

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



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

## Public Hearings

## Audience publique

**Commissioner**

L'Honorable juge /  
The Honourable Justice  
Bruce Cohen

**Commissaire**

**Held at:**

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

Monday, February 28, 2011

**Tenue à :**

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

le lundi 28 février 2011



### Errata for the Transcript of Hearings on February 28, 2011

Page	Line	Error	Correction
15	29	stock-side	dock-side
58	46	MR. McEACHERN	MR. ASHTON
59	4	MR. McEACHERN	MR. ASHTON
64	7	hearing	nearing
102	26	closer	closure

## **APPEARANCES / COMPARUTIONS**

Brock Martland Kathy L. Grant	Associate Commission Counsel Junior Commission Counsel
Tim Timberg Geneva Grande-McNeill	Government of Canada
Boris Tyzuk, Q.C.	Province of British Columbia
No appearance	Pacific Salmon Commission
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
No appearance	B.C. Salmon Farmers Association ("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")
Judah Harrison	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.**

Philip Eidsvik	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
Christopher Harvey, Q.C.	West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
Keith Lowes	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF")
No appearance	Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM")
No appearance	Western Central Coast Salish First Nations: Cowichan Tribes and Chemainus First Nation Hwlitsum First Nation and Penelakut Tribe Te'mexw Treaty Association ("WCCSFN")
Brenda Gaertner Crystal Reeves	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) Adams Lake Indian Band Carrier Sekani Tribal Council ("FNC") Council of Haida Nation

**APPEARANCES / COMPARUTIONS, cont'd.**

No appearance	Métis Nation British Columbia ("MNBC")
Nicole Schabus	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
James Hickling	Laich-kwil-tach Treaty Society Chief Harold Sewid Aboriginal Aquaculture Association ("LJHAH")
Lisa Fong	Heiltsuk Tribal Council ("HTC")

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5

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

7 MR. MARTLAND: Mr. Commissioner, this morning we're  
8 reconvening with the first commercial fishers'  
9 panel, and Mr. Eidsvik is continuing his  
10 questions. I have received estimates and ask  
11 counsel to be as quick as they can with their  
12 questions in order to ensure that we complete  
13 this, although, and I'll be perhaps reminding them  
14 from time to time where they're at vis-à-vis their  
15 estimate.

16 There's a small point that Mr. Rosenbloom  
17 drew to my attention. Mr. McEachern, one of the  
18 panellists, had corrections with respect to the  
19 transcript from some of his evidence from the last  
20 attendance. I'll plan to address those quick  
21 points during my re-examination at the conclusion  
22 of other questions.

23 Mr. Eidsvik.

24 THE REGISTRAR: The witnesses are reminded that your  
25 oath is still in effect.

26 MR. EIDSVIK: Good morning, Mr. Commissioner. For the  
27 record, Philip Eidsvik for the Area E Gillnetters  
28 and the B.C. Fisheries Survival Coalition.  
29

30 CROSS-EXAMINATION BY MR. EIDSVIK, continuing:  
31

32 Q Mr. Brown, if you look through the history of the  
33 fishery, and you're quite familiar with it, given  
34 the book you've written and all the years you were  
35 on the commission, if you look through the history  
36 of the fishery from the '60s to the '90s, how  
37 would you describe that period?

38 MR. BROWN: Well, I would describe it as a period  
39 following the Second World War as a period of  
40 gradual and slow rebuilding of stocks,  
41 particularly after the advent of the IPSFC in the  
42 1930s and the rehabilitation work they did, and  
43 the gradual development of a whole industry and an  
44 entire sort of coastal network of dependency upon  
45 that fishery that evolved into the modern era in  
46 the '60s was then subsequently shaped somewhat by  
47 the licensing programs brought under the Davis

1 Plan and limited entry, to culminating into the  
2 '80s and the '90s where we saw stocks nearly  
3 rebuilt, Fraser River stocks nearly rebuilt to  
4 historic levels. And from thereon after, the mid  
5 '90s, for a variety of reasons, we see this  
6 precipitous decline in productivity and a period  
7 of unprecedented political and social chaos.

8 Q Going to the period that ended in 1990, from the  
9 '60s to 1990, was there a general conception in  
10 the industry and in other places that we were  
11 doing a pretty good job of managing the rebuilding  
12 of the resource, then?

13 MR. BROWN: Well, Mr. Commissioner, I'm not sure how I  
14 could quite answer that other than I would think  
15 that there was a general feeling in the industry  
16 that things were not perfect but that they were  
17 reasonably well managed. Stocks were rebuilding  
18 on the aggregate. There was always stocks of  
19 concern, but there seemed to be a growing  
20 sophistication within the fisheries management  
21 community around how one would go about  
22 identifying problems and addressing them. And I  
23 would say, despite the vilification by some  
24 quarters in the media and elsewhere, most  
25 commercial fishermen were deeply imbued with the  
26 conservation ethic. They understood that in order  
27 to survive as an industry you had to buy into  
28 conservation and rebuilding.

29 So I think, generally speaking, without  
30 overplaying it, there was a sense that we're doing  
31 okay here. And comparatively speaking to world  
32 fishery problems, which I don't purport to be an  
33 expert, but you read about them around the globe  
34 where there's real calamitous and very, very  
35 conflict-ridden types of things going on, the  
36 Fraser River fishery seemed to be well managed,  
37 well studied, well thought through from a process  
38 point of view, and I think the fishing communities  
39 of all types were fairly comfortable within that.

40 Q And I'm going to just go off on a side distraction  
41 just for one second. It's often commercial  
42 people, the four of you sitting there, are looked  
43 upon as the rapists of the resource and not an  
44 environmental bone in your body. Can you tell us  
45 who fought the Moran Dam in the 1960s, long before  
46 the first environmental group got formed in B.C.?

47 A Well, Mr. Commissioner, I was a former member of

1 the United Fishermen and Allied Workers Union, and  
2 at a fairly young age I was deeply impressed by  
3 some of the figures that I met within that union,  
4 but it wasn't just limited to the union, there  
5 were people outside of the union that were very  
6 similar, but they were people like Homer Stevens,  
7 former president of the UFAWU, a rank-and-file  
8 activist by the name of Scotty Neish, who put his  
9 life on hold for many years back in the 1950s,  
10 campaigning along with members of the B.C.  
11 Wildlife Federation and other citizens' groups,  
12 long before environmental groups were even thought  
13 of, to campaign against things like the Moran Dam,  
14 which had been a proposal of the Provincial  
15 Government of the day to dam the river upstream of  
16 Hell's Gate, and would have had a terrific amount  
17 of damage on all of our sockeye runs.

18 So I think the point, Mr. Eidsvik, that  
19 you're leading me to, is that working class people  
20 in the fishery had a deeply attached -- a deep  
21 commitment to the idea of protecting the resource  
22 and fighting for the resource and evolving  
23 environmental consciousness about the resource,  
24 and I guess without trying to be too provocative  
25 here, in the more latter context it seems that  
26 some of the discourse is very negative towards  
27 commercial fishermen, and yet none of my  
28 colleagues here, nor anybody that I met in my  
29 entire career in this fishery, ever callously  
30 thought, "Oh, I'll go out and fish the last fish  
31 out." It's quite the opposite. Quite the  
32 opposite.

33 Q Now, in every career, and you've had a long one,  
34 you make -- people, no matter how good  
35 intentioned, make major mistakes, and the union  
36 was an advocate for transferring a lot of the  
37 power of the International Pacific Salmon  
38 Fisheries Commission and a lot of their duties to  
39 the Department of Fisheries. Looking back, now,  
40 was that a mistake?

41 A Mr. Commissioner, this is kind of a difficult  
42 question. Again, I draw upon my background as a  
43 unionist and a Canadian nationalist, which I'm not  
44 ashamed of. When I was a younger person in the  
45 industry, I would listen to people like Jack  
46 Nichol, former president of the union, and Homer  
47 Stevens, and a number of other pretty powerful

1 speakers, go on about the need to get a salmon  
2 treaty in which Canada controlled the Fraser River  
3 and controlled all of its stocks, and without  
4 taking up too much of your precious time, this was  
5 an ongoing, century-long problem I tried to  
6 account in my book, with U.S. interceptions of  
7 Canadian salmon. It totalled in the millions each  
8 year. It was a series problem for the longest  
9 time.

10 And so we always believed, I was brought up  
11 on the belief that once Canada got a salmon  
12 interception treaty for the entire coast, we would  
13 be all the better off. We also believed at the  
14 same time, it was a parallel process, that once we  
15 got a 200-mile economic zone off the shore of  
16 Canada things would start to be better for working  
17 people in the fishery.

18 I still believe the principles were correct;  
19 however, there are some things that happened  
20 subsequently to the signing of the Canada/U.S.  
21 treaty that have sort of diminished some of my  
22 enthusiasm, the first thing being that whatever  
23 else there may have been wrong with the old IPSFC  
24 format, and as you heard Mr. Lapointe describe it,  
25 this was a sharing arrangement in the panel area  
26 waters, which is the lower Georgia Strait/Juan de  
27 Fuca/Fraser River, where Canada and the United  
28 States shared 50/50 pink salmon and sockeye salmon  
29 going to the Fraser River. Whatever might have  
30 been wrong with that system, it had one very, very  
31 important factor that I think was very useful and  
32 enduringly valuable. That was that neither  
33 country could control the resource without some  
34 accountability to the other. This irked me as a  
35 Canadian nationalist, but looking back on it,  
36 there was a balancing or a checks and balances to  
37 that system that actually had a great deal of  
38 merit. I'm not suggesting we would necessarily go  
39 back to it, but what has bothered me subsequently  
40 is that once the salmon interception treaty was  
41 put in place and all of the issues of so-called  
42 regulating the interceptions was in place, it was  
43 believed that Canada, then, would be able to  
44 unilaterally do whatever it wished with those  
45 stocks, and one of the things was, we've heard  
46 about it, which was the escapement add-on  
47 principle that we would put more fish on the

1 grounds so that there would be more fish to be  
2 caught by Canadian fisheries in the future.

3 But that also brought about a new regime  
4 wherein new policies, new directives, largely from  
5 Ottawa, as to who would get the fish and who would  
6 get those benefits, became highly politicized and  
7 highly problematic.

8 I'm sorry, I hope I haven't gone on too long  
9 here, but all I'm trying to say is back in the  
10 earlier days it was a narrower framework, it was a  
11 50/50 sharing arrangement, there was much less  
12 room for discretion or political direction, and  
13 now, in my opinion at least, there's a good deal  
14 more politicization in terms of how the resource  
15 is used.

16 Q And that's an interesting period for, I think, the  
17 commission, is things were going pretty good until  
18 about 1990, and, to me, we could probably find a  
19 lot of the answers of what's happened to the  
20 Fraser fishery if we look at the things that have  
21 changed since 1990. Now, we've seen in 1985 we  
22 had the new commission takeover a lot of the -- or  
23 DFO takeover a lot of the duties that were  
24 formally done by the commission; is that correct?

25 MR. BROWN: Yes.

26 Q What other major changes happened about 1990 that  
27 you think may have led to the collapse of the  
28 fishery today, well, in the last 15 years?

29 MR. BROWN: Well, it's enormously complicated, Mr.  
30 Eidsvik and Mr. Commissioner. One of the things  
31 that changed, obviously, was the **Sparrow** decision  
32 which, in a way, didn't change anything, but it  
33 certainly changed the way things were perceived.  
34 All along, in all my career, it was always noted  
35 that Aboriginal people had a special right to  
36 fish, and all through my career, whenever we met  
37 with DFO personnel, we were always told, and  
38 nobody ever disputed it, that they had a priority  
39 for their food, social and ceremonial fishery.

40 After the **Sparrow** case, and I'm no expert in  
41 all of this jurisprudence, the entire way in which  
42 DFO seemed to operate around the Aboriginal  
43 fishery seemed to change dramatically. And if I'm  
44 asked, I could go into that in more detail, but  
45 I'm mindful of keeping brief here. I want to go  
46 to some of the other points.

47 In my research for my book, I was forced,

1 over several years, to go back into some pretty  
2 deep reading in terms of some of the antecedence  
3 to some of the restructuring that occurred  
4 following the 1983 Royal Commission done by Dr.  
5 Peter Pearse, which took the fishery from the pre  
6 sort of -- well, from the 1970s era and projected  
7 it into the future as we know it now, and there  
8 was a profound amount of transformation. But at  
9 the heart of a lot of that was a government  
10 objective that was articulated first in a document  
11 in 1978, commissioned by Pierre Trudeau. It was a  
12 document called, Reforming Regulations, and in it  
13 Trudeau asked the Economic Council of Canada to  
14 answer two questions: How do we approach the new  
15 economy; and, what will be the role of government  
16 in it? And there was an entire chapter in that  
17 report, written, incidentally, by Peter Pearse,  
18 who was on the commission, that essentially said  
19 that what the government needs to do is  
20 rationalize the fishery based on the notion of too  
21 many fishermen chasing too few fish, tragedy of  
22 the commons, et cetera, et cetera, get it down so  
23 it can be economically more viable, so they said,  
24 and the chief objective to derive economic benefit  
25 for the Government of Canada in the form of  
26 economic rent; i.e. royalties or land use, so  
27 there was a whole thrust to reform the fishery in  
28 terms of making it more manageable, but also for  
29 the government to receive rent for the fishery.

30 And I'm only half finished, but I see you're  
31 nodding or wanting to move on.

32 Q I'm sorry, Mr. Brown, I'm just trying to move on.  
33 I know we've got limited time --

34 MR. BROWN: I know.

35 Q -- so I'm trying to focus on if we go -- we know  
36 that things were going okay until about 1990, then  
37 things went off the rail, so we've seen two  
38 factors so far. You've identified the change from  
39 the IPFSC into the new commission and the transfer  
40 of a lot of duties over to DFO. We've talked  
41 about **Sparrow** and the issues that arose out of  
42 that. If you had to look at any other prime  
43 factor, would there be one that you could think  
44 of?

45 MR. BROWN: All I can say is that I believe that,  
46 looking back over time that there has been an  
47 overly fixated focus on the notion that the

1 commercial fishery was the cause of all our  
2 problems here. I'm not going to sit up here and  
3 say that there weren't problems with the  
4 commercial fishery, but I will say, looking back,  
5 that there were many other factors impacting these  
6 salmon, besides commercial fishing, which I do not  
7 believe a case can be made for overfishing in any  
8 significant way and that most of the attention and  
9 most of the activity by the DFO over the last 10  
10 or 15 years has focused on changing the commercial  
11 fishery as though it were the sole cause and not  
12 addressing many of the other problems that other  
13 people have testified here have identified as the  
14 problems; that is, downsizing of government; the  
15 onslaught against fisheries habitat; all of the  
16 lack of knowledge and information that we need to  
17 properly protect these fish. And I could go on  
18 and on and on, my point being that it appears that  
19 the thing that DFO focused on the most was the  
20 commercial fishery, which I think was overkill and  
21 unfair and far too selective, but I also note it  
22 was the one thing that was the easiest for the DFO  
23 to do.

24 Q So if we look at the 2009 fishery, for example, I  
25 brought Mr. Grout back to the 2005 fishery out of  
26 a run that was roughly seven million, the  
27 commercial sector caught 29,000. So it's easy to  
28 see that the commercial sector had nothing at all  
29 to do with the collapse in 2009, given the fishing  
30 effort in 2005. Would you make that as a  
31 conclusion?

32 MR. BROWN: Absolutely.

33 Q Mr. McEachern, I see you nodding your head. Would  
34 you make that as a conclusion as well?

35 MR. McEACHERN: Yeah, that's correct.

36 Q In 2007 and 2008, you'd have to go back and look  
37 at the brood years, and if those years were closed  
38 for commercial fishing, it would be easy to say  
39 commercial fishing's not a factor?

40 MR. BROWN: I do not believe commercial fishing was a  
41 factor in any of those years.

42 Q So the focus on management of the commercial  
43 sector, such as IQs, such as coho boxes, such as  
44 fleet downsizing, is misguided in the sense that  
45 it doesn't -- it's a distraction from getting at  
46 the real problems? And I'm not saying that  
47 there's not commercial sector problems, like with



1 coho.

2 MR. BROWN: I think that the debate about how fishing  
3 rights within the commercial system should be  
4 developed, particularly around the notion of  
5 permanent property rights, is utterly outside of  
6 the real concerns we have for the fish,  
7 themselves. There are a bunch of extravagant  
8 claims, in my opinion, about how this is the only  
9 way in which the fishery can be properly managed.  
10 I heard Mr. Grout make that point. I've heard it  
11 a thousand times from all kinds of people. I  
12 believe it comes from a very narrow philosophical  
13 premise that the only ways human beings would do  
14 the right thing is out of crass, narrow, economic  
15 self-interest. I, personally, being a socialist  
16 person coming from the left, quite proud of that,  
17 believes that human beings are more cooperative in  
18 nature than that. I believe that people left to  
19 their own devices to organize cooperative  
20 arrangements with proper knowledge and proper  
21 opportunity will do the right thing, and to that  
22 degree, Mr. Eidsvik, I would suggest that there  
23 are ways to make this fishery more responsible,  
24 more responsive to conversation without having to  
25 enter into this whole discourse about property  
26 rights and all the other things.

27 I don't want to over -- go over all what I  
28 did the other day, Mr. Commissioner. There are  
29 other options that don't imply such a profound  
30 shift in property rights in order to control a  
31 fishery in exceptional circumstances of low  
32 abundance. But other than that, I don't see why  
33 we would go down that road.

34 Q What I'm asking you, in really short terms --

35 MR. BROWN: Sorry.

36 Q -- is if the commissioner left here with the  
37 belief that IQs would solve the problem, IQs in  
38 the public commercial fishery, and he thought,  
39 "Okay, my job is over. I recommended IQs in the  
40 public fishery," that his job would be done and  
41 the fishery would magically rebuild, is that a  
42 pretty false and inaccurate conclusion?

43 MR. BROWN: I don't think there's any point me  
44 repeating myself.

45 Q Okay. Thank you. I want to go to Mr. Sakich on  
46 consultation issues for a minute. You've been  
47 involved in the CSAB and in the IPSC (sic), I

- 1           guess it's called, the bigger group --
- 2 MR. SAKICH: Integrated Harvest Management Planning.
- 3 Q       -- the Integrated Harvest Management Committee.
- 4       Other than license fee relief and funding for the
- 5       CSAB for holding meetings and the secretariat, is
- 6       there any other decision that was made by
- 7       consensus, the consensus approved at the IHPC? I
- 8       see you puzzled, Mr. Ashton; are you familiar with
- 9       that issue?
- 10 MR. SAKICH: I would like to know what you're looking
- 11       for; a lot of things happened in there.
- 12 Q       Was there a consensus decision on other issues
- 13       aside from these two main points, in the IHPC,
- 14       beyond a licence holiday for the CSAB and a
- 15       secretariat? There was those two items of
- 16       consensus. Was there others that --
- 17 MR. SAKICH: This is just recent stuff?
- 18 Q       Yes.
- 19 MR. SAKICH: I haven't been hanging around this process
- 20       that much, and so --
- 21 Q       Maybe Mr. Ashton can answer that for me?
- 22 MR. SAKICH: This would be something recent from here?
- 23 Q       No. I think I'm going to switch. I think Mr.
- 24       Ashton might know the answer to this question.
- 25 MR. ASHTON: Well, I don't know that I know the answer
- 26       beyond I can't recall any other issues that were
- 27       put up as a motion that received consensus beyond
- 28       those two that you mentioned.
- 29 Q       And that's a fairly big process. I gather there's
- 30       Aboriginal groups, commercial groups, sport
- 31       groups, environmental groups in that process?
- 32 MR. ASHTON: That's correct.
- 33 Q       So a tough place to get consensus?
- 34 MR. ASHTON: I think there's a diverse opinion amongst
- 35       the participants.
- 36 Q       Now, Mr. Sakich, you're a strong advocate of IQs
- 37       in the fishery, can I ask you: Did the CSAB ever
- 38       send a letter promoting and saying that the fleet
- 39       had accepted IQs, to the minister, that was
- 40       forced --
- 41 MR. SAKICH: Not to my knowledge.
- 42 Q       They've never sent out a letter that, at a
- 43       subsequent meeting, other people insisted that the
- 44       letter be retracted and you had to write a second
- 45       letter?
- 46 MR. SAKICH: I would have to have a look through
- 47       things. I have the records since the place

1 started and a lot of traffic has gone through, a  
2 lot of letters. We did have an executive  
3 director, but I have managed to keep everything  
4 together. But I don't recall anything like that.  
5 Q Did the CSAB ever send out a letter opposing a  
6 judicial inquiry into the management of the  
7 fishery?  
8 MR. SAKICH: No, I don't think we sent out a letter  
9 opposing that.  
10 Q Did the CSAB ever send it out, a letter, without  
11 the CSAB approval as a whole, opposing the  
12 inquiry?  
13 MR. SAKICH: I don't think so. Not that I remember.  
14 Q And what's your position on this inquiry as a  
15 useful force?  
16 MR. SAKICH: Well, I --  
17 MR. EIDSVIK: I'm almost done, Mr. Martland.  
18 MR. MARTLAND: I don't want me standing to indicate any  
19 concern about the witness's answer, per se. I  
20 just raise as a question this, and I think we have  
21 been attempting to give Mr. Eidsvik some leeway,  
22 because he has some important points to identify  
23 through these witnesses. We've called these  
24 witnesses, as you'll recall, on allocation and  
25 management of the commercial fishery in the  
26 context of our hearings on this topic. Perhaps he  
27 can articulate the relevance of having witnesses  
28 opine on the terms of reference, or perhaps a more  
29 useful way of approaching that is to tie it to a  
30 particular issue.  
31 MR. EIDSVIK: Thank you, Mr. Martland. Mr.  
32 Commissioner, I'm simply addressing the  
33 consultation issue that goes on in our industry,  
34 and I gather consultation was one of the things  
35 that we were asked about, and I'm asking about a  
36 couple of the issues that were brought up in the  
37 context of our consultation process.  
38 MR. SAKICH: I want to answer that question.  
39 MR. EIDSVIK: Thank you.  
40 MR. SAKICH: It's something I've been waiting to do in  
41 here. I don't have anything against the inquiry,  
42 as you asked me, but the one thing that is of  
43 great concern to me is that this is now going to  
44 be extended another year, so basically this thing  
45 will have been in place for, what, three years?  
46 And if this is going to have any effect on other  
47 work that needs to be done, if everything goes on

1 hold because of this inquiry, that becomes a real  
2 concern of mine. If we have to wait for outcomes  
3 to come out of here before we can move ahead with  
4 some things that, again, is a concern of mine.  
5 That's my opinion, and I'm allowed that one.  
6 Q I think you're fully free and welcome to have all  
7 the opinions you want, Mr. Sakich. My point is,  
8 so you were content with the way things were  
9 managed and going along? Did the CSAB have an  
10 opinion on this?  
11 MR. SAKICH: Okay, to explain that, the CSAB is a very  
12 diverse group of people, as you know. For the  
13 CSAB to come up with an opinion on an inquiry is a  
14 very hard thing to do, because you would never  
15 reach consensus on it, so folks were left up to  
16 their own thoughts on it; nobody say no, nobody  
17 said yes, we just left it alone and you can go off  
18 to your other respective groups and you can  
19 support it from there. But to answer for a group  
20 where everybody things -- every second person in  
21 there things different would not be a very smart  
22 thing to do.  
23 Q Okay. So given that lack of consensus, you're  
24 telling the Commissioner today that no letter was  
25 sent by the CSAB opposing the judicial inquiry  
26 into the management of Fraser River sockeye,  
27 because there was no consensus on it? That's your  
28 testimony today?  
29 MR. SAKICH: That is true.  
30 MR. EIDSVIK: Those are the end of my questions, Mr. --  
31 MR. SAKICH: Now, one other --  
32 MR. EIDSVIK: -- Commissioner, thank you.  
33 MR. SAKICH: Just wait a minute here. There is one  
34 other thing here. Things are long ago and far  
35 away, but I do not recall any letter distinctly  
36 relating to being against this.  
37 MR. EIDSVIK: Thank you, Mr. Commissioner. Those are  
38 my questions.  
39 MR. MARTLAND: Mr. Eidsvik was at or under his  
40 allocation and I appreciate that. Mr. Timberg is  
41 next.  
42 MR. TIMBERG: It's Mr. Timberg, for Canada, with my  
43 colleague, Geneva Grande-McNeill. And Mr.  
44 Registrar, if we could have Tab 7 from Canada's  
45 documents.  
46  
47

12  
PANEL NO. 21  
Cross-exam by Mr. Timberg (CAN)

1 CROSS-EXAMINATION BY MR. TIMBERG:

2  
3 Q And Mr. McEachern, I have some questions for you  
4 with respect to this e-mail. Can you identify  
5 this e-mail? It looks like you sent it on June  
6 8th, 2008.

7 MR. McEACHERN: It definitely looks like mine. I wrote  
8 a lot of -- it would take me a while to remember  
9 exactly what this is about, but it definitely  
10 looks like my writing.

11 MR. TIMBERG: All right. Thank you. If this could be  
12 marked as the next exhibit, please.

13 THE REGISTRAR: Exhibit 487.

14  
15 EXHIBIT 487: E-mail dated June 8, 2008, from  
16 Ryan McEachern to Area D Members, Subject:  
17 Area D Quota Discussion Part 8  
18

19 MR. TIMBERG:

20 Q And Mr. McEachern, it looks like you sent this  
21 e-mail to all of the Area D Gillnet members on  
22 June the 4th, 2008, and it appears that you're  
23 answering a number of questions related to what I  
24 think is an application for a demonstration  
25 fishery for share-based management; does that  
26 refresh your memory?

27 MR. McEACHERN: Yes. The e-mail on the bottom part of  
28 the screen was -- I guess you guys have eliminated  
29 the "to" portion, or it wasn't included, and then  
30 it looks like I forwarded it to the department to  
31 further some of the discussion I was having at the  
32 harvest committee level with the department.

33 Q All right. And did you send this out to the Area  
34 D Gillnet members?

35 MR. McEACHERN: Yes.

36 Q All right. And who are the Area D Gillnet  
37 members?

38 MR. McEACHERN: The Area D Gillnet Association is a  
39 society, a non-profit, that's set up to advocate  
40 and lobby for Area D Gillnet fishermen. We were  
41 in place before the current system of consultation  
42 with the Area Harvest Committee was imposed upon  
43 us, so we see ourselves as the true voice of the  
44 Area D Gillnet Association. So you've got, I  
45 think we have around two-thirds of the Area D  
46 fishermen belong to the association.

47 Q All right. And so point number 1 here, it looks

February 28, 2011

1           like you're commenting on the results of a survey  
2           in support or against share-based management, this  
3           demonstration fishery; is that correct?

4   MR. McEACHERN: Just a sec. Yeah, and point number 1,  
5           in particular, was dealing with the issue we have  
6           around -- there's two different types of Area D  
7           licenses; ones that are held by the general  
8           public, and another held by the Northern Native  
9           Co-Op, and it goes into a little bit of detail  
10          around that issue.

11   Q       All right. And it sounds like it had -- the  
12          Northern Native Co-Op voted against share-based  
13          management proposal; is that correct?

14   MR. McEACHERN: That's correct.

15   Q       But had they voted in favour of it, then you would  
16          have had your majority to implement this  
17          demonstration fishery?

18   MR. McEACHERN: That's correct, of the fishermen that  
19          voted, yes.

20   Q       Right. And do you know if the position of the  
21          Northern Native Co-Op is still against share-based  
22          management, or is their position still -- has  
23          their position changed since 2008?

24   MR. McEACHERN: We have had no discussion around that  
25          issue.

26   Q       All right. And then over the page then, page 2 of  
27          3, to point 3, and so you've written this e-mail  
28          to sort of to share your thoughts about the debate  
29          on share-based management with your members,  
30          right, the pros and the cons? Is that generally  
31          what you were trying to do here?

32   MR. McEACHERN: Yeah, I think it would be fair to say I  
33          hadn't written this e-mail with the intention of  
34          analyzing it in this setting.

35   Q       Fair enough. So paragraph 3, then, in the middle  
36          line you say:

37  
38                   I think the trollers will try to structure  
39                   their fisheries to catch fish at a speed that  
40                   enables them to maximize quality, which is  
41                   really the troller niche.

