

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



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

Public Hearings

Audience publique

Commissioner

L'Honorable juge /
The Honourable Justice
Bruce Cohen

Commissaire

Held at:

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

Tuesday, January 25, 2011

Tenue à :

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

le mardi 25 janvier 2011

APPEARANCES / COMPARUTIONS

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Wendy Baker, Q.C. Maia Tsurumi	Associate Commission Counsel Junior Commission Counsel
Hugh MacAulay Jonah Spiegelman	Government of Canada ("CAN")
Clifton Prowse, Q.C.	Province of British Columbia ("BCPROV")
No appearance	Pacific Salmon Commission ("PSC")
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")
No appearance	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")
No appearance	West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
No appearance	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF")
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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Vancouver, B.C. /Vancouver (C.-B.)
January 25, 2011/le 25 janvier
2011

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5 THE REGISTRAR: The hearing is now resumed.

6 MS. BAKER: Mr. Commissioner, Ms. Fong would like to
7 mark the exhibit that she took the witnesses to
8 yesterday, and then she will be followed by Brenda
9 Gaertner, who will commence cross-examination.
10 Mr. Lowes has advised he will not be asking any
11 questions of these witnesses.

12 MS. FONG: Mr. Commissioner, Lisa Fong for Heiltsuk
13 Tribal Council. Yesterday I referred to the IFMP
14 for the North, the June 2010 to May 31st, 2011. I
15 would ask that it be marked as the next exhibit,
16 please.

17 THE REGISTRAR: Exhibit number 349.

18 MS. FONG: Thank you.

19 THE COMMISSIONER: Ms. Fong, that exhibit, that
20 document you mentioned was -- at least the one you
21 had, or the one that we have on the screen is
22 Draft 1, I believe.

23 MS. FONG: We now overnight we corrected that, and we
24 provided the final version of this document to Mr.
25 Lunn. So now we are marking the one that I have
26 before me, which has the same language as the
27 language which I referred to yesterday in Draft 1.

28 THE COMMISSIONER: So, I'm sorry, what exhibit number
29 is that, then?

30 THE REGISTRAR: Exhibit number 349.

31 THE COMMISSIONER: Thank you.

32 MS. FONG: Thank you.
33

34 EXHIBIT 349: Pacific Region, Integrated
35 Fisheries Management Plan, Salmon, Northern
36 B.C., June 1, 2010 - May 31, 2011
37

38 MS. GAERTNER: Good morning, Mr. Commissioner. It's
39 Brenda Gaertner for the First Nations Coalition,
40 and with me is Leah Pence. I just want to start
41 -- good morning, gentlemen.

42 MR. GROUT: Good morning.

43 MR. ROSENBERGER: Good morning.

44 MS. GAERTNER: Thanks for being here. I just wanted to
45 start with two clarifications, perhaps. One is
46 that my instructions from my clients is to try to
47 use this process as best as we can to elicit

1 information towards the recommendations that we're
2 seeking. And not so much to cross-examine you, I
3 would prefer to think that I'm asking you a few
4 questions and seeing whether we could work
5 together to elicit information the Commissioner
6 may need for his recommendations. And so I want
7 to advise the Commissioner that I am going to
8 cover three areas in my questions this morning.

9 One is an overview, strategic questions
10 regarding the engagement process and decision-
11 making structures for harvest management issues,
12 particularly as it relates to First Nations and
13 DFO, and I think most of these questions will be
14 directed to Mr. Rosenberger to start with. And
15 then I am going to move to questions around the
16 FRIMT and the Salmon Team and the Salmon Working
17 Group, and just get some clarity around how those
18 three different internal organizations work. And
19 then I have got some specific questions on the
20 IHPC and some specific questions on the Fraser
21 River Panel. And so I am just going to cover
22 those areas this morning in my questions.

23 I understand we're going to get into quite a
24 bit more detail in the coming weeks around things
25 like the Forum and the Roadmap, and all of that,
26 so I know that there's always an intermingling and
27 things are a bit circular on some of this stuff,
28 but I'm going to try to leave those questions till
29 another day.

30
31 CROSS-EXAMINATION BY MS. GAERTNER:

32
33 Q As an entranceway into my strategic level
34 questions, I thought I'd begin by sharing with you
35 that so far - and these are questions for you, Mr.
36 Rosenberger - so far in the testimony that has
37 been provided by Sue Farlinger and Paul Sprout,
38 and I can take you to it if you want to see the
39 actual words, but they've been able to confirm for
40 Commissioner Cohen that developing a clearly
41 mandated Tier 1, 2 and 3 process with multiyear
42 funding would be helpful to DFO in the management
43 of Fraser River salmon, sockeye.

44 And so my question for you, Mr. Rosenberger,
45 from your experiences, do you agree also that a
46 mandated transparent Tier 1, 2 and 3 process that
47 would enable First Nations and DFO to meaningfully

1 engage on harvest management issues would be
2 helpful?

3 MR. ROSENBERGER: Yes, I do.

4 Q And in addition, I take it from the evidence
5 provided by Mr. Sprout that that linear approach
6 to Tier 1, Tier 2, Tier 3, which First Nations
7 often pursue, is something a bit challenging for
8 DFO, in particular that the Tier 3 processes are
9 often needed before the Tier 1 and 2 are in place.
10 Would you agree with me on that?

11 MR. ROSENBERGER: I think they -- much of it occurs at
12 the same time and they're not always in the clear
13 linear progression in trying to deal with some of
14 the given issues, you know, with all the groups.
15 But we do try to keep them flowing where the --
16 where we are preparing materials that we are
17 trying to give out in that more linear fashion.
18 But I think there's -- there's definitely
19 struggles in trying to make that happen.

20 Q One of the things Mr. Sprout spoke to and I wonder
21 if you could comment on is the challenges of the
22 -- the technical challenges associated -- that are
23 necessary in Tier 3, if those aren't in place,
24 that becomes a difficulty. Would you agree with
25 me on that?

26 MR. ROSENBERGER: It can be, yes.

27 Q The next area that again on the strategic level
28 that I spoke to Mark Saunders about when talking
29 about the Wild Salmon Policy implementation was
30 agreeing also that in implementation of that
31 policy, the mandated 1, 2 and 3 tier process would
32 be useful. He went on one step further and we
33 began to talk about scale-based analysis, and by
34 that I think we mean understanding clearly what
35 types of discussions need to happen where amongst
36 Tier 1 and 2 in particular, and then Tier 3.
37 Would you also agree that in the harvest
38 management work and the harvest management
39 decisions, having that kind of scale-based
40 analysis would be useful to the Department of
41 Fisheries and Oceans?

42 MR. ROSENBERGER: Yes, I do.

43 Q And then would you agree that implementing a
44 Fraser River Watershed process, in particular, a
45 forum that engages particularly as it relates to
46 both the approach and the in-river would be
47 particularly useful for discussions such as

1 escapement and the interaction of harvest
2 management plans?
3 MR. ROSENBERGER: I might have missed that a little
4 bit. So you're -- if you could ask the question
5 again, please.
6 Q Sure. Sorry, my -- I might be putting too many
7 things in my question. Let's try it again. If --
8 would you agree that implementing a Tier 1 and 2
9 process, first of all, at the Fraser River
10 Watershed level would be useful for such things as
11 discussions on escapement and the interaction
12 amongst harvest fishing -- fishing harvesting
13 plans?
14 MR. ROSENBERGER: Yes.
15 Q And would it assist in streamlining and providing
16 meaningful participation in-season?
17 MR. ROSENBERGER: I think the participation and the
18 roles that the various parties bring to each of
19 those levels right now has been an issue that
20 needs more focus to try to streamline, so that's
21 that people are mandated and representatives, as
22 opposed to observers or representing themselves
23 and not necessarily representing a given
24 geographic area.
25 Q And perhaps that will help me, because what I
26 wanted to do now is -- those questions are matters
27 and issues that the Department has been familiar
28 with for a number of years, do you agree?
29 MR. ROSENBERGER: That's correct, yes.
30 Q And there's been some challenges in implementing
31 those Tier 1 and Tier 2 and Tier 3 processes.
32 Would you agree with me on that?
33 MR. ROSENBERGER: Yes, I would.
34 Q And I'm just going to -- I've done my best to
35 provide a kind of listing of the types of
36 challenges, and I'm wondering if you'll comment on
37 them and whether they would be helpful. So first
38 of all, there's been historical challenges in
39 developing the Tier 1 process, because there have
40 been some tribes that -- or groupings that have
41 been unwilling to access capacity dollars through
42 DFO's AFS programs or AAROM programs, would you
43 agree with me on that?
44 MR. ROSENBERGER: Yes.
45 Q And that's resulted in some First Nations have
46 less capacity than others and some First Nations
47 having weaker working relationships with the

1 Department of Fisheries and Oceans. Would you
2 agree with me on that?

3 MR. ROSENBERGER: Yes.

4 Q Would you also agree that it's also increased the
5 distrust that occurs between the First Nations and
6 with DFO?

7 MR. ROSENBERGER: Yes, I think so.

8 Q Another challenge that I'm wondering if you could
9 comment on is that it's possible that not only do
10 you have challenges understanding who is mandated
11 and who is not mandated to come to those meetings,
12 that's what you were just talking about earlier;
13 is that correct?

14 MR. ROSENBERGER: That's correct.

15 Q And is it fair to say that First Nations also
16 expressed to you and raised concerns about not
17 being absolutely clear what the purpose of a
18 meeting is and what the implications of their
19 participation might be in that meeting?

20 MR. ROSENBERGER: That's raised at times, and we spend
21 a fair amount of time at some meetings trying to
22 make sure that it is clear. And we -- one of the
23 objectives that we've had in particular for the
24 last two years is trying to make sure those
25 objectives are clear going into the process, so
26 that's why we set up steering committees, whatever
27 the name are, you know, there's various names
28 around them. But the Forum has a formalized
29 process that works on specifically that, the
30 objectives meeting by meeting. So that at the
31 Tier 2 level, I think much more of that is -- and
32 the broader Forum level has been corrected, but on
33 some of the bilateral type meetings I think it's a
34 large number of issues often come into a given
35 meeting and so the clarity around the objectives
36 and expectations is still an issue.

37 Q Thank you, that's very helpful. I'm glad to hear
38 that things are improving. Can I also ask is that
39 part of it is, is it that there -- it isn't clear
40 whether the meeting is for engagement, the
41 exchange of information, or that it's actually a
42 meeting that some might consider consultation,
43 against -- and have some implications as it
44 relates to title and rights. Is that one of the
45 difficulties and challenges?

46 MR. ROSENBERGER: The interpretation of it, I think the
47 Department's tried to be clear in its objectives

1 and the acceptance of whether something forms part
2 of the consultation process or not has -- is still
3 an issue.

4 Q And one of the things going forward that will
5 become useful when we can get there is potentially
6 developing consultative processes that everybody
7 is clear about; is that correct?

8 MR. ROSENBERGER: That's correct.

9 Q Again, another challenge that I'm wondering if you
10 can speak to and perhaps provide a little bit of
11 examples. I know Commissioner Cohen has heard
12 this a bit before, and I expect that you've lived
13 this, Mr. Rosenberger, a little bit, is the
14 difference in how decision-making is made in the
15 aboriginal communities as compared to in the
16 Department of Fisheries and Oceans, and that
17 inverted pyramid that we often see, where
18 decisions in the First Nations are often -- most
19 often made, particularly harvest decisions, and
20 decisions are very close to the ground, very close
21 to home in the -- in the regional areas, and
22 decisions by DFO, particularly contentious issues
23 on those matters, are often made very high in your
24 pyramid quite far away from the ground. And so I
25 wonder if you could comment on that and comment on
26 the kinds of challenges that provides to the
27 interaction between First Nations and the
28 Department of Fisheries and Oceans.

