

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 15, 2011

Tenue à :

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

le mardi 15 mars 2011



Errata for the Transcript of Hearings on March 15, 2011

Page	Line	Error	Correction
v		Cross-examination by Mr. Harvey	Re-examination by Mr. Harvey
38	10	Conversation	Conservation
53	8	PVR	PPR
28 – 30	4	Cross-examination by Mr. Harvey	Re-examination by Mr. Harvey

APPEARANCES / COMPARUTIONS

Brock Martland Kathy L. Grant	Associate Commission Counsel Junior Commission Counsel
Tim Timberg Geneva Grande-McNeill	Government of Canada ("CAN")
Boris Tyzuk, Q.C.	Province of British Columbia ("BCPROV")
No appearance	Pacific Salmon Commission ("PSC")
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
No appearance	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
No appearance	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Tim Leadem, Q.C.	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
Don Rosenbloom	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

APPEARANCES / COMPARUTIONS, cont'd.

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 Crystal Reeves	First Nations Coalition: First Nations Fisheries Council; Aboriginal Caucus of the Fraser River; Aboriginal Fisheries Secretariat; Fraser Valley Aboriginal Fisheries Society; Northern Shuswap Tribal Council; Chehalis Indian Band; Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council; Upper Fraser Fisheries Conservation Alliance; Other Douglas Treaty First Nations who applied together (the Snuneymuxw, Tsartlip and Tsawout); Adams Lake Indian Band; Carrier Sekani Tribal Council; Council of Haida Nation ("FNC")
No appearance	Métis Nation British Columbia ("MNBC")

APPEARANCES / COMPARUTIONS, cont'd.

No appearance	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")

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1 Vancouver, B.C. /Vancouver
2 (C.-B.)
3 March 15, 2011/le 15 mars 2011
4

5 THE REGISTRAR: The hearing is now resumed.
6

7 BILL DUNCAN, recalled.
8

9 ROB MORLEY, recalled.
10

11 KATHY SCARFO, recalled.
12

13 THE COMMISSIONER: Mr. Martland.

14 MR. MARTLAND: Thank you. Mr. Commissioner, we're here
15 today to complete the evidence on the Commercial
16 Fishing hearings. There's two components. I'll
17 just take a moment to outline them. The first
18 component is the completion of cross-examination
19 of what we've termed the second Commercial Fishing
20 Perspective panel, and secondly we'll hear the
21 evidence or receive the evidence and cross-
22 examination of Lisa Mijacika today on commercial
23 licensing.

24 For the panel, counsel have been very helpful
25 in cooperating with our request for time limits
26 and working under the time constraints we have.
27 We had initially indicated we'd move to questions
28 and answers provided in writing, rather than
29 orally, and frankly people were not keen on that
30 idea for the most part. So with one exception,
31 we'll be proceeding in the usual fashion, and I
32 expect within about an hour we'll be concluded
33 with the evidence of the panel.

34 The exception is Mr. Rosenbloom, and his
35 situation is that he had in fact prepared and
36 submitted his questions, primarily for Mr. Duncan,
37 although one for Mr. Morley, in advance of our
38 decision and communication to participants that we
39 had moved back to oral questions. We've advised
40 participants. No one has expressed a difficulty
41 with Mr. Rosenbloom proceeding with the questions
42 and answers, and in the case of Mr. Duncan,
43 counsel James Hickling has helpfully assisted in
44 preparing the questions and answers.

45 So our first, our sequence, if you will, for
46 the panel evidence is I expect Mr. Rosenbloom
47 reading questions into the record, and then

1 confirming Mr. Duncan's answers, will be within
2 about five minutes or less. Mr. Leadem for the
3 Conservation Coalition is next, in the five- or
4 ten-minute range. I have next Phil Eidsvik at 15
5 minutes; Keith Lowes at five minutes; Brenda
6 Gaertner at 15 minutes, and Chris Harvey possibly
7 re-examining in the range of five minutes. He'll
8 tell us obviously at that point.

9 So with that as our introduction for the day,
10 Mr. Rosenbloom.

11 THE REGISTRAR: May I remind the panel that you are
12 still under oath.

13 MR. ROSENBLOOM: Thank you very much. Don Rosenbloom,
14 again representing Area D Gillnet, Area B Seiner.

15 Indeed, my learned friend is correct. I went
16 by way of interrogatories for the last few
17 questions that I had for this panel. Just for the
18 record, I advanced three questions to Mr. Duncan
19 through his counsel. I want to read into the
20 record the questions and then Commission counsel
21 will file the answers that have already been
22 prepared by Mr. Duncan, and I will just confirm
23 with Mr. Duncan that the answers are accurate to
24 the best of his information.

25

26 CROSS-EXAMINATION BY MR. ROSENBLOOM, continuing:

27

28 Q I asked three questions of Mr. Duncan. Question
29 1:

30

31 You provided the Commission on March the 1st
32 in oral testimony with a brief history of the
33 Native Brotherhood of B.C. Do you wish to
34 elaborate further in writing?

35

36 Mr. Duncan responded to question number 1.

37 Mr. Duncan, you have looked at the responses
38 as prepared by yourself with the assistance of
39 counsel. That answer in question 1 is true and
40 correct to the best of your knowledge?

