

**SPEAKING FOR SOCKEYE, SPEAKING FOR THEMSELVES:
FIRST NATIONS ENGAGEMENT IN THE COHEN COMMISSION (2009-2012)**

by

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Abstract

This thesis examines First Nations' perspectives on sockeye conservation through the 2009-2012 Commission to Inquire into the Decline of the Sockeye Salmon in the Fraser River, struck in response to low and falling sockeye returns. Specifically, this project asks: *what can the experiences of First Nations participants at the Cohen Commission tell us about creating more space for the consideration of Indigenous peoples' knowledges and perspectives about conservation in natural resource planning and management processes?* Interviews with First Nations leaders and technical and legal staff, as well as a review of Commission documents and transcripts, suggest that *integration*, *holism*, and *place* form some of the key characteristics of First Nations peoples' understandings of sockeye conservation. However, those interviewed for this study identified a significant number of structural and procedural challenges and constraints to their ability to have their approach to sockeye conservation understood and incorporated into the findings and final recommendations of the Cohen Commission of Inquiry. In addition, the federal government's failure to act (before 2016 at least) on the recommendations was perceived as a significant barrier to sockeye salmon conservation and, in turn, to the wellbeing of First Nations cultures and communities.

The research findings and associated recommendations of this study align with a number of mechanisms to support transformative planning processes and outcomes previously identified in the Indigenous Planning and associated literatures. These include the development of collaborative planning structures that recognize and create space for the differing rights and responsibilities of Indigenous peoples. In addition, this study highlights the importance of developing mechanisms to ensure state accountability to respond to completed plans. The study concludes with three recommendations for reforming future natural resource planning processes that relate to First Nations' rights, responsibilities and interests: 1) accord more space and

consideration in planning to First Nations' knowledges and worldviews; 2) engage First Nations in the development of planning mandates and procedural frameworks; 3) ensure at the onset of planning processes that policies are in place to ensure that plan outcomes are reviewed by the government(s), implementation strategies are developed and/or rationales are provided for inaction.

Preface

The research for this thesis was approved by the University of British Columbia Behavioral Research Ethics Board (BREB) with the project title: “Cohen Commission Study.” The certificate of approval number is H14-00825. The author conducted all research, data collection, and analysis for this thesis.

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List of Abbreviations

AFS	Aboriginal Fishing Strategy
BC	British Columbia
CHN	Council of the Haida Nation
CPF	Community Planning Forum
DFO	Fisheries and Oceans Canada
EBM	Ecosystem-Based Management
ENGO	Environmental Non-Governmental Organization
FNFC	First Nations Fisheries Council
FSC	Food, Social and Ceremonial
GBR	Great Bear Rainforest
IHPC	Integrated Salmon Harvest Planning Committee

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Chapter 1. Nine Million “Missing” Sockeye

The politics of salmon are also a politics of place.¹

In 2009, pre-season estimates by Fisheries and Oceans Canada² (DFO) estimated returns of 10.6 million Fraser River sockeye salmon (*Oncorhynchus nerka*). As the season progressed it became ever more evident that far fewer sockeye than expected were returning to the Fraser. Ultimately only 1.37 million arrived and the DFO closed the Fraser sockeye fishery for an unprecedented third consecutive year.³ The response was immediate and blame was spread far and wide: journalists from across the country scolded the DFO; a rally in Vancouver called for a ban on open-net aquaculture facilities on the coast; scientists, former DFO employees and commercial gill-net fishermen lobbied for a judicial inquiry; New Democratic Party MPs from the Lower Mainland and the Bulkley Valley petitioned for an emergency salmon summit; and the Provincial Minister for the Environment, Barry Penner, called for a public review of the “adequacy” of the DFO’s forecast abilities.⁴ In a markedly understated open letter to federal Fisheries Minister Gail Shea, Penner attested that “the wide disparity between the forecast and actual returns of Fraser River sockeye is a serious issue for British Columbians.”⁵ One month

¹ Stephen Bocking, “Science, Salmon, and Sea Lice: Constructing Practice and Place in an Environmental Controversy,” *Journal of the History of Biology* 45, no. 4 (2011): 7.

² Fisheries and Oceans Canada and the Pacific Salmon Commission now jointly manage the Fraser sockeye fishery, an effort that includes monitoring, enforcement, negotiating catch allocations and conducting pre-season estimates and in-season management. Pre-season management occurs in three stages: a forecast of stock abundance is estimated; a fishing plan is drawn up for each sector - Commercial, Recreational and First Nations Food, Social and Ceremonial - allocating a certain number (or proportion) of fish; and a escapement target is set to allow enough salmon to reach spawning grounds, thus ensuring the survival of the stock.

³ Robert Barron, “Biologist wants inquiry on salmon stocks,” *Nanaimo Daily News*, September 21, 2009, accessed September 10, 2010, <http://www.nanaimodailynews.com/biologist-wants-inquiry-on-salmon-stocks-1.233684>; Justine Hunter, “B.C. seeks probe into sockeye collapse,” *The Globe and Mail*, September 17, 2009, accessed November 16, 2015, <http://www.theglobeandmail.com/news/british-columbia/bc-seeks-probe-into-sockeye-collapse/article4187756/>.

⁴ Stephanie Dearing, “Protest against fish farms draws hundreds in Vancouver,” *Digital Journal*, October 4, 2009, accessed November 16, 2015, <http://www.digitaljournal.com/article/280039#ixzz2kb3q8GSh>; Mark Hume, “Fraser River salmon stocks ‘beyond crisis,’” *The Globe and Mail*, August 13, 2009, accessed November 16, 2015, <http://oceanicdefense.blogspot.com/2009/08/fraser-rivers-salmon-stocks-beyond.html> <http://www.theglobeandmail.com/news/national/fraser-rivers-salmon-stocks-beyond-a-crisis/article1250175/>; Gerry Bellet and Richard Dalton, “Call for salmon review derided by local MLA,” *Maple Ridge Times*, September 22, 2009, accessed October 28, 2010, <http://www.saveoursalmon.ca/news/2009-Q3/call-for-salmon-review-derided-by-local-mla-164/>; Kilian Crawford, “Federal NDP calls for emergency salmon summit,” *The Tyee*, August 23, 2009, accessed November 16, 2015, [url.http://thetyee.ca/Blogs/TheHook/Food-Farming/2009/08/23/SalmonSummit/](http://thetyee.ca/Blogs/TheHook/Food-Farming/2009/08/23/SalmonSummit/); Barron “Biologist Wants Inquiry...”

⁵ Barron, “Biologist wants inquiry...”

later, in response to a question in the House of Commons by Conservative MP John Weston (West Vancouver—Sunshine Coast—Sea to Sky Country) regarding the 9 million “missing” sockeye, Prime Minister Stephen Harper responded:

As the Minister of Fisheries and Oceans has said on numerous occasions, we are very concerned about the low and falling returns of sockeye salmon in British Columbia. Tomorrow, the Minister of International Trade, as the regional minister for British Columbia, will be making an announcement outlining the terms of reference for a judicial inquiry, as well as the judge who will lead that inquiry.⁶

On November 6th, 2009 MP Stockwell Day (Okanagan-Coquihalla) announced the appointment of Justice Bruce Cohen, a longtime member of the Supreme Court of British Columbia, as the sole Commissioner to Inquire into the Decline of the Sockeye Salmon in the Fraser River. His Terms of Reference instructed him to inquire into “the low and falling returns of sockeye salmon in British Columbia” and on the Fraser River specifically⁷ and to provide within two years recommendations which, it was widely hoped, would be sufficient to halt both the decline of the sockeye and its devastating effects on provincial communities and industries.

In announcing the Commission, Stockwell Day stated that the sockeye declines were “a significant and important issue for BC [sic] fisheries industry,” and that the government was “deeply concerned about the low returns of sockeye salmon to the Fraser River and the implications for the fishery.”⁸ However, the creation of a federal inquiry may have owed as much to vocal Conservative opposition to fisheries policy during the preceding minority Liberal government as it did to the 2009 failure of the salmon run. A small run had been forecast in 2004 but high early returns of certain stocks led the DFO to believe that spawning targets could be

⁶ *House of Commons Debates Official Report*, Thursday, November 5, 2009, accessed October 10 2015, <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=4213893&Language=E&Mode=1>.

⁷ Other regions with similarly affected runs received far less federal attention. To the north of the Fraser, the Skeena River salmon fishery had similarly experienced a “disastrous commercial fishing season on the North Coast;” upon hearing of the launch of the Cohen Commission, Prince Rupert city council sent a letter to the federal government requesting that the DFO conduct a parallel inquiry on the failure of some salmon stocks on the Skeena (Sean Thomas, “Council seeks a judicial inquiry into Skeena fishery collapse,” *The Northern View*, December 1, 2009, accessed November 13, 2010, <http://www.saveoursalmon.ca/news/2009-Q4/council-seeks-a-judicial-inquiry-into-skeena-fishery-collapse-204/>). No parallel process was forthcoming, however.

⁸ “Prime Minister Stephen Harper announces Inquiry into Decline of Sockeye Salmon in the Fraser River,” November 6, 2009, accessed October 24, 2015, www.pm.gc.ca/eng/news/2009/11/06/prime-minister-stephen-harper-announces-inquiry-decline-sockeye-salmon-fraser-river.

met while opening limited commercial, recreational and Aboriginal fisheries. A few weeks later spawning bed counts of returning fish revealed that only 530,000 sockeye had survived their journey from the river mouth. This was barely a quarter of the 2,353,000 sockeye that spawned in 2000, the progenitor run of the 2004 return. In-river Aboriginal fisheries were widely blamed for the “disappearance” of fish. The Conservative party petitioned for a formal inquiry and called attention to a number of reports that had recommended increased enforcement of in-river fishery regulations. A 2005 report by the Parliamentary Standing Committee on Fisheries and Oceans entitled *Here we go again....or the 2004 Fraser River Salmon Fishery*, attributed 2004’s “tragically low spawning numbers”⁹ to the Aboriginal Fisheries Strategy (AFS) pilot sales program and unusually warm river temperatures. The report’s title pointedly referenced several preceding fishing seasons in which sockeye mortality had been much higher than anticipated by federal managers. Both *Managing Salmon in the Fraser* (1992) by Peter Pearse and Peter Larkin, and *Fraser River Sockeye 1994: Problems & Discrepancies* (1995) by the Fraser River Sockeye Public Review Board, chaired by former House of Commons Speaker John Fraser, identified Aboriginal fishing in the Fraser River, particularly under the AFS pilot sales program, as a potential cause of “missing fish,” a term used to describe the discrepancies between anticipated and actual sockeye salmon arriving at their spawning grounds.¹⁰ According to Standing Committee member and Conservative Fisheries critic Loyola Hearn, speaking in 2005: “The standing committee did a report in 2001, which was tabled in 2003, making pointed recommendations that would have solved some of the problems that we are facing today. The Fraser report did the same thing. Both reports were completely and utterly ignored by government. What we need for the long-term is to get to the root of what caused the problems in 1992, 1994 and again this year [i.e. 2004].”¹¹

⁹ Standing Committee on Fisheries and Oceans, *Here we go again....or the 2004 Fraser River Salmon Fishery* (Canada, 2005), 1.

¹⁰ Peter Pearse and Peter Larkin, *Managing Salmon in the Fraser: Report to the Minister of Fisheries and Oceans in the Fraser River Salmon Investigation* (Canada: Public Works and Government Services, 1992); Fraser River Sockeye Public Review Board, *Fraser River Sockeye 1994: Problems & Discrepancies* (Canada: Public Works and Government Services, 1995).

¹¹ “Fraser River salmon fishery could fail in 2008,” *CBC News*, March 22, 2005, accessed Oct 20, 2014, <http://www.cbc.ca/news/canada/fraser-river-salmon-fishery-could-fail-in-2008-1.534902>.

In the summer of 2006 a series of opinion pieces published in the *Calgary Herald* ignited a nation-wide controversy over the newly elected conservative minority government's policies towards First Nations' fisheries, once again raising the specter of a national inquiry related to Fraser River salmon. The controversy was sparked by an opinion piece by Mike Milke, independent policy analyst with the Fraser Institute, who accused then-Prime Minister Stephen Harper of turning his back on his long-time supporters in the BC fishing industry by continuing the former liberal government's policy of licensing commercial components of Aboriginal fisheries. On July 7th Stephen Harper responded in a letter to the *Calgary Herald*, concluding with the words: "Let me also be clear -- in the coming months, we will strike a judicial inquiry into the collapse of the Fraser River salmon fishery and oppose racially divided fisheries programs."¹² First Nations leadership from the coast of British Columbia, including British Columbia Regional Chief of the Assembly of First Nations A-in-chut Shawn Atleo, spoke out against Stephen Harper's comments, concerned that this "startling change in policy" threatened to derail discussions occurring in the spirit of reconciliation between BC First Nations, the provincial government, and the commercial fishing industry.¹³ Concerns were also raised about Prime Minister Harper's characterization of First Nations' fisheries as "racially divided," an idea that had been rejected only a month earlier in *R. v. Kapp* (2008 2 S.C.R. 483, 2008 SCC 41) with the ruling that a communal fishing license granted to an Aboriginal group is a legitimate political choice and does not violate the Charter of Rights and Freedoms. An inquiry did not take place in 2006, but two years later Stephen Harper's words would be repeated back to him by the B.C. Fisheries Survival Coalition, who had recently lost their challenge to the *R. v. Kapp* ruling in the Supreme Court of Canada. The coalition called on the Prime Minister to act on the comments he made two years past and cancel the licensing of Aboriginal fisheries with a

¹² "Assembly of First Nations responds to Stephen Harper's call for a judicial inquiry into 'racially divided fishery,'" *The Georgia Strait*, July 28, 2006, accessed December 2, 2015, <http://www.straight.com/article/assembly-of-first-nations-responds-to-stephen-harpers-call-for-a-judicial-inquiry-into-racially-divided-fishery>.

¹³ *Ibid.*

commercial aspect: “We expect him to keep his promise” stated coalition executive director Phil Eidsvik.¹⁴ Harper did not respond publically to the Coalition’s challenge; nevertheless, for many First Nations in British Columbia significant damage had already been done to the relationship between First Nations and the federal government. In the words of A-in-chut Shawn Atleo:

It is one thing for a vocal minority to imply that First Nations are responsible for the “collapse” of the Fraser River sockeye fishery (which, in fact, has not collapsed), but it is another thing for the Prime Minister of Canada to take up their cause.¹⁵

Declining sockeye returns and run failures were hardly new issues on the Canadian political landscape in 2009, but increasing protests against finfish aquaculture on BC’s coast added another dimension to the 2009 crisis in confidence in Canada’s west coast fishery. Over one hundred open-net Atlantic salmon (*Salmo salar*) rearing “farms” were operating in BC in 2009, primarily along the eastern coastline of Vancouver Island, as well as the Tofino area on the exposed western coast of the Island.¹⁶ The Conservative government announced the Cohen Commission of Inquiry on the heels of a BC court case launched by opponents of salmon farms. Jurisdictional questions about licensing were the nub of this action, but particular attention was given to the environmental impacts of excess waste and the spread of sea lice to wild salmon (*Morton v. British Columbia (Agriculture and Lands)*).¹⁷ In February 2009, the BC Supreme Court ruled that the Province of British Columbia should relinquish its jurisdiction over the licensing of aquaculture facilities in the province to the federal government within twelve months.¹⁸ Significant uncertainty remained about the potential impacts of non-native salmon species and their concentrated rearing in the waters of the Pacific, including the impacts of marine pollution, parasite and disease transfer, and Atlantic salmon escapement and potential colonization on BC’s coast. Concerns expressed by Broughton Archipelago resident and

¹⁴ “Canada urged to cancel native commercial fisheries after court decision,” *The Vancouver Sun*, June 28, 2008, accessed December 3, 2015, <http://www.canada.com/vancouversun/story.html?id=9028f5dd-b54e-4776-8e8c-32c5b9efe52f>.

¹⁵ “Assembly of First Nations responds to...”

¹⁶ Department of Fisheries and Oceans, *Aquaculture in British Columbia* (Canada: Department of Fisheries and Oceans, 2011), accessed September 7, 2015, http://www.pac.dfo-mpo.gc.ca/publications/pdfs/aqua_mgmt-gest_aqua-eng.pdf.

¹⁷ 2009 BCSC 136. “DFO announces new rules for aquaculture in BC,” *The Globe and Mail*, July 12, 2010, accessed November 16, 2015, <http://www.theglobeandmail.com/news/british-columbia/dfo-announces-new-rules-for-aquaculture-in-bc/article4323545/>.

¹⁸ Although the province maintained jurisdiction over and licensing privileges to the sea floor.

researcher Alexandra Morton, environmental non-profit organizations (ENGOS) such as the Living Oceans Society, and some First Nations, turned on these potential risks posed to wild Pacific salmon stocks from open net-pen salmon farming facilities.

The Cohen Commission was therefore a timely intervention into a number of disparate issues facing the federal government: the confluence of rising protest over open-net aquaculture facilities on BC's west coast (now under federal jurisdiction); the repeated failure of resource managers to monitor and accurately forecast sockeye returns; Conservative Party critiques of the Liberal government's inaction in the face of evidence of inadequate enforcement of fisheries regulations; and a promise by Stephen Harper in 2006 to instigate an inquiry into the decline of Fraser River sockeye. The Commission's sweeping mandate set the stage for an inquiry that would look into all facets of Fraser River sockeye salmon with unprecedented focus and rigor.¹⁹ The Commissioner was assisted by a broad range of formal Inquiry participants, including First Nations, ENGOS, aquaculture and mining corporations, commercial and recreational fishing associations and the federal Union of Environmental Workers, and others.

Between 2009 and 2012 Justice Cohen, his administrative and legal teams, and commission participants tackled their mandate: the Commission held "10 public forums, conducted 14 site visits, and held 128 days of evidentiary hearings....[They] received 2,145 exhibits and heard testimony from 179 witnesses. The Government of Canada produced more than 525,000 documents for the Commission, including more than 242,000 emails. In addition, participant groups and members of the public produced about 7,800 documents. The Commission issued a discussion paper, 21 policy and practice reports, 15 technical reports, and five status reports. [Justice Cohen] issued 34 rulings and made nine funding

¹⁹ Lisa Wilcox, "Cohen Commission's inquiry extended another year due to importance of findings," *Indian Country*, August 8, 2011, accessed November 20, 2013, <http://indiancountrytodaymedianetwork.com/2011/08/08/cohen-commissions-inquiry-extended-another-year-due-importance-findings-46135>.

recommendations.”²⁰ For many of its public hearings the Commission travelled to BC communities along the Fraser and the sockeye migration routes, visiting hatcheries, hydro-acoustic fish-counting stations, land-based and net-pen aquaculture facilities, spawning channels, canneries (operational and historical), pulp-mills, and First Nations’ fishing sites.²¹ The Commission’s final report runs over 1000 pages in three volumes. The most current estimates of the cost of the Commission over its three-year life span run to over \$37 million.²²

1.1 Research Purpose

This work focuses on First Nations’ perspectives on the Cohen Commission of Inquiry, a turn of the millennium planning process aimed at reversing a perceived decline in sockeye salmon productivity. In the process, it calls into question the discourse of “conservation” that permeated the Commission’s proceedings and final recommendations by outlining alternative conceptualizations of sockeye conservation and, in turn, the challenges and constraints experienced by First Nations attempting to communicate these worldviews and knowledges to the Cohen Commission. According to his terms of reference (TOR) the Commissioner was “to conduct the inquiry without seeking to find fault on the part of any individual, community or organization, and with the overall aim of respecting conservation of the sockeye stock and encouraging broad cooperation among stakeholders.”²³ For its interim report, the Commission’s definition of “conservation” is drawn from Wikipedia, and states that conservation is “the protection of species, their habitats, and *ecosystems* from excessive rates of extinction.”²⁴ This definition was later changed in the final report of the Commission to: “conservation: protection,

²⁰ Bruce I. Cohen, *Final Report: Volume 3 - Recommendations - Summary - Process* (Ottawa: Minister of Public Works and Government Services, 2012), 86.

²¹ Cohen, *Final Report: Volume 3*, 125.

²² “Cohen report price tag tops \$37 million,” *The Vancouver Sun*, July 26, 2014, accessed June 22, 2015, http://www.canada.com/vancouver/news/westcoastnews/story.html?id=6045e966-1380-4d90-8ee8-2ff81b080f86#__federated=1. According to Stan Proboszcz, a biologist with Watershed Watch Salmon Society, this estimate is conservative as it does not include federal staff time.

²³ Bruce Cohen, *Interim Report: Fraser River Sockeye Salmon: Past Declines. Future Sustainability?* (Ottawa: Minister of Public Works and Government Services, 2010), 3.

²⁴ Bruce Cohen, *Interim Report: Fraser River Sockeye Salmon: Past Declines. Future Sustainability?* (Ottawa: Minister of Public Works and Government Services, 2010), 295.

maintenance, and rehabilitation of genetic diversity, species, and ecosystems to sustain biodiversity and the continuance of evolutionary and natural production processes.”²⁵ Commission documents frequently present conservation as a unifying goal toward which participants should work *in spite of* their often-opposed stances on contemporary issues such as salmon aquaculture and more deep-rooted histories of dispossession and the perception that non-Indigenous governments have mismanaged the fisheries resource. The implication is that conservation lies somewhere beyond politics.

The Commission’s representation of conservation as a neutral and a-historical goal raises two interrelated concerns. The first is that employing the term “conservation” in planning management strategies for the sockeye fishery in British Columbia overlooks the historical *construction* of conservation resource management by politicians, scientists, business people, and others involved in the early twentieth century North American conservation movement, all of whom actively created a concept for controlling nature grounded in technical expertise. In other words, conservation has a history that is associated with intensive and capital-oriented resource extraction. This concept has been reinforced through the decades, as resource management has grown increasingly complex; today, conservation is expressed by fisheries managers through quantifiable concepts such as biomass, returns, and recruitment rates.²⁶ Second, this discourse overlooks the historical *application* of resource management in North America, which predominantly matched conservation objectives with the interests of elite settler groups such as big game hunters, sports fishers, and industrialists.²⁷ On the Fraser River, the

²⁵ Bruce I. Cohen, *Final Report: Volume 1-The Fraser River Sockeye Fishery*. Ottawa: Minister of Public Works and Government Services, 2012), 680.

²⁶ Samuel P. Hays, *Conservation and the Gospel of Efficiency: The Progressive Conservation Movement, 1890-1920* (Pittsburgh, PA: University of Pittsburgh Press, 1999); Dean Bavington, *Managed Annihilation: An Unnatural History of the Newfoundland Cod Collapse* (Vancouver, BC: UBC Press, 2010).

²⁷ Louis Warren, *The Hunter's Game: Poachers and Conservationists in Twentieth Century America* (New Haven, CT: Yale University Press, 1997); Karl Jacoby, *Crimes against Nature: Squatters, Poachers, Thieves, and the Hidden History of American Conservation* (Berkeley, CA: University of California Press, 2001); John Sandlos, *Hunters at the Margin: Native People and Wildlife Conservation in the Northwest Territories* (Vancouver, BC: UBC Press, 2003); Tina Loo, *States of Nature: Conserving Canada's Wildlife in the Twentieth Century* (Vancouver, BC: UBC Press, 2006); Janet Foster, *Working for Wildlife: The Beginning of Preservation in Canada* (Toronto : University of Toronto Press, 1978); Darcy Ingram, *Wildlife, Conservation, and Conflict in*

course of development though the last 120 years has displaced traditional systems of governance and salmon management and reduced the access of First Nations communities to sockeye - a species of salmon that continues to be highly valued for food, social, economic and ceremonial purposes.

For colonial fisheries managers in British Columbia, the concept of conservation was tied up with the sustainability of the commercial salmon fishery and canning operations along the Fraser River, as well as a handful of major cannery operations in the northern expanses of the area. Regulations intended to ensure the continuity of the *industry* quickly eroded First Nations commercial and subsistence access to the fishery. Independent Aboriginal fisheries that had existed for millennia were rapidly reduced to a “food fishery” and controlled by policy mechanisms such as the federal requirement that an Indian Agent approve subsistence fishing.²⁸ In addition, bans were placed on several preferred traditional fishing technologies on the basis of conservation concerns, even as the number of First Nations participating in the commercial fishery diminished.²⁹

Because of these remembered histories of dispossession, First Nations have often been ambivalent toward the concept of “conservation” in fisheries management and planning. Simultaneously, however, traditional salmon fishing and management techniques and related cultural practices such as the First Salmon Ceremony have been recast by First Nations in the language of conservation and sustainability, providing additional leverage for their engagement

Quebec, 1840-1914 (Vancouver; Toronto: UBC Press, 2013).

²⁸ For a discussion of the “invention” of the food fishery in British Columbia, see chapter three of Diane Newell’s *Tangled Webs of History: Indians and the Law in Canada’s Pacific Coast Fisheries* (Toronto: University of Toronto Press, 1993).

²⁹ Douglas Harris, *Fish, Law and Colonialism: The Legal Capture of Salmon in British Columbia* (Toronto: University of Toronto Press, 2001), 72. Weirs are a specific form of traps, semi-permanent structures that are built in shallow streams or across rivers. They either stopped salmon on their way upstream or guided them towards traps - often baskets or enclosures constructed out of wood - and the dip nets, spears or gaff hooks of the waiting fishers. Like traps, these were often large and complex technologies that operated at a community level and were efficient enough to enable groups to harvest a sufficient quantity of fish to process for the winter. They also had the additional benefit of holding the fish until harvesters were able to process them. Because of their efficiency and holding qualities, weirs were among the most commonly used fishing technologies in the Fraser watershed, particularly in the smaller tributaries of the Fraser.

in fisheries management and planning. Employing a qualitative research approach informed by Indigenous methodological theory, this thesis explores these seemingly contradictory understandings of sockeye conservation and explores the dynamics between them through the perspective of those people who participated in the Cohen Commission as representatives of their Nations, as well as legal counsel and technical staff working for First Nations governments and organization, to explore *whether and how, from the perspective of First Nations people and associated support staff, natural resource planning and management processes create space for First Nations' understandings of conservation*. In the process this thesis confronts several questions specific to the experiences of First Nations at the Cohen Commission: *What are First Nations people's understandings of sockeye conservation? What were the perceived opportunities for the articulation of First Nations' understandings of sockeye conservation? What were the perceived challenges and constraints to the articulations of First Nations' understandings of sockeye conservation?*

Interviews with First Nations leaders and technical and legal support staff reveal how First Nations' perspectives differ from those in the final report of the Cohen Commission on the reasons for the decline of sockeye stocks on the Fraser, and with regard to how robust, resilient, and flourishing sockeye runs might be ensured. Those interviewed for this study are concerned that the Commission's final report failed to reflect First Nations' understandings of sockeye conservation - both as a concept that remains deeply implicated in colonial histories of dispossession and that resonates with some First Nations peoples' conceptualizations of how to live well with the world. They believe that these perspectives would be tremendously valuable for federal politicians and fisheries managers. By considering different strategic mechanisms to foster the articulation and meaningful implementation of First Nations' understandings of conservation, this research points the way to greater, more effective engagement of First Nations in future planning processes.

1.2 Fraser River Sockeye Salmon

Of all the salmon-bearing rivers in the world, the Fraser has been the most productive, historically, with all five species of anadromous Pacific salmon³⁰ following a cyclical migration pattern that takes them from the tributaries and lakes of their hatching out towards the Northern Pacific Ocean and back again to their natal waters to spawn and die. The Fraser begins from a dripping spring on the western slopes of the Rocky Mountain range, the crest of which forms the continental divide and serves as British Columbia's eastern boundary. From this small beginning the river flows north to the Yellowhead Highway and west past Mount Robson to the Rocky Mountain Trench and the Robson Valley near Valemount. After running northwest beyond 54° north, it turns sharply to the south at Giscome Portage to meet the Nechako River at the city of Prince George, where it turns southwards (see Figure 1.1). On its journey south the river cuts deeply into the rock and soil, creating a slim and treacherous canyon passage that opens out onto the Fraser Delta and drains into the Salish Sea/Strait of Georgia.

The 220,000 km² watershed of the Fraser River and its tributaries provides a diverse array of habitats for all five species of salmon, which prefer different water depths, current speeds, temperatures, and quantities of debris in the waters where they spawn. The genetic diversity of Pacific salmon produced by the “complex mosaic” of habitats encountered in the watershed produces a similar diversity in life histories.³¹ In turn, diversity serves to enhance survival rates and the resilience to cope with (some) environmental changes, including climate change.³² American fishery biologist Jim Lichatowich contends that “because the salmon are a keystone animal they coevolved within a particularly dense web of relationships” that tie together ocean and freshwater habitats and support localized terrestrial systems of “cedar trees, bears, eagles,

³⁰ All five species of anadromous Pacific salmon spawn in the Fraser River: chinook (*Oncorhynchus tshawytscha*), chum (*Oncorhynchus keta*), coho (*Oncorhynchus kisutch*), pink (*Oncorhynchus gorbuscha*), and sockeye (*Oncorhynchus nerka*).

³¹ Jim Lichatowich, *Salmon, People and Place: A Biologist's Search for Salmon Recovery* (Oregon: Oregon State University Press, 2013), 28.

³² Lichatowich, *Salmon, People and Place*.

humans, and many others.”³³ In physical and physiological terms, the Fraser River and salmon are in a continuous state of shaping one another - there are 271 distinct Fraser River sockeye salmon populations, each of which has adapted to specific rearing and spawning habitats in the river’s tributaries.³⁴ Sockeye generally spawn in lakes, and are consequently the species of salmon that tend to travel the furthest upstream. These voyages can be over 800 km, and sockeye are powerful swimmers (up to 50 km a day travelling upstream).³⁵ In the ocean and the first portion of their upstream migration, adult sockeye have small (6-18 kg) silver bodies and bright red and oily flesh, but these characteristics diminish on their migration upriver. As sockeye move upstream, the oil in their muscles is spent and replaced with water, and their scales change from glowing silver to jeweled red and green tones; males develop a thick hooked snout and a pronounced ‘hump’ on their back. The timing of their upstream migration allows identification of four distinct groups of Fraser River sockeye: Early Stuarts (named after their spawning destination, Stuart Lake in the northern interior); Early Summer; Summer; and Late Run. These runs occur between June and September. Though this is not characteristic of all sockeye stocks, several Fraser River sockeye populations have been marked by a very prominent year of abundance (the dominant line year) followed by a subdominant line year and then two years in which abundance is significantly lower. By one estimate, until the early 20th century, dominant run cycles in the Fraser River alone may have reached 100 million sockeye regularly, although the subdominant year and two off-cycle years’ returns would have been considerably lower. Other highly productive salmon rivers in British Columbia include the Skeena River and the Nass River to the north.

³³ According to the Encyclopedia Britannica, a keystone species is “a species that has a disproportionately large effect on the communities in which it occurs. Such species help to maintain local biodiversity within a community either by controlling populations of other species that would otherwise dominate the community or by providing critical resources for a wide range of species. The name *keystone species*, coined by American zoologist Robert T. Paine in 1969, was derived from the practice of using a wedge-shaped stone to support the top of an arch in a bridge or other construction. Just as other stones in the construction depend on the for support, other species in a biological community depend on the presence of a keystone species to maintain the community’s structure” (“Keystone Species,” Encyclopedia Britannica, accessed November 2, 2015, <http://www.britannica.com/EBchecked/topic/315977/keystone-species>); Lichatowich, *Salmon, People and Place*, 66; 199.

³⁴ M. A. Hassan, A.S. Gottesfeld, D.R. Montgomery, J.F. Tunnicliffe, G.K.C. Clark, G. Wynn, H. Jones-Cox, R. Poirier, E. MacIsaac, H. Herunter and S.J. McDonald, “Salmon-driven Bedload Transport and Bed Morphology in Mountain Streams,” *Geophysical Research Letters* 35, no. 1 (2008); Cohen, *Final Report: Volume 1*, 76.

³⁵ Cohen, *Final Report: Volume 1*, 14.

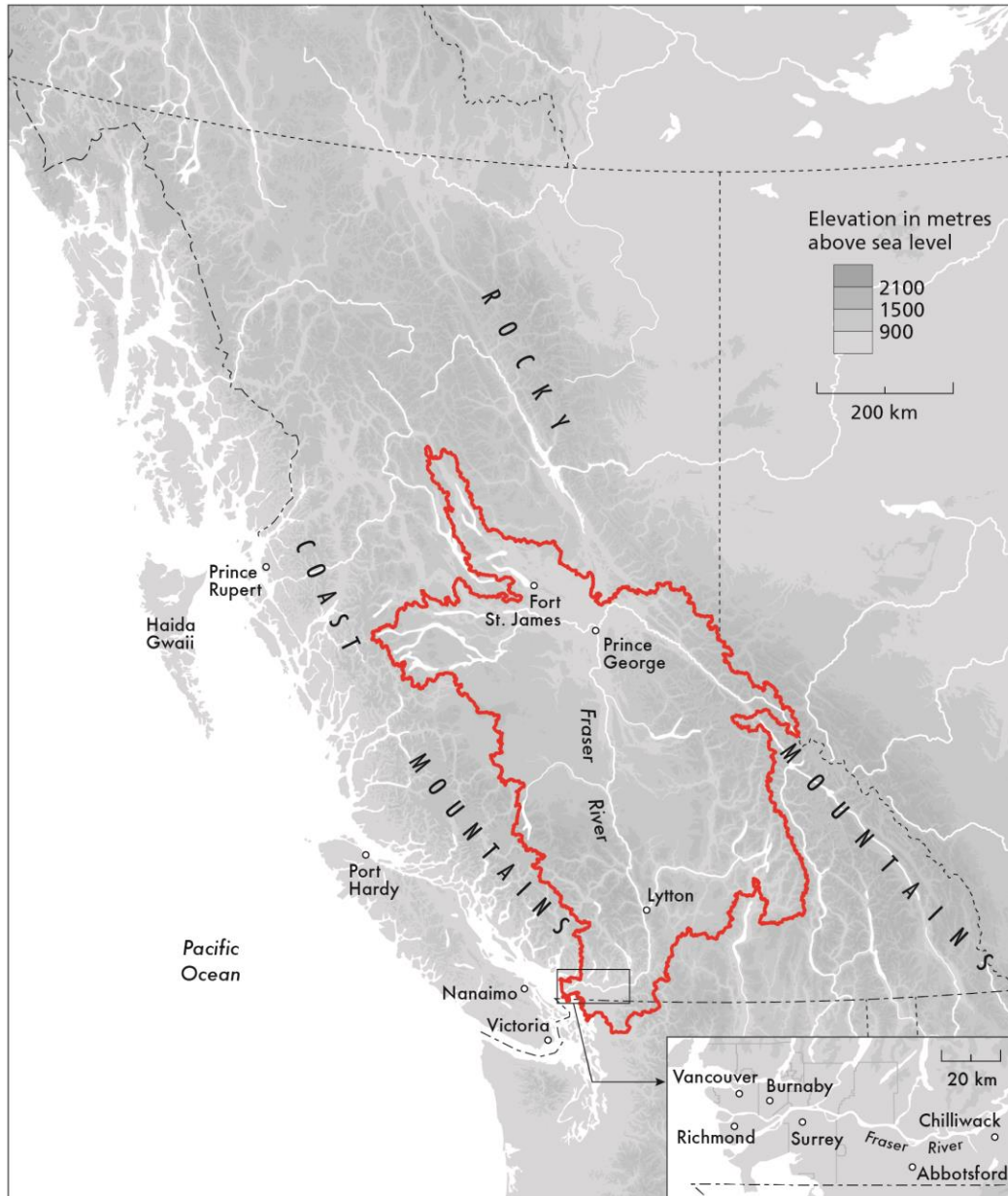


Figure 1.1 Map of the Fraser River Watershed
Map: Eric Leinberger, 2015

Human communities, including First Nations, European traders and the province's settler society, have also shaped and been shaped by the geography of the river and its abundant reserves of fish. Legal historian Douglas Harris describes how the "regular, predictable migration of salmon, concentrating vast amounts of protein in relatively accessible rivers and lakes" was and remains central to the people who have lived along Pacific-bound rivers for millennia (See Figure 1.2 for an overview of First Nations' approximate territories in the region that is now referred to as British Columbia).³⁶ Fish was a dietary staple: by one estimate, native peoples consumed an average of 220 kg of salmon (fresh weight) annually prior to colonization.³⁷ Fishing for salmon took place in the marine area with troll and reef nets, and there were large dip-net fisheries in the Fraser Canyon and along the middle reaches of the river, as well as weir fisheries in the lake systems at the northern edges of the Fraser River and its tributaries.³⁸ Practices for regulating traditional salmon fisheries varied across different parts of the watershed, with fishing on tributary rivers generally regulated more strictly than those on the lower Fraser River. Management practices included delaying fishing when salmon appeared in the river (often linked to environmental indicators); the control of fishing sites by individuals and groups; and the use of highly selective fishing technology that allowed fishers to pick and choose the species and size of fish that they harvested without causing serious harm to the fish. Some enhancement practices also took place, such as transplanting fertilized ova to nearby streams and the expansion of spawning areas to accommodate more redds. Once caught, salmon were dried, smoked or otherwise preserved for winter food and for trade with other First Nations who had less access to the salmon resource and/or areas suited for salmon preparing and preservation.

³⁶ Harris, *Fish, Law and Colonialism*, 7. Today, there are ninety-six First Nations communities along the Fraser River, and eight distinct linguistic groups (Fraser Basin Council, "Bridge Between Nations: A History of First Nations in the Fraser River Basin," 2013, accessed March 2, 2016, http://www.fraserbasin.bc.ca/_Library/Ab_NonAb_Relations/bridge_between_nations.pdf).

³⁷ Dianne Newell, *Tangled Webs of History*, 29.

³⁸ For more information on Indigenous fishing techniques and technologies see Hilary Stewart, *Indian Fishing: Early Methods on the Northwest Coast* (Vancouver, BC: Douglas & McIntyre, 1982).



Figure 1.2 First Nations' approximate territories in British Columbia³⁹

Source: Nancy Turner. *The Earth's Blanket: Teachings for Sustainable Living*. Vancouver, BC: Douglas & McIntyre, 2005.

Map by Robert Turner. Reproduced with permission from the author and Robert Turner.

³⁹ Note that these bounded areas are approximations only, and only hint at the extent of First Nations' territories that reach into other provinces or across the border into the United States.

Traditional harvesting and management practices on the Fraser River were substantially altered with the arrival of trading companies and, later, settlers into First Nations' territories. First Nations developed trade relationships early on with the Hudson Bay Company (HBC), who had established trading posts across the area that is now the province of BC. For instance, at Fort Langley on the Fraser River, Stó:lō people traded large quantities of salmon for muskets and axe heads, tobacco and beads. The salmon were dried to supply fur traders or salted, packed in wooden barrels and exported to the Sandwich Islands (Hawaii) and Asia for sale.⁴⁰ Initially profitable, the salt pack industry diminished in the 1850s and 1860s due to reports of spoilage.⁴¹ In the 1870s, as advances in salmon canning technology developed in California were adopted in British Columbia, large wooden canneries, docks and ramshackle seasonal living quarters began to spring up along the coast, clustering predominantly around the mouth of the Fraser River.⁴² The province's first cannery opened in Anniesville, near New Westminster; by the late 1870s there were eight canneries on the Fraser, one at Alert Bay on Cormorant Island, off the north coast of Vancouver Island and three on the Skeena and the Nass rivers on the North coast of the province.⁴³ By then, the BC salmon fishery produced more than \$713,000, with canned salmon worth \$401,000.⁴⁴ Ten years later four times as many canneries operated on the coast; by 1895, the BC salmon fishery was the most profitable single fishery in Canada.⁴⁵

In the early, heady days of the industrial fishery on the Fraser River there seemed to be no end to the abundance, no sense that any human harvesting could seriously impact - in the words of one fishery commissioner - such an "amazingly extensive, almost illimitable" flow of fish.⁴⁶

⁴⁰ Newell, *Tangled Webs of History*, 47; Richard Mackie, *Trading Beyond the Mountains: The British fur trade on the Pacific, 1793-1843* (Vancouver, BC: UBC Press, 1997).

⁴¹ Lissa Wadewitz, *The Nature of Borders: Salmon, Boundaries, and Bandits on the Salish Sea* (Seattle, WA: University of Washington Press, 2012), 70.

