

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.

Friday, January 21, 2011

Tenue à :

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

le vendredi 21 janvier 2011



Errata for the Transcript of Hearings on January 21, 2011

Page	Line	Error	Correction
43	7	common	Kalman

APPEARANCES / COMPARUTIONS

Wendy Baker, Q.C. Maia Tsurumi Line Christensen	Associate Commission Counsel Junior Commission Counsel Articled Student
Hugh MacAulay Jonah Spiegelman	Government of Canada
Boris Tyzuk, Q.C. Tara Callan	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")
Charlene Hiller	Rio Tinto Alcan Inc. ("RTAI")
Alan Blair	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
No appearance	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Tim Leadem, Q.C.	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
Don Rosenbloom	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

APPEARANCES / COMPARUTIONS, cont'd.

Anila Srivastava	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC") West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
Keith Lowes	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF")
No appearance	Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM")
No appearance	Western Central Coast Salish First Nations: Cowichan Tribes and Chemainus First Nation Hwlitsum First Nation and Penelakut Tribe Te'mexw Treaty Association ("WCCSFN")
Brenda Gaertner Leah Pence	First Nations Coalition: First Nations Fisheries Council; Aboriginal Caucus of the Fraser River; Aboriginal Fisheries Secretariat; Fraser Valley Aboriginal Fisheries Society; Northern Shuswap Tribal Council; Chehalis Indian Band; Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council; Upper Fraser Fisheries Conservation Alliance; Other Douglas Treaty First Nations who applied together (the Snuneymuxw, Tsartlip and Tsawout)
No appearance	Adams Lake Indian Band
No appearance	Carrier Sekani Tribal Council ("FNC")
No appearance	Council of Haida Nation

APPEARANCES / COMPARUTIONS, cont'd.

No appearance	Métis Nation British Columbia ("MNB.C.")
Nicole Schabus	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
No appearance	Laich-kwil-tach Treaty Society Chief Harold Sewid Aboriginal Aquaculture Association ("LJHAH")
Lisa Fong Benjamin Ralston	Heiltsuk Tribal Council ("HTC") Articled Student
No appearance	Musgamagw Tsawataineuk Tribal Council ("MTTC")

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1
PANEL NO. 12
In chief by Ms. Baker (cont'd)

Vancouver, B.C. /Vancouver (C.-B.)
January 21, 2011/le 21 janvier 2011

1
2
3
4 THE REGISTRAR: Order. The hearing is now resumed.

5 MS. BAKER: Thank you. I think your mics need to be
6 turned on.

7 THE REGISTRAR: May I remind counsel (sic) that they're
8 still under oath.

9 MS. BAKER: The witnesses.

10 THE REGISTRAR: I mean the witnesses.

11 MS. BAKER: We're not under oath.
12

13 EXAMINATION IN CHIEF BY MS. BAKER, continuing:
14

15 Q All right, just a couple of things, Mr. Grout.
16 This is follow-up from when you testified on
17 Monday. You had indicated in your testimony that
18 when the second draft of the IFMP was prepared you
19 weren't sure if it got posted on the internet or
20 not. Have you had a chance to look into that?

21 MR. GROUT: Oh right, yes, I did check on that. We do
22 post the second draft of the IFMP on our
23 consultation secretariat.

24 Q Thanks. Mr. Rosenberger, when we broke on Monday,
25 we were discussing the roles of Canada and the
26 Fraser River Panel once the season begins. And
27 just to recap, can you outline what the decisions
28 are that are made by the - just at an overview
29 level - what the decisions are that are made by
30 the Fraser River Panel in-season?

31 MR. ROSENBERGER: The panel is responsible for any run
32 size -- adopting any run size changes, management
33 adjustment changes, the harvesting in Canada on
34 commercial fisheries within panel waters, and the
35 fisheries in the U.S. side of -- in panel waters.

36 Q Okay. And what are the decisions that the
37 Department of Fisheries and Oceans is responsible
38 for, in-season?

39 MR. ROSENBERGER: And Canada would be making changes to
40 the -- or adopting and managing the fisheries,
41 commercial fisheries outside of panel waters and
42 all recreational and First Nations fisheries.

43 Q You've already described how often the Fraser
44 River Panel and the technical committee meet in-
45 season, and when Mr. Lapointe was here we reviewed
46 examples of the data presented by the PSC staff to
47 the panel in-season, and when we were reviewing

1 that data with Mr. Lapointe, we referred to a
2 document known as the Record of Management
3 Strategies. We looked at the 2009 document, and
4 that's now Exhibit 330, and I think it's in your
5 second volume of materials. Have you got that?

6 MR. GROUT: Yeah, 25.

7 MS. BAKER: So I don't know if this is more appropriate
8 for Mr. Grout or for Mr. Rosenberger, but what is
9 that document, and who prepares it?

10 MR. ROSENBERGER: It's a document prepared by the
11 Department of Fisheries and Oceans, so it's an
12 internal prepared document, and what it does is
13 summarizes all the information for the season of a
14 management, so we put in there all our the pre-
15 season information. The key points to it are the
16 in-season decisions that we make, so what
17 information do we have on each given decision-
18 point day, so all the technical information, the
19 debate that might have gone on, the variety of
20 views, at times, are recorded, and so the
21 decisions that we made, and then subsequently
22 fisheries that are planned out of that, so it's a
23 document that chronicles an entire year for the
24 Fraser River Fishery.

25 Q And once it's put together, how is it used? Why
26 do you do it?

27 MR. ROSENBERGER: Well, it's an excellent reference
28 document. So fish managers, the resource
29 managers, biologists, people like myself, will
30 take this document with them to planning sessions.
31 So you'll take a look and you'll have a good sense
32 about what are your issues in a given year, so
33 that if you need to make changes or corrections or
34 you want to adapt for future years. It's part of
35 what we call our adaptive management process,
36 which is -- links into things like Wild Salmon
37 Policy.

38 And in particular, when you get out and you
39 start looking back on cycle years, so in the case
40 of the '09 year, when somebody's in 2013 and
41 thinking, you know, "What are we doing? Why did
42 we do what we're doing? How does this compare?"
43 It will be an excellent reference material for
44 them.

45 Q Is it a public document?

46 MR. ROSENBERGER: I believe it is, yes. It's posted in
47 the department.

1 Q Okay. And it contains, amongst a lot of other
2 materials, it also contains all the materials that
3 were prepared by the Salmon Commission for the
4 technical committee and the Fraser River Panel
5 meetings?

6 MR. ROSENBERGER: Yeah, it's fairly large, as you can
7 see in this one, and it has all of the materials
8 from each meeting, you know, in which case, as
9 we've talked about earlier, it's usually twice a
10 week, and pre-season planning document, post-
11 season review meeting information, things like
12 that.

13 Q Okay. So I want to ask you some questions about
14 the in-season process, and I'm going to ask these
15 questions from your perspective as the chair of
16 the Canadian caucus on the Fraser River Panel. We
17 did spend quite a bit of time with Mr. Lapointe
18 going through all the technical information, so
19 I'm not necessarily going to take you back through
20 all of that. And as I understand it, the
21 technical committee reviews the initial technical
22 data provided by the Salmon Commission staff; is
23 that fair?

24 MR. ROSENBERGER: In most cases that's the first point
25 of review.

26 Q Okay. And then following that technical committee
27 meeting, is there a meeting of the Canadian
28 caucus?

29 MR. ROSENBERGER: In most cases, yes.

30 Q Okay. And who's -- or what happens in those
31 caucus meetings?

32 MR. ROSENBERGER: We'll get an update from the tech
33 chair, in most cases, and review the information,
34 usually highlighted to issues of change, so if
35 there's a potential run size change, management
36 adjustment change, timing, whatever it might be
37 that might affect decisions that we want to make,
38 either in adopting a change or in potential
39 impacts towards fisheries.

40 So we have that debate around the technical
41 information, then we tend to focus on our
42 opportunities for fisheries, and each of the
43 groups between the managers and the
44 representatives of the different groups, we try to
45 formulate what our options might be in our
46 fisheries and what we might be looking to
47 recommend when we get into the bilateral panel

1 meeting.

2 Q Are any PSC staff at that meeting?

3 MR. ROSENBERGER: No.

4 Q Who is at that meeting?

5 MR. ROSENBERGER: The Canadian caucus, so that's Fraser
6 Panel members, Canadian side. The Tech Committee
7 members, and not necessarily all of them. And
8 either in-person or on phone we tend to have a
9 number of the Fraser River Integrated Management
10 Team people, so that's departmental managers.

11 Q Okay. Fishing - you described them as
12 opportunities - but fishing plans or opportunities
13 are discussed. How are those fishing options
14 developed; what's the process?

15 MR. ROSENBERGER: We look at what the total allowable
16 catch to Canada would be, what our first -- we'd
17 start, usually, with what our First Nations
18 fisheries are, so how many fish we need to pass
19 either into -- pass Mission as part of the gross
20 escapement plans for fisheries in Lower River,
21 which is around that area, or looking into the
22 marine waters. So when we understand what that
23 might mean to each of the stock groupings and
24 their potential fisheries, is there TAC leftover,
25 total allowable catch, leftover for -other users,
26 recreational and commercial.

27 And then if it's apportioned out, you know, a
28 relative amount of fish, and then you get into the
29 planning for what your options might be if there's
30 -- obviously, if there's lots of fish, then
31 there's more opportunities that you might be
32 considering, more locations. For example, the
33 seine fishery in the south coast, you know,
34 whether you want to be fishing in Juan de Fuca
35 Straits as well as Johnstone Straits, so diversion
36 rates, abundance off the river, so there's various
37 locations, time, effort, that kind of stuff.

38 Q And it's probably an obvious question, but a
39 fishing plan, like when you're talking about these
40 fishing plans or options, it would be something
41 like, "We want to allow 'X' number of fish to be
42 caught in a quota fishery in a particular area, in
43 a particular week," or, "A particular area fishery
44 will be open for a certain number of hours."
45 Those are what we're talking about when we're
46 talking about plans?

47 MR. ROSENBERGER: That's correct.

1 Q Okay. Are the decision rules that are set out in
2 the IFMP used in this decision-making within the
3 Canadian caucus?

4 MR. ROSENBERGER: That's correct. So our Integrated
5 Fisheries Management Plan has our domestic rules
6 and principles in there, so some of those apply to
7 the international side of thing, so our escapement
8 objectives, for example. But Canada also has
9 additional objectives. We have fishery objectives
10 in the 2010 year around earliest timed Early
11 Summer stocks. We had additional actions that
12 Canada was taking around Cultus, for example, so
13 we are looking into managing more than the four
14 stock groupings, or have some other domestic
15 objectives that we need to bring into play. So
16 it's always formed part of our Canadian planning.

17 Q Okay. And in-season, can the Canadian caucus
18 recommend plans which are outside the IFMP
19 decision rules?

20 MR. ROSENBERGER: We discussed, again, in 2010, we
21 discussed options, when circumstances were
22 substantially different than what was expected in-
23 season, in this case around the late run timing as
24 an aggregate, all of the fish were, but then what
25 that meant to Cultus, what were the Cultus
26 rebuilding objectives from a process that's
27 described in the Integrated Fisheries Management
28 Plan versus the rules that we established in the
29 Integrated Fisheries Management Plan, to try to
30 meet that objective, and was there opportunity, so
31 we started discussing in there, and then
32 subsequently it was a broader discussion.

33 So yes, we do look at other -- we do look at
34 implications out of those rules or principles.

35 Q Okay. And in 2010, as an example, did you
36 ultimately make a decision that varied -- or
37 making fishing plans that varied from the decision
38 rules that were in the original IFMP?

39 MR. ROSENBERGER: We did, but we -- just to be clear,
40 that those aren't recommendations or decisions
41 that we made in the Fraser caucus side of things.
42 Once that group decided that it was worth
43 exploring further, we needed to go and prepare
44 briefing notes to the minister and Ottawa people
45 to get concurrence that we could make a change to
46 the Integrated Fisheries Management Plan.

47 Q Okay. So any change like you've just described,

1 would require an approach to the minister before
2 you could go ahead with the plan that --

3 MR. ROSENBERGER: That's correct.

4 Q -- was like that? Okay. And did you consult with
5 different stakeholder groups before making that
6 change to the IFMP in 2010?

7 MR. ROSENBERGER: Yes, we did, around the Cultus
8 decision time? Yes, from the discussion that was
9 raised in caucus, it was decided that it was worth
10 exploring, so the Department of Fisheries and
11 Oceans prepared some information that we were
12 using inside the caucus, as well as internally in
13 this region, so, in this case, it was myself and
14 Jeff and others briefing up to the regional
15 director general, getting concurrence that we
16 would consider this type of an approach. We were
17 briefing Ottawa, and at the same time I took
18 consultations to some of the First Nations in the
19 area most affected, as have been described as the
20 key, First Nations from the larger Fraser
21 aggregate of First Nations that they would be the
22 place to consult. So we talked with the Sto:lo
23 groups and --

24 MR. GROUT: The other group is Soowahlie --

25 MR. ROSENBERGER: Soowahlie, thank you.

26 MR. GROUT: -- whose territory includes Cultus Lake.

27 Q Okay. Yesterday, when we were -- or earlier this
28 week, when we were meeting with Mr. Lapointe, we
29 talked about the pre-season fishing plans that are
30 developed with -- by the PSC staff before the
31 season begins, so that he talked about his fishing
32 planning model. Do the results of those pre-
33 season fishing planning models have a role in-
34 season when you're developing the fishing plans?

35 MR. ROSENBERGER: They do. First, I would say that PSC
36 staff doesn't develop the fishing options. Those
37 are developed by both of the countries. The model
38 is managed by the PSC, but the options that are
39 presented into there are what Canada brings, or
40 the U.S. brings in to the -- to populate the
41 model.

42 And then, on your question, yes, it does help
43 us to formulate the options that we would be
44 looking at, but the vast majority of fisheries are
45 defined by in-season data, and so they're often
46 different. You know, if the timing is earlier,
47 later, or one stock is, you know, more or less

1 abundant than you expect. So it's the in-season
2 data that drives the decisions, but it does help
3 us to get a sense of when we should be doing
4 something if it was as per the conditions that we
5 populated the model with.

6 Q I think you already mentioned that you do look at
7 the different decisions that are being
8 contemplated for First Nations, FSC fisheries at
9 the time you're -- or within the Canadian caucus
10 you bring those decision possibilities forward; is
11 that right?

12 MR. ROSENBERGER: That's correct.

13 Q And is the Canadian -- does the Canadian caucus
14 get its information about FSC fisheries from the
15 Integrated Management Team that's a part of that
16 caucus?

17 MR. ROSENBERGER: Well, the proposed fisheries around
18 the First Nations are generally brought by myself
19 from the information that I have, as the chair of
20 the Fraser Integrated Management Team, so that
21 knowledge, so we cover them all off.

22 Q Okay.

23 MR. ROSENBERGER: If there's specifics about what we
24 might be planning somewhere, then one of the staff
25 members would elaborate more as needed.

26 Q Okay. And again, decisions that -- I will be
27 dealing more with the Fraser River Integrated
28 Management Team in some detail, so this is more
29 just a flagging of points. In the Canadian
30 caucus, do you consider decisions that are being
31 made on commercial openings outside panel waters
32 and also First Nations economic fisheries?

33 MR. ROSENBERGER: All of the fisheries -- for -- this
34 is maybe in the reverse, but hopefully you get
35 what you want. The First Nations food, social and
36 ceremonial fisheries, the department provides
37 essentially information in an update so that
38 people understand what stocks, you know, we're
39 harvesting, potential impacts, and so we
40 understand what might be leftover for available
41 catch.

42 The commercial fisheries and the licensed
43 areas, the First Nations economic fisheries and
44 the rec fisheries are essentially debated in the
45 room as to how to make them all fit together for,
46 you know, essentially optimum performance or
47 meeting the objectives that people bring to the

1 table. But -- so all other fisheries, whether
2 they're in the panel waters from the Canadian side
3 or outside, are discussed.

4 Q Okay. Do discussions happen between the Canadian
5 and the U.S. chairs outside of the full bilateral
6 panel meetings?

7 MR. ROSENBERGER: Yes.

8 Q And why do you have those discussions outside of
9 the bilateral meetings?

10 MR. ROSENBERGER: To try to get a sense of the scope of
11 the issues that each party might be bringing, and
12 whether, you know, either party is -- presumably
13 they're being briefed on the same technical
14 information, so what, you know, whether they may
15 or may not be looking to adopt a run size change.
16 The information is provided to us with some
17 uncertainty to it, so the bounds to it. Does it,
18 you know, is it making sense? Do we need to look
19 at other information requests that we might want
20 to have before we make decisions?

21 And then each party is trying to give the
22 other one a heads up as to the fisheries that
23 they're proposing, so we'll have a -- you just
24 have a longer chance to think about them and
25 debate them within your caucus before sitting in
26 the panel. We often break in the panel to go and
27 consider each other's fishery proposals, but it
28 helps to give just more or an opportunity to do
29 that.

30 Q All right. Currently, the Fraser River Panel only
31 makes decisions on fisheries that occur before
32 Mission, is that -- like marine areas and then in-
33 river before Mission?

34 MR. ROSENBERGER: The panel, that's correct, in the
35 panel waters.

36 Q Okay. But under the treaty, the panel waters
37 actually extend beyond Mission; isn't that right?

38 MR. ROSENBERGER: That's correct.

39 Q So is it just by convention, or maybe by the fact
40 that traditionally commercial harvests haven't
41 been above Mission, that you haven't -- that the
42 Fraser River Panel hasn't made decisions on those
43 fisheries?

44 MR. ROSENBERGER: That's pretty well the way -- it's
45 just the evolution is that as the department has
46 been working and creating First Nations economic
47 fisheries above Mission, the panel has not taken

1 on the role of adopting or having to authorize
2 those fisheries.

3 Q If the commercial fisheries above Mission became
4 more significant, do you anticipate there may be a
5 change in the interest of the Fraser River Panel
6 to become involved in the management of those
7 fisheries?

8 MR. ROSENBERGER: Well, there's a potential for sure.
9 At this point, the U.S. has been strongly
10 supportive of Canada moving more of its fisheries
11 terminally, that the less fish that's taken before
12 their fisheries is their interest here. So being
13 more terminal in our harvesting or a higher
14 proportion of the fish harvested terminally from
15 Canada as the allowable catch, at this point
16 they've identified as in their interests and they
17 support that. So whether they would want to be --
18 have more of a say in the adopting or authorizing
19 those fisheries, at this point they haven't made
20 any moves that that would be in their interests or
21 they would want to do that.

22 Q Okay. And then on the -- in the bilateral
23 meetings of the Fraser River Panel, who speaks for
24 Canada? Who's the decision-maker for Canada?