42  
43                   Can you elaborate what you mean by that statement?

44   MR. McEACHERN: Troll fish generally frozen at sea in a  
45          lot of cases is dedicated for a higher quality  
46          market, so they tend to like to catch their fish  
47          slower. Often they'll bleed their fish and then

1 they dress it onboard the vessel and freeze it.  
2 So they're looking to get paid for all that work,  
3 so they can't sell their fish at the same price  
4 that the net fleet sells their fish at, which is  
5 generally sold to a processor, and then those  
6 costs are added later. So they like to catch fish  
7 a lot slower.

8 And when there's a lot -- a large volume of  
9 fish to catch, then the net fleet really starts to  
10 shine and you can out-fish the trollers, in which  
11 case they would look to transfer fish off of their  
12 vehicles so they can continue their slow pace.

13 Q Right.

14 MR. McEACHERN: Trollers can fish -- they can catch  
15 fish faster, too, but they don't like to; they  
16 like to do it slower.

17 Q Right. And can you describe, for the benefit of  
18 all of us, the difference between where a troller  
19 then would catch one of their fish to get a higher  
20 quality return as compared to, say, a seine  
21 fishery, where they would sell their fish, just so  
22 we can understand a bit of the business and the  
23 market behind the sales?

24 MR. McEACHERN: Well, the seine fishery, most of that  
25 -- the vast majority of that fish gets sold to  
26 fish companies where it gets processed onshore,  
27 and it's destined for the more general use market.  
28 And so if you were looking for top quality, sushi-  
29 grade fish, with very little bruising or marring,  
30 each fish is handed individually, you would look  
31 for more of a troll fish. But there are specialty  
32 operators in both seine and gillnet fisheries  
33 which also specialize in quality. But just as a  
34 whole, the seine fishery generally goes for  
35 volume.

36 Q Right. And so where would a troll fisher sell  
37 their product at the end of a fishing period?

38 MR. McEACHERN: Well, there are some buyers that  
39 specialize in troll fish, so they would be buying  
40 off trollers, and a lot of the trollers, also  
41 independent operators, sell directly into  
42 restaurants and hotels.

43 Q And what's the difference in return that you get?  
44 What's the added value? Do you have a sense of  
45 that?

46 MR. McEACHERN: I'm not a troll fisherman or a seine  
47 fisherman, but my instinct would be anywhere from

1 50 percent to twice as much per pound.

2 Q Okay, thank you. And paragraph 4 you talk about  
3 scrutiny on catch numbers and data for all  
4 sectors, and can you explain the importance of  
5 this increased scrutiny on the catch data?

6 MR. McEACHERN: Sorry, can you rephrase the question?

7 Q Yes. Can you explain for us what the view is --  
8 your views with respect to increased scrutiny on  
9 catch numbers and data and the relevance of  
10 improving that system?

11 MR. McEACHERN: I guess there's been a lot of finger-  
12 pointing around data and who's catching what  
13 lately, especially in the period of time since we,  
14 you know, since the mid 90s, and part of the  
15 frustration as a commercial fisherman, is I'm very  
16 honest with my numbers. We have a very strenuous  
17 system of filling out logbooks and keeping track  
18 of our catch. So to hear ourselves as a fleet  
19 being accused of having poor catch numbers or  
20 cheating or lying is frustrating, and when I go to  
21 a lot of these meetings we get looked down on  
22 because of our catch numbers not being accurate  
23 enough.

24 So I think what I was getting at is, in this  
25 paragraph, is we need a way to try and increase  
26 the public confidence in our numbers, especially  
27 when I go to a meeting where a lot of these newer  
28 fisheries that we're having to fish around  
29 subscribe to a more strenuous stock-side  
30 monitoring, which we don't have in our fishery.  
31 The reality is we don't need it for accuracy sake,  
32 but we might need it for public perception sake.  
33 That was what I was getting at.

34 Q Okay. Thank you. And if we could turn to  
35 paragraph 8 on page 3, you have a comment about  
36 under an ITQ system there's less boats moving out  
37 to the grounds, and would you agree that under a  
38 share-based management it provides an ability for  
39 the fleet to adjust itself to determine which boat  
40 should go out fishing and which not, depending on  
41 the total allowable catch?

42 MR. McEACHERN: Yeah, that is the major benefit, yes.

43 Q And can you comment on the cost of gasoline to  
44 operate a boat? I understand it can be a very  
45 high cost in the commercial fishery, and I'd just  
46 like to hear your opinion on the cost of running a  
47 boat.



1 MR. McEACHERN: Sure. So most of the commercial  
2 vessels are actually diesel, but the analogy is  
3 the same; the cost of running a vessel has gone up  
4 astronomically in my generation, yes.

5 Q And what's the impact of that?

6 MR. McEACHERN: Well, every other industry that's  
7 affected by fuel prices is able to not -- sorry, a  
8 lot of industries are able to pass their costs on.  
9 For instance, if you were trucking potatoes from  
10 Idaho to Los Angeles and the cost of fuel went up,  
11 you just increase the cost of trucking, whereas  
12 the commercial fisherman, they're -- all of the  
13 input costs go into the fish product and then the  
14 fisherman ends up with whatever's leftover at the  
15 end. So there's really no way in passing on the  
16 cost of increased fuel onto the price of your  
17 fish.

18 One of the ways we've been trying to think of  
19 how to deal with that would be to -- if there was  
20 a way, number one, to catch your fish with less  
21 boats, then you save fuel, or if you could somehow  
22 have more independent control over your fish that  
23 you catch when you catch them, and maybe you could  
24 slow down your fuel burn that way. For instance,  
25 if you didn't have to, you know, rush to an area  
26 that was farther away but you could catch them  
27 closer to your home port, because you knew they'd  
28 be coming by at a later date, then that would save  
29 fuel.

30 Q Right. And pooling of licenses may also assist  
31 that reduction of cost?

32 MR. McEACHERN: Right. That's just another -- pooling  
33 and ITQ are both just ways of trying to get more  
34 fish on less boats.

35 Q Okay. Thank you.

36 MR. BROWN: Excuse me?

37 Q Yes?

38 MR. BROWN: Am I permitted to make a comment?

39 Q I only have a few minutes, if I could direct my  
40 questions --

41 MR. BROWN: Well, it would be very brief. I don't  
42 disagree with what Mr. McEachern's saying, but I  
43 would want to emphasize or reiterate, or at least  
44 be given the opportunity to say that you can do  
45 all of these things regarding fuel cost-efficiency  
46 measures, et cetera, without ITQs; there are other  
47 options

1 Q Thank you.

2 MR. BROWN: I just don't want to leave it as though  
3 that is the only way you can go about saving fuel  
4 costs, et cetera.

5 Q Thank you. And I note that you attached, at  
6 paragraph 9 to this affidavit (sic) a copy of a  
7 document called, Sustaining America's Fisheries  
8 and Fishing Communities, which has been entered  
9 already at Exhibit 481. And if, Mr. Registrar, we  
10 could have Exhibit 481, please?

11 And you encourage your members to read this  
12 document. So is it your view that this document  
13 is helpful in setting out some of the issues with  
14 respect to the debate?

15 MR. McEACHERN: Yes.

16 MR. TIMBERG: Thank you. And then if we could turn to  
17 Exhibit 14 -- Tab 14, please, in Canada's binder.

18 Q And Mr. McEachern, this is a letter from DFO,  
19 attention Ryan McEachern and the Area D Harvest  
20 Committee, sent February 18th, 2010, with respect  
21 to Commercial Demonstration Fishery Proposal.  
22 Have you seen this letter before?

23 MR. McEACHERN: Yes.

24 MR. TIMBERG: And if we could have that marked as the  
25 next exhibit, please.

26 THE REGISTRAR: Exhibit 488.

27

28 EXHIBIT 488: Letter dated February 18, 2010,  
29 from Department of Fisheries and Oceans, to  
30 Area D Harvest Committee, attention Ryan  
31 McEachern, Subject: Commercial Demonstration  
32 Fishery Concept Proposal(s)  
33

34

34 MR. TIMBERG:

35 Q And can you clarify whether the Area D Gillnet  
36 Association did submit a proposal for a  
37 demonstration share-based fishery in 2010?

38 MR. McEACHERN: On Fraser River sockeye?

39 Q Yes.

40 MR. McEACHERN: No.

41 Q Okay. And can you describe the discussions around  
42 why that did not take place?

43 MR. McEACHERN: The department made it clear that we  
44 would have to have another survey of our licence  
45 holders --

46 Q Right.

47 MR. McEACHERN: -- and at the time I asked for

1 clarification of how we were going to treat the  
2 Northern Native Co-Op licences --

3 Q Right.

4 MR. McEACHERN: -- which are substantially different  
5 than ours. I could go into detail on that, but  
6 it's probably not important. And without hearing  
7 any direction from the department about what would  
8 be viewed as a clear majority of fishermen and  
9 without hearing any direction as to how we were  
10 going to deal with the Northern Native Licenses, I  
11 decided that a further survey of my fleet would  
12 only cause more tearing apart of our group, which  
13 has managed to stay very friendly and able to work  
14 together through a lot of these issues, even  
15 though we have strong support and strong  
16 opposition to ITQs within our fleet --

17 Q Right.

18 MR. McEACHERN: -- and there's a large group of people  
19 who are fairly neutral.

20 Q All right. And so just looking at this letter, at  
21 the bottom of this page, DFO offered to assist  
22 with the survey of your group, but you decided  
23 not to pursue that for the reasons you just gave?

24 MR. McEACHERN: That is correct.

25 Q Okay. Thank you. And I have some general  
26 questions with respect to changes in the market  
27 conditions for commercial fishers, so I'm open to  
28 some views from the panel with respect to some of  
29 these questions.

30 Would you agree that there's been increased  
31 competition, worldwide, for sockeye salmon in the  
32 last 20 years; is that a general statement that  
33 you can agree with, there's been increased  
34 competition from Chile, Norway, Alaska and Russia?  
35 Mr. Sakich?

36 MR. SAKICH: I don't know if you have any sockeye  
37 coming out of Chile, but you have an awful lot of  
38 them coming out of Alaska, Bristol Bay and those  
39 areas, and they can flood the market pretty good  
40 before we even get there. They're an earlier time  
41 than our coast.

42 Q I see, because they catch their fish sooner in the  
43 season?

44 MR. SAKICH: Yes. And I don't know what's going on  
45 over towards Russia, but there's issue with large  
46 pink catches, too, in south east Alaska and over  
47 towards the Russian side, now, as well.

- 1 Q All right.
- 2 MR. SAKICH: A few years ago, at one of the Fraser  
3 Panel meetings, or just a general PST meeting, not  
4 a Fraser Panel open one, it was shown with the  
5 changes in the climate how they were starting to  
6 get pinks and other types of salmon up into some  
7 of these areas in big numbers where they have not  
8 been for a gazillion years. So some of that's  
9 being harvested.
- 10 Q All right. And I'd like your view, Mr. Sakich, on  
11 the importance of the MSC process, the Marine  
12 Stewardship Council process. Is that important  
13 for the ability of the commercial fishers to sell  
14 their fish?
- 15 MR. SAKICH: You're talking about the MSC, the Marine  
16 Stewardship Certification?
- 17 Q Yes, thank you.
- 18 MR. SAKICH: I think it is very important. I don't  
19 think you can get any fish out of this country  
20 without it, now, can you?
- 21 Q And I'd just like your views, then, on why it's  
22 important? If you could just elaborate on why  
23 it's important?
- 24 MR. SAKICH: Well, it meets a criteria of  
25 sustainability. There's a lot of hoops you've got  
26 to jump through to get that, and you basically --  
27 I don't think you're going to achieve that without  
28 a full accountability for your fisheries, and that  
29 -- there's a whole bunch of things in that. We  
30 could go on for an hour about that.
- 31 Q Right.
- 32 MR. SAKICH: It would be everything from monitoring to  
33 meeting stock assessment criteria and on and on it  
34 would go.
- 35 Q All right.
- 36 MR. SAKICH: It has to be a sustainable fishery to meet  
37 that MSC.
- 38 Q All right. Thank you. Okay. Mr. Sakich --
- 39 MR. BROWN: Mr. Timberg, are you moving off of the  
40 point of --
- 41 Q Yes, I am.
- 42 MR. BROWN: I had my hand up, and I thought you had  
43 acknowledged, but maybe you don't want to hear my  
44 view, but I did hear you say you wanted the panel,  
45 as a whole, to address this topic. Am I able to  
46 speak, or...
- 47 Q If you can limit your --

1 MR. BROWN: Why is it that I have to limit? I'm just  
2 asking you, may I speak? I'll try to be brief.  
3 Q All right. If you could be brief, please. Thank  
4 you.

5 MR. BROWN: There is changes in the world salmon  
6 market, there's no question about that, but I  
7 don't draw the same inference, which you seem to  
8 do, is that because salmon markets are changing we  
9 have to completely and utterly disrupt the entire  
10 historical foundation of the commercial fishery in  
11 British Columbia with all of its social benefits  
12 and all that it did to support coastal  
13 communities, i.e. where you were driving at in  
14 your leading questions a moment ago about ITQs, et  
15 cetera.

16 I would say that one of the big things that  
17 we have, Mr. Commissioner, in our favour in Canada  
18 is Canada has a comparative advantage in that we  
19 have a highly regarded product image around the  
20 world, Canadian-sought salmon and, particularly,  
21 Canadian labels, are considered the top of the  
22 mark. We are closer, in some cases, to markets  
23 than some of our so-called competitors. Mr.  
24 Sakich talked about Alaska, and there are vast  
25 volumes of fish coming out of Alaska, but at very,  
26 very inferior product levels and at very, very  
27 high cost, comparatively speaking, to ours. It  
28 takes about 10 days for a Packard to run from  
29 Bristol Bay, which is practically up near the  
30 Arctic, to processing plants, because they don't  
31 have the capacity in Bristol Bay and a lot of it  
32 is processed in Prince Rupert. That's an added  
33 cost, it's a loss in quality.

34 The case I'm making is that the Canadian  
35 salmon can be very competitive, are very highly  
36 regarded, but I would argue that because of some  
37 of the politics in the industry over the last many  
38 decades, which includes, also, the undermining of  
39 former collective bargaining processes that once  
40 occurred in the industry and the ability of people  
41 in the industry and the ability of people in the  
42 industry to share some of the wealth that's been  
43 created by this resource have been disrupted.

44 And I would also argue that the prime way in  
45 which you can keep competitive in the world salmon  
46 market is by keeping the product in the market, by  
47 having shelf space for your product, by having the

1 ability for the consumer to recognize it and see  
2 it.

3 When you come along and do what has been done  
4 to the fishery over the last several years and you  
5 have some years where, for example, in 2010 you  
6 had 38 million fish return and only less than 30  
7 percent are harvested, you diminish the supply and  
8 you undermine your ability to maintain your market  
9 share.

10 You're looking impatient at me, Mr. Timberg,  
11 but I think --

12 Q Well, Mr. --

13 MR. BROWN: -- these are --

14 Q Yeah.

15 MR. BROWN: -- important points that need to be made.

16 Q I appreciate your comments, Mr. Brown. I do have  
17 a limited period of time this morning for my  
18 questions --

19 MR. BROWN: Yes.

20 Q -- and I have a number of things to cover, so I'd  
21 like to move on, if that's --

22 MR. BROWN: Okay, well, I'll defer to you, but  
23 there's --

24 Q Thank you.

25 MR. BROWN: -- many other points that I could make and  
26 I think they should, at some point, be made --

27 Q And we're all working on that.

28 MR. BROWN: -- without leaving the impression that the  
29 only way you can become competitive is through an  
30 ITQ system.

31 Q Thank you.

32 MR. BROWN: I don't agree with that.

33 Q Mr. Sakich, you are the co-chair of the Commercial  
34 Salmon Advisory Board; is that correct?

35 MR. SAKICH: That's right.

36 Q And we've heard some concerns about the difficulty  
37 of reaching consensus and the difficulty of  
38 decision-making at the CSAB. I'd be interested in  
39 your views on how you would improve the CSAB  
40 decision-making.

41 MR. SAKICH: Well, consensus is very hard to work with.  
42 I would think that if the folks that are elected  
43 in this country to run the country are setting the  
44 example, they're not doing it by consensus. I  
45 don't think that would work.

46 Q Okay.

47 MR. SAKICH: They expect it to work for us, and it's

1 extremely hard to work. And I don't say that it's  
2 all that bad of a thing. A little bit of both  
3 somehow might be a good thing. But we went  
4 through an exercise with professionals, what would  
5 be blocking, what wouldn't be blocking, when you  
6 come to achieve consensus, and it gets very  
7 complicated.

8 Q Right.

9 MR. SAKICH: It's very time-consuming. I guess if  
10 you're on the payroll and you can sit there and  
11 you can argue about this for a whole year to make  
12 one point, fine, but we're not.

13 Q Right. And does the CSAB, would that organization  
14 like to have decision-making authority; is that  
15 something you're seeking?

16 MR. SAKICH: That's a difficult question. Decision-  
17 making on what? There's so many things that are  
18 coming through there, and sometimes I think that  
19 may be a question of things, too; what should it  
20 be dealing with and what shouldn't it be dealing  
21 with.

22 Q Right.

23 MR. SAKICH: You know, every day it's something new.  
24 It's just like a minefield. Somebody wants  
25 something, somebody wants something else, so  
26 probably in some case the safest to do is not  
27 anything, sometimes, because you just can't  
28 fulfill what everybody wants.

29 Q Do you have a scope of the subjects that you think  
30 the CSAB could provide recommendations on? Do you  
31 have some topics that you think that the CSAB  
32 should (indiscernible - overlapping speakers) --

33 MR. SAKICH: Well, I think that's something, you know,  
34 I wouldn't want to answer that, because I think  
35 that's something that the group would need to  
36 wrestle down with itself, just who's going to do  
37 what and how. And for me to, just as a non-  
38 engaging chair, almost, to say what it should be  
39 would be not right.

40 Q All right. Thank you. If we could move to Tab 11  
41 of Canada's documents, please. And Mr. Sakich, if  
42 we could -- or Mr. Commissioner, if we could turn  
43 to -- or Mr. Registrar, if we could turn to the  
44 second page, there's a forward. And this is a  
45 forward by yourself, Mr. Sakich, that you're the  
46 Monitoring and Compliance Panel Chair; is that  
47 correct?

1 MR. SAKICH: That's right.

2 Q And can you identify this document for us?  
3 Perhaps we could go back to the front page, Mr.  
4 Registrar?

5 MR. SAKICH: This was put together by the Monitoring  
6 and Compliance Panel over about a year and a half  
7 or so.

8 Q All right.

9 MR. SAKICH: Through many meetings.

10 MR. TIMBERG: All right. If this could be marked as  
11 the next exhibit, please?

12 THE REGISTRAR: It's already an exhibit.

13 MR. TIMBERG: Oh, it is.

14 THE REGISTRAR: It's Exhibit Number 428.

15 MR. TIMBERG: Thank you.

16 Q So if you could -- page 13 has a list of the  
17 summaries, if we could turn there. So Mr. Sakich,  
18 can you help us by describing what the conclusion  
19 was to this report and the next steps?

20 MR. SAKICH: We're still going, and since we have put  
21 this document out, Fisheries and Oceans have now  
22 put one very similar out. There's a lot of  
23 crossing in the -- you know, there are a lot of  
24 paralleling in the two documents. And I guess  
25 what our next move is going to be, I really --  
26 we're going to try and pull together a meeting  
27 here fairly soon to address the cost-effectiveness  
28 of monitoring. That's one of the issues with it,  
29 why it's a hard sell, because it's so expensive.

30 Q Right.

31 MR. SAKICH: And we're going to try and work around  
32 that, and not everybody will be doing this exactly  
33 the same way, and so it's innovation, cost-  
34 effectiveness, that sort of -- that's our next  
35 move on this, now.

36 Q All right. Thank you. And I have one final  
37 series of questions this morning. Mr. Registrar,  
38 if we could have Exhibit 454.

39 And Mr. Ashton, when you were here last you  
40 put in a series of documents with respect to the  
41 issue of knotless bunts, and if we could turn to  
42 the next page, please, and this is a letter you  
43 wrote to Mr. Gordon Curry, on June 30th, 2004, and  
44 the bottom of the first paragraph you concluded  
45 that the committee does not endorse or support the  
46 selectivity project in 2004; isn't that correct?

47 MR. ASHTON: That's correct.



1 Q And at the bottom you believe that further  
2 expensive experiments are not necessary?

3 MR. ASHTON: I believe it also says in there that we  
4 had met and part of this program was that when  
5 enough information had been gathered through the  
6 various years of testing this equipment that it  
7 would be subjected to a PSARC review.

8 Q Right.

9 MR. ASHTON: And we had our directors look at the  
10 information and they felt that there had been  
11 enough, and what was proposed for continuing that  
12 program in 2004, we didn't believe was going to  
13 add any significant new information that would  
14 change how the project would be viewed.

15 Q Okay. Thank you.

16 MR. ASHTON: You know, a PSARC review is, I guess, they  
17 present a paper and it's reviewed. It's a peer-  
18 review process. And I might add that our Harvest  
19 Committee, made up of 12 members, two of them are  
20 processors, but the other 10 of them are  
21 fishermen, and we probably have about 400 years of  
22 knowledge in the fishing industry, collectively,  
23 together, and I think that would be regarded as a  
24 peer-review of our own.

25 Q Okay. Thank you. If we could turn to the next  
26 page, the letter of July the 5th, 2004, and Mr.  
27 Curry wrote back to you, and at the start of the  
28 second paragraph he states that he has:

29  
30 ...witnessed a significant amount of acrimony  
31 towards Mr. Paul Brajcich and DFO staff  
32 supporting this project over the past few  
33 years.

34  
35 And you would agree with that?

36 MR. ASHTON: That would be Mr. Curry's opinion.

37 Q And I guess I'm asking you, would you agree with  
38 his opinion that there's a significant amount of  
39 acrimony with respect to the grids and knotless  
40 bunts project?

41 MR. ASHTON: I really couldn't comment on that. I've  
42 known Mr. Brajcich for a long time, his father as  
43 well, was a significant fishermen that was in the  
44 business when I started fishing over 40 years ago.

45 Q All right. Thank you. If you could then turn to  
46 the next page, a letter of July 11th, 2004. And  
47 at the end of the letter, the last paragraph, you

1 conclude, saying that you're looking forward to:

2  
3 ...a comprehensive review of [the] project at  
4 a post season meeting to assess whether the  
5 implementation of this equipment will afford  
6 the benefit of increased fishing access to  
7 the Area B fleet.

8  
9 Correct?

10 MR. ASHTON: That's correct?

11 Q Yeah. And so you were seeing this selective  
12 fishing technique as a way of increasing fishing  
13 access?

14 MR. ASHTON: If it was deemed to be acceptable and  
15 viable and affordable, then we would look at it as  
16 something that could be adopted.

17 Q All right. Thank you.

18 MR. ASHTON: It had to go to that review.

19 MR. TIMBERG: And if we could then, Mr. Registrar, I  
20 have one new series of documents that Mr. Curry  
21 provided over the weekend and we disclosed this  
22 morning, if that could be pulled up? It's an  
23 e-mail from Gordon Curry to Chris Ashton, on  
24 January 17th, 2005. And at the bottom of the  
25 page, if you could show the from and to line,  
26 thank you. Yes.

27 Q And so this is from Gordon Curry and it's to Chris  
28 Cue and yourself, Mr. Ashton?

29 MR. ASHTON: Yes.

30 Q Okay. And attached to this e-mail there were  
31 three documents, a grid meeting agenda from  
32 December 4th, 2004; a grid study; and some grid  
33 notes of Mr. Brajcich?

34 MR. ASHTON: That's correct.

35 MR. TIMBERG: If this document could be marked as the  
36 next exhibit, please.

37 THE REGISTRAR: Did you want that marked as one  
38 document?

39 MR. TIMBERG: I'll suggest that the first page be  
40 marked as the number, and then the next three will  
41 have letters.

42 THE REGISTRAR: Marked as Exhibit 489, will be the  
43 e-mail --

44 MR. TIMBERG: And then over the page --

45 THE REGISTRAR: The presentation notes will be 489A;  
46 the selective fishing meeting document will be  
47 489B; and the selective grids will be 489C.

1 EXHIBIT 489: E-mail dated January 17, 2005,  
2 from Gordon Curry to Chris Cue and Chris  
3 Ashton, Subject: Selective Fishing - Grids &  
4 Knotless Bunts  
5  
6 EXHIBIT 489A: Presentation Notes from Paul  
7 and John Brajcich, dated December 2004  
8  
9 EXHIBIT 489B: Selective Fishing Meeting-  
10 Seine Grids and Knotless Bunts - Agenda and  
11 Results, dated December 8, 2004  
12  
13 EXHIBIT 489C: Selectivity Grids in the  
14 Salmon Seine Fishery of B.C. - Project  
15 Summary, dated December 2004  
16  
17 MR. TIMBERG: All right.  
18 Q And so there was a post-season review held on  
19 December 8th, with respect to the grids and  
20 knotless bunts; is that correct?  
21 MR. ASHTON: That's correct.  
22 A And then 489A sets out some of the notes of the  
23 presenters; is that correct?  
24 MR. ASHTON: I believe so. I haven't had a chance to  
25 read through all this, so...  
26 Q All right. And then if we could go to 489B, these  
27 are the minutes of the meeting on December the  
28 8th. In attendance was yourself, and at the  
29 bottom it reads -- it talks about the selective  
30 fishing policy, and it goes on in that paragraph  
31 to talk about a need for a review of the evolution  
32 of grids and knotless bunts.  
33 And if we could go to 489C, this, then, is  
34 the project summary. And have you seen this  
35 document before? This was provided to you at the  
36 meeting.  
37 MR. ASHTON: I haven't read the one that you have,  
38 here, but I did attend that meeting and I would  
39 have had that material.  
40 Q All right.  
41 MR. ASHTON: It's somewhat similar to the one that was  
42 presented in June, I think it was June 18th, 2004.  
43 I think it's quite similar.  
44 MR. TIMBERG: All right. I'll just let this document  
45 speak for itself, Mr. Commissioner. It has  
46 pictures of the grids and how it, in short, allows  
47 the small fish to escape and it saves the larger

1 fish.

2 Q You'd agree with that summary, Mr. Ashton?

3 MR. ASHTON: Yes, it does let the smaller fish escape.  
4 It doesn't allow fish of different species of the  
5 same size escape, so that was one of the  
6 complicating factors.

7 MR. TIMBERG: All right. And then Mr. Registrar, if we  
8 could move to my final document, which is dated  
9 February 1st, 2005.

10 Q And I'm not sure, Mr. Ashton, if you received this  
11 document. This is from Mr. Curry, and it  
12 summarizes the results to date with respect to the  
13 work on grids in combination with knotless bunts.

14 MR. ASHTON: I don't recall. I may have received that,  
15 but I can't -- that's quite a few years ago and I  
16 can't recall it.

17 Q All right. Would you agree that the results to  
18 date with respect to the benefit of knotless  
19 bunts, in combination with knotless bunt web can  
20 do the following, that they can allow the escape  
21 from the bunt of a high percentage of immature  
22 salmon; are you aware of that?

23 MR. ASHTON: I'm aware of that. A lot of the testing  
24 that took place was out in Area 20, and by  
25 regulation our nets are -- the bunt portion of the  
26 net is required to have 100 millimetre four-inch  
27 bunt, which allows a significant amount of  
28 juvenile fish to swim through those. It was after  
29 extensive research done over a number of years of  
30 testing different sizes, so the grids let the fish  
31 through the large mesh bunt. The normal bunt  
32 that's used in all other areas in the salmon  
33 fishery is 70 millimetres, so it's quite a bit  
34 smaller.

35 Q Right. So you would agree with that comment?

36 MR. ASHTON: Well, yes. I mean, it's quite obvious.

37 MR. TIMBERG: Okay. If this document, then, perhaps,  
38 could just be marked as the next exhibit?

39 THE REGISTRAR: It will be marked as Exhibit 490.

40

41 EXHIBIT 490: Paper, titled, Grids and  
42 Knotless Bunts Update, by Gordon Curry, dated  
43 February 1, 2005  
44

45 MR. TIMBERG: And those are all my questions, Mr.  
46 Commissioner.

47 MR. MARTLAND: Mr. Commissioner, I'm grateful to Mr.

1 Harrison for the Conservation Coalition, who took  
2 my request to heart and trimmed his questions down  
3 to zero. Mr. Harvey is next.

