

# Cohen Commission Ruling on Standing

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## I. Background

1. On 5 November 2009 the Governor in Council issued an Order in Council setting out the Terms of Reference for the Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River. I was appointed Commissioner under Part 1 of the *Inquiries Act*, R.S.C. 1985, c. I-11.

2. The current ruling, the first of the commission, deals with applications for standing from persons who wish to formally participate in the commission's public hearing process. Some applicants have also applied for funding under the Privy Council's contribution program. The applications for funding are not addressed in this ruling but will be the subject of a separate ruling.

## II. The Subject Matter of the Inquiry

3. The preamble of Order in Council PC 2009-1860 (the “Terms of Reference”) states that the commission’s goals are to identify the reasons for the decline and the long term prospects for Fraser River sockeye salmon stocks, and to determine whether changes need to be made to fisheries management policies, practices and procedures.
4. The Terms of Reference direct me to inquire into the decline of sockeye salmon in the Fraser River as follows:

Therefore, Her Excellency the Governor General in Council, on the recommendation of the Prime Minister, hereby

- a. directs 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 (the “Inquiry”), which Commission shall
  - i. direct the Commissioner
    - A. to conduct the Inquiry without seeking to find fault on the part of any individual, community or organization, and with the overall aim of respecting conservation of the sockeye salmon stock and encouraging broad cooperation among stakeholders,
    - B. to consider 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 of stocks, forecasting and enforcement,
    - C. to investigate and make independent findings of fact regarding
      - I. the causes for the decline of Fraser River sockeye salmon including, but not limited to, 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, and
      - II. the current state of Fraser River sockeye salmon stocks and the long term projections for those stocks, and
    - D. to develop recommendations for improving the future sustainability of the sockeye salmon fishery in the Fraser River including, as required, any changes to the policies, practices and procedures of the Department in relation to the management of the Fraser River sockeye salmon fishery ...

5. Clause a.vi. of the Terms of Reference also authorize the Commissioner “to adopt any procedures and methods that he may consider expedient for the proper conduct of the Inquiry, to sit at any times and in any places in Canada that he decides and to conduct consultations in relation to the Inquiry as he sees fit.”

### **III. The Meaning of Standing**

6. Clause a.ix. of the Terms of Reference authorize “the Commissioner to grant, to any person who satisfies him that they have a substantial and direct interest in the subject matter of the Inquiry, an opportunity for appropriate participation in it.”

7. In accordance with the Terms of Reference, I have adopted Rules for Standing and Funding which, as amended, provide in part as follows:

5. The Commissioner may amend these Rules or dispense with their compliance as he deems necessary to ensure that the inquiry is thorough, fair and timely.

...

9. Commission counsel, who will assist the Commissioner to ensure the orderly conduct of the inquiry, and the Government of Canada\_ have standing throughout the inquiry.

10. 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.

11. The Commissioner may grant a person standing if he is satisfied that the person has a substantial and direct interest in the matters investigated in the inquiry or portions thereof.

12. In these Rules, persons with standing are referred to as “participants.”

13. 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.

14. To apply for standing, a person must submit a written application to the Commissioner by 4 p.m. on 10 March 2010. An application should demonstrate why the person has a substantial and direct interest in the subject matter of the inquiry and outline how the applicant proposes to contribute to the inquiry. Guidelines for application format and delivery will be posted on the commission website: [www.cohencommission.ca](http://www.cohencommission.ca).

15. The Commissioner will determine the outcome of applications for standing on the basis of written applications, unless the Commissioner determines that an oral hearing is necessary. Any oral hearings conducted on standing will take place on 23-24 March 2010 at the Federal Court, 8<sup>th</sup> floor, 701 West Georgia Street, Vancouver, B.C., and on such other dates as the Commissioner may determine.

16. Where persons have shared interests in the subject matter of the inquiry, they should make a single application for standing, identifying those persons whose interests are reflected in the application.

17. The Commissioner may direct that a number of applicants share in a single grant of standing.

8. Formal involvement in the commission's public hearings is restricted to participants. A participant is a person who makes an application for standing and who has satisfied me that it has a substantial and direct interest in the subject matter of the inquiry and who has been granted standing.

9. Participants are entitled to be self-represented or represented by counsel at the public hearings; propose witnesses to be called by commission counsel; review documents disclosed by the Department of Fisheries and Oceans ("DFO") and other participants; and make oral and written submissions. They may also be involved in evidentiary hearings by examining or cross-examining witnesses. Participants will be expected to make full disclosure to the commission of documents in their possession relevant to the subject matter of the inquiry.

10. Persons who do not receive a grant of standing may become involved in several ways; for example, by submitting written comments to the commission about any matter relevant to the Terms of Reference, submitting written comments or suggestions to the commission in response to scientific or policy reports posted on the commission's website, and attending the formal public hearings.

11. This is an inquiry, not an adversarial process with traditional parties or litigants. As such I will rely on commission counsel to assist me throughout the inquiry. The Rules for Standing and Funding reflect commission counsel's role in representing the public interest and ensuring that matters that bear upon the public interest are brought to my attention.

## IV. A Substantial and Direct Interest: The Relevant Considerations for Standing

12. No precedent or single authority exists in this country to determine with precision what constitutes a “substantial and direct interest in the subject matter of the inquiry.” Professor Ed Ratushny writes: “Obviously, the interest must be measured against the terms of reference, which represent the ‘subject matter’.” He also notes the “many diverse rulings on standing left by past commissions”, and comments: “Beyond all of these approaches is an overarching discretion on the part of a commissioner to grant standing or participation in a variety of ways.” (Ed Ratushny, *The Conduct of Public Inquiries: Law, Policy and Practice* (Toronto: Irwin Law Inc., 2009) at pp. 187-191.)

13. Some commissions have interpreted the phrase “substantial and direct interest” to refer to persons who have a legal, property or reputational stake in the matter of the inquiry. Commissioner Gomery in the Commission of Inquiry into the Sponsorship Program and Advertising Activities stated it this way:

What constitutes "a substantial and direct interest in the subject matter of the Inquiry"? Based upon what has been decided in comparable cases, the interest of the applicant may be the protection of a legal interest in the sense that the outcome of the Inquiry may affect the legal status or property interests of the applicant, or it may be as insubstantial as the applicant's sense of well-being or fear of an adverse effect upon his or her reputation. Even if such a fear proves to be unfounded, it may be serious and objectively reasonable enough to warrant party or intervenor standing in the Inquiry. What does not constitute a valid reason for a participant's standing is mere concern about the issues to be examined, if the concern is not based upon the possible consequences to the personal interests of the person expressing the concern. As was stated by Campbell J. in *Range Representative on Administrative Segregation Kingston Penitentiary v. Ontario* (1989), 39 Admin. L.R. at p. 13, dealing with a coroner's inquest:

Mere concern about the issues to be canvassed at the inquest, however deep and genuine, is not enough to constitute direct and substantial interest. Neither is expertise in the subject matter of the inquest or the particular issues of fact that will arise. It is not enough that an individual has a useful perspective that might assist the coroner.

This extract was cited with approval by Mr. Justice O'Connor in his Ruling dated May 4, 2004 in the context of the Arar Commission of Inquiry.

