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NSARB 2025-001

NOVA SCOTIA AQUACULTURE REVIEW BOARD

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

– and –

NSARB-2025-001: Public Hearing on Application for Boundary Amendment for Marine Finfish Licence/Lease AQ#0814x and New Marine Finfish Licence/Lease AQ#1430 and AQ#1431, WFN Fish Farm Limited Partnership, Whycocomagh Bay, Inverness County, Nova Scotia

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BOOK OF AUTHORITIES ON BEHALF OF WFN FISH FARM LIMITED PARTNERSHIP

March 16, 2026

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I N D E X

CASE LAW

LEGISLATION

TAB A

CERTIFIED TRUE COPY OF AN ORIGINAL DOCUMENT

DECISION and ORDER **NSARB 2023-001**

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

BEFORE: Damien Barry, Hearing Chair and Board Member
Bruce Morrison, Board Member
Roger Percy, Board Member

HEARING DATES: **Session 1:** October 7, 8, 9, 10, 2025 (in-person)
Session 2: October 31 (virtual), 2025.

DECISION DATE: February 17, 2026

Introduction

[1] Kelly Cove Salmon (KCS) has operated the Coffin Island AQ#1205 farm since 2011.

[2] In 2016, it was identified that a portion of the infrastructure, including some of the moorings and cages, present at Coffin Island AQ#1205, was outside the lease boundaries. The Nova Scotia Department of Fisheries and Aquaculture (DFA) provided KCS with two options: (1) to bring the Coffin Island farm operation within the lease boundary; or (2) apply for a boundary amendment.

[3] On September 7, 2018, DFA granted KCS the option to lease in Liverpool Bay. On March 6, 2019, KCS submitted the following applications and its supporting Development Plan, including a scoping report, to DFA:

1. An Aquaculture Amendment Application for Coffin Island license and lease AQ# 1205 requesting a boundary amendment to encompass the existing 14 marine finfish cages, mooring lines and anchors, and the addition of 6 marine finfish cages; and
2. An Aquaculture License/Lease Application for two new marine finfish aquaculture sites for Brooklyn Point AQ#1432 and Mersey Point AQ#1433, with each having 20 cages.

[4] On August 9, 2023, the Honourable Steve Craig, Minister of DFA, referred the Application, pursuant to section 49(c) of the *Fisheries and Coastal Resources Act,* SNS 1996, c 255 for a decision before the Board for an adjudicative amendment.

[5] Applications for intervenor status, outlined at https://arb.novascotia.ca/sites/default/files/hearing/documents/nsarb-2023-001_intervenor_applications-_all_redacted_1.pdf , were received on or before October 20, 2023.

[6] Following consideration of these applications, intervenor status was granted to Kwilmu'kw Maw-Klusuaqn Negotiation Office (KMKNO), the Queens Recreational Boating Association (QRBA), 23 Fishermen of Liverpool Bay (23 Fishermen), Region of Queens Municipality (RQM), and Protect Liverpool Bay Association (PLBA).

[7] Written submissions from members of the public, were received on or before February 22, 2024.

[8] The Application hearing was scheduled to proceed on March 4-8, and April 2-5, 2024.

[9] On February 20, 2024, the Board adjourned the March 2024 hearing dates.

[10] On March 6, 2024, the Board adjourned the Application without day. On April 9, 2024, the Board explained that the Application hearing was adjourned for "ongoing discussions amongst the panel members" and to provide time to review the amended legislation and procedures.

[11] On June 17, 2025, KCS wrote to the Board requesting to sever Application NSARB-2023-001 by separating the applications for new aquaculture licences and leases from the application to increase the boundary of its existing marine finfish farm near Coffin Island, and also increase the number of pens at the Coffin Island site. KCS asked that the Board place the former in abeyance and schedule only the Coffin Island site issues for a public hearing.

[12] This request was granted on July 18, 2025.

[13] On August 28, 2025, the Chair of the Board advised the parties that the Rules of Procedure were updated, and that the Application was classified as a Category 3 application.

[14] In person hearings before the Board were heard on October 7-10, 2025 in Bridgewater, NS and virtually on October 31, 2025, following which final written submissions were received from all parties.

Background

[15] In 2013, the Province of Nova Scotia tasked an independent panel to develop a regulatory framework for aquaculture in Nova Scotia. Following extensive study and consultation, Meinhard Doelle and William Lahey produced the report titled *A New Regulatory Framework for Low-Impact/High-Value Aquaculture in Nova Scotia* [Doelle Lahey Report] in 2014. The report's authors suggested aquaculture regulation be guided by the concept that aquaculture that integrates economic prosperity, social well-being and environmental sustainability is characterized by low impact and high value. They explained that this meant that, ideally, social and environmental impacts were low and decreasing over time while aquaculture had positive economic and social value, increasing over time.

[16] 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.

[17] In order to reach a decision on an application, the Board must consider eight factors as set out in s. 17 of the regulations (effective December 16, 2025):

> (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.

[18] Applying the factors in this case, 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 Class I application**
>
> 23 **(**1) Except as provided in subsection (2), on receiving a completed Class I application, an employee of the Department appointed by the Minister under subsection 47(2) of the Act must consult with those persons or entities set out in clauses 47(2)(a) to (c) of the Act.
>
> (2) On receiving an application to amend a non-finfish licence or lease to change the boundaries of an existing aquaculture site to increase the area of the associated aquaculture site, the Minister must appoint an employee of the Department to consult with all of the following:
>
> (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;
>
> (b) any person, group of persons or organization that the Minister considers necessary or advisable in the circumstances; and
>
> (c) the public, in the manner set out in Section 43.

[19] Bodies (Network Partners) 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)

[20] 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 June of 2019 until February 9, 2022, resulting in DFO's Initial Letter of Advice, dated March 18, 2022, and the Canadian Science Advisory Secretariat report dated September 21, 2022 (the "CSAS Report").

[21] As part of the network consultation, on June 27, 2019, the application documents were provided to the Office of Aboriginal Affairs (OAA, now Office of L'Nu Affairs.) That office is the provincial

government department which advises all departments on Mi'kmaq consultation. It advised DFA that consultation with the Mi'kmaq was to be at the moderate level. This consultation will be discussed in more detail at the end of this decision.

[22] Ultimately, all network consultations were finally completed, with none of the network partners having any issues with the proposal that could not be mitigated. A summary of the outcomes with all network partners is attached as Appendix "A" to this decision.

[23] On August 9, 2023, following completion of the internal review, DFA submitted the application to the Review Board.

Public Response

[24] As stated, intervenor status in respect of this proceeding was granted to KMKNO, the Queens Recreational Boating Association, 23 Fishermen, RQM, and PLBA. The reasons for granting these parties intervenor status are outlined at https://arb.novascotia.ca/sites/default/files/hearing/documents/nsarb-2023-001_all_intervenors_decisions-redacted_final.pdf

[25] After KCS's request to sever the application, the QRBA declined to participate in this particular boundary amendment only, by correspondence dated October 6, 2025, reserving its right to participate in any future hearings in relation to the Application for two new marine finish aquaculture sites for Brooklyn Point AQ#1432 and Mersey Point AQ#1433, which is now held in abeyance.

[26] In addition to the outreach efforts, including a public meeting and direct outreach, as stated, written submissions were received from members of the public. These submissions are outlined at https://arb.novascotia.ca/sites/default/files/hearing/documents/nsarb-2023-001-wrt_all_redacted_-_feb_22_2024_all.pdf

[27] It should be noted also that the written submissions received were in relation to the original application for an amendment as well as two new fish farms. A substantial number of written submissions were provided in opposition to the three applications as a whole, with many of these expressing an opposition to fin fish farming in general. Some submissions focused on the eight factors to be considered by the Board; some did not and were more general and subjective in nature. Those submissions in favour of the expansion were, in the main, from businesses and suppliers in the area. The Board thanks every member of the public who took the time to make a written submission.

[28] Oral submissions were made at the beginning of the public hearings by the following individuals and parties; Jeff Bishop (Nova Scotia Aquaculture Association) Bob Iuliucci and Elizabeth Hartt (Bear Cove Resources), Andrew Tyler, a Liverpool resident, Stewart Lamont (Tangier Lobster), and Simon Ryder-Burbidge (Ecology Action Centre).

[29] Apart from Mr. Bishop, who stated that only 0.03% of the Nova Scotia coastline is used for aquaculture and that the KCS expansion would support economic growth in Liverpool, the rest of the speakers voiced their opposition to the expansion, citing reasons such as climate change and the strengthening tides in Liverpool Bay, the protection of Beach Meadows, the impact of fish farm waste on the lobster industry in Liverpool Bay and its associated impact on export markets, and the general lack of community support for the expansion, amongst other reasons.

[30] Owing to the number of parties as well as the extensive amount of evidence filed in this matter, It was decided by the Board, before the hearing commenced, that direct evidence would not be received by the Board and that witnesses would be grouped in witness panels by the parties to be cross examined where previously requested by opposing parties.

[31] Written submissions were provided by all parties after the conclusion of the in person and virtual hearings.

Issues to be determined

[32] Prior to the commencement of the hearing, the parties were directed by the Board to outline what issues were to be determined in this hearing. Written responses were received from KCS, 23 Fishermen, PLBA, RQM and KMKNO.

[33] The Board notes that some parties chose to address the issues to be determined in a broad general sense, while others focused on the specific factors as set out in s. 17 of the regulations (effective December 16, 2025). RQM made explicit reference to the attraction of shark species to the area as well as impacts on the RQM brand and tourism industry in the overall context of the s. 17 factors.

[34] As per these written communications, the issues to be determined by the Board in this matter can be summarized as follows:

> a. What impact, if any, will the proposed lease and license amendment to the Coffin Island Farm have in consideration of the factors enumerated under section 17 of the Regulations? and
> b. Did the Crown have a duty to consult with the Mi'kmaq of Nova Scotia and did the Crown fulfill its duty?

[35] No requests were made by any participating party during or after the hearing to amend or add to the issues to be determined. Where any new issues have been raised in final written submissions received by the Board, they will not be addressed or ruled upon.

[36] The Board also declines to consider any new evidence raised in final written submissions that was

not put before the Board prior to the hearing, or was not raised in cross examination during the hearing.

[37] Prior to the commencement of the hearing, the Board sought written submissions on the issue of expert qualifications. Each party identified their proposed experts along with a statement of qualification. The Board qualified all experts on a preliminary basis, subject to any objections that could be raised through cross examination of these experts, and/or outlined in their final written submissions.

[38] As with any hearing, experts give evidence in certain areas of expertise, to assist the decision makers, being the Board in this instance. As is stated in *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, [2015] 2 S.C.R. 182,

> Expert witnesses have a duty to the court to give fair, objective and non-partisan opinion evidence. They must be aware of this duty and able and willing to carry it out. The expert's opinion must be impartial in the sense that it reflects an objective assessment of the questions at hand. It must be independent in the sense that it is the product of the expert's independent judgment, uninfluenced by who has retained him or her or the outcome of the litigation. It must be unbiased in the sense that it does not unfairly favour one party's position over another. The acid test is whether the expert's opinion would not change regardless of which party retained him or her. These concepts, of course, must be applied to the realities of adversary litigation.

[39] As per section 22 of the *Rules of Procedure Respecting Adjudicative Hearings*, amended January 2026,

> 22 EVIDENCE
> (1) Evidence submitted to the Board to support a party's position must be done in accordance with s.60 of the Regulations (effective December 16, 2025).
> (2) The Board may receive in evidence any statement, document, information or matter that, in the opinion of the Board, may assist it to deal with the matter before the Board whether the statement, document, information or matter is given or produced under oath or would be admissible as evidence in a court of law.
> (3) All evidence received by the Board at an adjudicative hearing will be handled pursuant to s.61 of the Regulations (effective December 16, 2025).

[40] The Board has considered all of the expert evidence filed in this matter and as was stated before and during the hearing, will give sufficient weight to each piece of evidence in coming to its final decision. Some evidence of course will be given greater weight than other evidence on the basis of subject matter, qualifications of the expert and relevance to the specifics of this particular boundary extension application. Some expert evidence will be accepted in part while other evidence may be accepted in full or not at all. Expert reports are proffered only to assist the final decision maker, being the Board in this matter. They are not determinative of any issue or sub issue that must be ruled upon,

but rather are used to help inform the Board's ultimate decision.

Analysis

a. What impact, if any, will the proposed lease and license amendment to the Coffin Island Farm have in consideration of the factors enumerated under section 17 of the Regulations? (previous decisions made under the previous regulations reference the sections of the regulations at that time, which have now been updated to reflect the December 16, 2025, regulations)

[41] As is noted in KCS's written submissions,

> As held by the Board in **Rattling Beach**, the issue to be determined with respect to KCS's proposed expansion at the Coffin Island Farm is what, if any, impact it will have, in consideration of the Section 3 Factors (now s.17, effective December 16, 2025). The hearing is not a platform for general opposition to marine finish aquaculture. At para 51, the Board held as follows:
>
> > [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. …

[42] The statute mandates the consideration of the eight factors set out in s. 17 of the Regulations (effective December 16, 2025).

> (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.

These will now be considered.

(a) <u>The optimum use of marine resources</u>

[43] In *Rattling Beach*, the Board concluded that a 20-cage salmon farm constituted an optimum use of marine resources because it efficiently produced thousands of kilograms of food in a small portion of the Annapolis Basin. The Board held as follows:

> *[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.*

[44] The same is true here. The proposed expansion of the Coffin Island Farm would represent only approximately 1.13% of Liverpool Bay. The proposed lease area is 40.7 HA of the 3,590 HA of open boundary in Liverpool Bay (as estimated by DFO). The increase from the existing lease mostly reflects the re-drawing of an imaginary line to encompass existing Farm infrastructure, including moorings and anchors. This currently consists of 14 sea cages in a 7 x 2 grid cell configuration.

[45] KCS's proposed expansion would add six cages, resulting in a 10 x 2 configuration. This means the Farm would lengthen an additional 183 m parallel to Coffin Island, maintaining the width of approx. 122 m associated with the 2-cell formation, increasing the Farm footprint by approximately 2.2 HA (i.e. 60.96 m x 60.96 m per cage for 6 cages). At the proposed maximum production levels of 33,000 salmon per cage, this 2.2 HA expansion would increase maximum production by 198,000 salmon.

[46] The Board concludes that the re-drawing of the boundary to encompass the infrastructure, as well as adding six new cages, represents the optimum use of marine resources, in that the site will be used to efficiently produce thousands of kg of food.

[47] The Board also notes, in relation to this specific factor, that arguments were made as to how the Board should rule upon factor (a). In *Rattling Beach*, the Board chose to address it as one of the eight factors to be considered, each given equal weight, while in *Town Point* the Board chose to consider factor (a) only after considering all of the other factors in a holistic manner. The Board is not bound by the decision and the manner in which factor (a) was considered in *Town Point*, and chooses to adopt the mechanism that was used in *Rattling Beach*.

(b) <u>The contribution of the proposed operation to community and Provincial economic development</u>

[48] KCS has operated the Farm for 14 years and contributes to the local economy through both direct employment and the use of regional suppliers. In addition to the 12 full-time equivalent positions located in Liverpool, KCS reports that it engages a range of local businesses, including divers, mechanics, boat-repair services, hardware suppliers, welders, heavy-equipment and crane operators, marine supply companies, fuel distributors, environmental consultants, electricians, boat brokers, boat builders, engine suppliers, hotels, restaurants, and ferry operators. A number of the public written submissions in support of KCS came from existing suppliers.

[49] KCS is the Canadian farming division of Cooke Aquaculture Inc. (Cooke), headquartered in Blacks Harbour, New Brunswick. According to Cooke's Development Plan, the company expended $231 million in 2017 on supplies and services across Atlantic Canada, involving 309 Nova Scotia businesses. KCS states that, as of October 2025, Cooke and KCS collectively employed 323 individuals in Nova

Scotia, generating annually $17.7 million in employment income, $10.4 million in tax revenue, and $19.4 million in consumer spending.

[50] Cooke and KCS also assert that they provide financial and community support within Queens County and the Province. This includes a $121,000 contribution to the South Shore Regional Hospital expansion, $11 million to universities, and support for local food banks. KCS further notes the involvement of its employees in volunteer activities. Additionally, Cooke and KCS provided substantial assistance to the community and emergency services during the June 2023 Shelburne County wildfires.

[51] RQM contends that the proposed amendment will adversely impact its brand integrity and its investments in tourism. In support of this position, RQM submitted an expert report prepared by Susan McGibbon.

[52] In her report, Ms. McGibbon asserted that RQM invested $4 million in a brand relaunch. However, the affidavit of Richard Lane, RQM's Director of Economic Development, indicates that the department's total budget between 2019 and 2024 was $4,285,092.11, of which $337,568.28 was allocated specifically to rebranding. Ms. McGibbon further opined that additional fish farms in Liverpool Bay would conflict with RQM's tourism strategies. During cross-examination, she confirmed that she conducted no surveys, interviews, or case study reviews to support her conclusions.

[53] Conversely, Stephen Coyle of ATN Strategies opined that Liverpool Bay's tourism industry is robust and already co-exists with the Coffin Island Farm. He stated that synergies exist between aquaculture and tourism. On cross-examination, Mr. Coyle explained that he visited Beach Meadows and Liverpool's working waterfront while preparing his report, focused on jurisdictions with regulatory frameworks comparable to Nova Scotia, and drew lessons from bivalve aquaculture case studies relevant to marine finfish operations.

[54] RQM notes that, on cross-examination, Mr. Coyle confirmed that he conducted no interviews with any individual in preparing his report, including persons associated with RQM, notwithstanding his testimony that he visited Beach Meadows as part of his assessment.

[55] Mr. Coyle also acknowledged that none of the Nova Scotia communities referenced in ATN Strategies' prior revitalization work had active finfish aquaculture operations. He agreed that the case studies he reviewed did not address finfish aquaculture, despite his conclusion that such operations could contribute to a working waterfront.

[56] Mr. Coyle conceded that he could not identify any evidence suggesting that KCS intended to develop an experiential tourism initiative at the Coffin Island site. He confirmed that neither the Application materials, statements from KCS, nor his own report indicated any such intention.

[57] Mr. Coyle further acknowledged that his assessment addressed aquaculture–tourism interactions in general terms. The experiential tourism examples cited in his report related exclusively to shellfish

aquaculture, and he confirmed that he did not distinguish between shellfish- and finfish-based experiential tourism in forming his conclusions.

[58] RQM submits that any economic contribution advanced by KCS in support of the Application must be offset by financial losses to RQM allegedly resulting from its approval. However, RQM has not established any clear evidence establishing and quantifying losses coming from, for example, impacts on its branding efforts from any approval of the KCS application.

[59] RQM further asserts that the McGibbon Report demonstrates a connection between the Province's environmental attributes, RQM's brand, and the resulting economic benefits. Ms. McGibbon concludes that additional aquaculture development in the form of fish farms would be strategically incompatible—both philosophically and economically—with existing environmental features and current tourism priorities.

