

**INTERIM RULING RE: R. 19 APPLICATION FOR
PRODUCTION OF AQUACULTURE HEALTH RECORDS**

1. Pursuant to Rule 18 of the commission's rules of procedure and practice, two participant groups, the Conservation Coalition and the Aquaculture Coalition (the "applicants"), sought to have commission counsel request copies of the following documents from the Province of British Columbia, the Government of Canada, and the British Columbia Salmon Farmers' Association ("BCSFA") (the "respondents"):

- i. Documents in the possession or control of the Department of Fisheries and Oceans, the Canadian Food Inspection Agency, Environment Canada and/or any other federal department relating to the occurrence of, monitoring of, and response to pathogens, including sea lice and disease (in particular, infectious hematopoietic necrosis virus, bacterial kidney disease, infectious salmon anemia and furunculosis) in wild salmon stocks. Included in the document request are any documents submitted to the World Organization for Animal Health relating to disease in salmon in British Columbia waters in compliance with reporting obligations to that organization;
- ii. Documents in the possession or control of the federal government (particularly DFO), and the provincial government (particularly the Ministry of Agriculture and Lands and the Ministry of Environment and their respective predecessors), relating to fish health, mortality and the occurrence of, monitoring of and response (including treatment, enforcement, and authorizations) to pathogens, including sea lice and disease (in particular infectious hematopoietic necrosis virus, bacterial kidney disease, infectious salmon anemia and furunculosis) in finfish aquaculture facilities;

- iii. Documents in the possession or control of the BCSFA relating to fish health, mortality, and the occurrence of, monitoring of and response (including treatment, enforcement, and authorizations) to pathogens, including sea lice and disease (in particular infectious hematopoietic necrosis virus, bacterial kidney disease, and furunculosis) in finfish aquaculture facilities; and
- iv. Documents in the possession or control of the BCSFA relating to the stocking of finfish aquaculture facilities including: number of fish, species, location, dates of entry into facility and harvesting or mortality, as well as age-class.

2. On August 19, 2010 commission counsel wrote to the respondents requesting the documents proposed by the applicants, but limited to the period 2004–2009, and to 21 identified fish farms. This limitation was based on commission counsel's assessment of the material available to them at that time, and of the relevance and necessity of the requested documents. In limiting the requests, commission counsel advised that they were attempting to balance the following competing considerations:

- This is a public inquiry which should permit a full public examination of the issues arising in the terms of reference.
- The Commissioner is to investigate and make findings of fact regarding the causes for the decline of Fraser River sockeye.
- There is a lively public debate surrounding aquaculture and its impact, if any on the Fraser River sockeye.
- The terms of reference explicitly list aquaculture as a potential cause for decline that the Commissioner shall investigate (cl. A(i)(C)(i))
- The Commissioner has granted participant status to organizations that focus exclusively on aquaculture issues (such as the Aquaculture Coalition and the BCSFA). There will be hearings addressing this topic in order to permit the Commissioner to investigate and make findings

of fact and if warranted to make recommendations for improving the future sustainability of the sockeye salmon fishery.

- Counsel's assessment of what documents are relevant and necessary must strike a balance between (1) ensuring a full and informed investigation of the issue, and (2) avoiding a prolonged and tangential review of the documents with little or no connection to the commission's work.
- Documents produced to the commission do not enter the public domain, but are provided to participants on the basis of undertakings of confidentiality which ensure they cannot be used for purposes beyond the commission (see Rule 17).

3. The respondents support the request made by commission counsel (21 identified fish farms for a five year period), with one qualification: the respondent BCSFA asks that I consider ordering that its documents be produced on an aggregate basis. Moreover, this respondent resists the application on the basis that the order sought for a broader time frame and additional fish farms would have the effect of making the work of the commission on this issue unmanageable and greatly delay disclosure, thus prejudicing the inquiry process and the public interest.

4. The respondent Canada supports the document request made by commission counsel. It takes no position on the geographic scope of production but asserts that the five year time period is consistent with the initial approach this respondent and commission counsel settled upon for its document production.

5. The respondent Province supports commission counsel's request, and raises concerns regarding the practicality of extending the request further back in time.

6. The participants, Area D Gillnetters Association/Area B Seine Society and the Heiltsuk Tribal Council, both filed written submissions supporting the applicants' position.

7. At the hearing, counsel for the respondent Province said that this respondent would be in a position to produce the documents sought by commission counsel within two weeks. Thus I order that this respondent's documents be produced forthwith.

8. Counsel for the respondent BCSFA said at the hearing that this respondent, if ordered, could produce the documents sought by commission counsel forthwith. Thus I order that the documents sought from this respondent be produced forthwith. I also order that this respondent produce the documents in the form requested by commission counsel as I am not persuaded that providing the documents only in the aggregate as proposed by this respondent will be sufficient.

9. With respect to the respondent Canada, it is engaged with the commission in an extensive document production process. As such I will not make a similar order with respect to the timing of the production of the documents. I would, however, ask that this respondent provide the documents to the commission counsel at the earliest possible date, but without causing undue disruption to the broader process of document production. Thus I order that this respondent advise commission counsel within one week of the date of this ruling of its estimate of time for delivering the documents sought by commission counsel. The other respondents, the applicants and commission counsel have liberty to seek directions from me if the respondent Canada's estimate of time for delivery of the documents is considered by any of them to prove problematic.

10. I should add that it has been brought to my attention since the date of the hearing that some of the fish farms identified by commission counsel may not

have been stocked during the relevant time period. In this respect, my order only requires production of documents to the extent that they exist.

11. Finally, while I am satisfied that the material filed by the applicants and respondents necessitates my consideration of the limitation placed by commission counsel on the documents sought by the applicants, I have concluded that I need some further evidence before issuing my ruling.

12. In my consideration of the temporal and geographic limits to be applied to the requested documents, I intend to apply the principles adopted by commission counsel reproduced at paragraph 2, in particular, that I must strike a balance between ensuring a full and informed investigation of the issues while avoiding a prolonged and tangential review of the documents with little or no connection to the commission's work.

13. While I heard submissions of counsel regarding the impact the order sought might have on the respondents and the conduct of this inquiry, some of these submissions were not supported by evidence.

14. In this regard, I invite counsel for the respondents to provide me with additional evidence addressing any hardship that would be occasioned by the collection and production of a broader set of documents than that now sought by commission counsel.

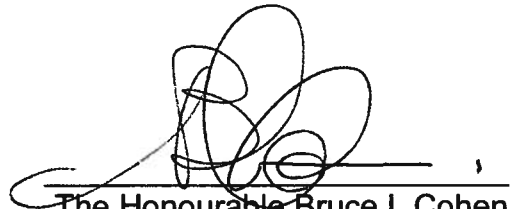
15. Further, I invite counsel for the applicants, the respondents and the commission to provide me with evidence addressing any consequences in terms of timeliness and cost associated with the analysis and presentation of the evidence on this topic which may flow from me ordering a broader production of documents than that now sought by commission counsel.

16. Such additional evidence may be delivered to the commission by 4:00 p.m. Monday November 1, 2010. The commission shall promptly distribute the

evidence to all participants. Supplemental written submissions from the applicants, respondents, participants or commission counsel may be delivered to the commission by 4:00 p.m. Monday November 8, 2010.

17. It should be noted that all documents disclosed to participants are subject to an undertaking of confidentiality and all counsel shall abide by this undertaking and ensure that their clients understand the limited use to which the disclosed documents may be put.

Signed 20 October 2010



The Honourable Bruce I. Cohen
Commissioner