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By Nova Scotia Aquaculture Review Board at 4:37 pm, Nov 28, 2025

NSARB-2023-001-AFF-006

Nova Scotia Aquaculture Review Board

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

- and -

IN THE MATTER OF: Applications made by KELLY COVE SALMON LTD. for a BOUNDARY AMENDMENT and for the cultivation of ATLANTIC SALMON (*Salmo salar*) – AQ#1205x

**Post Hearing Submissions on behalf of
The Region of Queen's Municipality**

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OVERVIEW

1. The Region of Queen's Municipality ("**RQM**") makes the following post-hearing submissions in opposition to the boundary amendment application filed by Kelly Cove Salmon Ltd., ("**KCS**") seeking an expansion of its existing marine aquaculture lease boundaries and the addition of six cages for the cultivation of Atlantic Salmon (*Salmo salar*) in Liverpool Bay, Queen's County (the "**Coffin Island Site**" and the "**Application**").
2. The parties in this Application, KCS, the Nova Scotia Department of Fisheries and Aquaculture (the "**Department**" or "**NSDFA**") and Intervenors: the Protect Liverpool Bay Association ("**PLBA**"), 23 Fishermen, Kwilmu'kw Maw-Klusuaqn ("**KMK**") and RQM appeared before the Nova Scotia Aquaculture Review Board (the "**Board**") from October 7-10 and 31st, 2025.
3. Pursuant to section 16 of the *Aquaculture License and Lease Regulations* (the "**Regulations**")¹, the full Application package, a report on any outcomes of government consultation undertaken concerning the Application and a report on any outcomes of the performance review conducted concerning the Application, were filed as part of the record in this matter.
4. In addition, the parties filed issue lists, witness lists and affidavit evidence including expert evidence. Public submissions formed part of the record and additional exhibits were tendered throughout the hearing. The Board also heard oral submissions from the public on the first day of the hearing.
5. Lease AQ#1205 is located in Liverpool Bay, within the municipal boundaries of RQM. RQM includes several communities along Nova Scotia's South Shore. At the time of the Application, RQM's vision was "to be a place where communities respect the natural environment, possess strong character, enjoy access to a variety of recreational opportunities and continue to develop an economy that builds on the assets of RQM as a whole".²

¹ amended to O.I.C. 2019-322 (effective November 12, 2019), N.S. Reg. 186/2019, RQM Book of Authorities ("**BOA**") Tab 1.

² Exhibit 5, Application Package Vol 1, p. 114.

6. The Board must consider the eight factors set out in Section 3 (the “**Factors**”) of the *Regulations*,³ when determining whether KCS’s application for the expansion should be approved. In a previous decision, the Board has determined, that ultimately it must find that KCS’ Application would result in the “optimum use of marine resources”, after assessing the evidence of all the Factors.⁴
7. The Board has determined in previous decisions that it is not tasked with determining whether aquaculture is generally good for the province and the provincial economy, but instead whether the evidence pertaining to the specific Application supports a finding that the proposed operation is an optimum use of marine resources.
8. The Factors include:

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;

³ *Regulations*, BOA Tab 1

⁴ Decision Order, *Grand Pass Oyster Ltd.* NSARB 2020-001 to 003, p. 4 para 1 BOA Tab 2.

9. RQM respectfully asks this Board to consider the following issues:
- i. Will the expansion negatively impact the Municipality's brand investment, brand integrity and tourism industry including from further industrialization of the harbour, unsightliness, and from debris from the operation (affecting Factors (a)(b) and (e)).
 - ii. Will the expansion have a negative impact on the benthic health and species richness and diversity of Liverpool Bay at large and specifically beneath and near the operation area (affecting Factors (a), (c), and (d)).
 - iii. Will the expansion will increase the risk of attraction of shark species to the area (affecting Factors (b), (c) and (g)).
10. RQM submits that the evidence before the Board is insufficient to find that the Application represents the optimum use of marine resources, when all the evidence underlying the Factors is considered on balance.
11. KCS' evidence in support of Factor 3(b) relies on vague narrative representations concerning the relationships KCS has fostered within RQM. The testimony of KCS' Global Sustainability Officer Michael Szemerda confirmed that KCS chose not to provide particulars or even the business names of the local suppliers it purportedly contracts with in RQM.
12. While the NSDFA circulated the Application among it's review team, the Department did not provide evidence that KCS' representations concerning Factor 3(b) were verified through the review process.
13. The representations concerning KCS' contributions to RQM are bald assertions, insufficient to find the proposed operation will contribute to local economic development. KCS attempts to rely on community relationships and supplier contracts, which purportedly benefit RQM without sufficient proof that those relationships and supplier contracts exist.

14. RQM expert Dr. Cranford was qualified by the Board as a subject matter expert in the fields of aquaculture, environment interactions, environmental monitoring and management, benthic ecology, biological oceanography and environmental sensing capable of giving opinion evidence on the oceanographic and biophysical characteristics of ocean waters, including the impact these characteristics have on fish habitat, fish prey species, ecology and environment.
15. Dr. Cranford's report provides persuasive evidence that the regulatory method for measuring free sulfide in benthic sediment is inaccurate. As free sulfide concentration is the primary indicator of an oxic environment and benthic health, the Board cannot rely on the evidence that the Coffin Island Site has maintained oxic status historically.
16. As free sulfide concentration is toxic to prey species consumed by commercial groundfish in Liverpool Bay, the Application may pose a risk to the ecological health of the area surrounding the Coffin Island Site, up to 30m.
17. RQM expert Susan McGibbon was qualified by the board as an expert in the fields of marketing and creative industries as well as brand management, capable of giving evidence on the impacts of the Application on RQM's Queen's Coast Brand.
18. Ms. McGibbon's expert opinion is that additional finfish aquaculture within the Region would be strategically opposite philosophically and economically to environmental elements that form the basis for RQM's brand. RQM invested \$337,568 in branding related expenses from 2019-2024.⁵
19. Any contribution to community and provincial economic benefit of the Application must be offset by the resulting degradation of RQM's brand integrity. KCS has not provided expert evidence to refute Ms. McGibbon's opinion that the Application will negatively impact RQM's brand reputation.
20. KCS relies on the opinion of Mr. Stephen Coyle who was qualified by the Board in the area of tourism, capable of giving opinion evidence on the subjects of aquaculture-tourism interactions, tourism in the South Shore of Nova Scotia including Liverpool Bay, and contemporary trends in preferences of visitors to Nova Scotia.