4 MR. HARVEY: Chris Harvey, for the Area G Harvest  
5 Committee and the UFAWU.

6  
7 CROSS-EXAMINATION BY MR. HARVEY:  
8

9 Q First, some questions for Mr. McEachern, just  
10 questions of detail relating to how ITQs -- how  
11 fishing businesses are managed. Is it common for  
12 fishermen to operate their fishing businesses  
13 through a closely-held company such that usually  
14 the boat and the licence is owned by the company?

15 MR. McEACHERN: You mean a personal company or a large  
16 company?

17 Q Yeah, a personal company.

18 MR. McEACHERN: Yeah, I believe so.

19 Q Yeah. And quotas as well, I expect, are held in  
20 the same way; is that right?

21 MR. McEACHERN: There's a pretty strong mixture, I  
22 think, between people who personally own their  
23 things solely and those who own them as a small  
24 company with their wife or kids or something like  
25 that.

26 Q Okay. Does DFO regulate the ownership of those  
27 companies?

28 MR. McEACHERN: I don't know.

29 Q You've never experienced DFO questioning who owns  
30 the shares of the company that owns the --

31 MR. McEACHERN: No.

32 Q -- licence?

33 MR. McEACHERN: No.

34 Q And ITQs are freely bought, sold and leased; is  
35 that correct?

36 MR. McEACHERN: My experience is with herring ITQ; I  
37 don't have any experience with salmon, sorry.

38 Q All right. I see. Your family group of licences,  
39 did you say, are held in the Area C, that's the  
40 northern gillnet, and the Area D, southern  
41 gillnet?

42 MR. McEACHERN: Actually, we, after relicensing, we had  
43 to buy licenses in all three areas. Area E as  
44 well.

45 Q C, D and E, all right. And those are all non ITQ  
46 areas; is that correct?

47 MR. McEACHERN: That's correct. There's been no ITQ

1 gillnet fisheries to date.  
2 Q Yeah. When these votes occur on licenses, does  
3 your family vote all its licences in the same way?  
4 MR. McEACHERN: Well, when the votes come from the  
5 department, you get one vote per licence --  
6 Q Yes.  
7 MR. McEACHERN: -- and so just, I'm not sure how other  
8 companies would handle that, but we generally sit  
9 down as a group and come up with an answer and  
10 they are all voted the same way, yes.  
11 Q Yes. Similar to the Northern Native Co-Op?  
12 MR. McEACHERN: Right. I'm not familiar with whether  
13 the fishermen of the Northern Native Co-Op  
14 actually participate in the process, but our  
15 fishermen do.  
16 Q Yeah. And to your knowledge, I expect Canfisco  
17 vote their licenses in the same way?  
18 MR. McEACHERN: I have no idea, sorry.  
19 Q All right. Mr. Sakich, you're an Area H troller;  
20 is that correct?  
21 MR. SAKICH: That's right.  
22 Q There are 89 troll licenses in Area H; is that  
23 correct?  
24 MR. SAKICH: A couple less maybe now, but around there.  
25 Q And am I right in that about 50 to 60 actually  
26 participate while the others lease out their quota  
27 or have sold it to others?  
28 MR. SAKICH: I don't think there's any selling, because  
29 I don't think you own anything, this is a pilot --  
30 A I see.  
31 MR. SAKICH: -- and it is rented, in some cases been  
32 given, and I would think the licenses on the  
33 vessels that aren't showing up, they're basically  
34 because they're involved in other offshore fishes,  
35 like tuna, things like that, and they don't want  
36 to make the trip in.  
37 Q But they all have equal ITQ shares in this  
38 demonstration in Area H; is that correct?  
39 MR. SAKICH: That's right.  
40 Q So they would lease out their ITQs to others?  
41 MR. SAKICH: Yeah. We have two pilots running there,  
42 just for your information, and they're not run at  
43 the same time. The particular one you're  
44 referring to is done by the piece of fish. We  
45 have a pilot up and running that is a time block  
46 quota as well that we use in the fall months, on  
47 chum, and that is where you're trading time, not

1 actual fish.  
2 Q Trading time in the sense of trading ITQs, or --  
3 MR. SAKICH: That's right.  
4 Q -- (indiscernible - overlapping speakers).  
5 MR. SAKICH: Yeah, you're given so many days each to  
6 start with and you have to assemble those days  
7 that work for you into a certain block.  
8 Q Right. Is this the way it operated in 2010, that  
9 your Area H was initially allotted five percent of  
10 the sockeye allocation?  
11 MR. SAKICH: No. That is by the piece. That is by the  
12 percentage of the catch.  
13 Q Sorry, in Area H how was the ITQ allotted in Area  
14 H in 2010? How was it allotted?  
15 MR. SAKICH: Well, when there was an identified TAC  
16 early in the season --  
17 Q Yes.  
18 MR. SAKICH: -- I think our first allotment was 250  
19 fish per licence, something like that.  
20 Q Yes, okay.  
21 MR. SAKICH: And they changed as the total allowable  
22 catch changed.  
23 Q Yes. And am I right in thinking the Area H  
24 trollers were not able to catch their ITQs because  
25 the fishery closed?  
26 MR. SAKICH: Well, you're dealing with -- they were not  
27 able to catch it, no, because you're dealing with  
28 such an anomaly of a year for the amount of fish  
29 that's thrown at you in such a short time.  
30 Q Yes. Troll fishing is done at a rather slow pace,  
31 whether it's ITQ or under TAC arrangement; is that  
32 right?  
33 MR. SAKICH: It could be, but it is a slower way to  
34 catch fish --  
35 Q Yes.  
36 MR. SAKICH: -- but don't confuse one thing, when I  
37 went back to what I said a minute ago, that when  
38 there was a TAC identified that a first  
39 identifiable catch for Area H was 250 fish per  
40 boat --  
41 Q Yes.  
42 MR. SAKICH: -- that is a lot better than being thrown  
43 out there and in five days you see a -- catch what  
44 you want and then leave.  
45 Q Yes. But in the sockeye fishery, when it turned  
46 up in large numbers, the Area H trollers were  
47 unable to catch their TAC; that's correct, isn't

1           it?

2       MR. SAKICH: That's right.

3       Q     And that would have been the same whether it was  
4           -- well, it was an ITQ fishery, but it would have  
5           been the same if it was not an ITQ fishery,  
6           correct?

7       MR. SAKICH: Well, you definitely wouldn't have caught  
8           your own, and the difference is, is the ones you  
9           didn't catch, if you could get somebody else in a  
10          seine boat to catch them for you, that was done,  
11          because we have a B and H integrated fishery.

12      Q     Yes, all right. But I guess the point is this,  
13          that the ITQs did not slow down the pace of  
14          trolling when the sockeye turned up in large  
15          numbers in 2010?

16      MR. SAKICH: No, it didn't.

17      Q     All right. Mr. Brown, I have some questions for  
18          you. The ITQ market that you've referred to in  
19          the leasing market for ITQs, is it basically an  
20          unregulated market?

21      MR. BROWN: Yes.

22      Q     Yes. ITQs essentially become financial assets  
23          gifted by DFO to the first generation of licence  
24          holders?

25      MR. BROWN: That's exactly right.

26      Q     Yes.

27      MR. BROWN: And I'd also add that there's nothing  
28          pertaining to those ITQs that obliges the owner of  
29          those ITQs to do anything in terms of paying rent  
30          or return, other than possible income tax, I  
31          suppose, to the real owners of the resource, which  
32          is the people of Canada.

33      Q     The opportunity to fish is created by the licence;  
34          am I correct in that?

35      MR. BROWN: Yes.

36      Q     What the ITQ adds to that, am I correct, is a free  
37          gift in perpetuity of a defined share of the  
38          common property fishery resource?

39      MR. BROWN: Yes. And that is fundamentally different  
40          than a limited entry licence, as you point out. A  
41          limited entry licence, which is an obviously  
42          necessary thing, we can't all go commercial  
43          fishing, the resource won't stand it, so we all  
44          agree that we have to have a socially acceptable  
45          way of determining who shall participate, but it  
46          doesn't confer anything other than the option to  
47          participate. So if you're a fisherman, you would



1 then have to rely on your own competitive skill  
2 and knowledge and equipment, et cetera, et cetera,  
3 but it doesn't give you any set amount.

4 An ITQ is a fundamentally different approach.  
5 It gives you not only property and fish before  
6 they're even landed, but it gives them -- it gives  
7 you the opportunity to treat that as property over  
8 an extended period of time, thus enhancing the  
9 speculative and marketable value.

10 One, in these days, might not be too inclined  
11 to go and buy a limited entry salmon licence,  
12 given the upheaval in the industry and the poor  
13 prospects. So that has tended to keep speculation  
14 and inflation in fishing privileges somewhat low  
15 in these days. Earlier on, there was considerably  
16 more speculation.

17 But that was the point I was trying to make  
18 in the last session, about this burden of  
19 capitalization which has now been imposed on this  
20 industry since primarily beginning in 1969, but  
21 extending exponentially since 1990, with the  
22 introduction of all these different quota  
23 fisheries, which solves the problem for certain  
24 people in DFO, particularly people that sit in  
25 ivory towers and stare into computers and take a  
26 paycheque, saying they're managing a fishery, as  
27 you've heard abundant testimony here, it solves  
28 their problem in that they can say, "Oh, we have  
29 less people to have to worry about out there," and  
30 so on and so. It makes life easier for them.

31 But I'm not the slightest bit interested in  
32 making life easier for DFO managers. I am  
33 interested in the fish, and I am interested in  
34 fish harvesters. And I think the ITQ system does  
35 very little to help them and, as I said last time,  
36 Mr. Commissioner, this capital burden is enormous  
37 and will stay with us over generations and will  
38 put perpetual pressure on the resource. That's  
39 even before we've gotten into ITQs on salmon. It  
40 will get worse when we do that.

41 So I plead with everybody to consider that we  
42 do not go down that option and look at other  
43 alternatives.

44 Q In terms of regulation, it seems to me the ITQ  
45 shares, as you've described them, are essentially  
46 a tradable asset that is gifted by DFO to the  
47 first generation fishermen, correct?

1 MR. BROWN: Yes.

2 Q It's not unlike the shares in a company in the  
3 sense that they can be traded?

4 MR. BROWN: Yes.

5 Q Except with shares in a company you've got stock  
6 market regulation. Have you got any similar  
7 regulation?

8 MR. BROWN: No. You do not have regulation, and if I  
9 may, I'd like to, Mr. Harvey, just also, and Mr.  
10 Commissioner, point to a secondary or tertiary  
11 problem in that the way in which DFO has  
12 approached the criteria for determining who will  
13 be eligible for ITQs in the various fisheries has  
14 been problematic, to say the least.

15 Generally speaking, what has happened is a  
16 group of fishermen sit down with DFO, not  
17 necessarily in concert with all of the  
18 participants in the fishery, and they work out a  
19 system. It will usually be based on some kind of  
20 landing performance over a set period of time, and  
21 those that are lucky enough, or who qualify for  
22 that criteria are, as you say, Mr. Harvey, they're  
23 gifted with the quota. Those who, for whatever  
24 reason, don't, are out, and that has been a  
25 concern of mine. I think that there has been  
26 politics around that and there has been  
27 controversy over that.

28 Also, I have been a little bit troubled when  
29 I hear only the voice, it seems to me, in a lot of  
30 the public pronouncements by DFO, of the  
31 proponents of ITQs being those who are the ones  
32 who are in favour of this, and they cite the fact  
33 that there's overwhelming votes in some sectors.  
34 Let's be real here. When you give somebody the  
35 opportunity of an ITQ, you're giving them the  
36 opportunity to print money, so it's quite often  
37 that you'll see people operating in self-interest  
38 around this subject. But I don't look at it that  
39 way, and many of us in the industry don't in the  
40 sense that we were put here and elected to be here  
41 to represent all the participants in the industry,  
42 and we have to articulate those who are less  
43 advantaged, who have less access to capital, or  
44 may have been plain, outright discriminated  
45 against in terms of the criteria for determining  
46 those quotas.

47 Q Now, you say that DFO and the licence holders sit

1 down and work it out. Is there any involvement of  
2 the fisheries-dependent communities in this  
3 dialogue?

4 MR. BROWN: No. Fishing communities have long  
5 articulated their concerns, Mr. Commissioner,  
6 about this. And as I tried to say in my last  
7 session to you, when somebody sells a quota out of  
8 a small village, like Sointula or Prince Rupert,  
9 or Hartley Bay or Qualicum, or any other place,  
10 it's more than just a personal transaction on the  
11 stock market or in the economy. It impacts those  
12 coastal communities profoundly, because when those  
13 jobs or those catches go, whole series of  
14 ancillary and tertiary industries and interests  
15 are hurt.

16 So coast communities, to the best of my  
17 knowledge, have been arguing that if quotas are to  
18 be defined in the fishery, that there needs to be  
19 some perspective or some ability for communities  
20 to secure those quotas, and there's been quite a  
21 bit of work done on this, both on the west coast  
22 and the east coast, where there's, I think the  
23 principle, if I'm correct, is the Adjacency  
24 Principle, where there would be some notion that  
25 if a quota for salmon was being allocated in  
26 perpetuity, that somehow or other there would be  
27 some attachment to the traditional fishing areas  
28 in close proximity where people had fished for a  
29 long time.

30 Q Okay. There are obviously enormous socioeconomic  
31 implications to an ITQ system being inaugurated in  
32 a fishery. Do you think the DFO fishery managers  
33 are equipped and competent to deal with those  
34 broad socioeconomic implications?

35 MR. BROWN: That's a tricky question, because I think  
36 there are people in the DFO who are equipped.  
37 They are trained economists. I'm not so certain  
38 that all of their analysis comes to the light of  
39 day. I think that most of the people that do the  
40 talking about ITQs these days are people like Jeff  
41 Grout and others that you've heard. Sometimes it  
42 would be senior people, like Paul Sprout, and what  
43 they focus on almost to exclusion, is that it  
44 makes life easier for them. And so be it.  
45 They're very eloquent and they make that case.  
46 Less votes means an easier time for these fish  
47 managers, presumably.

1                   However, I don't believe that those fish  
2 managers, most of whom are biologists, or some of  
3 them are just pure bureaucrats, have all that  
4 great of an insight into socioeconomic impacts,  
5 and that was my other point, building on what Dr.  
6 Walters had said in his testimony, that needs to  
7 be done here. We're dealing with very profound  
8 socioeconomic and political shifts here, and when  
9 they are codified as property, there's no going  
10 back. DFO can't say, "Oh, we're going to just  
11 test it out." They're kind of getting away with  
12 that, now, with all these fancy terms about pilots  
13 and all the rest. But once it goes through that  
14 doorway of property there's no going back, and if  
15 DFO recognized that it made a mistake and  
16 something was wrong, if it tried to, it would be  
17 vulnerable to vast lawsuits and all kinds of  
18 complications.

19                   So I would go back to what Dr. Walters was  
20 saying, and I don't think I'm taking any liberty  
21 here, I heard him very clearly say that when you  
22 go down the road of these major changes, both in  
23 terms of the management of the resource, i.e. weak  
24 stock management, or into changes around fishing  
25 rights, you should be doing a full and transparent  
26 socioeconomic analysis, and that has not been  
27 done.

28 MR. HARVEY: Mr. Commissioner, I note the time.

29 THE COMMISSIONER: Thank you.

30 THE REGISTRAR: The hearing will now recess for 15  
31 minutes.

32  
33                   (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

34                   (PROCEEDINGS RECONVENED)

35  
36 THE REGISTRAR: The hearing is now resumed.

37  
38 CROSS-EXAMINATION BY MR. HARVEY, continuing:

39  
40 Q   Mr. Brown, over the weekend, I took the  
41 opportunity to have a look at your book. I'd like  
42 to compliment you on it, a very thorough  
43 description from the ground, as it were, as to  
44 what was happening in the fishing industry in the  
45 1995 to 2005 period. I note it was published in  
46 2005.

47                   One thing struck me, and I'd like to read a

1 passage from page 134. What struck me is that the  
2 issues that you're speaking of now were issues  
3 brought to the attention of Parliament about 15  
4 years ago. Page 134, the passage reads:  
5

6 On April 28, 1996, a large group representing  
7 fishermen's organizations, coastal  
8 communities and environmentalists travelled  
9 to Ottawa. The highlight of the lobby was  
10 the appearance before the Parliamentary  
11 Standing Committee on Fisheries of the media  
12 personality and environmentalist David  
13 Suzuki, who had family roots in commercial  
14 fishing. He confessed that it was strange  
15 for him to work with commercial fishermen,  
16 since he had been "beaten up by a few of them  
17 a number of times," but he believed he and  
18 the fishermen were of one mind.  
19

20 There's a quote:  
21

22 "We know that change must come, and I think  
23 the people in this delegation are prepared to  
24 pay a price to protect the future -- but not  
25 by the Mifflin Plan."  
26

27 He went on, and then you've got two paragraphs  
28 which I'll just read from his presentation. David  
29 Suzuki said:  
30

31 I'm a biologist and I fear for the future of  
32 wild organisms that are being shoe-horned  
33 into agendas being set by politicians and  
34 economics, not biology. What is a biological  
35 problem gets fractured into bureaucratic  
36 subdivisions that ensure the fish will never  
37 be properly dealt with as a single entity and  
38 therefore protected properly. We believe  
39 local communities will be the unit of  
40 survival into the future, communities with a  
41 shared stake in the quality of the air, the  
42 water, the soil, and biodiversity...Their  
43 future, it seems to me, is our best hope for  
44 the planet. Fishers have knowledge that  
45 cannot be duplicated by science.  
46

47 Politicians come and go. Government experts

1 and bureaucrats seem immune from long-term  
2 accountability for their decisions. Local  
3 communities aren't immune to consequences of  
4 these decisions. I believe they must have an  
5 opportunity for their knowledge and advice to  
6 be heard and acted upon...The concentration  
7 of licences in corporate hands at the expense  
8 of small boat owners may maximize  
9 profitability and the ease of management, but  
10 it sure doesn't maximize jobs or the  
11 viability of local communities.  
12

13 Now, that passage from your book connotes  
14 that that speech was made by Mr. Suzuki on April  
15 28th, 1996. I note that on December 18th, 1996,  
16 the **Oceans Act** was passed, and I'm going to read  
17 you a passage in that and ask you whether that  
18 changed anything [as read]:  
19

20 In exercising the powers and performing the  
21 duties and functions assigned to the Minister  
22 under this **Act**, the Minister  
23

24 (a) shall cooperate with affected aboriginal  
25 organizations, coastal communities and  
26 other persons or bodies.  
27

28 Since that time, have you seen any  
29 significant amount of consultation between DFO and  
30 coastal communities?

31 MR. BROWN: The short answer is no. I would argue that  
32 things have -- that the gap between coastal  
33 communities and their interests, both First  
34 Nations communities and non-First Nations  
35 communities, has widened with DFO's almost  
36 singular obsession with the idea of somehow or  
37 other rationalizing the resource into hands of a  
38 smaller and smaller group based largely on the  
39 ideological thinking of one man. That's Dr. Peter  
40 Pearse, who has been on the scene for more than 40  
41 years. His great opus was the Royal Commission  
42 report of 1983 where he argued for a lot of these  
43 reforms based on his thesis of the "tragedy of the  
44 commons" and the idea that common property is  
45 nobody's property and the only way to rationally  
46 conduct economic affairs is through private  
47 interest devices.

1 Pearse has subsequently written another  
2 report in 2005. What I find really interesting is  
3 in more recent times, there's all this veneer  
4 about conservation that's been layered upon it,  
5 that we need to do all this rationalizing for the  
6 good of the fish when, in fact, in the earlier  
7 eras, Pearse never hardly discussed conservation.  
8 It was always about economic rationality.

9 But as Dr. Suzuki said in that eloquent  
10 passage which I quoted in my book, there's more to  
11 all of this than simply the bottom line. There's  
12 more to all of this than just economic  
13 rationality. Salmon and humans are  
14 interconnected. They have been for thousands of  
15 years with First Nations people, and they have  
16 been in multiple generations in my family and  
17 other fishing families. There is a profound link  
18 between the two and it's expressed in things like  
19 the UN principles of adjacency, the idea that  
20 people who live closest to the resource have a  
21 great affinity and concern with it.

22 That's not because they're angels. It's  
23 because they are the ones who are most affected if  
24 something goes wrong with the resource.

25 Q Now, Mr. Brown, the principle of adjacency which  
26 you just mentioned is also mentioned in the **Oceans**  
27 **Act** passed at the end of 1996. Have you seen,  
28 since that time, any greater adherence or any  
29 significant adherence to the adjacency principle  
30 by DFO?

31 MR. BROWN: No, I have not.

32 Q There's a --

33 MR. MARTLAND: Mr. Commissioner, I just want to  
34 identify for Mr. Harvey's benefit, he's in the  
35 last few minutes of his time estimate. Thank you.

36 MR. HARVEY: Yes. I'd like Exhibit S brought up,  
37 please, Mr. Lunn.

38 Q This is the Parzival Copes socioeconomic analysis  
39 of ITQs and I see from the beginning, the paper  
40 addresses the difference between two diametrically  
41 opposed approaches, co-management approaches.  
42 First, community-based fishery management and  
43 market-based individual transferable quota  
44 management. He has a socioeconomic evaluation in  
45 this paper at page 5, Mr. Lunn.

46 I'm going to ask you at the end, Mr. Brown,  
47 whether this is consistent with your views. Page

1           5 under the heading "CBM versus ITQs", CBM being  
2 community-based management [as read].  
3

4           With community-based management (CBM) and  
5 individual transferable quotas (ITQs)  
6 attracting so much attention, it is important  
7 to understand the key differences between  
8 them. These management approaches reflect  
9 very different views on what fisheries are  
10 all about. We must consider how they compare  
11 in meeting the current as well as the future  
12 needs of vessel owners, crew members,  
13 processing plant workers, and their  
14 communities. What is good and what is not,  
15 must be viewed from many angles.  
16

17           Et cetera.

18           In the course of the paper, he makes the  
19 point that -- he discusses the various  
20 socioeconomic implications of ITQs such as you've  
21 mentioned. He discusses the capacity reduction  
22 which we've heard about as being a consequence of  
23 ITQs and says, on page 11:  
24

25           The capacity reduction that may be  
26 facilitated by an ITQ system is likely to  
27 generate financial benefits, but distribution  
28 of those benefits is widely considered to be  
29 inequitable. The first generation of quota  
30 holders receives a windfall in the form of  
31 "free" ITQ from the government - a mechanism  
32 which, as noted above, seems to have been  
33 adopted to convince current vessel owners to  
34 accept ITQ schemes. Later generations must  
35 buy or lease quota at high prices from the  
36 original holders, and indeed may be unable to  
37 afford to get into the fishery at all.  
38

39           That's, I think, consistent with what you've  
40 been saying, is that right, Mr. Brown?

41 MR. BROWN: Yes, it is, and I would just add that Dr.  
42 Copes is a Vancouver resident -- West Vancouver  
43 resident and he's considered one of the world's  
44 leading authorities on the subject, and it would  
45 be with the greatest respect, Mr. Commissioner,  
46 that I encourage you to acquaint yourself with his  
47 work along with those who are on the other side of



1 the fence, like Dr. Pearse.

2 I would also wonder whether it would not be a  
3 good idea that as opposed to people like my  
4 colleagues here and myself who are hardly expert,  
5 that there be testimony or at least some  
6 investigation into this topic with those kinds of  
7 experts, given that the inquiry wants to open the  
8 door into this discussion.

9 But I would say that Dr. Copes' points are  
10 very well taken in terms of the affinity between  
11 communities and the well-being of the resource.  
12 You also heard Mike Lapointe very eloquently in  
13 his testimony talk about the fact that we, as  
14 humans, are part of the ecosystem and that we  
15 interact with these creatures and we have a role  
16 and a place with them, and they, in many ways,  
17 depend on us. Having strong community interest in  
18 the salmon fishery means perhaps that one doesn't  
19 go about ravishing timber slopes in the forest  
20 industry or spew poisonous chemicals into the  
21 waterways and so on and so forth.

22 I won't belabour the point, but I would want  
23 to go to the one point, Mr. Harvey, and I can't  
24 see it on the screen there, but where Dr. Copes  
25 talked about an essential triad; that's my word,  
26 not his. He talked about biology, economics and  
27 social benefits of the fishery. He has taught me,  
28 and I've read hundreds and hundreds of papers on  
29 this subject, that one of the things that a good  
30 resource management regime should stress is  
31 balance between all three.

32 It has been Dr. Copes' analysis - and perhaps  
33 you can see it for yourself and make your own  
34 conclusions - that DFO chronically gets the triad  
35 out of balance, the three-legged stool out of  
36 balance. At one point in history, they're using  
37 economic development/job creation as the primary  
38 motive of the fishery and they go too far, perhaps  
39 in some cases, in over-harvesting, over-  
40 capitalizing, too many licences. I have a whole  
41 chapter in my book about how licensing got out of  
42 control over the best interest of working  
43 fishermen in this province.

44 In another situation, they go, oh, we need to  
45 be more biologically sensitive. So then you get  
46 into things, some of the more distorted version of  
47 the biodiversity argument which you heard Dr.

1 Walters critique.

2 My only point for saying this is I think Dr.  
3 Copes' analysis is correct, that we need to  
4 balance all three. You can't do it to the  
5 exclusion of one over the other. But it tends to  
6 be the temptation, I think, in the political  
7 operatives that control DFO to seek favour in a  
8 given moment. If it's biology that's the flavour  
9 of the month today, that's what we'll do and we'll  
10 hopefully get Brownie points for that. Or if it's  
11 looking like we're saving costs or whatever, we'll  
12 go with that. You need all three, and you need  
13 the balance.

14 Q Yes. Yes. One point he makes is the -- towards  
15 the end at page 18 is that ITQ systems are  
16 inflexible because once they're in place, they're  
17 difficult to dismantle. He does attribute the  
18 collapse of the Atlantic fishery, in part, to the  
19 inflexibility brought about in that fisheries  
20 management regime by ITQs.

21 MR. HARVEY: I wonder if this paper could be marked,  
22 please, as the next numbered exhibit. Is that  
23 acceptable, Mr. Timberg? We had it, at your  
24 request, a lettered exhibit.

25 MR. TIMBERG: Yes.

26 THE REGISTRAR: The "for identification" caveat will be  
27 removed and that will be marked as Exhibit 491.

28  
29 EXHIBIT 491: Socioeconomics of Individual  
30 Transferable Quotas in Community-Based Fisher  
31 Management  
32

33 MR. MARTLAND: I'll just point out again the time, Mr.  
34 Commissioner. In order for us to complete this  
35 panel's evidence, which we're truly seeking to do,  
36 I will need to have other counsel -- move other  
37 counsel through their questions as soon as we're  
38 able. Thank you.

39 MR. HARVEY: Well, that being so, I will sit down.  
40 Thank you.

41 MR. MARTLAND: I have Mr. Lowes next.

42 MR. LOWES: Thank you, Mr. Commissioner. J.K. Lowes  
43 for the B.C. Wildlife Federation and the B.C.  
44 Federation of Drift Fishers.

1 CROSS-EXAMINATION BY MR. LOWES:

2  
3 Q Is there another book here, Mr. Brown?

4 MR. BROWN: Probably. I'm not sure I'm up for writing  
5 it. It's awfully hard work.

6 Q The book was published in 2005?

7 MR. BROWN: Yes.

8 Q When did you start it?

9 MR. BROWN: In 2001.

10 Q And why did you start it?

11 MR. BROWN: Oh, well, I'm not sure I know how to say  
12 this, but after all the things that happened in  
13 the industry, I guess I came close to the brink of  
14 maybe what would be called a breakdown in terms of  
15 my personal life. Everything that I'd ever  
16 believed in and everything that I knew had more or  
17 less come to a halt. I was very upset, and I  
18 don't want to bore you with that, but I tried to  
19 come to terms with what had happened, and I  
20 couldn't get it out of my system.

