

Southern Sunshine Coast Ferry Advisory Committee

28 November 2011

BC Ferry Commission
RPO Box Hillside
Box 35119
Victoria BC
V8T 5G2

Attention: Mr. Gord Macatee
BC Ferry Commissioner

Dear Gord:

Re: BC Ferry Commission Review of Coastal Ferry Act
Comment on BC Ferry Commission Discussion Paper #1
Regulatory Principles

The members of the Southern Sunshine Coast Ferry Advisory Committee (SSCFAC) are pleased to provide comment on Discussion Paper #1 regarding existing principles contained in Section 38 of the Coastal Ferry Act. The Commissioner must regulate in accordance with these principles; and this places unnecessary constraints on the Commissioner and thereby reduces the effectiveness and credibility of the oversight and regulatory process.

We believe that the impact of existing principles is widely understood and clearly stated by Ms. Cheryl Wenezenki-Yolland, Comptroller General, in her October 2009 report to the Minister of Transportation and Infrastructure and the Minister of Finance. She found that the very narrow interpretation of the mandatory principles and the limited regulatory role was not appropriate to balance the financial sustainability of the system with the needs of customers, the operators and the communities. This situation has prevailed since BC Ferries was converted by government in 2003 to a private corporation to outsource coastal ferry services. Most people characterize the transition as a privatization of a government function; and some are of the opinion that the transition simply offered a way for government to take credit for maintaining the essential service without government borrowing, added taxation, or accountability (as complaints could be diverted to the new 'private operator' or to the Commission). The transition was presented to the public as necessary to prevent future 'political interference' and as a means of operating the ferries in a more commercial manner that would result in future fare increases being less than the Consumer Price Index.

The optimistic projections of 2003 have not materialized. The government, through BCFS and the Ferry Commission, has failed to maintain affordable maritime ferry service based on the Coastal Ferry Act (CFA) and its Coastal Ferry Service Contract (CFSC). Ferry fares have risen between 60 % and 110 % since 2003, in the face of a CPI increase of a mere 12 % over the same period, causing a considerable reduction in traffic over the last 3 years.

This situation has adversely affected coastal communities and residents as safe, reliable and affordable service provided by BC Ferries is their 'lifeline' as terminals and vessels are essential components of the provincial highways system. There is no alternative road access to the Sunshine Coast.

It is our understanding that the regulatory structure was intentionally designed to be 'regulation light' to minimize the complexity and costs. In our opinion, the extent of on-going regulatory review needs to be reviewed. The purchase of new vessels, vessel upgrades, and terminal expansions / upgrading are large capital expenditures that generally have a life span of 30 to 40 years. Making a mistake in this regard will therefore have a long term impact on costs and the ability to maintain service. We therefore need to have confidence that the amount of regulatory supervision is appropriate considering the downside risks of the operator making inappropriate short term decisions.

A new legislated framework has to be created which safeguards the financial viability of BCFerries (BCFS) and protects the lifeline of the ferry users and the ferry dependent communities, through affordable and predictable fares.

Unfortunately Ms. Cheryl Wenezenki-Yolland's 2009 review was looking backward at how the application of the mandatory principles had impacted the ferry system. The damage had already been done. In drafting the new framework, the government needs to more proactively address the needs of ferry users and communities.

The following are our comments on the CFA principles listed in your discussion paper #1:

(a) Financial Sustainability of Ferry Operators

Giving priority to the financial sustainability of the ferry operator severely limits the scope and potential effectiveness of the Ferry Commissioner. It takes away the need for and the opportunity to examine the 'big picture' and thereby balance the needs of customers, the operator, the affected communities, and the government. BCFS routes are an integral part of the provincial infrastructure and should be treated in a similar manner as the provincial highways with regards to financing. We have separately provided comment regarding this topic in our response to Discussion Paper #3.

(b) Commercial Approach

Commercial Approach is not a defined term and is therefore open to interpretation. It is expected that BCFS will be operated in a 'business like' manner using industry standard management practices and procedures. BCFS is also expected to provide a monopoly service acting substantially as a sole source agent or subcontractor to the province. It is unclear how the Ferry Commission can interpret and apply this principle. Efficient and effective management will be demonstrated in how effectively BCFS can deliver on the contractual obligations it has to the government. The government has a duty to develop policy and monitor operation of the ferry system by means of the Ferry Commission and political processes.

Maintaining this principle in the regulation implies that the government has determined, and is accepting, that the ferry operator is not presently taking a commercial approach. If specific deficiencies are known to government or the Ferry Commission, there should be a duty to take action to remedy the situation,

(c) Additional Alternative Service Providers (ASP)

There appear to be too many hurdles for a viable application to operate a route or routes by an ASP. Therefore, do not solicit applications, but let potential ASP providers come to BCFS. We have separately provided comment regarding this topic in our response to Discussion Paper #7

(d) Minimize Expenses

An ongoing close monitoring of cost projections and actuals for a reliable ferry service is vital, because it can make the service more affordable. We have separately provided comment regarding this topic in our response to Discussion Paper #8

(e) Cross Subsidization

Cross subsidization should be permitted. The BCFS coastal ferry system comprises a number of routes. Other provincial transport systems allow for uniform tariffs and uniform fare increases. It would be unthinkable for an operator like TransLink to implement different percentage price increases on individual bus routes simply because one route is more cost effective than another route. The fleet of buses act together to provide an integrated service. We have separately provided comment regarding this topic in our response to Discussion Paper #5.

(f) User Pay

The combination of Principle (a) and the governments unquantified requirement to move towards greater user pay to reduce service fees (Principle (f)) have resulted in large fare increases and a reduction in traffic to levels that threaten the financial viability of BCFS and are undermining the economies of coastal communities and residents.

We believe that the existing mandatory principles are undermining the ability of the BC Ferry Commission to ensure that a ferry service is maintained that will provide a safe, reliable and affordable ferry service. The ferry service needs to remain and be treated as part of the provincial transportation system. Otherwise coastal communities and their residents are not being treated fairly when compared to mainland areas of the province served by the integrated highway network.

There is a need for replacing 14 ships on the minor routes. There is an urgent need to set aside the existing principles and provide focus on how to maintain a safe, reliable and affordable coastal ferry service that meets the needs of communities and the residents of British Columbia. We have separately provided our observations and suggestions in our response to Discussion Paper #3.

Southern Sunshine Coast Ferry Advisory Committee

28 November 2011

BC Ferry Commission
RPO Box Hillside
Box 35119
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Attention: Mr. Gord Macatee
BC Ferry Commissioner

Dear Gord:

Re: BC Ferry Commission Review of Coastal Ferry Act
Comment on BC Ferry Commission Discussion Paper #2
Definition of Ferry Users and it's Application

The members of the Southern Sunshine Coast Ferry Advisory Committee (SSCFAC) are pleased to provide comment on Discussion Paper #2 regarding the definition of ferry users and how it should be used.

The Coastal Ferry Act was amended in 2010 to require the Ferry Commission to “consider the interests of ferry users”. A definition of ferry users appears intuitive and not a term that needs to be defined in the Coastal Ferry Act or regulations. It appears obvious that a ferry user is an individual or business, non-profit, or government that is impacted by a ferry to move people or goods. The risk of compiling a definition that includes all of these specific individuals and entities, and including it within regulation, is that some may be overlooked or left out in error.

