

Cohen Commission  
Suite 2800, PO Box 11530  
650 West Georgia Street  
Vancouver, BC V6B 4N7

March 24, 2010

Dear Commissioner Cohen,

I am writing in response to the Commission's call for submissions on matters related to the Commission's review of Department of Fisheries and Oceans (DFO) policies and practices with respect to the Fraser River sockeye salmon fishery.

My primary concern is that the DFO policy review be guided by the principles that the health of wild salmon communities is our collective responsibility, and that the DFO, as the federal department responsible for the management of fisheries, habitat and aquaculture, is the public body charged with acting to protect the health of wild salmon communities.

The continued well-being of Fraser River sockeye salmon communities is a prerequisite to a sustainable fishery. We cannot even begin to think responsibly about a wild sockeye fishery – regardless of scale – unless and until wild sockeye communities are nurtured and protected by our every action. In conducting its review of DFO policies and practices, I urge the Commission to assess policies and practices with the following lens:

*How can we protect wild sockeye salmon in the Fraser River, and what significant changes to DFO policies and practices are necessary or advisable to halt the destruction of wild sockeye communities in the Fraser?*

The *Fisheries Act*, RSC 1985, c. F-14, gives the DFO broad authority to address matters relating to the health of wild salmon communities and to set the parameters of any potential wild salmon fishery. In addition to setting up a licensing scheme, the Act includes provisions respecting fish habitat protection and pollution prevention, and allows for regulations to be made respecting the conservation and protection of fish and of spawning grounds, and respecting the pollution or obstruction of waters.

Allocation to commercial and sport fisheries is **only** supposed to occur after conservation objectives are met and allocations to First Nations fisheries are made for food, social and ceremonial purposes. This is clearly set out in the DFO's Wild Salmon Policy (WSP).<sup>1</sup> The goals and guiding principles<sup>2</sup> of the Wild Salmon Policy align with all I have stated above.

In conducting the policy review, please consider whether the DFO is implementing the goals and guiding principles of the WSP in practice.<sup>3</sup> In doing so, please consider

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<sup>1</sup> Available online at: <http://www.pac.dfo-mpo.gc.ca/publications/pdfs/wsp-eng.pdf>

<sup>2</sup> Please refer to pages 8-9 of the Wild Salmon Policy.

<sup>3</sup> See, for example, the comments of David Loewen, at: <http://www.salmonguy.org/?p=1137>

whether DFO's harvesting policies, both as set out in the Wild Salmon Policy and elsewhere, align with the goals and guiding principles of the WSP. For example, please consider whether DFO's prioritization of a continued commercial harvest, as described on page 14 of the WSP, is undermining rather than furthering the goals of the WSP. As we have learned from the Atlantic cod fishery collapse, it does not make sense to speak of fisheries-related employment or other economic benefits if the fish communities meant to sustain these economies are in decline.<sup>4</sup> Short-term economic gain is not to be balanced against conservation objectives. Conservation objectives must be met *first*. The health of wild salmon communities must be our first priority in every action we take, not relegated to an externalized consequence of short-term economic planning.

Please consider making a strong recommendation that the DFO begin implementing policies that will fulfill the goals of the WSP immediately, even if it means a complete shut-down of the commercial and sports fisheries until the health of wild sockeye communities are restored.

The DFO also has authority and responsibility under the *Species at Risk Act*, SC 2002, c. 29 (SARA). Through SARA, the DFO is responsible for the protection and recovery of aquatic species at risk and for implementing necessary conservation and protection measures.<sup>5</sup>

A wild species may be designated a 'species of concern' under SARA if that species may become a threatened or an endangered species because of a combination of biological characteristics and identified threats.<sup>6</sup> This designation is intended to identify species that are to be managed in a precautionary manner, so as to prevent them from becoming threatened or endangered species. Once a species is listed as a 'species of concern', a management plan for the conservation of that species must be prepared in cooperation with relevant provincial governments and aboriginal organizations. An ecosystem approach to management may be adopted.

The DFO's authority under SARA is not limited to species designated as species at risk. Section 12 of SARA allows the DFO to enter into a conservation agreement with a provincial government with respect to a species that is not identified under the legislation as a species at risk. The agreement may provide for taking conservation measures and other measures consistent with the purposes of SARA, including measures with respect to: (a) monitoring the status of the species; (b) developing and implementing education and public awareness programs; (c) protecting the species' habitat; and (d) preventing the species from becoming a species at risk.

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<sup>4</sup> I would also note here that the dichotomy between jobs and conservation is a false one. There are a myriad of jobs to be created in actively working to protect the health of wild salmon communities – jobs in stream restoration, habitat remediation and protection, pollution clean-up, the safe dismantling of aquaculture operations, and all aspects of true stewardship.

<sup>5</sup> In this regard, I would note that the DFO decided not to list under SARA two sockeye salmon populations recognized as endangered by COSEWIC, namely the Cultus Lake and Sakinaw Lake sockeye populations. See: [http://www.oag-bvg.gc.ca/internet/English/pet\\_149\\_e\\_28879.html](http://www.oag-bvg.gc.ca/internet/English/pet_149_e_28879.html)

<sup>6</sup> The aquaculture industry and associated sea lice outbreak, with its documented negative impacts on juvenile wild salmon, would certainly constitute an 'identified threat'.

I ask that you consider the DFO's mandate under both the *Fisheries Act* and SARA in relation to the DFO's ability and responsibility to address the significant threat the aquaculture industry poses to wild salmon communities. The severity and magnitude of this threat is well documented.<sup>7</sup> Where the DFO's Aquaculture Policy Framework<sup>8</sup> fails to prioritize the health of wild salmon communities, and puts 'societal benefits' of industry ahead of the health and continued well-being of wild salmon communities, I urge you to make strong recommendations for change. The DFO's legislative mandate supports this.

In this regard, I would also ask that you consider the recent decision of Mr. Justice Hinkson of the BC Supreme Court in making recommendations for changes to the DFO's policies and practices respecting aquaculture operations in wild salmon habitat.<sup>9</sup> This decision makes clear that the regulation of aquaculture is properly a matter of federal rather than provincial jurisdiction.

Finally, please, please, please listen to Alexandra Morton. Not only that, but seek her out, solicit her advice and guidance. I urge you to consider engaging Alexandra Morton as an expert under section 11 of the *Inquiries Act* and offer her the opportunity to bring her experience and wisdom to bear in the Commission's policy review.

Thank you for this opportunity to express my views on matters related to the policy review process.

Sincerely,



Kirsty MacKenzie  
Vancouver, BC

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<sup>7</sup> See, for example, [http://www.ubcic.bc.ca/News\\_Releases/UBCICNews02151002.htm](http://www.ubcic.bc.ca/News_Releases/UBCICNews02151002.htm); and "Declining Wild Salmon Populations in Relation to Parasites from Farm Salmon", Krkosek et al. *Science* 14 December 2007: 1772-1775.

<sup>8</sup> Available online at: <http://www.dfo-mpo.gc.ca/aquaculture/ref/APF-PAM-eng.htm>

<sup>9</sup> *Morton v British Columbia (Agriculture and Lands)* 2009 BCSC 136, available online at: <http://www.courts.gov.bc.ca/jdb-txt/SC/09/01/2009BCSC0136err1.htm>