Federal Court of Appeal | Cour d'appel fédérale

Date: 20260129

Docket: A-272-24

Citation: 2026 FCA 19

CORAM: **DE MONTIGNY C.J.**
HECKMAN J.A.
WALKER J.A.

BETWEEN:

MOWI CANADA WEST INC.

Appellant

and

THE MINISTER OF FISHERIES, OCEANS AND THE CANADIAN COAST GUARD

Respondent

and

ALEXANDRA MORTON, DAVID SUZUKI FOUNDATION, GEORGIA STRAIT ALLIANCE, LIVING OCEANS SOCIETY AND WATERSHED WATCH SALMON SOCIETY

Interveners

Heard at Vancouver, British Columbia, on June 17, 2025.

Judgment delivered at Ottawa, Ontario, on January 29, 2026.

REASONS FOR JUDGMENT BY: DE MONTIGNY C.J.

CONCURRED IN BY: HECKMAN J.A.
WALKER J.A.

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REASONS FOR JUDGMENT

DE MONTIGNY C.J.

[1] This appeal relates to a decision made by the Minister of Fisheries, Oceans and the Canadian Coast Guard (the Minister) on February 17, 2023, to refuse to re-issue aquaculture licenses to salmon farms operating in the Discovery Islands.

[2] Three salmon farm operators (Mowi Canada West Inc. (the appellant or Mowi), Cermaq Canada Ltd. (Cermaq) and Grieg Seafood B.C. Ltd. (Grieg)) and two First Nations (We Wai Kai Nation and Wei Wai Kum First Nation or the Nations) challenged the Minister's decision by way of an application for judicial review before the Federal Court. They claimed that the Minister had predetermined the outcome and breached the *audi alteram partem* rule by considering information outside of, and after, the official consultation process, thereby depriving them of the opportunity to know the case to meet, and to respond. They also submitted that the Minister's decision was unreasonable because she relied on erroneous and unjustified findings, did not justify departure from internal advice, and failed to meaningfully account for central issues and concerns they raised.

[3] The Federal Court dismissed the application for judicial review (*We Wai Kai Nation v. Canada (Fisheries, Oceans and Coast Guard)*, 2024 FC 876). Mowi now appeals that decision before us, essentially raising the same arguments it made at first instance. For the reasons that follow, I am of the view that its appeal must fail.

I. FACTUAL BACKGROUND

[4] Open net-pen salmon farming in coastal British Columbia has been the source of an intense, decades-long debate. Since the early 2000s, scientists and environmental groups have raised concerns about the impact this industry has on wild salmon. In 2009, the Governor General in Council created the Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, presided over by the Honourable Justice Bruce Cohen (the "Cohen Commission"),

and directed it to investigate and make independent findings of fact regarding the causes for the decline of Fraser River sockeye salmon, including aquaculture.

[5] In its report released in 2012 (the Report), the Cohen Commission identified the Discovery Islands as an area where wild salmon may be particularly vulnerable to the transmission of disease from salmon farms due to the narrow passage between the islands and their location on the migration route of young Fraser River sockeye salmon. The Report also recommended that further research be conducted to assess whether the transfer of diseases and pathogens from salmon farms may be causing serious harm to Fraser River sockeye. See Cohen Commission Report, Appeal Book (AB), Tab 101, p. 2216, Tab 102, pp. 2409, 2413.

[6] Additionally, Justice Cohen recommended that all net-pen salmon farms in the Discovery Islands be prohibited by September 2020 unless the minister is satisfied that such farms "pose at most a minimal risk of serious harm to the health of migrating Fraser River sockeye salmon" (Cohen Commission Report, AB, Tab 102, p. 2414 (Recommendation 19)) He recommended that no new licences should be issued in the Discovery Islands in the interim, and that no increases in production at existing Discovery Islands salmon farms should be permitted, and that the maximum duration of any licence in the Discovery Islands should not exceed one year: Cohen Commission Report, AB, Tab 102, pp. 2413-2414.

[7] In response to the Report's recommendation that further research be conducted, Department of Fisheries and Oceans (DFO)'s Canadian Science Advisory Secretariat (CSAS), a national body that coordinates scientific peer-review processes, carried out 9 risk assessments.

Each assessment focused on a pathogen of concern related to salmon farming and concluded that they pose no more than minimal risk to wild salmon as they migrate through the Discovery Islands: Affidavit #1 of Peter McKenzie sworn on June 29, 2023, AB, Exhibits E-M, Tabs 162-170, pp. 5335-5514. The CSAS's risk assessments did not, however, consider the cumulative effects of the nine pathogens or their impact on wild salmon in combination with other environmental stressors, such as climate change.

[8] In 2019, the Prime Minister tasked the Minister with creating a plan to transition away from open net-pen salmon farming in coastal British Columbia waters, including the Discovery Islands, by 2025. The mandate did not require the same timeline for all regions and did not preclude an earlier transition away from open net-pen salmon farming in the Discovery Islands or any other region.

[9] In 2020, the Minister started implementing that transition and decided to phase out salmon farming in the Discovery Islands. In a news release, she announced that the operators' licences would expire in June 2022, that no licences would be issued after that date, and that no new salmon transfers would be permitted into the Discovery Islands in the meantime (the 2020 Decision).

[10] The appellant and two other salmon farm operators, along with the We Wai Kai Nation and the Wei Wai Kum First Nation, brought an application for judicial review of that decision before the Federal Court. In April 2022, the Federal Court set aside the 2020 Decision and sent it back for redetermination by the new Minister: *Mowi Canada West et al. v. Canada (Minister of*

Fisheries and Oceans), 2022 FC 588 [*Mowi I*]. Justice Heneghan found the 2020 Decision procedurally unfair because the operators were not given notice of the scope of what the Minister was considering and did not as a result have a meaningful opportunity to provide submissions.

[11] Justice Heneghan also found that the 2020 Decision was unreasonable because the Minister had not provided reasons, thereby depriving the Court of a basis upon which to assess the decision. The Certified Tribunal Record was silent on the subject of banning fish transfers, and DFO had recommended against the closure of Discovery Islands salmon farms. In those circumstances, Justice Heneghan found that the Minister was required to explain her departure from DFO's recommendation.

[12] Following *Mowi I*, the Minister informed the licence holders in a letter dated June 22, 2022 (the June 2022 Letter) that she had decided to defer the redetermination of licence decisions in order to consult with licence-holders and First Nations. At that time, there were no Atlantic salmon remaining in Discovery Islands salmon farms. In her letter, the Minister expressed her view that there were concerns specific to the Discovery Islands "which do not lend support for continued salmon aquaculture activities in the area", and that, based on those concerns, her current view was that no such activities should be carried out (June 2022 Letter, AB, Tab 6, p. 215).

