

OUR LAND IS OUR FUTURE

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The Honourable Jonathan Wilkinson
Department of Fisheries and Oceans Canada
Justice Building Suite 09
House of Commons
Ottawa, ON K1A 0A6
Via Email: min@dfo-mpo.gc.ca

OPEN LETTER: Fisheries and Oceans Canada's (DFO) Policy Not to Test for the Piscine Orthoreovirus (PRV) Before Transferring Atlantic Salmon to the Open-Net Fish Farms (the PRV Policy)

Dear Minister Wilkinson:

The Union of BC Indian Chiefs (UBCIC) writes in support of the 'Namgis First Nation's position that the DFO should prohibit introductions of Atlantic salmon infected with PRV into open-net fish farms. The scientific evidence continues to show that PRV was likely introduced to British Columbia (BC) from Europe and is a foreign virus that can cause significant harm to populations of native, wild Pacific salmon. Unfortunately, the DFO continues to ignore this risk even though it is unassailable:

- PRV is found in high concentrations in Atlantic salmon farms along BC's coast.
- PRV causes Heart and Skeletal Muscle Inflammation ("HSMI") in Atlantic salmon.
- The same strain of PRV causing HSMI on fish farms causes the red blood cells of Chinook to rupture, releasing toxins into their livers and kidneys and killing many of the infected fish.
- PRV causes erythrocytic inclusion body syndrome ("EIBS") in coho salmon.
- Severely depleted Chinook populations are the preferred food source of endangered killer whales.

DFO researchers have established that the PRV originating in fish farm hatcheries poses a clear and profound risk to wild Pacific salmon. The risk is significant considering that one fish farm

can hold almost one million fish; a number that is now equivalent to one run of sockeye returning to the Fraser River, the world's largest salmon-producing river. There are over 100 licensed fish farms in BC, and on most days, 60 to 80 fish farms are fully stocked. At any one time, millions of PRV-infected Atlantic salmon off the BC coast are shedding a harmful virus into the migration routes and habitats used by wild Pacific salmon. Even our neighbours to the south are acting; twice in the last year, Washington State has prohibited fish farms from putting PRV-infected Atlantic salmon in open-net pens and ordered those fish destroyed.

In 2015, Mr. Justice Rennie, in a decision of the Federal Court, concluded that s. 56 of the *Fishery (General) Regulations* embodies the precautionary principle and requires the DFO to test smolts for PRV before they are transferred to the marine environment.¹

Yet, in 2018, Mr. Justice Manson, again of the Federal Court, concluded the DFO's approach to the transfer of "Atlantic salmon smolts to aquaculture facilities involves no supervisory control or objective criteria with respect to testing for PRV or HSMI".² This abdication of regulatory oversight and of the precautionary principle is inexplicable and troubling.

On February 4, 2019, the Federal Court quashed the DFO's most recent PRV policy on four grounds:

- DFO failed to reasonably interpret its core mandate under the *Fisheries Act* – the protection and conservation of fish.
- DFO did not adhere to the precautionary principle – to anticipate, prevent and attack the causes of environmental degradation and not use scientific uncertainty to excuse inaction.
- DFO breached its constitutional duty to consult and accommodate the 'N̄amgis.
- When regulating PRV, the virus responsible for one of the leading causes of death in fish farms globally, the DFO failed to consider the risk PRV poses to wild Pacific salmon.

First Nations are dismayed and alarmed by the DFO's astonishing failure to manage the risk PRV poses to the five species of wild Pacific salmon they have relied on since time immemorial. The protection of wild Pacific salmon is a key concern of the First Nations of British Columbia. UBCIC has numerous resolutions calling for the protection of wild salmon, including Resolution 2012-36 "UBCIC Mandate to Protect and Safeguard Wild Salmon, Resolution 2013-18 "First Nations Wild Salmon Alliance," Resolution 2016-41 "Support for Scientific Efforts to Research Decline in Wild Salmon Stocks," and Resolution 2018-02 "Support for the FNLC Wild Salmon Summit Draft Recommendations."

The Federal Court ordered the DFO to reconsider the PRV Policy and gave it four months to do so. Unfortunately, the DFO's conduct during that time has been troubling. It failed to undertake any meaningful efforts to consult with 'N̄amgis who have had to seek the Federal Court's permission to extend the consultation deadline. We also understand that despite 'N̄amgis writing

¹ *Morton v. Canada (Fisheries and Oceans)*, 2015 FC 575, paras. 95 to 99 and paras. 40 to 48.

² *Namgis First Nation v. Canada (Fisheries, Oceans and Coast Guard)*, 2018 FC 334, para. 92.

to the Minister on March 29, 2019 with numerous questions and information requests, DFO has not responded meaningfully to those requests.

