

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.

Tenue à :

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

Wednesday, December 15, 2010

le mercredi 15 décembre 2010



Errata for the Transcript of Hearings on December 15, 2010

Page	Line	Error	Correction
ii		incomplete title	Patrick McGowan Associate Commission Counsel
ii		incomplete title	Jennifer Chan Junior Commission Counsel
ii		Judah Harrison is not a Q.C.	Judah Harrison
iv		James Walkus is not a participant	remove from record
iv		Musgagmagw Tsawataineuk Tribal Counsel	Musgamagw Tsawataineuk Tribal Council
vi		Exhibit 303 Document entitled, "Heiltsuk Marine Use Plan"	Exhibit 303 Document entitled, "Heiltsuk Community Health Study"
vii		Memorandum of Instruction, dated October 23, 2876	Memorandum of Instruction, dated October 23, 1876
19	18	Memorandum of Instruction, dated October 23, 2876	Memorandum of Instruction, dated October 23, 1876
35	25 - 26	Exhibit 303 Document entitled, "Heiltsuk Marine Use Plan"	Exhibit 303 Document entitled, "Heiltsuk Community Health Study"
41	36	bit	big
51	4	(Speaking Haida language) actually Terri-Lynn Williams-Davidson's Haida name	gid7ahlgudsllaay
88	3	(Speaking Haida language) actually Terri-Lynn Williams-Davidson's Haida name	gid7ahlgudsllaay
52	7	schoolagette	sGuuluu jaad
52	9	elaquans	jiila <u>K</u> uns
57	35	Lyle Island	Lyell Island



Page	Line	Error	Correction
73	23	Nimgus River	Nimpkish River

APPEARANCES / COMPARUTIONS

Patrick McGowan Jennifer Chan	Commission Counsel Commission Counsel
Mark East Jonah Spiegelman	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, Q.C.	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
No appearance	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")
No appearance	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF")
James Reynolds Derek Christ	Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM")
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")
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")
Terri-Lynn Williams Davidson	Council of Haida Nation

APPEARANCES / COMPARUTIONS, cont'd.

Joe Gereluk	Métis Nation British Columbia ("MNB.C.")
Nicole Schabus	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
James Hickling	Laich-kwil-tach Treaty Society James Walkus and Chief Harold Sewid Aboriginal Aquaculture Association ("LJHAH")
Krista Robertson Lee Schmidt	Musgamagw Tsawataineuk Tribal Counsel ("MTTC")
Lisa Fong Benjamin Ralston (articled student)	Heiltsuk Tribal Council ("HTC")

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1
PANEL NO. 11 (Affirmed)
In chief by Mr. McGowan

1 Vancouver, B.C. /Vancouver (C.-B.)
2 December 15, 2010/le 15 décembre
3 2010
4

5 THE REGISTRAR: Order. The hearing is now resumed.

6 MR. MCGOWAN: If we could we have the panel sworn.

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

11 MR. NAKNAKIM: I do.

12 CAPTAIN DUCOMMUN: I do.

13 PRESIDENT GUUJAAW: I do.

14 THE REGISTRAR: I need a verbal...

15 CHIEF NEWMAN: I do.

16 CHIEF MOUNTAIN: I do.

17 THE REGISTRAR: Thank you. And your name, sir.

18 MR. NAKNAKIM: Rod Naknakim.

19 CAPTAIN DUCOMMUN: Gary Ducommun.

20 PRESIDENT GUUJAAW: Guujaaw.

21 CHIEF NEWMAN: Edwin Newman.

22 CHIEF MOUNTAIN: Robert Mountain.

23 THE REGISTRAR: Thank you.

24 MR. MCGOWAN: Thank you. Mr. Commissioner, as has been
25 the practice for the last few days, Commission
26 counsel's examination in chief will consist
27 primarily of introducing the witnesses and having
28 witness summaries marked, which will amount to the
29 lion's share of our examination in chief. I am
30 going to start on the left and move to the right.
31

32 EXAMINATION IN CHIEF BY MR. MCGOWAN:
33

34 Q First we have Mr. Rod Naknakim. Sir, you are a
35 member of the Cape Mudge Indian Band?

36 MR. NAKNAKIM: That's right.

37 Q And you are currently the chief negotiator for
38 Laich-Kwil-Tach Treaty Society?

39 MR. NAKNAKIM: That's right.

40 Q And the Laich-Kwil-Tach Treaty Society is made up
41 of three bands, I understand?

42 MR. NAKNAKIM: That's right.

43 Q And those are Cape Mudge, Campbell River, and
44 Kwiakah?

45 MR. NAKNAKIM: That's right.

46 Q Okay. And you had an interview with Commission
47 counsel on December 7th of this year.

2
PANEL NO. 11
In chief by Mr. McGowan

1 MR. NAKNAKIM: Yes.
2 Q Okay. And we prepared a summary of that and
3 you've had a chance to review that?
4 MR. NAKNAKIM: Yes.
5 Q Okay. If we could have that document brought up,
6 please. I've just got it on the screen here.
7 You've reviewed this and do you adopt its
8 contents?
9 MR. NAKNAKIM: Yes, I do.
10 MR. MCGOWAN: Okay, thank you.
11 If that could be marked as the next exhibit,
12 please, Mr. Registrar.
13 THE REGISTRAR: Exhibit 297.
14 MR. MCGOWAN: Thank you.

15
16 EXHIBIT 297: Witness Summary of Rod Naknakim
17

18 MR. MCGOWAN:
19 Q Next is Mr. Ducommun.
20 CAPTAIN DUCOMMUN: Yes.
21 Q Sir, you are here on behalf of the Métis Nation?
22 CAPTAIN DUCOMMUN: That's correct.
23 Q You're a professional biologist?
24 CAPTAIN DUCOMMUN: That's correct.
25 Q And presently you're the Director of Natural
26 Resources for the Métis Nation?
27 CAPTAIN DUCOMMUN: Yes.
28 Q And you had an interview with Commission counsel
29 on November 17th of this year?
30 CAPTAIN DUCOMMUN: That's correct.
31 Q And you've reviewed the summary that we produced
32 of that?
33 CAPTAIN DUCOMMUN: I have.
34 Q And are you content with its contents?
35 CAPTAIN DUCOMMUN: There are a couple of fairly minor
36 changes.
37 Q Okay. If you could maybe just take a moment and
38 take the Commissioner through the changes that
39 you'd like to make, identifying the page and the
40 particular change.
41 CAPTAIN DUCOMMUN: Okay. Page 1, last paragraph. The
42 sentence says:

43
44 The buffalo remains an important part of
45 Métis history and cultural events, and some
46 Métis are now involved in efforts to recover
47 buffalo populations in Alberta.

3
PANEL NO. 11
In chief by Mr. McGowan

1 It should actually read "historically Métis were
2 involved in efforts to recover buffalo
3 populations." Period.

4 Q Thank you for that correction.

5 CAPTAIN DUCOMMUN: Second page, under "Historic and
6 modern participation in the fishery", last
7 sentence:

8
9 Many Métis have family connections in First
10 Nations, and rely on these connections for
11 opportunities to fish.

12
13 I would just insert "and sometimes rely on these
14 connections for opportunities to fish."

15 Q Thank you.

16 CAPTAIN DUCOMMUN: Will I -- will I be challenged with
17 word-smithing? Second-last paragraph:

18
19 Aboriginal people have always believed that
20 salmon feed the environment where they live.

21
22 Rather than "environment" --

23 Q Okay. Let me just make sure. You're on the
24 second-to-last paragraph on page 2?

25 CAPTAIN DUCOMMUN: Yes, that's correct.

26 Q And the third line of that?

27 CAPTAIN DUCOMMUN: Yes. So:

28
29 Aboriginal people have always believed that
30 salmon feed the environment where they live.

31
32 Rather than "feed the environment they live".

33 Q Right. Thank you.

34 CAPTAIN DUCOMMUN: Last paragraph, last sentence.

35 Q On the same page?

36 CAPTAIN DUCOMMUN: Yes.

37 Q Okay. So still on page 2, the last paragraph of
38 your witness summary.

39 CAPTAIN DUCOMMUN: In part:

40
41 ...recommendations related to listings and
42 recovery plans directly to the Minister of
43 Environment...

44
45 Rather than "to directly the Minister".

46 Q Thank you.

47 CAPTAIN DUCOMMUN: And that's it.

4
PANEL NO. 11
In chief by Mr. McGowan

1 Q Okay. So with those changes made, are you
2 prepared to adopt the contents of your summary?

3 CAPTAIN DUCOMMUN: I am.

4 MR. MCGOWAN: Thank you for that, sir.

5 If we could have that marked as the next
6 exhibit, please.

7 THE REGISTRAR: Exhibit 298.

8 MR. MCGOWAN: Thank you.

9

10 EXHIBIT 298: Witness Summary of Gary
11 Ducommun
12

13 MR. MCGOWAN:

14 Q Guujaaw, you are President of the Council of the
15 Haida Nation?

16 PRESIDENT GUUJAAW: President of the Haida Nation.

17 Q President of the Haida Nation. Thank you. And
18 that -- and the Council of the Haida Nation is the
19 body that governs the Haida Nation; is that
20 correct?

21 PRESIDENT GUUJAAW: Yes.

22 Q Okay. And you also -- you've also held the
23 position of Firekeeper for their Hereditary Chiefs
24 of Haida Gwaii?

25 PRESIDENT GUUJAAW: Yes.

26 Q Okay. And you had an interview with Commission
27 counsel on September 8th of this year?

28 PRESIDENT GUUJAAW: Must have been.

29 Q In September of this year.

30 PRESIDENT GUUJAAW: Yes.

31 Q We produced a summary. Have you had a chance to
32 review it?

33 PRESIDENT GUUJAAW: Yes.

34 Q Okay. And are you prepared to adopt the contents
35 of your summary?

36 PRESIDENT GUUJAAW: One change. On page 3, second to
37 the bottom it says "abundance of salmon stocks".
38 In that instance I was speaking of herring stocks.

39 Q Okay. Let me just see. I'm on page 3 of the
40 summary, and you're on the -- which paragraph?

41 PRESIDENT GUUJAAW: Second to the bottom.

42 Q Yes, I see that. On the first line, the word
43 "salmon" should be replaced with "herring"?

44 PRESIDENT GUUJAAW: Yes.

45 Q Okay. Thank you for that correction. Aside from
46 that, are you content with the contents?

47 PRESIDENT GUUJAAW: Yes.

5
PANEL NO. 11
In chief by Mr. McGowan

1 MR. MCGOWAN: If that could be marked as the next
2 exhibit, please.

3 THE REGISTRAR: Exhibit 299.

4
5 EXHIBIT 299: Witness Summary of President
6 Guujaaw
7

8 MR. MCGOWAN:

9 Q Chief Edwin Newman. Sir, you are a Hereditary
10 Chief and Elder of the Heiltsuk Nation?

11 CHIEF NEWMAN: That's right.

12 Q And you've held many community and political
13 positions over the years with the Heiltsuk Nation
14 and other organizations?

15 CHIEF NEWMAN: That's right.

16 Q And a number of those are highlighted in your
17 witness summary?

18 CHIEF NEWMAN: That's right.

19 Q Okay. And have had a chance to review that
20 summary with your counsel?

21 CHIEF NEWMAN: I've looked at it, yes.

22 Q Okay. And are you content with the contents?

23 CHIEF NEWMAN: Not really. I think there's a few
24 things and have to deal with as we go along.

25 Q Okay. Let me ask you this. Are you content that
26 the summary is accurate, but that you may want to
27 expand on certain things in your evidence?

28 CHIEF NEWMAN: That's right.

29 Q Okay. If the summary could then be marked as the
30 next exhibit, please.

31 THE REGISTRAR: Exhibit 300.

32
33 EXHIBIT 300: Witness Summary of Chief Edwin
34 Newman
35

36 MR. MCGOWAN:

37 Q Chief Robert Mountain, you are an elected
38 Councillor of the Namgis First Nation?

39 CHIEF MOUNTAIN: Yes, I am.

40 Q Okay. And you're also a Heredity Chief of the
41 Mamalilikula First Nation.

42 CHIEF MOUNTAIN: Mamalilikula.

43 Q Okay. Mamalilikula, is that closer?

44 CHIEF MOUNTAIN: Yes.

45 Q Okay. Thank you. You're also the local Outreach
46 Fisheries Coordinator for Musgamagw and
47 Tsawataineuk Tribal Council?

6
PANEL NO. 11
In chief by Mr. McGowan
Cross-exam by Mr. Hickling (LJHAH)

1 CHIEF MOUNTAIN: The Musgamagw Tsawataineuk Tribal
2 Council, that's right.

3 Q Thank you. All right. We produced a summary of
4 the interview that you had with Commission counsel
5 on November 16th of this year?

6 CHIEF MOUNTAIN: That's right.

7 Q And have you reviewed that?

8 CHIEF MOUNTAIN: Yes, I did.

9 Q Okay. And are you prepared to adopt the contents
10 today?

11 CHIEF MOUNTAIN: Yes, and probably expand on it as well
12 as we go along.

13 MR. MCGOWAN: Thank you very much, sir.

14 If that could be the next exhibit.

15 THE REGISTRAR: Exhibit 301.

16

17 EXHIBIT 301: Witness Summary of Chief Robert
18 Mountain

19

20 MR. MCGOWAN: Thank you, Mr. Commissioner, those are my
21 questions for the panel.

22 THE COMMISSIONER: Thank you.

23 MR. MCGOWAN: I believe Mr. Hickling is going to
24 conduct the first examination of the panel.

25 THE COMMISSIONER: Yes.

26 MR. HICKLING: Good morning. I am going to follow a
27 similar pattern of questions that was established
28 by Ms. Pence yesterday.

29 THE COMMISSIONER: Could you identify yourself for the
30 record, please.

31 MR. HICKLING: Yes. My name is James Hickling, spelled
32 H-i-c-k-l-i-n-g, and I am representing the Laich-
33 Kwil-Tach Treaty Society, and the other members of
34 the Standing Group are - excuse me - the
35 Aboriginal Aquaculture Association and Chief
36 Harold Sewid.

37

38 CROSS-EXAMINATION BY MR. HICKLING:

39

40 Q Mr. Naknakim, I wonder if you could briefly
41 describe your own experience in the fishing
42 industry.

43 MR. NAKNAKIM: Yeah. I was born and raised in Cape
44 Mudge. There is no river there, but our people
45 have always been strongly involved in the fishing
46 industry. I pretty much grew up on a seine boat
47 with my grandfather, Harry Assu. I started going

1 out with him on the boat since I was eight years
2 old, and I continued right through until I
3 finished university.

4 The whole -- I don't know where to start on
5 this, but the whole -- the whole village has
6 always been involved. My grandfather told me
7 about his father, Chief Billy Assu, who helped get
8 the people in the village involved in the salmon
9 fishing industry, and in fact we started buying
10 gas boats in the 19-teens, to troll and gillnet.

11 Then 1921, Chief Billy Assu was successful in
12 getting the regulations to the Department of
13 Fisheries and Oceans changed to allow us to go
14 seine fishing. And I guess in the heyday, you
15 would see up to 40 seine boats being operated out
16 of our village, and just about the same with the
17 Campbell River Band.

18 Today, now, there's probably less than half a
19 dozen, just because of the nature of the industry,
20 how it's gone.

21 Q And you have participated in several organizations
22 that deal with fishing issues. Could you say
23 something about that.

24 MR. NAKNAKIM: Yeah. I guess my first experience has
25 been with the Native Brotherhood of BC. The
26 Native Brotherhood was designed somewhat like a
27 union, where the members paid the dues and had a
28 delegate system for each of the branches. And our
29 branch was the Cape Mudge-Comox-Qualicum Branch.
30 And I got involved fairly early in being a
31 delegate to the annual conventions. I got
32 involved in writing a lot of their resolutions.
33 And those were very enjoyable, because we got to
34 know everybody on the coast that's in the
35 industry.

36 The -- later on after I became a lawyer, I
37 got hired to set up the Native Fishing Association
38 as the Executive Director, which had money, about
39 \$11 million to lend out to Native fishermen to buy
40 boats and licences. And then later on I got on
41 the Board and became Chair of that organization
42 for a while.

43 During my career as a lawyer, I got involved
44 with our fishermen in the Johnstone Strait and was
45 a co-chair of the Area 13 Salmon Seiners
46 Association, which had one mandate now as to
47 address the Department of Fisheries and Oceans.

1 And I was particularly proud of that organization,
2 because it managed to get about seven or eight
3 groups together that never normally spoke to each
4 other, in fact, actually fought with each other.
5 It got us all together to deal with DFO's
6 policies, and on openings and closures.

7 I'm currently involved with the Aboriginal
8 Aquaculture Association as an advisor. That
9 organization, its main objective is to build the
10 capacity for First Nations to get involved in
11 aquaculture. What's happened is a lot of the boat
12 owners that are still hanging on their boats in
13 the industry can't just make it on salmon and
14 herring any more. They've got to diversify and
15 keep their boats active. And that's -- that's
16 what I'm trying to do there.

17 I used to be the -- well, I still am, I
18 guess, the advisor to the A-Tlegay Fisheries
19 Society, which has five member bands: the three
20 that belong to our Treaty Society, plus Comox and
21 Tlowitsis. And those other two bands have
22 overlapping areas with us where we have shared
23 territory and we work together and we work
24 together. And the main objective there is to try
25 and build our capacity to deal with Department of
26 Fisheries and Oceans, and to keep statistics on
27 our fishing and our food, social and ceremonial
28 fish.

29 MR. HICKLING: Thank you. Mr. Commissioner, I'd like
30 to ask Mr. Naknakim a few questions about the area
31 in which LKTS is centred, and I'd like to refer to
32 this map. It's -- the Commission circulated it a
33 couple of weeks ago. I've put copies on all
34 counsels' desk, and multiple copies with Mr.
35 McGowan. And I see Mr. Lunn's brought it up on
36 the screen.

37 Q Rod, do you have a copy of this?

38 MR. NAKNAKIM: It's on the screen in front of me.

39 MR. HICKLING: Oh, thanks. I want to emphasize, Mr.
40 Commissioner, that we're not relying on this map
41 to establish the boundaries of Laich-Kwil-Tach
42 territory. It was just a convenient map for us to
43 use to provide an overview of the Johnstone Strait
44 area.

45 Q Mr. Naknakim, if we started at the southern end,
46 of the territory where it joins Vancouver Island,
47 the first two islands there are Denman and Hornby.

1 MR. NAKNAKIM: Yeah, territory goes down to around
2 Qualicum River, then all the way up to Eve River
3 on Vancouver Island.

4 Q Right. I just want to focus on the geographical
5 features of the Johnstone Strait area. If you
6 travel up from -- from those islands, you pass
7 through some open water and then you come to
8 another big island.

9 MR. NAKNAKIM: Yes.

10 Q That's Quadra Island?

11 MR. NAKNAKIM: That's right.

12 Q And the southernmost tip of Quadra Island is
13 called -- how do we do this?

14 MR. NAKNAKIM: Well, pointing out up there.

15 MR. MCGOWAN: Mr. Commissioner, I provided the witness,
16 or had the witness provided with a laser pointer
17 so he can identify for you where he's speaking of,
18 and I'd perhaps just ask counsel to ensure it's
19 described on the record adequately.

20 THE COMMISSIONER: Thank you.

21 MR. NAKNAKIM: Quadra Island, right about there. Do
22 you want to do this?

23 MR. HICKLING:

24 Q Okay. And there's a ribbon of water between
25 Quadra Island and Vancouver Island. What --
26 what's that body of water called?

27 MR. NAKNAKIM: Yeah, that's about halfway up of Quadra
28 Island you'll see the narrowest point there, and
29 it's called Seymour Narrows, and that's generally
30 considered where Johnstone Strait starts. And it
31 goes all the way up that narrow, along -- the
32 stretch along the East Coast of Vancouver Island.

33 But the thing about Seymour Narrows, it's got
34 very strong tides. And just above it, there's two
35 bays, there's Plumper Bay which is the first bay
36 just above the Seymour Narrows, and then just
37 above that is Deepwater Bay.

38 Now, we've been doing a lot of research in
39 our Treaty Society and we've come across a lot of
40 fish traps all over the place. And in these two
41 bays there were fish traps that date hundreds of
42 years back. And there's no significant river in
43 those bays. So we think those fish trips were
44 designed to fish -- I mean, catch passing stock
45 that's going to the Fraser.

46 Then when the cannery got started in
47 Quathiaski Cove, the owner set up modern fish

1 traps in the 19-teens, and it was there
2 particularly to catch sockeye that's going in the
3 Fraser. And there is correspondence verifying
4 that. And what he talked about is the particular
5 quality of the fish at that point. He was able to
6 get the best prices there because it had the
7 highest oil content. Once it went further down
8 into the Gulf, it started losing that quality.

9 We have other fish traps further up towards
10 the mainland that we think are designed for
11 passing stocks, as well. And of course we have a
12 number of fish traps in mouths of some of the
13 rivers there, all along the mainland.

14 Our -- our Origin Story and Flood Story is on
15 the mainland about -- that's about 30 miles north
16 of Campbell River on the mainland on a mountain.
17 And we moved south, and north, I guess we moved
18 all over the place, but mainly in and around
19 Johnstone Strait. We just basically lived off of
20 Johnstone Strait.

21 Q Thank you. And could you briefly describe how the
22 geography of Johnston Strait influences the
23 migration of the Fraser River sockeye?

24 MR. NAKNAKIM: Well, we got pretty good at catching the
25 -- particularly sockeye, which is the main, main
26 -- it's got the highest value in terms of sales.
27 And we all -- all our different families have
28 different setting spots, you know, we know where
29 the Assus fished, the Louises, the Dicks and the
30 Roberts, Kwak sisters. We pretty much had our own
31 kind of areas where we fished. And those areas
32 were identified by certain stages of the tide.
33 You can't -- you can't just set anywhere and catch
34 the fish. It's usually on low water slack that
35 you have to set at these spots, and you get very
36 good sets.

37 Those places are still being used by those
38 families today, by the way.

39 Q When the salmon are migrating south through the
40 Johnstone Strait area do they -- is it your
41 experience that they swim through north to south
42 in one continuous --

43 MR. NAKNAKIM: Not all the time. They'll go back and
44 forth along the Straits. Sometimes they'll hang
45 around for quite a while, but once it starts
46 raining harder, they'll just shoot right through.

47 Q I'd like to ask you a few question about the

1 cultural connection between the Laich-Kwil-Tach
2 and fishing. Can you describe briefly the
3 significance of fishing to the Laich-Kwil-Tach
4 people.

