



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *Northern Harvest Smolt Ltd. v. Salmonid
Association of Eastern Newfoundland*, 2021 NLCA 26

Date: May 4, 2021

Docket Number: 202001H0025

BETWEEN:

NORTHERN HARVEST SMOLT LTD.

APPELLANT

AND:

SALMONID ASSOCIATION OF
EASTERN NEWFOUNDLAND

FIRST RESPONDENT

AND:

FRESHWATER-ALEXANDER BAYS
ECOSYSTEM CORPORATION

SECOND RESPONDENT

AND:

PORT AU PORT BAY FISHERY
COMMITTEE

THIRD RESPONDENT

AND:

JOHN BAIRD

FOURTH RESPONDENT

AND:

ALAN PICKERSGILL

FIFTH RESPONDENT

AND:

WAYNE HOLLOWAY

SIXTH RESPONDENT

AND:

HER MAJESTY THE QUEEN IN
RIGHT OF NEWFOUNDLAND
AND LABRADOR

SEVENTH RESPONDENT

Coram: Green, Welsh and Butler JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
General Division 201901G2746
(2020 NLSC 34)

Appeal Heard: January 20, 21 and 22, 2021

Judgment Rendered: May 4, 2021

Reasons for Judgment by: Welsh J.A.

Concurred in by: Green and Butler JJ.A.

Counsel for the Appellant: J. Alexander Templeton

Counsel for the First, Second, Third, Fourth, Fifth and Sixth Respondents:
James Gunvaldsen Klassen and Sarah McDonald

Counsel for the Seventh Respondent: Suzanne Orsborn

Authorities Cited:

CASES CONSIDERED: *Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67; *International Brotherhood of Electrical Workers, Local 1620 v. Lower Churchill Transmission Construction Employers' Association Inc.*, 2020 NLCA 20; *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23; *Labrador Inuit Association v. Newfoundland (Minister of Environment and Labour)* (1998), 155 Nfld. & P.E.I.R. 93 (Nfld.

C.A.); *Atlantic Salmon Federation (Canada) v. Newfoundland (Environment and Climate Change)*, 2017 NLTD(G) 137.

STATUTES CONSIDERED: *Environmental Protection Act*, SNL 2002, c. E-14.2, sections 46, 47, 48, 49 and 107; *Environmental Assessment Regulations*, 2003, NLR 54/03, sections 29 and 23.

Welsh J.A.:

[1] Northern Harvest Smolt Ltd. sought approval under the *Environmental Protection Act*, SNL 2002, c. E-14.2, to expand its onshore salmon hatchery producing smolt that would later be transferred to sea cages. The Minister of Municipal Affairs and Environment considered Northern Harvest's proposal and, with conditions, released it from further review under the *Act*.

[2] There are two ministerial decisions underpinning this appeal. The Minister's initial decision releasing Northern Harvest's undertaking from further environmental review was challenged, as provided by the *Act*, by way of appeals to the Minister. The Minister dismissed the appeals and confirmed his initial decision. On judicial review, the Minister's decisions were quashed on the basis that the decisions were unreasonable. Northern Harvest appeals that decision.

BACKGROUND

[3] The process was begun in accordance with the *Act* with registration of a proposal which Northern Harvest Smolt Ltd. submitted with respect to the expansion of the hatchery. While the proposal specified that the smolt would be delivered to certain sea cages, consideration of the environmental assessment was restricted to the hatchery. The applications judge set out the basis of the application for judicial review of the Minister's decisions (2020 NLSC 34):

[4] ... The Applicants say that the environmental impact of the hatchery expansion should not have been considered without simultaneous review of the impact [on] the sea pens. The Applicants say the determination of the Minister to consider the land-based expansion as a stand-alone project was unreasonable.