⁵ Affidavit of Susan McGibbon, Exhibit 50 pgs. 5 and 9; Affidavit of Richard Lane, Exhibit 70, p. 4.

21. Mr. Coyle's report opines that aquaculture generally can positively impact tourism. However, Mr. Coyle confirmed on cross-examination that his report does not distinguish between shellfish and finfish aquaculture, despite citing a study that determined Atlantic Canadians have a more negative perception towards finfish aquaculture.
22. Additionally, Mr. Coyle's analysis is largely premised on the potential of experiential aquaculture in tourism, including a revitalization concept of "working waterfronts". On cross-examination Mr. Coyle confirmed that KCS had not demonstrated any intention for the Coffin Island Site to offer experiential aquaculture. Additionally, Mr. Coyle did not provide evidence of a working waterfront case study that featured a finfish aquaculture site.
23. Mr. Coyle confirmed that he had the opportunity to canvass tourist businesses located in RQM or recent visitors to the area and that he chose not to. For these reasons his report is limited in probative value as it does not deal with the impact on the local tourist industry posed by the expansion, nor does it depend on relevant case studies as the Application will not provide opportunities for experiential aquaculture.
24. Expert Dr. Neil Hammerschlag was qualified by the Board as an expert in the fields of marine biology, ecology and conservation with a specialization in shark movement ecology, behavioural ecology and conservation biology capable of giving opinion evidence on the impact of the Application on sharks and shark behaviour.
25. Dr. Hammerschlag has opined that the Application poses a threat to the endangered GWS.

FACTS

26. KCS has operated the Coffin Island Site since approximately 2011. The current site size is 3.99 hectares with 14 cages. The lease for AQ#1205 is active until April 1, 2030 and the license is active until April 1, 2040.⁶
27. KCS had submitted a boundary amendment application for the lease and license of AQ#1205 in the fall of 2013, but the application was not processed due to an ongoing regulatory review.⁷

⁶ Affidavit of Nathaniel Feindel, Exhibit 52, para 6.

⁷ Affidavit of Nathaneil Feindel, Exhibit 52, Affidavit Exhibit "E".

28. In 2016 the province identified that KCS was operating outside of the lease boundaries, in contravention of Section 55(2)(b) of the *Regulations*. At that time the Nova Scotia Department of Environment offered KCS two options,
29. The province offered KCS two options to bring the operation into regulatory compliance. The options were: 1) to bring the Coffin Island Site operation within the lease boundaries or 2) to apply for a boundary amendment.⁸ KCS chose to pursue a boundary amendment and was permitted to continue operating the Coffin Island Site with several conditions.⁹
30. On October 28, 2016, KCS submitted its original application for the boundary amendment of #AQ1205.¹⁰ This application was deficient and the NSDFA provided direction to KCS on August 17, 2017 outlining the deficiencies in the application.¹¹
31. On March 6, 2019, Kelly Cove resubmitted its original application.¹² The application submitted in March of 2019 was for the expansion of the Coffin Island Site and two new aquaculture leases and licences for proposed sites located at Brooklyn #AQ1432 and Mersey Point #AQ1433 in Liverpool Bay ("**Original Application**").
32. The Original Application sought an increase of KCS' finfish operation from an area of 3.99 hectares to 40.70 hectares,¹³ with the addition of 46 new cages and 1,540,000 farmed salmon.¹⁴
33. The Original Application underwent review by the NSDFA review team as prescribed by the *Regulations* ("**Review Team**"). The Review Team was led by Nathaniel Feindel.¹⁵
34. The *Regulations* require that the NSDFA undertake consultations with relevant federal and provincial departments or agencies (the "**Network Partners**").¹⁶

⁸ Affidavit of Nathaniel Feindel, Exhibit 52, para 8.

⁹ Affidavit of Nathaniel Feindel, Exhibit 52, Affidavit Exhibit "E".

¹⁰ Affidavit of Nathaniel Feindel, Exhibit 52, para 14, Affidavit Exhibit "F".

¹¹ Affidavit of Nathaniel Feindel, Exhibit 52, para 16, Affidavit Exhibit "G".

¹² Affidavit of Nathaniel Feindel, Exhibit 52, para 17.

¹³ Application Package Vol 1, Exhibit 1, p. 9.

¹⁴ Application Vol 1, Exhibit 5, p. 79.

¹⁵ Affidavit of Nathaniel Feindel, Exhibit 52, para 19.

¹⁶ Affidavit of Nathaniel Feindel, Exhibit 52, para 23.

35. Pursuant to section 11(2) of the *Regulations*, KCS was required to include in its Application, a report and development plan, which must include details and meet criteria required by the NSDFA.
36. In 2019 RQM Council moved to have the Economic Development Department lead a rebranding exercise, which was part of RQM's tourism and economic strategy intended to attract visitors and new residents to RQM.¹⁷
37. In 2019 RQM proceeded with an RFP for a marketing consultant to assist with the rebranding process. The RFP totaled \$60,363.50 and was awarded to m5 Marketing Communications ("**M5**").¹⁸
38. M5 organized extensive public engagement and consultation including public meetings, surveys online, in-person and over the phone, scans of peer positioning and consultation with local tourism and marketing agencies.¹⁹
39. Following M5's public engagement and consultation process M5 recommended and RQM accepted the brand strategy of "Queen's Coast – Seek Nature's Rewards" ("**Queen's Coast Brand**").²⁰
40. The Queen's Coast Brand exemplified that RQM was a place to explore and engage in outdoor adventures, to enjoy the local environment and access nature.²¹
41. In 2019 RQM Council accepted M5's recommendation and proceeded with the Queen's Coast rebranding project.²²
42. On April 27, 2021, RQM was forwarded correspondence from Robert Ceschutti the Manager of Licencing, and Leasing of the NSDFA.²³

¹⁷ Affidavit of Richard Lane, Exhibit 70, paras 4-5.

