

**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

**REPLY SUBMISSIONS OF THE STÓ:LŌ TRIBAL COUNCIL
AND CHEAM INDIAN BAND STANDING GROUP**

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1. These are the reply submissions of the STC-CIB standing group. These submissions respond to some of the submissions and recommendations made by other participants, organized under the headings below. These reply submissions only address certain submissions and recommendations of some participants, and our silence on other submissions and recommendations ought not to be taken as support for them.

I. CROSS-CUTTING ISSUES: ABORIGINAL RIGHTS, JOINT MANAGEMENT AND TRADITIONAL KNOWLEDGE

A. ABORIGINAL RIGHTS

2. A premise of this Inquiry must be that a number of First Nations have Aboriginal rights in Fraser sockeye. At the very least these rights extend to fishing for food, social and ceremonial purposes, and likely extend beyond that. While this Inquiry is not mandated to make any determination of the existence or extent of those rights, that such rights exist must be taken as an operating premise based on DFO's own conduct, the evidentiary record and commonsense.

3. First Nations like the member bands of the STC-CIB have fished Fraser sockeye since time immemorial. The *sthéqi* is literally part of them. It has been and remains a backbone of their cultures and economies. It is overwhelmingly obvious that they have very substantial Aboriginal rights in the Fraser sockeye. While the extent of those rights remains subject to the continuing evolution of the case law, it is at least clear that they enjoy Aboriginal rights to fish for FSC purposes, and to be consulted and accommodated in respect of them. Indeed, international standards demand prior informed consent of Indigenous Peoples regarding all fisheries decisions in their traditional territories.

4. In this way, First Nations like the STC-CIB bands have an entirely different relationship to the Fraser sockeye than do other groups who use that resource. The BC Wildlife Federation and BC Federation of Drift Fishers, for instance, treat Fraser sockeye as a resource, defining it as "a resource as distinct from (but not ignoring) an element of nature; it emphasizes that the

appropriate perspective is not that of species itself nor of Mother Nature, but rather of the human beings which relate to them; it emphasizes that the fishery is distinct from the fish.”¹ The Stó:lō people on the other hand describe themselves as being part of the *sthéqi* and forming part of the circle of nature, where the land, the animals and the people all stand as equals in a circle and First Nations are the stewards and the voice of those who cannot speak. Their goal is not to exploit Fraser sockeye as a resource, but rather to ensure its sustainability as a core element of their lives and cultures.

5. First Nations do not have mere *interests* in the sockeye; rather, they have *constitutionally-protected rights* in it. And those rights are not based on some generalized notion of the fisheries as the common heritage of all Canadians; rather, their rights are specific, and they are entitled to specific constitutional protection, including through implementation, consultation and accommodation. One of the goals of DFO should *therefore* be the implementation of *Aboriginal rights in fisheries*. The STC-CIB therefore echoes the FNC’s Recommendation #1: “DFO must actively take steps to recognize and affirm Aboriginal title, rights, and treaty rights and promote reconciliation with First Nations in all matters related to the fishery, including FRSS.”

6. It is the position of many First Nations that the implementation of their Aboriginal rights in the fishery requires that they jointly manage the fishery with DFO. Certainly that is the position of the STC-CIB. In its primary submission, however, the STC-CIB points to a range of essential benefits for the conservation of Fraser sockeye that would flow from joint management or co-management with First Nations. Put succinctly, co-management is essential for the long-term sustainability of Fraser sockeye.

¹ BCWF final submission paragraphs 31 onwards

7. Some participants in this Inquiry, however, suggest that the Minister lacks the authority to effect co-management. The BC Wildlife Federation, for instance, says: “Because occupying the position of a steward or trustee, Canada cannot abdicate its responsibility to the public by sharing its authority in such a way as to promote or enhance the interest of particular groups at the expense of others or the public at large.”² That is an issue of law that this Commission is not mandated to determine, and it should not do so. But if it *were* to consider that issue, then the STC-CIB submits it would quickly become clear that this proposition is utterly specious. Aboriginal rights have been specifically recognized and protected in the Constitution. Whatever the public’s rights to the fish, and whatever the Minister’s authority, they are limited by the Aboriginal rights that fall within the scope of s. 35. As Professor Harris stated in answer to counsel for Canada’s questions regarding the Douglas treaties,³

Aboriginal people had pre-existing rights to fisheries, rights that preceded the British assertion of sovereignty, that preceded the introduction of the common law to this territory. And so to characterize those rights as being rights that were being granted by the Crown I think is erroneous. I think what's happening is that Douglas is recognizing prior rights to the fisheries. And in that context, the public right to fish doesn't act as a limit on what the Crown can do.

