the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation.

[110] The Applicant relies on three expert witnesses to demonstrate the suitability of the proposed sites for oyster aquaculture:

- Dr. Jon Grant is a biological oceanographer and longstanding professor in the Department of Oceanography at Dalhousie University who is responsible for a body of literature on aquaculture that is as substantial as any in the world (exhibits 25 and 45).
- Professor David Garbary is a biologist and professor at St. Francis Xavier University, having expertise in marine plants including eel grass (exhibits 24 and 42)
- Mr. Robin Stuart is an aquaculture manager and consultant with many years of local aquaculture experience (exhibit 26).

[111] Intervenor Groups 1 & 2 rely on the expert report(s) and testimony of

- Dr. Peter Cranford, currently the proprietor of Emeritus Marine, who, for the majority of his career was a research scientist with the Habitat Ecology Section, Ecosystem Research Division with Fisheries and Oceans Canada at the Bedford Institute of Oceanography, as well as an adjunct professor at Dalhousie University (Ex 19)

Carrying capacity

[112] Dr. Grant's opinion considered carrying capacity of Antigonish Harbour for oyster culture. He explained that carrying capacity of suspension feeding bivalve aquaculture site is a key consideration in assessing whether adequate resources exist to permit growth of the organisms. As suspension feeders, oysters derive their primary nutrition from phytoplankton. Phytoplankton supply is self-limiting in that a stocking density of oysters that exceeds the available phytoplankton results in smaller yields. He explains that as an estuary, Antigonish Harbour is flushed by tides daily that carry phytoplankton in with the coastal water. As such, the balance between tidal renewal of plankton and ingestion by oysters forms the basis of ecological carrying capacity, one of the major concepts in aquaculture management.

[113] Dr. Grant explained that carrying capacity can be measured directly by increasing oyster stock until their growth is compromised, but the more practical approach is to estimate carrying capacity using a simulation model. Dr. Grant, in collaboration with researchers elsewhere, developed these types of models in the late 1980's. Such models are now in widespread use, often with detailed computer simulation requiring data relating to oyster bioenergetics and tidal calculations called spatial models. These models have been applied to multiple sites in the Maritimes including bays and estuaries. Such investigations require extensive resources.

[114] Dr. Grant used a similar spatial model, albeit based on more accessible calculations. He considers it to be a valid screening model to indicate whether there is any concern that the site would be close to carrying capacity. The model is calculated as an index comparing the volume of water filtered by oysters compared to water renewal in the bay owing to tidal flow. The so called "Dame index" has already been used numerous times in coastal waters, including in his research on Prince Edward Island. He explained that oyster bioenergetics are well known having been studied extensively. In these studies, oysters have been placed in tanks with known concentrations of particles and allowed to feed. The reduction of particles is associated with water volume in which the particles are suspended and used to calculate a clearance rate expressed in litres per hour. The tidal height and depth of an estuary can be used to estimate the tidal prism or volume of water exchange per day.

[115] Dr. Grant's calculations suggest that the proposed three million oysters included in the proposed lease could filter 18 million litres of water per day. The time required to filter the entire harbour would be 83 days. In comparison, the tidal prism renewal time for the harbour is 0.76 days. As such, the tide renews harbour water 109 times faster than 3,000,000 oysters could deplete it. Essentially, the proposed volume of oysters can only filter 1.2% of the harbour water per day. He concluded that this degree of variation is "noise" and could never be detected in a sampling program, and as such 3,000,000 will not result in a significant drawdown of phytoplankton.

[116] Dr. Peter Cranford holds a different view. He was asked by Intervenor Groups 1 and 2 to prepare a report detailing his analysis and conclusion regarding the impacts of the

proposed lease sites. His conclusion was that the environmental conditions associated with the proposed sites are not optimal for oyster aquaculture in general. He concluded that the proposed aquaculture sites present a threat to fish habitat, species, populations, communities, fisheries, and ecosystem function and that there is a high likelihood that these ecological impacts will result if the development plan is approved.

[117] Dr. Cranford stated that most experts agree that oyster aquaculture impacts are unlikely if tidal currents are sufficient to supply the oysters with sufficient food and disperse waste over a large area. He says that, for example current velocities of 20-25 cm/s are required to disperse oyster deposits and limit the potential for adverse impacts from seabed organic enrichment. He accepts that the flow rates in Antigonish harbour are high (0.8 day flushing rate) but notes the sites are in shallow water thus would not experience the same flow rate as the channel. He is critical of the measurements taken by TPC which he describes as a “homemade drifter consisting of a surface buoy attached to a brick”.

[118] Dr. Cranford moored his own current sensor at 1.5 metres above the seabed in what he considered to be the centre of the three leases. The measurements were taken for approximately one day and attempted to capture spring and neap tide effects. The range of measurements at leases AQ#1442 and AQ#1443 was from 0 cm/s, which is expected as the tide turns, to approximately 14 cm/s and generally rose and fell reflecting the normal tidal pattern. The values associated with site AQ#1444 ranged from 0 to approximately 10 cm/s during the spring tide, and 0 to approximately 14 at the neap tide.

[119] Dr. Cranford could offer no explanation for the counterintuitive sampling results showing lower flow during the stronger spring tides, compared to neap tides. He calculated average speeds across the sites ranging from 3.8 to 5 cm/s, concluding that this was too slow for oyster aquaculture. However, we note that he relied upon prior studies showing that oysters are capable of growth with flow rates as low as 1 cm/s, and indeed confirmed this when questioned.

[120] In his report, Dr. Cranford relies on studies that suggest current speeds less than 10cm/s are not suitable for oyster aquaculture, to reach his conclusions regarding the viability of the lease sites for oyster aquaculture. This seems to ignore that there is evidence that slower speeds are still capable of supporting oyster aquaculture.

[121] Current speeds aside, Dr. Grant’s more general view regarding Dr. Cranford’s scientific approach is:

“The use of a single current speed to address whether oyster waste particles will be deposited is an incredibly simplistic approach. Even the paper that Cranford cites (Gadeken et al. 2021) recognizes that depositional dynamics are understood by shear stress estimates, not single point current measurements.”

[122] He also notes that while Dr. Cranford disputes the current speeds taken by the Applicant, these are substantiated by the DFO using their Acoustic Doppler Current Profiler. He adds that DFA has decades of experience using this device to assess aquaculture sites.

[123] Aside from the issues with current speed measurements specifically, Dr. Grant is highly critical of Dr. Cranford's expert report which purports to assess risk using data from what was essentially a "one day study". In fact, Dr. Grant goes so far as to say, "As a long-term colleague, I am concerned that such an inadequate effort has emerged from an experienced scientist".

[124] Dr. Cranford candidly admitted that cost precluded using a more long-term evaluation.

[125] We find that Dr. Grant's sentiment rings true. We agree that drawing such conclusions, and in particular Dr. Cranford's conclusion of that:

"Data reported herein supports a high level of confidence in the conclusion that the proposed project activities will interact with the local environment in ways that are expected to adversely impact fish habitat, ecological processes, species, populations, communities and fisheries."

[126] Based on his very abbreviated sampling data, this conclusion is the very antithesis of scientific endeavour. When questioned, Dr. Cranford accepted that the sites would be affected by localized eddies and that strong winds (we note maximums may be as high as 96 kms/hr) combined with tidal current could contribute to eddies with much higher current speeds. He also accepted that re-suspension of organic matter does not have to be continuous, but rather adequate flushing may occur more occasionally, such as daily or weekly. Yet these timeframes on the order of a week were not accounted for in Dr. Cranford's sampling plan which was limited to an extremely contracted sampling period of a matter of a few days. Even as non-scientists, this sampling frequency seems to us to be remarkably deficient.

[127] We therefore conclude Dr. Cranford's methodology was fundamentally flawed and cannot agree with the Intervenor Groups 1 and 2 position that he is the most important witness since he applied scientific principles to the actual site. In relying on so little data and drawing such extreme conclusions we consider basic scientific principles to have been ignored rather than relied upon. We therefore favour the analysis and opinion provided by Dr. Grant over Dr. Cranford in respect of the issue of current speeds and carrying capacity at the proposed lease sites.

[128] Dr. Cranford also bases the aforementioned prospective detrimental impacts outlined in his report on what he considers to be a reduced capacity to receive oyster bio deposits without adversely impacting fish habitat. While admitting that such data is not required in respect of bivalve aquaculture, Dr. Cranford nonetheless goes on to rely on what are again,

limited samples comprising cores taken on two days in November, to draw conclusions regarding suitability of the lease sites. As pointed out by Dr. Grant, the methodology used by Dr. Cranford for sulfide analysis is not recognized at this time by regulators in Nova Scotia. However, that concern aside, there are additional issues with Dr. Cranford's work.

[129] In spite of the fact that some of the sampling appears to have been less than rigorous, (for example with no controls or measurements of depth at which the cores were taken), Dr. Cranford appears confident in concluding that all three lease sites have poor to bad sediment quality "apparently resulting from the inability of the low tidal currents to disperse deposited particular organic matter entering the sites from natural sources, such as land run-off and eelgrass detritus." He concludes from these two days of sampling three locations, at each of the three sites, that the ability of the environment to incorporate organic matter deposition has already been exceeded. Yet, he accepts that seasonal variability exists. He also appears to accept that that eel grass is present, even under these less than desirable conditions.

[130] Dr. Cranford goes on to detail the detrimental effect on fish habitat created by the aerobic decomposition process concluding:

"The cumulative oxygen demand of the oysters and organically enriched sediments could reduce oxygen concentrations in these shallow, poorly flushed waters to the point where there is a high likelihood that hypoxic (low oxygen) conditions detrimental to fish health will occasionally develop in the water column in and around these shallow leased areas".

[131] Dr. Grant's opinion regarding this research was that Dr. Cranford used superficial sampling to characterize the entire outer harbour. He is of the view that speculation regarding the benthic health of the harbour would require detailed sampling at multiple locations. He notes that in addition, Dr. Cranford neglected consideration of sediment organic matter, grain size and porosity- all being factors that would be standard in respect of any benthic assessment. As Dr. Grant describes it "the recognized method for assessing the risk of organic enrichment does not come from a few sulfide samples" stating that it is depositional modelling that is instead used. He also notes that while surface sediments at fin fish aquaculture sites are a key regulatory variable, this is not a requirement for leasing of oyster sites. We note Dr. Cranford did admit that the presence of sulfides was not a parameter that is reviewable in terms of lease grants for oyster aquaculture.

[132] In addition, Dr. Grant is critical of Dr. Cranford's reliance on his data to conclude that there is risk of hypoxia to the entire water column, including oysters. He notes that he has never observed widespread water column hypoxia from oyster aquaculture in any Canadian site. Again, we find that Dr. Grant's interpretation of the alleged detriment associated with benthic deposits in Antigonish Harbour to be based on more sound scientific principles than Dr. Cranford's.

[133] We have considered the words of Mr. Stuart, that there is no better environmental barometer in an estuary than an oyster. We note that oysters were plentiful in Antigonish Harbour prior to development of the surrounding land. In addition, we note natural populations continue to exist, even if their numbers are reduced compared to what was present historically. Finally, in the unlikely event that Dr. Cranford's dire predictions, in whole or in part, are realized, it is the lease holder who may be expected to feel the effects of reduced capacity first. In light of the foregoing, and mindful of the fact that benthic monitoring is not a requirement of the regulatory framework, we do not consider benthic monitoring to be necessary going forward unless and until there is some evidence, such as substantially reduced oyster growth, that this is needed. We note in this regard that DFA has confirmed its ability to require and manage benthic monitoring under the farm management plan and that it will be possible to use DFO established procedures should this become necessary.

Eel Grass

[134] Dr. Jeffrey Barrell, a DFO scientist, completed a report on eel grass coverage in the lease sites. He reported a generally patchy and fragmented distribution of eel grass in the estuary. He noted patchy distribution that could not be considered to be continuous beds. In addition, he noted evidence of visible damage to the plants attributable to green crabs. Of the three sites AQ#1443 appeared to contain the highest concentration of eel grass. Dr. Barrell questions the extent to which his sampling, one week after hurricane Dorian, might have affected his results. He provides suggestions for enhanced collection of data in the future which we consider to be very helpful.

[135] Dr. Garbary conducted a study in the summer and fall of 2022 in which 20 random samples were collected in the general area of the lease sites. No living or dead eel grass was found in any of the cores. He relies on these findings to conclude that 20 years after the collapse of eel grass in Antigonish Harbour, this area has reached a new steady state in which the eel grass is unable to regenerate. Dr. Garbary's findings have been criticized by the opponents as being anecdotal. We agree in part. As is the case with respect to Dr. Cranford's, and to some extent Dr. Barrell's work, limited sampling frequency and area calls into question the value of the results and the commensurate opinions. However, the discrepancy between Dr. Barrell's findings and those of Dr. Garbary is at least supportive of the conclusion that monitoring of the lease sites with a view to determining impact on eel grass in the vicinity would be best.

[136] We note that Professor Garbary's research suggests that contrary to what is argued by the opponents, the proposed oyster leases are unlikely to have a detrimental impact on eel grass populations in the harbour. To the extent his research results are accurate, and there is now limited eel grass at or near the sites, this may be true. However, the data before the Board appears, on balance, inconclusive regarding the quantity and quality of eel grass in close proximity to the sites.

[137] We note the main concern in respect of eel grass may be shading from the oyster cages. Since the lease area represents 2% of the harbour, and the cages do not cover the entire lease area, we note it is only an exceptionally small part of the harbour which could potentially be affected by the proposed aquaculture operations.

[138] We also note that DFO recommends eelgrass monitoring be put in place if the leases are approved by the Board. We agree with the recommendation that monitoring at 1, 3 and 5 years of operation should be included in the farm management plan. However, we suggest that any monitoring plan should also take into account the size of any affected area relative to the size of the harbour. Additionally, noting that the experts suggest eel grass may, at the moment, be declining in Antigonish Harbour, we suggest any monitoring strategies consider the possibility for natural decline, unrelated to increased oyster populations.

Factor h) The number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation.

[139] There is only one other aquaculture site in the harbour, a bottom harvest oyster lease at the west side of Graham's Cove. It is operated by Sam McKinley. A letter from Mr. McKinley was included in the TPC application and was not disputed by Intervenor Groups 1 and 2. Mr. McKinley was very supportive of the TPC proposal. He saw possible benefit to his own operation and believed that the TPC oysters would result in increased oyster larvae in the harbour. He also saw potential for making use of TPC's depuration facility as he currently sends his product to Pictou for depuration. He noted "Antigonish Harbour produces great oysters!"

Factor a) Optimum use of marine resources

[140] There are many harbours in Nova Scotia, and for centuries, these harbours have provided sources of food, routes for trade and commerce, and centres for human habitation. The less remote have always been "working harbours". The same is true of Antigonish Harbour, but its current use as a working harbour is minimal. Present activity in this harbour consists of recreational use, commercial fishing (with fishers resident in the harbour, but conducting fishing activity outside of the harbour), wild oyster harvesting, and a small oyster aquaculture lease.

[141] "Optimum" does not mean perfection. However, if this application is allowed, it would add to those existing uses, provided that it does not do so at the expense of the other uses.

[142] Speaking for the Aquaculture Association of Nova Scotia, Michelle Sampson pointed out that Nova Scotia lags far behind other maritime provinces in aquaculture development;

New Brunswick and Prince Edward Island production is, respectively, four and twelve times the value of that produced in Nova Scotia. She also pointed out the positive impact of tourism.

[143] The Board is satisfied that this relatively small operation will add to the existing uses. We are satisfied that it can be done without damage to the ecosystem, including eelgrass and piping plovers. It will be sited, with minor amendments, in such a way to respond to the concerns of those who navigate the harbor for commercial and recreational uses. We recognize that to some, the BOBR system is seen as unsightly, but we also note that the relatively low profile of the gear, as well as the distance from most shoreline properties will considerably reduce what some see negatively.

Will it be economically viable? That is a risk that TPC is prepared to take.

[144] Intervenor Groups 1 and 2 attacked the integrity of Mr. Porter. In its final submissions, it suggested the following:

- a. The incentivization for TPC to disrupt plovers is a live issue informed by Mr. Porter's demonstrated lack of care when it comes to the protection and preservation of the plover and gulls. In his evidence Mr. Porter:
 - Went onto Gooseberry Island in contravention of the directions set out by CWS.
- b. Initially argued that a 250-meter buffer was sufficient in the March Correspondence, which changed to a 230-meter buffer and as of the date of the hearing has become a 100-meter buffer.
- c. Preferred the hearsay conclusions of Dr. Tony Miller (which were to TPC's benefit and who was not called to testify) to those of Rachael Gautreau of the CWS, responsible for endangered species protection and conservation.
- d. Referred to Ms. Gautreau as an "advocate" for endangered and migratory birds, in his testimony.
- e. In his testimony referred derogatorily to black backed gulls as "seagulls" that could be seen in any parking lot.

