

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



Commission d'enquête sur le déclin des
populations de saumon rouge du fleuve Fraser

Public Hearing

Audience publique

Commissioner

L'Honorable juge /
The Honourable Justice
Bruce Cohen

Commissaire

Held at:

Room 801
Federal Courthouse
701 West Georgia Street
Vancouver, B.C.

Wednesday, June 16, 2010

Tenue à :

Salle 801
Cour fédérale 701, rue West
Georgia
Vancouver (C.-B.)

le mercredi 16 juin 2010

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David Bursey	Rio Tinto Alcan Inc.
Alan Blair	B.C. Salmon Farmers Association
Gregory McDade, Q.C.	Alexandra Morton Raincoast Research Society Pacific Coast Wild Salmon Society
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Brenda Gaertner	First Nations Fisheries Council
Allan Donovan	Laich-Kwil-Tach Treaty Society
Lisa Fong Ming Song	Heiltsuk Tribal Council
Joe Gereluk	Métis Nation of British Columbia
Tim Dickson Nicole Schabus	Stó:lō Tribal Council and Cheam Indian Band
Robert Janes	Western Coast Salish First Nations
Joseph Arvay	Maa-Nulth Treaty Society, Tsawwassen First Nation and Musqueam First Nation
Christopher Harvey	West Coast Trollers Area G Association and The United Fishermen and Allied Workers' Union
Mr. Lowes	B.C. Wildlife Federation and B.C. Drift Fishers Federation

TABLE OF CONTENTS / TABLE DES MATIÈRES

	PAGE
Hearing commences at 10:05 a.m.	60
Submissions on Behalf of the First Nations Coalition	60
Submissions on Behalf of Laich-Kwil-Tach Treaty Society	82
Submissions on Behalf of the Heiltsuk Tribal Council	87
Recess taken at 11:20 a.m. Hearing resumes at 11:40 a.m.	90
Submissions on Behalf of the Métis Nation of British Columbia	90
Submissions on Behalf of the Stó:lō Tribal Council and Cheam Indian Band	93
Submissions on Behalf of Western Coast Salish First Nations	101
Submissions on behalf of Maa-Nulth Treaty Society, Tsawwassen First Nation, and Musqueam First Nation	105
Recess taken at 12:10 p.m. Hearing resumes at 2:05 p.m.	109
Submissions on behalf of West Coast Trollers Area G Association and The United Fishermen and Allied Workers' Union	109
Submissions on behalf of B.C. Wildlife Federation and B.C. Drift Fishers Federation	117
Reply submissions on behalf of The Government of Canada	120
Hearing adjourns sine die at 2:50 p.m.	126

1 Vancouver, British Columbia
2 --- Upon resuming on Wednesday, June 16, 2010
3 at 10:05 a.m.
4 THE REGISTRAR: The hearing is
5 now resumed.
6 MR. WALLACE: Good morning,
7 Commissioner.
8 The first group up this morning is
9 the First Nations Coalition.
10 Ms Gaertner...?
11 MS GAERTNER: Good morning,
12 Commissioner.
13 THE COMMISSIONER: Good morning.
14
15 SUBMISSIONS ON BEHALF OF THE FIRST NATIONS
16 COALITION
17
18 MS GAERTNER: I will start by
19 introducing the Coalition and myself briefly and
20 then turned to my submissions.
21 I want to emphasize that this
22 Coalition is a broad-based coalition consisting of
23 two broad-based umbrella organizations, one
24 provincial in nature and has received mandates to
25 assist in providing technical and capacity support
26 to First Nations throughout the province.
27 The other is the Aboriginal Caucus
28 of the Fraser River Aboriginal Fisheries
29 Secretariat, who again is provided with a mandate
30 to provide technical and capacity support in
31 relationship to aboriginal title and rights of the
32 Fraser River tribes from the middle, upper and
33 lower river.
34 We then have tribal-based Fraser
35 River organizations, both the Fraser Valley
36 Aboriginal Fisheries Society, the Secwepemic
37 Fisheries Commission of the Shuswap Nation Tribal
38 Council, which are also representing 10 member
39 Bands, and the Upper Fraser's Fisheries
40 Conservation Alliance, representing both Tribal
41 Councils and First Nations numbering 29th.
42 In addition to that, as an effort
43 to provide a further Coalition support, we also
44 have additional specific title and rights holders,
45 the Chehalis Indian Band, the Adams Lake Indian
46 Band, the Northern Shuswap Tribal Council, who has
47 four member Bands, and the Carrier Sekani Tribal

Submissions on behalf of The First Nations Coalition

1 Council which has eight member Bands.

2 The Council of Haida Nations and
3 the Douglas Treaty First Nations of Snuneymuxw,
4 Tsartlip and Tsawout First Nations are also
5 members of our Coalition and are nations who are
6 often called, in relation to the Fraser River
7 sockeye, approach or interception fisheries.

8 I state this strongly because when
9 I stand to speak I speak on behalf of those
10 organizations and the efforts that have been made
11 to respond to the discussion paper in the
12 extremely short period of time that we have had
13 to, as a result of me not having written
14 submissions yet before you. I have committed to
15 getting those to you by the end of the week.

16 You will find that my submissions
17 take longer than 15 minutes. I warned you a
18 little bit about that when I first spoke to you.
19 I will do my best to keep them as succinct and as
20 substantive as possible.

21 I also wanted to introduce a
22 little bit about myself and my legal team on this
23 matter. Unlike many of the counsel around you, I
24 don't spend my time in my legal career in
25 courtrooms. I have spent my time on the Fraser
26 River, most often working in collaborative and
27 consensus-building opportunities, but often very
28 much focused on the Fraser River.

29 This training brings me a
30 different approach when I look at your Terms of
31 Reference and the First Nation Coalition has
32 thought it would be useful when looking at some
33 of the collaborative efforts that you are asked to
34 do and the co-operation amongst the stakeholders
35 per se that my expertise will be offered, but I
36 want you to be rest assured that when we need
37 litigators they will be here and that my job will
38 be to make submissions to you as it relates to
39 the fisheries and the First Nations relationship
40 to that fishery and the substantive matters
41 before you.

42 Now, before I go to my opening
43 remarks on the discussion paper, in the manner
44 that I have been taught, in the oral tradition
45 that I have been taught, I want to raise my hands
46 to Larry Grant, the Musqueam Elder who opened his
47 hearing and the welcome that he brought to this.

Submissions on behalf of The First Nations Coalition

1 In many ways that worldview difference is
2 important, as important as it was when they first
3 offered the salmon as he spoke of yesterday.
4 To be still welcomed into their
5 territory and to be encouraged in our work given
6 the state of the fishery is an uplifting moment
7 for us all.

8 And then I wanted to share a
9 transformer or salmon dream that I have carried,
10 which I also think is useful in understanding the
11 worldview difference is that you will be called
12 upon to begin to work with.

13 In that story, which has now been
14 interpreted by a Stó:lō teacher, there is a female
15 salmon who finds herself at the mouth of the river
16 and it's confusing, it's different than what she
17 understands inert genes. The water is confusing,
18 the temperatures are confusing and it's cloudy and
19 murky and there is a lot more work. Even though
20 salmon very determined beings, there is a lot more
21 work than she understands has ever had to happen
22 in order to get up that river.

23 Although determined to return
24 to her homeland, she does that work and she
25 continues to work and she finds it extremely
26 confusing, all the new structures and the new ways
27 she has to swim and all the men that have to be
28 worked with to get around and to be with, to
29 convince and to let herself get to her homeland,
30 for this is a formidable task and she is willing
31 to do that work.

32 And in this dream and in this
33 teaching she arrives in her home waters and we
34 can feel relieved by that. And in that dream and
35 in this teaching she is then transformed and she
36 becomes one of the women who sings and dances
37 and treasures and cares for the salmon that have
38 fed her families and her children and her
39 communities forever.

40 I want to contrast that story to
41 another story that I hear often at the meetings on
42 the Fraser River of the indigenous women who are
43 representing the upper reaches of the Fraser River
44 who have for centuries relied on what are called
45 the early Stuarts salmon and they come to the
46 meetings now and want to make sure that we all
47 know that there aren't fish for their families,

Submissions on behalf of The First Nations Coalition

1 there aren't fish to can, there aren't fish to dry
2 and there aren't fish to freeze.
3 It's a difficult picture to
4 imagine those differences and it's difficult to
5 imagine Elders who are not having salmon to get
6 through the winters and what that means when they
7 contemplate the children and their grandchildren
8 in this watershed.
9 Finally, I want to end with
10 the teaching from an Elder and I think that this
11 should inspire our work also, and that is that
12 the salmon will not return in abundance, she
13 told me. Remember, the salmon will not return in
14 abundance until human beings stop fighting and
15 arguing about them.
16 Turning now to the questions you
17 have asked us. I have seven opening remarks and
18 then I will turn immediately to the questions.
19 I want to start with gratitude to
20 the Commission staff and to the people that are
21 working for you. We all waited with somewhat
22 bated breath to get the first draft of the scoping
23 document for it's difficult to gauge how this
24 Commission will begin to focus the inquiry given
25 the web of complex issues that are before you.
26 We were heartened. Many of the
27 First Nations that I represent were heartened to
28 read the breadth of the scientific perspective --
29 and I emphasize that, the breadth of the
30 scientific perspective on issues contributing to
31 the decline of the Fraser River sockeye salmon.
32 While we have some comments
33 regarding that perspective and the topics we must
34 emphasize from the beginning, I want to emphasize
35 something I heard yesterday a number of times and
36 we take a unique approach on.
37 This is not simply a
38 scientific inquiry. Science is not unbiased,
39 science is neither the cause nor the ultimate
40 solution for how we are going to re-establish
41 a sustainable Fraser River sockeye. Science
42 does not have all the answers and it's my educated
43 guess that being clear about that from the
44 beginning and unburdening those scientists from
45 that responsibility will come as a relief and
46 not as an insult to those working hard to
47 collect the scientific information for this panel

Submissions on behalf of The First Nations Coalition

1 and its inquiry.

2 Second, I want to say that the
3 comprehensive nature of the scoping document and
4 the information and evidence that was brought
5 forward during this inquiry will require a
6 thoughtful approach to the best use of your
7 limited time.

8 The work that's to be undertaken
9 is important, because in order for it to be
10 meaningful it must be well done. First Nations
11 have been involved in numerous processes. In
12 fact, I often say we are either meeting to death
13 or processed to death. I want to emphasize that
14 in order for this work to be meaningful and for
15 First Nations to use their precious resources it
16 has to be substantive, there has to be meaningful
17 effort, and we have to work within the time limits
18 that you have been asked to work within.

19 While the Fraser River sockeye
20 requires immediate attention, the issues before
21 this Commission are complex.

22 At this point we ask
23 some questions.

24 Do we need to have inquiry dates
25 for all of the issues or do we simply need to have
26 inquiry hearing dates on the issues that are in
27 disagreement amongst the participants or on which
28 there is contention about the evidence?

29 Can we make some strong efforts to
30 find where the commonalities are at the upfront
31 rather than at the end?

32 My clients are keen to have that
33 work done and they are keen to have this effort
34 move ahead in a timely manner.

35 Many of the comments I'm now
36 going to provide to you with respect to the
37 discussion paper are steeped in a history of
38 experience of First Nations with first settlers,
39 then colonial governments, most typically DFO, and
40 then the industry.

41 Both the recreational and the
42 commercial fisheries have grown relatively quickly
43 on our shores and while they are newcomers they
44 have had amazingly strong effects.

45 This difference in world views is
46 something that you, Commissioner, will need to
47 grapple with for First Nations are not simply

Submissions on behalf of The First Nations Coalition

1 interest groups and they are not simply
2 harvesters, they are indigenous people with
3 aboriginal and treaty rights and responsibilities
4 to the salmon that are founded on cultures and
5 traditions and economies and ways of life that are
6 intricately tied to the salmon and they carry
7 responsibilities not only to the salmon and the
8 families, but to the Creator and the ecosystem
9 that connects them all.

10 Over the last 150 years First
11 Nations have experienced a colonial arrogance and
12 it's the arrogance of: We know better and we can
13 manage this fishery. That arrogance has been a
14 challenge for First Nations. Through decades of
15 struggle and landmark decisions such as Sparrow,
16 Jack John and John and Saanichton Marina, to
17 mention just a few, and many, many more that are
18 still going through the courts, the strength of
19 aboriginal and treaty rights and title to the
20 fishery has just begun to assist First Nations to
21 achieve some rebalancing of these worldviews.

22 Aboriginal and treaty rights to
23 the fisheries are recognized in the
24 Constitution -- you are well aware of that -- and
25 the aboriginal perspectives on how those fishing
26 rights are to be exercised must be respected in
27 this process.

28 It is fair to say that there is
29 much work left in order to achieve recognition and
30 reconciliation and this inquiry is part of that
31 reconciliation process.

32 I want to emphasize in your Terms
33 of Reference that you have been asked to do make
34 collaborative, co-operative efforts and to make
35 recommendations. In many ways the First Nations I
36 represent are here because they hope your
37 recommendations will make a difference.

38 You will hear in our scoping
39 comments, we submit those recommendations need
40 to be a pivotal focus of this inquiry from the
41 get-go.

42 Over many years our First Nations
43 have sought a judicial third-party assessment of
44 DFO's mandates and the contradictions that DFO
45 walks with. These same First Nations are now
46 rightfully anticipating and expecting that the
47 work of you, Commissioner Cohen, can bring lasting

Submissions on behalf of The First Nations Coalition

1 and positive effects.

2 However, I have to also mention --
3 and this is probably from the school of hard
4 knocks -- that broad co-operation and
5 collaboration on Fraser River sockeye matters
6 takes time, effort and innovative ways of
7 approaching complex issues.

8 Consensus is built, it's not
9 imposed as an outcome and I think that's something
10 that I want to really emphasize with you. We
11 suggest that where possible you create flexibility
12 in the processes that are under way to give space
13 for the building of consensus.

14 I'm just going to briefly take a
15 moment to use the example of this discussion paper
16 to bring it home.

17 It was extremely useful to have a
18 first draft and it's extremely useful to hear all
19 of counsel representing the different and unique
20 interests to fine-tune the submissions of their
21 clients with respect to the issues before you.
22 However, if your staff is simply to go away by
23 themselves and revise those drafts and have you
24 make a ruling on that, then you have missed an
25 opportunity for consensus-building.

26 What I suggest instead is that
27 there be a revised draft and that you bring us all
28 back into a room and that we spend a day looking
29 at that revised draft and see where we have and
30 can reach consensus and in those places where we
31 can't that your staff then advise you of those
32 places that you make the necessary rulings. At
33 that point then we at least have some consensus on
34 how the extremely important and complex issues of
35 this inquiry will move forward.

