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The Honourable Loyola Hearn, P.C., M.P.

Minister of Fisheries
House of Commons
Ottawa, Ontario

Dear Minister:

Thank you for your letter of March 3, 2008 concerning the Tsawwassen Treaty's grant of fish to the Tsawwassen Indian Band and the analysis contained in my paper, *Review of Commercial Salmon Allocations: Impact Analysis Applying Tsawwassen Benchmark to the Fraser River Fishery*.

I provided you with a detailed statistical analysis that showed conclusively that if salmon allocations equal to those established by the Tsawwassen Treaty are granted to other aboriginal claimants of Fraser River sockeye there will be no sockeye left for Canadians in the public recreational and commercial fisheries.

You rejected these conclusions even though they are based on widely accepted Indian populations statistics published by the Department of Indian Affairs and Fraser River salmon statistics from the Pacific Salmon Commission.

Your response to my analysis is a serious concern because it appears that your department simply does not understand the implications of the Tsawwassen Treaty's salmon allocations to the Tsawwassen Indian Band:

- **The Tsawwassen Treaty more than doubles the existing food fish allocation and allows the fish caught to be traded or bartered, thus creating a new limited commercial fishery. The food allocation in 2006 was 6250 sockeye. Based on the formula in the Tsawwassen Treaty, the Trade and Barter allocation in 2006 would have been 15,226 sockeye.**
- **The Trade and Barter fishery is capped at 15,226. An analysis of the years 1990 – 2006 indicates that the cap would be reached in more than half of the years. Your analysis uses a shorter time period that**

that concentrates on years of low abundance and thus has a lower number.

- Your analysis appears to ignore the new Commercial allocation of another 0.78 percent of the Canadian commercial harvest of Fraser sockeye over and above the new Trade and Barter allocation.
- Your officials are now negotiating Commercial allocations with upriver Bands. These are new allocations. There is only one source of Fraser River sockeye, the Fraser River. When you establish new commercial fisheries you reduce the number of fish available to other fishermen. Fish can only be caught once.
- If the Commercial allocation of 0.78 percent of Total Allowable Catch of sockeye granted by the Treaty to the Tsawwassen Band were to be replicated for the other bands claiming Fraser River fish it would result in the equivalent of 177 percent of the Total Allowable Catch of Fraser River sockeye being committed to these bands.
- If the Tsawwassen Treaty's new Trade and Barter allocation had been in place between 1990 and 2006, the Tsawwassen Indian Band's allocation would have averaged 13,000 sockeye salmon per year. If the Commercial allocation of 0.78 percent of Total Allowable Catch of sockeye had been in place the Tsawwassen Band would have harvested 30,000 sockeye.

The total allocation of 43,000 sockeye divided amongst the 273 Band members would provide 157 sockeye per person each year.

- There are approximately 62,577 aboriginals in the south coast of B.C. who claim a right to Fraser sockeye migrating through waters adjacent to their communities. Applying the *Tsawwassen Benchmark* of 157 Fraser Sockeye per person per year works out to a grand total of 9,824,589 fish. This would have been larger than the entire sockeye run in 91 out of the last 113 years.
- Thus the entire Fraser salmon fishery would be exhausted by Indian claims leaving nothing for the public fishery, in fact not even leaving enough to satisfy Indian claims.
- Not only are the treaty allocations based on a faulty analysis of the number of fish available for allocation to Indian bands but they totally ignore the series of Supreme Court of Canada decisions beginning with *Sparrow* and *Van der Peet* that clearly rejected the trade and barter of food fish and any claim of an aboriginal right to sell or exchange salmon. The court in *Gladstone* and in other decisions explicitly noted that food fish were for consumption not for trade.

A blanket statement that there will be enough fish left over for other Canadians after treaties are settled is insufficient reassurance to other Canadians who rely on fish for food, recreational or commercial purposes. Their future right to fish should not be dependent upon wishful thinking.

You may not be aware, but this allocation problem long precedes your appointment as Minister and the election of this government. Similar concerns were raised by commercial and recreational fishing interests during the debates about the Nisga'a treaty. The Liberal government then headed by Mr. Chretien and the provincial NDP government headed by Glen Clark responded with assurances identical to yours, but after complaints from fishermen regarding the creation of a race based fishery, the governments agreed to fund an independent analysis of the implications of the Nisga'a fish grant. Unfortunately, after the impact analysis was completed both governments refused to release it for public review.

I had sought the report on the coast-wide impact of treaties on the fishery under the *Access to Information Act* and was advised by the then Liberal government that it did not exist.

- **I have not sought this document under the Access to Information Act since you became Minister but would ask that you now make it available to me.**
- **In addition, might I suggest that the Nisga'a analysis be now released together with the analysis of the implications of the fish allocated to race-based fisheries by the Tsawwassen Treaty and turned over both to the Auditor General of Canada for an independent review of their impact on the public recreational and commercial fishery and to the judicial inquiry to be established by the Prime Minister.**
- **Further, it would be helpful if you might show me (i) how the new treaty allocations for Trade and Barter and Commercial fisheries are consistent with the government's promise to end racial segregation in the fishery and (ii) how these new treaty allocations will impact fishing opportunities for fishermen in the public recreational and commercial fisheries.**

The Tsawwassen Treaty and other such treaties now in negotiation segregate the fishery based on racial lines. I know that you do not wish to be the Minister responsible for setting a precedent that will exclude every Canadian except treaty signatories from access to Fraser River salmon. I would be pleased to work with you, your staff and the Auditor General to resolve this very serious issue.

Yours truly,



John Cummins, M.P.
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cc. The Right Honourable Stephen Harper, Prime Minister of Canada