

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, December 13, 2010

Tenue à :

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

le lundi 13 décembre 2010



Errata for the Transcript of Hearings on December 13, 2010

Page	Line	Error	Correction
ii		incomplete title	Patrick McGowan Associate Commission Counsel
ii		incomplete title	Jennifer Chan Junior Commission Counsel
iv		James Walkus is not a participant	remove from record
iv		Musgagmagw Tsawataineuk Tribal Counsel	Musgamagw Tsawataineuk Tribal Council
40	14, 16, 19 and 16	Halalt	Pilalt

APPEARANCES / COMPARUTIONS

Patrick McGowan Jennifer Chan	Commission Counsel Commission Counsel
Mark East Charles Fugère	Government of Canada
Boris Tyzuk, Q.C.	Province of British Columbia
No appearance	Pacific Salmon Commission
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
No appearance	B.C. Salmon Farmers Association ("B.C.SFA")
No appearance	Seafood Producers Association of B.C. ("SPAB.C.")
No appearance	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Judah Harrison	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")
Don Rosenbloom	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

APPEARANCES / COMPARUTIONS, cont'd.

David Butcher, Q.C.	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
No appearance	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")
Tina Dion James Reynolds	Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM")
David Robbins Robert Janes Sarah Sharp	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)
No appearance	Adams Lake Indian Band
No appearance	Carrier Sekani Tribal Council ("FNC")
No appearance	Council of Haida Nation

APPEARANCES / COMPARUTIONS, cont'd.

No appearance	Métis Nation British Columbia ("MNB.C.")
Tim Dickson Nicole Schabus	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
No appearance	Laich-kwil-tach Treaty Society James Walkus and Chief Harold Sewid Aboriginal Aquaculture Association ("LJHAH")
Benjamin Ralston (articled student)	Heiltsuk Tribal Council ("HTC")
Krista Robertson Lee Schmidt	Musgagmagw Tsawataineuk Tribal Counsel ("MTTC")

TABLE OF CONTENTS / TABLE DES MATIERES

	PAGE
PANEL NO. 9: (Affirmed)	
COUNCILLOR JUNE QUIPP	
In chief by Mr. McGowan	3
Cross-exam by Ms. Schabus	39
Cross-exam by Mr. East	50/54/61/66
Cross-exam by Mr. Harrison	69
Cross-exam by Mr. Butcher	77/82/84/86
CHIEF WILLIAM CHARLIE	
In chief by Mr. McGowan	4
Cross-exam by Ms. Pence	24
Cross-exam by Mr. East	52/57/62/66
Cross-exam by Mr. Harrison	67/71/72
Cross-exam by Mr. Butcher	76/78/82/83/84/86
Cross-exam by Mr. Lowes	87
GRAND CHIEF CLARENCE PENNIER	
In chief by Mr. McGowan	5
Cross-exam by Mr. Dickson	16
Cross-exam by Mr. East	48/58/65
Cross-exam by Mr. Harrison	72
Cross-exam by Mr. Butcher	75/77/80/81/85/86
CHIEF KIMBERLY BAIRD	
In chief by Mr. McGowan	6
Cross-exam by Ms. Dion	10
Cross-exam by Mr. East	51/56/63/66
Cross-exam by Mr. Harrison	71/72
Cross-exam by Mr. Butcher	74/81/83/86
Cross-exam by Mr. Janes	89
JOSEPH BECKER	
In chief by Mr. McGowan	6
Cross-exam by Mr. Reynolds	7
Cross-exam by Mr. East	51/54/64
Cross-exam by Mr. Butcher	74/79/81/85
Cross-exam by Mr. Lowes	88

EXHIBITS / PIECES

<u>No.</u>	<u>Description</u>	<u>Page</u>
278	Witness summary of Councillor June Quipp	4
279	Witness summary of Chief William Charlie	5
280	Witness summary of Grand Chief Clarence Pennier	6
281	Witness summary of Chief Kimberly Baird	6
282	Witness summary of Joseph Becker	7
283	Tsawwassen First Nation Final Agreement dated December 6, 2007, effective April 3, 2009	11
284	Appendix A to the Tsawwassen First Nation Final Agreement	12
285	TFN Fisheries, Wildlife, Migratory Birds and Renewable Resources Act , April 3, 2009	13
286	TFN Fisheries, Wildlife, Migratory Birds and Renewable Resources Act , Fisheries Regulations, dated September 16, 2009	14
287	Appendices J-1, J-2, J-3 from Tsawwassen First Nations Final Agreement	14
288	Review of the Fraser River Aboriginal Fisheries Secretariat: March 2007, Prepared for the Fraser River First Nations Fisheries Forum by Dr. Bob Brown	59
289	DFO and First Nations Fraser Salmon "Roadmap" Process, December 2010	65
290	Three Year Strategic Approach to Developing a Co-management Process for Fraser River Salmon: First Nations Component - Draft September 27, 2009	65

1 Vancouver, B.C. /Vancouver (C.-B.)
2 December 13, 2010/le 13 décembre
3 2010
4

5 THE REGISTRAR: The hearing is now resumed.

6 THE COMMISSIONER: Mr. McGowan.

7 MR. MCGOWAN: Thank you, Mr. Commissioner. For the
8 record, it's Patrick McGowan. I'm counsel for the
9 Commission. With me is Jennifer Chan, another one
10 of your counsel. I'll just say perhaps a few
11 brief words before we get started today, Mr.
12 Commissioner, about the next three days.

13 The next three days will consist of evidence
14 from witnesses proposed by a number of your
15 aboriginal participants. The focus of the
16 evidence over these next three days will be
17 Aboriginal World View, Aboriginal Traditional
18 Knowledge and Cultural Context. That will be
19 primarily what the evidence will cover.

20 The evidence will be presented by witnesses
21 appearing in panels. You're going to hear from a
22 total of 14 witnesses over the next three days in
23 the three panels which will consist of four to
24 five witnesses each. The panels are organized
25 roughly along geographical lines.

26 Today, Mr. Commissioner, you'll be hearing
27 from First Nations representatives representing
28 areas primarily in the lower Fraser. Tomorrow
29 you'll be hearing from aboriginal panellists who
30 represent primarily the mid and upper Fraser, and
31 the third day we'll deal primarily with the marine
32 and approach areas.

33 Now, it's obviously a good number of
34 witnesses covering some important evidence we have
35 to get through in the next few days. We'll have
36 to all work together to ensure that we're able to
37 cover this material in the time allotted.

38 In terms of the order of examination,
39 Commission counsel will go first, followed by
40 counsel for each of the panellists, and then of
41 course, questions from the remaining participants
42 in the room.

43 There's one issue in terms of examination
44 that I wanted to just draw to your attention, Mr.
45 Commissioner. The usual rule we have is that each
46 participant group speaks with one voice. They
47 have one counsel who'll deal with each topic or

1 each witness or panel. There is an issue that's
2 arisen with this particular panel whereby a couple
3 of the participant groups are going to seek leave
4 to have two counsel, and I'll just explain that to
5 you. The Cheam and Sto:lo are one participant
6 group together, but we have one witness from the
7 Sto:lo Tribal Council and one from the Cheam
8 Indian Band. Mr. Dickson is counsel for the
9 Sto:lo and Ms. Schabus is counsel for the Cheam,
10 and they will each seek to lead the evidence of
11 their own panellist. They've agreed not to ask
12 questions of each other's witnesses and to avoid
13 any duplication.

14 A similar issue arises with respect to the
15 Musqueam witness and the witness from Tsawwassen
16 First Nation who are represented by Mr. Jim
17 Reynolds and Ms. Dion respectively, and they will
18 also seek leave from you, Mr. Commissioner, to ask
19 questions of their own witness, and similarly have
20 agreed to avoid duplication and to question only
21 their own witnesses, not each other's.

22 Commission counsel's position is it seems
23 like a reasonable request and we're supportive of
24 it. As I said, we have three panels to get
25 through in three days. We've allotted one day for
26 each. We're going to have to work hard to stay on
27 track and make sure that we don't run over time.
28 We're sitting from 10:00 to 4:00 each day.

29 Commission counsel has conducted an interview
30 with each of the panellists and, in part because
31 of the timing considerations, Commission counsel
32 has prepared fairly detailed summaries of the
33 information provide to us during those interviews.
34 Each of the summaries has been reviewed by the
35 witness and their counsel and has been distributed
36 to all participants. Subject to any corrections,
37 it's our intention to have each witness adopt
38 their summaries and have those filed as an
39 exhibit.

40 In order to help keep us on track in terms of
41 timing, aside from introducing the witnesses,
42 Commission counsel will rely on these summaries as
43 its examination in chief, leaving as much time as
44 possible for counsel for the witnesses on the
45 panel to spend time with their witnesses.

46 As I said, Mr. Commissioner, the oral
47 evidence you are going to hear, I understand, is

3
PANEL NO. 9 (Affirmed)
In chief by Mr. McGowan

1 going to be primarily focused on aboriginal world
2 view, aboriginal traditional knowledge and
3 cultural context. We're hopeful we can keep the
4 evidence this week focused primarily on those
5 topics. There will be topics related to the
6 aboriginal fishery which will arise in hearings
7 that come later in the New Year in the area of the
8 hearings dedicated to that particular topic.

9 With that said, and subject to any questions,
10 I would propose to have the witnesses sworn or
11 affirmed and then proceed to introduce them and
12 file their summaries.

13 THE REGISTRAR: You may remain seated. Do you solemnly
14 affirm that the evidence to be given by you to
15 this hearing shall be the truth, the whole truth
16 and nothing but the truth?

17 I need you to speak up, please.

18
19 (ALL PANEL MEMBERS AFFIRMED)
20

21 THE REGISTRAR: Could you state your full name, please?

22 COUNCILLOR QUIPP: June Quipp.

23 CHIEF CHARLIE: William Peter Charlie.

24 GRAND CHIEF PENNIER: Clarence Martin Pennier.

25 CHIEF BAIRD: Kimberly Carolyn Baird.

26 MR. BECKER: Joseph Ralph Becker.

27 THE REGISTRAR: Thank you. Counsel?

28 MR. MCGOWAN: Ms. Commissioner, I'll just have a couple
29 of brief questions to introduce the witnesses and
30 we'll file their summaries. I'll start with you,
31 Ms. Quipp.
32

33 EXAMINATION IN CHIEF BY MR. MCGOWAN:
34

35 Q You're presently a councillor for the Cheam Indian
36 Band?

37 COUNCILLOR QUIPP: Yes.

38 Q Okay. And you previously served five years as an
39 elected chief for the Cheam Indian Band?

40 COUNCILLOR QUIPP: Yes, I did.

41 Q And personally you're a member of the Halalt Tribe
42 at Cheam?

43 COUNCILLOR QUIPP: Yes.

44 Q Okay. Now, we had an interview just a short time
45 ago in fact on November 26th.

46 COUNCILLOR QUIPP: Yes.

47 Q And Commission counsel prepared a summary of that

4
PANEL NO. 9
In chief by Mr. McGowan

1 interview?

2 COUNCILLOR QUIPP: Yes.

3 Q And have you had a chance to review your summary?

4 COUNCILLOR QUIPP: I have.

5 Q And you made a couple of corrections?

6 COUNCILLOR QUIPP: Yup. Yes, I did.

7 Q Which we accepted.

8 COUNCILLOR QUIPP: Yes.

9 Q And are you able to, today, adopt the contents of
10 your summary?

11 COUNCILLOR QUIPP: Yes.

12 MR. MCGOWAN: Mr. Commissioner, if that could be the
13 next exhibit? That's the witness summary of
14 Councillor June Quipp.

15 THE REGISTRAR: Exhibit number 278.

16

17 EXHIBIT 278: Witness summary of Councillor
18 June Quipp
19

20 MR. MCGOWAN: Thank you.

21 Q Chief Charlie, you are a member of the Chehalis
22 Indian Band?

23 CHIEF CHARLIE: Yes.

24 Q And you're presently an elected chief of the
25 Chehalis Indian Band?

26 CHIEF CHARLIE: Yes.

27 Q And you're the CEO also for the band's
28 Administration and Development Corporation?

29 CHIEF CHARLIE: Yes.

30 Q And previously you were the vice-president for the
31 Union of B.C. Indian Chiefs?

32 CHIEF CHARLIE: Yes.

33 Q And similarly, we had an interview on September
34 21st of this year?

35 CHIEF CHARLIE: Yes.

36 Q And you've had a chance to review the summary
37 that's been completed for that?

38 CHIEF CHARLIE: Yes.

39 Q And I understand you may have one just small
40 correction to make?

41 CHIEF CHARLIE: Yes.

42 Q If you could direct me to the page that correction
43 is on?

44 CHIEF CHARLIE: On page 4 underneath "Aboriginal
45 Perspective and World Views", second paragraph,
46 fourth line down, second sentence, "Some become
47 the wind...". It's supposed to have been

5
PANEL NO. 9
In chief by Mr. McGowan

1 "winged".

2 Q So the word "wind" in the fourth line of that
3 second paragraph should be changed to "winged"?

4 CHIEF CHARLIE: Yes.

5 Q Okay. Subject to that correction, do you adopt
6 the contents of your summary?

7 CHIEF CHARLIE: Yes.

8 MR. MCGOWAN: Okay. If that could become the next
9 exhibit, Mr. Commissioner.

10 THE REGISTRAR: Exhibit number 279.

11

12 EXHIBIT 279: Witness summary of Chief
13 William Charlie

14

15 MR. MCGOWAN: Thank you.

16 Q Grand Chief Pennier, we had --

17 GRAND CHIEF PENNIER: Yes.

18 Q -- our interview on November 26th as well?

19 GRAND CHIEF PENNIER: That's right.

20 Q Okay. You're presently chief of the Sto:lo Tribal
21 Council?

22 GRAND CHIEF PENNIER: Change that to president.

23 Q President?

24 GRAND CHIEF PENNIER: Yes.

25 Q I'm sorry about that. And the Sto:lo Tribal
26 Council is comprised of approximately eight
27 communities?

28 GRAND CHIEF PENNIER: That's right.

29 Q And personally you're a member of the -- is it
30 pronounced Scowlitz First Nation?

31 GRAND CHIEF PENNIER: That's right.

32 Q Okay. Now, have you had a chance to look at the
33 summary that we prepared?

34 GRAND CHIEF PENNIER: I have.

35 Q Okay. And are you content with the contents of
36 it?

37 GRAND CHIEF PENNIER: Yes, I am.

38 Q Okay.

39 GRAND CHIEF PENNIER: Just changing "President" from
40 "Chief".

41 Q Okay. So in the first -- in the second line
42 before we get very far in, we've made our first
43 mistake. Are you -- is Grand Chief an appropriate
44 title for you, sir?

45 GRAND CHIEF PENNIER: That's right.

46 Q Okay. So we can address you as Grand Chief, but
47 presently you're the president of the Tribal --

6
PANEL NO. 9
In chief by Mr. McGowan

1 Sto:lo Tribal Council.

2 GRAND CHIEF PENNIER: That's right.

3 MR. MCGOWAN: Okay. Thank you for that clarification.

4 If that could be the next exhibit, then, Mr.

5 Commissioner? I'll just wait for Mr. Giles.

6 THE REGISTRAR: It'll be 280.

7

8 EXHIBIT 280: Witness summary of Grand Chief
9 Clarence Pennier

10

11 MR. MCGOWAN:

12 Q Chief Baird?

13 CHIEF BAIRD: Yes.

14 Q You're a member of the Tsawwassen First Nation?

15 CHIEF BAIRD: Yes.

16 Q You're presently the elected chief of Tsawwassen
17 First Nation?

18 CHIEF BAIRD: Yes.

19 Q And you've held that position for approximately 11
20 years?

21 CHIEF BAIRD: Yup.

22 Q Prior to which, you were a council member of the
23 Tsawwassen First Nation for six years?

24 CHIEF BAIRD: Yes.

25 Q You had an interview with Commission counsel on
26 August 13th of this year?

27 CHIEF BAIRD: Yes.

28 Q And you've had an opportunity to review the
29 summary from that interview?

30 CHIEF BAIRD: Yes.

31 Q And do you adopt the contents of the summary?

32 CHIEF BAIRD: Yes.

33 MR. MCGOWAN: Okay. Thank you. If that could be the
34 next exhibit, Mr. Commissioner.

35 THE REGISTRAR: Exhibit number 281.

36

37 EXHIBIT 281: Witness summary of Chief
38 Kimberly Baird

39

40 MR. MCGOWAN: Thank you.

41 Q Mr. Becker, thanks for being here today. You're a
42 member of the Musqueam Indian Band?

43 MR. BECKER: Yes.

44 Q And you spent much of your life fishing from
45 Steveston?

46 MR. BECKER: Yes.

47 Q Okay. And you're presently one of six elected

7
PANEL NO. 9 (Affirmed)
In chief by Mr. McGowan
Cross-exam by Mr. Reynolds (MTM)

1 commissioners on the Musqueam Fisheries
2 Commission; is that correct?
3 MR. BECKER: Yes.
4 Q All right. You had an interview with Commission
5 counsel on November 1st of this year?
6 MR. BECKER: Yes.
7 Q Okay. And we prepared a summary of that
8 interview?
9 MR. BECKER: Yes.
10 Q And you've had a chance to look at that and make
11 any corrections?
12 MR. BECKER: No corrections.
13 Q Okay. Thank you. So you're content with the
14 content?
15 MR. BECKER: Yes, I am.
16 MR. MCGOWAN: If that could be the next exhibit, Mr.
17 Commissioner?
18 THE REGISTRAR: Exhibit 282.
19
20 EXHIBIT 282: Witness summary of Joseph
21 Becker
22
23 MR. MCGOWAN: Mr. Commissioner, that will conclude the
24 examination by Commission counsel. There are five
25 panellists, each who will have a separate counsel
26 conducting their examination in chief on behalf of
27 that participant group. I have suggested to them
28 that they ought to collectively attempt to get
29 through their examinations in chief within a
30 couple of hours, and I've left it to them to sort
31 out the particular order and how they're going to
32 distribute that time.
33 So I'm not sure who is going to be going
34 first? Mr. Reynolds is going to be examining
35 first, Mr. Commissioner.
36 MR. REYNOLDS: Mr. Commissioner, my name is James
37 Reynolds. I'm the counsel for the Musqueam, and
38 as Mr. McGowan mentioned, I'd like to seek leave
39 to examine Musqueam, and my friend, Tina Dion,
40 will examine the Tsawwassen with Chief Baird.
41 THE COMMISSIONER: Thank you, Mr. Reynolds.
42 MR. REYNOLDS: Thank you.
43
44 CROSS-EXAMINATION BY MR. REYNOLDS:
45
46 Q Mr. Becker, I have a few questions for you.
47 First, I'd like to just give some further

1 background relating to you. I'll read a
2 statement, in effect, and ask that you confirm
3 whether it's true or not. Is it true that you've
4 fished for most of your life?

5 MR. BECKER: Yes, it is.

6 Q That you've been a member of the Musqueam
7 Fisheries Commission for a number of years, for
8 about 18 years, I believe?

9 MR. BECKER: Right.

10 Q That you're a former chief?

11 MR. BECKER: Yes.

12 Q A former member of the band council?

13 MR. BECKER: Yes.

14 Q That you participate in ceremonies at the
15 longhouse?

16 MR. BECKER: Yes.

17 Q And that you carry on the Musqueam tradition as a
18 carver?

19 MR. BECKER: Yes.

20 Q Thank you. I'd like to acknowledge that we are in
21 the traditional territory of the Musqueam.
22 Please, could you tell us where the main winter
23 village of the Musqueam was located in relation to
24 the Fraser River?

25 MR. BECKER: It's right at the mouth of the north arm.

26 Q Thank you. And what is your understanding of the
27 importance of fishing on the Fraser River to the
28 Musqueam before the arrivals of the Europeans in
29 1792?

30 MR. BECKER: Salmon has always been important, and
31 culturally, they use it in all of the ceremonies.
32 We use it for, like, used to preserve it for long
33 periods of time to last till the next salmon
34 season, so they would -- they would dry it, they
35 would can it. So there was always lots of salmon
36 available for our people.

37 Q Thank you. How many members of the Musqueam
38 participate in the Fraser River fishery today?

39 MR. BECKER: Approximately -- anywhere from 40 to 100.
40 We issued about 100 licences last year, and
41 approximately 40 or 50 people fished.

42 Q Thank you. What about those members of the
43 community who can't fish for themselves?

44 MR. BECKER: The Commission has a responsibility to the
45 membership. We're elected by the membership, so
46 we set aside a portion of our allocation to be
47 distributed amongst the elders and the handicapped

1 first, and then we distribute it to the
2 membership.

3 Q Thank you. And can you explain the importance of
4 the sockeye salmon to Musqueam culture today?

5 MR. BECKER: We still use it in our longhouses. We --
6 in our funeral, our ceremonies. So there's
7 basically like two main ingredients that we feed
8 people when they come to Musqueam, and that's
9 salmon and the other is wild game.

10 Q Thank you. And the Musqueam letterhead or logo,
11 could you describe that?

12 MR. BECKER: It's a salmon within an arrowhead with a
13 net.

14 Q Thank you. And if I could turn to traditional
15 knowledge, how relevant do you think that is to
16 the management of the fishery?

17 MR. BECKER: I think traditional knowledge, given the
18 time frame of where we are today, has to evolve.
19 Methods of fishing have changed. Fish have
20 changed. So we use our traditional knowledge
21 about run size and when fish are coming, but we
22 fish by today's methods because of the technology.

23 Q Thank you. And if I could turn to the question of
24 management of the Fraser River fishery, what is
25 your view on whether the Department of Fisheries
26 adequately consults with Musqueam with respect to
27 the fishery?

28 MR. BECKER: My view is that it's a process that needs
29 more work. They did consult in the beginning, but
30 now it's more of a dictatorship, in my view, where
31 these agreements are basically "take it or leave
32 it". If you leave it, then you're not fishing.

33 Q And how would you see Musqueam working with other
34 First Nations in the Fraser River watershed?

35 MR. BECKER: Well, traditionally, there were two
36 parties that Musqueam belonged to. One was the
37 Lower Fraser Fishing Authority made up of bands
38 from Sawmill Creek or Yale to the mouth and the
39 Fraser Watershed. Musqueam does not belong to
40 either of those, and I believe both of those
41 groups have disbanded.

42 So I think a forum needs to be established
43 and I believe the AAROM process is starting that,
44 and hopefully, that will revive the Lower Fraser
45 initiative anyway.

46 Q And do you see a role for a province-wide
47 organization representing First Nations such as

1 the First Nations Fisheries Council?

2 MR. BECKER: I believe that aboriginal fisheries really
3 needs to have one organization that represents all
4 of the fishers. That would include rights fishers
5 and licensed fishers. We would have to elect
6 regional members to that group.

7 Q Thank you. And my final question is how do you
8 think the Fraser River fishery could be better
9 managed to ensure the sustainability of the
10 sockeye?

11 MR. BECKER: I was going to say that's a hot potato.
12 Mr. Commissioner, I've -- I'm a real believer in
13 equity, and there is no equity in the way the fish
14 are managed today. Fish are the responsibility of
15 everyone who participates in the fishery. DFO, in
16 their management regime, has decimated the stocks
17 in the Fraser system. I believe that there has to
18 be a regime or a group representing all user
19 groups, and that's First Nations, recreational and
20 commercial, and put our egos aside and get into a
21 room and negotiate with one another so that there
22 will be fish for the future, for our
23 grandchildren.