41 MR. DUNCAN: That's correct.

42 Q Thank you. Question 2 that I advanced:

43

44 You testified at the same hearing on March
45 the 1st, page 41, that as a result of the
46 changes arising as a result of the Davis
47 Report and the Mifflin Plan, there has been a

1 diminished First Nation involvement in the
2 commercial fishery. You said:

3
4 Over the years, that participation has
5 declined. You can thank the Davis Plan
6 and more recently Mifflin. But the new
7 arrival on the scene has been DFO
8 through its programs. I mean, they've
9 always had the ATP program, and more
10 recently they're still in PICFI. But
11 there's also another player on DFO's
12 camp, and that's AAROM. And between
13 these three initiatives, they're buying
14 up a lot of licences.

15
16 I then asked:

17
18 Please expand on all aspects of your quota
19 testimony above, including the Davis and
20 Mifflin Plan and the programs referred to by
21 you following that period.

22
23 Again, Mr. Duncan provided a response to question
24 2.

25 Mr. Duncan, you have reviewed the document
26 that has been provided to us of your responses.
27 Is the response to question number 2 true and
28 correct to the best of your knowledge?

29 MR. DUNCAN: That's correct.

30 Q Thank you. I go to the third and last question
31 advanced to you. It read:

32
33 Provide information by way of personal
34 knowledge or through studies in your
35 possession, the extent to which First Nations
36 are involved in the commercial fishery and
37 the trickle-down effect into your
38 communities.

39
40 Again, Mr. Duncan, you provided a response to
41 question number 3. You have reviewed that
42 response. Is it true and correct to the best of
43 your knowledge.

44 MR. DUNCAN: That's correct.

45 Q Right. I would ask that your responses 1 through
46 3 be filed as an exhibit to these proceedings.

47 MR. DUNCAN: And I agree with that happening, please.

1 THE REGISTRAR: Exhibit number 577.

2

3

EXHIBIT 577: Bill Duncan, Answers to
Questions from Don Rosenbloom, March 14, 2011

4

5

6

THE COMMISSIONER: Thank you. I just, Mr. Rosenbloom,
just on page - they're not numbered - it's the
second page in that portion that commences, "To
provide a big picture". Do you have that in front
of you by any chance? Do you have this...

10

11

MR. ROSENBLUM: Yes, I do.

12

THE COMMISSIONER: Yes. I'm not sure I've seen this
term before. But in the last --

13

14

MR. ROSENBLUM: Mr. Commissioner, would you mind
bringing the mike a little closer if possible.

15

16

THE COMMISSIONER: Oh, yes, I'm sorry.

17

MR. ROSENBLUM: Sorry.

18

THE COMMISSIONER: My apologies.

19

MR. ROSENBLUM: No problem.

20

THE COMMISSIONER: I'm sorry about that. Just on the
second page. It's not numbered, but it's the
second page, under "To provide a big picture",
there's six dots.

21

22

23

MR. ROSENBLUM: Yes.

24

25

THE COMMISSIONER: The last what we call bullets, I
guess.

26

27

MR. ROSENBLUM: Yes.

28

THE COMMISSIONER: There's a reference to "inshore
putter fleet"?

29

30

MR. ROSENBLUM: Yes. Well, there is, and are you
wanting to ask the witness what that means?

31

32

THE COMMISSIONER: That's what I was going to do, yes.

33

34

MR. ROSENBLUM: Yes, I have no idea. Keep in mind
these are not my responses.

35

36

MR. MARTLAND: I was fully confident you would bluff,
at least, Mr. Rosenbloom.

37

MR. ROSENBLUM:

38

Q Mr. Duncan, you have heard Commission counsel. I
think you've got the document in front of you.
Page 2, the last of the six bullets at the bottom
of the page, "putter fleet". Can you explain what
that is.

39

40

41

42

43

MR. DUNCAN: Essentially what the putter fleet was, was
that there was many fisheries, or many boats used,
so they were a small fleet. They were basically
skiffs and rowboats. And what they would do is
they would fish and they would have someone else

44

45

46

47

1 deliver on their behalf, and then they would share
2 the revenue that way. So it's just a collection
3 of small skiffs and rowboats.

4 THE COMMISSIONER: Thank you.

5 MR. ROSENBLOOM: Thank you very much, Mr. Duncan. And
6 again, then, I would ask that this document be
7 marked as an exhibit.

8 THE COMMISSIONER: Yes.

9 THE REGISTRAR: That was marked as 577.

10 THE COMMISSIONER: 577, thank you.

11 MR. ROSENBLOOM: Thank you very much. Lastly, before I
12 step down, I went by way of interrogatory with one
13 last question to Mr. Morley. I am just going to
14 read into the record the question. Mr. Morley has
15 informed me that his Association is working in
16 response to that question.

17 Q My question to Mr. Morley was:

18
19 On March the 1st you provided the Commission
20 at hearing with information regarding the
21 extent of First Nation involvement with
22 employment in your company. Can you kindly
23 provide the Commission with the same
24 information pertaining to the other companies
25 membered in the Seafood Producers
26 Association.

27
28 Mr. Morley, you have received that question. I
29 gather you are pursuing it through your
30 Association; is that correct?

