

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



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

## Public Hearings

## Audience publique

**Commissioner**

L'Honorable juge /  
The Honourable Justice  
Bruce Cohen

**Commissaire**

**Held at:**

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

Monday, January 24, 2011

**Tenue à :**

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

le lundi 24 janvier 2011



### Errata for the Transcript of Hearings on January 24, 2011

Page	Line	Error	Correction
1	2	January 21, 2011 / le 21 janvier 2011	January 24, 2011 / le 24 janvier 2011
95	47	role	rule

## **APPEARANCES / COMPARUTIONS**

Wendy Baker, Q.C. Maia Tsurumi	Associate Commission Counsel Junior Commission Counsel
Hugh MacAulay Jonah Spiegelman	Government of Canada
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")
Shane Hopkins-Utter	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")
Chris Watson	West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
Keith Lowes	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF")
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 ("MNBC")
No appearance	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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PANEL NO. 12  
Cross-exam by Mr. Leadem (cont'd) (CONSERV)

1 Vancouver, B.C. /Vancouver (C.-B.)  
2 January 21, 2011/le 21 janvier 2011  
3

4 THE REGISTRAR: The hearing has now resumed.  
5 MS. BAKER: Mr. Leadem will continue his cross.  
6 MR. LEADEM: For the record, Leadem, initial T., Mr.  
7 Commissioner, appearing as counsel for the  
8 Conservation Coalition.  
9

10 CROSS-EXAMINATION BY MR. LEADEM, continuing:  
11

12 Q Gentlemen, when we left off on last Friday, we  
13 have been examining Exhibit number 327 and I'll  
14 just ask the technician to pull that document up  
15 and place it before you. Perhaps we can just  
16 start with the first page, if you would please,  
17 Mr. Lunn.

18 This document is a briefing note and the  
19 first page of which appears to be an Action  
20 Requirement and there's a bit of a synopsis of the  
21 various steps that are taken before the Integrated  
22 Fisheries Management Plan is approved; is that  
23 right, Mr. Grout?

24 MR. GROUT: Yeah. The briefing notes that the  
25 department produces go into a computerized system  
26 known as MECTS, and I'm not sure what those  
27 acronyms stand for, but it's for tracking our  
28 briefing notes and I believe the Action Request is  
29 generated by that system, so depending on where  
30 the note is in the system, you could have a  
31 different Action Request attached to it, depending  
32 on who's being asked to review or approve it.

33 Q My interest was drawn to the handwritten notations  
34 at the bottom of that page and I showed you one of  
35 those on Friday. The first one appears to be 16  
36 June and my deciphering of the words, it appears  
37 to be "signed by DM", that would be the deputy  
38 minister; do I have that correct, Mr. Grout? 16  
39 June signed by DM, that would be the deputy  
40 minister; would it not?

41 MR. GROUT: Yes, it could be.

42 Q All right. I realize this is probably not your  
43 handwriting, so you'll have to bear with me. I'm  
44 just trying to decipher to the best of my ability  
45 what these notations might mean. There's -- it  
46 then says "to MO for decision". "MO" would be  
47 minister's office; is that fair?

January 24, 2011



2

PANEL NO. 12

Cross-exam by Mr. Leadem (cont'd) (CONSERV)

1 MR. GROUT: That's a reasonable assumption.

2 Q All right. And then the one that I showed you on  
3 Friday at the bottom -- well, first before we go  
4 there, there's a notation of:

5

6 16/06/09 Dan, please review - Scott

7

8 Do you know who Scott would be?

9 MR. GROUT: No. Just to be clear, my involvement with  
10 these briefing notes is to get them through the  
11 RDGs approval in Vancouver and I typically would  
12 not be involved in any of the sign-offs that occur  
13 in Ottawa.

14 Q Okay. So Scott, for all -- you don't know who the  
15 identity of a Scott would be?

16 MR. GROUT: In this case I'm not sure.

17 Q And then on the 25th of June of 2009 the IFMP was  
18 approved with a note from the minister and I  
19 showed you that note the last time we were here  
20 and that was at page 5 of the document, if we can  
21 just go there briefly. There's a handwritten  
22 notation next to the minister's name, Ms. Shea,  
23 with the notation:

24

25 need to ensure we maximize opportunities for  
26 commercial fisheries.

27

28 Is it common for ministers to have these kinds of  
29 notations on a briefing note such as this to your  
30 knowledge, Mr. Grout?

31 MR. GROUT: I have seen comments on briefing notes  
32 before.

33 Q Do you ever see comments on briefing notes on IFMP  
34 before such as this?

35 MR. GROUT: There may have been, but I can't recall  
36 specifically.

37 Q All right. Do you ever recall seeing comments  
38 from the minister's office that we need to ensure  
39 that we deal with conservation or we need to  
40 ensure that we satisfy First Nations concerns? Do  
41 you ever see anything of that nature on briefing  
42 notes such as this?

43 MR. GROUT: I can't recall the nature of comments that  
44 have been on previous briefing notes.

45 Q All right. I'll leave it at that. Now, I'll turn  
46 to the issue of membership on the Pacific Salmon  
47 Commission and the -- as I understand it from

1 discussions that we have with Mr. Lapointe, Canada  
2 is responsible for appointing members of the  
3 Fraser River Panel, the Fraser River Panel  
4 Technical Committee, the Canadian Caucus; is that  
5 correct?

6 MR. ROSENBERGER: That's correct.

7 Q And with regard to the appointment process, my  
8 understanding is that the -- my clients, the  
9 Marine Conservation Caucus, have been asking  
10 Canada for some time to be appointed to either the  
11 Fraser River Panel or the Fraser River Panel  
12 Technical Committee; is that right, Mr.  
13 Rosenberger?

14 MR. ROSENBERGER: That's correct.

15 MR. LEADEM: I'd ask that document 14 from the  
16 Conservation Coalition's documents be placed  
17 before the witnesses.

18 Q This is a letter, it's DFO document -- or Canada  
19 document 263866. It's a letter dated September  
20 26th, 2005 to the then minister, Geoff Regan.  
21 Were you aware of this document, Mr. Rosenberger?

22 MR. ROSENBERGER: I'm aware of two or three letters to  
23 ministers and the RDGs requesting participation in  
24 the Fraser Panel or the Tech Committee. I did  
25 review this document when it was sent to me a  
26 couple days ago.

27 MR. LEADEM: Might this be marked as the next exhibit,  
28 please?

29 THE REGISTRAR: Exhibit number 344.

30

31 EXHIBIT 344: Letter dated September 26, 2005  
32 to Geoff Regan  
33

34 MR. LEADEM:

35 Q I'm not going to take you through the document at  
36 length, but the -- it appears to be from the first  
37 paragraph that the document is a formal request  
38 that Canada, through the minister, consider  
39 incorporating the participation of the Pacific  
40 Marine Conservation Caucus in the PSC; does that  
41 accord with your understanding of the document, as  
42 well?

43 MR. ROSENBERGER: Yes.

44 MR. LEADEM: If we can now have document number 6 of  
45 the Conservation Coalition's documents, please?

46 Q This appears to be an email which contains a  
47 letter dated July 18th, 2007 to the then Regional

1 Director General, Mr. Sprout, and if we can turn  
2 briefly to the last page of it, please, under the  
3 cc's. It appears as though, Mr. Grout, you were  
4 copied on this particular piece of correspondence,  
5 were you?

6 MR. GROUT: Looks like it.

7 Q And if we could go back now to the first page,  
8 under the -- the first paragraph makes a reference  
9 to a letter of July 6th offering observer status  
10 to the Marine Conservation Caucus Salmon Committee  
11 on the Fraser River Panel of the Pacific Salmon  
12 Commission; does that accord with your  
13 understanding of when the MCC was offered that  
14 opportunity, Mr. Rosenberger?

15 MR. ROSENBERGER: Yes, they've had observer status for  
16 two or three years in the panel.

17 Q And what is your understanding of observer status  
18 at the panel, at the Fraser River Panel?

19 MR. ROSENBERGER: The way our Canadian -- the way the  
20 panel works is that the panel members are those  
21 that are -- can raise questions or issues during  
22 the bilateral panel process. We do have observers  
23 that raise questions and issues at times. Within  
24 the Canadian Caucus we operate as everybody has an  
25 equal opportunity to raise their issues, debate  
26 them, discuss concerns and provide  
27 recommendations.

28 Q As an observer, do the members of the MCC have any  
29 decision-making authority vested in them?

30 MR. ROSENBERGER: The decision-making authority of the  
31 -- from Canada in through the panel is through the  
32 vote from the DFO member.

33 MR. LEADEM: Might that be marked as the next exhibit,  
34 please?

35 THE REGISTRAR: 345.

36

37 EXHIBIT 345: Email dated July 18, 2007 re  
38 Marine Conservation Caucus response to Fraser  
39 River Panel invite  
40

41 MR. LEADEM: Mr. Lunn, could you pull up document  
42 number 26 of the Conversation Coalition's book of  
43 documents, please?

44 Q It appears to be a letter to Mr. Craig Orr of the  
45 Marine Conservation Caucus dated July 26th, 2007.  
46 On the second page under the signature it appears  
47 to be signed by Mr. Paul Sprout as the RDG and

1           once again, it appears as though you received a  
2           copy of this piece of correspondence, Mr. Grout,  
3           did you?

4           MR. GROUT: Yes.

5           Q     Now, I just want to discuss with either one of you  
6           paragraph 3 on the first page. I find these  
7           words:

8  
9                     I've also considered your request regarding  
10           direct participation in the work of the  
11           Fraser River Panel Technical Committee. As  
12           you know, all five seats for Canada on the  
13           Technical Committee are currently filled. We  
14           are not presently considering changes to  
15           those representatives.

16  
17           And Mr. Sprout goes on to say:

18  
19                     However, I'm sure there will be times when  
20           the MCC could assist the Technical Committee  
21           in their deliberations.

22  
23           To your knowledge, and this is a question for  
24           either one of you, does the MCC actually  
25           participate by assisting the Fraser River Panel  
26           Technical Committee in its deliberations and  
27           discussions?

28           MR. ROSENBERGER: I'm not aware of them participating  
29           in any direct technical committee sessions. I  
30           think at times they have provided input into the  
31           Canadian technical members who may bring that  
32           information forward into their deliberations.

33           Q     Have either of you given any thought to whether  
34           you will directly invite the members of the MCC to  
35           be an active member, as opposed to an observer  
36           status member of the Fraser River Panel or the  
37           Fraser River Panel Technical Committee?

38           MR. ROSENBERGER: There's been discussions about  
39           membership of the panel and the Tech Committee at  
40           times, more towards the panel. There's a number  
41           of organizations and individuals requesting  
42           participation in the panel and so we're  
43           considering that in any changes that might be made  
44           into the future.

45           MR. LEADEM: Might this be marked as the next exhibit,  
46           please?

47           THE REGISTRAR: Exhibit number 346.

1 EXHIBIT 346: Letter dated July 26, 2007 from  
2 Paul Sprout to Craig Orr - Fraser River Panel  
3 Appointment  
4

5 MR. LEADEM:

6 Q Now, on Friday we discussed a little bit about how  
7 the discussion process occurs with regard to the  
8 Integrated Harvest Management Committee and the  
9 Integrated Fisheries Management Plan, Mr. Grout,  
10 and is it usual that members of the MCC submit  
11 correspondence or provide input into that process,  
12 into the IHPC process, by filing correspondence  
13 with you or your office?

14 MR. GROUT: Yeah, we would get correspondence from any  
15 of the participants in the Integrated Harvest  
16 Planning Committee process. We also encourage the  
17 representatives of the Integrated Harvest Planning  
18 Committee to verbalize any submissions or concerns  
19 that they're raising at the meetings, as well.

20 Q I'm going to show you a piece of correspondence  
21 for the 2009 Integrated Fisheries Management Plan.

22 MR. LEADEM: If I could ask Mr. Lunn to pull up our  
23 document number 21, the Coalition document number  
24 21.

25 Q This is a letter to the Marine Conservation Caucus  
26 and if we can just look at the signature page,  
27 just to get the context of who signs it. It  
28 appears to be a letter from Mr. Paul Ryall. I  
29 understand that he'll be coming in later on to  
30 provide testimony to this commission, but I also  
31 note that you appear to be copied on this piece of  
32 correspondence; is that right, Mr. Grout?

33 MR. GROUT: That's correct.

34 Q Are you familiar with the contents of this  
35 particular letter?

36 MR. GROUT: Yes.

37 Q Did you draft it?

38 MR. GROUT: I may have had a role in assisting with  
39 drafting portions of the letter.

40 Q I want to go through some of these subject areas.  
41 This is what I'm going to call a response to the  
42 Marine Conservation Caucus with regard to the 2009  
43 IFMP, a response from DFO to some of the  
44 suggestions made by the caucus; is that correct?

45 MR. GROUT: This letter, as I understand it, was  
46 provided as a follow-up to a meeting we had to  
47 discuss the Integrated Fishery Management Plan.

1 Q Under the heading on the first page, if we can  
2 just go back to page 1, please -- I don't know  
3 whether you have hard copies with you or not, so  
4 if you want to take some time, we can go through  
5 the whole letter, but I'm going to go through  
6 specific topics. Under the heading "Wild Salmon  
7 Policy (WSP) Implementation" there's a response  
8 from DFO and I'm going to suggest to you that the  
9 Marine Conservation Caucus has always tried to  
10 suggest to the Integrated Harvest Planning  
11 Committee and as part of the IFMP that there will  
12 be a direct implementation of the WSP into the  
13 context of the Integrated Fisheries Management  
14 Plan. They've been very persistent in trying to  
15 get that moving forward; isn't that fair?

16 MR. GROUT: Yeah, I think that's a fair assessment of  
17 the points that are raised regularly by the Marine  
18 Conservation Caucus.

19 Q And if we look at page 2, for example, of this  
20 particular document, the italicized portion at the  
21 top of the page, I would suggest to you is a  
22 recommendation coming directly from the MCC to DFO  
23 with respect to the 2009 Integrated Fisheries  
24 Management Plan. And recommendation 1 specifies  
25 that:

26  
27 All salmon CUs should be identified with  
28 whatever information on status is available.  
29

30 Now, we've discussed, and I'm not going to go into  
31 -- at length with you with respect to the CUs and  
32 the Wild Salmon Policy, but it's my understanding  
33 that CUs are in the process of being identified  
34 pursuant to the Wild Salmon Policy for Fraser  
35 River sockeye; is that correct?

36 MR. GROUT: Yes.

37 Q And there's approximately to -- 35 or something in  
38 that range, 35 -- anywhere between 32 and 35  
39 conservation units which have been identified that  
40 correspond to Fraser River sockeye; is that fair?

41 MR. GROUT: There has been ongoing discussions about  
42 the specific number of CUs for Fraser River  
43 sockeye. At a science meeting this Fall, working  
44 on developing some of the benchmarks to assess the  
45 status of Fraser sockeye there was a discussion --  
46 this was at our Centre for Science Advice Pacific  
47 meetings in the Fall, there was discussion about

1           whether some of the CUs should be identified as  
2           such.

3       Q     So would you agree with me then that it's a topic  
4           that's somewhat in transition at this point in  
5           terms of the finite number of CUs?

6       MR. GROUT: Yes.

7       Q     And that's something that Canada has been working  
8           on?

9       MR. GROUT: Yeah. We've been progressing from  
10          identifying the initial list of CUs to moving to  
11          develop methods, standardized methods that might  
12          be used to assess status for those, and then  
13          following up now with more specific work of trying  
14          to apply those methods. And the meeting I  
15          referred to this Fall was trying to do that, apply  
16          some of these methods to Fraser sockeye.

17       Q     And the reason why I'm focusing on the Wild Salmon  
18          Policy and conservation units in the context of  
19          your evidence is that when I review a document  
20          such as the Integrated Fisheries Management Plan  
21          for 2009 I see very little in the way of  
22          references to conservation units or very little in  
23          the way of Wild Salmon Policy. Is it because  
24          we're still at the seminal stage of developing  
25          that policy? It's not yet ready for rollout?

26       MR. GROUT: I don't know if I'd characterize it that  
27          way. I'd say there's been an iterative process of  
28          development of the tools that we would use to  
29          assess the status of conservation units. We've  
30          moved from identification of a preliminary list of  
31          conservation units to paper by Carrie Holt and  
32          others to try and identify methodologies that  
33          could be used to assess status and now we're  
34          moving into a phase of specific papers that might  
35          be applying some of those methods to identify  
36          status for some of these populations.

37       Q     Are you referring to the paper by Dr. Sue Grant  
38          that attempts to place benchmarks, lower  
39          benchmarks onto some of the conservation units for  
40          the Fraser River sockeye?

41       MR. GROUT: Yes, that's correct.

42       Q     And are you aware of that paper and her work that  
43          shows that there's somewhere, and I know the paper  
44          is in transition, but at least preliminarily  
45          there's something in the range of seven  
46          conservation units for Fraser River sockeye which  
47          are actually in the red zone according to the

1 initial description that she afforded to it in her  
2 paper; isn't that right?

3 MR. GROUT: Well, the paper was reviewed this Fall and  
4 it's my understanding that revisions have been  
5 requested prior to finalizing the paper.

6 Q Yes, I understand that, but if you've read the  
7 paper, you would agree with me that there are  
8 seven conservation units which are demarked in  
9 that particular paper as being within the red  
10 zone, correct?

11 MR. GROUT: I can't recall the specific number.

12 Q Now, the reason I'm going on on this at length is  
13 just that if you've got somewhere in the range of  
14 30, 35 conservation units that you've now  
15 identified, and I think you've already identified  
16 that you've got 19 stock management groups for  
17 Fraser River sockeye; is that right?

18 MR. GROUT: We have 19 stocks. I wouldn't characterize  
19 them as management groups necessarily, but stocks  
20 for which we have longer time series of spawn and  
21 recruitment data which allows us to use those  
22 populations in our forecasting methods and  
23 assessment in the Fraser Sockeye Spawning  
24 Initiative process and modelling work.

25 Q Okay. So that gets entered in -- so you've got 19  
26 sets of data that can be entered into the FRSSI  
27 model; is that right?

28 MR. GROUT: That's correct.

29 Q And then we've heard evidence from Mr. Lapointe,  
30 amongst others, that for the purposes of the  
31 Pacific Salmon Commission, you've got these four  
32 management aggregate groups; is that right?

33 MR. GROUT: Yes.

34 Q Right. And there -- I think there were Early  
35 Stuart, the Early Summer, Summer and the Late Run.  
36 And so I guess my conundrum and the problem that  
37 I'm going to suggest that you have is trying to  
38 distil down from these conservation units, these  
39 30, 35 conservation units into managing just four  
40 runs or four aggregates, and how do you do that?  
41 How is it possible to do that in a meaningful way  
42 where you actually are going to be looking after  
43 the conservation units that are most in trouble?

44 MR. GROUT: Well, we do it through a number of ways, so  
45 one of the ones is in looking at the Fraser  
46 Sockeye Spawning Initiative work, we're assessing  
47 harvest -- the impact of various different harvest



1 rules on the component populations in the  
2 management group to look at, for example,  
3 probabilities that the spawning abundance of those  
4 populations falls below specific benchmark levels.

5 While we have four management units for the  
6 Fraser River Panel purposes, Canada has also  
7 managed at a finer scale resolution on some  
8 occasions. Cultus Lake sockeye is an example.  
9 We've also applied additional management  
10 constraints to protect weaker populations, for  
11 example, in the Early Summer run. In 2010 we  
12 looked at extending a window closure that we had  
13 in place and also putting an additional constraint  
14 on exploitation rates. So even though we've got  
15 four management groups identified, we have managed  
16 at finer levels in the past.

17 Q Would you agree with me to this extent, that if  
18 you're taking these aggregate management groups,  
19 that in order to manage effectively to preserve  
20 biodiversity, and the conservation unit status  
21 that you have to manage to the most vulnerable  
22 conservation unit in that mixed fishery? Would  
23 you agree with that?

24 MR. GROUT: That's certainly a suggestion that has been  
25 made by some. Currently we're looking at  
26 developing harvest rules for the major management  
27 units that are consistent with preserving the  
28 component populations.

29 Q By that -- when you say the component population,  
30 do you mean the conservation unit or what do you  
31 mean?

32 MR. GROUT: Well, as I pointed out earlier, the Fraser  
33 Sockeye Spawning Initiative model is using the  
34 data for the 19 stocks for which we have longer  
35 time series of spawn and recruit data. Some of  
36 those 19 stocks represent more than one  
37 conservation unit and some conservation units  
38 don't fit within some of those stocks, but for the  
39 19 where we have the data, we're looking at  
40 developing a harvest rule approach that looks at  
41 the probabilities of exceeding or falling below  
42 spawning escapement benchmarks for each of those  
43 populations in the model. So in some cases they  
44 represent CUs. In some cases they represent more  
45 than one CU and in others a CU may not be directly  
46 reflected by one of the 19 stocks.

47 Q And I understand we'll be getting into the FRSSI

1 model later on in evidence, so I'm not going to go  
2 into detail with respect to the FRSSI model with  
3 you, but my question is more of a general one  
4 about FRSSI. Have there been attempts or are  
5 there attempts to your knowledge, Mr. Grout and  
6 Mr. Rosenberger, to incorporate the conservation  
7 unit and what we know about conservation units  
8 into the workings of the FRSSI model?

9 MR. GROUT: Well, for populations where the 19 stocks  
10 represent the conservation units, those are  
11 clearly included in the model. There are some CUs  
12 that are not directly reflected by those 19 stocks  
13 and that has posed a challenge for trying to  
14 incorporate into the model itself. This is a  
15 model that relies on time series of spawn and  
16 recruitment data for its operation.

17 MR. LEADEM: I think I'll leave it at there, Mr.  
18 Commissioner, wait to get involved in a more full  
19 discussion of FRSSI when we have that coming on in  
20 a few -- maybe next week or so.

21 Q Going back to this document, Mr. Grout or Mr.  
22 Rosenberger, the recommendation 2, I want to just  
23 make sure I understand some of this. The  
24 recommendation 2 in the italicized portion of this  
25 letter says:

26  
27 Use the 75p cumulative probability forecast  
28 for planning 2009 fisheries.

29  
30 Now, when you were leading your evidence of the  
31 IFMP for 2009, I understood that the Early Run --  
32 or sorry, the Early Stuart run, certainly used the  
33 75p in terms of its plan; is that correct?

34 MR. GROUT: That's correct.

35 Q The MCC is recommending that the 75p be used not  
36 just for that Early Stuart, but also for the  
37 Summer, the Late Summer Runs as well; is that  
38 correct?

39 MR. GROUT: That's my understanding of what the  
40 recommendation was, yes.

41 Q And why wasn't that recommendation followed with  
42 respect to the 2009 IFMP?

43 MR. GROUT: Well, the suggestion that the 75p forecast  
44 be used is essentially that that reflects in this  
45 -- in 2009 a more conservative, if you will,  
46 forecast level, so there's only a one-in-four  
47 chance that the returns would be returning at less

1 than that level, based on the forecast  
2 distribution, or a three-in-four chance of  
3 something larger than that.

4 The use of the 75p had been used in some  
5 cases in the past. It is an arbitrary selection  
6 of a particular forecast level that might be used  
7 and one of the key points that we made at the time  
8 was that we're really focusing on our in-season  
9 information to assess the run size of these  
10 various different populations and we didn't feel  
11 at the time that it was appropriate to set  
12 everything at 75p.

13 Q The last part of this letter that I want to  
14 examine with you is Recommendation 4 on the next  
15 page:

16  
17 Continue to manage timing aggregate overlap  
18 explicitly. Do NOT --

19  
20 In caps.

21  
22 -- use a "10/10" rule --

23  
24 And then it offers an explanation of the 10/10  
25 rule:

26  
27 -- where fisheries can proceed if co-  
28 migrating aggregates are less than 10% of the  
29 total abundance and less than 10% of the  
30 smaller aggregate is exposed to the fishery.

31  
32 Does to your knowledge DFO use the 10/10 rule in  
33 managing fisheries for Fraser River sockeye?

34 MR. ROSENBERGER: It has been used in the past.

35 There's various discussions about options to be  
36 used when there's -- on overlapping stock that's  
37 -- has a small TAC or no TAC at the time, when  
38 there's a larger, more abundant overlapping  
39 population co-migrating with it, so it's looking  
40 at ways -- either in the same species and  
41 sometimes across species, so it's looking at rules  
42 that we would use to try to protect those smaller  
43 migrating populations when they co-migrate with  
44 either another species or a larger stock grouping.

45 Q The recommendation goes on to say:

46  
47 This approach intentionally fishes beyond

1 TAC --

2

3

Total allowable catch.

4

5

-- and into escapement and/or First Nations  
FSC fish.

6

7

8

Do you agree with that proposition that they're  
putting to you there, Mr. Rosenberger?

9

10

MR. ROSENBERGER: Not in that terminology. It does  
mean that you're looking to fish beyond the TAC  
and so it's what -- you're looking at ways to try  
to minimize that impact. Often the reason that  
we're looking to do this is for the purposes of  
having FSC fisheries.

11

12

13

14

15

16

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

17

18

THE REGISTRAR: Exhibit number 347.

19

20

EXHIBIT 347: Letter from Paul Ryall to MCC -  
Recommendations From the Marine Conservation  
Caucus on the South Coast Salmon Integrated  
Fisheries Management Plan

21

22

23

24

25

MR. LEADEM: If I can ask document number 34 from the  
Conservation Coalition documents to be pulled up,  
please?

26

27

28

Q Gentlemen, what you should have before you is a  
paper entitled "A Rolling Discussion Paper on the  
Implementation of Pacific Fisheries Reform -  
Beyond the Fraser Mixed Stock Fishery - Exploring  
Options for Voluntary Implementation". Are either  
one of you familiar with this paper?