24 I have 17 grandchildren and I'd like them to
25 have fish in the future. The way it's going
26 today, there won't be fish for even my children.

27 MR. REYNOLDS: Thank you, Mr. Becker. Mr.
28 Commissioner, those are my questions for Mr.
29 Becker. There may be other questions.

30 THE COMMISSIONER: Thank you, Mr. Reynolds.

31 MS. DION: Good morning, Mr. Commissioner, Tina Dion,
32 D-i-o-n, for Tsawwassen First Nation.
33

34 CROSS-EXAMINATION BY MS. DION:
35

36 Q Chief Baird, with respect to the witness summary,
37 is it true that your witness summary is a blend of
38 pre-treaty and post-treaty comments that you made
39 in your witness statement? That is, that you've
40 spoken about the fishery for Tsawwassen First
41 Nation in pre-treaty times as well as post-treaty
42 times.

43 CHIEF BAIRD: Yes, that's correct.

44 Q In your witness statement, page 1, there's a
45 reference to you becoming the lead negotiator for
46 the treaty, negotiating the treaty. Will you
47 please explain how it is that you came to the

1 position of lead negotiator?

2 CHIEF BAIRD: When I became chief in 1999, I also
3 assumed the position of chief negotiator as there
4 was no one else left in our Treaty Department to
5 do the job, so our council agreed that I should
6 represent our community in those negotiations.

7 Q And it's true, then, Chief, that since that time,
8 you've been both the -- you remained as chief and
9 have continued not only as lead negotiator, but
10 have come on since the treaty has come into effect
11 dealing with matters related to treaty.

12 CHIEF BAIRD: Yeah, I oversee the implementation of the
13 treaty currently as well as being chief.

14 Q Thank you. The treaty was signed by the three
15 parties, that is, Canada, British Columbia and
16 Tsawwassen First Nation, on December 6th, 2007?

17 CHIEF BAIRD: Yes.

18 Q And that treaty came into effect on April 3rd,
19 2009?

20 CHIEF BAIRD: Yes.

21 MS. DION: Mr. Commissioner, I'd like to enter as an
22 exhibit the Tsawwassen First Nation Final
23 Agreement dated December 6th, 2007, which came
24 into effect April 3rd, 2009.

25 THE REGISTRAR: Exhibit 283.

26
27 EXHIBIT 283: Tsawwassen First Nation Final
28 Agreement dated December 6, 2007, effective
29 April 3, 2009
30

31 MS. DION: Thank you.

32 Q Now, Chief Baird, under the heading of "Territory"
33 in your witness statement, the first sentence
34 reads:

35
36 TFN's traditional fishing territory extends
37 from the marine areas up to the Port Mann
38 Bridge.
39

40 With respect to Tsawwassen's traditional
41 territory, are you referring to the area set out
42 in Appendix A of the Tsawwassen Final Agreement?

43 CHIEF BAIRD: Yes.

44 MS. DION: Mr. Commissioner, I'd like to enter as an
45 exhibit the TFN appendices to the Final Agreement,
46 specifically Appendix A, and I wonder if the
47 Registrar wouldn't mind bringing that up.

1 THE REGISTRAR: Exhibit number 284.

2
3 EXHIBIT 284: Appendix A to the Tsawwassen
4 First Nations Final Agreement
5

6 MR. LUNN: Is that the appendices document?

7 MS. DION: It is. And it will be the first Appendix A.

8 MR. LUNN: Do you have a page number for the document?

9 MS. DION: It should be if you go up -- back. There it
10 is there, and you probably could make it one
11 smaller, one size smaller.

12 MR. LUNN: Certainly.

13 MS. DION:

14 Q And this, Chief Baird, is the area that you're
15 referring to under the heading of "Traditional
16 Area of Tsawwassen First Nation"?

17 CHIEF BAIRD: Yes.

18 Q Okay. Thank you.

19 CHIEF BAIRD: Until we get our U.S. claim done.

20 Q Now, under the heading "Cultural significance of
21 the Fraser River sockeye and the act of fishing
22 for it," there is, on the second paragraph, the
23 first sentence reads [as read]:
24

25 Salmon is one of the only resources left in
26 TFN's traditional territory, which means it
27 is all the more important.
28

29 Now, here I'd like to refer you to appendix J-1 of
30 the appendices and I have a -- should be two --
31 page 275.

32 Sorry, Mr. Registrar, one appendices (sic)
33 back. That's it there, J-K.

34 With respect to your reference, Chief Baird,
35 under this section, when you're referring to the
36 Tsawwassen First Nation fishing area, this is the
37 area that you're talking about, J-1 of the
38 appendices to the Tsawwassen Final Agreement?

39 CHIEF BAIRD: Yes.

40 Q Under the heading, "Interaction and Consultations
41 with DFO", you indicate that:
42

43 TFN has tried hard to obtain joint management
44 powers, but DFO has always wanted to retain
45 ultimate decision-making authority.
46

47 Can you explain what you mean by that statement?

1 CHIEF BAIRD: Well, over the decade-plus of treaty
2 negotiations, trying to increase Tsawwassen's
3 jurisdiction in relation to fisheries management,
4 we weren't successful in that we don't have a veto
5 over any important issues or ultimate decision-
6 making authority that extends beyond our internal
7 organization.

8 Q And with respect to your internal organization, as
9 a result of the treaty, Tsawwassen First Nation
10 had, among it's many powers, it could have
11 jurisdiction over -- it could have jurisdiction
12 over internal fisheries matters?

13 CHIEF BAIRD: Yes.

14 MS. DION: In that regard, Mr. Commissioner, what I'd
15 like to do is enter two documents. The first is
16 the **Fisheries, Wildlife, Migratory Birds,**
17 **Renewable Resources Act**, and again, I'll just
18 repeat that. **Fisheries, Wildlife, Migratory Birds**
19 **and Renewable Resources Act** dated April 3rd, '09.

20 Q Chief Baird, this is the **Act** at Tsawwassen First
21 Nation which regulates fisheries among other
22 items, but for our purposes, fisheries and the
23 taking of fish.

24 CHIEF BAIRD: Yes.

25 THE REGISTRAR: Exhibit number 285.

26
27 EXHIBIT 285: TFN **Fisheries, Wildlife,**
28 **Migratory Bird and Renewable Resources Act**
29 dated April 3, 2009
30

31 MS. DION: The second document, Mr. Commissioner, I'd
32 like to enter is titled **Fisheries, Wildlife,**
33 **Migratory Birds and Renewable Resources Act** and
34 that is the Fisheries Regulations that support the
35 **Fisheries Act** and that is dated September 16th,
36 2009.

37 Q Chief Baird, this Fisheries Regulation is the
38 regulation that, among other things, regulates who
39 in the community is entitled to fish under the
40 **Act**.

41 CHIEF BAIRD: Yes.

42 Q And among the documents in this Regulation are all
43 the schedules for applications for any person who
44 may want to obtain a licence from the Tsawwassen
45 government in respect to fishing?

46 CHIEF BAIRD: That's right.

47 THE REGISTRAR: That document will be marked as 286.

1 MS. DION: Thank you.
2

3 EXHIBIT 286: **Fisheries, Wildlife, Migratory**
4 **Birds and Renewable Resources Act**, Fisheries
5 Regulations, dated September 16, 2009
6

7 THE COMMISSIONER: Could you scroll down, Mr.
8 Registrar? There it is. Thank you.

9 MS. DION:

10 Q Now, under the heading of "Post-Treaty Fishery",
11 you talk about the allocation under treaty with
12 respect to sockeye salmon, among other species,
13 and I wonder if we could take you to Appendix J-1,
14 J-2 and J-3.

15 MS. DION: At this point, I should mark this Appendix
16 J-1, J-2, J-3, they're all together, as one
17 exhibit, if you don't mind.

18 THE REGISTRAR: Exhibit number 287.
19

20 EXHIBIT 287: Appendices J-1, J-2 and J-3
21 from Tsawwassen First Nations Final Agreement
22

23 THE COMMISSIONER: Sorry, Ms. Dion, just so I can
24 follow you, I'm just going back to -- when you
25 originally referred to J-1 --

26 MS. DION: J-1 is the map, Mr. Commissioner.

27 THE COMMISSIONER: Pardon me?

28 MS. DION: J-1 is the map, the fishing area.

29 THE COMMISSIONER: Right. But you referred to it
30 earlier as a page number of the treaty itself, did
31 you not?

32 MS. DION: At the bottom of each of the appendices,
33 there's a page number.

34 THE COMMISSIONER: Right. But I'm just -- is it these
35 are all separate documents?

36 MS. DION: Well, the appendixes as one -- it's about
37 300 pages in total. So what I'm doing is just
38 entering two exhibits. One is the Appendix A-1
39 and J-1, and attached to J-1 are the allocations
40 that I'd like to take Chief Baird to now.

41 THE COMMISSIONER: All right. Now, Exhibit 284, I had
42 as Appendix A. Is that correct?

43 MS. DION: That's the traditional territory, that's
44 right.

45 THE COMMISSIONER: Right. And then 287, then, will be
46 the three appendixes that you've referred to?

47 MS. DION: That's right, J-1, 2 and 3.

1 THE COMMISSIONER: I see, okay. Thank you.

2 THE REGISTRAR: That's marked as 287.

3 MS. DION:

4 Q If we could go to J-2, appendix J-2 -- and there's
5 always a blank page in between there so -- it's a
6 bit strange, but -- now, this appendix J-2, Chief
7 Baird, could you explain the total allocation for
8 Tsawwassen First Nation as set out in J-2 with
9 respect to sockeye salmon?

10 CHIEF BAIRD: So basically we went from -- in AFS
11 regime with DFO into a percentage of CTAC is the
12 model under the treaty, so one percent of the
13 total allowable catch for Fraser River sockeye,
14 and we had Fisheries biologists help us with the
15 section because it's quite technical. I wouldn't
16 be proficient to talk about the different
17 allocation formulae for the chum, pink, et cetera
18 -- or pink is bycatch, but regardless -- so we've
19 changed from a more or less fixed number of about
20 25,000 sockeye, depending on the year, to about
21 40,000 under the treaty. Of course, that's
22 dependent on the health of the run size.

23 So instead of an allocation no matter what
24 the run size is, we take a percentage of the CTAC.
25 Q Right. And that's all -- the treaty represents
26 the final numbers for Tsawwassen. Tsawwassen
27 can't go back and negotiate any more beyond what's
28 here.

29 CHIEF BAIRD: No. I guess the harvest agreement goes
30 in tandem with this as well for our economic
31 opportunities.

32 Q Right. And the last question -- second question I
33 have is with respect to Appendix J-3. Now, this
34 appendix, Chief Baird, sets out the principles for
35 calculating overages and underages, and you've
36 talked a bit about that in your witness statement.
37 Can you just explain, please, what the principles
38 are and how they operate under -- for the
39 Tsawwassen First Nation?

40 CHIEF BAIRD: Well, the principle of overages and
41 underages is to ensure that there is no incentive
42 to overfish or for DFO to have us underfish. And
43 so if we catch too many fish in a given year, the
44 following year, it would come off our next year's
45 allocation, or vice versa. If we didn't catch
46 enough fish, then DFO would have to up our
47 allocation to equalize the situation.

1 Q All right. And the Tsawwassen First Nation Final
2 Agreement is the only treaty currently, in its
3 effective day, that was negotiated under the B.C.
4 Treaty Commission treaty process; is that right?

5 CHIEF BAIRD: Can you repeat that?

6 Q The Tsawwassen Final Agreement is the only treaty
7 that's now in effect that was negotiated --

8 CHIEF BAIRD: Yes.

9 Q -- under the B.C. Treaty Commission process?

10 CHIEF BAIRD: Yes.

11 Q All right. And just with respect to Appendix A-1
12 and J-1, those two appendices are documents that
13 were negotiated as a result of the treaty, but you
14 are not putting those forward or Tsawwassen First
15 Nation is not putting those forward to link to any
16 legal claim or any claim outside of the treaty.

17 CHIEF BAIRD: No, the constitutional protections under
18 the treaty are fine with Tsawwassen.

19 MS. DION: Right. Good. Thank you very much, and
20 those are my questions.

21 MR. DICKSON: Mr. Commissioner, Tim Dickson, co-counsel
22 for the Sto:lo Tribal Council and Cheam Indian
23 Band. As with Mr. Reynolds, I ask leave that I
24 may be allowed to direct questions to Grand Chief
25 Pennier, and that my co-counsel, Nicole Schabus,
26 be able to question Ms. Quipp.

27 THE COMMISSIONER: Yes, thank you, Mr. Dickson.

28 MR. DICKSON: Thank you, Mr. Commissioner.

29

30 CROSS-EXAMINATION BY MR. DICKSON:

31

32 Q Grand Chief Pennier, the Commission has heard that
33 the Sto:lo Tribal Council is composed of eight
34 Sto:lo bands, and that you are president of the
35 Tribal Council. I would like you to give the
36 Commissioner a bit of a sense of the traditional
37 territory of the Sto:lo, obviously not in order to
38 make any assertion here of aboriginal title, but
39 just to situate the Sto:lo traditionally.

40 GRAND CHIEF PENNIER: For purposes of this Commission,
41 we're talking about the river from where Kwantlen
42 is, which is Fort Langley. They fished on that
43 area and up into the Fraser Canyon. Some of our
44 people used to fish up to Alexandria Bridge, which
45 is much beyond the Sawmill Creek area.

46 Q And Sawmill Creek is around about Yale for those
47 of us less familiar.

1 GRAND CHIEF PENNIER: It's five miles above Yale.

2 Q And currently, if you could just locate for the
3 Commissioner where the Sto:lo Tribal Council bands
4 have their reserves?

5 GRAND CHIEF PENNIER: Their reserves mainly are beside
6 the river or on a tributary. Where I'm from,
7 Scowlitz, is at the mouth of the Harrison and the
8 Fraser and, as mentioned earlier, Kwantlen is
9 along the Fraser down the Fort Langley area.

10 Q And as you say, Grand Chief Pennier, you're from
11 Scowlitz, and you were chief of Scowlitz for some
12 time?

13 GRAND CHIEF PENNIER: Yeah, chief for many years, as
14 well as being on council for years as well.
15 Through that process, you know, learn about the
16 families and what they do.

17 Q And if you could just describe a little bit for
18 the commissioner your community of Scowlitz,
19 socio-economic conditions?

20 GRAND CHIEF PENNIER: Yeah, we have a population of
21 approximately 300 members and we live at Lake
22 Errock and Harrison Mills. In the past, the
23 majority of our people depended upon the logging
24 industry and now that's not a very good industry
25 to be involved in, so a number of our people are
26 unemployed from that. The majority of our people
27 rely on social assistance for their livelihood,
28 you know, so there's very little unemployment in
29 our area (sic).

30 Q And could you speak a little bit to the connection
31 that the Sto:lo have with salmon and sockeye in
32 particular?

33 GRAND CHIEF PENNIER: Well, salmon is important to all
34 of our people, has been for generations upon
35 generations. We hope that it continues to be
36 important for our generations into the future. As
37 time has changed, we became more dependent upon
38 the sockeye because of their abundance and, you
39 know, where they go in to spawn. So, you know, it
40 comes through our different territories and our
41 reserves.

42 We use it in all of our social gatherings and
43 our ceremonies, you know, to feed the people.
44 It's one of the main things, and part of our
45 teachings is to feed the people when we have our
46 different functions.

47 Q And can you speak a little bit to the kind of

1 ceremonial and social occasions in which sockeye
2 is important?

3 GRAND CHIEF PENNIER: We have, you know, different
4 weddings. We have traditional weddings. We have
5 the weddings that are, you know, you go through
6 the province to get your -- all those different
7 gatherings, whether it's ceremony or social.
8 Usually you feed people fish, and there are
9 different other ceremonies like birth, death and
10 changing of -- into womanhood and manhood, those
11 different kinds of ceremonies. A lot of different
12 social gatherings were -- you know, you're having
13 family gatherings. You're having community
14 gatherings, you know. A lot of the time fish is
15 one of the main staples.

16 Q Now, how did the Sto:lo fish traditionally and
17 then if you like, you can address how they fish in
18 modern times.

19 GRAND CHIEF PENNIER: Well, one of the early ways of
20 fishing was through the fish weirs where they
21 built the weirs across the rivers. Whether it was
22 like in Harrison and other tributaries, you know,
23 it was a better system where you could manage how
24 much fish are going through and how much you
25 harvest and what you're going to harvest.

26 Then you're doing your dipnetting mainly in
27 the Canyon and you're doing some torch-lighting in
28 the rivers so you're selective in what you catch,
29 the fish you catch.

30 We're into modern times where we're doing the
31 set-netting and drift-netting.

32 Q Yeah, and talk a little bit, if you would, about
33 -- about set-netting and how that's done and
34 drift-netting and the relation between the two and
35 how it's changed, if you would.

36 GRAND CHIEF PENNIER: Well, of course, the set-netting,
37 you're putting the one end of the net tied onto
38 land or something on land, whether it's cedar
39 trees or other trees, and you have an anchor in
40 the river. There's been quite a change in the
41 river lately with the gravel accretions, how
42 that's taken away a number of fishing sites for a
43 number of fishing families. Through that change,
44 it led onto where people are more inclined to
45 drift now, because they have lost their fishing
46 sites, so...

47 Q Very good. And what kind of equipment is used in

1 the -- beyond the nets, but describe the boats a
2 little bit that are used in drift-netting.

3 GRAND CHIEF PENNIER: Well, you need -- your power
4 boats are, what, about anywhere from 14 to 24 feet
5 or something like that, you know, depending on how
6 many families you're working with to go out to the
7 river. Then of course you have to have your motor
8 to power it, you have to have your trailer and
9 then all the -- you know, you're paying all kinds
10 of money for your nets and all, you know, that
11 goes with it, so...

12 Q And you've spoken a little bit to the importance
13 of sockeye fish themselves to the Sto:lo, but can
14 you speak a little to the importance of the active
15 fishing, the actual activity of going out there on
16 the water and fishing to Sto:lo people?

17 GRAND CHIEF PENNIER: Well, it becomes a family
18 function. You know, you learn from your parents
19 and your grandparents on the importance of fish.
20 You learn about the importance of looking after
21 yourself when you're on the river, because there
22 are dangers out there, and you have to know where
23 the gravel bars are, you have to know where the
24 deep water is, the rough water, so -- you know,
25 it's a way of making sure that you're going to be
26 safe out there, you know, and you learn from your
27 grandparents and parents as you're growing up.

28 Q Just going back to drift-fishing for a moment,
29 you're talking about having to know where you can
30 do a drift and, as I understand it, there are only
31 so many places you can do a drift; is that right?

32 GRAND CHIEF PENNIER: That's right. The good places,
33 you have to -- you know, you're sharing those with
34 a number of families, and the other places, you're
35 subject to having your net taken through different
36 deadheads and things like that, that could lead to
37 accidents as well. That's why it's important to
38 know where they are.

39 Q Grand Chief Pennier, I understand you're not,
40 yourself, a fisherman most of the time.

41 GRAND CHIEF PENNIER: No, I'm not a fisherman, and
42 didn't have the opportunity to learn from my
43 parents or grandparents.

44 Q And why was that?

45 GRAND CHIEF PENNIER: I went to residential school for
46 eleven years, so that's why I didn't learn about
47 it.

1 Q From your involvement in the community, however,
2 have you -- have people spoken of a decline in the
3 sockeye fishery, and if so, what impacts has that
4 had that you've observed?

5 GRAND CHIEF PENNIER: Well, we can -- we can feel the
6 decline in the sockeye and the other fish because
7 we don't have that on our tables. You know, in
8 years of abundance, the fishing families will
9 share with the other members in the community who
10 don't fish, and in not-so-abundant years, you
11 know, sometimes I buy fish from my neighbours
12 because I don't want to spend all the money with
13 buying boats and motors and whatnot to go fishing.

14 Q And with a lower abundance of sockeye, try to give
15 the Commissioner a sense of how that impacts on
16 the community if you could.

17 GRAND CHIEF PENNIER: Well, when you look at Scowlitz,
18 as an example, when the majority of our people are
19 unemployed and there's no sockeye, our people are
20 forced to go out to the different Safeways and the
21 other shopping areas to buy their foods, and
22 sometimes it's not the best quality foods because
23 you're limited with your budget when you're on
24 social assistance.

25 Q Very good. I'd like to shift to policy issues,
26 and if you could, Grand Chief Pennier, speak a
27 little bit to the main changes to DFO policy on
28 the management of the fishery that the Sto:lo
29 would like to see.

30 GRAND CHIEF PENNIER: You know, when we take a look at
31 section 35.1 that talks about food, social,
32 ceremonial, and it also talks about moderate
33 livelihood. And in terms of the Department and
34 the Government of Canada, there are no changes to
35 laws or policies to reflect what's in the
36 constitution. There has to be changes to do that,
37 and, you know, we're talking about having a better
38 or more authority in working with Canada to make
39 sure that the fisheries are managed in a proper
40 way so that it's beneficial to our people and our
41 future generations as well as the non-Indian
42 population as well, you know. So more better
43 management where we're part of it.

44 Q So you're talking there about being part of the
45 management of the fishery. The word that's
46 sometimes used for that is co-management. Is that
47 what you're speaking of?

1 GRAND CHIEF PENNIER: That's right, but we have to come
2 to a common definition of what we mean by co-
3 management in terms of where we're at with -- when
4 we look at all kinds of different entities that
5 are involved in fishing, there's different
6 interpretations and we need to come up with one
7 where we all believe that it's going to work
8 towards making good decisions on fishing.

9 Q Well, give the Commissioner a sense, if you could,
10 of what would need to be done to allow for greater
11 co-management between First Nations and DFO.

12 GRAND CHIEF PENNIER: We really need to have a good
13 negotiation or good understanding with several of
14 the senior officials within the Department of
15 Fisheries and Oceans at that level. Right now
16 we're just meeting with people who come to our
17 tables who put documents on our table and say,
18 "This is what you're entitled to, or you're going
19 to get." You either accept it or you don't accept
20 it. That isn't negotiations.

21 So, you know, we talk about the right to
22 consult. It has to be done in a good way rather
23 than just the way it's done presently.

24 Q So if I'm hearing you there, the issue is that the
25 DFO representatives with whom you meet don't have
26 a mandate to negotiate and make decisions, but
27 rather are --

28 GRAND CHIEF PENNIER: That's right, they don't. When I
29 look back at some of the activities we were
30 involved in over the number of years, you know,
31 it's always been difficult to get the attention of
32 the Minister and the Deputy Ministers. Because on
33 a couple of occasions, we had a good fishing at
34 Gill Bay with a number of Sto:lo people and DFO
35 came down hard on us, of course, because we were
36 fishing contrary to what they thought, you know.
37 So we're trying to make sure that they listen to
38 us, and that was one of the ways of getting their
39 attention.

40 Another incident we had, we stopped -- or
41 blocked the CNR tracks so we could try to talk to
42 the Ministers and get them to come out to us to
43 talk to us, you know, because we're saying that
44 this is how important the fish is to us. So we
45 use those as examples of trying to get them to
46 come to us and talk to us so we can make better
47 changes.

1 Q Very well. What you're speaking of there of is
2 getting the attention of DFO and being able to
3 speak to those who are in positions to actually
4 make some decisions. Are there -- do you have any
5 comments or concerns to make on the level of
6 resourcing of First Nations so as to engage in co-
7 management?