There does not appear to be a definition for ‘highway user’ or ‘road user’ in the Act and Regulations that apply to the Ministry of Transportation. This perhaps indicates that a highway is viewed by the government and residents as the lifeline that connects people and communities, and is an essential service for the economic and social well being of the province. As it is not practical or economic to provide a highway to every maritime community; coastal ferries serve as an essential component of the highway system by providing a ‘bridge’ to connect ferry dependent communities to the rest of the provincial highway network.

The lack of a definition of highway user does not seem to inhibit the construction and maintenance of highways. We do not know whether there are definitions of electricity user, natural gas user, water user, or sewer system user in the Acts and Regulations that are necessary in order for their regulator to set rates and service levels for those essential services. The provision of safe, reliable and affordable essential services is necessary to maintain the quality of life in British Columbia.

The Ferry Commission Discussion Paper #2 indicates that it would be helpful if a definition were developed and inserted within the Coastal Ferry Act that would address four questions and thereby enhance the existing processes to set rates:

1. Who are ferry users?
2. What are the “interests” of ferry users?
3. What is meant by the term “consider”?
4. How should the Act balance “the interests of ferry users” with “the financial sustainability of the ferry operator”?

The crafters of the amendment to the Act probably considered that the answers to these questions were obvious; or they would have felt a duty to insert definitions within the Act to clarify how the words should be interpreted for purposes of interpreting and applying the Act. The legal experts who developed the specific clauses in the Act might therefore be asked as part of this process to confirm their intent and interpretation of the regulatory language that they developed. One could ask them questions like: ‘Was it their intent, or were they instructed by policy makers, to restrict consideration to those who physically pay a ferry fare and then ride on the ferry; and thereby ignore all of the other stakeholders that are impacted by ferry fares and level of service?’. If so, was there a rationale for excluding all of these other people and organizations?’. One would expect that this type of discussion and detailed questioning would occur when the regulations were being drafted and carried forward through the officials and politicians who are responsible for moving the legislation forward for approval by the legislature.

1. **Who are ferry users?** – Ferry service is an essential link in the provincial highway network. Ferry dependent communities have no alternate road access to enable them to travel to other areas of the province. Therefore, ferry rates have an impact on all individuals who reside in or travel to and from ferry dependent communities. High ferry fares affect the cost of living for every resident and business in ferry dependent communities regardless whether she/he travels on the ferries! The provincial government is a substantial ferry user as employees travel for their work, and the cost of ferry travel is embedded in the cost of goods and services they purchase in coastal communities. It is our opinion that ferry users are all of the stakeholders that are affected by ferry fares and levels of service.
2. **What are the “interests” of ferry users?** – Ferry users’ expect safe, reliable and affordable service. There are many elements that roll up into this assessment, and include items like service quality, on time performance, etc. Because fares are no longer affordable (Rte. 3 suffered a 78 % increase in fares over the last eight years versus a CPI increase of a mere 12 %) ferry traffic has declined threatening the financial viability of BC Ferry Services (BCFS), residents, and communities. While commuters tend to shift their residence to the Lower Mainland, other residents severely curtail discretionary travel and undermine the ability for families to stay connected.
3. **What is meant by the term “consider”?** - The addition of the requirement for the Ferry Commissioner to consider the interest of ferry users is a very significant first step in

restoring safe, reliable and affordable ferry service. However, there is limited capability to make change as long as the mandatory guiding principle to give priority to the sustainability of the ferry operator is maintained in the legislation.

During the process of making any regulatory decisions, ‘consider’ can mean determining, and giving appropriate and careful attention to, the current and long term interests of ferry users. The commissioner must also have tools that protect the interests of ferry users. The commissioner has some of these tools now (e.g. “to ascertain whether major infrastructure costs (purchase of ships) are reasonable and necessary”). The scope of such tools should be widened to protect the interests of ferry users. Basic enforceable policy decisions, such as, that annual fare increases do not increase more than the CPI increases, should be entrusted to the commissioner.

4. How should the Act balance “the interests of ferry users” with “the financial sustainability of the ferry operator”?

Ferry users interests are affordable fares and reliable predictable ferry service. BCFS financial sustainability requires assured financing to operate the ferry systems and the replacement and maintenance of their infrastructure. We need to seriously consider the perspective of all stakeholders that are impacted. A solution might be ferry users pay for the operation of the ferry system and government pays for the infrastructure, same as they do for the provincial highway system.

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BC Ferry Commission
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Attention: Mr. Gord Macatee
BC Ferry Commissioner

Dear Gord:

Re: BC Ferry Commission Review of Coastal Ferry Act
Comment on BC Ferry Commission Discussion Paper #3
Existing Principle 38(1) (a):

Priority is to be placed on the financial sustainability of the ferry operators;

The members of the Southern Sunshine Coast Ferry Advisory Committee (SSCFAC) are pleased to provide comment on the financial sustainability principle requirement of the Coastal Ferry Act. The impact of this principle is linked to some of the other principles that require moving towards a user pay system. The Commission is obliged to follow the six principles.

We have separately prepared a response to Discussion Paper #1 and included brief comments about the sustainability principle. This response is intended to provide a more detailed perspective on the present and future impact of giving priority to ferry operator sustainability.

We agree with the recommendation of Cheryl Wenezenki-Yolland, Comptroller General, in her October 2009 report, that giving priority to the principle of sustainability needs to be balanced with the needs of customers, the operators and communities. We believe that giving priority to the sustainability principle will result in fares that will result in a continued decrease in ferry travel and will result in the severe financial difficulties for BC Ferries, put this outsourcing contract in jeopardy, and undermine the government's ability to provide essential ferry services to dependent communities.

We are of the opinion that the government needs to take an in depth review of the situation and take steps to ensure that the ferry system overall (including the ferry operator) will be able to serve the needs of customers, the operators, communities and the taxpayers of British Columbia. The following provides our understanding of the current situation and the potential future implications if a long term workable solution to this issue is not implemented at this time. While we believe that the following numbers are accurate; the commissioner is in a position to review and verify them in consultation with the government and BC Ferry Services (BCFS).

While the Ferry Transportation Fees (FTF) paid by the BC government for the Minor Routes/Rte. 3 have remained unchanged since 2003 at around \$ 78 million per annum, there has been an increase for the Northern Routes from \$ 25 million to \$ 47.5 million per annum to finance the cost of amortization and financing charges (infrastructure costs) of the new ships and upgrades of the terminals. The increases to the Northern Routes was required because the government recognized that moving towards user pay for these routes would have resulted in fares that were not practical nor defensible. This has created a precedent that should be applied to all ferry routes.

Ship replacements for the Minor Routes and Rte. 3 (during PT3 and PT4) have become a pressing need. We are of the opinion that BC government should absorb the higher infrastructure costs as was done for the Northern Routes.

There is a "hidden" financial shortfall when rejuvenating the ancient fleet on the Minor Routes and Route 3. Amortization is calculated on the historical purchase cost of the ships, but the cost of the replacement new ships is at least two or three times higher than the historical cost. There are no provisions in the BCFS accounts to finance this shortfall.

