

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, February 1, 2011

Tenue à :

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

le mardi 1 février 2011



Errata for the Transcript of Hearings on February 1, 2011

Page	Line	Error	Correction
16	21	too	took
81	28	THE COURT	MS. BAKER

APPEARANCES / COMPARUTIONS

Wendy Baker, Q.C. Maia Tsurumi	Associate Commission Counsel Junior Commission Counsel
Mitch Taylor, Q.C. Hugh MacAulay Jonah Spiegelman	Government of Canada
Boris Tyzuk, Q.C. Clifton Prowse, Q.C.	Province of British Columbia
Tam Boyar	Pacific Salmon Commission
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
No appearance	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
No appearance	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Tim Leadem, Q.C.	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
Don Rosenbloom	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

APPEARANCES / COMPARUTIONS, cont'd.

No appearance	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
Chris Watson	West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
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")
Tim Dickson	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
James Hickling	Laich-kwil-tach Treaty Society Chief Harold Sewid Aboriginal Aquaculture Association ("LJHAH")
No appearance	Musgamagw Tsawataineuk Tribal Council ("MTTC")
Lisa Fong Benjamin Ralston	Heiltsuk Tribal Council ("HTC") Articled Student

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1
PANEL NO. 15
In chief by Ms. Baker

Vancouver, B.C. /Vancouver
(C.-B.)
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2011

THE REGISTRAR: Order. The hearing is now resumed.

MS. BAKER: Good morning, Mr. Commissioner. Today, we are starting a new panel of witnesses. This panel is addressing decision-making and advisory processes relating to Fraser River sockeye. We have with us, today, Mr. Wayne Saito, who is here representing the Province, we have Gerry Kristianson, who is here as a member of the Sports Fishing Advisory Board, and Mr. Pat Matthew, who is with the Secwepemc Tribal Council.

Those witnesses can now be sworn in.

GERRY KRISTIANSON, affirmed.

WAYNE SAITO, affirmed.

PAT MATTHEW, affirmed.

THE REGISTRAR: State your name, please.

DR. KRISTIANSON: My name is Gerald Kristianson, normally addressed as Gerry.

THE REGISTRAR: Thank you.

MR. MATTHEW: My name is Wayne Saito.

THE REGISTRAR: Thank you.

MR. SAITO: Patrick Matthew.

THE REGISTRAR: Thank you.

MS. BAKER: Thank you.

EXAMINATION IN CHIEF BY MS. BAKER:

Q I'll just run through a little bit of background with each of you gentlemen. I'll start with Mr. Saito. Now, Mr. Saito, you have a long history in fisheries in B.C. I don't want to get into too much detail on your past. You're here as a representative of the Province, today, but I will just highlight a few things. You started back in the IPSFC in the 1970s, is that right, as a management support biologist?

MR. SAITO: That's correct.

Q And you moved to the Department of Fisheries and Oceans in 1986?

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1 MR. SAITO: That is correct.
2 Q And you stayed in the Department of Fisheries and
3 Oceans right through to 2005?
4 MR. SAITO: That is correct. I retired November the
5 1st of 2004.
6 Q 2004, okay. And during that time you were at the
7 Department of Fisheries and Oceans, you held many
8 different positions, and one of the positions that
9 you had just prior to your retirement was Canadian
10 chair of the Fraser River Panel?
11 MR. SAITO: That is correct.
12 Q All right. And following that, after your
13 retirement from DFO, you moved to the Ministry of
14 Agriculture, Food and Fisheries, in the Ministry
15 of Environment, at the Province of B.C.; is that
16 right?
17 MR. SAITO: That is correct.
18 Q And you've continued to be involved in fisheries
19 issues in that role with the Province ever since?
20 MR. SAITO: Yes, I have been.
21 Q All right. And you're here, today, to talk about
22 -- the questions I'll be asking you are in
23 relation to your role as a provincial
24 representative.
25 MR. SAITO: Thank you.
26 Q Dr. Kristianson, you have a doctorate in political
27 science?
28 DR. KRISTIANSON: That's correct.
29 Q And you have a long history with the sport fisher
30 community in B.C.; is that right?
31 DR. KRISTIANSON: That is correct.
32 Q You are the chair of the Sports Fishing Advisory
33 Board?
34 DR. KRISTIANSON: I am, yes.
35 Q And you're also, and have been since 1998, a
36 commissioner with the Pacific Salmon Commission?
37 DR. KRISTIANSON: That is correct, as well as the North
38 Pacific Anadromous Fish Commission.
39 Q And you have been a representative for the Sports
40 Fisher Advisory Board at the Integrated Harvest
41 Planning Committee?
42 DR. KRISTIANSON: That is correct.
43 Q All right. I will come back to Mr. Saito's
44 biography in a minute, to mark it, and I didn't,
45 but just while I'm with you, Dr. Kristianson, at
46 Tab 5 of the binder before you is a copy of a
47 biography you provided us?

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1 DR. KRISTIANSO: Yes, it is.

2 Q And that sets out your history and your
3 involvement with fisheries in B.C.?

4 DR. KRISTIANSO: Yes, it does.

5 MS. BAKER: All right. I'd like that marked, please,
6 as the next exhibit.

7 THE REGISTRAR: Exhibit Number 376.

8

9 EXHIBIT 376: *Curriculum Vitae* of Dr. Gerald
10 Kristianson

11

12 MS. BAKER:

13 Q And Mr. Saito, I meant to mark your biography as
14 well, your C.V., before we left you. That's at
15 Tab 3 of the material before you, And this is a
16 copy of your C.V. setting out your experience in
17 the fisheries world in B.C.; is that right?

18 MR. SAITO: That is correct.

19 MS. BAKER: All right. I'd like that marked, please,
20 as the next exhibit.

21 THE REGISTRAR: Exhibit Number 377.

22

23 EXHIBIT 377: *Curriculum Vitae* of Wayne Saito

24

25 MS. BAKER:

26 Q And Mr. Matthew, I think I incorrectly identified
27 you as a member of the Secwepemc Tribal Council.
28 You're actually a member of the Secwepemc
29 Fisheries Commission; is that right?

30 MR. MATTHEW: That's right. The Secwepemc Fisheries
31 Commission is a part of the Shuswap Nation Tribal
32 Council.

33 Q Sorry, I apologize for that. You also have a long
34 history of fishing experience in B.C.,
35 particularly in the Thompson and Fraser Rivers,
36 over 30 years of experience in that area?

37 MR. MATTHEW: That's correct.

38 Q And since 1998 to the present, you've been the
39 fisheries management coordinator for the Secwepemc
40 Fisheries Commission?

41 MR. MATTHEW: I believe it's 1988.

42 Q 1988?

43 MR. MATTHEW: I believe it is.

44 Q Thank you. And in that role, you are involved in
45 coordination of consultation and engagement on
46 fisheries management issues on behalf of the
47 Shuswap Nation Tribal Council?

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1 MR. MATTHEW: That's correct.

2 Q And you have been involved in other aspects of
3 fisheries management going back into the 1970s, as
4 a fisheries guardian and as a fisheries
5 technician, the latter one for the Central
6 Interior Tribal Council?

7 MR. MATTHEW: That's correct.

8 Q Okay. And you've provided us with a C.V., and
9 that's found at Tab 6 of the binder in front of
10 you? This is the C.V. that you provided us,
11 setting out your qualifications and history?

12 MR. MATTHEW: That's correct.

13 MS. BAKER: All right. I'd like that marked, please,
14 as the next exhibit.

15 THE REGISTRAR: Exhibit 378.

16

17 EXHIBIT 378: *Curriculum Vitae* of Pat Matthew

18

19 MS. BAKER: Thank you.

20 Q We have had evidence already in this commission
21 from Mr. Grout and from Mr. Rosenberger on the
22 Integrated Harvest Planning Committee process, so
23 we've heard an overview of how that process works,
24 what the meetings are and how the IFMP is
25 developed from the Department of Fisheries and
26 Oceans' perspective. So we've asked you to come,
27 today, and provide your own experiences in those
28 processes. Because we've had that background, I'm
29 going to jump right into some of those processes
30 without too much background being established.

31 So I'll start with the Integrated Harvest
32 Planning process. First of all, the terms of
33 reference for the Integrated Harvest Planning
34 Committee have been marked as an exhibit in this
35 proceeding, as Exhibit 342. The question I want
36 to ask you is not what is in the terms of
37 reference of this committee, but what I want to
38 ask each of you is: What do you see as the
39 purpose of this committee, as a participant in
40 that process?

41 So I'll start, if I can, with you, Mr.
42 Matthew. What do you see is the purpose of this
43 IHPC process?

44 MR. MATTHEW: Well, my understanding of it is that it's
45 an advisory process to the minister from the
46 sectors that are involved at the meetings.

47 Q Do you see it as a decision-making committee or as

1 an advisory committee?

2 MR. MATTHEW: I see it as an advisory committee.

3 Q Okay. Mr. Saito, how would you respond to that
4 question?

5 MR. SAITO: I have no disagreement with --

6 Q I'm sorry, could you turn your mic on? Thank you.
7 And it needs to be fairly close to your mouth as
8 well. Thank you.

9 MR. SAITO: I have no disagreement with what Mr.
10 Matthew has indicated. I would add, perhaps, or
11 embellish a bit by suggesting it is intended or
12 designed to provide advice to the Department of
13 Fisheries regarding the efficacy of fishing plans
14 in the pre-season and to comment on the
15 achievement of objectives in post-season sense.

16 I also suggest that one of the primary
17 focuses is to identify areas of competing and
18 conflicting interest and to engage in discussions
19 to perhaps, to the extent possible, to resolve
20 them.

21 Q And Dr. Kristianson?

22 DR. KRISTIANSON: Yes, thank you. I think I would
23 simply add -- I don't disagree with anything
24 that's been said. I would add, though, that I
25 think, from the recreational perspective, the role
26 just mentioned by Mr. Saito is the key one. From
27 our perspective, the process -- we work with the
28 department to develop proposed recreational
29 fishing plans. The IHPC is the place where we can
30 meet with the other harvest sectors and the
31 conservation group to work through the places
32 where those plans intercede or conflict. So it's
33 to get at that aspect of things that is
34 particularly valuable and important to us.

35 Q The fishing plans that you just discussed, are
36 those the fishing plans which will find their way
37 into the IFMP, the Integrated Fisheries Management
38 Plan?

39 DR. KRISTIANSON: That is correct. From our
40 perspective, the way it works is that, at the
41 local level and through our original bodies,
42 individuals bring forward proposals for the
43 operation of fishing plans. The SFAB has the
44 overall role of integrating those in order to work
45 with the department in the development of a
46 recreational fishing plan, or recreational fishing
47 plans is probably a better answer, because there

1 are a series of those.

2 From our perspective, then, once we've
3 reached some agreement with the department on what
4 we would like to see happen, it's appropriate that
5 those go before the IHPC so that the commercial
6 harvest sector, First Nations, and the
7 conservation movement can comment on them,
8 question them, et cetera.

9 Q Does anybody else have anything to add before I
10 move to the next question? No?

11 THE COMMISSIONER: Ms. Baker, I wonder if you could
12 just, at this point, just so it informs me, when
13 they say "we", that they're attending meetings so
14 that "we" can accomplish something, who are they
15 speaking for, exactly?

16 MS. BAKER: Okay, sure.

17 Q When you're talking about the IHPC, who is the
18 "we"? Who are you representing?

19 DR. KRISTIANSO: Yes, I am one of the six
20 representatives from the sport fish -- chosen by
21 the Sport Fishing Advisory Board to sit on the
22 Integrated Harvest Planning Committee; three from
23 the north and three from the south. And so when I
24 say "we", I am speaking of the Sport Fishing
25 Advisory Board.

26 Q And Mr. Matthew?

27 MR. MATTHEW: I guess I have a comment about the
28 sectors bringing forward fishing plans to the
29 IHPC. I, from the Secwepemc, brought forward a
30 fishing plan that describes our fishery, our
31 harvest targets, our conservation objectives, and
32 recommendations to meet those and, as far as I
33 could tell, I've - and maybe I could be corrected
34 - but I have not seen a similar type of fishing
35 plan brought forward by the other sectors to the
36 IHPC meeting for full review. So maybe I'm
37 incorrect in saying that, but I don't see that
38 process happening at the IHPC, where people -- the
39 commercial or recreational or the conservation
40 sector bring forward a fishing plan that describes
41 how they're going to protect various stocks within
42 the fishery in their plans. Maybe it's there;
43 maybe I'm missing it.

44 Q And when you attend at the IHPC, just to follow up
45 with what the Commissioner asked, who are you
46 representing?

47 MR. MATTHEW: I'm representing the Secwepemc Fisheries

1 Commission, which represents only those First
2 Nations in the Thompson area, and I guess those
3 fish stocks within the Thompson Basin, within our
4 area.

5 Q Okay. And Mr. Saito, you are representing the
6 Province?

7 MR. SAITO: And I represent the Province of British
8 Columbia.

9 Q And we know from our earlier discussions with Mr.
10 Grout and Mr. Rosenberger, that there are
11 representatives from the commercial sector also
12 involved in the IHPC, correct?

13 DR. KRISTIANSO: That is correct, yes, representing
14 the Commercial Salmon Advisory Board.

15 Q And there's also representatives from the Marine
16 Conservation Caucus, or the environmental groups?

17 DR. KRISTIANSO: That is correct. And if I could, Ms.
18 Baker, again to -- I think the issue that Pat has
19 raised is one that deserves comment. From our
20 perspective, when I use the phrase "fishing plan",
21 I'm referring to what is in the Integrated -- the
22 draft Integrated Harvest Plan that comes before
23 the IHPC for comment. So our fishing plan, and I
24 assume the same is -- I think the same is true for
25 the commercial sector, is incorporated into the
26 draft Integrated Harvest Plan.

27 Q Okay. And that is something different, Mr.
28 Matthew, from what you have described?

29 MR. MATTHEW: I would imagine. I don't get -- I guess
30 I'm not clear on how the discussion revolves
31 around that in terms of seeing how the other
32 sectors' fishing plans are actually incorporated
33 or the discussion goes on about how they're
34 incorporated into the IFMP, and to me it's not
35 clear how it happens or sort of the outcomes of
36 that from the meeting.

37 Q Okay. Let me cover a few more preliminary issues
38 and then we'll get into some of the content of
39 what happens at those meetings, and maybe we can
40 come back to that issue.

41 So at a preliminary level, I've described the
42 people who are present at the IHPC, currently, and
43 my question to the panel is: Are all the people
44 at the table, at the IHPC table who need to be
45 there? So who are the people that you think need
46 to be at the table to make this process work? And
47 I'll start with you, Dr. Kristianson.

1 DR. KRISTIANSO: I think, at the present time, the
2 composition of the IHPC is appropriate. There are
3 representatives there of the three harvest groups,
4 and there are representatives there of the self-
5 described conservation sector, in the form of the
6 MCC.

7 Q Okay. Mr. Saito?

8 MR. SAITO: I also believe that the appropriate parties
9 have the opportunity of being represented and
10 participating in this process.

11 Q Okay. And Mr. Matthew?

12 MR. MATTHEW: I think that First Nations are not
13 adequately represented at the IHPC. Myself,
14 represents only our interest in the Thompson for
15 Secwepemc communities. There is no representation
16 from the middle Fraser, the other tribes in the
17 area, or the lower Fraser. The lower Fraser, I
18 believe, had applied to have a representative, and
19 the response from DFO was, I believe - I can be
20 corrected - that they would leave it to First
21 Nations to sort of organize our representation
22 there and perhaps use the First Nation Fish
23 Council process to do that.

24 So at this point I don't believe that First
25 Nations are adequately represented there. We have
26 not developed sort of a coordinated approach
27 amongst First Nations on the Fraser or the south
28 coast to do that, although that is in the works in
29 other processes.

30 The other folks that I don't believe are
31 represented there - I can be corrected on that -
32 is the sort of the south coast marine First
33 Nations.

34 Q Is the process for appointing people to the IHPC
35 understood by the parties or understood by the
36 sectors, and is it a fair process? We'll start,
37 again, with you, Mr. Kristianson.

38 DR. KRISTIANSO: Well, I could speak directly only
39 with respect to my own sector, the recreational
40 sector, and certainly in our case the process is
41 transparent and fair. The six representatives are
42 elected at the -- as part of the main board
43 process of the -- well, actually, the regional and
44 main board process of the SFAB, so I can't speak
45 directly to the other sectors as to how people get
46 there.

47 Q All right. Do you have an understanding, then --

1 you do not, I take it, have an understanding of
2 how other people are appointed to represent those
3 sectors?

4 DR. KRISTIANSO: Well, I guess I'm being careful,
5 because you asked whether it's fair, and I'm
6 reluctant to comment subjectively on it. But I
7 believe that the Commercial Salmon Advisory Board
8 has a process somewhat similar to the one the SFAB
9 operates. I think the same is true of the Marine
10 Conservation Caucus. Clearly, there is a problem
11 with respect to how First Nations are chosen to
12 come to the table, and that's been well
13 articulated by Pat, and I think the rest of us
14 have sympathy with the difficulty that First
15 Nations face in determining their membership at
16 that table.

17 Q Okay. Mr. Saito?

18 MR. SAITO: I've had the privilege of participating in
19 both the commercial and recreational fishing
20 sector processes, so I am aware of how individuals
21 are identified and can affirm that the process is
22 by election. I am less familiar with how the
23 Marine Conservation Caucus nor First Nations
24 identify or are appointed, so I can't comment on
25 whether it is fair or not. And I use "fair", I
26 guess, within the context that it is a democratic
27 and elected process.

28 Q For the commercial --

29 MR. SAITO: For the commercial and recreational fishing
30 sectors.

31 Q Thank you. Mr. Matthew?

32 MR. MATTHEW: I can't comment on the other sectors, but
33 I guess as far as being fair, I believe DFO has
34 made many attempts to try to allow First Nations
35 to provide representatives there in whatever
36 fashion they can or will. So I think they've made
37 attempts at it, maybe not formally. So I guess
38 it's fair, as far as that's concerned. I
39 mentioned, earlier, First Nations are or have been
40 attempting to try to sort of coordinate our
41 representation there.

42 At the November IHPC meeting, the First
43 Nations Fish Council representative attended and
44 we had a caucus meeting of First Nations there,
45 and the First Nations Fish Council is trying to
46 coordinate, I guess, in effort to sort of
47 determine representation from the First Nations

- 1 side, although I haven't really heard any actions
2 to date on that. But as far as being fair, I
3 believe DFO is attempting to do that.
- 4 Q How is it that you were appointed? How is First
5 Nations representation currently being appointed
6 to the IHPC?
- 7 MR. MATTHEW: Well, I wasn't appointed. I heard about
8 the IHPC process and, of our own accord, I went to
9 a meeting to observe, and I guess I was -- we were
10 concerned with the IHPC process and its purpose
11 and mandate and how it might impact our Aboriginal
12 interests around the fishery, so I attended one of
13 the meetings, and at that time there were very few
14 other First Nations attending from the
15 lower/middle Fraser, or upper Fraser, for that
16 matter, and so DFO asked me to continue to attend.
17 I'm not sure if I'm appointed or I guess I'm
18 an observer, but when I'm there I only speak on
19 behalf of our interests in my area for my
20 communities. I don't represent the other First
21 Nations interests.
- 22 Q Are there any other First Nations that participate
23 in the IHPC?
- 24 MR. MATTHEW: Marcel Shepert does, on behalf of the
25 Upper Fraser Fisheries Conservation Alliance.
26 That's many of the First Nation Tribal
27 organizations above sort of Williams Lake and
28 north. Other than that, none on a consistent
29 manner. Murray Ned represents a group of lower
30 Fraser First Nations that are currently involved
31 in establishing AAROM Group, and at this point I
32 believe he's only attending as an observer.
33 As far as the northern IHPC, I'm not clear on
34 how they're represented with First Nations.
- 35 Q Are there representatives from the Nuu-chah-nulth
36 on the IHPC?
- 37 MR. MATTHEW: I believe Don Hall might represent the
38 Nuu-chah-nulth. I'm not sure how other First
39 Nations from the approach areas, Vancouver Island,
40 sort of the lower coast, are represented within
41 that group.
- 42 Q Okay. Do you think it's important that all First
43 Nations who have an interest in the harvest of
44 Fraser River sockeye have some kind of
45 representation at the IHPC, whether through a
46 mandate given to a representative or individually,
47 or is the bilateral discussion that the DFO has

1 with First Nations adequate?