29 MR. ROSENBERGER: An example of some of that, I guess,
30 is when we hold meetings in particular on the Tier
31 2 level, but at a bilateral process, you often do
32 not have chiefs or necessarily a mandated
33 councillor with a fisheries portfolio at the
34 session, and you have a large -- a relatively
35 large number of people that are members of a given
36 First Nation or groups of First Nations giving
37 their views on how something might, you know, on a
38 given action that might be moving forward, and
39 they're not necessarily looking at it in the same
40 way. So from the First Nations side trying to get
41 to a collective view, a single view is one of the
42 issues that, you know, we're not always certain
43 about whose view is it from in that room we should
44 be taking back into the Department's side.

45 You're correct in that, you know, from our
46 side of it, we do have a hierarchy of decisions.
47 And we don't set escapement goals on a bilateral

1 meeting in a given room that affects a larger
2 group of First Nations because those fish migrate
3 through others' areas and things like that. And
4 so that's an example where local First Nations
5 have a very hard time that the Department won't
6 come to that decision rule with them in, you know,
7 a given meeting in a -- in a specific geographic
8 area, and particularly in a terminal area where
9 their view is that they hold the -- they hold that
10 decision right in their system, and from our side
11 of it we're trying to accomplish that at a broader
12 scale.

13 Q Thank you, that's very helpful. It probably leads
14 right into this next one. Would you also agree
15 and perhaps comment on the challenges associated
16 with DFO playing a dispute resolution role amongst
17 First Nations, and sometimes perceived as
18 resolving disputes between First Nations and other
19 stakeholders, and challenges associated with that.

20 MR. ROSENBERGER: Well, that's -- I mean, that again
21 it's a key issue that is part of the struggle.
22 So, you know, using the example I just did with
23 the escapement side of things, it's a few years
24 back now, but we tried to get input into
25 escapement objectives for the Early Stuart, for
26 example, and the -- in this particular given year,
27 we had received advice, and some of this was in
28 writing and some of it was verbally in meetings.
29 But the escapement objective ranged from 1,500
30 sockeye to over 200,000 sockeye, or it might have
31 been 200,000. And each one of those groups then
32 wanted to have a fishing plan established based on
33 their input into that escapement objective. And
34 so the Department selected a number for given
35 reasons, and that given circumstance. But that's
36 -- that's an example of where things were
37 struggling for us as being the arbitrator and in
38 the various advice, and such, why we're trying to
39 move towards forum-type meetings where we get a
40 broad range of First Nations over a large
41 geographic area, and try to get to hopefully a
42 consensus decision from their part. But, if not,
43 at least they understand some of the tradeoffs,
44 and they have been trying to make those kinds of
45 adjustments in particular in the last few years.

46 Q Is it fair to say that some of the First Nations
47 who had not been participating at a Watershed

1 level basis are still not participating in the
2 Forum? Are you still struggling with those
3 issues?

4 MR. ROSENBERGER: We still have individual groups that
5 we have very little contact with and are not part
6 of the Forum process at all.

7 Q Some of which take off a fair bit of regional --
8 geographic area along the Fraser, for example, the
9 Nlaka'pamux or the Stl'atl'imx are Middle Fraser
10 people and generally are they participating at the
11 forum levels?

12 MR. ROSENBERGER: We have participation from the
13 Nlaka'pamux and Stl'atl'imx, if I've said -- and
14 working on the same people.

15 Q Yes.

16 MR. ROSENBERGER: The -- we don't have people from
17 every First Nation within the group, so, you know,
18 you hope that there's some dialogue going on in
19 their groups. But again that's what we struggle
20 with is, you know, if you have somebody there, are
21 they representing. You know, we have one chief
22 from the Nlaka'pamux that shows up regularly, but
23 is he representing all the Nlaka'pamux, or not?
24 My view is he's not, and he often states that he's
25 not. But he states he's representing a number of
26 them. So that kind of interaction is part of the
27 issue.

28 I would say we have the majority of people
29 showing up and it's a lot of the smaller -- in a
30 broader tribal group. It's a lot of the small
31 independent bands that have really not started to
32 engage.

33 Q One further item I've identified, I'm wondering if
34 you could comment on. I haven't had a chance to
35 ask Mr. Sprout questions on this yet. My
36 examination, or my questions of him have not
37 proceeded yet. But he mentioned, and what he
38 described, I think I have his words right, the
39 existence of undefined title and rights and the
40 challenges associated with that. Would you agree
41 that that is a challenge also for the dialogues
42 you have with First Nations and the outcome of
43 these meetings?

44 MR. ROSENBERGER: It's a significant challenge.

45 Q And I wonder if you could help me. I've been
46 thinking about those words and thinking about that
47 challenge, as you know. What's the part that's

1 undefined that's the most difficult? Is it the
2 location of the rights, or is it who the rights
3 holders are, or is it the content of the rights,
4 and in particular is it something like the content
5 of the co-management right?

6 MR. ROSENBERGER: It's probably all of those, and we
7 have -- we have significant overlap in claimed
8 territories between groups. Some of them that are
9 very broad, and multiple different groups claiming
10 the same area and looking for the co-management
11 right and the say in defining fishing objectives
12 or escapement objectives, things like that; the
13 specific right itself. And then moving into co-
14 management, I think is one where some of the First
15 Nations I think are still trying to think about
16 how -- bringing their context of that management
17 into trying to match with, you know, what the
18 government is trying to do. Because they're not
19 necessarily consistent, even thought processes,
20 about how we're moving forward.

21 Q Thank you. Are there any other challenges? Those
22 are the ones that I had done some work on. Are
23 there any other ones that come to your mind that I
24 -- I might have missed?

25 MR. ROSENBERGER: I think you hit the significant ones.

26 Q Thank you. I'm just going to ask a couple more
27 questions at the strategic level. I'm just
28 wondering, when you dream about a Watershed
29 program that -- or a Watershed process that might
30 work for both First Nations and DFO and other
31 stakeholders that you work with, I wonder if you
32 would agree with me that these would be benefits
33 into moving that -- that dream forward. First of
34 all, a dedicated multiyear resource base from
35 which First Nations and DFO could rely upon to
36 obtain this goal.

37 MR. ROSENBERGER: Yes, I think that would be useful.

38 Q Would it also be useful to get a commitment from
39 both DFO and the First Nations to dedicate the
40 human resources necessary to accomplish this
41 overarching task? My observation is that often
42 there are so many in-season and post-season and
43 all of those other types of tasks that the task of
44 structuring the processes are fit into the cracks.
45 Would you agree with that, and would that be
46 useful to have a dedicated group of people from
47 both DFO and other First Nations that could

1 concentrate on this task?

2 MR. ROSENBERGER: It would. That's a key part of what
3 we're trying to do in the Roadmap process.

4 Q And I wondered, you were either a participant or a
5 good observer, close observer of the effort that
6 went on under the development of the Wild Salmon
7 Policy; is that correct?

8 MR. ROSENBERGER: That's fair to say.

9 A And that was a pretty, I'm going to use, magical
10 time in which there was a fair bit of work done
11 and achieved over a short period of time, relative
12 to some of the tasks we have on the fisheries;
13 would you agree with that?

14 MR. ROSENBERGER: I think it's -- yeah, that's a good
15 way to describe it, yes.

16 Q And one of the things Commissioner Cohen has
17 already heard with respect to that process is how
18 useful it was to have senior people at Department
19 of Fisheries and Oceans and senior people within
20 First Nations that were really willing to grasp
21 that and had timelines and had commitments that
22 had to be made. Would that be a useful thing when
23 you look at the struggles and the challenges we've
24 had with respect to the Watershed process?

25 MR. ROSENBERGER: It would.

26 Q Are there any other challenges or possible
27 solutions that you have thought about over the
28 years that you've been working on this issue, Mr.
29 Rosenberger?

30 MR. ROSENBERGER: I think one of the keys is this work
31 with bringing the Forum together, at least in the
32 South Coast in the last few years, is really
33 trying to get that broader participation in the
34 same room. The -- it's been interesting to
35 observe but a not unexpected, I think, the
36 challenges of Coastal First Nations that have much
37 more of a commercial history interest, versus --
38 in recent times, versus the Interior First Nations
39 and really the whole Fraser where they for many
40 years did not have a commercial interest. And
41 trying to reconcile that and what they want to
42 bring forward in the last couple of years, I think
43 we're seeing a change in the shift of some of the
44 objectives of some of the groups as they
45 understand each others', and bring that into this
46 broader management concept that I think we're
47 seeing a shift in some places. So I think those

1 kinds of processes and engagements is a key factor
2 moving forward, one of them.

3 Q So maybe if I've just heard part of that
4 correctly, and I'm going to touch on this later
5 on, the challenges of terminal fisheries, but that
6 one of the other benefits of this approach,
7 Watershed work, is that as we become -- as we
8 change where and how we fish and for what
9 purposes, there may be more consensus built around
10 that; is that correct?

11 MR. ROSENBERGER: That's correct.

12 Q Thank you very much. Last week and again
13 yesterday I heard you mention and it always seems
14 like a whole lot when we hear these numbers, 40 to
15 60 meetings that need to go on on a regular basis
16 with First Nations. Am I correct to understand
17 that for the most part these are meetings that are
18 being held by First Nations and Area staff? And
19 we don't have 40 and 60 meetings at the Forum
20 level, of course.

21 MR. ROSENBERGER: That's correct.

22 Q So it's at the Area staff. And what processes
23 does DFO use to make sure the information that's
24 collected at the Area staff gets communicated up
25 the line within DFO, and where decisions around
26 some of those key harvesting issues are made.

27 MR. ROSENBERGER: Well, through the Fraser Integrated
28 Management Team we have the Resource Managers from
29 each of the geographic areas is a part of that
30 process. So they're bringing forward the
31 information and comments, recommendations,
32 whatever that are heard in each of their bilateral
33 sessions. We have a tracking system in place when
34 get formal letters from any of the groups, trying
35 to make sure that the local managers have the
36 information they need to respond, or if it's an
37 issue that we think should be elevated in the
38 response, so that's something that the Salmon
39 Coordinator position and myself have been working
40 to coordinate on responses and letters, to make
41 sure that we're consistent in the information, and
42 that also gives us the opportunity to see all of
43 that information direct.

44 The managers participate in their own
45 processes within Areas, so the individual Resource
46 Managers are working with their Chief of Resource
47 Management. So it's from the three geographic

1 zones that the Department has, so the B.C.
2 Interior, Lower Fraser and South Coast. So
3 there's exchange of information and the issues.

4 And so I think from our side of it, both in
5 providing the direction down from the front
6 membership, being -- listening in on Fraser Panel
7 meetings, listening in at our FRIMT meetings and
8 the direction, the coordination and developing
9 lists of issues and options for, you know, how
10 we're moving forward, so that they can go back out
11 and try to resolve those at local levels I think
12 is -- gives us that coordination that we need.

13 Q And without again taking away from the details
14 which we'll have now, I just want to see if I've
15 heard that right. Which is that it has a lot to
16 do with who and how people are talking to each
17 other.

18 MR. ROSENBERGER: Yes.

19 Q Last week and again yesterday, I understood from
20 your evidence that another challenge or another --
21 yeah, maybe challenge is the right word, is that
22 many First Nations do not have treaties. And from
23 your experience and your perspective, on the hard
24 issues that you're dealing with in-season and as
25 it relates to harvest management, do we need
26 treaties to resolve First Nations participation in
27 Tier 1 and Tier 2 and Tier 3 processes?

28 MR. ROSENBERGER: I think it's the treaties gives you
29 the defining of the rights, so what the process is
30 that the government wants to come to and the First
31 Nations, there is a First Nations treaty process,
32 so that's obviously one way of doing it. But
33 governments have made other arrangements to
34 define, you know, the -- whether they're trying to
35 define the rights or they're just trying to
36 define, you know, a given set of circumstances.
37 And in the Interior we're seeing that around
38 forestry right now in some places without
39 treaties. So there are mechanisms for settling
40 this without a specific land claim treaty, but
41 until you get into defining, coming to agreement
42 either on that right or how that right will be
43 enacted until there's a treaty or whatever, you
44 know, the more formalized process is, I think
45 that's a key part on trying to understand how to
46 move forward.

