

Clerk of the Privy Council and
Secretary to the Cabinet



Greffier du Conseil privé et
Secrétaire du Cabinet

Ottawa, Canada
K1A 0A3

February 28, 2012

The Honourable Bruce Cohen
Commissioner
Commission of Inquiry into the Decline
of Sockeye Salmon in the Fraser River
Suite 2800, PO Box 11530
650 West Georgia Street
Vancouver, British Columbia
V6B 4N7

Dear Commissioner Cohen:

I write in response to your letter of January 24, 2012, in which you set out your recommendations to modify the funding for a number of participants under the Contribution Program.

I note that the majority of the additional resources you have recommended flow from your decision to hold a third day to assess concerns raised about the possible presence of the ISA virus on the British Columbia coast. I also note that you have proposed additional funding for the Aquaculture Coalition, given its important role in this aspect of your work.

I note these recommendations are consistent with the terms and conditions of the Contribution Program and are in keeping with your decision to hold additional hearings on the ISA issue in December 2011.

When I wrote in December 2011, the Contribution Program was over-committed by approximately \$210,548. To accept your recent recommendations would be to over-commit the Program by approximately \$306,530. As I have emphasized before, the current fiscal context means the ability to identify additional funding is quite limited.

That said, the experience of previous fiscal years suggests that it is unlikely that all participants will expend the allocated amounts. I also note your remark that you anticipate that this will be your last recommendation on the Contribution Program, now that the hearings are fully completed.

In light of this, and my remarks on the overall budget set out in my letter of December 2011, I am prepared to approve your recommendations. I would ask that your staff continue to work closely with my staff in identifying any further efficiencies and economies, so as to respect the budget to the fullest extent possible.

I wish you well in your important work.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Wayne G. Wouters". The signature is fluid and cursive, with the first name "Wayne" and last name "Wouters" clearly legible.

Wayne G. Wouters



January 24, 2012

Via Facsimile: 613-957-5729

Mr. Wayne G. Wouters
Clerk of the Privy Council and Secretary to the Cabinet
Privy Council Office
Office of the Clerk of the Privy Council and Secretary to the Cabinet
Langevin Block, 80 Wellington Street
Ottawa, Ontario, K1A 0A3

Dear Mr Wouters:

Re: Contribution Program – Recommendation for funding related to ISAv hearings

On 12 May 2010 (as amended 19 May 2010), I recommended that certain participant standing groups be granted funding for legal fees in order to participate in the Inquiry (the "Initial Recommendation"). On 9 June 2010, you advised that the Government of Canada had granted funding as I had recommended, in accordance with the terms and conditions of the Treasury Board Contribution Program, to a maximum limit of \$3,423,200. During the 2010-2011 fiscal year, I recommended, and the Government of Canada approved, some adjustments to the Initial Recommendation in respect of a few participant groups, none of which resulted in an increase in cost to the Contribution Program.

On 8 March 2011, I recommended further adjustments under the Contribution Program for the past fiscal year (2010 – 2011), as well as additional funding for the current fiscal year (2011 – 2012). You advised that the Government of Canada had granted funding as I had recommended.

Since March 2011, I have recommended some adjustments or additions in relation to various participants for the 2011-2012 fiscal year. Most recently, on 21 November 2011, I recommended additional funding specifically for the planned two days of hearings on the topic of ISAv (infectious salmon anemia virus). These requests have been approved.

I am grateful for the Contribution Program enabling the work of counsel before the Inquiry.

Additional funding for ISAv hearings

The hearings on ISAv were scheduled after the completion of the Inquiry's evidentiary hearings as a result of new information in the fall concerning tests for ISA virus in wild pacific salmon, and the government's response. Two days were initially scheduled for these hearings and I recommended funding on that basis. I later agreed with commission counsel's request that I convene for a third day of evidence given the significance of testing conducted by Dr. Kristi Miller, disclosed to commission counsel by Canada after 21 November, 2011 and in order to hear from two panels of experts (one on the testing results, another on the government's response).

