

**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.

FINAL WRITTEN SUBMISSIONS OF LKTS AND AAA

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INTRODUCTION

The purpose of the present submission is to provide to the Commission a short list of recommendations, together with the rationales and supporting evidence for those recommendations. In Part I, the Laich-Kwil-Tach Treaty Society (LKTS) sets out its recommendations on fisheries management issues. These are:

- Ensure that policy reforms do not negatively impact coastal First Nations access to and participation in the Fraser River sockeye fishery;
- Maintain and increase funding for First Nations capacity building at the sub-regional level;
- Further study and weigh the potential costs and benefits of terminal fisheries;
- Continue to fund and expand the marine test fishery;
- Provide for coastal First Nations representation at the Fraser River Panel and Technical Committee; and
- Ensure that certification requirements for fishermen are reasonable and that training is accessible to First Nations fishermen.

In Part II, the Aboriginal Aquaculture Association (AAA) sets out its recommendations on aquaculture issues. These are:

- Apply the highest standards and best practices to the aquaculture industry;
- Fund independent scientific research on aquaculture;
- Engage in meaningful consultations with First Nations and give priority to First Nations in licensing decisions;
- Ensure First Nations participation in the management of aquaculture industry; and
- Support First Nations certification programmes

The above recommendations are offered in the hope and expectation that they will assist the Commission in its work.

PART I

**RECOMMENDATIONS OF THE
LAICH-KWIL-TACH TREATY SOCIETY**

1. Ensure that Policy Reforms Do Not Negatively Impact Coastal First Nations Access to and Participation in the Fraser River Sockeye Fishery

LKTS is concerned that the Commissioner will be asked to recommend policies and policy reforms that may have severe unintended consequences for coastal First Nations fishermen and communities. This concern is heightened by the knowledge that the Department of Fisheries and Oceans (DFO) does not seem to have the capacity to assess the socioeconomic impacts of its policy decisions (discussed below).

Therefore, LKTS recommends that the Commissioner make an overarching recommendation directing Canada to take steps to ensure that the implementation of policies and policy reforms do not negatively impact coastal First Nations participation in the Fraser River sockeye fishery. It is submitted that there are four main reasons why the Commissioner should make this recommendation.

(a) Coastal First Nations People have a Long-Standing Historical Claim to Participation in the Fraser River Sockeye Fishery

LKTS is comprised of coastal First Nations peoples whose traditional territories include the waters in and around the Johnstone Strait area. The LKTS claim to participation in the Fraser River sockeye fishery is supported in part by the special geographic and ecological features of their territory. The Johnstone Strait area is an important stage in the migration of Fraser River sockeye. Each year a large proportion of the run diverts down the East coast of Vancouver Island, eventually funnelling through the narrow, river-like channels and passages that exist between the many islands that crowd the Johnstone Strait area.

The migrating fish do not swim through Johnstone Strait overnight. They congregate in bays and inlets, swimming back and forth as they find their way, resting and waiting for the tides to turn in their favour.¹ It follows that the First Nations that traditionally occupied the Johnstone Strait area were well-placed to intercept and harvest an abundance of high quality Fraser River sockeye using a

¹ Rod Naknakim. 15 December 2010. p. 10, ll. 21-46.

variety of traditional techniques, including fish traps, box traps, nets, and hook and line.²

The LKTS claim to participation in the Fraser River sockeye fishery is also based on the history of the allotment of Indian reserves in British Columbia. Rod Naknakim explained that the Laich-Kwil-Tach were allotted small reserves in locations that were intended to provide access to marine resources.³ Dr. Doug Harris confirmed that many Indian reserves were set aside along the main migration route of the Fraser River sockeye.⁴ He further explained that, during the mid to late 19th century, government officials (colonial, provincial and federal) plainly acknowledged that coastal First Nations were primarily fishing peoples.⁵

The close connection between coastal people and fishing was the main justification for the government decision to set aside relatively small Indian reserves on the coast of British Columbia. Rod Naknakim explained that when the reserves were set aside in the late 1890s the Laich-Kwil-Tach were told by Indian Affairs that they didn't need larger reserves because they made their living from the sea – but today LKTS finds that they have been alienated from marine resources by DFO regulations.⁶ Dr. Harris confirmed the provincial and federal governments considered coastal First Nations to be “toilers of the sea”.⁷ It was their view that the First Nations did not want or need extensive reserve lands; they were profitably employed in fishing and they should not be disturbed in their traditional occupation.⁸ The two arguments underlying this policy were: (i) a recognition that coastal First Nations people had a moral (if not a legal) right to continue to practice their traditional fisheries without interference; and (ii) the more self-interested position that if First Nations were employed in fishing they would be less likely to become “a burden on the public purse”.⁹

Further, Dr. Harris confirmed that for coastal First Nations in general, and for the Laich-Kwil-Tach in particular, the small parcels of land set aside as Indian reserves were regarded by government officials as being “barren” and “worthless”.¹⁰ Yet, government officials urged the Laich-Kwil-Tach to accept the small parcels of worthless land because the lands were in locations that could be used to secure access to and exert control over their traditional fisheries.¹¹ The result was that the economic viability of coastal First Nations communities was

² Rod Naknakim. 15 December 2010. p. 9, ll. 27-45; p. 11, l. 39 to p. 12, l. 5. See also: Exhibit 297.

“Witness Summary of Rod Naknakim”, at pp. 1-2.

³ 15 December 2010. p. 15, l. 12 to 40.

⁴ 27 June 2011, p. 108, l. 13 to p. 109, l. 6.

⁵ 27 June 2011, p. 103, ll. 5-8.

⁶ 15 December 2010. p. 15, ll. 12-40.

⁷ Exhibit 1168. Sessional Papers No. 9, Report of the Deputy Superintendent General of Indian Affairs, excerpt.

⁸ 27 June 2011, p. 105, ll. 14-23.

⁹ 27 June 2011, p. 110, l. 22 to p. 111, l. 5.