31 MR. MORLEY: That is correct.

32 Q Thank you very much. And you would hope to have
33 response to the Commission in approximately what,
34 two weeks?

35 MR. MORLEY: Within two weeks, yes.

36 MR. ROSENBLOOM: Thank you very much. I have no
37 further questions. Thank you.

38 THE COMMISSIONER: Thank you.

39 MR. MARTLAND: Thank you. And, Mr. Commissioner, with
40 respect to that last point involving Mr. Morley,
41 we'll follow up, we'll communicate with
42 participants. I expect that may lead to an
43 affidavit that provides the response that he has
44 to Mr. Rosenbloom's question.

45 There's one further point here, and I'll ask,
46 Mr. Lunn, with respect to the Heiltsuk's list of
47 documents, number 5 on that list of documents is

6
PANEL NO. 22
Re-exam by Mr. Martland
Cross-exam by Mr. Leadem (CONSERV)

1 the Native Fishing Association Report on Native
2 Involvement in Commercial Fisheries. Mr. Hickling
3 drew this to my attention. It's referred to in
4 Mr. Duncan's answer to Mr. Rosenbloom's question.
5 I'd suggest that to be complete it should also be
6 marked as an exhibit, please.

7 THE REGISTRAR: Exhibit 578.

8
9 RE-EXAMINATION BY MR. MARTLAND:

10
11 Q I should have first asked, but, Mr. Duncan, you'll
12 recognize that as the document that you referred
13 to in your answer; is that correct, sir?

14 MR. DUNCAN: That's correct.

15 MR. MARTLAND: Thank you.

16
17 EXHIBIT 578: Native Fishing Association
18 Report on Native Involvement in Commercial
19 Fisheries, April 2011
20

21 MR. MARTLAND: Next I have on the list Mr. Leadem.

22 MR. LEADEM: My name is Tim Leadem. I represent the
23 Conservation Coalition. I apologize, I was not in
24 attendance when you testified on March the 1st.
25 My Junior Associate, Mr. Harrison was. He has
26 seen fit to go off to Mexico and I have the
27 greater pleasure of asking you questions here this
28 morning.
29

30 CROSS-EXAMINATION BY MR. LEADEM:

31
32 Q I want to centre on questions to you, Mr. Morley,
33 and you may recall from your discussion on March
34 1st that you had a discussion with Mr. Boris
35 Tyzuk, who represents the Province, concerning
36 certification from the Marine Stewardship Council.
37 Do you generally recall that evidence that you
38 gave at that time?

39 MR. MORLEY: Yes, I do.

40 Q And I would suggest to you that the obtaining of
41 the certification, the Marine Stewardship Council
42 certification is of great benefit to the
43 commercial fishing sector; is that correct?

44 MR. MORLEY: Yes, it is.

45 Q And the certification that was obtained is a
46 conditional certification, is it not?

47 MR. MORLEY: Yes. As I mentioned in my testimony, it

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1 is a custom in Marine Stewardship Council
2 certifications that if you don't achieve a score
3 of the 80 benchmark, and that you're somewhere
4 between the 60 pass mark and the 80 benchmark,
5 that you are required to bring your fishery up to
6 a level that would justify the 80 score within the
7 five-year certification period and that's done
8 through imposing a number of conditions that need
9 to be met.

10 Q Right. And I don't want to go through some of
11 those conditions with you, but generally a lot of
12 them relate to the Department of Fisheries and
13 Oceans' obligation to implement the Wild Salmon
14 Policy within a certain timetable; is that not
15 correct?

16 MR. MORLEY: It's a number of elements in the Wild
17 Salmon Policy, yes.

18 Q And there's a timetable set out for the
19 implementation of those elements.

20 MR. MORLEY: There is an action plan that's attached to
21 the certification that lays out a timetable for
22 complying with each one of the conditions, yes.

23 MR. LEADEM: Right. Mr. Commissioner, I'm not going to
24 go through this, in the interests of time, but I
25 would refer you to my cross-examination of Jeff
26 Grout earlier on, where I went through some of
27 those conditions with respect to the
28 implementation of the Wild Salmon Policy.

29 Q So as I understand it, then, Mr. Morley, in order
30 to retain the MSC certification, it's necessary to
31 go through this process and fulfill these
32 conditions; is that not correct?

33 MR. MORLEY: That is correct.

34 Q And then I take it as a matter of logic, then, it
35 would be of some benefit to the commercial fishing
36 sector to have the Wild Salmon Policy be
37 implemented because there is certain conditions
38 that are attached to the certificate process, as
39 well. Do I have that right?

40 MR. MORLEY: That's right.

41 Q And so I see this as an opportunity for
42 environmentalists who are also concerned about the
43 Wild Salmon Policy to cooperate with the
44 commercial fishing sector to get the Wild Salmon
45 Policy implemented. And certainly it's something
46 that we have in common, would you agree with that?

47 MR. MORLEY: Yes, we have made great efforts to try to

1 work together. Once the environmental groups went
2 through and exhausted their objections to the
3 certification, I think they now realize that
4 working together with us and trying to encourage
5 DFO to do a better job is in both our interests,
6 yes.

7 MR. LEADEM: All right, thank you. Those are my
8 questions.

9 MR. MARTLAND: Mr. Eidsvik I have for 15 minutes.

10 MR. EIDSVIK: Good morning, Mr. Commissioner, Philip
11 Eidsvik on behalf of the Area E and B.C. Fisheries
12 Survival Coalition.