⁴² Joseph Gough, *Managing Canada's Fisheries: From Early Days to the Year 2000* (Sillery: Éditions du Septentrion, 2007), 72.

⁴³ Gough, *Managing Canada's Fisheries*, 140.

⁴⁴ Newell, *Tangled Webs of History*, 71.

⁴⁵ Ibid.

⁴⁶ Edward Prince, Campbell Sweeny, J.C. Brown, Richard Hall, Reverend G.W. Taylor and John Babcock, *Dominion British Columbia Fisheries Commission, 1905-1907: Report and Recommendations with Addenda and Appendices* (Ottawa: 1908), accessed March 2, 2016, <http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/prince1908a-eng/prince1908a-eng.pdf>, 14.

However, dramatic increases in the number of boats fishing the mouth of the Fraser River over the course of the late nineteenth and early twentieth century failed to increase overall catch rates, raising concerns about the economic viability and sustainability of the industrial salmon fishery.⁴⁷ Federal Commissions of Inquiry became an important tool for developing management policies for the Fraser River sockeye fishery, particularly at the turn of the twentieth century when the federal *Fisheries Act* was almost entirely devoid of regulations relevant to British Columbia's commercial fisheries.⁴⁸ Between 1892 and 1922, the Dominion established five Royal Commissions of Inquiry to address aspects of the Pacific salmon fishery and to provide policy and regulatory recommendations. These included the 1892 Wilmot Inquiry, struck to develop draft regulations for the "better preservation of the salmon and other fisheries in British Columbia;" the 1902 Commission on the Salmon Fishery Industry in British Columbia charged with reviewing regulations prohibiting fish traps in Canadian waters; the British Columbia Fisheries Commission held from 1905-1907 on overfishing of Fraser River sockeye stocks; the 1910 Commission to Inquire into the number of boats employed by salmon canneries in the Province of British Columbia; and the 1922 Royal Commission on British Columbia Fisheries struck to "investigate and consider fisheries conditions in British Columbia, and more particularly, but not so as to restrict the generality of the foregoing, the depletion of the salmon fisheries of the Fraser River District, and to make suggestions for the restoration and conservation of the same."⁴⁹ In 1940 another *Royal Commission of Salmon Fishing in British*

⁴⁷ Epidemics and capitalism had drastically reshaped the temporal, social and spatial organization of the salmon fishery in the Fraser River. First Nations traditionally fished from spring until fall for all five species of salmon that spawned in the Fraser; however, sockeye salmon was the most suitable for commercial canning because of its high oil content. The space for fishing was similarly diminished; Indigenous people traditionally harvested throughout the watershed, although fishing activity was concentrated within the Fraser Canyon. In contrast, the industrial fleet focused its fishing efforts on the mouth of the Fraser where the canneries were located. These changes, alongside industrial development along the river, put substantial pressure on Fraser sockeye stocks.

⁴⁸ Initially, *Fisheries Act* regulations had little relevance to Pacific Fisheries; based on fisheries laws developed by the Province of Canada, regulations related to salmon fishing focused on regulating anglers fishing for Atlantic salmon (Gough, *Managing Canada's Fisheries*, 86).

⁴⁹ Samuel Wilmot, Charles Dupont, Charles Major, D.W. Higgins and William Armstrong, *Report of British Columbia Fishery Commission* (Ottawa: Government Printing Bureau, 1893), accessed March 2, 2016, <http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/wilmot1892-eng/wilmot1892-eng.htm>; Edward Prince, George Maxwell, Aulay Morrison, Ralph Smith and George Riley, *Report of the British Columbia Salmon Commission* (Ottawa, 1903), accessed March 2, 2016, <http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/prince1903-eng/prince1903-eng.pdf>; Prince et al, *Dominion British Columbia Fisheries Commission, 1905-1907*; John Babcock and John T. Williams, *Dominion-British Columbia Boat-Rating Commission: Report and Recommendations with Appendix* (Ottawa: 1910), accessed March 2, 2016, <http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/williams1910-eng/williams1910-eng.pdf>; William Duff, Charles Herbert Dickie, Alan Neil, Alfred Stork, Lewis

Columbia led by lawyer and sometime MLA Gordon Sloan looked into the issues of trap fishing, following the prohibition of the technology in the USA.⁵⁰ Forty years later, resource economist Peter Pearse was charged with reviewing and providing recommendations for the improvement of fisheries policy in British Columbia in the face of rampant overcapitalization of the fishing fleet, rising fuel costs and declining prices for seafood products.⁵¹ In addition to these formal commissions of inquiry, there have been a series of independent and government-initiated investigations related to Fraser River sockeye salmon; in the past thirty years alone, there have been over twenty-four of these investigations and subsequent reports.⁵²

First Nations have always engaged in salmon-related commissions of inquiry in British Columbia; however, the number of participating First Nations, relative to interest groups, was very low at the turn of the twentieth century. Early commissions of inquiry took testimony primarily from industrial canning representatives, commercial fishermen, and members of parliament, although in some instances Indian agents or missionaries spoke for the First Nation community that they claimed to represent. For instance, at the 1892 Wilmot Inquiry the commissioners heard testimony from 112 “fishermen, cannerymen [sic], dealers and others interested in the fisheries of British Columbia.” Of those testifying, two were Indigenous: Charlie Caplin of Musqueam and Captain George of Chehalis, although Captain George noted in his testimony that fifty members of his tribe who had wished to give testimony, had been dissuaded by the local Indian Agent.⁵³ One Indian Reserve Commissioner and two Indian agents also spoke at the hearings. At the British Columbia Fisheries Commission in 1922, however,

Martell, William McQuarrie, Alexander Chisholm and Henry Stevens, *British Columbia Fisheries Commission 1922: Reports and Recommendations* (Ottawa, 1922), accessed March 2, 2016, <http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/duff1922-eng/duff1922-eng.pdf>, 3.

⁵⁰ Gordon Sloan, *Report Relating to the Use of Trap-Nets at Sooke Area and Purse-Seines in a Portion of the Gulf of Georgia (Area no.17) in Salmon fishing in British Columbia* (Ottawa, 1940), accessed March 2, 2016, <http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/sloan1940-eng/sloan1940-eng.pdf>.

⁵¹ Peter Pearse, *Turning the Tide: A New Policy for Canada's Pacific Fisheries: the Commission on Pacific Fisheries Policy: Final Report* (Ottawa: Minister of Supply and Services, 1982), accessed March 2, 2016, <http://epe.lac-bac.gc.ca/100/200/301/pco-bcp/commissions-ef/pearse1982-eng/pearse1982-eng.htm>.

⁵² Cohen, *Interim Report*.

⁵³ Douglas Harris, *Landing Native Fisheries: Indian Reserves and Fishing in British Columbia, 1849 – 1925* (Vancouver; Toronto: UBC Press, 2008).

First Nations represented themselves more than ever before. Sixteen “Indian Fishermen” were among the 191 individuals who testified at the Duff Commission; in addition, the secretary of the Allied Indian Tribes, the Chief Inspector of Indian Affairs, two missionaries and two Indian Agents spoke at the hearings.⁵⁴ This trend continued over the following decades, with First Nations representation at the 1980 Pearse Commission consisting of eighteen participants representing over twenty First Nations across BC and the Yukon and three First Nations organizations, including the Union of BC Indian Chiefs, the Central Native Fishermen’s Cooperative, and the Native Brotherhood of BC, out of a total of almost 200 participants.⁵⁵ In his final report, Commissioner Pearse stated that the commission had “a remarkable amount of information and advice from Indian organizations and individuals,” including briefs and supplementary documents from most of the First Nations commission participants.⁵⁶ The level of First Nations engagement at the Cohen Commission is consistent with this rising trend: of the fifty-three groups granted standing before the Cohen Commission, twenty-seven were First Nations governments, associations, tribal and band councils. In addition, many First Nations people provided testimony at the Cohen Commission hearings and at the public meetings held in Fraser River and other communities reliant on Fraser River sockeye salmon. This growing level of engagement is part of a greater shift towards First Nations re-assuming their rights and responsibilities to manage the natural resources within their traditional and, in the province of British Columbia, predominantly un-ceded territories. The following section outlines this (re)emerging context in Canada, with particular attention to the shifting role of First Nations in Pacific salmon management in the province.

⁵⁴ W. Duff et al., *Royal Commission on British Columbia Fisheries*, 5 - 8.

⁵⁵ Peter Pearse, *Turning the Tide*.

⁵⁶ *Ibid.*, 151.

1.3 First Nations' Rights to Management: A (Re)emerging Context

The Royal Commission on Aboriginal Peoples (1996) describes three stages in the development of Aboriginal-Crown relations in Canada: “Contact and Cooperation;” “Displacement and Assimilation;” and, “Negotiation and Renewal.”⁵⁷ Broadly speaking, the first stage comprises initial contact, exchange, and alliances between Aboriginal peoples and European newcomers, including the Royal Proclamation issued by the British Crown in 1763 that acknowledged the rights of the Indigenous peoples of Canada to occupy and use their traditional lands. However, a dramatic increase in the non-Aboriginal population and an associated increase in competition for resources rapidly ushered in a new era characterized by “Displacement and Assimilation,” including a lessening of the Canadian government’s protection of Indigenous rights to lands, waters, and wildlife - including fisheries. This marginalization of Aboriginal rights continued up until the late 1960’s following the release of then Prime Minister Trudeau’s infamous *White Paper of Indian Policy*, a well-intentioned proposal for integrating of First Nations peoples into Canadian society that nevertheless raised significant protest by First Nations across the country, in part because of its “categorical denial of the legal viability of Aboriginal rights.”⁵⁸ Several court cases were filed against the Crown in response to the proposal, including the now famous *Calder v. Attorney General of British Columbia*⁵⁹ which signaled the beginning of a new phase in Aboriginal-Crown relations characterized by the negotiation and renewal of Aboriginal title and rights in Canada.⁶⁰

This emerging legal framework for Aboriginal rights in Canada sets the Cohen Commission apart from that of its predecessors. The constitutional protection of existing Aboriginal and treaty rights in the Canadian Constitution, 1982, as well as the interpretation of

⁵⁷ Garth Nettheim, Gary D. Meyers and Donna Craig, “Indigenous Resource Management in Canada: Development and Current Practices,” in *Indigenous Peoples and Governance Structures: A Comparative Analysis of Land and Resource Management Rights*, eds. Garth Nettheim, Gary D. Meyers and Donna Craig (Canberra: Aboriginal Studies Press, 2002), 79.

⁵⁸ Nettheim et al., “Indigenous Resource Management in Canada,” 84.

⁵⁹ (1973) SCR 313.

⁶⁰ Nettheim et al., “Indigenous Resource Management in Canada,” 84.

these rights by the Canadian Supreme Court and other Canadian courts, have advanced the extent to which Aboriginal rights to access and manage natural resources are recognized and accommodated by Crown governments.⁶¹ In the words of Nuu-chan-nulth scholar Umeek, cases confirming oral history as a legitimate form of evidence in court hearings are helping to change Canada's perspective on Indigenous self-governance: "Aboriginal title to land, previously held in question, can now be recognized [...] The hegemonic, one-world-order perspective of Canadian law has given way to the plurality of post-modernity by recognizing another perspective on land title."⁶² These changing perspectives are evident in cases relating specifically to Aboriginal title and other rights to fish and fisheries, including the landmark *R. v. Sparrow*⁶³ decision which determined an Aboriginal right to a food, social and ceremonial fishery that conferred priority of access and recognized the "history of conservation-consciousness and interdependence with natural resources" held by Aboriginal peoples.⁶⁴ More recent court decisions that acknowledge rights for specific First Nations to a commercial fishery (often for a particular species of fish or seafood). These include *R. v. Gladstone*⁶⁵ acknowledging Heiltsuk peoples' aboriginal right to harvest and trade in herring spawn on kelp; the *R. v. Marshall*⁶⁶ ruling that under a historic treaty Mi'kmaq have the right to access and sell fish and wildlife to make a moderate livelihood; the determination in *Ahousaht et al. v. Canada*⁶⁷ that five Nuu-chah-nulth nations⁶⁸ had proven an Aboriginal right to fish for any species in their territories, and to sell that fish; and *Lax Kw'alaams Indian Band v. Canada (Attorney General)*⁶⁹ acknowledging the Lax Kw'alaams Nation's rights in the commercial eulachon fishery. These

⁶¹ For a more comprehensive discussion of the emergence of a (Canadian) legal framework for Aboriginal rights and title see Nettheim et al., "Indigenous Resource Management in Canada: Development and Current Practices."

⁶² Umeek (Richard Atleo), *Tsawalk: A Nuu-chah-nulth Worldview* (Vancouver, BC: UBC Press, 2004), 67.

⁶³ (1990) 1 SCR 1075.

⁶⁴ Ibid. 'Priority of access' entails that Aboriginal FSC fisheries supersede recreational and commercial fishing (including Aboriginal Commercial licenses and pilot projects) opportunities and allocations. This is particularly important in years where they are low numbers of returns, because priority of access is, in principle, means that Aboriginal FSC fishers have access to fishing even if the other fisheries are forced to remain closed due to conservation concerns. In recent years, however, returns have been so slight that DFO officials have asked that Aboriginal organizations voluntarily restrict their FSC fisheries.

⁶⁵ (1996) 2 SCR 723.

⁶⁶ (1999) 3 SCR 456.

⁶⁷ 2013 BCCA 300.

⁶⁸ Ahousaht, Ehatlesah, Hesquiaht, Mowachaht/Muchalaht and Tla-o-qui-aht.

⁶⁹ 2011 SCC 56.

cases have also provided some clarity regarding recognition of First Nations' rights to manage their traditional fisheries, including the recent *Ahousaht* decision in January 2014 in which the Supreme Court of Canada upheld the 2009 decision of the BC Supreme Court that "co-management agreements may be an appropriate accommodation for the Ahousaht's 'strength of claim' [to access specific species of fish and seafood for commercial purposes] and the adverse impact of current aquatic resource management in the Ahousaht's traditional territories."⁷⁰ In addition, *Haida Nation v. British Columbia*⁷¹ reaffirmed the duty of Crown governments' to consult with a First Nation before taking actions that might adversely impact said First Nation's rights and title. In a province where the majority of the land base remains un-ceded, the *Haida* ruling is significant because it can be applied on the basis of a First Nation's *strength of claim* over a given territory, whether or not that territory has been explicitly recognized as falling within a First Nation's jurisdiction through the Canadian court system or through treaty or land claim agreements, policy, ceremony or other mechanism of recognition.

In spite of these legal advances, the *extent* to which the Crown was required to engage with First Nations and/or First Nations self-governance regarding natural resource management is still not definitively determined by the Courts at the time when the Cohen Commission was struck. In Canada, this has resulted in a highly uneven pattern of Crown policies engaging Indigenous peoples in the management of their lands and natural resources. For instance, many comprehensive land claims developed in the 1970s through to the 1990s (e.g. *James Bay and Northern Quebec Agreement*, 1975; *Northeastern Quebec Agreement*, 1978; *Inuvialuit Final Agreement*, 1984; *Gwich'in Comprehensive Land Claim Agreement*, 1992; *Sahtu Dene and Métis Agreement*, 1994; *Nunavut Final Agreement*, 1999) include governance structures for shared responsibilities for managing wildlife, fisheries, and environmental affairs. However,

⁷⁰ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 295 First Nations Fisheries Council Co-management Discussion Paper," October 25, 2010: 9, accessed December 4, 2015, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/EXHIBITS.HTM.

⁷¹ 2004 3 S.C.R. 511.

those First Nations engaged in the BC treaty process have experienced limited success in negotiating the rights to manage or collaboratively manage their traditional fisheries.⁷² Fisheries negotiations reached a standstill in March 2010, when the government announced that treaty negotiations related to salmon fisheries would be deferred pending completion of the Cohen Commission's investigations. As Fisheries Minister Gail Shea stated:

... I will continue to manage and authorize BC salmon fisheries, including First Nations allocations of salmon for food, social and ceremonial purposes, and all participation in integrated commercial fisheries [...] The findings of the Commission of Inquiry may have implications for management of other Pacific salmon fisheries, and it is therefore prudent to defer negotiations on the fisheries components of treaties in British Columbia.⁷³

In August 2014 the federal Ministry of Aboriginal Affairs and Northern Development announced that the federal government would resume negotiations of fisheries provisions in BC treaties, although at the time of this writing (March 2016), federal negotiators do not have a mandate to negotiate joint management provisions.⁷⁴

While the case law regarding First Nations' rights to management was not definitive at the time of the Cohen Commission process, First Nations in the province have "repeatedly articulated that they view their title and rights as including a right (and obligation) to play a key role in natural resource management within their territories," including the marine and riparian areas and the fish and other wildlife that flow through them.⁷⁵ Discussions related to fisheries co-management are being broached by individual BC First Nations as part of reconciliation discussions with the federal government, but these talks are still in an early state and some First Nations remain skeptical about the federal government's willingness to make substantial changes to fisheries management in the near future. A broader, province-wide approach for

⁷² The modern treaty process in British Columbia is conventionally marked as beginning in 1992, and is distinguished from the earlier treaties signed in BC, including the fourteen Douglas Treaties' negotiated on Vancouver Island from 1850-1854, Treaty 8 in the far Northeast of the province, signed in 1899, and the Barricades Treaty at Lake Babine in 1906 (Harris, *Fish, Law and Colonialism*).

⁷³ Fisheries and Oceans Canada, "Fisheries Negotiations at British Columbia Treaty Tables," March 2, 2010, accessed June 13, 2015, <http://www.dfo-mpo.gc.ca/media/statement-declarations/2010/20100302-eng.htm>.

⁷⁴ Private communication with a First Nations lawyer and treaty negotiator, March 12, 2016. Ministry of Aboriginal Affairs and Northern Development, "Taking Action to Advance Treaty Negotiations and Reconciliation," August 2014, accessed June 13, 2015, <http://www.aadnc-aandc.gc.ca/eng/1406568410859/1406568519050>.

⁷⁵ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 295."

exploring co-management structures for Fraser River Salmon is the Fraser River Salmon Roadmap Initiative, a bilateral process between Fisheries and Oceans Canada and First Nations from the Fraser River watershed, Vancouver Island, and Marine Approach⁷⁶ areas; as well as the Forum on Conservation and Harvest Planning that focuses on operational aspects of co-management, including facilitating discussion of Food, Social, and Ceremonial (FSC) allocations in years of low abundance. In addition, First Nations are engaged in the overall management of Fraser River sockeye salmon through a variety of mechanisms and processes, including:

- One representative (out of four Canadian representatives) on the Pacific Salmon Commission, charged with pre-season planning for the Fraser River sockeye fishery;
- One representative (out of six Canadian representatives) on the Fraser River Panel, charged with in-season management of the Fraser River sockeye fishery;
- Reviewing of and commenting on DFO plans, policies and decisions; and
- Participating in Integrated Harvest Planning Committee meetings as “observers.”⁷⁷

However, First Nations have repeatedly raised concerns regarding the extent and nature of their current engagement in salmon management in the province. The First Nations Fisheries Council (FNFC), a province-wide organization charged with facilitating discussions “related to the development of a British Columbia-wide First Nations-based collaborative management framework that recognizes and respects First Nations jurisdiction, management authority and responsibilities,” including the Roadmap Initiative and the Forum on Conservation and Harvest Planning, released several reports regarding the inadequacy of current engagement mechanisms for the full expression of First Nations’ rights to management. Two significant issues are identified in these reports and are best explained with reference to the Spectrum of Engagement

⁷⁶ The “Marine Approach” areas include coastal areas of Alaska, British Columbia and Alaska where Fraser River sockeye salmon would pass by on their return journey to the Fraser River.

⁷⁷ First Nations are also engaged in the management of their aboriginal fisheries, including the negotiation of allocations with the DFO (including treaty negotiations), and in some instances enacting band by-laws (under s. 81(1)(o) of the *Indian Act*) related to the designation of fishers and vessels authorized to fish under the First Nations’ communal fishing right, or the distribution of catch amongst members of the First Nation. However, these by-laws cannot interfere with the DFO’s management plans or apply to the management of fish off reserve and/or in navigable waters adjacent to a reserve.

in Co-management formulated by the FNFC (Table 1.1). First Nations feel that the level of engagement currently in place with the DFO ranges “from the middle to the far left of the spectrum of engagement,” and contend, “true co-management lies at the [right or] authority end of the engagement spectrum.”⁷⁸ In other words, the DFO continues to engage First Nations by providing and exchanging information and offering opportunities for First Nations to provide input, while First Nations seek shared management and/or sole management responsibilities for their traditional and unceded fisheries.

<div style="display: flex; justify-content: space-between; align-items: center;"> <div><i>Centralized Government Management</i></div> <div>← Spectrum of Engagement →</div> <div><i>Community Self-Governance</i></div> </div>				
Informing	Information Exchange	Advisory	Partnership / Shared Management	Devolution
Government Management		Co-Management		
DFO informs First Nations and stakeholders of decisions First Nations provide no input into decision making process	DFO informs First Nations and stakeholders what management actions it intends to take First Nations and Stakeholders may provide comment, E.g. Dialogue Forums	DFO outlines what it intends to do but does seek comment or input from First Nations and stakeholders Assume that there is an analysis of options, Trade-offs, risk management Government makes the final decisions	Joint commitment to identify issues and processes for resource management activities and decisions Shared decision-making by DFO, First Nations and stakeholders	Government delegates the authority for resource management to First Nations and/or stakeholders

Table 1.1 Spectrum of potential engagement in a co-management relationship

Source: First Nations Fisheries Council. “Co-management Discussion Paper.” October 25, 2010. Reproduced with the permission of the First Nations Fisheries Council.

⁷⁸ Julie Gardner, “An Overview of Issues concerning First Nations and DFO co-management of Fisheries in the Pacific Region,” April 2010, vi, accessed December 4, 2015, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/EXHIBITS.HTM.

The second issue raised by the FNFC concerns the disjuncture between First Nations’ and Crown strengths of authority: while First Nations’ strength of authority lies at the community level, the DFO operates in such a way that its authority is strongest at the national level, with ultimate authority for management decision-making lying with the Minister (Figure 1.3 visually demonstrates these opposing strengths of authority). This has resulted in a model for engaging with individual First Nations in which “the field staff who are the primary point of contact for most First Nations, are at the opposite end of the spectrum from the Minister, and therefore have little strength of authority to make decisions at the community scale with proper First Nations rights holders.”⁷⁹ In response to this, the First Nations Fisheries Council has identified a three-tier management model for engagement in management-related processes: Tier 1 relationships encompass “arrangements between and among First Nations.” Tier 2 processes include “relationships between First Nations and federal or provincial government,” while Tier 3 includes “engagement of First Nations with government and stakeholders.”⁸⁰ The level of First

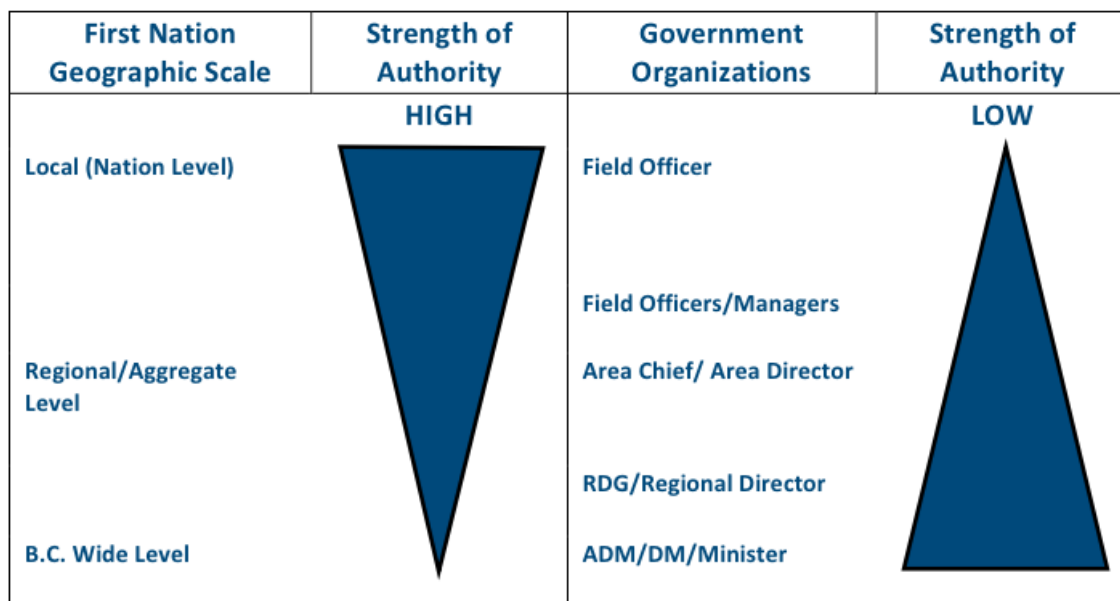


Figure 1.3 Opposing Strengths of Authority for First Nations and the DFO

Source: First Nations Fisheries Council. “Co-management Discussion Paper.” October 25, 2010. Reproduced with the permission of the First Nations Fisheries Council.

⁷⁹ Julie Gardner, “An Overview of Issues...” 8.

⁸⁰ Ibid. 3.

Nations engagement in the management of the province's fisheries therefore remains a significant concern for many First Nations, who have observed firsthand the declines in many of their fisheries even as their rights and responsibilities to these fisheries are increasingly recognized in case law. The significant involvement and contributions of First Nations organizations and individuals in the 2010-2012 Cohen Commission reflects both these concerns, providing a unique opportunity to understand how contemporary commissions of inquiry are changing in the face of growing recognition of Aboriginal rights to management and to explore whether they are perceived of as suitable vehicles for addressing the conservation concerns held by First Nations.

1.4 Thesis Overview

The five chapters that follow address these changing circumstances for fisheries planning and management in British Columbia. Chapter 2 outlines the nature of Commissions of Inquiry in Canada, and discusses their political role. I argue that commissions of inquiry can serve the planning process, and consider how commissions may both encourage and limit the transformation of Indigenous-settler relations over natural resource management in Canada. The final section of Chapter 2 focuses on the Cohen Commission, detailing its mandate, identifying key participants in its deliberations, and showing how these shaped the ways in which it gathered evidence and evidence and framed the issues

Many researchers have examined the intersections between Indigenous peoples and settler-colonial resource conservation processes and policies. Their work is examined in Chapter 3, with particular focus on two divergent schools of thought: the first emphasizing that colonial ways of knowing and being in the world pose significant challenges for Indigenous engagement in state-led environmental management; the second emphasizing the transformative possibilities for Indigenous peoples engaging in these processes. Chapter 4 presents a relational qualitative

methodology that is consistent with the approach taken in these latter studies. This section outlines my motivations in undertaking this research and provides a rationale for the research design and methods adopted. Chapter 5 describes the study findings, organized according to the three objectives outlined in Section 1.1: *What are First Nations people's understandings of sockeye conservation? What were the perceived opportunities for the articulation of these understandings? What were the perceived constraints and/or challenges?* The key findings from this study are evaluated in Chapter 6 in the context of the Indigenous Planning and associated literature, and the limitations of this study's research design are discussed. The implications for transformative planning theory as well as the broader political applicability of these findings are considered, and areas for future research are highlighted. I conclude the study with some personal reflections on the research process and contemporary events surrounding salmon and their management in British Columbia.

1.5 A Note on Terms

According to the University of British Columbia *Indigenous Foundations* website, ““First Nation” is a term used to describe Aboriginal peoples of Canada who are ethnically neither Métis nor Inuit. This term came into common usage in the 1970s and ‘80s and generally replaced the term “Indian,” although unlike “Indian,” the term “First Nation” does not have a legal definition.”⁸¹ The terms “Indian” is still used in Canada in certain circumstances – to characterize legally constituted Indian Reserves for example. In this thesis I use the term “First Nations” when referring broadly to first peoples in the regions now referred to as Canada who are neither Métis or Inuit. The more encompassing term “Indigenous” is used here to refer to first peoples in a more general context, or when authors cited have chosen to use that term. The term “Aboriginal” is used when referring to Canada’s first peoples within a legal or political context (for example, when discussing Aboriginal rights and title). Indigenous friends and

⁸¹ Indigenous Foundations, “Terminology,” accessed Oct 15 2015, <http://indigenousfoundations.arts.ubc.ca/home/identity/terminology.html#indigenous>.

colleagues, among others, have impressed upon me the importance of referring to first peoples in as specific a manner as possible; by nation, clan and family, as appropriate.⁸² For this reason I have tried to refer to specific Nations whenever possible in this thesis, while seeking to maintain the anonymity of research participants.

The terms colonialism and colonality are also used in the course of this thesis, and require some clarification. “Colonialism” refers to a temporal process involving the appropriation of Indigenous lands by foreign (in this instance, western European) powers, and the material and discursive effects of this process on both the colonizer and the colonized, including the creation of hierarchical structures of power premised on the superiority of the colonizing society. “Coloniality” is a term used primarily in Latin American subaltern and postcolonial studies to describe how these processes as they operated after the formal colonial period in BC (1858-1871). The persistence of coloniality in Canada and other former colonies is the subject of postcolonial inquiry, a field of study concerned with “the continuing presence of colonial processes and their ongoing material effects” and the ways in which colonial “relations, practices and representations are reproduced or transformed between past and present.”⁸³ I adopt this perspective to demonstrate how colonial discourses continue to dominate discussions of resource management and conservation, and identify how more space can be made for challenges to these discourses through the articulation of alternative visions for the future of fish and the communities that continue to rely upon them.

1.6 Conclusion

In an economy such as British Columbia’s, which has been based since earliest European contact and subsequent colonization upon the extraction and sale of what have come to be

⁸² Haida. The first spelling is the Hlgaagilda (Skidegate) dialect, and the second in in the Gaaw (Massett) dialect.

⁸³ “Post-colonialism” in Derek Gregory, Ron Johnston, Geraldine Pratt, Michael Watts and Sarah Whatmore, eds., *Dictionary of Human Geography 5th Edition* (Oxford: Wiley-Blackwell, 2009), 561.

known as ‘raw natural resources,’ the discursive and institutional meanings attached to terms such as conservation, and the weight given these meanings in the creation of environmental policy, matter enormously. When negotiating policies governing the future of a culturally, regionally, and economically significant animal such as sockeye salmon, broadening the terms of the debate to include the voices of First Nations people is increasingly urgent work. This study addresses one particular aspect of the province’s unfolding history, seeking to give constructive insight into the significant challenges and opportunities involved in creating decolonized and sustainable futures for all of the province’s inhabitants. As the American philosopher Donna Haraway (echoing Marx) so neatly wrote: “the point is to get at how worlds are made and unmade, in order to participate in the processes, in order to foster some forms of life and not others...the point is not just to read the webs of knowledge production; the point is to reconfigure what counts as knowledge.”⁸⁴ In drawing out the actions and voices of those actively asserting their knowledge and perspectives as crucial to the fisheries management processes, this work aims - in a very modest way - to participate in these compelling and critical reconfigurations.

⁸⁴ Donna J. Haraway, “A Game of Cat’s Cradle: Science Studies, Feminist Theory, Cultural Studies,” *Configurations* 2, no. 1 (1994): 62.

Chapter 2. Commissions of Inquiry and Salmon in British Columbia

There have been more than 450 federal commissions of inquiry in Canada since Confederation, ranging widely in content and mandate.⁸⁵ Some commissions have proven of immense importance in articulating new goals for policy direction. The final reports of the Royal Commission on Bilingualism and Biculturalism (1967), the Royal Commission on Equality in Employment (1984) and the Royal Commission on Aboriginal People (1996) all substantively challenged existing federal policy with their propositions that planning for just outcomes ought to be central to government policy directives. Other commissions such as the Westray Mine Inquiry (1987), the Walkerton Commission of Inquiry (2002), and the Air India Inquiry (2008) have served as federal responses to tragedy, often at a local or community level. And a substantial number have related to resource management and failure, including a commission considering the possibility of caribou and musk-ox herding industries in the territories (1922), and an inquiry into the seal hunt in Canada (1986). Fisheries crises on Canada's coasts have historically also been addressed through the federal inquiry process. On the eastern seaboard, there have been a number of historical inquiries into commercial fisheries species, including the Commission to Investigate Grievances and Complaints Existing in Regard to Salmon and Lobster Fisheries in Gloucester County, New Brunswick (1904); Commission to Inquire into the Herring and Sardine Industry of the Bay of Fundy, as well as into the Ravages of the Dog-fish and the General Condition of the Lobster Fishery at the Magdalen Islands, St. Mary's Bay and The Bay of Fundy (1905); and, the Commission on the Lobster Industry in Quebec and the Maritime Provinces (1910). As indicated in Chapter 1, inquiries into salmon and salmon fisheries have figured predominantly on the country's western edge.

⁸⁵ Paul Fox, "Royal Commissions," *The Canadian Encyclopedia*, accessed October 31, 2015, <http://www.thecanadianencyclopedia.ca/en/article/royal-commissions/>.

Despite their relative prominence in the Canadian political system, commissions of inquiry have an enigmatic and elusive reputation. The Institute of Public Administration of Canada once mused:

Launching a commission of inquiry is a risky process - a bit like sending a ship out to sea. You don't know where it will go, how long it will take, how much it will cost or what it will bring back. And trying to relocate a ship lost at sea and bring it back to port can be a costly experience (especially if the captain is not in a hurry to come home).⁸⁶

The first two sections of this chapter outline what commissions of inquiry are and why they are considered to be such “risky processes,” focusing specifically on policy and other political outcomes of the commission of inquiry process and final recommendations. In the third section I outline a rationale for why commissions of inquiry mandated to investigate natural resources and their management might be considered as a form of planning process, and the implications of evaluating such Commissions through a planning lens. The final section sets the Cohen Commission of Inquiry in this context to underpin the analysis and discussion offered in the second half of this study.

2.1 Commissions of Inquiry in Canada

Broadly defined, a commission of inquiry in Canada is “a body created by a government under Part I of the *Inquiries Act* or the corresponding provincial or territorial legislation.”⁸⁷

Article 2 defines when royal or federally struck public inquiries may be commissioned. The article reads:

The Governor in Council may, whenever the Governor in Council deems it expedient, cause inquiry to be made into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof.⁸⁸

The general *purpose* of a commission is therefore to make inquiries and then report its findings to the appropriate government, including any policy recommendations that may follow from

⁸⁶ Cited in Edward Ratushny, *The Conduct of Public Inquiries* (Toronto: Irwin Law, 2009), 130.

⁸⁷ Ratushny, *The Conduct of Public Inquiries*, 11.

⁸⁸ Government of Canada, *Inquiries Act* 1985 c. 1 – 11, s. 2, accessed March 2, 2016, <http://laws-lois.justice.gc.ca/eng/acts/I-11/page-1.html>.

these findings. Commissions of inquiry are generally called upon by cabinet (in effect “the council” in the traditional phrasing of the Act) to make inquiries into “broad matters of failure or lacunae in government policy, whether economic, social, environmental, or other, generally in response to crisis.” Broadly, these concerns are brought to a commission of inquiry because they are considered unsuitable for investigation by any of the three formal branches of government (executive, administrative and judicial) because of the implications that they might hold for government reform.⁸⁹ Following the announcement of an inquiry, the government develops the terms of reference to guide the inquiry and a Commissioner is (or a panel of Commissioners are) appointed to lead the process. The Commissioner(s), limited only by their terms of reference, are then free to investigate whatever they perceive as relevant to their subject of inquiry. The Commissioner(s) – at least one of whom, in contemporary inquiries at least, is usually an experienced judge – proceeds to assemble administrative and legal staff, locate and equip an office, conduct preliminary research, and invite applications from stakeholders to engage in the process. Commission participants are selected and, once granted standing, they assist the Commissioner(s) in preparing evidence for commission hearings (though the production and suggestion of documents relevant to the commission’s mandate) and in identifying witnesses to be called to the stand.⁹⁰ Usually, Commissioner(s) hear from a broad array of interests and expert witnesses regarding the subject at hand.⁹¹ Witness participation and the submissions of evidence are generally voluntary; however, Commissioner(s) do have the authority (via subpoena) to compel testimony and to require the production of any relevant documents. At the conclusion of the Inquiry, a final report outlines a given commission’s findings and policy recommendations to the appropriate government.⁹² These recommendations are not legally binding, with the government that struck the inquiry being under no legal

⁸⁹ Gregory Inwood and Carolyn M. Johns, eds., *Commissions of Inquiry and Policy Change: A Comparative Analysis* (Toronto: University of Toronto Press, 2014), 10.

⁹⁰ In a commission of inquiry, only individuals and organizations who are considered to have a substantial and direct interest are eligible for participant status.

⁹¹ With permission from the Commissioner, participant counsel may examine or cross-examine witnesses.

⁹² The final report of a commission of inquiry is almost always made public (Allan Manson and David Mullan, eds., *Commissions of Inquiry: Praise or Reappraise?* (Toronto: Irwin Law, 1999), 3).

obligation to implement or even review a given commission's final report, although by tradition the government usually issues a statement outlining its reaction to the final report. This reaction either takes the form of a 'white paper' that outlines intended actions, or a 'green paper' for discussion by stakeholders.⁹³

Process can be as important as substance in the work of commissions of inquiry. By bringing together expert witnesses, the general public, government representatives, First Nations, and diverse groups of stakeholders, commissions of inquiry provide a unique public forum for contending with what are, more often than not, highly contentious subjects. For this reason sociologist Adam Ashforth has suggested that commissions should be considered as "symbolic rituals within modern states, theatres of power which do 'make policy' but which do much else besides."⁹⁴ Other recent scholarship on commissions of inquiry has emphasized the role of inquiry processes as fora for the deliberation of policy alternatives.⁹⁵ Here the participatory and highly publicized nature of commissions of inquiry is seen as an important opportunity for interested parties to advance and provide a rationale for policy alternatives. So Australian public policy analyst Mike Rowe and Welsh governance scholar Laura McAllister highlight the potential for inquiry processes and/or final reports and recommendations "to influence the policy agenda in ways that governments might find awkward or embarrassing."⁹⁶ The appointment of a commission invariably engages a wide range of participants in deliberations about policy, which Rowe and McAllister suggest creates the possibility of revelations and recommendations that government might regard as "unexpected or unwanted."⁹⁷

⁹³ Adam Ashforth, "Reckoning Schemes of Legitimation: On Commissions of Inquiry as Power/Knowledge Forms," *Journal of Historical Sociology* 3, no. 1 (1990): 15.

⁹⁴ Ibid. 4.

⁹⁵ Robert Centa and Patrick Macklem, "Securing Accountability Through Commissions of Inquiry: A Role for the Law Commission of Canada," in *Commissions of Inquiry: Praise or Reappraise*, eds. A.S. Manson and D.J. Mullan (Toronto: Irwin Law, 1999); Inwood and Johns, *Commissions of Inquiry and Policy Change*; Mike Rowe and Laura McAllister, "The Roles of Commissions of Inquiry in the Policy Process," *Public Policy and Administration* 21, no. 4 (2006).

⁹⁶ Rowe and McAllister, "The Roles of Commissions of Inquiry," 100.

⁹⁷ Rowe and McAllister, "The Roles of Commissions of Inquiry," 111.

In their introduction to an edited collection of articles on commissions of inquiry and policy change in Canada, political scientists Gregory Inwood and Carolyn Johns suggest that inquiries create vital spaces for the framing of the “problems, definitions, and policy solutions”⁹⁸ for the subject under investigation. As “sites of sense making” commissions of inquiry may therefore serve to re-shape the parameters of what is *considerable*, for governments, stakeholders, and the general public. While these alternatives may not be incorporated into final recommendations, they nevertheless remain on record (e.g., in commission transcripts and reports, as well as media reports) and may persist in the imagination of governments, stakeholders and the general public. Moreover, even when recommendations for policy alternatives are not accepted or implemented in their entirety - or, in some instances, at all - by governments, Inwood and Johns observe that commission of inquiry findings and recommendations tend to turn up in the political agenda “at subsequent and regular intervals.”⁹⁹

These perspectives on the policy and broader political roles of Commissions of Inquiry are born out in recent research focusing on the Mackenzie Valley Pipeline Inquiry.¹⁰⁰ In 1974, the federal government tasked Thomas Berger to evaluate the social, economic, and environmental consequences of building a proposed natural gas pipeline from the Yukon through the Mackenzie Valley to bring oil discovered off the northern coast of Alaska to southern markets, and to recommend such terms and conditions as he deemed necessary should the pipeline be built.¹⁰¹ The Inquiry lasted for three years, during which Berger heard testimony in “the ballrooms of Yellowknife hotels, at community centres...at fish lakes and cabins, and along traplines.” Notably, the Berger Inquiry was one of the first times that northern residents were

⁹⁸ Inwood and Johns, *Commissions of Inquiry*, 29.

