

Commission of Inquiry into the Decline of
Sockeye Salmon in the Fraser River



Commission d'enquête sur le déclin des
populations de saumon rouge du fleuve Fraser

Public Hearings

Audience publique

Commissioner

L'Honorable juge /
The Honourable Justice
Bruce Cohen

Commissaire

Held at:

Room 801
Federal Courthouse
701 West Georgia Street
Vancouver, B.C.

Monday, November 8, 2010

Tenue à :

Salle 801
Cour fédérale
701, rue West Georgia
Vancouver (C.-B.)

le lundi 8 novembre 2010



Errata for the Transcript of Hearings on November 8, 2010

Page	Line	Error	Correction
ii		remove current commission counsel, Brian Wallace, Jon Major and Meg Gaily	Wendy Baker, Q.C. Associate Commission Counsel Maia Tsurumi Junior Commission Counsel
ii, iii, iv		did not attend hearing	remove: Mitch Taylor, Q.C. Hugh MacAulay Jonah Spiegelman Gregory McDade, Q.C. Lisa Glowacki Chris Watson Krista Robertson Tim Dickson
ii		Counsel for Canada	Mark East Charles Fugere
ii		Counsel for TWCTUFA	Christopher Harvey, Q.C.
iv		Counsel for STCCIB	Nicole Schabus
iv		James Walkus is not a participant and R. Keith Oliver is not counsel	remove names from record
iv		Musgagmagw Tsawataineuk Tribal Counsel	Musgamagw Tsawataineuk Tribal Council

APPEARANCES / COMPARUTIONS

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Mitchell Taylor, Q.C. Hugh MacAulay Jonah Spiegelman	Government of Canada
Boris Tyzuk, Q.C. D. Clifton Prowse, Q.C. Tara Callan	Province of British Columbia
John Hunter, Q.C.	Pacific Salmon Commission B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
Charlene Hiller	Rio Tinto Alcan Inc ("RTAI")
Alan Blair Shane Hopkins-Utter	B.C. Salmon Farmers Association ("B.C.SFA") Seafood Producers Association of B.C. ("SPAB.C.")
Gregory McDade, Q.C. Lisa Glowacki	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Tim Leadem, Q.C.	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")

APPEARANCES / COMPARUTIONS, cont'd.

Lyndsay Smith	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")
David Butcher	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
Chris Watson	West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
Keith Lowes	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF") Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM") Western Central Coast Salish First Nations: Cowichan Tribes and Chemainus First Nation Hwlitsum First Nation and Penelakut Tribe Te'mexw Treaty Association ("WCCSFN")
Brenda Gaertner Leah Pence	First Nations Coalition: First Nations Fisheries Council; Aboriginal Caucus of the Fraser River; Aboriginal Fisheries Secretariat; Fraser Valley Aboriginal Fisheries Society; Northern Shuswap Tribal Council; Chehalis Indian Band; Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council; Upper Fraser Fisheries Conservation Alliance; Other Douglas Treaty First Nations who applied together (the Snuneymuxw, Tsartlip and Tsawout) Adams Lake Indian Band Carrier Sekani Tribal Council ("FNC")

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Tim Dickson

Sto:lo Tribal Council
Cheam Indian Band ("STCCIB")

Laich-kwil-tach Treaty Society
James Walkus and Chief Harold Sewid
Aboriginal Aquaculture Association ("LJHAH")

Heiltsuk Tribal Council ("HTC")

Krista Robertson

Musgagmagw Tsawataineuk Tribal Council
("MTC")

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Vancouver, B.C. /Vancouver (C.-B.)
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1
2
3
4 THE REGISTRAR: The hearing is now resumed.

5 MS. BAKER: Mr. Commissioner, Wendy Baker appearing as
6 commission counsel. With me I have Maia Tsurumi
7 and Line Christensen, also from the commission.

8 THE COMMISSIONER: Thank you.

9 MS. BAKER: Today we will be dealing with witnesses
10 from the Pacific Salmon Commission. I have just
11 one housekeeping matter to deal with before we
12 begin and that is to deal with reasonable notice
13 of documents people will be putting to witnesses
14 in cross-examination. Correspondence did go out
15 from the commission counsel this morning about
16 this setting some guidelines that we would like
17 people to comply with in terms of providing
18 notice. I will note for the record that there is
19 one typographical error in that letter in which we
20 referred to the commission having ultimate
21 discretion to determine if a document goes in. Of
22 course it is the Commissioner who has that
23 discretion. So please, when you read that letter,
24 read that correction into it.

25 And just to summarize, we're asking people to
26 please give us one week's notice of documents to
27 allow our administrative staff to circulate those
28 documents, identify them in the Ringtail system
29 and have them ready to be available electronically
30 at the hearing, and also to give reasonable notice
31 to the witnesses who might be asked to comment on
32 those documents.

33 One thing that is important that people give
34 us is the Ringtail numbers for those documents,
35 whether or not they're going to be relying on
36 them. So if you're giving us notice that there's
37 a handful of documents you might be using, please,
38 you must give us those Ringtail numbers at the
39 time you give us that information. That will
40 allow our administrative people to get those
41 documents in the hopper, so to speak, for the
42 hearing. It doesn't mean you have to rely on them
43 if you change your mind, but we need to have those
44 documents available electronically. So we do need
45 those Ringtail numbers at the time you give us
46 notice.

47 So those are my administrative comments,

2

PANEL NO. 5

Donald Kowal

In chief on qualifications by Ms. Baker

1 housekeeping.

2 If I can begin this morning, we have two
3 witnesses from the Pacific Salmon Commission,
4 Mr. Don Kowal and Mr. Mike Lapointe. And Mr.
5 Lapointe has already been sworn in this hearing,
6 but Mr. Kowal does require to be sworn.

7 THE REGISTRAR: Do you wish to be affirmed? Do you
8 solemnly affirm that the evidence to be give by
9 you to this hearing shall be the truth, the whole
10 truth and nothing but the truth?

11 MR. KOWAL: I do.

12 THE REGISTRAR: Would you state your full name, please.

13 MR. KOWAL: Donald Lawrence Kowal.

14 THE REGISTRAR: Thank you.

15 MS. BAKER: Mr. Lapointe, the affirmation you gave on
16 the first day of hearing continues.

17 MR. LAPOINTE: Thank you.

18 MS. BAKER: Mr. Commissioner, on the first day of
19 hearing we did run through the qualifications of
20 Mr. Lapointe and I don't intend to do that again
21 today.

22

23 EXAMINATION IN CHIEF ON QUALIFICATIONS OF DONALD KOWAL

24 BY MS. BAKER:

25

26 Q But, for Mr. Kowal, if I could just confirm,
27 you're the executive secretary of the Pacific
28 Salmon Commission?

29 A I am.

30 Q And you have a background with a degree in
31 agriculture economics from the University of
32 Manitoba?

33 A Yes, I do.

34 Q And a master's in natural resource management as
35 well?

36 A I do.

37 Q And without running through all of your
38 background, in 1981 you accepted a position in
39 Ottawa with Department of Fisheries and Oceans in
40 the Pacific, Arctic and Inland Resource Management
41 Branch, becoming the director of the branch in
42 1989?

43 A Yes.

44 Q And in 1997 you were appointed director of Oceans
45 Policy Secretariat responsible for developing a
46 framework and approach to support the development
47 of an Oceans Strategy for Canada?

3
PANEL No. 5
In chief by Ms. Baker

1 A Yes.

2 Q And in 1999 you moved to beautiful Vancouver to
3 accept the position of executive secretary for the
4 Pacific Salmon Commission?

5 A That's correct.

6 Q Thank you. And you've continued in that role to
7 the present?

8 A I have.

9 MS. BAKER: Mr. Commissioner, I'll be directing
10 questions to the panel generally and they will
11 answer depending on their areas of knowledge
12 unless I have a specific question for one of them.
13

14 EXAMINATION IN CHIEF BY MS. BAKER:
15

16 Q So I'd just like to confirm that prior to 1985
17 when the current Pacific Salmon Treaty was
18 enacted, there was a convention between the U.S.
19 and Canada known as the Convention for the
20 Protection, Preservation and Extension of the
21 Sockeye Salmon Fishery in the Fraser River System;
22 is that correct?

23 MR. LAPOINTE: That's correct.

24 Q And this convention came into force in 1937?

25 MR. LAPOINTE: It's correct that it was ratified in
26 1937. There actually were some provisions that
27 did not come into force until later on, 1946.

28 Q And that convention established the International
29 Pacific Salmon Fisheries Commission?

30 MR. LAPOINTE: That's correct.

31 Q What species were the subject of the International
32 Pacific Salmon Fisheries Commission?

33 MR. LAPOINTE: Fraser River Sockeye primarily, and then
34 in 1957 with the Pink Salmon Protocol, Fraser
35 River pink salmon became part of the IPSFC.

36 Q Were there any other species under that
37 commission?

38 MR. LAPOINTE: Not directly. Initial provisions of the
39 convention did include some capacity to regulate
40 mesh size in chinook fisheries but they weren't a
41 primary subject of the IPSFC.

42 Q Okay. And that commission, which we can refer to
43 as the IPSFC, if I can keep my tongue twisted
44 around those letters, that commission addressed
45 the commercial harvest of Fraser River sockeye; is
46 that right?

47 MR. LAPOINTE: That's correct.

1 Q Did it address the recreational fisheries?

2 MR. LAPOINTE: No, not in any regulatory way.

3 Q And First Nations fisheries?

4 MR. LAPOINTE: Again, not in any regulatory way.

5 Q Can you give us an overview of the
6 responsibilities of the IPSFC in the management of
7 Fraser River sockeye?

8 MR. LAPOINTE: Well, initially, in 1937, the primary
9 responsibility was actually more research. The
10 provisions for regulation which applied to the
11 convention waters, which I understand we may speak
12 to later, took effect in 1946. There was a period
13 of eight years from 1937 until 1945, through 1945,
14 when the primary responsibilities were more of a
15 biological research. I think the charge given to
16 the IPSFC was to investigate the natural history
17 of Fraser sockeye. So after that, 1946, the
18 regulatory authority within convention waters was
19 given force.

20 Q And what kinds of work in terms of biological
21 research was done by the IPSFC?

22 MR. LAPOINTE: It was pretty wide-ranging. At the time
23 that the IPSFC was formed, the fishery had
24 virtually collapsed, and so the charge given the
25 IPSFC was really to figure out what was going on.
26 So it included a variety of natural history
27 studies, tagging, enumeration on the spawning
28 grounds, investigations into all aspects of life
29 history. Their specific charge related to
30 enhancement, including hatcheries, other ways of
31 artificial propagation, and then also specific
32 reference to looking at obstructions, so any
33 barriers to migration that might be present in the
34 Fraser watershed at that time.

35 Q Did the IPSFC do any work on juveniles or smolts?

36 MR. LAPOINTE: Yes. As part of the natural history
37 investigation, a number of programs on juveniles.
38 One that still is in existence today is the Chilco
39 Smolt Enumeration Program that began in 1949.
40 There's a number of other programs in the juvenile
41 realm that were taken up -- the Lake Survey
42 Program, speaking initially under the IPSFC. And
43 I'm referring to acoustic surveys and -- well, in
44 particular Shuswap and Quesnel Lakes.

45 Q Did the IPSFC maintain any programs to understand
46 temperatures or basic biological and environmental
47 data?

1 MR. LAPOINTE: Yeah. There was an extensive
2 temperature monitoring program throughout the
3 watershed, spot temperatures taken in numerous
4 streams, including spawning areas and also the
5 main stem of the Fraser.

6 Q Did the IPSFC have any responsibility for doing
7 catch estimates?

8 MR. LAPOINTE: Yes, I believe they did, for the
9 convention waters.

10 Q And what about in forecasting run size? Was that
11 a responsibility of the IPSFC?

12 MR. LAPOINTE: Yes, it was.

13 Q And during the currency of the IPFSC, what was the
14 role of the Department of Fisheries and Oceans in
15 relation to managing Fraser River sockeye?

16 MR. LAPOINTE: That one's a little bit hard for me to
17 answer. It's a long time ago. I tried to do a
18 little research on it. But certainly prior to the
19 force of the regulatory control, so prior to 1946,
20 Canada - which I guess at that point was the
21 Dominion of Canada - would have had responsibility
22 for the regulation. Now, in 1937, I don't think
23 DFO actually existed as an agency. I think it was
24 called Department of Fisheries, as I recall. And
25 I'm not sure what responsibilities Department of
26 Fisheries actually executed in terms of the
27 responsibilities the Dominion of Canada had, but
28 they certainly would have had some agency -- the
29 Dominion of Canada would have had responsibility
30 for the regulation prior to '46, and then
31 subsequent to '46, there certainly would have been
32 responsibilities for implementing whatever
33 regulations in the convention waters were deemed
34 to be appropriate by the IPSFC. I believe that
35 the Dominion of Canada also would have had some
36 responsibilities with respect to habitat, but I'm
37 not sure specifically what those were.

38 Q Did Canada do any of the work that you described
39 above, including enumeration, studies on juvenile
40 smolts, et cetera, that kind of work?

41 MR. LAPOINTE: They may have but it wasn't their
42 primary responsibility.

43 MS. BAKER: I'd like to turn to one of the documents
44 that we have identified for the hearing. This is
45 a map, Mr. Lunn. It's on the exhibit list we've
46 prepared 5A, and it's just one page out of a
47 longer document which has the Ringtail number

6
PANEL No. 5
In chief by Ms. Baker

1 CAN046918. That's it. And I wonder if that could
2 be -- can we rotate these documents on the system?

3 MR. LUNN: Yes, we can rotate.

4 MS. BAKER: That's better. Thank you.

5 Q So the document that you see before you, that's
6 taken from another document, but it shows a map of
7 the convention areas managed by the IPSFC prior to
8 the Pacific Salmon Treaty. Do you see that?

9 MR. LAPOINTE: Yeah.

10 Q Okay. And those are the waters within the 49th
11 Parallel and the 48th Parallel, and as those bold
12 lines continue across the watershed?

13 MR. LAPOINTE: Yeah. Those areas are described in
14 detail in article 1 of the original convention.

15 Q Right. And this map illustrates for the users
16 where those lines are drawn --

17 MR. LAPOINTE: Yes.

18 Q -- and what the convention waters are?

19 MR. LAPOINTE: Yes, that looks correct.

20 MS. BAKER: Okay. I'd like to have that one page,
21 please, marked as the next exhibit.

22 THE REGISTRAR: Exhibit number 64.

23

24 EXHIBIT 64: Map from Pacific Salmon Stock
25 Assessment Plan, 1985, Part I: Inner South
26 Coast, page 97
27

28 MS. BAKER:

29 Q And those waters that are identified on this map,
30 those convention waters represent the waters
31 within which the IPSFC had management authority
32 over Fraser River sockeye; is that right?

33 MR. LAPOINTE: That's correct.

34 Q And it includes the fresh water spawning grounds
35 of the Fraser River?

36 MR. LAPOINTE: Yes.

37 Q In what part of these convention waters generally
38 did commercial fishing take place?

39 MR. LAPOINTE: Anywhere in the areas below the Mission
40 Highway Bridge right out through the marine area.
41 So I believe the Mission Highway Bridge even back
42 then was the upstream boundary of the commercial
43 fishing area.

44 Q And in 1985, a new treaty, the Pacific Salmon
45 Treaty between the U.S. and Canada, came into
46 effect; is that right?

47 MR. LAPOINTE: That's correct.

7

PANEL No. 5

In chief by Ms. Baker

1 MS. BAKER: And Mr. Lunn, that is document number 4 on
2 our exhibit list.

3 Q And you'll see before you the treaty set out.
4 That's the treaty you're referring to, the 1985
5 treaty?

6 MR. LAPOINTE: This is the 2009 treaty that I'm looking
7 at here, I believe.

8 Q Sorry. This is the current version of the treaty
9 that came into effect in 1985?

10 MR. LAPOINTE: Yes.

11 MS. BAKER: Thank you. I'd like that marked, please,
12 as the next exhibit.

13 THE REGISTRAR: Number 65.

14

15 EXHIBIT 65: Pacific Salmon Treaty

16

17 MS. BAKER: If I could stop for a moment, Mr.
18 Commissioner. We have prepared a policy and
19 practice report with respect to the Pacific Salmon
20 Commission. That was circulated to all parties on
21 October 18, 2010. It's titled "Overview of the
22 Pacific Salmon Treaty and the Pacific Salmon
23 Commission regarding Management of Fraser River
24 Sockeye Salmon," and that, Mr. Lunn, is number 1
25 on our exhibit list. I'd also like to have that
26 marked, please, as a PPR at this time.

27 THE REGISTRAR: PPR number 4.

28

29 EXHIBIT PPR-4: Commission Policy and
30 Practice Report: Overview of the *Pacific*
31 *Salmon Treaty* and the Pacific Salmon
32 Commission Regarding Management of the
33 Fraser River Sockeye Salmon

34

35 THE COMMISSIONER: Ms. Baker, I wonder if you could
36 just explain or have the witness explain. You
37 talked earlier about the convention, and then
38 Exhibit 65 is the current version, I understand,
39 of the 1985 treaty. Was this document essentially
40 replacing the convention or was the convention a
41 completely separate legal document? Or do we
42 know?

43 MS. BAKER: I understand that the treaty replaced the
44 convention, but perhaps the witnesses can --

45 MR. LAPOINTE: I actually don't know the answer to that
46 question. Don, I don't know --

47 MR. KOWAL: I think in 1985 the Pacific Salmon Treaty

1 replaced the previous convention.

2 MR. LAPOINTE: I see.

3 THE COMMISSIONER: Thank you.

4 MS. BAKER:

5 Q Now, going to Exhibit 65, which is the treaty, the
6 current version of the treaty, this treaty sets
7 out a number of different articles relating to
8 fisheries, including fisheries beyond the Fraser
9 River system; is that right?

10 MR. LAPOINTE: That's correct.

11 Q Okay. And article number 6, is this specific to
12 Fraser River sockeye and pinks?

13 MR. LAPOINTE: That's correct.

14 Q And Annex I to the treaty creates the Fraser River
15 Panel?

16 MR. LAPOINTE: That's correct.

17 Q And Annex II sets out the Fraser River Panel area,
18 which you would call now the panel waters?

19 MR. LAPOINTE: That's correct.

20 Q And those are what you had referred to earlier
21 when we were looking at Exhibit 64, which is the
22 map?

23 MR. LAPOINTE: The definition of panel waters in Annex
24 II is virtually identical to the definition of
25 convention waters in article 1.

26 Q I'm just going to identify a couple of things. I
27 don't want to get into detail right now with them,
28 but I will identify that Annex IV, Chapter 4 of
29 the treaty, specifically deals with Fraser River
30 sockeye and pink salmon in the Fraser system?

31 MR. LAPOINTE: That's correct.

32 Q In the course of our review of the work of the
33 commission, reference is made to things like
34 diplomatic notes and guidance documents, and I
35 wonder if maybe Mr. Kowal could explain what those
36 are and how they work.

37 MR. KOWAL: Yes. Essentially when a change to the
38 treaty has been negotiated by the Salmon
39 Commission, the documents are sent to the
40 respective countries for ratification by the
41 Salmon Commission. And a diplomatic note is then
42 the result of that. If the two countries do
43 approve what the commission has agreed to, then
44 diplomatic notes are exchanged between Canada and
45 the U.S. and these become a formal part of the
46 process. Whereas a commission guidance is a
47 document that is used when there may be some

1 discussion regarding a particular aspect of the
2 treaty that is not -- and the commission may want
3 to sort of, for use of other words, test drive
4 that particular process.

5 Or if there's a negotiating part that they're
6 just uncertain that they want to put into a formal
7 process, the commission drafts up a document which
8 we call a commission guidance, which sort of
9 authorizes the particular panel or group that is
10 impacted by this document to perform those
11 functions under the Pacific Salmon Treaty. And if
12 the process that has been test driven through this
13 commission guidance is subsequently approved, then
14 through formal negotiations that would be ratified
15 into the treaty as a change to the treaty.

16 MS. BAKER: Thank you. If I can ask you, in Exhibit --
17 with electronic things I don't have paper to write
18 my exhibit numbers on. So Exhibit 65 is our
19 treaty, page 131 in Exhibit 65, if that can be
20 brought up.

21 MR. LUNN: What page number again, sorry?

22 MS. BAKER: 131. Sorry, 126 of that document.

23 Q This document that you see before you is a
24 diplomatic note dated August 13, 1985, and that
25 was appended to the treaty?

26 MR. KOWAL: That's correct.

27 Q And this document sets out under A, which you'll
28 see on the screen before you, and over to the next
29 page on 127 it sets out some of the significant
30 changes from the IPFSC. For example, in section
31 A. 1. it establishes the responsibilities of the
32 Fraser River Panel?

33 MR. KOWAL: Yes.

34 Q And some of those responsibilities include, as set
35 out in paragraph A. 1. a), a review and evaluation
36 of information from the U.S. and Canada in order
37 to make fisheries recommendations?

38 MR. KOWAL: That's correct.

39 Q That will be a responsibility of the Fraser River
40 Panel?

41 MR. KOWAL: Yes.

42 Q Next, making recommendations for regulations for
43 Fraser River sockeye and pink in panel waters?

44 MR. KOWAL: Yes.

45 Q Sub c) sets out specific data collection and
46 assessment obligations within panel areas?

47 MR. KOWAL: Yes.

1 Q d) provides authority for making orders for
2 fisheries in season?

3 MR. KOWAL: Yes.

4 Q And e) sets out obligations to provide the
5 commission with accounting of the catch?

6 MR. KOWAL: That's correct.

7 Q All right. And then section A. 2) identifies that
8 all other work that was previously done by the
9 IPFSC will be transferred to Canada?

