

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.

Tuesday, November 9, 2010

Tenue à :

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

le mercredi 9 novembre 2010



Errata for the Transcript of Hearings on November 9, 2010

Page	Line	Error	Correction
ii		Line Christensen, Articled Student	Document Reviewer
iv		James Walkus is not a participant	remove from record
iv		Musgagmagw Tsawataineuk Tribal Counsel	Musgamagw Tsawataineuk Tribal Council
5	6	PSE	PSC
20	45	Fraser Pane;	Fraser Panel
25	46	our	are
29	32	chair	sharing
30	18	Macah	Makah
32	2	travel	tribal

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Boris Tyzuk, Q.C.	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	B.C. Salmon Farmers Association ("BCSFA") Seafood Producers Association of B.C. ("SPABC") 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")
Lyndsay Smith	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

APPEARANCES / COMPARUTIONS, cont'd.

David Butcher	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
Christopher Harvey, Q.C.	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") Council of Haida Nation Métis Nation British Columbia ("MNBC")

APPEARANCES / COMPARUTIONS, cont'd.

Nicole Schabus

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")

Musgagmagw Tsawataineuk Tribal Council
("MTTC")

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4 THE REGISTRAR: Order. This hearing is now resumed.
5 MS. BAKER: Thank you, Mr. Commissioner. The cross-
6 examination will continue this morning, starting
7 with Lyndsay Smith, on behalf of the Area D Salmon
8 Gillnet Association and Area B Harvest Committee.
9 Thank you.

10
11 CROSS-EXAMINATION BY MS. SMITH:
12

13 Q Mr. Kowal, I'll direct this question to you, but
14 request input from Mr. Lapointe, if you have any
15 comments or observations. And it arises out of a
16 question asked by Commission counsel yesterday
17 with regard to the impact of the **Larocque**
18 decision, and as I understood it, the question
19 related to a 2006 Federal Court of Appeal
20 decision. Is that your understanding?

21 MR. KOWAL: That's correct.

22 Q All right. And basically, the import of that
23 decision was that no longer could the DFO research
24 be funded by the resource, by fishing; is that
25 correct?

26 MR. KOWAL: That's correct.

27 Q And my recollection of your reply to a question
28 asked by Commission counsel, her question was to
29 the effect, "Has the **Larocque** decision affected
30 your test fishery?" and my recollection of your
31 evidence was that you replied, "Not directly," do
32 you recall that?

33 MR. KOWAL: That's correct.

34 Q All right. So I'm wondering if you could tell us,
35 if it didn't -- if the decision didn't impact the
36 test fishery directly, were there indirect
37 consequences from the decision?

38 MR. KOWAL: Well, the main consequence to the decision
39 is previous to the **Larocque** decision, the
40 preparation for the test fishery was conducted
41 basically by the staff of the Salmon Commission
42 consulting with the Fraser Panel as to what test
43 fisheries would be required, and then we would get
44 the, you know, the order. Once the instructions
45 were passed, then we would proceed with making all
46 the arrangements for the test fishery to be
47 conducted.

1 With the **Larocque** decision coming into play,
2 it now requires that we need to -- once we have
3 decided on the suite of test fisheries we require,
4 we then need to negotiate with DFO through a
5 memorandum of understanding to receive the funds
6 necessary to proceed with the test fisheries. So
7 there's the added administrative details that are
8 required to make the same process happen. It
9 doesn't directly affect the test fishery, but it's
10 just additional administrative requirements that
11 are required on our behalf.

12 Q All right. Is there an attendant delay or a
13 consequent delay in the process as a result of
14 that?

15 MR. KOWAL: Not usually. The test fisheries will start
16 on time. We haven't had to delay any test
17 fisheries starting. It's just an administrative
18 process we're having to conduct.

19 Q All right. Thank you. And my understanding is
20 that there is funding set for the test fishery
21 currently, but that it is to expire or run out at
22 some point in the near future?

23 MR. KOWAL: That's correct. The **Larocque** decision was
24 for a five-year period, and the **Larocque** process
25 ends after next year.

26 Q All right. And my understanding of your
27 collective evidence is that test fishing is an
28 important part of the data collection required for
29 proper monitoring and management of the fishery;
30 do you agree?

31 MR. KOWAL: Yes, it's an integral part of what we
32 require.

33 Q All right. So one of the things that we have to
34 have in place is proper funding for proper test
35 fishings; is that correct?

36 MR. KOWAL: That is correct.

37 MS. SMITH: All right. And Mr. Lapointe -- I'm going
38 to ask Mr. Lunn, to put up Ex 73 on screen. This
39 is the Synthesis of Evidence from a Workshop on
40 the Decline of Fraser River Sockeye. And I
41 believe it was Mr. Leadem who produced this
42 document yesterday.

43 Q And when it was first introduced, my recollection
44 of your evidence was essentially an acknowledgment
45 or recognition that this workshop occurred when
46 the participants were aware that this commission
47 of inquiry was in place and looking into some of

1 the issues that were under consideration at this
2 workshop; is that correct?

3 MR. LAPOINTE: Yes. The planning occurred subsequent
4 to the announcement that this inquiry would occur.

5 Q Okay. And at page 2 of the document, the members
6 of the Expert Advisory Panel are listed, and those
7 experts include Canadian and American
8 participants; is that correct?

9 MR. LAPOINTE: That's correct.

10 Q All right. And do you know how the experts were
11 identified for this workshop?

12 MR. KOWAL: Perhaps I can answer that.

13 Q Thank you.

14 MR. KOWAL: The Scientific Cooperation Committee of
15 the Salmon Commission worked to decide on the
16 members that were chosen. They were chosen for
17 their expertise in the various factors that could
18 be affecting the non return of salmon, so that's
19 how they were chosen.

20 Q All right. And the report that was produced at
21 the end of August of 2010, if I describe it as a
22 collective view of this panel, would that be fair?

23 MR. KOWAL: That's correct.

24 Q All right. And so any recommendations contained
25 in this report is, effectively, a wish list from
26 this scientific community; is that fair?

27 MR. KOWAL: These are recommendations from the
28 committee, that's correct.

29 Q All right. And the reason that I ask this is
30 that, Mr. Lapointe, yesterday, in response to a
31 question by Mr. Leadem about this document, my
32 understanding of your evidence was that obviously
33 no concrete reason was reached, but one of the
34 strong hypothesis is that it's the ocean
35 conditions in the Georgia Strait.

36 MR. LAPOINTE: With respect to 2009, that's correct.

37 Q All right. And my recollection of that statement
38 was that you followed it by saying that the
39 ability to discern beyond the conclusions set out
40 in this document, Exhibit 73, was limited by
41 having the data with regard to lifecycle of the
42 sockeye; is that right?

43 MR. LAPOINTE: That's correct.

44 Q All right. And when I read this document last
45 night, one of the occurring themes in it appears
46 to be a dearth of evidence. There is reference
47 throughout the document to the conclusions being

1 limited by available evidence, and that phrase is
2 used throughout; do you agree with that?

3 MR. LAPOINTE: Yes, I do.

4 Q All right. And so when I heard you testify that
5 the ability to discern beyond the conclusions in
6 this document is limited by the data, one of the
7 questions that occurred to me is, what would be
8 required to permit a further or stronger
9 hypothesis, and when one looks at this document,
10 for example, at page 5, there's a heading in a
11 box, called, "Main conclusions about mechanisms",
12 and just addressing your attention to the first
13 paragraph:

14
15 The Panel's judgments, summarized in Table E-
16 1, are that physical and biological
17 conditions inside the Strait of Georgia
18 during the juvenile life stage are very
19 *likely the major cause* of poor survival of
20 the cohort that returned in 2009.

21
22 And then dropping down to the last sentence of
23 that paragraph, it says:

24
25 The Panel lacked certain types of information
26 needed to identify the mechanisms more
27 specifically (as described in Section 4) and
28 has recommended future research that may lead
29 to such detailed conclusions (see Section 5).

30
31 And the research that this panel suggests as being
32 required is set out in Table E-3 in a hierarchy of
33 priority; do you agree?

34 MR. LAPOINTE: Yes, that's correct.

35 Q All right. And so if I were to ask you, what
36 would you need, or in the science community that
37 you work in, need to go beyond the conclusions?
38 Are the recommendations set out in this document
39 basically your answer?

40 MR. LAPOINTE: Yes.

41 Q And turning to a different point, regarding catch
42 estimates, my understanding is that -- well
43 perhaps I'll ask it a different way. What are the
44 sources of information that the panel uses to make
45 catch estimates?

46 MR. LAPOINTE: Catch estimates are, by and large, the
47 responsibility of the national sections of Canada

1 and the United States, national sections of the
2 panel, so from a Canadian perspective, catch
3 estimates are provided to us by, largely, members
4 of the Department of Fisheries and Oceans, so we
5 receive those estimates from them.

6 There was a time when PSE staff had a larger
7 role in estimating catch in panel waters, and that
8 was at a time when fish tickets were more of a
9 source of that estimation, but in more recent
10 years we turn more to using the creel surveys that
11 are provided by DFO. Fish tickets tend to be
12 incomplete, and so they've not been the source of
13 -- not all fish that are landed necessarily show
14 up in a fish ticket, so we've been relying more on
15 the governments to provide us their catch
16 estimation.

17 Q Okay. And when I was reviewing my notes, my
18 recollection of your evidence was that the Fraser
19 Panel has no authorization with regards to the
20 recreational fishery; is that right?

21 MR. LAPOINTE: That's correct.

22 Q So does that mean that their catches are not
23 contained in the information that is provided for
24 the catch estimates?