The judge summarized the rationale underlying the Minister's decisions:

[51] The Minister based both his [initial] Release Decision and the decision on appeal on the same reasons, which I paraphrase as follows:

1. Under section 29 of the *Regulations*, the development of marine sea farms is considered an undertaking for the purposes of an environmental assessment only where there is the construction of shore-based facilities;
2. The *Act* does not authorize the assessment of an existing undertaking unless the proposal is to modify, extend, or otherwise deal with one;
3. As the sea farms have separate utility from and can proceed without the hatchery expansion, they are not connected actions;
4. The hatchery expansion did not create any increase in the marine environmental footprint that had not already been evaluated and approved through the required provincial and federal regulatory regime.

(Emphasis added.)

[4] The applications judge had several reasons for concluding that the Minister's initial and appeal decisions were unreasonable, including: the Minister did not provide a reasonable basis to distinguish between new and existing sea cages when applying section 29 of the *Environmental Assessment Regulations, 2003*, NLR 54/03; the Minister did not explain his conclusion that existing sea cages were only subject to environmental assessment if the proposal was to modify, extend or otherwise deal with them when an equally valid alternative interpretation was available; and the Minister failed to provide a reasonable explanation for concluding that the hatchery and sea cages were not connected for purposes of assessment under the *Act* and *Regulations*.

[5] In the result, the applications judge quashed the Minister's initial and appeal decisions releasing Northern Harvest's undertaking from further environmental assessment.

ISSUES

[6] At issue in this appeal is whether the applications judge erred in concluding that the Minister's decisions were unreasonable in releasing the expansion of Northern Harvest's salmon hatchery from further environmental assessment. Definition of the scope of the undertaking and the application of principles of interpretation, taking into account the text, context and purpose of the *Act* and *Regulations* are integral to the reasonableness analysis.

ANALYSIS

The Legislation

[7] Section 107 of the *Act* provides for an appeal to the Minister from his initial decision:

(1) A person ..., who is aggrieved by a decision or an order made under this Act, may appeal that decision or order to the minister by notice in writing, within 60 days of receipt of that decision or order, stating the reasons for the appeal.

...

(3) The minister may dismiss the appeal, allow the appeal or make another decision or order that may be made under this Act.

(Emphasis added.)

[8] Part X of the *Act* is concerned with environmental assessments. Definitions are set out in section 45, with the purpose of Part X described in section 46:

The purpose of this Part is to

(a) protect the environment and quality of life of the people of the province;
and

(b) facilitate the wise management of the natural resources of the province,

through the institution of environmental assessment procedures before and after the commencement of an undertaking that may be potentially damaging to the environment.

(Emphasis added.)

[9] Section 47(1) addresses the application of the *Act*:

This Part and regulations made with respect to this Part apply to all undertakings carried out in the province, unless it is an undertaking or a class of undertaking exempted under this Act.

[10] A project is not allowed to proceed unless the undertaking has been released or exempted under the *Act* (section 48 of the *Act*).

[11] Section 49(1) provides for registration of an undertaking:

A proponent shall, in the form and with the content prescribed by the minister and before proceeding with the final design of an undertaking, notify the minister of the proposed undertaking and that notification shall be considered to be a registration of the undertaking under this Act.

“Undertaking” is broadly defined in section 2(mm) of the Act:

“undertaking includes an enterprise, activity, project, structure, work or proposal and a modification, abandonment, demolition, decommissioning, rehabilitation and an extension of them that may, in the opinion of the minister, have a significant environmental effect;

[12] Section 29 of the *Regulations* addresses the requirement for registration of undertakings involving fish:

An undertaking that will be engaged in farm raising fish or shellfish where that undertaking will intervene in the rearing process to enhance production by keeping the animals in captivity, stocking and feeding the animals and protecting the animals from predators including

(a) fish or shellfish farming in salt water or fresh water; and

(b) fish or shellfish breeding and propagating or hatchery services,

where the undertaking will include the construction of shore based facilities other than wharves and storage buildings and

(c) permanent marine trap or weir fisheries,

shall be registered.