47 Q So it's really understanding the nature of the

1 rights that people are -- are responsible for,
2 more than the treaty.

3 MR. ROSENBERGER: Yes.

4 Q Thank you. Would you also agree that in modern
5 day issues, in particular the challenges around
6 sharing arrangements in times of scarcity, and
7 approaches to selective and terminal fisheries,
8 some of the conservation issues that you're
9 looking at, that we really can't wait for treaty
10 given that many First Nations along the Fraser are
11 not even in the treaty process. Would that be a
12 fair -- do you agree with that?

13 MR. ROSENBERGER: I think we need to resolve those
14 issues. And the fish don't wait, as we often say,
15 you know, to have all this other more formalized
16 agreements concluded. So we have to have some
17 kind of arrangements each year, and that's what we
18 strive for right now.

19 Q Thank you. I've heard that expression quite
20 often, so I'm glad that it's now on the record. I
21 wanted now to pick up on something that I
22 understand was raised yesterday in your testimony.
23 I just need a couple of clarifications. I wasn't
24 sure I understood this. I understand in response
25 to questions from Ms. Fong that you used the term
26 "mandate information", and without the benefit of
27 the transcript, I just want to see if I've got a
28 couple of things correctly, and then I've got a
29 couple of questions for you around this.

30 I understood that you had a mandate for each
31 First Nation. Is that each band?

32 MR. ROSENBERGER: Not necessarily at that level, no.

33 Q So some of them are tribal mandates and some of
34 them are local individual First Nations, depending
35 on how the agreements are crafted?

36 MR. ROSENBERGER: That's correct.

37 Q Thank you. And that the mandate is information
38 that you've received from Ottawa, is that correct,
39 or is that --

40 MR. ROSENBERGER: That's correct.

41 Q Is the Region involved in developing these
42 mandates?

43 MR. ROSENBERGER: I assume so. I'm not part of that.

44 Q Oh, you're not part of that. Okay. And then I
45 was -- who is part of that?

46 MR. ROSENBERGER: Our Treaty and Aboriginal Policy
47 Group with the Ottawa people.

1 Q With the Ottawa people in the Department of
2 Fisheries and Oceans?
3 MR. ROSENBERGER: That's right.
4 Q And who would that be in DFO here now, like, at a
5 Regional level, who --
6 MR. ROSENBERGER: Our Director, Treaty and -- Treaty
7 and Aboriginal Policy Division.
8 Q Could you tell me the name?
9 MR. ROSENBERGER: Kaarina McGivney was there. That's
10 her substantive -- Jennifer Nener?
11 MR. GROUT: Sarah Murdoch is currently acting in that
12 position.
13 Q Thank you. Now, these are mandates that inform
14 the nature of the work that you do, or the nature
15 of the work that the Area Directors will do, and
16 in any given season, and I appreciate that -- I'm
17 not going to ask you the content of any particular
18 mandate, so you can rest assured on that. But I
19 am curious as to what they are, are they mandates
20 for FSC allocations, are they mandates for
21 economic fisheries, are they mandates for how far
22 and to what extent a First Nation can participate
23 in decision-making structures. What type of
24 mandates are we talking about?
25 MR. ROSENBERGER: Funding and FSC allocations.
26 Q Thank you. Do you know whether in developing
27 these, or in your work, maybe that might be easier
28 for you to answer, but if you know from both
29 perspectives and the development of the mandates
30 in your own work, do you do strength of claim
31 analysis with respect to the First Nations along
32 the Fraser or the approach, or is that part of the
33 work that the Department does?
34 MR. ROSENBERGER: It's considered in the -- in the work
35 that we do.
36 Q And is that work shared with First Nations when
37 you complete that work?
38 MR. ROSENBERGER: I don't think there's a lot of
39 formalized work around it. I mean, from our side
40 of it, it's often -- some groups have sent us maps
41 or geographic descriptions of the areas that
42 they're laying claim to. If the -- where there's
43 overlaps in those groups, then we need to
44 understand that -- that there might be more than
45 one group in a given area, things like that. I
46 can't say at the -- at the Area level that I'm not
47 even certain in the Department we do a lot of

1 formalized work to conclude the strength of claim.

2 I think from our side of it, it's been more
3 the history of our interactions and which groups
4 we would expect. And there has been a number of
5 issues raised between some groups, and so in some
6 of those we've been involved to try to either
7 clarify or understand, so some of the boundaries
8 and some of the geographic areas.

9 And in some places it's ended up where we've
10 got consistent information on a communal licence,
11 for example, in the Williams Lake area between the
12 Chilcotin and Alkali, the Esketemc First Nation,
13 and the Northern Shuswap, for example, where
14 they're claiming on -- you know, each one of them
15 claims is their own, but they recognize some
16 degree of overlap. So in places like that we come
17 to, you know, some compromise in how we issue out
18 communal licences, for example.

19 Q And so am I right to take from that answer that
20 primarily you're looking at strength of claim
21 analysis to address what I often call shared use
22 areas, is that correct, or overlap areas, to use
23 your words?

24 MR. ROSENBERGER: That would be the use that we would
25 probably have the most from a fisheries management
26 side of it.

27 Q So you don't really use strength of claim analysis
28 to look at making decisions around harvesting and
29 priority issues?

30 MR. ROSENBERGER: The priority side of things is one
31 that we're -- most often asking the First Nations
32 to try to work their way through, as I was talking
33 about when we had multiple groups wanting
34 different escapement levels, for example, on a
35 given stock. So instead of us making that
36 decision in favour of one group or another, and
37 stating that we think that they have -- one group
38 or another has a higher priority or claim, we
39 haven't made those kinds of determinations. So
40 we're looking at processes to try to resolve on --
41 you know, on a management basis, not on a strength
42 of claim basis.

43 Q Thank you. That's very helpful. Okay. I'm going
44 to take -- unless there's any questions the
45 Commissioner has on this topic, I'm going to move
46 more to specific questions on -- ah, yes. I
47 wonder, do you know whether or not any of this

1 mandate information is going to be disclosed to
2 this Commission as part of the disclosure of
3 documents?

4 MR. ROSENBERGER: I have no idea.

5 Q All right. I'm going to turn now my questions to
6 trying to understand a little bit more how FRIMT
7 and the Salmon Working Group and the Salmon Table
8 -- not the Salmon Table, Salmon Team, sorry -
9 S.T., Salmon Team or Salmon Table, sorry - Salmon
10 Team, there's three internal DFO groups that we've
11 learnt about: the FRIMT and the Salmon Working
12 Group and the Salmon Team. I'm -- frankly I
13 looked at the terms of reference that I could find
14 and I'm still a little -- I still have a couple of
15 questions about how their work coordinates. And
16 could you tell me is one working for another
17 group, or is -- like is the Salmon Working Group
18 working for the Salmon Team, and doing the legwork
19 for them, or how does -- how do the three of them
20 work?

21 MR. ROSENBERGER: I'm sure Jeff will jump in here, but
22 maybe just at the level I would describe it as the
23 Salmon Team is a geographic working -- or like
24 it's a working team within our Department, but
25 it's just -- it's a group of people. So it's the
26 same as I'm the Director for the B.C. Interior, so
27 you could call us the B.C. Interior Team idea.
28 It's, you know, that's a work structure group.
29 The ones that actually are working on fisheries
30 decisions in a formalized team is trying to bring
31 people together from across sectors or across
32 geographic working units within the Department is
33 the Salmon Working Group, and the -- and the
34 Fraser Integrated Management Team. So they have a
35 specific management task that they're trying to
36 do, where there is a terms of reference and this
37 -- the Salmon Team is -- it's been described
38 around here as really a group of people that, you
39 know, it's our core headquarters, geographic
40 working people.

41 Q Great. That's very helpful. So they're the sort
42 of think tank people and the FRIMT and the Salmon
43 Working Group are people that are - sorry, I don't
44 mean any insult on that - are people that are
45 charged with making certain decisions and certain
46 recommendations?

47 MR. ROSENBERGER: Well, the Salmon -- people who work

1 in -- you know, Jeff, and the Salmon Team Lead and
2 the Salmon Officer are charged with making
3 decisions as well. But they sit on this
4 integrated teams, the other two, versus, you know,
5 having an organization structure, is how I would
6 describe the Salmon Team.

7 Q You'll appreciate that one of the reasons why I'm
8 asking these questions is it's often hard to
9 understand at what level and who makes certain
10 decisions within the Department. You'll agree
11 with me that that's sometimes a challenge First
12 Nations have and perhaps even some people in the
13 Department have?

14 MR. ROSENBERGER: There's often questions raised, so I
15 think we try to answer them. We'll try today.

16 Q Okay, thank you. Is it the FRIMT or the Salmon
17 Working Group that finalizes the IFMP for signoff
18 for the RDG?

19 MR. ROSENBERGER: Well, that's -- Jeff gets that
20 together in his role as the -- that's one of his
21 tasks as the Lead within the Salmon Team side of
22 it. So just that's a structure part, but there's
23 a lot of people who feed into the development of
24 the Integrated Fisheries Management Plan, and it's
25 not specifically from either FRIMT or the Salmon
26 Working Group.

27 Q Jeff, is there anything you'd like to add with
28 that?

29 MR. GROUT: I could maybe just add a little bit. So
30 Barry's right. I have the ultimate responsibility
31 for pulling together the final IFMPs that are
32 going to go to the Minister for approval, as well
33 as the -- the briefing note that's going to
34 summarize the issues around those. We utilize any
35 number of our teams that we have in place. We
36 typically at the Salmon Working Group discuss
37 issues related to the IFMP where we can get
38 feedback from all of the participants at the
39 Salmon Working Group.

40 One important distinction to make is that the
41 Salmon Team and the Salmon Working Group are
42 focused broadly in the Pacific Region, so it's not
43 just Fraser sockeye and pink salmon. Whereas
44 that's more of a focus for the Fraser River
45 Integrated Management Team.

46 Q That does help me. Thank you. Now, is it then
47 FRIMT who takes the various competing potential

1 interests and perhaps even something as loosely
2 defined as the public interest, and those types of
3 things. Is it FRIMT who does that final balance
4 between those issues and makes decisions before
5 they make the recommendations then?

6 MR. ROSENBERGER: For the IFMP development, it's the --
7 Jeff is coordinating that for the Department from
8 various sources that it's coming in. So the pre-
9 season document that guides our in-season
10 decisions, and the Fraser Integrated Management
11 Team is taking that document and making those
12 deliberations in-season about the decisions, and
13 as the Chair of FRIMT, that's a responsibility
14 that I have.

15 Q And are there any direct engagement meetings
16 between FRIMT and First Nations on matters that
17 you make decisions on, either pre-season or post,
18 or in-season?

19 MR. ROSENBERGER: Well members of FRIMT would be doing
20 bilateral consultations, they would attend Forum
21 processes, Integrated Harvest Planning Committee,
22 so they -- the FRIMT as a whole group doesn't go
23 out and travel to meet with all the groups in
24 various geographic areas, but people from the
25 FRIMT team go to those meetings and bring that
26 information back into the process.

27 Q So is it fair to say that there is often at that
28 FRIMT team differences of views and perspectives
29 that need to be talked out as it relates to that.
30 If I'm getting that right, if Area Directors are
31 getting information into FRIMT about the differing
32 views that First Nations might have on the fishing
33 plans, there may be conflicts associated with
34 that, or challenges associated with that. Is --
35 are those issues talked out and talked through at
36 the FRIMT level?