8. The government of Canada’s position and submission is also very concerning from both the perspective of conserving Fraser sockeye and from an Indigenous perspective. The section setting out the context for Fraser sockeye is over 60 pages long, with 56 pages spent on describing DFO’s organization, federal laws and DFO policies and processes and only 4 pages spent on the biological and environmental context. This imbalance is symptomatic of DFO’s

² BCWF Submissions, para 15.

³ Transcript, June 27, 2011, Cross-Exam by Mr. East, p. 21 line 15 onwards; emphasis added.

management approach, which propagates policies and processes under the central control of DFO, but fails to effectively address the decline of Fraser sockeye.

9. In this section of its submission, Canada asserts exclusive jurisdiction based on one constitutional provision, section 91(12) (Sea Coast and Inland Fisheries), which has formed the basis for its regulation of fisheries. The submission fails to take into account other constitutional provisions, such as section 35, which of course protects Aboriginal title and the rights of Aboriginal peoples to fish and to the conservation of fish stocks. These rights delimit federal jurisdiction and provide an opportunity for Aboriginal peoples to serve as checks and balances on DFO to ensure the more sustainable management of Fraser sockeye.

10. Canada's final submissions reveals its failure to understand the key role First Nations play in the conservation of Fraser sockeye, including through their year-round presence along the sockeye's entire migratory route and through their traditional knowledge of the stocks and their habitat. Canada does not have exclusive jurisdiction over the conservation of sockeye. To the contrary, there is an Indigenous dimension to and right in the conservation of Fraser sockeye. If Canada seeks to make conservation of Fraser sockeye a priority it must move to joint decision-making and management with First Nations.

11. It appears from Canada's submissions that such is not its priority. The submissions do not set out any plan for implementing co-management and joint decision making with First Nations, especially in the sections on conservation. Rather, most of Canada's references to First Nations are instead related to harvest management or to a section on "Aboriginal groups and stakeholders". The submissions instead continue to promote DFO's policy framework, which does not implement Aboriginal rights, lacks transparency and has not resulted in sustainable management of Fraser sockeye to date. An obvious example of this is the development of the Coastwide Framework, which was developed without direct input, prior informed consent or

even consultation of First Nations. At paragraph 550 of its submissions, Canada claims to have deferred completion of the work on the Coastwide Framework, pending receipt of the recommendations of the Cohen Commission, “with the exception of the endpoints of the allocation strategy”.⁴ This statement displays disregard for Aboriginal rights and this Inquiry: not only are the endpoints of the allocation strategy plainly at the core of the Coastwide Framework, but Canada’s statement plainly suggests that it is moving to a single allocation based on share-based management without consulting Aboriginal Peoples. Indeed, Canada is proceeding despite the opposition of First Nations to share-based management, especially in the absence of full recognition and implementation of Aboriginal rights.

12. Canada’s submission acknowledges that we are operating in a different environment and are facing new challenges, which have resulted in the decline of Fraser sockeye. What Canada fails to recognize, however, is that this also requires a different approach to management. Canada defends the exclusive jurisdiction of the Minister as a given, when what is required is a fundamental shift to a more integrated, local management process that ensures sustainable management of Fraser sockeye in the respective environments and traditional territories of First Nations.

B. JOINT MANAGEMENT AND DECISION MAKING

13. In its primary submission, the STC-CIB has addressed in some length the need for joint management between First Nations and DFO, and some aspects of the form that joint management ought to take. That submission focuses on the benefits for conservation of fisheries resources that would flow from robust joint management between DFO and First Nations. It is essential to remember, however, that many First Nations people regard the need for joint

⁴ Government of Canada, final submission, Para 550

management as being grounded in their Aboriginal rights. That is, for many First Nations, joint management is a natural consequence of their Aboriginal rights.

