

**Overview of the *Pacific Salmon Treaty* and the Pacific
Salmon Commission Regarding
Management of Fraser River Sockeye Salmon**

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Introduction

The *Pacific Salmon Treaty* (the “Treaty”) is a bilateral agreement between Canada and the United States addressing the allocation and conservation of Pacific salmon.¹ The Treaty provides for bilateral management of all salmon originating in the waters of one country which are subject to interception by the other, affect management of the other country's salmon or affect biologically the stocks of the other country.² The Treaty creates the Pacific Salmon Commission (the “PSC”), which, in addition to making management and conservation recommendations to the Canadian and American governments, is directly involved in managing Fraser River sockeye.

This paper is intended to provide an overview of the role of the *Pacific Salmon Treaty* and the PSC in the management of Fraser River sockeye. Another commission Policy and Practice Report describes the international law framework relevant to Fraser River sockeye: *International Law Relevant to the Conservation and Management of Fraser River Sockeye Salmon*.

The *Pacific Salmon Treaty*

General

In March 1985, the United States and Canada (the “Parties” or respectively, the “Party”) ratified the Treaty and thereby agreed to cooperate in the management, research and enhancement of Pacific salmon stocks of mutual concern.

In fulfilling their obligations under the Treaty, both countries agreed to take into account³:

- (a) the desirability in most cases of reducing interceptions;
- (b) the desirability in most cases of avoiding undue disruption of existing fisheries;
- and

¹ An Agreement Between the Government of Canada and the Government of the U.S.A. concerning Pacific Salmon signed January 28, 1985, Annex IV revised 1999, as amended January 27, 2009 (available online at: http://www.psc.org/publications_psc_treaty.htm).

² Treaty, Article I, Para. 6.

³ Treaty, Article III, Para. 3.

(c) annual variations in abundance of the stocks.

The Treaty is intended to embody the commitment made by Canada and the United States to carry out their salmon fisheries and enhancement programs in order to prevent over-fishing, provide for optimum production and ensure that both countries receive benefits equal to the production of salmon originating in their waters.⁴ The Treaty includes, in the form of an annex ("Annex IV"), a group of short-term management plans directed at six specific sets of fisheries. A primary function of the PSC is to negotiate new management plans as the old ones expire.

Article XI covers domestic allocation and stipulates that the Treaty does not affect or modify existing Aboriginal rights or rights established in Aboriginal treaties and other existing federal laws.⁵

The Annexes to the Treaty form part of the Treaty and may be amended by the Parties through an Exchange of Notes between Canada and the United States.⁶ Annex IV, Chapter 4, governs the total allowable catch (the "TAC") and management of Fraser River sockeye and pink salmon.

Under the Treaty, TAC is defined as⁷:

[T]he remaining portion of the annual aggregate Fraser River sockeye and pink runs (including any catch of Fraser River sockeye identified in Alaskan waters) after the spawning escapements targets established, unless otherwise agreed, by application of Canada's pre-season escapement plan (subject to any adjustments made pursuant to paragraph 3(b), below), the agreed Fraser River Aboriginal Exemption⁸ and the catch in Panel authorised test fisheries have been deducted. TAC shall be computed separately for Fraser River sockeye and pink salmon.

⁴ The Pacific Salmon Treaty – 1985, online: The Pacific Salmon Commission <http://www.psc.org/about_treaty.htm>.

⁵ Treaty, Article XI, Para. 1.

⁶ Treaty, Article XIII, Para. 3.

⁷ Treaty, Annex IV, Ch. 4, Para. 3.

⁸ The Aboriginal Fishery Exemption (the "AFE") from 2000 to 2010 is the actual catch of Fraser River sockeye harvested in the in-river and marine area Aboriginal fisheries up to a ceiling of 400,000 sockeye annually (Annex IV, Ch. 4, Para. 3(c)). The AFE is allocated among sockeye management groups as follows: up to 20% for Early Stuart sockeye and the remaining balance is based on the average proportional distribution for the most recent three cycles and modified annually as required to address concerns for Fraser River sockeye stocks and other species (Annex IV, Ch. 4, Para. 3(d)). If the AFE is not caught, then the AFE becomes what was actually caught.

The United States' TAC ("USTAC") of Fraser sockeye is a percentage of TAC.⁹ This share of annual Fraser River sockeye is harvested in the waters of Washington State and from 2005 through 2010 is no more than 16.5% of TAC.¹⁰ Canadian TAC ("CTAC") is the TAC minus the USTAC. USTAC is adjusted annually for harvest overages or underages.¹¹

Enhancement Programs

Pursuant to Article V, salmon enhancement programs¹² established by the Parties must be conducted subject to Article III "Principles".¹³ Each year, each Party must provide to the other Party and the PSC information about the operations of and plans for existing projects, plans for new projects and its views about the other Party's salmon enhancement projects.¹⁴ The PSC must forward this information to the Panels and the Panels must examine the information and report their views to the PSC in light of the principles in Article III.¹⁵ The PSC then reviews the reports and may make recommendations to the Parties.

Commercial Harvest Management Pursuant to the Treaty: Fraser River Sockeye

There are Treaty constraints on decision-making for the commercial harvest of Fraser River sockeye. The Fraser River Panel (the "FRP") and the PSC must ensure that regulatory proposals and recommendations, to the extent practical, meet the requirements of the Parties with respect to management of non-Fraser River sockeye and pinks and are consistent with existing Aboriginal rights, treaties and domestic allocation objectives.¹⁶

⁹ Treaty, Annex IV, Ch. 4, Para. 2.

¹⁰ *Ibid.* Operationally, however, it has been 16.5% since 2002.

¹¹ Treaty, Annex IV, Ch. 4, Para. 8.

¹² Defined in the Treaty, Article I as, "man-made improvements to natural habitats or application of artificial fish culture technology that will lead to the increase of salmon stocks".

¹³ Treaty, Article V, Para. 1.

¹⁴ Treaty, Article V, Para. 2.

¹⁵ Treaty, Article V, Paras. 2 to 3.

¹⁶ Treaty, Article VI, Paras. 3 to 4.

The Treaty also requires FRP management actions to meet the following objectives listed in order of priority¹⁷:

- (a) obtain spawning escapement goals by stock or stock grouping;
- (b) meet Treaty defined international allocation; and
- (c) achieve domestic objectives.

As noted above (see “Panels”, below), Fraser River sockeye and pink salmon are managed under the Treaty in a different way than are other salmon species. Commercially harvested Fraser River sockeye in Panel Area waters¹⁸ are subject to Article VI “Fraser River”.¹⁹ Thus, despite Article IV, it is the FRP, and not the Parties, that proposes regulations to the PSC staff for the commercial harvest of Fraser River sockeye and pink salmon. Pre-season, the PSC staff must then evaluate these fishery proposals and if it deems them consistent with the recommendations and projections in Annex IV, Ch. 4, Para. 13(a) and (b) and the Treaty objectives in Annex IV, Ch. 4, Para. 10, then the PSC recommends these regulations to the Parties for approval.²⁰ Effectively, if the PSC staff evaluation supports a Party’s recommendations, then the FRP adopts the fisheries proposals. Fisheries proposals not supported by the PSC staff review can also be adopted by bilateral agreement.²¹

This in-season decision process came into force in 2002.²² Prior to 2002, the PSC staff made recommendations to the FRP for fisheries in Panel Area waters and these recommendations were then subject to modification by the Panel and approval required bilateral agreement by the Parties.²³

Paragraph 13 of Annex IV, Ch. 4 stipulates that the FRP will use the following in-season decision-making process:

¹⁷ Treaty, Annex IV, Ch. 4, Para. 10.

¹⁸ See Appendix 1: Map of Panel Area waters.

¹⁹ Treaty, Article VI, Para. 1.

²⁰ Treaty, Article VI, Paras. 2 to 6; Annex IV, Ch. 4, Para. 13.

²¹ 2002 FRP Report at 6 (Ringtail Document CAN002564); Treaty, Annex IV, Ch. 4, Para. 13(a), (b) and (d).