[145] In the view of Intervenor Groups 1 and 2, that evidence lessens confidence that if the Application were approved, TPC would act cautiously when operating in close proximity to Dunn's Beach and Gooseberry Island, as TPC would be incentivized to avoid having them nest nearby.

[146] We disagree. Mr. Porter's evidence was that he and Dr. Miller went around the edge of Gooseberry, below the low tide line, to video the presence, or absence, of gull nesting. Furthermore, there was no 'direction' from Ms. Gautreau, and in fact she would have no authority to do any more than make a recommendation to DFA.

[147] Rachel Gautreau's opinions were no less hearsay than those of Dr. Miller. As with Dr. Miller, she did not testify. And as with Dr. Miller, neither party called her as a witness. Indeed, it is astonishing that even after repeated requests from DFA to explain her position, to consider further input from Mr. Porter, and to meet with DFA and / or Mr. Porter, her only response was to simply state that she had not changed her view. She refused to even discuss alternative options, such as were later suggested in the CMAR report.

[148] If Mr. Porter did refer to Ms. Gautreau as an "advocate" for piping plovers; he actually agreed with the suggestion put to him in cross examination that she should be an advocate for piping plovers.

[149] The reference by Mr. Porter to gulls on Gooseberry Island as "parking lot seagulls", simply highlights the fact that the black backed gulls are not an endangered or protected species. And ironically, Ms. Gautreau was keen to protect them, although they are a known predator of piping plovers on the adjacent Dunn's Beach.

[150] There were several other collateral efforts by the opponents to attack the credibility and integrity of Ernie Porter. They raised his placement of a boulder on a narrow strip of ungranted land which ran along the harbour edge and to the Porter property. Mr. Porter testified that in fact he had placed the boulder there some seven years earlier to prevent ATVs from transiting to his property. Aside from the ATV use, the route was rarely used. The community at large had never expressed concerns prior to the initiation of the oyster project. However, as the project developed, he received correspondence from Nova Scotia Department of Transportation, requesting the boulder be removed. In response, Mr. Porter did so. The Department also indicated that they would be prepared to consider a transfer of the land in question to Mr. Porter.

[151] Mr. Porter, in his evidence, characterized the boulder controversy as a "stage prop", used by the FOAH opponents. He said that they had even cleared the grass around the boulder to create the impression of frequent public use. We agree.

[152] The opponents of the project also characterized the pre-application work done by Mr. Porter in building his land-based depuration facility. They suggested that he proceeded to do this work without a permit, implying that Mr. Porter was a 'scofflaw' of sorts. In his evidence, Mr. Porter testified that he did in fact have permission from the Municipality for the work, however, he did not realize (nor did the Municipality) that only the land-based portion of the work was governed by the permit. However, the work included some piping to the water below the ordinary high-water mark. Mr. Porter's opponents seem to have brought the issue to the attention of the authorities. It was reviewed over a one-year period by the Department, and finally, a means was created to approve the piping without change.

[153] We are entirely satisfied with the integrity and transparency of Ernie Porter. He demonstrated his patience in moving forward through the lengthy process and he has

demonstrated willingness to modify various aspects of the project to respond to the concerns of others, from the outset, and to the very concluding submissions. He has been completely transparent. He has invited anyone interested to visit his property and learn about the gear he proposed to use. He took part in a well-attended public meeting organized by an independent individual. Much of what he did was faced with strong headwinds from a highly organized group, who sought to challenge his every step.

Oral submissions

[154] Roger Porter (no relation to Ernie Porter) said that he had been asked to oppose the application and was told by an unknown individual that Ernie Porter was not being candid. He met with Mr. Porter, read various background papers, and concluded that the leases were not obstructive, and would be a positive benefit to the community.

[155] Ronald Fraser taught school in Antigonish for 35 years. His family and ancestors have owned property at Seabright, and he has always spent summers at the family cottage. He has a view of all three leases from his property, which is 800 -1000 metres away. He is concerned about access to a beach on Town Point, which he says was blocked by Ernie Porter, and he is concerned about waste material from the leases impacting the health of the harbour. He is also concerned about the potential impact of drifting and damaged gear from the leases.

[156] Michelle Sampson is the director of the Aquaculture Association of Nova Scotia. She said the TPC project is optimal. She notes that New Brunswick and PEI respectively, produce four and twelve times the market value of farmed oysters, as Nova Scotia. She says that the production can contribute to tourism through branding, as demonstrated in Prince Edward Island. She noted that the Ivany Report recommended co-operation and collaboration among communities. She said that shellfish exports are small in Nova Scotia, and the opportunity for development is immense.

[157] Sean Day has lived in Antigonish for 30 years and was the Director of Planning and Development for Antigonish. He is currently a private consultant, and he is the current president of the Antigonish Boat Club. He says the unobstructed harbour channel is 250 metres wide, and a sailboat can tack even under storm conditions. He sees the BOBR system as being storm resistant and the low profile will have minimal impact on views. He says that for the last 20 years, boating in the harbour has been minimal, but he sees the oyster development as attracting tourism.

Written submissions highlights:

[158] Written submissions were received from 143 individuals and businesses. Some writers

were local, and some owned property in the harbour. There was some duplication in the written submissions. Some were also members of FOAH, and should not act through FOAH, and at the same time, submit a written comment. However, the Board did review and consider their comments.

[159] Some writers presented “expert” opinion evidence (their own, or papers and research reports by others). There is a strict evidentiary limit on the use of expert opinion, both in the higher courts, and in this tribunal, and so those submissions should not be considered. Some writers supported the project, others opposed it. The basis for the opposition and support of the project matches the concerns and support expressed throughout the hearing, by lay and expert witnesses. These include environmental concerns (eel grass, piping plovers, habitat for other species), interference and non-interference with recreation and harbour navigation, impact of views of the farm, property value impact, impact on tourism, contribution to economy.

[160] All of the submissions have been reviewed. They are for the most part sincere, although a few unfortunately engaged in personal attacks on the transparency and integrity of TPC and Ernie Porter.

[161] Their views are based on the information available to them until the cutoff date, two weeks before the hearing. Some of the writers had attended the CLC meeting, some had also met with Ernie Porter, some had done their own research.

[162] The writers expressed views for or against the project on essentially the same basis as those who testified. These included:

- impact on tourism related business
- sustainability
- transparency and integrity of TPC
- economic impact
- effect on the ecosystem
- impact on recreational use of the harbour
- views of the site from private property impacting property values
- “industrialization” of Town Point

[163] These concerns were helpful in highlighting concerns of the public in general, and as such, have all been addressed within the evidence and submissions of the parties.

Decision

[164] In conclusion, the applications of Town Point Consulting for AQ #1442, AQ#1433, and AQ#1444, are all approved, subject to the development of the Farm Management Plan, which must include the piping plover mitigation and monitoring plan using the 250m buffer as described above, as well as eel grass monitoring. TPC must make any necessary adjustments to its cages and equipment to ensure that there is no intrusion on the wild oyster existing harvesting areas.

[165] The Applicant should also make his proposed adjustment to AQ# 1444, to minimize any interference with the southern navigation route from the Harbour.

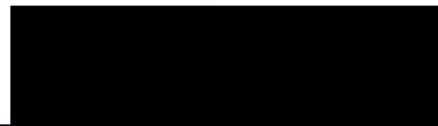
DATED at Halifax, Nova Scotia this 5 day of **January**, 2024.



Jean McKenna, Chair



Coleen Morrison, Vice Chair



Roger Percy, Board Member

DISTRIBUTION: Sarah Shiels, Solicitor on behalf of Town Point Consulting Inc.
 Alison Campbell, Solicitor on behalf of the Department of Fisheries and Aquaculture
 Peter Rogers, Solicitor on behalf of Groups 1 and 2.
 Marc Genuist, Representative on behalf of Group 3.

TAB C

Fisheries and Coastal Resources Act

CHAPTER 25 OF THE ACTS OF 1996

as amended by

1999, c. 2; 2001, c. 6, s. 108; 2005, c. 19; 2005, c. 50, s. 1; 2010, c. 51;
2012, c. 22; 2015, cc. 18, 19; 2015, c. 32, s. 73; 2018, c. 8; 2019, c. 31, ss. 1-3;
2021, c. 31; 2024, c. 3, s. 10; 2024, c. 5, ss. 110-117, 124, 125, 129, 130



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Published by Authority of the Speaker of the House of Assembly
Halifax

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CHAPTER 25 OF THE ACTS OF 1996
amended 1999, c. 2; 2001, c. 6, s. 108; 2005, c. 19; 2005, c. 50, s. 1; 2010, c. 51;
2012, c. 22; 2015, cc. 18, 19; 2015, c. 32, s. 73; 2018, c. 8; 2019, c. 31, ss. 1-3;
2021, c. 31; 2024, c. 3, s. 10; 2024, c. 5, ss. 110-117, 124, 125, 129, 130

**An Act to Revise and Consolidate
the Laws of the Province Respecting
the Fishery and to Encourage and Promote
Programs to Sustain and Improve the Fishery**

Table of Contents

(The table of contents is not part of the statute)

	Section
PART I	
Introduction	
Short title.....	1
Purpose of Act.....	2
Interpretation.....	3
PART II	
Administration	
Personnel.....	4
Supervision and management of Act	5
Powers of Minister.....	6
Committees	7
Public registry	8
Alternate dispute resolution	9
Development of objectives and standards.....	10
Delegation by Minister.....	11
Transfer of administration and control.....	12
Agreements	13
Purchase and disposal of real property	14
Inspectors	15
Identification of inspectors.....	16
Laboratory analyses	17
Mode of serving documents.....	18
Regulations.....	19
PART III	
Training, Technology and Development	
Fisheries training.....	20
Undertaking of projects by Minister.....	21
Establishment of programs by Minister.....	22
Regulations.....	23
PART IV	
Lending for Fisheries and Aquaculture Development	
Interpretation of Part.....	24
Board continued	25
Remuneration and reimbursement of members	26
Quorum and term of office.....	27

JULY 29, 2025

Object of Board.....	28
Use of Fund.....	29
Powers and duties of Board	30
Board subject to Ministerial directions.....	31
Personnel.....	32
Administration expenses.....	33
Fisheries and Aquaculture Development Fund.....	34
Transfers to Fund	35
Guarantees as charges	36
Treatment of repayments and recoveries	37
Approval for certain guarantees	38
Priority of claim	38A
Execution of documents	39
Finances and fiscal year	40
Annual statements	41
Regulations	42

PART V

Aquaculture

Interpretation of Part.....	43
Purpose of Part.....	43A
Licences	44
Proposals for options to lease undesignated Crown land	44A
Application for licence	45
Contents of application	46
Procedure upon receipt of application	47
Proposal to advance application	47A
Review Board	48
Review Board's duties with respect to undesignated marine areas	49
Review Board decision	49A
Appeal.....	50
Public hearing	51
Review Board decision	52
Prohibition	54
Administrator.....	54A
Special experimental licence or lease	55
Institutional licence or lease	55A
Powers of Minister respecting aquaculture.....	56
Consequences of designation.....	57
Powers of Administrator	58
Powers where licence or lease revoked	59
Power to revoke licence or lease	59A
Title to plants and animals	60
Exclusive property of holder	61
Certain provisions prevail	63
Regulations	64

PART VI

Sea Plants Harvesting

Interpretation of Part.....	65
Leases	66
Exclusion from lease.....	67
Application for lease.....	68
Notice of application and objection	69
Permit for harvesting	70
Regulations	71

PART VII

Licensing and Inspecting of Fish Products

General supervision and control	72
Prohibition	73
Licences	74

Grounds for refusing licence	75
Particulars respecting licence	76
Certain powers of Governor in Council and Minister	77
Existing regulations	78

PART VIII

Recreational Fishing

Requirement for licence	79
Permit for fishing event	80
Regulations	81

PART IX

Enforcement, Investigations and Penalties

Powers of inspector	82
Seizure	83
Further powers of inspector	84
Requirement to stop vehicle or vessel	85
Seizure	86
Persons accompanying inspector	87
Requirement to assist inspector	88
Custody of fish seized	89
Treatment of seized fish	90
Order to pay compensation	91
Power of court	92
Disposal of seized fish and property	93
Treatment of unforfeited property	94
Return of fish to water	95
Holders of interests in forfeited property	96
Appeal	97
Exception from application of Sections 96 and 97	98
Prohibition of retaliation	99
Ministerial order	100
Permitted contents of order	101
Persons bound by order	102
Enforcement of order	103
Additional penalty	104
Persons liable under order	105
Duty of insurer	106
Conviction as evidence of negligence	107
Immunity from liability	108
Recovery of costs and expenses	109
Limitation period	109A
Offence	110
Defences	111
Additional fine	112
Proof of offence	113
Effect of corporate offence on certain persons	114
Powers of court on conviction	115
Penalties	116
Regulations	117

PART X

Appeals

Appeal to Minister	118
Appeal to Supreme Court	119
Duty to dismiss appeal	120
Regulations	121

PART XI
Miscellaneous

Valid provisions severable	122
Prohibitions re marine renewable-electricity areas.....	122A
Comprehensive review of Act	123
Transitional provisions	124
Repeal	125
Executive Council Act amended.....	126
Public Service Act amended	127
Substituted reference	128
Proclamation	129

Short title
1 This Act may be cited as the *Fisheries and Coastal Resources Act*.
1996, c. 25, s. 1.

PART I
INTRODUCTION

Purpose of Act

- 2** The purpose of this Act is to
- (a) consolidate and revise the law respecting the fishery;
 - (b) encourage, promote and implement programs that will sustain and improve the fishery, including aquaculture;
 - (c) service, develop and optimize the harvesting and processing segments of the fishing and aquaculture industries for the betterment of coastal communities and the Province as a whole;
 - (ca) recognize that the fish harvesting, fish processing and aquaculture industries are integral to the food system;
 - (d) support the sustainable growth of the aquaculture industry;
 - (e) expand recreational and sport-fishing opportunities and eco-tourism;
 - (f) foster community involvement in the management of coastal resources;
 - (g) provide training to enhance the skills and knowledge of participants in the fishery, including aquaculture;
 - (h) increase the productivity and competitiveness of the processing sector by encouraging value-added processing and diversification.
- 1996, c. 25, s. 2; 2015, c. 19, s. 1; 2024, c. 5, s. 110.

(o) respecting records to be kept by fishers, aquaculturists, companies, co-operatives, associations or other person to or for whom any loan or guarantee of loan has been made;

(p) for the examination and audit of records and accounts and for the inspection of any premises, plant, boat, assets, products or equipment in respect of which a loan or guarantee of loan has been made;

(q) notwithstanding the definition of “fishing industry”, prescribing commercial, business or other activities that are deemed to be included in the definition of “fishing industry” for the purpose of this Part and the regulations;

(r) defining any word or expression used but not defined in this Part;

(s) respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1996, c. 25, s. 42; 2019, c. 31, s. 3.

PART V

AQUACULTURE

Interpretation of Part

43 In this Part,

(a) “adjudicative amendment” means an amendment to an aquaculture licence or to an aquaculture lease approved by the Review Board on the hearing of an application to amend pursuant to clause 49(b) or (c); ~~and~~

(aa) “aquacultural operation” means the practice of aquaculture at a site;

(ab) “aquacultural produce” means aquatic plants and animals farmed or being farmed as part of an aquacultural operation;

(b) “aquaculture lease” means an aquaculture lease issued pursuant to this Part;

(c) “aquaculture licence” means an aquaculture licence issued pursuant to this Part;

(ca) “aquaculture registry” means a public registry of Provincial aquaculture licences and leases and information related to sites available for reallocation in the Province;

(d) “aquatic” refers to fresh, brackish or marine water;

- (e) “aquatic plants and animals” means plants and animals that during all stages of their development or life cycles have water as their natural habitat;
- (f) “brackish water” means water situated in tidal areas where fresh water mixes with marine water;
- (g) “experimental licence” means an experimental licence issued pursuant to this Part;
- (h) “farming” means the culture, husbandry, production, development or improvement of aquatic plants and animals;
- (i) “feed stock” includes any form of flora or fauna given or intended to be given as food to aquacultural produce;
- (ia) “finfish” means any cultured cold-blooded aquatic vertebrate possessing fins and gills;
- (j) “prescribed” means prescribed by the regulations;
- (ja) “Review Board” means the Nova Scotia Aquaculture Review Board established pursuant to this Act;
- (k) “seed stock” includes eggs, alevins, parr, smolt, juvenile and adult fish, crustaceans and shellfish, seeds, spat, seedlings and other forms of aquatic plants and animals used or intended to be used as the primary source of the aquacultural produce;
- (ka) “shellfish” means any cultured mollusc or crustacean, at any stage of its life cycle;
- (l) “sub-aquatic land” means the bed of a natural body of water including the solum of the sea;
- (m) “water column” means the aqueous medium superjacent to a defined area of sub-aquatic land. 1996, c. 25, s. 43; 2015, c. 19, s. 4; 2018, c. 8, s. 1.

