

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

Closing Reply submissions of the Public Service Alliance of
Canada, BC Region and Union of Environment Workers/BC

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CONTENTS

Areas of Agreement	3
Recommendations involving Funding.....	3
Recommendations involving the Wild Salmon Policy	3
Recommendations involving Protection and Enhancement of Fishery Habitat	4
Recommendations involving the Fisheries Management.....	5
Recommendations involving Science.....	6
Areas of Disagreement	7

AREAS OF AGREEMENT

After reviewing the submissions of the other parties, a number of recommendations were made by the other parties with respect to DFO policy and practices that the PSAC BC/UEW BC supports. Many of the parties made very similar, albeit not identical, recommendations. The slight differences among these recommendations do not impact the touchstone of such recommendations. What follows are various recommendations that the PSAC BC/UEW BC expressly support. But, we have not sought to find and group together all similar recommendations. Rather we have simply identified a representative recommendation to stand for all such similar recommendations.

Recommendations involving Funding

Throughout the recommendations by the other parties, most if not all of the parties expressed concerns about the present and future DFO funding, either in specific areas or generally. The PSAC BC/UEW BC expressly adopts the following broadly worded recommendation, which captures the particular as well as the general, which is similar and supportive of the PSAC BC/UEW BC's recommendations set out in their written closings.

Area D Salmon Gillnet Association

From page 73 of its closing submission

Recommendation: That DFO's Pacific Region annual funding be significantly increased to cover the multitude of initiatives being recommended by the Commission. This funding should be directed in part on stock assessment, enforcement, habitat restoration/enhancement and socio-economic research around the implementation of the WSP.

While recommendations with respect to specific funding areas or initiative are important, the pending crisis in the DFO as a result of massive currently planned budget reductions cannot be overstated and it is difficult to see how the numbers and health of Fraser River sockeye salmon will not be profoundly, adversely impacted unless there is a change in course in the funding for the DFO.

Recommendations involving the Wild Salmon Policy

There was widespread support of the Wild Salmon Policy (with apparently only one party arguing for the outright elimination of the Wild Salmon Policy¹). Of the parties who expressed concern about the state about the Wild Salmon Policy, at least two factors were common to the criticisms: the lack of funding and the lack commitment by the DFO to ensure the full implementation of the Wild Salmon Policy. The PSAC BC/UEW BC shares those two concerns. Therefore, the PSAC BC/UEW BC adopts the following recommendations, which are similar and supportive of the PSAC BC/UEW BC's recommendations set out in its written closings.

Conservation Coalition

From pages 8-9 of its closing submissions

¹ B.C. West Coast Trollers and UFAWA, recommendation #7

- i.1. Immediately assign a senior DFO manager (who directly reports to the RDG) with the exclusive responsibility of WSP implementation (WSP champion). Performance measures for the position must be integrated with WSP implementation targets. Make the WSP champion's initial task the completion and publication of a WSP implementation plan to be completed by December 2012.
- i.2. Assign DFO staff specific implementation tasks with timelines, to be overseen by the WSP champion.
- i.3. Assign a substantial portion, or all, of the performance-based pay structure of the Pacific Region RDG to WSP implementation targets and meeting recovery targets of conservation units identified to be in the Red Zone.
- i.4. Allocate at least \$2.5 million annually over the next three years to support the coordination and administration of WSP implementation.
- i.5. By December 2012, assess the amount of resources necessary to complete baseline CU, habitat and ecosystem assessments for Strategies 1, 2 and 3 (likely to be a minimum of \$30 million). Allocate the necessary funding to ensure completion of preliminary habitat and ecosystem assessments, with status relative to benchmarks, by December 2013.
- i.6. Require annual public reporting on the status of Pacific salmon relative to Strategies 1 – 3, along with progress on the WSP implementation plan.
- i.7. By December 2012, assign all CUs to Red, Amber or Green zones, consistent with the CU benchmark methodology. CUs lacking enough information to quantify status should be assigned Red Zone status, and thereby identified as a priority CU.
- i.8. By December 2013, a recovery planning process for all Red Zone CUs must be initiated. Regional grouping (e.g., watershed scale) of recovery planning efforts in areas where multiple Red Zone CUs should be undertaken to maximize efficiency and support implementation of integrated planning (Strategy 4).
- i.9. By December 2012, host workshops with stakeholders on the application of the WSP to DFO management decisions, including but not limited to: aquaculture permitting, habitat authorizations and CEAA assessments.
- i.10. By December 2012 undertake a science-based and multi-stakeholder process to evaluate and apply the goals and intent of the WSP to the DFO Salmon Enhancement Program
- i.11. By December 2014, conduct an independent audit of WSP implementation.