⁹⁹ Rowe and McAllister, “The Roles of Commissions of Inquiry,” 110.

¹⁰⁰ Frances Abele, “The Lasting Impacts of the Berger Inquiry into the Construction of a Pipeline in the Mackenzie Valley,” in *Commissions of Inquiry and Policy Change: A Comparative Analysis*, eds. Gregory Inwood and Carolyn M. Johns (Toronto: University of Toronto Press, 2014); Carly Dokis, *Where the Rivers Meet: Pipelines, Participatory Resource Management, and Aboriginal-State Relations in the Northwest Territories* (Vancouver, BC: UBC Press, 2015).

¹⁰¹ Thomas Berger, “Canadian Commissions of Inquiry: An Insider’s Perspective,” in *Commissions of Inquiry: Praise or Re-appraise?* eds. A.S. Manson and D.J. Mullan (Toronto: Toronto Irwin Law, 1999), 15.

enabled to participate in the development of a common public policy debate about the region in which they lived. Berger's final report *Northern Frontier, Northern Homeland* is widely credited with establishing a new way of thinking about the meaning of northern development; the title of the final report itself presents a binary between settler and Indigenous conceptualizations of the north. Northern policy analyst Frances Abele suggests that before the Berger Inquiry and the release of its final report "northern development policy was understood, rather straightforwardly, to mean the orderly extension of the natural resource frontier;" following the Inquiry, however, it was necessary to take into account the perspectives and aspirations of Indigenous communities who considered the north their homeland.¹⁰² In his final report, Berger made two key recommendations: first, that there should never be a pipeline on the northern coast of the Yukon and the Mackenzie Delta and; second, that no pipeline should be constructed in the Mackenzie Valley for ten years, to allow for the settlement of Indigenous land rights and appropriate benefit sharing agreements to be put in place. The impact of these recommendations, however, are difficult to assess; although no pipelines have been constructed in the Yukon to date, three years after the release of Berger's report the federal Cabinet approved construction of an oil pipeline from Norman Wells to Zama City – a pipeline to fuel the north that bisected Dene territory much as the proposed gas pipeline would have done. Soon after the report was released, the world market for energy prices dropped and the Mackenzie Valley Pipeline was no longer a viable economic proposition. Abele suggests that while the Inquiry may not have stopped the development of the Mackenzie Valley Pipeline, it did have the effect of *delaying* a decision "long enough for the economic case for construction to dissipate."¹⁰³

However consequential his recommendations, Berger's extensive consultation with communities in the course of his inquiry established an important precedent for participatory

¹⁰² Abele, "The Lasting Impacts of the Berger Inquiry..." 88.

¹⁰³ Ibid. 89.

politics in the north – both through the development of Crown and corporate consultative mechanisms, and the establishment of an *expectation* in northern communities that they will be consulted about their perspectives on proposed development projects. Yet debate continues over the extent to which Berger’s precedent has been followed in recent years. Frances Abele argues, “the inquiry did not invent but strengthened and elaborated [the case] for community-based, public deliberation.”¹⁰⁴ This, she suggests, was reflected in subsequent environmental assessment processes and in the politics of the Northwest Territories more broadly. However, in *Where the Rivers Meet*, a recent study of participatory resource management in the Sahtu Dene region of the Northwest Territories (one of the regions that Berger travelled through in the course of his inquiry), anthropologist Carly Dokis argues that the participatory processes championed by Abele remain deeply problematic for Indigenous peoples. Dokis acknowledges that the Berger Inquiry set an important precedent for consultative relationships in Canada’s north, but her close analysis of several processes involving Dene people and natural gas pipeline proponents in the first decade of the twenty-first century demonstrates that the “promise of the Berger Inquiry” – characterized by careful listening and respectful relationship building – has been left by the wayside. Dokis argues that in place of this promise there has arisen “standardized, repeatable, technocratic, and quantifiable” forms of consultation that fail to address Sahtu Dene concerns about the threats posed to their territories and way of life.¹⁰⁵ Nevertheless, the approach taken by Berger forty-odd years ago remains the standard against which contemporary consultation processes are evaluated; not only by Dokis, but by northerners themselves.

As Justice Berger once stated, public inquiries have “brought new ideas into the public consciousness. They have expanded the vocabulary of politics, education, and social science..

¹⁰⁴ Abele, “The Lasting Impacts of the Berger Inquiry...” 90.

¹⁰⁵ Carly Dokis, *Where the Rivers Meet*, 4. It is notable that this second wave of interest in the development of a natural gas pipeline through the Mackenzie Valley foundered, like its predecessor, because of financial impediments.

They have added to the furniture we now expect to find in Canada's storefront of ideas"¹⁰⁶

Taken together, recent studies on the Berger Inquiry contribute to an understanding of commissions of inquiry that encompasses both a quantifiable *policy* function - the development and implementation of inquiry recommendations - and an equally important but more diffuse *political* function, the latter of which extends to outcomes such as the reconfiguration of ideas, institutions, relationships, and public opinion. This combination of effects makes Commissions of Inquiry highly relevant to both policy and planning realms.

2.2 Commissions of Inquiry as Planning Processes?

What is planning, and who determines how it is defined? While definitions offered by professional organization such as the Canadian Association of Planners address such institutionalized planning processes as urban and regional land use planning, Māori scholar Hirini Matunga offers a definition that speaks to the universality of the practice of planning:

Planning is not just a word. It is also an imperial scholarly discipline and colonial practice located in the "West," around which much theoretical posturing and competing land claims have accreted. As an activity, "planning" isn't owned by the West, it's theorists, or practitioners. It just happens to be an English language descriptor for a universal human function with an abiding and justifiable concern for the future.¹⁰⁷

In his important book *Planning in the Face of Power*, planning theorist John Forester states, "planning is the organization of hope."¹⁰⁸ Planning scholars Michael Hibbard and Marcus Lane elaborate on and extend this idea: "Planning is fundamentally concerned with the organization and management of land and resource use; it is commonly concerned with mediating between diverse claimants in the use of urban and rural landscapes; it has a problem-solving focus; and it has a future seeking dimension that means it is concerned with improving the circumstances of human existence."¹⁰⁹ In both their investigative and advisory functions (but particularly the

¹⁰⁶ Berger, "Commissions of Inquiry in Canada," 25.

¹⁰⁷ Hirini Matunga, "Theorizing Indigenous Planning," in *Reclaiming Indigenous Planning*, eds. Ryan Walker, Ted Jojola and David Natcher (Montreal; Kingston: McGill-Queen's University Press, 2013), 4.

¹⁰⁸ John F. Forester, *Planning in the Face of Power* (Berkeley, CA: University of California Press, 1999), 98.

¹⁰⁹ Michael Hibbard and Marcus Lane, "Doing It for Themselves: Transformative Planning by Indigenous Peoples," in *Journal of Planning Education and Research* 25, no.1 (2005): 177.

latter) the processes and outcomes of natural resource-related commissions of inquiry align with Hibbard and Lane's definition of planning's preoccupations: first, they are, as a matter of course, fundamentally concerned with natural resources and human harvesting; second, they mediate the varied and at times conflicting perspectives of First Nations, Crown governments, and interest and/or other user groups; third, they are created to provide recommendations to resolve an identified problem; and, fourth, recommendations generated from natural resource-related commissions of inquiry are frequently oriented towards improved management of natural resources, often with the intent of maintaining or improving human access. Furthermore, and again in ways similar to formalized planning processes, Commissions of Inquiry provide an important forum for the articulation of alternative policy and practices for addressing perceived crises in resource management; a space where "defenders of the status quo can engage proponents of alternatives to the status quo" with the purpose of advancing social, institutional and policy change.¹¹⁰

2.3 The Cohen Commission

2.3.1 Terms of reference

The terms of reference for commissions of inquiry "determine the jurisdiction of the commission and set out the boundaries of what the commission can and cannot do."¹¹¹ The terms of reference set out by the federal cabinet directed Commissioner Cohen to:

- a) Conduct the Inquiry without seeking to find fault on the part of any individual, community or organization, and with the overall aim of respecting conservation of the sockeye salmon stock and encouraging broad cooperation among stakeholders,
- b) Consider the policies and practices of the Department of Fisheries and Oceans (the "Department") with respect to the sockeye salmon fishery in the Fraser River,

¹¹⁰ Inwood and John, *Commissions of Inquiry and Policy Change*, 8.

¹¹¹ Brad Caldwell, "Conduct of Canadian Public Inquiries and the Cohen Commission," Caldwell & Co, 2010, 2, accessed January 18, 2015 at <http://www.admiraltylaw.com/fisheries/Papers/Cohen%Commission.pdf>.

- c) Investigate and make independent findings of fact regarding the causes for the decline of Fraser River sockeye salmon including, but not limited to, the impact of environmental changes along the Fraser River, marine environmental conditions, aquaculture, predators, diseases, water temperature and other factors that may have affected the ability of sockeye salmon to reach traditional spawning grounds or reach the ocean, and the current state of Fraser River sockeye salmon stocks and the long term projections for those stocks, and
- d) Develop recommendations for improving the future sustainability of the sockeye salmon fishery in the Fraser River including, as required, any changes to the policies, practices and procedures of the Department in relation to the management of the Fraser River sockeye salmon fishery.¹¹²

These terms provided Justice Cohen with a significant amount of discretion in determining potential causes for the 2009 and long-term decline of Fraser River sockeye salmon and did not significantly limit the scope of recommendations for the future sustainability of the fishery in the Fraser River. For all that, the language in section d. of the terms of reference suggests that Cabinet was particularly interested in potential reforms to the DFO “policies, practices and procedures.” While the terms themselves are silent on the issue of Aboriginal rights, in a discussion of his interpretation of the Commission’s terms of reference Justice Cohen recognized “the special relationship that many First Nations have with Fraser River sockeye salmon” and the unique status of First Nations in relation to access to sockeye based on section 35 of the *Constitution Act, 1982* and the negotiation of historical and modern treaties.

In a 2010 article, maritime and fisheries lawyer Brad Caldwell observed, “in some cases terms of reference [for commissions of inquiry] can be quite narrow, severely limiting the scope of the inquiry to avoid overlap with other proceedings or to avoid matters that are potentially embarrassing for the government. In other cases, they are broad with an open-ended clause giving almost unlimited scope to the inquiry.”¹¹³ In his assessment, the terms of reference for the Cohen Commission were “quite broad.”¹¹⁴ Specifically, the clause ‘but not limited to’ in the directive to investigate the causes for the decline of Fraser River sockeye (TOR c.) provided the

¹¹² Cohen, *Final Report: Volume 1*, 580.

¹¹³ Caldwell, “Conduct of Canadian Public Inquiries and the Cohen Commission,” 2.

¹¹⁴ *Ibid.*

Commissioner with license to consider numerous factors that might have contributed to the decline. In other words, the Commission's terms of reference provided Commissioner Cohen with a unique opportunity to investigate and provide recommendations for substantive policy change in the management of the Fraser River sockeye salmon fishery.

2.3.2 Participant standing

The organizations and individuals selected to participate in the Cohen Commission reflected the very broad range of interest in sockeye salmon in the Fraser River region. Applicants for standing outlined their perspectives on the following: the nature and extent of their rights or interests in the Commission's object of investigation; why standing was necessary to protect or advance these rights or interests; whether the applicant might face criticism for their conduct in relation to the subject of the Commission; the intended approach of the applicant, and how this approach would assist the Commissioner in his mandate; the applicant's relevant expertise and experience; any duplications in the applicant's perspectives or interest with other applicants; and, whether the applicant would be suited to participate in the Commission in a different capacity (e.g. on a research committee).¹¹⁵ Fifty governments, organizations, and individuals initially applied to participate in the Cohen Commission; all but ten applicants were accepted.¹¹⁶ Accepted applicants included the federal government and the government of B.C., the Pacific Salmon Foundation, several unions representing federal employees, Rio Tinto Alcan Inc., the B.C. Salmon Farmers Association and the Seafood Producers Association of B.C.¹¹⁷ There were several groups representing commercial fishers and two representing recreational fishing interests, an anti-aquaculture coalition and a conservation coalition comprising a number

¹¹⁵ Cohen, *Final Report: Volume 1*, 16-17.

¹¹⁶ Several of the initial applications for standing were submitted by umbrella organizations or coalitions of applicants. Applicants who were not granted standing include: Rafe Mair and Damien Gillis (Journalist; Filmmaker); David Ellis (bookseller and recreational fisherman); Steve Bergh (commercial fisherman); Jack Emberly (concerned citizen); David Loewen (salmon activist and writer); Dave Smith (salmon enhancement volunteer); BC Wilderness Tourism Association; the Fraser River Salmon Table Society; the Native Brotherhood of BC and the Salmon Enhancement Habitat Advisory Board (Cohen, *Interim Report*, 173-183).

¹¹⁷ Rio Tinto Alcan operates a smelter in Kitimat and the associated dam on the Nechako River, a tributary of the Fraser. The company has agreements with both Crown governments to maintain water releases at a certain level to support salmon fisheries.

of ENGOs and environmental activism groups and individuals, including Alexandra Morton. In all, twenty-six First Nations and representative governments, councils or bands applied to the Cohen Commission for participant status, as well as James Walkus of James Walkus Fishing Co., Chief Harold Sewid from northeast Vancouver Island, and the Aboriginal Aquaculture Association; all were accepted with the exception of the Native Brotherhood of B.C.¹¹⁸

To reduce the costs and administrative burdens associated with granting standing to so many participants, Commissioner Cohen requested that the applicant groups, organizations and individuals group themselves into larger aggregations of their choosing.¹¹⁹ Many participants did so, including many of the individual First Nations governments and organizations, as well as anti-aquaculture groups, and some commercial fishing groups. In the final count, twenty groups representing fifty-three individuals, organizations and governments received participant status. This later became twenty-one, when the Heiltsuk Tribal Council requested individual standing due to conflicts within the group of which it was originally a member.¹²⁰ A full list of participants granted standing and their associated coalitions is in **Appendix 4**. Participants were offered funding – primarily for high legal fees and some travel expenses – to facilitate their engagement. This did not cover all travel expenses, nor the time of support staff working with legal counsel to prepare and present evidence before the Commission. In total, \$3,423,200 was allocated to support participants’ engagement in the Cohen Commission.¹²¹

¹¹⁸ The Native Brotherhood had put forward in their submission the organization’s wish to make a presentation to the Commission regarding the perspectives of coastal communities and fishers on sockeye decline. In his Ruling on Standing, Commissioner Cohen denied the application of the basis that “the presentation described by the Brotherhood would be more appropriately made through the public submission process (Cohen, *Interim Report*, 183). Following his selection in the spring of 2010, James Walkus elected to not proceed as a participant.

¹¹⁹ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, *Status Report: July 7th, 2010* (2010), 2, accessed March 2, 2016, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/PDF/COHENCOMMISSIONSTATUSREPORTJUL7.PDF#zoom=100.

¹²⁰ This, in part, was due the Heiltsuk being in a grouping of participants that included the Aboriginal Aquaculture Association; the Heiltsuk government has taken a “zero tolerance” stance on finfish aquaculture in Heiltsuk territory. The Laich-kwil-tach Treaty Society and Chief Harold Sewid were the other members of the group (Cohen, *Interim Report*, 18).

¹²¹ Cohen, *Interim Report*, 20.

2.3.3 Representing sockeye decline

Sockeye decline was represented in Commission documents primarily “in terms of abundance, productivity and diversity” and was depicted in jagged, definitive graphs (see figures 5.1 and 5.2 as examples).¹²² Prominently located on the first page of the introductory chapter of Justice Cohen’s final report and reproduced as exhibits for the hearings, these two graphs were taken to represent the problem that the Cohen Commission set out to investigate, on which they sought to make ‘findings of fact’ and about which they aimed to develop recommendations for remediation. Figure 2.1 shows the Fraser sockeye returns over 120 years. Between 1893 and 1913 there were “extraordinarily good returns every four years, but returns of well under 10 million in most intervening years” – a pattern of cyclical dominance that was common long before 1893.¹²³ The pattern shifted abruptly following the rockslide at Hell’s Gate in 1914, which dramatically reduced the returns of the subsequent dominant year (1918) to eight million fish.¹²⁴ 1918 levels were not exceeded until 1942. The Cohen Commission focused its attention on the years after 1994 when returns trended downwards. Figure 2.1 shows that the returns for 2007, 2008 and 2009 were particularly low, with fewer than two million sockeye returning, but numbers spiked to almost 30 million in the dominant run year of 2010 - shortly after anxiety about the unprecedented run of low returns called the Cohen Commission into existence.

¹²² Cohen, *Interim Report*, 242.

¹²³ Bruce I. Cohen, *Final Report: Volume 2- Causes of the Decline*. Ottawa: Minister of Public Works and Government Services, 2012, 101.

¹²⁴ For more information related to the Hell’s Gate slide, see Matthew Evenden, “Remaking Hells Gate: Salmon, Science, and the Fraser River, 1938-1948,” *BC Studies* 127, no. 3 (2000); Derek Ellis, “Construction - Hell’s Gate (Canada),” in *Environments at Risk: Case Histories of Impact Assessment*, ed. Derek Ellis (Berlin: Springer-Verlag, 1989); John Pease Babcock, “Conditions Above the Fishing Limits,” in *Report of the BC Commissioner of Fisheries* (1914); J.H. McHugh, “Report on the Work of Removal of Obstructions to Ascent of Salmon in the Fraser River at Hell’s Gate, Skuzzy [sic] Rapids, China Bar and White’s Creek during the year 1914, and the early portion of the year 1915,” in *Annual Report, Fisheries Branch, Department of Naval Service 1914-15* (1915).

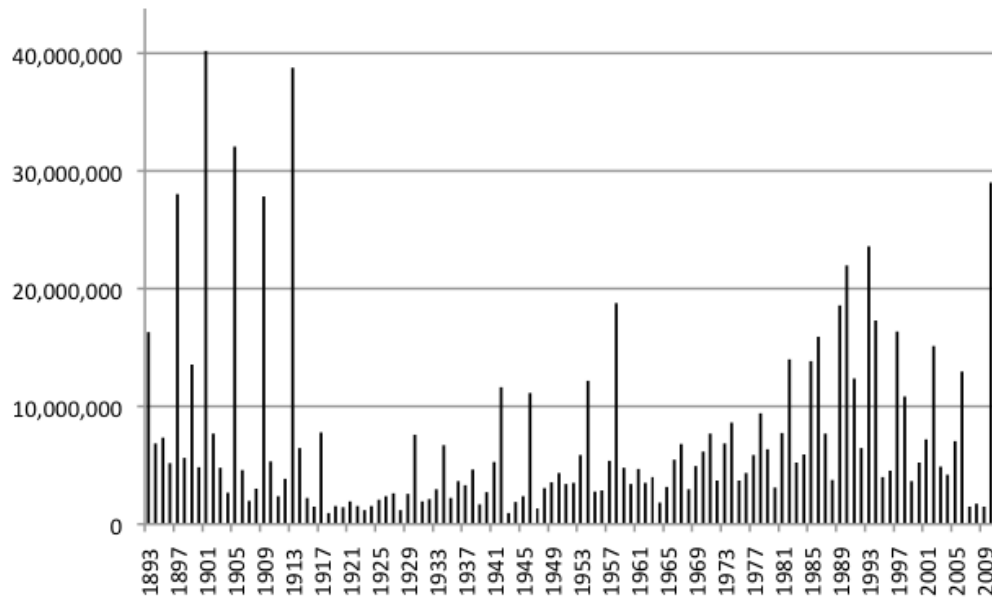


Figure 2.1 Total Fraser River Sockeye Returns 1893 – 2011

Source: The Uncertain Future of Fraser River Sockeye – Volume 1 – The Sockeye Fishery. Final Report – Oct 2012.
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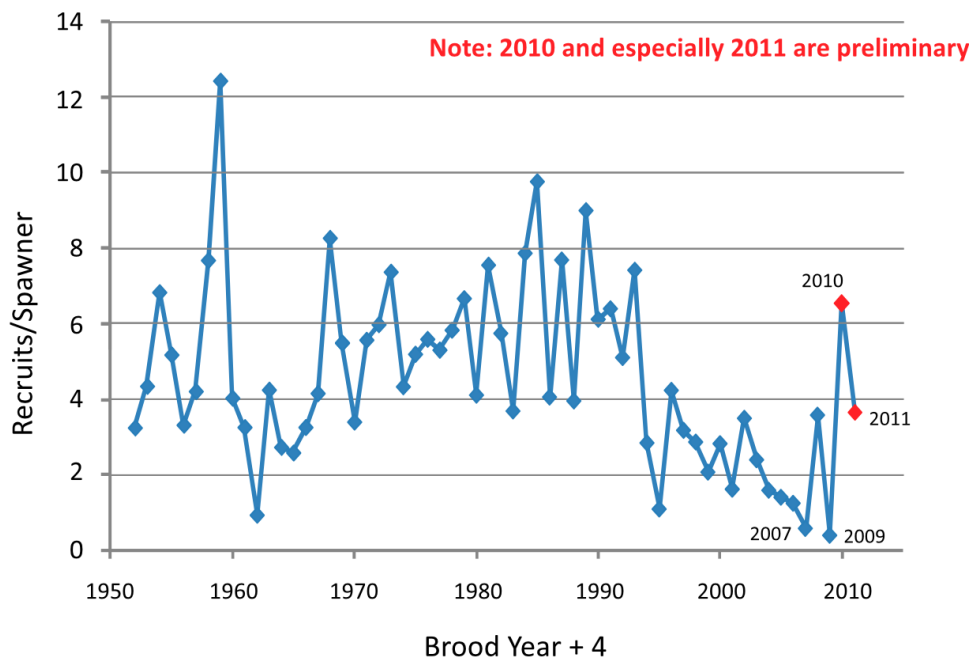


Figure 2.2 Fraser Sockeye Adult Returns per Spawner, 1952 – 2011

Source: The Uncertain Future of Fraser River Sockeye – Volume 1 – The Sockeye Fishery. Final Report – Oct 2012.
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Figure 2.2 represents sockeye productivity in terms of ‘recruits,’ or the ratio of adults returning to spawn in a given year to the number of spawning adults four years previously. Although the number of recruits changes from year to year, from 1950 to 1990 the average was approximately six recruits per spawning adult. However, the graph indicates that since the early 1990s there has been a marked downturn in sockeye productivity relative to the previous twenty years, with just over or less than one recruit per spawner returning to the Fraser in 2007 and 2009. The replacement level for salmon is approximately one ‘recruit’ for every salmon that returned four years previously: if there are fewer progeny than parental numbers, the stock is considered to be in decline.¹²⁵

2.3.4 Understanding sockeye decline

To identify the principle causes of declining sockeye numbers (as identified and depicted in the graphs above), the Commission charged a legal team to review sockeye fisheries-related reports released since the early 1980s. Beginning with Peter Pearce’s 1982 report on the Commission on Pacific Fisheries Policy, *Turning the Tide*, the team reviewed dozens of papers, inquiry reports, investigations, and examinations, many of them concerned with salmon and particularly Fraser River sockeye. Based on the 700 recommendations put forward in these reports Commission Counsel identified twenty broad topics for further investigation “relating to fisheries management, fish biology, and the ecosystem.”¹²⁶ These were refined further, until they “eventually became an outline for the issues that the commission intends to investigate during its proceedings.”¹²⁷ The legal team then identified experts on each topic, to develop a draft witness list and to prepare evidence to present on particular issues at the Commission’s hearings.¹²⁸ Finally, the Commission established a Scientific Advisory group comprised of “six prominent salmon fisheries and conservation experts” to assist Justice Cohen with scientific issues related

¹²⁵ Cohen, *Interim Report*, 124.

¹²⁶ Cohen, *Final Report: Volume 1*, 50; Cohen, *Interim Report*, 128.

¹²⁷ Cohen, *Final Report: Volume 1*, 50.

¹²⁸ *Ibid.*

to fish biology and ecosystem interactions relevant to the Commission's mandate.¹²⁹ In July of 2010 the Commission reported that it was "currently considering appointing to the panel a recognized expert in Aboriginal traditional knowledge;" however, no additional panel member was appointed.¹³⁰

In mid-June 2010, Commission participants were invited to respond to the issues slated for investigation at the Commission hearings, either through the submission of written comments or attendance and participation in several days of hearings intended to elicit "first, whether there were issues other than those listed in the Discussion Paper [...] that the commission ought to investigate and, second, the relative priority of the issues that the commission ought to investigate."¹³¹ The initial draft of issues slated for investigation included the DFO's organizational structure, and its harvesting and conservation policies and practices. The latter category included: investigations of habitat enhancement and restoration; protecting salmon and salmon biodiversity; conserving habitat and ecosystems; and, habitat-related enforcement. Sockeye biology and ecosystem issues were also slated for investigation. These included such things as water pollution, salmon farms, climate change effects, non-retention fisheries and diseases and parasites and broad contextual issues including freshwater and marine

¹²⁹ The scientific advisory panel was headed by fisheries consultant Dr. Levy, a recognized scientific expert who has authored over 50 reports on Fraser River sockeye salmon. Also included on the panel were Dr. Carl Walters, Professor Emeritus at the University of B.C. Fisheries Centre, who specializes in fish population dynamics; Dr. Brian Riddell, CEO and President of the Pacific Salmon Foundation and former DFO scientist who played a role in the development of the Wild Salmon Policy; Dr. Paul LeBlond, Emeritus Professor in oceanography at UBC; Dr. John Reynolds, Professor at Simon Fraser University specializing in aquatic ecosystems; Dr. Patricia Gallagher, Director of Continuing Studies in Science and an Adjunct Professor at SFU, who specializes in salmon physiology and selective fishing; and Dr. Thomas Quinn, Professor at the University of Washington in the School of Aquatic and Fishery Sciences. Dr. Brian Riddell left the panel in July, 2010 in order to be available to serve as a witness at the Cohen Commission hearings (Mark Hume, "Six leading scientists to advise Cohen Commission," *The Globe and Mail*, April 22, 2010, accessed November 16, 2015, <http://www.theglobeandmail.com/news/british-columbia/six-leading-scientists-to-advise-cohen-commission/article1211690/>; Ian Bailey, "Senior Scientist Quits Cohen Commission Panel," *The Globe and Mail*, July 7, 2010, accessed November 16, 2015, <http://www.theglobeandmail.com/news/british-columbia/senior-scientist-quits-cohen-commission-panel/article4323433/>).

¹³⁰ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, *Status Report: July 7th, 2010*, 8; *Status Report: March 24, 2010* (2010), 5, accessed March 2, 2016, http://epe.lac-bac.gc.ca/100/206/301/pcobcp/commissions/cohen/cohen_commission/LOCALHOS/EN/PDF/COHENCOMMISSIONSTATUSREPORTMAR2.PDF#zoom=100.

¹³¹ Cohen, *Interim Report*, 129. The process for and selection of commission participants is discussed in the following section. These were released on June 3rd in the form of a discussion paper entitled *Issues that the Commission Intends to Investigate* (Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, *Discussion Paper: Issues that the Commission Intends to Investigate* (2010), 4, accessed March 2, 2016, http://epe.lac-bac.gc.ca/100/206/301/pcobcp/commissions/cohen/cohen_commission/LOCALHOS/EN/PDF/DISCUSSIONPAPER.PDF#zoom=100).

ecology and sockeye production dynamics.¹³² A full list of the issues that the commission originally intended to investigate is available in Appendix 5.

With this list in hand, counsel for the participants were invited to provide “their final input on the issues to be investigated during the evidentiary hearings.”¹³³ The resulting notable additions included two days of hearings dedicated to the discussion of “Conservation, Sustainability and Stewardship;” three days of hearings on “Aboriginal Worldview, Cultural Context and Traditional Knowledge;” one day of hearings on “Perspectives on the Aboriginal and Treaty Rights Framework Underlying the Fraser River Sockeye Salmon Fishery;” and, fourteen days allocated to the Wild Salmon Policy, a high level plan for the future management of Pacific wild salmon developed by the DFO in consultation with First Nations and stakeholders that, at the time of the Cohen Commission hearings, had yet to be fully implemented by the DFO. Appendix 6 summarizes the final list of issues investigated, with hearing dates.

The Commission primarily gathered evidence from three sources: public submissions, technical and policy reports, and evidentiary hearings. Public submissions, of which the Commission received over 900, were reviewed by the Commissioner and are referenced throughout the Cohen Commission Final Report. The Commission also contracted technical reports summarizing scientific research on fifteen different issues slated for investigation. These dealt with matters such as diseases and parasites, predators, and climate change impacts on Fraser River sockeye salmon. In addition, Commission Counsel prepared over twenty reports on “a wide range of legal topics and on numerous salmon management policies and practices.”¹³⁴

¹³² A full summary of issues that the Commission initially intended to investigate is available in Appendix 5.

¹³³ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, *Status Report: July 7th, 2010*, 5.

¹³⁴ Cohen, *Interim Report*, 259; Cohen, *Final Report: Volume I*, 6.

Evidentiary hearings were held at the Federal Court in downtown Vancouver between October 2010 and September 2011, with an additional three days of hearings held in December 2011 to consider new evidence regarding infectious salmon anemia (ISA) virus. A total of 179 witnesses came before the Commission over 133 days of evidentiary hearings, and the process followed court procedures, with witnesses being put under oath, followed by questioning by Commission counsel and cross-examination by participants or participants' counsel. Over two thousand documents were filed as exhibits during the hearing process, and were also considered in the Commission's final report.¹³⁵ In addition to the formal evidence gathering process, public fora were held before the evidentiary hearings to allow Justice Cohen "to hear from members of the public on the issues [he was] mandated to consider."¹³⁶ These fora took place in ten coastal and Fraser River communities in the fall of 2010, including Lillooet, Campbell River, Chilliwack, and Kamloops. Site visits also took place at this time, with Justice Cohen and his entourage visiting acoustic monitoring sites, cannery museums, a salmon aquaculture site, a hatchery, a sockeye spawning area on the Adams River and several First Nations' fishing sites, where the Commission staff observed traditional fishing and preserving techniques. In the Commission's final report, Justice Cohen stated that these community and site visits provided him with "context on and information about various aspects of the sockeye fishery" and thanked those who attended the public forums, including First Nations, for their passionate, eloquent and thoughtful presentations.¹³⁷

¹³⁵ Cohen, *Final Report: Volume 3*, 86.

¹³⁶ Cohen, *Final Report: Volume 1*, 23.

¹³⁷ *Ibid.*, 24.



Figure 2.3 Cohen Commission Public Forum in Lillooet, August 18th 2010

Source: Personal collection of Elena Edwards. Reproduced with the permission of Elena Edwards.



Figure 2.4 Justice Cohen observes a Stó:lō youth from Chiyó:m filet a salmon, August 12th 2010

Source: Personal collection of Elena Edwards. Reproduced with the permission of Elena Edwards.

2.4 Summary

Recent scholarship suggests that commissions of inquiry have direct and diffuse impacts on Canadian policy development, as well as a broader potential to make possible the consideration of alternate perspectives and policies to invigorate and challenge the status quo. Commissions of inquiry, particularly those preoccupied with question related to improved management of natural resources, share the same pre-occupations as formalized environmental planning processes. Both provide an important forum for different actors, including First Nations, to advance their perspectives on the appropriate way forward for managing lands, water and the wildlife that flow through them. While policy impacts may or may not arise from these processes over the short term, their long term and diffuse political effects continue to be a subject of scholarly interest and speculation.

The Cohen Commission's broadly articulated Terms of Reference granted Commissioner Cohen, staff and Commission participants the opportunity to explore a broad spectrum of evidence and perspectives about the cause(s) of declining sockeye numbers and to suggest ways of reversing the trend. The significant increase in the number and proportion of First Nations governments and organizations choosing to engage in the Cohen Commission marked a significant departure from previous commissions of inquiry related to salmon in British Columbia. This is similarly suggested by the changes made to the issues slated for investigation in the Commission proceedings, including the three days dedicated to "Aboriginal Worldview, Cultural Context and Traditional Knowledge" – a topic without precedent in historic Pacific salmon-related commissions of inquiry. However, the efficacy of First Nations engagement in resource management planning, as well as the inclusion of the knowledges and perspectives of First Nations peoples in those processes, remain uncertain.

Chapter 3. Mechanisms for Transformative Planning

Indigenous peoples in Canada are increasingly involved in decisions affecting their territories and the wildlife within them. Legal and political gains related to Aboriginal rights and title have made it difficult for Crown governments and/or corporations to maintain unilateral authority in resource management decision-making processes, and more collaborative processes, policies and institutions of environmental management and governance have emerged over the past four decades. For Indigenous peoples in Canada, contemporary collaborative processes include natural resource co-management arrangements with Crown governments, an increased role in environmental impact assessments, and partnerships between Indigenous communities and corporations, amongst others. Indigenous authority within these processes range from shared environmental governance, whereby Indigenous communities have an equal or significant share in decision-making power, to collaborative management processes that operate on a more consultative basis. In turn, Indigenous communities are increasingly leveraging their rights to engage with environmental planning and management processes within and across their traditional territories.

While this shift towards collaboration suggests a growing role for Indigenous peoples in the management of environments and natural resources, debate continues over the efficacy of these processes for furthering the “interrelated goals of development, conservation, social justice, and self-determination” held by Aboriginal peoples in Canada.¹³⁸ Two divergent schools of thought are evident in the growing literature on Indigenous peoples’ roles in settler-colonial resource conservation processes and policies. The first school emphasizes the continuity of colonial ways of knowing and being in the world (or “coloniality”) as a significant challenge for Indigenous engagement in state-led environmental management. The second emphasizes the

¹³⁸ Ryan Bowie, “Indigenous Self-Governance and the Deployment of Knowledge in Collaborative Environmental Management in Canada,” *Journal of Canadian Studies* 47, no. 1 (2013): 92.

transformative (or decolonizing) potential and, in some cases, outcomes of Indigenous collaboration in these processes. In what follows I review the former literature before considering a second, recent, body of work in Indigenous planning and related fields that offers a consistent analytic approach to the study of environmental planning and resource management processes. This is sometimes termed “transformative planning;” a theoretical framework that takes seriously both the constraints on Indigenous people choosing to engage in state-led processes and the power of Indigenous engagement to influence and/or transform state-led processes and outcomes in support of decolonizing natural resource management.

3.1 Critiques of State-led Resource Management and Planning

A significant body of critical work examining the intersections between Indigenous peoples and settler-colonial resource conservation processes and policies has been produced in disciplines as diverse as Anthropology, Ethnoecology, Environmental History and Indigenous Planning. Early work by anthropologists working in Canada’s northern territories and northwestern coast has been particularly instrumental in advancing a conceptual framework for understanding Indigenous engagement with state-led resource management and planning processes.¹³⁹ This work foregrounds the ongoing coloniality of these processes and their effects. Historians of the environment have explored histories of preservation and resource management initiatives that have dispossessed Indigenous people of access to their traditional territories and/or access to their traditional foods.¹⁴⁰ Ethnoecologists offer a nuanced analysis of the wealth

¹³⁹ Hugh Brody, *Maps and Dreams*, (New York: Pantheon Books, 1981); Julie Cruikshank, *The Social Life of Stories: Narrative and Knowledge in the Yukon Territory* (Vancouver, BC: UBC Press, 1998); *Do Glaciers Listen? Local Knowledge, Colonial Encounters, and Social Imagination* (Vancouver, BC: UBC Press, 2005); Charles Menzies, *Traditional Ecological Knowledge and Natural Resource Management* (Lincoln: University of Nebraska Press, 2006); “Dm sibilhaa’nm da laxyuubm Gitxaala: Picking Abalone in Gitxaala Territory,” *Human Organization* 69, no. 3 (2010); Paul Nadasdy, “The Politics of TEK: Power and the Integration of knowledge,” *Arctic Anthropology* 36, no. 1-2 (1991); *Hunters and Bureaucrats: Power, Knowledge, and Aboriginal-State Relations in the Southwest Yukon* (Vancouver, BC: UBC Press, 2003); “Reevaluating the Co-management Success Story” *Arctic* 1, no. 1 (2003); “Transcending the Debate over the Ecologically Noble Indian: Indigenous Peoples and Environmentalism,” *Ethnohistory* 52, no. 2 (2005); “The Anti-politics of TEK: The Institutionalization of Co-management Discourse and Practice,” *Anthropologica* 47, no. 2 (2005).

¹⁴⁰ Jane Carruthers, *The Kruger National Park: A Social and Political History* (Pietermaritzburg: University of Natal Press, 1995); Caroline E. Grego, “Maybe National Park: Consultation, Conservation, Conflict in the Okanagan-Similkameen,” *BC Studies* 186, no. 3 (2015); Bruce W. Hodgins, Shawn Heard and John S. Milloy, *Co-existence?: Studies in Ontario-First Nations Relations*, (Peterborough: Frost Centre for Canadian Heritage and Development Studies, Trent University, 1992); Sean Kheraj, *Inventing*

of Indigenous knowledge regarding natural resource management and document the impacts of state-led resource management on Indigenous culture and food security.¹⁴¹ More recently, the nascent field of Indigenous Planning has joined this critical chorus, focusing specifically on the ongoing challenges faced by Indigenous peoples engaging in regional and resource planning processes in settler colonial contexts.¹⁴² These analyses contribute to a broader intellectual concern with the “diverse, uneven and contested impacts of colonialism on the cultures of colonizing and colonized peoples.”¹⁴³ Scholars such as Edward Said, Gayatri Spivak and Dipesh Chakrabarty, among others, have stressed the importance of understanding how colonial logics continue to shape the lived experiences of former colonizers and colonized peoples.¹⁴⁴ A key objective in this line of inquiry is to advance understanding of the politics of knowledge in former colonies and the material and discursive *effects* of the ways in which this knowledge is generated, produced and disseminated.

Influential studies by anthropologists Paul Nadasdy and Julie Cruikshank bring a (post)colonial framework to bear on Indigenous intersections with state-led resource management and planning. Nadasdy’s ethnographic research on the “project of integration” that was taking place in Kluane territory in southwestern Yukon at the turn of the twenty-first century exposed the persistent asymmetrical relationships that shaped the struggle over and for

Stanley Park: An Environmental History (Vancouver, BC: UBC Press, 2013); Mark David Spence, *Dispossessing the Wilderness: Indian Removal and the making of the National Parks* (New York : Oxford University Press, 1999); Loo, *States of Nature*; Ingram, *Wildlife, Conservation, and Conflict in Quebec*; Jacoby, *Crimes against Nature*; Sandlos, *Hunters at the Margins*; Warren, *The Hunter's Game*; Newell, *Tangled Webs of History*.

¹⁴¹ Fikret Berkes, Carl Folke and Johan Colding, eds., *Linking Social and Ecological Systems: Management Practices and Social Mechanisms for Building Resilience* (Cambridge: Cambridge University Press, 1998); Fikret Berkes, *Sacred Ecology: Traditional Ecological Knowledge and Resource Management* (Philadelphia, PA: Taylor & Francis, 1999); Nancy J. Turner, *The Earth's Blanket: Traditional Teachings for Sustainable Living* (Vancouver, BC: Douglas & McIntyre, 2005); Nancy Turner, Ron Ignace and Marianne Boelscher, “Traditional Ecological Knowledge and Wisdom of Aboriginal Peoples in British Columbia,” *Ecological Applications* 10, no. 5 (2000).

¹⁴² Marcus B. Lane, “Participation, Decentralization, and Civil Society: Indigenous Rights and Democracy in Environmental Planning,” *Journal of Planning Education and Research* 22, no. 4 (2003); Libby Porter, “Producing Forests: A Colonial Genealogy of Environmental Planning in Victoria, Australia,” *Journal of Planning Education and Research* 26, no. 4 (2007); *Unlearning the Colonial Cultures of Planning* (Burlington, VT: Ashgate, 2010).

¹⁴³ Gregory, Johnston, Pratt, Watts and Whatmore, *Dictionary of Human Geography*, 561.

