

## Appendix 10

### Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River

#### RULES FOR PROCEDURE AND PRACTICE

(As amended)  
September 9, 2010

##### A. GENERAL

1. These Rules for Procedure and Practice apply to the Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River (the “commission” or “inquiry”).
2. The commission will be conducted in accordance with Part I of the *Inquiries Act*, R.S.C. 1985, c. I-11 (the “Act”) and pursuant to Order in Council PC 2009-1860 (the “Terms of Reference”).
3. Subject to the Act and the Terms of Reference, the conduct of and procedure to be followed at the inquiry are under the control and discretion of the Honourable Bruce I. Cohen (the “Commissioner”).
4. The Commissioner may amend or supplement these Rules or dispense with their compliance as he deems necessary to ensure that the inquiry is thorough, fair and timely.
5. In these Rules, “person” includes an individual, group, government, agency, institution or other entity. Persons with a grant of standing are referred to as “participants”. Participants who share a single grant of standing are also referred to as “joint participants”, and they together comprise a “standing group.”
6. The Commissioner will determine on what terms and in which parts of the inquiry a participant may participate, and the nature and extent of such participation. The Commissioner retains the discretion to vary a participant’s participation or rescind standing. The issue of standing and the Commissioner’s recommendations for funding assistance for participants are governed by the commission’s Rules for Standing and Funding, a separate document which supplements these Rules.
7. All participants, witnesses and their counsel shall agree to adhere to these Rules, and may raise any issue of non-compliance with the commission.
8. The Commissioner may deal with any non-compliance with these Rules as he deems appropriate, including by rescinding standing of a participant, imposing restrictions on a participant, or excluding any person from

participation in or attendance at commission hearings and public consultations.

9. Commission counsel have the primary responsibility for representing the public interest, including the responsibility to ensure that all matters that bear upon the public interest are brought to the Commissioner's attention.

10. Commission counsel will communicate with participants primarily by email. Notice or service by email shall be considered adequate notice or service. All participants must identify to commission counsel the email address they wish to use for this purpose. Joint participants must identify a single counsel or law firm as the contact for their standing group, and provide a single email address for delivery.

## B. DOCUMENT PRODUCTION

11. In these Rules, the term "documents" is intended to have a broad meaning, and includes the following forms: written, electronic, audiotape, videotape, digital reproductions, photographs, maps, graphs, spreadsheets, microfiche and any data and information recorded or stored by means of any device.

12. As soon as possible after being granted standing, but subject to Rule 14, a participant shall do the following:

(a) identify to the commission documents in its possession or under its control relevant to the subject matter of the inquiry; and

(b) if requested to do so, provide copies of any such documents to the commission. Wherever possible, documents shall be provided electronically.

13. Wherever possible, commission counsel will seek to reach an agreement with a participant concerning which documents need to be produced to the commission.

14. Unless a different procedure is set out in the *Canada Evidence Act*, R.S.C. 1985, c. C-5, where the Commissioner requires the production of documents under Rule 12 and the participant to whom the requirement is directed objects to the production of any document(s) on any ground of privilege,

(a) The participant shall specify the privilege claimed and the basis for the claim;

(b) The participant and commission counsel shall attempt to resolve the issue of privilege informally;

(c) If the participant maintains his or her claim of privilege, and the matter cannot be resolved informally, the participant may apply, in compliance with Part H of these Rules, to the Commissioner for a ruling;

(d) The Commissioner may, if necessary, inspect the document(s) and may rule on the claim, or refer the matter to the Federal Court for determination under section 18.3 of the *Federal Courts Act*, R.S.C. 1985, c. F-7; and

(e) If the claim of privilege is dismissed, the document(s) shall be produced to commission counsel.

15. Upon the request of commission counsel, a participant shall provide the commission a true copy or the original of any document disclosed under Rule 12.

16. Subject to Rule 17, the commission shall treat all documents it receives as confidential, unless and until they are made part of the public record, or until the Commissioner otherwise determines. This does not preclude commission counsel from showing a document to a potential witness, in respect of an interview pursuant to Rule 21.

17. Commission counsel will provide documents and information to counsel for both participants and witnesses upon their executing a written undertaking that the documents and information will be kept confidential and used only for the purposes of the inquiry, unless and until the documents or information are or become part of the public record. Counsel may provide such documents and information to their clients only upon the clients executing a written undertaking to the same effect. The commission may require that documents provided and all copies thereof be returned to it, or confidentially destroyed.

#### Participant Requests for Documents

18. Where a participant believes that documents in the possession of another participant are necessary and relevant to the inquiry, a participant may ask commission counsel to request specific documents from another participant. Commission counsel may accede to or decline such a request.

19. Where the participant has asked commission counsel to request documents from another participant and commission counsel has declined to do so, the participant may apply, in compliance with Part H of these Rules, to the Commissioner for an order that the other participant produce the documents in issue.