14. This point has relevance in two respects. The first is that, for First Nations, joint management is not simply about providing input into the management of the fisheries; it is rather about *joint decision-making*. It is about being an equal partner to DFO in the management of Fraser sockeye.

15. In this regard, we support a number of the recommendations on co-management put forward by the FNC, but with emphasis on the need for joint decision-making between DFO and First Nations:

a. FNC Recommendation #2: *DFO and First Nations must together determine the elements and principles of co-management and establish the robust government-to-government structures that efficiently implement better management of the fisheries.* The STC-CIB adds that these government-to-government structures must be aimed at implementing true joint decision-making and must be founded on the recognition and implementation of Aboriginal rights.

b. FNC Recommendation #12: *Canada must conduct in-depth consultations with First Nations on its development of a percentage goal for the average total allowable catch that will be allocated to First Nations.* The STC-CIB comments that that percentage goal for the total allocation to First Nations must be developed not merely in the context of “in-depth consultations”, but rather through joint decision-making. It is counterproductive for DFO to unilaterally proceed to promote and implement share-based management and a single allocation for First Nations fisheries. Such an approach undermines constitutionally-protected rights, including priority resource allocation for First Nations.

c. FNC Recommendation #13: *Canada must provide the capacity for First Nations to determine intertribal allocations amongst themselves.* The STC-CIB supports this recommendation entirely.

16. The second point that flows from the rights-based nature of joint management is the *form* that such joint management will need to take. As was heard in the Inquiry and addressed in the STC-CIB's primary submission, joint management will need to respect the source of authority among Aboriginal communities, which lies at the First Nation level. Aboriginal rights are not held by large-scale Aboriginal organizations; rather, they reside much more locally. Any resilient system of joint management with First Nations will have to respect and respond to this reality.

17. The STC-CIB extends qualified support to the following recommendations advanced by the FNC:

a. FNC Recommendation #8: *As part of its commitment to co-management with First Nations, DFO must continue to help build capacity within First Nations for those aspects of fisheries management that are more efficiently delivered at the local level.* The STC-CIB agrees, and emphasizes that many aspects of joint management will need to be conducted at a local level.

b. FNC Recommendation #9: *DFO must enhance its support for First Nations and Tribal Councils, as well as First Nations' regional and provincial fisheries organizations (e.g. FRAFS, FNFC), through stable, multi-year AAROM, AFS, or PICFI agreements, or other funding and capacity measures.* The STC-CIB also agrees, and again stresses that capacity building must not only take place at regional levels, but also at the First Nation or Tribal Council levels, and funding must be provided to support those efforts.

18. The STC-CIB is not able to agree with the FNC's Recommendation #6: *In a manner similar to Health Canada and Parks Canada, the Minister of DFO should seek to reach a MOU with the First Nations Leadership Council (UBCIC, First Nations Summit and the AFN), the FNFC, and the Province to formalize a commitment and process to work together at a strategic government-to-government level on areas of shared interest and importance in the fisheries, including FRSS.* It is First Nations that are the rights-holders, not regional, provincial or national organizations. While such organizations will play important technical and advisory roles in joint

management, the authority for joint management will need to flow from First Nations themselves. Therefore, it is First Nations with whom DFO ought to sign an MOU. That should be done through the Roadmap Process, as described by Ernie Crey in his testimony.⁵

19. The STC-CIB supports FNC Recommendation #10: *As an immediate sign of good faith and incentive, DFO must increase First Nations representation on the FRP to 50 percent of the Canadian caucus. To build the necessary accountability, First Nations representatives should be appointed to the FRP using Tier 1 processes.* The STC-CIB further calls for 50% representation of First Nations not only on the Fraser River Panel, but also on the Canadian caucus to the PSC and among the Canadian PSC Commissioners. We agree that those representatives should be selected by and accountable to First Nations themselves and not the Canadian government. The US tribes within the Northwest Indian Fisheries Council have full decision-making power at the PSC and operate on a consensus basis with federal and state governments; the same standard should be implemented between First Nation representatives and the Canadian federal government at the PSC.