The full impact of higher BCFS costs (labour, fuel, repairs/maintenance, administration and particularly amortization and debt financing) have been extracted exclusively from ferry users (except the FTF increase for the Northern Routes). This is the reason why ferry fares have risen 60 % to 110 % since 2003, while the Consumer Price Index (CPI) has gone up by a mere 12 %. This huge increase in ferry fares is the main contributing factor for the drastic decline in traffic over the last three years. BCFS annual financial results for the last three years have been dismal - 2008/09 profit \$2.991 million, 2009/10 loss \$2.616 million, 2010/11 loss \$ 3.743 million. This is far below the forecasted "Return On Equity" (ROE) for PT2 of some \$ 40 million per annum.

The obvious solution for this financial dilemma is that the BC government absorbs all the infrastructure costs of BCFS for the existing infrastructure and new ships, major upgrades of ships, and terminals. It has been the policy of the BC government to finance new constructions and major upgrades to the provincial highways, by adding these costs to the provincial debt, which is serviced by all BC taxpayers, including residents in ferry dependent communities. The exception is where alternate road access is available. There is no alternate to the ferry service to dependent communities. The provincial fuel tax and the motor licensing fees cover the costs for the repair and maintenance of the provincial highways. It has been made quite clear during the many meetings you had in the ferry dependent communities that residents, ferry users and elected officials consider the ferry routes as their provincial highway, because these routes are the lifeline for their existence.

The financing of these infrastructure costs can be effected in various ways. Proportionate increases in the FTF seem to be a simple solution, but would require a change in policy so that Major Routes also benefit from their legitimate share. A more practical way would be to create a common share capital of say \$ 1 billion, where annual infrastructure costs could be covered by the purchase of shares by the BC government. (While FTFs "disappear" from the accounts of BCFS a growing shareholding will demonstrate an increasing BC government stake in the enterprise!).

In this connection we would also propose that the “Return on Equity” for BCFS be eliminated, because none of the other transportation components of BC’s transportation system (such as Translink, BC Transit, Highways) have to generate a ROE!

The provincial government should also “return” to BCFS the \$ 427 million “Debenture” allocated to them in 2003 and demanded back two years later and should refund new taxes and charges applied against BCFS operation since 2003 which include the HST and Carbon Tax. In 2003 BCFS inherited an antiquated fleet which needed major replacements and upgrades. In March 2004 the BC government had an 83 % stake in BCFS. (\$ 427.7 million debenture, \$ 75.5 million prf. share capital and \$ 21.9 million retained earnings on \$ 629.8 million assets). Today this stake has shrunk to 16.61 % and is not very confidence inspiring if BCFS has to access the commercial market for borrowings.

If our proposal for the BC government to absorb the infrastructure costs (amortization and financing) for all routes is accepted, then the picture looks as follows and would satisfy the ferry travelers expectation that fares should only go up in line with CPI. (Basis no return on equity; 2004 tariff revenue of \$ 323 million + 12.5 % (CPI) = \$ 363 million)

Corporate Total (basis 2011)

\$ 363 million tariff revenue
+ \$ 99 million Ancillary, Social Program, Contracted Routes Fares
<u>\$ 462 million Total Operating Revenue,</u>
./ \$ 527 million Total operating expenses
\$ 65 million Loss from Operations
<u>\$ 187 million Cost of Capital (infrastructure costs)</u>
\$ 252 million shortfall,

Financed by

\$ 58 million Ferry Transportation Fees*
+ \$ 27 million Federal Subsidy
+ \$ 167 million provincial contribution (absorbing the infrastructure costs)
\$ 252 million eliminating the shortfall

The infrastructure costs of Rte. 3 = \$ 4 million + Northern Routes \$ 28 million, Minor Routes \$ 35 million = total \$ 67 million can be deducted from the \$ 125 million FTF because they will be funded by the \$ 168 million provincial contribution for infrastructure.

The rollback from the 2011 tariff revenue of \$ 458 million to the above \$ 363 million works out @ 21 %.

Because ferry fares for the routes other than the majors have gone up much more than for the majors and would qualify for larger percentage discounts than 21 %, whereas the Majors might

have to be satisfied with a lower figure. It would not be out of place to mention to try and bring some equity into the fare structure for all routes by looking at the “loading plus distance” fare structure, which was unanimously agreed upon by FACs at Coastal Council meetings. (Obviously the two northern routes with long distances might have to be treated as special cases). Another alternative could be to adopt the “Road Equivalent Tariff” successfully introduced recently in Scotland.

We have studied the likely future developments regarding the Solvency of BCFS, which is not very confidence inspiring as per the following details:

“Looking forward into PT3 2012-2016 we see some problems.

Per 3/31/2011 BCFS accounts showed

\$ 33 million cash

\$ 151 million unused short term loan facility valid till May 2013

\$ 184 million funds available

Against these fund BCFS might suffer

\$ 35 million estimated **deficit** for 2011/12

\$ 50 million estimated **deficit** for 2012/13

Plus

\$ 22 million share repayment long term debt 2011/12

\$ 24 million share repayment long term debt 2012/13

\$ 164 million share repayment long term debt 2013/14

\$ 274 million share repayment long term debt 2014/15

Presently BCFS has an AAA credit rating. We suspect that it is so high because all their shares are held by the BC government. However, with repeated actual losses since 2010 present bond holders might be reluctant to roll over the existing loans, forcing BCFS to borrow at much higher interest rates.

Amortization of some \$ 114 million per year is a non cash item, but this money is sorely needed for the replacement and/or major upgrade of the overaged fleet/terminals (some 14 ships are involved!)

The obvious solution is for the BC government (sole shareholder) to infuse more cash (capital) into BCFS either by creating a common share capital and/or absorbing all of the annual infrastructure cost (amortization and financing) as they do for the provincial highways. We have previously made this suggestion to the Ministry. We have attached as an Appendix a copy of letter sent January 29, 2010 to Mr. Kirk Handrahan as an example of previous correspondence in this regard.

Past history has shown that rapid large fare increases reduce traffic and, thereby, reduce earning capacity which would force BCFS into substantial financial difficulties.”

We hope that our above proposals for a solution will receive a favourable reception and serious consideration. Should you require additional information/clarifications, we shall try and provide them for you.

APPENDIX

Ferry Advisory Committee Southern Sunshine Coast

Sechelt, January 29, 2010

Province of British Columbia
Ministry of Transportation and Infrastructure
PO Box 9850
Stn Prov Govt
Victoria BC
V8W9T5

Attn: Mr. Kirk Handrahan,
Executive Director, Infrastructure Development Branch, and
Acting Director, Marine Branch

Dear Kirk:

Re: Feedback Regarding Route 3 Southern Sunshine Coast

During your meeting with the Ferry Advisory Committee chairs (FACC) in Nanaimo on 6 January 2009, you invited individual members to provide comments on the needs of our routes as related to the October 2009 report by the Office of the Comptroller General titled *Report on Review of Transportation Models*.

