

**COHEN COMMISSION OF INQUIRY INTO THE DECLINE OF
SOCKEYE SALMON IN THE FRASER RIVER
STATUS REPORT**

October 12, 2011

INTRODUCTION

This is the Cohen Commission's fifth status report. It provides general information about the commission's main activities between May and September 2011. The commission is pleased to provide this update. Previous status reports released in March 2010, July 2010, January 2011 and April 2011 are available on the commission's website at <http://www.cohencommission.ca/en/StatusReports.php>.

DOCUMENT PRODUCTION

Documents produced by Canada

Canada has been disclosing documents to the commission through Ringtail Legal, the automated document management program specified by the Attorney General of Canada. To date, the Government of Canada, through the Department of Justice, has produced more than 508,500 documents, which include more than 237,000 emails. The commission remains grateful for the considerable resources that Fisheries and Oceans Canada (DFO) and the Department of Justice have committed to this task.

Documents produced by other participants

Since June 2010, 17 participant groups have produced more than 13,000 documents to the commission. All of these documents have been or will be imported into Ringtail Legal.

In order to be searchable in the Ringtail Legal database, documents must be coded. Some participants have provided coding for their documents, while others, for a variety of reasons, have not. In the case of the latter, the commission has accepted responsibility for the coding on participants' behalf, which has delayed the rate at which documents are added to the database.

INTERVIEWS

Since May 2011, the commission's legal team has conducted approximately 100 interviews of prospective witnesses in preparation for upcoming hearings. This is in addition to approximately 260 interviews conducted in 2010 and the first four months of 2011. A number of the interviewees are current or former employees and managers from DFO, others are commercial and recreational fishers, environmentalists, members of First Nations, scientists and academics, and consultants.

EVIDENTIARY HEARINGS

From October 2010 to September 2011, the Commissioner heard 125 days of evidence. This included testimony from 173 witnesses, 1,992 documents marked as exhibits, with other documents marked for identification, which may become exhibits. The themes covered by the evidentiary hearings are listed below alphabetically, along with the number of days (or partial days) heard on each theme:

Aboriginal Fishing	7
Aboriginal Worldview, Cultural Context and Traditional Knowledge	3
Advice to the Minister regarding Sockeye Returns in 2009	1
Aquaculture	9
Commercial Fishing	7
Conservation, Sustainability and Stewardship	2
Cultus Lake – SARA Listing Decision	3
Cultus Lake – recovery efforts from 2005 onwards	2
Cumulative Impact Assessment	2
DFO Priorities & Summary	5
DFO's organizational structure	4
Diseases	4
Effects on Habitat in the Marine Environment	5
Effects on the Fraser River Watershed - Gravel Removal	2
Effects on the Fraser River Watershed - Logging	1
Effects on the Fraser River Watershed - Municipal Wastewater	2

Effects on the Fraser River Watershed - Pulp and Paper Effluent, Mining Effluent	1
Effects on the Fraser River Watershed – Urbanization	3
Examination on Scientific Reports - Project 10 Fraser River sockeye salmon production dynamics	2
Examination on Scientific Reports - Project 12 Fraser River Sockeye Habitat Use in the Lower Fraser and Strait of Georgia	2
Examination on Scientific Reports - Project 2 Effects of contaminants on Fraser River sockeye salmon	2
Examination on Scientific Reports - Project 3 Status of Fraser River Sockeye Salmon and the Role of Freshwater Ecology in their Decline	2
Examination on Scientific Reports - Project 7 Fraser River sockeye fisheries and fisheries management	2
Examination on Scientific Reports - Project 9 Potential Climate Change Effects on Survival of Fraser River Sockeye Salmon	2
Fisheries Monitoring and Enforcement	4
Fraser River Sockeye Life Cycle	1
Habitat Enhancement and Restoration	1
Habitat Management and Enforcement	5
Harvest Management (Part 1)	7
Harvest Management (Part 2)	12
Hydroelectric Power, Water Flow and Temperature	2
Pacific Salmon Commission & Pacific Salmon Treaty	2
Perspectives on the Aboriginal and Treaty Rights Framework Underlying the Fraser River Sockeye Salmon Fishery	1
Predation	3
Recreational Fishing	3
Wild Salmon Policy (Part 1)	9
Wild Salmon Policy (Part 1) – Expert Stakeholders	2
Wild Salmon Policy (Part 2) – Strategy 4 and Integrated Planning	2
Wild Salmon Policy - Regional Director General	1

The evidentiary hearings were all held in the federal courtroom on the 8th floor of 701 West Georgia Street in Vancouver. The public was able to attend the hearings, and interest from the public varied, with hearings on disease and aquaculture garnering full houses. For some of those hearing days, a media website also webcast the English audio from the hearings.

