

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 to Marine Finfish Licence and Lease AQ#1039
NSARB #2021-001

REPLY SUBMISSIONS ON BEHALF OF KELLY COVE SALMON LTD

December 23, 2021

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OVERVIEW

1. The Applicant, Kelly Cove Salmon Ltd. (“**Kelly Cove**”), makes the following reply submissions in support of its application seeking a boundary amendment to its Marine Finfish License and Lease AQ#1039 for its Rattling Beach Farm in Digby, NS (the “**Application**”).
2. The issue of whether the Crown had a duty to consult with the Mi’kmaq on the Application is before the Board. The Board must determine whether (1) the Crown had a duty to consult the Mi’kmaq with respect to the Application and (2) if yes, did the Crown fulfil its duty in this matter. In the event that the Board decides that there was a duty to consult and it was not fulfilled, Kelly Cove submits that the opportunity for consultation, if any, should be 6 weeks. The Intervenor concedes that the Board has authority to adjourn this hearing for consultation to occur.
3. The Intervenor cautions that the Board should not be a “rubber stamp” to legalize Kelly Cove’s non-compliant operations. The Intervenor’s submission repeatedly mischaracterizes the unrefuted evidence before the Board. Rattling Beach Farm is not an illegal operation nor is it an illegal expansion. Kelly Cove has sought an amendment to its lease boundaries for AQ#1039 pursuant to the Act and regulations and has filed evidence in support of the Sector 3 Factors for the Board to consider.
4. The Intervenor relies on the precautionary principle to support a finding that the Application should be dismissed. The precautionary principle is already embodied in the Act and regulations. Kelly Cove’s operations comply with the various mitigation requirements to minimize the impact of the Rattling Beach Farm on its surrounding environment and the Annapolis Basin wild salmon population, if any.
5. There is no evidence or legal argument that the Rattling Beach Farm will impact the Intervenor’s re-wilding project at his homestead, approximately 15 km from the Farm.
6. Based on the evidence before the Board, it is respectfully submitted that the Board should decide in favour of Kelly Cove’s Application for a lease boundary amendment such that the Minister of DFA may amend the aquaculture licence and lease AQ#1039 pursuant to section 52 of the *Fisheries and Coastal Resources Act* (the “**Act**”).

DUTY TO CONSULT

7. The issue of whether the Crown had a duty to consult with the Mi'kmaq on the Application is before the Board. The Intervenor asserted that the only issue before the Board with respect to the duty to consult was whether the duty was triggered.

Intervenor's Closing Submissions at para 56

8. In advance of the hearing, the parties all agreed that the Board is a tribunal with the jurisdiction to consider the following two issues:

(1) Whether the Crown had a duty to consult the Mi'kmaq with respect to the Application; and

(2) if so, whether the Crown fulfilled its duty in this matter.

9. In this Application, if the Board answers "yes" to the first question, it must also decide whether the Crown fulfilled its duty in this matter.

10. In the event that the Board determines that the Crown had a duty to consult and did not fulfil that duty in advance of the hearing of the Application, the Intervenor concedes that the Board has authority to adjourn this hearing under section 29 of the *Aquaculture License and Lease Regulations* to provide the opportunity for consultation.

Intervenor's Closing Submissions at para 82

11. The Intervenor argues that this Application should be denied because no consultation took place prior to Kelly Cove's operation "expansion" at Rattling Beach Farm.

12. This assertion fails to consider the chronology of the Farm and this Application, the regulatory regime as well as the evolution of the legal framework with respect to the Crown's duty to consult.¹

13. Atlantic salmon have been farmed at the Rattling Beach Farm since 1994.

¹ The full chronology of the Farm and this Application is set out in Kelly Cove's Closing Submissions filed on December 2, 2021, at paras 24 - 56.

14. In 2004, Kelly Cove acquired the lease and license of the Farm, AQ#1039, and installed a modern grid system and 20 pens on the Farm. This was done with DFA approval under the old aquaculture regulatory regime.
15. The grid arrangement and the number of pens on the Farm has not changed since 2004. There has been no “expansion” as alleged. Kelly Cove is seeking to amend its lease boundary to encompass the 20 pens and their underwater moorings which were installed in 2004.
16. The same year, the Supreme Court of Canada held in *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73 that the Crown has a duty to consult with First Nations when Crown conduct may adversely affect Aboriginal Rights or Title.