¹⁸ Affidavit of Richard Lane, Exhibit 70, para 6.

¹⁹ Affidavit of Richard Lane, Exhibit 70, para 8.

²⁰ Affidavit of Richard Lane, Exhibit 70, paras 9.

²¹ Affidavit of Richard Lane, Exhibit 70, para 10.

²² Affidavit of Richard Lane, Exhibit 70, para 11.

²³ Report on the Outcomes of Consultation, Exhibit 4, pgs. 501-502.

43. The NSDFA notification letter to RQM stated that the purpose of the letter was to advise RQM of the Original Application. The letter included a hyperlink to the Development Plan and attached the Schedule "A" for the expansion of the Coffin Island Site and the two new sites.
44. The letter stated that the NSFDA did not require RQM's feedback, but RQM could contact the Department with questions. This NSDFA correspondence with Schedule "A" attachments is the only documentation included in the Municipal Affairs section of the NSFDA's report on outcomes of consultation.²⁴
45. On August 9, 2023, the Original Application was referred to the Board by the Minister of Fisheries and Aquaculture.²⁵
46. On September 19, 2023, RQM applied for intervenor status in opposition to the Application.
47. RQM requested intervenor status, in part on the basis that the industrial scale operations of the Coffin Island Site were in close proximity to RQM's coastlines and Beach Meadows, a municipally owned beach. RQM's application stated further that the operation already detracted from the natural environment, contrary to the Queen's Coast marketing brand and that an increase to the Coffin Island Site would have further impact on the brand integrity.²⁶
48. RQM was granted intervenor status by the Board on October 20, 2023.
49. The parties filed their evidence in response to the Original Application in January of 2024 and rebuttal evidence in February of 2024. The hearing was set to proceed in March of 2024.
50. On March 6, 2024 the Board adjourned the hearing of the Original Application without day.²⁷
51. On June 17, 2025 KCS requested to proceed by separating the applications for new aquaculture leases and licences and that they be placed in abeyance. KCS requested that the application seeking amendments to the boundary and lease and licence for the existing marine finfish farm at Coffin Island #AQ1205 be scheduled for a hearing.²⁸

²⁴ Report on the Outcomes of Consultation, Exhibit 4, p. 501-502.

²⁵ Ministerial Referral Letter, Exhibit 1.

²⁶ RQM Intervenor Application, NSARB-2023-001-INT-007.

²⁷ NSRAB March 6, 2025 Correspondence

²⁸ KCS June 17, 2025 correspondence to the Board.

52. On July 18, 2025 the Board accepted KCS' request to split the applications and provided advance notice that the Application would be heard in October of 2025.²⁹
53. The hearing proceeded based on the evidence filed by the parties in response to the Original Application.

Section 3 Factors

54. RQM submits that the Applicant bears the burden of proof that the Application represents the optimum use of marine resources. While a burden is not made explicit in the *Regulations*, the Board has implicitly applied this principle in its other decisions, wherein each Factor is considered first by assessing the evidence put forward by the Applicant in support of the Application and then considering whether there is any additional evidence which refutes that evidence.
55. In *Judicial Review of Administrative Action in Canada*, Authors Donald J.M. Brown and John M. Evans³⁰ explain this requirement of a Tribunal as follows:

In the absence of a statutory provision to the contrary, generally the person who asserts a proposition bears the burden or onus of proving it.³¹ A distinction must sometimes be made, however, between the onus or burden of proof respecting a particular fact or issue, and the onus of proof as to the overall matter. Thus, although the overall burden of proof may be on the applicant or complainant, it may shift in the course of the proceeding to the respondent. In certain circumstances, such as for example, where only that party has access to relevant information, where an appropriate rebuttable presumption is applicable, or where sufficient evidence has been led to establish a *prima facie* case. Nevertheless, if a tribunal errs as to which party should bear the burden of proof, the courts will intervene, as they will if it is unclear on whom the burden was placed.

Factor 3(b): the contribution of the proposed operation to community and Provincial economic development

56. KCS relies on opaque and unsupported representations about the economic contribution of the Coffin Island Site and requested expansion to RQM. These representations are not

²⁹ NSRAB July 18, 2025 correspondence to the parties.

³⁰ Part IV. Review of Administrative Procedure Chapter 12, s 12:8 (Carswell: available on Westlawnext) Tab 2.

substantiated with particulars, despite one of the criteria of Factor 3(b) including the proposed operation's contribution to community economic development.

57. In effect KCS puts forward relationships and supplier contracts with RQM or other "local" entities, in support of its Application that it has not proven exist and simply asserts.
58. KCS says that the Coffin Island Site is a significant economic contributor RQM. KCS argues that it "contracts with multiple local companies" and with various suppliers including divers, mechanics, boat repair facilities, hardware suppliers etc.³²
59. KCS has not provided the names of these referenced suppliers, where they are located, on what basis it contracts with them, or any details that would properly inform the Board of any quantifiable economic contribution to RQM or the local community.
60. Similarly, KCS states there is potential to build on its existing relationships within RQM.³³ Yet as confirmed during the cross examination of Mr. Szemerda, KCS has not identified what relationships KCS is relying on and with which local entities, groups or persons. The evidence does not assist in weighing the nature of those purported community relationships.
61. KCS has provided some quantifiable particulars concerning various capital investments listed in the Executive Summary of it's Application.³⁴ However, Mr. Szemerda agreed under cross-examination that none of the investments listed indicated they were invested within RQM.
62. In it's 2019 Application, KCS stated that the Coffin Island Site employed eight full-time employees and four part-time employees.³⁵ In January of 2024, KCS' Business Development Manager at the time, Jeffrey Nickerson affirmed that the Coffin Island Site employed 12 full-time employees. This quantification was incorrect and ultimately amended by KCS prior to the hearing, on October 6, 2025.³⁶
63. During his cross-examination Mr. Szemerda testified that further explanation was required concerning the employment at the Coffin Island Site. He stated that in actuality KCS had 12

³² KCS Brief, para 25, Section 2.3 of the Development Plan, Application Package Vol 1, Exhibit 5, p. 82.