²² *Ibid.*

²³ *Ibid.*

- (a) The mid-point forecast provided by Canada will be used for management purposes until in-season updates of run size become available. Based on advice from the FRP Technical Committee and PSC staff, the FRP may adopt a more precautionary or optimistic applications of the forecast information until in-season updates of run size are available. PSC staff will provide the Panel with recommendations for in-season run size and other factors relevant to sound fisheries management decisions. Based on information such as, but not limited to, in-season estimates of run timing and diversion rate, the PSC staff will make recommendations to the FRP regarding in-season decision-making.
- (b) PSC staff will provide the FRP with projected harvestable surpluses and status of harvest from fisheries under Panel management. These projections will incorporate any FRP agreement on management adjustments that deal with environmental conditions during in-river migration that could significantly impact the FRP's ability to achieve spawning escapement objectives and other considerations agreed to by the Panel.
- (c) Any changes from PSC staff recommendations for paragraphs 13(a) and (b) will be based on bilateral agreement between the National Sections of the FRP. Acceptance of the PSC staff recommendation requires approval of at least one of the National Sections.
- (d) The respective National Sections of the Panel will develop proposed regulations for their domestic Panel Water fisheries consistent with recommendations and projections provided by the PSC staff as described in 13(a) and 13(b) as may be modified pursuant to 13(c). Either National Section may ask PSC staff for advice in designing its fisheries proposals. PSC staff will assess and provide advice as to whether proposed fishery regulations for Panel water fisheries are consistent with recommendations and projections described in 13(a) and 13(b) and Panel objectives. Subsequently, after full discussion of a Panel water fishery proposal, the following may occur: (i) the Panel may adopt the proposal based on bilateral agreement or; (ii) the proposing National Section may modify and re-submit its proposal in response to advice from staff and/or concern(s) raised by the other National Section; or (iii) while acknowledging objection(s) of the other National Section, the Panel will grant the request to adopt the fishery proposal. In the event that the Panel adopts a fishery under the provisions of the latter circumstance (13(d)(iii)), prior to the commencement of the proposed fishery, the proposing National Section must provide a written rationale for the fishery as submitted.
- (e) If post-season a party maintains that it has been adversely affected by a fishery they objected to pursuant to paragraph 13(d)(iii) above or paragraph 13 (f) below; the PSC staff will prepare an objective report on the circumstances of the fishery and its consequences for the January PSC meeting following the season in question. The Panel will review the staff report and determine what action is required. If the Panel cannot come to agreement on the appropriate action, the issue will be referred to the Commission for resolution during its February annual meeting.

- (f) Pursuant with art. VI(7) of the Treaty, the Parties will communicate and consult with one another in a timely manner regarding their fishing plans for Fraser River sockeye outside of the Panel's regulatory control. In the event that a party has an objection to the other party's fishing plans as they relate to achievement of Panel objective, the implementing party will provide the rational for such plans.

Upon approval of the pre-season plan and during the in-season period of FRP regulatory control, all commercial sockeye fisheries in Panel Area waters are closed unless opened for fishing by in-season order of the FRP.²⁴ Therefore, during the fishing season, the FRP regulates the commercial harvest by making orders for the adjustment of fishing times and areas.²⁵ Canada and the United States review these orders for consistency with each country's domestic legal obligations and give effect to such orders in accordance with their respective laws and procedures. Both countries must develop regulations to give effect to these orders.²⁶

Fisheries and Oceans Canada ("DFO") regulates Canadian commercial net Fraser River sockeye fisheries in non-Panel Area waters (Johnstone Strait, off the West Coast of Vancouver Island north of 49°N and the northern part of Georgia Strait approximately just south of Texada Island). DFO also regulates First Nations and recreational fisheries in Panel and non-Panel Area waters.²⁷

Regulations Implementing Annual Fishing Plans

Pursuant to the Treaty, each Party establishes and enforces regulations to implement the fishery regimes adopted by the Parties.²⁸ The FRP annual reports have appendices with the regulations for each year's fishing season submitted at the end of June by the PSC to Canada and the United States.²⁹

²⁴ Treaty, Annex IV, Ch. 4, Para. 12.

²⁵ Treaty, Article VI, Para. 6; Annex IV, Ch. 4, Para. 12; *Diplomatic Note of August 13, 1985 regarding implementation of Article XV (paragraph 3) of the Pacific Salmon Treaty* [1985 Diplomatic Note] at Part A, Para. 1(d).

²⁶ Treaty, Annex IV, Ch. 4, Para. 12.

²⁷ See e.g. 2002 FRP Report at 40 (Ringtail Document CAN002564).

²⁸ Treaty, Article IV, Para. 7.

²⁹ See e.g. *Report of the Fraser River Panel to the Pacific Salmon Commission on the 2005 Fraser River Sockeye and Pink Salmon Fishing Season* (Vancouver: Pacific Salmon Commission, October 2009) (Ringtail Document CAN002567) at 53-54, Appendix G.

Regulatory recommendations for Canadian waters are implemented under the *Fisheries Act*, R.S.C. 1985, c. F-14, and regulations as part of the Canadian legislative regime for fisheries licensing, openings and closings and enforcement.³⁰

Canada's Obligations to Provide Information Required for the Management of Fraser River Sockeye

The Treaty requires Canada to provide information to the PSC on an annual basis. Canada must annually establish spawning escapement targets for Fraser River sockeye in order to calculate the TAC³¹ and inform the FRP what these spawning escapement targets are for each fishing season.

Canada must also submit preliminary information to the United States and the PSC on the estimated pre-season size of the run, the interrelationship between stocks, its intentions concerning the management of fisheries in its waters and its domestic allocation objectives.³²

Furthermore, for the purposes of pre-season planning, where possible, Canada must provide to the FRP forecasts of run size and spawning escapement requirements by stock management groups (which are the four run-timing groups: Early Stuart, Early Summer, Summer and Late Run³³) no later than the February annual meeting of the PSC.³⁴ Forecasts of migration patterns (e.g. diversion rate and timing), gross escapement needs and any in-season adjustments in escapement requirements shall be provided to the FRP by Canada as they become available. The United States is to provide forecasts of non-Fraser sockeye and pink salmon run size returns affected by the FRP management.

³⁰ See e.g. *Report of the Fraser River Panel to the Pacific Salmon Commission on the 1987 Fraser River Sockeye and Pink Salmon Fishing Season* (Vancouver: Pacific Salmon Commission, August 1988) (Ringtail Document CAN002613) at 38.

³¹ Treaty, Article IV, Para. 3 and Annex IV, Ch. 4, Para. 4.

³² Treaty, Article IV, Para. 3.

³³ Treaty, Annex IV, Chapter 4, Paras. 3 to 4.

³⁴ Annex IV, Ch. 4, Paras. 4 and 13(e).

In-season, Canada and the United States are to provide the PSC with information on in-season catches by time, area, species and gear type for fisheries outside of Panel Area waters that harvest Fraser River sockeye.³⁵

The 1985 Diplomatic Note also requires the FRP to conduct stock assessment programs and provides for the PSC staff to implement these programs in support of the FRP.³⁶ The FRP is also authorised to collect in-season information on catches within Panel Area waters, review information on escapements within Panel Area waters, collate information provided by the Parties for fisheries outside of Panel Area waters, conduct test fishing, collect data on upriver escapements by observations at Hell's Gate and the hydro-acoustic program at Mission and design and conduct studies to identify and discriminate between stocks.³⁷

Post-season, the Treaty provides that the FRP is to provide the PSC with an accounting of catches, wherever made, of Fraser River sockeye and pink salmon and with an appraisal of the extent to which the Panel achieved the objectives set by the Parties.³⁸

The 1999 Agreement

Although ratified in 1985, the original fishing arrangements in the Treaty expired in 1992. From 1992-1998, Canada and the United States were not able to reach agreement on new coast-wide fisheries arrangements, but in 1999, long-term fishing arrangements were finally renewed under the 1999 Agreement.

Some of the key elements introduced with the 1999 Agreement include the creation of the Transboundary Panel and the Committee on Scientific Cooperation; the inclusion of habitat provisions in the Treaty; the establishment of the Northern and Southern Restoration and Enhancement Funds and a move from negotiated catch ceilings to abundance-based management fisheries for the harvest of Chinook.

³⁵ 1985 Diplomatic Note at Part D.

³⁶ Ringtail Document CAN005758 at 15; 1985 Diplomatic Note at Part A, Para. 1(c).

³⁷ 1985 Diplomatic Note at Part A, Para. 1(c).

³⁸ 1985 Diplomatic Note at Part A, para. 1e) and Part D, Paras. 4-6.

The 2009 Agreement

Significant revisions to the Treaty also occurred in 2009 when Canada and the United States signed a new bilateral agreement for the conservation and harvest sharing of Pacific salmon. Approved in December 2008 by the respective governments, the new fishing regimes in Annex IV, Chapters 1 to 3 and 5 to 6 are in force from the beginning of 2009 through to the end of 2018. These new fishing regimes replace previous versions of these Chapters.