2 MR. MATTHEW: I guess the issue with the IHPC for First
3 Nations is that it's what's called a third-party
4 process, and many First Nations believe that their
5 interests around fisheries management should be
6 represented in a government-to-government fashion
7 with DFO or some other form of federal government,
8 and in a bilateral fashion. And that's one of
9 the, I guess, issues with First Nations attending
10 to this process is it may not be the appropriate
11 place they believe to have their Aboriginal rights
12 interests dealt with in a fashion with DFO.

13 Q The members of the IHPC are predominantly harvest-
14 based members. Do you think that the IHPC is too
15 heavily weighted in favour of harvesting
16 interests, given that they make up the bulk of the
17 membership? Mr. Kristianson?

18 DR. KRISTIANSON: Given that it's the Integrated
19 Harvest Planning Committee, no, I do not think
20 that it's too heavily weighted to harvest. I do
21 think that it was appropriate for the department
22 to include the self-described conservation group
23 through the Marine Conservation Caucus and,
24 frankly, it's been helpful to have those people in
25 the room as a balance, but it is a harvest
26 committee and its primary interest is in
27 discussing harvesting issues.

28 Q Thank you. Mr. Saito?

29 MR. SAITO: I agree with Dr. Kristianson in that I do
30 not believe that it is too heavily weighted. As a
31 matter of fact, I am personally of the view that
32 there are a number of instances where if there was
33 a broader representation of specific and
34 knowledgeable harvest interest that more refined
35 fishing plans could have been developed and
36 opportunities were lost.

37 Q Sorry, can you explain that?

38 MR. SAITO: There are situations where local knowledge
39 could have added to a situation here where
40 specific opportunities might have been seized when
41 the opportunities arose, but were not described in
42 decision rules and that are part of the Integrated
43 Fisheries Management Plan, itself. I agree that
44 there is a need to ensure that the needs of the
45 resource are adequately provided for, but there's
46 also a need to ensure that the fishing plans are
47 refined as carefully and as accurately as

1 possible, and I think that some opportunities
2 could have been lost in the past.

3 Q Thank you. Mr. --

4 THE COMMISSIONER: Can you give an example?

5 MR. SAITO: Sorry?

6 THE COMMISSIONER: Can you give an example, so I
7 understand what you're talking about?

8 MR. SAITO: An example is that there is a policy in
9 place by the Department of Fisheries, and a sound
10 one, selective fishing policy. If there's a
11 demonstrated capacity by a particular fishing
12 group to respond to an identified abundance that
13 might occur in-season that might have been planned
14 for, or unexpected bonus, so to speak. If the
15 capacity is not there to respond in terms of a
16 decision rule, then that opportunity is foregone.

17 One specific instance, perhaps, that I can
18 refer to is, that I'm aware of, is that there was
19 a proposal or a concept being suggested by the
20 Area B Seine group to fish in the Fraser River
21 when the opportunities arose. The conversation
22 did not take place to the point where that kind of
23 a decision rule of that capacity could have been
24 responded to if the abundance and the
25 circumstances provided for it.

26 MS. BAKER:

27 Q That situation that you've just described, we've
28 heard a little bit about a proposal in 2002 to
29 fish in the river by the Area B; is that what
30 you're referring to?

31 MR. SAITO: I can't, with any great certainty, refer to
32 the specific year, and if it was 2002, then
33 perhaps it was. I thought it was more recent than
34 that. I thought it was more in the order of 2006,
35 but again, I can't state with certainty which
36 year, but I am familiar with that circumstance.

37 Q Okay. Mr. Matthew? The question was: Do you
38 think the IHPC is too heavily weighted in favour
39 of harvesting?

40 MR. MATTHEW: I do. I don't think you can separate
41 conservation from harvest, and as I mentioned
42 earlier, most of the discussion at the IHPC is
43 about harvesting and harvest opportunities. I
44 don't hear a lot of the discussion being about how
45 the sectors are going to develop conservation
46 plans or measures within their own groups to
47 protect stocks of concern. Those are identified

1 in the IFMP, but I don't hear a lot of discussion
2 about how, in particular, each sector is going to
3 do that at the meetings. I guess the only thing
4 that I hear or discussed a lot is about
5 harvesting. And the pilot projects that DFO and
6 sectors work on, including our own, are really
7 about how to reorganize the fishery in terms of
8 share-based fishing, those sorts of things, the
9 administration of the fishery. Those pilot
10 projects aren't about conservation. They don't
11 describe, within their fishing plans, how they're
12 going to protect stocks, what data they're going
13 to collect to do that in the marine areas, or in
14 other areas.

15 Our fishery, our commercial fishery, had, in
16 the last couple years, in Kamloops Lake, DFO
17 forced us to collect DNA and scale data, manage
18 our fishery in a selective manner to protect weak
19 stocks, and we've attempted to do that. And I
20 don't see those same measures being applied or
21 talked about at the IHPC.

22 Q Are any of those conservation measures that you've
23 described contained within the IFMP document,
24 itself?

25 MR. MATTHEW: Well, I guess in the IFMP document there
26 are sort of precautionary rules or options that
27 are described in there in the pre-season, in the
28 document. And as the season progresses, and run
29 size data is collected, various rules are
30 implemented in-season to protect stocks at given
31 levels. And so those are, for sockeye, are
32 described in an escapement plan where DFO provides
33 several options for each of the stocks in terms of
34 cut-off levels, benchmarks, those sorts of things.
35 So they're describing what they expect First
36 Nations and others to do in the pre-season is
37 choose an option that we think might meet our best
38 interests. And so some First Nations are able to
39 do that.

40 A lot of those options that are described in
41 there are developed through very technical
42 processes, like FRSSI and other processes that
43 First Nations and, I believe, are having
44 difficulty understanding the implications to the
45 fishery for that season and into the future.

46 So the IFMP is sort of the process that we're
47 all trying to address in the IHPC process, and I

1 think there's difficulties there for First Nations
2 to be able to effectively participate in that.

3 MS. BAKER: All right. Well, this sort of leads into
4 the next question I wanted to ask, which is
5 whether the IHPC and the development of the IFMP,
6 whether those processes provide an opportunity for
7 meaningful input from the different sectors, and
8 maybe I can just ask you if you have anything to
9 add to your previous comments, Mr. Matthews?

10 MR. MATTHEW: For First Nations, I don't believe so.
11 For one, we're not adequately represented there,
12 as I've talked about, and our responses to the
13 IFMP, at this point aren't in any sort of
14 coordinated fashion. And I guess DFO represents
15 the IFMP, in terms of sockeye, in many cases, in a
16 very technical sense, where they've developed
17 escapement plans and harvest opportunities are
18 described, precautionary sort of rules or
19 principles, those sorts of things. They're
20 derived from the FRSSI process that many First
21 Nations are not clear about, are in opposition to
22 it, are not clear how it functions, and not clear
23 how it will meet sort of their objectives, so it's
24 very difficult to provide meaningful input when
25 there's sort of an underwritten opposition to how
26 some of those management measures have been
27 developed, I guess in other places and other
28 forums.

29 Q Just before I move to the other witnesses, do you
30 find that -- we heard from the Department of
31 Fisheries and Oceans that they have provided
32 funding to assist First Nations in retaining
33 people with technical expertise to help understand
34 the FRSSI model, that they come and meet with
35 First Nations to describe the model and explain
36 how it works. Do any of those processes assist
37 the First Nations in understanding how the models
38 run and how these options are developed?

39 MR. MATTHEW: We have, I guess, a couple of biologists
40 that work for FRAFS, the Fraser River Aboriginal
41 Fisheries Secretariat, that have attempted to
42 describe those models, describe the FRSSI process
43 and some of the, I guess, potential outcomes, how
44 fishing plans this year, what they might mean to
45 the productivity into the future. And as far as
46 I'm concerned, First Nations aren't in agreement
47 with it. There's been opposition to the FRSSI

1 model and basically how it's been sort of built by
2 DFO, even though there was First Nations
3 participation.

4 I guess the other part of it, DFO has come to
5 the Fraser First Nations in various forums and
6 attempted to describe FRSSI and how it functions
7 and works, but many of the problems that First
8 Nations have are understanding sort of the
9 technical jargon, the modelling approach and sort
10 of the precautionary measures, the risk measures
11 that DFO is trying to employ, and how they
12 quantify them is part of the problem, and very
13 difficult for First Nations to understand that.
14 And very difficult for DFO to describe that.

15 So last year FRSSI was going to be discussed
16 at what used to be PSARC, and that was DFO's
17 answer to First Nations in terms of, "How do you
18 want to get involved? Go to PSARC and sit there
19 and try to understand it from that level," and
20 they've come to many meetings and they have not
21 been able to clearly describe how our interests
22 are going to be sort of incorporated or
23 accommodated in the FRSSI process, especially in
24 terms of individual stocks or CUs and how they're
25 going to be addressed in the FRSSI process, in the
26 models.

27 And those, I guess, for First Nations,
28 individual stocks or CUs are what we depend on for
29 our harvesting, and right now the FRSSI model is
30 based on large aggregates of stocks, of which
31 management measures are applied. Cut-off points,
32 harvest plans, escapement benchmarks, they're all
33 based on these large aggregates, and for us that's
34 a serious problem in terms of trying to protect
35 our interest around individual stocks, and we've
36 asked DFO, "Can you describe to us how you're
37 going to accommodate the modelling for individual
38 stocks in your FRSSI plans?" and they have not
39 been able to do that.

40 Q Thank you. Mr. Saito, the question, again, was:
41 Do the processes, the IHPC process and the IFMP
42 development process provide an opportunity for
43 meaningful input from the sectors?

44 MR. SAITO: I don't have the depth of knowledge of the
45 impact that reduced funding and support to the
46 sectors have on their ability to provide that
47 continuing and meaningful input, but I would

1 comment that my observations of how the Commercial
2 Salmon Advisory Board and the Sport Fishing
3 Advisory Board, their opportunities for meetings
4 and discussions at the local and community levels
5 have been diminished over time, and I believe it
6 is having an impact on their ability to provide a
7 coordinated and balanced approach to fishing
8 plans, and I believe that the importance and the
9 value of the umbrella organizations or umbrella
10 process, as I describe it, the main board, the
11 Sport Fishing Advisory Board and the Commercial
12 Salmon Advisory Board, the true value of those
13 processes were to try to find some sort of give
14 and take, some sort of balance between the
15 interests and the objectives between, perhaps,
16 competing harvest interests, whether it be area
17 geographically or fishery-type based. And I
18 believe that the initial successes of the
19 Integrated Harvest Planning Committee were in
20 finding those balances.

21 So it too a long time to say, "Yes," but I'm
22 concerned about the diminishing resources being
23 withdrawn.

24 Q Can you give examples of that? What are you
25 referring to when you say resources are being
26 withdrawn?

27 MR. SAITO: Funding support to address travel costs and
28 meeting costs to have meetings of the Commercial
29 Salmon Advisory Board. Similarly so for the Sport
30 Fishing Advisory Board, perhaps at the local
31 level. The support is gradually being diminished,
32 not withdrawn, but diminished, due to budget
33 restraints and constraints.

34 Q In your observation as a member of the IHPC, do
35 you see the sectors being able to provide
36 meaningful input within the context of those
37 meetings and that process?

38 MR. SAITO: I believe at the Integrated Harvest
39 Planning Committee meetings, yes, the participants
40 there -- the process is fortunate to have
41 longstanding members that have an understanding
42 and appreciation of the issues and are able to
43 provide that input, yes.

44 Q All right. Dr. Kristianson?

45 DR. KRISTIANSON: I think I would like to address this
46 on three levels. The Sport Fishing Advisory
47 Board, it needs to be understood, is a volunteer

1 body. There are no paid staff, there are no paid
2 members; everyone is a volunteer. But the
3 strength of the SFAB is that we're able to draw on
4 a wide constituency of anglers from across the
5 province who attend local board meetings in 24 or
6 25 local committees, who then elect
7 representatives to a regional board -- to two
8 regional boards, and to then elect representatives
9 to the main board, with the attempt to maintain a
10 careful balance in which a majority in the room is
11 always what we describe as the primary sector;
12 that is, anglers whose only interest is fishing,
13 as opposed to people whose economic interests are
14 related to fishing. That we describe as the
15 secondary sector. But the SFAB is a balance of
16 those two constituencies.

17 And so at the human resources level, I'm
18 happy to say, we are able to draw on a variety of
19 people with enormous knowledge, local knowledge,
20 of fishing, often technical background from
21 previous parts of their life, people who worked in
22 government, in fisheries, et cetera. So at that
23 level we're well represented, and I think our
24 contribution in fora, like the Integrated Harvest
25 Planning Committee, is effective.

26 At the technical level, we have no technical
27 support and, frankly, I'm not sure that we want
28 technical support. In other words, the SFAB tends
29 to view the department as playing the technical
30 role. We want the department to be well supported
31 with resources so that it can do the science and
32 technical work that we can then relate to.

33 And, frankly, I guess, at the personal level,
34 I have some concern about the creation of duelling
35 technical bodies where technicians who work for
36 one interest are duelling with the technicians
37 from another interest. I tend to view the role of
38 government as being the broker of those things and
39 be able to provide impartial and objective
40 scientific background, which I'm happy to say is
41 almost always the case with the Department of
42 Fisheries and Oceans, and with entities like
43 PSARC, or as it's now called --

44 Q CSAP.

45 DR. KRISTIANSO: -- CSAP, in which we are -- we attend
46 those science meetings. I attend them as a lay
47 person in that I have no degree in biology, but it

1 allows us to build a group of people who can ask
2 the right questions and understand the data when
3 it's in front of us. So at that level, then, my
4 only concern is with the availability of those
5 resources to the department.

6 At the financial level, though, there is a
7 problem, and with respect to the organization and
8 operation of the Sport Fishing Advisory Board, the
9 Department of Fisheries and Oceans, at one point,
10 had a recreational fisheries division which
11 related to recreational fisheries. That has been
12 truncated over the years to where it's really just
13 a few staff and part-time staff positions.

14 The SFAB process works because the department
15 has funded the travel of its participants, so
16 people donate their time, as I do, probably, in my
17 case, a couple of hundred days a year, but I do it
18 happily because I don't have to pay my travel and
19 accommodate expenses when participating on behalf
20 of the department.

21 And presently, the license fees for
22 recreational angling account for about 50 percent
23 of all the department's expenditures on
24 recreational fishing, probably the highest
25 proportion of any sector, but we have been asking
26 the department, for at least six years, to please
27 increase the licence fees so that we can have more
28 money available for catch monitoring, for our
29 contribution to the process. And we have been
30 unable to make that happen because of an
31 iniquitous piece of legislation in Ottawa, a
32 private bill, not a private member -- a private
33 members' bill, rather, not a public bill, called
34 **The User Fee Act**, which appears to have stymied
35 the department, which is unable to collect more
36 money from recreational anglers in order to
37 support the activities that recreational anglers
38 believe should take place and want to have happen.

39 Q Thank you.

40 DR. KRISTIANSO: I apologize for going on. This is a
41 subject I feel a little passionate about.

42 Q Yes, I can see that. We've talked a little bit
43 about how in the IHPC process First Nations are
44 not fully represented, those First Nations on the
45 Fraser River system are not fully represented, and
46 so this is a broad question for the panel. Can
47 the IHPC process be effective as it's currently

1 constituted without that full representation from
2 First Nations? Mr. Saito?

3 MR. SAITO: In my personal opinion, yes, provided that
4 the process understands and respects the fact that
5 there are going to be people that can accurately
6 and credibly anticipate the views and the
7 responses that First Nations would provide if the
8 conversation were to take place between the
9 Department of Fisheries and those First Nations at
10 a bilateral level. In other words, not to make
11 the decision so much as to anticipate and respect
12 where various -- the positions that might be
13 taken.

14 Q Okay. Dr. Kristianson?

15 DR. KRISTIANSON: Well, I believe your question was if
16 First Nations are not fully represented, and I
17 guess the difficulty is in definition of the word
18 "fully". I mean, the original plan was that there
19 be four First Nations from the north and four from
20 the south, and along with a number from other
21 communities, and I suspect that in the original
22 iteration those numbers did not seem unreasonable
23 in the context of representation. But clearly,
24 the problem is that it's difficult for First
25 Nations to delegate people to a forum like the
26 IHPC as representatives, given that the individual
27 First Nations have individual constitutional
28 status.

29 And so, I mean, I think that the inability of
30 ensuring effective representation, there are some
31 -- I don't want to make it sound like there aren't
32 some excellent First Nations representatives
33 there, now, but to ensure that there's a full
34 slate of First Nations representatives, possibly
35 more if that's needed to cover the numbers.
36 Frankly, we have no objection. The IHPC is a body
37 based on consensus, so it's not voting, so the
38 number of persons in the room isn't a key issue,
39 and so if one could ensure that First Nations felt
40 they were better represented by either some more
41 people or a better process for choosing them, I
42 think that would work well for the rest of us who
43 are in the room who feel that often it's hard for
44 people like Pat to speak on behalf of a diverse
45 constituency, given that there isn't a process by
46 which they are, in effect, delegated to operate in
47 that constituency.

1 I have the benefit, as both an IHPC rep and
2 as the SFAB chair, that when I say, "The SFAB
3 believes," that statement has some validity in
4 that there's a representative process behind me.
5 I think it would be good if we could build a
6 similar support for First Nations in the IHPC
7 process, and other processes.

8 Q Has the IHPC process, to date, then, been
9 successful because there has been this difficulty
10 in full representation from First Nations?

11 DR. KRISTIANSOON: Well, I mean, obviously from the
12 point of view of First Nations, there has not been
13 full representation, but I think the IHPC has
14 worked reasonably well. I think it's led to the
15 building of relationships between the sectors,
16 which were not possible before, because this kind
17 of forum did not exist. And so I think that
18 having concern about how to improve First Nations
19 representation should not be interpreted as
20 criticism of the achievements the IHPC has made to
21 date.

22 Q Okay. Mr. Matthew?

23 MR. MATTHEW: The question, please?

24 Q I guess it's sort of a two-part question. One,
25 can the process be successful if First Nations are
26 not fully represented at the IHPC, is the first
27 part. And the second part is the one that Dr.
28 Kristianson just addressed, is: Has the process
29 been successful to date, notwithstanding the fact
30 that there has been an inadequacy, potentially, of
31 representation from First Nations?

32 MR. MATTHEW: I guess the first part about can it be
33 successful without First Nations, I think it goes
34 to the mandate and purpose of the IHPC. If it's
35 simply an advisory process to the minister and the
36 First Nations, we're coordinated to come there and
37 use it as just another venue to put forward our
38 conservation harvest interests, it may function in
39 that manner, if it's just simply a venue to do
40 that.

41 But as I mentioned earlier, First Nations,
42 for the most part, as far as I can understand,
43 don't see it as a place to discuss how their
44 fishing plans or conservation objectives -- maybe
45 I need to start again on that. But I guess they
46 don't see it as a place to discuss their interest
47 around fishing rights. And one of the problems

1 with the IHPC is that there's an understanding,
2 and I believe it's in the terms of reference, that
3 those discussions about First Nations fishing
4 rights or their interest around conservation and
5 management will have taken place at other venues
6 before the IHPC, with DFO in a bilateral sense in
7 that they're already taken care of in another
8 situation, and that those things should not be
9 discussed at the IHPC.

10 But the problem in that is where the IHPC is
11 meant to discuss the IFMP in which their
12 conservation measures and, I guess, fishing plans,
13 those sorts of things, are in the document that
14 have potential impact in how they're dealt with to
15 First Nations fishing interests. So there's all
16 kinds of, I guess, problems, with the purpose and
17 intent of the IHPC as First Nations are concerned.

18 So I'm not sure if I answered the question
19 about representation, but...

20 Q I think that answers the questions I asked.

21 THE COMMISSIONER: Ms. Baker, I'm sorry to interrupt,
22 but again, I'm sure these witnesses and many of
23 the counsel in the room, have enough background
24 and understanding of the structure of the politics
25 of all of the parties who are participating in
26 this process, but I do not. So I just want to
27 make sure I understand a couple of things.

28 One, is Mr. Kristianson's remark about asking
29 the right questions but not having, necessarily,
30 advisors to advise on what are the right questions
31 to ask; in other words, scientists on one side of
32 the table, lay persons on the other side of the
33 table.

