

Justice Cohen's Get Out of Jail Free Card?

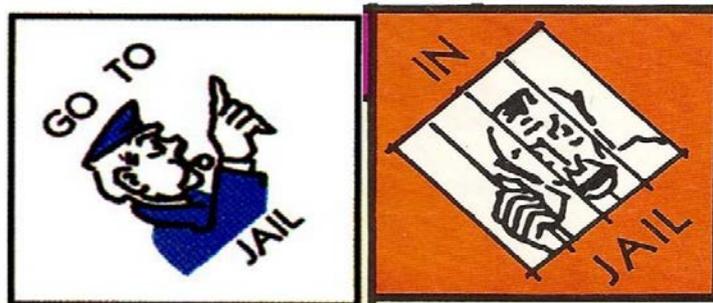
Within the week (“[on or before 30 September, 2012](#)”), Justice Bruce Cohen will finally close the door on Canada’s [\\$25 million](#) judicial inquiry into the decline of wild salmon after almost three years of public meetings, evidential hearings and heated discussion.



Photo: [Justice Bruce Cohen](#) at the public hearing in Lillooet in August 2010 smiling in front of the jail (with the Cohen Commission’s Director of Communications [Carla Shore](#) and Senior Commission Counsel [Brian Wallace](#))

For more photos read “[Cohen In Camera – Photo Review of the Salmon Inquiry](#)”

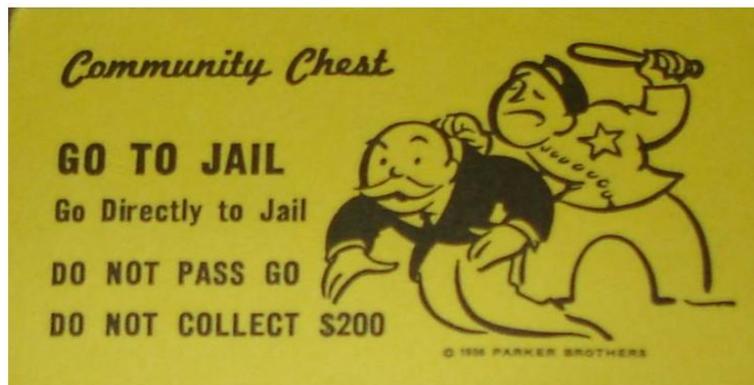
The stakes are high. If Justice Cohen takes a hard-line approach, the [Cohen Commission’s](#) final report could see British Columbia’s salmon farming industry in the dock for spreading [infectious diseases](#) (and the Canadian Government for aiding and abetting in the [cover-up](#)).



However, the likeable Justice Cohen could well give the Canadian Government and the [Norwegian-controlled](#) salmon farming industry a ‘Get Out of Jail Free’ card despite calls to ‘lock ‘em up and throw away the key’.



“[Someone should be going to jail over this](#),” said John Werring of the David Suzuki Foundation in reaction to a secret Government report last year which detailed over 100 positive cases of ISA in farmed Atlantic salmon and wild Pacific salmon. “Never in my over 20 years of doing my work have I seen such duplicity by our government. The closest thing I can relate to is when whistle blowers in the U.S. released documents showing that tobacco companies knew their product harmed people. This document (2004 draft) shows our government has known for years that ISAV has been in the Pacific and they have done nothing except cover it up. Appalling!”

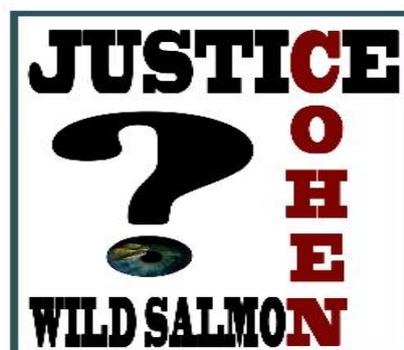


Read more via “[Salmonopoly: Go to Jail, Go Directly to Jail, Do Not Pass Go, Do Not Collect \\$200](#)”

“Call it Salmongate,” reported the [LA Times](#) last December. “The deepening controversy over who knew what and when about a deadly virus that may or may not have been detected in West Coast salmon would be obscure fodder for biologists if there weren't so much at stake -- the health of the West's dwindling stocks of wild salmon, for one. And Canada's \$2.1-billion fish farming industry.”

Read more via “[Did Canada cover up deadly salmon virus? Report suggests yes](#)”

Will the [Cohen Commission](#) provide [justice for wild salmon](#) or will the Canadian Government and Norwegian-owned salmon farming giants (who control over [90%](#) of BC's salmon farms) wriggle off the hook?