Ms. Cheryl Wenezeki-Yolland concluded that the legislated key principles for the Ferry Commission and the priority given to sustainability of the ferry operator has resulted in the Commission taking a very narrow interpretation of the principles and the regulatory role. She states an expectation that the Commission should focus as well on the sustainability of the coastal ferry system, balancing the financial sustainability of the system with the needs of customers, the operators and the communities. Specific recommendations were made for changes in the Commission's mandate and responsibilities.

While expanding the mandate and the responsibilities of the Commission is required, it is our opinion that the Province through the Ministry of Transportation and Infrastructure needs to examine the long term practicality and impact of the following principle in the Coastal Ferry Act (section 38):

(f) the designated ferry routes are to move towards a greater reliance on a user pay system so as to reduce, over time, the service fee contributions by the government.

The Southern Sunshine coast is served solely by BC Ferries. There is no alternative road access. The BC Ferries ships and terminals are part of the highway infrastructure to ferry dependent communities.

The Ministry of Transportation and Infrastructure has Guidelines for Tolling posted on their website. It states that in some cases, tolling of users will provide the most appropriate means for recovering some or all of the costs of a significant investment in new highway infrastructure. The guidelines then go on to list a number of guiding principles.

Principle 2.3 Tolls will be implemented only if a reasonable untolled access reads:

The public has a right to a basic level of toll-free access. Therefore, tolls will be implemented only if a reasonable untolled alternative is available.

We accept that tolling was appropriate for the Coquihalla Highway and is appropriate for new highway projects like the Golden Ears Bridge and the replacement of the Port Mann Bridge. There are untolled alternatives available. Those applications comply with the Ministry's Guidelines for Tolling.

We consider that our ferry service is an integral part of the provincial transportation (highway) system. Our ships and terminals perform the same function as a bridge. We accept that BC Ferries fares should cover operating costs for our route. However, since there is no alternative to ferry service, it appears contrary to the Guidelines and unfair to expect that communities and residents can also pay the capital costs of investments for terminals and ships. This expectation disadvantages our residents and communities when compared to other locations in the province.

Amortization and Finance charges for our Route 3 have increased by 38% from \$ 7.28 million to \$ 10.04 million for the years 2007/08 to 2008/09. Despite this increase in cost of capital, the government's contribution by way of the Ferry Service Fee and Federal Contract was reduced in these years from \$ 6.436 million to \$ 4.608 million. Our residents are therefore expected to pay an increasing percentage of the capital costs. BC Ferries expect that it is required to spend some \$ 50 million to \$ 75 million for an upgrade to our Langdale Terminal; and recovering this expense through ferry rates is unrealistic and unfair.

In September 2006, the government recognized that it was unrealistic to expect that fares could recover all of the capital costs of new ships on the Northern Routes. To address this situation, it was announced that the 2007/08 service payments were to be about \$29.3 million, up from \$ 16.4 million.

Our rationale for users paying operating costs and the province covering capital costs is a realistic expectation considering that the annual accounts 2007/08 of the Highways Department indicate that motor licensing fees and the provincial fuel taxes (\$ 585.1 million) cover slightly more than the annual cost (\$ 553 million) for repairs and maintenance of our road system. The

capital cost (amortization and funding of the debt) of \$ 342 million is borne by the taxpayers of British Columbia. Similarly, ferry fares should be expected to cover the operating costs of the ferries and terminals, and capital costs should come from taxpayers. A fair solution would be for the government to restore their contribution for Route 3 from the present 46 % to the needed 100% of the annual capital cost. (The average coverages of our infrastructure costs during PT1 were 106 %).

The government spent about \$ 750 million to upgrade the Sea to Sky Highway and a few years ago spent about \$ 2,000 million on the Island Highway. We understand that the capital cost of these and other highway expenditures are added to the provincial debt. Like all provincial residents, our Sunshine Coast residents are therefore paying our share of these projects. It is unrealistic to expect that all taxpayers should not be contributing their share of the capital costs for the ferry links between other portions of our provincial highways system.

We would be most grateful if you could address this matter of fairness as both Highways and BC Ferries are within the Ministry of Transportation and Infrastructure and similar principles should apply to equivalent projects for capital costs and fares (tolls). Resolving this fairness issue would go a long way towards satisfying the recommendation contained in the Comptroller General's report about addressing the needs of customers, the operators and the communities. We trust that you will be taking action in this regard.

Yours sincerely
Ferry Advisory Committee Southern Sunshine Coast

Jakob Knaus
Chair

Southern Sunshine Coast Ferry Advisory Committee

28 November 2011

BC Ferry Commission
RPO Box Hillside
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Attention: Mr. Gord Macatee
BC Ferry Commissioner

Dear Gord:

Re: BC Ferry Commission Review of Coastal Ferry Act
Comment on BC Ferry Commission Discussion Paper #4
Regulatory Balance re Ferry Users and BCFS Sustainability

The members of the Southern Sunshine Coast Ferry Advisory Committee (SSCFAC) are pleased to provide comment on Discussion Paper #4 regarding the balancing of the interests of ferry users and financial sustainability objectives.

As stated in our other submissions, the high level objective for the Coastal Ferry system should be to provide safe, reliable and affordable transportation to ferry dependent communities.

In your discussion paper, you advise that the BC Utilities Commission has recognized a duty to approve rates that will provide a reasonable opportunity to earn a fair return. The complexity is increased for Coastal Ferry service regulation as the provincial and federal governments are aware that some continued government funding is required to maintain this essential service at affordable rates. Provincial government funding in the form of 'service fee contributions' has been extremely inflexible especially for the Minor Routes / Route 3 and a guiding principal in the Ferry Act requires the Ferry Commission to reduce, over time, the service fee contributions by government. If a mechanism can be found to address the fact that service fees can be increased where necessary to maintain affordable service, then all of our problems can be solved.

A workable basis would be to compare the government financial assistance with the other provincial transportation agencies. The cost recovery of BC Transit is a mere 37 %; Translink recovers 47 %, the highway department 70 % and BCFS 84 %. Therefore, a guaranteed realistic government financial contribution for BCFS should be feasible!

Questions:

1. *What approaches should be taken by the commissioner to ensure consumer protection? How are these approaches to be balanced against financial sustainability objectives? –*

The Ferry Commission must act in accordance with the Act and regulations. Government has the power to make policy decisions and amendments to legislation. The Ferry Commission should make recommendations to BCFS and the government for policy changes based upon recent consultations in communities impacted by ferry services and with appropriate consideration of the interests of ferry users. The Ferry Commission has made previous recommendations (e.g. “Report on the Preliminary Price Cap Decision” March 2001, chapter 3 Findings and Determinations Para k. Assumption on Changes to Service Contract”. In the same report the commissioner made cost reduction/containment proposals which were rejected outright by BCFS.

2. *Is a tiered approach to establishing regulatory duties the most appropriate for regulation of the BC ferry system?*

Possibly yes, at least during an introductory period, after which the regulations would have to be reviewed. In the UK, the primary duty for regulators is to protect and / or further the interests of consumers. We acknowledge that this primary duty does not override the secondary duty of providing a return that sustains financial viability. Going forward, it is in the interests of all stakeholders that the legislation and regulatory oversight fairly balances the needs of consumers, the ferry operator, and the government while recognizing that ferry communities require affordable ferry service that is administered as being a part of the integrated provincial highway system.