29

30

31

32

33

34

MR. GROUT: I've seen pieces of this paper in the past  
and participated in some discussions which I  
understand were related to some of the ideas put  
forward in the paper.

35

36

37

38

Q It appears to be that this particular copy which  
is a Canada document has a draft date of June 29,  
2007; if you could just scroll down just a wee bit  
there, Mr. Lunn.

39

40

41

42

So I wanted to discuss - not at length,  
because I think that we're going to be discussing  
some of these other topics later on - but I want  
to get your information or your evidence with  
respect to some of the suggestions that are being  
made in this particular paper. The first one is

43

44

45

46

47

1 an allocation transfer policy. Has DFO given any  
2 consideration to actually going to an allocation  
3 transfer policy?

4 MR. ROSENBERGER: We currently have an allocation  
5 transfer program in place - I'm not certain it's  
6 defined as a policy - whereby we are purchasing up  
7 commercial licences from marine mixed stock  
8 fishing areas and one objective out of those  
9 licences is to reassign them into more terminal  
10 areas to try to reduce mixed stock fisheries.

11 MR. GROUT: Maybe I could add to that, as well. The  
12 current allocation policy for salmon contemplates  
13 transfers of allocations between the existing  
14 commercial area gear types but does not specify  
15 how that might work between commercial fleets, and  
16 by those I mean the licensed fleets in Area A  
17 through H. It doesn't contemplate how the  
18 transfers might work between those fleets to  
19 inland areas, for example.

20 Q One of the other topics, and I'm looking now at  
21 page 3 of this particular paper, that is being  
22 promoted at the bottom of the page under the bold  
23 heading "Trading Immediate Benefits to First  
24 Nations for Compensation to the Commercial Sector  
25 through New Conservation-based Arrangements  
26 (Conservation Credits)". Has DFO had any  
27 response, formal or otherwise, to this particular  
28 suggestion?

29 MR. GROUT: I can't recall if we've responded to the  
30 conservation credit notion specifically as it's  
31 laid out in this report. In reviewing this  
32 document over the weekend, I confirmed my  
33 recollection that the specific mechanisms weren't  
34 particularly laid out here. It was more of a  
35 concept for how something might work.

36 Q I believe, to be fair to my clients, it was just  
37 put out as a -- to engender discussion, and my  
38 question would then be what kind of discussion has  
39 centred on these kinds of suggestions that are  
40 being made?

41 MR. GROUT: Well, I guess in terms of one of the ideas,  
42 if I understand it correctly, is that harvest  
43 could be moved out of the main stem of the Fraser  
44 River where there's mixed stock fisheries  
45 occurring and be focused in more terminal areas.  
46 And in this case, the Harrison River was an  
47 example of one of the spots where that might

1 occur. Certainly with the demonstration fisheries  
2 the department has implemented, we have looked at  
3 providing commercial access for a demonstration  
4 fishery in the Harrison River, which would have  
5 removed harvests that might otherwise have  
6 occurred in the Fraser main stem itself, so it's  
7 not inconsistent with some of the ideas that the  
8 department has explored through its demonstration  
9 fisheries.

10 MR. LEADEM: Might that paper be marked as the next  
11 exhibit, please?

12 THE REGISTRAR: Exhibit 348.

13  
14 EXHIBIT 348: Paper entitled "A Rolling  
15 Discussion Paper on the Implementation of  
16 Pacific Fisheries Reform - Beyond the Fraser  
17 Mixed Stock Fishery - Exploring Options for  
18 Voluntary Implementation"  
19

20 MR. LEADEM:

21 Q I want to finish with the -- a discussion of the  
22 Marine Stewardship Council's work. Your counsel  
23 showed you a three-volume set which are the public  
24 records, and I was going to ask that 343A be  
25 brought up. That should be Volume 2.

26 While we're waiting for that, my  
27 understanding of your evidence from last Friday  
28 was that the certification report showed that the  
29 Fraser River sockeye was sustainable within the  
30 terminology of the Marine Stewardship Council; is  
31 that right? Is that basically the gist of your  
32 evidence?

33 MR. GROUT: That's correct.

34 Q Now, if I look at this particular volume and I go  
35 to page 224, my understanding is that the  
36 certification was conditional on a number of  
37 things, a number of conditions being met; is that  
38 right, Mr. Grout?

39 MR. GROUT: Yes, that's correct. A number of  
40 conditions were identified for each of the four  
41 sockeye fisheries and those would have to be  
42 addressed within a five-year timeframe, is my  
43 understanding.

44 Q Right. And part of the conditions were that DFO  
45 would actually have a management plan of things  
46 that it would have to deliver upon in order to  
47 make the certification process go beyond the five

1           years; is that right?  
2       MR. GROUT: I'm not sure that I understand your  
3           question. The department has put together an  
4           action plan to address the conditions that are  
5           laid out in the report. Is that what you were  
6           asking?  
7       Q       Yes.  
8       MR. GROUT: Okay.  
9       Q       I think that's probably a better way of saying it.  
10           And what appears to me under Appendix 6 of Volume  
11           2 is the department's action plan to address the  
12           conditions for marine stewardship certification of  
13           the sockeye fishery in the Fraser River; is that  
14           right?  
15       MR. GROUT: Sorry, I missed the last part of your  
16           statement.  
17       Q       Well, I'm just simply asking you whether this  
18           appears to be the DFO action plan that was  
19           submitted in conjunction with the MSC  
20           certification process.  
21       MR. GROUT: Do you mind scrolling down a few pages  
22           there for me, please? Yes, that looks like it.  
23       Q       And, for example, on the page that we're now  
24           looking at which should be page 225 - and if we  
25           could just highlight, just briefly, the "Unit" and  
26           "Deliverable" table there that shows on the bottom  
27           of that page. Under the "Unit - Fraser" that  
28           would apply to the Fraser River sockeye; would it  
29           not, Mr. Grout?  
30       MR. GROUT: That's correct.  
31       Q       And under the "Lead" where it says "FAM" that  
32           would be the branch of DFO?  
33       MR. GROUT: Yes. Fisheries and Aquaculture Management  
34           in Vancouver.  
35       Q       And the timeline, there's some discrete timelines  
36           of deliverables that are itemized there.  
37       MR. GROUT: Right. Those are the plan dates when that  
38           item would be addressed.  
39       Q       If we could now look at page 228, maybe just  
40           scroll slowly through so Mr. Grout can see what's  
41           being discussed -- do you have a hard copy there,  
42           Mr. Grout, or you're relying upon this electronic  
43           version?  
44       MR. GROUT: I hadn't -- I do, but I haven't flipped to  
45           the --  
46       Q       Okay.  
47       MR. GROUT: -- specific page.

1 Q This table appears to go on for a few pages and  
2 then at page 228 under the heading "Conditions  
3 Relating to Implementing DFO's Wild Salmon Policy"  
4 there appears to be the MSC certification was very  
5 much tied into implementation of the Wild Salmon  
6 Policy; isn't that right?

7 MR. GROUT: Yes.

8 Q And in this particular case, there's a number of  
9 Strategy 1 items that DFO said it would do as part  
10 of the certification process; isn't that right?

11 MR. GROUT: That's correct.

12 MR. LEADEM: I'm not going to go through any of these  
13 at length, Mr. Commissioner. And I'm simply going  
14 here because my learned friends opened the door by  
15 tendering this document and I wanted to ensure  
16 that the certification process was seen that there  
17 was -- it was done, but with conditions.

18 If we can continue to scroll down through  
19 some of these conditions, there's a table there  
20 and I just wonder if you can highlight that table,  
21 Mr. Lunn, and just amplify it. Thank you.

22 Q There's a number of timelines there and under the  
23 action "Identification of Conservation Units", and  
24 under the timeline there's a paper reviewed and  
25 approved by PSARC, that's the Holtby paper, I  
26 think you were talking about, was it? The Holt  
27 and Holtby paper?

28 MR. GROUT: I did refer to several papers earlier.  
29 That was one of the ones I referred to as  
30 identifying the conservation units for Pacific  
31 salmon.

32 Q Right. The third action item, "Define LRPs -- "  
33 now that refers to limit reference points -- "For  
34 each Target Stock CUs". Now, I'm not going to  
35 quibble about LRPs and lower benchmarks with you,  
36 but basically as you understand it, DFO is in the  
37 process of defining lower benchmarks for many of  
38 the conservation units for Fraser River sockeye;  
39 is that correct?

40 MR. GROUT: That's correct. That was the purpose of  
41 the paper that was through our science review  
42 process this past Fall.

43 Q And then the last item, action item, is "Define  
44 TRPs". What does TRP stand for?

45 MR. GROUT: In this case it's referring to target  
46 reference points.

47 Q And would that correspond roughly to the upper



1 benchmark for CUs that the WSP identifies?

2 MR. GROUT: It might be more appropriate to ask some of  
3 these questions to Paul Ryall. He's been our lead  
4 for the MSC process. But certainly the work to  
5 assess status of conservation units for Fraser  
6 sockeye refers to upper and lower benchmarks. The  
7 limit reference points and target reference points  
8 may or may not refer to those specific points, or  
9 they may refer to the specific management  
10 reference points out lined by the Management  
11 Decision Rules.

12 Q And finally, if we can look at page 252 of this  
13 document. Sorry, my mistake. I think I have the  
14 wrong page number. I'm just going to leave that  
15 question.

16 MR. LEADEM: Thank you, gentlemen. Those are my  
17 questions.

18 MR. GROUT: You're welcome.

19 MS. BAKER: Thank you. The next counsel will be for  
20 Area D Salmon Gillnet Association and Area B  
21 Harvest Committee, Mr. Rosenbloom.

22 MR. ROSENBLOOM: Don Rosenbloom, I appear for Area B  
23 Seiner, Area D Gillnet. I thank both you  
24 gentlemen in anticipation of you answering my  
25 questions.

26 Mr. Commissioner, before I commence my cross-  
27 examination, I wish to indicate that I've had a  
28 healthy exchange of emails with Ms. Baker  
29 throughout last week and into the weekend because  
30 Ms. Baker quite appropriately is asking counsel to  
31 calculate the amount of time necessary for cross-  
32 examination. I fully respect the reasons why  
33 that's asked.

34 During last week, prior to the testimony  
35 being tendered by these two witnesses, I informed  
36 Ms. Baker that I anticipated maybe a 40-minute  
37 cross-examination, again this being a calculation  
38 prior to the Friday testimony. After the Friday  
39 testimony of which I was present for part of it  
40 and not for a -- the latter portion of it, I  
41 communicated with Ms. Baker and informed her  
42 during the weekend that I would be of a timeframe  
43 significantly greater than 40 minutes. I would  
44 estimate now approximately an hour, an hour and  
45 ten, an hour and 15 minutes. I have informed Ms.  
46 Baker generally that that was the direction that  
47 it was going.

1 I apologize to the commission but quite  
2 frankly, I don't think it really needs much of an  
3 apology, because we are being asked to calculate  
4 time for cross-examination before the testimony is  
5 given by the witnesses and so it's obviously a  
6 matter of some skill to anticipate what the  
7 timeframe would be. Having said that, I will do  
8 my best to keep my cross-examination as  
9 efficiently delivered as possible.

10  
11 CROSS-EXAMINATION BY MR. ROSENBLOOM:  
12

13 Q Gentlemen, I first want to deal with a point that  
14 was made by Mr. Leadem in his cross-examination  
15 this morning, his first item, and that related to  
16 the minister's approval of the IFMP for 2010, I  
17 believe, and it is Exhibit number 327, if I have  
18 that correctly and Ms. Baker will inform me  
19 otherwise. And Mr. Leadem put the document before  
20 the -- before you and on page 5 of that document,  
21 he drew to your attention the entry by the  
22 minister at her asterisk next to her signature  
23 which reads, in part:  
24

25 Need to ensure we maximize opportunities for  
26 commercial fisheries.  
27

28 And so your attention was drawn to that. I have  
29 questions for you regarding that entry.

30 Can you inform me, as DFO officials, what  
31 meaning you put on the ministerial entry in that  
32 IFMP that you are, quote, you "need to ensure we  
33 maximize opportunities for commercial fisheries"?  
34 How would that be interpreted by your office?

35 MR. GROUT: Well, my interpretation of this comment was  
36 that that would be something that we would try and  
37 do consistent with the guidelines that are laid  
38 out in the IFMP.

39 Q Well, that being the case, wouldn't it be  
40 redundant for the minister to be making that entry  
41 if all she's asking is that you comply with  
42 ministerial policy? Would she be putting in that  
43 document make sure you do comply with policy? Is  
44 that all she's saying there by your  
45 interpretation?

46 MR. GROUT: Oh, I guess in response to that, the  
47 minister did not speak with me directly about this

1 comment and I didn't receive additional direction  
2 for changes to be made by the RDG in the Pacific  
3 Region, so I was giving you my assessment of what  
4 that comment meant.

5 Q I appreciate that. Mr. Rosenberger, do you have  
6 any response to my question as to how the Pacific  
7 Region interpreted the ministerial direction as  
8 found in that asterisk entry?

9 MR. ROSENBERGER: No, I don't, and I wasn't aware of  
10 that comment until I became involved in this  
11 process.

12 Q And you say until you got involved in this  
13 process. I'm sorry, would you just run by me the  
14 timeframe of your --

15 MR. ROSENBERGER: I don't normally get back these  
16 documents. It's something that comes back to  
17 region and so although I knew that the plan was  
18 approved, these handwritten comments I wasn't  
19 aware of.

20 Q All right. Well, you are now aware of them and my  
21 question to you is how do you interpret the  
22 political directive as found on page 5?

23 MR. ROSENBERGER: Similar to Jeff. There's no specific  
24 actions to change any parts of the Integrated  
25 Fisheries Management Plan that was put forward, so  
26 I didn't see any specific changes that we would  
27 make because of this comment.

28 Q Would you not agree with me that the minister is  
29 stating in very clear terms that the department  
30 must be very, very careful in weighing its  
31 decisions to ensure that socioeconomic issues are  
32 considered by the department in managing the  
33 fishery?

34 MR. ROSENBERGER: That is part of the decision process  
35 that we go through. It is trying to take into  
36 account socioeconomic, cultural, the biological  
37 and so it's consistent with how we're managing our  
38 fisheries.

39 Q I see. So you say that from your vantage point,  
40 the department has effectively been weighing the  
41 socioeconomic impacts of its decision-making in  
42 harvest management; is that your testimony?

43 MR. ROSENBERGER: Yes.

44 Q Okay. I'll come back to that a little further on  
45 in my cross-examination. I want to now ask you a  
46 few questions regarding Cultus Lake. First one is  
47 for information purposes for all of us, with

1 respect to the 2009 Cultus Lake run, I believe  
2 you, Mr. Rosenberger, and I can refer you to the  
3 transcript at any point if, as I cross-examine you  
4 you wish to review the transcript of last day or  
5 your earlier testimony, I'm very happy to refer  
6 you to it. I just want to speed things up unless  
7 it's absolutely necessary.

8 You spoke about the 2009 run of Cultus Lake  
9 as being reasonably -- these aren't your words,  
10 but that they -- well, these are your words,  
11 definitely exceeded people expectations and 2010  
12 was quite satisfactory also. My question to you  
13 is this: can you and DFO inform us as to the  
14 breakdown ratio of the returning sockeye of Cultus  
15 Lake that are hatchery fish as opposed to non-  
16 hatchery fish?

17 MR. ROSENBERGER: The vast majority is enhanced fish.  
18 It's a combination of -- it's mostly from the --  
19 what we would refer to as sort of the normal  
20 hatchery operations as opposed to the captive  
21 brood fish, but the significant majority of the  
22 fish are enhanced, as opposed to wild fish.

23 Q And you can say that with some certainty, can you  
24 not, sir, because the hatchery fish are fin-  
25 clipped for identification purposes?

26 MR. ROSENBERGER: That's correct.

27 Q Do you see any significant consequence to the fact  
28 that the majority of the returning fish are  
29 hatchery fish as opposed to lake fish?

30 MR. ROSENBERGER: Our science people have taken a look  
31 at that and there's a new Cultus recovery document  
32 that was put through our Centre of Science  
33 Excellence last June because of some of the  
34 concerns around the captive brood fish, lack of  
35 those fish returning to spawn successfully. We're  
36 not seeing those fish in the process. We're  
37 looking to discontinue the captive brood side of  
38 it. We are not looking at this stage to  
39 discontinue the hatchery portion, egg taken prior  
40 to release side of things, largely because those  
41 fish are from wild fish that we're taking, so that  
42 what we're trying to do is remove the majority of  
43 the wild fish that come back to the fence, because  
44 it is a smaller part of the total, and those are  
45 the fish we're using in our hatchery program at  
46 this stage, so we are monitoring it. We are  
47 concerned that, you know, we'd like to have more

1 wild fish. We'd like to have more wild,  
2 successful natural spawners but at this point  
3 we're removing many of them from the ability to  
4 naturally spawn because we don't want to have  
5 hatchery fish going through our system, like  
6 taking fish for the hatchery again that we know  
7 are from hatchery original origin.

8 Q Mm-hmm. Knowing a little bit of where we go from  
9 here with this inquiry with this hearing and with  
10 this schedule, is there someone that comes to your  
11 mind that will be testifying that may be of a  
12 scientific background that would more  
13 appropriately be able to answer the significance  
14 of the fact that most of the returning Cultus Lake  
15 fish are hatchery fish?

16 MR. GROUT: Dr. Bradford, I believe, will be here on --  
17 at some time and he is the lead of the Cultus  
18 program.

19 MS. BAKER: Mr. Commissioner, I think that's correct,  
20 and they're in the section which is identified on  
21 the hearings plan as Wild Salmon Policy Part 2.  
22 There will be a whole section dealing with the  
23 Cultus recovery planning and recovery efforts, so  
24 that may be where this topic could be dealt with  
25 in more depth.

26 MR. ROSENBLOOM: Thank you.

27 Q I'd like to turn to further matters relating to  
28 Cultus, and I'm speaking of the appropriate  
29 management response to the Cultus situation. And  
30 you speak of the SEP, the enhancement program, and  
31 the recovery program ending with the involvement  
32 of the CSAB. What does CSAB stand for?

33 MR. GROUT: Commercial Salmon Advisory Board.

34 Q Thank you. With the Fraser Valley First Nations  
35 and finding common ground. I'm informed of the  
36 following and I wish to put this to you and I wish  
37 you to confirm these are, in fact, the facts in  
38 respect to the Cultus Lake enhancement program and  
39 I've put this to previous witnesses.

40 In 2006 was when the CSAB negotiated a higher  
41 harvest rate on lakes, that is Cultus, in return  
42 for contributing money to address habitat issues  
43 that DFO wasn't - that is DFO had only implemented  
44 harvest management - catch reduction in the  
45 rebuilding strategy. In 2006 the CSAB caught  
46 approximately 100,000 fish with the proceeds for  
47 the sale earmarked for the pike minnow program,

1 milfoil removal and fed fry. That was from --  
2 now, firstly, do you agree generally with that  
3 history back in 2006, either of you?

4 MR. GROUT: That's my general understanding. I think  
5 you indicated that the department wasn't  
6 contemplating any -- maybe you could repeat what  
7 you said about what the department's actions were  
8 at that time?

9 Q Well, what were the department's actions at that  
10 time? Was it not that the department's response  
11 to this problem at Cultus Lake was this initiative  
12 with CSAB wherein a hundred thousand fish would be  
13 caught and the proceeds would go into a program;  
14 is that not correct? And I'm going to come to the  
15 **Larocque** decision in a moment, but just stick  
16 there --

17 MR. GROUT: Okay. Well, my --

18 Q -- freeze-frame 2006.

19 MR. GROUT: My understanding of some of the discussions  
20 that occurred at the time was that the department  
21 was considering a number of potential recovery  
22 activities with salmon enhancement program as part  
23 of that, but some of the discussion was around  
24 whether additional monies might increase the size  
25 of the enhancement component of the program in  
26 addition to some other activities like pike minnow  
27 removal.

28 Q Well, are you suggesting that in 2006 the DFO  
29 response was intended to be more, in terms of the  
30 enhancement issue, more than simply this program  
31 of CSAB and the monies that would be generated  
32 from that catch?

33 MR. GROUT: My recollection is that the department had  
34 contemplated some activities, including some of  
35 the hatchery activities, and one of the things  
36 that was of interest was expanding the number of  
37 -- expanding the size of the facilities at the  
38 hatcheries to increase the number of hatchery fish  
39 that could be released.

40 Q Okay. So you say contemplated a program beyond  
41 simply what I've stated here. Let's go on.  
42 Because of the **Larocque** decision and I'm not  
43 sitting in this hearing every day, I'm not sure if  
44 the **Larocque** decision has been canvassed  
45 exhaustively to the point where the commissioner  
46 understands its consequences, but assuming that to  
47 be the case, would you agree with me because of

1           the **Larocque** decision DFO refused to take the  
2           money from the CSAB as it had come from the  
3           harvest of fish, hence the salmon table came into  
4           being and its funds the annual pike minnow  
5           removal, as well as the contribution to the annual  
6           Father's Day recreational pike minnow derby; do  
7           you agree generally with that?

8       MR. GROUT: I can't -- I can't speak to the sequence of  
9           events but I do know the department did not accept  
10          funding from the CSAB for the purposes of  
11          expanding the hatchery, for example.

12       Q       And the salmon table and its membership is  
13          regarded as a different entity, it's a joint  
14          industry native entity, would you agree with that?

15       MR. GROUT: I'm not an expert on the terms of reference  
16          for the salmon table, but I do know those various  
17          groups have participated at times at that table.

18       Q       Okay. And how do you react to this statement that  
19          my clients inform me, and that is that the end  
20          point is that DFO won't or hasn't spent money on  
21          habitat issues where industry stepped up to the  
22          plate; do you agree with that?

23       MR. GROUT: Well, I think the department had been  
24          contemplating a number of different activities and  
25          the industry funding was intended to augment or  
26          increase some of those. I am aware of habitat  
27          work that we have done in terms of assessing  
28          ground water in the Lindell beach and other areas  
29          around Cultus Lake, so a number of these  
30          activities have been done by the department.

31       Q       Well, I'm going back to the recesses of my brain  
32          here because this is testimony given before  
33          Christmas, but I believe that the -- Ms. Stalberg  
34          testified that there had never been - and please,  
35          I stand corrected if I mislead this inquiry about  
36          this, but that she testified there had never been  
37          a habitat assessment analysis done of Cultus by  
38          DFO to the best of her knowledge. Would you agree  
39          with that testimony?

40       MR. GROUT: I don't have a basis for either confirming  
41          or denying that, to be honest.

42       Q       Okay. Well, but being in the position you're in,  
43          Mr. Grout, if indeed there had been a habitat  
44          assessment analysis done by DFO, you'd be aware of  
45          it, wouldn't you?

46       MR. GROUT: Well, I do get a lot of things crossing my  
47          email and my desk. I don't recall seeing that one

1 in particular.

2 Q All right. Mr. Rosenberger, do you have anything  
3 to add?

4 MR. ROSENBERGER: Well, I think that habitat assessment  
5 is part of the recovery, Cultus recovery teamwork,  
6 so that was led by DFO and raised a number of  
7 these issues. In looking at habitat work there,  
8 your statement that DFO wasn't doing anything else  
9 in the regular habitat duties of people looking to  
10 do developments, logging, whatever might be going  
11 on in the area is part of the ongoing operations  
12 of the department, specific extra activities  
13 around pike minnow removal or milfoil or other  
14 aspects like that might have been the focus of  
15 that discussion.

16 Q Well, let me ask you this quite bluntly. As you  
17 stand here testifying are both of you satisfied  
18 with DFO's initiatives on salmon enhancement in  
19 the Cultus area in the last, let's say, four or  
20 five years?

21 MR. ROSENBERGER: Yes, I am.

22 MR. GROUT: And certainly the performance of those  
23 activities has been recently reviewed and a number  
24 of them appear to be effective. I will say we  
25 have looked at doing some things that have not  
26 appeared to be effective, for example, the milfoil  
27 removal, and we've not pursued doing some of that  
28 work.

29 Q And shouldn't it be done? Isn't it obvious that  
30 it should be done?

31 MR. GROUT: Well, the evidence that has been reviewed  
32 has suggested that's not an effective way to  
33 assist the recovery of Cultus Lake.

34 Q Okay. Well, from the beginning with this hearing,  
35 we have heard about Cultus as being obviously a  
36 focal point of concern because the COSEWIC listing  
37 and so on and so forth, are you both saying that  
38 to the best of your knowledge, DFO has responded  
39 appropriately and completely in dealing with  
40 enhancement issues at Cultus? Is that your  
41 testimony?

42 MR. GROUT: Well, I would say the department has put  
43 forward considerable resources into assisting the  
44 recovery of Cultus Lake sockeye. If your question  
45 is whether more resources might have enabled  
46 additional or other things to be done, I think  
47 that's certainly possible.



1 Q Just possible, but not necessary in your opinion?

2 MR. ROSENBERGER: From my side of it I would say that  
3 at this point --

4 Q I'm sorry, I just want to finish -- I apologize -  
5 with Mr. Grout. I think you were about to  
6 respond?

7 MR. GROUT: I'm sorry, can you repeat your --

8 Q Yes.

9 MR. GROUT: -- question?

10 Q You said possible, and I said and not necessary?  
11 You said possibly more could be done and I'm  
12 saying to you possibly or necessary that it be  
13 done?

14 MR. GROUT: Well, I used the word possible because  
15 there may be additional activities that haven't  
16 already been identified but I couldn't comment on  
17 which specific things those might be.