Purpose of Part

43A The purpose of this Part is to

- (a) recognize that aquaculture is a legitimate and valuable use of the Province’s coastal resources;
- (b) ensure aquaculture is conducted under conditions and in accordance with controls that protect the environment;
- (c) provide a predictable and efficient regulatory environment for business and public confidence;
- (d) ensure equity, fairness and compatibility in access to, and utilization of, public water resources for aquaculture;
- (e) ensure that members of the public have access to information with respect to the regulatory process and an opportunity to participate in the process;

- (f) ensure that regulations governing aquaculture are achievable, contain incentives for compliance and are enforceable;
- (g) ensure that coastal communities derive positive social and economic benefits from aquaculture;
- (h) ensure that aquaculture is conducted with due regard to the health, well-being and recovery of species at risk; and
- (i) ensure that the regulation of aquaculture contributes to the productive development of the Province's coastal resources. 2015, c. 19, s. 5.

Licences

44 (1) No person shall carry on aquaculture without an aquaculture licence.

(2) No person shall carry on aquaculture on Crown land without an aquaculture licence and an aquaculture lease.

(3) Unless otherwise restricted by this Part or the terms of the lease, the granting of an aquaculture lease carries with it the exclusive right, for aquacultural purposes, to possession of the water column and sub-aquatic land described in the lease. 1996, c. 25, s. 44; 2015, c. 19, s. 6.

Proposals for options to lease undesignated Crown land

44A (1) From time to time, the Minister may issue a call for proposals for options to lease a tract of Crown land chosen by the Minister that is not designated as an aquaculture development area.

(2) A person may submit a proposal within such time and in such manner as the Minister determines.

(3) A proposal shall include such information as the Minister determines.

(4) Upon review of a proposal, the Minister may issue an option to lease for an area within the tract.

(5) An option to lease shall

- (a) convey the exclusive right, for the duration of the option, to apply for an aquaculture lease for a site within the area;
- (b) be for a prescribed duration; and
- (c) be subject to a prescribed fee.

(6) Where there are competing proposals of equivalent and acceptable stature, the Minister shall issue an option to lease to the proponent who, in the opinion of the Minister, is the best overall proponent based on the information available to the Minister under this Section. 2015, c. 19, s. 7; 2018, c. 8, s. 2.

Application for licence

45 (1) A person may apply to the Minister, in the manner prescribed by the Minister, for an aquaculture licence.

(2) Where the site at which aquacultural activities are proposed to be carried on is on Crown land, the applicant shall, in addition to applying for a licence pursuant to subsection (1), apply to the Minister, in the manner prescribed by the Minister, for an aquaculture lease.

(3) Where the site at which aquacultural activities are proposed to be carried on is on private land, an aquaculture licence may only be issued to the owner or lessee of the land. 1996, c. 25, s. 45; 2015, c. 19, s. 8.

Contents of application

46 (1) An application for an aquaculture licence or aquaculture lease shall be accompanied by the information stipulated by the Minister.

(2) The Minister may require an applicant for an aquaculture licence or aquaculture lease to submit any additional information the Minister considers necessary.

(3) Where the Minister considers an application to be incomplete, the application shall not be processed until the information required is submitted. 1996, c. 25, s. 46.

Procedure upon receipt of application

47 (1) Upon receipt of an application referred to in subsection 54A(1) for an aquaculture licence or aquaculture lease, the Minister shall refer the application to the Administrator.

(2) Upon the receipt of an application for an aquaculture licence or aquaculture lease for an area not designated as an aquaculture development area, the Minister shall appoint an employee of the Department to consult with

(a) other departments or agencies of the Government or the Government of Canada, as may be required under the laws of the Province or of Canada; and

(b) any person, group of persons or organization that the Minister considers necessary or advisable in the circumstances,

and shall refer the application, along with a report on the outcome of the consultation described in clauses (a) and (b), to the Review Board for decision. 2015, c. 19, s. 9.

Proposal to advance application

47A (1) The holder of an aquaculture licence or an aquaculture lease may submit a proposal to the Minister to advance an application before the Review Board for an adjudicative amendment to the licence or lease.

(2) The proposal must be submitted within such time and in such manner as the Minister determines.

(3) The proposal must include such information as the Minister determines.

(4) Upon review of the proposal, the Minister may issue an approval to advance the application for an adjudicative amendment before the Review Board.

(5) The approval to advance the application

(a) must convey the exclusive right, for the duration of the approval, to apply for the adjudicative amendment to the Review Board;

(b) must be for a prescribed duration; and

(c) is subject to a prescribed fee.

(6) Where the Minister grants an approval pursuant to subsection (4) and the Review Board could approve an increase of the area of an existing aquaculture site under that application, the Minister shall not, pending the Review Board's determination, grant an option to lease or approve another proposal to advance an application relating to the area that may be added to the existing aquaculture site.

(7) Where there are competing proposals of equivalent and acceptable stature, the Minister shall issue an approval to advance an application for an adjudicative amendment to the proponent who, in the opinion of the Minister, is the best overall proponent based on the information available to the Minister under this Section. 2018, c. 8, s. 3

Review Board

48 (1) There is hereby established a board to be known as the Nova Scotia Aquaculture Review Board consisting of not more than ten members appointed by the Minister for such terms as the Minister may determine.

(2) The Minister shall appoint one member of the Review Board to be its Chair and another member to be its Vice-chair.

(3) The Minister shall appoint an employee of the Department to act as the clerk of the Review Board.

(4) The Chair of the Review Board shall assign three or more of its members to constitute a panel to hear an application before the Review Board.

(4A) The Chair of the Review Board shall determine a quorum of the Review Board or of a hearing panel.

(5) Members of the Review Board shall be paid such remuneration as the Minister determines.

(6) Members of the Review Board shall be reimbursed as the Minister determines for reasonable travelling and other expenses incurred by them in accordance with the work of the Review Board.

(7) A vacancy on the Board does not impair the ability of the Review Board to act.

(8) The Review Board may make rules of procedure for the conduct and management of its affairs.

(9) The Review Board and each member of the Review Board has all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment. 2015, c. 19, s. 9; 2021, c. 31, s. 1.

Review Board's duties with respect to undesignated marine areas

49 The Review Board shall, with respect to marine areas not designated as aquaculture development areas, make decisions with respect to

- (a) an application for an aquaculture licence or aquaculture lease;
- (b) where an existing aquaculture licence or aquaculture lease authorizes the production of shellfish or aquatic plants but not finfish species, an application to amend the aquaculture licence or aquaculture lease to authorize the production of a finfish species; and
- (c) an application to amend an aquaculture licence or aquaculture lease to change the boundaries of an existing aquaculture site if the change results in an increase in the area of the aquaculture site. 2015, c. 19, s. 9.

Review Board decision

49A Where a panel is constituted to hear an application before the Review Board, a decision of a majority of the panel is the decision of the Review Board but, where there is no majority, a decision of the chair of the panel is the decision of the Review Board. 2021, c. 31, s. 2.

Appeal

50 (1) A party to an application may appeal a Review Board decision to the Supreme Court of Nova Scotia, upon any question as to the jurisdiction of the Review Board or upon any question of law, upon filing with the Court a notice of appeal within thirty days after the decision is issued.

(2) An appeal made pursuant to subsection (1) does not operate as a stay of the Review Board decision pending the outcome of the appeal. 2015, c. 19, s. 9; 2018, c. 8, s. 4.

Public hearing

51 Where the Minister refers an application to the Review Board, the Review Board shall hold a public hearing as prescribed. 2015, c. 19, s. 9.

Review Board decision

52 (1) Upon receiving a decision of the Review Board made pursuant to Section 49, the Minister shall, in accordance with the decision,

- (a) issue the aquaculture licence or aquaculture lease;
- (b) issue the aquaculture licence or aquaculture lease, subject to any conditions the Review Board considered appropriate;
- (c) reject the application for the aquaculture licence or aquaculture lease; or
- (d) amend the aquaculture licence or aquaculture lease.

(2) The Minister shall make publicly available a decision of the Review Board upon implementation pursuant to subsection (1). 2015, c. 19, s. 9.

53 *repealed 2015, c. 19, s. 9.*

Prohibition

54 (1) No person shall introduce a species of aquatic plants or animals foreign to the area where it is intended to introduce them without having first obtained an aquaculture licence authorizing such introduction.

(2) and (3) *repealed 2015, c. 19, s. 10.*

1996, c. 25, s. 54; 2015, c. 19, s. 10.

Administrator

54A (1) The Minister shall appoint an employee of the Department to act as Administrator and make decisions with respect to

- (a) applications for aquaculture licences or aquaculture leases in designated aquaculture development areas only;
- (b) applications for aquaculture licences for land-based aquaculture sites;
- (c) applications to amend aquaculture licences or aquaculture leases except those applications referred to in clauses 49(b) and (c);
- (d) applications to renew aquaculture licences or aquaculture leases;
- (e) applications to assign aquaculture licences or aquaculture leases;

(f) applications with respect to an aquaculture site for which the licence or lease has been revoked; and

(g) applications to amalgamate two or more aquaculture licences or aquaculture leases and their associated aquaculture sites.

(2) In making a decision under subsection (1), the Administrator shall follow the prescribed process. 2015, c. 19, s. 11; 2018, c. 8, s. 5.

Special experimental licence or lease

55 Notwithstanding anything contained in this Part, the Administrator may grant a special experimental licence or special experimental lease upon such terms and conditions as the Administrator considers necessary or advisable. 2015, c. 19, s. 12.

Institutional licence or lease

55A Notwithstanding anything contained in this Part, the Administrator may grant an institutional licence or institutional lease, upon such terms and conditions as the Administrator considers necessary or advisable, to a person who is carrying out public fishery enhancement and research activities. 2018, c. 8, s. 6; 2024, c. 5, s. 124.

Powers of Minister respecting aquaculture

56 (1) The Minister may, with the approval of the Governor in Council,

(a) designate as an aquaculture development area sub-aquatic lands under marine or brackish waters and their water columns;

(b) impose conditions and restrictions on the conduct of aquaculture and other activities in an aquaculture development area;

(c) change any designation, condition, restriction or determination pursuant to clause (a) or (b);

(d) designate as a provisional aquaculture development area sub-aquatic lands under marine or brackish waters and their water columns not otherwise designated as an aquaculture development area or a closed area;

(e) designate as a closed area sub-aquatic lands under marine or brackish waters and their water columns which, in the opinion of the Minister, are not suitable for aquaculture development;

(f) determine when aquaculture development areas may be designated.

(1A) A designation made pursuant to subsection (1) must contain a description of the sub-aquatic lands comprising the aquaculture development area sufficient to identify their boundaries.

(2) Before designating an aquaculture development area or imposing conditions or restrictions to be applicable thereto, the Minister shall consult with

(a) other departments or agencies of the Government or the Government of Canada, as may be required by the laws of the Province or of Canada; and

(b) any person, group of persons or organization that the Minister considers necessary or advisable in the circumstances.

(3) and (4) *repealed 2015, c. 19, s. 13.*

(5) When

(a) an aquaculture development area has been designated;

(b) conditions and restrictions are imposed on the conduct of aquaculture or of other activities in an aquaculture development area; or

(c) there have been changes in those matters outlined in clauses (a) or (b),

the Minister shall cause a copy of the designation and the conditions or restrictions to be published on the Department's website and in the Royal Gazette.

(6) Property is deemed not to be injuriously affected by reason of the exercise, pursuant to subsection (1), by the Minister of the authority conferred upon the Minister by that subsection. 1996, c. 25, s. 56; 2015, c. 19, s. 13; 2024, c. 5, s. 125.

Consequences of designation

57 (1) Where the Minister has designated an area as an aquaculture development area, a person may apply to the Administrator for an aquaculture licence or an aquaculture lease and the Administrator may issue an aquaculture licence or aquaculture lease in the aquaculture development area on such terms and conditions as the Administrator considers necessary or advisable.

(1A) The Minister may determine when applications in aquaculture development areas may be submitted.

(2) For greater certainty, Sections 51 and 52 do not apply to an aquaculture licence or aquaculture lease issued by the Administrator pursuant to subsection (1). 1996, c. 25, s. 57; 2015, c. 19, s. 14.

Powers of Administrator

58 (1) The Administrator may

(a) issue aquaculture licences for land-based aquaculture sites;

- (b) amend aquaculture licences and aquaculture leases except those applications referred to in clauses 49(b) and (c);
- (c) renew aquaculture licences and aquaculture leases;
- (d) approve applications to assign aquaculture licences and aquaculture leases; ~~and~~
- (e) issue in accordance with the regulations aquaculture licences and aquaculture leases with respect to aquaculture sites for which the licence or lease has been revoked; and
- (f) amalgamate aquaculture licences and aquaculture leases and their associated aquaculture sites.

(2) The Administrator may assign any conditions that the Administrator considers necessary or advisable to an aquaculture licence or aquaculture lease referred to in subsection (1). 2015, c. 19, s. 15; 2018, c. 8, s. 7.

Powers where licence or lease revoked

59 (1) Where an aquaculture licence or aquaculture lease has been revoked, the Administrator may

- (a) maintain use and activity information related to the aquaculture site on the aquaculture registry for a prescribed period; or
- (b) remove use and activity information related to the aquaculture site from the aquaculture registry.

(2) A person may apply to the Administrator in the prescribed manner for an aquaculture licence or aquaculture lease to a site for which the licence or lease has been revoked. 2015, c. 19, s. 15.

Power to revoke licence or lease

59A An aquaculture licence or aquaculture lease issued pursuant to this Part may be revoked by the Administrator if

- (a) the holder is in breach of this Part, the regulations or any term or condition of the licence or lease;
- (b) in the opinion of the Administrator, the aquaculture activities authorized by the licence or lease are detrimental to or interfere with previously licensed or leased aquaculture sites;
- (c) the holder is found by a court of competent jurisdiction to be in violation of any law of the Province or of the Parliament or Government of Canada relating to fishery activities; or
- (d) the holder requests revocation of the licence or lease. 2015, c. 19, s. 15.

Title to plants and animals

60 All aquatic plants and animals of the species specified in an aquaculture licence or aquaculture lease in or on the licensed or leased area, except free-swimming or drifting flora or fauna not enclosed by a net, pen, cage or enclosure, are the exclusive property of the holder of the licence or lease. 1996, c. 25, s. 60.

Exclusive property of holder

61 (1) All aquatic animals owned by the holder of an aquaculture licence or aquaculture lease remain the exclusive property of the licence or lease holder while within the licensed or leased area boundaries.

(2) Notwithstanding subsection (1), if the aquatic animals owned by the holder of an aquaculture licence or aquaculture lease escape from the licensed or leased area, the holder of the licence or lease retains the exclusive property right to those aquatic animals while within one hundred metres of the boundaries of the licensed or leased area. 1996, c. 25, s. 61.

62 *repealed 2015, c. 19, s. 16.*

Certain provisions prevail

63 Where there is a conflict between Sections 44, 50 or 57 of this Part and any other enactment, those Sections prevail. 1996, c. 25, s. 63; 2015, c. 19, s. 17.