[60] With respect to the McGibbon report, the first mention of aquaculture in the report does not occur until the last two paragraphs of the summary and conclusion on page 9 of the 9 page report, where she states as follows:

> Introducing a new aquaculture facility in Liverpool Bay would be both a challenging and opposing strategy to both the Nova Scotia government's brand strategies and tourism strategies.
>
> The introduction of the new fish farm within the region would be strategically opposite philosophically and economically based on the current environmental areas and elements that exist and tourism strategies that are in place. The role of the environment, and specifically the ocean is crucial to the tourism sector within Queens.

[61] The Board finds that the McGibbon report outlines in a broad manner the tourism branding of both Queens and the Province without actually explaining or quantifying the economic benefits of same or the potential economic losses that could be suffered to these brands by the granting of an extension to KCS. As such the Board places little weight on the McGibbon report.

[62] PLBA submits that the proposed expansion will not generate additional employment or economic activity. They rely on the evidence of Mr. Michael Szemerda, who agreed that the expansion would not create the 28–30 jobs referenced in the application materials. PLBA argues that no evidence has been presented demonstrating any new employment specifically associated with AQ#1205.

[63] PLBA also contends that the record contains no evidence that the proposed expansion would result in increased local or provincial spending by Cooke or KCS, nor any evidence indicating how denial of the Application would affect broader economic development or spending.

[64] KMKNO argues that KCS's analysis improperly focuses on the contributions of the existing facility rather than the anticipated impacts of the proposed expansion. KMKNO also challenges the relevance of evidence regarding broader investment activity undertaken by Cooke Aquaculture Inc. across

Atlantic Canada, asserting that such information does not speak directly to the implications of the Application itself.

[65] As was noted in ***Rattling Beach,***

> [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.

[66] In the present matter, the same logic applies. If the farm operations are moved entirely inside the original lease boundaries, then it would logically follow that this would reduce the economic contribution and could potentially make it unviable. Logic also dictates that approving the proposed expansion will mean there are more fish to feed, more equipment to service, additional cages to inspect, etc.

[67] Having considered and weighed the evidence put forth by all parties in relation to this factor, as well as the arguments advanced by the parties who addressed it in their closing submissions, the board is 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

[68] KCS submits that the Coffin Island Farm has operated successfully for 14 years in Liverpool Bay alongside other fisheries, including herring, mackerel, lobster, and First Nations fisheries. Section 3 of the Development Plan addresses surrounding fishery activity and notes that KCS permits local fishers to use the lease area for fishing purposes.

[69] The 23 Fishermen argue that the proposed expansion will negatively affect the lobster industry in Liverpool Bay. They rely on the testimony of local fishers and the expert opinions of Inka Milewski and Chris Milley.

[70] KCS counters that the affidavit and testimonial evidence of the fishers establishes only that they harvest lobster, herring, and mackerel in Liverpool Bay, including areas near the Coffin Island Farm. KCS submits that the fishers have not produced objective evidence demonstrating a decline in catch over the 14 years of the Farm's operation. Under cross-examination, both Mr. Manthorne and Mr. Munroe acknowledged that they set their traps in historically productive areas, which—based on the maps appended to their affidavits—include waters in and around the existing Farm.

[71] Ms. Inka Milewski, a Research Associate at Dalhousie University, provided an opinion that the Farm may adversely affect lobster populations, relying in part on her research in Port Mouton.

[72] Dr. Ramon Filgueira, Associate Professor in the Marine Affairs Program at Dalhousie University, reviewed Ms. Milewski's 2014 and 2018 Port Mouton studies and identified, in his view, fundamental scientific flaws, including those previously noted by other researchers. He emphasized two primary deficiencies: (1) the studies used a catch-per-unit-effort (CPUE) metric without knowing the total effort expended by the fishery, which is essential for valid CPUE analysis; and (2) the data collection was limited to a two-week period within the broader fishing season, generating uncertainty in the results.

[73] Dr. Shawn Robinson, a retired DFO scientist, provided evidence based on literature reviews and field studies involving lobster behaviour, including acoustic tracking and microbiome analysis. He concluded that the proposed farms in Liverpool Bay would have little negative effect on lobster behaviour or distribution in a manner that would materially impact the local fishery.

[74] Following his three-year study in Liverpool Bay, Dr. Robinson concluded: (1) lobsters and crabs were observed beneath the Coffin Island Farm; (2) lobsters did not avoid the Farm; and (3) no significant differences were identified in the gut microbiomes of lobsters sampled at the Farm compared with reference sites elsewhere in Liverpool Bay. He therefore found no detectable effect from current Farm operations on lobster populations.

[75] Dr. Robinson further emphasized the importance of ongoing benthic monitoring to mitigate environmental impacts from aquaculture. Ms. Milewski raised concerns regarding benthic effects associated with the proposed expansion. Section 3.2.2 of the Development Plan and paragraph 19(b) of the Nickerson Affidavit outline mitigation measures, including remote feeding systems designed to ensure accurate feed delivery and minimize benthic deposition.

[76] Mr. Chris Milley of Nexus Coastal opined that the proposed expansion may pose significant risks to the economic condition of the Liverpool Bay lobster fishery due to: (1) potential loss of harvest area and associated revenue, and (2) potential reduction in public confidence in the lobster industry, which he asserted could discourage intergenerational transfer of fishing enterprises. Under cross-examination, Mr. Milley acknowledged that several data points forming the basis of his modelling and calculations were incorrect.

[77] While the Milley report speculates as to future adverse impacts on the lobster industry in Liverpool Bay, there are few if any tangible connections between the expansion of the Coffin Island site and these adverse impacts. A lot of the impacts that are mentioned in the Milley report are unrelated to the proposed expansion, such as weak markets, exchange rate fluctuations, fuel price stability and global market conditions.

[78] Mr. Peter Norsworthy provided an opinion that declines in lobster landings observed in certain areas are unrelated to marine finfish aquaculture. He also opined that the expansion of finfish aquaculture provides high paying year round employment to a growing number of people in Nova Scotia and Atlantic Canada. He also takes issue with the economic output results of the Milley report, stating that true landed value of subarea 310 in LFA 33 should be $2.2 million and not $4.2 million, when using the Mulley report average landed value of $21.84/kg.

[79] Contrary to Mr. Milley's position, both Mr. Manthorne and Mr. Munroe testified to recent intergenerational transfer within the Liverpool Bay lobster industry. Each acknowledged purchasing a lobster licence and vessel based on their assessment that the lobster fishery in Liverpool Bay is, and will remain, productive.

[80] Mr. Milley also conceded that the proposed addition of six cages would not displace a meaningful number of lobster fishers and would therefore be unlikely to cause significant detrimental effects.

[81] In his affidavit, Mr. Justin Martin, Lead of Fisheries for KMKNO, confirmed that First Nations harvest lobster in Liverpool Bay under both the Moderate Livelihood fishery and the Food, Social, and Ceremonial (FSC) fishery. Although he did not identify the specific harvesting locations, this aligns with section 3.1.3 of the Development Plan and KCS's evidence that First Nations fishers have historically set lobster traps within the Coffin Island Farm boundaries. Mr. Martin reported a four-fold increase in Moderate Livelihood lobster landings between October 2023 and January 2024. Mr. Martin also stated that First Nations harvest elvers in the Mersey River.

[82] The 23 Fishermen presented Messrs. Monroe, Stewart, and Manthorne as their panel. They testified that approximately 700 licence holders operate in LFA 33 and that they, along with most affiants, predominantly fish in grid 310 and adjacent grids. Their fishing season runs from late November to May 31.

[83] Mr. Manthorne testified that he purchased his licence in 2019 for approximately $600,000.00 based on the profitability of the lobster fishery. He confirmed that he does not place traps within the boundaries of the KCS Farm, though other fishers have done so for more than a decade. Mr. Monroe similarly testified that the purchase price of his licence represented a sound investment, in his view.

[84] Mr. Stewart stated that he previously participated in lobster migration studies using his vessel and traps. When presented with video footage entered by Dr. Robinson showing lobster movement beneath the KCS Farm, Mr. Stewart questioned whether fish were present in the cages at the time and contended that the video represented only a small portion of the Farm's perimeter where current flows and water quality differ. Dr. Robinson stated that the footage was taken beneath an active portion of the Coffin Island Farm.

[85] KMKNO disputes KCS's assertion that the Coffin Island Farm has operated successfully alongside other fisheries, including First Nations fisheries. KMKNO submits that the impact of the existing Farm on First Nations' fishing rights was neither examined at the hearing nor adequately addressed in the Indigenous consultation process. KMKNO argues that proper assessment would have required comparing First Nations' exercise of fishing rights today with the period before the Farm was established—evidence they concede that is not available.

[86] KMKNO further submits that their representatives repeatedly raised these concerns during consultation meetings with DFA, and similar concerns were identified in the affidavit of Ms. Charmaine Stevens, who described band members fishing for food in small vessels close to shore.

[87] The evidence establishes that KCS does not prohibit other fishing activities within its licensed area and has permitted fishers to set lobster traps within Farm boundaries throughout its operation. There is no evidence of interference with other fishery activities since the Farm began operations, and the record demonstrates that a thriving lobster industry co-exists alongside the Farm.

[88] The Board finds no clear evidence that the presence of the Coffin Island Farm has had a substantial negative impact on surrounding fishery activities. The continued significant investment by lobster fishers in licences and equipment, despite the Farm's longstanding presence, supports the conclusion that the lobster fishery remains strong and productive in Liverpool Bay.

[89] While the expert opinions before the Board differ significantly with respect to the Farm's effects on fisheries, the Board finds that the concerns raised in both the Milley and Milewski reports are speculative and general in nature. The Board has also had the benefit of hearing directly from, and reviewing the affidavits of the 23 Fishermen, which do not indicate clear and substantial impacts and effects on the surrounding lobster fishery to the existing Coffin island site.

[90] Having weighed the evidence and considered the expert reports, as well as the evidence of the intervenors 23 Fishermen and that of KMKNO, as well as all other evidence relevant to this specific factor, the Board concludes that the existing Farm does not cause significant negative impacts to other fishery activities in Liverpool Bay.

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

[91] The Coffin Island Farm is situated near the entrance to Liverpool Bay, south of Coffin Island. Its proximity to Coffin Island provides shelter from prevailing winds.

[92] Section 4 of the Development Plan addresses the oceanographic and biophysical characteristics of the public waters surrounding the Farm, including wind conditions, waves, tides, currents, temperature, dissolved oxygen, and bathymetry.

[93] Section 15(g) of the Aquaculture Management Regulations requires KCS to provide DFA with a professional engineer's approval of the design of the Farm's containment structures. In providing that approval, the engineer must consider relevant oceanographic and meteorological conditions, including wind, waves, currents, depth, and tidal range.

[94] Adam Turner, P.Eng., of Cooke, testified that, following his design and approval of the existing Coffin Island Farm layout, he directed surface and subsurface inspections of the mooring lines, grid lines, compensators, and cages to verify installation in accordance with design specifications.

[95] On cross-examination, Mr. Turner addressed the performance of the infrastructure during Hurricane Lee. While a buoy detached and drifted to shore, he testified that the mooring and containment systems were not compromised and there were no fish escapes.

[96] KCS is required to report breaches of containment infrastructure to DFA. There has been one reportable event at the Coffin Island Farm. In June 2021, a six- to seven-inch hole was discovered in a net, suspected to have been caused by a seal. There was no evidence of fish escape. KCS responded by implementing the year-round use of predator nets to mitigate the risk of future escape.

[97] Under the Aquaculture Management Regulations, operators must submit a Farm Management Plan (FMP) to DFA for approval. The FMP must address, among other matters, DFA's EMP for marine aquaculture in Nova Scotia and DFA's Standard Operating Procedures (SOPs) for environmental monitoring of marine aquaculture sites in Nova Scotia.

[98] In its Performance Review, DFA concluded that the site has historically met environmental regulatory requirements and has been considered "oxic" since 2012.

[99] The Development Plan and its addenda include data on dissolved oxygen, temperature, and salinity that support healthy conditions for Atlantic salmon, as well as baseline testing conducted on January 10 and 15, 2019, while the Farm was stocked, documented in a Baseline Assessment Report prepared by SIMCorp. Average sulfide conditions fell within DFA's oxic classification.

[100] In the Baseline Assessment Report, SIMCorp modeled depositional contours for the proposed site. The modeled deposition fell directly beneath the 20 cages and extended slightly to the northwest, in the direction of the dominant current. No depositional contours extended beyond the lease boundary.

[101] DFO modeled Predicted Exposure Zones ("PEZs") to assess the potential far-field, theoretical impacts of the three proposed farms in Liverpool Bay, characterizing the PEZs as precautionary overestimates.

[102] Dr. Shawn Robinson explained that the PEZs are highly precautionary and that potential impacts diminish exponentially with distance from the cages. Anticipated impacts are expected up to 30 metres from the edge of the cages (or up to 50 metres under a highly cautious approach). Dr. Ramon Filgueira, an expert in depositional modeling familiar with Liverpool Bay conditions, testified that, given the depth and site characteristics, even 30 metres is likely an overestimate.

[103] Based on its depositional modeling, DFO expressed the view that production levels of 660,000 fish could result in an exceedance of DFO's 3,000 µM sulfide threshold.

[104] KCS state that approval of this Application, if granted, would not, in itself, authorize stocking at the proposed level of 660,000 fish. KCS must obtain DFA approval for stocking density prior to each stocking event, which includes a review of the Farm's EMP data.

[105] Dr. Peter Cranford, called by RQM, critiques DFO's and DFA's regulated monitoring standard for sulfides, particularly the ISE method and the timing of monitoring. He advocates for use of the UV Spec method and is of the view that regulatory changes should precede significant industry expansion, including in Liverpool Bay.

[106] On cross-examination, Dr. Cranford agreed that the proposed expansion of the Coffin Island Farm by six cages does not constitute a significant industry expansion from a scientific perspective.

[107] While Dr. Cranford challenges the DFA-approved ISE method and the timing of sulfide monitoring, KCS notes that these are methods and processes that operators are legally required to follow.

[108] DFA's EMP is a key monitoring and regulatory tool designed to assess the effects of aquaculture operations on the marine environment.

[109] The primary objective of the EMP is to ensure that marine environments where aquaculture occurs maintain oxic sediment conditions. Oxic conditions occur or are present when BOD is less than the oxygen available. The EMP monitors impacts on the benthic environment by measuring sulfide concentrations in sediments and assessing visual indicators of benthic health.

[110] Sulfide concentration in sediments is assessed by measuring free sulfide (hydrogen sulfide, bisulfide, and sulfide) in micromolar units (µM). Monitoring is primarily based on measurements of free sulfide.

[111] Free sulfides are highly toxic to most marine species, with toxicity exacerbated by low oxygen levels. Under the EMP, conditions are considered oxic when total free sulfide concentration is less than 1,500 µM. Ms. Jessica Feindel testified that "oxic state" functions as a proxy for oxygen availability.

[112] DFA requires annual monitoring of all active finfish sites between July 1 and October 31. Additional monitoring is required when a lease reaches Hypoxic B or Anoxic status—i.e., when free sulfide concentrations greater than 3,000 µM are measured in the area.

[113] The oxic status of the benthic environment within Liverpool Bay is significant, as hypoxic or anoxic conditions can affect prey species for active commercial groundfish fisheries. Using the AMBI index, Dr. Cranford provided an analysis of the sensitivity of groundfish prey identified in the Liverpool Bay area.

[114] Dr. Cranford determined that prey species of groundfish in the area fall mainly into ecological groups I and II, indicating high sensitivity or low tolerance to pollution stress and a need for undisturbed oxic conditions.

[115] In his report, Dr. Cranford provided evidence that, in his opinion, the ISE method is inaccurate and cannot be relied upon to quantify the oxic monitoring thresholds prescribed by the NSDFA and DFO.

[116] Dr. Cranford has published several peer-reviewed articles on alleged inaccuracies of the ISE method. He identified two alternative methods in his report—the UV Spec method and the

methylene blue colorimetry method—and testified that he supports any method that achieves accurate measurement.

[117] KCS assures the Board that approval of the Application would not amount to a "rubber stamp," as DFA approval is required prior to stocking and includes review of EMP data. RQM argues this assurance has limited value if the underlying free sulfide measurement method is inaccurate.

[118] Whilst Dr. Cranford takes issue with the ISE method, It must be noted that this method is but one of seven factors that are considered by DFA for sediment classification, as is confirmed in the Rebuttal Affidavit of Jessica Feindel, the Manager of Aquaculture Operations for DFA at paragraphs 14 to 15. Only one of these indicators is total free sulfide. DFA does not rely solely on the ISE method. Rather, it considers a range of other well-established environmental indicators to evaluate benthic conditions, which together inform site-specific management responses. Dr. Cranford's central thesis seems to be that DFA's aquaculture policy and procedures do not adopt current best practices. However, the Board notes that it would be prejudicial to hold KCS to a standard different from all other existing aquaculture operations. As Ms. Feindel noted, *I am not aware of any other aquaculture regulator in Canada that has adopted the UV spec method.* She also advised that DFA was studying the UV Spec method. Finally on this particular sub issue, the Board notes that the FMP will also control production/stocking density levels depending on sampling results.

[119] Overall, having considered the evidence and arguments of the parties, the Board finds there is no clear evidence indicating poor site performance or degraded benthic conditions. On the contrary, the evidence demonstrates and the Board finds that the oceanographic and biophysical characteristics of the Coffin Island Farm site are suitable for salmon aquaculture. KCS has operated the site since 2011 without evidence of unacceptable adverse effects on the benthic environment or the broader ecology.

[120] The Board finds that the oceanographic and biophysical characteristics of the public waters surrounding the proposed aquacultural operation are suitable for salmon aquaculture.

(e) <u>The other users of the public waters surrounding the proposed aquacultural operation</u>

[121] The public waters of Liverpool Bay support a variety of activities, including boating, swimming, and fishing. Other users of the Bay are addressed in Section 5 of the Development Plan.

[122] The Coffin Island Farm is located approximately one kilometre offshore from Beach Meadows, a popular municipal beach. Beach Meadows Park is operated by RQM, which has recently invested in upgrades including new picnic shelters and a beach hut.

[123] The Coffin Island Farm has operated in proximity to other users of Liverpool Bay and Beach Meadows since 2011.

[124] Brian Muldoon, Founder and President of PLBA confirmed on cross-examination that PLBA advocates for a moratorium on marine-based salmon aquaculture. As is stated at paragraph 42 of his affidavit, *PLBA's mission is "[t]o promote prosperity, social wellbeing, and environmental sustainability of our coastal communities by preventing the expansion of open net fin fish farms."*

[125**]** PLBA presented evidence from three homeowners—Mr. Muldoon, Mr. Larry Cochrane, and Mr. Eric Goulden—each of whom purchased coastal properties along Liverpool Bay after KCS commenced operations at the Coffin Island Farm in 2011.

[126] Mr. Goulden purchased his Beach Meadows oceanfront home in 2013. The Farm is visible from his back deck. He confirmed on cross examination that the boundary expansion alone would not have a major impact on his property.

[127] Mr. Cochrane purchased land in 2014 and constructed a residence at a cost of approximately $2.5 million, including a deck with views of the Farm.

[128] Mr. Muldoon resides closest to the Farm. He and his partner purchased their home in 2014 and renovated it, including the addition of rear windows facing the Bay from which the Farm is visible. He also acquired the adjacent property, renovated it, and opened a short-term rental in 2017 known as the Mighty Atlantic Guest House, which he testified has been very successful.