8 GRAND CHIEF PENNIER: The level of funding is
9 inadequate, and it isn't distributed in a good
10 way. You know, when I look back at 1992 when they
11 instituted the AFS, the Lower Fraser Fishing
12 Authority was established, or we established it,
13 working with the bands up and down the river.
14 Through that process, we had our guardians, we had
15 our monitors, we had our biologists and we had
16 people who could work in giving people good
17 information on fishing, but with funding cutbacks,
18 we lost the biologists, we lost the guardians, and
19 now we're just stuck with monitors.

20 Q Yes. And so the Lower Fraser Fishing Authority is
21 an inter-tribal organization intended, in part, to
22 interact with DFO; is that right?

23 GRAND CHIEF PENNIER: That was what we had back in '92,
24 '93, '94, that era, and presently we have two or
25 three different organizations that are trying to
26 work with DFO and presently we're working better
27 with some of the bands up and down the river,
28 hopefully getting to -- back to an LFA-type group.

29 Q Yes. And do you see a role, do you see it being
30 important that there be groups such as these?

31 GRAND CHIEF PENNIER: There has to be, because it's
32 part of our responsibilities if we want to be able
33 to look after the salmon for our future
34 generations, and if that's what the rest of the
35 nations up and down the River say, then we have to
36 be able to work together to make sure that that
37 happens.

38 It will take a lot of time to do it, and one
39 of the examples of people working together for the
40 benefit of a fishery is the Northwest Indian
41 Fisheries Commission down in Washington State.

42 Q Is that a -- is that a model that you'd put
43 forward?

44 GRAND CHIEF PENNIER: It would be a good one to look
45 at, yes.

46 Q And you've spoken a little bit about the history
47 of the Lower Fraser Fishing Authority and how it

1 came to be defunct, but can you speak more about
2 challenges that you've seen in terms of creating
3 larger aboriginal organizations?

4 GRAND CHIEF PENNIER: Right now we have a number of
5 different groups up and down the river like the
6 Upper Fraser out of Prince George. We have the
7 Shuswap out of Kamloops area. We have the mid-
8 Fraser group and the Interior Tribal Organization,
9 and partly us down in the lower Fraser now, and,
10 you know, if we can come and work together, it
11 would be a lot better for the fish.

12 Q And what do you think can be done to encourage
13 that creation of larger groups in cooperation?

14 GRAND CHIEF PENNIER: I think that we need to have some
15 assistance from the government like funding, and
16 we need to be able to hire our own biologists up
17 and down the river so that we can all work with
18 the same information that the Pacific Salmon
19 Commission has.

20 Q The Sto:lo have been seeking, as I understand it,
21 more co-management for some time. I believe 1986,
22 you made some efforts in that regard. Can you
23 tell the Commissioner a little bit about that?

24 GRAND CHIEF PENNIER: Yeah, back in 1986 the Sto:lo
25 Tribal Council worked with a consulting company
26 and biologists and developed a co-management
27 proposal and a number of us went back to Ottawa to
28 meet with the Assistant Deputy Ministers to talk
29 about it, and it didn't lead to any agreement of
30 any kind.

31 Back in -- the Sto:lo are part of the treaty
32 process, and in 2000 and 2001, we were talking
33 about negotiating an Interim Measures Agreement on
34 fishing, so we went through a lot of work with
35 having a lawyer, having a biologist, and having a
36 working group, and having members of the DFO sit
37 together to talk about an Interim Measures
38 Agreement on fishing, but it didn't really get
39 anywhere because -- I guess part of the statement
40 was that it was -- if it was going to lead to
41 treaty, then why would we negotiate a treaty?

42 Q And what would the advantages of being able to
43 enter into an Interim Measures Agreement be, do
44 you think?

45 GRAND CHIEF PENNIER: Well, it would really set out the
46 roles and the responsibilities of not only the
47 First Nations and DFO, but it would also help with

1 the commercial fishermen and sports fishermen,
2 because through that Interim Measures Agreement,
3 there was three different levels of groups being
4 formed to take a look at the fishing issue.

5 Q Grand Chief Pennier, you're aware, of course, that
6 there's a distinction that's been drawn between
7 food, social and ceremonial fish, and fish that
8 can be sold. How is that distinction viewed
9 within the Sto:lo community and, if you can speak
10 to them, and what's your sense of how it's viewed
11 among First Nations more broadly?

12 GRAND CHIEF PENNIER: Well, when we look at -- you
13 know, we have to come to an agreement about what
14 we mean by "food, social and ceremonial".
15 Presently, we haven't really put our definition
16 in, as far as I -- the Tribal Council hasn't put
17 our definition in front on the Department of
18 Fisheries and Oceans. You know, how we mean we
19 want to fish to those three aspects of it, and on
20 a larger scale. We should be doing that so that
21 it becomes clear to all First Nations and the
22 government how -- what "food, social, ceremonial"
23 means and how we can fish to it and protect it.

24 MR. DICKSON: Grand Chief Pennier, those are my
25 questions. Thank you very much.

26 GRAND CHIEF PENNIER: Okay.

27 MR. MCGOWAN: Mr. Commissioner, Ms. Pence will be
28 questioning the next witness. Her estimate is
29 approximately 30 to 40 minutes. She could either
30 get started, or we could take the morning
31 adjournment now.

32 THE COMMISSIONER: We can take the morning adjournment.

33 MR. MCGOWAN: Thank you, Mr. Commissioner.

34 THE REGISTRAR: The hearing will now recess for 15
35 minutes.

36
37 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

38 (PROCEEDINGS RECONVENED)

39
40 THE REGISTRAR: Order. The hearing is now resumed.

41 MS. PENCE: Mr. Commissioner, for the record, I'm Leah
42 Pence, P-e-n-c-e, for the First Nations Coalition.
43 And with me is my co-counsel, Brenda Gaertner.

44
45 CROSS-EXAMINATION BY MS. PENCE:

46
47 Q Chief Charlie, I wonder if you could take us for a

1 moment out of this courtroom and back to where
2 your people fish and describe where that is and
3 what that looks like?

4 CHIEF CHARLIE: Chehalis -- or Chehalis, today we -- we
5 live on the Harrison River, which is a tributary
6 into the Fraser River. We're about two, two-and-
7 a-half miles maybe or so to the Fraser River. Our
8 tradition territory is the Harrison Lake, Chehalis
9 Lake, coming down onto the Harrison River and bits
10 and pieces on the Fraser River.

11 Q Mm-hmm.

12 CHIEF CHARLIE: We have a number of tributaries or
13 spawning channels or sloughs that are on the
14 Harrison River. We live in what people call
15 terminal spawning grounds. So there's -- just on
16 the reservation alone there's nine spawning
17 channel.

18 Q And what time of year do your people fish for
19 sockeye?

20 CHIEF CHARLIE: For sockeye, would be the summer runs
21 but we were -- we're also able to get sockeye on
22 the Harrison into the fall.

23 Q Can you tell the Commissioner a little bit more
24 about the traditional fishing methods that your
25 people used and continue to use today?

26 CHIEF CHARLIE: Traditional fishing methods for
27 Chehalis would have been spearing and fishing with
28 a net. Those would have been some of the primary
29 ones. If you go back a little bit further there
30 might have been some, as Grand Chief Pennier
31 explained, some of the fish weirs. Today, we
32 still fish with a net, either with a set net or
33 with a -- people call a driftnet fisheries, as
34 well as torch-lighting. So we've taken back our
35 -- our traditional or selective fishing in the
36 fall time with the spears.

37 Q Can you tell the Commissioner just a little bit
38 more about what you mean when you say this is a
39 selective traditional method, these various
40 methods?

41 CHIEF CHARLIE: The selective way of fishing would be
42 in the fall time, again, the Harrison River is a
43 very shallow river.

44 Q Mm-hmm.

45 CHIEF CHARLIE: If you go back a bit further as well,
46 our people would have went right out to the Fraser
47 River to spear and/or to torchlight. And --

1 Q Can you describe what torch-lighting is for us?

2 CHIEF CHARLIE: A torchlight would be on your dugout
3 canoe, you would have a fire. You would put some
4 sand in the middle of your canoe in a box. You'd
5 gather the pitchy wood up and you would build a
6 fire right in the middle of your canoe. That fire
7 would attract the salmon, as you were poling up
8 and down in the shallow parts of the river and
9 then you could choose -- pick -- select the salmon
10 that you would like.

11 Q And how have these traditional fishing methods
12 changed over the years?

13 CHIEF CHARLIE: Well, actually, we've just now been
14 allowed again to torchlight in the last few years.
15 It was actually banished for -- for a number of
16 years by DFO. And so we -- we were saying that --
17 they were saying in the -- for conservation that
18 it was -- wanted to protect the fish and so didn't
19 allow torch-lighting. We were finally able to
20 kind of assert ourselves and say we -- this is
21 actually a really selective way, a good way of
22 harvesting fish.

23 Q Could you describe for the Commissioner some of
24 the ceremonies that Chehalis holds to honour the
25 salmon?

26 CHIEF CHARLIE: Salmon...

27 Q Or perhaps I can reframe it. Some of the
28 ceremonies that Chehalis holds that involve
29 salmon.

30 CHIEF CHARLIE: Sure. Again, going back to the summary
31 that is here and I -- the Council mentioned that
32 this was a pretty detailed summary. It's actually
33 a pretty brief summary of some of the discussions
34 that had happened, you know, so there was a lot of
35 information that was shared in a short period of
36 time. And this is just kind of a glimpse of it.
37 The same with any of the ceremonies that we have
38 that would be to honour the salmon, people and/or
39 as salmon is used in our ceremonies.

40 We have a -- from my understanding from some
41 of our history from our stories and our legends
42 that we have in the beginning of time when the
43 world was first created, between the -- between
44 the sun and the moon, when those feelings and
45 emotions came together when the world was first
46 created, we were all equal and the same. And
47 through that evolution -- through evolution from

1 that time, some took different shape and different
2 form and some became the winged, some became the
3 four-legged, some became the plant people and the
4 root people, some became the ones that swim in the
5 rivers and the ocean and some became human. There
6 was an agreement in time that all our relations,
7 all living things, they would give themselves to
8 us as humans because we were the weakest. They
9 would give themselves for food, shelter, clothing,
10 utensils and for medicine. And alls they had
11 asked for in return was to be respected and to be
12 remembered. And so when the salmon return in the
13 beginning of the year, we have a ceremony to give
14 thanks and gratitude to the salmon people for
15 returning and giving themselves to us again. It's
16 a part of that agreement of paying respect and
17 giving gratitude.

18 Other parts of the year, as Chief Pennier
19 explained, there's other ceremonies for many, many
20 different things: for death, for life, for change
21 of life, for weddings, for namings. There's all
22 kinds of ceremonies that go on where we would have
23 salmon that is served to the people because salmon
24 is such a vital part of who we are as a people.
25 And we were supposed to share the wealth of your
26 land. And for who we are, as the Stó:lō people,
27 we are the salmon people, we're the river people.
28 And food has been our -- main part of our diet for
29 so many years so that's the wealth according to
30 our agreement with everything is what we're
31 supposed to share.

32 Q And Chief Charlie, is some of what you've just
33 described here, would that be considered, forgive
34 my pronunciation, but Snowoyelh and what's known
35 as the law of everything to put it kind of simply?

36 CHIEF CHARLIE: The simple translation of Snowoyelh is
37 that -- means the law of everything . Snowoyelh is
38 a really big word in our -- in our language. It
39 would take a number of pages to define Snowoyelh.
40 It's our laws of how we were supposed to live in
41 harmony with all living things, how we were
42 supposed to be stewards of all living things,
43 again going back to that agreement with all our
44 relations. But it's also how we were supposed to
45 get along with each other. It's how we were
46 supposed to get along as -- as xwelmexw, or as
47 human beings. It's how you raise your children.

1 It's how you conduct yourself and behave at
2 different stages of your life and the different
3 roles and responsibilities that come at different
4 stages of life. So it's a really big word that
5 would take a long time to kind of describe the
6 Snowoyelh.

7 Q I'd like to ask you about another word that's
8 often hard to give a specific definition to and
9 perhaps you can talk to what this word might mean
10 to you. And that word is "stewardship". What
11 does stewardship mean to you and how do you
12 exercise stewardship?

13 CHIEF CHARLIE: Stewardship, again, goes back to that
14 relationship with all living things. But it's
15 also how everything is connected and how
16 everything is interconnected. And so when we talk
17 about this salmon that is the -- we say that it's
18 our -- our greatest resource after our children.
19 Who we are and where we come from is our greatest
20 resource is that salmon. But everything has
21 impacts on everything. And so logging practices,
22 they have impacts on the salmon, how we harvest,
23 how we gather and what we take from the -- the
24 land or the water has impacts on everything else.
25 So a true stewardship is how we conduct ourselves
26 as humans on the land that's going to ensure that
27 all things -- all living things carry on.

28 Q Could you provide the Commissioner with some
29 examples of stewardship practices that you see at
30 Chehalis and what might happen if those practices
31 aren't adhered to?

32 CHIEF CHARLIE: Going back to kind of again Snowoyelh
33 and stewardship, we understand that we live on the
34 spawning grounds and the salmon return to us. And
35 we are struggling with the jurisdiction and the
36 mandate that DFO might have and how they choose to
37 enforce that. And getting around to is what we --
38 on our communities, we've had some that would go
39 out fishing -- illegally fishing or poaching in
40 the -- some of the terminal grounds. And there
41 are council that have taken a real stand on this,
42 that this is a communal right; it's not an
43 individual right. It belongs -- that great
44 resource belongs to all of us and belongs to our
45 future generations like you heard some of the
46 other panel members talk about how they want to
47 look after the salmon so that their grandchildren,

1 great-great grandchildren all have the same thing.
2 And so it's up to all of us to work together to
3 protect that.

4 But in the past, again, leading back to this
5 poaching of the salmon, some of our members were
6 out fishing and we kept -- continued to call on
7 DFO to enforce their jurisdiction and to put a
8 stop to it. And we'd call in ourselves and says
9 there's -- you know, there's this illegal fishing
10 going on and has been going on for a number of
11 years till finally Council had enough and we said
12 -- finally, we sent letters out and said, you
13 know, there's going to be repercussions of what
14 you're doing. And so we sent letters to the
15 individuals. We hired somebody to sit out there
16 in the river to see who was out there. Sent
17 letters to the gentlemen. The majority of them
18 stopped but there was a handful that didn't. And
19 as a result of that, they -- we -- in Chehalis, we
20 banished a few of our own members. The banishment
21 had a term on it, though. They could come back to
22 the community. They could come back to the
23 community in a year's time to explain themselves
24 and to make amends and make commitments to how we
25 -- they were going to work with us in protection
26 or stewardship of this resource.

27 Q Thank you. You've spoken a little bit about this
28 but I wonder if you could just explore for us,
29 when you're exercising stewardship or when you're
30 practising your laws, Snowoyelh, who are you
31 thinking about? Are you thinking about only
32 what's happening right now or are you thinking
33 about next season? How far are you thinking? Who
34 are you responsible to?

35 CHIEF CHARLIE: Again, in stewardship -- again, in
36 stewardship, in Snowoyelh, is that we were
37 supposed to look after all things so that at least
38 seven generations behind us have the same thing.
39 And we always say that we don't want to be the
40 generation that is responsible for losing
41 something, especially the salmon, and so we look
42 after that. But it's also a part of the
43 Snowoyelh, how you're supposed to look after it so
44 that those that are around you have access to the
45 same thing. And Grand Chief Pennier touched on
46 it, how some fishing -- fishermen would share
47 their -- their gift or their -- yeah, they're

1 gifted fishermen so they would share that with
2 others in their communities that maybe couldn't
3 get out. But we were also supposed to have been
4 thinking about our neighbours. We were supposed
5 to have been thinking those that are further down
6 the line or up the line, depending on where you
7 are. And so we've quite actively done this on the
8 Harrison River with certain runs of fish that go
9 by us up the Lillooet River.

10 Q Thanks. I'd like to ask you to describe your
11 people's relationship to salmon for food, social
12 and ceremonial purposes and to comment on this
13 term, this FSC term, that we've come to know.
14 What does "fishing for FSC" really mean to you?

15 CHIEF CHARLIE: Again, it's -- some of the panel
16 members before me described a little bit about
17 food, social and ceremonial and how it's a term
18 that has been coined or imposed upon us, and maybe
19 with good intentions but again how it's been
20 practised and how it's been looked at and
21 sometimes been used might not be what it was
22 supposed to be. And so food, social and
23 ceremonial, fish is supposed to have been to
24 practice our Aboriginal right to access the fish
25 to look after ourselves for our main source of
26 food and diet for life but also for -- for
27 ceremony.

28 And we do -- we do it in some of our
29 discussions with -- again, DFO came out to our
30 community and said -- wanted to talk about this
31 FSC and said that they would like us to only --
32 only to use this FSC for death -- to use it at
33 times of death and loss in our communities. We
34 just kind of told them, I said, life is just as
35 important as death and that how do we -- how do we
36 -- or who are we to define what a ceremony is to
37 our communities and to our people. These
38 ceremonies, when we call upon our ancestors and we
39 call upon our neighbours and our respected
40 relatives and friends to come to a ceremony, have
41 a right to -- to be able to share in that -- that
42 great resource of the salmon, what we were
43 supposed to share with them, according to our law.

44 Q Thank you. Could you speak a little bit about how
45 salmon contributes to the health -- physical
46 health, community health of your people?

47 CHIEF CHARLIE: Physical community health, as well as

1 spiritual well being, again, today where, you
2 know, Grand Chief Pennier touched a little bit
3 about the social conditions in our communities and
4 how we rely upon that resource of the salmon to --
5 as a -- you know, main part of our diet because we
6 have limited resources -- a lot of our community
7 members have limited resources to go to the
8 stores. But again, that salmon when you -- it's
9 been a major part of your diet for so many
10 generations, for so many years, thousands of years
11 and it becomes a part of you and becomes -- if you
12 -- if you will, it becomes soul food, it becomes
13 medicine. And it becomes such a main part of our
14 diet that you -- you crave for it. We get quite
15 anxious for it when the fishing season comes upon
16 us and the different kinds of fishing.

17 So we look forward to the -- all the
18 different runs of fish and the different ways that
19 we would preserve it or prepare it or use it. So
20 the -- also -- and it's really difficult to
21 explain but there's one example I have of how it
22 becomes medicine, becomes soul food, is that at
23 one time my grandmother was very, very -- you're
24 going to have to apologize -- I might be a
25 storyteller in my time so I can only tell things
26 through a story.

27 My grandmother was very, very ill and she was
28 not able to keep things down and it was going on
29 three weeks, four weeks, and she was getting very
30 fragile and frail and she couldn't keep any food
31 down. But she kept saying that she was wishing
32 for sturgeon soup. So finally I was able to find
33 a chunk of sturgeon and I brought it to my
34 grandfather on my dad's side. And my grandfather
35 cooked some soup for her. I picked it up later
36 and brought it to my grandmother and she ate the
37 soup. Had about three or four feeds of it. And
38 then she got better. She started eating again and
39 started carrying on again and she was quite well
40 again for sometime.

41 A number of months again, maybe nine or ten
42 months later, same thing happened, my grandmother
43 became very ill, couldn't stomach anything,
44 couldn't keep anything down and we knew a little
45 bit earlier this time. Again, I went and picked
46 up a piece of sturgeon to my -- brought from my
47 grandfather and I -- this time, I sat with him, as

1 he prepared the food and again brought it to my
2 grandmother and I sat with her and we had sturgeon
3 soup together and again she got better.

4 And so when they talk about it becomes such a
5 mainstay of your diet for so many generations for
6 so long that you start to crave for it, it becomes
7 soul food or medicine. And we have the same use
8 for different parts of the fish and different runs
9 of fish. So whether that's the -- the sockeye or
10 whether that's the chum or whether that's the
11 sturgeon or, you know, the different kinds of
12 fish, we have different uses for them.

13 Q Thank you. The Commissioner's been hearing a lot
14 about traditional ecological knowledge, sometimes
15 referred to as TEK. And I wonder if you could
16 provide him with some examples of some of the
17 indicators that you use in your territory to know
18 when it's time to go fishing.

19 CHIEF CHARLIE: I'm a fisherman. I've been fishing
20 most of my life, since I can remember. I go out
21 on the water and it's -- the actual practice of
22 fishing is -- is a medicine. So for me to go out
23 on the water it's medicine. If anyone -- if
24 anyone -- if you have different gifts or different
25 hobbies or different things that you're good at,
26 and when you -- the reason why you have that
27 hobby, whatever you're good at, you do that
28 because it's peace of mind. It's medicine for
29 you. It's a way to clear your mind, clear your
30 spirit. And you do that and you make things with
31 your hands. For fishermen, it's the same thing.
32 Hunters, they describe it in a similar way.
33 People that play sports do all these different
34 things the same way. That's the same thing for
35 fishermen.

36 When I was fishing and I went to my
37 grandfather who would -- into his '90s would mend
38 all of his sons and his grandsons' nets. And I
39 went to him one day and -- getting ready for
40 fishing. And he was -- he actually gave me heck
41 because I wasn't bringing my nets to him but then
42 he started saying what was in the water. He
43 started saying, "Son, this is the fish that's in
44 the water and this is where you're going to find
45 them. And this is the kind of gear or this is the
46 kind of net you need to fix to go and catch the
47 fish.

1 And so I looked at my grandfather and I said,
2 "Gramps, like how do you know? You haven't been
3 on the water for ten years." And he's -- he
4 looked around and he took a look at some plants
5 and he said, "Do you see these plants? When they
6 grow, that's the fish that comes the same time."
7 And he started pointing out different birds and
8 different animals and he said -- and he started
9 talking about the different animals that become a
10 part of that system. And he becomes so a part of
11 who they are just by what's going on around him,
12 the time of the year, the heat, the -- the
13 animals, the plants. They're just so connected.
14 Our elders would know what was in the water or
15 when they were on their way according to the
16 environment or the plants or the animals.

17 Q And do you have suggestions on how this type of
18 knowledge that you learned from your grandfather
19 and your elders can be incorporated into fisheries
20 decisions and fisheries management today?

21 CHIEF CHARLIE: Yeah, I definitely think that in
22 fisheries management the traditional knowledge
23 needs to be taken into consideration, needs to be
24 used. Everything evolves and everything is so
25 connected, as I say, and the -- our people have a
26 long, long history of use of the land and the
27 resources that are around us. Kind of another
28 example of the traditional knowledge is that I
29 have a cousin that works at the Weaver Creek
30 Spawning Channel. He's been there for 35 years.
31 And he would work with the Simon Fraser University
32 and they would come out and they would kind of
33 look at the salmon and he would just be walking
34 with these scientists, I guess, or educated people
35 and he would point out some of the fish on the
36 beach and he'd say, "This one spawned. This one
37 didn't spawn but it tried to." And he would just
38 look at a fish and he'd say.

39 So SFU would take some scale samples and do
40 other tests and they'd come back in a couple of
41 months and verify what my cousin told to them. So
42 he had -- that kind of knowledge is what was
43 passed on to him by his father and by our
44 grandfather and by our great-grandfather so
45 there's that real connection to the -- to the land
46 and to the fish in knowing how to better -- best
47 look after it. We think that by incorporating

1 that traditional knowledge with the technology and
2 the tools or the -- of today, it's kind of where
3 it needs to evolve to.

4 Q Thank you. Based on your observations, generally
5 speaking, how would you say that the levels of
6 sockeye returning to your territory are different
7 now than what they were when you were young?