21 So rather than getting angry, I thought,  
22 well, maybe I'll try to write notes down. One  
23 thing led to another and it became kind of an  
24 exercise in therapy. I will readily admit that  
25 many people in society won't agree with my  
26 conclusions, and my good friends here on the panel  
27 will have different perspectives. But it was a  
28 heartfelt attempt to come to terms with what --  
29 everything I knew in my life and my family. My  
30 father was a fisherman, my brother and family  
31 members, and so it was my attempt to try and  
32 describe what happened.

33 Q And in those four years, did you do considerable  
34 research to try to find out what had happened?

35 MR. BROWN: Again, you probably don't want to be bored  
36 with my life story, but I spent essentially every  
37 day of my life for approximately three years in  
38 the Vancouver Public Library at the microfiche  
39 lab, usually 12-hour days, reading everything I  
40 could get my hands on. It was an intense process.  
41 I learned a lot and I found out more things than I  
42 probably ever wanted to know. Then I had to go  
43 through the rather difficult task of trying to  
44 write it. I'm not a professional writer and so it  
45 was -- it was a deep experience.

46 Q You tried to find out what had happened to the  
47 world that you knew.

1 MR. BROWN: In essence, and of course it's difficult  
2 because I was a participant, so I'm not  
3 necessarily seen as subjective and I'm not an  
4 "objective" historian. But what I did note in  
5 some of the historical research that I did and  
6 theories that I read, put some of it in the book,  
7 is that it tends to be that the small people, the  
8 powerless people, who are often pushed aside in  
9 times of economic upheaval, have the least  
10 opportunity to voice their concerns, you know, the  
11 closure of the commons and so on.

12 So it was my attempt, however pretentious it  
13 might seem, to somehow capture some of that  
14 experience and put it down so that at least  
15 someday somebody could say, well, here's what one  
16 person thought during those days, contrary to what  
17 was the official party line of the DFO.

18 Q You started out your evidence last week by telling  
19 the Commissioner that you'd waited 20 years to  
20 give this evidence. Is that what you were getting  
21 at?

22 MR. BROWN: Exactly, yes. Very appreciative of it,  
23 too, as I'm sure my colleagues are.

24 Q Since writing the book in 2005, have you continued  
25 to study the issues that are before this  
26 Commission?

27 MR. BROWN: Yes, on a virtually unpaid basis. I don't  
28 work for any organization. It's been mostly a  
29 labour of love. I have been dealing with this  
30 stuff almost daily ever since, and around this  
31 inquiry, I've been attending, I've been writing  
32 and reading, as I'm sure others are. I don't make  
33 myself special. But those of us who have got  
34 fishing in our blood - and I say this with the  
35 utmost sincerity - can't get it out of our  
36 systems, and so this is a very precious  
37 opportunity for at least us to articulate some of  
38 what we've gone through.

39 Q You've kept up with the literature? I think  
40 you've mentioned several authors during the course  
41 of your evidence.

42 MR. BROWN: I've been reading all the literature and  
43 I've been the great beneficiary of what the  
44 Commission has provided us in the way of  
45 literature and exhibits. I've been trying to read  
46 it all and have certainly benefited from that.

47 Q And you've discussed your ideas with other experts

1 or with experts in the field and, in particular,  
2 some of those who've given evidence in these  
3 proceedings?

4 MR. BROWN: I have talked to literally dozens, if not  
5 hundreds of fisheries people over the years of all  
6 walks: within the Department, in the academic  
7 community, within the Pacific Salmon Commission.  
8 I have referenced most of my own writing to them,  
9 so that I would at least have what would be the  
10 equivalent of a peer-review process so that any of  
11 the criticisms that I would have, albeit I  
12 understand they would be perhaps not well  
13 received, are at least grounded in some of kind of  
14 factual reality. I've benefited from the generous  
15 amount of time that people in those fields have  
16 given me.

17 This crosses all lines, biology, sociology,  
18 anthropology, history, economics and including a  
19 number of people who were former employees of the  
20 DFO who have given freely of their time whenever  
21 I've requested. So I believe I've tried to test  
22 my --

23 Q In particular, you've kept up contacts with Dr.  
24 Walters and Mr. Lapointe and Dr. Woodey, among  
25 others?

26 MR. BROWN: All of those people, I'm on a very, very  
27 cordial relationship with. They certainly don't  
28 agree with me on all my points and I don't agree  
29 with them, but I am very indebted, as I think a  
30 number of people in our industry are, for the kind  
31 of knowledge and expertise that's out there. Yes,  
32 I've made it my point to keep in close contact.

33 Q Now, as I understand the basic thrust of your  
34 evidence, you are saying that the history of the  
35 -- the recent history of fisheries management has  
36 taken place in a political paradigm; is that  
37 correct?

38 MR. BROWN: Yes.

39 Q And I think you started out, in answer to some of  
40 Mr. Eidsvik's questions, in describing that  
41 paradigm, and you mentioned the **Sparrow** case and  
42 the aftermaths of the **Sparrow** case. Then you were  
43 getting on to Dr. Pearse and some of the political  
44 fallout from his views. Perhaps you could  
45 continue with that.

46 MR. BROWN: Well, my observation -- and I struggle with  
47 this 'cause it's so complicated and I know before

1 I open my mouth, people are blowing the whistle on  
2 lack of time or people want to beat you up and  
3 say, well, who are you and you're not an expert  
4 and all -- it's an enormously stressful business,  
5 but what my observation after 35 years is, is that  
6 things are fundamentally different in this age in  
7 terms of how politicians, particularly, deal with  
8 the fishery.

9 In an earlier time, I'm sure it was much  
10 easier for managers of the resource to get  
11 together with the fishing communities and within  
12 DFO and make difficult decisions that sometimes  
13 worked and many times they didn't work, but on the  
14 whole, were -- must have been doing something well  
15 because we rebuilt stocks from virtually nothing  
16 in the 19 -- after Hell's Gate up to near record  
17 levels in the '90s.

18 But nowadays, fisheries people, politicians,  
19 managers, can't do anything without being under  
20 the intense scrutiny of the media. There's often  
21 excessive distortion about what's going on.  
22 There's passion and acrimony that's ramped up, and  
23 so it gets to be so that the fish become secondary  
24 and the politics and the sort of - what's the  
25 fashionable term now - the spin-doctoring, the  
26 putting of the communications spin on things seems  
27 to take priority over dealing both with the  
28 resource itself and the impact on people.

29 Q And I believe - I too read your book - a prime  
30 example of what you've just described was the  
31 statement by the Honourable John Fraser that in  
32 1994 the fishery was within 12 hours of disaster.

33 MR. BROWN: Yes. That phrase, I don't know if Mr.  
34 Fraser thought it up himself or he had it fed to  
35 him, but nevertheless was one of the most  
36 inaccurate and unfortunate phrases that's ever  
37 been uttered in the context of west coast  
38 fisheries. But it was custom-made for a media  
39 extravaganza that took that statement, which is  
40 actually factually not true -- and if I had more  
41 time, and I wish I did -- and I have written in my  
42 book, all of what took place in the season that  
43 Mr. Fraser was referring to, the 1994 salmon  
44 season, can be explained.

45 There was not a fishery within 12 hours of  
46 disaster. It's not physically possible to do so.  
47 But why it is so upsetting to people like me that

1 it became part of the public discourse and the  
2 grand narrative of some people who seek ill of the  
3 commercial fishery, is that it persuaded the  
4 public that something was recklessly out of  
5 control when I could argue -- 'cause I was there  
6 as the Minister's advisor at the time -- that  
7 nothing of the sort took place. There's  
8 explanations as to why that happened.

9 But after that fact, everything seemed to go  
10 absolutely extremely surreal in terms of how  
11 politics around the fishery is conducted because  
12 of this impending disaster, which I would argue  
13 was factually incorrect.

14 Q You're for incremental change or incremental  
15 adaptations in the management of the fishery?

16 MR. BROWN: I think I would, as a layperson, as a  
17 participant in the fishery, subscribe to Dr.  
18 Walters' description which is adaptive management,  
19 which is that you do things, you test them, get  
20 the results back, see what worked and then do some  
21 more of it.

22 But, yes, I do not believe in  
23 "transformative" approaches. I think that's  
24 wrong. I think it has been harmful for primarily  
25 the fish, but for a lot of people. I believe in  
26 incremental cautious conservative approaches, and  
27 I believe that most fishermen would also agree  
28 with that.

29 Q And do you also agree in focusing on increasing  
30 sustainable harvests rather than micro-managing  
31 diminishing returns?

32 MR. BROWN: Absolutely. When I heard Dr. Walters  
33 testify before this Commission that between 1995  
34 and 2005, no less than 25 million sockeye could  
35 have been harvested without detriment either to  
36 the major stocks or the weak stocks, I was  
37 astounded. I believe that there could have been  
38 more opportunity, and people could have benefited  
39 and the salmon resource would have been better  
40 off.

41 Actually, what is bothering me is what Dr.  
42 Walters was saying is that by over-escaping, by  
43 putting too many fish on the spawning grounds, we  
44 actually did some serious harm to the productivity  
45 of our big stocks which we'll have to live with,  
46 Mr. Commissioner, for quite some time. We can't  
47 undo that damage.

1           But it strikes me as absurd that we've been  
2 sitting here around a paradigm that says over-  
3 fishing is the problem, when I could go chapter  
4 and verse proving that that has not been the case  
5 and that we somehow or other have to redesign the  
6 entire world around fishing privilege rights when,  
7 in fact, we could have fished more, we could have  
8 had more benefit, First Nations could have  
9 benefited more and could have grown into greater  
10 participation levels.

11           We could have - and I want to make this point  
12 clear because I won't have another chance -  
13 involved communities and working-class people in  
14 the fishery in progressive change around how we  
15 redesign the fishery. I do not sit here, and I've  
16 never heard a single fisherman in all my union  
17 career ever say, "Let's stick with the past," and  
18 stubbornly stay in the past. All of them have  
19 said, "If it can be done fairly, if it can be done  
20 democratically and responsibly, we want to be part  
21 of change." But that's not the way DFO has  
22 approached it.

23 Q       You're in favour of an inclusive fishery?

24 MR. BROWN: Absolutely. And I feel that, right now,  
25 the driving imperative in the fishery is to  
26 exclude people who otherwise should be in the  
27 fishery and have a legitimate right to be in it.

28 Q       And you're concerned of the apparent divisiveness  
29 between First Nations interests and other  
30 interests in the fishery?

31 MR. BROWN: Mr. Lowes and Mr. Commissioner, again, I  
32 feel so pressed for time here. I heard Paul  
33 Sprout testify a month or two ago about new  
34 governance. I could tell you - and I wouldn't  
35 repeat myself once - that I was part of a project  
36 sponsored by Brian Riddell's Salmon Foundation and  
37 the very highly-regarded group called the Fraser  
38 Basin Council - which is a group that deals with  
39 all issues in the Fraser Basin - around an attempt  
40 to bring the Area E fishermen's group, which Ryan  
41 belongs to, together with the lower Fraser fishing  
42 interests on the Fraser around a paradigm where we  
43 could somehow reintegrate the fishery on an  
44 experimental basis around a small quota of chinook  
45 salmon - we started small - with the one goal: to  
46 try and heal our two communities. These are  
47 people that once worked together, went to school



1 together, lived together and now, sadly -- and I  
2 don't say this for a moment to speak against  
3 aboriginal rights. Those are unequivocally  
4 accepted by me and my colleagues. But we have  
5 seen communities driven apart, we've seen chaos on  
6 the river, we've seen the DFO lose control, and  
7 we've seen two communities that have an exact  
8 identity of interest - although they have  
9 different histories and different cultures of  
10 course - driven apart.

11 So, yes, I want to bring them together. And,  
12 guess what? When we went to -- over a year's  
13 worth of work, wrote those papers -- we delivered  
14 them to DFO and they didn't even give us the  
15 courtesy of an answer. They just gave it short  
16 shrift. All that effort was discarded, and that  
17 really bothers me, and I wish I had more time to  
18 go into the details.

19 MR. MARTLAND: On that note, Mr. Commissioner, I would  
20 point out for Mr. Lowes' benefit, he is at his  
21 estimate.

22 MR. LOWES: Two questions.

23 Q First of all, Mr. Brown, having waited 20 years,  
24 if you were to give advice to the Commissioner as  
25 to a recommendation that he might make in his  
26 final report, what would that recommendation be?

27 MR. BROWN: It would be to build a new salmon commons  
28 which First Nations and non-First Nations would  
29 work towards together. It would be to invest in  
30 salmon enhancement again the way we once did, and  
31 see salmon enhancement not as a cost, but an  
32 investment in our future.

33 In terms of the generalities of the fishery,  
34 I'd dispense with area licensing. I think it's  
35 just an impediment and it's no longer necessary  
36 with the vastly reduced fleet. I would move  
37 towards a royalty system in which the old-age  
38 issue of whether or not the industry is paying  
39 economic rent to the owners of the resource, the  
40 people of Canada, would be addressed. And  
41 everybody that caught a certain amount of fish  
42 would pay back to the Crown, to the owners, but it  
43 would be done equally by those who catch -- per  
44 volume, so big companies would be paying as well  
45 as small harvesters.

46 I would get rid of the current obsession with  
47 biodiversity that you've heard, and move back to

1           what Dr. Walters talked about, which is a harvest-  
2           rate approach to the resource based on aggregate,  
3           and not the one that is based on fixed escapement  
4           policies.

5           I would try to bring all of the people back  
6           together who have an interest in this fishery so  
7           that we could all work together for the common  
8           good of the fish.

9           Q     And my final question: Of all of the issues and  
10           matters and problems that you've heard about and  
11           thought about facing the Fraser River sockeye  
12           fishery, I suggest to you that the recreational  
13           fishery is at the bottom of the list, if indeed  
14           it's on the list.

15          MR. BROWN: In terms of Fraser River sockeye, yes, I  
16           quite agree with you.

17          MR. LOWES: Thank you.

18          MR. MARTLAND: Thank you. Ms. Gaertner?

19          MS. GAERTNER: Mr. Commissioner, Brenda Gaertner, and  
20           with me, Crystal Reeves for the First Nations  
21           Coalition. I'm happy to say I only have one  
22           question that might become two, depending on how  
23           it goes, so I should be very short.

24

25          CROSS-EXAMINATION BY MS. GAERTNER:

26

27          Q     Mr. McEachern, I'm going to start with you in this  
28           question, and Mr. Ashton, if you have anything to  
29           add, please do. You can rest assured that my  
30           questions are mainly for Mr. Grout this afternoon  
31           on this issue and not with the panel.

32           But I'm curious. It's fair to say, I would  
33           think, almost reasonable to say that when DFO  
34           works with you and your group on developing  
35           demonstration fisheries or selective fisheries  
36           that there's a cost to you and an effort that you  
37           take, both in terms of actual cost and perhaps  
38           professional cost in terms of trying something  
39           new; is that correct?

40          MR. McEACHERN: Yes.

41          Q     And is it also fair to say that while you're  
42           working on those demonstration fisheries or, in  
43           your case, Mr. Ashton, the selective fisheries,  
44           that you're working out the details and working  
45           out the problems and that, over time, you're  
46           trying to perfect what you're working on; is that  
47           also fair to say?

1 MR. McEACHERN: Yes.

2 Q And is it also fair to say that at the end of  
3 that, you have a reasonable expectation that if  
4 you've worked out those details, that that fishery  
5 is going to proceed?

6 MR. McEACHERN: Yes.

7 Q And what has DFO said to you about proceeding with  
8 ITQs in your fishery at this point in time?

9 MR. McEACHERN: There would need to be a--

10 Q Let me do -- let me do (sic) more precise for you  
11 on that one. What have they said with respect to  
12 ITQs or IQs as it relates to Fraser River sockeye  
13 salmon?

14 MR. McEACHERN: Sorry, I'm still not sure how to answer  
15 the question. The --

16 Q Has DFO made any promises to you as you've been  
17 working on demonstration fisheries with respect to  
18 ITQs or anything like that as it relates to Fraser  
19 River salmon, as to when you can reasonable expect  
20 that they will be proceeding with that? Have  
21 they given you any expectations on any further  
22 investments that you'll need to make or otherwise?  
23 What have they said to you?

24 MR. McEACHERN: No, the -- it's definitely up to the  
25 Harvest Committee to bring up ITQs to the  
26 Department. The Department is not bringing them  
27 up to me.

28 Q And so as you work with them, and trying to work  
29 out the potential of using ITQs or IQs or any of  
30 those types of things in Fraser River sockeye,  
31 you're not building an expectation that they're  
32 moving forward?

33 MR. McEACHERN: I guess I don't have that expectation  
34 because of the mixed support within my own  
35 community. I'm just trying to offer options.

36 MS. GAERTNER: Those are my questions.

37 Q Oh, Mr. Ashton, do you have anything to add to any  
38 of that?

39 MR. ASHTON: As you know, Area B has, I guess, the last  
40 year, successfully had an IQ fishery on Fraser  
41 sockeye. There was no indication from DFO for  
42 expectations of it being permanent. I spoke,  
43 actually, with Mr. Grout recently about it, and he  
44 said as long as the area Harvest Committee wished  
45 to carry on as a demonstration fishery, that it  
46 would be in place for any future fisheries, but  
47 there's no expectation of it being permanent at

51  
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1 the moment.

2 Q Anybody else from the panel that would like to add  
3 to that?

4 MR. SAKICH: Yes. There is no guarantees in ITQs. I  
5 think some people have that misconception: just  
6 because you have an ITQ of Fraser sockeye does not  
7 mean you're going to achieve the prescribed  
8 number.

9 Q But, right now, the IQs that you're being given  
10 are demonstration or experimental; correct?

11 MR. SAKICH: That's right.

12 Q That would change if they weren't.

13 MR. SAKICH: No, I don't think so. I don't think it's  
14 possible just because you get an ITQ isn't going  
15 to give you the right to overfish your share of  
16 the resource.

17 Q Oh, absolutely. Sorry, that wasn't the intention  
18 of the question. I would agree with that.

19 MR. SAKICH: And there is one other thing missing here  
20 that would help Dennis' issue, and everybody  
21 else's, is that we lost the right to have the true  
22 types of fisheries running where you have a  
23 demonstration fishery paralleling with your status  
24 quo type fishery. Not having those in place does  
25 not help.

26 So in the case of -- our fleet went to ITQ.  
27 We went through the demo for two years, and it was  
28 the folks that decided that they wanted on board  
29 the type of fishery that we were having the  
30 experimental fishery on, rather than the status  
31 quo. So nobody was forced into anything.

32 MS. GAERTNER: Thank you. Those are my questions, Mr.  
33 Commissioner.

34 MR. MARTLAND: Ms. Schabus has helpfully cut her  
35 questions. Ms. Fong?

36 MS. FONG: Lisa Fong for Heiltsuk Tribal Council and  
37 with me is Christian Morey.

38 Mr. Lunn, could you assist and please pull up  
39 Exhibit number 317 which is the IFMP for the  
40 south, and if you can move towards Appendix 4,  
41 there's a chart on page 3/5. In the meanwhile, I  
42 will ask Mr. McEachern a question.

43

44 CROSS-EXAMINATION BY MS. FONG:

45

46 Q As I understood your testimony on the 22nd, there  
47 is the ability, between area groups, for transfers

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1 of allocation in season; is that correct?

2 MR. McEACHERN: It's part of the policy that if the  
3 fish transfer -- fish move through your area and  
4 you haven't been able to catch them, either due to  
5 too much fish or other constraints, or just  
6 political issues, that the further down -- the  
7 next group along the line that shares your gear  
8 type would automatically be transferred those  
9 fish.

10 None of those gear -- none of those two areas  
11 could catch them. Anyone else in the commercial  
12 \*13:47:37 fishery that's left in line would  
13 receive that allocation. That's the only context  
14 in which I understand that question.

15 Q Okay. And you just said "would be automatically  
16 transferred." Is that the case that it's  
17 automatic or is there some discretion on DFO and  
18 the part of the area groups?

19 MR. McEACHERN: I might not be quite familiar enough  
20 with that process. You might want to try -- Chris  
21 is in the Fraser Panel. I'm not sure what  
22 discussion actually happens at the Fraser Panel,  
23 but my understanding as a commercial area advisor  
24 is that if the fish move first to another gillnet  
25 group, and if another gillnet group can't catch  
26 them, then they would move to the seine fleet.

27 Q Okay. Before I go to Mr. Ashton, I'm just going  
28 to ask you, Mr. McEachern, if you're aware,  
29 looking at that chart there under the chart "South  
30 Coast for South Coast Sockeye, Fraser River  
31 Sockeye", now this is the chart for the pre-season  
32 allocation for 2011 to -- sorry, 2010 to 2011. So  
33 for the 2010 fishing season, do you know if there  
34 were transfers of allocation and how that shifted?

35 MR. McEACHERN: Yes. There was a number of fish from  
36 Area D were transferred to Area E to increase  
37 their allocation but, however, they couldn't catch  
38 it all either, and I think that fish probably  
39 ended up being caught by Area B.

40 Q Okay. And perhaps here I can just ask Mr. Ashton  
41 if he's aware of that transfer allocation in  
42 relation to this graph so that he can confirm that  
43 Seine B picked up the allocation when D and E  
44 could not complete their uncaught catch  
45 allocation.

46 MR. ASHTON: Yes, that's correct. The fish had passed  
47 through Johnstone Strait which is Area D's area to

1 fish, and because of the coho closures in the  
2 river that take place the day after Labour Day,  
3 Area E was unable to catch it, so then that fish  
4 was left -- or transferred into Area B's catch.  
5 Q Okay. And then eventually, because D couldn't  
6 catch it all, Seine B received the allocation.  
7 MR. McEACHERN: That's correct. Or the opportunity to  
8 catch it.  
9 Q Correct.  
10 MR. McEACHERN: We didn't catch it all.  
11 MR. MARTLAND: And I should just point out, this is the  
12 2009 to 2010 IFMP that's on the screen.  
13 MS. FONG: Thank you.  
14 MR. MARTLAND: Thank you.  
15 MS. FONG:  
16 Q And, Mr. Ashton, I'm just going to come back to  
17 that question I'd asked Mr. McEachern. Seeing as  
18 you sit on the Fraser River Panel, the transfer  
19 allocation process in season, how does that occur?  
20 Is that -- and what I'm asking for, the mechanics  
21 of it. Is there a request at the table? Is there  
22 discussion? Are the area groups represented? I  
23 want to understand how much input there is in such  
24 a decision.  
25 MR. ASHTON: Well, primarily the Fraser River Panel,  
26 Canadian caucus side, is -- its interest is to  
27 look after Canadian fisheries. I guess where the  
28 individuals, such as myself and Peter Sakich and  
29 another gentleman, Les Rombaugh, represents  
30 gillnets on the panel, and John Murray, they --  
31 when we get to the point of actually having a  
32 catch being allocated, then they ask for our  
33 advice on how we would best determine the fishing  
34 methods and the time and areas.  
35 But to the question you're asking, that is  
36 more of a Department of Fisheries allocation.  
37 These allocations aren't through the Fraser Panel.  
38 Q Okay. I understand. So what you're explaining to  
39 me is that the area groups would have discussions  
40 or communications with the DFO, and there would be  
41 a sort of consultation as between them before that  
42 decision as to the transfer allocations made; is  
43 that correct?  
44 MR. ASHTON: In a lot of respects, that's how it would  
45 take place, but basically it's sort of *de facto*  
46 process that the abundance of sockeye had already  
47 passed through Area D's fishing area and wasn't

1 going to be available to Area E, so there was  
2 Canadian commercial TAC available.

3 Q Okay. And are you aware, given the various  
4 allocations here, was there a compensatory aspect  
5 to the allocation? So, for example, when Seine B  
6 was able to obtain a larger portion of the  
7 allocation, was there some sort of compensation  
8 that was given to D or E?

9 MR. ASHTON: No, there wasn't.

10 Q Okay. And is that an arrangement, that decision,  
11 is that a private decision as between Seine B and  
12 D and E, or is that something that DFO would give  
13 direction on?

14 MR. ASHTON: No, they wouldn't. There's been a number  
15 of instances over the years where fish have been  
16 -- area fishery groups have been unable to catch  
17 their share of allocation for one reason or  
18 another, and it has just flowed into somebody  
19 else's catch.

20 But in regards to 2010, Area B and H were  
21 jointly doing an ITQ demonstration project and,  
22 under the rules of that project, they were allowed  
23 to transfer IQs between Area B vessels or Area H  
24 vessels. It was interchangeable. But there was,  
25 since Area D and E were both fishing in a derby-  
26 style fishery, there was no mechanism of transfer  
27 there.

28 Q Okay. But in terms of the compensatory aspect,  
29 like, for example, dollars for some fish because  
30 Seine B picked up some extra allocation, that gets  
31 worked out between the area groups, not -- if I  
32 understand your evidence correctly -- not a  
33 direction from DFO?

34 MR. ASHTON: No, there is not arrangements to pay for  
35 that fish.

36 Q Okay. And, Mr. Ashton, like putting aside, you  
37 know, how the allocation -- how the transfer of  
38 allocation might happen, would you -- would you  
39 agree that it's better to have this flexibility  
40 within the pre-season -- or, sorry, within the in-  
41 season management to be able transfer allocation,  
42 than it would be to have, for example, a rigid  
43 system where these percentages would be adhered to  
44 regardless of whatever is happening with the fish.  
45 So would you agree that flexibility is better?

46 MR. ASHTON: Well, the flexibility often flows out of  
47 what happens in-season. DFO attempts to, as well

1 as they can, to try and make sure each fishing  
2 group obtains their allocation as close as they  
3 can, close as is possible to do, but I don't know  
4 -- I'm unsure of the direction of your question.  
5 Q Oh, I'm just asking about the flexibility 'cause  
6 not everyone enjoys flexibility. So I just want  
7 to understand. Flexibility is a good thing as  
8 opposed to rigidity where --  
9 MR. ASHTON: Well, I mean --  
10 Q -- it's 47.5 percent or nothing.  
11 MR. ASHTON: These numbers that are set out pre-season,  
12 they are target allocations. For any number of  
13 reasons, a group may not obtain their allocation.  
14 Q Right.  
15 MR. ASHTON: Sometimes it's caught by another group for  
16 reasons that were just described before.  
17 Q And it's good to have that level of flexibility,  
18 would you agree?  
19 MR. ASHTON: Oh, yeah, yeah.  
20 Q Thank you. And Mr. McEachern, would you agree  
21 also that having flexibility to transfer  
22 allocation within in-season is a positive thing in  
23 comparison to a rigid rule that says no transfers?  
24 MR. ASHTON: My feeling on it is it's very positive to  
25 have that flexibility to be able to transfer the  
26 fish around between the commercial fleet. I think  
27 where you're going to have -- it becomes much more  
28 -- because the commercial fishermen see each other  
29 as common participants in the goal of catching  
30 fish for Canada. If fish was to be transferred  
31 outside of the commercial fleet, that would be the  
32 kind of flexibility that I would have trouble  
33 with.  
34 Q Thank you. And, Mr. Sakich or Mr. Brown, do you  
35 have any comments about the positive or  
36 negativeness of flexibility versus a rigid rule?  
37 Perhaps we can start with Mr. Sakich, if that's  
38 okay, Mr. Brown. Thank you.  
39 MR. SAKICH: The flexibility works very well. That was  
40 -- in between Area H and B, something that hasn't  
41 come up here, there was over -- let's say from B  
42 to B, B to H, H to B, there was over a thousand  
43 transfers a week or ten days before the season  
44 ended that took place between those two gear  
45 types. Not totally between those two gear types,  
46 but in the flexibility realm there was transfers  
47 all different ways. So, like I said, it might be



1 a bit of research that you would have a look at  
2 that was over a thousand -- I think it probably  
3 ended up around 1200, 1300 I'll bet. So that's  
4 flexibility.

5 Q Thank you Mr. Sakich. And Mr. Brown?

6 MR. BROWN: Yes, Ms. Fong and Commissioner, I obviously  
7 agree that flexibility is a highly desirable  
8 principle and I would argue, based on my  
9 historical research, that there was a lot more  
10 flexibility in the past and the stocks didn't  
11 collapse. In fact, they were rebuilt from Hell's  
12 Gate to near record levels in the 1980s with  
13 flexible management arrangements.