With the cooperation and assistance of the Federal Court Administration, the commission used electronic communications in the courtroom to make the hearings more efficient. Extensive use of Ringtail Legal enabled the commission to provide documents and exhibits electronically through monitors located at counsel tables and to the courtroom audience through data projection. A secure wireless network was available to counsel and participants.

The calendar on the commission's website lists each hearing day, showing the witness(es) who appeared and the exhibits that were entered that day. Transcripts are also posted on the calendar for each hearing day once they are translated (generally about two weeks after the hearings). All transcripts for evidentiary hearings are expected to be posted by the third week of October.

Final oral submissions by the 21 participant groups will be heard over five days from November 4-10. Due to unavailability of the federal courtroom, these submissions will be heard in an alternate room in the same building.

POLICY AND PRACTICE REPORTS

The legal team prepared 21 policy and practice reports, which set out the information derived from the review of policies and practices of DFO with respect to the sockeye salmon fishery in the Fraser River – including DFO's scientific advice, its fisheries policies and programs, its risk management strategies, its allocation of departmental resources and its fisheries management practices and procedures, including monitoring, counting stocks, forecasting and enforcement. Counsel also reviewed previous examinations, investigations and reports related to the decline of sockeye salmon in the Fraser River, and the government's responses to previous recommendations.

These reports were distributed to participants and are intended to inform the Commissioner's deliberations. The reports were each tendered as evidence during the hearings, at which point they were posted on the commission's [website](#). The Commissioner may consider the policy and practice reports in making findings of fact and recommendations.

Policy and Practice Reports were published on following topics:

1. The Aboriginal and Treaty Rights Framework Underlying the Fraser River Sockeye Salmon Fishery
2. International Law Relevant to the Conservation and Management of Fraser River Sockeye Salmon
3. Legislative Framework Overview
4. Pacific Salmon Treaty and the Pacific Salmon Commission Regarding Management of Fraser River Sockeye Salmon
5. Overview of Fraser River Sockeye Salmon Harvest Management
6. Commercial Salmon Fishing: Licensing, Allocation, and Related Issues
7. Recreational Salmon Fishing: Licensing, Management, and Related Issues
8. The Department of Fisheries and Oceans' Habitat Management Policies and Practices
9. Enforcement of the Habitat Protection and Pollution Prevention Provisions of the Fisheries Act
10. Overview of Fraser River Sockeye Salmon Net and Gross Escapement Data
11. Overview of Habitat Enhancement and Restoration
12. Fishery Monitoring and Catch Reporting for Commercial and Aboriginal Fraser River Sockeye Salmon Fisheries
13. Department of Fisheries and Oceans Policies and Programs for Fisheries Enforcement
14. Overview of Freshwater Urbanization Impacts and Management
15. Municipal Wastewater, Pulp and Paper and Mining Effluents
16. Gravel Removal in the Lower Fraser River
17. Regulation of Forestry Activities Impacting Fraser River Sockeye Habitat
18. Department of Fisheries and Oceans Policies and Programs for Aboriginal Fishing
19. Overview of Marine Environment Issues Potentially Relevant to Fraser Sockeye Salmon
20. Aquaculture Regulation in British Columbia
21. Regulation of Water Uses in the Fraser River Watershed

SCIENTIFIC RESEARCH PROGRAM

The commission established a scientific research program to enhance the Commissioner's understanding of the science behind the decline of Fraser River sockeye. The commission

contracted with qualified and experienced external scientific researchers to study a wide range of technical and scientific issues designed to address potential causes for the decline.