[13] Section 23 of the *Regulations* sets out screening criteria for release of an undertaking:

(1) Where the minister releases an undertaking because

(a) there are no environmental or public concerns; or

(b) the environmental effects of the undertaking will be mitigated under an Act of the province or of Canada,

he or she, in making a determination under paragraph (a) or (b), may consider

(c) the comprehensiveness of the description of the undertaking;

...

(e) the compatibility of the undertaking with other resource use in the area of the undertaking;

(f) whether or not the undertaking occurs in an environmentally or other sensitive area;

...

(2) In making a determination under paragraph (b), the minister may consider

(a) issues of concern relating to the environmental effects of the undertaking;

(b) whether or not licences, certificates, permits, approvals or other documents of authorization required at law will mitigate the environmental effects referred to in paragraph (a);

(c) whether or not sufficient detail of the undertaking has been provided to determine the level of the known environmental effects of the undertaking;

...

Assessing Reasonableness of the Challenged Decisions

[14] The applications judge correctly determined that reasonableness is the appropriate standard of review to be applied to the Minister's decisions on judicial review. I agree with counsels' submission that there is no basis on which to depart from the presumption of reasonableness as discussed in *Canada Post Corp. v. Canadian Union of Postal Workers*, 2019 SCC 67. (See *International Brotherhood of Electrical Workers, Local 1620 v. Lower Churchill Transmission Construction Employers' Association Inc.*, 2020 NLCA 20, at paragraphs 12 and 13.)

[15] In applying the reasonableness standard, the applications judge referred to the discussion in *Canada Post*, in which Rowe J., for the majority, explained:

[42] Where the meaning of a statutory provision is in dispute, the administrative decision maker must demonstrate in their reasons that they were alive to the "essential elements" of statutory interpretation: "the merits of an administrative decision maker's interpretation of a statutory provision must be consistent with the text, context and purpose of the provision" (*Vavilov* [2019 SCC 65], at para. 120). Because those who draft statutes expect that the statute's meaning will be discerned by looking to the text,

context and purpose, a reasonable interpretation must have regard to these elements – whether it is the court or an administrative decision maker tasked with the interpretative exercise (*Vavilov*, at para. 118). In addition to being harmonious with the text, context and purpose, a reasonable interpretation should conform to any interpretative constraints in the governing statutory scheme, as well as interpretative rules arising from other sources of law. In this case, the Appeals Officer’s interpretation was constrained by interpretative rules within the Code, the *Interpretation Act*, R.S.C. 1985, c. I-21, and common law rules of statutory interpretation.

(Emphasis added.)

[16] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, Wagner C.J.C., for the majority, cautioned:

[121] ... [The administrative decision maker] cannot adopt an interpretation it knows to be inferior – albeit plausible – merely because the interpretation in question appears to be available and is expedient. The decision maker’s responsibility is to discern meaning and legislative intent, not to “reverse-engineer” a desired outcome.

[17] In order to assess the reasonableness of an administrative decision, it is necessary for the applications judge on judicial review, and the court on appeal, to consider the relevant legislation and its application. This does not amount to applying a correctness standard to the administrative decision, but rather, is necessary to enable the court to assess and determine whether the administrative decision is reasonable. That is the approach that was taken by the applications judge in this case.

[18] I would add that, in reviewing the applications judge’s decision, the appellate court will necessarily consider the reasonableness of the administrative decision. In *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23, Deschamps J., in her dissenting reasons, noted:

[247] ... In the “classic” process, appellate review consists in verifying whether the court at the first level of review has correctly applied the standard in reviewing the administrative decision. What this means in practice is that in “step[ping] into the shoes” of the lower court, an appellate court’s focus is, in effect, on the administrative decision [citations omitted].