[13] The Minister also advised the appellant that she would be consulting on licence applications for all 11 of the appellant's Discovery Islands sites, including Hardwicke, a site outside of Discovery Islands which, according to Justice Heneghan, the Minister had included in

the Discovery Islands zone without showing an appreciation of the facts. The appellant was advised that the consultations would take place from July to December 2022. The Minister also indicated that she was fully aware of *Mowi I,* and that it was her intention that the consultations be fair and comprehensive, and offer both First Nations and industry the opportunity to be heard and to provide comments on her concerns.

[14] The June 2022 Letter was accompanied by an annex explaining the specific considerations that would inform the licencing decision, including knowledge gaps concerning the cumulative effects of various stressors on wild salmon, research underway since the CSAS risk assessments describing potential impacts on wild salmon, how the geography of the Discovery Islands relates to potential impacts on migrating wild salmon, and the continued decline of wild salmon populations (Stated Considerations, AB, Tab 8, pp. 235-236). The Minister also noted that "a more risk-averse or precautionary approach must consider further measures to limit any potential interaction between wild fish and marine finfish aquaculture" (*ibid*).

[15] From August 2022 to January 2023, a series of meetings were held with industry representatives and First Nations as part of the consultations. Representatives of the appellant attended 11 consultation meetings, including three meetings with the Minister, a meeting with the Deputy Minister, and a meeting with staff in the Prime Minister's office. The appellant also provided written submissions to the Minister on November 30 and December 21, 2022. Its applications were supported by organizations representing the industry, at least one of which (the BC Salmon Farmers Association) filed written submissions to the Minister addressing some of

the scientific issues on the Minister's mind, such as the potential impacts of sea lice from Discovery Islands salmon farms on wild salmon.

[16] There were also extensive consultations with First Nations, but since Mowi does not appeal the Federal Court's findings regarding the duty to consult, I need not delve into them. Suffice it to say that in November 2022, Mowi entered into a new business-to-nation agreement with We Wai Kai Nation and Wei Wai Kum First Nation in respect of four aquaculture sites. And on November 30, 2022, the Nations submitted a comprehensive proposal to the Minister advocating for the re-issuance of aquaculture licences for seven sites within their territories, including four sites operated by Mowi. That being said, other First Nations, including the Homalco First Nation, the K'ómoks First Nation, and the Tla'amin Nation expressed strong opposition to salmon farms in their asserted territories. See Summary of Consultations, AB, Tabs 16 and 25.

[17] Following the consultation with the various stakeholders, DFO provided the Minister with a memorandum dated January 24, 2023 (Decision Memorandum, AB, Tab 4). Four options were offered to the Minister, the first one of which (approve all licences until June 2024) was DFO's recommended option. Contrary to that advice, on February 17, 2023, the Minister would eventually proceed with a modified version of the fourth option (deny all licences), which DFO had strongly recommended against. She refused to issue an aquaculture licence for each of the 11 sites operated by the appellant in the Discovery Islands area, and only accepted to renew temporarily the aquaculture licence for a small-scale operation (Decision Letter to Mowi, AB, Tab 157, pp. 5183-5188; Decision Letter to Saltstream, AB, Tab 158. p. 5235).

[18] After the initial period of consultation which took place until the end of December 2022, the Minister sought further information through consultation with non-DFO academics and environmental non-governmental organizations (NGOs), which Mowi claims it was not made aware of. In advance of a meeting with UBC academics, the Minister received a five-page briefing note, authored by a research associate of that university, which provided a summary of the criticisms levelled against CSAS's findings. It can be summarized as claiming: that CSAS had not conducted an appropriate risk assessment for sea lice (one of the known salmon pathogens in relation to Discovery Islands salmon farms), that CSAS's assessment process focused solely on Fraser River sockeye, that CSAS's assessment process deviated from accepted norms of scientific peer review, that studies conducted within DFO often underestimated the risk because DFO is both the lead federal agency for the promotion of aquaculture and responsible for regulating it, that inconvenient evidence was disregarded, and that its science policy was not consistent with the latest evidence.

[19] It is not in dispute that DFO was not involved in any of these meetings, nor did the Minister obtain DFO assistance to assess the information put to her during these meetings. As for Mowi, it was not notified that the Minister had been provided or was seeking scientific expertise outside of the science advice provided by DFO, and it was not given notice of the 59 scientific studies included in Annex #3 of the Decision Letter.

[20] As mentioned above, on February 17, 2023, the Minister decided not to issue licences for any (save one) open net-pen Atlantic salmon farm in the Discovery Islands. That same day, the Minister sent her Decision Letter to Mowi and the other operators.

[21] At the outset of her reasons, the Minister referred to her June 2022 Letter and summarized the consultation process; there was, however, no reference to the Minister's additional meetings and correspondence with academics and environmental NGOs that took place in January and February 2023. The letter also explained that the Hardwicke site was appropriately included as part of her Discovery Islands licencing decisions for the reasons set out in a November 2022 letter to the appellant from the Department of Justice (DOJ), which she attached to her reasons.

[22] The Decision Letter then listed the three main considerations that guided her decision not to issue aquaculture licences. First, she expressed her belief that the Discovery Islands are a unique area that warrants a more precautionary approach. She stated that her view was consistent with the findings of the Cohen Commission and had been expressed by many others throughout the consultation process.

[23] Second, she described the continued decline of wild Pacific salmon stocks. She noted that there are various factors that contribute to that decline (including climate change, habitat degradation and destruction, and illegal, unreported, and unregulated fishing), that the contribution of fish farms to these cumulative impacts raised "additional uncertainties", and that it was her responsibility to take action with respect to the factors that were within her ministry's control. She also placed heavy emphasis on the importance of wild salmon to many First Nations' ability to exercise their constitutional fishing rights, in conformity with sections 2.3 and 2.4 of the *Fisheries Act*, R.S.C. 1985, c. F-14 (the Act) which provides that the rights of First Nations shall be taken into account in her decision-making. She also acknowledged that views on

whether aquaculture activities should be carried out vary between First Nations, and that many of them are supportive and have entered into agreements with Mowi regarding aquaculture activities.

[24] Finally, she explained that scientific uncertainty surrounding the risks of salmon farms in the Discovery Islands warranted a “highly precautionary approach”, given the dire state of wild salmon. She acknowledged the results of the nine CSAS risk assessments which were conducted between 2017 and 2020, and referred to more recent scientific work that was brought to her attention by numerous stakeholders and First Nations. She also mentioned various studies provided by her department, listed and summarized in Annex #3 of her Decision Letter, that raised the possibility of harmful impacts on wild salmon from salmon farms in the Discovery Islands. She also highlighted gaps in the CSAS risk assessments, most importantly the lack of analysis of the cumulative effects of multiple pathogens or other stressors on wild salmon in the Discovery Islands.