25 MR. LAPOINTE: No. We receive catch estimates for all
26 fisheries that might have some potential impact on
27 Fraser sockeye, including recreational fisheries,
28 including fisheries in Alaska. The reference to
29 regulation means that the panel does not exert any
30 bilateral decision on whether or not a
31 recreational fishery would be opened or closed.

32 Q All right. And so is that answer also applicable
33 to your reference to the Fraser Panel having no
34 authorization of First Nations?

35 MR. LAPOINTE: Yeah, it's the same reference. There's
36 no regulatory authority with respect to First
37 Nations fisheries in Canada.

38 Q All right. And is catch numbers from that
39 fishery, as well, included in the catch
40 assessment?

41 MR. LAPOINTE: Yes.

42 Q So does Canada provide the same information as the
43 Americans provide?

44 MR. LAPOINTE: It depends on what you mean by "the
45 same". The sources of the catch estimates, the
46 techniques used to generate the catch estimates
47 differ between the two countries, but they both

1 provide catch estimates.

2 Q All right. And those catch estimates cover all
3 users of the fishery?

4 MR. LAPOINTE: Yes.

5 Q All right. And just following up on area touched
6 on at the end of yesterday with regard to the
7 number of 15-1/2 million fish unaccounted for in,
8 I believe, a 16-year period, and there was
9 discussion of high water temperature as being a
10 potential cause; do you recall that?

11 MR. LAPOINTE: Yes.

12 Q I'm wondering, during that period, were there
13 carcasses found by your scientists consistent with
14 that?

15 MR. LAPOINTE: We don't survey the watershed for
16 carcasses. That would be something that would
17 come under Canada's purview, but it's pretty well
18 understood now, and there's actually a published
19 paper I could probably point you to, that you
20 don't tend to see level of bodies that you'd
21 expect when you have a large mortality, and that's
22 simply because sockeye carcasses don't float for
23 very long, and so you'd have to have a pretty
24 significant, dedicated program to monitoring a
25 very long period of time, and even then you'd only
26 see the ones that float.

27 MS. SMITH: Thank you, those are my questions.

28 MS. BAKER: Mr. Commissioner, I think the next
29 participant who will be asking questions is the
30 First Nations Coalition with Brenda Gaertner.

31 MS. GAERTNER: Thank you. For the record, Brenda
32 Gaertner, and with me, Leah Pence, for the First
33 Nations Coalition.

34 I just wanted to start this morning with a
35 housekeeping matter, particularly in response to
36 Ms. Baker's comments yesterday. She suggested, on
37 the record, yesterday, and it is true, that we all
38 received a letter from Brian Wallace first thing
39 Monday morning, with the proposed requirement that
40 all the participants provide a week's notice of
41 any documents we intend to rely upon. Now, I
42 need, also, therefore, to put on record that the
43 First Nations have concerns regarding this request
44 and note that although the Commission staff,
45 themselves, are doing a very -- doing their best
46 and working their hardest, they have not, also,
47 been able to manage to meet that standard as of

1 yet in this inquiry.

2 There are a significant volume of documents
3 which are already in Ringtail. There is also a
4 very tight timeframe in which you are also trying
5 to hold this inquiry on very complex matters. And
6 so it is my observation, Mr. Commissioner, that
7 relying on an adversarial process for the work
8 that you have ahead of you is a hard enough task.
9 Relying on increased stress and pressure on the
10 participants in order to participate in this
11 inquiry is not sustainable and should be dealt
12 with in a very precautionary manner before there
13 are cracks that start appearing in this inquiry
14 that could be quite significant.

15 And this is especially true as we move into
16 the hearings going forward that are going to be
17 increasingly technical in nature and will require,
18 as best we can, input from our clients on a
19 regular basis.

20 And so I don't want to air any more of these
21 concerns at this time and in this place. I've
22 spoken to Ms. Baker this morning, and I'm
23 suggesting that we try a management conference
24 amongst counsel to air some of the concerns that
25 are becoming more real as we experience this
26 inquiry and participate in it as best we can. I
27 don't imagine it will take too long. I would
28 prefer, if we can, to schedule it at a time when
29 we're already scheduled for hearings, because the
30 down time is definitely needed for preparation.

31 And so if that's something, and I understand
32 Ms. Baker is very content to take that suggestion,
33 then I would prefer that happen, and if we can't
34 sort some of these issues ourselves, then we'll
35 have to return to you for some guidance.

36 MR. BUTCHER: I would join in that request. I've sent
37 a letter, or dictated a letter to Mr. Wallace with
38 similar comments, and I think it would be very
39 helpful for us to have a management conference at
40 this point. It is getting very, very difficult
41 for the participants to keep up with the pace of
42 this process.

43 MS. BAKER: I can advise, Mr. Commissioner, that we
44 have talked internally about having another
45 management meeting with counsel, and I let Ms.
46 Gaertner know this morning, so it's on the agenda,
47 and we expect to be communicating with people

1 about that, suggesting perhaps meeting before a
2 hearing day an hour earlier or an hour after,
3 whatever, but we will find some time to do that in
4 short order, because we know that that's something
5 that people need to talk about.

6 THE COMMISSIONER: Thank you.

7 MS. GAERTNER: Thank you. Now, turning to the topic of
8 this panel and having to listen to the evidence
9 that had been provided yesterday and the questions
10 of the Commission, I'm going to work very hard to
11 stay at the 70,000 foot level and keep my
12 questions that way and not get into the details of
13 harvest management or the complexities associated
14 with that, or in the causes of decline for the
15 stocks.

16 I'm really trying to make sure that Mr.
17 Commissioner and all of our working knowledge
18 regarding how the PSC works with the parties,
19 Canada and the U.S. and that world is clarified as
20 best we can.

21 Many of the structural questions, I think,
22 will be questions you'll be able to handle, but I
23 note, Mr. Commissioner, that both Mr. Sprout and
24 Barry Rosenberger, and Mr. Sprout being the former
25 head of commissioners, and Mr. Rosenberger the
26 present chair of the Fraser Panel, are witnesses
27 that will be still back on the stand - if we want
28 to use that language - later in the inquiry, and
29 so if these are questions that are more
30 appropriately placed to them, I'll leave it in the
31 hands of these witnesses.

32 And also, I think it's important for the
33 witnesses, and for you to know, Mr. Commissioner,
34 that Mr. Russ Jones, who is an alternate
35 commissioner, and Mr. Marcel Shepert, who is a
36 member of the Fraser Panel, are part of First
37 Nations Coalition that I represent, and I am also
38 hoping that they will have the opportunity to
39 provide information to you directly as a witness,
40 and so some of the questions and issues may be
41 more appropriately placed with them, also.

42 And so just with those notes of introduction,
43 I'll begin my questions of this commission.

44
45 CROSS-EXAMINATION BY MS. GAERTNER:

46
47 Q I want to, first, touch on and provide some

1 clarification around Canada's involvement in the
2 PSC and how the staff and the commissioners and
3 the panel operate. And yesterday it was suggested
4 that it's sort of like a board of directors, and I
5 guess I have a little bit of problems with that
6 metaphor because, really, there are equal votes
7 between Canada and the U.S., and clearly not equal
8 sharing of the stocks, and so there is a nuance
9 associated, or equal responsibilities, with
10 respect to that stock; is that a fair observation?

11 MR. KOWAL: If you're referring to the reference to
12 Fraser stocks --

13 Q Yes.

14 MR. KOWAL: -- the stock proportion is not equal,
15 although the Salmon Commission is responsible for
16 all five species of salmon, and the sharing of
17 other stocks is not in that same proportion, so
18 that that -- if that clarifies that issue?

19 Q Thank you, yes, that's true. And my questions are
20 totally going to be focused on the Fraser River
21 stocks, bear with me on that, but that's the focus
22 of this inquiry.

23 Is it fair to say that one of the purposes
24 and goals of the treaty, from Canada's
25 perspective, is to keep the U.S. fisheries, which
26 occur in panel waters, and in particular the
27 Washington State panel waters, to fish, as they
28 fish on the Fraser River sockeye, to an agreed
29 sharing arrangement? That it's a marine fishery
30 that occurs outside of Canada's jurisdiction, and
31 that one of the goals, of course, in the treaty,
32 is that through the treaty they can get to a
33 particular share that that marine fishery will
34 access?

35 MR. KOWAL: Well, the shares are negotiated between the
36 two countries, and that is prescribed in the
37 treaty as it stands.

38 Q But one of the goals of Canada, because they don't
39 have jurisdiction over that fishery, and it's one
40 of the only fisheries they don't have jurisdiction
41 over, other than that which is accessed in Alaska,
42 is to attempt level of certainty around the level
43 of access and the time of access that that fishery
44 will have on Fraser-bound stocks?

45 MR. KOWAL: I would assume that would be a goal. Those
46 discussions do take place in the Fraser Panel.

47 Q And is it fair to say that through the Pacific

1 Salmon Treaty and the Annex, that there is a
2 tweaking of the method by which DFO has used to
3 establish some of the measures of control over
4 that fishery over the years, a fishery which has
5 been, in the past, quite volatile and adversarial
6 in nature?

7 MR. KOWAL: I'm not sure I understand what you mean by
8 "tweaking".

9 Q Well, how they operate now, and I'll take you
10 through those, perhaps, but how they operate now
11 and how they operated 20 years ago has changed.

12 MR. KOWAL: The operations have changed over time.

13 Q Now, it's fair to say Canada, in its work with the
14 PSC, and in the process, in particular, of
15 establishing the TAC, the goal, and it's
16 specifically set out in the Annex, is to establish
17 the TAC as it relates to the 16-percent share that
18 the U.S. holds, Canada is not required to fish
19 their TAC?