Regulations

- 64 (1)** The Governor in Council may make regulations
- (a) for the proper development, management and control of aquaculture;
 - (b) respecting the forms and information required upon an application;
 - (ba) respecting the application process for the reallocation of an aquaculture site;
 - (bb) respecting options to lease including, without limiting the generality of the foregoing, their duration and the payment of fees required for their issuance;
 - (c) respecting the term and conditions under which an aquaculture lease or aquaculture licence may be issued;
 - (ca) respecting the issuance of an aquaculture licence or aquaculture lease for an aquaculture site that is being reallocated pursuant to clause 58(1)(e);
 - (d) respecting fees for aquaculture licences and aquaculture leases;
 - (e) respecting the environmental monitoring, conservation and protection of licensed or leased areas;

- (f) respecting the introduction of new species or strains of aquatic plants and animals;
- (g) respecting the health of aquacultural produce including, without limiting the generality of the foregoing,
 - (i) the isolation, quarantining, gathering, disposal and destruction of aquacultural produce, seedstock and feedstock,
 - (ii) payments to the Minister for costs incurred, and
 - (iii) the payment of compensation;
- (h) respecting methods of handling, marketing and maintaining the quality of aquacultural produce;
- (i) providing for the use, control or prohibition of feedstock and seedstock;
- (j) providing for inspection of feedstock and seedstock;
- (k) respecting the manner and methods of marking the boundaries of licensed areas, leased areas or aquaculture development areas;
- (l) respecting the marking of aquacultural operations so as to provide notice to mariners;
- (m) respecting information to be submitted to the Minister by the holder of a lease or licence concerning the productivity and obligations in respect of the area leased or licensed;
- (n) respecting the exemption of persons or classes of persons or activities from all or part of this Part;
- (o) determining whether or not compensation for anything done pursuant to this Part is payable and, if payable, the circumstances in which, the extent to which, by whom and to whom such compensation is payable and the manner in which and the person by whom the amount of such compensation is to be determined;
- (oa) respecting the requirement for security bonds in connection with issuance of licences or leases;
- (ob) prescribing the powers and duties of the Review Board;
- (oc) prescribing the procedures of the Review Board for conducting hearings, public consultations, investigations and issuing decisions;
- (od) prescribing procedures and fees payable for making an application to the Administrator;

(oe) respecting applications to the Administrator for the granting, renewing, amending, assigning or revoking of aquaculture licences and aquaculture leases;

(p) defining any word or expression used but not defined in this Part;

(q) respecting any matter necessary or advisable to effectively carry out the intent and purpose of this Part.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 1996, c. 25, s. 64; 2015, c. 19, s. 18.

PART VI

SEA PLANTS HARVESTING

Interpretation of Part

65 In this Part,

(a) “lease” means a lease issued pursuant to this Part;

(b) “sea plant” means all fucoids (commonly known as rock weeds) and laminarians (commonly known as kelp) but does not include *chondrus crispus* (commonly known as Irish moss), dulse or eel grass. 1996, c. 25, s. 65.

Leases

66 (1) The Minister may issue a lease to an individual, corporation or other entity to harvest sea plants from an area or areas of the solum, based on commercialization of harvest.

(2) No lease shall be issued in respect of an area for which a lease is in force.

(3) No lease shall be issued for a period, or combined extension of periods, in excess of fifteen years. 1996, c. 25, s. 66.

Exclusion from lease

67 No lease shall include any part of the solum which has been granted or leased under the *Beaches and Foreshores Act*. 1996, c. 25, s. 67.

Application for lease

68 (1) Application for a lease shall be made to the Minister on the form or forms provided by the Minister and shall contain the information required by the Minister or by the regulations.

TAB D

This consolidation is unofficial and is for reference only. For the official version of the regulations, consult the original documents on file with the [Office of the Registrar of Regulations](#), or refer to the [Royal Gazette Part II](#).

Regulations are amended frequently. Please check the list of [Regulations by Act](#) to see if there are any recent amendments to these regulations filed with our office that are not yet included in this consolidation.

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Aquaculture Licence and Lease Regulations
made under Section 64 of the
Fisheries and Coastal Resources Act
S.N.S. 1996, c. 25
O.I.C. 2015-338 (October 26, 2015), N.S. Reg. 347/2015
amended to O.I.C. 2019-322 (effective November 12, 2019), N.S. Reg. 186/2019

Table of Contents

Please note: this table of contents is provided for convenience of reference and does not form part of the regulations.

[Click here to go to the text of the regulations.](#)

[Citation](#)

[Definitions](#)

[Factors to be considered in decisions related to marine aquaculture sites](#)

[Options to Lease](#)

[Details in call for proposals](#)

[Unsolicited proposal for option to lease](#)

[Issuing options to lease](#)

[Fee required to secure option to lease](#)

[Duration of option to lease](#)

[Public notice of issued option to lease](#)

[Scoping process for option to lease holder for marine aquaculture site](#)

[New application for a marine site in a non-designated area](#)

[Incomplete application](#)

[Adjudicative Amendments](#)

[Approval to advance application for adjudicative amendment](#)

[Scoping process for applicant for adjudicative amendment](#)

[Applying for adjudicative amendment](#)

[Consultations on adjudicative amendment application](#)

[Performance review on application for adjudicative amendment](#)

[Minister must refer application to Review Board](#)

[Adjudicative Hearings](#)

[Adjudicative hearing process](#)

[Date of adjudicative hearing](#)

[Public notice of adjudicative hearing](#)

[Pre-hearing submissions for adjudicative hearing](#)

[Location of adjudicative hearing](#)

[Parties to adjudicative hearing](#)

[Request for intervenor status](#)

[Copies of documents to intervenor](#)

[Intervenors' evidence may be consolidated](#)

[Copies of documents and correspondence to parties](#)

[Review Board authority](#)

[Opening adjudicative hearing](#)

[Adjourning and reconvening adjudicative hearing](#)

[Evidence at adjudicative hearing](#)

[Documentary and real evidence at adjudicative hearing](#)

- Public participation in adjudicative hearing
- Questions at adjudicative hearing
- Conclusion of adjudicative hearing
- Record of adjudicative hearing
- Decision on application for adjudicative hearing
- Deadline for implementing Review Board decision
- Administrative Decisions
 - Prescribed process for administrative decisions
 - Manner of applying to Administrator
 - Consultations on application to Administrator
 - Public submissions on application to Administrator
 - Administrator's decision
- Land-based Aquaculture
 - Factors to be considered in application for land-based aquaculture licence
 - Applications for land-based aquaculture
 - U-fish operations
- Special Experimental Leases and Licences
 - Applying for special experimental licence
 - Applying for special experimental lease
 - Research purposes
 - Research results
 - No assigning special experimental licence or lease
 - Conversion to commercial purpose
- Institutional Licences and Leases
 - Applying for institutional licence
 - Applying for institutional lease
- Terms and Conditions of Aquaculture Licences and Aquaculture Leases
 - Term and renewal of aquaculture licence or aquaculture lease
 - Application of Sections 54 to 58
 - Information included on licence or lease
 - Location and marking
 - Security bond
 - Access for riparian land owner
 - Recording and reporting requirements
 - No sublicensing or subletting
 - Use of aquaculture site
- Discontinuance of Aquacultural Operation at Marine Site
 - Request for certificate of discharge
 - When Minister may remediate aquaculture site
 - Certificate of discharge
- Reallocated Marine Aquaculture Sites
 - Definition for Sections 64 to 67
 - Call for proposals
 - Evaluating proposals
 - Application requirements for reallocation of marine aquaculture site
- Aquaculture Development Areas
 - Definition for Sections 68 to 70
 - Call for proposals
 - Evaluating proposals
 - Application requirements for licence and lease in aquaculture development area
- Performance Reviews Conducted by Administrator
 - Definition for Sections 72 and 73
 - Timing of performance reviews
 - Outcomes of performance review
- Fee Payments and Fee Waivers
 - Fees required
 - Application fee payable on date application submitted
- Prescribed Fees

[Fee to secure option to lease](#)

[Fees for aquaculture licence and aquaculture lease applications](#)

[Annual fees](#)

[Minister may waive annual fee](#)

Citation

1 These regulations may be cited as the *Aquaculture Licence and Lease Regulations*.

Definitions

2 In these regulations,

“Act” means the *Fisheries and Coastal Resources Act*;

“adjudicative amendment” means an amendment to an aquaculture licence or aquaculture lease that the Review Board is required by clause 49(b) or (c) of the Act to decide on;

“adjudicative hearing” means a public hearing held by the Review Board as required by Section 51 of the Act in accordance with the process set out in Sections 17 to 36;

“aquaculture development area” means an aquaculture development area designated by the Minister under clause 56(1)(a) of the Act;

“bottom shellfish with gear method” means a method of shellfish aquaculture using gear placed on the solum;

“bottom shellfish without gear method” means a method of shellfish aquaculture practised without using gear placed on the solum;

“development plan” means a document that specifies the technical aspects and feasibility of an aquacultural operation at a particular site;

“Farm Management Plan” means a farm management plan as required by the *Aquaculture Management Regulations* made under the Act;

“institutional lease” means an institutional lease granted by the Administrator under Section 55A of the Act;

“institutional licence” means an institutional licence granted by the Administrator under Section 55A of the Act;

“intervenor” means a person who is granted leave to intervene in an adjudicative hearing before the Review Board under Section 23;

“option to lease” means an option issued by the Minister under subsection 44A(4) of the Act to lease a tract of Crown land that is not designated as an aquaculture development area;

“prescribed fee” means a fee prescribed in Sections 76 to 78;

“reallocation”, in relation to an aquaculture site, means the issuance of an aquaculture licence or aquaculture lease for the aquaculture site after the revocation of its previous aquaculture licence or aquaculture lease, as referred to in clauses 54A(1)(f) and 58(1)(e) of the Act and subsection 59(2) of the Act;

“special experimental lease” means a special experimental lease granted by the Administrator under Section 55 of the Act;

“security bond” means a surety bond or any other form of financial security acceptable to the Administrator;

“special experimental licence” means a special experimental licence granted by the Administrator under Section 55 of the Act;

“suspended shellfish method” means a method of shellfish aquaculture using gear placed in the water column;

“u-fish pond” means a pond stocked with fish that meets all of the following criteria:

- (i) it is located on private property,

- (ii) in the opinion of the Administrator, it is used primarily for the purpose of allowing persons to fish in the pond with rod and line for a fee.

Factors to be considered in decisions related to marine aquaculture sites

3 In making decisions related to marine aquaculture sites, the Review Board or Administrator must take all of the following factors into consideration:

- (a) the optimum use of marine resources;
- (b) the contribution of the proposed operation to community and Provincial economic development;
- (c) fishery activities in the public waters surrounding the proposed aquacultural operation;
- (d) the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation;
- (e) the other users of the public waters surrounding the proposed aquacultural operation;
- (f) the public right of navigation;
- (g) the sustainability of wild salmon;
- (h) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation;

Options to Lease**Details in call for proposals**

4 A call for proposals for options to lease issued by the Minister must include any details the Minister considers necessary, including all of the following:

- (a) a description of the geographic area under consideration;
- (b) the types of species to be cultivated;
- (c) the method of cultivation to be used;
- (d) the deadline for submitting a proposal;
- (e) the number of options to be issued.

Unsolicited proposal for option to lease

5 The Minister may entertain an unsolicited proposal for an option to lease in a manner determined by the Minister.

Issuing options to lease

- 6** (1) The Minister may establish procedures for evaluating proposals for and issuing options to lease.
- (2) The Minister has sole discretion in deciding whether to issue an option to lease and, if issued, whether to issue it
- (a) as set out in the proposal for the option; or
 - (b) with variations from the proposal for the option.
- (3) In deciding on a proposal for an option to lease, the Minister may take any of the following into consideration:
- (a) the potential benefits to the community and Province;
 - (b) any previous record of the proponent related to aquacultural operations;

- (c) the ability of the proponent to carry out the proposal;
 - (d) the concentration of current and proposed aquacultural operations, in order to ensure orderly development of the industry;
 - (e) the suitability of the proposal, determined in accordance with any policies established by the Minister.
- (4) Before issuing an option to lease, the Minister must notify the proponent that their proposal has been approved and that a fee to secure the option must be paid as required by Section 7 before the option to lease will be issued.

Fee required to secure option to lease

- 7 (1) To secure an option to lease, a proponent must pay the prescribed fee no later than 15 days after the date the Minister notifies the proponent under subsection 6(5)[(4)] of their successful proposal for the option to lease.
- (2) The Minister must not issue an option to lease to a proponent who does not pay the prescribed fee as required by subsection (1).

Duration of option to lease

- 8 (1) Unless it is renewed under subsection (2), an option to lease expires on the date determined by the Minister, which must be no later than 6 months from the date the option is issued.
- (2) At the written request of the holder, the Minister may grant an extension of up to 6 months to the duration of an option to lease.

Public notice of issued option to lease

- 9 (1) The Minister must publish notice of an issued option to lease on the Department's website and in the *Royal Gazette* Part I no later than the following dates:
- (a) 30 days after the option has been issued; or
 - (b) 60 days after the option has been issued, if requested by the proponent and approved by the Minister.
- (2) Notice of an issued option to lease must include any information determined by the Minister.
- (3) In addition to publishing notice of an issued option to lease as required by subsection (1), the Minister may do any of the following:
- (a) notify any person, group of persons or organization, as determined by the Minister, of the issued option to lease;
 - (b) publish notice of the issued option to lease by any means determined by the Minister.

Scoping process for option to lease holder for marine aquaculture site

- 10 (1) Before submitting an application for an aquaculture licence or aquaculture lease for a marine aquaculture site in the area for which their option to lease was issued, an option to lease holder must complete a scoping process.
- (2) The scoping process required by subsection (1) must be carried out as determined by the Minister and must include at least 1 public information meeting that is
- (a) organized by the option to lease holder; and
 - (b) held in the community that the Minister determines is the most appropriate community closest to the location of the aquaculture site that is the subject of the option to lease.
- (3) An option to lease holder must publish notice of the public information meeting required by subsection (2) in a manner determined by the Minister.

New application for a marine site in a non-designated area

- 11 (1)** An option to lease holder who wishes to apply for an aquaculture licence or aquaculture lease must submit their application
- (a) after completing the scoping process required by Section 10; and
 - (b) before their option to lease expires.
- (2)** In addition to any information required by the Minister under Section 46 of the Act, an option to lease holder must include all of the following with their application for an aquaculture licence or aquaculture lease:
- (a) a report on the scoping process carried out under Section 10, including any details required by the Minister;
 - (b) a development plan that meets the criteria established by the Minister for the type of aquacultural operation to be carried out under the licence or lease.

Incomplete application

- 11A (1)** If the Minister considers an application for an aquaculture licence and aquaculture lease to be incomplete, the Minister must notify the applicant in writing of all of the following:
- (a) that the application is incomplete;
 - (b) that, for the application to be processed, the applicant must provide the additional required information no later than 90 days after the date of the Minister's notice.
- (2)** If an applicant does not submit the required additional information in compliance with the deadline in clause (1)(b), the Minister must notify the applicant in writing that the application is deemed to be withdrawn.

Adjudicative Amendments

Approval to advance application for adjudicative amendment

- 11B (1)** In this Section,
- “approval” means an approval issued by the Minister under subsection 47A(4) of the Act to advance an application for an adjudicative amendment before the Review Board; and
- “proposal” means a proposal to the Minister under subsection 47A(1) of the Act to advance an application for an adjudicative amendment before the Review Board.
- (2)** The Minister may establish procedures for evaluating proposals and issuing approvals.
 - (3)** Subject to any extension granted under subsection (4), the prescribed duration of approvals for the purpose of clause 47A(5)(b) of the Act is 6 months.
 - (4)** At the written request of the holder of an approval, the Minister may extend the approval's duration for up to 6 months.

Scoping process for applicant for adjudicative amendment

- 12 (1)** Before applying for an adjudicative amendment, the holder of the aquaculture licence or aquaculture lease must complete a scoping process.
- (2)** The scoping process required by subsection (1) must be carried out as determined by the Minister and must include at least 1 public information meeting that is
- (a) organized by the holder of the aquaculture licence or aquaculture lease; and
 - (b) held in the community that the Minister determines is the most appropriate community closest to the location of the site that is the subject of the aquaculture licence or aquaculture lease.

- (3) A prospective applicant for an adjudicative amendment must publish notice of the public information meeting required by subsection (2) in a manner determined by the Minister.

Applying for adjudicative amendment

- 13** An application for an adjudicative amendment must include any information or documentation that the Minister considers necessary to assess the application, including all of the following:
- (a) a report on the scoping process carried out under Section 12, including any details required by the Minister;
 - (b) an updated development plan that meets the criteria established by the Minister for the type of aquacultural operation to be carried out under the amended aquaculture licence or lease.