13 Mr. Lunn has probably been passed a number of
14 documents that were passed around last week for
15 all the parties. And if he could bring up the
16 1984 New Policy for Canada's Pacific Salmon
17 Fisheries.

18
19 CROSS-EXAMINATION BY MR. EIDSVIK:
20

21 Q While I'm doing that, perhaps I can ask a couple
22 of questions of Ms. Scarfo. Ms. Scarfo, one of
23 the issues that we've heard again and again
24 through this Commission is the question of DFO
25 spending, and that they have no money for science,
26 they have no money for fisheries management. Do
27 you have any comments on that?

28 MS. SCARFO: Yes, I guess I could comment on that,
29 particularly post-*Larocque*, which I'm assuming
30 you're familiar with, where the use of fish was no
31 longer available to the Minister to fund programs
32 and projects in the way that it had been done in
33 the past. There's been a serious problem of
34 finding funds to do basic science work. And I
35 guess if you look at within the Department the
36 budget cuts over the last number of years where
37 you have staff basically sitting in the room that
38 don't even have telephones or computers at
39 sometimes. And basically the main projects that
40 get funding are the ones that are in crises or are
41 sexy, I guess is the best way to put it, because
42 they have public viewpoints and are in central
43 main Vancouver areas, whereas a lot of the other
44 smaller ones get ignored.

45 And if you look at the allocation of not just
46 resources, but personnel within the Department,
47 you'll find that a lot of the personnel are busy

1 dealing with First Nations treaty issues and fish
2 farms, aquaculture, which maybe should be under a
3 different department, and allow the Department of
4 Fisheries to get on with what is really their core
5 mandate, which is fish and fisheries.

6 Q So you have problems of spending money -- the
7 Department spending money to promote aquaculture,
8 for example.

9 MS. SCARFO: Well, if you look at the jurisdiction over
10 aquaculture, you kind of stop and wonder why it's
11 actually under the Department of Fisheries. Or if
12 you look at the amount of time that personnel
13 spends in treaty negotiations, which maybe we'd be
14 better off under Native Affairs (sic), which also
15 leads to the complication of is DFO in a conflict
16 of interest in a lot of their activities.

17 At this point under ATP, AAROM and PICFI, I
18 think it would be safe to say that DFO is maybe
19 one of the largest licence holders in British
20 Columbia, in which case is it appropriate for the
21 largest group, the largest licence holder also to
22 be in control of allocation and management, and
23 are their decisions really at arm's length from
24 the process as they should be. And if they're not
25 at arm's length, then how would you do that, would
26 to be to remove the holding of those licences, the
27 purchasing of those licences and put the
28 management in DFO's hands, but remove their
29 absolute control.

30 Q Thank you, Ms. Scarfo. The document we're looking
31 at is obviously a June 1984 DFO document entitled
32 "A New Policy for Canada's Pacific Salmon
33 Fisheries". And if we go to the next page, Mr.
34 Lunn, and the second paragraph. The Department
35 again is dealing with a number of issues. It
36 sounds awfully familiar to today. And the second
37 paragraph, and I'll read it into the record:

38
39 In response to these current difficulties,
40 and to secure for the industry and the people
41 in it a more stable and rewarding future, the
42 Minister of Fisheries and Oceans is proposing
43 a comprehensive package of legislation for
44 the management and development of the Pacific
45 salmon fisheries.

46
47 And if we switch to the second page, we can see

1 DFO talks about stock rebuilding. On the third
2 page they review some of the problems. And, Ms.
3 Scarfo, I'm going to just target this with you.
4 We can skip all the way to page 10, if you don't
5 mind, Mr. Lunn. And it's the -- there we go. And
6 the question that DFO responds to is:

7
8 What will the relative allocations be to
9 Indian, commercial and sport fishermen, and
10 between gear types?
11

12 Now, Ms. Scarfo, maybe you can quickly read that
13 next paragraph and then tell me whether that's
14 what's happened.

15 MS. SCARFO: Well, obviously, the defining of shares
16 between the user groups hasn't really happened,
17 particularly where it talks about the recreational
18 fleet. I know in chinook/coho, for example, the
19 allocation has more than tripled. Where it used
20 to be a small percentage of the catch, it's now
21 actually above and beyond the commercial catch.
22 So there's been a significant increase without any
23 compensation and without a defined share at this
24 point, and no forum for that policy discussion on
25 the defined share for the recreational fish.

26 The First Nations food fish, my understanding
27 is the FSC fishery is defined to some degree and
28 there is a mechanism for compensation. Whether or
29 not that mechanism is appropriate or actually
30 provides compensation is a separate issue.

31 Q And, Mr. Lunn, if you could turn to the 1998
32 Promises, I think there's a document entitled
33 that. And while I'm asking that, perhaps Mr.
34 Duncan --

35 MR. MARTLAND: I wonder, sorry, I apologize for
36 interrupting. I wonder, though, if no counsel
37 raises an issue, this document's been put to the
38 witness. I wonder if it might become an exhibit.