8 CHIEF CHARLIE: A few different ways, I guess. By
9 being a fisherman up until -- not taking into
10 consideration this last year but before that,
11 being a fisherman on the water we -- there was
12 times when we would go out fishing and you'd --
13 you'd get pretty tired. When the fish are there
14 -- our grandfather said, "When they're there,
15 that's when you fish and you have to stay at it
16 and you work at it. You stay out there." So we
17 would actually, you know, camp out right on the
18 water. And you'd fish 20-something hours a day
19 and you'd be tired. You'd be tired of gathering
20 and harvesting and doing what we would do.

21 Up until a few years ago, we would -- we
22 would -- again, as Grand Chief Pennier explained,
23 different fishing methods had to be used because
24 of different conditions that are around us so we
25 had -- it was more driftnet fisheries. And
26 there's only certain spots that you could fish.
27 And so we would spend our time on the water. You
28 would wait three or four hours to do one drift.
29 And so we'd be sitting on the beach resting,
30 suntanning and getting fat and not even getting
31 tired because you maybe, if you were lucky, you
32 got three or four drifts in, in one day. And the
33 reason I say we'd get fat 'cause other guys would
34 bring out their -- their deer meat and their
35 pepperonis and everything and we'd just sit on the
36 beach waiting for your turn to fish, not like the
37 way it used to be.

38 Again, going back to that -- my grandfather,
39 he was a -- he was a great fisherman. And going
40 back about 15 or 18 -- I don't know how many years
41 ago, my -- for a number of years, my grandfather
42 used to say to us, he goes, "Oh, you poor kids.
43 You have no more fish." This was going back 20
44 years ago when we thought we had a few fish. And
45 then he would talk about the great runs of salmon
46 that would come on the -- the Fraser and its
47 tributaries. He said you could see the water

1 change colour when these schools of fish would
2 come in. And so the -- over my grandfather's time
3 and my time and then you could start to see the
4 decline in the salmon, the continuous decline in
5 salmon for a hundred years.

6 Q Chief Charlie, in your summary of evidence, you
7 refer to some of the -- the pressures from various
8 fishers and I think you -- you call it the
9 "conflict on the water". What do you mean when
10 you talk about the conflict on the water?

11 CHIEF CHARLIE: As well, again, and -- in times the way
12 that things have evolved, there's been more and
13 more pressures from other groups wanting more
14 access or greater access to the -- this great
15 resource that we have. It's a major part of who
16 we are. Again, I was just thinking about them --
17 the Musqueam, as Joe was speaking, and remember
18 going back 20 or so years ago when the -- it was
19 the Musqueams that were having conflict on the
20 water with commercial groups. And there was some
21 conflict and real tension between the commercial
22 fishery groups and -- and Musqueam and others that
23 were in this area. We do know that more and more
24 of that's been pushed further and further up into
25 the Fraser and -- and now we have these -- in our
26 territory, it's the sport fishing groups. And
27 there's hundreds of them that are on the water and
28 tensions in the last number of years between First
29 Nations fishermen and sporting groups has just
30 been escalating and escalating and it's been
31 pretty -- it's gotten pretty bad. My one example
32 of that would be, again, I'm a fisherman and I go
33 out for peace of mind. I go out to -- for fish to
34 feed my family but I also go out there for
35 medicine. For my role today as a chief, I get
36 pretty stressed out, have so much different things
37 and so I go on the water for peace of mind.

38 This one time when I went out in the water,
39 you might have followed some of it in the media
40 where the -- heard about one of the chiefs that
41 got shot by a pellet gun. That was me. I was
42 fishing on the water and we were waiting our turns
43 to drift. Again, I was waiting three hours or
44 something, sitting on the beach waiting for our
45 turn to drift, and we started developing a bit of
46 a relationship between some of the sporting
47 groups. But they're not all out there for -- to

1 follow some rules or different things that are put
2 into place and there are some that are out there
3 really for conflict and their own interests and
4 they're not very diplomatic about it. And if
5 somebody came and set their boat in a drift -- in
6 a driftnet fisheries, your net is moving and you
7 have to fish in the bars. And so some of the
8 sporting groups were setting up their -- their
9 boats and fishing there and we'd go and ask them
10 to move and they would move.

11 Except when it came my time to fish, this
12 boat wouldn't move. And so when our net was
13 coming down, we -- our net wrapped around their
14 boat and all of our gear was all tangled up
15 between the two boats. And things escalated so
16 that there was a lot of yelling and screaming and
17 cursing going back and forth to each boat. There
18 was me and my brother and then there was two
19 gentlemen on the other boat. The gentlemen from
20 the other boat picked up a dip net and he started
21 clubbing my brother with it. My brother's a big
22 guy and he -- so I stepped up at the front and I
23 was giving him a paddle to defend himself and my
24 brother just said, "Huh, that don't hurt." Just
25 when I looked across, the guy from behind the boat
26 in the back of the boat where I was at as well,
27 picked up a knife and he started coming at me.
28 And it was a filet knife. So if you're on a boat
29 and you're pretty close quarters, I got, of
30 course, pretty frightened.

31 At the time I didn't know about it because
32 the adrenaline and everything else was going on.
33 So I started giving my brother the paddle. I kept
34 the paddle for myself and I picked the paddle up.
35 Just as I picked the paddle up, he picked up a
36 gun. And alls I could see was a gun and he
37 started pointing it at me. And I seen these hands
38 going like this so I knew he was shooting. I'm
39 not the kind of guy that would run. Guys that
40 know me from sport and that, I'm usually not the
41 kind of guy that would run. If I could have ran
42 that day, I would have 'cause alls I saw was a
43 gun. And I felt something hit me, graze me in the
44 chin 'cause I was ducking and bobbing. I felt
45 something hit me and I come up swinging with my
46 paddle and I clubbed the gum -- gun out of his
47 hand and I picked up the paddle and there was more

1 cursing going on. So he picked up a bigger gun
2 and some of the guys -- Native guys on the -- from
3 the beach seen what was going on so -- sorry --
4 they came up and they kind of surrounded this
5 boat.

6 Finally, the -- the older gentlemen said --
7 finally talked some sense into the younger guy and
8 said maybe they should leave. So we untangled
9 their boat. I was leaning off the back of our
10 boat and you know what a net is like in the prop
11 and so I was leaning off the back of -- and I
12 untangled their prop out of the -- out of our net.
13 And then as soon as I did that, they sped away.
14 And so I started to untangle our prop. Just when
15 I was able to do that, my brother hollered at me
16 to hang on. And I looked up and this boat that I
17 just untangled came by and it rammed us. And I
18 just grabbed onto the motor and hung on. And if
19 my brother didn't holler at me I would have
20 probably been in the water in the net and in a
21 whole lot of trouble.

22 And then he proceeded -- last moment, he
23 didn't ram us. So at the last minute he turned
24 and just kind of hit us but with enough impact and
25 then sped away. We got to the beach and was
26 trying to fix our net because it got all ripped up
27 from it being in the props. And I started talking
28 to the guys and I said, "Holy cow, if that was a
29 real gun I'd have been dead." I'd have been dead
30 for trying to practice my Aboriginal right to
31 fish, trying to feed my family, trying to come out
32 here for medicine.

33 Q Chief Charlie, sorry, I don't mean to interrupt
34 but I wonder if you could fast-forward to some of
35 the talks that you've been engaging in with what
36 you've called the sporty groups or the
37 recreational fishing groups and what kind of
38 progress is being made on that front now.

39 CHIEF CHARLIE: As a result of that, we -- I got a
40 number of calls not only from our own community
41 but from other -- other First Nations communities
42 saying, you know, "Just give us the word. We'll
43 leave. Like we're out there. We're with you.
44 Like we'll arm ourselves. We're going to bring
45 our guns out there and we're going to do this and
46 that." And I said, you know, "Hang on, you guys.
47 We're not going to deal with this in this manner.

1 We're going to try to deal with it in a different
2 manner." And so, I, myself, committed to meeting
3 with some of these sporting groups because we were
4 just developing a relationship around a fishing
5 trail that goes through parts of my reservation
6 for access for sporting groups to go through. So
7 we were already in some discussions. And so I
8 knew the groups and so we came together and I made
9 a commitment that we were going to try to find
10 ways of getting along on the water.

11 And I committed myself. I attended the first
12 six or seven, eight meetings by myself and I
13 didn't subject our council member, whose portfolio
14 that was or our fisheries' coordinators to those
15 -- to those meetings. Things evolved eventually
16 to a place where they've been good but it was
17 very, very difficult because in the meetings some
18 of the sporting groups were saying that we have
19 equal rights. First time they mentioned that I
20 said -- I let it go by but I talked to the guys
21 that were trying to chair the meeting and mediate.
22 And I just said, you know what? I'll let that
23 comment go by this time.

24 I said, "But you have to address it. If you
25 don't, I'm going to." And so it came up again and
26 I looked at the chairs and I just said, "You know
27 what? We don't have equal right. Aboriginal
28 fisheries have an Aboriginal court-protected right
29 to fish and you have a privilege." And so cooler
30 heads prevailed and some of the other guys talked
31 some sense into one guy that continued to say
32 that. And then we stayed at it. And then they
33 kept asking, "Where's the other sport -- where's
34 the other Native fishermen? Like where's the
35 other guys?" We had some commitment from other
36 First Nations to be there but in the early goings,
37 they weren't there. And I just kind of told them
38 again, I said, "You know what? I'm here. And I
39 could leave. Then who are you going to have?" So
40 we should consider starting with this small group
41 and expanding and building on that." Chehalis, we
42 have a fairly big area where we fish on the
43 Fraser, from what we call Hooknose just below the
44 Agassiz/Rosedale Bridge to Island 22. So we fish
45 a really big area, along with the Scowlitz.

46 So I said, you know, "We can start here and
47 when others are ready to come on we could build

1 some success." And so we made a real commitment
2 to -- to those meetings and I -- I believe more
3 and more First Nations are at the table now, as
4 well as a number of other sporting groups. And
5 I've kind of backed out and I go when I can but
6 now our fisheries coordinator and our portfolio-
7 holder attend the meetings.

8 Q Thank you. Chief Charlie, my final questions to
9 you are about co-management or joint management.
10 And I wonder if you can explain to the
11 Commissioner what -- what the term "co-management"
12 or "joint management" -- you let me know what you
13 prefer -- what that means. What's your definition
14 of that? What's your vision for co-management?

15 CHIEF CHARLIE: Again, as a few of the panel members
16 described earlier about the practice of today
17 where there's -- an agreement is brought forward
18 to us and kind of put on a table and said, "Sign
19 this or you don't really have anything," we think
20 that co-management needs to be where we can
21 actually sit down with a -- and come up with ways
22 of going forward, whether it's in harvesting. But
23 co-management needs to be across the board. It
24 needs to be co-management of harvesting but also
25 stewardship of enhancement and a protection of the
26 waterways or spawning grounds. It needs to be
27 all-inclusive of everything and not just
28 harvesting.

29 MS. PENCE: Thank you. Those are my questions.

30 MS. SCHABUS: Mr. Commissioner, for the record, Nicole
31 Schabus, S-c-h-a-b-u-s, first initial N., counsel
32 -- co-counsel for STC and Cheam. Mr.
33 Commissioner, with your leave, I would ask to be
34 allowed to direct questions to Councillor June
35 Quipp.

36
37 CROSS-EXAMINATION BY MS. SCHABUS:

38
39 Q Councillor Quipp, can you please tell us your
40 Halq'eméylem name and what it means?

41 COUNCILLOR QUIPP: Yes, my Halq'eméylem name is Sioliya
42 and it -- it means the great spirit protector.
43 And how I got the name was traditionally we go to
44 our families or they come to us and talk about
45 Indian names. And these are names that we have to
46 earn and then end up having have to live up to
47 them. So it took me a long time. I've only had

1 my Indian name for a couple of years, as I -- I
2 wasn't sure if I could live up to it so it took me
3 a while to accept an Indian name. But it does
4 mean great spirit protector and it reflects a lot
5 of the work that I've done over the years in my
6 lifetime.

7 Q And I understand that name was bestowed on you in
8 a ceremony in your smokehouse -- in a traditional
9 ceremony --

10 COUNCILLOR QUIPP: Yes.

11 Q -- in your smokehouse?

12 COUNCILLOR QUIPP: Yes.

13 Q Now, just to clarify, the people at Cheam are part
14 of the Stó:lō Nation and specifically the Halalt
15 Tribe. Could you please describe the territory
16 that the Halalt Tribe is responsible for,
17 especially along the Fraser River?

18 COUNCILLOR QUIPP: Well, our -- for our history, our
19 tribe, in particular, the Halalt Tribe, I think we
20 believe a lot in the -- the -- we go a lot with
21 the kinship ties, you know, the waterways and
22 stuff that -- that we used as -- you know, prior
23 to contact. We had a territory that sustained our
24 lifestyle and so we go right from Hunter Creek,
25 which is just in between Popkum and Hope, down
26 just west of Chilliwack, which is the Halalt Tribe
27 and all through that area along the Fraser River.

28 Q Now, could you please explain in which areas your
29 people fish and which fishing techniques you use?

30 COUNCILLOR QUIPP: We have several fishing areas.
31 Number one, we -- we do our main fishing area for
32 -- the main fishers in Cheam is around the Cheam
33 Beach and in that area from Jespersen Road to
34 Hunter Creek. But we also have, as I explained
35 and I may repeat it over and over about the
36 kinship ties that we have with -- you know, with
37 other groups. We have family sites in Yale, as do
38 other families from the Stó:lō territory. I also
39 am fortunate that myself and my direct descendants
40 have fishing areas up in Union Bar, which is just
41 above the Hope Bridge. My husband is from the
42 Union Bar Reserve. And other members of our
43 family ever since I can remember have fished up
44 and I think Kat described it as the Alexandra
45 Bridge. I call it Spuzzum. But my knowledge --
46 my recollection is that we fish that area as well.

47 Q And you used different fishing techniques up

1 towards the canyon and then --

2 COUNCILLOR QUIPP: Yes, in the canyon because it's so
3 steep and the -- the eddies, we call them, the
4 pools where we set out nets are so small that we
5 use poles and pulleys to set the nets there. It's
6 just -- it's called a set net but -- at one time
7 our people used dip nets but I don't really recall
8 until such time that it was banned by the
9 Department of Fisheries. And so we ended up using
10 nets -- set nets with pulleys down in Cheam. We
11 do two different methods of fishing. There's
12 drifting. And we also do set nets, set net being
13 a net tied up to shore.

14 Q Now, according to your Indigenous laws and
15 knowledge, what have you been taught about your
16 peoples' relationship with the salmon?

17 COUNCILLOR QUIPP: Well, that we have to respect it.
18 It's a really big part of our lives and I think we
19 face that -- that dilemma and I think really came
20 to realize what our connection was to the salmon
21 in 2009 when to our -- our devastation and our
22 shock, we only had one opening for sockeye salmon.
23 And it was really hard because a lot of our people
24 didn't even get a chance to preserve any of the
25 sockeye that year.

26 And as a result, a lot of our people, you
27 know, really suffered throughout the year. I have
28 a sister that provides food and myself and -- her
29 and I, we provide a lot of food to our community
30 members. And a lot of that food -- like my
31 sister, although I don't know how she disperses
32 the food that, you know, I provide to her, her
33 comment at a health meeting was that four months
34 out of the year, many of our people live on
35 nothing but salmon. You know, that's the only
36 food they have.

37 Q And I was just going to ask you to clarify. When
38 you say -- when you provide food, you're referring
39 to mainly salmon, right? And could you just speak
40 to the kind of -- to the families that your sister
41 would provide food to and what they need that food
42 for?

43 COUNCILLOR QUIPP: Well, they're families. We have
44 many families that are -- are on Social Assistance
45 and normally they have food for a week in their
46 house. After that, they're -- you know, they're
47 quite desperate and lucky to get a meal a day. So

1 anyway, she provides -- people come to her house
2 and she cooks for them and -- and provides food
3 for them if -- her door is always open for -- for
4 anyone that needs a meal.

5 Q And can you please explain the central role that
6 the sockeye salmon plays in regard to the culture,
7 spirituality, livelihood and also the economies --
8 the Indigenous economies of your people?

9 COUNCILLOR QUIPP: Well, the sockeye have always been
10 an important part in -- in my life -- our
11 lifestyle in our community. And even, you know,
12 we use it to dry. We smoke it. We can it and
13 now, since 1990, we actually freeze it, which is a
14 real culture shock for me to have to eat frozen
15 fish. But now, even today it's more of a -- I
16 really guard and I use the word "hoard" my frozen
17 fish which I never, ever thought I would do
18 because it's so important that we have that. We
19 do -- in particular, my family because I came from
20 a very large family. My mother took pride in
21 volunteering our services to people. And so we've
22 all become caterers, we cook -- we cook for
23 ceremonies, we do volunteer cooking.

24 And almost any meal we cook, I think anybody
25 can vouch that in Cheam we always provide salmon
26 at our ceremonies. And we've always used the
27 sockeye as part of our economic -- it's always
28 been a part of our sustenance in our lives. Like
29 I said, our communities live in poverty. And I
30 come from a family of 17 siblings. So growing up,
31 that was a real big part of, you know, the
32 lifestyle that my mom -- my mother and father had
33 to -- to live was to -- to catch the salmon and
34 actually sell a lot of it in order to -- to
35 provide other food for the family and clothing.

36 Culturally, we have a longhouse in our
37 community that again we ensure that there's enough
38 salmon to put away to feed the people that come
39 into our longhouse. For those that don't
40 understand what we're talking about, longhouses,
41 in the wintertime we have gatherings and usually
42 weekly gatherings where we feed anywhere up to
43 three or 400 people. And sometimes during the
44 week, we have families that live in the longhouse
45 that we provide that salmon for them, as well as
46 wild meat.

47 And so I just kind of wanted to, you know,

1 touch on -- on the difference between hunting and
2 fishing in a comparison to try and make people
3 understand that we feel that we're being really
4 harassed with the salmon regulations and whatnot
5 because it's a good economic benefit for other
6 people than First Nations. With the hunting, it
7 has never been -- we've never been really harassed
8 that much with the hunting. We can still hunt all
9 year around. We don't have to have a license.
10 But we still sell -- we still sell some of the --
11 we eat the meat mostly but we sell a lot of the
12 parts from the -- from the animals, like
13 moccasins, you know, and I'm sure everyone's seen,
14 you know, the beautiful work that comes out of
15 tanned hides. And we've never been harassed.
16 We've never been restricted from selling those
17 items that are made from the hides, as we are with
18 the sockeye. Or any of the salmon so...

19 Q And I'm going to ask you -- so what I'm hearing
20 you say is you've always had an economy that's
21 been based on the salmon. I'm going to ask you
22 about the changes in abundance of salmon that
23 you've seen in your lifetime alone and how that
24 has impacted your people.

25 COUNCILLOR QUIPP: Well, it's a real -- over the last
26 couple years, or few years, there's -- there's
27 always an anxiety, you know, when it comes to
28 fishing. And especially for myself, I've fished
29 all my life. I processed fish all my life. I've
30 taught my children, my grandchildren and now I'm
31 teaching my great-grandchildren the meaning of the
32 salmon, how important it is to us, how we can't
33 waste that kind of food and that I never, ever, as
34 a child, ever thought that I'd be so worried as I
35 am today in wondering if there's going to be
36 salmon next year, how much we have to put away.
37 We've got, you know, six freezers where we smoke
38 fish, we can fish and we freeze it. And those
39 freezers are all full. So it's really
40 important --

41 Q And I'm just going to stop you there. What do you
42 keep a lot of that fish for and what does it serve
43 for throughout the year?

44 COUNCILLOR QUIPP: As I explained, it's for many
45 reasons. Like I said, we do catering jobs, we
46 cook for funerals and we cook for ceremonial
47 gatherings. I think two weeks ago I cooked for

1 four days for a memorial. And there was up to
2 five or 600 people there that we fed at least a
3 hundred people for the first few days and then
4 five or 600 for the last day that -- every day, we
5 -- we set the table and we -- we put out salmon on
6 the table, along with the wild meat and other food
7 that we provide.

8 Q And also, I take it for the smokehouse at Cheam?

9 COUNCILLOR QUIPP: And the smokehouse. We have -- we
10 have our own longhouse at Cheam and, like I said,
11 we provide -- the fish that's in our freezers now,
12 most of it goes to our longhouse. Because of the
13 people that gather there, the people that live
14 there, we make sure that we have enough salmon
15 there, both canned, smoked and -- or -- and frozen
16 for -- to -- we take pride in being able to serve
17 the salmon to -- to the people with our longhouse.

18 We also have other ceremonies that we've --
19 annually, this year, we -- we missed it but for
20 the last five years, we -- we had a relationship-
21 building barbecue down at our beach. And we
22 invited -- we've had the Department of Fisheries,
23 the RCMP and the -- the invitation has been open
24 to other First Nations to -- and even to the local
25 people in our community. We put an ad in the
26 paper, come and see how we fish. You know, let's
27 -- let's get rid of this myth that we have a wall
28 of death of nets across the river. And so what we
29 do is we -- we have a barbecue right from noon
30 till about five o'clock and we serve salmon and --
31 and anything else that goes with it. And it's
32 free of charge. It's just come and see us, come
33 and get to know us and let us get to know you and
34 so...

35 Q I'm going to ask you some questions now also
36 relating to -- a little bit more to policy and
37 implementation. How do you feel that the
38 Department of Fisheries and Oceans deals with your
39 culture, rights and connection with the salmon?

40 COUNCILLOR QUIPP: I believe they're in denial. They
41 totally ignore it. They don't have a mandate to
42 deal with our culture. They don't have a mandate
43 to deal with -- they do. They don't use it. A
44 real good example is during our -- one of the
45 areas -- ceremonies I did neglect was the first
46 salmon ceremony. And we asked for a ceremonial
47 permit for one fish for that ceremony and we were

1 denied and --

2 Q Just to clarify, which year was that?

3 COUNCILLOR QUIPP: This year. Last year -- starting, I
4 think, two years ago, you know, it's really
5 upsetting when you use the term "FSC" because it's
6 a terminology that's used to explain maybe or
7 justify, you know, some decisions that are made in
8 the Department that, to me, aren't really
9 justifiable. There -- no one's ever -- no one's
10 ever defined "social". Now, the Department in the
11 last two years has been taking it upon themselves
12 to define our ceremonies. And the only ceremony
13 they recognize with us right now is our funerals.
14 You have to die before we can get a ceremonial
15 permit to --

16 Q To get fish?

17 COUNCILLOR QUIPP: -- to set the table. And like I
18 said, I requested a social permit one of the --
19 the events I do, I guess, during the fishing
20 season is I've had for the last ten or 15 years
21 now, I have invited people to my home and to our
22 community in Cheam to can fish for their elders,
23 for their families. And we have about -- I'd say
24 about ten different groups from ten different
25 communities, as far away as Fort St. John coming
26 into our community canning fish for their -- their
27 people up there because by the time the fish get
28 to their spawning grounds they're almost not
29 edible.

30 And so the one year I put in for ceremonial
31 permit for this type of event was it was denied
32 because they said it was just under food fishery.
33 So then I requested a social ceremony and --
34 permit and -- or a social permit and I never even
35 got the -- you know, the respect of an answer on
36 that one. So still, we're -- we still don't know
37 what "social" means when you talk about "FSC". To
38 me, it's -- and we've discussed this lots in our
39 community, that it's an easy way for the
40 Department to try and justify some of their
41 decisions -- or they think they're justifying
42 their decisions.

43 Q And when you refer to "decisions" that will be
44 decisions to limit fisheries?

45 COUNCILLOR QUIPP: Yes.

46 Q Now, in regard to your relationship or
47 communication with the DFO, do you feel there is

1 room to take your concerns into account?