25 MR. ROSENBERGER: Department of Fisheries and Oceans,
26 so the panel chair.

27 Q You?

28 MR. ROSENBERGER: That's me.

29 Q All right. Once a decision is made in the Fraser
30 River Panel about fishing plans, what's the
31 process for implementing those decisions?

32 MR. ROSENBERGER: Well, as the panel meeting is -- ends
33 and we've made decisions around specific
34 fisheries, the Fraser Integrated Management Team
35 members, so the Department of Fisheries and Oceans
36 managers, would need to then either create
37 variation notices or some -- whatever the legal
38 instrument is to authorize a given fishery. So we
39 might have all the details already worked out, and
40 that's easy. Sometimes we hold, again, another
41 Canadian caucus, FRIMT, meeting, to work through
42 some of the details. And for some of the
43 fisheries, the non panel water fisheries, where
44 it's less specific what the -- will occur,
45 particularly around some of the First Nations
46 fisheries, the managers will then go and have a
47 meeting with the fishing working group of that

1 given First Nation area and work through details.
2 It might be that they're planning a fishery for 24
3 hours on the weekend, but you don't know what the
4 hours are, or you might be targeting a set amount
5 of fish, and so those kind of details could be
6 worked out later. And then they'll all need to
7 create the legal instruments to authorize any
8 fisheries.

9 Q Okay. Could I have the PPR5 brought up? If you
10 could turn to page 100? At paragraph 271, we've
11 set out some of the implementation of process for
12 decisions made in the panel, and if I could just
13 take you down to the second to last sentence that
14 begins:

15
16 For commercial fisheries, the Area Resource
17 Managers generate the fishery notices as well
18 as the variation orders...

19
20 Is that accurate, or did we miss something?

21 MR. ROSENBERGER: I think it looks accurate. So these
22 are created by local resource managers. The
23 commercial and recreation ones are all approved
24 through the salmon office, so Jeff's portion of
25 this, in headquarters, and then there's a sign-off
26 on some of these by RDG, and it looks correct.

27 Q Okay. Are the area P and C staff involved in the
28 variation orders?

29 MR. ROSENBERGER: No.

30 Q Okay.

31 MR. ROSENBERGER: I mean, they'll -- not in having to
32 create them, but there's often a discussion with
33 them about here -- I mean, there's notification to
34 them for sure. There's some discussions about
35 options, sometimes, in the creation of a fishery,
36 but they don't have to help in drafting.

37 Q Okay.

38 MR. GROUT: But I believe, Barry, the Area C and P
39 staff do sign off on the completed variation order
40 for the commercial fisheries.

41 Q Okay. Thanks. And then, at paragraph 272, second
42 sentence, the line reads, "These fishery" -- so
43 we're talking, here, about fishing plans for First
44 Nations, FSC and economic opportunity fisheries.
45 We say that:

46
47 The fishery plans are subsequently reviewed

1 and must be approved by the Fraser River
2 Integrated Management Team and by the
3 Regional Director General.
4

5 Is that correct?

6 MR. ROSENBERGER: Right. That's essentially myself and
7 then through to the RDG, yeah.

8 Q Okay. So are they approved by the Regional
9 Director General?

10 MR. ROSENBERGER: Definitely there's a notice of all
11 the fisheries, and that's -- there's not a formal
12 sign-off on the -- like there is with a variation
13 order or some of the other notices.

14 Q So it's not an approval as much as it's just an
15 information to the RDG?

16 MR. GROUT: There's not a formal approval on these
17 fisheries by the RDG. The communal licenses would
18 be issued by the area offices.

19 Q Okay. Thanks. Now, I'd just like to get into the
20 Integrated Management Team process. Can you give
21 me anymore detail on how decisions are made for
22 opening FSC fisheries? You've just touched a
23 little bit on it.

24 MR. ROSENBERGER: Well, it's a large number of meetings
25 and places, and it's actually quite different
26 between sort of three general geographic areas, so
27 marine, lower Fraser and the BC Interior. On the
28 B.C. Interior side of it, most of the licences
29 that are issued are - it's one licence and it
30 covers the whole period of the fishery. There's
31 very little change over time.

32 And so there are weekly meetings, often for
33 information, or if there's a need to -- for a
34 conservation concern or some other aspect to make
35 a significant change. In the Lower Fraser and
36 some of the areas even up to Lillooet, the
37 management can be much more on a weekly basis. So
38 there are fisheries harvest committees from the
39 First Nations that meet with the DFO resource
40 managers, and those groups are meeting at least
41 once, and often twice a week to try to go through,
42 as this information is changing, and look for
43 opportunities. So there's that give and take.

44 From the FRIMT side of things, the
45 coordination that I'm providing into the process,
46 is you're often giving some guidance for the
47 group, but they need to go and look at the

- 1 specific circumstances in the area to have the
2 fishery -- instead of saying, you know, "You're
3 open" -- "You have to open on Wednesday from 10:00
4 till 4:00," it might be a lot better for them to
5 open on Wednesday from 4:00 till midnight. Or,
6 you know, that might be in their interest to come
7 there. So the department doesn't -- this is -- is
8 -- many of these fisheries are jointly managed and
9 the group -- the local groups need to decide
10 what's in their best interest to try to have their
11 fisheries and understand their own circumstance.
- 12 Q Okay. Are there parameters set around the target
13 amounts of fish that will be caught?
- 14 MR. ROSENBERGER: Yeah, but usually it's the amounts of
15 fish, and general times, so that we don't get
16 conflict of gear fishing on top of each other, but
17 the more details are created locally.
- 18 Q Okay. By your resource managers in collaboration
19 with relevant groups?
- 20 MR. ROSENBERGER: That's right.
- 21 Q Okay. And what about recreational openings? How
22 is that process managed?
- 23 MR. ROSENBERGER: Each of the areas has, again, the
24 south coast, lower Fraser and Interior has either
25 a recreational coordinator/manager or a key person
26 targeting to their recreational fisheries, but a
27 number of them have larger involvement. So those
28 fisheries, we're looking at, again, less variation
29 on a weekly basis. It's usually much more, when
30 do we think we can get started, in particular, in
31 the lower Fraser or the marine approach areas, and
32 when might we run up against either a conservation
33 concern of another stock or species that we've had
34 pre-season planned.
- 35 So in cases like '09, where we never got a
36 sockeye fishery going, or any directed sockeye
37 fisheries, that was updates weekly, but really one
38 decision. We did take some actions when we
39 thought we had unacceptable levels of encounter
40 rates, so you'll have those kinds of actions, and
41 we'll have meetings, again with local groups, that
42 happens once a week, and in this case on Tuesdays.
- 43 Q And ultimately those decisions on openings are
44 debated at the Canadian caucus level?
- 45 MR. ROSENBERGER: That's correct.
- 46 Q Okay. And for First Nations economic opportunity
47 fisheries, what's the process for that? Is it,

1 again, a discussion with resource managers and the
2 affected First Nations?

3 MR. ROSENBERGER: Yes, that one has a bit more
4 discussion at caucus, but it's, again, mostly
5 defined around the abundance. But in this case,
6 the time is the one that gets more of the
7 discussion at caucus, where, you know, if somebody
8 wanted to have four days to fish and you thought
9 you could get it done in one day, what might that
10 mean to another commercial fishery, or an FSC
11 fisheries? So more bounds are put on in that
12 discussion in the caucus side of things.

13 Q Okay. And would the decision for Musqueam and
14 Tsawwassen First Nation also be part of that
15 process within the economic --

16 MR. ROSENBERGER: Always the economic demonstration
17 fisheries. There's a number of them throughout
18 the fishery.

19 MR. GROUT: Maybe just to add onto that one. The
20 department does meet with the First Nation
21 planning committees for each of the economic
22 opportunity fisheries, as well, to discuss the
23 parameters of the fishery and the number of fish
24 they're targeting.

25 Q Okay. And then, finally, commercial non panel
26 area openings, how are those -- are they just
27 decided in the caucus, or do you have other
28 preliminary meetings on those?

29 MR. ROSENBERGER: They're mostly decided in the caucus.
30 There are -- we have a weekly commercial
31 conference call where all of the licensed area
32 harvest committee reps can participate, so they
33 get a sense of what's coming up. The Area E is
34 often one where there's a number of different
35 scenarios provided to us, so we try to have a
36 process where we can gather those into the caucus
37 meeting, but in the caucus is where those
38 decisions are ultimately made.

39 Q And once the decisions are made in the caucus on
40 those areas outside of Fraser River Panel
41 authority, is there a reporting to the panel of
42 all those decisions and to the PSC for their
43 information purposes?

44 MR. ROSENBERGER: Yeah, we report those in the panel
45 meetings.

46 Q Okay. For 2009, were there any particular issues
47 or challenges in managing the fishery that year?

1 MR. ROSENBERGER: Lots. Right from the beginning, we
2 had a relatively low snow pack, so we had
3 anticipation of high levels of management
4 adjustment, so we were anticipating from the
5 beginning that we wouldn't be having just a normal
6 level or an average level, which did come to pass.
7 We ended up with some of the highest and, in some
8 cases, record temperatures, which does affect the
9 management adjustment by stocks.

10 We had a relatively large forecast for a
11 Summer run stock group in sockeye and relatively
12 weak in the other three stock groupings, so
13 thinking about how to optimize harvest to the --
14 to the strong stock and protect the three weaker
15 stock groupings.

16 There was considerable discussion around
17 Cultus and lakes as a whole, and we had a manage
18 -- we had a plan for total allowable mortality we
19 settled on of 20 percent, but it wasn't 20 percent
20 of the run no matter what; it was 20 percent of
21 the run for the purposes of trying to harvest or
22 optimize harvest towards abundant sockeye or pink
23 populations. So that actually came into play
24 later in '09, when there wasn't that strength in
25 the sockeye -- the Summer run sockeye, so it
26 didn't mean we could go fishing. And many of the
27 reports, actually, because of ease of reporting,
28 it looked like there's a TAC at times when there's
29 not, which is why Canada didn't access it, or
30 didn't access all of it.

31 We had other stocks of concern that we've
32 identified. Some populations, coho, Sakinaw
33 sockeye, and Nimpkish sockeye outside of the
34 Fraser River, but which were thought of in our
35 whole process. And the -- so then taking all that
36 information, we were, in the pre-season planning
37 with the U.S., as you've mentioned earlier, in
38 your discussions with Mike Lapointe, the pre-
39 season management model that we use with the
40 Fraser River Panel, we -- one of the objectives,
41 pre-season, is to come to a consensus fishing
42 pattern from what the U.S. is hoping to accomplish
43 and Canada is, and there's some rules that are
44 defined in the treaty and in the commission
45 guidance that we use in trying to set those
46 parameters.

47 And in this case, Canada and the U.S. could

1 not come to a consensus plan, so that's the first
2 time that hasn't occurred, and so there was
3 considerable uncertainty on when some of these
4 fisheries might start. In particular, some of the
5 low impact fisheries that -- that often do start
6 before you have, you know, reached the mid point
7 of the run and have a higher degree of certainty,
8 and so where it's the Canadian FSC fisheries or
9 some of the U.S., they call them 4B56C fisheries,
10 but it's the Juan de Fuca area for the U.S., there
11 was considerable uncertainty around those. So it
12 probably didn't hit on all of them, but pre-season
13 it was quite a difficult planning process.

14 And then in-season, right from the beginning,
15 we had test fishery results that were
16 significantly less than expected from most
17 populations, but not all. So we actually had
18 Harrison, in particular, which was extremely
19 strong, but not on the stocks that were forecast.
20 The 4 sub one, which is the normal strength, was
21 actually one of the biggest collapsed stocks ever
22 in the Fraser, but the three sub ones were a
23 phenomenal return at that stage and subsequently
24 returned as four-year-olds in 2010.

25 Adams, Cultus, and some of the other late run
26 stocks returned relatively well and did well. As
27 far as spawning escapement objectives, we met or
28 exceeded the spawning for late run stocks. And we
29 had a phenomenal pink return forecast and even a
30 larger one that materialized, so the extreme
31 temperatures in-season, the MA, and then trying to
32 figure out how we're going to fish. So our test
33 fisheries performed very well. We knew, in most
34 cases, that we were not experiencing large returns
35 of fish; in fact, substantially less than
36 expected, so that was good.

37 In-season, we identified a problem in the
38 IFMP that we hadn't expected, and that was in the
39 Early Summers and Summers. We didn't have a rule
40 that if we came back at less than escapement
41 objective what we would do, and we do have that
42 for, in this case, for the Early Stuarts, and it's
43 a long established and discussed process.

44 And for the Lates we had a rule, but not for
45 those other two stock groupings, and that created
46 considerable problems in that these fish co-
47 migrate, and the number of First Nations, in

1 particular, were looking to fish for chinook, and
2 trying to access some sockeye, and we needed to
3 make up some -- I understand if we were going to
4 make a change in the FMP, in which case we did, we
5 allowed some small fisheries to occur, either
6 incidentally or directed on these Early Summer and
7 Summer stocks.

8 So there was considerable debate and
9 challenges in trying to figure out how to share
10 those among -- particularly amongst the First
11 Nations, because we don't have a sharing rule,
12 which is one of the things we've been striving
13 for, but in that circumstance we had a number of
14 issues around that.

15 There may be more. I like when you ask the
16 shorter questions.

17 Q For the issue that you just described, where you
18 didn't have the rule for Early Summers and Summers
19 that you had for -- or a rule like you had for
20 Early Stuarts and Lates - they may not be the same
21 rule for Early Stuarts and Lates - but you had a
22 rule to deal with the issue you just described.
23 Did you have to go back to the RDG to deal with
24 that problem?

25 MR. ROSENBERGER: Yes, there was discussions with the
26 RDG about options and what we should be trying to
27 do.

28 Q And ultimately did it have to go to Ottawa?

29 MR. ROSENBERGER: I believe that the RDG briefed
30 Ottawa, but unlike the 2010 Cultus change in plans
31 that we talked about, we didn't -- or I'm not
32 aware that we briefed to the same extent and got
33 that type of a sign-off.

34 Q Was there an actual change, like a -- to the IFMP
35 the same way there was in 2010, or was it just of
36 management within the rules that you already had?

37 MR. ROSENBERGER: Well, the rules would have been,
38 nobody would have a fish, and we had harvests that
39 were in the three to five percent exploitation
40 rate by the first -- seven percent overall in
41 total, two percent tests -- three to five percent,
42 probably, by those stocks as an exploitation rate
43 that was used in mostly incidental First Nations
44 fisheries to chinook, but some directed fisheries
45 on sockeye. So that's a change from the plan.

46 Q All right. But it wasn't documented as a change
47 to the plan?

1 MR. ROSENBERGER: That's correct.

2 Q Okay. Was there consultation with stakeholders
3 about that change?

4 MR. ROSENBERGER: Within the panel there was, in the
5 rec community, specifically on the Tuesday calls.
6 I didn't participate when we were making that
7 change in the commercial calls, but I'm very
8 confident that that did occur. And then there was
9 extensive discussions with First Nations of what
10 we could try to do around having some of these
11 limited fisheries in different places.

12 Q You mentioned the very high abundance of pinks in
13 2009. What was the impact of that on the sockeye
14 management?

15 MR. ROSENBERGER: Well, there was a significant
16 overlap, as we saw on Monday, when you had the
17 timing table up on the screen, and so with a
18 return, in this case estimated at nine and a half
19 million, half to two-thirds of that is overlapping
20 with the sockeye, so trying to harvest those
21 sockeye was -- trying to harvest the pinks and
22 protecting the sockeye was a considerable
23 challenge. One of the items that wasn't a
24 challenge, necessarily, in the question I answered
25 earlier, but which became a challenge in the pink
26 fishery is the late run sockeye had been migrating
27 in early into the Fraser for the last 10, 12
28 years, since 1996, and creating problems. I'm
29 sure you had some discussions around here, or will
30 have before you're done, on en route and pre-spawn
31 mortality of those fish changing their timing and
32 migration behaviour.

33 In 2009, they reverted to more of a normal
34 pattern, so they delayed in the Straits of
35 Georgia, so that the gulf off of the Fraser River,
36 and so there was more mixing with the pink salmon
37 than there had been in some of the previous recent
38 cycles, but more of a traditional pattern. So
39 trying to harvest those fish and, in this case,
40 get the pink harvest before coho conservation
41 rules kick in, were challenges. So Canada was
42 able to harvest, or did harvest, something in the
43 range of two million of about a 10 million total
44 allowable catch available to them, and the U.S.
45 harvested pretty much their full allocation in the
46 range of three-and-a-half to four million.

47 Q When you mentioned, just earlier, that the

1 Harrison stock came in strong, as, I can't
2 remember how you described it, but if I said to
3 you the three-year-olds were strong, but the four-
4 year-olds were weak, is that fair?

5 MR. ROSENBERGER: That's correct.

6 Q Okay. The weak four-year-olds, would they be the
7 same age class, then, as the other stocks that
8 came back in such low numbers in 2009?

9 MR. ROSENBERGER: They're the same total age, but they
10 have -- it's a unique population in the Fraser in
11 that these are described as sub one, so they don't
12 spend a year in freshwater. It's a unique life
13 history. Almost all of the sockeye in the Fraser
14 and most sockeye everywhere, spend at least one
15 year in freshwater. In this case, these are
16 populations that migrate in their first year out
17 to the ocean, so they're tending to spend two,
18 three, four months in the Fraser River. So their
19 total age is the same, but their life history is
20 different.

21 Q Okay. And the three-year-olds that came back
22 strong, are they the same age class as the large
23 numbers that came back in 2010?

24 MR. ROSENBERGER: That's correct.

25 Q Do you draw any conclusions from that?

26 MR. ROSENBERGER: There's many conclusions one could
27 draw. But, I mean, we take a look at, you know,
28 in our forecast in a lot of places, we take a look
29 at inter-species productivity. So, you know, are
30 pinks doing well one year? Are the sub one stocks
31 doing well? What are the coho doing? And so you
32 hope that it's going to give you some ideas,
33 because some of those fish are spending portions
34 of their life history together. But there's not
35 any strong science papers that say that there's,
36 you know, there's a specific correlation between a
37 number of these different species or stock. So
38 it's a positive, but it's not necessarily going to
39 play out into, you know, the record numbers we saw
40 in 2010.

41 Q The Wild Salmon Policy -- sorry, just moving to a
42 new topic. The Wild Salmon Policy states that
43 harvest management will focus on conservation of
44 CUs. You know that?