10 MR. KOWAL: That's correct.

11 Q All right. And then section E. identifies the
12 staff that will be transferred to the new
13 commission which was created as part of the
14 Pacific Salmon Treaty, which is your organization,
15 the Pacific Salmon Commission?

16 MR. KOWAL: That is correct.

17 Q And also identifies which staff will transfer to
18 Canada?

19 MR. KOWAL: Yes.

20 Q Okay. And these are significant changes between
21 the IPFSC and the Pacific Salmon Commission?

22 MR. KOWAL: Yes, they are.

23 Q Were there any other significant changes affecting
24 Fraser River sockeye in the 1985 treaty?

25 MR. LAPOINTE: Yes. Under the convention, the sharing
26 arrangement, which was 50 percent, attempt to
27 manage the fisheries in convention waters to 50
28 percent shares to each country, was expanded to
29 include the catches -- account for catches outside
30 the convention area. So prior to 1985, it was
31 only the catches within the convention area that
32 were managed too in terms of the sharing
33 arrangement, and after 1985, outside convention
34 waters catches counted shares.

35 In addition, the regulatory management under
36 the IPSFC was -- there was a pre-season plan that
37 stipulated that fisheries were closed except for
38 these particular times. So it would be like, for
39 example, I don't know, Tuesdays between certain
40 hours or the openings. And so there was a pre-
41 season plan which stipulated when fisheries would
42 occur unless there was some emergency order to do
43 something different, which did occur in some
44 cases. Whereas under the 1985 treaty, the pre-
45 season plan essentially was a closed-unless-open.
46 So in fact, the pre-season plan is all fisheries
47 are closed and then the panel has the regulatory

1 authority to open them. So it's perhaps a subtle
2 difference, but it was an important difference in
3 that there were actually a schedule of fisheries
4 that were approved pre-season under the original
5 convention and that no longer occurred under the
6 '85 treaty.

7 Q Were there changes in the percentages shared
8 between the countries?

9 MR. LAPOINTE: Yes, as well. There were changes. It's
10 a little hard to tease out from the '85 treaty
11 because the treaty refers to particular numbers,
12 but the numbers are in fact ratios. So the U.S.
13 had a percentage as well during that period, but
14 it was a smaller percentage than 50-50 and it
15 actually varied between years. And I don't
16 exactly know what the source was of that variation
17 but there was a variable percentage that was less
18 than 50 percent.

19 Q And did the PSC maintain any of the obligations of
20 the prior commission to deal with data collection
21 or assessment in spawning areas?

22 MR. LAPOINTE: No.

23 Q So we've looked at the diplomatic note and just
24 briefly touched on the fact that there were
25 changes made between what was being taken over by
26 Canada. Can you just on a practical, operational
27 level describe what the change in responsibility
28 meant? Like what responsibilities now lie with
29 Canada versus what responsibilities lie with the
30 PSC?

31 MR. LAPOINTE: Well, it's in the diplomatic note that
32 you have here. At the time that the treaty was
33 signed, the last year of the operation of the
34 IPSFC, I think there were 47 staff that were part
35 of the IPSFC. Twelve of those staff having to do
36 with fisheries management were transferred to the
37 PSC; 34 were transferred to the department and the
38 director was not transferred to either operation.
39 So the fisheries management obligations that are
40 currently the PSC's responsibility were
41 transferred to Fraser River Panel or to PSC staff,
42 and all of the other responsibilities, which
43 include the spawning ground enumeration, the
44 environmental monitoring, the engineering
45 division, which dealt with obstructions,
46 enhancement -- all of those responsibilities were
47 transferred to Canada.

1 Q Okay. And so what -- actually if you can just
2 identify in shorthand, what are the remaining
3 responsibilities of the PSC or the Fraser River
4 Panel now with respect to data collection and
5 assessment?

6 MR. LAPOINTE: So we have three main programs primarily
7 directed at the assessment. We have stock
8 discrimination, test fishing and hydroacoustics.
9 There's also monitoring Hell's Gate. So it's
10 those particular in-season responsibilities that
11 are stipulated in the diplomatic note here that we
12 have retained.

13 Q Now, there were changes to the treaty made in
14 1999; is that right?

15 MR. LAPOINTE: That's correct.

16 Q What were the significant changes, if any, in the
17 1999 amendments to the treaty as they relate to
18 Fraser River sockeye?

19 MR. LAPOINTE: There's quite a few of them. The
20 original treaty in 1989, I think, had five
21 paragraphs, and I think the 1999 version has
22 something like 11 paragraphs. So I just reference
23 the '99 agreement here. I don't know if you have
24 it marked as an exhibit. But there was a
25 schedule -- a specific schedule for decreasing
26 U.S. shares specified in paragraph 2. There was a
27 much more explicit definition of the way the TAC
28 calculations would be made in paragraph 3.
29 Included in paragraph 3 is also a reference to
30 extra requirements that relates to something we
31 call a management adjustment, which I can explain
32 later in more detail if necessary. And that's in
33 paragraph 3(b). Proportional sharing was first
34 brought into the sharing arrangements in paragraph
35 3(e). There was a formalization of a Fraser River
36 Panel technical committee in paragraph 9. There
37 was a more explicit definition of a hierarchy or
38 objectives for the Fraser River Panel in paragraph
39 10. And there was a mention in paragraph 11 of
40 the need for the arrangements directed at Fraser
41 River sockeye and pink salmon to take into account
42 the conservation and management needs of other
43 species in paragraph 11.

44 So there was actually quite a substantial
45 change, although a lot of it was formalizing what
46 had become practice, I guess, as part of the
47 Fraser River Panel operations prior to 1999. So

1 many of these things were in place. They just
2 weren't formally part of the document.

3 Q What about the Northern and Southern Boundary
4 Restoration and Enhancement funds? Were they
5 created in 1999?

6 MR. KOWAL: Yes, they were.

7 Q The Southern Boundary Restoration and Enhancement
8 Fund is the fund that's relevant to Fraser River
9 sockeye; is that right?

10 MR. KOWAL: That's correct.

11 Q Can you describe what it is?

12 MR. KOWAL: The southern fund is a -- in 1999, the
13 parties agreed that two funds would be formed, a
14 Northern Restoration and Enhancement Fund and a
15 Southern Restoration and Enhancement Fund. They
16 were endowed with \$140 million, 75 million to the
17 northern fund and 65 million to the southern fund.
18 They were created to enable projects to be
19 undertaken to improve habitat issues, to improve
20 enhancement of various activities, and to improve
21 fisheries management projects. So basically it's
22 a process where priorities that the commission
23 would like to see dealt with through new projects
24 or assignments are put forward in the form of an
25 advertisement so people who are interested in
26 applying and performing these projects are to
27 submit project proposals. These project proposals
28 are reviewed. Initially, in southern form
29 especially, it's a two-page document that is
30 initially requested by applicants. The fund
31 members review those documents and ask for those
32 that are agreed to to submit more formal
33 applications to the process. These documents are
34 then, once they are received, are reviewed by a
35 non-related to the Salmon Commission, the
36 technical review committee, who provide comments
37 and rate these projects. And then the fund
38 committee members then would decide on which
39 projects would be approved for funding in the
40 subsequent year.

41 Q Thank you. And there's a strategic plan for the
42 southern fund committee which outlines some of the
43 priorities and the origin of the fund.

44 MR. KOWAL: That's correct. The strategic plan is
45 intended to formalize the process that the
46 southern fund follows and outlines some of the
47 objectives and strategies that would be favourable

14
PANEL No. 5
In chief by Ms. Baker

1 for people to submit their particular project
2 proposals.

3 MS. BAKER: All right. And we have a copy of that, Mr.
4 Lunn. It's document number 8. You see before you
5 the Southern Boundary Restoration & Enhancement
6 Fund, Strategic Plan of the Southern Fund
7 Committee?

8 MR. KOWAL: That's correct.

9 MS. BAKER: I'd like to have this document marked,
10 please, as the next exhibit.

11 THE REGISTRAR: 66.

12

13 EXHIBIT 66: Southern Boundary Restoration &
14 Enhancement Fund, Strategic Plan of the
15 Southern Fund Committee

16

17 MS. BAKER:

18 Q I'd like to move back to Exhibit 65, which is the
19 treaty document. I'd like to look at Annex IV in
20 a little more detail, Chapter 4 of that annex,
21 which deals with Fraser River sockeye and pink
22 salmon, and I think that should be page 75.

23 Now, this document was last amended in 2005
24 pursuant to an exchange of diplomatic notes; is
25 that right?

26 MR. LAPOINTE: That's correct.

27 Q Section 2 sets out the total allowable catch and
28 how that's to be calculated, and I wonder if we
29 could just have you explain TAC, as it's known, is
30 calculated.

31 MR. LAPOINTE: Sure. Paragraph 3 actually would tell
32 you how it's calculated. Two just stipulates the
33 shares. So total allowable catch for
34 international sharing purposes is calculated by
35 taking the total return of Fraser River sockeye
36 and subtracting a number of deductions, and those
37 deductions include spawning escapement targets;
38 the management adjustment, which is referred to in
39 this paragraph as any extra amounts under
40 paragraph 3(b) there; the agreed aboriginal
41 fisheries exemption; and any expected catches and
42 panel-approved test fisheries. So it's total run
43 minus spawning escapement minus management
44 adjustment minus exemption minus test fisheries.

45 Q And that creates the total allowable catch?

46 MR. LAPOINTE: That determines -- that is used to apply
47 the percentage shares in paragraph 2 to determine

1 the shares that each country would be entitled to.
2 Q And in practice you refer to the U.S. TAC and the
3 Canadian TAC?

4 MR. LAPOINTE: That's correct.

5 Q And that's a reflection of that application of the
6 percentage share?

7 MR. LAPOINTE: That's correct.

8 Q Section 10 of Chapter 4 sets out the objectives
9 that the panel should meet.

10 MR. LAPOINTE: That's correct.

11 Q And the panel being the Fraser River Panel?

12 MR. LAPOINTE: That's correct.

13 Q And it sets out at

14

- 15 (a) obtain spawning escapement goals by
 - 16 stock or stock grouping;
 - 17 (b) meet Treaty defined international
 - 18 allocation; and
 - 19 (c) achieve domestic objectives.
- 20

21

22 Now, first can you tell me if those -- is there a
23 priority allocation? Are these all treated
24 equally in practice? How is it dealt with?

25 MR. LAPOINTE: As it says in paragraph 10, they're
26 listed in order of priority, so the highest
27 priority is spawning escapement followed by
28 international allocation followed by domestic
29 allocation.

30 Q And who is responsible for setting the spawning
31 escapement goals by stock or stock grouping?

32 MR. LAPOINTE: Canada.

33 Q 10(a) refers to spawning escapement goals by stock
34 or by stock grouping. In practice, how are those
35 goals set? Are they set by individual stock or by
36 stock groupings?

37 MR. LAPOINTE: Under the current spawning initiative,
38 Fraser Sockeye Spawning Initiative, which I
39 understand is going to be on your agenda later in
40 the sessions here, there are spawning escapement
41 -- well, it's not really a target. It's a plan,
42 because it varies with run size. But there's a
43 spawning escapement plan that refers to each
44 management group. In the context of the treaty
45 there are four management groups: Early Stuart,
46 Early Summer, Summer, and Late Run. So we receive
47 an aggregate spawning escapement plan for each of
those management groups.

1 Q And (b), what is meant by the "Treaty defined
2 international allocation"?

3 MR. LAPOINTE: It basically refers to the shares as
4 defined in paragraph 2, "Sharing arrangement."

5 Q And what is meant by (c), the "domestic
6 objectives"?

7 MR. LAPOINTE: The domestic objectives are set by each
8 party, so Canada and the United States. So for
9 example, within Canada, domestic objectives would
10 include First Nations food, social and ceremonial.
11 They would include commercial and recreational
12 objectives. Within the commercial sector there
13 would also be objectives that relate to the
14 licence areas, so each licence area -- Area B,
15 which is purse seine; Area D, which is Johnstone
16 Straits gillnet; and Area H, primarily Johnstone
17 Straits troll; and Area -- let's see, which one
18 have I missed -- E, Fraser River gillnets, all
19 those would have certain domestic objectives.

20 Q And does the Pacific Salmon Commission or the
21 Fraser River Panel have any role in setting those
22 domestic objectives?

23 MR. LAPOINTE: No, they're set by Canada and the United
24 States respectively.

25 Q Now, Chapter 4 that we've just been reviewing. On
26 the face of it, it expired, or it will expire at
27 the end of 2010. That's section 1 of Chapter 4?

28 MR. LAPOINTE: Yes. Yeah, the sharing arrangements
29 show that the duration ends in 2010; that's
30 correct.

31 Q And what will happen at the end of 2010 with
32 respect to this chapter?

33 MR. LAPOINTE: Well, the commission met in executive
34 session in October of this year and they have
35 reached an agreement in principle on a two-year --
36 essentially a two-year extension to Chapter 4 to
37 continue through to 2012. So essentially, as I
38 understand it, the only change -- and of course
39 this is subject to the normal approval process
40 within in each country, but the only change is the
41 first paragraph there, where it would say from
42 2010 through 2012, is my understanding the only
43 change to the actual document.

44 Q All right. Now, this chapter has been under
45 negotiation for a number of years; is that
46 correct?

47 MR. LAPOINTE: Yeah, for a number of years.

1 Q And we've been provided with a status report of
2 those negotiations, which is -- let me just get my
3 hands on that document.

4 MS. BAKER: Sorry, it's number 7 on our list of
5 exhibits, Mr. Lunn.

6 Q So this document sets out the items that were
7 under negotiation and where things stand as of
8 November 13, 2009?

9 MR. LAPOINTE: That's correct.

10 Q Item 2 sets out management groups. Now, without
11 discussing the negotiating positions of either
12 country, can you just explain what the issue was
13 under discussion? What's the issue relating to
14 management groups that's being talked about?

15 MR. LAPOINTE: Two. One is how many groups. So as I
16 said earlier, currently there are four management
17 groups. And also, the second component is which
18 individual stock components would be in each of
19 those groups. So those are the two things that
20 were under discussion.

21 Q Okay. And then item number 3, the same. Without
22 discussing the negotiating positions of either
23 country, can you tell us what the issue is under
24 discussion with respect to item number 3?

25 MR. LAPOINTE: It may just define what proportional
26 sharing means. It just relates to how the shares
27 are taken across the different management groups.
28 So that was the item, was how each country should
29 distribute its harvest in relation to the four
30 management groups.

31 Q So for example, whether there should be 20 percent
32 taken off of each individual management group or
33 whether it should be 20 percent of all management
34 groups put together?

35 MR. LAPOINTE: Yeah, that's correct.

36 Q Or some other variation?

37 MR. LAPOINTE: Yeah. If you're talking about the
38 United States' share, it would be 16 and a half
39 percent right now. But that's the concept, how it
40 should be spread amongst those four groups.

41 MS. BAKER: Thank you. That's all I need to ask on
42 that. I should ask to have that marked as the
43 next exhibit, that document.

44 THE REGISTRAR: Number 67.

45
46
47

1 MS. BAKER:

2 Q Moving back to Chapter 4 of the treaty, so back to
3 Exhibit 65, please. Thank you. Now, sub (3) of
4 Chapter 4 does talk about -- for example, in
5 paragraph (d), it talks about computing the total
6 allowable catch by stock management grouping and
7 it refers to the Early Stuart sockeye exemption.
8 Can you advise, are there any instances in the
9 treaty where the Fraser River Panel or the Pacific
10 Salmon Commission is required to manage the Fraser
11 River sockeye fisheries by a particular stock
12 grouping?

13 MR. LAPOINTE: Other than the four management
14 groupings?

15 Q Are they required to manage by those management
16 groupings anywhere in the treaty?

17 MR. LAPOINTE: In the paragraph that you have in front
18 of you, it says "to the extent practicable."
19 There's a desire to distribute the United States'
20 harvest proportionally across those stocks. The
21 TAC's are actually calculated for each management
22 group separately, so in order to get the aggregate
23 TAC, you have to calculate the sum of the TAC's
24 across each of the four management groups. But
25 that's the extent of the, I guess, requirement if
26 you like as stipulated in paragraph (d) and (e)
27 and in the actual calculation of the total
28 allowable catch.

29 Q Okay. If Canada were to set escapement goals at
30 an individual stock level, would there be any
31 implications for that in a practical way in terms
32 of how the PSC manages its work?

33 MR. LAPOINTE: When you say PSC, do you mean the Fraser
34 River Panel?

35 Q I do, yeah.

36 MR. LAPOINTE: Okay. It would depend on the scenario
37 that presented itself. Actually if you go back in
38 history of the Fraser River Panel, if you go back
39 to, say, 1991, there actually were escapement
40 goals provided for 19 -- I think there were 19
41 different stocks, and that stock (indiscernible)
42 in the Fraser River Panel annual report for 1991.
43 But in effect, those individual stocks were summed
44 into their groups and generated escapement targets
45 to each of the groups, and so it actually didn't
46 impact the management at all. So the provision of
47 escapement targets for individual stocks by itself

- 1 wouldn't necessarily change how the management
2 would occur. It would depend upon how -- you
3 know, what specific scenario was provided for how
4 that would be accounted for.
- 5 Q I'd like to turn now to the operations of the
6 Pacific Salmon Commission itself. I think we've
7 probably covered this already, but just to confirm
8 this, the Pacific Salmon Commission was created
9 pursuant to the '85 treaty?
- 10 MR. KOWAL: That's correct.
- 11 Q And within the organizational structure of the
12 Pacific Salmon Commission, how many -- we have
13 included in our policy and practice report, which
14 has now been marked, a listing of staff at page 35
15 of that report. So if that may be helpful to have
16 that in front of you as we review some of these
17 questions. How many commissioners sit on the
18 Pacific Salmon Commission?
- 19 MR. KOWAL: There are eight commissioners, four from
20 each country and four alternates. And in Canada
21 all the commissioners are treated as equals.
- 22 Q So there's eight actual commissioners and each
23 country has four alternates; is that right?
- 24 MR. KOWAL: It's four commissioners and four
25 alternates.
- 26 Q From each country?
- 27 MR. KOWAL: From each country.
- 28 Q And in the policy and practice report that's in
29 front of you, it shows Mr. Paul Sprout as being a
30 commissioner. Is that still the case?
- 31 MR. KOWAL: That is not the case. As of the October
32 executive meeting, Sue Farlinger has replaced Paul
33 Sprout.
- 34 Q Now, out of the commissioners sitting, does each
35 country appoint a chair for their national caucus?
- 36 MR. KOWAL: Yes.
- 37 Q How are the Canadians appointed to sit as
38 commissioners on the Pacific Salmon Commission?
- 39 MR. KOWAL: They're appointed by the Minister of
40 Fisheries and Oceans.
- 41 Q And where do these commissioners and alternates
42 come from in terms of sectors that they represent?
- 43 MR. KOWAL: In general there's representatives from the
44 federal government, from the provincial
45 government, from the various user sectors: the
46 commercial sector, the recreational sector, the
47 First Nations, and the environmental sector.

1 Q What is the role of the commissioners on the
2 Pacific Salmon Commission?

3 MR. KOWAL: Well, basically like a board of directors.
4 They're responsible for all aspects of the treaty
5 that report to governments. They approve all of
6 the various plans and negotiations that do take
7 place by the various panels. They set the
8 financial rules and regulations. They manage the
9 staff of the Salmon Commission. Essentially they
10 handle all the activities that are required under
11 the treaty.

12 Q All right. And the commission guidance documents
13 that you referred to earlier, are those created by
14 the commissioners?

15 MR. KOWAL: That's correct.

16 Q And how many votes does each country have on the
17 commission?

18 MR. KOWAL: It's one country, one vote.

19 Q And do decisions of the Pacific Salmon Commission
20 require the agreement of both countries or both
21 parties?

22 MR. KOWAL: Yes, they do.

23 Q How many times a year does the Salmon Commission
24 meet?

25 MR. KOWAL: Formally we have three sessions for the
26 commissioners. One in October, which we term our
27 executive session where the -- one in January,
28 which is our post-season meeting, and there's one
29 in February, which is our annual meeting.

30 Q And who attends those three different meetings?

31 MR. KOWAL: For the executive session, it's usually the
32 commissioners and their advisers plus, depending
33 on the agenda, if there are issues that reflect on
34 a particular panel or a particular technical
35 committee, members from that committee would
36 arise. At the January and the February meeting,
37 basically all members of the Salmon Commission do
38 attend those meetings.

39 Q When you say all members of the Salmon Commission,
40 do you mean the 16 people or something bigger than
41 that?

42 MR. KOWAL: No. It is actually the commissioners plus
43 the panel members from both countries plus the
44 various technical committees that provide
45 information to the panels and to the commission.
46 So roughly we're talking somewhere between 150 and
47 200 people.