14 I would make this one observation, and I make  
15 it both as a union leader over many years, but as  
16 an Area E harvest member at the moment, elected to  
17 that position by commercial fishermen, that there  
18 is very little flexibility in DFO's current  
19 approach. I have, all too often, heard fishermen,  
20 for one, under great duress, tell me, "Dennis, I  
21 don't like ITQs. I have concerns about them.  
22 But, you know, when we were at the DFO last week,  
23 they said if we don't move to ITQs, we're not  
24 going to fish again." That is not a good way to  
25 be flexible. It's not a good way to bring buy-in  
26 from fishermen. It's kind of a form of coercion.

27 I have heard repeatedly DFO officials - Mr.  
28 Grout being one of them - that constantly go on  
29 saying unless you people can meet certain  
30 standards and meet certain pre-conceived notions  
31 about how we'd like to see the fishery managed,  
32 it's going to be very difficult for us to open it.

33 Now, he may or may not be right about that,  
34 but I tend to think that there's a bit of an  
35 overstatement here in terms about the fact that  
36 the only way you can get flexibility in managing  
37 the fishery is by changing property rights to the  
38 fishery. I think there is a plethora of ways one  
39 can be flexible about both managing to risk-averse  
40 conservation target and allocation targets without  
41 doing that. This is the point that I've been  
42 trying to make, and I hope I'm not overly  
43 repetitive, is that we've seen a diminishment of  
44 flexibility options within the Department, within  
45 the Department's toolbox, which have been known  
46 for many, many decades, because after 2005, Dr.  
47 Peter Pearse wrote a report and said we should

1 move to ITQs, and that was adopted by the Minister  
2 of Fisheries of the day, and it's become the party  
3 line.

4 I would like to go back to the time where  
5 politics and all of these other concepts were put  
6 to the back and we really do what you're just  
7 saying: Look at what is the best thing to do in a  
8 given situation in a pragmatic and flexible way  
9 and see if we can work it out. I think we can.

10 MS. FONG: Thank you. Those are my questions.

11 MR. MARTLAND: Thank you. Mr. Commissioner, I'm  
12 mindful of the time. We're almost in the last few  
13 moments, I think, of dealing with this evidence.  
14 There's no further cross-examination. I have one  
15 very quick set of questions for Mr. McEachern that  
16 I think are properly re-examination that Mr.  
17 Rosenbloom identified for me. If I might lead --  
18 and I'd welcome anyone to object.  
19

20 RE-EXAMINATION BY MR. MARTLAND:  
21

22 Q Mr. McEachern, I take it that through counsel, you  
23 read the transcript of your first day of testimony  
24 here before the Commission last week and  
25 identified four specific errors in the transcripts  
26 referring to the testimony that you were part of  
27 that day?

28 MR. McEACHERN: Yeah, myself, and there's just one  
29 minor error with Dennis Brown's too.

30 Q And I'd like to take you through those very  
31 quickly. Page 38 -- and I'll simply read these  
32 into the record and we can pick up the discussion,  
33 if any, arising.

34 Page 38, line 32 of the transcript for  
35 Tuesday, the 22nd of February. Fleet "boat", b-o-  
36 a-t, should be replaced with fleet "vote", v-o-t-  
37 e.

38 MR. McEACHERN: Roger. Sorry, yes.

39 Q All right. I didn't mean to move you into  
40 different lingo. Page 60, line 10, that's where  
41 Mr. Brown testified and I think referred to you,  
42 or Mr. McEachern and commented about Area E, but  
43 the transcript provides "Area A".

44 MR. McEACHERN: Yeah, he did say "E". That's just a  
45 typo or something.

46 Q All right. Page 78 --

47 MR. MARTLAND: And Mr. Lunn, I don't need you to try

58

PANEL NO. 21

Cross-exam by Mr. Harvey (TWCTUFA)

Cross-exam by Mr. Rosenbloom (cont'd) (GILLFSC)

1 and move as fast as I'm going.

2 Q But page 78, line 5, there's reference to  
3 "kingfish", one word, but I take it that should  
4 refer to Canadian Fish, the company?

5 MR. McEACHERN: Yeah, that's a funny mistake, that one.

6 Q All right. Page 79, line 38, the word "to", t-o,  
7 should be "t-o-o". I think you made a comment  
8 about something that affected you "too".

9 MR. McEACHERN: Yeah, just that the hardship was  
10 including myself as well. So that should be the  
11 inclusive "too" as in t-o-o.

12 MR. MARTLAND: Mr. Commissioner, those are the quick  
13 points I wanted to address. Mr. Rosenbloom  
14 identified that he had very short questions on re-  
15 examination, and then we're finished with this  
16 panel.

17 MR. ROSENBLOOM: I'll be a minute or less, Mr.  
18 Commissioner.

19

20 CROSS-EXAMINATION BY MR. ROSENBLOOM, continuing:

21

22 Q Mr. Ashton, much has been said about the bunt grid  
23 study where DFO approached your group and there  
24 was correspondence back and forth. Last day we  
25 put in a bundle of documents in terms of your  
26 correspondence. I want to refer you very, very  
27 briefly to Exhibit 489.

28 MR. ROSENBLOOM: Mr. Lunn can put that before you. I  
29 think you'll see it there on the screen.

30 Q Sir, in an email, Mr. Curry writes to you January  
31 17th, 2005. He says in the middle paragraph of  
32 that email:

33

34 A meeting was held in Vancouver on December 8  
35 to review progress on grids and knotless  
36 bunts since 1999 and to review the results  
37 from 2004.

38

39 This gear has shown compelling results and  
40 will be further analyzed through the  
41 development of a PSARC paper due for May 8th,  
42 2005.

43

44 Is it your understanding, sir, that that study was  
45 never done in 2005?

46 MR. McEACHERN: That's my understanding. I don't  
47 recall ever hearing any more about it.

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1 Q So it's your understanding that not only was the  
2 study not done in 2005, but it's never been done  
3 since?

4 MR. McEACHERN: I don't believe so.

5 MR. ROSENBLOOM: Thank you. I have no further  
6 questions.

7 MR. MARTLAND: Mr. Commissioner, that concludes the  
8 evidence from this panel.

9 THE COMMISSIONER: Just before you go, there, I just  
10 wonder -- I want to raise with you, Mr. Martland,  
11 and see whether Mr. Harvey and Mr. Lowes would  
12 agree, but I don't have a copy and I haven't seen  
13 a copy of Mr. Brown's book, I don't believe. But,  
14 in any event, at least today, reference was  
15 actually made from some pages of that book, and  
16 I'm wondering whether the pages, at least, that  
17 were referred to and read to the witness - he is  
18 the author of those pages - should not be at least  
19 marked for identification, if not, as an exhibit.

20 MR. MARTLAND: I think that's an appropriate  
21 suggestion, Your Honour -- I'm sorry, Mr.  
22 Commissioner. I wonder if I might suggest that if  
23 those in the room are in agreement, we can discuss  
24 among counsel how we're best to put that in as an  
25 exhibit and then look to do that this afternoon,  
26 if we're able.

27 THE COMMISSIONER: Yes, that's fine.

28 MR. MARTLAND: Thank you.

29 THE COMMISSIONER: You're now done with this panel?

30 MR. MARTLAND: Yes, and I was simply going to canvass  
31 with respect to the timing for when we might  
32 reconvene in the afternoon and Mr. Grout's  
33 evidence.

34 THE COMMISSIONER: I would prefer, given the time, to  
35 reconvene at 2:00. We could reconvene at ten to  
36 2:00 if that's convenient for everyone in the  
37 room.

38 MR. MARTLAND: If I could request that, please. Thank  
39 you.

40 THE COMMISSIONER: That's fine. I would, before we  
41 leave -- and I presume we're going to leave now,  
42 is that...?

43 MR. MARTLAND: That's right.

44 THE COMMISSIONER: I want to express my gratitude to  
45 Mr. Brown, Mr. McEachern, Mr. Sakich and Mr.  
46 Ashton for their attendance here on Friday -- or  
47 last week, I should say, and here again today.

1 I'm grateful that you were able to do that and  
2 that you were willing to participate in the way  
3 that you have and for the time that you've taken  
4 on behalf of this Commission and the public to be  
5 here and give your views and answer the questions.  
6 So thank you all very much for that.

7 If we have nothing further, then, with this  
8 panel, they may be excused. You're welcome to  
9 stay, of course. They don't have to; we do. So  
10 we'll give them that option. We'll be back at ten  
11 to 2:00. Thank you.

12 THE REGISTRAR: The hearing is now adjourned until ten  
13 to 2:00.

14  
15 (PROCEEDINGS ADJOURNED FOR NOON RECESS)  
16 (PROCEEDINGS RECONVENED)

17  
18 JEFF GROUT, recalled.

19  
20 MR. EIDSVIK: Philip Eidsvik for the Area E Gillnetters  
21 Association and B.C. Fisheries Survival Coalition,  
22 for the record.

23  
24 CROSS-EXAMINATION BY MR. EIDSVIK, continuing:

25  
26 Q Mr. Grout, there's been a number of days talked  
27 about IQs and again this morning we spent a lot of  
28 time on IQs, and the IQs in the commercial, public  
29 commercial troll and the seine sectors and  
30 gillnet. Can you tell the Commissioner how the  
31 lack of IQs in these fisheries can explain how 15  
32 million sockeye have disappeared between Mission  
33 and the spawning grounds in the last, well, since  
34 about 1990? Can you tell him how IQs in our fleet  
35 cause that problem, the lack of IQs?

36 Probably because that's a tough question,  
37 maybe I can move on one more time. Then maybe you  
38 can tell us, I mean, we've had a difficult time in  
39 the management of the fishery since about 1990.  
40 Can you tell us how IQs in the public commercial  
41 fishery would have cured some problem that the  
42 public commercial fishery has done since 1990 to  
43 put the fishery in the shape that it's in.

44 A Well, in terms of the share-based approach and  
45 we've used ITQs in some of the Fraser River  
46 sockeye fisheries, Area B and H notably, and what  
47 we've seen in those fisheries in particular is a

- 1 better ability to manage to a specific share of  
2 the catch in those fleets.
- 3 Q No, excuse me, Mr. Grout, I didn't ask you what we  
4 are talking about the future. I'm asking what did  
5 those fleets do between, say, about 1990 and 2009  
6 to create the problem that this Commission's  
7 meeting today. Was there overfishing in the  
8 public? Did they not put enough fish to Mission?  
9 I'm trying to get specifically what problem in the  
10 management of the commercial fleet between 1990  
11 and 2005, the brood year for 2009, can be cured by  
12 putting IQs in there, what problem in that fleet?
- 13 A Well, we're looking at using a Pacific fisheries  
14 reform and the move to a share-based approach to  
15 address a number of issues in terms of how the  
16 fishery is managed.
- 17 Q I understand you're trying to change how the  
18 fishery is managed for the future. I'm trying to  
19 understand what problem in the management of the  
20 fishery that caused the collapse of Fraser River  
21 sockeye could have been cured if there had have  
22 been IQs prior -- between 2005 and 1990.
- 23 A Well, if you're asking me for -- well, maybe I can  
24 ask you. Is your question, are you asking me what  
25 role commercial fishing potentially had in the  
26 decline of Fraser River sockeye?
- 27 Q Well, that's probably a good place to start.  
28 That's the first question.
- 29 A Well, in terms of that question, Science staff in  
30 the Department are better placed to explore that  
31 hypothesis, amongst others, that might explain  
32 the cause of the decline. Certainly in a recent  
33 workshop that was chaired by Dr. Randall Peterman  
34 and David Marmorek, they did not -- the  
35 participants at that workshop did not feel that  
36 fishing was a likely cause of the poor return that  
37 we saw in 2009, at least in the findings in that  
38 workshop.
- 39 Q That's helpful, and it's just a lot of us are  
40 thinking that all the time we're spending on IQs  
41 kind of distracts us from finding out the real  
42 reasons of the decline of Fraser River sockeye.  
43 Now, one other question on that. Is DFO imposing  
44 IQs in the aboriginal commercial fishery on the  
45 Fraser River?
- 46 A Well, we're working with willing fleets as far as  
47 potential different management approaches, so we

- 1 have not imposed ITQs or IQs on any of our  
2 commercial fleets at this point. In terms of a  
3 share-based approach, we are managing economic  
4 opportunity fisheries, for example, in the Fraser  
5 River to a defined share of the commercial total  
6 allowable catch, which is specified as a  
7 percentage.
- 8 Q Okay. And that's pretty well the same for Area E  
9 fleet. Area E's managed to a percentage of the  
10 defined TAC, isn't it?
- 11 A We do have a fleet share specified --
- 12 Q Okay.
- 13 A -- for Area E, as well.
- 14 Q That helps. You talked in your testimony about an  
15 experiment that you ran with Area E in 2002 where  
16 there was a short fishery that had a catch  
17 allocation of 30,000 and caught 45,000. You were  
18 quite critical of that. Was there an unexpectedly  
19 high number of fish in the river at the time?
- 20 A Well, the point I was making there was that it's  
21 very challenging to control the various different  
22 parameters that you might use in setting up a  
23 fishery opening, including the numbers of fish  
24 that might be in the river.
- 25 Q Forgive me for interrupting. The question I was  
26 just asking, was there an unexpected --
- 27 MR. TIMBERG: Mr. commissioner, if the witness could be  
28 allowed to answer the question, please. Mr.  
29 Eidsvik keeps interrupting him while he's  
30 answering.
- 31 MR. EIDSVIK: My problem is, is the question, we have  
32 little time and I'm trying to get out the answers  
33 to the questions that I want. And I'm sorry, Mr.  
34 Grout, if I am interrupting you, and I apologize  
35 for that. But I guess I --
- 36 MS. TIMBERG: But I'd like to resolve this, and if you  
37 ask a question, I think the witness is entitled to  
38 provide an answer.
- 39 MR. EIDSVIK: Here's the question. I'll repeat my  
40 question.
- 41 Q Was there an unexpectedly high number of fish in  
42 the Fraser River at the time of that experiment?  
43 That was my question.
- 44 A It's possible there was a higher abundance than  
45 expected at the time when that fishery occurred.
- 46 Q In 2002 we had a gross escapement over ten million  
47 fish, didn't we?

1 A I'd have to look at the specific data for that  
2 year.

3 Q I won't bring you to the document because it will  
4 take some time. But it is an exhibit, the 2002  
5 Fraser Panel Report.

6 Now, Jim Woodey, in his testimony, said that  
7 in 2002 there was a lengthy dispute about how to  
8 deal with the early entry of Late run sockeye. He  
9 said that DFO was advised by himself and other  
10 people in the industry that one way to deal with  
11 the problem was to let Area E crop the early entry  
12 fish, because the vast majority of them would die  
13 before they spawned. You were in fisheries  
14 management at that time. Do you remember any of  
15 those discussions?

16 A Yes, I do.

17 Q And why didn't DFO take Mr. Woodey's advice?

18 A Well, that was back when we were really coming to  
19 grips with the sort of problems we had in terms of  
20 early entry of Fraser sockeye into the Fraser  
21 River. There was certainly some evidence to  
22 suggest that some of these early entry fish may  
23 not survive to spawn, but there was no evidence  
24 that they were all not going to survive to spawn,  
25 for example. So there was a reluctance to  
26 undertake a sort of management approach where you  
27 would try and harvest all of the fish coming into  
28 the river early. There were still concerns at  
29 that time about Cultus Lake sockeye, for example.

30 Q Yeah. I don't think anybody was saying we should  
31 harvest all of the Late run, but there was, I  
32 think, pretty serious discussions about how long  
33 should we keep harvesting those early entry fish,  
34 knowing the ones that hit the river the earliest  
35 will be the most likely to die and the ones that  
36 come in at the normal time will be the most likely  
37 to survive. Can you offer any expansion on what  
38 you just said?

39 A Well, I think since that time there's been a  
40 considerable amount of work with radio and  
41 acoustic tagging to try and further improve the  
42 sort of information that we can get about the  
43 timing and migration success of these different  
44 salmon.

45 Q But at the time in 2002 Mr. Woodey's advice was  
46 disregarded. We put 10 million fish on the  
47 spawning grounds and there was a considerable loss



1 of economic opportunity for the commercial sector  
2 and for aboriginal groups and for recreational.  
3 Is that fair to say?

4 A Yes, that's the potential outcome there.

5 MR. EIDSVIK: Thank you.

6 MR. MARTLAND: Mr. Commissioner, I'll just point out  
7 Mr. Eidsvik is hearing the completion of his  
8 estimate of time. Thank you.

9 MR. EIDSVIK: That's good. I only have a couple more  
10 things to go over fairly quickly.

11 Q Mr. Hargreaves, in his testimony last week, he  
12 said that, referring to a revival box:

13  
14 Properly designed, a revival tank can bring  
15 back fish that are by all intents and  
16 purposes, even by the experts, the fishermen  
17 themselves, dead. Fishermen ranked them as  
18 dead. They're in the net, they come aboard,  
19 they're dead. You put them in a revival  
20 [box] and up to 90 percent of those fish will  
21 revive and become fully functional again.

22  
23 In your testimony last week you said that you  
24 didn't ask or have a regulation for aboriginal  
25 fishermen in the river to have revival boxes  
26 because there's a cultural practice not to waste  
27 salmon that have been killed. Now, I guess if Mr.  
28 Hargreaves is right, we don't really know if  
29 they're dead or not when they're brought on board;  
30 is that correct? Do you agree with Mr.  
31 Hargreaves?

32 A Maybe you could rephrase your question. I thought  
33 I heard more than one question there.

34 Q Okay. Do you agree with Mr. Hargreaves' point  
35 that coho coming on board, you don't really know  
36 if they're dead, and a revival box, even ones that  
37 appear to be dead, revival box can revive 90  
38 percent of them.

39 A Oh, I think Mr. Hargreaves is an expert on this  
40 matter, and he's done a bunch of the research.  
41 Certainly not all of the coho that you bring on  
42 board are going to be in a dead sort of condition.  
43 A number of them will be still fighting actively.

44 Q So of the ones that are dead, Mr. Hargreaves says  
45 you can revive 90 percent. Do you agree with  
46 that?

47 A If that was his statement that he's made. I will

1 point out that in the Integrated Fisheries  
2 Management Plan we've summarized the information  
3 stemming from the selective fishing studies and we  
4 do have a release mortality of 60 percent that's  
5 applied in the gillnet fishery and can be as low  
6 as 40 percent, depending on other factors.

7 Q And I'm harping on the point that we've been over  
8 a few times and it's the absence of revival boxes  
9 in the aboriginal fleet when we're in the chum or  
10 sockeye fishery, and the absence of a regulation  
11 saying throw all fish overboard. You say that  
12 aboriginal fishermen can keep the coho because  
13 they're aware which ones are dead and they  
14 wouldn't waste fish. And it seems we've got a  
15 fisheries practice on a really important bycatch  
16 of fish that's based on a cultural factor that I  
17 don't know where it comes from. Have you heard  
18 any studies about that cultural practice?

19 A Well, you've misrepresented to begin with what I  
20 stated, and what I stated last week was that  
21 revival boxes are required in the First Nation  
22 fishery for the larger vessels over 30 feet.  
23 There are also provisions in the Area E licence  
24 conditions for vessels that are under 30 feet  
25 which allow for different release practices from  
26 the revival boxes.

27 Q So your testimony here today is that not all  
28 vessels in the regular all citizens commercial  
29 fleet need revival boxes. Is that what you're  
30 saying?

31 A No, it is not. I said, and we can go to the  
32 licence conditions, I believe we've seen them.  
33 There's an exhibit with Area E licence conditions,  
34 so I'm happy to point you to the spot. But I  
35 stand by my earlier testimony that revival boxes  
36 are required in the commercial fishery. There are  
37 provisions for vessels smaller than 30 feet to  
38 have different design or ability to release fish  
39 from those boxes.

40 Q In your explanation for why aboriginal fishermen  
41 were allowed to keep dead sockeye, you said it was  
42 because -- and I'll read your words:

43  
44 And one of the reasons there is cultural  
45 practice not to waste salmon that have been  
46 killed.  
47

1 Now, Mr. Hargreaves illustrates that we can't  
2 really tell what's been killed, so a revival box  
3 was handy. And I'm wondering, there's a policy  
4 and a regulation and a practice on coho, which  
5 really serious conservation issue, that appears  
6 that you've built it on a cultural practice, and  
7 I'm just wondering what do you have to  
8 substantiate that cultural practice you referred  
9 to?

10 A This cultural practice has come up in discussions  
11 with the First Nations involved that have  
12 requested licence conditions to allow for  
13 retention of fish that are, the words used,  
14 "mortally wounded".

15 Q And you're probably aware that there's other  
16 academic theory out there that would say that the  
17 cultural practice so far as wasting fish between  
18 aboriginal communities and other communities are  
19 probably the same, because nobody likes to waste  
20 fish.

21 A Yes, I've heard that.

22 MR. EIDSVIK: Those are all my questions. Thank you,  
23 Mr. Commissioner.

24 MR. MARTLAND: Ms. Gaertner.

25 MS. GAERTNER: Mr. Commissioner, Brenda Gaertner, and  
26 with me Crystal Reeves for the First Nations  
27 Coalition.

28 I am going to, as I am wont, start with a  
29 little brief story to open this examination. Last  
30 week, when I thought I was going to have the  
31 opportunity of asking Mr. Grout some questions, I  
32 had the crazy coyote arrive at my office in the  
33 morning, but in the form of Grand Chief Saul  
34 Terry. Now, you've met Grand Chief Saul Terry as  
35 a witness and also up in his homeland, in the  
36 Stl'atl'imc, Bridge River. And we had a moment,  
37 and I reminded him what we were speaking about  
38 that day and the next couple of days, and his  
39 comments, and I'm sure he'll say them directly to  
40 you if they become relevant, but his comment was,  
41 "Well, that the Department is somewhat challenged  
42 by their own history when it comes to allocation."  
43 And so I asked him what he meant by that. And we  
44 only had a few seconds, but he said that having  
45 established for decades a fishery that is in the  
46 marine, and having industrial fisheries developed  
47 - this is all common knowledge so it's not as if

1 I'm giving evidence - that they've had quite  
2 abilities to harvest the fish that quite a long  
3 streak, and now the law requires that conservation  
4 and FSC fisheries have changed that established  
5 fishery. And so that by that way the Department  
6 is challenged by their own history.

7 So that was the story I was going to tell you  
8 last week, but I had the weekend to think about  
9 it, and I wondered really why it was that Grand  
10 Chief Saul Terry has come and given me, and he  
11 gave me the title to these questions, and the  
12 title to these questions are "outstanding  
13 business".  
14

15 CROSS-EXAMINATION BY MS. GAERTNER:  
16

17 Q And Mr. Grout, I want to also start by letting you  
18 know that you probably hear this up at negotiating  
19 tables more often than this type of setting. And  
20 it's an important practice that my clients have  
21 asked me to use here, and I think it's important,  
22 which is that sometimes we have to work the issues  
23 hard but not the people hard. And so we've got  
24 some things to do today. You may ask a number of  
25 times why I'm asking you these questions. They  
26 are not directly from your own personal  
27 experience, I don't think, but you are here to  
28 talk about allocation on the part of the  
29 Department of Fisheries and Oceans, and as you  
30 know, that's sometimes quite a contentious issue  
31 amongst the harvesters of the resource. And  
32 there's some history that I need Mr. Commissioner  
33 to know about, and I'm going to have to do it  
34 through you, because you're the witness. So bear  
35 with me on some of those and we'll go through them  
36 as quickly as we can and we'll get to where we  
37 need to go.

38 And so I'm going to start with Exhibit 264,  
39 which is the Allocation Policy of the  
40 Department's, and I'm going to take you to page  
41 15. And, Mr. Commissioner, at page 15 of the  
42 Allocation Policy, Exhibit 264, we begin to get  
43 the fundamental principles that guide the  
44 Department of Fisheries and Oceans as it relates  
45 to fisheries management.

46 And you'll agree with me, Mr. Grout, that we  
47 start with conservation. And that's the overall

- 1 allocation, legal responsibility that the Minister  
2 has under the **Fisheries Act**; is that correct?
- 3 A Yes.
- 4 Q So it's not really a policy, per se, it's a legal  
5 requirement.
- 6 A That's correct.
- 7 Q And then we go to Principle 2 on the next page,  
8 and again the second principle that we're talking  
9 about here is they call it First Nations, but you  
10 describe it as being the food, social and  
11 ceremonial requirements and treaty obligations.  
12 And again you'll agree with me that that's not so  
13 much a principle as a legal requirement. Would  
14 you agree with me on that?
- 15 A Yes.
- 16 Q All right. And then the third principle and the  
17 fourth principle which we'll talk about in a  
18 little bit more detail. We go then to the common  
19 property resource, and then allocations between  
20 recreational and commercial. So you're with me on  
21 that, that's a policy you're familiar with and  
22 you've given some evidence of.
- 23 Let's start first with conservation. Will  
24 you also agree with me that allocations for  
25 conservation purposes, and I'm stressing the word  
26 "allocations" there, are becoming more and more  
27 sophisticated and perhaps more and more difficult  
28 as we begin to implement the Wild Salmon Policy  
29 and begin to understand how we're going to  
30 allocate for conservation purposes on the Fraser  
31 River sockeye salmon and the conservation units.  
32 That's definitely outstanding business and a fair  
33 bit of challenge going forward; is that correct?
- 34 A Well, I have heard from First Nations and others  
35 about the methods the Department uses to set  
36 conservation objectives for Fraser sockeye and the  
37 challenges that the groups have in terms of  
38 understanding the Fraser River Sockeye Spawning  
39 Initiative model and process.
- 40 Q And you'll agree with me, and perhaps this isn't  
41 something you're at all familiar with, that as it  
42 relates to the implementation of the Wild Salmon  
43 Policy, we're clearly at the infancy stage and we  
44 haven't got to Strategy 4 in any kind of depth  
45 where we deal with the socioeconomic issues around  
46 conservation; is that correct?
- 47 A I think we have some examples of where that's been

- 1 done, but I certainly explain there'll be more  
2 cases of that, as well, to come in the future.
- 3 Q All right. And then we go next to Principle 2,  
4 which is the First Nations, legal priorities for  
5 FSC and treaty obligations. Will you agree with  
6 me that as it relates to the allocation of FSC in  
7 practice, many First Nations do not agree with the  
8 allocations and do not think that they're adequate  
9 and absolutely believed there is more discussion  
10 and consultation that's required between DFO and  
11 the allocations for FSC?
- 12 A Yes, I think that's accurate.
- 13 Q And are you aware of any ongoing and immediate  
14 processes that would result in consensus on the  
15 allocations for the FSC fisheries?
- 16 A Well, there's a number of ways that the Department  
17 would go about doing that. Probably some of the  
18 specifics are better asked of some of our Treaty  
19 and Aboriginal Policy Directorate folks, but  
20 certainly treaty negotiations would form part of  
21 that. We do work with groups in the Lower Fraser  
22 in particular around developing comprehensive  
23 fisheries agreements where allocations would be a  
24 specific topic of discussion with those groups.
- 25 Q And you're aware that DFO doesn't recognize an  
26 aboriginal, i.e., a Section 35 Commercial Fishing  
27 right unless it's in a treaty or it's been proven  
28 in court; is that correct?
- 29 A Yes, that is our practice.
- 30 Q And you'll also agree, and we'll go next to  
31 Principle 3, and it leads from the FSC priorities,  
32 that we're dealing with a fully subscribed  
33 commercial fishery.
- 34 A That's correct.
- 35 Q The limited entry licensing.
- 36 A Yes.
- 37 Q So it's a little bit of a stretch to think of  
38 fisheries as a common property resource in those  
39 settings, isn't it, especially as it relates to  
40 the commercial fishery?
- 41 A Well, it's common property in that the fish in the  
42 water are the common property of the people of  
43 Canada, and the licenses provided by the Minister  
44 provide a privilege to harvest those fish.
- 45 Q But it's not up to any individual to be able to  
46 easily go and commercially fish. They have to  
47 acquire these expensive commercial licenses at

- 1           this point in time. It's not common property for  
2           them to be able to go and fish commercially.
- 3        A     A license would be required, yes.
- 4        Q     And it's a fully subscribed commercial fishery.
- 5        A     I would say that's accurate.
- 6        Q     And so where I'm going, Mr. Grout, and again I  
7           don't think it is -- is that in order to  
8           reallocate for FSC fisheries, or in order, I mean,  
9           to allocate for FSC fisheries, or to allocate for  
10          First Nations in order to access commercial  
11          fisheries, you actually need to reallocate, don't  
12          you.
- 13       A     Well, you asked about FSC and then you said  
14          commercial. So FSC allocations come before any  
15          commercial or recreational allocations that occur.  
16          They're first in priority after those. In terms  
17          of additional commercial access, it's been the  
18          Department's approach to transfer access from the  
19          existing commercial fishery.
- 20       Q     Right. And in fact if you -- so it's a  
21          reallocation or as you said a transfer. We're  
22          probably using different words to say the same  
23          thing.
- 24       A     Yes, for commercial access for First Nations.
- 25       Q     And if you were actually going to increase the  
26          allocation for FSC fisheries, that has to come  
27          from somewhere, doesn't it?
- 28       A     That's correct.
- 29       Q     And so it would either have to come from the  
30          commercial fishery or the recreational fishery; is  
31          that fair to say?
- 32       A     Yes.
- 33       Q     Okay. So now I want to take you, if I may, to  
34          Exhibit 269, and that's --
- 35       A     Sorry, Ms. Gaertner, can you give the tab numbers,  
36          too, as well, please.
- 37       Q     Oh, I could try.
- 38       A     Oh, you don't have that?
- 39       Q     I've picked and choose them. Where I'm going to  
40          go is Exhibit 264, which is the Allocation Policy  
41          for Pacific Salmon, October 1999. I always think  
42          I've done well if I've got the exhibit numbers.  
43          Sorry about that, you've got it?
- 44       A     Sorry, I only have the tab numbers when I'm  
45          looking in mine, so, okay, thanks.
- 46       Q     He's got it. And so I'm going to spend a little  
47          bit of time with this in a couple of ways. So

1 let's start with a little bit of history, a little  
2 bit of background. This Pacific Fisheries Reform,  
3 the 2005 -- oh, sorry.