³³ Section 2.3 of the Development Plan, Application Package Vol 1, Exhibit 5, p. 54.

³⁴ Executive Summary, Application Vol 1, Exhibit 5, pgs. 53-54.

³⁵ Section 2.3 of the Development Plan, Application Package Vol 1, Exhibit 5, p. 18.

³⁶ Nickerson Affidavit, para 31 as amended.

fulltime “equivalent” positions for the Coffin Island Site. He clarified that the farm employed 5 fulltime staff and “38 people” made up “the rest of the fulltime equivalents”.

64. Based on Mr. Szemerda’s testimony, as of October 2025, KCS employed 38 people on a “part-time” basis, whose cumulative work hours equate to seven fulltime positions.
65. The total hours for seven fulltime positions calculated at eight hours a week, five days a week for 12 months and divided by 38 persons, averages to those 38 persons working 30 hours per year at the Coffin Island Site.
66. Mr. Szemerda could not confirm the salaries for each of the 12 equivalent fulltime positions at the Coffin Island Site and KCS did not include that information in its evidence.
67. This evidence demonstrates that the nature of employment at the Coffin Island Site has changed from a majority of fulltime employment reported in 2019, to a majority of part-time employment. At best, KCS has difficulty quantifying the number of employment positions and the nature of the positions that the Coffin Island Site provides.
68. The evidence put forward by the NSDFA concerning the Review Team assessment of the contribution to community and provincial economic development as stated in the Application is limited to an evaluation of infrastructure in relation to depth and Wharf usage in Mr. Feindel’s Affidavit.³⁷
69. RQM submits that it is insufficient for KCS to provide bare assertions as to the impact the Application will have on community economic development.
70. In **Quebec (Attorney General) v. Canada (National Energy Board)**, [1994] 1 S.C.R. 159,³⁸ The Supreme Court of Canada considered an appeal from a decision of an administrative tribunal, the National Energy Board (“NEB”).
71. The NEB granted Hydro-Quebec licences for the export of electrical power to the U.S., subject to conditions related to environmental protection. Several intervenors appealed the NEB’s

³⁷ Affidavit of Nathaniel Feindel, Exhibit 55, paras 27-33. I note that Jessica Fiendel’s Affidavit also includes a heading on Factor 3(b) but beneath discusses

³⁸ BOA Tab 3.

decision to issue the licences. Hydro-Quebec and the Attorney General of Quebec responded to the appeal but claimed the Board erred in granting of the licences conditionally.

72. Under the *National Energy Board Act*, R.S.C. 1985, c. N-7, the applicant Hydro-Quebec was required to furnish the NEB with certain evidence in support of its application. However, the NEB had discretion to determine which considerations were relevant to its decision.³⁹

73. The NEB interpreted the *National Energy Board Regulations* to require it to consider whether the price charged by Hydro-Quebec for export of electric power would result in cost recovery of all direct and indirect costs, including environmental, land use, and economic costs.⁴⁰

74. The SCC stated that there must be some evidence to support the NEB's ultimate conclusion on cost recovery as follows:

28 It is, of course, insufficient for Hydro-Quebec to ask the board simply to accept a **bare assertion** that all costs will be recovered... [emphasis added].

75. The SCC determined that, Hydro-Quebec had provided information on the magnitude of the revenues expected and details on the methodology used in carrying out its feasibility study as well as on economic, financial and other relevant assumptions underlying the analysis – which constituted more than a bare assertion.⁴¹

76. The SCC went on to state at paragraph 29 of the decision:

29 ... **The Board cannot simply rely on the conclusions of the respondent as to cost recovery without evaluating their validity**, but that does not appear to have been the situation here. Moreover, **a prohibition on the reliance on the unsubstantiated affirmations of the applicant** should not be transformed into a duty on the Board to conduct its own independent analysis where such an undertaking is unnecessary. [emphasis added]

77. In this matter the Board must consider Factor 3(b) in making its decision to approve or deny the Application. As directed by *National Energy Board*, KCS' bare assertions about its

³⁹ *Quebec (Attorney General) v. Canada (National Energy Board)*, at para 25 [*National Energy Board*].

⁴⁰ *Ibid.*

⁴¹ *National Energy Board*, para 28.

“relationships” with RQM and unnamed suppliers, in support of its purported contribution to local and provincial economic development, are insufficient for the Board to rely on.

78. The information included in the Development Plan relies heavily on the economic viability of the operations of KCS’ parent company Cooke Aquaculture Inc., (“**CAI**”) to satisfy factor 3(b).⁴²
79. The specific language prescribed by the legislature, which the Board is to consider under the *Regulations*, states that the Board must consider the “contribution of **the proposed operation** to community and provincial economic development.”⁴³
80. KCS cannot satisfy this Factor with evidence concerning other, current operations, including but not limited to the global operations of its parent company.
81. Were this type of evidence determined sufficient to meet the 3(b) Factor threshold, all new or amending applications for aquaculture licences and leases made by CAI and any affiliates would satisfy this threshold simply because CAI has functioning global aquaculture operations. The local and provincial impact of the expansion of the Coffin Island site is at issue in this proceeding.
82. Additionally, the evidence tendered at the hearing demonstrated that KCS omitted evidence concerning CAI’s global operations, where that evidence was detrimental to CAI’s global performance.
83. The Executive Summary included in KCS’ Application stated that CAI is a leader in the global seafood industry and in support of that proposition listed CAI’s operations as of 2019, in New Brunswick, Newfoundland, Miqne, Nova Scotia, Scotland and Chile. Several other CAI operations related to sea bream and shrimp aquaculture were listed as well as wild capture operations.
84. During cross-examination Mr. Szemerda confirmed that the operations listed in the Executive Summary were included based on finfish farming and more specifically salmon farming and then finfish and other species. When questioned, Mr. Szemerda could not think of any

⁴² Section 2.3 of the Development Plan, Application Package Vol 1, Exhibit 5, p. 82.

⁴³ *Regulations*, Section 3(b), Tab 1.

additional operations that had been left off the list other than a shrimp processing company in Belgium and a nutrition supplement company.