The Registration Proposal Submitted by Northern Harvest

[19] The letter attached to the registration document submitted by Northern Harvest in accordance with section 49 of the *Act* summarizes the proposal (appeal book, at page 3333):

Please find attached Environmental Registration from Northern Harvest Smolt Ltd. (NHS) to expand the NHS Indian Head hatchery in Stephenville. The NHS expansion (the Project) will provide smolt to the licensed sea cage sites that belong to Northern Harvest Sea Farms (NHSF). Both NHS and NHSF are now owned by Marine Harvest (MH) but will continue to function as separate corporate entities.

[20] The record and submissions of counsel were unclear as to the separate corporate functions of Northern Harvest Smolt Ltd. and Northern Harvest Sea Farms. For example, the record indicates that the hatchery is owned by Northern Harvest Sea Farms, but the registration was submitted by Northern Harvest Smolt Ltd. For purposes of this appeal, I am satisfied that it is unnecessary to draw a distinction between the two corporate entities. In his appeal decision, the Minister indicated that he “was not influenced in any way by the corporate structure of the hatchery or the marine sea farms to be stocked by the hatchery” (appeal book, at page 4970). In any event, Northern Harvest does not take the position that the environmental assessment provisions of the *Act* and *Regulations* could be circumvented or avoided by operation of their corporate structures.

[21] The Registration application provides a description of the undertaking, including the following (appeal book, at pages 3429 and 3433):

3.3.2 Marine Infrastructure and Transportation

No construction of marine infrastructure in the form of wharves or other marine installations is planned for the hatchery. [Northern Harvest Sea Farms] intends to utilize existing local marine installations in the area for the delivery of juvenile salmon from the hatchery site to well-boats at the local wharf that will transport them to cold water grow-out cages. A wharf already exists at the former Abitibi Mill site, a short distance from the hatchery site, and wharf facilities for commercial fishing enterprises exist at the entrance to Port Harmon.

The hatchery will have company trucks for the transportation of materials required for operation of the hatchery and for the transportation of juvenile salmon from the hatchery to local wharves.

...

3.3.8.1 Description of Operation

The hatchery will be owned and operated by [Northern Harvest Sea Farms] The facility will be a modern recirc salmon hatchery and the Atlantic Salmon (*Salmo salar*) produced will be used at the company’s own sites. All smolt from the hatchery will be

used by [Northern Harvest Sea Farms] in their own cold water sea cage grow-out system; no smolt will be for sale.

...

Product transportation will involve delivery of juvenile salmon from the hatchery site to well boats at the local wharf that will transport them to cold water grow out cages.

Minister's Decisions

[22] In responding to the appeals of his initial decision, at page 5, the Minister rejected the submission that an environmental assessment of the sea cages was required (appeal book, at page 4968):

2. The entire undertaking must be registered

a. "Connected actions"

The undertaking as registered proposes to expand and upgrade the existing Indian Head Hatchery. While the expansion and upgrading will provide more smolt to fully utilize the 33 existing licensed [Northern Harvest Smolt] marine sea farms, the focus of the undertaking is the existing physical structure of the hatchery. The sea farms were developed, licensed, and operated prior to the existence of the Indian Head Hatchery and they do not require this Hatchery in order to function. Any increase in production could be supplied through smolt obtained from other hatcheries as the proponent described as an alternative in the registration document. As the sea farms have separate utility from and can proceed without the hatchery expansion, they cannot be considered connected actions.

(Emphasis added.)

[23] Under the same heading, at pages 5 and 6, the Minister distinguished this project from an earlier Grieg project that required new sea cage sites (appeal book, at pages 4968 and 4969):

... Unlike the Grieg project, the Indian Head Hatchery is an expansion, and not a new development and the sea farms identified in the registration are licensed to receive the strain of fish and the approximate number of fish the hatchery expansion will be able to supply.