- 1 Q Does the Pacific Salmon Commission itself, the
2 commissioners that we've just identified, have any
3 direct operational responsibility for Fraser River
4 sockeye?
- 5 MR. KOWAL: Operational responsibility would be, as we
6 mentioned earlier, doing some commission guidance
7 would be one process they have, and approving the
8 panel -- changes to the Fraser Panel -- to the
9 Fraser Chapter, sorry.
- 10 Q Okay. And operationally, in-season, pre-season,
11 post-season?
- 12 MR. KOWAL: No.
- 13 Q Who has responsibility for that?
- 14 MR. KOWAL: The responsibility for that is the Fraser
15 Panel.
- 16 Q In the policy and practice report at page 16,
17 we've included an organizational chart essentially
18 of the commission. It sets out the commissioners
19 that you've just identified and a number of
20 different committees and panels. And can you just
21 highlight which panels are relevant and committees
22 are relevant to Fraser River sockeye and the work
23 of the commission we're sitting in today?
- 24 MR. KOWAL: Sure. It would be the finance and
25 administrative committee, would be relevant, the
26 committee on the scientific cooperation and the
27 Fraser Panel technical committee.
- 28 Q And the Fraser Panel itself?
- 29 MR. KOWAL: And the Fraser Panel itself, yes.
- 30 Q Okay. What's the role of the -- let's just start
31 with the first one you mentioned, the finance and
32 administration committee?
- 33 MR. KOWAL: The finance and admin committee basically
34 establish the budget for the commission.
- 35 Q Okay. And then what's the role of the science and
36 cooperation committee?
- 37 MR. KOWAL: They basically set the science agenda for
38 the commissioners and provide them advice on
39 science issues.
- 40 Q And skipping over the panel -- we'll come back to
41 the panel in more detail, but what is the role of
42 the Fraser River Panel technical committee?
- 43 MR. LAPOINTE: It is the technical vehicle to
44 communicate to the national sections the technical
45 advice that the PSC staff provide. It also
46 provides information back to the PSC staff, non-
47 panel information in terms of Canada's

1 obligations, like forecasts, escapement goals and
2 so forth. Those normally are conveyed through the
3 technical committee. There are occasions where
4 there are various options for technical approaches
5 to problems, and so in recent years I've been
6 trying to have them -- there be a technical
7 consensus, so when there is a technical issue that
8 the panel asks the staff to investigate, I can
9 come back to the panel and say, yes, we've
10 explored this with the technical committee and
11 staff and the technical committee have this
12 recommendation for this particular option and way
13 of solving a problem. So it has both sort of an
14 information transfer role, but also they're very
15 much engaged in any of the technical issues that
16 the staff would be undertaking on behalf of the
17 panel.

18 Q What is the make-up of that committee? Who sits
19 on it?

20 MR. LAPOINTE: It's up to five members from each
21 country are appointed formally. Informally there
22 usually are some number more than that in terms of
23 participation, but it's up to five. I think
24 currently each country has three, although there's
25 one vacancy on the United States side, I believe.

26 Q And in terms of Canada's part of that committee,
27 where do the people from Canada come from? Like
28 are they independent people? Are they scientists?
29 Are they from the Department of Fisheries and
30 Oceans?

31 MR. LAPOINTE: The current composition are a biologist
32 from Department of Fisheries and Oceans and there
33 is one gentleman who represents Aboriginal
34 Fisheries Secretariat, I believe, that is part of
35 the formal membership of the technical committee.

36 Q And who is that?

37 MR. LAPOINTE: Mike Staley.

38 Q Who's the chair of the Canadian side of the Fraser
39 River tech committee?

40 MR. LAPOINTE: Currently it's Anne-Marie Huang.

41 Q And she's with DFO?

42 MR. LAPOINTE: That is correct.

43 Q Are PSC staff members of that committee formally?

44 MR. LAPOINTE: No. We're not formal members. We
45 interact with it in the ways I described earlier.

46 Q And then just to close the loop on PSC
47 organization, page 20 of the PPR, the policy and

1 practice report, sets out an overview of the staff
2 at the PSC. Roughly how many staff do you have
3 working on Fraser River Panel issues at the Salmon
4 Commission?

5 MR. LAPOINTE: In terms of direct responsibility, it
6 would be the staff underneath the chief biologist
7 there, which is my position. There's
8 approximately 16 of them. But in practical terms,
9 we also get support obviously from many members of
10 the other parts of the staff. So you know, we
11 have to pay our people and so the accountants are
12 involved. We have lots of computer assistants,
13 you know, library services. All those folks are
14 involved in one way or another. But in terms of
15 direct responsibility, it would be the 16 people
16 that are underneath the chief biologist.

17 Q Okay. And those are identified at the end of the
18 policy and practice report. Pages 42 to 44 sets
19 out the staffing complement.

20 MR. LAPOINTE: That's correct.

21 Q How is the PSC funded? Where do the funds come
22 from?

23 MR. KOWAL: It's funded equally by both Canada and the
24 U.S.

25 Q And you mentioned earlier the committee that deals
26 with budgeting. Can you explain the budgeting
27 process? How does that happen?

28 MR. KOWAL: Sure. Around this time of the year, the
29 staff of the Salmon Commission start preparing an
30 F&A briefing book. The briefing book contains our
31 budget from last year, sort of an outline of where
32 we are with our spending up to this point in time,
33 an estimate of where we expect to be by the end of
34 the fiscal year, and it outlines budget requests
35 for the following year and an outline for the
36 budgets that we would anticipate over the next
37 three years following.

38 This document is sent at the end of November
39 to the members of the finance and administration
40 committee members. We meet mid-December to
41 discuss the budget and then we review all of the
42 material with the F&A committee members. And in
43 addition to just the numbers that are in the book,
44 there are brief summaries of the actions. If in a
45 particular fiscal year we have overspent slightly
46 in an area, we explain why, or if we've
47 underspent, we explain why. And we have outlines

1 if we are requesting new programs as to why the
2 programs are needed and proper justification with
3 those are all included in the manual.
4 Q And the finance committee has members from both
5 countries, I take it?
6 MR. KOWAL: That's correct.
7 Q And it reviews the budget?
8 MR. KOWAL: Yes, it does.
9 Q And is that where the budget is set, at that
10 finance committee level?
11 MR. KOWAL: All of the -- the setting of the budget is
12 set by the finance and admin committee and is then
13 sent to the commissioners for final approval.
14 Q And once that approval has been made, does either
15 country have an ability to negotiate further on
16 the content of that budget?
17 MR. KOWAL: Unless there's some extraordinary
18 circumstances, that is our budget.
19 Q Okay. Now, Canada's share of -- the funds that
20 Canada contributes to the Pacific Salmon
21 Commission, how does that come out of Canada's
22 funding? Can you explain that?
23 MR. KOWAL: Well, at this point we receive a cheque
24 from Ottawa for the amount of Canada's share. I'm
25 not exactly sure of the details within the DFO
26 process as to where the money actually comes from.
27 I know that at one point in time there was money
28 allocated in the international directorate, as it
29 is for most international commissions. I guess
30 most of the money would probably come from that
31 particular budget.
32 Q And that international directorate -- I don't know
33 if you can confirm this or not, but my
34 understanding was the amount designated through
35 the international directorate was essentially set
36 in 1999?
37 MR. KOWAL: Primarily, yes.
38 Q Was there an inflationary factor applied to those
39 funds to --
40 MR. KOWAL: That I can't comment on. I'm not sure.
41 Q If additional money is required beyond what is
42 allocated through the international directorate,
43 do you know where that comes from in Canada?
44 MR. KOWAL: Not exactly, no.
45 Q Do you know if it comes from the Department of
46 Fisheries and Oceans' budget?
47 MR. KOWAL: It would come from Fisheries and Oceans'

1 budget somewhere. I'm not exactly sure where.

2 Q All right. Has that caused any difficulties for
3 the Pacific Salmon Commission in terms of being
4 able to meet its budgetary needs?

5 MR. KOWAL: We each year set out our budget
6 requirements and we negotiate with the F&A
7 committee, and at the end of the day we reach a
8 practical solution. It may not often be the
9 budget we initially presented, but it's what
10 the -- the two parties agreed to at the time.

11 Q Right. And has there been any concerns about
12 being able to meet increasing staffing costs or
13 any other inflationary items over time?

14 MR. KOWAL: Well, over time, I mean, one of the
15 problems that we have in preparing our budget is
16 we're somewhat different than the government. We
17 work with the same job classifications and salary
18 negotiations that the federal government does. As
19 an example, if there is a job category such as the
20 biologist series where there's an increase through
21 union negotiations for an increase in salaries and
22 it's agreed to, you know, the general practice for
23 the federal government is the Treasury Board
24 supply that money to the department, where in our
25 case we have to adhere to those requirements but
26 we don't have any influx of money. We have to
27 include those kinds of increases with our regular
28 budget. So those are actually issues that are
29 outside of our control and they at times can
30 impact our operational funds.

31 Q In 2006, a decision known as the **Laroque** decision
32 was rendered. You're familiar with that decision?

33 MR. KOWAL: I am.

34 Q Okay. Did that decision change the way funding
35 was provided for PSC test fishing?

36 MR. KOWAL: Yes, it did.

37 Q Can you explain what the implications of that
38 were?

39 MR. KOWAL: Well, prior to the **Laroque** decision, test
40 fisheries that were conducted by the Salmon
41 Commission were basically financed through the
42 sale of fish that were harvested in the test
43 fisheries. With the **Laroque** decision, the
44 decision was basically that we no longer could use
45 the sale of fish to finance scientific matters.
46 So basically, because of the court decision we now
47 rely on Canada to provide us the funds for the

1 test fishing.
2 Q And has that had any impact on your budgeting and
3 funding requirements?
4 MR. KOWAL: Not directly.
5 Q I'd like to move now to the Fraser River Panel
6 itself. How is the make-up of the Fraser River
7 Panel constituted?
8 MR. LAPOINTE: There are six members and six alternates
9 from each country.
10 Q Where do those people come from? Do they
11 represent different sectors?
12 MR. LAPOINTE: Yes. They represent government, various
13 fishing sectors, First Nations, commercial harvest
14 interests, processors, primarily.
15 Q And does each nation have its own caucus on the
16 Fraser River Panel?
17 MR. LAPOINTE: Yes, they do.
18 Q And there's a chair for each caucus; is that
19 right?
20 MR. LAPOINTE: That's correct.
21 Q And how does the chair of the Fraser River Panel
22 itself get set?
23 MR. LAPOINTE: I'm not sure how the chair is actually
24 nominated. I would assume it would be appointment
25 from someone in the department, Don?
26 MR. KOWAL: Yes.
27 Q And there's one chair each year?
28 MR. LAPOINTE: That's correct.
29 Q And is it always from one country or --
30 MR. LAPOINTE: You mean within the Fraser Panel itself?
31 Q Yes.
32 MR. LAPOINTE: It alternates. The chairmanship
33 alternates between Canada and the United States.
34 Q Each year?
35 MR. LAPOINTE: Each year.
36 Q Can you explain how the national caucuses work?
37 What's their function and what do they do?
38 MR. LAPOINTE: I don't know if I can explain how they
39 work since we're never part of their caucus
40 meetings. But their function is to represent the
41 respective governments' positions. In the case of
42 the Fraser Panel, one of their primary tasks in
43 season is to propose fishery regulations. But how
44 they actually develop those regulations is not
45 something that we are ever participating in, so I
46 can't describe in any detail about that.
47 Q And when decisions are made within the Fraser

1 River Panel, who speaks for Canada?

2 MR. LAPOINTE: Canada's chair.

3 Q Who is the chair right now for Canada?

4 MR. LAPOINTE: Barry Rosenberger.

5 Q Is the Canadian chair always a member of
6 Department of Fisheries and Oceans?

7 MR. LAPOINTE: It has been, at least for the period
8 that I've been there, which is 1992. So I believe
9 yes, it pretty much has been throughout.

10 Q Now, how is the Fraser River Panel involved in the
11 Fraser River sockeye fisheries in the pre-season?

12 MR. LAPOINTE: In the pre-season period, the panel has
13 three meetings, beginning in February, as part of
14 the commission's annual meeting. Typically pre-
15 season planning would start. That's the meeting
16 when Canada would typically provide a pre-season,
17 for example, and some of their other obligations
18 under the treaty. And then there is subsequently
19 two meetings, one that's currently in April and
20 another one in June. The pre-season planning
21 phase is a phase where the objectives - for
22 example, spawning escapement objectives provided
23 by Canada, forecasts, domestic objectives provided
24 by each party - feed into a number of scenarios
25 for how a fishing seasons might take place given
26 the available harvest. And out of that comes an
27 agreed pre-season fishing plan which is basically
28 a template for how the season might work out if
29 the runs come back as expected.

30 So it's that pre-season kind of development
31 of schedule of fisheries that -- how a schedule of
32 fisheries might look in order to achieve the
33 hierarchy objectives of the Fraser Panel that the
34 panel's involved with pre-season.

35 MS. BAKER: Thank you. Mr. Commissioner, I'm asking
36 the witness about these different steps but only
37 to really identify what those steps are. In
38 December we will be taking the same witness
39 through those steps in great detail to explain how
40 they functionally work, what kinds of materials
41 they're looking at with examples of those
42 materials and so forth. So today's session is
43 really to just understand what those steps are at
44 a high level.

45 Q In the Fraser River Panel pre-season, are there
46 meetings between the PSC staff, the tech
47 committee, and the Fraser River Panel?

1 MR. LAPOINTE: Yes.

2 Q How does that work?

3 MR. LAPOINTE: Typically in each of our pre-season
4 planning meetings in both April and June, there
5 would normally be a two-day set of technical
6 committee meetings between the PSC staff and the
7 technical committee. Following those two days,
8 the panel would arrive and there would be
9 typically two days of panel meetings as well.

10 Q Does the Fraser River Panel or the PSC have a role
11 in drafting the Integrated Fisheries Management
12 Plan that Fisheries and Oceans prepares?

13 MR. LAPOINTE: No. They're basically parallel
14 processes that occur. So we're not involved in
15 that plan, but certainly there is sort of, I
16 guess, communication, and Canada typically
17 couldn't sign off on a final plan at the Fraser
18 Panel Level without having finalized the
19 Integrated Fisheries Management Plan.

20 Q Now, under the treaty, it is the Fraser River
21 Panel that has the authority for in-season
22 management of the commercial fishery in panel
23 waters; is that right?

24 MR. LAPOINTE: That's correct, with only one exception,
25 that the commercial fisheries that are conducted
26 for First Nations are not under the jurisdiction
27 of the Fraser River Panel.

28 Q How is authority transferred to the Fraser River
29 Panel during the in-season?

30 MR. LAPOINTE: Through a process of regulatory control
31 letters. Once the pre-season plan is agreed to,
32 there's a letter of transmittal on their
33 regulatory control letters that go to the
34 governments that provide essentially the closed-
35 unless-opened regulatory framework for the Fraser
36 River Panel.

37 MS. BAKER: Okay. And we have two examples of those,
38 Mr. Lunn, at exhibits noted at number 10 on our
39 list. So A and B are two examples of those
40 letters.

41 Q Is that --

42 MR. LAPOINTE: Yes. They go to Fisheries and Oceans
43 and External Affairs in Canada, and I think
44 Secretary of State, Secretary of Interior,
45 Secretary of Commerce in the United States.

46 MS. BAKER: I'd like to have those two documents marked
47 as the next exhibits. So the first one would be

29
PANEL No. 5
In chief by Ms. Baker

1 the letter to Canada, which is not the one we see
2 on the screen, if you could switch it over.

3 MR. LAPOINTE: To Minister Shea.

4 MS. BAKER: Yes, to Minister Shea. If that could be
5 the next exhibit.

6 THE REGISTRAR: That will be 68.

7

8 EXHIBIT 68: Letter from Pacific Salmon
9 Commission to Canada, dated June 18, 2009,
10 specifying a closed unless open fishing plan

11

12 MS. BAKER: And then the one to the U.S. could be the
13 next exhibit.

14 THE REGISTRAR: 69.

15

16 EXHIBIT 69: Letter from Pacific Salmon
17 Commission to the U.S., dated June 18, 2009,
18 specifying a closed unless open fishing plan

19

20 MS. BAKER:

21 Q These are both letters for the 2009 season; is
22 that right?

23 MR. LAPOINTE: That's correct.

24 Q We've touched a little bit on test fishing so far.
25 If you could just give us an overview of what the
26 Fraser River Panel's role is with respect to test
27 fishing in seasons?

28 MR. LAPOINTE: Prior to the season, the Fraser River
29 Panel approves the test fishing plan. During the
30 season we basically execute that plan, and if
31 there are substantial changes -- for example, if
32 we were going to cease test fishing sooner than
33 the schedule would have indicated or if we'd like
34 to extend test fisheries past the schedule, then
35 we would seek input from the Fraser River Panel on
36 that change.

37 Q And maybe you can just explain as an overview what
38 the test fishing program is with respect to --

39 MR. LAPOINTE: Well, okay. So fundamentally, the
40 purpose is to gather data on return abundance in
41 various waters. So there are test fisheries in
42 marine areas, in Johnstone Straits and Juan de
43 Fuca Strait. There is observation, in the case of
44 the Juan de Fuca Strait, in both countries, and
45 then in Puget Sound there is a reef net
46 observation program. There is also test fisheries
47 in the Fraser River which are designed to either

- 1 gather species composition for application to our
2 acoustics or stock composition. So prior to the
3 program is to gather both abundance but also
4 stock, samples for stock composition. I think
5 maybe I'll stop there and see if you need more
6 detail.
- 7 Q No, that's fine. And the design and the
8 implementation of those test fisheries are all
9 within the Pacific Salmon Commission through the
10 Fraser River Panel's control; is that right?
- 11 MR. LAPOINTE: There are test fisheries in non-panel
12 waters that are implemented by Department of
13 Fisheries and Oceans on our behalf.
- 14 Q But it is the Salmon Commission that decides what
15 needs to be done and ensures that they're
16 implemented?
- 17 MR. LAPOINTE: Yes.
- 18 Q Okay.
- 19 MR. LAPOINTE: Fraser River Panel decides that.
- 20 Q Now, back to the Fraser River Panel itself. In
21 season, what are the decisions that are made by
22 the Fraser River Panel in season?
- 23 MR. LAPOINTE: Primarily pertaining to those inputs
24 needed to calculate total allowable catch. So PSC
25 staff would make recommendations for the total
26 return abundance and the panel would provide a
27 check-off on those. There's also a lot of these
28 extra requirements which we call management
29 adjustments that are add-ons, the escapement
30 targets. Those are subject to Fraser Panel
31 review. And then of course there's the fishery
32 proposals that are proposed by each country that
33 are also subject to some review by Fraser River
34 Panel.
- 35 Q All right. The return abundance, is that also
36 what we would call run size?
- 37 MR. LAPOINTE: That's correct.
- 38 Q Okay. And the specific fisheries proposals, can
39 you just explain how that actually works during
40 the panel meeting and maybe an example of what a
41 fisheries proposal would be. What would it look
42 like?
- 43 MR. LAPOINTE: Okay. So it's generally -- in the case
44 of Canada it would be a specific licence area. So
45 for example, it might be a proposal for an Area E
46 fishery to commence for 12 hours beginning at 9:00
47 a.m. on a Tuesday.

1 Q Okay. So that would be brought to the panel by
2 Canada in that example?

3 MR. LAPOINTE: That's correct.

4 Q And the decisions on fisheries proposals, each
5 country brings their own proposals forward, right?

6 MR. LAPOINTE: That's correct.

7 Q And decisions on those fisheries proposals are
8 made at the panel level. Do they require the
9 agreement of both countries on those fisheries
10 proposals?

11 MR. LAPOINTE: No, they do not.

12 Q How is the decision-making done, then, in the
13 Fraser River Panel?

14 MR. LAPOINTE: As stipulated in paragraph 13 of Chapter
15 4, the proposals come forward from each national
16 section. PSC staff provide an evaluation of the
17 proposals against the criteria. Primarily, is the
18 expected catch in a particular fisheries proposal
19 smaller or larger than the available TAC? And if
20 it is smaller than the available TAC, then PSC
21 staff would judge those fisheries consistent with
22 the information. And if we judge them consistent,
23 then the panel would approve those regardless of
24 whether or not one of the countries objected. If
25 we judge them inconsistent, then the panel -- the
26 national section whose proposal it is that we have
27 judged inconsistent has two options. They can
28 resubmit their proposal, change it, modify it
29 somehow to improve the chances that it would be
30 consistent. Or alternately, the two parties can
31 actually adopt the fisheries proposal by bilateral
32 agreement regardless of the judgment by PSC staff.

33 Q And that process that you've just described, when
34 did that process start?

35 MR. LAPOINTE: It started as commission guidance, I
36 believe in probably something like 2002 or 2001.
37 It was made part of annex language when the annex
38 was revised in 2005.

39 Q Okay. And just on that note, we have as one of
40 our exhibits, which is Exhibit Number 9 on our
41 list, Mr. Lunn, this is a report of the Fraser
42 River Panel for the 2002 season. And if you turn
43 to page -- Ringtail number 12, but it appears as
44 page 6 on the body of the document, right under
45 the introduction.

46 MR. LAPOINTE: Yeah, this should be an appendix which
47 stipulates the guidance, I believe, in that

1 document. But I don't know exactly where that
2 would be.

3 MS. BAKER: All right. If we see under review of the
4 2002 season -- it's getting hard to read. Can it
5 be enlarged, that first paragraph?

6 MR. LAPOINTE: So Appendix B would have the guidance
7 then.

8 Q All right. But it does identify this change that
9 was made in 2002 and it identifies it prior to
10 2002 PSC staff -- and I'm looking at the sixth
11 line down [as read]:
12

13 Prior to 2002, PSC staff made recommendations
14 to the panel for fisheries in panel waters.
15 They were subject to modification by panel
16 and approval required bilateral agreement
17 under the new decision process parties made
18 fisheries recommendations and staff evaluated
19 proposals against criteria specified in the
20 treaty and the pre-season plan. If PSC staff
21 evaluation supported the recommendations, the
22 panel adopted the fisheries proposals.
23

24 That's the process that you've described and that
25 came in in 2002?

26 MR. LAPOINTE: That's correct.

27 Q Thank you. And then the guidance document that
28 you were referring to is on page 51, which is
29 Ringtail number 57, page (indiscernible).
30 Ringtail 51, sorry, which is page 45 of the
31 document itself. And there's the guidance
32 document and this is what we had referred to
33 earlier as a guidance from the Pacific Salmon
34 Commission to in this case Fraser River Panel?

