



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Deputy Minister

Sous-ministre

PROTECTED B/SOLICITOR-CLIENT PRIVILEGE

GCCMS# 2021-502-00119

MEMORANDUM FOR THE MINISTER

**Request to Transfer Live Farmed Salmon into the Discovery Islands and Extend Facility Licences from Cermaq Canada
(FOR DECISION)**

Summary

The purpose of this note is to seek your decision on applications from Cermaq Canada Ltd. ("Cermaq") to transfer live fish into two sites in the Discovery Islands and to extend the marine finfish licences at these two sites.

On April 16, 2021, the British Columbia Introductions and Transfers Committee received an application from Cermaq to transfer 1,499,000 Atlantic salmon from Cecil Island (Facility 819) to Venture Point (Facility 306) and Brent Island (Facility 1401). On April 30, 2021, Cermaq applied to extend the facility licences for Venture Point (Licence AQFF 122921) and Brent Island (Licence AQFF 12911) until February 28, 2023. The licence extension application was made to allow the full grow-out of the fish to be transferred. Cermaq indicated that the fish would be harvested by February 28, 2023, if their transfer were allowed.

The British Columbia Introductions and Transfers Committee reviewed the transfer application in accordance with section 56 of the *Fishery (General) Regulations* and determined that the request meets each of its three pre-conditions (a, b, and c), and therefore a transfer could be licensed. DFO has considered the request to extend the facility licences and determined that these extensions are not precluded for any reason related to wild or farmed fish health, and therefore extensions could be granted.

DFO consulted with First Nations claiming territory where the transfer sites are located on both the transfer application and the facility licence extension application, and also sought input from Cermaq in response to the First Nation and other external submissions. There is both support and opposition to these applications. From the Department's perspective, two options would be available.

Option 1: approve the application to transfer 1,499,000 Atlantic salmon from Cecil Island to the Venture Point and Brent Island facilities, located in the Discovery Islands, and approve the application to extend the licences for these facilities to February 28, 2023.

Option 2: deny both applications.

Option 1 is supported by the department. You are being asked to make a decision on these two applications by June 14, 2021 at the latest.

Background

On December 17, 2020, you announced an intention: 1) to phase out existing salmon farming facilities in the Discovery Islands by June 30, 2022, with the upcoming 18-month period being the last time this area would be licensed; 2) that no new fish of any size may be introduced into Discovery Islands facilities during this time; and 3) that all farms be free of fish by June 30, 2022, but that existing fish at the sites can complete their growth-cycle and be harvested (the Policy).

On March 8, 2021, Mowi Canada West Ltd. (Mowi) and 622335 British Columbia Ltd. (Saltstream) filed an application for an injunction in the context of their respective judicial review applications (*Mowi Canada West Inc. et al v. Minister of Fisheries and Oceans and the Canadian Coast Guard*) challenging the Policy. The Federal Court issued an interim injunction order on April 5, 2021, which: 1) prevents the Crown from applying the component of the Policy to cease the transfer of fish into licensed aquaculture facilities in the Discovery Islands; 2) applies only to Mowi's applications to transfer fish into two particular sites (Hardwicke and Phillips Arm) and to Saltstream's application to transfer fish into its Doctor Bay Farm; and 3) is valid until the Federal Court issues its decision on the judicial review applications. DFO did not appeal the Federal Court's decision.

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On April 16, 2021, Cermaq submitted a transfer application to the BC Introductions and Transfers Committee to transfer 1,499,000 Atlantic salmon from Cecil Island to marine sites Venture Point and Brent Island, which are both located in the Discovery Islands (Tab 1). Cermaq provided additional documentation comprised of a cover letter (Tab 2), a letter of support from Wei Wai Kum First Nation (Tab 2A), and a summary of Cermaq's Discovery Island operations (Tab 3). Cermaq has proposed to conduct the transfer on July 1, 2021; however, they have noted that a decision is required by June 14, 2021 to provide sufficient time to prepare the sites to receive fish. The application was reviewed and officially considered complete and received by the BC Introductions and Transfers Committee coordinator on April 16, 2021. On April 27, 2021, Cermaq was informed via email of the process and service standard for transfer applications to the Discovery Islands, which provides for consultations with First Nations. On April 30, 2021, Cermaq submitted a request to extend the Venture Point and Brent Island marine finfish licences to February 28, 2023, so as to allow the full grow-out of the fish proposed to be transferred in (Tab 4).

With respect to Cermaq's transfer and licence extension applications, DFO has consulted with First Nations that claim territory where Venture Point and Brent Island are located. Additionally, other input has been presented to DFO that is being considered; this being submissions from Ecojustice, on behalf of the Conservation Coalition, and correspondence received by your office regarding aquaculture in the Discovery Islands. The consultation and other input is outlined further below.