[25] Based on these considerations, and taking into account the financial impacts of her decision on the appellant and others, the Minister decided to act with the utmost caution to protect wild salmon and refused to issue the 11 aquaculture licences requested by the appellant. The final paragraph of her letter captures her rationale:

> Protecting wild salmon is a priority for the Government of Canada. Issuing the licences sought in the Discovery Islands would pose risks to wild Pacific salmon. In exercising my authority, I will act with the utmost caution and I will not take those risks.

II. DECISION OF THE FEDERAL COURT

[26] On June 7, 2024, the Federal Court dismissed the consolidated applications for judicial review brought by the Nations, Mowi, and other operators. It concluded that the Minister met her duty to consult the Nations and that the 2020 Decision was both procedurally fair and reasonable.

[27] On the first issue (which is not in dispute on appeal), the Federal Court found that the Minister owed a duty to consult to the Nations, and assessed the depth of consultation owed in the middle of the spectrum. Given the adequate notice of consultation with the Stated Considerations, the length of the consultation period, the direct engagement with the Nations through meetings and letters, and the notice of the decision with reasons that recognize the Nations' position and submissions and explain how the Minister came to a different course of action, the Court ruled that the Minister had reasonably met her duty to consult.

[28] With respect to procedural fairness, the Federal Court found that the Minister met her duties to provide the operators with notice of the decisions, the opportunity to know the case to meet and make submissions, and reasons for the Decision. More particularly, the Court agreed with the Minister that the operators did not have a legitimate expectation that the Minister would rely only on CSAS's advice when considering scientific information. Moreover, while the Court acknowledged that the operators did not know the exact scientific opinions coming from outside CSAS, it agreed with the respondent that the information was not prejudicial to the operators because they were aware of the existence of conflicting science and because it did not change the

case they had to meet. Finally, the Court found the operators had not pointed to any evidence sufficient to establish bias.

[29] On the reasonableness issue, the Federal Court decided that the Minister's decision passed muster because her conclusions about the uniqueness of the Discovery Islands and scientific uncertainty were supported by the record. While her views on those questions diverged from DFO's advice and the CSAS risk assessments, there was still a factual basis to come to her finding, grounded in the scientific papers before her. The Court also stated that the Minister's decision addressed the key issues raised by the operators, that she was alive to the appellant's position on the Hardwicke site and explained the basis for its inclusion, and that she provided adequate reasons for departing from DFO's advice, aligned with her statutory obligations.

III. ISSUES

[30] The parties agree that the issues on appeal are whether the Minister's decision was (1) procedurally fair, and (2) reasonable.

IV. ANALYSIS

A. *Legislative context*

[31] It is now well-established that the federal power to legislate with respect to "fisheries", found in subsection 91(12) of the *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (U.K.) extends not only to the conservation and protection of the resource, but also to the general regulation of

fisheries, including their management and control: see *Comeau's Sea Foods Ltd. v. Canada (Minister of Fisheries and Oceans)*, [1997] 1 S.C.R. 12 at para. 37; *Ward v. Canada (Attorney General)*, 2002 SCC 17 at paras. 36-41. This is reflected by section 2.1 of the Act pursuant to which its purpose is "to provide a framework for (a) the proper management and control of fisheries; and (b) the conservation and protection of fish and fish habitat, including by preventing pollution".

[32] Of note are the following considerations that the Minister must consider when making decisions in furtherance of the powers conferred by the Act:

***Fisheries Act*, R.S.C. 1985, c. F-14**	***Loi sur les pêches*, L.R.C. (1985), ch. F-14**
2.4 When making a decision under this Act, the Minister shall consider any adverse effects that the decision may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*.	**2.4** Le ministre prend toute décision sous le régime de la présente loi en tenant compte des effets préjudiciables que la décision peut avoir sur les droits des peuples autochtones du Canada reconnus et confirmés par l'article 35 de la *Loi constitutionnelle de 1982*.
2.5 Except as otherwise provided in this Act, when making a decision under this Act, the Minister may consider, among other things,	**2.5** Sauf disposition contraire de la présente loi, dans la prise d'une décision au titre de la présente loi, le ministre peut prendre en considération, entre autres, les éléments suivants :
(a) the application of a precautionary approach and an ecosystem approach;	**a)** l'application d'approches axées sur la précaution et sur les écosystèmes;
(b) the sustainability of fisheries;	**b)** la durabilité des pêches;
(c) scientific information;	**c)** l'information scientifique;
(d) Indigenous knowledge of the Indigenous peoples of Canada that has been provided to the Minister;	**d)** les connaissances autochtones des peuples autochtones du Canada qui lui ont été communiquées;
(e) community knowledge;	**e)** les connaissances des collectivités;

(f) cooperation with any government of a province, any Indigenous governing body and any body — including a co-management body — established under a land claims agreement;	**f)** la collaboration avec les gouvernements provinciaux, les corps dirigeants autochtones et les organismes — de cogestion ou autres — établis en vertu d'un accord sur des revendications territoriales;
(g) social, economic and cultural factors in the management of fisheries;	**g)** les facteurs sociaux, économiques et culturels dans la gestion des pêches;
(h) the preservation or promotion of the independence of licence holders in commercial inshore fisheries; and	**h)** la préservation ou la promotion de l'indépendance des titulaires de licences ou de permis dans le cadre des pêches côtières commerciales;
(i) the intersection of sex and gender with other identity factors.	**i)** l'interaction du sexe et du genre avec d'autres facteurs identitaires.

[33] One of the responsibilities of the Minister, as head of the DFO, is to regulate aquaculture operations. The department is responsible for issuing all aquaculture licenses for marine finfish, including aquaculture licenses necessary for the operation of salmon farms. According to subsection 7(1) of the Act, the Minister may, "in his absolute discretion", issue such licenses. The breadth of that discretion is obviously not unlimited, and it must be exercised in keeping with the Minister's overarching duties to manage and conserve fisheries. Operators also require introduction and transfer licences to transfer fish into or between aquaculture sites, pursuant to section 56 of the *Fisheries (General) Regulations*, SOR/93-53 (the Regulations). It is worth noting that receiving a licence pursuant to that provision does not imply or confer any right to be issued a licence in the future: see subsection 16(2) of the Regulations; *Anglehart v. Canada*, 2018 FCA 115 at paras. 28 and 44-46.

B. *Standard of review*

[34] The parties agree that the standard of review on appeal of a final decision by a Federal Court judge in an application for judicial review is the one set out in *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 [*Agraira*]. Accordingly, this Court must "step into the shoes" of the lower court to decide whether it identified the appropriate standard of review and applied it correctly (*Agraira* at paras. 45-46).