[129] Mr. Goulden and Mr. Cochrane are property developers and have subsequently made additional investments in Liverpool.

[130] Christopher Glebe, an architectural designer, modeled the visual effects of the proposed expansion from several vantage points around Liverpool Bay. His report indicates that the current visual impact of the cages is low. The View Location Map and images (including View 3: Horsehead and View 7: Coffin Island) illustrate existing and proposed views from multiple locations. In his opinion, the addition of six cages would be difficult to discern from most surrounding areas. His opinion was not challenged on cross-examination.

[131] PLBA submits that Mr. Glebe's study lacks a clear expert opinion and that he acknowledges no expert knowledge is required to interpret his materials. PLBA further submits that the report presents selective and unrealistically distant sea-level images, omitting photos of servicing vessels and debris observed by residents.

[132] Mr. Muldoon asserted that, during summer with certain wind conditions, odours from the Farm are perceptible at his property. Notwithstanding this assertion, his Mighty Atlantic Guest House—located near Beach Meadows— is fully booked in the summer.

[133] KCS argue that there is no objective lay or expert evidence before the Board substantiating odour impacts on nearby properties.

[134] PLBA submits that Mr. Muldoon has at times endured nauseating odours of fish feed when winds blow toward his property, interfering with his use and enjoyment. PLBA notes that his property lies within DFO's CSAS Predicted Exposure Zones for fish feces and waste feed.

[135] The Board finds, after considering all of the evidence in relation to the issue of odour that there is no substantial evidence to suggest significant issues with odour. While Mr. Muldoon speaks of nauseating odours, his evidence also shows that he is operating a thriving rental business next door to his own property. The Board also notes that neither Mr. Goulden or Mr. Cochrane refer to any issues of odour in their affidavits.

[136] A substantial amount of evidence and submissions was presented with respect to the issue of noise and the related issue of how this noise was measured and quantified by parties and experts.

[137] Mr. Muldoon raised concerns about noise originating from the Coffin Island Farm. KCS state that they have received a noise complaint only from Mr. Muldoon.

[138] In the Rebuttal Affidavit of Jeffrey Nickerson, it is stated that net-washing vessels were on site during three of the five specific dates referenced in Mr. Muldoon's 2020 and 2021 affidavit. In 2023, KCS completed sound-attenuation refits to its net-washing vessel, the *Lady Jeanelle*. Following those modifications, KCS reports that no noise complaints were received on days when the net-washing vessel was operating. KCS also implemented additional attenuation measures, including a system to reduce supplemental oxygen runtime.

[139] KCS commissioned a sound assessment from David Richards, P.Eng. Mr. Richards is a professional engineer with experience conducting sound assessments for occupational health and safety purposes. His study included several measurements taken when the feed barge was idle and when its systems were operating. Mr. Richards referenced Nova Scotia Environment and Climate Change ("NSECC") sound guidelines, noting that measurements at receptors were below certain thresholds. While those guidelines do not directly apply, KCS state that they provide a useful reference.

[140] Mr. Richards was cross-examined on NSECC's October 2023 updates introducing lower thresholds in rural areas. The updates post-date his measurements and include a methodology for deviations in areas with elevated background sound.

[141] In contrast, PLBA relies on readings from Mr. Muldoon's iPhone application (Decibel Meter Sound Detector). Mr. Muldoon was not qualified as a sound expert and acknowledged he lacks expertise in acoustics. Mr. Richards reviewed Mr. Muldoon's readings and explained that smartphone app accuracy varies by device and that smartphones are not calibrated measurement instruments. He also noted that Mr. Muldoon used Z-weighting, which is not a standard for environmental sound monitoring.

[142] Ms. Feindel testified that DFA conducted sound measurements during audits and site inspections from a net-washing vessel and from Beach Meadows. The NSDFA's Performance Review

recorded that noise complaints had been investigated and that warnings or charges were not warranted.

[143] PLBA submits that Mr. Muldoon has endured significant disruptive noise since 2018, when automated feeding via feed barge commenced, with other equipment also contributing to sustained noise.

[144] PLBA challenges Mr. Richards's expertise as an acoustical assessor and submits that his reports primarily seek to discredit Mr. Muldoon's observations. PLBA argues that Mr. Richards relied on a 1990 guideline and was unaware of the October 2023 NSECC guideline at the time he finalized his reports in early 2024. PLBA submits that the 2023 guideline supersedes the 1990 guideline as the accepted standard.mPLBA argues that, while its own measurements were taken with a smartphone app, Mr. Muldoon's readings (83–86 dBA on several dates) exceeded both the rural thresholds in the 2023 guideline and the older 1990 guideline, indicating serious exceedances. PLBA submits that Mr. Richards's expertise, methodology, and results are deficient and should be afforded no weight.

[145] PLBA further submits that DFA's conclusion that it "is satisfied with the historical performance" is not probative of noise impacts, and that scant detail exists in the record regarding DFA's own measurements.

[146] The reports with respect to noise levels both have their shortcomings but ultimately the Board is left with a choice between an iPhone app and the evidence of Mr. Muldoon versus an Engineer's report, as well as DFA audit records. The Board finds, after considering all of the evidence in relation to the issue of noise, that there is no substantial evidence to suggest significant issues with noise.

[147] PLBA raised concerns regarding KCS equipment becoming debris along the shoreline. Mr. Goulden and Mr. Muldoon provided photographs of debris on Beach Meadows, which they attribute to the Coffin Island Farm. Both Mr. Goulden and Mr. Muldoon acknowledged that, when notified, KCS retrieves buoys and other large debris where safe to do so. DFA's Performance Review similarly reports that KCS collects its debris.

[148] Mr. Goulden's affidavit includes a photograph of a 40 kg fish feed bag said to be from KCS's operation. Mr. Szemerda testified that KCS uses 25 kg bags, not 40 kg. Mr. Goulden also described plastic, rope, and netting that he attributed to the Farm, but without identifying marks. He did not notify KCS of these items.

[149] According to PLBA, materials from AQ#1205 often break loose and wash up on Mr. Muldoon's property, at Beach Meadows, and elsewhere in Liverpool Bay. PLBA contends that large yellow buoys filled with polystyrene beads are the most frequent and destructive items. PLBA acknowledges that KCS retrieves escaped buoys when notified and when conditions permit. However, when buoys wash ashore and break apart, PLBA submits that innumerable polystyrene beads disperse along the shoreline and are difficult to clean up, leading to accumulation.

[150] Mr. Muldoon provided photographs of a broken buoy and polystyrene beads, and testified that KCS staff removed larger pieces after community members and conservation officers moved them to the road, but the smaller beads remained despite cleanup attempts.

[151] DFA concluded it "is satisfied with the historical performance" of AQ#1205. PLBA submits that this conclusion should carry no probative value regarding debris impacts and cannot support a finding that those impacts are acceptable or adequately addressed by KCS's FMP.

[152] PLBA argues that adding more infrastructure would likely exacerbate debris issues and negatively impact other users of public waters. It asks the Board to reject the application in its entirety or, at minimum, to prohibit additions that could increase debris risk.

[153] With respect to debris, the Board finds that the evidence does not support PLBA's characterization of Liverpool Bay as subject to 'chronic' pollution arising from loose gear or debris associated with KCS's operations. The affidavits of Mr. Muldoon and Mr. Goulden, while detailed in relation to a limited number of specific incidents, do not substantiate assertions of 'enormous quantities' of Styrofoam or of 'chronic pollution' along the shoreline. While equipment loss may occur, the record does not indicate a significant or persistent problem. The evidence indicates that KCS takes steps to remedy debris issues when they occur.

[154] As noted, nearby property owners and community members use Liverpool Bay for beachgoing, boating, swimming, and fishing.

[155] The only expert opinion evidence before the Board regarding potential impacts on recreational boating or sailing is from Eric MacIntosh, a retired DFO officer and experienced sailor. His unchallenged opinion is that the proposed expansion will not detrimentally affect recreational boating or sailing.

[156] RQM filed no evidence of negative impacts related to debris, sound, visual effects, or odour on Beach Meadows, nor evidence that the proposed expansion would negatively affect recreational boaters within its constituency.

[157] The Queens Recreational Boating Association ("QRBA") was granted intervenor status based on its members' recreational boating and sailing activities in Liverpool Bay but did not participate in the hearing. In a letter dated October 6, 2025, QRBA indicated that its evidence pertained to two new sites and was of limited relevance to the proposed Coffin Island expansion.

[158] The Board finds that there are no potential negative impacts on recreational boating or sailing.

[159] As set out in DFO's CSAS report, there have been no reports of Great White Shark (GWS) entanglement with aquaculture sites in Atlantic Canada. As an endangered species, any interactions must be reported. Cooke reports no negative GWS interactions across 38 years of operations in Atlantic Canada and the eastern United States.

[160] RQM's expert, Dr. Neil Hammerschlag, opined that the current Coffin Island Site is attractive to GWS and that aquaculture netting poses risks of entanglement, cage breach, or capture. Dr. Hammerschlag reviewed minimum specifications for nets to be used at the Coffin Island Site and concluded that the net strength, as reported in KCS's Development Plan, would be insufficient to withstand the bite force of medium to large sexually mature male GWS.

[161] Dr. Andrew Swanson provided a rebuttal report critiquing Dr. Hammerschlag's opinion. RQM submits that Dr. Swanson is not qualified as an expert in shark species interactions and that his analysis relies substantially on hearsay from DFO scientist Marc Trudel. RQM relies on its oral submissions on this point.

[162] Dr. Swanson stated that the Coffin Island Site has operated without a GWS incident for 22 years. RQM argue that at hearing, it was shown that this assertion could not be proven. This begs the question, how does one prove a negative?

[163] RQM further state that Dr. Hammerschlag testified that GWS numbers are increasing in the area and argue that it appears uncontested that GWS frequent Liverpool Bay.

[164] After considering the expert reports tendered as well as the totality of the evidence in relation to this sub issue, the Board finds that there is no evidence of any entanglements or interactions with GWS at the Coffin island site and that any concern of future entanglements or interactions is speculative at best.

[165] Canadian Wildlife Service (CWS), in response to DFA's network consultations, recommended a 300 m buffer from Coffin Island to the lease boundary due to use of the island by nesting colonial waterbirds, including the endangered Roseate Tern.

[166] In *Town Point* (paras. 26, 91–92), CWS similarly recommended a standard 300 m buffer to protect potential Piping Plover habitat on nearby land. Considering the specific circumstances before it, the Board accepted a 250 m buffer due to a 20 m gap between oyster cages and the lease edge.

[167] In this case, KCS state that the distance from the lease boundary to the nearest shoreline point on Coffin Island is 248.2 m. The distance from the lease boundary to the cage boundary is 158.4 m. Accordingly, there is an approximate buffer of more than 400 m from the cage boundary to Coffin Island. KCS state that the proposed expansion does not move the Farm closer to Coffin Island

[168] KCS relies on *Town Point*, NSARB 2022-001-002-003, to justify a lesser buffer. RQM submits that *Town Point* is not comparable for several reasons; In *Town Point*, the proponent contacted Birds Canada and retained an expert to assess potential impacts on nesting plovers. The expert endorsed a smaller buffer, in part because plovers were unlikely to use the harbour side. Dunn's Beach was a provincial park with recreational use and a commercial wharf. Given differing views, DFA sought its own report from the Centre for Marine Applied Research. The ARB in *Town Point* referenced and relied on this body of work to deviate from CWS's recommendation, opting for a compromise buffer and a requirement that active operations cease if plover activity were observed.

[169] RQM submits that none of these factors are present here. RQM also submits that potential impacts on birds of significance to the Mi'kmaq were not flagged during consultation, leaving potential implications for Aboriginal or treaty rights unknown. RQM argues that it is premature to determine an appropriate buffer without further work.

[170] In an email dated January 24, 2024, CWS reiterated concern that the proposed boundary amendment would place part of the lease within 300 m of Coffin Island, recommending relocation so the lease would be entirely greater than 300 m from the island. CWS's reasons included the vulnerability of colonial birds to human disturbance, potential abandonment of historical colony locations, and risks to eggs and chicks when adults are flushed from nests.

[171] PLBA notes that CWS's recommendation—that the AQ#1205 lease boundary be located more than 300 m from Coffin Island—has not been incorporated into KCS's proposal and submits this poses risks to colonial migrants, notably the endangered Roseate Tern.

[172] KCS submits that there is no evidence establishing Coffin Island as critical habitat for the Roseate Tern. Instead, the material before the Board indicates that no critical habitat for the species occurs within 5 kilometres of the proposed aquaculture sites. Data from the Bird Monitoring Data Exchange, as referenced in the Development Plan, records five sightings of the Roseate Tern in Liverpool Bay over a 16-year period between 2000 and 2016.

[173] After considering the totality of the evidence in relation to this sub issue, the Board finds that there is no evidence establishing Coffin Island as critical habitat for the Roseate Tern and that the current buffer zone is sufficient. The Board also notes that KCC's Wildlife Interaction Plan, which was updated further to feedback from CWS, identifies a list of mitigation measures directed specifically at protecting Roseate Tern habitat on Coffin Island.

[174] Having considered all of the sub issues and the evidence and submissions tendered by all parties the Board finds that the proposed expansion will not have a negative impact on the other users of the public waters surrounding the proposed aquacultural operation.

(f) <u>The public right of navigation</u>

[175] KCS submits that the proposed amendment and expansion will not adversely affect the public right of navigation. During network consultation, Transport Canada reviewed the Application and did not identify any navigational concerns.

[176] Mr. Eric MacIntosh, a former DFO officer and experienced sailor, provided opinion evidence that the Application and proposed expansion would not detrimentally impact navigation in Liverpool Bay. His opinion was not contradicted by any competing expert evidence, and he was not cross-examined on this point.

[177] Mr. Stewart of the 23 Fishermen, who was not qualified as an expert, stated that certain fishing routes along the west side of Coffin Island would be "lost" as a result of the expansion. However, the Farm has operated in its current configuration since 2011. Moreover, the direct evidence of lobster fishers Mr. Manthorne and Mr. Munroe is that they fish along Coffin Island, including its western side, as reflected in the maps appended to their affidavits.

[178] KMKNO highlights that the Mi'kmaq experience distinct navigational and safety considerations, placing them in a different position from other fishers who may operate larger vessels or work with larger crews. As Ms. Stevens explained in her affidavit, Mi'kmaq women may be required to fish alone where a spouse lacks Indian status, and Mi'kmaq youth may fish alone where a parent lacks Indian status, given that non-Indigenous family members cannot exercise Aboriginal or treaty rights. As a result, the proposed expansion along the length of Coffin Island poses unique navigational challenges for Mi'kmaq harvesters. They state that the evidence on these concerns was not contested.

[179] As previously stated, the QRBA declined to participate in this boundary amendment hearing.

[180] Overall, the Board, after considering the evidence and the arguments put forth on this issue sees no significant impact on the public right of navigation.

(g) <u>The sustainability of wild salmon</u>

Wild Atlantic Salmon — Potential Risks and Evidence

[181] The potential risks associated with marine salmon aquaculture to wild Atlantic salmon include the transmission of diseases and sea lice from farmed to wild populations, as well as escapes and consequent genetic introgression.

[182] KCS submits that neither the Coffin Island Farm nor the proposed expansion poses a risk to wild salmon or their sustainability. KCS further submit that the Mersey River, the closest historic salmon river to Liverpool Bay, has been considered extirpated since at least 2008; there is presently no wild salmon population in that river. Dr. Kurt Samways testified that, in practical terms, *"there are little to no wild salmon left in the area."* KCS also state that Wild Atlantic salmon populations have declined over more than two decades. While multiple freshwater and marine stressors have been investigated, there is no definitive scientific causal attribution for the overall decline. In their view, there is no direct evidence that salmon farming has caused the decline.

[183] The Medway River, approximately 20 km from Liverpool Bay, is the nearest Southern Upland salmon spawning river. The Medway experiences invasive bass and acidification pressures, with an annual wild run reportedly fewer than 100 grilse. Other spawning rivers, such as the LaHave, are substantially farther away.

[184] PLBA's wild salmon expert, Mr. Jonathan Carr, who prepared an expert report on behalf of PLBA, opined that small or weakened populations are more vulnerable to additional stressors such as introgression, competition, or disease. DFO's CSAS report notes similar concerns. However, DFO

highlighted DFA's regulatory efforts to improve containment and did not recommend additional mitigation measures.

[185] KCS submits that its containment management, fish health programs, and sea lice monitoring further reduce any residual risk to wild salmon in or around Liverpool Bay.

Containment Management and Escape Prevention

[186] Section 15 of the Aquaculture Management Regulations requires that KCS include containment management measures in its FMP. In its Performance Review, DFA concluded with respect to KCS's containment management at Coffin Island:

> The operator has fully complied with the criteria set out by the department regarding the Containment Management Framework, which supports the comprehensive and effective management of marine finfish farms to mitigate the risk of escapees.

[187] KCS employs a custom-designed mooring and containment system approved by a professional engineer. Once installed, infrastructure is monitored through daily above-water inspections, with moorings and anchors inspected by divers every six months and after significant storms.

[188] DFA's Containment Management Framework includes a genetic marking requirement allowing identification of any escapees as Cooke aquaculture salmon.

[189] In 2023, Cooke/KCS implemented a DNA traceability program under which all salmon stocked at Coffin Island are traceable in the event of a breach.

[190] There has been one suspected containment incident at Coffin Island: in June 2021 divers found a small hole in a net, suspected to have been caused by a seal. KCS notified DFA and provided required information. DFA deemed the response satisfactory and required no further action.

[191] Dr. Brian Glebe, a fish physiologist and salmonid aquaculture research scientist, with a 45-year career in both Atlantic salmon conservation and farming, opined that the greatest risk to wild salmon arises from the escape of sexually mature grilse capable of breeding. He notes that KCS uses grow lights at Coffin Island to reduce early maturation of farmed salmon—potentially by up to 90%—and that producing large smolts in land-based systems reduces time at sea and the risk of escape.

[192] Mr. Carr recommends the use of sterile (triploid) salmon as a mitigation measure. On cross-examination, Mr. Szemerda confirmed KCS has trialed sterile fish at another farm. Dr. Glebe cautioned that triploid salmon present challenges in marine aquaculture—slower growth, reduced disease resistance, and greater sensitivity to low oxygen—with Norway having discontinued their use for such reasons. He noted that he produced the first North American triploid stock in the early 1980s.

Fish Health, Sea Lice Monitoring, and Interventions

[193] Sea lice occur naturally in the marine environment and are observed on wild salmon. Sea lice do not survive in freshwater. Smolts stocked from freshwater hatcheries are sea-lice-free. KCS must obtain a Certificate of Health for Transfer from the DFA prior to stocking, that confirms satisfactory testing.

[194] KCS is required to monitor sea lice levels weekly from April 1 to January 15, maintain electronic records, and provide them to the Chief Veterinarian within seven days of collection. DFA imposes seasonally varying low action thresholds of 0.5 to 1 adult female louse per fish.