18 Q Thank you. I'm sorry, Mr. Rosenberger.

19 MR. ROSENBERGER: Yeah, I was going to make a comment  
20 that the actions we've taken in line with some of  
21 your earlier questions about the proportion of  
22 enhanced fish to non-enhanced fish returning to  
23 the Cultus system is a significant factor in  
24 trying to maintain the wild population or making  
25 sure that the enhancement does not somehow alter  
26 that -- unduly alter the relationship in the  
27 system and so the captive brood stock was an  
28 action which is fairly extreme and rarely taken in  
29 British Columbia to try to deal with issues when  
30 we were concerned about potential extinction. Now  
31 we're concerned about BKD, bacterial kidney  
32 disease, being present but also that those fish  
33 are not successfully either spawning or surviving  
34 after their release. So there's -- in enhancement  
35 often as we're working our way through different  
36 enhancement techniques, we need to take a trial  
37 and error process and try to understand the  
38 relationships to the results and, you know, we  
39 don't -- for sockeye enhancement, we don't have a  
40 long history in this province and we don't have  
41 necessarily, you know, know all the right  
42 techniques, so I think that the method and the  
43 rate that they have gone forward with enhancement  
44 process in Cultus is appropriate from the  
45 information that I've seen to date.

46 On the milfoil question that you asked, what  
47 we've learned in dealing with milfoil is that when

1           you have a plant and a small piece of it gets  
2           ripped or torn, which is what happens when you're  
3           trying to pull these things out by the roots or  
4           using a mechanical device, is that literally down  
5           to potentially a very few cells or single cell  
6           will regrow a whole new plant. So in the areas  
7           where we've been trying to do the milfoil work,  
8           we've actually generated many, many more plants,  
9           so it's actually working against the objective  
10          that we strive for of trying to hand or  
11          mechanically remove them. They are looking at --  
12          and this has happened in the Okanagan and the  
13          Shuswap system, as well, so the concerns now are  
14          that the only effective way in trying to deal with  
15          milfoil is large blanket mats or other devices  
16          that, you know, stop the photosynthesis or  
17          whatever the process is and I'm definitely not an  
18          expert and, you know, Dr. Bradford or others. But  
19          at this stage, unless you understand all those  
20          relationships moving forward with some of these  
21          techniques just, you know, as fast as you can can  
22          be more of a problem than it could be solving.  
23          And I think that's part of what we're trying to do  
24          in Cultus is learn as we -- adapt as we make these  
25          efforts.

26          Q       Well, without belabouring the issue, then is it  
27                your testimony this commission should not be  
28                concerned with Ms. Stalberg's evidence that there  
29                has never been an enhancement analysis report done  
30                on Cultus, that should not concern us?

31          MR. ROSENBERGER: I think -- that's not my testimony.  
32                Your question and I think what both Jeff and I  
33                said is we are not aware of Ms. Stalberg's  
34                testimony or on, you know, whether or not there  
35                had been a full habitat assessment. Now you're  
36                talking about an enhancement assessment and my  
37                comments back were that the Cultus recovery team  
38                which has been in play has looked at a large  
39                number of issues and they looked at ground water,  
40                they looked at forestry, they looked at a lot of  
41                things. They narrowed that scope down to a number  
42                of issues they thought should get more attention  
43                and which is what the actions that they're working  
44                through now. And there was reports done on the  
45                success of some of those actions in June of '09  
46                which is guiding us in moving forward.

47          Q       Yes. And indeed, Ms. Stalberg's evidence, to the

1 best of my memory, was about habitat analysis, not  
2 enhancement analysis, so asking my question again,  
3 in the context of Ms. Stalberg's evidence before  
4 this proceeding that there has not been a habitat  
5 analysis done of Cultus, should that be of  
6 concern?

7 MR. ROSENBERGER: And I can't comment. I wasn't here  
8 when she gave her reply. What I've stated is that  
9 I think that there was work done in the recovery  
10 team and that Dr. Bradford would be a person that  
11 you could get more information from.

12 Q Thank you. I'll do that. Moving on, if I may, in  
13 terms of the IFMP, you have testified previously  
14 that it, of course, needs ministerial approval. I  
15 want to direct a series of questions to you  
16 regarding decisions made mid -- in season where  
17 you wish changes to the IFMP. Do those decisions  
18 require ministerial approval if you are deviating  
19 from the letter of the IFMP?

20 MR. ROSENBERGER: In 2010 when we wanted to make a  
21 change to Cultus, we thought that was significant  
22 enough that we wanted to make sure that we had the  
23 minister's concurrence, as I mentioned in my  
24 testimony in '09 where we wanted to consider  
25 options for having limited incidental harvest of  
26 sockeye or some small fisheries in potentially  
27 some terminal areas from First Nations, what we --  
28 the plan that we took, I briefed to the RDG and I  
29 assume, because I have no knowledge, that he  
30 briefed Ottawa and he may or may not have had  
31 ministerial authority, but we did have some small  
32 fisheries that they were aware of, others in  
33 Ottawa whether the minister was or not. So in  
34 that case there was not, to my knowledge, a sign-  
35 off from the minister.

36 Q So do I hear you to say that some decisions in  
37 terms of deviating from the IFMP require  
38 ministerial approval and some don't?

39 MR. ROSENBERGER: Well, that's two examples that we  
40 have and what we try to do, I believe, on any  
41 significant issue is to have that concurrence from  
42 the minister.

43 Q I'm sorry? I didn't hear that. Would you repeat  
44 that again? It's advisable to have the  
45 concurrence? Is that what you said?

46 MR. ROSENBERGER: Essentially, yes.

47 Q Yes. Is it not somewhat cumbersome, overly

1           cumbersome, to require ministerial approval for  
2           some of these mid-season decisions of deviation  
3           from the IFMP when it's summertime, ministers are  
4           on vacation, Ottawa's basically vacated? Is that  
5           causing a problem in terms of flexibility where  
6           there are decisions that you, Mr. Rosenberger, or  
7           people in your position want to make but are  
8           hamstrung by the fact that they -- there isn't  
9           easy access to the minister?

10       MR. ROSENBERGER: It's clear that -- and correct that  
11       we do want to make some relatively quick  
12       decisions, that information changes often in a  
13       very short period of time, day or two. I'm not  
14       aware of a case where we've wanted to have  
15       decisions or ministerial engagement that we  
16       haven't been able to have that, but I mean it's a  
17       very short timeframe and that could be the case.

18       Q       So it's your evidence, is it, that being in the  
19       position you're in where you are instrumental in  
20       directing changes to the IFMP that you are never  
21       hampered or restricted in your flexibility to do  
22       so because of a communications problem with Ottawa  
23       and ministerial approval; is that your testimony?

24       MR. ROSENBERGER: We didn't have any problems in trying  
25       to make the change in the Cultus in 2010.

26       Q       Yes. And so generally you're saying that that has  
27       not been an issue. There -- in your opinion, it's  
28       not a cumbersome schematic for changes in the IFMP  
29       when necessary? You don't feel restricted?

30       MR. ROSENBERGER: I wasn't in 2010. But I could  
31       imagine some circumstances where you could be. So  
32       I think it's worth taking a look at how the  
33       wording is in the IFMP. That is part of the  
34       reviews that we do annually and the 2009 change  
35       was one that we had discussions and change to how  
36       the wording occurred for 2010, for example, so we  
37       wouldn't be in that kind of a position again.

38       Q       All right. Well, this is interesting and  
39       intriguing where you say it could be worthwhile in  
40       looking into this. This is precisely the kind of  
41       thing this commission is presumably struck to deal  
42       with, is to make life easier for everybody and to  
43       bring about a more effective fishery. Do you have  
44       recommendations that you would make here that  
45       might be of assistance to the commissioner in  
46       refining the lines of communication to ensure that  
47       mid-season decisions are implemented without any

1 unnecessary restrictive process that might be  
2 time-consuming and might lose the fishery?  
3 MR. ROSENBERGER: I don't have anything that I would  
4 like to put forward right now.  
5 Q There isn't? You have no advice?  
6 MR. ROSENBERGER: Not at this point. I think if I was  
7 going to provide that kind of a recommendation, I  
8 would want to be thinking about that and consider  
9 some of the different processes, but I don't think  
10 it would be appropriate for me to just provide,  
11 you know, advice off the cuff.  
12 Q I see.  
13 MR. ROSENBERGER: I think there's a lot of related  
14 places where these processes link together and I  
15 think we need to understand how that all links.  
16 Q Yes. I regret I can't remember. Do you come back  
17 here to this hearing? Are you scheduled to be a  
18 witness further on?  
19 MS. BAKER: He's coming back and dealing with the  
20 aboriginal fishing interests for sure.  
21 MR. ROSENBLOOM: Just the aboriginal --  
22 MS. BAKER: I don't know if he's coming back again for  
23 anything else.  
24 MR. ROSENBLOOM:  
25 Q Well, if your testimony goes on till tomorrow and  
26 if you think about it overnight, you sit in a very  
27 valuable position here, Mr. Rosenberger. Unlike  
28 the rest of us, you are on the front line. You  
29 are making these decisions. You effectively made  
30 some decisions in 2010 that are much appreciated  
31 by my clients and they speak very well of you in  
32 terms of your intervention when we saw what  
33 happened in 2010. Because you sit in this  
34 critical position, any advice that you have for  
35 the commission, I invite you to speak up, if not  
36 now, even if your cross-examination goes into  
37 tomorrow and you wish to add something, I would  
38 welcome you doing it, even though I won't be the  
39 one cross-examining you at that point. So I leave  
40 it at that.  
41 Mr. Grout, do you have anything to say on  
42 this or is it more Mr. Rosenberger's area of  
43 concern?  
44 MR. GROUT: Well, the only point I might add is to the  
45 extent that we can capture the various different  
46 scenarios that may occur in any given season in  
47 our integrated fishery management plans prior to

1 the season we're well-served where we can do that.  
2 MR. ROSENBLOOM: Thank you very much. I don't know if  
3 this is a time for the break. Thank you.  
4 THE REGISTRAR: Hearing will now recess for 15 minutes.

5  
6 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)  
7 (PROCEEDINGS RECONVENED)  
8

9 THE REGISTRAR: The hearing is now resumed.

10  
11 CROSS-EXAMINATION BY MR. ROSENBLOOM, continuing:  
12

13 Q Mr. Rosenberger, last day of sitting, which was  
14 Friday, the 21st of January, you testified in  
15 respect to the fact that there are no rules that  
16 governed the situation where stock size turned out  
17 mid-season to be less than escapement objectives.  
18 And I want to refer you to your testimony and Mr.  
19 Lunn will put this document, this transcript  
20 before you. It's now on the screen and it's at  
21 page 15. And you said, down at line 37, and I'd  
22 like to read it back to you and then ask for your  
23 understanding of your testimony, you said:

24  
25 In-season, we identified a problem in the  
26 IFMP that we hadn't expected, and that was in  
27 the Early Summers and Summers. We didn't  
28 have a rule that if we came back at less than  
29 escapement objective what we would do, and we  
30 do have that for, in this case, for the Early  
31 Stuarts, and it's a long established and  
32 discussed process.  
33

34 And for the Lates we had a rule, but not for  
35 those other two stock groupings, and that  
36 created considerable problems in that these  
37 fish co-migrate, and the number of First  
38 Nations, in particular ...  
39

40 And then you go on from there. I want to focus on  
41 that testimony for a moment. You say that you did  
42 not have a rule responding to in-season, a lower  
43 stock size than expected. And I assumed that you  
44 also didn't have a rule for what to do in 2010,  
45 in-season, when a larger return occurred; would  
46 you agree with me about that?

47 MR. ROSENBERGER: We didn't have any problems with the

1 decisions or any of the rules, principles that  
2 were in the IFMP in 2010, except around making  
3 some adjustments on Cultus.

4 Q But when you say you didn't have a rule for the  
5 situation set out in your testimony there, don't  
6 you fall back on the FRSSI process? Doesn't that  
7 answer it? You rely on the FRSSI process when  
8 doing your pre-season analysis and drafting up  
9 your integrated harvest plan for that year. Why  
10 does not FRSSI give you the direction necessary?  
11 Why do you testify that you don't have a rule in  
12 circumstances such as that?

13 MR. ROSENBERGER: Well, in the case of the Fraser River  
14 Salmon Sockeye Spawning Initiative, the rules in  
15 that process are that below the lower cutoff point  
16 was to be no harvesting, except for two percent  
17 for test fishing. So it states in there no  
18 harvesting, but it's -- that's the, you know,  
19 footnote as to how that will operate.

20 In the case of the Early Stuarts, we have a  
21 rule within the IFMP, the Integrated Fisheries  
22 Management Plan, on how to handle Early Stuarts in  
23 that we've identified that we will protect up to  
24 90 percent of the run. So we would use that rule  
25 from the IFMP, in this case, to how to implement  
26 what was going on in the FRSSI. So this is one of  
27 the places that we're actually looking to make  
28 changes in the FRSSI model, both to incorporate  
29 the change that we made in 2010 that we didn't  
30 have in place in 2009, that when these stocks come  
31 back at less than anticipated, and to allow for  
32 potentially incidental harvest, or bi-catch in  
33 other species' fisheries, that we would target to  
34 protect up to 90 percent of the run. So FRSSI  
35 doesn't give you that rule and what to do in that  
36 situation.

37 Q I see. Now, you say you do have a rule, though,  
38 in-season, when the stock is significantly higher  
39 than your escapement targets. What is the rule  
40 that you rely on, as you did, for example, I  
41 assume, in 2010, to deviate from the management  
42 plan?

43 MR. ROSENBERGER: We didn't deviate from the management  
44 plan so in the overall harvest for the various  
45 stocks, and when they're in large abundance, the  
46 rules that you get out of the FRSSI model, and  
47 that we were using in our fisheries is that you

1 can have a total allowable mortality up to 60  
2 percent so that's 40 percent, then, of the stock  
3 would go to spawning ground.

4 Q Thank you. You also testified last day in respect  
5 to the over-escapement issue, and Ms. Baker  
6 directed your attention to testimony given by Mr.  
7 Lapointe on the over-escapement issue, and I want  
8 to focus on your evidence in that respect and so  
9 we are still within the transcript of the 21st,  
10 which was last Friday. We are at page 26, and at  
11 line 8, Ms. Baker asks you questions and directs  
12 your attention to Mr. Lapointe's evidence. Then  
13 down at line 33, you say:

14  
15 Well, productivity has been shown to decline  
16 at very high levels, or even higher levels of  
17 escapement, so I think a key is being aware  
18 that if you want to have the highest recruits  
19 per spawner, you probably want to have a  
20 relatively low level of number of spawners  
21 that's those -- those given fish will get the  
22 best places to spawn and have the, you know,  
23 best food to eat, and whatnot, but there's a  
24 lot of inherent risk with that style of  
25 management, and that's not the management  
26 [policy] that's adopted by the department.  
27

28 My question to you, sir, is this. What are the  
29 risks that you're speaking of when you speak of  
30 risks in that testimony?

31 MR. ROSENBERGER: What I was implying was if you have  
32 very low numbers of spawners, you have the risk  
33 that the returning fish might not find their  
34 partner in the given river system, and that's a  
35 concern in very low numbers, in small populations.  
36 The predation that could occur in some places from  
37 whatever the source might be, if there's very few  
38 numbers of fish being produced in some of those  
39 areas, so the issues that we're striving for is a  
40 balance of ecosystem values, as well as  
41 productivity from measures, metrics such as just  
42 return for spawner.

43 Q Mr. Lapointe, in his testimony regarding some of  
44 these issues, said, and I'll read from his  
45 testimony, but I'm happy to put the transcript in  
46 front of you. This was of the 19th of January,  
47 last Wednesday.



1 MR. ROSENBLOOM: I'll give Mr. Lunn a moment to pull  
2 that up for us, and it's page 36 of Wednesday's  
3 transcript.

4 Q I'm soliciting from you your comments of some  
5 risks with over-escapement as Mr. Lapointe  
6 testifies, and I'd like your response to it. I  
7 see it is now before us, and I'm referring to Mr.  
8 Lapointe's response at line 12 of the transcript,  
9 where he says:

10  
11 No, I don't.

12  
13 He was asked regarding over-escapement. He says:

14  
15 No, I don't. And it isn't because I believe  
16 that the fish are wasted and I think I had  
17 responded directly to this concept previously  
18 in my testimony. I believe there are  
19 impacts, and this is --

20  
21 And he's speaking of over-escapement here. He  
22 says:

23  
24 ... and this is -- you know, don't think  
25 about salmon for a minute. Just think about  
26 general ecological knowledge. I know you  
27 have some biological training.

28  
29 He's responding to Mr. Leadem, I believe, in this  
30 exchange:

31  
32 And ask yourself whether any part of the  
33 ecological training that we have, and I can  
34 speak on my part, would suggest that we  
35 shouldn't anticipate impacts on an ecosystem  
36 at the extremes. Okay? I'm talking about  
37 really, really low, say, abundance of fish or  
38 really, really high abundance of fish. I  
39 think we do anticipate that if we put a  
40 really, really large number of predators,  
41 which is what the sockeye -- the sockeye are  
42 when they're in their lakes, the juveniles,  
43 in that ecosystem it's going to have an  
44 impact on that ecosystem.

45  
46 He goes on and he says:  
47

1 Quesnel sockeye is a perfect example.  
2 Quesnel sockeye impacts of that -- of this  
3 build-up of the Quesnel run have not just  
4 impacted the number of fish that came back in  
5 2006. The Kokanee population in Quesnel Lake  
6 has collapsed. The large trout population in  
7 Quesnel Lake has also been impacted. That  
8 ecosystem is fundamentally different, not  
9 better or worse, you know, than it was  
10 before. Its capacity to produce Fraser River  
11 sockeye may be different now. So what I'm  
12 trying to suggest to you not -- it's not  
13 about the benefits here, okay? It's not  
14 about the distribution of the surplus or  
15 whether there is a surplus. It's about the  
16 potential risks and consequences not just to  
17 the folks that might want to catch some of  
18 these fish but to the ecosystem at large.  
19 And to think that there is no risk, no  
20 consequence to the ecosystem of a very large  
21 escapement, I think, is not consistent with  
22 all of our training.  
23

24 And then just let me read the last paragraph of  
25 his testimony:  
26

27 And in the case of Quesnel, we have very  
28 strong empirical evidence. So whether you're  
29 a bear in the Quesnel ecosystem that wants to  
30 eat those sockeye or whether you're some  
31 other part of the ecosystem like the trees  
32 that might benefit from the nitrogen and the  
33 phosphorous that those carcasses deliver,  
34 extremes have a consequence to all parts of  
35 the ecosystem. So that's where -- that's  
36 where I'm coming from.  
37

38 I'd like your response to his testimony. Do you  
39 subscribe to what he's saying?

40 MR. ROSENBERGER: I agree with him that the Quesnel  
41 escapement in 2002, 2003, which were very high  
42 levels for that time period, and in the Quesnel  
43 system over a longer timeframe, caused changes in  
44 the ecosystem. I don't think there's any doubt  
45 about that. We have our freshwater science people  
46 found the fall fry to be at a very small size so  
47 we didn't get a large recruitment from them, and

1 we found that the plankton community was very  
2 heavily, their terms, and one meeting I was at,  
3 grazed upon by all these fry. So in that  
4 consequence, it definitely, I think, is an extreme  
5 and one that you want to avoid.

6 The place where you're looking at -- whether,  
7 you know, that was too many fish, the discussion  
8 is is that if you increase the populations at a  
9 slower rate, in this case we came off some very  
10 low escapements in the previous years to those  
11 years, do you build up nutrients, which builds up  
12 the various levels of the food chain so that you  
13 can support higher numbers, then I think there's  
14 more to learn. And in a review of the data, you  
15 find that in most cases, we have a lot of data  
16 points on the relatively lower ends of the  
17 spectrum of what we've seen in some of the Fraser  
18 populations, and fewer numbered data points at the  
19 larger end, but we have seen what will make a  
20 large jump in the amount of spawners from previous  
21 years, especially in some of these cyclic dominant  
22 stocks that we can have adverse impacts.

23 Q Thank you. I'd now like to turn to --

24 THE COMMISSIONER: Mr. Rosenbloom? Mr. Rosenbloom,  
25 sorry, just before you move on, I wonder if I  
26 could ask -- I apologize for interrupting, first  
27 of all.

28 MR. ROSENBLROOM: Not at all. Thank you.

29 THE COMMISSIONER: The witness, in a response to an  
30 answer to you just a moment ago, used a term, and  
31 I wondered if you might not just explore it  
32 through your questioning because it's on the point  
33 you've been making. I had heard, or I have heard  
34 evidence from other witnesses on this issue that  
35 using the term "escapement objectives," and Mr.  
36 Lapointe, in particular, but others, as well. A  
37 moment or so ago, in answer to you, I apologize to  
38 Mr. Rosenberger, I don't have a transcript in  
39 front of me of what he just said, but I think he  
40 talked about attempting to balance, and I think he  
41 used the term, "ecosystem values and  
42 productivity." And I'm just wondering not  
43 necessarily his opinion on this, but whether  
44 within the DFO we have some definition around  
45 escapement objectives and something he called  
46 ecosystem values. Are they the same thing, or are  
47 we talking about different concepts? And you

1 don't have to explore that, but I will if you  
2 won't, but I thought perhaps it falls more into  
3 your line of questioning.

4 MR. ROSENBLOOM: No, I'd be very happy with the  
5 Commissioner's interjection at this point in time  
6 on that very issue.

7 Q And I think you heard the Commissioner in his  
8 comments. Do you have a response in terms of  
9 DFO's general approach to the definition of those  
10 issues?

11 MR. ROSENBERGER: Yeah, I think this is a key point,  
12 that we're moving to in the Wild Salmon Policy, in  
13 my view. And that historically, in my time in the  
14 Department, most of our escapement objectives, the  
15 spawning ground objectives that we had were  
16 largely based on maximum sustainable yield-type  
17 objectives, so trying to put the optimal number of  
18 fish on the spawning grounds to achieve the  
19 purpose of the maximum amount of harvest in future  
20 generations. And the Wild Salmon Policy now is  
21 looking at broader objectives than just that  
22 maximum sustained yield side of things. We're  
23 trying to look at the amount of fish we need to  
24 think about for other parts of the ecosystem,  
25 whether that's predators in terminal areas, or  
26 anywhere along the system. You know, whether it's  
27 the impacts to killer whales and part of their  
28 habitats and needs. And so I think we're trying  
29 to understand better those broader ecosystem  
30 requirements, and that's built into the  
31 Strategy 3, and probably to somewhat 2 and 3 in  
32 the Wild Salmon Policy, and so we're trying to  
33 build some of these benchmarks and trying to  
34 understand where we want to go. I think we're  
35 trying to move towards that understanding, as  
36 opposed to just for the purposes of harvesting.

37 Q Before our break, I was speaking about Ms.  
38 Stalberg's evidence and the lack of habitat  
39 analysis. I'm informed by one of the Commission  
40 counsel during the break that the term that I  
41 should have applied is "Habitat Status Report,"  
42 and it's my understanding that Ms. Stalberg's  
43 evidence was there had never been a Habitat Status  
44 Report prepared. You generally understood what I  
45 was speaking about when I asked you those  
46 questions before the break, even though I didn't  
47 use the term, "Habitat Status Report"?

1 MR. ROSENBERGER: Well, that's different to me from  
2 what you were describing earlier so I am aware  
3 that we don't have a habitat status report.  
4 That's the objectives that we're trying to move to  
5 again the Wild Salmon Policy, trying to bring  
6 together those indicators and understanding that  
7 that status -- that it is one of the areas that  
8 the Department has been wanting to move on for a  
9 while in trying to get a better status reports and  
10 indications of changes in trends and habitat  
11 status.

12 Q Well, this, unfortunately, invites us a little bit  
13 back to this very subject matter since you didn't  
14 -- my misuse of the term. Appreciating that there  
15 is no status, Habitat Status Report, as you  
16 acknowledge now, surely, would you agree with me  
17 that that is regrettable that DFO has not as yet  
18 carried out such a status report when we hear so  
19 much about the threat to the ecology of the Cultus  
20 Lake sockeye?

21 MR. ROSENBERGER: Well, that's a part, again, of a  
22 component of the Wild Salmon Policy, and this is  
23 Strategy 2, and that's trying to establish what  
24 are those parameters that we want to measure, and  
25 how do we want to record this and collect the  
26 information. And so this is something the  
27 Department is moving on and it has some pilots,  
28 but I'm not at all involved in that process, other  
29 than trying to, you know, pick up information as I  
30 can.

31 Q I appreciate that, Mr. Rosenberger, and I  
32 appreciate that you're not the one responsible to  
33 make those calls, but surely, the Cultus Lake  
34 issue has been with DFO for some time, it is a  
35 matter of focus as you read back from certainly  
36 the past decade, from 2000 to 2010. My question  
37 is would not one have expected the DFO to have  
38 carried out a Habitat Status Report on Cultus Lake  
39 by now?

40 MR. ROSENBERGER: Well, I don't believe we did Habitat  
41 Status Reports before the Wild Salmon Policy  
42 process bringing this together. So I'm not  
43 concern we have them anywhere, but that's just to  
44 my knowledge.

45 Q What about 2005 till now, why hasn't it been done?

46 MR. ROSENBERGER: You'd have to ask the people in the  
47 habitat process. They are piloting this in some

1 areas and getting methodologies together, but I'm  
2 not even certain where they're focussing.

3 Q Thank you.

4 MR. GROUT: Mr. Rosenbloom, I wouldn't mind adding --  
5 sorry, over here.

6 Q Sorry.

7 MR. GROUT: I wouldn't mind adding to what Barry said  
8 on that specific point.

9 Q Yes.

10 MR. GROUT: And although the formal Habitat Status  
11 Report has been entered into evidence as not being  
12 done, the -- the Cultus Lake Sockeye Recovery  
13 Team, and then later, the Conservation Team has  
14 looked at a number of habitat attributes related  
15 to Cultus sockeye in developing some of the  
16 strategies that might be used to help recover the  
17 population, itself. So habitat considerations  
18 have been addressed to a certain extent in the  
19 work of the team.