45 MR. ROSENBERGER: That's correct.

46 Q Okay. How can management to CUs occur within the
47 bilateral process?

1 MR. ROSENBERGER: Well, there's a number of factors
2 there. So the Wild Salmon Policy says that we
3 will focus towards CUs, but it also says we may
4 manage to aggregates, and it actually expects that
5 we will manage to a much more limited number of
6 aggregates than all the CUs, because you have --
7 you can have two stocks that you classify as
8 conservation units, because they're in separate
9 lakes and you may not have strains, so you want to
10 keep track of them, but if their timing,
11 productivity, distribution is all the same, you're
12 going to manage them potentially the same.

13 But, if they're -- you know, if something in
14 there is different, then you're going to look and
15 manage them potentially different. So there's --
16 creating aggregates is really a given in the way
17 that all these populations have some degree of
18 overlap. It's trying to understand what would be
19 the best aggregation of the stocks.

20 Within Canada, as I mentioned earlier, we
21 take some of the populations - might have some
22 rules for Canada/U.S. in the four timed groupings
23 - but Canada is under no obligation to stay there.
24 In recent years, we've managed a finer suite of
25 distinction. And so Cultus is one. I mentioned
26 this last year, the -- and has been for a number
27 of years. The earliest time miscellaneous part of
28 the Early Summers. So there's different actions
29 can be taken, and they have been taken.

30 And around any of the populations we've been
31 starting to move more towards some of the terminal
32 harvests. So even in 2009, some of the food,
33 social and ceremonial harvests that occurred was
34 in the Harrison, discreet from the Fraser after
35 they'd broken off, and was in the Thompson after
36 the late run, in this case the Shuswap population
37 had segregated. So Canada has a fair amount of
38 discretion there.

39 Within the Canada/US process, the four
40 aggregates, you know, are probably the best way -
41 not necessarily as four, but some aggregation -
42 and matching them to the timing through the marine
43 distribution is -- their distribution through the
44 marine timing is the key way that we use to
45 manage.

46 Q I'm going to read a part of the policy to you, and
47 if you want me to pull it up on the screen, let me

1 know and I'll do that. But at page 33 of the
2 policy document, which is Exhibit 80, it says
3 that:

4
5 The Wild Salmon Policy will not preclude
6 fisheries operating on population aggregates
7 that include numbers CUs, but increased
8 attention to all of the units within the
9 aggregate will likely require significant
10 changes to current management practices.

11
12 Are you familiar with that language?

13 MR. ROSENBERGER: That's right, yes.

14 Q Okay. What's being done in response to that? How
15 is current management meeting this objective?

16 MR. ROSENBERGER: Well, we're in the process of doing a
17 number of things, and some of them are done. So
18 we've got the CU definition paper out, so we've
19 defined what is a CU for all the different
20 populations in B.C., for all the different
21 species. And there still is some discussion
22 around some of those. We had this around Fraser
23 sockeye here just in November, where, you know,
24 one year there was five sockeye in the Tête Jaune
25 Cache area of the Fraser, so it shows as a CU,
26 but, really, is it a CU? It's never been observed
27 before or after. So we do have good documentation
28 about whether it exists or not.

29 But after that, we've got a status paper, so
30 a - not a status paper - a benchmark that is
31 currently in draft, but it was at our PSARC
32 process - that Jeff can correct me on what that's
33 changed to in a second, if you need it - it's our
34 science review process within Canada. And so
35 trying to establish what would be the rules that
36 we would use to set the benchmarks for each of
37 these populations, so that helps to drive
38 potential harvest and TAM rules, total allowable
39 mortality rules. We have the wild -- we have our
40 Fraser River Sockeye Escapement paper, which was
41 somewhat at the beginning of the Wild Salmon
42 Policy, and we've made a number of changes on that
43 so that we can take a look at stocks on an
44 individual stock basis within aggregates to the
45 19, not necessarily to all 35 of them. And so how
46 we wanted to bring that into play, that Canada is
47 working on.

1 So there's a number of pieces that are in the
2 process right now that some of them are being
3 utilized and some are not. The Wild Salmon
4 Policy, though, as a whole, also talks about, you
5 know, these aggregates developing processes for
6 consultation and bringing people together and
7 trade-off of decisions in trying to meet the, you
8 know, the shared views of everyone, and so trying
9 to get those processes in play is a big part of
10 what we're trying to do, as well, as to what --
11 what are our common objectives that we're striving
12 for.

13 Q DO you see the process as moving towards a set of
14 rules, then, to govern the process, or something
15 different?

16 MR. ROSENBERGER: Well, I think it's within -- largely
17 within the kinds of processes we've got, but we're
18 going to need to adapt them in some ways. But
19 whether it's specific rules or it's principles
20 that are guiding you I think is the part that
21 we're going to need to see, moving forward. I
22 think we have a little bit of both right now, and
23 I'm not certain that one way or the other meets
24 all the criteria. And I say that because we just
25 spent the last year and a half, I was trying to
26 lead the renegotiation of the Fraser chapter.
27 When you start trying to think of all the
28 different variables that are out there and setting
29 a rule for it, it was very hard for, in this case,
30 within the Canadian caucus to come to consensus,
31 or between Canada and the U.S. but we did fairly
32 well in coming together in what the principles
33 should be that would drive us or guide us, I
34 should say, not drive us, in the decision-making
35 that we want to move forward on.

36 And then you need to use all that best
37 information. Everybody had, you know, brings
38 knowledge to that table.

39 Q Moving to another related, but different topic,
40 which is protection of weaker stocks, is it fair
41 to say that there's an assumption that if you
42 manage to the dominant stocks needs, you will
43 protect the weaker stocks at the same time, or we
44 don't have specific data on the smaller stocks in
45 a group?

46 MR. ROSENBERGER: Let me see if I've got that right.
47 If we manage to the large populations, we'll

1 protect the small ones, that that is an assumption
2 you have?

3 Q Well, yeah. I mean, you don't -- you can't do --

4 MR. ROSENBERGER: I would say it's the opposite --

5 Q -- rules --

6 MR. ROSENBERGER: -- but maybe I missed the question.

7 Q You can't do rules for the very, very small
8 stocks. You don't have, necessarily, data for
9 more than the 19 large stocks, for example?

10 MR. ROSENBERGER: Well, the 19 stocks are not
11 necessarily large. Cultus is not large, in recent
12 times. It's the stocks that you can identify
13 discreetly in some way, in many cases, or that
14 you've been monitoring for a long period of time.
15 So it's within the 19 populations they all have
16 the same datasets, the same periods of time.
17 Scotch Creek, for example, had very few fish in it
18 before the 1970s, and today it's got hundreds of
19 thousands of them. You know, they were probably
20 always present and they've colonized in a bigger
21 way for a number of changes. That one I can
22 actually tell you why, but some of them I
23 couldn't.

24 In the case of the -- so you have the 19
25 populations, and does that give you enough
26 understanding across the 30-some, I think is a
27 better question.

28 Q Okay.

29 MR. ROSENBERGER: But you cannot manage and set
30 exploitation rates to the largest, most abundance
31 populations and expect to protect the weakest
32 ones, if that was the question. But on the weaker
33 ones, we can set proxies for them. We need to
34 study them in ways to understand how does the
35 proxy -- how accurate is the proxy in trying to
36 protect that particular population.

37 MR. GROUT: Maybe if I could add a bit to what Barry
38 was saying? In the escapement memos that we
39 produce each year, and some of these are in the
40 exhibits, Tab 11 in our binder here, the Model
41 Overview and Summary of 2009 Planning Simulations.
42 When we're looking at harvest rules for Fraser
43 sockeye and the shapes of those rules, we're also
44 musing the model to calculate the performance of
45 the individual stocks in the model relative to
46 spawning benchmarks that we've laid out, so we can
47 look at the probability that those populations are

- 1 going to be blow a particular benchmark. We need
2 to do more work to line those benchmarks up with
3 the Wild Salmon Policy work that Barry mentioned
4 that -- in the paper that was presented this past
5 fall, but we are trying to explicitly account for
6 the populations and the harvest rules that we're
7 laying out for these management units as well.
- 8 Q And if you manage the dominant -- so just to flip
9 it around, I think I got things a bit backwards
10 when I was asking the question. If you manage the
11 dominant stocks to protect the weaker stocks, the
12 assumption is that it will protect all the stocks
13 within that group?
- 14 MR. ROSENBERGER: With the right set of rules it
15 should.
- 16 Q Okay. And is that an assumption that has been
17 used in managing the late runs to protect Cultus?
- 18 MR. ROSENBERGER: That's correct. So that -- I mean,
19 that's where even though you might have had --
20 well, just last year we had a total allowable
21 mortality -- total allowable catch level
22 exploitation rate for Late runs that would have
23 been in the 40-some percent, but from Cultus we
24 didn't -- you could follow that and use that
25 assumption, or you could use a different
26 assumption. So in some years it's better to use
27 even -- even the year before. The Lates actually
28 met their exploitation -- or met their escapement
29 objective, but in the -- if you followed 20
30 percent, or some other number, would you have
31 gotten there? So I think you have to set the
32 rules that think about that small population,
33 taking it into account. So my point here is
34 you're not going to necessarily be able to harvest
35 all of the total abundant stocks, but they could
36 still be a proxy that you understand what the
37 implications are.
- 38 Q Has there been any science work done to support
39 that assumption that the managing the dominant
40 stocks to protect the weaker stocks will protect
41 all within the group?
- 42 MR. ROSENBERGER: You asked that question kind of the
43 same way you asked it before. Is there science
44 that the large population is going to protect the
45 small one? No, but --
- 46 Q No, no, if you manage -- is there science to
47 support the theory -- the assumption that if you

1 manage the dominant group to protect the smaller
2 group, like, for example, if you manage late runs
3 to Cultus, that it will actually protect all of
4 the stocks that are within the late run stock
5 group?

6 MR. ROSENBERGER: Okay, we're not trying to manage the
7 dominant stock -- the aggregate dominant stock to
8 do that. In this case, we're trying to find a
9 proxy, which is -- so does it match in timing,
10 productivity, distribution and different fisheries
11 that's the most similar, and then trying to set
12 the rules for what can Cultus sustain, and
13 applying that to the dominant stock. But you're
14 using the dominant stock to measure it, because
15 you can find it. So you're trying to set the
16 rules around Cultus, but if you were going to go
17 find Cultus to know whether you were measuring it
18 properly and were successful, you wouldn't find
19 them.

20 So in the case of 2010, with 20-some million
21 Lates returning, 25 -- 24 million or whatever is
22 the total, but 20 million to the Adams/Weaver,
23 which was the proxy, and expecting something in
24 the ten, fifteen thousand, twenty thousand range,
25 you know, we'd be sampling to five, six, ten
26 thousand fish at a time instead of the hundred to
27 three hundred we strive for, so does that make
28 sense? You don't need to kill that many fish to
29 know that you're making the right decision, so you
30 use the proxy to make that calculation.

31 Q All right. Moving to a new topic, and this is, I
32 think, directed to Mr. Grout. I wanted to talk to
33 you about the Fraser River In-River Management
34 Model. Can you describe what that model is? And
35 we do have available the Southern Endowment Fund
36 Proposal, if that's of some use in reviewing the
37 issue. That's at Tab 5 in your binder, CAN
38 003645. It's just a short concept document, but
39 perhaps you can describe for us what that model is
40 and what's being developed there?

41 MR. GROUT: I'm certainly not an expert on all the work
42 that's been done on this particular model, but my
43 understanding comes from presentations, a couple
44 of annual presentations. I've sat in on the work
45 that's been done here, primarily by researchers at
46 SFU. And they're looking at whether they can
47 develop a more explicit model to look at finer

1 scale resolution on escapement objectives, perhaps
2 at the CU level or finer scale resolution.
3 They're looking at the consequences, potentially,
4 of inaccurate or imprecise information on the CU
5 run size timing and migration rates, and the
6 ability to perhaps deliver harvest to some of the
7 terminal areas, taking into account the best
8 available information they've got.

9 So they're also trying to factor in where the
10 discrepancies between estimates of Mission and
11 upstream might take place, and this -- we've got a
12 mortality component to the model.

13 So this is really an effort to try and build
14 a much more complex model of the Fraser Watershed
15 for looking at the migration of the fish and how
16 we might achieve objectives, if they were
17 specified for more terminal areas. And this is
18 quite a different approach than what's been done
19 in the Fraser spawning initiative. The model we
20 use there does not specify where the harvest occur
21 or who -- or by who and how they might be
22 allocated. So this potentially would be a tool
23 that you might be able to look at that sort of
24 thing over time.

25 Q Is the Department of Fisheries and Oceans involved
26 in this project?

27 MR. GROUT: Yes. We meet regularly with the
28 researchers to discuss the progress of the work
29 and they ask for feedback on incorporating various
30 different components that they might want to be
31 looking at in their research.

32 Q And has the department made any decisions about
33 whether this is something that they would pursue
34 when the work is done, or is it still too early?

35 MR. GROUT: I think this is still a work in progress,
36 and as I said, so far we're just getting updates
37 on how the work's progressed and what additional
38 work needs to be done, so we haven't, to my
39 knowledge, moved to a spot where we would be
40 contemplating policy changes, at this point.

41 Q And where is this model or this project in the
42 development of it? Is it completed; is it being
43 tested; or is it still being developed?

44 MR. GROUT: My understanding is it's still in the
45 development stages, at least that's where the
46 discussion was at the last time I attended a
47 meeting on this, which was last year.

1 MS. BAKER: All right, thank you. I should mark this
2 as an exhibit.

3 THE REGISTRAR: Exhibit number 337.

4
5 EXHIBIT 337: Southern Boundary Restoration
6 and Enhancement Fund Project Concept 2008
7

8 MS. BAKER:

9 Q Moving to a new topic, when Mr. Lapointe was here,
10 some questions were raised around over-escapement,
11 or that phenomena which has been described as
12 over-escapement. Just to summarize, it's been
13 suggested by people, including Carl Walters, that
14 escapement under current policies, and perhaps
15 going back as far as the 1987 rebuilding strategy,
16 allowed escapements to be too high on certain
17 stocks and that the high number of spawners has,
18 for a variety of reasons, negative impact on
19 productivity on certain of the larger runs. Are
20 you familiar with that theory?

21 MR. ROSENBERGER: Yeah, well, Carl's been involved in
22 two or three papers on this, and media reports,
23 which are not all consistent, but I have heard him
24 state some of those claims.

25 Q There's also a suggestion that continued high
26 numbers of spawners on certain stocks could result
27 in a serious loss of productivity, or a potential
28 collapse of those stocks; have you heard that
29 argument as well?

30 MR. ROSENBERGER: I have.

31 Q Do you agree that those are potential impacts from
32 high levels of escapement on certain stocks?

33 MR. ROSENBERGER: Well, productivity has been shown to
34 decline at very high levels, or even higher levels
35 of escapement, so I think a key is being aware
36 that if you want to have the highest recruits per
37 spawner, you probably want to have a relatively
38 low level of number of spawners that's those --
39 those given fish will get the best places to spawn
40 and have the, you know, best food to eat, and
41 whatnot, but there's a lot of inherent risk with
42 that style of management, and that's not the
43 management policy that's adopted by the
44 department.

45 As far as a collapse goes, there is a paper
46 that Carl was one of the co-authors on that the
47 department asked to be written that showed, after

1 review, of 20-some sockeye populations and a
2 number of pink populations, that there is no
3 catastrophic collapse or loss of stocks, at least
4 within the Fraser, and it might have been a larger
5 area of review than just Fraser River population.

6 So I don't think we've seen that occur
7 anywhere, and, you know, I don't agree that there
8 would necessarily be a loss of the total
9 population, or a catastrophic loss, but you'd
10 definitely see a decreased productivity at the
11 higher end, and that's, you know, most stock
12 recruitment relationships show that as you get to
13 higher levels of spawn. And so, again, there's
14 other things that come into play of environmental
15 and other factors that you're striving for, as
16 opposed to just to fisheries production.

17 MR. GROUT: Maybe if I could --

18 Q Yeah.

19 MR. GROUT: -- just add a couple points to what Barry
20 said? So the report Barry referred to was by the
21 Pacific Fisheries Resource Conservation Council.
22 I believe it was done in 2004, on the over-
23 escapement issue.

24 In terms of the decrease in production as the
25 number of spawners increases, that a key element
26 of the models we're using in the Fraser sockeye
27 spawning initiative, whether it's a Ricker
28 variation of the model, or a Larkin-style variant
29 to the model. We're using the best available data
30 we've got to try and develop the model fits, but
31 the models generally do contemplate decreased
32 production as the number of spawners increases.
33 It's not necessarily across all stocks, though.
34 So there may be some populations that can get to
35 large spawner abundances, but other ones may not.
36 So management rules we're developing are
37 contemplating the performance of all of the stocks
38 in the model and are not necessarily just focused
39 on one.

40 Q Since high mortalities began to be observed on the
41 late run stocks in the 1990s, the department has
42 implemented low harvest rates on the late runs to
43 ensure that sufficient escapement occurred on the
44 spawning grounds; is that correct, as a summary?

45 MR. ROSENBERGER: Yes, it's -- the exploitation rates
46 were decreased largely to account for that -- the
47 required management adjustment needed to ensure --

1 or attempt to ensure escapement objectives.

2 Q And the late runs also now tend to overlap more
3 significantly with the summer runs than they did
4 previously; is that fair as well?

5 MR. ROSENBERGER: That varies between years and cycle
6 lines.

7 Q Is it fair that they have - they do tend to
8 overlap more with summers in the -- since they
9 stopped holding -- or since they stopped holding
10 in the mouth of the Fraser?

11 MR. ROSENBERGER: Sorry, I didn't get the question
12 there. In the marine side of things, we've seen
13 very little change in the timing, so the timing
14 between Summers and Lates in the marine area
15 hasn't changed noticeably. Again, there's
16 obviously variations between years or within
17 years. The timing entering into the river has had
18 more of an overlap with that -- not having that
19 delay to the same extent. And just I mentioned
20 earlier, but in -- for 2009, and in 2010, the fish
21 have reverted back to more of their traditional
22 delay of four to six weeks in the gulf before they
23 enter. They're not up to six weeks, yet, but I
24 think we've been sitting in the three, four weeks
25 each of the last two years. So that does vary
26 between years.

27 Q All right. And is it the case that more fish are
28 reverting to their old patterns, but not all,
29 there's still a significant amount that are
30 entering the river early?

31 MR. ROSENBERGER: There is fish that are still entering
32 early. In the last year in particular, it would
33 not have been significant, it would be quite a
34 small fraction.

35 Q Okay. Do you agree that the low harvest rates on
36 late runs has resulted also in low harvest rates
37 on the summer runs where those summer runs overlap
38 with the late runs?

39 MR. ROSENBERGER: That's correct.

40 Q Okay. Has the resulting reduced harvest rate on
41 the summer runs resulted in levels of spawners on
42 the summer runs which are high enough to impact
43 productivity?