5 MR. NAKNAKIM: Well, I think we're all the same on the
6 coast, actually. The fishing has been a central
7 part of our identity. You know, we're the same as
8 everybody else. We, despite the potlatch being
9 prohibited and outlawed, until '72 we still
10 potlatched right through, my grandfather on my
11 father's side particularly. He used to have -- he
12 used to have big speakers outside his house. He
13 had a big house, and he'd have hymns playing, but
14 inside he'd be potlatching with the elders. And
15 we've been able to keep this alive amongst our
16 people.

17 But there always is salmon part of the
18 potlatch, you know, to feed. But more than that,
19 there's songs. My brother's wife is a twin, and
20 she -- she owns a salmon dance with her twin
21 sister. Because that's what we do is, you know,
22 give that to the twins. And of course it's got
23 all kinds of carvings of salmon. They're on
24 everything, like totem poles and plaques and our
25 walls and our button blankets, and there's songs
26 about it, dances about it. But you know it wasn't
27 just the salmon, but it was everything kind of
28 integrated together.

29 So our people, we make our living off of the
30 salmon, so it's pretty important to us. We -- we
31 want to make sure they come back every year
32 because -- because we've got members that still
33 have heavy investment in the industry, and we're
34 -- and that's what we're trying to concentrate on
35 is -- is to keep them in the industry. We don't
36 want to be removed from the water. We've got to
37 be part of the water, because that's how we keep
38 healthy, and, yeah.

39 Q You mentioned some of the fish traps that you
40 believe were used to harvest passing stock. I
41 wonder if there were any other traditional fishing
42 technologies that you used for fishing salmon.

43 MR. NAKNAKIM: Yeah, there -- you know, we did a lot of
44 research and there's evidence from those explorers
45 that they -- when they went through our territory,
46 they would see nets drying, you know. We had
47 large canoes that we fished on. We -- we had

1 hooks, all kinds of design of hooks. And when the
2 industry started, in the 19-teens, my grandfather
3 designed his own spoon to troll with. You know,
4 we just knew how to -- how to adapt to our
5 different circumstances.

6 Q I'd like to ask if conservation has played a role
7 in Laich-Kwil-Tach fishing practices.

8 MR. NAKNAKIM: Most definitely. You know, we've faced
9 -- the first -- the first real big closure, I
10 guess, and I wasn't involved in the herring
11 industry but my grandfather was. Tells me the
12 story when him and Tommy Hunt went to see B.C.
13 Packers and to shut down the herring industry, and
14 it did get shut down for 20 years, because they
15 were fishing it out. And with the help of the
16 company, they were able to persuade DFO to do
17 that.

18 Then in I think it was '80s, when we put the
19 ribbon boundary in, in Johnstone Strait. They
20 wanted to close us down, but we -- we convinced
21 DFO we can stay open and still fish if we marked
22 off certain areas in Johnstone Strait that we
23 wouldn't fish in. And they call it a ribbon
24 boundaries. And we still don't fish there today,
25 and we're the ones that initiated that effort.

26 Q So the ribbon boundaries are areas that are off
27 limits to Laich-Kwil-Tach fishing and they
28 allow passing --

29 MR. NAKNAKIM: All commercial fishing.

30 Q -- and they allow passing stock to travel through
31 Johnstone Strait.

32 MR. NAKNAKIM: Yeah.

33 Q I'd like to ask you a few questions about
34 traditional knowledge. Is there a particular
35 skill-set or knowledge that's required to fish
36 effectively in Johnstone Strait?

37 MR. NAKNAKIM: Yeah, it's not the easiest place to fish
38 because of the strength of the tide. I mean, back
39 in the earlier day you could lose your net, if you
40 fish -- fish in the wrong place or the wrong stage
41 of the tide. And the timing of the set is all the
42 difference in the world on whether you're going to
43 get any fish at all.

44 My grandfather always amazed me on how well
45 he knew the water, and when the fish were coming
46 and how many. We'd be waiting out there on the
47 boat and there'd be some killer whales going by.

1 He'd stand up on the seat on the -- on top of the
2 cabin and whistle at them. And they'd come up to
3 wherever they are, and then pretty soon they're
4 rubbing against the boat, and then they're passing
5 on.

6 But what my grandfather was famous for is
7 predicting the size of the run that's coming in.
8 And he'd often get into fights with DFO. He'd be
9 in their office telling them to open it, there's a
10 big run coming, and quite often he was right.
11 That amazed me.

12 And our guys, they got to know which run was
13 which, you know, just by looking at the fish, the
14 size generally, and sometimes the spots. I knew
15 when I was in my teens. I forget now, but I knew
16 back then. I could tell generally some of the --
17 some of the differences on the sockeye and that.

18 Q And how is traditional knowledge about fishing
19 passed down to younger generations?

20 MR. NAKNAKIM: Well, it's getting more and more
21 difficult because of the lack of fishing itself.
22 You know, they're -- take, for instance, we didn't
23 have food fish for the last five years and this
24 year we -- we managed to get some. But -- but now
25 they've got the fishing industry down to hours,
26 being open for hours for the whole season. You
27 know, 12-hour openings. It's pretty hard to make
28 a living. It's pretty hard to teach the younger
29 generation because you're not willing to take the
30 chance on a greenhorn. You want your most
31 experienced guy there so that you can use that 12
32 hours and nothing goes wrong.

33 So but it has generally been passed down. I
34 fully expected to be a fisherman when I grew up,
35 just like my cousin, Brian. But I went and got an
36 education instead. The different families, they
37 teach their kids how and where -- where to fish,
38 how to build a seine net and all of that.

39 Q I'd like to ask if Laich-Kwil-Tach traditional
40 knowledge has a role currently in DFO decision-
41 making and if DFO is making use of that knowledge.

42 MR. NAKNAKIM: I'm not the best one to answer that,
43 because I'm not on the Board with A-Tlegay, but
44 all of our fish, that goes through A-Tlegay. But
45 apparently they've developed the relationship with
46 DFO for collecting statistics, and they're
47 reported, we report all of our food fish that we

1 catch each season, by species and quantity, and
2 name, name the families they go to.

3 We are trying to build our credibility up
4 with DFO to get into management decision in the
5 local area. It's important for us to deal one-on-
6 one with DFO, because Johnstone Straits always
7 seems to be a controversial place in terms of the
8 rest of the coast. And that's probably just the
9 location and the fact that a lot of fish can be
10 caught out of there.

11 Q I'd like to ask you a few question about FSC
12 fishing. Beginning with if you could briefly
13 describe the ways in which FSC fishing is
14 important to Laich-Kwil-Tach today.

15 MR. NAKNAKIM: Oh, we -- we rely on all kinds of fish,
16 not just the salmon, but we've got -- we've got
17 lots of other types of marine resources in our
18 area. And we like to catch it, whether it be cod
19 or halibut or herring and shellfish. We've got
20 that, but the -- it's really important to all of
21 our families that we get that, and it always has
22 been, even before the **Sparrow** decision, where that
23 decision was made as a right. We used to -- when
24 we come -- before we come in with our seine boats,
25 set aside a few hundred fish for the village to --
26 to get their food fish.

27 Q I understand that Laich-Kwil-Tach manages its FSC
28 allocation through the A-Tlegay Fisheries Society.
29 I wonder if you could describe how that works.

30 MR. NAKNAKIM: Yeah. We used to be all together in
31 Johnstone Straits with the First Nations north of
32 us, but we split off of it and created our own
33 fisheries society called A-Tlegay. But we all
34 have the same communal licence for sockeye, and I
35 think it's somewhere around 80,000 pieces.

36 Q And from there you divide them up between the five
37 participant First Nations?

38 MR. NAKNAKIM: Well, it's up to -- the way we catch our
39 fish, food fish for our five bands, is each of the
40 families take the responsibility to look after
41 their own families with their different boats.

42 Q And you're using modern boats and gear to --

43 MR. NAKNAKIM: Yeah.

44 Q -- harvest FSC fish.

45 MR. NAKNAKIM: Yeah. Quite often our guys are
46 contracted by other bands further down on the
47 South Island to catch their food fish for them.

1 Q Is there anything you would do to improve the FSC
2 fishery?

3 MR. NAKNAKIM: Well, I know it's always been
4 controversial, but I personally am against selling
5 of food fish. You know, and I'm not against
6 selling. Just that I think it's a management
7 issue. You know, if you're going to -- if you're
8 going to catch fish for the purpose of selling, we
9 should be able to issue a licence for that person
10 for the purpose. But food fish should be for the
11 people and not be sold.

12 Q I'd like to talk a little bit about -- okay. I
13 wonder if you could very briefly describe the
14 connection between Laich-Kwil-Tach Indian reserves
15 and the modern fishery, or your fishing practices.

16 MR. NAKNAKIM: Well, the way -- the way we always
17 believed that the Department of Indian Affairs
18 limited the size of our reserves. We tried to get
19 bigger reserves, but you take our -- the biggest
20 reserve in our district, the Cape Mudge Reserve,
21 is around 1,200 acres. And what we said -- had
22 the surveyor set aside was about double that, and
23 the same with -- we needed a bunch of other
24 reserves. We were told by Indian Affairs that we
25 can't have it because we don't make a living off
26 the land, and we make our living off the sea. And
27 they granted our reserves, we've got about a dozen
28 reserves and they vary from ten acres up to the
29 1,200 acres. Most of them are between 100 and 200
30 acres. But they're located for the purpose of
31 providing us access to our marine resources.

32 Then after that it was all said and done,
33 given to us, we find we're alienated from these
34 marine resources by the Department of Fisheries
35 and Oceans. It's like Indian Affairs didn't have
36 any right to make a commitment like that to us.
37 So we kind of feel that, you know, there's an
38 obligation on the Crown to provide access to our
39 marine resources in Johnstone Strait so we can
40 make a living.

41 MR. HICKLING: Mr. McGowan has asked me to conclude.
42 I've just got three more questions.

43 Q Could you -- we've heard over the past couple of
44 days about some new organizations like the ITO and
45 the First Nations Fisheries Council, and I wonder
46 if you could provide your view on -- on those
47 organizations and their role.

1 MR. NAKNAKIM: Yeah, we have a representative on the
2 Fisheries Council, but you know, we've had a hard
3 time dealing with issues between our First
4 Nations. You know, we're definitely in the
5 commercial fishing industry. We want to be able
6 to make a living there within our territory, and a
7 lot of issues come up about that.

8 We're not against any of these organizations,
9 but what we do want is the right to make our own
10 representations. We don't want them to -- to be
11 representing us. We want to represent ourselves
12 directly with government.

13 Q Thank you. Another point that's been raised by
14 other participants is the suggestion that the
15 fishery might move towards a terminal fishery.
16 And I wonder what's your view on that?

17 MR. NAKNAKIM: Well, that will push us right out of the
18 industry. We're not against anybody getting their
19 fish, but we still would like to make a living in
20 the Johnstone Strait area.

21 Q And I just have two more quick questions. Are
22 there any other processes or forums that you think
23 Laich-Kwil-Tach should be invited to participate
24 in?

25 MR. NAKNAKIM: Well, the Fraser Panel, my cousin was
26 telling me we don't have a technical person on the
27 Fraser Panel for -- for the Coast. And I think
28 that's the most powerful decision-making body on
29 the Coast is the recommendations that come out of
30 there.

31 Q And just one concluding question, could you
32 describe what you see as Laich-Kwil-Tach's future
33 role in the fishery?

34 MR. NAKNAKIM: Well, I think the biggest complaint over
35 all these years that we've had is their licensing
36 system. It's basically blocked just about all of
37 us on the Coast out of the fishing industries.
38 When they changed the -- the "A" licence to
39 restrict it to just salmon, I don't think that
40 most of our people on the Coast understood that.
41 Before the Davis Plan, you could catch everything
42 under that one licence, and I think we should be
43 issued a licence like that, for us to be able to
44 make it in the -- in the -- any industry.

45 MR. HICKLING: Thank you. That concludes my questions,
46 Mr. Commissioner. There's one other item I'd
47 like to address. I have a binder of documents

1 that I'd like to have marked as an exhibit. There
2 are 19 documents. The binder is indexed and
3 tabbed. Most of the documents are public
4 documents prepared by Crown officials and obtained
5 from archival sources during research for
6 litigation and other processes. Two of the -- the
7 last two documents are extracts from books on
8 aboriginal fishing.

9 These documents concern the allocation of
10 Indian reserves as fishing stations around the
11 turn of the century and the government policies in
12 force at that time.

13 We have circulated the documents about nine
14 or ten days ago, and we provided copies to the
15 Commission for uploading onto Ringtail.

16 We also wrote to the Commission late last
17 week to propose that the documents be entered as
18 exhibits by consent. I don't propose to take Mr.
19 Naknakim through the documents today, but we would
20 like to have them entered as exhibits so that we
21 can rely on them if necessary when the Commission
22 hears evidence on the history of the regulation of
23 aboriginal fisheries in the New Year.

24 MR. MCGOWAN: Yes, Mr. Commissioner. I understand and
25 I believe my friend has circulated to counsel for
26 all participants a letter asking whether any
27 participant raises objection to these documents
28 going in, I think it's ostensibly by consent. The
29 Commission is nor aware of any response to that
30 request.

31 I take it from what my friend has said that
32 he's asking the documents go in, but does not
33 intend to put them to his witness today. I might
34 suggest, Mr. Commissioner, that it may be useful
35 if he's seeking to have such a large bulk of
36 documents go in that he address the issue of their
37 relevance to your mandate, and how it is that he
38 intends to use them in the future in the hearing,
39 or expects you to use them. I don't want to take
40 up a bunch of our hearing time to do today that --
41 today to do that, because I know we're tight on
42 time. But I wonder if you might find some further
43 information on that helpful before receiving the
44 documents.

45 THE COMMISSIONER: What I would suggest, Mr. McGowan,
46 and Mr. Hickling, is that this list, which I
47 presume all participants' counsel have, of what

1 are described as a document index. What I would
2 suggest is that we take the next letter
3 available for identification purpose, we identify
4 -- use that letter, whatever it is. Mr.
5 Registrar, what is the next letter?

6 THE REGISTRAR: "R".

7 THE COMMISSIONER: Thank you. If we use R1 through 19
8 for identification purposes, that in the interim
9 at your convenience, Mr. Hickling, if you could
10 provide Commission counsel with a letter outlining
11 your submission with respect to the relevance of
12 these documents, for the purposes of this
13 Commission's mandate, and then if and when you do
14 come back and refer to some of these documents, at
15 that time if there's no opposition they could be
16 marked. But at that time if Commission counsel
17 have a submission to make, they could make it at
18 the time you're intending to put the document to a
19 witness.

20 MR. MCGOWAN: I'm certainly content with that, Mr.
21 Commissioner, and it may well be that -- that my
22 friend does intend to put these documents to a
23 witness down the road and they can go in through
24 the usual course, but I'm content with your
25 suggestion.

26 THE COMMISSIONER: So it would be R1 through 19 marked
27 for identification purposes, and Mr. Registrar can
28 have a copy of this document index so that that
29 can be noted in his records as "R" through -- 1
30 through 19.

31 THE REGISTRAR: It will be so marked.

32 MR. HICKLING: Thank you.

33 THE COMMISSIONER: Thank you.

34

35 MARKED R1 FOR IDENTIFICATION: Memorandum
36 dated March 1, 1874 by D. Laird, federal
37 Minister of the Interior and Superintendent
38 General of Indian Affairs

39

40 MARKED R2 FOR IDENTIFICATION: Memorandum
41 dated August 17, 1875 from Geo. A. Walkem,
42 Attorney General for the Province of British
43 Columbia to the provincial Lieutenant
44 Governor in Council

45

46

47

1 MARKED R3 FOR IDENTIFICATION: Letter dated
2 October 1, 1875 from I.W. Powell, federal
3 Indian Commissioner for BC to the
4 Superintendent General of the Department of
5 Indian Affairs
6

7 MARKED R4 FOR IDENTIFICATION: Extract from
8 Annual Report of the Department of the
9 Interior for the Year Ended June 30, 1876, at
10 pp. xv-xvi
11

12 MARKED R5 FOR IDENTIFICATION: Memorandum of
13 Instruction, dated August 25, 1876, from D.
14 Laird, federal Minister of Interior, to the
15 Dominion Commissioner
16

17 MARKED R6 FOR IDENTIFICATION: Memorandum of
18 Instruction, dated October 23, 1876, from Sir
19 Charles Good, Deputy Provincial Secretary, to
20 G.M. Sproat, Esq., Reserve Commissioner
21

22 MARKED R7 FOR IDENTIFICATION: Transcript of
23 Letter dated November 6, 1878, from G.M.
24 Sproat, Reserve Commissioner, to W.
25 Buckingham, Deputy Minister of the Interior
26

27 MARKED R8 FOR IDENTIFICATION: Letter dated
28 October 29, 1886, from Peter O'Reilly,
29 Reserve Commissioner, to Wm. Smith,
30 provincial Chief Commissioner of Lands &
31 Works, enclosing Minutes of Decision dated
32 October 8, 1886
33

34 MARKED R9 FOR IDENTIFICATION: Letter dated
35 October 30, 1886, from P. O'Reilly, Reserve
36 Commissioner, to the Superintendent General
37 of Indian Affairs
38

39 MARKED R10 FOR IDENTIFICATION: Excerpts from
40 the Annual Report of the Department of Indian
41 Affairs, for the years 1887, 1888, 1890 and
42 1896
43

44 MARKED R11 FOR IDENTIFICATION: Excerpts from
45 the Annual Report of the Department of Indian
46 Affairs for the Year Ended 31st December,
47 1887

1 MARKED R12 FOR IDENTIFICATION: Letter dated
2 May 28, 1888, from Ashdown H. Green, Surveyor
3 to the Indian Reserve Commission, to the
4 Superintendent General of Indian Affairs
5

6 MARKED R13 FOR IDENTIFICATION: Report dated
7 October 12, 1899, from R.H. Pidcock, Indian
8 Agent for the Kwawkewith Agency, to the
9 Superintendent General of Indian Affairs
10

11 MARKED R14 FOR IDENTIFICATION: Report dated
12 September 16, 1900, from R.H. Pidcock, Indian
13 Agent for the Kwawkewith Agency, to the
14 Superintendent General of Indian Affairs
15

16 MARKED R15 FOR IDENTIFICATION: Report on the
17 Kwawkewith Agency
18

19 MARKED R16 FOR IDENTIFICATION: Transcript of
20 testimony given to the McKenna-McBride
21 Commission on August 22, 1913
22

23 MARKED R17 FOR IDENTIFICATION: Letter dated
24 February 17, 1934, from Geo. Pragnell,
25 Inspector of Indian Agencies for BC to Major
26 Motherwell, Supervisor of Fisheries
27

28 MARKED R18 FOR IDENTIFICATION: Excerpt from
29 Newell D. (1993), *Tangled Webs of History:
30 Indians and the Law in Canada's Pacific Coast
31 Fisheries*
32

33 MARKED R19 FOR IDENTIFICATION: Excerpt from
34 Assu H. and Inglis J. (1989), *Assu of Cape
35 Mudge: Recollections of a Coastal Indian
36 Chief*
37

38 MS. ROBERTSON: Mr. Commissioner, Krista Robertson,
39 counsel for the Musgamagw Tsawataineuk Tribal
40 Council, which henceforth I will refer to as the
41 "MTTC".
42

43 CROSS-EXAMINATION BY MS. ROBERTSON:
44

45 Q Chief Mountain, *Gilakasla!* Could you please
46 describe the four member Nations of the MTTC.
47

CHIEF MOUNTAIN: The four members are the

1 Kwicksutaineuk, Gwawaenuk, the Namgis and the
2 Kingcome Band, and they're all in -- Gilford is
3 comprised of two bands, Ah-Kwa-Mish, as well, too,
4 but they're amalgamated.

5 Q Thank you. And could you please describe the
6 general territory, the shared territory of these
7 four Nations.

8 CHIEF MOUNTAIN: Yeah. The shared territory of the
9 Tribal Council is generally what is referred to as
10 the Broughton Archipelago up in the northeast end
11 of Vancouver Island. It's between the mainland
12 and Vancouver Island.

13 Q Thank you. And could you please tell us about
14 your experience fishing as a child. Who taught
15 you how to fish, where did you fish, what methods
16 did you use?

17 CHIEF MOUNTAIN: Well, as a child, I was -- I basically
18 lived on a boat with my parents and my
19 grandparents, doing all kinds -- all types of
20 fishing in our -- our rivers of our territory
21 where we would go in and there were still some
22 traps in some of these rivers that we would use,
23 weirs and traps, that we'd go and check. When I
24 was young, I didn't know where they were, but as I
25 grew older, I found out that they were in our
26 general territory in Knight's Inlet area where
27 we'd go and collect fish. But a lot of my time
28 was spent on a commercial boat with my grandfather
29 and my father, table-seining. But a lot of other
30 collection of food was our food and social and
31 ceremonial, where we drag-seined in our river, and
32 that was part of my upbringing.

33 Q And those rivers you described as being in the
34 Broughton Archipelago area?

35 CHIEF MOUNTAIN: Yeah, basically they were in some of
36 the local streams in Viner Sound, in Ahta Creek
37 and Charles Creek and in Call Inlet and Protection
38 Creek, general streams in the close vicinity of
39 Village Island.

40 Q Thank you. Have you ever observed or caught
41 Fraser River sockeye in the rivers that you fished
42 in as a child?

43 CHIEF MOUNTAIN: At the time I knew that there was a
44 difference, but I didn't know that they were
45 Fraser. But you could clearly tell that the
46 Fraser River fish and the timing of the year,
47 fishing in June and July, that the Fraser River

1 fish were a lot larger than the local stocks. The
2 local stocks were a lot smaller in our creeks,
3 basically six to eight pounds, and the fish that
4 we caught in the local streams and the Fraser
5 River fish that were also caught following the
6 local stocks were at least ten to 12 pounds and
7 slightly different colour.

8 Q So were you observing then adult Fraser River
9 sockeye on their migration southward in these
10 areas?

11 CHIEF MOUNTAIN: Yeah. We basically, when we did catch
12 them, we kept them. We didn't throw them back.
13 But a lot of -- a lot of people didn't care. They
14 were -- just want their food fish. And a lot of
15 the fish that we caught in the Nimpkish River, I
16 think at least 20 or 30 percent of the food fish
17 we catch, if we caught 200, you'd probably catch
18 about 60 of them would be the Fraser River fish
19 when we drag-seine.

20 Q Thank you. And, Chief Mountain, can you speak
21 about the changes that you've observed in our
22 lifetime in the stocks that spawn in the MTTC
23 traditional territory.