C. INDIGENOUS KNOWLEDGE AND TEK

20. In its primary submission, the STC-CIB has stressed the benefits of incorporating traditional knowledge into fisheries management, and has emphasized that such knowledge can only be incorporated if the *holders* of that knowledge are incorporated into fisheries management. That is, it is only through true joint management with First Nations that the benefits of traditional knowledge will be unlocked for fisheries management.

⁵ See Transcript of July 4, 2011, p. 62, l. 34 – p. 63, l. 15 (Mr. Crey in cross by Ms. Gaertner).

21. The FNC has advanced a similar perspective, and the STC-CIB supports their submissions in that regard. The STC-CIB also supports their recommendations on this topic, subject to these qualifications:

a. FNC Recommendation #14: *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.* Again, the STC-CIB stresses that First Nations, as rights-holders and as the communities to which knowledge-holders belong, need to be at the centre of these efforts.

b. FNC Recommendation #15: *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.* The STC-CIB adds that such protocols need to be based on the international standard of prior informed consent.

22. The STC-CIB further stresses that traditional knowledge is collectively held by the respective First Nations in their traditional territories and the only way to full access and appropriately use traditional knowledge is to have First Nations as full decision-makers. Traditional knowledge, co-management and Aboriginal rights are cross-cutting issues throughout the STC-CIB submissions and should also be read as basic principles and standards into the recommendations endorsed in the following.

II. CONSERVATION AND CO-MANAGEMENT OF FRASER RIVER SOCKEYE, HABITAT AND ECOSYSTEMS

A. BIODIVERSITY AND PRECAUTIONARY APPROACHES

23. The STC-CIB supports all of the recommendations advanced by the FNC under this topic, that is, FNC Recommendations #16-19.

B. THE WILD SALMON POLICY

24. In its primary submission, the STC-CIB submits that the core concepts in the WSP are sound, but that DFO has failed to adequately implement the policy. The STC-CIB supports the general thrust of the submissions of the FNC and the Conservation Coalition (“CC”) in urging DFO to more fully and expeditiously implement the WSP.

25. The STC-CIB endorse the following recommendations of the FNC in their “WSP: General” section, subject to the qualifications noted:

a. FNC Recommendation #20: *DFO must implement every action step of every strategy of the WSP in a manner that meets its obligations to First Nations and upholds the honour of the Crown.*

b. FNC Recommendation #21: *DFO should bring fisheries management into alignment with the WSP, including continued and enhanced implementation of:*

i. *terminal or near terminal river fisheries on known stocks in the coastal areas and in the Fraser River watershed; (the STC-CIB adds here that, as a general proposition, DFO should continue to move more of the fishery in-river, in order to benefit from the better abundance estimates and run-timing group assessments such fisheries offer);*

ii. *selective fisheries in the marine and freshwater;*

iii. *harvest closures as required to protect CUs; and*

iv. *stock assessment measures that operate at a CU level.*

c. FNC Recommendation #22: *DFO should work with First Nations to identify a champion or a core group of dedicated people who will have the responsibility of effecting the implementation of the WSP in a timely and comprehensive manner. Although the RDG may be a part of this core group of dedicated people, the RDG alone should not be responsible for this task.*

d. FNC Recommendation #24: *As part of the Tier 1 and 2 co-management process, DFO and First Nations should explore how to efficiently establish recovery team(s) (including Tier 3 working groups), either under Strategy 4 of the WSP or SARA to develop and oversee recovery initiatives.*

26. The STC-CIB also endorses all of the FNC's recommendations under their headings on "WSP: CUs" and "WSP: Ecosystem Based Management and Integrated Strategic Planning", being Recommendations #26 - #34.