37 MR. ROSENBERGER: That's correct.

38 Q And are there dispute resolution processes that
39 are used by FRIMT when doing that?

40 MR. ROSENBERGER: Not that we have a formal list out,
41 here is the steps you follow. But the IFMP gives
42 us direction. We have, you know, court case
43 decisions on priority of the First Nations, the
44 Department's policies, besides the IFMP, the
45 Allocation Policy, Selective Fishing Policy,
46 there's a number of different places that guide
47 those decisions. So when recommendations are

1 coming in from a geographic area or a given sector
2 for fishing that the DFO person who was at that
3 meeting might be bringing into the discussion as a
4 whole, in most cases there is policy and direction
5 that helps to work our way through.

6 Where, you know, in places like First Nations
7 sharing around a limited stock, we don't have
8 clear -- you know, there isn't -- there isn't
9 something as we've already discussed about saying
10 that, you know, Group A has priority over Group B,
11 that both have fish passing through their areas
12 but not spawning there, or they spawn there versus
13 passing through, kind of arguments that have been
14 brought forward. In those cases the Department
15 has set some rules that we're using and that we've
16 passed on to First Nations, and if they come to
17 consensus of a different set of rules, then we
18 would look to incorporate those in our decisions.

19 MR. GROUT: Maybe if I could add as well to what Barry
20 said. There are going to be occasions where there
21 may not be agreement in the FRIMT Team on the
22 particular approach, or -- and an issue is going
23 to be controversial no matter what the decision is
24 going to be made. So in those sorts of cases,
25 briefings can be done at the RDG to get feedback
26 on what level of briefing we might want to do.
27 And in some cases for important decisions we have
28 taken the step of briefing up to the Minister for
29 a decision, and the decision on the Cultus
30 exploitation rate in 2010 was an example of that.

31 Q And do you also take another step, which is to get
32 back to the First Nations and advise them of the
33 competing interests that you're having to balance
34 and the nature of options that you're considering
35 and get feedback at that level, or is it primarily
36 through your own hierarchy.

37 MR. GROUT: Well, keeping with the example of Cultus
38 sockeye in 2010, we did make a number of efforts
39 to try and go back and meet with Sto:lo and
40 Soowahlie specifically. At the previous Forum
41 meetings in the pre-season planning, First Nations
42 there suggested the Department work closely with
43 those two groups on any plans we were considering
44 making with respect to Cultus.

45 Q And perhaps just picking up on what Mr.
46 Rosenberger said earlier, is it fair to say that
47 at the stage in which FRIMT is making decisions

1 you're not considering strength of claim analysis,
2 or any issues around that, you're mainly dealing
3 with the management issues?

4 MR. GROUT: Yeah, I think Barry's depiction of that was
5 accurate from previous.

6 Q Thank you. Just a couple more questions on FRIMT.
7 Is it also a fair observation that what DFO is
8 trying to do internally with the potential
9 challenges associated in -- and externally is that
10 you're trying to work with committee levels
11 internally to reach consensus on what can go
12 forward; is that correct?

13 MR. ROSENBERGER: Yes, I think that's fair.

14 Q And is it -- is it a fair observation that if you
15 do reach consensus at these levels, that as they
16 travel forward your recommendations are usually
17 respected; is that correct? If you reach
18 consensus --

19 MR. ROSENBERGER: I think --

20 Q If you reach consensus at the FRIMT level, for
21 example, and have consensus reached amongst the
22 Area Directors or any of the other things and make
23 those recommendations forward, do they generally
24 get changed at a higher level, or are they
25 generally implemented?

26 MR. ROSENBERGER: They're generally implemented.

27 Q Typically how are the decisions of FRIMT
28 communicated back to First Nations as it relates
29 to harvest decisions and the -- DFO's decision.
30 Is it usually through just the IFMP or do you
31 actually communicate directly. We've considered
32 these three issues, and we've decided to go with
33 this. Or how do you do it, do you...

34 MR. ROSENBERGER: Anybody who writes to us, we write
35 back, and on their recommendations, and we provide
36 the DFO decision and rationale, if it's accepting
37 it or if it's different, and why we -- we might
38 have made a change. In the discussions in our
39 planning processes, the meeting that we'll be
40 holding tomorrow with First Nations in the Forum
41 is one of the things that we do in our post-season
42 reviews is get the recommendations from groups,
43 and it's not just First Nations, but in this case
44 the ones that they've made, and we try to show
45 where the -- here's the decision that the
46 Department has taken, here's, you know, the
47 recommendation or the series of recommendations we

1 might have seen from First Nations on a given
2 issue. And what we did in adopting it, and
3 hopefully information on how successful it was in
4 the implementation. So there's a number of
5 different ways that that information gets
6 exchanged.

7 Q Thank you.

8 MR. GROUT: Maybe if I might add a little bit to what
9 Barry said. In terms of the Integrated Harvest
10 Planning Committee process, I quite often will go
11 back to the individual First Nations that have
12 sent us letters with advice and ask if it's okay
13 to share that information with broader groups. So
14 to the extent that there's agreement on doing
15 that, I might provide a summary at the Integrated
16 Harvest Planning Committee on advice that we'd
17 been provided. I think on these sorts of
18 questions, there's maybe things that we do
19 differently in-season, as well.

20 In terms of regular planning calls at the
21 various groups, to explain the information as it
22 currently stands of the process, our understanding
23 of what fishing plans are for various other
24 groups. And so it's a much more dynamic process
25 in-season in terms of the Department or other
26 technical experts that are involved in the
27 process.

28 Mike Staley is a good example. He's got a
29 weekly call for First Nations where he keeps them
30 abreast of the information from the Fraser Panel
31 in-season and any plans that are being considered.
32 So from pre-season to in-season we move to a much
33 more dynamic process in-season in terms of the
34 updating we try and do.

35 Q Thank you. Just one final -- two final questions
36 on FRIMT and how it works within the Department.
37 Is it FRIMT that would be the group that would
38 recommend to you as the Chair of the Fraser Panel
39 different approaches on engagement with First
40 Nations. Is that -- have I got that correct?

41 MR. ROSENBERGER: I think the approach to the
42 interactions with the First Nations is something
43 that we discuss to some degree in FRIMT, but the
44 given areas are often defining that for themselves
45 in the workings that they have. Like, what --
46 what might be working and as we described earlier,
47 some groups are further advanced technically, some

1 are more interested in being engaged, so I think
2 the -- the method for engagement in a specific
3 area is defined in the area. But whether the
4 engagement has occurred or whether there's, you
5 know, people who have indicated that they're not
6 interested in meeting, so we understand at the
7 FRIMT level if we want to make a decision that we
8 -- that we have attempted to meet the consultation
9 objectives is an example of something that we want
10 to understand in the FRIMT process.

11 Q I guess I'm trying to get a sense of how you as
12 the Fraser -- Chair of the Fraser Panel gets some
13 of your mandate issues. Is -- are you mandated
14 from FRIMT for the pre-season and in-season work
15 that you do at the Fraser Panel -- or directed,
16 maybe mandate is the -- is too a strong a word.
17 Are you -- do you get your direction from FRIMT as
18 to the positions that you -- that are promoted by
19 the Department at the Fraser Panel or otherwise?

20 MR. ROSENBERGER: Well, Policy is giving me direction.
21 I report to the Regional Director General as the
22 Area Director, in trying to implement the Area
23 mandate in the summer, or year round. I also
24 report to the Chief Commissioner of the Pacific
25 Salmon Commission as the Panel Chair, which is
26 also the RDG, so that makes it easy. I don't have
27 to track down two people.

28 In the scheme of things, the -- there's a lot
29 of interaction there. I think that was a point
30 that Jeff was clarifying in some of my
31 discussions. So as the Fraser Panel Chair, I am
32 mandated to make those decisions, and with FRIMT
33 for both the domestic side and the international
34 issues, but it's a -- you know, it's not like I
35 don't talk to the RDG on a regular basis about
36 where we're going or what the issues might be, if
37 they are significant. And if there's any changes
38 that we are considering.

39 Q Thank you. I want to turn now to specific
40 questions around the Fraser River Panel, Mr.
41 Rosenberger, and I know that you've had -- correct
42 me, you've had experience with the Fraser River
43 Panel much before you became the Chair, you've
44 been working with that group and active in that
45 group for a while now?

46 MR. ROSENBERGER: Well, I was seven or eight years the
47 co-chair for the Southern Panel, so there's a fair

1 number of links between the Southern Panel and the
2 Fraser River Panel. Many of the fisheries in the
3 areas are overlapped. It's more of a species
4 designation to the separation. I also was asked
5 to participate as an observer in the Fraser River
6 Panel for a number of years before I was on the
7 Southern Panel, for a few different reasons. So
8 I've had knowledge of the Fraser Panel for a long
9 time.

10 Q Thank you. And I want to pick up on a comment, I
11 think I've remembered it right, I didn't quite
12 have a chance to go back to the transcript. But
13 as I remember your evidence when Ms. Baker was
14 asking you questions, was around, you know, you
15 don't have to be scientist always to be able to
16 work with these -- these numbers, and in fact that
17 some of the job as a manager is to integrate and
18 deal with the various uncertainties. Is that --
19 have I put words in your mouth, or is...

20 MR. ROSENBERGER: Probably not.

21 Q It is your understanding and your work at the
22 Fraser Panel and your experience that there is
23 increasing uncertainties and in-season risks as
24 part of the work, in particular around run size
25 estimates and...

26 MR. ROSENBERGER: I'm not necessarily agreeing that
27 there's increasing uncertainties. I think we're
28 spending more time in trying to document and
29 understand the uncertainties and take that into
30 account in our decisions more explicitly.

31 Q Oh, that's fantastic. I actually did again a
32 little bit of work, having sat here, to sort of
33 list the kinds of uncertainties that you as
34 managers may be facing in your decision-making
35 process and I'll see whether or not how -- whether
36 or not this is consistent with your work. First
37 of all, you have uncertainties regarding the
38 estimates of fish abundance and other
39 measurements; is that correct?

40 MR. ROSENBERGER: That's correct.

41 Q And is there also uncertainties regarding the
42 model structures themselves and then the
43 parameters of how those models apply?

44 MR. ROSENBERGER: I'm not a modeller, so this is part
45 of -- where you maybe don't have to be a scientist
46 to be a part of this. So maybe to respond to the
47 -- linking the first question into your second one

1 is that so the kinds of things we're doing within
2 the Pacific Salmon Commission is asking them to
3 develop a new model, where they in the past were
4 using three or four different types of models to
5 try to estimate the run size in-season, and some
6 of those had uncertainty estimations in
7 association with them, and others did not. The
8 new model, the attempt there is to move into a
9 more of a different type of statistics and
10 analysis, this Bayesian process, and part of that
11 is to try to more quantify the various
12 uncertainties in the different parts.

13 So the workings of the model I don't have any
14 information on it, on whether the model is more
15 uncertain or less, but our objective in the Panel
16 and what we've asked the Salmon Commission to do
17 is try to bring more pieces of information into
18 their quantifying the uncertainties or risk
19 associated with various parts of that when they
20 report out.

