

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



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

Public Hearings

Audience publique

Commissioner

L'Honorable juge /
The Honourable Justice
Bruce Cohen

Commissaire

Held at:

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

Tuesday, March 1, 2011

Tenue à :

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

le mardi 1 mars 2011



Errata for the Transcript of Hearings on March 1, 2011

Page	Line	Error	Correction
1	25	Markland	Martland
2 – 4		MR. MORLEY	MR. MARTLAND or Q.
20	5	dead load	debt load
31	27	royal	royalty
45	25	stars	starts

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.

Phil 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	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; Council of Haida Nation ("FNC")

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")
No appearance	Musgamagw Tsawataineuk Tribal Council ("MTTC")
Ming Song	Heiltsuk Tribal Council ("HTC") Articled Student

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1 Vancouver, B.C. /Vancouver
2 (C.-B.)
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5 THE REGISTRAR: The hearing is now resumed.

6 MR. MARTLAND: Mr. Commissioner, today we have the
7 second commercial perspective's panel.

8 Before we deal with that, I wonder if I might
9 address one remaining question from the evidence
10 in the past few days. The book by Mr. Brown who
11 testified, *Salmon Wars*, was not marked as an
12 exhibit, but it was referred to by him in his
13 evidence, as well as through counsel's questions
14 on at least two different occasions, and I've
15 spoken with, in particular, Mr. Harvey, who read
16 from it yesterday.

17 We're open to your direction, Mr.
18 Commissioner, but we've taken a relatively broad
19 approach to exhibits. It would seem to be
20 consistent with that to have this marked as an
21 exhibit. That introduces the logistical question
22 of having it entered that way, but unless any
23 participant raises a different perspective on it,
24 I would suggest we simply take that approach.

25 MR. HARVEY: Yes. I would support Mr. Markland's
26 application, but I would also suggest - because I
27 believe we have it - that the page that I referred
28 to be marked as an exhibit now.

29 MR. MARTLAND: Mr. Lunn has prepared an excerpt from
30 the book that contains the page that was read
31 from, which is pages 134 to 135 of the *Salmon Wars*
32 book. If the book is going in proper, I don't
33 know if we need the pages as a separate exhibit or
34 what the preferable approach is.

35 THE COMMISSIONER: I would go with Mr. Harvey's
36 suggestion of marking the page as a separate
37 exhibit and marking the book first and then
38 marking the page as "A" of the number that's
39 assigned to the exhibit.

40 MR. MARTLAND: Thank you. And I'll pass up my book to
41 become the exhibit, and we'll work on the
42 logistics of having it circulated.

43 THE REGISTRAR: Mr. Commissioner, I'll mark that now.
44 The book will be marked as Exhibit number 497.
45 The excerpts from within the book will be 497A.
46

47 EXHIBIT 497: *Salmon Wars* book by Dennis

1 Brown

2
3 EXHIBIT 497A: Excerpted pages 134-135 of
4 *Salmon Wars*, book by Dennis Brown
5

6 MR. MARTLAND: Mr. Lowes?

7 MR. LOWES: Mr. Commissioner, Mr. Brown is off for a
8 very short well-earned rest but I did speak to him
9 yesterday, and this is on the logistics part of
10 it. He's going to be contacting his publisher to
11 see what can be done, because the book hasn't been
12 available for some time. But I will take it on to
13 deal with Mr. Brown and Mr. Martland, and make
14 sure that the logistics are dealt with.

15 MR. MARTLAND: Mr. Commissioner, today's panel consists
16 of three people, alphabetically: Bill Duncan, Rob
17 Morley and Kathy Scarfo. Mr. Morley's testified
18 previously. I take it his affirmation can remain
19 in effect. The other two witnesses, if they could
20 please be affirmed.
21

22 ROB MORLEY, recalled

23
24 BILL DUNCAN, affirmed

25
26 KATHY SCARFO, affirmed
27

28 THE REGISTRAR: Would you state your name, please?

29 MS. SCARFO: Kathy Scarfo.

30 MR. DUNCAN: Bill Duncan.

31 THE REGISTRAR: Thank you. Counsel?

32 MR. MORLEY: My questions today, witnesses, will move
33 in this order. What I'll try to do is move from
34 left to right and rotate, if you will, who I'm
35 asking the question of. First, I will do my best
36 to ensure that the questions I have will be put to
37 all of you, and my approach will be to open the
38 questions up to all of you.

39 I'll ask you not to interrupt or speak
40 directly to a fellow panellist as opposed to
41 answering my question and addressing the
42 Commissioner through your evidence.

43 As counsel for participants move through
44 their questions, I will ask them to address
45 questions to particular panel members inasmuch as
46 they can. We do have the challenge of timing for
47 today and I appreciate that we are looking to do

1 something optimistic which is cover some rather
2 large topics in a very short period of time. In
3 my questions, I will, I suppose, be spartan and
4 focus on four main topic areas: allocation,
5 share-based management or SBM, and the use of ITQs
6 or individual transferable quotas. Third,
7 selective fishing, and fourth, the Department's
8 consultative processes, especially the CSAB,
9 Commercial Salmon Advisory Board.

10 I had advised you previously I had expected
11 to try to ask some big picture questions. I don't
12 think I'll do that under a free-standing topic
13 area, but you should certainly address that as
14 that arises.

15 My approach will not be to take you to
16 particular documents, but rather to move through
17 this based on the topics and the issues without
18 referring to particular documents. The exception
19 to that is first I should just confirm that the
20 Policy and Practice Report, or PPR, is something
21 that is an exhibit and the participants have it.
22 Secondly, biographies or a c.v. for the three of
23 you are the exception to my comment that there are
24 no documents I'm looking to lead.

25 Mr. Morley's c.v., Mr. Registrar, I'll just
26 confirm. I believe Mr. Morley's c.v. is already
27 marked as Exhibit 7 in this proceeding. And
28 secondly, the other two documents, our proposed
29 exhibits are number 68 for Ms. Scarfo, and number
30 70 for Mr. Duncan. Beginning with Ms. Scarfo,
31 number 68 on our exhibit list, Mr. Commissioner,
32 is a biography, a brief biography for Kathy Scarfo
33 and that's been provided in the witness summary to
34 all participants. I'd ask that please be marked
35 as the next exhibit.

36 THE REGISTRAR: Exhibit 498.

37
38 EXHIBIT 498. Biography of Kathy Scarfo
39

40 MR. MORLEY: And the next document is Mr. Duncan's
41 biography, number 70 from the exhibit list.

42 THE REGISTRAR: Exhibit 499.

43
44 EXHIBIT 499: Biography of Bill Duncan
45

46 MR. MORLEY: Mr. Duncan, there's one correction to this
47 which I might, if I could address it simply by

1 asking you a question, partway through that
2 paragraph there's a sentence that begins:
3

4 In 1984 he took on the position of director
5 in the Native Affairs Branch within DFO.
6

7 And I think you've identified it, but please tell
8 me if I have this right. In 1984, you assumed a
9 position in the Native Affairs Branch. It was
10 sometime after that, that you served three years
11 in an Acting Director position; is that right?

12 MR. DUNCAN: That's correct.

13 MR. MORLEY: Thank you. So that's the one correction
14 I'd make on the record for that biography.
15

16 EXAMINATION IN CHIEF BY MR. MARTLAND:
17

18 Q What I'd like to ask - and I'll begin with Ms.
19 Scarfo - in sort of the one-minute version if you
20 could please describe your position, your area
21 group and representation and involvement in the
22 commercial salmon fishery.

23 MS. SCARFO: I'm going to try and keep me short. I
24 guess just when it comes to the commercial fishing
25 industry, I've been involved for many, many years
26 as a commercial fisherman up and down the coast
27 prior to area licensing and single gear licensing.
28 Since 1996 I've been president of the West Coast
29 Trollers' Association and a representative on the
30 advisory to DFO for that area of troll licences,
31 which is the west coast of Vancouver Island where
32 1800 vessels used to troll, and we're down to 160
33 at this point. I was just re-elected to that
34 position in the last two months.

35 I also serve on the Canadian Council of
36 Professional Fish Harvesters. I sit on most of
37 DFO's advisory boards representing my fleet,
38 other than the ones where DFO will not allow us a
39 seat. I also participate in the World Fisheries
40 Organization and I sit on the Science Panel for
41 NSERC on Capture Fisheries.

42 Q Thank you. Mr. Duncan?

43 MR. DUNCAN: Okay. I mean essentially I started
44 fishing as a very young man, as most Native people
45 do. I started fishing in 1958 which was another
46 big sockeye year which I don't hear about in this
47 session, but it was a good year. I was schooled

1 in a residential school in Alert Bay. I managed
2 to go to university and shortly after my term in
3 university, I started with what was then the
4 Department of Fisheries and Forestry as a fishery
5 officer.

6 Then shortly after that, I got an opportunity
7 to go to Ottawa with Indian Affairs, spent six
8 years there, and then returned to B.C. with the
9 Public Service Commission of Canada where I was
10 involved in senior staffing with all government
11 departments in this area. Then I returned to
12 Fisheries and Forestry in 1984 with the Native
13 Affairs Branch, which then morphed into what is
14 now AFS.

15 I retired in 1999. I tried to stay retired,
16 but I got enticed to get involved with the Native
17 Brotherhood, volunteered there for a year plus,
18 then got elected to a Business Agent with the
19 Native Brotherhood and I've been there since 2000.
20 I'm also involved with the Aboriginal Fish and
21 Vessel Owners' Association as the secretary-
22 treasurer. I sit on the B.C. Salmon Marketing
23 Council as one of the directors. I'm also on the
24 Canadian Council of Professional Fish Harvesters
25 with Kathy.

26 I'm involved in other departmental processes
27 like HIAB, IHPC (sic), and some other -- it just
28 goes on. I'm involved with my own band level at
29 the treaty advisory process. But that's it.

30 Q Thank you. Mr. Morley?

31 MR. MORLEY: I began my -- I went to university and got
32 a degree in economics at UBC and started with the
33 Department of Fisheries and Oceans in the summer
34 of 1974. Worked there in a variety of positions
35 in the economic analysis side as well as Director
36 of Planning for the Salmonid Enhancement Program
37 and the advisor International -- Intergovernmental
38 Affairs working for the last five years of my
39 career there on helping to negotiate the Pacific
40 Salmon Treaty with the United States.

41 I left the Department at the end of 1986 and
42 spent ten years working for two trade associations
43 that represented the fish-processing industry, one
44 called the Fisheries Council B.C., which did
45 government relations and lobbying work on their
46 behalf and representation, and the other one being
47 Fish Processors Bargaining Association where I was

1 involved with negotiating with the United
2 Fishermen and Allied Workers over shore worker
3 contracts and fish prices with fishermen.

4 From there, I took a job with the joint
5 venture between B.C. Packers and Canadian Fishing
6 Company called Allied Pacific Processors, and was
7 general manager of that company for three years.
8 Then, since that time period, I have been with the
9 Canadian Fishing Company and I'm currently vice-
10 president in charge of human resources, corporate
11 development and our production fishing fleet.

12 I sit on a number of industry boards and
13 bodies, like probably 15. There's only about
14 three of them represented here, but in addition to
15 the ones you see in there, I'm the president of
16 the Canadian Pacific Sustainable Fisheries
17 Society. I am a member of, again, a number of
18 advisory bodies, both locally and in Ottawa with
19 other departments as well. So I won't go into
20 those in detail.

21 Q Thank you. I'll ask my first substantive question
22 of Mr. Duncan, and then move to the rest of you.
23 The question is about the Salmon Allocation Policy
24 from 1999, and the particular premise for the
25 question is, of course, the allocation policy sets
26 out a formula for intersectoral allocation. It
27 has an approach that uses a 95 to 5 percent split,
28 if you will, for sockeye, pink and chum as between
29 the commercial and recreational sector.

30 So with that as one of the main parts of the
31 allocation policy relevant to sockeye, the more
32 general question is what works and what doesn't
33 work with the allocation policy?

34 MR. DUNCAN: I'm sure DFO is trying to figure that out
35 as we speak. It's not an easy question. I mean,
36 if anything -- I mean the whole -- the main
37 problem is the nature of the -- it's a coast-wide
38 allocation policy, but we have a different regime
39 north and south. It's always been a problem to
40 get consensus around those issues. But then it
41 becomes an exercise in crunching numbers, what
42 works, and that's about the extent of that, at the
43 end of the day.

44 Q What do you mean by a "number-crunching" problem
45 or issue?

46 MR. DUNCAN: Well, because we're basically - not
47 necessarily stacked - but it's 38, 40, 22 percent

1 I think is the allocation between the gear types,
2 between gillnet, seine and troll. The ability to
3 fish north-south is not necessarily conducive to
4 get those exact numbers. You know, I can remember
5 participating - it's been a while now - but where
6 we're trading fish because we're looking at
7 sockeye equivalents. That was the exercise at the
8 end of the day, and we juggled the numbers to fit
9 that exercise.

10 Q Mr. Morley, could you offer comments on what works
11 and what doesn't work with the 1999 allocation
12 policy?

13 MR. MORLEY: Speaking specifically of the intersectoral
14 part of it between recreational and commercial
15 fisheries, I would suggest that the -- you
16 mentioned the 95, 5 percent for sockeye, pink and
17 chum, with five percent going to the recreational
18 sector. I think Bill has touched on a couple of
19 the issues, Mr. Commissioner, and that is with
20 being a coast-wide policy, the activity for the
21 recreational fishery is really concentrated in a
22 few specific areas, so in Barclay Sound on the
23 west coast of Vancouver Island, and largely in the
24 approaches of the Fraser River and in the bar
25 fishery up around the Chilliwack area is where the
26 vast majority of recreational harvest is located
27 for sockeye.

28 So the coast-wide allocation is difficult to
29 manage because there really isn't any direct
30 control on the catch of the sport fishery in
31 Barclay Sound, for example. They really get a
32 third of all the fish coming back there, and
33 depending on how many fish are coming back to
34 other parts of the coast, it could go over or
35 under in terms of the coast-wide allocation.

36 But I think if you look over the years, the
37 95 to 5 has not been a huge issue. I think the
38 more difficult part is when you look at the other
39 aspects of the policy - and I know Ms. Scarfo will
40 be most interested in the chinook and coho
41 priority part - but I think the part that reflects
42 on sockeye is that the recreational priority given
43 for chinook and coho is for directed fisheries and
44 a priority to directed access.

45 But the other part of the policy that impacts
46 on the sockeye fishery is where in fact that
47 priority is only there for directed fisheries, and

1 when in fact the commercial fishery requires a
2 bycatch allowance of chinook and coho in order to
3 prosecute and catch the 95 percent of the sockeye,
4 pink and chum that it's provided, that that is
5 supposed to have a priority, and I think that part
6 of the policy has not been implemented properly at
7 all, so that there have been a large number of
8 fisheries for sockeye; for example, the net
9 fisheries in the Juan de Fuca Strait area where
10 there is coho bycatch, and we're limited on coho
11 bycatch, but the recreational fishery is actually
12 getting coho bycatch as well.

13 So if the priority was provided, as indicated
14 in the policy, I think there would be
15 opportunities for more commercial fisheries on
16 sockeye, pink and chum than what have been
17 allocated by the Department of Fisheries and
18 Oceans.

19 Q Ms. Scarfo?

20 MS. SCARFO: Actually, if you'll bear with me for a
21 minute. Before I answer your question, just out
22 of respect to a few people that travelled a fairly
23 long distance to get here today, I'd like to
24 recognize the representatives from Ahousaht that
25 came down from the Hesquiaht band. We have the
26 chief and his special advisors here that manage
27 their fishery, and they actually could be out
28 fishing today. So I just wanted to thank them for
29 making the effort of recognizing how important the
30 work of the panel here is. So thank you.

31 You started with a really easy question:
32 what works and what doesn't work. Well, I guess
33 to put that into context, it depends what it is
34 you're trying to achieve. So from the perspective
35 that I'm going to speak from, which is the small
36 independent owner fleet that fishes in the open
37 ocean, which is a mixed-stock fishery; not a
38 terminal fishery, not an end-of-the-spawning-
39 ground fishery, but the open ocean aggregate
40 mixed-stock fishery.

41 What doesn't work is a lack of guiding
42 principles. What doesn't work is a lack of
43 consistent guidelines in allocation. What doesn't
44 work is conflicting priorities. What doesn't work
45 is a complete lack of direction from government as
46 to what it is that we're trying to achieve so that
47 we know how to actually make the steps to get

1 there.

2 Now, that being said, there is an awful lot
3 written and there's been an awful lot of work on
4 allocation that's happened over the years. Some
5 of us have been absolutely amazed and inspired by
6 the brilliance of some of the sharing arrangements
7 and the principles that have come out. Those are
8 identified in things like the FAO code of conduct
9 on fisheries, the guiding principles, selective
10 fishing. All of those things sound great. The
11 **Oceans Act**, the adjacency principles, those are
12 all things that many of us hold very dear.

13 But when it comes down to where the rubber
14 hits the road, most of those principles are never
15 put into guidelines and principles that actually
16 apply to how we allocate fish, and therefore
17 that's where the biggest pitfall starts. If you
18 don't address those, the details of how you
19 allocate fish won't work either, which is priority
20 access for recreational fleets or how you design
21 selective fisheries. All of those won't work
22 unless you actually get to the root of the problem
23 which is what is it that you're trying to achieve?
24 Why are we here? Why are we trying to manage
25 fisheries? What's that goal?

26 Q I think, Mr. Duncan, in your answer to my first
27 question, you touched on the question of
28 intrasectoral allocation, which is to say within
29 the different gear types or fleets, what works or
30 doesn't work with allocation as it's currently
31 conducted. I'd like to follow up on that and ask
32 that question. I'll begin this time with Mr.
33 Morley and then move to the other witnesses,
34 please.

35 MR. MORLEY: The intrasectoral issue is quite clearly
36 that we have a coast-wide allocation policy that
37 specifies a share of sockeye equivalents for each
38 of the fleets, and we have an area licence system
39 that does not allow fleets to participate in more
40 than the area they are licensed for unless they
41 purchase another licence.

42 So there's two problems with that. Number
43 one is that when there's a shortfall in a
44 particular area, in order to make up for it we
45 allocate more fish to that gear type in another
46 area, but we're actually taking it away from a
47 fleet that hasn't got the opportunity to move

1 somewhere else. So the coast-wide part of the
2 allocation does not work with the area licensing
3 system.

4 Secondly, the sockeye equivalents work in a
5 perverse way that penalize people like, for
6 example, the area offshore troll fleet that Kathy
7 represents, where, if they do a better job in
8 designing a fishery or accessing higher-valued
9 markets, their reward is next year they get less
10 fish. So those kinds of systems do not work under
11 the current way and we need to find a way to
12 change that and to a system that eliminates those
13 problems.

14 I think the way to do that is through more of
15 a defined share according to fish production area
16 for each of the sectors that are operating in that
17 area, and that would be fixed for all time and
18 essentially would in fact follow more historic
19 fishing patterns of the local fleets in those
20 areas.

21 Q Ms. Scarfo, I'm expecting you may agree and
22 disagree with parts of what was just said. Why
23 don't I ask -- I'll be coming to the SBM part of
24 this discussion momentarily, but if you could go
25 ahead, please.

26 MS. SCARFO: So just what was the specific question and
27 then --

28 Q The question had to do with intrasectoral
29 allocation and how that is currently conducted,
30 what's good and bad, and what should happen?

31 MS. SCARFO: Intrasectoral being the --

32 Q Within gear -- sorry, as between different gear
33 types.

34 MS. SCARFO: Okay. You're kind of starting backwards
35 from the way I normally would do it. You set your
36 TAC, you get your share that's going to be
37 harvested, and then you need to divvy it up
38 between the top groups. Then you, once you get
39 down to the commercial sector, you divvy it up.
40 But we're going to start with the bottom with you.

41 Historically, we've done a lot of good things
42 in allocation. There's a lot of things that don't
43 work. But if you look back at the 1980s, for
44 example, the biggest thing you heard about
45 fisheries then was the conflict between First
46 Nations and the commercial fleet. The reason was
47 you had a fully subscribed industry. The

1 commercial harvest -- the harvest, the TAC, was
2 already fully subscribed. But we were in years of
3 fairly high abundance at that point.

4 So if you look at the problems that have come
5 since then and the conflicts that have arisen and
6 some of the things we're trying to address, you've
7 decreased your abundance so even if it was just
8 the existing stakeholders that were still in the
9 fishery, you would have conflict because we're
10 going to be fighting over a smaller piece of the
11 pie. The pie has gotten smaller. The commercial
12 share has gotten smaller. Within that commercial
13 share, you've added a significant number of new
14 stakeholders that are also trying to target that
15 same catch.

16 So a lot of the problems around allocation
17 aren't problems that we haven't had to address in
18 the past, but the severity of the problem has
19 increased dramatically because we're arguing over
20 the crumbs at this point.

21 So a lot of the solutions to dealing with
22 allocation are you can continue to say we're going
23 to argue over the crumbs, or we're going to try
24 and increase that pie so that there's actually
25 more fish, less arguments and a clearer share.
26 There's lots of things -- sockeye equivalents as
27 an example. Interesting mechanism when it was
28 designed to develop some kind of sharing
29 arrangements between the sectors, but like Morley
30 says, if I actually increase the value of my
31 product -- if I go to lower volume, increase the
32 value of my product, I actually get penalized with
33 less fish. Well, there's something significantly
34 wrong with creating a disincentive to adding
35 value.

36 So there's little details within the
37 allocation model. There's the inability to
38 actually define the shares that you have and some
39 sense of security. But then that goes to a
40 broader licensing scheme that doesn't give you
41 that security in the first place because your
42 licence is an annual privilege. So you've got
43 some rooted problems and then you've got some
44 details in the implementation.

45 I can give you - I've got a list - of details
46 in implementation that could be implemented to
47 help address those, but first, I think we need to

1 actually get to the broader picture of what it is
2 that we need to do before we get to that stage.
3 Or do you want those details?

4 Q Well, I think you're on the point. Why don't you
5 address that?

6 MS. SCARFO: Okay. Well, I actually made some notes
7 because I knew I would forget a whole bunch of
8 things.

9 I think one of the biggest things is when we
10 sit down to design allocation plans and allocation
11 models, usually it's -- within the commercial
12 sector, it's the vested interests that are sitting
13 at the table so we end up arguing. There's never
14 any recognition, even though we say we're going to
15 do, of bringing in the other interests that are
16 actually really large vested interests which
17 include, say, coastal communities that hold the
18 infrastructure and actually feel the impacts of
19 when you shift fish. Because when you shift fish
20 from one place to another, from one user group to
21 another, there's significant regional impacts to
22 that decision. At this point, never, in any
23 situation, has there been a recognition of the
24 impact of those decisions.

25 So if Bill or Ryan or any of us want to make
26 an arrangement within fisheries, we can sit down
27 and make those arrangements in the pre-season
28 plan. But it never goes that next step of saying,
29 okay, we might agree to this. Area B and H, ITQ
30 fishery is an example of this. They've
31 arbitrarily made a decision that they can shift
32 fish between themselves. But those fish normally
33 would have been harvested, and the benefits of
34 those fish would have been allocated to regions
35 that are now no longer involved in that decision.
36 So the market and the decision making in
37 allocation then becomes one that is very focused
38 only on certain users, when the implications are
39 much broader-reaching.

40 So obviously you need a broader consultation
41 process and allocation policy discussion, not just
42 an allocation once a year meeting where we design
43 the numbers. You need to clearly identify what it
44 is the objective is, so that when we make
45 decision, we know that those are what those are
46 going to be held against, and that there has to be
47 a way of evaluating those at the end of the season

1 and actually prior to actually implementing those.