27. The STC-CIB supports as well the following recommendations put forward by the Conservation Coalition in respect of implementing the WSP:

a. CC Recommendation 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.*

b. CC Recommendation 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.*

c. CC Recommendation 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.* This is in addition to what the STC-CIB recommends has to be a full engagement and joint decision making process between DFO and First Nations regarding implementation of the WSP.

d. CC Recommendation 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.*

- e. CC Recommendation i.11: *By December 2014, conduct an independent audit of WSP implementation.*

C. CO-MANAGEMENT OF HABITAT

28. The STC-CIB supports the Conservation Coalition Recommendations respecting habitat, namely CC recommendations v.1 - v.6 and suggests that they can best be implemented through joint management with First Nations, since First Nations are situated within Fraser sockeye habitat, and they can serve as checks and balances on DFO to ensure that all proper measures are taken to protect fish habitat and to ensure no net loss.

29. The STC-CIB endorses the FNC recommendations under the heading “Habitat Management, Protection and Enforcement”, and again stress that this is an area where co-management with First Nations should be implemented in its fullest form as soon as possible. First Nations not only hold the necessary traditional knowledge to ensure better habitat management, but they are also present in their territories and as such are often the first to observe changes and take steps to address concerns.

30. In regard to FNC Recommendation #57, the STC-CIB reiterates that the respective First Nations are the proper title and right holder and also the collective knowledge-holders and as such they must be part of the nation-to-nation and government-to-government decision-making processes. While inter-jurisdictional concerns cause problems between the federal and provincial government in regard to comprehensive and integrated habitat management, First Nations’ Aboriginal title and rights apply across their territories, and as such they must be engaged by both the federal and provincial governments. First Nations are the ones who can ensure integrated planning and management and serve as checks and balances on DFO to ensure that there is proper management of fish habitat.

31. Where reference is made to consultation, the STC-CIB again suggests that the appropriate substantive standard is prior informed consent of the affected Indigenous Peoples and that joint decision-making processes should be put in place.

32. The STC-CIB oppose the Conservation Coalition's submissions on gravel and its Recommendation vi.1. The gravel hearings clearly established that gravel removal is not linked to the decline of Fraser sockeye and both Dr. Rempel and the DFO ecosystems manager in charge of gravel removal testified that it does not constitute a concern for Fraser sockeye. The STC-CIB suggest that co-management with First Nations in the field can help ensure that gravel removal is conducted in the most sustainable manner. By taking into account traditional knowledge about flow patterns and areas used by migrating sockeye salmon, features can be put in place that can assist migrating salmon.

33. The STC-CIB endorses the FNC recommendations on Aquaculture; Contaminants; and the Marine Environment. The STC-CIB support the recommendation to remove open-pen fish farms from the migratory route of Fraser River Sockeye Salmon, in light of concerns regarding spread of pathogens and impacts on habitat and wild stocks that First Nations depend on. In that regard the STC-CIB further supports the Conservation Coalition recommendation iv.1, iv.3, iv.4 and iv.5.

34. The STC-CIB also supports the Conservation Coalition recommendations under the headings Temperature, Flow and Hydroelectricity; Contaminants; and Marine Spills. Again, the STC-CIB submits that these recommendations can better be implemented through co-management and joint decision-making with First Nations.

35. The STC-CIB also supports the FNC recommendations on research gaps, especially its Recommendation #96: *As a priority DFO and First Nations must develop mechanisms for the application and integration of traditional ecological knowledge within Science and Management decisions.* The STC-CIB supports the FNC's recommendations on further research on fish health and generally recommends an integrated approach to studying and assessing fish health. Scientists, including Kristi Miller in her testimony before the Cohen Commission, acknowledged that First Nations, their traditional knowledge and observations have an important role to play in that regard.

36. The STC-CIB standing group supports the FNC recommendations on ecosystem-based management approach (EBM) to research considering climate change and cumulative impacts. The STC-CIB submissions already speak to its support for ecosystem-based management and the importance of assessing the impacts of climate change and conducting cumulative impact assessments as the basis for appropriate management decisions. First Nations and their traditional knowledge must also play a key role in both the research and the decision-making.