¹⁰ 27 June 2011, p. 106, l. 31 to p. 107, l. 36.

¹¹ 27 June 2011, p. 106, l. 31 to p. 107, l. 16.

entirely dependent on participation in the fishery – a state of affairs that still exists today.¹²

(b) *The Participation of Coastal First Nations is Vital to the Sustainability of the Modern Commercial Sockeye Fishery*

The Laich-Kwil-Tach people have always been deeply involved in the commercial sockeye fishery. In the early part of the 20th century, the Indian Agent Pidcock reported that the Laich-Kwil-Tach were living solely on the products of the sea, from which they had derived a considerable amount of wealth.¹³ While the Indian Agent was no doubt engaging in hyperbole when he referenced an exclusive reliance on the resources of the sea, the importance of fishing to the Laich-Kwil-Tach people cannot be doubted. Dr. Harris confirmed that by the 1920s, while First Nations people had been largely excluded from the commercial gillnet fishery in and around the Fraser River, there continued to be a high level of First Nations participation in the commercial fishing industry in the Johnstone Strait area.¹⁴ This is consistent with the evidence given by Rod Naknakim about the high-level of Laich-Kwil-Tach participation in the commercial fishery during the 1910s and 1920s.¹⁵

The Commission received evidence of the experience and merits of coastal First Nations fishermen from the panel on test fisheries. Mr. Ryall stated that test fishing contracts are awarded using a competitive bidding process, and that the bids are ranked according to whether the bidders are good fishermen, well-respected in the fishing community, with lots of experience fishing in the area, and with appropriate vessels and gear.¹⁶ Mr. Cave then testified that four out of five of the marine test fishers are in fact First Nations fishermen. Mr. Cave was asked why this was so – was priority being given to First Nations? He said: "... it doesn't matter to me the colour of person's skin or their background. We need good people. So, no, there's been no attempt to say: 'We have to hire a First Nations person here.' No. The best fishermen in Johnstone Straits, it turns out, are usually First Nations fishermen."¹⁷

The Commission also received some statistical evidence of the high level of coastal First Nations participation in the modern commercial fishing industry. Mr. Duncan referred to a 2003 report by former DFO employee Michelle James entitled "Native Participation in British Columbia Commercial Fisheries".¹⁸ He confirmed that this is the most recent report on the subject. It shows that 46.7 percent of seine licences and 38.1 percent of gillnet licences are held or operated by First Nations people. The report also showed that the First Nations fishermen

¹² 27 June 2011, p. 111, l. 31 to p. 112, l. 1.

¹³ 27 June 2011, p. 109, ll. 20-36.

¹⁴ 27 June 2011, p. 111, ll. 6-34.

¹⁵ 15 December 2010, p. 7, ll. 4-20.

¹⁶ 31 January 2011, p. 100, l. 34 to p. 101, l. 10.

¹⁷ 31 January 2011, p. 101, ll. 11-40.

¹⁸ Exhibit 503.

landed between 32.6 and 46.8 percent of the value of the catch during 1999 to 2002 (or an average of 41.7 percent). The report then goes on to estimate that First Nations people hold about one-third of all commercial fishing jobs (not including those employed on packers and in canneries).¹⁹

Mr. Morley agreed that coastal First Nations people are very good fishermen and an important part of the commercial fishery. He said that First Nations people are "a critical part" of Canadian Fish Co.'s workforce – accounting for probably "in excess of 65 percent" of the cannery workforce in Prince Rupert and about 80 percent of the crew members in Canadian Fish Co.'s seine fleet.²⁰

Mr. Morley also provided affidavit evidence on First Nations participation in the fishing and fish processing sector that he obtained by surveying the companies that are members of the Seafood Producers Association. The survey confirmed that there is a high level of First Nations participation in the industry, with about 45% of the harvesters and 37% of the processors being First Nations.²¹

Brian Assu explained that there is a high level of First Nations participation in the commercial fishery, both as license holders and as operators of boats for Canadian Fish Co.²² Mr. Ashton confirmed that First Nations participation in the commercial fishery in Area B is significant, including licence holders, operators, crew, and workers at processing facilities. This view was also echoed by Mr. McEachern for Area D.²³

(c) *The Participation of Coastal First Nations in the Modern Commercial Sockeye Fishery is Vital to the Sustainability of Coastal First Nations Communities*

The participation of coastal First Nations in the commercial fishery is vital to the coastal First Nations communities in two main ways. First, participation in commercial fishing is culturally-significant and remains a central part of coastal First Nations identity. The act of fishing helps to sustain First Nations cultures by providing opportunities to practice a traditional occupation and to transfer traditional knowledge about fish, the landscape, and cultural practices to young people.²⁴ In addition, First Nations communities that have capacity to fish commercially also have the capacity to harvest FSC fish at a cost that is

¹⁹ Bill Duncan. 3 March 2010, p. 62, l. 12 to p. 64, l. 18.

²⁰ 3 March 2010. p. 64, l. 27 to p. 65, l. 12; p. 98, ll. 16-29.

²¹ Exhibit 1978. "Affidavit of Rob Morley".

²² 11 February 2011. p. 79, ll. 20-43.

²³ 22 February 2011. p. 73, l. 26 to p. 76, l. 2.