35 MR. LAPOINTE: That's correct.

36 MS. BAKER: Mr. Commissioner, this would probably be an
37 appropriate time to break if that's convenient.

38 THE COMMISSIONER: Yes, that's fine. Are you marking
39 these last?

40 MS. BAKER: Oh, yes, I'm sorry. This last one should
41 be marked. It's the report of the Fraser River
42 Panel.

43 THE REGISTRAR: Number 70.
44

45 EXHIBIT 70: Report of the Fraser River Panel
46 to the Pacific Salmon Commission on the 2002
47 Fraser River Sockeye Salmon Fishing Season

1 THE COMMISSIONER: And the guidance document, is that a
2 separate document?

3 MS. BAKER: It's an appendix to the report.

4 THE COMMISSIONER: Yes. Thank you.

5 MS. BAKER: I think we're going to take a break now.

6 THE REGISTRAR: The hearing will now recess for 15
7 minutes.

8

9

(PROCEEDINGS ADJOURNED FOR MORNING RECESS)

10

(PROCEEDINGS RECONVENED)

11

12

THE REGISTRAR: The hearing is now resumed.

13

THE COMMISSIONER: Ms. Baker?

14

MS. BAKER: Thank you, Mr. Commissioner.

15

16

EXAMINATION IN CHIEF BY MS. BAKER, continuing:

17

18

Q So we left off talking about the decision-making
19 for fisheries proposals and how that happens, but
20 I'd also like to go back and just review decision-
21 making and information-sharing steps in season, so
22 if I can just start with how often does the Fraser
23 River Panel meet in season?

24

MR. LAPOINTE: Typically scheduled meetings would be
25 Tuesday conference calls and Friday in person, but
26 it's more or less as needed and quite often it's
27 more.

28

Q Okay. On those calls, who -- first of all, who
29 attends those calls that you just described or the
30 in-person meetings?

31

MR. LAPOINTE: In terms of physical attendance at the
32 Friday meetings, it's members of the Fraser River
33 Panel. They are open to the public, subject to
34 approval by the national section, so anyone can
35 attend with permission from their national
36 sections, and the staff, of course. And the
37 Technical Committee would also be attending those
38 meetings.

39

Q And the telephone conferences, is it the same?

40

MR. LAPOINTE: It's the same group. We also have, in
41 the last two or three years now, a listening line
42 for First Nations folks throughout the watershed
43 and actually in the last couple of years, we've
44 also had the speakerphone in the in-person
45 meetings so they can listen in to the
46 deliberations as well in the in-person meetings,
47 but they aren't physically in attendance normally.

1 Q Okay. What information is available to the -- I'm
2 sorry, if I can just back up. That's the actual
3 bilateral panel meeting that you're referring to?

4 MR. LAPOINTE: That's correct.

5 Q Okay. And then is it preceded by a Canadian
6 caucus meeting and a U.S. caucus meeting?

7 MR. LAPOINTE: I would presume so, yes. Normally they
8 would be.

9 Q Okay. And what information is made available to
10 the Canadian caucus and the Fraser River Panel for
11 those calls?

12 MR. LAPOINTE: Okay. On the Friday meetings, which are
13 in-person meetings, there's normally a Fraser
14 River Panel Technical Committee that precedes it
15 on Thursday afternoon. So we would provide the
16 Tech Committee with all of the changes that we
17 anticipate making in terms of recommendations for
18 run size, management adjustments and so forth on
19 the Thursday afternoon. So there would be some
20 heads up, if you like, about where we think it'll
21 go. Sometimes there can be data changes that
22 might cause us to move in a slightly different
23 direction on Friday.

24 On the other calls, typically I would be in
25 contact with the chairs of the Fraser River Panel
26 and sometimes Technical Chairs to provide them a
27 bit of a heads up. So if there's no formal
28 Technical Committee meeting where there's an
29 exchange with the technical members from each
30 government, then typically I would either send an
31 email or have a phone call to try to give them an
32 idea which direction -- and when I say "which
33 direction", I'm talking about -- specifically
34 about run sizes and management adjustments which
35 essentially are the two things that we change in
36 season, or the panel changes in season, that would
37 impact the calculation of TAC.

38 Q Okay. What are the types of information that are
39 reviewed, then, from -- like what information does
40 the PSC staff give to the committee to talk about
41 on those meetings?

42 MR. LAPOINTE: It would be a review of the test fishing
43 catches so far, the implications of those test
44 fishing catches for run size assessments. There
45 would be a review of environmental conditions
46 within the Fraser which have an impact on the
47 management adjustments. If we are, you know,

1 contemplating run size change, there might be some
2 scenario of a TAC sheet that would talk about
3 where the TAC status might be if we change the run
4 sizes.

5 Q And those run sizes that you're describing, are
6 those management group run sizes or -- that you
7 talked about earlier, the four groups, or
8 something different?

9 MR. LAPOINTE: Yes, they are the run sizes for the four
10 management groups.

11 Q Do you look at any finer level, like is there
12 stock ID composition reviewed at those meetings?

13 MR. LAPOINTE: Yes. We review the results of our stock
14 composition analysis typically on a level that we
15 refer to as a DNA reporting group which is which
16 is a reflection of our sort of assessment
17 capability.

18 Last year, for example, I think we might have
19 had ten or twelve DNA reporting groups that we
20 thought we could distinguish and they were rolled
21 up into the four management groups.

22 Q Okay. Once the decisions have been made by the
23 Fraser River Panel -- and, as you've identified,
24 those are run sizes and management adjustments and
25 fisheries proposals; is that right?

26 MR. LAPOINTE: That's correct.

27 Q Once those decision have been made, how are those
28 decisions communicated and who are they
29 communicated to?

30 MR. LAPOINTE: Well, within our agency, there would be
31 news releases that are issued every Friday. There
32 are things called regulatory announcements that
33 are issued after every Fraser River Panel meeting
34 which would stipulate if there are any regulations
35 that are agreed to by the parties. There would be
36 a listing of what those fisheries approvals have
37 been and what the schedules are. I'm sure in
38 addition there's a recorded message service where
39 folks can call and get the results of the
40 meetings.

41 Within each national section, there's
42 typically a similar set of information exchanges.
43 In Canada there's a set of emails called
44 "Fisheries Notices" that are issued. There are
45 recorded message services in both countries. So
46 each national section also communicates that
47 information as well as what we communicate

- 1 bilaterally through the PSC website and so forth.
2 Q All right. When Canada makes a fisheries proposal
3 that's approved by the Fraser River Panel, how
4 does that get implemented? Is that something that
5 the PSC implements?
6 MR. LAPOINTE: No, it would be implemented by Canada
7 through DFO in the case of the Canadian fisheries.
8 Q All right. And does DFO have to approve those
9 bilateral decisions once they come out of the
10 Fraser River Panel?
11 MR. LAPOINTE: No, in the sense that the approval of
12 the Fraser River Panel constitutes essentially the
13 approval by DFO, since the Chair is a member of
14 DFO.
15 Q In the Fraser River Panel process, is there
16 information shared with respect to fish in non-
17 panel waters?
18 MR. LAPOINTE: Yes. Catches -- obviously some of the
19 test fisheries actually occur in non-panel waters.
20 There's very frequent exchanges of information
21 that relates to any activities in non-panel waters
22 that might affect the Fraser River sockeye.
23 Q Does the Fraser River Panel have any authority
24 over fishing in non-panel waters?
25 MR. LAPOINTE: No formal authority, but we do work on
26 the same set of information so there's a
27 coordination of the regulations in non-panel
28 waters, but there's no formal regulatory
29 authority.
30 Q Does the Fraser River panel exercise any authority
31 over recreational fisheries and openings in panel
32 waters?
33 MR. LAPOINTE: No.
34 Q And does the Fraser River Panel exercise any
35 authority over First Nations fisheries openings or
36 closings in panel waters?
37 MR. LAPOINTE: Not in Canada.
38 Q What is the role or involvement of the Fraser
39 River Panel or the PSC post-season for Fraser
40 River sockeye?
41 MR. LAPOINTE: Two main roles. Establish post-season
42 accounting of total return for each of the stock
43 groups, and then there's a Fraser Panel and a
44 report which documents the season, main events of
45 the season, and the achievement of objectives as
46 specified under the treaty.
47 Q And the document we've already marked as Exhibit

1 7, which is a seasonal report from the Fraser
2 River Panel to the PSC, this is an example of one
3 of the reports you prepared?
4 MR. LAPOINTE: That's correct.
5 Q And what's the timeline for getting those reports
6 sent to --
7 MR. LAPOINTE: Ideally, we'd like to have them done
8 within about a year. We have actually quite a
9 significant backlog right now. I think there's
10 two or three that are actually in the hands of the
11 parties that are under review, and a couple that
12 are under construction.
13 Q So do we have the 2009 season report yet?
14 MR. LAPOINTE: I believe it's being drafted, actually,
15 probably even as we speak.
16 MS. BAKER: Mr. Commissioner, those are my questions
17 for these witnesses.
18 THE COMMISSIONER: Ms. Baker, I know earlier you said
19 there would be a panel later with --
20 MS. BAKER: Yes, if I can clarify. So these witnesses
21 have been asked to come today to deal with the
22 fairly high level review of what the treaty says
23 and what their obligations are under the treaty in
24 practice, but again, as an overview piece. Mr.
25 Lapointe will be back in December and will be here
26 with members of Department of Fisheries and Oceans
27 to talk about how it actually happens pre-season,
28 in-season and post-season. So if my friends can
29 bear that in mind as they ask their questions,
30 that the detailed questions that would relate to
31 some of the very high level review we've done
32 today would be more appropriate in December when
33 we will have had an opportunity to put much more
34 detail on the record about the day-to-day
35 management. Thank you.
36 THE COMMISSIONER: Thank you.
37 MR. PROWSE: D.C. Prowse. No questions, Mr.
38 Commissioner.
39 MR. HUNTER: Mr. Commissioner, it's John Hunter,
40 counsel for the Pacific Salmon Commission, and I
41 have no supplementary questions for these
42 gentlemen.
43 THE COMMISSIONER: Ms. Baker, I think at least for the
44 last couple of weeks, Commission counsel have been
45 keeping track of --
46 MS. BAKER: Who's going --
47 THE COMMISSIONER: -- who goes next, so I'm not sure

1 how you want to do that.

2 MS. BAKER: Canada would have the next opportunity for
3 cross-examination.

4 THE COMMISSIONER: Thank you.

5 MR. EAST: Just a small number of questions. It's Mark
6 East for the Government of Canada.

7

8 CROSS-EXAMINATION BY MR. EAST:

9

10 Q Earlier we talked about the IPSFC, and there
11 was -- I'm curious as to how that was funded. Did
12 the United States provide a share of that funding
13 for that convention?

14 MR. LAPOINTE: I believe it's funded 50-50 as
15 stipulated in the articles.

16 Q 50-50, and that was consistent with the 50-50
17 rough division of the sockeye under that
18 convention?

19 MR. LAPOINTE: That's correct.

20 Q Okay. I just want to ask you a couple of
21 questions about the Commissioner's Guidance. Has
22 the practice to date been that Commissioner's
23 Guidance would be developed, perhaps on a yearly
24 basis, and that would represent, I suppose, the
25 policy guidance of the Commissioners with respect
26 to the operations of Chapter 4?

27 MR. LAPOINTE: Yes, in a -- with respect to the
28 specific things that that Guidance refers to,
29 that's correct.

30 Q And the practice to date has been at certain
31 points the Commission's Guidance has become part
32 of the language of the annex, of Chapter 4.

33 MR. LAPOINTE: Yes.

34 Q And the Commissioner's Guidance for the next two
35 years, I believe there's a document in evidence,
36 and that's dated February of 2010?

37 MR. LAPOINTE: That's correct.

38 Q And that is intended to be in place for the next
39 year or is there going to be -- is it looked at on
40 a yearly basis or is it intended to be in place
41 for the next two years?

42 MR. KOWAL: I think the one you're referring to is in
43 place until changed.

44 Q Till changed, okay. Just one other question. I
45 just wanted -- there's some questions about the
46 Southern Boundary Restoration and Enhancement
47 Fund. I believe if you look at the policy and

1 practice report, there's an interesting chart and
2 it has a dotted line between the Pacific Salmon
3 Commission and the box, and it talks about the
4 fund. The dotted line, is it because those
5 enhancement funds, are they at arm's length to the
6 Pacific Salmon Commission?

7 MR. KOWAL: They are part of the Salmon Commission,
8 although the Commissioners do not direct actions
9 to the Fund Committee. The Fund Committees brief
10 the Commissioners, and in fact some Commissioners
11 do happen to be on the Fund Committee as appointed
12 by their respective government, but they act
13 independent.

14 MR. EAST: Okay. I had a few questions, and I'm
15 wondering if these -- I wanted to have a bit of a
16 discussion about the how the four stock management
17 groups work. Hearing Commission counsel today, I
18 wonder if those are subject matters that are going
19 to be dealt with in the harvest management
20 section, and perhaps those are a better place to
21 have a discussion about those.

22 MS. BAKER: There will be evidence on the four
23 management groups during that time frame,
24 definitely.

25 MR. EAST: I think it might make more sense at that
26 point, and that for now, anyway, to leave that
27 discussion until then, or unless it comes up in
28 further questions.

29 MS. BAKER: Mr. East, if I -- you referred to the
30 Commission Guidance document in February 2010.
31 That's not actually in evidence yet. I don't know
32 if you wanted that to be marked or not.

33 MR. EAST: I think it might be useful to have that as
34 evidence as an example of the Commission Guidance
35 that is in place at the moment. I believe in the
36 list of documents provided by the Commission, it's
37 number 16, dated February 11th, 2010.

38 Q That's the current Commission Guidance that, I
39 guess, supplements, I would suppose -- not so much
40 supplements, but I guess the way it's written, it
41 actually defines, in some places amends, the
42 language of Chapter 4; is that right?

43 MR. KOWAL: That's correct. Gives them instruction for
44 implementation.

45 MR. EAST: So, Mr. Commissioner, perhaps we could have
46 that document marked as an exhibit. It's number
47 is PSC 00004.

1 THE REGISTRAR: That will be marked as Exhibit number
2 71.
3

4 EXHIBIT 71: Pacific Salmon Commission
5 Guidance to the Fraser River Panel, dated
6 February 11, 2010
7

8 MR. EAST: Those are my questions.

9 THE COMMISSIONER: Mr. East, we'll just bring that up
10 on the screen to make sure it's the one that
11 you're wishing to have marked.

12 MR. LUNN: I'll be just a moment, I'm sorry.

13 THE COMMISSIONER: Thank you.

14 MR. EAST: And actually, perhaps, there is a couple of
15 questions I can just - just for identification
16 purposes - ask about that Commission Guidance.

17 Q So is the document on your screen?

18 MR. LAPOINTE: Yes, it is.

19 Q Is this the document that we're referring to as
20 the February 11, 2010 Commission Guidance?

21 A Yes, it is.

22 Q And just as an example of how this works, and I
23 think the details of this, you know, may bear some
24 scrutiny at some point, but in number 1 -- or in
25 the preface number 1, it says:

26
27 Notwithstanding provisions of paragraphs
28 3(c), 3(d) and 3(e) of Chapter 4 to the
29 contrary:
30

31 And then there's a definition of how the
32 aboriginal fisheries exemption will be
33 proportionate among the four stock management
34 groups; is that right?

35 MR. LAPOINTE: That's correct.

36 Q And then on number 2, there's a discussion about,
37 "For the purposes of computing the aggregate
38 TAC...", and it discusses how the total allowable
39 catch is aggregated from the four stock management
40 groups.

41 MR. LAPOINTE: That's correct.

42 Q And that's an elaboration, I suppose, upon the
43 language of the Chapter 4 itself which, itself,
44 doesn't provide any details as to how the total
45 allowable catch is to be aggregated. This
46 provides further detail on how that's done?

47 MR. LAPOINTE: Yes.

1 Q And finally, over the page in number 3, Chapter 4,
2 paragraph 8 refers to the concept of, I guess,
3 overages and underages from the U.S. share of the
4 catch. Number 3 here is some further details and
5 elaboration upon that provision in Chapter 4,
6 essentially implements how Chapter 4 is to be
7 implemented (sic). Sorry, paragraph 8 of Chapter
8 4.

9 MR. LAPOINTE: That's correct.

10 MR. EAST: Okay. Those are my questions.

11 MS. BAKER: Mr. Commissioner, the next party is the
12 Public Service Alliance of Canada. I don't even
13 know if they're here today. Following that is Rio
14 Tinto Alcan.

15 MS. HILLER: Charlene Hiller for Rio Tinto Alcan. We
16 have no submissions at this moment.

17 MS. BAKER: Thank you. The next party is B.C. Salmon
18 Farmers' Association.

19 MR. BLAIR: Good morning. Alan Blair for the B.C.
20 Salmon Farmers' Commission and we have no
21 questions.

22 MS. BAKER: Next is the Seafood Producers' Association
23 of B.C. I don't think they're here.

24 Next is the Aquaculture Coalition. No
25 questions?

26 Following is the Conservation Coalition with
27 Mr. Leadem.

28 MR. LEADEM: Leadem, initial T., appearing on behalf of
29 the Conservation Coalition.

30 I have some questions to the panel with
31 respect to the management of conservation units
32 within the management groups, and I'm wondering if
33 it would be more appropriate for me to ask those
34 questions when they return. Are these panel
35 members returning? Perhaps Commission counsel
36 could indicate.

37 MS. BAKER: Mr. Lapointe will be back in December for
38 two weeks, more or less.

39 MR. LEADEM: And perhaps through the Commissioner,
40 could the Commission counsel indicate whether or
41 not questions relating to conservation units and
42 how they're managed within the confines of the
43 four management groups are better placed to Mr.
44 Lapointe and others on the panel when we return in
45 December?

46 MS. BAKER: We will be getting into details on
47 management in-season, pre-season and post-season

1 and how that actually plays out in December, and
2 there will be further opportunity at that time. I
3 don't know what your questions are right now, so
4 I'm not sure whether they are more appropriate
5 here or not. I certainly don't see a problem if
6 you want to touch on an overview basis, that's
7 really the point of this evidence, is to provide
8 overview evidence.

9 MR. LEADEM: All right. Perhaps I'll do that, Mr.
10 Commissioner, and I'll reserve some specific
11 questions relating to specific conservation units
12 such as the Cultus Lake sockeye conservation unit
13 at that time.

14
15 CROSS-EXAMINATION BY MR. LEADEM:

16
17 Q Gentlemen, I wanted to ask you about conservation
18 units and how they're managed from the perspective
19 of the Pacific Salmon Commission within the four
20 management groups, and I just want to ask you as a
21 general proposition how is that done? Because, as
22 I understand it from your evidence, the four
23 management groups are pretty large groups based on
24 seasonal aggregates rather than anything else; is
25 that right?

26 MR. LAPOINTE: That's correct. The four management
27 groups -- I mean, other than Early Stuart, which
28 of course is more specific, the other four groups
29 are quite large aggregates of stocks. Multiple
30 conservation units would be part of each of those
31 groups.

32 Q All right. So if you were to try to manage,
33 rather than for those four management groups but
34 for conservation units, which is, as I understand
35 it from your earlier evidence to us, Mr. Lapointe,
36 on the life cycle and biodiversity, it's the
37 conservation unit that is really of some
38 importance here; is it not?

39 MR. LAPOINTE: It's the conservation units which Canada
40 is moving towards identifying and trying to
41 address through its wild salmon policy.

42 Q Right. And I think from your earlier evidence
43 when you came here and gave evidence concerning
44 the life cycle of the salmon, you agreed that
45 biodiversity of the species is something that
46 ought to be looked at and examined and protected
47 if possible.

1 MR. LAPOINTE: It's certainly one of the range of
2 possible objectives that the panel and others are
3 concerned about.

4 Q Yes. And if we can then relate the conservation
5 units to biodiversity, perhaps that's the missing
6 link in terms of the evidence. Perhaps you can
7 provide just -- the Commissioner with just an
8 overview of biodiversity and conservation units
9 and how they're related.

10 MR. LAPOINTE: It's my understanding that the
11 conservation units through the wild salmon policy
12 are the unit, if you like, of biodiversity that
13 Canada seeks to protect under the Wild Salmon
14 Policy.

15 Q And we'll get into the Wild Salmon Policy in due
16 course. But for the purposes of the role of the
17 Pacific Salmon Commission and providing advice to
18 Canada in terms of the total allowable catch, how
19 do we segregate out the conservation units, or do
20 we?

21 MR. LAPOINTE: They're not segregated out in any
22 specific way in the calculation of total allowance
23 catch. They're part of the aggregates that --
24 part of each of the four aggregates that are
25 managed to --

26 Q All right. And I understand that it's Canada that
27 sets these four aggregates, correct?

28 MR. LAPOINTE: No, not the four aggregates in the sense
29 that those are determined in the treaty language,
30 so --

31 Q Okay.

32 MR. LAPOINTE: -- there isn't a -- you know, Canada
33 doesn't determine which stocks are in those
34 aggregates. It's actually something that is, you
35 know, bilaterally agreed to.

36 Q What I'm getting at, Mr. Lapointe, is whether
37 there is a challenge here, and the challenge that
38 I'll put to you directly is this, that if one
39 wants to preserve biodiversity and examine the
40 species from a biological perspective of
41 biodiversity and conservation units, and you're
42 then actually allocating catch on the basis of
43 these four larger groups, how are you able to
44 factor in the conservation unit into that scheme?