On 15, 16 and 19 December, 2011, those hearings took place. They have now concluded, and participants have made their final submissions in relation to the ISAv evidence.

Barring any unexpected developments, I expect this to be my last funding recommendation for participants' counsel.

In my letter of 21 November 2011, I recommended that all currently funded participants with standing on issues of disease or aquaculture be granted further funds to cover the costs of legal counsel for two days of hearings, including preparation time. I recommended funding (with two exceptions) for 10 hours of time for counsel's attendance at hearings. For preparation time, I recommended 23 hours of time for senior counsel and 27 hours for junior counsel. In addition, I recommended additional time for preparation of supplementary final submissions (5 hours each for senior and junior counsel). I also recommended a 3% increase in disbursement and travel allowances for the 2011-2012 fiscal year. These recommendations were approved.

Since making that recommendation, the hearings were expanded to add the additional day of evidence, which meant both additional hearing time and additional preparation time for participants' counsel. Also, the hearing days were longer than the usual 5 hours per day. My calculation is that the total hearing hours in December, 2011 was 17.25 hours as opposed to the 10 hours that was scheduled when I made my recommendation of 21 November, 2011. Using the additional 7.25 hours, the difference between actual time and my previous recommendation, and the existing ratio 4:1 of preparation to attendance, I am recommending supplementary funding as follows for participants with standing on the ISAv issue:

Attendance at hearing: 7.25 hours for senior counsel. There are two exceptions to this. I have previously ruled that exceptional circumstance exist for the First Nations Coalition to have two paid counsel attend hearings. I permitted the Conservation Coalition to claim legal fees for two counsel to attend the ISAv hearings. This group's senior counsel, Mr. Leadem, was unavailable to attend and I approved to them to have a substitute senior counsel attend and their junior counsel assist.

Preparation time: 29 hours – 10 hours for senior counsel and 19 hours for junior counsel.

The participants with standing for the ISAv hearings are Aquaculture Coalition, Conservation Coalition, Area D Salmon Gillnet Association and Area B Harvest Committee, First Nations Coalition, Sto:lo Tribal Council and Cheam Indian Band, Laichkwil-tach Treaty Society, Chief Sewid and Aboriginal Aquaculture Association and Msgagmagw Tsawataineuk Tribal Council. Counsel for Heiltsuk Tribal Council did not attend the ISAv hearings and I am therefore not recommending additional funding for them.

In addition to the above, some participants sought funding for ISAv hearings beyond what this recommendation would permit. I have considered those requests carefully, and have concluded as follows:

1. The Aquaculture Coalition seeks additional funding for 150 hours. This is a significant request and goes beyond the funding I am recommending for other participants. There is, however, a compelling rationale for some additional funding. The Aquaculture Coalition and Alexandra Morton, were centrally involved both in the events leading up to the ISAv hearings in December, 2011, and also in those hearings. In some respects this participant group was, along with government agencies, most implicated with the events surrounding testing for ISAv in relation to Pacific salmon. Counsel for the Aquaculture Coalition played a central role in the hearings as well, as became apparent when various participants “donated” allotted cross-examination time to their senior counsel, Mr. McDade, Q.C. Furthermore, there were applications and issues outside of the evidentiary hearings that necessitated this participant’s involvement.

However, funding for counsel is not without limits, and this participant group has previously received additional funding beyond that afforded to other participants. In the circumstances, while I see merit to the request made, I am not prepared to recommend the full 150 hours sought by this group. I am prepared to recommend 100 additional hours. The total supplement is 136.25 hours - 67.25 hours for senior counsel and 69 hours for junior counsel.

