

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

April 27, 2011

INTRODUCTION

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

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 11 of the 13 scientific research projects it contracted. Project 5, Salmon Farm Impact Assessment, has not yet been completed for a number of reasons, including: the identification of appropriate contractors; an application for the production of fish-health and fish-farm data which led to a hearing and written ruling; and the production of data and documents from the Province of British Columbia, the BC Salmon Farmers Association, and Canada in accordance with the Commissioner's December 8, 2010 ruling. The Project 5 technical reports, however, are on schedule for completion in accordance with the commission's hearings timeline. Project 1A, Hatchery Disease Impact Assessment, is expected to be completed in mid-summer.

Technical reports will be presented during the commission's public evidentiary hearings, at which counsel for participants will have an opportunity to question the researchers and test their theories. Reports that are presented will be made available on the commission's [website](#).

To date, commission counsel have presented as evidence:

- Project 3, Evaluating the status of Fraser River sockeye salmon and the role of freshwater ecology in their decline
- Project 7, Fraser River sockeye fisheries harvesting and fisheries management
- 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

Commission counsel have decided not to present project 11, Fraser River Sockeye Salmon – Status of DFO Science and Management, into evidence. The financial information requested by the commission's researcher for project 11 could not be obtained in the timeframe needed to complete the intended analyses. Further, the Commissioner has heard or will hear direct evidence on the issues covered in the technical report. In particular, the Commissioner will hear evidence directly from DFO witnesses on these issues during the final hearing topic, "DFO Priorities & Summary." The commission will also review an analysis of DFO's accounting records done by an external contractor.

DOCUMENT PRODUCTION

Documents produced by Canada

Canada continues to produce disclosure 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 390,000 documents, which include more than 188,000 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.

The estimate for the completion of production is now May 2011.

Documents produced by other participants

Since June 2010, 15 participant groups have produced more than 5,500 documents to the commission. All of these documents have been or will be imported into Ringtail Legal. The commission may request additional documents from participants over the course of the evidentiary hearings.

In order to be searchable in the Ringtail 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 January 1, 2011, the commission's legal team has conducted approximately 60 interviews of prospective witnesses in preparation for upcoming hearings. This is in addition to approximately 200 interviews conducted in 2010. 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.

POLICY AND PRACTICE REPORTS

The legal team continues to prepare 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.

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

Since January 2011, the legal team has completed four policy and practice reports on the following topics: Recreational Salmon Fishing: Licensing, Management and Related Issues; Enforcement of Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*; The DFO Habitat Management Policies and Practices; and Fishery Monitoring and Catch Reporting for Commercial and Aboriginal Fraser River Sockeye Salmon Fisheries. All of the commission's published policy and practice reports are available on the commission's [website](#).

RULINGS

On March 10, 2011, the Commissioner issued a ruling dismissing the application for standing brought by the Matsqui First Nation on February 18, 2011, seeking to join the participant group, the Sto:lo Tribal Council and the Cheam Indian Band. Rule 14 of the commission's Rules for Standing and Funding provides that an application for standing must be submitted in writing by March 10, 2010, although the Commissioner may amend the rules or dispense with their compliance. The Commissioner determined that he should not dispense with Rule 14 in this case and denied the application.

On March 17, 2011, the Commissioner issued a ruling further to the ruling of December 8, 2010 regarding the production of fish health documents in the possession and control of the Province of British Columbia, the Government of Canada and the British Columbia Salmon Farmers Association. The Province sought clarification of the December 8, 2010 ruling, specifically

whether the commission seeks "only the electronic copy of the materials or requires both paper and electronic copy of the materials." The Commissioner found that the December 8, 2010 ruling should exempt the Province of British Columbia from its obligation to produce certain paper records, described by the Province of British Columbia as paper necropsy records. The Commissioner was not persuaded that the production of the paper records would advance his consideration of issues related to fish farms and their impact, if any, on Fraser River sockeye and he was mindful of the fact that requiring the production of the paper records would delay the work of the researchers contracted by the commission to prepare their reports on the topic of aquaculture.

EVIDENTIARY HEARINGS

From January to April 2011, the Commissioner heard 18 days of evidence on the topic of Harvest Management, covering the following areas: overview of the planning and management cycle; forecasting; run size assessment; test fishing; stock assessment; inter-sectoral consultation and decision-making; escapement planning, including the Fraser River Sockeye Spawning Initiative; and the issue of "over-escapement."

The Commissioner heard seven days of evidence on the management of the commercial fishery and three days of evidence on the management of the recreational fishery. In addition, the Commissioner heard another day of evidence stemming from the December 2010 hearings on the Wild Salmon Policy (with the current and previous DFO Pacific Region Regional Directors General on the implementation of the Wild Salmon Policy) and another day of evidence with the DFO Pacific Region Regional Director of Science on the use of briefing notes to the Minister of Fisheries and Oceans.

In the past month, the Commissioner heard five days of evidence on habitat management and enforcement, and two days each on three technical reports: Project 7– Fraser River Sockeye Fisheries and Fisheries Management and Comparison with Bristol Bay Sockeye Fisheries;

Project 12: Fraser River Sockeye Habitat Use in the Lower Fraser and Strait of Georgia; and
Project 10: Fraser River Sockeye Salmon Production Dynamics.

RECENT ADMINISTRATIVE ACTIVITIES

Since October 2010, 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 (the commission's document management software), coordinating the introduction and display of evidence in the courtroom, responding to media and public enquiries, and managing the commission's contribution program.

Staff have implemented a number of technical enhancements to improve the efficiency of the hearings. A website upgrade now permits most exhibits to be uploaded the same day they are introduced, while the use of Skype allows witnesses to testify remotely and provides greater flexibility in scheduling hearing days.

WRITTEN PUBLIC SUBMISSIONS

The commission continues to receive written submissions from the public through its website. To date, members of the public have submitted 326 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 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.

The commission will accept written submissions until the end of evidentiary hearings in the fall of 2011.