¹⁴⁴ Edward W. Said, *Orientalism* (New York: Pantheon Books, 1978); Gayatri Chakravorty Spivak, “Can the Subaltern Speak?” in *Marxism and the Interpretation of Culture*, eds. C. Nelson and L. Grossberg (Basingstoke: Macmillian Education, 1988); Gayatri Chakravorty Spivak, *The Post-Colonial Critic: Interviews, Strategies, Dialogues*, ed. Sarah Harasym (New York : Routledge, 1990); Dipesh Chakrabarty, *Provincializing Europe: Postcolonial Thought and Historical Difference* (Princeton, N.J. : Princeton University Press, 2000).

knowledge in ostensibly collaborative natural resource management processes. Through an analysis of the operations of the Ruby Range Steering Committee, a collaborative management board established to address a decline in Dall Sheep in the region, Nadasdy lays bear the challenges to genuine power-sharing between First Nations and government bureaucrats in resource management decision-making processes. He documents how Kluane hunters are compelled to make their distinctive perspectives and knowledge systems *intelligible* to bureaucrats schooled in western ways of thinking about wildlife management if they want to see their knowledge integrated into management plans and policies; for example, through recalling areas where they have seen Dall Sheep, as well as the approximate number of sheep they saw. However, some Indigenous knowledges defy translation and, in consequence, remain left out of management strategies. One example of this is the perspective of Kluane people regarding precautionary management in the face of uncertain or incomplete knowledge. In traditional knowledge studies compiled for the use of the Committee, Kluane people expressed their deep concern for the dwindling regional Dall Sheep population, and the impact that this has had on their ability to hunt for a preferred traditional food:

Little Arm [of Kluane Lake] used to have loads of sheep. Now there's nothing, down by my cabins, anyways.... There was sheep everywhere ... Little Arm, all over there right down to the lower cabin. See there was a sheeplick there, and they'd come down on that mountain. Now you don't see nothing there, not even a fresh track, up in that area, nowhere. We used to go just there and get our meat and come home. That was it. Now you can't; there's nothing.¹⁴⁵

The perspective shared by Kluane people was because of the uncertainties surrounding the reasons for the decline, territorial resource managers had to act quickly in order to protect the remaining population and, by extension, the Kluane people's way of life. However, in spite of these persistent and emphatic calls for action, resource managers continued to allow some game hunting of Dall Sheep in the area. That this deeply felt perspective was excluded from a management strategy for Dall Sheep provides a compelling example of how Indigenous

¹⁴⁵ Nadasdy, *Hunters and Bureaucrats*, 177; Grace Chambers, cited in Nadasdy, *Hunters and Bureaucrats*, 174.

knowledge is evaluated by Canadian resource managers and unevenly integrated in resource management policy.¹⁴⁶

Anthropologist Julie Cruikshank echoes this line of argument in her account of human-glacier relations in the southwest Yukon. The settlement of land claims in and around the Kluane National Park and Reserve in the 1990s created new co-management relationships between federal park authorities and the Kluane, Champagne and Aishihik Nations. However, the imperative to consider traditional knowledge in the development of management plans was complicated by the fact that members of the three Nations had been effectively banished from the area since the early 1940s, when it was set aside as a hunting reserve by the Yukon government. Nevertheless, in the early twenty-first century these Nations were asked by Kluane Park officials to document their “traditional knowledge” for integration into the management of parklands and resources. Cruikshank finds in this a fundamental paradox in the integration of TEK into state resource management: as the quest to collect and integrate traditional knowledge accelerates, the localness or place-specificity of knowledge “sometimes seems to disappear.”¹⁴⁷ Three generations of Champagne, Aishihik and Kluane people were restricted from hunting within the boundaries of Kluane Park; all they knew of the land within the Park came from stories told by their grandparents. More than this, Cruikshank argues, the process of developing databases of Indigenous knowledge for park management purposes fundamentally changes the nature of that knowledge, turning it into “an object for science rather than as intelligence that could inform science.”¹⁴⁸ In other words, both Nadasdy and Cruikshank conclude that the *opportunity* presented by Indigenous knowledge, to rethink “how people should relate to the world around them” is lost at the moment integration occurs.¹⁴⁹

¹⁴⁶ Nadasdy, *Hunters and Bureaucrats*, 183.

¹⁴⁷ Cruikshank, *Do Glaciers Listen?* 253.

¹⁴⁸ *Ibid.*, 257.

¹⁴⁹ Nadasdy, *Hunters and Bureaucrats*, 122. This critique is not contained to Indigenous Knowledge, however; similar concerns have been raised in the context of local fishers knowledge on the eastern seaboard by Grant Murray, Dean Bavington and Barbara Neis who suggest that “when viewed as only an instrumental strategy to achieve specific goals, the way can be paved for co-optation and

Following these leads, other scholars have produced increasingly nuanced analyses of the different ways in which state-led resource management and planning processes continue to marginalize Indigenous communities in spite of growing recognition of Indigenous peoples' rights to engage in these types of processes. One example is provided by Carly Dokis, whose thoughtful ethnographic research on Sahtu Dene engagement in land claim and environmental impact assessment projects reveals a prescriptive and perfunctory practice that fails "to take seriously the moral nature of Sahtu Dene relationships with the landscape" and results in inaccurate assessments of potential impacts of industrial development for Sahtu Dene. Dokis argues that consultations about resource decision making in the region had "little in common with what a consultative relationship ought to be" because they were "ultimately unilateral" with crown and corporate entities retaining the final say over resource management decisions. Rather than providing an avenue for "genuine and appropriate consideration of the needs, rights, and visions of aboriginal peoples," contemporary consultation processes serve, in Dokis' telling, to legitimate resource management decisions even when those consulted have significant concerns about a proposed development in their territories. Other researchers have advocated a wide variety of inclusive approaches, including the integration of Indigenous Knowledge into environmental impact assessment processes, wildlife management, Traditional Use and Occupancy studies, and environmental planning processes. Others have focused on the negotiation of Impact Benefit Agreements between First Nations and development proponents, and shared environmental decision-making processes (collaborative, joint and co-management). Taken together, these studies have highlighted what planning scholars Janice Barry and Libby Porter describe as:

the mining of LEK to serve the goals of fisheries managers and others with the power to expropriate knowledge and use it as a means to serve their ends rather than those of fishers." (Grant Murray, Dean Bavington and Barbara Neis, "Local Ecological Knowledge, Science and Participation and Fisheries Governance in Newfoundland and Labrador: A Complex, Contested and Changing Relationship" in *Participation in Fisheries Governance*, ed. Tim S. Gray (Netherlands: Springer, 2005), 273).

... an essential tension in the governance of (post)colonial societies....a tension between the modern state's attempt to accommodate rights within existing institutional and legal arrangement and Indigenous aspirations for a more fundamental reconfiguration of their political and spatial relationships.¹⁵⁰

Doubting whether state-led processes can further Indigenous interests in resource management in their traditional territories, these studies have generally concluded that efforts at inclusion and integration perpetuate, and in some instances exacerbate, inequalities between Indigenous and settler communities. The conflation of cooperation and consent in contemporary state-led resource management and planning processes remains, in these accounts, a significant challenge for Indigenous people choosing to engage in these types of processes; in the words of Dokis: “it is through participating in consultation that Indigenous people have so much to lose.”¹⁵¹

In sum, such work has furthered understanding of how resource management and planning processes perpetuate colonial ways of thinking and being in the world *in spite of* an increased role for Indigenous peoples and voices within these processes. Yet they identify few means – options, tools, mechanisms – by which Indigenous peoples might have their perspectives taken seriously, without distortion, in a shared governance structure for environmental decision making. Possible solutions, when articulated, remain vague: a “reconciliatory approach” is needed; local perceptions and knowledge should be “taken seriously;” resource management should entail “genuine power sharing” and a degree of “self-determination” for Indigenous peoples.¹⁵² For all their emphasis on critique, studies in a (post)colonial conceptual framework have generally failed to ask, and thus to answer, two fundamental and practical questions: “To what end is this critique directed?” and “How are these lessons to be applied?” The *constraints* on Indigenous engagement in conservation and planning processes are by no means unknown to Indigenous nations and their leadership; yet many Indigenous governments and representative First Nations organizations persist with state-led and collaborative resource management and

¹⁵⁰ Barry and Porter, “Indigenous Recognition in State-based Planning Systems,” 171.

¹⁵¹ Dokis, *Where the Rivers Meet*, 135.

¹⁵² *Ibid.* 160.

planning in spite of their deficiencies, in part because they are often faced with few viable alternatives.¹⁵³ If the *critical purpose* of (post)colonial research is to advance decolonization through “everyday acts of resurgence which regenerate Indigenous knowledges, epistemologies, and ways of life” then it is vital to move through critique to action and the transformation of the power relations embedded in resource management and planning processes in postcolonial settings.¹⁵⁴

3.2 Conceptualizing Transformation in Resource Planning and Management

Indigenous planning scholars have recently sought opportunities and means to advance Indigenous rights and title through state-led planning processes. Their research builds on the work of planning theorist John Friedmann, whose 1987 treatise *Planning in the Public Domain* outlines a productive dialectic between what he termed “radical” and “traditional” planning modes. Friedmann defines radical planning as “the process of identifying and implementing strategies for transforming structures of oppression” and traces its intellectual origins to utopian, social anarchist and Marxist/historical materialist traditions of thought.¹⁵⁵ For Friedmann, radical planning is a necessary intervention into what he describes as a moment of crisis in planning, where traditional planning modes are failing to serve the interests and needs of civil society. Friedmann argues that in order to move past this crisis a “re-centering of political power in civil society” is required, with the goal of social reconstruction and the building of a society that embraces equality, grass-roots democracy, anti-oppressive society, collective self-reliance and ecological interdependence. Radical planning differentiates itself from what Friedmann

¹⁵³ There are, of course, some exceptions to this. One recent analysis by Sharon Hausam explores the reasons why four Native American tribes (the pueblos of Haak'u, Kawaik, A:shiwi, and Diné) choose to not engage in a regional water planning process. The author found that the lack of engagement by the four tribes was not out of a lack of interest or concern for the water and their rights to it, but rather their belief that engagement in a regional planning process would not suitably express these interests, and that a bilateral approach with the federal government was a better approach to having their goals concerning their water rights met (Sharon Hausam, “Maybe, Maybe Not: Native American Participation in Regional Planning,” in *Reclaiming Indigenous Planning*, eds. Ryan Walker, Ted Jojola and David Natcher (Montreal; Kingston: McGill-Queen's University Press, 2013).

¹⁵⁴ Eric Ritskes, “What is decolonization and why does it matter?” September 21st 2012, accessed October 5, 2015, <https://intercontinentalcry.org/what-is-decolonization-and-why-does-it-matter/>.

¹⁵⁵ John Friedmann, *Planning in the Public Domain: From Knowledge to Action* (Princeton, NJ: Princeton University Press, 1987), 389.

terms “traditional” modes of planning by: a) its concern with structural change and emancipatory values; b) openness to a multiplicity of routes to social progress; and c) engagement in radical political practice.¹⁵⁶ Friedmann argues that there is a need for both forms of planning in the struggle for social transformation. Because radical planning:

... encounters the powers of the state and corporation on all sides, the theory is self limiting. It points to a dialectical process in which both traditional planning modes and radical planning modes interact to produce the kind of society we are able, collectively, to achieve.¹⁵⁷

Between the polarities of the status quo and social revolution, Friedmann identifies a middle ground of “system changing practices through which radical proposals become integrated with the structure of the guidance system [‘traditional’ planning] of society.”¹⁵⁸ This idea of working to find the transformative possibilities within this ‘middle ground’ has been taken up by Indigenous planning scholars over the past decade, following Leonie Sandercock’s 2004 call for planners to use their knowledge of state-based structures to further Indigenous interests and aspirations:

The knowledge and values underpinning such state processes and structures constitute the rules of the game at the moment and cannot be done away with, although they may need radical revision. It is necessary for indigenous organizations to operate within state-based systems and to find strategic moments of opportunity that result in the recognition of indigenous rights.¹⁵⁹

Australian planning theorist Marcus Lane has been instrumental in developing a framework for understanding how transformative planning can *work* in an Indigenous context – what Lane describes as a “deliberate attempt to transform the institutional bases of indigenous subjugation and dependence.”¹⁶⁰ In contrast with much of the critical (post)colonial planning literature that treats the state as “a reflection of dominant social forces,” Lane advances an understanding of the state as “an actor embedded in a web of social relations” – a state-in-society model that

¹⁵⁶ John Friedmann, *Planning in the Public Domain*, 250.

¹⁵⁷ Ibid. 15.

¹⁵⁸ Ibid. 32.

¹⁵⁹ Leonie Sandercock, “Commentary: Indigenous Planning and the Burden of Colonialism,” *Planning Theory & Practice* 5, no. 1 (2004): 121.

¹⁶⁰ Hibbard, and Lane, “Doing it for Themselves,” 182.

emphasizes how states and societies both constitute and transform one another.¹⁶¹ Following a state-in-society model, Lane suggests, makes possible an understanding that “indigenous marginalization is not an inevitable consequence of state efforts to allocate and regulate land and natural resources” and underlines the transformative potentiality of both Indigenous action and state responsiveness in planning.¹⁶² Lane does not go so far as to suggest that engaging in state-led planning processes should be the only planning priority; rather, he suggests that “the state can provide part of the forum for the indigenous struggle,” with parallel work taking place in pursuit of Indigenous title and the protection of traditional Indigenous territories, as well as through community-based planning to meet local goals and agendas (for instance, in areas such as healthcare, education, housing, and food security).¹⁶³

The applicability of Lane’s transformative planning framework for evaluating the effects of First Nations engagement in environmental planning processes in Canada has been demonstrated in recent research by Michael O’Flaherty, Iain Davidson Hunt and Micheline Manseau on land use planning in the Whitefeather Forest in northwestern Ontario. They begin their analysis by documenting how the Pikangikum First Nation’s goals for self-determination were challenged in debates about the appropriate scale for conservation of woodland caribou habitat as it seemed that “two very different worldviews...[were] slipping past one another”.¹⁶⁴ While the Pikangikum community maintained that they were not responsible for a provincial decline in woodland caribou (and, in fact, caribou populations in the Whitefeather Forest were found to be at healthy levels), provincial officials and conservation organizations insisted that caribou habitat had to be managed at a provincial scale and that protected areas, off-limits to Pikangikum and other hunters, had to be established within Whitefeather Forest. This was

¹⁶¹ Marcus Lane, “The Role of Planning in Achieving Indigenous Land Justice and Community Goals,” *Land Use Policy* 23, no. 4 (2008): 388.

¹⁶² Ibid.

¹⁶³ Lane, “The Role of Planning...” 392.

¹⁶⁴ Michael O’Flaherty, Iain J. Davidson-Hunt and Micheline Manseau, “Indigenous Knowledge and Values in Planning for Sustainable Forestry: Pikangikum First Nation and the Whitefeather Forest Initiative,” *Ecology and Society* 13, no. 1 (2008): 6.

inimical to Pikangikum views of the appropriate approach to forest management, which supports broad habitat conservation over the creation of hunting preserves. In spite of these differences, O’Flaherty, Hunt and Mansea identify a number of characteristics of the land-use planning process to date that they suggest could enable consensus on planning outcomes, including: the leadership role of the Pikangikum Nation within the project; the recognition by the Crown and Pikangikum Nation of the vitality and validity of local interests; the acceptance by both parties of other interests (including governments, conservation organizations and outfitters); and, a previously established commitment to respectful dialogue and consensus building.

Recent research on land-use planning for the Great Bear Rainforest (GBR) provides another illustration of how planning spaces can become sites for the recognition and accommodation of Indigenous rights and title, even in areas where treaties, land claim processes and/or court cases have yet to formally recognize title.¹⁶⁵ The 2006 GBR Plan, encompassing 6.4 million hectares of temperate rainforest along the coast of central and northern British Columbia, is the result of one of the largest and longest collaborative planning processes in the province’s history. The provincial government, twenty-six different First Nations who claim territory in the GBR, and various stakeholder groups - including loggers, environmentalists, and tourism operators - engaged in the planning process for approximately two decades. In their 2010 assessment of the collaborative model for the GBR planning process, Gordon McGee, Andrea Cullen and Thomas Gunton credit the successful completion of the GBR plan to the eventual establishment of a two-tiered governance process. In the first tier, interest groups and First Nations were asked to prepare a draft plan that was to be submitted, in the second stage of the process, to a group representing First Nations and the province of BC. This second group reviewed and amended the

¹⁶⁵ Michael Howlett, Jeremy Rayner and Chris Tollefson, "From Government to Governance in Forest Planning? Lessons from the Case of the British Columbia Great Bear Rainforest Initiative," *Forest Planning and Economics* 11, no. 1 (2009); Gordon McGee, Andrea Cullen and Thomas Gunton, "A New Model for Sustainable Development: A Case Study of The Great Bear Rainforest Regional Plan," *Environment Development Sustainability* 12, no. 1 (2010); Margaret Low and Karena Shaw, "First Nations Rights and Environmental Governance: Lessons From The Great Bear Rainforest," *BC Studies*, 172 (Winter 2011/2012).

draft plan through a government-to-government negotiation process. This latter stage, McGee, Cullen and Gunton argue, was a key component to the success of the GBR process, because it allowed parties to adapt to “the distinct cultural characteristics and legal status of First Nations in BC,” including First Nations’ rights to gain a livelihood in their traditional territories.¹⁶⁶ Under the GBR plan, almost thirty percent of the land area is protected from future industrial extraction processes; the remainder is slated to be managed according to an Ecosystem-based Management (EBM) framework that supports sustainable economic development in the region (including tourism, logging and hunting) and protects viable ecological systems.

Margaret Low and Karena Shaw provide additional nuance to the arguments set out above, suggesting that the GBR planning process represents broadly “what can and might happen when Aboriginal peoples demand recognition of their rights and participate actively in the processes determining the future of their traditional lands and communities.”¹⁶⁷ In their analysis of the implications of the process and its outcomes for environmental governance, they argue that First Nations participation at a government-to-government level had a fundamental impact on the percentage of the land base protected in the GBR, reducing the total amount of area protected while supporting the application of stringent EBM processes and indicators. In other words, First Nations’ ambitions “to be able to sustain themselves from the resources that they, in turn, have a responsibility to sustain” was supported through a governance structure that provided recognition for participating First Nations’ title and rights even as it provided space for the development of consensus between First Nations and other interest and/or user groups.¹⁶⁸

¹⁶⁶ McGee et al., “A New Model for Sustainable Development,” 759.

¹⁶⁷ Low and Shaw, “First Nations Rights and Environmental Governance.”

¹⁶⁸ Ibid. It is important to note that there are detractors to this position; in particular, Michael Howlett, Jeremy Rayner, and Chris Tollefson are highly skeptical of the claim that the GBR planning process represents a shift from a top-down government approach to a “new governance” model. In particular, they interrogate the institutional, political and regulatory dimensions of the GBR governance structure and planning outcomes, finding that these did not consistently shift in a way that would make the claim of a “new” governance regime justifiable. For instance, the provincial government maintained ownership and control over land disposition, as well as the ability to “grant or withhold the recognition of expertise” within the process. The EBM approach to lands outside of the protected areas, they suggest, in many instances mirrored the results-based forest practices legislation (FRPA) brought in “over the vociferous objections of environmentalists” (Howlett, Rayner and Tollefson, “From Government to Governance,” 389; 390).

Lessons from the GBR collaborative land use planning process have since been applied in other parts of the province, including both land and marine areas on the remote island archipelago of Haida Gwaii. Recent research suggests that collaborative planning processes and resulting land and marine plans endorsed by the Haida Nation and the Province of BC advance a worldview “at odds with a centralized planning approach in which governments are focused on overall objectives related to national or provincial economic development.”¹⁶⁹ Founded in Haida and Haida Gwaii values, these plans have had a profound effect on the management of the natural resources of the archipelago. The following section explores these Haida Gwaii processes in some depth, as they provide a compelling example of an emerging approach to planning profoundly rooted in place and the laws, values and ethics of a participating Nation. Following economic geographer and methodological theorist Bent Flyvbjerg, I suggest that these studies provide exemplary or “paradigmatic” instances of collaborative planning.¹⁷⁰ Many of the qualities of these planning processes provide key reference points for the discussion of key research findings.

Environmental Planning on Haida Gwaii: A Paradigmatic Case Study

Shared Haida and local concerns over the rate of deforestation on Haida Gwaii and the small benefits that accrue to island communities from logging activities, particularly by comparison with the substantive profits gained by the multinational forestry corporations who held tenures in the area, precipitated the Haida Nation’s decision in 2004 to establish fourteen protected areas on the archipelago, encompassing twenty-three percent of the land base. Eighteen months later a collaborative Community Planning Forum, jointly managed by the Haida Nation and the province of BC, tabled a series of goals for (amongst other things): ecosystem integrity, cultural values, and economic wellbeing. On topics where the forum

¹⁶⁹ Russ Jones, Catherine Rigg and Lynn Lee, “Haida Marine Planning: First Nations as a Partner in Marine Conservation,” *Ecology and Society* 15, no. 1 (2010): 12.

¹⁷⁰ Bent Flyvbjerg, “Case Study,” in *The Sage Handbook of Qualitative Research*, 4th ed., eds. Norman K. Denzin and Yvonna S. Lincoln (Thousand Oaks, CA: Sage Publications, 2011), 308.

representatives were unable to reach agreement, two sets of goals were put forward for consideration: the first representing the point of view of the forestry industry, and the second representing the perspectives of “everybody else.”¹⁷¹ The provincial government continued to approve cut block applications in areas slated for protection, a tactic that the Haida Nation and island communities interpreted as an effort to “pressure the Haida into agreeing to a land use plan if they wished to avoid a talk-and-log scenario.”¹⁷² The Haida Nation responded by instigating Island Spirit Rising, an island-wide movement to halt all logging activities on Haida Gwaii until a land use plan was developed. By the third week of the ensuing blockade, serious negotiations were underway between the Haida Nation and the province; a week later, a Memorandum of Understanding was signed between the governments that outlined interim measures for protecting the islands forests and an approach for future land use planning negotiations between the Haida Nation and the provincial government.

In December 2007 both governments agreed to the finalized *Haida Gwaii Strategic Land Use Agreement*. The plan “puts the long term needs and priorities of the Haida Nation and local communities ahead of corporate profits and government coffers,”¹⁷³ and stresses the need to maintain the forestry economy over the long term, while promoting alternative and non-extractive economic development initiatives in the region. Under the agreement, fifty-two percent of the archipelago’s land base was established in protected areas, and the annual allowable cut was reduced from 1.7 million cubic meters to 800,000 cubic meters – of this, 120,000 cubic meters were allocated to the Haida Nation, and a provision for the creation of a community forest was also negotiated.¹⁷⁴ EBM was required in areas beyond the formally protected areas. This provides significant protection for important flora (cedar, yew), fauna

¹⁷¹ John Broadhead cited in Louise Takeda, *Island Spirit Rising: Reclaiming the Forests of Haida Gwaii* (Vancouver, BC: UBC Press, 2015), 142.

¹⁷² Takeda, *Island Spirit Rising*, 153.

¹⁷³ *Ibid.*, 188.

¹⁷⁴ *Ibid.*, 184.

(black bears, northern goshawks, salmon), watersheds, old growth, and cultural features (including culturally modified trees and tree stands).¹⁷⁵ Most importantly, the agreement established a unique consensus-based decision-making body with equal representation by the Haida Nation and the Provincial government to oversee the implementation of the Land Use Plan, including the annual determination of Haida Gwaii's allowable cut.

In her analysis of the development of the *Haida Gwaii Land Use Agreement*, Louise Takeda argues that the alternating use of conflict and consensus-based approaches by the Haida Nation and island communities in their deliberations with the provincial government were instrumental in incorporating their values into the land use planning process. Takeda demonstrates how direct action led by the Haida Nation forced the provincial government to re-engage in the land use planning process to negotiate a fundamental reconfiguration of power relations on Haida Gwaii as they related to resource-management decision-making. She also suggests that the Community Planning Forum (CPF) established following the signing of the initial MOU “provided an important forum for broadening the scope of values, knowledge, and meanings to be considered in planning.” Once an alternative vision for forestry on Haida Gwaii had been established and legitimized through the initial consensus-based planning approach taken by the CPF, the status quo of corporate and crown decision-making power over land use on Haida Gwaii became “increasingly vulnerable to external challenge.”¹⁷⁶ Takeda further suggests that the government-to-government relationship established between the Haida Nation and the Province of BC was an important contributor to the success of the planning process because it created a “capacity for action...for issues that were once outside of the realm of possibility,” including the establishment of a local decision-making body that represented Haida

¹⁷⁵ Takeda, *Island Spirit Rising*, 185.

¹⁷⁶ *Ibid.*, 189; 191.

and local interests first and foremost.¹⁷⁷

Recent planning for Haida Gwaii's marine area has benefited substantially both from the lessons learnt from the GBR and Haida Gwaii land use planning processes. In their reflection on the Council of the Haida Nation's engagement in collaborative marine planning, Jones, Rigg and Lee afford the *values-based* approach to planning advanced by the *Haida Gwaii Land Use Agreement* (2007) vital importance for establishing more local and place-based management of resources.¹⁷⁸ They demonstrate how six Haida Gwaii values were selected to guide the development of the CHN-BC *Haida Gwaii Marine Plan* and the way in which these values were of practical importance in the development of plan goals, strategies for achieving plan goals and the partners' approach to plan implementation. As part of this process, the planning partners drew parallels between Haida values and western management principles, including: 'Laa guu ga kanhlIns (Responsibility) and participatory management; Gina k'aadang.nga gii uu tl' k'anguudang (Seeking Wise Counsel) and adaptive management and the use of best information, including scientific and indigenous knowledge; and, Gina waadluxan gud ad kwaagiida (Everything depends on everything else) and integrated management between terrestrial and marine areas. This values-based approach was in turn mobilized through the establishment of a government-to-government relationship between the Haida Nation and the Province of BC through the Marine Planning Partnership, resulting in the development of a marine plan that is fundamentally an expression of Haida and Haida Gwaii values, interests, and aspirations for themselves and their home.¹⁷⁹

¹⁷⁷ Takeda, *Island Spirit Rising*, 192.

¹⁷⁸ Jones et al., "Haida Marine Planning."

¹⁷⁹ Marine Planning Partnership Initiative, *Haida Gwaii Marine Plan* (Council of the Haida Nation and the Province of B.C., 2015).

3.3 Summary and Synthesis

Fisheries-related planning processes have yet to be examined in the Indigenous Planning literature. However, fisheries remain highly contested terrain (so to speak) between First Nations and the Crown. In British Columbia, the struggle to establish shared responsibility for salmon, a “cultural keystone” species for many coastal and inland First Nations, has been in place for decades, with limited gains. The gradual development of collaborative management processes that recognize First Nations’ inherent and constitutionally-protected right to access and to steward fisheries resources is unique in part because of the longstanding and acrimonious nature of this struggle – from protests on the land and in the water, court cases, negotiations, and, most recently, the establishing of a Commission of Inquiry to investigate sockeye declines and the DFOs management policies.

There is significant potential to re-envision state-led planning and resource management processes to ensure that Indigenous voices are heard. However, the significant body of critical research on Indigenous peoples’ engagement with state-led resource management and planning in settler-colonies has done much to reveal the variety and depth of challenges posed to Indigenous peoples striving to meaningfully engage in the governance of their traditional resources and territories. These challenges – both structural and discursive – remain embedded in colonial ways of thinking about and being in the world that, scholars have argued, are incompatible with Indigenous worldviews, interests and aspirations. Planning scholars in particular have responded to these issues by evaluating strategies for enhancing Indigenous governance in the planning for, and management over, lands and resources. The findings of this field of research to date suggests that there are a number of key mechanisms and/or principles that Indigenous groups can leverage to advance their participation at all levels of decision making and participation in state-led environmental planning and management processes. These include:

- Indigenous laws, ethics, and values inform the planning approach and are used to evaluate the acceptability of planning objectives and strategies;
- Indigenous knowledge is recognized as a necessary compliment to scientific knowledge;
- A government-to-government framework is established, enabling Indigenous people to integrate their values into planning and mobilize their collective knowledge;
- The vitality and validity of Indigenous interests, including socioeconomic values and equitable sharing of benefits from resources within Indigenous territories, are recognized by all planning partners;
- The interests of other governments and stakeholders are recognized by First Nations;
- All planning partners maintain a commitment to respectful dialogue and consensus-building; and
- All planning partners maintain focus on their shared objectives for planning.

These principles offer a springboard for my attempt, in what follows, to extend the state of knowledge on mechanisms for transformative planning by considering both the challenges encountered and opportunities identified with the Cohen Commission. My hope is to provide focused and strategically useful tools for First Nations who remain deeply invested in the conservation of salmon and other fisheries resources.

Chapter 4. On Motivations, Methodological Approach and Methods

For Māori researcher Linda Tuhiwai Smith, research “is really about focusing, about thinking critically, about reflecting on things, about being strategic.”¹⁸⁰ These imperatives become all the more important when a non-Indigenous researcher engages with an Indigenous issue at a place and time when “Indigenous people still experience such research as enacted upon them more frequently that it is done by them, with them, or for them under their direct control and authority.”¹⁸¹ The strategic bent of this research is to develop a greater understanding of First Nations’ experiences at a recent federal commission in order to develop tools to create more space for Indigenous peoples and their perspectives on salmon (and wildlife conservation more generally) in future inquiries and related processes. This research focus is supported by the research design, which deploys a methodology (research approach) grounded in Indigenous and critical research theory, and methods appropriate to gathering the information necessary to answer my research questions. Here I describe the theoretical underpinnings of a “relational qualitative” approach to researching with and for First Nations communities, and point to the importance of researcher reflexivity, accountability, and knowledge sharing in applying this approach. My information gathering methods included analyzing Cohen Commission documents, including final reports, status and interim reports, and transcripts, and conducting eleven interviews with First Nations leadership, as well as legal counsel and technical staff who were involved in the Cohen Commission as participants. I also interviewed one technical staff member whose Nation was not involved in the Cohen Commission but had been involved in previous inquiries regarding sockeye conservation in the Fraser River. Interviews with Cohen Commission participants were immensely valuable, assisting me in reading “through the lines”

¹⁸⁰ Marie Battiste, Lynne Bell, and L.M Findlay, “An Interview with Linda Tuhiwai Te Rina Smith,” *Canadian Journal of Native Education* 26, no. 2 (2002): 186.

¹⁸¹ Charles Menzies, “Standing on the Shore with Saaban: An Intellectual Rapprochement with an Indigenous Intellectual Tradition,” *Collaborative Anthropologies* 6, no. 1 (2010): 171.

of Cohen Commission documents; they also enabled me to develop a stronger understanding of First Nations' motivations for engaging in fisheries planning processes broadly speaking, as well as the opportunities they perceive and pursue through these types of processes – the details of which I explore in subsequent chapters.

4.1 Locating the Researcher

I have lived on the Fraser River in Coast Salish territory for most of my life; first in Steveston on the southern arm of the Fraser, where westerly winds still bore the bracing smell of fish; in Fort Langley, a small town on the southern bank of the Fraser in the Lower Mainland; and finally in Vancouver, where I did my BA and course work for my Masters in Human Geography at the University of British Columbia. My concern for these places, already drastically altered by the declining numbers of fish and the uncertainty surrounding the economic viability of commercial fishing, is part of what drives this project. But having a sense of 'belonging' and, it follows, of responsibility towards these places is a complicated notion for the eldest daughter of an immigrant from England with Irish ancestry and a third generation Canadian with Scottish and French Canadian ancestry. I therefore come to this research as both a person with European settler heritage living on unceded Indigenous land (formerly in the Coast Salish territories of the Lower Fraser and now the archipelago of Xaayda Gwaayay/Xaad Gwaay) and as a friend, colleague and ally to the people and communities that I work with, both outside of and for this research project.

"Knowing personal motives behind research matters" wrote Nêhiyaw/Saulteaux scholar Margaret Kovach.¹⁸² I began to study the Cohen Commission, the Fraser and sockeye at the tail end of my BA degree in Geography because of a personal desire to focus my studies and to combine my interests in environmental justice, First Nations studies, and regional history. It has

¹⁸² Margaret Kovach, *Indigenous Methodologies: Characteristics, Conversations, and Contexts* (Toronto: University of Toronto Press, 2009), 179.

taken a long time for me to determine which story that I felt most needed to be told about the Cohen Commission, and iterations of thesis objectives have come and gone numerous times. The decision to focus specifically on the relationships between First Nations participation in planning, conservation discourses, and planning structures emerged as I began working for the Haida Nation, and have been a first-hand witness to the kinds of decolonizing policies possible in marine and fisheries planning, though not, in some instances, without considerable effort and negotiation on the part of a First Nation's political representatives and their staff. My motivation for this research is to contribute to a process that is already very much underway, and that is being led by Indigenous governments and people across the country. I believe that this work demonstrates that First Nations' perspectives of conservation are currently inadequately addressed in commission-style fisheries planning processes, and I hope that my recommendations for structured change are useful in enabling the full participation of First Nations in future inquiries. Finally, in light of the incumbent Liberal government's campaign promise to implement the Cohen Commission's recommendations, I hope that this thesis and associated published materials will assist in encouraging the Canadian government to put the Cohen Commission's recommendations to work.

4.2 Methodological Approach and Rationale

*a framework
is not just an architect/ural or /tectonic manifestation of a blueprint/ing
it is the enactment of a respectful relationship
with the rest of creation which shares this earth with us
a framework is never a noun never simply a metaphor
it cannot be captured thus as a part of speech a figuration
it is more than any words which attempt to denotate it
a framework is a journey/ing with¹⁸³*

The editors of the *Handbook of Critical and Indigenous Methodologies* Norman Denzin, Linda Tuhiwai Smith, and Yvonna Lincoln define critical methodology as “scholarship done for explicit political, utopian purposes, a discourse of critique and criticism, a politics of liberation,

¹⁸³ Peter Cole, “Aboriginalizing Methodology: Considering the Canoe,” *International Journal of Qualitative Studies in Education* 15, no. 4 (2002): 453.

a reflexive discourse constantly in search of an open-ended, subversive, multi-voiced, participatory epistemology.”¹⁸⁴ Critical research methods emerged over the past forty years as a distinctive approach to qualitative academic research in the social sciences, when a new generation of scholars, primarily from North America, came into contact with the critical pedagogy and work of Brazilian educator and philosopher Paulo Freire.¹⁸⁵ From the 1970s onwards, critical studies exploded into a multitude of subaltern and critical fields, including critical race theory, feminism, Latino criticism/critical theories; pragmatic action theory; participatory action research (PAR); and queer theories.¹⁸⁶ (Post)colonial, First Nations and Red studies also emerged as distinctive study areas concerned with decolonization and cultural reclamation. Methods in critical qualitative research reflect this diversity of approaches, ranging from performance to experience narratives, photographs, *testimonios*, poetry, storytelling, autoethnography and discourse analysis, among many others.

Although critical methodologies are distinct from one another and are grounded in different beliefs about the nature of reality (ontologies) and ways of thinking about these realities (epistemologies), they share some principles. All are differentiated from the broader field of qualitative research and methods by an ontology “rooted in the subjective and specific as well as particular socio-historical experiences of people [who] are simultaneously multiply [sic] positioned” yet who nevertheless possess agency. They are also distinguished by the associated epistemological premise that knowledge is always partial, place-based, and situated, and that therefore “subjectivity within research will be constant.”¹⁸⁷ The researcher(s) and research participant are both engaged in a process of meaning making. There is also a shared epistemological assumption that “those who live their lives in marginal places in society

¹⁸⁴ Norman K. Denzin, Yvonna S. Lincoln and Linda Tuhiwai Smith, eds., *Handbook of Critical and Indigenous Methodologies* (Thousand Oaks California: SAGE Publications Inc., 2009).

¹⁸⁵ Ibid.

¹⁸⁶ Kovach, *Indigenous Methodologies*, 22.

¹⁸⁷ Kovach, *Indigenous Methodologies*, 132; Mehmoona Moosa-Mitha, “Situating Anti-oppressive Theories within Critical and Difference-Centered Perspectives,” in *Research as Resistance: Critical, Indigenous, and Anti-Oppressive Approaches*, eds. Leslie Brown and Susan Strega (Toronto: Canadian Scholars’ Press/Women’s Press, 2005), 65-66.

experience silencing and injustice.”¹⁸⁸ For those engaging in critical and anti-oppressive work, this understanding of how we come to know the world shifts the *point* of social science research on its axis; “research” shifts away from being based on the *production of new knowledge* and towards the *production of meaning* and an associated call to action. In the words of Karen Potts and Leslie Brown: “In anti-oppressive research, we are not looking for a ‘truth’; we are looking for meaning, for understanding, for the power to change.”¹⁸⁹

Spurred on in part by Linda Tuhiwai Smith’s influential book *Decolonizing Methodologies*, first published in 1999 and now in its second edition, a new generation of Indigenous researchers has begun to carve out a distinct space for research rooted in “tribal epistemologies.”¹⁹⁰ These scholars contend that it is the *rootedness* of methodologies in specific tribal cultures/ways of knowing that distinguishes specific Indigenous research methodologies from other types of critical qualitative research methodologies. And there are other important distinctions; for instance, while scholars writing on the topic of Indigenous research methodologies are not wholly in agreement about whether a researcher *must* be Indigenous to use a specific Indigenous research methodology, there is broad consensus that *doing* research in an Indigenous context requires a longstanding relationship and commitment to (an) Indigenous community(ies), as well as openness regarding the researcher’s subject position(s).¹⁹¹ This is considered foundational to the other qualities of an Indigenous research methodology, including respect for (inter)relationships; respect for sacred knowledge and responsibility for that

¹⁸⁸ Margaret Kovach, “Emerging from the Margins: Indigenous Methodologies,” in *Research as Resistance: Critical, Indigenous, and Anti-Oppressive Approaches*, eds. Leslie Brown and Susan Strega (Toronto: Canadian Scholars’ Press/Women’s Press, 2005), 21.

¹⁸⁹ Karen Potts and Leslie Brown, “Becoming an Anti-oppressive Researcher,” in *Research as Resistance: Critical, Indigenous, and Anti-Oppressive Approaches*, eds. Leslie Brown and Susan Strega (Toronto: Canadian Scholars’ Press/Women’s Press, 2005), 261.

¹⁹⁰ Battiste, Bell and Findlay, “An Interview with Linda Tuhiwai Te Rina Smith,” 36; Cora Weber-Pillwax, “Indigenous Research Methodology: Exploratory Discussion of an Elusive Subject,” *Journal of Educational Thought* 33, no. 1 (1999): 31; Shawn Wilson “What is an Indigenous Research Methodology?” *Canadian Journal of Native Education* 25, no. 2 (2001); *Research is Ceremony: Indigenous Research Methods* (Halifax: Fernwood Pub., 2008).

¹⁹¹ For some perspectives on this issues see Kathy Absolon and Cam Willett “Putting Ourselves Forward: Location in Aboriginal Research,” in *Research as Resistance: Critical, Indigenous, and Anti-Oppressive Approaches*, eds. Leslie Brown and Susan Strega (Toronto: Canadian Scholars’ Press/Women’s Press, 2005); Linda Tuhiwai Smith, *Decolonizing Methodologies* (New York, NY: Palgrave Macmillan, 2012); Kovach, *Indigenous Methodologies*.

knowledge; giving back; and familiarity with Indigenous language(s).¹⁹² The latter is identified by Margaret Kovach as one of the most fundamental challenges for both Indigenous and non-Indigenous researchers engaging in scholastic inquiry in an Indigenous context: “Indigenous knowledges have a fluidity and motion that is manifested in the distinctive structure of tribal languages, and from this perspective western research and Indigenous inquiry can walk together only so far.”¹⁹³

Gitxaala anthropologist Charles Menzies’ recent reflections on a rapprochement between an Indigenous theoretical framework and the tools of his chosen intellectual trade provides a more detailed outline of what this “walking together” could look like – albeit one that employs a more stationary metaphor. Menzies transports his readers to the shores of Gitxaala territory to stand with *sm’ooygt* (chief) Saaban and observe the arrival of the first European traders or *k’mksiwah* (translates literally as “ghost people”) to the territory. We follow the *k’mksiwah* to a *halait* (friendship making ritual) hosted by another *sm’ooygt*, Ts’ibasaa, and observe the exchange of gifts and names, one of which - He:l (from Hale, the surname of the trading ship’s captain) - is still used today in reference to the highest ranking house of the Gitxaala. Menzies interprets the encounter through Gitxaala concepts of *wulE’isk* (relatives), *syt glüüm goot* (of one heart), *nabelgot* (continuity through reincarnation). He suggests that this contrasts with more conventional approaches to anthropological research, based on intellectual traditions imported from “a different shore.”¹⁹⁴ To free themselves from the “monolithic blinders of Euro-American thought,” Menzies urges anthropologists and other researchers to work *with* Indigenous communities on projects that all partners consider meaningful to move “beyond simply treating our communities as data sources” – and respecting and learning from the intellectual traditions

¹⁹² Weber-Pillwax, “Indigenous Research Methodology,” 31.