36 It's a suggestion. I leave that
37 for you to consider.

38 Finally, with respect to
39 faultfinding, while we agree that avoiding finding
40 fault will be a useful way of keeping those around
41 these tables from pointing fingers at each
42 other -- we can all recall children who do that --
43 and it is your job and the job of your capable
44 legal staff to ensure that the focus stays much
45 more enlightened than that.

46 I have to say that as it relates
47 to the role and the assessment of DFO and it's

Submissions on behalf of The First Nations Coalition

1 contradictory mandates and actions, its challenges
2 around funding and resourcing and it's
3 decision-making processes, it has been DFO,
4 through the federal government, who has, since
5 Confederation, assumed and enforced itself as the
6 ultimate decision-maker as it relates to critical
7 governance and management decisions related to
8 these sockeye salmon and DFO has enforced that
9 worldview upon those who hold and exercise the
10 underlying aboriginal and treaty title and rights
11 to those salmon.

12 Therefore, without a doubt it must
13 now also assume primary responsibility for where
14 we are now. They, and the interest they have
15 historically represented, took a benefit and a
16 strong benefit as it relates to the Fraser River
17 sockeye, for all the good years. They are now
18 needing to step to the plate and critically assess
19 how they will take responsibilities during these
20 very hard times.

21 That concludes my opening
22 comments. I am now going to get quite technical
23 as it relates to the discussion paper and again I
24 comment that I will be providing these in writing.

25 So you asked us two questions,
26 Commissioner Cohen.

27 You asked us first what issues
28 other than those in the discussion paper should
29 this Commission investigate. I will turn to those
30 and I have seven of comment.

31 The first is, the First Nations
32 Coalition suggests to the Commissioner that the
33 overarching and pivotal issue to be central and to
34 lead the issues in this inquiry is conservation.
35 Conservation is fundamental to the rebuilding of
36 the sustainable sockeye salmon runs.

37 Moving it to a rightful place is
38 the key issue to be scoped and considered in their
39 inquiry, reflects the common governing
40 responsibilities that both DFO and First Nations
41 share and presumably is also of common interest to
42 all the participants.

43 In our view, the main job of DFO
44 under the Constitution and the Fisheries Act and
45 the first responsibility of First Nations is to
46 conserve the sockeye salmon stocks for this and
47 future generations.

Submissions on behalf of The First Nations Coalition

1 the substance of the discussion paper is that as a
2 topic you need to understand and reconcile the
3 place and role of the section 35 constitutionally
4 protected aboriginal treaty rights and title as it
5 relates to fisheries management.

6 The First Nation Coalition submits
7 that the discussion paper does not address the
8 constitutional fact that First Nations are much
9 more than another stakeholder; First Nations are
10 holders of protected title and rights and as such
11 have to be involved directly in the management of
12 the fisheries.

13 This expertise and their
14 voice is also key to the rebuilding of these
15 important stocks.

16 In this light, and at this
17 time -- reserving the right to say more about
18 this topic as the inquiry unfolds -- we propose
19 that the Commission, when considering DFO's
20 policies and procedures, and both the decline
21 and the rebuilding grasp the scope and considers
22 the comprehensive nature of aboriginal title
23 and rights.

24 We suggest at this point that
25 there are at least two aspects that have to be
26 the topic of specific inquiry. First,
27 co-management and second the food social and
28 ceremonial fisheries.

29 With respect to co-management, we
30 suggest that the topic be co-management and shared
31 decision-making which respects and recognizes
32 aboriginal and treaty rights and title.

33 Including in that we recommend
34 that you scope the legal obligations; the need for
35 transparency and inclusiveness; and the challenges
36 associated with DFO and the other interest groups
37 history of denial; the complexity of the migratory
38 routes. There is no doubt that the river sockeye
39 creates a complexity related to First Nations
40 because of the numerous tribes that that salmon is
41 connected to, all the way from the Haida Gwaii to
42 the tops of the upper Fraser, and there are many,
43 many nations in between and all throughout that
44 route and that creates the complexity that must be
45 grappled with when looking at the recommendations
46 that you will be putting forward with respect to
47 the rebuilding of a sustainable fishery.

Submissions on behalf of The First Nations Coalition

1 As it relates to food, social and
2 ceremonial fisheries there are three topics that
3 we consider need to be scoped.

4 One is understanding the historic,
5 modern and future importance of the food social
6 and ceremonial fisheries and their priority.

7 Second is the complexities
8 associated with managing for a constitutionally
9 protected priority that acts as both in the
10 marine, at the mouth and in the upper reaches of
11 the river.

12 And third, you will need to
13 grapple with the consistently growing inability to
14 ensure food, social and ceremonial requirements
15 are being met.

16 I have two more comments with
17 respect to the scoping of the first aboriginal and
18 treaty rights.

19 The first is, you will need to
20 look at how -- and I am going to use a term that
21 was coined by one of the First Nations I
22 represent -- the Fraser River sockeye centric
23 fishery which has devalued ensuring viability of
24 other salmon stocks throughout the entire
25 migratory route from the Haida Gwaii throughout
26 Vancouver Island and the entire Fraser River.

27 That focus in the economics, in
28 the management, in the habitat protection, it goes
29 throughout the whole list, has not allowed First
30 Nations to maintain and access numerous stocks
31 whose natal streams are in their territories and
32 puts unnecessary and increasing pressure on the
33 Fraser River sockeye.

34 I don't want to leave this topic
35 without the impression that First Nations do not
36 care about the economics of the fishery; that
37 would mistake. That should also be part of the
38 scoping, as my friend Maître Taylor suggests.
39 However, the placement of that scoping is
40 important and I will speak to that in my reply.

41 In any rebuilding strategy, First
42 Nations throughout the migratory route have asked,
43 and will ask again, when they stop fishing for
44 conservation purposes -- and they have done that
45 on their own accord, and they have done that in
46 response to closures, and they can't access that
47 stock for food, social and ceremonial fisheries --

Submissions on behalf of The First Nations Coalition

1 who are we rebuilding for, and how will that
2 rebuilding be done in a way that honours and
3 respects their traditional relationship to the
4 salmon?

5 Now, my next topic with respect to
6 the discussion paper -- I am at 3 of 7 -- is the
7 role of valuing Aboriginal expertise. With all
8 due respect to those that you have chosen to be
9 members of your scientific advisory panel, it's
10 not complete. Aboriginal expertise is notably
11 absent from that panel.

12 The Commission must, when it
13 gathers and critiques evidence around this, not
14 only use the western scientific lens, it needs the
15 assistance of what is often called the Aboriginal
16 traditional knowledge, or the traditional
17 ecological knowledge, and we submit that there are
18 many capable people that can provide that
19 expertise and bridge it on your panel, and are
20 considered very much scientific and traditional
21 ecological knowledge experts.

22 I have provided to all counsel,
23 and I will provide to you now, Commissioner Cohen,
24 the c.v.'s of three doctors who, we submit, one of
25 which should be on this panel, either Dr. David
26 Close, Dr. Charles Menzies, or Dr. Fikret Berkes.
27 All of these are experts that can bridge that
28 place between traditional ecological knowledge and
29 western or modern scientific knowledge.

30 We note in passing, because the
31 Stó:lō Tribal Council and the Cheam Band have
32 provided written comments already, that they are
33 also suggesting that there be a panel of experts
34 to provide information with respect to traditional
35 ATK or TEK. We agree with that and can support
36 that; however, my instructions remain the same,
37 that it is important, right on this advisory
38 panel, for you to get reliable advice on these
39 world views, how they meet, how they complement,
40 how they are not always disparate and in conflict.
41 You need to have somebody on that panel that First
42 Nations believe and know have that training.

43 We have, through the short period
44 of time that we had, reached consensus on who we
45 could recommend.

46 I turn now to my fourth comment,
47 and this relates to the role of your assessment

Submissions on behalf of The First Nations Coalition

1 and inquiry around DFO's policies and practices.
2 In addition to all of the other
3 topics that have been listed in the paper under
4 the heading "Management of Fraser River Sockeye
5 Salmon", we recommend the following specific
6 topics for distinct consideration.
7 The first is a review of DFO's
8 decision-making processes and culture. Under that
9 we recommend that you look at three areas. One is
10 the external influences on those decision-making
11 processes. For example, the international
12 obligations, the work of the PSC, the province's
13 interest in the recreational fisheries, and the
14 budgeting and challenges that the DFO Pacific
15 Region has in coping with the ever-increasing
16 tasks before them.
17 The second area is the internal
18 influences. DFO's decision-making processes are
19 not transparent. The basis on which they come to
20 ultimate decisions is not accountable. We need to
21 understand, and you need to understand, that chain
22 of command and how those decision-making
23 responsibilities are carried out, and how they can
24 change.
25 Thirdly, we need you to assess and
26 critique the implementation and follow-through.
27 So many recommendations, so many policies, within
28 the short 25 years I have been involved in the
29 fishery, and so little practice on accountability
30 and follow-through.
31 Secondly, as an important
32 component of DFO's policies and practices, you
33 need to inquire and get a full understanding of
34 the contradictions in DFO's mandates, policies and
35 practices. There are conflicts that arise between
36 the obligation to conserve and the promotion of
37 economic priorities and other priorities.
38 You need to understand the
39 practice that DFO has of saying one thing and
40 doing another.
41 I am going to give you a couple of
42 examples to make it clear.
43 The hatchery program: The
44 Province of British Columbia is the only place in
45 Canada where the province is not funding hatchery
46 programs, and DFO is not adjusting funding for the
47 Pacific Region to accommodate that reality. So

Submissions on behalf of The First Nations Coalition

1 funding for hatcheries comes out of core funding
2 and funding for all of the other policies, like
3 the wild salmon policy.

4 That is a fundamental and
5 difficult contradiction in DFO's management
6 policies and practices.

7 Here is another example: The wild
8 salmon policy. In that policy they insist on
9 conservation, and yet, at the same time, there is
10 the retention of recreational fisheries, and no
11 food, social and ceremonial fisheries, and there
12 is inadequate data to support the harvesting
13 decisions.

14 We recommend, with respect to
15 DFO's decision-making processes and the
16 contradictions in their mandates, policies and
17 procedures, that you develop an expert paper and
18 call evidence specifically on this complex topic.

19 While the topic may be considered
20 implicit in some of the notes in your discussion
21 paper, it needs to become explicit and it needs to
22 become a focal point.

23 We recommend that the terms of
24 reference for this work be reviewed and critiqued
25 by the participants, and that you have this
26 information soon in the process.

27 Finally, as the last topic within
28 DFO's policies and procedures to add, we believe
29 that the socioeconomic factors informing both the
30 decline of the sockeye and the rebuilding
31 principles is again a topic of distinct inquiry,
32 and again a topic that should be developed by way
33 of an expert.

34 It goes without saying that we
35 need to acknowledge and understand the historic
36 effect of the impact of the Fraser sockeye centric
37 commercial fishery and its reliance on mixed stock
38 aggregate fisheries that were managed to ensure
39 strong stock dominance at the expense of smaller,
40 weak stocks.

41 It would be an error to look only
42 at the precipitous decline of the last five years
43 and to only focus on biological impediments.

44 For example, it wasn't too long
45 ago that DFO was allowing a harvest of 95 percent
46 of certain Fraser River stock-strong sockeye
47 salmon. It is important for you to understand the

Submissions on behalf of The First Nations Coalition

1 history and effect of such management on this
2 decline.

3 My fifth comment with respect to
4 the discussion paper, and a matter of emphasis for
5 the First Nations Coalition, especially as it
6 relates to the biological factors -- but it
7 includes the biological and then the socioeconomic
8 -- is what is quickly called in the discussion
9 paper "cumulative impacts". The drafters did a
10 good job of listing all of the biological impacts,
11 and put that in at the end.

12 We suggest that there is a fine
13 tuning that needs to happen with respect to this.
14 The first is that it is really the interaction of
15 the various impacts and their cumulative effects
16 or impacts that you need to look at.

17 We see the cumulative impacts of
18 the biological and environmental issues, such as
19 water pollution, fish farming, logging, hydro
20 projects, and the interaction of these various
21 forces, as a key component of the analysis that
22 should be undertaken. It shouldn't be lost in the
23 list of issues, and it shouldn't be picked up only
24 at the end. Rather, an analysis of these impacts
25 should be considered from the start, and needs to
26 be included in the scoping material.

27 Now, we say this cognizant of the
28 fact that if the Commission is going to only
29 obtain secondary research, which is what we
30 understand is the plan, and will not be performing
31 any primary research, then creative thought and
32 clarity is going to be necessary on how you are
33 going to assess these interactions, because there
34 isn't a large body of material already developed
35 on the interaction of all of these factors and the
36 cumulative impacts.

37 We suggest that as a distinct
38 topic of inquiry it go broader than just what
39 science has had to offer to date and include at
40 least the following three topics: grappling with
41 the complexities and interactions; a need for an
42 in-depth assessment of the whole. You are going
43 to need to consider the methodology that will be
44 employed, and how and which groups of people to
45 bring that; and how do we evaluate the unknowns.

46 I, for one, am very curious about
47 what science and traditional ecological knowledge

Submissions on behalf of The First Nations Coalition

1 together can offer with respect to that issue.

2 My sixth point on the discussion
3 paper is quite technical in nature. We recommend
4 five different expansions of topics that are
5 already identified.

6 First of all, a review of
7 out-ocean impacts and food abundance in the marine
8 environment.

9 Second, water quality and
10 pollution needs to be considered, including such
11 things as tailing ponds, agriculture, and
12 recreational boaters.

13 We need to look at invasive
14 species, and we need to look at the biological
15 harvesting impacts that have influenced the
16 evolution of sockeye salmon.

17 Finally, comments were made
18 yesterday regarding the discussion paper on the
19 assessment of the hydroelectric impacts on the
20 Fraser River sockeye. We submit that it needs to
21 go broader than the IPPs. We need to have a view
22 on all hydroelectric impacts on the Fraser.

23 The Commission should consider
24 also the increased demands on the Fraser River
25 sockeye as a result of other hydroelectric
26 developments, and in particular the Columbia.

27 My last comment with respect to
28 the substance of the scope of this inquiry relates
29 to one of my opening comments, and that is around
30 the substantive approach to developing
31 recommendations.

32 As I said in my opening comments,
33 the First Nations Coalition feels that your job of
34 developing recommendations for the rebuilding of a
35 sustainable sockeye salmon is one of the most
36 important aspects of this inquiry, yet the
37 discussion paper provided no elucidation on the
38 approach and scoping that the Commission will use
39 to arrive at these recommendations.

40 We recommend that we take time now
41 to provide clarity and transparency regarding the
42 general nature of the types of recommendations and
43 how they will be developed. This is especially
44 true if the goal of this Commission is to keep us
45 all focused and working toward achieving
46 collaborative outcomes that will be endorsed not
47 only by the federal government, but also by

Submissions on behalf of The First Nations Coalition

1 Aboriginal governments and all of the other
2 interests that are before you.

3 We recommend that the scope of the
4 recommendations regarding rebuilding focus on the
5 following subjects and topics.