39 MR. EIDSVIK: Thank you, Mr. Martland.

40 THE REGISTRAR: Exhibit 579.

41
42 EXHIBIT 579: A New Policy for Canada's
43 Pacific Salmon Fisheries, June 1984, A
44 Question and Answer Guide for Commercial
45 Fishermen
46
47

1 MR. EIDSVIK:

2 Q While Mr. Lunn brings that next document up.
3 Perhaps, Mr. Duncan, if I can ask, in Alert Bay in
4 1990 how many seiners? What kind of seine fleet
5 did they have in Alert Bay in 1990?

6 MR. DUNCAN: That I'm not 100 percent sure of, but I
7 don't even want to guess. But I think there was
8 still a good size fleet there.

9 Q Fair to say that in Alert Bay salmon fishing,
10 especially sockeye fishing for Fraser River salmon
11 was a pretty big economic driver in the community,
12 if not the biggest?

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

14 Q And what about today?

15 MR. DUNCAN: Well, there isn't many boats left. So the
16 reality is that it is not as important as it was
17 in the past, but 2010 painted a different picture,
18 so...

19 Q Yes. Now, in terms of job opportunities, say
20 comparing Vancouver to Alert Bay, a seine boat
21 generally has a crew of five. Am I about right
22 there?

23 MR. DUNCAN: Yes.

24 Q So if you take five jobs out of Alert Bay, in
25 other words, if a seine boat disappears, what
26 other alternative job opportunities are there in
27 Alert Bay compared to, say, somebody living in
28 Burnaby?

29 MR. DUNCAN: Next to nothing.

30 Q So it's a serious issue to lose a seiner or two
31 out of Alert Bay?

32 MR. DUNCAN: That's correct, yes.

33 Q Thank you for that.

34 MS. SCARFO: Can I just add to that?

35 Q Yes.

36 MS. SCARFO: Because we actually just talked about
37 this. There was a report during the Mifflin Plan
38 where there was a concern raised with the loss of
39 First Nations licences, particularly at that point
40 there was an affirmative action program within the
41 First Nations where there was native-only licences
42 that were being bought back in the government
43 plan. So that in a community like Ahousaht, the
44 drop in commercial licences was down to about
45 approximately a third of what it had been prior to
46 the Mifflin Plan, which we're now buying back and
47 supposedly going to reissue.

1 But there was a number of reports done and I
2 would point to the provincial government's Job
3 Protection Commissioner, and the Gislason Report,
4 which I think was called "Fishing for Answers",
5 which clearly demonstrated the significant
6 difference in a job loss in a coastal rural
7 community and the importance of that job to that
8 community and the infrastructure in that
9 community, as compared to a job loss in a more
10 urban community.

11 Q So when we're talking about the reserves on the
12 West Coast of Vancouver Island, there used to be a
13 fairly decent troll fleet and the impact on that
14 is a lot more than the reduction in the troll
15 fleet in Vancouver. Is that what you mean?

16 MS. SCARFO: Yes. The fish access loss is significant.

17 Q Thank you. The next document is also excerpts
18 from various DFO documents, and I'd like to draw
19 your attention, Ms. Scarfo, to the first quote in
20 the column at the top, and I'm going to read this
21 into the record.

22 MR. MARTLAND: If I might just do this, because I've
23 promised to warn the participants today at the
24 ten-minute mark I'd stand to let them know that
25 that's where we're at on questions. Thank you.

26 MR. EIDSVIK: My time is up, is that what you're
27 telling me?

28 MR. MARTLAND: No, 15 minutes is the time we're giving
29 over to these questions, so you're ten minutes
30 into 15 minutes.

31 MR. EIDSVIK: Okay, thank you, Mr. Martland.

32 Q I'm not going to read this in, Ms. Scarfo. You've
33 probably had a quick view of it. This was one of
34 DFO's many commitments that we're going to reduce
35 the fleet, we're going to come up with a new plan
36 and everything is going to be better; is that fair
37 to say?

38 MS. SCARFO: Yes, we've been reformed, remodelled,
39 revitalized, restructured and now we're going to
40 be renewed, I guess again, once again into ITQs,
41 which is another experiment that's going to
42 significantly improve everything.

43 MR. EIDSVIK: And this is the 1999, I'd like to enter
44 this as an exhibit, please. Any objection from
45 counsel?

46 THE REGISTRAR: Exhibit 580.

47

1
2 EXHIBIT 580: Excerpts from DFO documents
3 prepared by Phil Eidsvik
4

5 MR. TIMBERG: Mr. Commissioner, I don't object to this
6 question or to this exhibit going in. I just
7 would like to note for the record that it's a
8 series of excerpts created by Mr. Eidsvik, pulling
9 from these various policies.

10 MR. EIDSVIK: Would it be useful, perhaps, then to
11 submit the actual exhibits they come from at a
12 later date?

13 MR. MARTLAND: Well, I think we've taken the flexible
14 approach where we don't have people raising
15 objections. I wonder if Mr. Eidsvik, though,
16 could just confirm that that is indeed what this
17 document is. It's something that he's prepared or
18 his participant group has prepared, and it borrows
19 from the different policies that are set out
20 there.

21 MR. EIDSVIK: Yes, Mr. Commissioner. These excerpts
22 are from documents that DFO provided and we
23 prepared.

24 THE COMMISSIONER: Yes. I would appreciate it if you
25 could put together a bibliography of those
26 documents, and we'll attach that as 580A, if you
27 could do that, Mr. Eidsvik.

