

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-fish 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 fin 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 Iulucci 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 finfish 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) The optimum use of marine resources

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

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

[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. PLBA 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) The public right of navigation

[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) The sustainability of wild salmon

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 escapees are an ongoing threat to the genetic integrity and persistence of wild populations; escapees 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 adequacy 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 scope of the duty to consult raised. (emphasis added)

[219] As was confirmed in KMKNO’s correspondence to the Board on September 22, 2025 when presenting their issue list, 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. Included as part of this issue is consideration of the potential adverse impacts of the proposed aquaculture development on the Mi’kmaq asserted and established Aboriginal, treaty and title rights, as protected under s. 35 of the Constitution Act, 1982. (emphasis added)

[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’kmaq 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'kmaq 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'kmaq 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 from 2 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 Scotia 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'kmaq 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.