Even if Justice Cohen does get tough there is no guarantee that the Harper Government will abide by his recommendations. “Whether Justice Cohen’s recommendations will have any sway on the Harper government’s current agenda is unlikely, but we can only hope that his report will not cater to the very things that put wild salmon at risk,” writes Elena Edwards in

[Wild Salmon First](#) (24 September). “If nothing else, the Cohen Commission succeeded in one thing; it has clearly shown that government has been compromising wild salmon to death and that the DFO is in place not to protect wild fish but to protect the economic proceeds derived from the fish and oceans. If wild salmon are to have a chance of surviving into the future they must be prioritized before open-net salmon farming, oil pipelines, and mass industrial practices that destroy salmon habitat. In short, wild salmon must come first.”



Read more via [“Justice Bruce Cohen to make final report on salmon inquiry”](#)

The wait is nearly over. Following repeated [delays](#) and [extensions](#) since it’s opening in November 2009, the Cohen Commission’s [Terms of Reference](#) now call for the final report to be submitted “on or before September 30, 2012”.

“In completing his final report, Commissioner Bruce Cohen will consider all the evidence entered at evidentiary hearings and approximately 900 submissions from the public,” [wrote](#) the [Cohen Commission](#) in March 2012. “More than 160 witnesses testified at the hearings, resulting in 14,000 pages of transcripts and 2,100 exhibits”.

Justice Cohen received [final submissions](#) from a wide range of stakeholders including the [BC Salmon Farmers Association](#), the [First Nations Coalition](#), the [Conservation Coalition](#) and the [Aquaculture Coalition](#). The BC Salmon Farmers Association, for example, [claimed](#) that there was “no reliable evidence” indicating a risk posed by salmon farming:

EXECUTIVE SUMMARY

The B.C. Salmon Farmers’ Association (“BCSFA”) submits that the weight of scientific evidence provided to the Commission indicates that the risk posed to the Fraser River sockeye salmon by the aquaculture industry is minimal. There was no reliable evidence submitted that claimed otherwise. Salmon aquaculture operations are stringently regulated, carefully monitored, and properly managed in a precautionary, environmentally conscious manner.

The Conservation Coalition, on the other hand, [cited](#) “substantial evidence regarding the serious risk posed by open net-cage salmon farming to wild salmon”:

Aquaculture

“...there's lots of examples where fish farms have, in fact, created problems because of their location or because of their – *the way in which they've been operated.*” (Pat Chamut, November 29, p. 30, ll. 17 – 20).

40. This Commission has received substantial evidence regarding the serious risk posed by open net-cage salmon farming to wild salmon. Instead of exercising precaution in the face of this risk, DFO has taken on the mandate to promote this unsustainable practice. The promotion by DFO of open net-cage salmon farming is in direct conflict with its primary mandate: the conservation of wild fish stocks.

The [final submission](#) of the Aquaculture Coalition, spearheaded by [Alexandra Morton](#) and her lawyer [Greg McDade](#), also cited “compelling ecological evidence” that diseases from salmon farms was “the primary cause of the failure of the 2009 sockeye return”:

The submission of the Aquaculture Coalition is that the primary cause of the failure of the 2009 sockeye return was disease, and that salmon farms along the path of the migrating salmon played a significant role in the origin or amplification of that disease. Ocean conditions north of the salmon farms may have played a role in increasing mortality from that disease.

Disease is also the most likely cause of the long-term declines in salmon productivity since the early 1990's, when salmon farms expanded into the confined areas of the Discovery Islands and Johnstone Strait. We should not be surprised. Wild salmon are in decline wherever there are salmon farms worldwide.

Wild salmon declines due to disease is the best fit for the available evidence differentiating between the stocks that thrived and those that failed in 2007, and in distinctions between 2007 and 2008 returns.

Direct empirical evidence of disease causation is not feasible in salmon populations, and could not be expected here. However, there is compelling ecological evidence and evidence from other fish farming jurisdictions to show the inevitable role that fish farms play in the amplification of endemic diseases, and the evolution of new diseases. [See Part I-2]

The Aquaculture Coalition also recommended:

RECOMMENDATIONS:

The Aquaculture Coalition strongly urges the Commission to recommend that:

- *DFO re-visit its decision to grandfather existing farms on the migration route;*
- *Those farms be removed until further, supportable research is undertaken and no new farms be sited on the migration route until that research is completed; and,*
- *DFO regulate aquaculture truly using a precautionary approach that puts wild salmon first.*

Read all final submissions [online here](#)

During his [final oral submission](#) in November 2011, Greg McDade, legal counsel for Alexandra Morton, hit the nail in the coffin when he said:

“Like the Monty Python sketch, we have a dead parrot.”