28 MR. EIDSVIK: I'd be pleased to.

29 THE COMMISSIONER: Thank you.

30 MR. EIDSVIK: Thank you, Mr. Commissioner.

31 MR. MARTLAND: Thank you.

32 THE REGISTRAR: That will be marked as 580A, when
33 received.

34 MR. EIDSVIK: Thank you.

35 Q The next document is an unusual document, Mr.
36 Lunn, it's an Excel spreadsheet that was
37 circulated a couple of weeks ago. And it's
38 various colours. And I think it's almost the last
39 document I'm going to have time in the limit I've
40 got. And, Mr. Morley, perhaps you can help me on
41 this, and I want to go back to 1992 for a minute.
42 Do you remember a meeting in the Fisheries Council
43 of B.C. in 1992 with Mr. Chamut, Mr. Art - I've
44 forgotten his last name - when we were first
45 notified of the fish that had gone missing on the
46 Fraser River in 1992. And it was an evening
47 meeting in your boardroom at Fisheries Council.

1 MR. MORLEY: I vaguely recall the meeting, but...

2 Q Do you recall Mr. Chamut and I've forgot the name
3 of the second gentleman, explaining that a number
4 of fish had gone missing. They weren't really
5 sure what the problem was. Do you remember what
6 you asked them at that point?

7 MR. MORLEY: You know, frankly I can't remember.
8 Sorry.

9 Q Okay. You don't remember that Mr. Chamut
10 suggested they either had miscounting at Mission
11 or hot water temperatures had led to the shortage
12 of fish, and your suggestion was that we've got to
13 close the fisheries because we can't --

14 MR. MORLEY: I'm sorry, I don't recall the details.

15 Q Do you remember the Fisheries Council of B.C.
16 seeking an injunction in court to have the
17 fisheries closed?

18 MR. MORLEY: Yes, I do.

19 Q And after the filing of the injunction
20 application, do you remember that the Minister,
21 then John Crosbie, closed the fishery.

22 MR. MORLEY: Yes.

23 MR. EIDSVIK: Yes, thank you. Well, perhaps we can go,
24 and we've talked a lot about missing fish and
25 various fishing activities, and I've brought this
26 chart up just to review very quickly, and I think
27 we'll start at 2008.

28 MR. MARTLAND: Mr. Commissioner, I'm sorry to interrupt
29 Mr. Eidsvik, but if you could just clarify the
30 source of this information.

31 MR. EIDSVIK: And I'm not asking this to be submitted
32 as an exhibit, Mr. Commissioner. I want to submit
33 it as something for identification. It's all
34 summaries of information taken from the Fraser
35 Panel Reports and prepared by the Pacific Salmon
36 Commission, and I submit it today because we don't
37 have yet a document highlighting this information
38 before the Commission. And I'd like to submit it,
39 refer to it a couple of times, and then just
40 submit it for identification. And if any other
41 counsel has a problem with it at a later date,
42 I'll deal with it that way. I don't know if
43 that's suitable with you or not.

44 MR. MARTLAND: Well, I sense some hesitation on the
45 part of some counsel in the room. If it's a
46 question, this document has been put up and Mr.
47 Eidsvik may have a question. We're almost out of

1 his time allocation, I'm afraid to say, as well.
2 If that's the situation, perhaps we can defer the
3 use of this document by having it marked for
4 identification only, and we can pick up on that
5 discussion offstage. I don't know if other
6 counsel want to state an objection more strongly
7 at this point.

8 MS. GAERTNER: I just don't know what these numbers
9 are.

10 MR. MARTLAND: And I don't have a clear picture of the
11 provenance, if Mr. Eidsvik has prepared this, but
12 based on PSC information. I think we'd want to
13 before relying on it substantively have any input
14 from the PSC or from counsel who have dealt with
15 that issue.

16 MR. EIDSVIK: Mr. Commissioner, I just want to comment
17 on my frustration on this. As that we're 16
18 months into the Commission and we don't have basic
19 catch and escapement data, and the important
20 Fraser Panel Reports on a year-to-year basis
21 before the Commission so we can refer to catch and
22 escapement, who caught what, what was caught, how
23 many fish got on the spawning grounds. So this,
24 my procedure here today is a bit unusual. I'm
25 happy to sit down, but I do want to object to this
26 information not being before the Commission at
27 this point, because every single person I've
28 cross-examined, it would have been handy to have
29 this information. But I'll withdraw my exhibit
30 and sit down.

31 THE COMMISSIONER: Well, Mr. Eidsvik, what I would
32 respectfully suggest you do is you, if it's
33 convenient for you, send a letter to Commission
34 counsel, and if you haven't done so already, and
35 specifically request the information that you are
36 seeking with regard to the statistics or data that
37 you would wish the Commission to collect.
38 Commission counsel will take that under advisement
39 and respond to you accordingly. I don't know what
40 this document is or what the source of the
41 information is, and so for that reason, I think
42 it's problematic. But my suggestion, if you wish
43 to follow it, is to send that letter to Commission
44 counsel and express your frustration over data
45 that you feel ought to be before the Commission
46 and allow Commission counsel to respond to you
47 accordingly.

1 MR. EIDSVIK: For the record, Mr. Commissioner, I have
2 been raising this issue for I think probably close
3 to six months now.