85. Yet, when asked specifically about CAI's Washington State finfish operations, Mr. Szemerda agreed those operations had been omitted from the list and to remain consistent should have been included.
86. Mr. Szemerda testified that the omission had nothing to do with the fact that in 2017 CAI had experienced a major escape of 160,000 salmon at its Puget Sound operation. This was despite his earlier testimony that the criteria for listing CAI's operations in the Executive Summary were based on finfish farming operations.
87. Mr. Szemerda confirmed that following the salmon escape from CAI's Puget Sound operation, the Washington Legislature enacted a statute to phase out non-native fish farms in Washington. He also confirmed that ultimately CAI was denied renewal of their aquaculture leases in Washington in 2022 and have banned commercial finfish operations in Washington other than indigenous enhanced fisheries.
88. Mr. Szemerda also confirmed that CAI experienced a fish escape of approximately 50,000 in August of 2023, in Machias Bay. This was not included in KCS' review of CAI operations pertaining to their fish containment capabilities.

Factor 3(d): the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquaculture operation.

89. Section 30 of the *Regulations* state:

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.

90. The Board is tasked with consideration of the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquaculture operation. The Factors are not defined under the *Regulations*. It follows that the Board has discretion to determine what evidence is relevant in its consideration of the Factors.
91. The Board also has discretion under section 22(2) of its Rules of Procedure to “receive any statement, document, information or matter that, in the opinion of the Board may assist it to deal with the matter before it”.⁴⁴
92. KCS,⁴⁵ NSDFA,⁴⁶ and RQM⁴⁷ each adduced expert evidence concerning the potential environmental risk posed by increased organic deposition and organic loading of the seabed resulting from the Application.
93. The NSDFA uses an Environmental Monitoring Program (“**EMP**”) as an important monitoring and regulatory tool. The function of which is to monitor the effects of an aquaculture operation on the marine environment.⁴⁸
94. Solid organic matter contained in waste salmon feed and feces qualifies as biological oxygen demanding matter (“**BOD**”) under the *Fisheries Act*, RSC 1985, c. F-14.⁴⁹
95. The primary objective of the EMP is to ensure the marine environment where aquaculture operations occur maintain oxic sediment conditions. Oxic conditions result when BOD is less than the oxygen available.⁵⁰
96. The EMP monitors impacts to the benthic environment by conducting analysis of sulfide concentration in sediment and assessing visual indicators of benthic health.⁵¹

⁴⁴ Section 22(2) of the Aquaculture Review Board Rules of Procedure

⁴⁵ Affidavit of Dr. Sean Robinson, Exhibit 43, paras 30-31.

⁴⁶ Affidavit of Jessica Fiendel, Exhibit 52.

⁴⁷ Affidavit of Dr. Peter Cranford, Exhibit 48.

⁴⁸ Affidavit of Jessica Fiendel, Exhibit 52, para 15.

⁴⁹ Affidavit of Dr. Peter Cranford, Exhibit 48, Affidavit Exhibit A, p. 3.

⁵⁰ Affidavit of Jessica Fiendel, Exhibit 52, para 21.

⁵¹ Affidavit of Jessica Fiendel, Exhibit 52, para 23.

97. Sulfide concentration in sediments is assessed by measuring free sulfide (hydrogen sulfide, bisulfide and sulfide) in units called micromolar (“ μM ”). Monitoring is primarily done through measurement of free sulfide levels.⁵²
98. Free sulfides are highly toxic to most marine species and the toxicity effect is compounded by low oxygen levels. Conditions remain oxic pursuant to the EMP, where total free sulfide concentration is less than 1500 μM .⁵³ During cross examination Ms. Feindel explained that the oxic state is a proxy for oxygen availability.
99. The NSDFA requires annual monitoring of all active finfish sites with sampling required between July 1 and October 31. Additional monitoring is required when a lease reaches an oxic state of Hypoxic B or Anoxic, which means the free sulfide concentration measured in the area is greater than 3000 μM .⁵⁴
100. The oxic status of the benthic environment within Liverpool Bay is important as hypoxic or anoxic conditions impact the prey species for active commercial groundfish.⁵⁵ Using the AMBI index Dr. Cranford provided an analysis of the sensitivity of prey of groundfish identified in the Liverpool Bay area.⁵⁶
101. Dr. Cranford determined that prey species of the groundfish in the Liverpool Bay area fit mainly into ecological groups I and II, based on their sensitivity or tolerance to pollution stress and require high (undisturbed) oxic conditions.⁵⁷
102. Based on these relationships free sulfide monitoring is critical for the overall ecological health of the environment proximate to the Coffin Island Site.
103. The Federally and Provincially prescribed method for measuring free sulfide concentration in benthic sediments is the Ion Selective Electrode method (“**ISE**”).
104. Dr. Cranford’s expertise in the methodology of free sulfide sampling is recognized by NSFDA and KCS experts Jessica Fiendel, Dr. Sean Robinson and Dr. Ramon Filgueira. Ms.

⁵² Affidavit of Dr. Sean Robinson, Exhibit 43, para 30.

⁵³ Affidavit of Dr. Peter Cranford, pgs. 4-6.

⁵⁴ Affidavit of Dr. Peter Cranford, pg. 6.

⁵⁵ Affidavit of Dr. Peter Cranford, Exhibit 48, p. 14.

⁵⁶ Affidavit of Dr. Peter Cranford, Exhibit 48, p. 15.

⁵⁷ Affidavit of Dr. Peter Cranford, Exhibit 48, pgs. 14-15.

Feindel, Dr. Robinson and Dr. Filgueria each testified that Dr. Cranford is a respected scientist in free sulfide testing methodology, a field of his expertise.

