



Department of Justice
BC Regional Office
900-840 Howe Street
Vancouver, British Columbia
V6Z 2S9

Telephone: 604-666-2324
Facsimile: 604-666-2710
Email: mitch.taylor@justice.gc.ca

December 21, 2010

By Email

Commission of Inquiry into the Decline of Sockeye
Salmon in the Fraser River
2800 – 650 West Georgia Street
Vancouver, British Columbia
V6B 4N7

Attention: Brian J. Wallace

Dear Sir:

Re: FRASER River Sockeye Salmon - Commission of Inquiry - DFO
Our File: 2-272052
Commission's Written Re-examination for Wild Salmon Policy Implementation Panel:
Questions and Answers - Dr. Kim Hyatt

With respect to your re-examination questions of the Wild Salmon Policy Implementation Panel in your correspondence dated December, 17, 2010, we write to provide you with the answers from Dr. Kim Hyatt.

The answers are set out below in bold text for your ease of reference.

Question:

1. On December 8, 2010, you and Mr. Rosenbloom, counsel for Area D Salmon Gillnet Association and Area B Harvest Committee (Seine), had this exchange regarding the level of collaboration between DFO and the Province on WSP implementation, starting at page 31, line 17:

Q -- and I am not so concerned for a listing by you and by this panel of where there has been cooperation, but because my time is so limited, and Commission Counsel can draw these kind of details out of you in re-examination if the Commission feels it's in its interest. I am more interested in the question that I have posed to the four of you, which is, is generally from 30,000 feet up, is the level of collaboration between the two levels of government at the level that the public would expect, or do we have problems? Yes, Mr. Saunders.

DR. HYATT: Collaboration -- well, just let me finish.

Q All right.

DR. HYATT: Collaboration waxes and wanes. During the period when we had an active pursuit of watershed-based fisheries planning with the province, it was

at a level that the public would expect. Under Wild Salmon Policy implementation, based on that comparative set of activities that occurred previously, one would say we would be looking for a greater engagement at this time to meet the public good, and certainly to accelerate the implementation of Wild Salmon Policy.

Turning away from the transcript and to Exhibit 8, the Wild Salmon Policy itself, page 40 defines Watershed-Based Fish Sustainability Planning as

Watershed-based Fish Sustainability Planning (WFSP). A new approach to the management of fish stocks and fish habitat in British Columbia. Its overall goal is to ensure effective long-term conservation of fish and fish habitat – including spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly. WFSP is based on a standard planning sequence that can be applied to regions and watersheds across the province.

Pages 25 and 27 also note Watershed-based Fish Sustainability Planning.

- a. In referring to the “active pursuit of watershed-based fisheries planning with the Province” are you referring in particular to the Watershed-Based Fish Sustainability Planning (WFSP) initiative referred to in the WSP?
- b. For clarity, is the document associated with Watershed-Based Fish Sustainability Planning the Guidebook that is enclosed with this letter (Ringtail BCP00430)?
- c. Is your understanding of what the public would expect gleaned from the many public consultations that you have participated in?
- d. What is the period of time that you were referring to? Roughly 1999-2002?
- e. What is the current status of the Watershed-Based Fish Sustainability Planning initiative with the Province? Is it fair to say this particular initiative is no longer actively being pursued?

Answer:

- a. “Active pursuit of watershed-based fisheries planning with the Province” included not only the WFSP initiative referred to in the WSP, but also a wide range of watershed-and-fisheries projects executed through active collaborations among the Province, DFO and community stewardship groups given funding and support derived from Forest Renewal BC and Fisheries Renewal BC programs between approximately 1993 and 2002. Both programs were terminated following a provincial election and replaced by a much more narrowly focused Forest Investment Account program.