44 MR. ROSENBERGER: We've been reduced recruits per
45 spawner in -- in some of those years.

46 Q Is that a concern for the department?

47 MR. ROSENBERGER: I think it would be a concern

1 overall, and it's part of the discussion that,
2 again, we bring to the tables in trying to
3 establish escapements in the given year and our
4 harvest objectives. The escapements in 2006,
5 which were some of the largest in the last recent
6 years, close to five million, produced the roughly
7 30 million in 2010. So I think the people who
8 have seen some of these larger escapements are
9 also seeing the potential benefits that can occur.
10 So I think there's much more to understand to know
11 what escapement objectives that individuals would
12 like to bring forward.

13 MR. GROUT: Maybe to add to Barry's point, as well, one
14 of the key uncertainties, when you're looking at
15 the best harvest rule you use for managing Fraser
16 sockeye, is what the impact of a larger escapement
17 is going to be. We tend to have a lot of data
18 that's had a relative -- or lower levels of
19 spawners relative to out at the right-hand side,
20 which is higher spawner levels. So there's
21 considerable uncertainty about the response of the
22 populations that some of these higher abundances
23 of spawners compared to at low abundance.

24 Q Okay. Thank you. And then moving to, again,
25 another topic, this deals with the timing of the
26 run and the timing of the harvest of the run. Is
27 it fair to say that under the current management
28 model you wait until you know where the peak of
29 the run is before you tend to permit high-impact
30 fisheries; is that a fair --

31 MR. ROSENBERGER: The majority of the fishing is
32 targeted around the peak of the run.

33 Q Okay. Is there a concern that we have a
34 disproportionate harvest within the run, itself,
35 like we're not harvesting proportionately across
36 all of the run, because if that -- it's either
37 harvesting at the peak or at the tail of the run?

38 MR. ROSENBERGER: Well, there's a number of factors at
39 play here, again. So we have four stock groupings
40 that were managed in most cases, and they have a
41 number of different CUs or populations within
42 them. So some are -- they're not all affected
43 equally by the harvesting, to begin with, but you
44 hope that the stock grouping represents the
45 majority of them, or your focus.

46 Whether you're harvesting more on the later
47 part of the run or the earlier part of the run in

1 a given year, if you think that you've got a
2 larger abundance early and the run subsequently
3 doesn't materialize at the same magnitude, so in
4 this case the second half of the run, so as to
5 speak, then you could tend to be harvesting more
6 on the beginning of the run.

7 So in some of the recent years, where the
8 total returns are less than expected, sometimes
9 you're finding that you're -- that scenario. And
10 if the run continues to grow through time, which
11 we saw in 2010 and was later, the harvesting was
12 probably quite proportionate to the runs, but
13 could be more on the later side.

14 So you can have -- over time I would suggest
15 it probably balances out, because we're often
16 seeing differences in any of the run, being
17 smaller or larger, even when you think you're
18 around the peak. But the majority of the time I
19 think you're probably there, because the peak
20 tends not to range once you think you've got it by
21 more than three or four days. So each of these
22 fisheries, assuming that they're harvesting what
23 you're striving for, is probably driving it more
24 and it's balanced.

25 Q I'm just going to move to the post-season process.
26 Most of what we've talked about now has been sort
27 of in-season work. When do you consider the
28 beginning of the post-season phase of the year?

29 MR. ROSENBERGER: After the fisheries are completed.
30 And at times, though, we will still have -- we
31 could have no fisheries or very limited fisheries,
32 but -- and still have assessment going on, so
33 we're still trying to understand the run. So 2009
34 would be an example of where the fisheries weren't
35 necessarily defined when you ended, because we
36 didn't really have any, but once we've done our
37 assessment and our fishing side of things,
38 generally the in-season is over.

39 Q And when does regulatory control transfer from the
40 panel back to the domestic --

41 MR. ROSENBERGER: They're both at the same time. If we
42 don't anticipate any further fishing, in the case
43 of the U.S., it comes off in a staged approach, as
44 the stocks migrate through their areas as well, so
45 from the outside to the inside, and Canada's tends
46 to go off as one set process, but it's similar
47 kind of timing.

1 Q Are there any commercial fisheries that occur
2 after the transfer of regulatory control?

3 MR. ROSENBERGER: Not for Fraser sockeye or pinks, in
4 the panel waters, but other species there are.
5 That's why we transfer the control, so you can
6 harvest -- plan fisheries and have -- have
7 fisheries for chums, primarily.

8 Q Okay. And spawning escapement, that's thought of
9 as a post-season activity, but it occurs in-season
10 and post-season; is that right? Sorry, the
11 enumeration of the --

12 MR. ROSENBERGER: The in-season and post-season is
13 usually more thought of on the harvesting side of
14 it. So the stock assessment, in this case, the
15 spawning ground assessment is something that's,
16 you know, is occurring as those fish are arriving
17 on the spawning grounds. In the case of the Early
18 Stuart, first sock in, they're primarily being
19 enumerated in August, late July and August, and
20 obviously we're still in fishing mode for other
21 populations at that time, so there's an overlap.

22 Q Okay. And once you're in the post-season phase,
23 what does the Department of Fisheries and Oceans
24 have to do with respect to sockeye management on
25 the Fraser?

26 MR. ROSENBERGER: Well, we prepare three reports. One,
27 is the Record of Management Strategies that we
28 were talking about earlier. There's a Post-season
29 report for the Pacific Salmon Treaty that
30 encompasses all fisheries within the treaty, but
31 the Fraser sockeye and pink are a component of
32 that. And then we produce what's called a
33 Southern B.C. Fisheries report -- that's not the
34 right title --

35 MR. GROUT: It's the Post-Season Report for Southern
36 B.C.

37 MR. ROSENBERGER: Post-Season Report for Southern B.C.
38 Thanks. So the information in each of those is,
39 well, the RMS is significantly different, but the
40 other two, one is focused on international
41 fisheries and not necessarily all of our domestic
42 issues and points that we want to cover, and the
43 southern B.C. one, which is a Canadian paper, has
44 all of the information. So that's a key. We also
45 have to, you know, collect up all of the
46 biological information where we're confirming
47 catch information from fisheries going through.

1 You know, some managers are trying to get to final
2 information, as opposed to preliminary or some of
3 the in-season documents. And then there's reviews
4 of how effective, you know, were fisheries
5 decisions, how effective were the test fishing
6 programs and whatnot. We might have went through
7 that in some more detail, but the Tech Committee
8 is having reviews of some of this stuff, as is the
9 panel, and those are presented normally in our
10 January -- what's referred to as our post-season
11 report at the panel, where we start to get that
12 information presented back at the panel level and
13 concluded in February. And then we hold post-
14 season meetings, domestically, to go through
15 similar kinds of reviews.

16 Q The post-season meetings that you hold, who are
17 those with?

18 MR. ROSENBERGER: It's a broad range. That's probably
19 the part I missed to begin with. But the
20 Integrated Harvest Planning Committee we just held
21 in the last -- two days ago, as a post-season
22 review. So that's the aggregate of First Nations,
23 commercial, recreational, marine conservation,
24 caucus together. There's First Nations meetings,
25 in an aggregate sense, being planned for next
26 week. The sports fish is early February, and the
27 commercial fishermen was planned for this week.
28 So there's -- they're across all the range of
29 people that we deal with, all of the different
30 groups of interest, domestically, as well as the
31 Canada/U.S. process.

32 Q All right. There's a November meeting of IHPC; is
33 that dealing with post-season matters?

34 MR. ROSENBERGER: It is, but you're still in a very
35 preliminary stage, so we often -- at that one
36 we're more talking about people's interests and
37 issues around the fishery or around things that
38 they, you know -- you know, how well did something
39 work, some -- you know, we might have tried -- the
40 last two years we've had a couple of innovative
41 fisheries around the Area B Seine group, and so,
42 you know, that or some other aspects. We're
43 trying to get issues that the various groups are
44 -- have raised among themselves in their own
45 thought processes. And then it gives us a chance,
46 within the department, to collect data and do any
47 analysis that groups might be looking for that we

1 might want to bring to the meetings that just are
2 occurring usually in January, and along with the
3 more formalized catch reports and escapement
4 information, things like that.

5 Q One of the things that you said is done is an
6 assessment of how effective your management
7 strategies were against your goals, and I take it
8 one of those objectives is to meet your escapement
9 targets?

10 MR. ROSENBERGER: That's correct.

11 Q Do you use the pre-season targets to determine
12 your effectiveness, or do you do an adjustment
13 once you know -- to those pre-season targets once
14 you know what the final run size numbers are?

15 MR. ROSENBERGER: Well, it's -- you're usually
16 adjusting to what did you know when you're making
17 your last in-season decisions. So you don't --
18 once you know the final numbers, that is the final
19 number for spawning grounds. So the target that
20 you had, which, you know, in '09 and 2010 varied
21 considerably from pre-season and in-season, as the
22 run sizes changed; one year down, one year up. So
23 it's against that objective that we're looking to
24 see, post-season, how effective we were.

25 Q Okay. If I could have the PPR5 brought up. I
26 think we need a correction on this document, on
27 paragraph 278, which is page 102. So that
28 paragraph, 278, can you just tell us if there's a
29 correction that needs to be made there?

30 MR. ROSENBERGER: Yeah, it would be comparing the
31 actual escapements to the last in-season target --
32 escapement target.

33 Q Okay.

34 MR. ROSENBERGER: It's not the pre-season target.

35 MS. BAKER: Okay. Mr. Commissioner, I said, yesterday,
36 that we'd take a break at 11:15 and 12:15. I see
37 it's 11:15, now. I won't be very much longer
38 after the break, but we should probably take our
39 break now.

40 THE COMMISSIONER: Okay.

41 THE REGISTRAR: We will now recess for 15 minutes.

42

43 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

44 (PROCEEDINGS RECONVENED)

45

46

47

1 EXAMINATION IN CHIEF BY MS. BAKER, continuing:
2

3 Q Before the break, I talked to you about how you
4 assessed whether you met the escapement objectives
5 in the post-season process. How do you -- but
6 that was only one small piece. So generally, how
7 does DFO go through its review of its management
8 of the season against its management objectives?
9 Like what are the objectives that you're assessing
10 against and how do you do that analysis?

11 MR. ROSENBERGER: Most of the focus is on the -- the
12 key initiatives or the -- the significant
13 initiatives that we might be undertaking in a
14 given year. So over the last couple of years,
15 Cultus is -- spawning enumeration objectives are
16 -- the spawning ground objectives are the key but
17 the Cultus, I mentioned the earliest time, early
18 summer, the -- so conservation-orientated
19 objectives, in this case, are key factors that we
20 look for and see how effective we were with the --
21 the different initiatives or -- or changes that
22 we've taken.

23 The -- on the -- the fisheries side
24 themselves, the First Nations meeting their needs
25 is -- is assessed. On the recreational,
26 commercial and then within the commercial the
27 splits on the domestic side of things, we have
28 pre-season objectives for those. So you know,
29 whether it's the 5 percent of the combined
30 recreational, commercial, or between seine,
31 gillnet, troll and the different license groups
32 that they have. So all of that information is --
33 is provided out and, you know, whether it might be
34 issues that tend to be raised between the -- the
35 sector groups of things that they would like to
36 change then we'll, you know, take a look and see
37 what we might do differently into the future.

38 Q And how do you assess whether you met the First
39 Nations needs or objectives?

40 MR. ROSENBERGER: The communal licenses all have an
41 allocation level on them so in the different
42 various areas the -- where the fish -- did -- did
43 they catch the fish that are in the licensed
44 amounts? And if they didn't, were there fish
45 available that -- that they might have been able
46 to access those fish whether, you know, for other
47 reasons, they may or may not have been able to?

- 1 Q Okay. And then do you create work plans in
2 reaction to your assessment of whether you met the
3 different objectives you just reviewed?
- 4 MR. ROSENBERGER: I'm not sure I'd use the word -- term
5 "work plans" but what we tend to have is running
6 lists of issues that we're, you know, looking to
7 try to resolve as we can on somewhat of a priority
8 basis. But if we need to be making adjustments in
9 any given fishery or in our escapement objectives,
10 you know, they do vary between years. In the case
11 of the Fraser River escapement initiative, there's
12 a number of -- of issues that have been raised
13 over the last couple of years in particular
14 because of these two extreme low and extreme high
15 return years that have created some discussion.
16 So then we'll take a look and see what we can --
17 you know, the FRSSI modelling process and we're
18 looking to have workshops, things like that, that
19 can try to address those issues.
- 20 Q Okay. And earlier, you mentioned a couple of
21 reports, the post-season treaty limit report, I
22 think was one; is that right?
- 23 MR. ROSENBERGER: That's the -- the Pacific Salmon
24 Treaty Report?
- 25 Q Yeah.
- 26 MR. ROSENBERGER: Yes.
- 27 Q Okay. I'm going to just take you to that. That's
28 Tab 2 in the binder and it's CAN 032340. I might
29 have too many zeroes there. No zero at the end,
30 yeah. So 3234. And this is the 2009 post-season
31 report for the PSE.
- 32 MR. ROSENBERGER: Yes.
- 33 Q And each country prepares a report like this?
- 34 MR. ROSENBERGER: That's correct.
- 35 Q Okay. And what's the function of this document?
- 36 MR. ROSENBERGER: Each country is obligated to report
37 out against the -- its allocations and limits and
38 conditions of the treaty by each of the chapters.
39 So in our case, this is chapter 4, the sockeye
40 pink chapter of the treaty, and so we need to
41 report out on those. So we have escapement
42 objectives, international (indiscernible - rapid
43 speech) objectives and we report some of our
44 domestic information in this report as well.
- 45 Q Okay. And who prepares this report?
- 46 MR. ROSENBERGER: It's a series of people, as most
47 things within the Department of Fisheries of

- 1 Oceans. And so there's a number of different
2 authors bringing together for the Fraser sockeye
3 pink. We will have a lead and as it works its way
4 through to the final in the years since I've been
5 the chair, Jeff and I tend to be the two people
6 that have to review it and give it its final
7 review to get back and then it will be sent from
8 Canada to the Pacific Salmon Commission, who then
9 -- this is a Commission staff who then will
10 circulate it to each other's country.
- 11 Q Does it go through any level of approval or review
12 after the two of you have completed your work?
13 Does it go up the chain, so to speak?
- 14 MR. ROSENBERGER: The -- each of the sections, it's
15 expected that the panel chairs will sign off on
16 them. And so Jeff's shop is highly involved in
17 coordination of the whole thing.
- 18 Q You sign off. Does the -- does the minister have
19 to see this document or approve it --
- 20 MR. ROSENBERGER: No.
- 21 Q -- before it goes? No. Are there any people
22 external to DFO that review this before it goes to
23 the -- to the panel process or to the PSC, I
24 guess?
- 25 MR. ROSENBERGER: Yes, there has been some people
26 externally reviewing parts of this one and it's --
27 I think a lot of that is -- might be more related
28 around this south one and Jeff coordinates that.
29 Maybe I should let Jeff do this.
- 30 MR. GROUT: Yeah, so we have in some years identified
31 errors in certain spots in the -- the document.
32 And one of the ways we've tried to address that
33 and address concerns is to identify people at the
34 Integrated Harvest Planning Committee that have --
35 have been interested in reviewing specific
36 sections. So we give the report a -- it's a
37 relatively limited distribution, you know, a
38 handful of people that will -- from the Integrated
39 Harvest Planning Committee that will review and
40 provide any advice or feedback on the report
41 before it's finalized.
- 42 MS. BAKER: Okay. Can I have that marked, please, as
43 the next exhibit?
- 44 THE REGISTRAR: Exhibit Number 338.
- 45
46 EXHIBIT 338: Post-Season Report for 2009
47 Canadian Treaty Limit Fisheries

1 MS. BAKER:

2 Q And then the next document that you referred to
3 was the post-season report for 2009 Southern B.C.
4 Fisheries. And I think that's in Tab 16. And
5 it's CAN 056738. Is that the document that you
6 were referring to?

7 MR. ROSENBERGER: That's correct.

8 MS. BAKER: All right. Can I just have that marked,
9 please, to start?

10 THE REGISTRAR: Exhibit Number 339.

11

12 EXHIBIT 339: Post-Season Report for 2009
13 Southern BC Fisheries

14

15 MS. BAKER:

16 Q Okay. Now, who prepares this document? Is it the
17 same team?

18 MR. ROSENBERGER: Yeah, pretty much. I mean we're
19 trying to reduce duplication and -- and workloads
20 but also keep consistency of -- of the
21 information. So a number of the same people but
22 there are more domestic issues recorded in this
23 report than there are in the international one so
24 there are a few more people helping to bring the
25 information together. But in this case, Jeff has
26 the overall coordination and sign-off to it at the
27 end. But the sections, because they've gone
28 through the same review, in many cases, as the
29 Pacific Salmon Treaty Report, we have somewhat
30 similar reviews.

31 Q Is this report developed with any external
32 assistance?

33 MR. GROUT: As Barry points out, the report is very
34 similar and identical in places to the -- the
35 post-season report that's done for the -- the
36 Salmon Treaty. The southern sections are very
37 similar, if not identical to that report. We do
38 remove the northern and trans-boundary fisheries
39 here and then we make additions for some fisheries
40 not covered by the treaty, for example, Somas
41 sockeye. And then, as Barry mentioned, some of
42 the domestic considerations around Fraser sockeye,
43 for example, would be added in. We don't do a --
44 or we haven't done a separate review externally on
45 this -- on the southern version.

46 Q Right. And who receives this report?

47 MR. GROUT: This report's tabled at the Integrated

- 1 Harvest Planning Committee meeting and can also be
2 table at our other consultation processes as well.
- 3 Q And do you ever get feedback from people who
4 receive this report for request for changes or
5 updates?
- 6 MR. GROUT: We can certainly -- and have had in the
7 past errors or omissions that have been identified
8 in the -- in the report that we've been asked to
9 follow up on. But primarily, it's a tool for
10 people to look forward in their planning to see
11 what some of the issues are that they'd like to
12 see addressed in the coming year.
- 13 Q And does this document find its way up the chain?
14 Does it go to the regional director general or the
15 minister?
- 16 MR. GROUT: This document does not go to the -- the
17 minister. It's circulated to others in the
18 department for information.
- 19 Q Okay. Are summaries of either of these documents
20 provided to the minister? Is there a reporting in
21 some way of the -- the end of the season?
- 22 MR. GROUT: No, most of the issues that would be of
23 concern or of interest to the minister, if -- if
24 they've been identified, will have been briefed on
25 separately. So we tend to take a more targeted
26 approach on the specific issues that are going to
27 be of interest or implication or that the minister
28 will need to be briefed on. And we tend to brief
29 separately on those.
- 30 Q Okay. And is this document used in any internal
31 processes within DFO, aside from the IHPC process?
- 32 MR. GROUT: This document's got our reporting out on
33 our various different objectives. It would be a
34 reference material, I guess, to some of our
35 internal meetings.
- 36 Q I mean there --
- 37 MR. ROSENBERGER: Maybe I could just add. Like, we use
38 it in FRIMT, the Fraser River Integrated
39 Management Team. I think it has -- gets
40 discussions occasionally at the Salmon Working
41 Group but the -- you know, from Fraser sockeye
42 management we're looking at this and our -- our
43 team and thinking about what it is that we want to
44 look at moving forward so it forms the basis of
45 some of our discussions in planning for each of
46 our -- our sessions. Again, as Jeff pointed out,
47 we often use it as a tool to help us move forward

1 on a summary of the previous years much like the
2 way more -- much more internally but they are
3 record of management strategies by the department
4 often over a longer period of time.