4 A Thanks.

5 Q I've got the wrong document. 2005 document from  
6 the Department was in response to two reports that  
7 they had received, the Joint Task Group report  
8 from Pearse/McRea, and Our Place at the Table from  
9 the First Nations Panel; is that correct?

10 A Yes.

11 Q And this was the Department's response and the way  
12 forward from the Department's perspective; is that  
13 also correct?

14 A Yes. There was an announcement from the Minister  
15 and then also a discussion paper at about the same  
16 time.

17 Q All right. And you'll agree with me that at page  
18 3 of that report, one of your goals from the  
19 Department's perspective was that First Nations  
20 fishing interests be defined and reconciled with  
21 the interests of all Canadians.

22 A That's correct. That was part of the vision.

23 Q And at page 6 and 7 of the document, and in  
24 particular at the top of page 7, there is a change  
25 -- or at least it looks like there's a change in  
26 what the federal government is saying there, and  
27 you'll see that it says:

28  
29 The federal government believes that  
30 comprehensive treaties negotiated in the BC  
31 Treaty Commission process will ultimately  
32 secure the place of First Nations in the  
33 fishery but given the slow pace of treaty  
34 negotiations, interim arrangements will be  
35 necessary to foster relationships between  
36 First Nations and other harvesters that are  
37 conducive to the collaborative problem  
38 solving and decision-making necessary in  
39 well-managed fisheries.

40  
41 Right? That was a decision that was reflected  
42 here as they're not waiting for treaties, so not  
43 so much that you've been now instructed to pursue  
44 interim arrangements; is that correct?

45 A Yes, it does say they will be necessary.

46 Q And there is:

47



1                   A commitment to increasing First Nations'  
2                   access to economic fisheries is a key  
3                   component of these interim arrangements...

4  
5           A     Yes.

6           Q     And that:

7  
8                   In fully allocated fisheries, this will  
9                   require the transfer of licence  
10                  eligibilities, or allocations...

11  
12          A     That's correct.

13          Q     All right. So before we deal with a couple of  
14                  other details, I want to talk briefly about your  
15                  experiences on the demonstration fisheries and the  
16                  efforts that have been made to try to reallocate  
17                  some of the allocation from the marine fisheries  
18                  into the river in particular, the Fraser River.  
19                  You're familiar with some of those demonstration  
20                  fisheries and things that are going on, on the  
21                  Fraser River?

22          A     Yes, that's correct.

23          Q     Do you agree with me that they're learning lots of  
24                  lessons as we go along?

25          A     Yes. I think we've learned more in some years  
26                  than others, just given the fluctuating abundance  
27                  and availability of the commercial TAC for Fraser  
28                  River sockeye.

29          Q     And one of the things that the Department and  
30                  First Nations are realizing, and this would  
31                  probably not be rocket science for the First  
32                  Nations, is that there has to be respect and not  
33                  competition between the FSC fisheries and any of  
34                  the commercial fisheries that the aboriginal  
35                  fishermen are going to participate in, that that's  
36                  a likely good first principle?

37          A     Maybe you could rephrase, I think in this  
38                  question.

39          Q     In order for a commercial fishery by aboriginal  
40                  people on the Fraser River to proceed, that one of  
41                  the principles will be that there can't be  
42                  competition with FSC fisheries, but rather respect  
43                  between the needs for FSC and commercial.

44          A     The Department in working with the First Nations  
45                  that are doing these projects, we've emphasized  
46                  the need to ensure that FSC harvests are taken  
47                  care of prior to the commercial fishery occurring.

1 Q They also are willingly respecting conservation  
2 requirements and are welcoming selective  
3 fisheries; is that correct?

4 A Yes.

5 Q They're happily including the desire to refine  
6 river stock assessments to address those  
7 conservation requirements?

8 A I think there may be additional work required on  
9 some of the stock assessment, especially in some  
10 of the more terminal areas in some cases.

11 Q Clearly there's more work, and that was my next  
12 one, that there needs to be more information and  
13 more time to clearly identify all that would be  
14 necessarily for an economically viable fishery.  
15 That's another thing that's outstanding yet.

16 A Yes. Certainly there are a number of things that  
17 we would need to continue to work on.

18 Q Mr. Commissioner, I'm going to take Mr. Grout  
19 briefly to Exhibit 450. You've seen this document  
20 before. Are you familiar with the River to Plate  
21 work that's been going on in the Chehalis and  
22 other areas? It's actually all the way up the  
23 river.

24 A I have had discussion at not all of the meetings  
25 they've had, but at some of the meetings I've been  
26 present.

27 Q And in this document they detail a lot of the  
28 things that you've just been able to confirm, so I  
29 don't need to take you to that, but I'd like you  
30 to go to page 10 of the actual document, page 16  
31 in Ringtail. And you'll see just to the bottom,  
32 the last two sentences, beside the graph. It's  
33 not actually -- and I just want to present this  
34 statement to you, Mr. Grout:

35  
36 A successful inland commercial fishery will  
37 need to be capable of handling a mixture of  
38 species and be equally adept at valuing their  
39 catch regardless of the species and quality  
40 composition. Therefore, allocation planning  
41 for experimental commercial fisheries in-  
42 river would consider a mix of these species  
43 in each project.

44  
45 I wonder if you could respond to that, give us  
46 your thoughts on that. It's definitely something  
47 that they've concluded as a result of the work

- 1 that they've done on these experimental fisheries.  
2 A Well, I think with some of these inland fisheries,  
3 and they've been in a number of areas around the  
4 Fraser watershed, we've had one for a number of  
5 years in the Chehalis/Scowlitz territory in the  
6 Harrison River, just in the lower river. We've  
7 had a project up in the Secwepemc First Nation  
8 area in the Thompson, Kamloops Lake area. And  
9 then we've had other projects in the Quesnel,  
10 Chilko, as well as some of the other areas. I  
11 think one of the challenges, particularly for  
12 Fraser sockeye, will be differences in abundance  
13 from year to year, so there may be stronger years  
14 where there's substantial numbers of fish  
15 available, followed by off-cycle years where the  
16 abundance is much lower. Having access to other  
17 species may help from year to year, but pink  
18 salmon also returns on odd years, so we  
19 contemplate even years where there's not going to  
20 be pink harvest. And then there's potential for  
21 chinook and chum, depending on the area. Chum  
22 primarily in the Lower Fraser, given that they  
23 don't really migrate up through the Fraser Canyon,  
24 and chinook in some areas, depending on whether  
25 they can harvest the particular chinook stocks  
26 while avoiding some of our stocks of concern.
- 27 Q So although we're going to get to this at a  
28 principle level, it's a good example of the  
29 importance of making sure there's flexibility when  
30 looking at the approaches that we're going to use  
31 for these types of commercial fisheries, given  
32 locations, given the variabilities of abundance,  
33 given -- I mean, those two alone require  
34 flexibility, would you agree with me on that?
- 35 A Yes, I think that's accurate in terms of the way  
36 the statement's wording here.
- 37 Q Thank you.
- 38 A In terms of a successful inland fishery.
- 39 Q All right. Then the next exhibit I'd like to take  
40 you to, Mr. Grout, is Exhibit 468, which you were  
41 taken to in your evidence earlier. Oh, again  
42 you're going to want the tab number.
- 43 MR. MARTLAND: No, and I'll just try to help. I think  
44 it should be Tab 29 of the binder.
- 45 MS. GAERTNER: Thank you, Mr. Martland.
- 46 Q And that's a presentation that I believe you were  
47 part of, or you were at, at the Ops Committee on

1 Defined Shares for Salmon Management?

2 A I wasn't at the discussion at the Ops Committee,  
3 but I did assist with some of the information and  
4 the presentation.

5 Q And I'd like to take you to Ringtail page 14. And  
6 I wondered if you can confirm whether I've read  
7 this chart correctly. But as it relates to Fraser  
8 River sockeye and the particular demonstration  
9 fisheries that are being reviewed there, we've got  
10 a total of about 2.4 percent of the commercial  
11 catch that we're dealing with here; is that  
12 correct?

13 A In this case, and for the particular year, for  
14 Fraser River sockeye it's about 2.4 percent of the  
15 commercial TAC.

16 Q And is there any particular year that it gets  
17 higher than that at this point in time, or is that  
18 pretty (indiscernible - overlapping speakers).

19 A 2010, which is the year when we had the most  
20 substantive demonstration projects, we used the  
21 licenses available in the Department's inventory,  
22 and I believe the share of the commercial sockeye  
23 TAC available was about 12 to 13 percent.

24 Q So again if I was to go back to the outstanding  
25 business, we've still got a fair bit of work in  
26 transferring any meaningful amount of the sockeye  
27 allocation into the river, and into the hands of  
28 the aboriginal people. Is that a fair assessment?

29 A Well, I think 12 to 13 percent is quite a  
30 substantial amount, and some of the groups in  
31 the --

32 Q In a year like 2010?

33 A Yes.

34 Q To be fair. But in the other years we're about  
35 2.5 percent.

36 A Well, part of the issue around providing shares  
37 was in some of these earlier projects the First  
38 Nations were specifying specific quantum of fish.  
39 So these are the percentage share of those. We  
40 were in 2010 and moving forward where we've had  
41 additional licences accumulated by the Pacific  
42 Integrated Commercial Fisheries Initiative, and  
43 we're trying to provide all of the share  
44 associated with those licenses.

45 Q And there are some challenges. There's capacity  
46 issues, there's learning how the commercial  
47 fishery is going to work, all of the things we've

1 talked about.

2 A That's correct.

3 Q It's a work in progress.

4 A Yes.

5 Q All right. I just want to ask you a few questions  
6 around demonstration fisheries, and then we're  
7 going to go to share-based management fisheries.

8 You'll agree with me that it's realistic or  
9 reasonable, perhaps, if we want to use that word,  
10 that when you begin a demonstration fishery and  
11 you begin to do the work around a demonstration  
12 fishery, and clean up any of the challenges that  
13 it is likely or intended to move towards a fishery  
14 that could be useful in the future, and  
15 potentially a permanent fishery; is that correct?

16 A Yes. In terms of the demonstration fishery  
17 approach we're taking with First Nations in the  
18 B.C. Interior and Lower Fraser in particular,  
19 we've been trying to line up those demonstration  
20 fisheries with the business plans that have been  
21 submitted as part of the Pacific Integrated  
22 Commercial Fisheries Initiative.

23 Q Thank you. And it's also a reasonable expectation  
24 in the commercial fishery that if you're working  
25 with them to develop demonstration fisheries and  
26 working out the challenges and stuff that it's  
27 likely to end up in a more permanent fishery; is  
28 that correct?

29 A I think there's probably a ways to go before we'd  
30 look at making some of these changes permanent.  
31 But the end of the road, that would certainly be  
32 something that we, if we were going to go down  
33 that road, we'd be out consulting on the changes  
34 that we were contemplating.

35 MS. GAERTNER: Thank you. Mr. Commissioner, and Mr.  
36 Lunn, I'd like you to bring forward the documents  
37 we have listed on our list of documents between  
38 document number 5 through document number 10.

39 Q Mr. Grout, these are a series of documents and  
40 exchanges between the Council of the Haida Nation,  
41 who is one of my client base, and the Department  
42 of Fisheries and Oceans. I'm not sure whether or  
43 not prior to coming here today you've had a chance  
44 to look at these or not. They have been on our  
45 list for quite a while, and they're an exchange of  
46 correspondence in which the Council of Haida  
47 Nation are raising concerns precisely on this

1 issue, on the issue of the use of demonstration  
2 fisheries in the North Coast troll fishery. Are  
3 you familiar with this issue and the Haida's  
4 concerns?

5 A I wasn't involved directly in the exchange of  
6 correspondence here.

7 Q Can you speak to any of this correspondence  
8 whatsoever?

9 A No, it was before I came into my current role for  
10 the most part.

11 MS. GAERTNER: Then I'll ask it generally. Mr.  
12 Commissioner, I would like these to be marked  
13 exhibits. They are documents that have gone  
14 between the Haida and the Department of Fisheries  
15 and Ocean on demonstration fisheries. I suggest  
16 they be as a bundle marked as one exhibit, because  
17 they are all to this topic. I was concerned  
18 whether or not Mr. Grout would be able to answer  
19 any questions on these. I'll ask him general  
20 questions on them. It is quite likely that if  
21 there are representatives from the Council of  
22 Haida Nations later in the inquiry, that they'll  
23 want to speak to this issue. So if we could mark  
24 the group as an exhibit.

25 MR. MARTLAND: Yes. Mr. Commissioner, I pause only to  
26 see if other counsel raise any concerns.  
27 Certainly the notice was provided with respect to  
28 these documents. That's important. We haven't  
29 taken a strict view of admissibility of exhibits  
30 as might be done in the course of a trial where  
31 the witness can necessarily speak to the  
32 particular documents. I, from a quick review,  
33 understand that some of these pertain to the North  
34 Coast troll as opposed to South Coast, but I  
35 presume the relevance comes in vis-à-vis  
36 consideration of demonstration projects and the  
37 like. Ms. Gaertner's nodding yes. We don't take  
38 issue if no participant has a concern.

39 MS. TIMBERG: I'm just wondering which tabs you're  
40 seeking to put into evidence.

41 MS. GAERTNER: Five through 10 of my list.

42 Q Mr. Grout, let's just talk it about more broadly,  
43 since the specifics are going to be challenging.  
44 The concern that First Nations often have, I'm  
45 wondering if you've experienced it, is that  
46 they're concerned (a) that the demonstration  
47 fisheries that are occurring in the commercial

1 fisheries are not fisheries that DFO takes the  
2 step of consulting with them on. Can you speak to  
3 that?

4 A In terms of the demonstration fishery approach  
5 that we're taking, each of the demonstrations has  
6 been for one year only. We have done some of them  
7 again from year to year. But the term of each  
8 demonstration is only for a year. And we consult  
9 on those through our existing consultation  
10 processes, including the ones that we use to  
11 develop our Integrated Fisheries Management Plan.  
12 We do put a summary of the proposals for  
13 demonstrations for the commercial area fleets,  
14 commercial fleets, any proposals we have there, as  
15 well as our First Nation demonstrations do go into  
16 the Integrated Fisheries Management Plan for  
17 consultations.

18 Q Well, can you also speak on the concern the First  
19 Nations raise which is that while they were  
20 temporary in nature, while through a demonstration  
21 fishery, they often lead to more permanent  
22 fisheries in place, based on the expectations of  
23 the commercial fishermen who have invested in  
24 them, and based on DFO's ongoing commitment to  
25 those commercial fishermen through the  
26 demonstration process.

27 A Well, I can speak to the salmon fisheries and we  
28 have not moved to make any of our demonstrations  
29 permanent. So it has been annual demonstrations  
30 at this point.

31 Q And so if you stopped implementing those  
32 experimental fisheries, there would be no concerns  
33 and no complaints by the commercial fishermen and  
34 DFO would have clean hands?

35 A No, I don't think I was stating that. Before the  
36 Department would move to make any of the  
37 arrangements we've contemplated under our  
38 demonstration fisheries, there would be need to be  
39 substantial consultation on that move.

40 Q And it's fair to say that, for example, for the  
41 Haida, that they've seen demonstration fisheries  
42 and commercial fisheries in halibut go from  
43 demonstration to permanent; is that correct?

44 A I can't speak to the halibut fishery.

45 MS. GAERTNER: All right.

46 MS. TIMBERG: Mr. Commissioner, I've reviewed the five  
47 documents that Ms. Gaertner seeks to have marked

1 as an exhibit. I'm satisfied that they go in,  
2 subject to our ability to -- I note there's a  
3 number of letters, for example, to Paul Sprout,  
4 and there may be, I would presume there will be a  
5 document in response that's not been included  
6 today. So I am satisfied with these going in,  
7 subject to our ability to file additional letters  
8 that are relevant to these at a later date.

9 MS. GAERTNER: Of course I have no difficulty with  
10 that, and you'll see there is a letter from Paul  
11 in here, so I have endeavoured to try to give the  
12 whole package and if I haven't, I'm happy to have  
13 it. I'm not trying to prove this as directly  
14 factual. It's a good example of some of the  
15 challenges and concerns around this approach.

16 MR. MARTLAND: Mr. Commissioner, just so we have a  
17 record that's clear, what I'd suggest we might do  
18 then with Mr. Giles' assistance, is work through  
19 this list. Number 5 on Ms. Gaertner's letter is a  
20 letter to Mr. Sprout. I'm happy to pass the baton  
21 to her if she wants to walk us through.

22 MS. GAERTNER: I can do that.

23 MR. MARTLAND: And have these numbered as exhibits as  
24 we go, so that they're the ones looking to have  
25 forward. Thank you.

26 MS. GAERTNER: Happy to. Tab 5 is a letter dated April  
27 12th, 2005 from the Council of Haida Nations to  
28 Paul Sprout as the Regional Director General.

29 THE REGISTRAR: We will mark that as 492.

30  
31 EXHIBIT 492: Letter from the Council of  
32 Haida Nations to Paul Sprout, RDG, dated  
33 April 12, 2005  
34

35 MS. GAERTNER: And then on behalf of the Council of  
36 Haida Nations, their legal counsel, Amanda Pinder  
37 and in particular Louise Mandell writes a letter  
38 to the Minister on May 24th, 2005.

39 THE REGISTRAR: As these are related, I will mark that  
40 as 492A.

41  
42 EXHIBIT 492A: Letter from Louise Mandell for  
43 Council of Haida Nations to Minister, DFO  
44 dated May 24, 2005  
45

46 MS. GAERTNER: The Department of Fisheries and Oceans,  
47 I have two response letters. One from Paul Sprout



80  
Jeff Grout  
Cross-exam by Ms. Gaertner (FNC)

1           dated June 15th, 2005 to the Council of Haida  
2           Nations.

3   THE REGISTRAR:   Exhibit 492B.

4  
5           EXHIBIT 492B:   Letter from Paul Sprout to  
6           Council of Haida Nations dated June 15, 2005

7  
8   MS. GAERTNER:   And then June 16th, similarly, it's a  
9           response from Paul Sprout to Ms. Mandell of June  
10          16h, 2005.

11   THE REGISTRAR:   Exhibit 492C.

12  
13          EXHIBIT 492C:   Letter from Paul Sprout to  
14          Louise Mandell dated June 16, 2005

15  
16   MS. GAERTNER:   Actually I have to go one more document.  
17           It's a good thing we did this.   September 6th,  
18           2005 is a letter to Guujaaw, who is the President  
19           of the Council of Haida Nations from the Minister  
20           of the time,

21   THE REGISTRAR:   Exhibit 492D.

22  
23          EXHIBIT 492D:   Letter from Minister, DFO, to  
24          Guujaaw, President, Council of Haida Nations  
25          dated September 6, 2005

26  
27   MS. GAERTNER:   And, please, if I may, I'd like also the  
28           next document, which is -- oh, sorry, April 12th,  
29           2005, same document as the first one.   I should  
30           have done this differently, but it has all the  
31           attachments.

32   THE REGISTRAR:   I don't have that one.   April 12th, you  
33           say?

34   MS. GAERTNER:   2005.

35   THE COMMISSIONER:   Is that item number 4?

36   THE REGISTRAR:   Exhibit 492E will be your Tab number  
37           10.

38  
39          EXHIBIT 492E:   Enclosure to the letter from  
40          the Council of Haida Nations to Paul Sprout,  
41          RDG, dated April 12, 2005

42  
43   MS. GAERTNER:   I think we're good to go.

44   MR. LUNN:       Tab 4, I was just unclear if we're marking  
45           that as the next and last document.

46   MS. GAERTNER:   Is Tab 4 the April 12th, 2005 letter.  
47           Yes.   That's been marked.

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1 THE REGISTRAR: That will be 492F.

2  
3 EXHIBIT 492F: Letter from the Council of  
4 Haida Nations to Paul Sprout, RDG, dated  
5 April 12, 2005 with attachments  
6

7 MR. MARTLAND: Ms. Gaertner can correct me, but for the  
8 benefit of counsel who may have prepared binders  
9 or have a list based on her letter to  
10 participants, I understand the Tab 10 as provided  
11 to participants was the enclosure to the letter at  
12 Tab 5, and I will just confirm. Thank you.

13 MS. GAERTNER: That's correct. That's my working  
14 knowledge.

15 Mr. Registrar, what exhibit was that, the  
16 first exhibit number, the whole of the bundle.  
17 The bundle is Exhibit...

18 THE REGISTRAR: 492.

19 MS. GAERTNER: Thank you.

20 THE REGISTRAR: A through to F.

21 MS. GAERTNER: All right. My next topic, Mr.

22 Commissioner, is on share-based management.

23 Q Mr. Grout, I want to start with just a general  
24 conversation with you, and then we'll get into a  
25 couple of specifics. ITQs or IVQs are just one  
26 form of many forms of selective base management,  
27 and there are things like community development  
28 quotas, community based quotas, all those other  
29 different types of share-based management; is that  
30 correct?

31 A Yes. I believe you used the word "selective base  
32 management", though, at the beginning.

33 Q Oh, share based.

34 A I think you meant share base.

35 Q Share base, thank you.

36 A Yes.

37 Q And this morning we had put into evidence Exhibit  
38 491, which is an article by Parzival/Copes, that  
39 was in my recollection or reading was done in  
40 about 2004. And at page 2 of that exhibit, I'm  
41 going to take you to a paragraph where he's, you  
42 know, at the beginning he's doing a fairly general  
43 summary of some of the issues, and it begins with:

44  
45 While the above reality seems generally  
46 accepted, this is where the agreement ends.  
47 There are two main contrasting visions of co-

1 management. On the one hand, there are those  
2 who view the fishery as a cornerstone of the  
3 coastal economy, and of coastal life in  
4 general, and so co-management as a tool for  
5 careful planning... These people will tend to  
6 opt for a planned approach to co-management,  
7 likely through what is called community-based  
8 management. Others, who seek market-based  
9 approaches to management, tend to consider  
10 persons who currently hold marketable  
11 individual quotas as the legitimate  
12 stakeholders in the fishery, in whose  
13 interest the fishery should be managed.  
14 While the variety and complexity of fishery  
15 conditions leaves room for many different  
16 options in structuring fishery management,  
17 the most important debate regarding the  
18 choice of management system seems to be  
19 associated with the approaches identified  
20 above: community-based management and  
21 market-based individual transferable quota  
22 (ITQ) management.  
23

24 Do you agree with him in a general way that that's  
25 a good way of looking at or dividing up the  
26 various options under share-based management?

27 A I think that captures some of the discussion. I'm  
28 not sure if I agree with all of the points made  
29 there. I think co-management is an important  
30 element in both approaches.

31 Q In the article, he continues on. Are you familiar  
32 with this article? Have you spent any time  
33 studying the differences through his eyes?

34 A I don't believe I've seen this particular article  
35 by Mr. Copes.

36 Q Mr. Commissioner, Mr. Copes then goes on to  
37 describe the fundamental differences between  
38 community between-based fisheries management and  
39 ITQs, and I'm going to take you to a couple of  
40 places. I'm going to go to Ringtail page 5, in  
41 particular under the title, "A Contrast in Value  
42 Systems":  
43

44 With community-based management (CBM) and  
45 individual transferable quotas (ITQs)  
46 attracting so much attention, it is important  
47 to understand the key differences... What is

1                   good and what is not, must be viewed by many  
2                   angles:...

3  
4                   So he goes through all of that in that first  
5                   paragraph. Do you see that, Mr. Grout? He then  
6                   goes on to say:

7  
8                   First, in exploring the nature of CBM and  
9                   ITQs, it is of interest to note that in  
10                  theory, both could be used in the same  
11                  fishery. This is because CBM is more of a  
12                  framework for organizing fishery management  
13                  at the local level, while ITQs represent a  
14                  very specific way of dividing up a Total  
15                  Allowable Catch (TAC).

16  
17                  I'm going to stop there and ask if you can comment  
18                  on that.

19                  A    Well, I'm trying to read quickly here as you ask  
20                  questions. I understand the ITQ component of his  
21                  discussion. I'd want to go back and read further,  
22                  though, to see everything that he's including in  
23                  community-based management. It's not entirely  
24                  clear to me whether he's just referring to a  
25                  community-based quota in that case, or something  
26                  that's different.

27                  Q    He is including community-based quotas in the  
28                  community-based management.

29                  A    I'm sorry. Could you repeat your question again?

30                  Q    So then I want to know what your views on that are  
31                  -- Mr. Grout, what I'm going to, and maybe I'll  
32                  just do that, is why is it that the Department is  
33                  only looking at ITQs and are not looking at  
34                  community-based quotas, or any of the broader  
35                  quotas when looking at reallocating or changing  
36                  the commercial fishery quotas?

37                  A    Well, in terms of the demonstration fisheries,  
38                  we've done, we have had some ITQ programs in the  
39                  commercial fleets, as you know it. The  
40                  demonstrations we've had with First Nations in  
41                  inland areas have been communal in nature. So the  
42                  allocation is provided in a licence and it can be  
43                  fished communally. so I think the inland  
44                  demonstration fisheries are perhaps an example of  
45                  a communal quota.

46                  Q    Next as a backdrop to the issue on allocations, I  
47                  want to take you now to Our Place at the Table,

1           which is document number 11 on our list. And I'm  
2           not sure whether you have that in front of you or  
3           not, Mr. Grout, so I brought another --

4           A     Yes, I do.

5           MS. GAERTNER: Oh, you do. Mr. commissioner, I'm going  
6           to hand you a copy of this document if I may. If  
7           you have any difficulty with that, it's a large  
8           document, and both this witness and elsewhere  
9           through this inquiry I'll be going back to that.

10          Q     Mr. Grout, that's the report that went to the  
11          Department of Fisheries and Oceans from the First  
12          Nations Panel prior to the Fisheries Reform of  
13          2005; is that correct?

14          A     Yes.

15          Q     And I'm going to now take you first to the  
16          "Executive Summary", which begins at Ringtail page  
17          3, and I'm just going to ask you to walk through  
18          that for a moment. You get a sense of the types  
19          of issues that in this document the First Nations  
20          Panel is going to, and then I'm going to take you  
21          specifically to page 3, where we deal with  
22          allocation.