34 The other area that I would find interesting
35 is Mr. Matthew's remarks this morning. If he
36 could explain to me who is out there organized
37 into either fisheries counsels or fisheries
38 committees within the First Nations communities.
39 In other words, what is the structure out there?
40 And I'm sure this will be coming up later in the
41 commission's hearings under the Aboriginal
42 fisheries, but just so I can understand your
43 comments a few moments ago. I'm not fully
44 apprised of who all the players are and how you
45 would take this IHPC format or forum and relate it
46 back to all of the parties who are in the process
47 of discussing, you said, fishing rights and so on,

1 and I think I understand what you're talking
2 about, but I want to make sure I understand what
3 you're talking about. I just want to make sure
4 I'm following your comments, because it's
5 important for me to understand the context in
6 which you're making your comments.

7 MS. BAKER:

8 Q Could you maybe address the last comments by the
9 Commissioner?

10 MR. MATTHEW: Well, I guess as far as First Nations
11 processes, at this point, many of them are in
12 development and emerging. So sort of at the BC-
13 wide level, there's the First Nations Fisheries
14 Council, which is a body that was borne of, I
15 guess, a political will amongst the Union of B.C.
16 Indian Chiefs, the AFN and another group, called
17 the First Nations Summit, and these are sort of
18 pretty well all the political bodies in B.C. for
19 First Nations at sort of a higher level with
20 chiefs.

21 And so that organization, the First Nations
22 Fisheries Council, has a staff. It's fairly new.
23 They are in the process of developing
24 representation sort of geographically in B.C., in
25 the Fraser and other areas. They are now just
26 developing work plans in terms of a working group
27 structure and an MOU that they have with
28 Department of Fisheries and Oceans on several
29 topics, of which co-management is one of them, and
30 there's several others. So they're now just
31 developing that sort of process. And so our First
32 Nation is involved and has representation there.
33 So that's sort of the BC-wide First Nations -- one
34 of the BC-wide First Nations structures.

35 The other, on the Fraser, is an organization
36 called the Fraser River Aboriginal Fisheries
37 Secretariat, which is made up of First Nations and
38 Department of Fisheries and Oceans in a sort of a
39 bilateral arrangement. And so there are
40 representatives from -- or First Nations from
41 several areas on the Fraser and the approach
42 areas. And underneath that they've developed a
43 technical working group, or joint technical
44 working group with Department of Fisheries and
45 Oceans to address, I guess, sort of the science
46 and management around key questions.

47 The other process is that FRAFS is helping to

1 coordinate our -- a process called the Fraser
2 Forum, which is a bilateral process between First
3 Nations and DFO to discuss sort of annual
4 operational plans around the fishery, which
5 includes all salmon species. I guess it's used to
6 inform the IFMP as well. So that process is going
7 on.

8 Out of that process, also, there's, I guess,
9 the First Nations have a First Nations only side
10 of the forum process where they try to review and
11 understand annual plans from the IFMP. So they go
12 through a structured process to do that, and with
13 DFO, so there's that, I guess, the forum process.

14 The latest process that First Nations and DFO
15 are working on is it's called a roadmap process,
16 and it's a process to try to explore a possible
17 arrangement with DFO on joint fisheries management
18 on the Fraser River. So the First Nations also
19 are trying to align themselves in what we call a
20 tier 1 process, which is First Nations only to do
21 that.

22 The other First Nations process that is sort
23 of reinventing itself on the Fraser is called the
24 Inter-Tribal Treaty Organization, and historically
25 there was a treaty amongst First Nations on the
26 Fraser in the mid to late '80s, that was signed by
27 many of the Fraser First Nations. And the treaty
28 is still in existence amongst the Fraser tribes.
29 What they're trying to do with the Inter-Tribal
30 Treaty Organization is to get the treaty, I guess,
31 implemented and get support for it to start again.
32 So if I'm not mistaken, those are sort of the
33 larger organizations.

34 Many First Nations have tribal councils of
35 which communities or Native bands belong to, and
36 on the Fraser there's probably, I would say, eight
37 large tribal groups on the Fraser, of which some
38 of them are organized into tribal councils, or
39 maybe two tribal councils per First Nation. Some
40 of those tribal councils or organizations are
41 involved in AAROM agreements. An example is the
42 Upper Fraser Fisheries Conservation Alliance,
43 where they have several tribes and many First
44 Nations communities involved in an AAROM program.
45 Ourselves are in that same AAROM agreement with
46 Department of Fisheries and Oceans.

47 Many of the communities at a tribal council

1 or band level, are involved in Aboriginal
2 fisheries strategy and get funding to do stock
3 assessment, like some support for technicians and
4 biologists. Our own agreement is through AAROM,
5 and persons such as myself are supported to help
6 our communities organize ourselves around
7 fisheries management and consultation, those sorts
8 of things.

9 MS. BAKER: Mr. Commissioner, you can hear from that
10 overview that there's a lot to cover in that area,
11 and we do have a number of days coming up where
12 we'll get into all of those, I understand, all of
13 those processes in quite a bit of detail. So I
14 think it's very helpful, as an overview, but I
15 know that we will be coming back and spending
16 quite a bit of time on those different processes
17 in some depth.

18 THE COMMISSIONER: Well, the reason I asked was for my
19 purposes. The remarks being made this morning, by
20 this panel, Ms. Baker, is when questions are asked
21 of Mr. Matthew, in particular, about whether the
22 system is fair, IHPC, and whether the
23 representation is fair and whether it's supportive
24 enough and full enough, is just for me to
25 understand who, in the different levels of
26 politics within the First Nations, is involved in
27 actually addressing the IHPC --

28 MS. BAKER: I understand.

29 THE COMMISSIONER: -- and who is involved in putting
30 persons forward, and it just wasn't clear to me
31 who Mr. Matthew was speaking about when the words
32 "First Nations" is used. I appreciate there are
33 many persons involved in this process, but I
34 didn't understand, to put his answers in context,
35 just exactly who is being referred to in these
36 answers.

37 MS. BAKER: Right.

38 Q In fact, I think it may be useful, then, in just
39 clarifying, when we're talking about the questions
40 I'm asking you on the IHPC, you have indicated
41 that you're representing the Secwepemc Fisheries
42 Commission and the Shuswap people. Are you
43 representing people other than that in the IHPC
44 process?

45 MR. MATTHEW: I am not. I'm representing the Secwepemc
46 Fisheries Commission, or the Shuswap Nation Tribal
47 Council of which there are nine communities that

1 live in the Thompson Basin, and I only represent
2 those communities and their fishing interest in
3 that area. I do not represent any other First
4 Nations on the Fraser.

5 MS. BAKER: All right. So I think the questions that
6 we're talking about, today, are identifying that
7 limited representation and trying to understand
8 whether that is adequate within that process,
9 given that there are many other First Nations
10 involved in the Fraser River sockeye, with
11 interest in Fraser River sockeye, and we will be
12 coming -- the commission will be coming back to
13 talk about the First Nations processes throughout
14 the Fraser River Watershed and how they're
15 involved in management issues.

16 But what we're trying to parse so far, in
17 terms of our hearing plan, is to talk about,
18 today, about the IFMP and the IHPC and what input
19 goes into those processes and the final document,
20 who comments are coming from in the development,
21 and we've heard from DFO already about the
22 bilateral discussions that they have with
23 different First Nations outside the IHPC full
24 meetings, and now we're hearing from Mr. Matthew
25 as to what he contributes and gains from that
26 process and who he represents in that process, and
27 he's identified his very limited representation in
28 that process.

29 So the question, at the end of the day, will
30 be whether that is adequate or not, and we will
31 hear -- we have heard from DFO and we will hear
32 again from DFO on the participation of First
33 Nations in the decision-making process outside the
34 IHPC meetings and that process.

35 So it is a bit awkward, but we have tried to
36 address it in that way to try and at least draw
37 that distinction as to what's happening in that
38 Integrated Harvest Planning Committee process,
39 itself, and the development of the IFMP within
40 that process. That's where these questions have
41 been directed at, for the most part, is at that
42 IHPC process and the people that are in that
43 process, how well can they understand what's being
44 presented to them for decision-making and how well
45 is that process working for them.

46 We started a bit late, today. I don't know
47 if you want to take a break this morning, if you

1 want to press on, or what do you want to do?

2 THE COMMISSIONER: I'm content to go further, if you're
3 comfortable.

4 MS. BAKER: Yes.

5 Q Mr. Matthew, I did have one follow-up question.
6 Is there value for you and for your community in
7 your attendance at the IHPC meetings?

8 MR. MATTHEW: I guess at the IHPC, you know, the value
9 I found is that there is a lot of information on
10 fisheries management planning, technical
11 information, policy information, that I think is
12 important that, you know, I understand or at least
13 receive. I guess the other part about it is I
14 hear a lot of sort of the internal workings of DFO
15 in terms of subcommittees, processes within DFO
16 that perhaps First Nations don't hear. And unless
17 we understand them, then how can we sort of be
18 involved in participating in them. And in fact,
19 First Nations in many cases aren't involved in a
20 lot of those processes that I hear about within
21 DFO. I guess the other part of it is
22 understanding the interests of the commercial and
23 recreational and conservation sectors. You know,
24 it's important to understand their interests in
25 conservation and harvest.

26 Q Have you found that to be a valuable aspect of the
27 IHPC, then, hearing the other interests and
28 understanding the perspectives of the other
29 sectors?

30 MR. MATTHEW: I think it is valuable and I guess at
31 some point in the future, you know, just
32 understanding their interests and them
33 understanding mine, hopefully that would inform
34 their decisions and ours about protecting salmon
35 within our own fishing plans. And I have heard
36 that from various sectors at the meetings, and I
37 think that's a value that needs to be sort of
38 heard in terms of understanding where we're coming
39 from in our area of the river.

40 Q Thank you. And the Commissioner asked a question
41 which is one I was going to be moving to now, in
42 any event, which is capacity for participants in
43 the process, participants in the IHPC process and
44 in the review and development of the IFMP. Do the
45 people that are participating in the IHPC and who
46 are being asked to comment on draft IFMPs have the
47 technical capacity to meaningfully engage in the

1 process, or the human resources to meaningfully
2 engage, and the financial capacity. So a couple
3 of different issues there. And I guess in the
4 background when you're answering that question, if
5 you can reflect on the question posed by the
6 Commissioner, which is do the participants have
7 the ability to not only understand what's been
8 given to them, but to know what questions need to
9 be asked. Do they have the technical assistance
10 to allow them to ask those questions. And if I
11 could start with Dr. Kristianson.

12 DR. KRISTIANSON: Well, as I indicated earlier, I mean,
13 I think we are not unhappy with the ability of our
14 representatives at IHPC to understand the issues
15 that are before them, some of which are technical
16 and most of which relate to harvest planning and
17 harvest methods. And I guess the people that we
18 elect, I think in looking at who should be there,
19 we're choosing people who we feel have the ability
20 to deal with those issues.

21 I would separate that from the question of
22 whether or not it would be both wise and advisable
23 and a good expenditure of public funds to provide
24 each of the groups that are represented at IHPC
25 with some kind of separate technical support. And
26 frankly, I am, without having thought about it a
27 great deal, I am not sure that would be a useful
28 expenditure of public funds, again given past
29 experience, which is that the more you want to do
30 that, the more you're going to take funds away
31 from the core responsibilities of the Department.

32 And so, you know, my vision of the technical
33 support is that a well-funded Department with
34 highly qualified staff does the primary technical
35 work. It subjects its technical findings and
36 science to a peer review process called in the
37 past PSARC and now CSAP, an unfortunate acronym.
38 And the other interests can have technical people
39 or others at those PSARC meetings - I've attended
40 many of them - that gives us the ability to
41 understand and question what the Department's
42 doing, and out of that comes the advice which
43 flows from Science to Management in the Department
44 of Fisheries and Oceans. I think it's a good
45 model. I think it's not adequately supported at
46 present for reasons that are not the fault of
47 Pacific Region, but I would not like to see, at

1 least in our case, resources diverted from that to
2 try and provide what would become inevitably
3 duelling scientific hired guns, and I'm simply not
4 convinced that's a good idea.

5 Q Mr. Saito.

6 MR. SAITO: My only observation and concern is that
7 many of the individuals that participate in the
8 myriad of consultation fora (sic) and meetings are
9 the same people, and there is this issue of
10 fatigue, perhaps, in that there is being an awful
11 lot asked of individuals to participate day after
12 day, week after week in very similar forums, and I
13 think it's asking an awful lot of individuals.
14 And I know that some people have, that the demands
15 have been more than they could provide, and some
16 people have, you know, you're starting to see some
17 dropout in some of these processes. I'm very
18 fortunate, quite frankly, in observing the high
19 level of integrity and competency within the
20 individuals that do participate, but one only has
21 to take a look at a three-page list of the number
22 of meetings that are going to take place over a
23 year, relating to just salmon, and realize that
24 the same people are at those same meetings, that
25 you've got to ask yourself how long can this take
26 place.

27 Q And Mr. Matthew.

28 MR. MATTHEW: Well, I guess speaking for myself and
29 First Nations that may attend that I know of, I
30 don't believe we have the technical capacity to
31 engage in the IHPC as an advisory process. Along
32 with, you know, what's been described already,
33 First Nations have limited technical capacity in
34 terms of actual individuals at a Fraser-wide
35 level, or within their communities. So it would
36 make sense to me that that capacity has to be sort
37 of consolidated in someplace and I don't think
38 it's at the IHPC that it should occur. But I do
39 agree that the pure science of managing fisheries,
40 there needs to be, I guess, some alignment with
41 DFO and their science, their technical staff and
42 First Nations. And, you know, that's occurring at
43 the Fraser Watershed level through the FRAFS
44 agency or the FRAFS organization, but I don't see
45 it occurring here.

46 So I see, you know, when I go to the
47 meetings, a lot of the information on fisheries

1 management is presented in a very technical
2 manner, and there might be a lot of graphs and
3 things like that, but a lot of the work that's
4 gone on behind that in terms of, to me it's not
5 clear, and we need, I think, First Nations need to
6 be able to understand it, to review it and agree
7 on it, on the processes, the technical processes
8 that are used in the IFMP or IHPC and in any
9 process.

10 Q And this may have been covered already by the
11 panel, but it's a bit of a different take on this
12 question. Do you think that the sectors need to
13 have a detailed technical understanding of what is
14 being presented, in terms of the model outcomes
15 and the model options, to actually engage
16 meaningfully in the process. Do they need that
17 deep technical understanding to actually do what
18 they're being asked to do in the IHPC in reviewing
19 the IFMP documents and make decisions for, or
20 provide advice for fishery decision making. Again
21 start with you, Dr. Kristianson.

22 DR. KRISTIANSON: Well, they certainly need to
23 understand what's in front of them, and I guess
24 that, I suppose my perspective is that I view it
25 as the responsibility of technical people to
26 present their information in ways that can be
27 understood by intelligent people. And you know, I
28 think that using -- and so in that context, I
29 think that when the system works appropriately,
30 when people who are technically trained and who
31 have done the work are presenting their
32 information in understandable language, most of us
33 get it. Whether you need to have a detailed
34 technical understanding is, I think, you know, I
35 guess I don't think that I would like to see an
36 IHPC where each of the sectors had a technical
37 person behind them who they inevitably had to call
38 on to duel with whoever is presenting the
39 information. I just think that overly complicates
40 things, and I don't think generally that's the way
41 it is. Most of the information that's presented,
42 I find to be in an understandable way, you know.

43 Have I had to in my own personal sense try
44 and do some extra reading to discover what the
45 Bayesian approach is. You can't be involved in
46 fisheries science at all before you will have
47 people tell you, well, this information is valid

1 because I subjected it to a Bayesian approach.
2 And you know, my response to those people is to
3 point out to them that the populariser of the
4 mathematician Bayes approach, of course, said that
5 the approach was valid because it proved the
6 existence of God, and what probably is the
7 appropriate thing to apply to fisheries science.
8 But I'm sorry, I digress.

9 I think that it is the responsibility of all
10 of us to understand this technical material. If
11 we had more resources, would that be better?
12 Sure. But in terms of what is needed and what's
13 available, I'm not sure I would place that at the
14 top of the list.

15 Q Okay. Now, Mr. Saito, and you may have already
16 answered this question, but...

17 MR. SAITO: In my personal opinion the answer is no.
18 But I come from a slightly different perspective
19 than Dr. Kristianson, in that models are merely
20 tools, and I think what I need is some confidence
21 that the tool itself operates and functions in a
22 manner that it is intended to, and that if I'm
23 asking it to perform a task, that it performs that
24 task in a reasonable manner. I think without
25 extending too far, extending the question too far,
26 I'm wondering if the question really is, are the
27 people that are responsible for developing and
28 caretaking these models being provided the
29 appropriate communication tools so they are
30 actually able to translate a highly technical and
31 complex subject into something that most all of us
32 should be able to understand and relate to. And
33 but I might have gone beyond what the question was
34 asked.

35 Q Mr. Matthew, again you may have covered this
36 already in your prior answer, but is there
37 anything you'd like to add?

38 MR. MATTHEW: I guess about the information that's
39 presented, you know, you mentioned about models
40 and, I guess, potential outcomes from that, from
41 those models are perhaps described or various
42 options described that are derived from models.
43 And the problem with that is that the outcomes in
44 choosing, you know, which sort of option, you
45 know, the outcome might have an impact on one
46 stock or another, and First Nations have a concern
47 with that, in that it may mean that you might be

1 establishing a harvest option on a group of stocks
2 or one stock that might impact a stock of concern.
3 And so the question is how do you trade off
4 fishing a strong stock versus a weaker one. And
5 there's a question of, you know, the outcome might
6 be less fish returning to spawn, which is an
7 impact on conservation, or it might be an impact
8 on an individual community's fishery on that
9 particular stock. So the whole issue of outcomes
10 and that is who decides that.

11 And right now it's for First Nations, it's
12 very difficult for them to understand the models
13 and understand the outcomes, and right now there's
14 no agreed-to process at the IHPC or any other
15 place to discuss and understand what those
16 tradeoffs are and what the implications are
17 between conservation and harvest, especially for
18 First Nations. And you know, the models that are
19 described about sockeye look at the survival or
20 the productivity 40 years into the future. And
21 for First Nations that's very difficult to
22 understand, you know, how that might function.
23 And anyways, to me it's, I think, you know, First
24 Nations, yeah, we do need scientists and
25 technicians, but we really need somebody, or we
26 need to really be clear about what the outcomes
27 are and the tradeoffs are. And I don't think
28 DFO's presenting those to us in a fashion that we
29 understand, or how they make those tradeoffs in an
30 individual year with their fishing plan.

31 Q We heard from DFO that one of the purposes of the
32 IHPC is to discuss those tradeoffs, those
33 tradeoffs between conservation and harvest and
34 impacts on stocks. Do you not find that is
35 properly or fully discussed in the IHPC?

36 MR. MATTHEW: I don't at all. I don't think we've ever
37 gotten to that, as I recall, that sort of point in
38 the discussion at the IHPC. We've never gotten to
39 the point of talking about tradeoffs or the
40 implications, and nor would I even venture as a
41 First Nation representative from my own
42 communities to want to do it there. I don't think
43 that's the right place for First Nations to
44 discuss tradeoffs where conservation or their
45 harvest are impacted, or the outcomes might impact
46 those. I don't think that's the right place to do
47 it. There's got to be another First Nations sort

1 of process to do that, that's clearly understood
2 and transparent.

3 Q Thank you. Before we leave the IHPC, I wanted to
4 ask one last question or a couple of questions
5 about what is the role of the province. Mr.
6 Saito, what do you see is the role of the province
7 at the Integrated Harvest Planning Committee?

8 MR. SAITO: Thank you. The role of the province that I
9 have attempted to serve is to ensure that the
10 fishing plans themselves are sustainable and
11 protect biological diversity, that they achieve
12 that necessary balance between the interest
13 groups, so that the greater good to all British
14 Columbians can be met and served, and also to
15 ensure that there is a balance between the social
16 and the economic objectives in terms of harvest,
17 so that the fishing plans are broadly supported by
18 all.