5 Q Okay. Are there any specific decisions that are
6 required of the department in the post-season
7 process in terms of sort of management of the
8 Fraser sockeye?

9 MR. ROSENBERGER: No, I don't think so. I mean the --
10 preparing these reports, making sure that people
11 are informed, using that to help us move forward
12 and on our next season of management is the key
13 objectives. The key sign-off types of things are
14 done by, you know, fisheries regulations or that
15 side of things in-season.

16 MS. BAKER: I think those are the end of my questions
17 for these two witnesses. Thank you.

18 THE COMMISSIONER: Ms. Baker, if it's convenient now, I
19 just had a couple of questions that --

20 MS. BAKER: Yeah.

21 THE COMMISSIONER: -- you might want to follow up on.
22 And one is -- you may have said it, Mr.
23 Rosenberger, and I may have missed it. In between
24 the post-season process and starting the pre-
25 season management process, what activity is there
26 between the Fraser River Panel or between the DFO
27 and the stakeholders? In other words, what goes
28 on between the post-season, just describe the
29 reports, and the pre-season planning, that
30 generates discussion between the DFO or the Fraser
31 River Panel and the stakeholders?

32 MR. ROSENBERGER: Well, it's -- it's not a clear cut-
33 off line that at one point you're in post-season
34 and the next point you're in pre-season. So we --
35 so these processes are really iterative, as they
36 work their way through. As we had the post-season
37 -- the last in-season meeting in the Fraser Panel,
38 which, in this year was October, when we -- with
39 the data that we collected out of that, we held a
40 Fraser caucus and Fraser Integrated Management
41 Team joint meeting in November to help us prep on
42 some of our work planning coming into the next
43 cycle year, to review some of our objectives, to
44 look at where some of our issues were that we want
45 to be thinking about in trying to prep in going
46 into the January meeting.

47 And so when we had the -- the January Pacific

1 Salmon Treaty meeting, which tends to be this one
2 weeklong called "post-season meeting" each year,
3 the -- again, in prep for that one, on the Monday
4 of that week, we got together as the Canadian
5 Caucus and FRIMT -- some FRIMT participation and
6 the Tech Committee to prepare ourselves for the --
7 that week and our post-season review. In this
8 case, in the year we just went through, on the
9 November -- November -- on the Thursday, as we
10 ended some of our discussions with the U.S., we
11 took the opportunity again to spend a few hours on
12 trying to work on some things. We tend to have a
13 meeting now looking forward on this cycle. We
14 will hold a meeting, probably a conference call,
15 in late January or in the first week of February,
16 at least the week before the February planning
17 session and moving ourselves forward and, again,
18 trying to narrow our -- our list of issues or get
19 all of our issues together that we want to be
20 raising bilaterally or that we can work on
21 domestically.

22 We have that which is really the start of the
23 next planning cycle supposedly for us in February
24 but we'll still be doing a lot of post-season
25 accounting and review. We hold a meeting in
26 April, the caucus/FRIMT together, using one or two
27 days before we get together with the Fraser Panel
28 has two pre-season planning meetings, one in April
29 and usually one in -- in June. So we'll take
30 opportunity to have a more in-depth session
31 usually in April to try to make sure it links to
32 our domestic planning and often have more of a
33 conference call in June. So there's sort of
34 iterations. We try to link them close together,
35 usually always trying to do our Canadian side of
36 things.

37 And then there's links because many of our
38 domestic planning processes whether it's the
39 Integrated Planning Team or the licensed area
40 groups or even the First Nations groups, the
41 Fraser Panel participants are usually all on those
42 other processes. That's where they, you know,
43 came from or, you know, had the interests or been
44 elected or represented from. So there's linkages
45 there and in most cases those individuals and
46 myself or -- or the other Canadian member of the
47 panel have an awful lot of emails and phone calls,

1 interactions, that are going on a regular basis
2 like in the hundreds of exchanges in a given year.
3 Q I wonder if, looking at Exhibit 318 might help as
4 well to outline some of the meetings that take
5 place in the -- in the fall and into the new year.
6 Is that helpful as well?

7 MR. ROSENBERGER: That's our advisory process. I'm not
8 certain if all the panel meetings are on there.

9 Q No, I think also the Commissioner was asking how
10 you engage the stakeholder groups in the post-
11 season process as well.

12 MR. ROSENBERGER: Yeah, that's -- so this is a schedule
13 that we create and update a few times in a year
14 about where all of our meetings are and how we try
15 to link them together and -- and who the key
16 contact people are.

17 THE COMMISSIONER: The other came up in Mr. Lapointe's
18 evidence, both last fall and more recently, but
19 just assuming for the moment that a legal
20 framework would permit the panel to make all
21 decisions with respect to the fishery, not just in
22 panel waters but what are -- what are your views
23 on the advantages or disadvantages of the panel
24 having that kind of responsibility?

25 MR. ROSENBERGER: Well, there would be many more things
26 that the panel would have to meet and review on.
27 And the system we have today, you know, does allow
28 us the flexibility to have, you know, a number of
29 iterations and back and forth domestically, in
30 particular, thinking around a number of our First
31 Nations fisheries and our First Nations food,
32 social, ceremonial, as well as even the economic
33 ones where trying to get all of the -- the timing
34 and the linkages of all these fisheries. We
35 always talk in the lower Fraser. There's only --
36 there's not enough days in the week and if we
37 could get eight or nine, we might be able to get
38 them all in. Bu the -- trying to -- trying to get
39 all these fisheries lined up, if you had to get
40 them where they're actually approved by the panel
41 and come back for that -- that sign-off, I think
42 that could be -- slow the process up in a number
43 of ways.

44 And from the U.S. side, I'm not certain that
45 they have all the knowledge, you know, required so
46 there might be a fair bit of education side.
47 Within the U.S. system, and this is an example of

1 why this may or may not be an appropriate way to
2 go, they have fisheries that they call ceremonial
3 and -- ceremonial and subsistence, which is
4 somewhat consistent with our food, social,
5 ceremonial. Within their -- their legal
6 framework, they're allowed to have the tribes, as
7 they call themselves down there, are allowed to
8 sell all of their fish. But when there -- when
9 there's not enough fish like in 2009, they tend to
10 hold their ceremonial subsistent fisheries without
11 panel approval. And that's okay. We understand
12 they're doing that and it tends to be for amounts
13 of, you know, one, two, 3,000. In that year, I
14 think they took 4,300 or 4,500 fish in total. And
15 so it's spread out. They're for their ceremonies.
16 They're for, you know, a funeral or something that
17 needs to come up. And to try to be able to have a
18 panel on standby for literally hundreds of
19 licenses that could be issued in a year but it's
20 usually in the tens of licenses for special
21 occasions, I think the panel would have a real
22 struggle trying to operationalize (sic) all of
23 that kind of a process.

24 I think on the scheme of how we work today,
25 both in the Canadian caucus and in the panel, we
26 have a lot of discussion about these fisheries,
27 whether or not we're approving them. Every
28 fishery has some degree of discussion at the panel
29 or in the caucus to make sure that people are
30 aware and they're linking them and that they're
31 making decisions that are not inconsistent that
32 would be causing conflict. So it might be more a
33 process side of it would the bigger issue but
34 there's probably a learning curve for -- for both
35 sides.

36 THE COMMISSIONER: Thank you.

37 MS. BAKER: Thank you. Then the next counsel up is Mr.
38 MacAulay for Canada.

39 MR. MacAULAY: Mr. Commissioner, for the record, Hugh
40 MacAulay for the Government of Canada. With me is
41 my colleague, Jonah Spiegelman.

42
43 CROSS-EXAMINATION BY MR. MacAULAY:

44
45 Q Mr. Grout and Mr. Rosenberger, I have a few
46 questions for you to explore in more detail a
47 couple of the topics that Ms. Baker asked you

1 about, specifically pre-season forecasting and
2 consultation and advisory processes, which Mr.
3 Commissioner asked you about as well. And then
4 I've got a series of questions for you about DFO
5 policies and initiatives and how they influence or
6 are reflected in the management of Fraser sockeye
7 fisheries.

8 So starting with revisiting a couple of
9 topics that you've spoken to, but the first of
10 those being pre-season forecasting. I'd ask that
11 document number 1 on Canada's list, Tab 1, that
12 is, be brought up. It's a document titled "Pre-
13 Season Run Size Forecast for Fraser River Sockeye
14 and Pink Salmon in 2009". The first bullet under
15 the heading "Summary" sets out the median forecast
16 for Fraser sockeye in 2009 and sets that median
17 forecast at 10.6 million fish. This was -- the
18 figure, 10.6 million, as I recall it, attracted
19 considerable attention through the 2009 fishing
20 season. I note -- and I'll ask you to elaborate
21 on this in a second but on the following page,
22 page 2, the second bullet provides a bit of a
23 caveat to that median forecast highlighting the
24 high uncertainty associated with these forecasts.
25 Is this the -- is this the key document with
26 respect to the forecast -- the pre-season
27 forecast, that is, for Fraser River sockeye in
28 2009?

29 MR. ROSENBERGER: It is, yes.

30 Q And who prepares this document for DFO?

31 MR. ROSENBERGER: Sue Grant is the lead author but
32 there's four or five authors. They would be
33 probably listed at the top of the document. So
34 there's people bringing different expertise and
35 whatnot into it. There is one external person
36 that has been involved the last couple years from
37 the Pacific Salmon Commission, Kathleen (sic)
38 Michielsens.

39 Q Mr. Rosenberger, can you describe, if you're
40 familiar with it, the review process for this
41 document?

42 MR. ROSENBERGER: Until 2009 or -- and in this
43 particular document, there is a science review,
44 which was formally called PSARC process, that
45 reviewed the methodology and was affirmed in 2004
46 or 2005, I believe. Actually, it's on the bottom
47 of -- the way it's highlighted on the screen so

1 it's Cass et al in 2006. It lays out the
2 procedures for computing the various different
3 models and there's a large number of models that
4 are available to each of the -- or not all
5 available to each one of them but the 19 stock
6 groupings and then the miscellaneous populations
7 have a different process. So in this case, Sue
8 Grant, who is a stock assessment biologist from
9 the Fraser area, produces this and has to follow
10 that -- did follow and has to follow that
11 methodology so that it can get reviewed through
12 the process and signed off for a given year.

13 Q And what use is made of this document?

14 MR. ROSENBERGER: It's key for us in pre-season
15 planning and also in our in-season works in
16 understanding the linkages of timing,
17 distribution, stocks of concern. So it -- in this
18 case, as it talks about in the summary part near
19 the top of this page, where the vast majority of
20 the fish coming back were summer runs, relatively
21 small amounts into the other stock groupings. So
22 it gives us that relative magnitude and
23 understanding about which stocks we think we can
24 harvest. In this case, it would have been summer
25 runs and then which stocks are more likely to be
26 of concern, which were the other three stock
27 groupings.

28 Q As is widely known, the actual total return of
29 Fraser sockeye in 2009 fell far short of the 10.6
30 median forecast. Were there any stocks that
31 exceeded their forecast in 2009?

32 MR. ROSENBERGER: Yes, the Harrison was substantially
33 above expectations. I'm not certain I have the
34 numbers. The forecast was around 69,000 and I
35 believe we were in a two to 300,000 return so it
36 was -- it was off and not on the -- we expected
37 the large return in age fours versus age threes,
38 as I described earlier. The Adams River return
39 was 30, 40,000, the normal -- or the Adams Shuswap
40 stock grouping and I believe it was more in the
41 20,000 range. And the Cultus stock, which ended
42 up with a final fence count of around 900, 950
43 adults from a brood year of 100 was probably
44 fairly -- well, forecast-wise, this one is high
45 uncertainty. That might not have exceeded
46 forecast but it definitely exceeded most people's
47 expectations. So there is some stocks most of

1 them were in the late timing group.

2 MR. MacAULAY: I'd ask that this document be marked as
3 the next exhibit.

4 THE REGISTRAR: Exhibit Number 340.

5

6

EXHIBIT 340: Pre-Season Run Size Forecasts
for Fraser River Sockeye and Pink Salmon in
2009

7

8

9

10 MR. MacAULAY: Could I have pulled up Tab 2 at Canada's
11 list of documents?

12 Q And Mr. Grout and Mr. Rosenberger, there's a
13 binder with these in hard copy before you.

14 MR. ROSENBERGER: Yeah, thank you.

15 Q This is a document titled "Pre-Season Run Size
16 Forecast for Fraser River Sockeye Salmon in 2010".
17 This, as I understand it, is the 2010 version of
18 the document that we were just looking at for
19 2009?

20 MR. ROSENBERGER: It's the same purpose, to be the pre-
21 season forecast but it's prepared significantly
22 different in that this document sets out new
23 methodology. In this case, they added three or
24 four new models to be used in making the
25 predictions and reviewing their accuracy. So like
26 the Cass 206 paper, this paper changes or adds to
27 the methodology and had to go through a more
28 rigorous science review, as well as bringing out
29 the forecast information.

30 Q And Mr. Rosenberger, was this document prepared by
31 Sue Grant and the other people that you mentioned
32 earlier?

33 MR. ROSENBERGER: That's correct. I think there's one
34 or two different authors between the tiers.

35 Q Could you further describe the change in
36 methodology? I appreciate that Ms. Grant will be
37 a witness in the coming weeks. But just in
38 general terms. And I'm trying to keep my
39 questions to you at a very high level given that
40 you're just providing the overview. But could you
41 describe, sorry, the change in methodology?

42 MR. ROSENBERGER: What Sue and others did was -- we'd
43 been discussing in the 2009 year, even before the
44 -- the poor return, that we were -- we knew we
45 were in a period of decreasing productivity and it
46 was largely because of the discussions that went
47 on around 2008, which at the time had had the

1 lowest marine survivals that we'd had record for
2 in the Fraser dataset. And looking at trying to
3 expand the range of models and options to be used
4 in forecasting. And so in this case, there was
5 models that were -- they truncated the dataset so
6 they used a portion of it and so there's four-year
7 models, eight-year models and common filter models
8 were added as options into the -- into those that
9 could be used for making the predictions. And
10 then in the review process evaluating their
11 effectiveness in timeframes to what actually
12 occurred.

13 MR. MacAULAY: Thank you. I guess before I leave it,
14 could we mark that as the next exhibit? That's
15 the 2010 run size forecast.

16 THE REGISTRAR: Exhibit 341.

17
18 EXHIBIT 341: Pre-Season Forecasts for Fraser
19 River Sockeye Salmon in 2010
20

21 MR. MacAULAY:

22 Q One final question about pre-season forecasting.
23 And Mr. Commissioner is going to hear further
24 evidence later in these hearings regarding the
25 allocation of DFO resources. But I was wondering
26 if you could provide just in general terms a sense
27 of how many DFO resources perhaps expressed as
28 full-time employees or equivalent are dedicated to
29 pre-season run size forecasting for Fraser
30 sockeye?

31 MR. ROSENBERGER: In this case, with trying to develop
32 new methodologies and reviewing, you know, various
33 other options that are available, there was
34 considerable interaction between, in this case,
35 DFO staff and a number of people from Simon Fraser
36 University. So there's -- there's probably eight
37 or ten people providing some information. There's
38 three or four key authors from the department side
39 and we had significant support from Kathleen (sic)
40 Michielsens, as I described in the 2009 one. As
41 we moved into 2010, Dr. Randall Peterman from SFU
42 and some of his people and some of the work he'd
43 done in looking at different types of
44 methodologies for forecasting and their accuracy
45 and uses was considerable going into this. But we
46 have people who are bringing the escapement side
47 of the information so our biologists that are

1 coordinated and running the field operations as
2 well as -- and tend to be the same people who are
3 then evaluating that data that goes into -- into
4 these -- the datasets. So it -- there's a lot of
5 different people but there's a few key authors. I
6 think in this case there were four or five key
7 authors on this document for the transition.

8 Q Thank you. The other topic, as I mentioned, that
9 I'd just like to explore in a little bit more
10 detail with you that you've already responded to
11 questions from Ms. Baker about is sort of
12 consultation advisory processes.

13 MR. MacAULAY: And I'd ask that document number 3 on
14 Canada's list of documents be brought up.

15 Q These questions, I think, are perhaps better
16 directed to you, Mr. Grout, but I invite Mr.
17 Rosenberger to add to anything that you wish to
18 say. You are, as you've expressed, the chair of
19 the Integrated Harvest Planning Committee, the
20 IHPC, as it's known?

21 MR. GROUT: That's correct. Although at times in the
22 past the salmon team lead has had that role as
23 well.

24 Q The terms of reference date from May of 2005 but
25 are they still reflective of current realities?

26 MR. GROUT: Yes, they are.

27 Q I'd like to take you to page 3 near the bottom. I
28 guess the formal name of this IHPC is the South
29 Coast IHPC. That's the IHPC that deals with
30 Fraser sockeye?

31 MR. GROUT: The IHPC usually meets together with both
32 the northern and the southern reps in the same
33 room. The south and north groups meet separately
34 for the post-season review. So the meeting that
35 Barry referred to that occurred last -- or this
36 past week with the south -- was just the South
37 Coast IHPC.

38 Q Thank you. Under South Coast IHPC, there are
39 listed the representations essentially for the
40 various component parts so six representatives for
41 the CSAB, three for the SFAB, two for the MCC.
42 That's the Marine Conservation Caucus. And four
43 First Nation representatives. And one ex-officio
44 from the Province of British Columbia. Is that
45 still how the representation is working?

46 MR. GROUT: That's correct. The department has been
47 doing some work around how we might improve the

1 First Nations representatives in the process. We
2 have had interest from a number of groups, First
3 Nations groups in increasing First Nation
4 participation. And in fact, we've -- for example,
5 the Sto:lo have -- we've invited an observer from
6 that group to sit on the committee in the interim
7 while we figure out a longer-term process for
8 appointing representatives.