2 COUNCILLOR QUIPP: Not the way the -- the system's set
3 up. You know, I really -- in our discussions, we
4 talk about the regulations, the guidelines that
5 the Department of Fisheries or any government
6 organization has to follow. And quite often, the
7 decisions that are made by them are -- are more --
8 they follow some guidelines, although we've never
9 seen the Department of Fisheries guidelines on
10 consultation.

11 They'll come to a meeting or we'll go to a
12 meeting and we discuss our concerns and they go
13 nowhere. I believe that in order for, you know,
14 us to be even able to come to some reconciliation
15 with the Department of Fisheries, we have to
16 really look at the guidelines that are set out for
17 the -- the government and make sure that they
18 include us as part of the discussions that -- and
19 I think I might be jumping ahead here but the --
20 you know, the management of the fishery that we
21 really don't have, you know, any part in the
22 management of the fishery.

23 We may go sit at the table and have
24 discussions with DFO but they always come with a
25 mandate. And they always come with the thought
26 that the person that comes to a meeting with us is
27 so low on the totem pole they don't have any
28 decision-making authority in order to -- you know,
29 even say we -- we might have a level playing field
30 at negotiating some kind of an agreement that we
31 could all agree with.

32 Q Now, I take your people have made substantive
33 proposals to DFO about a more sustainable
34 management of the salmon?

35 COUNCILLOR QUIPP: One of the areas we talked about and
36 -- and I -- at one time, DFO had a term -- they
37 change their terminology all the time but they had
38 this term that they -- they used was "risk
39 aversion management plan". And the explanation to
40 that risk -- what that means is if they wanted
41 60,000 salmon to return to the spawning grounds,
42 then they should -- they would have to make sure
43 that 120,000 salmon got by instead of just 60. So
44 our recommendation from our community was that
45 they use that same formula for the Indigenous
46 people along the river to ensure that the highest
47 court decisions in Canada are followed, that if --

1 if they're allotting us 600,000 for the Stó:lō
2 people, then they should make sure that there's
3 1,200 or 1.2 million getting -- getting by past
4 the commercial fisheries. And I think that should
5 be really considered when they're doing their --
6 their total allocation catch for any other user
7 groups.

8 Q Now, we've heard about and questions have been
9 asked about processes. And I take it there's some
10 concerns with processes. But also, in order for
11 any process to work, what do you feel are the
12 substantive requirements that should be met
13 regarding Indigenous peoples and your knowledge?

14 COUNCILLOR QUIPP: Someone here earlier mentioned that
15 we needed our own biologists, you know, and it
16 sparked something with me that, yeah, we do need
17 our own biologists 'cause we do have several
18 biologists and -- you know, within our Indigenous
19 people now. But I really believe that not just
20 biologists that have had academic training through
21 university but we have many, many people that have
22 lived on the river, that have fished all their
23 lives, that have a lot of knowledge.

24 And I think Willy touched on a lot of the
25 different signs and symbols that we use when --
26 when we're -- you know, when we're getting ready
27 to go fish and I agree with those. And a lot of
28 those, I don't even really give out at this
29 particular time. To me, it's -- it's traditional
30 knowledge. But we've -- I think a good example
31 I'd like to give is we've been involved with
32 gravel removal from the river and -- and again,
33 that's just another area where we look at how any
34 development impacts, you know, our fishing or our
35 lifestyle.

36 And we -- we have developed, going way back
37 to when my father was chief, he did develop gravel
38 plans. When he was the chief, we removed gravel.
39 I think in our history way back we had cobbler --
40 cobble courtyards. But most recently, we removed
41 gravel from one of the bars and in that gravel
42 plan, and I think DFO has taken credit for it now,
43 but during that -- those gravel plans that were
44 being developed, we built some jetties to enhance
45 the fishing pools -- fishing -- where fish come
46 and rest and feed. And because those are also our
47 -- a lot of them are our fishing sites. And so

1 when we develop gravel plans, we develop them
2 always keeping in mind the habitat.

3 Q And just to close off, how do you see Indigenous
4 involvement in decision-making or what level
5 should -- at what level should you be involved in?

6 COUNCILLOR QUIPP: At every level. You know, I think
7 we have to be there from the beginning. What's
8 happened over the last -- in my lifetime of, you
9 know, negotiations, agreements and whatever with
10 -- with any government is that they present us
11 with a proposal. They present us with an
12 agreement. And then we may get to make changes,
13 we may not. But I think we have to go right from,
14 you know, the planning, the development of
15 guidelines, the development of legislature,
16 changes, if necessary, and we also have to be able
17 to be sitting at the table to make a decision and
18 not leave it up to the RDG having the final say.

19 MS. SCHABUS: Thank you. Those are all my questions.

20 MR. MCGOWAN: Yes, Mr. Commissioner. That concludes
21 the examinations in chief. It might be an
22 appropriate time for the lunch break.

23 THE COURT: Thank you very much.

24 THE REGISTRAR: The hearing is now adjourned until 2:00
25 p.m.

26
27 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

28 (PROCEEDINGS RECONVENED)

29
30 THE REGISTRAR: Order. The hearing is now resumed.

31 MR. MCGOWAN: Yes, Mr. Commissioner. We're now at the
32 stage of commencing cross-examination. Mr. East
33 for Canada is going to go first. I understand he
34 is going to try and keep himself within half an
35 hour, if he can.

36 MR. EAST: Good afternoon, Mr. Commissioner, my name is
37 Mark East, again the Department of Justice. As
38 Mr. McGowan has said, I will attempt and make
39 every effort to keep my questions within half an
40 hour, recognizing that we will have some hearings
41 in the New Year on this issue, and many of the
42 issues we're discussing today I suspect will be
43 discussed at that time, as well.

44
45 CROSS-EXAMINATION BY MR. EAST:

46
47 Q Thank you, everybody on the panel, for coming

1 today. Just as an introduction, I am going to
2 probably ask questions of you as individuals, but
3 I just invite you to jump in and to answer the
4 questions as a collective as I go forward, because
5 many of the questions I'm going to ask, I'm going
6 to try to frame them in such a way that to
7 encourage input from all of you.

8 One of the things that I'd like to discuss in
9 the time that I have is this issue of co-
10 management. And I heard what Chief Pennier said
11 about the definition of being co-management - I'm
12 putting words in your mouth, I suppose - but it
13 could have been the eye of the beholder: It's
14 something that needs to be defined. And I was
15 just wondering if you've heard of this structure
16 that's used to define the levels of management as
17 the tier system. There's Tier 1, Tier 2 and Tier
18 3. Is that a terminology that's used by -- within
19 First Nations communities to describe the
20 different levels of engagement between -- between
21 First Nations and between First Nations and DFO?
22 Chief Pennier.

23 GRAND CHIEF PENNIER: I've heard about Tier 1, Tier 2
24 and 3, but I'm not too familiar with all of it. I
25 know that Tier 1 is amongst ourselves, and Tier 2
26 is with DFO, and I'm not too sure of what T3 is,
27 whether it's with commercial and sport, or...

28 Q I guess Tier 3 would be with essentially all the
29 other fishers, including commercial and
30 recreational. That's my understanding, so...

31 GRAND CHIEF PENNIER: Yeah, good.

32 Q I'd like to focus a little bit on what we would
33 call Tier 1, and perhaps as a first document I'd
34 like to look, it's actually -- and this is a
35 question for Ms. Quipp. And it's related to your
36 witness summary, Ms. Quipp, just as an
37 introduction. And this is the exhibit. So it's
38 the "Witness Summary" of Ms. Quipp, Exhibit 278.

39 So if you go to page 2. I'm just curious and
40 would like to follow up on a comment under the
41 heading "FSC fishery". And if you look at the
42 second line it says:

43
44 Councillor Quipp explains that the Cheam band
45 falls under the collective FSC allocation for
46 the Stó:lō Peoples. She advises that the
47 various tribes do not discuss among

1 themselves how to divide up the allocation.
2

3 I just want to clarify when you refer to the
4 tribes, the "various tribes", Ms. Quipp, is that
5 the peoples, the tribes of the Sto:lo Nation, or
6 is that the tribes of the Fraser generally?

7 COUNCILLOR QUIPP: Of the Sto:lo Nation or the ones
8 that, you know, like when we talk about Sto:lo
9 Nation, Katzie is usually included in the
10 allocation that we get, and then goes right up to
11 Yale. So those are the ones that I would be
12 talking about.

13 Q Okay. So within the Sto:lo community of nations,
14 Sto:lo tribes, if you're not discussing among
15 yourselves how many fish -- how to divide up the
16 allocation, how do you know, then, at the end of
17 the fishing season that you've met the allocation
18 that's been provided to the Sto:lo group, Sto:lo
19 Nation?

20 COUNCILLOR QUIPP: We have one -- we have the only
21 monitoring program in the world where we have all
22 of our fish counted so that at the end of the
23 season all of our tallies go into DFO and they
24 know how many fish we got in each community, as
25 well as the -- all of Sto:lo.

26 Q So each of the Sto:lo tribes, or Sto:lo bands
27 reports their catch monitoring to DFO and that's
28 how you know how -- to what extent that all the
29 Sto:lo First Nations have met their allocation?

30 COUNCILLOR QUIPP: Yeah, it's done every week as soon
31 as the fishing times that we've been allocated are
32 over, then the stats go in right away.

33 Q Okay. I'll probably return to this in a minute if
34 I have time, but I just want to ask at the bottom,
35 and I think at that same page, you refer to that:

36
37 The Cheam have their own catch monitors --

38
39 - that's the very last sentence -

40
41 -- who record numbers of fish as they come
42 in. The catch monitors then pass those
43 numbers along to the band office and in turn
44 DFO.

45
46 COUNCILLOR QUIPP: Each community has their own catch
47 monitors --

1 Q Okay.

2 COUNCILLOR QUIPP: -- normally throughout the season.

3 Q Okay. So it would be a requirement of DFO to
4 essentially collect all these numbers and to
5 ensure that the allocations are met, that the
6 allocations are fished to and not exceeded?

7 COUNCILLOR QUIPP: Yes. And they do, otherwise they
8 refuse to pay the -- the \$60,000 or whatever it
9 is, annually, they refuse to pay it until all of
10 those reports are in.

11 Q Okay. And just as an aside, my understanding that
12 Cheam in particular hasn't had a catch monitoring
13 program for the last two years; is that right?

14 COUNCILLOR QUIPP: No, we haven't signed an agreement
15 for the last two years.

16 Q Okay.

17 COUNCILLOR QUIPP: But I think the catch monitors,
18 they're probably still out there anyway.

19 Q Okay. That was a preface for a more general
20 question for the panel, and that is in a poor run
21 year where there are concerns that there simply
22 not be enough fish to meet all of your
23 communities' needs, what is your vision for how
24 the First Nations will ensure -- your vision of
25 all the First Nations on the Fraser River will
26 ensure that the fish are shared equitably among
27 the nations on the Fraser River. And I'd throw
28 that open to anybody on the panel.

29 CHIEF BAIRD: I think one first step to ensure that
30 doesn't happen would be to provide the test
31 fishery to First Nations. That would be a very
32 positive measure to ensure that if there isn't any
33 fish beyond the test fishery, that First Nations
34 would have access to those fish that are caught
35 in-season as a starting point.

36 MR. BECKER: As a rule a percentage that was proposed
37 by DFO for First Nations to -- to try and see if
38 we could come to some agreement on it, and that
39 was starting at 25 percent and allowing another as
40 it went up the river. Though there was no
41 agreement on it, I believe that if -- if First
42 Nations could rely on the information that was
43 given to them, because it's not the first time
44 that we've come close not to meet our FSC needs.
45 But we're always suspect of -- of the numbers that
46 are being given to us by the Department. Because
47 there's test fisheries going on in the Straits,

1 test fisheries going on on the West Coast of
2 Vancouver Island, and those fish are going
3 somewhere, they're actually being sold.

4 So what we're saying is that -- and I believe
5 what -- in what Kim is saying, give those fish to
6 First Nations, thereby reduce the amount that --
7 the impact on First Nations, and then let us try
8 and decide if -- if we believe there's not enough
9 fish, and if there isn't then we'll work out that
10 percentage and we'll start meeting with First
11 Nations up along the -- the watershed.

12 Q Okay. Anybody else?

13 MR. BECKER: I don't believe you can impose it --
14 impose from the federal side --

15 Q Right.

16 MR. BECKER: -- a percentage we and Musqueam could --
17 would have to share.

18 Q Chief Charlie.

19 CHIEF CHARLIE: It's Mark?

20 Q Yes.

21 CHIEF CHARLIE: Thanks, Mark, for your questions.
22 There's a couple of comments for, I think, the
23 ones that you have asked for the tiers. Again,
24 I'm not as intimately involved in the fisheries at
25 a higher political level, but I definitely think
26 that the tiers need to be across the board. And
27 so that if we're going to talk about monitors in
28 relationship to the -- amongst the different
29 tiers, then I think that it should also be in the
30 same question.

31 So June mentioned a bit about the monitoring
32 system that First Nations are using that is not
33 with the other user groups. There is no counting
34 for other user groups. And so this tiers -- tier
35 system needs to be somehow clear and concise and
36 some clear mandates that should go across the
37 different tiers.

38 I think the question around the low stocks
39 and the low numbers, and I agree, last year we --
40 or, yeah, it was last year early in the season
41 that the numbers of the early Chinooks weren't
42 returning.

43 Q Mm-hmm.

44 CHIEF CHARLIE: And we were wanting to have our first
45 salmon ceremony to pay respect. And it was
46 actually one of the test fishery out of Albion
47 that gave us a feel of the early Chinook, what we

1 call a squawkum (phonetic). Squawkum is that
2 first fish, and it's like the -- and it's like the
3 most prized fish of our people, the king of the
4 fish, if you will, the one that you pay respect
5 to, and the one that you have a ceremony for,
6 because they're the first ones to return to the
7 people. And once you have your ceremony for them,
8 it's like they are supposed to go back and let the
9 rest know that they're still being respected, so
10 that the other numbers can happen, so the others
11 will return. And so that kind of collaboration
12 amongst the test fisheries and other user groups
13 should definitely be out there. We should learn
14 how to spread that out, rather than it being sold
15 somewhere else. It should go for some of those
16 sacred uses.

17 Another example of the test fisheries and
18 paying respect, I guess, to the low returns, in
19 Chehalis we had a catch for some chum and DFO said
20 for commercial use. So they give us these numbers
21 and our guys went out and they said, well, there's
22 not enough fish. We're not going to fish if
23 there's no fish in the water. And then it was
24 told to us that we needed to use those numbers.
25 We needed to go out and catch those numbers. Our
26 fishermen came back very adamantly to the band
27 office and said "We're not going to fish if the
28 fish aren't there."

29 And so the proper tests that need to happen
30 before allocations are given out should be a
31 collaborative approach amongst all groups of this
32 co-management that you were talking about. So
33 that's what co-management would mean. It's not
34 just the divvying up of numbers, dealing out cards
35 and saying "This is how much fish you're going to
36 get, and you're going to get." The co-management
37 really needs to be for stewardship and
38 enhancement, and then what goes back to that.

39 So there's user groups in our fishing -- in
40 our salmon enhancement numbers and some of the
41 commercial opportunities that we get, some of
42 those dollars there are marked to go back into
43 enhancement, and are other groups doing that?
44 Should other groups be doing that same thing,
45 putting "X" amount of their catch or their
46 resources that they make, they should be putting
47 it back into enhancement, as well.

1 So that's co-management.

2 Q Okay. Mr. Becker.

3 MR. BECKER: Mark, could I just go back to your Tier 1,
4 Tier 2 and Tier 3?

5 Q Yeah.

6 MR. BECKER: In 1992 when the Lower Fraser was
7 negotiating with the Department of Fisheries and
8 Oceans on the first AFS agreement, in the end of
9 that process, the other user groups were invited
10 into that meeting. And I think we went two days
11 without any kind of a consensus being reached
12 between the user groups and First Nations. So it
13 has been tried, but there was never any kind of an
14 agreement. Just to let you know that part.

15 Q Yeah. No, that's helpful, and I'll probably
16 return if I have time to what I guess you would
17 call a Tier 3, and that's something that you
18 brought up, Mr. Becker. I'd be interested at
19 some point in discussing, if we have time, your
20 ideas and vision for how all user -- all fishers
21 on the water can get together in some kind of what
22 we would call a Tier 3 initiative, Fraser-wide, to
23 manage and co-manage the fishery, including DFO.

24 One thing I want to focus on, though, is some
25 of the -- what you see is perhaps some of the
26 challenges in getting all of the various First
27 Nations on the Fraser together into one kind of
28 collaborative management organization. I wondered
29 if I could just ask you, based on just a quote I
30 found in one of the -- one of the documents that
31 we -- that we have in our -- on our database, and
32 it's -- Mr. Registrar, it's actually -- it's Tab
33 12 of our list of documents, Canada's list of
34 documents and the CAN number is CAN056656.

35 So this is a paper -- maybe I should
36 introduce it. It's a paper, it's called "Review
37 of the Fraser River Aboriginal Fisheries
38 Secretariat". Now, I understand that most of your
39 First Nations, or all of them are -- at least
40 participate in the Fraser River Aboriginal
41 Fisheries Secretariat?

42 COUNCILLOR QUIPP: I think a lot of these organizations
43 that are put together, there are certain groups
44 that participate and they're -- not all First
45 Nations participate and not all of the leaders
46 participate. Quite often, and especially in Tier
47 1, I think it ended up being a lot of the

1 technical people from different communities and we
2 don't all have technical people, ended up at these
3 meetings and DFO was calling it consultation. And
4 so they sort of in my mind, in our community
5 didn't really work out. Because when our -- if
6 any of our leaders went, they were unsure of what
7 role they actually played in those Tier 1
8 meetings. And I think that's the way it was sort
9 of ending up in our community -- for our
10 community, anyway.

11 Q My understanding of -- and my imperfect
12 understanding of this organization, it provides
13 technical and communication support for First
14 Nations. It's not intended to be a representative
15 body. I wanted to take you to -- however, I
16 wanted to take you to a quote from the document.
17 It's at page 5 of the document. And this is a --
18 it appears to be a paper done by a consultant for
19 this organization. And it's page 5, under "Review
20 Results". And I just want to read you the first
21 paragraph under "Tier 1", and this is where some
22 of the terminology of tiers comes in. I just want
23 to get your impression of -- your comments on this
24 paragraph. I'm just going to read it out:

25
26 One of the most problematic issues addressed
27 in each of my previous Reviews --

28
29 - and that's a reference to some earlier papers
30 that this consultant has done -

31
32 -- is the serious division that exist amongst
33 Fraser River First nations. I noted then
34 that the hard feelings that exist between
35 some Nations and Bands made it difficult to
36 get everyone to the table. These
37 relationship problems were then and remain
38 today, complex, rooted in a variety of
39 sources: treaty issues, AFS issues, harvest
40 vs. conservation issues, and others.

41
42 And it's that last sentence that I'd like to have
43 some of your comments on. What are some of the
44 issues that make it difficult, at least according
45 to this person, as to why communities on the
46 Fraser have a difficulty in getting along? First
47 of all, do you agree with that?

1 COUNCILLOR QUIPP: I agree. I agree there's a lot of
2 conflict within First Nations, and in my
3 experience, my witnessing of how the Department of
4 Fisheries has acted within our meetings, they go
5 from one community to another, and we know for a
6 fact that they've gone up to the -- the
7 communities up -- what I call the Thompson area,
8 and above the Spuzzum Bridge, and they misinform
9 some of the First Nations there. When this has
10 happened in the past, I know we at Cheam have
11 written letters to some of those First Nations and
12 asked them, "Come and sit with us and find out,
13 you know, what's going on." So that's one of the
14 biggest problems I see is that, you know, it's
15 easy for -- for the Department to travel all over
16 the province and spread rumours or whatever, or
17 misconceptions to other First Nations. And it's
18 easy for us to believe some of the stuff they're
19 spreading.

20 Q Chief Baird?

21 CHIEF BAIRD: I think there's lots of reasons why
22 there's First Nations' conflict and I think it
23 comes down to, in my view, undefined fishing
24 rights. And I think that when you have
25 collaborative sessions that just turn out into
26 venting sessions that don't really result in any
27 true co-management, and there's no strong
28 foundation between the federal government and the
29 First Nations, there's no partnership there.
30 There's nothing to hang our administrative
31 arrangements on, in my perspective. And, you
32 know, when you talk about ceilings on allocations
33 that seem arbitrary to First Nations and a lack of
34 clarity of how those are even arrived at. And the
35 lack of capacity within First Nations to engage in
36 these issues at different times in their different
37 communities, those are all elements that don't
38 help the situation.

39 And if going forward we want to have a more
40 robust ability to work together in a Tier 1 type
41 of fashion, then we need to have sort of rules of
42 engagement that everyone understands, agrees to,
43 and has input on, so that there's meaning to be --
44 there's real meaning to be in those sorts of
45 forums, in my view.

46 Q Mm-hmm. I wanted to ask if you've been involved
47 or heard of some -- the recent initiatives on the

1 Fraser River. One of them is called, and I'll
2 always get this wrong, I always kind of call it
3 "the Forum", but it's the Fraser River Forum on
4 Conservation and Harvest Planning. Are you aware
5 of this initiative that I believe started in 2008?

6 CHIEF CHARLIE: Mark?

7 Q Yes, sorry.

8 CHIEF CHARLIE: Sorry, I don't know the last question.
9 I'm not aware of it. But I was just going back to
10 your Tier 1, and the way you read something from
11 this report. And I read down further in the
12 report, that would have been my comments. So if
13 you go down to paragraph 3 and it talks about:

14
15 However, recent positive changes...

16
17 Q And this is -- I'm glad you're pointing it out. I
18 was going to go back to that and maybe we can go
19 back to that now. Thank you very much, Chief
20 Charlie, because I think that's important. If we
21 can go back to that same -- same paragraph, and go
22 down to the third:

23
24 However, recent positive changes in
25 attitudes, brought on by projected declines
26 in fish stocks, the prospect of increasing
27 competition from "approach" Bands (Vancouver
28 Island Bands are arguing that they be given
29 access to in-river fishing), projected in-
30 river commercial fisheries, the demise of
31 the --

32
33 - I think that's the BC Fisheries Coalition -

34
35 - BCFC, dissatisfaction with the bi-lateral
36 process and other issues, has resulted in a
37 recent resurgence of interest in attending
38 Tier 1 meetings...

39
40 Now, this was in 2007, but would that be your view
41 today?

42 CHIEF CHARLIE: Yes.

43 Q That there's been a recent resurgence?

44 CHIEF CHARLIE: I think so. I was at an All Chiefs
45 meeting a couple of months back and there was a
46 few fishermen that came together that had been
47 working on this Tier 1, came to do a report

1 together to the All Chiefs meeting that was held
2 at the Joe Mathias Centre. I don't remember
3 exactly which date. But we had somebody there
4 from the Coastal, and we had somebody there from
5 the Sto:lo, and the other one was from the Fraser
6 Canyon. And in their own comments before starting
7 they said these guys have been involved in
8 fisheries for quite some time. I don't know if I
9 should say their names, it probably doesn't
10 matter, but it was Chris Cook, Ken Malloway and
11 Fred Sampson, Chief Fred Sampson were the ones
12 that came and did the report together. And they
13 both -- they all three had been heavily involved
14 in fisheries for a number of years and came and
15 said they've come to do this report together,
16 standing in unison to advocate on behalf of all
17 First Nations for co-management of fish, and the
18 resource of the fish. And they stood together and
19 gave a report together, and they said not long ago
20 they would have been poking -- pointing fingers at
21 each other and arguing amongst each other about
22 what numbers they were given and how they were
23 being played against each other. And this time
24 they stood up together to look after the
25 stewardship of the fish.