[35] That being said, this Court has repeatedly stated that it will not ignore the reasons given by the Federal Court. Where the reasons of the Federal Court are compelling, the onus will be on the appellant to show that these reasons are flawed and that the Federal Court erred in its analysis: see *Canadian Coalition for Firearm Rights v. Canada (Attorney General)*, 2025 FCA 82 at para. 25; *Bank of Montreal v. Canada (Attorney General)*, 2021 FCA 189 at para. 4; *Sun v. Canada (Attorney General)*, 2024 FCA 152 at para. 4.

[36] The appellant also agrees with the respondent that the application judge identified the appropriate standards of review, that is one akin to correctness for procedural fairness issues (see *Canadian Pacific Railway Company v. Canada (Transportation Agency)*, 2021 FCA 69 at para. 46; *Mission Institution v. Khela*, 2014 SCC 24 at para. 79), and reasonableness for the Minister's decision (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 [*Vavilov*] at para. 16). What is left to be decided, therefore, is whether the Federal Court erred in applying these standards.

(1) The procedural fairness issue

[37] The appellant argues that the 2020 Decision was procedurally unfair essentially for two reasons. First, it claims that the Minister breached the *audi alteram partem* rule, because the Minister did not provide it with notice or an opportunity to respond to the non-CSAS science and studies she obtained after the formal consultation process was completed.

[38] More specifically, Mowi contends that the Minister failed to provide notice of the submissions that she received from non-DFO academics and environmental NGOs outside the formal consultation period, and of the non-CSAS list of studies attached as Annex #3 to the Decision Letter that was prepared three and a half weeks prior to the Decision. Not only was Mowi not apprised of this new information, but it was prejudiced by the lack of opportunity to respond to it. Mowi argues that the Federal Court erred in that respect when it stated that the non-CSAS science was not prejudicial because it did not change the case the operators had to meet, because they were aware of the existence of conflicting science. The test does not require a party to demonstrate actual prejudice, but a possibility of prejudice. Given that the basis for the Minister's assertion of scientific uncertainty was the non-CSAS science, and the importance of this consideration to her decision, she was required to provide Mowi with notice of and an opportunity to respond to the non-CSAS science, much of which was sought out after the end of the formal consultation.

[39] Second, Mowi argues that the Decision breached its legitimate expectations that long-standing, well-established processes within DFO for obtaining scientific advice to support the

Minister's decision-making would be followed. Given Mowi's legitimate expectations that the Minister's decision would be based on the scientific advice generated by DFO and delivered through the CSAS scientific process, Mowi did not make science the central focus of its submissions and focused instead on social, cultural, and economic factors as emphasized in the Stated Considerations.

[40] As found by the Federal Court, it is beyond dispute that a duty of fairness is owed by the Minister in making decisions under the Act: see Federal Court Decision at para. 95; *Mowi I* at para. 154. It is, after all, an administrative decision that affects the rights or interests of a person, and as such it triggers the application of the *audi alteram partem* rule, which in turn encompasses an affected party's right to know the case against them, and to be afforded an opportunity to respond: *Air Canada v. Robinson*, 2021 FCA 204, at para. 54.

[41] That being said, what the duty of procedural fairness may reasonably require of a decision maker is context-dependent and will inevitably vary depending on the legislative and administrative scheme and the particular circumstances of each case: *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 at p. 654; *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 21; *Canada (Attorney General) v. Mavi*, 2011 SCC 30 at paras. 38-42. In the case at bar, it is clear that the discretionary nature of the Minister's decision and the absence of a statutorily mandated process bring us closer to the lower end of the spectrum and away from the more rigorous requirements that would have to be met in an adversarial, judicial, or quasi-judicial process.

[42] It is clear from the record that the appellant had ample opportunities to make submissions in support of its licencing applications. Over the six-month consultation process, its representatives attended a number of consultation meetings, including three with the Minister, and provided two sets of written submissions in addition to those the BC Salmon Farmers Association submitted on its behalf.

[43] The gist of the appellant's argument, however, is that it was not afforded the information to present its case fully and fairly because it did not know the case it had to meet. Mowi claims that the Minister relied on submissions that she received from non-DFO academics and environmental NGOs after the formal consultation period, as well as on a number of non-CSAS studies, without being given an opportunity to respond to that new information. This, in Mowi's view, was clearly prejudicial to its interests because the Minister placed significant weight on that new information to conclude that there was scientific uncertainty as to the impact and potential harm posed by salmon farms in Discovery Islands, and decided on that basis to refuse to issue aquaculture licenses to the appellant.

[44] Both parties agree with the Federal Court that the governing case to determine whether the information at issue was prejudicial is the decision of this Court in *Taseko Mines Limited v. Canada (Environment)*, 2019 FCA 320 [*Taseko*]. In that case, the Court rejected the appellant's contention that a breach of procedural fairness occurs every time receipt of an *ex parte* statement is established, unless the Court is satisfied that there was no possibility of prejudice (at para. 54). It is sufficient that a "possibility" or "likelihood of prejudice" be shown for a breach of the *audi alteram partem* rule to apply (at para. 52). The Court also made it clear that the information at

issue will not be “new”, and therefore potentially prejudicial, merely because a party did not know the exact content that was conveyed or has not seen a specific document. For the information to be prejudicial, and therefore call for a fair opportunity by the opposing party to respond, it will have to be more than a variation of a previous submission; it will have to be substantially different from what was already known, and introduce a possibility of prejudice different from that which could reasonably have been addressed in prior submissions. As stated in *Taseko* at paragraph 64:

> […] At the end of the day, Taseko had to first demonstrate there was significant and relevant information presented to the Minister of which it did not have prior knowledge. That involves consideration of whether such information was both “fresh” and “prejudicial” to its position, such that it could even potentially change the case it had to meet. […]

[45] I agree with the Federal Court that the information from the non-CSAS science was not prejudicial to Mowi; even if one were to accept that Mowi did not know the exact information that was conveyed to the Minister by non-government scientists or included in the list of studies, it did not change the case it had to meet as it was aware of the existence of conflicting science. The record is replete with evidence of disagreement between industry, environmentalists, First Nations, and others about the risks of salmon farms in the Discovery Islands. These opposing views are reflected in the summary of consultation feedback that was provided to the Minister (Consultation Summary, AB, Tab 88, p. 1348), and Mowi had opportunities to make submissions concerning the scientific uncertainty with respect to the risks to wild salmon associated with salmon farms in the Discovery Islands.