3. *If so, what should the primary and secondary duties of the regulator be? – What should the secondary duties of the regulator be?*

The commissioner, through the fare cap system, has succeeded in giving priority to the financial sustainability of BCFS. However, because fares have risen so steeply, traffic is plummeting putting the financial viability of BCFS in jeopardy. There has been no requirement to safeguard the interests of ferry users and the ferry dependent communities. This deficiency is now recognized by government and the present consultation process has the potential to put the system back on track. The primary duty should be to mitigate the suffering that the present regulatory model has imposed, and to refine the regulatory model so that the system will better serve the needs of ferry users, the ferry operator, ferry dependent communities and the government. Ferry users and ferry dependent communities are suffering from exorbitant ferry fares that are far in excess of the predictions that were made to justify the existing model.

4. *If not, what alternative approaches are appropriate?*

At the present time, we see no alternative approaches to solve the present regulatory imbalance between ferry users and BCFS other than increased government guaranteed funding, similar to which is being provided to BC Transit, Translink and the highway department (government pays a significant portion of capital costs; fares cover operating costs). At this time, we are updating ships and terminals and maintaining routes that were in place prior to forming the private BCFS company. Large capital expenditures were required for new ships, retrofitting ships, and making terminal improvements. It is appreciated that this was necessary to replace the older equipment; and that situation prevails on the minor routes. When some stability is restored to the system, longer term activities should include detailed planning that will lead to refining the system so that the system remains sustainable.

This may require a rethink of the type of vessels required and of the routes. At the public meeting in Gibsons, some suggested that the future will require greater emphasis on passenger only ferries that are integrated with expanding mass transit systems. At this time, decisions on long term ferry service appear to be made with little consultation with how they will integrate with other transportation systems in future years. We are not sure whether the long term planning role for integration with the various other provincial transportation systems has been assigned to the Ferry Commission, or whether it will form a part of the Ministry's overall provincial transportation planning process.

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Attention: Mr. Gord Macatee
BC Ferry Commissioner

Dear Gord:

Re: BC Ferry Commission Review of Coastal Ferry Act
Comment on BC Ferry Commission Discussion Paper #5
Fare Cap Price Regulation

The members of the Southern Sunshine Coast Ferry Advisory Committee (SSCFAC) are pleased to provide comment on Discussion Paper #5 regarding price regulation.

We do not have expertise on the alternative methods and tools that are available for rate regulation. Our interest is more about how effective the methods and tools are.

When the government approved the transformation of BC Ferries assets and personnel out of government into a government owned private corporation, politicians and government staff promoted the transformation on the basis that fare increases would be at about 75% of the Consumer Price Index. This projection was apparently based upon the December 2001 report by Fred R. Wright wherein he also predicted that operating cost increases would be in the order of 1.4% per year, fuel cost increases would be about 1 % per year, and traffic would increase 1.3% for passengers and 1.4% for vehicles.

Increases in fuel costs have been separately collected in fuel surcharges. We recognize that the purchase of new vessels and the upgrading of terminals have had a major impact on rates. The Fare Cap regulation allows all of these costs to be included in rates, and provides a financial incentive to proceed with these large expenditures.

We are pleased to respond to your specific question: **What improvements are possible within the existing price cap system?**

The Fare Cap regulation was put in place in order to provide 'light' regulation as it is a low cost regulatory method for both BCFS and the Ferry Commission. While it delivered substantial financial security benefit for the ferry operator and government, it failed miserably to deliver ferry rates in line with the CPI. Route 3 has had fare increases of 78% over the past eight years

whereas the CPI only increased 12%. Fare increases have been far in excess of the 9% that would be expected by Mr. Wright's prediction (75% of 12%).

We have experienced the impact of using Fare Cap 'light' regulation for a newly privatized corporation. The effort to minimize cost by using 'light' regulation was likely justified on the basis that BC Ferries was up and running within government, and that the transition to a private corporation would be easy as all equipment and personnel would simply move outside the constraints of government and become more efficient and more responsive to the needs of the overall ferry system. The challenges and costs were likely underestimated. Perhaps the initial performance terms were too long considering the rapid rate at which changes in processes were made and the need for quick capital expenditures to replace aging equipment. In retrospect, the emphasis on 'light' regulation likely is a cause of the current situation whereby rapidly escalating fares are undermining the sustainability of the ferry system and having large impacts on residents and coastal communities.

The calculation of the fare cap is very detailed and not readily understood by the public. A simpler method of comparing the actual tariff revenue and the calculated revenue (traffic multiplied by tariff rate) would be more understandable.

There are discernable shifts in ferry usage over the last three years which distort the anticipated "average actual revenue". It has caused BCFS to increase our fares in April 2010 by more than the "permitted" fare increase of 7.2 % per 1st April 2010 - reason - to catch up to the cap! The reason for our shortfall was increased usage of the experience card, a trend which continues today. On other routes there has been a migration from vehicle traffic to passenger traffic, obviously caused by the very high ferry fares and reducing the "average total revenue".

A further threat to a valid fare cap system is the proviso 42 in the CFA which allows for BCFS to demand a cap increase due to "unanticipated and extraordinary changes in traffic levels". BCFS has repeatedly overestimated traffic levels despite the FACs informing them repeatedly about the hardship ferry users are undergoing.

Summing up we recommend that the present fare cap scheme be amended to add a factor that requires that future fare increases be no higher than the CPI. In order to detect any material variations in fare income, a quarterly comparison between "theoretical anticipated fare income" and "actual average fare income" might be a tool to find explanations for possible remedies.

Southern Sunshine Coast Ferry Advisory Committee

28 November 2011

BC Ferry Commission
RPO Box Hillside
Box 35119
Victoria BC
V8T 5G2

Attention: Mr. Gord Macatee
BC Ferry Commissioner

Dear Gord:

Re: BC Ferry Commission Review of Coastal Ferry Act
Comment on BC Ferry Commission Discussion Paper #6
Single or Multiple Price Caps

The members of the Southern Sunshine Coast Ferry Advisory Committee (SSCFAC) are pleased to provide comment on the BC Ferry Commission Discussion Paper #6 regarding Single or Multiple Price Caps.

The routes operated by BCFerries are an integral part of our provincial transportation system. Therefore, it is only logical that the ferry fare structure is based on a similar basis as for other provincial transportation operators. If price cap methodology is to be used for fare setting purposes, we believe that a one price cap model should be utilized.

BC Transit and Translink apply uniform percentage increases when they increase their fares. There are bus and SkyTrain routes that are more profitable than others, same as for BCFerries, but fare increases are uniform across their systems.

Almost all of the minor ferry routes and our Route 3 (Horseshoe Bay to Langdale) have a substantial number of commuters. It is illogical that when they travel on BCFerries their fares are based on the higher of a two tiered system; and when they travel on BC Transit or Translink, their fare basis is uniform.

There is a distinct tendency in B.C. for utilities to adhere to a uniform province wide rate basis (i.e. BC Hydro and the recent application by Fortis BC (formerly Terasen Gas and BC Gas) for uniform rates).

The financial viability of BC Ferries will not be affected by using a one price cap model because it is only a matter of recalculating the fares fleetwide.