¹⁹³ Kovach, *Indigenous Methodologies*, 30.

¹⁹⁴ Menzies, “Standing on the Shore with Saaban,” 175.

and conceptual frameworks of Indigenous research partners.¹⁹⁵

Menzies and other Indigenous scholars engaging in debates around Indigenous theory and methodology in academic research are engaged primarily in charting a way forward for research at the scale of the Nation and/or band and/or reserve community— that is, they provide limited guidance for researchers working *across* Indigenous territorial boundaries and communities. Work at this scale necessitates shifting away from an Indigenous research methodology – but what kind of movement? Although discussion of this type of research model is limited, asides and footnotes by Indigenous methodological theorists such as Kovach suggest that while an Indigenous methodology “ought to be choice” for scholars doing research in Indigenous communities, the careful use of other critical qualitative methodologies and techniques for research is valid if the research (or researcher) is not suited to a Indigenous approach.¹⁹⁶ For instance, Denzin, Lincoln and Smith stress that a *localized* approach to critical qualitative research may be more appropriate in some contexts, so that the “goals of critique, resistance, struggle, and emancipation are not treated as if they have ‘universal characteristics that are independent of history, context, and agency.’”¹⁹⁷ Other Indigenous methodology scholars have suggested that it is important that the researcher build on the “natural alliances” between the Indigenous and critical qualitative research by emphasizing *relationality*, *personal commitment* and *responsibility* as fundamental components of the research process (“doing research in a good way”); the *situated* aspect of research production (including the locating of the researcher and her/their/his motives within research texts); and an overarching and explicit *decolonizing aim and effect*.¹⁹⁸ In what follows I justify my choice of a methodological framework within these liminal and cross-boundary spaces, and outline my research approach in reference to these

¹⁹⁵ Menzies, “Standing on the Shore with Saaban,” 175; 172.

¹⁹⁶ Kovach, *Indigenous Methodologies*, 13.

¹⁹⁷ Denzin, Lincoln and Smith, *Handbook*, 6; Smith, *Decolonizing Methodologies*, 229.

¹⁹⁸ Kovach, *Indigenous Methodologies*, 34 -35; “Emerging from the Margins: Indigenous Methodologies,” 33; Susan Strega, “The View from the Poststructural Margins: Epistemology and Methodology Reconsidered,” in *Research as Resistance: Critical, Indigenous and Anti-Oppressive Approaches*, eds. Susan Strega and Leslie Brown (Toronto: Canadian Scholars press, 2005), 229.

“natural alliances.”

A relational qualitative approach

This study follows the migration of the sockeye from northern coastal waters to the mouth of the Fraser and up through the canyon. It is the story of a coast, a river and the people who are connected to it. It is also a deeply situated work of salty and fresh waters and riverbanks and urban courtrooms. But in several important respects this project is ill-suited to an Indigenous research methodology. First, I am of European ancestry raised first and foremost as a “Canadian;” it is only in the last three years that I have become connected to a First Nations community, through my partnership, friendships and my work with the Haida Nation. I would not presume to think that such limited exposure would bring me anywhere close to possessing the worldview necessary to engage with a Xaayda/Xaad methodology. Furthermore, the research I have set out to do is necessarily a regional project. It is not located in any specific community or Nation’s territory, but is rather an attempt to bring together a diversity of First Nations voices and experiences in order to build a stronger platform for First Nations engagement *as an aggregate* in fisheries planning and policy occurring in the region now referred to as British Columbia. Even if other aspects of an Indigenous methodology *were* in place, this regional approach would necessitate a movement away from the deeply relational and place/language based approach of Indigenous research methodologies.

For all of these reasons, my methodology sits at the intersection between critical qualitative research and Indigenous epistemologies; it deploys, in the terminology of Kovach, a “relational qualitative” approach.¹⁹⁹ Kovach calls *doing* relational research “having or possessing good relations” that support good ongoing and future relationships with those who choose to engage in a study and that place high value on reflexivity, stories, and community

¹⁹⁹ Kovach, *Indigenous Methodologies*, 30.

benefits.²⁰⁰ My research approach includes situating myself and my intentions with/in the research design; paying respect to participants by visiting their territories and thanking them with gifts of food (sometimes that I had gathered or harvested; sometimes I picked up the cheque at the local Tim Hortons); and providing opportunities throughout the process for feedback and critique. In addition, throughout this thesis I have attempted to center and privilege Indigenous knowledge and voices, and employ the appropriate language, dialect and spelling wherever possible. The following section addresses how this relational qualitative methodology was furthered by the research methods.

4.3 Research Methods

This research seeks to bring together First Nations peoples' stories about salmon, and their goals and experiences participating in a Commission of Inquiry. It aims to identify opportunities for making (more) space for First Nations peoples' knowledges and perspectives of conservation in natural resource planning and management processes, *based on the perspectives and suggestions of First Nations leadership and their technical and legal staff*. These goals are pursued using a case study approach and semi-structured interviews with eleven individuals who participated in the Cohen Commission as First Nations political representatives, staff and counsel. Documents from the Cohen Commission were also used, primarily to provide context as well as to corroborate and provide examples of interviewee claims.

4.3.1 A single case study approach

Researchers who have written extensively on the case study method have struggled to develop a satisfying definition for their object of study.²⁰¹ Nevertheless, the 2009 edition of Miriam Webster's dictionary provides a description that contains the basic elements of a case

²⁰⁰ Kovach, *Indigenous Methodologies*, 30.

²⁰¹ See, for instance, Bent Flyvbjerg, "Case Study"; Robert K. Yin, *Case Study Research: Design and Methods* (Newberry Park, CA: Sage Publications Inc., 1989).

study research design: “An intensive analysis of an individual unit (as a person or community) stressing developmental factors in relation to environment.”²⁰² In other words, case study research begins by separating out the “case” from its “context” and then works towards an understanding of the dynamics between them. In his classic text on the subject, Robert Yin outlines the three conditions that a research topic must meet in order for the case study approach to have an advantage over other social science research methods (such as surveys, experiments or archival research):

- When “how” or “why” questions are being posed;
- When the researcher has little control over events; and
- When the focus is on a recent event or phenomenon²⁰³

The foremost *outcome* of single case study research is to “generate knowledge of the particular” through the use of multiple and corroborating sources of evidence.²⁰⁴ Case studies do not yield *statistical* generalizations but they may lead to robust *analytical* generalizations relevant to a particular theory or proposition. In addition, a case study approach is useful when a researcher is attempting to develop an understanding of messy and complex social phenomena or seeking to retain “holistic and meaningful characteristics of real-life events” in the data collection and writing processes.²⁰⁵ This is especially true for doing research with Indigenous people, where simplification is often inadequate and inappropriate.

David Turnbull contends that an intensive case study is the most suitable approach for shedding light on “multiple incompatible ontologies and perspectives.”²⁰⁶ This is borne out by the many exemplary studies of Indigenous engagement in planning and resource management

²⁰² Cited in Flyvbjerg, “Case Study,” 301.

²⁰³ Yin, *Case Study Research*, 13.

²⁰⁴ Thomas A. Schwandt, *The SAGE Dictionary of Qualitative Inquiry* (Los Angeles, California: Sage Publications, 2007), 28.

²⁰⁵ Yin, *Case Study Research*, 13.

²⁰⁶ David Turnbull, “Maps Narratives and Trails: Performativity, Methodology and Distributed Knowledges in Complex Adaptive Systems: An Approach to Emergent Mapping,” *Geographical Research* 45, no. 2 (2007): 140.

processes outlined in the previous chapter. This research project contributes to this literature through the analysis of specific testimony and deliberation related to Fraser River sockeye salmon conservation. This research topic is well suited for a case study approach, in that it fulfills the three criteria set out by Yin and is fundamentally concerned with “multiple incompatible ontologies and perspectives.”²⁰⁷ Moreover, a case study approach is important because it enables the *account* of these perspectives to be enriched by their cultural, ecological and political contexts. For the purposes of this research, the “case” includes the Cohen Commission of Inquiry process, which ran from 2009 until 2012, and the three years that followed the release of the Commission’s final report and recommendations. The preparations, discussions and documents produced by Commission participants and their legal counsel throughout the process are also included. *Context* for this case study includes the events leading up to the Commission of Inquiry in the late summer of 2009; the contemporary management of sockeye salmon, including the sockeye fisheries, in the Fraser River; the antecedent Royal Commissions of Inquiry and other recent investigations and reports on salmon declines and disappearances on the Fraser; and, the gradual recognition of First Nations’ rights to access and care for fisheries resources that are affecting their ability and willingness to formally engage in these types of processes.

4.3.2 A semi-structured interview approach

At the center of a relational qualitative research methodology is the creation of space for participants in a given study to ascribe meaning to their own experiences.²⁰⁸ In this way, and consistent with an Indigenous methodology, “the stories of both the researcher and research participant are reflected in the meanings being made.”²⁰⁹ Through an initial review of hearing transcripts and the Cohen Commission’s interim and final reports, I became increasingly

²⁰⁷ David Turnbull, “Maps Narratives and Trails,” 140.

²⁰⁸ Denzin, Lincoln and Smith, *Handbook*, 4; Irving Seidman, *Interviewing as Qualitative Research: A Guide for Researchers in Education and the Social Sciences*, 2nd ed. (New York: Teachers College Press, 1998).

²⁰⁹ Kovach, *Indigenous Methodologies*.

interested in how First Nations people who participated in the process perceived sockeye conservation, and what they felt were the major obstacles and opportunities that they encountered in trying to further these perspectives. I chose a semi-structured interview approach for my research design because it allowed me to gain an understanding of these perceptions and values that would have otherwise been un-accessible. A semi-structured approach not only allowed me, as the researcher, to continue a line of questioning; it also created space for unanticipated themes to come up in the course of interviews. In turn, the recurrence of unanticipated themes in several interviews led me to re-evaluate my research focus. This ultimately resulted in an approach that was as focused on perceived opportunities as it was on the constraints perceived by First Nations participating in the Cohen Commission, and that explored their concerns regarding the lack of implementation of the Cohen Commission recommendations in the three years since the release of the final report.

Developing the interview questions

In developing interview questions, I sought answers to a primary question: *What can the experiences of First Nations participants at the Cohen Commission tell us about creating more space for the consideration of Indigenous peoples' knowledges and perspectives of conservation in natural resource planning and management processes?* This implied a need to:

1. Develop an understanding of First Nations' understandings on sockeye conservation;
2. Broadly identify First Nations' goals related to sockeye conservation in the context of the Commission process; and
3. Identify the perceived constraints and opportunities experienced by First Nations when trying to achieve these goals.

I developed two sets of interview questions with these objectives in mind: one for First Nations leadership who spoke at the Cohen Commission hearings (Appendix 2) and one for technical and legal staff working for a First Nations government or an organization that was involved in

the Cohen Commission (Appendix 3). These draft questions were reviewed by a colleague with significant experience interviewing Indigenous people for academic research and a Xaayda friend. Both provided feedback that resulted in the separation of question “blocks” (admittedly a weakness of mine) into single questions, more straightforward language and a more intuitive ordering of question topics. In preparation for conducting interviews I also reviewed a number of texts on interview technique, paying particular attention to those focusing on interviewers attempting to “breach the wall” between cultures.²¹⁰

Interview recruitment

I first began recruiting interviewees in the spring of 2015 by contacting leaders of First Nations governments and organizations who had spoken during the three days of Cohen Commission hearings on “Aboriginal Worldview, Cultural Context and Traditional Knowledge.” With the exception of two interviewees living on Xaayda Gwaayay/Xaad Gwaay and one in Nuuchahnulth territories on the west coast of Vancouver Island, interviewees lived in communities along the Fraser River. Through a purposive “snowball sampling” approach I was also able to connect with technical staff and legal counsel working for First Nations governments and organizations who had been involved in the Cohen Commission. Although not all research participants identified as Indigenous, as technical and legal staff they were nevertheless able to provide considerable insight into the Commission process and First Nations participation within that process.

²¹⁰ Melanie J. Birks, Ysanne Chapman and Karen Francis, “Breaching the Wall: Interviewing People from Other Cultures,” *Journal of Transcultural Nursing* 18, no.1 (2007); Yvonna S. Lincoln, “Reconsidering Rapport: Interviewing as Postmodern Inquiry Practice,” paper presented at the *Annual Meeting of the American Educational Research Association* (Seattle, WA, April 10-14, 2001).

Total Interviews		Political Leadership		Technical Staff		Legal Counsel	
Indigenous	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous	Indigenous	Non-Indigenous
8	3	6	0	2	2	0	1

Table 4.1 Interviewee self-identification and role in the Cohen Commission of Inquiry

Twenty-six First Nations organizations were granted standing in the Cohen Commission. These included First Nations governments (including bands, tribes and tribal councils), organizations and associations. These organizations subsequently self-organized into eight participant groups for the Cohen Commission proceedings. I interviewed people from four of the eight participant groups, with the greatest representation from the First Nations Coalition – itself a grouping of twelve First Nations organizations. This was in part due to the snowball sampling approach taken for interview recruitment, as those initially recruited for the study tended to suggest people with whom they had worked with on the Cohen Commission. In addition, one informal interview took place with a technical staff member from a Nation that had elected not to participate in the Cohen Commission because of their experiences engaging in previous commissions and investigations related to Fraser River sockeye. This interview is not included in the table above.

The interview process

Before an interview began, participants were provided with a list of interview questions, as well as the study consent form (Appendix 1). The consent form was reviewed at the beginning of each interview, and was either signed immediately (in the case of in-person interviews) or agreed to by the research participant, who then signed and forwarded a copy of the consent form by e-mail. In-person interviews took place primarily in band office boardrooms, private offices and local public areas such as Tim Hortons and the ubiquitous Canadian-Chinese diners of rural BC. In the late spring and summer of 2015, I travelled to several communities to meet with

research participants; in addition, several interviews took place in Haida Gwaii, with both Haida and other research participants. When a face-to-face interview was not possible, interviews were conducted over the phone. Interviews lasted from one to three hours and were audio recorded with the consent of the interviewees. These were generally informal, with interview questions serving more often than not as guideposts during the course of an interview. Probing and/or clarifying questions were sometimes posed to explore a topic more thoroughly or to make sure that I adequately understood what the interviewee had said.

Analyzing interview data

Following each interview I wrote up a verbatim transcript based on the audio recording of the interview and my interview notes. Within two weeks of the interview date the transcript was sent by e-mail to the participant for review and clarification along with the interview audio recording. Only one of the transcripts was returned with a clarification at this time. Some initial analysis of interviews took place while interviewing and during transcription. When transcription was complete, I used the method of emergent (inductive) thematic coding – a “qualitative research approach in which interview transcripts are reviewed to identify themes that emerge from the data” – to respond to my research objectives.²¹¹ The thematic coding process took place in four stages: first, the transcripts were reviewed; next, sections of the transcripts relevant to the research objectives were marked. These marked sections were then reviewed and coded based on emerging themes (e.g. 27 - Importance of having First Nations' perspectives on record). Themes were then clustered into broader defined themes, a process that was repeated three times until the initial ninety-five codes identified in the transcripts had been reduced to four broad themes representing the key findings for this study. Once the initial coding and organizing were complete, I prepared an outline of my initial research findings. These were forwarded to all of the research participants to obtain feedback on my interpretation of their

²¹¹ Richard E. Boyatzis, *Transforming Qualitative Information: Thematic Analysis and Code Development* (Thousand Oaks, CA: Sage Publications, 1998), vi.

experiences and stories. Six participants responded with feedback and/or questions, and several comments were incorporated into my final draft, including a section considering the Liberal government's process for implementing the Cohen Commission's recommendation, additional emphasis placed on the conservation obligations of First Nations, and some additional clarification regarding sections of the *Inquiries Act*. In February 2016 I forwarded all research participants the quotations from their interview that I had incorporated into this thesis, along with my interpretations of their quotations, for review and feedback. Five participants responded at this time and two edits were made in response to participant feedback related to transcription errors.

Although many research participants were comfortable with having their names used in this thesis, others were not. Rather than develop a two-tiered system, I chose to maintain the anonymity of all research participants, identifying them only by their primary role in the Cohen Commission process (leadership, technical staff, or legal counsel) and the date of the interview (e.g. Interview with First Nations leader and knowledge holder, May 27, 2015).

4.3.3 Document analysis

In line with the suggested best practices for case study research, multiple forms of evidence were used to arrive at the research conclusions. Documents from the Cohen Commission proceedings were used to corroborate some statements generated during interviews, related to issues such as Commission structure (Rules for Procedure, Terms of Reference etc.) and other types of information that could be found in Commission and other documentation. When research participants referred back to statements that they made at Commission hearings, Commission hearing transcripts and witness summaries were reviewed to confirm the content of these statements.

4.4 Summary

The decision to focus on the opportunities perceived by First Nations participants in the Cohen Commission arose from listening, particularly at the beginning of the interview process, to the perspectives of research participants. While all identified constraints on their ability to fully articulate First Nations' perspectives on conservation, there was, overall, as much interest in the idea of building on the lessons learnt by First Nations engagements with the Cohen Commission as in focusing on perceived issues with the Commission process. The resulting shift in my concerns was consistent with a relational qualitative methodology, which emphasizes taking guidance from research participants in the formulation of an appropriate research focus. In addition, the research methods chosen for this project, including a case study approach, semi-structured interviews, and document analysis, were sufficiently flexible to allow a shift in research focus without significant changes to the project's research design. The commitment to a relational qualitative approach is further evident in the explicit decolonizing intent of this research project and in my situating myself and my intentions with/in the research design (*purpose*); the selection of a case study that furthers understanding of First Nations' understandings of sockeye conservation (*purpose*); respectful visits and gift giving (*respect for (inter)relationships/giving back*); collaborative meaning making and the privileging of participant and other Indigenous narratives, knowledge and voices (*sacred knowledge and responsibility for that knowledge*); and respect (though not a deep familiarity with) Indigenous knowledge (*sacred knowledge and responsibility for that knowledge*).

Chapter 5. Study Findings

The central question guiding this research is a pragmatic one: *What can the experiences of First Nations participants at the Cohen Commission tell us about creating more space for the consideration of Indigenous peoples' knowledges and perspectives of conservation in natural resource planning and management processes?* The term “space” was chosen to maintain an openness to participant perspectives on the form and substance of the opportunities that might be created – and in retrospect, this worked well, as more often than not I emerged from interviews both surprised and enlightened by the content of participant responses. In order to be able to address this study’s central question in a comprehensive and constructive way, three additional questions also required responses. These questions include:

- *What are First Nations’ understandings of sockeye conservation?* (Sec. 5.1)
- *What were the perceived opportunities for the articulation of First Nations’ understandings of sockeye conservation?* (Sec. 5.2)
- *What were the perceived challenges and constraints to the articulations of First Nations’ understandings of sockeye conservation?* (Sec. 5.3)

The following sections address these questions, before I turn, in the final section (5.4), to the primary research question outlined above. These questions are addressed based on the major “themes” developed from the transcript analysis process, augmented with quotations from witness summaries and testimony from the Cohen Commission. Each thematic section contains within it several sub-themes that are explored for additional context and depth.

5.1 Sockeye Conservation through a First Nations Lens

Whenever I sat down to interview a research participant, I would start by asking them what conserving sockeye means to them. The responses were incredibly varied for such a clustered sample of First Nations leaders, staff and counsel who participated in the Cohen

Commission; people often offered a wide array of examples, stories, and statements that, taken together, brought into relief their understanding of sockeye conservation from their own perspectives. More than just personal reflections, these perspectives were often tied back to oral histories and traditions from participant's cultures that demonstrate the appropriate way to interact with salmon and the sustainable harvesting and stewardship practices of their ancestors – practices that in many areas of the province remain in place today.

Their reflections broadly suggest an *integrative, holistic*, and fundamentally *place-based* approach to sockeye conservation encompassing cultural, social, spiritual, ecological, and economic considerations. In particular, connections were made several times between traditional forms of governance and sockeye conservation, as well as the importance of practicing the values of respect (towards the salmon) and sharing (with other beings, with upriver First Nations, and with future generations). Sustainable harvesting techniques such as the timing of fisheries to allow for sufficient escapement, maintaining riparian ecologies, selective fishing, and habitat restoration were provided as examples of traditional practices that, wherever possible, First Nations seek to maintain in their territories. It was suggested several times that these understandings of conservation have been neglected in the contemporary management of sockeye salmon on the Fraser, but that they contain valuable teachings for contemporary federal resource managers.

In turn, participants in this study were very clear that the conservation of salmon, including sockeye, was deeply tied to the survival of their cultures; for example, language, technologies, oral traditions, histories, and “customary laws about fisheries management” are all transmitted through the act of fishing.²¹² Salmon play a central role in the ceremonies, songs,

²¹² Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River “Exhibit 301 Witness Summary – Chief Robert Mountain,” 2, accessed December 4, 2015, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/EXHIBITS.HTM.

dances, and iconography of First Nations cultures, as evidenced by the Heiltsuk Nation's "sea kingdom" dance that shows the importance of all marine creatures to the Heiltsuk people, and drums traditionally decorated with images of salmon.²¹³ The process of learning how to cook and to preserve salmon – smoking, wind drying, curing, and (nowadays) canning – is also considered an important element of cultural continuity, while the ability to access nourishing traditional foods is crucial for the prevention of illness such as diabetes, particularly for community members whose access to nutritious foods (particularly proteins) is otherwise extremely limited. Several respondents suggested that First Nations are in danger of, or are already, "losing their culture" because of their lack of access to fish:

If there's severe loss of habitat, severe loss of the animals and the vegetation and the fish that they have survived on for thousands of years then First Nations are lost too.²¹⁴

It is not only a matter of being able to catch fish for food, but also having the opportunity to practice everything that surrounds that activity [...] The cultural issue is quite a profound thing that has to be addressed.²¹⁵

In other words, study participants were clear that for First Nations who relied upon salmon for their primary food source for millennia, *culture is inseparable from First Nations peoples' ability to fish for, eat, preserve, share, and give thanks for salmon*. This linkage between salmon and the "cultural, physical and spiritual" well-being of First Nations also came up repeatedly in the testimony of First Nations people and staff at the Cohen Commission.²¹⁶ Because of these vital linkages between culture and Fraser River sockeye, as well as the obligations First Nations feel towards the salmon runs that have passed through their traditional territories for over 10,000 years, research participants were unequivocal in their conviction that First Nations' involvement

²¹³ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 300 Witness Summary – Chief Edwin Newman;" Interview with a First Nations leader and former technical staff, May 20, 2015; see also "Exhibit 381 Witness Summary – Grand Chief Clarence Pennier." All exhibits accessed December 4, 2015, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/EXHIBITS.HTM.

²¹⁴ Interview with a technical staff member of a First Nations organization, August 10, 2015.

²¹⁵ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 293 Witness Summary – Grand Chief Saul Terry," 2, accessed December 4, 2015, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/EXHIBITS.HTM.

²¹⁶ See, for example, Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 300 Witness Summary – Chief Edwin Newman;" "Exhibit 301 Witness Summary – Chief Robert Mountain;" "Exhibit 294 Witness Summary – Dr. Ron Ignace;" "Exhibit 293 Witness Summary – Grand Chief Saul Terry;" "Exhibit 291 Witness Summary – Chief Fred Sampson;" "Exhibit 281 Witness Summary – Chief Kim Baird;" "Exhibit 278 Witness Summary – Sioliya (Councillor June Quipp)." All exhibits accessed December 4, 2015, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/EXHIBITS.HTM.

at every level of management is necessary for the conservation of both First Nations communities and Fraser River salmon, including sockeye. In the two sub-sections that follow, I discuss these research findings in more detail. I have divided these findings into two broad categories: *ecological* perspectives of sockeye conservation (Sec. 5.1.1) and *governance* perspectives of sockeye conservation (Sec. 5.1.2). I do so recognizing the intertwined nature of these categories within First Nations cultures and, wherever relevant, point to the connections between these findings.

5.1.1 Ecological stewardship and sockeye conservation

For some of the individuals interviewed for this study, “conservation” is an English term for a fundamentally modern concept, one used in the context of a scarcity of salmon that they suggest was virtually unknown in the past, particularly in the lower reaches of the Fraser watershed where all species of salmon were regularly harvested:

I used to struggle with this question before about how we view conservation – but in the past fish were so plentiful before they opened the commercial fishery we didn’t have to worry about conservation [...] we never ever really had to have a plan in place for conservation and, like I said I used to really struggle with that ‘cause we never really dealt with conservation up until just the last twenty or thirty years.²¹⁷

Many, however, found antecedents of the concept of conservation in their own cultural traditions. In these traditions, the careful management of *ecologies*, rather than the narrower management of salmon *fisheries* commonly associated with the term today, dominated explanations of First Nations’ perspectives on what constitutes sound management techniques for Fraser River sockeye, and salmon more broadly. This section explores some of these dimensions of sockeye conservation, focusing specifically on research participants’ perceptions of the role of water, fire, habitat restoration, and the importance of conserving all runs of salmon.

²¹⁷ Interview with a First Nations leader and knowledge holder, May 19, 2015.

Terrestrial Management and the First Nations tool of fire

In several of the interviews conducted for this study, terrestrial management was a prominent point of discussion. In particular, many research participants drew connections between the logging they have observed in and around their traditional territories and the decline in salmon; in particular, it was felt that increased siltation of the rivers in combination with reduced shade on the river banks (and the associated increase in river temperatures) have been detrimental to salmon over the long term:

Conservation is our spiritual connection to *kwu*, which is water. All of the different streams, all of the different things that come down into that. We were raising concerns in the 70's about the way that forestry was cutting down trees right over the creeks, removing the cover.... If the Fraser River is rising in temperature, all you have to do is google 'British Columbia' and look at the massive deforestation – it's contributing to the rising temperatures.²¹⁸

On Haida Gwaii, amongst other places along the BC coast, spawning gravel was removed from the rivers to build roads for logging trucks, and there are stories of trucks piled high with river pebbles and salmon eggs being pursued by hungry ravens and gulls.²¹⁹ One interviewee in particular related the lack of integration of forest and fisheries management as a product of a western worldview, and spoke to the need for an approach that considered logging and other extractive economies from an ecological, rather than a purely economic, perspective:

The problem with our whole western philosophy and knowledge is that we thing-ify, make life into things. Like, for example, salmon are not referred to as salmon but as pieces, you know. And we look at trees as fiber, not as living organisms. In our mind, in our way of life, everything, you know, has life, is not inanimate. They're all - all things are animate. And what I'm now beginning to push for is that we have to change our way of managing the forests. We have to manage the forests for water.²²⁰

²¹⁸ Interview with a First Nations leader and knowledge holder, May 27, 2015. See also: Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 297 Witness Summary – Rod Naknakim," accessed December 4, 2015, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/EXHIBITS.HTM.

²¹⁹ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 299 Witness Summary – Guujaaw," 2, accessed December 4, 2015, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/EXHIBITS.HTM.

²²⁰ Interview with a First Nations leader and knowledge holder, August 31, 2015.

Several research participants pointed to the traditional management tool of fire as a means of maintaining forests to shade and protect migrating and/or spawning salmon, while also producing benefits such as increased berry productivity and a reduced risk of wildfires:

Our people looked after those creek systems through traditional burning to manage those areas so there was always a good canopy protecting those streams, maintaining the temperature of the Fraser River. [...] So conservation was a broad thing, not just how many fish we caught or which fish we let go. It was about the land base as a whole.²²¹

There was general agreement across interviews that the current approach to natural resource management was incompatible with traditional approaches to fisheries conservation because it was unable to account for the ways in which the management of forests and water produces reciprocal relationships of abundance.²²²

Salmon Aquaculture

Some research participants also voiced concerns about the lack of an integrated perspective in the management of open-net pen Atlantic salmon aquaculture. In particular, they were concerned that an observed increase in the number of lesions on salmon caught in the Fraser River and its tributaries was not being considered seriously or integrated into wild salmon management decision-making:

The evidence of the migrating stocks that were passing by our doors, you could see the impact of the fish farms. Because I had never seen so many lesions on the salmon in my life, and it wasn't until later that I realized, or found out, that it was because of sea lice. Lice that had attached to them, that broke the skin surface.²²³

While not all agreed that salmon aquaculture was a major contributor to the two decade-long decline of Fraser River sockeye, there was consensus that a highly precautionary approach was warranted in managing fish stocks. Chief Robert Mountain, for instance, stated in his witness summary:

²²¹ Interview with a First Nations leader and knowledge holder, May 27, 2015.

²²² Recent scholarship has begun to demonstrate wider concern for this issue, although until recently the regulatory response to these findings has been limited. See for example Richard Rajala, "Streams Being Ruined from a Salmon Producing Standpoint: Clearcutting, Fish Habitat, and Forest Regulation in British Columbia, 1900-45," *BC Studies* 176 (Winter 2012/13).

²²³ Interview with a First Nations leader and knowledge holder, May 27, 2015.

Given the fragile and uncertain state of both the Fraser sockeye and the local salmon stocks, and the immense importance of salmon to the [Musgamagw Tsawataineuk Tribal Council]... Atlantic salmon farming should only be practiced with the highest precautionary principles.²²⁴

In other words, salmon aquaculture was indicted by some participating First Nations for not taking into sufficient account the relationships between wild salmon health and industrial farming of Atlantic salmon in the sheltered inlets and bays on the BC coastline.

Extinctions

When asked to consider the definition of conservation provided in the Cohen Commission glossary, many of the people interviewed for this study responded negatively to the idea of conservation as “protecting species, or habitats, or ecosystems from excessive rates of extinction:”

Just that very wording...is, to my way of thinking, almost a de facto admission that rates of extinction are just a matter of course, and somebody gets to define what’s excessive and what isn’t. That just doesn’t... that sort of language has never been used in any discussions or conversations I’ve had over the years.²²⁵

In part, these conversations did not happen within or between First Nations because of the value that many, if not all, Nations place on individual salmon runs. Smaller streams that have less productive runs than the province’s major systems, are valued for other reasons, including the cultural or spiritual significance of a particular stream or area; the relation of a particular stream or area to other harvesting practices; clan or hereditary rights to fish in a particular stream; the challenges of travelling to other fishing locations; the ability to use traditional harvesting methods; and shared territorial issues. Although Indigenous people fish some of these tributaries today, the runs in others have been significantly depleted or, in some instances, extirpated entirely:

²²⁴ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 301 Witness Summary – Chief Robert Mountain.”

²²⁵ Interview with a technical staff member of a First Nations organization, August 10, 2015.

There's some streams that you might not think are that important for salmon which were important for Haida harvest, Haida use. So where you used to have fish production, now you don't, right. So it tells you a lot more about what salmon production was like in the past, right.²²⁶

At one time, the Stuart Takla system used to carry, in each stream, over a 100,000 fish to the spawning grounds. The smaller streams used to carry 100,000 fish and the main streams would carry over a million fish. Today is drastically different. The Stuart Takla system is comprised of over 100 streams, and over 50 streams have been decimated through development, and fish no longer return.²²⁷

This concern for the conservation of smaller runs was particularly strong among research participants from traditional territories high on the Fraser River, who tend to rely more heavily on one or a few streams for their fisheries - some of which may only have one run of salmon. For these First Nations, "even a few is too many extinctions."²²⁸ However, research participants in the lower reaches of the watershed and those whose traditional fisheries for Fraser sockeye were marine-based echoed this perspective.²²⁹ There was a shared understanding of the need to protect the lineages of distinct salmon runs, not only out of a respect for biodiversity, but for the salmon as "essential co-habitants" in First Nations' territories.²³⁰

5.1.2 Ecological governance and sockeye conservation

The literature on First Nations and wildlife conservation suggests that the maintenance of respectful relationships is fundamental - between First Nations and salmon, First Nations and other First Nations further upstream, and First Nations traditional rights holders and those who relied upon them for access to salmon. The word "respect" came up frequently in interviews with research participants in relation to how salmon should be treated, and how people's access

²²⁶ Interview with a technical staff member of a First Nations organization, August 26, 2015.

²²⁷ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 292 Witness Summary – Thomas Alexis," 2, accessed December 4, 2015, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/EXHIBITS.HTM.

²²⁸ Interview with a technical staff member of a First Nations organization, August 31, 2015.

²²⁹ For instance, in his witness summary, Chief Edwin Newman of the Heiltsuk Nation stated the importance of "rebuilding stocks in smaller river systems," as Heiltsuk had determined "that innumerable smaller systems contribute to mixed stock salmon fisheries and their neglect creates reliance on passing stocks such as the declining Fraser River sockeye" (Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 300 Witness Summary," 4).

²³⁰ Nancy J. Turner, *The Earth's Blanket*, 25. This principle is supported in more contemporary management approaches to wild salmon put forward (but as of yet not fully implemented) put forward by the federal government, including the principle of Ecosystem-based Management (EBM) and the Wild Salmon Policy, which supports the management of salmon according to smaller aggregates of salmon runs (termed "conservation units) in place of the current DFO policy of making management decisions according to very large run timing (e.g. early summer, late) aggregates.

to Fraser River sockeye and other species of salmon should be treated across and within nations. This section explores how this idea of respect was and, in many instances, continues to be enacted in First Nations' salmon fisheries, and the perceived conservation effects of these practices, including the use of indicators to enable sharing and sufficient escapement of salmon; selective fishing technologies; respectful treatment of salmon; and systems of governance (including oral histories, traditions, and values) that maintained and enforced these practices.

“It doesn’t just belong to us. It belongs to all people:” Sharing salmon

A recurrent theme in this study's interviews was the timing of fishing for different species and different runs to ensure that First Nations upstream had sufficient salmon to meet their needs, including food for the winter and for trade. The time to start fishing would often be timed with the use of “certain days and such tricks,” including biological indicators:²³¹

Conservation, when I asked my grandmother she, of course, her being ninety percent Nlha7kamx speaker – totally different mindset, different way of thinking and looking at things. And she talked about conservation, she would tell me: it doesn't just belong to us. It belongs to all people. Conservation is something that needs to be done by all people. When, like in this time of year right now, the early time Chinook are going by. We wouldn't go fishing. We would keep our nets out of the water until the mock orange blossoms started showing up on the bushes. [...] That's when my grandmother would put the spring salmon net out. And I said “How come? I see springs going by. There they are!” She'd say: “No, they don't belong to us. They belong to those people up there.” That's conservation in my mind.²³²

As one went up along the river systems people used to talk to one another and say, “what do you think we should be doing?” and “how was the abundance?” People understood what abundance should be going back to the spawning grounds; it was very sustainable. There was collaboration within the systems.²³³

In Interior Salish territories, the ripening of Saskatoon berries was considered a signal of the mid-summer sockeye runs, while “the best time for drying fish happens when big grasshoppers can hold themselves up in the air and make the “click, click, click” noise, which indicates the

²³¹ Interview with a First Nations leader and knowledge holder, May 17, 2015.

²³² Interview with a First Nations leader and knowledge holder, May 27, 2015.

²³³ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 292 Witness Summary – Thomas Alexis,” 1.

right breeze and temperature.”²³⁴ In Sts’ailes territories, signals were the migration of certain species of birds, the ripening of snowberries, and the turning of salmonberries from orange to a jewel-like red – “everything functions by cycles and ecosystems.”²³⁵ Waiting to fish based on these types of ecological indicators, it was suggested, helped to ensure that enough salmon would reach the spawning grounds to ensure a healthy return. In other words, research participants contend that respecting the needs of other First Nations also met the conditions for the continuity of the salmon run.

This value of sharing was also mentioned by those whose Nations traditionally fished for Fraser River sockeye in the marine area – otherwise known as “interception fisheries.” In several instances, different names were used to differentiate the sockeye stocks that spawned in a Nation’s traditional territories and those that were just passing through:

There’s *taxiid*, which is the sockeye which return to Copper River, sort of rivers...the sockeye return to the rivers in Haida Gwaii, and there’s *sGwaagan*, which is the sockeye which are kind of passing by going to other rivers, right. So there’s kind of a recognition...that they’re a different kind of fish.²³⁶

The Kwakwaka’wakw people whose territories extend across the northeastern coast of Vancouver Island have a general word in their language for sockeye – *maḥik*. However, in his testimony before the Cohen Commission, Rod Nannakim of the We Wai Kai First Nation²³⁷ described a different Kwak’wala word for passing sockeye salmon stocks, and noted the We Wai Kai fishermen’s ability to distinguish between sockeye:

Fishermen say that they can tell the difference between local and passing sockeye, and also between the different runs of the passing sockeye based on behavioral and physical differences in the fish.

²³⁴ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 291 Witness Summary – Chief Fred Sampson,” 3.

²³⁵ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 279 Witness Summary – Chief Willie Charlie,” 5, accessed December 4, 2015, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/EXHIBITS.HTM.

²³⁶ Interview with a technical staff member of a First Nations organization, August 26, 2015.

²³⁷ The We Wai Kai First Nation is one of thirteen band governments that form contemporary political organization of the Kwakwaka’wakw peoples.

Sharing was also a distinct part of many First Nations cultures, and the sharing of salmon was of particular importance in winter ceremonies where the host would feed everyone who attended for days on end.²³⁸ This “culture of sharing” continues today, at the level of families and communities and, in the event of scarcity or celebration at the level of region or nation.²³⁹ The ongoing longhouse traditions of many coastal and other First Nations “depend on the salmon and people that help cook and provide food” and First Nations are proud when they have enough salmon to feed guests in their territories.²⁴⁰ This generosity in turn maintains reciprocal relationships between a Nation and other communities, including other First Nations communities.

Selective Fishing Technologies

Research participants considered traditional selective fishing technologies to be an important component of salmon conservation. The technologies referenced included a variety of fish traps (tidal and non-tidal), weirs, nets, troll lines, fishing platforms, spears and dip nets. Overall, there was a shared perspective that these technologies fostered sustainable use of the salmon resource by reducing by-catch and/or by-catch mortality. For instance, fish weirs and traps allow fishers to examine the trapped or confused salmon and select those they wanted to harvest according to preferences and requirements for sustainability; salmon “ripe” for spawning might be released in favor of salmon with more muscle and higher fat content, or large salmon might be released to encourage “good progeny for their future.”²⁴¹ These highly selective technologies would also enable fishers to harvest more males and release the majority of roe-carrying females vital for the continuity of the run:

²³⁸ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 381 Witness Summary – Grand Chief Clarence Pennier,” 4.

²³⁹ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 282 Witness Summary – Joe Becker,” 2, accessed December 4, 2015, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/EXHIBITS.HTM.

²⁴⁰ For instance, the Stó:lō community of Chiyó:m holds an annual salmon barbeque open to anyone interested in learning about Cheam “cultural and traditional practices,” including fishing methods (Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 278 Witness Summary – Councilor June Quipp,” 3; 5).

²⁴¹ Interview with a First Nations leader and knowledge holder, May 17, 2015. Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 293 Witness Summary – Grand Chief Saul Terry,” 1.