2 An example of that is in the United States
3 they actually do socioeconomic analyses of their
4 fisheries plans to see whether or not those
5 changes make a difference, and I think one of the
6 examples they used down there was where they
7 decided to move a fishery from a region, so that
8 region, the main town in that region, decided not
9 to dredge the harbour that year. Well, the
10 significant impacts of that were an amazing ripple
11 in the economies of that region, not just to the
12 fishery, but to all their other industries. So I
13 think they included that in the actual fish-
14 planning process to recognize what fish are for.

15 You need to have some kind of incentive to
16 move from volume fisheries to value fisheries, and
17 right now that's -- the sockeye equivalent formula
18 doesn't do that.

19 There needs to be a mechanism to recognize
20 that when you allocate fish and you move to
21 selective fishing, there are significantly
22 increased costs in selective fishing. So if
23 you're going to make those conservation sacrifices
24 and incur those costs, there has to be some
25 mechanism to recognize that as part of the value
26 of the formula of that fish.

27 You need to recognize that local knowledge
28 needs to be incorporated in the process. In the
29 past, we had mechanisms because we have cycle
30 years for things like catch-up/make-up. So you
31 have one year where there's large runs. Some
32 people might benefit more than others that year,
33 but there's a way of paying back that additional
34 fish that somebody got so that there isn't
35 economic hardship throughout the fleets. That was
36 removed from the last 1999 allocation policy.

37 I think I'll avoid ITQs at this point. So
38 those are some of the details. I can give you a
39 further list if --

40 Q No, that's helpful, and I think that'll give --
41 what I'll do now is ask Mr. Duncan if he has
42 further comments on intrasectoral allocation
43 between the gear types, but equally if he has any
44 comments arising from Ms. Scarfo's. I can tell
45 you just to forecast a little bit, my next
46 question was going to simply be what should happen
47 in allocation? What are the particular or

1 specific changes that any of you would recommend?
2 Ms. Scarfo, I'll allow you a further opportunity
3 to add to that, but I think you've probably
4 anticipated that in some of the points you've
5 made.

6 Mr. Duncan?

7 MR. DUNCAN: I haven't really thought about that per
8 se. To a large extent, I agree with Kathy. I
9 mean, there are problems. There's often problems
10 with the food fish becoming a priority before
11 anything else. But I really can't add much right
12 now 'cause I haven't thought about that in depth.

13 Q That's fine. Mr. Morley, the sort of merged
14 question now, if you will, is to comment -- I
15 started by asking you about intrasectoral
16 allocation, if I have my notes right on who I've
17 been asking, but you've heard Ms. Scarfo comment
18 on some specific questions that talk about
19 implementation. You're welcome to respond to
20 those points that she's advanced, and more
21 broadly, to offer your views on what should happen
22 and any particular changes that should be made to
23 the allocation process.

24 MR. MORLEY: Thank you. Mr. Commissioner, I think my
25 comments on the allocation process and where it
26 should head -- I won't necessarily address what
27 Ms. Scarfo said directly, but I think it'll come
28 to that. I'm of the view that in fisheries
29 management, that we already have too many politics
30 involved in fisheries management, and what I'd
31 really like to see is something that provides a
32 framework, and for individual fishing businesses,
33 be they individual owner/operator vessels all the
34 way up to corporate fleets, that can plan on the
35 basis of some certainty and stability and not have
36 a system which annually requires us to sit down
37 and lobby, negotiate, do analyses, have
38 innumerable meetings to try to change things from
39 year to year.

40 So from that perspective, in taking all that
41 argument and analysis and politics out of it, I
42 would favour moving to a system that has a defined
43 share of each of the fishery production units, up
44 and down the coast, with initially Fraser sockeye,
45 for example, being a single production unit, but
46 one could, down the road as we get more
47 sophisticated, look at moving to each of the run

1 timing groups, Early Stuart, Early Summers,
2 Summers and Lates, or even beyond that if we get
3 more sophisticated in terms of a production group
4 that we would specify what each gear type's
5 allocation of that was on a one-time and once-and-
6 for-all basis. That would then become an
7 allocation table that would be there and everyone
8 could plan around, regardless of what happened
9 from year to year.

10 I think that's the system that would take all
11 this politics out of it and have something that
12 everybody could plot their future in. I won't go
13 beyond that in terms of going to the individual
14 level until we get into those discussions.

15 Q Well, I think --

16 MR. MORLEY: Certainly that would, even at that level,
17 provide the opportunity, if fleet sectors could
18 look at jointly somehow agreeing between them that
19 they might change that on a given basis, it still
20 provides them that opportunity, as a fleet sector,
21 to deal with another fleet sector.

22 But initially it should be fixed once and for
23 all.

24 Q I think there's an irresistible pull to us
25 speaking about SBM and ITQ. I think it makes
26 sense that we simply move to that discussion now.
27 Ms. Scarfo, I'll begin with you. I'd invite you
28 to comment on the big -- I'll try and ask one very
29 big question, if you will, or with a few parts to
30 it.

31 Should the commercial salmon fishery move to
32 SBM? Why or why not? And if you can draw on your
33 experience with SBM models or including
34 demonstration ITQs, if applicable, your experience
35 or observations in answering.

36 MS. SCARFO: Okay. The big question. SMB, it's an
37 interesting term 'cause it's not one that I was
38 actually familiar with until recently. Defined
39 shares bantied (sic) around.

40 When it comes to identifying shares and
41 sharing arrangements coast-wide on salmon, there
42 is a value to the mechanism that was the sockeye
43 equivalent and the ability to share fish coast-
44 wide. That was because one of the guiding
45 principles of fisheries and allocating fish that
46 we've heard decade after decade from the Fisheries
47 Department, is stewardship, and that if you felt

1 you had a stake in the resource, then you had a
2 responsibility towards the future. If that's a
3 value that we still hold, then maintaining some
4 kind of sharing arrangements so that I'm not just
5 interested in the creek and the fish that are
6 actually passing through my neighbourhood or my
7 fishery, but that I'm interested in maintaining
8 the stewardship and the vibrancy of all salmon in
9 British Columbia, whether it's in the Skeena and
10 Nass when I'm stuck fishing, on the west coast of
11 Vancouver Island, I believe that that's a very
12 valuable tool, and that should transcend just the
13 commercial fishery, that that responsibility for
14 all of us that want to harvest fish in B.C. has to
15 be that we care about all the fish, not just the
16 ones I'm going to maybe catch. Then there needs
17 to be some mechanism that was like the sockeye
18 equivalent that transcends all of those defined
19 shares within those sectors.

20 Now, we don't have a defined share in the
21 commercial industry. The recreational fleet has
22 priority. They need a defined share and they need
23 to be able to live within that share. The Pearse
24 report in 1983, I think it was, clearly identified
25 that you couldn't have both. You couldn't have an
26 expanding recreational fishery and the same
27 limits, because they were going to bump up against
28 each other. Well, they've done that.

29 The recreational fleet now harvests more
30 chinook on the west coast of Vancouver Island than
31 that dirty aggressive fish-killing commercial
32 fleet does, and yet it's not regulated and it's
33 not capped. The commercial fleets, we have
34 limited entry, we have capped abilities that we
35 hit up against, and we have to live within those
36 and we have to learn to be selective.

37 The recreational fleet can just continue to
38 expand. And if there's a conservation problem,
39 someone else pays for it. So the concept of
40 stewardship doesn't even apply in that fishery.
41 So there's a mechanism there that's absolutely
42 critical if that's a principle that we're going to
43 apply.

44 When it comes to share-based management
45 within area licensing, when the Mifflin Plan came
46 out -- I don't know if any of you were in B.C. --
47 but it was hugely criticized that there were some

1 serious flaws in the policy. One of them was area
2 licensing itself and how you allocate fish that
3 don't just stay in one area. We have Canada/U.S.
4 treaties, we have international treaties on all
5 sorts of stocks that are straddling, and you end
6 up with disputes. It becomes political decisions
7 on how you allocate those fish. You're not going
8 to remove politics from allocating fish. That's
9 where the politics do exist in fisheries.

10 Where politics shouldn't exist is in the day-
11 to-day management and the decision of who's being
12 selective, who gets what funds. Those are the
13 areas you should remove the politics from.

14 But you obviously need the politics in the
15 allocation of fish because it is a Canadian
16 resource and the Canadian government is going to,
17 on our behalf, make those decisions of who best
18 and how best to allocate those fish. If the
19 Canadian government wants to come out, as they
20 have, and say the recreational fish is more
21 important than my fishery, I can argue against
22 that from my point view. But it is the Canadian
23 government's responsibility to make that decision
24 and I will have to live within that. So there are
25 going to be politics.

26 In fisheries, we get all these cozy
27 statements that really aren't meaningful. You
28 can't remove politics from allocation. We need
29 shares that are clearly defined. But then you
30 need the mechanisms and the guidelines that tell
31 you how, when and why you're going to change them.
32 Whether it's between First Nations' increased
33 participation in the fishery through PICFI
34 programs or ATP programs, whether you're going to
35 give recreational priority and what the impact of
36 that is going to be on other fisheries and other
37 regions, or whether you're going to concentrate
38 the fishery in the terminal rivers away from the
39 oceans, where you get best value, where you have
40 small communities that actually rely on these
41 fish, and put them in the mouth of Vancouver who
42 really doesn't need the commercial fishery, and in
43 the hands of large corporate interests. And that
44 decision is going to be made by the licence-
45 holders themselves through - as Morley models out
46 - this defined share and ITQs.

47 Or whether or not we actually say there are

1 political decisions here, and that political
2 decision is that maybe that isn't the best model
3 -- it may be the most efficient model for Morley's
4 company, but it may not be what Canada actually
5 wants those fish for, because the added values of
6 having those fish landed in Ahousaht or somewhere
7 else may be significantly higher. It may not be
8 the model of efficiency that a corporation wants,
9 though.

10 So when you talk about defined shares, you
11 can have some sense of what you're going to get,
12 but you also need the rationale for why those
13 changes are going to be made, and a process that
14 actually shows you how that will be made. At this
15 point, there is no allocation board. There is no
16 allocation table. There is one meeting a year for
17 the commercial industry where we fine-tune things.
18 We have processes like the Score or the Kelleher
19 process where we work on those guiding principles
20 together.

21 But we are competing and area licensing made
22 that competition even stronger. Not only do we
23 compete amongst ourselves as gears, but now we
24 also compete against ourselves as individual --
25 within the gears between areas, and there is --
26 it's like playing a card game that I once learned
27 that was called "screw your neighbour". Well, if
28 you put people in the room and you say, "Here's
29 the card game," what's the outcome going to be?
30 That's where the politics and the direction is
31 required.

32 I don't know if that answers your question.

33 Q It helps me and I'll try and be a bit more -- I'll
34 pick up on one point. I'll frame it as a question
35 to you, and I'll move to the other witnesses in a
36 moment. But on one reading of the record suggests
37 that the Department philosophically is inclined or
38 committed to moving towards a share-based
39 management approach for the commercial salmon
40 fishery. Ms. Scarfo, what should the Department --
41 you can comment on that if you like -- what should
42 the Department be doing?

43 MS. SCARFO: Well, when it comes to share-based
44 management within the sectors, recreational -- I
45 mean what's the incentive for me to engage in a
46 selective fishery? I've watched the harvest in my
47 fleet, for my fishermen, decrease since 1996 when

1 we reduced the fleet by over 50 percent. And we
2 reduced it by significantly more than 50 percent
3 at that point because we went to area licensing
4 and single gear licensing. So the west coast
5 troll fleet went from 1800 participants to what we
6 are now, which is 160.

7 But the principle behind that was there would
8 be less of us catching the same amount of fish, so
9 we'd be economically viable. But, at the same
10 time, they added layer upon layer of other
11 reductions -- and Canada/U.S. I won't engage in,
12 the 50 percent reduction there other than -- even
13 in that principle there, the reduction was only on
14 the commercial troll sector. None of it applied
15 to the other main user group within the area.

16 So the commercial sector needs to know if we
17 are going to engage in the things that we believe
18 that we need to do, which we are doing, which we
19 are doing in selective fishing, in marketing
20 strategies in trying to increase the viability
21 working within our region, if we're going to be
22 encouraged to do those things, you do need to know
23 that, at the end of this season I'm not going to
24 lose another 50 percent of my catch because the
25 recreational fleet went over their share because
26 they don't have any limits. You can't continue to
27 have a business model that has that kind of
28 expropriation and uncertainty.

29 Within the commercial sector, we can fine-
30 tune the mechanisms. We can deal with the sockeye
31 equivalents. But that's not the direction we're
32 going. The only direction, when it comes to
33 dealing with the commercial allocation, is move to
34 ITQs. It is the saviour of all things. If you
35 don't move to it, we'll just have another process
36 and we'll just wear you down where we, as
37 participants in the process, who do it unpaid-for,
38 and it's hours and hours and hours -- and it's
39 expensive because not all of us live in Vancouver.
40 So we end up spending what time we should be doing
41 more productive things, or even being with our
42 families, we end up sitting in hotel rooms in
43 Vancouver, going to meeting after meeting where
44 you know the outcome is going to be one portion of
45 the industry wants ITQs because they need to
46 retire, they need a pension plan, it's the better
47 business model for them.

1 The other portion of the industry still sees
2 that there is a future, that they believe they
3 want to build a fishery that will allow for new
4 entrants, that will be economically viable, not
5 increase the dead load, not concentrate the
6 fishery in areas that are far from the regions
7 that they live in.

8 There's going to be a split. We know that.
9 We go into that process ahead of time knowing
10 that. And we just get to go to another process
11 and another process, at our own expense, unless we
12 actually agree. We get manipulated, and we get
13 punished if we don't agree with that process.

14 To say that you -- I'm going to keep going
15 because you've opened it up. I've sat here and
16 listened to Jeff Grout. I sat through the
17 allocation meetings. I sat through international
18 panels talking about ITQs and the benefits of
19 ITQs. I personally know there are pros and cons
20 to ITQs. It is not one size fits all. The
21 government knows it's not one size fits all. The
22 government knows there are cons to this mechanism.
23 They've recognized them. We have stuff in our
24 exhibits that actually shows that Paul Sprout
25 knows this. He's written about it. The Senate
26 Committee has written about it. They've
27 identified these.

28 If you are absolutely determined that ITQs
29 are the only way to go for salmon in B.C., then
30 why aren't we engaging in that discussion of how
31 do you minimize the downsides that come with this?
32 Our fishermen in our fleet have categorically told
33 their advisors, their elected representatives,
34 again at a meeting two weeks ago when we asked
35 them again, "We're going into another allocation
36 process that the government is forcing us into."
37 We would like to talk about sockeye equivalents
38 and things like that, but we know the discussions
39 is only going to be about ITQs.

40 So we asked the fishermen, "What's your
41 direction?" They basically said, "Why do you keep
42 asking us? We have told you repeatedly that, on
43 principle alone, this is not the solution. It
44 does not slow the fishery down. It does not
45 increase selectivity. It does not increase the
46 value of our product. It will increase our debt
47 load, and if you increase our debt load as

1 independent fishermen right now, I will do what I
2 can to get out there and catch those fish as damn
3 fast as I can so I can get off the water. Because
4 I don't have the ability to incur further debt."

5 We have a fishery that we've modelled. We've
6 presented to the government through selective
7 fishing. Amendment-style fisheries? Which means
8 that we can harvest very small ACs, very small
9 amounts of fish if that is the only allocation
10 there is, if the problem is going over the number.
11 It hasn't been a huge problem in our fishery.
12 We've presented and fished to monthly harvest
13 quotas. We took our fishery and we spread it out.
14 We slowed it down. We have a fishery -- we've got
15 guys out there fishing today where the average
16 catch, right now, on the west coast of Vancouver
17 Island, is four fish. I don't know how much
18 slower you want us to go.

19 We have increased the value of our fish from
20 \$2 to \$3 a pound to, last year, \$8 a pound. No
21 other ITQ fishery in B.C. has done that. We land
22 the fish in our local communities. We support the
23 small buyers. We have new entrants coming into
24 our fishery, even with the uncertainty of
25 Canada/U.S. and the increase in the recreational
26 fishery.

27 We've moved to selective fishing because we
28 believe there is a future with less volume. We
29 need to address the obstacles that are in the way
30 that we've identified throughout these. We spent
31 five years developing the winter pilot fishery
32 where we go head-to-head with farmed fish in the
33 marketplace. We have to haul our fish up the
34 dock because there isn't big enough volume. We
35 put them in totes and bring them up the dock and
36 deliver them in places like Zeballos because there
37 isn't enough volume for the large companies to be
38 interested. We don't sell to the large companies.

39 If you want to look at a model of a fishery
40 that actually works, warts and all, the west coast
41 troll fishery is doing those things that DFO says
42 we have to go to ITQ to do. We've done it without
43 ITQ. The problems in our fishery is you keep
44 taking our fish away. You can't have a viable
45 fishery without fish. That's the baseline.

46 Yes, I would like a defined share, but you're
47 not going to define the share because it's going

1 to alter every year. What I want to know is, vis-
2 à-vis the recreational fleet, what my expectation
3 can be for the changes, instead of just the
4 ongoing expropriation. We have some stability
5 when it comes to First Nations. We know it'll be
6 a licence buy-back. The First Nations in our
7 region have expressed interest and have said they
8 will take commercial licences. They want to enter
9 into the fishery. We have a co-management program
10 within the region with the management boards, with
11 the local community, with First Nations, with
12 NGOs, with secondary industries, with mayors and
13 regional districts.

14 It's a model fishery. We've presented
15 internationally and said this is a model fishery
16 and been able to stand up to the international
17 scrutiny. And yet, it is the fishery that is
18 under constant attack from DFO to go to ITQs.

19 Q I'll take the pause to ask Mr. Duncan to address
20 the question of whether the commercial salmon
21 fishery should move to an SBM or ITQ type of a
22 management model.

23 MR. DUNCAN: I have a fairly simple answer to that.
24 It's no. The Native Brotherhood, as an
25 organization, is not in support of that. There
26 are other aspects of our organization is crew.
27 Those are the guys that work on the seine boats,
28 the extra man on the gillnets and troll, this sort
29 of thing. The view out there is that you're
30 attempting to squeeze out the little guy.

31 I mean, I can go back when I started first
32 fishing in 1958. We fished four or five days a
33 week. This was a fairly simple plan. We started
34 mid-June and went to the fall, four days a week.
35 It was only in times of conservation where there
36 was a closure. There used to be what we called
37 ten-day closures. They were implemented as and
38 when required type thing. But a large extent,
39 that was the fishery, and then it slowly got
40 chewed away at. Went from four days to three
41 days, two days to one day, type thing. Now it's
42 zero.

43 But to go back, I mean a little further,
44 First Nations have been here for a long time. I
45 know you're going to hear more from this in May,
46 but we have been here for thousands of years.
47 We've managed the fish for social and economic

1 purposes then, and I have to support that notion
2 that we're in for the long run here. Many remote
3 communities on the coast, I mean you just can't
4 pick up and go away. A reserve is a reserve.
5 Yes, some of them have closed down, but to a large
6 extent, they're there. You have nowhere else to
7 go. Fishing has been a mainstay for many, many
8 years. It's well documented in the early days of
9 the Fraser River in the late 1800s, the canneries
10 used to employ. They had the licence, they
11 employed a lot of Native people type thing.

12 But prior to that, yeah, they used to do
13 their own thing. They used to manage it. They
14 only took what they needed. So I just -- I'll
15 leave it there.

16 Q Thank you. Mr. Morley?

17 MR. MORLEY: Mr. Commissioner, I think since the
18 purpose of this panel is commercial fishing, I
19 want to sort of step back a bit and, again, go to
20 what the purpose of commercial fishing is. We are
21 really talking about harvesting, processing and
22 marketing a food product to international markets,
23 okay? This is not about - although it does
24 provide a way of life to a lot of people - the
25 reality here is this is an industry that is
26 designed to sell fish to consumers as a food
27 product.

28 In terms of managing this natural resource on
29 behalf of the people of Canada, it really is the
30 responsibility of the government of Canada to try
31 to find a way to in fact make best use of the
32 resource in a way that can provide the greatest
33 income and employment for Canadians in the
34 business of supplying food products.

35 I think we really -- I want to sort of take
36 away from sort of the emotional attachment to a
37 certain way of life and a way of business,
38 because, frankly, that way of life has changed
39 drastically over the last hundred years in all of
40 our businesses and industries throughout Canada
41 and throughout the province. And I don't think
42 it's -- we really need to analyze this from the
43 point of view as how do we manage this resource in
44 a way that provides the greatest opportunity, from
45 a commercial perspective, now that we're talking
46 about to maximize the potential income that is
47 available to Canadians. How we distribute that

1 income, we can talk about later.

2 I want to analyze this from the point of view
3 of the evidence and evidence-based analysis of
4 share-based management, because it is very easy to
5 get hung up in a lot of rhetoric about what social
6 scientists say the impacts may or may not be,
7 based on theory. But I think you have to look at
8 where we have applied this in British Columbia
9 fisheries, in our case, in other fisheries, and
10 seen exactly what the impacts are. The impacts
11 have been this, that by going to share-based
12 management, we have seen groups take more of a
13 stewardship interest, invest in the resource,
14 invest in science from the commercial sector,
15 develop better management policies that monitor
16 and track the catch better, and we've also seen
17 from a commercial point of view the ability to in
18 fact maximize the income that is derived from that
19 resource through targeting higher-valued markets
20 and better matching the actual landings to the
21 capacity of the fleet, the processors and the
22 market to absorb.

23 The halibut fishery is a prime example of
24 where this has happened, and in fact contrary to
25 some of the rhetoric here is that when I worked
26 for the Fisheries Council of British Columbia, at
27 the time, which represented the major fish
28 processing companies, we lobbied against
29 implementation of ITQs in the halibut fishery. We
30 were totally opposed because, at the time, the
31 major companies were benefiting from an Olympic-
32 style fishery where you had 400 licence holders
33 who, at one point, got down to fishing for no more
34 than four or eight days when they landed with a
35 huge glut of fish all at once. Guess what? The
36 only people they could sell it to, they could
37 unload it to, were the biggest companies with the
38 huge freezing and cold storage capacity, and we
39 got the fish really cheap.

40 We knew that that was going to come to an end
41 when ITQs came in, and in fact it did. So the
42 individual fisherman now could take his time,
43 could negotiate with a variety of buyers and try
44 to achieve a better market for their fish. And,
45 in fact, the major companies that I represented
46 went from handling 80 to 90 percent of the
47 halibut, to probably handling less than ten

1 percent of the halibut.

2 So the evidence shows that, in fact,
3 individual fishermen have benefited greatly in
4 terms of increased income overall from moving to
5 ITQs. In the salmon fishery this past year, the
6 best example I can see is that when we did
7 implement a pilot system for Areas B and H on
8 Fraser sockeye -- and again, I'm not going to
9 speak to what trollers may want to do with
10 chinook. We're here to talk about managing Fraser
11 sockeye, Fraser sockeye and pink salmon. With the
12 kinds of markets and volumes we see in that, if we
13 had not had the share-based system for Area B and
14 H, I would suggest to you that the -- given the
15 normal style of opening that the Department would
16 have come in, we would not have harvested probably
17 60 -- we would have harvested maybe 60 percent of
18 what we did harvest.

19 So because there would have been concern
20 about getting the fleet in the water early on,
21 because putting the whole fleet in there might
22 have exceeded the allowable TAC at the time. In
23 addition, you would have seen that there would
24 have been gluts of fish and processors would not
25 have been able to handle it. They would have
26 said, hold on, and we would have had sporadic
27 openings and not had the opportunity to harvest
28 all the fish.

29 The way it was, from our company's point of
30 view, we were able to spread the landings out over
31 about a three-and-a-half week period with fish,
32 fresh fish coming to the dock every day. As a
33 company, we were able to can the lowest percentage
34 of Fraser sockeye that we ever have in our
35 history, and achieve the greatest amount going
36 into the fresh and frozen market that permitted us
37 to handle the volume in a way that matched the
38 capacity and target those markets, rather than
39 have to deal with poorer quality fish with a glut
40 at the dock.