24 CHIEF MOUNTAIN: A lot of concerns are brought about,
25 about the assessment done in the creeks. We've
26 done a lot of work, and I've walked quite a few of
27 these streams where a lot of them aren't recorded
28 now. But we used to always see 20,000, 30,000
29 fish in some of these smaller streams. And then
30 in bigger streams like Kingcome and Wakeman and
31 you'd see basically 100,000, 200,000 fish in these
32 streams. And even in the Nimpkish there used to
33 be 100,000, 200,000, but historically there was
34 1.2 million in the Nimpkish River alone. That was
35 just for sockeye, not counting the chums, coho and
36 springs.

37 But as the years progressed, when as a
38 Guardian, we'd be assessing these streams by foot
39 and floating the rivers, and by helicopter or
40 fixed plane. And there's a noticeable drop over
41 the last 20 years of hardly any fish going into
42 the local streams, even the Nimpkish River
43 streams, there's drastic decline. I used to swim
44 in pools where there'd be 20,000 sockeye in there,
45 and later on in the years basically had 1,000 in
46 there, you know, drastic decline in the last 20
47 years.

1 Q Are the MTTC involved in efforts to rehabilitate
2 some of these stocks?

3 CHIEF MOUNTAIN: There has been a lot of talk with DFO,
4 and at one point that they wanted to put a
5 hatchery on the Kingcome River, and talk about
6 enhancing a lot of the other local streams in the
7 mainland. And on the Nimpkish River, there is a
8 hatchery, and they have been trying to keep the
9 stock steady, but there's no money coming from DFO
10 so there's lack of capacity for funding to
11 actually do a lot of this enhancement projects
12 that need to be done on the mainland and the
13 Nimpkish River. So basically where our hands are
14 tied; we aren't actually basically doing much at
15 all.

16 Q Okay. What today is the main source of food
17 fishery for the MTTC Nations?

18 CHIEF MOUNTAIN: Today everybody fishes the Johnstone
19 Strait fishery, which is the Fraser River sockeye,
20 because of like I said previous, all our streams
21 have no more fish in there. You know, some of the
22 major streams like Kingcome and Wakeman, a few
23 years ago you had 50 and just this last year they
24 had seven or eight hundred. So people do not want
25 to fish those streams and lakes because they're
26 already depleted.

27 So all the villages in the area and the other
28 nations, like Alert -- from Alert Bay and Port
29 Hardy, they all fish the Johnstone Strait sockeye
30 fishery, Fraser River sockeye.

31 Q Thank you. And could you please speak about the
32 cultural significance of salmon to the Musgamagw
33 people.

34 CHIEF MOUNTAIN: Well, it's on the same lines as Rod
35 has said, that it's a cultural significance for
36 us, and a lot of our songs and dance and even our
37 Creation Story, where we heard that how our salmon
38 was created and how it symbolizes our culture and
39 tradition. And also the twins in our family have
40 their own song, the salmon dance song, which
41 signifies their -- the abundance that we have and
42 hopefully that we're going to get more sockeye.
43 So we have that dance in our Big House.

44 And it's for me, growing up -- I grew up with
45 my grandparents, and basically we lived on sockeye
46 salmon. We would -- we would have salmon three
47 times a day, and snacks. We'd have our dried

1 fish, and it was a staple every day when I was
2 growing up. And it's not the same now.

3 Q Chief Mountain, we know from your witness
4 statement that you were an Aboriginal Fisheries
5 Guardian. You were the supervisor of that program
6 in DFO's Area 12, which is also the Musgamagw
7 territory. Could you in that role as a supervisor
8 of that program, are you familiar with the test
9 fishery in Johnstone Strait of the Fraser River
10 sockeye?

11 CHIEF MOUNTAIN: Yes, I am.

12 Q Could you please tell us your views on the
13 effectiveness of the test fishery as it relates to
14 traditional knowledge, and if it's changed over
15 time, the conduct of that test fishery.

16 CHIEF MOUNTAIN: Well, I remember way back when I was
17 still commercial fishery at the time when DFO was
18 doing the test fishery, and all the fishermen were
19 wondering what DFO was doing. Why are they
20 fishing on the bum tides, why are they opening it
21 up and on the biggest tides when we know it's
22 dangerous out there, and basically they would make
23 sets at the wrong times when there's no fish. And
24 previous to what the fishery -- test fishery is
25 now, there's basically two boats during their
26 sockeye, and maybe during their chum fishery,
27 doing the test fishery, when there used to be way
28 more test boats out there when they first started
29 out. So you're not getting an accurate number of
30 what is really out there.

31 And just like Rod was saying, all the elders
32 know when there's a lot of fish out there. But
33 the way DFO is doing the testing on the wrong
34 tides, the backup tides, you cannot get an
35 accurate number of what's really out there.

36 Q Thank you. Chief Mountain, are there salmon farms
37 in the MTTC traditional territory?

38 CHIEF MOUNTAIN: Yes, there's -- currently there's 29
39 farms out there, which are not licensed right now,
40 but DFO has taken them over and are supposed to
41 licence them in December. And there's one pending
42 application for a licence, as well.

43 Q Now, recognizing we're going to have, I think, at
44 least a week of hearings on the subject of
45 aquaculture, I'm just going to ask you some
46 questions in respect of your communications with
47 DFO about the farms in your territory. Have you

1 been involved in communications with DFO about
2 MTTC's traditional knowledge and experience that
3 you've had observing changes in your territory,
4 from the presence of these farms.

5 CHIEF MOUNTAIN: Yes. Around the year 1999/2000/2001,
6 where there was a noticeable increase in these
7 fish farms from 1,000 -- a 100,000 fish to up to
8 500,000 or 600,000 fish, we noticed, and our
9 traditional knowledge holders, our clam diggers,
10 our fishermen, and people who lived out in the
11 village, noticed a lot of changes out there to
12 deal with all our resources, clam beds, shellfish,
13 ground fish, and it was brought to the attention
14 of the leadership back then.

15 So there's a big change that traditionally
16 everybody would notice because they live out in
17 the territory and they're on the grounds every day
18 and fishing every day. That's their life. And
19 they've noticed all those changes, and it's been
20 documented and a lot of this information is
21 brought to DFO and they do know.

22 Q Do you feel that DFO has been responsive to these
23 communications?

24 CHIEF MOUNTAIN: No. We bring our concerns forward,
25 and it's the same old thing when we meet with
26 them: "We'll come back to you," or, "We'll ask our
27 superiors what to do," and but we do not usually
28 hear anything back and there's no action taken.

29 Q Thank you. Chief Mountain, are any of the MTTC
30 member nations in an AAROM body, or receiving
31 AAROM funding currently?

32 CHIEF MOUNTAIN: Right now I know that they MTTC
33 bodies, none of them have, but we have all
34 applied. And for whatever reason, DFO rejected
35 all our applications. Like the three other bands,
36 Kingcome, Hopetown and Gilford, applied on their
37 own, and the Namgis applied on their own, but
38 neither of our proposals got accepted. So, no,
39 right now we're not -- we don't have any AAROM
40 money.

41 Q So currently what is your arrangement with DFO?
42 What's your forum that you use to engage in
43 management discussions with DFO?

44 CHIEF MOUNTAIN: A lot of our decision are is the
45 Namgis has their own fisheries and the Kingcome,
46 Hopetown and Gilford have their own AFS agreement,
47 as well. So we do have, each band does have a

1 fisheries organization. And also my position,
2 mine is strictly dealing with the resources in the
3 territory as it pertains to fish farms. So we do
4 have a lot of interaction with DFO from AFS
5 agreements.

6 Q Thank you. I'm just going to conclude with a
7 couple of questions to you around how the MTTC
8 Nations communicate with other First Nations
9 around the sharing of the Fraser River fishery.
10 Are the MTTC Nations involved in forums, groups,
11 organizations where that kind of communication
12 happens?

13 CHIEF MOUNTAIN: Yes. We have some councillors on our
14 band who attend a lot of these meetings in
15 Vancouver and Richmond to do with the Fraser
16 Panel, or the FRAWG Committee, and the IMAWG
17 Committee. I'm not exactly sure what they stand
18 for, I just see these acronyms on the letterheads
19 when we receive them. But our councillors do
20 attend them and I know the other bands have
21 representations on them as well, so they are at
22 the table. And just like Rod said, we are
23 attendants, but we're not part of the decision-
24 making body. It's just information that DFO
25 brings to us. So we're basically not there making
26 any decisions. We're there to listen. So that
27 needs to change.

28 Q And have you been involved in meetings facilitated
29 by the First Nations Fisheries Council?

30 CHIEF MOUNTAIN: Yes. I was at a few meetings at a
31 fish council. I haven't been to all of them. I
32 was basically there when it first started, when
33 they created the First Nations Fishery Council
34 Action Plan, and where we all got together to
35 actually -- to work together with all the Coast
36 First Nations and the Fraser River First Nations,
37 get rid of our differences because we all know
38 we're all fishing for the same fish, the Fraser
39 River sockeye fish. So we had to stop pointing
40 fingers and we had to learn to share, because the
41 Fraser River sockeye fishery passes everybody's
42 doorstep and spawns in a few First Nations
43 territories. So we're all after the same thing,
44 and we had to unite. And there was actually a
45 meeting in Prince Rupert, where a number of us
46 were there, and the word is we need to have unity
47 on all this fisheries resource and conservation

27

PANEL NO. 11

Cross-exam by Ms. Robertson (MTTC)

Cross-exam by Ms. Fong (LJHAH)

1 was also the number one topic about that Fraser
2 River fish, as well.

3 MS. ROBERTSON: Thank you, Chief Mountain. Those are
4 my questions.

5 MR. MCGOWAN: Mr. Commissioner, Ms. Fong, who is
6 counsel for the Heiltsuk would be questioning
7 next. I don't know if it's your preference to
8 take a break now.

9 THE COMMISSIONER: Sure, we'll do that.

10 THE REGISTRAR: The hearing will now recess for 15
11 minutes.

12

13 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

14 (PROCEEDINGS RECONVENED)

15

16 THE REGISTRAR: Order. The hearing is now resumed.

17 THE COMMISSIONER: Ms. Fong?

18 MS. FONG: Thank you. Lisa Fong for Heiltsuk Tribal
19 Council.

20

21 CROSS-EXAMINATION BY MS. FONG:

22

23 Q Chief Newman, can you give us a brief description
24 of your background, for the Commissioner?

25 CHIEF NEWMAN: Yes. I'm a Hereditary Chief. I hold
26 two different titles. My father was Kwagiulth and
27 I hold the name (indiscernible) of the Kwagiulth
28 people, and Kwifta (phonetic) from the Heiltsuk
29 people.

30 Q Okay. Can you describe for us when you started
31 fishing?

32 CHIEF NEWMAN: When I came out of residential school
33 when I was 14 years old, and I was hired by a
34 relative in Klemtu to go fishing with him. I was
35 a young boy then. So I've been on a seine boat
36 since I was 14 years old. I've retired for the
37 last 11 years from my boat. My son now runs my
38 boat and they kicked me off. I guess they thought
39 I was getting too old so --

40 Q How many sons do you have?

41 CHIEF NEWMAN: I have three sons.

42 Q And do they all fish?

43 CHIEF NEWMAN: Two of them fish on the boat. They are
44 all fishermen. They are all commercial fishermen,
45 but two of them fish on my boat.

46 Q Can you briefly describe for us your political
47 involvement on behalf of Heiltsuk?

1 CHIEF NEWMAN: Yeah, well, I was a member of the band
2 council for a number of years, and then I served
3 as the chief of -- elected chief of the band for a
4 number of years. I guess I was involved in the
5 politics of the community for over 30 years.

6 Q Okay. Were you also a participant with the Native
7 Brotherhood of B.C?

8 CHIEF NEWMAN: Yes, I was a member of the Native
9 Brotherhood for many years. I served on the board
10 for a good number of years, and then I was the
11 president of the Native Brotherhood of B.C. for 11
12 years.

13 Q Okay. And were you also involved in the
14 Aboriginal Fisheries Commission?

15 CHIEF NEWMAN: Yes, I was the Coastal Co-chair on the
16 Aboriginal Fisheries Commission.

17 Q Were you -- did you have any involvement, any
18 judicial experience?

19 CHIEF NEWMAN: Yeah, I was the first aboriginal person
20 appointed as a magistrate in British Columbia.

21 Q Okay. How long was that?

22 CHIEF NEWMAN: Yeah, I served as a magistrate for nine
23 years.

24 Q Thank you.

25 CHIEF NEWMAN: I was also a member of the National
26 Fisheries Commission Committee for the Assembly of
27 First Nations.

28 Q Thank you. Can you describe for Mr. Commissioner
29 where the Fraser River sockeye salmon passed
30 through Heiltsuk territory?

31 CHIEF NEWMAN: Yeah, the Fraser River sockeye and all
32 the passing stock usually came in through the
33 south end of Price Island, along the Price Island
34 shore and into Milbanke Sound, across the Seaforth
35 Channel, and to Cape Mark, down to Purple Bluff,
36 Spider Island, Nalau Pass, Hakai Pass, and down
37 through the outside of Calvert Island, and also
38 went through Hakai Pass and Nalau Pass into Fitz
39 Hugh Sound, and passed through quite a lot of our
40 territory.

41 Q Can you now speak about the cultural significance
42 of the Fraser River Sockeye salmon to the
43 Heiltsuk.

44 CHIEF NEWMAN: As it's been pointed out, they sort of
45 mixed, intermingled with our local stock, and I
46 think all passing stocks did that. And a lot of
47 passing stock passed through Heiltsuk's territory.

1 Like the Bella Coola stocks passed through, the
2 Rivers Inlet stocks passed through there, and the
3 Fraser River stocks all passed through there.

4 Q Could you explain what the nature of the
5 traditional knowledge is with respect to the
6 passing stock?

7 CHIEF NEWMAN: Well, our people knew when they were
8 there, when they were passing through.

9 Q And are you -- are there, for example, creation
10 myths or celebrations regarding the salmon?

11 CHIEF NEWMAN: Yes, there was a lot of celebrations in
12 our family. We had what they called a barbecue
13 dance that our people perform at the potlatches
14 and we also had what has been talked about, too --
15 I have twins, I have a set of twins in my family.
16 My son has a set of twins and that's considered
17 the lucky -- you're lucky to have that because
18 you're always going to catch lots of salmon. And
19 my twins are entitled to dance the salmon dance at
20 any potlatch.

21 Q Thank you. Is there also a traditional commercial
22 aspect to marine resources for Heiltsuk?

23 CHIEF NEWMAN: Yes, the Heiltsuk are ocean people. Our
24 economy was based on resources, it always was and
25 the digs in Namu showed that we'd been there for
26 10,000 years, and I think if they went a couple of
27 more feet, they'd find out we'd been there for
28 20,000 years. But they found bones of salmon and
29 different kinds of fish. Even the remains of
30 lootooner (phonetic) were included in that dig.
31 But our people have always been ocean people. We
32 weren't -- we didn't migrate from the interior, we
33 were always ocean people. And as Rod pointed out,
34 our reserves remain small because our economy was
35 based on the resources of the sea.

36 The **Gladstone** case was won on that basis,
37 because what (indiscernible) recorded what they
38 did in the old days, how they traded with other
39 nations.

40 Q Now, with the decline of the passing stock, the
41 salmon in particular, what sort of impacts have
42 you observed on Heiltsuk?

43 CHIEF NEWMAN: It had a very devastating impact on our
44 community. You know, we now have the highest
45 social -- serious social problems that we never
46 had before. We have a high unemployment rate, our
47 fish plant is closed down. It wiped out our

1 trolling fleet, took away 75 percent of the
2 earning power of our gillnet fleet, and that
3 started the decline of our gillnet fleet.

4 Before that, we were independent people. We
5 didn't depend on government handouts to do the
6 things you wanted to do. We build our own houses.
7 We didn't what they call government houses at that
8 time.

9 After they closed Milbanke and created the
10 problems and the loss of our -- and mismanaged our
11 stocks in our local area, our people become
12 totally dependent people. We did totally -- we
13 became totally dependent on the government to do
14 things for us.

15 It was devastating for our community. We
16 have the highest suicide rate. Any communities on
17 the coast have a high -- very high suicide rate
18 amongst the young people because of that. And it
19 also created the -- an epidemic in sugar diabetes
20 for our people. We have a -- now have a high rate
21 of cancer, heart problems, strokes among our young
22 people. And we attribute it to the loss of our
23 economic opportunities in the fishery and loss of
24 our food that we eat -- get from the sea.

25 Q Okay. Thank you. I'm going to ask a series of
26 questions now about joint management or co-
27 management. In your view, currently, does joint
28 management, and I'll use that term, "joint
29 management" instead, of the Fraser River sockeye
30 salmon, or the marine resources, does that exist
31 with DFO?

32 CHIEF NEWMAN: No, no such thing as -- we do have what
33 they call the co-management, but that issue has
34 been in the -- on the table of the Heiltsuk for
35 many years, even before we got a -- we agreed to
36 an AFS agreement. The request for the joint -- or
37 we want to take over the total management of our
38 fishery and we put that to the government when we
39 had our AFS and at that time, the government
40 agreed that enforcement would be included in our
41 co-management deal, but they withdrew that and
42 they withdrew the funding that was going to come
43 with it because the Civil Service Alliance of
44 Canada was opposed to it. They felt it was a
45 threat to the members of the Department of
46 Fisheries and Oceans, and DFO withdrew it.

47 Q Okay. So with some of the more specific aspects

1 of joint management, in your view, what does joint
2 management mean in terms of enforcement powers?
3 Like, how can you give that meaning?

4 CHIEF NEWMAN: I was just looking at the copy of the
5 Wild Salmon Policy sitting on the table out there.
6 I was co-chairman of the native -- or Aboriginal
7 Fisheries Commission when the Department of
8 Fisheries of Oceans wanted to go on what they
9 called the multi-purpose tour. And they asked the
10 members of the B.C. Aboriginal Fisheries
11 Commission Board if they could accompany them, and
12 we did. But what they wanted to push was the Wild
13 Salmon Policy. They already had it in print.

14 When our people heard that, and every Indian
15 community wanted to, we heard the same thing. The
16 aboriginal people wanted to be totally involved in
17 rebuilding of the resources, totally involved in
18 rebuilding of the habitat, and totally involved in
19 the management of the resources.

20 Q Mm-hmm. And so with enforcement, what would
21 "totally involved" mean for Heiltsuk?

22 CHIEF NEWMAN: The right to control openings and
23 closes, who comes in to fish it. Because right
24 now, we've got a -- when they closed Milbanke, it
25 became a sports fishing area. We have thousands
26 of sports fisherman coming there every year. Our
27 little airstrip looks like Vancouver International
28 in the summertime with all the sports fisherman
29 that come in there. And we can't go fishing. We
30 fished for one day a season for the last two
31 seasons. How can people survive on that? And
32 yet, we stood on the beach and watch these
33 carpetbaggers taking boxes of fish out of our
34 territory and we get nothing out of it. They
35 don't even spend any money in our community. So
36 to me, that's not right. You know, when you take
37 away people's economic opportunities, that's not
38 right.

39 Q Okay. So coming back to joint management, I now
40 want to turn to FSC, so fishing for food, social
41 and ceremonial purposes. So in your view, again,
42 like, what does "joint management" mean in terms
43 of an appropriate FSC management?

44 CHIEF NEWMAN: Well, the system that's in place today,
45 where the sports fishermen are allowed to run
46 uncontrolled in our territory, is an infringement
47 on our title and rights to food fishery. Milbanke

1 was the bread basket of the Heiltsuk people.
2 Today, it's hard for us to go out and get -- we
3 don't -- because we don't just depend on the
4 salmon, as has been pointed out here already, we
5 depend on the halibut, the cod, and clams, and
6 everything else that's in that ocean for our food.
7 We live in a very high-cost area and we put a high
8 value on the food fishing in the commercial
9 fishery because it takes care of our people all
10 year round.

11 Q So when you say you put a high value on your food,
12 social and ceremonial fishery, do you also manage
13 its conservation voluntarily?

14 CHIEF NEWMAN: Yes, there have been times when we've
15 been forced to close certain areas in our
16 territory to the food fishery in order to try to
17 rebuild the stocks and we've stopped other -- we
18 used to allow our people to come and harvest their
19 own roe, herring roe in our territory.

20 Q Mm-hmm?

21 CHIEF NEWMAN: We've -- we also asked people to stop so
22 we could conserve that when the herring started to
23 decline.

24 Q Okay. I'm going to show you a document.

25 CHIEF NEWMAN: I'd like to add something else to that.
26 We also were asked to be part of rebuilding --
27 trying to rebuild abalone. The Department of
28 Fisheries and Oceans, in their wisdom, created 20
29 commercial abalone licences that were given to 20
30 white people. They totally wiped out the abalone
31 in our territory. We've been trying to rebuild
32 that stock. (Indiscernible) asked if we would
33 voluntarily stop taking abalone for the -- in the
34 food fishery --

35 Q Mm-hmm?

36 CHIEF NEWMAN: -- and we agreed to do that, to help try
37 to rebuild that. We haven't been able to take
38 abalone in the food fishery for over 30 years now
39 and, yet, we have the highest -- one of the
40 biggest poaching operations going on in our
41 territory in abalone and there's no enforcement
42 out there. So we wanted to be able to put a joint
43 -- a total management in place to look -- not just
44 look after the commercial part of it, but to also
45 protect the resources for the benefit of the
46 people. We live there. We've been there for
47 10,000 years. We're not going to go anywhere.

1 When the Crown Zellerbach ran out of logs,
2 they abandoned Ocean Falls, the people left. They
3 left us with a mess, but we're not going to leave,
4 we're going to live there. And it's important for
5 the Heiltsuk people that they protect and rebuild
6 the resources that we have and that's not
7 happening under this system.

8 Q Thank you. I'm going to show you a document.

9 MS. FONG: Mr. Lunn, if you could assist us, the June
10 7th, 2010 notice.

11 Q Chief Newman, if you could take a look at that and
12 tell me whether you recognize it?

13 CHIEF NEWMAN: Yes, I recognize it.

14 Q Can you explain to Mr. Commissioner what it is.

15 CHIEF NEWMAN: It was a request from the Fraser River
16 bands and some of the bands on Lower Vancouver
17 Island, to part of the Salish bands, if we could
18 stop the food fishery, an early Stuart run was
19 coming through our territory, and we agreed to do
20 that.

21 Q This was voluntary?

22 CHIEF NEWMAN: That's right.

23 Q Okay.

24 MS. FONG: I'd like to mark this as the next exhibit,
25 please.

26 THE REGISTRAR: Exhibit number 302.

27

28 EXHIBIT 302: June 7th, 2010 "Notice to all
29 Food fishers" document

30

31 MS. FONG:

32 Q Is it your view that the current AF -- sorry, FSC
33 allotment in these AFC agreements is adequate for
34 Heiltsuk?

35 CHIEF NEWMAN: Yeah, I've looked at that agreement
36 briefly. I glanced through it the other day and
37 if I was asked to sign it, I wouldn't sign it
38 because it seems to me, the number's out of whack
39 for the poundage and the population that we have,
40 and the way we're increasing so fast, it doesn't
41 seem to line up so --

42 Q Okay. And has Heiltsuk done a community needs
43 study to ascertain the amount, like, the FSC
44 allotment that would be appropriate?