Submissions by Mr. McDade (AQUA)

In other words, they're not okay like the Monty Python sketch, we have a dead parrot; we have a dead fish. And they had symptoms of disease, but if they couldn't fit them neatly into a particular disease category, they were given an open diagnosis.

No amount of rattling the cage will resuscitate the [disease-ridden](#) Norwegian Blue.



Read more via [“Norwegian Blues – Monty Python’s Dead Farmed Salmon”](#)

Following the [re-opening](#) of the Cohen Commission in December 2011 to hear [new evidence](#) on [Infectious Salmon Anaemia](#) (ISA), there were [further written submissions](#). The BC Salmon Farmers Association, for example, [concluded](#):

IV. Conclusion

30. In conclusion, the BCSFA says that the recent tests for ISAv in BC have produced inconclusive results that must be further researched and studied to be properly interpreted prior to placing any evidentiary weight on them. The experts are unanimous in that if something has in fact been detected, then it is unlikely to be a known form of ISAv, and the weight of evidence supports a Pacific strain of an ISA-like virus, possibly an orthomyxo virus, that has been present on Coastal BC water for many years before commercial aquaculture of Atlantic Salmon but was undetected. Atlantic salmon have not tested positive for ISAv or been diagnosed with ISA even though they are extremely susceptible, and have shown no clinical signs of the disease. Furthermore, the clinical signs of the fish tested by Miller are inconsistent with ISA.
31. The aquaculture industry in BC has offered to provide samples of farmed salmon for ISAv testing, and will comply with the CFIA's investigation into these tests, and with future surveillance efforts as required.

*Exhibit 2081, Letter from M E Walling, BCSFA to
K Ashfield, Minister DFO, Nov 25 2011*

All of which is respectfully submitted,

This 29th of December, 2011,



K. Alan Blair
B.C. Salmon Farmers' Association



The Conservation Coalition [concluded](#):