D. FISHERIES MONITORING, CATCH REPORTING AND ENFORCEMENT

37. The STC-CIB broadly echoes the FNC's submissions on fisheries monitoring, catch reporting and enforcement, and it endorses these recommendations:

- a. FNC Recommendation #68: *When allocating budgets and priorities, DFO can proceed on the basis that the level of fisheries monitoring and catch reporting currently undertaken in First Nations fisheries along the migratory route of the FRSS is more than sufficient.*
- b. FNC Recommendation #69: *DFO should continue to enhance capacity in First Nations organizations to the conduct monitoring, catch reporting and enforcement. Synergies between this work and protection and preservation work should be encouraged.*
- c. FNC Recommendation #70: *C&P should direct more of its attention at Pillar 1 activities such as public education, shared stewardship, and relationship building with First Nations.*
- d. FNC Recommendation #71: *In consultation with First Nations, DFO should restore the Aboriginal Guardian Program.*
- e. FNC Recommendation #72: *C&P should adopt an open and transparent way of setting its activity priorities. Such priorities should reflect conservation concerns, and in particular those that present the greatest risk to fish and fish habitat.*

f. FNC Recommendation #73: *DFO should re-integrate C&P as part its matrix management model and eliminate the line reporting relationship.*

38. This Inquiry has heard an enormous amount of evidence on the causes of the decline of Fraser sockeye and on the Fraser sockeye fisheries. With respect to the monitoring, catch reporting and enforcement of Aboriginal fisheries, the record discloses three essential facts:

a. The monitoring and catch reporting programs in place in the Lower Fraser are adequate and provide fairly good coverage.⁶

b. There is no credible evidence that there is overharvesting in the Aboriginal fishery that is leading to the decline in Fraser sockeye. To the contrary, C&P has a credible enforcement presence on the Fraser River and has a handle on closed time fishing activities.⁷

c. If a fish is caught within an FSC allocation and properly accounted for, then the sale of that fish does not raise a conservation concern.⁸ The ban on such sales and the enforcement of that ban, however, create real antagonism between DFO and First Nations and use up valuable DFO resources.⁹

⁶ See, for instance: Transcript, May 11, 2011, pp. 15-16, 20, 36-37 (Lester Jantz); Transcript, May 11, 2011, p. 16 (Matthew Parslow); Exhibit 718 (Technical Report #7: Fraser River Sockeye Fisheries and Fisheries Management and Comparison with Bristol Bay Sockeye Fisheries, February 2011), pp. 29-32; Transcript May 12, 2011, p. 23 (Grand Chief Ken Malloway).

⁷ See, for instance, Transcript of May 17, 2011, p. 8, ll. 35-46 (Mr. Nelson).

⁸ Transcript, May 18, 2011, p. 67 (Scott Coultish); Transcript, July 5, 2011, p. 80 (Barry Rosenberger).

⁹ See, for instance, Transcript of June 27, 2011, p. 92, ll. 37-40 (Professor Harris).

39. First Nations have long faced allegations that “poaching” by Aboriginal persons is responsible for failures of the sockeye runs in certain years, and indeed the long-term decline of Fraser sockeye. Indeed, in this Inquiry, the Fisheries Survival Coalition devotes 14 pages of its 35-page submission on enforcement within the Aboriginal fishery, addressing such topics as “*How long has Aboriginal poaching been a serious problem?*” and “*What will it take to stop Aboriginal poaching?*”. The Survival Coalition defines “poaching” as “illegal fishing and illegal sales of fish”, but then proceeds to address only what it refers to as the “illegal” sale of fish. The Survival Coalition does so by stringing together old and unrelated case law and sound bites from previous reviews.

40. The Coalition’s submissions are entirely ungrounded in the evidentiary record, and they are riddled with innuendo, bias and inaccuracy. As one example, the Coalition quotes from Mr. Eidsvik’s cross-examination of Ernie Crey at paragraph 79 of its submissions:¹⁰

Q Fishing during a closed time, fish caught under a licence that does not authorize sale. How big an issue are those issues, fishing during a time when DFO has not opened a fishery, and I'm talking the Lower Fraser Aboriginal Fishery, and sales of fish when sale is not authorized. Are those issues of concern in the Lower Fraser?

MR. CREY: Well, they appear to be issue of concern to some folks but I don't think those folks are in our community; they appear to be outside the community.

