

# **COHEN COMMISSION OF INQUIRY INTO THE DECLINE OF SOCKEYE SALMON INTO THE FRASER RIVER**

## **REPLY TO PARTICIPANT SUBMISSIONS**

**Prepared on behalf of Area D Salmon Gillnet Association and  
Area B Harvest Committee (Seiners)**

**Submitted by: Don Rosenbloom and Katrina Pacey, Legal Counsel  
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# REPLY TO PARTICIPANT SUBMISSIONS

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In reply we wish to focus briefly in respect to six issues:

1. Elimination of Mixed Stock Fisheries
2. Terminal Fisheries
3. Selective Fishing
4. Co-management
5. Over-escapement
6. Wild Salmon Policy Implementation
7. Aquaculture and Disease

## **1. Elimination of Mixed Stock Fisheries**

A recurring theme in the submissions from the FNC and the Conservation Coalition is a call to move away from “mixed-stock” fisheries (primarily in the marine areas) in favour of terminal fisheries – referred to, in their submissions, as an implementation of the precautionary approach. This suggestion is premised on the belief that although mixed-stock fisheries may not be responsible for the decline of the Fraser sockeye the elimination of mixed-stock fisheries is the solution. This hypothesis was in fact “tested” extensively in the years between 1999 and 2009 when there were few if any commercial fisheries. The severe reduction of fisheries in that ten year period did not result in any dramatic or noticeable rebound of the noted “weak stock populations”. In fact evidence revealed that the slow but steady rebuilding of Cultus can be attributed more as a result of captive brood stock, hatchery augmentation and predator control programs. Interior Fraser Coho continue to struggle even after 14 years of conservation restrictions. This is not to say that it is not appropriate, at times, to introduce some fishing restrictions to assist some weaker populations but it must be recognized that unless one is fishing right on the spawning grounds there is no such thing as a non-mixed-stock fishery. It must be noted also that in addition to the commercial fishers it would appear, from the Lower Fraser and the marine area First Nation’s Submissions, that the elimination of their mixed-stock fisheries is not supported by these groups either.

We suggest that the solution to the rebuilding of weak stocks does not lie in the elimination of mixed-stock fisheries. This proposed action would only serve to deflect the necessary focus needed to address the real problems that are impacting wild salmon stocks.

## **2. Terminal Fisheries**

In their final written submissions, as stated above, certain participants promote a transition to terminal fisheries. In doing so, they fail to grapple with significant unresolved issues in this type of fishery. In particular, these participants fail to recognize certain realities, which are set out in our final submission:

- (i) The lack of any socio-economic analysis of the impact of moving the commercial fishery up-river;
- (ii) The significantly depreciated value of a fish caught terminally, and the limited marketability of those fish;<sup>1</sup>
- (iii) The in-migration mortality (for each fish caught, up to 2 fish may need to be factored into escapement); and
- (iv) The stunning consequences to both First Nation and non-native commercial fishers on the coast if this transition takes place.

A move in the direction of terminal fisheries should not proceed as these issues are not resolvable.

## **3. Selective Fishing**

The First Nations Coalition submits that the commercial fishery has been uncooperative in 2004 when it comes to embracing selective fishing practices. Their position is predicated on one specific project involving the use of “escape grids” sewn into the bunt of a seine net. Our client Mr. Chris Ashton testified that after five years of testing the Area B Directors took the position that it was unwarranted and unnecessary to carry out a sixth year of this initiative. Rather, the seiner fleet’s position was that the project

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<sup>1</sup> Exhibit #1989 - Nelson FRSS Benchmark Study - A Business Perspective on Fraser Sockeye (July 2006)

showed merit and should be put to the required scientific review.<sup>2</sup> The project went ahead anyway, and to this day DFO has never advanced the project to scientific review (PSARC – now called CSAS), as was required. The overwhelming evidence was that the commercial fleet was totally cooperative throughout the limited years when DFO was pursuing these projects. In fact, the evidence was that many members of the seine fishing community were actually the innovators and proponents of selective fishing.

#### **4. Co-Management**

Many of the First Nations participants' final submissions promote a co-management structure. Their position is that the solution to good management of the fishery resource lies in a co-management model that would see a shared nation-to-nation authority. Not only do we believe that there should be only one governing body (DFO), we believe that it would be a direct conflict of interest having a large diverse group, that has heavily vested harvest interests, placed in such a position of authority. Among other things, such an unwieldy structure of management would drown in bureaucracy.

