

COMMISSION OF INQUIRY INTO THE DECLINE OF SOCKEYE SALMON IN THE FRASER RIVER

THE HONOURABLE BRUCE COHEN, COMMISSIONER

In the matter of His Excellency the Governor General in Council, on the recommendation of the Prime Minister, directing that a Commission do issue under Part 1 of the Inquiries Act and under the Great Seal of Canada appointing the Honourable Bruce Cohen as Commissioner to conduct an inquiry into the decline of sockeye salmon in the Fraser River

Submissions of the Public Service Alliance of
Canada, BC Region and Union of Environment Workers/BC
On the Impact of Bill C-38

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BACKGROUND AND REQUEST

On April 27, 2012, the Commission wrote to the parties to provide them a very limited opportunity to make submissions on “how, if at all, the proposed changes impact the submissions you have already made to the commission”.

The PSAC BC Region and UEW/BC respectfully submits that the parties ought to have the opportunity to file full written submissions on Bill C-38’s impact on the Fraser River Sockeye Salmon, as key environmental legislation relating to fish and fish habitat are diluted and narrowed which prevent the DFO from fulfilling its mandate.

We focused our earlier submissions on a few critical areas of concern to our clients and their members. But, no one could foresee that the Harper Government would not await the outcome of the Commission’s important and considered work before making sweeping substantive changes to the *Fisheries Act* and other federal statutes that relate to the protection of fish and fish habitat¹.

Parties ought not to be hampered because they focused their earlier submissions on certain issues. Rather, the parties ought to have the right to make full submissions on the Bill C-38 regardless of the content of their earlier submission. Our clients seek the right to make such a full submission on the impact of Bill C-38. Unless, and until that request is granted, we file this submission on the narrow basis sought by the Commission.

IMPACT OF BILL C-38 ON WILD SALMON POLICY

In our earlier submissions, our clients strongly advocated for the full and timely implementation of the Wild Salmon Policy, including but by no means limited to providing sufficient funding to implement the Wild Salmon Policy.

Bill C-38 undermines the Wild Salmon Policy in a number of important ways. First, it eliminates the longstanding protection found in section 35, “harmful alteration, disruption or destruction of fish habitat” (typically abbreviated as “HADD”), and replaces it with a narrower, inferior protection of “serious harm” to fish. Even this inferior protection only applies to permanent alteration or destruction of fish habitat. Second, it narrows the fish subject to the protections afforded by the *Fisheries Act* to aboriginal, commercial and recreational fish (all of which are narrowly defined terms in Bill C-38). Third, Bill C-38 introduces section 43(5) to the *Fisheries Act* which allows the Harper Government, through the Governor in Council, the complete discretion to exempt any waters from even these limited protections.

The Harper Government has provided neither a justification for these changes nor how it arrived at the changes. At this time, the changes to the *Fisheries Act* appear to come about through the whim of the government instead of the result of any economic, scientific or policy rationale.

¹ Throughout these submissions we have used the term Harper Government not as a political statement but rather because that is how the federal government describes itself on its website and press releases.

Thus, the Harper Government's Bill C-38 is a repudiation of the Wild Salmon Policy and eliminates key protections for the fisheries that have been in place since 1976. The Harper Government's Bill C-38 is a repudiation of the "No Net Loss" policy which has served as a foundation for numerous of DFO's touchstone policies, such as the Wild Salmon Policy. Further, the Harper Government's Bill C-38 demonstrates a lack of understanding of biodiversity and importance of habitat protection necessary for fisheries management.

Throughout these proceedings, DFO witnesses and other witnesses have testified about the importance of the protections found in *Fisheries Act*, as it is now enacted. By significantly narrowing the application of the *Fisheries Act*, to only certain fish, and by protecting only "serious harm" to fish, the Harper Government is creating a regime that places the Fraser River sockeye salmon at serious risk even in the best case scenario.

The Harper Government introduced Bill C-38 without any consultation, including the participants affected by the changes to the *Fisheries Act*. And, as is well-known, the Harper Government's 425 page bill (of which about half involve changes to environmental legislation) is to be limited to just seven days of debate through a motion successfully brought by the Harper Government. This extremely brief opportunity to debate the bill ensures that the House will be unable to consider the full ramifications of the repudiation of the Wild Salmon Policy and No Net Loss policy to the Fraser River Sockeye Salmon, specifically, and of course to all the important fisheries throughout Canada.

We urge the Commission in its final report to decry the Harper Government's proposed changes to the *Fisheries Act* as these changes will make it impossible for the DFO to implement the Wild Salmon Policy.

What Bill C-38 also tells us is that the Commission must speak in a louder, more pointed voice if the report is to have any impact. The Harper Government has obviously prejudged the issues relating to the fish and fish habitat. Otherwise, it would not have proposed the changes to the *Fisheries Act* that it has. While more muted or nuanced language might otherwise be as effective in other circumstances, Bill C-38 demonstrates that such an approach will simply led to futility here.

IMPACT OF BILL C-38 ON FUNDING

In our earlier submission we set out how the DFO was unable to discharge all its responsibilities because of staffing and funding shortfalls. Our clients urged the Commission to state the need to maintain and increase funding in the Pacific Region.

In Bill C-38 the Harper Government must be recognizing that it cannot maintain the existing protections afforded to fish and fish habitat with the present level of staffing and funding of the DFO, Environment Canada, Canadian Forest Service and other federal departments. Therefore, the Harper Government is eliminating or reducing the environmental protections for the fisheries. But, simply because the present funding means that the DFO, and other departments, cannot accomplish what it must under the existing *Fisheries Act* does not compel the impairment of the DFO's mandate through reduced protection of fish and fish habitat. Such change puts at

risk the Fraser River sockeye salmon and other important fisheries. Rather, funding ought to be increased as we set out in our earlier submission.

As of today's date the Harper Government has not yet indicated to our client, or to the public, the number and location of positions that will be eliminated in the DFO this year, next year or the following year. Therefore, the full impact that Bill C-38 will have on the Fraser River sockeye salmon is not yet known.

There have been, of course, significant reductions in Environment Canada, particularly the scientific staff.

Recently, Minister of Environment, Peter Kent, in the department's plans and priorities for 2012-1013 stated "Due to transition alignment challenges, the department risks being unable to stay current with advances in science and technology." He also stated "In addition, the recruitment and retention of employees who possess the essential and specific skills and knowledge required to support programs and internal services could pose difficulties, in particular due to the current fiscal environment."

In response to this crisis at the DFO and Environment Canada one response is to provide the necessary the staffing and funding. That is not the response of the Harper Government. Another possible response is to re-write the end goal: lower the standard to be expected so one can meet the limited, meager standard. That is the response of the Harper Government in Bill C-38.

What is evident is with the inability to achieve the appropriate protection for fish and fish habitat with present staffing and funding, the Harper Government in Bill C-38 is reducing the protections to avoid criticism that the DFO is unable to discharge its responsibilities. For example, since it is not staffing and funding the DFO to allow it to meet the HADD standard, the Harper Government is saying the DFO only has to be meet the "serious harm" standard. While this approach may benefit the politicians, it is does not benefit the public, the workers and, importantly, the fish.

As we stated above, given the prejudgment of the Harper Government, the Commission must speak in a louder, more pointed voice when it speaks about the need to maintain and increase the funding for the Pacific Region, as we urge it to do. Otherwise, the report's recommendations will simply fall upon deaf ears.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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