19 Q Mr. Matthew, what do you take, what do you see as
20 the role of the province at the IHPC?

21 MR. MATTHEW: I'm not really clear. I guess to me
22 there's been situations where they may play a role
23 in some of the stocks, like I guess steelhead is
24 one of them. But you know, speaking of the
25 greater good of the public, you know, to me that's
26 where sort of the balancing act comes in, and
27 that's where sort of the deep-rooted problem lies
28 in this process, is it's conservation first, in
29 terms of priority, then First Nations priority
30 second, and other sectors, and I imagine the
31 greater good of the public third and last. And so
32 to me that's where it just doesn't sort of, I
33 guess, fit, in terms of their role and my
34 understanding of it.

35 Q Dr. Kristianson.

36 DR. KRISTIANSON: I think it's essential that the
37 province be part of this process, and indeed other
38 processes related to the tidal fisheries.
39 Historically British Columbia was not much
40 interested in these things, and in fact that has
41 changed and it's changed for the better. I think
42 having the province at the table, because of the
43 fact that it has responsibility for a wide range
44 of activities that impinge upon fisheries
45 ultimately: water, freshwater supplies to the
46 Interior, who gets water, forestry issues, all of
47 those. And so I think if the province wasn't

1 there and ably represented, as I think it has
2 been, then there would be a missing element to all
3 of this. In fact, it could render irrelevant a
4 lot of the discussion that actually does take
5 place, so I think it's a positive thing.

6 Q Now, obviously a big part of what happens at the
7 IHPC is the review of draft Integrated Fisheries
8 Management Plans, the IFMPs. Are you aware of
9 times where there has been a consensus at the IHPC
10 on a decision to be made in the IFMP document
11 where that IFMP was not actually implemented or
12 taken up by the Minister? Mr. Saito.

13 MR. SAITO: Yes, but I'm struggling because I can't
14 recall the exact minutes, the precise minutes and
15 the days, you know, of the proceedings that where
16 that consensus was reached. But there was a year,
17 and I simply can't remember that year, where there
18 was a pre-season forecast for salmon returns that
19 were very poor, and there was a consensus that DFO
20 should consider a licence holiday for the
21 commercial fishery. And there was a consensus
22 reached at the IHPC, and that advice, it's not
23 clear what happened to that advice, but that
24 licence holiday, and I put that in brackets, but
25 the licence holiday was not responded to in a
26 positive manner.

27 Q Dr. Kristianson, have you got anything to add?

28 DR. KRISTIANSON: Well, I was kind of scratching my
29 mind on this one, and I recalled the same issue.
30 I think that that had to do with licensing, and I
31 think the answer was that it went to Ottawa, which
32 at the national level was examining a whole set of
33 licensing issues and this one simply fell into a
34 trough from which it didn't emerge because of
35 these other issues.

36 I mean, there have been other, and I didn't
37 have time to go back and search the minutes to
38 find them, but there have been occasional times
39 when consensus, formal consensus decisions were
40 reached, and but they usually didn't relate
41 specifically to the fishing plan. They usually
42 related to issues that surround the fishing plan.
43 I think one I'm right in saying is support for
44 better integration of the Wild Salmon Policy into
45 the creation of the IFMP. And I think that, you
46 know, we worked through language that everyone
47 could agree to, but this was really kind of a

1 policy statement, as opposed to a specific
2 recommendation.

3 I mean, I think the difficulty, as in any
4 consensus-based forum, the problem is of course
5 that interests have a veto. And so there have
6 been a number of occasions when a proposal is made
7 for a consensus. I'm not sure how you do that.
8 Do you move a motion to try to go to consensus?
9 You know, we have not worked through the dynamics
10 of these things. But where having had a
11 discussion at the table it's clear there isn't
12 support, then the issue is dropped because there
13 clearly is not a consensus.

14 Q Mr. Matthew.

15 MR. MATTHEW: What was the question, sorry?

16 Q Have there ever been examples where there is a
17 consensus at the IHPC on a decision in the IFMP,
18 the draft IFMP, where that IFMP decision was not
19 taken up by the Minister?

20 MR. MATTHEW: I'm not clear on the Minister's responses
21 to any of the recommendations put forward, licence
22 holiday or otherwise. Well, maybe that one,
23 somebody else is clear about that. But the other
24 recommendations put forward were, you know,
25 somewhat about lobbying for more funding, about
26 stock assessments and that sort of thing. But I
27 guess the process there is if you don't say
28 anything or object, then silence is consensus. In
29 other words so it's very difficult then with the
30 IFMP as the sort of the document that we're trying
31 to agree to or have input to, what do you do then,
32 do you say something on every topic throughout?
33 You know, we'd never get there.

34 So I guess it's not clear to me like what,
35 after the IHPC meetings, what actually is sent to
36 the Minister in terms of the communication from
37 our group. I think this question has been asked
38 of DFO before, how do you weigh and balance the
39 advice that we put forward from various sectors to
40 the Minister, and how is it weighed and balanced?
41 And I don't know that we've ever been responded to
42 in that fashion. And to me, I mean, I think that
43 needs to be clearly understood. Maybe the
44 Minister has discretion not to, but it's why would
45 a person continue to go to a process such as this
46 when, you know, your interests are not
47 accommodated, or there's no description of how

1 much of it is accommodated.

2 THE COMMISSIONER: Ms. Baker, would this be a good
3 place for the break?

4 MS. BAKER: Yes, it's 12:00, so what was your thinking,
5 we would break for ten minutes and come back for
6 another 20, or...

7 THE COMMISSIONER: I guess.

8 MS. BAKER: Okay, thank you.

9 THE REGISTRAR: The hearing will now recess for ten
10 minutes.

11
12 (PROCEEDING ADJOURNED FOR MORNING RECESS)
13 (PROCEEDINGS RESUMED)

14
15 THE REGISTRAR: The hearing is now resumed.

16 MS. BAKER: Thank you.

17
18 EXAMINATION IN CHIEF BY MS. BAKER, continuing:

19
20 Q We've been talking a lot about the IHPC. Now,
21 that is a pre-season process, and we've heard from
22 Mr. Rosenberger, Mr. Grout and Mr. Lapointe about
23 the in-season process, which involves the Fraser
24 River Panel. So my question now is should there
25 be a process like the IHPC in-season. So should
26 there be the same kind of consultative process in-
27 season that you see in the IHPC? And if I could
28 start with you, Dr. Kristianson.

29 DR. KRISTIANSON: Frankly, I think that attempting to
30 have a multi-interest in-season process would
31 simply be impractical. And I suppose I'm saying
32 that in the context that I think that the
33 recreational sector is at least, is reasonably
34 satisfied with the in-season management process.
35 There is regular consultation with the
36 recreational sector as issues arise with respect
37 to recreational and commercial fisheries that
38 might impact on our interests. For example,
39 conference calls. In the north related to the
40 Area F troll, this is the Chinook harvest in the
41 north, and its relationship to other fisheries.
42 In the south, in the specific context of sockeye,
43 we have a Sockeye Working Group that has a
44 conference call sometimes weekly during the
45 harvest season with DFO representatives and others
46 in order to either provide input or receive
47 information on how the process is going. And I

1 think that it works reasonably well from our
2 perspective, and frankly, I'm not sure how
3 practical it would be to try to pull together all
4 harvesting interests, particularly since sometimes
5 these issues are quite narrow in their concern.
6 And so we view it as being up to us to ensure that
7 the right people are being consulted when
8 decisions need to be made in-season.

9 Q Mr. Saito?

10 MR. SAITO: I actually believe that in my personal
11 opinion the Department has it right, has it right
12 right now, and that there is a lot of effort made
13 in developing pre-season fishing plans that have
14 clear decision rules, particularly on key and
15 critical stocks and situations, that the -- that
16 the decisions are known as well in advance as
17 possible, and described as the broadest range of
18 possible circumstances possible. I think there is
19 a good in-season information sharing and
20 discussion forums made available and they're
21 largely bilateral, and I think that is probably
22 appropriate that it take place at that level. I
23 think that there are good communication tools to
24 keep the public at large well informed as
25 possible, well, as through the fishery notice
26 system, what have you. I think they've got it
27 right.

28 There are some situations where perhaps maybe
29 it might make some sense to have some sort of
30 local process where you keep the various sectors
31 informed of the progress of fisheries, or progress
32 of the stocks, that the conservation objectives
33 can be met, and what have you. But it's more fine
34 tuning than reworking, in my view.

35 There's one possible embellishment or
36 addition that I think that would be helpful to the
37 process, and that is to establish some sort of
38 standing arbitration or adjudication process where
39 because there will be from time to time,
40 respectful differences of opinion arise with
41 respect to how to actually implement or make a
42 decision with respect to a management option. And
43 having the ability to kind of have some sort of
44 standing process like that where the -- a
45 situation can be put forward, and a pleadings, per
46 se, suggested, or something like that. Then I
47 think that could help some situations, but beyond

1 that, I think they've got it right.

2 Q Just to understand what you're saying there,
3 you're suggesting that there should be a formal
4 arbitration for in-season management decisions
5 that are happening once or twice a week, that kind
6 of...

7 MR. SAITO: No, no.

8 Q Okay, so what are you talking about?

9 MR. SAITO: I'm saying that on occasions, on occasions,
10 on some rare occasions, that some differences of
11 opinion will take place. Again I can't remember
12 the exact year, but there was a situation where a
13 particular troll group was faced with a situation
14 that was not expected in-season. It was possible
15 that the case could have been put forward to a
16 process that, hey, we need to hear about this. We
17 need to see this and make some sort of formal
18 recommendation to the Department, or some sort of
19 process where their pleadings could have been
20 heard.

21 Q And who would hear this?

22 MR. SAITO: Well, I would suggest that there is a model
23 that exists within the Pacific Salmon Commission
24 process right now. The Fraser River Panel, for
25 example, if the United States and Canada were to
26 arrive at a respectful difference of opinion and
27 need to have the situation heard, then the Pacific
28 Salmon Commission is empowered and mandated to
29 hear the case and to render a decision.

30 Q Are you talking about fishing plans, where Mike
31 Lapointe, or the Chief Biologist of the Salmon
32 Commission, is able to make a decision on whether
33 a fishing plan is consistent with the objectives.
34 Is that what you're referring to?

35 MR. SAITO: Mike Lapointe makes recommendations to the
36 Fraser River Panel, and the Fraser River Panel
37 then makes some sort of determination as to
38 whether that is a suitable or acceptable execution
39 of the fishery itself, that it's consistent with
40 the agreements between Canada and the United
41 States. But there have been occasions when there
42 have been differences of opinion take place
43 between Canada and the United States, and there
44 was one particular situation where that particular
45 provision was invoked, and the Pacific Salmon
46 Commission itself, the Commissioners - and I'm
47 talking about the Commissioners, not the Pacific

1 Salmon Commission staff but the Commissioners -
2 did have to hear a situation and render a
3 decision.

4 Q All right. And so you're suggesting that there
5 should be some sort of an arbitration provision
6 set up within the Fraser River Panel for in-season
7 management disputes. Is that what you're saying?

8 MR. SAITO: No, I was suggesting more in the domestic
9 situation here. What I was responding to is if
10 there are differences of opinion, legitimate and
11 respectful differences of opinion that take place,
12 with respect to how the fishery could be executed.
13 In other words, it might be between a gillnet
14 group and a purse seine group, or it might be
15 between the commercial fishery, a decision or
16 option between the commercial fishery and a
17 recreational fishery. And there is legitimate
18 differences of opinion, and there are equally
19 perhaps viable options that require some sort of
20 adjudication, then those situations, if the
21 process existed to have that situation heard, and
22 an objective process was established in place to
23 make that decision, that might be helpful.

24 Q And, sorry, and who would be the arbitrator in
25 this decision? I wasn't clear on your answer to
26 that question.

27 MR. SAITO: It could very well be a panel composed of
28 Departmental as well as other interest groups, the
29 Province of B.C., for example, and/or - and/or -
30 representatives from other harvest groups.

31 Q All right. Mr. Matthew, do you think there needs
32 to be an inter-sectoral process like the IHPC
33 during the in-season decision making time?

34 MR. MATTHEW: No, I don't think it would work in-
35 season. It's impractical and I already sort of
36 described all the problems with First Nations
37 representation there already, as an in-season
38 process I think it would be even more complicated
39 in that manner.

40 I guess the question talks about the IFMP,
41 does it, too?

42 Q Yes.

43 MR. MATTHEW: So I guess, from my perspective the IFMP
44 lays out sort of rules or principles that the
45 fishery might be managed by. But the in-season
46 process that occurs at the Fraser Panel is sort of
47 interpretation of those rules and interpretation

1 of how the data that's used is going to be applied
2 in, I guess, developing a fishing plan. And to me
3 that's the Fraser Panel, that's where First
4 Nations I think need to be involved in a process
5 like that. I imagine later on today we're going
6 to talk about the Fraser Panel and all that.

7 Q Yes.

8 MR. MATTHEW: So I won't go into the problems we see
9 with that. But I don't think the IHPC is an in-
10 season process that should be used.

11 Q Okay. And the last question I have on the IHPC is
12 in the recommendations from the 2001 Institute for
13 Dispute Resolution Report, which was at page 164
14 in Exhibit 14, recommendation number 6. And then
15 there's -- I don't know if we need to go to it,
16 but there's a similar recommendation from the
17 Chamut Report, which is - maybe people can just
18 make note of it - recommendation number 2, which
19 is at page 210 of Exhibit 14. But if we look at
20 the one that's in front of us, which was from the
21 Institute For Dispute Resolution, recommendation
22 number 6:

23
24 Establish a Policy Advisory Committee and a
25 public Policy Forum process for discussion of
26 key policy issues amongst all sectors, First
27 Nations and the federal and provincial
28 governments.

29
30 The response from the Crown, which is in the
31 right-hand column of this document is that:

32
33 A Policy Advisory Committee has not been
34 established. Policy matters that affect the
35 conduct of salmon fisheries are discussed at
36 the Salmon IHPC and its advice is then
37 integrated with advice received from other
38 sources.

39
40 Is that description of the process for discussion
41 of key policy issues adequate from your
42 perspective, Mr. Kristianson?

43 DR. KRISTIANSO: No, it is not. And I say that in
44 part because I played a fairly strong role in the
45 development of the proposals by the Institute for
46 Dispute Resolution, and secondly because I was a
47 member of the Chamut Inquiry and in both cases it

1 seemed to me that there was a need for a separate
2 body. That it is not either fair or appropriate
3 to expect the Integrated Harvest Planning
4 Committee to take on these broader policy issues
5 that do need discussion, of both the -- and if you
6 again look particularly in the IDRC
7 recommendation, the constituency is broader. It
8 was proposed to include coastal communities and
9 other interests that are not normally at the table
10 in fisheries issues, and particularly not at the
11 IHPC.

12 I would mention one example that struck me
13 because I took the time to re-read this document.
14 One of the examples that the IDRC Report gives as
15 a policy issue that needed to be discussed by such
16 a forum, was the question of individual vessel
17 quotas or, as sometimes defined, as defined shares
18 or others. Instead, the Department in fact has in
19 effect moved into the development of individual
20 vessel quotas, both in ground fish and now
21 increasingly in terms of salmon fisheries, without
22 that issue ever receiving any kind of serious
23 inter-sectoral and inter-interest forum
24 discussion. And it seems to me that I simply cite
25 that as one example of something that cannot be
26 covered by the existing institutions and which
27 would be better served where the resource is
28 devoted to this kind of forum.

29 Q Thank you. And Mr. Saito?

30 MR. SAITO: Well, I agree with Dr. Kristianson that of
31 the need and the importance for a forum to discuss
32 broad public policy issues.

33 Q Okay. And Mr. Matthew?

34 MR. MATTHEW: I agree there needs to be a forum for
35 First Nations to discuss these policy issues, like
36 the Wild Salmon Policy and the process that's
37 evolved so far. As you know, DFO has come out and
38 conducted dialogue sessions throughout B.C. on the
39 Wild Salmon Policy, as an example, and sort of
40 taken our input and developed a policy. But I
41 guess the questions are all in sort of the
42 implementation of it is what First Nations, that
43 policy and others, but would like to see is
44 because there are implications, even in some of
45 the policies like the Wild Salmon Policy that
46 where there are going to be tradeoffs between
47 conservation and harvest, and First Nations

1 interest can be impacted in that manner. And so I
2 don't see First Nations discussing those in a
3 third party forum. I think it's got to be a
4 bilateral forum between DFO and First Nations.

5 Q Thank you. I'm going to flag a question that
6 we'll come back to. But I want to ask you in
7 terms of later, when we're going to talk about a
8 thing called the Integrated Salmon Dialogue Forum,
9 and I just want to flag this discussion when we
10 come back to ask whether that's a place where
11 these policy discussions can happen. But I will
12 wait till we lay some groundwork for that first.

13 Before we leave the IHPC, are there any
14 improvements that you think could be made to the
15 IHPC process. I think we've spent quite a bit of
16 time talking about the representation of First
17 Nations in that process, so we might have said
18 everything we need to say on that for the purposes
19 of today. If you people want to come back to
20 that, if there's something that hasn't been
21 addressed, please do so. But are there any other
22 improvements that could be made to the IHPC and
23 the IFMP process? Again start with you, Dr.
24 Kristianson.

25 DR. KRISTIANSO: Well, yes, I mean, I think that the
26 intention in fact is to move in this direction at
27 the present time. There is discussion, for
28 example, of whether or not we ought to be, instead
29 of having this massive individual Integrated
30 Fisheries Management Plan for salmon, one ought to
31 try to parse out the portions of that which are
32 simply a rollover year after year. They are
33 established policy, the references to the Pacific
34 Salmon Commission and its role, those kinds of
35 things. And then have separate the document which
36 gives the actual harvest management decisions
37 which are directly relevant to an individual year.
38 Because I think all of us feel somewhat
39 intimidated when we arrive at the meeting at which
40 the draft plan has been presented, or we get it by
41 e-mail and we're having to page through this very
42 large document, trying to find the things that
43 have been changed. Now, last year was an
44 innovation of highlighting those things, and I'd
45 like to see that taken further, so that it makes
46 clearer and more specific what the harvest
47 recommendations that are being proposed that are

1 specific to the particular year, what those are,
2 and where they fit into things.

3 Q And Mr. Saito.

4 MR. SAITO: No, I think I've already said enough on
5 this, thank you.

6 Q Thank you. Mr. Matthew?

7 MR. MATTHEW: I guess as far as the -- did you say
8 IFMP?

9 Q The IFMP or the IHPC process.

10 MR. MATTHEW: As far as the IFMP is concerned, in the
11 introduction and throughout parts of it, it
12 describes, you know, the priority of First Nations
13 and after conservation, those sorts of things.
14 But I guess what's not clear to many First Nations
15 is in that document there's no description of how
16 that would occur and, you know, how do you
17 describe within a fishing plan where other sectors
18 are concerned, how you will protect the allocation
19 for First Nations within that document. And to me
20 the conservation objectives are there, the second
21 priority in terms of First Nations are there's no
22 process or no part in the document that actually
23 describes how those are going to be protected
24 through these other fisheries. And so to me it's
25 a problem. The document in itself is complicated
26 enough, but to me, First Nations look at that
27 document and it's not clear to them how our
28 interests are going to be protected within that
29 plan.

30 Q Could the IFMP document be a multiyear plan,
31 rather than a yearly plan. Would that be
32 something to consider?

33 DR. KRISTIANSO: Well, that may have been implicit in
34 my response, in that parts of it are a multiyear
35 plan. But the portions that relate to specific
36 harvest decisions are not and cannot be. I think
37 that we would all like to go back to the good old
38 days when the fish were predictable and nature was
39 predictable and everything happened and you didn't
40 have to worry about making changes. The reality
41 is, whether that world ever existed, it does not
42 exist now, that there is a need for fishing plans
43 to take a whole range of environmental and social
44 and economic issues into account. And so I don't
45 think that trying to make up a fishing plan that
46 tries to deal with more than the coming year, or
47 perhaps looking another year out, would be

1 practical. That's different, though, than the
2 parts of the plan that reflect policy and can
3 simply roll over from year to year .