45 CHIEF NEWMAN: Yes, they have done a study to do that
46 and I think that it's now part of our 15-year plan
47 that's been put into place.

1 Q Okay.

2 MS. FONG: With the assistance of Mr. Lunn, if he can
3 put up our next document? Thank you. And if you
4 could flip to the next page, please, Mr. Lunn?
5 And perhaps slowly scroll down into page 3.

6 Q Chief Newman, do you recognize this document, and
7 if you do, can you please explain what it is?

8 CHIEF NEWMAN: Yes, I've seen it. Yes, I've seen it.

9 MS. FONG: If we can settle on page 3?

10 Q Chief Newman, can you explain what this document
11 is?

12 CHIEF NEWMAN: Yes, it's a study that was done to
13 determine the needs of our -- the food fishery
14 needs of our -- the Heiltsuk people.

15 Q I notice, on page 3, it indicates the amount
16 required for a population of 2,180 people is
17 98,819, I believe it's pounds, of sockeye. Do you
18 believe this to be accurate?

19 CHIEF NEWMAN: I guess it's close, but like I said, the
20 numbers, to me -- I haven't done arithmetic on it,
21 but, to me, they look out of whack. You know, our
22 nation is increasing fast and the numbers there
23 will never take care of the needs of the people.

24 Q Thank you. When you talk about the needs of your
25 people, are you also speaking of urban members and
26 what that means?

27 CHIEF NEWMAN: That's right. Any Heiltsuk person has
28 the title and right to the food fishery, and we
29 want to make sure that they have the opportunity
30 to enjoy their right.

31 Q And to your knowledge, have there been any issues
32 regarding obtaining fish through the food fishery
33 right for urban members?

34 CHIEF NEWMAN: Well, this year, we tried -- with the
35 big run of sockeye that went through our
36 territory, we missed it. Because the sockeye goes
37 through our territory and, like I said, I feel
38 that we're entitled to a share of it and we should
39 be able to take it anywhere on the migratory
40 route. But DFO would not allow us to get more
41 sockeye for urban members in other people's
42 territories.

43 MS. FONG: Okay. If, Mr. Lunn, you can assist us with
44 the next document?

45 THE COMMISSIONER: Do you wish to mark that document?

46 MS. FONG: Oh, sorry, yes, please. May we mark that as
47 the next exhibit?

1 THE REGISTRAR: Exhibit 303.
2 MR. MCGOWAN: Just before it's marked, Mr. --
3 THE REGISTRAR: Oh.
4 MR. MCGOWAN: -- Registrar. Mr. Commissioner, there's
5 a lot of very specific information in this
6 document and if the document is being marked
7 simply to the extent it informs or explains Chief
8 Newman's testimony, I don't have an objection, but
9 I'm not sure it's appropriate to mark it for the
10 truth of everything contained in the document.
11 MS. FONG: We're satisfied to mark it for
12 identification, or for the limit expressed by Mr.
13 McGowan as we will hopefully be able to call other
14 witnesses through Commission counsel later on in
15 the proceeding.
16 THE COMMISSIONER: Very well, we'll mark it as an
17 exhibit on the understanding that counsel has
18 reached with Mr. McGowan.
19 MS. FONG: Thank you.
20 THE REGISTRAR: For identification?
21 THE COMMISSIONER: No, we'll mark it as the next
22 exhibit.
23 THE REGISTRAR: That will be Exhibit 303.
24
25 EXHIBIT 303: Document entitled, "Heiltsuk
26 Marine Use Plan"
27
28 MR. MCGOWAN: Just to be clear, Mr. Commissioner, I'm
29 not -- Commission counsel is not committing to
30 call further witnesses to give evidence on this
31 document. We haven't -- don't have a present
32 intention to do so. I'll certainly discuss it
33 with my friend.
34 MS. FONG: Yes, we'll make that request. Thank you.
35 And the next document, please?
36 Q Again, Chief Newman, if you could take a look at
37 this document and tell me whether you recognize
38 it, and if you do, can you explain what it is?
39 CHIEF NEWMAN: Yeah, it's an agreement that was
40 developed, I guess, by the Department of Fisheries
41 and Oceans between the Heiltsuk and the Department
42 of Fisheries and Oceans.
43 Q Oh, I think perhaps it says, "Aquatic
44 Department --
45 CHIEF NEWMAN: Mm-hmm.
46 Q -- and "Dutilh (Heiltsuk for "news")," it's a
47 newsletter?

1 CHIEF NEWMAN: Oh, yeah, I see that. Yes.

2 Q Okay.

3 CHIEF NEWMAN: The Dutilh, yeah.

4 Q And could you take a look at it and tell me
5 whether you recognize it and what it is.

6 CHIEF NEWMAN: Yes, I recognize it.

7 Q Okay. And what is the newsletter about?

8 CHIEF NEWMAN: Our food fishery. Our food fishery
9 and --

10 Q Okay. Of the events over this summer?

11 CHIEF NEWMAN: There's concerns from the urban people
12 on why they didn't receive a share of the food
13 fishery.

14 Q Thank you.

15 MS. FONG: I'd like to mark that as the next exhibit,
16 with the same limitations expressed by Commission
17 counsel.

18 THE REGISTRAR: Exhibit number 304.

19

20 EXHIBIT 304: Document entitled, "Aquatic
21 Department Dutilh (Heiltsuk for news)"
22

22

23 MS. FONG:

24 Q Chief Newman, in your experience, have you had, or
25 are you aware of negotiations with DFO on the FSC
26 allotment numbers in your AFC agreements?

27 CHIEF NEWMAN: Not that I recall. We always got the
28 notices with the numbers already written into it
29 and we always refused to sign those agreements
30 because we didn't agree with the numbers. We
31 didn't want anybody to put the numbers on -- we
32 wanted to put the numbers in it.

33 Q Okay. And would they let you put the numbers in
34 it?

35 CHIEF NEWMAN: No.

36 MS. FONG: If you could, Mr. Lunn, pull up the next
37 document?

38 Q Okay. The next document is the Comprehensive
39 Fisheries Agreement signed on December 9th, 2009.
40 Do you recognize this?

41 CHIEF NEWMAN: Yes, I do.

42 Q Okay. I'm going to refer you to page 14. Okay,
43 and page 14 reads:

44

45 Schedule B-1, Food, Social and Ceremonial
46 Fishery.
47

47

1 Do you see that, Chief Newman?

2 CHIEF NEWMAN: Mm-hmm. Yes, I was looking at this last
3 night and, again, I thought if I had anything to
4 do with it, I would have never signed this
5 agreement.

6 Q Okay. I'm going to flip over. My question is
7 with respect to a paragraph at page 15, paragraph
8 4(b). Okay. Now, the second sentence of that
9 paragraph reads:

10
11 In the event that the HTC identifies an
12 increase in the food, social and ceremonial
13 needs of its members, during the fishing
14 season, the Parties will review the
15 quantities specified in the Communal Licence
16 issued to the HTC and, if agreed by the
17 Parties, DFO will amend the Communal Licence.
18

19 Are you aware of any circumstance where the
20 Communal Licence was amended to increase the
21 number of the FSC allotment?

22 CHIEF NEWMAN: No, I don't recall any of our
23 allocations being increased, but you know, we --
24 every time there's a change in the amount of quota
25 that the commercial fisherman get and the sports
26 fisherman receive, and this happened in the
27 halibut, with the Kelliher proposal, the halibut
28 fishermen -- the sports fishermen wanted an
29 increase in their allocation so Kelliher was asked
30 by the government to negotiate a deal between the
31 two of them, but they excluded the Indian people,
32 we weren't even a part of that. We weren't
33 consulted in what happened to that agreement, and
34 how it came about. Now, today, the sports
35 fishermen want 40 percent of the total halibut
36 allocation. Again, nobody's come to ask us about
37 what we think about it. And if we had, what do
38 you call it, total management of our resources,
39 we'd be able to control that.

40 Q Okay. But staying with the FSC fishery, let me
41 ask you a question about that next sentence that
42 follows:

43
44 The quantities of fish reflected in the
45 Communal Licence are subject to consultation
46 each year, at which time the needs of the
47 members of the HTC and conservation

1 requirements will be reviewed by the Parties.

2

3 Do you have any knowledge of any consultation with
4 DFO on this?

5 CHIEF NEWMAN: I can only speak for the time I was
6 involved in the band business, there was never any
7 consultation, we were always told, "This is it.
8 You sign it," or -- you know?

9 Q Thank you.

10 MS. FONG: I'd like this document marked as the next
11 exhibit, and I'd be satisfied with the same
12 limitations as expressed by Commission counsel.

13 THE REGISTRAR: Exhibit 305.

14

15 EXHIBIT 305: Document entitled,
16 "Comprehensive Fisheries Agreement"
17

18

18 MS. FONG:

19 Q Now, coming back to joint management and what that
20 -- you know, the aspects of what that might mean,
21 can you tell us whether that would include not
22 just the marine resources, but the inland, like,
23 rivers and stream resources, in your view?

24 CHIEF NEWMAN: You mean the salmon streams inland?

25 Q That's correct.

26 CHIEF NEWMAN: Yes, it would include all of our
27 territory. In our territory, we have over 200
28 salmon streams and because of the problems in the
29 Fraser and the Skeena River, less than 20 percent
30 of the funding that DFO gives to look after
31 streams is spent between Vancouver Island and the
32 Skeena River. The 200 streams in the central
33 coast have been totally abandoned. The Department
34 of Fisheries and Oceans doesn't seem to care
35 whether they produce salmon any more, or not.

36 Q And what would the restoration of these streams
37 matter to the passing stock?

38 CHIEF NEWMAN: Well, it would -- we wouldn't
39 concentrate on the passing stock so much. You
40 know, the -- when you neglect the streams in our
41 territory, you're forcing a dependency on the
42 Fraser River and the Skeena River.

43 MS. FONG: Mr. Lunn, if you can assist us with the last
44 document? We've also passed this out to counsel
45 because I recognize it's got a lot of detail and
46 it might be hard to see.

47 Q Chief Newman, if you could take a look at this and

1 tell me if you recognize this document and what it
2 is, what it depicts?

3 CHIEF NEWMAN: Well, it -- that marks all the salmon
4 streams in our territory.

5 Q Oh, sorry, can you speak into the mike?

6 CHIEF NEWMAN: I'm sorry. This is a map showing the
7 location of our -- of all the fish-bearing streams
8 in our territory.

9 Q Okay. And do --

10 CHIEF NEWMAN: Our salmon-bearing streams.

11 Q And do all of them bear salmon currently?

12 CHIEF NEWMAN: No, they don't. A lot of them don't
13 produce any more because of bad logging practices
14 that we had in our territory.

15 Q And are there -- do you know if there are
16 restoration activities going on with these salmon
17 streams?

18 CHIEF NEWMAN: We attempted, on our own, to try to do
19 that. You know, some of the things I see on that
20 agreement they want to sign is that they -- we
21 walk the streams and try to keep them clear, but
22 we were told not to do that, not to interfere with
23 it.

24 Q Okay. So my last question on joint management
25 would be for meaningful joint management, do you
26 have any comments about how fishing licences ought
27 to be?

28 CHIEF NEWMAN: Yes, I have some concerns about the way
29 PICFI has been put into practice. I was at the
30 joint -- I was at the press conference. I was
31 invited by the Minister of Fisheries and Minister
32 of Oceans to -- and Indian Affairs to be there.
33 And what I heard them present jointly was
34 something altogether different than what we see
35 being put in place today.

36 We were told by the Department of Fisheries
37 and Oceans that their mandate is to make
38 everything communal. An aboriginal person will
39 not have the opportunity to be a private owner any
40 more, according to their process. And to me,
41 that's not right.

42 You know, the communal system has not worked.
43 The process through the AFS has not worked. It
44 has not created any economic opportunities for the
45 band members who are supposed to be using them. A
46 lot of those licences have been leased to non-
47 Indian people. And the government does have some

1 concerns about that because I saw some documents
2 from the standing committee on fisheries and
3 oceans to question why that's happening. So it's
4 not doing what it's supposed to do, it's doing the
5 opposite.

6 PICFI was supposed to create economic
7 opportunities for aboriginal people. It hasn't
8 done that. It's been changed so it's creating
9 economic opportunities for the non-Indian people.

10 Q And just so I understand your evidence, is it the
11 case that you say communal -- or, sorry,
12 ownership, individual-owned licences are better
13 than the communal system currently in place?

14 CHIEF NEWMAN: Yeah, well, the -- when we owned our
15 licences individually, we created a lot of jobs in
16 the community. Today, it's dead. If you go to
17 communities like Alert Bay, Bella Bella, Klemtu,
18 Rivers Inlet, there's no fishermen there any more
19 because somebody created management plans that are
20 designed to push people out of the industry, and
21 the aboriginal people are the ones that's been
22 pushed out. Limited entry was created to push
23 somebody out. The quota system was created to
24 push somebody out, the area licensing, the Mifflin
25 buy-back program, they were all created to push
26 somebody out and we're the victims.

27 Q Okay. Now, my last question for you today is do
28 you believe that First Nations can negotiate with
29 the DFO with a unified voice, with one voice? And
30 so for example, using the First Nations Fisheries
31 Council?

32 CHIEF NEWMAN: Yeah, I guess that -- I have to express
33 my own personal view on it. Many times, our
34 people have tried to put something in place to
35 speak with one voice. It was always a dream of
36 our ancestors that we could put something together
37 that would speak out with one voice for the
38 aboriginal people. The first one, the Indian
39 Allied Tribes, went to Ottawa. As a result of
40 that trip to Ottawa, the government put a law in
41 place that made it illegal for Indian people to
42 meet to talk about the issues. If three people
43 got together and talked, that was called an
44 illegal congregation.

45 So the Native Brotherhood was born under the
46 umbrella of the church to try to form another
47 organization to fight with the unified voice.

1 Again, that didn't work, it broke apart, and the
2 Native Brotherhood of B.C. became a coastal
3 organization.

4 Then we formed the Union of B.C. Indian
5 Chiefs, again to speak with one voice on a line of
6 questions. Again, that broke apart and the one
7 issue that always broke us apart was the fishery
8 because the coastal people have a lot to talk
9 about when they talk about fish. The ocean is
10 full of wealth and the aboriginal people want to
11 share that wealth.

12 Q Mm-hmm?

13 CHIEF NEWMAN: The river systems, all they talk about
14 is salmon. And we've tried different ways to try
15 to put something together to speak on behalf of
16 all aboriginal people. The B.C. Aboriginal
17 Fisheries Commission was put in place to do that.
18 It didn't work. Now, we've got a new one that the
19 government is putting -- decided to fund to try to
20 do that, but, again, I have my concerns whether
21 it's going to work. And I was at the AGM in
22 Prince Rupert a month ago, and some of the things
23 I heard there created -- troubled me in ways
24 because I do believe that the coastal people need
25 to come together to deal with their issues in a
26 unified way. The interior people need to come
27 together to deal with their issues in a unified
28 way. Because right now, the two of us are all
29 split, we're divided. The government has a way of
30 -- to split us, divide and conquer. They do that
31 with funding. The AAROM funding is one source of
32 funding that they use to divide us.

33 Many times their funding -- their funding
34 arrangements have been designed to create
35 divisions among our people. It's the same in the
36 interior. There's a bit split on the Fraser River
37 between the Fraser River bands. So we need to get
38 together to deal with our issues together in a
39 separate way, the coastal people and the interior
40 people, and then they come together and deal with
41 those issues that we have in common.

42 MS. FONG: Thank you very much, Chief Newman, those are
43 my questions. With respect to the last document,
44 the streams, if I could get that marked as the
45 next exhibit and with those same limitations would
46 be fine.

47 THE REGISTRAR: Exhibit 306.

1 EXHIBIT 306: Document entitled, "Spatial
2 Distributions of Sockeye Streams"
3

4 MR. GERELUK: Thank you, Mr. Commissioner and panel
5 members. My name is Joe Gereluk. Gereluk is
6 spelled G-e-r-e-l-u-k, and I represent the Métis
7 Nation, British Columbia.
8

9 CROSS-EXAMINATION BY MR. GERELUK:
10

11 Q My question would be directed, then, of course, to
12 Mr. Ducommun. And Mr. Ducommun, we've heard about
13 your professional qualifications. I wonder if
14 you'd be able to discuss your personal experiences
15 as they relate to fisheries in B.C. for the
16 commission?

17 CAPTAIN DUCOMMUN: Sure. I think the purpose of today
18 is to focus more on -- on traditional knowledge
19 and kind of world view, and I'll try to do that.
20 I am a professional biologist, fisheries
21 biologist. Primarily, I've been working in the
22 fisheries field since about 1972 in British
23 Columbia.

24 Part of the reason I became a fisheries
25 biologist is because I was inseparable from the
26 water when I was a young man, and I found that it
27 was the way that I could stay out there on the
28 water and on the land and not have to do a real
29 job.

30 Anyway -- but I'm also a traditional
31 knowledge holder and I -- my traditional knowledge
32 comes in a little bit different way, I think than
33 some of the other panellists and that is that
34 within the Métis world, particularly in the
35 fishing business, our old-time commercial
36 fishermen are disappearing. I think that's
37 probably true within all commercial fishing
38 sectors and, you know, it's just -- it's the
39 nature of the commercial fishery now that there
40 just is not that many opportunities. A lot of
41 those opportunities are corporate.

42 But one of the things that I've done over the
43 last number of years, just out of interest more
44 than anything, is I've actually interviewed a lot
45 of our old commercial fishermen and our old
46 fisheries families and also talked to people along
47 the coast and along the major river systems from

1 our communities about their activities around
2 traditional harvesting, including fish. So my --
3 so as I interview them, their traditional
4 knowledge becomes mine so it -- but it -- it's a
5 little bit difference process than being, you
6 know, raised in a commercial fishing family, which
7 I wasn't. So I'll speak primarily on kind of that
8 traditional aspect today.

9 Q All right. And I understand part of the -- your
10 experience included working with -- as an
11 aboriginal fisheries advisor for the Cariboo
12 Tribal Council?

13 CAPTAIN DUCOMMUN: That's correct. I -- for a number
14 of years, I managed the aboriginal fisheries in
15 the mid-Fraser for the Northern Shuswap people.

16 Q And your current position with the Métis Nation of
17 British Columbia is?

18 CAPTAIN DUCOMMUN: I'm the Director of Natural
19 Resources so I'm responsible for all the national
20 resource activities related to our 35 communities.

21 Q And perhaps we can just have a brief review of the
22 Métis Nation structure as it is in British
23 Columbia relative to where the Métis population is
24 dispersed in British Columbia in accordance with
25 your studies with the UBC.

26 CAPTAIN DUCOMMUN: Okay. We -- Métis Nation B.C.
27 represents 35 chartered -- what we call chartered
28 communities so they've signed an affiliation
29 agreement with a provincial organization. They're
30 distributed throughout British Columbia. There's
31 somewhere around 10 or 12 within the Fraser
32 watershed and between -- essentially, on the east
33 coast of Vancouver Island. So those would be the
34 ones that are certainly more interested in Fraser
35 sockeye.

36 All of our communities have ballot box-
37 elected presidents. We also have ballot box-
38 elected regional and provincial officials.
39 There's 11, including a women's and a youth
40 representative. So that process allows us to --
41 you know, to discuss issues, concerns, activities
42 with Métis across the province. According to the
43 2006 census, there was just under 60,000 self-
44 identifying Métis in British Columbia, and we also
45 have a process to identify **Powley** compliance. So
46 according to the **Powley** decision in the Supreme
47 Court, there's actually a definition of who a

1 Métis is so we have a process to do that.

2 Q And what percentage of the population would you
3 say, of the Métis population, is concerned with or
4 spread out over the Fraser watershed?

5 CAPTAIN DUCOMMUN: I would guess that there's probably
6 in the low tens of thousands of Métis who are
7 involved in communities within the Fraser River or
8 along the east coast of Vancouver Island.

9 Q And one more item with respect to the Métis Nation
10 governance structure. There is a legislation
11 system in place and I understand there's a **Natural**
12 **Resources Act** under which you, as the captain of
13 the natural resources operates?

14 CAPTAIN DUCOMMUN: That's correct. We have a
15 legislative process. We -- our legislation is law
16 for our nation. It's passed through a two-reading
17 process. The first reading is all of our
18 presidents plus our 11 ballot box provincial
19 representatives have to pass it. And our second
20 reading is at the AGM, where all of our citizens
21 have an opportunity to vote on it. And the
22 **Natural Resource Act** passed at both those stages
23 unanimously.

24 Q And the Act, itself, is concerned with
25 conservation; is that correct?

26 CAPTAIN DUCOMMUN: It's -- conservation is definitely
27 one of the big focuses of that Act, but also
28 access to resources is another.

29 Q And does the Act speak to the use of fishery or
30 other wildlife resources for food, social and
31 ceremonial purposes?

32 CAPTAIN DUCOMMUN: The Act directs that that is the
33 only reason for that Act. It specifically
34 actually prohibits commercial activities and
35 that's not to say that there may not, in the
36 future, be commercial activities approved, but
37 there would be a different legislative process to
38 do that.

39 Q All right. Now, the historical perspective of
40 Métis, from the historical perspective of Métis in
41 British Columbia, can you describe what was the
42 Métis relationship with the fishery in British
43 Columbia?

44 CAPTAIN DUCOMMUN: Well, Métis people first came in the
45 fur trade era to B.C. We are -- the earliest
46 documents that we have go back to 1793. We know,
47 just from some of the reading between the lines of

1 those documents, that Métis people were here
2 before that. But there is -- one of the projects
3 that I'm involved with with the University of B.C.
4 is collecting historic documents from the fur
5 trade era. We have over 20,000 documents now and
6 some of those documents speak fairly early on to
7 commercial fishing activities, not specifically to
8 the fact that they were Métis, but we also know
9 that the workers in the fur trade during the early
10 1800s were primarily Métis people.

11 Q And how would you describe the relationship to --
12 of the Métis people from a scientific viewpoint or
13 a traditional viewpoint? Is there an explanation
14 for the Métis' view of the fishery from those two
15 perspectives?

16 CAPTAIN DUCOMMUN: Well, one of the things -- because
17 we're a mixed race people, we tend to pull the
18 best we can from each of our European, primarily,
19 and First Nations roots, and one of the things
20 that's actually reflected in our **Natural Resource**
21 **Act** quite strongly is that we try to balance
22 traditional knowledge with what we call western-
23 based science and it's actually written into our
24 process that we have to look at traditional
25 knowledge in any decisions that we make related to
26 national resource management.

