

EXECUTIVE SUMMARY

Introduction

In 2009, the decline of sockeye salmon stocks in the Fraser River in British Columbia led to the closure of the fishery for the third consecutive year, despite favourable pre-season estimates of the number of sockeye salmon expected to return to the river. The 2009 return marked a steady decline that could be traced back for two decades.

In November 2009, the Governor General in Council appointed me as a Commissioner under Part I of the *Inquiries Act* to investigate this decline of sockeye salmon in the Fraser River. The Terms of Reference direct me

- “to consider the policies and practices of the Department of Fisheries and Oceans” (DFO) with respect to the Fraser River sockeye salmon fishery;
- “to investigate and make findings of fact regarding ... the causes for the decline,” the current state of stocks; and the long-term projections for those stocks; and
- “to develop recommendations for improving the future sustainability of the ... fishery.”

I am also directed to conduct the commission of inquiry without seeking to find fault on the part of any individual, community, or organization. The overall aim of this commission is to respect the conservation of the sockeye salmon stock and to encourage broad co-operation among the stakeholders.

Commission activities

The commission established an office in downtown Vancouver and retained administrative, legal, and scientific research staff. I received 50 applications for standing from the Government of British Columbia, the Pacific Salmon Commission, First Nations and other Aboriginal organizations, various commercial and recreational fishery interests, and environmental and conservation organizations, as well as from individuals. The Government of Canada has standing as of right. On April 14, 2010, I made 20 grants of standing for participation in the commission (later increased to 21), based on my finding that these participants had a substantial and direct interest in the matters to be investigated. Some of these grants were shared among applicants who originally applied for standing individually. In total, 53 individuals, groups, and organizations are included in these 21 grants of standing.

Fifteen of the original 20 participants applied for funding, in accordance with the terms and conditions approved by the federal Treasury Board. I made recommendations to the clerk of the privy council that 14 of those 15 participants receive funding, to ensure their appropriate participation. These 14 participants included 44 individuals, groups, and organizations. The Government of Canada accepted my recommendations.

Beginning in December 2009, commission counsel and the Department of Justice developed a process for the disclosure by Canada of documents relevant to the commission's mandate. They include more than 500,000 DFO "core" documents, DFO emails, and documents from other federal government departments. The commission is also pursuing disclosure of relevant documents from other participants, including the Province of British Columbia. Disclosed documents are stored digitally in Ringtail Legal, the automated document management program specified by the attorney general of Canada. Participants received Ringtail Legal licences and training, giving them full access to all disclosed documents.

In accordance with the commission's Rules for Procedure and Practice:

- Two participants have applied for production of specific documents related to fish health and aquaculture facilities from the governments of Canada and British Columbia and from the BC Salmon Farmers Association (another participant).
- I have made a ruling respecting my authority to make findings of misconduct.

During the summer and fall of 2010, I conducted public forums in 10 coastal and Fraser River communities along the Fraser sockeye salmon migratory route and visited sites in nine communities to provide me with context and information about various aspects of the fishery. Commencing on October 25, 2010, I am conducting evidentiary hearings regarding the issues that the commission is mandated to investigate.

The commission's bilingual website provides information about the commission's activities. It will include transcripts and exhibits of each day's proceedings during the

evidentiary hearings, as well as Policy and Practice Reports and Scientific Reports prepared by or for the commission. Members of the public may make submissions on any matter relevant to the commission's Terms of Reference and may comment on another person's submission. Submissions, and bilingual summaries of them, are posted on the website.

My final report, due in 2011, will include my findings of fact regarding the causes for the decline of the Fraser sockeye, as well as the current state of those stocks and the long-term projections for them. It will also contain my recommendations for improving the future sustainability of the Fraser sockeye fishery, including, as required, any changes to DFO's policies, practices, and procedures in relation to the management of that fishery.

Preliminary views and assessment

The Terms of Reference direct me to set out in my interim report my "preliminary views on, and assessment of, any previous examinations, investigations or reports" that I consider relevant to the commission. In addition, I am asked to comment on "the Government's responses to those examinations, investigations and reports."

Previous reports and government responses

Over the past three decades, there have been dozens of examinations, investigations, and reports into the Pacific fisheries, primarily focusing on DFO's management of the fishery and the department's legislative powers respecting harvesting, protection of habitat, protection of wild salmon stocks, and aquaculture.