We are also dismayed that the DFO intends to rely almost exclusively on the Canadian Science Advisory Secretariat's ("CSAS") *Advice from the assessment of the risk to Fraser River Sockeye Salmon due to piscine orthoreovirus (PRV) transfer from Atlantic Salmon farms in the Discovery Islands area, British Columbia* (the "CSAS Review") for its current reconsideration of the PRV Policy. The scope of the current CSAS review and the composition of the panel conducting it are troubling.

The CSAS Review of the PRV Policy is limited to the effects of PRV on sockeye salmon, an extremely narrow and inadequate scope. The occasion demands an assessment of PRV's risk to all five species of wild Pacific salmon, not just sockeye, to say nothing of other marine life. As Dr. Garver, the DFO's own expert, explained in a 2018 affidavit for the Federal Court, the effects of a pathogen on one species cannot predict the disease outcome for all species in all environments.³ PRV is the perfect example: it causes HSMI in Atlantic salmon, jaundice in Chinook, and EIBS in Coho. The exclusive focus on sockeye excludes the mounting research from around the world that PRV kills both Coho and Chinook salmon. Even if Sockeye could be used as a proxy for all other species of wild Pacific salmon, the research we have on PRV in sockeye is very limited; indeed, the laboratory evidence is comprised almost exclusively on flawed the DFO studies that used inadequate controls and sampled fish outside of the window they would be expected to show signs of disease.

However, First Nations are not the only ones concerned about how the DFO is managing the risk fish farms pose to wild Pacific salmon.

- In 2012, Mr. Justice Cohen stated:

There is a risk that the DFO will not proactively examine potential threats to migrating sockeye salmon from salmon farms, leaving it up to other concerned parties to establish that there is a threat.⁴

- In 2015, Mr. Justice Rennie found that arguments that the DFO was adhering to the precautionary principle with respect to PRV "are inconsistent, contradictory and, in any event, fail in light of the evidence".⁵
- In 2018, the Commissioner for the Environment and Sustainable Development stated that DFO:
 - "had not made sufficient progress in completing risk assessments for key diseases, which were required to assess the effects of salmon farming on wild fish",⁶

³ Affidavit of Dr. Kyle Garver submitted in Federal Court file T-430-18, paras. 14 to 17.

⁴ *The Uncertain Future of the Fraser River Sockeye*, Volume 3, page 12.

⁵ *Morton v. Canada (Fisheries and Oceans)*, 2015 FC 575, para. 44.

⁶ *2018 Spring Reports of the Commissioner of the Environment and Sustainable Development to the Parliament of Canada Report 1 – Salmon Farming*, para. 1.17.

- “did not sufficiently enforce its Aquaculture Activities Regulations to minimize harm to wild fish”;⁷ and
 - “was vulnerable to claims that it prioritized the development of the aquaculture industry over the protection of wild fish”.⁸
- In 2018, Mr. Justice Manson found that the DFO’s management of fish transfers of “Atlantic salmon smolts to aquaculture facilities involves no supervisory control or objective criteria with respect to testing for PRV or HSMI”⁹ and that ‘N̄amgis had:

.....established a serious risk of irreparable harm on a number of fronts: that fishery being at serious risk, given the depleted wild salmon populations in the Asserted Territory; and the recent science establishing the connection between PRV and HSMI and the resulting risk of disease and mortality. All of this is proof of a real and non-speculative likelihood of irreparable harm to [‘N̄amgis] (underlining added).¹⁰
 - In 2018, the Independent Panel on Aquaculture Science also concluded that the DFO was not up to the task of evaluating evidence and science in policy decision-making without bias and recommended that the DFO appoint a Departmental Science Advisor and establish an External Advisory Committee on Aquaculture.¹¹
 - In 2019, the Federal Court again quashed DFO’s PRV Policy because the DFO failed to protect and conserve fish, failed to adhere to the precautionary principle and failed to consider the risk to wild Pacific salmon.

Minister, we write to you now because clearly political intervention is necessary to address the profound dysfunction within the DFO documented by three Federal Court judges, a former BC Supreme Court judge, the Commissioner for the Environment and Sustainable Development and the Independent Panel on Aquaculture Science.

UBCIC fully supports ‘N̄amgis and calls upon the DFO to conduct itself honourably in consultations with ‘N̄amgis, to address their concerns about PRV and to adhere to the precautionary principle to protect the wild Pacific salmon that the First Nations of BC have relied and thrived on since time immemorial.

On behalf of the UNION OF BC INDIAN CHIEFS



Grand Chief Stewart Phillip
President



Chief Don Tom
Vice-President



Kukpi7 Judy Wilson
Secretary-Treasurer

⁷ Ibid., para. 175.

⁸ Ibid., para. 1.49.

⁹ *Namgis First Nation v. Canada (Fisheries, Oceans and Coast Guard)*, 2018 FC 334, para. 92.

¹⁰ *Namgis First Nation v. Canada (Fisheries, Oceans and Coast Guard)*, 2018 FC 334, para. 93.

¹¹ Report of the Independent Expert Panel on Aquaculture Science, page 14.

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