20 MR. LAPOINTE: That's correct.

21 Q And it's also fair, in the present management,
22 that it's only the U.S. that has overages and
23 underages?

24 MR. LAPOINTE: As described in paragraph 8, that's
25 correct. I believe it's paragraph 8.

26 Q And that nowadays, with respect to the U.S.'s
27 underages, it's only when they haven't caught
28 their share and they can establish that we've done
29 something directly to impact their inability to
30 collect their shares, that that applies?

31 MR. LAPOINTE: I believe that is certainly one of the
32 conditions, and that probably is contained in the
33 guidance document, the provisions for how the U.S.
34 would determine an underage, and that's one of the
35 provisions for sure.

36 Q Thank you. It's also, now, the present practice,
37 with respect to spawning escapements, it's my
38 understanding that it's now clear that the setting
39 of spawning escapement targets, is a matter
40 strictly for Canada and, in particular, DFO to do?

41 MR. LAPOINTE: That's correct.

42 Q And that one of the -- and perhaps more -- I don't
43 want to suggest that the setting of those spawning
44 escapement targets aren't something relevant to
45 the Fraser Panel, because you'll agree with me
46 that what happens is once those spawning
47 escapement targets are set, it comes to the Fraser

1 panel to develop preseason plans based on those
2 spawning escapement targets, correct?
3 MR. LAPOINTE: It does develop the preseason plans for
4 the bilateral management. There are obviously
5 other preseason plans that go on domestically in
6 Canada.
7 Q And it's those preseason plans, if reached by
8 agreement, that will result in both parties,
9 Canada and the U.S., in doing the annual
10 devolution to the Fraser Panel for the in-season
11 management that they do?
12 MR. LAPOINTE: Yes, it's the agreement on the plan that
13 results in the transfer powers to the panel from
14 the parties.
15 Q And that occurs annually?
16 MR. LAPOINTE: Yes.
17 Q And so obviously it's important for the work of
18 the in-season management for agreement of the plan
19 to be reached?
20 MR. LAPOINTE: Yes.
21 Q Now, I also wanted to make it clear - or help get
22 clear - I'm not going to make it clear - help get
23 it clear that around how the staff of the PSC and
24 the commissioners worked. As I understand it, the
25 staff work for the commission, they don't work
26 directly for the parties? And perhaps Mr. Kowal
27 can --
28 MR. KOWAL: That's correct.
29 Q -- clarify my understanding there? And that the
30 commission is an independent party or body that
31 works for both of the countries?
32 MR. KOWAL: Yes.
33 Q And it's each country maintains a significant
34 amount of responsibility associated with the work
35 regarding Fraser River stocks and, in particular,
36 the domestic obligations associated with that?
37 MR. KOWAL: Yes.
38 Q That's not the work of the commission in any way?
39 MR. KOWAL: That's correct.
40 Q And I just want to use an example of this just to
41 bring this home, not in any way as a criticism,
42 but it's my understanding that conference that you
43 held with respect to the 2009 fisheries was
44 actually a conference that you were directed to
45 hold by the commissioners; that's not something
46 you, as staff, can independently choose to do?
47 MR. LAPOINTE: That's correct.

1 Q Now, with that backdrop, and I think it's an
2 important backdrop, it's also fair to say that the
3 U.S. and Canada have, through the work of the
4 Fraser Panel, tried to become clear on the work
5 that the commission can do to assist the parties
6 in creating more predictable fisheries.

7 And I want to just make sure that I've got
8 the basics of that down, and the basics, as I
9 understand it, as it relates to the Fraser Panel,
10 is that you reach the preseason plan we've just
11 talked about based on Canada's escapement targets,
12 and then you -- and then, if you can, by
13 consensus, do that, you then provide in-season
14 run-size estimates and then, in a postseason
15 environment you provide analysis based on those
16 first two tasks?

17 MR. LAPOINTE: Yes, but just to be clear, when you used
18 the word "commission" in that context, you're
19 talking about the commission staff; is that
20 correct?

21 Q That's right.

22 MR. LAPOINTE: Okay. That's correct.

23 Q That's exactly right. It's commission staff, and
24 in these cases, it's the Fraser Panel, in
25 particular, that are charged with these
26 obligations?

27 MR. LAPOINTE: That's correct.

28 Q And that those in-season run-size estimates are,
29 first of all, very time-sensitive work? It can be
30 something that's adjusted in any particular week,
31 never mind just weekly?

32 MR. LAPOINTE: Yes, multiple times in the same week,
33 potentially.

34 Q And that once agreement with respect to those run-
35 sizes is reached by the panel, then those run-size
36 estimates are used for all of the fisheries
37 accessing Fraser River sockeye fisheries?

38 MR. LAPOINTE: That's correct.

39 Q And so they're used for all of the Washington
40 State fisheries in panel waters?

41 MR. LAPOINTE: That's correct.

42 Q And they're also used by Canada in all of their
43 in-season -- in all of the domestic fisheries that
44 they may hold, be it commercial, recreational or
45 First Nation?

46 MR. LAPOINTE: That's my understanding.

47 Q And is it fair to say that it's an ongoing concern

1 by Canada that if there isn't agreement with the
2 U.S., that they might simply go out fishing and
3 that that would be an ever increasing concern,
4 given Canada's increased concerns about
5 conservation?

6 MR. LAPOINTE: I think that would be a question better
7 directed to someone from Canada.

8 Q All right. Is it also fair to say that those run-
9 size estimates and the decisions that flow from it
10 are just one of the pivotal decisions that are
11 made during in-season and the management of the
12 fisheries?

13 MR. LAPOINTE: Yes.

14 Q And it's also fair to say that the openings that
15 are completely dependent on those run-size
16 estimates can have significant effects all along
17 the migratory routes that the sockeye travel?

18 MR. LAPOINTE: Yes.

19 Q And, in particular, it could have significant
20 effects on both the sustainability of the weak
21 stocks and the access by Fraser First Nations
22 people up in the higher reaches of the migratory
23 route?

24 MR. LAPOINTE: Yes.

25 Q Thank you. I want to turn, now, to some comments,
26 and just again, to provide some, hopefully,
27 improved clarity on the involvement of First
28 Nations people in the commission, and by that I
29 mean as commissioners or the panel. And I want to
30 turn specifically to PPR-4, page 24. And while
31 we're doing that, I just want to begin by making a
32 distinction I make, and see whether you'll agree
33 with this or not, between people who are First
34 Nations, or have training in First Nations issues,
35 and people that would carry a mandate or represent
36 tribal matters; would you agree with that
37 distinction?

38 MR. LAPOINTE: Yes, I would.

39 Q And, first of all, it's my working understanding,
40 and again, I'd like clarity on this, that all of
41 the individuals you identified yesterday as First
42 Nations are appointed by Canada to be either a
43 commissioner or a member of the Fraser Panel, and
44 not by First Nations; is that correct?

45 MR. KOWAL: That's correct.

46 Q And that, in fact, their oath of office, as a
47 commissioner or as a member of the panel, is an

1 oath of office to Canada; is that correct?

2 MR. KOWAL: That's correct.

3 Q And would you also agree, and is it to your
4 knowledge, that none of the people that are
5 commissioners or members of the panel, carry a
6 mandate from the tribes along the entire
7 migratory route, and that it would be misleading,
8 as suggested by the Policy and Practice Report, to
9 suggest they "represent" First Nations?

10 MR. KOWAL: That's probably a fair representation.

11 Q You would agree with me?

12 MR. KOWAL: Yes.

13 Q That it could be misleading to suggest they
14 represent First Nations?

15 MR. LAPOINTE: I've certainly heard those views
16 expressed by the First Nations' representatives on
17 the Fraser Panel.

18 Q Now, I'm not suggesting, and I don't want to
19 suggest that it's not important to have them there
20 and that they can provide some useful information,
21 I just think it's extremely important for the
22 Commissioner to know that they do not represent
23 all the tribes on the Fraser River or those that
24 access the Fraser River stocks.

25 Because you'll also agree with me that it's
26 been your experience at either the commission
27 level or at the staff level, that given the
28 breadth of the First Nations who access these runs
29 and their locations along these runs, clearly
30 their interests are not always the same?

31 MR. LAPOINTE: That would be a correct observation.

32 Q I'm not sure whether this is something you could
33 speak to, but I'm wondering - I definitely will
34 put it to the DFO representatives at the
35 commission - but do you think, from your working
36 knowledge at the commission and on the panel, that
37 it would be useful to have a clearly mandated
38 process where First Nations are present in those
39 scenarios with mandates from the tribes and along
40 the rivers?

41 MR. KOWAL: I think that would be a decision that the
42 parties would have to make for their own affairs.

43 Q Also, then, just a couple more questions on
44 representation and participation by First Nations.
45 I just want to turn to the makeup of the Fraser
46 Panel, and if I've done my calculations right, if
47 I use the panel members and the alternates,

1 there's two from DFO and three -- two or three,
2 depending on how you interpret Mr. Assu from the
3 First Nations, one from rec, and six or seven from
4 the industry; is that your working knowledge of
5 the makeup of the Fraser Panel?

6 MR. LAPOINTE: It certainly would be what's referred in
7 the PPR document on page 36, I believe, so yeah,
8 that's consistent.

9 Q And would you agree with me that that makeup is
10 largely a fact of history and that primarily when
11 it started and as it began, the commissioner's
12 work and the Fraser Panel's work was largely
13 attentive to the interests of industry?