6 The first is principles and
7 approaches to ensuring conservation.

8 Second, First Nations and DFO
9 collaborative co-management, shared
10 decision-making structures and processes within a
11 constantly changing environment.

12 Third, we recommend that we focus
13 on the development of a rebuilding strategy,
14 including recommendations on such things as the
15 role of mixed stock aggregate fisheries, the
16 benefits and challenges associated with terminal
17 fisheries that are focused on biodiversity, what
18 we can do to improve spawning habitat, the safety
19 of the migration routes, and the development of
20 healthy, safe, freshwater and marine ecosystems.

21 Those will be minimum topics of a
22 rebuilding strategy, and recommendations
23 surrounding all of those need to be considered as
24 we move forward.

25 Finally, as part of the scoping of
26 your recommendations, we recommend that you
27 consider the necessary changes in DFO's policies,
28 practices and management to address and implement
29 that rebuilding strategy.

30 You will be asked to consider:
31 What changes can you recommend on how decisions
32 regarding conservation, risk management, and the
33 balancing of interests can best be made, and by
34 whom.

35 Included in that decision-making
36 are three key areas on which decisions are made
37 around the sockeye. The first is the pre-season
38 risk management decisions. There is a whole
39 series of decisions that used to be made in the
40 pre-season around what risk management needed to
41 be considered.

42 Second, you will learn that many
43 of the key decisions with respect to the sockeye
44 salmon are made in-season. You will need to
45 assess the processes for in-season management
46 decision-making and how best they can be improved.

47 Third, you will need to consider

Submissions on behalf of The First Nations Coalition

1 the decision-making processes regarding the
2 reorientation of a fishery, from a fishery that
3 was geared for harvest, to a fishery that has to
4 now be geared to ensuring conservation,
5 biodiversity, and habitat protection.
6 Finally, there are two more
7 comments that we have with respect to areas for
8 recommendations. One is the information base that
9 will be necessary to properly assess the health of
10 the stocks and make decisions around conservation
11 and harvesting opportunities, including the
12 information base that will be necessary to ensure
13 and respect the priority of the FSC fishery. That
14 will be part of your rebuilding strategy.
15 Finally, your recommendations
16 should include benchmarks for success and
17 accountability. What is the information that will
18 be needed to assess whether this rebuilding
19 strategy is working, how will it be maintained,
20 who will do that assessment, and when, will all be
21 useful recommendations.
22 We suggest that when this part of
23 the discussion paper is worked on -- and we submit
24 that it needs to be part of the next draft -- it
25 also consider approaches that are used in other
26 jurisdictions. There are management and fishing
27 practices in other jurisdictions that are facing
28 similar challenges that should be considered.
29 Similarly -- although I don't
30 think that I have this in the right place in my
31 submissions -- we also need to consider, as it
32 relates to other jurisdictions, the data that they
33 have regarding the accessing of Fraser River
34 sockeye salmon.
35 That completes my comments with
36 respect to the scope of the discussion paper.
37 You asked a very difficult
38 question. You may not have been aware of how
39 difficult it was, but, at least, it was difficult
40 for the size of coalition that I represent. You
41 then went on to say: Not only would we like to
42 hear about what we might have missed, we would
43 like to hear about the priority that the First
44 Nations Coalition has, as to how you would
45 prioritize the issues that you intend to
46 investigate.
47 Of course, I think, given my

Submissions on behalf of The First Nations Coalition

1 primary submissions, that defining conservation
2 and understanding it, including all of the factors
3 engaged in making risk management decisions, is a
4 critical first priority.

5 Interestingly enough, and I think
6 extremely useful for your assessment of where this
7 inquiry needs to focus, it was also, then, easy to
8 set the second priority, and that was looking at
9 DFO's management and decision-making structure.

10 In particular, the priority was:
11 first, understanding the inconsistencies and
12 contradictions; second, developing improved
13 knowledge and information bases; third, shared
14 management and decision-making; fourth, adequate
15 funding to support comprehensive management; and
16 fifth, assessing and managing results.

17 The third priority from the First
18 Nations Coalition is, then, the priority of
19 gathering and assessing information regarding the
20 environmental factors influencing the decline.

21 From there, there are different
22 perspectives -- complementary. From the marine
23 perspective, for those First Nations that are
24 within this coalition, disease, predation, fish
25 farms and aquaculture, and ocean health were all
26 significant priorities.

27 From the in-river perspective,
28 habitat loss and managing for biodiversity and
29 terminal fisheries were priorities.

30 Also, for all of them, the effects
31 of climate change, water quality and quantity,
32 and, without a doubt, the interaction of all of
33 the influences.

34 Before briefly turning to my
35 response comments, I have initial comments
36 regarding the process of this inquiry, as set out
37 in the discussion paper.

38 Clearly, this inquiry process is
39 intended to encourage engagement by First Nations
40 on matters that strike at the core of section 35,
41 Aboriginal and Treaty Rights.

42 It is unclear yet how this inquiry
43 will unfold. Perhaps it might come as a surprise
44 to you; however, First Nations were not engaged in
45 any consultative process with the Crown when it
46 decided to hold this inquiry, and use the Inquiry
47 Act, or develop your terms of reference. This is

Submissions on behalf of The First Nations Coalition

1 an example of where the history of denial remains
2 active.

3 There is a curious lack of
4 specific reference in the terms of reference
5 regarding Aboriginal title and rights, although I
6 do note that in section (a)(i)(6) you are directed
7 to conduct consultations in relation to the
8 inquiry as you see fit.

9 It may be useful for you to begin
10 to grapple with what types of consultations will
11 be necessary for the conduct and outcome of this
12 inquiry. To that end, you may want this issue
13 scoped and give us an opportunity to respond.

14 However, I am willing to provide
15 you some initial observations regarding the
16 distinction between your work as a finder of fact
17 and your work as providing recommendations.

18 It is clear that within the
19 gathering of the information there is an iterative
20 process that you are seeking and using within the
21 Inquiry Act. We are challenged, as many are, with
22 inadequate funding for the cost of such
23 engagement.

24 We are grateful for the work that
25 was done, and for the timing of the decision on
26 the funding. I would have truly regretted if we
27 had spent this week talking about that issue, so I
28 was grateful that the decision on funding with
29 respect to legal counsel was made.

30 But the costs of this Commission
31 for First Nations cannot be simplified to legal
32 costs. I recognize your ruling as it relates to
33 other interests that have been before you with
34 respect to this, and I don't want to belabour this
35 point here and now, but I want to make a note that
36 First Nations are not in the same position as DFO.
37 They don't have on staff biologists, lawyers,
38 policy advisors, that can be seconded to this
39 Commission, and they don't have budgets to provide
40 participants with meaningful opportunities to
41 participate.

42 While steps are being taken to try
43 to convince DFO to address this matter, it remains
44 a striking imbalance.

45 I do want to point out that in the
46 development of the recommendations we strongly
47 recommend that this process include the

Submissions on behalf of The First Nations Coalition

1 development of draft recommendations, and the
2 opportunities for engagement, comment, and
3 submissions related to such recommendations before
4 they are finalized.

5 Finally, with respect to the
6 proposed hearing dates in September, given the
7 importance of considering and understanding DFO's
8 organization, its management and decision-making
9 structures, frankly, I have to say that it was
10 confusing for me and for my clients that the
11 Commission proposed to not only start with this
12 issue -- and you will have heard my submissions
13 now on the priorities and how to approach them --
14 but to only set aside two days of hearings for it.
15 It is simply impossible to understand and critique
16 DFO's decision-making, management and
17 organizational structures in that short period of
18 time.

19 My next comment with respect to
20 process is that it is clear the Commission will be
21 contracting, and we have, in these oral
22 submissions, recommended expert reports in
23 addition to those identified in the discussion
24 paper. How you will be contracting these expert
25 reports, and how those reports will be undertaken,
26 requires clarity and transparency.

27 Participants must be involved in
28 reviewing the draft terms of reference for these
29 consultants and the scope of each of the reports
30 to be undertaken.

31 I also suggest -- and, again, this
32 is from the school of hard knocks -- that input
33 from participants during the initial stages of
34 these scoping reports will assist you in
35 developing collaborative and consensus approaches.
36 It will ensure the usefulness of the reports. It
37 will ensure that the information gathering process
38 will be complete, and that we won't have to return
39 and do more work later.

40 Although you have heard my initial
41 comments that the First Nations Coalition that I
42 represent is actively interested in ensuring that
43 you meet your timelines, and is committed to
44 trying to assist you in that, we suggest that it
45 could very well be impossible to begin hearing
46 dates as early as September.

47 We also suggest that it may be

Submissions on behalf of The First Nations Coalition

1 more useful to use the months of September and
2 October to clearly ensure that Commission staff,
3 including legal counsel, and participants and
4 their legal counsel, have had an adequate time to
5 not only collect information, but have facilitated
6 dialogue on the key issues and the matters of
7 contention.

8 Beginning before that work is done
9 will, in my mind at least, result in the time
10 before this Commission not being used as wisely as
11 we could.

12 It seems to me that if we need
13 inquiry time that is in this courtroom, and
14 focused in an adversarial way, we need to make
15 sure that it is on those issues of contention and
16 not issues that we all agree on.

17 Finally, with respect to site
18 visits, the First Nations Coalition welcomes --
19 absolutely welcomes the opportunity to work with
20 your staff to ensure that you are given an
21 opportunity to experience and witness the First
22 Nation relationship to the Fraser River sockeye
23 salmon throughout its entire migratory route. We
24 have already begun to do that work, and we would
25 welcome your staff to contact us, to coordinate
26 how this can be done in a transparent and
27 inclusive manner.

28 That completes my primary
29 submissions. I briefly have a couple of reply
30 submissions that I will take the time to do now.

31 I was heartened by how many times
32 I could say "We agree" in response to many of the
33 comments that were made yesterday.

34 First, as it relates to Canada's
35 submissions, we heard from Canada that
36 conservation is the responsibility of all, and
37 that conservation is a fundamental issue. We
38 agree.

39 We heard from Canada that the
40 Commission needs to have a better contextual
41 understanding. We agree.

42 We heard that cumulative impacts
43 are important. We agree.

44 We heard that comparing Fraser
45 River sockeye salmon to other stocks and species
46 is important. We agree.

47 We also heard that enforcement

Submissions on behalf of The First Nations Coalition

1 should be a separate area of inquiry and we agree.
2 We have heard that a couple of times yesterday.
3 Harvest and habitat related
4 enforcement should be considered as a distinct
5 issue. We think that will help to focus and have
6 a specific place for that issue and prevent it
7 from seeping into a lot of other issues.
8 However, Canada also suggested
9 that the internal structure of DFO should not be a
10 line of inquiry and you can take from my comments
11 up until now that we disagree with that.
12 We heard Rio Tinto Alcan say that
13 the impacts of all hydro project should be
14 considered. We agree.
15 However, we disagree that
16 Kemano should not be a matter of focus. It's
17 neither too old nor too far removed to be left off
18 the list of impacts.
19 We agree with the submissions by
20 Mr. McDade of the Aquaculture Coalition around the
21 unsettled nature of science and the importance of
22 looking at the multiple hats and roles of DFO and
23 assessing and managing the risks.
24 And finally, in conclusion, we can
25 agree with all of the comments that were made that
26 conservation is key.
27 Thank you, Mr. Commissioner.
28 THE COMMISSIONER: Thank you very
29 much, Ms Gaertner.
30 MR. WALLACE: Thank you,
31 Ms Gaertner.
32 Commissioner, the next group on
33 the agenda, the Musgagmagw Tribal Council have
34 opted to provide us with a written submission and
35 I understand will not be speaking today.
36 We heard something from the
37 Aboriginal Aquaculture Association yesterday, but
38 also in that group was Laich-kwil-tach Treaty
39 Society and the Heiltsuk Tribal Council who I
40 understand do have some comments this morning on
41 other issues than aquaculture.
42
43 SUBMISSIONS ON BEHALF OF LAICH-KWIL-TACH TREATY
44 SOCIETY
45
46 MR. DONOVAN: Thank you,
47 Mr. Commissioner.

Submissions on behalf of Laich-Kwil-Tach Treaty Society

1 A failing of counsel, I won't be
2 able to pack as much into my 15 minutes as
3 Ms Gaertner has packed into here, but I will do
4 my best.

5 The Laich-kwil-tach Treaty
6 Society --

7 MR. WALLACE: Could we have your
8 name for the record, please?

9 MR. DONOVAN: Sorry, it's Allan
10 Donovan for the Laich-kwil-tach Treaty Society,
11 which is comprised of all of the Lekwala-speaking
12 peoples, the Weiwaikum, the Wewaikai and the
13 Kwiakah Nation.

14 We have submitted some written
15 submissions and I will just comment briefly on
16 those submissions.

17 The Lekwala-speaking people,
18 the Laich-kwil-tach Treaty Society members,
19 have occupied since time immemorial the areas,
20 including the parts of Johnstone Strait and
21 the adjacent waters between Vancouver Island
22 and the mainland through which a large portion of
23 the Fraser River run goes every year on its
24 migration route.

25 The harvesting of a proportion of
26 those salmon has always been integral to the
27 cultural well-being, food and sustenance, but also
28 to the economies of our clients, and accordingly
29 the decline of the Fraser River salmon and the
30 systematic exclusion of the coastal First Nations
31 from the harvest of these salmon has had a
32 disproportionate and profound impact on the
33 coastal First Nations and in particular on the
34 Laich-kwil-tach peoples.

35 We have noted in our written
36 submissions that the Commission has to balance
37 between issues of science and policy and this has
38 been well explained by others and indeed
39 acknowledged in your ruling on the standing order,
40 that issues such as law, history and aboriginal
41 rights have to play an integral part of the
42 Commission's analysis.

43 Science alone might say something
44 like a weir across the mouth of the Fraser River
45 whereby all the salmon were harvested that were
46 appropriate and those that were to be let through
47 should be let through might be a scientifically

Submissions on behalf of Laich-Kwil-Tach Treaty Society

1 sound proposition. I have heard a well-known
2 fisheries scientist make that point. Of course
3 it would be a complete social and economic
4 disaster for many parties that rely on the
5 harvesting of the fish and it would be a complete
6 denial of the historic and constitutional promises
7 to aboriginal nations.

8 So science can lead us some of the
9 way, but considerations of the full range of
10 issues, including aboriginal rights and history
11 and law have to be part of the Commission's
12 deliberation and the Commission's evidence.

13 The discussion paper was an
14 excellent starting point and we have no criticisms
15 or comments on what's included in the discussion
16 paper. In our written submissions we have tried
17 to identify a number of issues that we say have
18 been missed and should be explicitly included.