[195] KCS reports that no sea lice interventions have been required to date at the Coffin Island Farm. If intervention is required, KCS identifies several measures: mechanical freshwater treatments (with disposal of lice to a land-based compost facility), in-feed treatments approved by Health Canada, and/or harvesting.

[196] Dr. Kurt Samways, lead scientist for the Fundy Salmon Recovery Project and a member of the Medway River restoration steering committee, opined that sea lice risk to wild salmon is low in this context. He noted that reports associating sea lice with reduced post-smolt returns are from regions with more intensive farming and narrow passages (e.g., Scotland, Norway), unlike Liverpool Bay. He further observed that available migratory information suggests salmon leaving or returning to the Medway are unlikely to travel south along the coast before migrating to the North Atlantic, reducing interaction likelihood.

Veterinary Oversight and Disease History

[197] Under the Aquaculture Management Regulations, at least six provincial surveillance veterinarian visits occur per calendar year at the Farm, complemented by visits from KCS veterinarians. Knowledge or suspicion of a reportable disease, or mortality events above specified thresholds, must be reported to the provincial Chief Veterinarian. DFA's Performance Review included an historical assessment of the Farm's operations from a health regulatory perspective and concluded they were satisfactory.

[198] The Farm follows an "all-in, all-out" production strategy with a proposed three-month fallow period aligned with industry standards and DFA recommendations for a production cycle of the proposed length. Fallowing reduces the risk of pathogens and sea lice by removing the farmed host.

[199] In 2012, infectious salmon anaemia virus was detected in two of fourteen cages. KCS reported the detection to DFA, DFO, and the Canadian Food Inspection Agency, and voluntarily culled the fish in the two cages. There have been no further reportable diseases.

Wild Salmon Recovery Efforts

[200] KCS state the Coffin Island Farm has not impeded wild salmon recovery efforts. KCS has supported initiatives to restore the Medway River wild Atlantic salmon run.

[201] On behalf of PLBA, Dr. Edmund Halfyard opined that addressing chronic freshwater acidification from acid rain is the most pressing restoration need on the Medway, with liming efforts requiring multi-decade investment.

[202] Dr. Samways, stated that recovery will require collecting out-migrating smolts, rearing them at a marine conservation facility, and returning them to the river.

[203] KCS state that neither of these recovery initiatives would be impacted by the proposed expansion.

PLBA Submissions on Wild Salmon

[204] Mr. Carr opined that expanding the Coffin Island facility will elevate pressures on critically endangered local wild Atlantic salmon populations and significantly impair their survival and recovery, potentially leading to extirpation in nearby rivers such as the Medway, Petite, and LaHave. PLBA submits that KCS's current AQ#1205 operation has likely had negative impacts and that expansion (including at other proposed sites) would increase the likelihood and magnitude of such impacts.

[205] PLBA notes that Dr. Samways agreed on cross-examination that interactions with aquaculture are among several threats to wild salmon. PLBA also points to DFO CSAS findings that genetic risks to Southern Upland salmon "already exist at the current lease" and that risks are expected to be at least proportional to activity intensity; therefore, increased farmed salmon would increase risk at AQ#1205.

[206] Mr. Carr cited research indicating greater declines in wild salmon where aquaculture is present compared to areas without aquaculture, suggesting that populations already vulnerable due to low marine survival cannot tolerate additional stressors from aquaculture operations. Mr. Carr identified three principal harms: (i) interbreeding by escaped farmed salmon causing genetic decline in small, vulnerable populations; (ii) sea lice proliferation in farms and uptake by passing wild salmon; and (iii) disease/pathogen amplification within farms and transmission to wild fish. He submits that escapees from sea cages can interbreed with wild populations in the Medway, LaHave, and Petite systems, causing genetic impacts.

[207] PLBA state that DFO CSAS concluded that the Liverpool Bay expansion (considering all three sites) would increase the proportion of escapees within local populations in the Medway and Mersey beyond a critical 10% threshold, creating significant additional risks to survival and recovery at Medway and to restoration at Mersey.

[208] Mr. Carr recommended sterile (triploid) salmon to mitigate introgression. PLBA submits that Dr. Glebe's reservations about triploids—based on production impacts—should be afforded little weight, as the issue is mitigation of genetic risk, not productivity. PLBA asserts that using triploid stock is a necessary compromise to protect at-risk populations.

[209**]** PLBA contends that:

- KCS has not adequately assessed risks to wild salmon in its FMP, including by misstating that nearby salmon rivers are generally extirpated and by identifying the Gold River as the nearest salmon river. PLBA submits that high farm densities create conditions conducive to sea lice outbreaks, which passing wild salmon can acquire;
- that the Medway River itself (approximately 20–21 km) remains within plausible sea lice drift range;
- Mr. Carr concluded that the proposed expansion will elevate pressures on critically endangered SU populations and significantly impair survival and recovery. Dr. Halfyard cites research indicating that even small increases in freshwater salmon productivity could significantly reduce extirpation risk;
- Dr. Halfyard opined that the Medway population can recover with proper intervention. PLBA submits that, while recovery is possible, the proposed expansion would hinder or preclude restoration efforts, because additional marine mortality from aquaculture would impede recovery; and
- PLBA argues that DFA offered no evidence regarding sea lice presence at AQ#1205 or a meaningful risk assessment, and that historical use of treatments is not predictive of future outbreaks as production scales and environmental conditions change.

[210] PLBA's position is that there is no evidence that real risks to wild salmon are being or will be sufficiently mitigated, and that the site is too close to active salmon runs of a critically low, biologically unique population for which additional marine mortality would hinder recovery. PLBA concludes that the existing AQ#1205 operation likely harms the sustainability of SU salmon populations in the Medway, LaHave, and other nearby rivers, and that expansion would further jeopardize recovery; it submits that this factor weighs heavily against approval.

[211] KMKNO submits that:

- a series of government development decisions and approvals have eliminated the ability of the Mi'kmaq to exercise fishing rights with respect to this species in Liverpool Bay and that the Application, if approved, would add to threats affecting remaining spawning rivers such as the Medway and LaHave;
- KMKNO cites DFO Science reporting that the existing and proposed sites lie within the migration pathways and range of the SU population, that the Mersey and Medway are known Atlantic salmon rivers, and that escapees can be found in rivers up to 200–300 km from farms. The SU population has been assessed as Endangered by COSEWIC since 2010 and is under consideration for SARA listing;
- KMKNO further relies on scientific literature cited by DFO indicating that escapes are an ongoing threat to the genetic integrity and persistence of wild populations; escapes occur regularly, and reported numbers may significantly understate actual escapees;
- KMKNO submits that, while DFO may accept this level of risk, it does not, and warns that continuing to introduce new threats may eliminate wild Atlantic salmon in this region for future Mi'kmaq generations; and

- KMKNO submits the Province should have acknowledged Mi'kmaq rights-based fisheries (including lobster) and recognized as relevant the potential spread of parasites/sea lice to wild fish and potential harm to groundfish (e.g., lobster) from antibiotic use.

[212] The Board notes that when KMKNO filed their application for intervenor status, the following was stated at paragraph 8 in response to the question, *Specifically describe how the proposed aquaculture activities may substantially and directly affect you*:

> Providing Kelly Cove with more room to farm their fish means less physical area in Liverpool Bay for the Mi'kmaq to fish in. Although no detrimental effects have been shown on culturally significant wild species in the area such as salmon, eel and lobster, the expansion and approval of new sites will displace Mi'kmaw fishers. This loss of access clearly impedes the court affirmed Mi'kmaw right to fish for food, social and ceremonial purposes as well as for moderate livelihood..

[213] A significant amount of expert evidence was tendered by the parties in relation to the issue of wild salmon. Having considered and reviewed all of the evidence and arguments made with respect to this issue, the Board comes to the conclusion that the proposed expansion will not have any significant impact on the local salmon population and that the existing farm has not had a significant impact since coming into operation in 2011. KCS has established that they have adequate mitigation systems in place to ensure that any attempts to aid the recovery of wild salmon will not be impacted. As was stated in *Rattling Beach* at paragraph [113*],* "*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".*

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

[214] There are no other aquaculture sites currently operating in the public waters of Liverpool Bay. Accordingly, this factor does not apply.

b. Did the Crown have a duty to consult with the Mi'kmaq of Nova Scotia and did the Crown fulfill its duty?

[215] Was there a duty to consult in this case, and if there was, did the Crown fulfill its duty. In other words, was there adequate consultation?

[216] 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 (Haida)

> 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.

[217] 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".

[218] The Board has received extensive final written submissions on the issue of the <u>adequacy</u> of the duty to consult. This is how the question around the duty to consult was framed by the parties prior to the hearing. At no time prior to the hearing commencing were the issue of the <u>scope</u> of the duty to consult raised. <u>(emphasis added)</u>

[219] As was confirmed in KMKNO's correspondence to the Board on September 22, 2025 when presenting their issue list, <u>*KMKNO's participation is primarily concerned with overarching issue of the adequacy of Crown consultation, as set out in our previous correspondences to the Board*</u>*. Included as part of this issue is consideration of the potential adverse impacts of the proposed aquaculture development on the Mi'kmaqs asserted and established Aboriginal, treaty and title rights, as protected under s. 35 of the Constitution Act, 1982.* <u>(emphasis added)</u>

[220] As noted above, as part of the network consultation, on June 27, 2019, DFA provided the application documents to the Office of Aboriginal Affairs (now L'Nu Affairs (OLA)).

[221] OLA found the applications to potentially involve impacts to Mi'kmaw Aboriginal and Treaty rights at the moderate end of the Haida spectrum. The criteria used to assess the potential for

intrusion on asserted or established Aboriginal or Treaty rights is further described in the initial offer to consult letter. These criteria included:

> • The scope and scale of physical works required for the project;
> • The proximity to Mi'kmaw communities;
> • Regulatory requirements associated with the project (which estimate potential environmental impacts to waterways); and
> • The potential for the existence of – and impacts to – heritage resources of Mi'kmaw origin within the project area.

[222] When outlining her specific rationale for a moderate level of consultation across all three original applications, Ms. Claire Rillie of OLA stated the following:

> • The proponent, Kelly Cove Salmon Ltd. is proposing to more than triple the amount of farmed Atlantic Salmon in Liverpool Bay, Nova Scotia – total biomass, if all applications are approved, could reach 10 million Kg.
> • Proposed sites will comprise a total footprint of 122.1 ha in Liverpool Bay.
> • Numerous other fisheries, including commercial and Aboriginal fisheries, are known to have occurred or currently occur in Liverpool Bay.
> • The Mersey River system, which drains into Liverpool Bay, is a known river of significance to the Mi'kmaq.
> • The proponent has committed to employing management strategies to reduce the risk of fish escapes including building infrastructure strong enough to withstand weather, currents, ice flow etc.
> • Cages will be designed to minimize farmed fish and wildlife interactions and will include predator deterrents.
> • Site #1205 is immediately proximal to Coffin Island (nesting grounds for birds, migratory resting spot, duck habitat, etc).
> • Site #1205 is less than 0.5 km from a known Mi'kmaq archaeological site at Coffin Island; #1433 is less than 3 km from2 known Mi'kmaq archaeological sites in Liverpool.
> • The proponent will require an NPA authorization from Transport Canada.
> • Proposed sites are located approximately 30 km from Ponhook Lake IR 10 (Acadia FN).
> • Limited engagement with the Mi'kmaq of Nova Scotian has been undertaken to date.

[223] On balance, DFA offered to consult the Mi'kmaq of Nova Scotia at a moderate level and reached out to Chiefs and Councils for reciprocity in the form of community-level and collectively held knowledge of potential adverse impacts to Aboriginal rights practiced within the project area which could be used to inform the results of screening and open the consultation dialogue.

[224] On September 25, 2019, DFA initiated consultation with the Mi'kmaq of Nova Scotia at the moderate level.

[225] On November 22, 2019, Ms. Twila Gaudet from KMKNO, the negotiation office of the Assembly of First Nations, advised that the Mi'kmaq of Nova Scotia wished to proceed with consultation. The KMKNO raised a number of concerns with the proposed expansion and expressed that the local Mi'kmaq communities were opposed to it.

[226] On February 6, 2020, DFA wrote to KMKNO indicating its intention to continue consultation. In this letter, DFA acknowledged that KMKNO had raised several concerns in its prior correspondence; however, DFA stated that only two of these issues appeared to implicate established or asserted Mi'kmaq Aboriginal or Treaty rights. Both issues related to potential adverse impacts on fish health and, consequently, the Mi'kmaq right to fish. DFA further noted that the remaining concerns identified by KMKNO appeared to be general in nature and that any connection to an established or asserted Aboriginal or Treaty right had not been clearly demonstrated. DFA therefore requested that KMKNO provide details regarding any alleged adverse impacts on such rights and expressed its willingness to meet in person to advance the consultation process.

[227] Consultation was initiated with the following groups: The 10 Chiefs and Councils of the Assembly of Nova Scotia Mi'kmaw Chiefs, including Membertou First Nation (under the August 31, 2020, Mi'kmaq-Nova Scotia-Canada Consultation Terms of Reference).

[228] It should also be noted that the initial consultation letter considered the original three applications in this matter,#1433, #1432 and #1205, as a package. The Board in this decision is tasked with considering #1205 only.

[229] Exhibited to the affidavit of Robert Ceschiutti (Exhibit 54), is a record of all of the communications between DFA and KMKNO presentations given during consultation meetings, as well as minutes of all meetings during the period of consultation. This record alone is 260 pages.

[230] The first consultation meeting occurred virtually on December 9, 2020. During this session, DFA delivered three presentations: (a) an overview of the adjudicative application review process; (b) a presentation describing the proposed aquaculture expansion in Liverpool Bay; and (c) a presentation outlining the lobster telemetry study conducted in Liverpool Bay.

[231] The second consultation meeting took place virtually on March 1, 2022. The primary focus of this meeting was the potential fish health impacts associated with the proposal and the applicable mitigation measures. One of DFA's veterinarians, Dr. Anthony Snyder, provided a presentation outlining the aquatic animal health programs mandated under both provincial and federal regulatory frameworks.

[232] The third consultation meeting was held on March 2, 2022. This meeting focused on concerns relating to potential environmental impacts and associated mitigation strategies.

[233] During the third consultation session, DFA requested clarification regarding the specific ways in which the site affected First Nation fisheries. Representatives from KMKNO advised that further detail might not be possible. They stated that Mi'kmaq fishers had already been displaced and compelled to

alter their fishing practices in Liverpool Bay as a result of the existing aquaculture operation. In addition, Jessica Feindel delivered a presentation describing the program, the historical performance of site AQ#1205, and the collection of baseline environmental data.

[234] It was also at this meeting that KMKNO first expressed concerns regarding potential impacts on underwater archaeology within Liverpool Bay.

[235] The fourth consultation meeting occurred on June 1, 2022. The primary issue discussed was the concern raised by KMKNO and Acadia First Nation relating to potential impacts on submerged archaeological resources. Potential impacts on fishing rights were also examined. During this session, Acadia First Nation and KMKNO reported that they had met with KCS on April 15, 2022, and advised that KCS had been unaware of the archaeological concern at that time.

[236] Staff from the Department of Communities, Culture, Tourism and Heritage (CCTH) attended the meeting to address KMKNO's suggestion that an Archaeological Resource Impact Assessment (ARIA) be conducted. CCTH's initial advice to DFA regarding the proposed AQ#1205 expansion indicated no concerns. However, CCTH noted that if any artifacts were discovered during operations, the proponent would be required to report the finding to the Coordinator of Special Places. DFA stated it would consider KMKNO's request that an ARIA be completed for the project area.

[237] This meeting also included extensive discussion regarding potential impacts on Mi'kmaq fishing rights. OLA emphasized that consultation required specificity regarding the exercise of rights, including information about the species fished and the number of community members affected. KMKNO maintained that the number of community members was not relevant and that displacement of Mi'kmaq fishers had already occurred due to both the existing site and commercial fisheries. DFA sought clarification on how the proposed expansion would limit access to fishing resources and highlighted the importance of identifying the most productive fishing areas. DFA suggested that one of the alternate proposed sites might be preferable if it reduced impact, emphasizing the need to balance multiple interests.

[238] As recorded in paragraphs 196 and 197 of Exhibit 54, KMKNO agreed to undertake a new action item (Action Item #4), which required them to provide information on: (a) species fished; (b) locations where fishing occurred; (c) the number of community members who would be affected; (d) how the project would impede fishers' access to the resource; and (e) whether reasonable accommodations could be developed to mitigate any potential loss within the immediate project area.

[239] On June 16, 2022, KMKNO wrote to DFA reiterating its concern regarding possible impacts to submerged archaeology. On November 23, 2022, DFA wrote to KMKNO seeking to continue consultation and noted that no follow-up had been received regarding the outstanding action items in the five months since the fourth consultation meeting. DFA requested a response within 30 days. KMKNO replied on November 30, 2022, requesting additional time to review the ARIA report and prepare feedback.

[240] KMKNO submitted its response on December 14, 2022. The first matter addressed was Action Item #4. KMKNO declined to provide the requested information, stating: “We reiterate that there remains concerns in providing that information. This is an ongoing exercise.” KMKNO also objected to the ARIA being a desk-based screening conducted by KCS without direction from DFA. KMKNO further indicated that provincial recognition of the cultural significance of the submerged landscape in Liverpool Bay to the Mi’kmaw would help build the trust necessary for sharing information regarding fishing activities.

[241] DFA issued its decision letter closing consultation on May 1, 2023. The letter set out a detailed chronology of the consultation process and DFA’s assessment of each concern raised by KMKNO and Acadia First Nation.

[242] DFA concluded that many of the concerns raised during consultation were general in nature, not specific to the proposed site, and not clearly linked to an asserted or established Aboriginal right. DFA reached this conclusion with respect to issues concerning: (a) aquaculture facility waste; (b) parasites and sea lice, including antibiotics; (c) oxygen conditions; and (d) fish escapes.

[243] DFA acknowledged the established Aboriginal and Treaty rights to fish for Food, Social and Ceremonial (“FSC”) purposes and for a moderate livelihood. It also acknowledged that KMKNO and Acadia First Nation raised concerns regarding potential adverse impacts on these rights—specifically, the protection of wild stocks from sea lice, the presence of American eels, and impacts to local FSC fisheries. However, DFA determined that these concerns were general and not shown to relate specifically to the proposed expansion site. DFA further concluded that the lack of specificity regarding how the exercise of rights would be adversely affected meant that it could not identify accommodation or mitigation measures.

[244] With respect to submerged archaeology, DFA noted that KCS provided a Phase II ARIA report on March 15, 2023, and that the report had been shared with KMKNO and Acadia First Nation. The report advised that no cultural remains were found in subsurface testing and that development could proceed without further investigation. DFA concluded that the concern about submerged archaeology was speculative. Nonetheless, DFA stated that, should the application be approved, it would request that the Aquaculture Review Board impose a licence condition requiring KCS to notify CCTH’s Coordinator of Special Places if any artifacts were discovered during operations. DFA also described an ongoing collaborative working group, involving KMKNO, CCTH, OLA, and others, to develop archaeological procedures and educational materials for licence holders.

[245] In their final written submissions, KMKNO takes issue with the consultation, as outlined above, even going so far as to call into question the qualifications and abilities of DFA employees.