14 MR. LAPOINTE: Partly. I think it may also be a
15 reflection of the mandate. So the mandate of the
16 panel does not include direct jurisdiction over
17 First Nations' fisheries, and so that may also be
18 a factor in the representation.

19 Q It's clear that that mandate doesn't determine
20 which commercial fisheries will be open, either;
21 it simply determines when there's enough available
22 catch for Canada to determine an open fishery for
23 the commercial fishery?

24 MR. LAPOINTE: That's correct, but there is a more
25 direct link in terms of at least the panel water
26 commercial fisheries in terms of regulatory
27 control.

28 Q Is it also fair to say that, going forward, given
29 the conservation concerns that Canada is working
30 with, with respect to the Fraser River stocks, and
31 given the challenges associated with implementing
32 the Wild Salmon Policy, that it may actually be
33 useful to have people from -- more people from the
34 Fraser River, itself, then from industry?

35 MR. KOWAL: That would be Canada's decision as they
36 proceed forward.

37 Q So you're suggesting that that's something I
38 better -- that's better pursued with Mr. Sprout or
39 Mr. Rosenberger?

40 MR. KOWAL: That's correct.

41 Q All right. And just turning, briefly, to the work
42 of the technical committee responsible to the
43 Fraser Panel. And again, we referred to -- or as
44 referred to Mike Staley's work on the technical
45 committee, yesterday, it's clear that on the
46 technical committee no one is representing anyone
47 in particular; is that correct?

1 MR. LAPOINTE: That's correct.

2 Q And, in fact, the guidelines of -- the bylaw
3 guidelines for the PSC, for the technical
4 committee, make that a requirement?

5 MR. LAPOINTE: That's correct as well.

6 Q They also make it a requirement that you clearly
7 distinguish between technical and biological
8 issues and policy issues; is that correct?

9 MR. LAPOINTE: That's correct.

10 MS. GAERTNER: I'm wondering, Mr. Commissioner, whether
11 or not it would be useful -- I think, going
12 forward, he's confirmed the evidence, so I don't
13 know if I need the document for his, but I think
14 it would be useful for you to see the document.
15 In the Pacific Salmon Commission bylaws there is a
16 document that provides the guidance and the
17 obligations of the members of the technical
18 committee, and so I'd like to tender that as an
19 exhibit. I'll tender the Pacific Salmon
20 Commission Bylaws as an exhibit, and the
21 guidelines are attached, and these are documents
22 that have been referenced in the materials to
23 date, and I don't believe should come as a
24 surprise to anybody.

25 THE REGISTRAR: Exhibit 76

26
27 EXHIBIT 76: Pacific Salmon Commission Bylaws

28
29 THE COMMISSIONER: Ms. Gaertner, are they already in
30 the system, that Mr. Lunn has access to?

31 MS. GAERTNER: Yes. He's going to bring it to your
32 attention in half a second, and then I'm going to
33 take you to page 14 of that document.

34 THE COMMISSIONER: Thank you.

35 MS. GAERTNER: Magic. Sorry, I'm still an old fogey
36 and rely on paper.

37 Q And you'll see that those are guidelines for the
38 conduct of the technical committee members. Those
39 were the guidelines I was referring you to
40 earlier; is that correct? And you'll see that at
41 the third paragraph, under the:

42
43 Individual Committee Members Shall Serve as
44 Scientists, Not as Advocates For Their
45 Respective Agency Positions

46
47 It makes it clear that they cannot represent

1 directly, or indirectly, their clients?

2 MR. LAPOINTE: That's correct.

3 Q And that they are -- that in - in the paragraph
4 before it, your work is to clearly and:

5
6 ...carefully define and distinguish
7 technical/biological problems and policy
8 issues.
9

10 MR. LAPOINTE: That's correct.

11 Q Thank you. I just want to briefly, and again, I'm
12 not sure about your experience on this one, and if
13 it doesn't work we'll see if we can get the right
14 witness - I just want the Commissioner to know the
15 contrast between how Canada and the U.S. operate
16 at the panel. In particular, it's my working
17 knowledge that there are four decision-makers
18 represented within the U.S. commissioners on the
19 Fraser Panel. There's the decision-makers
20 representing the Federal Government, there are
21 decision-makers on behalf of the Washington and
22 Oregon States and Alaska and the tribes, but each
23 of them carry obligations within their caucus and
24 that they do absolutely require consensus amongst
25 them in order for a position to be taken by that
26 party; is that working knowledge correct?

27 MR. KOWAL: I wasn't clear whether you were referring
28 to the commissioners or you were referring to the
29 panel members.

30 Q Is there a distinction there?

31 MR. KOWAL: There is a distinction.

32 Q Could you explain that?

33 MR. KOWAL: The commissioners would fit the description
34 you did talk about.

35 Q So at the commission level there are four
36 decision-makers, and consensus amongst all of
37 those are required in order for a position of the
38 U.S. to take?

39 MR. KOWAL: That's correct.

40 Q And tell me, how is it different at the Fraser
41 Panel?

42 MR. KOWAL: The Fraser Panel basically has -- I could
43 ask Mike to describe it, but --

44 MR. LAPOINTE: Sure, I'll take it. It's just the main
45 distinction would be the fact that Oregon is not
46 represented on the Fraser River Panel.

47 Q Ah.

1 MR. LAPOINTE: So there are three.

2 Q Great. Perfect.

3 MR. LAPOINTE: But it is my understanding that those
4 three parties; federal, Washington State; and
5 tribal representatives, do have to reach consensus
6 for the Fraser River Panel -- the United States
7 section of the Fraser River Panel, to bring
8 forward a position.

9 Q Thank you. I think that -- that's very helpful.
10 My next line of questions is really lines of
11 questions around -- I often describe them as
12 proving a negative. I just want you to bear with
13 me as I confirm what you don't do and you don't
14 have responsibility for.

15 You'll agree with me that the legal
16 responsibilities of the Canadian Crown is to
17 recognize and reconcile Aboriginal and treaty
18 rights and to consult and accommodate, under
19 Canadian law, regarding the impacts of any of the
20 commissioner's decisions or the Fraser Panel
21 decisions, is something, to date, that the
22 Department of Fisheries and Oceans Canada have
23 assumed as full responsibilities and are not the
24 responsibilities of either the Fraser Panel or the
25 commission?

26 MR. HUNTER: I'm sorry, Mr. Commissioner, but that's a
27 legal question. It's not really a fair question
28 for the panel.

29 MS. GAERTNER:

30 Q Well, on an operating basis, do you operate with
31 any obligations associated with the consultation
32 with First Nations?

33 MR. LAPOINTE: Not that I'm aware of. Only through the
34 panel or the commission.

35 Q And it's fair to say that the kind of expertise
36 that may be required to do such an activity is not
37 something that's found within the Commission staff
38 or the commissioners, necessarily?

39 MR. LAPOINTE: That would be correct.

40 Q Yesterday, if I heard Mr. Butcher correct, he made
41 the suggestion that given the increasing demands
42 of fisheries management and the changing
43 fisheries, that somehow -- that one of the ways
44 forward would be for the PSC to assume
45 responsibility for all of the Fraser River
46 fisheries. Now, would you agree with me that that
47 would -- one of the impacts of such a move would

- 1 be that the U.S. would only have more involvement
2 in the fisheries of Canada?
- 3 MR. LAPOINTE: To be clear, I think what the gentleman
4 was referring to was the sentence in the document
5 of the 1994 review where John Fraser suggested
6 that the powers be vested within the Canadian
7 section of the Fraser Panel, not the bilateral
8 Fraser Panel, but I would ask the counsellor to
9 provide that, you know, correct me if I'm wrong,
10 but that was my understanding, he was referring to
11 that particular document which referenced the
12 remarks by John Fraser. So the Canadian section,
13 of the Fraser Panel, should be vested with that
14 power, no the bilateral Fraser Panel.
- 15 Q Well, the Canadian section of the Fraser Panel
16 participates at the Fraser Panel level, which is
17 at the PSC level, it's not domestic; is that
18 correct?
- 19 MR. LAPOINTE: Yes, but bilateral decisions can only be
20 made by both Canada and the United States and --
- 21 Q Right.
- 22 MR. LAPOINTE: -- I believe that Mr. Fraser's remarks
23 were referring to just the Canadian section of the
24 Fraser River Panel, which obviously does not have
25 bilateral authority.
- 26 Q All right. So maybe we'll just go with what I
27 want to make sure is clear in the suggestion,
28 which would be that, if it was suggested that the
29 Fraser Panel should -- and the commission should
30 extend their jurisdiction or responsibilities up
31 the Fraser, that that would only result in the
32 U.S. having more involvement in Canadian
33 fisheries; is that correct?
- 34 MR. LAPOINTE: That would be a fair characterization,
35 yes.
- 36 Q And, in fact, it might even suggest that the U.S.
37 would have involvement in First Nations fisheries
38 in the setting of priorities for First Nation
39 fisheries?
- 40 MR. LAPOINTE: Whether or not they would have
41 involvement in priorities would depend up on what
42 their engagement was in terms of -- I mean, they
43 might not be involved with the regulation to meet
44 priorities and not involved in priorities at all.
45 So it would depend on detail and how that was
46 implemented.
- 47 Q All right. Now, just one final comment or

1 question on this topic. Given the objection
2 already made, whether I can go this far, but
3 again, I just want to make it clear that it's
4 Canada's responsibility to respond to and, on the
5 ground, deal with the domestic fisheries within
6 their jurisdiction, including the First Nations'
7 fisheries, and that the commission does not hold
8 any direct responsibilities to First Nations, in
9 that regard?

