

# 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.

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## FINAL SUBMISSIONS OF THE MUSGAMAGW TSAWATAINEUK TRIBAL COUNCIL

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### **Introduction**

1. The Musgamagw Tsawataineuk Tribal Council (the “MTTC”) is a collective of four First Nations with a deep historical and contemporary relationship with wild salmon, including Fraser River Sockeye stocks that migrate through their traditional territory (the Broughton Archipelago and Johnstone and Queen Charlotte Strait), as well as local stocks that spawn in the rivers within their traditional territory.
2. The MTTC was granted limited participation standing in the Commission and focused its engagement on the topics of Aboriginal Fishing and Aquaculture.
3. Based on the evidence presented to the Commission in the course of the hearings on the topics noted above, the MTTC makes the following key submissions.

### **The Need for Adequate Funding for Wild Stock Management**

4. The MTTC has serious concerns about declining funding for DFO to adequately protect fish habitat and properly manage the fishery. In particular, the MTTC gave evidence about the drastic reduction in DFO patrol presence since the mid 1990’s, resulting in very little DFO presence ‘on the ground’ in MTTC territory.

Without such a presence, enforcement is inadequate and knowledge about the state of the fishery is insufficient. The best knowledge is obtained by having boats in the water; ‘fly-overs’ do not result in adequate escapement estimates.<sup>i</sup>

5. In parallel to the decline in DFO patrol presence, a decline in funds has resulted in a serious reduction of the Aboriginal Fisheries Guardian program. Aboriginal Fisheries Guardians are ideally positioned to be the eyes and ears for the fishery. Further, Guardians may have access to traditional ecological knowledge that would be of great benefit in the management of the fishery.<sup>ii</sup>
6. For many years the MTTC membership has carried out the test fishery for the Fraser River Sockeye in Johnstone and Queen Charlotte Straits. The MTTC submits that it is essential that funding for the test fishery is restored to appropriate levels. Without proper funding, the test fishery cannot accurately predict return numbers of Fraser River Sockeye; in particular, testing needs to take place in several areas simultaneously and over a longer period of time.<sup>iii</sup>
7. The MTTC urges that DFO to not lose sight of the importance of careful management of the mainland stocks (such as those in MTTC territory in the Broughton Archipelago), including ensuring adequate funding to do so. This would reduce the pressure on Fraser River Sockeye to meet the food, social and ceremonial (FSC) needs of the MTTC members, as well as the livelihood needs of those members who depend on the commercial fishery.

### **Transparent Process for Fisheries Allocations that Respect s. 35 Aboriginal Rights**

8. The MTTC rejects the arbitrary and secretive method that DFO continues to employ in the establishment of FSC allocations under the Aboriginal Fisheries Strategy (AFS). The MTTC strongly urges the Commissioner to recommend a transparent process of consultation with First Nations in accordance with s. 35 Aboriginal Rights and the jurisprudence interpreting the meaning of those Rights, including full implementation of the legal duty to consult and accommodate First Nations in respect of all decisions where s. 35 Rights may be affected.

## **Full Participation of MTTC in Management of Fraser River Sockeye**

9. It is of the utmost importance to the MTTC that the Commissioner, in making findings and recommendations, is mindful of the importance of the Fraser River Sockeye to the MTTC member Nations as collectives of the “Vancouver Island/Marine Approach area” First Nations. To that end, the MTTC submits that its member Nations should be afforded a role in decision making about the Fraser River Sockeye on equal footing as all other First Nations who rely on Fraser River Sockeye for their sustenance and livelihood.

## **Address the Risks Posed by Aquaculture**

10. The technical reports and evidence presented in the course of the hearings on diseases and aquaculture revealed a great deal of uncertainty and a high level of risk in respect of the relationship between salmon farming and the decline of the Fraser River Sockeye. Given the profound importance of the Fraser River Sockeye to the MTTC, other First Nations and the general economy of the Province, this level of risk and uncertainty is unjustified and unacceptable.
11. The MTTC urges the Commissioner to recommend the separation of DFO departments mandated to develop and promote the aquaculture industry with the departments mandated to protect the wild fishery.
12. Fish farms sited on the migratory routes of Fraser River Sockeye should be reviewed for removal/re-siting, unless DFO can be certain that there is no potential for the transference of pathogens from farmed salmon to wild stocks.
13. It is evident that DFO engaged in very limited consultation with First Nations about the development of a regulatory regime for aquaculture, and that DFO did not engage with First Nations about the decision to replace all aquaculture licenses that had been issued by the Province prior to December 18, 2010. DFO must take immediate steps to remedy the breach of its consultation obligations to First Nations whose Aboriginal rights have the potential to be impacted by the licensing of salmon farms.

14. The evidence before the Commission showed that integrated area management of salmon farms encompassing ecosystem based planning and cumulative effects analysis was not a component of the licensing regime administered by the Province prior to December 18, 2010. The evidence revealed a lack of capacity and progress on the part of DFO to implement area planning. The MTTC strongly urges that aquaculture licenses should not be renewed, or in the alternative, should be renewed on a limited basis, until appropriate area management planning, with adequate consultation with First Nations, is completed. As with other areas of fisheries management, DFO must show appropriate respect for traditional ecological knowledge as a sound basis for area planning.
15. In developing and implementing area management planning, it is essential that DFO does not 'grandfather' existing aquaculture licenses. An appropriate adaptive management approach is one that conforms to the internationally accepted definition of the precautionary principle: "where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation". Until such time as we have a better understanding of the dynamics of pathogen transmission from farmed to wild salmon, as well as other risks under the present management and technology regimes, DFO should not grant long term salmon aquaculture licenses.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

Dated: October 17, 2011



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<sup>i</sup> See oral evidence of Robert Mountain, December 15, 2010 transcript, at page 20.

<sup>ii</sup> See witness statement of Robert Mountain, Exhibit 301 at p. 4.

<sup>iii</sup> Ibid at p. 4.