20 Q But not comprehensively?

21 MR. GROUT: I'm not an expert on the habitat components  
22 of the recovery, to speak whether it's -- the job  
23 that's been done is comprehensive, or not, sorry.

24 Q I want to draw your attention to the PPR, the  
25 policy review work that was filed in respect to  
26 harvest management, and I believe it is Exhibit --  
27 it's PPR number 5. And in that document,  
28 paragraph 161 --

29 MR. ROSENBLOOM: I suppose Mr. Lunn can put this  
30 forward. It would probably be of assistance if  
31 you do have it on the screen. Paragraph 161, page  
32 63 of the document. There it is.

33 Q And I want to read this paragraph to you, and I  
34 want to ask you the current status of this  
35 situation. It reads:

36  
37 In April 2008, DFO released a draft (first  
38 revision) of a policy document called "A  
39 Framework for Socio-Economic Analysis to  
40 Inform Integrated Fisheries Management  
41 Planning and Fish Harvest Decisions".  
42 The framework presents guidelines and  
43 principles for conducting a socio-economic  
44 analysis to inform the IFMP process and  
45 annual harvest decisions. The compilation of  
46 this framework was done in concert with  
47 Resource Management's development of a new

1           template and guidelines for IFMPs. According  
2           to this document, IFMPs are supposed to  
3           include an economic profile and an assessment  
4           of the current economic health/viability of  
5           the fishery. An economic analysis of  
6           management objectives and measures will be  
7           done when the Minister and or senior managers  
8           make a request of Resource Management staff  
9           to look at particular options.

10  
11           My question is this. We learned from this policy  
12           report that as of April of 2008, DFO had a draft  
13           of this policy document on socio-economic  
14           analysis. Has there been any development since  
15           2008 in respect to completing that document,  
16           completing the drafts and implementing a socio-  
17           economic analysis document for policy purposes?

18       MR. GROUT: I can't answer your question specifically,  
19           but in terms of developing the Integrated Fishery  
20           Management Plan for Salmon, we're moving over to  
21           be consistent with the template that's used  
22           nationally for the development of IFMPs. In there  
23           is a specific section on the socio-economic  
24           analysis of the resource. That hasn't been in our  
25           Fishery Management Plans to date, but it's  
26           intended to be included with this year's -- so the  
27           2011 Integrated Fishery Management Plan.

28           The other point I was going to raise is that  
29           in some past decisions, for example, Cultus Lake  
30           sockeye, information to the extent that the  
31           Department had it was provided on the potential  
32           economic and social impacts of decisions, for  
33           example, associated with different exploitation  
34           rates.

35       Q       But at this moment in time, to the best of your  
36           knowledge, we have nothing, you have nothing other  
37           than a draft document in respect of the guidance  
38           on socio-economic analysis work; is that correct?

39       MR. GROUT: I can't speak to whether this particular  
40           document's been finalized, or not. In developing  
41           this section of the Integrated Fishery Management  
42           Plan, the Salmon Team, including myself, would be  
43           relying on our Policy Branch staff to develop that  
44           section of the IFMP for us.

45       Q       No one's finding fault with you in particular  
46           about it, but the fact is if the document had been  
47           completed, finalized, signed off on and was to be

1           implemented, both of you would be fully aware of  
2           it because it would be utilized by you in decision  
3           making on harvest management, would it not?  
4       MR. GROUT: Certainly, the intention, moving forward,  
5           is to have that component in our Integrated  
6           Fishery Management Plans.  
7       Q       Right. And the reason that it is intended to have  
8           that policy in place is because in making harvest  
9           management decisions day in and day out, both  
10          leading up to the development of the IFMP and, for  
11          that matter, in season, it is critical that the  
12          managers have a sense of the socio-economic issues  
13          that are in play when decision making takes place.  
14          Do you agree with that?  
15       MR. GROUT: Yeah, it's certainly an important component  
16          of the decision-making process.  
17       Q       And it is a component of the decision-making  
18          process that is currently absent from your process  
19          because you do not have that direction and  
20          information to apply to your decisions; is that  
21          not correct?  
22       MR. GROUT: No, I don't think saying it's absent is an  
23          accurate depiction. We do have a variety of  
24          sources of information on the fisheries that we  
25          can use and have used in the past in making our  
26          decisions.  
27       Q       Well, this theme of mine in cross-examination will  
28          come out with later witnesses, too, but I'm going  
29          to suggest to you, Mr. Grout, that when these  
30          decisions are being made by you, and obviously,  
31          made with good intent on your part, but that you  
32          do -- you never have before you an analysis of  
33          precisely what will be the economic -- socio-  
34          economic impacts to the commercial fishery when  
35          deciding Option A as opposed to B, or C. Do you  
36          agree with that?  
37       MR. GROUT: As I've stated before, that's not an  
38          entirely accurate depiction. The Department has  
39          endeavoured to include that information in the  
40          past and we have used outside contractors to  
41          provide us with some of that information, where  
42          appropriate.  
43       Q       So are you suggesting that, for example, 2009, if  
44          one dug into your files, your archive, that one  
45          would find socio-economic reports being done for  
46          the Department in respect to the closure of the  
47          fishery?



1 MR. GROUT: No, I think you have a point. If you're  
2 trying to make the point that this information is  
3 provided for routine decisions that are part of  
4 the integrated -- maybe you could further describe  
5 what you're trying to get at there.

6 Q No, I accept as you're going with it.

7 MR. GROUT: Okay. So well, I guess the point I'd make  
8 is the Department has used the information that  
9 it's had available to it in making decisions in  
10 the past. I'm not sure I fully understood your  
11 question regarding the 2009 fishery.

12 Q Well, I'm just taking that as an example. Did  
13 you, as managers, have socio-economic analyses  
14 done before decision making in respect to the 2009  
15 season when it came to, obviously, the Fraser  
16 sockeye?

17 MR. GROUT: If you're asking whether we had specific  
18 information linking to the potential socio-  
19 economic impacts of a decision made in-season to  
20 close the fishery in the pre-season period, we did  
21 not have that information, that I'm aware of.

22 Q And it would be unsatisfactory to you that you had  
23 to make the decision in the absence of such socio-  
24 economic analysis, isn't it -- or wasn't it?

25 MR. GROUT: Well, I think in that case, conservation  
26 continues to be the top priority in the management  
27 of the fishery, and that was the basis for the  
28 decision making in 2009.

29 Q But don't we learn from the Wild Salmon Policy,  
30 albeit it's not implemented yet, that the managers  
31 of the resource are to weigh conservation issues  
32 with socio-economic issues? Isn't that part of  
33 the dictate of the Wild Salmon Policy?

34 MR. GROUT: That's correct.

35 Q In terms of the management of a fishery and the  
36 development of the escapement plan and harvest  
37 rules for Fraser sockeye, that was one of the key  
38 components in the Fraser sockeye spawning  
39 initiative work that was done. Looking at the  
40 specific balance of objectives to avoid low  
41 spawners and also avoiding low catch, or providing  
42 for catch-related objectives.

43 MR. ROSENBERGER: Maybe I could add to that. The Early  
44 Stuart program and the rules around the Early  
45 Stuart is one that's had extensive discussion  
46 dating back to 1996 on trying to create some of  
47 those balances and weigh off, and that's one of

1 the reasons, in that stock, and in the Early  
2 Summers that we were talking about earlier, that  
3 we moved to, you know, protecting 90 percent of  
4 the population, as opposed to trying to protect  
5 100 percent. So it's trying to weigh off some of  
6 those, in this case, more social and cultural  
7 kinds of issues than economic, but the same in the  
8 Late Run populations in utilizing a 20 percent  
9 maximum exploitation when some of the analysis  
10 through the FRSSI program indicates that there may  
11 or may not be an allowable, total allowable catch  
12 available. So that's -- it may not be explicit  
13 studies that are undertaken, but I think it forms  
14 part of the discussion and debate. And also  
15 members in the Integrated Harvest Planning  
16 Committee, and other committees we have, and the  
17 Fraser Panel, bring those kinds of issues into the  
18 debate, you know, where and how we should be  
19 having fisheries and the implications.

20 Q Yes, but the stakeholders who are bringing forward  
21 their position in these forums you speak of are  
22 obviously not generally economists and are not  
23 bringing to the table the kind of economic, socio-  
24 economic analysis that you would want as a  
25 framework for your decision making; is that not  
26 fair to say?

27 MR. ROSENBERGER: Well, I agree with you, we do not  
28 have the, you know, more detailed analysis in most  
29 of these cases, and the trade-offs are not as  
30 explicit as they might be in Cultus and some of  
31 the other places where we've had more specific  
32 issues we've reviewed.

33 Q And that is a shortcoming to the current  
34 environment for you making the decisions that  
35 you're called upon to make because you're not --  
36 you do not have available that socio-economic  
37 analysis; would you agree?

38 MR. ROSENBERGER: Yes, and I think that's why we're  
39 making some of the changes that we're making.

40 Q Thank you. I want to turn to evidence that was  
41 given by Mr. Lapointe on Tuesday of last week, the  
42 18th of January, and he was speaking of the  
43 fishery from Mission upriver and the concern, as  
44 he expresses it, of the mortality rate between  
45 Mission and to the spawning ground, and that  
46 mortality, as he theorized it, was partly because  
47 of all the gear that is found in the river, that

1           there's been an increase in fishery from Mission  
2           upriver in recent time. And I want to just put  
3           his comments, and then I want to ask you what --  
4           does DFO subscribe to his concern, and if they do,  
5           what are they doing about it? I refer you to page  
6           86 of that day's transcript of last Tuesday. I  
7           refer you at line 37, where Mr. Lapointe, in  
8           response to Ms. Baker, said the following.  
9           Line 37:

10  
11           Now, there's only one other point I want to  
12           make while I have this graph up that relates  
13           to the in-river fishing issue, and it's just  
14           one that I think is important to keep in  
15           mind, and the point is that you have had  
16           increased intensity of in-river fisheries  
17           since the '90s, okay? It is not the catch  
18           part of that that concerns me, it's the  
19           interaction with the gear in the context of  
20           warm water. So what I'm trying to say here  
21           is that if fish are encountering gear more  
22           frequently because there's more gear in the  
23           water during these warm temperature years,  
24           that could exacerbate the mortality impact.  
25           In other words, an additional stressor that  
26           the fish have. So it's not about the  
27           poaching issue, or any of that stuff, it's  
28           just about the gear fishery interaction and  
29           how that may be exacerbated by warm river  
30           temperatures that, you know, is something I  
31           would flag as a potential concern. And  
32           that's all it is, okay, it's just this  
33           potential gear impact.

34  
35           I think I should take the next paragraph, too:

36  
37           We know from our work at Qualark --

38  
39           And I understand that's a location where you have  
40           a hydroacoustics system; is that correct?

41       MR. ROSENBERGER: Yes, a Didson program.

42       Q           Yes. A what program?

43       MR. ROSENBERGER: Didson.

44       Q           Thank you:

45  
46           -- or not our work at Qualark, DFO's work at  
47           Qualark and our work at Mission that there's

1 an impact on the fish distribution across the  
2 river when there are fisheries occurring.  
3 Fish tend to be moving offshore. A fish  
4 that's offshore is in the current. It's got  
5 to do more work to get to where it needs to  
6 go than a fish near shore. So it doesn't  
7 necessarily have to be a physical, you know,  
8 entanglement and escape, it could just be an  
9 affect (sic) on distribution. And, you know,  
10 where this goes in the future, with climate  
11 change, is something that we just have to  
12 keep a watch on.  
13

14 Now, I'm going to be asking you your comments on  
15 his testimony. Do you subscribe to it and is DFO  
16 responding to it, but before doing so, I'm  
17 informed by my clients that the year 2009, when  
18 there was no fishery, that the mortality rate  
19 between Mission and spawning grounds was very,  
20 very low; is that to your understanding, too? In  
21 other words, where there was no fishery Mission  
22 upriver in 2009, the mortality rate was very, very  
23 low? Do either of you have any information?

24 MR. ROSENBERGER: Well, I've seen this information be  
25 reviewed a lot. I'm trying to -- it's a lot of  
26 data in a lot of years so I don't have that  
27 specifically in front of me, whether there was --  
28 you know, what exactly our estimates of the  
29 mortality might have been. And I assume from  
30 here, you're referring to the difference between  
31 estimate of Mission to the spawning grounds?

32 Q Yes.

33 MR. ROSENBERGER: So I don't have that information  
34 coming to the top of mind.

35 Q Fair enough. I appreciate that. Going to Mr.  
36 Lapointe's evidence, do you subscribe to the  
37 concerns as he expresses them in that testimony?

38 MR. ROSENBERGER: A bit of context, maybe. So yes,  
39 this is something that is becoming more of a  
40 concern and it's the -- largely, it's the Didson  
41 monitoring program that the Department of  
42 Fisheries and Oceans has run at Qualark, and some  
43 of this we observed at the Siska fish wheel. So  
44 this is equipment that allows you to actually  
45 understand -- not just counting a ping as a fish  
46 is moving by, but you get to see the fish swimming  
47 by on the monitor and so with the work of the

1 gillnet that operates in conjunction with the  
2 Didson program, the hydroacoustics work or  
3 portion, they're able to observe that the fish  
4 are, in some cases, avoiding the net as it drifts  
5 down through the area. So essentially, we've got  
6 some information that we didn't have before the  
7 last couple of years.

8 So where we've been working on this and  
9 trying to understand it better, and it's not just  
10 going on in British Columbia, many fisheries, in  
11 particular, in Alaska, are looking at -- most of  
12 our effort up until this point has been in what's  
13 called instantaneous release mortality, or the  
14 mortality of releases of fish in that first 24-  
15 hour period. That's how most of the studies have  
16 been designed. What we're trying to do now is  
17 work with UBC, and Carleton University, and  
18 others, trying to understand delayed release  
19 mortality impacts and so we're working on a number  
20 of studies in cooperation with those two  
21 universities to understand some of these delayed  
22 impacts, some of the impacts of the gear, and  
23 we've done some of the work on trying to monitor  
24 from Qualark, in particular.

25 On the impact, and trying to think about how  
26 that plays out into the fisheries we've had now,  
27 in fact, I think you'd have to do some work to  
28 analyze whether, in fact, we've had more fisheries  
29 in recent times. There was considerable fishing  
30 in the early 1990s, but in many of the years, in  
31 the last 10 years, for example, we've probably had  
32 -- in my view, we've had less fishing, less effort  
33 in the river system by people above Mission than  
34 we did historically. So before the last 10 years,  
35 most of the time in the Mission to Hells Gate  
36 area, it was open three days a week and with some  
37 very large effort counts, particularly in the '80s  
38 and early '90s. Now we're more often fishing a  
39 day a week on most of those fisheries, or in some  
40 of the last few years, closed.

41 In the area of Lytton and Lillooet, further  
42 up, in the last few years, in most cases, we've  
43 had less fishing effort than we had 15, 20 years  
44 ago. And in some of the areas, the First Nations  
45 fishermen have actually banned the use of  
46 gillnets, utilizing dip nets only, in places  
47 where, again, up until the mid-90s, they were open

1 to gillnet fishing. So I think that information  
2 would need to be looked at in a more systematic  
3 manner to understand some of these impacts.

4 Q All right. But not to make too fine of a point of  
5 it, but you do acknowledge Mr. Lapointe's concern  
6 that this may be an issue with mortality issues,  
7 and you have testified of the program that DFO is  
8 currently investigating these matters; is that not  
9 correct?

10 MR. ROSENBERGER: Yes.

11 Q Thank you.

12 MR. GROUT: Could I add to what Barry said?

13 Q Yes.

14 MR. GROUT: I had a couple different points than what  
15 Barry made, and the first is that in looking at  
16 the difference between estimates between Mission  
17 and upstream areas, what we're looking at is,  
18 essentially, five components that can cause that  
19 different between estimates. There can be biases  
20 in the Mission hydroacoustic counts and on the  
21 spawning grounds. There could be biases in our  
22 catch estimates. There could be unreported catch  
23 that, obviously, we're not taking account of, or  
24 there can be actually mortality. So you focussed  
25 your questions a bit on the potential for  
26 mortality, but there are those five factors that  
27 contribute to the differences we see. And what  
28 we're using in the management process is simply a  
29 correlation between the sum of all those variables  
30 on the difference we see, and it happens that you  
31 get a correlation between environmental variables,  
32 like river temperature or discharge. So I think  
33 that's an important point to make.

34 I will say in terms of your question, I was  
35 involved in some field research when I was working  
36 in the Lower Fraser office, and Barry referred to  
37 this Didson system, and for those of you that  
38 don't know it, it's akin to looking at an image of  
39 a baby *in situ* for a pregnant mother.

40 Q Ultrasound.

41 MR. GROUT: So you've seen the ultrasound pictures on  
42 the fridge. You can actually get quite good  
43 quality images of fish migrating. The images are  
44 good enough to see the difference in size between,  
45 say, a Chinook and a sockeye. We set up this  
46 system at Yale in the Fraser River, and we were  
47 using it to look at not particularly fish passage,

1 but the effect of the gillnet that was fishing in  
2 this particular back eddy. So this was a set  
3 gillnet in the Fraser River, and what we actually  
4 found, and this was just data from one day and one  
5 year. It's actually quite challenging to try and  
6 set these Didson systems up to actually watch a  
7 gillnet while it's moving around in the current,  
8 but certainly in that year, I believe it was 2006,  
9 the water was quite low and clear, and what it  
10 showed, when we went back and looked at the  
11 imagery from the video, is that the gillnet,  
12 itself, was probably catching 10 percent or less  
13 of the fish that appeared to be encountering the  
14 net. So in the imagery, you could see the fish  
15 coming towards the net, and I don't know if they  
16 were touching it. It appeared they were getting  
17 very close, and the image showed these fish  
18 veering off from the net.

19 What we didn't know is whether that was  
20 causing a delay in the migration, or whether they  
21 were going out and around the end of the net, or  
22 whether they were just circling back around and we  
23 were seeing the same school of fish delayed for  
24 the day. So there's certainly some observed  
25 evidence to support some of the things that Mike's  
26 talked about here in his evidence.

27 Q Thank you. I want to move very briefly, I just  
28 have two or three other areas of cross-  
29 examination. Over the last 15 years, or so,  
30 there's been a pretty radical restriction in  
31 commercial harvest, and, obviously, 2010 is an  
32 exception. My question is has that led to any  
33 problems at your end in terms of estimating run  
34 size? As I am educated by my clients, the  
35 commercial harvest, especially not so much Early  
36 Stuart, but Early Summer, and so on, you used to  
37 rely on catch information from the commercial  
38 fishery, partly to do ongoing management and  
39 estimates of the stock for that year. And you  
40 have been limited by the fact that there has  
41 obviously been a restriction on commercial  
42 harvest. Is that a fair comment to make?

43 MR. ROSENBERGER: If you're looking for the accuracy by  
44 having fish caught and having a fairly good idea  
45 that you've caught that fish, you know how many  
46 you're encountering on that side of things versus  
47 the escapement side which has the spawning ground

1 counts, where we don't try to touch every fish,  
2 we're using either visual estimates, or mark  
3 recaptures or fence counts, which would be more  
4 into actually, you know, seeing and handling each  
5 fish. So that's where there's definitely  
6 uncertainty in the estimates, and when you have  
7 less of the fish caught, and back 20, 30 years  
8 ago, 60, 70, 80 percent of the fish were normally  
9 caught so your confidence in the total number  
10 would be higher than it is in years when you have  
11 a very little portion of the fish caught, and a  
12 much higher portion of them are being estimated by  
13 other means.

14 Q Do you think that -- do you believe that your  
15 estimate procedures are hampered by the fact that  
16 where there is a restricted harvest, commercial  
17 harvest, you don't have that kind of data that you  
18 otherwise would have?

19 MR. ROSENBERGER: No, I don't think that that impacts  
20 on the fishery.

21 Q Okay. Thank you.

22 MR. ROSENBERGER: Or the management moving forward.

23 Q When, in 2010, with the IFMP, there was a decision  
24 made that there be a 20 percent harvest rate,  
25 target harvest rate for late runs, can you tell  
26 me, was that the scientific community within DFO  
27 that made that decision, and if not, whose  
28 decision was it?

29 MR. GROUT: Well, just to clarify, so the IFMP that  
30 went out contemplated an exploitation objective  
31 for Cultus Lake sockeye ranging from 20 to 30  
32 percent, depending on a couple of factors, one,  
33 the overall abundance, and then also the potential  
34 spawners that may reach the spawning areas. And  
35 so what it allowed is for, potentially, some  
36 flexibility in-season to move from 20, up to 30  
37 percent, based on information that we had.

38 We did also lay out that at the start of the  
39 season, we'd contemplate starting at 20 percent  
40 until such time as we had more definitive  
41 information on the other factors I just mentioned,  
42 namely, abundance and the potential number of  
43 spawners that would arrive in spawning areas.

44 Q So I'm sorry, I listened to you, but maybe I  
45 didn't understand you. It was that 20 percent  
46 benchmark, for want of a better term, that 20  
47 percent figure, that the scientist had promoted



- 1 and it was adopted, or does it come from somewhere  
2 else? Who made the decision to impose in the IFMP  
3 for 2010 a 20-percent harvest rate?
- 4 MR. GROUT: Ultimately, the objective that's in the  
5 IFMP is signed off by the Minister and it was  
6 developed by the Department based on feedback we  
7 had from our various groups during our  
8 consultation process. Science would have been  
9 involved in those discussions, but they -- I don't  
10 know that I'd identified them as a proponent for  
11 one particular view.
- 12 MR. ROSENBERGER: Excuse me. In 2010, the Late Run  
13 exploitation rate is not set at 20 percent. The  
14 Cultus exploitation rate is set at a starting  
15 place of 20 percent, and it may increase to 30  
16 percent.
- 17 Q I'm sorry, are you suggesting Late Summers for  
18 2010, on the IFMP, did not set a 20-percent  
19 harvest rate target?
- 20 MR. ROSENBERGER: I don't believe that for 2010 that  
21 that's the objective that's stated in there.
- 22 MR. GROUT: Yeah, just to clarify, in my comments, I  
23 was referring to the constraint that would have  
24 been effecting the Late Run management from the  
25 Cultus exploitation rate objective. The IFMP did  
26 -- I don't believe we have a copy of that buried  
27 in the evidence, but the Late Run was described by  
28 a harvest rule, I believe.
- 29 Q Okay. Well, I can't -- I don't have the document,  
30 either, in front of me so I'll leave that and I  
31 thank you very much for your patience.
- 32 MR. ROSENBERGER: Well, I might be able to --
- 33 Q Mm-hmm?
- 34 MR. ROSENBERGER: The question might have been  
35 referring to 2009, where there was a 20 percent.  
36 In some of the smaller Late Run years, that's how  
37 we've put it forward and there has been some  
38 analysis done, and I believe it was in the 2008  
39 year, with the FRSSI process, where they look at  
40 Late Runs and trying to understand implications at  
41 varying harvest rates, if we wanted to take on  
42 that type of a rule, so that might be where you're  
43 looking.
- 44 Q Well, if it was 2009, is that figure driven by the  
45 scientists within DFO, or does it come about?
- 46 MR. ROSENBERGER: Well, that's what I was trying to  
47 describe, that in 2008, or '07, I'm looking for

51

PANEL NO. 12

Cross-exam by Mr. Rosenbloom (GILLFSC)

Cross-exam by Ms. Srivastava (SGAHC)

1           Jeff here, I don't know if he was a part of that  
2           process, but there was some science review of  
3           trying to understand the implication of  
4           exploitation rates at various levels for Late Run  
5           aggregate, and from some of that work -- and then  
6           looking at some of the social and economic side of  
7           things is the -- you know, they picked a  
8           percentage off of that graph and other  
9           considerations.

10       MR. GROUT: In terms of the science involvement in the  
11       work, I was involving in helping to put together a  
12       population viability analysis model, which was a  
13       tool to look at the probability of extinction or  
14       some very low number of spawners from which we  
15       thought the population might not recover. And  
16       recovery objectives were laid out by the  
17       conservation team, and we were able to --  
18       essentially, it was a simulation model to look at  
19       the probabilities of the population recovering,  
20       given not just exploitation rates, but also the  
21       various other recovery objectives that were being  
22       -- actions that were being contemplated, including  
23       removing predators in the lake and enhancement  
24       activities.

25               Now, that model went through the scientific  
26       review process, at the time, it was called PSARC,  
27       that would have been the scientific approval of  
28       the model that was used.

29       Q     Thank you very much. I thank you for your  
30       patience.

31       MS. BAKER: Mr. Commissioner, the next counsel is  
32       counsel for Southern Area E Gillnetters and BC  
33       Fisheries Survival Coalition.

34       MS. SRIVASTAVA: Thank you, Mr. Commissioner. Anila  
35       Srivastava, and the spelling, again, is  
36       S-r-i-v-a-s-t-a-v-a, first initial A., for BC  
37       Fisheries Survival Coalition and Southern Area E  
38       Gillnetters.

39

40       CROSS-EXAMINATION BY MS. SRIVASTAVA:

41

42       Q     John, I'm actually going to -- because we're so  
43       close to the lunch break, I'm going to pick up on  
44       a couple of questions that Mr. Rosenbloom asked  
45       you, because I think there might be just two or  
46       three short questions that we can manage before  
47       the lunch break. And I think this question is

1 probably more directed to Mr. Grout, but,  
2 obviously, Mr. Rosenberger, if you wish to  
3 contribute, it could be very helpful.

4 I asked Mr. Lapointe quite a few questions  
5 about the difference between estimates, and you,  
6 Mr. Grout, had just responded to Mr. Rosenbloom's  
7 question. One of the five factors you identified,  
8 you stated, I believe, that the environmental  
9 factors are the most highly correlative. Is that  
10 right? Is that what you told us?