21 Q Great. And Commissioner Cohen does have an
22 affidavit from the woman at the PSC that lists all
23 the uncertainties that the models include. How
24 about uncertainties regarding the response of the
25 users to the regulations, like changes in gear
26 type, changes in fishing efforts that occur as a
27 result of the changes in the fishing season.
28 Those are increasing -- are some types of
29 uncertainties that you as managers --

30 MR. ROSENBERGER: There's definitely uncertainties, but
31 I would -- again I'd say that that's one area
32 where it, you know, it's probably less. The
33 fisheries themselves and the regulations moving
34 to, for example, some of the individual
35 transferable quotas and the accountability -- the
36 accountabilities, but the accounting processes now
37 where we have dockside monitoring. So it's
38 virtually a full census on the program versus an
39 estimation what used to be largely described as a
40 sample survey type of an estimation process. So I
41 think we have less risk in the catch and the --
42 and the quantity of the catch, so that the
43 reliability and certainty around that is improved
44 when you look at the -- where the -- how many of
45 those fisheries now have got a full census versus
46 an estimation process around them. So you know,
47 gear type use, I think there's been lots of

1 information on transition to selective fishing and
2 the objectives around that. There's training
3 courses in use and whatnot. So my understanding
4 and my observations would be that some of those we
5 have less -- there's still uncertainty, but it
6 would be less than it would have been in the past.
7 Q Great. That's helpful. Also uncertainties around
8 the future environmental conditions, both in terms
9 of the ones that we are used to measuring, which
10 is water levels and water temperatures, but also
11 future environmental conditions associated with
12 cumulative impacts. Would you agree with me on
13 that?
14 MR. ROSENBERGER: Yeah, I think that's significant.
15 Q Also uncertainties regarding the future social,
16 political and economic conditions that are
17 associated with these fisheries; is that correct?
18 MR. ROSENBERGER: It could be, yes.
19 Q And likely there's also uncertainties regarding
20 future management objectives as it relates to some
21 of these stocks; is that correct?
22 MR. ROSENBERGER: Well, there's uncertainties because
23 there's different objectives that different
24 parties are bringing to the table. But I think
25 the process is improving all the time of trying to
26 get people to bring their issues to the table, and
27 trying to work through them and come to consensus
28 as much as possible, but at least a clear
29 understanding of what the objectives are. So I
30 would say that in any given year there's less
31 uncertainty.
32 Q All right. So that actually takes me right to my
33 next question. Would you agree with me that when
34 working with all of these different uncertainties
35 and the -- that a person's responsibilities, their
36 own experiences, their own values, their own risk
37 tolerances and familiarities with the interplay of
38 all these will result in different reactions to
39 these uncertainties and different responses to
40 these uncertainties?
41 MR. ROSENBERGER: Yes.
42 Q And would you also agree with me that
43 understanding the level of these uncertainties is
44 an increasing challenge and getting adequate
45 information around that is something that requires
46 further work at the Fraser Panel?
47 MR. ROSENBERGER: Yes.

1 Q Has there been formal approaches that are being
2 developed at the Fraser Panel amongst the managers
3 as to how approach these uncertainties? You
4 mentioned a few things that you're taking at a
5 specific level. Are there more collective efforts
6 that are being made to deal with all of these
7 uncertainties and how to work with them?

8 MR. ROSENBERGER: That's part of again in the model
9 where we're trying to quantify the uncertainties
10 so people understand where -- where decisions
11 leave risk in the Integrated Fisheries -- in the
12 FRSSI model, that's built in to some of this
13 process. So I think there's a few places where
14 we're trying to spend more time and trying to
15 quantify the risk, trying to quantify the
16 uncertainty and get input from people in -- in
17 that regard. So I think there is work going on in
18 a few fronts. It may not be in all of them.

19 MR. GROUT: I could maybe just add briefly to what
20 Barry said. There has been a fair amount of work
21 done at the Fraser Panel to try and assess risks
22 of different fishing plans, for example, as well.
23 And there was -- I can't remember the exact years,
24 but we were looking at the probabilities of
25 exceeding Cultus exploitation rate objectives, for
26 example. And so we built new tools into the
27 planning models to try and address some of that.

28 I think you referred to Catherine Michielsens
29 as well, earlier, without using her name, and one
30 of the pieces of information she's also been
31 developing is probabilities of meeting the
32 escapement targets, given uncertainties and run
33 size. So there's new information being brought
34 into the discussions to address some of the
35 questions and concerns that are -- and people are
36 raising.

37 Q Thank you. Just picking up on that question
38 around different people having different
39 perspectives on these uncertainties, could you
40 remind me, MR. Rosenberger, I'm sorry again, how
41 many representatives on the Fraser Panel do the
42 commercial fisheries have?

43 MR. ROSENBERGER: I need to count these up -- seven or
44 eight. The -- yeah, seven or eight.

45 Q And the recreational?

46 MR. ROSENBERGER: One.

47 Q And how many DFO reps sit at the --

1 MR. ROSENBERGER: Two.
2 Q Two. And how many from the First Nations?
3 MR. ROSENBERGER: Three.
4 Q Isn't it two First Nations with the -- with
5 alternates at the Fraser Panel?
6 MR. ROSENBERGER: No, three.
7 Q Three?
8 MR. ROSENBERGER: There is only six members and there's
9 six alternates, but...
10 Q So you're counting all 12 there?
11 MR. ROSENBERGER: I'm counting all 12 in the process.
12 Q Thank you.
13 MR. ROSENBERGER: And three First Nations, there's an
14 Upper Fraser, a Lower Fraser and an approach area.
15 Q And how long have these numbers been in place?
16 MR. ROSENBERGER: They've changed periodically. There
17 was two First Nations for a long time. So it
18 changed to three, it would have been about five --
19 four or five years ago. And 20 years ago there
20 was only one First Nation, so there's a
21 progression there, but I don't have the specific
22 dates when we've made changes on whose members.
23 Q How are those changes made? Who makes that
24 decision to change the makeup of the Fraser River
25 Panel?
26 MR. ROSENBERGER: Until about four or five years ago,
27 it was at the decision of the Minister, and now
28 that decision resides in the Region, and it's the
29 Regional Director General that makes decisions on
30 appointments to panels.
31 Q Now, again just bear with me, I again have not
32 been able to ask Mr. Sprout about this
33 specifically, and I will, but I want -- I am
34 informed that at a meeting in February of 2009 of
35 the First Nations Caucus of the Pacific Salmon
36 Commission in Oregon, Mr. Sprout indicated that it
37 was his personal opinion anyway that at least 50
38 percent of the representation on the Fraser Panel
39 should be First Nations. Were you at that
40 meeting?
41 MR. ROSENBERGER: I was at that meeting, yes.
42 Q Do you agree with Mr. Sprout on this?
43 MR. ROSENBERGER: The discussion we had was that we
44 needed to increase the participation of First
45 Nations in both geographic areas, but also in the
46 -- in the interest that they were bringing
47 forward. So one of the members now is a

1 commercial fisherman as well as a First Nation
2 person, and so we looked at it in that context.
3 And there was some debate in that meeting about
4 when you started talking about percentages, which
5 was maybe where that part came of whether they
6 were First Nations FSC type interests only, so I
7 haven't thought enough about whether it should be
8 50 percent and how you would make that
9 relationship. But I do agree that there should be
10 more First Nations on the Panel.

11 Q And what are the impediments to increasing First
12 Nations representation? Why hasn't it yet
13 happened, and what needs to happen in order for
14 that to occur?

15 MR. ROSENBERGER: Well, the RDG needs to make a
16 decision, so somebody would have to be removed
17 from the Panel. When you're appointed, there's
18 some of -- some of the appointments actually have
19 a set term and some of them don't. But simply
20 you'd have to remove someone from a -- from a
21 position and make an appointment to obviously
22 somebody else. I think there's a few impediments.
23 One is that the First Nations have still not
24 collectively got themselves to the point where
25 when somebody comes, they are there representing
26 either a geographic area or some interest -- well,
27 obviously they have an interest, but that we know
28 that they're there mandated by some area that and
29 that they're going back. So there's some issues
30 around how First Nations people amongst themselves
31 would want to have people appointed. And then the
32 role that they would carry back.

33 There's requests from -- as we heard
34 yesterday, or one of the days I was here, there's
35 requests from the Marine Conservation Caucus for a
36 formalized membership. There's been a request for
37 additional recreational people to try to cover off
38 their geographic interests. And there's -- I
39 don't think there's any formal request right now
40 for increased commercial, but there's been letters
41 and information on file that the commercial
42 industry does not want to lose any of the seats
43 that they have. So it's trying to weigh off the
44 various interests that are interested in
45 participating, and then within the groups of, you
46 know, who should be selected and how they would
47 come forward.

1 Q Do you agree with me that in order to get First
2 Nations' insight on the weighing of these
3 uncertainties and the measuring of these
4 uncertainties, you wouldn't necessarily need the
5 mandate issue resolved; is that correct? It would
6 be nice to have them both resolved, like the
7 mandate on who they represent and whether they
8 represent all First Nations on the Fraser. I've
9 heard you say you'd like to have both of those in
10 place, both, that that would be useful. But you'd
11 agree with me that in order to improve decisions
12 of the Fraser River Panel, just having the wisdom
13 of different perspectives is a useful thing?
14 MR. ROSENBERGER: Yes.
15 Q And so that that mandate issue may not need to be
16 resolved in order to -- to take the next step on
17 that; is that correct?
18 MR. ROSENBERGER: It may not be, but I think it's a
19 significant issue in trying to get informed input.
20 MS. GAERTNER: Mr. Commissioner, I note the time. I've
21 got to consider one thing and this might be an
22 appropriate time to take a break, if it works for
23 you.
24 THE COMMISSIONER: If you don't need a break, I'm happy
25 to continue.
26 MS. GAERTNER: You want me to ask a couple more
27 questions before we take the break? All right, I
28 can do that. Absolutely.
29 THE COMMISSIONER: How much longer do you think you'll
30 be?
31 MS. GAERTNER: I estimated 90 minutes, and I expect
32 I'll be the full 90 minutes.
33 Q Perhaps if we could have Exhibit 14 at page 282.
34 Mr. Rosenberger, I'm asking them to bring up a
35 summary of the recommendations that -- I have
36 Exhibit 14, page 282. And this was a
37 recommendation -- you may be familiar with this
38 recommendation, Mr. Rosenberger, from your won
39 work again. It's recommendation 44 from the
40 Williams Inquiry. So you'll see on the -- on the
41 left-hand side, the actual recommendation:
42
43 The PSC [Fraser River Panel] is the critical
44 link... The Canadian consultative and
45 management structures for all fisheries
46 impacting on Fraser sockeye should be
47 integrated with the Canadian section of the

1 FRP. In particular, First Nations'
2 consultative processes must be fully engaged
3 with that process.
4

5 What steps have been taken since the -- this
6 recommendation to respond to it and increase the
7 integrative relationship between the Fraser River
8 Panel and DFO's consultative processes?

9 MR. ROSENBERGER: The response is written on the right-
10 hand side, some of it there. So the making that
11 the Fraser Panel Chair and the Chair of FRIMT are
12 the same person, so we bring that coordination
13 together, is a key part of this. It's also
14 linking in other appropriate directors,
15 understanding some of these issues, and how we
16 want to make sure we have that overall
17 coordination. And the DFO consultation side of
18 things is one where we've put, as we've been
19 talking here, a fair amount of effort in
20 particular in the Forum process over the last four
21 years on trying to bring together the First
22 Nations consultation into a more cohesive process,
23 but overall I would say there has been increasing
24 consultations with First Nations since the last
25 review.

26 Q There haven't been any changes to the makeup of
27 the Fraser River Panel since that review yet; is
28 that correct?

29 MR. ROSENBERGER: I'm not certain when Marcel Shepert
30 was the last First Nation added to the Panel. It
31 might have been around the '04/'05 period. That
32 would be about the right timing where we would
33 have added the third First Nation, but I'm not
34 certain on the dates.

35 MS. GAERTNER: Okay, thank you. I am now going to move
36 to another area, so this would be an appropriate
37 time for the break.