27 Q All right. Now, there is a concern about Métis
28 having legal rights, or not, to fish, and as a
29 result, has there been a change in the manner in
30 which Métis people fish in British Columbia?

31 CAPTAIN DUCOMMUN: Well, Métis, up till -- my
32 understanding, from interviews I've done and my
33 own personal observations, even in this -- in the
34 1970s, was that we tended to fish more opening up
35 until about the last 20 or 30 years when kind of
36 the crunch came and people all of a sudden were
37 paying attention to missing fish and Métis became
38 more -- I don't know, I've got a pretty strong
39 word for the way DFO treats us, but, you know, we
40 were forced underground, essentially.

41 We -- Métis fishing was in a lot of ways not
42 unlike some of the First Nations fishing, where it
43 was a social, communal activity and now it's
44 really an individual kind of an activity in most
45 cases. In some cases, because we're related by
46 family in First Nations, you know, some -- in some
47 cases, Métis fish under First Nations rights,

1 essentially.

2 Q Okay. When you talk about the First Nations
3 connection to Métis, and it's a familial
4 relationship, is that what you're saying?

5 CAPTAIN DUCOMMUN: In a lot of cases it is because
6 Métis families have been over 200 years in this
7 province and because in the early, you know, 70 or
8 80 years of that, there was no European women,
9 there was a lot of intermarriage between Métis
10 men, primarily, and First Nations women and we see
11 those families. And my family is a perfect
12 example, I have lots of relatives on reserves in
13 the interior of B.C. who are status Indians but
14 who carry, essentially, the same Métis bloodline
15 as myself.

16 Q Now, how the Métis, as far as you're -- to your
17 knowledge, been included in any federal or
18 provincial policy programs concerning the salmon
19 fishery in British Columbia?

20 CAPTAIN DUCOMMUN: No.

21 Q Has there been any effort by the Métis to become
22 involved with the salmon fishery in British
23 Columbia?

24 CAPTAIN DUCOMMUN: There's been effort to become
25 involved in discussions around the management of
26 salmon, and there's also been efforts to, you
27 know, identify opportunities for Métis fishing.

28 Q And the results of those efforts?

29 CAPTAIN DUCOMMUN: Essentially, no response. I mean,
30 we get responses, but it's, you know, "Go to
31 court, prove you have rights and we'll talk to
32 you."

33 Q Are you talking federal -- sorry, I mixed them up,
34 federal and provincial response?

35 CAPTAIN DUCOMMUN: Well, DFO. Yeah, DFO, at this
36 point, I'm speaking to.

37 Q And then you've talked about traditional
38 knowledge, what is your view about how the
39 traditional knowledge, from the Métis perspective,
40 should be used with respect to salmon fishery?

41 CAPTAIN DUCOMMUN: Well, I think we've -- you know,
42 we've run the course of using science alone to
43 develop management practices around managing these
44 fish, and I think that one of the things that
45 we've missed, and certainly, I've heard that from
46 other panellists this morning, is that there has
47 been no consideration of traditional knowledge in

1 the mix. I think that, you know, number one,
2 there's value to some traditional knowledge, but
3 number two, and I spoke to it in my statement, was
4 that the real value is engaging aboriginal people,
5 and we believe that Métis have something to
6 contribute to the management of salmon along the
7 Fraser, and one of the things that that might be
8 is that we have interests along the entire
9 migration route of those fish, and so we have a
10 different kind of a view than some First Nations
11 who kind of have a piece along the route where
12 they have interests.

13 Q And you, in your statement, or your written
14 statement also talked about a merging of
15 scientific and traditional knowledge. Can you
16 expand on that?

17 CAPTAIN DUCOMMUN: Well, that was my science-based
18 background, but you know, we understand, I think
19 aboriginal people understand that fish, not only
20 just being part of the ecosystem they belong to,
21 they're a key part, salmon in particular and that,
22 you know, the ecology of any area where they
23 exist, it really depends on them. So everything
24 -- you know, everything that walks, swims or flies
25 is going to eat a salmon at sometime in its life,
26 it seems like, in British Columbia, and beyond
27 that, you know, the plants and the trees, as well,
28 really require those nutrients when they come back
29 from the sea. And one of the things that we're --
30 and I think DFO has known for a long time because
31 they've actually artificially added nutrients to
32 sockeye lakes for quite a number of years, but I
33 think that's one place where traditional knowledge
34 and science are starting to agree, that, "Yeah, we
35 actually need more fish into these watersheds in
36 order to maintain that cycle."

37 Q And would you be able to evaluate, or could you
38 evaluate the value of sockeye as a food fish as
39 compared to other salmon as food fish?

40 CAPTAIN DUCOMMUN: Well, I think Métis consider it to
41 be high, possibly the highest and I think that
42 goes back traditionally that, you know, sockeye,
43 pound for pound, if you were going to subsist on
44 salmon, you would probably want sockeye because of
45 the oil content and the fact that it's high
46 calorie and -- but that doesn't mean that other
47 species weren't used.

1 Q The Métis is part of some Government of Canada
2 initiatives and, in particular, to endangered
3 species. Can you talk a little bit about that?

4 CAPTAIN DUCOMMUN: Well, the -- under the **Species at**
5 **Risk Act**, there is a traditional knowledge
6 component and it's one of the examples that I used
7 where DFO might want to look, and that is there's
8 actually two aspects there where aboriginal and
9 traditional knowledge is incorporated. One is in
10 a aboriginal traditional knowledge subcommittee,
11 which advises, essentially, scientists about
12 technical issues, and the other is in what's
13 called the NACOSAR which actually advises the
14 Minister on traditional knowledge issues related
15 to species at risk. So there is some processes
16 out there in other jurisdictions where traditional
17 knowledge is incorporated.

18 Q Have you sat on -- you, personally, sat on those
19 subcommittees?

20 CAPTAIN DUCOMMUN: I sit on the NACOSAR Board on behalf
21 of Métis.

22 Q Now, with respect to your interactions with the
23 Department of Fisheries and Oceans, we spoke about
24 it briefly, but do you find a difference between
25 the way the West Coast -- or the British Columbia
26 Métis are treated with respect to West Coast
27 fisheries as compared to other provincial Métis
28 organizations are treated with fisheries in other
29 provinces?

30 CAPTAIN DUCOMMUN: Well, it's our understanding that
31 Métis organizations in other provinces have
32 agreements with Department of Fisheries in other
33 areas, and it's one of the things that we've
34 identified is that, you know, there's lots of
35 places where we would like to work with DFO that
36 are not related to catching fish, but we're being
37 kept away from that because of this notion that
38 the **Powley** rights don't apply to Métis in British
39 Columbia. And you know, it's interesting that in
40 that way, the government has treated Métis
41 differently than First Nations because a lot of
42 First Nations case law is applied across the
43 country the day that it's announced in the Supreme
44 Court, but in the case of Métis, it's not.

45 Q Is there another effect, though, of DFO not
46 consulting with the Métis with respect to harvest
47 numbers, for instance?

1 CAPTAIN DUCOMMUN: Well, we -- I mean, I think DFO
2 ignores the fact that we are harvesting, we're not
3 sitting and waiting for them to allow us to fish.
4 A lot of it's off the radar. A lot of is using
5 other processes, but our own estimate, based on
6 the 2006, we did a natural resource use survey and
7 we had 1,600 respondents and we applied that, you
8 know, to the demographics from the 2006 census.
9 We estimated somewhere around 100,000 sockeye from
10 the Fraser would be a reasonable estimate of what
11 the harvest is. But because DFO won't talk to us,
12 they are missing a component of the aboriginal
13 fishery which really puts -- you know, creates a
14 deficit in that dataset for them.

15 Q And you also speak about a holistic view that DFO
16 should take in the approach to salmon fishery in
17 B.C. Can you describe or expand on that?

18 CAPTAIN DUCOMMUN: Well, I think, you know, there has
19 to be some connectivity between management, you
20 know, habitat protection, you know, water
21 licensing, aquaculture, and right now, it's a
22 silo'd approach and I don't believe that, in many
23 cases, different groups within the Department
24 talk, but the reality is is that there's a
25 multitude of reasons why we're in the situation
26 we're in. We're not going to find, you know, the
27 silver bullet of why sockeye salmon have
28 disappeared. You know, they've disappeared
29 because there's a lot of pressures, you know, from
30 habitat, from water use, from aquaculture, from
31 fisheries and, you know, we have to really look at
32 the big picture and try to figure out where -- you
33 know, what are the big contributors and how do we
34 deal with them, but also what are the smaller
35 contributors to the reason why we can't recover
36 these stocks?

37 Q And has there been any investigation by the Métis
38 Nation with respect to the reason for the sockeye
39 -- or the decline in sockeye over the last few
40 decades?

41 CAPTAIN DUCOMMUN: Well, I mean, I think we have some
42 ideas but, you know, really, it's just management
43 issues. It's -- you know, we're -- I guess
44 there's a big concern, a bigger concern about what
45 global warming is doing to these stocks, and if,
46 in fact, it is one of the bigger contributors,
47 then we may have some difficulty in recovering

1 those fish, but, you know, sockeye salmon have
2 proven to be fairly resilient. I mean, the
3 Horsefly sockeye run after the gold rush was down
4 to 500 in the peak year and it's come back to, you
5 know, a few millions in the peak year in some
6 years now. So I mean, they can recover, but they
7 need the habitat, they need the water quality,
8 they need -- which includes no pollution. And DFO
9 has to really look at -- you know, for instance,
10 we have a process right now where there's a major
11 pipeline talking about crossing upper Fraser River
12 watersheds, a huge major pipeline and there
13 doesn't seem to be any process in place to
14 actually say, "Well, you know, the Fraser sockeye
15 are so important, there's certain things that
16 we're not going to allow to happen within the
17 watershed because of the risks to their, you know,
18 future." And so I think, you know, in one case,
19 habitat protection in DFO is going to be involved
20 in evaluating that pipeline, but are they really
21 talking to anybody else in DFO about what that
22 might do to impact the future of that stock?

23 Q Thank you.

24 MR. GERELUK: We had -- Mr. Commissioner provided a
25 copy of the **Natural Resources Act** and I'm seeking
26 to have this entered as an exhibit at this time in
27 this proceeding.

28 THE COMMISSIONER: Very well.

29 THE REGISTRAR: Exhibit number 307.

30
31 EXHIBIT 307: Métis Nation British Columbia
32 **Natural Resource Act**
33

34 MR. GERELUK:

35 Q Is there anything you wish to add, Mr. Ducommun,
36 to this discussion?

37 CAPTAIN DUCOMMUN: I don't think so at this time.

38 MR. GERELUK: Thank you very much. That will be the --
39 my questions.

40 THE COMMISSIONER: Thank you.

41 MR. MCGOWAN: It seems to be an appropriate time to
42 break for lunch, Mr. Commissioner.

43 THE COMMISSIONER: Thank you.

44 THE REGISTRAR: The hearing is now adjourned until
45 2:00 p.m.

46
47 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

1 (PROCEEDINGS RECONVENED)

2
3 THE REGISTRAR: The hearing is now resumed.
4 MS. WILLIAMS-DAVIDSON: (Speaking Haida language).
5 Terri-Lynn Williams-Davidson representing the
6 Council of the Haida Nation. I just want to begin
7 by expressing my gratitude and honour for being in
8 the presence of the witnesses today sharing your
9 knowledge about the Aboriginal Worldview.

10
11 CROSS-EXAMINATION BY MS. WILLIAMS-DAVIDSON:

12
13 Q Guujaaw, you are the President of the Haida
14 Nation. What is that position?

15 PRESIDENT GUUJAAW: Just before I start, Your Honour, I
16 want to tell your recorder I've got a little bit
17 of a speech issue. I'm in the middle of a dental
18 thing, so if they don't understand something I
19 say, they could certainly get it clarified.

20 The Council of Haida Nation is the governing
21 body of Haida Gwaii, and is organized by our
22 people in such a way that includes democratically-
23 elected council and president and vice-president.
24 It includes some representation from our two
25 villages and also the hereditary chiefs from about
26 18 different villages where our people originate
27 from.

28 Q How long have you held that position?

29 PRESIDENT GUUJAAW: It's 11 years now, and still a
30 couple of years on my mandate.

31 Q Have you held other positions within the Haida
32 Nation in the past?

33 PRESIDENT GUUJAAW: Yes, I have. It is mentioned that
34 I worked with the hereditary chiefs as firekeeper,
35 and I worked with the Council of Haida Nation, and
36 I also worked in management. Before that,
37 basically I was carver and trapper and those sort
38 of things.

39 Q And what is the mandate of the Council of the
40 Haida Nation?

41 PRESIDENT GUUJAAW: It's to restore our title to Haida
42 Gwaii, to look after the lands and the waters
43 around us in the meantime, to ensure that our
44 rights continue through the generations. It's one
45 thing to have the right to fish, but it's also
46 necessary that we have fish to exercise those
47 rights, so a lot of the effort is in protecting

1 those resources.

2 Q I'd like to ask you to share knowledge about the
3 origins of the Haida people.

4 PRESIDENT GUUJAAW: The story in our origins is
5 speaking about a time before human beings had
6 existed, that it talks about the whole earth being
7 covered by water, and schoolagette (phonetic)
8 comes out on a rock in the southern part of our
9 island, and the elaquans (phonetic) also comes out
10 near that rock, and those are the ones who give
11 birth to the ancestors of the two different -- the
12 Raven and the Eagle Clans.

13 Q Do you have an idea of when that might have taken
14 place?

15 PRESIDENT GUUJAAW: It goes well before the Ice Age
16 that we're familiar with. The archaeological
17 evidence I think goes back about 14,000 years, and
18 before that, it would be pretty hard to find any
19 evidence because it'll be under water because of
20 the changing sea levels, though there has been
21 some work and artefacts found underwater.

22 Q Meaning that that was an area that was occupied in
23 the past?

24 PRESIDENT GUUJAAW: Yes. And the way the archaeology
25 was carried out was taking the most probable areas
26 where there was rivers and lakes and those sort of
27 things, but we also have stories that talk about
28 the time when the Hecate Strait was dry and our
29 people lived in more of a tundra type of
30 condition. That was in the last Ice Age. That
31 part of our story is proven out by science.

32 Q Is there anything in the oral history record about
33 the change in that landscape?

34 PRESIDENT GUUJAAW: Yes, yeah, there was a time when
35 there was no trees at all and our people lived,
36 wore skins and used grasses and things to live so
37 the culture that we see today has evolved and
38 changed with the landscape.

39 Q And how does that origin affect -- and those ties
40 to Haida Gwaii affect the respect or the
41 relationship with the land and the sea and the
42 salmon?

43 PRESIDENT GUUJAAW: Well, the -- what we consider to be
44 the Haida culture, most people would look at totem
45 poles and canoes and hear the songs and dances and
46 think that that is Haida culture. But in itself,
47 it isn't the culture. The culture is the

1 relationship to the land and those are ways of
2 expressing and celebrating that relationship.

3 Q I'm wondering if you would share some examples of
4 how we would show that respect in that
5 relationship, say, to salmon?

6 PRESIDENT GUUJAAW: Well, we do still practice the
7 first salmon ceremonies and, like our neighbours,
8 we try to always make sure that the first
9 consideration is for the survival of the stocks.
10 So that would be the first thing that we have to
11 consider.

12 Q Are there any supernatural beings that are charged
13 with taking care of the salmon?

14 PRESIDENT GUUJAAW: That is -- at the top of each creek
15 is a supernatural called -- we called them "Creek
16 Woman", and they regulate the water and look after
17 the salmon as they come and go.

18 Q Are you aware of any gifts that Haida people
19 received from the supernatural beings?

20 PRESIDENT GUUJAAW: Well, I think we consider that --
21 you know, certainly our place on the earth is a
22 gift from the supernatural beings, but to be more
23 specific, we know now the whole sequence of the
24 arrival of plants on the Haida Gwaii, from the
25 first tree. And we had one clan who had claimed
26 the crest of the first tree because they were the
27 ones who found it. It is a pine, and they had the
28 right to wear them at potlatches. Again, very
29 recently - you know, in the last 10 or 15 years -
30 science has been able to lay out the whole
31 sequence of the arrival of plants and confirm
32 that, you know, it arrived at that time. Our
33 people would have been here when that -- when that
34 happened.

35 But one that I have experience with is a
36 canoe I built, canoes, and basically the canoe-
37 building had gone out of practice for some time,
38 and we had to back-engineer it, basically, going
39 into the forest and finding some in different
40 stages of completion and looking at old ones that
41 had survived and are sitting in museums. There's
42 some in the museums.

43 To do that, we blueprinted some of the old
44 ones and we had a shipwright do that and he was
45 amazed to find that the tolerance of the -- and
46 accuracy of the canoes, the old canoes were within
47 sixteenths of an inch which -- you know, even a

1 modern wooden boat builder couldn't be any closer
2 than that.

3 That was given to our people. It was made
4 out of a single tree, carved in one shape with the
5 expectation that it changes when it's steamed
6 open. Once it's steamed, the ends come up and the
7 sides go down giving it more stability and
8 manoeuvrability. Those were the first marine
9 craft with a flared prow. In fact, you know, at
10 the time of contact when the first British and
11 Spanish ships had come around, they were quite
12 blunt instruments in comparison to our Haida
13 canoe. It was around 1900 that the first schooner
14 was built with a flared prow like that, and it was
15 inspired by the big canoe in New York.

16 So our people had learned from the
17 supernaturals who had taken the first canoe
18 builder -- and I should say that before that,
19 there was some kind of rudimentary dugouts that
20 existed there. This story is probably -- the
21 first cedar arrived about 5000 years ago, so we
22 figure it's about three or four thousand years ago
23 that this happened. It basically took them
24 through the different steps.

25 So I built canoes based on what we learned
26 from the old ones, and was pretty astonished at
27 the technology used in getting those things to the
28 point that we recognize them.

29 Up to that point, there was -- our people
30 were actually isolated on Haida Gwaii after the
31 Ice Age because, as the ice on the continent had
32 caused the edges to bulge up and that's why the
33 Hecate Strait was dry. As the waters -- as the
34 ice melted, the melt waters out of the Skeena, The
35 Nass, the Stikene, Kitimat River and all these
36 other ones where it would have been pretty
37 torrential waterways. Eventually as the ice let
38 its weight off the continent, the islands kind of
39 sunk into it.

40 So, for this reason, our language is an
41 isolate language (sic).

42 Q And what impact did the canoes have on fishing in
43 Haida Gwaii?

44 PRESIDENT GUUJAAW: Well, our commerce generally, it
45 gave our people the ability to move back and
46 forth. So our people travelled all over the
47 coast. There's accounts of certainly far into

1 Alaska, but also into California. We had stories
2 that described our people going to a place where
3 they -- to the west where they used colourful
4 clothes and ate maggots, which I figure is rice.

5 Q Just to come back, what impact did the canoes have
6 on fishing technology, or where we fished?

7 PRESIDENT GUUJAAW: Well, certainly from that point,
8 you know, they talked about a time when people who
9 didn't have the canoes would send branches out
10 into the -- into the ocean and trigger a hook to
11 fall. So afterwards, certainly we had the ability
12 to cover a lot of country and, you know, the
13 access to move further was available to our people
14 for, you know, offshore fishing.

15 Q And when you say "offshore fishing", did that
16 include fishing for Fraser River sockeye salmon?

17 PRESIDENT GUUJAAW: Yes. You know, I think that it's
18 kind of a misnomer to consider that interception
19 fishing because the migration route right from the
20 place that they're born to coming back certainly
21 is part of their life cycle, and along the way
22 they're eaten by killer whales and sea lions and
23 other fish, and certainly the indigenous people
24 who are along the coast in the route were
25 legitimate recipients of those fish.

26 Q And relative to streams like the Fraser River,
27 will you speak about the number and sizes of
28 streams for salmon, sockeye salmon in Haida Gwaii?

29 PRESIDENT GUUJAAW: Well, we're on an island so
30 relative to the Fraser, the Skeena, or some of the
31 other mainland rivers, we have small streams which
32 were tended to by fish weirs. The fish weir
33 fishing was changed again by -- in the early days.
34 I think it's an important factor here. Our people
35 numbered, you know, somewhere around 10,000
36 people. That's an estimate. The population had
37 dropped down to 600 people, and it was at that
38 point when colonialism stepped in there.

39 It was during that point of low population
40 when actually the federal government had issued
41 fishing nets and outlawed the weirs.

42 Q Have there been any impacts of logging on the
43 streams in Haida Gwaii, salmon streams?

44 PRESIDENT GUUJAAW: Yes. That was a pretty contentious
45 few decades for our people, fighting against the
46 logging to protect our rivers. In the last little
47 while, we've succeeded in protecting fully half of

1 the landscape of Haida Gwaii, and included is all
2 the watersheds in those areas. But at the same
3 time, we didn't surrender the rest to industry.
4 We've changed the rules so that there would be a
5 lot more consideration for the wildlife and fish
6 and the cultural use of it.

7 Q Do Haida people have food fishing permits from
8 DFO?

9 PRESIDENT GUUJAAW: No.

10 Q Do they have any permits to fish?

11 PRESIDENT GUUJAAW: No. For a while, our people did
12 get food permits and, you know, then it became
13 pretty evident, like the Department of Fisheries'
14 efforts were really on our people. They weren't,
15 you know, while -- like, for instance, I was
16 charged and convicted for taking 27 pink salmon,
17 and got two days in jail, while the commercial
18 fleet took 750,000 fish out of that same
19 watershed.

20 Other people were harassed, and it just came
21 to the point where we see them basically, you
22 know, in the '60s, I guess, when the big tree farm
23 licences were given out. It was commonplace for
24 them to take gravel from the river bottoms and use
25 it for building roads. My own father told me
26 about times when there were so many salmon eggs
27 and seagulls on the road that, when they were
28 going to work, they couldn't pass through without
29 hitting seagulls.

30 Q I'm wondering if we could just shift to the last
31 area here and speak about the Haida experience
32 with management and with co-management.

33 PRESIDENT GUUJAAW: Yeah, just before that, I wanted to
34 say something about, you know, why we have been in
35 discussions with the Government of Canada, why
36 this goes on.

37 So the difference between the rest of Canada
38 and British Columbia is that in the rest of
39 Canada, the -- whether the treaties were right or
40 wrong, there was processes set out across Europe,
41 basically, who was colonizing the world, and the
42 British had their own particular set of rules, and
43 there was other conventions that described how the
44 race into the un-European parts of the world would
45 be divvied up. Basically there has been no
46 surrender of our title west of the Rockies, so
47 therefore the people in each of their own regions

1 still maintain aboriginal rights. You know,
2 that's a word that's familiar with the
3 constitution and things like that, but it's not
4 necessarily the way that we would describe it.