[46] The appellant cannot credibly claim that it was left in the dark as to the Minister’s preoccupations, and that it focused its submissions on social, cultural and economic factors

because these were the gist of the Minister's Stated Considerations (Appellant's memorandum at para. 25). A careful reading of that document shows, on the contrary, that knowledge gaps and uncertainty were very much on the Minister's mind, as can be seen from the following extract of the Stated Considerations:

> The public has expressed concern that additional potential stressors and impacts not related to aquaculture may exacerbate negative impacts on salmon, which in turn should inform management of aquaculture. Pacific salmon productivity and abundance can be affected by the cumulative effects of several factors, including climate change, habitat loss and degradation, fishing pressure, predation, aquaculture operations and other anthropogenic stressors. However, the relative importance of individual factors is difficult to determine because of the complexity and interaction amongst factors. Given the complexity and interactions associated with cumulative effects, this represents an area where there are knowledge gaps and uncertainties. Understanding uncertainties is an important component in informing risk-based decisions, and identifying key uncertainties also helps to inform future research priorities.
>
> In the context of this uncertainty, the public has raised concern regarding the broad suite of risks faced by migrating juvenile salmon, resulting in additional scrutiny placed upon the management of aquaculture in the Discovery Islands. These issues continue to be expressed as a key concern voiced by Rights holders, First Nations and stakeholders broadly on the status of wild salmon. Within this context, the Minister has expressed that it is her duty to act in a manner that reduces risk to the maximum extent possible.

[47] The Minister similarly made it clear that she would be considering new scientific information that post-dated the risk assessments completed by her department in September 2020, regarding the potential risks to wild salmon posed by Discovery Islands salmon farms. Again, the following extract is quite clear in that respect:

> Research underway since the completion of the Discovery Islands risk assessments has continued and several papers further describing potential impacts on wild Pacific salmon have been published or are in preparation for publication. As this new body of information is published, the Minister has expressed that it is important to consider this new information in the Department's management approaches, and ongoing reconsideration of risk on wild migrating salmon will need to be considered to support future management decisions.

[48] Indeed, it is clear that the appellant and other operators knew of the existence of conflicting scientific opinions about the risks to wild salmon posed by Discovery Islands salmon farms, as correctly noted by the Federal Court, and also knew that it was a major concern for the Minister. In a letter addressed to the Minister on August 22, 2022, the BC Salmon Farmers Association explicitly acknowledged the Minister's interest in reviewing scientific evidence relating to salmon farming in the Discovery Islands, and stated that it "fully appreciate[s] your need to review the most recent scientific data" (AB, Tab 47, p. 658).

[49] In a subsequent letter addressed to the DFO, the BC Salmon Farmers Association asked for clarification on several issues, including the measures the Minister was considering to address the effects of the social, economic and cultural factors to which she refers in her Stated Considerations. In response, the department wrote:

> The Minister's focus, with respect to decisions about licencing marine finfish aquaculture in the Discovery Islands, is specifically in consideration of any potential current or future risk/impact to wild salmon specifically related to the activity of salmon aquaculture. The Minister is particularly concerned with salmon populations where stock status is at low levels, and her tolerance for adding any potential additional risks or impact to these populations is low. As new science on aquaculture or other factors becomes available, the Minister will also consider this information in her decisions. (emphasis added)
>
> AB, Tab 46, p. 656.

[50] As for Mowi, it was involved in previous litigation (under its former name Marine Harvest Canada Inc.; see Opala Affidavit at para. 29, AB, Tab 181, p. 5713) with respect to the issuance of aquaculture licences, where the Federal Court highlighted the scientific uncertainty with respect to the causal relationship between a pathogen (piscine reovirus, or PRV) and an infectious disease found in farmed salmon (heart and skeletal muscle inflammation, or HSMI):

see *Morton v. Canada (Fisheries and Oceans)*, 2015 FC 575 at para. 40; *Namgis First Nation v. Canada (Fisheries, Oceans and Coast Guard)*, 2018 FC 334 [*Namgis*]. In the latter case, many of the academics listed in Annex #3 to the Decision Letter testified on the risks to wild salmon posed by the Discovery Islands salmon farms. Both Ms. Parker, Director of Environmental Performance & Certification for Mowi, and Ms. Morrison, Managing Director for Mowi, knew that these academics had published on the issue and were adverse to their position; in fact, Ms. Morrison had testified in the *Namgis* case: see Parker Affidavit at para. 56, AB, Tab 174, p. 5585; Morrison cross-examination, AB, Tab 193, pp. 5854-5855; 5914-5915; 5923-5925).

[51] Other operators also appear to have understood that scientific uncertainty and gaps in understanding the cumulative impacts of potential stressors in addition to aquaculture were very much on the Minister's mind. For example, in its information session with the Minister on November 17, 2022, Cermaq began its presentation with an assessment of the risks and gaps they felt could be managed differently and indicated that they were working on developing a program that would allow them to manage risk, determine cumulative impacts, and identify changes to the ecosystem: AB, Tab 71, p. 1022.

[52] The operators also shared with DFO a consultant's report, which concluded that aquaculture activity had little negative influence on Discovery Islands salmon returns, and that other factors including forestry, historical commercial fishing, and climate change had more of an impact on salmon returns: Salmon Return Trends for Twenty-Four Discovery Island Streams and Relationship with Finfish Farms (November 2022), AB, Tab 51, pp. 665-783.

[53] Mowi had every opportunity to share its views with the Minister on any issue that it cared about. If Mowi chose to focus its representations on the economic and social repercussions the termination of aquaculture in the Discovery Islands would have for its employees and its contractors, on its agreements with First Nations, and on other socio-cultural factors, it was of its own choosing and not because of its ignorance of the case it had to meet. After all, the impact of salmon farms and the potential risks resulting from the transfer of pathogens and diseases to wild salmon had been identified by the Cohen Commission, and the Minister had clearly indicated that this would be a key driver in her management of the fisheries and on the implementation of the Prime Minister's mandate to develop a transition plan to phase out the salmon aquaculture activities.

[54] In its letter to the Minister on November 17, 2022, for example, the gist of Mowi's submissions was that the Discovery Islands should not be treated separately from the entire British Columbia coast, and that the Minister's decision should be based on DFO's own risk assessment. Yet, the Minister had indicated that she was particularly preoccupied by the cumulative effects of the various pathogens examined by CSAS and by their impact on wild salmon when combined with other environmental stressors such as climate change. She had also made it clear that she would be taking into account new research to update the CSAS's risk assessments. Mowi ignored these two factors in its representations at its own peril.

[55] Nor can Mowi claim that the Minister's knowledge of more recent scientific work could only have come from her meetings with non-governmental scientists and from the list of studies

annexed to her Decision Letter. There is no evidence that the Minister's knowledge of this scientific literature came from her meetings with environmental NGOs in January 2023.