Negotiations for Annex IV, Chapter 4

Chapter 4 which governs Fraser River sockeye and pinks expires after 2010.³⁹ Canada and the United States have asked the FRP to undertake a review of the provisions of Chapter 4 and provide advice to the PSC Commissioners on issues that need to be negotiated.⁴⁰ The following is a list of items that were under negotiation in 2009⁴¹:

1. distribution of Fraser River Aboriginal Fish Exemption (pre-season and in-season);
2. management groups;
3. proportional sharing across management groups;
4. review all occurrences of phrase “unless otherwise agreed” and its variants;
5. incorporate Commission guidance and any proposed changes into Chapter 4;
6. term of agreement;
7. test fishing policy;
8. document PSC staff and Party responsibilities; and
9. treatment of Alaska catch in TAC calculations.

³⁹ Treaty, Annex IV, Ch. 4, Para. 1.

⁴⁰ Ringtail Document CAN006901 at 6.

⁴¹ Document provided by the PSC, but not yet entered into Ringtail at the publication date of this Policy and Practice Report.

The status of these items as of November 13, 2009, is as follows⁴²:

Item	Action Status
1	Agreed draft of paragraph 3(d) completed November 12, 2009. The AFE allocation approach described was tested in 2009 and will undergo further technical review to ensure there are no outstanding issues with implementing the agreed approach.
2	Composition of current 4 management groups can be changed by Panel agreement without Annex revision. Changes to number of management groups require Annex revision. Current composition of management groupings is causing issues for management. Changes to the composition and number of management groups could affect the implementation of Canada's escapement plan and change the harvest patterns on specific stock components. Thus, any proposed changes would require consultation and DFO science review. It is unlikely that such review could be completed prior to February 2010. Canada has developed a work plan to address technical issues related to potential changes to the composition of management groups.
3	Canada and the United States are considering a proposal to address this issue.
4	Resolved February 9, 2009.
5	Agreed draft finalized September 30, 2009. A work group has been established to ensure that the new paragraph 8 is consistent with existing language in Chapter 4 (paragraph 3(a)).
6	To be resolved at Commission level as per their instruction.
7	Final agreed document formally approved by Fraser Panel and the Commission.
8	Staff completed a draft which lists PSC staff, Fraser River Panel and Party duties and responsibilities. Most of the language was drawn directly from the Aug. 13, 1985 Diplomatic note (p. 126-130 in Treaty). A working group lead by the co-chairs of the Fraser River Panel Technical Committee will review the draft to ensure it is complete and consistent with current practices. The final product will be a new Diplomatic note to accompany the revised Annex IV, Chapter 4.
9	To be resolved at Commission level as per their instruction.

At this time, Canada has told the PSC that it will not continue negotiations for the renewal of Annex IV, Chapter 4 until the Cohen Commission has submitted its Final Report. Although negotiations for Chapter 4 are on hold and Chapter 4 has not been renewed, in February 2010, the Commission did provide some interim direction to the FRP with respect to implementation of Annex IV, Ch. 4, Paras. 3 and 8.⁴³

⁴² *Ibid.*

⁴³ Document provided by the PSC, but not yet entered into Ringtail at the publication date of this Policy and Practice Report.

The International Pacific Salmon Fisheries Commission: 1937-1985

The predecessor to the current *Pacific Salmon Treaty* was the *Convention for the Protection, Preservation and Extension of the Sockeye Salmon Fishery* (the "Convention").⁴⁴ The Convention was signed on May 26, 1930. Although it was approved by Canada on May 29, 1930, it was not ratified by both countries until the early summer of 1937.⁴⁵ The Convention divided catch equally between Canada and the United States (i.e. TAC was divided 50-50) and its Treaty Waters included the Fraser River watershed and high seas fishing areas.⁴⁶

Following ratification of the Convention, the International Pacific Salmon Fisheries Commission (the "IPSFC") was established in 1937 with six members, three each from the United States and Canada.⁴⁷ The Convention also provided for a bilateral Advisory Committee to advise on conditions on the fishing grounds; as well, permanent professional and technical staff were selected by the director of the IPSFC with the concurrence of the chairman.⁴⁸

The IPSFC was empowered to carry out certain investigations to determine why the sockeye runs were depleted, make recommendations about removing or overcoming obstructions to the ascent of sockeye on their return to their natal streams and after an eight-year investigation to regulate the sockeye fishery.⁴⁹ Articles III and IV of the Convention identified the following responsibilities for the IPSFC⁵⁰:

1. To make a thorough investigation into the natural history of both species, hatchery methods, spawning ground conditions and any other matters affecting the status and productivity of the sockeye and pink salmon stocks of the Fraser River;

⁴⁴ *Convention for the Protection, Preservation and Extension of the Sockeye Salmon Fishery* 26 May 1930, entered into force 28 July 1937, 184 in the Fraser River System (Fraser River Salmon Agreement), Washington, LNTS 305. The Fraser River Salmon Agreement established the International Pacific Salmon Fisheries Commission, the predecessor to the current PSC.

⁴⁵ Roos, J.F., *Restoring the Fraser River* (Vancouver: Pacific Salmon Commission, 1991) [Roos] (Ringtail Document CAN005102) at 49-50.

⁴⁶ *Ibid.* at 45 at 302.

⁴⁷ *Ibid.* at 54.

⁴⁸ *Ibid.* at 55.

⁴⁹ *Ibid.*

⁵⁰ *Ibid.* at 302-303 and 341-342.

2. The authority to conduct fish-cultural operations, improvements of spawning grounds and construction of facilities determined necessary for the propagation and enhancement of the two species;
3. The right to overcome obstructions affecting the migration of sockeye and pink salmon; and
4. Regulation of the fishery.

The Convention was clear that the Parties' intentions were that the IPSFC would have the authority to preserve, protect and extend the sockeye resource. There was no indication that this would be a responsibility shared with any other entity.⁵¹ The sole authority of the IPSFC regarding management of the fisheries was clearly identified in the Convention and the only exception to this authority was the requirement that all pre-season regulations proposed by the IPSFC would be subject to the approval of each government.⁵²

The IPSFC itself was not authorised to enforce its own regulations as this was the responsibility of regulatory bodies within each country.⁵³ The IPSFC also did not have controlling authority over development activities in the watershed and it had no input as to the types or number of gear types.⁵⁴

On March 18, 1985, the *Pacific Salmon Treaty* was signed and the idea of management unity, which was the basic foundation of the IPSFC, was changed to management duality through the return of significant resource and habitat management responsibilities to the Canadian government and the increase in Canada's share of the catch.⁵⁵ These changes meant that going forward Canada assumed the majority utilisation and control of Fraser sockeye and pink salmon.⁵⁶

⁵¹ *Ibid.* at 303.

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ *Ibid.* at 319.

⁵⁶ *Ibid.*

The Treaty stipulated that the IPSFC would be terminated on December 31, 1985 and thus in 1986, the PSC was created.⁵⁷

The Pacific Salmon Commission

The PSC is the bilateral body that implements the Treaty.⁵⁸ It is funded equally by the Parties.⁵⁹

The PSC itself, except for Fraser River sockeye and pink salmon (see below), does not regulate Pacific salmon fisheries but provides regulatory advice and recommendations to Canada and the United States and is a forum through which both countries can resolve their salmon management problems.

The fundamental role of the PSC is two-fold⁶⁰:

1. to conserve Pacific salmon in order to achieve optimum production; and
2. to divide the harvests so that each country reaps the benefits of its investment in salmon management and the production of salmon originating in its waters.

Organisational Structure of the PSC

The PSC is a sixteen-person body with four Commissioners and four alternates for each Party. The Minister of Fisheries and Oceans appoints the eight Canadian Commissioners and alternates and domestically all appointees are referred to as "Commissioners".⁶¹ The term of appointment is either for four or two years.⁶²

The Commissioners represent each Party at the PSC and they include representatives from commercial and recreational fisheries as well as federal, state, provincial and First

⁵⁷ *Ibid.* at 321.

⁵⁸ Treaty, Article II, Para. 1.

⁵⁹ Treaty, Article II, Para. 12.

⁶⁰ Treaty, Article III, Para. 1.

⁶¹ Commissioners, online: The Pacific Salmon Commission
<http://www.psc.org/about_org_commissioners.htm>.

⁶² Treaty, Article II, Para. 4 says that members are appointed at the "pleasure of the appointing Party".