41 So the evidence shows that share-based
42 management does in fact provide the greatest
43 opportunity to maximize the value of the resource
44 to the people of Canada and the incomes that can
45 be derived by providing this food product to
46 hungry people both here and abroad.

47 Q I'm looking to move through my topics as well as I

1 can, so I'm going to shift to asking about
2 selective fishing. My note is that Mr. Duncan is
3 the next person I'll ask first among the three of
4 you.

5 On selective fishing, the question is briefly
6 this: Could you describe your familiarity and
7 involvement with selective fishing? Should
8 selective fishing be more of a priority for the
9 DFO? Are there particular things that you think
10 should happen on selective fishing?

11 MR. DUNCAN: Well, my experience with selective fishing
12 initially started when I was in the Department.
13 It was assigned to another person within the
14 region, Gord Curry, and he was the one that took
15 sole ownership of it.

16 At the end of the day, when the program
17 ended, I wonder myself did it have merit. Yeah,
18 there's some practices today that came out of that
19 that are still in use today, and that's the
20 revival boxes, brailling and this sort of thing,
21 the knotless bunts. Those are the good features
22 that came out of the program but the actual -- for
23 example, allocation of five percent of the TAC to
24 selective fishing. I mean it was an example
25 whereby if you were in with someone, you got an
26 access to, type thing. I wasn't necessarily in
27 favour of that, but that's what happened.

28 The program has now ceased. It had some
29 merit in some instances (indiscernible - coughing)
30 but it's my concern behind this thing is the size
31 really there? I don't know. I don't think so.
32 There's a lot of unanswered questions about
33 mortality and this sort of thing. You know, what
34 happens when you take a fish out of the revival
35 tank and throw him overboard? Yeah, I've seen
36 them get revived, but then I think they're more
37 vulnerable to other predation.

38 In general, I think it's the notion -- it was
39 tried and it was concluded.

40 Q I take from that you don't suggest any new
41 initiative or new work on this in particular?

42 MR. DUNCAN: I don't think any more is required. It's
43 -- the Department did try. There was a lot of
44 potential, I think, to do a lot of things, but at
45 the time, we were dealing with a dwindling
46 resource as well. There was pressure to do
47 something. Behind all of this was the stocks of

1 concern. There was the Thompson coho which was
2 the principle guiding force behind this. There
3 was Cultus sockeye type thing. None of these fish
4 had tags on them, so you really couldn't identify
5 them, but if anything, it's as a result of that --
6 you know, coastal coho stocks increased
7 dramatically.

8 But I think it's -- is it worth pursuing? I
9 don't think so, but I'm not an expert there. But
10 what I've seen, what I've read, yeah, no, it's run
11 its course.

12 Q Mr. Morley, do you have comments on this, please?

13 MR. MORLEY: Mr. Commissioner, the selective fishing I
14 think is a valuable tool to move forward in
15 protecting some of the stocks of concern.
16 Clearly, dealing with -- where you can identify
17 bycatch species is a lot easier to deal with than
18 when we are trying to identify particular
19 populations within a species, which we don't
20 really have the technology to deal with at this
21 point in time.

22 I think the real issue here is that we need
23 to find a system that gets the incentives right,
24 that there -- I agree with Mr. Duncan that there
25 still a lot of unanswered scientific questions
26 about what the real full mortality is of fish that
27 are released that -- we've seen some studies done
28 in some questionable way to come up with some
29 mortalities that should be relooked at, and we've
30 got some more recent research that shows that
31 there are maybe longer term effects further up the
32 river of fish that don't make it, that might have
33 survived for the first 24 or 48 hours.

34 Having said that, as I said, the incentives
35 need to be there, and part of the failing of the
36 selective fishing policy is that any individual or
37 group who have seen advantage in getting access to
38 more fish or more fishing time, whether it be an
39 individual commercial fisherman selected by a
40 scientist to participate on an annual basis and,
41 sure, they want to keep doing it because they're
42 getting to fish when other people aren't, whether
43 it's a First Nations group in the lower river, or
44 bringing in a new technique that they're getting a
45 special allocation that they wouldn't otherwise
46 get, I would say everyone's going to be in favour
47 of carrying on if they're in that situation.

1 What we need to do is provide the incentives
2 for everybody who is willing to undertake the
3 additional cost and additional care to
4 (indiscernible) like the fishing to actually be
5 able to get something back for that, and I believe
6 that if we get into a share-based system that has
7 allowable bycatch mortalities where we measure
8 total bycatch mortality in the -- and allocate
9 that as well, that in fact you will find that
10 people will get very inventive and will find new
11 ways in which to fish more selectively within that
12 system that will move us forward. I think that's
13 really the way we need to go if we want to move
14 forward on this.

15 Q Thank you. Ms. Scarfo?

16 MS. SCARFO: Being a commercial fisherman's
17 representative, I'm not sure if I should say this
18 out loud, but I actually love selective fishing.
19 I love the policy and it suits the type of fishery
20 that I'm engaged in. We select our gear and
21 target the specific species that we want to target
22 and try and avoid the others, whether you put on a
23 hoochie or a plug or red gear or green gear, or
24 whether you troll at a certain depth or speed.

25 The problem with selective fishing, for all
26 that I love it and I think it can be an incredibly
27 valuable tool to try to meet the Wild Salmon
28 Policy, which is another policy that I actually
29 love the thought of, because maintaining
30 biodiversity of all species (sic).

31 In my fishery, we're the aggregate fishery.
32 We're the ocean fishery. If I can have a myriad
33 of healthy little creeks with a ditch behind your
34 house that happens to have three coho in it, it
35 adds to that aggregate that I survive on, and it's
36 important because it's all those tiny little
37 creeks added together that make my fishery viable.
38 I love that concept. I love the concept of
39 aggregate, and I love the concept of being able to
40 pick within those which ones I'm targeting.
41 There's tools that exist within the existing
42 toolbox that we can maximize to do that.

43 In our fishery, we took on a selective
44 fishing strategy even before DFO announced
45 policies. We took on dealing with avoiding coho
46 when we're targeting chinook, avoiding chinook and
47 coho while we're targeting sockeye. Time and area

1 management, valuable tool. We micro-manage the
2 west coast of Vancouver Island. We DNA sample 25
3 percent of our catch to this day. Now that we're
4 not even in the pilot project, we still continue
5 to do that so that we can say the fish returning
6 to this creek at this time of year hug the
7 shoreline. If we move offshore, we can avoid
8 them. So that the myriad of tools within that
9 toolbox are much more diverse than actually DFO is
10 giving is benefit of.

11 We looked at different models of how you
12 would give incentives to that. But I think you
13 need to put selective fishing into the context,
14 though, of it will help you maintain biodiversity.
15 But it's not going to address some of the major
16 problems -- and we are here to talk about Fraser
17 River sockeye and the declines of Fraser River
18 sockeye.

19 Moving into selective fisheries will make a
20 very small difference on the health and recurrence
21 of building reproductive Fraser Rive sockeye runs.
22 Selective fishing is one of the tools for
23 commercial fishery to access fish around those
24 runs, but it will not rebuild Fraser River
25 sockeye. So I think you need to keep that in
26 mind, that when we talk about the importance of
27 selective fishing, it is not a rebuilding
28 mechanism. It is a tool for harvesting.

29 If we focus too much attention on selective
30 fishing as the be all and end all of how we deal
31 with fisheries, we are dealing with the symptoms
32 rather than the causes. So I would say, from the
33 Cohen Commission point of view, if the Cohen
34 Commission is to be looking at that the goal is
35 that we're not going to stay in the situation we
36 are now -- 'cause we didn't need a Commission to
37 do that. The goal is not to stay on the track
38 that we were, because we would have done that
39 anyway and we didn't need to sit in here to do
40 that. If the goal is to actually see vibrant
41 Fraser River fish into the future, not like 2009
42 but more like we can see we can do in 2010, then
43 selective fishing mechanism should be encouraged.
44 There should be incentives, but they should be
45 recognized as just one tool in that toolbox for
46 harvesters to avoid and meet -- to avoid the
47 weaker stocks, the less productive stocks, and

1 fish around them.

2 But then you need to be really clear that
3 within the Wild Salmon Policy, the cutbacks on
4 incidental catch or bycatch of weaker stocks needs
5 to be viewed from the actual benefit of cutting
6 fishing and the actual, therefore, benefit of
7 selective fishing. If foregoing 25 million Fraser
8 River sockeye to protect 200 Cultus is actually
9 effective, then that's a cost/benefit analysis
10 that we need to do, and we need to recognize that.
11 We need to be able to say, we, as the Canadian
12 government, gave up 25 million sockeye, worth
13 however much they are, because we want to protect
14 these 200.

15 But the general public should then also be
16 able to say, "Was that really effective?" Did
17 cutting back the commercial fishery actually
18 really do anything for Cultus? Or would we be in
19 a better situation to harvest 25 million sockeye,
20 maintain an exploitation rate that does not do
21 incredible harm or irreversible harm to that stock
22 group, and actually invest the money in where the
23 actual problem is. If it's pikeminnow, if it's
24 dams, if it's irrigation, if it's agriculture, if
25 you don't address those, you will constantly be
26 cutting commercial fisheries back because there
27 will always be a weak stock in that mix because
28 you're not actually doing what it is you're
29 supposed to be doing to protect those weaker
30 stocks, to rebuild the mix in the aggregate, to
31 provide the commercial fisheries that produce the
32 interest in Canada to maintaining wild salmon in
33 B.C., and increase the economic benefits and
34 actually put the money in.

35 I know Dennis Brown put a suggestion on the
36 table yesterday that I was kind of surprised at,
37 and that was a royalty. I, like Dennis, have
38 always felt that the person that causes the
39 problem should be the person that pays the price.
40 In most of our situations in the commercial
41 fishery, that is not the situation. Commercial
42 fishermen are constantly viewed as the culprit.
43 From a proud tradition of being a commercial
44 fisherman, most of the commercial fishermen I know
45 are -- actually feel like they are targeted as the
46 problem, even though in many cases - in most cases
47 - it is not over-fishing that caused the problem,

1 and even if it was, commercial fishermen do not
2 define the TAC. They fish within the TAC and
3 normally stay within that set TAC. So if the
4 government is issuing overly high exploitation
5 rates, allowing too much fish to be caught, the
6 culprit becomes the fisherman.

7 But the problem is when Dennis put forward
8 the suggestion of paying a royalty, my immediate
9 reaction was, "But I didn't create the problem. I
10 didn't ruin that stream, that river, that creek."
11 And we have constantly tried, within the
12 commercial industry to use the **Fisheries Act** as
13 much as possible to stop -- I mean, we've taken
14 cases to court for oil spills and chemical spills
15 in the Fraser River, for dredging.

16 We end up being the group that tries to stop
17 -- whether it's a dam or whatever -- from
18 happening. We don't have the tools, we don't have
19 the budgets. the **Fisheries Act** is there. The
20 federal government is not using the **Fisheries Act**
21 to its ability. So when Dennis suggested a
22 royalty, my first reaction was, no, we shouldn't
23 do that, because then you let the actual culprit
24 off the hook.

25 Thinking about it at two o'clock this
26 morning, I have to say I changed my mind. As long
27 as that royal could be held by fishermen and
28 controlled by fishermen and didn't go into that
29 big black hole of general revenues, if fishermen,
30 like we did on Cultus, can take a million dollars
31 of their fish or of our revenue, and actually
32 address the problem and actually, for 200 or a
33 million dollars, get really good bang for our
34 buck, then why shouldn't we do that? Why
35 shouldn't we put the money where it actually makes
36 a difference, if it means we can harvest 25
37 million fish?

38 But, to do that, then you also need some
39 sense of security that somebody else isn't going
40 to harvest those fish in priority of you, that you
41 have some - maybe not a defined share in the ITQ
42 sense of it - but some assurance that you are
43 still in line in that picture, that you're
44 investing in your future, not somebody else's
45 future, and that you control those funds and that
46 you still have the ability then to go after the
47 individuals that are causing the problem.

1 So I have to say I changed my mind on what
2 Dennis was suggesting, and I think even within the
3 Wild Salmon Policy, which is not a policy that
4 says we have to harvest fish on the spawning
5 ground. It is that we maintain the biodiversity.
6 Are we up to those challenges? I think we are.

7 I may be proven wrong 20 years from now. It
8 may be that we end up continually shutting
9 fisheries down. But I believe in giving people
10 the opportunity to step up to the plate. In Area
11 G on the west coast, we stepped up to the plate
12 and we micro-managed our fishery. We made the
13 investment, we've used and gone creative and found
14 additional tools above and beyond ITQs which, in
15 my mind, is a faulty solution that, if
16 implemented, is irreversible.

17 So to look at opening up possibilities to
18 meet those objectives, to me the ITQ -- I'll
19 disagree - it may work for some people. It may
20 work for the efficiency model within a
21 corporation. In my view, it doesn't do the things
22 that it says.

23 Most of the reports that have been written
24 about ITQs have not asked the individual fishermen
25 who have been displaced from that fishery. It
26 asks those that benefited. "How well is this
27 working for you?" Ask the black cod fleet how
28 well they're doing. The guys that are still there
29 are doing quite fine. Ask the halibut fleet, who
30 had a windfall of quota.

31 But then ask the fishermen that were
32 displaced because the management costs were too
33 high, or they didn't have large enough landings,
34 that now we're looking at, through treaty
35 settlements, a million dollars to get back where
36 they used to be, were 70 percent of the landed
37 value is in lease rents instead of going into
38 putting that investment into things like Cultus.

39 I would rather see that go into a royalty
40 than into rent for somebody who's sitting in some
41 office building or some foreign nation and reaping
42 the benefits of that.

43 MR. MARTLAND: Mr. Commissioner, we're overdue for the
44 break, please. Thank you.

45 THE REGISTRAR: The hearing will now recess for 15
46 minutes.

1 (PROCEEDINGS ADJOURNED)
2 (PROCEEDINGS RECONVENED)
3

4 MR. MARTLAND: Thank you, Mr. Commissioner. I'll
5 complete with one last question, and then before
6 we move through participants I expect to make some
7 comments for their benefit with respect to timing
8 and the situation we're in, in terms of completing
9 this evidence today, which is vital.

10
11 EXAMINATION IN CHIEF BY MR. MARTLAND, continuing:
12

13 Q The final question I have for the panel, and this,
14 if I have my sequence right, should go first to
15 Mr. Morley.

16 The department has a number of consultative
17 processes with the commercial sector. One of the
18 primary ones is the CSAB. What is your best
19 advice on improvements that can be made or should
20 be made to those processes?

21 MR. MORLEY: Mr. Commissioner, the consultative -- the
22 CSAB consultative process, I think, suffers from
23 the issue that we tend to get bogged down in
24 dealing, again, with issues that impact on shares
25 -- intrasectoral shares issues and allocation and
26 a whole range of things that cause us to have
27 problems within the sector, and it really makes it
28 difficult to move forward, because the way it's
29 set up is that we operate on the basis of
30 consensus and no group will be sort of put under
31 the bus by the rest of the groups there. And I
32 think that unless and until we get a sort of fix
33 for that end of the business, i.e. intrasectoral
34 allocation, then I think it's going to continue to
35 be a problem to have that group move forward.

36 We certainly have the ability, when we're
37 dealing with common issues that impact on the
38 total commercial sector, can do good work and make
39 progress, but so many things that come back to
40 dealing with fishing plans that impact on the
41 allocation issue that makes it very difficult for
42 that group to function. In addition, the group is
43 not well supported by the department. Other
44 advisory processes are provided with funding so
45 that people who are volunteering a lot of their
46 time to go to these things and many, many
47 meetings, at least get their expenses defrayed for

1 being at those meetings and, in some cases,
2 actually get an honorarium for being at the
3 meetings. The CSAB gets none of that.

4 Secondly, there are groups that also have a
5 secretariat service provided that would take
6 meeting notes and send that material out to people
7 and, again, there's no funding for that for the
8 CSAB as well, and I think that would make it
9 operate more efficiently as well, so...

10 Q Thank you. Ms. Scarfo?

11 MS. SCARFO: Representation and consultation, which was
12 one of the topics you wanted to talk about, are a
13 very dear issue to my heart and to the people that
14 I represent. The CSAB is one of the organizations
15 where the Area Harvest Committee is an elected
16 process, everybody gets a ballot, we get elected.
17 The Harvest Committee then sends representation to
18 the different panels that we're allowed to sit on.
19 And I have had the honour of sitting on behalf of
20 my fleet consistently for quite some years on the
21 CSAB, I'd say.

22 For the most part, the CSAB is fairly
23 ineffective, poorly funded, although I hate -- I'm
24 not a person who throws money at a problem, so I
25 would say for all that the funding is an issue,
26 it's not the core issue. The difficulty is we
27 meet very rarely. Groups tend to feel that there
28 is an advantage at working in the hallways with
29 DFO rather than through industry, and there's many
30 examples of that where we'll reach consensus
31 within the meeting of the board, groups go out,
32 and because we're all pitted against each other,
33 they'll change their position to something because
34 there's been some understanding that there is some
35 personal advantage to them to change that outside
36 the room.

37 I do have a problem with the representation
38 because - and no offence, Morley - when I sit
39 representing fishermen in the one forum where it's
40 supposed to be fishermen, my fleet and all our
41 individual independent fishermen have as much
42 representation at the table or can be vetoed,
43 basically, by the large corporate companies. So
44 it's not a fishermen's organization. It's not a
45 fishermen's meeting room. And I have a problem
46 with that.

47 I understand the UFAWU being there. I think

1 they represent individuals, and quite well. We
2 have the seat assigned for the large companies,
3 which I don't understand, particularly when a lot
4 of us don't sell to the large companies; a lot of
5 us sell to the small, independent companies that
6 used to have a seat on the previous advisory
7 board, which was the Commercial Fishing Industry
8 Council, or through the other process that I'm
9 quite familiar with, which was the Minister's
10 Advisory Council, prior to that.

11 So if the makeup isn't fishermen and it's a
12 combination, then I get into the discussion, then,
13 of, "Well, if it's going to be the combination,
14 shouldn't you start making sure that you add some
15 of those other seats?" But when it comes to
16 representation and consultation, which I think is
17 the crux of what your question was, not just about
18 the CSAB, because I don't think the CSAB is going
19 to make any difference to Fraser River sockeye
20 survival, there are major problems with the
21 consultation processes that DFO engages with. And
22 I think that somebody told me the other day that
23 on the west coast alone fisheries managers attend
24 160 different management consultation processes.
25 Most of them I would say are meaningless. Most of
26 them are presentations of PowerPoints that I could
27 just as easily sit at home, without incurring
28 costs, to look at. You very rarely get time to
29 ask any meaningful questions, because usually the
30 room is too big or the person who actually made
31 the presentation isn't there to answer the
32 questions. So it's kind of meaningless
33 consultation; it's window dressing.

34 There's been a lot of work done over the
35 years within the department and through the
36 Auditor General reports and others, talking about
37 DFOs consultation processes and the needs for
38 change and what meaningful consultation actually
39 means. I've had the privilege of working with
40 really good people either on the west coast
41 through the Area Management Board, people like
42 Craig Darling or Gordon Sloan, who can bring much
43 more to the table to actually talk about how we
44 co-manage and how meaningful decisions are made.

45 But when it comes to representation, the
46 Commercial Fishing Industry Council that we had
47 before fell apart because of representation

1 problems, where groups went off and assumed to
2 speak -- they were handpicked by the department to
3 sit on individual processes, excluded usually the
4 participant that is going to be impacted, and then
5 walked away saying they represented industry.
6 That's happened on numerous occasions, sports
7 priority being one of them, where a portion of the
8 industry signed away, saying they agreed on behalf
9 of the industry that the commercial sports, not
10 just individuals, ma and pa, but commercial
11 recreational sports, would have priority over
12 those of us that actually had been making our
13 living on it. The Commercial Industry Council
14 fell apart because of that. Donna Petrachenko was
15 the RDG at the time and said unless the board
16 could become more representative and show that it
17 was representative, she would not fund. And I
18 think that kind of commitment from government, if
19 they are going to fund, that there are guidelines.

20 But the government hand picks how they want
21 in processes, and I can personally speak to that
22 on the fact that the Fraser Panel, Area G, West
23 Coast Vancouver Island and the communities have
24 historically always had access to west coast -- to
25 stocks as they migrated past.

26 The Fraser Panel is made up of individuals
27 representing Canada's interests, but they also
28 represent individual stakeholder groups at the
29 table. Since 1996, DFO has appointed individuals
30 that are not supported by the region to sit in
31 those processes. In fact, one individual didn't
32 even both attending the meetings. At this point,
33 the representative that supposedly is sitting in
34 the seat that would be occupied by Area G is an
35 extra Area H harvester.

36 So there is no representation, which means we
37 don't even have access to the weekly data that is
38 provided. We've raised the issue with the
39 government. They handpick who they have as
40 representation. So on the meaningful processes
41 where representation is critical, DFO appoints,
42 whether that individual has support from the
43 people they're supposedly representing or not.
44 PST negotiations is another example, but we won't
45 go there for today.

46 But on the ones that are meaningless, where
47 decisions doesn't (sic) really matter, because

1 they don't follow through anyway, they let the
2 Harvest Committee pick.

3 Q Mr. Duncan, do you have comments on these
4 processes?

5 MR. DUNCAN: Yes, I do. You want to rephrase your
6 question as I kind of lost track with Kathy here.

7 Q No, that's fine. The question was simply: What
8 is your best advice on improvements that can be
9 made to these consultative processes?

10 MR. DUNCAN: That's a difficult one. Essentially, I
11 mean, it should be an all-inclusive process.
12 However, you know, we were talking about CSAB. At
13 least there's a consensus here that it has
14 difficulty in working, and the Native Brotherhood
15 pulled out of that process back about 2006, if
16 memory serves me correct, at a convention in
17 Campbell River.

18 And the way the Native Brotherhood works, its
19 governance structure says that by resolution it
20 votes on a certain subject, and one of the topics,
21 I can't remember the number, but one of the
22 resolutions passed that year said they wanted out
23 of CSAB, and it was the opinion of the person who
24 proposed the motion on the floor and said they
25 felt it was inadequate and wasn't meeting the
26 needs of the members. So it was voted on and it
27 was carried, and that action was then carried to
28 CSAB whereby we withdrew.

29 And to this day we're still out of the
30 picture, out of the CSAB picture, but not entirely
31 out of the consultative process. But we're not
32 intimately involved in that but, you know, it's --
33 we're peripherally involved in the IHPC. IHPC has
34 a number of commercial seats, but they're all
35 taken, so we're sitting on the sidelines there,
36 so... So the level of interest is not there, so I
37 was there from day one, but, you know, we spent
38 the first day with a lady named Pam Cooley, and we
39 went through an exercise where we were --
40 developed the terms of reference for IHPC. We
41 spent all day, and at the end of the day DFO came
42 in and said, "Here they are," but they had a
43 different version of it, so...

44 But generally, you know, consultative
45 mechanisms, they work if there's some trust,
46 there's some honesty, I guess, sort of thing
47 between groups, and not so competitive, because I

1 think by nature fishermen are competitive. I
2 mean, that was the basis for the fishery until we
3 got into this mode we're in now. And to a large
4 extent, our members are very, very supportive of a
5 commercial competitive fishery. And what that
6 means is the good fishermen get more of the fish
7 and the others get less. But that's been the
8 history of the competitive fishery and so thus,
9 therefore, they're not necessarily for ITQs
10 because of that, because their current ITQ
11 structure or, I mean, sorry, the share-based
12 management approach DFO's imposing or is
13 attempting to impose, is that it does not
14 recognize the catch history of individual
15 fishermen.