This having been said, it is not possible to enumerate an exhaustive list of the factors to be taken into consideration when determining whether an applicant's interest is sufficiently substantial and direct to the subject matter of the Inquiry. The Terms of Reference, in stating that the Commissioner

must be satisfied that an applicant has such an interest, leave me with a certain degree of discretion, which must be exercised judiciously, to decide which persons or groups shall be authorized to participate, and to what degree.

[Emphasis added.]

14. In this inquiry, the Terms of Reference task me with considering a broad array of issues: science, the law, government management, aboriginal rights, history, and the environment, just to name a few. The Terms of Reference direct an inquiry addressing broad policy issues of wide concern to many members of the public. In addition, although the Terms of Reference suggest a focus on the most recent sockeye salmon returns in the Fraser River, this is not a commission of inquiry arising from a single factual incident. As a result, I view it as appropriate, and necessary, for this commission to hear from a wide range of voices.

15. In order to guide my determination of whether an applicant has a substantial and direct interest in the subject matter of the inquiry, I have reviewed the applications in the context of certain relevant considerations, including those which were set out in the Notice of Standing as follows:

- the nature and extent of the applicant's rights or interest;
- why standing is necessary to protect or advance the applicant's rights or interest;
- whether the applicant faces the possibility of adverse comment or criticism with respect to its conduct;
- how the applicant intends to participate, and how this approach will assist the commission in fulfilling its mandate;
- whether and how the applicant's participation will contribute to the thoroughness and fairness of hearings;
- whether the applicant has expertise and experience relevant to the commission's work;

- whether and to what extent the applicant’s perspective or interest overlaps or duplicates other applicants’; and
- whether the applicant may participate in another capacity — for example, a research body which may be otherwise consulted by the commission, or a witness who may testify — instead of being granted formal standing.

16. Additionally, the Notice of Standing made clear to applicants the following:

Where applicants have shared interests or a similar perspective in the subject matter of the inquiry, they should make a single application for standing, identifying those persons whose interests are reflected in the application. The Commissioner may make a grant of standing conditional upon such cooperation.

17. Accordingly, I have considered whether it is more appropriate for an applicant to become involved in the commission in ways other than through a grant of standing. I have also considered whether certain applicants who have satisfied me that they have a substantial and direct interest may appropriately share in a single grant of standing and collaborate in the hearings process. I am concerned that too many participants could make the process unwieldy and expensive, and impede the completion of the commission’s work. In this regard, I am heartened by the remarkable cooperation displayed by almost all applicants who were asked to consider whether they might share a grant of standing with others to permit a more manageable and efficient process for the public hearings. During the hearing process, participants may continue to find that their interests and perspectives in relation to the Terms of Reference, if not more generally, are aligned with others’, and may collaborate further so as to avoid repetition and permit efficiency in the public hearing process.

## **V. The Application Process**

18. The commission received 49 written applications for standing by the deadline of 10 March 2010. One late application was received, for a total of 50 applications for standing. This number is significantly greater than for other federal commissions of inquiry. For example, the Commission of Inquiry into the Investigation of the Bombing

of Air India Flight 182 received 21 applications for standing; the Commission of Inquiry into the Sponsorship Program and Advertising Activities attracted a total of 15 applications for standing, as did the Internal Inquiry into the Actions of Canadian Officials in Relation to Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin; the Commission of Inquiry into the Actions of Canadian Officials in relation to Maher Arar received 24 applications for standing.

19. Before the current commission, three applications for standing were withdrawn. These applications were from the Pacific Salmon Foundation, the Association of Professional Biologists, and the Veins of Life Watershed Society. These applications are not discussed further.

20. After a review of the remaining applications, certain of the applicants were invited to attend a hearing before me on 23 March 2010 to supplement their written applications with oral submissions concerning their interest in the commission. Others were invited to attend a hearing before me on 26 March 2010 for the same purpose, and to state their positions on whether and how they might be able to collaborate with other applicants before the commission.

21. At the hearing on 23 March, only three of the twelve applicants who were invited to attend actually appeared and made oral submissions.

22. Thirty-one applicants were invited to attend the hearing on 26 March, and all appeared. Some of these applicants had already reached agreements to collaborate with one another in respect of their applications for standing; some were able to reach agreements to collaborate while at the hearing; and others asked for more time to consider reaching agreements to collaborate, in which case they were asked to advise commission counsel by 30 March 2010 of their position.

## **VI. Disposition of Applications for Standing**

23. In arriving at my decision on whether applicants should receive a grant of standing, I have applied the directions contained in the Terms of Reference and the considerations that I have deemed relevant for a grant of standing to the content of the



written applications, as supplemented in the case of some applicants by their oral submissions at the hearings, or written submissions following the hearings.

### ***A. Applicants Granted Participant Status***

24. The following applicants have satisfied me that they have a substantial and direct interest in the subject matter of the inquiry and should receive a formal grant of standing. In many cases, I have determined that applicants should share in a formal grant of standing as joint participants. Where I have reached this conclusion, I am satisfied that the applicants' interests in the subject matter of the inquiry (as specified below) are aligned to such an extent that it is appropriate for them to collaborate as joint participants in a single grant of standing.

25. Some of the applicants advised me that while they were willing to cooperate, or share in a single grant of standing, they might need or want to participate separately through their own counsel at some point in the inquiry proceedings. As described below, often where this concern or caution has been expressed, I have nonetheless concluded it is appropriate to accord the applicants involved a single grant of standing, to be shared among them. I have done this where I have concluded that the interests of the applicants align to such an extent that it is appropriate that they act as joint participants. In so deciding, I recognize that legitimate conflicts or differences may arise. I further observe that my present articulation of the basis for a grant of standing may, through the course of the inquiry process, require variation. The ability of joint participants to make separate written submissions may well be adequate to overcome such difficulties, but if not, the affected joint participant may apply for directions.

### **1. Recreational and Sports Fishers**

#### **B.C. Wildlife Federation and the B.C. Federation of Drift Fishers**

26. The B.C. Wildlife Federation ("BCWF") is an organization with a membership of 38,000 individuals and 130 member organizations. The BCWF purports to represent the views of sports and recreational fishers concerned about access to Fraser River sockeye and about "common property" interests in the fishery. The BCWF has participated in previous "commissions, inquiries and other resource management and review processes", and has intervened in fisheries cases related to aboriginal rights. It

indicates that it is comprised of members who have broad experience in fisheries management and habitat issues and it anticipates making submissions on “each of the issues and problems before the commission.”

27. The B.C. Federation of Drift Fishers (“BCFDF”) is a non-profit organization with a membership of approximately 1000 sports fishers and anglers. Its interests lie in sustaining a healthy and vibrant sport fishery. It offers the commission its “experience in these matters and knowledge of the situation at hand”, and “intelligent suggestions on what we believe needs to be done to properly measure fish stocks” and to enhance the stocks.

28. Although these applicants applied separately, they have indicated that they are willing to collaborate and share in a single grant of standing. In doing so, they have satisfied me that their substantial and direct interest is in environmental changes (including habitat) along the Fraser River, and the policies and practices of the DFO, in particular fisheries policies and programs, and fisheries management practices and procedures, including monitoring, counting of stocks, and enforcement, and that their interests align to such an extent that it is appropriate to direct they share in a single grant of standing.