4 Q Thank you. I want to move now to the -- oh, I'm
5 sorry, Mr. Saito, did you have anything to add on
6 that front?

7 MR. SAITO: On the multiyear plan?

8 Q Yes.

9 MR. SAITO: Well, the only aspect, I guess, that I
10 would add is that, as Dr. Kristianson indicates,
11 the intention is to develop and have in place the
12 multiyear plan. The framework within which
13 fisheries and the populations will be managed, it
14 is critical that it be part of a long-term plan.
15 In fact, that's part of the struggle, I think, in
16 some cases that that clarity does not exist in
17 terms of what are the goals and objectives that we
18 are working towards, with respect to not only
19 management of the fisheries, but to management of
20 the fish populations themselves, so that we can
21 achieve both. And I think that, that if there was
22 a greater, a larger emphasis on the long-term
23 aspects, what are those things, what are those
24 goals and objectives we work towards, I think that
25 the decision rules that are implemented on an
26 annual basis to ensure we can continue to work
27 towards them, will become more stable and offer
28 greater certainty and predictability to the people
29 that are affected by those sorts of decisions.
30 And it would be in everybody's best interest to
31 work towards that certainty, that stability, in
32 the face of environmental uncertainty.

33 Q Thank you. Mr. Matthew.

34 MR. MATTHEW: I guess I don't really have a clear
35 answer. A multiyear plan may not be responsive to
36 new conditions or conservation sort of issues that
37 come up within a single year. So if you had, for
38 instance, a year where the run didn't show up, or
39 that sort of thing, and if you had a five-year
40 plan, it may be not be responsive enough to
41 address mortality issues, natural or otherwise.
42 So to me the plan needs to be sort of annual.

43 MS. BAKER: Thank you. Mr. Commissioner, we didn't
44 finish the Test Fishing panel yesterday and we had
45 asked them to come back at two o'clock. And I
46 wonder if we might want to continue with that plan
47 and ask this panel to stand down for half an hour

1 or so, to let that cross-examination complete on
2 the Test Fishing panel, and then hopefully we can
3 complete these witnesses in the balance of the
4 day.

5 THE COMMISSIONER: That's fine with me, Ms. Baker.

6 MS. BAKER: Thank you.

7 THE REGISTRAR: The hearing is now adjourned until 2:00
8 p.m.

9

10 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

11 (PROCEEDINGS RECONVENED)

12

13 MS. BAKER: Mr. Commissioner, we are back with the test
14 fishing panel from yesterday and the order for
15 counsel is Brenda Gaertner for First Nations
16 Coalition followed by Tim Dickson for Sto:lo and
17 Cheam and followed finally by Lisa Fong for the
18 Heiltsuk. Thank you.

19 THE REGISTRAR: Gentlemen, you are still under oath.

20 MS. GAERTNER: Thank you, Mr. Commissioner. For the
21 record Brenda Gaertner and with me is Leah Pence
22 for the First Nations Coalition.

23

24 JIM CAVE, resumed.

25

26 PAUL RYALL, resumed.

27

28 BRIAN ASSU, resumed.

29

30 CROSS-EXAMINATION BY MS. GAERTNER:

31

32 Q This afternoon I just have a few brief
33 clarification questions of the panel and then I
34 want to turn to some thinking or some questions
35 around test fisheries and uncertainties.

36 So beginning with you, Mr. Assu, I just have
37 a couple of clarifications. There's been a little
38 bit of confusion on the evidence that's come
39 before Commissioner Cohen. Can I confirm with you
40 that you're an alternate on the Fraser Panel for
41 the commercial industry; is that correct?

42 MR. ASSU: Yes, that's correct.

43 Q So we've heard a couple times when there's just
44 three First Nations representatives, there's
45 actually two and you're there on behalf of the
46 commercial industry; is that correct?

47 MR. ASSU: That's right.

1 Q Thank you. And then the next area that I just
2 wanted to have you help provide a little bit of
3 confirmation, just make sure I've heard your
4 evidence yesterday right, the challenges as I
5 understand it to having First Nations and FSC
6 fisheries and test fisheries linked a little
7 closer, I heard two yesterday and I wanted to
8 speak, make sure I've heard that right. The first
9 one you said is making sure that people have the
10 experience in the right area; is that correct?
11 MR. ASSU: That's right.
12 Q And so provided we had local First Nations, we'd
13 likely have the expertise that's necessary in the
14 test fishing sites?
15 MR. ASSU: Yeah. It appears that way.
16 Q Yeah. It does absolutely. And then secondly, I
17 wanted to ask you, the other challenge that I
18 heard you speak to was the challenge of when
19 you've got a catch that could be distributed,
20 there's no allocation rules amongst the First
21 Nations at this point in time; is that correct?
22 MR. ASSU: That's right.
23 Q But that is something that could be improved with
24 the rules; is that right?
25 MR. ASSU: Could be with the rules, but, you know, I
26 also pointed out that the need or the concern
27 arises in seasons of low abundance and therefore,
28 the sample set is very low also at those times.
29 You're not fulfilling the 115 a day in all cases.
30 I mean, I've -- I can remember, in '09 in
31 particular, we, you know, might have only had 35,
32 40 samples in a day.
33 Q But you agree with me that those 35 or 40 fish are
34 perhaps more priceless for the First Nations in
35 those settings if it's a low abundance year?
36 MR. ASSU: Well, I still wouldn't want to be the one
37 trying to distribute it.
38 Q No, I could -- all right. So that's when the
39 allocation rules would be necessary --
40 MR. ASSU: Yeah.
41 Q -- for you. Absolutely. All right.
42 Mr. Ryall, I have a couple of questions of
43 you. I needed to have you confirm. It's not
44 clear to the clients I represent, does Canada's
45 Aboriginal Business Procurement Policy apply to
46 the test fisheries?
47 MR. RYALL: It could.

- 1 Q It isn't right now?
2 MR. RYALL: No, it could. It does.
3 Q Could you give me an example of how it is being
4 applied?
5 MR. RYALL: Well, the -- I'm not involved in the test
6 fishery setting of contracts right now, so... If
7 that's what you're asking.
8 Q But when you were involved, were -- was it being
9 applied and...?
10 MR. RYALL: There was one time I recall when I was area
11 chief in the Lower Fraser where we put out to
12 tender for submissions of contracts to undertake
13 the Albion test fishery and was looking for
14 qualified First Nations that had the appropriate
15 gear and experience to do that, yes.
16 Q So it's one of the options that's available in
17 your toolbox?
18 MR. RYALL: It certainly is, yes.
19 Q Great. The other thing you mentioned yesterday
20 that DFO is looking for options for increased
21 collaboration with harvesters around test
22 fisheries. To your knowledge, either when you
23 were there directly or your knowledge within the
24 department now, is DFO specifically exploring
25 links between test fisheries and FSC fisheries, if
26 not in the marine but in the river?
27 MR. RYALL: I don't think I could answer that question.
28 I'm not involved in that area right now.
29 Q All right. And who would I ask that question of?
30 MR. RYALL: Well, are you referring specifically to
31 Fraser sockeye or more generally?
32 Q I have -- Fraser sockeye.
33 MR. RYALL: Okay. So right now when we talked
34 yesterday, the administration of the test
35 fisheries is through the Pacific Salmon
36 Commission.
37 Q And so, Mr. Cave, do you have any additional
38 comments that you could raise in here or...?
39 MR. CAVE: I really wasn't -- I listened -- I heard the
40 question, but I didn't understand its substance
41 'cause it had jargon I didn't understand. I
42 didn't hear the question or didn't understand the
43 question because of some of the terms that you
44 were using when you asked it.
45 Q All right. To your knowledge, is Pacific Salmon
46 Commission exploring specific ways of linking test
47 fisheries with FSC fisheries?

1 MR. CAVE: We don't have, I believe -- I don't think I
2 can answer the question because I don't think we
3 have any authority to do that. But I could be
4 wrong and I think again I'd turn that question
5 back to Paul.

6 MR. RYALL: I'm sorry, Brenda. I misunderstood your
7 question actually. I thought you were asking
8 about the procurement of test fishing services.

9 Q No, I was --

10 MR. RYALL: I totally misunderstood you.

11 Q That's okay. Could you answer the question then?

12 MR. RYALL: Well, it's similar to what Brian is talking
13 about. First off, there is not a process in place
14 at this point in time to provide fish that are
15 caught from test fisheries to First Nations.
16 Licenses are put in place that are -- when those
17 under s. 52, which is scientific licence, and the
18 ownership of those fish belong to that licence
19 holder.

20 Brian talked about some of the challenges
21 that would take place, as well, in distributing
22 those fish if there's not actually even a process
23 with setting aside what I talked about as far as
24 where those fish belong and it's not up to DFO or
25 -- to direct that licence holder to where those
26 fish might go.

27 Q So again, I think it sounds like that you're
28 facing the same challenges that Mr. Assu is
29 referencing, which is you need allocation policies
30 amongst the First Nations in order to provide for
31 a distribution of those fish for FSC purposes?

32 MR. RYALL: Well, that would be one area.

33 Q I'm going to turn now to just a couple of
34 questions. I understand that some First Nations,
35 in particular, as counsel for the Council of Haida
36 Nations, some First Nations north of the existing
37 test fisheries in the marine provide DFO with
38 sockeye samples for the purposes of DNA analysis
39 and just to refresh people's memory if this helps,
40 it's my understanding that in the Haida's case,
41 for example, those samples come from Rennell Sound
42 and are provided to provide some early indicators
43 of Fraser sockeye returns. Could you provide, and
44 I don't know if this is a question for Mr. Ryall
45 or Mr. Cave, could you provide the commissioner
46 with some background information as to what
47 information is gained from those fisheries and how

1 those fisheries fit in with the remaining test
2 fisheries?

3 MR. CAVE: I believe you're referring to scale and DNA
4 samples and other biological samples that they're
5 collecting; is that correct?

6 Q That's correct.

7 MR. CAVE: Yes. We are interested in collecting
8 samples from those areas as those catches are
9 made, in part because we need to understand what
10 the catch composition is as part of the overall
11 estimate of production. But we would be using
12 them just to sort of gain an understanding of the
13 nature of the stock composition of the migration
14 that's considerably further seaward. Now, those
15 are just one-off point estimates typically. It's
16 -- they're hard to interpret, but they are
17 interesting to look at.

18 Q They might help you with stock composition and not
19 stock abundance; is that the issue?

20 MR. CAVE: Well, I think when we were talking about sea
21 grid, you know, you'd need a lot more samples over
22 a lot broader area to get feedback on abundance
23 and I think that as I mentioned yesterday, I
24 believe that's a real challenge, even with the
25 best laid-on fisheries. Just a single sample once
26 in awhile is, while interesting, is not altogether
27 informative in terms of abundance.

28 Q So it's not as informative for the PSC work but it
29 is potentially useful for things like the Wild
30 Salmon Policy; is that correct, Mr. Ryall?

31 MR. RYALL: No, I don't think I would agree with that.
32 I think that as Jim has just discussed, like one
33 or two samples that occur very irregularly would
34 not be all that informative of what -- it would
35 help in some limited sense, but not, I don't
36 really think, paint a very big picture of
37 migration of sockeye or what those stocks are.

38 Q So you need more regular programs in order to do
39 that?

40 MR. RYALL: Well, I don't know if it's more regular
41 programs because in -- Fraser sockeye do not
42 always make landfall there either, and so that
43 leads to the sporadic nature of actually getting
44 any samples. But -- so I'm not sure that it would
45 be particularly helpful.

46 Q Okay.

47 MR. RYALL: I wouldn't rule it out, but I don't think

1 that there would be a lot of information.
2 Q All right. I have a series of questions now for
3 you, Mr. Ryall. Can you confirm that the
4 locations for the test fisheries that are
5 presently relied upon were chosen primarily as
6 good test sites for stock abundance and as
7 distinct from stock composition? Like break-ups
8 between -- I better be careful with my language
9 here. I mean stock abundance as distinct from
10 conservation units; that the sites that were
11 chosen were chosen to measure abundance.
12 MR. RYALL: Well, I think your question, that one in
13 particular, is very technical question. It's more
14 -- better addressed by someone in the biological
15 technical area, but I could start and then maybe
16 Jim wants to provide some answers on this, as
17 well.
18 I don't think they were particularly chosen
19 just to do stock abundance. They were to provide
20 an overall series of information that includes
21 abundance, the timing of the runs, the diversion
22 rates, and all of those things. So I wouldn't say
23 that they were chosen just on stock abundance.
24 Q They were chosen before we were doing DNA
25 sampling?
26 MR. RYALL: They were chosen before we were doing DNA
27 sample, but really, prior to DNA sampling, it was
28 done through scale analysis and the DNA sampling
29 provides a finer resolution of what the stocks are
30 than the scale analysis.
31 Q The resolution we need for conservation units?
32 MR. RYALL: It's an improvement.
33 Q Yeah. Could you confirm that if you wanted to
34 ensure accuracy of meeting spawning escapements
35 that it would be perhaps precautionary or wise to
36 include test fisheries in river, in particular,
37 upriver from Yale?
38 MR. RYALL: Well, we'd have to look at, once again, I
39 would go back to what are we trying to get from
40 that information? And I would --
41 Q If we were trying --
42 MR. RYALL: -- go back --
43 Q I'm sorry.
44 MR. RYALL: I would go back to the policy document that
45 we were talking about yesterday that was put
46 together by the Fraser Panel as at least a place
47 to start to address that question that you just

1 asked.

2 Q Okay.

3 MR. RYALL: So why would we gather that information?
4 What would be the added benefit from gathering
5 that information? Could there be added stock --
6 information to manage fisheries within the Fraser
7 by gathering that? And what would it do? Would
8 it provide us improved estimates on abundance or
9 are there better ways of getting that information?
10 There has been some work that's been undertaken in
11 a preliminary fashion with some fish wheels. I
12 mentioned that yesterday at Siska.

13 Q So I was specifically talking about improved
14 accuracy with spawning escapements, actual
15 spawning escapements --

16 MR. RYALL: Mm-hmm.

17 Q -- as distinct from abundance solely. And so
18 would you agree with me that improved spawning
19 escapement accuracy would be improved with test
20 fisheries that go into the river and upriver from
21 Yale?

22 MR. RYALL: Well, I'm not really differentiating, I
23 guess. I mean, as the fish migrate up the river,
24 we need to know what the stock ID is and what the
25 abundance is and if that was useful information.
26 But I guess I would argue it would be better
27 information on the spawning grounds to gather that
28 information directly and not indirectly. But
29 there has been some exploratory work to consider
30 doing it that way.

31 Q Mr. Cave, we've heard a lot about in-season run
32 size estimates so far and you mentioned yesterday
33 in your evidence a list of uncertainties that in
34 -- are embedded into your estimates and
35 particularly if I have your evidence right, you
36 mentioned catchability, catch per unit estimates,
37 the model chosen, the parameters of the model and
38 the changes in how test fisheries are being
39 conducted, in particular the decreased size of
40 catches. Those were a number of different areas,
41 would you agree with me, that those all have
42 different influences on certainty within your
43 estimates?

44 MR. CAVE: Yes. That's exactly right. There is some
45 literature on this and I think one of the papers
46 that you'd identified in your list of documents
47 was a paper by Hilborn and Peterman and there's

1 some interesting points that can be made that they
2 make in that paper that I can speak to potentially
3 and the work that we're doing currently and that
4 is ongoing and will be going on for awhile on
5 that.

6 Q All right. In a moment I'll take you to that
7 paper if necessary. My question was to ask you
8 how are those uncertainties communicated directly
9 to the Fraser River Panel members and, in
10 particular, the implications of those
11 uncertainties to the decisions they have to make?
12 How does that get translated?

13 MR. CAVE: Well, run size estimation, for example,
14 let's take an example, Summer Run sockeye. We can
15 break those into their component stocks, say
16 Chilko River sockeye or Horsefly sockeye, which
17 were stocks of interest in 2009. Currently we
18 accrue the run through Mission and we have a daily
19 abundance that's plotted, reconstructed to
20 Mission. We back that out to the marine areas.
21 Then we have six days of abundance that are based
22 on test fishing.

23 And we run a -- currently we're running a
24 model that assumes that has in it components of
25 uncertainty in the pre-season forecast, components
26 of uncertainty in timing - priors we call them -
27 it's the work that Catherine Michielsens has been
28 doing. And then we also have priors on
29 catchability and their associated uncertainty as
30 measured in a CV. So all of that's translated
31 into the overall model uncertainty that's deriving
32 these estimates. It's a very extensive review and
33 retrospective analysis that's done. While this
34 work is not yet peer-reviewed, both Carl Walters
35 and Randall Peterman, Ray Hilborn and André Punt
36 have reviewed some of the work that Catherine's
37 doing and they feel she is on the right track.

38 What we're communicating to the panel in the
39 results of those models are the median of the
40 distribution, which is what we have told the panel
41 we believe is the best estimate of run size if
42 they were to work with a point estimate, but we
43 also communicate the -- what the 80 percent
44 prediction or probability interval in a range, so
45 we may be telling the panel that the Bayesian
46 model that incorporates uncertainty in
47 catchability in catch-per-unit effort is

1 indicating a run size of one million sockeye with
2 an 80 percent prediction interval that might range
3 from, say, for the sake of argument now just as an
4 example, 400,000 to 1.6 million, something like
5 that. And that would mean that 80 percent of the
6 time you could expect the true estimate to be in
7 that range. And that is what I mean by
8 communicating uncertainty.

9 Now, that would include all of the data that
10 we have, including the most recent six days of
11 test fishing which would include those
12 projections.

13 Q So there is --

14 MR. CAVE: Now, I know that's a rather involved
15 explanation but --

16 Q No --

17 MR. CAVE: -- that's how it is actually communicated to
18 the panel and so Mike Lapointe would make that
19 communication to the panel.

20 Q So it's communicated through the calculation of
21 numbers in the actual formulas that are used to
22 develop the different percentiles. It's not
23 communicated by saying well, if we're wrong on
24 this particular thing, it'll have an implication
25 like that.

26 MR. CAVE: Actually, there has been next steps on that.
27 Now, in 2009 the run was so bad, okay, that there
28 was no -- there was no fishing considered. So it
29 all became moot communicating further -- further
30 uncertainties and the consequences of making a
31 decision on fishing. Okay? But what I mentioned
32 is that you can then take that output from that
33 model and then start putting in your goals into
34 that in the form of escapement, net escapement in
35 the form of FSC targets and test fishing and then
36 catch to date and then some expected future catch.
37 And you can then communicate to the panel what the
38 probability of reaching those in aggregate is.
39 Okay?

40 Q So if I've heard your evidence right - and I just
41 -- I need to make sure I've heard it right - is
42 that in order to understand those uncertainties,
43 you need to understand the models that you're
44 using and the implications associated with the
45 models and you don't go into much more depth with
46 the Fraser Panel members around those
47 uncertainties?

1 MR. CAVE: Not in season but we have a process where we
2 review these methods with the Fraser Panel's
3 technical committee and that's at a fairly
4 rigorous level and we'll also make a similar
5 presentation with perhaps some of the more
6 difficult language, the more difficult concepts
7 summarized in lay terms to them. But, you know,
8 we've only been working on this for the past three
9 years. We've made some rather significant
10 strides. I'm not saying that this will be our end
11 point. It probably won't be. But it is, I
12 believe, a major leap forward to where we were
13 three years ago.

14 Q If I heard your evidence correctly yesterday, your
15 recommendation was that one more purse seine in
16 Johnstone Strait and one more in Juan de Fuca
17 would cut that uncertainty by a half is what I
18 heard; is that a generalization --

19 MR. CAVE: If you --

20 Q -- or -- could you --

21 MR. CAVE: Let me explain that one further. Sorry, go
22 ahead.

23 Q I wonder if I could finish my --

24 MR. CAVE: Yeah. Sorry.

25 Q Is that a generalization or is that something
26 specific to a specific stock group or where does
27 that come from?

28 MR. CAVE: That comes from a theoretical analysis by
29 Walters and Scandol, Carl Walters and James
30 Scandol.

31 Q Mr. Ryall, given the work that you've done on the
32 Fraser Panel, do you agree with that proposition?

33 MR. RYALL: The proposition of adding those test
34 fisheries and --

35 Q And decreasing --

36 MR. RYALL: -- reducing those uncertainties?

37 Q Yeah, by 50 percent.

38 MR. RYALL: Well, I haven't looked at that paper - I
39 don't know, I was going to say ever - but I don't
40 know that I can answer your question, Brenda. But
41 it would be very interesting if it was only those
42 fisheries that would reduce the uncertainty by
43 that much.