The project described was properly scoped and the relevant aspects of the project were registered fully and appropriately under section 49(1) of the *Act*. The decision to release this project from further environmental assessment was lawful and correct.

b. Section 29 of the [*Regulations*]

As per section 29 of the *Regulations*, an undertaking involving marine sea farms is required to be registered only where there is the construction of shore-based facilities, other than wharves and storage buildings. ...

...

... The 33 [Northern Harvest Smolt] marine sea farm sites, intended to be stocked with fish coming from the hatchery expansion, are existing aquaculture licensed sites that completed the licensing process. [Northern Harvest Smolt] advises that while they do intend to increase production, that increase will occur on fully licensed sites that have not been stocked to their full licensed capacity and that [Northern Harvest Smolt] has not submitted any plans to expand site perimeters or capacity of any of its sites. The marine sea farm sites associated with this undertaking have been evaluated in accordance with the established licensing process and existed prior to the proposed expansion of the hatchery. No modifications to the existing licensed marine sea farms are required. ...

...

... The *Act* does not authorize the assessment of an existing undertaking unless the proposal is to modify, extend, or otherwise deal with one. ...

Purpose of the Legislation

[24] Consistent with the analytical approach described in *Canada Post* and *Vavilov*, it is helpful to begin consideration of this appeal with a focus on the purpose of the *Act* and *Regulations*. As referenced above, section 46 of the *Act* identifies the legislative purpose to protect the environment and quality of life of the people of the Province as well as to facilitate the wise management of the Province's natural resources. In *Labrador Inuit Association v. Newfoundland (Minister of Environment and Labour)* (1998), 155 Nfld. & P.E.I.R. 93 (Nfld. C.A.), at paragraphs 9 to 12, the Court addressed the rationale underlying environmental legislation generally:

[9] One of the primary initiatives taken by governments in rationalizing economic activity with environmental imperatives has been the enactment of statutes providing for environmental assessment. These measures have generally been aimed at moving away from correcting environmental problems *ex post facto*, towards preventing them from occurring *ab initio* or, at least, assuring that they are contained at tolerable levels. It is well to point out that this is not only environmentally sound but is economically desirable as well, inasmuch as the costs of rectifying long term effects often eclipse short term burdens. ...

[10] Accordingly, it can be said that the process of environmental assessment is not a frill engrafted on the development process, nor should it be regarded as an administrative hurdle to be gotten over in the march towards economic development. It is, rather, an integral part of economic development.

...

[12] The legislation, if it is to do its job, must therefore be applied in a manner that will counteract the ability of immediate collective economic and social forces to set their own environmental agendas. It must be regarded as something more than a mere statement of lofty intent. It must be a blueprint for protective action.

[25] The applications judge in this case made a similar statement:

[73] Environmental protection is a fundamental value of Canadian society and environmental protection legislation and regulation must therefore be interpreted broadly and liberally using the precautionary approach that supports protection over remediation. ...

[26] Whether the stated purpose of the legislation is achieved in the context of these considerations would form part of the analysis in assessing the reasonableness of the Minister's decision. An appropriate consideration is whether "the proponent had properly addressed the Project's true environmental footprint or was restricting what it chose to register in an effort to avoid environmental scrutiny by the appropriate officials" (*Atlantic Salmon Federation (Canada) v. Newfoundland (Environment and Climate Change)*, 2017 NLTD(G) 137, at paragraph 76).

[27] The Minister, in his appeal decision, referred to the concept of "connected actions" in considering whether the sea cages were required to be included in the undertaking. Depending on the circumstances, the concept of connected actions may be of assistance in defining the scope of the undertaking which, given the purpose of the legislation, will encompass the entire environmental footprint. However, in this case, as discussed below, the Minister's use of the concept led him into error with the result that his decision was unreasonable. Also as discussed below, the definition of the undertaking in a particular situation will be determined by consideration of the registration application and other relevant factors. Where helpful, this may include reference to connected actions, such as where one project is triggered by or cannot proceed without the other, or the projects "are part of a larger whole and have no independent utility if considered separately" (*Atlantic Salmon Federation (Canada) v. Newfoundland (Environment and Climate Change)*, at paragraph 72).

