

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

In the matter of Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, directing that a commission do issue under Part I 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

**ADDITIONAL SUBMISSIONS OF THE STÓ:LŌ TRIBAL COUNCIL
AND CHEAM INDIAN BAND STANDING GROUP REGARDING BILL C-38, *THE
BUDGET IMPLEMENTATION ACT***

**Counsel for the Stó:lō Tribal Council and
Cheam Indian Band:**

Tim Dickson

Farris, Vaughan, Wills & Murphy LLP
700 W. Georgia St.
Vancouver, BC, V7Y 1B3

Email: tdickson@farris.com

Tel: 604 661 9341

Fax: 604 684 9341

Nicole Schabus

Tessmer Law Offices
272 Bernard Avenue
Kelowna, BC, V1Y 6N4

Email: schabus@telus.net

Tel: 250 762 6747

Fax: 250 762 3163

1. The Stó:lō Tribal Council and Cheam Indian Band Standing Group (STC-CIB) thanks Commissioner Cohen for the opportunity to provide brief submissions on Bill C-38, the *Budget Implementation Act*, since it could have devastating impacts on the work of the Cohen Commission and the implementation of its future recommendations. Bill C-38 can be taken as an indicator that the federal government is prejudging and pre-empting the work of the Cohen Commission.

2. The STC-CIB will address in these brief submissions two categories of effects Bill C-38 will have: the effects on the sockeye and their habitat, and the effects on Aboriginal peoples.

The Bill's Effects on Sockeye and Their Habitat

3. If anything has become clear in this Inquiry, it is this: that the environmental conditions pertaining to Fraser sockeye have been deteriorating and that the cumulative effects of those adverse changes, along with deteriorating fish health, have severely damaged sockeye productivity; and that protecting the sockeye's biodiversity and the diversity of its habitat is essential to allowing the sockeye to adapt and survive. Science, traditional knowledge, and even policy in the form of the Wild Salmon Policy all share this understanding.

4. The changes to the *Fisheries Act* and other environmental legislation proposed by Bill C-38 are utterly inconsistent with this understanding, however. While this Inquiry heard again and again that it is essential to protect the full diversity of stocks and that it is the cumulative effects of adverse conditions that is the real cause of the decline in productivity, the federal government now appears to propose to protect against only the most obvious impacts on the largest stocks. Through the proposed changes to the *Fisheries Act* – especially to section 35 and the habitat protection provisions – the federal government is trying to limit its responsibility for protecting habitat to only “serious harm to fish that are part of a commercial, recreational and Aboriginal fishery” (emphasis added), which would appear to leave stocks such as the Cultus – which has no fishery because it is endangered – outside of the habitat protection provisions.

5. The STC-CIB's final submissions from October 2011 also spoke to climate change as a key factor in the decline of the Fraser River Sockeye Salmon and the need to take measures for

adaptation and mitigation. The participant is very concerned about the proposed repealing of the *Kyoto Protocol Implementation Act* through Bill C-38. The Inquiry proceedings and the technical reports have made it clear that maintaining species and stock diversity is an important factor in regard to addressing the impacts of climate change and other cumulative effects.

6. In light of the hearings before the Cohen Commission, one would expect that the federal government would realize the urgency of the situation and *enhance* habitat protection measures. To see the federal government instead back away from its responsibility to protect all fish stocks and their habitat is extremely distressing. That is all the more so because these changes come while this Commission continues to prepare its report on the very topic to which these changes are addressed. That the federal government is proposing to implement such changes so contrary to the evidence and expert opinion heard in this Inquiry; indeed, that the federal government is willing to make such sweeping changes without waiting for this Commission's report – both of these suggest a very disturbing lack of concern for the future of the Fraser sockeye and other elements of our natural heritage.

7. Throughout the Inquiry the federal government has asserted exclusive jurisdiction over fisheries and fisheries management, often to the exclusion of Indigenous Peoples, and has argued that the federal government must ensure conservation of the stocks, the highest objective in the priority resource allocation. Aboriginal peoples in turn have stressed that they have Aboriginal title and rights to the protection of their salmon and that that could best be implemented through joint decision-making and management.

8. Bill C-38 just underscores the importance of First Nations having joint decision-making authority. The federal government does not have the necessary commitment to the Fraser sockeye to ensure their survival and flourishing. Rather, it is within First Nations that that commitment can best be found. It is First Nations who have depended on the Fraser sockeye since time immemorial; it is First Nations who live along the sockeye's habitat year-round, year after year; it is First Nations who care for the streams and the land within their territories; it is First Nations who are dedicated to seeing the sockeye thrive for all future generations.

9. The STC-CIB urges the Commission to make that point clear in its report. If the Fraser sockeye are to be properly protected, then First Nations have to be at the table with equal decision-making authority to the federal government.