9 MR. ROSENBERGER: I might just add to that one that
10 there are a number of people who participate or
11 attend who attend as observers, somewhat as Jeff
12 described, although that one is more formalized in
13 what they're doing. But there are a number of
14 other people who attend, most of them First
15 Nations, but to make it clear, they're not
16 representatives. They're, I think, really trying
17 to understand the process and whether -- to what
18 degree they might want to engage and how.

19 Q Thank you. And I'd like to bring you back to that
20 point because I note in the terms of reference, as
21 you've noted I'm sure, after the phrase "Four
22 First Nations Representatives", there is a note
23 and it says:

24
25 In 2004, interim appointments by DFO will be
26 based on recommendations made by major
27 Aboriginal groups active in the south. For
28 longer-term appointments, DFO will continue
29 to work with Aboriginal groups to identify a
30 suitable process.

31
32 Mr. Grout's alluded, I think, to that process but
33 could you describe it in more detail? What's
34 happened since this perhaps? And what work is
35 ongoing?

36 MR. ROSENBERGER: I could try to answer that. So we
37 have a -- we started the First Nations forum on
38 conservation and harvest planning about four years
39 ago bringing together the southern approach, First
40 Nations groups, with all those within the Fraser.
41 And in getting that process off the ground, we
42 ended up forming a group to try to manage the
43 process so a combination of First Nations and DFO
44 people. That steering committee, if you would,
45 has -- has now broken away into a group that's
46 trying to build a longer-term process that we can
47 agree on collectively that would have people, you

1 know, defined as representatives in this process
2 or, you know, to the Pacific Salmon Treaty
3 processes or whatever, as well as linkages between
4 the forum and sub-regional groups and domestic
5 issues and things like that. So that's -- our
6 objective is working on that. And some people
7 have referred to it as the roadmap process.

8 MR. MacAULAY: I'd ask -- well, perhaps before I do
9 that, I'll just ask the terms of reference for the
10 IHPC be marked as the next exhibit.

11 THE REGISTRAR: 342.

12
13 EXHIBIT 342: Integrated Salmon Harvest
14 Planning Committee (IHPC) Terms of Reference
15

16 MR. MacAULAY: And then I'd ask that Exhibit 289 be
17 brought up.

18 Q Mr. Rosenberger, you describe the road -- roadmap,
19 I should say, work. This is a document that's
20 already been entered as an exhibit. Is this
21 reflective of that work that you described?

22 MR. ROSENBERGER: That's one part of it, yes.

23 Q Could you describe what else is involved and how
24 that's going to improve the IHPC representation
25 from First Nations?

26 MR. ROSENBERGER: So the overall objective is to try to
27 develop -- jointly develop our approved-upon
28 consultation co-management process between First
29 Nations affecting Fraser stocks and the Department
30 of Fisheries and Oceans. So there's a -- there
31 has been a time list of different issues put
32 together so, you know, what do you do about a
33 decision on who gets to fish in a given location
34 versus policies being developed so that there's --
35 the idea there is that there's a range of kinds of
36 issues that could come forward. And you're trying
37 to match that with where do they fit in the
38 process so what's, you know, a regional
39 initiative? What's a watershed type of an issue?
40 What's a sub-region versus a much more localized
41 process? And how do the First Nations see
42 themselves as amalgamating? So we have a funding
43 and strategy process called the Aboriginal
44 Resource -- it's AAORM. What does it stand for?
45 I lost it.

46 MR. GROUT: Aboriginal Aquatic and Oceans Resource
47 Management.

1 MR. ROSENBERGER: Thank you. So we have -- so that's a
2 key that's helping to facilitate these types of
3 developments of overall process. So one of the
4 kinds of things that the department is bringing to
5 this is that we would like to see representative
6 people appointed to programs or -- to like the
7 Integrated Harvest Planning Committee or to Fraser
8 Panel or to whatever so that promoting that
9 there's responsibilities of taking information
10 back, seeking input, you know, clarifying what's
11 required, as opposed to somebody being there as an
12 individual who really then can only state that
13 they represent themselves. So that's the longer-
14 term objective here we're trying to develop.

15 Q Thank you.

16 MR. GROUT: And Hugh, I wouldn't mind adding one point
17 just related to the First Nation process and I
18 don't think it's been made before. But the
19 Integrated Harvest Planning Committee is not
20 intended to be the body where negotiation of food,
21 social and ceremonial fisheries occurs. What
22 we're trying to do there is to improve the
23 coordination of the different fishing plans. And
24 to the extent that the First Nation participants
25 can identify issues that may affect fishing plans
26 for themselves and for others, that would --
27 that's one of the intentions of the group. I have
28 been talking with the -- the current
29 representatives at the Integrated Harvest Planning
30 Committee over the past year about ways we might
31 improve the representation there. And we don't
32 have a clear process laid out at this point. I
33 think it's one of the topics that may be discussed
34 at the First Nations Fisheries Council. But there
35 -- there is an interest in making sure that
36 there's active participation in the group and a
37 recognition of the value of participation there.

38 Q Thank you. This is a general question but I hope
39 -- I hope it's a helpful one. Could you describe,
40 in general terms, some of the contributions that
41 have been made by -- and I'll walk you through it,
42 I guess, First Nations participants in the IHPC
43 process in terms of changes to the IFMP or
44 improvements to the management of Fraser River
45 sockeye fisheries?

46 MR. ROSENBERGER: Well, I think there's been lots of
47 improvements and changes and the IHPC is probably

1 not the key place where some of that's gone on.
2 But from within First Nations fisheries and the
3 IFMP development, the Integration Fisheries
4 Management framework, you know, back before --
5 around 1990/'92, each individual First Nations was
6 licensed separately and pretty much to go fishing
7 wherever they wanted to. The department, in
8 working with First Nations groups, have developed
9 what's referred to as often "band licensing" but
10 it may be much larger than a given First Nation.
11 It could be groups of First Nations. And those
12 groups of First Nations have taken over the
13 management, in this case, so it's a co-management
14 process within a given area so they define who
15 gets to be the participants, you know, what types
16 of gear should be used, you know, when fisheries
17 should be occurring, that kind of thing, so that
18 they're -- they're the ones that are defining the
19 management within that given area within, you
20 know, an agreed-upon objective, which is, you
21 know, potentially a number of fish or the number
22 of fish in the communal license or a weekly
23 expectation, things like that. And so it's -- you
24 know, that's moved forward in joint data
25 management collection so the catch monitoring
26 programs.

27 In some cases, there has been at times joint
28 enforcement programs. I'm much less familiar with
29 those but in years gone by there was some. And
30 then moving forward, so with -- with the processes
31 we created this, what was for a while, a watershed
32 agreement and so we're trying to expand into the
33 broader form process. So getting more explicit
34 input into escapement objectives, understanding
35 their needs by some of the individual stocks and
36 stock groupings and actions that we might want to
37 take and collectively work towards. So it's --
38 you know, it's fairly well developed now but
39 there's lots more we would like to do here in
40 moving forward and trying to get that as, you
41 know, an established process.

42 Q I'd like to ask you the same question with respect
43 to the other participants and the other sectors
44 that participate in the IHPC process. So same
45 question essentially with respect to the
46 commercial sector, the CSAB. What contributions
47 have they made through their input to improvements

1 in the management of Fraser River sockeye
2 fisheries?

3 MR. ROSENBERGER: I'm somewhat -- you know, everybody's
4 contributing to some of the same places but as you
5 get into these processes, you get a much clearer
6 understanding about, you know, individual group's
7 objectives. So they've created a vision document,
8 I believe, is the title for it but -- so getting a
9 clear idea about, you know, their longer-term
10 objectives so, again, they're inputting into
11 escapement goals, objectives, harvest rates. And
12 so how do they fit? And then also in our case
13 within the maximum 5 percent commercial sport
14 sharing arrangement that occurs so, you know, how
15 do they see that occurring and, in this case, you
16 know, they don't like we're closed, we're open,
17 we're closed, we're open every other day that a
18 commercial fishery might go through.

19 So you know, how do you ensure that you're
20 trying to meet their, you know, opportunity type
21 of objectives and less sometimes focused on a
22 number. But if you're thinking you're going to
23 bump up against a number, what can you do? So the
24 interactions like -- you know, they -- helping to
25 define. Should it be, you know, two-a-day limit
26 or one-a-day limit or closed somewhere, those
27 kinds of things? We've done a number of joint
28 studies together. They've helped to define our --
29 some of our released mortality studies that were
30 -- were -- you know, we were using from another
31 area that may not have been appropriate and, you
32 know, they've given us advice on what they would
33 like to see. So we work on some of that kind of
34 stuff together so -- you know, I think it's
35 overall improvement, you know, to be more
36 selective, more -- you know, individual stock or
37 -- or species orientated.

38 MR. GROUT: Maybe just to add, Hugh, to what Barry
39 said, the groups are able to come to the IHPC and
40 put on the table issues that I think are regional
41 in nature and that affect potentially the fishing
42 plans of others. We have seen the -- to give
43 specific examples for Fraser sockeye, in 2006, the
44 IHPC struck a subcommittee dealing with the
45 appropriate management response for Cultus Lake
46 sockeye. And so there we saw a development of the
47 committee where each of the -- the groups from the

1 IHPC were represented to try and find a way
2 forward to propose some options that would provide
3 for the recovery of Cultus sockeye but also
4 provide for fishing opportunities for -- for some
5 of the various different groups. So that's --
6 that's one example that we could maybe get into
7 some more detail on.

8 The commercial and the recreational groups
9 have also worked with each other in an allocation
10 implementation committee, which is focused on how
11 the allocation policy itself is operationalized.
12 And one of the issues around sockeye, in
13 particular, is the -- providing stable
14 opportunities for the recreational fishery but
15 recognizing that sockeye, pink and chum are the
16 primary source of harvest for the commercial
17 fishery. So the allocation policy refers to a 5
18 percent cap on the recreational fishery over time.
19 And certainly, in some recent years, the
20 recreational fishery itself has been over on an
21 individual year but not necessarily over time. So
22 that's been one of the issues that the sectors
23 themselves have worked closely on, on trying to
24 figure out responses to specific issues.

25 MR. MacAULAY: Thank you. Mr. Commissioner, it's just
26 past 12:15. I understand the plan was to take a
27 break at 12:15. I'm in your hands.

28 THE COMMISSIONER: How much longer will you be, Mr.
29 MacAulay?

30 MR. MacAULAY: I'll be quite a while yet, probably
31 another half an hour or so.

32 THE COMMISSIONER: We'll take the break now then.

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

35 (PROCEEDINGS ADJOURNED)

36 (PROCEEDINGS RECONVENED)

37
38 MR. MacAULAY: Mr. Commissioner, for the record again,
39 Hugh MacAulay for the Government of Canada. I
40 understand that counsel for the Government of
41 British Columbia has a matter to raise with you,
42 and I defer to her.

43 MS. CALLAN: Mr. Commissioner, Callan, C-a-l-l-a-n,
44 initials T.E., appearing on behalf of Her Majesty
45 The Queen in re the Province of British Columbia.
46 An issue has arisen with respect to the

1 December 8, 2010 order that the province may need
2 to seek clarification on in the next little while.
3 We hope to be able to discuss it first with our
4 friends and -- at the next all-counsel meeting -
5 although I understand Mr. Blair won't be available
6 so we might have to discuss alternative dates -
7 and we'll try to seek some sort of agreement on
8 the issue. However, it's likely that we might
9 have to address it down the road in front of
10 yourself.

11 This issue is in respect to the fish health
12 database. We expect to be able to comply with
13 that component of the order.

14 The issues arising with respect to the fish
15 necropsy orders, so basically when a fish dies in
16 the province and one of the veterinarians is
17 interested in diagnosing what occurred to this
18 particular fish, they send it to the Animal Health
19 Centre, and we are going to be producing the
20 electronic records. But there are some paper
21 documents that form the basis of what ultimately
22 becomes the electronic documents, and the Province
23 would -- will likely be seeking clarification on
24 whether those are included in the order.

25 THE COMMISSIONER: Thank you.

26 MR. BLAIR: Mr. Commissioner, just briefly, Alan Blair
27 appearing for the B.C. Salmon Farmers'
28 Association. I've had discussions with the
29 provincial counsel as well as the federal counsel
30 on the issue of our collective document production
31 for today, and I understand what the issue is.
32 The discussion can certainly go ahead on Tuesday
33 in my absence. My junior will be here, and I've
34 indicated what our position would be on the issue
35 of clarification. So the discussion can go ahead
36 on Tuesday in my absence.

37 A meaningful discussion amongst all of the
38 counsel would have to occur on another day, but my
39 assistant will be able to outline what our
40 client's view is with respect to the clarification
41 the province seeks.

42 THE COMMISSIONER: Thank you, Mr. Blair.

43 MR. BLAIR: Thank you.

44 MR. LEADEM: Sorry, Mr. MacAulay, if I just might --
45 sorry, Mr. Commissioner, I don't want to take up
46 valuable time from this hearing. I just want to
47 go on record that I have had some discussions with

1 my colleagues from the Province, Mr. Prowse
2 predominantly, who has indicated that they have
3 found a realm of paper documents and requested
4 that I take a position with respect to the
5 production of those paper documents.

6 Reading your order for production of the
7 records, it does not make a distinction between
8 electronic records and paper records, so I took
9 the position that the paper records ought to be
10 produced as well in the interest of having as
11 fulsome a record as we can.

12 I will raise this with other counsel at the
13 meeting, but I think that relates to the issue
14 that, at least insofar as I've been apprised of
15 it, that relates to the issue with respect to the
16 documents.

17 THE COMMISSIONER: Thank you.

18
19 CROSS-EXAMINATION BY MR. MacAULAY, continuing:
20

21 Q Mr. Grout and Mr. Rosenberger, before we broke I
22 was asking you about contributions made through
23 the IHPC process by the participant groups, and
24 just for the sake of completeness - and it's
25 important that we are complete on this - Mr.
26 Grout, I think you alluded to the recreational
27 sector in passing in some of your comments about
28 contributions from the commercial sector.

29 But, to both of you, what contributions, in
30 terms of improvements to the management of Fraser
31 River sockeye fisheries have been made by the
32 recreational sector through their representatives
33 on the SFAB?

34 MR. GROUT: The SFAB has got a substantial consultation
35 process for bringing in feedback from local
36 committees up into the sub-regional or southern
37 board and then into the main board of the SFAB.
38 These views are brought forward to both the IHPC
39 and also to the Fraser River Panel. So we would
40 have input from the SFAB as part of the IHPC
41 process from the SFAB.

42 Q And the same question in terms of input and
43 changes, improvements that have been made to the
44 management of Fraser River sockeye fisheries from
45 MCC, the Marine Conservation Caucus representing
46 environmental groups. Could you comment on that?

47 MR. GROUT: I think the MCC representatives at the IHPC

1 have been effective at bringing their views
2 forward on the management of Fraser sockeye.
3 They've asked for and received presentations on
4 the implementation of the Wild Salmon Policy and
5 have views that they're able to share with the
6 other representatives at the Integrated Harvest
7 Planning Committee.

8 The Department does also try and arrange a
9 separate meeting with the group to go over the
10 IFMP each year as well. So they're active
11 participants at the IHPC process.

12 Q Thank you. So I'd like to turn now to, as I
13 indicated in my introductory comments, to some
14 questions touching on some DFO policies and
15 initiatives and how they're reflected in -- or how
16 they influence the management of Fraser River
17 sockeye fisheries. These questions are going to
18 be general and high level in keeping with the
19 nature of your testimony.

20 The first topic area I'd like to ask you
21 about is the Salmonid Enhancement Program, and
22 there will be testimony at later hearings
23 regarding enhancement generally speaking, but the
24 Salmonid Enhancement Program, or SEP as it's often
25 known, could you describe for Mr. Commissioner
26 just in general terms what that's about and its
27 relevance for Fraser sockeye?

28 MR. ROSENBERGER: The Salmonid Enhancement Program is
29 rather large in B.C. in a lot of different places,
30 but as far as sockeye is concerned, there is not a
31 lot of enhancement around the sockeye/pink
32 populations. The significant broader components
33 are work that's been done on passage over the
34 years, which is very significant, things of --
35 like Hell's Gate fish ladders. So there's a
36 number of different fish ladders in key
37 constriction areas, passage problem areas along
38 the Fraser and/or tributaries.

39 There's also four spawning channels that are
40 active today. They're on relatively small systems
41 -- or that's not the -- they're relatively small
42 on the systems that they're on, so ones on the
43 Dina, Weaver, the Quesnel and Gates Creek. There
44 were a couple of other ones that we didn't find
45 effective and so no longer use.

46 But the key thing on some enhancements in
47 recent years has been the work on Cultus, so the

1 Cultus sockeye problem. Both the more traditional
2 enhancement and, in the case of taking eggs and
3 raising fry or smolts and releasing them, as well
4 as during the period of very, very high pre-spawn
5 and en route mortalities that we're up in the 90
6 percent range. So this is some of the work that's
7 occurred with the early migration timing.

8 We initiated a Captive Brood Program, and so
9 we've held adults through their whole life history
10 to be able to make sure that we maintained genetic
11 diversity but also maintained the population. So
12 in the case of Cultus, the Salmonid Enhancement
13 Program has been a significant component of that
14 rebuilding strategy.

15 Q Just picking up, Mr. Rosenberger, on Cultus
16 sockeye, from a fisheries management perspective,
17 why is rebuilding Cultus sockeye so important?

18 MR. ROSENBERGER: Well, it's a conservation unit so
19 it's a distinct population, and the Wild Salmon
20 Policy, as well as the overall objectives of the
21 Department are trying to maintain maximum
22 diversity and population size and structure, so
23 it's important to have diversity of all
24 populations, given climate changes or -- anything
25 that's, you know, the fish need to adapt to,
26 you're looking to try and have the maximum base.
27 So every population has a degree of importance in
28 that.

29 MR. GROUT: If I could --

30 A Mr. Grout?

31 MR. GROUT: -- on the points Barry was making about the
32 Cultus sockeye recovery, our enhancement staff
33 have worked very closely with, first, the recovery
34 team and then the conservation team for Cultus
35 sockeye. They've done a substantive amount of
36 work in the release strategies of the sockeye that
37 they've released into Cultus Lake.

38 So Barry alluded to the Captive Brood Stock
39 Program which is eggs collected from adults and
40 reared to adulthood entirely in the hatchery
41 before their offspring are released, but there's
42 also been an enhancement component as well, which
43 are more conventional hatchery production where
44 you release fry or smolts, and have done quite a
45 bit of work on marking those juveniles that
46 they've been releasing to assess what the
47 appropriate release strategy should be.

1 So the initial thinking was that it was
2 important to produce smolts, but more recent work
3 has shown that you can get higher production by
4 having a release strategy of fall fry, for
5 example, going out into the Lake.