[56] As for the studies, they were for the most part released between 2019 and 2022, and were published in scientific journals that were publicly available. Therefore, the list of studies found in Annex 3 of the Decision Letter should not have come as a surprise to Mowi. Indeed, Ms. Morrison stated in her affidavit that "in [her] role as Managing Director and as a veterinarian, [she] stay[s] apprised of relevant research in respect of aquaculture" (Affidavit #1 of Diane Morrison, AB, Tab 172, p. 5556). The publicly available abstracts produced in Annex 3 of the Decision should therefore have been known to her, and nothing prevented Mowi from providing its views as to what this research said about the risks to wild salmon from fish farms.

[57] For all of the above reasons, I am therefore of the view that Mowi was not prejudiced by the information gathered by the Minister after the completion of the formal consultation process because the case to meet did not change. Mowi knew from the outset the Minister's preoccupation and the basis upon which she would make her decision. It was given a fair opportunity to respond to these concerns, like all the other stakeholders, but ultimately failed to convince the Minister that its licenses should be renewed. This is not a basis to find that its right to procedural fairness was breached.

[58] As for the appellant's second argument that the Minister breached its legitimate expectations that it would only rely on the latest CSAS's assessments and DFO advice, it is not substantiated by the record. As found by the Federal Court, the proper test to identify a legitimate

expectation is either through clear, unambiguous, and unqualified representations about the process, or by showing a consistent process that has been followed in the past: see *Canada (Attorney General) v. Mavi*, 2011 SCC 30 at para. 68; *Agraira* at para. 94.

[59] The appellant has failed to identify any clear and unqualified statements by the Minister or DFO that could raise a legitimate expectation. The best it could come up with is an email from the Minister describing DFO's peer-review process as "formal and comprehensive", and to a memorandum of the Deputy Minister to the Minister stating that "scientific advice generated by DFO continues to be based on the best available information". This is a far cry from a commitment to follow a particular process. Indeed, the Stated Considerations advised that, as new risk assessments and papers are published, it is "important to consider this new information in the Department's management approaches" (Stated Considerations, AB, Tab 8, p. 235). Nowhere does it refer to CSAS or any other internal DFO procedures, let alone guarantee that a particular process will be followed.

[60] Nor was the appellant able to cite any evidence to the effect that the Minister and DFO have consistently adhered to internal processes for obtaining science advice with respect to aquaculture licensing applications in the past. In fact, the evidence from the Regulatory Affairs Manager for Mowi is to the effect that the application process to relicense existing sites has been "informal" since the federal government began issuing aquaculture licences in BC coastal water in 2010 (see Opala Affidavit at para. 18; AB, Tab 181, p. 5711).

[61] On the basis of the record that was before it, the Federal Court could therefore conclude that the appellant had no legitimate expectation that the Minister would follow a particular process when considering scientific information, let alone that she would rely exclusively on DFO for advice regarding the current science relating to aquaculture. Not only is there no evidence to that effect, but such a commitment would stifle the Minister's broad discretion and prevent her from seeking out a diversity of scientific sources and views before making her decision in the public interest.

[62] Before leaving the subject of procedural fairness, a word must be said about the vague allegation of bias made by the appellant on the basis of an email sent by the Minister to her aunt, in which she assures her that she is "not waffling on the open-net pen transition". In its decision, the Federal Court considered the Minister's statements to be her initial position, not indications that she would not change her position regardless of the importance of the consultation process. The Federal Court also concluded that the Minister recognized the importance of the decision to be made. In fact, in the same email, the Minister tells her aunt that "[s]ince the industry represents thousands of jobs […], and since the supply chains are a huge part of the economies and many coastal communities […] there can be no precipitous decisions" (AB, Tab. 151, p. 5006).

[63] Before this Court, the appellant changed its tack. Instead of arguing that the Minister was biased, it argued that the procedural flaws in the decision could be explained by the fact that the Minister had pre-determined the outcome. In my view, this argument is a variation on the same theme and is entirely speculative. For the reasons given by the Federal Court, it must be rejected.

[64] In any event, counsel for the appellant explicitly stated at the hearing that Mowi was not arguing bias nor making the submission that the Minister had a closed mind, because the test for bias is too high to meet. This was clearly the most apposite stand to take, because an allegation of bias is always serious and may translate for the person involved in significant implications; as such, it should never be made lightly.

[65] Shortly before the release of these reasons, counsel for the appellant sent a letter to the Court seeking leave, by way of informal motion, to adduce fresh evidence on appeal pursuant to Rule 351 of the *Federal Court Rules*. Counsel for the Minister consented to this matter being determined by way of an informal motion, and filed written submissions in response to the appellant's motion, to which the appellant made a brief reply. The fresh evidence consists of six pages of handwritten notes taken by the Minister during three meetings held on January 26 and 27, 2023 between her and Dr. Brian Riddell, representatives of Ecojustice, and Mr. David Marmorek. The Certified Tribunal Record already included handwritten notes from these meetings taken by a member of the Minister's staff who attended the meetings with the Minister (AB, Tabs 142-144). The Minister's notes were disclosed to the appellant upon their discovery by counsel for the Minister on December 23, 2025.

[66] The test for the admission of fresh evidence on appeal, which has been set out in *Palmer v. The Queen*, [1980] 1 S.C.R. 759 at p. 775 (and reiterated in *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 29), applies equally on appeal from a judicial review: see *'Namgis First Nation v. Canada (Fisheries and Oceans)*, 2019 FCA 149 at paras. 15-16. Pursuant to this four-prong test, fresh evidence will be admitted if:

a) By exercise of due diligence, it could have been adduced at trial;

b) It is relevant, in the sense that it bears upon a decisive or potentially decisive issue in the trial;

c) It is credible, in the sense that it is reasonably capable of belief; and

d) It is such that, if believed, it could reasonably, when taken with the other evidence at trial, be expected to have affected the result.

[67] There is no dispute between the parties that the Minister's notes meet the first and third criteria. The Minister's notes are also arguably relevant to the issue of procedural fairness, and more specifically to the appellant's argument that the Minister had predetermined the outcome of the impugned decisions. I fail to see, however, how they could have changed the outcome of the applications for judicial review in the Court below or lead to the conclusion that the Minister had a closed mind and breached the appellant's right to procedural fairness.