The PSAC BC/UEW BC will have more to say about the Wild Salmon Policy implementation, once the draft Performance Review is admitted as an exhibit, which then allows them to speak about it in the closing submissions.

Recommendations involving Protection and Enhancement of Fishery Habitat

A number of parties expressed concern about the DFO's present capacity and commitment to the protection and enhancement of fishery habitat. This issue, of course, cannot be entirely separated from the discussions about the failure to fully implement the Wild Salmon Policy. However, this

area is worthy of specific mention. The DFO's present policy and practices with respect to protection and enhancement of fishery habitat is not adequate. Further, the self-regulation model has not proven effective. Therefore, the PSAC BC/UEW BC adopts the following recommendations, which are similar and supportive of the PSAC BC/UEW BC's recommendations set out in its written closings.

Conservation Coalition

From pages 24-5 of its closing submissions

v.2. DFO must be adequately funded to effectively protect habitat. This means sufficient funding to allow for the presence of fisheries officers, as well as sufficient resources to conduct the necessary research and audits. DFO should abandon any public funding of industry until it meets its core conservation protection mandate.

v.3. EPMP should be abandoned and the Minister of Fisheries and Oceans should direct staff to recommit to habitat compliance monitoring and enforcement. Further, an independent audit of the effectiveness of EPMP in meeting the goals of the WSP and 'no net loss' should be immediately undertaken.

v.4. DFO management should commit to an honest and objective assessment of the resources required to implement the habitat components of the WSP, as well as to actually achieve 'no net loss'.

v.5. DFO must, as a priority, implement Strategy 2 of the Wild Salmon Policy, and it should receive adequate and immediate funding accordingly. In addition, a high-level 'champion' should be tasked with ensuring implementation of Strategy 2.

v.6. Local field staff, in association with a prosecutor, must have independent authority to determine when a Fisheries Act violation occurs, as well as when charges should be laid. Proper training and guidelines should be developed in this regard.

Adequate funding and commitment to habitat monitoring and enforcement is a necessary foundation for the proper conservation and enhancement of the Fraser River Sockeye Salmon.

Recommendations involving the Fisheries Management

This area again cannot be divorced from the Wild Salmon Policy discussions. Nevertheless, some specific recommendations were made by other participants with respect to monitoring and enforcement of the fisheries management that are worthy of consideration. The PSAC BC/UEW BC adopts the following recommendations, which are similar and supportive of the PSAC BC/UEW BC's recommendations set out in its written closings.

Conservation Coalition

From pages 24-5 of its closing submissions

iii.5. Mandate a minimum of 50% independent observer coverage (camera or onboard monitors) by 2013 in all salmon fisheries where non-target species are encountered.

Aquaculture Coalition
From Appendix D

Disease Reporting and Monitoring:

6. DFO needs to establish regulations, and an appropriate regulatory arm, to require strict, open and independent disease and sea lice monitoring and response. Full disease testing and auditing data, including raw data, should be open and available to other scientists and to the public.

7. Canada must establish regulations allowing DFO scientists to test salmon farms for the presence of potential new diseases, including live fish, without requiring consent of the farm operators, and should fund current studies to determine the presence or absence of parvovirus and salmon leukemia virus on all current farms.

8. DFO should institute a program to audit health and disease in live fish on a regular basis.

Recommendations involving Science

The final area where there was broad support among the parties was with respect to building a strong base of science and knowledge, including traditional knowledge, upon which the DFO can fulfill its mandate. The PSAC BC/UEW BC adopts the following recommendations, which are similar and supportive of the PSAC BC/UEW BC's recommendations set out in its written closings.