People thought that we strung a weir across a whole river, but that was never the case. We only had partial weirs with collection boxes. Those collection boxes were about fifteen feet long and five foot wide, were made of willows, and once those are full, people used to take them out and used them for food. And it was a communal event, fishing, the whole community used to go to the weirs and gather their fish there. You know our old weir site on Tachie River and you will see cache sites all along the river where people stored their dried goods for the winter. It was an annual event, and it was only a two-week stint at most of the times because it was so efficient. [...] Then we would shut down our weir fisheries and let the rest go spawn. And it was very selective. Our people knew the condition of the fish, whether they were ready to spawn or not, and if they were at that condition then they let it go.²⁴²

Although operated differently from weirs, the dip net technologies used in the fast flowing waters of the Fraser Canyon also allowed for selective fishing for salmon:

We were doing dip netting on the Adam's River run. There was an abundance, we felt safe doing it. We went and done it by dip net – not one coho bycatch. Not one steelhead. Take a look at any one of the other fisheries. There's bycatch. Not here, zero. If there's a way to do this sustainably, we need to do that.²⁴³

This interviewee then went on to explain that if the salmon caught in the fine mesh dip net is not the salmon that is desired, it is a relatively simple matter (though requiring considerable strength) to flick the salmon back into the roaring river waters. In addition, it was mentioned in the course of several interviews that in the event of an unexpectedly small return of a particular salmon run, selective fishing technologies in combination with extensive knowledge regarding run timing groups and characteristics could reduce the harvest rate and support regeneration of the run, potentially without seriously diminishing the ability of First Nations communities to meet their needs by harvesting other runs. It was further suggested that these selective fishing technologies contributed significantly to the ability of First Nations to maintain very large populations and to spend months of the year feasting and dancing while maintaining flourishing populations of salmon: “We were able to... monitor returns and manage fisheries, and we didn't overfish. And that is true.”²⁴⁴

²⁴² Interview with a First Nations leader and knowledge holder, May 17, 2015.

²⁴³ Interview with a First Nations leader and knowledge holder, May 27, 2015.

²⁴⁴ Interview with a technical staff member of a First Nations organization, August 26, 2015.

Restoring the Runs: Lessons from oral histories

The incredible abundance of Fraser River sockeye runs in the past is remembered through oral traditions, histories, and place names:

Our people used to say, “We manage these fish so well we used to walk across the backs of the fish to get to the other side.” So all these stories that you’ve heard of abundance, reflecting abundance, you hear it all the way along the river too that they managed so well they used to walk across the river on the backs of the salmon.²⁴⁵

[I have] heard stories of salmon abundance so great that they changed the colors of the rivers.²⁴⁶

Coquitlam means: “where the water boils with fish.” There would be so many fish going through that part of the water that it would seem to bubble with them as they were going through.²⁴⁷

Not only do these stories tell us, in the words of one research participant, the “very high abundance” of salmon that once returned to the rivers and streams in the Fraser River watershed but, as was suggested on several occasions, these stories suggest that fisheries managers should be aspiring to return to such levels of abundance:

A lot of the elders in the Fraser waters say, “we need to get back to the numbers we had before.”²⁴⁸

We are doing the protection of the habitat already but we need the numbers to come back and to be rebuilt to a number where we could sustain our seven generations. So that’s what it means to do conservation. It doesn’t mean that you can fish this much, give commercial fisheries this much and whatnot.²⁴⁹

This suggests that oral histories and lessons passed on through oral traditions provide a framework for the management objectives that First Nations feel we should collectively be striving for; importantly, these objectives differ substantively from “no net loss” or sustained yield approaches to fisheries management. In addition, it was articulated several times that the respectful *treatment* of salmon bodies was as important to conservation as the *number* of bodies harvested; in the words of one study participant, “If you honor someone, they will honor you

²⁴⁵ Interview with a First Nations leader and knowledge holder, May 17, 2015.

²⁴⁶ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 279 Witness Summary – Chief Willie Charlie,” 2.

²⁴⁷ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 381 Witness Summary – Grand Chief Clarence Pennier,” 2.

²⁴⁸ Interview with a First Nations leader and knowledge holder, May 17, 2015.

²⁴⁹ Ibid.

back. There is reciprocity.”²⁵⁰ This perspective is reflected in oral traditions, where respect for salmon bodies is a consistent theme. For example, oral traditions recounted to me in an abbreviated form from Haida and Secwepemc/Shushwap territories exemplify this ethic of humility and respect, by showing what happens when fishers do not adhere to these values:

In Haida oral history there’s, you know, there was once an Eulachon run on the islands and then we didn’t look after it so it was wiped out... so as a result, you know, we now... we go to the mainland to get Eulachon oil. So that, in a way that’s a teaching, right, around if you don’t look after what you have then you might lose it, right. And also what some of the consequences might be of that.²⁵¹

Salmon never used to run into Shushwap Country... and it is said that a couple of powerful women were blocking the river downstream and not allowing the salmon to come upstream and so Coyote had a hankering for salmon [so] he went down to be able to bring the salmon back for our area. [...] But when he did get them up there, he wanted to... show off, and in the process of trying to do that he invited the whole Shushwap Nation, the chiefs to come and feast on this great food that he’d brought up. But in the process of preparing the salmon he disrespected them [by kicking the salmon when they got caught on his hair] and they all left. And that’s what’s happening today, we’re disrespecting the salmon and they’re all leaving us.²⁵²

We have to turn ourselves around and move back towards respecting the environment, respecting the salmon, respecting the water, respecting the forest.²⁵³

This idea of “turning ourselves around” came up several times in reference to the management of Fraser River sockeye; in particular, there was frequent re-iteration of the belief that oral traditions had a lot to teach contemporary fisheries managers about “respect for all [their] relations.”²⁵⁴ Not only were proper manners conveyed in these oral traditions, but also management techniques to ensure respect for the salmon runs in their entirety (i.e. the protection of smaller runs). Above all, there was a shared perspective that First Nations’ oral traditions, histories and values in the context of a shared governance framework would provide important direction for “the way forward” for rebuilding salmon runs.²⁵⁵

²⁵⁰ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 294 Witness Summary – Dr. Ron Ignace,” 3. See also “Exhibit 300 Witness Summary – Chief Edwin Newman.”

²⁵¹ Interview with a technical staff member of a First Nations organization, August 26, 2015.

²⁵² Interview with a First Nations leader and knowledge holder, August 31, 2015.

²⁵³ Ibid.

²⁵⁴ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 381 Witness Summary – Grand Chief Clarence Pennier,” 5.

²⁵⁵ Interview with a First Nations leader and knowledge holder, August 31, 2015.

First Nations governance systems

The respectful treatment of fish and the fisheries resource, timed access to runs, and the use of specific fishing technologies and locations have traditionally been, and in many instances continue to be, guided by complex systems of governance linked to territory. In addition to a right to management based in a long history of stewardship and use of salmon (discussed in Sec. 5.1), First Nations' title rights were also seen to provide a strong basis for First Nations *sharing* responsibility for salmon management with the Canadian government. In the following passages First Nations participants at the Cohen Commission describe the linkages between conservation and governance in the context of traditional systems of natural resource stewardship:

[Conservation is] a traditional knowledge tool we always used when we do our fishing or our management on the land. Our people used to manage all species... and they always monitored these areas that have been hunted out, so they close down those areas and asked some other families to invite this family to their areas to do their food gathering. [...] It was the grand chiefs of the day that made those decisions. It was connected to the potlatch and the clan system.²⁵⁶

For Secwepemc people, historically everything was based on kinship ties. If you have kinship ties then you were allowed to access the land and its resources. If you are married to a person from a neighboring Nation you are allowed to, for example, hunt and fish with them in their Nation's land and vice versa. However, if you do not have this kinship tie, you would be severely punished for entering into another Nation's land without express permission and proper protocol.²⁵⁷

The [St'at'imc] communities also had fish Chiefs to ensure that enough fish passed up-river. The fish Chief's role was to decide when enough fish had passed, and give the nod to commence the fishing. It was a ceremonial observation as well as a conservation initiative.²⁵⁸

In other words, in both their testimony at the Commission and in their interviews for this study, First Nations were very clear that their traditional roles as stewards and sustainable harvesters of Fraser River salmon, and the success of their traditional governance systems in sustaining very high salmon runs for millennia, put First Nations in an excellent position to guide and implement

²⁵⁶ Interview with a First Nations leader and knowledge holder, May 17, 2015.

²⁵⁷ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 294 Witness Summary – Dr. Ron Ignace," 2.

²⁵⁸ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 293 Witness Summary – Grand Chief Saul Terry," 2; see also "Exhibit 381 Witness Summary – Grand Chief Clarence Pennier," 5.

contemporary salmon management. Moreover, it was felt that the right to manage the fishery was *as* important as the right to access the fishery; after all, without abundant returns of sockeye and other species of salmon, what would be the value in a right to fish? In the words of Stsmél'ecqen Dr. Ron Ignace: “I can’t eat my Aboriginal right to fish, I can eat a fish. So I will keep fighting for my rights by fighting to save salmon.”²⁵⁹

This obligation to exercise their Nation’s rights to management is enforced by the belief that sockeye conservation is fundamentally linked to the wellbeing of future generations:

It’s not simply bringing things back from the edge of extinction – it’s managing them so that each generation can enjoy the benefits.²⁶⁰

In our language conservation means that we need to sustain stocks for the next seven generations. That’s something like 125 years. And everybody along the river says that. Everybody.²⁶¹

In interviews, research participants did not initially differentiate between future generations of First Nations and of settlers; when asked to explain their perspectives further, it was generally contended that the needs of First Nations, including the need to maintain a moderate livelihood from the fishery resource, would take precedence over the needs of non-Indigenous groups. Nevertheless, there was a belief that more abundant sockeye runs would enable First Nations to meet their needs while also providing some recreational, sustenance, and commercial access to non-Indigenous peoples.

5.2 Deciding to participate (or not) in the Cohen Commission

When the Cohen Commission was announced in the fall of 2009, several Fraser River and other First Nations with a historical or contemporary Fraser River sockeye fishery were not interested in participating. Experiences with earlier inquiries had made them deeply skeptical

²⁵⁹ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 294 Witness Summary – Dr. Ron Ignace,” 5.

²⁶⁰ Interview with a First Nations leader and knowledge holder, July 17, 2015.

²⁶¹ Interview with a First Nations leader and knowledge holder, May 17, 2015.

about the efficacy of these types of processes for the conservation of Fraser River salmon. In the end, however, twenty-six First Nation governments and organizations participated in the Cohen Commission. Most participants in this study engaged with the commission only after carefully weighing the drawbacks and the benefits of doing so. For First Nations, some of the reasons to engage were primarily defensive, and included the need to refute accusations of “poaching” as well as the need to communicate the impacts of the sockeye decline on the wellbeing of their communities. But the Cohen Commission was also perceived by First Nations as an opportunity to address the decline in Fraser River sockeye runs and associated impacts through the advancement of their rights and responsibilities to manage the fishery.

In what follows I touch on research participants’ perceptions of earlier inquiries related to Fraser River salmon (Sec. 5.2.1), before discussing some of the reasons First Nations decided to engage in the Cohen Commission (Sec. 5.2.2). Several First Nations leaders stated that they engaged in the Cohen Commission because they felt an obligation and the responsibility to “speak for the salmon.”²⁶² Others perceived the Commission as an opportunity to move toward shared management of Fraser River sockeye salmon, consistent with their rights and responsibilities. These obligations and perceived opportunities provide important context for Section 5.3, which focuses on the challenges and constraints experienced by First Nations in their attempts to articulate their understandings of sockeye conservation at the Cohen Commission.

5.2.1 “Aboriginal leaders have long memories:” Putting the Cohen Commission into historical context

As briefly outlined in the introduction, there is a longstanding history of First Nations engaging in Fraser River salmon-related commissions of inquiry. These as well as other forms of

²⁶² First Nation's technical staff, e-mail message to the author, December 8, 2015.

inquiry were brought up in several interviews, and the impacts of commissions (and/or the lack thereof) on First Nations communities was referenced repeatedly as a reason why First Nations were initially skeptical about engaging with the Cohen Commission. While many First Nations bands, tribal councils, organizations and individuals eventually applied for participant status, some Fraser River and coastal First Nations did not. For at least one of these Nations, concerns around the process and outcomes of a recent inquiry related to Fraser River salmon, as well as existing workloads and other important fisheries-related issues that required resourcing and staff oversight, outweighed the potential benefits of participating. The Nation in question also trusted that their interests and perspectives would be well represented by the many Nations that did eventually decide to engage.²⁶³ This section explores the legacy of historical salmon-related commissions of inquiry in British Columbia from the perspectives of First Nations leaders, staff, and legal counsel in order to further understanding of how their experiences informed contemporary decision-making by First Nations around whether or not to engage in the Cohen Commission of Inquiry.

Overall, participants in this study expressed a low level of confidence in the efficacy of inquiries to conserve sockeye salmon, in part *because* of their experiences with inquiries in the past, including that led by Peter Pearse in 1982. One research participant said: “Aboriginal leaders have long memories” and leaders interviewed for this study were consistent in their perspective that most earlier inquiries damaged First Nations’ interests and failed to conserve sockeye.²⁶⁴ Preceding inquiries were deemed by many to have taken up too much of First Nations’ limited time and resources, and several participants noted that there “hasn’t been much that came out of them.”²⁶⁵

²⁶³ Interview with a fisheries manager working for a First Nations organization, September 21, 2015.

²⁶⁴ Interview with a First Nations leader and former fisheries manager, May 20, 2015.

²⁶⁵ Ibid.

We've had enough people wasting our time over the years, you know with inquiries and putting things off, you know, instead of doing something which would... you know they set up this thing, [we] spend a couple of years fiddling around...²⁶⁶

There's been a lot of Royal Commission that, kind of, have Aboriginal issues right, and then again you look and say there's these thirty or forty or a hundred recommendations and how many have actually resulted in... have some outcomes?²⁶⁷

In addition to being perceived as a “waste of time,” none of the previous inquiries were seen to have reflected or meaningfully integrated Indigenous perspectives and values into their findings and recommendations:

My experience with any these commissions is they've never ever taken under consideration our testimonies, any of our information, any of our input. It's always been ignored. You look back there was... they never seem to stay focused on the reason that they're commissioned or the reason there's a review.²⁶⁸

It was suggested several times that this lack of “focus” had somehow resulted in First Nations' fisheries being scrutinized and First Nations being blamed for “missing” fish. The results were, in several cases, recommendations to increase enforcement of regulations governing in-river fisheries, a situation that was viewed with concern by those who felt that federal enforcement officers were unfairly targeting First Nations' fisheries:

The Aboriginal leadership had previous experience with Inquiries, such as the Pearse-Larkin Inquiry in '92. But even before that - and a lot of people forget this - that Dr. Pearse... away back in 1982... [there] was a royal commission inquiry called Turning the Tides. [...] There was a lot of dissatisfaction about that Commission of Inquiry.²⁶⁹

Dissatisfaction hinged, in part, on Pearse's characterization of what was then referred to as the “Indian food fishery” and his recommendation of more stringent law enforcement and increased penalties for fisheries offenses - all these were perceived to target First Nations' fisheries.²⁷⁰ Because of these experiences with earlier inquiries related to salmon and/or “missing” fish, several of those interviewed contended that their Nations engaged in the Cohen Commission

²⁶⁶ Interview with a First Nations leader and knowledge holder, July 17, 2015.

²⁶⁷ Interview with a technical staff member of a First Nations organization, August 26, 2015.

²⁶⁸ Interview with a First Nations leader and knowledge holder, May 19, 2015.

²⁶⁹ Interview with a First Nations leader and former fisheries manager, May 20, 2015.

²⁷⁰ Pearse, *Turning the Tide*, 173.

because they were concerned that otherwise they would not be able to formally defend their communities from being blamed for the failure of the 2009 Fraser River sockeye run:

If you look back in history, and unfortunately you have to go back in history, there's been several reviews. This is the first commission that was actually done with the hearings and stuff, but whenever fish went missing or the Department of Fisheries made mistakes on their estimates of how many fish are returning and then they lose some fish they always blame [Lower Fraser First Nation]. [Lower Fraser First Nation] always got the blame for taking all these fish.²⁷¹

Nevertheless, “as the days and weeks went by, more and more people started to get on – First Nations is what I mean – get on board to take part in the Inquiry.”²⁷² The following section outlines how, in spite of their significant reservations about engaging, many First Nations chose to engage in the Cohen Commission because of their responsibilities for sockeye conservation as well as the opportunity presented by the Cohen Commission to make those responsibilities known.

5.2.2 Perceived opportunities to support sockeye conservation at the Cohen Commission

In 2009, when the Commission convened, DFO was already engaging First Nations through several different avenues, including community-level discussions regarding FSC allocations, minor First Nations representation on the Fraser River Panel,²⁷³ and, to a limited extent, the Integrated Harvest Planning Committee, a DFO salmon advisory process.²⁷⁴ But these avenues were considered wholly inadequate by First Nations striving for joint management of the fishery:

²⁷¹ Interview with a First Nations leader and knowledge holder, May 19, 2015.

²⁷² Interview with a First Nations leader and former fisheries manager, May 20, 2015.

²⁷³ The Fraser River Panel is a cross-sectoral management body that is responsible under the terms of the Pacific Salmon Treaty for the in-season management of Fraser River sockeye and pink salmon fisheries. First Nations are currently a minority on the Panel, which has been identified as an issue by First Nations at the Cohen Commission, who suggest that more engagement of First Nations is necessary to make in-season decisions about the fishery (Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, Public Hearing 94, June 28, 2011, accessed March 2, 2016, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/SCHEDULE/TRANSCRIPTS/COHENCOMMISSION_HEARINGTRANS_94.PDF#zoom=100).

²⁷⁴ The Integrated Salmon Harvest Planning Committee (IHP) is a cross-sectoral advisory process that provides feedback to the Department of Fisheries and Oceans on operational decisions related to salmon harvesting on the BC coast and the associated watersheds, including harvest planning management, and post-harvest review. First Nations representation on the IHP has been consistently low because of First Nations' concerns about engaging in a process designed for resource users (Tier 3 engagement). Fisheries Management Plan, which has the potential to set out a plan of action that may infringe on First Nations' rights. This was raised as a significant issue for pre-harvest planning by First Nations in their testimony at the Cohen Commission (Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, Public Hearing 94, 49).

Right now First Nations do not have much say – they are told when, where and what to fish. That’s not co-management.²⁷⁵

First Nations haven’t been meeting their needs on the Fraser River many many times out of the last twenty, thirty, forty years. And the reason is the federal government’s management system, which excludes First Nations from it.²⁷⁶

First Nations perceived the Cohen Commission as providing an opportunity for the development of recommendations that would support the establishment of co-management structures that recognized First Nations’ rights, title, and responsibilities to conserve Fraser River sockeye.

In 2009 the First Nations Fisheries Council outlined a broad vision of co-management as a process “that actively engages and respects DFO’s and First Nations’ rights and responsibilities in fisheries and aquatic resource management and decision making processes.”²⁷⁷ Four distinct opportunities were identified by those interviewed for this study to advance this understanding of co-management. First, they identified the Cohen Commission as an opportunity for First Nations to educate the Commissioner, his staff, other Commission participants, and the public about First Nations’ rights and responsibilities to manage sockeye salmon. Second, they saw the Cohen Commission as an opportunity for First Nations to outline their concerns around the Fraser River sockeye management approach of the DFO. Third, they considered the Commission an opportunity for First Nations to outline, from their perspectives, the key impediments to joint or co-management of Fraser River salmon and to seek recommendations to overcome these impediments. And fourth, respondents saw the Cohen Commission as a space for First Nations to demonstrate their capacity to manage sockeye and the benefits that they could bring to a co-management relationship with the federal government. The following sections outline these perceived opportunities in turn.

²⁷⁵ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 294 Witness Summary – Dr. Ron Ignace,” 5.

²⁷⁶ Interview with a technical staff member of a First Nations organization, August 10, 2015.

²⁷⁷ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 295 First Nations Fisheries Council Co-management Discussion Paper,” 1.

1. First Nations' responsibilities for sockeye conservation

In spite of their reservations about participating in yet another inquiry, several interviewees indicated that their Nations engaged in the Cohen Commission in part because of their rights and responsibilities to support sockeye conservation. Specifically, particular First Nations felt that if they did not engage in the Cohen Commission, “the salmon would not have a voice in the inquiry.”²⁷⁸

[Northern Secwepemc te Qelmucw] they're there to protect the resource and, or to ensure that it's coming back for generations of youth and there was huge concern about why the fish didn't show up, and so continuing that stewardship role, they were... that was, that would be part of... partially the reason that they were wanting us, or wanted me there to represent the Northern Secwepemc te Qelmucw at the Cohen Commission.²⁷⁹

Moreover, many considered the commission of inquiry process as a far less adversarial and expensive forum for discussing salmon conservation than either the courts or direct action:

So, what do you do? You blockade, you raise trouble, you go to court, and all that does is... displaces you from the general public, as to... “oh, there are those Indians again.” The breaking recognition that we do have a right and we do own this resource as First Nations always ends up in court. Conflict rather than just listening and respecting and that's disheartening in itself. I've been raised here on this river.²⁸⁰

Research participants perceived the Cohen Commission as holding the potential to be one such space of “listening and respecting.”

For some, the Commission also presented a space for First Nations leaders in particular to express how the declining returns of sockeye and other species of salmon impacted the physical and cultural wellbeing of their communities, past, present, and future. Several interviewees explained how they felt compelled to participate in the Cohen Commission as part of their responsibility to ensure the continuity of Fraser River sockeye and as an obligation to both their ancestors, who had stewarded and safeguarded salmon for the present generation, and future generations to whom, it was felt, the same consideration was owed:

²⁷⁸ First Nation's technical staff, e-mail message to the author, December 8, 2015.

²⁷⁹ Interview with a technical staff member of a First Nations organization, August 31, 2015.

²⁸⁰ Interview with a First Nations leader and knowledge holder, May 27, 2015.

I felt it was absolutely critical, whether I had fifteen minutes or three days, I needed to go forward and say something. And I was encouraged of course by all of my community and all of my elders: “You need to go!” And absolutely, I wanted to go. My life, I was born on this river, I’ve lived here all my life. I had to go. I have a responsibility to those fish. That’s my grandmothers and grandfathers and great ancestors that are in that river. I owe them that, I have to, I’ve no choice. Not only for them and respecting what I was taught, but respect to my children and grandchildren, and my unborn grandchildren’s children. Your children. Everybody’s children. So I had no choice, I had to participate, even though I knew - same old same old.²⁸¹

In this telling, the conservation of salmon, community, and ties of kinship are presented as one and the same; a responsibility to conserve one is, in effect, perceived as a responsibility to conserve the delicate balance between these elements of First Nations ways of being in the world. When the opportunity arose to support both sockeye conservation through the sharing of First Nations’ perspectives, worldviews, and knowledge and, in turn, to support the development of more equitable fisheries governance structures, many First Nations eventually chose to seize the opportunity and engage in the Cohen Commission in spite of their substantial reservations.

2. First Nations’ concerns around DFO sockeye management

For some interviewees, one part of the appeal of engaging in the Cohen Commission was the opportunity for First Nations (amongst other participants) to outline the ways in which the Department of Fisheries and Oceans was mismanaging the fishery:

What we could bring to them as a First Nation I think, they never ever listen to, and we still bring it to them, is how they mismanage the fishery. That’s never ever... the commissions or the reviews never seem to put any of the onus on Department of Fisheries. And I think that’s where they need to get their knuckles rapped to say, “Hey, you aren’t doing a good job.”²⁸²

It was further said that the Cohen Commission provided a forum for describing the ways in which the DFO was obstructing First Nations’ rights to stewardship through its exclusion of First Nations from decision-making.²⁸³ As one First Nations leader stated: “DFO doesn’t want to

²⁸¹ Interview with a First Nations leader and knowledge holder, May 27, 2015.

²⁸² Interview with a First Nations leader and knowledge holder, May 19, 2015.

²⁸³ See also Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 280 Witness Summary – Grand Chief Clarence Pennier.”

let go of its responsibilities, and it hurts our people because of that.”²⁸⁴ For this reason, some interviewees perceived the commission process as an opportunity to offer a *constructive* critique of sockeye salmon management. Their favored approach was formalized by Tachie First Nations elder, traditional knowledge holder, leader, and longtime fisheries advocate, Thomas Alexis, as “managing for sustainability as opposed to managing for commercial interests.”²⁸⁵

3. Perceived impediments to a Fraser River salmon co-management framework

A third opportunity perceived by the key informants for this study was the chance to outline key impediments to the development of co-management structures for Fraser River salmon from a First Nations perspective, and to seek to overcome them. These impediments were identified in a 2011 discussion document prepared for the First Nations Fisheries Council of British Columbia by consultant Julie Gardner, and included: i) a lack of consistent and stable funding to support Tier 1 and Tier 2 co-management initiatives such as the Fraser River Salmon Roadmap Initiative, a bilateral initiative bringing together Fisheries and Oceans Canada and First Nations from the Fraser River watershed, Vancouver Island, and Marine Approach areas to develop a collaborative approach to managing Fraser River salmon; ii) a lack of transparency in the DFO mandate to negotiate shared management of the fishery; and, iii) a want of political will on the part of the federal government to recognize and act on the authority and jurisdiction of First Nations to manage their traditional fisheries.²⁸⁶ As one of the First Nations technical staff who testified at the Cohen Commission had it:

What’s the incentive to develop management plans if there’s no share of fish or your authority...to look after habitat is not recognized, or you can’t participate in the stewardship of your area?²⁸⁷

²⁸⁴ Interview with a First Nations leader and knowledge holder, May 17, 2015.

²⁸⁵ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 292 Witness Summary – Thomas Alexis,” 7.

²⁸⁶ For more information on barriers to progress on the Roadmap initiative see the report by Dr. Julie Gardner commissioned by the Fraser River Aboriginal Fisheries Secretariat Executive Committee: Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 1259 - Fraser Salmon Roadmap: Document analysis and Process Recommendations,” accessed December 4, 2015, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/EXHIBITS.HTM; 5.

²⁸⁷ Russ Jones speaking at the Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, Public Hearing 94, June 28, 2011, 58.

The First Nations Coalition entered this discussion paper outlining these impediments as an exhibit in the Commission's hearings; in addition, these obstacles were repeatedly brought up in the testimony of First Nations leaders and technical staff.²⁸⁸

4. First Nations' salmon management expertise

Rather than simply advocating for the exercise of First Nations' rights and obligations to manage the fishery, and outlining the obstacles to their advancement, some First Nations participants in the Commission chose to demonstrate how First Nations could contribute to the conservation of Fraser River sockeye at all levels of management. In this they emphasized Indigenous values and knowledge, including a holistic perspective on sockeye conservation; effective Nation-to-Nation (Tier 1) processes; technical expertise; and recent experience with salmon stewardship. The overall intent was to demonstrate "that one of the best and only ways that they could properly secure conservation of...Fraser River sockeye salmon was to have First Nations involved in the management."²⁸⁹ The following section discusses each of these elements in turn.

Indigenous values and knowledge

One major concern brought by First Nations to the Cohen Commission centered on how little First Nations knowledge holders were consulted by fisheries managers. Initially First Nations with these concerns pressed for hearings focused on the testimony of their leaders and knowledge holders. Many of those interviewed considered the three days of hearings dedicated to "Aboriginal Worldview, Cultural Context and Traditional Knowledge" a critical contribution by First Nations to the Cohen Commission's investigations:

²⁸⁸ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, Public Hearing 95, June 30, 2011, accessed March 2, 2016, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/SCHEDULE/TRANSCRIPTS/COHENCOMMISSION_HEARINGTRANS_95.PDF#zoom=100.

²⁸⁹ Interview with a lawyer who represented a First Nations organization at the Cohen Commission, August 19, 2015.

First Nations' values had to be part of the Cohen Commission even though they were leaving it... they wanted it to be more science, technical and all of that, [The First Nations Coalition] was successful in lobbying to have that component brought into so that Cohen, Justice Cohen could hear... could hear a broader perspective.²⁹⁰

[First Nations] definitely would try to and usually have the opportunity to bring forward the... the, I guess the position that these fish would be better managed if management incorporated traditional knowledge, more than it does and more effectively, and place it on the same sort of plane or level as modern day science. That traditional knowledge had its place in today's management world.²⁹¹

The Cohen Commission was therefore perceived as a key opportunity for First Nations to emphasize the knowledge held in their communities and to stress its value for management and salmon conservation, even though elements of this knowledge, related to ceremonies and traditional medicines, could not be shared beyond particular First Nations communities.²⁹²

However, First Nations were adamant in refusing to simply collect and pass along their knowledge to federal fisheries managers, insisting, in the words of Chief Edwin Newman of the Heiltsuk Nation that, "DFO needs to recognize, respect and utilize Heiltsuk's aboriginal knowledge as well as their practical experience as both commercial and subsistence fishers by honoring Heiltsuk authority over fishery management."²⁹³ In sum, First Nations at the Cohen Commission wanted a joint management structure in which they participated with the federal government *as equals* to ensure that First Nations' knowledges would be considered "at the same level as contemporary science."²⁹⁴

Effective Nation-to-Nation collaboration

In a co-management discussion paper prepared for the First Nations Fisheries Council of British Columbia, Nation-to-Nation or Tier 1 processes are described as foundational for the

²⁹⁰ Interview with a technical staff member of a First Nations organization, August 31, 2015.

²⁹¹ Interview with a technical staff member of a First Nations organization, August 10, 2015.

²⁹² Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River "Exhibit 291 Witness Summary – Chief Fred Sampson."

²⁹³ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 300 Witness Summary – Chief Edwin Newman."

²⁹⁴ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 291 Witness Summary – Chief Fred Sampson," 3. See also Public Hearing 94, June 28, 2011, 19.

development of a shared management structure for Fraser River salmon.²⁹⁵ In grouping themselves together at the beginning of the inquiry process, and in their effective engagement throughout, First Nations demonstrated that they were willing to and capable of coordinating themselves and arriving at consensus on subjects pertaining to sockeye salmon and management:

We illustrated to the Commission that we were working together and they had a whole large group of people cooperating and that we could cover a lot of different areas within the Commission of evidence that we could speak to.²⁹⁶

We worked very hard...to show Commissioner Cohen and others that we have something meaningful to contribute as it relates to all matters of management and... I think we met that goal.²⁹⁷

One coalition engaged in the Cohen Commission included nations from the Fraser watershed, Vancouver Island, and/or other coastal regions where sockeye salmon have traditionally been caught in interception fisheries.²⁹⁸ Discussion and negotiation were necessary to ensure that different interests were equitably represented. Overall, however, differences in opinion across different First Nations were outweighed by the overriding concern for the conservation of Fraser River sockeye and a shared perspective that joint management was an urgent next step to support sockeye conservation.

First Nations' contemporary stewardship activities and technical expertise

In several interviews it was suggested that First Nations considered it important to demonstrate to the Cohen Commission that they were well suited for and could meaningfully contribute to the technical aspects of Fraser River sockeye management:

We have the capacity and we want to do all our enumeration projects, sampling projects and whatnot from our own office, not from DFO's office. So we've got a biologist now doing this paper for us now. So getting all these ducks in a row to make sure that we're doing our jobs.²⁹⁹

²⁹⁵ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 295 First Nations Fisheries Council Co-management Discussion Paper."

²⁹⁶ Interview with a technical staff member of a First Nations organization, August 31, 2015.

²⁹⁷ Interview with a lawyer who represented a First Nations organization at the Cohen Commission, August 19, 2015.

²⁹⁸ The First Nations Coalition contained representatives from both the watershed and marine approach areas of the province. For more information on the grouping of participants at the Cohen Commission, see Appendix 5.

²⁹⁹ Interview with a First Nations leader and knowledge holder, May 17, 2015.

[First Nations] had grown and we were becoming more and more engaged in the science and the technical parts of what was required to deal with ... to co-manage with DFO. We wanted to make sure that they were hearing that we were working, we were being co-managers, that we are the original managers but also willing to work with DFO to be co-managers.³⁰⁰

This co-management role encompassed decision making, but also the development of First Nations' capacity on the ground to act as technical staff, monitors, and enforcement personnel that had authority for both commercial and aboriginal fisheries.³⁰¹ Time and again, participants emphasized that effective capacity building within First Nations communities requires long term and stable sources of funding.³⁰²

Summary

Witness summaries and testimony by First Nations at the Cohen Commission include many references to the recent actions on the part of First Nations to protect and restore salmon. In particular, public hearings and community meetings made the Cohen Commission aware that First Nations continue to be both “producers and caretakers” of Fraser River salmon through their enhancement and monitoring work. They also informed the Commission of the challenges First Nations have experienced trying to work with the DFO to support salmon stewardship and management.³⁰³ All of this, First Nations also pointed out, has affected their rights and responsibilities to manage their traditional fisheries.³⁰⁴ In many minds, the Cohen Commission provided a venue in which to demonstrate the ineffectiveness of management by the DFO, and a

³⁰⁰ Interview with a technical staff member of a First Nations organization, August 31, 2015.

³⁰¹ Capacity, according to Julie Gardner of Dovetail Consulting, “is the ability of people and organizations to manage their affairs successfully. Components of capacity include skills, structures, processes, resources and powers that together provide a range of governance, managerial and technical capabilities” (Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 1198 Capacity for Co-Management of Fisheries and Aquatic Resources: A Discussion Document,” 4, accessed December 4, 2015, http://epe.lac-bac.gc.ca/100/206/301/pco-bcp/commissions/cohen/cohen_commission/LOCALHOS/EN/EXHIBITS.HTM); Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 300 Witness Summary – Chief Edwin Newman,” “Exhibit 301 Witness Summary – Chief Robert Mountain,” “Exhibit 297 Witness Summary – Rod Naknakim,” “Exhibit

²⁹¹ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River Witness Summary – Chief Fred Sampson,” “Exhibit 381 Witness Summary – Grand Chief Clarence Pennier.”

³⁰² Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 381 Witness Summary – Grand Chief Clarence Pennier,” 3.

³⁰³ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, “Exhibit 381 Witness Summary – Grand Chief Clarence Pennier,” 3.

³⁰⁴ Interview with a technical staff member of a First Nations organization, August 31, 2015.

platform from which to insist that First Nations had a role in the technical as well as governance aspects of the fishery.

5.3 Perceived Challenges and Constraints

Even as First Nations leveraged the Cohen Commission to advance their rights and responsibilities to manage sockeye salmon, they encountered a number of significant obstacles that compromised the effectiveness of their strategies to articulate their capacity to ensure sockeye conservation. These obstacles took two distinct forms: first, Indigenous spokespersons perceived the Commission's Terms of Reference as limiting the Commissioner's ability to make recommendations regarding the rights and responsibilities of First Nations to co-manage the sockeye fishery. Second, Indigenous participants perceived a number of challenges to the full expression of First Nations' understandings of sockeye conservation *within* the Cohen Commission process. These challenges, and particularly the first of them, resulted in final recommendations that First Nations consider insufficient for the conservation of Fraser River sockeye.

5.3.1 Structural challenges

Under the current terms of the *Inquiries Act*, the federal government is not required to consult with First Nations on the appointment of a Commission, the Commissioner(s) or their terms of reference, though the Act does not state that the cabinet committee cannot consult with First Nations or any other group.³⁰⁵ For many of those interviewed, the lack of First Nations engagement prior to the announcement of a public inquiry was a significant constraint on the Commission's ability to address First Nations' management rights and responsibilities. In particular, it was suggested that the unilateral appointment of a Commissioner(s) for a

³⁰⁵ Section 2 of Part 1 of the *Inquiries Act* states: "The Governor in Council may, whenever the Governor in Council deems it expedient, cause inquiry to be made into and concerning any matter connected with the good government of Canada or the conduct of any part of the public business thereof." Section 3 of Part 1 of the Act outlines the process for appointing a commissioner(s): "Where an inquiry as described in section 2 is not regulated by any special law, the Governor in Council may, by a commission, appoint persons as commissioners by whom the inquiry shall be conducted" (Government of Canada, *Inquiries Act*).

Commission that directly related to, and had the opportunity to impact, First Nations' rights and responsibilities was problematic:

We didn't have any say in whether there should be two commissioners for example, one appointed by First Nations and one appointed by the Crown. Which frankly I thought would have been a really good idea, even though I have a lot of respect for Commissioner Cohen.³⁰⁶

In this view, an additional Commissioner appointed by First Nations would have increased opportunities for the articulation of First Nations' perspectives, and enhanced the impact of testimony given by First Nations people on the Commission's final recommendations. It was also felt that because the Commissioner was charged primarily with considering the policies and practices of the DFO, his opportunities to weigh in on the policies and practices of other federal and provincial departments were limited.³⁰⁷ In this view the Cohen Commission's Terms of Reference should have been broadened to encompass the policies and practices of industries and regulators relevant to Fraser River sockeye salmon conservation, producing a more integrated approach to investigating the causes for the decline of Fraser River sockeye and developing recommendations to address it.

For all that, Justice Cohen's final report recognized "the special relationship that many First Nations have with Fraser River sockeye salmon" and the unique status of First Nations in relation to access to sockeye based on section 35 of the *Constitution Act* and the negotiation of historical and modern treaties.³⁰⁸ Commissioner Cohen further acknowledged that the rights enshrined in the *Constitution Act*, as well as historical and contemporary treaties, "must be considered as part of the legal framework underlying the management of Fraser River sockeye."³⁰⁹ However, in his interpretation of the Commission's mandate, Justice Cohen stated that the focus of his inquiry (and the recommendations that would flow from his "findings of

³⁰⁶ Interview with a First Nation's legal counsel, August 19, 2015.

³⁰⁷ Interview with a technical staff member of a First Nations organization, August 31, 2015; Interview with a First Nations leader and knowledge holder, August 20, 2015; Interview with a lawyer who represented a First Nations organization at the Cohen Commission, August 19, 2015.

³⁰⁸ Cohen, *Final Report: Volume 3*, 5.

³⁰⁹ Ibid.

fact”) would be directed towards biological and ecological issues as well as DFO policies and practices. The short list of exemplary issues that followed made no mention of collaborative or co-management approaches, or First Nations’ knowledge.³¹⁰ This interpretation of the Commission’s Terms of Reference was described as disappointing for First Nations participants:

There was a feeling that his interpretation was almost an interpretation of convenience for him. It wasn’t...I don’t recall it being any real strong or bitter sort of feelings, but I think that was sort of in the air a little bit, but then basically there was... it was evident that everybody had to live by his interpretation and so people just rolled up their sleeves and got to work.³¹¹

However, those First Nations who engaged in the Cohen Commission soon found that there were additional procedural constraints on their ability to have their understandings of conservation articulated and meaningfully integrated into the Commission’s final report and recommendations.

5.3.2 Procedural challenges

Issues to be investigated

Commission counsel developed a list of issues for participants to review and comment on. Most of those individuals interviewed for this study expressed their initial surprise at the Commission’s broad approach.³¹² There was also concern that the original emphasis was “on different areas where modern day science would be providing some of the insights and the answers. You know, in relation to disease and fish farms...all other things too.”³¹³ The three days of hearings dedicated to “Aboriginal Worldview, Cultural Context and Traditional Knowledge” partly offset these concerns but it was also suggested in one interview that it would have been useful to have gathered evidence related to the negative impacts of the management of Fraser River sockeye by the DFO, including the exclusion of First Nations from management processes:

³¹⁰ Cohen, *Final Report: Volume 1*, 4.

³¹¹ Interview with a technical staff member of a First Nations organization, August 10, 2015.

³¹² Interview with a technical staff member of a First Nations organization, August 26, 2015.

³¹³ Interview with a technical staff member of a First Nations organization, August 10, 2015.

There wasn't emphasis placed on First Nations not being involved in management decision-making processes, sort of how badly that has been for the salmon over the last fifty years in particular.³¹⁴

In general, it was suggested that more analysis of the harm that had been caused to sockeye populations "might have broadened the vision of the Cohen Commission" to encompass a clear recommendation in support of more collaborative management of Fraser River sockeye.³¹⁵

Site visits: A mis-managed opportunity?

Before beginning its formal hearings, the Cohen Commission announced its intention to travel to twelve sites. None of these was a First Nations community. One First Nations leader describes the process that she went through to bring the Cohen Commission to her village:

...So I get really upset. And I start demanding. And so our one lawyer that was representing Stó:lō tribal council...we got on a conference call and he starts talking about the field visits that none of us were going to be visited. So I said, you know, you get us on there.³¹⁶

When asked about the value of the Cohen Commission visiting Chiyó:m, she responded:

I think, some of it is to show them how we fish, what it means to us, how we hand it down from generation to generation, the knowledge that we have, the knowledge that... you know, that... it's like our bloodline. You know, the fishing. It's not only is part of our sustenance, a big part of our sustenance – lot of our people that's all they live on all winter. You know... on salmon. Because we still live in high poverty.³¹⁷

In the end, a site visit to Chiyó:m was arranged, and in August of 2015 Justice Cohen and a delegation of Commission staff visited the small reserve on the southern bank of the Fraser River. Stó:lō fishing techniques, skills and knowledge were demonstrated to the visitors, and the community's reliance on salmon was expressed by Chiyó:m representatives throughout the visit.³¹⁸ Still many believed that a single site visit to a First Nations community was inadequate in demonstrating the extent of First Nations' ties to and knowledge of the lands and waters of their traditional territories:

³¹⁴ Ibid.