11 MR. GROUT: I don't recall my exact words at this  
12 point, but of those five factors that contribute  
13 to differences between estimates, I was indicating  
14 that we can often find correlations with  
15 environmental variables that can explain some of  
16 the variation across years in those differences.

17 Q Thank you. And just to be fair, I'm not trying to  
18 spring surprises on you at all. Mr. Lapointe had  
19 said the same thing, and he had a very nice  
20 graphic presentation that showed correlations  
21 between high difference between estimate years and  
22 years in which there was an identifiable high  
23 temperature event, or high water flow event. So  
24 if I understand correctly, you're saying that you  
25 agree with that assessment, that that is one of  
26 the strongest factors affecting difference between  
27 estimates; am I right?

28 MR. GROUT: Not having seen his presentation, if you're  
29 asking me whether high discharge or high water  
30 flows and high temperatures have strong  
31 correlations for some of the management  
32 aggregates, then my answer would be yes.

33 Q If that's the case, would it be possible,  
34 scientifically, and the second part of the  
35 question is would it be helpful, scientifically,  
36 to extract the environmental factor, temperature  
37 and water flow, and so those indicators as  
38 separate factors contributing to the DBE and,  
39 therefore, to difference in management  
40 assessments?

41 MR. GROUT: That question might be better posed to one  
42 of the PSC staff or member of the Fraser Panel  
43 Tech Committee. I believe that those are things  
44 that they have looked at in the past, i.e.  
45 combinations of temperature and other variables,  
46 or those variables on their own, to try and find  
47 what has the most explanatory power.

1 Q And explanatory power is a term that did come up  
2 in Mr. Lapointe's testimony, probably because I  
3 used it. What I'm getting at, fundamentally, is  
4 that the management adjustment can often be a very  
5 large figure from year to year. In setting your  
6 -- the actual IFMP, the overall management plan,  
7 and then adjusting the rules in season, as a  
8 scientist and someone who's designing the  
9 management plan, is it not difficult to  
10 accommodate in management an adjustment figure  
11 that can be as much as 50 percent, or more, of the  
12 run?

13 MR. GROUT: I'm not entirely sure that I follow your  
14 question, but in terms of the management plan  
15 we've put together, we do contemplate potential  
16 for management adjustments and layout in the  
17 escapement plan how those would be accounted for  
18 in determining the total allowable catch.

19 Q Fair enough. Let me come at it another way, then.  
20 As a manager, would it not be -- as somebody's  
21 who's contributing to a fisheries management plan,  
22 would it not be helpful to separate out factors  
23 that are within human control and specifically  
24 within DFO control, as opposed to factors that are  
25 environmental and outside of DFO's control. And  
26 what I'm getting at is in-river fisheries. Would  
27 it not be possible and helpful to separate out all  
28 aspects related to that interior fishery above the  
29 Mission Bridge and, again, indicate that as a  
30 separate, viable end set of factors for  
31 assessment, rather than lumping it all into a  
32 management assessment figure that also includes  
33 completely disparate factors like environmental  
34 factors.

35 MR. GROUT: I'm not sure I can specifically comment on  
36 your question.

37 MR. ROSENBERGER: I mean, if I could add, I think that  
38 any time that you could separate out these four or  
39 five items that Jeff had described earlier and  
40 have a good correlation with them so you could  
41 make decisions around them in season and try to  
42 effect some of them, obviously, that would improve  
43 the system.

44 Q Thank you, Mr. Rosenberger. I'm struggling, also,  
45 a little, Mr. Rosenberger, with this whole issue  
46 of productivity declines at very high levels of  
47 escapement. And Mr. Rosenbloom had gone over that

1 testimony with you again. And some earlier  
2 testimony of yours, Mr. Grout, when you described  
3 that the changes to the 2010 model can provide  
4 several different scenarios based on different  
5 productivity assumptions. And one of the things  
6 I'm wondering is if DFO's management, which it  
7 seemed to me you were saying, Mr. Rosenberger, did  
8 not endorse a high-risk approach to productivity  
9 and escapement, how does that affect using  
10 productivity itself as a variable in the model?  
11 In other words, isn't DFO's management philosophy,  
12 which it seemed that you were saying, Mr.  
13 Rosenberger, was a lower-risk philosophy with  
14 respect to productivity, does that, in itself, not  
15 affect the future cycles?

16 MR. ROSENBERGER: Your terminology is probably --

17 Q And I'm sorry, that's probably my fault because I  
18 am really struggling with understanding how it is  
19 that productivity can be both a variable that's  
20 used in a management model, and how an approach to  
21 productivity that's low risk, as I understand it  
22 from your testimony today, doesn't affect that  
23 variable, in itself.

24 MR. ROSENBERGER: Yeah. I'm not a modeller so how  
25 they've put that into the model and using it for  
26 forecasting, you're probably going to get one of  
27 the later witnesses who will be able to describe  
28 some of that better so I think that's probably the  
29 best we can do. I think using the term that we  
30 were -- the way you were describing it, it might  
31 be different than what I was trying to describe,  
32 when it was asked that if you were striving for  
33 the highest rate of return of spawners, then you  
34 generally get a higher rate of return on lower  
35 levels of spawn. And what we've described in some  
36 of these discussions and places has been looking  
37 at things like maximum sustainable yield. So when  
38 you're doing that and you have a large volume of  
39 data, which is one of the reasons we use 19  
40 populations, where we have more information than  
41 all 30 some that might be CUs is around trying to  
42 look for those relationships. And when you're  
43 looking at maximum sustain yield, you're trying to  
44 find the place on that curve where it's starting  
45 to bend down towards a lower productivity, and  
46 that was the historical optimal escapement that  
47 many stocks were striving for.

1 Q Thank you. And so Mr. Grout, in the shift that  
2 you described last week is that the change in the,  
3 sorry, 2010 model is that you can plug in  
4 different or even floating. So productivity in  
5 different years going up and down and that you can  
6 then come up with several different scenarios  
7 based on different productivity assumptions over  
8 that time series; is that right?

9 MR. GROUT: Yeah, so in the Fraser Sockeye Spawning  
10 Initiative model, itself, we're looking at the  
11 spawning and recruitment data for each population  
12 in the model. From that data, you can estimate  
13 what the productivity of that population might be.  
14 That productivity reflects the historical data.  
15 There's some uncertainty around that estimate,  
16 given the scatter in the data that we've seen  
17 historically, so the model's accounting for the  
18 uncertainty in the historical data. One of the  
19 concerns we've heard is that going forward, due to  
20 global warming, or habitat degradation, or some  
21 other factor, the productivity may be permanently  
22 impaired. And to try and address that in some of  
23 our modelling work, there were some scenarios, I  
24 believe, they're in the 2010 memo with the  
25 escapement -- Fraser Sockeye Spawning Initiative  
26 Memo. We looked at some scenarios of productivity  
27 based on the historical data, and then some  
28 reductions in productivity for the whole forward  
29 simulation. I know one of the scenarios was a  
30 reduction by half. So you can look at what effect  
31 -- without knowing what the future holds, you can  
32 essentially look at, okay, if it is this, what  
33 effect might that have on the performance of the  
34 particular harvest rule you're intending to use.  
35 So it's a more recent addition to the model,  
36 trying to address some of the concerns that have  
37 been raised about what future productivity might  
38 be.

39 Q And so if productivity may be permanently affected  
40 by environmental factors, but what I'm trying to  
41 get at, Mr. Grout, is is it not also possible that  
42 productivity can be impaired by a set of rules in  
43 one particular year that generate massively high  
44 levels of escapement, say, 90 percent, like we  
45 were talking about for 2009. Is it not possible  
46 that the management decision, itself, could  
47 decrease productivity in the four years, eight

1           years, 12 years following that cycle, not just  
2           environmental factors that you are trying to put  
3           into the mix?

4       MR. GROUT: This would be a good question to repeat to  
5           the Fraser Sockeye Spawning Initiative Folks when  
6           they come and talk to the committee, but my  
7           understanding is some of the sensitivity analysis  
8           work that was done here is that the actual choice  
9           of the population dynamics model is more important  
10          than the choice of a harvest rule in any given  
11          year. And what I mean by that is whether you  
12          choose to use a Ricker-style model which describes  
13          the productivity parameter in the data and doesn't  
14          contemplate any density effects across years  
15          versus a Larkin model, which would allow for  
16          potential effects of one year's abundance on  
17          subsequent years. So in the modelling work that's  
18          been done, it's my understanding that the choice  
19          of that particular model is actually quite  
20          important.

21       Q       Good. That's helpful. It certainly clarifies my  
22           mind. It will help me in talking to that panel.

23       MS. SRIVASTAVA: Mr. Commissioner, those were the two  
24           sort of questions that arose from Mr. Rosenbloom's  
25           cross and perhaps now it would be a time to break.

26       THE COMMISSIONER: Yes, thank you. Before we break,  
27           I'm advised that there is in the public audience  
28           today, a number of university students who are, I  
29           believe, embarking, potentially, upon a career in  
30           the field of the science that we are engaged in  
31           examining. And I would expect that this morning's  
32           evidence will either inspire them to carry on in  
33           their program, or perhaps have them go home this  
34           afternoon and change their career plan. In any  
35           event, they're welcome here today and I'm  
36           delighted that they're taking all of this in.  
37           Perhaps they can tell us later if they understood  
38           anything we were talking about this morning.  
39           Thank you very much. We'll break now until  
40           2:00 p.m.

41       THE REGISTRAR: The hearing is now adjourned until  
42           2:00 p.m.

44                       (PROCEEDINGS ADJOURNED FOR NOON RECESS)

45                       (PROCEEDINGS RECONVENED)

46  
47       MS. SRIVASTAVA: Thank you, Mr. Commissioner. Anila

1 Srivastava, S-r-i-v-a-s-t-a-v-a, continuing for  
2 B.C. Fisheries Survival Coalition and Southern  
3 Area E Gillnetters Assn.  
4

5 CROSS-EXAMINATION BY MS. SRIVASTAVA, continuing:  
6

7 Q Gentlemen, I would like to go back to the basics  
8 of DFO organization as it relates to fisheries  
9 planning and management. As I understand it,  
10 there are a number of teams, some of them are  
11 called teams, and some of them are called groups  
12 that have various responsibilities for fisheries  
13 planning, and you may be able to help me  
14 understand where those responsibilities are  
15 different and complementary, where they are  
16 hierarchically related, and where perhaps they  
17 overlap. So again I recall that Mr. Grout was the  
18 person speaking to us most about this, but that  
19 may just have been, Mr. Rosenberger, because that  
20 was on the Monday. So I will direct my questions  
21 to Mr. Grout, but again, Mr. Rosenberger, please  
22 do contribute.

23 Mr. Grout, am I correct in saying that the  
24 Salmon Team is probably the smallest group at DFO  
25 with responsibility for fisheries management  
26 planning?

27 MR. GROUT: Yeah, it is certainly among the groups that  
28 are doing salmon fishery-related planning. It's  
29 the smallest core group at Regional Headquarters  
30 with myself, the Salmon Officer that reports to  
31 me, the Salmon Team Lead and the Recreational  
32 Fishery Coordinator is also part of that group.

33 Q And, Mr. Grout, I believe you said that you've  
34 been with DFO since 2004, is that correct, or am I  
35 wrong?

36 MR. GROUT: No, since 1998.

37 Q 1998, my apologies. When you arrived at DFO, was  
38 the Salmon Team already in existence, or is that  
39 something that's been developed in the last few  
40 years?

41 MR. GROUT: The Salmon Team Leader position came about  
42 in response to one of the reviews, I believe, I  
43 can't recall the exact date, I think it's in the  
44 mid-2000s, though.

45 Q But and the other roles, so the Regional Salmon  
46 Coordinator, which is also sometimes known as the  
47 Regional Resource Manager, the Recreational



- 1 Coordinator and the Salmon Officer, did those come  
2 about at the same time as the Team Leader  
3 position?
- 4 MR. GROUT: The Salmon Coordinator position was around  
5 longer than that. I know a number of individuals  
6 that have occupied the position. I can't recall  
7 the exact date when that position started, though.
- 8 Q And this may be a phrase that just simply doesn't  
9 apply at all, and, if so, you can tell me that.  
10 But in your thinking, is it -- is it neither  
11 strictly a science team or a management team, but  
12 something like an applied science team, or is it  
13 some other type of entity altogether?
- 14 MR. GROUT: The Salmon Team is all staff, or the  
15 members of the Salmon Team are Fisheries -- are  
16 attached to the Fisheries and Aquaculture  
17 Management, so we don't have any direct Science  
18 participation on that team.
- 19 Q Right. That was my understanding. So when  
20 science input is required, which it clearly must  
21 be to develop IFMPs, the Salmon Team is getting  
22 that data from the Science group; is that right?
- 23 MR. GROUT: Yes, we can get Science advice from -- in a  
24 number of ways. Most formally the Salmon Working  
25 Group is involved in developing requests for  
26 Science advice. So these would be specific  
27 requests for developing research papers, or  
28 Science Advisory documents that would go through  
29 our old PSARC process, or our new Science CSAS  
30 process. That's how it's been recently renamed.  
31 We also have Science advice being provided in the  
32 development of management plans, as well.
- 33 Q And is there any explicit effort to get  
34 information or input from other DFO, I believe  
35 they're called branches, such as Oceans, Habitat,  
36 and so on, or is it more ad hoc: if it's needed,  
37 you go and ask for it.
- 38 MR. GROUT: We can do it a number of ways. We have on  
39 the Salmon Working Group a number of  
40 representatives from the areas, as well as from  
41 Science, our Enforcement staff, Salmonid  
42 Enhancement Program, Treaties, there may be a  
43 couple that I've missed, which would be the formal  
44 way we coordinate advice on salmon-related issues,  
45 but we could also look for specific advice on an  
46 as-needed basis, as well.
- 47 Q Thank you.

1 MR. ROSENBERGER: If I could add specifically into the  
2 IFMP, there is an Enforcement Section and the  
3 Salmonid Enhancement Section besides the Science  
4 Fish Management components that come together.

5 Q And still staying with that small group, the  
6 Salmon Team, are either of you able to answer why  
7 the Regional Recreation Coordinator is part of the  
8 team, but there's no specific membership from the  
9 commercial sector or the First Nations sector?

10 MR. GROUT: All of the members of the Regional Salmon  
11 Team are DFO employees. In terms of the  
12 Recreational Coordinator, that role provides  
13 advice on recreational fisheries for salmon, but  
14 also for other recreational fisheries. We get  
15 information for First Nations fisheries and  
16 commercial fisheries through our own knowledge, as  
17 well as staff in the areas. So the recreational  
18 coordinator position was brought about to try and  
19 help coordinate the more dispersed recreational  
20 fishery advice.

21 Q I am going to ask more about that because it's an  
22 interesting phrase, disperse recreational advice,  
23 specifically in relation to First Nations groups  
24 and their involvement in the process. But for now  
25 is it fair to say then that there is a dedicated  
26 DFO position that's the Recreation Coordinator,  
27 but there's no dedicated complementary position  
28 for First Nations input or commercial input at the  
29 Salmon Team level; is that right?

30 MR. GROUT: No, we do not have a commercial coordinator  
31 or a First Nations coordinator at the Regional  
32 Headquarters level. As I stated before, we'd rely  
33 on our own expertise, as well as input from our  
34 staff in the areas on those fisheries.

35 Q Are you confident -- I understand what you're  
36 saying about relying on own knowledge and other  
37 staff inputs. I think you'll accept if I put to  
38 you that nonetheless that information, whether  
39 it's about commercial interests or about First  
40 Nations interest, is filtered before it gets to  
41 the Salmon Team. Is that fair to say?

42 MR. GROUT: Sorry, you'll have to -- I missed the part  
43 of your question about the filtering of  
44 information.

45 Q If there is no specific DFO person on the Salmon  
46 Team who is tasked with the same tasks as the  
47 Recreation Coordinator, but for the commercial or

1 the First Nations sectors respectively, then there  
2 is an indirect method or a filtering method for  
3 that information to get into the Salmon Team, and  
4 I am not at all trying to denigrate the level of  
5 knowledge at DFO, but simply that that position is  
6 not there for those other two sectors.

7 MR. GROUT: I don't know if I'd characterize it that  
8 way. On the recreational side of things we do  
9 have a Recreational Coordinator. We have a  
10 Recreational Manager position in each of our  
11 areas, as well, which is providing recreational  
12 input and advice to the Recreational Coordinator.  
13 We also have on the commercial side Resource  
14 Managers in each of the areas typically attached  
15 to the each of the commercial -- each of the eight  
16 area gear types, that's also able to feed up  
17 advice through the Area Chiefs in the areas, and  
18 to myself directly, and we also have similar  
19 management positions on the First Nations side, as  
20 well. That's at a sort of sub-regional level of  
21 aggregation in the areas, working directly with  
22 First Nations on their fisheries.

23 Q Now, the Regional Salmon Coordinator position,  
24 which is also sometimes called the Regional  
25 Resource Manager position, which is your position,  
26 Mr. Grout, is that correct, is -- can you just  
27 describe to me quickly what the difference is  
28 between that and a Salmon Officer's position. So  
29 what does a Salmon Officer do that's different and  
30 necessary.

31 MR. GROUT: I'm responsible for the overall  
32 coordination of the development of the Integrated  
33 Fishery Management Plan, as well as a number of  
34 our advisory processes, including the IHPC. I  
35 quite often work directly with the Commercial  
36 Salmon Advisory Board, particularly around the  
37 allocation meeting. I also present regularly at  
38 the Sport Fishing Advisory Board and First Nations  
39 meetings that are primarily at the First Nation  
40 forum level, which are more of a regional nature.  
41 The Salmon Officer is supporting in the delivery  
42 of those activities, and there's a number of  
43 aspects that are specific elements of the  
44 Coordinator's job that we've got that position  
45 doing, from reviewing of fishery notices, and some  
46 of the variation orders, and as well approval of  
47 fishery notices, working specifically with our

1 Area staff on development to the IFMPs, helping to  
2 put together agendas and follow up on action items  
3 related to the number of meetings. So the two  
4 positions are quite complementary in terms of the  
5 delivery of the program.

6 Q And as I understand it, and just for your  
7 information, I'm taking this information from the  
8 Policy and Practice Report, so if there is a  
9 discrepancy, we may need to drill down into a  
10 little bit. My understanding is that three of the  
11 four members of the Salmon Team are also members  
12 of the Salmon Working Group; is that right?

13 MR. GROUT: Depending on the meeting, I -- I would  
14 chair the Salmon Working Group meeting. The  
15 Salmon Officer is usually at those meetings. The  
16 Salmon Team Lead is, I believe, at most of the  
17 meetings. There may be occasions where that  
18 position is not able to attend. The Recreational  
19 Coordinator is also a usual participant at those  
20 meetings, as well.

21 Q And then moving -- but by the same token, the  
22 Salmon Working Group is a much larger group with a  
23 much larger number of stakeholders represented in  
24 addition to DFO staff, correct?

25 MR. GROUT: No, the Salmon Working Group is just --

26 Q Oh, I'm sorry.

27 MR. GROUT: -- just a DFO group.

28 Q It's an internal DFO group. So as well as the  
29 members of the Salmon Team, the Salmon Working  
30 Group includes members from other sectors or  
31 branches. but most of the Salmon Team either is at  
32 all the meetings, or can be at most of the  
33 meetings, depending on the agenda. Is that a fair  
34 summary?

35 MR. GROUT: That's accurate.

36 Q Thanks. Moving on then to FRIMT, it's also purely  
37 an internal DFO group; is that correct?

38 MR. ROSENBERGER: That's correct.

39 Q And two of the four members of the Salmon Team are  
40 also on FRIMT, and the other two may attend as  
41 required in a similar way to what Mr. Grout  
42 described with the Salmon Working Group; is that  
43 correct?

44 MR. ROSENBERGER: Yeah, and Jeff, the Salmon  
45 Coordinator position, attends regularly. The  
46 other ones are probably more at discretion or  
47 need.

1 Q Is there any hierarchy between and amongst these  
2 three groups then, the FRIMT, the Salmon Team, and  
3 the Salmon Working Group, or are they all equal in  
4 hierarchy but doing different and complementary  
5 roles?

6 MR. ROSENBERGER: Yeah, that's how I would describe it.

7 Q Now, again my understanding is that the Salmon  
8 Officer coordinates between the Salmon Team and  
9 FRIMT, and then your role, Mr. Rosenberger,  
10 because you're on both FRIMT and the Fraser River  
11 Panel; is that right?

12 MR. ROSENBERGER: The Salmon Officer -- the Salmon  
13 Coordinator is more of a link between the Salmon  
14 Working Group and the FRIMT and Panel levels.  
15 That's Jeff's position, as opposed to the Salmon  
16 Officer's position.

17 MR. GROUT: In practice we try and have a member from  
18 the Salmon Team attend the FRIMT meetings. It's  
19 either myself or the Salmon Officer, depending on  
20 the meeting and the specific items we're reviewing  
21 there.

22 Q All right. And in looking at the -- let's call  
23 them the job descriptions, but the  
24 responsibilities that are laid out for these  
25 various three groups, they all have some  
26 responsibility for development of the Fisheries  
27 Management Plans. But actual production of the  
28 Fisheries Management Plan lies with the Salmon  
29 Team; is that correct, Mr. Grout?

30 MR. GROUT: Yes. The Salmon Team has overall  
31 responsibility for coordinating the development of  
32 the Integrated Fishery Management Plan, although  
33 in the South Coast, we have, given the size of the  
34 Plan and the number of different elements to it,  
35 we do have a rotation through the three areas,  
36 with a lead identified in each of the areas that  
37 are -- a lead identified in one area or the other,  
38 depending on the year. So the areas would take  
39 turns in assisting with the development of the  
40 Fisheries Management Plan and there would be  
41 inputs from a number of different staff throughout  
42 the areas.

43 Q Okay. And the role of the Salmon Working Group  
44 then, it's not quite clear to me whether it is  
45 more in the development stage of the IFMP, as in  
46 here are some considerations, here are some  
47 concerns from stakeholders, here is this year's

1           consultation process, and there's mention of  
2           timeframes. So is the Salmon Working Group's  
3           input in the early stages or is it pre-IFMP  
4           development?

5       MR. GROUT: The Salmon Working Group meets a number of  
6           times during the year. We tend not to be focused  
7           on the specific operational details around  
8           implementing a plan in-season. We do have  
9           discussions about elements of the Integrated  
10          Fisheries Management Plan, broader strategic  
11          initiatives that we're developing, development of  
12          science advice, a request for science advice, is  
13          examples.

14       Q       And then moving on to the -- to FRIMT, FRIMT's  
15           role is more after an IFMP has been developed and  
16           produced to coordinate that with the Fraser River  
17           Panel; is that correct, Mr. Rosenberger?

18       MR. ROSENBERGER: That's correct, for the  
19           implementation.

20       Q       Thanks. If this Commission recommended a single  
21           planning and management authority for Fraser River  
22           salmon, would that create some economies primarily  
23           in terms of the time dedicated to meetings,  
24           committees and communications between all of those  
25           groups?

26       MR. GROUT: Well, maybe I'll take a stab at that first.  
27           I mean, the Fraser River Integrated Management  
28           Team is focused on Fraser sockeye and pink salmon.  
29           The Salmon Working Group is tasked with developing  
30           management plans in the Pacific Region, so we've  
31           got a much wider focus than purely on Fraser  
32           sockeye and pink salmon. We've got fisheries in  
33           the North Coast, South Coast, and the Yukon trans-  
34           boundary, as well, to have discussions about.

35       Q       Fair enough. But if instead of having management  
36           of the Fraser River sockeye divided between the  
37           Treaty Panel Areas and those managed by DFO, would  
38           there not automatically be some savings in terms  
39           of the time and resources devoted to meetings and  
40           coordination?

41       MR. ROSENBERGER: I don't think so. The Panel and the  
42           Fraser River Integrated Management Team are very  
43           closely linked and a number of the people attend  
44           both processes, and it gives -- on the internal  
45           side it gives the resource managers for each of  
46           the geographic areas or recreational community or  
47           First Nations, whoever they're going to be

1 consulting on further, it gives them enough basis  
2 and understanding of the directions, and they're  
3 getting direction from the decisions that we're  
4 making in those processes to be able to go out and  
5 develop the specific fishery characteristics that  
6 they're looking to do. So bringing them all into  
7 one place, there's a number of people who don't  
8 need to attend all of those sessions. They just,  
9 you know, they need to get some coordination from  
10 it.

11 I'm not -- more what we're getting is  
12 requests to do more meetings and have more  
13 interactions, and so, you know, I think we  
14 definitely would be appreciative of ideas that  
15 might help to bring about, you know, improvements  
16 in that side of things. But I'm not certain in  
17 taking the Panel and the FRIMT group and trying to  
18 bring that into one that you would necessarily  
19 make those same kind of gains you're expecting.

20 Q Looking at it from another perspective, then,  
21 without any question about changing the  
22 jurisdictional model, is it necessary, from your  
23 perspective, Mr. Grout, to actually have a Salmon  
24 Team, given that the members of it are also  
25 members of other committees?

26 MR. GROUT: Well, given that we've got an area-based  
27 model for the management of our salmon resources,  
28 I think it is helpful to have a regional salmon  
29 team that can look at issues that spread across  
30 areas. It's pretty common when you're dealing  
31 with a salmon resource that they are either -- the  
32 stocks are migrating through one or more of our  
33 management areas, and by that I mean our South  
34 Coast, for example, our Lower Fraser or B.C.  
35 Interior areas, and so there is a need to have  
36 that regional coordination role across the areas.  
37 Certainly the fisheries in one area can affect or  
38 have an effect on fisheries that are being  
39 contemplated or considered in the other areas.

40 Q I'd like to move on to forecasting, and I'd like  
41 you both to answer this question. Would you both  
42 agree that Fraser River sockeye forecasting has  
43 become increasingly inaccurate since 1985?