Consultations on adjudicative amendment application

- 14** (1) On receipt of a completed application for an adjudicative amendment, the Minister must appoint an employee of the Department to undertake consultations with any of the following as required under the laws of the Province or of Canada with respect to the application:
- (a) a department or agency of the Government of Nova Scotia;
 - (b) a department or agency of the Government of Canada.
- (2) In addition to any required consultation referred to in subsection (1), the Minister may appoint an employee of the Department to undertake consultations with any person, group of persons or organization that the Minister considers necessary in the circumstances.

Performance review on application for adjudicative amendment

- 15** (1) On receipt of a completed application for an adjudicative amendment, the Minister must appoint an employee of the Department to conduct a performance review of the aquacultural operation that is the subject of the amendment.
- (2) The Minister must determine the criteria for and scope of a performance review under this Section.

Minister must refer application to Review Board

- 16** The Minister must refer a completed application for an adjudicative amendment to the Review Board, along with all of the following:
- (a) a report on the outcomes of any consultations undertaken under Section 14;
 - (b) a report on any outcomes of the performance review conducted under Section 15.

Adjudicative Hearings

Adjudicative hearing process

- 17** The Review Board must follow the adjudicative hearing process with respect to any of the following applications:
- (a) an aquaculture licence or aquaculture lease application with respect to a marine site in an area not designated as an aquaculture development area, as referred to in clause 49(a) of the Act;
 - (b) an application for an adjudicative amendment.

Date of adjudicative hearing

- 18** (1) No later than 15 days after receiving an application referred by the Minister, the Review Board must set a date for an adjudicative hearing.
- (2) The date of an adjudicative hearing must be at least 60 days but no later than 90 days after the date on which the Review Board sets the adjudicative hearing date under subsection (1).
- (3) The Review Board must give the parties to an adjudicative hearing at least 60 days' written notice of the hearing date.

Public notice of adjudicative hearing

- 19** (1) At least 60 days before the date set for an adjudicative hearing, the clerk of the Review Board must publish notice of the adjudicative hearing on the Department's website and in the Royal Gazette Part I.
- (2) Public notice of an adjudicative hearing must include all of the following information:
- (a) the nature of the hearing;
 - (b) the time and place of the hearing;
 - (c) the location of the aquaculture site that is the subject of the adjudicative hearing;
 - (d) the species and method of cultivation proposed;
 - (e) the applicant's name;
 - (f) any information about the hearing that the Review Board determines should be made public.
- (3) In addition to publishing notice of an adjudicative hearing as required by subsection (1), the clerk of the Review Board may publish the notice by any means determined by the Review Board.

Pre-hearing submissions for adjudicative hearing

- 20** Members of the public may submit written comments to the Review Board during the notice period provided for an adjudicative hearing and in the manner determined by the Review Board.

Location of adjudicative hearing

- 21** An adjudicative hearing must be held in the community that the Review Board determines is the most appropriate community closest to the aquaculture site that is the subject of the hearing.

Parties to adjudicative hearing

- 22** All of the following are parties to an adjudicative hearing:
- (a) the applicant;
 - (b) any intervenor;
 - (c) the Minister or the Minister's designate.

Request for intervenor status

- 23** (1) A person may request intervenor status from the Review Board.
- (2) A request under subsection (1) must be in writing in a form determined by the Review Board and must be submitted to the Review Board no later than 10 days after the date that notice of the adjudicative hearing is published under Section 19.
- (3) No later than 10 days after the date it receives a request for intervenor status, the Review Board must decide whether to grant or refuse the request.
- (4) The Review Board must grant intervenor status to any person requesting it who, in the opinion of the Review Board, is substantially and directly affected by the hearing.
- (5) A decision made by the Review Board with respect to intervenor status is final.
- (6) No later than 5 days after deciding on a request for intervenor status, the Review Board must provide notice of its decision to the person requesting intervenor status and, if the request is granted, to each of the parties to the proceeding.

Copies of documents to intervenor

- 24** (1) Subject to any order under subsection (2) respecting confidentiality, promptly after receiving ~~of~~ any of the following documents referred by the Minister for an adjudicative hearing, the Review Board must provide copies of the documents to an intervenor in the hearing:
- (a) for an application for a new aquaculture licence or aquaculture lease for a marine site in a non-designated area, the documents referred to in subsection 11(2);
 - (b) for an application for an adjudicative amendment, the documents referred to in Section 13.
- (2) If an applicant requests, consistent with the Review Board's procedures, that the Review Board hold a document in confidence, the requirement to provide copies in subsection (1) does not apply until the Review Board makes an order respecting the confidentiality of the document, and the requirement must then be applied only in a manner consistent with the Review Board's order.

Intervenors' evidence may be consolidated

- 25** The Review Board may require all or part of 2 or more intervenors' evidence to be consolidated if the Review Board determines that consolidation is necessary to avoid repetitive or cumulative evidence.

Copies of documents and correspondence to parties

- 26** (1) Subject to any order under subsection (1A) respecting confidentiality, a party to an adjudicative hearing who files any correspondence or document with the Review Board, other than a document referred to in Section 24, must at the same time deliver a copy of the document or correspondence to each of the other parties to the adjudicative hearing.
- (1A) If a party to an adjudicative hearing requests, consistent with the Review Board's procedures, that the Review Board hold a document in confidence, the requirement to deliver copies in subsection (1) does not apply until the Review Board makes an order respecting the confidentiality of the document, and the requirement must then be applied only in a manner consistent with the Review Board's order.
- (2) At the same time it delivers any correspondence to a party to an adjudicative hearing, the Review Board must deliver a copy of the correspondence to each of the other parties.

Review Board authority

- 27** (1) If procedures are not provided for in these regulations or in the Act, the Review Board may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate on the matter before it.
- (2) The Review Board may dispense with, amend, vary or supplement all or part of the procedures for adjudicative hearings set out in these regulations if it is satisfied that the special circumstances of the application before it so require or it is in the public interest to do so.

Opening adjudicative hearing

- 28** The Review Board must open an adjudicative hearing by describing in general terms the purpose of the adjudicative hearing and the general procedure governing its conduct.

Adjourning and reconvening adjudicative hearing

- 29** (1) The Review Board may adjourn an adjudicative hearing and reconvene the adjudicative hearing at any time and at any place the Review Board considers appropriate.
- (2) The Review Board must provide reasonable notice of the time and place of a reconvened hearing to the parties to the hearing and to the public.

Evidence at adjudicative hearing

- 30** (1) Evidence presented at an adjudicative hearing must be relevant to all of the following:
- (a) the proposed aquacultural operation, including its geographic location;
 - (b) the factors to be considered by the Review Board as required by Section 3.
- (2) The Review Board may exclude anything it considers to be hearsay, irrelevant, immaterial or unduly repetitious from the evidence presented at an adjudicative hearing.

- (3) A party is not entitled to present the evidence of an expert witness at an adjudicative hearing unless
 - (a) the evidence is in the form of a report that includes the expert's name, address and qualifications, along with a statement of the substance of the expert's proposed evidence; and
 - (b) the party has provided the evidence to the Review Board and each of the other parties as required by subsection (5).
- (4) A party to an adjudicative hearing may submit written evidence or present oral testimony to explain their position.
- (5) At least 15 days before the date of an adjudicative hearing, a party who intends to present written or visual evidence at the adjudicative hearing must provide that evidence to the Review Board through an affidavit, with a copy to each of the other parties.
- (6) The Review Board may take notice of any facts of which judicial notice could be taken.

Documentary and real evidence at adjudicative hearing

- 31** (1) The clerk of the Review Board must number or otherwise identify each document, material item and object offered and accepted as evidence in an adjudicative hearing.
- (2) The Review Board may accept evidence submitted in the form of a copy or excerpt if the original is not readily available.
 - (3) The Review Board may require any person presenting a document or photograph as an exhibit to submit a specified number of copies, unless the document or photograph is determined to be unsuitable for reproduction.

Public participation in adjudicative hearing

- 32** (1) Any member of the public may participate in an adjudicative hearing by making a sworn oral statement or an affirmation providing the Review Board with all of the following information:
- (a) their name;
 - (b) their place of residence;
 - (c) their position on the issues, subject to any limits, terms and conditions determined by the Review Board.
- (2) The Review Board must limit the duration of oral testimony given by a member of the public to 6 minutes per person.
 - (3) To be considered by the Review Board, a sworn oral statement or an affirmation provided by any member of the public must be in relation to 1 or more of the factors set out in Section 3.

Questions at adjudicative hearing

- 33** (1) The Chair of the Review Board may determine the order of questioning at an adjudicative hearing.
- (2) The Chair may exclude any question that, in the opinion of the Chair, is outside of the terms of reference of the Review Board or is needlessly repetitive in nature.
 - (3) The Chair may limit the number of questions that may be asked at an adjudicative hearing.
 - (4) A question addressed to a group of persons representing a party may be directed to a specific member of the group or all members present in person.
 - (5) If a question is directed to a specific member of a group representing a party and that person is unable to answer because of a lack of knowledge or qualification, the Chair may permit another member of the group to provide an answer.

- (6) If a party is unable to answer a question without further consultation or research, the party must undertake to provide an answer on or before the close of the hearing or, if that is not possible, no later than 7 days after the close of the adjudicative hearing, and the clerk must provide the response to the person who asked the question and to any other person on request.

Conclusion of adjudicative hearing

- 34** (1) At the conclusion of an adjudicative hearing, the record of the hearing must be closed and, except by agreement of all parties or as specified by the Review Board in accordance with subsection (2), no other evidence may be entered into the record.
- (2) The Review Board may re-open the record of an adjudicative hearing after it has been closed to take additional evidence on specific issues if the Review Board is not satisfied that all necessary information to make a decision has been presented.

Record of adjudicative hearing

- 35** (1) The clerk of the Review Board must keep a full and complete record for each adjudicative hearing.
- (2) A record of an adjudicative hearing must include all of the following:
- (a) the application;
 - (b) supporting documents;
 - (c) all exhibits.

Decision on application for adjudicative hearing

- 36** (1) No later than 30 days after the date that an adjudicative hearing concludes, the Review Board must decide on the application and issue a written decision that includes the reasons for the decision.
- (2) In setting out reasons in a written decision, the Review Board must include all of the following:
- (a) the findings of fact on the evidence related to the factors set out in Section 3;
 - (b) the conclusions of law based on the findings of fact;
 - (c) particulars of any deviations by the Review Board from the procedures for adjudicative hearings set out in these regulations, as allowed under subsection 24[27](2).
- (3) Once a written decision on an application is issued by the Review Board, the clerk of the Review Board must
- (a) send a certified copy of the decision to each party to the adjudicative hearing on the application; and
 - (b) publish a certified copy of the decision on the Department's website.

Deadline for implementing Review Board decision

- 37** An action of the Minister to implement a decision of the Review Board must be taken no later than 15 days after the closing date of the appeal period set out in Section 50 of the Act.

Administrative Decisions

Prescribed process for administrative decisions

- 38** (1) Except as provided in subsection (2), the process set out in Sections 39 to 42 is prescribed as the process to be followed by the Administrator in making a decision with respect to an application for any of the following:
- (a) an aquaculture licence or aquaculture lease in a designated aquaculture development area;
 - (b) an aquaculture licence for a land-based aquaculture site;
 - (c) an amendment of an aquaculture licence or aquaculture lease;

- (d) a renewal of an aquaculture licence or aquaculture lease;
 - (e) an assignment of an aquaculture licence or aquaculture lease;
 - (f) a special experimental licence or special experimental lease;
 - (g) a reallocation of an aquaculture site;
 - (h) an institutional licence or institutional lease in a designated aquaculture development area.
- (2) The administrative decision process prescribed by subsection (1) is not required for any of the following:
- (a) a routine amendment to an aquaculture licence or aquaculture lease that is required to correct an error or to address a revised policy or a regulatory change of the Government of Nova Scotia or of the Government of Canada;
 - (b) a request for corresponding expiry dates under subsection 52(5);
 - (c) a renewal of a special experimental licence or special experimental lease;
 - (d) an amalgamation of aquaculture licences or aquaculture leases and their associated aquaculture sites.

Manner of applying to Administrator

39 Any application referred to in clauses 38(1)(c) to (f) must be made in a manner determined by the Administrator.

Consultations on application to Administrator

- 40** (1) On receipt of a completed application that is within the jurisdiction of the Administrator, the Administrator must undertake consultations with any of the following as required under the laws of the Province or of Canada with respect to the application:
- (a) a department or agency of the Government of Nova Scotia;
 - (b) a department or agency of the Government of Canada.
- (2) In addition to any required consultation referred to in subsection (1), the Administrator may undertake consultations with any person, group of persons or organization that the Administrator considers necessary in the circumstances.

Public submissions on application to Administrator

- 41** (1) On completion of any consultations conducted under Section 40 with respect to an application, the Administrator must publish a notice on the Department's website and in the Royal Gazette Part I inviting the public to submit written comments on the application to the Administrator within the 30 days following the date the notice is published.
- (2) A public notice under subsection (1) must specify the period during which written comments may be submitted together with any additional information that the Administrator determines to be necessary.
- (3) In addition to the means of publishing required by subsection (1), the Administrator may publish a notice inviting written comments on an application by any other means determined by the Administrator.
- (4) A member of the public may submit written comments about an application to the Administrator by mail, fax or e-mail.
- (5) To be considered by the Administrator, a written submission from a member of the public must meet all of the following requirements:
- (a) it must identify the person making the comments and include contact information;
 - (b) it must describe how the person making the comment is connected with the matter to be determined;

- (c) it must be submitted within the 30-day period specified in the notice published under subsection (1);
- (d) if it concerns a marine aquaculture site, it must be in relation to 1 or more of the factors set out in Section 3;
- (e) if it concerns a land-based aquaculture site, it must be in relation to 1 or more of the factors set out in Section 43.

Administrator's decision

- 42** (1) After the close of submissions under Section 41, the Administrator must decide on the application and issue a written decision that includes the reasons for the decision.
- (2) On issuing a written decision, the Administrator must
- (a) send a copy of the written decision issued to the applicant; and
 - (b) publish a copy of the decision on the Department's website.

Land-based Aquaculture

Factors to be considered in application for land-based aquaculture licence

- 43** In deciding on an application for a land-based aquaculture licence, the Administrator may take the following factors into consideration:
- (a) the financial viability of the proponent and the proposed operation;
 - (b) the extent to which the proposal is in accordance with the Act, the relevant regulations made under the Act and any guidelines or policies established by the Minister;
 - (c) the technical viability of the proposed operation;
 - (d) any factors that the Administrator considers relevant to the application.

Applications for land-based aquaculture

- 44** In addition to any information required by the Minister under Section 46 of the Act, an application for a land-based aquaculture licence must include a development plan together with any information or documentation that the Administrator considers necessary to assess the application.

U-fish operations

- 45** (1) Sections 43 and 44 apply to an application for an aquaculture licence for a u-fish pond.
- (2) The holder of an aquaculture licence for a u-fish pond must not process and sell the aquacultural produce from their u-fish pond.

Special Experimental Leases and Licences

Applying for special experimental licence

- 46** A person who wishes to conduct aquaculture to do any of the following may apply for a special experimental licence:
- (a) test or develop new technology or methods;
 - (b) carry out basic research;
 - (c) test the technical feasibility of a aquaculture site.

Applying for special experimental lease

- 47** An applicant for a special experimental licence must also apply for a special experimental lease if the proposed aquaculture site is on Crown land.

Research purposes

- 48** Aquaculture conducted under a special experimental licence must be in support of research and must not be on a scale that exceeds the research purposes for which the special experimental licence or special experimental lease was granted.

Research results

- 49** (1) A holder of a special experimental licence must make a summary of the research results from the aquaculture conducted under the experimental licence available to the Minister.
- (2) The Minister, in the Minister's sole discretion, may release the summary submitted under subsection (1) to the public in full or in part.

No assigning special experimental licence or lease

- 50** (1) A holder of a special experimental licence or special experimental lease must not assign the special experimental licence or special experimental lease.
- (2) An assignment contrary to subsection (1) is void.

Conversion to commercial purpose

- 51** A holder of a special experimental licence or special experimental lease applying for a commercial aquaculture licence or aquaculture lease must apply to the Minister in accordance with Section 45 of the Act and these regulations, including any requirement to submit a proposal for an option to lease, if the application is for either of the following:
- (a) the same site;
 - (b) an area that includes all or part of the same site.

Institutional Licences and Leases**Applying for institutional licence**

- 51A** An applicant for an institutional licence must apply in a manner determined by the Administrator.

Applying for institutional lease

- 51B** If the proposed aquaculture site is on Crown land, an applicant for an institutional licence must also apply for an institutional lease.