During the period from 2003 through to the end of 2010, statistics reveal that under the two tier system the major routes had a total fare increase of 45 %. Their traffic increased

by 10 % for vehicles and declined marginally by 0.8 % for passengers. However, the other routes suffered a total average fare increase of 78 % but their traffic declined by 3.53 % for vehicles and 5.07 % for passengers (Dismal figures if you consider the projected growth in population during the 8 years at 7 %). This clearly shows the consequences and inequality of the two tiered fare cap system. It also confirms that high fares reduce traffic.

Sunshine Coast residents consider Route 3 as a component of our provincial highway (and lifeline) to the Lower Mainland and the rest of British Columbia. The provincial gas tax and the motor license fees (which fund the cost of repairs and maintenance of our highway system) are the same throughout B.C. The two tiered fare setting model for BC Ferries is out of sync with other provincial transportation system practices and public expectations whereby all portions of a system are similarly charged even though fares on some routes recover more than are recovered on other routes. Cross subsidization between different routes in the highways, bus, SkyTrain, hydro, natural gas, telephone and many other essential services is accepted regulatory practice in the province. Each BC Ferry route is part of the provincial highway system and the BC Ferries system. Fairness requires that there be a one tier system. A high level objective for planning and operating purposes should be to have fares increase no more than the consumer price index.

The existing price cap system is based upon BC Ferries forecasts of revenues and direct costs and allocation of indirect costs for each rate group. The Commissioner then needs to review the submitted material and evaluate whether each proposed item is required and whether the cost projections are reasonable and fair. This requires a good understanding of BC Ferries operations. Without detailed scrutiny, BC Ferries has an incentive to make operational changes and capital improvements as all of their accepted costs flow through and are protected within the rate cap system.

During the Commissioner's public meeting in Gibsons on September 7, 2011, a number in the audience questioned the need and value of the newly opened BC Ferries Vacations Centre in downtown Vancouver. They expressed concern that costs for this new centre were included in ferry rates and reinforced their opinion that BC Ferries was more focused on out of province tourism that they were on serving the basic and essential needs of ferry dependent communities. Others questioned the need for and cost of BC Ferries purchasing signage and executive suites for Vancouver Canucks games at Rogers Arena.

There is a public expectation that the Ferry Commissioner looks carefully at the business case for all proposed significant capital additions (new ferries and ferry upgrades, terminal improvements) and at major changes in processes or new service offerings to ensure that there is a sound basis for the expenditures and will thereafter monitor whether the actual costs and benefits that are predicted are achieved in future years.

A number of other essential utility services fall within the jurisdiction of the British Columbia Utilities Commission (BCUC). Like the BC Ferry Commission, the BCUC is

a regulatory agency of the Provincial Government, operating under and administering under an Act. The BCUC is responsible for ensuring that customers receive safe, reliable and non-discriminatory energy services at fair rates from the utilities it regulates, that shareholders of these utilities are afforded a reasonable opportunity to earn a fair return on their invested capital, and that the competitive interests of BC businesses are not frustrated. It approves the construction of new facilities planned by utilities and their issuance of securities. Approvals by the BCUC for significant capital expenditures and changes in operations are often given by issuing a Certificate of Public Convenience and Necessity, the process may require a public hearing, and Certificates may contain specific terms and conditions. A similar formal review process should be adopted by the Ferry Commission so that the pros and cons of major expenditures (like vessel purchases or vessel upgrades, terminal modifications, etc.) are reviewed in detail prior to Commissioner approval to proceed.

The BCUC also reviews energy-related matters referred to it by Cabinet. These inquiries usually involve public hearings, followed by a report and recommendations to Cabinet.

We believe that the price cap model review should include a review of the overall scope of the Ferry Commissioner and consideration as to how issues dealt with by the BCUC can be similarly assessed within the Ferry Commissioner processes (e.g. ensuring that ferry users receive safe, reliable and non-discriminatory services at fair rates, and that the shareholder is afforded a reasonable opportunity to earn a fair return on their invested capital). The BCUC also reviews ratepayers' complaints about the actions of utilities.

BC Ferries provides a monopoly essential service, and regulatory oversight needs to be well informed of the impact of ferry operations on stakeholders and appropriately balance the interests of the ferry operator, ratepayers, and communities that are served by this important and essential component of the provincial highway system. Ferry users have no alternative transportation route; we therefore consider the ferry link a lifeline to dependent communities.

We trust that this provides a satisfactory response to the Discussion Paper question:

- Is a one price cap model preferred over the existing model and why?

Our conclusion is that **A one price cap model is preferred over the existing model.** An objective should be to cap increases in line with CPI increases.

Southern Sunshine Coast Ferry Advisory Committee

28 November 2011

BC Ferry Commission
RPO Box Hillside
Box 35119
Victoria BC
V8T 5G2
Attention: Mr. Gord Macatee
BC Ferry Commissioner

Re: BC Ferry Commission Review of Coastal Ferry Act
Comment on BC Ferry Commission Discussion Paper #7
Section 69 Coastal Ferry Act 38(1)(c)
Additional or Alternative Service Providers (ASP) for Designated Ferry Route(s)

The members of the Southern Sunshine Coast Ferry Advisory Committee (SSCFAC) are pleased to provide comment on the BC Ferry Commission Discussion Paper #7 regarding Alternate Service Providers.

BC Ferries (BCFS) is obligated by the Coastal Ferry Act (CFA) to provide service on designated routes. A stated principle is that they are to be encouraged to adopt a commercial approach, to seek additional or alternate service providers, and to minimize expenses without adversely affecting their safe compliance with core ferry services. "To be encouraged" seems to be treating the issue of cost containment lightly. Seeking out and reviewing cost effective alternatives to minimize the cost of operations while maintaining adequate service is an expectation of any business and government organization.

For some routes and services, BC Ferries may be able to minimize costs by outsourcing some existing activities to subcontractors. Using an ASP to provide a vessel and operate it may be applicable in certain situations and one can expect that BC Ferries would be looking at it within the context of looking at many other options as part of their normal investigation of potential actions that could lead to lower costs and improved efficiency. It seems unreasonable to single out the ASP requirement by making it a guiding principle and thereby forcing expenses for formally preparing and reviewing competitive bids where a cursory review may be all that is necessary.

The Comptroller General in her review of BCFS concluded that the company is well run. Therefore, it is not easy for an ASP to match the service level provided by BCFS. There would be costs to BCFS to administer the ASP outsource contract.

Initially an ASP might benefit from lower wages and less administration. Experience has shown that within a short time employees will agitate for similar wage levels and fringe benefits as those enjoyed by BCFS personnel and this advantage will disappear. In the course of such wage/benefit adjustments work interruptions could severely impact the service level of an ASP.

An ASP will be faced with several obstacles in initiating a service which severely impacts the financial viability of the venture.

Terminal Usage: Where multi route terminals are involved, agreement must be reached with BCFS about access to the terminals and allotted time slots to use the terminal. The obvious solution would be for the ASP to buy this service from BCFS at a cost that is in line with what BCFS is allocating to the other routes. Should there be disputes, then the solution might be an independent body to run the terminal and all route providers would have to buy access to the terminals. This would have huge implications re ownership of the terminals, etc, etc. (not recommended).