- b. Two key documents are associated with WFSP. These are the Watershed-Based Sustainability Planning Guidebook (Ringtail BCP00430) and a background report commissioned by DFO and BC-MOE entitled "Watershed-based Fish Sustainability Planning: Implementation Experience and Requirements." The authors of the latter report (Final Report, March 31, 2003) were Alan Ferguson (Regional Consulting Limited), Michael McPhee (Quadar Planning Consultants Limited) and Bill Bengeyfield (Global Fisheries Consultants Limited). The WFSP "guidebook" was produced to provide general guidance to community-based volunteers wishing to participate in WFSP work while the WFSP "requirements" document was produced to "assist DFO and the BC Ministry of Sustainable Resource Management in defining the requirements and capacity needs for implementing WFSP" (Ferguson et al. 2003).
- c. My perspective regarding what the public would expect is based on a personal history that includes hundreds of presentations and collaborative project interactions over the past 30 years with local community (e.g. Streamkeepers) and First Nations groups throughout British Columbia.
- d. As noted above, in my experience, the period during which DFO and BC were engaged in an elevated level of activity regarding watershed-based fisheries planning stretched from 1993-2002 coincident with the previously mentioned FRBC programs.
- e. This question requires some initial clarification to make the distinction between the current status of WFSP as a centrally supported and coordinated program for delivery throughout BC versus watershed-based fish sustainability planning as a generic activity. Regarding the former category, it is my impression that the WFSP "program" is no longer actively being pursued following the recommendations in the Ferguson et al. (2003) document mentioned above. However, watershed-based fish sustainability planning as an activity is certainly being pursued through a "patchwork" of initiatives funded under the Fraser Salmon and Watershed Program, the Skeena Watershed initiative and some Wild Salmon Policy initiatives (e.g. the Barkley Sound WSP Implementation Pilot). There are clearly scores of projects dealing with salmon and watershed planning issues throughout BC but what is missing is the commitment to a common assessment and planning framework along with clear coordination that the Wild Salmon Policy calls for among the various levels of government.

Question:

- 2. On December 7, at page 1, line 42 of the transcript, counsel for Canada asked Dr. Irvine,

“...can you advise whether the Holtby and Ciruna paper that was peer reviewed, whether it included a list of conservation units.”

At line 45, Dr. Irvine answered:

“And I will defer to Dr. Hyatt in just a moment, but I think the important thing to realize is that it’s the methodology that’s really most important, the methodology went through a very vigorous peer review. Now, Dr. Hyatt actually chaired the meeting, I believe, that – where the peer review took place, so I think I’ll ask Dr. Hyatt to answer.”

At which point, counsel for Canada, at page 2, line 6 of the transcript, asked:

“So Dr. Hyatt, can you advise whether the Holtby and Ciruna paper included a list of conservation units?”

You then answered:

“So there was a list of provisional conservation units that was provided in association with the methodology. That provisional list was examined as part of the peer review process but, of course, there are area experts who have more detailed knowledge about, you know, the geographic location, in particular life history characteristics of these CU’s, and so it was regarded as provisional until, you know, full responses from all of the areas could be vetted and the list could then move to a next level of, you know, somewhat less provisional but firmer.”

Exhibit 145 is the published proceedings of the June 13-14, 2007 PSARC peer review meeting. Exhibit 145 states, at page 6 and also again at page 16, that:

“A list of CUs was deliberately not included by the authors. As the method has been accepted by the Salmon Subcommittee, subject to the successful completion of revisions, a list of the CUs should be added to the final version (i.e., the list arrived at after systematically applying the general method.)”

- a. Could you confirm that you are the author of Exhibit 145?
- b. Having now reviewed Exhibit 145, do you agree that a provisional list of CUs was *not* provided to the participants as part of the peer review of the Holtby and Ciruna paper describing the methodology for defining CUs?

Answer:

- a. I can confirm that I was the author of the document listed as Exhibit 145.
- b. I see there is some misunderstanding about the nature of the “peer review process” to which both the Strategy-1 methodology paper and the provisional list of CUs were subjected. Although the CU list was not appended to the draft of the Holtby

and Cirunna paper at the time of the workshop, it was made available subsequently to both those participants as well as to knowledgeable local area reviewers inside and outside of DFO. Commentaries on the errors or omissions of CUs from the initial list were actively solicited by Dr. Holtby prior to that list being posted along with the Holtby and Cirunna paper on the DFO web-site. Consequently, both the methodology paper and the CU list were subjected to reviews by those individuals having the necessary familiarity with the CU methodology, the traits of local salmon populations making up a CU or both such that peer review was completed although admittedly through a process that involved more than just the meeting reported on in Exhibit 145.

Question:

3. You were referred to the Aquaculture Policy Framework by counsel for the BC Salmon Farmers' Association. Have you ever had any direct experiences with the Aquaculture Policy Framework?

Answer:

I have not had any direct experience with the Aquaculture Policy Framework.

We trust you will find the above in accordance with the format as set out in our correspondence to you with Canada's written re-examination answers and questions, dated December 16, 2010.

Yours truly

A handwritten signature in black ink, appearing to read 'M. Taylor'.

Mitchell R. Taylor, Q.C.
Senior General Counsel