10 MR. LAPOINTE: That would be my understanding, yes.

11 Q And I guess it's remiss -- I would be remiss to
12 complete this topic without asking you to observe
13 some of the challenges of the Fraser Panel's work,
14 in particular, the in-season estimates that
15 occurs. If I heard you right, yesterday, your
16 comment was - and again, if I heard you right -
17 that one of the ways that DFO's involvement with
18 respect to the pre-season estimates, is determined
19 or resolved is the fact that the DFO sits as the
20 chair of the Fraser River Panel?

21 MR. LAPOINTE: I'm not sure I quite understand the
22 comment, perhaps?

23 Q That's what I heard you say, yesterday, that --

24 MR. LAPOINTE: Could you repeat the comment, please?
25 I'm sorry, I'm just trying to understand what the
26 question is.

27 Q I'm going to see if I can get you come clearer
28 notes of your -- what I heard you say, and I'm
29 just checking this --

30 MR. LAPOINTE: Okay.

31 Q -- is that one of the ways that -- or the way that
32 you ensured DFO's involvement or consensus with
33 the in-season estimates that are determined, is
34 because DFO chairs the Fraser Panel?

35 MR. LAPOINTE: So I think the reference is probably to
36 this part of the testimony involving whether
37 Canada has a say over decisions made by the Fraser
38 River Panels, or after -- subsequent to a panel
39 bilateral decision? Is that the reference?

40 Q And that there isn't any change by DFO to those
41 preseason estimates once it's reached at the panel
42 level?

43 MR. LAPOINTE: That's correct.

44 Q That's correct. And so DFO's decisions, as it
45 relates to in-season run estimates, is confirmed
46 and determined at the Fraser Panel; is that
47 correct?

1 MR. LAPOINTE: With respect to in-season, that would be
2 correct; with respect to pre-season, there isn't
3 that same mechanism.

4 Q Right. And I am just focusing on in-season
5 decisions there.

6 All right, I have two more topics. The next
7 topic I want to turn to is what's known as the
8 Aboriginal exemption and its role in the Fraser
9 River Annex. Can you confirm with me my working
10 knowledge that the 400,000 Fraser River Aboriginal
11 -- Fraser River sockeye Aboriginal exemption was
12 first introduced in 1985 and has not changed since
13 then?

14 MR. LAPOINTE: I believe it was 1985. There is a
15 reference to 400,000 in the 1985 treaty. I just
16 don't know the extent to which it was involved in
17 the detailed calculations of TAC at that time, but
18 I believe -- I believe you're correct.

19 Q And is it fair to characterize the import of that
20 400,000 exemption as it's really a number that's
21 taken off the top that the U.S. agreed to before
22 the calculation of the TAC; is that correct?

23 MR. LAPOINTE: Yeah, I think it would be fair to say
24 that under the current arrangement the U.S.
25 Essentially accepts a 16-1/2 percent of 400,000
26 deduction from its share as the acknowledgment of
27 the importance of First Nations' fisheries in
28 Canada.

29 Q And that it doesn't reflect what Canada's view is
30 with respect to the appropriate numbers for First
31 Nations' fisheries and the need for food, social
32 and ceremonial fisheries?

33 MR. LAPOINTE: Doesn't bear any -- anything resembling
34 -- resemblance to what that -- it has no bearing
35 on that particular decision within Canada.

36 Q And that, as far as I understand, in terms of the
37 working part of that, in addition to the number
38 that's taken off top, is that historically there
39 was some disagreements with -- between Canada and
40 the U.S. as to where that exemption could be
41 caught and by which First Nations. Those are
42 somewhat resolved now, but that one of the
43 outstanding matters for negotiation is how that
44 exemption now will apply across the stocks of the
45 Fraser River sockeye; is that correct?

46 MR. LAPOINTE: Certainly there's been a change in the
47 way -- in the way that the First Nations'

1 exemption, in terms of application, is calculated.
2 It did just apply to in-river fisheries, at one
3 point, and it now applies to in-river or marine
4 fisheries, so that's been a change.
5 And the second part of your question, I'm
6 sorry, Brenda?
7 Q As I understand it, there's one item that's still
8 listed in Exhibit 67, or --
9 MR. LAPOINTE: Ah, yes.
10 Q -- which is the list of outstanding issues under
11 the Annex, and there is one item on the exemption
12 that's listed and
13 MR. LAPOINTE: Relates to the distribution, that's
14 correct.
15 Q That's correct.
16 MR. LAPOINTE: Amongst the four management groups,
17 that's correct.
18 Q So that there is some discussions going on between
19 Canada and the U.S. as to how to distribute that
20 400,000 off the top, over the four aggregates; is
21 that correct?
22 MR. LAPOINTE: That's correct.
23 Q I'm wondering if whether you would agree with this
24 observation, that in the past - and I'm not sure
25 if it's still accurate today, although it may be -
26 that one of the indirect effects of that 400,000
27 was that there was often a rush to get that caught
28 so that the U.S. marine fisheries could then
29 access the runs; is that a fair characterization
30 of how that happened in the past, or is that --
31 MR. LAPOINTE: I really don't have any --
32 Q All right.
33 MR. LAPOINTE: -- recollection of anything of that
34 nature.
35 Q Okay. I just want to ask Mr. Kowal a couple of
36 questions. Mr. Kowal, would you agree with me
37 that one of the reasons informing the postponement
38 of the substantive renegotiations of the Annex was
39 Canada's decision to embark on the Cohen
40 Commission and the possible implications and
41 benefits of any recommendations that Commissioner
42 Cohen may arrive at?
43 MR. KOWAL: I best would ask Canada that particular
44 question.
45 Q And again, I may suspect I know the answer to this
46 question, but I'll risk it. Are you aware of any
47 efforts that Canada has made with respect to

1 engaging First Nations on the renegotiations of
2 this Annex?

3 MR. KOWAL: I can't answer that question.

4 MS. GAERTNER: I'm wondering if you could bring forward
5 Exhibit 76, and, in particular, I'd like you to go
6 back to page 263, and then have ready page 261.

7 MR. LUNN: Are you talking about the bylaws?

8 MS. GAERTNER: No, I'm talking about that book that
9 went into evidence yesterday.

10 MR. LUNN: That's 75.

11 MS. GAERTNER: I'm Sorry.

12 MR. LUNN: Sorry, can you give me that page number
13 again?

14 MS. GAERTNER: Sure, it's page 263 and 261 of the book,
15 which I think is around page 281 of Ringtail.

16 Q Now, Mr. Lapointe, for some reason, Mr. Butcher
17 asked for your expertise with respect to that
18 chart, and so I need to ask a few more questions
19 and perhaps clarify a few things.

20 It's fair to say that you don't have any
21 direct knowledge or understanding of the
22 historical catches of First Nations on the Fraser
23 River; is that correct?

24 MR. LAPOINTE: That's correct.

25 Q And would it be helpful to you, when commenting on
26 the draft, for you to see, at page 261 of this
27 book, the author of the book reflects that
28 accurate records for the early years of those
29 fisheries are lacking?

30 MR. LAPOINTE: I think when I commented on the graph, I
31 simply suggested that the graph appears to
32 represent what Mr. Butcher said. I didn't comment
33 directly on whether I thought the numbers in the
34 graph were accurate or inaccurate.

35 Q I see, you were just reading the graph from a
36 scientific perspective --

37 MR. LAPOINTE: Yes.

38 Q -- and not commenting on the substance of it?

39 MR. LAPOINTE: That's correct.

40 Q All right. I'll leave this area of examination,
41 then.

42 Finally, I just want to turn very briefly to
43 the complex task ahead of us around the kinds of
44 challenges that might be associated with managing
45 for the conservation units under the Wild Salmon
46 Policy and as it relates to the four aggregates
47 that are managed presently under the commission's

1 work. First of all, would it be fair to say that
2 the U.S. will have to agree to use anything
3 broader than the four aggregates in order for
4 there to be more accurate conservation units to
5 become the work of the PSE staff?

6 MR. LAPOINTE: When you say "broader" do you mean more
7 groups?

8 Q More groups, that's right.

9 MR. LAPOINTE: It would depend upon how that is
10 implemented. So Canada could choose to try to
11 meet its obligation as to a finer level either
12 within or outside, either engage the U.S. or not
13 engage the U.S. It would depend upon what Canada
14 chooses to do.

15 Q Right. But if it was to become something that the
16 PSC staff turned their mind to, directly, we would
17 require U.S. agreement; is that correct.

18 MR. LAPOINTE: If it was going to be written into the
19 treaty that there be a management to more groups,
20 then the U.S. would have to agree to that.

21 Q And is it also fair to observe that Canada would
22 have its work cut out for them to have the U.S.
23 agree to that, because the likely result of it
24 could be, in some years, that the U.S. marine
25 fisheries would be restricted?

26 MR. LAPOINTE: Again, someone from Canada or the U.S.
27 could comment as to whether or not that would be a
28 fair characterization.

29 Q That's not something from biological perspective
30 you can comment on?

31 MR. LAPOINTE: I think the question that you -- or the
32 comment that you made was that Canada would have
33 their work cut out for them to get the United
34 States to agree --

35 Q Well, let's unpack it.

36 MR. LAPOINTE: -- so --

37 Q So if you were managing for the increased
38 conservation units, that one of the possibilities
39 associated with that is that in some years the
40 marine fisheries more curtailed; would you agree
41 with that?

42 MR. LAPOINTE: It would depend, again, upon the
43 specifics about how those conservation units were
44 being implemented. It would depend upon what the
45 specific scenario is that Canada or the U.S., or
46 whatever the agreement would be, the proposal, to
47 implement that particular policy.