DFA’s Book of Authorities, Tab 6

17. The Supreme Court released its decision in *Haida Nation* in November 2004, several months after AQ#1039 was assigned to Kelly Cove. While the duty to consult was discussed in earlier Canadian case law, consultation did not become a standard part of government practice in our region until after *Haida Nation*.
18. While Kelly Cove’s operations at the Farm have not changed or expanded since 2004, the legal framework with respect to the Crown’s duty to consult has continued to evolve.
19. The Crown’s duty to consult is now before the Board in consideration of the new regulatory requirements and procedures enacted by the Province following the Doelle-Lahey Report in 2015.
20. In October 2016, Kelly Cove sought an adjudicative amendment pursuant to section 49(c) of the Act. The amendment application was referred to the Board by the Minister of DFA pursuant to section 16 of the new *Aquaculture License and Lease Regulations*.
21. The Intervenor’s assertion that the parties’ conduct is “sharp dealing” or an attempt to put the aquaculture industry’s interests ahead of the Mi’kmaq is not supported in the evidence.
22. This Application is before the Board because Kelly Cove has followed the new regulatory procedures to amend the lease boundaries of AQ#1039 as required under the *Aquaculture*

License and Lease Regulations. Kelly Cove did not covertly “expand” its operations and now seeks retroactive approval from the Board.

23. In the event that the Board determines that (1) the Crown had a duty to consult the Mi'kmaq with respect to the Application and (2) the Crown did not fulfil its duty in this matter, Kelly Cove submits that the Board should adjourn the decision on the merits of the Application pursuant to Section 29 of the *Aquaculture License and Lease Regulations* to provide the Crown and the Mi'kmaq the opportunity to undergo consultation with respect to the Application.
24. It is respectfully submitted that the time period for the consultation should be 6 weeks.²
25. In ***Nova Scotia (Attorney General) v Nova Scotia (Utility and Review Board)***, 2019 NSCA 66, the Nova Scotia Utilities and Review Board adjourned the application to allow an opportunity for further consultation. In that case, the applicant Nova Scotia Power Inc sought approval to refurbish its obsolete Tusket Main Dam, a capital work order totaling \$18,157,609 to carry out the project. The UARB determined that the consultation with the Mi'kmaq was inadequate and adjourned the hearing for three months for further consultation.
26. Unlike the Tusket Main Dam project, in this matter, Kelly Cove is seeking to amend the lease boundary to an existing aquaculture farm operation. No operational changes are being sought. The Farm comprises a small area of the large Annapolis Basin. Moreover, there is no precise evidence before the Board with respect to the Aboriginal and Treaty rights that may be adversely impacted by the Application.
27. Accordingly, if the Board decides that there was a duty to consult and it was not fulfilled, it is submitted that the opportunity for consultation, if any, should be 6 weeks.

² We note that the smolts for stocking Rattling Beach Farm have hatched and are currently growing at the hatchery. The smolts will be ready to introduce into the marine environment in early May 2022.

MISCHARACTERIZATION OF EVIDENCE

28. In his submissions, the Intervenor repeatedly mischaracterizes the unrefuted evidence before the Board.

The Board is not a Rubber Stamp

29. The Intervenor purports that Kelly Cove is asking the Board to “legalize the company’s non-compliant operations via this lease expansion application” and that Kelly Cove has been operating the Farm with more pens and fish than lawfully can fit in the lease boundaries. The Intervenor says that the Farm has been operating in “serious violation.”

30. The Intervenor asserts that in this Application the Board is being used as a “rubber stamp”.

Intervenor’s Closing Submissions at paras 11, 12, 13, 97, 98

31. The Intervenor further asserts that this Application will set a precedent for operators to apply for an expansion after functionally expanding their aquaculture farm. It will set in motion an “ask forgiveness, not permission” scheme.