³¹⁵ Interview with a technical staff member of a First Nations organization, August 31, 2015.

³¹⁶ Interview with a First Nations leader and knowledge holder, May 19, 2015.

³¹⁷ Ibid.

³¹⁸ Interview with a First Nations leader and knowledge holder, May 19, 2015.

It would have been nice, you know, to have the opportunity to take the Cohen Commission out onto the lakes and the rivers and tell the stories of the land and how we utilized the water, and how we managed the fishery, you know, down through the ages.³¹⁹

You can actually stand in the footprints of my ancestors on the dipping rock. Because its worn into the rock, thousands and thousands of years of fishing in the same spot. Three different levels of that dipping rock was given to us as a gift from Coyote. Three different species of salmon would pass that rock. Every time you could stand and dip.³²⁰

Research participants did not oppose holding hearings downtown; still, some felt that the formal hearings and the community meetings (held indoors, often in a gymnasium, community center or conference room) were inadequate venues for the expression of First Nations' knowledge and perspectives about sockeye salmon conservation. In particular, interviewees regretted that Commissioner Cohen's insights into First Nations' laws, traditions, and knowledge surrounding salmon might have been compromised by his lack of interaction with the land and the river.

The hearings

First Nations played a "prominent role" in the Cohen Commission hearings, providing testimony on a broad range of subjects and working with their legal counsel to cross-examine witnesses.³²¹ Yet several of those interviewed remained ambivalent about the value of a judicial-style inquiry; some acknowledged that this form of collecting information was useful, but others were concerned about the appropriateness of this approach because many of the experts who testified, including First Nations and scientists, had their own communication styles, vocabularies and frames of reference:

Would we do it all the same? I'm not sure about the court setting, I'm not sure that we needed... I mean I accept that its very useful to have a judge listening to it, but judges often rely on very strict procedural processes and even how you ask questions and all that type of stuff, while in the scientific dialogue, if I'm involved in both, you know the scientific dialogue is often not based on the sort of strict rules about how you ask a questions.³²²

Those who provided testimony at the Cohen Commission also raised concerns about the cross-examination style. In particular, it was felt that some of the cross-examination by other groups'

³¹⁹ Interview with a First Nations leader and knowledge holder, August 31, 2015.

³²⁰ Interview with a First Nations leader and knowledge holder, May 27, 2015.

³²¹ Interview with a technical staff member of a First Nations organization, August 10, 2015.

³²² Interview with a lawyer who represented a First Nations organization at the Cohen Commission, August 19, 2015.

legal counsel sought to justify current approaches to fisheries management or emphasized the quantity of fish caught by the Aboriginal fishery – both of which were considered inappropriate lines of questioning:

The type of questions they were asking, as opposed to saying “What do you think... how should the resources... how should we look after the fisheries?” They were asking more specific questions which doesn’t allow you to contextualize your thought about how management should take place, and it was more geared towards... it seemed like the questions they were asking me was geared towards rationalizing the way things were run without really allowing... looking for ways to move forward in a positive fashion. That was my impression.³²³

In addition, the formal style of the court setting left several participants feeling nervous, intimidated or uncomfortable speaking at the hearings:

Because of the technical nature of fish, if you’re not a biologist you can feel out of your depth right. And it was also a legal process but I’m not a lawyer, right. So providing testimony under those circumstances was a little bit intimidating I found.³²⁴

For others, however, the hearings were “fun” – “They told me that I shouldn’t be joking around but I was already. They were saying that you are not supposed to laugh out but I was already telling some of my stories” – “above board,” and “pretty elevated, pretty good, pretty civil and pretty respectful.”³²⁵

Most interviewees who provided testimony at the Cohen Commission felt that they had too little time to express their knowledge and perspectives. Some believed that because First Nations’ fisheries had been disproportionately scrutinized and, in some instances, blamed for missing or declining numbers of salmon, First Nations leaders should have had additional time to defend their communities against these accusations:

We only got three days out of 120 and yet it was us that were getting the blame for the missing fish.³²⁶

³²³ Interview with a First Nations leader and knowledge holder, August 31, 2015.

³²⁴ Interview with a First Nations leader and knowledge holder, August 20, 2015.

³²⁵ Interview with a First Nations leader and knowledge holder, May 17, 2015; Interview with a technical staff member of a First Nations organization, August 10, 2015.

³²⁶ Interview with a First Nations leader and knowledge holder, May 19, 2015.

I was given fifteen minutes to share a lifetime of experience on this river. It was highly... to me it was rude and I was insulted that I was only given that time to be able to share that, when, you know you look at how that process worked. I was given fifteen minutes and each DFO scientist were given fifteen minutes – but there was ten of them... so in reality they got two and a half hours, versus fifteen minutes... per leadership. How does that work? You know, when you're supposed to collecting evidence or testimony when it's totally lopsided.³²⁷

Many argued that additional valuable information would have been provided to the Commission had leaders been given more time to speak about their Nations' values and knowledge about sockeye salmon:

I can certainly understand where... especially some of the political leaders in the... the elder statesmen would definitely have felt they didn't have enough time because those are people that aren't to be rushed. You don't get the best out of them unless they have a lot of time.³²⁸

Among these insights was the point that traditional fishing practices, including selective fishing technologies and timed fishing, were central to the conservation practices of First Nations.

Haisla scholar Kundoqk (Jacquie Green), contends that “it is essential to re-visit [traditional Haisla fishing and hunting] practices as a decolonizing method to reassert and affirm how Haisla peoples define conservation.” In other words, creating space for the articulation of traditional use is considered *essential* to the creation of space for First Nations' understandings more broadly. A majority of those interviewed for this study identified the lack of time and space (including the lack of time spent directly observing First Nations people fishing with their traditional technologies and techniques) as a significant constraint on their ability to more fully articulate their conservation perspectives regarding sockeye salmon at the Cohen Commission.

Cost of participating

First Nations insist that a lack of funding constrained their engagement with the Cohen Commission. Beyond the substantial costs of retaining legal counsel, few additional costs were covered by the funding issued by the treasury on the recommendation of Commissioner Cohen:

³²⁷ Interview with a First Nations leader and knowledge holder, May 27, 2015.

³²⁸ Interview with a technical staff member of a First Nations organization, August 10, 2015.

They don't really provide much capacity – they do provide for your legal counsel but not a heck of a lot of anything else for the people that are actually having to attend. I would have liked to have gone down every day or at least once a week but you know it's just impossible... I mean it costs money to travel to Vancouver, it costs money to meet with your lawyers, it costs money to, you know, get everyone together.³²⁹

Still others were less critical: “I think we were successful in lobbying for those funds to participate...as much as we could with the funding that was available.”³³⁰ All agreed, however, that, “there was a whole lot of other work that could have been done in the background that we were probably limited to,” including research related to traditional management techniques.³³¹

5.3.3 Did the Commission's final recommendations reflect these perceived constraints and challenges?

First Nations contributed substantially to both the collection of evidence and the development of the Cohen Commission's final recommendations; in the words of one research participant: “many of the Commission's recommendations could be more or less listed from our final submissions.”³³² Nonetheless, the majority of those interviewed expressed their disappointment that the final recommendations did not include any recommendations in support of First Nations' rights to management:

That was one of the major disappointments, major disappointments of the outcome of the Cohen Commission was the lack of recognition by Justice Cohen that First Nations have... that it would benefit the resource if First Nations were in a position to exercise their... actually their right I guess to participate in the management of these fish.³³³

Our submissions we sought very specific recommendations around co-management, collaborative management and Cohen... Commissioner Cohen wasn't prepared to go as far as we asked or sought.³³⁴

The final report recommended upholding the principle “that the Minister is the ultimate authority in decisions about conservation, fisheries management...and, within areas of federal jurisdiction, fish habitat” – a policy that First Nations have long considered an affront to their respective

³²⁹ Interview with a First Nations leader and knowledge holder, May 19, 2015.

³³⁰ Interview with a technical staff member of a First Nations organization, August 31, 2015.

³³¹ Ibid.

³³² Interview with a lawyer who represented a First Nations organization at the Cohen Commission, August 19, 2015.

³³³ Interview with a technical staff member of a First Nations organization, August 10, 2015.

³³⁴ Interview with a lawyer who represented a First Nations organization at the Cohen Commission, August 19, 2015.

authorities and jurisdictions.³³⁵ Justice Cohen also put forward a significant number of recommendations regarding implementation of the moribund Wild Salmon Policy, including some regarding integrated strategic planning for implementing the strategy with First Nations and stakeholders.³³⁶ However, Justice Cohen was silent regarding the Roadmap Initiative and Tier 1 governance structures; processes that First Nations perceived as vital to the development of a successful process to jointly manage Fraser River sockeye.³³⁷

The lack of specific recommendations related to First Nations' rights and responsibilities to manage Fraser River sockeye was partially attributed by study participants to the Terms of Reference - "a very important document" - which they suggested limited the scope of the Cohen Commission's recommendations to the DFO's policies.³³⁸

The trouble is that his recommendations had to go only to DFO, that's how he was structured. So if you look back to the scope of his original terms of reference, his recommendations were only to DFO. And so, you know, he could have said a lot to the province, he could have said a lot to everybody as to what others should be doing also. But he was charged and he had to stay within the confines of his charge to make recommendations to DFO, or to Canada.³³⁹

I think it was partly the limitations of the Terms of Reference, right, around... laws, rights and title and that kind of thing. So he was sort of limited in terms of changes to policy. Recommending changes to policy to reflect law.³⁴⁰

Because the *Tsilhqot'in Nation v. British Columbia* (2014 SCC 44) title case had not been decided at the time of the Cohen Commission hearings, some felt that there was no clear legal precedent in the province regarding the extension of First Nations' title rights to management of natural resources in their traditional territories: "My observation is that if *Tsilhqot'in* had been decided prior to Cohen then we might have had better recommendations around co-

³³⁵ Cohen, *Final Report: Volume 3*, 104.

³³⁶ *Ibid.*, 106.

³³⁷ Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River, "Exhibit 295 First Nations Fisheries Council Co-management Discussion Paper."

³³⁸ Interview with a technical staff member of a First Nations organization, August 26, 2015.

³³⁹ Interview with a lawyer who represented a First Nations organization at the Cohen Commission, August 19, 2015.

³⁴⁰ Interview with a technical staff member of a First Nations organization, August 26, 2015.

management.”³⁴¹ Still others argued that the lack of integration of First Nations’ perspectives in the final report and recommendations was simply a continuation of a broken consultative relationship:

You’re always left with the impression that they’re just going through a process... it’s lip service and you’re not given true time. It’s just like, okay, at the end, First Nations were participating, they were engaged. It’s just the whole consultative process.³⁴²

I don’t think it would have mattered what kind of knowledge or what kind of history we brought to the Cohen Commission. It still is ignored.³⁴³

Taken together, these concerns suggest that First Nations face a dilemma in deciding whether or not to participate in future royal commissions or other forms of inquiry related to salmon. On the one hand, First Nations feel a responsibility to engage in these processes because of their relationships to salmon, and to their communities, including their ancestors and future generations. In fact, those interviewed were unanimous in agreeing that they would participate in future salmon-related commissions of inquiry. On the other hand, First Nations are frustrated by what they perceive to be an ineffective process, both for the articulation of First Nations’ rights and interests as they relate to salmon, and for the design and implementation of conservation strategies for declining salmon stocks. In the years since the Commission’s inquiries, this perception of ineffectiveness has only grown.

5.3.4 First Nations’ perspectives regarding the federal response to the Cohen Commission recommendations

By the fall of 2015 the federal government had implemented two of the Cohen Commission’s seventy-five recommendations: the publication of an approved Integrated Salmon Fisheries Management Plan for 2013, and DFO’s release of the department’s rationale for the harvest rules set out in the “Fraser River Sockeye Decisions Guidelines” section of the

³⁴¹ Interview with a lawyer who represented a First Nations organization at the Cohen Commission, August 19, 2015.

³⁴² Interview with a First Nations leader and knowledge holder, May 27, 2015.

³⁴³ Interview with a First Nations leader and knowledge holder, May 19, 2015.

management plan.³⁴⁴ Other actions taken by the Stephen Harper-led government flew in the face of Cohen’s recommendations, including passage of the *Jobs, Growth and Long-Term Prosperity Act* (Bill C-38) on June 29th, 2012, which replaced the *Canadian Environmental Assessment Act* with a new act reducing the number and scope of federal environmental assessments, and amended the *Fisheries Act*, to reduce and eliminate habitat protection for fish. In addition, in January 2014 the federal government expanded the licensing of aquaculture facilities along BCs coastline.³⁴⁵

When accused, in a public letter from three fisheries advocates, of unreasonable delay in implementing the Cohen Commission recommendations, former Fisheries Minister Gail Shea responded that the government had recently announced a \$10 million program supporting local fisheries conservation projects and claimed that “our government has long recognized the importance of protecting sockeye salmon in the Fraser River,” adducing the establishment of the Cohen Commission as evidence of that.³⁴⁶ However, the DFO under Shea never responded to the Commission’s recommendations. Shea’s announcement of a \$10 million conservation program – far narrower and less expensive than Cohen’s conservation-related recommendations – did not satisfy First Nations dismayed at the obfuscation of the federal government:

They could have taken that 35 million and turned it into habitat restoration, spawning ground enhancement, creating the hatcheries to introduce our wild stocks. That money could have gone a long ways. Instead it was spent on this commission that doesn’t seem to have any teeth or traction.³⁴⁷

³⁴⁴ The IFMP is a document produced by the DFO that outlines the basic “rules” for the sustainable management of the fisheries resource. It is important to note that these are published on an annual basis (Cohen, *Final Report: Volume 3*, 30).

³⁴⁵ In May 2013, “without announcing any policy change, DFO approved the expansion of two salmon farms owned by Marine Harvest Canada in Queen Charlotte Strait which is a key migratory corridor for whales, dolphins, seabirds and fish—especially Fraser River sockeye salmon. The Marsh Bay and Shelter Bay salmon farms were allowed a 45 percent increase in capacity and together are now licensed to raise 7,000 tons of Atlantic salmon” (Living Oceans, “DFO cloaks salmon farm expansion in secrecy to bar public input,” January 16, 2014, accessed January 27, 2015, <http://www.livingoceans.org/media/releases/dfo-cloaks-salmon-farm-expansion-secrecy-bar-public-input>).

³⁴⁶ Peter O’Neil, “Ottawa denies delays in responding to sockeye report,” *Vancouver Sun*, Sept. 11, 2013, accessed January 27, 2015, <http://www.nationalpost.com/m/ottawa+denies+delays+responding+sockeye+report/8899973/story.html>.

³⁴⁷ Interview with a First Nations leader and knowledge holder, May 27, 2015.

They could have spent that 34 million on habitat work or... whatnot, here they invested it on lawyers. That's crazy. That's poor foolish management. That's the way we feel in the Fraser River because they're managing our fish that way... into extinction.³⁴⁸

Some described the Cohen Commission as “a step backwards” for sockeye conservation – a reference in part to the passing of Bill C-38 and the repercussions for non-commercial fish species' habitat protection.³⁴⁹ The Conservative government was accused of acting in bad faith by holding a public inquiry on salmon conservation whilst almost simultaneously dismantling fisheries habitat legislation and supporting a nation-wide program to extract and export of fossil fuels that pose a considerable threat to wildlife:

Basically our political leadership in Ottawa just sort of had a bigger and a more long-term agenda ahead of them and that was resource extraction rather than renewable resource conservation, stewardship... whatever you want to call it.³⁵⁰

The fact that the government of Canada has not made a point of implementing them, but instead has continued basically to destroy... what there is good about the management i.e. they're ripping apart their science branch, you know, they basically tore up all these environmental and Fisheries Act protections that there were sort of thing. So that I find to be much more frustrating right now.³⁵¹

For many, this concerning trend away from precautionary fisheries management as well as consistent government disregard for commission outcomes rendered the non-binding nature of recommendations increasingly unacceptable:

The government was under absolutely no constraint to pay attention to those findings is certainly problematic and therefore [the Cohen Commission]... did its job as far as it went, but then the government didn't do its job in terms of implementing to any degree the recommendations that would go towards solving some of those reasons for decline.³⁵²

The commissions to me they're useless, they're a big waste of money unless all the recommendations are really looked at and really seriously taken into consideration why would we even bother having them.³⁵³

³⁴⁸ Interview with a First Nations leader and knowledge holder, May 17, 2015.

³⁴⁹ Interview with a technical staff member of a First Nations organization, August 31, 2015. For a more thorough summary of the environmental implications of Bill C-38 see Ecojustice and West Coast Environmental Law, “What Bill C-38 means for the environment,” accessed December 4, 2015, <http://wcel.org/resources/publication/what-bill-c-38-means-environment>. For a more thorough analysis of the potential impacts of the changes of the *Fisheries Act* for fish habitat protection see Jeffrey A. Hutchings and John R. Post, “Gutting Canada's Fisheries Act: No Fishery, No Fish Habitat Protection,” *Fisheries* 38, no. 11 (2013).

³⁵⁰ Interview with a technical staff member of a First Nations organization, August 10, 2015.

³⁵¹ Ibid.

³⁵² Interview with a technical staff member of a First Nations organization, August 10, 2015.

³⁵³ Interview with a First Nations leader and knowledge holder, May 19, 2015.

So I think if something were to happen again First Nations and everyone should focus on something that's measurable and implementable... if that's even a word. We're sort of just dropping testimony for the sake of custom; I mean, it should lead to concrete actions, right, for the resource.³⁵⁴

In May of 2014, the First Nations Fisheries Council of British Columbia issued a press release in response to a *Globe and Mail* article by columnist Mark Hume discussing the ongoing failure of federal ministers to implement the Cohen Commission recommendations.³⁵⁵ Gord Sterritt, Executive Director of the Upper Fraser Fisheries Conservation Alliance, provided a reminder that in spite of the promising projected returns for the 2014 sockeye season, "there are still serious conservation concerns for runs returning to tributaries such as the Quesnel, Stuart Lake, Bowron, Nadina and Taseko."³⁵⁶ The Fisheries Council's press release also underlined the perceived value of the Cohen Commission recommendations and the need to act on them to ensure the survival of Fraser River sockeye. Taken together, these interview and press release statements suggests that *in spite of* First Nations' concerns that their rights to management and the conservation benefits of engaging First Nations in stewardship of the fisheries resource had been ignored, there was significant approval for many of the Cohen Commission's final recommendations and a desire to see them implemented. Some of those interviewed offered suggestions to support the implementation of future commission recommendations. The identification of dedicated funding (in at least the amount spent on the Commission) to support the implementation of its recommendations was one such suggestion. It was felt that this would ensure that the government would at least consider implementing recommendations if it already had funding set aside to do so.

³⁵⁴ Interview with a First Nations leader and knowledge holder, August 20, 2015.

³⁵⁵ Mark Hume, "First Nations fed up with government inaction on salmon inquiry," *Globe and Mail*, May 28, 2014, accessed February 24th, 2015, <http://www.theglobeandmail.com/news/british-columbia/fishers-urge-action-on-salmon-stocks/article18901535/>.

³⁵⁶ First Nations Fisheries Council, "PRESS RELEASE - First Nations Fisheries Council of British Columbia responds to Globe and Mail article, urges Government of Canada to implement Cohen recommendations," May 28, 2014, accessed November 16, 2015, <http://www.fnfisheriescouncil.ca/downloads/press-release-cohen-recs-may-28-2014.pdf>.

5.4 Creating Space for First Nations' Understandings of Sockeye Conservation: Summary and Synthesis

Holding an inquiry never solves an issue. All it does is bring to light the issues and the possible next steps.³⁵⁷

This chapter offers a substantial amount of evidence, drawn from interviews with First Nations leaders, resource management staff, and legal counsel, as well as witness summaries and testimony transcripts from the Cohen Commission hearings, pertinent to the question: *What can the experiences of First Nations participants at the Cohen Commission tell us about creating more space for the consideration of Indigenous peoples' knowledges and perspectives of conservation in natural resource planning and management processes?* The evidence presented in this chapter provides significant insight into the conservation perspectives and experiences of First Nations participants at the Cohen Commission, including:

- 1) Integration, holism, and place are key characteristics of First Nations' understandings of sockeye conservation. These understandings are rooted in oral histories, cosmologies, selective harvesting techniques and traditional governance approaches to fisheries management. In turn, these conservation perspectives inform First Nations' conceptualizations of appropriate approaches to contemporary sockeye salmon and fisheries management.
- 2) Research participants chose to engage in the Commission in part because many perceived the process as a unique opportunity to both educate the appointed Commissioner, his counsel, other participants and the general public about First Nations' rights and responsibilities to conserve Fraser River sockeye for future generations, and to demonstrate the many meaningful contributions that First Nations have to offer within a co-management (Tier 2) relationship with

³⁵⁷ Interview with a lawyer who represented a First Nations organization at the Cohen Commission, August 19, 2015.

the federal government, including traditional values and knowledge, effective Nation-to-Nation (Tier 1) processes, and longstanding experience and expertise in monitoring and stewardship.

3) Research participants encountered significant structural and procedural challenges to having their perspectives on sockeye conservation understood and incorporated into the findings and final recommendations of the Cohen Commission of Inquiry. These included: a lack of First Nations involvement in the drafting of the Commission's Terms of Reference and appointment of the Commissioner(s); a lack of focused analysis on the DFO's mismanagement; a lack of time spent out on the land and on the water learning about First Nations' knowledges and worldviews; the formalized judicial-style hearing process; the short amount of time given to witnesses to provide their testimony; and the cost of participation at the Cohen Commission; and

4) Research participants regard government inaction on the final recommendations of the Cohen Commission as unacceptable in the face of long-term declines in Fraser River sockeye salmon stocks. They suggest a number of potential policy mechanisms to address a perceived lack of government accountability when it comes to reporting on and implementing commission recommendations.

In light of all this, what steps are needed to ensure more space for the reception of First Nations' knowledges and perspectives of conservation in natural resource planning and management processes? Two key themes emerged from the study interviews. First, to address the procedural constraints outlined in Section 5.3.2, research participants put forward a number of suggestions:

- Examine traditional governance regimes, and stewardship and management practices;
- Examine the historical impacts of fishery management by the DFO, including the exclusion of First Nations from decision-making;

- Collect and give equal weight to traditional, technical, and scientific knowledge in the development of recommendations;
- Request that First Nations knowledge holders share their knowledge and perspectives on a given issue at the very beginning of the hearings' schedule "to give the whole commission an effective...on what we know on the ground, as opposed to what science knows on the ground;"³⁵⁸
- Increase the allotted time for the testimony of elders and political leadership;
- Visit more First Nations communities and traditional territories; and,
- Increase funding for commission participants to facilitate First Nations representatives' ability to attend Commission hearings.

Second, there was broad agreement that a more productive shared endeavor would emerge from the early engagement of First Nations in proceedings such as these by, for example, jointly developing the scope and procedures for a given commission of inquiry. Jointly appointing a Commissioner and/or appointing a second First Nations Commissioner to review the evidence, make findings of fact and recommendations, was also suggested several times by research participants. It was emphasized that a commissioner appointed by First Nations would not necessarily need to be a judge in the formal sense; rather, it was considered appropriate that First Nations elect a joint commissioner based on their own criteria of qualities and qualifications.

³⁵⁸ Interview with a First Nations leader and knowledge holder, May 17, 2015.

Chapter 6. Discussion and Conclusion

This study has sought to identify ways of creating more space for First Nations' knowledges and perspectives of conservation in the ongoing struggle to establish more equitable and ecologically sound approaches to natural resource governance in British Columbia. To achieve this, it first examined First Nations' perspectives on sockeye conservation. Then it evaluated both the opportunities to articulate and integrate such perspectives in planning processes by examining the work of a recent commission of inquiry and the limitations to so doing. Information for this study was gathered from two primary sources: interviews with twelve First Nations leaders, technical staff and counsel, and Cohen Commission process documents. An emergent thematic coding technique was used to analyze this information, resulting in two key findings aimed at the structure and procedures of planning and natural resource management processes. The following section evaluates these findings in the context of the Indigenous Planning and associated literatures, before turning in Section 6.2 and 6.3 to a discussion of the implications of these findings for both planning theory and practice. I conclude this chapter with a discussion of the limitations of the research design and theoretical approach, as well as some final reflections on the future of First Nations engagement in Fraser River sockeye conservation

6.1 Discussion of Key Research Findings

6.1.1 Coming to understand conservation from First Nations' perspectives

This study contributes to the broad literature on Indigenous worldviews and their intersections with sustainable use practices examining First Nations' conservation perspectives. It does so by concentrating on a single species – sockeye salmon – and a single “moment” – the Cohen Commission.³⁵⁹ The *place-based*, *integrative*, and *holistic* nature of First Nations'

³⁵⁹ This work additionally complements studies on First Nations' perspectives on salmon conservation as well as traditional knowledge studies that have taken place primarily at the Nation, Tribal or Band Council level by providing a more generalized analysis of First Nations' understandings of sockeye conservation (See, for instance: Heather Evelyn Castleden, “As Sacred as Cedar and Salmon: A Collaborative Study with Huu-ay-aht First Nation, British Columbia into Understanding the Meaning of 'Resources'”

understandings of sockeye conservation outlined in the previous chapter is reflected in the substantial literature chronicling Indigenous perspectives on appropriate approaches to resource management.³⁶⁰ Ethnobotanist Nancy Turner's *The Earth's Blanket* provides one of the most thorough accounts of First Nations interactions with their territories, which she characterizes as "a positive, direct, and reciprocal relationship between people and their environment, in which the consequences of wrongful action are seen to be immediate and direct."³⁶¹ Charles Menzies and Caroline Butler recount in their analysis of selective fishing techniques in K'moda Gitxaala territory how the "integrated and community-based nature of Gitxaala resource use structures a balance between community need and ecosystem health."³⁶² Consistent with these characterizations, Haisla scholar Kundoqk (Jacquie Green) coined the term "cultural conservation" to describe:

Traditional practices passed down from ancestors who had intimate knowledge and understanding of how these practices would preserve natural resources, provide sustenance for people and ensure that mother earth and all her offspring would be replenished throughout the seasons.³⁶³

In turn, these and other researchers identify how relationships between First Nations and other beings within their territories are reinforced by oral histories that recount what happens to people who "forgot themselves and mistreated our animal relations;" a conclusion that is also confirmed by the stories recounted to me regarding the punishments meted out to those who disrespect salmon – death by suffocation or, at the very least, being made a mockery of by chiefs of high esteem.

from an Indigenous Worldview," (Ph.D. Diss., University of Alberta, 2007); Michael Blackstock, "Water: A First Nations' Spiritual and Ecological perspective," *B.C. Journal of Ecosystems and Management* 1, no. 1 (2001); Ann Garibaldi and Nancy Turner, "Cultural Keystone Species: Implications for Ecological Conservation and Restoration," *Ecology and Society* 9, no. 3 (2004). For an excellent review of the development of First Nations' conservation perspectives see Nancy J. Turner and Fikret Berkes, "Coming to Understanding: Developing Conservation through Incremental Learning in the Pacific Northwest," *Human Ecology* 34, no. 4 (2006); Haida Marine Traditional Knowledge Study participants, Janet Winbourne, and Haida Oceans Technical Team. 2011. *Haida marine traditional knowledge study. Volume 1: Methods and results summary; Volume 2: Seascape unit summary; Volume 3: Focal species summary*. Prepared for the Haida Oceans Technical Team, Haida Fisheries Program, August 2011).

³⁶⁰ For example, see Berkes et al., *Linking Social and Ecological Systems*; Berkes, *Sacred Ecology*; Turner, *The Earth's Blanket*; Turner et al., "Traditional Ecological Knowledge and Wisdom of Aboriginal Peoples in British Columbia."

³⁶¹ Turner, *The Earth's Blanket*, 20.

³⁶² Charles Menzies and Caroline Butler, "Returning to Selective Fishing Through Indigenous Knowledge: The Example of K'moda Gitxaala Territory," *American Indian Quarterly* 31, no. 3 (2007): 445.

³⁶³ Kundoqk (Jacquie Green), Glasttowk askq (Ray Green) and Bakk jus moojillth (Mary Green), "Haisla Nuuyum: Cultural Conservation and Regulation Methods within Traditional Fishing and Hunting," *Decolonization: Indigeneity, Education & Society* 2, no. 2 (2013): 59.

The value of incorporating Indigenous knowledge and perspectives of wildlife conservation into management in support of improved conservation outcomes is broadly supported in TEK and Indigenous Planning literatures.³⁶⁴ For instance, Jones, Rigg and Lee conclude that the incorporation of Haida marine knowledge in the development of marine plans for Haida Gwaii, “increased understanding of species and interactions, particularly at local scales and for species that are not fished commercially,” even as it served to fill data gaps and document trends and changes.³⁶⁵ Still others in the field of Indigenous Planning have highlighted the incorporation of Indigenous *values* as an important component in reforming multilateral planning processes involving the state, Indigenous peoples, and non-Indigenous interest groups. For instance, traditional use cartographer and planning theorist Deborah McGregor identifies a need to start a given planning process by determining what kinds of Aboriginal values exist so that appropriate guidelines can be applied during the process, and concludes that these values need to be generated by the Nation(s) involved rather than state planners.³⁶⁶ In their analysis of the potential contributions of traditional knowledge systems in climate change planning and decision-making, Turner and Spalding conclude that in addition to the value of traditional knowledge for tracing long-term ecosystem changes, adaptability, and resiliency,

... the values of respect and recognition of kinship with other species that are often embodied in [traditional knowledge] systems can serve to remind all of us about the imperative to conserve and protect these other species if we are to survive as humans.³⁶⁷

³⁶⁴ For some examples, see Fikret Berkes and Mina Kislalioglu Berkes, “Ecological Complexity, Fuzzy Logic, and Holism in Indigenous Knowledge,” *Futures* 41, no. 1 (2009); Nancy Turner and Pamela R. Spalding, “We Might Go Back to This: Drawing on the Past to Meet the Future in Northwestern North American Indigenous Communities,” *Ecology and Society* 18, no. 4 (2013); Green et al., “Haisla Nuuyum;” Menzies, “Dm sibilhaa’nm da laxyuubm Gitxaala;” Weiss et al., “Bridging Knowledges;” Michael Healey, “Resilient Salmon, Resilient Fisheries for British Columbia, Canada,” *Ecology and Society* 14, no. 1 (2009); William G. Housty, Anna Noson, Gerald W. Scoville, John Boulanger, Richard M. Jeo, Chris T. Darimont and Christopher E. Filardi, “Grizzly Bear Monitoring by the Heiltsuk people as a Crucible for First Nation Conservation Practice,” *Ecology and Society* 19, no. 2 (2014).

³⁶⁵ Jones et al., “Haida Marine Planning,” 24. See also Lisa Hardess and Kerri Jo Fortier, “Co-creative Planning: Simpcw First Nation and the Centre for Indigenous Environmental Resources,” in *Reclaiming Indigenous Planning*, eds. Ryan Walker, Ted Jojola and David Natcher (Montreal; Kingston: McGill-Queen’s University Press, 2013), 142.

³⁶⁶ Deborah McGregor, “Representing and Mapping Traditional Knowledge in Ontario Forest Management Planning,” in *Reclaiming Indigenous Planning*, eds. Ryan Walker, Ted Jojola and David Natcher (Montreal; Kingston: McGill-Queen’s University Press, 2013), 427. See also Jones et al., “Haida Marine Planning;” Takeda, *Island Spirit Rising*; Richard Howitt, Kim Doohan, Sandie Suchet-Pearson, Gaim Lunkapis, Samantha Muller, Rebecca Lawrence, Sarah Prout, Siri Veland and Sherrie Cross, “Capacity Deficits at Cultural Interfaces of Land and Sea Governance,” in *Reclaiming Indigenous Planning*, eds. Ryan Walker, Ted Jojola and David Natcher (Montreal; Kingston: McGill-Queen’s University Press, 2013).

³⁶⁷ Turner and Spalding, “We Might Go Back to This,” 29.

Nadasdy furthers this conclusion, arguing that First Nations' knowledges and values pose a challenge to contemporary western resource planning and management approaches because they "might be used to rethink unexamined assumptions about how people should related to the world around them."³⁶⁸ This study contributes to this line of inquiry by bringing forward evidence specific to Fraser River sockeye salmon that *underlines the centrality of values in guiding First Nations traditional approaches to salmon harvesting and stewardship practices*. In particular, values such as respect and recognition of kinship were perceived as linking directly to *practices* such as selective fishing that support conservation objectives. These findings support the perspective that the worldviews and knowledge systems of First Nations pose a direct *challenge* to contemporary resource management, one that calls for a re-examination not only of the technical apparatus of management, but the *underlying values and assumptions* embedded in current management techniques. However, these scholars and others have contended that the sharing of values best occurs when interpretation and decision-making structures are meaningfully collaborative.

6.1.2 Recognizing First Nations' rights and responsibilities

In their 1992 study on hunting regulations in Yup'ik Innu territory in Central Alaska, Phyllis Morrow and Chase Hensel observed that negotiations between Indigenous groups and state resource managers were frequently derailed when the parties involved "assume[d] contested terms represent congruent realities."³⁶⁹ In their analysis they determined that such terms as "subsistence," "conservation," and "sustainable use," conveyed very *different* meanings and approaches to the use of resources among Yup'ik Innu and resource managers who tended to rely on the logics of western scientific management in their planning and activities. The result, Morrow and Hensel suggest, is an approach that "narrows the field of convincing arguments

³⁶⁸ Nadasdy, *Hunters and Bureaucrats*, 122.

³⁶⁹ Phyllis Morrow and Chase Hensel, "Hidden Dissension: Minority-Majority Relationships and the Use of Contested Terminology," *Arctic Anthropology* 29, no. 1 (1992): 42.

available for discourse,” making it necessary for Yup’ik Innu to define and defend their traditional harvesting and hunting practices in a manner consistent with logics that are inconsistent with Yup’ik knowledge and perspectives regarding sustainable hunting practices.³⁷⁰ In a recent analysis of the impacts of a fisheries management regime on coastal Māori communities in Aotearoa (New Zealand) Fikret Berkes and Nancy Turner observed “very different discourses about fisheries sustainability” between government stock assessments and kaitiaki (Māori environmental stewards).³⁷¹ Reflecting on the assumptions regarding terms such as “conservation” embedded in discussions of “integrating” traditional knowledge in environmental planning and management in Kluane territory, anthropologist Paul Nadasdy contended:

Since all parties assume that the contested terms refer to agreed-upon realities when, in fact, they serve only to mask deep cultural differences, their use can lead to serious misunderstandings and perceptions of bad faith. Their use also has the effect of biasing the discussion in favor of scientific managers by restricting the ways in which it is possible to talk (and think) about these issues.³⁷²

The findings of this study add to these important discussions of differing and, in some instances, contending conservation discourses in (post)colonial environmental planning and management contexts. Specifically, this study finds that the approach to sockeye conservation undertaken at the Cohen Inquiry was misaligned with First Nations’ perspectives on sockeye conservation. First Nations consider sockeye conservation to be their traditional and ongoing responsibility, and believe that the careful management of a species requires an ecosystem-based approach that encompasses more precautionary management of industrial activities such as logging, dams, and salmon aquaculture than is currently in place. The approach taken by the Commission, however, was heavily weighted towards highly technical hearings and research reports – as evidenced in the finalized list of issues to be investigated. For several of those interviewed for this study, this weighting was inappropriate because it did not provide enough space for the articulation of First

³⁷⁰ Morrow and Hensel, “Hidden Dissension,” 42.

³⁷¹ Nancy Turner, Fikret Berkes, Janet Stephenson and Jonathan Dick, “Blundering Intruders: Extraneous Impacts on Two Indigenous Food Systems,” *Human Ecology* 41, no. 1 (2013): 571.

³⁷² Nadasdy, *Hunters and Bureaucrats*, 119.

Nations' knowledges; for instance, no traditional knowledge literature reviews were conducted to inform the Cohen Commission, and Indigenous knowledge holders were provided with very limited time to share their knowledge about sockeye salmon and their peoples' interactions and relationships with them.

Structural and procedural challenges hindered First Nations in having their perspectives on sockeye conservation understood and incorporated into the findings and final recommendations of the Cohen Commission of Inquiry. These ranged from the limitations of the Commission's terms of reference, to concerns over the lack of time given to witnesses – particularly elders and traditional knowledge holders. These findings are consistent with others documenting the challenges Indigenous peoples face in having their voices and interests heard in a broad swathe of arenas from land-use and marine planning processes through contemporary environmental impact assessments to the negotiation of Impact Benefit Agreements between Indigenous peoples and development proponents.³⁷³ Similar critiques appear in editorials, press releases, and other publically-available statements on these issues by First Nations and other Indigenous peoples; as recently expressed by historical geographer and environmental historian Graeme Wynn, “whatever good intentions might be ascribed to the implementation and development of participatory praxis, it is increasingly found wanting by Aboriginal people themselves.”³⁷⁴

These criticisms reflect the fundamental and ongoing failure of Crown governments to fully recognize and accommodate Indigenous rights, including title and cultural rights, within

³⁷³ Galbraith, “Making Space for Reconciliation in the Planning System;” Westman, “Social Impact Assessment...;” Yakovleva, “Oil Pipeline Construction in Eastern Siberia;” Gagnon and Berteaux, “Integrating Traditional Ecological Knowledge and Ecological Science;” Gratani et al., “Is Validation of Indigenous Ecological Knowledge a Disrespectful Process?” Weiss et al., “Bridging Knowledges;” Barry and Porter, “Indigenous Recognition in State-based Planning Systems;” Lane and Williams, “Color Blind;” McGregor, “Linking Traditional Knowledge and Environmental Practice in Ontario;” Procter and Chaulk, “Our Beautiful Land;” Robinson and Lane, “Boundary-Riding;” Caine and Krogman, “Powerful or Just Plain Power-Full;” von der Porten and de Loë, “Collaborative Approaches to Governance...;” Galbraith et al., “Towards a new Supraregulatory Approach to Environmental Assessment in Northern Canada.”

³⁷⁴ Graeme Wynn, “The Paradoxical Politics of Participatory Praxis,” foreword in Carly Dokis, *Where the Rivers Meet: Pipelines, Participatory Resource Management, and Aboriginal-State Relations in the Northwest Territories* (Vancouver, BC: UBC Press, 2015), xix.

environmental planning and management processes. The Indigenous Planning and critical resource management literatures provide evidence of how Indigenous peoples continue to be engaged in state-led processes as one of several ‘user groups’ rather than as the stewards of the lands, waters, and wildlife within the territories to which they claim title. Such approaches have been fiercely condemned: “conceptualizing Indigenous peoples as ‘stakeholders’ in planning processes,” writes planning scholar Libby Porter, “fails to appreciate their unique status as original owners of country that was wrested from them by the modern, colonial state.”³⁷⁵ Inclusion, Porter suggests, can become problematic when “it fails to appreciate the depth and breadth of aspirations held by Indigenous peoples, and the extent to which an Indigenous domain is always operating (although often un-recognised) alongside modern legal and administrative processes.”³⁷⁶ This study reinforces this critique; while research participants consistently articulated how First Nations’ rights, title, relationships with, and responsibilities towards sockeye salmon set them apart from other formal participants at the Cohen Commission, they were also clear that more could have been done to engage First Nations in the structuring, procedures, and protocols of the inquiry.

Echoing the arguments of recent literature surveyed in Chapter 3, several of those interviewed for this study suggested that a government-to-government approach that recognized the rights of First Nations to access, manage and steward Fraser River sockeye might have addressed many of their concerns about the Cohen Commission process. This study underlines the importance of supporting Tier 1 governance structures *as well as* structures that distribute responsibility for planning and management decision-making between Crown and First Nations governments. Specifically, it points out that these structures are of primary importance for First Nations engaging in planning processes, in part because they provide a forum for internal

³⁷⁵ Libby Porter, “Planning in (Post)Colonial Settings: Challenges for Theory and Practice,” *Theory & Practice* 7, no. 4 (2006), 389.