Area D Salmon Gillnet Association
From Page 76 of its written submissions

ii. Canada should properly fund DFO's scientific activities in order to ensure that the Department is able to make effective, evidence-based decisions regarding fishery management and conservation. Further, the Department should develop clear research goals and performance measures for its research program that are in line with its conservation mandate, and ensure transparency surrounding its research program and their results.

BC West Coast Trollers and UFAWU
From Pages 73-7 of their written submissions

Fisheries Management: General

13. That DFO enhance its science arm with a view to: (a) further understanding the mechanism causing cyclic dominance; (b) expanding its knowledge of carrying capacity beyond the major lake systems in which carrying capacity has already been determined; (c) determining the method of sockeye management in the Columbia River system and the likely reasons for the three consecutive record returns in that system in 2008, 2009 and 2010; and (d) generally improving knowledge of sockeye population dynamics so as to permit the setting of a lower benchmark (limit) at a level which is high enough to insure sustainability of weak stocks but not so high as to jeopardize the productive capacity and beneficial harvest of strong stocks in a mixed stock fishery.

From Aquaculture Coalition

From Appendix D

Research:

9. Research: The science and research function of DFO should be given structural independence and freedom from political interference. Canada should separate the science and research function from the political and aquaculture promotion functions of DFO....

10. DFO should prioritize scientific research that impartially investigates the impacts of aquaculture on wild salmon stocks and the ocean ecosystems and aimed at ensuring the conservation of wild salmon and salmon habitat.

11. Research into disease in wild salmon and aquaculture; and disease interactions between the two, be given highest priority.

13. Sufficient funding should be provided to ensure the above research is scientifically-sound and supportable.

From the First Nations Coalition

From page 189 of their written submissions

Recommendation: DFO should work with First Nations, including with the FNFC at a strategic level, to collaboratively develop guidelines and best practices for the use of Indigenous Knowledge and TEK in fisheries research and management, including the implementation of the WSP.

Recommendation: DFO Science should develop clear protocols with First Nations for the better and timely exchange of information and concerns related to salmon, in particular FRSS, including the application and integration of TEK to improve ecosystem understanding and research.

These recommendations reinforce the PSAC BC/UEW BC's recommendation of providing that the Department remains a neutral, science based regulator, who ensures that the best evidence is used to set standards for fisheries, farmed and wild, and its recommendation for increased science research and monitoring of stocks (especially in the open ocean), increased science around aquaculture. As well, these recommendations will infuse the DFO with more information, such as with First Nations traditional ecological knowledge, before making its decisions with respect to the fisheries and fisheries management.

AREAS OF DISAGREEMENT

The primary area of disagreement arises from the recommendations made by a few of the participants that would reduce Federal capacity for fishery management and devolve Federal authority over fishery management through privatization, including through such means as some forms of co-management. These recommendations are particularly concerning because there is no evidentiary basis to support the premise that such reduction of Federal capacity and authority would provide effective, efficient, reliable and trustworthy results. Before this Commission

makes such pivotal and irreversible (if accepted) recommendations such as reducing Federal capacity or devolving Federal authority, a necessary pre-condition ought to be that clear and cogent exists to support such a recommendation, which is absent here. One of the participants has described what it is seeking as a paradigm shift. Before there is such a shift, one must be sure that the new location is more beneficial than where one is presently situated.

We understand that the term co-management as used by the participants making recommendations for co-management means moving from the present system in which the Federal government has exclusive decision-making authority over fisheries and fishery management and which it consults with and works collaboratively with stakeholders. Instead they proposed replacing this system with one in which the Federal Government and one or more other parties have joint decision-making authority and responsibility over the fisheries and fisheries management. Of course, there are many possible definitions of co-management: many of which do not involve the devolution of authority. So for example, co-management frequently includes consultation or collaboration. But the participants who are seeking changes to the current DFO policies and practices are not satisfied with the other forms of co-management.