1 Q Mr. Kowal, I wonder if you could advise whether or
2 not the topic of increasing from four aggregates
3 to a more complex conservation unit has been
4 tabled at the commissioner's work?

5 MR. KOWAL: Not at this point.

6 Q All right. Finally, I just want to ask a little
7 bit about pre and in-season run-size estimates. I
8 just want to - and I don't mean this as a
9 criticism by any means, I think run-size estimates
10 is a very complicated business - but I want to see
11 whether you will agree with me that run-size
12 estimates are exactly that, they're estimates,
13 they're not guaranteed numbers in the bank?

14 MR. LAPOINTE: I agree.

15 Q And that those estimates are becoming more and
16 more difficult to rely upon, given the variables
17 that are affecting the salmon in present climate
18 conditions and river conditions; is that correct?

19 MR. LAPOINTE: There's certainly a perception that
20 they're becoming more variable. I haven't
21 actually looked at the data to determine if they
22 are becoming more variable, but there certainly is
23 a perception that they're becoming more variable.

24 Q And is it fair to say that in any particular year
25 that you can have up to 25 to 30% adjustments that
26 occur at the end of the year, two-year in-season
27 estimates?

28 MR. LAPOINTE: In certain circumstances they certainly
29 have had postseason run sizes differ from in-
30 season run sizes by that amount, at that order of
31 magnitude, sure.

32 Q And it's also fair to say that in years of
33 scarcity that that kind of error can be quite
34 significant for long-term sustainability; is that
35 correct?

36 MR. LAPOINTE: Certainly it's conceivable, depending
37 upon the decisions that are made, you know, with
38 respect to the run sizes that are -- that occur in
39 those years.

40 Q And again, I think it's because of the increased
41 variables you're working with that are not in the
42 control of humans, necessarily; is that correct?

43 MR. LAPOINTE: Again, I know that there is a perception
44 that there is a greater variance in the run-size
45 estimates, but whether that is, in fact, correct
46 or not, you know, certainly our impacts, potential
47 impacts of changing conditions on the survival of

1 fish and -- but, you know, to some extent those
2 have occurred in history all along. I think part
3 of it is we're just a little bit more in
4 perception, in tune to these changes, now, perhaps
5 because, you know, more folks are involved, or the
6 complexity has changed, and so forth.

7 Q And it's also fair to say that our marine
8 fisheries and the abilities to catch those fish
9 have been developed over time, also, and we can do
10 -- we can access a fair bit of the run in one or
11 two days of openings now; is that correct?

12 MR. LAPOINTE: Certainly the potential is there in a
13 derby-style fishery, if that was to occur, to
14 access a larger fraction of the run. In the last
15 few years there's been a move away from that and
16 marine fisheries is more towards quota-based
17 fisheries, in which case the risk is much less,
18 because you can determine the exact quota that the
19 particular fleet might be fishing to. But the
20 power, the fishing power is certainly there.

21 Q And really, what I'd like to suggest to you is
22 nothing more than, again, in this ever-increasing,
23 changing world, even all of the work we've done on
24 preseason and in-season estimates, it's something
25 that, given the changing conditions, we need to
26 take care with and be cautionary about; is that
27 correct?

28 MR. LAPOINTE: We have to be aware of all the sources
29 of uncertainty in both the in-season and the
30 preseason estimates. And to the extent we can
31 change the way we do things to decrease that
32 uncertainty, it certainly would be desirable.

33 MS. GAERTNER: Thank you very much. Those are my
34 questions.

35 THE COMMISSIONER: Ms. Gaertner, just before you close
36 off, there were just -- just from, again, the
37 general context of your asking it, but I might
38 just ask: The witness mentioned that, I'm sorry,
39 the catch estimates he - this may have been just
40 prior to your questioning - catch estimates were
41 provided by DFO and then, when you were examining
42 the witness, he talked about the spawning
43 escapement targets, that are also provided by DFO.
44 I just wonder if we could just get some sense of
45 the timing of receipt, and without drilling down
46 too deeply, just how this information is supplied
47 to all of those within the commission that require

1 this information? So timing of receipt --
2 MS. GAERTNER: Sure I'd be happy to pursue that --
3 THE COMMISSIONER: Thank you very much.
4 MS. GAERTNER: -- kind of detail.
5 MS. GAERTNER:
6 Q Mr. Lapointe, I think this is the matter in your
7 hands. As I understand it, the preseason spawning
8 escapement targets are a preseason discussion that
9 occurs in order for planning preseason; is that
10 correct?
11 MR. LAPOINTE: That's correct.
12 Q And that most of Canada's work with respect to
13 that is now being done by FRSSI, the new
14 initiative on setting preseason targets; is that
15 correct?
16 MR. LAPOINTE: Yes, Fraser River Sockeye Salmon
17 Initiative.
18 Q Thank you. And that's something that I anticipate
19 the Commissioner will hear much about in the weeks
20 to come with respect to harvest planning; is
21 that --
22 MR. LAPOINTE: I understand it's on the calendar, yes.
23 Q Thank you. And then, the catch estimates are
24 something that occurs in-season and postseason; is
25 that correct?
26 MR. LAPOINTE: That's correct.
27 Q And so those catch estimates are done differently
28 for every one of the fisheries; is that correct?
29 MR. LAPOINTE: There are probably some that are done
30 similarly, but there are different methodologies
31 for different fisheries.
32 Q And again, those are something that is really in
33 the purview of Canada's responsibilities?
34 MR. LAPOINTE: On the Canadian side, that's correct,
35 yes.
36 Q That's right. And it's fed in weekly to the
37 Fraser River Panel?
38 MR. LAPOINTE: More frequently than weekly. Usually
39 within a short duration after the closure of
40 fishery, sometimes in less than 24 hours we would
41 have initial catch estimates, and then they are
42 refined over the course of time. But it's very
43 frequent
44 MS. GAERTNER: Is that helpful, Mr. Commissioner?
45 THE COMMISSIONER: It is, thank you very much, Ms.
46 Gaertner.
47 MS. GAERTNER: All right.

1 MS. SCHABUS: Mr. Commissioner, Nicole Schabus,
2 representing joint participant groups Sto:lo
3 Tribal Council and Cheam. I have an indication
4 from Commission counsel that I should indicate to
5 you I'm going to be 20 minutes or more, and so I'm
6 in your hands regarding the break.

7 THE COMMISSIONER: If it's convenient for you, we could
8 take the break now, and then, when we come back,
9 you can complete your examination. Is that
10 convenient?

11 MS. SCHABUS: It's fine with me.

12 THE COMMISSIONER: Thank you very much.

13 THE REGISTRAR: The hearing will now recess for 15
14 minutes.

15

16 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

17 (PROCEEDINGS RECONVENED)

18

19 THE REGISTRAR: Order. The hearing will now resume.

20 MS. SCHABUS: Gentlemen, the questions are basically to
21 both of you.

22 THE REGISTRAR: Name, please.

23 MS. SCHABUS: Sorry. Again, Nicole Schabus, S-c-h-a-b-
24 u-s, first initial N., counsel for participant
25 group 18, Sto:lo Tribal Council and Cheam Indian
26 Band.

27

28 CROSS-EXAMINATION BY MS. SCHABUS:

29

30 Q So generally my questions are going to be for both
31 of you. Feel free to answer accordingly, although
32 I think the first questions are going to be more
33 for Mr. Kowal.

34 Yesterday, I think it was actually Mr.
35 Lapointe who said it, but you indicated that the
36 chair of the Canadian caucus to the Fraser River
37 Panel has always been a person from DFO. And I
38 just want to point out, for the U.S. it has
39 actually been a Tribal representative; is that
40 correct?

41 MR. KOWAL: No; the representative for the U.S. changes
42 each year.

43 Q Yeah.

44 MR. KOWAL: And it rotates between the Tribal
45 representatives and the government.

46 Q Correct. And what I'm just trying to establish is
47 that sometimes it actually has been a Tribal

1 representative, namely, Lorraine Loomis, fisheries
2 manager for the Swinomish Tribe, right?
3 MR. KOWAL: That's right.
4 Q And she has been -- she is currently the co-chair
5 of the Fraser River Panel, and she also chairs the
6 U.S. caucus?
7 MR. KOWAL: That's correct.
8 Q And she also chaired the Bilateral Fraser River
9 Panel before?
10 MR. KOWAL: She has.
11 Q Now, you can tell, from the U.S. Tribal
12 participation in the Pacific Salmon Commission,
13 that they re trying to implement co-management of
14 the fisheries with the tribes?
15 MR. KOWAL: A lot of the change in the chairmanship for
16 the U.S. Fraser River Panel is based on the **Boldt**
17 decision.
18 Q And you are seeing them implementing that,
19 actually, also, at the level of participation in
20 the Pacific Salmon Commission and under the
21 treaty, right?
22 MR. KOWAL: Yes.
23 Q And the U.S. has made substantive efforts to
24 implement that decision in their work under the
25 commission?
26 MR. KOWAL: Correct.
27 Q Now, under that decision, the tribes have direct
28 participation in management decisions and are
29 entitled of up to 50 percent of harvestable runs
30 in usual and accustomed fishing areas, right?
31 MR. KOWAL: That's correct.
32 MR. LAPOINTE: Excuse me, the current chair arrangement
33 within the United States, with respect to Fraser
34 sockeye, I believe, is two-thirds of the catch
35 goes to the tribes and one-third goes to non
36 Indians.
37 Q Okay. Now, the Pacific Salmon Commission has
38 directly interacted with U.S. tribes, conducting
39 programs together, for example, the Northwest
40 Indian Fisheries Commission, correct?
41 MR. LAPOINTE: I'm sorry, could you repeat the
42 question?
43 Q The Pacific Salmon Commission has been directly
44 interacting with U.S. tribes conducting programs
45 together with the Northwest Indian Fisheries
46 Commission, as an example?
47 MR. LAPOINTE: Yes. So, for example, there are