Analysis and considerationsCermaq Applications

In the transfer application materials submitted, Cermaq included a cover letter which expresses the company's intent to jointly apply with Wei Wai Kum First Nation – one of the terms of a recently-established agreement between Cermaq and Wei Wai Kum – and requests that the company be exempt from the Policy with respect to the requirement that farms be free of fish by June 30, 2022. The letter indicates that, also in accordance with its agreement with Wei Wai Kum, Cermaq wishes to extend the licence terms for Brent Island and Venture Point from their current end date of June 30, 2022 to February 28, 2023, with fish to be harvested by February 28, 2023, and the site decommissioned prior to December 31, 2023.

The agreement with Wei Wai Kum, according to Cermaq, is in the spirit of reconciliation and recognition of Wei Wai Kum rights and intended to ease the economic strain of decommissioning Venture Point and Brent Island on the local community of Campbell River and the surrounding areas by saving up to 30 jobs and \$1.6 million in wages, and creating short-term relief to local businesses, contractors, and suppliers, who are already struggling financially due to the Covid-19 pandemic. Other details of the agreement are said to include: permission from Wei Wai Kum to transfer fish into Venture Point and Brent Island after July 1, 2021 (following the salmon out-migration period) for harvesting in February 2023, immediate transfer of ownership of the licences of occupation (tenures) for the two facilities to Wei Wai Kum; compensation to Wei Wai Kum for use of the licences of occupation until the fish have been harvested and the sites are decommissioned by December 31, 2023; operations in compliance with the Wei Wai Kum Guardian Program and under the oversight of the program; support and assistance from Cermaq for Wei Wai Kum to develop their own science and analysis capacity; and contributions from Cermaq to support wild salmon recovery and conservation work in Wei Wai Kum territory. Included with Cermaq's application was a letter from Wei Wai Kum Chief, Christopher Roberts, indicating support and consent for the joint application, and echoing the articulations by Cermaq regarding the details of their agreement. Chief Roberts calls it an interim approach that will both reduce the immediate economic impact to the local community and mitigate harm to wild salmon.

Finally, the application materials include the paper entitled, "Cermaq Canada: Seafood for a healthy world", which Cermaq submitted as part of the fall 2020 relicensing consultations, and provides information of the company's regional production, employment, and contributions to the local economy and community.

Section 56 of the Fishery (General) Regulations fish transfer assessment

Prior to issuing a licence to transfer live fish, you (and or your delegate) must be satisfied that each of the three preconditions outlined in Section 56 of *Fishery (General) Regulations* are met: (a) the release or transfer of the fish would be in keeping with the proper management and control of fisheries; (b) the fish do not have any disease or disease agent that may be harmful to the protection and conservation of fish; and (c) the release or transfer of the fish will not have an adverse effect on the stock size of fish or the genetic characteristics of fish or fish stocks. In determining whether these preconditions are met, DFO focusses on assessing the health of farmed stock, as well as ensuring that the movement of farmed fish will not cause genetic or ecological harm to wild fish. Fish health considerations of farmed and wild fish are by their very

nature ecosystem-based approaches, given that disease is an interplay among host, pathogen and environment.

The members of the BC Introductions and Transfers Committee reviewed Cermaq's transfer request with respect to the three preconditions (a, b, and c) of Section 56 of the *Fishery (General) Regulations*, as is their role. The full analysis is contained in the attached Transfer Assessment document (Tab 5). In summary, this request to transfer live fish from a marine to marine environment meets each of the three preconditions.

Licence extension assessment

Your December 2020 Policy approved the temporary renewal of licences for facilities operating in the Discovery Islands until June 30, 2022, which included the marine finfish licences for Venture Point and Brent Island (Memo 2020-502-00267, Tab 6). As outlined above, Cermaq has requested DFO extend these licences to February 28, 2023.

DFO does not typically receive requests to extend the term of marine finfish aquaculture licences. Occasionally new conditions are added, as conditions of licence are updated over time. DFO is currently conducting engagement toward an update of marine finfish conditions of licence, which will come into effect in July 2022 across British Columbia. In the present case, Cermaq voluntarily agreed on May 4, 2021, to adopt any new conditions should their licence extension application be approved.