[246] KMKNO in their final written submissions, address their concerns through a *what the province should have done* versus *what the province actually did* framework.

[247] As has been submitted by opposing parties in their response submissions, this framework implies that a correctness standard should be considered by the Board when analyzing if the duty to

consult was adequate in the present matter. KMKNO in their own response submissions confirm that the correctness standard should be applied, in their view.

[248] Respectfully, the Board declines to apply a correctness standard when reviewing the adequacy of the duty to consult in this matter and will apply a reasonableness standard as per *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 (" Vavilov"):

> [12] These concerns regarding the application of the reasonableness standard speak to the need for this Court to more clearly articulate what that standard entails and how it should be applied in practice. Reasonableness review is methodologically distinct from correctness review. It is informed by the need to respect the legislature's choice to delegate decision-making authority to the administrative decision maker rather than to the reviewing court. In order to fulfill *Dunsmuir*'s promise to protect "the legality, the reasonableness and the fairness of the administrative process and its outcomes", reasonableness review must entail a sensitive and respectful, but robust, evaluation of administrative decisions: para. 28.
>
> [13] Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a "rubber-stamping" process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.
>
> [14] On the one hand, courts must recognize the legitimacy and authority of administrative decision makers within their proper spheres and adopt an appropriate posture of respect. On the other hand, administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be "justified to citizens in terms of rationality and fairness": the Rt. Hon. B. McLachlin, "The Roles of Administrative Tribunals and Courts in Maintaining the Rule of Law" (1998), 12 *C.J.A.L.P.* 171, at p. 174 (emphasis deleted); see also M. Cohen-Eliya and I. Porat, "Proportionality and Justification" (2014), 64 *U.T.L.J.* 458, at pp. 467-70.
>
> [15] In conducting a reasonableness review, a court must consider the outcome of the administrative decision in light of its underlying rationale in order to ensure that the decision as a whole is transparent, intelligible and justified. What distinguishes reasonableness review from correctness review is that the court conducting a reasonableness review must focus on the decision the administrative decision maker actually made, including the justification offered for it, and not on the conclusion the court itself would have reached in the administrative decision maker's place.

[249] As is stated in *Haida,* when considering the duty to consult,

> 61 On questions of law, a decision-maker must generally be correct: for example, *Paul v. British Columbia (Forest Appeals Commission)*, [2003] 2 S.C.R. 585, 2003 SCC 55. On questions of fact or mixed fact and law, on the other hand, a reviewing body may owe a degree of deference to the decision-maker. The existence or extent of the duty to consult or accommodate is a legal question in the sense that it defines a legal duty. However, it is typically premised on an assessment of the facts. It follows that a degree of deference to the findings of fact of the initial adjudicator may be appropriate. The need for deference and its degree will depend on the nature of the question the tribunal was addressing and the extent to which the facts were within the expertise of the tribunal: *Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, 2003 SCC 20; *Paul*, *supra*. Absent error on legal issues, the tribunal may be in a better position to evaluate the issue than the reviewing court, and some degree of deference may be required. In such a case, the standard of review is likely to be reasonableness. To the extent that the issue is one of pure law, and can be isolated from the issues of fact, the standard is correctness. However, where the two are inextricably entwined, the standard will likely be reasonableness: *Canada (Director of Investigation and Research) v. Southam Inc.*, 1997 CanLII 385 (SCC), [1997] 1 S.C.R. 748.
>
> 62 The process itself would likely fall to be examined on a standard of reasonableness. Perfect satisfaction is not required; the question is whether the regulatory scheme or government action "viewed as a whole, accommodates the collective aboriginal right in question": *Gladstone*, *supra*, at para. 170. What is required is not perfection, but reasonableness. As stated in *Nikal*, *supra*, at para. 110, "in . . . information and consultation the concept of reasonableness must come into play. . . . So long as every reasonable effort is made to inform and to consult, such efforts would suffice." The government is required to make reasonable efforts to inform and consult. This suffices to discharge the duty.
>
> 63 Should the government misconceive the seriousness of the claim or impact of the infringement, this question of law would likely be judged by correctness. Where the government is correct on these matters and acts on the appropriate standard, the decision will be set aside only if the government's process is unreasonable. The focus, as discussed above, is not on the outcome, but on the process of consultation and accommodation

[250] The extensive record of consultations and attempts at consultation, in evidence, shows that adequate efforts were made to consult and that all concerns raised by the Mi'kmaq during the process were identified and responded to at the moderate level as was recommended by OLA.

[251] There is no reference to any dissatisfaction at the scope of consultation that was confirmed by DFA in their initial letters to bands or throughout the correspondence exchanged between KMKNO and DFA.

[252] As was stated at paragraph 42 of *Haida*

> 42 At all stages, good faith on both sides is required. The common thread on the Crown's part must be "the intention of substantially addressing [Aboriginal] concerns" as they are raised (Delgamuukw, supra, at para. 168), through a meaningful process of consultation. Sharp dealing is not permitted. However, there is no duty to agree: rather, the commitment is to a meaningful process of consultation. As for Aboriginal claimants, they must not frustrate the Crown's reasonable good faith attempts. nor should they take unreasonable positions to thwart government from making decisions or acting in cases where, despite meaningful consultation, agreement is not reached. Mere hard bargaining, however, will not offend an Aboriginal people's right to be consulted.

[253] Both parties have a duty to consult in good faith. Meaningful two way dialogue is required during consultation. The record shows that DFA displayed flexibility in extending deadlines to try and facilitate this meaningful two way dialogue.

[254] At the outset of consultation when general concerns raised did not seem to be relevant to Aboriginal rights, DFA invited further detail on these concerns and offered to meet to discuss these concerns further. Meetings were organized and presentations were prepared and presented by DFA, as outlined above.

[255] When DFA asked for more specifics around, for example, FSC and the numbers of effected fishers, this information was not ultimately provided. DFA listened to concerns articulated around potential displacement of fishers in Liverpool Bay and suggested that another proposed area might be preferred for expansion if a specific area was especially productive for fishers. Unfortunately this information was not forthcoming.

[256] The issue of underwater archaeology was only first identified at the March 2, 2022 meeting. Even when the issue of archeological artifacts and a request for an ARIA was made by KMKNO, almost three years into consultation, this request was considered and was ultimately fulfilled by the proponent themselves. DFA also committed to making a recommendation to this Board that a reporting requirement be put in place should any artifacts be found.

[257] The Board must consider the evidence before it as well as the legal arguments and caselaw when making a determination on whether the duty to consult was adequate.

[258] Based on the evidence put before it by the parties, as well as the legal arguments and caselaw presented to them, the Board finds that the duty to consult was fulfilled and was adequate.

Conclusion

[259] The Board is satisfied that there will be no negative, or any, impact of this amendment on any of the eight statutory conditions. The application of Kelly Cove Salmon Ltd. for an amendment to the boundary of lease AQ#1205 is allowed.

[260] The Board also recommends that KCS be required to contact CCTH's Coordinator of Special Places in the event that any artifacts are encountered by them at the site of lease #1205 and that the FMP be reviewed in light of this decision to allow for an amendment to the boundary of lease AQ#1205.

DATED at Halifax, Nova Scotia this 17th day of February, 2026.

Damien Barry, Chair

Bruce Morrison, Board Member

Roger Percy, Board Member

Appendix A

Summary of Network Consultations
https://arb.novascotia.ca/sites/default/files/hearing/documents/nsarb-2023-001-app-004_report_on_outcomes_of_consultation_exb_4-reduced_redacted_0.pdf

Fisheries and Oceans Canada (DFO) reviewed the applications according to their legislative mandate, which includes the Fisheries Act, Species at Risk Act (SARA), Oceans Act and applicable regulations. Questions were raised in discussions by DFO requiring clarification from the applicant, which were provided by the applicant

For each application, DFO completed its review and submitted a Letter of Advice (LOA) and one Canadian Science Advisory Secretariat (CSAS) Science Response. Each 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.

The applications were reviewed by various DFO sectors/offices to assess the following: the deposit of deleterious substances; the death of fish by means other than fishing; the harmful alteration, disruption or destruction of fish habitat; the killing, harming of SARA-listed species and the destruction of their critical habitat; and the introduction of aquatic species into regions or bodies of water frequented by fish where they are not indigenous.

DFO conducted a risk assessment for each application using pathways of effects to establish cause and-effect relationships by linking activities to stressors and stressors to effects on fish and fish habitat. These potential stressors included physical alteration of habitat structure, alteration in light, noise, deposit of nutrients and organic material, release of aquatic invasive species, deposit of chemicals, release of farmed fish, and the release of pathogens.

Each assessment by DFO was supported by a modelling exercise that described benthic and pelagic Predicted Exposure Zones (PEZs) associated with the range of aquaculture activities, and the predicted impacts on susceptible fish and fish habitat, including SARA listed species, susceptible fishery species, and the habitats that support them. DFO considered the proponent's avoidance and mitigation measures, and the regulatory requirements of DFO and other federal and provincial regulators while using the precautionary approach in determining the residual risk to fish and fish habitat.

DFO also assessed potential overlaps with fisheries that occur in the general vicinity and could potentially be displaced. These include American lobster, groundfish, sea scallop, Atlantic mackerel and Atlantic herring. DFO concluded that the lease area for proposed sites AQ#1205x, AQ#1432 and AQ#1433, however, are small relative to the fishing grounds for each of these fished species.

DFO recommended the implementation of the applicant's Sea Lice Management and Treatment Plan, and that the applicant prioritize preventing Atlantic salmon escapees on all sites if the site(s) are approved by the NSARB. If the application(s) are approved, DFA will continue to work with the 11 applicant to ensure the advice and recommendations provided by DFO are appropriately incorporated into the applicant's Farm Management Plan (FMP) for each licence/lease.

Canadian Food Inspection Agency (CFIA) reviewed the applications and did not raise any questions or concerns with the proposed boundary amendment or proposed two new marine finfish sites.

Transport Canada (TC) reviewed the applications and did not raise any questions or concerns with the proposed boundary amendment or proposed two new marine finfish sites. Transport Canada will engage with the Canadian Coast Guard (CCG) Aids to Navigation (AtoN) group to ensure under the Site Marking Plan for each site, yellow buoys are sufficient (see Appendix D). This request will be addressed under Transport Canada's Canadian Navigable Waters Act (CNWA) through the Navigation Protection Program (NPP) approval process, upon a decision from the board.

Environment and Climate Change Canada (ECCC) – **Canadian Shellfish Sanitation Program (CSSP)** reviewed the applications and did not raise any questions or concerns with the proposed boundary amendment or proposed two new marine finfish sites.

Environment and Climate Change Canada (ECCC) - Canadian Wildlife Services Division (CWS) reviewed the applications and had comments requiring clarification. The additional information requested by CWS was provided by the applicant and DFA. CWS recommends that the proposed new lease boundary (AQ#1205x) not be situated within 300 metres from Coffin Island, which is used for nesting by colonial birds and roseate terns. Additionally, CWS recommends that the proposed two new aquaculture leases (AQ#1432 and AQ#1433) should not be situated within areas where there are concentrations of wintering Harlequin Ducks, and an adequate buffer should be implemented between Harlequin Duck wintering areas and proposed aquaculture sites.

If the application(s) are approved by the NSARB, DFA will work with the applicant to ensure that the advice, mitigations, and recommendations provided by CWS are appropriately incorporated into the applicant's FMP for each licence/lease.

Nova Scotia Department of Environment (now Environment and Climate Change (NSECC)) reviewed the applications and recommends that the applicant use heavy material inflatable floats and buoys instead of Styrofoam buoys for corner markers. NSECC also recommends that corner blocks for site markers be placed by a qualified third party with GPS technology, which will indicate that infrastructure is kept within the proposed boundaries (see Appendix G). If the application(s) are approved by the NSARB, DFA will work with the applicant to explore alternative buoy types, as per the recommendation by NSECC. Also, DFA will work with KCS to ensure they have qualified personnel installing corner markers in alignment with each Site Marking Plan.

Nova Scotia Department of Agriculture reviewed the applications and did not raise any questions or concerns with the proposed boundary amendment or proposed two new marine finfish sites.

Nova Scotia Department of Municipal Affairs (now Municipal Affairs and Housing) The memo serves as a notification of the proposed developments to Municipal Affairs only and no response was required.

Nova Scotia Department of Communities, Culture, and Heritage (now Communities Culture, Tourism and Heritage (CCTH)) reviewed the boundary amendment application and initially did not have any archaeological concerns with the proposed boundary amendment. Following the review of the proposed two new marine applications, the department indicated that although there are no recorded archaeology sites in the area of the proposed aquaculture development, the larger vicinity has a number of recorded sites. There is concern for the impact of submerged archaeological resources when large anchors are placed on the sea floor. The concern is lessened if the anchors remain stationary and are not dragged.

After further consideration and consultation, an Archaeological Resource Impact Assessment (ARIA) of the proposed expansion areas was completed by the applicant on their own volition. Following the completion of the ARIA Phase I, it was determined that an ARIA Phase II of the proposed lease areas was required for AQ#1205x and AQ#1432 only. CCTH reviewed the final report for the Phase II and found the results to be acceptable. CCTH recommended the assessment area be cleared of any requirement for further archaeological investigation and that the proposed development may proceed as planned (see Appendix J). CCTH reviewed the ARIA Phase I and Phase II reports and provided their feedback in subsequent letters, which were shared by the applicant with DFA (see Appendix J). If the application(s) are approved by the NSARB, DFA will work with the applicant to ensure that the advice and recommendations provided by CCTH are incorporated into the applicant's FMP for each licence/lease.

Nova Scotia Department of Lands and Forestry (now Natural Resources and Renewables (NRR)) reviewed the applications and recommended a study be conducted on the number of bird interactions with the existing site prior to the proposed expansion of operations in Liverpool Bay. The applicant confirmed that no studies had been conducted but that they do monitor wildlife interactions and no interactions with birds have been recorded to date at AQ#1205. In addition, the applicant provided their updated Wildlife Interaction Plan (WIP), which incorporates additional control and monitoring measures related to interactions with other wildlife, including birds (see Appendix K). If the application(s) are approved by the NSARB, DFA will work with the applicant to ensure wildlife monitoring, interactions and mitigations are appropriately incorporated into the applicant's FMP for the licence/lease.

Nova Scotia Department of Fisheries and Aquaculture - Inland Fisheries Division reviewed the applications and did not raise any questions or concerns with the proposed boundary amendment or proposed two new marine finfish sites.

Nova Scotia Office of Aboriginal Affairs (now Office of L'nu Affairs (OLA)) reviewed the network memo containing information relating to the applications and provided advice on requirements for

further consultation with the First Nations communities of Nova Scotia that might be impacted or could provide feedback on the proposed aquaculture lease development.

Summary of Consultations with the Mi'kmaq of Nova Scotia

Level of Consultation and the First Nations Communities Offered Consultation

The applications were sent to the Nova Scotia Office of L'nu Affairs (OLA) to screen the applications for Aboriginal consultation purposes. OLA found the applications to potentially involve impacts to Mi'kmaw Aboriginal and Treaty rights at the moderate end of the Haida spectrum.

The criteria used to assess the potential for intrusion on asserted or established Aboriginal or Treaty rights is further described in the initial offer to consult letter. These criteria included:

- The scope and scale of physical works required for the project;
- The proximity to Mi'kmaw communities;
- Regulatory requirements associated with the project (which estimate potential environmental impacts to waterways); and
- The potential for the existence of – and impacts to – heritage resources of Mi'kmaw origin within the project area.

On balance, DFA offered to consult the Mi'kmaq of Nova Scotia at a moderate level and reached out to Chiefs and Councils for reciprocity in the form of community-level and collectively held knowledge of potential adverse impacts to Aboriginal rights practiced within the project area which could be used to inform the results of our screening and open the consultation dialogue.

Consultation was initiated with the following groups:

The 10 Chiefs and Councils of the Assembly of Nova Scotia Mi'kmaw Chiefs, including Membertou First Nation (under the August 31, 2020, Mi'kmaq-Nova Scotia-Canada Consultation Terms of Reference).

Issues Raised by the Mi'kmaq of Nova Scotia During Consultation

The following issues were raised by Acadia First Nations and/or KMKNO, the executive body that leads consultation efforts on behalf of the Assembly of Nova Scotia Mi'kmaw Chiefs:

1. Aquaculture facility waste
2. Parasites and sea lice, antibiotics
3. Oxygen
4. Protection of wild stocks from sea lice
5. Fish Escape
6. American eel
7. Impacts on local Food, Social and Ceremonial (FSC) fisheries
8. Underwater Archaeological Resources

9. Tourism

DFA Assessment

1. Aquaculture facility waste

The DFA assessed this issue and considered this to be a general concern regarding the aquaculture process where a connection between the contemplated decision and a potential negative impact to an established or asserted Aboriginal or Treaty right was not clear. The DFA responded to the issue raised and offered a meeting with representatives of the KMKNO and concerned Mi'kmaq harvesters to learn more about the potential interaction between the practice of Aboriginal and treaty rights and aquaculture in Nova Scotia. The issue was discussed during Consultation meetings held on December 9, 2020 (Consultation Meeting #1) and March 2, 2022 (Consultation Meeting #3).

The DFA determined that this issue raised was general in nature and not specific to the proposed activities identified by the applicant. In addition, the Mi'kmaq of Nova Scotia did not clearly indicate how this issue was related to asserted and established aboriginal rights. As such, no accommodation or mitigation measures are recommended to the Aquaculture Review Board for this issue raised.

2. Parasites and sea lice, antibiotics

The DFA assessed this issue and considered this to be a general concern regarding the aquaculture process where a connection between the contemplated decision and a potential negative impact to an established or asserted Aboriginal or Treaty right was not clear. The DFA responded to the issue raised and offered a meeting with representatives of the KMKNO and concerned Mi'kmaq harvesters to learn more about the potential interaction between the practice of Aboriginal and treaty rights and aquaculture in Nova Scotia. The issue was discussed during Consultation meetings held on December 9, 2020 (Consultation Meeting #1) and March 1, 2022 (Consultation Meeting #2).

The DFA determined that this issue raised was general in nature and not specific to the proposed activities identified by the applicant. In addition, the Mi'kmaq of Nova Scotia did not clearly indicate how this issue was related to asserted and established aboriginal rights. As such, no accommodation or mitigation measures are recommended to the Aquaculture Review Board for this issue raised.

3. Oxygen

The DFA assessed this issue and considered this to be a general concern regarding the aquaculture process where a connection between the contemplated decision and a potential negative impact to an established or asserted Aboriginal or Treaty right was not clear. The DFA responded to the issue raised and offered a meeting with representatives of the KMKNO and concerned Mi'kmaq harvesters to learn more about the potential interaction between the practice of Aboriginal and treaty rights and aquaculture in Nova Scotia. The issue was discussed during Consultation meetings held on December 9, 2020 (Consultation Meeting #1).

The DFA determined that this issue raised was general in nature and not specific to the proposed activities identified by the applicant. In addition, the Mi'kmaq of Nova Scotia did not clearly indicate

how this issue was related to asserted and established aboriginal rights. As such, no accommodation or mitigation measures are recommended to the Aquaculture Review Board for this issue raised.