The commission has received final reports (also called technical reports) for 15 scientific research projects. Each technical report was presented during the commission's public evidentiary hearings, at which counsel for participants had an opportunity to question the researchers and test their theories. These reports are:

- Project 1 - Infectious Diseases and Potential Impacts on Survival of Fraser River Sockeye Salmon
- Project 1A - Hatchery Disease Impact Assessment
- Project 2 - Potential Effects of Contaminants on Fraser River Sockeye Salmon
- Project 3, Evaluating the Status of Fraser River Sockeye Salmon and the Role of Freshwater Ecology in their Decline
- Project 4: The Decline of Fraser River Sockeye Salmon *Oncorhynchus nerka* (Steller, 1743) in Relation to Marine Ecology
- Project 5A – Summary of Information for Evaluating Impacts of Salmon Farms on Survival of Fraser River Sockeye Salmon
- Project 5B – Examination of Relationships Between Salmon Aquaculture and Sockeye Salmon Population Dynamics
- Project 5C – Impacts of Salmon Farms on Fraser River Sockeye Salmon: Results of the Noakes Investigation
- Project 5D – Impacts of Salmon Farms on Fraser River Sockeye Salmon: Results of the Dill Investigation
- Project 6: Data Synthesis and Cumulative Impact Analysis
- Project 7, Fraser River Sockeye Fisheries Harvesting and Fisheries Management
- Project 8: Predation on Fraser River Sockeye Salmon
- Project 9, Effects of Climate Change on Fraser River Sockeye Salmon
- Project 10, Fraser River Sockeye Production Dynamics
- Project 12, Sockeye Habitat Analysis in the Lower Fraser River and the Strait of Georgia

As reported in the April 2011 status report, commission counsel decided not to present project 11, Fraser River Sockeye Salmon – Status of DFO Science and Management, into evidence.

Once each report has been translated, they are made available on the commission's [website](#).

WRITTEN PUBLIC SUBMISSIONS

The commission received written submissions from the public through its website until October 3, 2011. Members of the public have submitted 591 relevant and appropriate submissions, which are posted to the commission's website. Written submissions inform the commission's ongoing work and may be considered and relied upon by the Commissioner.

The written submissions address a variety of topics, most prevalent of which is aquaculture. Submissions have also been received on issues such as making the proceedings and evidence of the commission public, the legal framework governing the Fraser River sockeye fishery, DFO's organizational structure and its responsibilities related to harvesting, the state of Fraser River sockeye freshwater and marine habitat, and predation, among many others.

RULINGS

Since April 20, 2011, the Commissioner has issued nine rulings and made three recommendations for additional funding for participants under the Contribution Program. All rulings and correspondence with the Privy Council regarding these funding recommendations are posted on the website at <http://cohencommission.ca/en/Rulings.php>. The rulings and recommendations are listed below:

- April 20, 2011: Recommendations for Supplementary Funding
- May 27, 2011: Ruling Re: Written Cross-Examination Questions of Karl English Posed by Representative of B.C. Fisheries Survival Coalition and Southern Area E Gillnetters Association
- June 2, 2011: Ruling Re: Leave for Two Cross-Examinations From Members of The Western Central Coast Salish First Nations of Professor Douglas Harris
- June 23, 2011: Ruling on Undertakings of Confidentiality
- July 18, 2011: Ruling on Application for Standing on Aquaculture and Seeking Extraordinary Circumstances

- August 10, 2011: Confidentiality of Material Filed in the Heiltsuk Tribal Council's Application for Production of Documents
- August 31, 2011: Recommendations for Supplementary Funding
- September 12, 2011: Ruling Re: Rules 52 and 53 Application By Conservation Coalition
- September 14, 2011: Aquaculture Coalition Additional Funding
- September 20, 2011: Letter from PCO and Ruling re: Heiltsuk Tribal Council's Application for Production of FSC "Mandate Documents" and the Coastwide Framework Documents
- October 7, 2011: Ruling on Disposition of Documents Marked for Identification
- October 7, 2011: Ruling on Admissibility of Revised Affidavit #1 of Otto Langer Sworn September 22, 2011

FINAL REPORT

As directed by the commission's Terms of Reference, the Commissioner intends to submit, on or before June 30, 2012 a final report, simultaneously in both official languages, to the Governor in Council.

RECENT ADMINISTRATIVE ACTIVITIES

Over the past year, the primary focus of the commission's administrative staff has been the evidentiary hearings. The hearings entail a range of support activities, such as providing technical assistance for Ringtail Legal, coordinating the introduction and display of evidence in the courtroom, responding to media and public enquiries, and managing the commission's contribution program.

In addition to the above, administrative activities are now focussing on producing the Commissioner's final report, including writing and editing, translation, production, printing and distribution. Staff is also planning for archiving, as directed by the commission's Terms of Reference, the records and papers of the inquiry with the Clerk of the Privy Council. Staffing levels will be adjusted to accommodate the different workload.