Terms and Conditions of Aquaculture Licences and Aquaculture Leases**Term and renewal of aquaculture licence or aquaculture lease**

- 52** (1) Except as provided in subsection (3), the term of an aquaculture licence must not exceed 10 years, and an aquaculture licence may be renewed for further terms of no longer than 10 years each.
- (2) Except as provided in subsection (3), the term of an aquaculture lease must not exceed 20 years, and an aquaculture lease may be renewed for further terms of no longer than 20 years each.
- (3) A special experimental licence or a special experimental lease is valid for a term of 1 year and may be renewed annually for up to 5 years.
- (4) On application by the holder of an aquaculture licence or aquaculture lease at least 6 months before its term expires, the Administrator may renew the licence or lease.
- (5) On request by the holder of an aquaculture licence or aquaculture lease, the Administrator may amend the expiry date of the licence or lease so that it corresponds with the expiry date of another aquaculture licence or aquaculture lease granted to the same holder, but only if this does not result in the granting or renewal of a term longer than that permitted under subsection (1) or (2).

Application of Sections 54 to 58

- 53** Sections 54 to 58 apply to all aquaculture licences and aquaculture leases, including, unless otherwise specified, special experimental licences and special experimental leases.

Information included on licence or lease

54 (1) An aquaculture licence or aquaculture lease must indicate all of the following information:

- (a) the species that may be cultivated under the licence or lease;
- (b) the methods of cultivation authorized under the licence or lease;
- (c) the geographic coordinates of the boundaries of the site under the licence or lease.

(2) In addition to the requirements of subsection (1), an aquaculture licence or aquaculture lease may specify the maximum amount of aquacultural produce allowed on the site.

Location and marking

55 (1) An aquaculture licence holder must mark each of their sites in a manner determined by the Minister and keep each site marked during the term of their licence.

(2) An aquaculture licence holder must ensure all of the following:

- (a) that each of their sites is marked as required under subsection (1) before any development takes place at the site;
- (b) that equipment and aquacultural produce related to any of their sites remain within the geographic boundaries of that site.

Security bond

56 (1) An aquaculture licence holder must ensure that a security bond is in place for the aquaculture site under the licence until a certificate of discharge has been issued by the Administrator.

(2) The holder of a new aquaculture licence must not begin their aquacultural operation until any applicable security bond has been approved by the Administrator.

(3) A person carrying out an aquacultural operation under an existing aquaculture licence on the date these regulations come into force must, no later than 18 months after that date, provide the Administrator with proof that any security bond required by this Section is in place and meets the requirements of this Section.

(4) A security bond must be in a form satisfactory to the Administrator.

(5) Except as provided in subsection (6), and subject to subsection (7) and (8), a security bond must be in an amount equal to the amount set out in the following table for the type of aquacultural operation carried out by the licensee:

Type of Aquacultural Operation	Security Bond Amount
Land-based operation	none
Operation using only bottom shellfish without gear method	none
Operation using bottom shellfish with gear method, site size 10 ha or smaller	\$500.00
Operation using bottom shellfish with gear method, site size larger than 10 ha and smaller than or equal to 50 ha	\$1000.00
Operation using bottom shellfish with gear method, site size larger than 50 ha	\$1500.00
Operation using suspended method for shellfish, marine plant or other species, site size 10 ha or smaller	\$5000.00
Operation using suspended method for shellfish, marine plant or other species, site size larger than 10 ha and smaller than or equal to 50 ha	\$10 000.00
Operation using suspended method for shellfish, marine plant or other species, site size larger than 50 ha	\$15 000.00

Marine finfish operation	\$1.50 per 100 kg licensed
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- (6) For a holder of a special experimental licence, the amount required for a security bond is 50% of the applicable amount specified in subsection (5).
- (6A) For a holder of an institutional licence, the amount required for a security bond is 50% of the applicable amount specified in subsection (5).
- (7) The security bond amount required for an aquaculture licence holder who is licensed for more than 1 species class on a site is the highest amount listed in subsection (5) that is applicable to that licensee.
- (8) The Minister may approve collective security arrangements for a group of aquaculture licence holders if the Minister is satisfied that those arrangements will effectively meet the requirements of this Section.

Access for riparian land owner

- 57** An aquaculture licence holder must conduct their aquacultural operation so as not to deprive any riparian land owner of reasonable access to and from the water adjacent to the land of the riparian land owner.

Recording and reporting requirements

- 58** (1) An aquaculture licence holder must maintain current and accurate records of all of the following with respect to their aquacultural operation:
- (a) all aquacultural produce sales, including the date, number or weight and destination of each sale;
 - (b) all losses of aquacultural produce by any means, including predation and weather;
 - (c) all on-site inventory;
 - (d) any information that the Minister requires to be recorded.
- (2) An aquaculture licence holder must retain each record maintained under subsection (1) at their normal place of business for at least 7 years from the date of the last entry in the record.
- (3) On request, an aquaculture licence holder must provide the Minister or the Minister's designate with any information from their records that is specified in the request in the manner and within the time period specified in the request.
- (4) An aquaculture licence holder must submit an annual report to the Minister at a time determined by the Minister that sets out any information required by the Minister concerning the aquaculture licence holder's use of the aquaculture site under the licence and the productivity of the site.

No sublicensing or subletting

- 59** (1) A holder of an aquaculture licence must not sublicense their interest in an aquaculture site.
- (2) A holder of an aquaculture lease must not sublet their interest in an aquaculture site.
- (3) A sublicense or sublease contrary to this Section is void.

Use of aquaculture site

- 59A** An aquaculture licence holder must use all of the aquaculture site for aquaculture purposes, to the degree and in the manner determined by the Administrator.

Discontinuance of Aquacultural Operation at Marine Site

Request for certificate of discharge

- 60** (1) On revocation of an aquaculture licence or aquaculture lease by the Administrator under Section 59A of the Act, or on the decision of an aquaculture licence holder to discontinue their marine aquacultural operation, the former aquaculture licence holder or aquaculture licence holder must obtain a certificate of discharge from the Administrator.

- (2) A request to the Administrator for a certificate of discharge must include all of the following:
- (a) a remediation plan;
 - (b) an anticipated date of completion of the remediation plan;
 - (c) payment of any outstanding fees that are owed for the aquaculture licence or aquaculture lease.
- (3) On receipt of a request for a certificate of discharge, the Administrator must do 1 of the following with respect to the remediation plan submitted with the request:
- (a) accept the remediation plan as submitted; or
 - (b) establish an amended remediation plan with or without adjusting the anticipated date of completion of the remediation plan.

When Minister may remediate aquaculture site

- 61 (1) The Minister may remediate an aquaculture site at the risk and expense of a former aquaculture licence holder or aquaculture licence holder in either of the following circumstances:
- (a) the site is not remediated in accordance with the remediation plan by the anticipated date of completion provided in a request for a certificate of discharge under Section 60;
 - (b) the site is abandoned without the former aquaculture licence holder or aquaculture licence holder first requesting a certificate of discharge from the Administrator.
- (2) The Minister may draw on the security bond of the former aquaculture licence holder or aquaculture licence holder to remediate an aquaculture site.

Certificate of discharge

- 62 On completion of a remediation plan established under Section 60 or a remediation carried out by the Minister under Section 61, the Administrator must issue a certificate of discharge to the former aquaculture licence holder or aquaculture licence holder and release any outstanding portion of their security bond.

Reallocated Marine Aquaculture Sites

Definition for Sections 64 to 67

- 63 In Sections 64 to 67, “proposal” means a proposal for the exclusive right to apply for reallocation of a marine aquaculture site.

Call for proposals

- 64 (1) The Administrator may issue a call for proposals.
- (2) A call for proposals must include any details the Administrator considers necessary, including all of the following:
- (a) a description of the location and size of the aquaculture site;
 - (b) the types of species to be cultivated;
 - (c) the method of cultivation to be used;
 - (d) the deadline for submitting a proposal.

Evaluating proposals

- 65 (1) The Administrator may establish the criteria for selecting a proposal and may, in the Administrator’s sole discretion, do any of the following:
- (a) select a proposal as submitted;

- (b) select a proposal but require variations to the proposal;
 - (c) not select any proposals.
- (2) On selecting a proposal, the Administrator must notify the successful proponent of the selection and of any variations to the proposal required by the Administrator under clause (1)(b).

Application requirements for reallocation of marine aquaculture site

- 66** (1) A proponent whose proposal is selected by the Administrator and who wishes to apply for an aquaculture licence and aquaculture lease for the aquaculture site being reallocated must submit their application no later than 90 days after the date of the Administrator's notice under subsection 65(2).
- (2) In addition to any information required by the Minister under Section 46 of the Act, an application referred to in subsection (1) must be accompanied by a development plan together with any information or documentation that the Administrator considers necessary to assess the application.

Aquaculture Development Areas

Definition for Sections 68 to 70

- 67** In Sections 68 to 70, "proposal" means a proposal for the exclusive right to apply for an aquaculture licence and aquaculture lease for a site in an aquaculture development area.

Call for proposals

- 68** (1) The Minister may issue a call for proposals.
- (2) A call for proposals must include any details the Minister considers necessary, including all of the following:
- (a) a description of the location of the aquaculture development area;
 - (b) the types of species to be cultivated;
 - (c) the method of cultivation to be used;
 - (d) the size of the sites within the aquaculture development area;
 - (e) the deadline for submitting a proposal.

Evaluating proposals

- 69** (1) The Administrator may establish the criteria for selecting a proposal and may, in the Administrator's sole discretion, do any of the following:
- (a) select 1 or more proposals as submitted;
 - (b) select 1 or more proposals but require variations to the proposal or proposals;
 - (c) not select any proposals.
- (2) On selecting a proposal, the Administrator must notify the successful proponent of the selection and of any variations to the proposal required by the Administrator under clause (1)(b).

Application requirements for licence and lease in aquaculture development area

- 70** (1) A proponent whose proposal is selected by the Administrator and who wishes to apply for an aquaculture licence and aquaculture lease for a site within the aquaculture development area must submit their application no later than 90 days after the date of the Administrator's notice.
- (2) In addition to any information required by the Minister under Section 46 of the Act, an application referred to in subsection (1) must be accompanied by a development plan together with any information or documentation that the Administrator considers necessary to assess the application.

Performance Reviews Conducted by Administrator

Definition for Sections 72 and 73

- 71** (1) In Sections 72 and 73, “performance review” means a performance review of an aquacultural operation required by this Section.
- (2) The Administrator or a person designated by the Administrator must conduct performance reviews of aquacultural operations at the times specified in Section 72.
- (3) The Minister must determine the criteria for and scope of a performance review.

Timing of performance reviews

72 The times specified for performance reviews are as follows:

- (a) for a new aquaculture licence, following the first production cycle, as determined on initial issuance of the licence;
- (b) on receiving an application to assign the aquaculture licence or aquaculture lease for the operation;
- (c) on receiving an application to renew the aquaculture licence or aquaculture lease for the operation;
- (d) on receiving an application for an amendment to the aquaculture licence or aquaculture lease for the operation that is under the jurisdiction of the Administrator;
- (e) before entering the information related to that site into the aquaculture registry;
- (f) at any time the Minister considers a performance review to be necessary.

Outcomes of performance review

- 73** (1) On completion of a performance review, the Administrator must notify the aquaculture licence holder of the outcome of the review.
- (2) In a notice under subsection (1), the Administrator may address concerns raised in the review by either
- (a) varying the terms and conditions of the aquaculture licence or aquaculture lease; or
 - (b) revoking the aquaculture licence or aquaculture lease in accordance with Section 59A of the Act.

Fee Payments and Fee Waivers

Fees required

- 74** (1) A fee must be paid for each application, renewal, assignment and amendment of an aquaculture licence or aquaculture lease under the Act or these regulations.
- (2) All fees are payable to the Minister of Finance and Treasury Board.
- (3) All fees are non-refundable.

Application fee payable on date application submitted

- 75** An application under these regulations is not considered complete and ready for processing until the application fee is paid.

Prescribed Fees

Fee to secure option to lease

- 76** The fee to secure an option to lease is \$500.00.

Fees for aquaculture licence and aquaculture lease applications

- 77 (1) For an aquacultural operation at a marine aquaculture site that is in an area not designated as an aquaculture development area, or at a reallocated site, the application fee is as set out in the following table:

Application Type	Application Fee	
	Licence	Lease
New licence or lease for finfish operation	\$1000.00	\$1000.00
New licence or lease for operation using only bottom shellfish without gear operation	\$250.00	\$250.00
New licence for operation using bottom shellfish with gear method	\$375.00	\$375.00
New licence or lease for suspended shellfish operation	\$500.00	\$500.00
New licence or lease for operation using suspended method for marine plants or other species	\$250.00	\$250.00
Amendment to add finfish to a non-fish operation	\$1000.00	\$1000.00
Amendment to add or change species, other than to add finfish to a non-fish operation	\$250.00 per species	\$250.00 per species
Amendment to change culture method to include suspended shellfish	\$375.00	\$375.00
Amendment to change culture method to include bottom shellfish with gear	\$250.00	\$250.00
Amendment to change culture method to include bottom shellfish without gear	\$125.00	\$125.00
Amendment to change site boundaries	\$500.00	\$500.00
Assignment	\$250.00	\$250.00
Renewal, other than renewal of special experimental licence or lease	\$500.00	\$1000.00
New special experimental licence or lease	\$250.00	\$250.00
Renewal of special experimental licence or lease	\$50.00	\$50.00
Amendment to site configuration without adding gear	\$125.00	\$125.00
Amalgamation of aquaculture licences or aquaculture leases and their associated aquaculture sites	\$500.00	\$500.00
New institutional licence or institutional lease	\$250.00	\$250.00
Renewal of institutional licence or institutional lease	\$125.00	\$125.00

- (2) For an aquaculture site that is in an aquaculture development area, the application fee is as set out in the following table:

Application type	Application Fee	
	Licence	Lease
New licence or lease for finfish operation	\$2000.00	\$2000.00

New licence or lease for operation using only bottom shellfish without gear operation	\$500.00	\$500.00
New licence for operation using bottom shellfish with gear method	\$750.00	\$750.00
New licence or lease for suspended shellfish operation	\$1000.00	\$1000.00
New licence or lease for operation using suspended method for marine plants or other species	\$500.00	\$500.00
Amendment to add finfish to a non-fish operation	\$2000.00	\$2000.00
Amendment to add or change species, other than to add finfish to a non-fish operation	\$500.00 per species	\$500.00 per species
Amendment to change culture method to include suspended shellfish	\$750.00	\$750.00
Amendment to change culture method to include bottom shellfish with gear	\$500.00	\$500.00
Amendment to change culture method to include bottom shellfish without gear	\$250.00	\$250.00
Amendment to change site boundaries	\$1000.00	\$1000.00
Assignment	\$250.00	\$250.00
Renewal, other than renewal of special experimental licence or lease	\$500.00	\$1000.00
New special experimental licence or lease	\$250.00	\$250.00
Renewal of special experimental licence or lease	\$50.00	\$50.00
Amendment to site configuration without adding gear	\$125.00	\$125.00
Amalgamation of aquaculture licences or aquaculture leases and their associated aquaculture sites	\$500.00	\$500.00
New institutional licence or institutional lease	\$250.00	\$250.00
Renewal of institutional licence or institutional lease	\$125.00	\$125.00

(3) For a land-based aquaculture site, the application fee is as set out in the following table:

Application Type	Application Fee
Licence for new commercial operation	\$500.00
Amendment to licence to add or change species	\$250.00 per species
Commercial licence renewal	\$500.00
Licence assignment	\$250.00
New institutional licence	\$250.00
Renewal of institutional licence	\$250.00
New special experimental licence	\$250.00
Renewal of special experimental licence	\$50.00

Annual fees

- 78 (1)** Except as provided in subsection (1A) for an institutional lease or institutional licence, an aquaculture licence or aquaculture lease holder must pay an annual fee on each anniversary date of the issuance of the licence or lease.

(1A) There is no annual fee for an institutional lease or an institutional licence.

- (2)** An annual fee that is not paid on the anniversary date of the issuance of the aquaculture licence or aquaculture lease is subject to a late fee.
- (3)** For any type of aquacultural operation other than one conducted under an institutional lease or institutional licence, the following annual fees apply:

Item	Annual Fee
Aquaculture licence	\$398.10
Aquaculture lease	\$13.30/ha
Late fee	10% of annual fee amount or \$100, whichever is more

- (4)** If an amendment to an aquaculture lease results in a change to the annual fee, the annual fee payable for the year of the amendment is adjusted on a pro rata basis from the date of the amendment.
- (5)** The holder of an aquaculture licence to operate a u-fish pond is eligible for a rebate of \$124.60 on their annual fees.