105. In his report, Dr. Cranford has provided persuasive evidence that the ISE method for measuring free sulfide concentration is highly inaccurate and cannot be used to reliably to quantify theoxic monitoring thresholds prescribed by the DFA and DFO.⁵⁸
106. Dr. Cranford has published several peer reviewed academic journal articles on the inaccuracy of the ISE method. He has provided evidence of two alternative testing methods in his expert report; the ultraviolet spectrophotometric method (“**UV Spec**”) and the methylene blue colorimetry method. Dr. Cranford testified that he is a proponent of any method that is accurate.
107. The accuracy of the ISE method is important, as Ms. Feindel testified that additional monitoring or mitigation requirements are engaged under the NSFDA and DFO regulatory schemes, if sulfide testing of an aquaculture site returns results over certain thresholds of free sulfide concentration.
108. KCS expert Ramon Filgueira agreed during cross examination that the ISE method results in overestimates and underestimates of free sulfide concentration. This means that underestimate samples would not engage additional monitoring or mitigation measures as prescribed by the provincial and federal regulations, and benthic environments may be Hypoxic or Anoxic but reported annually incorrectly, as oxic.
109. Dr. Cranford’s evidence on the inaccuracy of the ISE method is further supported by the fact that the NSDFA engaged Dr. Cranford in July of 2021 to train the Department’s staff and the Centre for Marine Applied Research, in the UV Spec method.⁵⁹
110. Additionally, the Department drafted a submission to DFO’s Canadian Science Advisory Secretariat (“**CSAS**”) requesting a peer review of the UV Spec method.
111. Ms. Feindel testified that CSAS has scheduled a review of methods to assess free sulfide concentrations in March of 2026.

⁵⁸ Affidavit of Dr. Peter Cranford, pg. 9.

⁵⁹ Rebuttal Affidavit of Jessica Fiendel, p. 10.

112. Dr. Cranford's evidence indicates that the historical sediment conditions for the existing Coffin Island Site are not reliable.⁶⁰
113. The evidence at the hearing demonstrated that Dr. Cranford is a highly respected and recognized scientific expert who specializes in the methodology of the measurement of free sulfide.
114. Dr. Cranford has presented credible and probative evidence, that demonstrates the prescribed regulatory method for measuring free sulphide is inaccurate. This evidence is relevant to Factor 3(b).
115. It is difficult to accept KCS' argument that Dr. Cranford's evidence is irrelevant to the Board's consideration of Factor 3(b),⁶¹ when KCS has itself relied on evidence that the Coffin Island Site has maintained oxic status via the ISE method, in support of approval of its Application and in satisfaction of Factor 3(b).⁶²
116. Additionally, in response to the Application, the DFO has expressed that the maximum production level of 660,000 fish could result in the exceedance of the 3000 µM. Free sulfide concentration in exceedance of this threshold would indicate the benthic environment is hypoxic based on the EMP.
117. KCS has assured the Board that if the Application is approved, it will not be "rubber stamped" as KCS requires NSDFA approval prior to stocking, which would include a review of the EMP data for the farm.⁶³ This assurance is of little comfort if the Board accepts the method applied to free sulfide measurement under the EMP is not accurate.
118. RQM is not asking the Board to "assess the merits of the environmental monitoring regime" nor to "amend the EMP" as argued by KCS.⁶⁴ This is an overly formalistic and technical interpretation of Dr. Cranford's evidence.⁶⁵

⁶⁰ Report on Outcomes of Performance Review, Exhibit 7, p. 4.

⁶¹ KCS Brief, para 73.

⁶² Report on Outcomes of Performance Review, Exhibit 7, p. 4; Baseline Assessment Report, Application Vol 1, Exhibit 5, pgs. 279-425.

⁶³ KCS Brief, para para 70.

⁶⁴ KCS Brief, paras 77 and 73 respectively.

⁶⁵ KCS Brief, para 79.

119. RQM has provided the Board with evidence that the historically oxic state of the Coffin Island Site is unreliable and that evidence is relevant to the Board's consideration of the Factors, in choosing to approve or deny the Application.
120. The Board is not required to find that the EMP requires amendment. Dr. Cranford's evidence goes towards one of the Factors, which the Board is tasked to consider in coming to a decision on approval or denial of the Application.
121. Had the legislature not intended the Board to consider elements underlying the EMP process in its analysis of the Factors, it would have defined the Factors or explicitly carved out the substance of the EMP. Instead, KCS, NSDFA and RQM have all adduced evidence relevant to Factor 3(b) concerning benthic monitoring, organic loading and benthic health.
122. RQM submits the Board must reject the argument that benthic monitoring and the potential impact of BOD from the Coffin Island site is irrelevant to oceanographic and biophysical characteristics of the public waters surrounding the proposed aquaculture operation.
123. *National Energy Board* supra, is instructive on this point. One of the grounds of appeal from the NEB's decision to approve the licenses for export of electrical power was that the NEB had failed to carry out a cost-benefit review that considered all direct and indirect costs arising from the exports for which the licenses were sought.⁶⁶
124. The *National Energy Board Part VI Regulations* required the applicant to furnish the NEB with evidence that the price to be charged for the export of power was reasonable and that an appropriate share of the costs incurred in Canada would be recovered.
125. The SCC found that in addition to evidence on cost-recovery adduced by the applicant, the NEB considered it relevant that the export contracts had received approval from the province of Quebec. The appellants argued that the mere fact that all contracts in Quebec required the approval was inappropriate for the NEB to consider as relevant to its cost benefit analysis, as it was an improper delegation of the NEB's decision-making power.
126. The SCC rejected the appellants argument but instructed at paragraph 31:

31 I also reject the appellants' argument that the mere fact that all contracts in Quebec require such approval renders consideration of this

⁶⁶ *National Energy Board*, para 24, Tab 3.

factor by the Board an improper delegation of its decision-making power. **The Board must, of course, make its own decision as to whether the cost-benefit requirement is satisfied. It cannot delegate that responsibility to the Government of Quebec or to any other body. In this case, for such a delegation to have occurred, the Board would have had to treat the mere existence of government approval as sufficient in and of itself to satisfy the cost-benefit requirement, without any independent consideration of the issue.** But that was not the case here. Therefore, it cannot be said that there was any jurisdictional error committed by the Board in this aspect of its decision. [emphasis added]

127. *National Energy Board* provides authority for the fact that it would be an improper delegation of the Board's authority to treat the existence of the EMP or federal regulatory regime as sufficient to satisfy Factor 3(d), or to fail to weigh evidence it considers relevant to Factor 3(b) based on the fact that the provincial and federal regulations employ the ISE method to measure oxyc conditions.