Under the *Canada - British Columbia Agreement on Aquaculture Management in British Columbia*, licensing decisions are harmonised among federal and provincial partners. Each agency retains independent decision-making authority and operators need authorisations from all agencies to conduct marine finfish aquaculture in British Columbia. Valid Transport Canada navigational authorisations are in place for both Brent Island and Venture Point and will remain in effect for the duration of the proposed licence extension. The provincial Crown licences of occupations for these sites are held by Cermaq with expiration dates of 2031 (Brent Island) and 2034 (Venture Point). Cermaq intends to transfer these licences of occupation to the Wei Wai Kum First Nation under its agreement with the First Nation, as described above. This is considered a licence of occupation assignment (replacement) by the Province of British Columbia and is subject to the provincial policy that requires operators to have agreements in place with First Nations in whose territories they propose to operate for all tenures issued after June 2022. The Province of British Columbia views the agreement between Wei Wai Kum and Cermaq as being consistent with its policy. A decision whether to approve the transfer of the licenses of occupation has not yet been made.

Taking into consideration the information and advice provided when you made your decision to renew licences for facilities operating in the Discovery Islands until June 30, 2022, and the information and advice contained in this memorandum, an extension of the licences for Venture Point and Brent Island to February 28, 2023 is not precluded for reason related to wild or farmed fish health.

Consultations and Perspectives

In accordance with the process outlined to you in Memo 2021-502-00090 (Tab 7) for the processing of Discovery Island transfer requests, DFO consults with First Nations in whose

territory the proposed transfer sites are located. In the case of Venture Point and Brent Island, the sites are located in the claimed territory of the Homalco, K'ómoks, Kwiakah, Tla'amin, Wei Wai Kai, and Wei Wai Kum First Nations. While Klahoose First Nation was part of the fall 2020 relicensing consultations, the proposed transfer sites are not located in Klahoose claimed territory, and thus that First Nation was not consulted. Through the consultations, DFO received input from First Nations in writing and during virtual meetings. A summary of these consultations, and their methodology, is included at Tab 8.

Since the announcement of the Policy, your office and DFO have received correspondence from a range of stakeholders, including industry associations, fish farming companies and suppliers, business councils, conservation groups, tourism industry representatives, union associations, and recreational and commercial fishery representatives. Several local government groups (municipal and provincial) have also provided input. Correspondence has reflected a range of perspectives and has been widely polarised and varied, with stakeholders both supporting and opposing the Policy. Summaries of these submissions is also included at Tab 8.

Cermaq's Response to Submissions

Cermaq was given an opportunity to make submissions on the input received and to be considered in relation to their transfer and extension applications. On May 27, 2021, Cermaq was provided with the materials received from First Nations, a summary of meetings that occurred between First Nations and DFO, and letters received from Ecojustice – and was invited to make submissions by June 3, 2021. A follow-up email attaching a late submission was sent to Cermaq on May 28, 2021. Cermaq responded with a written submission on June 3, 2021, which is also summarised at Tab 8.

DFO Analysis of submissions

The primary objective of on-farm health management is to grow the healthiest fish possible in order to mitigate any potential transmission back to wild populations. DFO applies the precautionary approach to its management of pathogens, disease and sea lice, primarily through aquaculture licences, which include requirements for managing, recording, reporting, and responding to fish health information. In addition, DFO staff in the Fish Health Audit and Intelligence Program routinely observe fish, take samples, check records, and inspect freshwater hatchery fish prior to sea entry. Live fish are not authorised for transfer if they are a genetic, ecological, or disease risk to wild fish populations.

DFO Science Branch has reviewed the Homalco and Tla'amin First Nation submissions and the submissions from the Conservation Coalition thoroughly. The issues posed in the submissions and the responses from DFO Science have been summarised according to five key themes that were identified during the review: sea lice, *Tenacibaculum maritimum*, *Piscine orthoreovirus* (PRV), new pathogens, and risks to depressed salmon stocks. A summary of this analysis included at Tab 9.

DFO Science Branch advises that there is no new or novel information presented in these submissions that would trigger a change in process. Current regulatory and management regimes appropriately manage fish health and disease, and are structured to assess and manage any new and emerging diseases as they arise.

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The Introductions and Transfers Committee has reviewed the Homalco and Tla'amin First Nation submissions and the submissions from Conservation Coalition, as well as the review and analysis conducted by DFO Science Branch. The Introductions and Transfers Committee concurs with the conclusions of Science Branch in that there is no new or novel information presented in these submissions that would alter its review process in assessing fish transfer applications under section 56 of the *Fishery (General) Regulations*.

Department of Justice Advice

Solicitor-Client Privilege



Solicitor-Client Privilege

Summary*Consultations and Perspectives*

In summary, consultations with First Nations and perspectives from environmental groups, Cermaq, stakeholders and others present varying and polarised views.

Overall, there is both support and opposition to the fish transfer and licence extension applications from the First Nations that were consulted. Four First Nations – Homalco, Tla'amin, K'ómoks and Kwiakah – oppose continued marine finfish aquaculture in their territory, though Kwiakah has clarified that these particular transfer sites are not within its (core) asserted territory and are deferring to fellow Laichwiltach Nations, the Wei Wai Kai and Wei Wai Kum. Wei Wai Kai supports one final grow-out cycle at the sites, and Wei Wai Kum expressly supports Cermaq's fish transfer application and associated licence extensions, and has entered a related business agreement with the company described earlier.