45 MR. LAPOINTE: My understanding is some of that
46 factoring occurs within the Fraser River Sockeye
47 Spawning Initiative which I understand is going to

1 be a topic for this group at a later date. But
2 that's my understanding. So we receive escapement
3 targets from Canada that are based on aggregates,
4 but part of the calculation of those escapement
5 targets within those aggregates or for those
6 aggregates involves the evaluation of the
7 achievement of benchmarks for finer units. In
8 some cases, they're actually a finer level than
9 conservation units; in some cases, they might be
10 aggregates of conservation units.

11 So that's my understanding of how it
12 currently is one of the ways in which conservation
13 units are addressed within the escapement policy
14 that Canada provides us.

15 Q Would you agree with me that it is a challenge,
16 that it's a challenge to be able to monitor and to
17 manage conservation units within the confines of
18 these large four aggregates?

19 MR. LAPOINTE: Yeah, it's a challenge from that
20 respect. It's also a challenge from the
21 perspective of our capabilities with our stock ID
22 methods. At present, we would not have the
23 capacity to identify uniquely each individual
24 conservation unit that's been identified by Canada
25 for two reasons: one is the genetic distinctness.
26 Not all of them are as genetically distinct. An
27 example would be that, you know, Late Stuart in
28 Stellako are not currently that genetically
29 distinct to allow us to uniquely identify them,
30 and yet they would be in two different
31 conservation units.

32 Also from the standpoint of relative
33 abundance, so Fraser sockeye have a very strong
34 cyclical pattern in their overall returned
35 abundance, and if you have stock that's present in
36 fairly low abundance -- and a good example would
37 be Cultus sockeye -- you have a limitation with
38 respect to sampling. In fact, it's a needle in
39 the haystack, probably, even countering an
40 individual -- Cultus individual with perhaps a
41 population size of a few thousand in a run of 30
42 million, would be very low.

43 So there's two constraints on the stock ID
44 capability that would impact our ability to
45 monitor that level of resolution.

46 Q I understand that the Pacific Salmon Commission is
47 actually involved with respect to the conservation

1 unit known as the Cultus Lake sockeye with
2 monitoring the number of returns through a
3 monitoring station at Swelter Creek; is that
4 correct?

5 MR. LAPOINTE: That's actually conducted by DFO, the
6 Department of Fisheries and Oceans. That's one of
7 the stations that was actually transferred to the
8 Government of Canada when the IPSFC was dissolved
9 and the PSC took over in 1985.

10 Q All right. But certainly from the perspective of
11 the PSC, you actually have that information and
12 data available to you, do you not?

13 MR. LAPOINTE: Yes, we do.

14 MR. LEADEM: I wonder if we can, Mr. Lunn, pull up the
15 PR-4, the overview of the Pacific Salmon Treaty,
16 and the Pacific Salmon Commission regarding
17 management of Fraser River sockeye salmon, and I'm
18 going to ask you to turn to page 35 of that
19 document.

20 THE COMMISSIONER: What exhibit number is that, Mr.
21 Leadem, do you know?

22 MR. LAPOINTE: It's PR-4, Mr. Commissioner.

23 THE COMMISSIONER: Okay, thank you.

24 MR. LAPOINTE: Thank you.

25 MR. LEADEM:

26 Q I'm going to ask you about the composition of some
27 of the commissioners and the respective
28 affiliations or background, and if you know the
29 answer, please advise me. If you don't, then I
30 can certainly defer it to someone else who might
31 know.

32 But let me begin by a general question. I
33 understand that you have nothing to do with
34 respect to the -- by "you", I mean the PSC. It's
35 nothing to do with respect to the appointment of
36 commissioners; is that correct?

37 MR. KOWAL: That's correct.

38 Q And with respect to the entity that's responsible
39 for placing these persons on these various
40 committees and commissions, as commissioners, it's
41 Canada that's responsible for the Canadian
42 representation; is that correct?

43 MR. KOWAL: That's correct.

44 Q So underneath Canada commissioners, we've already
45 been introduced to Mr. Paul Sprout. Mr. Ron
46 Fowler, is he connected with some affiliation to
47 your knowledge, Mr. Kowal?

1 MR. KOWAL: I know that he is a troller, troll
2 fisherman.
3 Q And Mr. Gerry Kristianson?
4 MR. KOWAL: He's associated with the recreational
5 fishery.
6 Q And I would take it, since I know Mr. Saul Terry,
7 he's connected with the aboriginal fishery; is
8 that correct?
9 MR. KOWAL: That is correct.
10 Q If we look at the alternate commissioners on that
11 same page, dropping down, Mr. Paul Macgillivray
12 we've already been introduced to through this
13 Commission. Mr. Garnet Jones? Mr. Kowal, can you
14 tell me --
15 MR. KOWAL: He's just resigned from the Commission, but
16 he was associated -- he was the member
17 representing the Province of B.C.
18 Q Mr. Russ Jones?
19 MR. KOWAL: He is a First Nations member from northern
20 B.C.
21 Q And Mr. Riddell says that he's president and CEO
22 of Pacific Salmon Foundation.
23 MR. KOWAL: Correct. He was just appointed by Canada.
24 Q If I can then ask you to please turn the page and
25 looking down at the Fraser Panel -- I'm obviously
26 only going to focus in on Canada. Mr. Barry
27 Rosenberger has been identified as an employee of
28 the Fisheries and Oceans, Canada. That's correct;
29 is it not?
30 MR. LAPOINTE: That's correct.
31 Q Mr. Chris Ashton?
32 MR. LAPOINTE: Area B-Seine.
33 Q Mr. Mike Griswold?
34 MR. LAPOINTE: Area H-Troll.
35 Q I take it Chief Ken Malloway would be there
36 because there was aboriginal background?
37 MR. LAPOINTE: That's correct.
38 Q Mr. Rob Morley is someone we've already been
39 introduced to through this Commission. Mr. John
40 Murray?
41 MR. LAPOINTE: Area E-Gillnet.
42 Q And then dropping down to the bottom of the page,
43 Mr. Lapointe, there is the Fraser River Panel
44 alternates.
45 MR. LAPOINTE: That's correct.
46 Q For Canada. Mr. Brian Assu?
47 MR. LAPOINTE: The combination of Area B-Seine, but

1 also Marine Area-First Nations.
2 Q Mr. Randy Brahniuk is described as someone
3 affiliated with Fisheries and Oceans Canada;
4 that's correct, is it not?
5 MR. LAPOINTE: That's correct.
6 Q Mr. Brent McCallum?
7 MR. LAPOINTE: Recreational fisheries.
8 Q Mr. Less Rombough?
9 MR. LAPOINTE: Less Rombough would be Area D-Gillnet.
10 Q Mr. Peter Sakich?
11 MR. LAPOINTE: B-Troll.
12 Q A troller?
13 MR. LAPOINTE: Troll, yes.
14 Q Mr. Marcel Shepert is identified there as the
15 fisheries coordinator for the Carrier Sekani
16 Tribal Council. That's right, to your knowledge?
17 MR. LAPOINTE: That's correct.
18 Q I wonder if I could also then just focus on some
19 of the other subcommittees or standing committees.
20 I'm not that concerned with finance. Standing
21 Committee on Scientific Cooperation on the bottom
22 of page 37, do you see it there, Mr. Lapointe?
23 MR. LAPOINTE: Scientific Cooperation Committee? Yes.
24 Q All right. There's two persons for Canada, Dr.
25 Laura Richards, whom we've already been introduced
26 to through this Commission, and Dr. Dick Beamish.
27 He's an employee of federal -- of DFO, is he not?
28 MR. LAPOINTE: Yes.
29 MR. KOWAL: Actually, Dr. Dick Beamish has been
30 replaced by Dr. Mark Saunders.
31 Q And where is Mark Saunders from, Mr. Kowal?
32 MR. KOWAL: Fisheries and Oceans.
33 Q All right. If I now then ask you to turn to the
34 bottom of page 39, please. I'm looking
35 specifically at the Fraser River Panel Technical
36 Committee. And the Chair of that -- or Co-Chair
37 of that committee appears to be a Ms. Anne-Marie
38 Huang? She's an employee of DFO, is she not?
39 MR. LAPOINTE: Yes.
40 Q And Ms. Sue Grant is also a DFO employee?
41 MR. LAPOINTE: Yes, she is.
42 Q As is Ms. Diana McHugh; is that right?
43 MR. LAPOINTE: That's correct.
44 Q Looking at the next page, Mr. Matt Mortimer is a
45 DFO employee, correct?
46 MR. LAPOINTE: That's correct.
47 Q And Mr. Jamie Scroggie, he's identified as a

1 resource management biologist. Do you know his
2 affiliation?

3 MR. LAPOINTE: He also is an employee of the Department
4 of Fisheries and Oceans.

5 Q And finally we -- I see Mr. Mike Staley. Who is
6 he, and with whom is he affiliated?

7 MR. LAPOINTE: Fraser River Aboriginal Fisheries
8 Secretariat I believe is the group that he's
9 representing when he's part of the Technical
10 Committee.

11 Q I'm going to skip a couple of these because
12 they're not particularly relevant to our
13 Commission's work, and I'm going to ask you to
14 turn to page 42, the Southern Fund Committee. The
15 Canada representation is represented by Mr. Don
16 Radford?

17 MR. KOWAL: That's correct.

18 Q And is he a DFO employee?

19 MR. KOWAL: Yes, he is.

20 Q Mr. Don Hall is identified as a member of the Nuu-
21 chah-nulth Tribal Council; is that correct?

22 MR. KOWAL: That's correct, but he represents the
23 Southern Panel. For the Southern Fund Committees,
24 there's a little different wrinkle to the
25 membership. There, each party is allowed to --
26 for the Southern Panel to represent three people,
27 three individuals.

28 Q Yes.

29 MR. KOWAL: In the case of Canada, they've chosen to
30 have their area director from their respective
31 area be a member, and the panel, Southern Panel
32 and the Fraser Panel have chosen their own
33 representative to represent them on the Southern
34 Fund Committee, and on the Northern Fund Committee
35 that works the same way for the Canadian
36 representatives.

37 Q And then, finally, I see the name Mr. Mike
38 Griswold. Would you know his affiliation, Mr.
39 Kowal?

40 MR. LAPOINTE: As previously stated, Area H-Troll, but
41 as Don said, on the Southern Fund he'd represent
42 the Fraser River Panel.

43 Q Okay. So by and large most of these people, would
44 you agree with me, tend to come from the fishing
45 industry or the aboriginal fishing industry; is
46 that fair to say? As well as DFO.

47 MR. LAPOINTE: Yeah, I think that would be fair to say.

1 MR. LAPOINTE: I misspoke. I should not have said
2 aboriginal fishing industry. I should have just
3 said aboriginal fishing. My apologies.

4 Q Looking in that list of all the people that we've
5 just gone through, for anyone that you could
6 characterize as being someone from the
7 environmental community (sic)?

8 MR. KOWAL: That's an observation I don't think I'm
9 free to make. I don't understand all of the
10 affiliation of all of the individuals.

11 Q All right. Certainly on the face of it, none of
12 them appear to be from the environmental
13 community, from an environmental non-governmental
14 organization; is that fair to say?

15 MR. LAPOINTE: On the list that you read through,
16 that's correct. Within the Fraser Panel, there
17 are two observers, Jeffrey Young and Ken Wilson
18 that are not on these lists, that both, I believe,
19 have represented, at one point, environmental
20 organizations and they're participants, as I
21 understand it, in the Fraser as observers as part
22 of the Fraser River Panel, but that understanding
23 would have to be clarified with someone from DFO
24 as to what their exact role is.

25 Q Right. Is it your understanding, Mr. Lapointe,
26 that as observers, they're allowed to simply
27 observe? They're not allowed to say anything or
28 comment upon anything, any of the discussions?

29 MR. LAPOINTE: I'm not sure what their role is in the
30 caucus. They do occasionally make some comments
31 or questions in the bilateral sessions, but I'm
32 not exactly sure what their role is in the caucus
33 because we don't participate in the caucus. So
34 you'd have to direct that question to someone from
35 Canada.

36 Q Does a member of the Pacific Salmon Commission
37 actually sit in on the meetings relating to the
38 Fraser River Panel?

39 MR. LAPOINTE: Very rarely. It would probably only be
40 if there were topics that were related to some
41 aspect of negotiation that there might be some
42 commissioner present, but it's very, very unusual
43 that there would be commissioners present at the
44 bilateral Fraser Panel meetings, full panel
45 meetings.

46 Q I understand that the PSC is in the business of
47 providing advice to the Fraser River Panel with

1 respect to forecasting catches and in-season
2 estimates; is that right?

3 MR. LAPOINTE: So when you say "PSC", I assume you're
4 referring to PSC staff; is that correct?

5 Q That's correct.

6 MR. LAPOINTE: Yes. We do provide recommendations on
7 run size and management adjustments. We don't
8 provide formal advice on forecasts other than when
9 the forecasts are provided, we would provide any
10 comments on them of a technical nature. If we had
11 particular concerns or something with the
12 calculation methods, we might express them at that
13 time.

14 Q Now, Mr. Lapointe, I'm going to show you two
15 documents. One is a paper that you authored. The
16 purpose of this is not for you to go into this
17 paper in any great detail, but simply I want to
18 have the paper tendered into evidence through you
19 so that I can ask questions of other witnesses who
20 may come later on in these proceedings.

21 The paper is entitled "Late run sockeye
22 salmon in the Fraser River, British Columbia, are
23 experiencing early upstream migration and
24 unusually high rates of mortality - what is going
25 on?" Is that a paper that you authored?

26 MR. LAPOINTE: Yes, it is.

27 MR. LEADEM: Mr. Commissioner, might that be marked as
28 the next exhibit in these proceedings, please?

29 THE REGISTRAR: Exhibit number 72.

30
31 EXHIBIT 72: Paper entitled, "Late run
32 sockeye salmon in the Fraser River, British
33 Columbia, are experiencing early upstream
34 migration and unusually high rates of
35 mortality - what is going on?
36

37 MR. LEADEM:

38 Q Now, I also understand that, in addition to --
39 THE COMMISSIONER: Mr. Leadem, I wonder if, just for my
40 clarification, the document that's up on the
41 screen - I hope you can see it - has other names
42 on it. Is this a document that was co-authored,
43 or -- it's just a little unclear to me as to --

44 MR. LEADEM: All right. I can ask the witness.

45 THE COMMISSIONER: Thank you very much.

46 MR. LEADEM:

47 Q Maybe you can just tell us the genesis of this

1 document, Mr. Lapointe, because you're listed
2 along with a number of other authors there.

3 MR. LAPOINTE: Yes. I gave a presentation at a Puget
4 Sound research conference, I think it was 2003,
5 and so this paper represents the written version
6 of that presentation, and clearly there are many
7 co-authors who contributed to the final product of
8 this paper; Steven Cooke, primarily, one of the
9 most important ones in the writing part of it.

10 Q I see that he's listed there as belonging to the
11 Centre for Applied Conservation Research at the
12 University of British Columbia.

13 MR. LAPOINTE: Yes. He was at that particular location
14 in 2003. He's now a professor at Carleton
15 University, my understanding is.

16 Q And that would be in Ottawa?

17 MR. LAPOINTE: I believe so, yes.

18 Q Without going into great detail with respect to
19 the paper, could you just provide the Commissioner
20 with a brief synopsis of what the paper relates
21 to?

22 MR. LAPOINTE: Sure. First of all, it references a
23 particular management group, the late-run
24 management group of the Fraser River sockeye, one
25 of the four groups. In fact, it's somewhat of a
26 subset of those groups. Prior to 1995, late-run
27 sockeye would migrate down the coast just like
28 other Fraser River sockeye, and then had a very
29 unusual behaviour of delaying or holding off at
30 the mouth of the Fraser River in the Strait of
31 Georgia for three to six weeks.

32 Beginning in 1995, that behaviour changed,
33 and individuals began migrating upstream much
34 earlier, so prior to 1995, it would be rare to see
35 late-run sockeye in the Fraser River in August,
36 for sure, and not even in the first week or so of
37 September. They would typically peak their
38 upstream migration prior to '95, in the third week
39 of September after this holding period of three to
40 six weeks in the Strait of Georgia.

41 But beginning in '95, they started to migrate
42 upstream earlier and the period of delay shortened
43 considerably to the point where, in 2000 and 2001,
44 the entire upstream migration was virtually
45 complete by the end of August. The consequences
46 of that behaviour are that there is fairly
47 significant both en route and pre-spawn mortality.

1 I think we talked about the difference between
2 those two terms back when I was here last time.
3 But "en route" refers to fish that don't reach the
4 spawning grounds, die somewhere between the lower
5 river and their spawning areas. "Pre-spawn" is a
6 particular type of mortality rate essentially to
7 egg retention on the spawning grounds. Female
8 that die -- reach the spawning grounds, dies on
9 the spawning grounds with some more or less of all
10 of its eggs intact.

11 So we had estimates of en route mortality in
12 2000 and 2001 that were greater than 90 percent
13 for some of these late-run stocks, a combination
14 of en route and pre-spawn. Most of it was en
15 route.

16 This presentation was made early in our
17 understanding of that whole phenomenon, and if you
18 go through the document, you'll note that I
19 actually was trying to get the idea out there and
20 see if I could get some advice from colleagues
21 that maybe weren't as familiar, but just external
22 advice from people to see if any others had
23 encountered something similar to this.

24 One of the late-run stocks impacted by this,
25 as indicated in the abstract, is Cultus sockeye,
26 and I suspect that this behaviour by the late runs
27 in Cultus specifically has been a very significant
28 factor in the current concerns about the status of
29 Cultus sockeye. There have been a number of steps
30 since then, the most recent or best sort of up-to-
31 date of the status of research and the significant
32 research funded by the Commission and Canada
33 through the NSERC, National Sciences Engineering
34 Research Council on this topic.

35 There's proceedings of a conference in June
36 of 2008 that's posted on our website. I believe
37 the editor or the author would probably be Scott
38 Hinch, since he was the lead that has -- sort of
39 where we are with respect to understanding. I
40 wouldn't try to attempt (sic) to summarize that
41 for you, but I would suggest that we think we
42 understand why these fish are dying. I think we
43 understand that Fraser sockeye generally seem to
44 have a life span in fresh water of about somewhere
45 between 30 and 45 days. These late-run sockeye,
46 such as the Adams, their peak of spawn is the
47 middle of October. So if you come into the river

1 in August, you're obviously going to have to
2 survive much longer than 45 days prior to
3 spawning, their normal spawning date.

4 So it's this longer duration in fresh water,
5 exposure to disease, that eventually kills all
6 these fish. It's just a question of whether you
7 spawn before you die, or you die before you spawn.
8 It just so happens when you come in early, you're
9 more likely to die before you spawn.

10 So we understand, I think, that aspect much
11 more. Because they come in earlier, they're
12 subject to higher temperatures, for example, than
13 they would be if they came in, in later fall, and
14 that has a relevance with respect to disease.
15 However, I don't think we yet understand why it
16 is, what is causing them to show this abnormal
17 behaviour. There's been a significant amount of
18 energy spent, and I can point you to the document
19 that talks about some of the hypotheses that are
20 out there now, but it's still a mystery as to why
21 these fish are actually coming up early in some
22 years and not in others, definitely notice a
23 pattern where in the larger late-run years such as
24 2010 when the Adams is a very large run, it seems
25 like the behaviour is less pronounced than in some
26 of the years when they're a much smaller fraction
27 like in the Weaver years.

28 I think maybe I'll stop there.

29 MR. LEADEM: All right. Thank you for that.

30 Mr. Commissioner, I was going to go onto the
31 next document.

32 Q The other document I wanted to show to you, Mr.
33 Lapointe -- and before I do so, I want to -- we
34 didn't go into your role as a scientist within the
35 confines of the Pacific Salmon Commission at all,
36 and perhaps before I show you the document, you
37 can just generally tell the Commissioner what your
38 role is within PSC.

39 MR. LAPOINTE: So, as the chief biologist, I obviously
40 have the administrative responsibility for the
41 staff there under me, about 16 staff. I have
42 scientific authority for the science that comes
43 out of the PSC staff, and I have obviously a
44 direct role in communicating to the Fraser River
45 Panel, both recommendations but also information
46 of a technical nature in relation to the various
47 aspects of our assessments.

1 I'm occasionally called on to provide
2 alternatives in terms of policy options on behalf
3 of the Fraser River Panel. It depends upon what
4 it is exactly that they're looking for. And, of
5 course, I have that very continual in-season
6 communication role with the Fraser River Panel on
7 the technical information that we provide.

8 Q When you say that you had a staff of 16, many of
9 them are biologists, are they?

10 MR. LAPOINTE: Yes, biologists primarily.

11 Q Do you also cooperate and, from time to time, meet
12 with other scientists, whether they're from
13 academia or from the environmental movement or
14 from DFO to discuss the nature of the science and
15 the questions and hypotheses that are arising in
16 the context of Fraser River sockeye?

17 MR. LAPOINTE: Yes. It's usually through involvement
18 in particular projects, so one of the parts of my
19 job would be to write letters of support for
20 problems of the late Fraser sockeye, so in the
21 case of late-run, for example, I wrote many
22 letters of support, and for research proposals
23 directed at addressing those problems. So it's
24 usually through that avenue that I get involved
25 with that broader scientific community.

26 Q Do you write letters to Department of Fisheries
27 and Oceans suggesting what kinds of science they
28 should be researching?

29 MR. LAPOINTE: Not typically writing letters. Any
30 letters or memos of that nature I normally would
31 write would be directed towards the Fraser River
32 Panel. If I'm asked to review, say, a document,
33 say, through the science advisory process, then
34 there would be reviews that would be written, but
35 not normally memos directly to the Department.