16 And it's fair to say that Native fishermen
17 have been at or near the top of production. I'm
18 pretty sure Rob would agree with that, in prior
19 times. I mean, not necessarily today, because, I
20 mean, the -- you know, last year, I mean, sure,
21 they went on a demonstration-type fishery, but I
22 just -- I'm getting lost here, now, but we'll just
23 leave it at that for now, I guess.

24 MR. MARTLAND: Thank you. Mr. Commissioner, that
25 concludes my questions of the panel. What I'd
26 like to do through addressing you, is to address
27 with counsel the position we're all in with
28 respect to the timing of this evidence. We're in
29 a position where we must complete this evidence
30 today. We don't have further hearing days
31 available, generally, and this business of
32 spilling over and having clean-up days is far from
33 optimal.

34 In light of that, and at the risk of being
35 even more of a whistleblower and a timekeeper for
36 the folks in the room, what I'm proposing might
37 make some sense for the time today. To complete
38 today, on my math, we would work to have time
39 divided equitably amongst participants' counsel.
40 Mr. Hickling and Mr. Harvey each act for members
41 of this panel, and I think it's fair that they
42 have some further time more than other counsel
43 might.

44 My math is such that if they each had 25
45 minutes, that would see Mr. Harvey concluding
46 before the mid-day breaks. Other participants
47 would have 10 minutes each for their questions,

1 and I appreciate that is a compressed period of
2 time. Of course, this is in the context where
3 it's the second panel. We have a background
4 through the PPR and other evidence and material.
5 If there were outstanding questions, if we're
6 unable to complete on that schedule or counsel
7 having compressed to 10 minutes have a further
8 question, we might then look to see if we could
9 introduce evidence through questions put to
10 witnesses answered in writing as opposed to using
11 hearing times.

12 So I'd like to express that and welcome any
13 direction that you have, Mr. Commissioner, on this
14 question, and I'll be asking counsel to work
15 within those confines that we face and to work to
16 share their time or fit in the time that we have
17 today.

18 THE COMMISSIONER: Mr. Harvey is up next?

19 MR. MARTLAND: He is, thank you.

20 MR. HARVEY: Chris Harvey for the Area G Trollers
21 Association and the UFAWU. Mr. Commissioner, I
22 will try to be as efficient as I can, but I don't
23 think I can possibly carry out my responsibility
24 in the time left between now and 12:30. I'll do
25 my best.

26
27 CROSS-EXAMINATION BY MR. HARVEY:

28
29 Q Ms. Scarfo, on the question of consultation, was
30 the use of the PICFI and ATP licenses -- well, let
31 me preface this. Out of the 160-odd Area G
32 licences, are there somewhere between 11 and 14
33 that have been purchased for reissuance to First
34 Nations?

35 MS. SCARFO: That's my understanding.

36 Q Yes. And was there a consensus reached in the
37 SCORE process as to the terms and conditions of
38 the licences when reissued?

39 MS. SCARFO: Yes, the SCORE process did come up with
40 consensus recommendations on the allocation
41 formula on how licenses would be transferred
42 through both the ATP and PICFI, and any other
43 transfer mechanism.

44 Q Yes. And was it basically that the terms and
45 conditions on the licence would remain the same
46 once they were reissued to First Nations?

47 MS. SCARFO: Yes. And if I could just elaborate on

1 that, is that the premise was that when you buy a
2 licence, whether you buy it or I buy it or the
3 judge buys it, what you get is what you bought,
4 which is a licence that has a list of conditions
5 attached to it as to where you can fish, how you
6 can fish, what the regulations are within that.

7 The Department of Fisheries and Oceans was
8 moving towards splitting that licence up into its
9 component parts and actually altering the
10 condition of that licence and moving them upriver,
11 which obviously has significant not just
12 allocation impacts but regional fisheries impacts
13 at the same time.

14 Q And is the continued participation of First
15 Nations in the west coast Vancouver Island troll
16 fishery a significant matter for west coast
17 Vancouver Island First Nations?

18 MS. SCARFO: I wouldn't want to speak on their behalf,
19 but everything they have indicated to me and to
20 the Area G fleet is that they work very closely
21 with us, they're interested in continuing and
22 expanding their participation in the fishery. We
23 work very closely together and build towards the
24 future, and that they see themselves as a major
25 increasing stakeholder in that fishery as time
26 goes by.

27 Q In fact, you mentioned that Chief Amos of the
28 Hesquiaht Band, is in the room today?

29 MS. SCARFO: Yes, he is.

30 Q He is on your Harvest Committee, Are G Harvest
31 Committee; is that correct?

32 MS. SCARFO: He's an advisor on the Harvest Committee
33 and also on the society that handles any of the
34 legal transactions for which we need a society.

35 Q And, of course, he's an Area G licence -- troll
36 licence holder?

37 MS. SCARFO: He is an active Area G fisherman.

38 Q Have the Ahousaht Band made repeated requests for
39 the use of those licences held in inventory under
40 the PICFI and ATP program?

41 MS. SCARFO: It is my understanding that they have and
42 that they have also, within their fisheries group,
43 been in significant discussion on the use and
44 misuse of the allocation that's associated with
45 those licences.

46 Q Yes. And have those licences been granted to the
47 Ahousaht First Nations, or not?

1 MS. SCARFO: To my understanding, no, and I think it
2 was in the cross-examination under the PST that
3 the indication was that they would not be granted
4 to the Nuu-chah-nulth.

5 Q And what use would be made of them?

6 MS. SCARFO: That those licences would be divvied up
7 and separated and moved up into particularly the
8 Fraser River.

9 Q Mr. Duncan, I'd like to ask you some questions.
10 You said you began in the fishery in 1958 and
11 fished for a number of years after that. You've
12 described all that. Can you just describe,
13 briefly, the changes you've seen with respect to
14 First Nations participation in the commercial
15 fishery over the years and what it is today?

16 MR. DUNCAN: Well, I mean, I don't have the exact
17 numbers, but there was considerable participation.
18 The fleet size, when I started, was fairly
19 significant. A lot of gillnetters. The seine
20 fleet, coast-wide, in that era, was about 225,
21 between 225 and 250. The gillnet size was
22 considerable; same with the troll, it was quite
23 considerable.

24 Over the years, that participation has
25 declined. You can thank the Davis Plan and more
26 recently Mifflin. But the new arrival on the
27 scene has been DFO through its programs. I mean,
28 they've always had the ATP program, and more
29 recently they're still in PICFI. But there's also
30 another player on DFO's camp, and that's AAROM.
31 And between these three initiatives, they're
32 buying up a lot of licences.

33 I did get a report from DFO on this, and it's
34 something in the order of about 350 to 400
35 licences, salmon licences, have been bought. And
36 sure, there's been some movement out, as far as F
37 licences have gone out, but that's coastal
38 community, and I don't know the distribution of
39 those right now, but it doesn't make up for
40 licences lost in the past.

41 Q What do you think of the idea of moving licences
42 to First Nations communities upriver, away from
43 coastal First Nations communities?

44 MR. DUNCAN: I thought about that last night, and
45 initially I was going to say it's not a good idea,
46 but through the mixed stock fishery process that
47 we have, sometimes those decisions by DFO allow

1 that to happen, so in general, as long as the
2 process is fair in determining when a terminal
3 fishery will happen, generally I don't have a
4 problem.

5 But what's happened is that it has passed
6 through coastal communities and the value would
7 have been much more considerable than inland,
8 especially when you get up a couple hundred miles
9 from the mouth here.

10 Q Yes. That's the question that I wanted to put to
11 Mr. Morley as well, from a -- wearing your
12 processor's hat for a minute, what are your views
13 on moving commercial fishing, harvesting and
14 marketing upriver?

15 MR. MORLEY: Mr. Commissioner, again, this comes back
16 to my view that we should be trying to find a way
17 that maximizes the potential income that this
18 resource can derive to Canadians and that -- and
19 also that we're really here talking about
20 recommendations that you're going to make about
21 sustainable fisheries, and sustainable fisheries
22 rely not just on the underlying health of the
23 ecosystem or the resource, but a sustainable
24 fishery is one that is economically sustainable
25 for the participants.

26 And the issue and the concern I have here is
27 that, and again, it gets back to a number of
28 issues of when you send fish upriver and develop a
29 new commercial fishery there, you are moving from
30 a commercial opportunity that relies on a variety
31 of fish populations to one that relies on a -- if
32 you're truly in a terminal area that a number of
33 people are advocating relies on a single
34 population and so from the -- we've had a lot of
35 discussion here from the biological point of view
36 on this portfolio effect of maintaining healthy
37 and diverse populations, and the reality here is
38 that the portfolio effect from the point of view
39 of a sustainable, economic commercial fishery is
40 also important, and what you're actually doing is
41 destabilizing commercial fishery by ensuring that
42 it relies on a single population in a terminal
43 area, which is much more highly variable in terms
44 of its amounts from year to year and much more
45 risky.

46 So from the point of view of what you're
47 doing there is trying to develop a commercial

1 activity in an upriver area where the fish are
2 available less frequently and where that group who
3 is fishing on that is relying on a single
4 population. And if that population is reduced,
5 their economic opportunities are reduced
6 drastically, and they can't sort of say, "Okay,
7 we're going to take conservation action on this
8 population this year and we're going to, instead
9 of harvesting Fraser sockeye we're going to
10 concentrate on Barkley Sound sockeye or we're
11 going to concentrate on chum salmon in Johnstone
12 Straits," because they don't have that opportunity
13 living in that one terminal area. So inherently
14 the fishing activity is less economically
15 sustainable from the point of view of relying on a
16 single highly variable population.

17 Secondly, from the point of view of, again,
18 looking at that -- in addition, we have also heard
19 that in order to put fish upriver for an upriver
20 fishery, given that there are fish that die on the
21 way up the river due to environmental causes, warm
22 water, perhaps, or other things, and in order to
23 transfer fish to develop a new commercial fishery
24 upstream, you may have to transfer one and a half
25 or two fish out of a fishery at the mouth of the
26 river, in the lower river, or in Johnstone
27 Straits, in order to get one fish to that terminal
28 fishery up the river. So you've got a loss of
29 yield as well, just in the point of the number of
30 fish that's available to that fishery.

31 Thirdly, quite clearly, the market
32 opportunities for the fish that are upriver are
33 much more limited and in the sense that the
34 quality of the flesh, itself, provides fewer
35 options in terms of products that could be
36 produced and certainly would not generate the
37 potential income that can be generated from higher
38 quality fish in the ocean fisheries.

39 So it's, in my opinion, those fisheries, from
40 the point of view of the amount of fish, the
41 variability, and the quality and the cost of
42 implementing a new fishery up there, are
43 significant that they are not as economically
44 sustainable as fisheries that are not up the
45 river.

46 Q Thank you. Mr. Morley, I think you - moving to a
47 different subject - but I think you described,

1 last time you were here, that the economic unit
2 that you worked in formally at DFO has basically
3 been disbanded over the years; is that correct?

4 MR. MORLEY: Well, DFO has had many, many
5 reorganizations and certainly that was disbanded a
6 long time ago. I think the concern I was
7 mentioning, Mr. Commissioner, is that the focus on
8 economic analysis of understanding what is the
9 socioeconomic benefits that are derived from
10 fisheries has not been a focus of attention for
11 the department for a number of years and the
12 expertise is somewhat lacking in the department in
13 terms of the number of people they have with that
14 background.

15 Q Yes.

16 MR. MORLEY: And that when they do economic analyses
17 now, largely they contract it out to outsiders,
18 but they don't have the internal resources in
19 order to do the analyses or to provide that kind
20 of advice to decision-makers within the
21 department.

22 Q Yes. On that subject, I'd like to refer you, Ms.
23 Scarfo, to a report. Now, this has been moved
24 into the ringtail somewhat late in the day, but I
25 think it's a non-contentious matter, a Report of
26 the Standing Committee -- Standing Senate
27 Committee on Fisheries and Oceans, Interim Report
28 on Canada's New and Evolving Policy Framework for
29 Managing Fisheries and Oceans. It's dated May
30 2005. Does Mr. Lunn have that? It was circulated
31 to participants last evening.

32 MR. LUNN: I don't think I have that, I'm sorry. Was
33 this circulated by your office?

34 MR. HARVEY: I'm not sure whether it's in --

35 MR. MARTLAND: Mr. Commissioner, I've alerted Mr.
36 Harvey to this concern, and the concern is this:
37 at four o'clock yesterday I think his office
38 circulated a series of 15 additional documents
39 proposed to be put to the panels and I've raised
40 concerns about that and concerns, in particular,
41 if they're documents that aren't on ringtail and
42 aren't part of the production record to
43 participants. This is a document which may be of
44 a different character if it's, in a sense, part of
45 the public record.

46 I believe we circulated that out to
47 participants. I don't know, right now, whether

1 that went to Mr. Lunn or others as well. This is
2 a document that's not on ringtail, I understand.

3 MR. HARVEY: All right.

4 MR. TIMBERG: Mr. Commissioner, if I could just
5 comment, briefly? This is an issue with respect
6 to document disclosure, primarily, in the sense
7 that Mr. Harvey has served us last night. I got
8 to see them this morning; he sent them after five
9 o'clock last night. And there are 15 documents
10 that are not on ringtail, which means he has not
11 disclosed them through the -- pursuant to your
12 order made November 2009, they're all non-ringtail
13 documents.

14 So it goes back to the issue of all
15 participants fairly disclosing their documents and
16 not cherry-picking them and serving them on other
17 participants in the midst of the hearings. So I
18 have not had an opportunity to review any of these
19 documents with my client. So that's number one.

20 And the second part is that, as I stated
21 yesterday, is the document disclosure of seven
22 days in advance, and the prejudice to us is that I
23 have not had a chance to review these with Jeff
24 Grout. Jeff Grout testified yesterday, and he
25 hasn't seen these. If he starts pursuing these
26 lines of documents, what, do we then have to call
27 Jeff Grout back to have him speak to any issues
28 that may arise out of this late disclosure?

29 So I just see a number of issues flowing from
30 this. First of all, it's one of document
31 disclosure, generally, and, second, it's the
32 commission's rules on fair notice to all
33 participants. So in that regard, I'd object to
34 these documents being utilized.

35 MR. HARVEY: Well, this is a public document, and I
36 suppose I could deal with it through the RDG panel
37 at the end of the week or through other witnesses,
38 but I thought it would -- I think what I'd like to
39 do is just have it described, at this point, at
40 any rate, with this witness. That may be the most
41 effective way of doing it. And then we'll -- once
42 it's in ringtail I'll have it properly put to a
43 DFO witness later, if that's acceptable?

44 Q Ms. Scarfo, this Senate Standing -- Standing
45 Senate Committee Interim Report on New and
46 Evolving Policy Framework, is this something which
47 contains a number of useful comments relating to

1 the effects, among other things, the effects of
2 ITQs?

3 MS. SCARFO: Yeah, there's actually three reports that
4 have been published by the Senate Committee on
5 ITQs. The most recent one was the Interim West
6 Coast Report on ITQs, where they identified a
7 significant number of concerns that have arisen on
8 ITQ fisheries from lessons that they've learned
9 not only in New Zealand and Iceland, but also from
10 east coast fisheries, where they've tried to
11 address them through the implementation of
12 policies to protect the small boat independent
13 fleet, including the Owner/Operator Policy, which
14 is very popular in the east coast and in Alaska,
15 and the Fleet Separation Policy, which seems to
16 have gone by the bye here, where seine boats are
17 trading fish with the small, independent troll
18 fleet.

19 They recognize the importance of those and
20 they made some significant recommendations to the
21 government, and those included some significant
22 work to be done before proceeding any further with
23 the implementation of any ITQs. The Nuu-chah-
24 nulth, the West Coast Regional Management Board,
25 Area G, have all participated in those processes,
26 and the Senate Committee actually has come out to
27 B.C. and to our communities and talked to our
28 fishermen and our regional districts and
29 representatives about these issues.

30 Q Okay. And included in the recommendations was a
31 recommendation that DFO take into account
32 socioeconomic impacts of its major decisions?

33 MS. SCARFO: Yes, that's one of the main
34 recommendations, is that there are, for all that
35 we've heard, some of the pros of which I would
36 actually love to debate at some point, the
37 validity of some of these supposed benefits of the
38 ITQ fishery. There are, regardless of whether I
39 agree or disagree with those, there are some
40 significant problems that arise out of those ITQ
41 fisheries that need to be addressed before you
42 implement them, because you cannot turn back once
43 you've implemented them. It is not something that
44 the small, independent boat owner can get back
45 into the fishery after you've implemented. So the
46 damage is irreversible, so the recommendations are
47 quite significant to proceed with extreme caution

1 and definitely take those steps before you
2 contemplate going any further.

3 Q Yes. And before we put this away, because I'm
4 going to move to the -- my next topic is the West
5 Coast Vancouver Island Aquatic Management Board.
6 Incidentally, you referred to an Area Management
7 Board; did you mean the Aquatic Management Board?

8 MS. SCARFO: Yeah, it evolved over time, so --

9 Q All right.

10 MS. SCARFO: -- so previously it was known.

11 Q Now, one of the recommendations was that DFO make
12 a firm commitment to fund the West Coast Vancouver
13 Island Aquatic Management Board; is that correct?

14 MS. SCARFO: It's been a recommendation that's been
15 fairly consistent throughout time, and yet long-
16 term funding is still a critical issue,
17 particularly if the board starts to look at what
18 DFO feels are controversial issues, like
19 allocation, which are obviously very important to
20 the regions, then the issue of funding seems to
21 raise its head very quickly.

22 Q And included in the report is a description that
23 that board was:

24
25 Launched officially February 2002 as a three-
26 year pilot, this regionally-based initiative
27 involves several communities on the West
28 Coast of [Vancouver] Island which came
29 together and have a formal place at the table
30 in regard to fisheries policy. The first
31 board of its kind in Canada, the AMB has
32 taken an integrated, ecosystem approach to
33 aquatic resource management and provided
34 advice to the appropriate statutory
35 authorities on aquatic resource policy,
36

37 Et cetera, et cetera. Does that accurately -- and
38 then it makes reference to the board describing to
39 this committee:

40
41 ...very much a success story, in that it is a
42 cost-effective vehicle for implementing
43 Canada's **Oceans Act**, which, we were told, is
44 "fairly specific about the resources of
45 Canada benefiting Canadians and especially
46 coastal communities." The AMB is perhaps
47 best known for having fostered a working

1 relationship among the Aboriginal and non-
2 Aboriginal fishing communities in the region.
3

4 Is that a correct description?

5 MS. SCARFO: It's a correct description, but I don't
6 think it captures the essence of what it actually
7 is. It's fairly phenomenal in that it is a truly
8 integrated board that has people that would
9 normally not even want to sit in the same room
10 working together, and that has been developed
11 predominantly because of overarching principles
12 and objectives and a very clear vision, and terms
13 of reference that identify that for all that we
14 all have conflicting interests, we do have some
15 overriding areas of consensus, and that when we
16 agree that we disagree there's mechanisms in place
17 as to how we actually address those disagreements.

18 In my mind, it's a rather phenomenal board.
19 And the efficiency and effect of that board within
20 the region, I think, is rather dramatic and is a
21 model that could be picked up under the **Oceans Act**
22 and has been used by DFO as a model of what they
23 could do for ecosystem-based management within
24 other areas.

25 Q What interests are represented on that board?

26 MS. SCARFO: Well, the commercial industry has a seat,
27 the processing industry has a seat, the
28 aquaculture industry has a seat, the recreational
29 fleet has a seat. The First Nations, Province and
30 Federal Government are the main players. The
31 regional districts and governments have
32 representation. NGOs, environmental groups and
33 secondary industries are also at that table. It's
34 a pretty broad group of people that don't normally
35 work together because of the competing interests.

36 MR. HARVEY: I note the time.

37 THE REGISTRAR: The hearing is now adjourned until 2:00
38 p.m.
39

40 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

41 (PROCEEDINGS RECONVENED)
42

43 THE REGISTRAR: Hearing is resumed.

44 MR. MARTLAND: Mr. Commissioner, I said to Mr. Harvey
45 just a moment ago that I would point out that he's
46 at the 25-minute mark of his questions.

47 MR. HARVEY: Mr. Commissioner, I appreciate that and

1 I'll go as quickly as I can to finish this.
2

3 CROSS-EXAMINATION BY MR. HARVEY, continuing:
4

5 Q Ms. Scarfo, you had described the Aquatic
6 Management Board; could you now describe DFO's
7 attitude towards the Aquatic Management Board?

8 MS. SCARFO: Yeah. I guess the most recent description
9 of how the government handles recommendations that
10 come out of a comprehensive board would be the
11 Canada/U.S. chinook annex and the reduction of the
12 troll catch by 50 percent in that region under
13 that annex. And what we did was, having met with
14 the minister and she outlined the challenges on
15 developing a mitigation plan, we took those
16 challenges back to the region.

17 We formed a sub-committee of the board and
18 worked for a year in developing a plan that would
19 minimize the impacts and get the best bang for the
20 buck for not just the individual fishermen
21 affected, but for the region. And so we had the
22 secondary industries, the fish buyers, the
23 regional districts and mayors and everyone at the
24 table and we worked really hard in developing that
25 plan. And we outlined our objectives and on that
26 same table, we actually evaluated it against DFO's
27 stated objectives of economic viability, the
28 **Oceans Act**, all of those things, and then
29 presented that to DFO and my understanding is that
30 according to the cabinet memo, they thought it was
31 a very comprehensive and inclusive recommendation
32 but they didn't accept it and went a route that
33 was completely contrary, in fact the one that was
34 not recommended that was -- that the management
35 board members and sub-committee recommended
36 against.

37 Q And that was a recommendation to further reduce
38 the number of licences in Area G; is that right,
39 by buy-back?

40 MS. SCARFO: Yeah, it was not just to further reduce
41 but to actually further reduce the allocation to
42 the area through that reduction in fishing
43 vessels.

44 Q Yes. All right. Now, I'd like to ask you next to
45 describe the Area G troll fishery and first of
46 all, for the point of demonstration only, I'd like
47 to refer to Tab 2 which sets out the different

1 troll fishery zones. I'm sure there would be no
2 objection to that.

3 MR. HARVEY: If Mr. Lunn could bring up Tab 2 on the
4 documents that were sent around. So it's up on
5 the screens, I see. It's just not up on this
6 screen.

7 Q Does this show all the different sub-areas in --
8 on the West Coast of Vancouver Island?

9 MS. SCARFO: Actually, no, the -- well, it does on the
10 West Coast of Vancouver Island, but the region
11 actually continues around the top end of Vancouver
12 Island and down to basically that second set of
13 islands where you actually get into that very
14 narrow gauntlet.

15 Q Yes. All right. And your purpose in showing this
16 is to show how the fishery can be micromanaged?

17 MS. SCARFO: Yes. And I guess -- the point in showing
18 this is these are -- these are areas within the
19 fishery. We have sub-areas and then within that,
20 we also have further sub-areas where we close
21 depending on the timing of a fish stock coming
22 through. So that we can actually micromanage
23 depending on the fish stock that we want to
24 target, depending on the nature of the beast,
25 whether it likes to hug the shore, follow the deep
26 or actually even what we call waterfall down the
27 coast.

28 So if a stock of concern is heading to the
29 Fraser River, it'll go through the northern area
30 first so we'll open that and then either follow it
31 down or shut down areas and sub-areas depending on
32 what stock and species that we're targeting. We
33 sort of design a fishing plan like most fisheries
34 ahead of time. You define what your potential
35 anticipated catches are going to be and obviously
36 that's in a range.

37 Then we'd pull out the toolbox basically and
38 decide whether or not we're going to manage it
39 through a fleet-wide quota and we've looked at
40 other models of different types of quota
41 managements and some of those are somewhat of an
42 individual quota that we call them an amendment
43 style fishery.