Intervenor’s Closing Submissions at para 104

32. This Application is not a “*post facto* approval of existing unlawful operation.”

Intervenor’s Closing Submissions at para 6

33. This characterization fails to consider the evolution of the Nova Scotia aquaculture industry, the historical operations of the Farm, the regulatory overhaul in 2015, as well as the improvement in GPS technology to allow accurate placement of water-based structures over the period of operations at Rattling Beach.³ It also undermines the authority and jurisdiction of the Board.

34. Since 2004, the majority of the 20 pens at the Farm were within the original lease boundary. At all times DFA was aware and approved of the number and location of the

³ The full chronology of the Farm and this Application is set out in Kelly Cove’s Closing Submissions filed on December 2, 2021, at paras 24 - 56.

pens at the Rattling Beach Farm. There has been no “expansion” in operations since then. Kelly Cove did not “unilaterally” expand its Farm.

35. In this Application, Kelly Cove seeks to amend the lease boundary for AQ#1039 to encompass all of the pens as well as the underwater moorings which inhabit the majority of the sought lease area. This is clearly illustrated in the Aquaculture Site Development Plans dated March 27, 2019, located in the Boundary Amendment Addendum, Appendix C, Tab 3, page 446 of the Application Package, Exhibit #2021-001-13.
36. Mr. Nickerson testified that Kelly Cove filed its Application seeking an amendment for this Farm (and its other farms), as required and in keeping with the new regulatory scheme. He further testified that Kelly Cove had sought to amend its farms’ boundaries as early as 2008 to encompass the underwater moorings (not to increase the number of pens), however was repeatedly deferred and delayed by DFA as the Province looked to establish a whole new regulatory scheme.
37. From 2004 to 2021, the Nova Scotia aquaculture industry and the operation at the Rattling Beach Farm evolved from an experimental licence to a large operation requiring a significant capital investment in order to operate safely and to mitigate all risks to the environment as Kelly Cove has done successfully.
38. Mr. Nickerson explained the evolution of GPS technology to determine the location of lease boundaries in the marine environment. In 2004, the GPS technology was in its infancy which made it difficult to determine the exact GPS coordinates of the lease boundary on the water as compared to today.
39. The Intervenor led no evidence to rebut the capability of the GPS technology in 2004 as compared to today.
40. The Intervenor relies on affidavits of Simon Ryder-Burbidge of the Ecology Action Center and Ronald Neufeld which includes DFA inspection reports to support his allegation that the Farm has been operating illegally outside of the lease boundaries. There is no evidence before the Board that:

- (a) Mr. Neufeld has personal knowledge or was involved in any way or present for any of the inspections or conversations between Kelly Cove and DFA regarding the lease boundaries; or
 - (b) Mr. Neufeld or Mr. Ryder-Burbidge have professional experience as marine survey professionals.
41. The Intervenor did not put the DFA inspection reports to Mr. Nickerson on cross-examination to elicit evidence, if any. The DFA inspection records are hearsay and should be given little to no weight.

No Legal Requirement for Boundaries to Encompass All Equipment pre-2015

42. The *Aquaculture Licence and Lease Regulations* were enacted in 2015 following the regulatory overhaul. A presumption of statutory interpretation is that a statute should not be given retroactive effect unless expressly stated. There is no express language in the amended Act or the new regulations that they are retroactive.
43. The requirement that all equipment at an aquaculture farm be contained within the lease boundaries and the procedure to seek a boundary amendment have been in force since October 26, 2015. There was no express legal requirement under the old regulatory regime.
44. The Intervenor concedes that the *Aquaculture Licence and Lease Regulations* enacted in 2015 was the first time there was an explicit legal requirement for operators to ensure all equipment was within its lease boundary.