²⁴ Rod Naknakim. 15 December 2011. p. 10, ll. 21-38; p. 12, l. 33 to p. 13, l. 38. See also: Exhibit 297, "Witness Summary of Rod Naknakim", at p. 4.

affordable. This was independently confirmed by several witnesses, including Mr. Naknakim, Mr. Duncan, Mr. Assu, and Chief Jones.²⁵

Second, participation in commercial fishing helps to sustain the economies of rural and remote coastal First Nations communities. Mr. Naknakim explained that the whole village of Cape Mudge has always been involved in the fishing industry. In its heyday there were about 40 vessels operated from the village at Cape Mudge alone, but there is probably less than have dozen there today. Mr. Naknakim also emphasized that some individuals are heavily invested in the industry and “we want them to stay in the industry”. He explained that the Laich-Kwil-Tach want to be able to make a living within their territory.²⁶

Mr. Duncan explained that the loss of one seine licence can have a significant impact on the viability of a community like Alert Bay. He said: “Many remote communities on the coast, I mean you just can’t pick up and go away. A reserve is a reserve. You have nowhere else to go. Fishing has been a mainstay for many, many years.”²⁷ It bears emphasizing here that the unemployment rate for aboriginal people living in reserve communities in BC is already higher than the national average and grossly disproportionate to the unemployment rate for non-aboriginals.²⁸

Chief Jones also spoke about how participation in commercial fisheries is one of the few economic opportunities available to people living in rural and remote coastal aboriginal communities. He reviewed the past contribution of the commercial fishery to employment and well-being in coastal aboriginal communities, and he agreed that: “It does make a big difference having someone in the commercial fishery and having a commercial fishing business.” He also confirmed that relatively few boats and licences remain in coastal aboriginal communities as a result of licensing policies.²⁹

Mr. Ashton described how the decline of fishing has had devastating socioeconomic impacts on individuals and communities – and he gave as an example the mainly native community of Alert Bay.³⁰ Similarly, Mr. Brown explained how the loss of fishing opportunities has caused many small, fragile coastal communities to implode. He said to the Commissioner: “... And I will tell you with the deepest amount of passion that the biggest impact has fallen on First Nations people, and that is really, truly, seriously bad.”³¹

²⁵ Rod Naknakim. 15 December 2010. p. 14, ll. 42-47; Duncan. 1 March 2011. p. 65, ll. 5-28; Assu. 31 January 2011. p. 86, ll. 17-28 and p. 102, ll. 2-8; Jones. 30 June 2011. p. 25, ll. 38-44.

²⁶ 15 December 2010. p. 7, ll. 4-20; p. 11, ll. 29-28; p. 16, ll. 4- 6.

²⁷ 1 March 2011. p. 23, ll. 2-8.

²⁸ See Exhibit 1643. “Aquaculture Development: An Economic Opportunity for BC First Nations”, at p. 6.

²⁹ 30 June 2010. p. 26, l. 8 to p. 28, l. 8.

³⁰ 22 February 2011, p. 76, l. 30 to p. 77, l. 6.

³¹ 22 February 2011, p. 80, l. 26 to p. 81, l. 6.

The importance of commercial fishermen and vessels to remote communities was also confirmed by Kathy Scarfo.³² She complained that DFO does not take socioeconomic impacts into account in its fisheries management decision-making processes.³³

(d) Summary

LKTS submits that fisheries policies and policy reforms can have severely negative unintended consequences for coastal First Nations people. Mr. Naknakim and Chiefs Mountain and Newman explained that, during the 1950s, 60s and 70s, it was not unusual for a coastal village like Cape Mudge, Alert Bay or Bella Bella to be the home port for many tens of First Nations owned and operated commercial vessels, but that since then there has been a steady decline in the number of vessels and the level of participation in the commercial fishery.³⁴ Rod Naknakim explained that the changes to the licensing system that followed the Davis Plan have "blocked just about all of us on the Coast out of the fishing industry."³⁵

Mr. Duncan confirmed that: "...the struggle to maintain Aboriginal involvement in the commercial fishery has been directly related to Federal Government policies which impact the Aboriginal communities adversely." He explained that fleet reduction programs such as the Davis Plan and the Mifflin Plan resulted in small scale First Nations fishermen being edged out of the industry, with huge negative impacts on coastal First Nations. This view was echoed by Ms. Scarfo, who added that communities like Ahousaht lost two-thirds of their licences as a result of the Mifflin Plan and studies had shown that the loss of fishing related jobs had a disproportionate impact on rural coastal communities.³⁶

Mr. Duncan also stated that First Nations have borne the brunt of fleet reductions and the consolidation of fish processing and fishing service industries that followed. He noted that in 1919 there were 97 canneries along the coast, but by 1970 there were only 15 (most of which were concentrated near the Skeena and Fraser rivers), and now there are only 3 left in the whole province. He said, "This downsizing resulted in an extremely serious loss of native jobs, income and fishing vessels" and now "many communities are finding it very difficult to meet their food, social and ceremonial needs because of loss of commercial fishing vessels, gear and means of transportation."³⁷

It is for all of these reasons that LKTS recommends that the Commissioner make an overarching recommendation directing Canada to take steps to ensure that

³² 1 March 2011, p. 12, ll. 9-24.

³³ March 1 2011 p. 12, ll. 9-24 and p. 13, ll. 2-14

³⁴ 15 December 2011, p. 75, l. 23 to p. 77, l. 10.

³⁵ 15 December 2011, p. 16, ll. 31-44.

³⁶ 15 March 2011, p. 11, l. 2 to p. 12, l. 16.

³⁷ 15 March 2011, pp. 2-5. See also: Exhibit 577. "Written Answers to Rosenbloom Questions" and Exhibit 578. "Native Fishing Association: Report on Native Involvement in Commercial Fisheries".

the implementation of policies and policy reforms do not negatively impact coastal First Nations participation in the Fraser River sockeye fishery.

2. Maintain and Increase Funding for First Nations Capacity Building at the Sub-Regional Level

By way of background, LKTS submits that it is important for the Commission to acknowledge that, while there is general agreement amongst First Nations on some matters, there is often a diversity of views on particular fisheries management policies. This diversity of views flows naturally from the fact that there are more than 150 different First Nations involved in the sockeye fishery, each harvesting fish at different stages in the salmon life cycle, at different geographic locations, using different techniques and equipment, and under the different ecological conditions that occur along the migration route.

The diversity of views is also partly a function of the fact that First Nations people harvest fish pursuant to different legal and policy regimes, including as members of various commercial, recreational, treaty-based, and aboriginal-rights-based fisheries. In addition, the unique circumstances of each First Nation, including their different levels of investment, fishing power, and technical capacity can create other layers of complexity in their approach to fisheries management issues.