10. Last on this topic, the STC-CIB are also concerned about the proposed changes to the *Health of Animals Act*, which would grant greater powers to the Canadian Food Inspection Agency (CFIA) to control infected places. As the Inquiry hearings on the infectious salmon anemia (ISA) virus have shown, granting the CFIA greater authority over infectious fish disease would further threaten Fraser sockeye stocks and Aboriginal peoples who depend on them. Rather than engaging in proper testing, the CFIA's focus is to protect international trade in both farmed and wild salmon and the CFIA spent considerable effort on discrediting reliable test results from leading laboratories, and on seizing samples rather than collecting their own. The CFIA also lacks the knowledge and experience to properly engage with First Nations and deal with viruses and fish disease in wild salmon. The recently circulated CFIA surveillance plan amounts to exactly that – *surveillance efforts*, rather than engaging in comprehensive testing and integrated fish health research to counter the effects of viruses and fish disease on Fraser sockeye stocks.

11. The STC-CIB therefore urge this Commission to make strong recommendations to ensure that independent testing for viruses and fish health be conducted and that First Nations be directly involved in the testing and the development of an urgent action plan to address the threats to fish health and the spread of pathogens, especially viruses along the migratory route of the Fraser sockeye.

The Bill's Effects on Aboriginal Peoples

12. The other broad effect of the Bill which the STC-CIB will speak to in these brief submissions is to Aboriginal Peoples.

13. The federal government has a constitutional responsibility to protect habitat and all fish stocks, from which it is further abdicating with Bill C-38. But that is not all. The government also has fiduciary obligations towards Aboriginal peoples, who have a right to the protection of

their salmon, which is the foundation of their Aboriginal right to fish. The government's abdication of its role of environmental protector amounts also to a failure to fulfil its obligations to Aboriginal peoples.

14. The federal government has consistently tried to limit Aboriginal rights to fish and has not properly implemented the priority resource allocation, and Bill C-38 just furthers that agenda. The Bill would introduce new definitions into the *Fisheries Act*. It proposes to define "Aboriginal" this way: "in relation to a fishery, means that fish is harvested by an Aboriginal organization or any of its members for the purpose of using the fish as food or for subsistence or for social or ceremonial purposes" (Bill C-38, para 133(3)). This definition refers to Aboriginal organizations instead of Aboriginal Peoples, who collectively are the proper Title and rights holders. The Bill also seeks to limit an "Aboriginal fishery" to a fishery for food, subsistence, social or ceremonial purposes, thereby denying the rights of Aboriginal Peoples to sustain their own economies based on fisheries. With respect to "commercial" fisheries, the Bill defines them as "fish is harvested under the authority of a licence for the purpose of sale, trade or barter"; such fisheries are therefore characterized as a privilege granted by the Minister, whereas Aboriginal Peoples claim a right to such fisheries.

15. The proposed changes to the *Fishery Act* would also further criminalize Aboriginal Peoples who exercise their Aboriginal Rights to fish. Bill C-38 proposes an extension of the period for laying charges for summary conviction offences under the *Fisheries Act* from two to five years (Bill C-38, para. 154), whereas the *Criminal Code* limitation period is 6 months. This Inquiry has heard extensive evidence that shared stewardship of the fish and habitat is a far more effective approach than is the criminalization of fishers, especially Aboriginal peoples. Again, Bill C-38 is directly opposite to the direction in which the evidence and expert opinion in this Inquiry points.

16. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) that Canada has endorsed requires consultation and the prior informed consent of Indigenous peoples to all legislative and administrative action affecting them. Similarly, Canadian Aboriginal law is clear that Aboriginal peoples must be consulted on governmental action with the potential to affect



their Aboriginal title and rights. Bill C-38 would have far reaching adverse impacts on, at least, Aboriginal people's rights to fish, and yet the federal government has not consulted with Aboriginal Peoples on the Bill whatsoever. What is worse is that these far-reaching effects are buried in what is described as a "budget implementation" bill. In fact, Bill C-38 is a Trojan horse intended to obscure legislation that would otherwise come under much greater scrutiny by the general public and Aboriginal peoples.

17. In this Inquiry, the federal government has repeatedly insisted that it meets its obligations to consult with Aboriginal peoples. Bill C-38 is yet further evidence to the contrary. The STC-CIB submits that this Commission needs to keep this Bill in mind when it assesses the federal government's commitment to consultation with Aboriginal peoples.

Conclusion

18. Bill C-38 is entirely contrary to the policy directions consistently supported by the scientific, traditional knowledge and other evidence and opinion in this Inquiry. The Bill demonstrates a profound disregard for environmental values, and poses a severe threat to Fraser sockeye and the Aboriginal peoples who depend on it. The STC-CIB urges this Commission to recommend a thorough overhaul to Bill C-38. Further, Bill C-38 demonstrates the importance of this Commission providing strong and extensive recommendations to the federal government with respect to the protection of the Fraser sockeye.

All of which is respectfully submitted,

	
<p>Co-Counsel for the STC-CIB</p>	<p>Co- Counsel for the STC-CIB</p>

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