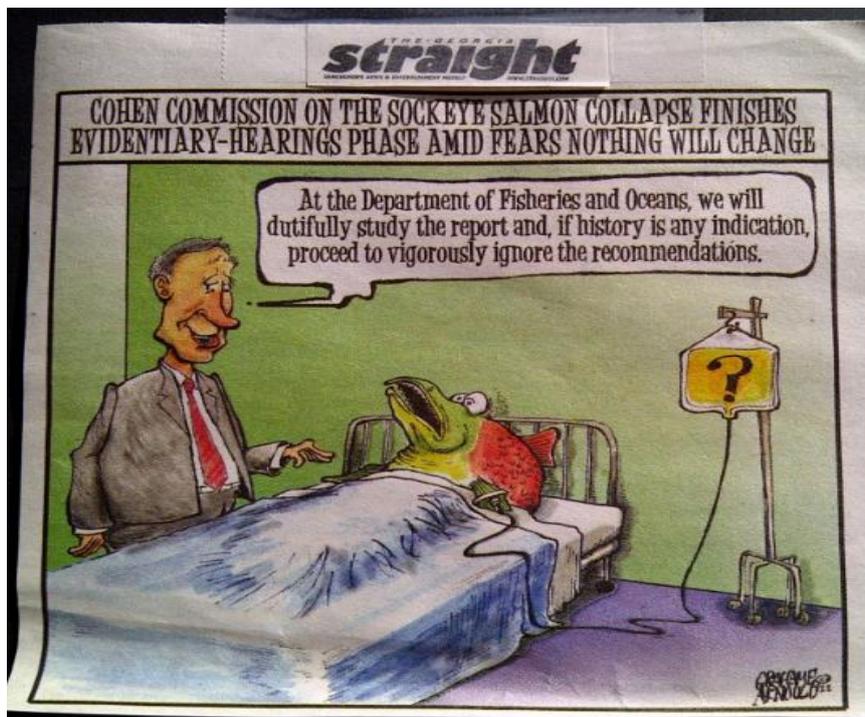
Conclusion

13. The heavy-handed response by government departments to positive ISAv test results, which includes intimidation and publicly undermining government and independent scientists, supports the need for independent oversight of ISAv confirmation. The need for a separation between science and political decision-makers is further strengthened as a result of industry's privileged access to government decision-makers (see, for instance, Ex. 2138). Indeed, this Commission will be hard-pressed to make recommendations that address the above concerns other than recommending a structural separation between science and political decision-making. It is absolutely integral that science not be influenced by politics. Due to the accountability of our democratic system, so long as science is conducted and disseminated transparently, political decision-makers may choose to ignore it at their peril. Nonetheless, the science must be transparent and free from political influence and their needs to be a separation between policy and science (Kibenge: Dec. 16; p. 43; l. 30 – 40)(Gagne: Dec. 16; p. 43; l. 18 – 19)(Ex. 2094; Rec. 3).
14. We therefore support the call from multiple leading scientists to establish a structural separation between science and political decision-making with respect to the management of fisheries generally, and with respect to the assessment of the presence of ISAv in B.C. particularly.

All of which is respectfully submitted this 29th day of December, 2011.



Judah Harrison
Counsel for the Conservation Coalition



The Aquaculture Coalition [concluded](#):

C. RECOMMENDATIONS ARISING FROM THE ISA HEARINGS:

We reiterate the recommendations made in our main Final Submissions. We submit that the evidence presented during the ISA hearings emphasizes the need for each of those original recommendations.

In addition, we recommend:

1. DFO accept and carry out its mandate to monitor, research, and control disease in farmed and wild fish; and, that any surveillance or diagnostic research by CFIA not interfere with or usurp DFO's role.
2. CFIA should not be permitted the power nor have a policy that "seizes" samples from labs (DFO, OIE or otherwise independent) that diagnosis ISA or any other disease in fish. This policy has a chilling effect on fish research and diagnosis and is counter-productive.
3. DFO should immediately test for HSMI in farmed and wild Pacific salmon and should require mandatory testing of this disease in the future.
4. Surveillance of fish health (including as envisioned by the CFIA in its draft plan) should be carried out by an independent body.
5. Dr. Miller's lab should be given adequate funding to allow her important research into disease and genomics in wild and farmed salmon to continue.

ALL OF WHICH IS RESPECTFULLY SUBMITTED,
This 29th Day of December, 2011

COUNSEL FOR Dr. Alexandra Morton and the Aquaculture Coalition
Gregory J. McDade, Q.C
Lisa Glowacki



For more information on the ISA hearings read "[Unplugged - Exclusive Footage from the Cohen Commission Online Now!](#)"

In May 2012, Justice Cohen [refused](#) to re-open the Cohen Commission to hear new evidence on infectious diseases found in farmed salmon.

**THE COHEN COMMISSION OF INQUIRY INTO
THE DECLINE OF SOCKEYE SALMON IN THE FRASER RIVER**

**RULING RE: RE-OPENING HEARINGS TO RECEIVE NEW
EVIDENCE OF DISEASE IN SALMON IN BRITISH COLUMBIA**

The Honourable Bruce I. Cohen, Commissioner

Background to the application

1. On April 23, 2012 the Aquaculture Coalition made an application to re-open the hearings to receive evidence on the epidemiology and impacts of piscine reovirus (PRV) and heart and skeletal muscle inflammation (HSMI) in salmon in British Columbia.
2. The Aquaculture Coalition refers to developing research into links between PRV and HSMI which indicates that both cause high mortality and appear to be transmissible to wild fish. Reference is also made to sampling for the virus done of fish purchased in local supermarkets, which identified the presence of PVR and indicators of HSMI.

In July 2012, Watershed Watch [published](#) a synopsis of key evidence of the Cohen Commission.



Cohen Inquiry Highlights



Synopsis of Key Evidence from the Commission of Inquiry into the Decline of Fraser River Sockeye



According to [Watershed Watch](#):

As the inquiry unfolded, we were astounded by the sheer volume of illuminating and previously confidential information revealed through the process. Both excited by and concerned with the nature and volume of information being released, we felt strongly that key evidence and testimony should not become buried and forgotten. Hence, we took on the task of refining and summarizing key highlights from the inquiry to ensure a meaningful and permanent record was accessible to the public. For our report we drew from our blogs and notes, and read numerous transcripts and exhibits summarizing the information we found to be most compelling in the Fraser sockeye story. We hope this report will arm the reader with a compelling overview of some of the key evidence, maybe even a jumping off point to further research on specific exhibits and testimony. Finally, Watershed Watch offers this report as a measuring stick against what is considered in the final report of the Commissioner—and more importantly, what actions government eventually decides to take in response to its federal sockeye inquiry.

For more background read “[Cohen Inquiry Highlights](#)”

Meanwhile, the salmon farming industry, First Nations, fishermen and the people of British Columbia wait for Justice Cohen’s final report and the Canadian Government’s reaction with baited breath.