It follows that there is and will likely always be a diversity of views amongst First Nations about how best to manage the sockeye fishery. This diversity is not a political failing of First Nations. Why should First Nations be expected to speak with one voice on complex matters? In fact, the diversity of views amongst First Nations is typical of any situation where different user groups are concerned with the management of a scarce natural resource.

Certainly, First Nations people have formed organizations that successfully represent and advance their common interests in fisheries matters. For example, the Commission heard that the Native Brotherhood of British Columbia was established in 1931 to represent the interests of First Nations people involved in the fishing industry. It is now recognized as being the longest-serving Native organization in Canada, with a lengthy record of successful programs and initiatives.³⁸

The Commission also heard, however, concerns about the challenges that affect regional and provincial First Nations fisheries organizations. In particular, Mr. Huber identified questions about representational authority and accountability (reporting back to communities) as two major issues that have impeded progress

³⁸ 1 March 2011, p. 97, ll. 6-40; 15 March 2011, pp. 2-5. See also: Exhibit 577. "Written Answers to Rosenbloom Questions", at p. 1.

on the development of a co-management regime.³⁹ Similarly, Chief Jones explained that:

The B.C. Aboriginal Fisheries Commission filled an important role back in the '80s and '90s of bringing First Nations together to try to address common Fisheries issues. Some of the problems that arose were around representation. There was elected leadership but it was a fairly small group and when they moved ahead on specific issues, often it was hard to know whether there was the support from First Nations.

...⁴⁰

The question of whether and how regional or province-wide fisheries organizations could acquire a mandate was further explored with Chief Jones and Chief Terry in cross-examination by counsel to the Province. Chief Jones explained that it takes time to build support, and that broad-based organizations can't take positions that are contrary to the interests of individual First Nations or the organization "might fall apart".⁴¹ Chief Terry explained that the Intertribal Treaty Organization is working on developing a mechanism whereby First Nations representatives at the ITO could be given authority to make decisions binding on their communities.⁴²

The Commissioner was alive to the issue of representational mandate. He noted that the preamble to one of the documents entered into evidence said: "Whereas the First Nations Fisheries Council has been empowered by First Nations leadership in B.C.". The Commissioner asked Chief Jones to explain who was being referred to as "First Nations leadership" in that paragraph. Chief Jones replied that the mandate of the organization was the result of "community dialogue sessions" and "another meeting with First Nations leadership".⁴³

It is useful to note the different views on how the challenges facing regional and provincial fisheries organizations can affect ongoing processes. Mr. Huber said that he had been successful in bringing people together and building relationships and he was optimistic that enough progress had been made that by January 2012 it would be possible to demonstrate to Ottawa that the work on a co-management process should continue. But Mr. Todd was more cautious. He raised concerns about the absence of secure funding, and about expecting too much too soon from First Nations. In his view "there is a long way to go" and it would take at least three and a half years before the parties could even know

³⁹ 28 June 2011, p. 25, l. 15 and p. 27, ll. 2-3.

⁴⁰ 28 June 2011, p. 31, ll. 14 to 25.

⁴¹ 28 June 2011, p. 79 l. 30 to p. 80, l. 40.

⁴² 28 June 2011, p. 82, ll. 10-45.

⁴³ 28 June 2011, p. 36, ll. 2-40. See also: 30 June 2011, p. 95, l. 26 to p. 96, l. 2.

"whether we've hit a dead end and have to try something else or whether we can proceed."⁴⁴

LKTS submits that it is essential that Canada provide long-term stable funding to support First Nations fisheries organizations. But Canada should not focus its efforts exclusively on regional and provincial organizations. The funding for sub-regional organizations must be maintained and increased.

An example of a model sub-regional organization is the A-Tlegay Fisheries Society. It is comprised of 5 First Nations with shared interests in and around the Campbell River area. Each member provides a Band Council Resolution supporting the mandate of the organization. These Resolutions are renewed periodically – usually every second year in accordance with the way the Society's elections are structured. The members of A-Tlegay pool their fishing capacity so that communities that do not have access to fishing vessels can obtain FSC fish at a reasonable cost. A-Tlegay also uses AAROM funds to increase its technical capacity. For example, A-Tlegay employs a full-time fisheries biologist, and has had success using the e-log system to perform catch monitoring and reporting. In this way, A-tlegay works with DFO to provide improved and timely catch information. Indeed, DFO has hired A-Tlegay to teach others how to implement catch monitoring systems in other situations. A-Tlegay has also been contracted by DFO to provide fisheries patrols between Kelsey Bay and Seymour Narrows.⁴⁵

Commission Counsel also noted that the Williams Inquiry recommended that secure long-term funding for catch monitoring be provided to marine FSC fisheries, and that DFO had agreed on that point.⁴⁶

In summary, it is submitted that Canada should be aiming to build organizational and technical capacity from the ground up. The experience of A-Tlegay shows that sub-regional organizations are efficient and effective in building technical capacity and can deliver tangible benefits to communities and fisheries managers. Sub-regional organizations are also better able to resolve concerns about representational mandate and accountability to communities. It follows that Canada can improve the outcomes and efficiency of regional and provincial processes by providing secure long-term support and funding to sub-regional organizations.

3. Further Study the Costs and Benefits of Terminal Fisheries

LKTS submits that the Commissioner should recommend that the costs and benefits of terminal fisheries must be further studied before any steps are taken

⁴⁴ 28 June 2011, p. 75, l. 24 to p. 77, l. 14.

⁴⁵ Rod Naknakim. 15 December 2010, p. 8, ll. 17-28 and p. 14, ll. 27 to p. 15, l. 10; Brian Assu.. 11 February 2011, p. 68, ll. 4-18 and p. 103, ll. 41-47. See also: Exhibit 297. "Witness Summary of Rod Naknakim", at p. 5-6.