23                 And specifically under the title called  
24          "Allocation Options" you have paragraph there from  
25          the First Nations Panel in which they are clearly  
26          saying to the Department they are:

27  
28                 ...not recommending a single approach to  
29                 allocation because different allocation  
30                 options may be more appropriate for different  
31                 species or fisheries or First Nations. A  
32                 variety of allocation options was considered  
33                 for First Nations, including community  
34                 quotas, an exclusive fishing area, fishing  
35                 using usual and accustomed means without a  
36                 fixed allocation, a fixed quota, and a  
37                 percentage share of the allowable catch for a  
38                 stock.

39  
40                 And so the panel was clear and you've read this  
41                 document, they clearly look at various different  
42                 options with respect to allocation and options for  
43                 allocations going forward, correct?

44          A     Yes.

45          Q     And at the bottom of page 6 in the  
46          "Recommendations", they recommend:

47

1                   A moratorium be placed on the further  
2                   introduction of individual property rights  
3                   regimes such as Individual Fishing Quotas  
4                   (IFQs) unless First Nation interests  
5                   including allocations in those fisheries are  
6                   first addressed.  
7

8                   You agree that that's there.

9                   A    Yes, I see that.

10                  Q    So why is it, Mr. Grout, that we don't have FSC  
11                   allocations looked after, we don't have  
12                   conservation allocations looked after, but it  
13                   seems important and vital for the Department to be  
14                   moving forward with individual quotas in the  
15                   commercial fisheries at this time. Why are we  
16                   doing that first before we look after these other  
17                   priorities?

18                  A    Well, you've stated that we haven't taken care of  
19                   conservation priorities or First Nation food,  
20                   social, ceremonial priorities, as well. Those are  
21                   the -- in order of priority, conservation comes  
22                   first. So we are dealing with the conservation of  
23                   the resource and providing for food, social and  
24                   ceremonial harvest. We've got a clear set of  
25                   decision rules for Fraser River sockeye,  
26                   describing how that will work.

27                   I did want to point out that this report was  
28                   considering all of the fisheries in B.C., and it  
29                   wasn't just directed at Fraser sockeye, for  
30                   example, but other salmon, as well, as well as  
31                   other marine species.

32                   In terms of we would be considering different  
33                   ways of reforming the fishery, in terms of the  
34                   commercial fishery, we think moving to a share-  
35                   based approach can improve the conservation  
36                   performance in terms of fishing the specific  
37                   quantum of harvest. We also think that that can  
38                   assist with achieving food, social and ceremonial  
39                   objectives, as well.

40                  Q    On just that second one, how would it do that?  
41                   Would it provide for an easier buyback? Is that  
42                   what we're doing?

43                  A    In terms of the food, social and ceremonial  
44                   fishery, we are ensuring that a portion of the  
45                   total allowable harvest is provided for food,  
46                   social and ceremonial fishery. So the point I was  
47                   making is if you have a system where your

1 commercial TAC is less likely to be exceeded, that  
2 can help with the performance of your  
3 conservation, as well as food, social and  
4 ceremonial objectives.

5 Q One of the concerns that First Nations have around  
6 the movement to ITQs in advance of at least their  
7 comfort zone around FSC, is that as you know, it  
8 creates a more privatized proprietary interest in  
9 the licence holder, and therefore a more  
10 expensive, potentially more valuable licence.  
11 You'll agree with me on that, that that's a  
12 concern the Department is aware of?

13 A I would agree that that concern has been raised,  
14 but certainly looking at the evidence on values of  
15 the licenses in salmon fisheries, that certainly  
16 hasn't been something we've seen. And I can say  
17 specifically there, using the area of troll  
18 fishery as an example, the licence values have  
19 declined from 2005 to 2009. There's a report on  
20 the Department's website called the West Coast  
21 Fishing Fleet, which is an analysis of commercial  
22 licenses quota and, sorry, vessels, by Nelson  
23 Brothers Fisheries. And in the area of troll  
24 fishery, the value of the licences have declined  
25 despite the introduction of an ITQ demonstration  
26 fishery there, and I think that's primarily been  
27 driven by reduction in the total allowable  
28 commercial harvest of chinook.

29 Q I may not have gotten that correct. So it's more  
30 the quota values that become valuable, as distinct  
31 from the actual licence. Is that...

32 A In terms of salmon demonstration fisheries, there  
33 isn't a separate or permanent quota associated  
34 with the licence. In terms of the annual licence  
35 document that's provided to harvesters, the change  
36 has been on the chinook in the Area F from a no  
37 limit on the licence conditions, to a fractional  
38 share of the commercial TAC. That licence is a  
39 privilege that's provided on an annual basis. So  
40 the value I'm referring to is the licence value.

41 Q And so is it your evidence that the Department has  
42 fully grasped and have dealt with the potential  
43 problem associated with reallocating from the  
44 commercial fishery into the aboriginal fishery,  
45 and the potential of increased costs in the  
46 buyback?

47 A I think we've heard that concern, and at this

1 point we're just doing the demonstration fisheries  
2 on a temporary basis for one year at a time. We  
3 have not allowed permanent reallocations of quota  
4 that have crossed over on years.  
5 Q And what is the Department's anticipation in terms  
6 of timing on the increased used of ITQs in the  
7 commercial fishery?  
8 A As I --  
9 Q As it relates to Fraser River sockeye.  
10 A As I provided information previously, we don't  
11 have a fixed deadline or target for when that  
12 might occur.  
13 Q And so you're open to waiting until all these  
14 other matters are addressed?  
15 A Certainly that's a possibility that can be  
16 considered here.  
17 Q Have you made any commitments with respect to  
18 that, to First Nations?  
19 A In terms of waiting until -- sorry, maybe you  
20 could...  
21 Q Until their issues, as it relates to the  
22 allocations for conservation and the allocations  
23 for FSC and the movement to increase their  
24 commercial, the percentage of commercial catches.  
25 Are you going to wait until those priority issues  
26 are addressed before you move forward with ITQs in  
27 the commercial fishery?  
28 A Sorry, there were -- you asked a number of points  
29 in that question. Maybe you could repeat the  
30 ones.  
31 Q Sure. So as you know, I've gone through a couple  
32 of the priority obligations that you have, both in  
33 law and in principle, which are the conservation  
34 issues, and the FSC issues. And we've talked  
35 about that there is outstanding business as it  
36 relates to both of those. Now we've moved to what  
37 you're doing in demonstration fisheries in the  
38 commercial fishery and I've raised with you and  
39 you've confirmed that First Nations have raised  
40 concerns with the Department about moving too  
41 quickly as it relates to those and have not yet  
42 addressed the priority allocations. Are you  
43 prepared to commit on behalf of the Department  
44 that you will not be moving forward as it relates  
45 to ITQs until those matters are addressed?  
46 A No, I'm not prepared to make that commitment.  
47 MS. TIMBERG: Mr. Commissioner, I'd just like to



1           clarify the record, that Mr. Grout can only speak  
2           -- he can't speak on behalf of the entire DFO. He  
3           can only speak with respect to his position and  
4           the knowledge he has with respect to DFO's  
5           policies.  
6    MS. GAERTNER: Absolutely. I want to, if I may, go to  
7           document 14 and 15 on our list, and I've just got  
8           a couple of things left to finish up.  
9    THE COMMISSIONER: Ms. Gaertner, I'm sorry --  
10   THE REGISTRAR: Do you wish to mark number 11?  
11   MS. GAERTNER: Yes, please.  
12   THE COMMISSIONER: What are we marking, Mr. Registrar?  
13   THE REGISTRAR: That will be item number 11.  
14   MS. GAERTNER: Our Place at the Table, the document I  
15           (indiscernible - overlapping speakers).  
16   THE COMMISSIONER: Thank you. I was just going to ask.  
17   THE REGISTRAR: It's 493.  
18   THE COMMISSIONER: 493, thank you.  
19  
20                   EXHIBIT 493: Our Place at the Table: First  
21                   Nations in the B.C. Fishery, a report by the  
22                   First Nation Panel on Fisheries dated May  
23                   2004  
24  
25   MS. GAERTNER:  
26   Q   Mr. Grout, when you were here last week, you gave  
27           a little bit of evidence on DFO's vision for  
28           shared stewardship and as it relates to  
29           allocations and I just have two more areas I want  
30           to ask questions about. And one is in particular,  
31           I'm not sure if this got into evidence last week.  
32           I don't believe so. It's the presentation that  
33           was provided by the Department of Fisheries on  
34           Stability, Transparency and Predictability in  
35           Allocation in November of 2010. You're familiar  
36           with that document?  
37   A   Yes, I have seen it before.  
38   Q   And were you present at the meeting in which this  
39           was presented to the First Nations Fisheries  
40           Council in November of last year?  
41   A   No, I was not.  
42   Q   But you are aware of this document and the  
43           presentations that DFO has given to First Nations  
44           based on this?  
45   A   The document and the consultations were developed  
46           by our national staff in Ottawa.  
47   MS. GAERTNER: I'm wondering if I could have this

1 marked as an exhibit. Again, it's been on our  
2 list of documents and counsel are familiar with  
3 it.

4 THE REGISTRAR: Exhibit 494.

5  
6 EXHIBIT 494: DFO presentation on Stability,  
7 Transparency and Predictability in  
8 Allocation, November 2010  
9

10 MS. GAERTNER:

11 Q Mr. Commissioner, I'll take Mr. Grout again now to  
12 Tab number 15. I expect you may not know this  
13 document if you weren't familiar with the first  
14 one, but I'll try. I have to let you know that  
15 the document listed in our Tab 15 appears to be a  
16 document dated January 27th, 2010. That is  
17 incorrect. My client advises that that date is  
18 incorrect, and if we need to have that *viva voce*,  
19 I'm sure somebody with the FNFC will be giving  
20 evidence later. That's a document in response to  
21 the November 26h presentation. January 27, 2011  
22 is the correct date of that document.

23 THE COMMISSIONER: So not the date that's on the  
24 document.

25 MS. GAERTNER: That's right. It's going to come back  
26 to haunt me. The document is dated January 27,  
27 2010, you know, that wonderful difficulty in  
28 January, like making sure that we've got the right  
29 years. That's what we're seeing there.

30 THE COMMISSIONER: Thank you.

31 MS. GAERTNER: That's all. And it's response of the  
32 First Nations Fisheries Council to the November  
33 26th document.

34 Q And Mr. Grout, I'm going to take you particularly  
35 to the last paragraph on the first page, where the  
36 First Nations Fisheries Council advises the  
37 Department about how important it would be to have  
38 [as read]:  
39

40 ...more comprehensive discussions to take  
41 place through workshops or discussions that  
42 would engage First Nations more broadly in  
43 these discussions and allow for proper  
44 analysis and feedback.  
45

46 You'll agree with me that that's what the First  
47 Nations Fisheries Council has advised the Deputy

1 Minister as of January 27, 2011 regarding any  
2 changes in allocation issues.

3 A That looks like what is stated there.

4 MS. GAERTNER: May I have both of those documents  
5 marked as an exhibit. I think we did the first  
6 one already.

7 THE COMMISSIONER: Number 15 will be marked as 495.

8 And the next one is --

9 MS. GAERTNER: You've done shared stewardship in 494.

10 THE REGISTRAR: We've done that one already.

11 MS. GAERTNER: Yes.

12

13 EXHIBIT 495: First Nations Fisheries Council  
14 response to DFO presentation of November 2010  
15 dated January 27, 2011

16

17 MS. GAERTNER: Finally, and I asked for leave of other  
18 counsel on Friday, Mr. Commissioner. I have two  
19 more documents I'd like to bring to your  
20 attention. And I appreciate they're as it relates  
21 to the halibut fishery, but they're definitely on  
22 ITQs. And I understand from counsel that there  
23 aren't any difficulties with me now introducing  
24 these documents. The first is an announcement by  
25 the Minister and the second is a letter in  
26 response to the Minister as it relates to ITQs in  
27 Pacific Halibut Fishery. And if I could have  
28 those marked as the next exhibit.

29 THE REGISTRAR: 496.

30

31 EXHIBIT 496: Announcement by the Minister,  
32 DFO, and letter from First Nations Summit in  
33 response re ITQs in Pacific Halibut Fishery

34

35 MS. GAERTNER:

36 Q Mr. Grout, given that they're halibut, I'm not  
37 expecting that you'll have any direct knowledge of  
38 this, but I want to raise with you and have you  
39 respond to the concern that's being raised by the  
40 First Nations Summit in this case directly with  
41 the Minister in response to the recent  
42 announcement on halibut ITQs, which is that in  
43 their view the divvying up of the spoils between  
44 the commercial and sports fisheries' interests  
45 prior to the AFS priorities being addressed fails  
46 to meet DFO's legal obligations. And I'd like you  
47 to respond to that as it relates to the Fraser

1 River sockeye.

2 A Well, I did have a chance to look briefly at the  
3 document here, and I maybe would note that there  
4 are two fact sheets and a question and answer  
5 sheet that were also associated with the one  
6 document on the statement by the Minister. The  
7 Department does continue to be committed to  
8 meeting food, social and ceremonial obligations  
9 before providing for access to a commercial total  
10 allowable catch, and that's consistent with how we  
11 manage salmon, as well as other species.

12 Q I'm just having difficulty, and I know my clients  
13 do, and so I wonder if you could help us, that if  
14 you continue to improve and provide proprietary-  
15 like interests at ITQ levels in the fisheries,  
16 prior to the reallocation occurring, that that is  
17 going to create a more expensive or more difficult  
18 reallocation for the Department of Fisheries.  
19 Could you respond to that?

20 A Well, I'll answer the question this way. When we  
21 issue a licence for one of our commercial  
22 demonstration fisheries, prior to that -- and  
23 maybe is there an exhibit with the Area B licence  
24 conditions that I could refer to here?

25 MR. MARTLAND: Mr. Commissioner, I believe there is. I  
26 think we put in area conditions for Area B, should  
27 be Exhibit 476, number 49, Mr. Grout, in your  
28 binder and number 49 on the list of exhibits, for  
29 2010/2011.

30 A I stated it in words earlier but I thought it  
31 might be helpful. So it's on page 3 of this  
32 exhibit. You can see under the number 1, species  
33 of fish that re permitted to be taken. So this is  
34 a licence that was issued for an ITQ fishery for  
35 Fraser sockeye, but you can see at 1(a) for  
36 "Chinook Salmon, no limit"; "Chum Salmon, no  
37 limit"; "Coho" and "Pink, no limit"; and skipping  
38 to (f) is "Sockeye Salmon (Area 23)" which is  
39 Somass sockeye, "no limit".

40 The Department is managing the fisheries with  
41 no limit to a commercial total allowable catch.  
42 And we're doing that by setting the open time, and  
43 any vessel that chooses to participate in that  
44 opening can harvest salmon in essentially no limit  
45 on the quantity until the fishery is closed.

46 Conversely, where we have a demonstration  
47 fishery with an ITQ, what we're doing is providing

1 an opportunity to harvest the same quantum of  
2 fish, but in a different fashion. In this case  
3 we're specifying at (3) for "Sockeye Salmon",  
4 excepting in the Somass, which would be Fraser  
5 sockeye on this licence, .28698 percent of the  
6 TAC. So this is an annual licence issued for the  
7 year and it provides a share of the TAC.

8 In both cases before and after we did the  
9 demonstration, we were using this to manage to the  
10 same commercial total allowable catch that was  
11 available. We're just using two different ways to  
12 do that.

13 I'm not sure what the date was on this  
14 licence, but I think it's up on page 1 at the top,  
15 this covers the period April 1st to March 31st,  
16 2011.

17 MS. GAERTNER:

18 Q So help me, Mr. Grout, if you may. I'm wondering  
19 how that response to my client's concerns that the  
20 ITQs are only going to provide more expensive  
21 proprietary interests for the purposes of  
22 reallocation.

23 A Well, the licence itself provides a privilege to  
24 harvest for the year. In terms of Fraser River  
25 sockeye management, we're taking the run size,  
26 we're subtracting off the numbers of fish required  
27 for conservation purposes to meet the escapement  
28 target. We're subtracting off from the total  
29 allowable catch amounts for food, social and  
30 ceremonial purposes that are outlined in the  
31 communal licenses for Fraser sockeye, roughly one  
32 million fish. And then we're using these  
33 commercial licence conditions to describe how the  
34 harvest can proceed for any commercial TAC that's  
35 identified.

36 One of the main driver, and I used Area F as  
37 an example of licence values in the sockeye  
38 fisheries, are prospects for the total allowable  
39 catch for the populations. Certainly possible  
40 that they could increase in the future, but as  
41 we've seen in Area F, they've decreased over the  
42 last four or five years.

43 Q All right. My last area of questions, and there's  
44 only a few of them, are to help, to give you an  
45 opportunity to respond to some of the  
46 recommendations the First Nations Coalition reps  
47 will maybe presenting to the Commissioner on

1 allocation later in the hearing, and have your  
2 thoughts on those, well, since you're here now.

3 The first is that there needs to be more  
4 flexibility to address allocation/reallocations  
5 and that prior to the reallocations to FSC and to  
6 First Nations commercial fisheries the Department  
7 should await introducing ITQs. Is there any  
8 danger in that, Mr. Grout? Is there any concerns  
9 that you have with respect to that?

10 A In terms of waiting to introduce ITQs?

11 Q ITQs in Fraser River sockeye salmon.

12 A Well, as I've indicated, we've been exploring the  
13 potential to look at these ITQs for a number of  
14 reasons. One I've talked about improved  
15 conservation performance in terms of fishing to a  
16 specific quantum of catch. There's also evidence  
17 that can increase the economic performance of the  
18 fishery. We are doing the demonstration fisheries  
19 just using the annual licence privileges provided  
20 by the commercial licences, and we have not made  
21 any move to a more permanent implementation of  
22 this at this point.

23 Q And so would you agree that if the Commissioner  
24 was to -- would you agree with a recommendation  
25 that said that prior to introducing fleet-wide  
26 quota fisheries, that those other steps will first  
27 be taken?

28 A Sorry, the other steps being...?

29 Q Reaching agreements with First Nations as it  
30 relates to FSC allocations and transferring  
31 commercial opportunities to First Nation fisheries  
32 inland, upriver.

33 A Sorry, if you could repeat your question.

34 Q I'm giving you an opportunity to respond to a  
35 recommendation that First Nations, some First  
36 Nations' representatives will be providing to the  
37 Commissioner, and that is that there would be no  
38 introduction of fleet-wide quota fisheries in  
39 Fraser Sockeye salmon until FSC allocations have  
40 reached agreements with First Nations -- the  
41 Department has reached agreements with First  
42 Nations on FSC allocations and that there has been  
43 adequate reallocations of commercial fisheries  
44 upriver.

45 A Well, I guess in terms of the FSC allocations, the  
46 Department's continuing to work to try and provide  
47 opportunities to access those FSC allocations. It

1 is an allocation priority before the commercial  
2 access occurs. And so we're ensuring that there's  
3 enough fish to provide for those FSC  
4 opportunities. In terms of our demonstration  
5 fishery approach, and our Pacific Integrated  
6 Commercial Fisheries Initiative, we are continuing  
7 to purchase licenses from commercial licence  
8 holders to provide increased opportunities for  
9 economic purposes for First Nations. So I see  
10 that work as continuing.

11 Q I just have one final question, which is where in  
12 DFO's decision-making process would the decision  
13 to proceed with ITQs in the Fraser River sockeye  
14 salmon be made? Is it at the Salmon Working  
15 Group, is it at this Team, is it at the RDG level,  
16 is it at the ministerial level, where is that  
17 decision made right now?

18 A In terms of the ITQs we've done, these are done as  
19 demonstration fisheries and we do our consultation  
20 on those as part of our Integrated Fishery  
21 Management Plan development. The approval  
22 process, then, that we use is through the approval  
23 of the Integrated Fishery Management Plan,  
24 although in some cases we have had separate  
25 briefing notes indicating the planning work we're  
26 doing on the demonstrations directly. But  
27 ultimately the signoff on the IFMP is with the  
28 Minister of Fisheries.

29 Q And so if the decision was made to go from  
30 demonstrations to a fleet-wide ITQ, where would  
31 that decision be made?

32 A Sorry, are you referring to a specific timeframe  
33 for that, or...

34 Q Yeah. Where in DFO, at what level of your  
35 decision-making process is decisions around  
36 timeframes for introducing ITQs in this Fraser  
37 River sockeye and the approach as to whether or  
38 not it's going to be fleet-wide, where in that  
39 decision-making process is that decision going to  
40 be made?

41 A I would expect that the briefing on that sort of  
42 decision, given that it's likely to be  
43 controversial, would most likely be required at  
44 the ministerial level.

45 Q And so that would require a briefing from the RDG  
46 in the province here to the Minister?

47 A Yes.

1 MS. GAERTNER: Those are my questions, Mr.  
2 Commissioner.

3 MS. TIMBERG: Mr. Commissioner, Ms. Gaertner entered  
4 into evidence at Exhibit 496 a news release with  
5 respect to a ministerial briefing note -- or a  
6 statement by Gail Shea, the Minister of Fisheries.  
7 I'm wondering if that should also be entered into  
8 evidence.

9 MS. GAERTNER: I think it is part of the package  
10 already.

11 MS. TIMBERG: I wasn't clear if both documents were  
12 part of that exhibit.

13 MS. GAERTNER: Yes.

14 MS. TIMBERG: They are. Okay, thank you.

15 MR. MARTLAND: Mr. Commissioner, just to look ahead, I  
16 think we're on -- we need to finish at four  
17 o'clock. Mr Grout has a commitment, as well.  
18 We're on track to do that. I wonder if I might  
19 request a ten-minute break, as opposed to 15 for  
20 us to do that.

21 THE COMMISSIONER: Very well.

22 MS. TIMBERG: Thank you.

23 THE REGISTRAR: The hearing will now recess for ten  
24 minutes.

25

26 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

27 (PROCEEDINGS RECONVENED)

28

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

30 MR. MARTLAND: Mr. Commissioner, in the time that  
31 remains, Ms. Fong will begin, then Ms. Schabus and  
32 then Mr. Timberg re-examining. That will complete  
33 Mr. Grout's evidence.

34 MS. FONG: Mr. Commissioner, Lisa Fong for Heiltsuk  
35 Tribal Council and with me is Christian Morey,  
36 articulated student. Mr. Lunn, thank you for pulling  
37 up that document. If you could, please, proceed  
38 to Appendix 4.

39 THE COMMISSIONER: What exhibit was this?

40 MS. FONG: Sorry. It's Exhibit 445. And the first  
41 page of Appendix 4. Yes, that's it right there  
42 with the bullets. Thank you.

43

44 CROSS-EXAMINATION BY MS. FONG:

45

46 Q Mr. Grout, this morning we had evidence from  
47 commercial fishermen that there's the ability to



1 transfer uncaught allocation in-season and,  
2 specifically, they spoke about the 2010 fishing  
3 season and the transfer of allocation at that  
4 time. And I'm just looking at the IFMP from the  
5 south, which is what's on the screen, Appendix 4,  
6 and the bullets I understand are operational  
7 guidelines. And it's that last bullet I'm  
8 interest in. Thank you. And it reads:

9  
10 If after spawning escapement objectives are  
11 met, and despite best efforts, it becomes  
12 apparent that an area licence group is unable  
13 to achieve its target allocation, subject to  
14 conservation requirements, uncaught balances  
15 will be given first to the same gear type in  
16 a different licence area and, second to  
17 different gear types in a manner that  
18 reflects their relative target allocations.

19  
20 Now, given what's been told to us about these  
21 transfer allocations, are you able to tell me,  
22 this operational guideline, is that what allows  
23 for these transfer of uncaught allocations in-  
24 season?

25 A This is referred to in the Allocation Policy as  
26 well. So if one of our eight commercial area gear  
27 fleets can't access its share, for example, the  
28 Area D Gillnet, then that harvest, if possible,  
29 would be transferred to Area E, which is also a  
30 gillnet fleet, using the Fraser sockeye example.  
31 If it turned out that it couldn't be transferred  
32 to Area E for perhaps a conservation reason, then  
33 it could go to the Area B seine fleet or the Area  
34 H troll fleet, to use an example.

35 Q Right. And that description that you've given of,  
36 I think it was D to E to B, is what happened this  
37 summer?

38 A That's correct.

39 Q Thank you. So my other question for you is  
40 understanding how this operational guideline  
41 works. So as a matter of process, is it typically  
42 something that's raised by the area group or is it  
43 something that DFO raises? Like who raises this?

44 A In terms of that 2010 example?

45 Q For example, like when there is a transfer  
46 allocation that's appropriate, who raises it?

47 A In the case of the Fraser River sockeye, this

- 1 would be discussed with the Canadian Caucus  
2 members of the Fraser River panel and then the  
3 Fraser River Integrated Management Team. So it's  
4 an in-season decision that's made by that group.
- 5 Q And is it the group that advises you that there is  
6 a need or is it something that DFO monitors and  
7 becomes aware of?
- 8 A It's a two-way street there. The group would be  
9 aware of those potential issues and the department  
10 would discuss it with them. It's ultimately the  
11 department that's going to make a decision,  
12 though.
- 13 Q Okay. And when you say it's the department that  
14 ultimately makes the decision, do you also  
15 incorporate into that decision-making information  
16 or input from the particular area groups that are  
17 affected?
- 18 A In terms of the in-season example here for Fraser  
19 sockeye, it's all done within the Fraser River  
20 panel process, the Canadian part of the Fraser  
21 River panel, including the DFO chair and co-chair  
22 and the Canada Caucus members. And then the  
23 Fraser River Integrated Management Team, which  
24 includes a number of our area management staff,  
25 would be involved.
- 26 Q Okay. And my memory, and if I'm wrong you can  
27 correct me, is that that process, this in-season  
28 process happens quite quickly. So if there is a  
29 transfer that is identified as being appropriate  
30 when you're in-season, there are regular, I  
31 believe almost daily, meeting so decisions can be  
32 made quite quickly so that there is an efficiency  
33 and a meaningfulness to any sort of result to, for  
34 example, the Area B seiners, that, yes, you can go  
35 and increase your allocation now.
- 36 A Well, they typically don't meet every day there  
37 but the Fraser River panel in-season can make  
38 decisions quickly, at least the Canadian Caucus  
39 piece and the Fraser River Integrated Management  
40 Team I was referring to. And once they make a  
41 decision, they'd put together fishing plans that  
42 would then be either reviewed at the Fraser panel  
43 with the U.S. and the Pacific Salmon Commission.
- 44 Q So are you able to say to me, just sort of  
45 generally, from beginning to end, like from  
46 becoming aware that the issue has arisen that a  
47 transfer might be appropriate of allocation to the

- 1 actual announcement to the area group that you're  
2 going to get this transfer, are we talking days?  
3 Weeks? Hours?
- 4 A I haven't been directly involved in the Fraser  
5 River panel process for a number of years but it  
6 can be done very quickly. I would think once a  
7 decision is made to do it, it can be done very  
8 quickly. I'm not sure but I suspect the Fraser  
9 panel had been talking about it for a period of  
10 time but I couldn't give you the exact number of  
11 days.
- 12 Q Okay. Thank you. And just so I understand, I  
13 also understood that there was, if I understood it  
14 properly, there's no compensation scheme when  
15 there's a transfer of uncaught allocation such  
16 that the group that's giving away their uncaught  
17 allocation is not being compensated for it.
- 18 A No, as I stated before, we try and make the  
19 transfer to the same gear group, if we can, to  
20 respect the coast-wide allocation framework. But  
21 if that's not possible, it goes to any other gear  
22 that could harvest the fish. And there's not a  
23 catch-up/make-up provision as part of the  
24 allocation framework.
- 25 Q Okay. But is there a position that DFO takes that  
26 there can't be a catch-up or a make-up agreement  
27 between the area groups? Well, I guess it  
28 wouldn't be catch-up or make-up but some kind of  
29 compensatory arrangement between them?
- 30 A There have not been those arrangements.
- 31 Q Okay. And are you aware if DFO would prohibit  
32 that or that's just within their private realm, if  
33 they were to, for example, compensate each other  
34 financially?
- 35 A I'm not aware of that kind of discussion taking  
36 place.
- 37 Q Okay. Now, coming back to this operational  
38 guideline, is it correct to say that the goal of  
39 the operational guideline is to assist commercial  
40 fishermen in being able to catch the total  
41 commercial allocation?
- 42 A Yes, that would be part of it. And then the other  
43 piece is trying to respect the coast-wide shares  
44 for each of the commercial fleet or commercial  
45 gears, seine, gillnet and troll.
- 46 Q Okay. And in your view, having this kind of an  
47 operational guideline, which allows for

Jeff Grout

Cross-exam by Ms. Fong (HTC)

Cross-exam by Ms. Schabus (STCCIB)

1 flexibility by allowing transfers of uncaught  
2 allocation in-season, is this a good operational  
3 guideline in comparison to one that doesn't allow  
4 for any flexibility where, for example, the pre-  
5 season percentages are set and then there's just  
6 no movement?