44 Q Mr. Cave --

45 MR. RYALL: I guess -- I think it would be a good
46 question to put back to the technical committee
47 about -- if we wanted to reduce uncertainty by

1 some amount, which we do, and put together a table
2 of options and see what the outcome of that is.
3 So I don't think I could answer your question
4 directly, but that's the way I would go back and
5 phrase it. So right now we have an estimate with
6 a range of plus or minus something and we want to
7 reduce it to something more narrow with -- and
8 then let's look at it that way. And what would it
9 take to do that?

10 The other thing I would like to add too is on
11 the implications of run sizes that are presented
12 to the Fraser Panel, as Jim was saying the median
13 estimate is provided with a range around it and
14 Jim was talking about the 80 percent confidence
15 intervals. The information on the meeting is also
16 put into a table, an implication table of making
17 decisions around fisheries and what that would do
18 as far as progressions towards escapement, as
19 well, so it's another piece of information that is
20 presented to the panel.

21 There has been some risk assessment done by
22 the PSC in the past - Jim, you're going to have to
23 help me on this, but it was back in about 2004,
24 2005 or '06 - at looking at various options and
25 presenting these in a risk analysis framework and
26 I think some of the work that Jim was just
27 referencing would take that a step further, but I
28 just wanted to draw your attention that there had
29 been some work done historically, as well.

30 Q Thank you. Is there anything you would like to
31 add to that, Mr. Cave?

32 MR. CAVE: Well, I just want to add that that memo that
33 I think you're referencing there, that is if you
34 went from one test fishery to -- from two test
35 fisheries down to one or if you went from a single
36 test fishery, so it -- once you start adding
37 additional test fisheries, that gain by adding
38 test fisheries starts to tail off, so you don't
39 cut it in half every time you add another test
40 fishery. You cut it -- if you go from one
41 independent estimate to two, you cut the
42 uncertainty in half. If you add an additional
43 one, you only get another 50 percent gain. So
44 it's -- you know, it's the cake or -- you get ten
45 boats. If you went to 11 you don't gain a lot.
46 But there's a big gain from going from one to two.
47 And if your run is all going down Johnstone

1 Straits and we've got two boats, then you -- then
2 the certainty if it's similar between Area 20 and
3 12 for a single boat by getting one boat in 13,
4 you cut it down in half. But if you -- in Area 20
5 if you only have one boat and all of a sudden the
6 fish move down Area 20, you've essentially -- you
7 don't have the -- you're back down to one boat
8 again because the fish aren't going down Johnstone
9 Strait.

10 So in other words, you want to have matching
11 effort if you can in both approaches, matching
12 programs so that when the fish move, shift from
13 one route of migration to another, you don't lose
14 those gains. And right now we really only have
15 one sampling vessel in Area 20 that conducts that.
16 We would get a gain if we put another one that is
17 actually independent and the key is they have to
18 be independent estimates.

19 Q Thank you. Mr. Ryall, you've mentioned on a
20 couple of occasions the June 2009 policy. I'm
21 wondering, Mr. Lunn, if you could bring Exhibit
22 366. As I understood your evidence yesterday, Mr.
23 Ryall, when Commissioner Cohen was asking you what
24 standards are you measuring some of these
25 objectives like a conservation objective or
26 anything within the test fisheries against, you
27 referred to this exhibit and overnight I took a
28 look at that again and if -- I wonder if you could
29 go to Appendix A which I believe is the third page
30 of the document. That's it. Is this what you're
31 referring to, Mr. Ryall?

32 MR. RYALL: Referring to what one would look for in
33 test fisheries to make a decision on whether
34 adding more; is that what you're asking?

35 Q Well, in answer to Commissioner Cohen's question
36 around what standards are you using when making
37 decisions for conservation and other issues, like
38 what standards of conservation are you using, you
39 referred to this document and I just want to make
40 sure we're getting what you're trying to tell us.
41 And so is it -- is that correct? Is that how you
42 remember your evidence?

43 MR. RYALL: I remember referring to this document a
44 number of times about if we wanted to add test
45 fisheries, we would be looking at this document as
46 a guide to making decisions around whether they
47 were going to add additional information and the

1 list here of 1 through 7 provides what sort of
2 information we may be looking for. And, as well,
3 what I recall is the -- a question was well, what
4 sort of performance measures would one be looking
5 at and my answer was I'd be looking at
6 conservation, international allocation, FSC
7 obligations and treaty and commercial allocations
8 and recreational.

9 Q And is it correct that there are no rules yet at
10 the Fraser Panel to your knowledge on how to
11 measure exactly the last things you've just talked
12 about, how to measure conservation, how to measure
13 international obligations, any of the rules that
14 would be used in those decision-making?

15 MR. RYALL: No. In the annual reports that are put out
16 by the Fraser River Panel, there's a chapter that
17 lists the -- how well the panel is doing to
18 meeting those obligations, as far as the three
19 that are within the treaty specifically is what
20 I'm referring to here, as far as escapement,
21 international and domestic obligations. And each
22 year in that chapter there'll be different levels
23 of detail in that chapter. And, as well, within
24 domestically each party will be looking at how
25 well it's doing at meeting its obligation, as
26 well, within each country, depending what those
27 are.

28 Q So there are no in-season decision-making rules
29 that govern the parties on those issues? That's a
30 post-season analysis?

31 MR. RYALL: Well, no. I mean -- I guess -- no, I don't
32 agree. Within the IFMP there are decision rules
33 of what we are looking for, for achieving
34 escapement and, as well, there is a table that
35 lists what we're looking at for achieving FSC
36 targets on Fraser River sockeye in particular, as
37 the table identified; and also, as well, what the
38 domestic, commercial and recreational targets are,
39 as well. And within that management plan there's
40 a chapter each year annually that lists how well
41 we did and -- or performed on each one of those,
42 as well.

43 Q Just one more area of questions at this time --
44 MR. RYALL: Just one other thing I would add, as well,
45 there's an annual report that is tabled to the
46 Salmon Commission by the parties each year, as
47 well, as how well they were doing in each one of

1 the chapters is another piece of documentation
2 that's produced on an annual basis.

3 Q Do you -- Mr. Ryall, do you agree with me that
4 Canada carries legislative and constitutional
5 obligations, particularly your conservation
6 obligations for the Department of Fisheries and
7 Oceans and the priorities of FSC fisheries that
8 should inform the priorities that Canada uses for
9 determining test fisheries and government funding
10 associated with it?

11 MR. RYALL: I agree with the priorities that you've
12 outlined and those priorities are listed in an
13 allocation policy for salmon, as well.

14 Q And do you agree with me that some test fisheries
15 are primarily needed or used to inform commercial
16 fisheries?

17 MR. RYALL: No, I don't agree with that. As we were
18 talking about yesterday, the test fisheries that
19 we have on Fraser River sockeye are used to
20 provide information for the management of Fraser
21 sockeye and provide a benefit to all for that
22 management.

23 Q Does DFO have any plans to institute more in-river
24 test fisheries?

25 MR. RYALL: I'm not aware of any at this point in time,
26 but I -- you know, just to add to that, to make
27 sure -- clear, I'm not currently the chair of the
28 Fraser Panel and if there are discussions that
29 could be occurring I'm not -- could not be totally
30 up to date.

31 MS. GAERTNER: Thank you. Those are my questions.

32 MR. DICKSON: For the record it's Tim Dickson for the
33 Sto:lo Tribal Council and Cheam Indian Band.

34
35 CROSS-EXAMINATION BY MR. DICKSON:

36
37 Q Mr. Cave, I want to ask you just a couple of
38 questions about a document we saw yesterday and
39 Mr. Lunn, it's Exhibit 375, I believe, a review of
40 Area D assessment fishery. It was document 7 on
41 the commission's list. And we'll go to the last
42 page, if you would.

43 Mr. Cave, we looked at this document
44 yesterday, if you recall and we looked at the
45 bottom left quadrant of the page there we were
46 looking at and I just want to ask you about the
47 third option listed at the bottom, which if I

1 could generally summarize is dealing with the
2 issue of uncertainty and in one of the options in
3 that third recommendation is to change the
4 location of commercial fisheries and shifting them
5 closer to the river; is that correct?

6 MR. CAVE: That's what's stated on that third point,
7 yes.

8 Q And in broad terms, the rationale for shifting the
9 location of the commercial fisheries is that
10 there's more information available to DFO when the
11 fishing is occurring closer to the river and so
12 there's more certainty about such things as
13 abundance; is that correct?

14 MR. CAVE: That would be correct in a general sense,
15 yes. Closer -- the closer to the river because
16 you have fewer days seaward. Currently we work
17 with six days seaward. If you were working with a
18 smaller number, the weight of those days that are
19 seaward of Mission would be less.

20 Q Yes. And generally, as you get closer to the
21 hydroacoustic counter at Mission, you're having
22 more information about abundance, there's more
23 certainty about abundance; is that correct?

24 MR. CAVE: You have less information, but what
25 information you have is more certain. Does that
26 make sense to you?

27 Q I think so, but you have information from Mission
28 combined with the test fisheries; is that correct?

29 MR. CAVE: Yes. And I was assuming you were limiting
30 the number of days seaward, but maybe that was a
31 -- maybe I misunderstood you there.

32 Q As you get closer to the river and sort of inward
33 along the migration route, is there also more
34 certainty about stock identification? Is there a
35 better ability to incorporate the DNA analysis
36 that was being discussed yesterday?

37 MR. CAVE: In a normal sense, and I'm not the stock ID
38 biologist, so I'll preface that, my remarks with
39 that statement. We would be using, if you're --
40 when we're estimating the stock ID at Mission, we
41 typically use river samples, so there's less
42 concern about whether different stocks might
43 choose to delay in the Strait of Georgia like in
44 2010. I mean, you could not use -- you could not
45 move the marine samples forward because there's an
46 unknown proportion of the Adams River's stocks
47 that would delay in the Strait of Georgia off the

1 mouth of the river, so, yeah, there's more
2 certainty in what you expect the river abundance
3 to be, that is correct.
4 Q As well, at Mission there's more certainty about
5 stock identification, if I was hearing you
6 correctly.
7 MR. CAVE: It's -- that's a generalization that's not
8 always true.
9 Q Is it generally true?
10 MR. CAVE: Sometimes we know -- we have a better handle
11 on the stock ID in the marine areas than we do for
12 the stock ID in the river if there are sampling
13 concerns within the river, sample size. We've had
14 some tricky problems with Harrison River sockeye
15 that seem to be not easily sampled by our gear.
16 So it's a generalization that I'm not -- does not
17 always hold true.
18 Q Mr. Ryall, I can see that you want to answer and
19 if I could just put one more question to Mr. Cave
20 and then I'll come back to you if that's all
21 right.
22 MR. RYALL: Thanks.
23 Q Mr. Cave, just as a -- again at a very general
24 level in which I'm asking these questions, after
25 Mission going upriver from Mission, would you
26 agree that we have more information about such
27 things as abundance than we do when the fish are
28 in the ocean?
29 MR. CAVE: The estimates of daily abundance are better,
30 okay? That is true. There's far less uncertainty
31 about the Mission-based estimate than are the
32 estimates that are derived on the fish en route,
33 okay? But if you only had Mission data, okay --
34 Q Right. No. And my question is not --
35 MR. CAVE: -- you're losing information.
36 Q -- only Mission and I'm not dropping the test
37 fisheries away.
38 MR. CAVE: Okay. Okay.
39 Q But just as it is now in combination --
40 MR. CAVE: Yeah.
41 Q -- after Mission there's more certainty about the
42 fish in the river?
43 MR. CAVE: That's true.
44 Q Now, Mr. Ryall, you wish to speak to something?
45 Please do.
46 MR. RYALL: Yeah. I guess now that you've added that
47 clarification, that was helpful too, that you

1 weren't dropping away -- I guess what I was
2 hearing in your questions what there would only be
3 assessment within the river and so your
4 clarification helps, so I'll cut my comment
5 shorter. But just by painting a bit of a picture,
6 let's say that late runs right now have had a
7 habit historically of delaying in the Gulf and if
8 you did not have those marine assessments and you
9 only had within the river, you would not know how
10 many fish are delaying, if any. Nor would you
11 know what is coming as they migrate down the
12 Johnstone Strait or Juan de Fuca either. So it
13 would be, as Jim was pointing out, I think, is
14 yes, you might have some improved estimates of
15 daily abundance or you might -- your information
16 might be better in the daily abundances, I think
17 what Jim was saying, but you would be missing lots
18 of other pieces of information and, as well, over
19 a number of years there's been a challenge of
20 getting sample ID numbers large enough to make
21 those estimates, as well. It's been another
22 challenge. That could be addressed in other ways,
23 but I would just point that out.

24 Q And you would agree though, Mr. Ryall, that given
25 the existing test fisheries that happen in the
26 ocean and in the river, as well as the acoustic
27 counter at Mission, we have the most information
28 about the fish when they're past Mission?

29 MR. RYALL: The most information? I mean, there's
30 other pieces of information that are collected
31 along the way, as well, and so I don't think the
32 information collection just stops at Mission.

33 Q Very well. Just so -- just so I can isolate it,
34 as between past Mission and in the ocean, we have
35 more information past Mission.

36 MR. RYALL: Well, certainly. I mean, there's harvest
37 that's upstream, there's escapement numeration
38 collected upstream. I mean, we need all of those
39 pieces of information. There's in-season counts
40 in various places too of how fish might be
41 migrating into Chilko, as well. All those pieces
42 of information and the environmental information
43 that's collected throughout the course of the year
44 are all valuable pieces that help to conduct the
45 management of the fishery. So I might be
46 misunderstanding your question and going in a
47 direction but I just -- there's more information

1 and collected that comes just from test fisheries
2 to manage this whole suite of fisheries, as well,
3 that are critical to managing Fraser sockeye.

4 MR. DICKSON: Thank you. Those are my questions.

5 MS. FONG: Lisa Fong for Heiltsuk Tribal Council. I
6 note the time. It's ten to 3:00. I'll probably
7 be about 15 minutes, so if that's okay, I can get
8 started? Thank you.

9 Mr. Lunn, could you please pull up the
10 regulatory notice number 16 dated August 17th,
11 2010?
12

13 CROSS-EXAMINATION BY MS. FONG:
14

15 Q I believe my questions are for Mr. Ryall but, Mr.
16 Ryall, if I'm incorrect, perhaps you and the panel
17 can assist me in redirect as to who it would be
18 more appropriate to ask. If you can just take a
19 look at this document. The Fraser River Panel has
20 a website. I looked on the website and there were
21 these regulatory notices. This is one of these
22 regulatory notices.

23 Are you familiar with regulatory notices that
24 are posted on that site?

25 MR. RYALL: I am familiar with the notices that are
26 posted on the PSC site, but I would preference my
27 remarks as well that I was not involved in the
28 management of the fishery in 2010, so may or may
29 not be able to help you.

30 Q Okay. Thank you. And I appreciate that. I'm
31 just going to ask you some questions, general
32 questions, about the purpose of the notice -- of
33 these notices, whether this is the only
34 publication of them, and how to read this one. So
35 we'll see how far we can get on that. So these
36 notices, would you agree with me that generally
37 their purpose is to provide to the public
38 information and that information includes run size
39 assessments derived from the test fishing?

40 MR. RYALL: Derived from the test fishing? Well, they
41 serve a variety of purposes. One is to provide
42 information on what the stocks are, what some of
43 the environmental conditions are, whether
44 fisheries are open or remain closed. They're a
45 form of providing information. And it's only one
46 of the pieces of -- notice the department, as
47 well, puts out a fishery notice at least weekly,

1 but more often during the course of the in-season.
2 It could almost be every day, providing
3 information on the health and status of Fraser
4 River sockeye and a host of fishery notices,
5 whether -- if the fisheries are to open or to
6 remain closed and who would be -- and what sort of
7 targets might be sought to fish in those areas.

8 Q Okay. Staying with the topic of run size
9 assessments, though, as opposed to, for example,
10 openings and closings, I mean just to get back to
11 my original question, you agree with me this is
12 publication to the public of information about run
13 size assessments.

14 MR. RYALL: This particular one, I'm having a little
15 hard time reading it, but I can see that there's
16 some changes in run size. Early Summers are
17 increased to 2.6 million, some timing information,
18 so it is one form, I agree with you.

19 Q Okay. So there's information in there about run
20 size assessment.

21 MR. RYALL: Yes.

22 Q Thank you. And if you could just read that second
23 paragraph.

24 MR. RYALL: The second one that starts:

25
26 There has been a strong migration of Fraser
27 sockeye...

28
29 Q That's correct.

30 MR. RYALL: Would you like me to read the whole
31 paragraph?

32 Q If you could to yourself. And then just tell me
33 when you're ready.

34 MR. RYALL: Okay. I think I've read it.

35 Q Okay. So I just want to know if I've read this
36 properly in my lay person view, as a member of the
37 public who reads this publication. As I
38 understand it, there's a run size estimate for the
39 Early Summer. There's a run size estimate for the
40 summer run, but there's no run size estimate for
41 the late run and what it says about the late run
42 is that:

43
44 There's considerable uncertainty in the
45 current assessment of Late Run sockeye
46 abundance; however the present assessments
47 are within the forecast range of abundance.

1 So when I read that, what I understand is that
2 with respect to the late run there isn't
3 reasonable certainty to provide an estimate like
4 there was with the early and the summer; is that
5 correct?

6 MR. RYALL: Well, I read it slightly differently and
7 Jim might want to comment on this, too. It says:

8
9 There is considerable uncertainty in the
10 current assessments... however --

11
12 And then, so qualification.

13
14 -- the present assessments are within the
15 forecast range of abundance.

16
17 So I don't know what those forecast ranges were in
18 2010, so it's telling you yes, there's some
19 considerable uncertainty but it's within what the
20 forecast range was.

21 Q Right.

22 MR. RYALL: So it's not outside at higher or lower is
23 what I read into it.

24 Q Okay. But it's something different from the
25 estimate which is provided for the early and for
26 the summer? I mean, what they're saying about the
27 late is not an estimate.

28 MR. RYALL: At this point in time they're saying they
29 cannot make a change - what I read into it from
30 the pre-season forecast range of abundance. And
31 then it goes on to talk about later there will be
32 more information, the way I read the last
33 sentence:

34
35 More accurate estimates of Late Run sockeye
36 will be available over the next week.

37
38 Which I read into that is that more information
39 will be collected. I don't recall -- what's the
40 date of this notice actually?

41 Q This --

42 UNIDENTIFIED VOICE: August 17th.

43 MS. FONG:

44 Q August 17th. It's in the top right-hand corner.

45 MR. RYALL: Okay. So on August 17th, they're thinking
46 by next week probably they'll have enough
47 information to put out a run size estimate on late

1 runs.
2 Q Okay.
3 MR. RYALL: Now -- and that would change from what the
4 pre-season forecast is.
5 Q Right. Okay.
6 MR. RYALL: Potentially. But I don't -- I'm reading a
7 little bit between the lines here.
8 Q Okay. And that's fine. We understand that,
9 'cause you've already told us you weren't engaged
10 in the 2010 fishing season. I just want to
11 understand the difference between the estimate
12 that's given for the early and estimate that's
13 given to the mid and then that there's no estimate
14 for the late run at this time, and I think you've
15 told me that's correct.
16 Now --
17 MR. RYALL: There's no information to change from the
18 pre-season forecast.
19 Q Right. And an estimate is not provided in the
20 same way it's provided for the summer and the
21 early.
22 MR. RYALL: True.
23 Q Okay. And so can I also, and I'll ask Mr. Cave
24 this later, as well, because I appreciate through
25 your testimony that you have a great deal of
26 information about test fishing data and what that
27 means. Can I also conclude from this information
28 that - and I want to get this right - okay. My
29 understanding is that being able to provide an
30 estimate of an early run and a mid-run, which is
31 what's happening here in this document, doesn't
32 necessarily mean that you can provide -- like you
33 can derive an estimate for the late run. So
34 having those two prior runs doesn't mean that you
35 can figure out what the late run is; is that
36 correct?
37 MR. RYALL: They're not necessarily correlated, no.
38 Q Okay. And Mr. Cave, do you have any comment on
39 that?
40 MR. CAVE: Well, I was involved in --
41 MR. RYALL: There you go.
42 MR. CAVE: Sorry, Mr. Commissioner. I was involved
43 with the data assessments in 2010 and I was -- the
44 models that I was responsible for -- that I put
45 together and was responsible for running were the
46 model of choice for Late Run sockeye in 2010. And
47 there -- we would have been providing them run

1 size estimates, but I think what was going on -
2 and again, I don't have the test fishing
3 information in front of me - but I remember that
4 we were so impressed with the magnitude of the
5 test fishing catches that we were observing at
6 that time and we were probably waiting for stock
7 ID information. We knew we were probably not at
8 the peak of the run at that point in time, but I
9 think it was clear to all that the run was larger
10 than forecast, but we -- considerably larger than
11 forecast, but we could not say by how much at that
12 time.