4. Protection of wild stocks from sea lice

The DFA assessed this issue and considered this to potentially threaten established and asserted Mi'kmaw Aboriginal and treaty rights. The DFA responded to the issue raised and offered a meeting with representatives of the KMKNO and concerned Mi'kmaq harvesters for further Consultation. The issue was discussed during Consultation meetings held on December 9, 2020 (Consultation Meeting #1), March 1, 2022 (Consultation Meeting #2) and June 1, 2022 (Consultation Meeting #4).

The DFA determined that, due to a lack of specificity, this issue raised was general in nature and not specific to the proposed activities identified by the applicant. As such, no accommodation or mitigation measures are recommended to the Aquaculture Review Board for this issue raised.

5. Fish escape

The DFA assessed this issue and considered this to be a general concern regarding the aquaculture process where a connection between the contemplated decision and a potential negative impact to an established or asserted Aboriginal or Treaty right was not clear. The DFA responded to the issue raised and offered a meeting with representatives of the KMKNO and concerned Mi'kmaq harvesters to learn more about the potential interaction between the practice of Aboriginal and treaty rights and aquaculture in Nova Scotia. The issue was discussed during Consultation meetings held on December 9, 2020 (Consultation Meeting #1).

The DFA determined that this issue raised was general in nature and not specific to the proposed activities identified by the applicant. In addition, the Mi'kmaq of Nova Scotia did not clearly indicate how this issue was related to asserted and established aboriginal rights. As such, no accommodation or mitigation measures are recommended to the Aquaculture Review Board for this issue raised.

6. American eel

The DFA assessed this issue and considered this to potentially threaten established and asserted Mi'kmaw Aboriginal and treaty rights. The DFA responded to the issue raised and offered a meeting with representatives of the KMKNO and concerned Mi'kmaq harvesters for further Consultation. The issue was discussed during Consultation meetings held on December 9, 2020 (Consultation Meeting #1).

The DFA determined that, due to a lack of specificity, this issue raised was general in nature and not specific to the proposed activities identified by the applicant. As such, no accommodation or mitigation measures are recommended to the Aquaculture Review Board for this issue raised.

7. Impacts on local FSC fisheries

This issue was first raised during the Consultation meeting held on December 9, 2020 (Consultation Meeting #1). The DFA responded to the issue raised during the Consultation meeting and requested that the Mi'kmaq of Nova Scotia further explain specific concerns about the potential adverse impact on local FSC fisheries from the Mi'kmaq during the consultation process. The issue was discussed

again during Consultation meetings held on March 2, 2022 (Consultation Meeting #3) and June 1, 2022 (Consultation Meeting #4).

The DFA determined that, due to a lack of specificity, this issue raised was general in nature and not specific to the proposed activities identified by the applicant. As such, no accommodation or mitigation measures are recommended to the Aquaculture Review Board for this issue raised.

8. Impacts to submerged Mi'kmaw Archaeological Resources

This issue was first raised during the Consultation meeting held on March 2, 2022 (Consultation Meeting #3). During the Consultation meeting, the DFA noted that no significant concerns were raised by Communities, Culture, Tourism and Heritage ("CCTH") during the review process but that CCTH advised that if any heritage resources were discovered that the operator should contact the Special Places Coordinator. The KMKNO Archaeology Research Division (ARD) asserted that the project area is high risk and recommended an Archaeological Resource Impact Assessment (ARIA) be completed.

During the Consultation meeting held on June 1, 2022 (Consultation Meeting #4), CCTH informed the KMKNO and Acadia First Nation that no official assessment had been undertaken to date, adding that the background information presented was helpful. CCTH stated that their examination of the application in these areas yielded information on shipwrecks and pre-contact site on Coffin Island - supporting the Mi'kmaw position that limited current knowledge does not preclude the existence of additional sites - and adding that CCTH understands the Mi'kmaw connection to the Mersey system. CCTH noted that they were still considering the project area as having a high energy subsurface environment and sandy floors. The DFA agreed to consider the request by KMKNO ARD to complete an ARIA for the project area.

The proponent, on its own volition, decided to retain Boreas Heritage Consulting Inc. (Boreas Heritage) to conduct a Phase I ARIA (desktop exercise) at the proposed project areas. The Phase I ARIA was conducted under Heritage Research Permit A2022NS130. The Phase I ARIA report was approved by CCTH on December 13, 2022, and the KMKNO ARD was provided a copy of the report. Based on the results of the desktop exercise, Boreas Heritage offered the following recommendations:

1. It is recommended that the two (2) areas of high archaeological potential (HPA-01 & HPA-02), as described in this report, be avoided during any proposed development and/or ground disturbance activities associated with the proposed Project, to prevent accidental impacts to areas ascribed high archaeological potential.
2. If areas of high archaeological potential, or parts thereof, cannot be avoided during development activities related to the proposed Project, it is recommended these areas be subjected to subsurface archaeological sampling probes in order to confirm the presence or absence of archaeological resources.
3. If any changes or deviations from the original plans relating to the proposed Project, as provided to Boreas Heritage for this Survey, are necessary, and are found to impact areas outside the Assessment Area described in this report, then additional archaeological resource impact 18 assessment(s) may be warranted for these amended portions of the proposed Project.

4. It is recommended that the remainder of the Assessment Area, as described in the report, be cleared of any requirement for further archaeological investigation and that development within these areas may proceed as planned.
5. In the event archaeological resources and/or human remains are encountered, from disturbed or undisturbed contexts, during construction or disturbance activities associated with the proposed Project, works must immediately cease until contact is made with, and direction(s) on how to proceed has been received from the Coordinator of Special Places, Nova Scotia Department of Communities, Culture, Tourism and Heritage.

The proponent, on its own volition, decided to proceed with the recommendations within the Phase I ARIA report and retained Boreas Heritage to conduct a Phase II ARIA (core sampling) at the previously recommended assessment areas. The Phase II ARIA was conducted under Heritage Research Permit A2023NS016. The Phase II ARIA report was approved by CCTH on March 22, 2023, and the KMKNO ARD was provided a copy of the report. Based on the results of the core sampling, Boreas Heritage offered the following recommendations:

1. It is recommended the Assessment Area (HPA-01 & HPA-02), as described in the report, be cleared of any requirement for further archaeological investigation and that development within these areas may proceed as planned.
2. If any changes or deviations from the original plans relating to the proposed Project, as provided to Boreas Heritage for this Survey, are necessary, and are found to impact areas outside the Assessment Area described in this report, then additional archaeological resource impact assessment(s) may be warranted for these amended portions of the proposed Project.
3. In the event archaeological resources and/or human remains are encountered, from disturbed or undisturbed contexts, during construction or disturbance activities associated with the proposed Project, works must immediately cease until contact is made with, and direction(s) on how to proceed has been received from the Coordinator of Special Places, Nova Scotia Department of Communities, Culture, Tourism and Heritage.

Having reviewed all pertinent information, the DFA concluded that the issue raised regarding impacts to submerged Mi'kmaw archaeological resources was speculative in nature. Nonetheless, in terms of accommodation or mitigation measures in connection with this issue, consistent with advice provided by CCTH, which is responsible, under authority of the Special Places Protection Act, for the protection of archaeological sites in Nova Scotia, a recommendation is made to the Aquaculture Review Board that the site operators be required to contact CCTH's Coordinator of Special Places in the event that any artifacts are encountered by the operators at the site.

9. Tourism

This issue was first raised in the Consultation meeting held on March 2, 2022 (Consultation Meeting #3). The DFA responded to the issue during the Consultation meeting. The DFA determined that this issue raised was general in nature and not specific to the proposed activities identified by the applicant. In addition, the Mi'kmaq of Nova Scotia did not clearly indicate how this issue was related to asserted and established aboriginal rights. As such, no accommodation or mitigation measures will be recommended to the Aquaculture Review Board for this issue raised.

Accommodation

The DFA decided to proceed with processing this application. Following Consultation with the Mi'kmaw of Nova Scotia, the DFA provides the following recommendations to the Aquaculture Review Board:

1. Site operators be required to contact CCTH's Coordinator of Special Places in the event that any artifacts are encountered by the operators at the site.

The 10 Chiefs and Councils of the Assembly of Nova Scotia Mi'kmaw Chiefs, KMKNO and Membertou First Nation have been informed of this decision.

TAB B

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 to18, 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 it's 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 Burridge 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 Burridge 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 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 occuring, 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 it's 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 seems 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 – Burridge of the Ecology Action Centre. As noted, both Mr. Neufeld and Mr. Ryder–Burridge 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 Heath 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 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 re-stocking 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 it's $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. Carrr, 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 oxic 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 off-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 he 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 Referenece Mi'kmaq-Nova Sotia – 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 ammendent 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 – Burridge 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-Burridge 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 Burridge, although very focused on the plight of wild salmon in general, is not qualified to give expert opinion evidence.

[146] Mr. Ryder Burridge 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 Burridge 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. lfor 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 1to 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 in corporate 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. NFA 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 and 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 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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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)

PART XI

Miscellaneous

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 ecotourism;

(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

Aquaculture Licence and Lease Regulations
made under Section 64 of the
Fisheries and Coastal Resources Act
S.N.S. 1996, c. 25
N.S. Reg. 276/2025 (effective December 16, 2025)

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

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*;

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

"bottom with gear method" means a method of aquatic plant cultivation or shellfish cultivation using gear placed on the solum;

"bottom without gear method" means a method of aquatic plant cultivation or shellfish cultivation without using gear placed on the solum;

"class", in relation to an application, means a class of application specified for a type of application as set out in Schedule A;

"compliance review" means an assessment of an applicant's record of compliance with federal or Provincial legislation;

"days" means calendar days;

"development plan", in relation to an aquacultural operation at a particular site, means a document that specifies the production plan, technical aspects and feasibility for the operation;

"facility method" means a method of land-based cultivation whereby fishery resources are cultivated in a physical structure on land;

"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;

"lease" means an aquaculture lease as defined in the Act;

"lessee" means the holder of an aquaculture lease as defined in the Act;

"licence" means an aquaculture licence as defined in the Act;

"~~licencee~~ [licensee]" means the holder of an aquaculture licence as defined in the Act;

"marine cage method" means a method of finfish cultivation using gear placed in the water column above the solum;

"non-ADA" means an area not designated as an aquaculture development area;

"non-finfish licence or lease" means a licence or lease authorizing the cultivation of aquatic plants or shellfish, but not finfish;

"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;

"performance review" means an assessment of the historical use of an aquaculture site;

"reallocation" of a marine aquaculture site means the issuance of a licence or lease for the site by the Administrator under clause 58(1)(e) of the Act after the revocation of its previous licence or lease;

"relay depuration" means the transfer of shellfish to a ~~licenced~~ [licensed] aquaculture site for natural biological cleansing using the ambient environment;

"scoping requirements" means any terms and conditions required by the Minister under clause 6(5)(b) or subclause 44A(5)(aa) or 47A(5)(aa) of the Act;

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

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

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

"suspended method" means a method of aquatic plant cultivation or shellfish cultivation using gear placed in the water column;

"U-fish method" means a method of finfish cultivation using a pond stocked with finfish that meets all of the following criteria:

(i) it is located on private property,

(ii) in the Administrator's opinion, it is used primarily for the purpose of allowing persons to fish in the pond with rod and line for a fee and any finfish caught are not processed and are sold whole only to the person that caught the fish.

Calls for Proposals

Options to lease

3 **(1)** A call for proposals for options to lease issued under subsection 44A(1) of the Act must include any details the Minister considers necessary, including all of the following:

(a) a description of the geographic area under consideration;

(b) the species to be cultivated;

(c) the method of cultivation to be used;

(d) the deadline for submitting proposals;

(e) the number of options to be issued.

(2) The Minister may consider an unsolicited proposal for an option to lease in the manner determined by the Minister.

Aquaculture development areas—call for proposals

4 **(1)** The Minister may issue a call for proposals for the exclusive right to apply to the Administrator for a licence and lease for a site in an aquaculture development area under Section 57 of the Act.

(2) A call for proposals issued under subsection (1) must include any details the Minister considers necessary, including all of the following:

(a) description of the location of the aquaculture development area;

(b) the species to be cultivated;

(c) the method of cultivation to be used;

(d) the size of a site within the aquaculture development area;

(e) the deadline for submitting proposals.

(3) The Minister may consider an unsolicited proposal for the exclusive right to apply for a licence and lease for a site in an aquaculture development area, in the manner determined by the Minister.

Reallocated marine aquaculture sites

5 **(1)** The Administrator may issue a call for proposals for the exclusive right to apply to the Administrator for reallocation of a marine aquaculture site under clause 58(1)(e) of the Act.

(2) A call for proposals issued under subsection (1) 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 species to be cultivated;

(c) the method of cultivation to be used;

(d) the deadline for submitting proposals.

(3) The Administrator may consider an unsolicited proposal for the exclusive right to apply for reallocation of a marine aquaculture site in the manner determined by the Administrator.

Proposals to the Minister

Proposal to advance area-size increase amendment application before Administrator

6 **(1)** For an amendment that would result in an increase to the area of an aquaculture site, a ~~licencee~~ [licensee] or lessee who holds a non-finfish licence or lease may submit a proposal to the Minister to advance an application before the Administrator for an amendment under clause 58(1)(b) of the Act to change the boundaries of an associated aquaculture site.

(2) A proposal under subsection (1) must be submitted within such time and in such manner as the Minister determines.

(3) A proposal under subsection (1) must include such information as the Minister determines.

(4) On reviewing a proposal under subsection (1) and subject to Section 9, the Minister may, in the Minister's discretion, issue an approval to advance an application for an amendment before the Administrator.

(5) An approval to advance an application

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

(b) must include any terms and conditions required by the Minister;

(c) must be for a prescribed duration; and

(d) is subject to the prescribed fee.

(6) If, in the Minister's opinion, an applicant does not comply with all the terms and conditions in an approval to advance the application issued under subsection (4), the Minister may, in the Minister's discretion, do 1 of the following:

(a) require the applicant to submit any additional information the Minister requires to demonstrate compliance with the terms and conditions to the Minister's satisfaction;

(b) terminate the approval to advance the application.

(7) Pending the Administrator's determination of an application that has been issued an approval to advance under subsection (4), the Minister must not approve another proposal to advance an application or grant an option to lease relating to the area that may be added to the existing aquaculture site, further to the application for an amendment.

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

Definitions for Sections 8 to 11

7 In Sections 8 to 11 of these regulations,

"proposal" means any of the following:

(i) a proposal to the Minister under subsection 44A(2) of the Act for an option to lease,

(ii) a proposal to the Minister under subsection 47A(1) of the Act to advance an application before the Review Board for an adjudicative amendment to a licence or lease,

(iii) a proposal to the Minister under subsection 6(1) to advance an area-size increase amendment application before the Administrator;

"approval" means any of the following:

(i) the issuance by the Minister of an option to lease under subsection 44A(4) of the Act,

(ii) an approval issued by the Minister under subsection 47A(4) of the Act to advance an application before the Review Board for an adjudicative amendment to a licence or lease,

(iii) an approval issued by the Minister under subsection 6(4) to advance an area-size increase amendment application before the Administrator;

"scoping period" means any of the following:

(i) the duration of an option to lease under clause 44A(5)(b) of the Act,

(ii) the duration of an approval to advance an application for an adjudicative amendment before the Review Board under clause 47A(5)(b) of the Act,

(iii) the duration of an approval to advance an area-size increase amendment application before the Administrator under clause 6(5)(c).

Issuing approvals

8 **(1)** The Minister may establish procedures for evaluating proposals and issuing approvals.

(2) The Minister has sole discretion in deciding whether to issue an approval and, if issued, whether to issue it

(a) as set out in the proposal; or

(b) with variations from the proposal.

(3) In deciding on whether to approve a proposal, 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;

(e) the orderly development of the industry;

(f) the suitability of the proposal, determined in accordance with any policies established by the Minister;

(g) any additional factors that the Minister considers relevant to the proposal.

(4) Before issuing an approval, the Minister must notify the proponent of all of the following:

(a) that their proposal has been approved, subject to any variations made by the Minister under clause (2)(b);

(b) any scoping requirements to be met during the scoping period;

(c) the prescribed fee to secure the approval, to be paid as required by Section 9 before the approval will be issued.

Fee required to secure approval

9 **(1)** To secure an approval, a proponent must pay a fee of $500.00 no later than 15 days after the date the Minister notifies the proponent under subsection 8(4) that their proposal is approved.

(2) The Minister must not issue an approval to a proponent who has not paid the fee required by subsection (1).

Duration of scoping period

10 **(1)** Unless it is extended in accordance with subsection (2), a scoping period expires on the date determined by the Minister, which must be no later than 12 months from the date the approval is issued.

(2) At the written request of the holder of an approval, the Minister may grant an extension of up to 6 months to the duration of the scoping period.

Public notice of approval

11 **(1)** The Minister must publish notice of an approval on the Department's website and in the Royal Gazette Part I no later than 60 days after the approval has been issued.

(2) Notice of an approval must include any information determined by the Minister.

(3) In addition to publishing notice of an approval as required by subsection (1), the Minister may do any of the following:

(a) notify any person, group of persons or organization that the Minister considers necessary of the approval;

(b) publish notice of the approval by any means determined by the Minister.

Proposals to the Administrator

Definitions for Sections 13 to 15

12 In Sections 13 to 15,

"proposal" means any of the following:

(i) a proposal to the Administrator for the exclusive right to apply for a licence and lease for a site in an aquaculture development area under subsection 4(1),

(ii) a proposal to the Administrator for the exclusive right to apply for reallocation of a marine aquaculture site under subsection 5(1);

"approval" means any of the following:

(i) an approval issued by the Administrator to advance an application for a licence and lease for a site in an aquaculture development area,

(ii) an approval issued by the Administrator to advance an application for reallocation of a marine aquaculture site;

"approval period" means any of the following:

(i) the duration of an approval to advance an application for a licence and lease for a site in an aquaculture development area before the Administrator,

(ii) the duration of an approval to advance an application for reallocation of a marine aquaculture site.

Issuing approvals

13 **(1)** The Administrator may establish procedures for evaluating and the criteria for selecting proposals and issuing approvals.

(2) The Administrator has sole discretion in deciding whether to issue an approval and, if issued, whether to issue it

(a) as set out in the proposal; or

(b) with variations from the proposal.

(3) On issuing an approval under subsection (2), the Administrator must notify the proponent that their proposal has been approved, subject to any variations made by the Administrator under clause (2)(b).

Duration of approval period

14 **(1)** An approval period expires on the date determined by the Administrator, which must be no later than 90 days from the date the approval is issued.

(2) An approval holder who wishes to apply for a licence and lease associated with their approval must submit their application before the date their approval period expires.

Public notice of issued approval

15 **(1)** The Administrator must publish notice of an approval on the Department's website no later than 30 days after the approval is issued.

(2) Notice of an approval must include any information determined by the Administrator.

(3) In addition to publishing notice of an approval as required by subsection (1), the Administrator may do any of the following:

(a) notify any person, group of persons or organization, as determined by the Administrator, of the approval;

(b) publish notice of the approval by any means determined by the Administrator.

Aquaculture Applications

Classes of applications

16 (1) Applications for or in relation to licences or leases are divided into the following 3 classes:

(a) Class I applications;

(b) Class II applications;

(c) Class III applications.