44 MR. HARVEY: That's Tab 1, I think, Mr. Lunn, if we
45 could have that up.

46 Q This is a document describing the amendment style
47 fishery?

1 MS. SCARFO: Yes. And this was in the early 2000s when
2 we realized that with the Wild Salmon Policy or
3 the desire to avoid certain stocks, we may have to
4 micromanage some very small allowances, in which
5 case it would be difficult to have the full fleet
6 go without knowing what their individual catch
7 was, so it's -- it does the same thing as an ITQ
8 does. It defines what the catch will be per
9 vessel.

10 The difference is here that if you're on the
11 fishing ground, and the way we fish, we hail into
12 the fishery that we know you're going to
13 participate. Then -- and we do that presently.
14 Then you actually divvy up the catch amongst the
15 number of boats that are on the ground and they
16 have an individual catch.

17 The other way that's very similar to this,
18 that's also used in the U.S. and on the East Coast
19 to slow the pace of a fishery down for marketing
20 purposes, is what we call trip limits, so that
21 every delivery you can't bring in more than a
22 certain number of fish.

23 Q Yes. And do those various mechanisms have the
24 advantage of not creating a financial instrument
25 that has a market value?

26 MS. SCARFO: Yes. And if you look at -- in the West
27 Coast troll fishery, I mean, some of our catches,
28 because we're not big volume fisheries, if you
29 look at the incremental additional cost that would
30 be added through the transfer or leasing costs,
31 where 50 to 70 percent of the landed value of your
32 product is then added to your daily catch, or the
33 monitoring costs, which dockside monitoring is
34 very, very expensive for small amounts of fish,
35 would basically bankrupt the fleet and cripple the
36 majority of the fishermen. These have the
37 benefits of what an ITQ fishery would have without
38 the down sides.

39 And I had the pleasure last week of actually
40 going over these with my colleagues on the East
41 Coast where they have very few ITQ fisheries and
42 what they call them is competitive fisheries that
43 are modified or modified competitive fisheries.
44 And over the years we've spent a fair amount of
45 time talking with them to see what kind of
46 mechanisms work really well for the type of
47 fisheries that are small boat fisheries with

1 smaller catches.

2 Q Yes. And how are those working in the West Coast
3 troll fishery?

4 MS. SCARFO: Well, like I said, if we had not had our
5 catch reduced by 50 percent, we were actually
6 doing quite well. That adds an element that makes
7 it a bit more difficult, particularly since it
8 impacts the domestic allocation on that the last
9 round of fleet reform, fleet renewal
10 revitalization from the federal government was a
11 -- was the Mifflin plan with area licensing. And
12 although we raised concerns at that point that
13 there was some unknowns and uncertainties, those
14 have still not been addressed and we're still
15 looking at those. And my understanding is they're
16 now planning on using some of our mitigation funds
17 to address the problems that were created in
18 1995/96, that they're still outstanding.

19 MR. HARVEY: All right. I wonder, if there's no
20 objection, if I could have those two documents
21 marked as exhibits.

22 MR. MARTLAND: I don't have an objection. I think,
23 just so people don't think I'm being too arbitrary
24 in these things, the approach we've tried to take
25 is one of -- to be measured. If there's a few
26 documents, we're not likely to object if they're
27 not problematic or difficult. If there's more
28 than a few, the late notice can create a bigger
29 concern for us.

30 The other point I'll make is that Mr. Harvey
31 referred to I believe it was a Senate Report and
32 that would seem to be a matter that is of a public
33 nature and it may be simply of assistance to avoid
34 the artificiality of having that deferred to later
35 testimony and I don't know what Canada's position
36 will be on that particular document. But I wonder
37 if there's some wisdom to having that put in as an
38 exhibit too.

39 MR. TIMBERG: Yes, Mr. Commissioner, we don't object to
40 the Senate Report being put in as an exhibit. I'm
41 not certain the source of this map at exhibit 2,
42 the troll fishery. I note that the witness has
43 said that it's not accurate at the north end of
44 Vancouver Island, so I question its utility. And
45 I'm not certain of the source of this amendment
46 style at Tab 1, if that's a DFO document or not.
47 So I'd like more certainty as to where these

1 documents come from.

2 MR. HARVEY:

3 Q All right. Well, I'll ask. Ms. Scarfo, what is
4 the source of the amendment style document?

5 MS. SCARFO: That was one of the pre-demonstration
6 fisheries on selectivity that we put forward, so
7 that came from the Area G advisory to DFO. The
8 map is the chinook management area map from DFO.
9 It doesn't include all sub-areas that are in the
10 licensing area which is a separate map.

11 MR. HARVEY: Okay. Could those then be marked?

12 MR. TIMBERG: So just for further confirmation then, so
13 Exhibit 1, the amendment style, you made that
14 proposal to DFO. Was that ever accepted or was
15 this just a proposal from the Area G troll?

16 MS. SCARFO: It was a proposal for something other than
17 ITQs from the Area G troll and no, it has not been
18 accepted by DFO.

19 MR. TIMBERG: Okay. Thank you. And map 2 is just the
20 chinook species; is that correct?

21 MS. SCARFO: Yes. Not the full licence area.

22 MR. TIMBERG: Fine. Thank you. With that
23 clarification, I -- those are fine.

24 MR. HARVEY: Thank you.

25 THE REGISTRAR: Mr. Harvey, you're the winner. Your
26 amendment style is Exhibit number 500. And the
27 map will be Exhibit 501. What about the Senate
28 Report?

29 MR. HARVEY: Five-0-two?

30 THE REGISTRAR: The Senate Report, do you want that
31 marked?

32 MR. HARVEY: Yes, please.

33 THE REGISTRAR: Senate Report will be 502.

34
35 EXHIBIT 500: Amendment Style - Use of
36 Amendment to Manage Small TAC - 2004 or 2005
37

38
39 EXHIBIT 501: West Coast Vancouver Island
40 Troll Fishery Map
41

42 EXHIBIT 502: Senate Interim Report on
43 Canada's New and Evolving Policy Framework
44 for Managing Fisheries and Oceans - May 2005
45

46 MR. HARVEY:

47 Q All right. Ms. Scarfo, I'd like you to describe

1 the -- say something about the value-added aspect
2 of things. We've been told that ITQs add value.
3 I don't want you to talk about ITQs any more, but
4 what have you done with respect to a computerized
5 system in your fish? Just describe that briefly.

6 MS. SCARFO: Yes. We've actually got a number of
7 initiatives, even though we're sort of down on our
8 hands and knees wondering if we can survive with
9 the amount of fish that we have left. We've got a
10 number of proactive initiatives underway. One is
11 a partnership with ecotrust and several other
12 fishing organizations that we started three years
13 ago and that was to recognize that the market
14 these days wants to be able to trace your product.
15 We applied to eco-certification through the Marine
16 Stewardship Council out of London a number of
17 years ago, but the cost of that type of
18 certification is in the millions of dollars and is
19 not really suited for small artisanal fisheries.
20 The pollock fishery in Alaska was able to afford
21 to do it but we can't really do it.

22 So what we decided instead was to, because
23 the winter fishery and some of our fisheries are
24 such small volume, we can actually trace each
25 fish. So we developed a tracing project where we
26 individually tag and put a number on each fish
27 that goes to the market that we deliver which can
28 then be identified back to a website where you can
29 track that number so we now have the test pilot
30 project up and underway and I think I've given you
31 the website for that. And what you do is you go
32 to that website and you punch in the number on
33 your fish and it will come up with an
34 identification of the vessel that caught it, where
35 it was caught, when it was caught, who the
36 individual that caught it was with some more links
37 to the fishery itself. And it's been very
38 productive so far.

39 We just partnered with the entire lobster
40 fleet on the East Coast. They've now joined our
41 website, so it's definitely taking off and we've
42 worked out the bugs and we're getting feedback
43 directly to the fishermen now from that website
44 where an individual can be sitting in a restaurant
45 in Chicago and comment that he enjoyed his meal
46 and the restaurant owner can now take an iPad or
47 an iPhone to the individual. They can punch that

1 number in and it directly shows you where that
2 fish was caught and we've had feedback from people
3 saying how much they enjoyed it and they're
4 talking directly to the fishermen.

5 Since the implementation of the winter
6 fishery, we have the highest landed value per fish
7 on record for our chinook, so it's been extremely
8 successful and we hope to see continued results
9 along this line. Unfortunately, we do get
10 penalized on the domestic allocation front in that
11 every time we do these kind of projects, we
12 actually lose access to other fish.

13 Q Yes. And you've accomplished that winter fishery
14 by arranging with DFO to divide up the annual TAC
15 in time period increments; is that right?

16 MS. SCARFO: Yes. We decided that instead of catching
17 all the fish in the traditional month and a half,
18 two months that we used to, we would spread the
19 fishery out over a longer period of time. You can
20 actually do this in chinook. It's much more
21 problematic on a sockeye fishery where the fish
22 are only in your area for a short period of time
23 so you've got to go out and catch them while
24 they're there. But we actually designed the
25 fishery to slow the pace of the fishery down,
26 spread it out and deliver fresh to the market. So
27 it's been a difficult one because it does incur
28 additional cost to the fishermen because instead
29 of fishing on those nice, long, warm August days
30 when there's significant larger abundances, the
31 guys are out there today.

32 And it's been cold, it's been snowing. The
33 days are short and the weather is unpredictable.
34 And the region that we're fishing in is fairly
35 remote, so it's not like we can deliver to
36 Vancouver easily. The only real road access is
37 Tofino/Ucluelet and a lot of the fishery to avoid
38 some stocks of concerns as of today we've shut
39 down Southwest Vancouver Island, so the boats have
40 to move up to the Nootka/Esperanza area and
41 there's very few deliveries. In fact Zeballos is
42 one of the few landing stations in that area.

43 So it is a significant challenge but we've
44 done this project cooperatively with environmental
45 groups, other businesses, with the support of the
46 tribal council and the local area management
47 board. It did require significant investment in

1 data collection on our own behalf. There was over
2 three years where the guys went out and collected
3 samples and DNA sampled them before we could
4 actually stand up to peer review internationally.

5 Q Was this done for selective fishing reasons or
6 value-added reasons or both?

7 MS. SCARFO: We weren't really calling them selective
8 fisheries back then, but that's definitely what
9 the interest was, was if we targeted only during
10 that summer period, the -- we couldn't avoid or
11 minimize the impact on one biological group within
12 the fishery. This way, we can micromanage around
13 very small components of the fishery, whether it's
14 by time and area or location.

15 Q Would ITQs assist any of that or would it hinder
16 that?

17 MS. SCARFO: It would basically kill the fishery. The
18 additional costs of an ITQ in some months we only
19 harvest 500 fish. If you were having to pay
20 leasing and monitoring costs on top of the costs
21 that we've already incurred to engage in this
22 fishery, the fishermen have said it would be
23 unreasonable and they wouldn't be able to
24 participate. Not to mention, when you're in that
25 kind of small numbers, the brokering alone would
26 be extremely difficult because you've got such
27 small amounts of fish that you're brokering back
28 and forth, and I think yesterday Peter Sakich
29 mentioned that in the last week of the sockeye
30 fishery, there was over a thousand transactions
31 between A and B on a sockeye fishery. There's
32 only 80 fishermen in that troll fishery in Area H,
33 so you can imagine the types of brokering that
34 would go on and the -- you'd spend more time on
35 the phone trying to find or trade fish than
36 actually fishing.

37 Q Yes. And with the system you've got, it's the
38 active fishermen who reap the benefits of fishing,
39 the inactive fishermen get no income at all; is
40 that correct?

41 MS. SCARFO: Yes and no. The direct benefits are those
42 that actually participate, but the value of your
43 commercial licence, if we hadn't moved towards
44 these types of regime, you basically in many cases
45 wouldn't be fishing. So the indirect benefit to
46 somebody who's not actively participating in the
47 fishery is that the value of his licence is

- 1 maintained because he has the opportunity to
2 participate or sell that licence if he wants to.
- 3 Q Yes. In ITQ regimes, is there value for the
4 licence and a separate value for the quota?
- 5 MS. SCARFO: In most ITQ fisheries. Not in the
6 demonstration projects that exist.
- 7 Q But I'm talking about ITQ fisheries that are
8 established. And what is the benchmark for the
9 value of the ITQ apart from the licence?
- 10 MS. SCARFO: Well, the lease -- the benchmark that
11 seems to apply for lease fees is always over 50
12 percent and usually about 70 to 75 percent of the
13 landed value is what you pay in lease fees. So
14 that's a significant additional cost on top of the
15 cost of operations.
- 16 Q Yes. All right. Now, I want to ask you some
17 questions about access to sockeye. I think you've
18 said historically, Area G has had access to
19 sockeye. Is there -- was there a data collection
20 aspect to that?
- 21 MS. SCARFO: Yes. And traditionally because we fish on
22 the West Coast of Vancouver Island, and I think
23 having worked with people like Carl Walters on
24 these projects, the Fraser Panel changed the
25 approach a number of years ago and didn't use our
26 test fishery to the same degree because they said
27 it couldn't indicate abundance. So it wasn't a
28 good abundance indicator. But what it does do is
29 it gives you an indication of whether or not
30 there's the proper curve to your fishery.
- 31 So say in the year where John Fraser said
32 that we came within hours of disaster, it was the
33 tail end of the fishery that wasn't there. On the
34 model, and we all know that you've got to be
35 careful with models, on the model traditionally
36 there was a nice curvature to the back end of that
37 fishery. If that curvature drops and isn't there,
38 the further away from the river the better you are
39 at indicating that there's something wrong. It
40 won't give you that data of abundance, but it will
41 give you the run timing and the diversion of how
42 the fish split around both sides of Vancouver
43 Island.
- 44 Q Yes. Now, a question relating to flexibility with
45 the large sockeye return in 2010 I gather Area G
46 was not able to have any allocation, in spite of a
47 number of letters to the minister by Area G and

1 the Nuu-chah-nulth Tribal Council?

2 MS. SCARFO: Yes. Over the last decade, Area G has
3 foregone, just like many other fishing fleets,
4 fishing opportunity on Fraser River sockeye,
5 because the abundances weren't there. Given the
6 high value of our chinook, we end up losing a fair
7 amount of access on paper fish at the beginning of
8 the year when we start our planning process.

9 The long-term allocation planning process has
10 always recognized that of all the fish stocks that
11 come back to B.C., Fraser River sockeye has the
12 highest variability and you could see additions
13 and losses of ten million fish from your pre-
14 season forecast. So when we allocated on Fraser
15 River sockeye, we always did it with a range. You
16 said we expect - and this year is an example,
17 where they expected anywhere up to including 30
18 million fish. So when you sit down and plan how
19 you're going to allocate those fish at the
20 beginning of the year, what we used to do was we
21 would say given a low range, a baseline, we would
22 say the commercial harvest would be 750 to a
23 million, two million. But there's the possibility
24 it'll come in at four to five million or ten to 12
25 million. And so we would have a different sharing
26 arrangement on Fraser River sockeye and it would
27 trigger different fisheries at different levels as
28 that run came back in those numbers.

29 Pre-season this year we sat down at the
30 allocation meetings. That principle in the long-
31 term allocation planning, which is not in the
32 policy but is in the details of how you actually
33 implement, has always been there and this year it
34 was foregone. They said there's not a hope in
35 hell we'll see those kind of runs, so it doesn't
36 matter. We said but if it does, we need to know
37 what would trigger a fishery for us in Area G so
38 that we can plan ahead.

39 Our calculations were -- we knew we wouldn't
40 get the first fish in the run, but at
41 approximately a catch of four million, you would
42 trigger an Area G fishery. That long-term
43 allocation planning principle was foregone and not
44 put into the plan this year. The maximum
45 anticipated catch, I think, for the commercial
46 fleet was under two million.

47 Q Yes.

1 MS. SCARFO: So at that level, we weren't planning on
2 getting any fish.

3 Q Yes. Now, does your refusal to accept ITQs
4 feature into this and in particular, I'd like you
5 to refer to DFO minutes of a meeting February
6 10th, 2011 and just read a portion of that, and
7 I'm not going to ask that the document be put in,
8 but if you have that document.

9 MS. SCARFO: Yes.

10 Q Number --

11 MS. SCARFO: The sense within the fleet and the word
12 from DFO is consistently that if you don't go to
13 ITQ fisheries, you will not have opportunities. I
14 think they demonstrated that very clearly last
15 year. Over the years we've had a number of
16 endeavours by the department to encourage us to
17 move to ITQs. That has included the -- a vote
18 within our area a number of years ago where we
19 were told basically the word went out and it was
20 coming to fishermen directly from DFO that if we
21 went to ITQs, the conservation restrictions that
22 we were faced with would be relaxed, although we
23 were also told that that wouldn't be the case.
24 We're consistently told that if we want to have
25 fisheries, we really need to go to ITQ and last
26 month at an area harvest committee meeting the
27 question was asked as to what is required for Area
28 G to have access to Fraser River sockeye and our
29 lower manager went back to senior management and
30 asked the question and the answer came back and it
31 was two items that we'd need. Area G access to
32 Fraser River sockeye for 2011 would require either
33 of these two things: our participation in the
34 allocation meeting tentatively scheduled for April
35 14th and 15th; or a submission of a --

36 Q Sorry? Or and?

37 MS. SCARFO: And.

38 Q And. Okay.

39 MS. SCARFO: Yes.

40 Q What's the second point?

41 MS. SCARFO: A submission of a demonstration fishery
42 proposal based on transferable quota project if
43 Area G doesn't have an allocation of Fraser
44 sockeye based on the pre-season plan.

45 So, in other words, if we don't have
46 allocation based on the domestic sharing, we could
47 get Fraser River sockeye if we would go for ITQs.

1 Q Yes. All right. The -- your basic recommendation
2 with respect to the focus of DFO as opposed -- in
3 terms of managing fish or managing people, what is
4 it?

5 MS. SCARFO: Well, I think DFO is -- basically hardly
6 has the capacity to manage fish these days. I
7 think there's a fair amount of problems within the
8 department, including staff turnover, long-term
9 staffing. A lot of people are just under short-
10 term contracts. That they have conflicting
11 programs in trying to manage fish and people and
12 they're not very good at the people side; that
13 they're basically almost in a conflict of interest
14 in items like the PICFI programs where DFO
15 actually becomes one of the largest group of
16 licence-holders and the objective of that program
17 may not be consistent with the objectives of
18 fisheries management. So the fisheries management
19 regimes then that they're being proposed may be
20 subject to value for money types of criteria that
21 they have on dealing with trying to address treaty
22 transfer programs or even aquaculture programs
23 that maybe should be better suited handled by
24 either the Ministry of Agriculture or Department
25 of Indian Affairs.

26 Q To your knowledge has the ITQ debate or decision
27 ever come before Parliament, House of Commons?

28 MS. SCARFO: Not to my knowledge, no.

29 Q Ever been debated? What have the Americans done
30 recently?

31 MS. SCARFO: Oh, in the last few weeks the American
32 government last year announced that they were
33 going to move towards ITQ fisheries on the East
34 Coast of the country. In the House of
35 Representatives there was a vote to not fund the
36 ITQ implementation programs and that was by both
37 Republicans and Democrats due to the concerns
38 around those fisheries.

39 Q So the policy question was debated in the House of
40 Representatives and the President's funds --
41 request for funds was withdrawn? Is that what --

42 MS. SCARFO: That's my understanding, yes.

43 Q And you've submitted some documents about that?

44 MS. SCARFO: Yes.

45 Q All right. Finally, Mr. Morley, am I right in
46 thinking that Canfisco has about 73 seine
47 licences?

1 MR. MORLEY: Somewhere in that -- in that range.

2 Q Yeah.

3 MR. MORLEY: Either owned whole or in part, yes.

4 Q All right. They're -- would I be right in
5 thinking that they hold no troll licences?

6 MR. MORLEY: That's correct.

7 Q Yes. All right.

8 MR. MORLEY: And we have two gillnet licences.

9 Q Yeah. The views that you've expressed on ITQs,
10 would you agree that they do not necessarily apply
11 to the Area G troll fishery?

12 MR. MORLEY: My -- I don't pretend to speak for the
13 Area G troll fishermen. I do know that the troll
14 fishermen in the other areas both certainly the
15 Area H trollers who participated in the pilot
16 project this year on Fraser sockeye were very
17 pleased with it and I'm sure that they would say
18 it was a big success and they want to continue
19 with it. I know that the Area F trollers who have
20 gone to a quota for their chinook fishery are very
21 pleased with it and don't want to go back. So as
22 I said, I won't speak for the Area G trollers.

23 But really, we're talking about sockeye here
24 and I think, as I said previously, the sockeye
25 fishery is one that works very well with the IQ
26 fishery, yes.

27 Q Yes. With respect to sockeye the IFMP, we looked
28 at this yesterday, states:

29
30 If one licence group is unable to achieve its
31 target allocation, the uncaught balances will
32 be given first to the same gear type in a
33 different licence area.

34
35 The Area H troll allocation we heard was not able
36 to be caught and was given to the seine fleet
37 rather than the troll fleet in a different area;
38 are you aware of that?

39 MR. MORLEY: The Area H troll quota was caught by Area
40 B seiners under licence allowed under the IQ
41 system.

42 MR. HARVEY: Yes. Thank you. Those are all my
43 questions.

44 MR. MARTLAND: Mr. Commissioner, I'll just repeat for
45 counsel my exhortation to proceed as quickly as
46 they're able. Mr. Hickling is next.

47 MR. HICKLING: James Hickling for the Laich-kwil-tach

1 Treaty Society. I've found some way to trim my
2 questions and I expect to finish in time. I'm
3 proposing to lead the witnesses a bit in the
4 interests of efficiency, and I'm sure Mr. Martland
5 will -- and others will let me know if there's a
6 problem with that.

7 I'd like to ask Mr. Lunn to pull up Tab 6 of
8 the Heiltsuk binder of documents. Okay?
9

10 CROSS-EXAMINATION BY MR. HICKLING:
11

12 Q Mr. Duncan, this is a report entitled Native
13 Participation in British Columbia Commercial
14 Fisheries 2003. Do you recognize this report?

15 MR. DUNCAN: Yes, I do. Yes.

16 Q And the author is Michelle James; who is she?

17 MR. DUNCAN: She's -- at this time she was -- it was a
18 consultant and she did this work for the Province
19 at that time. Michelle did similar studies with
20 DFO.

21 Q Before she was a consultant was she an employee of
22 DFO?

23 MR. DUNCAN: Yes, she was.

24 Q And did the Native Brotherhood provide Michelle
25 James with some data for this report?

26 MR. DUNCAN: Yeah. She ran the data through us and we
27 assisted her and identified a little more people
28 than she had identified, so...

29 Q And --

30 MR. DUNCAN: So at that time, it was fairly accurate.

31 Q And I note that it's dated 2003. Has it been
32 updated since?

33 MR. DUNCAN: No, it hasn't.

34 MR. HICKLING: Mr. Lunn, if you could go to page 6 of
35 the report? It has some blank pages in it, so you
36 may have to -- there's -- I'm looking for a table,
37 Table 2.1. That's it.

38 Q Mr. Duncan, this table shows a summary of
39 commercial licences held by First Nations people.
40 Do you see how the table is broken up into
41 different gear types?

42 MR. DUNCAN: Yes.

43 Q And looking at the seine licences, do you see how
44 the percent of these licences which are held or
45 operated by First Nations is 46.7?