Minister may waive annual fee

- 79 (1)** The Minister may waive annual fees payable by a person in connection with an aquaculture licence or aquaculture lease if all of the following conditions are met:
- (a) existing environmental, food safety, market or fish health conditions have resulted in a loss to the person;
 - (b) the loss referred to in clause (a) cannot, in the opinion of the Minister, be mitigated;
 - (c) significant hardship is demonstrated by the person.
- (2)** An annual fee waiver granted under subsection (1) may apply to any of the following:
- (a) 1 or more classes of aquacultural operations;
 - (b) 1 or more species of aquacultural produce;
 - (c) 1 or more geographic areas.
- (3)** A request to have an annual fee waived must be accompanied by any supporting information required by the Minister.
- (4)** Once a year, the Minister must review the records of fees waived during the preceding year.

Legislative History Reference Tables

Aquaculture Licence and Lease Regulations
Fisheries and Coastal Resources Act

N.S. Reg. 347/2015

Note: The information in these tables does not form part of the regulations and is compiled by the Office of the Registrar of Regulations for reference only.

Source Law

The current consolidation of the *Aquaculture Licence and Lease Regulations* made under the *Fisheries and Coastal Resources Act* includes all of the following regulations:

N.S. Regulation	In force date*	How in force	Royal Gazette Part II Issue
347/2015	Oct 26, 2015	date specified	Nov 13, 2015
186/2019	Nov 12, 2019	date specified	Dec 6, 2019

The following regulations are not yet in force and are not included in the current consolidation:

N.S. Regulation	In force date*	How in force	Royal Gazette Part II Issue
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*See subsection 3(6) of the *Regulations Act* for rules about in force dates of regulations.

Amendments by Provision

ad. = added
am. = amended

fc. = fee change
ra. = reassigned

rep. = repealed
rs. = repealed and substituted

Provision affected	How affected
2, defn. of “institutional lease”.....	ad. 186/2019
2, defn. of “institutional licence”.....	ad. 186/2019
2, defn. of “security bond”.....	ad. 186/2019
9(1).....	rs. 186/2019
11A.....	ad. 186/2019
11B.....	ad. 186/2019
16.....	am. 186/2019
24.....	ra. as 24(1), 186/2019
24(1).....	ra. from 24, 186/2019; am. 186/2019
24(2).....	ad. 186/2019
26(1).....	am. 186/2019
26(1A).....	ad. 186/2019

ad. = added
am. = amended

fc. = fee change
ra. = reassigned

rep. = repealed
rs. = repealed and substituted

Provision affected	How affected
33(1).....	rs. 186/2019
38(1)(a).....	am. 186/2019
38(1)(h).....	ad. 186/2019
38(2).....	am. 186/2019
38(2)(b).....	am. 186/2019
38(2)(c)-(d).....	ad. 186/2019
41(4).....	ra. from 41(5), 186/2019
41(5).....	ra. as 41(4), 186/2019
41(5).....	ra. from 41(6), 186/2019
41(5)(d).....	am. 186/2019
41(5)(e).....	ad. 186/2019
41(6).....	ra. as 41(5), 186/2019
51.....	rs. 186/2019
51A.....	ad. 186/2019
51B.....	ad. 186/2019
53.....	am. 186/2019
56(6A).....	ad. 186/2019
59A.....	ad. 186/2019
62.....	am. 186/2019
77(1)-(3).....	am. 186/2019
78(1).....	am. 186/2019
78(1A).....	ad. 186/2019
78(3).....	am. 186/2019
79.....	am. 186/2019

Note that changes to headings are not included in the above table.

Editorial Notes and Corrections

Note	Effective date
1 Original text does not include subsection 41(4). (corrected by N.S. Reg 186/2019)	

Repealed and Superseded

N.S. Regulation	Title	In force date	Repealed date
15/2000	Aquaculture Licence and Lease Regulations	Feb 2, 2000	Oct 26, 2015

Note: Only regulations that are specifically repealed and replaced appear in this table. It may not reflect the entire history of regulations on this subject matter.

TAB E

This consolidation is unofficial and is for reference only. For the official version of the regulations, consult the original documents on file with the [Office of the Registrar of Regulations](#), or refer to the [Royal Gazette Part II](#).

Regulations are amended frequently. Please check the list of [Regulations by Act](#) to see if there are any recent amendments to these regulations filed with our office that are not yet included in this consolidation.

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Aquaculture Management Regulations
made under Section 64 of the
Fisheries and Coastal Resources Act
S.N.S. 1996, c. 25
O.I.C. 2015-339 (effective October 26, 2015), N.S. Reg. 348/2015
amended to O.I.C. 2019-218 (effective August 13, 2019), N.S. Reg. 118/2019

Table of Contents

Please note: this table of contents is provided for convenience of reference and does not form part of the regulations.

[Click here to go to the text of the regulations.](#)

Table of Contents

Citation	
Definitions	
Administration	
Chief Aquatic Animal Health Veterinarian	
Release of information to the public	
Farm Management Plans	
Farm Management Plan and record of amendments	
Required content for Farm Management Plan	
Minister may require amendments to Farm Management Plan	
Adherence to Farm Management Plan	
Fish health content	
Environmental monitoring content for finfish in marine aquaculture site	
Environmental monitoring content for shellfish and plants in marine aquaculture site	
Environmental monitoring content for land-based aquaculture site	
Alternative procedures to achieve effective environmental monitoring	
Farm operations content	
Containment management content	
Aquaculture Management Areas	
Minister may define aquaculture management area	
Agreement among multiple licensees in aquaculture management area	
Disease Surveillance and Reporting	
Health records for aquaculture sites	
Diagnostic testing by approved laboratory	
Mandatory reporting of products used for treatments	
Mandatory reporting of disease or mortality	
Managing Outbreaks of Disease	
Outbreak of disease	
Authority during outbreak	
Minister may make quarantine order	
Serving quarantine order	
Minister may order slaughter, destruction or disposal	
Disease management measures for quarantine area	
Testing and sampling restocked fish in quarantine area	

- Consequences of non-compliance
 - Environmental Monitoring Management
 - Requirements for stocking
 - Updating mitigation plan
 - Oxic conditions remediation requirements
 - Containment Management Monitoring
 - Mandatory notification to Department of breach
 - Third-party audit of containment management section required
 - Report to Minister on third-party audit of containment management section
 - Adopted federal containment management procedures
 - Audits of Farm Management Plans
 - Appointment of aquaculture management specialist
 - When audit may be conducted
 - Powers of auditor
 - Records, Reports and Release of Information
 - Records to be kept by aquaculture licence holder
 - Documents requested by auditor
 - Reports on records
 - Aquatic Animal Health Transfer Permit
 - Obtaining permit
 - Permit required for transfer
 - Permit kept and produced on request
-

Citation

1 These regulations may be cited as the *Aquaculture Management Regulations*.

Definitions

2 In these regulations,

“biosecurity measures”, in relation to an aquaculture site, means the measures taken to prevent the entry or escape of disease causing agents;

“breach” means any escaping of fish from an aquaculture site;

“Chief Aquatic Animal Health Veterinarian” means the veterinarian appointed by the Minister under Section 3;

“containment management” means the structures in place, and practices carried out, to contain the fish at an aquaculture site;

“critical control limit” means the level or range of a value measured at a critical control point at which no remedial action is required;

“critical control point” means a stage in a procedure at which an action could be taken, if necessary, to prevent, eliminate or reduce a risk;

“disease” means any condition that adversely affects the health of fish;

“fallow period” means a period of time during which aquacultural produce must not be present and aquaculture must not be carried out at an aquaculture site;

“Farm Management Plan” means the document required by Section 5 that sets out how the aquaculture licence holder must address issues such as fish health management, environmental monitoring, farm operations and containment management at their aquacultural operation;

“fish” means any finfish or shellfish;

“holding unit” means a cage, tank, pond or other device used to contain, hold or demarcate groups of fish;

“laboratory” means any of the following:

- (i) a laboratory operated or managed by an aquaculture licence holder,
- (ii) a veterinary diagnostic or research laboratory,
- (iii) a medical or clinical diagnostic laboratory,
- (iv) a medical research laboratory;

“mitigation plan” means a mitigation plan to address poor environmental performance determined through monitoring, as required by clause 10(1)(e) or 11(1)(e) for a marine aquaculture site or by subsection 12(1) for a land-based aquaculture site;

“oxic conditions”, in relation to sub-aquatic lands, means oxygen availability indicated directly or indirectly by a verifiable and quantifiable measure;

“quarantine” means the isolation of an aquaculture site and the control or prohibition of the movement of fish, fish products, food, equipment or any other thing to or from the site;

“quarantine order” means an order for a quarantine issued by the Minister under Section 24;

“test”, in relation to an aquatic animal, includes the collection of body tissue or fluid from the aquatic animal for the purpose of determining whether the animal is infected with a disease causing agent;

“veterinarian” means a person who is permitted to practise veterinary medicine in the Province under the *Veterinary Medical Act*;

“veterinary administrator” means a veterinarian employed by the Department to assist in administering these regulations.

Administration

Chief Aquatic Animal Health Veterinarian

- 3** (1) The Minister must appoint a person as the chief aquatic animal health veterinarian to administer parts of these regulations.
- (2) In the absence of the Chief Aquatic Animal Health Veterinarian, the Minister may temporarily delegate the powers and duties of the Chief Aquatic Animal Health Veterinarian to a veterinary administrator.
- (3) The Chief Aquatic Animal Health Veterinarian or a veterinary administrator, in exercising powers under these regulations, may be accompanied by any person they consider necessary to enable them to exercise those powers.

Release of information to the public

- 4** The Minister may establish policies for the routine release to the public of aquaculture related information held by the Department, including policies for any of the following:
- (a) the type of information to be released;
 - (b) the manner in which information is released;
 - (c) the timing of the release of information.

Farm Management Plans

Farm Management Plan and record of amendments

- 5** (1) An aquaculture licence holder must prepare a Farm Management Plan in accordance with these regulations.
- (1A) Before the initial stocking of their aquaculture site, an aquaculture licence holder must notify the Minister that they have prepared their Farm Management Plan, and make it available for review and approval by the Minister.
- (2) An aquaculture licence holder must keep a record of any amendments to their Farm Management Plan, to be provided as required as part of an audit under Section 38.

Required content for Farm Management Plan

- 6** (1) A Farm Management Plan must include any information required by the Minister, including sections for all of the following:
- (a) fish health management, in accordance with Section 9;
 - (b) environmental monitoring, in accordance with Sections 10 to 13;
 - (c) farm operations, in accordance with Section 14;
 - (d) containment management, in accordance with Section 15, for holders of aquaculture licences for finfish in marine aquaculture sites.
- (2) Each procedure contained in a Farm Management Plan must include any of the following that apply with respect to that procedure:
- (a) critical control points;

- (b) critical control limits;
 - (c) details about how the procedure is to be monitored;
 - (d) details about corrective actions to be taken.
- (3) The Minister may establish minimum requirements for the procedures referred to in subsection (2).
- (4) The Minister must publish any minimum requirements established under subsection (3) on the Department's website.

Minister may require amendments to Farm Management Plan

7 On reviewing a Farm Management Plan, the Minister may require the Plan to be amended.

Adherence to Farm Management Plan

8 An aquaculture licence holder must adhere to the procedures contained in their Farm Management Plan and must keep records that

- (a) verify adherence to the procedures; and
- (b) demonstrate that effective action was taken at critical control points.

Fish health content

- 9 (1) The fish health section of a Farm Management Plan must include any information and procedures the Minister requires to ensure the effective management of fish health at an aquacultural operation, including all of the following:
- (a) for a holder of an aquaculture licence for shellfish, shellfish husbandry;
 - (b) for a holder of an aquaculture licence for finfish, all of the following:
 - (i) finfish husbandry and welfare,
 - (ii) veterinary care and disease surveillance practices,
 - (iii) culling and mass stock depopulation practices;
 - (c) biosecurity measures;
 - (d) general emergency measures, other than culling or mass stock depopulation practices.
- (2) In addition to the procedures required by subsection (1), the fish health section of a Farm Management Plan for an aquacultural operation in which trout or salmon is farmed at a marine aquaculture site must include procedures for managing sea lice.
- (3) The holder of an aquaculture licence for finfish in a marine aquaculture site must prepare an updated fish health section of their Farm Management Plan for approval for each production cycle, at a time determined by the Minister.

Environmental monitoring content for finfish in marine aquaculture site

- 10 (1) For a holder of an aquaculture licence for finfish in a marine aquaculture site, the environmental monitoring section of a Farm Management Plan must include any information and procedures the Minister requires to ensure the effective environmental monitoring of the site, including all of the following:
- (a) processes for measuring oxie conditions within the boundaries of the site and at any other locations determined by the Minister;
 - (b) the monitoring schedule and associated process for reporting results;
 - (c) sampling locations for each monitoring event;

- (d) processes for assessing and reporting on the stocking levels associated with monitoring events;
 - (e) a mitigation plan.
- (2) Any information resulting from the environmental monitoring procedures required by subsection (1) must be submitted by the aquaculture licence holder to the Minister on annual basis, at a time determined by the Minister.

Environmental monitoring content for shellfish and plants in marine aquaculture site

- 11 (1) For the holder of an aquaculture licence for shellfish or plants in a marine aquaculture site, the environmental monitoring section of a Farm Management Plan must include any information and procedures the Minister requires to ensure the effective environmental monitoring of the site, including a mitigation plan.
- (2) Any information resulting from the environmental monitoring procedures required by subsection (1) must be submitted by the aquaculture licence holder to the Minister, at a time determined by the Minister.

Environmental monitoring content for land-based aquaculture site

- 12 (1) The environmental monitoring section of a Farm Management Plan for a holder of an aquaculture licence for a land-based aquaculture site must include any information and procedures the Minister requires to ensure the effective environmental monitoring of that type of aquacultural operation, including a mitigation plan.
- (2) Any information resulting from the environmental monitoring procedures required by subsection (1) must be submitted by the aquaculture licence holder to the Minister periodically, at a time determined by the Minister.

Alternative procedures to achieve effective environmental monitoring

- 13 If an aquaculture licence holder establishes to the Minister's satisfaction that not all of the requirements in these regulations are relevant to their aquacultural operation, or that different requirements would be more appropriate to achieve effective environmental monitoring of their aquacultural operation, the Minister may do any of the following:
- (a) waive the requirement for the aquaculture licence holder to provide all of the information and procedures required by these regulations;
 - (b) accept alternative information and procedures proposed by the aquaculture licence holder.

Farm operations content

- 14 The farm operation section of a Farm Management Plan must include any information the Minister requires to ensure the responsible operation of an aquacultural operation, including information and procedures that are consistent with industry best practices relating to all of the following:
- (a) storing and disposing of feed, fuel, lubricants and chemicals;
 - (b) removing and disposing of accumulated refuse and decommissioned farm supplies and equipment;
 - (c) retrieving any gear or debris from the aquacultural operation that has broken loose;
 - (d) interactions with wildlife;
 - (e) maintaining the site in good order;
 - (f) noise.

Containment management content

- 15 The containment management section of a Farm Management Plan for a holder of an aquaculture licence for finfish in a marine aquaculture site must include information and procedures related to all of the following:
- (a) operating procedures that limit the risk of a breach;
 - (b) processes for installing and maintaining infrastructure in place to limit the risk of a breach;

- (c) responses to breaches;
- (d) areas of potential impact if a breach occurs;
- (e) management of the site if unusual events or severe weather occurs;
- (f) schedules for reporting all of the following:
 - (i) initial farm stocking,
 - (ii) inventory levels during production,
 - (iii) audits of the containment management system;
- (g) proof of a professional engineer's approval of the design of the structures in place for containment management;
- (h) a finfish marking plan.

Aquaculture Management Areas

Minister may define aquaculture management area

- 16** The Minister may establish an area with multiple aquaculture sites as an aquaculture management area for the purpose of managing the health of aquatic animals in the area.