19 We have noted at pages 3 and 4 of
20 the written submissions that there is a direction
21 in the discussion paper to have a review of the
22 background scientific issues like freshwater
23 ecology and marine ecology and we suggest that
24 that same kind of background review is essential
25 if the policies and regulations that govern and
26 have governed the harvesting of Pacific salmon
27 over the course of the last century and how they
28 have developed to the state that they are in now
29 and the impact that that has had on the aboriginal
30 peoples that rely on that salmon.

31 We have noted that much of this
32 could be done through review of existing
33 documentary reports and further evidence that will
34 be put before the Commission.

35 We say at page 4 that there should
36 be a specific reference to the concerns of
37 aboriginal nations in the discussion paper. The
38 discussion paper covers the scientific issues well
39 or thoroughly maps out a sketch of the framework
40 and we submit that the Commission should be
41 charting out in its discussion paper, in the
42 revised version, the issues that are of particular
43 importance to the aboriginal nations and the way
44 in which the Commission will address those issues.

45 We have humbly suggested some
46 wording for paragraphs that could be included at
47 the end of our submissions.

Submissions on behalf of Laich-Kwil-Tach Treaty Society

1 On three specific issues we see
2 nothing in the discussion paper and, in our
3 respectful submission, there should be something.
4 First is the issue of the
5 allotment of reserves to, as we say, as fishing
6 stations or, more broadly put, the entire
7 allotment of reserves to coastal nations on a very
8 small and limited basis, with the explicit
9 understanding by the Crown that these lands, while
10 insufficient as Reserves -- well, insufficient as
11 any basis for livelihood or continuation of the
12 communities, would be acceptable because of the
13 Crown's intention that these coastal First Nations
14 would continue making their living from the sea.
15 We are going to argue at the right
16 point that that is a profound historical
17 undertaking by the Crown that can't safely be
18 ignored by this Commission. The history that
19 followed that has really been a denial of that
20 promise by systematically excluding coastal First
21 Nations from their traditional livelihood of
22 salmon fishing.
23 That Crown promise is one of the
24 highest order and must be integrated into any
25 recommendations about how the Fraser River salmon
26 are managed in the future in a way that is
27 consonant with that promise.
28 Over on page 6 we note the linkage
29 to treaty negotiations. British Columbia, being
30 the odd man out of Confederation, has failed to
31 deal with aboriginal rights and title issues
32 through negotiated treaties with a few odd
33 exceptions prior to Confederation and a few very
34 recent exceptions in the last decade or two.
35 But our clients, like most before
36 the Commission, have no treaty and are in the
37 process of negotiating one. The Crown has
38 suspended negotiations on fisheries issues
39 explicitly pending the outcome of this inquiry and
40 their treaty mandates will be informed by what
41 this inquiry has to say.
42 In that sense, our suggestion is
43 that the discussion paper should be broadened to
44 include some consideration of the role the inquiry
45 will play in the development and framing of
46 Canada's negotiation mandates.
47 We will be recommending witnesses

Submissions on behalf of Laich-Kwil-Tach Treaty Society

1 and providing evidence and submissions to the
2 Commission on that issue.

3 Over on page 7, Mr. Commissioner,
4 we note that the issue of the interception versus
5 terminal fisheries is a critical one for the
6 Commission and it has been alluded to by others.
7 But in particular our client has been profoundly
8 affected by the decline of the sockeye and the
9 resulting restrictions on the access to the
10 fishery that they had formerly.

11 This is something that goes to the
12 health, the well-being, the cultural integrity and
13 the basic livelihood of the coastal First Nations.
14 Accordingly, we will be looking to this Commission
15 for recommendations that balance the interception
16 in terminal fisheries in some way that's fair and,
17 from our client's perspective, and we would submit
18 from the perspective of law, in a way that
19 respects the priority to be given to aboriginal
20 fishers, including aboriginal commercial fishers.

21 The final point we make at
22 pages 7 and 8 is that this is something that
23 Ms Gaertner has covered, that there is an
24 importance for this Commission to fully understand
25 the state and evolution of the law concerning
26 aboriginal fishing and a recognition that that law
27 is developing and will develop with significant
28 decisions to come in the next year or so from the
29 Supreme Court of Canada and from the British
30 Columbia Court of Appeal.

31 Our submission there is simply
32 that the Commission will need to consider the
33 role that aboriginal rights have had in the
34 development of fisheries policy and, perhaps more
35 importantly, should have in the development of
36 fishing policies in the future. We need policies
37 that reflect, honour and respect the section 35
38 rights of our clients and of all First Nations
39 that rely on this fishery.

40 Mr. Commissioner, we again
41 compliment the work of the Commission putting
42 together this paper, we have suggested a few
43 areas where we say new issues need to be
44 identified -- not new issues, but issues need to
45 be included explicitly.

46 We have taken the liberty of
47 suggesting at pages 8 and 9 of our written

Submissions on behalf of Laich-Kwil-Tach Treaty Society

1 submission language that could be included in
2 a revised discussion paper. I won't read that
3 to you. It's put out in the spirit of humility,
4 recognizing that imitation is the second highest
5 form of flatter, cut and paste is the very
6 highest form of flattery and we would be delighted
7 to be flattered.

8 --- Laughter

9 MR. DONOVAN: But any serious
10 consideration that could be given to this sort
11 of language would, in our view, help the
12 Commission direct its inquiry towards these very
13 important issues.

14 Thank you.

15 THE COMMISSIONER: Thank you,

16 Mr. Donovan.

17 MR. DONOVAN: Ms Fong was going to
18 make a few comments separately on behalf of the
19 Heiltsuk Nation.

20 MS FONG: Thank you.

21
22 SUBMISSIONS ON BEHALF OF THE HEILTSUK TRIBAL
23 COUNCIL

24
25 THE COMMISSIONER: Ms Fong...?

26 MS FONG: Mr. Commissioner, Lisa
27 Fong for the Heiltsuk Tribal Council. With me is
28 my co-counsel, Ming Song, who is in the galley.

29 First, the Heiltsuk wish to thank
30 the Commissioner for providing the opportunity to
31 make recommendations on the issues to be
32 investigated and we also wish to thank the
33 Commission staff for its very hard work on this
34 discussion paper.

35 As you may be aware, yesterday
36 Heiltsuk did not speak on the aquaculture issue
37 as scheduled and today we only wish to speak
38 very briefly.

39 Our view is that identifying the
40 issues to be investigated is a very important
41 first step if this Commission is to meet its
42 goals. For this reason, and because of the
43 various delays, Heiltsuk will provide a full
44 written submission listing the issues which it
45 recommends to be investigated. However, for today
46 I will just spend a few minutes on the overarching
47 issue of principal concern to Heiltsuk.

Submissions on behalf of The Heiltsuk Tribal Council

1 The discussion paper
2 references, and I quote, "the DFO's relationship
3 with First Nations."
4 This description, we say, fails to
5 reflect the First Nations rightful role in working
6 with the Crown to jointly carry out salmon
7 conservation management.
8 First Nations who fish are not
9 simply regulated by the DFO, they have a right, a
10 responsibility, and we say a jurisdiction, to
11 participate in the governance of fishing. They
12 are also the peoples most adversely affected by
13 the decline in the salmon stocks.
14 I just want to remind us all what
15 the Supreme Court of Canada said in Gladstone
16 about the priority to be given when attempting to
17 balance competing interests.
18 First priority should be accorded
19 to conservation.
20 Second priority to aboriginal
21 rights for food, social and ceremonial purposes.
22 Third priority to aboriginal
23 commercial rights.
24 Fourth priority to non-aboriginal
25 commercial rights.
26 With this in mind we say that
27 this Commission, to look to ways in which the
28 First Nations have been excluded in governance
29 in the past in order to inform proper governance
30 in the future.
31 We take this opportunity to give a
32 brief list of four issues we say should be
33 investigated. These are only four.
34 First, investigating failures of
35 the DFO to consult with First Nations on matters
36 which may impact aboriginal rights. For example,
37 Heiltsuk's experience includes the DFO failing to
38 meaningfully consult with respect to the licensing
39 of the Ocean Falls hatchery.
40 There should be an investigation
41 on what factors led to DFO licensing that hatchery
42 without first consulting Heiltsuk. And how can
43 those impediments be reduced or eliminated to
44 ensure that First Nations can protect their
45 aboriginal rights.
46 Second, investigating what
47 information DFO collects and its accessibility to

Submissions on behalf of The Heiltsuk Tribal Council

1 First Nations.
2 For example, we are not aware
3 that the DFO has shared information with First
4 Nations regarding its fish health audit and
5 surveillance program. First Nations have a vested
6 interest in knowing the impact of salmon farms.
7 Given the very serious risks that disease from
8 salmon farms will impact on fish stocks or marine
9 ecology, why wouldn't the DFO make this
10 information easily available so that the First
11 Nations can make meaningful decisions about their
12 aboriginal rights.
13 Again, these are just examples.
14 There is more.
15 Third, investigating lack of
16 enforcement by the DFO of catch limits.
17 Here again an example. Heiltsuk's
18 experience has been that sports fisherman have
19 been fishing beyond their allotments without DFO
20 enforcement. Why has that happened and what has
21 been done about that and what needs to be done to
22 improve those conservation efforts if conservation
23 is a priority?
24 Fourth, investigating the extent
25 and adequacy of funding of First Nations to engage
26 in conservation efforts.
27 Here I provide two examples.
28 Heiltsuk has jointly operated the McLaughlin Bay
29 Hatchery with the DFO since 1977. The hatchery
30 has engaged in programs that develop techniques to
31 increase salmon production.
32 The hatchery also ranch farms
33 salmon smolt for release, yet funding over the
34 last decade is reduced to half of what is needed
35 to operate the hatchery despite the staff at the
36 hatchery saying that it can grow and release
37 more smolts.
38 Perhaps one of the questions that
39 should be asked is why are hatcheries not an
40 alternative to salmon farming?
41 Another example, Heiltsuk is
42 partially funded to monitor salmon stocks, but
43 they are not funded sufficiently to properly
44 monitor offshore migration routes.
45 For the Heiltsuk monitoring stock
46 requires travelling in a boat 30 to 40 miles out
47 into the ocean. It's not something that can be

Submissions on behalf of The Heiltsuk Tribal Council

1 done from the cliffs.
2 If salmon management is such a
3 priority, what measures are necessary to ensure
4 sufficient funding?
5 Our submissions will provide a
6 further list of the issues, some examples and
7 also reply once we have had an opportunity to
8 hear everybody.
9 Again, we thank the Commission for
10 its work. This work is very important and we will
11 do all we can to support this Commission to have a
12 successful inquiry.
13 Thank you.
14 THE COMMISSIONER: Thank you,
15 Ms Fong.
16 MR. WALLACE: Thank you, Ms Fong.
17 Mr. Commissioner, it's 11:20,
18 perhaps this would be a convenient time to take
19 the morning break.
20 THE COMMISSIONER: Thank you,
21 Mr. Wallace.
22 THE REGISTRAR: The hearing will
23 now recess for 15 minutes
24 --- Upon recessing at 11:20 a.m.
25 --- Upon resuming at 11:40 a.m
26 THE REGISTRAR: Order. The
27 hearing is now resumed.
28 THE COMMISSIONER: Thank you.
29 MR. WALLACE: Mr. Commissioner,
30 the next group on the agenda are the Métis Nation
31 of British Columbia.
32 Mr. Gereluk...?
33
34 SUBMISSIONS ON BEHALF OF THE MÉTIS NATION OF
35 BRITISH COLUMBIA
36
37 MR. GERELUK: Thank you very much.
38 Thank you, My Lord, and
39 participants. My name is Joe Gereluk, I represent
40 the Métis Nation of British Columbia.
41 The Métis Nation, by way of
42 background, is constituted of approximately
43 35 communities extending throughout the Province
44 of British Columbia, including Fort Nelson, Fort
45 St. John in the far northeast and five communities
46 on Vancouver Island in the southwest.
47 There are approximately 5,800

Submissions on behalf of The Métis Nation of
British Columbia

1 card-carrying Métis citizens and those people who
2 self-identify as Métis number approximately 50,000
3 persons and individuals in British Columbia.

4 These people reside through the
5 province as stated, they are urban and rural
6 residents and have consistently and historically
7 relied in some fashion on the sockeye fisheries in
8 the Fraser River.

9 Historical data gathered on behalf
10 of the Métis Nation has determined that there is a
11 history dating back to the early 1800s where Métis
12 citizens have revolved around the fisheries in
13 the Fraser River, the sockeye for the purposes of
14 food and social and ceremonial purposes and
15 continue to practice that tradition and have
16 evolved a way of life surrounding the tradition of
17 gathering food and, for the purposes of this
18 Commission, the gathering of fish through fishing.

19 The Métis Nation has adopted a
20 series of legislation for regulating their
21 internal affairs, and as it relates to natural
22 resources, has adopted a Natural Resources Act as
23 the governing document for the preservation of
24 natural resources, including wildlife and fish
25 stocks.

26 The first priority of that
27 legislation is conservation, and the Ministry for
28 Natural Resources is directed by a registered
29 professional biologist with extensive experience
30 in the field.

31 Much of that experience is
32 relevant to the condition of sockeye salmon stocks
33 in the Fraser River.

34 The Métis, then, claim to have a
35 unique perspective on the issues that the
36 Commission will be investigating through its
37 mandate.

38 The Métis also claim an inherent
39 right and entitlement to fish and the gathering of
40 fish stocks in their traditional fashion.

41 I had intended to provide written
42 submissions to the Commission. Unfortunately, our
43 Director of Natural Resources has been unavailable
44 for a couple of weeks due to personal matters. He
45 is back in operation, and contact, and I will be
46 providing, with the Commission's permission,
47 written submissions within two weeks.

Submissions on behalf of The Métis Nation of
British Columbia

1 I only have two or three points
2 that I wish to bring up with respect to the
3 discussion paper of June 3rd. The first has to do
4 with the monitoring procedure that has been
5 proposed. As I understand it, the investigation
6 of fish biology and the issues relating to fish
7 biology and ecosystems is proposed to be in the
8 nature of secondary investigations, based on
9 existing studies and data that is or will be made
10 available to the participants and the Commission's
11 scientific advisory panel.

12 Data upon which secondary
13 investigations will be based should be, in our
14 view, enhanced by evidence provided by in-field
15 personnel, including DFO field officials and other
16 individuals, such as our, and other, registered
17 professional biologists, who have experience and
18 who have currency in the field; and including
19 those persons who are working for forestry and the
20 agricultural industry who may have valuable
21 information to provide to the Commission.

22 On a related matter -- and I
23 understand that this matter has been brought
24 forward -- although the issue of enforcement of
25 harvesting procedures has been pointed out and
26 referred to in the Commission's material, the
27 enforcement of legislation and regulations
28 surrounding the Fraser Valley ecosystem and the
29 various partners, such as forestry and
30 agriculture, have not been mentioned -- until, I
31 understand, perhaps some of the participants
32 mentioned them today -- and the health of that
33 ecosystem in the Fraser River Watershed depends on
34 consistent and effective enforcement.