46 MR. DUNCAN: Yeah. Mm-hmm.

47 Q And looking at the gillnet gear type, do you see

- 1 how across all areas the percent of native-held
2 licences, gillnet licences, is 38.1 percent?
- 3 MR. DUNCAN: That's correct, yeah.
- 4 Q And again, for the troll gear type the percent of
5 licences held by natives is 9.3 percent?
- 6 MR. DUNCAN: That's right.
- 7 Q And then across all gear types, native-held or
8 operated, the figure is 32.2 percent?
- 9 MR. DUNCAN: Mm-hmm.
- 10 MR. HICKLING: And, Mr. Lunn, if you could turn to
11 Table 2.3 which is on page 12.
- 12 Q Thank you. This is a table showing the landed
13 value of salmon catches and the part of the table
14 that I'm interested in is the lower part which is
15 the percentage value of catch. The figures are in
16 the upper part, but they are broken down into
17 percentages in the lower part of the table, and
18 looking at that part of the table, Mr. Duncan, do
19 you see how the percentage of value of catch, for
20 salmon catches, from 1999 to 2002 ranges from 32.6
21 percent to 46.8 percent?
- 22 MR. DUNCAN: Yes.
- 23 Q And the average over those four years is 41.7
24 percent?
- 25 MR. DUNCAN: That's correct.
- 26 MR. HICKLING: And then, Mr. Lunn, turning to page 26,
27 which is one of the last pages, actually if you
28 might go to page 25 first, so we can see the
29 heading.
- 30 Q So this is the section of the report on native
31 employment in commercial fishing. And then going
32 to the last two paragraphs of that report, of that
33 page, sorry, Mr. Duncan, in the penultimate
34 paragraph do you see in the middle there it says
35 that Ms. James concludes that the total estimate
36 of native employment in commercial fishing is 2684
37 jobs out of a total of 8,742?
- 38 MR. DUNCAN: Yes, that's most likely represents people
39 in the fishing industry, but this figure wouldn't
40 include the jobs that work on packers in the
41 canneries.
- 42 Q So not including shore workers or --
- 43 MR. DUNCAN: No.
- 44 Q And I should point out that this is not just the
45 -- the other figures were for the salmon fishery.
46 This is for -- this is a total estimate across
47 different commercial fisheries. And do you see in

1 the last paragraph there, the first sentence, Ms.
2 James says:

3
4 To put this employment number and percentage
5 into perspective...

6
7 And then she goes on to say that the aboriginal
8 population of B.C. is 4.4 percent of the
9 Province's overall population.

10 MR. DUNCAN: Yeah.

11 Q Okay. So generally speaking, I know these are
12 estimates, but are the numbers and the conclusions
13 that we've looked at in this report, are they
14 consistent with your current understanding of the
15 level of First Nations participation in the
16 commercial fishery?

17 MR. DUNCAN: On a percentage basis, yeah, but like
18 everything else, it's gone downwards.

19 MR. HICKLING: Thank you. I'd like to ask that this
20 report be marked as an exhibit.

21 THE REGISTRAR: Exhibit 503.

22

23 EXHIBIT 503: Native Participation in British
24 Columbia Commercial Fisheries - 2003

25

26 MR. HICKLING:

27 Q Mr. Morley, I'd like to ask you if you'd agree
28 that coastal First Nations people have a -- are an
29 important part of the commercial fishery?

30 MR. MORLEY: Absolutely. I'd agree with that. They
31 are, as indicated by the numbers, they've always
32 been a large part of the commercial fishery and
33 continue to do so. In terms of I know in our
34 operations, they're a very critical part of our
35 workforce in Prince Rupert, in our cannery that
36 employs up to 800 -- or two plants that employ up
37 to 800 people, there's probably 60 percent are
38 First Nations people and on the fishing vessels,
39 the seine boats that Mr. Harvey referred to of a
40 fleet that we own or joint venture partnership
41 with, about 80 percent of the crew members or 80
42 percent of the skippers and crew members are First
43 Nations people, yes.

44 Q Thank you. And in your view are First Nations
45 commercial fishermen good at what they do? Do
46 they rank among the higher producers?

47 MR. MORLEY: They're very good fishermen. You know,

1 there's certainly a range of First Nations
2 fishermen, like there are of all fishermen, but
3 certainly I would say that they're average or
4 above-average, yes.

5 Q Thank you. Mr. Duncan, I wonder if you could give
6 the Commissioner a sense of how important
7 participation in the commercial sockeye fishery is
8 for coastal First Nations communities and coastal
9 First Nations.

10 MR. DUNCAN: Basically, it is very important. They
11 have an extremely long tradition in sockeye
12 fishing, Fraser River sockeye fishing, and they've
13 been doing it for over 130 years or so. But I
14 think even more so of importance is it is a way of
15 life. It has significance culturally, this sort
16 of thing. There are ceremonies around salmon and
17 so bottom line, yes, it's very important.

18 Q And so I take it that you would say that
19 participation in the commercial fishery helps
20 sustain First Nations cultures?

21 MR. DUNCAN: Yes. It helps in a way of it provides
22 access to sockeye and other species and it
23 provides an opportunity to can fish, smoke fish
24 and preserve fish now.

25 Q So in communities that have capacity to
26 commercially fish, those communities have -- also
27 have capacity to harvest FSC fish?

28 MR. DUNCAN: That's correct, yeah.

29 Q Mr. Duncan, I know that you're concerned that
30 Transport Canada may be implementing new
31 certification requirements for fishermen and I'd
32 like to ask you to tell the Commissioner what your
33 concerns are about those requirements and how
34 they'll impact on First Nations commercial
35 fishermen.

36 MR. DUNCAN: Well, it's not a new requirement, but ever
37 since 2007 Transport Canada introduced legislation
38 whereby all fishermen would over time require
39 certification based on their tonnage and length of
40 vessel, so... And in addition to that, there are
41 other requirements for safety. You know, there's
42 a marine emergency duty certificate that's
43 required, watch-keeping mates, officer of the
44 watch and it's not that people are -- have been
45 caught off-guard. It's just that the process of --
46 has not caught up, but it's coming sooner than
47 later, but what's -- you know, I sit on the Fish

1 Safe Advisory Committee and what we're doing there
2 is that a proposal has gone forward to the
3 province to look at this and find out what the
4 real numbers are because it is literally in the
5 thousands. I mean, non-native fishermen are
6 impacted by this as well and it's a matter of
7 identifying what the shortfall is and then how
8 we're going to deliver it.

9 Q So is it fair to say that certification requires
10 training and are you concerned about how that
11 training may or may not be delivered to First
12 Nations commercial fishermen?

13 MR. DUNCAN: Yeah. The delivery of training is not
14 necessarily in your home port. It's concentrated
15 in a larger centres. And there's a high cost of
16 travelling, accommodation. Even if you're there
17 for only a week, but sometimes these are one, two,
18 three weeks or longer, so... But not exactly
19 convenient.

20 Q And are there other challenges?

21 MR. DUNCAN: Well, literacy is of concern because
22 you're dealing with fishermen. I mean, we have an
23 aging fleet. I mean, the average age of our
24 deckhands is probably fifty-ish, skippers sixty-
25 ish, so... And these guys were out there when I
26 started. But I was one of the very few that went
27 beyond Grade 8, so, but...

28 Q And do you think that Transport Canada understands
29 the issues that are involved in fishing vessels
30 and the operation of fishing vessels?

31 MR. DUNCAN: I think they're slowly getting the
32 message. It's not that we haven't tried, but
33 we've been trying for a number of years now to get
34 their attention. They tend to be shipping-
35 oriented as opposed to fishing-oriented. And, you
36 know, I think the region here understands, but
37 it's Ottawa.

38 Q I'd like to ask you, Mr. Duncan, in your
39 experience what do you think has been the single
40 most devastating impact on sockeye populations?

41 MR. DUNCAN: From where I -- what I've seen is -- I
42 mean, it's the destruction of habitat. You know,
43 I mean, I -- and what needs to be done is to have
44 that habitat restored. It's just... I mean there
45 are a number of other things that impact it, as
46 well, but if you could -- want the single, I think
47 I'd go for habitat.

1 Q And are there some activities which are
2 particularly dangerous to salmon habitat in your
3 view?

4 MR. DUNCAN: Forestry practices, I think, tend to
5 override everything there. It's -- I mean, you
6 don't have to go very far to see what's happened.

7 Q And can you explain your view about salmonid
8 enhancement programs, past and present?

9 MR. DUNCAN: Well, I mean, I -- once I had said I
10 support salmonid enhancement 'cause, I mean, there
11 is a way to build up what we do have. But the
12 Native Brotherhood a few years back explored ocean
13 ranching. We went to Alaska, at least got --
14 Alaska came to us, this sort of thing, and we
15 looked at the notion of doing enhancement through
16 ocean ranching. And but what we did, we
17 approached DFO and just to see if they would
18 approve it and initially they were relatively
19 supportive of the notion, but a couple years ago
20 we both got -- I mean we got letters both from
21 Paul Sprout and Gail Shea, saying they wouldn't
22 provide any money or as a result of **Larocque** they
23 wouldn't do anything for us. To this day I don't
24 know where **Larocque** came from in our proposal,
25 because we weren't asking for any money. We were
26 just asking permission to go ocean ranching.

27 Q Has DFO been more involved in salmon enhancement
28 in the past than it is today?

29 MR. DUNCAN: In the past, yeah. In 1977 they started
30 the -- what is known as the salmonid enhancement
31 program and I'm not just sure to how much is left
32 today, but it is still ongoing, but in the early
33 years they spent a lot of time or spent a lot of
34 effort on what is called a community economic
35 development program. They were small scale
36 hatcheries, primarily located on or near reserves
37 and employed a lot of people and were primarily
38 involved in enhancement of chinook and coho and it
39 was a great program. Then they slowly got chopped
40 off, so...

41 Q Do you think that some of the pressure on Fraser
42 River sockeye stocks could be relieved by
43 increasing enhancement efforts on other systems?

44 MR. DUNCAN: I think so, yeah.

45 Q I've just got two more questions. Is one of your
46 concerns about ITQs the effect that the
47 transferability of the quota, or I think it might

- 1 be called licence stacking, can have on levels of
2 employment and on the locations of employment?
- 3 MR. DUNCAN: I mean, if we're going to go that way, I
4 mean, it's -- you see, I mean, where I come from,
5 I have to kind of take the Brotherhood role here,
6 which is it is not supportive of ITQs. Personally
7 I say okay, if we're going to go down this road,
8 at least take the "T" out of there and make it a
9 quota for vessel quota or... And not make it
10 transferable. I mean, our -- one of our jobs is
11 to protect jobs for people, deckhands, and, you
12 know, when I started fishing we had a crew of
13 seven. Today you can get away with four, so...
14 But most people have five or six, but... But,
15 yeah, no, it's -- I don't know where we're going
16 to go.
- 17 Q Okay. And I'd just like to finish by asking if
18 you have any recommendations for the Commissioner
19 or anything else you'd like to say to the
20 Commissioner.
- 21 MR. DUNCAN: Okay. I sat down last night and thought
22 about this, and I mean I've talked about -- the
23 first one already was just to restore critical
24 habitat that has been lost or destroyed. The
25 other thing I like to do is recommend that the
26 department look at ocean ranching as an option,
27 'cause we've looked at it and it's viable. In
28 Alaska it's very viable, actually probably too
29 productive.
- 30 And the other observations I would have would
31 be, I mean, you could always improve the science
32 and research. The other -- it's easy to say is
33 improve fish management, you know. And the
34 example I would use here is in the catch
35 monitoring, in all fisheries, I say. I'd be
36 remiss if I didn't say that we should look at the
37 impacts of fish farming on wild stocks, because
38 where I grew up in the Broughton Archipelago is
39 exactly where all the fish farms are, so... And
40 the thing that's come up here is that, you know, I
41 mean, there's a need for kind of a socioeconomic
42 study to look at this whole thing, so...
- 43 MR. HICKLING: Those are my questions.
- 44 MR. MARTLAND: Mr. Commissioner, the next witness is
45 Mr. Timberg -- or, sorry, the next counsel is Mr.
46 Timberg.
- 47 MR. TIMBERG: For the record, Mr. Timberg, representing

1 the Government of Canada.

2

3

CROSS-EXAMINATION BY MR. TIMBERG:

4

5

Q Ms. Scarfo, I have a number of questions for you.
First, will you agree that the Area G Harvest
Committee is an elected committee?

6

7

8

MS. SCARFO: Yes. Every licence-holder gets a ballot.

9

Q All right. And the Area G Harvest Committee votes
by majority vote? That's how you make decisions?

10

11

MS. SCARFO: No. We actually strive for consensus.
Under the terms of reference we are to work to
majority, but 99 percent of the time we work to
consensus.

12

13

14

Q Okay. Thank you. And will you agree that there
was a survey conducted of the Area G Harvest
Committee a number of years ago with respect to
share-based management? Were you aware of that
survey?

15

16

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MS. SCARFO: Yes, I am aware of that survey.

20

21

Q And the results of the survey were for the Area G
for support for the demonstration fishery was 47
to 59 percent, so 47 were against -- 47 were for
the demonstration and 59 percent were against? Is
that -- is that your recollection of the results?

22

23

24

25

MS. SCARFO: I thought it was 50.1 percent of the
responses.

26

27

28

Q Okay.
MS. SCARFO: Doesn't add up to a hundred, so I'm a
little confused there.

29

30

Q Well, let's perhaps just look to Exhibit 468, Mr.
Registrar. So if we could turn to page 10 of 18
and my understanding here, if we look at this --
these are the results of the salmon survey results
through the Area G here, so 62 percent of the
surveys were returned and the response was 47 to
59 percent.

31

32

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MS. SCARFO: Yes. So it would be less than 50 percent
of the actual licence-holders responded in favour
of a demonstration fisheries on ITQs.

38

39

40

Q Right. And my colleague here is passing me notes.
The question being that the range is for the
demonstrating fishing depending on species. There
were different species, I guess, with respect
to --

41

42

43

44

45

MS. SCARFO: In the ballot there was different species
put on the ballot, yes.

46

47

1 Q Okay. Thank you. So can you tell us then what is
2 the view of the minority group within the Area G
3 harvest? How would they like to see fisheries
4 reform in the salmon fishery?

5 MS. SCARFO: Well, there's a variety of views,
6 depending on what your situation is. Obviously,
7 I'm elected by the majority, so according to
8 democratic rules, the majority rules.

9 Q Right.

10 MS. SCARFO: Within that time period since that ballot
11 was put out, there's an annual advisory process
12 election, so that was in 2008 so that was what,
13 three, four years ago?

14 Q Three years ago.

15 MS. SCARFO: Consistently we've had -- we have nine
16 representatives and consistently we've had the
17 overwhelming majority won, that's ambiguous, on
18 ITQs have been elected as non-ITQ advisors, so
19 since the time of that ballot -- at the time of
20 the ballot, in fact, I have emails that I can
21 provide you if you'd like, there was extreme
22 confusion as to what DFO was proposing in the
23 ballot as far as ITQs and what the parameters of
24 those ITQs would be as far as relaxing the
25 conservation constraints if we went to ITQ. We
26 have unanswered emails raising those questions
27 prior to the ballot. In fact, when that ballot
28 did go out, if I remember correctly, there was
29 also an error and they had to resend it.

30 So the minority, there is always a group that
31 given incentive towards access to Fraser River
32 sockeye will say gee, if that's what it takes,
33 then yes, I will go for that; or, I'm at
34 retirement age and if I can develop a pension plan
35 by leasing out my quota, moving to a quota system,
36 this would work for me because I basically -- if
37 you actually did a spreadsheet on a cost benefit
38 analysis, I can actually make more money staying
39 home, not incurring the costs of fishing or the
40 risks of fishing, than I can by actually
41 participating in the fishery if I go to a quota
42 fishery.

43 So depending on what your situation is and
44 what your goal are, there will always be people
45 within the fishery that have different views.

46 Q All right. And because we're -- today we're
47 dealing with these different views and with

1 respect to share-based management, can you tell us
2 how your area harvest committee deals with this
3 different views to reform the salmon fishery? How
4 do you handle that internally within your group?

5 MS. SCARFO: You mean how do we develop fishing plans
6 towards --

7 Q Yeah.

8 MS. SCARFO: -- programs and projects?

9 Q Given this difference within your group, how do
10 you resolve those different views?

11 MS. SCARFO: Well, we try to put together comprehensive
12 plans that try and address the needs of everyone
13 within those plans and we do work to consensus and
14 we have done that consistently over the last
15 number of years in putting forward projects that
16 actually meet the needs of all the fleet. I'm not
17 quite sure -- I mean, we represent the majority
18 interest, that's for sure. The majority interest
19 have said ITQ fisheries are not sustainable. But
20 there is enormous pressure - I will say so myself
21 - that I have to reconsider the fact if the only
22 way I can access fish is through an ITQ fishery
23 and that's been demonstrated that there are
24 benefits of going to an ITQ fishery that are not
25 the ITQ itself, but the manipulation of
26 opportunity and the additional benefits of -- if
27 you look at the ITQ fisheries that are being
28 demonstrated right now, they're not real
29 demonstrations because they don't really incur the
30 real costs of a demonstration, of an ITQ fishery.
31 Area F doesn't cover the additional monitoring
32 costs that traditional ITQ fisheries do because
33 DFO is covering those. Whereas in our fishery, we
34 actually, if we need observers on our boats to
35 participate in fisheries at this point, we need to
36 come up with those funds and with **Larocque** the way
37 it is.

38 If you look at the brokering fees that would
39 exist under a real ITQ fishery, those right now
40 are being covered by the federal government.

41 Q So you'll --

42 MS. SCARFO: So they're artificial demonstration
43 fisheries that don't actually show the true cost.

44 Q You'll --

45 MS. SCARFO: If I can finish.

46 Q Yes.

47 MS. SCARFO: If you look at a year like last year, the

1 ITQ fishery for B and H worked really well. But
2 you also have to recognize that they had a bonus
3 of getting the Area G traditional share of sockeye
4 in that fishery without any of the additional
5 costs that are traditionally incurred within that
6 fishery, and with relaxation against the rules
7 that exist within the existing IFMP which was when
8 coho are present, you're shut down. And that was
9 relaxed in season against the IFMP, without any
10 discussion in the integrated management planning
11 process, those rules were relaxed.

12 In fact, when I went to a meeting with Area F
13 prior to their implementation of the Area F quota
14 fishery, their demonstration project, the issue
15 came up of how can we slow the pace of this
16 fishery down by going to an ITQ if we still have
17 this hard closure if we reach a certain level of
18 WCVI stocks within that fishery. And the answer
19 was that DFO would be willing to turn a blind eye
20 and make -- let it happen and then just call it a
21 management error at the end.

22 Now, that is blackmail into going into an ITQ
23 fishery. So of course there are going to be
24 people who will feel that there is benefit to
25 going into those fisheries. But those benefits
26 are not going to exist for long once you're in
27 that fishery and the real costs are incurred.

28 Q So you'll agree that right now DFO is implementing
29 share-based management fisheries on a
30 demonstration stage only at this point in time?
31 They're only demonstration fisheries?

32 MS. SCARFO: I don't know how they would turn them back
33 at this point, but they're calling them
34 demonstrations, so I can't disagree with that.

35 Q Right. Thank you. If I could ask a question of
36 Mr. Morley, in years of weak stock concerns, this
37 is -- flows out of a question that Mr. Martland
38 asked you this morning, so it's sort of a refined
39 question with respect to the move to commercial
40 fisheries in the -- upriver. So my question is as
41 follows: in years of weak stock concerns in a
42 mixed stock fishery, is there value to the current
43 commercial fishery to moving part of the
44 allocation inland, i.e., if you could not do a
45 commercial fishery in the marine waters because of
46 concerns around Cultus fish and an opportunity
47 came up in the river, do you see a benefit to

1 that?

2 MR. MORLEY: First of all, I think as I mentioned
3 previously when I was on the witness stand that
4 the issue of what the balance is between
5 protecting some small populations that are never
6 going to amount to much and how much of the
7 commercial surplus you're willing to forego in
8 order to protect that diversity is the first
9 question you need to look at. And frankly, I
10 think that that analysis has not been done and if
11 it was done as was indicated by some of the other
12 expert witnesses, you would see that we're
13 foregoing -- have been foregoing tens of -- if not
14 hundreds of millions of dollars of income to
15 Canadians in order to protect populations that
16 will probably never amount to much and will
17 probably never be able to rebuild. So that's the
18 first issue that needs to be addressed.

19 And if someone decides that's the right thing
20 to do, then sure. If that's the decision that's
21 made and you have nowhere else to harvest the
22 fish, I don't see a problem with that; however, I
23 don't think we have made that decision. I think
24 people are arbitrarily saying we're going to do
25 this without looking at the real consequences in
26 lost income and lost jobs in First Nations
27 communities like Mr. Duncan comes from in Alert
28 Bay.

29 Q All right. Thank you. I have a question for the
30 three of you, but I'd like to ask each of you for
31 your different opinions. And so for first, will
32 you -- I'll ask you each. It'll be two questions
33 'cause I'm not sure what your answer is going to
34 be obviously, so Ms. Scarfo, will you agree that
35 DFO acknowledges there are pros and cons to the
36 move towards share-based management, that there's
37 pros and cons to that?

38 MS. SCARFO: If they acknowledge it, they certainly
39 don't acknowledge it in an active manner of trying
40 to address those prior to implementation.

41 Q All right. Can you --

42 MS. SCARFO: I guess -- I'm not going to speak for DFO
43 at this point. When issues of concern have been
44 raised --

45 Q Mm-hmm.

46 MS. SCARFO: -- there has been no answers to those
47 questions.

1 Q So I guess that's my question, is how would you
2 structure -- or would you -- do you have any ideas
3 with respect to how a share-based management
4 approach could be structured to address the
5 concerns of the Area G Harvest Committee such as
6 loss of -- your concern about impacts on small
7 boat fleets. Do you have any recommendations with
8 respect to how share-based management could be
9 implemented to address your concerns?

10 MS. SCARFO: Well, I guess -- if you're going to start
11 sharing fish, the first thing is to start at the
12 top and consistently, in fact, SCORE has -- the
13 allocation implementation project where we spent
14 three years sitting around the table, the first
15 area of consensus within industry was before
16 moving into any kind of share-based management
17 regime, you need to define what that share was
18 against the other user groups. In this case it
19 would be the recreational fleet.

20 DFO has absolutely refused to engage in that
21 discussion in any way, shape or manner. At the
22 last Commercial Salmon Advisory Board meeting,
23 there was consensus once again that prior to
24 implementing another allocation process, which
25 they plan on doing with the mitigation funds, that
26 the issue had to be -- to address the recreational
27 -- the recreational fleet. And when we talk about
28 the recreational fleet, it's predominantly the
29 incredible expansion of the industrialized
30 commercial recreational fleet that doesn't even
31 have to meet the same selectivity standards that
32 our fleet does fishing side-by-side.

33 Q Okay.

34 MS. SCARFO: So it's a first step --

35 Q That's your first recommendation.

36 MS. SCARFO: The first recommendation is you have to
37 start at the top.

38 Q All right.

39 MS. SCARFO: If you're going to talk about shares,
40 start at the top and define that before we try to
41 micromanage the seats on the *Titanic*.

42 Q And do you have any other recommendations with
43 respect to how to implement share-based management
44 that would address your concerns?

45 MS. SCARFO: Well, our fleet actually has a meeting
46 planned for -- we shut the fishery down to avoid
47 certain stocks in end of March, early April, and

1 we have another working group full fleet
2 opportunity where we will be sitting down once
3 again and designing options for not just ITQs but
4 other ways of moving forward. Obviously, we put
5 forward recommendations for amendment style
6 fisheries, MHQs, monthly harvest quotas. We've
7 with the tribal council in our region asked to
8 pilot an owner/operator policy such as they have
9 in Alaska and on the East Coast. And another
10 particular recommendation would be to look at the
11 importance of fleet separation as we have on the
12 East Coast, which is not being applied where the
13 large corporate fleet cannot buy up the small
14 artisanal fleet just because they have deep
15 pockets and can be more efficient and effective.

16 So those are just some of them, but obviously
17 there was recommendations from the Senate
18 Committee and from other places that would need to
19 be reviewed prior to implementation.

20 Q So would you agree that with share-based
21 management, it's the design of the share-based
22 management that's critical to address some of
23 these concerns? It's not -- there's not a cookie
24 cutter approach. You need to look at the
25 particularities of each area to address it in an
26 appropriate manner.