44 MR. ROSENBERGER: There's probably larger deviations  
45 from the midpoint in recent years.

46 Q And if the word "inaccurate" is not a helpful  
47 word, Mr. Grout, is the forecasting less reliable

1 now than it was in 1985?

2 MR. GROUT: I think there continues to be a  
3 considerable degree of uncertainty associated with  
4 the forecast, to the extent that recent declines  
5 in productivity of Fraser sockeye -- well, to the  
6 extent that there have been declines in the  
7 productivity of Fraser sockeye, it certainly looks  
8 like from recent work in reviewing the forecast  
9 models that models that take into account those  
10 recent declines have tended to perform better than  
11 those that are looking at the entire historical  
12 time series.

13 Q And that connects to what you've been telling us  
14 about the FRSSI model, that it explicitly attempts  
15 to incorporate either declines in productivity or  
16 to be able to model different productivity  
17 scenarios; is that correct? That's one of the  
18 primary paradigm shifts, if you like. It's a  
19 phrase that Mr. Lapointe used with this new  
20 modelling.

21 MR. GROUT: Well, just to be clear, the initial work  
22 that was done with FRSSI was relying on the  
23 historical time series of spawner and recruitment  
24 data. In response to requests to have a look at  
25 the potential for declines in productivity in the  
26 future to continue, those are elements that have  
27 been built into the model in recent years. So  
28 those are certainly scenarios we can look at,  
29 among others.

30 Q Yeah, and I'm sorry, Mr. Lapointe did make that  
31 clear, that when he was referring to paradigm  
32 shift, he was talking about the very recent shift  
33 in the modelling, the 2010 year.

34 Ms. Baker asked, I think it was you, Mr.  
35 Grout, or it may have been Mr. Rosenberger, what  
36 is the point of pre-season forecasting if it is so  
37 minimally predictive of in-season figures?

38 MR. GROUT: Oh, I think the utility of the pre-season  
39 forecast, it does provide some information. The  
40 amount of information in terms of its ability to  
41 predict returns varies by population. That  
42 information has been used in the past, as far as I  
43 understand it, by harvesters and others to  
44 contemplate potential scenarios for the coming  
45 season, and it might assist them in considering  
46 some of the requirements to deal with potential  
47 harvests or lack thereof.



1           I know the information in the distributions  
2           from the forecasts can be incorporated into the  
3           Bayesian run size models that are being used now  
4           by the Pacific Salmon Commission, as well as a  
5           potential source of information in the so-called  
6           prior information that's used in those models.

7       MR. ROSENBERGER: If I could add to that, really what  
8           we're trying to do is not dissimilar to the  
9           weather forecasting. So if somebody tells you  
10           that you know what's going to happen in a month or  
11           six months from now, that's really what you're  
12           getting from the pre-season forecast. And we add  
13           to that as we move through the -- through time.  
14           And so once we get into April and May, we start to  
15           get some in-season information that's added from  
16           the sea surface temperatures, and so that gives us  
17           an idea about variability around the -- the  
18           timing. First we'll see the Early Stuart  
19           information, then by June we get the Chilko and we  
20           can relate that to the four stock groupings. We  
21           also look at the snow pack information as we work  
22           our way through.

23           So when you're putting the pre-season  
24           forecast together, which is generally in  
25           November/December timeframe, we'll get the snow  
26           pack information updated monthly. And so you're  
27           adding to that information. And as you work your  
28           way through, you get into the in-season data, and  
29           now you start adding from your test fisheries and  
30           it's all built into the model now, in the process  
31           that the Salmon Commission has operated under the  
32           new model, the Bayesian statistics that Jeff just  
33           referred to.

34           So it's, you know, as you move through time,  
35           you're adding more pieces of information that  
36           allow you to be more accurate. But when you're  
37           looking out six months, you're probably not as  
38           accurate as you are when you're looking two or  
39           three days, and you have more information in it.

40       Q           And that weather forecasting metaphor has been  
41           used in this Commission. I'm going to put it to  
42           you, though, that the forecasting is so woefully  
43           inadequate that had a stakeholder group returned  
44           -- or, sorry, a stakeholder representative  
45           returned from the IHPC meetings in November 2008,  
46           where the Salmon Outlook document was first  
47           tabled, as I understand your evidence, Mr. Grout,

1 if those stakeholder reps had gone back to their  
2 groups with that information, it's not simply a  
3 matter that it would not have been inaccurate, it  
4 would have woefully misled anyone who was actually  
5 making fisheries planning -- their own fisheries  
6 planning decisions. Would you accept that?

7 MR. GROUT: Well, I can say in the past there has been  
8 a tendency for some to really focus on a  
9 particular slice through the distribution. So  
10 maybe a focus on the 50p level, or levels above or  
11 below that, and to the extent that those -- the  
12 midpoint or some other value in the forecast is  
13 not actually materialized, is not particularly a  
14 fault of the forecast. It's -- there's a range of  
15 possible outcomes that can occur.

16 Q I'm instructed by my clients that nobody who's  
17 actually fishing relies on any pre-season  
18 forecasting, whether it's the Salmon Outlook or  
19 Pre-Season Forecast. We have heard testimony  
20 though, and Mr. Lapointe said he does actually get  
21 phone calls from I believe he mentioned commercial  
22 -- like large-scale commercial harvesters. Have  
23 either of you received phone calls from industry  
24 groups, First Nations groups, asking you about  
25 forecasting prior to January of the -- of the year  
26 in question? Are they still relying on the  
27 information that you give them?

28 MR. ROSENBERGER: We still get a considerable amount of  
29 interest in the forecast. Without -- a lot of  
30 people are -- some of their forecast -- some of  
31 their information is more trying to understand how  
32 far off it is from the specific point. The -- one  
33 of the things we've tried to do in recent times is  
34 to get a better understanding across to people  
35 that it is a probability distribution, and so when  
36 we've had -- and some of the questioning this  
37 morning is, you know, why don't you use the -- in  
38 the case of the 2009, the 75 percent probability,  
39 which is now the 25 percent, or the p25, the way  
40 they describe it differently, but be more cautious  
41 in the forecast. So people are clearly putting a  
42 lot of energy in trying to influence the  
43 Department on which of the probability points that  
44 they want us to use in our modelling.

45 I think what people are learning over time is  
46 that it is a range that you're getting as the  
47 information and as important as whatever the

1 number is, which I would argue more and more the  
2 users are less interested in, but they're more  
3 interested in trying to understand the relative  
4 timing of the stock groups, or a given stock of  
5 interest to them, and the relative magnitude  
6 between those different populations. So it helps  
7 to define for people the -- you know, where the  
8 conservation concerns might be in their mind, or  
9 where the harvesting opportunities might be.

10 If you have as in 2009 where almost all of  
11 the expected return was in one of the groups, then  
12 it does help you to focus in your discussions and  
13 planning around what would you do with the Early  
14 Stuart group, or the Late group, and so in this  
15 case, you know, Early Summers potentially should  
16 have had some maybe more discussion with them.  
17 But it allows us to have that discussion and get  
18 to, you know, what are the principles or rules  
19 we're going to use in, you know, protection and/or  
20 towards harvesting and make some trade-offs,  
21 whether it's, you know, the 10/10 rule people are  
22 talking about, or 20 percent exploitation on  
23 Lates.

24 So whether you get the right number in the  
25 forecast, if you get some of those different  
26 variables out into play where people can have an  
27 informed discussion and hopefully come to  
28 consensus around, you know, what principles or  
29 rules we're going to use moving forward, I think  
30 that's probably the biggest value we get from this  
31 at this stage.

32 Q Would it be helpful if DFO did more work to  
33 educate the stakeholder groups to precisely what  
34 you've just described to us, that is, what you  
35 expect them to be taking from these documents,  
36 whether it's the Salmon Outlook or the Pre-Season  
37 Forecast, and would it be helpful to call them  
38 entirely different things, so that there is not  
39 this expectation of some sort of reliability?

40 MR. ROSENBERGER: We're open to any good ideas. We do  
41 spend quite a bit of time talking about that it's  
42 probability distribution, that there's a high  
43 degree of uncertainty, that, you know, there's --  
44 it's the, you know, some of the other factors that  
45 I just described that we want -- we want to focus  
46 on what are the issues going to be in the  
47 management, whether the run's really large or

1 small, or one part of it or another part comes  
2 back different than you expect. We don't actually  
3 spend a lot of time saying the run's going to be  
4 10 million or 11 million, now what are going to  
5 do. We get into whatever those details are that  
6 we need to be spending the focus on and not  
7 whether it's 10 versus 2 or whatever that might  
8 be.

9 Q But correct me if I'm wrong, and I think, Mr.  
10 Grout, you spent some time looking at the Salmon  
11 Outlook document last week, probably Monday. Even  
12 within that Salmon Outlook document, the relative  
13 abundances of the stocks was incorrect when it was  
14 -- when it was looked at post-season. Wasn't  
15 there an expectation, for example, that the Early  
16 Stuarts would be one -- or Summers would be  
17 reasonably abundant, they weren't, and I believe  
18 there were a couple of Late run stocks that were  
19 expected to be low that were actually surprisingly  
20 high. You talked briefly about Harrison and  
21 possibly Cultus. Am I correct that the -- even  
22 the relative abundances of the stocks was  
23 incorrect.

24 MR. GROUT: Yeah, the outlook itself is intended to  
25 provide a categorical outlook on the populations  
26 using a scale of 1 to 4. That information is  
27 updated with the -- the forecast information. And  
28 to the extent that we can, we're trying to  
29 communicate as a Department the uncertainty  
30 associated with these forecasts, and the potential  
31 ranges of returns.

32 In the recent Forecast Paper in 2010, there  
33 were some different graphical ways to try and show  
34 the potential for the different returns, but I  
35 think we can continue to try and explore ways to  
36 get people from fixating on one particular slice  
37 through the distribution or one fixed number,  
38 because we need to make it clear there is quite a  
39 wide range on some of these forecast abundances.

40 Q This may be a difficult question to answer,  
41 because it's going to require you to sort of think  
42 back over your annual cycle of planning. But of  
43 the individuals, teams, and these committees that  
44 we've discussed, involved in harvest planning and  
45 management over the calendar year, are either of  
46 you able to say, and again I'm not trying to catch  
47 you out here, but just in a general estimate of

1           what percentage of effort is spent during the pre-  
2           season period from January to May.

3       MR. GROUT:  Sorry, I'm not sure I understand the  
4           question.  What percentage of our effort is spent  
5           on which?

6       Q       What percent of time -- aggregately, what  
7           percentage of time and effort is spent of all the  
8           DFO staff and Science members and the committees  
9           we've discussed that are involved in the harvest  
10          planning and management process, what percentage  
11          of the effort is spent in the January to May pre-  
12          season period?  Would you be -- so if we divide  
13          the year into 12 months, would the January to May  
14          period represent five-twelfths of the total time  
15          and effort spent on harvest planning during that  
16          year?

17       MR. GROUT:  Boy, that's a tough question to answer.  I  
18          don't have specific data that I could use to  
19          answer that for you, I'm sorry.

20       Q       Do you --

21       MR. ROSENBERGER:  It tends to be much more effort-  
22          intensive in the summer in-season when you're  
23          getting new information, at least twice weekly and  
24          sometimes more often.  So there's many more  
25          meetings and much more effort required by staff  
26          pretty much from late June, early July, through  
27          till these runs are over, in the mid to late  
28          September, normally.  So that would be the most  
29          intensive period.  And there's probably the least  
30          amount of energy goes into -- overall it's sort of  
31          October to Christmas, where you're collecting up  
32          data and trying to -- to finalize, but there's  
33          limited number of meetings that are called at that  
34          timeframe.  So you get more back into the meeting  
35          cycle and trying to produce new data in the  
36          January to May period.  So I would say it's sort  
37          of three levels:  most intense in the summer,  
38          least intense into the fall till Christmas, and  
39          sort of in the middle in the January to May  
40          period.

41       Q       That's very helpful.  And given that level of  
42          effort, is the effort apportioned in a helpful  
43          way, given the shortcomings, as we've just  
44          discussed today and in the last week of the pre-  
45          season forecasts?

46       MR. ROSENBERGER:  Well, the -- changing the forecast  
47          and improving its reliability, or essentially what

1           you'd hopefully gain is reducing the range of  
2           potential information from some additional pieces  
3           of information, if you had that, would be helpful.  
4           But the bigger part that we need to spend time on  
5           in the pre-season is some of the items that, you  
6           know, we were discussing there just a few minutes  
7           ago, and that is trying to understand where is it  
8           that you anticipate or have experienced something  
9           that's different than the forecast, where some  
10          people do get quite focused.

11          So if you're going to have like an '09, some  
12          of the lowest returns recorded, and the rate of  
13          return some of the lowest ever recorded, what is  
14          it you need to do? And in some cases like that  
15          one, if you haven't experienced it, you might not  
16          be thinking about it. But I think between that  
17          year and 2010, it's creating much more discussion  
18          at the broader ranges of potential returns for  
19          some people, and it's raised a number of issues,  
20          and in particular around the specific outcomes  
21          from the escapement models that we're using.

22          So I think it's places like that that we need  
23          to focus more and get to the principles or the  
24          rules that we will use to make decisions in-  
25          season, potentially away from some of the -- the  
26          specific -- the very specific decision type rules  
27          that are in some of the IFMP today, and more into,  
28          you know, principles and guidance that will help  
29          you to work your way through unforeseen  
30          circumstances, because it's never exactly as the,  
31          you know, ratio of stocks and abundances and  
32          timing that you expect.

33          Q       Now, Mr. Lapointe described the change in the 2010  
34          methodology as a paradigm shift, and he also  
35          suggested that because of that, it was going to be  
36          difficult to say whether the -- the new method of  
37          forecasting and dealing with harvest planning,  
38          fisheries management generally, it was going to be  
39          difficult to assess that for a few years. Do both  
40          of you agree with that assessment? And the next  
41          part of that question is do you expect the model  
42          as it's set for 2010 and continuing to become more  
43          reliably predictive?

44          MR. ROSENBERGER: First off, in 2010 what they did was  
45          added three models to the suite of potential  
46          models that are used in the forecasting. With  
47          hind-casting they take a look at how effective

1 each one of them has been under the various  
2 scenarios of what they've seen over the last few  
3 years. So what we had was a generally declining  
4 trend in productivity, which is why we decided to  
5 truncate the dataset and use a four-year model and  
6 a eight-year model as the primary differences that  
7 occurred.

8 Whether because of the changes we saw in  
9 2010, the Science folks will review and say that  
10 maybe there's something else out there that we  
11 need to know, and then they would go back to a  
12 different model than one of those ones, is hard to  
13 say. They haven't changed the use of all of the  
14 stocks to one given model, as was discussed a  
15 little bit last week. Stocks like the Harrison  
16 and the Adams/Shuswap stock for example, have not  
17 shown a big change in their productivity trends,  
18 so in those cases they're still using the long-  
19 term models with the full dataset.

20 So I think the point that the Science people  
21 are trying to do is bring more of the -- any  
22 indicators they can from the marine side of things  
23 into play as to which models they might want to  
24 use if they can see that there's an indicator  
25 earlier that -- that there's something that's  
26 changing. And as Jeff pointed out, if you look at  
27 the 2009 or 2010 document, Forecast documents,  
28 you'll see there's a little grid in there with  
29 red/yellow/greens and they're looking at six or  
30 seven marine variables at this stage, and  
31 unfortunately they're not showing the same trend  
32 lines as the returns are. If they're often  
33 looking poor, what people think is poor, which is  
34 generally around warmer conditions, it hasn't  
35 necessarily translated into poorer returns, and  
36 Chilko is the indicator stock that we have from  
37 the suite of sockeye populations in the Fraser.  
38 So there's probably another different variable  
39 needs to be assessed or somehow figuring out to  
40 weight those in the information.

41 Q Who made that decision to add those three models  
42 in 2010?

43 MR. ROSENBERGER: In the discussions in 2009 and going  
44 into the season, there was talk about trying to  
45 make some changes at that time, and unfortunately  
46 we didn't have enough time available to try to get  
47 some of that together, at least in some of the

1 ways they wanted to. So I think the credit goes  
2 to Sue Grant, who is the primary author in trying  
3 to understand some of the shortcomings and which  
4 she's working on, but myself and others encouraged  
5 her to try to bring this together in a timely  
6 fashion, so that we could use this moving forward.  
7 And we made contacts, or she did, with people like  
8 Dr. Peterman from SFU, who spent some time in  
9 looking at different predictive models. So the  
10 credit goes to Sue, but there's -- there was a  
11 wide consensus that we needed to look at new  
12 forecasting tools.

13 Q And just so I understand it properly, Ms. Grant  
14 had -- or those discussions had started prior to  
15 the forecasting cycle for the 2009 year, but just  
16 hadn't been able to be implemented?

17 MR. ROSENBERGER: The work on trying to develop the new  
18 models, I think the idea of a concept of doing  
19 that had some discussion, but the work on trying  
20 to prepare new models and do the work required was  
21 really started in the summer of 2009 to try to get  
22 it ready, and it's why there was a delay in the  
23 forecasting. It -- they couldn't get all that  
24 work done by November of '09, which would normally  
25 have been the time we would have expected to see  
26 the 2010 forecast out. So it didn't actually  
27 occur until March of 2010.

28 MS. BAKER: Mr. Commissioner, I don't want to interrupt  
29 my friend if she's got -- but we are bringing Sue  
30 Grant in to talk about forecasting and all the  
31 models, so maybe you can just bear that in mind as  
32 you ask your questions.

33 MS. SRIVASTAVA: Oh, absolutely.

34 MS. BAKER: She'll be here to deal with all those  
35 details.

36 MS. SRIVASTAVA: Yeah, I thank my friend for that. I'm  
37 aware that she is coming in and I did just want to  
38 identify who -- who the person was responsible for  
39 it.

40 Q Mr. Grout, do you agree with Mr. Lapointe's  
41 description of the -- of this change in the 2010  
42 model as a paradigm shift? Because to me paradigm  
43 shift means a quite fundamental change in how we  
44 think about a scientific model. Whereas what Mr.  
45 Rosenberger and you have described over the past  
46 week sounds to me more like introducing non-  
47 radical, but perhaps helpful variations to the



1 model.

2 MR. GROUT: Yeah, I'm not sure whether I would call  
3 that a paradigm shift or not, but it was a  
4 substantial change in the methodology that  
5 warranted a review of the methods and development  
6 of a new research paper. Had it been something  
7 less substantive than that, then I would have  
8 expected the paper would have just been produced  
9 as a Science Advisory Report, which is a much  
10 shorter application of previously approved  
11 methods.

12 Q And although this was quite a new way of thinking  
13 about it, it was able to be incorporated into  
14 FRSSI, which had in fact been under development  
15 for some eight years prior to 2009; is that right?

16 MR. GROUT: Yes. This is one of the elements that was  
17 considered in the sensitivity analysis work that  
18 was done for the spawning initiative model.

19 Q Now, Mr. Rosenberger, last week I had a note that  
20 you told us the consultation phase, so the pre-  
21 season consultation phase, involved about 40 to 60  
22 meetings with different First Nation groups. Is  
23 that the right number?

24 MR. ROSENBERGER: That's the number that I used. I  
25 haven't sat down trying to count them all up, but  
26 I could describe in some detail where they all  
27 exist, if you would like me to go through some of  
28 the lists, and you could do some math.

29 Q I don't need that level of detail, but I want to  
30 make sure I understand your explanation of that,  
31 as well. Part of it was because the different  
32 groups -- there were two reasons, I think you put  
33 forward. One was that different groups have very  
34 different technical capabilities, technical  
35 capacity, let's say, to their level of involvement  
36 in a consultation. And another reason was that  
37 for many of the groups, they are only representing  
38 themselves. So they're not able to interact with  
39 DFO at a high level of representation in the same  
40 way that, let's say, a commercial fishers group or  
41 the sports fisheries groups are able to. Is that  
42 fair to say?

43 MR. ROSENBERGER: I don't think I'd describe at the end  
44 -- at the end there how the -- the technical and  
45 understanding capacity of groups varies  
46 considerably. Some of them are very small, but  
47 they have very highly trained people, or in some

1 of the First Nations their traditional ecological  
2 knowledge, they've spent considerable effort on  
3 trying to bring some of that together. So I don't  
4 think just because of the size of the group is  
5 defining their general capacity.

6 The meetings that we have, there's -- there's  
7 four key processes between the recreational,  
8 commercial and First Nations, and each one of  
9 those has four significant meetings at the broader  
10 scales, and then there's four meetings at the  
11 Integrated Harvest Planning Committee. So that's  
12 largely the 16 significant sessions that are  
13 happening, and now there's one or two interactions  
14 between the Marine Conservation Caucus and the  
15 Department. Below that in prepping for those,  
16 there's a number of technical meetings that occur  
17 with the recreational in particular, and First  
18 Nations. There's bilateral meetings with First  
19 Nations and there's the -- like every Thursday  
20 throughout the summer -- there's a session of  
21 First Nations with the Department every Tuesday, I  
22 think it is, or Thursday there's all the  
23 commercial guys with the Department. There's a  
24 lot of bilateral meetings with -- what are  
25 sometimes referred to as their fisheries operation  
26 groups from some of the First Nations, and then  
27 there's local sports fishing meetings. So I don't  
28 know if that helps to -- but their technical  
29 capacity varies by group and by organization.

30 Q Again I'm trying to get the sort of broad picture.  
31 In comparison to the First Nations groups with the  
32 numbers of bilateral meetings, as well as some  
33 other group meetings and then finally the IHPC  
34 meetings, of the other groups, the commercial  
35 fishers, sport fishers, and the Marine  
36 Conservation Caucus, approximately how many  
37 meetings would you have with those groups? You've  
38 described as far as I can tell, you said four  
39 significant meetings of each sector, plus four  
40 with the IHPC, and then somehow we got to 16. So  
41 maybe you can just run me through that again.

42 MR. ROSENBERGER: The IHPC generally has four planning  
43 meetings a year. The Commercial Salmon Advisory  
44 Board has three to four meetings a year. The  
45 Sports Fish Advisory Board tends to have four  
46 meetings a year, of which for the Fraser salmon,  
47 the Fraser sockeye and pink, some of those are the

1 Southern -- Southern Board or Panel, they call it,  
2 versus the main Board. And then the First Nations  
3 in their Forum on Conservation, Harvest and  
4 Planning has four planning sessions collectively  
5 together. The -- so the sports fishermen, there  
6 are -- there's probably eight or nine local groups  
7 that interact with the Department along the  
8 migration of Fraser sockeye. Most of those groups  
9 would meet two or three times in a year. They  
10 might not always be meeting or discussing around  
11 Fraser sockeye, but it's one of the items that  
12 they may be in discussions with. Those local  
13 committees have meetings and they send  
14 representatives to the Southern Board, or Southern  
15 Panel, which meets, as I mentioned, a couple of  
16 times a year. So and then within the Sports Fish  
17 Advisory Board, they have a Sockeye/Pink Working  
18 Group in the South Coast, which meets every  
19 Tuesday throughout the summer to plan for issues  
20 that might affect them, as we get through the  
21 Panel process. And they often meet a couple of  
22 times in the pre-season to work through specific  
23 issues.

24 Is there more groups you were looking for?

25 Q No, I'm -- I am a little flabbergasted at the  
26 number of meetings. And I suppose one of my  
27 questions is, would it be a helpful accommodation  
28 from DFO's perspective if the First Nations groups  
29 with whom you meet bilaterally and individually  
30 all represented themselves through the First  
31 Nations Forum in a similar pattern to how the  
32 commercial and the sports fishers do and, sorry,  
33 and the Marine Conservation Caucus. I'm not  
34 asking if it -- if you think they -- if you think  
35 it's possible, because I understand that they will  
36 speak through their council for their reasons.  
37 But from the DFO perspective, would it be a  
38 helpful accommodation if the First Nations Forum  
39 acted in a fully representative capacity?

40 MR. ROSENBERGER: I think representativeness is a key  
41 to moving forward on any of the processes that  
42 we're trying to work on, no matter which group is  
43 -- we're discussing about.

44 Q All right. Now, sticking with the First Nations  
45 Forum, I understand it has not been in place for  
46 very long, about four years; is that correct?

47 MR. ROSENBERGER: That's correct.

1 Q And you said that all of these groups, the First  
2 Nations Forum, as well, is able to provide  
3 technical as well as management input to DFO; is  
4 that correct?

5 MR. ROSENBERGER: The -- bilaterally we contact all the  
6 groups so that they have that opportunity if they  
7 don't want to participate in the Forum.

8 Q Now, do you recall in any previous year, 2009 or  
9 any previous year, any specific technical input  
10 from any of the stakeholder representative groups  
11 that directly affected the Department's pre-season  
12 forecast? So I'm thinking of something as direct  
13 as a stakeholder group coming to say -- one of  
14 these meetings, saying you're just wrong about  
15 this stock, or about this run. Do you recall  
16 anything like that happening in the last few  
17 years?

18 MR. ROSENBERGER: Many groups come forward and tell us  
19 that our forecasting is not accurate.

20 Q But do they -- do they then provide you with a  
21 number that -- that amends your forecast? Is  
22 their input actually taken in and said, well, they  
23 have this wealth of knowledge, whether it's from  
24 the conservation perspective, the First Nations  
25 perspective, or any other perspective, and we will  
26 amend our pre-season forecast in response to that.

27 MR. GROUT: And the opportunity for the various groups  
28 to provide that advice to us is when the Forecast  
29 Paper is reviewed at -- previous at PSARC or our  
30 CSAP process, when the Paper is adopted. I can  
31 recall different perspectives for different stocks  
32 being provided at those meetings. I can  
33 specifically recall Mike Lapointe attending those  
34 meetings and providing advice on behalf of the  
35 Pacific Salmon Commission, as well as I believe  
36 others have done the same thing at some of those  
37 meetings in the past, as well. In addition, we  
38 have independent peer reviewers also providing  
39 their views and advice on developing in the  
40 forecast.