Nations governments.⁶³ Each country has one vote in the Commission.⁶⁴ The agreement of both Parties is required for any recommendation or decision by the PSC.⁶⁵

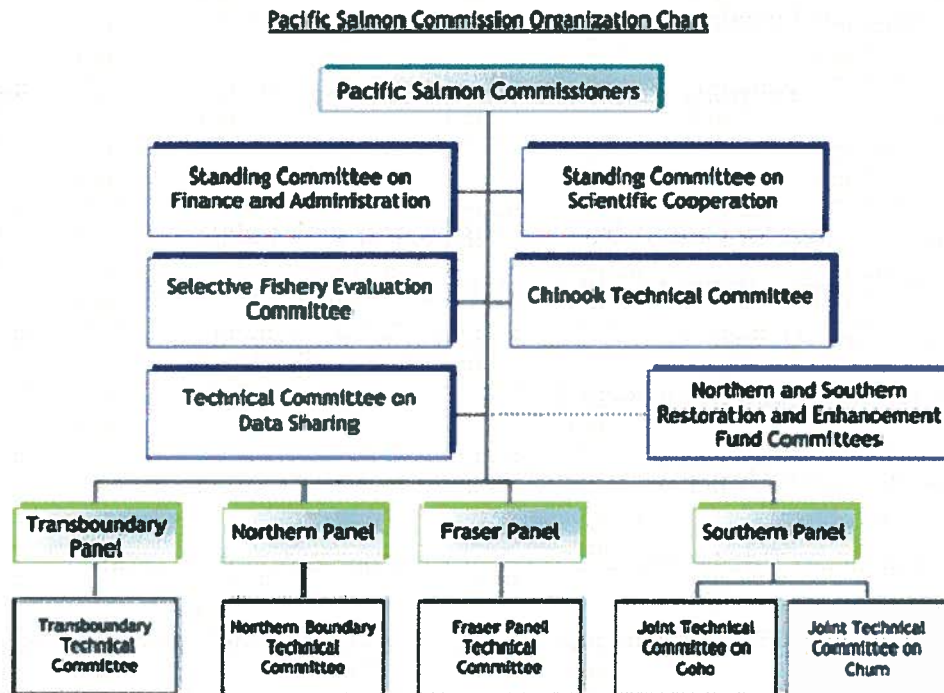


Figure 1: Pacific Salmon Commission Organization Chart.⁶⁶

A list of current PSC Commissioners and alternates is included in Appendix 3 to this Report.

*Panels*⁶⁷

Four Panels provide technical and regulatory advice to the PSC. Each Panel has up to six representatives and alternates from each country⁶⁸ and membership reflects a range of governmental and fishing interests. A Panel is assigned responsibility for salmon

⁶³ Treaty, Article II, Para. 3.

⁶⁴ Treaty, Article II, Para. 6,

⁶⁵ *Ibid.*

⁶⁶ Organizational Structure, online: The Pacific Salmon Commission <http://www.psc.org/about_organizational_structure.htm>.

⁶⁷ Panels, online: The Pacific Salmon Commission <http://www.psc.org/about_org_panels.htm>.

⁶⁸ Treaty, Article II.

stocks originating in a specific geographic area, but where fisheries intercept stocks for which more than one Panel is responsible, the appropriate Panels meet jointly.⁶⁹

The Panels provide recommendations on the management of the fisheries in their area of responsibility before and after each season's harvest.⁷⁰ This is achieved by reviewing technical data on annual fishing plans and regulations and the salmon enhancement programs of each country.⁷¹ The agreement of both Parties is usually needed for any decision or recommendation.

The FRP, however, is an exception to this process as it has responsibility for in-season commercial harvest regulation of Fraser River sockeye and pink salmon in southern B.C. and northern Puget Sound (see "Fraser River Panel", below).⁷² In addition, the Panel's decision making with respect to fishery openings is a "two out of three" type scenario: if a Party's fishery proposal is deemed consistent with the objectives of the Treaty and with the recommendations and projections of the FRP⁷³ by the PSC staff, then only one Party needs to agree to the opening (see "Fraser River Panel", below).

A list of current members of Fraser River Panel is included in Appendix 3 to this Report.

Committees⁷⁴

Panel recommendations are based on information received by the Panels from a variety of bilateral technical committees. Technical committees have members from Canada and the United States and they rely upon information provided by fishery management agencies of both Parties.

The Standing Committee on Finance and Administration, Chinook Technical Committee, Selective Fishery Evaluation Committee, Technical Committee on Data Sharing and Standing Committee on Scientific Cooperation (the "Science Committee")

⁶⁹ Treaty, Article II, Para. 20.

⁷⁰ Treaty, Article II, Para. 19.

⁷¹ Treaty, Articles IV and V.

⁷² Treaty, Article VI, Para. 6 and Annex IV, Ch. 4, Para. 5 and Para. 12.

⁷³ Set out in Treaty, Annex IV, Ch. 4, Para. 13(a) to (c).

⁷⁴ Committees, online: The Pacific Salmon Commission
<http://www.psc.org/about_org_committees.htm>.

provide support and advice to all four regional panels. Therefore, these committees report directly to the Commission.

The Science Committee makes recommendations to the PSC on science initiatives. For example, it organised the recent PSC workshop held in Nanaimo in June regarding the decline of Fraser River sockeye. The Science Committee is responsible for providing independent advice on major science issues. The issues examined can be issues the PSC asks for advice on or issues brought forward by others.

The Fraser River Panel Technical Committee (the “FRPTC”) reports directly to the FRP and provides it with the scientific data and information required for its management decisions.⁷⁵

A list of current members of the FRPTC and some of the other PSC Committees is included in Appendix 3 to this Report.

*The PSC Staff*⁷⁶

The PSC receives administrative support from its staff, headquartered in Vancouver. Secretariat staff members also provide technical information and advice concerning Fraser River sockeye and pink salmon harvest to the FRP and or the FRPTC. The PSC staff actively assist in the day-to-day regulation of sockeye and pink fisheries throughout the FRP area of jurisdiction.⁷⁷ The PSC has 26 full-time staff positions and 18 summer positions to carry out fisheries-related monitoring activities such as dockside monitoring, hydro-acoustics and test fishing.

The Executive Secretary of the PSC manages the PSC and makes sure that the responsibilities of the PSC are carried out.⁷⁸ The work includes organising and preparing meeting agendas, managing staff, working with the Standing Committee on Finance and Administration in preparing the budget and managing the PSC’s research

⁷⁵ Treaty, Annex IV, Ch.4, Para. 9(a) to (e); Figure 1; also called the “Fraser River Technical Committee”.

⁷⁶ Secretariat, online: The Pacific Salmon Commission <http://www.psc.org/about_org_secretariat.htm>.

⁷⁷ The PSC staff conduct the assessment of in-season run-size and this assessment result in proposals for regulations by each national section of the FRP. The PSC staff then assess whether proposed fisheries by either Party are consistent with the available surpluses of sockeye salmon.

⁷⁸ Treaty, Article II, Paras. 15-16.

endowment fund (see “Restoration and Enhancement Funds”, below). The current Executive Secretary is Don Kowal and he has held this position since 1989.

The Chief Biologist at the PSC ensures the integrity of the scientific information used by the PSC. Functionally, this work includes managing the biology staff and working closely with the FRP and FRPTC to ensure that the FRP has the information it requires and that Panel members understand the technical basis for this information to enable them to make decisions about fishery openings and closings. The current Chief Biologist is Mike Lapointe and he has held this position since 2002.

The PSC staff run two technical programs in relation to Fraser River harvest management: the Stock Monitoring program and the Racial Analysis Program.

The Stock Monitoring program assesses run size, daily abundance and migration timing of Fraser River sockeye and pink salmon at different points along their migration route during the fishing season.⁷⁹ This information is used to develop yearly Fraser River sockeye and pink fishing plans to achieve annual escapement and catch allocation objectives. The estimation of salmon abundance is based principally on test fishing, hydro-acoustics and estimates of catch by commercial and First Nations Food Social and Ceremonial fisheries along Fraser River sockeye migration routes (marine and in-river). Estimates of daily in-season gross escapement of Fraser River sockeye moving past Mission are also generated by this program.

The Racial Analysis Program identifies the stock proportions of Fraser River sockeye and pink salmon in commercial, test and First Nations’ catches.⁸⁰ These data provide information on the abundance and timing of sockeye stocks as they migrate to their spawning grounds. Racial data are also used to account for Fraser River sockeye salmon wherever they may be caught, and to apportion the daily estimates of in-season gross escapement past Mission into discrete stock groups. Stock composition is determined from salmon scale and micro-satellite DNA analysis.

A list of current PSC staff is included in Appendix 3 to this Report.

⁷⁹ Panels, online: The Pacific Salmon Commission <http://www.psc.org/about_org_panels_frp.htm>.