35 I would submit that enforcement
36 relating to the ecosystem be brought into the
37 Commission's investigation.

38 The other issue is priority. In
39 our view, there is a significant issue to be dealt
40 with and defined in relation to the provincial and
41 federal jurisdictional issues. There is a broad
42 range of matters dealt with provincially and
43 federally, and a definition, I think, would rank
44 near the top of the priorities; a definition of
45 the various jurisdictional issues, and an
46 agreement, if possible, between those governments
47 with respect to the matters that are before the

Submissions on behalf of The Métis Nation of
British Columbia

1 Commission.

2 That is all I have to say. I want
3 to thank the Commission for inviting the Métis
4 Nation to attend. Thank you very much.

5 THE COMMISSIONER: Thank you, Mr.
6 Gereluk.

7 MR. WALLACE: Thank you, Mr.
8 Gereluk.

9 Next, Nicole Schabus will speak
10 first, and then Tim Dickson will add some remarks,
11 for the Stó:lō Tribal Council and the Cheam Indian
12 Band.

13
14 SUBMISSIONS ON BEHALF OF THE STÓ:LŌ TRIBAL COUNCIL
15 AND CHEAM INDIAN BAND

16
17 MS SCHABUS: Mr. Commissioner, my
18 name is Nicole Schabus, and I am co-counsel for
19 the Cheam Indian Band, along with my co-counsel,
20 Tim Dickson, who is sitting at the counsel table,
21 for the Stó:lō Tribal Council. He will be
22 speaking after me.

23 We have also provided a written
24 submission, but I just want to speak to a few
25 issues here.

26 We first want to acknowledge that
27 we are on Coast Salish territory, and we also want
28 to acknowledge all of the indigenous nations whose
29 traditional territories and waters are home to the
30 Fraser River sockeye stocks.

31 We also want to acknowledge that
32 Ernie Crey, who is a member of the Pilalt Tribe
33 and the Cheam people, and who works for the Stó:lō
34 Nation Tribal Council, is in the hearing room with
35 us.

36 We also want to thank the
37 Commission for the discussion paper, which sets
38 out many important issues, all of which clearly
39 have an indigenous dimension that should be taken
40 into account when addressing those issues.

41 In regard to that, I want to ask
42 you, Mr. Commissioner, to look at the decline of
43 the Fraser River sockeye salmon from an indigenous
44 perspective.

45 Indigenous peoples have
46 sustainably managed the sockeye since time
47 immemorial, and since contact they have graciously

Submissions on behalf of The Stó:lō Tribal Council
and Cheam Indian Band

1 shared their resource and the salmon, which forms
2 the basis of their culture and indigenous
3 economies, with the newcomers.

4 Over the last century they have
5 been increasingly economically marginalized from
6 access to salmon through law and policy. They had
7 to work hard to have their Aboriginal title and
8 rights to fish recognized by the courts.

9 But, yet, those are still not
10 implemented on the ground and recognized by DFO.

11 Over the last century, indigenous
12 peoples have seen a drastic reduction in the
13 salmon that sustains them, and really in the last
14 generation the decline has been disastrous.

15 Others, whose testimony you will
16 hear in this inquiry, who remember how plentiful
17 the salmon, especially the sockeye, ran in the
18 Fraser River and its tributaries, know that their
19 grandchildren are not experiencing the same today,
20 and unless drastic steps are taken to ensure the
21 conservation of the sockeye, and the recognition
22 of indigenous rights, it might be lost for future
23 generations, and the indigenous cultures and
24 economies that depend on the salmon will be
25 forever changed.

26 The Stó:lō people, including the
27 Pilalt Tribe and the people of Cheam, have an
28 inextricable relationship with the Fraser River,
29 which crosses the heart of their territory, and
30 the salmon, especially the sthéqi, which is the
31 Halq'eméylem term for sockeye salmon, has
32 sustained their people and culture through time.

33 I just want to point out to you
34 that the term "sockeye" is actually derived from
35 the Halq'eméylem term "sthéqi".

36 The Stó:lō Tribal Council and the
37 Cheam people hold inherent title and rights over
38 their traditional territories, which flow from
39 their connection to their land and water. These
40 rights are enshrined in indigenous languages, laws
41 and protocols. They are recognized by the Supreme
42 Court of Canada as sui generis rights and legal
43 systems, protected under section 35 of the
44 Constitution.

45 The Supreme Court of Canada has
46 recognized that there is an economic and
47 jurisdictional dimension to Aboriginal title,

Submissions on behalf of The Stó:lō Tribal Council
and Cheam Indian Band

1 which therefore has to be taken into account when
2 dealing with fisheries management decisions in the
3 traditional territories of Aboriginal peoples.
4 In terms of the Aboriginal right
5 to fish, the Supreme Court of Canada has adopted
6 the Doctrine of Priority Resource Allocation,
7 meaning that Aboriginal peoples have the right to
8 be the first to access fish before commercial and
9 recreational fishers.
10 There is an economic dimension to
11 this right. But, more importantly, there is also
12 an indigenous dimension to conservation.
13 Indigenous peoples share in the
14 jurisdiction in regard to conservation, and DFO
15 cannot claim exclusive jurisdiction over
16 conservation and management of the fisheries, and
17 thereby exclude indigenous peoples from the
18 management of the resource that is so central to
19 their survival and culture.
20 Indigenous peoples, through their
21 traditional knowledge, hold one of the keys to
22 saving the Fraser River sockeye stocks.
23 Traditional indigenous knowledge constitutes the
24 longest term knowledge about the Fraser River
25 sockeye runs, and the marine and river ecosystems
26 that sustain them.
27 Research has shown that there is a
28 strong correlation and overlap between
29 biodiversity and cultural and linguistic
30 diversity, meaning that the highest concentration
31 of biodiversity can actually be found in areas of
32 linguistic diversity. This, in turn, points to
33 indigenous languages and concentrations of
34 biodiversity in indigenous territories.
35 The research has further shown
36 that indigenous peoples' interaction with
37 ecosystems and different species is actually
38 enhanced by diversity.
39 Now, we want to also specifically
40 point the Commissioner and the Commission to
41 international standards in that regard.
42 Multilateral environmental agreements recognize
43 indigenous knowledge as a key tool for sustainable
44 development.
45 Indigenous traditional knowledge
46 is treated on equal footing with scientific
47 knowledge, and indigenous peoples participate

Submissions on behalf of The Stó:lō Tribal Council
and Cheam Indian Band

1 independent of governments in many processes,
2 including the United Nations Framework Convention
3 on Climate Change. They actually participate, on
4 equal footing with governments, in a number of
5 those processes.
6 Canada is a party to the
7 Convention on Biological Diversity, which is a
8 sister convention to the Convention on Climate
9 Change, and, together with the UN Convention on
10 Decertification, they formed what are known as the
11 Rio Conventions, that came out of the Rio summit
12 in 1990.
13 The CBD, the Convention on
14 Biological Diversity, recognizes traditional
15 knowledge as a key tool to ensure conservation and
16 the sustainable use of biological diversity, just
17 as, if not more important than, western scientific
18 knowledge. It recognizes traditional knowledge in
19 specific provisions on in situ conservation and in
20 related provisions on sustainable use and access
21 and benefit sharing.
22 Article 8(j) particularly focuses
23 on traditional knowledge.
24 The CBD Conference of the Parties
25 established a specific ad hoc, open-ended working
26 group on traditional knowledge -- Article 8(j) --
27 and related provisions, where indigenous peoples
28 take part on equal footing with state governments
29 and address issues related to conservation and
30 sustainable use of biodiversity.
31 One of the instruments that was
32 elaborated on specifically by the Article 8(j)
33 working group, and adopted by the Conference of
34 the Parties, is the Akwé: Kon Guidelines. That is
35 named after the Mohawk term, because it was in
36 traditional Mohawk, or Haudenosaunee territory,
37 where it was adopted. The Haudenosaunee territory
38 around Montreal is also the territory where the
39 secretariat for the convention is based.
40 The Akwé: Kon Guidelines are for
41 the conduct of cultural, environmental, and social
42 impact assessments regarding developments proposed
43 to take place, which are likely to impact on
44 sacred sites and lands or waters traditionally
45 occupied or used by indigenous and local
46 communities.
47 This is one of the reasons,

Submissions on behalf of The Stó:lō Tribal Council
and Cheam Indian Band

1 Commissioner, that we want to point you to
2 indigenous terms. They have this advantage of
3 putting what are probably 15 lines in our language
4 into one term, which means taking care of
5 everything. Actually, there is a respective term
6 that the Stó:lō people have, which is
7 "che'chamus", to take care of everything. This is
8 really what we are talking here, when we are
9 talking about the sockeye salmon.

10 The Akwé: Kon Guidelines set out a
11 Prior Informed Consent standard. Similar
12 indigenous Prior Informed Consent standards are
13 enshrined in other multilateral environmental
14 agreements and international human rights
15 instruments, such as the UN Declaration on the
16 Rights of Indigenous Peoples.

17 There is a jurisdictional and
18 procedural element to Prior Informed Consent, and
19 a substantive element, that ensures that the
20 rights of indigenous peoples are taken into
21 account, which enables the full participation of
22 indigenous peoples as equal decision-makers.

23 We, therefore, recommend that the
24 Cohen Commission consider these international
25 standards, including Prior Informed Consent, which
26 would and could form the basis for future, more
27 sustainable management of the Fraser River sockeye
28 salmon that takes into account indigenous
29 knowledge.

30 We have reviewed the discussion
31 paper, and the Cohen Commission has retained a
32 scientific advisory panel, but it appears not to
33 have retained anyone with traditional knowledge of
34 the sockeye and its management, and the discussion
35 paper does not disclose an intention to engage in
36 knowledge holders. We, therefore, fully support
37 the recommendation made by the First Nations
38 Coalition to have at least one expert on the panel
39 who can translate between traditional knowledge
40 and scientific knowledge.

41 In addition, and specifically, we
42 also, in keeping with international standards and
43 processes, recommend that the Cohen Commission
44 involve traditional knowledge holders and consider
45 indigenous traditional knowledge on an equal
46 footing with scientific knowledge.

47 And we, therefore, recommend that

Submissions on behalf of The Stó:lō Tribal Council
and Cheam Indian Band

1 the Commission establish a panel of traditional
2 knowledge holders to advise them throughout this
3 inquiry.
4 Possible traditional knowledge
5 holders to form part of the panel should be
6 proposed by Aboriginal Peoples whose traditional
7 territories and waters are home to the Fraser
8 River sockeye salmon runs and stocks.
9 And we also thank the First
10 Nations Coalition for their support of this
11 proposal.
12 I'm now going to pass on to my
13 co-counsel.
14 MR. DICKSON: Thank you.
15 THE COMMISSIONER: Mr. Dickson.
16 MR. DICKSON: Mr. Commissioner, I
17 wish to address just two topics with you.
18 THE REGISTRAR: Name, please?
19 Name?
20 MR. DICKSON: Oh, I'm sorry.
21 Tim Dickson, D-i-c-k-s-o-n.
22 Mr. Commissioner, it is, in our
23 respectful submission, essential for the
24 Commission to consider and understand the
25 perspective that Aboriginal Peoples like the
26 Stó:lō have on DFO's management of Fraser River
27 sockeye and of the associated fisheries.
28 As you have heard, as you are
29 likely aware, like some other Aboriginal Peoples,
30 the Stó:lō have fished sockeye on the Fraser for
31 thousands and years and they have done so
32 sustainably. They have always depended upon the
33 sockeye in almost every facet of their culture,
34 for food, social, ceremonial and trade purposes.
35 And as you have also heard, like
36 other Aboriginal Peoples, their access to sockeye
37 has been systematically undermined since soon
38 after colonization.
39 After the canneries were
40 established by Europeans, government imposed upon
41 Aboriginal Peoples a distinction between a food
42 fishery, which was allowed, and a commercial
43 fishery which wasn't.
44 And while there is now recognition
45 of constitutional protection for a food fishery
46 and recognition that that food fishery has
47 priority over all other non-conservation uses, the

Submissions on behalf of The Stó:lō Tribal Council
and Cheam Indian Band

1 Stó:lō see DFO routinely infringe that right.
2 They witness DFO commonly allow the commercial
3 fishery and I add the fast-growing and now very
4 significant recreational fishery to proceed when
5 the Stó:lō's food and social and ceremonial rights
6 are unfulfilled.

7 DFO has adopted a command and
8 control style of management of the fishery that
9 does not respect and accommodate Aboriginal title
10 and rights.

11 DFO does not allow for meaningful
12 participation of Aboriginal Peoples in the
13 management of the fishery, nor does DFO
14 incorporate the traditional knowledge of the
15 sockeye that Aboriginal Peoples have gained over
16 thousands of years, instead, DFO relies on science
17 and modelling that is often criticized as weak and
18 outdated.

19 In the result, Mr. Commissioner,
20 the Stó:lō have witnessed DFO preside over a
21 precipitous decline in Fraser River sockeye and it
22 is no wonder that the Stó:lō and I believe other
23 Aboriginal Peoples view DFO's management of the
24 fishery as lacking in effectiveness, in
25 credibility and in legitimacy.

26 And, in my respectful submission,
27 the Commission needs to investigate the failure of
28 DFO to respect and accommodate Aboriginal title
29 and rights in respect of Fraser sockeye.

30 But what is more pressing, I would
31 urge, Mr. Commissioner, is that this Commission
32 explore the possibilities for a more effective
33 management model than DFO's command and control
34 approach.

35 This Commission needs to consider
36 the benefits of a truly cooperative management of
37 the Fraser sockeye fishery between DFO and
38 Aboriginal Peoples which would recognize that
39 Aboriginal Peoples also have jurisdiction over the
40 resource and which would involve shared
41 decision-making between DFO and Aboriginal
42 Peoples.

43 Aboriginal Peoples like the Stó:lō
44 have long advocated for a shared decision-making
45 model and I suggest that the benefits of such a
46 model likely include the incorporation of
47 traditional ecological knowledge, respecting

Submissions on behalf of The Stó:lō Tribal Council
and Cheam Indian Band

1 Aboriginal title and rights, achieving better
2 relations between DFO and Aboriginal Peoples,
3 securing the commitment of Aboriginal Peoples to a
4 coordinated conservation and management regime and
5 having more management of the resource placed into
6 the hands of those who are most dependent upon it
7 and most knowledgeable about it.

8 And if you find that such a model,
9 Mr. Commissioner, is a preferable approach to
10 DFO's current management, then I suggest that you
11 should make practical recommendations as to how it
12 could be achieved and the Stó:lō would welcome the
13 opportunity to assist you in that.