5 Q So perhaps we could speak -- start by first
6 speaking about your experience in managing the
7 Copper Bay River -- Copper River.

8 PRESIDENT GUUJAAW: The Copper River is a sockeye
9 stream and basically under the management of the
10 Department of Fisheries. It had -- the population
11 of fish had dropped down to a few hundred, and so
12 our people said, you know, that's enough. We're
13 going to lose this fishery. So they took over the
14 management in that fishery. Our people didn't
15 fish for several years until they were able to
16 build the stock back up. Today it is producing
17 salmon for one of our villages again.

18 But again, our people don't go to them for --
19 to the Department of Fisheries for permits. They
20 have no respect for the Department of Fisheries
21 and their management of resources.

22 Q Are there other areas where the Haida are managing
23 or co-managing fisheries?

24 PRESIDENT GUUJAAW: In the razor clam fishery, in that
25 instance we manage that fishery with an agreement
26 with the Department of Fisheries that has been in
27 place for, I don't know, 15 or 20 years. So our
28 people go out and make the assessments and
29 determine how much could be taken out of there in
30 a season.

31 Q Perhaps one of the most well-known examples of co-
32 management is the Gwaii Haanas area. Could you
33 speak briefly about the management structure
34 there?

35 PRESIDENT GUUJAAW: The Lyle Island issue was well
36 known, and occurred about 25 years ago when there
37 was blockades. Basically our people had seen what
38 was occurring north of there by logging, and our
39 people blockaded and stopped the logging in that
40 area. Eventually, the federal government came up
41 with some money to pay off the logging companies
42 and cut some sort of deal with British Columbia,
43 and a separate deal with our people. Basically
44 that one is called -- the first arrangement
45 between the province and the federal government is
46 called the South Moresby Agreement. The one with
47 the Haidas is called the Gwaii Haanas Agreement.

1 In that instance, there is an agreement that
2 all our rights remain intact. Our people have the
3 right to hunt, fish, trap, to even live there and
4 to cut trees and do all the things that our
5 ancestors did which, over the thousands of years,
6 had no adverse affect upon the land.

7 The management is really the management of
8 the visitors into the area, and in that instance,
9 we set up a management board made up of equal
10 numbers of federal and Haida people, and we look
11 at every issue and determine how many visitors
12 should be allowed and what kind of quotas and
13 those sort of matters. But also just to look
14 after things like seabirds and streamside and
15 determine what other activities are acceptable.

16 Q You also spoke about the salmon streams being
17 protected more recently. Is that also a co-
18 management agreement? The more recent agreement
19 to protect the streams under the land use area.

20 PRESIDENT GUUJAAW: Oh, in the Gwaii Haanas area, we
21 also have -- it's only about a year now since we
22 signed one for the marine area, and it'll be
23 similarly managed. Another distinction in the
24 agreement that I think should be known here is
25 that it certainly isn't an agreement to manage a
26 national park or national marine park. It's -- we
27 made our land designation long before the federal
28 government did.

29 So there's two separate authorities that work
30 together to manage the lands. In that instance,
31 we just agreed to disagree on the matter of who
32 holds title to those lands.

33 Q Just in closing, I would like you to speak briefly
34 about negotiations with the Crown regarding
35 salmon.

36 PRESIDENT GUUJAAW: Well, we've -- I think that most of
37 the people in here would be more familiar with the
38 treaty process that is in place. Basically we
39 seen that process to be totally unacceptable to
40 us. Such issues as land selection, you know, we
41 don't know what -- we don't know any part of our
42 land that we could surrender any -- all of our
43 rights to -- in exchange for a treaty, and nor
44 have we ever seen any place where that is an
45 expectation of the constitution or the courts of
46 this land.

47 I think it's basically cooked up by the

1 federal and provincial government with -- that
2 severely limits the ability to really have any
3 meaningful discussions on the matter of title.
4 We're not willing to surrender our title and we
5 don't think that's necessary for even having a
6 relationship within Canada and determining who we
7 are within the context of Canada. However, it
8 requires also that Canada would have to recognize
9 that there is aboriginal title over our lands.

10 In pursuing this, we have a case before the
11 courts, title case, which not only -- not only are
12 we prepared to meet the test of title as it's laid
13 down, but also we've challenged the Crown's
14 assertion that they have title. We're saying that
15 they have no legitimate means to claim title to
16 our lands, so this court is before -- or this case
17 is before the courts.

18 We've actually put it in abeyance, coming out
19 of another case that we did which was -- it's
20 referred to as Haida in a lot of other cases that
21 have used it, but we went into court with one of
22 the bigger logging companies at the time, and we
23 showed the court and they agreed that the
24 processes that were in place for consultation, the
25 processes of -- and relationship between the Crown
26 and the aboriginal people was not being conducted
27 in an honourable way by the Crown. The Supreme
28 Court upheld the earlier rulings that even before
29 any aboriginal title is proven, that the Crown has
30 to behave properly in their dealings with the
31 indigenous people.

32 Q Now, we just -- I'm sorry, I have one --

33 PRESIDENT GUUJAAW: Oh, yeah, the question was about
34 negotiation. So we put the case in abeyance and
35 we agreed to a process which is not the treaty
36 process. It is reconciliation and through that,
37 we've done a number of things with the provincial
38 government, including we, again, each have used
39 our own authorities to set land aside to remain in
40 its natural state. We both use our own -- if we
41 come into this agreement with our own authorities
42 in managing those lands, and basically, again,
43 leaving the matter of title aside.

44 Basically that agreement, the first agreement
45 that was done, The Gwaii Haanas agreement was
46 challenged by an individual that it was race-based
47 and unconstitutional and so on. The court upheld

1 that it was -- that it was innovative way to deal
2 with a complex problem and they said it stands.
3 It went to the -- they tried to bring it to the
4 Supreme Court and they -- they said that the
5 management structures are acceptable, and they
6 were.

7 So with the federal government -- and again,
8 I'll say that, you know, we have accomplished a
9 lot of things in the last couple of years with the
10 provincial government, but the federal government
11 at our table, and at every other table, has
12 basically stonewalled everybody on the matter of
13 fishing, and I think this is really important to
14 this Commission, is that basically in the last --
15 since this Cohen Commission has been set up, they
16 said they are going to rely upon the outcome of
17 this process, and they're not going to do anything
18 in the meantime. It's causing a lot of
19 difficulties at all the negotiating tables.

20 There was some, I guess, that were close to
21 finishing their agreements and everything has been
22 on hold. You know, I don't know that this
23 Commission is even mandated to try to determine
24 what ought to happen with the fisheries.

25 Q Okay, thank you. And I just, sorry, I have one
26 more question. You've talked about the co-
27 management agreements between the Haida and the
28 Crown and I just have a quick question about where
29 there are any traditional values or principles to
30 guide co-management or sharing of resources
31 between First Nations on the coast?

32 PRESIDENT GUUJAAW: Our people had traded and are quite
33 familiar with all our neighbours along the coast.
34 We move back and forth frequently doing commerce.
35 You know, in more recent times, in the canoe days,
36 into Victoria and New Westminster getting trade
37 goods.

38 But along the way, certainly we knew all of
39 our neighbours and the Heiltsuk, for example, have
40 brought us songs that were left there in the olden
41 days and, as well, the Nuu-Chah-Nulth had held
42 songs for us, the other Kwakwaka'wakw people, and over
43 the last few years in our relationships, they've
44 given songs back to us and we work together in
45 various ways.

46 But if somebody comes into our territory, the
47 protocols that we have amongst ourselves is -- and

61

PANEL NO. 11

Cross-exam by Ms. Williams-Davidson (CHN)

Cross-exam by Mr. East (CAN)

1 it's just pure respect, is you go to the people
2 who own that territory and you get permission,
3 make arrangements on how that fishing would occur.
4 Certainly, you know, if they say, no, that's their
5 prerogative.

6 MS. WILLIAMS-DAVIDSON: Thank you. Those are my
7 questions.

8 MR. MCGOWAN: Mr. East for the Government of Canada
9 will be next.

10 MR. EAST: Mr. Commissioner, Mark East, for the
11 Government of Canada.

12

13 CROSS-EXAMINATION BY MR. EAST:

14

15 Q Good afternoon, Panel. I just have a few
16 questions, probably about three different areas of
17 questions.

18 I'd like to start with Guujaaw, if I may,
19 just following up on your discussion just now
20 about the different agreements. I'm particularly
21 interested in the Gwaii-Haanas parks agreement,
22 and I just want to maybe talk about that a little
23 bit more. Going to your witness summary -- and
24 that's Exhibit 299 -- I don't think I'll go to it,
25 but you do talk about it in your witness summary.
26 I just want to get a little bit more -- talk a
27 little bit more about how it works. I get the
28 sense that the Parks Management Board that's been
29 developed by the Gwaii-Haanas agreement is a
30 consensus-based approach where there's two
31 representatives from the Haida and two
32 representatives of the Government of Canada
33 sitting on the board. Is that how that -- how
34 that works?

35 PRESIDENT GUUJAAW: Well, you got something wrong, is
36 that it's not a park agreement. The park is
37 Canada's designation.

38 Q Okay.

39 PRESIDENT GUUJAAW: We've designated it a Haida
40 Heritage Site before that. We stood up and
41 stopped the logging, we protected it and later
42 made an agreement with Canada. Before that, we
43 told them without an agreement we're not even
44 going to let you put up an outhouse.

45 So they came into management with us. We're
46 not going into management with them. The
47 agreement is, yes, there's currently two of each.

1 There will be another member added. We operate
2 mainly by consensus. If they're -- if we're held
3 up on a particular issue, it doesn't hold up the
4 whole agreement. Actually, in fact, the
5 superintendent on the Parks Canada side is a Haida
6 person and not because he's a Haida person, but
7 because he's the best person for the job. He also
8 sits on there.

9 Gwaii Haanas has been cited by the *National*
10 *Geographic Traveller* magazine as the best managed
11 protected area in North America.

12 Q So you just answered my next questions is that by
13 all accounts that I've heard, this is an
14 arrangement that's working well.

15 PRESIDENT GUUJAAW: Yes, it is.

16 Q And notwithstanding what's in the paper, I guess
17 -- you know, the paper, the agreement that created
18 this understanding between Canada and the Haida,
19 really it's the product of a lot of hard work on
20 the people involved, and a long process in
21 developing respect and trust for the people who
22 are involved in the process. Would you -- would
23 that be an accurate description?

24 PRESIDENT GUUJAAW: Yes, it is.

25 Q And I don't imagine that was easy. It probably
26 took some time and a lot of effort to come to that
27 position where, from what I understand your
28 evidence, it's rare that issues get bumped
29 upstairs. Things are resolved at the level of the
30 board itself.

31 PRESIDENT GUUJAAW: That's right. And, you know, like
32 to accomplish that thing, it took, you know, not
33 only discussions at the bureaucratic, but at the
34 political level to get there, and I think that
35 everybody who's involved with it now, all the
36 successive Ministers have been pretty happy with
37 it. We've had visitors from Australia, New
38 Zealand and up in the Northwest Territories and
39 across Canada, and so on, to look at it as a
40 model.

41 Q Mm-hmm. And one of the things with the Haida that
42 I understand -- or at least I've been told about
43 the Haida is that they're a united community that
44 has a real vision for, you know, where they are
45 and where they want to go. Would you agree --
46 would that be an accurate description?

47 PRESIDENT GUUJAAW: Well, what I would say is that we

1 basically have the full spectrum of people as any
2 other society would, and we have our
3 disagreements. But all of our people agree that
4 the land has to be looked after and the culture
5 has to continue.

6 Q And one of the things about the Haida Gwaii and
7 the Haida, in their home, is that, from what I
8 understand -- and this may be somewhat unique in
9 B.C., and certainly it would be a small minority
10 of First Nations in the same situation -- but
11 there aren't any overlapping claims from other
12 aboriginal -- from other First Nations to the
13 lands of Haida Gwaii or the waters around it.

14 PRESIDENT GUUJAAW: Well, you know, the water certainly
15 is a different issue. On the lands there is no
16 overlapping. On the water, you know, it is a
17 different thing. It's pretty hard to draw a line
18 in the water and, you know, the fish and the tides
19 and, you know, whether it's pollution or stocks
20 passing through, feeding in our area. You know,
21 like it's all -- it's all connected by the water.

22 Q I guess where I'm going with this is that one of
23 the reasons that this agreement has worked so
24 well, and I guess other agreements that you have
25 with British Columbia, for example, is that Haida
26 are a unified community with a unified voice, and
27 that makes it easier to enter into conversations
28 with the Crown, with the government, with Canada
29 or B.C., and enter into agreements because of that
30 unity that you have.

31 PRESIDENT GUUJAAW: Well, I think that helps when you
32 can unify around particular issues.

33 Q And one of the reasons I bring this up is because
34 one of the discussions we've had in the last few
35 days is some of the challenges facing First
36 Nations generally in B.C., is about finding that
37 common ground and working together toward a common
38 goal. Would you agree with me that a consensus
39 model of management, while perhaps something that
40 we would want to work towards, gets more
41 challenging the more people are being brought to
42 the table. The more chairs that are going to come
43 up to the table, the more difficult it is going to
44 be to obtain that consensus that you're seeking.

45 PRESIDENT GUUJAAW: Well, just to go a little further
46 is, you know, with the provincial government, we
47 fought them for so many years, and now we're

1 coming into places where we're actually using the
2 Gwaii Haanas model for protection of the lands and
3 actually for management of the forests and, you
4 know, we've gone -- basically getting past the
5 notion of fighting and we're trying to work
6 together. It is -- there's complexities to it
7 that, you know, basically we've been in battle
8 mode for so long, we have to retool our own
9 thinking. But, you know, we're trying to create
10 economies now and with that relationship, it makes
11 it a lot easier to get on to more productive
12 things rather than fighting.

13 Q Mm-hmm, thank you. Maybe on the same theme, and
14 I'll maybe turn my attention to asking some
15 questions to Chief Mountain. I heard you today
16 that you -- heard you today talk about your First
17 Nations' interactions with DFO, and I think I
18 heard you say that you agree that, first, it's
19 very important for First Nations to work together
20 and that you do so. But ultimately your community
21 prefers, on fisheries matters anyway, to speak
22 primarily and work directly with DFO. Is that --
23 would that be fair?

24 CHIEF MOUNTAIN: Not really.

25 Q Okay. I'll let you answer what you're saying.

26 CHIEF MOUNTAIN: Just because of the fact that we live
27 in a territory and we know the whole history,
28 local knowledge of it, we would like to have that
29 joint management where we'll be able to have the
30 opening and closures. And just like Rod was
31 saying in his territory, the same thing. We've
32 got so much local knowledge about the fisheries
33 and that, that we should be at the table instead
34 of being told what to do.

35 Q I see, okay. And I guess it's fair to say that
36 you can engage and talk to government, DFO, any
37 other department, at the local level but there's
38 no reason you can't also talk to them in these
39 larger organizations like the FNFC or whatever,
40 some of these larger bodies of First Nations. You
41 can have dialogue at a number of levels; is that
42 right?

43 CHIEF MOUNTAIN: Yes, we are, but we'd like -- we just
44 had a meeting with DFO with a couple of days ago,
45 and we would like -- just because our chiefs and
46 hereditary chiefs are at our table, we'd like
47 their decision-makers at the table too. It

1 doesn't seem to work when they send their local
2 level people or their bureaucrats 'cause they
3 can't make decisions like we can at the table. So
4 it's not an equal footing.

5 Q Okay. I wanted just to ask you about -- you
6 mention that -- I believe it was your First
7 Nations, that the Namgis had sought AAROM funding
8 but was denied. Was that at the Namgis First
9 Nation separately?

10 CHIEF MOUNTAIN: Yes.

11 Q And was that because -- did they give a rationale
12 for why that funding was rejected?

13 CHIEF MOUNTAIN: They wanted us to join an aggregate
14 group.

15 Q And my understanding - and I'd just like to have
16 your thoughts on this - but my understanding is
17 that Namgis have, for this upcoming fishing
18 season, joined the larger aggregate group to
19 receive AAROM funding.

20 CHIEF MOUNTAIN: We were thinking about joining
21 Nanwirkolas (phonetic), but we --

22 Q That's right.

23 CHIEF MOUNTAIN: -- haven't really signed on yet.
24 They've come to our table, but we hadn't made a
25 decision because we need to bring it to the
26 people.

27 Q Thank you. Thank you for clarifying that. But I
28 guess -- the reason I brought that up, and this is
29 maybe turning into something that Chief Newman
30 said about AAROM funding being divisive, and I
31 apologize if I got this wrong, but divisive in its
32 intent of trying to divide and conquer with First
33 Nations.

34 My understanding of the AAROM program is that
35 one of its purposes anyway was to fund First
36 Nations and encourage First Nations to get
37 together, to talk to each other, but also get
38 together to facilitate their discussions with DFO.
39 In that -- does that accord with your
40 understanding of what the purposes of AAROM was
41 and why you're seeking the funding under the AAROM
42 program?

43 CHIEF MOUNTAIN: Our main purpose as a single nation
44 was to access money so we can work on our
45 resources and rivers and stuff as part of an AFS
46 agreement, just to marry it together.

47 Q Well, maybe this is a question for Chief Newman,

1 then. My understanding is that -- and correct me
2 if I'm wrong. Is the Heiltsuk First Nation part
3 of what is called the "Turning Point" or North
4 Coast Turning Point Initiative? I'm not sure if
5 that's the latest name, but...

6 CHIEF NEWMAN: This is the Coastal First Nations now.
7 Yes, they are, in part.

8 Q Okay. Thank you. And that's a -- that's group of
9 DFO funds to the AAROM program, is that right, or
10 do you -- would you know that?

11 CHIEF NEWMAN: No, I don't.

12 Q Okay.

13 CHIEF NEWMAN: But I didn't -- my concern about the
14 AAROM process is there was distance put in place
15 by the Department of Fisheries and Oceans on how
16 you would qualify to get AAROM funding. One of
17 them was you had to form an aggregate, whether you
18 like it or not.

19 Q But that makes sense, in the sense that this
20 particular --

21 CHIEF NEWMAN: It may make sense to you, but not to me.

22 Q Okay. Well, this particular program is designed
23 to fund First Nations to meet and get together, to
24 have First Nations get together in a room and to
25 form aggregates so they can speak to each other
26 and speak to DFO. So in that sense, doesn't it
27 make sense that that money should be used for that
28 purpose?

29 CHIEF NEWMAN: Yeah, well, we've been trying to go at
30 the funding through Native Fishing Association to
31 get their coastal people together so that we can
32 come to some kind of an agreement. Knowing you
33 got all these different groups compete with each
34 other, it's pretty hard to get a decent agreement
35 out of -- do what the aboriginal people really
36 want to do.

37 Q Okay. Well, I'll leave that one for now, and just
38 go maybe to my last area of clarification. I have
39 a few more questions, and perhaps just some
40 clarifications Mr. -- Chief Newman, on your
41 testimony. This relates to some of the documents
42 that your counsel brought to your attention about
43 Heiltsuk fisheries.

44 But I just want to get some clarification
45 about your involvement with the Heiltsuk fisheries
46 management now. Have you been involved on the
47 ground in Heiltsuk fisheries management in recent

1 years?

2 CHIEF NEWMAN: No, I've been out of the politics in the
3 band for a while. My son's involved now, and
4 there's no reason two of us being in there
5 together. It creates problems.

6 MR. EAST: Okay. So maybe we can call up Exhibit 304
7 again.

8 Q This is, as I understand it, the Heiltsuk -- the
9 Heiltsuk newsletter about what happened with
10 respect to the food fishery in 2010. I just want
11 to clarify, were you involved at all in the events
12 in this newsletter that are discussed in this --

13 CHIEF NEWMAN: No. You'd have to talk to Ross Wilson
14 about that.

15 Q Okay. I'll just leave it, then. I won't ask any
16 questions about this document or what happened
17 that year.

18 I would like to go, though, to Exhibit 305.
19 That's the Heiltsuk Comprehensive Fisheries
20 Agreement, and I understand your testimony that
21 this is a document that you don't have any
22 personal involvement in negotiating.

23 CHIEF NEWMAN: No, but as a band member, it affects me.

24 Q Yes, definitely. Perhaps we can go, then, to page
25 15, the same section that was referred to by my
26 friend, s. 4(b), just to review this again. This
27 is the section that talks about:

28
29 In the event that the Heiltsuk identifies an
30 increase in the food, social and ceremonial
31 needs of its members during the fishing
32 season, the parties will review the
33 quantities specified in the communal licence
34 issue to the Heiltsuk Tribal Council, and if
35 agreed by the parties, the DFO will amend the
36 communal licence. The quantities of fish
37 reflected in the communal licence are subject
38 to consultation every -- each year, at which
39 time the needs of the members of the Heiltsuk
40 Tribal Council and the conservation
41 requirements will be reviewed by the parties.
42

43 Now, my understanding is that DFO does meet
44 with the Heiltsuk every year as part of the pre-
45 planning, pre-season process, and it meets
46 periodically with the Heiltsuk throughout the
47 year.

1 CHIEF NEWMAN: It hasn't always been done in the past.
2 The figures came out from the DFO and sent to the
3 band to sign and to read.

4 Q Well, maybe we'll go to those figures right now,
5 'cause I just want to -- I just want to talk about
6 that. That's at page 17 of the documents, a
7 couple of pages further on. There's a reference
8 to Appendix A to Schedule B, and these are the
9 general conditions of the communal licences. And
10 page 19, further on, actually has the allocations
11 set out. I think -- my understanding -- and we'll
12 just go to the species quantity. You have the
13 numbers for sockeye.

14 I guess when you talk about 20,000 pieces of
15 sockeye, that includes sockeye that's harvested
16 locally, but also sockeye that's caught from
17 passing stocks, including ones going to the
18 Fraser?

19 CHIEF NEWMAN: Is there -- it's everything included.
20 Everything that goes through our territory,
21 whether it somebody else's salmon, we claim it as
22 it goes through our territory. We have a title
23 right to use it.

24 Q Okay. And just to clarify, these numbers are
25 allocations for food, social, ceremonial. This
26 has nothing to do with commercial?

27 CHIEF NEWMAN: That's right.

28 Q Okay. Now, my understanding too, if you go back
29 and look at all the comprehensive claims
30 agreements over the past few years, these numbers
31 have been pretty stable for a long time. They
32 haven't changed much for years.

33 CHIEF NEWMAN: No. Like I say, nothing ever changes
34 for our people. The same number comes out in the
35 managed plan every year. We don't put it in
36 there. The Department of Fisheries puts it in.