6 They've also worked closely on the recovery
7 -- with the recovery team to try and maximize the
8 genetic diversity of the population so they've
9 done quite a bit of novel work around the matrix
10 models used to ensure that they're not doing
11 damage to the population in a genetic sense from
12 the sorts of mating strategies that they're using
13 in the hatchery as well. So it's been a very
14 integrated part of the team's activities.

15 Q Mr. Grout, I just want to pick up on something
16 that you referred to in one of your earlier
17 responses. I think you were referring to this.
18 Could you describe the Cultus sockeye structure of
19 decision-making process, or the structure of the
20 decision-making process that was applied to Cultus
21 sockeye, and perhaps as a preface to your
22 response, for those of us who aren't familiar with
23 structured decision-making processes, if you could
24 just describe what that is and then how it was
25 applied to Cultus.

26 MR. GROUT: Right. So I did refer to this in an
27 example of the Integrated Harvest Planning
28 Committee trying to work together on a common
29 problem. So we had Cultus sockeye which was a
30 stock of concern. It had been recently listed by
31 COSEWIC as endangered, and the Department was
32 working on developing recovery actions for this
33 population.

34 There were strong divergent opinions at the
35 Integrated Harvest Planning Committee about what
36 level of harvest might be appropriate for the
37 population from very low levels to -- with the
38 Marine Conservation Caucus and some First Nations
39 supporting up to much more substantial harvest
40 which was a view that the Commercial Salmon
41 Advisory Board had.

42 We embarked upon a structured decision-making
43 process which is essentially -- and it was with
44 the assistance of an external consulting group.
45 It was a way to try and structure the interests of
46 the parties and evaluate those using a rigorous
47 framework. So there's a number of steps from

1 clearly outlining what the purpose was for the
2 activities, the objectives you might use to assess
3 it, then it moved into constructing alternative
4 management actions or collections of actions that
5 people thought would be important from different
6 levels of harvest, but it also was able to look at
7 activities in Cultus Lake, for example, removing
8 predators or perhaps removing milfoil in the lake,
9 and also the enhancement activities, and then
10 using a model to assess the potential performance
11 of those.

12 The process essentially tried to work down
13 the options, taking into account uncertainties to
14 see if the group could find some common ground.
15 So they weren't able to get all the way to a final
16 recommendation on what might be done, but they
17 were able to identify elements of common ground
18 which led to some further work between the
19 Commercial Salmon Advisory Board and First Nations
20 further out in the Fraser Valley.

21 Q Could you describe what DFO's objectives are in
22 terms of rebuilding Cultus and whether or not
23 they're being met?

24 MR. GROUT: The objectives for Cultus sockeye were
25 originally developed by the recovery team that was
26 put together under the auspices of the **Species At**
27 **Risk Act**. When the Cultus sockeye were not listed
28 under the **Act**, the work of the recovery team was
29 picked up and summarized in a conservation
30 strategy for Cultus sockeye.

31 There were a number of nested objectives for
32 the population with two key objectives dealing
33 with low abundance. One is to ensure the
34 population has an average population size of about
35 1,000 with no fewer than 500 in any given year.
36 The second objective related to trying to grow the
37 population over time, and we wanted to see
38 generational growth in the population across four
39 years. Certainly looking at the historical data
40 for Cultus, when you've had three of the four
41 cycle lines growing, the population has grown
42 overall, so some indicators for that objective.

43 The third objective related to improving the
44 classification of Cultus from endangered to a
45 less-threatened category.

46 The group was not able to come to agreement
47 on sort of a fourth-level objective which might be

1 a broader level of abundance for the population
2 although the report that the group did, did lay
3 out a number of different metrics you might look
4 at to try and assess that.

5 Q Thank you.

6 MR. GROUT: In terms of performance of the population,
7 2010 is an example where we looked -- given the
8 much larger abundance of salmon returning this
9 year, we did go back and look at the likelihood of
10 meeting the recovery objectives, and in
11 particular, recovery objective 1 and 2. Based on
12 the scenarios we looked at, we thought that we
13 could meet objectives 1 and 2, and in particular,
14 we calculated how many effective spawners we
15 thought we would need.

16 We looked at the pre-spawn mortality, so fish
17 that had made it up to Cultus Lake but had
18 survived to spawn in the recent decade. We
19 determined how many fish we thought we needed to
20 get to the Cultus Lake fence consistent with those
21 recovery objectives. Based on that, there was a
22 decision and a briefing of the Minister in season
23 to provide some additional flexibility over the
24 objectives that were laid out in the IFMP.

25 Q Thank you. Before we leave Cultus sockeye, I just
26 would ask that the Harvest Management Policy and
27 Practice Report, number 5 I guess it is, be
28 brought up. If I could take you, Mr. Grout and
29 Mr. Rosenberger to page 112. This is table 4, and
30 specifically the column that provides the
31 exploitation rate for Cultus sockeye from 2009 and
32 years before.

33 My purpose in asking you this question is
34 just really to flag that there's an issue here
35 with respect to some of these calculations. Some
36 of the numbers, as you'll note, are large. We
37 will come back with other witnesses to delve into
38 some of these numbers, but perhaps Mr.
39 Rosenberger, could you just describe some of the
40 issues around the calculation of the Cultus
41 exploitation rate? These numbers, by the way,
42 come from, as I understand it, from the PPR. They
43 come from the Pacific Salmon Commission.

44 But if you could just describe sort of the
45 issues around the calculations?

46 MR. ROSENBERGER: Well, there's two things for me. One
47 is that the column furthest to the right under

1 "Cultus Percent", those are not the numbers that
2 we use from the Pacific Salmon Commission data as
3 far as Fraser Panel work or not provided by the
4 Department, so there's an inconsistency of
5 information I think being exchanged here.

6 On the -- specifically the sum of the data in
7 2008 is an example I'd use. The 71 percent
8 exploitation is not the exploitation rate, again,
9 that the Pacific Panel -- the Pacific Salmon
10 Commission datasets that I rely on and work, and
11 our tech group relies on. I think the number is
12 in a 14 percent range. The difference in this
13 one, in some discussions with some of the people
14 trying to understand, is that the fish that were
15 harvested -- or, in this case, the Salmon
16 Commission considered to be harvested were fish
17 that were taken from the fence to those fish that
18 return terminally as potential spawners and were
19 used as part of the Salmonid Enhancement Program,
20 so fish that were either taken for part of the
21 captive brood or for part of the more normal
22 hatchery operations were removed from the
23 potential spawner counts and added to the harvest
24 side of things. In low return years is why some
25 of those numbers are higher.

26 There's also data problems in this
27 calculation on this sheet in some of these years
28 where the -- what we've described to some degree,
29 and I'm sure others have, of the en route
30 mortality, which is the difference between
31 estimates that we calculate. In this case, the
32 Cultus stock was calculated at the same time as
33 Weaver, but they made a decision, as I understand
34 it from the Salmon Commission staff, that there
35 wasn't any -- that difference between estimates
36 should be all accounted against Weaver and not
37 against Cultus. So in this case, they've over-
38 estimated the impacts to one population and under
39 to another one.

40 But this is not the datasets that we use in
41 the process within the Fraser Panel. We do have
42 some data issues and getting -- and getting, you
43 know, from preliminary numbers to near-final
44 numbers to final numbers, you know, and the same
45 in catch and escapement and whatnot. And then
46 staff at the Salmon Commission have to apportion
47 that across their datasets.

1 We have a working group within the Technical
2 Committee to try to identify all these and to
3 clarify them. Many of them are off by 10 and 15
4 fish, which doesn't create significant
5 differences, but in some cases there are. So we
6 are looking to try clean that up.

7 But, as a whole, you know, a key is that
8 there's Late run harvest that occurs within the
9 Fraser River above Cultus, and so you would never
10 expect to see - and it doesn't, in current
11 practice - a Cultus exploitation rate higher than
12 a Late run exploitation rate. So unless you're
13 having a terminal fishery in anywhere that the
14 numbers show up like that, probably there's a
15 calculation issue. There needs to be some
16 clarification of the data and what's included.

17 Another note I would make is that this
18 structured decision-making process and the
19 recovery team that Jeff noted, I spent
20 considerable time trying to come to a best set of
21 data for their purposes, and so that's also
22 available through the -- they've made two reports,
23 but the underlying datasets that they have -- so
24 there's a number of places where we could provide
25 other datasets that would be different than this
26 one, but hopefully would provide clarity.

27 Q Thank you, Mr. Rosenberger, and that's very
28 helpful. As I say, we'll come back.

29 Mr. Grout, did you have something --

30 MR. GROUT: Maybe just to add a couple of observations
31 to what Barry said. One thing you do see, the
32 discrepancies aside that Barry's mentioned, is
33 that in the recent decade, as part of the recovery
34 activities for Cultus sockeye, we have made
35 substantial reductions in the exploitation rates
36 on that population.

37 It might be also useful to point out that in
38 season when we're managing these stocks, we're
39 using -- because Cultus sockeye are so
40 infrequently sampled, given their low abundance in
41 the fisheries, we are assessing the exploitation
42 rate on Cultus using a proxy from the Late run
43 group to do that.

44 Q Thank you. I'd like to, as indicated earlier,
45 seek your views on various DFO policies and
46 initiatives and how they influence or are
47 reflected in the management of Fraser River

1 sockeye fisheries. One is -- and I'd ask that
2 Exhibit 266 be brought up -- DFO's policy for
3 selective fishing in Canada's specific fisheries.
4 If you could just describe in general terms what
5 this policy is about and how it is implemented in
6 terms of the management of Fraser River sockeye
7 fisheries.

8 MR. GROUT: Well, maybe I'll start, and Barry might
9 have something to add here. But the policy for
10 selective fishing has guided our management around
11 the fisheries. You'll see, similar to the Wild
12 Salmon Policy, conservation is the top priority
13 here in terms of the principles, and it's trying
14 to move our fisheries to ways that can either
15 avoid harvests of stocks of concern, either
16 through time or area closures, or avoid them
17 through uses of specific gear, or if, in cases
18 where we can't do that, the fish can be released
19 unharmed either at the water or before they're
20 landed, or through techniques on the vessels
21 themselves. It does indicate there'll be
22 increasing movement to more selective fisheries
23 and that can affect potential opportunities moving
24 forward.

25 In terms of how we operationalize the policy,
26 it's directly related to how we manage a number of
27 our fisheries, especially for Fraser sockeye.
28 We're keeping an -- or a sense of the potential
29 bycatch implications on other stocks that are
30 present when we're fishing for Fraser sockeye, so
31 Coho, interior Fraser Coho is an example where
32 we're making assessments of potential mortalities
33 on those stocks in the fisheries that are directed
34 at Fraser River sockeye

35 We're keeping a tabulation in the south coast
36 of our overall management objective of three
37 percent exploitation on Coho using a spreadsheet
38 model that tracks release mortality rates and
39 impacts on those stocks in the various different
40 fisheries.

41 Q A very similar question regarding DFO's allocation
42 policy for Pacific salmon, and that's already been
43 marked as Exhibit 264, if we could just bring that
44 up so people can remember what it looks like.
45 Again, just if you could describe in very general
46 terms that policy and how it's implemented in the
47 management of Fraser sockeye fisheries.

1 MR. GROUT: This policy is a key document in how we
2 manage our salmon resources and Fraser sockeye is
3 no exception here. It outlines the key principles
4 for how we're going to manage with conservation as
5 the top priority.

6 After conservation, we've got First Nations
7 harvest for food, social and ceremonials fisheries
8 as having priority over all other uses. It
9 acknowledges the common property nature of the
10 resource, and then it speaks to the allocation for
11 the recreational fishery which is a priority for
12 Chinook and Coho relative to commercial fisheries.
13 But for sockeye, pink and chum, it provides for
14 stable access and there's, as we discussed earlier
15 this morning, there's a cap on the recreational
16 harvest of sockeye coast-wide of five percent over
17 a multi-year time period.

18 The policy then recognizes commercial
19 fisheries' priority for sockeye, pink and chum,
20 given that, in the past, the majority of their
21 harvest has been made up from those stocks. Just
22 rounding that out, Coho and Chinook are provided
23 when abundance permits.

24 Then finally, it also lays out how the
25 allocations will be distributed between the
26 different commercial gear types. So it's a very
27 important element of how we manage Fraser sockeye.

28 Q Thank you. Some of the previous reviews and
29 reports that have looked into Fraser sockeye
30 issues have identified monitoring and reporting
31 issues as areas where improvement could be made.
32 Could you describe what efforts are being made by
33 DFO to improve the monitoring of and reporting in
34 Fraser sockeye fisheries?

35 MR. GROUT: Fishery monitoring and catch reporting is
36 an important element of how we manage our
37 fisheries. Obviously having good catch
38 information is important as far as the assessment
39 of where we're at relative to the total allowable
40 catch in season. We've made a number of -- or a
41 number of reforms to how we collect the
42 information moving through time. We did release a
43 policy paper for the commercial fishery around
44 fishery monitoring and catch reporting.

45 The Department's continued to try and move
46 towards enhanced accountability as part of the
47 Pacific Integrated Commercial Fisheries

1 Initiative, and that's helped to support a number
2 of elements in the various different fisheries.
3 To give some examples, we've tried to provide
4 alternative ways for providing harvest log
5 information using electronic log books. We've
6 also made improvements to the licence conditions
7 to -- for example, in the past year, to have hail-
8 in and hail-out provisions which requires the
9 gillnet fleets now to announce when they're going
10 out fishing, and also when they're done fishing
11 which provides for some additional compliance
12 auditing opportunities.

13 As we've moved into a number of more defined
14 share fisheries, for example, some of our
15 demonstration projects and economic opportunity
16 fisheries for First Nations in the Lower Fraser,
17 for example, we've implemented mandatory landing
18 and dockside monitoring, verification of the
19 catches relative to their harvest shares in those
20 fisheries.

21 MS. BAKER: Mr. Commissioner, I just -- I know this is
22 an important area, but I did want to flag that we
23 are doing a section in the hearings on both
24 commercial and recreational issues, including
25 catch monitoring and changes, improvements, et
26 cetera, in catch issues. So it's important to
27 flag it, but I'm a little bit concerned that we
28 don't go too far down that road because we will
29 have a number of days dealing with that issue in
30 quite a bit of detail.

31 MR. GROUT: Thanks.

32 MR. MacAULAY: Thank you, Ms. Baker, and I won't pursue
33 that any further.

34 MR. GROUT: I just wanted to make one further point,
35 and that's the Department is currently working on
36 a catch monitoring framework document that I
37 understand is being -- really shortly that we'll
38 be seeking feedback from all our clients, and it
39 sets out the catch monitoring principles that
40 would be -- we would look to have them place
41 across all fisheries.

42 MR. MacAULAY: Thank you, Mr. Grout. And I'm very
43 mindful of Ms. Baker's very astute point that a
44 lot of this is going to be the subject of further
45 hearing, so I'm trying to keep it at a very high
46 level, but I want to give Mr. Grout and Mr.
47 Rosenberger, as two of DFO's more experienced

1 fisheries managers, an opportunity to at least
2 provide an overview on some of these issues. But
3 I'll be as brief as I can.

4 Q On that note, Mr. Grout and Mr. Rosenberger, other
5 fisheries' models and terminal fisheries, just a
6 couple of questions. First, could you describe
7 why commercial fisheries on the coast of British
8 Columbia are where they are?

9 MR. ROSENBERGER: A lot of that's historical. If you
10 turn back the clock 300 years, or whatever it
11 might be, most of the commercial fisheries were
12 inland where they were providing -- they were fish
13 that were being provided to fur-trading companies
14 and new settlers or whatever into the various
15 areas, so a lot of the harvest was occurring in
16 rivers and various places.

17 But starting the mid-1800s, there were
18 canneries and salting facilities being
19 established, and most of those were near the
20 mouths of rivers because they were trying to
21 provide fish that was going to Europe or other
22 places. So where they became established is where
23 the majority of the fisheries were. So in that
24 era, most of the fish was harvested near the mouth
25 of the river near terminal areas.

26 Then, over time, as fleets developed and
27 capacity and boats being able to move about the
28 coast, not -- essentially industrialization, so
29 having motors instead of relying on sails and
30 being towed around and whatnot. Fleets began to
31 be able to go out and seek out the fish instead of
32 waiting for the fish to come back to a given
33 location.

34 So where they were successful in that
35 endeavour with different fisheries changed things,
36 so you know, we've gone through primarily gillnets
37 to traps at given times, to the troll, seine,
38 gillnet that are the primary commercial fisheries
39 today that have a high degree of mobility, you
40 know, to where they're at.

41 So we're trying to move away from just some
42 of that history at this point and trying to
43 establish fisheries that are much more focused to
44 these broader Wild Salmon Policy principles and
45 sustainability, so that's why we're looking at
46 trying to move some of these fisheries back into
47 more terminal areas in recent years. With our

1 demonstration fisheries, at this stage, we're
2 trying to make some of that kind of transition.

3 In a number of fisheries, particularly on the
4 Fraser, some of the harvest in years recently, and
5 some of the periods of review when there was
6 significant harvesting and -- for example, of
7 Gwaii Haanas and troll north coast, some seining
8 north coast, Reynolds Sound, Purple Bluff -- which
9 I'm not certain that that's just a local name, but
10 it's in the central coast Bella Bella area, the
11 west coast of Vancouver Island. Those fisheries
12 often occurred at a time well in advance of much
13 of the assessment fisheries testing done by the
14 Pacific Salmon Commission or the Department.

15 Given the uncertainties in returns and the
16 variability of returns in years, in the last 15,
17 20 years, many of those fisheries are curtailed
18 and in one case, we have a request from the
19 Pacific Salmon Commission to not fish too far away
20 from assessment points because of the added
21 uncertainty that it's creating.

22 So we're trying to move the fish more
23 terminally generally to try to be more confident
24 in run sizes and be more -- make appropriate
25 decisions.

26 Q This Commission has heard some testimony regarding
27 what's known as Pacific Integrated Commercial
28 Fisheries Initiative, or PICFI for short, and
29 also, as I understand it, Pacific fisheries
30 reform. Could you describe what each of those two
31 initiatives --

32 MS. BAKER: Sorry. I know PICFI will be covered again
33 in another topic coming up. I'm just -- I'm just
34 a little bit concerned about how we could end up
35 doing several weeks of hearings and what we only
36 have is a couple of days.

37 MR. MacAULAY: I appreciate that, Ms. Baker, and I'll
38 skip that question.

39 If I could ask that Exhibit 185 be brought
40 up? This is a document that's titled "A Fishery
41 Decision-Making Framework Incorporating the
42 Precautionary Approach".