[68] The appellant focuses on a note made by the Minister during her meeting with Dr. Riddell, which reads: "- science & DI – help me support non-licence dec'n". According to the appellant, this note supports its allegations that the purpose of these meetings was to support a pre-determined decision not to re-licence. First of all, I reiterate that the appellant resiled at the hearing from its submission that the Minister was biased or had a closed mind. Second, the appellant's interpretation of this note is pure speculation, as it could also record Dr. Riddell's or the Minister's view at that time that the science supported a non-licence decision. Third, it may well be that at this late stage of her consultations, the Minister had formed the view that licences should not be renewed, and wanted to ensure that she had not overlooked any contrary argument,

or that she was still considering other, intermediate approaches as her notes from her meetings with David Marmorek and representatives of Ecojustice would suggest. When viewed in the context of the entire record, the Minister's short observation during her meeting with Dr. Riddell is clearly insufficient to establish that she had predetermined the outcome of her licencing decisions from the very beginning of her consultations and nothing could have changed her mind.

(2) The reasonableness issue

[69] The appellant argues that the Minister's decision was unreasonable essentially for three reasons. First, it contends that the Minister's conclusions that the Discovery Islands area is "unique" and "warrants greater precaution" relied on erroneous and unjustified findings. Second, it claims that the Minister failed to justify her departure from her own department's advice that all of Mowi's aquaculture sites in the Discovery Islands be relicensed. Third, it faults the Minister for not having meaningfully accounted for the central issues and concerns raised by the parties.

[70] There is no dispute between the parties that the Federal Court correctly identified the reasonableness standard of review to assess the substance of the decision, and that it accurately summarized the relevant principles of such review. When conducting a reasonableness review, a reviewing court must determine whether the challenged decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints bearing on the decision maker: *Vavilov* at

para. 99. While acknowledging that reasonableness review is a robust form of review, the Federal Court also took into consideration the overall scheme of the Act, including the fact that licencing decisions require a consideration of public interest factors that extend beyond the private interests of licence holders and which are assessed on polycentric criteria: Federal Court reasons, at para. 14.

[71] Relying on *Vavilov*, this Court made it clear in *Entertainment Software Association v. Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100, that decisions based on such open-ended criteria are "very much unconstrained" and therefore "harder to set aside" under the reasonableness standard:

> [28] Public interest determinations based on wide considerations of policy and public interest, assessed on polycentric, subjective or indistinct criteria and shaped by the administrative decision makers' view of economics, cultural considerations and the broader public interest–decisions that are sometimes characterized as quintessentially executive in nature–are very much unconstrained: *Vavilov*, at paragraph 110 […]
>
> [29] Complex, multifaceted and sensitive weighings by administrative decision makers of information, impressions and indications using criteria that may shift and be weighed differently from time to time depending upon changing and evolving circumstances, all other things being equal, are relatively unconstrained and are harder to set aside: *Vavilov*, at paragraphs 129-132 […]

[72] This is precisely the type of decision that the Minister is tasked to make when managing, conserving and developing fisheries. Pursuant to section 2.4, she must consider adverse effects her decisions may have on the rights of Indigenous peoples. She must also take into consideration a host of other factors pursuant to section 2.5, including the application of a precautionary approach, scientific information, Indigenous and community knowledge, and social, economic and cultural factors. Finally, she may issue leases and licences for fisheries or

fishing in her “absolute discretion”. One can hardly think of a broader, more multi-faceted conferral of discretion. With these considerations in mind, I will now turn in more detail to the appellant’s submissions.

[73] With respect to the uniqueness of the Discovery Islands, the appellant claims that the Minister’s decision was unsupported and contrary to her department’s own advice to the effect that the precautionary approach applied in the Discovery Islands should be consistent with that applied across British Columbia. The appellant further contends that the Minister based her decision on her own belief, on the fact that many British Columbians felt that the area is unique, and on the Cohen Commission Report whose concerns had been answered by DFO’s more recent scientific studies.

[74] In my view, the Federal Court did not err in dismissing those arguments and in finding that there was a reasonable factual foundation in the record to support the Minister’s statements that the Discovery Islands are a unique area and that there is scientific uncertainty. The Minister was clearly alive to Mowi’s and the other operators’ representations. Yet, she decided to align herself with the Cohen Commission Report’s identification of the Discovery Islands as an area with unique characteristics and potentially higher risks relating to wild and farmed salmon. The Cohen Commission Report identified the Discovery Islands as an area of particular concern, because it is marked by narrow passages that could bring migrating smolts into close contact with salmon farms, thereby increasing the potential for disease transfer: see Cohen Commission Report, AB, Tab 103, pp. 2409-2410 and 2480.

[75] While this report was published in 2012, the geography has not changed, and there was other, more recent information before the Minister to support her view that the Discovery Islands are a unique area that should be treated with particular caution. For example, information was provided by the Homalco First Nation and others supporting her view that the Discovery Islands are a unique area because of their geographical configuration, with their tidal flows and tidal behaviour and the highly stratified nature of these waters: see Homalco submissions, AB, Tab 16, pp. 289-291 and 468; Compendium of Discovery Islands and Salmon Migration Research, AB, Tab 123, pp. 4040-4041.

[76] The Minister also explained that the CSAS risk assessments did not resolve all scientific uncertainty with respect to the degree of risk that Discovery Islands salmon farms pose to wild salmon, and explained that the findings in some of the studies provided to her by DFO and found in Annex 3 of her Decision Letter raise the possibility of harmful impacts on wild salmon from Atlantic salmon aquaculture in the Discovery Islands: see, for example, the studies of Dr. Andrew Bateman and others (AB, Tab 157, pp. 5204 and 5224) and of Shea and others (AB, Tab 157, p. 5226).

[77] Finally, the Minister also explained that she disagreed with CSAS risk assessments and found gaps in these studies, first because they did not consider the cumulative effects of the nine pathogens on Sockeye salmon or other species of wild salmon in the Discovery Islands, and also because they did not consider the impact of these pathogens in conjunction with other stressors like climate change.

[78] In light of the evidence that was before her and of her disagreement with the advice provided by DFO as to the risk or uncertainties in relation to the impact of aquaculture, I agree with the Federal Court that it was reasonably open to the Minister to determine that the Discovery Islands are a unique area and warrant greater protection.

[79] The appellant also claims in its written submissions that the Minister failed to justify her departure from DFO's advice, and did not explain why she rejected the recommendation of her Department to relicense all of Mowi's aquaculture sites in the Discovery Islands. According to the appellant, the Minister did express her concern that the risk assessments did not address cumulative effects, but failed to account for the fact that DFO indicated that it would look into that issue in follow-up research, and did not provide a rationale for dismissing DFO's views that 1) it was unlikely this new research would significantly affect the previous risk assessments, and that 2) there is no scientific basis to apply a higher level of precaution in the Discovery Islands area compared to elsewhere in British Columbia.