Homalco and Tla'amin First Nations continue to express concerns regarding certain diseases and health impacts to wild fish from these applications specifically and aquaculture overall – particularly, though not exclusively *Tenacibaculum maritimum* and PRV. DFO Science has reviewed the assertions thoroughly and is confident that these present a minimal risk of harm to wild Pacific salmon. The BC Introductions and Transfers Committee has reviewed the submissions as well, and concurs with the conclusions presented by DFO Science. However, despite DFO's views, the Homalco and Tla'amin continue to be seriously concerned about these matters and are strongly opposed to both the Cermaq's fish transfer application and the licence extension application. These First Nations explained that they have a deep physical, cultural and spiritual connection to their territory, which includes the Discovery Islands that is inseparable from their fishing rights. Homalco and Tla'amin First Nations also communicated that harvesting salmon is an important food source and plays a central role in the their ceremonies and transmitting their culture to their youth.

The Conservation Coalition's views are generally consistent with those expressed by the Homalco and Tla'amin.

Cermaq is of the view that their transfer and licence extension applications should be considered as an exception to the Policy, and that their current agreement with the Wei Wai Kum could

become a template for reconciliation. They note that concerns raised by the Homalco, Ha'amin and Conservation Coalition regarding wild salmon interactions and conservation, and the need to respect Indigenous rights and title are primarily addressed through agreements with the Wei Wai Kum Nation. In their view, Cermaq has broader social acceptance for salmon farming on north Vancouver Island and specifically Campbell River, due to the strong economic and community wellbeing delivered by the industry.

More generally, there is both support and opposition for aquaculture occurring in the Discovery Islands from stakeholders and the public. There are concerns about the impact on local economies from removing salmon farms in the Discovery Islands, and discontentment regarding the suddenness of the announcement of the Policy and its impacts on local businesses. There is also support from groups and individuals who agree with the Policy and believe that phasing out salmon farms will result in better environmental outcomes and/or that it is in support of reconciliation.

Summary of Department Advice

DFO Science Branch advises that there is no new or novel information presented in the submissions provided during the review of Cermaq's applications that would trigger a change in process. The Introductions and Transfers Committee concurs with the conclusions of Science Branch in that there is no new or novel information presented in these submissions that would alter its review process. The committee reviewed the transfer application in accordance with section 56 of the *Fishery (General) Regulations* and determined that the request meets each of its three pre-conditions (a, b, and c), and therefore a transfer could be licensed. DFO has similarly considered the request to extend the facility licences and determined that these extensions are not precluded for any reason related to wild or farmed fish health.

The communities of the three Lathkwiltach First Nations, including the Wei Wai Kum First Nation, are the closest to the Venture Point and Brent Island sites. The Wei Wai Kum and the Wei Wai Kai support the applications and the Kwikwaka'wakw defer to the other two Nations. The Wei Wai Kum First Nation has entered into an agreement with Cermaq pursuant to which the First Nation would receive benefits if the applications were granted. They further indicate that this agreement would contribute to reconciliation with them. Granting the application is also expected to generate economic benefits, i.e. wages for workers and income for local businesses.

Advice, recommendations, and next steps

From the department's perspective two options would be available:

Option 1: approve the application to transfer 1,499,000 Atlantic salmon smolts from Cecil Island to Venture Point and Brent Island, located in the Discovery Islands, and approve the application to extend the licences for these facilities to February 28, 2023.

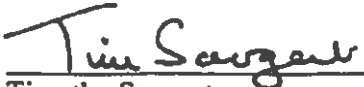
Option 2: deny both applications.

The department supports Option 1.

You are being asked to make a decision on these two applications by June 14, 2021.

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Potential responses to Cermaq have been drafted based on the options. Once your decision is made, please sign the attached letter to Cermaq found at Tab 14 or Tab 15 that reflects your decision.

 JUN 11 2021
Timothy Sargent
Deputy Minister

Lawrence Hanson
Associate Deputy Minister

Option 1:

I approve the application to transfer 1,499,000 Atlantic salmon from Cecil Island to the Venture Point and Brent Island facilities, located in the Discovery Islands, and approve the application to extend the licences for these facilities to February 28, 2023.

Option 2:

I deny both applications.

June 14, 2021



Bernadette Jordan
Minister

Attachments: 15

This is **Exhibit "RR"** referred to in the affidavit of Tracey Sandgathe affirmed before me at Vancouver, British Columbia this 24th day of June, 2021.



A handwritten signature in black ink, appearing to read "Tracey Sandgathe", is written over a horizontal line.