## **2. Commercial Fisher Associations and Unions**

### **United Fishermen and Allied Workers’ Union and West Coast Trollers Area G Association**

29. The United Fishermen and Allied Workers’ Union (“UFAWU”) is a 2,000-member-strong union representing salmon fishers of all fishing gear types, fish packing vessel crews, and workers employed in the processing of salmon. The UFAWU indicates it is concerned about the economic impact that the decline in sockeye returning to spawn has had on its members and their families. It offers the commission its “important historical and practical knowledge about Fraser River salmon runs” and other information that is not available from government sources. The UFAWU describes that it has a record of participating in public salmon fisheries reviews.

30. The West Coast Trollers Area G Association (“Area G Association”) represents the interests of the commercial troll fleet off the west coast of Vancouver Island. Its

members fish in the “outside waters” (distinct from the “inside waters” closer to land) and are the only group to do so. Area G Association says up to 30 per cent of the active fleet in that area is comprised of First Nations fishers. Area G Association’s main concern is its members’ decreased allocation of sockeye and the economic consequences that this decrease has had for its members. Its application indicates that some members can no longer afford to even pay for the basic safety maintenance on their boats. Area G Association is also concerned about the health of the sockeye salmon resource. It describes its members’ experience working with First Nations as well as various salmon advisory boards and research councils.

31. These two applicants sought standing as separate participants, but have now indicated a willingness to share a single grant of standing. In doing so, they have satisfied me that their substantial and direct interest is in the policies and practices of the DFO, in particular, fisheries policies and programs and fisheries management practices and procedures including monitoring, counting of stocks, forecasting and enforcement, and that their interests align to such an extent that it is appropriate to direct that they share in a single grant of standing.

### **Area D Salmon Gillnet Association and Area B Harvest Committee (Seiners)**

32. The Area D Salmon Gillnet Association (“Area D Association”) has 127 members and represents about half of the gillnet fishers in Area D, which extends around Vancouver Island's northern part — on the eastern side from Nanaimo to the north, and on the west coast from southern Barkley Sound to the north end. Until the decline of the sockeye, the majority of Area D's sockeye originated from the Fraser River. There have been no openings for Fraser River sockeye in Area D in the past five years. Area D Association states that it has an obvious economic interest in the sockeye fishery. Area D Association also identifies its concerns about aquaculture, given the area’s proximity to the roughly 100 fish farms on the southern B.C. coast.

33. The Area B Harvest Committee represents fishers along the south coast of B.C. who fish using purse seine nets. It says it is the largest commercial user group of Fraser River sockeye; Area B's annual allocation of the Canadian commercial total

allowable catch is approximately 50 per cent. The Area B Harvest Committee says it represents the perspective of those who depend on fishing for their livelihoods, but also those who take a long-term view of the health of this iconic resource. It is particularly concerned about the DFO's "weak stock management" policy, the decreases in the DFO's budget (meaning a loss of "money towards science, which is the basis for good management"), and salmon aquaculture.

34. Although these two applicants originally applied separately, they have indicated that they are willing to collaborate and share in a single grant of standing. In doing so, they have satisfied me that their substantial and direct interest is in investigating aquaculture as a cause of sockeye decline, and the policies and practices of the DFO, in particular fisheries policies and programs, allocation of departmental resources, and fisheries management practices and procedures including monitoring, counting of stocks, forecasting and enforcement, and that their interests align to such an extent that it is appropriate to direct that they share in a single grant of standing.

### **Southern Area E Gillnetters Association and the B.C. Fisheries Survival Coalition**

35. This application comes from a coalition of two groups who are jointly represented. The Southern Area E Gillnetters Association represents 110 gillnetters in Area E, which is in the southern Gulf of Georgia, Juan de Fuca Strait, the west coast of Vancouver Island, and the tidal waters of the Fraser River. The B.C. Fisheries Survival Coalition ("BCFSC") is a non-profit organization comprised of three individuals; it conducts advocacy to promote the conservation and enhancement of Canadian Pacific fisheries. The BCFSC has made presentations to parliamentary committees, and intervened in court cases before the Supreme Court of Canada.

36. Together, these applicants assert a substantial and direct interest, given the particular dependence of Area E fishers on Fraser River sockeye, and given the significant capital assets these fishers have in the fishery (estimated at over \$30M). They note they have materials, including Access to Information requests and information obtained "from within the DFO", that they can make available to the commission.

37. The Southern Area E Gillnetters Association and the BCFSC have satisfied me that their substantial and direct interest is in the policies and practices of the DFO, in particular fisheries policies and programs, allocation of departmental resources, and fisheries management practices and procedures including monitoring, counting of stocks, forecasting and enforcement.

### **3. Environmental Organizations**

#### **Conservation Coalition and David Suzuki Foundation**

38. The Conservation Coalition, represented by Ecojustice, includes five conservation/environmental NGOs and one individual, who have collaborated to make an application for standing. The Coastal Alliance for Aquaculture Reform is focused on the effect of aquaculture on wild salmon. The Fraser Riverkeeper Society focuses on water quality and fish habitat of the Fraser River; it patrols by boat, responds to citizen complaints of pollution, and seeks enforcement of environmental laws. The Georgia Strait Alliance is a charity dedicated to protecting and restoring the marine environment, and promoting the sustainability of the Strait and its adjoining waters. The Raincoast Conservation Foundation seeks to investigate and understand coastal species and ecological pressures, and its flagship project is the Wild Salmon Program, which it says often results in peer-reviewed scientific studies. The Watershed Watch Salmon Society works to protect and restore B.C.'s wild salmon through scientific expertise, strategic alliances, and community outreach. Mr. Otto Langer is a fisheries biologist with over 30 years' experience with the DFO, who later worked for the David Suzuki Foundation.

39. These applicants indicate that they collectively have a shared interest in the conservation of Fraser River sockeye, the management of the fishery, and the sustainability and health of the ecosystems that support the species. They submit that they are leading voices on conservation based fisheries management and environmental protection; that they may face adverse criticism for their work and studies; and that they bring a unique perspective to the inquiry.

40. The David Suzuki Foundation ("DSF") is a non-profit organization dedicated to finding solutions to core environmental problems in Canada. It says Pacific salmon has been a primary concern for the DSF since 1990. It has published science-based reports

and is interested in ensuring the long-term ecological, cultural and economic viability of salmon systems. DSF asserts that it offers expertise and engagement on salmon management in the Fraser River; it has a staff with science and policy expertise; and its work in relation to Fraser River sockeye could come under comment or criticism from other participants in the inquiry.

41. The Conservation Coalition and DSF each made separate applications, yet indicated a willingness to share in a grant of standing. These applicants have satisfied me that their substantial and direct interest is in the policies and practices of the DFO with respect to Fraser River Sockeye and the causes for the decline of Fraser River sockeye, and that their interests align to such an extent that it is appropriate to direct that they share in a single grant of standing.

**Alexandra Morton, Raincoast Research Society, and Pacific Coast Wild Salmon Society**

42. This application, made on behalf of three persons, seeks limited standing for the parts of the inquiry related to aquaculture. Ms. Alexandra Morton is a registered, professional biologist who has researched the effects of fish farms on wild salmon for over a decade. She is described as being a recognized authority on the subject, cited locally and internationally in popular media and academic journals. Her professional career and reputation are closely tied to this work and she expects her research may be the subject of criticism from other participants or witnesses. The Raincoast Research Society is the society through which some of Ms. Morton's research is conducted. It has published 17 papers on the impacts of fish farms on wild salmon. The Pacific Coast Wild Salmon Society is approximately 11,700 members strong, and was set up for advocacy purposes. It and Ms. Morton describe having advanced a court case successfully challenging the constitutionality of provincial regulation of fish farms. Both are currently engaged in a private prosecution of a fish farm for unlawful possession of wild salmon.