[80] In my view, this criticism of the decision is ill-founded. There is nothing in the statutory scheme suggesting that the Minister is constrained in the information she can take into account in making her decision with respect to licencing. As previously mentioned, the Minister is empowered to issue aquaculture licences in her "absolute discretion", and in exercising that discretion, she is entitled to look beyond the information and advice provided by her department. While the appellant would understandably have preferred that the Minister follow the recommendations of her department, her decision will not be unreasonable simply because she chose otherwise. As found by the Federal Court, her decision will be justified, transparent and

intelligible if she gives adequate reasons, supported by the record, for not adopting DFO's recommendations.

[81] This is precisely what she did. First, she explained that the decline of the Pacific wild salmon results from the cumulative effects of a number of factors, many of which are outside of her department's control. Because fish farms add to these cumulative impacts, especially in the Discovery Islands, and raise additional uncertainties, it was her responsibility to act in a heightened precautionary manner to mitigate the risks to wild salmon and to the First Nations' right-based fisheries.

[82] She also explained that she received scientific evidence from both independent scientists and First Nations that conflicted with DFO's conclusion that open net-pen salmon farms posed minimal risk to migrating Fraser River sockeye salmon in the Discovery Islands. Moreover, she noted that the CSAS assessments did not consider the cumulative impacts of the pathogens that were studied individually on the sockeye salmon in the Discovery Islands. Again, she felt bound in the face of these gaps and uncertainties and of the deeply problematic state of wild salmon stocks, to take a highly precautionary approach.

[83] I agree with the Federal Court that these reasons are more than sufficient and adequate to explain why the Minister decided not to adopt DFO's recommendations. As previously mentioned, the Minister was explicitly entitled to consider the application of a precautionary approach in making her decision to renew Mowi's licences or not (see ss. 2.5(a) of the Act). This principle, which is derived from environmental law, has been codified in many domestic statutes,

including the *Oceans Act*, S.C. 1996, c. 31, Preamble (para. 6), the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, para. 2(1)(*a*), *Federal Sustainable Development Act*, S.C. 2008, c. 33, subpara. 5(a.1)(iii), *Canada National Marine Conservation Areas Act*, S.C. 2002, c. 18, ss. 9(3), *Pest Control Products Act*, S.C. 2002, c. 28, ss. 20(2), *Endangered Species Act*, S.N.S. 1998, c. 11, para. 2(1)(*h*) and ss. 11(1), *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7, ss. 77.7(2). This principle is to the effect that "when there is a risk of serious or irreversible environmental damage, one should err on the side of caution even when there is not full scientific certainty with respect to the risk": Bergen Ministerial Declaration on Sustainable Development (1990), as cited in *114957 Canada Ltée (Spraytech Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40 at para. 31. The more serious the risk is, the earlier a decision maker may intervene to prevent its occurrence. It stands to reason that when a risk is particularly threatening and could have dramatic impacts were it to materialize, less will be required in terms of probabilities to justify offsetting measures.

[84] In light of the dire consequences that the declining stock of wild salmon in the Pacific could have for the rights of First Nations and, more broadly, for the economy and social fabric of British Columbia, it was understandable for the Minister to have a low level of tolerance for the risks posed by Atlantic salmon farms in the Discovery Islands. Considering the high level of deference that such an assessment warrants, I am satisfied that the Minister's decision bears all the hallmarks of reasonableness.

[85] Finally, the appellant argues that the Minister did not meaningfully account for central issues and concerns that it had raised, namely its relicensing proposal and its support by the We

Wai Kai Nation and the Wei Wai Kum First Nation, and the specific circumstances of its Hardwicke site. Once again, I find this argument without merit.

[86] While it is no doubt true that the Nations' support for relicensing of certain aquaculture sites was a significant change in circumstances compared to the situation that prevailed at the time the 2020 Decision was made, there is no evidence that the Minister did not take it into consideration. To the contrary, the record shows that the Minister was well aware of the two Nations' support for the licencing of four of the appellant's sites and of their economic interest in that venture. Indeed, the Summary of Consultations shows that the Minister attended a meeting with representatives of the appellant and the Nations during which the proposal was discussed: AB, Tab 10, pp. 249-251, 253-256. The Decision Memorandum and attachments also discussed the proposal and noted the need for further consultation on the proposal should licences be issues: AB, Tab 4, pp. 100, 250.

[87] More importantly, the Minister confirmed in her reasons that she had considered "the concerns of several First Nations who are supportive and who have entered into agreements with Mowi on aquaculture activities […]": AB, Tab 157, p. 5186. Of course, the Minister did not address every aspect of the proposal (many of which, in any event, went beyond the scope of the consultation on relicensing), but a careful reading of her reasons satisfies me that she did consider the support of the two Nations and eventually placed greater weight on conservation and concerns raised by many other First Nations. Such an approach was entirely consistent with her statutory mandate.

[88] Finally, the appellant submits that the Minister's decision to treat Hardwicke as part of the Discovery Islands is flawed because she relied exclusively on a previous letter from the DOJ dated November 2, 2022, wherein it is stated that DFO stood by its earlier decision to treat Hardwicke as part of the Discovery Islands; that decision was based on historical management practices, scientific information and ongoing adaptive management of aquaculture in British Columbia. The appellant argues that this letter is based on an unsupported and unreasonable chain of analysis, and that the Minister did not turn her mind to Mowi's response to the DOJ's letter dated January 26, 2023, refuting DOJ's statements.

[89] In my opinion, this argument amounts to nothing more than an attempt to convince this Court to reweigh the evidence that was before the Minister with the hope that we will come to a different conclusion. It is to be noted that the letter from the DOJ is a detailed, four-page explanation of the various reasons why Hardwicke must be considered part of the Discovery Islands. That letter also summarizes the consultations that took place with Mowi on the categorization of Hardwicke as being part of the Discovery Islands based on hydrological connectivity. See AB, Tab 95, pp. 1386-1390.

[90] The record shows that the Minister was aware of Mowi's position on this issue and heard from its representatives during the consultation period. Yet, she decided to accept the justification provided by the DOJ for DFO's position that Hardwicke was properly included in the Discovery Islands. The appellant has not explained why the Minister erred in adopting the reasoning of the DOJ on that issue. I also note that the January 26, 2023 letter presumably sent by Mowi is nowhere to be found in the Certified Tribunal Record. Accordingly, I agree with the

Federal Court that the Minister was alive and sensitive to Mowi's representations with respect to Hardwicke, and provided cogent reasons for including that site within the Discovery Islands by adopting the DOJ's rationale.

V. CONCLUSION

[91] For all the foregoing reasons, I would dismiss the appeal, with costs.

"Yves de Montigny"
Chief Justice

"I agree.
Gerald Heckman J.A."

"I agree.
Elizabeth Walker J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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CONCURRED IN BY:	HECKMAN J.A. WALKER J.A.
DATED:	JANUARY 29, 2026

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