41. That is the entirety of Mr. Crey’s testimony quoted by the Coalition. On the basis of this extract, the Coalition argues that Mr. Crey expressed that it is socially acceptable to sell fish as part of his heritage. That may or may not be Mr. Crey’s view – certainly the ban on the sale of fish is often viewed by First Nations people to be unjust, as the Commission has heard – but it is

¹⁰ Quoting from Transcript of July 5, 2011, p. 37, ll. 5-15.

patently clear that that was not what Mr. Crey intended to say, as the exchange immediately following the quotation above reveals:¹¹

Q So if there is illegal sale, sale of fish caught not under a commercial licence, and fishing during a closed period, that's not a concern to your community?

MR. CREY: Currently, Mr. Commissioner, when we do sell fish that we catch, we do so under agreements with Fisheries and Oceans Canada. We also have what are called food/social/ceremonial fisheries. Those fish are intended for just what it's described as, a fishery for food, social needs in the community and ceremonial purposes. So we do get opportunities to catch and sell fish but it's done under agreements with Fisheries and Oceans Canada and it's closely regulated.

Q So a person sitting outside looking into the fishery in the Lower Fraser, the Aboriginal fishery, doesn't have to be concerned about illegal sale or illegal fishing? Is that what you're saying? I'm trying to get that. I understand that some fisheries are legal where sale is allowed, some fisheries are just food. What I'm trying to find out is, is this an issue that fishery managers should be concerned about?

MR. CREY: Well, you'd have to ask a fishery manager, to be perfectly honest, and you have one sitting here.

Q Thank you.

42. When Mr. Crey stated that closed-time fishing and sales of FSC fish are issues of concern “to some folks but I don’t think those folks are in our community” (as quoted by the Fisheries Survival Coalition in its submissions), obviously what he meant is that people outside the community – such as members of the Survival Coalition, and Mr. Eidsvik himself – repeatedly accuse First Nations of these activities. In suggesting that Mr. Crey meant that First Nations have no concern for such issues, the Coalition was wilfully mischaracterizing the evidence.

¹¹ Transcript of July 5, 2011, p. 37, ll. 16-42; emphasis added.

43. The sort of focused attack on First Nations mounted by the Fisheries Survival Coalition in its submissions in this Inquiry is not new; the Coalition and its allies have railed against Aboriginal fishing for decades. While at times the Coalition dresses up its attacks in concerns for conservation, that is not its motivation at all. What the Coalition wishes to protect is not the *sockeye*, but rather the *market*. That is precisely why, when the Coalition addresses what it calls “Aboriginal poaching”, its sole focus is on the sale of fish by First Nations. It is also why, as seen in the *Kapp* decision,¹² the Coalition and its allies protested the pilot sales program that allowed the Stó:lō and Musqueam to legally sell part of their catch. The Coalition’s concern is not with conservation or even illegal activity at all; their concern is with protecting their share of the commercial market.

44. It is perhaps not surprising that some commercial fishermen would seek to protect their market shares, but the tone and rancour of the Coalition’s efforts in this regard are well beyond what is appropriate. That is especially so when it is considered that their attacks are directed at a group – Aboriginal peoples – who have suffered enormous historical injustice and exclusion in relation to the fishery, among other things. The courts and even DFO have recognized some of the injustice of the state’s past efforts to exclude Aboriginal peoples from the commercial fisheries and to reserve it for the settler communities, and some efforts to remedy that injustice have been made in recent decades. The Survival Coalition and its allies, however, decry these remedial efforts as “race-based”. That is, having benefited from the historical exclusion of Aboriginal peoples from the market-based fishery, the Survival Coalition and its allies now insist on strict racial equality.

¹² *R. v. Kapp*, 2008 SCC 41, [2008] 2 S.C.R. 483.

45. The hypocrisy, self-interest and hollowness of this argument are obvious. Sadly, however, the argument is persistent. Despite it being rejected in *Kapp*, the Coalition continues to make it in the media and in this Inquiry. And despite the overwhelming evidence proving in this Inquiry that First Nations are not to blame for the decline of Fraser sockeye, the Coalition continues to insist that they are.