- 1 employees of the Northwest Indian Fisheries
2 Commission that are, in fact -- well, the chair of
3 the U.S. Tech -- Fraser River Panel Tech
4 Committee, Gary Graves, is an employee of the
5 Northwest Indian Fisheries Commission.
- 6 Q And you also have programs like tagging,
7 monitoring programs with them? Or you've had
8 them?
- 9 MR. LAPOINTE: There probably are circumstances where
10 maybe the southern fund has funded programs that
11 are conducted by that group, but I'm not aware of
12 the details.
- 13 Q Now, the U.S. tribes conduct the test fishery, or
14 some of the test fishery, right?
- 15 MR. LAPOINTE: There is a test fishery in an area
16 called Neah Bay, which is out on outer Juan de
17 Fuca Strait on the United States side, that is
18 conducted by the Macah Tribe.
- 19 Q In Canada, there's no test fishery conducted by
20 First Nations, correct?
- 21 MR. LAPOINTE: There is involvement of First Nations in
22 a number of test fisheries. There's Brian Assu is
23 a test fisherman for us in Area 13, so Southern
24 Johnstone Straits. See if I can get all the other
25 names. Gordie Wasden is a test fisherman in
26 Northern Johnstone Straits. And Norman Stauffer
27 is another test fishermen who is Northern
28 Johnstone Straits. So there are test fishermen
29 who are conducting -- that are affiliated with
30 Aboriginal groups that are part of the test
31 fisheries in both countries.
- 32 Q Now, regarding the test fishery in Canada, it's
33 contracted out, right?
- 34 MR. KOWAL: That's correct.
- 35 Q SO it's not conducted by DFO vessels, or anything
36 like that?
- 37 MR. KOWAL: Not the ones that are prosecuted on behalf
38 of the Salmon Commission.
- 39 Q In the past, they were able to sell their catch to
40 cover costs and more. It could be that they would
41 actually recover more than cost, right?
- 42 MR. KOWAL: Well, if they're under contract to us, the
43 proceeds from the sale of the fish would have come
44 to us.
- 45 Q Now that it's funded by DFO, what happens with the
46 catch?
- 47 MR. KOWAL: The catch -- that depends on the particular

1 contract. I mean, the contract for us, the catch,
2 which is usually small, which is based on numbers
3 of fish that are harvested mainly in gillnets,
4 which are dead on -- after they are harvested, or
5 used for scientific purposes, those are then sold
6 by the Salmon Commission.

7 Q You say small amounts, but overall it is a
8 substantive amount of fish that comes to -- that
9 is caught that way, like over 100,000 fish in test
10 fisheries on an annual basis, right?

11 MR. LAPOINTE: That number is consistent with a level
12 of harvest we've seen in some recent years.

13 Q Now, the treaty does not take into account the
14 principle of priority resource allocation?

15 MR. LAPOINTE: I'm not sure what you mean by that.
16 There is a priority established in the treaty, as
17 reflected in paragraph 10, so -- but I'm not sure
18 what you mean by "priority of allocation," I'm
19 sorry.

20 Q Priority resource allocation, giving priority to
21 Aboriginal fishery, especially for food, social
22 and ceremonial purposes.

23 MR. LAPOINTE: That would be covered under the domestic
24 allocation objective in the treaty, so it would be
25 up to Canada to ensure that its domestic
26 priorities were achieved under its domestic
27 allocation.

28 Q But there is no such principle set out in the
29 treaty, right?

30 MR. LAPOINTE: Under domestic allocation it would be
31 whatever principles apply to that particular
32 country, so there --

33 Q As the third objective or third priority?

34 MR. LAPOINTE: As the third objective, that's correct.

35 Q Who provides the preseason run-size estimates?

36 MR. LAPOINTE: Canada, thru DFO.

37 Q Yeah. Now, these preseason run-size estimates are
38 used to making management decisions until certain
39 in-season estimates become available?

40 MR. LAPOINTE: There are very few fisheries that are
41 opened or closed based on preseason forecasts.
42 Typically, it takes some sort of an in-season
43 update to open a fishery. There would be
44 potentially some limited food, social and
45 ceremonial fisheries that might be open prior to
46 an in-season update, and occasionally there are
47 small level catches, for example, the commercial

1 fishery in Area 5 in the United States, small
2 travel fishery, might be open prior to an in-
3 season update, but primarily there's -- I wouldn't
4 know a fraction of the catch, but I would suggest
5 probably, you know 90 percent of the catch might
6 be taken following an in-season update, something
7 like that. It's a very fraction of the total
8 requiring some sort of an update.

9 Q Now, regarding early estimates overall, and I
10 think we've already established that there is
11 problems, and I'll go into more detail with that
12 with in-season estimates, but there have been
13 situations in recent years where you had higher
14 estimates, including in-season estimates, for
15 returns that later had to be adjusted, to the
16 detriment of in-river fisheries?

17 MR. LAPOINTE: We've certainly had years where in-
18 season estimates were higher than postseason
19 estimates, and we've also had years when in-season
20 estimates were lower than postseason estimates.
21 In both directions we've had deviations.

22 Q 2009?

23 MR. LAPOINTE: 2009, I don't think the postseason
24 estimates were actually substantially different
25 from the in-season estimates. We knew we had a
26 very small run right from the beginning, and the
27 panel took action accordingly.

28 Q Now, I'd like to take you back to Exhibit number
29 74. I hope that is the Fraser Panel Report 2005.
30 And we've already -- and specifically to the issue
31 of difference between estimates, and I think
32 that's important to point out. And I'd like to
33 take you specifically to page 62 in report, or 64
34 -- 68 on the pdf.

35 MR. LUNN: Thank you.

36 MS. SCHABUS: And this is dealing with in-season
37 estimates. I'm going to have you have to zoom in
38 on the first third of page.

39 MR. LUNN: Certainly.

40 MS. SCHABUS:

41 Q And I'll just briefly ask you about the issues
42 that you have encountered with in-season estimates
43 and reliability of in-season estimates, that you
44 have seen an increasing problem regarding
45 predictability in that regard; you'd agree with
46 that?

47 MR. LAPOINTE: With respect to the predictability that

1 in-season estimates provide of what is estimated
2 postseason?

3 Q Correct.

4 MR. LAPOINTE: So with respect to, as outlined
5 yesterday, with respect to differences between
6 this potential spawning escapement number shown in
7 this table and the spawning escapement number
8 which generates this difference, as was outlined
9 yesterday, those differences have increased over
10 time.

11 Q And like especially for the in-season
12 applicability, there is an issue with attributing
13 it to the appropriate species, right? There are
14 some problems with that?

15 MR. LAPOINTE: On pink salmon years, we do have
16 challenges in terms of trying to estimate the
17 proportion of sockeye and pink, and that's used to
18 partition out the Mission total to sockeye and
19 pink.

20 Q So I'd like to briefly take you to that summary
21 paragraph that we see on the screen.

22
23 In 2005 there was a substantial difference
24 [of] (4,690,000 fish) between the estimates
25 of potential spawning escapement (Mission
26 escapement minus catch upstream...) and
27 arrivals on the spawning grounds,
28

29 Right?

30 MR. LAPOINTE: That's correct.

31 Q And you were taken to that issue, specifically,
32 regarding 2005, yesterday. Now, on the post-
33 season analysis:

34
35 ...suggest that approximately 60% of this
36 difference can be attributed to biases in
37 species composition assessments obtained from
38 in-river gillnet test fisheries that were
39 applies to Mission acoustic estimates to
40 [determine] total sockeye passage.
41

42 Correct?

43 MR. LAPOINTE: That's correct.

44 Q So you would agree with me that that is obviously
45 a very substantive gap?

46 MR. LAPOINTE: Yes, on pink salmon years.

47 Q Correct. And then it runs through the remaining

1 percentages that were expected, and basically the
2 remaining seven percent of the difference is
3 unexplained, so that's really what we're dealing
4 with?

5 MR. LAPOINTE: In the case of post-season accounting,
6 it would be - and somewhere in this appendix it
7 probably gives a number - but so this is
8 explaining the difference that we observed in-
9 season?

10 Q Yes.

11 MR. LAPOINTE: The numbers that I think that were being
12 referred to in the table yesterday - and I don't
13 know exactly which page it was - where what's
14 remaining is not accounted for by the bias. So
15 enroute losses at one million fish, that would
16 still be a --

17 Q No, and --

18 MR. LAPOINTE: -- that would be still be part of the
19 difference -

20 Q Of course.

21 MR. LAPOINTE: -- that ends up in the accounting.

22 Q I understand that.

23 MR. LAPOINTE: Right.

24 Q But it's actually the difference between in-season
25 accounting and the issues that you have with in-
26 season predictions and postseason estimates.

27 Now, so I take it you agree with the
28 conclusion that is set out in the panel report
29 here?

30 MR. LAPOINTE: I agree that we were able to explain the
31 difference, 4.6 million, in the manner that's
32 outlined in Table 1.

33 Q And it shows a couple of things, that what we are
34 dealing with and what you've correctly referred to
35 as the Mission estimates, especially for the
36 species specificity are very much estimates,
37 right?

38 MR. LAPOINTE: Yes, that's an estimate.

39 Q And there is especially problems in ensuring that
40 they are attributed to sockeye salmon,
41 specifically? In this case, pink would have been
42 counted as sockeye, right?