43. These joint applicants have satisfied me that their substantial and direct interest is in whether aquaculture is a cause for the decline of Fraser River Sockeye, and the policies and practices of the DFO insofar as they relate to aquaculture.

## **4. Industry Organizations**

### **B.C. Salmon Farmers Association**

44. The B.C. Salmon Farmers Association (“BCSFA”) represents the salmon aquaculture industry. Its members include Creative Salmon, Grieg Seafood B.C. Ltd., Marine Harvest, Mainstream Canada, and West Coast Fish Culture (Lois Lake) Ltd. The BCSFA points to the commission’s Terms of Reference, which include investigating aquaculture as a possible cause of Fraser River Sockeye decline. It indicates that researchers, environmentalists and fishers have pointed to the aquaculture industry as a major cause for the decline. Accordingly, the BCSFA and its members may face adverse comment. The BCSFA indicates that the economic value of its members’ product rivals any other food production industry in B.C. Further, the BCSFA claims that its members have a substantial and direct interest in every one of the causes for decline of Fraser River sockeye because the factors affecting wild salmon also affect farmed salmon.

45. This applicant has satisfied me that its substantial and direct interest is in whether aquaculture is a cause for the decline of Fraser River Sockeye, and the policies and practices of the DFO insofar as they relate to aquaculture.

### **Seafood Producers Association of B.C.**

46. The Seafood Producers Association of B.C. (“SPABC”) represents seafood-processing interests on Canada's Pacific coast. The sector generated \$638M in 2005 and employed some 3,700 people, a third of whom are aboriginal. The SPABC states that it represents eight seafood processing companies which purchase and process the majority of the salmon caught in B.C. The SPABC says it is becoming increasingly difficult, if not impossible, for salmon to contribute to the economic success of this sector, and as a result, it is difficult for processing companies to remain economically viable. The SPABC says that while seafood processing falls under provincial jurisdiction, DFO policies and practices can have significant impact on this sector.

47. This applicant has satisfied me that its substantial and direct interest is in the policies and practices of the DFO, including fisheries policies and programs and fisheries management practices and procedures related to monitoring and enforcement.

## **Rio Tinto Alcan Inc.**

48. Rio Tinto Alcan (“RTA”) operates the Kitimat smelter and the related hydropower generation system at the Kemano Powerhouse – the reservoir of which is situated at the headwaters of the Nechako River, a tributary of the Fraser. RTA is obligated through agreements with B.C. and Canada to maintain certain water releases in the Nechako system for fisheries purposes. RTA indicates that changes in DFO management practices may affect its ability to generate power and sell it, which depends on water being diverted from the Nechako Watershed. It further notes the concern that it may be subject to adverse comment from other participants.

49. This applicant has satisfied me that its substantial and direct interest is in environmental changes along the Fraser River and other factors within the Fraser River watershed including the Nechako system which affect the ability of Fraser River sockeye to reach spawning grounds or the ocean, and the policies and practices of the DFO as they relate to these subjects.

## **5. First Nations and Aboriginal Organizations**

### **Maa-nulth Treaty Society, Tsawwassen First Nation and Musqueam Indian Band**

50. The Maa-nulth Treaty Society represents the Iluu-ay-aht, Kar’yu:k’t’h’/Che:k:tlés7et’h’, Toquaht, Uchucklesaht and Ucluelet from the Pacific coast of Vancouver Island. All of these First Nations have allocations of Fraser River sockeye for food, social and ceremonial purposes. They have a treaty with Canada and B.C. which will take effect in April of 2011. They indicate that salmon form an integral part of their culture and traditions, and that fish formed a very important part of their treaty negotiations.

51. The Tsawwassen First Nation (“TFN”) is a self-governing First Nation representing 410 Coast Salish people. Its territory is the lower Fraser and part of the Strait of Georgia. It has a final treaty agreement with the federal and provincial governments (the “TFN Treaty”). The TFN indicates that it has fished for salmon since time immemorial; fish are the cultural, social and economic fabric of the TFN. The TFN Treaty sets out its allocation of Fraser River sockeye for food, social and ceremonial



purposes. The TFN Treaty also allows the TFN government to make laws and regulations with respect to fisheries. The TFN has used this power to regulate licensing, trade and bartering amongst Aboriginal Peoples, penalties for offences, fisheries management, and distribution of catch. The TFN also participates in a joint fisheries committee with federal and provincial governments to assist in management of various fisheries. The TFN expects to be the subject of adverse comment from commercial fishers and people opposed to treaties.

52. The Musqueam Indian Band's (the "Musqueam") traditional territory includes the Fraser River delta. The Musqueam have fished in the Fraser River for thousands of years and sockeye is a vital part of the cultural, spiritual and economic life of the community. The Supreme Court of Canada recognized the Musqueam's right to fish for salmon in the Fraser River in *R. v. Sparrow*, [1990] 1 S.C.R. 1075. This applicant is concerned about what it calls the DFO's failure to manage the sockeye salmon fishery in accordance with proper policies and programs and the constitutional scheme of priority. The applicant also expects adverse comment from other participants, especially non-aboriginal fishers.

53. The Maa-nulth Treaty Society, TFN, and Musqueam originally brought separate applications for standing. These three bodies have now indicated a willingness to cooperate and share in a single grant of standing, although they identify a few issues where they anticipate their individual interests may differ from one another.

54. These applicants have satisfied me that their substantial and direct interest is in environmental changes along the Fraser River, and the policies and practices of the DFO with respect to Fraser River sockeye, and that their interests align to such an extent that it is appropriate to direct that they share in a single grant of standing. In so directing, I am mindful of the concern they raise, that an issue may compel a joint participant to seek to participate differently, whether by way of separate submissions or otherwise; if this occurs a joint participant may apply for directions.

**Cowichan Tribes, Chemainus First Nation, Hwlitsum First Nation, Penelakut Tribe, Te'mexw Treaty Association, and the Coalition of Douglas Treaty First Nations (collectively the "Western Central Coast Salish")**

55. The Cowichan Tribes (the "Cowichan") are a Coast Salish people from southern Vancouver Island, and are approximately 4,300 people strong. Fifty percent of their members live on reserve. The Cowichan claim an aboriginal right or interest in Fraser River sockeye based on "the cultural integral, pre-European contact, Cowichan practice of annually fishing, including for sockeye salmon, on the lower Fraser River and delta." The Cowichan had an historical summer settlement on Lulu Island. The Cowichan recently negotiated an allocation of Fraser River sockeye. They indicate an expertise in conservation, restoration and management of salmon stocks through their work in watersheds in the Cowichan Valley on Vancouver Island.

56. The Chemainus First Nation ("CFN") are a Coast Salish people that historically lived on Vancouver Island, the Gulf Islands and the lower Fraser River. The CFN is comprised of about 1,100 members, 635 of whom live on reserve. The CFN is in treaty negotiations with Canada and B.C. On 2 March 2010, the Government of Canada announced that it was deferring the fisheries component of treaty negotiations with B.C. First Nations until the conclusion of the Cohen Commission. Because of this, the CFN is of the view that its interests are at stake in the commission's work. The CFN asserts an aboriginal right to use Fraser River sockeye based on pre-European contact. Furthermore, the CFN says that the near total collapse of salmon runs near the Chemainus Reserve has increased its dependence on Fraser River sockeye for food, social and ceremonial needs.