46. The STC-CIB respectfully asks this Commission to help put a stop to this tired and unworthy refrain. The Commission should set the record straight: First Nations are not to blame for the decline of Fraser sockeye. To the contrary, as this Inquiry has seen, First Nations have been and continue to be vigorous and conscientious advocates for the conservation of the sockeye, and their involvement in the management of Fraser sockeye – as joint managers with DFO – will be essential to the future sustainability of the sockeye and the fishery.

III. CO-MANAGEMENT OF FISHERIES AND HARVEST MANAGEMENT

47. The STC-CIB endorses the FNC's recommendations on harvest management, including under the sections on: FRSSI and setting escapement objectives; pre-season forecasting; management adjustments; developing the IFMP; selective and known stock fisheries; and stock assessment.

48. Regarding pre-season forecasting and management adjustments, the STC-CIB maintains concerns about how these are calculated by DFO and the methods should be improved, including through the integration of Indigenous and traditional knowledge. The STC-CIB also refer back to the earlier FNC Recommendation #19, which urges that DFO should include objectives in its management models to ensure sufficient fish are delivered to specific geographic areas, thereby promoting biodiversity and ensuring that priority requirements for First Nations are met. As suggested by Councillor June Quipp in her testimony, this could be secured by doubling requisite numbers, similar to escapement numbers, to ensure there are sufficient returns to the respective territories of First Nations. Again, this is best achieved through joint decision-making where First Nations have a say in all respective management decisions and co-management.

49. Where references are made to terminal and near-terminal fisheries, the STC-CIB suggest that these objectives are generally shared by the artisanal fishery conducted by First Nations in the Fraser River. For example, FNC Recommendations #48 and #49 on known stock and selective fisheries can also be met by the artisanal fishery conducted by First Nations in the Fraser River. There are a number of traditional and selective fishing techniques employed by First Nations in the Lower Fraser River. In addition, their Indigenous and traditional knowledge can help identify specific stocks and ensure that mainly target species are harvested.

50. Regarding FNC Recommendation #50, the STC-CIB supports programs that enable a transition to increased artisanal in-river fishery by First Nations. The STC-CIB expresses their concerns and opposition to the use of PICFI to transition to a share-based management as envisioned in Exhibit 1756, DFO's Lower Fraser First Nations Fisheries Strategic Plan. The STC-CIB also note that none of the licences bought back under PICFI have been made available for Lower Fraser Aboriginal fisheries and the STC-CIB expresses concern with DFO's practice of retaining licences in their inventory of economic opportunity fisheries and attempting to balance them with non-Aboriginal commercial fisheries. At least certain Aboriginal fisheries enjoy priority under the Constitution, and the STC-CIB is concerned that this practice of DFO, and its movement toward share-based management, may undermine that priority.



51. The STC-CIB also supports the following WSP-related recommendations of the Conservation Coalition on fisheries management:

- a. CC Recommendation iii.2. *Ensure that lowered exploitation rates for threatened or endangered (i.e. red) CUs do not unduly restrict fisheries on identifiable CUs with harvestable surpluses by transferring fishing effort to terminal areas and more selective gear types. This action will have the added benefit of reducing reliance on run size forecasts at the 'aggregate level' which has been chronically unreliable.*
- b. CC Recommendation iii.3. *Facilitate the transfer of fishing effort to terminal areas and more selective gear types.*

Again, the STC-CIB suggest that these recommendations can also be met by artisanal in river fishery conducted by First Nations in the Fraser River, including by engaging in selective fishing methods and applying Indigenous and traditional knowledge.

52. The STC-CIB standing group endorses the FNC's recommendations on commercial fishing, including Recommendation #74: *No further share-based quotas, including ITQs should be implemented or expanded on FRSS until First Nations have been properly consulted and outstanding allocation priorities have been properly addressed.* The STC-CIB is opposed to DFO's current efforts to implement share-based management including for First Nations without consultation, let alone prior informed consent. As Exhibit 1756 and other documents reveal, DFO has instructed local managers to continue pushing this approach even against the opposition of the respective First Nations, including in the Lower Fraser. Such an approach undermines priority resource allocation for First Nations and must be rejected.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

	
Co-Counsel for the STC-CIB	Co- Counsel for the STC-CIB

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