7 A In this particular case, it provides a mechanism  
8 to move area gear shares, which otherwise wouldn't  
9 exist.

10 Q And do you have a view as to whether this is  
11 positive, like something better than not allowing  
12 for any movement?

13 A Yes.

14 MS. FONG: Thank you. Those are my questions.

15 MS. SCHABUS: Mr. Commissioner, Nicole Schabus; I'm  
16 counsel for Sto:lo Tribal Council and the Cheam  
17 Indian Band, co-counsel.

18

19 CROSS-EXAMINATION BY MS. SCHABUS:

20

21 Q Mr. Grout, I have a few questions for you and I'll  
22 start off with a few points of clarification and  
23 then questions regarding implementation of policy  
24 and allocation. So just to start off and to make  
25 sure we are on the same page when it comes to  
26 terms and words that we use, when we talk about  
27 "commercial fishery", we talk about the area  
28 harvesters that engage in large-scale commercial,  
29 industrial fishery, correct?

30 A When I'm talking about the commercial area gear  
31 types, I'm referring to the gear types, A through  
32 H, describing the different seine, gillnet and  
33 troll fleets.

34 Q And that sometimes also gets referred to as "area  
35 harvesters", right?

36 A Potentially.

37 Q I think they refer to themselves like that. We've  
38 heard it. Now, when you compare that to  
39 Aboriginal fisheries, say, in the Fraser River  
40 specifically and specifically above Mission, the  
41 area harvesters, in comparison, have a much larger  
42 capacity to catch large amounts of salmon in a  
43 short period of time.

44 A Sorry. That sounded like you were making a  
45 statement.

46 Q No, I'm asking you. I'm asking you if you would  
47 agree. When you compare the Aboriginal fishery in

- 1 the Fraser River, especially above Mission, area  
2 harvesters in comparison have a much larger  
3 capacity to catch large amounts of salmon in a  
4 short period of time.
- 5 A I don't think I would agree with that statement  
6 generally. If you were to look at a troll  
7 fishery, for example, the harvest rates, I'd say,  
8 are perhaps less than on a catch-per-unit effort  
9 basis than some of the harvests we've seen in the  
10 area from Mission to Sawmill in the Fraser. So it  
11 would really depend on the commercial fleets  
12 you're comparing.
- 13 Q Sure. So let's compare Area E Gillnet fishery.
- 14 A It would be good to have specific numbers for a  
15 given year but I'd say both of those areas have  
16 the capacity to harvest large amounts of fish.
- 17 Q But what I'm talking to you about is large amounts  
18 of fish in a shorter period of time when looking  
19 at fleet size and the size of the boats,  
20 specifically. You'd agree that they actually have  
21 a larger capacity to catch large amounts of fish  
22 in a shorter period of time?
- 23 A Well, you're asking me to make a comparison  
24 between the number of commercial gillnet boats  
25 that might go out on an opening in the lower part  
26 of the Fraser River to the number of set nets that  
27 might go out, for example, on a fishery in the  
28 Mission to Sawmill area, and the number of  
29 driftnets that also might be operated by First  
30 Nations in that area. So I don't have a specific  
31 quantitative comparison I can give you on that but  
32 they both have the capacity to remove large  
33 amounts of fish per unit of time when both  
34 fisheries are open.
- 35 Q Now, here's my question. For example, we were  
36 talking specifically about the use of revival  
37 boxes. Now, even in an Aboriginal fishery, if you  
38 have a larger vessel, about 35 feet, there is a  
39 requirement of a revival box, right?
- 40 A I believe it's at 30 feet but I could be mistaken  
41 about that. I believe my earlier comments were  
42 that it was at 30 feet, requirement for revival  
43 box.
- 44 Q Okay. Now, when it comes to like an Aboriginal  
45 fishery operated by individuals of families, they  
46 often have much smaller boats like small aluminum-  
47 shell boats. Now, in that context, a revival box

- 1 would be a safety issue?  
2 A That's correct. Most of the vessels are smaller  
3 than 30 feet in the First Nation fishery,  
4 especially in that area.  
5 Q And you'd have a concern about safety issues in  
6 that regard?  
7 A Yes, I understand the concerns relate to vessel  
8 stability having a revival box containing water.  
9 There may be also -- well, that's the main one.  
10 Q Instability. Now, when it comes to intersectoral  
11 allocations, DFO, I understand distinguishes three  
12 sectors, Aboriginal, commercial and recreational,  
13 right?  
14 A That's correct.  
15 Q Now, I think it's fair to characterize two of them  
16 as stakeholders, commercial and recreational, and  
17 one of them as rights holders, namely, the  
18 Aboriginal sector?  
19 A Yes, food, social and ceremonial rights.  
20 Q So those are constitutionally-protected rights to  
21 fish, right?  
22 A That's correct.  
23 Q Now, Aboriginal title and rights are actually the  
24 only constitutionally-protected property rights in  
25 Canada. You'd agree with me on that as well?  
26 A Yes.  
27 MR. TIMBERG: Mr. Commissioner, I think my friend is  
28 going into legal questions and I'd object to that.  
29 MS. SCHABUS: I'm ready to move on.  
30 Q But speaking about that difference between rights  
31 holders and stakeholders, you would agree that  
32 they play a different role in decision-making  
33 processes?  
34 A Yes, that's correct. The department has bilateral  
35 consultations with First Nations about their  
36 fishing plan.  
37 Q And when you're dealing with a rights holder, that  
38 also comes along with decision-making power in  
39 those processes? Or rights holders have decision-  
40 making powers when it comes to management  
41 decisions, right?  
42 A In terms of fisheries, the Minister is the  
43 ultimate authority as far as decision-making goes.  
44 Q That's the DFO position.  
45 MR. TIMBERG: Mr. Commissioner, again, I think my  
46 friend is verging into legal discussions here that  
47 are inappropriate for this witness.

- 1 MS. SCHABUS: I'm fine to move on.
- 2 Q Now, I have a question to clarify when it comes to  
3 in-season management. The Fraser River panel  
4 determines if there will be a commercial opening,  
5 correct?
- 6 A For fisheries in Panel waters, that's correct.  
7 For Canadian fisheries that are not in Panel  
8 waters, the decision is made by the Department of  
9 Fisheries and Oceans. But we'll typically review  
10 those at the Fraser River panel.
- 11 Q But even in Panel waters, it's actually DFO that  
12 determines the conditions for the opening, right?  
13 Like duration of the opening, gear type location?
- 14 A That's correct.
- 15 Q Now, when it comes to openings for Aboriginal  
16 fishery, especially for food, social and  
17 ceremonial purposes, those are the responsibility  
18 of the DFO?
- 19 A That's correct.
- 20 Q And it's the responsibility of the DFO to ensure  
21 priority resource allocation for those purposes,  
22 right?
- 23 A That is consistent with our allocation priorities,  
24 yes.
- 25 Q So you could have an opening for Aboriginal  
26 peoples for FSC purposes even if there is a closer  
27 on the Fraser River panel?
- 28 A If your question is whether we can have food,  
29 social and ceremonial fisheries when commercial  
30 fisheries or recreational fisheries are closed,  
31 the answer is yes.
- 32 Q Now, it's the practice of the DFO for Aboriginal  
33 economic fishery to only open it when there's a  
34 commercial opening, right?
- 35 A That's not entirely true. We're trying to manage  
36 those fisheries using similar rules in priority.  
37 It does not necessarily mean they're going to fish  
38 at the exact same time. In the case of Fraser  
39 sockeye, we'd be looking to fish for the same  
40 stocks and species that the commercial total  
41 allowable catch had been identified for.
- 42 Q So under the allocation, under the commercial TAC?
- 43 A If I haven't been clear, when there's a commercial  
44 total allowable catch identified, we would have  
45 fisheries for commercial, as well as economic  
46 opportunities on the same populations that the  
47 total allowable catch had been identified for.

- 1           Those fisheries may not occur at exactly the same  
2           time.
- 3       Q     Correct. But only when there is a Fraser River  
4           panel opening. When the Fraser River panel has  
5           deemed the fisheries open for commercial purposes?
- 6       A     Again, the decision on the economic opportunity  
7           openings do not require -- my recollection is a  
8           bit fuzzy here. That would be a better question  
9           for Mr. Rosenberger, the Fraser panel chair, but  
10          typically at the panel, we'd be informing the  
11          Fraser panel of our fishing plans, including for  
12          economic opportunities. I'm just trying to recall  
13          now whether there's an approval for those  
14          fisheries in the lower part of the Fraser River in  
15          Panel waters. I can't recall off the top of my  
16          head.
- 17      Q     Now, when it comes to the lower Fraser, DFO does  
18           no longer sign fisheries agreements with  
19           individual First Nations. You insist on  
20           comprehensive fisheries agreements with larger  
21           groups, right?
- 22      A     Generally, that's been the approach. We have had  
23           agreements, for example, with Musqueam, which is  
24           an individual First Nation as well.
- 25      Q     A larger First Nation. Now, when it comes to  
26           those comprehensive fisheries agreements that you  
27           signed with larger groups, they are assigned on an  
28           annual basis?
- 29      A     Yes, that's my understanding. These are  
30           negotiated annually with our staff in the areas.  
31           Usually, the area director leads those  
32           discussions.
- 33      Q     So they're not long-term agreements, right?
- 34      A     I believe, well, the recent ones have just been  
35           for one year. I can't speak to what's been done  
36           in the past.
- 37      Q     Now, the incentive to sign those comprehensive  
38           fisheries agreements is the economic opportunities  
39           under them, right?
- 40      A     I'm sorry. I missed the start of your question.
- 41      Q     Sorry. The incentive to sign comprehensive  
42           fishery agreements is the economic opportunities  
43           under them, right?
- 44      A     That would be one part of the agreements. I  
45           believe there are other components around catch  
46           monitoring, food, social and ceremonial, fishery  
47           allocations as well, to name a couple. I'm not



1 the expert on all of the elements on those  
2 agreements.  
3 Q No, that's why I was speaking to an incentive.  
4 Now, some bands in an area will sign and you'll  
5 refer to them as "signatory bands"?  
6 A That's correct.  
7 Q And others will not sign and you refer to them as  
8 "non-signatory bands", right?  
9 A That's correct.  
10 Q But DFO still considers the overall FSC allocation  
11 for the area to be under that agreement?  
12 A I can't speak to that specific question.  
13 Q Okay. So --  
14 MR. MARTLAND: And Mr. Commissioner, I just simply  
15 raise as a question whether some of these are  
16 topics that may arise more properly under later  
17 sections of our hearings plan.  
18 MS. SCHABUS: And Mr. Commissioner, I'm just trying to  
19 set that out now because we've been told that Mr.  
20 Grout is not going to be back to be examined on  
21 allocation issues. So I wanted to just clarify  
22 those because I needed to clarify that in order to  
23 ask my allocation questions. But I'm ready to  
24 move to the specific questions.  
25 Q Now, Mr. Grout, your position now is one of  
26 regional resource manager for salmon, right?  
27 A That's correct.  
28 Q So I think it's fair to say that you work on  
29 different processes dealing with the different  
30 sectors, commercial, recreational and Aboriginal?  
31 A That's correct.  
32 Q And you apply departmental policies on the ground  
33 in regard to salmon harvest management and  
34 allocation?  
35 A Personally, I'm not usually doing that. It's  
36 usually carried out through our area offices and  
37 our area staff.  
38 Q Okay. But actually when looking at your c.v., it  
39 specifically sets out that it is your role to  
40 ensure that those departmental policies, I guess,  
41 are applied consistently across the sectors,  
42 right?  
43 A That's correct.  
44 Q Now, I think that's where it's been getting a  
45 little bit confusing for all of us because we're  
46 dealing with so many policies at once. And if I  
47 can just recap with you a little bit. When it

1 comes to the commercial fishery, you now have  
2 area-based management, right, since the Mifflin  
3 Plan? You also have, since 1999, the discussion  
4 paper, which you now refer to as your Allocation  
5 Policy, right? And then you have the 2005 vision  
6 paper, which now is the policy that you would say  
7 you're applying for share-based management, right?  
8 A Yes, the area-based licensing was put in place in  
9 1996. You referred to the Allocation Policy as a  
10 discussion paper. There was a discussion paper on  
11 the Allocation Policy but then it's been  
12 formalized as the Allocation Policy.  
13 Q Yeah, same paper.  
14 A Well, there was an initial discussion paper on  
15 that and then the Allocation Policy was finalized  
16 from that discussion paper.  
17 MS. SCHABUS: And that would be our Exhibit 264, if we  
18 could just briefly bring it up to ensure that we  
19 are all on the same page?  
20 MR. MARTLAND: And just on that note, I'd like to  
21 confirm. I think the premise of the question may  
22 have not quite captured, as I understood it, the  
23 evidence related to a discussion paper, which  
24 separately led to what we're referring to as the  
25 Allocation Policy. But they're distinct  
26 documents. I believe they're both in evidence.  
27 MS. SCHABUS: Correct.  
28 Q So you have, as the result of that discussion  
29 paper now, the Allocation Policy, which is called  
30 "A New Direction", right? Now, you have to read  
31 that together with other policies like the 1998  
32 Selective Fishing Policy, which you referred to as  
33 an input-oriented policy, right?  
34 A I'm not sure if I stated it as such.  
35 Q Well, you made that distinction between input-  
36 oriented and output-oriented policies, right?  
37 A No, I wasn't referring --  
38 Q Or approaches?  
39 A -- to policies there. I was referring to types of  
40 approaches you might use in implementing the  
41 principles in the policy.  
42 Q Correct, okay. So if I were to ask you to show me  
43 one comprehensive and consistent policy and show  
44 me a policy manual that you apply when it comes to  
45 harvest management and allocation, there is not  
46 one comprehensive document?  
47 A The Allocation Policy itself is the primary driver

1 on our harvest management decisions.

2 Q And yet we've spent a lot of time also speaking  
3 about the vision document and the vision paper for  
4 share-based management, which is also driving the  
5 approach you're applying in fisheries management,  
6 right?

7 A It's laying out a vision for how we might change  
8 in the future, that's right.

9 Q Now, which policies play into that for Aboriginal  
10 peoples for harvest management and allocation?  
11 Which additional policies are there for Aboriginal  
12 peoples?

13 A There may be a number. You're probably best to  
14 ask that question to our director of Treaty and  
15 Aboriginal Policy. I can't speak well to all of  
16 them.

17 Q But yet you are the one who is responsible for  
18 actually applying those policies consistently  
19 across sectors when it comes to harvest management  
20 and allocation, correct?

21 A Again, my primary responsibility is for laying out  
22 and consulting on the Integrated Fisheries  
23 Management Plans and the consultation processes  
24 that are associated with those. There's  
25 considerable input and work done by our area staff  
26 and meeting bilaterally with First Nations in  
27 developing the agreements that we have with First  
28 Nations.

29 Q So when it comes to the Integrated Fisheries  
30 Management Plan, a lot of that is based on pre-  
31 season forecasts, right, the information that you  
32 have in there?

33 A No, for Fraser sockeye, the Integrated Fishery  
34 Management Plan includes information on the pre-  
35 season forecast but it also includes the decision  
36 rules we're going to use that cover a range of  
37 abundance for Fraser River sockeye. So we  
38 recognize that the pre-season forecast  
39 distribution may not capture the full range of  
40 potential returns in all cases. The decision  
41 rules themselves do cover that full range of  
42 abundances and the potential outcomes that may  
43 occur.

44 Q Now, the consultations regarding the Integrated  
45 Fisheries Management Plan occur pre-season, right?  
46 So the majority of those consultations are  
47 actually in pre-season when we all we're operating

- 1 from is that pre-season forecasting?
- 2 A We do have, in terms of our pre-season planning, a  
3 series of consultations that lead up to the  
4 development and production of the Integrated  
5 Fisheries Management Plan. There's a number of  
6 processes that we use in-season around  
7 implementing that plan, including with First  
8 Nations. For example, in the Fraser River, we've  
9 got a weekly call that's set up to explain  
10 information from the Fraser River panel. We've  
11 got fishery planning committees that are part of  
12 the comprehensive agreements there.
- 13 Q And the information line is what you were  
14 referring to just now?
- 15 A Pardon me?
- 16 Q The information line, right, is what you were just  
17 referring to, the call regarding to share  
18 information, right?
- 19 A That's correct. That's just an example of some of  
20 the processes we use in-season.
- 21 Q Now, when it comes to intersectoral allocations,  
22 right, I'd like to discuss that with you also in  
23 light of priority resource allocation. And I  
24 think it's fair to think of priority resource  
25 allocation kind of like a permit, not so  
26 dissimilar from Maslow's Pyramid of Needs where  
27 you have basic physiological needs at the bottom  
28 and then you move up in the scale of needs. Now,  
29 at the bottom of that priority resource allocation  
30 is conservation, correct?
- 31 A Sorry. I was thinking back to my first year of  
32 psychology class. I do remember hearing about the  
33 pyramid. So I must admit I lost your question  
34 there at the end.
- 35 Q Sorry. But I think it's helpful to think about it  
36 like a pyramid and apart from Maslow. But our  
37 priority resource allocation pyramid has at the  
38 bottom of it conservation, correct?
- 39 MR. MARTLAND: I'm going to interject in the psychology  
40 discussion to simply say we're pressing against  
41 our time. Mr. Timberg does have examination.  
42 Perhaps departing from Maslow and moving back to  
43 questions in the time would be appreciated. Thank  
44 you.
- 45 MS. SCHABUS: I'm right there.
- 46 Q So at the bottom of priority resource allocation  
47 is conservation, right?

- 1 A Well, I mean if we're going to use a pyramid as an  
2 analogy I think conservation is the top priority  
3 so that would be at the top.
- 4 Q Sure, okay. First priority, conservation. That  
5 clearly has an Aboriginal dimension, traditional  
6 knowledge being key to *in situ* conservation.  
7 You'd agree with that?
- 8 A I would agree that that is a component of the  
9 considerations in setting out the escapement  
10 objectives for Fraser sockeye.
- 11 Q And now, when it comes to the sectors and priority  
12 resource allocation, we have Aboriginal and then,  
13 after it, commercial and recreational, right?
- 14 A That's correct.
- 15 Q Now, the majority of the commercial area harvest  
16 happens in marine areas or at the mouth of the  
17 Fraser River, correct?
- 18 A For Fraser sockeye, yes.
- 19 Q Sure. And before those runs are ever subject or  
20 open to an Aboriginal harvest in the Fraser River,  
21 especially above Mission then, right? So this  
22 commercial area harvest will occur before the same  
23 runs are ever subject and open to an Aboriginal  
24 harvest in the Fraser River, especially above  
25 Mission?
- 26 A Not necessarily. We have a window closure that's  
27 in place for Early Stuart sockeye. There are some  
28 limited FSC fisheries that can occur then. We  
29 typically have had some communal, food, social and  
30 ceremonial openings in the marine waters, as well  
31 as in the Fraser River in a number of years prior  
32 to any commercial harvest.
- 33 Q Now, if there is an area of commercial harvest,  
34 right, that will impact the amount of fish that's  
35 available for an Aboriginal harvest up-river?
- 36 A Potentially, in that the fish that otherwise would  
37 have been there being removed, in terms of making  
38 decisions, we're trying to ensure that the amount  
39 of fish removed is not inconsistent with our  
40 objectives for providing for salmon to reach the  
41 spawning grounds and for food, social and  
42 ceremonial harvest.
- 43 Q Now, if there is, though, an over-harvest, by area  
44 harvest, is in the commercial fisheries or  
45 conservation concerns escalate after their  
46 harvest, it impacts Aboriginal peoples in-river  
47 and their ability to exercise their right to fish?

- 1 A It can potentially do that.
- 2 Q Now, you calculate a management adjustment into  
3 fisheries allocations to try and secure certain  
4 returns to the spawning grounds, right?
- 5 A Yes, management adjustments are used to account  
6 for the difference between Mission and upstream  
7 spawning areas and taking into account  
8 correlations with environmental variables to try  
9 and improve the achievement of those escapement  
10 objectives.
- 11 Q But you do not calculate in a similar adjustment  
12 or buffer to ensure that there is sufficient fish  
13 available for Aboriginal peoples to fish in the  
14 Fraser River? You don't have a similar adjustment  
15 or buffer calculated in?
- 16 A No, not explicitly.
- 17 Q It could be done, right?
- 18 A Potentially.
- 19 Q Now, there's also the case, and I'm sure you've  
20 heard complaints raised about the issue of  
21 openings for signatory bands of comprehensive  
22 fisheries agreements but not for non-signatory  
23 bands so that they can meet their FSC needs?
- 24 A Sorry.
- 25 Q I'm asking you if you've heard about the issue and  
26 the concern raised about openings for signatory  
27 bands to comprehensive fisheries agreements or  
28 fisheries openings for signatory bands under  
29 comprehensive fisheries agreements but not for  
30 non-signatory bands so that they can fulfill their  
31 FSC needs?
- 32 A I'm not aware of that. It would help if I had a  
33 specific example to go with your question. I'm  
34 not sure I'm following it.
- 35 Q Okay. I'll give you a specific example. For  
36 example, if you're looking in the Fraser River,  
37 you have non-signatory and signatory bands, right?  
38 There can be cases where an opening is done for  
39 signatory bands, who can also fish for economic  
40 opportunity and at the same time there's no  
41 opening for non-signatory bands. You'd agree with  
42 that?
- 43 A There would not be an opening for economic  
44 purposes for the non-signatory bands in that case.
- 45 Q But there's also cases where there's just simply  
46 no opening for the non-signatory bands but there  
47 is an opening for signatory bands.

1 A I'm not aware of specific examples of that.

2 Q Okay. I have one last point or issue that I want  
3 to raise. When it comes to the vision document in  
4 2005, that was in response to partly the  
5 Pearse/McRae report, right?

6 A You're referring to the Pacific Fisheries Reform  
7 discussion paper?

8 Q Correct. Now, this ITQ approach that was  
9 recommended by Pearse and McRae was initially  
10 recommended for a post-treaty era, right?

11 A I believe in that report they were recommending  
12 immediate implementation in the Pearse and McRae  
13 report.

14 Q The Pearse/McRae report actually focuses on a  
15 vision for fisheries in a post-treaty era?

16 A That's right. But I think your question was when  
17 they recommended implementing ITQs. And my  
18 recollection was is they recommended implementing  
19 it as soon as possible.

20 MS. SCHABUS: Those are all my questions.

21 MR. TIMBERG: I have three questions for re-direct, Mr.  
22 Grout. It's Mr. Timberg for Canada.

23

24 RE-EXAMINATION BY MR. TIMBERG:

25

26 Q Don Rosenbloom, last week, on cross-examination,  
27 asked you if you had any examples of consensus  
28 reached at the IHPC meetings and you spoke about  
29 one, waiver of licence fees, two, the payment of  
30 CSAB members to attend and provide a secretariat,  
31 and you also mentioned a consensus was reached on  
32 Early Stuart sockeye salmon but you were not given  
33 the opportunity to explain that third example.  
34 And so I'd like to ask you now to explain that  
35 third example.

36 A Well, the context is a bit foggy at this point but  
37 the two examples were given of the IHPC raising  
38 consensus and I just cited a third example related  
39 to Early Stuart sockeye and support for a motion  
40 that had been put forward by one of the First  
41 Nation representatives, Marcel Shepert, related to  
42 the Early Stuart sockeye. And there were some  
43 specific details around that motion, a consensus  
44 that we captured in our minutes. So I just put it  
45 out as another example.

46 Q All right. And so just so I understand, so there  
47 was agreement on the Early Stuart sockeye and

- 1 plans to manage that fishery?
- 2 A Yeah, at this point, the details are slipping my  
3 mind here. I can't remember the exact points that  
4 they raised there.
- 5 Q All right. Thank you. Mr. Harvey, last week,  
6 presented a number of documents to you with  
7 respect to analysis for loss of employment and  
8 other socioeconomic analysis. So my question to  
9 you is, who at DFO or what department at DFO would  
10 normally deal with any economic analysis  
11 information?
- 12 A We have a policy group that handles the economic  
13 analysis work that's done internally. They do  
14 quite often use external consultants to assist  
15 with that as well. It's not my primary area of  
16 expertise or responsibility, though.
- 17 Q And who leads that policy group?
- 18 A Currently, it's Jennifer Nener.
- 19 Q Okay. And she's located in Vancouver?
- 20 A In Vancouver at the regional headquarters  
21 building.
- 22 Q And is there a national part of that?
- 23 A There is but I can't give you the lead at this  
24 point.
- 25 Q Thank you. And my final question is, just now  
26 Brenda Gaertner suggested that a recommendation  
27 should be made that further steps with respect to  
28 implementing share-based management not take place  
29 until DFO has completed negotiations with First  
30 Nations on both FSC and commercial access to the  
31 fisheries. So my question for you is,  
32 approximately how many First Nations are there in  
33 B.C. who are reliant on Fraser River sockeye  
34 salmon? If you could just give us a general  
35 overview of that, both perhaps coastal First  
36 Nations and then interior First Nations.
- 37 A Well, it's a large number, well over a hundred. I  
38 couldn't give you the specific number. They would  
39 be the approach areas to the Fraser River. Fraser  
40 sockeye have also been in the south so on the west  
41 coast of Vancouver Island and the approaches in  
42 through Johnstone Straits. There have been years  
43 where Fraser sockeye have also been harvested by  
44 First Nations in the north as well, in the Haida  
45 Gwaii and in other parts in the north and then  
46 within the Fraser River itself, all the way up  
47 through the Fraser River into the Prince George



1 area.

2 MR. TIMBERG: All right. Thank you. Those are all my  
3 questions.

4 MR. MARTLAND: Mr. Commissioner, that concludes Mr.  
5 Grout's evidence. I have just one moment of  
6 comments with respect to our schedule moving  
7 forward.

8 THE COMMISSIONER: Before you do that, Mr. Grout,  
9 you've been here before and I don't know if you're  
10 coming back on another panel. But I just want to  
11 express the appreciation of the Commission for  
12 your willingness to return these often times to  
13 the Commission witness box and for your  
14 cooperation in answering the questions of counsel.  
15 Thank you very much.

16 A You're welcome.

17 MR. MARTLAND: Mr. Commissioner, we will return  
18 tomorrow at 10:00 a.m. with the second Commercial  
19 Fishers Perspectives Panel. Two updates on the  
20 schedule, which I'll communicate now. One, that  
21 we have made a shift only today to combine two  
22 parts of our recreational evidence. So  
23 Wednesday's witnesses, Ms. Sneddon and Ms. Adams,  
24 will be combined on a panel with Thursday's  
25 witness, Mr. Tadey. We thought that was a more  
26 productive and efficient way to go about leading  
27 that evidence. So that will be one panel for two  
28 days with all three witnesses Wednesday and  
29 Thursday this week. The second update is to  
30 advise that the witness that initially had been  
31 scheduled for today, Lisa Mijacika, on commercial  
32 licensing, has now been scheduled for March the  
33 15th. Her evidence will be led that day. Thank  
34 you.

35 THE COMMISSIONER: Thank you very much. We'll now  
36 adjourn. Thank you.

37 THE REGISTRAR: The hearing is now adjourned for the  
38 day and will resume at ten o'clock tomorrow  
39 morning.

40  
41 (PROCEEDINGS ADJOURNED TO MARCH 1, 2011, AT  
42 10:00 A.M.)  
43  
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45  
46  
47

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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11 Karen Hefferland  
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47 Karen Acaster