57. The Hwlitsum are also Coast Salish people, comprised of 350 members. The Hwlitsum's traditional territory includes southeastern Vancouver Island, the Gulf Islands and the lower Fraser River. The Hwlitsum had an ancestral village at the mouth of the Fraser and have fished salmon since time immemorial. They are currently at stage two of the treaty process. Many members of the Hwlitsum fish sockeye for food, social and ceremonial needs, and many work in the commercial fishery. The Hwlitsum propose to make submissions about how to incorporate traditional ecological knowledge into the

management of sockeye, the unique challenges faced by aboriginal commercial salmon fishers and food, social and ceremonial fishers, and the type or quantity of sockeye to sustain their aboriginal rights.

58. The Penelakut Tribe (the “Penelakut”) brought a late application for participation. The Penelakut are part of the Hul’qumi’num Treaty Group, which represents over 6,000 members from six First Nation communities (Chemainus, Cowichan Tribes, Halalt, Lake Cowichan, Lyackson and Penelakut). The Penelakut assert aboriginal rights and title to traditional territories on Vancouver Island, the lower mainland and the Gulf Islands, including areas along the Fraser River. They are at stage four of the B.C. Treaty process. The Penelakut indicate they have traditionally harvested marine resources, and that salmon remain important to them, playing a central role in their spiritual and cultural life. In addition, the Penelakut assert, the closure of the sockeye fishery has taken a great toll on the community. The Penelakut seek to offer the perspectives of elders and community members on how traditional ecological knowledge could better be incorporated into the management of fisheries. They also wish to address the challenges faced by aboriginal commercial fishers, and the necessity for salmon resources to sustain their aboriginal rights. The Penelakut seek joint standing with the Hwlitsum (and the Hwlitsum agree with this proposal).

59. The Te’mexw Treaty Association (“TTA”) represents the interests of five first nations (Snaw-naw-as, T’Sou-ke, Songhees, Beecher Bay and Malahat) located in southeastern Vancouver Island. These First Nations, comprised of approximately 1068 members, are all original signatories to one or more Douglas (pre-Confederation) Treaties. The TTA says these treaties give its members a right to fish for Fraser River sockeye. Historically, all TTA member nations fished for Fraser River sockeye near their communities, and would also travel, seasonally, to the mouth of the Fraser to fish. The TTA indicates that sockeye holds particular cultural importance. It was used as a subsistence food source, and was traded. The member bands of the TTA are all allowed food, social and ceremonial allocations of Fraser River sockeye. The TTA is currently negotiating a treaty with the federal government and, given the government’s recent announcement to defer negotiations of fisheries components of treaties until

completion of the Cohen Commission, the TTA feels it would be unfairly impacted if not granted standing.

60. The Coalition of Douglas Treaty First Nations comprises First Nations located on Vancouver Island (Snuneymuxw, Tsartlip, Nanoose, and Tsawout First Nations). All are Douglas Treaty signatories and claim rights to fish for Fraser River sockeye in and around Vancouver Island and the Salish Sea, including “Fraser River Approach Fisheries.” The Snuneymuxw also claim a traditional summer village along the Fraser River near Fort Langley. These applicants describe having spent 150 years trying to protect these rights. They indicate they are actively involved in the management, stewardship and protection of the fisheries, and have a depth of knowledge and a unique perspective.

61. Of the Cowichan, CFN, Hwlitsum, Penelakut, TTA, and the Coalition of Douglas Treaty First Nations (collectively, the “Western Central Coast Salish”), two pairs welcome sharing in a single grant of standing: the Cowichan and CFN, and the Hwlitsum and Penelakut. The Western Central Coast Salish have indicated their willingness to cooperate and participate by way of a common approach to the hearings, unless a difference in position arises as between them. Although they say they would work together, except for the two pairs noted above, they still seek separate grants of standing.

62. Additionally, since none of the applicants included in the Western Central Coast Salish have expressed concerns about the late application of the Penelakut seeking standing and cooperating within this group of applicants, I am prepared to grant an extension of time for the application.

63. The Western Central Coast Salish have satisfied me that their substantial and direct interest is in marine environmental conditions, other factors that may have affected the ability of sockeye salmon to reach traditional spawning grounds or reach the ocean, and the policies and practices of the DFO with respect to Fraser River sockeye, and that their interests align to such an extent that it is appropriate to direct that they share in a single grant of standing. In so directing, I am mindful of the concern they raise, that an issue may compel one of these joint participants to seek to

participate differently, whether by way of separate submissions or otherwise; if this occurs, that joint participant may apply for directions.

**First Nations Coalition: First Nations Fisheries Council, Aboriginal Caucus of the Fraser River Aboriginal Fisheries Secretariat, Fraser Valley Aboriginal Fisheries Society, Chehalis Indian Band, Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council, Upper Fraser Fisheries Conservation Alliance, Adams Lake Indian Band, Carrier Sekani Tribal Council, and Council of Haida Nation**

64. The First Nations Fisheries Council; the Aboriginal Caucus of the Fraser River Aboriginal Fisheries Secretariat; the Fraser Valley Aboriginal Fisheries Society; the Chehalis Indian Band; the Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council; the Northern Shuswap Tribal Council; and the Upper Fraser Fisheries Conservation Alliance explain in their joint application for standing that Fraser River sockeye are part of the very essence and identity of aboriginal people. The dramatic decline of the stock has meant there are not enough fish to meet constitutionally protected food, social and ceremonial needs. Some of these applicants have good working relationships with the DFO. Their perspectives are said to be broad and geographically varied. The First Nations Fisheries Council and the Aboriginal Caucus of the Fraser River Aboriginal Fisheries Secretariat are themselves broad-based umbrella organizations which work with a groups of First Nations in relation to the promotion of their aboriginal rights, title and interests in fisheries matters. The other applicants are said to have fisheries-related mandates and expertise arising in the lower, middle and upper Fraser River geographical areas.

65. The Adams Lake Indian Band indicates it has relied since time immemorial on the salmon returning to their area, in the interior of the Province, to spawn. It cites evidence of the historical diet of the Secwepemc People and notes its direct interest in Fraser River sockeye for food, social and ceremonial needs. It offers the commission witnesses to speak to historical use of salmon by the Secwepemc people.

66. The Carrier Sekani Tribal Council (“CSTC”) includes eight First Nations: Burns Lake (Ts’il Kaz Koh), Nak’azdli Band, Nadleh Whut’en First Nation, Saik’uz First Nation, Stellat’en First Nation, Takla Lake First Nation, Tl’azt’en Nation, and Wet’suwet’en First

Nation. These First Nations represent a population of over 10,000 people, and combined territories of 7.87 million hectares. The CTSC's territory includes the Nechako River, an important tributary to the Fraser River. The CTSC say about 23 per cent of Fraser River sockeye are born in the Nechako and its tributaries. It is deeply concerned about the well-being of the watershed and the land. The CTSC assert that the Carrier Sekani people have strong historical, cultural and economic ties to Fraser River sockeye. They fear adverse comment from participants critical of First Nations fisheries.