14 I want to touch quickly, Mr.
15 Commissioner, just on one other topic.

16 In my submission, the Commission
17 needs to consider the benefits of in-river or, as
18 they're sometimes called, terminal fisheries.
19 In-river or terminal fisheries occur obviously
20 when the fish are travelling up river after they
21 have left the salt water.

22 One benefit of such fisheries on
23 the Fraser is that they generally occur after the
24 fish have been counted at Mission and so they
25 occur with the benefit of much greater information
26 about the abundance of the sockeye. But the chief
27 benefit is that it is possible to be very
28 selective as to the fish that are being caught.

29 I expect the science in this
30 inquiry to show that it is critical to
31 conservation to protect the diversity of sockeye
32 runs and, indeed, I read DFO's wild salmon policy
33 as adopting that principle.

34 In-river fisheries provide much
35 more scope to protect weak stocks and to draw only
36 upon strong stocks.

37 Currently, however, the great bulk
38 of the commercial sockeye fishery occurs in salt
39 water when the stocks are mixed and before they
40 have been counted at Mission.

41 That fishery poses very
42 substantial risks to weak runs and, therefore, to
43 the diversity of sockeye stocks and, in turn, to
44 the health of Fraser sockeye generally.

45 The Commission should investigate
46 whether more or all of the commercial fishery
47 should be shifted from a salt water mixed stock

Submissions on behalf of The Stó:lō Tribal Council
and Cheam Indian Band

1 fishery to an in-river selective fishery. And if
2 the Commission were to find merit in that concept,
3 then it should also go further to suggest
4 practical steps for such a transition.

5 Some Coastal Aboriginal Peoples
6 are also dependent upon Fraser sockeye and
7 existing commercial fishers have significant
8 investments in a salt water mixed stock fishery
9 and the Commission should consider how their
10 interests should be treated in any transition to
11 an in-river fishery.

12 Many thanks.

13 THE COMMISSIONER: Thank you, Mr.
14 Dickson.

15 MR. WALLACE: Thank you, Mr.
16 Dickson.

17 For the Western Coast Salish First
18 Nations, Robert Janes.

19
20 SUBMISSIONS ON BEHALF OF WESTERN COAST SALISH
21 FIRST NATIONS
22

23 MR. JANES: My name is Robert
24 Janes, J-a-n-e-s. I've provided a written
25 submission, I'm not planning to take you through
26 it, I figure everybody can read it and I primarily
27 plan to supplement some of the submissions that
28 have been made and focus on the high points of our
29 submission.

30 In doing so, I would like to thank
31 Ms Gaertner for laying out a very comprehensive
32 view of many of the concerns that I think all of
33 the First Nations groups share and many of my
34 comments really more supplement what she has to
35 say.

36 And in terms of our core
37 submissions with respect to the topic before you
38 today, Commissioner, which are really the
39 questions you've asked around: are there things
40 that should be added to the Discussion Paper which
41 require further focus and what should the
42 emphasis be, really at point No. 4 we've
43 summarized our three major concerns.

44 The first of these concerns is
45 that we do not believe that the Discussion Paper
46 brings forth clearly the degree to which this
47 Commission should examine the complete historical

Submissions on behalf of Western Coast Salish
First Nations

1 context of the salmon runs in the Fraser River,
2 the sockeye salmon runs in the Fraser River and
3 their usage by First Nations and non-First Nations
4 persons and the history of their collapse.

5 We do have a concern that if there
6 is too great a focus on more contemporary
7 information, more contemporary runs, the analysis
8 and recommendations that will flow out of this
9 Commission will be informed by what is really a
10 depleted fishery and will not give a true picture
11 of how the Aboriginal People developed their
12 cultures and the context in which they developed
13 their cultures and the way in which they relate it
14 to these stocks and their use of these fish.

15 And, in our view -- and this does
16 run up against the submission that's been made to
17 you by Rio Tinto Alcan -- you are going to have to
18 look at historical impacts in the context of
19 habitat. That's not necessarily to say what
20 conclusion should be drawn out of that or what
21 recommendation should be drawn out of that, but
22 it's going to be important for this Commission to
23 understand if it is going to understand the
24 perspective of Aboriginal People that effectively
25 parts of the sockeye run have been appropriated to
26 the benefit of non-Aboriginal people through
27 historical impacts such as the construction of
28 hydroelectric facilities, the building of cities
29 and so forth.

30 So, that's the first concern we
31 have, is that that particular aspect of your
32 analysis is not really brought out clearly in the
33 Discussion Paper as a -- in our view, as a point
34 of discussion.

35 The second point, and this is a
36 critical one and much of the submissions you've
37 heard this morning have focused on this, is the
38 question of how the Department of Fisheries and
39 Oceans' approach to the Aboriginal and Treaty
40 rights issues are to be dealt with.

41 And I want to be clear that the
42 level at which we are making this submission, and
43 I believe there's many, many levels to this
44 submission. I mean, at one level there is what
45 are the rights, and I suspect that if you had 15
46 years and twice as many lawyers we could perhaps
47 get into that.

Submissions on behalf of Western Coast Salish
First Nations

1 knowledge is something that you should be taking
2 into account.

3 And I just want to come to my
4 third point in a moment on this, which is -- and
5 that's not a remarkable submission. The Canadian
6 Environmental Assessment Authority, you know,
7 regulatory hearings before the National Energy
8 Board, all sorts of regulatory processes now
9 involving decisions that affect Aboriginal
10 resources have requirements in them to take into
11 account traditional knowledge.

12 The submission that's being made
13 to you by Ms Schabus, by Ms Gaertner, these are
14 not remarkable suggestions, they are in fact quite
15 standard suggestions in large sectors and it is
16 something that is well suggested to you as
17 something that should form part of this process.

18 Which really brings me to my third
19 point as to why this rights issue is so critical
20 to this process, which is that -- and this goes
21 back to a submission I made to you before -- it
22 feeds into the legitimacy of the report that you
23 will be delivering in the eyes of Aboriginal
24 People.

25 The Aboriginal People are a very
26 significant sector and component, constituency,
27 whatever word you want to use, who will be looking
28 at this report and asking, finally have the issues
29 we've been raising about the disappearance of one
30 of our major resources been addressed.

31 And if their rights are invisible
32 in that process, or perhaps tucked underneath the
33 phraseology of the relationship with Department of
34 Fisheries and Oceans, they are not going to feel
35 and believe and accept that this report has really
36 addressed what they see as a key issue.

37 The third over arching issue which
38 we believe has to be brought out more clearly --
39 and this is more a point of emphasis -- is the
40 question of habitat loss as a discrete and
41 distinct topic.

42 There is no doubt that the
43 Discussion Paper does touch upon habitat loss,
44 issues such as urbanization, forestry,
45 agriculture, all implicitly deal with habitat
46 loss. But, in our submission, habitat loss is in
47 fact a broad, over arching issue which should be

Submissions on behalf of Western Coast Salish
First Nations

1 dealt with discretely and it cannot be estimated
2 the number of different ways in which habitat loss
3 come up.

4 I mean, forestry is one, but even
5 issues such as gravel removal in the Fraser River,
6 the hardening of the banks of the Fraser River,
7 the fact that the Fraser Delta has largely been
8 converted into a city are all issues of habitat
9 loss and are an issue that many First Nations
10 believe is at the root along with over fishing of
11 the decline of the fishery.

12 So, with that I'll really just
13 leave the rest of the paper to recommend itself to
14 you, Mr. Commissioner.

15 THE COMMISSIONER: Thank you, Mr.
16 Janes.

17 MR. WALLACE: Thank you, Mr.
18 Janes.

19 Joe Arvay for the Maa-nulth,
20 Tsawwassen and the Musqueam First Nations.

21 THE COMMISSIONER: Good morning,
22 Mr. Arvay.

23
24 SUBMISSIONS ON BEHALF OF MAA-NULTH TREATY SOCIETY,
25 TSAWWASSEN FIRST NATION, AND MUSQUEAM FIRST NATION
26

27 MR. ARVAY: Mr. Commissioner,
28 Joseph Arvay for the Tsawwassen First Nation, the
29 Musqueam Indian Band and the Maa-nulth Treaty
30 Society.

31 Mr. Commissioner, my submissions
32 today will be brief, some might say
33 characteristically so.

34 But today is largely because our
35 clients fully endorse and adopt the very thorough
36 submissions that Ms Gaertner made on behalf of the
37 First Nations Fishery Council, a group that we
38 hope to work closely with as this inquiry
39 proceeds.

40 The Tsawwassen First Nation and
41 the Maa-nulth Treaty Society share one thing in
42 common and that's Treaty status, current and
43 anticipated.

44 The Tsawwassen First Nation and
45 the Musqueam Indian Band share a long time access
46 to the mouth of the Fraser River and both have
47 been located there since time immemorial.

Submissions on behalf of Maa-Nulth Treaty Society,
Tsawwassen First Nation, and Musqueam First Nation

1 The Musqueam and the Tsawwassen
2 have a long-standing knowledge of the fishery in
3 the Fraser River.

4 The Tsawwassen First Nation and
5 the Musqueam are two First Nations that have been
6 significantly affected by urbanization and
7 agricultural activities.

8 And it's with respect to those
9 issues that they believe that they may be of
10 particular assistance to the Commission, both with
11 respect to the cause of the decline or the
12 disappearance of the sockeye stocks in the Fraser
13 River and equally importantly with respect to
14 measures that may be taken to remedy that decline.

15 Similarly, the Tsawwassen First
16 Nation and the Maa-nulth Treaty Society are two
17 First Nations that have reached final agreements
18 and, as such, they believe that they can look to
19 that experience to assist the Commission in ways
20 in which First Nations and other levels of
21 government can co-manage the fishery.

22 Related to urbanization and
23 management is the issue of restoration. The
24 Commission intends to examine the impact of
25 population centres along the Fraser River from
26 Prince George to Vancouver that are adjacent to
27 main stem or tributary habitats.

28 In our view, management and
29 enhancement issues of these main stem and
30 tributaries should be directly linked to the
31 future and ongoing restoration of these waterways
32 and habitats.

33 The Commission's stated review
34 under the sub-heading of urbanization and
35 agricultural activities includes, among other
36 things, population, changes in hydrology, sewage
37 impacts, toxic contaminants, damage to habitats as
38 well as agricultural activities including cattle
39 grazing.

40 In addition to the points raised
41 under the sub-heading, the following points should
42 also be considered, in our submission.

43 Firstly, the impact of traffic on
44 the Fraser River, including the use of larger
45 vessels such as oil tankers proposed for the
46 expansion of the Vancouver Airport Fuel Delivery
47 Project.

Submissions on behalf of Maa-Nulth Treaty Society,
Tsawwassen First Nation, and Musqueam First Nation

1 right to fish for salmon in the mouth of the
2 Fraser River for a period of 24 hours in August of
3 1998.

4 It was within a few months of the
5 Supreme Court of Canada's decision that the
6 government announced that there would be an
7 inquiry, although the former decision was not made
8 until about a year later.

9 The CAPP case highlighted the
10 tension that existed between the First Nations and
11 other non-Aboriginal groups, a tension that exists
12 among some to this day.

13 While this inquiry will not decide
14 who has Aboriginal rights or where, the fact is
15 that our clients have established their Aboriginal
16 rights through the courts in the case of the
17 Musqueam, and Treaty rights in the case of the
18 Tsawwassen and the Maa-nulth.

19 Those constitutional rights must
20 be respected by this Commission in any
21 recommendations it will make as to the future
22 management of the sockeye salmon fishery in the
23 Fraser River.

24 Mr. Commissioner, we heartily
25 agree with the submissions that you have heard
26 about the importance of Aboriginal knowledge and
27 Aboriginal wisdom, both in assessing the reasons
28 for the decline in the salmon and the way to
29 rebuild the species.

30 Our clients look forward to
31 assisting the Commission in this very important
32 respect.

33 Indeed, we look forward to working
34 cooperatively with all the First Nations and other
35 participants with whom we share a common interest,
36 to ensure that the Commission meets its mandate in
37 a timely way.

38 But timely must take into account
39 meaningfulness, both in terms of process and
40 outcome. While our standing group has serious
41 concerns about the time frame for the delivery of
42 the final report in May of 2011, for the time
43 being, we remain committed to working with the
44 Commission to see that it meets that deadline.

45 We recognize that the Commission
46 must proceed with all due haste to make
47 recommendations that will redress the serious

Submissions on behalf of Maa-Nulth Treaty Society,
Tsawwassen First Nation, and Musqueam First Nation

1 decline if not disappearance of the sockeye, a
2 decline or disappearance that continues to
3 seriously and adversely affect our clients on a
4 daily basis.
5 I'll provide a copy of my notes to
6 Commission counsel at the end of the day for your
7 convenience.
8 Thank you.
9 THE COMMISSIONER: Thank you very
10 much, Mr. Arvay.
11 MR. WALLACE: Thank you, Mr.
12 Arvay.
13 Mr. Commissioner, that's this
14 morning's roster. It's now 25 after 12:00. May I
15 suggest we resume at two o'clock.
16 THE COMMISSIONER: Thank you, Mr.
17 Wallace.
18 THE REGISTRAR: The hearing is now
19 adjourned until 2:00 p.m.
20 --- Upon recessing at 12:25 p.m.
21 --- Upon resuming at 2:00 p.m.
22 THE REGISTRAR: Order. The
23 hearing is now resumed.
24 MR. WALLACE: Good afternoon,
25 Commissioner.
26 First up this afternoon is
27 Mr. Harvey for the West Coast Trollers Area G
28 Association and the United Fishermen and Allied
29 Workers' Union.
30
31 SUBMISSIONS ON BEHALF OF WEST COAST TROLLERS
32 AREA G ASSOCIATION AND THE UNITED FISHERMEN AND
33 ALLIED WORKERS' UNION
34
35 MR. HARVEY: Thank you.
36 Mr. Commissioner, as Mr. Wallace
37 said, these submissions are on behalf of the two
38 entities connected with the commercial fishery.
39 The UFAWU represents
40 salmon fishers of all gear types, packing vessel
41 crews and workers employed in the processing of
42 salmon. They are of course concerned about the
43 economic impact on their livelihoods of the
44 decline of sockeye.
45 And the West Coast Trollers
46 Association have similar concerns, they operate
47 fishing vessels on the west coast of Vancouver

Submissions on behalf of West Coast Trollers Area G
Association and The United Fishermen and
Allied Workers' Union

