

**COHEN COMMISSION OF INQUIRY INTO THE DECLINE OF  
SOCKEYE SALMON IN THE FRASER RIVER  
STATUS REPORT  
January 26, 2011**

**INTRODUCTION**

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

**DEADLINE FOR FINAL REPORT**

Due to the complexity of the topic at hand, a difficult and time-consuming document disclosure process, the large number of participants in the inquiry, and a comprehensive evidentiary hearings schedule, the Commissioner requested an extension to ensure the commission's mandate would be properly fulfilled. The commission has been granted an extension by the Governor General in Council. The commission's Terms of Reference are now revised to call for a final report to be submitted on or before June 30, 2012.

**INTERIM REPORT**

As directed by the commission's Terms of Reference, an interim report was submitted to the Governor in Council on October 29, 2010. The report titled, "Fraser River Sockeye Salmon: Past Declines. Future Sustainability?" includes the Commissioner's preliminary views on, and assessment of, previous examinations, investigations and reports that the Commissioner considered relevant to the inquiry, and the government's responses to those examinations, investigations and reports. It also describes the commission's contracted research program,

the topics to be investigated during the commission’s evidentiary hearings and a summary of the commission’s public forums and site visits.

**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 has 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.

As outlined in the Interim Report, the commission contracted 12 technical and scientific research projects.

Project 1:	Diseases and parasites
Project 2:	Effects of contaminants on Fraser River sockeye salmon
Project 3:	Fraser River freshwater ecology and status of sockeye salmon Conservation Units
Project 4:	Marine ecology
Project 5:	Impacts of salmon farms on Fraser River sockeye salmon
Project 6:	Data synthesis and cumulative impact analysis
Project 7:	Fraser River sockeye fisheries harvesting and fisheries management
Project 8:	Effects of predators on Fraser River sockeye salmon
Project 9:	Effects of climate change on Fraser River sockeye salmon
Project 10:	Fraser River sockeye production dynamics
Project 11:	Fraser River sockeye salmon – status of DFO science and management
Project 12:	Sockeye habitat analysis in the Lower Fraser River and the Strait of Georgia

The researchers provided the commission with progress reports on November 15, 2010 and, with one exception, will deliver their final reports by January 31, 2011. The exception is

Project 5, Salmon Farm Impact Assessment, which will commence in January 2011 after data and documents have been produced by the BC Salmon Farmers Association, the Province of BC and Canada (see description of the December 8, 2010 ruling below). Four researchers with expertise in salmon farm impact assessment and statistical analysis will undertake the assessment and prepare reports that will be subject to external peer review.

On November 30 and December 1, 2010, researchers from the 11 ongoing projects met for a two-day workshop in Vancouver. This workshop provided an opportunity for researchers to communicate initial scientific findings to each other, to explore and evaluate the relative merits of the possible causes for the decline, to address cumulative impacts and to integrate findings.

Research evidence may 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.

## **RECENT ADMINISTRATIVE ACTIVITIES**

Between July and December 2010, additional staffing was required in order to prepare for the commencement of evidentiary hearings. A hearings coordinator, a manager of the commission's contribution program, an additional legal administrative assistant, and additional student document reviewers were hired to assist with the various requirements of the hearings as well as to further the work being done by the commission.

## **PUBLIC FORUMS AND SITE VISITS**

### **Public forums**

From August to October 2010, the commission held public forums in ten coastal and Fraser River communities. The purpose of the forums was to receive public input on the issues identified in the commission's mandate.

To prepare for the forums, commission staff developed an Internet-based registration form for presenters and produced an introductory DVD that was screened at each forum. Commission staff also made detailed information about the forums available on the commission website and, in order to publicize the forums, alerted local media outlets. Several commission staff attended the forums to provide administrative and technical support and to prepare summaries of the presentations. These summaries are available on the commission's website in English and French.

Forums were held as follows:

August 18	Lillooet
August 25	Campbell River
September 1	Prince Rupert
September 13	Steveston
September 14	Nanaimo
September 16	Victoria
September 20	New Westminster
September 23	Prince George
September 29	Chilliwack
October 21	Kamloops

More than 600 people attended the forums and 109 people made oral presentations. As noted in the commission's interim report, all the presenters spoke passionately about the importance of the Fraser sockeye fishery. Commission staff are in the process of reviewing the presentations, and the resulting analysis will inform the commission's ongoing work and may be considered by the Commissioner in making his findings of fact and developing his recommendations.