The capital investments of an ASP will be substantial because not only will the ASP have to provide the ship(s) for operating the route, it will also have to **provide back up** in case of breakdowns of the ship or interruptions because of annual overhauls etc. BCFS has a pool of vessels and can deploy one wherever there are breakdowns or interruptions. An elegant solution for an ASP provider would be an opportunity to buy such backup from BCFS, but disputes over cost and other terms might make such an arrangement unworkable.

A similar situation arises for **backup personnel** to allow for sick leave, annual leave, statutory holidays etc. BCFS has a pool to allow for these contingencies but for one ASP this cost would be quite high.

The financial viability might be impacted by the CFA which demands that the routes have to eradicate their losses through “user pay” fares. If this is adhered to the ASP would not benefit from financial assistance from the province!

Terms for the service contract would have to be clearly defined and might have to include a probation period, length of service (to defray the cost of the investment) Transport Canada safety/security legislation, etc. etc.

Summing up, we feel that BCFS should not be required to actively seek ASPs. Leave the opportunity open for BCFS to consider this matter as part of their ongoing review all available options that could minimize expenses. ASP should be a very low priority, if any.

Forward Look – Enhanced Service and Potential for Savings:

If we look outside the existing services, enhancement of overall ferry service by operation of small passenger only vessels on some routes to supplement the existing vessels primarily designed for vehicle transit may result in reduced costs and efficiency for BCFS. The passenger only vessels could be owned and operated by BCFS or managed by BCFS through an ASP.

Southern Sunshine Coast Ferry Advisory Committee

28 November 2011

BC Ferry Commission
RPO Box Hillside
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Attention: Mr. Gord Macatee
BC Ferry Commissioner

Dear Gord:

Re: BC Ferry Commission Review of Coastal Ferry Act
Comment on BC Ferry Commission Discussion Paper #8
Cost Efficiency

The members of the Southern Sunshine Coast Ferry Advisory Committee (SSCFAC) are pleased to provide comment on Discussion Paper #8 regarding existing cost efficiency.

We are very strongly of the opinion that the Ferry Commission has a vital role in questioning and assessing the appropriateness of the ferry operator's costs and whether they are reasonable and cost effective. The rationale is the individual costs roll up into the process of setting ferry user rates. The commissioner therefore should have full power and applicable resources to assess all aspects of BCFS costs. This is essential to maintaining the credibility of the fare setting process.

We are in an era of increasing public skepticism towards government and private corporations. Increasing numbers believe that careful methodical approaches to change or planning for the long-term have gone out the window as our political leaders plan only for the next election; just as so many leaders in the corporate world plan only as far as the next quarterly report. While we are not implying that this generalization applies to our Coastal Ferry system; there should be a realization that greater public scrutiny and questioning of government and private companies is a likely outcome of the present world economic situation.

The Comptroller General, in her review of BCFS, highlighted many potential cost savings for the board and senior executive's emoluments (payment for an office or employment) that were outside the commissioner's powers. The government acted upon her recommendations as there was much publicity and residents expressed their concerns to elected officials.

It is not clear to us how administrative expenses are dealt with in the accounts of BCFS. We were told that all administrative expenses which can be directly attributed to the individual routes or route groups will be debited to them. However, we see no administrative items in the route or

route group accounts. Therefore, we must assume that they are included in the operation accounts.

This leaves the Head Office (HO) expenses which are said to be distributed based on the tariff revenue of each route group. We do not know whether profit centers such as the downtown travel office and the ship maintenance facility on the Fraser River also attract their shares of HO overheads.

There is a dire need for clarity how administrative expenditures are dealt with in the accounts of BCFS, so that they can be monitored.

The nature of the Coastal Ferry System is that it requires large capital expenditures for vessel purchases, vessel retrofits, and upgrading of terminals. Substantial long term planning and looking in detail at alternative approaches is therefore required as these assets generally have a life span of up to 30 or 40 years. Errors in planning and forecasting future requirements can therefore have a huge impact on operating costs and fares.

Governments and companies often deal with short term financial problems by making staff reductions; and BCFS is taking that action. The risk is that long-term planning is set aside as the focus reverts to dealing with the current 'crises'. Considering the size of ferry capital expenditures, the long term cost of insufficient long term planning can dwarf the costs associated with developing the most appropriate and cost effective future Coastal Ferry service model.

We have previously made suggestions to BCFS and the Ministry about items that they could consider to reduce costs. For example:

- Ships should not be constructed / to cruise line standards (except maybe Rte. 10 Pt. Hardy – Prince Rupert). They should be functional but not extravagant. Where special consumer services are offered, these should be closely monitored as to their financial viability.
- Service levels should be adjusted to demand, particularly during the winter season, even if savings result only in fuel and overtime.
- The proposal for the extension of Rte. 10 to Tsawassen was nixed for political reasons, despite the fact that prospects exist for cost efficient trials.
- Traffic projections by BCFS should be more realistic, because recent estimates were too favourable. This leads to expensive excess capacity offerings increasing the operational costs.
- Elimination of Route 12 – Mill Bay to Brentwood Bay. Highway access is available as an alternative to this route. The intent of the Coastal Ferry service is to provide access to communities that do not have highway access. Elimination of this route would result in fare decreases on other routes where a highway alternative does not exist.
- Eliminate Department of Highways free inland ferries as alternate road access is available. Alternately, begin to charge fees for this service. Reduction in subsidies for these inland ferries can be diverted to the Coastal Ferry service to reduce fares to communities that have no highway access. The Ministry of Transportation has Guidelines for Tolling. Guiding principle #3 is: “The public has a right to a basic level of

toll-free access. Therefore tolls will be implemented only if a reasonable untolled alternative is available.” It is unfair if the province continues to provide free ferry service on the mainland where there is alternate highway access while making it mandatory that residents who are dependent upon Coastal Ferry routes as their only means of access are required have fare increases since 2003 that have been far in excess of the CPI. The Transportation Act that empowers the Minister to: ‘grant franchises and licences, and enter into agreements, to operate any ferry services on terms and conditions set by the minister, including, without limitation,

- (i) terms and conditions respecting fares or rates that may be charged for those services, and
- (ii) authorizing one or more providers of ferry services to charge and retain fares or rates’

Response to Questions:

1. Considering the above comments we are of the opinion that the present powers and resources of the commissioner may not be adequate to hold BCFS accountable for cost efficiency.
2. Full disclosure to the commissioner by BCFS of how costs are incurred and allocated must be safeguarded; BCFS should not be allowed to decline disclosure on the premise that information is “market sensitive” or “competitive”. BCFS is a virtual monopoly and provides regulated ‘utility’ service as there is no road service to ferry dependent communities.
3. All relevant sectors should be considered in determining productivity gains.
4. The commissioner should have the role of exploring and strongly advocating for enhanced efficiencies in BCFS. The present straitjacket of very prescriptive and limiting clauses in the CFA should be loosened considerably.