Application of the Law

[28] Northern Harvest submits that the applications judge erred in concluding that the Minister's decisions were unreasonable insofar as the Minister limited his consideration of the undertaking to the hatchery, excluding the sea cages. One of the Minister's reasons for finding that the sea cages were not relevant to the environmental assessment of the hatchery is that the cages do not require the hatchery in order to operate; that is, the cages could be stocked from other hatcheries.

[29] The applications judge rejected that analysis as unreasonable:

[89] The logic in this finding is flawed as it considers the connection between the hatchery and sea cages only from one perspective. Although the sea cages could have independent utility from the hatchery expansion, the hatchery expansion does not have independent utility from the sea cages. ...

(Emphasis added.)

[30] The registration document is clear. It specifies that the smolt would be transferred to Northern Harvest Sea Farms' sea cages. The applications judge continued:

[91] ... Although the cages could be independent of the hatchery expansion, the proponent chose to present its submission to the Minister with the inclusion of the intention to use these sea cages. The proponent connected the hatchery expansion with the increased utilization of the sea cages.

(Emphasis added.)

[31] The judge's conclusion demonstrates that, in considering the text, context and purpose criteria relevant to assessing the reasonableness of the Minister's decisions, the beginning point must be an accurate definition of the scope of the undertaking, which is gleaned, at least initially, from the registration document.

[32] Further interpretive assistance is found in the language of section 29 of the *Regulations*, which provides detail regarding the kind of undertaking that "shall be registered". That is, it mandates the registration of undertakings "engaged in farm raising fish" which "will intervene in the rearing process to enhance production by keeping animals in captivity". Specifically included are farming in salt water, breeding and propagating the animals, and hatchery services. The scope of the undertaking must be determined by means of these defining characteristics.

[33] Consideration of factors such as licenses and permits can reasonably be factored into the analysis only after the scope of the undertaking has been defined. This follows from the registration requirements of section 29 and the authority to release an undertaking under section 23 of the *Regulations*. Section 23 provides that the minister may release an undertaking where “the environmental effects of the undertaking will be mitigated under an Act of the province or of Canada.” In making that determination, pursuant to section 23(2)(b), the minister may consider “whether or not licences, certificates, permits, approvals or other documents of authorization required at law will mitigate the environmental effects”. That determination can be made only after the undertaking has been defined.

[34] In this case, when determining the scope of the undertaking, the Minister failed to integrate the sea cages and well boats that are referred to in the registration document. Together with the hatchery, the sea cages and well boats provide the beginning and end points of the operation. To say that the sea cages could operate without the hatchery expansion entirely misses the point. The registration document made a clear connection between the hatchery, the well boats and the sea cages. Given that context and the overarching purpose of the *Act* and *Regulations*, it would be unreasonable to define the scope of the undertaking so narrowly as to omit possible environmental implications related to the well boats and sea cages.

[35] Although the well boats that would be used to transfer the smolt to the sea cages are mentioned in the registration document, the Minister did not turn his attention to possible environmental concerns should, for example, a well boat sink or an error occur in transferring the smolt onto or off of the well boats. Counsel advised that the record does not contain information regarding permits or licenses related to the well boats to be used to transfer the smolt.

[36] Regarding the sea cages, the Minister relied on the fact that the cages had been licensed to accommodate the approximate number of fish the hatchery expected to provide. That was a factor to be considered after the scope of the undertaking had been established. Whether any licenses or permits would adequately deal with environmental concerns, including the mitigation of possible environmental effects, could only be determined after the undertaking had been defined. That is, licenses and permits would be a factor to consider for purposes of determining whether the undertaking, once defined, should be released from further environmental assessment. However, to remove a portion of the undertaking from review on the basis that those portions had been licensed in the past would undermine the purpose of the legislation, essentially

“putting the cart before the horse”, and would, therefore, be an unreasonable analytical approach.