⁴⁶ 31 January 2011, p. 88, l. 47 to p. 89, l. 41

to develop and implement a new terminal fisheries policy. There are four main questions that need to be answered.

(a) *Quality and Value?*

The Commission heard from several witnesses that the quality and value of fish caught near the spawning grounds is significantly lower than fish caught in marine areas. This point was made by Rod Naknakim and Bill Duncan.⁴⁷ In addition, Mr. Morley referred to a report by Stuart Nelson and Nelson Bros. Fisheries entitled "Fraser River Sockeye Benchmark Study, A Business Perspective on Fraser Sockeye".⁴⁸ He said that the report found that fish from up-river areas would generate somewhere in the range of 23 to 36 cents per pound to the fishers, whereas fish from marine areas generate between \$1.60 and \$2.30 per pound. In other words, the potential income for up-river fisheries is probably about one-fifth of the potential income for marine fisheries.⁴⁹

In addition, Mr Morley made the point that because fish get progressively weaker and die on their way up-river, fisheries managers would have to transfer two fish from marine and approach areas up-river in order to make one fish available to be caught in a terminal fishery. In other words, the potential income from terminal fisheries compared to marine fisheries should be further discounted by an additional fifty percent.⁵⁰

(b) *Ecological and Economic Sustainability?*

In theory, terminal fisheries are one of a number of tools that fisheries managers could use to help preserve weak stocks. There is no evidence, however, to show that terminal fisheries are necessarily more ecologically sustainable than other types of fisheries. In addition, it stands to reason that a similar (and perhaps more cost effective) level of protection for weak stocks may be achieved by applying other tools in the fishery manager's tool box, including improved sampling of test fisheries, habitat restoration, hatcheries, and other stock monitoring and enhancement techniques.

There is also the question of economic sustainability. Mr. Morley explained that terminal fisheries are more dependent on a single population, with more year-to-year variation, making the management of the business more difficult and risky.⁵¹ Mr. Morley also pointed out that the management of a terminal fishery is less flexible because it is fixed in one place and reliant on one population, so in years of low abundance you can't switch and target other species. Further, because the quality of the fish is reduced, terminal fisheries tend to produce a smaller,

⁴⁷ 15 December 2011, p. 9, l. 46 to p. 10, l. 8; 1 March 2011, p. 41, l. 41 to p. 42, l. 9.

⁴⁸ Exhibit 1988.

⁴⁹ 15 March 2011, p. 25, l. 8 to p. 26, l. 18; 1 March 2011, p. 42, l. 10 to p. 43, l. 45.

⁵⁰ 15 March 2011, p. 25, l. 8 to p. 26, l. 18; 1 March 2011, p. 42, l. 10 to p. 43, l. 45.

⁵¹ 1 March 2011, p. 25, l. 8 to p. 26, l. 18.

lower value range of products, which lowers the ability to maximize revenue by selling different products into a diversified market.⁵² [insert cites].

(c) *Socioeconomic Impacts?*

Bill Duncan expressed concerns about the diminished value of terminal fisheries, but he added that he wouldn't have a problem with a terminal fishery as long as there was a fair process for determining when it would happen.⁵³ In that connection, Kathy Scarfo raised a question about fairness when she noted that between 11 and 14 Area G troll licences have been bought by DFO through PICFI, and that DFO has indicated that it wants to alter the licences in order to move them up-river. Scarfo was concerned about the impacts this would have on allocation and regional fisheries. She added that she found DFO's decision particularly troubling because First Nations on the Westcoast of the Island want to become stakeholders in the Area G troll fishery but have been refused the use of licences now being held in the PCFI inventory.⁵⁴

Scarfo went on to point out that a recent Senate Committee Report recommended that DFO take into account the socioeconomic impacts of its major decisions.⁵⁵ Mr. Morley shared this concern. He explained that DFO disbanded its economic unit and the result is that DFO has no expertise or capacity to conduct socioeconomic analyses or to understand the socioeconomic impacts of its fisheries management decisions.⁵⁶

(d) *Summary*

LKTS submits that the case for terminal fisheries has not been made out in this Inquiry. The weight of evidence and opinion strongly suggests that the potential costs and benefits of terminal fisheries need to be further studied. In addition, the development and implementation a terminal fisheries policy for Fraser River sockeye would conflict with many values, including the historical and current reliance on the resource by coastal aboriginal communities, fish quality, economics, and conservation-based management.

4. Fund and Implement Expanded Coastal Test Fishing

The Commission convened a panel of expert witnesses to inquire into the use of test fishing as a management tool. All of the witnesses confirmed the importance of test fishing. Some concerns were expressed about the funding available to

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⁵³ 1 March 2011, p. 41, l. 41 to p. 42, l. 9.

⁵⁴ 1 March 2011, p. 39, l. 29 to p. 41, l. 8.

⁵⁵ 1 March 2011, p. 46, l. 30 to p. 47, l. 2. See also: Exhibit 502, "Senate Interim Report on Canada's New and Evolving Policy Framework for Managing Fisheries and Oceans".

⁵⁶ 1 March 2011, p. 44, ll. 4-14.

continue test fishing. And it was suggested that a further test fishery near the Gordon Group at the North end of Area 12 would provide useful seaward data that could be used to reduce uncertainty and improve management decision-making.

(a) *Marine Test Fishing provides Important Data for Fisheries Management Decision-Making*

Jim Cave explained that test fisheries are used to determine the timing and the strength of salmon runs.⁵⁷ Paul Ryall added that test fishery data is also used to identify which stocks are present in a run. He also emphasized that the information gathered during test fisheries is very important for fisheries management decision-making.⁵⁸ Mr. Cave agreed that test fishing provides information about run composition,⁵⁹ and he went on to say that test fishing also provides important information about the diversion rate around Vancouver Island.⁶⁰

Brian Assu confirmed that commercial fishers and First Nations actively monitor and use test fishing data to plan their activities,⁶¹ and that recreational fishers also benefit from test fishing. The Commissioner also noted that one or more speakers at the public hearing held in Prince Rupert had expressed concern about severe reductions in test fishing and the impact that had on the quality of data being received.⁶²

(b) *The Current Funding of Marine Test Fisheries is Precarious*

Commission Counsel noted that the Wappel Report and the Chamut Report both recommended that DFO invest in research to improve run forecasting, including further investment in test fishing.⁶³ It appears, however, that the funding of test fishing is in a precarious state.