128. The existence of the EMP does not inhibit the Board from considering expert evidence as to the efficacy of the technology that underlies that regime. If this were the case the legislature would not have provided the Board such broad discretion under section 3 of the *Regulations*.

Factor 3(e): the other users of the public waters surrounding the proposed aquacultural operation

I. Queen's Coast Brand

129. KCS says that CIA and KCS provide financial support and resources to RQM.⁶⁷ In support of this representation KCS provided evidence that it has donated funding for projects such as the South Shore Regional Hospital expansion project and unidentified food banks and "various other community initiatives".⁶⁸

130. While KCS' donation to the South Shore Regional Hospital expansion project can reasonably be evaluated as beneficial to RQM, KCS' other representations in this respect suffer from the same lack of particularization as their representations about local "suppliers" and community "relationships". This evidence is of no assistance to the Board in evaluating KCS' funding as a benefit to RQM.

⁶⁷ KCS Brief, para 29.

⁶⁸ Affidavit of Jeffrey Nickerson, paras 38-42.

131. Any verifiable evidence provided by KCS of economic contribution by the proposed Application, would have to be offset by losses to RQM caused by the Application.
132. Ms. McGibbon opines that there is a direct link between the environmental elements of the province and RQM and the economic benefits that result from the promotion of those elements. In her report Ms. McGibbon states that the introduction of new aquaculture in the form of fish farms within RQM would be strategically opposite philosophically and economically based on the current environmental areas and elements that exist and the tourism strategies in place.⁶⁹
133. Ms. McGibbon opines that RQM is rich in environmental elements that form a basis for RQM's tourist sector and Queen's Coast Brand. Ms. McGibbon cites some of the highest dunes in Nova Scotia, as well as the salt marsh, which provides habitat for colonial nesting birds, lichen moss and orchids.⁷⁰
134. The photographs of the Queen's Coast rebranding signage at various locations within RQM do not feature the KCS aquaculture operation.⁷¹ Nor is the Coffin Island Site discussed or listed in the branding materials which feature Beach Meadows beach as a tourist destination.⁷² This demonstrates that KCS' aquaculture operation is not part of RQM's rebranding efforts to draw tourists to the area.
135. As Ms. McGibbon testified RQM's Municipal spend of \$337,568 related to the Queen's Coast brand is significant for a municipality of its size.⁷³

II. Local Tourism

136. KCS relies on the expert report of Stephen Coyle in support of the proposition that the Application will not negatively impact the tourism industry in Liverpool Bay. Mr. Coyle is a professional consultant and Vice President of Research at ATN Strategies.

⁶⁹ Affidavit of Susan McGibbon, Exhibit 50, p. 9

⁷⁰ Affidavit of Susan McGibbon, Exhibit 50, p. 5.

⁷¹ Affidavit of Richard Lane, Exhibit 70, pgs. 7-22.

⁷² Affidavit of Richard Lane, Exhibit 70, pgs. 14-15.

⁷³ Affidavit of Richard Lane, Exhibit 70, p. 4.

137. Mr. Coyle's report does not opine on the impact of the Application on the Queen's Coast Brand. Ms. McGibbon's evidence stands alone in that respect.
138. Mr. Coyle includes a short overview of Queen's Coast as a tourist destination. He lists "impressive beaches, hiking trails, and paddling" among other "high-quality" experiences as well as culinary experiences, festivals art and culture. Mr. Coyle quotes directly from the RQM website, which cites Acadian coastlines, powerful rivers, glimmering lakes and an exquisite coastline as elements that make Queen's Coast stand out.⁷⁴ There is no mention of the KCS Coffin Island Site operation as included as part of Mr. Coyle's overview.
139. During cross-examination Mr. Coyle confirmed that he did not interview anyone directly in preparation of his report, from RQM or otherwise. This was despite his testimony that he attended RQM's municipal beach, Beach Meadows in preparation of his report. This evidence demonstrated that Mr. Coyle had opportunity to canvas local input and chose not to.
140. In his report Mr. Coyle reasons that based on case studies, the Coffin Island Site has the potential to be a popular point of interest in kayak or boat tours of the surrounding area. His report identifies a local kayaking business – Liverpool Adventure Outfitters ("**LAO**"), as offering a full-day paddle and picnic tour that includes the harbour and Coffin Island in support of his opinion.⁷⁵
141. During cross-examination Mr. Coyle agreed that he could have spoken to LAO directly about whether the Coffin Island Site currently impacted their kayaking tours or their visitor experience, whether LAO had received guest feedback about the proposed expansion and whether LAO felt the expansion would impact their business. Mr. Coyle confirmed that he chose not to.
142. Mr. Coyle testified that he was aware LAO had provided a public submission in opposition of the Coffin Island Site expansion. In their public submission to the Board LAO stated that they avoid "going anywhere near the existing fish farm due to ropes, buoys, noisy feed barge and oily slick water".⁷⁶ This evidence demonstrates that case studies concerning other

⁷⁴ Affidavit of Stephen Coyle, Exhibit 45, p. 8.

⁷⁵ Affidavit of Stephen Coyle, Tab A p. 13.

⁷⁶

aquaculture operations are not necessarily persuasive or applicable, regarding the relationship between aquaculture and local tourism businesses in RQM.