1 Island. Up to 30 percent of the active fleet
2 is comprised of First Nations fishers. Their
3 main concern, the Association's main concern,
4 is the decreased allocation of sockeye and the
5 economic consequences.
6 So both entities that I represent
7 have livelihood interests, concerns and they are
8 very concerned with the inquiry. They welcome the
9 opportunity to participate and they support the
10 views of others expressed as to the high
11 importance of the mandate of this Commission.
12 In the years to come they hope to
13 look back with pride on the Commission's work and
14 their participation in it, but they are concerned
15 that certain factors militate against the odds
16 that this Commission will be able to successfully
17 fulfil its mandate.
18 I have in mind the following:
19 The short timeframe allotted for
20 an incredibly broad mandate;
21 the lack of adequate funding for
22 participants who need it; and
23 the absence of any funding at all
24 for scientific expert assistance for participants;
25 and the absence of scientific
26 assistance to the Commission that is at arms
27 length from and truly independent of DFO.
28 I would like to make some
29 suggestions that may help overcome these
30 impediments. This is in response to the
31 invitation to comment on the prioritizing
32 of issues.
33 First is the need to maintain
34 focus. We urge the Commission not to waste
35 time on sideshows and to get to the heart of
36 the matter;
37 to work within the simple
38 framework of the productivity graph that is set
39 out at page 3 of the discussion paper;
40 find out what the fisheries
41 managers did right from 1913 to 1992 and what they
42 did wrong from 1992 to the present;
43 compare the two pictures and ask
44 what is different in terms of the ecosystems,
45 oceans, rivers, lakes and spawning grounds in
46 terms of monitoring and enforcement, including the
47 legal regime, in terms of science with respect to

Submissions on behalf of West Coast Trollers Area G
Association and The United Fishermen and
Allied Workers' Union

1 forecasting and data collection methods in
2 particular in respect of DFO culture, which has,
3 we believe, changed quite dramatically as between
4 the two periods;
5 and in the weight given by DFO to
6 the Fraser River Panel recommendations. I'm
7 referring to the Pacific Salmon Commission
8 recommendations. I'm given to understand that
9 that has changed quite dramatically as well.
10 The second point we would like
11 to make is to urge the Commission to obtain
12 independent scientific input. By that I mean
13 independent of DFO. I say that on the basis that
14 no one can really be expected to be independent
15 of the entity that controls his or her financial
16 destiny.
17 I would urge the Commission to go
18 outside B.C. for advice -- go to Alaska for
19 example -- and to recruit the best scientists who
20 are not in any way tainted and have no interest in
21 justifying positions they have taken in the past.
22 Don't use the same group that has advised DFO
23 since 1992 and who has failed to predict the
24 decline up to and including 2009.
25 That would be to repeat the
26 mistake made on the east coast when the cod
27 fishery collapsed and the same advisors who
28 presided over the collapse were retained and
29 predicted a quick recovery, which of course has
30 never happened.
31 If the Commission feels it is too
32 far down the road now to change its advisors, then
33 we say it should immediately recommend to the
34 Privy Council Office that immediate funding be
35 made available to participants for the retention
36 of scientific advisors.
37 We consider this to be a serious
38 enough issue to warrant meetings next week with
39 Commission counsel to discuss the matter. It is
40 serious because of what I mentioned about
41 effectively using the same advisors who presided
42 over the demise of the sockeye, but it also goes
43 to the perception of independence and fairness.
44 The whole tenor of mandate to the
45 Commission is that the Commission should be bring
46 an independent review, independent of DFO, and
47 that the perception of that can only be

Submissions on behalf of West Coast Trollers Area G
Association and The United Fishermen and
Allied Workers' Union

1 accomplished in my submission, if independent and
2 a new group of scientists are involved.
3 The third point I would like to
4 make, and this is somewhat repeating the
5 submissions of Mr. Kelliher for the Aboriginal
6 Aquaculture Association, the submission he closed
7 with, when he said don't follow what he termed
8 populist speculation of the dominant culture.
9 What we urge the Commission to
10 do is not to follow only the politically correct
11 and well-trodden paths. This is too vital an
12 issue for that.
13 It is of course politically
14 acceptable to accuse the fishing industry of
15 over-fishing. The aquaculture industry is also
16 a convenient whipping boy. This may be fully
17 justified in their case, I make no comment
18 on that.
19 --- Laughter
20 MR. HARVEY: But if you focus only
21 on the politically acceptable targets you will not
22 fulfil the task assigned to you.
23 For example, if it turns out
24 that the water sent by Alcan through the mountains
25 to Kemano rather than down the Fraser is a
26 causative factor, then you must say so. The same
27 with power projects, whether they are independent
28 from B.C. Hydro or not independent.
29 The same with the sports
30 fishery and the aboriginal fishery, the
31 precautionary principle we say has to be applied
32 equally across the board, not just where it is
33 easiest or most politically acceptable. There
34 must be no sacred cows.
35 You must also, I suggest, face the
36 reality that the hands-off approach that is
37 induced by political or politically correct
38 attitudes is endemic in the DFO scientific and
39 managerial community. It affects everything, but
40 it cannot change the true cause of the collapse of
41 the sockeye resource.
42 If being politically sensitive is
43 kindness, the sockeye may well be killed off by
44 kindness. That attitude has to stop here, in our
45 submission, in this Commission.
46 The reality is that all the
47 reports that you are considering for your interim

Submissions on behalf of West Coast Trollers Area G
Association and The United Fishermen and
Allied Workers' Union

1 report, due relatively shortly, have been
2 perfectly useless in reversing the decline of
3 the sockeye.

4 Mr. Leadem reminded us of the
5 apt title of the 2004 report "Here we go again".
6 Your report, in our submission, must be different,
7 because it is the last chance that we as a society
8 will get.

9 My fourth point is that because
10 your time is so limited you should not waste it.

11 Site visits seem to be a popular
12 item in the submissions we have heard. My clients
13 have a different view. They consider it would not
14 be a wise use of your limited time to travel out
15 to view a fish farm or to go up the Fraser to view
16 the aboriginal fishery at Yale for example, all
17 which visits would take place after due notice to
18 the participants and they would of course be
19 expected to be on their best behaviour. That
20 would be a fine showcase or media event.

21 Now, I'm not saying that this is
22 unimportant and I recall how effective Tom
23 Berger's meetings were in the remote communities
24 during the Mackenzie River pipeline inquiry. It's
25 not unimportant.

26 But in my submission it has to be
27 given a priority that it deserves and the top
28 priority we say is identifying the decline of the
29 sockeye resource. You don't have the luxury of
30 time. This is a judicial inquiry into a
31 critically important and urgent issue.

32 My client suggests that you would
33 find out far more in a shorter space of time by
34 holding for example in camera sessions to hear
35 evidence on subpoena from fishery enforcement
36 officers or by taking a charter flight up the
37 coast to see where the fish farms are and the
38 numbers of them.

39 Your subpoena powers were given
40 for a purpose and they should be used. My clients
41 think you should subpoena as many retired
42 enforcement officers, Salmon Commission officials
43 and DFO managers that you can get to compare
44 fishery management practices before and after 1992
45 and to give you the benefit of their views based
46 on long experience.

47 Those whose present jobs

Submissions on behalf of West Coast Trollers Area G
Association and The United Fishermen and
Allied Workers' Union

1 and prospects of advancement are at stake cannot
2 be expected to do anything other than support
3 the department.

4 The same thing applies to
5 scientific advisers, anything else would be a
6 career-ending move.

7 My fifth point is that this is not
8 a science inquiry, as it has been called by some,
9 or an aquaculture inquiry. These are of course
10 important components, but the question is: What
11 happened to the salmon?

12 We know they got to the spawning
13 grounds in 2005, the cycle year. It is not the
14 number of spawners that apparently is the problem,
15 it is the productivity that is the adult returns
16 per spawner.

17 So over-fishing is not an issue in
18 this inquiry. In fact, the term under escapement
19 we say should be substituted for over-fishing
20 because it more correctly identifies the issue or,
21 rather, the non-issue. Because there was no under
22 escapement in 2005. By "escapement" of course I'm
23 talking about getting fish on the spawning
24 grounds.

25 The question is why
26 productivity collapsed.

27 The first question, or the
28 question of first priority we say, therefore
29 concerns the number of smolts reaching the Gulf of
30 Georgia in 2006. Are the smolt numbers you are
31 given by DFO reliable, because we are informed I
32 believe that the smolt numbers were consistent
33 with the spawning numbers. You will want to look
34 closely at whether those numbers are reliable.

35 This is important because there is
36 a lot of evidence to support the theory that the
37 recent -- and by that I mean in the recent decade
38 or so -- recent focus on weak stock management has
39 led to over escapement that may well be
40 detrimental, detrimental in the sense that the
41 returning smolts are either less in number, in
42 other words there is less productivity due to over
43 escapement, or if they are not less they are
44 weaker and have more food competitors. Weaker
45 means less healthy when they reach the Gulf and
46 less able to withstand the degraded environmental
47 conditions in the Gulf which range from sewage,

Submissions on behalf of West Coast Trollers Area G
Association and The United Fishermen and
Allied Workers' Union

1 destruction of kelp and eelgrass and all the other
2 factors, including fish farms.

3 I would like to mention
4 some specific points that arise from the
5 discussion paper.

6 First, I agree with Mr. Taylor
7 that enforcement should be a standalone topic so
8 it can more properly be brought into focus.

9 We are dealing here of course with
10 a common property resource. That can't be
11 changed. Common property resources are inherently
12 susceptible to what is often called a tragedy of
13 the commons.

14 In that context I agree with
15 Ms Gaertner that fighting over salmon to get a
16 bigger share amongst the various groups is
17 potentially destructive, but fighting over salmon
18 is something that is inherent in any common
19 property resource, but we say that if you can't
20 privatize a common property resource which
21 obviously you can't with the sockeye resource,
22 then what you need, what you critically need is
23 monitoring and enforcement that is rock solid,
24 otherwise the resource is doomed by reason of its
25 very character as a common property resource.

26 I disagree with Mr. Taylor that
27 any investigation and recommendation concerning
28 budget is off limits. If this is a causal factor,
29 in other words budget cutbacks, it should be
30 identified as such in the Commission's report.

31 I agree with Mr. Sporer that
32 sustainability means sustainability of fish
33 and fishery -- I'm referring to the words of
34 your mandate -- fishery in the sense that the
35 commercial industry supports communities,
36 including First Nation communities, all up and
37 down the coast and that sustainability of that
38 fishery, that commercial fishery, must be
39 treated as a significant and important part of
40 the mandate.

41 I agree with Mr. Rosenbloom, with
42 whom Mr. Blair on behalf of the aquaculture sector
43 also agreed, that there must be a level playing
44 field with regard to funding.

45 The fishing industry has taken the
46 biggest revenue loss and desperately now needs
47 funding in order to bring its expertise to bear

Submissions on behalf of West Coast Trollers Area G
Association and The United Fishermen and
Allied Workers' Union

1 on the question.

2 The Commission's mandate I say
3 does not preclude it from making a further
4 recommendation for funding and we request, as I
5 touched upon before, additional funding for the
6 retention of a science advisor and that science
7 advisor could be shared amongst a number of
8 participant groups, and also legal funding that is
9 proportionate to the breadth of the Commission's
10 mandate and the vast documentary production.

11 On process issues I agree that
12 there should be transparency on scientific issues
13 and provision for cross-examination of experts.

14 I have no objection to the giving
15 of evidence by panels of witnesses, I have found
16 it to work fine in the regulatory hearings I have
17 been involved in and I don't see why it shouldn't
18 work equally well here.

19 On the question of the scope of
20 the inquiry, I disagree with the contention of
21 many of my learned friends this morning, my
22 learned friends representing First Nation groups,
23 who said that allocation issues are included in
24 the scope of your mandate, or they implied that
25 they were.

26 The only way I can see that they
27 would be relevant to the question of the collapse
28 of the sockeye resource is if the requirements of
29 First Nations consultation -- which again is a
30 requirement that we must live with, it can't be
31 changed -- but if that requirement and the other
32 issues arising after the Sparrow decision has
33 distracted fisheries managers from properly
34 overseeing the health of the sockeye resource,
35 then I can see that it would be a relevant issue,
36 but otherwise in my submission allocation issues
37 are not relevant to the question.

38 If it is concluded that aboriginal
39 claims have caused the DFO managers to take their
40 eye off the ball, then this aspect of allocation
41 may be relevant, but not otherwise.

42 And if the DFO's added
43 responsibilities have been taken on without any
44 increased funding to enable them to deal with it,
45 then this may also call for comment in your report
46 if it is determined to be a causative factor.

47 So I say in concluding that this

Submissions on behalf of West Coast Trollers Area G
 Association and The United Fishermen and
 Allied Workers' Union

1 is not an academic seminar, we urge you to take
 2 advantage of the practical knowledge and
 3 experience that exists, particularly from those
 4 who can say what changed in fisheries management
 5 in about 1992, after decades of recovery following
 6 the Hell's Gate slide, and I can say that my
 7 clients would be happy to assist in this.
 8 Thank you.
 9 THE COMMISSIONER: Thank you,
 10 Mr. Harvey.
 11 MR. WALLACE: Thank you,
 12 Mr. Harvey.
 13 The final presenter today,
 14 Commissioner, is Mr. Lowes for the B.C. Wildlife
 15 Federation and B.C. Federation of Drift Fishers
 16
 17 SUBMISSIONS ON BEHALF OF B.C. WILDLIFE FEDERATION
 18 AND B.C. DRIFT FISHERS FEDERATION
 19
 20 MR. LOWES: Thank you.
 21 Mr. Commissioner, my clients, the
 22 B.C. Wildlife Federation and the B.C. Federation
 23 of Drift Fishers effectively represent the
 24 recreational fishery in these proceedings. They
 25 are the only participant which represents that
 26 group. The combined membership of these two
 27 associations is in the order of 40,000 members.
 28 My instructions, Mr. Commissioner,
 29 before these hearings started yesterday was that
 30 the issues defined in the discussion paper were
 31 comprehensive and that my clients really couldn't
 32 see any that needed to be added. After sitting
 33 for a day and a half and hearing my learned
 34 friends, all I can say my submission now is an a
 35 fortiori one. The list is comprehensive,
 36 especially in light of the additions suggested by
 37 the other parties.
 38 This gives rise to the question of
 39 priorities. I agree with those participants who
 40 have described the subject as organic and the
 41 issues interrelated. It is the position of those
 42 whom I represent that the issues are interrelated
 43 and that the whole very probably is more than the
 44 sum of its parts.
 45 I was thinking when I was
 46 listening to the submissions yesterday of the poem
 47 by Wallace Stevens, Thirteen Ways of Looking at a

Submissions on behalf of B.C. Wildlife Federation and B.C. Drift Fishers Federation

1 Blackbird. This case is somewhat the same. We
2 are not looking at different issues, we are
3 looking at the same whole through different
4 perspectives.
5 This may very well pose a problem
6 for this Commission and some tough decisions. The
7 problem I am referring to is deciding whether to
8 find the time and resources to deal with all of
9 the issues and their relationships with one
10 another or to fit the issues into the time and
11 resources available.
12 If this Commission finds that it
13 is brought to that decision place, we would
14 suggest that the former be adopted and that the
15 form follow the function that all of the issues
16 and their interrelationships be explored and that
17 the Commission, you, Mr. Commissioner, use
18 whatever influence you have with the government to
19 make that possible.
20 We agree with Mr. Harvey's
21 submission, which was also that of the seafood
22 processors, that the focus ought to be on the
23 fishery as a resource, as well as the fish as a
24 part of an ecosystem.
25 You will see by the spectrum of
26 participants and the passion with which they
27 approach their task that the salmon is a part of
28 the very fabric of this province and has been
29 since before Confederation.
30 I also make one other general
31 observation, that the fishery, and in particular
32 the Fraser River fishery, is unique in that it is,
33 as Mr. Harvey says, a common property resource.
34 This is a rights-based resource and is not a
35 Crown resource and in that respect is different
36 from the lands, forests, mining, et cetera, in
37 terms of the legal context in which the department
38 must operate, and consequently constraints and
39 obligations on that department in carrying out
40 its mandate.
41 I have a couple of submissions on
42 process. I agree with those who wish to have
43 interface with both the panels of experts and the
44 Commission's advisors. We also agree that the
45 site visits are a good idea and my clients extend
46 the invitation to the Commission and Commission
47 counsel for any assistance that we can give in

Submissions on behalf of B.C. Wildlife Federation and B.C. Drift Fishers Federation

1 that regard.