Mr. Ryall explained how the funding of test fisheries changed after the *LaRocque* decision. He said that Canada decided to provide 5 years of "Larocque Relief" funding until a longer term solution was found. The relief funding provided for between \$1.2 and 1.6 million per annum for pacific salmon. It expires in 2011 and Mr. Ryall did not know if a longer term solution had been found.⁶⁴

⁵⁷ 31 January 2011. p. 15, l. 28-31; p. 18, l. 8-12; p. 22, l. 43.

⁵⁸ 31 January 2011. pp. 16-17; pp.36-37, l. 47-08; p. 40, l. 21-32.

⁵⁹ 31 January 2011. p. 56, ll. 8-45; p. 12, ll. 21-36.

⁶⁰ 31 January 2011. p. 68, ll. 20-26.

⁶¹ 31 January 2011. p. 22, ll. 4-36.

⁶² 31 January 2011. p. 81, ll. 7-14.

⁶³ 31 January 2011. P. 89 l. 42 to 90 l. 3

⁶⁴ 31 January 2011. p. 39, l. 13 to p. 41, l. 7.

Mr. Cave noted that in the current funding environment it is difficult to get additional test fishing activities approved. He cited a case in which permission to conduct further test fishery work off the West Coast of Vancouver Island was denied even though he believed it was necessary to increase the certainty of run-size estimates in a year of low abundance.⁶⁵ And both Mr. Ryall and Mr. Cave noted that there is some pressure to reduce the cost of the test fishing program, including by dropping some test fisheries (which results in much higher uncertainty) and reducing others to every other day (which is logistically impractical).⁶⁶

(c) *The Expansion of Marine Test Fisheries*

Mr. Assu explained that the First Nations Marine Society had modelled its FSC fishery on the test fishing program. He said that one of the boats that fished near the Gordon Group, at the North End of Area 12, provided very useful seaward information and that consideration was given to turning that work into an actual test fishery. Mr. Cave confirmed that a test fishery at the Gordon Group would provide really useful seaward information.⁶⁷

(d) *Summary*

It is submitted that the Commissioner should recommend that Canada provide adequate funding to maintain and expand the existing test fishing programme. The funding should provide for additional test fisheries aimed at collecting better seaward data, such as the Gordon Group test fishery. It should also provide some flexibility so that fisheries managers can commission additional test fishing work if necessary, for example to increase the certainty of run size estimates and to collect other information required for sound fisheries management decision-making.

5. Provide for Coastal First Nations Representation at Fraser River Panel and Technical Committee.

Commission Counsel asked Brian Assu whether the current make-up of Fraser River Panel fully engages First Nations in the consultative process. Mr. Assu pointed out that the Panel has First Nations representatives from the upper and lower river, but there is no representative for First Nations from the marine area, either on the Panel or the Technical Committee.⁶⁸ Mr. Naknakim further explained that the Technical Committee plays a strong role in guiding the decisions of the Fraser Panel. He said that the Panel and the Technical Committee would benefit from input from First Nations fishermen and biologists

⁶⁵ 31 January 2011. p. 49, ll. 35-46.

⁶⁶ 31 January 2011. p. 50, l. 4 to p. 58 l. 42.; see also p. 75, ll. 10-31

⁶⁷ 31 January 2011. p. 86, l. 29 to p. 87, l. 25; p. 88, ll. 40-46.; p. 94, ll. 44-7.

⁶⁸ 11 February 2011, p. 30, l. 28 to p. 31, l. 13; p. 70, ll. 9-16.

with experience in Johnstone Strait and other marine areas, because of their role in the overall fishery, and their knowledge of the marine fishery in particular.⁶⁹

6. Ensure that Certification Requirements for Fishermen are Reasonable and that Training is Accessible to First Nations Fishermen

Mr. Duncan explained that Transport Canada intends to require that all fishermen be certified for various activities related to the operation of vessels. But the delivery of training is concentrated in urban centres, the costs of travel and accommodation can be prohibitive, and there may be other challenges in the delivery of training, including literacy. Mr. Duncan also observed that Transport Canada has been slow to understand the issues that are involved in the operation of fishing vessels and that the certification programs tend to be shipping-oriented rather than fishing-oriented.⁷⁰

PART II

RECOMMENDATIONS OF THE ABORIGINAL AQUACULTURE ASSOCIATION

In mid September 2011, the Board of the Aboriginal Aquaculture Association (AAA) met to discuss and decide on the recommendations to be presented to the Commission on behalf of AAA. The following submissions are intended to reflect the outcomes of that meeting. In addition, the Board resolved to make clear that the overriding priorities for AAA are (i) the flourishing of wild salmon stocks, (ii) the protection and promotion of aboriginal culture and values, and (iii) the alleviation of poverty through sustainable economic and community development.

1. Apply Highest Standards and Best Practices to Aquaculture Industry

The Commission received four independent expert reports and convened a panel of expert witnesses on the subject of the impacts of fish farms on Fraser River sockeye. In his introductory remarks to the panel, Mr. Kelliher explained that AAA is an organization that represents First Nations who see aquaculture as a potential source of employment and training, a means to reduce the poverty and social problems that exist in their communities, and a way of creating a more hopeful future for their people. Mr. Kelliher further advised the expert panel that AAA's mission is "to promote aquaculture development that respects and

⁶⁹ Exhibit 297. "Witness Summary of Rod Naknakim", at p. 6.