4 THE COMMISSIONER: Have you formally written to
5 Commission counsel?

6 MR. EIDSVIK: Yes, I have.

7 THE COMMISSIONER: I see. Well, if that's the case,
8 then I will ask Commission counsel to advise the
9 Commission in due course as to what the response
10 ought to be to your request.

11 MR. EIDSVIK: Thank you, Mr. Commissioner.

12 THE COMMISSIONER: Thank you.

13 MR. EIDSVIK: I could use more time, but I'm out of
14 time, so I'll sit down today, thank you.

15 MR. MARTLAND: Thank you, Mr. Commissioner. I have Mr.
16 Lowes next; five minutes.

17 MR. LOWES: It's J.K. Lowes for the B.C. Wildlife
18 Federation and the B.C. Federation of Drift
19 Fishers.

20

21 CROSS-EXAMINATION BY MR. LOWES:

22

23 Q Mr. Morley, from your perspective, what does it
24 take to maintain a sustainable commercial fishery?

25 MR. MORLEY: Basically, in order to have a sustainable
26 commercial fishery, you need to have participants
27 involved in it all the way through the supply
28 chain from fishermen through processors, people
29 who transport the fish, and people who process and
30 market the fish, being able to have a viable
31 profit-making business that can afford to employ
32 people and have consistent supply and make profits
33 so they can reinvest in the capital needed to
34 support the business.

35 Q And what, as a processor, commitments are
36 necessary to be made before the salmon season
37 begins?

38 MR. MORLEY: You need to purchase your supplies,
39 inventory. Because salmon seasons are such short
40 periods of time, you need to be prepared for a
41 very intense period of several weeks in which that
42 you put out your entire production for a year. So
43 if you're in the canning industry, for example,
44 you need to make orders and purchase cans. You
45 need packaging materials and other kinds of
46 things, as well, and you also need to arrange for
47 working capital to finance the operation.

17

PANEL NO. 22

Cross-exam by Mr. Lowes (WFFDF)

Cross-exam by Ms. Gaertner (FNC)

1 Q And in an order of magnitude basis, what kind of
2 financial commitments are we talking about?

3 MR. MORLEY: Well, in the case of our company, it's in
4 the millions of dollars.

5 Q Thank you. I have no more questions. Oh, and one
6 question: And those commitments need to be made
7 on the basis of the pre-season forecast?

8 MR. MORLEY: Yes, that's correct.

9 MR. LOWES: Thank you.

10 MR. MARTLAND: Ms. Gaertner.

11 MS. GAERTNER: Good morning, Mr. Commissioner, Brenda
12 Gaertner, for the First Nations Coalition, and
13 with me Crystal Reeves. I have 15 minutes to ask
14 questions and I am confident I will be finished
15 within that time.

16

17 CROSS-EXAMINATION BY MS. GAERTNER:

18

19 Q I am going to ask a couple of questions on share-
20 based management, and I'll make the distinction
21 between shared-base management and ITQs, ITQs
22 being one form of shared-base management. I am
23 going to ask Mr. Morley one question about
24 sustainable fisheries, and then, Mr. Duncan, I
25 just have a couple of questions on some of the
26 useful work that you brought to us on numbers and
27 participation and the fishery of native fishermen
28 in the commercial fisheries.

29 So starting with ITQs, are you familiar with
30 the work that was done by the First Nations panel
31 in response to the Pearse-Larkin which is the "Our
32 Place at the Table". Are each of you as panel
33 members familiar with that work? And are you
34 familiar with the recommendations that were made
35 as a result of that? It's Exhibit 493 if we need
36 to bring it forward and I'll take you to anything
37 if you need it. And in particular, the First
38 Nations Panel on Fisheries in "Our Place at the
39 Table" said this as it relates to the "Allocation
40 Options" at page 3 of that document:

41

42 The Panel is not recommending a single
43 approach to allocation because different
44 allocation options may be more appropriate
45 for different species or fisheries or First
46 Nations. A variety of allocation options was
47 considered for First Nations, including

March 15, 2011

1 community quotas, an exclusive fishing area,
2 fishing using usual and accustomed means
3 without a fixed allocation, a fixed quota,
4 and a percentage share of the allowable catch
5 for a stock.
6

7 Do you see that on that document there? That's
8 one of the recommendations that the panel came up
9 with.

10 And turning over to page 4 of that document,
11 there are two recommendations in particular that I
12 want to draw your attention to. First of all,
13 that the third one in the column that:
14

15 First Nations themselves must address
16 intertribal allocations.
17

18 And finally:
19

20 A moratorium be placed on the further
21 introduction of individual property rights
22 regimes such as Individual Fishing Quotas
23 (IFQs) unless First Nation interests
24 including allocations in those fisheries are
25 first addressed.
26

27 Having that in context, I want to ask you
28 questions with respect to what I've heard from
29 your panel and from other panels. There clearly
30 seems to be a variety of interest and concerns
31 within the commercial fleet alone regarding ITQs
32 and share-based management, or share-based
33 licences. Would you agree that a one shoe fits
34 all approach is not advisable as it relates to
35 share-based management and the introduction of
36 ITQs in the commercial fleet alone?