Intervenor's Closing Submissions at para 21

45. Section 55 of the *Aquaculture Licence and Lease Regulations*, NS Reg 347/2015 provides as follows:

Location and marking

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

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

(a) *that each of their sites is marked as required under subsection (1) before any development takes place at the site;*

(b) *that equipment and aquacultural produce related to any of their sites remain within the geographic boundaries of that site.*

46. The repealed *Aquaculture Licence and Lease Regulations*, NS Reg 15/2000 did not require operators to ensure all equipment remained within the geographic boundaries of the aquaculture farm. Sections 3 and 4 of the repealed regulations provided as follows with respect to boundaries:

Location and marking

3 (1) *Marine aquaculture lease sites shall*

(a) *be located 25 m from the mean low water level; and*

(b) *have a water depth of 2 m on the shoreward boundary at low tide.*

(2) *Despite subsection (1), the Minister may issue an aquaculture lease for a marine area up to the highwater mark if in the Minister's opinion the area is required for the aquaculture undertaking.*

(3) *Despite subsection (1), the Minister may issue an aquaculture lease for the bottom culture of mollusks in respect of any area heretofore leased for such purpose by the Government of Canada according to the metes and bounds description used in the licence or lease issued by the Government of Canada.*

4 *The holder of an aquaculture lease shall*

(a) *mark all corners of the leased site with cautionary yellow buoys of a minimum of 60 cm in diameter;*

(b) *mark all corners of the leased bottom with a cement block or similar device of a weight sufficient to ensure the cement block or device remains in place at all times; and*

(c) *display the licence or lease number at 1 corner of the licensed or leased area.*

47. The Intervenor asserts that an approval of the Application would undermine the rule of law and establish that the law does not apply equally to Kelly Cove. There is no evidence that Kelly Cove has not followed the regulatory regime governing aquaculture in Nova Scotia.

Kelly Cove Sought Amendment Pursuant to New Regulations

48. Section 3 of the *Aquaculture Licence and Lease Regulations* expressly provides that the Board must consider eight factors in making its decision with respect to the Application. Notably, compliance with the old regulatory regime is not a factor that the Board must consider.
49. Kelly Cove has complied with the new regulatory requirements to seek its lease boundary amendment. It promptly filed its amendment application on October 26, 2016 following receipt of NSE's May 31, 2016 letter advising that Kelly Cove had two options to bring the Farm into compliance with the Act, as amended, and the new regulations.

NSE Letter to Michael Szemerda, Report of the Performance Review, Appendix A, Exhibit #2021-001-13-B
Affidavit of Nathaniel Feindel, Exhibit E

50. Following DFA's internal review, on February 5, 2021, the Minister of DFA referred the Application to the Board. The hearing of the Application commenced on November 15, 2021.
51. The Application Package as well as Kelly Cove's affidavit and *viva voce* evidence addressed and support each of the eight factors the Board must consider.
52. The evidence also demonstrates that Kelly Cove has followed the Act and its regulations not only with respect to the application process, but also with the regulatory requirements under the *Aquaculture Management Regulations* which require ongoing environmental monitoring and management, disease and sea lice monitoring and management, as well as containment monitoring and management.
53. In this Application, the only contested Section 3 Factor is section 3(g) - the sustainability of wild salmon. The Intervenor did not submit any evidence with respect to the remaining factors nor did he rebut the evidence before the Board with respect to the remaining factors.

54. It is submitted that the evidence in this hearing supports a finding in favor of the Application on each of the Section 3 Factors, including the sustainability of wild salmon, and that the Rattling Beach Farm is the optimum use of marine resources in the Annapolis Basin.

MISCHARACTERIZATION OF PRECAUTIONARY PRINCIPLE

55. The Intervenor relies on the precautionary principle to support a finding that the Application should be dismissed.
56. The Supreme Court of Canada recognized the precautionary principle stating that where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation.⁴
57. The precautionary principle provides that complete evidence of a potential risk is not required before action is taken to mitigate the effects of the potential risk. It does not provide that there has to be zero risk or there can be no environmental impact. It is not a “zero-tolerance” approach to development.
58. The authors of the Doelle-Lahey Report explained that, “*Often in discussions of the principle, it is assumed that its only application is to the decision of whether to allow an activity to happen or to continue.*” They continued to explain that the precautionary principle continues to apply where development is permitted.

Doelle-Lahey Report, Kelly Cove’s Closing Submissions, Tab 1, p 37

The Act and Regulations Embody the Precautionary Principle

59. The Doelle-Lahey Report recommended that the precautionary principle be expressly referenced in the amended Act and new regulations, like the Nova Scotia *Environment Act*. While neither the Act nor its regulations expressly include reference to the precautionary principle, it is clearly implemented in the stringent requirements imposed upon the aquaculture industry by the regulations.