#### **5. Over-Escapement**

The topic of over-escapement occupied considerable time during the Commission hearings. Three of the most respected scientists to come before this Commission, Dr. Woodey, Dr. Walters, and Mr. Lapointe, all alerted the Commission to the dangers of over-escapement. They testified, as referenced in our submission at p. 41- 48, that the Rebuilding Strategy leading to over-escapements after 1987 has been a failure and, in the expert opinion of Dr. Walters, led to "catastrophic" consequences.

It is difficult to "reply" to those participants that call for greater and greater escapements (with less and less harvest) when in fact they don't even mention this critical issue in their submissions. We have reviewed the submissions of both the First Nations Coalition and the Conservation Coalition, and regrettably neither appears to make mention of the weighty testimony of these three scientists and their dire warnings if DFO continues to blindly manage the fishery in this direction. Counsel for these parties will correct us if we are in error in our analysis. The testimony of these three scientists, and others, deserved some attention by those that promote reduced harvests and greater escapement. The issue will not go away if ignored.

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<sup>2</sup> Hearing Transcript (February 22, 2011), p. 85, l. 30; Hearing Transcript (February 28, 2011), p. 58, l. 22.

Interestingly enough, at least the submission of Sto:lo Tribal Council and the Cheam Indian Band does make mention of the over-escapement issue, and then summarily dismisses the issue with: “What is quite clear is that the declines are not caused in any significant way by delayed density dependence; that theory is simply not supported by the evidence”.<sup>3</sup> They cite evidence of Peterman and Dorner’s Project 10<sup>4</sup> that large spawner abundances “may have reduced productivity...” with the Quesnel stock.<sup>5</sup> This evidence, and the persuasive evidence of Dr. Woodey, Dr. Walters, and Mr. Lapointe, completely contradicts any suggestion that the “theory is simply not supported by the evidence”.

We submit in reply that the Commission must give weight to the opinions of these scientists and that the precautionary approach dictates that there must be a radical reversal of DFO’s over-escapement policy.

## **6. Wild Salmon Policy Implementation**

Subsequent to the filing of our final submission, the Commission has ruled that the draft Gardner Pinfold “Performance Review of the WSP” should be entered into evidence. Suffice to say that this review provides further support for our final submission concerning the WSP. We took the position that the policy was ill-conceived, was denied money for implementation, and as a result has failed. We believe this Gardner Pinfold report is now evidence in support of our position. The authors state:

“The overall level of funding was inadequate to carry out any more than the foundational activities under each of the Action Steps. Inadequate funding slowed down implementation of key activities including developing benchmarks and monitoring under Strategy 1 and habitat status reports under Strategy 2.”<sup>6</sup>

Nothing more need be said.

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<sup>3</sup> Sto:lo Tribal Council and Cheam Indian Band, Final Submissions, p. 3.

<sup>4</sup> Exhibit #748 Cohen Commission Technical Report 10 - Fraser River Sockeye Production Dynamics, Feb 2011

<sup>5</sup> Sto:lo Tribal Council and Cheam Indian Band, Final Submissions, p. 11.

<sup>6</sup> P. iii of the Summary of the Performance Review of the WSP.

## 7. Aquaculture and Disease

In their final submission, the BC Salmon Farmers Association (“BCSFA”) makes the following claim:

Aquaculture companies employ a suite of preventative measures to keep farmed fish healthy which reduces risks to wild salmon, including improved siting, brood stock programs, stocking densities, improved husbandry, and vaccinations. FHMPs are the keystone to these practices...<sup>7</sup>

On the issue of Fish Health Management Plans (“FHMP”), the BCSFA submits that, “Fish health professionals agree that biosecurity and FHMPs are an effective way to ensure the risks of pathogen transfer from salmon farms is minimized.”

With respect, we disagree with the position taken by BCSFA. We submit that the risk of disease transmission from open net fish farms is not effectively mitigated through FHMP. As stated in our final submission, evidence tendered in this Commission demonstrates that open net fish farms present a real risk to wild sockeye salmon.<sup>8</sup> This risk is heightened along migratory routes where wild salmon can be exposed at a time when they are particularly vulnerable. Therefore, in order to comply with the precautionary approach and DFO’s conservation mandate, we submit that government must take steps to effectively regulate this risk through siting farms away from migrating wild salmon.