⁸⁰ *Ibid.*

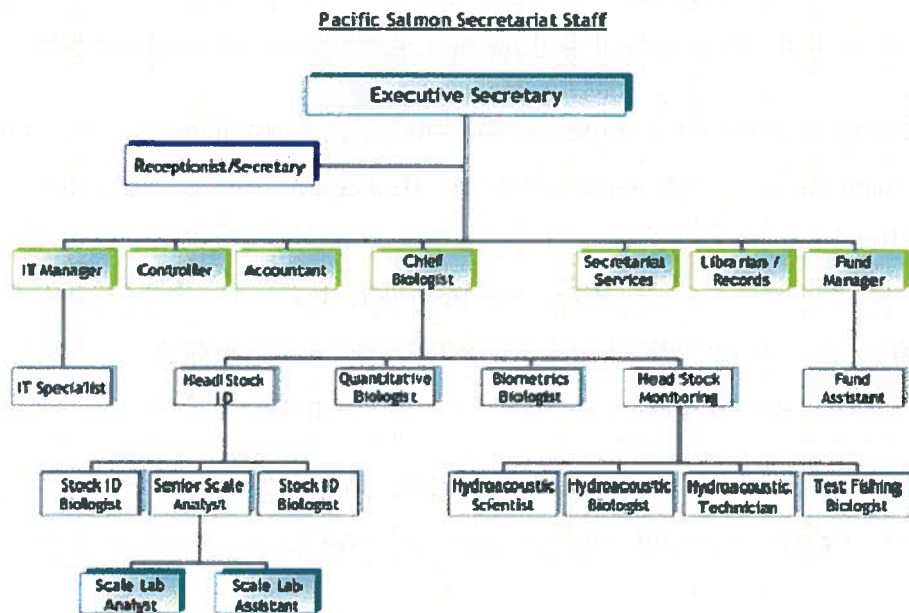


Figure 2: Pacific Salmon Commission Organization Chart.⁸¹

The PSC Meeting Cycle

The PSC holds three major meetings every year: an executive session in October for which the various Panels and Committees are required to prepare a work plan for the coming year. In January, there is a post-season meeting. The PSC Annual Meeting is convened in February. These meetings alternate between Canada and the United States and are generally attended by the Commissioners, each Party's advisors and others making reports and or presentations to the PSC.

The PSC Budget

The Standing Committee on Finance and Administration reviews and negotiates the PSC's budget. The budget in any given year will vary annually depending on salmon cycle years and the deferment of various activities. Much of the money goes to DFO to support the PSC's in-season functions.

⁸¹ Organizational Structure, online: The Pacific Salmon Commission <http://www.psc.org/about_organizational_structure.htm>.

From 1985 to 1999, Canada had an international directorate that would fund and manage the Canadian portion of the PSC's budget. Since 1999, the PSC's funds have come out of DFO's Regional operational budget.

The United States has a different budget structure than Canada for funding the PSC. It takes the PSC secretariat's forecasted budget and requests the same amount from the United States. This Commission's portfolio has a specific budget line item for the PSC. While budget contributions are split equally between the United States and Canada, most of the negotiations around the budget are between the PSC and Canada and the United States then provides a portion equal to Canada's contribution.

Restoration and Enhancement Funds⁸²

In June of 1999, the United States and Canada reached a comprehensive new agreement under the Treaty (the "1999 Agreement"). Among other provisions, the 1999 Agreement established two endowment funds administered by two bilateral Restoration and Enhancement Fund Committees each with three Canadian and three American members⁸³:

1. the Northern Boundary and Transboundary Rivers Restoration and Enhancement Fund (the "Northern Fund"); and
2. the Southern Boundary Restoration and Enhancement Fund (the "Southern Fund").

The purpose of the two funds is to support activities in both countries that develop improved information for resource management, rehabilitate and restore marine and freshwater habitat and enhance wild stock production through low technology techniques.

Through negotiation of the 1999 Agreement, the United States agreed to capitalise the Northern and Southern Funds in the amount of US\$75 million and US\$65 million, respectively. Canada agreed to contribute \$250,000 to each of the two funds. The

⁸² Restoration and Enhancement Funds, online: The Pacific Salmon Commission <http://fund.psc.org/about_fund.htm>.

⁸³ Treaty, Annex IV, Chapter 7, Attachment C.

Northern and Southern funds are managed by a trust board that has six members from each of Canada and the United States. The Canadian members include representatives from each Panel and DFO's Area Managers.

Commissioners cannot ask board members to fund a certain project but some Commissioners are also board members. Anyone can submit a proposal and projects funded are those that meet the needs and goals of the PSC. The Southern Fund follows a Strategic Plan in selecting projects to fund.⁸⁴ After an initial screening to ensure proposals meet Fund criteria, more substantial submissions are reviewed by independent experts who provide advice to the Funds' board members.

A current list of Southern and Northern Fund Committees is included as Appendix 3 to this Report.

Summary of the PSC's Role in Management for Non-Fraser River Sockeye Pacific Salmon

Annually, each country provides technical information to the PSC on the conduct of that country's fisheries, pre-season expectations and enhancement activities.⁸⁵ Specifically, each country must annually provide information to the PSC on⁸⁶:

- (a) the estimated size of the run;
- (b) the interrelationship between the stocks;
- (c) the spawning escapement required;
- (d) the estimated total allowable catch;
- (e) each Party's intentions concerning management of fisheries in its own waters;
and
- (f) each Party's domestic allocation objectives whenever appropriate.

⁸⁴ Available online at: http://fund.psc.org/about_fund.htm.

⁸⁵ Treaty, Article IV, Paras. 1 and 3.

⁸⁶ Treaty, Article IV, Para. 3.

This technical information is analyzed by bilateral technical committees and reported to the PSC's Panels. The relevant Panel then reviews this information, uses it to develop its fishery recommendations and area plans and reports its views to the PSC with respect to proposed fishery regimes for the following year.⁸⁷

The PSC reviews the reports of the Panels and recommends annual fishery regimes to the Parties;⁸⁸ upon adoption of these fishery regimes by both Parties, the fishery regimes are transmitted to the Governments of Canada and the United States for final approval and regulatory implementation and become part of the Treaty as Annex IV.⁸⁹

Each Party establishes and enforces regulations to implement the fishery regimes adopted by the Parties and notifies the PSC and the other Party of these regulations and any in-season modifications.⁹⁰

Annually, the PSC publishes a report that summarises the yearly activities of the PSC.⁹¹ This report includes the results of the fishing season as presented by the Parties, records of meetings of the Commission and annual reports from some of the PSC's committees.⁹²

The Fraser River Panel

The FRP manages the commercial harvest of Fraser River sockeye and pink salmon in the Fraser Panel Area^{93,94}; it is responsible for developing fishing plans, in-season decision rules and in-season harvest regulation of Fraser River sockeye and pinks in Panel Area waters.⁹⁵ The FRP makes all operational decisions, while the PSC Commissioners make decisions on Treaty language.

⁸⁷ Treaty, Article IV, Paras. 2 and 4.

⁸⁸ Treaty, Article IV, Para. 5.

⁸⁹ Treaty, Article IV, Paras. 5 to 6.

⁹⁰ Treaty, Article IV, Para. 7.

⁹¹ Ringtail Document CAN005748 at 1.

⁹² Ringtail Document CAN005748 at 1-2.

⁹³ Recreational and First Nations harvests of Fraser River sockeye are regulated by DFO (see e.g. *Report of the Fraser River Panel to the Pacific Salmon Commission on the 2002 Fraser River Sockeye Salmon Fishing Season* (Vancouver: Pacific Salmon Commission, 2005) [2002 FRP Report] at 40 (Ringtail Document CAN002564)).

⁹⁴ Treaty, Annex II; a map of the Fraser River Panel Area is attached as Appendix 1 to this Report.

⁹⁵ Treaty, Article VI(6) and Annex IV, Ch. 4, Paras. 5 and 12.

Although commercial and recreational fisheries in non-Panel Area waters and recreational fisheries in Panel Area waters are not regulated by the FRP, DFO will generally ask the FRP for comments with respect to these fisheries. There is no bilateral process for the FRP to provide comment on DFO's proposed First Nations' food, social and ceremonial fisheries.

The Canadian Caucus of the FRP is appointed by DFO. Each country is allowed six members and six alternates. DFO tries to have people from different sectors represented on the FRP including First Nations, processors and commercial and recreational fishers. In addition, in recent years environmental non-governmental organisations have participated as observers of the Canadian Caucus. The Chair and Co-Chair alternate between Canada and the United States and each is the Chair of his or her respective country's FRP caucus.