43 MR. LAPOINTE: That's correct. Hydroacoustic estimates
44 just estimate total targets. There's no ability
45 within the technology of the method to distinguish
46 species based on hydroacoustics, so we rely on
47 test fishing to partition those estimates.

1 Q Now, there are no management adjustments, or DBs
2 calculated for pink salmon?

3 MR. LAPOINTE: That's correct.

4 Q Because there are actually, no estimates -- you
5 don't have the estimates required for such a
6 calculation; the abundance plus Mission cannot be
7 accurately assessed, and spawning ground
8 numerations are not conducted, right?

9 MR. LAPOINTE: That's correct.

10 Q And so you actually still can't give us reliable
11 numbers of how many fish that went through Mission
12 were pink and how many were sockeye?

13 MR. LAPOINTE: We can provide a reliable estimate of
14 the sockeye; we can't provide a reliable estimate
15 of the pinks.

16 Q The changes in migration patterns either early or
17 late migration caused significant problems for the
18 in-season estimation?

19 MR. LAPOINTE: You mean upstream migration?

20 Q Yeah.

21 MR. LAPOINTE: When the late run began migrating
22 upstream early, in that case, their behaviour at
23 Mission also created problems for us, initially.
24 They would mill at the site, meaning they would
25 pass by our hydroacoustic estimates more than
26 once, and with the older technology we couldn't
27 distinguish direction of travel, but now we can,
28 and that's been in place since about 2000 or so,
29 2002, so that behaviour creates less of a problem
30 for us now than it did, say, five, six, seven,
31 eight years ago.

32 Q But you'd still agree that changes in migration
33 patterns combined with the problem in actually
34 predicting species composition, caused serious
35 problems for in-season predictions?

36 MR. LAPOINTE: Yeah, so on pink years, which, in case
37 folks are not familiar, pink salmon run into the
38 Fraser every odd year, not every year, so it's
39 only in odd years, the change in the migration
40 pattern of the sockeye has resulted in more of the
41 migration of sockeye overlapping with the pinks
42 and, in fact, the pinks have also changed their
43 migration, and they're coming in earlier as well.
44 So there's more time in the Fraser River when our
45 programs are operating when pinks and sockeye are
46 together than there used to be.

47 Q And let's just specify: for 2005, the issue was

1 actually the pinks were early; the sockeye were
2 late?

3 MR. LAPOINTE: That's right; the pinks were very early
4 and the sockeye were extraordinarily --

5 Q Were very late.

6 MR. LAPOINTE: -- late. Extraordinarily late.

7 Q Now, there is no independent indigenous -- there
8 was no independent indigenous participation in the
9 negotiation of the treaty?

10 MR. LAPOINTE: I'm not aware of who was participating
11 in the negotiation of the treaty.

12 Q Sorry?

13 MR. LAPOINTE: I'm not aware of the details of who was
14 participating in the negotiations of the treaty
15 and --

16 Q Okay. And I understand you -- neither of you were
17 around then, but you were around when the new
18 agreements -- one of you might have been --
19 actually, just 2009 you were both around, right?
20 But there was no consultation with indigenous
21 peoples from Canada at the -- and from -- with
22 indigenous peoples from Canada directly at the
23 level of the Pacific Salmon Commission, right?

24 MR. KOWAL: When the negotiation is on between the
25 parties, it's between the parties that are -- the
26 discussions take place.

27 Q Sure. But I'm going to put it to you that under,
28 for example, multilateral environmental
29 agreements, they have caucuses for indigenous
30 peoples where such are recognized as rights
31 holders and they have independent standing of the
32 parties and can, as such, participate in those
33 negotiations. That is not the case for the
34 negotiations for the Pacific Salmon Treaty,
35 correct?

36 MR. KOWAL: I'm not sure who are part of the Canadian
37 delegation and the national caucuses for these
38 negotiations.

39 Q But there is no -- and I agree with that, and
40 we've already spoken about nationally appointed
41 members and that they are appointed by Canada, but
42 what I'm trying to point out is there's no
43 independent indigenous participation, no
44 indigenous caucus, where indigenous peoples have
45 an input as rights holders with separate standing?

46 MR. KOWAL: No; the negotiations are between Canada and
47 the U.S.

1 MS. SCHABUS: Those are all my questions.

2 MS. BAKER: Mr. Commissioner, I have one point of
3 clarification coming out of the evidence, and I
4 just want to make sure the evidence is clear.

5

6 RE-EXAMINATION BY MS. BAKER:

7

8 Q Mr. Lapointe, when Mr. Leadem was asking you
9 questions, he put it to you that -- he asked you
10 whether a member of the PSC sits in on the Fraser
11 River Panel, and you replied, "Rarely," only if
12 the topic was with respect to renegotiation of
13 some issue and it would be very rare. I just
14 wanted to clarify: Did you understand that
15 question to refer to commissioners or commission
16 staff of the PSC?

17 MR. LAPOINTE: When I hear PSC, I generally assume
18 Pacific Salmon Commission and commissioners. So
19 it helps, for clarification, if people are asking
20 about "staff", to use the word "PSC staff", and I
21 think that is a very consistent, potential point
22 of confusion, so thank you for clarifying that.

23 Q So in your answer, was your answer referring to
24 commissioners or to staff?

25 MR. LAPOINTE: To commissioners.

26 Q Okay. And do staff of the PSC have an involvement
27 at the Fraser River Panel?

28 MR. LAPOINTE: Of course.

29 MS. BAKER: Okay. There was two other housekeeping
30 matters. Mr. Butcher referred to a document,
31 which is the 1994 Fraser River Sockeye Problems
32 and Discrepancy Report, but it wasn't marked as an
33 exhibit, and for the record we probably should
34 have that marked as an exhibit. It's been pulled
35 up on the screen by Mr. Lunn.

36 THE REGISTRAR: Number 77.

37

38 EXHIBIT 77: Fraser River Sockeye 1994
39 Problems and Discrepancy Report

40

41 MS. BAKER: And one final pure housekeeping point, in
42 the Policy and Practice Report there is a
43 typographical error that needed -- I meant to
44 correct and I forgot. So if you turn to the
45 Appendix II to the report, which is actually --
46 the correction needs to happen on page 33 of the
47 document, itself. Appendix II sets out chapter 4

1 from the Annex 4. And there's a --

2 THE COMMISSIONER: Which exhibit are you on?

3 MS. BAKER: It's the PPR, page 33. It's on the screen.
4 You'll see, at the top, where it has (c) as the
5 sub -- it says (c) is "Achieve domestic
6 objectives" - no, don't move it - then right below
7 is an "(a)"; that should really be an "11" and the
8 paragraph below should be a "12", and the
9 paragraph below that should be a "13", so that's
10 just a typographical error. But if we're
11 referring to this document at some point in the
12 future, we should make that correction so it
13 accurately reflects the language of chapter 4 from
14 Annex 4 of the treaty.

15 THE COMMISSIONER: I now have that on my screen. Can
16 you just repeat that, please?

17 MS. BAKER: Yes, (a), the sub (a) which you see sub (a)
18 reads, "The Fraser River Panel shall manage its
19 fisheries," that really should be 11, paragraph
20 11, and the paragraph which is 11 should really be
21 12, and 12 should really be 13. So that record
22 should be corrected.

23 Mr. Commissioner, unless there is anything
24 arising out of the questions and answers given,
25 those are -- we're finished with these witnesses
26 for today.

27 THE COMMISSIONER: Is there anything arising from
28 participants' counsel?

29 Just a couple of brief matters. I may have
30 missed it, Ms. Baker, but I'm not sure if we have
31 all Commission counsel on the record as yet, but
32 perhaps we can just -- your colleagues --

33 MS. BAKER: Yes, I think I did identify them on the
34 first day, but I can do that again. It's Maia
35 Tsurumi and Line Christensen.

36 THE COMMISSIONER: Thank you. I thank Ms. Gaertner and
37 Mr. Butcher for raising a point, and I'm confident
38 Ms. Baker will take that back to senior Commission
39 counsel and steps will be taken to address your
40 comments, and I thank you for that.

41 I take it, Ms. Baker, that the issue of the
42 test fisheries will come back when the matter
43 resumes with regard to some of the details
44 surrounding the --

45 MS. BAKER: Yes, all of those details --

46 THE COMMISSIONER: Right.

47 MS. BAKER: -- will be brought out in later evidence,

1 absolutely.

2 THE COMMISSIONER: Well, Mr. Kowal and Mr. Lapointe,
3 thank you very much for making yourself available
4 yesterday and today. I think, Mr. Lapointe, you
5 are probably going to see more of this room than
6 you would like to, but I gather you are going to
7 be back at some point.

8 MR. LAPOINTE: I believe that's correct, sir.

9 THE COMMISSIONER: So I thank you for yesterday and
10 today. And do I understand, Ms. Baker, that we
11 are now adjourned until Tuesday morning of next
12 week; is that correct?

13 MS. BAKER: That's correct.

14 THE COMMISSIONER: Okay. Then thanks to counsel. We
15 will now adjourn until 10:00 a.m. on Tuesday,
16 November the 16th. Thank you very much.

17 THE REGISTRAR: The hearing is now so adjourned.

18

19 (PROCEEDINGS ADJOURNED AT 11:39 A.M. TO
20 TUESDAY, NOVEMBER 15, 2010, AT 10:00 A.M.)

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28 I HEREBY CERTIFY the foregoing to be a
29 true and accurate transcript of the
30 evidence recorded on a sound recording
31 apparatus, transcribed to the best of my
32 skill and ability, and in accordance
33 with applicable standards.

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Karen Hefferland
Registered Court Transcriber

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