The BCSFA relies on the evidence of Dr. Peter McKenzie (Veterinarian and Fish Health Manager, Mainstream Canada) who acknowledges that FHMP cannot completely prevent disease from occurring.<sup>9</sup> Dr. McKenzie claims that FHMP represents “all the effort possible to mitigate risk.”<sup>10</sup> However, we disagree with this claim and take the position that the FHMP is an inadequate effort on the part of government regulators, who have many other available options in terms of aquaculture management, such as siting farms far away from migratory routes or moving to closed containment systems.<sup>11</sup>

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<sup>7</sup> BC Salmon Farmers Association, Final Submission, October 17, 2011, p. 97, para 209.

<sup>8</sup> Exhibit #1540 Cohen Commission Technical Report 5D - Dill, Impacts of Salmon Farms on FRSS: Results of the Dill Investigation, June 2011.

<sup>9</sup> Hearing Transcript (August 31, 2011) p. 89 ll. 5-9.

<sup>10</sup> BC Salmon Farmers Association, Final Submission, October 17, 2011, p. 99, para 215.

<sup>11</sup> Exhibit #1841 Fisheries and Oceans Canada, Feasibility Study of Closed-Containment Option for British Columbia Aquaculture Industry, Sept 2010

It is widely accepted that disease is a regular occurrence on fish farms. The evidence before this Commission demonstrates that, in aquaculture settings involving dense fish populations and open nets, transmission of disease cannot be completely prevented. BCSFA relies on the Salmon Aquaculture Dialogue Working Group Draft Report on Salmon Disease (the "Draft Report"), which acknowledges that pathogens move in and out of the pen, as do smaller wild salmon.<sup>12</sup> The Draft Report outlines the range of measures available to manage pathogens. However, these measures are reactive at best. They offer a response when a disease is detected,<sup>13</sup> but do little to prevent disease transmission before this detection occurs. Further, no additional precautions are required for farms located along migratory routes to protect migrating sockeye salmon.<sup>14</sup> The measures that are in practice in British Columbia do not prevent the transmission of disease, and this lack of effective prevention could have, and arguably has already had, disastrous effects on the wild salmon population.

Given that disease cannot be prevented in fish farm environments, Dr. Ian Fleming (Professor, Ocean Sciences Centre, Memorial University of Newfoundland) concludes that protections is needed in migratory areas:

16 Q And this is a map, Doctor, of the Discovery  
17 Islands, which is the narrowest part of that  
18 particular passage that I showed you in the larger  
19 map. Would you agree that it's particularly  
20 important to zone areas such as this to avoid  
21 disease transmission?

22 DR. FLEMING: I believe it would be helpful, if my  
23 understanding is correct, that the sockeye salmon  
24 and the other species, large number of species,  
25 have to pass through a narrow point, and if these  
26 stocks are recognized as being significant, then,  
27 yes, it seems to be an important area that would  
28 require protection if there is significant effect  
29 of disease and parasites on those fish that pass  
30 through that area. Yes.

31 Q Well, are you aware of any country in the world  
32 where fish farming is conducted in a volume where  
33 there is not problems with disease?

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<sup>12</sup> Exhibit 1561, Salmon Aquaculture Dialogue Working Group Report on Salmon Disease DRAFT, March 3 2009, p. 42.

<sup>13</sup> Exhibit 1561, Salmon Aquaculture Dialogue Working Group Report on Salmon Disease DRAFT, March 3 2009, p. 41, Table 6.

<sup>14</sup> Hearing Transcript (August 31, 2011) p. 93 ll. 47 – p. 94 ll. 14.

34 DR. FLEMING: No, I'm not aware that there is a  
35 situation where fish farming is done in a disease  
36 free manner.

37 Q So to your experience, no matter how tough the  
38 rules around veterinarian practices and  
39 quarantine, disease develops everywhere?

40 DR. FLEMING: Especially when there's contact with the  
41 open ocean or open environments<sup>15</sup>

We submit that, contrary to the submissions of the BCSFA, the risk of disease transmission is not sufficiently mitigated by FHMP. Indeed, as the Commission has heard and as a matter of scientific fact, despite similar inadequate precautionary measures, viral outbreaks and other pathogens emanating fish farms have harmed wild salmon stocks in other regions (e.g. Norway). Further precautionary measures, such as relocating farms off salmon migratory routes and moving towards closed containment systems, must occur in order to ensure the well being of this crucial resource.

Respectfully Submitted.

*Don Rosenbloom*

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*Katrina Pacey*

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<sup>15</sup> Hearing Transcript (August 30, 2011), p. 67-68, ll. 27-41