The Canadian FRP members represent Canada. The Chair speaks on behalf of the Canadian section of the FRP and will ask for comments from members. Members can also ask questions or request explanations of the PSC staff. Before any decisions are made, there is an internal discussion among each country's caucus. Canada's intention is that FRP members will communicate with their respective sector (i.e. commercial, recreational, processing, First Nations, conservation), inform their sector about what happens at the FRP meetings and provide input from their sector to the FRP process.

Prior to the fishing season, the FRP recommends a commercial fishery regime and a management plan for Panel Area fisheries, which are then approved by the Commissioners.⁹⁶ The management plan is based on:

1. abundance and timing forecasts and escapement targets for Fraser River sockeye and pink salmon stocks provided by DFO;
2. international catch allocation goals set by the Treaty;
3. domestic catch allocation goals of each country;

⁹⁶ See e.g. Fraser River Panel Annual Reports available online at: http://www.psc.org/publications_annual_fraserreport.htm.

4. management concerns for other stocks and species identified by each country;
and
5. historic patterns in migration and fisheries dynamics.

The pre-season management plan identifies the approximate pattern of fishery openings required to achieve the FRP objectives given pre-season expectations. Using real-time commercial and test fishing data and analyses from the PSC staff, the FRP responds to deviations from pre-season expectations in the weekly fishing plans that they develop in-season.

The pre-season fishing plans represent a template that can be used if the forecasted numbers of fish return to spawn. During the period of IPSFC management, plans setting out the exact fishery openings were formally adopted prior to the fishing season. However, in the 1985 Treaty the use of hard-wired plans was discontinued because fisheries were difficult to rescind when conditions in-season did not match forecasted expectations.

Prior to every fishing season, there is a formal process for transfer of regulatory control from the Parties to the PSC through an exchange of diplomatic letters that specify a “closed unless open by the FRP” fisheries regime.⁹⁷

The FRP reports annually to the PSC⁹⁸ and provides the following information to stakeholders and the public through its website:

1. test fishing results (posted daily during the fishing season);
2. news releases (typically published each Friday on the PSC website during the commercial fishing season following the regularly scheduled weekly meeting of the FRP)⁹⁹;

⁹⁷ Treaty, Annex IV, Chapter 4, Para. 12.

⁹⁸ Available online at: http://www.psc.org/publications_annual_fraserreport.htm.

⁹⁹ FRP News Releases and Regulatory Announcements, online: The Pacific Salmon Commission <http://www.psc.org/news_frpnews.htm>.

3. regulatory announcements (made by the FRP following meetings when no official news release is published)¹⁰⁰;
4. in-season Fraser River escapement reports;
5. sockeye and pink in-season status reports; and
6. Late-run Fraser River sockeye salmon updates and tagging notices.

Escapement reports provide regular estimates of in-season escapement of Fraser River sockeye and pink salmon moving past Mission (typically between June and September). These escapement numbers represent the total of the number of fish available both for catch and for spawning above Mission.¹⁰¹

The sockeye and pink status reports are updated prior to each in-season meeting of the FRP, which typically occurs twice each week.¹⁰² These reports include summaries of catch and Mission escapement of Fraser River sockeye salmon and catch summaries of Fraser River pink salmon.

The FRP's annual reports provide a summary of each year's management of the Fraser River sockeye and pink fisheries and include a summary of pre-season planning, in-season management actions and a post-season review of how well the FRP did in meeting the objectives established under the Treaty, Annex IV, Ch. 4.¹⁰³

The FRP's Meeting Cycle

The FRP and FRPTC, and PSC staff put together a fishing plan through two pre-season meetings held in April to June. A number of alternative plans are made that can vary in Fraser sockeye run-size abundance, timing and diversion rate assumptions. Ultimately, one plan is adopted by the FRP as the base case plan.

¹⁰⁰ *Ibid.*

¹⁰¹ In-Season Fraser River Escapement Reports, online: The Pacific Salmon Commission <http://www.psc.org/info_inseasonfraserescapement.htm>.

¹⁰² Sockeye In-Season Status Reports, online: The Pacific Salmon Commission <http://www.psc.org/info_sockeyeinseasonstatus.htm>.

¹⁰³ Ringtail Document CAN005748 at 1.

In-season, the FRP generally meets twice a week over the phone and frequently more often if updated technical information from the PSC staff warrants.¹⁰⁴ There are also five in-person meetings in Richmond during the period when most commercial fisheries decisions are anticipated. Further conference calls can be added if necessary and additional observers, such as United States Tribal members and Canadian First Nations can listen-in to the phone meetings or attend the in-person meetings.

At the in-season FRP meetings an agenda is distributed, test fishery results are updated, stock identification is reviewed, and river temperatures and flow are discussed. As in-season information warrants, the PSC staff make formal recommendations for changes to run-size abundance estimates and management adjustments for each of the four run-timing groups. These recommendations take effect following adoption by one or both National sections. Following adoption, each National section proposes fisheries and the PSC staff evaluate whether these fisheries are consistent with available harvestable surpluses. If the PSC staff judge a National section fishery proposal consistent, then the proposed fisheries can go ahead as stipulated in paragraph 13 of Annex IV, Chapter 4.

Depending on the cycle year, in-season management lasts from July-September or June-October. Following each management season, the FRP has a post-season meeting to assess the fishery relative to predictions. A post-season review is prepared for the PSC's January meeting.

The Fraser River Panel Technical Committee

The FRPTC is made up of 10 technical representatives, 5 each from Canada and the United States.¹⁰⁵ These representatives are from DFO, First Nations and United States federal, state and Tribal fisheries staff. PSC staff work with the FRPTC but are not formal members. The Canadian members of the FRPTC are all DFO employees except for one member who is paid by the Fraser River Aboriginal Fisheries Secretariat to participate in the FRPTC. The FRPTC usually meets prior to the FRP meetings.

¹⁰⁴ John Fraser Report of the Fraser River Sockeye Public Review Board: *Fraser River Sockeye 1994, Problems and Discrepancies* (1994) [Fraser Report] at 27; Sockeye/Pink In-Season Status Reports, online: The Pacific Salmon Commission <http://www.psc.org/info_sockeyeinseasonstatus.htm>.

¹⁰⁵ Treaty, Annex IV, Ch.4, Para. 9(b).

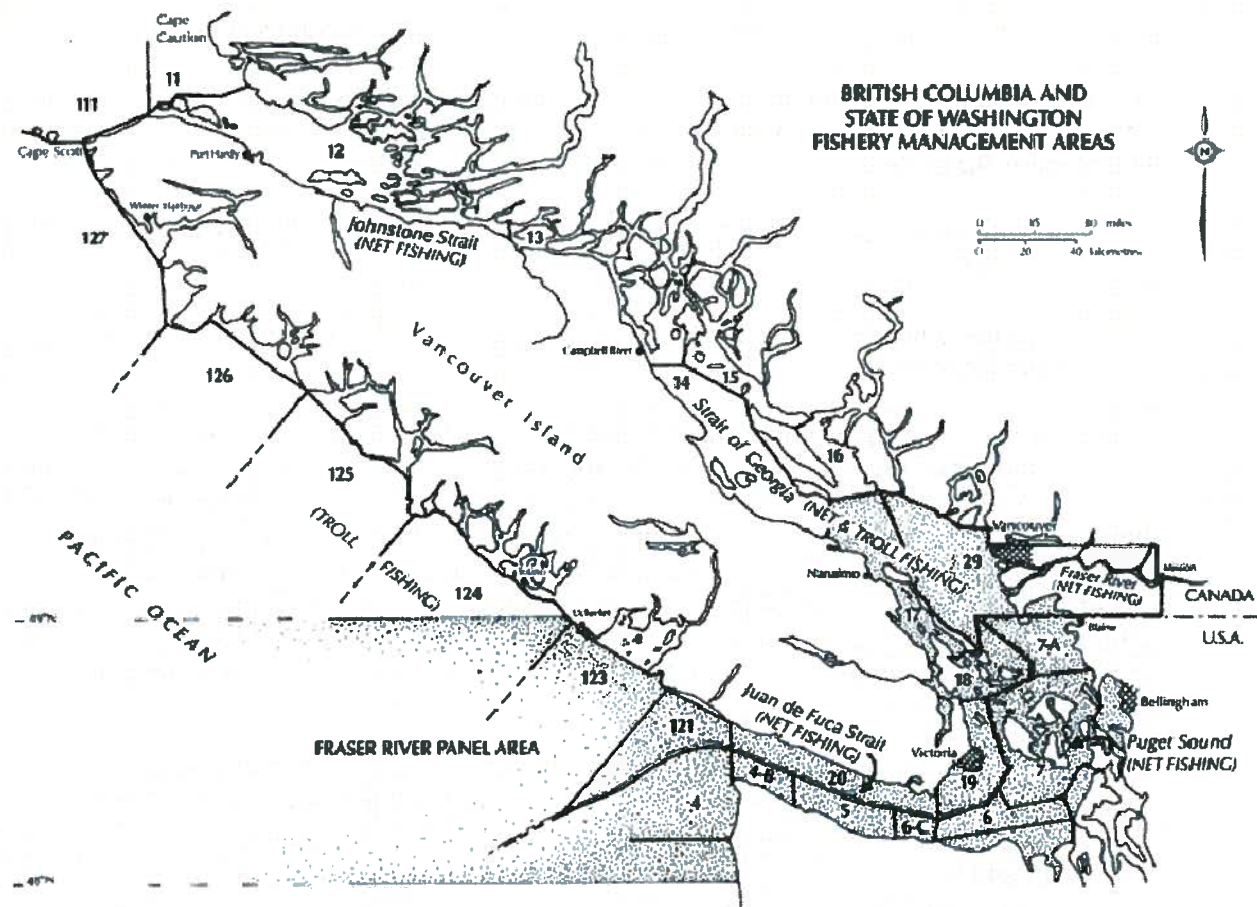
The FRPTC gets the scientific information from the PSC staff prior to every FRP meeting and their role is to review the PSC staff analysis of this technical information and then brief their respective Caucus members on this scientific advice. The FRP can assign the FRPTC tasks related to in-season and pre-season assessments and planning, but the PSC staff does most of this work and brings it to the FRPTC for review.