⁷⁰ 1 March 2011, p. 65, l. 29 to p. 66, l. 37.

supports First Nations communities, culture and values.”⁷¹ He then asked: Is that a realistic ambition? Each member of the panel framed their response by raising different issues. These can be summarized as; the need for consultation on tenuring, the need for effective management tools, the need for rigorous independent research, and the need for meaningful economic participation. But it is fair to say that all of the answers provided by the expert panel were cautiously optimistic.⁷²

Mr. Kelliher then put the following proposition to the panel: “I have a sense that there's agreement that aquaculture can coexist with the continued survival and growth of the wild stocks. Is that your view?” Dr. Korman answered affirmatively. He said that he had not seen any evidence to date that showed that fish farms are having a major or a direct impact on wild stocks. He concluded that a modest expansion of the industry would not lead to conflicts with wild stocks. Dr. Connors advised caution and attention to research but added that he thinks responsible aquaculture and wild stocks can coexist in British Columbia. Dr. Noakes agreed that aquaculture and wild stocks can coexist. Dr. Dill also agreed; if managed properly, there is no reason why aquaculture and wild stocks cannot coexist. He gave as an example his view that the problems in the Broughton Archipelago were being successfully addressed with a combination of goodwill, funding and proper management.⁷³

Mr. Kelliher put a similar proposition to another panel comprised of experts on sea lice. Dr. Saksida and Dr. Jones agreed that by employing best practices aquaculture and wild stocks can co-exist. Dr. Saksida in particular pointed to specific improvements in the industry, including vaccines, screening, stress mitigation, and better environmental monitoring.⁷⁴ Dr. Orr raised concerns about the density of farm operations but agreed that it's possible through best practices to reduce the impacts of farms on wild fish.⁷⁵ Mr. Price said that he didn't have the expertise to say whether aquaculture and wild stocks can coexist. He added that while he did have concerns about limiting interactions between wild and farmed stocks, he was not unqualifiedly opposed to pen aquaculture, nor was he condemning the industry.⁷⁶

AAA submits that the best evidence and expert opinion available to date supports the view that the aquaculture and wild stocks can co-exist if best practices in the industry are followed. Therefore, AAA recommends that the industry be held to the best and highest standards of practice.

⁷¹ See Exhibit 1643. “Aquaculture Development: An Economic Opportunity for BC First Nations”, at p. 3.

⁷² 29 August, p. 98, l. 26 to p. 101, l. 15.

⁷³ 29 August 2011, p. 101, l. 17 to p. 102, l. 8.

⁷⁴ 6 September 2011. p. 99, l. 6 to p. 100, l. 9.

⁷⁵ 6 September 2011. p. 102, ll. 8-46.

⁷⁶ 6 September 2011. p. 101, ll. 36-41; p. 100, ll. 35-38; p. 102, ll. 2-6.

2. Provide Funding for Independent Scientific Research

Questions about the impacts and in particular the biosafety of fish farms have become highly politicized. This was illustrated by the fact that the Commission found it impossible to identify a single technical expert who could report on the impacts of fish farms without attracting significant controversy.⁷⁷ The Commission heard several examples of the kinds of accusations of bias and self-interest (on both sides of the debate) that have fuelled a general lack of trust in scientific research.⁷⁸ Indeed, the heightened politicization of issues concerning aquaculture and fish health makes it difficult to distinguish objective science from scientific advocacy.

In addition, uncertainty about the availability of funding for research seems to be an obstacle to resolving some of the big questions that have been raised about fish health.⁷⁹

Several expert witnesses suggested that more effort and attention to research is required. For example, Dr. Korman urged caution and restraint because there are a lot of things that we still don't know about the potential impacts of fish farms.⁸⁰ Dr. Connors called for greater participation, funding, and support for a "rigorous examination of the interactions between farmed and wild fish", as well as a "continued examination of the evidence." He said that it is only through research that we can hope to achieve the coexistence of aquaculture and wild fisheries.⁸¹ Mr. Price said that there is still uncertainty about impacts and we need a higher level of scientific knowledge to answer those questions.⁸²

For these reasons, AAA recommends that the federal and provincial governments and the aquaculture industry adequately fund independent expert research to ensure that the industry achieves and maintains an optimal healthy relationship between pen fish and the surrounding environment.

3. Engage in Meaningful Consultation with First Nations and Give Priority to First Nations in Licensing Decisions

Mr. Kelliher asked Mr. Thomson to define and describe the federal government's views on the types of accommodations that were available to First Nations in the context of aquaculture licensing decisions. Mr. Thomson stated that he did not know of any form of accommodation granted in regard

⁷⁷ Martland. 25 August 2011. p. 60, ll. 10-27.

⁷⁸ Miller. 25 August 2011. p. 48, l. 16 to p. 52, l. 4; Morton, 7 September 2011, p. 106, l. 9-25.

⁷⁹ Miller and Garver. 25 August 2011. p. 52, l. 13 to p. 54, l. 20.

⁸⁰ 29 August 2011. p. 101, ll. 21-33.

⁸¹ 29 August 2011. p. 100, ll. 29-36 and p. 101, ll. 35-39.

⁸² 6 September 2011, p. 101, l. 42 to p. 102, l. 1.

to aquaculture licensing⁸³ and that "we haven't done formal strength of claim type assessments" to determine whether accommodation is required.⁸⁴ Instead, the federal government's approach to date has been to "sort of put a hold on whatever potential infringement may have been occurring" by limiting the license renewal period to one year and by not increasing the level of production. This hold was "a way to start the conversation going with First Nations over the course of this year and subsequent years to determine if there has been an infringement of the rights for that point."⁸⁵

Mr. Thomson then indicated that, in theory, accommodation could include measures such as the provision of capacity funding, increased access to fish, and the provision of land.⁸⁶ He was also specifically asked whether giving First Nations a preferential position in acquiring aquaculture licences could be an accommodation measure. Mr Thomson answered: "I think it certainly could be a consideration for accommodation, yeah." He explained that, because one of the principles in the current federal Aquaculture Policy Framework is 'to support and promote the engagement of aboriginals in conducting the business of aquaculture', he believed that "we certainly have a policy direction to rather support the engagement of First Nations in that."⁸⁷

Mr. Swerdfager agreed with the views expressed by Mr. Thomson. He added that the federal regulations on aquaculture were intended to be structured in a way that allows for accommodation arrangements and does "not close any doors". He believed that "we've certainly got the regulatory flexibility to do that."⁸⁸

AAA submits that the Commissioner should recommend that the federal and provincial governments fully engage in meaningful consultations with the First Nations in whose traditional waters aquaculture licenses have or may be granted or renewed. AAA further submits that the Commissioner should recommend that the federal and provincial governments support and promote First Nations involvement in the business of aquaculture, including by giving First Nations priority standing in acquiring leases and licenses in and around their traditional waters.