41 I can't recall specific advice provided or  
42 suggested to us that was accepted to change the  
43 forecast after it's been approved in the Paper.  
44 But we have had advice provided around adopting a  
45 different p level in the forecast for pre-season  
46 planning purposes.

47 Q And have there been instances you can recall where

1           that advice about changing the p level has been  
2           accepted and incorporated?

3       MR. GROUT: We did look at doing that in the 2009  
4           period. I believe that advice may have been  
5           reflected in the Science Review Paper though, as  
6           well, to use the 75p forecast level for -- at the  
7           time for Early Stuart sockeye.

8       Q     Now, I understand as well, that although the First  
9           Nations Forum has not been in existence for very  
10          long, one of the things that it generated was some  
11          interaction between Interior and Coastal First  
12          Nations groups, that perhaps had not been so  
13          formally organized before. Is that fair to say?

14      MR. ROSENBERGER: That's correct.

15      Q     Other than that, however, is there any formal  
16          forum, for lack of a better phrase, that  
17          encourages direct interaction between First Nation  
18          groups collectively or individually, and  
19          commercial fishers groups and sport fishers  
20          groups, or am I right in saying that their  
21          positions of those sectors are communicated to  
22          each other generally through your Department?

23      MR. ROSENBERGER: Well, the Integrated Harvest Planning  
24          Committee is a forum to bring all of the groups  
25          together to exchange views on their issues and try  
26          to seek compromise. There has been processes like  
27          the Salmon Table, it was called, where commercial  
28          and -- commercial and First Nations initially, but  
29          I think the Marine Conservation Council and sports  
30          groups joined in, and trying to deal with issues  
31          like Cultus. And in the Interior over the years  
32          we've had groups that were -- one of them was  
33          called the Thompson -- I can't remember now, it's  
34          not in existence today. It ended a few years ago.  
35          But the recreational community from the  
36          Thompson/Shuswap area was working with the First  
37          Nations on a number of issues, trying to seek  
38          compromise and trying to work their way through  
39          some of their issues. So those types of things  
40          have occurred sporadically. And then the IHPC is  
41          designed specifically for that task.

42      Q     And from your perspective from within DFO, is it  
43          preferable to have those kinds of direct  
44          interactions arise spontaneously, as you've  
45          described, and perhaps sub-regionally, or is the  
46          IHPC the best model for that, from your  
47          perspective?

1 MR. ROSENBERGER: I think it's good to solve as many  
2 issues locally as you can, but somebody has to  
3 bring those issues then to the broader group to  
4 try to incorporate them, if they have impacts on  
5 others. So sometimes they do. There's places  
6 where, you know, you might get a compromise on  
7 escapement objective in some portion of the Fraser  
8 that may not be in the same interests of another  
9 portion of the Fraser, but I think anywhere that  
10 you can bring people together, structured or  
11 otherwise, that helps to solve those is good, but  
12 you have to have some organizing focal place, I  
13 think, for us to get the IFMP out.

14 MS. SRIVASTAVA: Thank you. And just for my friend,  
15 Commission Counsel's assistance, I have a couple  
16 more questions, but I think I'll finish by 3:00,  
17 before the break.

18 Q Mr. Rosenberger, I think it was you that said that  
19 sometimes the First Nations groups had not  
20 separated out food, ceremonial and -- fishing from  
21 economic fisheries. I wasn't quite clear whether  
22 you meant that they didn't separate out estimates  
23 of what was required or desired pre-season, or did  
24 you mean that they didn't separate those two types  
25 of fisheries out in catch reporting?

26 MR. ROSENBERGER: No, catch reporting --

27 Q Or both, perhaps.

28 MR. ROSENBERGER: I'm not certain of the statement. So  
29 the fisheries are all separate in their -- in  
30 their operations and in the accounting, with a few  
31 small exceptions, the Department is reviewing or  
32 piloting what's called dual fishing. So this is a  
33 case where there could be First Nations out that  
34 are commercially fishing and part of their catch,  
35 they are retaining it for FSC purposes. So the  
36 last year I think we licensed two vessels to do  
37 that in the seine fishery in the Johnstone Strait  
38 area, and the demo fisheries, at least in Kamloops  
39 Lake, also were piloted in that kind of a concept.

40 Q And then I think, Mr. Grout, you had mentioned in  
41 your testimony last week that last year there was  
42 some mandatory landing and dockside monitoring of  
43 First Nations economic fisheries done for the  
44 first time last year; is that correct?

45 MR. GROUT: As I indicated that those programs were in  
46 place, but the Department's been working on having  
47 those programs for economic opportunities for some

1 time, so last year was not the first year when  
2 that occurred. We also had those programs in  
3 place for individual transferable quota fisheries  
4 for Area B and H, as well, in the commercial  
5 fleets.

6 Q All right. So it isn't something that was -- had  
7 not been done at all in the past and was only done  
8 last year, it's been in development for some time,  
9 is that...

10 MR. GROUT: That's correct.

11 Q Now, Mr. Rosenberger, I got the distinct  
12 impression last week that you had a slight  
13 preference for terminal fisheries. Is that fair  
14 to state or am I overstating your view?

15 MR. ROSENBERGER: I think there's value in having  
16 terminal harvest in the -- given the differences  
17 in productivity of the different stocks coming  
18 back to the Fraser, so we're in an area -- we're  
19 in a system like the Fraser, where you have such  
20 large variability in the returns, the timing, and  
21 the general productivity, where the stocks are not  
22 consistent, that Canada has been foregoing  
23 considerable catch even in some of the lower years  
24 recently, and so I think opportunities to try to  
25 utilize that foregone catch which probably can  
26 only be done terminally, I think is -- is very  
27 viable to try to work on.

28 Q Isn't it possible, Mr. Rosenberger, that it's  
29 simply a shifting and a movement to a different  
30 risk area, so as I understand it, the -- the  
31 reason for not allowing large impact fisheries  
32 seaward of Mission is that you're not sure when  
33 the peak is, and so you're not sure if you're  
34 dealing with an average run, but could be early,  
35 or actually a fantastic run could be at the time  
36 that it's expected. But you have testified as  
37 well that large escapements to the spawning  
38 grounds can decrease productivity. So I'm just  
39 not quite understanding. It seems to me to be two  
40 quite different risk factors, and you're simply  
41 shifting risk from one area -- not geographical  
42 area to another, but different type of risk to the  
43 salmon.

44 MR. ROSENBERGER: Which is if you are not going to  
45 harvest all of the available strong stock in a  
46 mixed stock fishery and you move a bit more  
47 terminally, then that's the reason, in my view,

1           that you -- one of the reasons that you would look  
2           and try to have a more terminal harvest, because  
3           you have that abundance that you could hopefully  
4           separate from some other weaker population. So if  
5           you can make that move, then that allows you to  
6           access that -- a further portion of that fish.

7           Q     And one of the consequences of that, that  
8           preference, or to shift to terminal fisheries,  
9           necessitates a quite drastic reduction of  
10          everything except for low impact fisheries seaward  
11          of Mission. Is that fair to say?

12         MR. ROSENBERGER: You have to reduce the mixed stock  
13         fishery and so if your -- if your harvest  
14         objectives is trying to maintain the broadest  
15         number of populations and biodiversity, then  
16         you're shifting towards whatever those weaker  
17         populations might be, or less productive  
18         populations might be, and so that's making that  
19         mixed stock fishery line up with that level of  
20         sustainable harvest. On the more productive  
21         populations is where those fish are moving, then,  
22         past that stock. And Cultus is a key example,  
23         where for many years we maintained the population  
24         -- the exploitation rate on the Lates as an  
25         aggregate, and to the detriment of Cultus  
26         population.

27         Q     Do you accept that if you reduce or delay seaward  
28         fisheries till the peak has passed Mission, you  
29         are affecting all fishers from every sector who  
30         have traditionally or historically fished on the  
31         seaward side of Mission.

32         MR. ROSENBERGER: If you delay the fisheries, you would  
33         be, yes.

34         Q     And that that shift in fisheries management  
35         affects those groups disproportionately, compared  
36         to those groups that fish on the inland side of  
37         Mission.

38         MR. ROSENBERGER: It can, which is why the Department  
39         is trying to buy out some of those licences and  
40         move that harvesting capacity to where the shift  
41         potentially could occur.

42         Q     And, Mr. Grout, do you have anything you want to  
43         add about the preference for terminal fisheries?

44         MR. GROUT: No, I can just maybe add to what Barry  
45         said, in terms of the Fraser sockeye spawning  
46         initiative work, we're developing harvest rules  
47         for aggregates of populations. It may well be



1 true that some of the more productive populations  
2 could have been harvested at a higher rate than  
3 was identified by the particular harvest rule,  
4 which might identify the potential for a more  
5 terminal opportunity to harvest the difference on  
6 those stocks. In terms of the way we've been  
7 managing to date in moving harvest inland, we have  
8 been using licenses purchased from the existing  
9 commercial fishery and moving an equivalent share  
10 associated with those licenses to the inland area,  
11 at least in the demonstration fisheries we've done  
12 so far.

13 MS. SRIVASTAVA: Thank you. And, Mr. Commissioner, it  
14 is just after 3:00, but I have one more question,  
15 so if I may finish then and it would be a natural  
16 time to take the break, or would you like to take  
17 the break?

18 THE COMMISSIONER: No. Go ahead.

19 MS. SRIVASTAVA: It's a short question.

20 Q Gentlemen, I'm sure you're tired of the  
21 Ministerial briefing note and the handwritten  
22 note. I do have one question about it. Mr.  
23 Grout, you were on the c.c. list. I wasn't quite  
24 clear from your testimony whether you actually  
25 recall seeing the handwritten note, that we assume  
26 is from the Minister, at the time. I think you  
27 may have said that you generally don't follow  
28 those things once you've sent it off to Ottawa.  
29 But do you recall seeing that note before these  
30 hearings?

31 MR. GROUT: In terms of the way the system works that  
32 tracks these briefing notes, it's called MECTS, M-  
33 E-C-T-S, and it tracks how the note is actioned  
34 through the Department and signed off at the  
35 various levels. I typically do the briefing for  
36 the Director of Fisheries and Aquaculture  
37 Management, and I have also briefed the RDG on  
38 that note in the past. For me to see the feedback  
39 on those notes, I'd have to go back in the system  
40 at a later date to find out when it had been  
41 signed off and get a copy of that.

42 In the case of that note, I did look for the  
43 signed-off copy. It's something I regularly do  
44 for the IFMP note, because that gives us the  
45 indication that the Minister has approved the  
46 Integrated Fishery Management Plan and we can move  
47 ahead with posting of the Plan on our Internet

1 site and letting our clients now that it's been  
2 approved. So I regularly do check for that note  
3 in particular to make sure it's signed off.

4 Q So your recollection is that you -- you would have  
5 and did check for the approval, but do you have  
6 any specific recollection of seeing her  
7 handwritten addition?

8 MR. GROUT: Yes, I would have seen that on the note, as  
9 well.

10 Q And you've both been quite clear that it's your  
11 view that the commercial opportunities and  
12 commercial sector form part of the Plan. My  
13 question to you is would you accept that the  
14 Minister's note indicates that at least at her  
15 level, at the ministerial level, there could have  
16 been a better understanding of the objectives of  
17 the IFMP, and how they were all being achieved?

18 MR. GROUT: It's a good question, but I'm not in a good  
19 spot to comment on that, given that I don't  
20 regularly or have never participated in any of the  
21 briefings that occur in Ottawa on the note.

22 Q Going forward, having that little handwritten note  
23 sort of tucked away in your head, because you're,  
24 as I understand it, responsible for preparing  
25 those briefing notes, do you think you will be  
26 doing more to try to explain those objectives so  
27 that you -- not so that you don't get notes from  
28 the Minister, but so that you're confident that  
29 right up to and including her level or his level,  
30 there is a better understanding of the objectives  
31 and how they are all addressed and integrated into  
32 the Plan?

33 MR. GROUT: Well, I take advice from the RDG primarily  
34 on the structure and content of the note. You  
35 will see that it's quite a comprehensive note. It  
36 has a number of appendices summarizing the  
37 feedback we've heard from our stakeholders, as  
38 well as the conservation objectives affecting  
39 fisheries. And I didn't -- as a result of that I  
40 didn't have any specific direction on how the note  
41 should be changed in future going ahead.

42 Q Last question for both of you. Would you agree  
43 that Ministerial feedback is an important element  
44 of the process?

45 MR. GROUT: It's a key component in getting the salmon  
46 Integrated Fishery Management Plan signed off, and  
47 we require the Minister to sign off to approve the

1 Plans for salmon.

2 Q And, Mr. Rosenberger?

3 MR. ROSENBERGER: Yes.

4 MS. SRIVASTAVA: Thank you, those are my questions.

5 MS. BAKER: Mr. Commissioner, perhaps now we can we can  
6 take the afternoon break.

7 THE REGISTRAR: Can you tell me who is up next and what  
8 the time estimates are, please?

9 MS. BAKER: Yes. The next cross-examiner will be Lisa  
10 Fong for the Heiltsuk, and her estimate I think is  
11 40 minutes. And then we'll break for the day and  
12 start with Brenda Gaertner in the morning, whose  
13 estimate is 90 minutes. And Mr. Lowes for B.C.  
14 Wildlife had given me an estimate, but he didn't  
15 appear today, so I'm not -- I'll have to follow up  
16 with him at the end of the day and find out what  
17 his plans are. So it's possible he might be here  
18 tomorrow and following Ms. Gaertner, and I think  
19 that's the end of our questions.

20 MR. ROSENBLOOM: Do you have plans for tomorrow  
21 afternoon yet?

22 MS. BAKER: We have tried to in the hope that we would  
23 be done by the lunch break, tried to have another  
24 witness scheduled for the afternoon, and we were  
25 unable to get Ms. Grant, who seemed like a natural  
26 one to start with. She wasn't available, so we  
27 tried then to get Mr. Patterson to come, but he's  
28 not available, either, so I don't think we're  
29 going to be able to start in the afternoon  
30 unfortunately, if we do finish at lunch time or  
31 early in the afternoon.

32 MR. ROSENBLOOM: So then you would put over until  
33 Wednesday morning at 10:00 a.m.; is that correct?

34 MS. BAKER: Right. We will start at the scheduled time  
35 for Part 2, which would be Wednesday morning.

36 MR. ROSENBLOOM: Thank you.

37 THE REGISTRAR: The hearing will now recess for ten  
38 minutes.

39

40 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

41 (PROCEEDINGS RECONVENED)

42

43 THE REGISTRAR: The hearing is now resumed.

44 MS. BAKER: The next counsel is Lisa Fong for the  
45 Heiltsuk.

46 MS. FONG: Mr. Commissioner, Lisa Fong for Heiltsuk  
47 Tribal Council. My questions start with Mr.

1           Grout.  
2

3           CROSS-EXAMINATION BY MS. FONG:  
4

5           Q     Mr. Grout, you're aware that the Heiltsuk are  
6                 located in Bella Bella?

7           MR. GROUT: Yes.

8           Q     And Bella Bella is located management area 7?

9           MR. GROUT: Correct.

10          Q     The Fraser River sockeye salmon pass through the  
11                 area 7 waters heading south into Johnstone Strait,  
12                 correct?

13          MR. GROUT: They may do so in some years. I'm not sure  
14                 that they do it every single year.

15          Q     Would you agree that the Fraser River sockeye  
16                 salmon, they do pass by through -- I mean they --  
17                 they generally pass -- like in 2010, they passed  
18                 through area 7 to get to Johnstone Strait?

19          MR. GROUT: That might be a better question for Barry,  
20                 if he's got in-season information on that.

21          MR. ROSENBERGER: No, we don't -- we don't do any  
22                 regular sampling in that area. In the past when  
23                 we still had directed fisheries in the north  
24                 coast, we would have years at Purple Bluff, which  
25                 is just south of Bella Bella, where we would have  
26                 Fraser sockeye harvested and identified as Fraser  
27                 sockeye. But on a regular basis, we don't have a  
28                 sampling program in there. And in many years it  
29                 is -- for many years in the '70s, '80s, into the  
30                 '90s, it was open to commercial harvesting where  
31                 they could have taken the fish, had they been  
32                 present. And there's only a few years where it's  
33                 -- there's significant numbers.

34          Q     Okay. But you wouldn't dispute that the Fraser  
35                 River sockeye salmon could swim by, I guess,  
36                 through area 7 to get to the Johnstone Strait  
37                 where the test fishing happens?

38          MR. ROSENBERGER: They could and they do in some years.

39          Q     You're aware, Mr. Grout, that the Heiltsuk have an  
40                 FSC allotment under their AFC agreement?

41          MR. GROUT: I'm not aware of the specific FSC amounts  
42                 for the Heiltsuk, no.

43          Q     But you're aware that they do have an FSC  
44                 allotment under their AFC agreement?

45          MR. GROUT: I'm not sure what the amounts and for which  
46                 species would be, no, I'm sorry.

47          Q     Right. So I'm not asking you about the amount but

1           you're aware they have an allotment of some sort?  
2 MR. GROUT: I would expect, yes.  
3 Q       Okay. We've heard during this part of the hearing  
4       a lot about the IFMP with respect to southern  
5       British Columbia. You're aware there's an IFMP  
6       for northern British Columbia, correct?  
7 MR. GROUT: That's correct.  
8 MS. FONG: Okay. And Mr. Lunn, if you could just pull  
9       up the IFMP for the north, please?  
10 Q       Okay. And Mr. Grout, that's the -- just to  
11       confirm, this is the IFMP for northern B.C., the  
12       cover page at least?  
13 MR. GROUT: That's correct.  
14 Q       Okay. And the northern IFMP covers management  
15       area 7?  
16 MR. GROUT: Yes, it does.  
17 Q       Okay. I'm just going to ask a question -- a few  
18       questions about the creation of this IFMP because  
19       we focus mostly on the creation of the south IFMP  
20       and I don't know if they're the same or not. So  
21       for example, with the south, I believe it was your  
22       testimony that there are four IHPC meetings. Is  
23       that the same thing with the north as well?  
24 MR. GROUT: The IHPC is comprised of northern and  
25       southern representatives. At three of the four  
26       IHPC meetings I referred to, the northern and  
27       southern representatives meet together. In the  
28       fourth meeting, the southern and northern  
29       representatives meet separately.  
30 Q       And for the northern IFMP, there's also bilateral  
31       meetings with, for example, groups like the First  
32       Nations?  
33 MR. GROUT: That's my understanding, yes.  
34 Q       Okay. I'm sorry. When you say that's your  
35       understanding, do you -- you're not part of that  
36       coordination effort?  
37 MR. GROUT: Typically, the bilateral meetings between  
38       the department and the First Nations are organized  
39       by our staff in the areas' offices.  
40 Q       Okay.  
41 MR. GROUT: So that would be covered by north coast  
42       area staff.  
43 Q       But you're aware there are bilateral meetings  
44       because you assist in putting together the IFMP  
45       report for the north, as you do, with the south?  
46 MR. GROUT: That's correct.  
47 Q       Okay. And this particular IFMP north is like the

1 south IFMP in that it includes pre-season  
2 forecasting information?  
3 MR. GROUT: Yes, for some stocks and species identified  
4 in the plan.  
5 Q And like again the south -- the southern IFMP it  
6 includes a series of harvest management rules?  
7 MR. GROUT: Yes, the decision guidelines for the  
8 various fisheries in the north are identified in  
9 the plan.  
10 Q Okay. And just in terms of timing, I don't know  
11 if it follows the same timing as the southern IFMP  
12 in -- when it's finalized. So when does this  
13 report get finalized?  
14 MR. GROUT: The -- in the briefing note that goes to  
15 the minister for the approval of the IFMP covers  
16 both the northern and southern IFMPs at the same  
17 time.  
18 Q Okay. So they get finalized at -- at the same  
19 time they're delivered in to the public in like  
20 July, is it?  
21 MR. GROUT: It does vary from year to year but  
22 typically early July is when the -- the briefing  
23 material is -- has been signed off and the plans  
24 can be posted on our public internet site.  
25 Q Okay. And just to round that off, do the drafts  
26 of the northern IFMP follow that same timeline as  
27 the southern IFMP?  
28 MR. GROUT: Yes, we release the draft plans to the IHPC  
29 approximately one week prior to the meeting in  
30 March, which includes both the northern and  
31 southern representatives. And then also, the  
32 second versions are provided approximately one  
33 week prior to the meeting in May of the IHPC,  
34 which includes both northern and southern  
35 representatives.  
36 Q Is it fair to say that the northern and the  
37 southern IFMP, they compliment each other in  
38 providing a whole Integrated Fisheries Management  
39 Plan for the coast of British Columbia?  
40 MR. GROUT: Yes, they cover the -- the northern and  
41 southern management areas and the fisheries  
42 within.  
43 MS. FONG: Okay. Now, if we could go to page 76 of  
44 this IFMP for the north --  
45 MR. LUNN: Is that (indiscernible - microphone off).  
46 MS. FONG: Oh, sorry, 76 on the bottom. Sorry. 76 of  
47 107. No, that's not what it looks like on mine.

1 It should be paragraphs 5.3, "Communal Licence  
2 Harvest Targets". Above that. No, keep going.  
3 Right. Yes, that's it, 5.3.

4 Q Okay. I'm just going to read that first  
5 paragraph, and it's the last sentence I'm  
6 interested in. So under the heading, "5.3  
7 Communal Licence Harvest Targets":  
8

9 First Nations access to salmon for FSC  
10 purposes is managed through communal  
11 licences. These licences are designed for  
12 the effective management and regulation of  
13 First Nations fisheries through a negotiated  
14 series of mutually acceptable conditions  
15 wherever possible. The date, times and  
16 locations where harvesting may occur,  
17 acceptable gear types and other conditions  
18 are described in these licences.  
19

20 And here's the sentence I'm interested in:  
21

22 Communal licences can be amended in-season  
23 for resource conservation purposes or to  
24 increase access for FSC purposes, as needed.  
25

26 And my question, Mr. Grout, is, would you agree  
27 with me that's a harvest rule where a First  
28 Nations can apply to amend their communal licence  
29 in-season to increase access for FSC purposes?

30 MR. GROUT: I'm sorry. I was listening to you read and  
31 I'm not -- I just want to make sure I'm looking at  
32 the same document you are.

33 Q I'm looking --

34 MR. GROUT: The last sentence you had, had a phrase on  
35 the end, which I'm not sure that I followed.

36 Q Oh, this is the -- all right. This is most  
37 peculiar because my copy has an additional -- has  
38 a different sentence to it -- in it. Perhaps we  
39 can --

40 MR. LUNN: I also notice you had said "76 of 107" and  
41 this document has 101 pages. It says "69 of 101"  
42 on the current page. I think we're working with a  
43 different version.

44 MS. FONG: This is the -- sorry. Can we -- so the  
45 cover page -- just so we can clarify this. The  
46 cover page is "2010 to 2011", right? Oh, there  
47 you go. Okay. Mr. Lunn, are we able to locate

1           that or can I -- I've got the physical hard copy.  
2 MS. BAKER: Yeah, the CAN number that you sent to us is  
3           the one that you see on the screen. And they're  
4           done for one year not two years so there was some  
5           confusion in your letter. You said "2009 to  
6           2011". So anyway, this is the CAN number that you  
7           sent to us so I don't know.  
8 MS. FONG: So as a -- well, I guess as an option this  
9           is a document that I do need for my cross. I can  
10          present it to you today and continue tomorrow  
11          or...  
12 MS. BAKER: Does it have a CAN number on the bottom?  
13 MS. FONG: Yes. No, sorry, I don't see a CAN number on  
14          this one but it's the 2010 to -- "2010 to 2011"  
15          and we did retrieve it off Ringtail. So I'm in  
16          your hands about how to deal with this.  
17 MS. BAKER: Well, if you -- if we look for a different  
18          date. This is "2009 to 2010". You're saying you  
19          have the "2010 to 2011" one is what you wanted?  
20 MS. FONG: Yes.  
21 MS. BAKER: Well, maybe Mr. Lunn can find that.  
22 MR. LUNN: It will take me a few moments because I'll  
23          be doing a search. So maybe you want to adjourn  
24          for a few minutes or continue cross-examination on  
25          a different topic.  
26 THE COMMISSIONER: Do you have some other questions,  
27          Ms. Fong, that you can move to and we'll wait to  
28          see if we can get this document up on the screen  
29          for you?  
30 MS. FONG: Yes, I can do that, Mr. Commissioner.  
31 THE COMMISSIONER: Thank you.  
32 MS. FONG:  
33 Q          Okay. Mr. Grout, Mr. Lapointe gave evidence last  
34          week, and he advised us last week that test  
35          fishing of the stocks coming down through the  
36          Johnstone Strait occurs in roughly mid-July.  
37          Would you agree with that?  
38 MR. ROSENBERGER: Test fishing --  
39 MR. GROUT: Barry would be in a better position --  
40 MR. ROSENBERGER: Yeah, test fishing in Johnstone  
41          Strait usually starts in the middle of July.  
42 Q          Thank you. He also advised us that a fairly firm  
43          assessment, and that was the wording he used,  
44          "firm assessment" of the run size would not occur  
45          until the last week of July or early August.  
46          Would you agree with that? Remaining with that  
47          same stock, the ones that come through Johnstone



1 Strait?

2 MR. ROSENBERGER: Of the four stock groupings that we  
3 manage the Fraser around, three of the four  
4 migrate down through Johnstone Strait. The first  
5 Early Stuart group tends to come almost  
6 exclusively by Juan de Fuca. Of the other three  
7 stock groupings, the Early Summer would be next  
8 and where he might see the peak of it or have more  
9 of a firm understanding of the abundance, would be  
10 in the later July/early August portion and the  
11 other two groups are later into August.