143. At section 3.4 of his report Mr. Coyle opines that the Coffin Island Site can positively impact tourism as ATN Strategies has seen the benefit of a “working waterfront concept” in other Nova Scotia communities and finfish aquaculture can fit into this concept.
144. Mr. Coyle testified that in his opinion working waterfronts were part of the authentic community and visitors were interested in understanding how that community operates, how people connect with the ocean, the marine history, and how a living is made from the ocean.
145. Despite Mr. Coyle’s testimony that the community itself was an important part of the attractiveness of the working waterfront concept, he offered no evidence under this section of his report for how the authentic community of RQM related to the Coffin Island Site, was part of RQM’s “marine history” or would provide a tourism experience attractive to tourists in RQM.
146. In his report, Mr. Coyle cited previous ATN Strategies work in waterfront research and planning related to the working waterfront concept in Pictou, Halifax, Pt. Hawkesbury and Glace Bay.⁷⁷ Mr. Coyle also examined case studies of successful waterfront revitalization projects in Lunenburg, Pugwash and Baddeck in support of this proposition.⁷⁸
147. Mr. Coyle confirmed on cross-examination that there were no active finfish aquaculture operations in any of the Nova Scotia communities he had listed as part of ATN Strategies’ previous revitalization work. Additionally, Mr. Coyle agreed that he did not include any references to finfish aquaculture from his examination of the case study revitalization projects that he reviewed, in support of his contention that finfish aquaculture could form part of a working waterfront.
148. Mr. Coyle opined that an important shift in contemporary travel is that visitor demand is moving away from traditional sightseeing toward an immersive form of tourism, which he terms in his report as “experiential tourism”.⁷⁹

⁷⁷ Affidavit of Stephen Coyle, Tab A, p. 14.

⁷⁸ Affidavit of Stephen Coyle, Exhibit 45, p. 15.

⁷⁹ Affidavit of Stephen Coyle, Exhibit 45, p. 12.

149. Mr. Coyle agreed that he could not point to any evidence where KCS had indicated an intention to create an experiential tourism experience at the Coffin Island Site, either from his review of the Application, as indicated from KCS, or as included in his report.
150. Mr. Coyle agreed on cross-examination that his report considered aquaculture and tourism interactions generally. He cited examples of experiential tourism related to shellfish aquaculture in his report and did not differentiate between shellfish and finfish experiential tourism.
151. This was despite Mr. Coyle citing a study by Ecology and Society titled *Drivers of social acceptability for bivalve aquaculture in Atlantic Canadian communities* (“**E&A Study**”) in his report that determined Atlantic Canadian perception of shellfish aquaculture skewed more positive than perceptions relating to finfish aquaculture.⁸⁰
152. During cross-examination Mr. Coyle attempted to distinguish this study based on the fact it was based on “resident” perceptions of aquaculture versus visitor perceptions. However, in his report Mr. Coyle appears to validate the distinction himself as he states that the E&A study “lends evidence toward social perceptions of aquaculture generally and **speaks to potential visitor priorities and considerations** in their travel planning”.⁸¹

III. Attraction of Great White Sharks

153. RQM expert Dr. Neil Hammerschlag opines that the current Coffin Island Site is attractive to the Great White Shark (“**GWS**”) and that netting used in aquaculture operations poses a threat to endangered GWS as they may become entangled, breach the finfish cages or be captured.
154. Dr. Hammerschlag reviewed the minimum specification requirements for all nets to be used at the Coffin Island Site and determined that the net strength as reported in KCS’ Development Plan would be insufficient to endure GWS bite strength in medium to large sexually mature males.⁸²

⁸⁰ Affidavit of Stephen Coyle, Exhibit 45, p. 23.

⁸¹ Affidavit of Stephen Coyle, Exhibit 45, p. 23.

⁸² Affidavit of Dr. Neil Hammerschlag, Exhibit 49, p. 8.

155. Dr. Andrew Swanson provided a rebuttal report in response to Dr. Hammerschlag's report, which substantially depended on hearsay evidence of DFO Scientist Marc Trudel. As submitted by RQM Counsel during the hearing, Dr. Swanson is not qualified to opine on Dr. Hammerschlag's report as an expert qualified in shark species interactions. RQM relies on its submissions to the Board made during the hearing on this point.
156. Additionally, a qualification of an expert who relies on hearsay of another expert - Dr. Mark Trudel, would set a dubious precedent. Dr. Swanson was unable to even provide Dr. Trudel's official title at the DFO, nevertheless his credentials.
157. While the Board has broad latitude to accept different forms of evidence, from an evidentiary standpoint hearsay-expert-evidence, has very little probative value, if any value at all, in assistance to the Board. Hearsay expert evidence is not testable on cross-examination and is highly prejudicial. It would also provide a loophole for parties to bypass the requirements for filing expert evidence under the *Regulations*.
158. From a factual perspective, in his report Dr. Swanson stated that the Coffin Island Site has operated in Liverpool Bay without a single GWS incident for 22 years.⁸³ It was demonstrated at trial that Dr. Swanson's statement could not be proven true.
159. During cross-examination Dr. Swanson could not confirm what predator had caused damage leading to a mortality event that occurred at the Coffin Island Site in March 2018.⁸⁴
160. Additionally, Dr. Swanson could not dispute the evidence of KCS Compliance Manager Jennifer Hewitt that it was unknown what had caused an approximately 7-inch hole in a net at the Coffin Island Site, resulting in a fish escape.
161. KCS cannot therefore affirm there have been no GWS incidents at the Coffin Island Site in 22 years. Dr. Hammerschlag testified that GWS numbers are increasing in the area, and it appears uncontested that GWS frequent Liverpool Bay.

CONCLUSION

⁸³ Affidavit of Dr. Andrew Swanson, para 7.

⁸⁴ Affidavit of Jeffrey Nickerson, Exhibit 44, para 17(b).

162. RQM submits that the evidence adduced by KCS concerning the Factors does not support a finding that the Application represents an optimal use of marine resources.
163. Specifically, RQM submits that KCS attempts to rely on KCS's economic contribution to RQM and the local community, without properly proving that contribution.
164. Additionally, the evidence adduced by RQM provides doubt that the Application represents an optimum use of marine resources, as the impact of the current site and contemplated expansion may have a negative effect on the benthic health of the lease area.
165. KCS has failed to adduce evidence that expansion of the Coffin Island Site would result damage to the reputation, vision and investment in the Queen's Coast Brand.
166. KCS at best has proven that experiential tourism can be a benefit generally, however KCS is not providing an experiential tourism experience through it's current Coffin Island operation or the Application.
167. RQM respectfully requests that the Board reject the Application on this basis.

Respectfully submitted this 28 day of November, 2025.



Peter M. Rogers, KC and Natasha Puka

Counsel for RQM

- c. Applicant (by email)
- c. Province (by email)
- c. Intervenors (by email)