67. The Council of Haida Nation is the elected governing body of the Haida Nation, located in Haida Gwaii. Fraser River salmon pass through waters of Haida Gwaii as they migrate from their feeding grounds in the North Pacific to the Fraser River. These fish are sometimes caught in net fisheries at Langara Island and Rennell Sound, and may be caught in commercial troll fisheries in Dixon Entrance and along the west coast of Haida Gwaii. The Council of Haida Nation indicates that the Haida people catch sockeye for food, social and ceremonial needs. It seeks standing as the “stewards of Haida Gwaii, its surrounding waters and ... all salmon which pass through these waters.” It offers the commission its “unique and traditional knowledge and experience to inquire into the collapse of the Fraser River sockeye fishery.”

68. The First Nations Fisheries Council, Aboriginal Caucus of the Fraser River Aboriginal Fisheries Secretariat, Fraser Valley Aboriginal Fisheries Society, Chehalis Indian Band, Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council, Upper Fraser Fisheries Conservation Alliance, Adams Lake Indian Band, CSTC, and Council of Haida Nation have satisfied me that their substantial and direct interest is in the policies and practices of the DFO with respect to Fraser River Sockeye and the causes for the decline of Fraser River sockeye, and that their interests align to such an extent that it is appropriate to direct that they share in a single grant of standing. In so directing, I am mindful of the concern raised, in particular by the CSTC, that a joint participant may feel it necessary to participate through separate counsel during the inquiry. If this occurs, that joint participant may apply for directions.

## **Métis Nation B.C.**

69. The Métis Nation of BC (“MNBC”) represents Métis citizens in B.C.; there are 35 chartered Métis Communities throughout the province. It "asserts Aboriginal rights to fishing in B.C. including the right to fish Sockeye Salmon from the Fraser River and Fraser bound Sockeye Salmon in tidal waters." MNBC indicates that the DFO "has ignored Métis Rights and Interests" in Fraser River sockeye. MNBC offers its expertise, in particular through two biologists that the MNBC Ministry of Natural Resources employs.

70. Although the MNBC’s legal position and its relationship with the DFO may differ from other aboriginal groups, this applicant has satisfied me that its substantial and direct interest is in the sustainability of the sockeye salmon fishery in the Fraser River, and the policies and practices of the DFO, in particular allocation of departmental resources, fisheries management practices and procedures, and enforcement. MNBC indicated its willingness to work cooperatively with others in finding common interests, and it may prove the case during the public hearings that MNBC’s interests align with those of other participants.

## **Sto:lo Tribal Council and Cheam Indian Band**

71. The Sto:lo Tribal Council (the “Sto:lo”) applies on behalf of its eight member Nations, excepting the Cheam. The Sto:lo has 3,000 members, located in the Fraser Valley between Langley and Hope. Fraser River sockeye are said to be central to Sto:lo way of life and identity. The Sto:lo indicate they have lived and fished Fraser River sockeye since time immemorial, and these fish are an essential part of their diet. The Sto:lo claim an unextinguished aboriginal right to fish for Fraser River sockeye. The Sto:lo complain that in recent years, the food, social and ceremonial fishery rights of the Sto:lo have gone unfulfilled while commercial and sports fisheries have continued. They fear adverse comment from other potential participants, such as commercial fishers.

72. The Cheam Indian Band (the “Cheam”), part of the Sto:lo Nation, originally applied separately for participant status. The Cheam’s traditional territory runs about 40 km from Cheam Mountain in the south to the mountains north of Harrison Lake. The

Cheam have historically fished in the common area of Yale, part of Sto:lo territory. The Cheam describe a long-standing use of, and reliance on, the salmon, and involvement in removing gravel deposits to enhance fishing spots. The Cheam state that they are known for their fishing expertise and have a tradition of providing salmon to other indigenous peoples in the province. The Cheam claim an inherent right to fish sockeye, which has sustained them from time immemorial. The Cheam are highly critical of the DFO's conservation and management policies for Fraser River sockeye, claiming that the DFO continually allocates a disproportionate amount of sockeye to the ocean fleet, which is depleting overall sockeye stocks. The Cheam accuse the DFO of racial discrimination, and says their criticism of the DFO has made its members a focus of DFO enforcement activities. The Cheam indicate that past inquiries have focused on aboriginal fisheries, which are not the true problem.

73. The Sto:lo and the Cheam applied separately, but have now indicated that they are willing to cooperate and share in a single grant of standing. In doing so, these applicants have satisfied me that their substantial and direct interest is in environmental changes along the Fraser River, and the policies and practices of the DFO, and that their interests align to such an extent that it is appropriate to direct that they share in a single grant of standing. In so directing, I am mindful of the concern they raise, that an issue may compel one of them to seek to participate differently, whether by way of separate submissions or otherwise; if this occurs that joint participant may apply for directions.

**Laich-kwil-tach Treaty Society, James Walkus and Chief Harold Sewid, Aboriginal Aquaculture Association, and Heiltsuk Tribal Council**

74. The Laich-kwil-tach Treaty Society ("LKTS") is involved in treaty negotiations for three First Nations (the Wewaikei Nation, the Weiwaikum Nation and the Kwiakah Nation) whose territory includes Johnstone Strait and other waters between Vancouver Island and the mainland. The LKTS people have always harvested sockeye from the ocean for food, social and ceremonial purposes. Fraser River sockeye are central to their way of life and their ability to earn a livelihood and sustain their communities. This



aspect finds its modern expression in the member nations' involvement in the commercial fishery.

75. James Walkus and Chief Harold Sewid are First Nations men and sockeye salmon commercial fishers who have joined together to apply for standing. They state they are directly and substantially interested, and bring experience and expertise. They are located on northeast Vancouver Island and say they have been dramatically affected by the decline in Fraser River sockeye, a fish which has great significance for them and their culture.

76. The Aboriginal Aquaculture Association ("AAA") represents and serves First Nations, First Nation companies and First Nation individuals who are involved in the aquaculture industry. It fears adverse comment from those opposed to aquaculture and wants to ensure that First Nations aquaculture participants are present and can cross-examine on evidence that touches upon aquaculture. AAA says it intends to present evidence on its members' knowledge, observations and experience with the Fraser River sockeye over generations; the economic, social and cultural consequences of the decline on First Nations communities; the aquaculture practices and procedures of its members; and the social and economic impacts of the aquaculture industry on its members.

77. The Heiltsuk Tribal Council (the "Heiltsuk") indicates that its ancestral homeland is a portion of the Central Coast (characterized by inlets and channels). Migrating sockeye salmon pass directly through this territory, and sockeye salmon have been an integral part of Heiltsuk life, harvested for food, social and ceremonial purposes and more recently harvested commercially. Fishing remains the largest non-government employer for the Heiltsuk. The Heiltsuk indicate they have a background in dealings on fishery-management issues, and they have established and operated hatcheries and researched habitat issues jointly with Raincoast Conservation Society.

78. These applicants applied separately for standing. However, with the exception of the Heiltsuk, they have told me that they are willing to cooperate and share a single grant of standing (although they ask to have separate legal counsel acting together).

The Heiltsuk indicate a willingness to join with these applicants on the topic of reserve allotment, but have not yet reached a more formal arrangement.