(2) Class I applications are further divided into the following 2 subclasses:

(a) Class IA applications;

(b) Class IB applications.

(3) The types of applications under each Class is set out in Schedule A together with the applicable decision maker, as determined under the Act.

Factors to be considered in decisions related to aquaculture applications

17 (1) In making decisions related to marine aquaculture sites, the Review Board or Administrator must take into consideration the optimum use of marine resources, as determined by taking into consideration the following factors only:

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

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

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

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

(e) the public right of navigation;

(f) for marine finfish applications, the sustainability of wild salmon;

(g) the number and productivity of other aquaculture sites in the public waters surrounding the proposed aquacultural operation.

(2) In making decisions related to land-based aquaculture sites, the Administrator must take all of the following factors into consideration:

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

(b) the technical viability of the proposed operation;

(c) the ability of the applicant to carry out the proposed operation;

(d) any previous record of the applicant related to aquacultural operations.

Incomplete Class I applications

18 (1) If the Minister considers a Class I application to be incomplete, the Minister must notify the applicant in writing of all 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) At the written request of an applicant, the Minister may grant an extension to the deadline in clause (1)(b) for providing additional required information.

(3) If an applicant does not submit the required additional information by the applicable deadline in this Section, the Minister must notify the applicant in writing that their application is deemed to be withdrawn.

Incomplete Class II or Class III applications

19 (1) If the Administrator considers a Class II application or Class III application to be incomplete, the Administrator must notify the applicant in writing of all 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 Administrator's notice.

(2) At the written request of an applicant, the Administrator may grant an extension to the deadline in clause (1)(b) for providing the additional required information.

(3) If an applicant does not submit the required additional information by the applicable deadline in this Section, the Administrator must notify the applicant in writing that the application is deemed to be withdrawn.

Withdrawn application deemed terminated

20 If an application is withdrawn, either as a result of Section 18 or 19 or upon written request by the applicant, the application is deemed to be terminated.

Class I Applications

Scoping process

21 (1) An applicant for a Class I application must complete a scoping process before submitting their application.

(2) The scoping process required by subsection (1) must be carried out as determined by the Minister and must meet any scoping requirements in accordance with clause 8(4)(b).

(3) The scoping requirements must include at least 1 public information meeting organized by the applicant and 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 application.

(4) An applicant must publish notice of the public information meeting required by subsection (3) in a manner determined by the Minister.

Submitting a Class I application

22 (1) An applicant must submit a completed Class I application to the Minister within the following timeframe:

(a) after completing the scoping process required by Section 21;

(b) before their scoping period expires under Section 10.

(2) In addition to the applicable application fee under Section 93, a Class I application must include all of the following:

(a) a report on the scoping process carried out under Section 21, 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;

(c) any additional information required to be submitted as a result of the scoping requirements;

(d) any additional information required by the Minister.

(3) If the Minister considers that an application is not in compliance with the scoping requirements, the Minister may do 1 of the following:

(a) require the applicant to resubmit the application in accordance with the timeframe specified in subsection (1), subject to any requirements stipulated by the Minister; or

(b) reject the application.

Consultations on Class I application

23 **(1)** Except as provided in subsection (2), on receiving a completed Class I application, an employee of the Department appointed by the Minister under subsection 47(2) of the Act must consult with those persons or entities set out in clauses 47(2)(a) to (c) of the Act.

(2) On receiving an application to amend a non-finfish licence or lease to change the boundaries of an existing aquaculture site to increase the area of the associated aquaculture site, the Minister must appoint an employee of the Department to consult with all of the following:

(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;

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

(c) the public, in the manner set out in Section 43.

Compliance review on Class I application

24 On receiving a completed Class I application, the Administrator, or an employee of the Department appointed by the Administrator, must conduct a compliance review of the applicant in accordance with Sections 86 and 87.

Performance review on Class I application

25 On receiving a completed Class I application relating to an existing licence or lease, the Administrator, or an employee of the Department appointed by the Administrator, must conduct a performance review of the aquaculture site that is the subject of the application in accordance with Sections 89 and 90.

Minister must refer Class I application

26 (1) After all reviews and consultations required by Sections 21 to 25 are completed, the Minister must refer a completed Class I application to the Review Board or Administrator, as applicable, along with all of the following:

(a) a report on the outcomes of any consultations undertaken under Section 23;

(b) a report on the outcomes of the compliance review conducted under Section 24;

(c) a report on the outcomes of any performance review conducted under Section 25;

(d) a report prepared by the Department, based on the review of the application materials required to be submitted under clauses 22(2)(b) to (d).

(2) In these regulations, an application of the type set out in Section 49 of the Act is referred to, consistent with Schedule "A," as the Class IA application type and must be referred to the Review Board for decision.

(3) In these regulations, an application of the type set out in clause 54A(1)(aa) of the Act or subsection 6(1) is referred to, consistent with Schedule "A", as the Class IB application type and must be referred to the Administrator for decision.

Requirement for hearing

27 The Review Board must follow the hearing process with respect to Class IA applications, in accordance with Sections 49 and 51 of the Act and Sections 44 to 66.

Administrator decision on Class IB applications

28 (1) No later than 30 days after receiving a Class IB application referred by the Minister, the Administrator must decide on the application and issue a written decision that includes the reasons for the decision.

(2) Upon issuing a written decision, the Administrator must do both of the following:

(a) send a copy of the written decision to the applicant;

(b) publish a copy of the decision on the Department's website.

Class II Applications

Applicant in good standing

29 (1) For the purpose of this Section, an applicant is deemed to be in good standing if they meet all of the following criteria:

(a) they have no outstanding fees due under the Act or these regulations;

(b) they have no outstanding reports due under the Act or these regulations.

(2) The Administrator may refuse to process a Class II application if the applicant is not in good standing.

Submitting a Class II application

30 On receiving any of the following types of applications, the Minister must refer the application directly to the Administrator:

(a) marine special experimental licence and lease;

(b) marine institutional licence and lease.

Class II application requirements

31 A Class II application must include all of the following:

(a) a development plan that meets the criteria established by the Administrator for the type of aquacultural operation to be carried out under the licence or lease;

(b) any additional information required by the Administrator.

Consultations on Class II application

32 On receiving a completed Class II application, the Administrator must undertake consultations with all of the following:

(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;

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

(c) the public, in the manner provided in Section 43.

Compliance review on Class II application

33 On receiving a completed Class II application, the Administrator, or an employee of the Department appointed by the Administrator, must conduct a compliance review of the applicant in accordance with Sections 86 and 87.

Performance review on Class II application

34 On receiving a completed Class II application related to an existing licence or lease, the Administrator or an employee of the Department appointed by the Administrator, must conduct a performance review of the aquaculture site that is the subject of the application in accordance with Sections 89 and 90.

Decision on Class II application

35 (1) No later than 30 days after all reviews and consultations required by Sections 32 to 34 are completed, the Administrator must decide on the Class II application and issue a written decision that includes the reasons for the decision.

(2) On issuing a written decision, the Administrator must do all of the following:

(a) send a copy of the written decision issued to the applicant;

(b) publish a copy of the decision on the Department's website.

Class III Applications

Applicant in good standing

36 (1) For the purpose of this Section, an applicant is deemed to be in good standing if they meet all of the following criteria:

(a) they have no outstanding fees due under the Act or these regulations;

(b) they have no outstanding reports due under the Act or these regulations

(2) The Administrator may refuse to process a Class III application if the applicant is not in good standing.

Submitting a Class III application

37 A Class III application must be submitted to the Administrator in a manner determined by the Administrator and include the applicable application fee under Section 93.

Consultations on Class III application

38 On receiving a completed Class III application, the Administrator

(a) must undertake consultations with 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;

(b) may undertake consultations with any person, group of persons or organization that the Administrator considers necessary or advisable in the circumstances.

Compliance review on Class III application

39 On receiving a completed Class III application, the Administrator or an employee of the Department appointed by the Administrator, may conduct a compliance review of the applicant in accordance with Sections 86 and 87.

Performance review on Class III application

40 On receiving a completed Class III application related to an existing licence or lease, the Administrator or an employee of the Department appointed by the Administrator, may conduct a performance review of the aquaculture site that is the subject of the application in accordance with Sections 89 and 90.

Decision on Class III application

41 **(1)** No later than 30 days after any reviews or consultations conducted under Sections 38 to 40 are completed, the Administrator must decide on the Class III application.

(2) The Administrator must inform the applicant of the decision made and publish a copy of the decision on the Department's website.

(3) If the Administrator decides to reject a Class III application, the Administrator must provide the applicant with the reasons for the decision.

Pre-October 26, 2015 sites

42 **(1)** Despite Section 6 and subsection 23(2), an application to amend a non-finfish licence or lease that was granted before October 26, 2015, to change the boundaries of an existing aquaculture site may be submitted to the Administrator for determination as a Class III application, if an inspection completed by the Department on or before December 31, 2024, confirmed that equipment associated with the aquaculture site is located outside the boundaries of the aquaculture site as set out in the licence or lease.

(2) Before deciding on an application received under subsection (1), the Administrator must be satisfied that the scope of the requested boundary amendment is reasonably necessary to ensure that equipment associated with the aquaculture site is located within the boundaries of the aquaculture site as set out in the licence or lease.

Public Written Comment on Applications

Inviting public to submit written comment on Class I and II applications

43 **(1)** A notice of public consultation required by the Act or these regulations for a Class I or Class II application must invite the public to submit written comments and be published by the Minister or Administrator, as applicable,

(a) on the Department's website and in the Royal Gazette Part I; and

(b) by any other means determined by the Minister or Administrator.

(2) A public notice referred to in subsection (1) must specify that comments must be submitted within the 30-day period following the date the notice is published together with any additional information that the Minister or Administrator, as applicable, considers necessary for the notice.

(3) A member of the public may submit written comments about an application in the manner described in the public notice.

(4) To be considered by the Minister or Administrator, as applicable, 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 period specified in the notice;

(d) it must be in reference to 1 or more of the factors set out in subsection 17(1).

Review Board Hearing Process

Definitions for Sections 44 to 66

44 In this Section and Sections 45 to 66,

"hearing" means a public hearing held by the Review Board as required by Section 51 of the Act;

"intervenor" means a person who is granted leave to intervene in a hearing before the Review Board under Section 51.

Review Board authority

45 **(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 hearings set out in these regulations if it is satisfied that the special circumstances of the application before it so requires or it is in the public interest to do so.

(3) All instances where the Review Board exercises its discretion under subsection (1) must be documented by the clerk of the Review Board, identifying the particulars and the reason for doing so.

Parties to hearing

46 All of the following are parties to a hearing:

(a) the applicant;

(b) any intervenor;

(c) the Minister or the Minister's designate.

Location of hearing

47 A 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.

Date of hearing

48 **(1)** The Review Board must set a date for a hearing no later than 30 days after the date it receives an application referred by the Minister.

(2) A date set for a hearing under subsection (1) must be at least 180 days but no later than 270 days from the date the Review Board sets the hearing date.

(3) The Review Board must give the Minister, or Minister's delegate, and the applicant to a hearing at least 180 days' written notice of the hearing date.

Public notice of hearing

49 **(1)** Public notice of a hearing by the Review Board

(a) must be published on the Department's website and in the Royal Gazette Part I; and

(b) may be published by any additional means determined by the Review Board.

(2) Public notice of a hearing must be published by the clerk of the Review Board no later than 30 days after the date the Review Board receives an application referred by the Minister and must include all of the following information:

(a) the date the application was received by the Review Board;

(b) the nature of the application submitted to the Review Board;

(c) the applicant's name;

(d) the time and place of the hearing;

(e) the location of the aquaculture site that is the subject of the hearing;

(f) the proposed species to be cultivated;

(g) the proposed method of cultivation;

(h) directions for how the public may request intervenor status from the Review Board;

(i) the prescribed time period for submitting a request for intervenor status to the Review Board;

(j) the prescribed time period for the public to submit written comments or requests to make a sworn oral statement or affirmation under Section 55;

(k) any additional information about the hearing that the Review Board considers should be made public at this stage in the process.

Request for intervenor status

50 **(1)** A person may request intervenor status from the Review Board.

(2) A request under subsection (1) must be in writing in a manner determined by the Review Board and must be submitted to the Review Board no later than 15 days after the date that notice of the hearing is published under Section 49.

Decision on request for intervenor status

51 **(1)** The Review Board must decide all requests received under subsection 50(2) no later than 30 days after the date that notice of the hearing is published under Section 49.

(2) The Review Board must grant intervenor status to any person requesting it who, in the Review Board's opinion, is substantially and directly affected by the hearing.

(3) The Review Board may grant intervenor status on such terms and conditions as the Review Board considers appropriate.

(4) The Review Board may consolidate 2 or more intervenors into a single party.

(5) Unless otherwise permitted by the Review Board, the participation of an intervenor is limited to the issues set out by the intervenor in their request under Section 50.

(6) A decision made by the Review Board under subsection (1) is final.

(7) The clerk of the Review Board must provide written notice of a decision made under subsection (1) to the person requesting intervenor status no later than 10 days after the date the decision is issued.

(8) The clerk of the Review Board must provide all other parties to a hearing with a written notice containing the final list of intervenor parties no later than 10 days after the date the decision on their status is issued.

Copies of documents to intervenor

52 **(1)** Except as provided in subsection (2), the Review Board must provide copies of all of the documents referred to the Board under subsection 26(1) to an intervenor at the time they are provided with notice of the decision under Section 51.

(2) Subsection (1) does not apply to any document that an applicant has requested be held in confidence until the Review Board makes an order respecting the confidentiality of the document, and then applies only in a manner consistent with that order.

Copies of documents and correspondence to parties

53 **(1)** Except as provided in subsection (2), at the same time any correspondence or document is filed with the Review Board by a party to a hearing, copies of the correspondence or document must also be delivered to each of the other parties to the hearing.

(2) Subsection (1) does not apply to any document that an applicant has requested be held in confidence until the Review Board makes an order respecting the confidentiality of the document, and then applies only in a manner consistent with that order.

(3) At the same time the Review Board delivers any correspondence to a party to a hearing, the Review Board must deliver a copy of the correspondence to each of the other parties.

Pre-hearing conference

54 The Review Board must conduct pre-hearing conferences with the parties to a hearing, the purpose of which may include any of the following:

(a) consolidating, determining, or addressing issues raised by parties;

(b) consolidating witnesses;

(c) pre-qualifying experts;

(d) determining the order of filing documents along with their respective due dates;

(e) establishing how evidence will be presented or otherwise entered into the record;

(f) determining the most suitable date for a hearing;

(g) any additional purposes considered necessary by the Review Board.

Public participation in hearing

55 (1) A member of the public who is not a party to the hearing may participate by submitting 1 of the following to the Review Board no later than 15 days after the date that notice of the hearing is published under Section 49:

(a) written comments, in the manner determined by the Review Board;

(b) a request to make a sworn oral statement or an affirmation, in the manner determined by the Review Board.

(2) 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 subsection 17(1).

(3) The Review Board may establish any limits, terms and conditions for a submission received under subsection (1).

Submission of written evidence

56 (1) A party who intends to present written or visual evidence at a hearing must provide the evidence to the Review Board as follows:

(a) at least 60 days before the date of the hearing; and

(b) by means of an affidavit, with a copy to each of the other parties.

(2) 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 presented.

(3) The Review Board may establish procedures for the order and timeframe in which parties are to submit responses to written evidence.

Submissions by Minister

57 (1) The reports referred by the Minister to the Review Board under subsection 26(1) form part of the record of a hearing and, in the absence of evidence to the contrary, are deemed admissible as proof of the truth of their contents.

(2) The Minister may submit rebuttal evidence in response to evidence that has been submitted by other parties.

Opening hearing

58 The Review Board must open a hearing by describing in general terms the purpose of the hearing and the general procedure governing its conduct.

Adjourning and reconvening hearing

59 (1) The Review Board may adjourn a hearing and reconvene the 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 hearing

60 (1) Evidence presented at a hearing must be relevant to all of the following:

(a) the proposed aquacultural operation, including its geographic location;

(b) the factors required to be considered by the Review Board under subsection 17(1).

(2) The Review Board may exclude anything it considers to be hearsay, irrelevant, immaterial or unduly repetitious from the evidence presented at a hearing.

(3) Unless otherwise permitted by the Review Board, intervenor evidence is limited to any terms and conditions placed on the grant of their intervenor status under subsection 51(3).

(4) A party to a hearing may submit written evidence to the Review Board or present oral testimony at the hearing to explain their position.

(5) The Review Board may establish limits on any of the following:

(a) the number of pages in submissions;

(b) the length of oral testimony;

(c) the length of presentations.

(6) A party is not entitled to present the evidence of an expert witness at a hearing unless

(a) the evidence is in the form of a report that includes all of the following:

(i) the expert's name, address and qualifications,

(ii) 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 56(1).

(7) The Review Board may take notice of any facts of which judicial notice could be taken.

Documentary and real evidence at hearing

61 (1) The clerk of the Review Board must number or otherwise identify each document, material item and object offered and accepted as evidence in a 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.

Questions at hearing

62 (1) The chair of a panel of the Review Board may do all of the following at a hearing:

(a) determine the order of questioning;

(b) exclude any question that, in the panel chair's opinion, is outside of the terms of reference of the Review Board or is needlessly repetitive in nature;

(c) limit the number of questions that may be asked.

(2) The Review Board may request a party to empanel 2 or more witnesses in order to answer questions.

(3) A question asked at a hearing that is 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.

(4) If a question asked at a hearing 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 panel chair may permit another member of the group to provide an answer.

(5) If a party is unable to answer a question at a hearing without further consultation or research, the party must undertake to provide an answer by the following applicable deadline and the Review Board must provide the response to the person who asked the question and to any other person, on request,

(a) on or before the close of the hearing; or

(b) if it is not possible to comply with clause (a), no later than 7 days after the close of the hearing.

Conclusion of hearing

63 (1) At the conclusion of a hearing, the record of the hearing must be closed and no other evidence may be entered into the record, except by agreement of all parties or in accordance with subsection (2).

(2) The Review Board may re-open the record of a 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 hearing

64 **(1)** The clerk of the Review Board must keep a full and complete record for each hearing.

(2) A record of a hearing must include all of the following:

(a) the application;

(b) supporting documents; and

(c) all exhibits.

Review Board decision

65 **(1)** No later than 60 days after the date that a 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 required to be considered under subsection 17(1);

(b) the conclusions of law based on the findings of fact;

(c) the particulars of any deviations by the Review Board from the hearing procedures set out in these regulations.

(3) Once a written decision on an application is issued by the Review Board, the clerk of the Review Board must do both of the following:

(a) send a certified copy of the decision to each party to the hearing;

(b) publish a certified copy of the decision on the Department's website.

Deadline for implementing Review Board decision

66 An action of the Minister to implement a decision of the Review Board under Section 52 of the Act must be taken no later than 15 days after [the] date the appeal period set out in Section 50 of the Act ends.

Terms and Conditions of Licences and Leases

Information included on licence or lease

67 **(1)** A licence or lease must indicate all of the following information:

(a) the type of aquaculture site;

(b) the type of aquacultural operation;

(c) the methods of cultivation authorized;

(d) the species that may be cultivated;

(e) the term of the licence or lease;

(f) the geographic coordinates of the boundaries of the aquaculture site.