13 And what's lacking here is what the level of
14 catches are of Late Run sockeye to that time
15 relative to our projected escapement to the Strait
16 of Georgia at that time. And that's not mentioned
17 here and I don't have those data with me here
18 today to answer that question more fully. But I
19 -- we were all, if I recall correctly, very
20 impressed with the size of the run that we'd seen
21 to date both at Mission and in the marine areas
22 relative to expectation.

23 Q Okay. I'm more interested in the correlation that
24 Mr. Ryall refers to and maybe the most basic
25 example, using my layman's point of view here,
26 would be if you knew -- if you were able to have
27 enough certainty to provide a run size assessment
28 for, say, the Early Stuart, which I understand
29 comes first, okay, you couldn't use that to
30 provide a run size assessment for your late run.
31 Like you couldn't derive that. You couldn't say
32 oh, because there's a hundred thousand Early
33 Stuart that means there's going to be a million
34 late run. Like, that -- it -- that correlation
35 just doesn't happen like that; is that correct?

36 MR. CAVE: It would -- I would suspect it would be
37 weak. I know we make those sorts of in-season
38 assessments on timing. So if we see later timing
39 of Early Stuart relative to forecast, we look to
40 see what the relationship between Early Stuart
41 timing is and other stocks. And there -- I
42 believe there are relationships for all of them
43 except for Late Run sockeye, so Late Run sockeye
44 kind of has its own sort of -- it's not well-
45 related with the other stocks in terms of timing.
46 But on run size, I can't say for sure and one key
47 point is they would only be related if the

1 sequence or the causal factors on survival were
2 marine because if it were freshwater, all of those
3 stocks have their own separate freshwater life
4 histories that are not normally well-correlated -
5 flood events and so on, could be quite different.
6 So when they're in the marine environment and co-
7 migrating, they may have similar tendencies in
8 what are perceived to be marine survival.

9 Q Okay. I'm going to move on.

10 MR. CAVE: Yeah. I guess I'm going on too much.
11 Sorry.

12 Q Thank you very much. Mr. Ryall, my next set of
13 questions are for you, as well.

14 MS. FONG: Mr. Lunn, could you please pull up the
15 management area map, just for reference?

16 Q Mr. Ryall, my clients are the Heiltsuk, whose
17 traditional territories are roughly speaking
18 located in Management Area 7 and 8. My
19 understanding of the testimony given to date at
20 this harvest management portion of the hearing is
21 that there's no -- currently there's no Fraser
22 River sockeye salmon test fishing in Management
23 Area 7 or north of it. And I'm just wondering,
24 and I'll ask Mr. Cave next, do you know why that
25 is?

26 MR. RYALL: We haven't seen a need to have a test
27 fishery in that area. We have not seen that
28 there's any consistent migration through that
29 area, but I'm going to turn it over to Jim. Well,
30 I'll just go on a bit further. I mean, we've seen
31 Fraser sockeye make landfall in a variety of
32 places as they come back on their annual
33 migration, sometimes they could be -- make
34 landfall on Haida Gwaii or sometimes off the west
35 coast of Vancouver Island with various proportions
36 that could migrate through Johnstone Strait or
37 through Juan de Fuca.

38 The view I would have at this point, unless
39 there's other information to be brought to bear is
40 that don't see that there is a need that would
41 provide information to help manage fisheries
42 having a test fishery in Area 7 or 8.

43 Q Mr. Cave, do you have any comment about that?

44 MR. CAVE: I think -- you know, if we could put a test
45 fishery in 7 and 8 and it did provide estimates of
46 run size, I'd be very pleased, because it would be
47 very, very helpful, but knowing what I know about

1 the nature of the Fraser River sockeye migration,
2 particularly in Area 7, it would only be on
3 unusual occasions that there would be an elevated
4 occurrence of Fraser River sockeye inside that
5 surf line. And, you know, I'm almost going to
6 turn this over to Brian, who's probably fished in
7 those areas from time to time and maybe he could
8 comment, because I've not heard - and we do get --
9 in the past we have had samples from those areas
10 and I don't think we've seen Fraser sockeye in
11 there.

12 Q Okay. I'm not going to ask Mr. Assu whether he's
13 fished in those areas. I'm going to ask Mr.
14 Ryall, you just mentioned to me that you didn't
15 see any consistent migration, so I'm just
16 wondering, when you say that you mean DFO has done
17 some work in that area at some point>

18 MR. RYALL: As far as test fisheries, no, not that I'm
19 aware of. But just picking up on Jim's comments,
20 we've not seen any consistent migration through
21 that area.

22 Q And what does that mean, we have not seen, meaning
23 there's some kind of program, there's some kind of
24 monitoring or how do you know who has seen?

25 MR. RYALL: Well, it goes back to my comments about
26 understanding of the migration of Fraser sockeye
27 and it's not always going to make landfall in one
28 particular area. And so there's not been a -- if
29 there was an abundance, I guess I would flip this
30 around. If there was an abundance of Fraser
31 sockeye going through Area 7 or 8 I think we would
32 know that by now and would be wanting to have a
33 test fishery there. Our experience has been that
34 they do make quite a variety of landfalls as they
35 return to the Pacific coast, B.C. coast, and our
36 experience has been that the test fisheries on the
37 south coast, where the fish start to come together
38 in larger abundances are the ones that are going
39 to provide us the best information on the timing
40 and migration and abundance of those stocks.

41 Q Okay. And again, you talk about your experience.
42 I'm just trying to identify, like is it DFO's
43 experience or do you mean, for example, other --
44 like fishermen who have fished up there and
45 information you've collected? I'm just trying to
46 figure out where that's coming from, that
47 information.

1 MR. RYALL: Well, I think this has been touched on in
2 previous discussions, as well, with Mr.
3 Rosenberger and Mr. Grout that was -- Barry was
4 providing a lot more detail in his experience in
5 being many years working in those areas and
6 hearing from people and so Barry -- so there's
7 also obviously from fishermen and -- that provide
8 information to us, as well. I'm not ruling it
9 out. I'm just giving you my views of what I know
10 of the migration of Fraser sockeye and there's
11 nothing that has been brought to my attention that
12 would lead me to think that there has been some
13 need to have a test fishery in that area. I don't
14 know that I could give you much more than that.

15 Q Thank you, Mr. Ryall. So, Mr. Ryall, are you able
16 to tell me what does DFO do to provide fisheries
17 in the central and the north like those of
18 Heiltsuk in terms of run size assessments as the
19 salmon are either approaching them or going past
20 them? What information do they provide?

21 MR. RYALL: You're talking about salmon generally or
22 Fraser sockeye?

23 Q Fraser River sockeye salmon.

24 MR. RYALL: Once again, I'm not aware that there are
25 Fraser River sockeye that have been consistently
26 moving through that area. I do know or seen or
27 heard that they have occasionally been there. And
28 if you're asking about the management of the fish
29 in that area, I'm going to have to -- we're going
30 to have to get someone that's involved in that
31 area and Barry Rosenberger, I think, was -- can
32 give you a pretty -- maybe some more detail than I
33 could provide you.

34 Q Okay. And Mr. Cave, do you as the representative
35 of Pacific Salmon Commission, are you aware of any
36 information that the PSC provides to communities
37 like Heiltsuk in the north and the central about
38 the size of the run as it's approaching or
39 passing, for example, communities like Heiltsuk?

40 MR. CAVE: Well, the only information that I'm aware
41 that we put out in season is -- are our reports
42 that you've already identified on the web, the
43 news releases and the regulation updates. I'm
44 just trying to recall in past years if we've ever
45 -- there may have been some commercial catches
46 that were taken in those areas and there may have
47 been -- we could look and see if there are data

1 that would suggest if there are Fraser sockeye
2 there on a regular basis, but I think it would be
3 -- if -- that -- if somebody were to report to
4 Heiltsuk about the status of Fraser River sockeye,
5 I would imagine that would be the Department of
6 Fisheries and Oceans' responsibility directly.

7 MS. FONG: Okay. Thank you. Those are my questions.

8 MS. BAKER: Mr. Commissioner, I don't know if anybody
9 has an interest in re-examining these witnesses.
10 I don't myself, but I don't know if the PSC or
11 Canada or Mr. Assu's counsel is interested or if
12 you want to do that after the break. I mean, my
13 preference would be to try and have these people
14 completed if necessary.

15 No? All right. I think we're completed with
16 these witnesses then, subject to any questions
17 arising. Thank you very much.

18 THE COMMISSIONER: Yes, I just add my thanks to Ms.
19 Baker for your patience in coming back today and
20 for your cooperation. Thank you very much.

21 MS. BAKER: Will we take a break now or will we --

22 THE COMMISSIONER: Yes, that's fine. Thank you.

23 MS. BAKER: Thank you. Can we -- ten minutes?

24 THE COMMISSIONER: Yes, that's fine.

25 MS. BAKER: Thank you.

26
27 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
28 (PROCEEDINGS RECONVENED)

29
30 THE REGISTRAR: The hearing is now resumed.

31 MS. BAKER: Thank you, Mr. Commissioner. We're
32 returning to the decision-making panel that we
33 started this morning, and I think we've completed
34 questions on the IHPC and IFMP process.

35 The next area I'd like to move to -- there's
36 a couple of areas I want to touch on. I want to
37 touch on the Fraser River Panel and then several
38 other processes that involve directly into the
39 management of the sockeye on an intersectoral
40 basis.

41
42 GERALD KRISTIANSO, recalled.

43
44 WAYNE SAITO, recalled.

45
46 PAT MATTHEW, recalled.

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

3 Q So first of all, the first question I'd like to
4 ask about the Fraser River Panel relates to a
5 recommendation that was made in 2005 in the
6 Williams Report. That's at Exhibit 14, page 282.
7 The recommendation is number 44. It identifies
8 that:
9

10 The PSC Fraser River Panel [FRP] is the
11 critical link in management of Fraser River
12 sockeye. The Canadian consultative and
13 management structures for all fisheries
14 impacting on Fraser sockeye should be
15 integrated with the Canadian section of the
16 Fraser River Panel [FRP]. In particular
17 First Nations' consultative processes must be
18 fully engaged with that process.
19

20 As I understand it, since 2005 there have been no
21 changes to the participation of First Nations at
22 the Fraser River Panel level. Can you comment on
23 that, Dr. Kristianson?

24 DR. KRISTIANSON: Certainly I can. I think, of course,
25 under the treaty, we're only entitled to so many
26 seats, and in fact the number of representatives
27 from each interest is a tricky one. I would point
28 out, for example, the recreational sector has only
29 one member on the Panel and has felt somewhat
30 aggrieved by that, but accepts that it's been
31 necessary in the context that, in particular, the
32 commercial fisheries, there's a variety of gear
33 types and areas involved. There's a need for
34 representation, wider representation. And then of
35 course it's important to have First Nations
36 representation.

37 I did want to say that I don't read the
38 recommendation 44 as in fact speaking to the issue
39 of how many First Nations representatives are on
40 the Fraser Panel. I say that as someone who held
41 the pen while that recommendation was being
42 formed. Indeed, if you read it, it says "must be
43 fully engaged with the process." Our concern was
44 not about the number of people on the Fraser River
45 Panel. It was on in making certain that the
46 variety of First Nations processes that relate to
47 interest in Fraser sockeye were -- had their

1 interests integrated into the work of the Panel.
2 That wasn't -- in fact, I think we carefully
3 avoided speaking to the question of how many
4 people should represent each interest.

5 Q Okay. Mr. Matthew, from your perspective, has
6 there been an adequate engagement of First Nations
7 at the Fraser River Panel level?

8 MR. MATTHEW: In my view, no, there has not. There's
9 never been, I guess, any formal process to -- from
10 the Fraser Panel and First Nations to describe or
11 agree on what "fully engaged" -- or "fully
12 engaged" means to us, and so there hasn't been
13 that sort of agreement or that definition, so
14 that, in itself, is a problem.

15 I guess since 2005 there has been some slight
16 changes in the engagement, and one is that there
17 has been an opportunity for First Nations to
18 listen in to the Canada/U.S. discussions at the
19 Fraser Panel, I guess weekly, or as we can. So
20 that is a slight improvement. We sort of get an
21 understanding of how the negotiations or
22 discussions occur and a little bit more about the
23 science and the interpretation of the science.

24 The other part, I guess, is that we have
25 technical updates from Mike Staley, who's with the
26 Fraser Aboriginal Fishery Secretariat, and our
27 participants on the Fraser Panel, Marcel Shepert
28 and Ken Malloway, once a week to sort of describe
29 further what's sort of gone on in the process.

30 But as far as being fully engaged, I don't
31 believe that it's occurred. I guess the concern
32 that I have is that the mandate of the Fraser
33 Panel is to -- and the mandate of those
34 participants is -- and it's been clearly made to
35 them, is that they're there to address the
36 interests of Canada first, and not First Nations
37 fishery interests. To me, the decisions that are
38 made at the Fraser Panel with the U.S. can have
39 serious implications to First Nations' aboriginal
40 rights and rights related to our fisheries, to
41 conservation, which is closely -- which is -- and
42 the health of the stocks which is linked to our
43 rights.

44 So, to me, there's a serious problem in that
45 there's never been an agreed-to process between
46 the Fraser Panel for Canada and how those issues
47 are going to be dealt with, with First Nations.

1 Q Thank you. I wanted to touch on other
2 intersectoral processes that are currently being
3 used by DFO. I wanted to talk about local
4 roundtables and the Integrated Salmon Dialogue
5 Forum.

6 Starting with the local roundtables, Mr. --
7 Dr. Kristianson, could you identify what a local
8 roundtable is?

9 DR. KRISTIANSON: Yes. In recent years, I'd say the
10 last eight or ten, probably, there has been a move
11 to the development of a group of people at the
12 local level who are interested and who participate
13 with the Department in some of the in-season
14 issues that affect the fishery. I think the
15 longest established has been one in Port Alberni
16 which deals both with sockeye and with Chinook,
17 and Coho as well, I suppose.

18 I think it started out without a necessary
19 connection with the rest of the process. It was
20 a local thing, although in the case of the Sport
21 Fishing Advisory Board, the participants are sent
22 there from the local Sport Fishing Advisory Board
23 and the Regional Board. So they are in fact
24 representatives. I can't speak to how the others
25 who participate (sic).

26 A more recent one has been in the Cowichan
27 area where, again, there's a roundtable has been
28 created with the encouragement of DFO to discuss
29 in-season issues. What isn't clear, frankly, is
30 how that process links to the IHPC and to the
31 broader planning process. It's an issue which has
32 been raised at the Integrated Harvest Planning
33 Committee, has led to the formation of a sub-
34 committee of the IHPC which has spent some time
35 looking at this issue and trying to work out how
36 one might ensure that the terms of reference for
37 these entities were somewhat -- were consistent
38 with one another, and to try and clarify how they
39 relate to the larger fisheries management issues.

40 Q Is there -- is the Fraser Salmon Table a local
41 round table that relates to Fraser River sockeye?

42 DR. KRISTIANSON: No. The Fraser Salmon Table is not a
43 local round table. It is a private society. It's
44 an incorporated society that was created as a
45 result of activity at the Integrated Harvest
46 Planning Committee in the year when we were --
47 when there was a concerted effort to try and find

1 a better way to deal with the conflict between the
2 impact of harvest, Late run harvest in particular,
3 on Cultus stocks, and the setting of the harvest
4 rate for the more abundant groups of salmon.

5 That led to some money being set aside by the
6 commercial sector, and that led to the founding of
7 the Fraser Salmon Table. But it is not clear to
8 the recreational sector, at least, how it fits
9 into the formal process to the extent that when
10 the recreational sector was asked to provide a
11 representative to the Fraser Salmon Table, we had
12 to decline because the Department told us that it
13 could not cover the costs of travel to Fraser
14 Salmon Table meetings because it was not a
15 Department-organized and authorized entity.

16 We do have a representative there. He will
17 appear as a witness later in another capacity, but
18 he sits as a private individual who has taken on a
19 director's role in a private society, but who does
20 us the courtesy of keeping the Sport Fishing
21 Advisory Board informed of the activities of the
22 Salmon Table.

23 Q Are there any local round tables that do deal with
24 Fraser River sockeye?

25 DR. KRISTIANSO: Not that I am aware.

26 Q And are there any issues that arise in other round
27 tables that can have an impact on Fraser River
28 sockeye?

29 DR. KRISTIANSO: I would think at least not of the --
30 frankly, I'm only aware of the two, and in both
31 cases, they are dealing very directly with local
32 harvest issues, with particularly the terminal
33 harvest of the stocks coming back to a particular
34 river or small set of river systems.

35 Q All right. And, Mr. Matthew, are you aware of any
36 round tables in the Interior?

37 MR. MATTHEW: No.

38 Q Mr. Saito, have you got anything to add in terms
39 of round tables that do deal with Fraser River
40 sockeye, if there are any, and how such processes
41 link back into the IHPC process?

42 MR. SAITO: I'm not aware of any round tables and, like
43 Dr. Kristianson, I believe that the only two
44 processes that are called "round tables" are the
45 Cowichan and Port Alberni. There is a West Coast
46 Aquatic, and I think that's considered a round
47 table process, but to be quite candid with you,

1 I'm not certain. But none of those round tables
2 concern themselves with Fraser River sockeye
3 issues.

4 Q Okay. Moving then to the Integrated Salmon
5 Dialogue Forum, Mr. Saito, can you identify what
6 that is?

7 MR. SAITO: Well, the Integrated Salmon Dialogue
8 Forum --

9 Q I don't think your mike's turned on.

10 MR. SAITO: I thought I pushed it. This process
11 officially took flight in around January, I
12 believe, 2007. This process represents, in my
13 opinion, in my view, a genuine effort on the part
14 of DFO to address a piece of unfinished business
15 from the 2007 IDR report for improved decision-
16 making Pacific Salmon fishery, and that is to
17 develop a -- in order for a fully-integrated
18 salmon fishery to be successful, there needs to be
19 a forum that deals with broad public policy
20 issues.

21 The ISDF process itself has a framework which
22 I consider to be essentially a terms of reference,
23 and that framework was accepted as an outcome, I
24 guess, of a series of meetings with respect to
25 what sort of business they should be involved in
26 and how it should go about conducting itself and
27 all those necessary parts of a fully-integrated
28 process.

29 In the final analysis, there was -- the
30 framework itself was accepted by virtually all the
31 participants that had a stake in the salmon
32 fishery that were invited to join in the process.
33 This framework conditions participation through
34 consensus and it works towards both high-beam --
35 it's called high-beam or other policy-based
36 issues, as well as low-beam or operational type of
37 issues, putting into practice some of the
38 solutions the process has found to address some
39 significant policy issues.

40 I personally have been participating in the
41 process ever since I was invited, which is right
42 from the beginning, and I continue to do so
43 largely because I support its goals and objectives
44 and principles that it's founded upon.

45 Q Who is invited to participate in this forum?

46 MR. SAITO: Actually, there was a broad general
47 invitation was extended to people, and they were

1 -- I would describe as people that could
2 contribute positively towards the outcome, coming
3 from the recreational, the commercial, First
4 Nations, environment, the Province of British
5 Columbia and the Department of Fisheries.

6 Q Is it the same group that appears at the IHPC?

7 MR. SAITO: No, no. There are quite a number of
8 individuals that actually belong to both
9 processes, but they're not the same. In fact, the
10 membership or the composition of the Integrated
11 Salmon Dialogue Forum has evolved over time.
12 There are some -- I think on a periodic basis, on
13 a regularized basis, there's a process called
14 "widening the circle" where invitations are
15 extended to quite a broad number of
16 representatives and opinion leaders, significant
17 opinion leaders within all the communities and
18 constituencies that are asked to -- invited and
19 asked to meet and to discuss issues that appear to
20 be of relevance and are in the public policy
21 domain.