20. A participant ordered to produce documents under Rule 19 shall provide those documents to the commission. The commission will then produce those documents to all participants.

### C. INTERVIEWS

21. Commission counsel may interview any person who has information or documents that have any bearing upon the subject matter of the inquiry. Commission counsel may interview the same person more than once. Persons who are interviewed are entitled, but not required, to have legal counsel present. Participation in interviews is voluntary.

22. Commission counsel may prepare a formal summary of a witness's expected testimony based on an interview (a "Summary"). If commission counsel determines that an interviewee will be called as a witness, before that witness testifies, commission counsel will provide a copy of any Summary relating to that witness to the witness and to participants having an interest in the subject matter of the witness's evidence.

### D. POLICY AND PRACTICE REVIEW

23. Commission counsel may review previous examinations, investigations and reports related to the decline of sockeye salmon in the Fraser River, and the Government's responses to previous recommendations.

24. The goal of any review will be to identify the policies and practices of the Department of Fisheries and Oceans (the "Department") with respect to the sockeye salmon fishery in the Fraser River – including the Department's scientific advice, its fisheries policies and programs, its risk management strategies, its allocation of Departmental resources and its fisheries management practices and procedures, including monitoring, counting stocks, forecasting and enforcement.

25. The review may consist of document review and interviews by commission counsel. Commission counsel may prepare reports setting out the information derived from the review and the source(s) of that information ("Policy and Practice Reports").

26. In advance of the Policy and Practice Reports becoming exhibits before the Commissioner, the commission may provide an opportunity to participants to comment on the Policy and Practice Reports. Participants may also propose witnesses for commission counsel to call during the hearings, to support, challenge, or comment upon the Policy and Practice Reports.

27. The Policy and Practice Reports will not necessarily represent the views of the Commissioner but are intended to inform the Commissioner's deliberations. The Policy and Practice Reports will be posted on the commission's website. The Commissioner may consider the Policy and Practice Reports to make findings of fact and recommendations.

## E. SCIENTIFIC REVIEW

28. The commission may engage experts to conduct scientific and other expert reviews into the decline of Fraser River sockeye salmon. These reviews may include the impact of environmental changes along the Fraser River, marine environmental conditions, aquaculture, predators, diseases, water temperature and other factors that may have affected the ability of sockeye salmon to reach traditional spawning grounds or reach the ocean, the current state of Fraser River sockeye salmon stocks, and the long term projections for those stocks.

29. The experts may prepare reports setting out their opinions (“Scientific Reports”). Where possible, the experts will seek to resolve any inconsistencies prior to finalizing the Scientific Reports.

30. In advance of the Scientific Reports becoming exhibits before the Commissioner, the commission may provide an opportunity to participants to comment on the Scientific Reports. Participants may also propose witnesses for commission counsel to call during the hearings to support, challenge, or comment upon the Scientific Reports.

31. The Scientific Reports will not necessarily represent the views of the Commissioner but are intended to inform the Commissioner’s deliberations. The Scientific Reports will be posted on the commission’s website. The Commissioner may consider the Scientific Reports to make findings of fact and recommendations.

## F. PUBLIC INVOLVEMENT

32. Any member of the public and any participant may make a submission, in writing, to the commission dealing with any matter related to the commission’s mandate.

33. The Commissioner may set deadlines by which submissions must be received, and may set requirements for the format of such submissions.

34. The Commissioner may convene public forums relating to the subject matter of the inquiry. The format of any public forums will be tailored to the topics discussed, and may vary.

35. The Commissioner will determine whether, and on what terms, persons who have made a written submission and other members of the public may participate in any public forums that are convened.

36. Any public forums held may be recorded at the discretion of commission counsel.

37. The commission may post submissions received and recordings made through the public involvement process on the commission's website (the "Public Submissions"). The Public Submissions will not necessarily represent the views of the Commissioner.

38. The commission may provide an opportunity for participants to comment on the Public Submissions. The Commissioner may consider the Public Submissions to make findings of fact and recommendations.

#### G. HEARINGS

39. The Commissioner will conduct hearings as set out in these Rules.

40. The Commissioner will set dates, hours and places for the hearings, and will publish this information on the commission's website.

41. The Commissioner may receive any evidence that he considers helpful in fulfilling the mandate of the commission whether or not such evidence would be admissible in a court of law.

42. Once final, any Policy and Practice Reports and any Scientific Reports are exhibits before the Commissioner, without the necessity of being introduced into evidence through a witness.

43. The Commissioner may consider findings, as he considers appropriate, of other examinations or investigations that may have been conducted into any of the questions set out in paragraph (a) of the Terms of Reference, and to give them the weight he considers appropriate, including accepting them as conclusive.

#### Public and Media Access to Hearings

44. Commission hearings are open to the public unless the Commissioner makes an order prohibiting a person, class of persons or the public from attending a hearing if the Commissioner is satisfied that such an order is appropriate.