26 GRAND CHIEF PENNIER: And if I can add to that. There
27 is an initiative in this year that where we're
28 trying to bring the Fraser group together to work
29 together, yeah, it's happening.

30 Q Is that the Lower Fraser -- I think its name
31 recently changed, but it's the Lower Fraser
32 Fisheries Alliance?

33 GRAND CHIEF PENNIER: That's right.

34 Q Okay. And that's a -- that's an organization I
35 understand it's still in development, it's in its
36 development stages?

37 GRAND CHIEF PENNIER: Yeah, there's still development,
38 but they're gathering more interest from the
39 communities up and down the river.

40 Q And that's -- that's an initiative that DFO funds
41 through its AAROM program?

42 GRAND CHIEF PENNIER: That's right.

43 MR. EAST: Okay. And there's something similar, well,
44 I won't ask you this, but something similar for...
45 I wonder if we could turn to -- first of all,
46 perhaps I should mark this document that we have
47 on the screen as an exhibit, Mr. Commissioner.

1 THE REGISTRAR: Exhibit number 288.

2
3 EXHIBIT 288: Review of the Fraser River
4 Aboriginal Fisheries Secretariat: March
5 2007, Prepared for the Fraser River First
6 Nations Fisheries Forum by Dr. Bob Brown
7

8 MR. EAST:

9 Q I want to talk a little bit more about this, the
10 Forum of -- perhaps we can go to Tab 8 in our list
11 of -- Canada's list of documents. Now, this is --
12 this is an internal DFO document, so I won't ask
13 you if you're familiar with it and have seen it
14 before. I'm interested in just reading the first
15 paragraph just for introductory purposes:
16

17 In 2008 it was recognized that poor
18 forecasted returns for Fraser salmon would
19 limit harvest opportunities and could
20 potentially impact the ability of First
21 Nations to harvest salmon for food, social
22 and ceremonial (FSC) purposes. Recognizing
23 this would pose in-season management
24 challenges for DFO and First Nations, the
25 Department (led by BCI) --
26

27 - which is BC Interior Department of DFO -
28

29 -- initiated a series of workshops to engage
30 Fraser River First Nations regarding harvest
31 planning for the 2008 season.
32

33 And that started, it seems, in the next paragraph,
34 started in January 2008.

35 My understanding is they met four times in
36 2008 and it was that process was well-received.
37 Did any of you participate, or do you know people
38 who would have participated in that?
39

40 Going maybe down to the third paragraph. The
41 second paragraph talks about some of the meetings
42 that the organization took part in that talked
43 about:
44

45 In preparation for 2009 season, the *ad hoc*
46 transition committee --
47

47 - they talk about -

1 -- evolved into the Interim Fraser River and
2 Approach Working Group (IFRAWG). This
3 working group has continued to fill the role
4 of planning and organizing meetings and
5 communications, with the assistance of the
6 Fraser River Aboriginal Fisheries Secretariat
7 (FRAFS).
8

9 So this is essentially a -- it looks like a
10 working group to operationalize some of the things
11 that were discussed at these meetings of the -- of
12 the Fraser River Forum. Do you have any
13 familiarity with that, with that organization?

14 Okay, I'll leave that, then.

15 Have you heard of the "Roadmap Process", a
16 process for -- well, maybe I will -- maybe Tab 6
17 from Canada's list of documents.

18 So this is a document, again this is a DFO
19 document, and it refers to the DFO and First
20 Nations Salmon Roadmap Process. And the first
21 heading says:

22
23 Engagement and input from other First Nations
24 Organizations (e.g. First Nations Fisheries
25 Council, ITO)
26

27 And you have a timeline here and you see December
28 2010 is in the middle. On the far right, and it's
29 very hard to see, so I'll have to get my hardcopy
30 because I can't read what's on the screen. I just
31 want to ask you about this process and its
32 objectives at the end of this chart. Now I'll
33 need my glasses.

34 "Summer 2012" on this timeline:
35

36 A series of meetings for a potential
37 agreement and/or implementation of the new
38 management approach between DFO and First
39 Nations (Fraser and Marine Approach) for
40 Fraser Salmon.
41

42 Are you aware of the activities of your First
43 Nations in this Roadmap Process, this series of
44 meetings to this objective? Okay.

45 GRAND CHIEF PENNIER: I think Ernie Crey from our group
46 has probably attended a few of these sessions,
47 that's about all.

1 Q Well, I just flag these now, but I'm sure that
2 we'll return to these at further sessions of this
3 hearing. I just wanted to ask if with your --
4 your personal involvement and knowledge was of
5 those -- of those processes.

6 But wouldn't you say that, I guess I'll leave
7 it at this, that there's certainly an interest on
8 the part of the Department of Fisheries and Oceans
9 to work with First Nations on these Tier 1 and
10 tier processes to improve the relationship with
11 First Nations and to move toward a co-management
12 process that works. Would you agree that there's
13 at least been some efforts made in recent times to
14 try to improve that track record?

15 COUNCILLOR QUIPP: I think I want to just stress on --
16 on one of Kim's comments about, you know, where
17 nothing goes anywhere, anything. You know, these
18 meetings happen, there's meetings that happen, and
19 so-called plans that are made, but they're never
20 followed through. They're never implemented, and
21 so a lot of our people get to the point where, you
22 know, what's the sense of going.

23 You know, we go and we spend our hard-earned
24 dollars that we do have, little dollars that we
25 have, it creates a real hardship for us, a lot of
26 our communities to attend, you know, these types
27 of organizations. And yet, you know, the
28 Department has its full staff, you know. They
29 have all the, you know, the Justice Department and
30 everyone that they can work with. And yet if we
31 get a lawyer it's going to cost us an arm and a
32 leg that we don't have. So it's really difficult,
33 I think, when we're looking at, you know, even
34 attending some of these.

35 When I was -- held the position of chief in
36 my community, I never travelled to a meeting.
37 Any meeting that we had with any government
38 organization, they came to us and it made it so
39 much easier for our -- even our members to
40 participate and be part of whatever's happening
41 here. And this is where we fall down, I think,
42 with -- when we might have one representative
43 going to a meeting such as this, and yet the
44 information never really gets back to the ground
45 level where we get our -- where I get my direction
46 from as a leader in my community. I need to have
47 that support from the members that elected me in

1 there. And if I don't have that support, if they
2 don't know what's going on, we don't know what's
3 going on, we can't present that to them. And so
4 there's a real big flaw right there that lack of
5 capacity is one of them, you know, that we -- we
6 really can't afford to be sending representatives
7 probably to all of these meetings.

8 Even now, you know, at one time we used to be
9 able to meet with the Deputy Minister who would
10 come out from Ottawa. Now we meet with people
11 such as the Resource Management, who have no
12 authority to make decisions. And it's really hard
13 for us to believe something's going to happen,
14 something positive's going to happen and come out
15 of something like this.

16 CHIEF CHARLIE: Mark?

17 Q Yes.

18 CHIEF CHARLIE: Can you ask that question again?

19 Q Yeah. If I can remember. Now I'm trying to
20 remember how we got to where we are.

21 CHIEF CHARLIE: Was there attempts to do...

22 Q I guess what I'm -- what I'm -- and maybe just to
23 paraphrase what I've heard, it's a real challenge
24 to create these organizations. You create these
25 processes, these ideas, but it's very difficult to
26 implement them on the ground.

27 CHIEF CHARLIE: I was just looking for your question
28 again.

29 Q Well, where I was asking about is does your --

30 CHIEF CHARLIE: Is there attempts to do --

31 Q -- knowledge involve -- oh, okay. Thank you.

32 CHIEF CHARLIE: Has the Department made attempts to --

33 Q Do you agree that the Department has made attempts
34 through these initiatives that I've just referred
35 to, and just generally, to try to engage First
36 Nations on processes for co-management in a system
37 within -- for First Nations to talk to each other,
38 but also for First Nations to engage with DFO?

39 CHIEF CHARLIE: Mark, you know how earlier a few of the
40 panel members had made some comments that DFO
41 would come to them with some of the less senior
42 bureaucrats and come with a -- a letter with no
43 mandate to kind of talk or negotiate and just
44 expect a signature. And then we were saying, you
45 know, we need to talk to the people that have some
46 authority, then it can make some decisions on the
47 ground. That goes both ways.

1 Q Mm-hmm.

2 CHIEF CHARLIE: And so that if the -- if DFO is coming
3 to First Nations and wanting to develop on co-
4 management structure, then they need to talk to
5 the ones that have that authority in First Nations
6 communities, and not one-off them -- what they
7 call one-off and go and talk to somebody and say,
8 "Well, we consulted with First Nations, but we
9 don't know who they were and what authority they
10 had, but we consulted with First Nations." You
11 need to go to the chiefs and to the leaders and
12 those that have that mandate and jurisdiction to
13 do those discussions.

14 And I think I've heard about this "Roadmap"
15 again, but it was more at a technical level. If
16 they're going to talk about things that are put
17 into structure, what it's going to be, if you
18 will, a co-management discussion, then it should
19 be with the proper people.

20 Q Sorry, Chief Baird.

21 CHIEF BAIRD: Yeah, I just want to say that our manager
22 of our Resource Department would typically attend
23 some of these meetings, and she's always
24 scratching her head wondering where it's best to
25 spend her time, because she could go to a meeting
26 probably every day of the week.

27 Q Mm-hmm.

28 CHIEF BAIRD: So there's that aspect of it. And to be
29 clear, my view, it's really complicated, the
30 interface between Department of Fisheries and
31 Oceans and First Nations, because there's the pre-
32 season planning stuff, which in some ways we have
33 time for. Then there's the in-season chaos that
34 really strained relationships, and then there's
35 enforcement on top of that. And then you throw
36 into the mix those First Nations that are in the
37 treaty process, and likely there's no mandate at
38 the treaty negotiation table from DFO, because
39 there hasn't been one for several years. It's the
40 sort of schizophrenic relationship because it's
41 interfacing at so many levels.

42 So while it is complicated, it is encouraging
43 to hear that DFO's interested in building
44 relationships and co-management. Because I don't
45 see that word on that "Roadmap" myself. So having
46 being aware of that would allow First Nations to
47 adequately resource themselves to participate in

1 those opportunities, in my view.

2 Q Yes, Mr. Becker.

3 MR. BECKER: We've got to build a relationship rather
4 than proceed on this document.

5 Q Okay.

6 MR. BECKER: The question about is the Department in
7 our opinion striving to make relations between
8 First Nations and DFO better? No. Ideas such as
9 this "Roadmap" pit First Nations against First
10 Nations. And I'm going to give you a good example
11 that goes back to one of your questions before,
12 and I didn't want to open a can of worms here.

13 Mr. Commissioner, all along this coast there
14 are numerous runs of salmon, numerous rivers where
15 these salmon spawn. First Nations in the North
16 have their own. The Central Coast have their own.
17 Vancouver Island has its own. And the Fraser
18 River has its own. It's with the depletion of all
19 of these, or most of these spawning channels and
20 spawning rivers in the North and in Central Coast,
21 on Vancouver Island, and now the Department has
22 the audacity to come to the Fraser River First
23 Nations and say "Make room for all of your
24 cousins". That's the mentality that we deal with.
25 And you ask the Lower Fraser their views on this,
26 and have we made it clear over the years. And,
27 Mark, I'm sure if you read the historical records
28 going back to 1992, you know what the Lower
29 Fraser's views are of sharing salmon with people
30 who have depleted their own resources in the North
31 and Central Coast.

32 And you also have pit commercial fishers of
33 Indian ancestry against us rights fishermen. And
34 some of those people we've tried to meet over the
35 years. We could never come to a consensus on how
36 we should sit together. But First Nations
37 themselves have tried this. Now you've got the
38 Department trying to say here's a new document.
39 And I don't believe that Musqueam would
40 participate in it. We've tried all of these
41 things before.

42 So, Mr. Commissioner, it's the shortage of
43 salmon that forces DFO to come out with documents
44 like this to impose on First Nations.

45 MR. EAST: Mr. Commissioner, perhaps I should mark this
46 document that's on the screen as an exhibit.

47 THE REGISTRAR: Exhibit 289.

1 EXHIBIT 289: DFO and First Nations Fraser
2 Salmon "Roadmap" Process, December 2010
3

4 MR. EAST: And I believe that I -- on our document on
5 Tab 8, I should mark that as an exhibit, as well,
6 Three Year Strategic Approach to Developing a Co-
7 management Process for Fraser River Salmon.

8 THE REGISTRAR: Two hundred and ninety.
9

10 EXHIBIT 290: Three Year Strategic Approach
11 to Developing a Co-management Process for
12 Fraser River Salmon: First Nations Component
13 - Draft September 27, 2009
14

15 MR. EAST: I'm mindful of the time. I would like to
16 ask one more question, but -- and throw this open
17 to the panel.

18 We've heard -- I've heard you say that one of
19 the concerns your communities has is the fact that
20 DFO engages you by sending you officials that are
21 at a lower level who don't have the authority to
22 make decisions, they don't have a mandate. And
23 I've heard what you said, Chief Pennier, about how
24 co-management has perhaps different definitions.
25 But at a minimum does co-management entail perhaps
26 a political level of engagement, but also there's
27 a place for the technical and operational level
28 where the biologist -- any kind of discussion that
29 needs a biologist is by definition in my mind
30 technical in nature. And do you agree that DFO
31 and First Nations have to engage at that level, as
32 well, and that the meetings that take place now
33 are valuable for that reason?

34 GRAND CHIEF PENNIER: Well, it's important that we do
35 have our own biologists to feed us the proper
36 information, and it's okay for technicians to meet
37 with technicians. But for decision-makers, they
38 have to meet with the decision-makers, as well.
39 Because, you know, it's fine to try to build a
40 relationship. This is in relation to your
41 previous question. But a relationship with chiefs
42 and technicians, minor technicians, doesn't really
43 fit the need because you've got to have the deputy
44 ministers come out and say okay, let's get
45 serious. We're going to talk about co-management,
46 and this is how we want to do it. Start at that
47 level, instead of just sending us papers about --

1 which are meaningless to us in the end, you know.

2 CHIEF BAIRD: I just want to quickly add that
3 Tsawwassen's context is a bit different now in the
4 post-treaty world. We have a joint fisheries
5 committee that sort of formalizes the process
6 about how the technical gets discussed, how the
7 operational aspects get rolled out, and what to do
8 if there's disagreement.

9 I don't -- I mean, it's early days in this
10 process for Tsawwassen so far. And I don't know
11 that we've got it perfect, but it's a step towards
12 the right direction, and sort of formalizing our
13 relationship with DFO in a way that is workable
14 and has access points from the political to
15 technical and the operational, and even
16 enforcement.

17 COUNCILLOR QUIPP: In my experience, you know, when --
18 when we have technicians that are involved with
19 fisheries and that, having the technicians
20 involved sometimes creates confusion in regards to
21 consultation when -- and we've experienced it very
22 clearly in the last couple of years where we had
23 some of our fisheries technicians working at the
24 band office. And the Department of Fisheries made
25 some decisions, and when we asked them about
26 consultation, they told us they talked to our
27 technicians.

28 So there has to be a clear line. I think
29 that the technicians -- we take direction from our
30 members, our communities, as leaders in our
31 community. We give direction to the technicians
32 in our community. And there's a big difference
33 there. So that, you know, if the technicians are
34 getting involved, we have to make it very clear to
35 the Department of Fisheries that if they're being
36 involved with our technicians, it definitely is
37 not consultation.

38 CHIEF CHARLIE: I agree with your comments, and I agree
39 with Grand Chief Pennier, his analogy of that, as
40 well, you know, so decision-makers meeting with
41 the chiefs, and technicians meeting with
42 technicians, and some of those being biologists.
43 But I think you also need to put in there is the
44 traditional knowledge. Right? So again we talked
45 a bit about the traditional knowledge of how
46 everything is connected and we really need to
47 consider that in going forward if it's going to be

1 true co-management.

2 MR. EAST: Well, I'll leave it there. Thank you very
3 much for your thoughtful questions, and that
4 concludes my questions, Mr. Commissioner.

5 MR. MCGOWAN: Mr. Commissioner, I think the next
6 participant with questions is Mr. Harrison for the
7 Conservation Coalition.

8 MR. HARRISON: Thank you, Mr. Commissioner. For the
9 record, Judah Harrison, last name, H-a-double-r-i-
10 s-o-n. And so the panel knows, I represent a
11 group of conservation groups, environmental non-
12 governmental organizations, and one individual
13 named Otto Langer.

14
15 CROSS-EXAMINATION BY MR. HARRISON:

16
17 Q I have very few questions for you and I am going
18 to direct my question to Chief Charlie, but I am
19 interested to hear everybody's opinion if they
20 have an opinion on this subject matter.

21 You just this morning, and just now you spoke
22 about traditional ecological knowledge and
23 traditional aboriginal knowledge. I'm wondering
24 if you can give the Commission a sense of
25 traditional ecological knowledge or your own
26 personal knowledge with respect to habitat and
27 habitat loss, as well as alterations in habitat in
28 your traditional territory.

29 CHIEF CHARLIE: Thanks, Judah. How much time they said
30 you had? Half an hour?

31 Q I believe you have as much time as you want. I'm
32 the one who's limited.

33 CHIEF CHARLIE: Okay. Thanks, Judah, and I think
34 that's the exactly going back to some of the
35 traditional knowledge of the impacts and how
36 everything affects everything.

37 I was sharing with our -- with our council
38 and with some of our group and our community,
39 around wanting to restore some of the spawning
40 channels or the sloughs in our community that have
41 been dramatically impacted by bad logging
42 practices in the past. And one slough in
43 particular is my grandfather's slough, they called
44 it William Phillips Slough, and there is no more
45 water in there.

46 Every spawning channel in our community is
47 named after an elder because when the Indian Agent

1 at the time came through, the family that was
2 living there at the entrance to the slough, he
3 just kind of gave that name of that slough, named
4 it after the elder at the time. And so they're
5 named after all -- so we have Ed Leon Slough,
6 Jimmy Charlie Slough, Billy Harris Slough, John
7 Mack Slough, and so on, named after different
8 families that lived there.

9 All of these spawning channels now are filled
10 with silt, just from bad practices. That silt
11 then comes into the -- into the Harrison River,
12 which has impacted the Harrison River and the
13 spawning channels that are there. And you see
14 those same impacts on the Fraser River, again of
15 all of the gravel build-up that is on there.

16 Like my grandfather says, we have about 100
17 years -- well, sorry, this is not from my
18 grandfather. This one comes from some of our
19 technicians in the office. They say we have some
20 records that go back about a hundred years about
21 Chehalis was working with DFO a hundred years ago.
22 And DFO would pay our -- our men in our community
23 to go out and break beaver dams. And my
24 grandfather just said, "Oh, that happened a long
25 time ago, even before DFO came." Because there
26 was a wealth of beavers and they would dam up all
27 of the sloughs, these spawning channels. And what
28 our people would do in the past is they would go
29 at times and break the beaver dams to allow the
30 salmon in to spawn. Then of course you know how
31 the beavers work, they build it back up. And then
32 they would just leave that until it was time for
33 the smolts to return, to go out to the ocean, and
34 then the men would go back in, break the beaver
35 dams down, and allow the smolts to -- to go out,
36 let them build up, let them build up their
37 strength.

38 The build up, or the bad logging practices
39 again goes more than just the logging on the land,
40 and it also goes to the putting of log booms into
41 the water, and what those tugboats do on the
42 Harrison River. It's not just the sediment that
43 comes off of the logs, but it's the big wakes that
44 these boats make on the shallow river, and they're
45 going and they're washing away banks, and our land
46 is eroding. And again all of that what erodes
47 goes back into the water and just creates silt and

1 muck, which is not good for the salmon.

2 Again, the cycle that we -- the ecology cycle
3 that we don't really -- we try our best to
4 understand and make projections on, and DFO is
5 just like anyone else, has made some bad
6 projections.

7 Again, if you look at some of the traditional
8 knowledge of how the elders used to think about
9 the return of certain things, according to
10 everything else around it - sorry, I talk with my
11 hands - and so the pussy willows. When the pussy
12 willows arrive and when the robins come back, and
13 then when there's a little black bird that hops
14 around at our -- we call our swimming holes, where
15 you go for your spiritual bath, when those things
16 come around again, that's when that early spring
17 salmon comes back, the squawkum. So you look for
18 those signs before you actually go out.

19 So they would do the same thing for anything
20 that they were gathering. There were signs on how
21 everything was interconnected.

22 There's probably lots of examples of the
23 traditional knowledge of the ecology or the
24 environment. Our elders used to tell, predict the
25 weather according to Lhílheqey. Sorry for whoever
26 is taking notes. Lhílheqey is Mt. Cheam. Mt.
27 Cheam, she's one of our Stone People. She's the
28 only one that was volunteered herself to be
29 transformed to stone. We call her our "Mother
30 Mountain". She's a sacred mountain, and she vowed
31 to look after the Sto:lo people and their greatest
32 resource, meaning our salmon. Our elders used to
33 predict the weather according to the snow packs on
34 that mountain. Now today that mountain, she goes
35 bare. So we've seen the -- these impacts on
36 everything around us, the snow packs, the trees,
37 the plants, the animals, and they all have impacts
38 on something else.

39 So I could go with a couple of more example,
40 but I'll allow some of the others to -- I don't
41 know if that answers your question.

42 Q Thank you. I'm interested if anyone else has
43 anything else to say about -- around the general
44 degradation of habitat or personal experience, I'd
45 be very interested.

46 COUNCILLOR QUIPP: I want to reflect on, you know, we
47 used to have and we still do have telephone

1 conferences with DFO, but the biologists would
2 come and, you know, on and give a report about the
3 water, the global warming and everything else.
4 And my sister was on there one day and she had
5 been down the river fishing, and she made a
6 comment, and she said, "Oh, gee, the water is
7 really warm today, but it's quite high." And so
8 when she got on the telephone conference with the
9 biologists from DFO, that was their exact comment,
10 and she was so -- she just couldn't get over it.
11 She said "You mean we have to come and get on this
12 telephone conference to hear something that we've
13 already noted, you know, in our daily life of
14 exercising our rights."

15 But I have real -- it's been many years since
16 I've talked about the developments around the
17 area, and what impacts it does have on the river,
18 the global warming. And it's not all due to just
19 global warming. It's -- a lot of it's due to
20 development and who has the final say in
21 development, is the Department of Fisheries and
22 Oceans.

23 So when we look at some of the decisions that
24 are made in regards to development within our
25 territories, it's pretty devastating sometimes
26 that our people that have lived and -- lived you
27 know on the earth and connected with the earth,
28 you know, and how that great sense of belonging to
29 the earth, have to see decisions that are being
30 made that are really impacting our lifestyles.
31 It's really hard for us to accept. And so we feel
32 -- and this is one of the reasons we really,
33 really push to have input in the decision-making
34 of developments, of harvest plans, or whatever the
35 -- you know, happens.

36 I'm not sure if that answers your question,
37 but it certainly is a devastation for us to sit by
38 and watch the depletion of the stocks, how -- how
39 much anxiety it causes us as people, wondering
40 what impact it's going to have on my
41 grandchildren, my great-grandchildren, their
42 children and grandchildren. It's going to have a
43 really big impact if things aren't changed.