2. The First Nations Coalition has sought a reallocation of hours between counsel, primarily transferring hours from senior counsel to junior counsel. Their request results in more hours than we proposed but at a slightly lower dollar total, due to the difference in hourly rates between senior and junior counsel. I am prepared to make the recommendations sought.
3. The Sto:lo Tribal Council and Cheam Indian Band seek both an additional 28.8 hours of counsel time, and a reallocation of counsel time. This participant group

has two junior counsel but no senior counsel, so the reallocation involves “moving” time from one junior to another. The requested additional time — when coupled with the reallocation, taking into account a small difference in the hourly rates of the two junior lawyers, and bearing in mind the overall allocation for this participant group — results in a reduced funding level for this participant. This is a recommendation I am prepared to make.

Supplementary request for funding recommendations

Not related to the ISAv hearings, the BC Wildlife Federation and BC Federation of Drift Fishers seek a reallocation of hours between counsel resulting in a very slight decrease to their funding level, due to the difference in hourly rates. The reallocation is a deduction of 308.5 hours from junior counsel and an increase of 141 hours for senior counsel. In the circumstances of this group, given senior counsel’s role in the hearings, and given that there is no additional cost for the change sought, I am prepared to make this recommendation.

I enclose tables setting out the recommended changes for each affected participant group, as well as the “Supplementary Recommendation for Recipient Funding Checklists” for each group.

I look forward to your reply concerning this recommendation.

Sincerely,



Bruce I. Cohen
Commissioner

Enclosures

Note: The financial details for each recipient in the Commissioner's supplementary recommendation for funding approved by the Privy Council Office are not included here to protect the confidentiality attaching to the financial information of the applicants for funding. The following tables, however, summarize the number of counsel hours underlying the approved recommendation for each participant.

Revised February 28, 2012 – Approval of January 24, 2012 Recommendation**Aquaculture Coalition, SALM-CA-08****Fiscal Year 2010/11**

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearings; Interviews; Meetings and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	103	373
Attendance at hearing	51	17
Application for Standing	10	0
Release of interim report	5	0
Release of final report	0	0
Total:	169	390

Fiscal Year 2011/12

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	327	401
Attendance at hearing	121.25	31
Release of interim report	0	0
Release of final report	0	0
Total:	448.25	432

Fiscal Year 2012/13

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	0	0
Attendance at hearing	0	0
Release of interim report	0	0
Release of final report	5	0
Total:	5	0

**Revised February 28, 2012 – Approval of January 24, 2012 Recommendation
Conservation Coalition, SALM-CA-09**

Fiscal Year 2010/11

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearings; Interviews; Meetings and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	325	925
Attendance at hearing	195	105
Application for Standing	10	0
Release of interim report	5	0
Release of final report	0	0
Total:	535	1030

Fiscal Year 2011/12

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	415	1124
Attendance at hearing	243.25	139.25
Release of interim report	0	0
Release of final report	0	0
Total:	658.25	1263.25

Fiscal Year 2012/13

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	0	0
Attendance at hearing	0	0
Release of interim report	0	0
Release of final report	5	0
Total:	5	0

**Revised February 28, 2012 – Approval of January 24, 2012 Recommendation
Area D Salmon Gillnet Association and Area B Harvest Committee (Seine), SALM-CA-10
Fiscal Year 2010/11**

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearings; Interviews; Meetings and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	416	573
Attendance at hearing	187	65
Application for Standing	10	0
Release of interim report	5	0
Release of final report	0	0
Total:	618	638

Fiscal Year 2011/12

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	369	716
Attendance at hearing	165.25	75
Release of interim report	0	0
Release of final report	0	0
Total:	534.25	791

Fiscal Year 2012/13

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	0	0
Attendance at hearing	0	0
Release of interim report	0	0
Release of final report	5	0
Total:	5	0

**Revised February 28, 2012 – Approval of January 24, 2012 Recommendation
 BC Wildlife Federation & BC Federation of Drift Fishers, SALM-CA-13
 Fiscal Year 2010/11**

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearings; Interviews; Meetings and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	169	457
Attendance at hearing	94	50
Application for Standing	10	0
Release of interim report	5	0
Release of final report	0	0
Total:	278	507