27 MS. SCARFO: Within the areas to harvest committees
28 we've always said that each area can design its
29 own implementation on these type of projects.
30 There is a push right now to put all the troll
31 fleets into one group, even though regionally we
32 obviously have different fisheries and different
33 desires within those fisheries. We work very
34 closely as compared to the other groups with our
35 regional representatives from the communities and
36 the tribal councils and we don't put
37 recommendation forward unless they support them.

38 Q Right.

39 MS. SCARFO: So obviously there isn't a cookie cutter
40 approach. There's obviously different --

41 Q Right.

42 MS. SCARFO: -- needs and aspirations. I certainly
43 won't trial the seine, the corporate seine fleet.

44 Q Right.

45 MS. SCARFO: If they want to stack and go down to two
46 seine boats in front of the Fraser River because
47 it's the most efficient economic model for them,

1 then go for it. That's up to them.

2 I will question whether or not that's the
3 best use of fish and I guess we need to redefine,
4 as I said earlier, the context on why we're
5 managing fish.

6 Q Right. And so you're having that conversation
7 with DFO in the next month?

8 MS. SCARFO: We consistently have that conversation
9 with the fleet. Just so you also know, in moving
10 forward in designing an Area G fishery at this
11 point with no Fraser River sockeye even in a
12 record return historical high year and 50 percent
13 cut due to Canada/U.S. and a mitigation plan that
14 has not delivered one penny to any of our
15 fishermen or the region in the last three years
16 since we've taken that cut, we've had to do some
17 serious look at ourselves and decide whether or
18 not there is even the possibility of maintaining
19 viable fisheries.

20 Obviously, there's a desire by the tribal
21 council to increase their participation in the
22 fishery. A lot of our fleet are getting older and
23 feel that we will be moving a lot of our fishing
24 effort into their fleets, so we have a joint
25 project going with UBC Fisheries Centre. We've
26 just gotten National Science and Research Council
27 funds to do that to say given the situation that
28 we're in now, where we are basically at the bottom
29 of where we think we can go and still call it a
30 fishery, what mechanisms, biologically, socially,
31 economically could we put in place to redesign
32 this fishery for the future? So we have a five-
33 year program in partnership with UBC which
34 includes not just economics and science in some of
35 the modelling exercises that we intend to do, but
36 also bringing in elements of social science
37 through other universities.

38 Q Okay. Thank you. I'd like to ask now Mr. Duncan,
39 do you -- will you agree that DFO acknowledges
40 that there are pros and cons to the issues
41 regarding share-based management?

42 MR. DUNCAN: I think so, yeah.

43 Q And can you tell us today if you have any ideas
44 about how a share-based management approach could
45 be structured to address the concerns of your
46 constituents?

47 MR. DUNCAN: Like I mentioned this morning, if we're

- 1 going to go down that road, I think individual
2 fishermen's catch history has to be recognized,
3 'cause we do have good fishermen and better
4 fishermen. But I mean, I'm not necessarily
5 convinced that we have to go down this road, but
6 if we do have to, we have to, we will. But --
- 7 Q So that would catch the -- capture the history of
8 the previous catches of the fishermen?
- 9 MR. DUNCAN: Yes, as long as it did that, this sort of
10 thing. But, I mean, but I mean if we were talking
11 about an IQ versus an ITQ, you know.
- 12 Q Yeah. I'm trying to avoid that language. I'm
13 trying to use "share-based management" to keep the
14 conversation open as to the various ways in which
15 that could be structured.
- 16 MR. DUNCAN: The other thing I would mention, as long
17 as that approach wasn't imposed, 'cause I get that
18 feeling that that is where DFO wants to go because
19 it's easier for them.
- 20 Q Yeah, okay. So that's another recommendation that
21 it not be imposed. And is there anything else?
22 I'm just -- I've been reminded of the time here.
- 23 MR. DUNCAN: Okay. Well, not right now, no, so...
- 24 Q Okay. Sorry about rushing you. And finally, Mr.
25 Morley, will you agree that DFO acknowledges that
26 there are pros and cons to the various share-based
27 management systems?
- 28 MR. MORLEY: Yes.
- 29 Q And can you assist us as to how you consider
30 whether share-based management systems can be
31 addressed or created in a way that address some of
32 the concerns that have been raised today?
- 33 MR. MORLEY: I would like to have a debate and look at
34 the evidence of the people who have addressed the
35 concerns because, frankly, the studies I have
36 looked at and I think we'll talk about a couple of
37 them that Mr. Gislason has undertaken looking at
38 share-based systems in B.C. will show that the
39 concerns that are expressed are not reflected in
40 the evidence of what's actually happened when we
41 implemented them, looking at the experience in the
42 B.C. fishery. So I would not like to create
43 anything in terms of rules that are dealing with a
44 bogeyman that doesn't exist.
- 45 And so I would certainly be willing to sit
46 down and cooperate with all the groups in devising
47 a share-based system that makes sense and I would

1 like to address their concerns, but I think that
2 their concerns are likely unfounded.

3 Q All right. Some of the concerns that we've heard
4 about are concerns about high grading or corporate
5 concentration, impacts on employment; are you able
6 to comment now on some of those concerns?

7 MR. MORLEY: Certainly. There is no evidence in
8 British Columbia that there has been increased
9 corporate concentration in fisheries that have
10 gone to a share-based system; that in fact I take
11 it from corporate concentration people mean that
12 large mainly processing companies are buying up
13 all the privileges. And I think the evidence, if
14 you look at it, is that in the fisheries that
15 under the limited entry licensing system,
16 corporate interests owned a certain number of
17 vessels and licences and they have the quota that
18 was attached to that --

19 Q All right.

20 MR. MORLEY: -- that the people who have actually
21 accumulated quota are independent owner/operators
22 for the most part.

23 Q Okay.

24 MR. MORLEY: Number one. What other issues did you
25 want addressed?

26 MR. TIMBERG: Well, I'm just conscious of the time.
27 I'm just wondering if, Mr. Registrar, we could
28 have Exhibit 483 brought up? Mr. Lunn. Mr. Lunn?
29 If we could have Exhibit 483 brought up?

30 Q This is the Stuart Nelson report. This is -- this
31 was prepared for Fisheries and Oceans in 2007 and
32 it provides financial profiles of the Pacific
33 commercial fishing fleet. Are you aware of this
34 document?

35 MR. MORLEY: Yes.

36 Q And there are a variety of summaries of each of
37 the fleet. I'm wondering if we could turn to page
38 15 and page 15 there's a summary of the key
39 challenges to success of the salmon seine fishery.
40 And I'm wondering -- and for the record, perhaps
41 I'll just read in the three page references and
42 then I'll ask you a global question. So for the
43 assistance of the Commissioner, page 15 is the
44 seine fleet, page 33 is the gillnet fleet, and
45 page 44 is the troll fleet. And so I'm just
46 wondering, my question for you is what are the key
47 points in this Nelson report that we can learn

1 from?

2 MR. MORLEY: Well, the key points in this report are
3 this refers to a 2007 study which as those of you
4 who have been around these hearings for awhile
5 recall was a year in which there was very little,
6 if almost no, Fraser River sockeye commercial
7 catches.

8 Q Right.

9 MR. MORLEY: So the incomes of the fleet that would
10 normally catch those are highly dependent on
11 Fraser sockeye and you'll note in the report that
12 their incomes are poor, if not negative in those
13 -- in that year, that the -- and, but again, 2007
14 reflects the period of time during which we have
15 had very restricted harvest rates in the
16 commercial fishery on Fraser River sockeye. And
17 so if you go back to the 1990s you would see a
18 very different financial picture, all the fleets
19 in here, where they were very prosperous and
20 making money.

21 The other thing that this report will show
22 again if you look in here is that the portions of
23 the fleet that have a positive EBITDA in this
24 report are the ones that are multi-licensed and
25 involved in a variety of fisheries, not just in
26 the salmon fishery. So they'll be involved in
27 some salmon, maybe some herring, some halibut,
28 some prawns, depending on the kind of fleet
29 they're in, and those vessels that have the
30 diversity of opportunities have better returns
31 than the ones who were only dependent on fishing
32 for salmon.

33 MR. TIMBERG: All right. Thank you very much. Those
34 are all my questions.

35
36 QUESTIONS BY THE COMMISSIONER:

37
38 THE COMMISSIONER: I wonder if I could just ask the
39 panel a brief question. You've all travelled
40 through the highways and byways of the fishery
41 management side. In your travels in, say, the
42 last five years, have you seen or are you aware of
43 any demographic study or report with respect to
44 the salmon fishery, particularly sockeye? Or I
45 don't want to suggest that I know exactly what is
46 meant by the term "socioeconomic" report or study.
47 I -- in my travels I've seen lots of reports that

1 have that heading and they're something else, in
2 fact, when you read them, but have you seen any
3 such documents in the last -- say post Wild Salmon
4 Policy that you can tell me about?

5 MR. MORLEY: I don't believe there have been any
6 specifically that have -- that would have
7 demonstrated that. And by -- one that I would
8 suggest is that really, one that describes what
9 the income and employment levels are in the salmon
10 fishery where -- what the viability of the
11 businesses is in both fishing and fish processing
12 end of the business, who do they employ, where do
13 they live, what's their contribution to the local
14 economy, that kind of report does not exist, and
15 one that would maybe compare the decline in the
16 fishery, which is really what you're, Mr.
17 Commissioner, challenged to look at, really the
18 decline in the fishery has to look at the decline
19 in the income and employment that's associated
20 with the fishery to really understand the impact
21 of the decline in the fishery and what the
22 potential benefits are of rebuilding a fishery.

23 MR. DUNCAN: A simple answer to your question, no, I
24 haven't seen such an animal, so...

25 MS. SCARFO: Actually, within the West Coast Vancouver
26 Island area we did do a -- the Nuu-chah-nulth
27 Tribal Commissioned Social Economic Impact
28 Analysis of -- wasn't called the Wild Salmon
29 Policy at the time, but it basically is the weak
30 stock management strategy, which is where you
31 protect individual stocks within that. The Job
32 Protection Commissioner, when the Mifflin plan
33 came in, did do several reports on the economic
34 impact of closures in regions or different fleet
35 configurations. There was some within our region
36 on the West Coast when Fraser River sockeye
37 collapsed, I think it was in 1999 or 2000 and we
38 implemented a voluntary tie-up program where
39 fishermen were paid basically their licence fee
40 not to fish. We also did some work at that point
41 with a significant number of questionnaires while
42 we applied for disaster relief through the West
43 Coast Sustainability Association and our
44 associations.

45 There's also a report that we did through the
46 Canadian Council of Professional Fish Harvesters
47 and it was a national strategy through Human

1 Resources -- or Human Resources Canada, HRDC
2 funded program, where we looked at the age and
3 demographics of not just British Columbia but all
4 fisheries in Canada and that would probably be the
5 more recent and most significant. It's probably a
6 document twice this thick though, so it's got a
7 lot of detail in it and there are some summary
8 reviews available.

9 THE COMMISSIONER: What year was that, Ms. Scarfo?

10 MR. DUNCAN: 2005.

11 MS. SCARFO: Was it 2005? Yeah, I think it was 2005,
12 yeah.

13 THE COMMISSIONER: Thank you.

14 MS. SCARFO: Thanks.

15 MR. HARVEY: Mr. Commissioner, just for the record, the
16 Nuu-chah-nulth report that was referred to is
17 Exhibit 486.

18 MR. ROSENBLOOM: And Mr. Commissioner, I would be
19 remiss if I did not indicate that there has been
20 an exchange of correspondence between myself and
21 commission counsel, not Mr. Martland, but one of
22 his colleagues, in respect to a request for
23 precisely that study. Thank you.

24 MR. MARTLAND: Mr. Commissioner, I note the time. If
25 we're moving to break, Ms. Grant's math was six
26 minutes per participant without a break, so we're
27 into a bit of a bind. But I wonder if the
28 preference is to take the break and I'll speak
29 with counsel about that. Thank you.

30 THE REGISTRAR: Hearing will recess for ten minutes.

31

32 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

33 (PROCEEDINGS RECONVENED)

34

35 THE REGISTRAR: The hearing is now resumed.

36 MR. MARTLAND: Mr. Tyzuk is next, Mr. Commissioner.

37 MR. TYZUK: For the record, Boris Tyzuk for the
38 Province of British Columbia. Mr. Commissioner,
39 I'm expressing some time concerns. The Province
40 was advised through some exchanges of
41 correspondence a while ago that the Commission
42 counsel would not be producing any economic data
43 for this panel. As the socioeconomic interests
44 are important to the Province, we felt that it
45 would be necessary to provide some of that. And
46 we've estimated that would be 30 to 45 minutes'
47 worth. I can try to make that as quickly as

1 possible but I am concerned on some areas.

2 Because we've got Mr. Morley here, and I
3 would be proposing to introduce the Gislason
4 Report, which deals with the economic impacts on
5 ITQs, having him here to deal with that and have
6 you hear it, I think, would benefit given over the
7 last two days we've heard a lot about ITQs. We
8 also have some concerns about MSC certification.
9 So I'm concerned for my colleagues because I don't
10 want to cut them out but it's clear that, you
11 know, we tried to limit our appearances here in
12 terms of cross to what are really provincial
13 interests and the socioeconomic benefits of the
14 fishery and the sockeye salmon fishery are of
15 prime importance to the Province and to all
16 British Columbians.

17 THE COMMISSIONER: I just want to get some time
18 estimate from you, Mr. Tyzuk, to do that.

19 MR. TYZUK: I mean if we just dealt with the Gislason
20 Report and MSC certification, we might get that
21 done. I have some concern about just getting some
22 exhibits in, which are just data. And because
23 I've gone over it with Mr. Morley, these just show
24 what the landed value and the catches have been
25 for the last 20 years, to give you a basis and a
26 graph. So there's a bunch I could rush through
27 there but the real key would be to get that
28 evidence from him.

29 THE COMMISSIONER: Certainly. I'm just trying to get
30 some general surround on how much time you think
31 you'll need.

32 MR. TYZUK: Well, I could probably if we went half an
33 hour.

34 THE COMMISSIONER: All right. Well, why don't we do
35 that then?

36 MR. TYZUK: All right. Thank you. Mr. Lunn, if you
37 can pull up these exhibits and we'll just get them
38 down there. And this would be the B.C. Seafood
39 Industry and Review for 1993, 1996, 2000, 2004 and
40 2007.

41
42 CROSS-EXAMINATION BY MR. TYZUK:

43
44 Q Mr. Morley, you've looked at these. These are all
45 documents that are produced by the Ministry of
46 Agriculture, Fishery and Foods. You're familiar
47 with these?

83
PANEL NO. 22
Cross-exam by Mr. Tyzuk (BCPROV)

1 MR. MORLEY: Yes, I am.
2 MR. TYZUK: All right. Could we get these marked as an
3 exhibit, Mr. Giles, in whatever way you would see
4 fit?
5 THE REGISTRAR: The 1993 document will be 504, '96 505,
6 2004 --
7 MR. TYZUK: 2000.
8 THE REGISTRAR: Oh, pardon me. 2000?
9 MR. TYZUK: Yes.
10 THE REGISTRAR: 2000 will be 506. Did you have more?
11 MR. TYZUK: And 2007.
12 THE REGISTRAR: 2007?
13 MR. TYZUK: Yes.
14 THE REGISTRAR: 2007 will be 507.
15
16 EXHIBIT 504: B.C. Seafood Industry and
17 Review 1993
18
19 EXHIBIT 505: B.C. Seafood Industry and
20 Review 1996
21
22 EXHIBIT 506: B.C. Seafood Industry and
23 Review 2000
24
25 EXHIBIT 507: B.C. Seafood Industry and
26 Review 2007
27
28 MR. TYZUK: Now, if we were just to turn to the first
29 one quickly, which would be the 1993 one, if you'd
30 turn to page 2 of that, Mr. Lunn, please? And if
31 you'd highlight the table, the first part of it
32 that just deals with salmon.
33 Q What this shows, it's got three columns "Wholesale
34 Value", "Landed Value" and "Landings" for three
35 years. And the second line there is "sockeye".
36 Now, if I read this correctly, it shows that the
37 landings in 1993 were 42 million for sockeye, '92,
38 21 and then in 1991, 25.5 million?
39 MR. MORLEY: Yeah, I think they're in thousands of
40 tonnes.
41 Q Oh, sorry.
42 MR. MORLEY: So 42,000 tonnes, 21,000 tonnes and 25,000
43 tonnes.
44 Q And 25,000 tonnes. And the landed value on that
45 is what?
46 MR. MORLEY: In 1991 was 84.6 million, '92 was 110.4
47 million and 1993 was 139.8 million.

March 1, 2011

1 Q Now, the wholesale value, how is that different
2 from the landed value?

3 MR. MORLEY: Wholesale would be the value of the
4 products leaving the processing plant so they
5 would be canned salmon, fresh and frozen salmon,
6 salmon caviar.

7 Q Now, the wholesale value, would that include just
8 B.C. caught fish or would it include imports?

9 MR. MORLEY: Since these numbers come from reports
10 filed by all the fish processors in B.C., there
11 are some salmon imported in B.C. from Alaska for
12 further processing and the wholesale value would
13 include that production as well.

14 Q So what would be sort of the ratio between the
15 landed value and the wholesale value of B.C.
16 salmon on an average?

17 MR. MORLEY: A general rule of thumb has been sort of
18 the wholesale value was kind of almost double the
19 landed value has sort of been a rule of thumb over
20 the years. Certainly, in sockeye for fresh and
21 frozen sockeye, it wouldn't be quite double but
22 for canned salmon it certainly is double.

23 Q Thank you.

24 MR. TYZUK: For the sake of expediency, Mr.
25 Commissioner, if you were to look at the ones
26 1996, 2000, 2004 and 2007, they have those same
27 graphs there with the same three-year comparison,
28 which would give you then a good perspective on
29 the salmon catches and the landed value and the
30 wholesale value from 1993 through to 2007.

31 Q Mr. Morley, you've looked at those. And what's
32 been the general trend?

33 MR. MORLEY: Well, the sockeye production in there that
34 we look at is probably three-quarters from the
35 Fraser River sockeye, certainly in the 1990s, has
36 been a slightly smaller proportion in the 2000s.
37 But the numbers show a dramatic decline where you
38 see the landed value of sockeye being in the
39 hundreds of millions down to being more in the
40 tens of millions of dollars. So it's been a huge
41 decline over that time period.

42 MR. TYZUK: And if we could now go to, Mr. Lunn, on the
43 letter we sent out, number 13, B.C. Commercial
44 Sockeye Harvest and Value 1990 to 2010. That's
45 that graph, yes.

46 Q If you look at that graph, and there's a table
47 that follows. Does this then, in your experience,

1 accurately reflect the plight of commercial
2 sockeye salmon harvest?

3 MR. MORLEY: Yes, I think this takes the numbers that
4 were in the reports previously and puts them on a
5 graph so it indicates again that large decline
6 from the 1990s into the 2000s, as the escapement
7 was sent more up the river and as we saw sort of
8 declining access for the commercial fishery up
9 until 2010 where you see the fact that we managed
10 to have a significant fishery that we have come
11 back to an estimate here of over \$90 million in
12 terms of landed value, at least a preliminary
13 estimate that's been put forward.

14 Q And if you turn the page, you've got tables, which
15 reflect those, if we go to the next page of that
16 exhibit. We've got tables which reflect that.

17 MR. MORLEY: That's correct, yes.

18 MR. TYZUK: May I get this marked as the next exhibit,
19 please?

20 THE REGISTRAR: Exhibit 508.

21 MR. TYZUK: 508.

22
23 EXHIBIT 508: B.C. Commercial Sockeye Harvest
24 and Value 1990-2010
25

26 MR. TYZUK: The next document that I would like to
27 bring up is number 14, Mr. Lunn, of the letter.
28 And this is the report that's called "Employment
29 Impacts of ITQ Fisheries in Pacific Canada"
30 prepared for DFO by Gislason and Associates.

31 Q This is the report that you had referred to
32 earlier in your testimony this afternoon?

33 MR. MORLEY: This is one of the reports. It also has a
34 more recent report out from 2010, which has a
35 number of things which I think would also be of
36 interest to the Commission but you don't have that
37 one here today.

38 Q No, we don't. Thank you. And if we could turn to
39 the first page under "Introduction", the second
40 bullet there. Given the testimony we heard today
41 you would agree with the second bullet, which
42 says:
43

44 ITQ management of Pacific fisheries in Canada
45 has been controversial and in that, in an
46 attempt to improve economic viability, such
47 programs can reduce the employment base.

1
2 MR. MORLEY: There's no question that the number of
3 crew jobs in the industry can and is normally
4 reduced when an ITQ program is brought in. In
5 terms of other employment in the economy, the
6 income, depending on how it's spent, can, in fact,
7 generate more income and more employment in the
8 economy and other sectors.

9 Q And we'll get to that part of the study. If we go
10 down to the fourth bullet, it indicates that the
11 study refers to six case study fisheries in
12 Pacific Canada and they are halibut, sablefish,
13 groundfish, troll, geoduck, red sea urchin and the
14 area of troll chinook salmon.

15 MR. MORLEY: That's correct.

16 Q Now, the study indicates that it focuses on ITQ
17 impacts for the year 2005, in the third bullet
18 under "Approach and Methodology". And then under
19 the last bullet on that page, Mr. Lunn, it talks
20 about some of the impact measures including
21 employment expressed in person-years, wages and
22 salaries, community impact indicators. And then
23 it goes on, on the next page to indicate how the
24 information was collected.

25 MR. TYZUK: Now, before going to the results or lessons
26 learned, if we could go to page Roman numeral vi.
27 Yes, that's it. So if we can expand that a bit.
28 This is a summary of the employment-related
29 impacts.

30 Mr. Commissioner, if you'd turn to the table
31 of contents on the next page, you will see that
32 there's a case study for each of the various
33 groups that has been referred to. And what I'm
34 doing here in the interests of time is just
35 focusing on the summary that comes from each of
36 those case studies. And what is interesting, if
37 we really want to get down to it, they've got the
38 case studies going across the page. And if you go
39 down to the bottom third, which is "2005 ITQ
40 Impacts". Mr. Lunn, if we could go down to that
41 part of it and expand that? Yes, from there on.
42 Yes.

43 Q So in looking at the various fisheries and the
44 analysis that they did, these are results that Mr.
45 Gislason found. And for halibut, what do you see
46 coming from those results?

47 MR. MORLEY: I take it halibut is the first column?

1 Q Yeah, it's the first column.

2 MR. MORLEY: That would show that the wages declined by
3 780,000, the person-years of employment increased
4 by 28, the number of vessels active in the fishery
5 reduced by 139 and the number of crew jobs reduced
6 by 665.

7 Q And the reduction in the number of rural licences
8 was 2 percent?

9 MR. MORLEY: Yeah, which is almost nothing.

10 Q Almost nothing. And an increase in the process
11 value and an increase in the catch?

12 MR. MORLEY: That's right.

13 Q Now, if you were to go then two over to the
14 groundfish troll, which is the third column over?

15 MR. MORLEY: You'll see there that the process value
16 increased by almost \$50 million, the wages
17 increased by almost 16 million, the employment
18 person-years increased by 280, the active vessels
19 increased by 12 and the crew jobs increased by 48
20 and the number of rural licences increased by 1
21 percent.

22 Q And if you were to take a look across the board at
23 those, depending on the fishery, you will see that
24 the active vessels for the most part decreased
25 across them, crew jobs save for the GF troll,
26 well, there was a minor increase in red urchin but
27 there was a loss in crew jobs across the board?

28 MR. MORLEY: Yes.

29 Q And in wages, there was an increase in four of the
30 six. There was a decrease in the area of halibut
31 and chinook. But in others, there was an increase
32 in the wages for the crews?

33 MR. MORLEY: That's correct, yes.

34 Q And in every case, there was an increase in
35 employment in person-years?

36 MR. MORLEY: Yes.

37 MR. TYZUK: All right. So if we go back now, Mr. Lunn,
38 if we could, to Roman numeral page iii. If we go
39 to "Results".