38 THE REGISTRAR: The hearing will now recess for 15
39 minutes.
40

41 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
42 (PROCEEDINGS RECONVENED)
43

44 CROSS-EXAMINATION BY MS. GAERTNER, continuing:
45

46 Q Mr. Grout, I'm actually going to turn to some
47 specific questions I have of you with respect to

1 the Integrated Harvest Planning Committee and
2 their work on the IFMP. And I wanted to start
3 with the terms of reference and just picking up
4 again on some of the same gist, as they say, the
5 questions with Mr. Rosenberger. There's also a
6 lot of cross-sectoral work and challenges
7 associated with understanding data and working
8 with various uncertainties at the IHPC level,
9 also; is that correct?
10 MR. GROUT: Yes.
11 Q And as I understand it, the representation that we
12 have at the south coast is we've got six for the
13 commercial; is that correct?
14 MR. GROUT: That's correct.
15 Q Three for the recreational?
16 MR. GROUT: Yes.
17 Q Two for the Marine Caucus Conservation?
18 MR. GROUT: Yeah, Marine Conservation Caucus.
19 Q Thank you. And four for First Nations --
20 MR. GROUT: Yes.
21 Q -- with only two participants of First Nations
22 participating right now; is that correct?
23 MR. GROUT: The attendance on some of the positions has
24 varied depending on the meetings. In the south,
25 we have not had our full four participants, at
26 least on the committee itself. We've had a number
27 of observers attend as well.
28 Q And is it correct that the participants that do
29 participate, not as observers, are very clear
30 they're not participating with the negotiating
31 mandate; is that correct?
32 MR. GROUT: That's correct.
33 Q When were those numbers determined, as to the
34 number of representations on the committee, and by
35 whom? And how flexible are they?
36 MR. GROUT: I don't have the -- the history on why the
37 specific numbers were -- were chosen when the
38 committee was set up initially but they're laid
39 out in the -- the May 2005 terms of reference.
40 Q And how would those numbers be changed, if
41 changing those numbers would be useful?
42 MR. GROUT: In terms of the Integrated Harvest Planning
43 Committee, I think we would have a discussion at
44 the committee about the plan changes that were
45 going to be made and then it -- the terms of
46 reference could be updated, as a policy decision
47 by the department. At least that's my view on how

1 such a change could be achieved.

2 Q Thank you. And would you agree with me that it's
3 quite useful for representation at the IHPC to
4 include significant technical capacity?

5 MR. GROUT: There's a couple ways technical capacity
6 can be provided. The department provides
7 technical capacity to the participants.
8 Participants, depending on who they are, accept
9 the advice that's provided by the department. But
10 there are others that would prefer to have -- or
11 might have more trust, if they were able to have
12 one of their own technical participants provide
13 the -- the information to them.

14 Q And it's fair to say that, generally speaking, in
15 the relationship between the department and First
16 Nations that they often want their own technical
17 capacity?

18 MR. GROUT: I find that's often the case at a number of
19 the meetings. Although, in my previous role in
20 terms of providing technical advice, I did have
21 some success there as well. So I think it's a
22 combination of the two.

23 Q Okay. Thank you. Just one other round of
24 questions on the IHPC. As I understood it, Mr.
25 Grout, and I just make sure I've got this right.
26 As I heard your evidence, the first draft of
27 roughly a 200-page document with a fair bit of
28 technical information comes out one week before
29 the first meeting; is that correct?

30 MR. GROUT: The draft IFMP -- or sorry, draft number
31 one of the IFMP comes out approximately one week
32 prior to the first -- or to the IHPC meeting in
33 March. Now, that meeting in March is a meeting
34 that was added. We didn't, in the past, have the
35 March meeting and it was just a review of the IFMP
36 at the May meeting so that one of the concerns
37 that we heard from the participants is just having
38 a meeting in May to do the final review and
39 approval of the IFMP wasn't sufficient, in their
40 view, to provide that feedback and advice. When
41 the first draft of the IFMP comes out, we also do
42 provide an opportunity for comments for
43 approximately a one-month period for people to
44 come back to us with their comments and concerns.

45 Q In your evidence on January 21st, you mentioned
46 that the department is doing some work on how we
47 might improve the First Nations representatives in

1 the process. Could you tell us a little bit more
2 about what steps you're taking -- what efforts
3 you've been taking to encourage First Nations
4 participation in your process and how you might
5 see that improving?

6 MR. GROUT: Well, I can say that the First Nation
7 participation in this committee is important. I
8 think it's a general view of the members of the
9 other groups, including the CSAB, SFAB and the
10 Marine Conservation Caucus that it's important to
11 have strong First Nation representation there. As
12 you pointed out earlier, there are a number of
13 spots on the First Nations side where attendance
14 has not been good and we've also had statements
15 made that they're not specific -- the First
16 Nations, that are there are not specifically
17 mandated to represent broader groups of others.
18 In terms of the committee itself, that's -- or the
19 -- the appointments originally made were in 2004,
20 as interim appointments, and there was a
21 commitment to look at a way to devise a longer-
22 term process to make those appointments. And
23 that's something that the department's interested
24 in following up on.

25 Since I took over chairing the committee last
26 year, this is an item that I've had an interest in
27 moving forward. I did speak with our existing
28 First Nation representation -- or representatives
29 on the committees in both the north and the south
30 over the past summer to get some of their views on
31 how we might do this. There's a strong interest
32 in ensuring the existing seats are filled and also
33 in trying to develop a process for doing that on a
34 longer-term basis. So that's currently where
35 things sit.

36 Q And now, would you agree that a mandated tier one
37 process would help, with a technical capacity to
38 support, that might help the representation issues
39 on the IHPC?

40 MR. GROUT: Yes, I think that could be helpful.

41 Q I just wanted to check something. We can go to
42 it, if you'd like, and it's Exhibit 327. It was
43 the memorandum that went up to the minister
44 recommending the IHPC for 2009 -- IFMP, sorry,
45 IFMP.

46 MR. GROUT: Okay.

47 Q And on that, there was a sentence that said there

1 have been extensive consultations with commercial,
2 recreational and First Nation harvesters. And I
3 was just trying to understand, given the
4 challenges you have with representation on First
5 Nations at the -- on the committee, that -- what
6 would be those extensive consultations with First
7 Nations? Are we talking about the consultations
8 Mr. Rosenberger was talking about with general
9 consultation with area directors and all of that?
10 Is that what you meant when you used the words
11 "extensive consultation" --
12 MR. GROUT: Yes, it was meant to --
13 Q -- with respect to this plan?
14 MR. GROUT: Oh, sorry, I interrupted there and then I
15 didn't --
16 Q No, it's okay.
17 MR. GROUT: -- hear the end of what you said.
18 Q No, that's fine. I'm actually asking, you know,
19 what consultations with First Nations were
20 extensive, as it related to the IFMP in 2009.
21 MR. GROUT: So it relates to the -- the meetings we
22 have with the Integrated Harvest Planning
23 Committee, the First Nations Forum and then also
24 bilateral meetings that are conducted in the areas
25 between the department and First Nations.
26 Q So there might be a disagreement as to whether or
27 not those have been extensive with First Nations?
28 Would you agree with me on that?
29 MR. GROUT: I suspect there would be disagreement, yes.
30 Q Thanks. Is there anything else that you'd like to
31 add as to how we might improve the working
32 relationship between DFO and First Nations at the
33 kind of planning committee that you do on harvest
34 planning?
35 MR. GROUT: No, I might -- I mean I might add on one
36 point and I think you've touched on it earlier
37 with Barry. But I think mirroring these IHPCs or
38 First Nations Forum process it's important to have
39 similar ways to communicate the technical
40 information between the First Nations and the
41 department. I think that's -- an understanding of
42 the information that's backing up the discussions
43 and the decisions that need to be made is an
44 important element of making sure the processes
45 work effectively.
46 Q It's actually -- one of the challenges associated
47 with the process is actually communicating very

1 complex information to people with different
2 perspectives; is that correct?

3 MR. GROUT: Yes, that is one of the -- the key
4 challenges the department and even others that are
5 working with First Nations are -- are challenged
6 to try and address. We're continuing to look for
7 new ways or other ways that information can be
8 presented.

9 Q Thank you. Turning now to my second-to-last topic
10 and it's the topic on what's often called "weak
11 stock management" or what I might prefer to call
12 "selective or more terminal fisheries". We've
13 heard your testimony, Mr. Rosenberger, yesterday
14 regarding terminal fisheries and some of the moves
15 that the department has been taking -- yesterday
16 or last week on things like the allocation
17 transfer program and demonstration commercial
18 fisheries. What are the lessons that have been
19 learned so far from the demonstration fisheries
20 that have been conducted over the last little
21 while, in particular, those that have been
22 conducted within the main stem or further up on
23 the Fraser?

24 MR. ROSENBERGER: Most of the effort has been trying to
25 develop a management system that would work
26 terminally so we -- we started off in some cases
27 with fixed allocations and we've -- we've moved to
28 having them run-based and so they're -- they
29 become a portion of the total allowable catch, the
30 same as -- as the other fisheries that we're
31 managing. So we want them to be on a consistent
32 framework. The stock identification out of some
33 of these areas were able to pick up some new
34 discrete information that we may not have had in
35 the past so taking a look at what the implications
36 of those would be for fisheries.

37 There's some fairly interesting new
38 information that came out of the Harrison work,
39 for example, where the First Nations, Chehalis and
40 Scowlitz First Nations we anticipated that they
41 would be able to harvest fish leaving the Fraser
42 into the Harrison. In fact, they were much more
43 successful when the fish came back out of the lake
44 down into the -- back into the Harrison River.

45 So some of them is trying to establish the
46 fisheries, uses of different gear, so selectivity.
47 We're targeting to be towards gears that are the

1 most selective that we can be in given areas that
2 have the -- either selective by the species or
3 they have the least mortality on any released
4 fish. I think just developing capacity in general
5 amongst the First Nations into starting, you know,
6 commercial enterprises and the various, you know,
7 business aspects that they need to develop and
8 link into their processes. So there's been, you
9 know, gear area, trials kind of idea, the
10 management process, some new stock information has
11 been accrued and the business aspects for the
12 First Nations communities themselves.

13 Q Thank you. And just one follow-up question on
14 that. I call it the "rate determining factor".
15 Now, when I talk to a bunch of technical people,
16 that might not -- I might need to communicate what
17 I mean. And what I mean is, you know, what are
18 the impediments or what's determining the rate in
19 which we can accomplish more terminal fisheries?
20 What are our biggest challenges?

21 MR. ROSENBERGER: Probably developing the capacity in
22 the areas at this stage. It was a fairly
23 significant breakthrough this last year in the
24 Interior, the Shuswap/Thompson side of things
25 where the harvest was around 200,000 fish. So
26 we've had demonstration fishery attempts in five
27 or six areas over the -- probably for five or six
28 years so that there's a number of them. And in
29 most cases, the harvesting was well below the
30 desired outcomes. You know, so the allocation
31 that was provided to those given fisheries. So I
32 think that for many of the groups, it's trying to
33 figure out where and how they want to fish. And
34 if this is not clear, I mean, if you have a dip --
35 many of the First Nations fisheries in a lot of
36 areas were dip net only fisheries. So if you have
37 an objective, as the Shuswap/Thompson fishery
38 share last year was close to a million fish and
39 you're dip netting, you're going to have awfully
40 strong arms and back when you're done and you're
41 probably not going to have all the fish that you
42 had hoped for. So moving to a -- in this case, it
43 was a seine boat operated on the lake. That's
44 probably never occurred in the history of the
45 Interior ever.

46 And we did demonstration fisheries with
47 traps, trying to utilize some of the traditional

1 knowledge of the First Nations. And most of them
2 were fairly -- had fairly limited success so, you
3 know, they needed to look for something else.
4 Beach seining has been proven fairly successful
5 but trying to find areas where you could function
6 -- some of the areas where they thought they --
7 they would -- so they need to move around in the
8 river quite a bit to find areas. So I think the
9 capacity to harvest and the understanding, the
10 workings of the gear, I think, is going to be, you
11 know, a growing experience. But I think that
12 there's -- it's something that's, you know, some
13 fairly good strides for in the last year, in
14 particular.

15 Q Thank you.

16 MR. GROUT: And if I could add one point --

17 Q Please.

18 MR. GROUT: -- to what Barry had said. It hasn't been
19 an impediment to date but the -- the allocations
20 or the shares we're providing First Nations for
21 these demonstration fisheries are coming from
22 licences that are held in the department's
23 inventory. So these are licences that have been
24 purchased from the commercial -- the existing
25 commercial fleets. And I don't use the word
26 "retired" on purpose because the intention of the
27 department purchasing those licences is to
28 reallocate them to First Nations for the purposes
29 of demonstration fisheries.