Fiscal Year 2011/12

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	294	279.5
Attendance at hearing	152	0
Release of interim report	0	0
Release of final report	0	0
Total:	446	279.5

Fiscal Year 2012/13

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	0	0
Attendance at hearing	0	0
Release of interim report	0	0
Release of final report	5	0
Total:	5	0

Revised February 28, 2012 – Approval of January 24, 2012 Recommendation

First Nations Coalition, SALM-CA-16

Fiscal Year 2010/11

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearings; Interviews; Meetings and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	601	1356
Attendance at hearing	300	300
Application for Standing	40	0
Release of interim report	5	0
Release of final report	0	0
Total:	946	1656

Fiscal Year 2011/12

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	773.5	1815
Attendance at hearing	325.50	406.75
Release of interim report	0	0
Release of final report	0	0
Total:	1099	2221.75

Fiscal Year 2012/13

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	0	0
Attendance at hearing	0	0
Release of interim report	0	0
Release of final report	5	0
Total:	5	0

Revised February 28, 2012 – Approval of January 24, 2012 Recommendation

Sto:lo Tribal Council and Cheam Indian Band, SALM-CA-18

Fiscal Year 2010/11

Activity	Hours for Junior Counsel #1	Hours for Junior Counsel #2
Preparation for hearings; Interviews; Meetings and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	463	464
Attendance at hearing	110	109
Application for Standing	10	10
Release of interim report	5	0
Release of final report	0	0
Total:	588	583

Fiscal Year 2011/12

Activity	Hours for Junior Counsel #1	Hours for Junior Counsel #2
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	848.5	352.9
Attendance at hearing	145.25	116.4
Release of interim report	0	0
Release of final report	0	0
Total:	993.75	469.3

Fiscal Year 2012/13

Activity	Hours for Junior Counsel#1	Hours for Junior Counsel #2
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	0	0
Attendance at hearing	0	0
Release of interim report	0	0
Release of final report	0	5
Total:	0	5

**Revised February 28, 2012 – Approval of January 24, 2012 Recommendation
 Laich-kwil-tach Treaty Society, Chief Harold Sewid & Aboriginal Aquaculture Association
 SALM-CA-19**

Fiscal Year 2010/11

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearings; Interviews; Meetings and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	176	530
Attendance at hearing	108	56
Application for Standing	30	0
Release of interim report	5	0
Release of final report	0	0
Total:	319	586

Fiscal Year 2011/12

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	242	666
Attendance at hearing	143.25	65
Release of interim report	0	0
Release of final report	0	0
Total:	385.25	731

Fiscal Year 2012/13

Activity	Hours for Senior Counsel	Hours for Junior Counsel
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	0	0
Attendance at hearing	0	0
Release of interim report	0	0
Release of final report	5	0
Total:	5	0

Revised February 28, 2012 – Approval of January 24, 2012 Recommendation

Musgagmagw Tsawataineuk Tribal Council, SALM-CA-20

Fiscal Year 2010/11

Activity	Hours for Junior Counsel	Hours for Junior Counsel
Preparation for hearings; Interviews; Meetings and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	203	111
Attendance at hearing	43	23
Application for Standing	10	0
Release of interim report	5	0
Release of final report	0	0
Total:	261	134

Fiscal Year 2011/12

Activity	Hours for Junior Counsel	Hours for Junior Counsel
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	344	108
Attendance at hearing	77.25	17
Release of interim report	0	0
Release of final report	0	0
Total:	421.25	125

Fiscal Year 2012/13

Activity	Hours for Junior Counsel	Hours for Junior Counsel
Preparation for hearing; Interviews, Meeting and other occasions deemed necessary by the Commissioner; Preparation of submissions; Review of materials	0	0
Attendance at hearing	0	0
Release of interim report	0	0
Release of final report	5	0
Total:	5	0