12 Q Okay. So you -- you would agree with him, though,  
13 that the first time you get a fairly firm  
14 assessment of the three stock groups that are  
15 coming in through the Georgia Strait -- or sorry,  
16 through the Johnstone Strait would be in late July  
17 or early August?

18 MR. ROSENBERGER: No, only the first of those three  
19 stock groupings at that time.

20 Q I see, okay. So those would be the earliest ones?

21 MR. ROSENBERGER: The Early Summers they're referred  
22 to.

23 Q Right, thank you. And Mr. Rosenberger or Mr.  
24 Grout, I mean would you agree -- I'll ask Mr.  
25 Rosenberger first. I mean would you agree that by  
26 the run size assessment's available, so that would  
27 be the late July/early August, the Heiltsuk in  
28 Bella Bella do not have the benefit of that  
29 information, as the salmon have already passed  
30 them?

31 MR. ROSENBERGER: The one stock grouping would have  
32 been. If it -- if it was coming down through the  
33 waters of area 7.

34 Q The one stock grouping?

35 MR. ROSENBERGER: This is the Early Summers. So the  
36 other -- the Summers tend to be a little bit later  
37 than that and then the Lates are later again so  
38 they migrate. Although there's significant  
39 overlap, they're sequential as they're working  
40 their way down so when they're -- you're seeing  
41 the peak in Johnstone Strait. If they were coming  
42 through area 7, you might be more on the peak of  
43 the Summers or the Late run at that timing.

44 Q So is it your belief then that -- just so I  
45 understand this. So is it your belief then that  
46 by the time they have the fairly firm assessment  
47 of the first stock coming through on area 12, that

- 1 the information would still be useful to the  
2 Heiltsuk in area 7?
- 3 MR. ROSENBERGER: It can be, yes.
- 4 Q Because you're saying that there are still the  
5 other two stocks swimming through area 7?
- 6 MR. ROSENBERGER: I'm not saying they're swimming  
7 through area 7. If they were coming through area  
8 7, then, by timing, they would still be present in  
9 area 7.
- 10 Q And is it your position as well, or your  
11 understanding as well, that an abundance or a run  
12 size of stock one would indicate necessarily a run  
13 size of what stock two and three would be?
- 14 MR. ROSENBERGER: They're not always linked as far as  
15 their relative proportions. But they -- the -- we  
16 would be getting information on the -- the later  
17 groups by the time we're getting to the peak of  
18 the Early Summers so that would help you to see  
19 whether that proportion was still there. And then  
20 the timing varies between years and you would get  
21 a sense of that at that same time.
- 22 Q Okay. So in 2010 when there was that really large  
23 run, would you agree it was possible that for the  
24 Heiltsuk that they -- in not -- that they might  
25 not have fished their full FSC allotment, as the  
26 fish were coming by them, because they didn't --  
27 they weren't aware of the size of the run until  
28 later on down in Johnstone Strait the test fishing  
29 occurred?
- 30 MR. ROSENBERGER: There's many factors of why they  
31 caught whatever they did. And I have no knowledge  
32 in 2010 what proportion, if any, Fraser River fish  
33 swam into their waters.
- 34 Q Okay. So you're -- you're not aware -- you don't  
35 have any awareness at all as to any information  
36 form the Heiltsuk as to why they did or did not  
37 fish their full FSC allotment?
- 38 MR. ROSENBERGER: That's correct.
- 39 Q Okay. Mr. Rosenberger, I'm just curious to know  
40 yesterday -- I just want to explore this comment  
41 that you made yesterday. I mean yesterday you had  
42 stated that fisheries at places like Gwaii Haanas,  
43 Reynolds Sound and Purple Bluff occur at a time  
44 well in advance sometimes -- I'll put a caveat on  
45 that -- sometimes occur at a time well in advance  
46 of the assessment fisheries testing done by the  
47 PSC. Do you remember saying that yesterday?

1 MR. ROSENBERGER: That's correct.

2 Q Okay. And where's Gwaii Haanas and where's  
3 Reynolds Sound?

4 MR. ROSENBERGER: Queen Charlotte Islands they used to  
5 be called, Haida Gwaii. Gwaii Haanas, I guess --  
6 I'm probably not up on all the latest here and I  
7 maybe need to turn to some learned friends in  
8 here. The Queen Charlotte Islands/Reynolds Sounds  
9 is on the northern island on the outside. There's  
10 been a fishery there in the past and it was an  
11 area that there was -- the west coast of the Queen  
12 Charlotte Islands has had significant Fraser River  
13 sockeye harvest in the past.

14 Q Okay. Now --

15 MR. ROSENBERGER: Purple Bluff is in -- right at the  
16 bottom of Cultus Sound, the bottom of Thompson  
17 Island area, Thompson Sound and the sockeye  
18 harvested there I'm aware of two or three times in  
19 the last 20 or 30 years when Fraser sockeye had  
20 been in there in numbers that have created a  
21 fishery of interest.

22 Q Okay. Now, I understand that you're director of  
23 the Interior currently so can you tell us how  
24 you've become aware of that particular information  
25 about the northern fisheries?

26 MR. ROSENBERGER: I lived in Alert Bay for two years.  
27 That's in the top end of Johnstone Strait. I  
28 lived in Prince Rupert for eight years. While I  
29 was in Prince Rupert, I would regularly go down  
30 and work in Bella Bella. And since I've been in  
31 Kamloops, I've been out on the herring fishery in  
32 Bella Bella for nine years straight in the 1990s  
33 up to 2001. And I've worked in there off and on  
34 since 1978.

35 Q Okay. So this -- so this issue of the fisheries  
36 occurring at a time in advance of the assessment,  
37 fisheries testing was obtained by you while you  
38 were working or living in Alert Bay, Prince Rupert  
39 and Bella Bella?

40 MR. ROSENBERGER: Or on information that has been  
41 passed to me in the roles I have now or other  
42 roles. It's -- I may not have got the information  
43 just while I was in those areas but it's --

44 Q Okay.

45 MR. ROSENBERGER: -- collectively through my  
46 experiences.

47 Q And the reason why you received that information

1           was because it was an issue of concern that there  
2           was this -- let me clarify -- that there was this  
3           mismatch between when the fish run and when the  
4           assessment of the run size is available?

5       MR. ROSENBERGER: I'm aware of the fisheries because  
6           I've been on some of those fisheries on the  
7           grounds when some of them have been occurring. So  
8           that's part of how I gained knowledge. In the  
9           latter part of 1990s into the earlier part of  
10          2000s, the department was making decisions on what  
11          it thought it needed to do in the changes of  
12          management of Fraser River sockeye and the Pacific  
13          Salmon Commission wrote a letter to the department  
14          advising that they recommended that we not fish in  
15          the northern waters out in front of their test  
16          fishing capabilities because of the uncertainty in  
17          run sizes. So it's the -- that side of things is  
18          because of that information from the Salmon  
19          Commission.

20       Q       Okay. Has it been expressed to you that it's a  
21           concern of these northern fisheries that they  
22           don't have run size assessments until after the  
23           fish have passed them?

24       MR. ROSENBERGER: The department doesn't manage for  
25           Fraser River sockeye fisheries in the north coast  
26           so we don't have any directed commercial fisheries  
27           in northern waters. We haven't for a number of  
28           years. I'm not aware of any significant  
29           recreational harvest, although there has been  
30           sockeye harvested in the northern end of the  
31           Charlottes at Langara Island where we have  
32           obtained some biological samples occasionally.  
33           And we are aware that there's some food fishing in  
34           the Queen Charlottes and in the Bella Bella areas  
35           periodically. But we don't make specific  
36           management -- we haven't taken management actions  
37           in order to be able to advise those folks about  
38           where fish stocks are or timing.

39       Q       I see. So let me understand how that segues then  
40           in with the IFMP. Prior to the finalization of  
41           the IFMP, if an issue were to -- a policy issue  
42           were to arise, who would deal with it before the  
43           IFMP is completed? If there's no -- like who  
44           manages it for the north?

45       MR. GROUT: Well, in terms of the North Coast  
46           Integrated Fishery Management Plan, the -- the  
47           area chief of resource management in the north

1 coast has taken the lead in putting together the  
2 -- a draft IFMP. Unlike the south, we just have  
3 one area office in the north so we don't have the  
4 -- the three area offices that we have to  
5 coordinate like in the south. The north coast  
6 draft plans are then shared with the IHPC and  
7 others to provide feedback on what's in the plans.  
8 Q Okay. But before they're finalized, you're --  
9 there's activity -- there's fishery activity  
10 that's occurring in these northern fisheries while  
11 the IFMP is being considered and drafted and so  
12 forth because it doesn't get finalized until July.  
13 So my question -- just so I'm trying to understand  
14 the structure of how these management decisions  
15 are made, who makes management decisions when a  
16 management issue arises before the IFMP is  
17 completed in the north?  
18 MR. GROUT: I'm trying to follow your question. So if  
19 you're asking what we would do to manage a fishery  
20 prior to the completion of the IFMP, for example,  
21 in early June before the IFMP is signed off, one  
22 of the ways we try and deal with that is produce a  
23 briefing note for the minister, typically  
24 something along the lines of early season salmon  
25 fisheries and identify the specific fisheries that  
26 may occur before the VIFMP is signed off and  
27 outline to the minister whether we expect to have  
28 any issues around those. Quite often, First  
29 Nations food, social and ceremonial fisheries  
30 could be included in that briefing note.  
31 Q Okay. And who prepares the briefing note?  
32 MR. GROUT: That briefing note is typically done by the  
33 salmon team, so myself or the -- the salmon team  
34 lead or the salmon officer would typically lead on  
35 drafting that.  
36 Q Okay. And after the IFMP in the north is  
37 finalized, does it go through the same process as  
38 it does in the south, if there's a policy issue  
39 that arises? Would it go to caucus, for example,  
40 and then up to the minister?  
41 MR. GROUT: In terms of the -- the North Coast  
42 Integrated Fishery Management Plan, we discuss  
43 that plan at the -- the Salmon Working Group  
44 meeting, any particular issues that are there.  
45 Then it's taken to the -- the final IHPC meeting,  
46 which occurs in May, for discussion. And from  
47 that point, we're taking into account any final

1 suggestions or feedback we've had on the plans,  
2 making any last changes and then putting together  
3 briefing material for the minister outlining key  
4 issues or decisions that have been outlined in  
5 those plans.

6 Q Right. And then once finalized and the minister  
7 confirms the northern IFMP and it's distributed to  
8 the public, after that, who makes policy  
9 decisions? Like for example, if the IFMP needed  
10 to be revised? Or when the harvest management  
11 rules needed to be revised in the IFMP north?

12 MR. GROUT: We don't make specific revisions to the  
13 plan itself in-season. There may be occasions  
14 where changes have been sought for the plan and  
15 we've referred to the change to the Cultus  
16 management objective in the south in 2010.  
17 Typically, a decision needs to be made on the  
18 significance of the change that's being  
19 contemplated, which would be taken up typically to  
20 the RDG level and then a decision on whether to  
21 brief the minister at that point.

22 Q Okay. So it follows the same process as it does  
23 in the south for the north?

24 MR. GROUT: Yes.

25 MS. FONG: I'm just wondering if we were able to locate  
26 that document?

27 MR. LUNN: What I have is draft number one of that  
28 document and I don't know if that matches what you  
29 have on paper.

30 MS. FONG: Could you go to 5.3 and we'll see whether  
31 that matches? Mr. Commissioner, the wording is  
32 the same. Counsel and Mr. Commissioner, the  
33 wording is the same, however, the copy I have is  
34 not draft number one. It doesn't have the "draft"  
35 word on it. But for my purposes, I can ask my  
36 question. Thank you.

37 Q Okay. So Mr. Grout -- so again, let's just focus  
38 on that last sentence then of the first paragraph  
39 under 5.3, "Communal Licence Harvest Targets",  
40 where it indicates:

41  
42 Communal licences can be amended in-season  
43 for resource conservation purposes or to  
44 increase access for FSC purposes, as needed.  
45

46 And my question to you is that, you agree that  
47 that is a harvest management role, which allows

1           the First Nations to apply to amend their communal  
2           licence in-season to increase access for FSC  
3           purposes?  
4   MR. GROUT: Sorry. Maybe you could repeat your  
5           question?  
6   Q       Okay. I just want to make sure I understand.  
7           Like this -- this, as I read it, is a harvest  
8           management rule. And the rule allows for First  
9           Nations to apply to DFO to ask -- to make a  
10          request -- to amend communal licence in-season to  
11          increase access to FSC. Or for FSC purposes.  
12   THE COMMISSIONER: I'm sorry, Ms. Fong, just to be sure  
13          I'm looking at the same document. You used the  
14          word "First Nations can apply". Is there  
15          something in the document that refers to that?  
16   MS. FONG: There's -- the word "apply" is not used.  
17   THE COMMISSIONER: Oh, I see.  
18   MS. FONG: It's my word for "First Nations can make the  
19          request", or, "can apply to DFO", somehow bring  
20          the issue so as to access this harvest management  
21          rule.  
22   MR. GROUT: I must admit I can't recall the specific  
23          context around the -- the statement that's listed  
24          here in the plan. Usually, our area management  
25          staff are dealing with the communal licences for  
26          First nations.  
27   Q       Okay. But would you agree with me that this is  
28          what is a harvest management rule within this  
29          document, this IFMP for the north?  
30   MR. GROUT: Well, it seems to me that that sentence is  
31          setting out some of the conditions around  
32          amendments that might be made for communal  
33          licences. It's not clear in terms of your earlier  
34          point about whether First Nations are making an  
35          application or whether that's being done for other  
36          reasons here.  
37   Q       Okay. But for the purposes of, for example, a  
38          guideline for DFO, when the guideline -- you can  
39          interpret this to -- to mean that a First Nation  
40          could ask DFO to make an amendment to the communal  
41          licence for the -- to increase access for FSC  
42          purposes. So this is a basis upon which -- let me  
43          flip that around. Yeah. It's a basis upon which  
44          DFO could amend a communal licence in-season?  
45   MR. GROUT: It's indicating that, yes.  
46   Q       Okay. And just that phrase "in-season", you would  
47          agree that would include July and August?

1 MR. GROUT: The in-season period can vary depending on  
2 the fisheries but for a number of our salmon  
3 species, those are typical months that are part of  
4 the in-season management period.

5 Q And so coming back to what I was -- sorry --  
6 trying to get at very awkwardly was while this  
7 document's in draft form before it's finalized,  
8 let's say for example, a First Nation comes to DFO  
9 and says, "I'd like to amend my licence. Here are  
10 my reasons." The process, as I understand from  
11 your evidence, is that that request would be made  
12 and then, if it's a significant request, then a  
13 briefing note would go to the minister who would  
14 then make a decision? Am I -- am I correct about  
15 how that request gets dealt with before the IFMP  
16 is finalized?

17 MR. GROUT: I can't say in this case that I recall  
18 seeing a briefing note on a specific communal  
19 licence request.

20 Q Okay. Just in terms of the process, though, how  
21 would that be dealt with before the IFMP is -- is  
22 finalized, that sort of request?

23 MR. GROUT: Typically, the communal licence discussions  
24 are occurring in the areas with our area staff.

25 Q And then what does the area staff do with that  
26 discussion? I'm just trying to figure out like at  
27 what point the decision gets made and who makes  
28 it.

29 MR. ROSENBERGER: Maybe I could try to help, although I  
30 don't have knowledge in this situation. But in  
31 most cases, the -- we have mandates within the  
32 department for each of the First Nations groups or  
33 amalgamation of the groups within the guidance  
34 that we get from that. The area staff tend to  
35 deal with a significant amount of the -- the First  
36 Nations FSC communal licences.

37 Q So Mr. Rosenberger, are you saying it's the area  
38 staff that can make the decision?

39 MR. ROSENBERGER: In most cases, they make these kinds  
40 of decisions.

41 Q And is it at their discretion then to raise it  
42 with their superiors?

43 MR. ROSENBERGER: Well, if -- if they're going to be  
44 looking to exceed mandate information, then they  
45 would need to get authorization from others.

46 Q And this mandate information that you speak of,  
47 this is something that's not included in the IFMP?



1 MR. ROSENBERGER: No, it is not.

2 Q Okay. And where is that mandate information?

3 MR. ROSENBERGER: Well, that's the directions that  
4 Ottawa has given to the region on management of  
5 food, social and ceremonial fisheries.

6 Q I see. And is that public information or is that  
7 internal?

8 MR. ROSENBERGER: No, it is not. It's internal.

9 Q Okay. And -- and when you say it's internal, is  
10 it shared with the First nations or not?

11 MR. ROSENBERGER: It is not.

12 Q Okay. My question is for Mr. Grout but perhaps  
13 Mr. -- I'm very good at aiming questions at either  
14 one of you. So Mr. Rosenberger, feel -- please  
15 feel free to jump in, if you know. I'm advised by  
16 Heiltsuk that they made a request on August 31st,  
17 2010, to the DFO. And that request was that DFO  
18 permit the First Nations at Nanaimo to fish for  
19 Heiltsuk's FSC allotment with the catch numbers  
20 coming off Heiltsuk's allotment, as opposed to the  
21 other First Nations' allotment. Mr. -- I'll start  
22 with Mr. Grout. You'd agree with me, Heiltsuk's  
23 request is seeking to amend their communal licence  
24 so it's a request that would be consistent with  
25 this -- what I call this harvest management rule  
26 under section 5.3 of the northern IFMP? This is  
27 the sort of request this is -- this section's  
28 designed for.

29 MR. GROUT: This isn't a topic I specifically dealt  
30 with in-season and I'm not usually in the position  
31 of dealing with. One of the -- I guess the one  
32 difference perhaps here is that the request was  
33 made to access fish in a different fishing area,  
34 which may or may not be consistent with what's  
35 listed here in the -- in the plan.

36 Q Okay. But you agree with me this plan doesn't say  
37 there's a limitation to the area?

38 MR. ROSENBERGER: Actually, these two plans are --  
39 that's the -- that's the -- one of the key things.  
40 One is designed for north coast fisheries and one  
41 is designed for south coast fisheries.

42 Q And what happens when they intersect such as the  
43 Heiltsuk, who are in the north, making a request  
44 regarding fishing in the south? Is there a system  
45 to deal with that?

46 MR. ROSENBERGER: Actually, there is. The -- so the  
47 department has -- is trying to develop some

1 guidance and policy to resource managers and  
2 decision-makers on these kinds of request. Some  
3 of that has been reviewed with some of the First  
4 Nations groups like the First Nations Fisheries  
5 Council. And the rationale here is that most of  
6 the First Nations are laying claim to a given  
7 territory and so the fisheries in the communal  
8 licences that we develop with them are for within  
9 that claim territory. And there's obviously some  
10 -- these licences that have overlap situations.

11 When a group is trying to either increase  
12 their numbers or move to a different geographic  
13 location, first, what we try to do is have those  
14 groups work it out themselves so that, in this  
15 case, if you said Heiltsuk wanted to go to Nanaimo  
16 and go catch fish, then they would do that under  
17 Nanaimo's licence. If they were looking to  
18 increase their licence or do something different,  
19 that would be a request they would need to make  
20 through the department. So in this case, using  
21 their own allocations.

22 And so in trying to make sure that the  
23 fisheries are managed where the -- the -- where  
24 the group is making their claims is part of trying  
25 to have this coordination. So some of this has  
26 had some review with some First Nations  
27 organizations to understand the policy and try to  
28 get their -- their input and to, you know, seek  
29 some direction. Most of these cases are dealt  
30 with on a case-by-case basis.

31 Q Okay. And when you say they're dealt with on a  
32 case-by-case basis, who are they dealt -- who  
33 deals with them?

34 MR. ROSENBERGER: Well, the individual First -- if a  
35 First Nation raised this issue that they wanted to  
36 go to another location, we would want them to try  
37 to work out those deals, you know, an arrangement  
38 between Heiltsuk and Nanaimo. But in most cases,  
39 what we're looking for is that they would fish  
40 under the authority of the licence of the group  
41 they're moving towards.

42 Q Okay. So just backing up and just for your  
43 information, my information is that, in fact,  
44 Nanaimo agreed but the issue was where the  
45 allotment would come off of because --

46 MR. ROSENBERGER: Well, that's the point that I was  
47 making. So if Nanaimo didn't want to give up any

1 of their fish to whoever the groups are that are  
2 coming in -- and they probably get a number of  
3 cases of requests in a given year. There's  
4 usually a few of these around where people are  
5 looking to go and harvest in areas outside of  
6 their own claim territories so we're looking to  
7 try to keep coordination and -- and have an  
8 understanding about what's going on in them.

9 So in the pre-season plan in understanding  
10 how much fish is available, so in this case around  
11 Fraser sockeye in the south coast, we're managing  
12 for roughly a million fish for the First Nations  
13 food, social, ceremonial arrangements. And so to  
14 build that into a plan and know when you have the  
15 opportunities to go and have commercial or  
16 recreational or some other type of a fishery, you  
17 need to have an understanding about what's going  
18 on. So if people want to make requests and come  
19 in there from the north coast or somewhere else  
20 that don't have that -- they're not built into  
21 that pre-season plan and haven't been a part of  
22 it, we need to have a process.

23 Q Okay. So assuming Nanaimo agrees, who at DFO  
24 would make the decision as to whether Heiltsuk  
25 could -- or whether Nanaimo could fish for  
26 Heiltsuk and the numbers would come off Heiltsuk's  
27 claim, as opposed to -- Heiltsuk's allotment as  
28 opposed to Nanaimo's allotment?

29 MR. ROSENBERGER: Most of the time this kind of stuff  
30 would go to our regional director of Treaty  
31 Aboriginal Policy Division.

32 Q And if it went there, would you be aware of it?

33 MR. ROSENBERGER: I would have --

34 Q The issue?

35 MR. ROSENBERGER: I would have expected to have been  
36 asked for input into this given that it would have  
37 affected fisheries that I was managing.

38 Q And Mr. Grout, would you also have been expected  
39 to know about this sort of issue, like in your  
40 position?

41 MR. GROUT: It can vary. Sometimes I'm included in the  
42 distribution on these specific issues but not  
43 always.

44 Q Okay. And Mr. Rosenberger, if I understand your  
45 evidence earlier, you weren't actually aware of  
46 such a request that was made by Heiltsuk in 2010,  
47 August 31st, 2010?

1 MR. ROSENBERGER: Not to Nanaimo. I was briefed by one  
2 of the resource managers in the south coast that  
3 the Heiltsuk was looking to fish around Port Hardy  
4 and there were some discussions with --  
5 potentially with a First Nations group but I -- as  
6 far as I understand, they never fished.

7 Q Okay. And Mr. Grout, were you aware of Heiltsuk's  
8 request to Nanaimo --

9 MR. GROUT: I can't --

10 Q -- in 2010?

11 MR. GROUT: I can't recall seeing the -- the request.

12 Q This sort of request, Mr. Rosenberger, had it come  
13 to your attention about the allotments, is this  
14 something that you would make a decision about or  
15 is something that would have to go to, for  
16 example, the Canadian caucus and then eventually  
17 up to the minister?

18 MR. ROSENBERGER: Well, it wouldn't go to Canadian  
19 caucus. This would have been an internal DFO  
20 discussion probably made by either the regional  
21 director of Treaty and Aboriginal Policy or the  
22 regional director general or the regional director  
23 of FAM or some combination of that.

24 Q Okay. I'm advised by Heiltsuk that the two  
25 individuals whom they did deal with, DFO  
26 individuals, were Mr. Braniuk -- I pronounce -- I  
27 don't know if it's Braniuk or Braniuk. And a Mr.  
28 Greg Thompson. And they both declined the  
29 request. The request was made on the phone and  
30 declined on the phone, same call. And it was  
31 advised to Heiltsuk that they would take the issue  
32 to "DFO policy folks". Do you -- now that I've  
33 told you that, do you have any recollection of  
34 this issue arising in August 2010 or after?

35 MR. ROSENBERGER: Well, it's Greg Thomas that advised  
36 me that the Heiltsuk had made a request. So my  
37 recollection is that it was at the north end of  
38 the Island they were looking to fish. And I would  
39 expect that Greg or Randy, whoever interacted with  
40 the Heiltsuk folks, wouldn't have said "go to the  
41 policy folks"; they would have given them more  
42 specific direction to the Treaty and Aboriginal  
43 Policy Group that deals with this matter. And I  
44 never heard anything further from anybody in that  
45 group whether there was a formal request or to  
46 consider it in any way.

47 Q Okay. So to the best of your knowledge right now,

1           as the IFMP for 2011 is currently underway, this  
2           issue is not being discussed?  
3   MR. ROSENBERGER: That's correct.  
4   Q   And Mr. Grout, that's your understanding as well?  
5   MR. GROUT: I have not had a specific discussion about  
6           this particular issue so far this year.  
7   MS. FONG: Okay. Thank you. Those are my questions.  
8   MS. BAKER: Mr. Commissioner, I think those are the  
9           ends of our questions for today. Tomorrow we'll  
10           start with Brenda Gaertner and we'll, I guess, see  
11           if Mr. Loews turns up tomorrow as well.  
12   THE REGISTRAR: The hearing is now adjourned until ten  
13           o'clock tomorrow morning.

14  
15           (PROCEEDINGS ADJOURNED TO JANUARY 25, 2011, AT  
16           10:00 A.M.)

17  
18                           I HEREBY CERTIFY the foregoing to be a  
19                           true and accurate transcript of the  
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21                           apparatus, transcribed to the best of my  
22                           skill and ability, and in accordance  
23                           with applicable standards.  
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28                           Susan Osborne  
29                           Registered Court Transcriber

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

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Pat Neumann  
Registered Court Transcriber

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

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Karen Acaster  
Registered Court Transcriber