⁴ 114957 *Canada Ltée (Spraytech, Société d'arrosage) v Hudson (Town)*, 2001 SCC 40 at para 31, Intervenor’s Book of Authorities, Tab 3.

60. The purpose of the Act is instructive and provides that it encourages, promotes and supports the sustainable growth of the aquaculture industry. It states, in part, as follows:

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;

...

(d) support the sustainable growth of the aquaculture industry;

...

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;

...

61. The Doelle-Lahey Report proposed that the new regulatory framework include elements to protect the declining wild salmon population, specifically the prevention of escapees from the farms into the wild. The Act and its regulations include various requirements to mitigate to potential risk to the wild salmon population, including containment management as well as ongoing environmental monitoring and management and disease and sea lice monitoring and management.
62. The wild salmon population flowing into the Annapolis Basin from the surrounding rivers has been severely depleted an extended period of time, reaching back to well before the initiation of salmon aquaculture in the Annapolis Basin. The Intervenor's expert Mr. Carr acknowledged that the population of wild salmon in rivers feeding into the Annapolis Basin by 1994 had become so perilously low that the population was not sustainable.
63. DFO advised that the Farm was not in an area considered to be critical habitat and there was no critical habitat in the predicted exposure zone. The Farm is unlikely to have any

residual risk on fish and fish habitat as a risk is below the threshold of unacceptable impact.

64. In its Letter of Advice, relying on the precautionary approach, DFO concluded that any residual risk from the Farm to fish and fish habitat was acceptable and no additional risk treatment was needed. While the Intervenor attacks DFO's advice, he did not seek to cross-examine the authors of the DFO letter or the CSAS Report.
65. Mr. Carr identified the same potential risks from aquaculture on the wild population as the Doelle-Lahey Report: introgression from escapees and transmission of disease and parasites to the wild population. The monitoring and management of all of these risks are explicitly required under the *Aquaculture Management Regulations*.
66. Kelly Cove withdrew the affidavit of Dr. Swanson due to the number of concessions it obtained on cross examination of the Intervenor's expert, Mr. Carr, including:
 - (a) The severe decline of the wild salmon population in rivers flowing into the Annapolis Basin had already taken place by 1994, before the Rattling Beach Farm was operational;
 - (b) The wild population decline was due to a host of factors, including the presence of fish constraints, the acidity of the water, agricultural practices not conducive to good salmon habitat, the presence of the tidal power plant presenting a barrier to migration and the incidence of acid rain the effect of which is compounded by an already acidic soil condition in the area;
 - (c) Mr. Carr's acknowledgment of the adequacy of Kelly Cove's containment infrastructure, measures and code of containment, which he had no recommendations for improvement;
 - (d) There was "likely a low chance" of wild smolts being infested with sea lice emanating from aquaculture operations at Rattling Beach given the cycles of operations and the pattern of sea lice to be less active and prevalent in colder spring waters than in the warmer water of fall;

- (e) That studies documenting the concurrence of sea lice in wild salmon and the proximity of salmon aquaculture were based upon conditions materially different than those in the Annapolis Basin and at the Rattling Beach Farm; and
 - (f) Sea lice naturally exist on wild salmon.
67. Kelly Cove's DFA approved FMP addresses containment management as well as ongoing environmental monitoring and management and disease and sea lice monitoring and management.⁵ The Rattling Beach Farm is subject to continual oversight by DFA.
68. Kelly Cove is continually improving its infrastructure and technologies to mitigate its impact, if any, on the wild salmon population and surrounding environment. One clear example is Kelly Cove's development of green technology to manage sea lice through thermal and mechanical wash boats and the use of lump fish in its salmon pens.