Test Fishing

Test fisheries are used by the FRP to determine sockeye run-sizes in-season and these fisheries operate in Panel Area and non-Panel Area waters. Catch from test fisheries is deducted from the total return in the calculation of TAC, but does not count against either country's share. Each year prior to the fishing season, the PSC sets out the test fisheries required to manage the in-season harvest of Fraser River sockeye and these fisheries require bilateral approval by the FRP. The PSC administers all of the contracts with fishery operators who do the test fishing whether in Panel Area or non-Panel Area waters.

Test fisheries were formerly paid for by the sale of fish caught by the operator of the test fishing boat. This practice changed with the decision in *Larocque v. Canada (Minister of Fisheries and Oceans)*, [2006] F.C.J. No. 985, 2006 FCA 237 [*Larocque*]. The *Larocque* decision holds in part that Canada cannot use the sale of fish caught in a test fishery to fund its scientific research activities. Test fisheries in the United States are still self-funded through the pre-*Larocque* model. In case of a short-fall to pay for test fishing, there is no mechanism for the PSC to ask for more money from the Parties. Before *Larocque*, this was not a problem because the program was funded by selling the fish caught, so pending FRP approval of increased test fishing deductions from the TAC, if increased test fishing was required this could be done at no net cost to DFO or the PSC secretariat budget.

Appendix 1: Fraser River Panel Area¹⁰⁶



¹⁰⁶ Fisheries Maps, online: The Pacific Salmon Commission <http://www.psc.org/info_fisheriesmap.htm>.

Appendix 2: *Pacific Salmon Treaty, Annex IV, Chapter 4*

Last Updated January 27, 2009

Chapter 4: Fraser River Sockeye and Pink Salmon

1. The provisions of this Chapter shall apply for the period 2005 through 2010.
2. The U.S. share of the annual Fraser River sockeye and pink salmon Total Allowable Catch (the "TAC"), as defined in paragraph 3 to be harvested in the waters of Washington State is as follows:
 - (a) for sockeye salmon, the U.S. catch in the Fraser Panel Area shall not exceed 16.5 percent of the TAC;
 - (b) for pink salmon, the U.S. catch in the Fraser Panel Area shall not exceed 25.7 percent of the TAC.
3. For the purpose of this Chapter, the TAC shall be defined as the remaining portion of the annual aggregate Fraser River sockeye and pink runs (including any catch of Fraser River sockeye identified in Alaskan waters) after the spawning escapement targets established, unless otherwise agreed, by application of Canada's pre-season escapement plan (subject to any adjustments made pursuant to paragraph 3(b), below), the agreed Fraser River Aboriginal Exemption, and the catch in Panel authorized test fisheries have been deducted. TAC shall be computed separately for Fraser River sockeye and pink salmon. The following definitions and procedures apply to TAC calculations:
 - (a) The annual U.S. share shall be computed based on the inseason run size estimates in effect at the time the Panel relinquishes control of the U.S. Panel waters, using the escapement targets established by application of Canada's preseason escapement plan as may be adjusted pursuant to paragraph 3(b), below, and taking into account any adjustments as provided in paragraph 8, below.
 - (b) For the purposes of in-season management by the Fraser River Panel, the spawning escapement objective is the target set by Canada, including any extra requirements that may be identified and agreed to by the Fraser River Panel, for natural, environmental, or stock assessment factors, to ensure the fish reach the spawning grounds at target levels. In the event the Fraser River Panel does not agree to additional escapement amounts, the PSC staff will make a recommendation which shall become effective upon agreement by at least one national section of the Panel. Any additional escapement amounts believed necessary by Canada above those determined pursuant to the foregoing will not affect the U.S. share.
 - (c) The agreed Fraser River Aboriginal Fishery Exemption (AFE) is that number of sockeye which is subtracted from the total run size in determining the TAC upon which the U.S. shares specified in paragraph 2 are calculated. Any Canadian harvests in excess of these amounts count against the TAC, and do not affect

the U.S. share. The agreed Fraser River Aboriginal Fishery Exemption is the actual catch of Fraser River sockeye harvested in both the in-river and marine area Aboriginal Fisheries, up to 400,000 sockeye annually.

- (d) For computing TAC by stock management groupings, the AFE shall be allocated to management groups as follows: The Early Stuart sockeye exemption shall be up to 20% of the Fraser River Aboriginal Fishery Exemption (AFE), and the remaining balance of the latter exemption shall be based on the average proportional distribution for the most recent three cycles and modified annually as required to address concerns for Fraser River sockeye stocks and other species and as otherwise agreed by the Fraser River Panel. For the duration of this Chapter, the harvest distribution of Early Stuart sockeye is expected to remain similar to that of recent years.
 - (e) To the extent practicable, the Fraser River Panel shall manage the United States fishery to spread the United States harvest proportionately to the TACs across all Fraser River sockeye stock management groupings (Early Stuart, Early Summer, Mid-Summer, and Late Run).
4. Pursuant to Article IV, paragraph 3, Canada shall annually establish the Fraser River sockeye and pink salmon spawning escapement targets for the purpose of calculating the annual TAC. For the purposes of pre-season planning, where possible, Canada shall provide forecasts of run size and spawning escapement requirements by stock management groupings to the Fraser River Panel no later than the annual meeting of the Commission. Forecasts of migration patterns, gross escapement needs, and any in-season adjustments in escapement requirements shall be provided to the Fraser River Panel by Canada as they become available in order to accommodate the management needs of the Panel in a timely manner. In addition, on a timely basis, the United States shall provide forecasts of sockeye and pink salmon run size returns affected by Panel management.
 5. The Fraser River Panel will develop fishing plans and in-season decision rules as may be necessary to implement the intent of this Chapter. The Parties shall establish and maintain data sharing principles and processes which ensure that the Parties, the Commission, and the Fraser River Panel are able to manage their fisheries in a timely manner consistent with this Chapter. With respect to management responsibilities, all activities of the Parties and the Fraser River Panel shall be consistent with the August 13, 1985, Memorandum of Understanding between the Parties.
 6. Fraser River Panel pre-season planning meetings that do not occur simultaneously with Commission meetings shall be held alternately in Canada and the United States. Scheduled in-season management meetings shall be held at Richmond, B.C. unless the Panel agrees otherwise. As agreed, Panel meetings may be held by telephone conference call.
 7. The Parties may agree to adjust the definition of the Fraser Panel Area as necessary to simplify domestic fishery management and ensure adequate consideration of the effect on other stocks and species harvested in the Area.
 8. Annually, the U.S. share shall be adjusted for harvest overages and underages in accordance with annual guidance provided by the Commission.