37 Q And are you aware that, at least based on the
38 numbers that are provided by the Heiltsuk First
39 Nation, the Heiltsuk Tribal Council to DFO, that
40 in the vast majority of years - and I think
41 nominally for sockeye, but for all the other
42 species of salmon - that the Heiltsuk Tribal
43 Council never comes anywhere near fishing the
44 allocations that are provided in this agreement.

45 CHIEF NEWMAN: No, things have been bad in our
46 territory for a number of years now. For a long
47 time now, our people have never got their food

- 1 fish allocation. We've had to depend on getting
2 fish from Johnston Strait for the last two years
3 now.
- 4 Q Okay. But would you -- would you agree that one
5 of the reasons why -- probably the reason why
6 these numbers stay the same year after year,
7 because during the pre-season planning phase, the
8 numbers that are reported by the Heiltsuk Tribal
9 Council are the numbers they've caught under the
10 -- don't approach these numbers. They don't get
11 close to fishing their allocation.
- 12 CHIEF NEWMAN: Like I say, we haven't got anything for
13 a few years now. There's been nothing there.
14 Like I told you this morning, we've had one
15 commercial opening for the last two years, one day
16 a year.
- 17 Q I'll get back to that in a second. But -- because
18 I do want to return to that bit of testimony. So
19 your evidence is that with respect to these
20 allocations for food, social and ceremonial
21 purposes, you're not catching your allocations
22 because the fish aren't there?
- 23 CHIEF NEWMAN: That's right.
- 24 Q Okay. So if the numbers are as low as that and
25 the Heiltsuk, for whatever reason, are not getting
26 close to harvesting the numbers that are there,
27 there's no real sense in bumping up the allocation
28 beyond a higher number than what's already there,
29 because you're not -- you're not attaining the
30 numbers that are there already.
- 31 CHIEF NEWMAN: Yeah, but we just want the government to
32 know that that's what we need. And if there's
33 sockeye passing through our territory that are
34 bound -- a travelling stock --
- 35 Q Mm-hmm.
- 36 CHIEF NEWMAN: -- then we're entitled to get a piece of
37 that stock that's travelling through our
38 territory, and we should be able to take it. If
39 we can't take it in our territory, we should be
40 able to take it anywhere.
- 41 Q Fair enough. My understanding is, from your
42 evidence, that the Heiltsuk are very much involved
43 in the commercial fishery as well.
- 44 CHIEF NEWMAN: We used to be. We're down to two seine
45 boats now and a handful of gillnet boats because
46 of the bad management of our resources.
- 47 Q So those are the -- those are boats that are owned

1 by the Heiltsuk First Nations --

2 CHIEF NEWMAN: Yes, I own one of those seine boats, the
3 band owns one.

4 Q Okay. If the FSC allocations are bumped up,
5 increased, isn't it true that those numbers of
6 fish have to come from somewhere? Isn't that
7 taken off the top of the fish that are set aside
8 for the commercial fishery?

9 CHIEF NEWMAN: I don't think so. I don't think they've
10 been set aside for the commercial fishers. Nobody
11 knew that sockeye was going to come this year.

12 Q With respect to 2010, I want to state -- based on
13 your evidence, what I heard is that the sockeye do
14 come into Heiltsuk territory as they pass by down
15 -- down on their way to the Fraser River.

16 CHIEF NEWMAN: Mm-hmm, that's right.

17 Q So with respect to all the fish that were coming
18 into the territory close to Heiltsuk, the Heiltsuk
19 communities, my understanding is that the Heiltsuk
20 reported a catch of 5000 sockeye.

21 CHIEF NEWMAN: This year?

22 Q This year.

23 CHIEF NEWMAN: They might have, yeah. I don't know
24 that -- I never heard that.

25 Q I'll leave that, then. I just want to maybe talk
26 about one last bit of your evidence, and this is
27 on Exhibit 300. This is your witness summary.

28 You spoke today about two, I guess, annual
29 migrations to Millbank Sound, and we just talked
30 about one. The Fraser sockeye pass through this
31 area and others. And the other migration is every
32 year, I guess, the sports fishers come in to
33 Millbank Sound. My understanding is the sports
34 fishers like to fish like Chinook, maybe
35 steelhead. They don't fish for sockeye salmon.

36 CHIEF NEWMAN: No, that's a myth. The sports fisherman
37 can catch anything today. They've got the gear to
38 take anything.

39 Q Do they catch sockeye in your experience?

40 CHIEF NEWMAN: They take sockeye, and they take chum,
41 everything.

42 Q And is that a significant number or is that just a
43 bycatch? Are they really after Chinook?

44 CHIEF NEWMAN: No, they take everything. They take
45 halibut, cod, everything out of Millbank.

46 Q Okay. Well, let's take your evidence, then, that
47 they're taking sockeye, they're taking in the same

1 numbers perhaps that they're taking some of these
2 other fish.

3 CHIEF NEWMAN: A large part of the sockeye run is
4 caught on troll gear, and that's what the sports
5 fishermen use.

6 Q I guess the real point what I'm trying to get at
7 is that you say there's been no openings in this
8 area, Millbank, for a couple of years, and you
9 just mentioned that just now.

10 CHIEF NEWMAN: Openings for what?

11 Q Well, this is what I'm asking you.

12 CHIEF NEWMAN: There's been no openings for commercial
13 fishing in Millbank for over 30 years now.

14 Q Okay, that's right. So there's been no opening
15 for commercial fishing, but you have openings for
16 food, social, ceremonial fishing in Millbank
17 Sound.

18 CHIEF NEWMAN: Yeah, we go out there even though the
19 Department of Fisheries doesn't like us going out
20 there. They were going to try and stop us one
21 year when I was the chief of the band, and I told
22 them, "You come and try it."

23 Q But with an allocation of 20,000 sockeye that,
24 according to the numbers that I've seen, where you
25 have lots of allocation room, DFO is not stopping
26 you from going into Millbank Sound to catch
27 sockeye for food, social and ceremonial purposes.

28 CHIEF NEWMAN: They tried. They were going to come --
29 we're managed from Bella Coola. The fishery office
30 in Bella Coola phoned me when I was the chief of
31 the band and told us not -- "You couldn't go out
32 there to fish for the sockeye passing through,"
33 and we were going out there and force that, and I
34 told them, "You come and try it."

35 Q When was that?

36 CHIEF NEWMAN: This was when I was chief of the band
37 the last time. That's about ten years ago now.

38 MR. EAST: Okay. Just looking at the time. I think
39 I'll leave the questions there. Thank you very
40 much for your time.

41 MR. McGOWAN: Mr. Commissioner, we do have questions
42 from several other participants. Did you want to
43 take a very brief afternoon break?

44 THE COMMISSIONER: No, we can keep going.

45 MR. McGOWAN: Thank you. Mr. Harrison, I believe you
46 had a question.

47 MR. HARRISON: Good afternoon. My name is Judah

1 Harrison, for the record, H-a-r-r-i-s-o-n. So the
2 panel knows, I'm representing six non-governmental
3 environmental organizations and one individual. I
4 only have two questions here today.
5

6 CROSS-EXAMINATION BY MR. HARRISON:
7

8 Q The first one is for Chief Mountain. This
9 morning, you were talking about in the past 20
10 years you've noticed, walking through your
11 territory, many changes to the local environment
12 and to the fisheries in your territory. I wonder
13 if you could expand upon that and tell us some of
14 the changes you've noticed.

15 CHIEF MOUNTAIN: Mm-hmm. Most of my life, I lived on
16 the water like I said before, and a lot of my work
17 has been in the Mainland and in the
18 (indiscernible) River as a fisheries guardian. I
19 remember -- just whenever I travel, it'd be a
20 nice, calm, hot day and you'd look out on the
21 water and it would look like it was raining out
22 there because of so many smolts and fry in the
23 area, that there was just millions of them around
24 at one point. Previous to that -- and after that,
25 around the year 2000, it was never like that
26 again. You wouldn't see that many fish around
27 anymore.

28 Part of my job out there was actually to
29 monitor the migration route of the salmon going by
30 the fish farms, and I would sit in a boat and just
31 watch the fish streaming by a fish farm. I'd sit
32 in a boat for six or seven hours and just monitor
33 fish going by. In each year, it was getting less
34 and less and less. We weren't seeing the big
35 schools of thousands of fry or smolts going by
36 these fish farms anymore. We were lucky to see
37 10, 20 or even 100 going by. So the number of fry
38 and smolts was being drastically reduced, and they
39 were all streaming by every fish farm out there,
40 'cause we used to do that as part of our job just
41 to monitor the migration route of the fry.

42 Also, in my commercial days, when we'd catch
43 the sockeye, we always noticed that, sure, there's
44 lice on there, where everybody says the sea lice
45 came from the wild. They might have brought them
46 in, you know, they had five or ten sea lice per
47 fish. But now that they're coming through area 7

1 and 8, I know the commercial fishermen -- and I
2 fished up there as well -- that they only had five
3 or ten sea lice per fish. But once they come past
4 the Port Hardy area where there's at least another
5 10 or 12 fish farms, and also come through the
6 Broughton area, and then you finally catch the
7 sockeye in Johnstone Strait, that these sockeye
8 had 50 to 100, and some people count 200 sea lice
9 on these fish now.

10 We see them on our food fish when we're food
11 fishing, that there's always over 50 to 100 sea
12 lice on them. Previous to that, I noticed that
13 all the sea lice that were on them in earlier days
14 were five to ten. They were all the older adult
15 sea lice, and now when they're passing the fish
16 farms, you look on your food fish catch that
17 you're doing at your home, that there's different
18 stage lice -- stage lifecycles of sea lice on
19 those fish, adults and pre-adults and copepods,
20 and so they got these sea lice from somewhere near
21 where we caught them.

22 There was never any sea lice on our sockeye
23 in the Nimkus River. DFO and Alexander Morton and
24 Marty Crocosik (phonetic) and SFU team did a lot
25 of fry sampling around our river in the bay of
26 Alert Bay, Kluckseewee (phonetic) area, R River
27 (phonetic), Lewis Point, all around the river, and
28 they found that our chum and sockeye were being
29 affected by sea lice.

30 But there was no farm. The closest farm was
31 over 40 kilometres away. The sea lice had to come
32 from somewhere. They either came from off the
33 sockeye and passed on, but we don't know where all
34 that come -- where it's coming from. There needs
35 to be more study on just our sockeye and our
36 chums.

37 Q Thank you. I'm interested to hear if anyone else
38 has personal knowledge or experience in changes
39 long fish (sic), but I'm very cognizant of the
40 time, so if anyone has a short thing -- something
41 short to say about changes to the fisheries or
42 their local environment that they've noticed in
43 the past 20 years, I'd be interested to hear that.

44 PRESIDENT GUUJAAW: In regard to management, as Chief
45 Mountain had stated, and the experience of Gwaii
46 Haanas, I think that if you look at every species
47 that the Department of Fisheries has taken care

1 of, every one of them has been almost wiped out.
2 There's a mention of the abalone. It took them
3 about five years to clean that out, once they had
4 a commercial licence. Rock cod. Herring right
5 now is at critical lows and our people fought them
6 for years about that. I think that if -- if the
7 management included the people of that region,
8 certainly the issues of poaching and the local
9 knowledge would go a long ways to supporting real
10 sustainable fisheries, because we believe that the
11 sea has the ability to provide for a lot of people
12 beyond our own, but it has to be looked after
13 properly. We think with the expertise of
14 biologists as well as the knowledge of our own
15 people, that that could be done.

16 But, you know, I mention the other species
17 because this, again, is -- we're talking about the
18 Fraser River and why is it in trouble? Just look
19 at every other species they managed, and every one
20 of them are in trouble as well.

21 Q Okay.

22 PRESIDENT GUUJAAW: I think a big part of the problem
23 is that they're trying to manage it remotely. You
24 know, they've got -- most of the fishery officers
25 are trained in Winnipeg. You know, you can't
26 manage a fishery that way.

27 Q Okay. Thank you. My final question is to Chief
28 Newman directly. Your frustration is clear in
29 many different areas throughout. I'm wondering if
30 there are any fish farms within your traditional
31 territory and, if so, whether you feel that you
32 have been properly consulted on their being placed
33 there and/or if you have sufficient say in the
34 management of these farms.

35 CHIEF NEWMAN: No, the Heiltsuk people have a firm
36 position on not wanting any fish farms in their
37 territory, and we've made that quite clear to both
38 the Department of Fisheries and Oceans and to the
39 province. We're afraid of the damage it will do
40 to the resource that we depend on, like the
41 seaweed and herring spawning areas, and also the
42 pit-lamping they do to attract feed. You know, I
43 don't know whether anybody has ever talked about
44 the pit-lamping that the fish farmers do to
45 attract fry to cut down the cost of the feed for
46 their product. But we understand that that does a
47 lot of -- attracts a lot of fry.

1 I know when the herring fleet was allowed to
2 pit-lamp, there were cases where a third of the
3 load of some of those boats that pit-lamped in
4 deep water bay and the low part of Johnstone
5 Straits, a third of it was salmon fry. You can
6 imagine just what a lot of damage the fish farms
7 have been doing when they're pit-lamping for food
8 for their salmon.

9 No, we're totally opposed to fish farms
10 coming to our territory. We've tried to fight it
11 at every turn. We even fought the catch read
12 (phonetic), there's a -- put into place in Ocean
13 Falls in our territory. That was done against our
14 wishes.

15 MR. HARRISON: Thank you.

16 MR. MCGOWAN: Mr. Butcher? Mr. Butcher?

17 MR. BUTCHER: I'm David Butcher. I represent the area
18 E gillnetters from the Fraser River and the
19 Pacific Fisheries Survival Coalition.
20

21 CROSS-EXAMINATION BY MR. BUTCHER:
22

23 Q I have some questions first -- and I'm going to
24 start with you, Chief Newman, about the decline or
25 the historical involvement of aboriginal people in
26 the commercial fleet on the central coast and the
27 decline that you've described for us.

28 You've told us today, if I've heard you
29 rightly, that there are just two seine boats --
30 two seine boats and two gillnets left in your
31 community in Bella Bella?

32 CHIEF NEWMAN: Mm-hmm.

33 Q Do I have that right?

34 CHIEF NEWMAN: That's right, yes.

35 Q Now, at the height of the commercial fleet, how
36 many seine boats and gillnet boats were there?

37 CHIEF NEWMAN: We had at least 15 seine boats, that's
38 company boats and privately owned boats, seine
39 boats, and over 30 gillnet boats.

40 Q When would that have been?

41 CHIEF NEWMAN: Well, that would have been before the
42 Millbank was closed. You know, we had that --
43 every household had a boat at that time.

44 Q Are we talking in the 1980s, or are we talking in
45 the --

46 CHIEF NEWMAN: Right in -- the 1980s through the --
47 1980s, 1990s. It's been a steady decline since.

1 Q And I wonder, Chief Naknakim, and Chief Mountain,
2 if you have similar numbers for your communities
3 in the Alert Bay and Campbell River areas?

4 CHIEF MOUNTAIN: Yes. I've talked to a lot of the
5 elders and also -- 'cause we did a lot of
6 interviews for commercial use and food use and
7 stuff, and also talked to my grandfather, that
8 they used to -- each village out in our territory
9 used to have -- like Ed -- Chief Ed Newman used to
10 say, that every family had a gillnet. Outside
11 their villages, you'd have 20, 30, 40 gillnets
12 anchored outside of their villages. Alert Bay had
13 the same. So each village had that many boats.
14 So it was in the hundreds of gillnets that were in
15 our territory.

16 The number of seine boats was up in the
17 forties or fifties in Alert Bay, and I think
18 there's just three left in Alert Bay right now.

19 Q And how many gillnetters left in your territory?

20 CHIEF MOUNTAIN: I could probably think of probably six
21 or seven that are commercially fishing, and I know
22 there's a few others who just use it for food and
23 social.

24 Q And in the Cape Mudge/Campbell River area?

25 MR. NAKNAKIM: I think between the two bands, there's
26 generally around 70 seiners operated out of those
27 two villages, probably in the '50s, '60s, '70s and
28 start declining in the '80s.

29 Q And today?

30 CHIEF NAKNAKIM: Today, there's -- I'd be surprised if
31 there's a dozen.

32 Q And, I'm sorry, I don't think I got from you,
33 Chief Mountain, a time when you say that your
34 commercial fishing fleet was at its peak?

35 CHIEF MOUNTAIN: It would be around '79, '80 as well.
36 That's when I went back to school, and I could see
37 the decline, steady decline since then. It's in
38 the early '80s.

39 Q And I take it -- and tell me if any of you agree
40 or disagree with this: That there was a very high
41 involvement of aboriginal people in your
42 communities in the commercial fishery, firstly.
43 Is that fair for all three communities?

44 CHIEF NEWMAN: That's right. I think a good part of
45 the company boats were operated by aboriginal
46 people, and a lot of our people were able to
47 purchase their own boats.

1 Q And similarly I see you nodding, Chief Mountain.

2 CHIEF MOUNTAIN: Yes.

3 Q And Chief Naknakim?

4 MR. NAKNAKIM: Yes.

5 Q And the second position I have is that a very --
6 it's a slightly different one but a very high
7 proportion of people involved in the commercial
8 fleet were aboriginal? Again, I see nods.
9 Everybody is agreeing with that second
10 proposition.

11 The second area that I wanted to touch on
12 very briefly was some comments arising out of
13 Chief Newman's comments that there is -- you
14 raised the question of enforcement in the context
15 of abalone.

16 CHIEF NEWMAN: Mm-hmm.

17 Q But do you have the sense that the enforcement
18 presence in your area on the central coast is very
19 much reduced now?

20 CHIEF NEWMAN: There is very little enforcement in our
21 area. We don't see it. As I said, we're sort of
22 managed from the Bella Coola community. I
23 understand that the new facility they built in
24 Bella Bella is worth \$7 million, and there's one
25 guy there, one fishery officer there.

26 Q And the nearest, either side, are in Port Hardy
27 and in Prince Rupert.

28 CHIEF NEWMAN: That's right.

29 Q So it's one guy?

30 CHIEF NEWMAN: Yeah.

31 Q Covering that area --

32 CHIEF NEWMAN: And the head manager is stationed in
33 Bella Coola. This year on the one-day open, the
34 fisheries enforcement weren't there. Three seine
35 boats went into the closed area to fish, and
36 nobody -- there was nobody there to stop it.

37 Q And if we're getting reports of pit-lamping of
38 smolts around fish farms, DFO has nobody to
39 enforce a violation like that.

40 CHIEF NEWMAN: Well, I don't know. I guess they --
41 they approve of it. They must approve it, because
42 they're part of the planning for these fish farms.

43 Q Do you, in Alert Bay, and in the Campbell River
44 area, share the same concern about the lack of
45 enforcement?

46 MR. NAKNAKIM: Yes, we do.

47 Q Have you got a sense of a reduction in enforcement

1 numbers? And by "enforcement numbers" I mean
2 numbers of fisheries officers.

3 MR. NAKNAKIM: Definitely. We've got some guardians,
4 but they can't charge people. They can only
5 observe. We can always use more enforcement
6 officers.

7 Q And --

8 CHIEF MOUNTAIN: Yes, in Alert Bay, when I used to work
9 for the Department of Fisheries and Oceans as well
10 as an aboriginal guardian and had the enforcement
11 powers, and we had five in Alert Bay and I know
12 they had at least 15 at Hardy. Now there's none
13 in Alert Bay and I'm not quite sure how much in
14 Port Hardy, but every time I go to the office, I
15 only see four or five officers sitting around. A
16 lot of the time when I report something, a lot of
17 them say, "Well, we'll get back to you. We can't
18 go out." They don't have the budget for the gas
19 for their boats or their truck, just to get out of
20 their office. So how can they enforce?

21 Q Guujaaw, I'm not meaning to leave you out of this.

22 PRESIDENT GUUJAAW: Yeah, I was starting to wonder.

23 Q Do you have any comments on either of those issues
24 with respect to the reduction of your people's
25 participation in the commercial fleet and
26 enforcement areas -- enforcement efforts in your
27 area?

28 PRESIDENT GUUJAAW: Our people went right from canoe-
29 building into building schooners and then into
30 building seine boats, and built a fleet in Masset
31 and in Skidegate. And it correlates with our
32 neighbours on the timing of when the -- the
33 reduction, it had to do with the licensing
34 schemes, but also at the same time there was --
35 sort of as our licences dropped, so did the stocks
36 drop, and the effort of fishing in our areas had
37 risen by other people from other places who took
38 over these licences.

39 But, you know, what I say in response to your
40 issue of enforcement is, you know, we don't look
41 forward to seeing them up there because the
42 biggest menace out there is the Department of
43 Fisheries. They're the ones who've been managing
44 this thing to extinction.

45 Q You'd be in favour of enforcement, but not in the
46 current form, is that what you're telling me?

47 PRESIDENT GUUJAAW: Well, the enforcement that they've

1 done, I mean, you know, like on one hand if
2 they're allowing fisheries that are not
3 sustainable, that are cleaning out the thing, and
4 they're putting their effort into going and
5 busting people for a few fish to bring to their
6 family, why would we look forward to that?

7 Q It's the enforcement priorities that you
8 criticize?

9 PRESIDENT GUUJAAW: Yeah, and, you know, like while the
10 geoduck fishermen and the urchin fishermen are
11 there, there seems to be a drop of abalone. We
12 know they're at the dock selling them. You go
13 tell the Fisheries, they basically give them the
14 time to slip them overboard or whatever. It's --
15 you know, it seemed pretty deliberate. But every
16 fishery is managed -- their main people that they
17 consult is the fishing industry, whether it's a
18 herring industry, it's a Herring Fishery Advisory
19 Board. If it's a crab, it's an area crab fishery.
20 If it's urchins, if it's geoduck, all the way
21 along, and that's why they're failing at every
22 point.

23 MR. BUTCHER: If we could just quickly bring up Exhibit
24 -- I think it's 303. This is another question for
25 Chief Newman. Can we scroll down? Keep going.

26 Q Chief Newman, I don't know if you're going to be
27 able to answer this, but this document is prepared
28 by a Heiltsuk organization?

29 CHIEF NEWMAN: Yes, that's right.

30 Q And it seems to say that the total required for
31 your food, social and ceremonial purposes is
32 98,000 pounds of round weight biomass sockeye.

33 CHIEF NEWMAN: That's right.

34 Q If -- if would probably be a little light to say
35 that a sockeye weighs about five pounds.

36 CHIEF NEWMAN: In our area, some are just four to five
37 pounds.

38 Q And I'm using that because it makes a very simple
39 calculation. If a sockeye is five pounds and
40 you're estimating 100,000 pounds needed, that's
41 about 20,000 fish, isn't it?

42 CHIEF NEWMAN: How many?

43 Q It's about 20,000 fish.

44 CHIEF NEWMAN: Yes.

45 Q And that's exactly the number that's provided for
46 in your fisheries agreement that was introduced
47 into evidence by your counsel.