### **Site visits**

During the same period, the Commissioner visited sites that provided context and information about various aspects of the Fraser sockeye fishery. Some participants attended these site visits but, at many of these locations, the space available limited the number of people who could attend. To ensure there is a record of what the

Commissioner saw and heard, a videographer recorded the proceedings. These recordings were subsequently made available to participants.

Site visits were held as follows:

August 12	Mission/Agassiz	<ul style="list-style-type: none"> <li>• Traditional Native fishery at Cheam Beach</li> <li>• Mission hydroacoustic counter</li> <li>• Inch Creek hatchery</li> <li>• Swift Aquaculture (land based aquaculture facility)</li> </ul>
August 19	Lillooet	<ul style="list-style-type: none"> <li>• First Nations fishery on the Bridge River</li> </ul>
August 19	Yale	<ul style="list-style-type: none"> <li>• Qualark acoustic site</li> </ul>
August 26	Campbell River	<ul style="list-style-type: none"> <li>• Marine Harvest salmon fish farm</li> </ul>
September 1	Prince Rupert	<ul style="list-style-type: none"> <li>• North Pacific Cannery Heritage Museum</li> </ul>
September 2	Prince Rupert	<ul style="list-style-type: none"> <li>• Canadian Fishing Company Cannery</li> </ul>
September 13	Steveston	<ul style="list-style-type: none"> <li>• Gulf of Georgia Cannery National Historic Site</li> </ul>
September 23	Prince George	<ul style="list-style-type: none"> <li>• Northwood Pulp Mill</li> </ul>
September 29	Maple Ridge	<ul style="list-style-type: none"> <li>• Alouette sockeye re-anadromization project</li> </ul>
October 21	Harrison Mills	<ul style="list-style-type: none"> <li>• Weaver Creek spawning channel</li> </ul>
October 22	Kamloops	<ul style="list-style-type: none"> <li>• Adams River salmon run</li> </ul>

The commission is thankful to the First Nations that welcomed commission staff to their traditional territories. Commission staff are also grateful to the many people and organizations who assisted with the site visits and for everyone who participated in and attended the public forums. Together, these events have deepened the Commissioner's understanding of the various aspects of the Fraser sockeye fishery.

## 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 293,000 documents, which includes more than 140,000 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 has become the end of March, with some anticipated as late as May 2011.

### **Documents produced by other participants**

In August, the commission prepared a set of guidelines to facilitate the production of documents by participants other than Canada. Given the variety and volume of documents possessed by participants, the guidelines were aimed at ensuring a smooth and consistent production process.

Since June 24, 2010, 12 participant groups have produced more than 3,600 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 processed by commission staff.

### **INTERVIEWS**

The commission's legal team has conducted approximately 200 interviews to gather information relevant to the evidentiary hearings. A number of the interviewees are current or former employees and management of DFO, others are commercial and recreational fishers, environmentalists, First Nations, scientists and academics, and consultants.

## **POLICY AND PRACTICE REPORTS**

As mentioned in the interim report, the commission's legal team has prepared several policy and practice reports, setting 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 and may be tendered as evidence during the hearings, at which point they are posted on the commission's website in English and French. The Commissioner may consider the policy and practice reports in making findings of fact and recommendations.

Topics that have already been covered in this process include the federal legislative scheme, the international law framework, harvest management, habitat enhancement and restoration, the Aboriginal and treaty rights framework for the fishery, and a history of regulation of the Aboriginal sockeye salmon fishery.

## **RULINGS**

On August 17, 2010, the Commissioner allowed an application to grant individual standing to the Heiltsuk Tribal Council, separating it from the standing group of which it was formerly a member, owing to conflicts within the group. The group was the Laich-kwil-tach Treaty Society (LKTS), Aboriginal Aquaculture Association (AAA), Chief Harold Sewid, and the Heiltsuk Tribal Council. This brings the total number of participants to 21.