36 Q We heard some evidence last week in your absence
37 about -- from the DFO scientists concerning PSARC,
38 the Pacific Science Advisory -- and I must admit I
39 don't know what the "R" and "C" stand for.

40 MR. LAPOINTE: Review Committee, I believe.

41 Q Review Committee. Thank you. Have you ever sat
42 on that -- on a PSARC meeting?

43 MR. LAPOINTE: I've not sat as a committee member, but
44 I have participated in reviews of -- for example,
45 it's normally routine for me to participate in the
46 review of the Fraser River sockeye forecasts,
47 either as a formal reviewer or as an external

1 participant. But not -- the members of PSARC or,
2 I guess, CSAP is what it's called now, are usually
3 members of the Department of Fisheries and Oceans.
4 I think they would be exclusively members of -- in
5 terms of formal committee members.

6 Q Do you have any opinion about the efficacy of that
7 program?

8 MR. LAPOINTE: No, not really. I mean, I've
9 participated -- I think, you know, in the meetings
10 that I've participated, I think it's provided
11 pretty effective feedback on the research that's
12 been presented to it.

13 Q Now, in conjunction with your work as a scientist,
14 do you sponsor, from time to time, workshops to
15 examine some of the issues that may arise with
16 respect to the fisheries?

17 MR. LAPOINTE: Yes. In fact, the late-run issue would
18 be one example. We had a number of workshops
19 related to late-run sockeye issues, so the Pacific
20 Salmon Commission would sponsor those workshops.

21 Another example would be the -- sometimes
22 funding for those might come through Southern
23 Fund. Sometimes it might come through the
24 Commission.

25 Q We heard some evidence earlier about some
26 workshops that were sponsored by a so-called think
27 tank in Simon Fraser University in December of
28 2009. Did you participate in that?

29 MR. LAPOINTE: Yes, I was invited to participate and I
30 did participate.

31 Q And did you also participate in the two-day
32 workshop in March of 2010, also hosted by Simon
33 Fraser University?

34 MR. LAPOINTE: Yeah, that was a public meeting session
35 that occurred as a follow-up to the think tank.

36 Q Right. And you made a presentation to that --

37 MR. LAPOINTE: Yes, I think I might have --

38 Q -- proceeding.

39 MR. LAPOINTE: -- made a couple of presentations to
40 that group.

41 Q All right. I think you made one where Colonel
42 Mustard did it in the ocean with a knife or
43 something like that?

44 MR. LAPOINTE: That's correct. There were a number of
45 hats that I was asked to wear, and I happened to
46 have my Sherlock Holmes hat with me that day, so I
47 donned it for that particular presentation.

1 Q All of which is to say that not much -- not many
2 scientists know exactly what's going on, do they?

3 MR. LAPOINTE: With respect to the declining
4 productivity you're talking about?

5 Q That's correct.

6 MR. LAPOINTE: I think that, you know, there was, of
7 course, a Pacific Salmon Commission workshop that
8 occurred in June sponsored by the PSC, so I think
9 that, you know, that document I guess will speak
10 for itself. In that analysis, we were pointing
11 towards the ocean, and in particular for 2009,
12 pointing towards Georgia Strait as a potential
13 spot where something might have happened to affect
14 the 2009 return.

15 But the ability to discern beyond that is
16 limited by not having the data of the life cycle
17 stages to determine, you know, where the
18 bottleneck might be. So the last places we've
19 seen these fish in most cases would be on the
20 spawning ground. In a few cases, would be --
21 juvenile estimates, for example, the Chilko, so it
22 makes it difficult to know in any more detail past
23 that part of the life cycle what specifically
24 might have happened in that particular instance.

25 Q You've referenced this workshop that I believe was
26 prepared for Pacific Salmon Commission. I'm going
27 to ask Mr. Lunn to show you a document entitled,
28 "Synthesis of evidence from a workshop on the
29 decline of Fraser River sockeye, June 15-17,
30 2010." Is that the conference that you had in
31 mind, Mr. Lapointe?

32 MR. LAPOINTE: Yeah, that's the workshop that I meant,
33 yes.

34 Q And just staying with the front page for the time
35 being, you're listed there as one of the attendees
36 on behalf of the Pacific Salmon Commission, are
37 you not?

38 MR. LAPOINTE: Yes, I am.

39 Q In addition, there is a number of other eminent
40 scientists who also appeared. Could you just give
41 some background?

42 MR. LEADEM: We're not going to go into great detail,
43 Mr. Commissioner, with this, because I'm hoping to
44 go into this much later in the testimony as it
45 unfolds. But I want to take advantage of Mr.
46 Lapointe being here.

47 Q Could you give some background to why this

1 workshop was held?

2 MR. LAPOINTE: It was clear that the 2009 return got
3 the Commission's attention. I mean it was a very,
4 very low return, and so there was a strong desire
5 on the part of the Commission -- and when I say
6 Commission, I should be more specific -- Pacific
7 Salmon Commission --

8 Q Pacific Salmon Commission.

9 MR. LAPOINTE: -- to try to conduct some sort of
10 conference or workshop to see what process we
11 could bring to bear on -- or what information we
12 could bring to bear on that issue. We were
13 cognizant of the fact that the Cohen Commission
14 was going to be ongoing, but also cognizant of the
15 fact that their time frame was significantly
16 longer. So the thought was that if we could form
17 a bilateral consensus group of scientists that we
18 could probably bring some information to bear on
19 this problem, and hopefully would provide some
20 assistance in terms of the Cohen Commission in
21 terms of outlining some of the issues that we
22 identified.

23 It was actually suggested by the Scientific
24 Cooperation Committee of the PSC.

25 Q And this particular workshop was attended by at
26 least one representative from Department of
27 Fisheries and Oceans, was it?

28 MR. LAPOINTE: Yes.

29 Q That would be Chris Wood?

30 MR. LAPOINTE: That's correct. You'll also note Mike
31 Bradford earlier on in the list there as well.

32 Q All right. I missed him. Thank you.

33 MR. LEADEM: Might that be the next document, please,
34 Mr. Commissioner?

35 THE REGISTRAR: Number 73.

36
37 EXHIBIT 73: Paper entitled, "Synthesis of
38 evidence from a workshop on the decline of
39 Fraser River sockeye, June 15-17, 2010"
40

41 THE COMMISSIONER: Would this be a convenient place,
42 Mr. Leadem?

43 MR. LEADEM: Yes, it would be, thank you. I'm nearly
44 finished, but I would like the opportunity to
45 consult with my client, Mr. Wilson, who's in the
46 audience.

47 THE COMMISSIONER: Yes, certainly. Perhaps we could

1 take the lunch adjournment, then.

2 MR. LEADEM: Thank you.

3 THE COMMISSIONER: Thank you.

4 THE REGISTRAR: The hearing is now adjourned until 2:00
5 p.m.

6

7 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

8 (PROCEEDINGS RECONVENED)

9

10 THE REGISTRAR: Hearing is now resumed.

11

12 CROSS-EXAMINATION BY MR. LEADEM, continuing:

13

14 Q Gentlemen, I want to get into an area of
15 conservation because I want to understand how the
16 Salmon Commission factors conservation into making
17 its advice available to the Fraser River Panel and
18 providing advice concerning the TAC. Would you
19 agree with me that conservation is the primary
20 goal that should always be followed in terms of
21 setting a TAC?

22 MR. LAPOINTE: (Microphone not on) Pardon me. It's
23 reflected in the order of priorities, so in the
24 context of the treaty conservation really refers
25 to the spawning escapement target, which is the
26 highest priority.

27 Q Right. And that's really -- the focus is the
28 escapement target because that's really where it
29 matters, to get the brood stock onto the reds,
30 right?

31 MR. LAPOINTE: That's certainly one of the purposes of
32 spawning escapement is to sustain future
33 generations.

34 Q And to me that just makes sense, because if you
35 don't have fish, we don't have anything to talk
36 about. Now, in terms of your providing advice,
37 did I have it clear, Mr. Lapointe, that it's the
38 actual commission staff that provide the advice to
39 the Fraser River panel?

40 MR. LAPOINTE: Yes.

41 Q And the Fraser River panel are not necessarily
42 obligated to follow that advice; is that right?

43 MR. LAPOINTE: They can with respect to both run size
44 and fisheries, adopt something different than what
45 we say based on bilateral agreement.

46 Q And to your knowledge, does that ever happen, that
47 the Fraser River Panel chooses to follow some

1 other information or chooses not to follow the
2 advice provided by the PSC staff?
3 MR. LAPOINTE: I can recall perhaps two or three
4 circumstances in the time that I've been with the
5 Commission, which is since 1992, where the panel
6 may have adopted slightly different run size or
7 adopted a fisheries action contrary to our advice.
8 It would be less than five times that I could
9 recall.
10 Q I wonder if we could have PR-4 brought up again
11 please. And I want to go to the Appendix 2, the
12 Pacific Salmon Treaty.
13 MR. LUNN: Mr. Leadem, do you have the page number?
14 MR. LEADEM: Oh, sorry, it's page 30. Thank you, Mr.
15 Lunn.
16 Q And this is mostly for my edification, Mr.
17 Lapointe or Mr. Kowal, because I'm a little bit
18 confused about how the Alaska catch is factored
19 into the total allowable catch. Do I have it
20 right that the Alaska catch which I see there in
21 Point 3 under Chapter 4 in the brackets, including
22 any catch of Fraser River sockeye identified in
23 Alaskan waters, is that then added to the total
24 run size?
25 MR. LAPOINTE: Yes, all catches are part of the total
26 run.
27 Q But that Alaska catch is not then considered part
28 of the U.S. proportion of the catch, is it?
29 MR. LAPOINTE: That's correct. The U.S. share is based
30 on the catch in Washington waters.
31 Q All right. So that's 16.5 percent allocation,
32 maximum allocation, to United States fisheries
33 does not take into consideration that Alaska
34 catch?
35 MR. LAPOINTE: That's correct.
36 MR. LEADEM: All right. Thank you. Those are my
37 questions.
38 THE COMMISSIONER: Just as a follow-up, Mr. Leadem,
39 from my understanding when the witness is talking
40 about Alaskan waters and Washington waters, is
41 that marine and freshwater or...?
42 MR. LEADEM: I'll follow up with the --
43 THE COMMISSIONER: Thank you very much.
44 MR. LEADEM: -- with the witness on that.
45 Q Mr. Lapointe, perhaps you can distinguish when --
46 the treaty makes mention of the catch -- any catch
47 of Fraser River sockeye identified in Alaskan

1 waters, where would that -- where would those
2 waters be?
3 MR. LAPOINTE: They would primarily be in the marine
4 waters of Southeast Alaska.
5 Q And we've heard some evidence, I believe, from you
6 and Dr. Welch earlier about the lifecycle of
7 salmon and some of them go up into the Gulf of
8 Alaska, so that would be as they're returning down
9 before they enter into B.C. waters, some of them
10 are intercepted and caught in Alaskan waters, are
11 they?
12 MR. LAPOINTE: Yes. Just north of B.C. Primarily the
13 area is an area called Noyes Island which is just
14 north of B.C. in Southeast Alaska, not in the high
15 seas, but in the coastal waters of Alaska.
16 Q And when you mentioned Washington, did you -- you
17 made reference, I believe, in your evidence
18 earlier to Washington; did you mean Washington
19 waters marine environment or where did you mean?
20 MR. LAPOINTE: Yes, marine waters of Washington.
21 Q We saw the map earlier that Commission counsel put
22 to you that demarked convention waters; is there a
23 similar map that demarks the present waters for
24 the purposes of the treaty or are they one and the
25 same?
26 MR. LAPOINTE: They are essentially identical, but
27 there is another version of the map that's more
28 current than the map that has been entered into
29 evidence, but the areas are identical.
30 MR. LEADEM: Those are my questions, Mr. Commissioner.
31 THE COMMISSIONER: Thank you very much.
32 MS. BAKER: Mr. Commissioner, the next party is Areas D
33 and B.
34 MS. SMITH: Thank you, Mr. Commissioner, Lyndsay Smith
35 on behalf of the two areas. If I could just have
36 a moment with Commission counsel? Thank you.
37 Thank you, Mr. Commissioner, for that
38 opportunity. I understand that there are several
39 other participant counsel going over to tomorrow
40 and I'm going to ask for the same indulgence. I'd
41 like to review Exhibit 73 before examining the
42 panel in further detail. Thank you.
43 MS. BAKER: The next party is Southern Area E
44 Gillnetters and the Association of -- oh, I can't
45 -- I'm sorry, Mr. Butcher, I can't remember what
46 your BCFSC is.
47 MR. BUTCHER: David Butcher. I can proceed this

1 afternoon.
2

3 CROSS-EXAMINATION BY MR. BUTCHER:
4

5 Q Just following up on a question from Mr. Leadem at
6 the end about the Alaska fishery, would I be
7 correct in stating that the Alaska commercial
8 catch of Fraser River sockeye is not significant
9 in terms of management of the resource?

10 MR. LAPOINTE: It would depend upon the particular year
11 in question. There have been years when the
12 magnitude of the Alaskan catch has been large
13 relative to catches elsewhere and it relates to
14 how far north the fish hit land, so if they fish
15 -- if they hit farther north on a really small
16 run, sometimes the Alaskan catch may be a
17 significant fraction relative to catches
18 elsewhere. But in general, it is a very small
19 component.

20 Q In most years it would be a very small component?

21 MR. LAPOINTE: In most years, yes. Thank you.

22 MR. BUTCHER: Mr. Lunn, I am going to ask the witness
23 to refer to some materials in the 2005 Fraser
24 River Panel Report which is item number 2 on the
25 ringtail documents for these proceedings. Thank
26 you.

27 Q Now, if we can go to page 34 of that document,
28 please? And if you can enlarge under the heading
29 and achievement of objectives, please. This
30 paragraph sets out the mandate of the Fraser River
31 Panel, Mr. Lapointe.

32 MR. LAPOINTE: That's correct.

33 Q With three goals in descending order of
34 importance. The first is to achieve the spawning
35 escapement targets for Fraser River sockeye and
36 pink salmon that is set by Canada or modified by
37 panel agreement.

38 MR. LAPOINTE: That's correct.

39 Q The second is to achieve targets for international
40 sharing of the total allowable catch as defined by
41 the treaty or by agreement of the parties?

42 MR. LAPOINTE: That's correct.

43 Q And the third is to achieve domestic catch
44 allocation goals within each country.

45 MR. LAPOINTE: That's correct.

46 Q Now, if you can go back, and this also follows up
47 on a question from Mr. Leadem, to page 5 of that

1 report, and if you can enlarge the map, please.
2 This map, Mr. Commissioner, also appears in the
3 paper prepared for this panel, but it shows in the
4 shaded area, the Fraser River panel area.

5 MR. LAPOINTE: That's correct.

6 Q And as you've told us, that really is exactly the
7 same area as existed in the treaty signed in 1935?

8 MR. LAPOINTE: Yes, if you look at Article 1 of the
9 convention and compare it to Annex 2 of the
10 existing treaty, it's virtually word-for-word. I
11 haven't done a complete comparison, but it is
12 virtually word-for-word.

13 Q Now, that treaty was first drafted in 1930 at the
14 latest, wasn't it?

15 MR. LAPOINTE: Yeah. Initial -- yeah, it would have
16 been drafted around that time, 1930, yeah.

17 Q And at that time, there were no aboriginal
18 commercial fisheries on the Fraser River at all,
19 were there?

20 MR. LAPOINTE: I'm not aware of any.

21 Q And there were no --

22 MR. LAPOINTE: To the best of my knowledge.

23 Q And there were no commercial fisheries above
24 Mission?

25 MR. LAPOINTE: I'm not aware of any commercial
26 fisheries above Mission, that's correct.

27 Q And the Johnstone Strait area is today an area
28 where salmon are caught commercially?

29 MR. LAPOINTE: That's correct.

30 Q Were they caught there in the 1930s?

31 MR. LAPOINTE: The catch of Fraser sockeye in non-panel
32 waters at that time was very small, you know, five
33 percent or less of the total harvest in those
34 years.

35 Q So when the boundaries of what is now the Fraser
36 Panel was set it was intended that it would
37 capture the vast majority of the commercial catch?

38 MR. LAPOINTE: The current Fraser Panel area?

39 Q What is now the Fraser Panel area and was the
40 convention treaty area in 1930 was the area in
41 which almost all of the salmon were caught at the
42 time these boundaries were drawn.

43 MR. LAPOINTE: So at the time that the boundaries were
44 drawn for the convention area, you're correct, it
45 had captured virtually all of the commercial
46 harvest of -- or Fraser sockeye. At the time when
47 the Fraser Panel area was designated as being the

1 same, it was well understood that there were large
2 fractions of fish being caught outside the panel
3 area and the main change in the 1985 treaty, as I
4 mentioned earlier in my earlier testimony was that
5 the original convention just asked the parties to
6 manage the catch in convention waters to that
7 split of 50/50 between the United States and
8 Canada.

9 When the 1985 treaty was signed, it is true
10 that the area is identical but it was acknowledged
11 and it was specified that the catches outside
12 panel waters would be taken into account in the
13 calculation of shares. So in other words, now
14 even though the panel doesn't have regulatory
15 control of the shaded area that you see on your
16 screen, the catches outside the panel area do
17 count and -- up until one of the revisions of the
18 annex.

19 I don't remember which year it was, that
20 would have included the catches in non-panel areas
21 in both Alaska -- in both United States and
22 Canada. The current version of the treaty has
23 stipulated that the Alaskan catch doesn't count.
24 I don't know exactly what year that occurred.

25 Q But the point that I want to make is that when the
26 1985 treaty was drafted there was significant
27 commercial activity outside of the Fraser Panel
28 area.

29 MR. LAPOINTE: Absolutely.

30 Q But it was not brought within Fraser Panel
31 control.

32 MR. LAPOINTE: That's correct.

33 Q And that has led to a Balkanization of control
34 over the management of the Fraser fishery,
35 different -- and perhaps I'll just follow that up
36 with one other comment. Different bodies are
37 responsible for managing the catch in different
38 areas.

39 MR. LAPOINTE: It's true that the Fraser Panel has
40 regulatory authority over the panel area and that
41 Canada, through DFO has regulatory authority over
42 the non-panel areas.

43 MR. BUTCHER: Now, if we can just for a moment go to a
44 document, it's a book called *Restoring the Fraser*
45 *River*. Mr. Lunn, it is number 5 on this ringtail
46 list, and particularly to page 263.

47 MR. LUNN: (Indiscernible - away from microphone).

1 THE COMMISSIONER: Mr. Butcher, is that earlier
2 document -- do you wish to mark it or... I'm
3 sorry. Sorry, no, not the book you were referring
4 to --
5 MR. BUTCHER: Yes, I --
6 THE COMMISSIONER: -- the 2005 panel.
7 MR. BUTCHER: Yes. I was going to ask that be marked
8 at the end, but I -- we might as well mark that
9 document as --
10 THE COMMISSIONER: All right.
11 MR. BUTCHER: -- as an exhibit. I'm going to be coming
12 back to that in a moment. Page 263, Mr. Lunn, and
13 whilst Mr. Lunn is looking for that...
14 Q The 2005 Pacific Salmon Commission report that
15 we've just been looking at is the last annual
16 report that has been published by the commission.
17 MR. LAPOINTE: That's correct.
18 Q Is that correct? Is there a reason for the delay
19 of several years in getting these reports out?
20 MR. LAPOINTE: It's combination of reasons. There's
21 been -- there was some lag, I believe, starting
22 around 2003 with the production of them and
23 there's a lag in also the review, so it's -- we
24 have a backlog.
25 We're trying to clear it out and hopefully
26 we'll be able to clear that out soon, but it takes
27 time. They have to be submitted to both parties
28 for review, there's been turnover in editorial
29 staff, you know, my staff gets drawn into other
30 things, so there's a number of reasons that have
31 contributed both on our side and on the parties'
32 side for review.
33 Q If you can blow up or enlarge, to be more
34 technically correct, the diagram at the top,
35 please? This is a draft from the International
36 Pacific Salmon Fisheries Commission records
37 showing the aboriginal food fishery quantum in
38 British Columbia between 1923 and 1985; is that
39 correct?
40 MR. LAPOINTE: That's correct.
41 Q And it shows that at the time the treaty -- sorry,
42 the convention came into force, the aboriginal
43 food fish catch was less than 100,000 pieces a
44 year.
45 MR. LAPOINTE: Yes, that seems to be what the graph
46 shows.
47 Q And probably closer to 70,000 a year?

1 MR. LAPOINTE: That's correct.

2 Q By the early 1980s that food fish catch had
3 increased to around or even over 400,000?

4 MR. LAPOINTE: That's correct.

5 Q Was it that -- was it these records that led to
6 the reference to 400,000 in the 1985 treaty? And
7 I should perhaps be a little more precise than
8 that. To the reference in Chapter 4, Section 3
9 sub (c) of that treaty?

10 MR. LAPOINTE: Be honest, I don't know the answer to
11 that question. I don't know. You know, it seems
12 coincidental that there are about similar
13 magnitude, but other than that, I can't comment as
14 to one -- whether one led to the other. I just
15 was not part of that negotiation or even employ of
16 the IPS -- or PSC or IPSFC at that time, so I
17 don't know the answer to that question, I'm
18 sorry.

19 Q Nevertheless, when -- you will agree that when the
20 area under convention management was first
21 defined, there was no aboriginal commercial
22 fishery firstly.

23 MR. LAPOINTE: That's correct.

24 Q And the aboriginal food fishery appeared to be
25 relatively insignificant, 70,000 or so on the
26 river according to these numbers.