40 Q The study here indicates that:

41
42 The impetus to moving to ITQs for the case
43 study fisheries generally had several common
44 features.

45
46 If you look at those, are those things that, in
47 your experience and knowledge of those fisheries,

1 seem to --
2 MR. MORLEY: That's correct. Each of those fisheries
3 exhibited some of those common features, yes.
4 Q Okay. Inability to fish within a fleet-wide TAC,
5 inherent unstable industry --
6 MR. MORLEY: Yes.
7 Q -- excessive amount of capital, labour and
8 operating costs?
9 MR. MORLEY: Yes.
10 Q Okay. Now, if we go down to the "Summary
11 Results", which we talked about, at the bottom
12 bullet there, as we've said all fisheries show an
13 increase in the industry product value under ITQs.
14 And we saw that from the table?
15 MR. MORLEY: Yes, for sure.
16 Q And as we saw, most...
17 MR. MORLEY: Most fisheries show an increase in wages
18 and person-year employment.
19 Q Now, there are two other results here that are of
20 some interest.
21 MR. TYZUK: And the second bullet on Roman numeral page
22 iv, Mr. Lunn, please?
23 Q
24 ITQ management has resulted in much better
25 science and data from the Dockside Monitoring
26 Program and other endeavours.
27
28 MR. MORLEY: Yes, in fact, many of these groups have
29 invested money in additional science projects to
30 support DFO science.
31 Q And the two bullets after that:
32
33 ITQ fisheries management has also allowed
34 better quality products to be produced over a
35 much longer season which has enabled higher
36 returns to both fishermen and processors.
37
38 MR. MORLEY: That's correct. In the fisheries that
39 they looked at here, yes.
40 Q Okay. In terms of the lessons learned, you've
41 read over these. And what are your general
42 comments over these lessons?
43 MR. MORLEY: My general comments are that, as I
44 indicated previously, a number of the concerns
45 that have been raised by groups opposed to
46 implementation of ITQs were addressed in this
47 report and analyzed in the ones that have been

1 implemented. And those concerns turned out to be
2 unfounded and, in fact, that, although there was a
3 few places where the number of crew jobs may have
4 declined, the incomes that were derived from the
5 jobs that were there afterwards were much higher
6 than the ones that had been there previously and
7 they were better jobs and more sustainable and
8 that the actual total income to fishermen and
9 processors increased substantially in all of these
10 fisheries and that the concerns about a shifting
11 in ownership from rural to urban areas, again, was
12 unfounded; it has not happened in these fisheries.

13 Q Well, yes, if you go to lesson nine on page Roman
14 numeral v, it indicates:

15
16 Commercial fishing licences under ITQ
17 fisheries management do not necessarily
18 gravitate to interests in large urban centres
19 at the expense of rural interests.
20

21 MR. MORLEY: That's correct, yes.

22 Q And lesson 10:

23
24 It's difficult to analyze the employment,
25 wage and community impacts of ITQs in
26 isolation of resource conservation, fisheries
27 management, market/revenue and cost impacts.
28 Future analysis of the employment impacts of
29 ITQ fisheries should comprise one component
30 of a more broad-based, integrated review of
31 ITQ programs.
32

33 Do you agree with that?

34 MR. MORLEY: Yes, I agree.

35 MR. TYZUK: Okay. I have one other line of
36 questioning, Mr. Commissioner, and that has to do
37 with MSC certification.

38 Q We've had some evidence to deal with that but if I
39 just may sort of provide a bit or if you want to
40 cut me off because you probably know this better
41 than I do, Mr. Morley, but MSC certification
42 refers to the certification by a group called the
43 Marine Stewardship Council, which is an
44 international, independent body?

45 MR. MORLEY: Yes, increasingly, world-buyers of fish
46 products are seeking assurances that particularly
47 the large retail and food service chains, based on

1 pressure from environmental groups and interest
2 from their consumers, are seeking to ensure that
3 the fish products that they're marketing to
4 consumers come from sustainably, well-managed
5 fisheries with healthy fish stocks. And that has
6 resulted in the development of a number of
7 certification schemes, the kind of gold standard
8 of independent third party certification scheme,
9 which assesses whether or not fisheries are being
10 sustainably-managed.

11 It's called the Marine Stewardship Council,
12 which is a group headquartered in London, England.
13 And it has certified now is approaching 200
14 different fisheries worldwide. The British
15 Columbia Salmon Fishery was one of the first,
16 following on the heels of Alaska, achieving
17 certification for its fisheries. And looking at
18 our market prospects, the B.C. Salmon fishery said
19 if we're going to compete with these guys and have
20 our product purchased we need to have our
21 fisheries assessed and certified as well.

22 The B.C. Salmon Marketing Council was the
23 original client which was an organization that
24 represented fishermen and processors that was
25 funded by a levy on fishermen and said we are
26 going to try, with the help of provincial
27 government who provided some funding towards it as
28 well, get our salmon fishery certified. It became
29 a monumental task. We've been at it for ten
30 years. The client has now changed the Canadian
31 Pacific Sustainable Fishery Society, which I am
32 president of and I've been involved in this
33 process since day one. We have gone through two
34 different certifiers but finally we managed to
35 achieve certification of the B.C. Sockeye
36 Fisheries last summer.

37 And this assessment, really there's three
38 principles against which they're trying to assess
39 whether or not a fishery is being managed
40 sustainably. It's not looking at whether the
41 population is going up or down; it's whether or
42 not the management agency, in the face of those
43 kind of changing circumstances, is taking the
44 right action to ensure that they are protecting
45 the underlying health of the population, whether
46 it's managing the fisheries properly. And the
47 assessment really sets the scoring criteria

1 against what you have to meet. If you don't meet
2 the scoring criteria at the 60 level, you fail.
3 If you meet above the 80 level, it's a pass with
4 flying colours. If you're between 60 and 80, then
5 you are subject to having a condition imposed in
6 your certification, which says during the five-
7 year period that your certification is valid for,
8 that you need to develop a way in which you will
9 raise the score on that condition up to over 80.

10 And so what you end up doing is developing
11 together with the management agency, in this case,
12 the Department of Fisheries of Oceans, an action
13 plan, which will see over the course of that time
14 period you achieving that 80 score by meeting that
15 condition. And there are a very large number of
16 conditions attached to the sockeye fishery in B.C.
17 certification but these are conditions that are
18 partly related to implementing parts of the Wild
19 Salmon Policy and a number of other factors that
20 will improve the management of the fishery over
21 that time period. And it's a timeline and a
22 commitment that we hopefully will be working with
23 our colleagues in the environmental community to
24 hold Fisheries and Oceans feet to the fire that
25 they meet because, in fact, if we want to maintain
26 access to these markets then we do need to
27 maintain the certification. For sockeye and we
28 need to expand into our other fisheries like pink
29 and chum salmon as well.

30 And so that is ongoing and I think, again,
31 there's a good cooperative effort to try to
32 implement and meet these conditions that's
33 working. Certainly, there's controversy about it.
34 Certainly, there's people who want the bar to be
35 set higher. But frankly, it's an action plan that
36 those groups haven't been able to achieve on their
37 own without this. And it's really a sign that the
38 marketplace can encourage better management of
39 fisheries and, in so doing, provide you access to
40 more customers.

41 MR. TYZUK: Thank you, Mr. Morley. I have no further
42 questions.

43 MS. SCARFO: I was just wondering if I could add to the
44 MSC certification comments.

45 MR. TYZUK: Sure.

46 MS. SCARFO: I was on the original advisory in
47 designing the certification criteria with the

1 Marine Stewardship Council where there was a lot
2 of discussion about whether or not the
3 certification would be more on the biological
4 sustainable end or include some of the other
5 socioeconomic analysis that needed to be done.
6 And the decision was made and there was a big
7 portion removed that did include the socioeconomic
8 side of fisheries at that point prior to starting
9 the first evaluation of fisheries, which were
10 basically the socioeconomic criteria that's in the
11 FAO Code of Conduct on Responsible Fisheries. So
12 the criteria of MSC suits and is designed for a
13 certain purpose. It is not designed for meeting
14 some of the other goals for which we intend to
15 manage fisheries.

16 And since I'm only here for today and I know
17 my colleague has been here before and probably
18 there will be lots of opportunity to talk about
19 the Gislason Report because I'm sure DFO will be
20 putting it forward since they commissioned it,
21 there's a lot of debate on ITQs. And I think
22 throwing up one report and trying to go into it in
23 15 minutes in detail is really an inappropriate
24 kick at the can because the debate has raged for a
25 long time and it's gone on in forums that have a
26 lot more depth and time to look into it than this.
27 There's other reports that show exactly the
28 opposite of what Gislason makes and it always
29 depends on what you're evaluating it against.

30 What you consider a job, an employment may
31 vary depending on the individual and the needs of
32 that individual depending where they live and how
33 you define a rural community. And if the
34 principle is I just happen to live at Qualicum
35 Beach so therefore I live in a rural community but
36 I'm leasing my licence up in Area F, may be very
37 different from a principle of, are you actually
38 fishing within the community where you're
39 delivering and is that part of the goal, that
40 adjacency type of principle? And you know, just
41 the model that was just shown, 71 percent of Area
42 F licences live in rural communities but there
43 certainly is not 71 percent of the Area F licences
44 that are being leased that actually live anywhere
45 near where those fish are being harvested. So it
46 depends on the criteria you apply to some of these
47 reports. And I think what it should be is a

1 demonstration that there is a debate, there is
2 different values that are applied to different
3 reports.

4 Gislason is a very good economist but I
5 certainly wouldn't put the social sciences as his
6 level of expertise. There are a lot of reports on
7 ITQs done by Memorial University, UVic, people
8 like Rosemary Ommer, Barbara Niess and others that
9 need to be brought into the discussion if we're
10 actually going to have the kind of comprehensive
11 understanding of the implications of ITQs other
12 than just from the pure economic base as to what
13 they actually mean. And I think that, if
14 anything, if the Cohen Commission is just going to
15 be an avenue, which a lot of us were concerned
16 about, to promote ITQs as a solution to a problem
17 that occurs irregardless of ITQs. Having an ITQ
18 management fishery in the last ten years would not
19 have made any difference to the survival of B.C.
20 Fraser River sockeye. All an ITQ will do is
21 provide the determination of who benefits from
22 that fishery. It is selective and it selects who
23 benefits; it doesn't select fish. Those
24 mechanisms already exist in the regulations. You
25 can brail, you can use all those mechanisms
26 through regulations in your licence. What an ITQ
27 does is regulate who benefits from fish.

28 MR. TYZUK: I have no further questions.

29 THE REGISTRAR: Mr. Tyzuk, did you wish to mark the
30 Gislason Report?

31 MR. TYZUK: Yes, thank you.

32 THE REGISTRAR: Number 14 on your list?

33 MR. TYZUK: Yes, please.

34 THE REGISTRAR: That will be marked as 509.

35 MR. TYZUK: Thank you, Mr. Giles.

36
37 EXHIBIT 509: Gislason, Employment Impacts of
38 ITQ Fisheries in Pacific Canada, March 2008
39

40 MR. MARTLAND: Mr. Commissioner, we previously
41 canvassed or at least raised the suggestion of
42 having remaining questions addressed by way of
43 written questions and I'd seek your direction at
44 this point. If you agree that that's an
45 appropriate way to conclude this evidence, my
46 suggestion would be that counsel who remain on the
47 cross-examination list provide questions in

1 writing by two o'clock on Friday to Commission
2 counsel. We'll then have a process to have that
3 presented to these witnesses and addressed.

4 MS. GAERTNER: Mr. Commissioner, while I would love to
5 be cooperative on this level, and I will consider
6 it, I do want to raise an issue that the last
7 witness said quite succinctly that I struggle with
8 and my client struggles with in this Commission,
9 which is, to what extent do all of the contentious
10 issues in the fisheries become relevant to you
11 today in this hearing and to what extent do all
12 the details around that contention become
13 irrelevant?

14 Because if ITQs are a relevant matter to your
15 inquiry and you're going to make recommendations
16 or be asked to make recommendations, then we need
17 more time to discuss that and you need to hear
18 from them much more broadly. And my questions to
19 this panel would not be sufficient to finish that
20 discussion, written or otherwise. And so I really
21 think we need direction from the Commission on
22 some of the detailed issues as to what extent are
23 all of these issues becoming relevant? Because
24 you're obviously running out of time on a regular
25 basis to deal with these in subject matter. And
26 while we're doing our best, I think it becomes
27 almost, well, at best frustrating, and at worst,
28 raising more and more levels of concern as to
29 whether you're getting the information you will
30 need.

31 MR. ROSENBLOOM: I may not have understood you, Mr.
32 Martland. You are suggesting what takes place on
33 Friday?

34 MR. MARTLAND: The suggestion was following up on the
35 suggestion offered earlier. If the matter is
36 proceeding by way of written questions and
37 responses in writing, they may be by way of
38 affidavits that are filed. That questions from
39 counsel with questions to put to these witnesses
40 would be provided to Commission counsel by Friday,
41 2:00 p.m., and we'll then facilitate that process.

42 MR. ROSENBLOOM: Well, Mr. Martland, in my case, I
43 informed you that a good portion of my process I
44 could carry out by interrogatory, yes. But I
45 still wanted a little bit of viva voce evidence,
46 maybe five minutes worth, and then the rest I
47 would do through interrogatories. However, there

1 are other counsel here. I know that Mr. Eidsvik
2 wanted an opportunity to examine so I certainly
3 don't speak for all the other counsel in waiving
4 the opportunity of cross-examination of this
5 panel.

6 MR. MARTLAND: And Mr. Commissioner, I think we have an
7 issue where we have, as I would identify it, two
8 alternatives. One is to work on identifying a
9 time to bring back this panel for whatever cross-
10 examination remains. The second is to proceed by
11 way of written questions to this panel. I
12 suppose, a third, meshing of the two would be to
13 do what we can by way of the written questions.
14 If there's still a need to have oral questions
15 posed that we could then look at having that. But
16 I think those are the alternatives and I think at
17 this point we'd ask for you direction on that.

18 THE COMMISSIONER: Well, first of all, I can say
19 because I'm sitting here each day looking out over
20 all of you that you're all trying your best so
21 there's no argument about that. What I would
22 suggest is this. First of all, those who have
23 questions for this panel would provide Mr.
24 Martland, as he has suggested, by Friday at 2:00
25 p.m. with the questions that they feel they can
26 pose to this panel in writing and Mr. Martland
27 will facilitate working with this panel to provide
28 answers to those questions through an affidavit
29 process. For those who, like Mr. Rosenbloom, feel
30 that they would like to elicit some *viva voce*
31 evidence from this panel, then I would ask
32 Commission counsel to work with Mr. Rosenbloom and
33 others who may want to have some *viva voce*
34 testimony elicited to see if we can find, it's
35 going to be extremely difficult the next two-and-
36 a-half weeks are very full, to bring this panel
37 back for a short period to accommodate counsel who
38 wish to ask a few questions and elicit the answers
39 through *viva voce* testimony.

40 I would also invite, and I think Ms.
41 Gaertner's raised this, if you have any
42 submissions you wish to make along the lines that
43 she just addressed, in other words, with respect
44 to the terms of reference of our Commission and
45 the scope and range of the subject matter within
46 which we are attempting to address through
47 documents and through witnesses, then I would

1 invite Ms. Gaertner or any counsel to provide
2 Commission counsel with a letter to that effect so
3 that I can have some sense of how she and others
4 may feel about that particular matter she raised.
5 I thank her for raising it and if she would like
6 to do that, I invite her to do so, and others.

7 So I think the first step, Mr. Rosenbloom, is
8 for you and other counsel who have counsel who
9 have questions for this panel, if you feel
10 comfortable doing so, that you provide those in
11 writing to Commission counsel by 2:00 p.m. on
12 Friday. If you have a short *viva voce* cross-
13 examination you would like to conduct, let Mr.
14 Martland know that and I know he will try his best
15 and work with me to try and accommodate that
16 before we adjourn in March to see if we can bring,
17 if they're available, members of this panel back
18 for that purpose. We'll do our best to
19 accommodate. Obviously, there are logistical and
20 other challenges to that, Mr. Rosenbloom.

21 MR. ROSENBLOOM: My purpose in *viva voce* was that I
22 felt that my interrogatories were predicated upon
23 very, very brief questions to these witnesses.
24 And upon those responses, I would then go by
25 interrogatory. What's being suggested here is the
26 cart before the horse and that I'm to provide
27 those interrogatories without asking those, what
28 I'll call preamble questions. So I'm a little
29 unhappy about that.

30 THE COMMISSIONER: Well, may I try to make you happy,
31 which apparently is also in my terms of reference.

32 MR. ROSENBLOOM: I hope you do with the final report,
33 too, Mr. Commissioner.

34 THE COMMISSIONER: One step at a time, Mr. Rosenbloom.
35 You've used the word "five minutes". And if it
36 meant that you could complete between now -- I
37 don't know. Are you next in line, by the way?

38 MR. ROSENBLOOM: Yes. No, no, I'm not. No, I'm not.

39 MR. HARRISON: I don't mind giving my space to him.

40 THE COMMISSIONER: There you are. You owe somebody
41 else now as well, Mr. Rosenbloom.

42 MR. ROSENBLOOM: Thank you.

43 THE COMMISSIONER: So if you could complete, as you
44 suggest, you few questions which would enable you
45 to decide what questions you might wish to pose in
46 writing, I'm willing to try and accommodate that
47 for you.

1 MR. ROSENBLOOM: Thank you very much.

2 THE COMMISSIONER: Thank you.

3

4 CROSS-EXAMINATION BY MR. ROSENBLOOM:

5

6 Q My first question is to you, Mr. Duncan, and maybe
7 if you'd be brief with your response and then if
8 you wish to give a more thorough written response,
9 I will give you the opportunity by way of asking
10 you through an interrogatory. Can you very, very
11 briefly give a history of the Native Brotherhood
12 of British Columbia? I understand you'd like to
13 have that testimony before this hearing.

14 MR. DUNCAN: Would be pleased to. The Native
15 Brotherhood of B.C. has been around since 1931.
16 It initially started as a northern group, then
17 gradually moved south in the late '40s. And
18 essentially what we are is a union of sorts. But
19 our activities were much more broader as, for
20 example, in 1949, the Brotherhood was essentially
21 involved with the Province, which helped bring
22 Native people the right to vote in this province.
23 That first right was exercised in 1950.
24 Federally, it was 1960 before Indian people got
25 the right to vote. We were also involved in
26 education, health and getting better living
27 conditions in canneries and this sort of thing.
28 As far as education was concerned, in my father's
29 time, Grade 8 was the farthest we can go. So I
30 mean you can see what some of the barriers were
31 but briefly that's who we are. We're still around
32 today. We're in our 80th year. And sure, our
33 membership has dropped but in its heyday we had
34 between 4,500 and 5,000 members.

35 Q Thank you. Now, Mr. Duncan, would you also want
36 me to ask you a question through written form so
37 you could give the Commission even a more detailed
38 history? Would that be in your interest, or are
39 you satisfied with what's on the record now?

40 MR. DUNCAN: We have a little more history than that.

41 Q Well, I will ask you the question and then you
42 can, through your counsel, decide what to put
43 before the Commission. Mr. Duncan, in your
44 testimony, you presented a report of 2003
45 regarding the economic participation of the First
46 Nations in the commercial fishery. You obviously
47 don't have anything subsequent to 2003; is that

1 correct?

2 MR. DUNCAN: No, there's no other report available.

3 Q All right. And I will be asking the Commission,
4 through counsel, for the Commission to take the
5 initiative to have updated information to bring us
6 into contemporary times in terms of the First
7 Nation participation. You also testified, sir,
8 that there was a diminished First Nation presence
9 in the commercial fishery starting around the time
10 of the Pearse report, then leading to the Mifflin
11 report. I will be asking you questions as to why
12 that period led to a diminished First Nation
13 participation. You'll be able to answer that
14 through written form, will you?

15 MR. DUNCAN: We can most likely get something.

16 Q All right. I will be asking you to try to give
17 the Commission a background about why, through the
18 Pearse period leading to the Mifflin period, it
19 has caused, as a consequence, the diminished First
20 Nation presence in the fishery. And lastly, Mr.
21 Morley, you were asked today in respect to the
22 First Nation involvement certainly with your
23 company as one processor in terms of the number of
24 First Nation people, for example, in the canning
25 industry, I believe, up at Prince Rupert, I
26 believe your testimony was around 60 percent of
27 that cannery; is that correct?

28 MR. MORLEY: Yeah, it's in excess of probably 65
29 percent, yes.

30 Q All right. My question to you, sir, is you're
31 part of a processors' association that in fact has
32 received standing as a participant at this
33 inquiry, are you not?

34 MR. MORLEY: Yes, the Seafood Producers Association of
35 British Columbia.

36 Q All right. I think it's important that this
37 Commission have a more comprehensive evidentiary
38 base in respect to First Nation participation in
39 the processing side of the industry. If I send,
40 through your counsel, and you do have counsel
41 although he's not present at these hearings day-
42 to-day, a request for information not just about
43 Canadian Fish Company but all the processors that
44 make up part of your association, do you believe
45 that such information can be provided that gives
46 this Commission contemporary information in
47 respect to First Nation participation in the

1 processing?

2 MR. MORLEY: I can certainly pass the request onto the
3 other companies in the Association. I can't say
4 how and if they can respond to all of that. But
5 certainly we'll give it our best shot.

6 MR. ROSENBLOOM: All right. And I will, thus, go by
7 way of interrogatory in respect to that. Mr.
8 Martland, that completes my viva voce evidence and
9 I will provide questions by Friday, 2:00 p.m.
10 Thank you.

11 MR. MARTLAND: Thank you. Mr. Commissioner, with the
12 exception of this written process that we've
13 identified, that concludes the commercial
14 evidence. We will begin tomorrow at 10:00 a.m.
15 with recreational fishing.

16 MS. GAERTNER: You have one more witness.

17 MR. ROSENBLOOM: I do repeat to you, I'm sorry, but
18 there are other counsel who aren't present today.
19 I know Mr. Eidsvik did intend to cross-examine
20 this panel.

21 MR. MARTLAND: Yes, I'm alive to that and I think I've
22 canvassed that that the preference, obviously, is
23 to have questions in the conventional form but
24 that we've looked to use a different means of
25 proceeding. I'll speak with Mr. Eidsvik. And Ms.
26 Gaertner makes the point there is one further
27 commercial witness, which I overlooked, Lisa
28 Mijacika, on March 15. I think we can be
29 adjourned at this point.

30 THE COMMISSIONER: Yes, I just note that Mr. Lunn does
31 send out his day end report on what's coming the
32 next day so all participants will get that this
33 evening and he could mention in that notice how we
34 concluded this afternoon so they will know. And I
35 again than Ms. Gaertner for raising her point and
36 again would, with the greatest respect, invite
37 her, if she wishes to, to provide that to
38 Commission counsel. And I thank you for that.

39 And I want to thank Ms. Scarfo, Mr. Duncan
40 and Mr. Morley. If you come one more time, Mr.
41 Morley, it'll be the Morley Commission. But thank
42 you for returning here so often and for your
43 willingness to participate. And to Mr. Duncan and
44 Ms. Scarfo, thank you very much for making
45 yourselves available today and for your willingness
46 to answer the questions of all the participants
47 who were able to question you today and for your

1 willingness to answer questions that are put to
2 you in writing as well. Thank you very much for
3 that to all three of you. Thank you.

4 THE REGISTRAR: The hearing is now adjourned for the
5 day and will resume at ten o'clock tomorrow
6 morning.

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8 (PROCEEDINGS ADJOURNED AT 4:22 TO MARCH 2,
9 2011, AT 10:00 A.M.)

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Karen Hefferland

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Susan Osborne

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Karen Acaster