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

Types of aquaculture sites

68 **(1)** Aquaculture sites are limited to the following 2 types:

(a) marine;

(b) land-based.

(2) An aquaculture site in brackish waters is deemed to be of the marine type.

(3) A licence or lease may be issued for only 1 type of aquaculture site.

Types of aquacultural operations

69 **(1)** All of the following are the types of aquacultural operations:

(a) commercial;

(b) special experimental;

(c) institutional.

(2) A licence or lease may be issued for only 1 type of aquacultural operation at a time.

(3) A ~~licencee~~ [licensee] or lessee who seeks to substitute one type of aquacultural operation for another must apply to the Minister for a new licence or lease in accordance with Section 45 of the Act and these regulations, including any requirement to submit a proposal for an option to lease.

Special experimental licences and leases

70 **(1)** Aquaculture conducted under a special experimental licence or special experimental lease must be for the following purposes only:

(a) to test or develop new technology or methods;

(b) to test the technical feasibility of an aquaculture site.

(2) Aquaculture conducted under a special experimental licence must not be on a scale that exceeds the purposes for which the licence was granted.

Institutional licences and leases

71 Aquaculture conducted under an institutional licence or institutional lease must be for the following purposes only:

(a) to carry out public fishery enhancement;

(b) to carry out general research activities.

Methods of cultivation and types of species

72 **(1)** The methods of cultivation and types of species for each type of aquaculture site are as set out in the following table:

Type of Aquaculture Site	Method of Cultivation	Type of Species
marine	marine cage	finfish
	suspended	shellfish or aquatic plants
	bottom with gear	shellfish or aquatic plants
	bottom without gear	shellfish or aquatic plants
land-based	facility	finfish, shellfish or aquatic plants
	U-fish	finfish

(2) A licence or lease may be issued for 1 or more methods of cultivation or types of species at a time, consistent with subsection (1).

(3) A ~~licencee~~ [licensee] or lessee may apply to the Minister to amend a licence or lease in accordance with the Act and these regulations to add, remove, or substitute 1 or more methods of cultivation or species.

Term and renewal of licence or lease

73 **(1)** The term of a licence must not exceed 10 years and may be renewed for further terms of no longer than 10 years each.

(2) The term of a lease must not exceed 20 years and may be renewed for further terms of no longer than 20 years each.

(3) Unless otherwise permitted by the Minister, an application to renew a licence or lease must be submitted to the Minister at least 12 months before the licence or lease expires and no later than 6 months before their licence or lease expires.

(4) A ~~licencee~~ [licensee] or lessee may submit an application to the Minister to amend their licence or lease to change the expiry date so that it corresponds with the expiry date of another licence or 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 this Section.

(5) Despite subsections (1) to (3), a special experimental licence or special experimental lease must not exceed 5 years and may not be renewed for further terms.

Location and marking

74 **(1)** A lessee must mark each of their aquaculture sites in a manner determined by the Minister and ensure that each of their aquaculture sites is marked as required before any development takes place at the site.

(2) A lessee must ensure that gear and aquacultural produce related to any of their aquaculture sites remains within the geographic boundaries of that site.

Security bond

75 **(1)** A lessee must ensure that a security bond is in place for the aquaculture site under the lease until a certificate of discharge is issued by the Administrator.

(2) The holder of a new lease must not begin their aquacultural operation until the security bond required by subsection (1) is approved by the Administrator.

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

(4) Except as provided in subsections (5) and (6), and subject to subsection (7), a security bond must be in an amount equal to or exceeding the amount set out in the following table for the method of cultivation authorized under the lease:

Method of Cultivation	Size of Aquaculture Site (in Hectares)	Minimum Security Bond Amount
marine cage	any size	$25 000
suspended	> 50 ha	$15 000
	> 10 ha and ≤ 50 ha	$10 000
	≤ 10 ha	$5000
bottom with gear	> 50 ha	$1500
	> 10 ha and ≤ 50 ha	$1000
	≤ 10 ha	$500
bottom without gear	any size	$50

(5) For a holder of a special experimental lease or a holder of an institutional lease, the amount required for a security bond is 50% of the applicable amount specified in subsection (4).

(6) For a lessee who is authorized for more than 1 method of cultivation on a site, the amount required for a security bond is the highest amount listed in subsection (4) that is applicable to the lessee.

(7) The Minister may approve collective security arrangements for a group of lessees if the Minister is satisfied that those arrangements will effectively meet the requirements of this Section.

Access for adjacent land owner

76 A ~~licencee~~ [licensee] must conduct their aquacultural operation so as not to deprive any owner of real property adjacent to a body of fresh, brackish or marine water from reasonable access to and from the water.

Recording and reporting requirements

77 **(1)** A ~~licencee~~ [licensee] 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) all transfers of produce into and out of the aquaculture site (including for the purposes of relay depuration), including the date, amount (in units each and/or weight), source and destination; and

(e) any additional information that the Minister requires to be recorded.

(2) A ~~licencee~~ [licensee] 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, a ~~licencee~~ [licensee] 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) A ~~licencee~~ [licensee] must submit an annual report to the Minister at a time determined by the Minister that sets out any information required by the Minister about the ~~licencee's~~ [licensee's] use of the aquaculture site under the licence and the productivity of the site.

(5) At the end of the term of a special experimental licence, the ~~licencee~~ [licensee] must make a summary of the research results from the aquaculture conducted under the special experimental licence available to the Minister.

(6) The Minister, in the Minister's sole discretion, may release a summary submitted under subsection (5) to the public in full or in part.

No sublicensing or subletting

78 (1) A ~~licencee~~ [licensee] must not ~~sublicence~~ [sublicense] their interest in an aquaculture site.

(2) A lessee must not sublet their interest in an aquaculture site.

(3) A sublicence or sublease contrary to this Section is void.

Use of aquaculture site

79 (1) A lessee must use all of the aquaculture site for aquaculture purposes, to the degree and in the manner determined by the Administrator.

(2) A lessee is responsible for any aquaculture gear present at an aquaculture site, regardless of whether the gear was abandoned by a previous site operator.

Administrator may amend licence or lease without application

80 The Administrator may amend a licence or lease without requiring an application to do so under any of the following circumstances:

(a) to correct an error;

(b) to address a revised policy or a regulatory change of the Government or of the Government of Canada;

(c) as a matter of administrative clarity.

Community benefits plan

81 (1) In this Section,

"community benefits plan" means a plan that identifies measurable social and economic benefits of an aquacultural operation to the community and the Province.

(2) A community benefits plan must be in a form acceptable to the Minister and contain any information the Minister determines is necessary.

(3) The Minister, in their discretion, may require any ~~licencee~~ [licensee] or lessee, including a ~~licencee~~ [licensee] or lessee who applies to the Minister to renew a licence or lease, to have a community benefits plan approved by the Minister for an aquacultural operation that is subject to a licence or lease they hold.

(4) Upon approval by the Minister of a community benefits plan under subsection (3), compliance with the plan, to the satisfaction of the Minister, is deemed to be a term and condition of the licence or lease, including any renewed licence or lease.

(5) The Minister may require a ~~licencee~~ [licensee] or lessee whose licence or lease is subject to a community benefits plan to submit information, in the form and manner prescribed by the Minister, about implementation of the community benefits plan.

Discontinuance of Marine Aquacultural Operation

Request for certificate of discharge

82 **(1)** A lessee or former lessee must obtain a certificate of discharge from the Administrator

(a) on revocation of a lease by the Administrator under Section 59A of the Act; or

(b) on the decision of a lessee to discontinue their marine aquacultural operation.

(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 lease.

(3) On receiving 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;

(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

83 **(1)** The Minister may remediate an aquaculture site at the risk and expense of a lessee or former lessee of the site 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 the request for a certificate of discharge under Section 82;

(b) in the Minister's opinion, the site is abandoned without a request for a certificate of discharge.

(2) The Minister may draw on the security bond of a lessee or former lessee to recover any costs associated with the Minister remediating an aquaculture site.

(3) If a security bond fails to cover all expenses incurred, the Minister may issue an order under Section 103 of the Act to a lessee or former lessee to recover any outstanding expenses associated with remediating an aquaculture site.

Certificate of discharge

84 On verifying that remediation of an aquaculture site of a former lessee or lessee is complete, either as set out in a plan established under Section 82 or as carried out by the Minister under Section 83, the Administrator must issue a certificate of discharge to the former lessee or lessee and release any unused portion of their security bond.

Compliance Review

Timing of compliance reviews

85 **(1)** In addition to the compliance reviews required by Sections 24 and 33 for Class I and Class II applications, the Administrator, or an employee of the Department appointed by the Administrator, must conduct compliance reviews at the following times:

(a) for a new licence, following the first production cycle, as determined on initial issuance of the licence;

(b) at any time the Minister considers a compliance review to be necessary.

(2) In addition to the compliance review required by Section 39 for a Class III application, the Administrator or an employee of the Department appointed by the Administrator, may conduct compliance reviews at the following times:

(a) when any ~~licencee~~ [licensee] or lessee has outstanding annual fees, as required by Section 94, that remain unpaid for more than 3 months;

(b) when any ~~licencee~~ [licensee] has outstanding annual reports, as required by subsection 77(4), that remain overdue for more than 3 months.

Process for compliance review

86 **(1)** The Minister must determine the criteria for and scope of a compliance review.

(2) While conducting a compliance review, the Administrator, or an employee of the Department appointed by the Administrator, may consult with

(a) other departments or agencies of the Government or the Government of Canada; or

(b) any person, group of persons or organization considered necessary.

Outcomes of compliance review

87 **(1)** The Administrator, or an employee of the Department appointed by the Administrator, must generate a report on the outcomes of a compliance review they conduct.

(2) If concerns are raised by a compliance review, on completion of the review the Administrator may address the concerns by doing 1 of the following:

(a) suspending a licence or lease;

(b) varying the terms and conditions of a licence or lease;

(c) revoking a licence or lease under Section 59A of the Act.

Performance Review of an Aquacultural Operation

Timing of performance reviews

88 In addition to the performance reviews required by Sections 25 and 34 for Class I and Class II applications, the Administrator or an employee of the Department appointed by the Administrator, must conduct performance reviews at the following times:

(a) for a new licence, following the first production cycle, as determined on initial issuance of the licence;

(b) before entering the information related to the aquaculture site into the aquaculture registry;

(c) at any time the Minister considers a performance review to be necessary.

Process for performance review

89 The Minister must determine the criteria for and scope of a performance review.

Outcomes of performance review

90 **(1)** The Administrator, or an employee of the Department appointed by the Administrator, must generate a report on the outcomes of a performance review they conduct.

(2) If concerns are raised by a performance review, on completion of the review the Administrator may address the concerns by doing 1 of the following:

(a) suspending the licence or lease;

(b) varying the terms and conditions of the licence or lease;

(c) revoking the licence or lease under Section 59A of the Act.

Fee Payments and Fee Waivers

Payment of fees

91 **(1)** A fee must be paid for each application for, or associated with, a licence or lease.

(2) All fees are payable to the Minister of Finance and Treasury Board.

(3) All fees are non-refundable once an application is processed by the Department, and withdrawal of an application does not result in a refund of fees.

Application fee payable with completed application

92 **(1)** An application is not considered complete and ready for processing until the application fee is paid.

(2) Submission of an application fee without a completed application is not sufficient to constitute an intent to apply for, or renew, a licence or lease.

Application Fees and Annual Fees

Fees for licence and lease applications

93 **(1)** The application fees for a new or reallocated licence or lease that is for a non-ADA are as set out in the following table:

New Licence/Lease (non-ADA)				Application Fee	
Operation Type	**Site Type**	**Cultivation Method (Species Type)**	**Application Class**	**Licence**	**Lease**
commercial	marine	marine cage (finfish)	Class IA	$1000.00	$1000.00
		suspended (shellfish)	Class IB	$500.00	$500.00
		suspended (aquatic plants)		$250.00	$250.00
		bottom with gear (aquatic plants or shellfish)		$375.00	$375.00
		bottom without gear (aquatic plants or shellfish)		$250.00	$250.00
	land-based	any	Class III	$500.00	n/a
special experimental	marine	any	Class II	$250.00	$250.00
	land-based	any	Class III	$250.00	n/a
institutional	marine	any	Class II	$250.00	$250.00
	land-based	any	Class III	$250.00	n/a

(2) The application fees for a new licence or lease that is for an area designated as an aquaculture development area are as set out in the following table:

New Licence/Lease (Aquaculture Development Area)				Application Fee	
Operation Type	**Site Type**	**Cultivation Method (Species Type)**	**Application Class**	**Licence**	**Lease**
commercial	marine	marine cage (finfish)	Class II	$2000.00	$2000.00
		suspended (shellfish)		$1000.00	$1000.00
		suspended (aquatic plants)		$500.00	$500.00
		bottom with gear (aquatic plants or shellfish)		$750.00	$750.00
		bottom without gear (aquatic plants or shellfish)		$500.00	$500.00

special experimental	any	any	Class II	$250.00	$250.00
institutional	any	any	Class II	$250.00	$250.00

(3) The application fees to amend an existing licence or lease are as set out in the following table:

Amendment to Licence/Lease				Application Fee	
Operation Type	**Site Type**	**Amendment to Cultivation Method or Species Type**	**Application Class**	**Licence**	**Lease**
commercial	marine	add marine cage method	Class IA	$1000.00	$1000.00
		add suspended method	Class II	$375.00	$375.00
		add bottom with gear method	Class II	$250.00	$250.00
		add bottom without gear method	Class II	$125.00	$125.00
		remove cultivation method	Class III	$125.00	$125.00
		add or remove 1 or more species (no change to cultivation method)	Class III	$250.00	$250.00
		change to site boundaries (resulting in increase to size of site)	Class IA or IB	$500.00	$500.00
		change to site boundaries (no increase to size of site)	Class II	$500.00	$500.00
		change to site boundaries (pre-October 2015 site)	Class III	$125.00	$125.00
special experimental	marine	add suspended, bottom with gear or bottom without gear method	Class II	$250.00	$250.00
		remove a cultivation method	Class III	$125.00	$125.00
		add or remove 1 or more species (no change to cultivation method)	Class III	$250.00	$250.00
institutional	marine	add suspended, bottom with gear or bottom without gear method	Class II	$250.00	$250.00

		remove a cultivation method	Class III	$125.00	$125.00
		add or remove 1 or more species (no change to cultivation method)	Class III	$250.00	$250.00
any	land-based	any	Class III	$250.00	n/a
any	any	change to term under subsection 73(4)	Class III	$125.00	$125.00
any	any	assignment	Class III	$250.00	$250.00
any	any	amalgamation	Class III	$500.00	$500.00

(4) The application fees to renew an existing licence or lease are as set out in the following table:

Licence/Lease Renewal				Application Fee	
Operation Type	**Site Type**	**Cultivation Method (Species Type)**	**Application Class**	**Licence**	**Lease**
commercial	marine	any	Class II	$500.00	$1000.00
institutional	marine	any	Class II	$125.00	$125.00
commercial	land-based	any	Class III	$500.00	n/a
institutional	land-based	any	Class III	$250.00	n/a

Annual fees

94 **(1)** Except as provided in subsection (2), a ~~licencee~~ [licensee] or lessee must pay an annual fee on each anniversary date of the expiry date of the licence or lease.

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

(3) The annual fees for any type of aquacultural operation other than for a licensee or lessee described in subsection (2), are as set out in the following table:

Item	Annual Fee Amount
licence	$398.10
lease	$13.30 per hectare

(4) An annual fee that is paid later than as required by subsection (1) is subject to a late fee of the greater of the following:

(a) 10% of the annual fee amount;

(b) $100.00.

(5) If an amendment to a licence or lease results in a change to the annual fee, the annual fee payable is adjusted at the next anniversary date.

(6) The holder of a land-based licence that exclusively uses the U-fish cultivation method is eligible for a rebate of $124.60 on their annual fees.

Minister may waive annual fee

95 **(1)** The Minister may waive annual fees payable by a ~~licencee~~ [licensee] or lessee 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 ~~licencee~~ [licensee] or lessee;

(b) the loss referred to in clause (a) cannot, in the Minister's opinion, be mitigated;

(c) significant hardship is demonstrated by the ~~licencee~~ [licensee] or lessee.

(2) An annual fee waiver granted under subsection (1) may apply to any of the following:

(a) 1 or more types 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 submitted by a ~~licencee~~ [licensee] or lessee before the date that payment of the fee is due and 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.

Schedule A: Classification of Applications

Class I Applications	
Class IA Application Type	**Decision maker (as set out in Act)**
New marine commercial licence or lease for the marine cage cultivation of finfish (non-ADA)	Review Board
Amendment to an existing marine commercial licence or lease to add the marine cage cultivation of finfish	
Amendment to an existing marine cage commercial licence or lease to modify the site boundaries resulting in an increase in the size of the site	
Class IB Application Type	**Decision maker (as set out in Act)**
New marine commercial licence or lease **except** for those involving the marine cage cultivation of finfish (non-ADA)	Administrator
Amendment to an existing marine commercial licence or lease to modify the site boundaries resulting in an increase in the size of the site **except** for those involving the marine cage cultivation of finfish	

Class II Applications	
Application Type	**Decision maker (as set out in Act)**
New marine licence or lease within an aquaculture development area	Administrator
New marine special experimental or marine institutional licence or lease	
Amendment to an existing marine licence or lease to add the suspended, bottom with gear or bottom without gear cultivation methods	
Amendment to an existing marine licence or lease to modify the site boundaries (without an increase in the size of the site)	
Renewal of marine commercial or marine institutional licence or lease	
Reallocation of an existing marine aquaculture site, resulting in a new licence or lease	

Class III Applications	
Application Type	**Decision maker (as set out in Act or regulations)**

New land-based licence (commercial, special experimental, institutional)	Administrator
Renewal of land-based licence (commercial, institutional)	
Amendment to an existing land-based licence (commercial, special experimental, institutional)	
Amendment to an existing marine licence or lease to remove a method of cultivation	
Amendment to an existing marine licence or lease to add or remove species (with no change to the method of cultivation)	
Amendment to an existing licence or lease (marine and land-based) to change the expiry date under subsection 73(4)	
Assignment of an existing licence or lease (marine and land-based)	
Amalgamation of 2 or more marine licences or leases and their associated aquaculture sites (with no change to the type of operation, site boundaries or methods of cultivation)	
Amendment to an existing licence or lease to modify the site boundaries under Section 42	

Legislative History Reference Tables

Aquaculture Licence and Lease Regulations
Fisheries and Coastal Resources Act

N.S. Reg. 276/2025

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
276/2025	Dec 16, 2025	date specified	Dec 26, 2025

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

*See subsection 3(6) of the *Regulations Act* for rules about in force dates of regulations.

Amendments by Provision

ad = added
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Provision affected	How affected
.....	

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

Editorial Notes and Corrections

Note	Effective date

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
347/2015	Aquaculture Licence and Lease Regulations	Oct 26, 2015	Dec 16, 2025

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.

Webpage last updated: 02-01-2026

TAB E

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

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 oxic 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

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Source Law

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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

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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

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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

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