Photo: June Quipp of the Cheam Indian Band with Justice Bruce Cohen at the first public hearing at Cheam Beach in August 2010

The [Norwegian-controlled](#) salmon farming industry, in particular, has a great deal of money riding on the Cohen Commission. If Justice Cohen adopts the recommendations of First Nations, the Aquaculture Coalition and the Conservation Coalition then salmon farms located on the Fraser River sockeye migration route could be removed.

The [submission](#) from the First Nations Coalition, for example, recommended “removal and relocation”:

RECOMMENDATION: In collaboration with First Nations and at the cost of Industry, DFO must ensure that independent transparent research is conducted on: (a) the interaction between existing finfish farms (including density, location, fish health and transfer of disease along the FRSS migratory route) and migrating wild salmon, including FRSS; (b) the experimental removal and relocation of fish farms along the FRSS migratory route; and (c) the feasibility of other models of farming fish (e.g. closed containment) that may present fewer risks and uncertainties for the health of wild salmon.

Moreover, if Justice Cohen blames disease-ridden salmon farms for the collapse of the multi-million dollar Fraser River sockeye fishery then the floodgates to legal action will surely be opened.

“Are your ministry and the Norwegian fish farmers adequately insured to cover damages if we find out BC is an ISAV suspect area, no one told us and it spreads because you did nothing?” asked Alexandra Morton in an [open letter](#) to the Canadian Fisheries Minister back in March 2011.

“Until DFO recognizes that salmon farms amplify pathogens to dangerous levels, I will maintain my opinion that DFO has no intention of protecting wild salmon from salmon farms,” wrote Alexandra Morton in another [open letter](#) to DFO last week (20 September). “I suspect you have been pressured to make it easier for the salmon farmers to collect insurance and apply for compensation.”

Certainly, [Superheroes 4 Salmon](#) thinks it is very rich of the Norwegian salmon farming industry to be claiming compensation for recent outbreaks of Infectious Hematopoietic Necrosis (IHN). West Coast Environmental Law, for example, [reported](#) last month (14 August):

The screenshot shows the West Coast Environmental Law website. The header includes the organization's name and a navigation menu with links for 'Our Work', 'Resources', 'Support Us', 'About Us', and 'Media Centre'. A prominent banner features an open book. On the right side, there are three call-to-action buttons: 'DONATE NOW Support WCEL', 'Legal E-Brief Subscribe to our Newsletter', and 'Blog Environmental Law Alerts'. The main content area displays a blog post titled 'Will your tax dollars subsidize BC's unsustainable fish farms?' dated 14 August, 2012. The post text discusses a business model for fish farming and the issue of compensation for disease outbreaks. A sidebar on the left lists various site sections like 'Environmental Law Alert Blog', 'About the Environmental Law Alert', 'Blog Roll', 'Blog Comments Policy', 'Twitter Moot', 'Webinars', 'New at West Coast', 'Publications', and 'Dialogues For Legal Innovation'. A right sidebar shows an 'Archive' of posts by month from September 2012 to December 2011.

Read more via [“Will your tax dollars subsidize BC’s unsustainable fish farms?”](#)

If BC salmon farmers are successful in claiming compensation against wild salmon for spreading infectious diseases, then it beggars belief how much compensation those stakeholders dependent upon wild salmon would be eligible for if Justice Cohen rules against disease-ridden farmed salmon?



First Nations have already filed a [class action lawsuit](#) focused on the devastation caused by salmon farming on the wild salmon in Kwikwaka'wakw/Ah-Kwa-Mish First Nation (KAFN)'s Territory around the Broughton Archipelago.

“When juvenile pink and chum salmon in our Territories attempt to migrate out to the ocean, they face a gauntlet of open net-pen salmon farms densely stocked with non-native Atlantic salmon,” [said](#) Bob Chamberlin, KAFN Chief and the Representative Plaintiff in the lawsuit in May 2012. “These salmon feedlots cause the incubation, amplification and transmission of diseases and parasites to the wild juvenile salmon. The Cohen Commission of Inquiry into the Decline of the Fraser River Sockeye shone a pretty bright light on the evidence that was hidden by industry and our governments about the impacts of open net-pens, including introduced diseases. What more are they hiding?”



At last, the wait for Justice Cohen’s final report is nearly over. Keep an eye on the Cohen Commission’s [web-site](#) this week as the Canadian Government and Norwegian-owned salmon farming industry wriggle for all their worth!