44 And as I said, you know, we've been
45 commissioned to that. I really hope that, you
46 know, this Commission is going to really do
47 something because we had the Royal Commission on

1 Aboriginal Peoples and it sits on the shelf, with
2 no implementations and no -- no regard for what's
3 in that, the recommendations. None of them have
4 been really even looked at. And so I'm hoping
5 this Commission isn't going to be the same thing.
6 Because in my heart, I'm here because I'm
7 concerned.

8 CHIEF CHARLIE: If I could -- Judah, I'm sorry, I just
9 was recalling a comment that was made. We had a
10 funeral services for the late Archie Charles,
11 Grand Chief Archie Charles, and he was a real
12 advocate for fishing, and the dry rack fishing
13 especially in the Fraser Canyon. And early last
14 year some of the projections that were coming back
15 was that they were not going to be able to go out
16 dry rack fishing because they said the salmon
17 hadn't returned yet. And it was Grand Chief
18 Archie Charles that kind of said, "We need to get
19 out dry-racking. The fish are here, or the fish
20 are coming. I can feel it in my bones" was the
21 direct comment. And so Grand Chief knew that. I
22 don't know how or what indicators he had, but our
23 people have that deep spiritual connection to the
24 salmon. Some of these guys like Grand Chief
25 Archie Charles just knew it. And sure enough last
26 year, look at the returns of salmon.

27 And so it's some of that knowledge and some
28 of those ones that have that deep connection
29 that's not just to the environment, but also that
30 spiritual insight, if you will, that just kind of
31 knows. So that was Grand Chief Archie Charles
32 that just kind of knew, felt it in his bones that
33 the fish were on their way. And sure enough,
34 so...

35 Q Thank you. Does anyone else have anything to say
36 on that?

37 CHIEF BAIRD: I'm just going to say something quickly,
38 and that being in an urban area, habitat loss is
39 of great concern. But what's also of great
40 concern is what are we benchmarking in relation to
41 the environment? I mean, it's getting to a point
42 where we're valuing -- valuing ditches as fish
43 habitat because that's almost what's left to
44 value, and I think we need to step back and take a
45 broader look at what an ecosystem needs. And I
46 have grave concern because it's everyone hires
47 their own scientific experts, and it's in some

1 ways, I think everyone talks past each other.

2 And so to me, I know that one of our elders
3 who has passed on, who said that, "You know, to
4 start benchmarking today's environment is not
5 going to fix the problem, because so much loss of
6 habitat has already occurred." So I just felt
7 compelled to say that.

8 Q Thank you.

9 GRAND CHIEF PENNIER: And I just wanted to add one
10 thing to the conversation, too, because in where I
11 come from, Scowlitz, I mentioned earlier that in
12 the government's wisdom, they decided to riprap
13 all the way down our reserve just to protect the
14 farmers' fields above us. And that's caused a lot
15 of destruction to the Fraser and to the Harrison
16 River, as well. So you know, even though they
17 tried to solve one problem, they're creating a lot
18 more problems now, and that's going to impact on
19 the fish.

20 Q Thank you. I would like to follow up actually,
21 based on what you just said. Being in an urban
22 area, and your territories are in an urban area,
23 do you believe that significant restoration has to
24 occur, starting right now, of fish habitat?

25 GRAND CHIEF PENNIER: Oh, me? Or are you...

26 Q Yes, sorry about that.

27 CHIEF BAIRD: I believe so. I don't think that we at
28 Tsawwassen have the -- a clear roadmap of what
29 restoration work needs to be done, but certainly
30 under the treaty we have a fund that is aimed
31 towards restoration activities and that kind of
32 thing. So we're very much interested going
33 forward in looking at restoration projects
34 strategically.

35 Q Thank you. Well, while I'm up here, I'm going to
36 ask one more question. You just, as well, you
37 just mentioned taking a step back and looking at
38 the ecosystems requirement -- the ecosystem
39 requirements of salmon generally. I'd like to
40 ask, I mean, when you look - and this is for the
41 entire panel, as well - but what we would call
42 ecosystem services, and who needs to benefit from
43 salmon. I'm wondering if you can comment on the
44 role that salmon play in the West Coast system,
45 and as well as other -- other needs besides just
46 human needs for salmon.

47 CHIEF CHARLIE: Thanks, Judah. The eagles right now

1 are out on the Harrison River. There's thousands,
2 thousands and thousands of eagles that return to
3 the Harrison River every year. They migrate there
4 for the salmon. And "thousands and thousands" is
5 probably not even an exaggeration. Just saying
6 that a couple of Novembers ago me and my youngest
7 son were out doing a tour, we run our tour
8 business, and on four trees alone we counted 200
9 eagles. And these eagles return every year for
10 the salmon.

11 The same with the bears. We were out doing
12 -- around that same time, that same year we --
13 before I became the chief and was doing tours, we
14 were going and there was a big black bear laying
15 on the beach and wouldn't even move when we were
16 going by on the jet boat, because he was so full.
17 He just kind of rolled over and watched us go by.
18 And we finished our tour, and we were going back
19 the other way, and he rolled over and watched us
20 go by.

21 These salmon that these bears come down for
22 and bring back, you talk to some of the foresters
23 that are working with some of the -- some from the
24 Simon Fraser University that work in Forestry, and
25 they say you can actually determine which trees
26 have had this nutrients, I guess, that come from
27 the salmon that are so close. Going back they can
28 -- they have ways of looking at it.

29 And so there's so many of the other animals,
30 and again it's this kind of cycle of life, if you
31 will, that benefit from -- from the eagles -- or
32 sorry, from the salmon, and so there's so many.

33 This time of the year you can see a seagull
34 sitting beside an eagle on the beach. If they
35 were hunting, you wouldn't see that. Come
36 February there's going to be no other birds close
37 to the eagle because they're going to be a little
38 bit more hungry, and then they won't get as close.
39 And it's kind of something to watch out there and
40 to be out there and to kind of see how everything
41 kind of evolves in its cycle and how everything
42 else depends upon it, as well.

43 So there's probably a few other examples, but
44 I'll just leave it, leave it with the -- with the
45 eagles and the bears.

46 MR. HARRISON: Those are my questions. Thank you.

1 MR. MCGOWAN: Thank you, Mr. Commissioner. I think Mr.
2 Butcher's next. I don't know if you wanted to
3 take a very brief break this afternoon --

4 THE COMMISSIONER: No.

5 MR. MCGOWAN: -- or carry on?

6 THE COMMISSIONER: No, carry on.

7 MR. MCGOWAN: Thank you.

8 MR. BUTCHER: I'm David Butcher. I represent the Area
9 E Gillnetters and the Pacific Fisheries Survival
10 Coalition. Those are obviously people who are
11 fishing in the same part of the lower Fraser River
12 as your groups. I have heard bits and pieces of
13 evidence from your oral evidence and from your
14 written summaries with respect to the degree of
15 involvement of each of your communities in the
16 fishery.

17
18 CROSS-EXAMINATION BY MR. BUTCHER:

19
20 Q And maybe I'll start with you, Chief Baird,
21 because yours might be the simplest, because you
22 now have the treaty. Can you tell us how many
23 people you have in your community and how many of
24 those are involved in the food, social and
25 ceremonial fishery and how many are involved in
26 the commercial fishery? And then I have the same
27 question for each of the panel members, so that
28 we've got that evidence from everybody. And I
29 don't need precise numbers, but I'm interested in
30 the scale.

31 CHIEF BAIRD: I'd say that we are about 420 members, in
32 Tsawwassen. We have about 80 to 100 licenses,
33 which means 80 to 100 Tsawwassen people licensed
34 every year. And probably about 40 to 45 boats
35 we're up to, now. And of that, I would say 80
36 percent of those would -- maybe 75 to 80 percent -
37 this is off the top of my head - would fish in the
38 FSC, and upwards of 90 to 95 in sales fisheries.

39 Q And do you also have members in the regular
40 commercial fishery as well?

41 CHIEF BAIRD: I think we might have one.

42 Q Mr. Becker, can you answer those questions for
43 your community?.

44 MR. BECKER: We have roughly 1,300 Band members. We
45 licensed about 100 last year. There were about 40
46 to 50 boats out. We have upwards of a half a
47 dozen commercial fisherman.

- 1 Q Those who have licenses in the regular commercial
2 system?
- 3 MR. BECKER: In the privileged fishery. Purchased
4 license to -- privilege, to me.
- 5 Q Mm-hmm. And of those fishing pursuant to your
6 agreement with Canada, how is that divided between
7 food, social and ceremonial and commercial?
- 8 MR. BECKER: The commission is -- decides how much fish
9 is distributed to the elders and the handicapped,
10 ceremonial, and how much is fished for the
11 community, before we go fishing for ourselves.
12 And I think that -- the information on internal
13 distribution is confidential.
- 14 Q Internal contribution as between food, social and
15 ceremonial and commercial?
- 16 MR. BECKER: That's what I'm saying. It's a decision
17 that we make, as a band, and I don't think it's
18 anyone's business on how we divide that food,
19 social and ceremonial fish.
- 20 Q As between food, social and ceremonial and sales,
21 is that what you mean? Or as between aspects,
22 different aspects of food, social and ceremonial?
- 23 MR. BECKER: Food and social and ceremonial, that's
24 confidential how we divide that amongst the Band.
25 For commercial, we'll use the term that the
26 Department of Fisheries uses, "economic
27 opportunity". We take a portion of that FSC and
28 transfer it over to sales.
- 29 Q And you're saying that's a matter that is
30 confidential to the Band?
- 31 MR. BECKER: No, the -- for public record, you could go
32 to the Department of Fisheries and see what
33 Musqueam transferred.
- 34 Q Okay. So the only issue that you consider to be
35 confidential is what you use as between food,
36 social and ceremonial?
- 37 MR. BECKER: Right.
- 38 Q Fair enough. Sorry.
- 39 GRAND CHIEF PENNIER: As the president of the Sto:lo
40 Tribal Council, I'm not privy to that information
41 about how many fishermen we have in all of those
42 communities, or who's a commercial fisherman or
43 not, because they have their own group to discuss
44 amongst themselves, you know, how it's -- who's
45 going fishing and when.
- 46 Q That raises a question that was really asked of
47 Chief Quipp earlier by Canada's counsel, from

1 something arising out of your witness statement,
2 which seems to suggest that there isn't
3 coordination as between members of the Sto:lo
4 groups as to how many fish each of your groups are
5 going to catch within your allocations. Is that
6 fair? Is that what you're telling us, the two of
7 you?

8 CHIEF CHARLIE: Go ahead.

9 GRAND CHIEF PENNIER: No, I was just telling you that
10 I'm not privy to information about who is
11 receiving permits to fish and all that sort of
12 thing from each of the communities. It's not --
13 Q Are either you, Chief Quipp, or Chief Charlie,
14 able to give the Commissioner some concept of
15 scale, or number of members, number involved in
16 FSC, number involved in commercial activities?

17 CHIEF CHARLIE: Thanks, David. There's some questions
18 specific numbers and details of things that I
19 cannot answer because I just don't have the time
20 in the day to keep a handle on all of those, and
21 so we have technicians that would be able to give
22 you definite numbers when its their opportunity to
23 share that. I do know that I think we have over
24 200 licensed, though, generally, that we hand out.
25 I don't know how many boats. I think it was about
26 40 boats or so, fishermen.

27 As far as the comment towards us not knowing
28 or being coordinated on our end to know how many
29 fishermen, we know. Our technicians would know
30 those numbers. And we also have a method of
31 knowing what fish come in, because, again, we're
32 the only user group that counts and lands all of
33 our fish.

34 So all of the fish get counted at each of the
35 different communities through fish counters. And
36 so I can't give you the answer right now, but if I
37 knew you were going to ask that question, I could
38 have -- If I had my Blackberry turned on, I could
39 e-mail one of the technicians and ask him.

40 Q I'm sure the evidence will come out eventually.
41 When you use the word "we", are you referring to
42 the Chehalis or are you referring to the Sto:lo?

43 CHIEF CHARLIE: We, as far as numbers that I give you
44 are for Chehalis fishermen, but any -- and how we
45 count fish and how we have landing sites.

46 Q And just so it's clear, I think there are about
47 7,000 Sto:lo members; is that correct?

1 CHIEF CHARLIE: Just Chehalis, we're 1,000 on our own.
2 So I think 7,000 would be a bit under.

3 GRAND CHIEF PENNIER: Yeah, it's a bit under. There's
4 about 6,000 with Sto:lo Tribal Council
5 communities, and then there's -- well, there's 24
6 bands up in our area, so, you know, you're looking
7 at a fairly large population.

8 Q But all included within that 6,000 number, or are
9 there others to be added to that 6,000 number?

10 GRAND CHIEF PENNIER: That's just with Sto:lo Tribal
11 Council with Cheam in there.

12 Q I was a little perturbed to hear what I thought I
13 heard today, was that some of you were saying that
14 the Department of Fisheries and Oceans still --
15 there was still a dispute between your groups as
16 to what constituted social and ceremonial use.
17 Did I hear that correctly?

18 COUNCILLOR QUIPP: Yes, you did. There is still a
19 dispute. There's no definition for "social" and
20 so they give out permits. They give out permits
21 for communal licenses for -- they call it FSC, but
22 there's also ceremonial permits that are given
23 out, but they've never given out a social permit,
24 and nobody's ever defined what "social" means when
25 it comes to FSC, because that's what the acronym
26 stands for, food, social and ceremonial.

27 Q And listening to you, today, I would understand
28 that your social and ceremonial issues would
29 include matters relating to what I will call human
30 lifecycle events: birth; marriage; death, those
31 sorts of things; is that --

32 COUNCILLOR QUIPP: As well as economic, yeah.

33 Q And if I can --

34 COUNCILLOR QUIPP: Spiritual.

35 Q Spiritual, perhaps seasonal celebrations?

36 COUNCILLOR QUIPP: Yes. Or any celebrations. You
37 know, like I mentioned earlier, that DFO has taken
38 it upon themselves to define what our ceremonies
39 are, and that's only funerals over the last two or
40 three years. But one of our elders from our
41 community has actually listed about 50 ceremonies
42 that we actually practice, different families
43 practice, not everybody, but different families
44 practice different ceremonies, and yet those
45 aren't recognized by the Department of Fisheries,
46 when we're talking about ceremonies.

47 Q There must be a way for you, collectively, to

1 quantify that social and ceremonial need?

2 COUNCILLOR QUIPP: You know, I feed a lot of people. I
3 feed a lot of people. I have people come from all
4 over B.C. coming to my backyard and I supply them
5 with whatever fish I can, because I know they need
6 it to bring it back to their families, to bring it
7 back to people. Someone made a comment this
8 morning about really, you know, craving a fish,
9 you know, and one of my elders, years ago,
10 mentioned the fact that she -- her mouth watered
11 whenever she knew it was the season for the
12 salmon, and she knew they were going right by her
13 house. It took me years to realize what that
14 statement meant, because now I have that same
15 watering in my mouth when I know there's salmon
16 and I have no access to it.

17 I want to go back to your question about, you
18 know, how we -- how we share the salmon and
19 whether we know we have enough for our people.
20 And our indicator for as to whether we've filled
21 an allocation that we need, or that the needs of
22 our people are being filled, is if we don't hear
23 anymore complaints about one of our members
24 getting enough salmon for the year, and I don't
25 think we've ever gone a year where we've had, you
26 know, a member that -- at least one or two members
27 that come and say, "Well, I didn't get my salmon
28 this year," because our fishers, it's a common
29 teaching in our community that everyone gets a
30 fair share of the salmon. And so when our fishers
31 go out, there's quite often a member from a family
32 grouping that goes out and fishes and provides
33 that salmon for their family, and if they don't,
34 some other family is more than willing to step up
35 to the plate to do that.

36 CHIEF CHARLIE: I don't mind answering your question.

37 Q Sure.

38 CHIEF CHARLIE: You're rattling a whole bunch of
39 questions off and I'm having a hard time keeping
40 up and writing them all down.

41 I want to thank you for your question, and
42 also thank you for being concerned and being
43 perturbed, and I hope that your clientele group is
44 as perturbed that there is no definition right
45 now, except the definition of FSC. And so thank
46 you for being upset about it, and I hope you hep
47 us advocate to make sure that it is defined

1 properly with our inclusion and because -- and
2 that's the way it needs to be. We can't have it
3 dictated to us what a ceremony is, and that's
4 exactly what's trying to happen. They're trying
5 to put a definition on FSC fishing for us, and we
6 kind of said, "No, no, we'll determine what FSC
7 is, according to our social laws, according to our
8 snowoyelh, according to what our spiritual needs
9 are."

10 I don't know what faith you are, or what
11 belief that you have, but I'm not going to tell
12 you how to pray and how to carry on with your
13 spiritual practices and beliefs, and that's
14 exactly what happens when they try to define
15 ceremonial need for us. And it's up to us to
16 determine what an FSC is, and I think we can. I
17 can do it for Chehalis, but it's going to be up to
18 other nations to do that, themselves. But it
19 needs to be all of it, FSC. So I hope you help us
20 advocate for that.

21 Q No, I was surprised that 28 years after that
22 phrase was defined or used by the Supreme Court of
23 Canada that there still wasn't a common ground as
24 to what it meant.

25 CHIEF CHARLIE: Thank you for your concern.

26 Q But Mr. Becker, you were wanting to answer
27 something for a moment there?

28 MR. BECKER: Yeah, I just didn't accept your -- whether
29 you were trying to describe ceremonial or social,
30 what you -- what you were trying to say to us.

31 Q Well, one of the things I was trying to get was
32 your -- you're the witnesses here, your idea as to
33 what the difference was and what the definitions
34 were.

35 MR. BECKER: Well, if you look at -- and I'm sure
36 you've looked at many of the agreements and many
37 of the licenses over time, what it states, and
38 that's FSC, and what it should actually state is
39 just "FC", because there is no definition of
40 "social".

41 We're on record as trying to sit with the
42 Department of Fisheries and Oceans to get that
43 definition, and that's two years in the making. I
44 agree that it's time that there is definition to
45 "social". And I think it's going to take more
46 than one First Nation to define that, though in
47 the Supreme Court of Canada ruling it only

1 pertained to Musqueam. So we're endeavouring to
2 resolve that question.

3 But if only Musqueam has a definition of
4 "social" and DFO does not agree with it, then
5 we're just wasting our time.

6 Q And at the moment, both for the Sto:lo and the
7 Musqueam, you have what are called -- I think
8 they're called Comprehensive Fishing Agreements
9 that you sign each year, and they just contain one
10 number of fish, of sockeye, that each of you can
11 catch for that purpose? Have I described that
12 correctly for the Sto:lo and the Musqueam, at
13 least?

14 MR. BECKER: Yeah.

15 GRAND CHIEF PENNIER: Yeah, there's agreements that are
16 signed, yeah, that defines the amounts of fish,
17 yeah.

18 Q Now, the reason that I'm interested in this issue
19 is that several of you, in your witness
20 statements, have said that you are opposed to the
21 prohibition on the sale of food, social and
22 ceremonial fish. And perhaps if those --
23 Councillor Quipp -- sorry, Grand Chief Pennier,
24 you say, simply, that the prohibition on the sale
25 of food, social and ceremonial fish should be
26 eliminated. Mr. Becker, you say -- or the
27 statement says this:

28
29 Mr. Becker advises that Musqueam have always
30 felt that it had a right to access food fish.

31
32 Nobody disputes that.

33
34 Musqueam do not propose to break the law and
35 sell FSC, but they do want to have a
36 definition of "social" or "societal" in FSC,
37 which they believe is something that they
38 should define.

39
40 Sorry. Perhaps I can just have -- oh, sorry, Mr.
41 Becker, you went on to say -- you say:

42
43 He thinks it is not right that First Nations
44 are told that if they go FSC fishing, then
45 they cannot sell the fish to satisfy other
46 needs. They should have that right; the fish
47 belongs to them.

1 What I'm trying to get, collectively, from you is
2 your evidence about why it is that you assert that
3 ability to sell the fish that is being provided or
4 allocated to you specifically for that purpose,
5 i.e. the food, social and ceremonial purpose?

6 Does anybody want to answer that question?

7 MS. GAERTNER: Sorry, Mr. Commissioner, I'd like this
8 question posed -- if he's raising it from a
9 witness statement, to the witness who has raised
10 it in their witness statement, please.

11 MR. BUTCHER:

12 Q Well, I'll ask it, first, of Mr. Becker, and then
13 of Chief Pennier, because I think those are the
14 witnesses who have raised it directly.

15 MR. BECKER: Could you ask it again, please?

16 Q Well, I'll ask it this way: It seems to me that
17 you're asserting that your group should have a
18 right to sell the fish that have been allocated to
19 you for food, social and ceremonial purposes. Is
20 that, in fact, your position?

21 MR. BECKER: No. That's my personal view, but not the
22 Band's position.

23 Q Why is it your personal view?

24 MR. BECKER: I just believe that in economic times,
25 where they are, that individuals should have that
26 opportunity.

27 Q What is the Band's position?

28 MR. BECKER: No salmon.

29 Q Chief Baird, may I ask the same position from you?

30 CHIEF BAIRD: My personal view is that if fish have
31 been legally caught, First Nations should be able
32 to decide whether they eat or sell it, like any
33 other user group does.

34 Q Chief Pennier?

35 GRAND CHIEF PENNIER: Well, I made this statement that
36 the sale should be -- or the provisions, whatever,
37 should be outlawed. You know, it's been in the
38 **Fisheries Act** since 1888 that we're only supposed
39 to catch food fish, and that law has been broken
40 for, what, over 100 years? And it still hasn't
41 changed, you know. You know, our people, as I
42 mentioned earlier, people in Scowlitz are -- had
43 depended on an industry that's pretty well dead,
44 now, so they really need to get some money to
45 provide for their families, and fishing is one of
46 those ways that they can get money to provide for
47 them, whether it's food -- different food on the

1 table and clothes on their kids.

2 Q Do the other two of you have any comment on that
3 issue? On the -- yes, sorry, go ahead.

4 CHIEF CHARLIE: Again, David, thank you for helping us
5 to, I think, clarify a few things. Again, going
6 back to kind of the traditional laws of our
7 peoples, what we call snowoyelh, everyone is born
8 with a different gift. Today, we're kind of
9 forced to conform to what people think we should
10 be and how we should be.

11 What I'm getting at is at one time you were
12 born -- the way my uncle said it. My Uncle Buster
13 said, "You're born with a gift. Everybody's born
14 with a gift. That gift becomes your job. That
15 gift becomes your place in your community" And so
16 if you were the hunter and you went out hunting
17 and you provided meat for those in your village
18 and your community, and maybe you weren't the
19 fisherman. So when it was the fisherman's turn to
20 go out and catch fish, he brought you fish. Maybe
21 he was gifted at working with his hands and
22 working the cedar, working with wood. In
23 exchange, they would share with each other their
24 different gifts for survival.

25 Same with spiritual people. A spiritual
26 person might not have the time, energy, or
27 whatever, to go out and to hunt or to fish or to
28 work with their hands. And so if I go and look
29 for help from a schwilan (phonetic), a way of
30 thanking that person for carrying their gift in a
31 good way, I'll bring them something that I do. So
32 I'm a fisherman. I'm going to bring them canned
33 fish, I'm going to bring them smoked fish. I'm
34 going to bring them whatever I have as a way of
35 thanking them for the gift that I've been blessed
36 with, thanking them for their gift in looking
37 after me.