Agreement among multiple licensees in aquaculture management area

- 17** (1) If the aquaculture sites within an aquaculture management area established under Section 16 are operated by 2 or more aquaculture licence holders, all the aquaculture licence holders within the aquaculture management area must agree among themselves, in writing, to do all of the following:
- (a) share procedures that are required to be carried out under their Fish Health Management Plans;
 - (b) coordinate treatments where applicable;
 - (c) coordinate fallow periods;
 - (d) create communication protocols concerning all fish health issues of common concern.
- (2) A copy of an agreement required by subsection (1) must be submitted to the Minister annually at a time determined by the Minister.
- (3) If the Minister considers it necessary to better prevent and manage disease, the Minister may require an amendment to any agreement submitted under subsection (2).
- (4) If the aquaculture licence holders within an aquaculture management area fail to agree on any of the requirements in subsection (1), the Minister must determine the requirements and notify the licence holders that they must comply with the Minister's direction.

Disease Surveillance and Reporting

Health records for aquaculture sites

- 18** (1) An aquaculture licence holder must keep health records for the current stock in each of the licence holder's aquaculture sites and must submit the records to the Minister at the Minister's request.
- (2) The Minister may determine the information that an aquaculture licence holder must include in the health records required by subsection (1).

Diagnostic testing by approved laboratory

- 19** (1) In this Section, “approved laboratory” means a laboratory approved by the Minister to conduct diagnostic testing on fish for the purpose of disease surveillance.
- (2) The Chief Aquatic Animal Health Veterinarian may require an aquaculture licence holder to collect and submit samples to an approved laboratory for diagnostic testing.

Mandatory reporting of products used for treatments

20 An aquaculture licence holder must report any use of any of the following at their aquacultural operation to the Minister in the manner and at the times determined by the Minister:

- (a) antibiotics;
- (b) products to treat sea lice.

Mandatory reporting of disease or mortality

21 (1) In this Section,

“mortality event”, in relation to fish in an aquaculture site, means the death of a number of fish

- (i) within a 24-hour period, equivalent to at least 2% of the current aquaculture site inventory, or
- (ii) within a 5-day period, equivalent to at least 5% of the current aquaculture site inventory;

“reportable disease” means a disease that the Minister determines must be reported to the Chief Aquatic Animal Health Veterinarian in accordance with subsection (4).

- (2) The Minister must post a list of all reportable diseases on the Department’s website.
- (3) The reporting requirements in this Section apply to all of the following persons:
- (a) an aquaculture licence holder;
 - (b) a member of the personnel of an aquacultural operation;
 - (c) a veterinarian;
 - (d) a member of the personnel of a laboratory.
- (4) A person listed in subsection (3) must immediately report any of the following to the Chief Aquatic Animal Health Veterinarian by telephone, followed by a written report no later than 24 hours after the telephone report:
- (a) knowledge or suspicion that a fish may have a reportable disease;
 - (b) a mortality event.
- (5) A report under this Section must include the name and contact information of the person who is making the report together with all of the following information, if available, about the aquaculture site and fish that are the subject of the report:
- (a) all of the following information about the aquacultural operation:
 - (i) name of the aquaculture licence holder,
 - (ii) license or lease number,
 - (iii) location of the site, including the address,
 - (iv) holding unit number infected or suspected to be infected;

- (b) the species, age and number of fish in the holding unit;
- (c) the presumptive diagnosis;
- (d) clinical signs of disease in the affected fish;
- (e) the mortality rate.

Managing Outbreaks of Disease

Outbreak of disease

22 For the purposes of Sections 23 and 24, an outbreak of disease is the presence of disease that, in the opinion of the Chief Aquatic Animal Health Veterinarian, requires extraordinary means for control.

Authority during outbreak

23 If the Chief Aquatic Animal Health Veterinarian suspects or considers a situation to be an outbreak of disease, the Chief Aquatic Animal Health Veterinarian or veterinary administrator may

- (a) with respect to each aquaculture site where the disease was reported, do any of the following:
 - (i) take samples of the fish, other organisms or water,
 - (ii) undertake an epidemiological investigation,
 - (iii) order the treatment of a group of fish,
 - (iv) order the vaccination of a group of fish,
 - (v) order that no fish be moved to or from the site,
 - (vi) require the aquaculture licence holder to take enhanced biosecurity measures;
- (b) for the purpose of inspecting or examining fish to determine whether the fish are infected with a disease, do any of the following:
 - (i) stop and inspect any vehicle, including the vehicle's load, in which the Chief Aquatic Animal Health Veterinarian or veterinary administrator believes fish are being or have been transported,
 - (ii) inspect each aquaculture site where the fish originated or to which a disease causing agent may have spread.

Minister may make quarantine order

- 24** (1) The Minister may make an order designating any aquaculture site or any other area where an outbreak of disease is known or suspected as a quarantine area.
- (2) A quarantine order may include any conditions or restrictions with respect to the quarantine area that the Minister considers necessary or advisable in the circumstances, including biosecurity measures.

Serving quarantine order

25 A quarantine area order must be served on each holder of an aquaculture licence for an aquaculture site within the quarantine area.

Minister may order slaughter, destruction or disposal

- 26** (1) The Minister may order the slaughter, destruction or disposal of any fish in a quarantine area.
- (2) Nothing in these regulations imposes an obligation on the Minister to pay compensation for any fish slaughtered, destroyed or disposed of under an order under subsection (1).

Disease management measures for quarantine area

- 27 (1)** The Chief Aquatic Animal Health Veterinarian may specify disease management measures required for complying with a quarantine order, including any of the following:
- (a) controlling the movement of any fish or thing into or out of the quarantine area;
 - (b) slaughtering, destroying or disposing of any fish in the quarantine area, as ordered under Section 26;
 - (c) operating a disinfection station at the entrance to and exit from any aquaculture site in the quarantine area;
 - (d) disinfecting any thing in the quarantine area;
 - (e) eradicating the disease or disease causing agents in the quarantine area;
 - (f) establishing a fallow period for the quarantine area;
 - (g) preventing the spread of the disease or disease-causing agents out of or into the quarantine area.
- (2)** An aquaculture licence holder whose aquaculture site is the subject of a quarantine order must provide to the Chief Aquatic Animal Health Veterinarian, for approval, written incident-specific information indicating how they will take any disease management measures specified under subsection (1).

Testing and sampling restocked fish in quarantine area

- 28 (1)** The Chief Aquatic Animal Health Veterinarian may require an aquaculture licence holder whose aquaculture site is subject to a quarantine order to complete specified testing of newly stocked fish within a specified period of time after the date the site is restocked.
- (2)** The Chief Aquatic Animal Health Veterinarian or veterinary administrator may collect samples of newly stocked fish for testing.

Consequences of non-compliance

- 29 (1)** If the Minister believes, on reasonable grounds, that a quarantine order, a disease management requirement under Section 27 or a requirement for testing under Section 28 has not been complied with, the Chief Aquatic Animal Health Veterinarian or veterinary administrator may enter any place in the quarantine area and take or cause to be taken any steps they consider necessary to accomplish the following:
- (a) ensure compliance with the order or requirement;
 - (b) remedy the consequences of the failure to carry out the order or requirement.
- (2)** The Minister may recover any expenses reasonably incurred in taking steps under subsection (1) from the person who failed to comply with the quarantine order or the requirement.

Environmental Monitoring Management

Requirements for stocking

- 30 (1)** In this Section, “baseline assessment” means environmental monitoring procedures carried out at an aquaculture site to record, for the purpose of future comparison, the state of environmental conditions that prevail without aquacultural produce at the site.
- (2)** Before the initial stocking or restocking of a marine finfish aquaculture site, an aquaculture licence holder must obtain the Minister’s approval for the proposed stocking level as being supported by either the baseline assessment of the site or by environmental monitoring results.

Updating mitigation plan

- 31 (1)** If poor environmental performance is determined through monitoring, an aquaculture licence holder must update their mitigation plan to address the poor environmental performance and submit the updated plan for the Minister’s approval.

- (2) An aquaculture licence holder must implement an updated mitigation plan approved under subsection (1) within the timeframe determined by the Minister.

Oxic conditions remediation requirements

- 32** (1) A holder of an aquaculture licence for finfish in a marine aquaculture site must conduct their aquacultural operation in a manner that maintains oxic conditions that indicate that sufficient oxygen is present within the boundaries of their site.
- (2) If monitoring results indicate that the oxic conditions referred to in subsection (1) are not maintained, an aquaculture licence holder must do all of the following:
- (a) conduct follow up (level II) monitoring no later than 35 days after initial (level I) monitoring;
 - (b) submit the results of the follow up (level II) monitoring conducted under clause (a), along with an updated mitigation plan, no later than 14 days after conducting the monitoring, for the Minister's approval.
- (3) In addition to the requirements in subsection (2), the aquaculture licence holder must take any action at the aquaculture site required by the Minister to reduce environmental impact, including any of the following:
- (a) expediting the harvest program;
 - (b) extending a fallow period;
 - (c) limiting approved stocking levels;
 - (d) adjusting the site layout.

Containment Management Monitoring

Mandatory notification to Department of breach

- 33** (1) A holder of an aquaculture licence for finfish in a marine aquaculture site must conduct their aquacultural operation in a manner that is designed to prevent breaches.
- (2) A holder of an aquaculture licence for finfish in a marine aquaculture site or any personnel of their aquacultural operation who know or suspect a breach must immediately notify the Department in the manner determined by the Minister and in accordance with subsection (3).
- (3) A notice required by subsection (2) must include any information the Minister requires to ensure that the suspected or confirmed breach is remedied, including all of the following information:
- (a) name and contact information of the individual who is making the report;
 - (b) suspected date of the breach;
 - (c) all of the following information about the aquacultural operation:
 - (i) name of the aquaculture licence holder,
 - (ii) licence or lease number,
 - (iii) address of the site,
 - (iv) holding unit number where the suspected or confirmed breach occurred;
 - (d) species and approximate age, size, and weight of the fish that escaped;
 - (e) approximate number of fish in the holding unit where the suspected or confirmed breach occurred;
 - (f) freshwater place of origin of the fish that escaped;

- (g) level of the suspected or confirmed breach;
- (h) suspected or confirmed cause of the breach;
- (i) any mitigation efforts that have been undertaken, are in progress or are proposed.

Third-party audit of containment management section required

34 The containment management section of a Farm Management Plan must be audited at all of the following times by a third party approved by the Minister:

- (a) before the initial stocking of an aquaculture site;
- (b) [repealed]
- (c) no later than 30 days after the date that a breach of more than 50 fish is reported;
- (d) when 1 or more cultured salmonids are identified in a water body, for all aquaculture licence holders who have identified the water body in their containment management section as being potentially affected by a breach other than aquaculture licence holders who have an approved marking plan that verifies the fish are not part of their operation;
- (e) other times, as required by the Minister.

Report to Minister on third-party audit of containment management section

35 (1) A report on the results of a third-party audit of the containment management section of a Farm Management Plan must be submitted to the Minister no later than the following dates:

- (a) for an audit required by clause 34(a), (b) or (e), 30 days after the date the audit is completed;
- (b) for an audit required by clause 34(c) or (d), 15 days after the date that the audit is completed.

(2) A report required by subsection (1) must include any corrective actions taken in response to the results of the audit.

Adopted federal containment management procedures

36 (1) If requirements that are more stringent than the requirements for containment management in these regulations are established under the laws of Canada, the Minister may adopt and impose those requirements on aquaculture licence holders.

(2) The Minister must notify all affected aquaculture licence holders before imposing any requirements under subsection (1).

Audits of Farm Management Plans**Appointment of aquaculture management specialist**

37 The Minister may appoint a person as an aquaculture management specialist to audit the implementation of a Farm Management Plan at an aquacultural operation.

When audit may be conducted

38 An aquaculture management specialist, the Chief Aquatic Animal Health Veterinarian, or a veterinary administrator may audit an aquacultural operation's Farm Management Plan at any time.

Powers of auditor

39 As part of an audit under Section 38, an auditor may do any of the following:

- (a) enter and inspect any aquaculture site or any other facility or location that the Farm Management Plan applies to;
- (b) accompany individuals who are collecting or analyzing samples;

- (c) accompany individuals who are inspecting equipment or gear;
- (d) observe and document the procedures used in collecting or analyzing samples;
- (e) collect samples of any substance for examination and analyses;
- (f) examine or test equipment and materials;
- (g) require production of written and electronic copies of procedures, records or documents that they believe contain information related to the Farm Management Plan, and examine and make copies of them.

Records, Reports and Release of Information

Records to be kept by aquaculture licence holder

- 40** (1) An aquaculture licence holder must keep all records relating to their Farm Management Plan at their place of business in the Province, and make them available, in whole or in part, to the Minister on request.
- (2) A record referred to in subsection (1) must be kept for at least 7 years from the date the record is created or updated.

Reports on records

- 41** An aquaculture licence holder must submit reports relating to the records required by these regulations at times determined by the Minister, or on the request of the Minister or the Minister's designate.

Documents requested by auditor

- 41A** An aquaculture licence holder must submit any documents related to an audit under these regulations that are requested by an auditor to the auditor no later than 72 hours after the auditor's request.

Aquatic Animal Health Transfer Permit

Obtaining permit

- 42** (1) In this Section and in Sections 43 and 44, "aquatic animal health transfer permit" means a certificate issued by the Minister that authorizes an aquaculture licence holder to move fish to an aquaculture site.
- (2) An aquaculture licence holder must comply with any conditions set by the Minister for issuing an aquatic animal health transfer permit.
- (3) An aquatic animal health transfer permit must be in the form approved by the Minister.

Permit required for transfer

- 43** An aquaculture licence holder must ensure that an aquatic animal health transfer permit accompanies each group of live fish that is being moved to their aquaculture site.

Permit kept and produced on request

- 44** (1) An aquaculture licence holder must keep a copy at their aquacultural operation of each aquatic animal health transfer permit for fish that have been moved to their aquaculture site.
- (2) An aquaculture licence holder must produce a copy of any aquatic animal health transfer permit for any specified group of fish in the time and manner specified in a request by the Chief Aquatic Animal Health Veterinarian or a person designated by the Minister.

Legislative History Reference Tables

Aquaculture Management Regulations
Fisheries and Coastal Resources Act

N.S. Reg. 348/2015

Note: The information in these tables does not form part of the regulations and is compiled by the Office of the Registrar of Regulations for reference only.

Source Law

The current consolidation of the *Aquaculture Management Regulations* made under the *Fisheries and Coastal Resources Act* includes all of the following regulations:

N.S. Regulation	In force date*	How in force	Royal Gazette Part II Issue
348/2015	Oct 26, 2015	date specified	Nov 13, 2015
118/2019	Aug 13, 2019	date specified	Aug 30, 2019

The following regulations are not yet in force and are not included in the current consolidation:

N.S. Regulation	In force date*	How in force	Royal Gazette Part II Issue
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*See subsection 3(6) of the *Regulations Act* for rules about in force dates of regulations.

Amendments by Provision

ad. = added
am. = amended

fc. = fee change
ra. = reassigned

rep. = repealed
rs. = repealed and substituted

Provision affected	How affected
5(1).....	rs. 118/2019
5(1A).....	ad. 118/2019
9(1)(b).....	rs. 118/2019
9(1)(d).....	am. 118/2019
9(3).....	am. 118/2019
11(1).....	rs. 118/2019
11(2).....	am. 118/2019
15(f).....	am. 118/2019
15(f)(i).....	am. 118/2019
15(f)(ii).....	am. 118/2019
15(f)(iii).....	ad. 118/2019
15(g).....	am. 118/2019

ad. = added
am. = amended

fc. = fee change
ra. = reassigned

rep. = repealed
rs. = repealed and substituted

Provision affected	How affected
15(h).....	ad. 118/2019
21(1) defn. of “mass mortality”.....	rep. 118/2019
21(1) defn. of “mortality event”.....	ad. 118/2019
21(1) defn. of “reportable disease”..	am. 118/2019
21(1) defn. of “significant mortality event”.....	rep. 118/2019
21(4)(b).....	am. 118/2019
21(4)(c).....	rep. 118/2019
30(2).....	am. 118/2019
32(2)(a).....	am. 118/2019
34(b).....	rep. 118/2019
34(d).....	am. 118/2019
34(e).....	rs. 118/2019
40(1).....	am. 118/2019
41A.....	ad. 118/2019
42(1).....	am. 118/2019
42(2).....	am. 118/2019
42(3).....	am. 118/2019
43.....	rs. 118/2019
44(1).....	am. 118/2019
44(2).....	am. 118/2019

Note that changes to headings are not included in the above table.

Editorial Notes and Corrections

Note	Effective date
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Repealed and Superseded

N.S. Regulation	Title	In force date	Repealed date
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Note: Only regulations that are specifically repealed and replaced appear in this table. It may not reflect the entire history of regulations on this subject matter.