22 Q I understand that there are three areas of
23 activity that are currently being undertaken by
24 this Dialogue Forum. One was a Monitoring and
25 Compliance Panel, one is a governance model and
26 one is an Alternative Justice Peacemaker Panel.
27 Is that correct, or is there more being worked on
28 by this forum?

29 MR. SAITO: Well, though, all of those activities are
30 captured within a process called the Monitoring
31 and Compliance Panel. There's a fourth area of
32 activity that is also within that suite of
33 activity and that is basically the communications
34 to ensure that -- or to work towards interesting
35 areas where there are misunderstandings or
36 misperceptions with respect to -- as an example,
37 there's an interest in developing a communications
38 tool or instrument with respect to explaining how
39 creel surveys are -- how the recreational fishery
40 catches are actually estimated, to provide the
41 public with this sort of information as required
42 to better understand how a creel survey actually
43 takes place. So that's another area of activity
44 as well.

45 Q Now, Dr. Kristianson, you've also been involved in
46 this forum, have you?

47 DR. KRISTIANSO: Yes, I have. I was a participant

1 from the beginning, or invited to participate. In
2 my case, I frankly declined to participate unless
3 the invitation was made to the Sport Fishing
4 Advisory Board, because we believe that the
5 process works best when the Board assigns people
6 to particular tasks that affect the interests of
7 the recreational sector, as opposed to having
8 other interests decide who should represent the
9 recreational sector. So that invitation was
10 issued. I have attended most of the meetings, as
11 have several of my colleagues.

12 I'm not sure that I share, respectfully, Mr.
13 Saito's view of the Integrated Salmon Dialogue
14 Forum. My understanding, when it was created, was
15 not that it was being created as some kind of
16 alternative policy forum. Indeed, it had a
17 narrower perspective. It was to try and deal with
18 the issue of how to better ensure that First
19 Nations were brought into the management process
20 for the Fraser River. Frankly, I think that
21 perspective has somewhat been lost as various
22 people have arrived and the desire to grow it in
23 other directions took place.

24 The Monitoring and Compliance Panel has been
25 the one kind of concrete result in the sense that
26 it has done good work in trying to bring together
27 all of the participants in harvest and others to
28 come to better understand how monitoring takes
29 place, what the compliance rates are, to
30 understand the different measures that are needed
31 in different fisheries, and to ensure there's some
32 level of public trust around that process. I
33 think that's positive.

34 On the governance side, though -- and I've
35 been directly involved in that -- again, the
36 primary beginning of the governance work was to
37 try and develop, using southern Chinook as an
38 example, a better way to create harvest plans and
39 conservation plans for Chinook salmon. That's
40 kind of morphed into a search for broader policy,
41 over-arching policy objectives.

42 And frankly, my concern about viewing this as
43 a replacement for, or a surrogate for the IDRC
44 recommendation, is that this process has no
45 discipline. It has no formal process that I'm
46 aware for representation being appropriate to the
47 different interests. It meets sporadically. It

1 hasn't followed -- it hasn't attempted, apart from
2 Monitoring and Compliance, to achieve much in a
3 direct way. I think that's unfortunate, but
4 frankly, my instructions from my sector are that
5 make clear that we attend it because we can't
6 afford not to be there. But frankly, we don't
7 feel that much is being gained by attendance and
8 participation in that particular process.

9 Q Thank you. And, Mr. Matthew, I understand you're
10 not a participant in this process; is that
11 correct?

12 MR. MATTHEW: I am not.

13 Q Was your -- was the Shuswap First Nation invited
14 to attend?

15 MR. MATTHEW: We were.

16 Q And does somebody else from your organization
17 attend?

18 MR. MATTHEW: No.

19 Q Why not?

20 MR. MATTHEW: I guess, similar to what others are
21 saying, the -- sort of the mandate and the
22 accountability to the ISDF is not clear to us. I
23 mean, they might come up with recommendations or
24 do pilot projects, but in terms of being
25 accountable to DFO or the First Nations that are
26 there, being accountable to other First Nations,
27 you know, that's not clear to us.

28 Then I guess, lastly, if it was developed to
29 deal with First Nations' interests and management,
30 for us - I mentioned earlier - we would prefer to
31 deal with DFO on a bilateral government-to-
32 government basis, and this is not. I guess I just
33 see from recent experience that there is a lot of
34 redundancy between what they're trying to do and
35 what DFO is doing. The Monitoring and Compliance,
36 DFO has a similar initiative or sub-committee
37 within DFO, the ISDF does, and First Nations also
38 had a workshop on monitoring and compliance from
39 some of their processes.

40 So, to me, there seems to be a fair bit of
41 redundancy with who's actually taking on these
42 tasks. I guess some of the projects that they're
43 doing might be interesting, but there's no clear
44 understanding of how the recommendations that
45 might come out of those would be implemented if,
46 for instance, DFO or First Nations are not clearly
47 -- there's no clear responsibility to either side.

1 Q Is this Integrated Salmon Dialogue Forum linked to
2 the IHPC process in any formal way? Maybe I'll
3 just ask Mr. Saito, or if somebody else is better
4 suited, whoever.

5 MR. SAITO: Well, I can take a first run at it, and
6 that -- the short answer is no. There is no
7 formal or direct linkage to the IHPC.

8 Q Anybody have anything to add to that? No?
9 Then I flagged earlier this morning that I
10 was going to come back to a recommendation that
11 was made --

12 THE COMMISSIONER: Could I just -- before you go to
13 that, maybe it's Dr. Kristianson. I just wanted
14 to understand. You made reference -- I think you
15 said the IBRC recommendation. Is that what you
16 said?

17 DR. KRISTIANSON: Yes, the Institute for -- I may have
18 got the acronym -- the Institute for Dispute
19 Resolution recommendation, or sometimes known as
20 the Owen Report that led to the original creation
21 of the Integrated Harvest Planning Committee.

22 MS. BAKER: This was the recommendation that we went to
23 earlier today. I was just going to go back to
24 that one.

25 THE COMMISSIONER: I wanted to make sure I understood
26 which one you were referring to.

27 MS. BAKER: Okay.

28 THE COMMISSIONER: And the other point is I think you
29 mentioned that, Dr. Kristianson, you talked about
30 this being harvest focused. But was that the
31 original intent, or does it engage in policy-level
32 discussions apart from harvest issues?

33 DR. KRISTIANSON: Well, you mean the Integrated Harvest
34 Planning Committee?

35 THE COMMISSIONER: Yes.

36 DR. KRISTIANSON: No, I mean, it does --

37 THE COMMISSIONER: No, not the IHPC.

38 DR. KRISTIANSON: Sorry.

39 THE COMMISSIONER: I'm talking about the ISDF.

40 DR. KRISTIANSON: Oh, the Integrated Salmon --

41 THE COMMISSIONER: We're drowning in acronyms.

42 DR. KRISTIANSON: The Integrated Salmon Dialogue Forum,
43 in a sense, talks about anything it wants to. It
44 has -- I mean, I don't want to sound like it
45 hasn't been a useful exercise. In my view, its
46 major contribution was in providing a place that
47 people could sit and talk without threat to

1 others.

2 I've made some very important -- I've
3 developed some important understandings of the
4 interests of First Nations in the room, for
5 example, by being able to talk about issues in a
6 forum where we weren't making decisions and
7 therefore no one was at risk. But, by its very
8 nature, that kind of a forum, it's hard, it seems
9 to me, to move from there to any concrete activity
10 like reaching a policy recommendation on
11 something, that sort of thing. So we've been
12 trying to work it in that direction.

13 I say it's not that it isn't useful. It has
14 been somewhat frustrating, particularly for those
15 of us who are probably -- have not yet learned to
16 say "No" and so are participating in far too many
17 things.

18 THE COMMISSIONER: No, I understand that. But to the
19 extent that you've had those kinds of discussions,
20 or however you want to characterize what goes on
21 there, have they been focused on harvest issues,
22 or on a wide array of issues?

23 DR. KRISTIANSO: I would have to say mostly focused on
24 harvest and conservation. I mean, the two can't
25 be separated. I mean you can't talk about
26 catching fish unless you're talking about ensuring
27 adequate escapement, providing for First Nations
28 priority and deciding what the rest of us will get
29 to catch.

30 So probably the best example is the catch
31 monitoring -- the Monitoring and Compliance Panel
32 which started out by inviting members of each of
33 the sectors out onto the Fraser to watch fisheries
34 taking place so that - all fisheries - so that
35 people could get back together again and discuss
36 whether we really should be throwing stones at
37 each other there about what we perceive to be the
38 weaknesses of others, and then go on to work up
39 recommendations that might help to both ensure
40 better monitoring, and to reduce the suspicion
41 that inevitably has existed between the sectors.

42 THE COMMISSIONER: Thank you.

43 MS. BAKER:

44 Q Thank you. Then the forum -- excuse me, the
45 recommendations that we looked at earlier today
46 that are in Exhibit 14 at page 164, and that is
47 recommendation number 6 on that page, page 164.

1 This is the establishment of a Policy Advisory
2 Committee. My question to you is does this ISDF,
3 this Integrated Salmon Dialogue Forum, fulfill the
4 policy body that was contemplated in
5 recommendation number 6, and I'll start with you,
6 Mr. Kristianson.

7 DR. KRISTIANSON: In my opinion, it does not.

8 Q And what's the main reason why it does not?

9 DR. KRISTIANSON: Well, as I think I said earlier in my
10 testimony, given that it's an entity that exists
11 by kind of sort of invitation or wander into the
12 room, there is no formal process in place to
13 ensure that people there are there representing
14 particular interests or groups of interests, and
15 there's no agenda in the sense of the group
16 deciding which policy issues it ought to be
17 pursuing.

18 I don't think it fulfills any of the roles
19 that were perceived by Stephen Owen in this case,
20 and which we discussed in the Chamut-led inquiry
21 later. I gave an example earlier. In Stephen
22 Owen's report - I could refer you to the page - he
23 talks about the issue of individual vessel quotas
24 as a key policy issue that needed to be discussed.
25 We've now moved into the wholesale development of
26 individual vessel quotas before -- proposals to
27 move them onto salmon, and that discussion has
28 never taken place in any organized coherent way
29 that would certainly lead my sector to feel that
30 its interests had been heard, whether or not they
31 were agreed to.

32 Q All right. Mr. Saito, do you have anything to add
33 to that?

34 MR. SAITO: I'm trying to figure out which question
35 you're actually specifically --

36 Q I'm asking whether the Integrated Salmon Dialogue
37 Forum fulfills this recommendation of establishing
38 a Policy Advisory Committee for discussion of key
39 policy issues amongst all sectors.

40 MR. SAITO: And it's my personal view that a forum such
41 as the Integrated Salmon Dialogue Forum, could be,
42 if properly mandated and supported. I think that
43 there clearly is a need to have the opportunity to
44 have that kind of public discussion that Dr.
45 Kristianson is referring to.

46 There is -- at this point in time, I think
47 it's fair and safe to conclude that there is no

1 magic formula. We have not had the process, and
2 to the credit of the Department, the Department's
3 efforts have been significant in this area, but it
4 hasn't come up with the magic formula, so to
5 speak. But I think that -- I hope that there will
6 continue to be some -- a lot of work toward that
7 effort here.

8 I might not be explaining all the background
9 and the objectives and the purposes that Glenn
10 Sigurdson and Barry Stuart and company were
11 attempting to work towards. I may not be the best
12 person to describe exactly how much progress they
13 feel has been made, but my personal opinion, it's
14 easier to conceive the jump from where they are to
15 a more formalized institutionalized policy forum
16 than anything else I've seen.

17 Q All right. And, Mr. Matthew, do you have any
18 perspective on this?

19 MR. MATTHEW: I guess, you know, the way it started
20 with -- there were only select few First Nations
21 invited to attend, and I don't know on what basis
22 they selected those individuals. Then later on,
23 they tried to, yeah, widen the circle, but I guess
24 overall I don't see the ISDF as a place for First
25 Nations to address policy issues. I believe
26 that's a place for First Nations and DFO to
27 discuss that in a bilateral sense.

28 THE COURT: Thank you. Today we have talked about the
29 Integrated Harvest Planning Committee. We've
30 spent a lot of time on that. We've talked a
31 little bit about the Fraser River Panel, touched
32 on the local round tables and looked at the
33 Integrated Salmon Dialogue Forum.

34 Is there a different system that would serve
35 the sectors better in engaging in intersectoral
36 decision-making and advice-giving to Fisheries and
37 Oceans in their management decision-making
38 process?

39 I guess I could start with you, Mr. Saito.
40 Do you -- should we continue to work with the
41 system we have, or is it time to look at something
42 different?

43 MR. SAITO: Is it time to do something different? I
44 think what everyone has been working towards right
45 now has asked that question. I think the time has
46 come, and perhaps even this process here is
47 attempting to answer -- or to at least come to

1 grips with some of that question (sic). There are
2 so many characteristics of the current system
3 right now that are -- that speak for significant
4 change, consultation fatigue, the increasing cost,
5 the human as well as the financial cost of
6 maintaining the system, whether it be within the
7 stakeholder community or the Department of
8 Fisheries or some of my former colleagues within
9 the Province of British Columbia, the government
10 side of it. The costs are getting larger and
11 larger and larger and more complex.

12 The concern that I would have is that unless
13 there is a very, very extensive and full
14 discussion and a review of perhaps some of the
15 recommendations put forward in the 2000 IDR --
16 IDRC report, and saying we're going to work
17 towards a specific outcome.

18 The concern that I would have is that we
19 would be dismantling all those good things that
20 actually are taking place now. I'd be concerned
21 about the unintended or collateral damage with
22 respect to just burning everything to the ground
23 and starting all over again.

24 So, as usual, as I often do, I guess, I'm
25 going to give you an ambiguous answer, in the same
26 sense that there is a need, but we need to be so
27 careful in proceeding how we go about examining
28 and making those changes, 'cause the changes are
29 so critical, not just to the resource, but to all
30 those people that depend upon it.

31 Q Mr. Kristianson?

32 DR. KRISTIANSON: Yeah, I mean, I wish I could give you
33 the magic bullet to all these problems. But I
34 think the thing that needs to be kept in mind is
35 that the Department of Fisheries and Oceans
36 deserves a gold star for being probably the most
37 consultative department of government in this
38 entire country. I'm not aware of any department
39 of government, federal or provincial, that spends
40 as much time trying to understand the needs of its
41 constituents.

42 So I agree with Wayne, that I don't want -- I
43 would not want to see this Commission do anything
44 that would undermine the good work that the
45 Department has done.

46 Now, can things be improved? Of course. I
47 mean, I think we're all troubled by the issue

1 Wayne has raised, the demands on individuals. The
2 Sport Fishing Advisory Board has had the good
3 fortune to have -- the Department having agreed in
4 principle from the beginning that it would cover
5 the out-of-pocket expenses of people who
6 participate in the process. That has not been
7 true necessarily for other sectors. The
8 Commercial Sector, for example, was -- except for
9 the Integrated Harvest Planning Committee is
10 usually expected to cover its own expenses, the
11 belief being that, look, it's the people you're
12 representing make their money from catching fish
13 and therefore they should pay their own expenses
14 when they participate in the process.

15 I happen to think that's not fair, and I
16 argued that strongly in the creation of the
17 Integrated Harvest Planning Committee, because I
18 felt that it was better that all the people in the
19 room were there on the same basis, as opposed to
20 some being there with their expenses paid out of
21 government funds, others there paying it out of
22 their own pocket or being expected to collect it
23 from their colleagues.

24 But the other thing to keep in mind here is
25 that while -- I happen to think that the IHPC
26 process is working well now except for the way in
27 which it -- in which First Nations' interests come
28 to it. If that problem could be solved, I think
29 it would work extremely well.

30 The other side of this is -- to keep in mind
31 is that we're just talking about salmon here, and
32 in particular, Fraser River salmon. There are a
33 whole series of other processes, advisory
34 consultant processes going on in DFO related to
35 other species. So one can't look at one part of
36 the puzzle without thinking of the other.

37 Just to give you a tiny example, I had, last
38 week, to give up my important role in representing
39 Canada at the International Pacific Halibut
40 Commission meeting in Victoria in order to come
41 and be interviewed by counsel in another aspect of
42 this Commission. I mean there's just a lot of
43 processes, a lot of involvement. I think one
44 needs to avoid destabilizing what is a process in
45 terms of representation that works, I think, very
46 well for commercial and recreational harvesters.

47 I can't speak for the marine conservation

1 caucus, but I suspect they are not unhappy with
2 the current process, but which the key problem is
3 for First Nations to work out, in conjunction with
4 government, a more effective way to ensure that,
5 when you're in a room, multi-interests, non-
6 bilateral room - and I accept that distinction -
7 that the First Nation -- the people who are there
8 -- that there are people there who actually do
9 represent First Nations and believe they can speak
10 on behalf of a broader body than just an
11 individual First Nations group. If this
12 Commission could give advice with respect to that,
13 I think that would be a very positive outcome of
14 your activity.

15 Q Mr. Matthew?

16 MR. MATTHEW: I won't say that the whole system has to
17 be dismantled, but I think, from the First Nations
18 side, and what's occurred to date, is that DFO has
19 jumped to try to develop management systems with
20 -- in a third-party setting with First Nations and
21 other sectors. We're not a sector. According to
22 the recognition that we are a third order of
23 government, we're -- our First Nations want to
24 develop a government-to-government relationship
25 with DFO in a bilateral sense.

26 There's case law that is out there that gives
27 us the wherewithal to be involved in management,
28 including conservation, and our own harvesting.
29 So therefore, if all those precedents are set, if
30 it's always just First Nations being an advisory
31 service to the Minister with no authority, that's
32 one of the key problems that First Nations see,
33 that if all these processes, like the IHPC and
34 others that DFO has formed, simply advise the
35 Minister and he makes decisions without necessarily
36 having to justify how he's incorporating First
37 Nations' interests and our rights into his
38 decision, that's a serious problem for First
39 Nations to engage in.

40 So, to me, the DFO has to develop systems and
41 procedures within the Fraser Panel and others that
42 accommodate First Nations' interests around
43 conservation and harvest first. Then you go and
44 take those decisions and you implement them in
45 your other processes. Commercial/recreational
46 fisheries have to accommodate -- DFO has to find
47 ways to accommodate our interests in those other

1 processes as per the priority in *Sparrow* and other
2 case law and the constitution.

3 So that's my -- I guess my take on that.

4 MS. BAKER: Thank you. Mr. Commissioner, those are the
5 end of my questions and it's four o'clock. I know
6 that you can't sit late today. It looks like
7 we've probably got an hour-and-a-half of cross-
8 examination for these witnesses.

9 Tomorrow we have some constraints because Dr.
10 Riddell can only come tomorrow, this week, and Mr.
11 Whitehouse has come down from Kamloops for
12 tomorrow's testimony as well. So I don't know if
13 we can put together a solution right here on my
14 feet. I think I'll need to talk to the witnesses
15 and see what their ability is.

16 I don't know if tomorrow we have any
17 possibility for extended hours. I thought at one
18 time we had thought there might be a possibility
19 of sitting until 5:00 on the 2nd of February, but
20 I could be wrong.

21 THE COMMISSIONER: I can certainly let you know
22 tonight. I just don't recall, Ms. Baker, I'm
23 sorry.

24 MS. BAKER: Okay.

25 THE COMMISSIONER: I apologize. I don't know that I
26 checked that, but I'd have to check and let you
27 know.

28 MS. BAKER: All right. So I think I'll talk to -- if
29 my colleagues could stick around and just talk to
30 me about timing issues, that might be helpful, and
31 if the witnesses could stay as well, I'll try and
32 talk to them after we shut down for today, and
33 I'll send out an email on the suggestion for where
34 we go from here.

35 THE COMMISSIONER: All right.

36 MS. BAKER: Thank you.

37 THE COMMISSIONER: Thank you very much.

38 THE REGISTRAR: The hearing is now adjourned till 10:00
39 a.m. tomorrow morning.

40

41 (PROCEEDINGS ADJOURNED AT 4:02 P.M. TO
42 FEBRUARY 2, 2011, 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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10 _____
11 Karen Hefferland

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

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

34 I HEREBY CERTIFY the foregoing to be a
35 true and accurate transcript of the
36 evidence recorded on a sound recording
37 apparatus, transcribed to the best of my
38 skill and ability, and in accordance
39 with applicable standards.
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44 Diane Rochfort
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