38 And so, yeah, those traditional laws, our
39 social laws, need to be our social laws.

40 COUNCILLOR QUIPP: I just want to comment on the sales
41 of fish, I guess, in regards to ours, and I really
42 believe that social should cover that. I was
43 asked that question, earlier, whether I felt we
44 should be able to sell our fish out of the FSC
45 allocation and I said, "Definitely," because it's
46 -- depending on whether there's an abundance of
47 salmon in the river, or whether there's only

1 enough for sustenance. You know, the **Van der Peet**
2 case actually ruled against us in the sale of
3 fish, but that's a case that should be reviewed,
4 as oral evidence was not accepted in that case.
5 And to date I've had several members, several
6 people that have been charged with selling fish,
7 but DFO always drops those charges before they get
8 to the courts, and so when they end up in court
9 they're charged with possession of fish, but they
10 drop the sales charges. So it's definitely a
11 concern, even on the part of DFO, to follow
12 through the charging one of our people with
13 selling fish.

14 You know, in B.C. we still hold the concept
15 that we haven't sold, ceded or surrendered this
16 province, yet. I've seen no bill of sale that the
17 government owns the salmon. To date, we still own
18 it, we still should have the jurisdiction over
19 that fish.

20 Q So I take it, from your answers collectively, that
21 there's a broad support among the panel for those
22 who continue to sell food, social and ceremonial
23 caught fish; is that a fair summary?

24 MR. BECKER: I disagree.

25 CHIEF BAIRD: Saying whether it should be allowed for
26 sale versus what people are doing now are kind of
27 two different topics, in my view. In the
28 Tsawwassen context, we took a smaller food, social
29 and ceremonial allocation under the treaty to have
30 a larger sale component within our harvest
31 agreement for that trade-off. So I disagree with
32 how you categorized it.

33 Q Does anybody agree?

34 CHIEF CHARLIE: I don't agree with your
35 characterization.

36 Q Chief Baird, you may not be able to answer this
37 question yet, but do you think your fisheries
38 issues are going to be much simpler for your
39 people now you have a treaty? Is it just too soon
40 to tell that?

41 CHIEF BAIRD: I think it's soon, but I think there are
42 signs that we have better ways of dealing with the
43 Department of Fisheries and Oceans on some of our
44 matters. We'll have internal issues to sort out
45 as our population grows and our number of fish
46 don't continue to grow, so I see those internal
47 issues becoming more complicated over time.

1 But we have multi-year agreements that have
2 sorted out our allocation. Our funding has
3 inflators. It's the first time AFS funding is
4 getting a boost, so to speak, through our fiscal
5 finance agreement under the treaty.

6 So there are some things that are
7 improvements, I would say, to the status quo, and
8 my only hope is that the status quo for everyone
9 else improves no matter what way they decide to
10 go.

11 Q I heard, I think it was Chief Charlie, say that
12 you banished people for illegal fishing. Have any
13 of the other groups done that or taken steps
14 against people who have been fishing illegally?
15 And I see, Mr. Becker, you're shaking your head in
16 the negative for the Musqueam?

17 COUNCILLOR QUIPP: I guess I'd like to also have
18 addition -- a definition of illegal fishing. Like
19 I just mentioned, we still have jurisdiction. We
20 still have not ceded, surrendered or sold our
21 Province of B.C., yet.

22 Q Well --

23 COUNCILLOR QUIPP: And the reason I am responding to
24 this is because we have about 15 or 20 of our Band
25 members that have been in court for the last 10
26 years and are still on those same old cases that
27 are happening and there's still no answer as to
28 whether it's illegal or not. So I'd like to know
29 what the definition of "illegal fishing" is.

30 Q Well, Chief Charlie, it was you, I think, who used
31 that phrase --

32 CHIEF CHARLIE: Mm-hmm.

33 Q -- and perhaps you can help us by telling us when
34 it was that you, as a community, imposed those
35 sanctions?

36 CHIEF CHARLIE: Banishment from our community was,
37 again, the rationale behind that was our own
38 social law in our own community. Again, reminding
39 you that we live on terminal spawning grounds in
40 the Harrison River, and there is spawning sloughs
41 that are there, and some of the activities that
42 were going on were within the spawning channels.
43 And our people say that you do not fish where they
44 reproduce, just like you don't hunt when it's
45 mating season, and you don't shoot does.

46 And so it was under those conditions that it
47 was going against our social laws within our

1 community as to where and how they were harvesting
2 fish at the time.

3 And so I appreciate you asking to clarify
4 that, because that's exactly the way it was.
5 Again, we're hoping that we're showing stewardship
6 and we're showing that we're willing to manage in
7 a certain way the resource that comes back to us,
8 and we're hoping that other groups will do the
9 same thing, that co-management means conservation,
10 it means stewardship, and it means enhancement.
11 And so that's what we were looking after, was the
12 conservation and the stewardship of the fish.

13 Q I have some questions about the LFFA. Maybe, Mr.
14 Becker, you can answer this question. Can you
15 tell us why that organization collapsed, from your
16 perspective?

17 MR. BECKER: No, I can't.

18 Q What happened to it?

19 MR. BECKER: Actually, I can only give you what
20 happened at Musqueam, because we were part of it,
21 and Musqueam made a decision to withdraw from that
22 organization and become an independent First
23 Nations and negotiate on its own. So I don't know
24 what happened after that and why it did collapse.

25 Q Why was that? Was that a dispute over allocation?

26 MR. BECKER: No, it wasn't.

27 Q What was it?

28 MR. BECKER: The decision of our political people at
29 the time were to become independent.

30 Q And anybody else?

31 GRAND CHIEF PENNIER: Well, all I know is that there
32 was a reduction in budgets for the LFFA, then
33 there was a loss of those guardians and a loss of
34 those biologists and other staff, and all that
35 remained was the monitors.

36 Q And Mr. Becker, you made mention, earlier, of a
37 hope, perhaps, of some means to bring all of the
38 user groups together. I heard that with interest.
39 How would you suggest that might happen?

40 MR. BECKER: I think we have to leave our egos at home.
41 I look around the room out there and I seen one of
42 the gentlemen -- one of your clients that -- that
43 was part of the -- one of the groups that we used
44 to try and negotiate with. We have the
45 recreational fishers that we had in the same room
46 with the commercial people. We had First Nations
47 from the Fraser Watershed. We had First Nations

1 from the approach, from the marine groups. And we
2 thought we could make headway on it. It could not
3 get past the recreational fishers and the
4 commercial fishers.

5 Q Does anybody else have a comment on that question?

6 CHIEF BAIRD: I think that sort of body has to have
7 legal and political legitimacy with the parties
8 that would be involved in it, whether it be the
9 federal Department of Fisheries and Oceans and
10 First Nations, and to that regard I think it would
11 need legislation and formalized agreement about
12 what it would look like and what it would
13 accomplish and what the roles and responsibilities
14 of everyone involved in it would be.

15 Q Anybody else?

16 GRAND CHIEF PENNIER: Well, there has to be change in
17 the way that the department is going to recognize
18 the right to fish. Presently, it doesn't
19 recognize it.

20 Q Chief Charlie or Chief Quipp? I see you writing
21 furiously, Chief Quipp. I don't know if that's --
22 if you're making notes for the answer or something
23 completely different.

24 COUNCILLOR QUIPP: I'll give you an answer, I guess, my
25 opinion, and I'm answering to the question about
26 the LFFA. I know that was a really big step for
27 us to have the, you know, our own Aboriginal
28 guardians, but I think it became too much of
29 political arena, having the guardians, some of the
30 staff. I think there was a lack of funding. That
31 organization was developed with the pilot sales
32 agreement in 1992, and when the pilot sales
33 agreement kind of dwindled, so did the LFFA.

34 CHIEF CHARLIE: I was just generally agreeing with
35 Chief Kim Baird. I think that it needs to be a
36 clear structure and a clear system that's set up
37 with proper mandates.

38 Q And I get the sense that you've collectively lost
39 confidence with DFO; is that fair, that that's not
40 the body to carry this out?

41 COUNCILLOR QUIPP: I don't think I've ever gained
42 confidence in DFO.

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

44 MR. MCGOWAN: Mr. Lowes, do you have a question?

45 MR. LOWES: Good afternoon. I act for the B.C.
46 Wildlife Federation and the B.C. Federation of
47 Drift Fishers. My name is Lowes. I have a couple

1 of questions, and I'd like to start with Chief
2 Charlie.

3
4 CROSS-EXAMINATION BY MR. LOWES:
5

6 Q Chief, I was impressed with your terminology when
7 you referred to the fish and fishing as medicine.
8 I take it that you get a great deal of spiritual
9 and emotional sustenance from being outdoors and
10 catching fish?

11 CHIEF CHARLIE: Sorry, I missed your name.

12 Q Keith.

13 CHIEF CHARLIE: Keith.

14 Q Yeah. Since we're all on first-name basis here.
15 Lowes.

16 CHIEF CHARLIE: Thanks, Mr. Lowes. Yes.

17 Q It's an important part of your life, I took it,
18 from your answer?

19 CHIEF CHARLIE: Do you want a short answer or a longer
20 answer?

21 Q I want the long answer.

22 CHIEF CHARLIE: Yeah, I think being outdoors, being
23 connected with all things is very, very important.
24 And one of my roles in my family and my community
25 might be as a teacher, and so I always talk about
26 -- to those that are coming behind me, walking in
27 a similar way, to have respect for all living
28 things and to pay respect to all living things and
29 to only take what you need and to share the rest.

30 Q And would you recommend that medicine for
31 everyone?

32 CHIEF CHARLIE: Yeah, we should go right now.

33 Q And in particular, my clients?

34 CHIEF CHARLIE: Yes.

35 Q Yes. And, in fact, that's what they get, for the
36 most part, out of their activity, isn't it, "re-
37 creation"? Isn't that what you're looking for,
38 "re-creation"? Not looking for; finding?

39 CHIEF CHARLIE: I don't really understand your
40 definition of re-creation or --

41 Q I'll leave it. When was this pellet gun incident?

42 CHIEF CHARLIE: Not this past summer, the summer
43 before.

44 Q And do I take it from your evidence that after it
45 was over you set up a series of meetings? Was it
46 you who set up the series of meetings?

47 CHIEF CHARLIE: Yeah, I called upon our fishing

1 consulting at the time to help call together a
2 group, yes.

3 Q Yeah. And do they continue to today? Are you
4 still having those meetings?

5 CHIEF CHARLIE: Yes, the next one is on January 11th,
6 if you plan on attending?

7 Q Have they done the trick? Have they calmed the
8 waters, no pun intended?

9 CHIEF CHARLIE: Yes, I think they have, but if -- also
10 calmed the waters, but also given some clear
11 definition about the different uses. And so if
12 you're hinting that there's the same and that it
13 is the same right. I don't think it is; I think
14 it's a little bit different.

15 Q Well, that leads me into next question. You
16 mentioned the word "privilege", and I noticed Mr.
17 Becker talked about the privileged fishery.
18 What's the difference, as far as you're concerned,
19 between -- well, first of all, are you saying that
20 non Aboriginal people have no right to fish?

21 MR. BECKER: They purchased the privilege to fish.

22 Q Yeah --

23 MR. BECKER: We have an Aboriginal right guaranteed to
24 us under the constitution, s. 35(1).

25 MR. MCGOWAN: Well, Mr. Commissioner, I wonder if what
26 we're starting to engage in, here, is asking the
27 witnesses for a legal opinion?

28 MR. LOWES: No, no, I won't. I just want to know what
29 the word means to the witness.

30 CHIEF CHARLIE: Me?

31 Q Yes.

32 CHIEF CHARLIE: Yeah, I think that there -- we
33 definitely have an Aboriginal right to fish.

34 Q No, no doubt about that. But what -- I'm looking
35 at the -- I want the meaning of the other word,
36 the "privilege".

37 CHIEF CHARLIE: It is -- under s. 35, we have an
38 Aboriginal right to fish, and I think that those
39 that are non Aboriginal have a privilege to be
40 able to be out on the water that they purchase
41 through a licence or through a derby, or through
42 whatever process that they used to get there.

43 Q I see. So you think, and Mr. Becker, you think,
44 that non Aboriginal fishermen are buying something
45 from the government, is that --

46 MR. MCGOWAN: Well, Mr. Commissioner, again, I'm not
47 sure whether it makes a difference whether he's

1 asking the witness for a legal opinion or their
2 opinion about a legal matter. It's either a legal
3 opinion or it may not be relevant.

4 Q Well, my understanding --

5 MR. MCGOWAN: So I don't think there's much use in
6 pursuing this.

7 MR. LOWES: My understanding is that the whole reason
8 for these -- for this panel was to get a sense of
9 a world view, and clearly this is part of a world
10 view.

11 MS. GAERTNER: Mr. Commissioner, I share the concern of
12 Commission counsel on this matter. I think we are
13 getting into the area of what's a legal opinion or
14 not and what does a privilege under the legal
15 system mean or not. I don't think that the
16 clients here are in a position to be able to speak
17 for Mr. Lowes' clients as to what they think they
18 hold. I don't think we're getting very far in
19 this question.

20 MR. LOWES: I won't pursue it. It's not worth the
21 argument.

22 Q The thrust of my question, really, Chief Charlie,
23 was that my understanding of your evidence was
24 that once the dispute or the argument got past the
25 question of rights and privileges and into, "How
26 are we going to fish together in the same place,"
27 the meeting got better?

28 CHIEF CHARLIE: Yes.

29 MR. LOWES: I have no more questions.

30 MR. MCGOWAN: I think Mr. Janes may be the last
31 participant -- or counsel with some questions.

32 MR. JANES: Good afternoon, everybody. I have
33 relatively few questions and it would be helpful
34 if we could have --

35 THE REGISTRAR: Name, please?

36 MR. JANES: Sorry. Robert Janes. I'm here for the
37 Western Coast Salish First Nations.

38 It would be helpful if we could have Chief
39 Baird's witness statement up, Exhibit 281, I
40 believe.

41

42 CROSS-EXAMINATION BY MR. JANES:

43

44 Q And, first, I'd like to turn to page 1 of Chief
45 Baird's witness statement, and the comments which
46 you actually started to elaborate on a bit earlier
47 with respect to the significance of urbanization

1 in your territory. And I believe it's, excuse me,
2 towards the bottom you say:
3

4 Salmon is one of the only resources left in
5 TFN's traditional territory, which means it
6 is all the more important. Fishing is one of
7 last ways that TFN community can practice its
8 culture, so people are very involved.
9

10 And I take it that that reflects, in part, the
11 effects of urbanization limiting the ability to
12 pursue things like the traditional hunt or to
13 engage in certain traditional gathering practices
14 simply because places like Vancouver, Delta and
15 such like that are sitting on top of some of your
16 traditional territory, now?

17 CHIEF BAIRD: That's right, yes.

18 Q And so, therefore, when we look at the range of
19 activities which would have made up your way of
20 life in the past, fishing is probably the most
21 easily accessible of the resource-gathering
22 activities?

23 CHIEF BAIRD: That's right.

24 Q And so as a means of maintaining your culture as
25 an urban or suburban First Nation, the effects of
26 urbanization have increased the importance and
27 significance of the fishery from that perspective?

28 CHIEF BAIRD: Yes.

29 Q And I take it that even if we look at your modern
30 treaty, the reality of urbanization and its effect
31 on the hunting right as reflected in the fact that
32 I believe the hunting right is described in some
33 ways as a diminishing right due to the ongoing
34 effects of urbanization?

35 CHIEF BAIRD: Yeah.

36 Q The second thing I want --

37 CHIEF BAIRD: And our forestry chapter is one page.

38 Q Yes.

39 CHIEF BAIRD: It took more trees to print the treaty
40 than we have in our territory, so...

41 Q I expect that maybe commercial orchards might
42 have a better chance of giving you forests?

43 CHIEF BAIRD: Perhaps.

44 Q I'd next like to turn to an issue that the panel
45 has been put through for the last few minutes, or
46 probably for the last hour and a half, actually,

1 around some of the commercial issues. And I'd
2 like to turn to page 3 of your witness statement,
3 Chief Baird. And you say this, or I guess it's
4 you being -- are quoted as saying this:

5
6 Chief Baird finds the restriction -

7
8 -- that is, the ban on selling FSC fish --

9
10 - paternalistic, and her personal view is
11 that it is nobody's business what people to
12 do with their own fish.

13
14 And then you go on to say -- actually, let's stop
15 there for a moment. Could you elaborate a bit on
16 why you find it to be paternalistic and what you
17 mean by that?

18 CHIEF BAIRD: I can only repeat what I said earlier, in
19 that if a fish is legally caught, that it's no
20 one's business what people do with it. If they
21 decide to eat it or to sell it, I think that's
22 their business.

23 Q Do you see any kind of inconsistency between sale
24 of fish and your traditional way of life and
25 culture?

26 CHIEF BAIRD: No. It's complicated in that sustenance
27 in our culture has evolved over time. So those
28 interactions have evolved as well. So if you were
29 to look at our rights, if they were frozen in
30 time, then people might -- you've heard the
31 argument that you should go fishing in cedar nets
32 in your canoe if you want, but presumably you
33 could do that seven days a week and you wouldn't
34 be limited to four-hour fishing openings and those
35 sorts of things. So I think having -- being able
36 to live off fish, however that translates into
37 modern times, is relevant and logical, in my view.

38 Q And I'm going to suggest it's not just in reaction
39 to modern --

40 MR. MCGOWAN: I'm sorry, Mr. Janes, I just see Mr.
41 Lowes on his feet.

42 MR. LOWES: I don't know how my friend is going to
43 pursue this, but I rise to just make the point
44 that what's good for the goose is good for the
45 gander, and if we're getting into the area of
46 Aboriginal rights, then I'm taking the same
47 position as my friends took with respect to me.

1 MR. JANES: To be clear, I haven't asked any questions
2 with respect to rights. I've certainly asked the
3 question about whether certain activities were
4 consistent with their cultural practices.

5 MR. LOWES: Well, with great respect, My Lord, I spent
6 a week in the Court of Appeal yesterday -- or last
7 week, dealing with that very issue, and whether
8 that has evolved into a right to sell.

9 MR. JANES: To be very clear, I'm just not asking --
10 I'm not going to ask you to make any findings with
11 respect to Aboriginal rights. I'm not asking any
12 of the witnesses to comment on Aboriginal rights.
13 I'm just asking practically, in terms of their
14 world view and their culture, whether or not
15 certain activities, and in particular this
16 question of the sale of FSC fish and the sale of
17 fish, is inconsistent with the way in which
18 they've practiced -- carried out their way of
19 life.

20 THE COMMISSIONER: My only concern, Mr. Janes, is just
21 that the answers may be just half a loaf. It's a
22 complex world in which you and your learned
23 friends deal when it comes to those kinds of
24 issues, and I'm not sure covering it in five
25 minutes in the way you're tending is going to be
26 all that helpful.

27 MR. JANES: It may -- I think there's a problem -- the
28 problem may be there in terms of the time
29 constraints that we're facing, but it is a
30 significant issue for our clients, and certainly
31 their have been two counsel who have put a number
32 of questions with respect to sale and the way in
33 which sale is carried out and way in which sale
34 plays a role in the view that these people have,
35 today, of the way in which DFO interacts with
36 them, the way in which they're having problems
37 procuring compliance of individuals in their
38 community and such like that, and in fairness to
39 the witnesses and in fairness to my client,
40 Commissioner, I submit at least with the time that
41 we've been allocated we should be able to touch on
42 the matters and deal with them to the extent that
43 we can.

44 THE COMMISSIONER: I believe questions have already
45 been posed to the panel members regarding that
46 topic, Mr. Janes. I'm not sure where you're
47 heading with this topic.

1 MR. JANES: I'm simply, for the purpose of cross-
2 examination, trying to clarify the meaning of
3 certain -- and the significance of certain
4 passages in Chief Baird's witness statement.
5 That's --

6 THE COMMISSIONER: If it's just a matter of clarifying
7 something she's already said, I'm okay with that.
8 If you're going beyond that, then I think Mr.
9 Lowes' objection is reasonable and fair.

10 MR. JANES: As you're the commissioner, I'll clearly
11 defer to that.

12 Q And just let me, then, go back to your statement,
13 Chief Baird, and I would like to move onto the
14 second part of the passage that I put to you a few
15 moments ago, and I want to try to connect the two.
16 You say here:

17
18 Clearly fishermen need to invest in gear, and
19 therefore need a way to raise capital.

20
21 Now, I'm going to suggest to you that this ties
22 into the fact that the cost -- there is a cost
23 associated with carrying out even the food, social
24 and ceremonial fishery as the Department of
25 Fisheries and Oceans runs it today?

26 CHIEF BAIRD: Yes, especially with --

27 MR. MCGOWAN: I'm sorry to interrupt, Mr. Commissioner.
28 I accept that Mr. Janes is engaged in a cross-
29 examination, but it's starting to sound, to me, a
30 little bit like a friendly cross-examination, and
31 if that's the case, I wonder if it might be more
32 helpful to you if the questions weren't leading.

33 MR. JANES: I'm happy to do that.

34 Q Would you expand upon what the significance of
35 that is in terms of its relationship to the costs
36 of the food, social and ceremonial fishery?

37 CHIEF BAIRD: Well, the way the fisheries have evolved
38 and the technologies involved in relation to First
39 Nations have to participate in the fishery safely,
40 it does have associated costs, whether it's the
41 boat and the gear and the fuel and the motor and
42 all those sorts of things. Especially, we've sort
43 of evolved from a mosquito fleet, if you will, to
44 small modest gillnetters that have greatly
45 increased safety, and that's been through the AFS
46 program and people being able to reinvest in tier
47 vessels so that they are in more sea-worthy

1 vessels to fish in.

2 Q And what would you see being able to sell FSC fish
3 do -- in terms of being able to address this cost
4 issue associated with the FSC fishery?

5 CHIEF BAIRD: Well, if there was more reliance on the
6 ability to make income from the fish that come in
7 that wasn't subject to a year-to-year agreement
8 that can be taken away from DFO at a whim, or
9 First Nations won't sign because of things
10 potentially being imposed on it, it would make it
11 much easier for the participants to be able to
12 plan, over the long term, their participation in
13 the fishery in a safe way, with the proper gear,
14 and build capacity in the participants in the
15 fishery, ultimately, I think.

16 MR. JANES: Thank you. Those are my questions.

17 THE COMMISSIONER: Thank you, Mr. Janes.

18 MR. MCGOWAN: Does anyone else have questions?

19 Commission counsel has no questions in re-
20 examination. That, I think, concludes our day,
21 Mr. Commissioner. We'll commence tomorrow
22 morning, I believe, at 10:00 a.m., with panellists
23 representing the mid and upper Fraser.

24 THE COMMISSIONER: Thank you, counsel. Thank you very
25 much to each and every one of the panel members
26 for attending this afternoon. Thank you.

27 THE REGISTRAR: The hearing is now adjourned for the
28 day and will resume at ten o'clock tomorrow
29 morning.

30
31 (PROCEEDINGS ADJOURNED TO TUESDAY, DECEMBER
32 14, 2010, AT 10:00 A.M.)
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1 I HEREBY CERTIFY the foregoing to be a
2 true and accurate transcript of the
3 evidence recorded on a sound recording
4 apparatus, transcribed to the best of my
5 skill and ability, and in accordance
6 with applicable standards.
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11 Diane Rochfort
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14 true and accurate transcript of the
15 evidence recorded on a sound recording
16 apparatus, transcribed to the best of my
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22 Karen Acaster
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34 Pat Neumann
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46 Karen Hefferland
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