30 In the years we've done demonstration
31 fisheries, we've used licences in the inventory
32 that were bought back either through the
33 allocation transfer program or through the -- more
34 recently the Pacific Integrated Commercial
35 Fisheries initiative. And so those -- where I'm
36 going with this is we repurchase these licences
37 and then we determine what the shares of salmon
38 are associated with those for providing to inland
39 fisheries. And I don't have the exact numbers in
40 front of me. But for Fraser sockeye this past
41 year I think we had in the range of 12 to 13
42 percent of the commercial TAC associated with
43 those licences. Barry mentioned that the groups
44 weren't able to harvest that amount of fish. But
45 in the future, there may be capacity developed to
46 do that and/or interest for increased allocations.

47 Q Thank you. That's -- that's very helpful. And

1 just --

2 MR. ROSENBERGER: If I could add another thing here, if
3 it might help.

4 Q Of course.

5 MR. ROSENBERGER: But another item is -- and that is
6 that the Fraser sockeye are -- are cyclic by the
7 different streams and so the tributaries and so we
8 have a -- in the Thompson drainage, for example,
9 there's two very strong sockeye years and there's
10 two relatively weak sockeye years. And that's
11 true for a number of the different systems. And
12 one of the issues right now is that most of the
13 First Nations are trying to develop this capacity.
14 All of them want to have the same level of
15 capacity, those are that are interested in
16 participating in it.

17 And if you, you know, purchased equipment,
18 get yourself engaged in this and you only have a
19 business two out of four years, for example,
20 you're probably not going to have as successful a
21 business as you might want. And so some of them
22 are trying to only develop to the level of the
23 weaker years, in some cases, and not necessarily
24 taking full advantage of what might be there on a
25 run-based linkage. So one of our challenges has
26 been trying to get them to want to be a part of a
27 larger co-op aggregate, some kind of a process.
28 And fairly limited progress has been made on that
29 side of things at this stage.

30 Q Okay.

31 MR. ROSENBERGER: The other thing I would clear up is
32 my numbers weren't all that good this morning on
33 the panel part so it's -- there's five commercial
34 fishermen representing one of each of the licensed
35 gear areas. There's one processor and then I did
36 provide there's three First Nations, one Rec and
37 two DFO --

38 Q Thank you.

39 MR. ROSENBERGER: -- if that helps. Thanks.

40 Q Yeah. Good to keep some of my numbers accurate.
41 Thank you. I just have this question. Has it
42 been your experience with the terminal fisheries,
43 this is one area that First Nations and DFO have a
44 common interest?

45 MR. ROSENBERGER: Definitely some of the First Nations.
46 Some of them are not interested in the commercial
47 fishing aspect or moving it terminally.

1 Q But then those -- those First Nations that do have
2 an interest in moving it closer to the terminal
3 grounds and working in commercial -- and including
4 commercial purposes are very interested in working
5 to get these implemented on the ground?

6 MR. ROSENBERGER: Yes, I would agree with that.

7 MR. GROUT: Can I maybe add one point? One of the
8 concerns that's been raised with First Nations at
9 some of our meetings, particularly among marine
10 First Nations, is that their commercial harvesting
11 capacity is closely linked to their ability to
12 harvest their FSC fish. So there have been
13 concerns raised about the department removing
14 licences from the commercial fishery through
15 buyback programs, the potential that First Nations
16 commercial harvesters in some of these communities
17 may give up their licences, which may impair some
18 of these marine area groups or limit their
19 abilities to access their FSC fish. So there's a
20 range of perspectives on that issue, depending on
21 where you are.

22 Q That's a very helpful overview. I know we're
23 going to spend more time in the future on this
24 more specifically so I'll move on. But I'm
25 grateful for your strategic level comments. I
26 just had one final question and that's around
27 managing the numbers and, in particular, I
28 understand it from your evidence right now, that
29 you're -- you're managing roughly to a one million
30 FSC allocation. When you manage for numbers like
31 that, do you take into consideration the abundance
32 that's necessary if First Nations needs -- wants
33 to exercise their rights based on their preferred
34 methods like a dip net and the necessary abundance
35 that would be required in order to catch their
36 FSC, or are you managing really to the numbers
37 that you're expecting them to catch?

38 MR. ROSENBERGER: We manage to the number.

39 MS. GAERTNER: Those are all my questions, Mr.
40 Commissioner.

41 MS. BAKER: Mr. Commissioner, I don't know if you had
42 any question arising?

43 THE COMMISSIONER: I do really have one -- I'm not sure
44 if it's a question so much as it is just some
45 assistance in terms of clarification. I think, as
46 you both know, this Commission has heard a great
47 deal of evidence so far and there's more to come

1 about the Wild Salmon Policy. And in the last few
2 days, we've heard from Mr. Lapointe and yourselves
3 about the operational side of the PSC and, of
4 course, the committees and working groups that
5 you've mentioned. What's not clear to me is when
6 the Wild Salmon Policy is fully implemented, how
7 will it change, alter, amend, modify all of these
8 operational structures that you've discussed here
9 in the last couple of days?

10 You haven't made reference very often to the
11 Wild Salmon Policy in your answers and that's not
12 -- I'm not faulting you for that; it's because the
13 questions put to you were really directed to the
14 current operational structure. But to the extent
15 that that policy has been embraced by stakeholders
16 and the DFO and to the extent that it's moving
17 forward with the CUs and benchmarks and other
18 steps to be taken in the future, what changes
19 might take place?

20 The other, for clarification, you might help
21 me on is this. You've talked about on-the-ground
22 discussions that go on through the meetings and
23 through the structure to gain input from
24 stakeholders with regard to operational matters.
25 Is there a process within the DFO for examining
26 the structures themselves, that is, the
27 operational structures to annually or biannually
28 or from time-to-time explore how to engage some of
29 the comments that are made to you about perhaps
30 changing those structures? In other words, is the
31 Wild Salmon Policy the answer to that? In other
32 words, it did look at everything and determine
33 that the Wild Salmon Policy would be the next kind
34 of era for the DFO in terms of managing the
35 fishery? Or is there some other process going on
36 to be constantly ensuring that the structure is
37 addressing the kinds of points that you hear about
38 from the stakeholders and at your different levels
39 of discussion?

40 MR. ROSENBERGER: I think there's a large number of
41 issues that we're working on and have been for a
42 long period of time. And my experience in the
43 department is that you don't -- you're not moving
44 down one track of managing, in this case, Fraser
45 sockeye, and then decide to change abruptly
46 between years. Most of the changes are based on
47 input that are making, you know, corrections in

1 the direction that you're heading, as opposed to,
2 you know, you're totally going in a different
3 direction altogether. So that being said, things
4 -- where the Wild Salmon Policy is going to be key
5 in moving forward and giving us more focus of
6 kinds of changes that we've been striving for is
7 Strategy 4 will be huge. It's about bringing
8 together all the various points of view and
9 explicitly defining what are the trade-offs and
10 what -- you know, what's the overall objective
11 going to be in that year or in -- not on a year-
12 by-year and having the conservation this year and
13 more harvesting this year or whatever. But you
14 have -- you have these longer-term objectives.
15 This is my view of what will come out of this.

16 And so things like the Integrated Harvest
17 Planning Committee is exactly the kinds of things
18 that are envisioned. But you know, to get that
19 functioning, you have to get everybody in that
20 room, mandated, understanding, you know, what
21 they're bringing together. And we've been talking
22 quite a bit about the First Nations here today and
23 that's -- at this point, that's a huge piece
24 that's lacking. So where the Wild Salmon Policy
25 cannot define the native rights in, you know,
26 whatever they might be, there has to be some
27 process that has to come in there so you have to
28 have that kind of a link. And that is going on in
29 other places, the department and the government to
30 -- you know, what should happen in those places.
31 That needs to be brought into this.

32 But I think trying to get these forums where
33 people are coming together with -- with that kind
34 of decision-making trade-off ability as opposed to
35 right now, you know, a lot of this stuff is quite
36 adversarial where people want to come and give
37 their view, like it has to be this way and nothing
38 else and somebody else is not on the same page.
39 So the department is stuck trying to make these
40 trade-offs, as it was described to some degree
41 this morning.

42 More specific kinds of actions is that we've
43 moved from managing Fraser as one population up
44 until the mid-'80s and then it was in two
45 populations and over time we've moved to four.
46 And at one point, we had five, although only four
47 are defined in the Pacific Salmon Treaty. One

1 population, in this case Birkenhead, was removed
2 for five or six years from that structure of four
3 and into five. And whether we'll end up with 19
4 or 30 or whatever it might be, I'd be surprised
5 that we would have -- we would have 30 explicit
6 management objectives, you know, in the Integrated
7 Fisheries Management Plan, but you'd be much more
8 explicit like we are with Cultus today where we
9 are managing that stock separately in Canada, not
10 internationally, making sure that you make links
11 so that you don't make rules in Canada that, you
12 know, will be contrary to the Salmon Treaty
13 implementation side or that the Treaty is doing
14 something that would compromise Canada.

15 So you know, in that case, we've moved to an
16 explicit decision rule. People can follow it.
17 You know, it's a small population size so here's
18 what the proxy is, here's how we're going to make
19 our decision rules, here's -- you know, here's
20 what we're going to do working our way through.
21 And I think you're going to see more of that. And
22 where that comes together in -- whether it's in
23 the Pacific Salmon Treaty or in the domestic side
24 of things, we have some of this already in Coho in
25 the -- the Chapter 5, I think it is of the Pacific
26 Salmon Treaty. And in there, we have defined
27 management units, both in Canada and the U.S., and
28 we have explicit sets of rules that if you have
29 one stock in trouble, you'll take X level of
30 actions. If you have two stocks in trouble,
31 you'll take X plus something and three.

32 So you get into a defined process where
33 people understand that -- that, you know, it's not
34 in anybody's benefit to get into, you know, having
35 more stocks in trouble and you're only worried
36 about what's the large one, for example. And some
37 people are focused on that. They can see that
38 there's consequences if we, you know, keep trying
39 to push up against some boundary that some of them
40 bring interest forward. So you know, we've talked
41 about how we might bring some of that together in
42 the -- in the Fraser sockeye side of it. The CU,
43 you know, status accounting, I think, will be
44 clear to people. And whether the issues -- we run
45 into this a lot is that, you know, we spend a lot
46 of time in the harvesting aspects but people, you
47 know, if they think that they are less interested

1 in trying to take the action, it's -- you know,
2 the ocean is causing the problem or it's a water
3 issue upcountry or it's something else and so, you
4 know, why -- you know, why should I give up some
5 harvesting now?

6 If we get -- not if -- when we get all of
7 these status reports around the habitat and
8 understand specifically the issues, you know,
9 again, Cultus is the example we've got so far and
10 it's not the formal status as the one gentleman
11 asked about yesterday and I don't think we've got
12 to that point yet. But we've got a habitat paper
13 where you can start to see that if there's --
14 well, many people thought it was water quality in
15 the lake, others said it was the logging that was
16 going on and others thought, you know, whatever
17 the issues they brought forward.

18 So you -- you start to be able to work your
19 way through and define, you know, is there a place
20 here where we need to take specific actions or
21 that -- or that the actions we might -- you know,
22 we're doing now in our overall habitat management
23 are enough but there's something that you need to
24 do specifically. And in the case of Cultus, they
25 were able to identify two areas of work, the
26 milfoil and the pike minnow. And interestingly,
27 the work they were doing on the milfoil was
28 probably causing more problems, but not
29 necessarily helping to solve the problems. So you
30 get -- you know, your adaptive and iterative
31 working your way through.

32 So I think bringing together these stock
33 objectives, CU objectives, with habitat,
34 understanding more explicitly where you might want
35 to take given actions but then having defined
36 rules. And to me, it doesn't mean manage them --
37 individual stocks. You know, I did have a role in
38 some of the drafting of the Wild Salmon Policy
39 and, you know, I never envisioned and I don't
40 think others did, that we would be down to
41 managing CU-by-CU but rather the aggregates.