45. The Commissioner may order that testimony and/or submissions not be published.

#### Video and Audio Recordings

46. The Commissioner may impose restrictions on the video and audio recording of the hearings by the public or media and may, on application, order that there be no video or audio recording of some or all of a witness's testimony or of the proceedings.

### Witnesses

47. Commission counsel may call witnesses to give evidence on any matter relevant to the Terms of Reference, or to support, challenge, or comment upon the Policy and Practice Reports and the Scientific Reports.
48. In the normal course, a witness will give evidence at a hearing under oath or upon affirmation. However, in special circumstances and on application by a witness, the Commissioner may admit evidence not given under oath or affirmation.
49. Commission counsel may issue and serve a subpoena or summons upon a witness.
50. A witness may be called more than once.
51. A witness is entitled to have his or her own counsel appear before the Commissioner while the witness testifies.
52. Participants may propose witnesses to be called as part of the inquiry. Participants will provide commission counsel, in a timely way, the names, addresses, telephone numbers and email addresses if known, of all witnesses they believe the Commissioner ought to hear. If possible, participants will provide statements of the anticipated evidence of the proposed witnesses and copies of the documents relevant to the witness's testimony, including those to which they would refer.
53. Commission counsel may decline to call a witness proposed by a participant. If the participant believes that the witness's evidence is necessary, the participant may apply, in compliance with Part H of these Rules, to the Commissioner for an order that commission counsel call that witness.

### Oral Examination

54. In the normal course, commission counsel will call and lead the witnesses who testify before the commission. Unless the Commissioner determines otherwise, commission counsel are entitled to adduce evidence through leading questions.
55. Counsel for a participant or witness may apply, in compliance with Part H of these Rules, to the Commissioner to lead a particular witness's evidence. If counsel is granted the right to do so, examination shall be confined to the normal rules governing the examination of one's own witness in court proceedings, unless otherwise directed by the Commissioner.

56. The Commissioner will determine the order and extent of cross-examination by each participant, and may direct counsel for a participant having common interests with the witness to adduce evidence through non-leading questions.

57. Unless the Commissioner orders otherwise, the order of examinations of a witness will be as follows:

- (a) Commission counsel will lead the witness in direct examination;
- (b) Counsel for the witness will examine the witness;
- (c) Counsel for participants will cross-examine the witness;
- (d) Counsel for the witness will re-examine the witness; and
- (e) Commission counsel will re-examine the witness.

58. If counsel for a witness applies for and is granted the right to lead a witness in direct examination, commission counsel will examine the witness immediately following direct examination. The order of re-examination remains as set out in Rule 57.

59. Counsel who calls a witness, whether commission counsel or otherwise, will provide reasonable notice in writing to the commission and participants with an interest, of the subject matter of the proposed evidence of the witness.

60. A document may not be put to a witness unless it has previously been provided to commission counsel.

61. Before using a document for purposes of cross-examination, counsel shall provide reasonable notice to the witness and to all participants having an interest in the subject matter of the proposed evidence.

62. For the purpose of these Rules, the Commissioner has discretion to determine, as to both timeliness and content, what constitutes reasonable notice, and whether the introduction of subject matter or a document to a witness should be denied, allowed, or allowed on terms that he considers fair.

#### Panels of Witnesses

63. The Commissioner may permit a witness to give evidence as a member of a panel of witnesses and may modify these Rules to accommodate the introduction of documents and oral examination where witnesses are testifying as part of a panel.

## H. APPLICATIONS

64. Rules 65 to 72 do not apply to applications for standing or to applications for funding recommendations. Applications for standing or funding are governed by the Rules for Standing and Funding.

65. A participant may apply to the Commissioner for an order or direction by delivering an application, together with all supporting materials required to allow for a full consideration of the application, including any necessary affidavits, to the commission.

66. All applications and responses to applications shall be delivered to the commission by email addressed to applications@cohencommission.ca and shall be provided in Microsoft Word or .pdf format. The subject line of the email delivering an application must read, "Application Re: [insert the subject of application]."

67. The commission shall promptly, by email, deliver to each participant who has provided the commission with an email address for delivery all materials received by the commission, or generated by commission counsel, pursuant to Rules 65, 69, 70, and 71.

68. Participants are entitled to respond to a Rule 65 application where their grant of standing identifies them as having an interest in the subject matter of an application.

69. Unless otherwise directed by the Commissioner, responses to a Rule 65 application shall be delivered to the commission no later than 3 business days following delivery of the application to participants by the commission.

70. Unless otherwise directed by the Commissioner, the applicant shall deliver any reply submissions to the commission no later than 3 business days following delivery of any responses to the commission.

71. Commission counsel may provide the Commissioner with any submissions or materials commission counsel deem relevant and necessary to the proper resolution of the application.

72. The Commissioner may make an order or direction based on the written material filed or, at his discretion, after hearing oral argument.