Part of the problem with much of the evidence before the Commission is that there was no single definition of co-management used. So, for example, Exhibit 1257 (Leadership, Social Capital and Incentives Promote Successful Fisheries, 2010), is used by some of the participants to support their view of co-management. But it is clear that the authors are speaking of co-management broadly, so as to include the present system. The report itself does not indicate that there would be any further benefits gained by devolution of Federal authority -- in fact the authors noted that a strong central governance system was a factor of success of these schemes: see page 2. So, this type of study, while interesting, is not the persuasive evidence to demonstrate that the present system would be enhanced by what is being proposed. This evidentiary failing is shared by other exhibits that are relied on by some of the other participants in support of co-management, see for example, Exhibit 1220 (Overview of the Fraser River Salmon Roadmap Initiative, undated). Further, the problem is also found in much of the testimony relied on by the participants. Meaning, that the answers do not indicate whether the witness is basing his or her answers on co-management (or related terms) broadly speaking or in the way urged by the participants.²

So when the Commission is examining the evidentiary record before it, it will be necessary to distinguish the testimony and exhibits which are using co-management broadly (including effective consultation or collaboration) and when they are being used, as urged by some of the participants, as meaning a devolution of federal authority. When performing this close scrutiny it is not at all evident that case has been made that the effective consultation or collaboration is not adequate or, in fact, preferred.

One of the overriding concerns in the closing submissions before this Commission, is the lack of resources being made available to the Pacific Region for conservation and enhancement of the Fraser River sockeye salmon. Before going down the path of recommending a paradigm shift,

² See for example the reliance by some of the participants to the testimony of Ms. McGivney at Transcript, September 2, 2011, pp. 53-54 and Mr. Huber, Transcript June 30, 2011, p. 67.

there ought to be a compelling case made that devolution of authority and capacity would create financial efficiencies. There does not appear to be actual evidence before this Commission that such a shift creates a financial efficiency. Certainly exhibits, such Exhibit 972 (An Overview of Issues Concerning First Nations and DFO Co-management of Fisheries in the Pacific Region, Draft, April 2010), makes claim of the financial benefits but do not provide evidence to support those bald assertions.

Certainly there is no suggestion among the participants seeking co-management that with adoption of their co-management model additional revenue would arise through a new revenue source. To the contrary, it would appear from the recommendations sought that the Federal government would be diverting resources from Federal capacity to the other parties to participate in the co-management by building up their capacity — above and beyond the recommendations seeking further resources being directed to negotiating and implementing co-management — including funding technical and scientific knowledge so that the co-manager can understand the information provided by the DFO.

Of course there may other considerations as to why co-management as urged by some of the participants ought to be recommended, since there is no compelling financial or efficiency basis for such a recommendation. One such possible consideration is that some of the participants assert a section 35 *Charter* right to co-management. If Section 35 compels co-management then obviously that is a right that must be recognized regardless of the financial implications. However, there appears to be a vigorous debate among many of the participants in these proceedings as to the scope of Section 35 of the *Charter* and whether the Commission is the appropriate venue to resolve the differing views. The PSAC BC/UEW BC takes no position on these points.

There is a suggestion by those proposing the devolution of Federal authority that there would be better “buy-in”, including adherence, to the ultimate decisions. However, it seems that any present difficulty in “buying in” arises from the parties having different beliefs as to the nature and scope of the rights of the parties. Once that issue is resolved, in whatever manner, presumably there would be no further difficulty.

Unless, or until, there is compelling evidence that demonstrates that devolution of Federal Authority and reduction of Federal capacity results in an outcome that is as effective, efficient, reliable and trustworthy or unless there is a legal requirement to do so, the Commission ought not to recommend any such radical paradigm shift, as is being urged.

Finally, the last area of disagreement that we will address is that some participants have expressly recommended that some existing monitoring and enforcement duties be halted and redirected elsewhere: such as a halt or reduction on the ban of sale of FSC fish.³ It is our clients’ view that the Commission ought not to recommend specific monitoring targets nor recommend things that should not be monitored. Rather, it should be left to the DFO, including the regional conversation and protection officers, to set its own priorities relating to monitoring and

³ See for example counsel for the Sto:lo Tribal Council and Cheam Indian Band, para 203-4.

enforcement. Particularly where, as here, there is no evidence to suggest improper considerations or flawed processes in selecting monitoring and enforcement priorities.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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