Southern Sunshine Coast Ferry Advisory Committee

28 November 2011

BC Ferry Commission
RPO Box Hillside
Box 35119
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V8T 5G2

Attention: Mr. Gord Macatee
BC Ferry Commissioner

Dear Gord:

Re: BC Ferry Commission Review of Coastal Ferry Act
Comment on BC Ferry Commission Discussion Paper #9
Unfair Competitive Advantage – Drop Trailer Service

The members of the Southern Sunshine Coast Ferry Advisory Committee (SSCFAC) are pleased to provide comment on Discussion Paper #9 regarding Unfair Competitive Advantage.

The drop trailer service is not offered on our Rte. 3 and therefore, we have limited knowledge of all of the implications concerning this service. It is not appropriate for us to comment on the matter while it is being addressed by the Ferry Commission and an appeal is pending before the BC Court of Appeal. Our comments are therefore limited to the cost implications and to the process whereby the 2010 amendment to the Coastal Ferry Act mandates the Ferry Commissioner to determine whether the ferry operator is pricing a proposed or ongoing competitive service below direct costs and an appropriate portion of indirect costs. The act defines competitive service and ferry transportation services as follows:

"Competitive service" means a ferry transportation service, including, without limitation, a drop trailer service, that is the same as or substantially similar to a service being provided

- (a) by a person other than a ferry operator, and
- (b) in a geographical area that is sufficiently near to where the ferry transportation service is or may be provided that the 2 services could reasonably be in competition;

"ferry transportation services" means the transportation of vehicles and passengers on designated ferry routes, and does not include any ancillary services;

Because all the costs incurred by the Ferry Commission are paid for by BC Ferry Services (BCFS), they are added to BCFS's administrative costs. We understand that administrative costs are usually distributed to the route groups in proportion to their fare revenue. The government's financial contribution (ferry transportation fee) for the Minor Routes has remained unchanged in dollar terms for the last eight years. For Route 3, the government has reduced it. Therefore, the

additional costs associated with this new service offering will be loaded onto the shoulders of all ferry users through higher tariff fares unless the Commission directs BC Ferry that all costs for trailer drop service must be allocated only to the routes that offer this service.

Our concern is that all costs to date of the Ferry Commission and BC Ferry Services (BCFS) related to the drop trailer service trial will be rolled into ferry rates. The total costs are likely to be very significant for the appeal and for any actions that may be ordered or otherwise required as a result of the appeal decision.

It should not have been unexpected that the Ferry Commission could be drawn into a position where it is requested to rule on whether a new competitive service is fair and provides benefit to ratepayers. The BC Utilities Commission (BCUC) has addressed a number of situations where a utility has proposed a new competitive service and there have been hearings and decisions as a consequence of others deeming that the utility would be unfair competition or operating outside their monopoly mandate.

As BCFS attempts to reach beyond its traditional government and monopoly role, any new offerings that appear to be in competition with the private sector can expect to be challenged. BC Ferries and the Commission need to be aware of the potential for costly regulatory participation and legal challenges as the private sector endeavor to defend their market by claiming unfair competition and those costs need to be considered as part of the business plan. It usually takes much work and stakeholder consultation for a regulated utility or monopoly to successfully go beyond its core business. Other stakeholders in competition must be convinced that the new service is not unfair competition. Well established and financially strong competitors can be expected to put up a substantial effort to protect their 'turf' even if the original offering represents a small portion of their business. Some may perceive that the initial offering is a 'foot in the door' and an indicator of greater potential intervention into their business at some later date. They may therefore be tempted to aggressively attack the initial offering rather than waiting until there is a meaningful risk to their business.

The unfortunate situation is that ferry users must absorb the costs if new competitive ventures are not successfully rolled out or do not generate the predicted incremental revenue. While we encourage BCFS to explore new competitive opportunities as all incremental revenue generated will result in lower fares, sufficient homework needs to be done to predict whether others will see this as 'unfair' competition and whether these stakeholders are likely to approach the Ferry Commission or the government and proceed with formal objections (i.e. a risk assessment process). A cost estimate to address this issue should be estimated and included in the business plan. Appeals and court actions can be very costly to BCFC and the Ferry Commission in terms of staff time and out of pocket expenses. Time taken for an appeal reduces senior management's ability to focus on the core business. The ferry users assume all of the risks if a new competitive offering is not successfully implemented as all of the costs are now required to be rolled into ferry rates.

We understand that some have expressed the opinion that disputes about competition should be addressed as a complaint to the federal Competition Bureau in accordance with the Competition Act and Competition Regulations (since the Ferry Commission has already determined that the

drop trailer service was a competitive service and rates did not recover all of the indirect costs). There are substantial financial penalties for non-compliance with the Competition Act. The federal may be more lengthy and costly to ferry users.

The mandatory requirement in the Act for a review of competitive service pricing may be unnecessarily opening the door to substantial additional work and other costly challenges and appeals. While the mandatory requirement is now limited to the transportation of vehicles and passengers by the ferry transportation services definition, some might argue that the principal should be applied to any service that is sufficiently near to where the the ferry transportation service is or may be provided that the 2 services could reasonably be in competition. BCFS have indicated that they would like to add additional amenities when upgrading terminals to make them more of a 'destination' rather than a vehicle holding area. If one owns a coffee shop / convenience store or restaurant near a ferry terminal, one might argue that the Act should be further amended so that the Ferry Commissioner and BCFS have a duty to ensure that prices for the likes of coffee, confectionary and meals properly include all ferry operator costs and a fair share of allocated overheads? 'Sufficiently near' is not a defined term. The new mandatory requirement could result in substantial additional on-going accounting and potential appeal costs that must be borne by ferry users.

Questions:

1. *Are the provisions in the act covering unfair competitive advantage appropriate or should such issues be dealt with in some other manner?*

The government has amended legislation to make it mandatory that the Ferry Commissioner determine whether the ferry operator is pricing a proposed or ongoing competitive service below direct costs and an appropriate portion of indirect costs. This will likely increase the perception that the government is encouraging BCFS to move beyond the traditional monopoly core transportation service and may prompt greater scrutiny of BCFS operations.

The drop trailer issue has demonstrated that there can be significant costs. The government has not provided additional funding to BCFS or the Ferry Commission to cover these costs and they will therefore default to ferry users.

2. *Should the commissioner have more discretion in determining what constitutes an unfair competitive advantage? What improvements are possible with current administrative review process?*

The review process should look at how the introduction of complete services has the potential to impact fares. Under the current act, the requirements and costs for regulatory approval may well exceed the incremental revenue that a new service may generate. The Commission heard at the September 7, 2011 public meeting in Gibsons that ferry users expect BCFS to provide basic services rather than moving towards cruise industry standards. BCFA should perhaps be encouraged to stay focused on

developing and implementing initiatives and programs that will increase core vehicle and passenger traffic or better manage traffic flow through actions like incentives that have the potential to shift traffic from peak times to sailings that are not normally full.

3. *Should additional tools be available to the commissioner such as imposing a mediation process to determine if the parties can come to an agreement?*

The development of new tools should be deferred until there is a greater understanding of the need for and value of the new complete service legislation. When the current drop trailer appeal has been completed, there will be an opportunity to look back and evaluate the effectiveness of the new legislation and of the tools that were used to move the drop trailer initiative to a court resolved conclusion.