Monitoring & the Traceability Committee

69. The Intervenor proposes that Kelly Cove should commit to or be directed to monitor the marine waters and rivers for escaped farmed salmon. With respect, the imposition of such a requirement upon Kelly Cove as part of a decision to amend the licence boundaries is beyond the jurisdiction of the Board.
70. Pursuant to the federal *Fisheries Act* and its regulations, the federal government has jurisdiction to monitor the Canadian fisheries waters, including marine waters and rivers. Section 39 of the *Fishery (General) Regulations* provides who may obtain a license to "observe" and/or "monitor" the Canadian fisheries waters. Kelly Cove may not apply to be an observer as it is an operator that processes and transports fish.
71. While Kelly Cove is not permitted to seek authority to monitor the Canadian fisheries waters, it participates in the Province's Finfish Traceability Committee, focused on approaches to trace escaped finfish.

⁵ Kelly Cove's mitigation and monitoring efforts with respect to escapees, disease and parasites are discussed in detail in its Closing Submissions filed on December 2, 2021 at paras 149 to 207.

72. Kelly Cove has committed to the use of genetic markers in its salmon. Mr. Nickerson testified that the genetically marked fish will be placed in the farms in the Spring of 2023 and are currently spawning in the company's fish hatchery.
73. The evidence before the Board does not support a conclusion that the monitoring local rivers for the presence of escaped farmed salmon is required in order to address the sustainability of wild salmon in the Annapolis Basin. Nevertheless, Kelly Cove is committed to working with DFO and/or DFA in the development and implementation of a salmon monitoring program in Nova Scotia.
74. As stated by the authors of the Doelle-Lahey Report, it is assumed that the precautionary principle leads only to a decision “*of whether to allow an activity to happen or to continue*” when in fact, the precautionary principle applies to development allowed to continue and requires mitigation efforts to minimize potential adverse impacts on the environment.
75. It is submitted that the Rattling Beach Farm operations embody the precautionary principle as required under the regulations. The potential risk to the wild salmon, if any in the Annapolis Basin, as well as the surrounding environment, is well mitigated by careful compliance with containment measures and ensuring the farmed fish are healthy and not infested with lice, elements which are monitored continually.

INTERVENOR’S PROPOSED CONDITIONS

76. Kelly Cove submitted its aquaculture amendment application with respect to its Rattling Beach Farm AQ#1039 pursuant to section 49(c) of the Act.
77. In its aquaculture amendment application, Kelly Cove sought an “amendment request” to “change of site boundaries (for marine applications).” Kelly Cove did not apply for a new aquaculture lease and/or license to be issued. It holds a license and lease to operate a salmon farm at Rattling Beach under AQ#1039 until April 27, 2026 and April 27, 2036, respectively.

Tab 1 of Application Package, Exhibit #2021-001-13

Report on Performance Review, Exhibit #2021-001-13-B

78. The Board is a creature of statute. Its authority and jurisdiction are set out in the Act and its regulations. In this matter, under section 49(c) of the Act, the Board must decide whether to amend AQ#1039:

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.

(emphasis added)

79. In the event that the Board decides in favor of the amendment, the Intervenor seeks to have the Board impose conditions to AQ#1039 and relies on section 52(1)(b) of Act.
80. Section 52(1)(b) of the Act applies when the Board decides to issue to new aquaculture lease and/or license. It expressly provides that the Minister will, in accordance with the Board's decision, issue the aquaculture lease and/or license "subject to any conditions the Review Board considered appropriate." It does not apply to amendment applications.
81. Section 52(1)(d) of the Act applies to amendment applications. Unlike section 52(1)(d), it does not provide the Minister or the Board authority to impose conditions on an amendment application. The lease and license have already been issued.

82. It states as follows:

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).

(emphasis added)

83. It is respectfully submitted that the Board does not have authority or jurisdiction to impose conditions to Rattling Beach Farm AQ#1039.

RELIEF SOUGHT

84. Based on the foregoing, as well as the closing submissions filed on December 2, 2021, it is respectfully submitted that the Board should decide in favor of Kelly Cove's Application for a lease boundary amendment such that the Minister of DFA may amend the aquaculture licence and aquaculture lease AQ#1039 pursuant to section 52(d) of the Act.

All of which is respectfully submitted.



Robert G. Grant

c. Kelly Cove Salmon Ltd.
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Alison Campbell
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