[37] Viewed from another perspective, the Minister used the licensing of the sea cages to define the scope of the undertaking rather than to determine, pursuant to section 23 of the *Regulations*, whether the undertaking should be released from further environmental assessment.

[38] Further, the Minister interpreted section 29 of the *Regulations*, which requires the registration of undertakings, to mean that the legislation does not authorize the assessment of an existing undertaking “unless the proposal is to modify, extend, or otherwise deal with” it. The applications judge found, at paragraph 68, that the Minister “did not elaborate on this determination or provide any support for it.” This was an important omission since the advice on which the Minister relied, from John Reynolds, environmental scientist, Environmental Assessment Division, Department of Municipal Affairs and Environment, referred specifically to alternate interpretations and conclusions. The judge quoted from the Reynolds Memorandum:

[68] ...

Advice was sought from [Justice and Public Safety] regarding whether or not a description of pre-existing sea cages is required for this project and they advised in a meeting with the Environmental Assessment Division on August 30, 2018, that continuing to allow hatcheries to proceed through environmental assessment without considering the pre-existing marine sea farms may be defensible. However, valid arguments could be made on both sides of a challenge and the *Environmental Assessment Act* and *Environmental Assessment Regulations* are not clear as to whether pre-existing components of projects should be considered and there is a risk of a legal challenge if the pre-existing cages are not assessed as well.

[69] The record does not include any request from the Minister or his staff for further elucidation of this discussion. It also does not include any explanation as to how the Minister chose between these two conflicting positions, which he was advised were equally valid.

(Emphasis added.)

[39] Further, without explanation, to limit the environmental assessment of an existing undertaking to one that was being modified, extended or otherwise dealt with has no apparent basis in the language of the *Act* or its purpose. The applications judge noted, at paragraph 72, that the *Act* “does not prohibit environmental review of existing operations and even expressly allows for it.”

In particular, section 46 of the *Act* refers to “assessment procedures before and after the commencement of an undertaking”. This led the applications judge to conclude that the Minister’s failure to explain his position demonstrated that he was not “alive to the essential elements of statutory interpretation” (decision of the applications judge, at paragraph 74).

[40] For the above reasons, I am satisfied that the applications judge applied the appropriate standard of review to the Minister’s decisions, and that he did not err in concluding that the initial and appeal decisions, in which Northern Harvest’s hatchery expansion was released from further environmental assessment, were unreasonable. The judge’s reasons are clear and are consistent with the analytical approach set out in *Canada Post* and *Vavilov*.

Public Concern

[41] The parties agree that the applications judge erred by addressing the issue of significant public concern under section 25 of the *Regulations* (applications judge’s decision, at paragraphs 105 to 111). That issue was not properly before the Court since it was not raised on the judicial review application.

Costs

[42] As the successful party, the first to sixth respondents, who were represented by the same counsel, shall have their costs for two counsel under column 3 of the scale of costs in the *Court of Appeal Rules* jointly and severally against Northern Harvest and the seventh respondent, Her Majesty the Queen in Right of Newfoundland and Labrador.

SUMMARY AND DISPOSITION

[43] The applications judge did not err in concluding that the Minister’s initial and appeal decisions, releasing the expansion of Northern Harvest’s salmon hatchery from further environmental assessment, were unreasonable. In assessing the reasonableness of the Minister’s decisions, the beginning point is a determination of the scope of the undertaking, which is gleaned from the registration document assessed in accordance with the text, context and purpose of the legislation. In this case, the Minister’s decision to limit consideration of the environmental assessment to the hatchery could not be maintained as reasonable.

[44] Accordingly, I would dismiss the appeal, with costs as set out in paragraph 42, above.

B. G. Welsh J.A.

I Concur:_____

J. D. Green J.A.

I Concur:_____

G. D. Butler J.A.