In May 2010, DFO provided the commission with a document entitled "Recommendations Related to Fraser River Sockeye Salmon and Responses by the Government of Canada, 1982–2010." This document set out the recommendations contained in 25 reports prepared by or for the Government of Canada between 1982 and 2005, along with the federal government's initial responses.

In this interim report, I refer to 22 of those 25 reports. I have also considered reports from several other sources, including provincial auditors general, provincially appointed commissions, and reports commissioned by Aboriginal organizations and an environmental non-governmental organization. My principal interest was reports that are relevant to the Fraser sockeye fishery, but I also thought it important to review reports that deal more generally with various aspects of West Coast fisheries, such as DFO management, conservation, and habitat protection and the potential impact of open-pen salmon farms on wild salmon stocks.

In most cases I have limited myself to the government's initial response to these reports, and in this interim report I am presenting only what the government has said about its response to particular recommendations. Readers should not infer from this form of presentation that the commission has accepted or is endorsing such responses. The commission's evidentiary hearings will explore how DFO and other government departments have dealt with some of these issues since the recommendations and the initial responses were made.

The previous reports discussed in this interim report have resulted in more than 700 recommendations being made about the Pacific fishery. I have organized these recommendations into the following major categories: DFO organization and administration; habitat management, conservation, restoration, and enhancement; harvest management; harvesting; responsibility for salmon farms; enforcement; and research and identification of gaps in knowledge.

The number of previous reports and the number of recommendations contained within them is remarkable, as is the wide range of issues that were examined. Read as a whole, the previous reports touch on most major issues in fisheries management. Several themes emerged from these reports:

- the response to an immediate crisis;
- fleet reduction and intersectoral allocation (among Aboriginal, commercial, and recreational fishing);
- the Aboriginal role in fisheries;
- the effects of salmon farms;
- conservation and habitat protection; and
- consultative arrangements.

Some issues have been examined repeatedly. An enormous amount of time and money has been invested in arriving at the recommendations contained in these previous reports, yet the decline in Fraser sockeye stocks continued through 2009. This history of decline motivated the Government of Canada to investigate the causes for it – and to appoint me to conduct this commission of inquiry.

The commission benefited from its review of these previous reports and recommendations. The legal team identified approximately 20 broad topics in fisheries management, fish biology, and the ecosystem that warranted investigation. They, in turn, became an outline for the issues that the commission intends to investigate during its hearings. This review also served to inform the commission's scientific research program, directed by its in-house fisheries research consultant. The commission also sought and received valuable input from participants respecting the issues that the commission ought to investigate in its hearings and its scientific research program, as well as the relative priority of those issues.

When to make findings of fact and recommendations

Although I am mindful of the detailed research and cost associated with the production of these previous reports and recommendations, I have concluded that it would be premature and unwise to make findings of fact or recommendations based solely on these reports and recommendations, for several reasons:

- Notwithstanding the best efforts of DFO and other participants, the commission has not yet received complete disclosure of documents from DFO, other government departments, and the other participants.
- The commission's legal team is still conducting interviews of potential witnesses.
- Before I draw any conclusions respecting DFO's policies and practices, I should await the evidence that will flow from the evidentiary hearings investigating those matters.
- Similarly, I need to consider the results of the commission's contracted scientific research projects, which will not be available until early 2011.

Findings of fact and recommendations must await my consideration of the whole of the evidence emanating from the hearings, public forums, site visits, and public written submissions.

Issues the commission will investigate

In late July 2010, the commission finalized the 22 issues to be investigated during its processes, which are summarized as follows:

- Fraser sockeye life cycle
- Conservation perspectives
- Perspectives on Aboriginal law
- DFO's organizational structure
- The Pacific Salmon Commission
- Wild Salmon Policy (Part 1)
- Overview of DFO habitat management and conservation
- Harvest management
- Harvesting
- Enforcement (fisheries)
- Habitat enhancement and restoration
- Wild Salmon Policy (Part 2)
- Protection of sockeye biodiversity
- Watershed-based planning and marine coastal planning

- Enforcement (habitat)
- Effects on habitat in the Fraser River watershed
- Predation
- Diseases, viruses, bacteria, and parasites
- Salmon farms
- Effects on habitat in the marine environment
- Population dynamics
- Other fisheries models

Technical and scientific research projects

The commission finalized 12 technical and scientific research projects, which have been contracted out to respected external researchers. The topics are as follows:

- Project 1 Diseases and parasites
- Project 2 Effects of contaminants on Fraser River sockeye salmon
- Project 3 Fraser River freshwater ecology and status of sockeye salmon
Conservation Units
- Project 4 Marine ecology
- Project 5 Impacts of salmon farms on Fraser River sockeye salmon
- Project 6 Data synthesis and cumulative impact analysis
- Project 7 Fraser River sockeye fisheries and fisheries management
- Project 8 Effects of predators on Fraser River sockeye salmon
- Project 9 Effects of climate change on Fraser River sockeye salmon – literature
compilation and analysis
- Project 10 Fraser River sockeye production dynamics – data compilation,
literature review, and reporting
- Project 11 Fraser River sockeye salmon – status of DFO science and management
- Project 12 Sockeye habitat analysis in the Lower Fraser River and the Strait of Georgia

Although the two-decade decline in Fraser sockeye stocks has been steady and profound, in 2010 Fraser sockeye are experiencing an extraordinary rebound, demonstrating their capacity to produce at historic levels. The reasons for this dramatic improvement are as yet unclear. This inter-year variability has important implications for the commission’s work, in that previous years’ declines must be understood and evaluated in the context of an unprecedented rebound in 2010.

How this commission is unique

Several significant circumstances distinguish the mandate of this commission of inquiry from that of previous reports. It is the first commission

- that has specifically been tasked to identify the causes for the decline of Fraser River sockeye salmon and to make recommendations for the fishery's future sustainability;
- that has been specifically directed to investigate the fish biology and ecosystem issues that may have caused or contributed to the decline, including a consideration of anthropogenic climate change;
- that has been mandated to undertake a comprehensive consideration of DFO's past and present policies, practices, and procedures.

It is the first commission in three decades to have been granted authority under Part 1 of the *Inquiries Act*, which authorizes me to summon witnesses to attend and give evidence under oath or affirmation and to produce documents relevant to the commission's mandate. This commission is also unique in the degree to which it has sought input from 21 formally recognized participants (representing 53 individuals, groups, and organizations) who represent governmental, Aboriginal, commercial fishing, sport fishing, industrial, and environmental non-governmental interests.

The legal landscape within which this commission operates has changed as well. This change will require a consideration of the Aboriginal right to fish under section 35 of the *Constitution Act, 1982*, and of the 2009 decision of the Supreme Court of British Columbia which struck down the provincial regulatory scheme with respect to finfish farming in this province. That decision has resulted in DFO taking over responsibility for the regulation of fish farms.

I must also take into consideration modern treaties, such as those that have been ratified under the 1992 British Columbia Treaty Commission Agreement. These agreements give First Nations specified food, social, and ceremonial allocations, as well as side agreements that provide for Aboriginal commercial fishing opportunities.

Improving the future sustainability of the Fraser River sockeye fishery

The Fraser sockeye is an iconic species of fish in Aboriginal and non-Aboriginal communities. It has been a resource at the centre of Aboriginal traditions in this province for millennia, as well as a critically important resource for the province's economy. The steady decline of this resource over several decades has put enormous pressure on the Aboriginal and non-Aboriginal communities that depend on it for their food, social, and ceremonial purposes; recreational pursuits; and livelihood needs. They want answers as to why there has been a steady decline in the Fraser sockeye stocks. They seek solutions for restoring the stocks to those levels of abundance where an ample supply of sockeye salmon served the needs of all the communities that relied heavily on it.

A common will to conserve sockeye

I believe there is a common will to do what is necessary to conserve Fraser sockeye stocks, and I am cautiously optimistic that, with the co-operation of the participants, recommendations will be made to satisfy our mandate of improving the future sustainability of the fishery. In saying so, I am under no illusions about the challenge that lies ahead for the commission, the controversial nature of some of the issues that must be investigated, and the long history of recommendations and responses that have been made.

If there is reason to be optimistic, it is in the willingness of all those I have come into contact with to find a way to participate in as meaningful and helpful a manner as possible. I have been well served by the commission's staff of legal and science professionals, as well as by those who have agreed to provide their services to the commission as consultants or advisers. I am also fortunate in having a dedicated staff of administrators who toiled long hours to get the commission in operation as quickly and efficiently as possible, in order to meet the tight schedule under which it is working.

From commission staff to participants to other interested citizens, we all share the common goal of doing our very best to identify the causes for the decline in numbers of Fraser River sockeye salmon and to make meaningful recommendations for the fishery's future sustainability.