³⁷⁶ Ibid.

deliberations regarding shared perspectives and strategic approaches to advancing First Nations' rights and stewardship responsibilities. While the Indigenous Planning literature has given some attention to the internalizing of Indigenous discussion within western planning spaces, further analysis of this aspect of Indigenous engagement in state-led planning and management activities – preferably in partnership with Indigenous communities and/organizations seeking this type of analysis – would provide additional understanding of the value of Tier 1 processes within collaborative planning.³⁷⁷

6.1.3 Acting on conservation commitments

In her 2012 treatise *On Being Included: Racism and Diversity in Institutional Life*, Sara Ahmed outlines a theoretical explanation for a perceived paradox: the existence of positions aimed at promoting diversity within institutions and the resistance of those same institutions to policies that promote diversity. Ahmed's theorization of the "non-performativity" of institutional commitments to diversity is also relevant to planning processes. Specifically, Ahmed contends that "statements of commitment can...be understood as opaque: it is not clear what they are doing if they are not doing what they are saying. A commitment does not necessarily commit the institution to anything or to doing anything."³⁷⁸ Ahmed further argues that the appearance of bringing something into effect through what she terms "speech acts," can "be a way of conserving the past, of keeping hold of what has apparently been given up [...] We could describe this situation in terms of the gap between what an institution makes a commitment to and what it is already committed to."³⁷⁹

In 2004 the federal Conservative party demanded an investigation of the decline of Fraser River sockeye runs; five years later, after three consecutive years of poor sockeye returns

³⁷⁷ See Matunga, "Theorizing Indigenous Planning;" Jones et al., "Haida Marine Planning."

³⁷⁸ Sara Ahmed, *On Being Included: Racism and Diversity in Institutional Life* (Dunham, NC: Duke University Press, 2012), 116.

³⁷⁹ Ahmed, *On Being Included*, 126.

to the Fraser, the minority Conservative government struck a royal commission to address the issue. In his announcement of the Commission, former MP Stockwell Day stated:

Once we launch a commission like this, just by the very nature of doing it, we are saying that we want to know about the findings and we want to know what his recommendations are. Any government that would launch something like this and then not take a serious look at it, of course, would raise questions.³⁸⁰

Yet even as Commissioner Cohen was drafting his final report, bills and budget cuts enacted by the federal government were having drastic effects on environmental safeguards such as the *Environmental Assessment Act* and the *Fisheries Act*, while budget and staff cuts seriously undermined the abilities of the DFO to respond to his commission's recommendations. In the three years after Cohen's final report, the federal government put no discernible pressure on the DFO to implement the Cohen Commission recommendations, or to explain why they were being ignored.

On the face of it, this is surprising: why launch a \$37 million inquiry and not pay any attention to it? But this was not unprecedented, as legal and scholarly analyses of the functions of commissions of inquiry have shown. Legal scholar Ed Ratushney has described commissions as "expensive chimeras" that can provide both a "check on politics," as well as a "political tool" allowing the government in power to delay action and/or gain "some distance from problems through the delegation of immediate responsibility."³⁸¹ Given the non-binding nature of commission recommendations, the chimera metaphor might also be used to suggest that they are "an illusion or fabrication of the mind; *especially*: an unrealizable dream."³⁸² This study suggests that the current role of commissions of inquiry as investigative processes offering non-binding recommendations for policy change to the government that appointed them is unacceptable to some First Nations in light of consistent government disregard for the yields of these processes.

³⁸⁰ "B.C. Judge to Head Inquiry into West Coast Sockeye Salmon Collapse," *Moose Jaw Times*, November 6, 2009, accessed March 2, 2016, <http://www.mjtimes.sk.ca/News/Local/2009-11-06/article-187090/B.C.-judge-to-head-inquiry-into-West-Coast-sockeye-salmon-collapse/1>.

³⁸¹ Ratushny, *The Conduct of Public Inquiries*, 20.

³⁸² "Chimera," *Miriam-Webster Dictionary*, accessed January 26 2015, <http://www.merriam-webster.com/dictionary/chimera>.

Many participants in this study were deeply frustrated by their participation in yet another commission that yielded few positive outcomes for either sockeye salmon or the communities and cultures that rely upon them for cultural and physical survival. As my interviews with Cohen Commission participants proceeded over the summer of 2015, it became increasingly clear that any study of a planning process needed to consider the implementation or neglect of its recommendations; those I interviewed were strongly concerned about this dimension of the inquiry. There remains, however, a significant gap in the literature on this topic. Current scholarship on commissions of inquiry focuses on the policy changes they produce.³⁸³ Much less attention has been paid to the perspectives of those directly impacted by a *lack* of implementation, or to assessing whether lengthy, expensive, and voluntary planning processes such as commissions of inquiry are valuable policy tools.³⁸⁴ Nor has Indigenous Planning research considered the *implementation* of plans and the role of Indigenous peoples in that, or considered the leverage points used by Indigenous peoples when plans were left to languish or implemented in ways that failed to engage them in appropriate ways, i.e. as rights holders with responsibilities towards their territories and the resources within them.³⁸⁵ This study provides

³⁸³ See, for example, the edited collection on the subject of commissions of inquiry by Inwood and Johns, eds., *Commissions of Inquiry and Policy Change: A Comparative Analysis*; George J. Bedard, "Constructing Knowledge: Realist and Radical Learning Within a Canadian Royal Commission," *Educational Policy* 13, no. 1 (1999); Jeffrey R. Stutz, "What Gets Done and Why: Implementing the Recommendations of Public Inquiries," *Canadian Public Administration/Administration Publique du Canada* 51, no. 3 (2008).

³⁸⁴ Work done on this latter topic tends to focus on specifically on the *policy* value of commissions of inquiry in relation to other policy bodies and processes. See, for example, John McCamus, "The Policy Inquiry: An Endangered Species," in *Commissions of Inquiry: Praise or Reappraise*, eds. Allan Manson and David Mullan (Toronto: Irwin Law, 2003).

³⁸⁵ Janice Barry's Ph.D. research on the government-to-government framework that evolved out of the Central Coast Land and Resource Management Plan process hints at the *institutional* structures that may facilitate a sustained governance relationship between crown and First Nations governments. Barry traces the emergence of a multi-level governance structure that was developed during the planning phase, whereby technical staff work with technical staff, and politicians engage with politicians (avoiding the issue of opposing strengths of authority that may otherwise arise in planning and resource management discussions between First Nations and crown governments). Barry describes this framework as "a relatively simple yet highly effect institutional innovation that can be replicated in other planning and policy processes" (Janice Barry, "Building Collaborative Institutions for Government-to-Government Planning: The Nanwakolas Council's Involvement in Central Coast Land and Resource Management Planning," (Ph.D. Diss., University of British Columbia, 2011): 200). Australian planning scholars Sue Jackson and Marcus Barber have, in contrast, focused their attention on negotiated agreements between mining corporations and Indigenous peoples in Australia. They suggest that these agreements may be used to build sound environmental management arrangements and meaningful opportunities for employment, particularly as neither are considered by Indigenous Australians to be addressed through government environmental policy or social supports. In particular, Jackson and Barber argue that such agreements with industry "offer an effective means of addressing Indigenous peoples' strong desire to manage their natural resources more collaboratively with other parties throughout the life of a mine and into the decommissioning stage" (Sue Jackson and Marcus Barber, "Recognizing Indigenous Water Cultures and Rights in Mine Water Management: The Role of Negotiated Agreements," *Aquatic Procedia* 5, no. 1 (2015): 88.). However, aside from these and a few other faint murmurings, a decolonized approach to implementing collaboratively developed plans remains an unexplored area in the small but growing Indigenous Planning literature.

some insight into First Nations' perspectives on these themes, and outlines some suggestions to support government review and implementation of commission recommendations.

6.2 Implications for Indigenous Planning

Although recent work by Indigenous Planning scholars has significantly furthered our understanding of how environmental planning processes can and have been structured to advance outcomes that further decolonization, none of this has considered commissions of inquiry. This is a significant oversight considering the substantial educational, political and planning role that these processes play in Canadian natural resource and environmental management. To date commissions of inquiry have generally been evaluated through a policy analysis lens, focusing on the policy implications or effects of these processes. Little attention has been paid to the ways in which these processes might work to produce some recommendations and not others, or to the associated political implications for marginalized groups. This study points to the consistency in the nature of the challenges faced by Indigenous peoples engaging in inquiries and other forms of planning process. Specifically, this case study suggests that these planning and inquiry processes frequently result in:

- Inadequate and/or non-existent First Nations involvement in the development of the structure of a given planning process;
- Insufficient time for the sharing of values and knowledge;
- Inappropriate contexts for the sharing of values and knowledges; and
- Inadequate funding for First Nations participation.

Further, this study corroborates the value of a number of mechanisms elsewhere identified as facilitative of transformative planning processes and outcomes. These include: i) the development of collaborative planning structures that acknowledge the rights and responsibilities of Indigenous peoples, as well as their distinctive cultures of governance, stewardship and sustainable harvesting; and ii) the establishment of mechanisms to ensure the

accountability of the state and other planning partners to respond to and implement completed plans.

This study also bears on broader debates about the role of planning in creating decolonized futures. Although decolonization is widely understood as both a process and a goal that involves the “restructuring of Indigenous/non-Indigenous relations to establish new orders without imposed power imbalances,” planners and critical scholars debate the most strategic *approach* to achieving decolonization.³⁸⁶ Some interpret decolonization as a process that begins with individual, ethical and discursive transformation; others emphasize the institutionalization of decolonizing discourses.³⁸⁷ This has led supporters of the former interpretation to focus on planning at the individual, community and Nation levels (for instance, in the development of culture camps for youth, the building of language nests, or supporting traditional food gathering and harvesting programs), and researchers holding to the latter interpretation to emphasize the “recognition and institutionalization of Indigenous rights” within planning processes.³⁸⁸ The Tsalagi (Cherokee) scholar Jeff Corn tassel has offered a trenchant critique of the latter approach, arguing that “for substantive decolonization and community regeneration to take place on a wider scale, the identification and implementation of nonstate [sic], community-based solutions should take precedence.”³⁸⁹ In this view, community-based changes ought to precede and take precedence over the recognition of rights at “a wider scale” if decolonization is to occur.

My examination of the Cohen Commission suggests that First Nations favor mechanisms for planning reforms that support and strengthen collaborative governance structures. In other

³⁸⁶ Magdalena Ugarte, “Ethics, Discourse, or Rights? A Discussion about a Decolonizing Project in Planning,” *Journal of Planning Literature* 29, no. 4 (2014): 405.

³⁸⁷ For a thorough review of these diverging schools of thinking, see Ugarte, “Ethics, Discourse, or Rights?”

³⁸⁸ Ugarte, “Ethics, Discourse, or Rights?” 403.

³⁸⁹ Jeff Corn tassel, “Toward Sustainable Self-Determination: Rethinking the Contemporary Indigenous-Rights Discourse,” *Alternatives* 33, no. 1 (2008): 121; see also Jim Silver, Parvin Ghorayshi, Joan Hay and Darlene Klyne, “In a Voice of Their Own: Urban Aboriginal Community Development,” Canadian Centre for Policy Alternatives, 2006, accessed January 27, 2016, http://www.policyalternatives.ca/sites/default/files/uploads/publications/Manitoba_Pubs/2006/In_A_Voice_Of_Their_Own.pdf.

words, from the perspective of those interviewed, *genuine recognition and accommodation of First Nations' rights and responsibilities within their traditional territories is fundamental to decolonizing both state-led planning processes and natural resource management*. This is consistent with much of the recent research in Indigenous planning, including that of Libby Porter who contends that inclusive planning practices cannot “shift the effects of (post)colonial structures and relations of power on indigenous nations without a fundamental recognition of rights.”³⁹⁰ Robinson and Lane find likewise in an analysis of Australian state-led natural resource planning and management efforts to engage Indigenous peoples; in their assessment the planning system was insufficient because it “often failed to involve Indigenous people in practical deliberations about the purpose and practice of [natural resource use and management] activities occurring on their lands.”³⁹¹ In considering federal environmental impact assessments in Canada, Carly Dokis contends that planning should be grounded in the views of Aboriginal people about the land, the world, and their place in it; otherwise, she argues, “their participation will remain an insertion into a dominant paradigm of knowledge, rather than a serious challenge to the paradigm itself.”³⁹²

For all that, my findings *also confirm and uphold the importance of community healing and cultural resurgence* in First Nations efforts to manage the natural resources within their traditional territories under their jurisdiction. Everyone I interviewed for this study emphasized the importance of salmon conservation for the continuity of First Nations communities and cultures. Access to salmon was associated with ceremonies and dances; with passing on cultural values; with a healthy, local source of protein that connects First Nations people with their culture; and with educating youth about fishing techniques, technologies, and fishing and fish-specific language. In other words, First Nations' struggles to regain control over the

³⁹⁰ Libby Porter cited in Sandercock, “Commentary: Indigenous Planning and the Burden of Colonialism,” 120.

³⁹¹ Robinson and Lane, “Boundary-Riding,” 406.

³⁹² Dokis, *Where the Rivers Meet*, 90.

management of sockeye through the recognition of their title and cultural rights are *fundamentally driven* by a concern for community and cultural wellbeing. Here at least, the recognition and accommodation of Indigenous rights and the creation of opportunities for community healing and cultural resurgence can be understood as mutually supporting processes; as planning scholar Magdalena Ungarte has insightfully observed: “If these two processes operate in totally separate streams, a true decolonized planning practice...cannot occur.”³⁹³

6.3 Implications for Planning Practice

Radical planning begins with a critique of the present situation. This critique is not merely normative; it contains a strong analytical element which allows us to interpret, understand, and explain why things are as they are. Planners can help in the mobilization of radical practice by providing a critical account of the situation to be changed.³⁹⁴

This research has sought to identify the opportunities, challenges, and constraints experienced by First Nations engaged in the recent Cohen Commission in order to identify mechanisms that First Nations consider essential for the incorporation of their knowledges and perspectives regarding sockeye salmon conservation into modern managerial strategies. Its findings lead to three recommendations. These are:

- 1) Accord more space and consideration in planning to First Nations’ knowledges and worldviews;
- 2) Engage First Nations in the development of planning mandates and procedural frameworks; and,
- 3) Ensure at the onset of planning processes that policies are in place to ensure that plan outcomes are reviewed by crown government(s), implementation strategies are developed and/or rationales are provided for inaction.³⁹⁵

By providing a focused study of the experiences of First Nations at the Cohen Commission, this work is intended to offer lessons for the development and execution of future commissions and other planning processes requiring sustained government-to-government engagement with First Nations and other Aboriginal peoples in Canada (such as the recently announced inquiry into

³⁹³ Ungarte, “Ethics, Discourse, or Rights?” 411.

³⁹⁴ Friedmann, *Planning in the Public Domain*, 303.

³⁹⁵ In instances where implementation activities may have the potential to impact First Nations title and rights, engage First Nations in all of the processes listed above at a government-to-government level.

missing and murdered Indigenous women and girls).³⁹⁶ Several recent works have evaluated consensus and conflict-driven approaches to establishing more equitable structures and processes for environmental and natural resource management in (post)colonial states.³⁹⁷ They suggest that a measured approach employing both approaches (and others) can be effective and I would hope that this research and its recommendations assist First Nations through the development of stronger and more effective processes for managing the lands, waters, and wildlife that are so integral to British Columbia and the people who dwell here.

6.4 Study Limitations

Research design

This study would have been enhanced by the participation of First Nations leadership, technical staff, and legal counsel from the other four groups who participated in the Commission process. The issue of representation was considered in the research design but six First Nations leaders, technical staff, and legal counsel either declined to be interviewed or did not respond to my initial e-mail requesting an interview. My sample provides a sound general sense of First Nations' perspectives on the opportunities and constraints posed by the Cohen Commission, and includes representatives from the major regions in which Fraser River sockeye salmon are harvested. But depth and insight would have been gained by more extensive interviewing to include representatives from the four coalitions of First Nations not engaged by this study.³⁹⁸ In addition, by emphasizing the perspectives of (primarily First Nations) key informants, my research design may have oversimplified the constraints and challenges perceived by First

³⁹⁶ The applicability of these research findings is corroborated by a recent article published in Thunder Bay's CBC News. The article provides recommendations for the consultation process based on interviews with "experts," several of which mirror the recommendations outlined above. These include a recommendation related to engaging with First Nations Chiefs and Councils as well as immediate action on the Commission's recommendations (Jody Porter, "Missing and murdered Indigenous women: 5 things an inquiry should consider," *CBC News*, January 6, 2016, accessed February 1, 2016, <http://www.cbc.ca/news/canada/thunder-bay/inquiry-missing-and-murdered-indigenous-women-1.3390803>).

³⁹⁷ See, for example, Louise Takeda's analysis of the eventual development of a land use plan for Haida Gwaii in British Columbia (Takeda, *Island Spirit Rising*), as well as the recent cross-case analysis by Kirsten Maclean, Catherine Robinson and David C. Natcher on the Girringun Aboriginal Corporation from the Wet Tropics, Australia, and the Innu Nation of Labrador, Canada (Kirsten Maclean, Catherine J. Robinson and David C. Natcher, "Consensus Building or Constructive Conflict? Aboriginal Discursive Strategies to Enhance Participation in Natural Resource Management in Australia and Canada," *Society & Natural Resources: An International Journal* 28, no. 2 (2015)).

³⁹⁸ These are the Upper Fraser, Middle Fraser, Lower Fraser, Vancouver Island, and Marine Approach areas.

Nations. Further research on engaging additional First Nations leadership, technical staff, and legal counsel, as well as Commission staff and counsel would add voices and complexity to these research findings.

Theoretical Approach

The collaborative approach to sockeye conservation and planning advanced here can lead to increased bureaucratization and what Nadasdy describes as “the institutionalization of rationality” in First Nations governments.³⁹⁹ Nadasdy’s concern is that in developing the capacity of First Nations to engage in government-to-government resource management and environmental planning processes, local “ways of talking, thinking, and acting” are subsumed and, at worst, forgotten in efforts to regain control of traditional territories and resources.⁴⁰⁰ In this interpretation, co-management is considered – at best – a hollow victory for First Nations. Nadasdy also offers a more sinister interpretation – that co-management may be a “subtle extension of empire.”⁴⁰¹ This is a view echoed by Carly Dokis who concluded more than a decade after Nadasdy’s work, that the co-management regime established under the 1993 Sahtu Dene and Métis Comprehensive Land Claim Agreement had “legitimated and entrenched non-local forms of land tenure, decision-making, governance, and economies” to the detriment of Sahtu Dene communities.⁴⁰²

These important criticisms of co-management are often overlooked in the Indigenous Planning literature, although they have continuing salience as Indigenous communities increase their capacity to manage resources in partnership with colonial state governments. As an employee with the Council of the Haida Nation’s Marine Planning Program, I am aware of how state requirements can shape the ways First Nations engage in environmental planning; however,

³⁹⁹ Nadasdy, *Hunters and Bureaucrats*, 9.

⁴⁰⁰ Ibid.

⁴⁰¹ Ibid.

⁴⁰² Dokis, *Where the Rivers Meet*, 167.

I have also witnessed the opposite occurring. Those who agreed to participate in this study (the majority of whom are elected representatives or technical staff for First Nations governments) are well aware of these power dynamics and the challenges and opportunities of co-management. While I recognize the vested interests that both the researcher and some research participants have in the continuation of the bureaucracies that employ them, I also believe that as members or allies of the Indigenous communities whom they serve, these individuals are well-placed to understand what is needed to ensure the conservation of both sockeye salmon and the communities that continue to rely upon them. Research participants' support for ongoing engagement in fisheries planning processes and commissions of inquiries *in spite of* their deep concerns about current approaches to integrating First Nations' perspectives into planning and policy guided my analysis. Those interviewed for this study expressed the desire to improve upon the existing commission of inquiry structure, while simultaneously pursuing alternative venues and opportunities for the articulation and enactment of First Nations' rights and responsibilities. Both Radical and Indigenous Planning theory identify the need for both traditional and Indigenous forms of planning to advance a radical (in this instance, decolonizing) agenda. Further research into the "dialectical processes" between state-led and more traditional forms of Fraser River sockeye salmon management and planning between would potentially be a productive line of inquiry for dissipating any "either/or" perception of the "right" approach to decolonizing fisheries and other wildlife management and planning.⁴⁰³

6.5 Directions for future research

This research has suggested that engagement in planning processes *alone* is not acceptable to First Nations; participants in this study contend that engaging First Nations must extend to implementation. More work is required here to understand the mechanisms necessary to transform implementation processes, and to identify broad principles that may be applied

⁴⁰³ Friedmann, *Planning in the Public Domain*, 15.

across different jurisdictions and types of plans. Associated research questions might include: *what are the policy and political tools available to compel governments to respond to and act on plans developed with Indigenous peoples? What kind of implementation structures might be best suited to engage Indigenous rights and title holders in decision-making and related implementation activities?* This line of inquiry will only become more urgent as First Nations' rights, including rights to manage the natural resources within their traditional territories, result in a growing number of plans developed in collaboration with First Nations.

6.6 Some Final Reflections

Plans... do not represent the endpoint of any given planning process to Aboriginal planners. Rather, they constitute a new platform from which Aboriginal groups will continue to develop strategies as they work toward natural resource rights recognition.⁴⁰⁴

On October 19th, 2015 the Liberal Party of Canada, led by Justin Trudeau, won 184 out of a total of 338 seats in the House of Commons. In his campaign platform, Trudeau committed to act on the recommendations of the Cohen Commission, a commitment that he then reiterated in his mandate letter to newly appointed Minister of Fisheries and Oceans and the Canadian Coast Guard, Hunter Tootoo.⁴⁰⁵ While the process for “acting on” the recommendations has not yet been announced, other processes are also underway that suggest that the Canadian government is cognizant of the need to recognize and act on the authority and jurisdiction of First Nations regarding their traditional fisheries. One such process is the Fraser River Salmon Roadmap Initiative (briefly discussed in Section 1.3), a bilateral negotiation process between Fisheries and Oceans Canada and First Nations from the Fraser River watershed, Vancouver Island, and Marine Approach areas established to develop a co-management approach for Fraser River salmon. The processes inception goes back to the winter of 1997, when the DFO initiated dialogue with First Nations to try to bring First Nations together to agree on how they could share an expected shortfall of Fraser River sockeye returns the following season. While some

⁴⁰⁴ Maclean, Robinson, and Natcher, “Consensus Building or Constructive Conflict?” 208.

⁴⁰⁵ Office of the Prime Minister, “Minister of Fisheries, Oceans and the Canadian Coast Guard Mandate Letter,” 2015, accessed January 30, 2016, <http://pm.gc.ca/eng/minister-fisheries-oceans-and-canadian-coast-guard-mandate-letter>.

First Nations resented the need to “share the leftovers” after the marine-based commercial sockeye fishery had fished, many nevertheless came together with the DFO to talk about allocation issues in a series of meetings prior to the commencement of the 1998 fishing season. No agreements for allocation sharing came out of these meetings but it was agreed by participating First Nations that they had been useful in building relationships amongst the Fraser River Nations. This process continues up until the present day under the label “Forum on Conservation and Harvest Planning.” In the wake of the 1998 fishing season, Fraser First Nations agreed to jointly open discussions with DFO to explore the possibility of negotiating a collaborative approach to managing Fraser River salmon.⁴⁰⁶ Negotiations between the parties occasionally stalled in the following years, but the process that became known as the Fraser River Salmon Roadmap Initiative reached a significant milestone on March 20th, 2012 when an LOU was signed between the DFO and sixty First Nations. The LOU outlines the parties’ commitment to work together in a government-to-government relationship to negotiate processes and agreements for the management and conservation of Fraser River salmon, and establishes the guiding principles for the initiative process and the respective responsibilities of the parties. On March 25, 2014 the Fraser Salmon Management Council (FSMC) became the mandated Tier 1 governance organization by which First Nations will negotiate with DFO:

And that’s what our people now are trying to get back to, as opposed to DFO managing into extinction, let’s take back the management and let’s do it ourselves. So that’s the reason the people in Fraser watershed are entering into high level negotiations with DFO now and the federal government to do that, because we have the science capacity and we have the traditional knowledge holders on our side, so we could develop a management tool based on western science and our traditional science.⁴⁰⁷

As of late February 2016 the FSMC includes sixty-four member First Nations. Each First Nation appoints its Member Delegate who is politically mandated by Council Resolution to represent his or her First Nation. Member Delegates are now seeking a formal mandate from their respective Nations that will authorize them to enter into a negotiation process with DFO, which

⁴⁰⁶ Telephone conversation with a technical staff member of a First Nations organization, January 24, 2016.

⁴⁰⁷ Interview with a First Nations leader and traditional knowledge holder, May 17, 2015.

is anticipated to begin in the spring or summer of 2016. The FSMC's goal: to achieve a new relationship with DFO concerning the management of Fraser River salmon – a relationship that included First Nations in the decision-making processes.⁴⁰⁸

The Cohen Commission therefore did not and does not represent an “endpoint” for Fraser River salmon conservation and the development of decision-making structures for shared responsibility for and management of salmon in the Fraser River; in fact, several research participants who are currently involved in the Roadmap Initiative credit the Cohen Commission as a catalyst for these government to government discussions between DFO and First Nations representatives.⁴⁰⁹ Furthermore, the collaborative work by First Nations at the Cohen Commission was identified as a precursor to the development of priority actions for the FNFC for the advancement of the Roadmap Initiative.⁴¹⁰ The Cohen Commission recommendations are also perceived as having ongoing utility, particularly as a guide for future collaborative or First Nations-led salmon conservation initiatives:

If they're not going to be done by government, who are they going to be done by? They'll have to be done by others. And I think it also provides a useful... in my view it... the recommendations provided useful steps for people who wanted to work collaboratively on conservation.⁴¹¹

We have to ourselves initiate some of the recommendations and really push forward rather than just sit back and say, “Oh, well, they didn't do anything.”⁴¹²

We've got to figure out how to pick up the good things in the Commission and move them forward.⁴¹³

⁴⁰⁸ Fraser River Aboriginal Fisheries Secretariat, “Fraser Salmon Management Council (FSMC),” Fraser Salmon Management Council, “Seeking a Mandate to Negotiate,” accessed January 6, 2015, <https://www.facebook.com/media/set/?set=a.193150754361474.1073741833.113354722341078&type=3>.

⁴⁰⁹ Interview with a technical staff member of a First Nations organization, August 10, 2015; August 31, 2015.

⁴¹⁰ Interview with a technical staff member of a First Nations organization, August 10, 2015.

⁴¹¹ Interview with a lawyer who represented a First Nations organization at the Cohen Commission, August 19, 2015.

⁴¹² Interview with a First Nations leader and knowledge holder, May 19, 2015.

⁴¹³ Interview with a First Nations leader and knowledge holder, August 31, 2015.

And for several of those interviewed in the course of this study, positive outcomes of the Cohen Commission extend beyond discussions of the number of recommendations implemented, or the direct contributions made to current co-management negotiation processes:

One could measure outcomes of this kind of process by whether or not Cohen agreed with us or not, but I think part of the outcomes included whether we were able to educate a broader group of people about First Nations' perspectives on conservation, First Nations' perspective on how DFO is currently managing, all those things.⁴¹⁴

You have to decide as a participant how important the issue is to you. What's the benefit of having kind of a more open and transparent kind of disclosure on what the issues are. So that's you're opportunity to do that.⁴¹⁵

In the end, the "open and transparent" discussion of contemporary issues in natural resource management that is made possible through commissions of inquiry is an opportunity worth taking, and improving, from the perspective of First Nations. This study provides further argument for reforms to create a more collaborative forum for these important discussions to take place.

⁴¹⁴ Interview with a lawyer who represented a First Nations organization at the Cohen Commission, August 19, 2015.

⁴¹⁵ Interview with a technical staff member of a First Nations organization, August 26, 2015.

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Appendices

Appendix 1: Ethics Consent Form



a place of mind
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Consent Form

I. Study Team

Principal Investigator: Graeme Wynn, UBC Geography Department

Co-Investigator: Molly Clarkson, UBC Geography Department

II. Why are we doing this research?

The purpose of this study is to learn more about how fisheries planning processes can create space for First Nations understandings of conservation. Specifically, the investigators are interested in what technicians and expert witnesses who contributed to the Commission into the Decline of the Sockeye Salmon in the Fraser River think about the structure of this planning process and their ideas for the improvement of these types of planning structures. An outcome of this research would be to suggest, based on interview responses, unrealized potential contributions to be made in this area by First Nations people.

You have been asked to participate in this research because of your contributions to the Cohen Commission, either as a participant or as a witness.

III. What happens if you say “Yes, I want to be in the study”?

If you say 'Yes', here is how we will do the study:

- An interview will take place somewhere convenient for the participant (e.g. their office, a local café). If this is not possible, a phone or skype interview will be arranged by the co-researcher. With the permission of the participant, an audio recording of the interview will be made.
- The interview questions will be forwarded to the participant prior to the interview. The participant is not expected to respond strictly to the questions in the interview script.
- Interviews will range from a half hour to two hours, depending on the responses of the participant.

IV. Study Results

- The co-researcher intends to submit an abbreviated version of the research to regional newspapers and journals.
- The results of this study will also be reported in the co-author's graduate thesis and may also be published in academic journal articles and presented at conferences.

V. Potential Risks of the Study

Participants will be asked for their perspectives on a range of highly contentious issues in BC, and their words will be published in public documents such as articles. For participants wishing to remain anonymous, this may at times be difficult given the high profile of some of the participants and their ideas. Specific mentions of involvement in the commission or knowledge of particular aspects of the fishery may also contribute to the challenges to providing anonymity.

VI. Potential Benefits of the Study

There are two identifiable benefits to the study, one immediate and one more long term. The first is, through the publication of some of the research in regional newspapers and journals, attention will be drawn to First Nations' perspectives on participatory planning processes and may benefit participants by drawing public attention to current environmental and cultural concerns. Second, this research will increase knowledge about the perspectives of people who engage in resource management planning processes.

VII. Confidentiality

Your confidentiality will be respected. Information that discloses your identity will not be released without your consent unless required by law.

All documents will be identified only by code number and kept in a locked filing cabinet. Subjects will not be identified by name in any reports of the completed study.

VIII. Contact for Complaints

If you have any concerns about your rights as a research subject and/or your experiences while participating in this study, you may contact the Research Subject Information Line in the UBC Office of Research Services at 604-822-8598 or if long distance e-mail RSIL@ors.ubc.ca or call toll free 1-877-822-8598.

Taking part in this study is entirely up to you. You have the right to refuse to participate in this study. If you decide to take part, you may choose to pull out of the study at any time without giving a reason

- Your signature below indicates that you have received a copy of this consent form for your own records.
- Your signature indicates that you consent to participate in this study.

Participant Signature

Date

Printed Name of the Participant

Date

Appendix 2: Interview Questions – Set 1 – Political Leadership

Can you tell me about why your nation decided to participate in the Cohen Commission?

Can you tell me about your experience speaking at the Cohen Commission?

When giving evidence at the Commission, you discussed the importance of the social and cultural aspects of conservation in your culture. Can you tell me more about that?

The Cohen Commission definition of ‘conservation’ states that conservation is “the protection of species, their habitats, and *ecosystems* from excessive rates of extinction.” In your opinion, does this definition reflect a (specific First Nation here) perspective of conservation?

Can you suggest a word or words from your language that might be roughly translated as ‘conservation’? What does this word mean to you?

From your perspective, what are some harvesting traditions, management techniques, practices or ceremonies from your culture that reflect the nature of conservation?

Can you tell me more about how the three days of hearings dedicated to “Aboriginal Worldview” came about?

Of the 120 days of hearings, three were specifically dedicated to aboriginal perspectives on sockeye decline and conservation on the Fraser River. Do you feel that this was a sufficient amount of time and space for this topic?

Do you feel that using this (specific First Nation here) definition of living and being with salmon would have made the structure of the Cohen Commission different? In what way?

In your opinion, how should environmental planning processes such as the Cohen Commission be structured in the future to incorporate this (specific First Nation here) understanding of conservation? What would be the benefits and drawbacks of this approach?

How do you feel now about your Nation’s participation at the Cohen Commission?

Overall, do you feel that First Nations perspectives and concerns were heard by the Commissioner?

It is 2015, and there has been very little action of the part of the federal government to implement the recommendations of the Cohen Commission. How do you feel about this? What has been the response of your community?

Appendix 3: Interview Questions – Set 2 – Technical Staff and Legal Counsel

Can you tell me about how you became involved in the Cohen Commission?

Can you tell me about your experience at the Cohen Commission?

The Cohen Commission definition of ‘conservation’ states that conservation is “the protection of species, their habitats, and *ecosystems* from excessive rates of extinction.” In your opinion, does this definition reflect a First Nations perspective of conservation?

Can you suggest a word or words from your language that might be roughly translated as ‘conservation’? What does this word mean to you?

From your perspective, what are some harvesting traditions, management techniques, practices or ceremonies from your culture that reflect the nature of conservation?

Can you tell me more about how the three days of hearings dedicated to “Aboriginal Worldview” came about?

Do you feel that there was a sufficient amount of time and space allotted to the presentation of evidence regarding aboriginal perspectives on sockeye decline and conservation on the Fraser River? Why?

In your opinion, how should environmental planning processes such as the Cohen Commission be structured in the future to incorporate First Nations understanding of conservation? What would be the benefits and drawbacks of this approach?

How do you feel now about your participation at the Cohen Commission?

Overall, do you feel that First Nations perspectives and concerns were heard by the Commissioner?

It is 2015, and there has been very little action on the part of the federal government to implement the recommendations of the Cohen Commission. How do you feel about this? What has been the response of your organization and/or community?

Appendix 4: Participants Granted Standing at the Cohen Commission

Group #/Title	Members
1.	Government of Canada
2.	Province of British Columbia
3.	Pacific Salmon Commission
4.	B.C. Public Service Alliance of Canada Union of Environment Workers B.C.
5.	Rio Tinto Alcan Inc.
6.	B.C. Salmon Farmers Association of B.C.
7.	Seafood Producers Association of B.C.
8. Aquaculture Coalition	Alexandra Morton Raincoast Research Society Pacific Coast Wild Salmon Society
9. Conservation Coalition	Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society Georgia Strait Alliance Raincoast Conservation Foundation Watershed Watch Salmon Society Mr. Otto Langer David Suzuki Foundation
10.	Area D Salmon Gillnet Association Area B Harvest Committee (Seine)
11.	Southern Area E Gillnetters Association BC Fisheries Survival Coalition
12.	West Coast Trollers Area G Association United Fishermen and Allied Workers' Union
13.	B.C. Wildlife Federation B.C. Federation of Drift Fishers
14.	Maa-nulth Treaty Society Tsawaassen First Nation Musqueam First Nation
15. Western Central Coast Salish First Nations	Cowichan Tribes Chemainus First Nation Hwlitsum First Nation Penelakut Tribe Te'mexw Treaty Association
16. First Nations Coalition	First Nations Fisheries Council Aboriginal Caucus of the Fraser River Aboriginal Fisheries Secretariat Fraser Valley Aboriginal Fisheries Society Northern Shuswap Tribal Council Chehalis Indian Band Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council Upper Fraser Fisheries Conservation Alliance Adams Lake Indian Band Carrier Sekani Tribal Council Council of the Haida Nation Douglas Treaty First Nations (Snuneymuxw, Tsartlip and Tsawout)

17.	Metis Nation British Columbia
18.	Sto:lo Tribal Council Cheam Indian Band
19.	Laich-kwil-tach Treaty Society Chief Harold Sewid Aboriginal Aquaculture Association
20.	Musgagmagw Tsawataineuk Tribal Council
21.	Heiltsuk Tribal Council

Appendix 5: Issues that the Cohen Commission Intended to Investigate, June 3rd 2010

Theme	Issue	Additional Information
MANAGEMENT OF FRASER RIVER SOCKEYE STOCKS	DFO's organizational structure	<ul style="list-style-type: none"> • National and regional leadership • Funding, budgeting and allocation of departmental resources • DFO's relationship with the Province of British Columbia, First Nations, Pacific Salmon Commission, scientific researchers, stakeholders; and other federal departments and agencies • Information management and data management • DFOs management approach
	Harvesting	<ul style="list-style-type: none"> • Allocations, locations, methods, and regulations for the three fishing sectors (Aboriginal, commercial and recreational) • Harvest management tools, including preseason planning and in-season management • Harvest-related enforcement
	Conservation	<ul style="list-style-type: none"> • Habitat enhancement and restoration • Protecting salmon and salmon biodiversity • Conserving habitat and ecosystems • Habitat-related enforcement
FISH BIOLOGY AND ECOSYSTEM ISSUES	Fish biology and ecosystem issues research projects	<ul style="list-style-type: none"> • Water pollution • Salmon farms • Logging • Hydro • Urbanization and agriculture activities • Climate change effects (freshwater and marine) • Diseases and Parasites • Predators • Non-retention fisheries • Cumulative impacts
	Background/contextual issues	<ul style="list-style-type: none"> • Status of Fraser River sockeye Conservation Units • Freshwater ecology • Marine ecology • Production dynamics

Appendix 6: Issues Investigated at the Cohen Commission of Inquiry, with Hearing Dates

Issues	Hearing dates
Aboriginal Fishing	June 27 - 28, 30; July 4, 5 August 19; September 2, 2011
Aboriginal Worldview, Cultural Context and Traditional Knowledge	December 13-15, 2010
Advice to the Minister regarding Sockeye Returns in 2009	May 17, 2011
Aquaculture	August 25 – 26, 29-31; September 1, 6-8, 2011
Commercial Fishing	February 21-24, 28; March 1, 15, 2011
Conservation, Sustainability and Stewardship	October 28-29, 2010
Cultus Lake - Recovery Efforts from 2005 Onwards	May 31; June 1, 2011
Cultus Lake - SARA Listing Decision	May 30-31; July 8, 2011
Cumulative Impact Assessment	September 19-20, 2011
DFO Priorities & Summary	September 22-23, 26-8, 2011
DFO's Organizational Structure	November 1-4, 2010
Diseases	August 22-25, 2011
Effects on Habitat in the Marine Environment	July 6-8; August 17 – 18, 2011
Effects on the Fraser River Watershed - Gravel Removal	June 16; July 17, 2011
Effects on the Fraser River Watershed - Logging	June 17, 2011
Effects on the Fraser River Watershed - Municipal Wastewater	June 14 – 15, 2011
Effects on the Fraser River Watershed - Pulp and Paper Effluent, Mining Effluent	June 13, 2011
Effects on the Fraser River Watershed - Urbanization	June 6-8, 2011
Examination on Scientific Reports - Project 10: Fraser River sockeye salmon production dynamics	April 20-21, 2011
Examination on Scientific Reports - Project 12: Fraser River Sockeye Habitat Use in the Lower Fraser and Strait of Georgia	April 18-19, 2011
Examination on Scientific Reports - Project 2: Effects of contaminants on Fraser River sockeye salmon	May 9 – 10, 2011
Examination on Scientific Reports - Project 3: Status of Fraser River Sockeye Salmon and the Role of Freshwater Ecology in their Decline	March 10, 14, 2011
Examination on Scientific Reports - Project 7: Fraser River sockeye fisheries and fisheries management	April 14-15, 2011
Examination on Scientific Reports - Project 9: Potential Climate Change Effects on Survival of Fraser River Sockeye Salmon	March 8, 9, 2011
Fisheries Monitoring and Enforcement	May 11-12, 17-18, 2011
Fraser River Sockeye Life Cycle	October 25, 2010

Habitat Enhancement and Restoration	May 2, 4, 2011
Habitat Management & Enforcement	April 4-8, 2011
Harvest Management (Part 1)	January 17-21, 24-25, 2011
Harvest Management (Part 2)	January 26-27, 31; February 3, 7-11; March 16, 2011
Hydro, Water, Temperature	September 15-16, 2011
Infectious Salmon Anemia virus (ISAv)	December 15-16, 19, 2011
Pacific Salmon Commission & Pacific Salmon Treaty	November 8-9, 2010
Perspectives on the Aboriginal and Treaty Rights Framework Underlying the Fraser River Sockeye Salmon Fishery	October 26, 2010
Predation	May 4- 6, 2011
Recreational Fishing	March 2-3, 7, 2011
Wild Salmon Policy (Part 1) - Expert Stakeholders	November 29-30; December 1-3, 7-9, 16 2010; June 1-2, 2011
Wild Salmon Policy (Part 2) - Strategy 4 and Integrated Planning	June 2-3, 2011
Wild Salmon Policy - Regional Director General	March 4, 2011