4. Ensure First Nations Participation in the Management of Aquaculture Industry

AAA commissioned a survey to provide socioeconomic data on the participation of First Nations people in finfish aquaculture in British

⁸³ 30 August 2011, p. 99, ll. 24-30 and ll. 43-45.

⁸⁴ 30 August 2011, p. 100, ll. 17-19.

⁸⁵ 30 August 2011, p. 100, ll. 32-39.

⁸⁶ 30 August 2011, p. 100, l. 40 to p. 101, l. 6.

⁸⁷ 30 August 2011, p. 99, ll. 38-42; p. 99, l. 46 to p. 100, l. 5.

⁸⁸ 30 August 2011, p. 101, l. 40 to p. 102, l. 19.

Columbia.⁸⁹ The report on the survey estimated that 108 aboriginal people are employed in salmon farming, earning \$5,441,000 annually. The report also estimated that 178 aboriginal people are employed in salmon processing operations, earning \$5,557,000 annually. Mr. Backman agreed that these figures were consistent with his experience. He added that 95 percent of the employees at the Klemtu processing plant and around 50 percent of the employees at the Port Hardy processing plant are aboriginal.⁹⁰

Mr. Backman also confirmed that the farm operations at Kitasoo provide about 15 full-time equivalent jobs for Kitasoo First Nation members (with annual salaries of \$50,000). The processing plant constructed by Kitasoo processes 1.4 million pounds of farmed salmon each month generating gross revenues of about \$2.2 million per month, as well as 30 full-time equivalent jobs, contributing approximately \$1 million in wages to the Kitasoo village economy.⁹¹

Further, Mr. Backman pointed out that the aquaculture operation at Kitasoo is very important to the village. Kitasoo is remote and the decline of mining, logging and fishing meant the community was in severe economic circumstances – aquaculture provided a viable opportunity for Kitasoo to engage in a valuable form of local economic development. Further, based on his many visits to Kitasoo, Mr. Backman agreed with the proposition that aquaculture has provided enormous benefits and made an incredible difference in the lives of the people who live at Kitasoo.⁹²

In addition, Mr. Backman also confirmed that many training opportunities are made available to aboriginal employees of farm and processing operations. He said that every employee at a salmon farm takes approximately 20 separate training courses in their first two years of employment. These can include training in first-aid, food safety, forklift certification, WHMIS training, etc.⁹³ Additional kinds of training courses are listed on p. 6 of the socioeconomic report.

With respect to managerial opportunities and training, we note that Principle 4 of the federal Aquaculture Policy Framework provides that:

DFO will respect constitutionally protected Aboriginal and treaty rights and will work with interested and affected Aboriginal communities to facilitate their participation in aquaculture development.

⁸⁹ Exhibit 1977. "Socio-Economic Benefits of Finfish Aquaculture in BC Aboriginal Communities".

⁹⁰ 7 September 2011. p. 101, l. 11 to p. 102, l. 21.

⁹¹ 7 September 2011. p. 102, l. 34 to p. 103, l. 22.

⁹² 7 September 2011. p. 103, ll. 14-28

⁹³ 7 September 2011. p. 102, ll. 22-33.

Aquaculture development represents an important opportunity for Aboriginal people in all regions to contribute to, and fully benefit from, Canada's economic growth and prosperity. The benefits of greater economic participation through aquaculture and related activities include wealth creation; the development of technical, managerial and entrepreneurial skills; the development of community economic infrastructure; revenue for the community; and the opportunity for Aboriginal people to remain in their communities...⁹⁴

We also note that the socioeconomic report commissioned by AAA indicates that aboriginal people currently occupy only about 8 percent of the managerial positions in farm operations (compared to 18 percent of production positions) and about 9 percent of the managerial positions in processing operations (compared to 40 percent of processing positions).⁹⁵

AAA submits that the provincial and federal governments, together with the aquaculture industry, should remove barriers and promote increased First Nations participation in the management of the aquaculture industry, through training, joint ventures, access to investment capital, the granting of licenses, and similar measures.

5. Support First Nations Certification Programmes

AAA has begun developing a set of Aboriginal Principles for Sustainable Aquaculture and a third-party certification programme to help ensure that First Nations values and interests are included in the management of aquaculture operations in British Columbia. The principles fall under the following four headings; transparency and inclusiveness, social responsibility, environmental responsibility, and economic responsibility.⁹⁶ AAA submits that certification is a viable way to increase First Nations participation in the management of the aquaculture industry and that certification programmes should receive the support of government and industry.

CONCLUSION

The LKTS and the AAA appreciate the opportunity provided by the Commission to present their views on the positive steps the Crown can take to fulfil its obligations to coastal First Nations peoples while at the same time promoting the common goals of healthy and sustainable stocks, fisheries, and communities.

⁹⁴ The federal Aquaculture Policy Framework is cited in Aquaculture PPR, at pp. 57-58.

⁹⁵ Exhibit 1977, at pp.5 (Table 1) and 6 (Table 4).

⁹⁶ Exhibit 1644. "Aboriginal Principles for Sustainable Aquaculture (APSA)"

All of which is respectfully submitted, this 18th day of October, 2011.

for James Hickling
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