On September 15, 2010, the Commissioner released a ruling on the interpretation of the Terms of Reference. This ruling was prompted by a letter from one of the participants seeking confirmation that the wording directing the Commissioner to conduct this inquiry "without seeking to find fault on the part of any individual, community or organization" prohibited the Commissioner from making a finding of misconduct. The Commissioner

ruled that the Terms of Reference do allow him to make findings or recommendations based on the conduct of any individual, community or organization that is a factor causing or contributing to the decline of Fraser River sockeye salmon.

On September 28, 2010, the Commissioner wrote to the Clerk of the Privy Council recommending changes to his funding recommendations in respect of two recipient groups: the LKTS, AAA and Chief Harold Sewid; and the First Nations Coalition. In respect of both groups, the Commissioner found extraordinary circumstances to justify additional counsel working on behalf of these groups (i.e., counsel in addition to the contribution program's standard one junior and one senior counsel). This recommendation did not affect the total amount of funding for the groups in question. On October 6, 2010, the Clerk of the Privy Council approved these changes.

On October 20, 2010, the Commissioner released his interim ruling in response to an application under Rule 19 of the commission's rules by two of the participants, the Aquaculture Coalition and the Conservation Coalition, requesting the production of documents relating to fish health and stocking from the participants, the BC Salmon Farmers Association and the Province of BC, as well as case reports on wild sockeye and information on fish health from the Government of Canada. In the interim ruling, the Commissioner ordered production of documents for 21 identified fish farms for the period 2004-2009, and requested further evidence regarding the hardship of extending the production of documents to more fish farms and for a longer period of time.

On December 8, 2010, the Commissioner released the final ruling on the Rule 19 request for production of documents (following from the Interim Ruling of October 20, 2010). In this ruling, the Commissioner ordered that the BC Salmon Farmers Association, the Province of BC, and the Government of Canada produce documents in their possession or control for the period from January 1, 2000 through September 1, 2010, relating to fish health and stocking in certain identified fish farms (a total of 120 fish farms along the migratory route of the Fraser River sockeye salmon), as well as DFO's case reports on wild sockeye salmon during the same time period.



## EVIDENTIARY HEARINGS

The commission's evidentiary hearings began on October 25, 2010. Before the end of 2010, hearings have been conducted on the following topics:

- Life cycle of Fraser River sockeye salmon
- Perspectives on the Aboriginal and treaty rights framework related to the Fraser River sockeye salmon fishery
- Conservation, sustainability and stewardship
- DFO organizational structure
- Pacific Salmon Commission and Pacific Salmon Treaty
- Wild Salmon Policy
- Aboriginal worldview, cultural context and traditional knowledge

On November 9, 2010, the commission adjourned hearings until November 29, 2010. The pause was at the request of participant counsel for more time to review the large number of technical documents in preparation for hearings on the Wild Salmon Policy.

Hearings resumed January 17, 2011. Topics to be covered at hearings include:

- Harvest management
- Commercial fishing
- Aboriginal fishing
- Recreational fishing
- Habitat enhancement and restoration
- Predation
- Habitat management overview
- Enforcement
- Wild Salmon Policy (Part 2)
- Effects on the Fraser River watershed
  - Pulp mills
  - Municipal waste water
  - Logging
  - Gravel removal
  - Metal mining
  - Hydro, water temperature
  - Urbanization

- Aquaculture and diseases
- Effects on habitat in the marine environment
- Cumulative impact assessment
- Other fisheries models
- DFO funding and priorities

### **Ringtail updates**

The Cohen Commission is the first federal inquiry to provide Ringtail access to participants. The start of evidentiary hearings has increased participants' use of Ringtail. Since June, the commission has conducted a number of online training seminars for those participants who missed the initial Ringtail training sessions in March 2010 or who wished to re-familiarize themselves with Ringtail's search tools. Training and support is provided to participants on an ongoing basis.

The increasing use of Ringtail by both participants and commission counsel has led to a corresponding increase in Ringtail administration and support work for commission staff.

With the cooperation and assistance of the Federal Court facility where the commission is holding its public hearings, the commission is using electronic communications in the courtroom to make the hearings more efficient. Extensive use of Ringtail enables 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 is available to counsel and participants.

### **WRITTEN PUBLIC SUBMISSIONS**

The commission continues to receive written submissions from the public through its website. To date, members of the public have submitted 304 relevant and appropriate submissions, all of which are posted to the commission's website. As with public forum

presentations, written submissions inform the commission's ongoing work and may be considered and relied upon by the Commissioner.