42 And so we started some work on that in the
43 last two years in the Fraser Panel and I haven't
44 got a clue whether Mike Lapointe gave a
45 presentation here or not but it was information
46 that -- that I provided and I believe the Salmon
47 Commission did into the collection of data. And

1 so we -- you know, trying to get people to get
2 away from thinking that one stock, you know, has a
3 certain timing or -- or should be in a certain
4 group, we hear a lot of people saying, you know,
5 move Stock X from the Early Summers to the Summer.
6 And so we put together a table of the 19
7 populations where we had good data and into a
8 table and just numbered them one to -- to 19, I
9 think it was, and ask people, you know, make your
10 own stock groupings from what you see in the
11 migration timing and whether you should have --
12 whatever -- you could go from one to 19.
13 Interestingly, some people, without even looking
14 at the overlap in timing said we want 19 back and
15 most people didn't know which stock was which.

16 But when we went through and started grouping
17 them when you looked at the timing, it came out to
18 four or five, as most people said four or five.
19 And there is stocks that need to move around from
20 groupings we're doing today. So we've got a plan
21 to -- to try to implement that through the -- some
22 of the changes we're making in the FRSSI model.
23 It's one of the -- one of the action items we've
24 got with that group so there's -- there's places
25 here where we can make some changes. So they're
26 all really driven by the issues in the Wild Salmon
27 Policy, the initiatives that we've been thinking
28 about.

29 Your comment that we didn't specifically
30 mention it, I think this comes back, as in the
31 forecasting questions. We don't do a very good
32 job of telling people why we're making the changes
33 maybe or that we get that linkage so that people
34 understand and want to be a part of that change.
35 You know, I've heard this a lot actually even in
36 the last few months, you're not doing any Wild
37 Salmon Policy implementation. I strongly
38 disagree. I think there's a lot of things we're
39 definitely not at the level where it's all there
40 and we have all this information. I think we've
41 been overwhelmed by the complexity of some of the
42 information we've been collecting.

43 And even in this benchmark paper, you know,
44 we thought we knew where we were going and which
45 model and how this would play out and the -- you
46 know, we sent it back to the authors that they
47 need to do a lot more and they might not even,

1 from science, give us a specific, you should use a
2 Larkin model or Larkin model modified in a certain
3 way. Jeff's much more up on this than I am. But
4 the part that struck me was the managers are still
5 going to have to go and try to potentially pick
6 which one of these might be the way you want to --
7 which model you might want to use. And I'm not
8 certain that it would even be the same for each
9 stock because they don't -- they don't seem to
10 perform equally in the information they give you.

11 So it's -- I think where we're implementing
12 the Wild Salmon Policy would be nice if it was
13 faster. You'd definitely have to have more
14 resources and time commitment to it. But we're
15 also making changes ourselves where it just is
16 part of our business. And this is what, to me, it
17 should be, is that it should just be how we do our
18 work. Like I don't tell people each time I'm
19 meeting with them that I'm doing this because of
20 the allocation policy. That's been around long
21 enough now that everybody expects that that's why
22 you're making decisions the way you are. So -- a
23 lot of rambling. Maybe it's Jeff's turn.

24 THE COMMISSIONER: Thank you.

25 MR. GROUT: I might add just a couple points to what
26 Barry said. I think Barry gave a very
27 comprehensive answer. I would agree with Barry
28 that on the Wild Salmon Policy that that continues
29 to be the key policy for the department in terms
30 of moving forward. You may also have heard about
31 fisheries renewal nationally and the key objective
32 of sustainable fisheries there. And there's a
33 suite of papers that support that, one of which is
34 the precautionary approach, which specifically
35 cites the Wild Salmon Policy as the -- the way
36 we're going to implement that for Pacific salmon.
37 So I think, as Barry stated, it's going to be a
38 key policy moving forward.

39 I agree with Barry that the resolution and
40 discussion of the scale of management of the
41 different sockeye CUs is going to be -- continue
42 to be something that's debated and probably
43 contentious. I think one of the important
44 elements of the policy is the open and transparent
45 process we use to deal with that. I think Barry
46 alluded to it but we've got a number of
47 sophisticated tools that have been developed for

1 dealing with a number of these issues from
2 forecasting to the Fraser Sockeye Spawning
3 Initiative (sic). For those to be effective in
4 your process, though, you have to have a technical
5 capacity to explain what those results mean. And
6 that includes departmental people that can
7 understand and explain it to their clients but
8 also a way to take that information and put it out
9 there in layman's terms in terms of, what does it
10 mean to my fishery this summer?

11 And I think that's one of the key challenges
12 with doing some of the Strategy 4 work and
13 assessing options and outcomes in coming to
14 decisions in an open and transparent way. There's
15 a lot of sophisticated work that can be done to
16 support some of that analysis and we really need
17 to try and support the capacity to understand
18 that. So maybe I'll finish by saying there are
19 some other programs the department's got,
20 including Pacific fisheries or forum in PICFI
21 where we're trying to bring a line. What we're
22 doing there, I think, are consistent with what
23 we're trying to do in the Wild Salmon Policy.

24 So PICFI's got some elements around capacity-
25 building and co-management, which I think are --
26 are going to be important elements implementing
27 the Wild Salmon Policy, as well as providing
28 certainty and stability around shares in the
29 fisheries. And I think having some certainty and
30 stability around what those shares are will help
31 the participants align their interests with the
32 long-term directions with the Wild Salmon Policy
33 as well. I know those are topics that are going
34 to be discussed later, I think, but I just thought
35 I'd link those in as well.

36 THE COMMISSIONER: Thank you. Ms. Baker or counsel who
37 may want to follow up with anything as a result of
38 those answers may do so. If not...

39 MS. BAKER: No, thank you. I think that Canada has at
40 least one re-examination question and I don't know
41 before we do that, though, if there's any
42 questions arising. Maybe we should do that before
43 Canada does any re-exam. Nobody's jumping to
44 their feet so I think maybe Canada can start its
45 re-exam.

46 MR. MacAULAY: Thank you, Mr. Commissioner. Hugh
47 MacAulay for the Government of Canada. With me

47
PANEL NO. 12
Cross-exam by Mr. MacAulay (CAN)
Re-exam by Ms. Baker (ACC)

1 again is Jonah Spiegelman.
2

3 CROSS-EXAMINATION BY MR. MacAULAY:
4

5 Q Mr. Grout and Mr. Rosenberger, I have just one
6 clarification question arising from questions put
7 to you yesterday, I think it was, by Mr. Leadem
8 and Mr. Rosenbloom.

9 MR. MacAULAY: And I'd ask Mr. Lunn to pull up Exhibit
10 317. I'm sorry. I was looking for the briefing
11 note for approval of the -- 327? Pardon me, Mr.
12 Lunn, 327. Sorry about that.

13 Q And could you go to page 5? The handwritten
14 comment that we've focused some attention on reads
15 to me "Need to ensure we maximize opportunities
16 for commercial fisheries". I noted in reviewing
17 that, that there's no specific reference to Fraser
18 sockeye. The question for you, Mr. Grout,
19 perhaps, and Mr. Rosenberger, I welcome you add to
20 this, but the approval that's being sought here
21 and provided by the minister is for both the IFMP,
22 the Integrated Fisheries Management Plan, for the
23 north and for the south for salmon fisheries in
24 British Columbia; is that correct?

25 MR. GROUT: That's correct. That's correct. If you
26 look at the top of the page under "Recommendations
27 and Next Steps", we're seeking the recommendation
28 from the -- or support for the recommendation that
29 the IFMPs be approved for both northern B.C. and
30 southern B.C. so the comment around maximizing
31 opportunities for commercial fisheries could be
32 implied to pertain to any commercial fisheries, I
33 think, that relate to either northern and southern
34 B.C., as laid out in the management plans.

35 MR. MacAULAY: Thank you. That was my question.

36 MS. BAKER: Thank you. And I just have one question as
37 well.
38

39 RE-EXAMINATION BY MS. BAKER:
40

41 Q When -- I'm sorry -- I will mispronounce her last
42 name so I'll say counsel for Fisheries Survival
43 Coalition was asking you questions about pre-
44 season forecasts, she took you -- or she asked you
45 some questions about how there'd been a paradigm
46 shift in how the forecast was done in 2010 and
47 there's some discussion around that. And then she

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1 -- at the very end of that series of questions,
2 she said, and then when this gets incorporated
3 into FRSSI. I just wanted to clarify. The pre-
4 season forecast work that's done by Sue Grant
5 relies on the dataset with respect to the 19
6 stocks where you have a spawner/recruit
7 relationship, correct?
8 MR. GROUT: That's correct.
9 Q And that same dataset is used in developing the
10 FRSSI models, right?
11 MR. GROUT: That's correct.
12 Q Does the pre-season forecast itself get used in
13 FRSSI?
14 MR. GROUT: No, it does not.
15 Q Okay. Thank you. So they use the same dataset
16 but they're two different models for two different
17 purposes?
18 MR. GROUT: That's correct.
19 MS. BAKER: Okay. Thank you. Those are all the
20 questions that I had. If there's no other
21 questions, we have -- we were unable to rustle up
22 another witness for this afternoon so I'm sorry
23 about that. We will have to take the afternoon
24 off and restart tomorrow morning with Sue Grant.
25 Oh, and I don't know if we need to discuss
26 this on the record or not but there was an
27 earthquake preparedness thing that was circulated
28 this morning, which suggests that if we want to,
29 we can participate in a province-wide earthquake
30 preparedness thing at ten o'clock tomorrow
31 morning. And I don't know if we have a decision
32 on whether you want to do that or not. I'm very
33 concerned about how much time we have for the
34 second part of the hearing so my preference would
35 be just to do that in spirit but not in reality.
36 THE COMMISSIONER: Yes, Mr. Registrar did bring me the
37 document that you're referring to. I don't know
38 if other counsel have seen it. It is an
39 earthquake preparedness -- I believe it's Lower
40 Mainland or is it province-wide? I'm not sure.
41 MS. BAKER: Yeah, I'm not sure.
42 THE COMMISSIONER: But in any event, I'm content that
43 everybody read the document and be aware of the
44 well-intentioned operation that is crucial for all
45 of us. But I think I'm -- if counsel are
46 prepared, I'm prepared to proceed tomorrow morning
47 with Ms. Grant and move forward with that

1 evidence.

2 MS. BAKER: Thank you.

3 THE COMMISSIONER: And people during the day can duck
4 under any desk or wall frame they might choose to
5 do so. I think that's a good practice for all of
6 us.

7 MS. BAKER: We could do it at the break.

8 THE COMMISSIONER: Before we break for this afternoon,
9 I wanted to thank Mr. Grout and Mr. Rosenberger
10 for their attendance here and -- for the past
11 several days and for their answers to counsel.
12 And I want to thank counsel for, for the most
13 part, sticking very closely to your time
14 estimates, which is very critical to our ability
15 to move forward with what's going to be an even
16 heavier list of witnesses in the next couple of
17 weeks. So thank you very much for all of your
18 cooperation in that regard. And again, thank you
19 to our witnesses. Thank you very much.

20 THE REGISTRAR: The hearing is now adjourned for the
21 day and will resume at ten o'clock tomorrow
22 morning.

23
24 (PROCEEDINGS ADJOURNED TO JANUARY 26, 2011,
25 AT 10:00 A.M.)
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1 I HEREBY CERTIFY the foregoing to be a
2 true and accurate transcript of the
3 evidence recorded on a sound recording
4 apparatus, transcribed to the best of my
5 skill and ability, and in accordance
6 with applicable standards.
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12 Registered Court Transcriber
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15 true and accurate transcript of the
16 evidence recorded on a sound recording
17 apparatus, transcribed to the best of my
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25 Registered Court Transcriber
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