27 MR. LAPOINTE: That's correct, but do be aware that
28 paragraph 3 of Article 1 and paragraph 3 of Annex
29 2 both extend at least in a technical sense, panel
30 jurisdiction to cover the Fraser watershed right
31 up to the tributary waters, so that -- those were
32 always and are still part of panel waters.

33 MR. BUTCHER: Now, if we can please go back to the 2005
34 Annual Report and go this time please to page 27,
35 and I'm just going to use this year as an example,
36 because it's the -- in the statistics that -- or
37 in the materials we've been provided for this
38 panel, if you can please enlarge that, Mr. Lunn,
39 as best you can.

40 MR. LUNN: The entire table?

41 MR. BUTCHER: Yes.

42 Q We can see that in this particular year, the
43 total, looking at the --

44 MR. BUTCHER: Maybe if you can go to the very top --
45 the top third of that and enlarge that first.

46 Q You'll see that in this particular year, the total
47 commercial catch in your panel area was only 3400

1 fish.
2 MR. LAPOINTE: That's correct.
3 Q Total commercial catch in non-panel areas was
4 126,000?
5 MR. LAPOINTE: That's correct.
6 Q Would that mainly have been in Johnstone Strait?
7 MR. LAPOINTE: Yes. I believe so. In non-panel areas.
8 No, actually, you know what? Yeah, I think it is
9 Johnstone Straits. Yeah.
10 Q And total aboriginal catch or First Nations catch
11 as it's been described in these reports, was
12 956,000?
13 MR. LAPOINTE: That's correct.
14 Q And if you go down to the very bottom, Mr. Lunn,
15 you'll see that the total catch in all fisheries
16 was 1,755,400.
17 MR. LAPOINTE: That's correct.
18 Q By this year, your panel is controlling next to
19 none of the Fraser sockeye catch?
20 MR. LAPOINTE: It's correct that the catch in panel
21 waters is a very low fraction of the total.
22 Q It's been similar in many of the other recent
23 years.
24 MR. LAPOINTE: This would probably be the most extreme
25 I could recall but, yeah, there have been many
26 years where the panel catch -- or a number of
27 recent years, I should say, where the panel catch
28 was a relatively small fraction.
29 Q And so getting back to your primary management
30 goal -- I just want to find it to get the language
31 absolutely correct - achieving spawning escapement
32 targets for Fraser River sockeye and pink salmon,
33 your role in that, in achieving that goal in a
34 year like 2005 is very limited?
35 MR. LAPOINTE: That's correct.
36 Q Almost non-existent, in fact?
37 MR. LAPOINTE: Well, I wouldn't say non-existent in the
38 extent that the decisions made to determine what
39 catches were taken were based on the information
40 that PSC staff provided, so we're still providing
41 the information and the decisions not to go
42 fishing in panel waters were obviously based on
43 that information. So --
44 Q Has --
45 MR. LAPOINTE: So --
46 Q Obviously has an impact.
47 MR. LAPOINTE: Obviously has an impact, yes.

1 Q But it's been a decision with respect to whether
2 or not to fish, not how and when to fish.

3 MR. LAPOINTE: With respect to the magnitude of the
4 catch, it had a very limited impact.

5 Q Now, and so rather than the panel making the
6 decisions about when and where sockeye salmon were
7 caught that year, it was the Department of
8 Fisheries and Oceans making the decisions?

9 MR. LAPOINTE: That's correct.

10 Q Now, I'm going to jump -- I'll go back in time to
11 a comment made by John Fraser in his report.
12 That, Mr. Lunn, the Fraser Report, is document --
13 the tenth document on our list here.

14 THE COMMISSIONER: Before we go on to that one, Mr.
15 Butcher, the 2005 report was marked as Exhibit 74.

16 MR. BUTCHER: Thank you.

17
18 EXHIBIT 74: 2005 Report of the Fraser River
19 Panel to the Pacific Salmon Commission on the
20 2005 Fraser River Sockeye and Pink Salmon
21 Fishing Season
22

23 MR. BUTCHER: And actually, if I could also have marked
24 now the whole of the *Restoring the Fraser River*
25 book as Exhibit 75, please?

26 THE REGISTRAR: Exhibit 75.

27
28 EXHIBIT 75: *Restoring Fraser River Salmon, a*
29 *History of the International Pacific Salmon*
30 *Fishers Commission, 1937-1985*
31

32 THE COMMISSIONER: Mr. Butcher, what is the title of
33 that book again?

34 MR. BUTCHER: It's entitled *Restoring Fraser River*
35 *Salmon*. It's by John E. Roos.

36 THE COMMISSIONER: Thank you.

37 MR. BUTCHER: The subtitle is *A History of the*
38 *International Pacific Salmon Fisheries Commission,*
39 *1937 to 1985* and Mr. Roos was one of the
40 commissioners.

41 THE COMMISSIONER: Right. Thank you.

42 MR. KOWAL: I could correct that. That was not a
43 commissioner. He was the executive secretary for
44 the former IPSFC.

45 MR. BUTCHER: Thank you for that correction.

46 Q If we could please go to page 53 of this report.
47 Now, in -- the Fraser Inquiry was set up because

1 there had been -- because significantly fewer fish
2 had arrived on the spawning grounds than had been
3 anticipated because of the number that had passed
4 Mission.

5 MR. LAPOINTE: That's partly correct. There was also
6 an issue with respect to late-run sockeye and it
7 was anticipated from marine areas, but that's
8 partly -- those two reasons. There was a
9 shortfall versus numbers expected.

10 Q And on page 53, if you can please enlarge the
11 middle paragraph or the middle subject area.
12 Going to the second sentence, Mr. Fraser said this
13 in his report:

14
15 The in-season management process is so
16 fragmented the PSC --

17
18 The Pacific Salmon Commission.

19
20 -- does not have adequate control to ensure
21 that these goals are met in conditions such
22 as occurred in 1994. Conservation objectives
23 will continue to be placed at risk if the
24 responsibility for escapement to Mission is
25 not matched by adequate management authority.
26 This could be achieved by vesting the
27 Canadian section of the Fraser River Panel
28 with responsibility for in-season management
29 for the sockeye and pink salmon fisheries in
30 Canadian waters beyond the current PSC
31 convention area.

32
33 Have I read that correctly?

34 MR. LAPOINTE: Yes.

35 Q Would you agree that today we are still faced with
36 a problem. You've not accepted that it is a
37 Balkanized but you'll agree with the problem that
38 we have different managers managing different
39 parts of the same fishery?

40 MR. LAPOINTE: From a management authority perspective,
41 I would agree. From a coordination perspective,
42 there is an attempt to coordinate the information.
43 So we are all managing to the same set of numbers,
44 if you like, but from an authority perspective, it
45 could create difficulties.

46 Q Would it be beneficial today for this
47 recommendation of Mr. Fraser to be implemented,

1 namely that your panel have authority for the
2 management of the in-season sockeye outside of
3 your panel areas, that is, in Johnstone Strait and
4 above Mission and in the other fisheries within
5 your area that are not managed by your panel?

6 MR. LAPOINTE: It would depend --

7 MS. GAERTNER: Mr. Commissioner, I'm not sure about the
8 expertise of these witnesses to answer questions
9 like this and I'm -- as I recall today he wasn't
10 being qualified to give expert evidence as it
11 relates to panel decisions. He's a staff member
12 within the Commission.

13 MR. BUTCHER: He is the chief biologist of the Pacific
14 Salmon Commission and has been since 2002 and with
15 respect, it's precisely opinions such as his that
16 you should be listening to.

17 THE COMMISSIONER: Well, I'm going to allow Mr. Butcher
18 to ask the question. If the witness feels that he
19 has the -- within the context of his position, the
20 expertise to answer, he may do so. If he does not
21 feel that that is within the purview of his
22 expertise, then he should say so, and I think Ms.
23 Gaertner will have an opportunity when she cross-
24 examines to pursue this matter.

25 MR. BUTCHER:

26 Q I think the -- I'll ask the question again. Today
27 -- sorry. Start again. When the treaty process
28 was set up, the panel and its predecessors had
29 responsibility for the in-season management of
30 almost all of the catch, correct?

31 MR. LAPOINTE: That's correct.

32 Q In years like 2005, you've got responsibility for
33 virtually none of the catch?

34 MR. LAPOINTE: That's correct.

35 Q In 1994 John Fraser lamented the fragmentation of
36 the management of the fishery in-season.

37 MR. LAPOINTE: That's correct.

38 Q And today you do not have responsibility for
39 managing the catch by the commercial fishery in
40 Johnstone Strait, the aboriginal fishery,
41 commercial fishery -- sorry, or any of the
42 aboriginal fisheries in the Fraser River?

43 MR. LAPOINTE: That's correct.

44 Q Would it be appropriate today to adopt this
45 recommendation of John Fraser that you take within
46 your responsibilities the management of all of the
47 catches of Fraser River sockeye?

1 MR. LAPOINTE: So you're saying that the Fraser River
2 Panel take that all into --

3 Q Yes.

4 MR. LAPOINTE: Well, theoretically, the Fraser River
5 Panel should be responding to all of the mandate,
6 so I don't know that it matters who's in charge,
7 as long as we're all operating to the same set of
8 objectives. So there's nothing preventing the
9 current system from achieving the objectives that
10 are set forward in the treaty. It doesn't have to
11 be, quote/unquote the PSC or the Fraser River
12 Panel to have control in order to make that
13 happen. So because the panel didn't have
14 jurisdiction in 2005 or the catches in the Fraser
15 panel represented such a small fraction doesn't
16 mean that the achievement of objectives could not
17 be accomplished through the actions of folks who
18 are in charge of the management outside the panel
19 waters.

20 So the question of authority is almost a
21 question of kind of who gets the credit in some
22 ways in terms of that responsibility. And I don't
23 think that that's really important. What's
24 important is that the objectives are achieved. So
25 would a single authority be more efficient in
26 that? Potentially. Should that be the PSC or
27 someone else? It's not for me to say.

28 MR. BUTCHER: Thank you. Those are my questions.

29 MS. BAKER: Mr. Commissioner, Mr. Harvey is up next for
30 the West Coast Trollers and Area G.

31 MR. HARVEY: Yes. Thank you.

32

33 CROSS-EXAMINATION BY MR. HARVEY:

34

35 Q Mr. Lapointe, I think you probably did make this
36 clear, but for some reason I didn't get it. The
37 -- you described the transfer of authority that
38 took place in 1985 and described the significant
39 reduction in the commission staff and the number,
40 quite a large number, that transferred to DFO
41 staff. But I just want to ask you about the task
42 of setting these spawning escapement targets.

43 Prior to 1985 how was that done?

44 MR. LAPOINTE: I believe it would have been done by the
45 IPFSC, but I'm not completely sure.

46 Q Okay. That may be described somewhere in Mr.
47 Roos' book that's now been marked Exhibit 75?

1 MR. LAPOINTE: It probably is.

2 Q Yes. All right. At any rate, after 1985 how is
3 the establishment of spawning escapement targets
4 done?

5 MR. LAPOINTE: Provided by Canada.

6 Q Yes. And that means provided by DFO, I guess; is
7 that right?

8 MR. LAPOINTE: Yes.

9 Q Does the Salmon Commission have any role at all in
10 determining those targets?

11 MR. LAPOINTE: We have participated in some of the more
12 recent workshops under the spawning initiative,
13 but no -- and when I mean participating in -- I
14 think we've got to be careful here, use the
15 commission --

16 Q Yes.

17 MR. LAPOINTE: PSC staff have participated in some of
18 the workshops associated with the spawning
19 initiative but there's no formal role that the
20 Fraser River Panel or PSC staff have in
21 establishment of a spawning escapement goals.

22 Q All right. During the years of the IPSFC, there
23 was a determination of optimum escapement numbers
24 for each race of salmon; is that correct?

25 MR. LAPOINTE: Yes, in the context the term "race"
26 would apply to the approximately 19 populations
27 for which there was a data set sufficient to
28 estimate --

29 Q Yes.

30 MR. LAPOINTE: -- optimal escapement.

31 Q Yes. I wonder if we could have Exhibit 35 put up
32 on the screen again -- Exhibit 75, I mean. Mr.
33 Roos' book. At page -- at page 122 there's a
34 heading entitled "Optimum Escapement
35 Determinations"; do you see that? And then I
36 think it reads just below that heading:

37

38 Another important challenge facing the
39 Commission was to determine optimum
40 escapement numbers for each race.

41

42 And it goes on. So that's what you were just
43 referring to; is that right?

44 MR. LAPOINTE: That's correct.

45 Q And then on the bottom right-hand column, the last
46 three lines reads:

47

1 In the long run, the optimum number of
2 spawners for each particular spawning area
3 was the most important --

4
5 And I think we have to go to page 125 to continue
6 to find out what was the most important.

7
8 MR. LUNN: We're actually doing this in ringtail, so
9 it's fairly slow. I apologize for the wait.

10 MR. HARVEY: Okay. Okay. And there are two pages of
11 photographs, I think, in the book, so we have to
12 go to page 125 for the actual continuation.

13 MR. LUNN: You said 125?

14 MR. HARVEY: One-twenty-five, yes. It's just the...

15 Q Yes. So the spawning area --

16
17 -- the most important management goal each
18 season. For the most part this could be
19 controlled.

20
21 So that is correct so far as you know; is that
22 right?

23 MR. LAPOINTE: Yeah. It seems to reflect --

24 Q In that era?

25 MR. LAPOINTE: Yeah, that era, yeah, for sure.

26 Q And if we could go further down the left-hand
27 column of page 125 to about the middle point of
28 the page. Yes, this section. There's an asterisk
29 there. I want to read from about that point on.
30 It says:

31
32 On the other hand, the 1950 Adams escapement
33 was on time and though only 1.2 million
34 spawners reached the river, this small
35 escapement produced a large return of about
36 9,000,000 fish in '54. In '54 the escapement
37 number (1,000,000) was near the optimum, and
38 because of the unique escapement pattern to
39 leave the Strait of Georgia and swarm through
40 the lower river in only two and one-half
41 days, the duration of arrival time at the
42 spawning grounds was much less than normal.
43 This short migration spread of a normally-
44 timed run produced a modern-day record return
45 of over 15,000,000 fish in '58.

46
47 The reference there to two million being near the

1 optimum for the Adams run is -- is correct so far
2 as you know in terms of the administration by the
3 IPFSC up to 1985.

4 MR. LAPOINTE: Sorry? You're asking me whether I think
5 that two million is the optimum escapement for the
6 Adams River? Is that --

7 Q No. No, I'm asking you whether it was considered
8 by the pre-1985 commission to be near optimum?

9 MR. LAPOINTE: I believe it was, yes.

10 Q Yes. Now, coincidentally, that is about the same
11 as the escapement in 2006 that produced the run in
12 2010; is it not?

13 MR. LAPOINTE: I can't recall the exact escapement in
14 2006 on the Adams River proper.

15 Q Yeah.

16 MR. LAPOINTE: It probably is in that range, but I
17 don't have the number --

18 Q Yes.

19 MR. LAPOINTE: -- right in front of me.

20 Q I'm told it's just short of 1.9 million on the
21 Adams in 2006, but...

22 MR. LAPOINTE: It sounds correct. I just don't have
23 the numbers right in front of me.

24 Q But -- but the -- I think in 2006 the escapement
25 target was far higher than that, was it not, the
26 target set by DFO?

27 MR. LAPOINTE: I don't recall exactly what the
28 escapement target was. It would have been
29 probably a -- 60 percent total allowable mortality
30 applied to whatever the run size was in 2002 and
31 then there would have been some sort of a
32 management adjustment that would have taken up
33 some of that total allowable mortality but it's
34 certainly a matter of record that I could look up
35 and get you that target.

36 Q Yes. All right. Well, perhaps we'll get to that
37 when we get into the more detailed evidence. Just
38 one final thing I'd like to note while we have
39 this Exhibit 75 on the screen. If we could go to
40 page 128.

41 MR. LAPOINTE: Perhaps while it's coming up, as a point
42 for clarification, there would not have been a
43 specific spawning escapement target for the Adams
44 River in 2006. It would have been for the late
45 run aggregate. So there wouldn't have been an
46 escapement target that would have been implied
47 from that, but there wouldn't have been a specific

1 target for the Adams.

2 Q I see. Thank you. On this section on page 128
3 right beside the number it reads that:

4
5 The first information on relative abundance
6 of Fraser River sockeye and pink salmon runs
7 was taken from troll fishery catches along
8 the west coast of Vancouver Island.

9
10 And that is correct so far as you know at that
11 time?

12 MR. LAPOINTE: Yeah, that sounds correct.

13 Q Yes. Now, that -- that information is not
14 available nowadays to the Salmon Commission, is
15 it?

16 MR. LAPOINTE: That's correct.

17 Q You mentioned test fisheries and described how
18 they were funded at one time through the catches
19 and now have to be funded through DFO allocation
20 of funds. Has that resulted in there being less
21 test fisheries now than there was previously?

22 MR. KOWAL: No. The number of test fisheries we're
23 conducting is about the same as...

24 Q Yes. Is any test fishery conducted off the west
25 coast of Vancouver Island?

26 MR. LAPOINTE: No, not at this time but that test
27 fishery was terminated prior to **Larocque**.

28 Q Yes. I see.

29 MR. LAPOINTE: Prior to 2006. I don't know the exact
30 year, but it was awhile ago.

31 MR. HARVEY: Okay. I have no further questions. Thank
32 you.

33 THE COMMISSIONER: Mr. Harvey, just -- if I could just
34 ask, I'd prefer to leave it with you to see
35 whether you want to pursue it, but I'm not sure I
36 fully understood. You had given the witness a
37 figure of 1.9 or thereabouts --

38 MR. HARVEY: Yes.

39 THE COMMISSIONER: -- for the escapement, and he
40 explained or came back to you in saying that that
41 would have been for the aggregate late run and --

42 MR. HARVEY: Yes.

43 THE COMMISSIONER: -- I think your questions were from
44 the book at least directed to the Adams River, and
45 I'm not sure --

46 MR. HARVEY: Yes.

47 THE COMMISSIONER: -- whether you got the answer you

1 were seeking or whether -- maybe I just missed the
2 point.

3 MR. HARVEY: Yes.

4 THE COMMISSIONER: I'm sorry.

5 MR. HARVEY:

6 Q Well, yes. No, I think I should -- because I have
7 got a sheet, but I don't think it's in evidence
8 yet, but I'll put the number and the sheet that
9 I'm looking at, and this will give an opportunity
10 for it to be checked, has a breakdown for the
11 various runs and the graph I'm looking at is
12 entitled "Adams River Sockeye Adults Only 2006
13 Cycle". And the escapement, the spawning
14 escapement number for 2006 is 1,876,191.

15 MR. LAPOINTE: I can certainly try to verify that
16 number. The reference, Mr. Commissioner, to the
17 late run aggregate was the target, so the target,
18 there wasn't a specific target for the Adams River
19 in 2006.

20 Q I see. But can you determine the target for the
21 Adams from the aggregate target for the late run?

22 MR. LAPOINTE: You can determine what the implied
23 target is if you apply the exploitation rate to
24 the Adams itself, but there is really no such
25 thing as a stock-specific target under the current

26 Q Yes.

27 MR. LAPOINTE: -- spawning initiative rules, so it's --
28 it would be an inference drawn from exploitation
29 rates not a clearly stated objective in any
30 documents or anything we would have. The
31 objective for the Adams is actually, it would be
32 just implied based on -- so for example, if the
33 run was ten million and the late run aggregate
34 escapement rate was 40 percent, there would be an
35 implied target for the Adams of --

36 Q All right.

37 MR. LAPOINTE: -- 40 percent times ten million or --

38 Q All right. So --

39 MR. LAPOINTE: -- four million.

40 Q So that then is another one of the changes that
41 took place in 1985. Previous to that, there was
42 an optimum escapement determination by the
43 commission for the Adams run and after that, it
44 seems, at least at the present day there is not.
45 Is that right?

46 MR. LAPOINTE: I wouldn't say that there aren't people
47 who might determine what an optimal escapement

- 1 might be for the Adams, but there's no stated goal
2 and as I've said earlier, there were periods of
3 time since the new treaty when we did receive
4 spawning escapement objectives by stock and there
5 would have actually been one, say, in the 1991
6 panel report for the Adams River, I believe. It
7 might have been for the Adams River or late
8 Shuswap combined, but it was for the Shuswap, so
9 -- so I guess what I'm trying to say is that
10 people may be determining what the optimal
11 escapement is for the Adams now, but we don't
12 receive a stated objective of an escapement goal
13 for the Adams specifically. We received one goal
14 for the late run aggregate which includes the
15 Adams and a number of other late run stocks.
- 16 Q Would you agree that a sophisticated scientific-
17 based system should have an optimum escapement
18 goal for each system?
- 19 MR. LAPOINTE: There's lots of debate about how to
20 determine escapement goals and one of the parts of
21 that debate is whether you should have them for
22 each individual stock or for aggregate stocks and
23 there's trade-offs in terms of biology and
24 implementation. Current system isn't doing it
25 that way, but it may have advantages in other
26 areas, so it's one of these trade-offs between
27 different costs and benefits.
- 28 Q But as a biologist from a biological perspective
29 would you not want to see a system-specific
30 optimum escapement number?
- 31 MR. LAPOINTE: From a biological perspective, if one
32 could achieve those system-specific goals, you
33 could do better on an individual stock basis than
34 you can on an aggregate basis in terms of --
- 35 Q Yes.
- 36 MR. LAPOINTE: -- maximizing yield, I guess.
- 37 Q Yes.
- 38 MR. LAPOINTE: But that was one of the objectives.
- 39 MR. HARVEY: Yes. Thank you.
- 40 MS. BAKER: Mr. Commissioner, the next participant is
41 the B.C. Wildlife Federation and Mr. Lowes.
- 42 MR. LOWES: Yes. Thank you. J.K. Lowes for the B.C.
43 Wildlife Federation.
- 44
- 45 CROSS-EXAMINATION BY MR. LOWES:
- 46
- 47 Q First of all, Mr. Lapointe, I take it that both

1 you and Mr. Harvey have used the word optimum
2 escapement. I take it from that that in terms of
3 escapement, more is not always better?