1 CHIEF NEWMAN: I didn't see that.
2 Q Well, it was introduced by Canada's counsel. That
3 round weight means the full weight of the fish
4 caught with guts and all.
5 CHIEF NEWMAN: That's right.
6 MR. BUTCHER: Maybe we can bring up Exhibit 305, and go
7 to page 17.
8 CHIEF NEWMAN: You understand we're talking about food
9 fish here, not commercial.
10 MR. BUTCHER: Oh, I'm aware of that.
11 CHIEF NEWMAN: Okay.
12 MR. BUTCHER: Keep going down to the numbers. Maybe
13 it's on page 19.
14 MR. MCGOWAN: Page 19.
15 MR. BUTCHER: Yeah.
16 Q You see that the number of allowance -- allowed
17 sockeye for you in the middle of that agreement is
18 exactly the number that -- or more or less exactly
19 the number that your own people say you need.
20 CHIEF NEWMAN: Yeah, that's -- I think that's the
21 number they put into the 15-year plan.
22 Q Your problem is not with the number in the
23 document, it's with the number that you've been
24 allowed to catch or been able to catch.
25 CHIEF NEWMAN: Well, personally, my position there was
26 personal this morning. I didn't agree with those
27 numbers. They're too low.
28 Q Okay. But I'm trying to suggest to you that they
29 are the numbers that have been put forward by your
30 own organization.
31 CHIEF NEWMAN: Yes, but I'm a member of the band and I
32 disagree with it.
33 Q Okay. Maybe we should just scroll down a little
34 bit more just so we see this as well. There's
35 also a 22,000 pound allowance for halibut and
36 another 22,000 pound allowance for groundfish in
37 -- for food, social and ceremonial fish in that
38 agreement. I just want -- that's correct, isn't
39 it?
40 CHIEF NEWMAN: Yes, that's not very a many for a
41 community the size of Bella Bella. You know, we
42 live off the land 'cause we're forced to. It's a
43 high-cost area and our people do a lot of food-
44 fishing. Our young people are fully involved in
45 the food fishery in Bella Bella.
46 Q I'm going to ask you this question and I'm -- I've
47 seen the -- and it's now in evidence -- the treaty

1 with the Tsawwassen that allows them one percent
2 of the Canadian total allowable catch. I've seen
3 the agreement with the Sto:lo that allows them
4 5.25 percent, I think, of the total allowable
5 Canadian catch. Do you get the sense, Chief
6 Newman, that there's been a shift from the
7 permissible fishing effort of your people on the
8 Central Coast to the people in the -- the
9 aboriginal people in the Fraser Valley?
10 CHIEF NEWMAN: Try that again? I didn't quite follow
11 you.
12 Q Do you get a sense that your people have lost
13 available fishing effort because of fishing
14 allowances given to --
15 CHIEF NEWMAN: And you're talking about the commercial?
16 Q -- the aboriginal people in the Fraser Valley?
17 CHIEF NEWMAN: And you're talking about the commercial?
18 Q Both, social and ceremonial and commercial uses by
19 aboriginal people in the Fraser Valley?
20 CHIEF NEWMAN: I know that through the --
21 MR. MCGOWAN: I'm sorry to interrupt. I just see Ms.
22 Schabus has risen, Mr. Commissioner.
23 MS. SCHABUS: Yes. Mr. Commissioner, I'm just hoping
24 to clarify that, and my objection would be that I
25 don't think that the witness is qualified to
26 actually comment on the allocation of other
27 aboriginal peoples. I don't think my friend has
28 properly put it to him. And absent establishing
29 that the witness is actually aware of those
30 allocations, I would object to that question going
31 forward.
32 MR. BUTCHER: I'm wondering if my friend is saying that
33 I've misstated the allocations, 'cause I don't
34 believe I have.
35 MS. SCHABUS: Well, my point is that the witness is not
36 one who would be qualified to actually comment on
37 those numbers, and wouldn't be aware of them. So
38 that is my objection.
39 MR. BUTCHER: I'll ask it without reference to the
40 numbers.
41 Q I've heard you, Chief Newman, say that we're not
42 even able to catch probably one quarter of our
43 requirement for food, social and ceremonial
44 purposes. Have I summarized your evidence
45 properly?
46 CHIEF NEWMAN: I really don't understand your question.
47 It's hard to --

1 MR. BUTCHER: Okay. I'll leave it. I'll leave it at
2 that. Thank you.

3 PRESIDENT GUUJAAW: No more questions for me?

4 MR. MCGOWAN: Ms. Schabus has a few minutes of
5 questions.

6 MS. SCHABUS: Yes, just a few brief ones. For the
7 record, Nicole Schabus, counsel for Sto:lo --

8 THE COMMISSIONER: Ms. Schabus, just a moment, sorry.
9 Madam Reporter, are you okay to go for another few
10 minutes? Are you? Are you sure? Okay. Thank
11 you very much.

12 MS. SCHABUS: Thank you, Mr. Commissioner.

13 MR. MCGOWAN: Thank you. Ms. Schabus has a few minutes
14 of questions.

15 MS. SCHABUS: Yes, just a few brief ones. For the
16 record, Nicole Schabus --

17 THE COMMISSIONER: Ms. Schabus, just for --

18 MS. SCHABUS: -- counsel for Sto:lo --

19 THE COMMISSIONER: Ms. Schabus, just a moment.

20 MS. SCHABUS: Sorry.

21 THE COMMISSIONER: Madam Reporter, are you okay to go
22 for another few minutes?

23 THE REPORTER: Yes, thank you.

24 THE COMMISSIONER: Are you? Are you sure?

25 THE REPORTER: Yes.

26 THE COMMISSIONER: Okay. Thank you very much.

27 MS. SCHABUS: Thank you, Mr. Commissioner. Chiefs,
28 gentlemen, leaders, I am co-counsel for Sto:lo
29 Tribal Counsel and the Cheam Indian Band, and I
30 actually just have two brief clarifying -- or
31 questions, and one was partially answered, but I'm
32 still going to put that question to Chief
33 Mountain.

34

35 CROSS-EXAMINATION BY MS. SCHABUS:

36

37 Q You were commenting on the decline that you've
38 seen in your local fish stocks, and based on your
39 experience and indigenous knowledge, could you
40 comment on the reasons for the decline of your
41 local stocks?

42 CHIEF MOUNTAIN: The local stocks, from what we know,
43 is a lot of the rivers were over-logged and the
44 commercial fishery that allowed the -- to catch --
45 target those fish and over-catch them, and another
46 factor is the fish farms that the sea lice are
47 evident on them.

1 MR. MCGOWAN: Mr. Commissioner, I note my friend asked
2 the question quite carefully, and that was "Based
3 on your traditional knowledge, can you inform the
4 Commissioner about the reasons for the decline,"
5 but perhaps my friend could just clarify the basis
6 of the answer that was just given and whether it
7 was based on that traditional knowledge she asked
8 for or some other information that came to the
9 witness perhaps through hearsay.

10 MS. SCHABUS: I'll actually put it to the witness in
11 that context.

12 Q Obviously, you are a person who has extensive
13 experience as an indigenous person with the
14 fishery and you've seen that decline, and does
15 your traditional knowledge actually speak, for
16 example, to the effect how habitat alteration,
17 both in the marine and in the river context and
18 ecosystem actually affects those stocks, and if
19 you can speak to that?

20 CHIEF MOUNTAIN: Yes, like I said, I was Aboriginal
21 Guardian and we walked and enforced a lot of the
22 forest range practice codes, when it used to be in
23 effect back in the day. We used to walk those
24 streams and check for habitat degradation and
25 spawning bed degradation, if there's sediment --
26 too much sediment in the spawning beds or too many
27 beaver dams or too many logs crossing too many
28 dams, you know, we'd look for anything in the
29 streams that we went, and if it needed
30 rehabilitation, we would do it; if it was no harm
31 to the stream or fish getting by, we would just
32 leave it, but, yeah, we did a lot of that
33 rehabilitation during our assessments of the
34 rivers, counting the fish and rehabilitating them.

35 Q And my second question is to the panel as a whole,
36 and based on Canada's point about problems in
37 building consensus, probably more western systems,
38 but I want to take you and ask you to, based on
39 your indigenous experience, speak to indigenous
40 consensus-building mechanisms that you have within
41 your communities and within your indigenous
42 nations, how you build consensus, and also how you
43 have interacted and built such consensus according
44 to your traditional protocols amongst the
45 indigenous nations and obvious understanding if
46 you have a consensus-building process and you make
47 decisions and you're decision-makers and how that

1 could be employed in a different kind of regime of
2 dealing with the fisheries from an Aboriginal
3 perspective?

4 MR. NAKNAKIM: I'll try at this. If you're talking
5 about building a body that's going to represent
6 one voice for all First Nations in British
7 Columbia and fish, I don't think you're ever going
8 to get there. We've, my group, I've got three
9 nations in my treaty group, have just finished a
10 mediation process between ourselves, and we came
11 out with two products. One product was an
12 agreement on how to approach sharing our lands.
13 And the second document was an internal dispute
14 resolution process. Now, to get to that point, we
15 had to change our discussion to be based totally
16 on our values, and that was a tough discussion.
17 In that sharing formula agreement, what it does is
18 it creates a safe place to have very tough
19 discussions where we try our best to come to an
20 agreement.

21 And on an internal dispute resolution
22 process, we identify what the problem is, first,
23 then it goes to our, what we call, unity group,
24 which will then decide what process that issue
25 needs to be settled on. So we determine the
26 process after the problem is identified. From
27 what I understand on a normal mediation process,
28 they make the problem fit the process; here, we've
29 reversed it, we make the process fit the problem.

30 So I think those are key points that all of
31 us First Nations, with the responsibilities of
32 representing our communities, must talk to each
33 other on these issues.

34 Now, the way we talk, now, is business, and
35 it's too early to talk business on these tough
36 issues. That's what I think.

37 In any event, if we ever get there with a big
38 organization, we don't want that organization
39 being the voice with government. We want it to
40 open doors for us so we can advocate, ourselves,
41 in our own local area and make our own decisions.

42 Q And I want to put it to the panel that I just want
43 to clarify, I wasn't suggesting a provincial
44 organization or western style; I was actually
45 asking exactly what you spoke to, about your
46 indigenous laws and how you would communicate
47 amongst indigenous nations as decision-makers.

1 PRESIDENT GUUJAAW: Well, I think that, first of all,
2 each of our people within their own territories
3 are the ones who live with the consequences of any
4 decision there, and certainly each of us would
5 have to be representing ourselves in any kind of
6 forum like that, that there's certain things that
7 indeed it would be fairly straightforward to get
8 consensus on the matters of looking after the
9 land, looking after the fish, and those sort of
10 things, are common to all of our nations.

11 And so to arrive at that point would be the
12 simple part of it, and then to address our needs
13 in a way other than as you've seen with the
14 Heiltsuk where basically someone else writes a
15 prescription and sends you some numbers, and that
16 would never do for us, it would -- you know, it
17 doesn't do for them or anybody else. And, you
18 know, it's not that we want more, but we want to
19 be sure that our people are looked after.

20 Commerce is an ancient thing on the coast.
21 It isn't something that started up with fishing
22 licenses. Our people fished and traded and did
23 all those things for thousands of thousands of
24 years amongst the different nations and amongst
25 ourselves. There's people who specialize in
26 different kind of fishing and people who provided
27 for other people with other -- that had other
28 things to trade, and it's just normal course of
29 events that commercial fishing would be a way that
30 our people would make a livelihood.

31 But, firstly, I think that important to all
32 the people on the coast is that our people are
33 provided for in their homes. So certainly those
34 sort of things I think are simple things that we
35 all agree upon, principles we all agree upon and
36 could easily work from there, but we would have to
37 be representing ourselves.

38 THE COMMISSIONER: Ms. Schabus, I --

39 MS. SCHABUS: I understand. I just wanted to leave it
40 -- I have no more questions.

41 THE COMMISSIONER: Thank you very much.

42 MS. SCHABUS: I just wanted to see if any of the panel
43 members -- I think one of the chiefs still wanted
44 to speak, but I have no further questions, Mr.
45 Commissioner.

46 CHIEF NEWMAN: No. My position is that we have to come
47 together on our own, to kind of put a position in

1 place that will work for our people, because the
2 systems that DFO is trying to force on Aboriginal
3 people don't work and never has. And the sooner
4 they quit interfering with how we deal with each
5 other, the better for us. They should just give
6 us the money to put something together and get the
7 hell out of the way.

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

9 MR. MCGOWAN: Mr. Commissioner, I believe Ms. Robertson
10 is the only counsel with additional questions,
11 although I see Ms. Fong standing up. Did you want
12 to carry straight through or did you want to take
13 a short break?

14 THE COMMISSIONER: No, I want to give Madam Reporter a
15 five-minute break, and then we'll have 10 minutes
16 left and remaining counsel can divide up the 10
17 minutes.

18 MR. MCGOWAN: Yes. Thank you, Mr. Commissioner.

19 THE COMMISSIONER: Thank you.

20 THE REGISTRAR: Court will recess for five minutes.

21

22 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

23 (PROCEEDINGS RECONVENED)

24

25 MR. MCGOWAN: Yes, Mr. Commissioner. Counsel for the
26 other participants have concluded. There's a
27 couple of counsel who are seeking to ask questions
28 in re-exam. Ms. Robertson has discussed with me
29 the questions she wants to ask, and Commission
30 counsel feels it's a fair question.

31 MS. ROBERTSON: Krista Robertson, counsel for the
32 Musgamagw Tsawataineuk Tribal Council.

33 Mr. Lunn, if I can ask you to pull up the
34 Comprehensive Fisheries agreement?

35

36 CROSS-EXAMINATION BY MS. ROBERTSON, continuing:

37

38 Q Now, this is just a point of clarification arising
39 from the testimony given by the panel. And I'm
40 going to put the question to Chief Mountain. So
41 this is -- I'll just describe it. It's the
42 Comprehensive Fisheries Agreement.

43 THE COMMISSIONER: What exhibit number is it?

44 MS. ROBERTSON: Pardon me, it's actually on Ringtail.

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

46 MS. ROBERTSON:

47 Q So this is a Comprehensive Fisheries Agreement

1 between - the acronym is the MTMMS - and those are
2 three of the four nations of the MTTC; is that
3 correct, Mr. Mountain?

4 CHIEF MOUNTAIN: Yes, it is.

5 Q And this is an agreement from this year, as you
6 can see the duration is April 2009 to March 2010.
7 So Mr. Lunn, if you could please go to page 13 of
8 the agreement.

9 Chief Mountain, can you see there on the
10 screen, it says -- if you can just enlarge, just
11 at the top of the page there - this is the
12 Aboriginal communal fishing licence for what is
13 called the Johnstone Strait First Nations; do you
14 see that there?

15 CHIEF MOUNTAIN: Yes.

16 Q Now, Mr. Lunn, if we can just scroll down to the
17 very bottom of the page. And you can stop there,
18 thank you. You can see there's a definition of
19 the Johnstone Strait First Nations there?

20 CHIEF MOUNTAIN: Yes.

21 Q And Chief Mountain, can you see (a) and (b)? You
22 can see there's eight nations there. Mr. Lunn, if
23 you can just go to the top of the next page.
24 Chief Mountain, you'll see item (c) there is
25 another six nations there? And I think you'll
26 recognize the nations as being -- that group of
27 nations are the four member nations of the MTTC.

28 So would you agree that is -- the number of
29 that definition defines which nations are covered
30 by this single communal fishing licence -- food
31 fishing licence?

32 CHIEF MOUNTAIN: Yes.

33 Q Mr. Lunn, if you would go to page 17, now. And
34 that visual is fine there. Maybe if you could
35 just, then, please just enlarge the numbers there
36 under "Salmon", the heading, "Salmon". Chief
37 Mountain, can you see there that the allocation of
38 sockeye salmon for all of those 14 nations who are
39 grouped under the heading "The Johnstone Strait
40 First Nations" is 80,000?

41 CHIEF MOUNTAIN: Yeah.

42 Q So would you agree, then, that the total
43 allocation for those 14 nations for sockeye is
44 80,000?

45 CHIEF MOUNTAIN: Are you asking if that's enough or is
46 that just --

47 Q I'm just asking if, on the face of the

1 agreement --

2 CHIEF MOUNTAIN: Yeah.

3 Q -- that is the allocation for the communal food
4 fishing licence?

5 CHIEF MOUNTAIN: As this agreement says, yes.

6 MS. ROBERTSON: Thank you, that is my question.

7 MR. MCGOWAN: I wonder if you wanted the agreement
8 marked.

9 MS. ROBERTSON: Sure, we can mark it as -- I wasn't
10 sure, if it's already in Ringtail, but if --

11 MR. MCGOWAN: Mr. Commissioner, I believe if my friend
12 wants it as evidence she can rely on later in the
13 hearing, or in submissions, it ought to be marked.

14 MS. ROBERTSON: Thank you. I'll have it marked, then.

15 THE REGISTRAR: It will be Exhibit Number 308.

16

17 EXHIBIT 308: Comprehensive Fisheries
18 Agreement between Her Majesty the Queen and
19 MTMMS, for the period April 2009 to March
20 2010
21

22 MS. WILLIAMS-DAVIDSON: I have one quick question for
23 Mr. Ducommun. You mentioned in your testimony
24 that --

25 THE COMMISSIONER: I'm sorry, counsel, you have to at
26 least put your name on the record --

27 MS. WILLIAMS-DAVIDSON: I'm sorry.

28 THE COMMISSIONER: --or we won't have it.

29 MS. WILLIAMS-DAVIDSON: I'm sorry.

30 THE COMMISSIONER: Thank you very much.

31 MS. WILLIAMS-DAVIDSON: (Haida language spoken) Terri-
32 Lynn Williams-Davidson, counsel for the Council of
33 the Haida Nation.
34

35 CROSS-EXAMINATION BY MS. WILLIAMS-DAVIDSON, continuing:
36

37 Q Again, Mr. Ducommun, you talked about the Métis
38 people being a blend of Aboriginal and European
39 concepts, and I wanted to know whether the Métis
40 share the sort of motherhood or value of concept
41 of -- that Aboriginal people have of giving
42 respect to the people of the land and the protocol
43 of seeking permission before utilizing a land or
44 resource, because I think this is relevant to how
45 we look at developing sharing and co-managing
46 principles between First Nations and the Métis.

47 CAPTAIN DUCOMMUN: There's a two-part answer to that.

1 Our history does not show that -- that agreement
2 type or request for permission, but at the same
3 time, we definitely recognize, you know, the
4 territories of Aboriginal First Nations people.
5 We have no problem with that. And what we, in
6 British Columbia in particular, do not claim
7 territories, what we claim is a right to feed our
8 families, the way we have for sometimes 12 or 14
9 generations in this province.

10 MS. WILLIAMS-DAVIDSON: Okay, thank you.

11 MS. FONG: Lisa Fong, for Heiltsuk Tribal Council, and
12 I just have two short questions on re-direct.

13 Mr. Lunn, if you could please pull up Exhibit
14 303, the third page, and if you have the facility
15 to do it, also page -- sorry, first page of 301,
16 which is the witness summary of Chief Newman.

17 MR. LUNN: Did you say Newman?

18 MS. FONG: Yes, Chief Newman, the first page.

19 MR. LUNN: I think it's Exhibit 300.

20 MS. FONG: Sorry, it's 300. And then what I -- yeah,
21 303, and the third page, where you see the group
22 -- where you see the list at the third page.
23 Okay, there we go.

24

25 CROSS-EXAMINATION BY MS. FONG, continuing:

26

27 Q My question is for Chief Newman on re-direct.
28 Chief Newman, if I can direct your attention to
29 your witness summary. Now, your witness summary,
30 under the heading "Nation/Territory", second
31 paragraph, it reads:

32

33 Chief Newman is a member of the Heiltsuk
34 First Nation, which currently has 2500 on and
35 off reserve members.

36

37 Do you see that, Chief Newman? And then comparing
38 that to the other document, and that was page 3 of
39 the Community Needs Study, I'm now looking at that
40 line item for sockeye salmon, the 98,000 pounds,
41 and then right above that it says "Now, population
42 2180". Do you see that?

43

44

My question to you is this: Do you know

45

which of these numbers is more up-to-date?

46

CHIEF NEWMAN: Well, the 2,200, I think it's more up-
to-date, although I don't agree; I think it's more

1 like 2,5000, 2,600 people. You'd have to look at
2 the census or the numbers in the Band office to
3 find out the true number that -- which should go
4 in there.

5 Q Okay, so I understand your evidence to be the
6 2,500 would be more accurate?

7 CHIEF NEWMAN: That's right.

8 Q Thank you. My second question is this. It
9 pertains to a question that Mr. East asked you,
10 and Mr. East stated that in 2010, so this year,
11 Heiltsuk reported a 5,000 number catch of FSC
12 salmon, and then he suggested, as I understood,
13 DFO wasn't stopping Heiltsuk from fishing for
14 more, for example, in Millbanke, so for fishing
15 for the balance of their 20,000 pieces allotted in
16 the FSC agreement.

17 So my question is this: Chief Newman, do you
18 know why Heiltsuk didn't fish for that full 20,000
19 pieces of FSC salmon as it was passing by your
20 territory, given the massive run this year?

21 CHIEF NEWMAN: Nobody knew that that massive run was
22 going to come through. It was through before we
23 found out about it.

24 MS. FONG: Thank you very much. Those are my
25 questions.

26 MR. MCGOWAN: Commission counsel has no questions in
27 re-examination.

28 THE COMMISSIONER: Thank you very much. To each and
29 every member of the panel, I want to thank you for
30 coming here, today, to, through your voices, bring
31 your viewpoints and your answering of those
32 questions that were put to you by counsel. I
33 thank you very much for taking the time to do
34 that.

35 I also want to thank Participants' counsel
36 once again for cooperating with Commission counsel
37 to ensure that we could complete the evidence in
38 the last three days on the estimated times, and
39 I'm very grateful to all of you for your
40 cooperation.

41 We're now adjourned until 10:00 a.m. tomorrow
42 morning. Thank you.

43 THE REGISTRAR: The hearing is now adjourned until
44 10:00 a.m. tomorrow morning.

45

46 (PROCEEDINGS ADJOURNED TO THURSDAY, DECEMBER 16,
47 2010, AT 10:00 A.M.)

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.
7
8
9

10 _____
11 Pat Neumann
12

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

22 _____
23 Irene Lim
24

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

37 I HEREBY CERTIFY the foregoing to be a
38 true and accurate transcript of the
39 evidence recorded on a sound recording
40 apparatus, transcribed to the best of my
41 skill and ability, and in accordance
42 with applicable standards.
43
44
45

46 _____
47 Karen Hefferland