2 There is one subject that is of
3 potential concern that I haven't heard others deal
4 with and it is in essence the function of the
5 interim report in these proceedings. In
6 particular, we are interested in whether that
7 report is going to impact in any way the process
8 in the main hearings.

9 What I'm getting at there,
10 Mr. Commissioner, is this: As I read the Terms of
11 Reference I see that it is open to you, after
12 having reviewed previous Commissions and reports,
13 to adopt findings, either in whole or in part, and
14 conclusions of those reports.

15 If such is the case, then it would
16 be useful and I would request that the
17 participants have some sort of notice of what
18 reports you are considering and some sort of input
19 into the potential for conclusions drawn which
20 would impact the evidentiary hearings in these
21 proceedings from those reports.

22 The same can be said for the other
23 branch of the interim report which, as I
24 understand it, is a review of the recommendations
25 made by other bodies and in particular a review of
26 whether or not the department has abided by those
27 recommendations.

28 Again, if there are going to be
29 any conclusions or findings at the end of the day
30 on that issue, then we would ask that we be
31 informed during the process of preparing that
32 interim report and be given the opportunity of
33 making submissions on that subject matter.

34 I say "if", Mr. Commissioner,
35 because I spoke briefly with Commission counsel
36 before standing up today and was informed by him
37 that in his view conclusions with respect to
38 findings in previous reports or conclusions with
39 respect to the compliance or otherwise of the
40 Department of Fisheries and Oceans of the sort
41 that might prejudice or influence the subsequent
42 proceeding were not on the agenda for the -- were
43 not likely to result from the interim report.

44 There is one final point and it's
45 a very narrow and technical one and it deals with,
46 in its narrow sense, on the proposed technical
47 paper on production dynamics.

Submissions on behalf of B.C. Wildlife Federation and B.C. Drift Fishers Federation

1 My instructions are -- and this is
2 not necessarily a submission at this point -- that
3 the department rejected out of hand the
4 proposition that cyclical dominance were a factor
5 in production dynamics. This gives rise to the
6 more general issue that was canvassed by the
7 Aquaculture Coalition yesterday of the treatment
8 of scientific controversy or scientific
9 uncertainty by the department. I raise it here
10 simply as a current and relevant example of that
11 issue along with those of secondhand smoke and DDT
12 and I would urge you, Mr. Commissioner, to look at
13 the whole question of the way in which the
14 department has dealt with the issue of scientific
15 controversy and scientific uncertainty.

16 Those are my submissions.
17 Thank you.

18 THE COMMISSIONER: Thank you,
19 Mr. Lowes.

20 MR. WALLACE: Thank you,
21 Mr. Lowes.

22 Commissioner, that concludes all
23 the principal submissions. I have been advised by
24 Mr. Taylor that the Government of Canada wishes to
25 reply. I have not been informed of others and I
26 will ask again when Mr. Taylor has completed.

27
28 REPLY SUBMISSIONS ON BEHALF OF THE GOVERNMENT OF
29 CANADA

30
31 MR. TAYLOR: Mr. Commissioner,
32 I have a few points in reply, not too many
33 in number.

34 I listened to Mr. Lowes just now
35 and I was interested in what he said about the
36 interim report and his interpretation of it.

37 I think I don't share his view as
38 to what he was saying as to the interpretation of
39 the mandate, but be that as it may it does lead me
40 to raise that as far as I am aware there really
41 hasn't been much talk, or any talk from Commission
42 counsel to the participants' counsel as to any
43 role or involvement that the participants might
44 have in the shape that that interim report is to
45 take. I don't mean the content, that of course is
46 for you, but what it is.

47 If it's thought that there was

Reply submissions on behalf of The Government of Canada

1 going to be something about that report that
2 would, if you like, irrevocably set a direction
3 that we would be locked into in some way or other,
4 then it strikes me that it would be useful and
5 appropriate for the participants to be able to
6 make some submissions.

7 Next by way of reply, the lawyer,
8 Christopher Buchanan for PSAC and the United
9 Environmental Workers, said that Canada takes too
10 narrow a view of the budgetary matters that the
11 Commission can or should inquire into and went
12 further and said that the Commission should look
13 into the funding that is given to DFO and as well
14 look at the workplace environment.

15 First, on that last point, this is
16 not a labour relations inquiry and that is not
17 within the mandate, as I view it, nor going to the
18 budget, nor is it a budget determination exercise.

19 With that, I think that the Union
20 may misconstrue our position and Mr. Lowes just
21 now spoke a bit to this as well and I want to be
22 clear that we do see the Terms of Reference as
23 encompassing the Commission inquiring into DFO's
24 allocation of resources assigned to it -- and
25 that's right in the Terms of Reference -- and that
26 necessarily means that you would be potentially,
27 at your decision or your counsel's decision,
28 inquiring into the money that is assigned and what
29 is done with that money and whether DFO did the
30 right things with the money and whether DFO did
31 enough of "X" or "Y" or whatever.

32 But what the Terms of Reference
33 do not encompass, in our view, is an inquiry into
34 the funding of DFO writ large and, as I say, it
35 also doesn't contemplate an inquiry into the
36 workplace environment.

37 Next, Mr. Commissioner, the
38 Aquaculture Coalition twice said that DFO
39 scientists have been or are in denial. Once he
40 said "science denial" and then he said "selective
41 denial". I raise that up now to say that those
42 comments, in my submission, are unfair and
43 ill-informed.

44 The DFO scientists are
45 professionals, they carry out scientific research
46 in a professional manner and in accordance with
47 proper scientific principles. In turn, they

Reply submissions on behalf of The Government of Canada

1 provide scientific advice and conclusions in a
2 professional manner to the department and then
3 others make decisions of course from there.
4 Even if the Aquaculture Coalition
5 disagrees with some of the professional
6 conclusions that DFO scientists make, that is no
7 reason to speak of denial or to demean their work.
8 Next as to the Conservation
9 Coalition, one point that Mr. Leadem raised I want
10 to reply to.
11 He made a suggestion that there
12 might be a shortening up of the document analysis
13 by participants. If he or she who produces
14 documents in the first place -- which means mainly
15 the Government of Canada, but not exclusively --
16 could identify what's important, that's an
17 interesting proposition and I have probably in
18 litigation much wanted to tell all the other side
19 what was important and don't ask for more, but
20 that doesn't happen of course.
21 It is my submission that the
22 suggestion that we identify what is important for
23 everyone and then that shorten things up somehow
24 is, in my view, wrong-headed and unworkable.
25 First, it would slow up the
26 document production process considerably, because
27 there would have to be a pause and look and find
28 what is important, but more importantly it's not
29 for us to decide for others what is important,
30 that's for them to decide. We produce the
31 documents and then everyone from there, including
32 Commission counsel and his staff can look and
33 decide for themselves what is important.
34 Next I want to comment on a
35 suggestion or a point that many counsel in their
36 submissions made. They would start by saying
37 effectively or messaging that we are all in this
38 together and it's not a fault-finding exercise,
39 which is all true, and then turn in the next
40 breath to point fingers.
41 My reply to that is that you,
42 Mr. Commissioner, should resist that. You should
43 of course not be pointing fingers, but at the same
44 time you should be certainly getting to the bottom
45 of things and finding what are the cause or causes
46 of the decline or the possible and probably causes
47 depending on what degree of certainty you can put

Reply submissions on behalf of The Government of Canada

1 on it without, if you like, finger-pointing or
2 fault-finding of course.

3 In doing that work,
4 Mr. Commissioner, in replying to some of the
5 suggestions that have been and submissions that do
6 amount to pointing fingers, it is important to
7 bear in mind the myriad of natural factors that
8 come into play as well.

9 There will be many human elements
10 and human activities that should and will be
11 looked at by you and your Commission staff through
12 many means, including the evidence and so forth,
13 but at the same time there are natural factors
14 that need to be given their due attention and
15 first amongst those of course is water temperature
16 as distinct from water quality, but water
17 temperature and climate change. I again refer to
18 the point I made the other day about the Fraser
19 River sockeye being close to the southern limit of
20 sockeye salmon.

21 I want to next reply to a point
22 that a number of the First Nation participants'
23 counsel messaged in their submissions, even if
24 they didn't directly say it.

25 Mr. Harvey or Mr. Lowes spoke of
26 this sort of thing in a slightly different
27 context, and that is keep your eye on what the
28 Commission and this inquiry is truly about, which
29 is a Commission of Inquiry into the cause for
30 decline of sockeye salmon. Keep one's eye on the
31 ball, if you like.

32 There are many factors that come
33 into play, but at the same time this is not an
34 inquiry into aboriginal fishing rights, it is an
35 inquiry into the decline of the sockeye salmon.

36 Having said that, aboriginal
37 fishing rights are an important element in all of
38 this and will come into play as one of the things
39 that you will be looking at and many of the First
40 Nation participants will be suggesting lines of
41 evidence in that regard, but at the same time we
42 should not have this inquiry veer off or morph
43 into something that it is not.

44 Next I have a number of reply
45 points to Mr. Donovan.

46 Somewhat in like vein to what I
47 just said a moment ago, Mr. Donovan spoke of

Reply submissions on behalf of The Government of Canada

1 inquiring into the allotment of reserves and
2 whether they were or weren't fishing stations
3 and whether there was or wasn't a promise of
4 fishing made to the First Nation people when
5 reserves were allotted.

6 He also, in his written
7 submissions, and somewhat in his oral submissions,
8 spoke of the inquiry work here having as part of
9 it reformulating or developing or framing policy
10 on negotiation mandates or approaches to
11 negotiating treaties on a go-forward basis.

12 Those two things are not what this
13 inquiry is about either and seem to not fall
14 within the Terms of Reference.

15 In particular as to his statement
16 that there was a promise made of fishing -- and
17 I'm not going to argue law you will be pleased to
18 know, but that sort of assertion was made in the
19 Lax Kw'alaams decision and the B.C. Court of
20 Appeal in its decision at page 73 rejected that
21 proposition that Mr. Donovan puts forward, they
22 rejected it in the context of the Lax Kw'alaams,
23 which is First Nations up by Prince Rupert.

24 Next is to Mr. Donovan.

25 The suggested paragraphs that he
26 has kindly put forward at the end of his written
27 material that the Commission counsel, as Mr.
28 Donovan invites them to do, could put into the
29 discussion paper, those are nothing but an
30 advocacy piece that doesn't have a proper place in
31 the discussion paper.

32 Finally, Mr. Commissioner,
33 Mr. Donovan listed as priorities for fishing and
34 fish allocation first conservation, which is
35 correct; and then food ceremonial and food fish
36 for First Nations people following that, which
37 is correct; and then he said First Nation
38 commercial fishery.

39 That is not quite so. That is not
40 an absolute priority. There can be concurrent
41 allocations to other fishers along with an
42 aboriginal commercial fishery, but you then move
43 to the justification end of things and it can, in
44 some instances, be justified. So it's not an
45 absolute priority.

46 Thank you.

47 THE COMMISSIONER: Thank you,

Reply submissions on behalf of The Government of Canada

1 Mr. Taylor.

2 MR. WALLACE: Thank you.
3 Does anybody else wish to reply to
4 anything in submissions?

5 --- Pause

6 MR. WALLACE: Mr. Commissioner,
7 I think that concludes the presentations this
8 afternoon.

9 THE COMMISSIONER: Thank you,
10 Mr. Wallace.

11 I would like to thank all of those
12 who yesterday made submissions on behalf of their
13 clients and who today made submissions on behalf
14 of your clients. I am very grateful for the
15 obvious depth and thoughtfulness upon which you
16 based your submissions and I said yesterday and I
17 repeat today they will all be taken into account
18 as we review your written submissions as well as
19 your oral submissions yesterday and today.

20 There are just a few of the
21 participants who indicated they would be filing
22 written submissions to go along with their oral
23 submissions and of course it would be most helpful
24 if those could be filed as quickly as possible.

25 One or two mentioned a week or two
26 weeks. If it's at all possible to get those
27 before that time lapses it would be appreciated by
28 myself and Commission counsel.

29 I do not have really anything else
30 to say today about next steps, but you will
31 certainly be informed -- as soon as we have had an
32 opportunity to absorb your written and oral
33 submissions we will indicate to you how we plan to
34 go forward.

35 I'm very grateful to all of you
36 for ensuring that you were able to provide us with
37 as many written submissions as you could given the
38 short timeframe that elapsed between when you
39 received our discussion paper and the hearings
40 which commenced yesterday, so again I just want to
41 express my deep appreciation to all of you for the
42 obvious hard work and dedicated effort you made to
43 be able to assist us yesterday and today.

44 I want to thank all of the
45 Commission staff and our registrar and our staff
46 here today for making it possible for us to use
47 the Federal Court, which is I think an ideal

Reply submissions on behalf of The Government of Canada

1 opportunity to use this facility given the numbers
2 we have who want to attend and the hope that we
3 can continue to use this facility when it is
4 available to us to conduct hearings and meetings
5 with counsel.
6 At this time I'm going to adjourn
7 and thank you again. You will be hearing from us
8 as soon as we possibly can develop our go-forward
9 plan and indicate that to you.
10 Thank you all very much.
11 THE REGISTRAR: These hearings are
12 now adjourned sine die.
13 --- Whereupon the hearing adjourned at 2:50 p.m.
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27 We hereby certify that we have accurately
28 transcribed the foregoing to the best of
29 our skills and abilities.
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37 _____
38 Beverley Dillabough

37 _____
38 Jean Desaulniers

39
40
41
42
43
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45
46 _____
47 Sue Villeneuve