43 Q Mr. Grout, Mr. Rosenberger, are you familiar with
44 this document?

45 MR. GROUT: Yes, I am.

46 Q Could you describe how it is influencing the
47 management of Fraser sockeye fisheries?

1 MR. GROUT: Well, this document is a document that
2 guides the management of fisheries in Canada. In
3 terms of Pacific salmon, it does specifically
4 reference the Wild Salmon Policy as the way we're
5 going to implement the precautionary approach in
6 salmon fisheries. Really, the intention is to
7 take into account uncertainties and specify
8 reference points that are going to be used in the
9 management of the resource.

10 The Fraser Sockeye Spawning Initiative in
11 particular is making use of harvest rules that
12 have the similar elements to the rules laid out in
13 the precautionary approach framework, in that
14 we've got reference point below which we're going
15 to have minimal fishing, some increasing total
16 allowable mortality as the run size increases, but
17 a cap after that on the total allowed mortality to
18 account for uncertainties, among other things.

19 So the Wild Salmon Policy is intended to be
20 the vector that's used to implement the
21 precautionary approach for Pacific salmon.

22 Q Thank you. This Commission has heard testimony
23 regarding DFO's shift towards ecosystem-based
24 management. Could you describe how ecosystem-
25 based management is being reflected in the
26 management of Fraser sockeye fisheries?

27 MR. GROUT: Well, there's a number of elements in the
28 management of Fraser River sockeye that have
29 ecosystem components to them. In some of the
30 other fisheries, the Department manages
31 interaction between the fishery gear and other
32 species are key considerations, and also with the
33 habitat.

34 With our salmon gears, for the most part,
35 we're not impacting on the habitat or the species
36 for the most part. There are specific examples,
37 for example, the Area B Seine fishery off the
38 mouth of the Fraser where we're considering
39 boundaries that ensure the bottom of the seine
40 nets aren't interacting with the bottom and
41 affecting other things, juveniles of some species
42 and crabs, for example.

43 There's considerations around bycatch in our
44 various fisheries. So those are species that are
45 unintended to be caught in a fishery but may be
46 caught during the fisheries themselves, so a
47 number of measures around that.

1 The Wild Salmon Policy also speaks to the
2 incorporation of ecosystem status indicators as
3 part of the overall management framework as well.

4 MR. ROSENBERGER: I might just add that -- so it's
5 trying to bring in obviously broader objectives
6 and so things -- whether it's **SARA** species, if
7 there became, you know, links and there hasn't
8 been that much defined around sockeye, but Fraser
9 Chinook and killer whales, for example, are an
10 example within the Fraser, so how we take that
11 into account and what we do -- but, you know,
12 bringing all ocean aspects into this so the
13 various juvenile life stages and food sources and,
14 you know, those interrelationships are things that
15 we're trying to understand better and are bringing
16 to account for where we do have knowledge.

17 Q Thank you.

18 MR. GROUT: Sorry, that reminded me of one other thing
19 and that's an increasing focus on environmental
20 variables that may assist with our management, so
21 we've had an increasing focus on state of the
22 oceans' reports summarizing the performance or
23 effects on various species of various different
24 climatic and ocean conditions.

25 The forecast papers for Fraser River sockeye
26 have also, in the last couple of years, tried to
27 see if there's helpful variables, environmental
28 variables that might be used in the forecasting
29 process, be they environmental conditions
30 themselves or indices of plankton or productivity
31 for example. We haven't had a lot of success so
32 far on that, but it's one of the areas where
33 there's been increasing focus.

34 MR. MacAULAY: My last few questions, Mr. Commissioner,
35 relate to the Marine Stewardship Council
36 Certification process, and I'd ask that document
37 number 8 on Canada's list of documents be brought
38 up and marked as an exhibit. I should add that
39 this is a report in three volumes which are found
40 at Tabs 8, 9 and 10 of Canada's list, and I would
41 recommend that all three be marked as one exhibit,
42 or three exhibits, whatever. I just think that,
43 for the record, that it's important probably to
44 have all three volumes of the report.

45 THE REGISTRAR: There's three separate documents, you
46 said?

47 MR. MacAULAY: There are. All forming one report.

1 THE REGISTRAR: Right. It will be marked as 343, 343A,
2 343B.
3

4 EXHIBIT 343: Report B.C. Commercial Sockeye
5 Salmon Fisheries, Public Certification
6 Report, Volume 1
7

8 EXHIBIT 343A: Report B.C. Commercial Sockeye
9 Salmon Fisheries, Public Certification
10 Report, Volume 2
11

12 EXHIBIT 343B: Report B.C. Commercial Sockeye
13 Salmon Fisheries, Public Certification
14 Report, Volume 3
15

16 MR. MacAULAY:

17 Q And if I could go to page 200 of the first volume,
18 just to highlight the conclusion of the process
19 and then I'll ask you, Mr. Grout and Mr.
20 Rosenberger, to speak a little bit about the
21 process and some of the parties involved.

22 But the conclusion -- and this is coming from
23 the July 2010 MSC report with respect to British
24 Columbia sockeye fisheries. The two paragraphs
25 under the heading "Conclusion":
26

27 The TAVEL certification assessment team
28 concludes that all aspects of the MSC Fishery
29 Certification Methodology procedures were
30 followed, that four B.C. sockeye fisheries
31 meet the requirements of the MSC principles
32 and criteria as a well-managed and
33 sustainable fishery.
34

35 I'll just stop there. Fraser sockeye is one of
36 the four assessed fisheries; is that correct?

37 MR. GROUT: That's correct.

38 Q And then there's a paragraph that follows that
39 says -- which speaks to the objections and we'll
40 -- I'll ask you a question about that in a minute,
41 but:
42

43 After completion of the objection period and
44 Independent Adjudicator dismissal of the
45 objections lodged by Watershed Watch Salmon
46 Society, David Suzuki Foundation and
47 SkeenaWild Conservation Trust, Moody Marine

1 Limited has determined that the Fraser
2 sockeye fisheries will be certified in
3 accordance with the Marine Stewardship
4 Council Principles and Criteria for
5 Sustainable Fisheries.
6

7 Could you first describe just what the MSC is?

8 MR. GROUT: The MSC is an international process for
9 certification of the wild capture fisheries as
10 sustainable. They do that by applying a rigorous
11 framework, or scientific framework that looks at
12 their three key principles of sustainability, the
13 environmental impact of the fishery and the
14 management process, and criteria related to those.

15 The MSC uses independent certifiers to assess
16 the fisheries against those criteria.

17 Q And if I understand correctly, after the
18 assessment there were objections, and then an
19 adjudication; is that accurate?

20 MR. GROUT: Throughout the process, there are
21 opportunities for public input and comment on the
22 process itself, and it also lays out an objection
23 period at the end of the -- when the report is
24 produced as well, during which time the
25 independent adjudicator would have to evaluate any
26 objections that are made.

27 Q There are references in the document to the
28 "client". Who is the client through this process?

29 MR. GROUT: Well, the client is laid out on the front
30 page here, and at the end of the process, it's the
31 Canadian Pacific Sustainable Fisheries Society,
32 which is essentially representing the commercial
33 salmon industry.

34 Q What's DFO's role through this process?

35 MR. GROUT: DFO has had quite an essential role in the
36 process, primarily from the perspective that we're
37 the fisheries regulator. So the assessors -- the
38 assessment team worked quite closely with the
39 Department in assessing the criteria that they use
40 to assess the fishery.

41 MR. MacAULAY: Thank you, Mr. Commissioner. Those are
42 my questions.

43 MS. BAKER: Thank you. The next party is the province
44 with Mr. Tyzuk.
45
46
47

1 CROSS-EXAMINATION BY MR. TYZUK:

2

3 Q Mr. Rosenberger, I just have one question. If we
4 could get Exhibit 3 --

5 THE REGISTRAR: Name, please?

6 MR. TYZUK: Oh, sorry, Boris Tyzuk for the Province of
7 British Columbia.

8 Q Mr. Rosenberger, if I could turn your mind to
9 Exhibit 330, which is the Record of Management
10 Strategies. If we could get that back up, that
11 was the first exhibit for the day.

12 I just want to clarify something that you
13 said. It's my -- you indicated that it was an
14 internal document. It's my understanding from
15 some sources that this may not be a public
16 document, but then you indicated that it might be
17 a public document but -- and then I have a
18 question mark about whether it's been posted or
19 not. So maybe you could explain this.

20 MR. ROSENBERGER: It's a good question. So the last
21 few years, it has not been made public. It has
22 been made public in some past years, and has been
23 posted. In some of those years, there was two
24 versions to -- there was some slight changes in
25 some parts of it, so in the last few years, my
26 understanding is that it's not posted and
27 generally not made public, but we do hand out
28 copies of it to some individuals upon request.

29 Q So a member of the public, if they wanted to,
30 could request it from you and they would get it?

31 MR. ROSENBERGER: That's correct.

32 MR. TYZUK: Thank you. I have no further questions.

33 MS. BAKER: The Salmon Commission is not here, and the
34 B.C. Public Service Alliance of Canada is not
35 here. Rio Tinto, no questions. B.C. Salmon
36 Farmers' Association, I don't think they're here
37 anymore. Seafood Producers' Association is not
38 here, Aquaculture Coalition is not here. So we
39 move down the list to the Conservation Coalition,
40 Mr. Leadem.

41

42 CROSS-EXAMINATION BY MR. LEADEM:

43

44 MR. LEADEM: Leadem, initial T., for the record,
45 appearing as counsel on behalf of the Conservation
46 Coalition.

47 Q Gentlemen, I want to begin our discussion with

1 respect to the planning that goes into the pre-
2 season forecast. Mr. Grout, you've mentioned, and
3 talked at length with respect to the Integrated
4 Harvest Planning Committee, the IHPC. That's
5 something that you chair, is it?

6 MR. GROUT: Yes. That committee has been chaired by
7 the salmon team leader in past, in some years, but
8 I've -- I'm currently chairing that committee,
9 although there are stand-ins on occasion.

10 Q All of the meetings that take place within that
11 committee take place with respect to the pre-
12 season planning; is that correct?

13 MR. GROUT: The committee has got a planning cycle with
14 four primary meetings through the year. We meet
15 as a main IHPC group with the north and south
16 panels in November, which is a preliminary
17 identification of post-season issues, and it's
18 also where we provide the salmon outlook for the
19 coming year.

20 We do the formal post-season reviews with the
21 north and south committees separately in December
22 and January respectively for north and south.
23 Then we have a meeting in March to review the
24 first draft of the IFMP, Integrated Fisheries
25 Management Plan, followed by a final meeting in
26 May to review that plan. That committee does meet
27 in season.

28 Q That's my point. That in season, there's a hand-
29 off to the Fraser River Panel where the decision-
30 making takes place; is that right?

31 MR. GROUT: For Fraser sockeye, that's correct.

32 Q Right. Now, you talked at length with respect to
33 the components of the Integrated Harvest Planning
34 Committee, and you mentioned, for example, that we
35 saw from the document that your counsel showed
36 you, that there were a number of sectors that are
37 represented in that committee; is that right?

38 MR. GROUT: That's correct.

39 Q My understanding is that part of the time there's
40 separate meetings between Department of Fisheries
41 and Oceans and the separate sectors; is that
42 correct?

43 MR. GROUT: Yes. The IHPC is the meeting where the
44 various sectors come together to discuss issues of
45 overlap and potential coordination for fisheries
46 and concerns, but we also have a substantial
47 consultation process outside of the IHPC as well.

1 Q And those discussions, then, would be -- for
2 example, you would have a separate meeting with
3 the Commercial Salmon Advisory Board, and a
4 separate meeting with the Sport Fisheries Advisory
5 Board; is that correct?

6 MR. GROUT: Typically there are meetings with the
7 Commercial Salmon Advisory Board and the Sport
8 Fishing Advisory Board as well as First Nations
9 outside of the IHPC.

10 In my experience, the IHPC, we've also met
11 with the Marine Conservation Caucus on a more
12 limited basis to review the IFMP.

13 Q Right. When you meet individually with those
14 components of the sectors, do you ever take that
15 information back to the plenary sessions so that
16 everyone understands where everyone else is coming
17 from, so to speak?

18 MR. GROUT: That's one of the things we -- we try and
19 do there. We -- the Department can summarize
20 points of view and perspectives that we've heard
21 from the groups at these meetings, and the groups
22 themselves may also bring up issues that they'd
23 like to raise with the full committee.

24 Q Now, my understanding, with respect to the IFMP,
25 the Integrated Fisheries Management Plan is that,
26 as you suggested, there are two times when that
27 actual plan is brought before the IHPC, one when
28 it's in very rough draft form; is that right?

29 MR. GROUT: That's correct. In the past, we did not
30 have the March meeting of the IHPC and there was
31 some concern expressed that there wasn't enough
32 opportunity for that committee to really have an
33 effect on the final IFMP, so we added the March
34 meeting as an opportunity to provide comments on
35 the first draft.

36 Q And, at that first session, then, there will be
37 input allowed from the various sectors in terms of
38 the pre-season forecasting and the fishing plan
39 that's going to be developed as you approach the
40 in-season regime; is that correct?

41 MR. GROUT: That's correct. Typically, at the March
42 meeting of the Integrated Harvest Planning
43 Committee we'll have a plenary session with all of
44 the representatives from both the north and the
45 south. And we also go into a more focused session
46 on south-specific issues and north-specific issues
47 in separate break-out rooms as well.

1 Q Right. And then you mentioned that there might be
2 then another iteration of the Integrated Fisheries
3 Management Plan that will come back before the
4 Integrated Harvest Planning Committee in May.

5 MR. GROUT: That's correct. So we -- prior to the
6 March meeting, roughly a week ahead, we release
7 draft one of the plan, and then approximately one
8 week prior to the May meeting of the IHPC we
9 release a second draft of the plan to the
10 committee, and also post it on our consultation
11 secretary, one page.

12 Q And then the -- as I understand it, the IFMP then
13 goes from that point to the Minister for sign-off?

14 MR. GROUT: There's some steps in between where the
15 Department will be assessing the feedback that
16 we've got from the groups. We'll be meeting --
17 we'd meet internally to address specific issues
18 that have been raised and make final
19 recommendations.

20 Then we would put together briefing material
21 and a number of briefings. For me, particularly,
22 I'd brief to the RDG level in the Pacific Region
23 and then the final IFMP, as well as the briefing
24 note would be submitted to the Minister for
25 approval.

26 Q My understanding from reading some of the template
27 documents and some of the material for the IFMP's
28 is that great pains were taken to describe this as
29 a non-binding non-legal document. Do you -- is
30 that your understanding as well?

31 MR. GROUT: Well, the IFMP is intended to lay out the
32 key guidelines and considerations that will be
33 used in making decisions during a fishing season.
34 It's given all of the variables that can change
35 in-season. What we're trying to do is lay out
36 rules that are robust to describe how we're going
37 to react in those situations without saying -- we
38 can't obviously prescribe specifically how we'll
39 react to every single situation in the plan.

40 Q Right. But to the extent that it's binding or
41 not, it would be your view that it's not
42 necessarily binding. It's just -- it's something
43 that's informative and instructional, but it's not
44 necessarily binding in and of itself; is that
45 fair?

46 MR. GROUT: Well, there's -- in cases where the
47 Department has found itself in a situation where

- 1 the guidelines or the objectives laid out in the
2 IFMP are inconsistent with the current set of
3 information, and maybe the approaches that are
4 proposed, we have taken the approach of -- for
5 those substantive issues to go back and brief the
6 Minister and seek approval for a different
7 decision where appropriate.
- 8 Q Now my understanding with respect to this
9 particular -- if we look at the 2009 example of
10 the IFMP that that was in fact a document that --
11 that went to the Minister, and we saw earlier in
12 your testimony, I think from Monday, that the
13 Minister signed off on that particular document.
14 Is that correct?
- 15 MR. GROUT: That's -- yes, she signed off on the
16 briefing note which was approving the use of that
17 Integrated Fisheries Management Plan.
- 18 Q All right. And it's my recall -- and I'm not sure
19 of the actual exhibit number. I believe if we can
20 pull up Tab 24 from the documents from Commission
21 counsel.
- 22 MR. LEADEM: I apologize, Mr. Commissioner, I'm not
23 sure of the actual exhibit number.
- 24 MS. BAKER: I think it's Exhibit 326.
- 25 MR. LEADEM: Thank you. Actually that's not the one I
26 had in mind.
- 27 MS. BAKER: 327.
- 28 MR. LEADEM: There's one that had an actual note on the
29 front. That's the one. That's the one that was
30 actually finalized, I believe, right?
- 31 Q There's a note on the front of it saying
32 "approved/" -- it looks to be "routine" with "note
33 for Minister". Then if you can turn to the last
34 page of that, page 5, you'll see that there's two
35 signatures there, one from the Deputy Minister,
36 Ms. Dansereau, and then one from the Minister, Ms.
37 Shea. Then there's a handwritten notation by Ms.
38 Shea, indicating, "Need to ensure we maximize
39 opportunities for commercial fisheries."
40 To the best of your knowledge, gentlemen,
41 that handwritten note is there from the Minister
42 herself; is that correct?
- 43 MR. GROUT: That's my understanding.
- 44 THE COMMISSIONER: Mr. Leadem, I apologize for
45 interrupting.
- 46 MR. LEADEM: Yes.
- 47 THE COMMISSIONER: I note the time.

1 MR. LEADEM: Oh, yes.

2 THE COMMISSIONER: If this is a convenient place to
3 interrupt your cross-examination...?

4 MR. LEADEM: Yes, we'll come back to -- I'll probably
5 be some length at this, this particular topic.

6 THE COMMISSIONER: All right.

7 MR. LEADEM: I'm sorry, Mr. Commissioner, I forgot we
8 were breaking at 1:30.

9 THE COMMISSIONER: No, no, no need to apologize.

10 That's fine. I just wanted to find out from Ms.
11 Baker, I presume we'll carry on with this panel
12 Monday morning; is that correct?

13 MS. BAKER: That's correct. We have this panel
14 scheduled for Monday and in fact for Tuesday as
15 well.

16 THE COMMISSIONER: Oh, I see. It would be helpful, if
17 it's convenient for counsel, just -- I know she
18 has asked before, but if you could just indicate
19 to her your time estimates, at least for those who
20 are here, to her before you leave. I think that
21 would be helpful for our planning on Monday. We
22 can revisit that on Monday morning, but that would
23 give Ms. Baker an opportunity over the weekend to
24 do some forward planning. Thank you very much.
25 Have a nice weekend.

26 THE REGISTRAR: The hearing is now adjourned until
27 Monday at 10:00 a.m.

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(PROCEEDINGS ADJOURNED AT 1:29 P.M. TO
JANUARY 24, 2011 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.
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10 _____
11 Karen Hefferland
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.
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21 _____
22 Karen Acaster
23

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