79. These applicants have satisfied me that their substantial and direct interest is in marine environmental conditions, aquaculture, other factors that may have affected the ability of sockeye salmon to reach traditional spawning grounds or reach the ocean, and the policies and practices of the DFO, in particular allocation of departmental resources, fisheries management practices and procedures, enforcement, counting of stocks, monitoring and forecasting. Notwithstanding the fact that the Heiltsuk have not yet agreed, I am satisfied that the interests of these applicants align to such an extent that it is appropriate to direct that they share in a single grant of standing. In so directing, I am mindful of the position taken by the Heiltsuk. If a joint participant concludes it is necessary to seek to participate differently, whether by way of separate submissions or otherwise, that joint participant may apply for directions.

### **Musgagmagw Tsawataineuk Tribal Council**

80. The Musgagmagw Tsawataineuk Tribal Council (“MTTC”) speaks for four member First Nations (the ‘Namgis Nation, the Gwawaenuk Tribe, the Dzawada’enuxw First Nation, and the Kwicksutaineuk Ah-Kwa-Mish First Nation). These First Nations are comprised of approximately 2,000 members, and their traditional territory is the Broughton Archipelago on the eastern side of Johnstone Strait, with the Discovery Islands to the south. They have fished salmon since time immemorial, and have come to rely almost entirely on Fraser River sockeye to meet their food, social and ceremonial needs, as a result of the decline of salmon in local rivers. The MTTC seeks to provide the commission with traditional ecological knowledge from members who have fished Fraser River sockeye in the Johnstone Strait. It also wants to provide information about the impact of salmon farms on the health of local salmon within the Broughton Archipelago, as it believes the same factors are at play for the Fraser River sockeye decline.

81. This applicant has satisfied me that its substantial and direct interest is in aquaculture, and the policies and practices of the DFO, in particular fisheries management practices and procedures, and enforcement. The MTTC indicated a

strong intention to work in conjunction with Alexandra Morton, the Raincoast Research Society, and the Pacific Coast Wild Salmon Society, and to participate with them through one counsel for hearings pertaining to aquaculture. The MTTC further indicated its interest in a limited type of participation, focusing on those topics set out in our Terms of Reference under clause a.(i.)(B), which is a self-limitation that I endorse. I encourage the MTTC to continue in its efforts to work collaboratively with other participants.

## **6. Other Organizations**

### **B.C. Public Service Alliance of Canada and the Union of Environment Workers, B.C.**

82. The B.C. Public Service Alliance of Canada (“PSAC”) and the Union of Environment Workers, B.C. (“UEW”) represent 1,500 employees employed by the DFO in British Columbia. PSAC/UEW’s interests stem from their members’ responsibilities for the implementation and delivery of programs in support of Canada’s interest in oceans and fresh waters. They indicate their members study, conserve and protect aquatic ecosystems, conduct scientific research, help manage the commercial, recreational and aboriginal fisheries, and provide services to fishers. These applicants propose to assist the commission by bringing to light information about DFO employees, the workplace environment, and current policies and practices. The interests of DFO employees are different from the DFO as an organization. In particular, these applicants speak on behalf of the employees of the DFO who may be subject to adverse comment or criticism, and members who may be impacted by any recommendations made by the commission concerning DFO policies and practices.

83. These joint applicants have satisfied me that their substantial and direct interest is in the policies and practices of the DFO, and other issues insofar as they relate to DFO employees.

### **Pacific Salmon Commission**

84. The Pacific Salmon Commission (“PSC”) is the body formed by the governments of Canada and the United States to implement the 1985 *Pacific Salmon Treaty* and to

provide regulatory advice and recommendations to the two countries. The PSC is organized into panels, with the Fraser River Panel being responsible for in-season management of Fraser River sockeye and pink salmon fisheries in the “Fraser River Panel Area.” The PSC requests standing in order to provide bilateral fisheries management information, and to correct false or misleading information related to Fraser River sockeye and the fisheries’ management. The PSC indicates that it possesses a wealth of experience and expertise in fisheries management and knowledge of Canada’s international obligations.

85. This applicant has satisfied me that its substantial and direct interest is in the policies and practices of the DFO with respect to the Fraser River sockeye.

### **Province of British Columbia**

86. The Province of B.C. asserts a substantial and direct interest based on its constitutional authority over various areas which are critical to the freshwater life of sockeye salmon; based on its management of protected areas, tenured activities and waste regulation; and based on the fact that the management of fisheries is a shared responsibility in B.C.. The Province has professional and scientific staff with much expertise, and can provide relevant information. The Province points out that it may be subject to criticism from other respondents.

87. This applicant has satisfied me that its substantial and direct interest is in the policies and practices of the DFO with respect to Fraser River sockeye and the causes for the decline of Fraser River sockeye.

### ***B. Applicants Not Granted Participant Status***

88. The following persons have not satisfied me that they have a substantial and direct interest in the subject matter of the inquiry; therefore I have determined that they should not receive a formal grant of standing.

89. In all of their cases, I am satisfied that they can appropriately participate in the subject matter of the inquiry, should they choose, by taking advantage of the other options open to them: they are invited to make a written public submission on issues dealt with by the inquiry; to attend the public hearings, particularly when an issue of

interest to them is being addressed; and to contact commission counsel if they wish to supply information, or to discuss any issue relating to the subject matter of the inquiry.

### **Rafe Mair and Damien Gillis**

90. Mr. Rafe Mair is a well-known former lawyer, MLA, and broadcaster in British Columbia. Mr. Damien Gillis is a film-maker. These two applicants have applied jointly for standing. In their application, they identify their opposition to fish farming and offer their perspectives on issues of aquaculture. Mr. Gillis has campaigned against fish farms, “whose lice have destroyed untold hundreds of thousands of B.C. salmon.” He has worked on this issue abroad, in Norway and Chile, as well as in Canada. Mr. Mair served as provincial Minister of the Environment in the late 1970s, and in that capacity signed the Salmonid Enhancement Program. He has focused on many environmental issues, and recently served as Official Spokesperson for the Save Our Rivers Society.

91. Mr. Gillis and Mr. Mair indicate in their application that they “have both spoken far and wide on fish matters and appeared at meetings both official and unofficial.” They add that they have both written extensively on Pacific salmon. I recognize that these applicants have a longstanding, genuine and serious concern about these issues, but as noted earlier, concern alone cannot support a grant of standing. Moreover, it does not appear from their application materials that they face the prospect of criticism arising from issues covered by the commission’s Terms of Reference. Nor am I persuaded that they offer a unique perspective that would otherwise be missed in the course of the inquiry. Thus, I respectfully deny their application for standing and urge them to make use of the public submissions process to ensure that their concerns are brought to the commission’s attention.

### **David Ellis**

92. Mr. David Ellis is currently a bookseller and sports fisherman; he has worked in the past as a consultant, commercial salmon fisher, and head of a committee on the status of endangered species. In his application, he expresses concerns about fish farms and fisheries management. He seeks to make two presentations to the commission: one on the lack of scientific knowledge about “biological interaction between Fraser sockeye and farmed salmon” and another about the “long term

management” of the fishery. In my view Mr. Ellis does not have a substantial and direct interest in the subject matters of the commission, but I encourage Mr. Ellis to make use of the public submissions process to make the points referred to in his application.

### **Steve Bergh**

93. Mr. Steve Bergh is a commercial fisher who holds an Area H troll licence and is a member of the Area H Harvest Committee. He offers the commission his expertise on the migration of Fraser River sockeye, and says he can answer questions about the health of those stocks. While I recognize that he may have relevant information, his participation in the hearing process will likely be duplicative given the breadth of perspectives represented by applicants who have been granted standing. I suggest that Mr. Bergh provide information to the commission through the public submissions process.