9. The Parties shall establish a Technical Committee for the Fraser River Panel:

- (a) the members shall coordinate the technical aspects of Fraser River Panel activities with and between the Commission staff and the national sections of the Fraser River Panel, and shall report, unless otherwise agreed, to their respective National Sections of the Panel. The Committee may receive assignments of a technical nature from the Fraser River Panel and will report results directly to the Panel.
- (b) membership of the Technical Committee shall consist of up to five such technical representatives as may be designated by each National Section of the Commission.
- (c) members of the Technical Committee shall analyze proposed management regimes, provide technical assistance in the development of proposals for management plans, explain technical reports and provide information and technical advice to their respective National Sections of the Panel.
- (d) the Technical Committee shall work with the Commission staff during pre-season development of the fishery regime and management plan and during in-season consideration of regulatory options for the sockeye and pink salmon fisheries of Fraser Panel Area waters and during post-season evaluations of the season to ensure that:
 - (i) domestic allocation objectives of both Parties are given full consideration;
 - (ii) conservation requirements and management objectives of the Parties for species and stocks other than Fraser River sockeye and pink salmon in the Fraser Panel Area during periods of Panel regulatory control are given full consideration; and (iii) the Commission staff is informed in a timely manner of management actions being taken by the Parties in fisheries outside of the Fraser Panel Area that may harvest sockeye and pink salmon of Fraser River origin.
- (e) the staff of the Commission shall consult regularly in-season with the Technical Committee to ensure that its members are fully informed in a timely manner on the status of Fraser River sockeye and pink salmon stocks, and the expectations of abundance, migration routes and proposed regulatory options, so the members of the Technical Committee can brief their respective National Sections prior to each in-season Panel meeting.

10. The Parties agree that Panel management actions should meet the following objectives, listed in order of priority:

- (a) obtain spawning escapement goals by stock or stock grouping;
- (b) meet Treaty defined international allocation; and

- (c) achieve domestic objectives.
-
- (a) The Fraser River Panel shall manage its fisheries consistent with the provisions of the other chapters of Annex IV to ensure that the conservation needs and management requirements for other salmon species and other sockeye and pink salmon stocks are taken into account.
-
11. The Parties agree to develop regulations to give effect to the provisions of the preceding paragraphs. Upon approval of the pre-season plan and during the period of Panel regulatory control, all sockeye and pink fisheries under the Panel's jurisdiction are closed unless opened for fishing by in-season order of the Panel.
12. Pursuant to the Parties' obligations under Article V1 the Panel will use the following in-season decision process:
- (a) The mid-point forecast provided by Canada will be used for management purposes until in-season updates of run size become available. Based upon advice from the Fraser River Panel Technical Committee and PSC staff, the Panel may adopt a more precautionary or optimistic applications of the forecast information until in-season updates of run size are available. PSC staff will provide the Fraser River Panel with recommendations for in-season run size and other factors relevant to sound fisheries management decisions. Based on information such as, but not limited to, in-season estimates of run timing and diversion rate, the PSC staff will make recommendations to the Fraser River Panel regarding in-season decision making.
 - (b) PSC staff will provide the Fraser River Panel with projected harvestable surpluses and status of harvest from fisheries under Panel management. These projections will incorporate any Fraser River Panel agreement on management adjustments that deal with environmental conditions during in-river migration that could significantly impact the Fraser River Panel's ability to achieve spawning escapement objectives and other considerations agreed to by the Panel.
 - (c) Any changes from PSC staff recommendations for points 13(a) and 13(b) above shall be based on bilateral agreement between the National Sections of the Fraser Panel. Acceptance of the PSC staff recommendation requires approval of at least one of the National Sections.
 - (d) The respective National Sections of the Panel will develop proposed regulations for their domestic Panel Water fisheries consistent with recommendations and projections provided by the PSC staff as described in 13(a) and 13(b) as may be modified pursuant to 13(c). Either National Section may ask PSC staff for advice in designing its fisheries proposals. PSC staff will assess and provide advice as to whether proposed fishery regulations for Panel Water fisheries are consistent with recommendations and projections described in 13(a) and 13(b) and Panel objectives. Subsequently, after full discussion of a Panel water fishery proposal, the following may occur: (i) the Panel may adopt the proposal based on bilateral agreement or; (ii) the proposing National Section may modify and re-submit its proposal in response to advice from staff and/or concern(s) raised by the other National Section; or (iii) while acknowledging objection(s) of the other National

Section, the Panel will grant the request to adopt the fishery proposal . In the event that the Panel adopts a fishery under the provisions of the latter circumstance (13(d)(iii)), prior to the commencement of the proposed fishery, the proposing National Section must provide a written rationale for the fishery as submitted.

- (e) If post-season a party maintains that it has been adversely affected by a fishery they objected to pursuant to paragraph 13(d)(iii) above or paragraph 13 (f) below; the PSC staff will prepare an objective report on the circumstances of the fishery and its consequences for the January PSC meeting following the season in question. The Panel will review the staff report and determine what action is required. If the Panel cannot come to agreement on the appropriate action, the issue will be referred to the Commission for resolution during its February annual meeting.
- (f) Pursuant with Article VI, paragraph 7 of the treaty, the Parties will communicate and consult with one another in a timely manner regarding their fishing plans for Fraser River sockeye outside of the Panel's regulatory control. In the event that a party has an objection to the other party's fishing plans as they relate to achievement of Panel objective, the implementing party will provide the rational for such plans.

Appendix 3: Current list of Pacific Salmon Commission Commissioners, Panel, Committee and staff

COMMISSIONERS

CANADA

Mr. Paul Sprout (Vice-Chair), Regional Director General, Fisheries and Oceans Canada

Mr. Ron Fowler

Mr. Gerry Kristianson

Mr. Saul Terry

UNITED STATES

Mr. Larry Rutter (Chair), National Marine Fisheries Service

Mr. David Bedford, Deputy Commissioner, Alaska Department of Fish and Game

Dr. Jeffrey P. Koenings, State of Washington Recreation and Conservation Office

Mr. Olney Patt Jr.

ALTERNATE COMMISSIONERS

CANADA

Mr. Paul Macgillivray, Associate Regional Director General, Fisheries and Oceans Canada

Mr. Garnet Jones

Mr. Russ Jones

Dr. Brian E. Riddell, President and CEO Pacific Salmon Foundation

UNITED STATES

Mr. W. Ron Allen, Tribal Chairman Jamestown S'Klallam Tribe

Mr. James E. Bacon

Mr. Roy Elicker, Director, Oregon Department of Fish and Wildlife

Mr. John Field, Foreign Affairs Officer, U.S. Department of State

FRASER PANEL

CANADA

Mr. Barry Rosenberger (Vice-Chair), Area Director BC Interior, Fisheries and Oceans Canada

Mr. Chris Ashton

Mr. Mike Griswold

Chief Ken Malloway, Tzeachten First Nation Band

Mr. Rob Morley, Canadian Fishing Company

Mr. John Murray

UNITED STATES

Mr. Kyle Adicks (Chair), Washington Department of Fish & Wildlife

Mr. Robert F. Kehoe, Purse Seine Vessel Owners Association

Ms. Lorraine Loomis, Fishery Manager, Swinomish Tribal Community

Mr. Tim Tynan, National Marine Fisheries Service, Salmon Recovery Division

FRASER RIVER PANEL - ALTERNATES

CANADA

Mr. Brian Assu

Mr. Randy Brahniuk, Fisheries and Oceans Canada

Mr. Brent McCallum

Mr. Les Rombough

Mr. Peter Sakich

Mr. Marcel Shepert, Fisheries Coordinator, Carrier Sekani Tribal Council

UNITED STATES

Mr. Ronald G. Charles, Port Gamble S'Kallam Tribe

Mr. Jack R. Giard

Mr. John Long, Washington Department of Fish and Wildlife

STANDING COMMITTEE ON FINANCE AND ADMINISTRATION

CANADA

Mr. Paul Macgillivray (Vice-Chair), Associate Regional Director General, Fisheries and Oceans Canada

Ms. Wellsley Hamilton, Policy Branch, Pacific Region, Fisheries and Oceans Canada

Ms. Chantal Lamadeleine, International Fisheries Officer, Fisheries and Oceans Canada

Mr. Roy Neighbor, Fisheries & Oceans Canada

UNITED STATES

Mr. W. Ron Allen (Chair), Tribal Chairman, Jamestown S'Klallam Tribe

Mr. David Bedford, Deputy Commissioner, Alaska Department of Fish and Game

Ms. Cheryl Ryder, National Marine Fisheries Service

Mr. Roy Elicker, Director, Oregon Department of Fish and Wildlife

Ms. Natalie Howard, U.S. Department of State

Mr. Mike Matylewich, Columbia River Inter-Tribal Fish Commission

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Mr. George Nandor, Pacific States Marine Fisheries Commission

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