4 MR. LAPOINTE: Yeah. It depends upon what the
5 objective is you're trying to achieve, so in my
6 first presentation to this group, I talked about
7 the fact that from a juvenile perspective
8 increasing number of spawners on spawning grounds
9 doesn't necessarily produce more juveniles, so
10 that means that, you know, you could conceivably
11 do something else with those fish other than try
12 to produce more juveniles, since they don't tend
13 to be producing more juveniles beyond some level.
14 So, sure, relative to some objective.

15 Q So if your objective is returns four years later,
16 more is not better?

17 MR. LAPOINTE: If the objective is -- yeah, if the
18 objective is returns four years later, then you
19 don't receive -- beyond some point, you don't
20 necessarily receive more returns by putting more
21 fish in spawning grounds.

22 Q Right. And does putting more fishing -- fish on
23 the spawning grounds, is that a potential cause of
24 problems?

25 MR. LAPOINTE: It can in certain circumstances, create
26 problems. You can have greater likelihood of, you
27 know, reds from earlier spawners being dug up by
28 subsequent spawners. You can have impacts on
29 density of fry, which can have impacts on the size
30 of fry and those can have negative impacts on
31 future returns in some cases.

32 Q Yes. Is what you just referred to, is that known
33 as delayed density effects?

34 MR. LAPOINTE: Not exactly.

35 Q What is a delayed density effect?

36 MR. LAPOINTE: Okay. I think -- let's see if I can get
37 the same definition I gave a few weeks ago. I
38 tried to describe this.

39 So some of the information I provided the
40 October presentation, top out the effects of the
41 density of the number of spawners on the number of
42 fry that they produce. Okay? So that's the
43 parents' effect on their offspring.

44 Delayed density dependence refers to the
45 possible effects of prior year parents on the
46 number of offspring produced in subsequent
47 generations. Give you an empirical example which

1 may or may not be considered a result of delayed
2 density dependence but give you an idea of what it
3 means.

4 In 2001 to the Quesnel system, primarily the
5 Horsefly, there's a very large escapement,
6 something like 3.5 million fish. The subsequent
7 generation also had a very large escapement in
8 2002, again similar number, over three million
9 fish. The fry that were produced by the 2002
10 brood, that second large escapement, were
11 something like 40 percent smaller than the
12 previous smallest fry ever observed, so even
13 smaller than the fry produced by the 2001
14 escapement.

15 Some folks would attribute that, and in fact
16 if you fit statistical models to something like
17 that, they would say well that small fry size was
18 potentially related not only to the number of
19 parents, but the number of -- the abundance of
20 parents the prior year. That's an example of the
21 kind of thing that's referred to in delayed
22 density dependence. That 3.5 million escapement
23 in 2002 produced a 700,000 total return.

24 Q So if I can simplify it and since we're dealing in
25 generalities here, maybe simplicity is warranted.
26 Would you agree with this: proposition number 1
27 is that there can be a situation in which more --
28 higher escapement does not result in more returns
29 in the subsequent four years.

30 MR. LAPOINTE: Yes, that can happen.

31 Q And to go farther than that, more escapement may,
32 in fact, be counter-productive and create lesser
33 than -- how am I going to express this? That it
34 may be, in fact, counter-productive rather -- in
35 addition to being non-productive in terms of
36 returning -- the returns of fish four years
37 later?

38 MR. LAPOINTE: So, in other words, even less fish than
39 -- so not only does it not produce more fish than
40 -- but it may actually produce less fish --

41 Q Yes.

42 MR. LAPOINTE: -- is that what you're trying to say?
43 Yes, it's possible.

44 Q Far more elegantly put than I did. Could you
45 bring up again Exhibit 74 which is the 2005 panel
46 -- or, sorry, commission report? And I want to
47 refer you again to page 27 which is the table that

1 Mr. Butcher referred to. And if you could enlarge
2 the very bottom section, the total catch
3 escapement DBE's and run. Mr. Lapointe, what's a
4 DBE?

5 MR. LAPOINTE: Differences between estimates, it refers
6 to the difference between what we've expected to
7 reach the spawning grounds based on the Mission
8 escapements, less our First Nations catch
9 estimates that occur, so we estimate the number of
10 fish we expect to occur on the spawning grounds by
11 taking the Mission escapement minus the First
12 Nations catches between Mission and the spawning
13 grounds, and we compare that to what arrived on
14 the spawning grounds. And so the difference
15 between those two numbers is this thing called the
16 DBE.

17 Q So that is the fish -- I take it -- well, let me
18 ask you this. How do you calculate the numbers
19 that arrive on the spawning grounds?

20 MR. LAPOINTE: Those are derived by programs conducted
21 by the Department of Fisheries and Oceans. A
22 number of different methods are used to estimate
23 spawning ground escapements.

24 Q So would it be accurate if I -- if I termed the
25 salmon passing mission the gross escapement and
26 the salmon reaching the spawning grounds the net
27 escapement?

28 MR. LAPOINTE: Yes, that would be accurate.

29 Q All right. And are the DBE's, in fact, the
30 difference between the gross and the net
31 escapement?

32 MR. LAPOINTE: No. So gross escapement includes catch
33 and so what we're trying to do with the DBE is
34 compare what we'd expect to reach the spawning
35 grounds so we're subtracting off the catch between
36 Mission and spawning grounds from the Mission
37 escapement and then comparing that value to the
38 number of fish estimated to be on spawning
39 grounds.

40 Q All right.

41 MR. LAPOINTE: It's a difference between two estimates
42 of what should be the same thing, bearing in mind
43 that one of the things that happens between
44 Mission and the spawning grounds is en route loss
45 in some years and so to some extent, some fraction
46 of this DBE is related to en route losses that are
47 not part of our calculation, 'cause we don't have

1 an independent estimate of en route loss in most
2 years.
3 Q All right. So the difference between estimate
4 will be net of the authorized aboriginal catch?
5 MR. LAPOINTE: It'll be net of the catch estimates,
6 that's correct.
7 Q All right. So another way of putting it might be
8 that the difference between estimates are the fish
9 that you don't know what happened to?
10 MR. LAPOINTE: It could be a result of en route loss,
11 it could be a result of errors in the estimates at
12 either location. So, for example, if Mission was
13 high and the spawning ground estimates were low --
14 Q All right.
15 MR. LAPOINTE: -- it could be a result of a number of
16 factors.
17 Q Popularly known a few years ago as the missing
18 fish, is that...?
19 MR. LAPOINTE: Well, they're not missing in the sense
20 that they were enumerated to go past a certain
21 location and didn't show up at another location.
22 The disposition of them is not known, but they're
23 not missing.
24 Q Yes. But they passed Mission; is that correct?
25 MR. LAPOINTE: They're estimated to have passed
26 Mission --
27 Q Yeah.
28 MR. LAPOINTE: -- that's correct.
29 Q And they weren't caught -- they're estimated not
30 to have been caught by the authorized aboriginal
31 fishery?
32 MR. LAPOINTE: They're estimated -- they're not in the
33 catch estimates, that's correct.
34 Q All right. And with that definition, would you go
35 to the exhibit -- or page 27 of Exhibit 74 and in
36 this year, which is 2005, if you would look at the
37 second line to the bottom you'll see that the
38 DBE's -- the DBE for the early Stuart was 45
39 percent. Do you see that?
40 MR. LUNN: Did you say page 28?
41 MR. LOWES: Twenty-seven. Sorry.
42 MR. LUNN: Okay. We were just on page 27. Is that
43 where you want to be?
44 MR. LOWES: Yeah. That's where I want to be.
45 MR. LUNN: Sorry.
46 MR. LOWES: The bottom -- the very bottom thing there.
47 Q So we're looking at the left-hand column of

1 numbers, second to the bottom number, 45 percent.
2 MR. LAPOINTE: Yeah. I see that. That's correct.
3 Q That means 45 percent of the estimated run were --
4 of early Stuarts were DBE's.
5 MR. LAPOINTE: That's correct.
6 Q Or unaccounted for fish past Mission.
7 MR. LAPOINTE: Yes.
8 Q Yeah. And just next, the early summer DBE's were
9 40 percent?
10 MR. LAPOINTE: That's correct.
11 Q And the summer, 27 percent?
12 MR. LAPOINTE: That's correct.
13 Q And the Birkenhead, 51 percent?
14 MR. LAPOINTE: That's correct.
15 Q And the late, 13 percent?
16 MR. LAPOINTE: That's correct.
17 Q For a total, if you just move over to the right
18 again, for a total DB percentage of the run that
19 are DBE's of 28 percent.
20 MR. LAPOINTE: That's correct.
21 Q Yeah. Over a quarter of the estimated run; is
22 that --
23 MR. LAPOINTE: That's correct.
24 Q -- correct? Now, some years ago, and in
25 particular 1994, the question of DBE's was
26 something that was looked at by the Fraser Panel
27 -- the Fraser Inquiry?
28 MR. LAPOINTE: I believe that's true, yes.
29 Q And I -- and the accuracy of the counting at
30 Mission was by some challenged?
31 MR. LAPOINTE: That's correct.
32 Q And did the Salmon Commission subsequently do some
33 tests to make sure that the counting at Mission
34 was accurate?
35 MR. LAPOINTE: It's been a long research program that
36 began in part in response to recommendations from
37 John Fraser's review, changing technology,
38 incorporation of shore-based systems, a number of
39 things. It's been very long program. It's
40 actually still ongoing. We're still trying to
41 improve our estimates the best we can.
42 Q Yes. Are you confident in those estimates?
43 MR. LAPOINTE: Yeah, I'm confident that we're doing the
44 best we can. I think we still have some areas we
45 need to improve, in particular in our mid-channel
46 sampling, but they're the best estimate we have
47 right now of what enters the lower river in most

1 years.

2 Q And are you confident in the estimates on the
3 spawning grounds of the actual fish reaching the
4 spawners?

5 MR. LAPOINTE: Generally, yes. There have been a few
6 years when there have been incomplete coverage,
7 but in most years, yes, they're usually very good.

8 Q So can I put it to you that you would deny, would
9 you, the assertion that those DBE's that I've read
10 over in -- for the year 2005 could be explained by
11 poor counting methods or inaccurate estimates?

12 MR. LAPOINTE: I would think that they'd -- the
13 contribution of stock assessment errors would be a
14 relatively minor component.

15 Q Now, are you generally familiar with the
16 differences in the DBE's throughout the history of
17 the -- of the records of the Salmon Commission
18 from, say, 1947 to date?

19 MR. LAPOINTE: I'm aware that they have become more
20 prevalent since the early '90s. I'm not aware of
21 the extent to which they were even estimated in
22 some of the prior years. You know, I don't know
23 that there's been comparisons made between
24 whatever methods were used to estimate lower river
25 escapements which Mission program would go back to
26 the late 1970s, prior to that it would be test-
27 fishing based. I'm not aware that people have
28 actually made the comparison. So... But I am
29 aware that there has been an increase in them
30 certainly since the mid to early 1990s.

31 Q And would you agree that the increase has been
32 huge, a huge amount of increase between the --
33 between the DBE's, say, before 1991 and after
34 1991?

35 MR. LAPOINTE: Yes. And part of that is probably
36 related to some of the things I talked about
37 earlier, one of them being the early upstream
38 migration of late run sockeye which has had a very
39 significant effect on the DBE's, the other one
40 related to Fraser River water temperatures. I
41 think, as I said in my testimony on October 25th,
42 something like eight of the ten warmest summer
43 Fraser River water temperatures have occurred in
44 the last 15 years, so, you know, water
45 temperatures and early upstream migration are
46 certainly a very significant component of this DBE
47 since the 1990s.

1 Q What about poaching?

2 MR. LAPOINTE: I couldn't comment on whether poaching
3 is an issue or not.

4 Q Would that --

5 MR. LAPOINTE: We use the best estimates of catch that
6 are provided to us by Canada and those are the
7 ones that we factor into our calculations.

8 Q But it's clearly a potential explanation for some
9 of the DBE's?

10 MR. LAPOINTE: If there are catches that are not --
11 that are not part of the catch estimate, then that
12 could be a potential explanation. Now, whether
13 that's poaching, I have no way of knowing anything
14 about whether it's poaching or not.

15 Q Well, somebody catching the fish.

16 MR. LAPOINTE: It would have to be a catch that's not
17 part of the estimate.

18 Q Right. Or a catch that's not part of the plan.

19 MR. LAPOINTE: Whether it's part of the plan or not is
20 not for me to comment on. If it's not in the catch
21 estimate -- I mean, if it's in the catch estimate,
22 whether it's part of the plan or not part of the
23 plan, it's part of the catch estimate, it's part
24 of a calculation.

25 Q I was just suggesting that they -- for my
26 purposes, the plan and the estimate are synonyms
27 here. I mean, part of the estimated catch is the
28 projected catch.

29 MR. LAPOINTE: I have no comment on that observation.

30 Q Okay. All right. I just want to put some numbers
31 to you for an order of magnitude basis in terms of
32 the increase in DBE's. My instructions are that
33 in the years between 1946 and 1991, and these are
34 Pacific Salmon Commission tables, the DBE's was in
35 total about 202,000. That's in 45 years. Would
36 you agree with the order of magnitude?

37 MR. LAPOINTE: That number seems to reflect what I've
38 seen in terms of reports of en route losses or
39 other losses that were sporadically spread
40 throughout the records of the IPSFC --

41 Q Yes.

42 MR. LAPOINTE: -- over that period.

43 Q About 200,000 fish in 45 years.

44 MR. LAPOINTE: That is consistent with what I've seen
45 in the records, yes.

46 Q Right. Now, between 1992 and 2008, which is 16
47 years, I'm instructed that the same source shows

1 DBE's at about 15 and a half million, over 16
2 years. Does that sound about right?

3 MR. LAPOINTE: My initial reaction was it seems high,
4 but it could be accurate. I would -- I can't say
5 that it's not accurate. I'd have to check the
6 numbers. It certainly has been very significant
7 numbers of fish in some of these years, yes.

8 Q Certainly in -- well over ten million.

9 MR. LAPOINTE: Yeah. I mean, if you just look at the
10 2005 number there, you've got a pretty significant
11 number, so it could have added up over the years
12 to a number of that magnitude.

13 Q Yeah. So what happened in 1991 to account for
14 that discrepancy?

15 MR. LAPOINTE: Well, I already mentioned two things
16 that I think are very significant contributors:
17 late run migration and upstream migration actually
18 didn't start until 1995 but certainly we have had
19 warm Fraser River water temperatures --

20 Q Yeah.

21 MR. LAPOINTE: -- in the 1990s, a number of those
22 years, 1998 -- actually, even 1992 was actually a
23 very significantly warm year, although at the time
24 of 1992 kind of Pierce Larkin (phonetic)
25 inquiries, I don't think it was recognized as a
26 temperature, significant temperature, but it was
27 much warmer than average. So there's been a
28 number of biological events that would cause one
29 to think that the fish would not necessarily be
30 successful in making it to the spawning grounds.

31 Q And add to that potentially fishing that was not
32 estimated?

33 MR. LAPOINTE: Again, we use the best catch estimates
34 that are provided to us. There could be impacts
35 to the fishery that are not related to catch
36 estimation. For example, fish could be escaping
37 from an entangled net and not make it to the
38 spawning grounds, whether they -- and that fish
39 might not show up in a catch estimate, so it
40 doesn't require any -- it need not require any
41 particular event in terms of how those fish were
42 taken or whether they were sanctioned or not. It
43 can be an incidental impact of a fishing
44 activity.

45 Q But it can also be people catching fish and not
46 reporting them?

47 MR. LAPOINTE: It's possible.

1 Q Yeah. Now, I want to refer briefly to what was
2 marked as Exhibit 72 and I won't take you to it,
3 but it's your 2003 paper on early late run fish.

4 MR. LAPOINTE: Sure. Yeah.

5 Q And the question simply was, Mr. Lapointe, is --
6 and I may have missed this, is what have you
7 learned about the problems that you spoke of in
8 the 2003 paper to date? If you were to write this
9 paper today, what would be the difference?

10 MR. LAPOINTE: Oh, I'd have to probably refresh my
11 memory as to what's in that paper. But I think I
12 described earlier that --

13 Q I think what --

14 MR. LAPOINTE: -- I think what we've learned is why
15 these fish are dying. What we haven't learned,
16 yet to learn, is why they're coming upstream
17 early. So it's the why they are dying part we
18 have a pretty good explanation for what's going on
19 there, but it's the why they're migrating up so
20 early that's causing us the biggest challenge
21 remaining, yes.

22 Q Yes. Thank you.

23 MR. LAPOINTE: And I don't know if that answers your
24 question or not.

25 Q Yes, it does. You narrowed the focus as to the
26 potential causes; is that...?

27 MR. LAPOINTE: The mortality, yeah, for sure.

28 Q Yeah. Would you agree with me, Mr. Lapointe, that
29 -- well, let me ask you this question first. As I
30 understand it, the migration, the numbers that are
31 migrating, the numbers of fish in season are
32 counted in a number of ways. One is I think you
33 said on the spawning grounds; one at Mission; and
34 one way of counting them are your test fisheries;
35 is that correct?

36 MR. LAPOINTE: Yes, although the spawning ground
37 estimates are not available in season.

38 Q No. But -- yes, okay. Would you agree with this
39 proposition, that the -- if not the best, at least
40 a valuable source of in-season estimates of
41 abundance is commercial fisheries, in particular
42 commercial fisheries in Johnstone Strait or off
43 the west coast of Vancouver Island?

44 MR. LAPOINTE: It was a very valuable, particularly the
45 commercial fisheries in Johnstone Straits were
46 very valuable estimation tool for total return up
47 until about 1994.

1 Q And what --

2 MR. LAPOINTE: West coast of Vancouver Island catches
3 were used as a relative abundance index, not so
4 much used in run size estimation but Johnstone
5 Straits catches certainly were.

6 Q And what happened in 1994?

7 MR. LAPOINTE: We had a relatively small run and
8 diminished commercial fisheries and a number of
9 other events.

10 Q And since then you don't have the same source of
11 information as you had prior to that?

12 MR. LAPOINTE: It's correct that the commercial
13 fisheries, regular commercial fisheries and the
14 main ones that were the main tool up until 1994
15 were the purse seine commercial fisheries. Those
16 have not occurred on nearly as frequent a basis,
17 in some years not occurring at all, and so those
18 -- that data set has been lost.

19 Q And that's a valuable data set?

20 MR. LAPOINTE: It is valuable from the standpoint of
21 its timeliness and accuracy in the marine area.

22 MR. LOWES: Thank you. Those are my questions. Thank
23 you, Mr. Lapointe.

24 MS. BAKER: Mr. Commissioner, I note the time but I
25 also would like to bring to your attention the
26 fact that the other counsel who are here to cross-
27 examine have indicated that they would like to
28 commence their cross-examination tomorrow, so this
29 may be, with leave, an appropriate time to end for
30 the day.

31 THE COMMISSIONER: Who do we have for tomorrow, Ms.
32 Baker?

33 MS. BAKER: As I understand it, there will be -- Ms.
34 Gaertner will be cross-examining the witness and
35 Ms. --

36 MS. SCHABUS: Schabus.

37 MS. BAKER: -- sorry. I don't want to mispronounce
38 your name, will be cross-examining and then Ms.
39 Smith. I think those are the only remaining three
40 that have indicated they'll be cross-examining.

41 THE COMMISSIONER: Just for my purposes, does that mean
42 we'll finish tomorrow morning? Or will it go on
43 for the entire day?

44 MS. GAERTNER: At this point in time, subject to
45 conversation I'm having with clients this evening,
46 I don't anticipate being longer than an hour
47 tomorrow.

1 THE COMMISSIONER: All right.
2 MS. SCHABUS: Mr. Commissioner, I can indicate I won't
3 be long either, so...
4 MS. SMITH: And me as well, I don't expect to be more
5 than 20 minutes, 15 minutes. Thank you.
6 THE COMMISSIONER: Well then, shall we then adjourn now
7 until ten o'clock tomorrow morning?
8 MS. BAKER: Thank you.
9 THE REGISTRAR: Hearing is now adjourned until ten
10 o'clock tomorrow morning.

11
12 (PROCEEDINGS ADJOURNED TO NOVEMBER 9, 2010 AT
13 10:00 A.M.)
14

15 I HEREBY CERTIFY the foregoing to be a
16 true and accurate transcript of the
17 evidence recorded on a sound recording
18 apparatus, transcribed to the best of my
19 skill and ability, and in accordance
20 with applicable standards.
21

22
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24 _____
25 Patricia Kealy

26 I HEREBY CERTIFY the foregoing to be a
27 true and accurate transcript of the
28 evidence recorded on a sound recording
29 apparatus, transcribed to the best of my
30 skill and ability, and in accordance
31 with applicable standards.
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35 _____
36 Diane Rochfort

37 I HEREBY CERTIFY the foregoing to be a
38 true and accurate transcript of the
39 evidence recorded on a sound recording
40 apparatus, transcribed to the best of my
41 skill and ability, and in accordance
42 with applicable standards.
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46 _____
47 Susan Osborne