### **Jack Emberly**

94. Mr. Jack Emberly applies as a “non-aligned citizen” whose concerns stem from his discovery of approximately 100,000 dead fish fry in May 2009 while canoeing in the North Alouette River. Mr. Emberly is frustrated by the way the DFO and Environment Canada handled his complaints about the dead fry. He focuses his application on a 1985 Memorandum of Understanding between the DFO and Environment Canada, concerning how these federal departments respond to information from the public and how fish deaths are investigated. There is, in his application, no clear link to sockeye salmon. Although he may have insights into how the DFO and Environment Canada interact with each other and the public, these views are more appropriately gathered by commission counsel -- if his evidence is compelling, he may be called to testify.

### **David Loewen**

95. Mr. David Loewen was raised on Haida Gwaii and has been involved with Pacific salmon for much of his life as a fisheries technician; non-profit project manager doing stream and habitat restoration; and Sierra Club executive member. He engaged in "the Wild Salmon Cycle" and biked 10,000 kilometres across western North America to raise awareness about the plight of salmon populations. He is a speaker and writes a blog called "Salmon Guy"; he also works as a consultant in Prince George. Mr. Loewen

feels he has "interests" in the commission's work, but acknowledges his "rights" are limited to the right to catch fish. While commendably engaged as an activist and writer, I have concluded that Mr. Loewen does not have a substantial and direct interest and that his comments and views can more appropriately be made through a written public submission.

### **Dave Smith**

96. Mr. Dave Smith from Maple Ridge describes his community's involvement with enhancement activities including hatcheries along the north side of the lower Fraser River. He "would like to talk about some of the issues, dilemmas, concerns and accumulative problems", some of which he lists. He wishes to "make a presentation" to the commission. While Mr. Smith states general concerns, I am not satisfied that he has a substantial and direct interest in the subject matter of the inquiry. Mr. Smith is invited to make a written public submission.

### **B.C. Wilderness Tourism Association**

97. The B.C. Wilderness Tourism Association ("BCWTA") seeks the opportunity to present a submission "as one of the business stakeholders impacted." Its application for standing discusses the importance of wild salmon to plant and animal life in B.C. It says if wild salmon are lost, industries such as fishing and tourism will also be lost. The annual spawning season presents an exceptional opportunity for wildlife viewing, nature study and photography. These are high-value tourism products; more than 1.2 million tourists spend approximately \$1.5 billion on nature-based tourism each year in B.C. The BCWTA points to fish farms and the attendant sea lice as a source of concern.

98. Although the BCWTA has a different perspective from other applicants, I am not convinced that this is a voice that requires participant status to be heard, particularly given the Association's stated interest in making a public submission to the commission.

### **Fraser River Salmon Table Society**

99. The Fraser River Salmon Table Society ("FRSTS") applies for standing but indicates it does not have counsel nor does it have the capacity to have someone attend court daily. The FRSTS would like to present its members' views and experience

directly, and believes the only way to be guaranteed to do so is by being granted standing. The FRSTS says it represents the best example of collaborative management in the Fraser Basin. Its mission is to foster mutual respect and increased understanding, in order to reduce conflict, reach better management decisions, improve the health of salmon stocks and their habitat, and achieve greater economic opportunity for all involved. The FRSTS's board draws from conservation, First Nations, and commercial and sport fishing.

100. I am not satisfied that the FRSTS has a substantial and direct interest in the inquiry, and I suggest it make use of the public submissions process.

### **Native Brotherhood of B.C.**

101. The Native Brotherhood of BC (the “Brotherhood”) was founded in 1931 as an organization to represent Native communities and Native fishers. It has engaged over many years with government, communities, fishers, and shore workers. The Brotherhood wishes to make a formal presentation to convey the perspectives of its coastal communities and fishers, and to suggest an approach to rectify the issues and problems in B.C.

102. In my view, the presentation described by the Brotherhood would be more appropriately made through the public submissions process.

### **Salmon Enhancement Habitat Advisory Board**

103. The Salmon Enhancement Advisory Board (“SEHAB”) describes itself as the “voice of the volunteer community.” It is funded and supported by the DFO (Pacific Region)'s Oceans, Habitat and Enhancement Branch. It is the body coordinating and working with community partners and volunteers who assist DFO staff. It comprises some 20,000 volunteer stewards. It does advisory work and is involved in some 200 restoration projects, 110 enhancement facilities, and 110 education/public awareness initiatives. SEHAB says it will “introduce the need for a paradigm shift in the way the Department attempts to achieve its mandate”, and “will speak to the intrinsic value of Fraser Sockeye.”



104. In my view, the values held by SEHAB members will be adequately reflected by other participants in the hearing process, but I invite this applicant to make use of the public submissions process.

## VII. Summary

105. I have made 20 single grants of standing for participation in the inquiry as set out in the table below. Many of them are shared among applicants who originally applied for standing individually.

### ***Table of Participants Granted Standing***

#### **Participant or Joint Participants**

1	Government of Canada
2	Province of British Columbia
3	Pacific Salmon Commission
4	B.C. Public Service Alliance of Canada Union of Environment Workers B.C.
5	Rio Tinto Alcan Inc.
6	B.C. Salmon Farmers Association
7	Seafood Producers Association of B.C.
8	<u>Aquaculture Coalition:</u> Alexandra Morton Raincoast Research Society Pacific Coast Wild Salmon Society
9	<u>Conservation Coalition:</u> Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society Georgia Strait Alliance Raincoast Conservation Foundation Watershed Watch Salmon Society

## Participant or Joint Participants

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	Mr. Otto Langer David Suzuki Foundation
10	Area D Salmon Gillnet Association Area B Harvest Committee (Seine)
11	Southern Area E Gillnetters Association B.C. Fisheries Survival Coalition
12	West Coast Trollers Area G Association United Fishermen and Allied Workers' Union
13	B.C. Wildlife Federation B.C. Federation of Drift Fishers
14	Maa-nulth Treaty Society Tsawwassen First Nation Musqueam First Nation
15	<u>Western Central Coast Salish First Nations:</u> Cowichan Tribes Chemainus First Nation Hwlitsum First Nation Penelakut Tribe Te'mexw Treaty Association Other Douglas Treaty First Nations who applied together (the Snuneymuxw, Tsartlip and Tsawout)
16	<u>First Nations Coalition:</u> First Nations Fisheries Council Aboriginal Caucus of the Fraser River Aboriginal Fisheries Secretariat Fraser Valley Aboriginal Fisheries Society Northern Shuswap Tribal Council

### **Participant or Joint Participants**

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	Chehalis Indian Band
	Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council
	Upper Fraser Fisheries Conservation Alliance
	Adams Lake Indian Band
	Carrier Sekani Tribal Council
	Council of Haida Nation
17	Métis Nation British Columbia
18	Sto:lo Tribal Council
	Cheam Indian Band
19	Laich-kwil-tach Treaty Society
	James Walkus and Chief Harold Sewid
	Aboriginal Aquaculture Association
	Heiltsuk Tribal Council
20	Musgagmagw Tsawataineuk Tribal Council

Signed 14 April 2010.



The Honourable Bruce I. Cohen  
Commissioner