37 MS. SCARFO: Was that directed at anyone in particular,
38 or just to...

39 Q No, I'd like to hear from all of you.

40 MS. SCARFO: Absolutely there is no one size fits all
41 or one model that fits all the fisheries. In
42 fact, even if you look at the existing fisheries
43 that have gone to even ITQs, there's an
44 inconsistency in how the ITQs are developed. In
45 most of the ITQ fisheries that exist, it's based
46 on catch history. So far in the salmon fishery,
47 it is not based on catch history. The ones that

1 have gone to that approach have been based on
2 equal share amongst all existing licence holders,
3 whether they've fished in the last decade or not,
4 or whether they've fished salmon on that licence
5 or not. So there's an inconsistency.

6 There's also different needs and different
7 aspirations between different fleets, and I will
8 be the first to say that the economic efficiency
9 model that suits the seine fishery is definitely
10 not the same model that will suit a troll fishery.
11 There's a different model that will fit a fleet
12 that's predominantly at the retirement age and
13 wants just out of the industry and doesn't really
14 see a future, and a fleet that in particular has a
15 fairly large First Nations component, that
16 believes that there is the possibility of a
17 future. And that the economic efficiency model is
18 not the best model, that there are other models
19 that we can work within, within our region in
20 particular, that have a defined share, a fleet
21 quota or an area quota that we can then model to
22 meet the region's aspirations rather than a
23 different model that meets a more corporate or
24 foreign ownership type of model.

25 Q Thank you. Mr. Duncan.

26 MR. DUNCAN: I agree with Kathy to a large extent. You
27 know, I have made the statement that in the salmon
28 fishery there is no record of catch history of
29 individual fishermen. And the recommendations
30 talked about in this report about different
31 methods that I agree with, so...

32 Q Thank you. Mr. Morley.

33 MR. MORLEY: I think that the basic concept of share-
34 based fisheries and a basic structure applies in
35 the same way in all fisheries that are managed
36 according to a TAC, total allowable catch, and
37 where harvests change from year to year or from
38 time to time, and that providing a system which
39 provides all participants with a defined share, is
40 the system that works, because it does in fact
41 take away the, quote, race to catch the fish, that
42 is wasteful for all participants and does from
43 time to time cause management problems and
44 conservation problems. And I think all the
45 evidence would support that approach.

46 There are potentially fisheries that are more
47 location based where the species may be sedentary,

1 and not moving around, where different kinds of
2 systems of property rights can be shown to be a
3 better system than a, quote, share-based system
4 that identify a space. It might be a sedentary
5 clam bed or something that requires some kind of
6 husbandry that could be looked at in a different
7 sort of geographically based property rights
8 system. But for the most part, when we're talking
9 about the fisheries, we're talking about a share-
10 based system applies.

11 The real issue is in terms of differences is
12 from fishery to fishery is really around the
13 details of how you implement it in terms of the
14 allocation of initial shares, for example. But
15 the basic concept is one that applies in all
16 situations.

17 Q Mr. Morley, I recall your first day of evidence in
18 this inquiry and we spoke at that point in time of
19 the benefits of flexibility. Would you also agree
20 that as it relates to share-based management and
21 share-based licences and Fraser River sockeye,
22 that flexibility in the approach will be useful
23 and therefore a one size fits all will not be
24 useful?

25 MR. MORLEY: I think in order for commercial fisheries
26 and businesses to work properly, that the business
27 system needs to be a consistent and one size fits
28 all, with the basic regulations, and structure of
29 the competitive structure needs to be one that
30 applies equally to all participants, so that, but
31 I don't know --

32 Q So you're looking for something transparent and
33 fair.

34 MR. MORLEY: No, I'm looking for something that the
35 rules are the same for all commercial enterprises,
36 because that's the basis on which our economy
37 works properly. And if you make it different and
38 create different rules for different people, that
39 you are not in fact providing the best opportunity
40 for the greatest economic benefit to all the
41 participants.

42 Q All right. One more question on ITQs
43 particularly. We've heard a number of times and
44 bear with me, I can't remember if exactly it was
45 this panel or panels with the Department of
46 Fisheries and Oceans, or other panels of
47 commercial representatives, but a number of times

1 we've heard that management of the fishery, in
2 particular this Fraser River sockeye fishery,
3 would be particularly improved, the management,
4 and as it relates to monitoring. Would you agree
5 with this observation, that ITQs are not a cause
6 or not necessarily a vehicle for improved dockside
7 monitoring programs, or other endeavours, but
8 rather an incentive for commercial fisheries to do
9 it. So it's not necessary to improve dockside
10 monitoring programs and other endeavours to have
11 ITQs. It's just the incentive that might
12 encourage commercial fisheries to do that.

13 MR. MORLEY: I'd put it the other way around, that in
14 fact because the major way in which fisheries are
15 managed under a share-based or ITQ system is to
16 provide each participant with a defined amount of
17 harvest to take, that actually ensuring that they
18 stay within that harvest is critical to the
19 success of that system, and so it's to have
20 ironclad catch information is really the most
21 important management tool in that system. So if
22 you don't have a system, whether it's dockside
23 monitoring, or whether it's onboard monitoring,
24 whatever, to ensure that people stay within their
25 shares, then the system falls apart. So it's a
26 requirement more so than an incentive.

27 Q But surely dockside monitoring and improved catch
28 monitoring is not dependent on ITQs.

29 MR. MORLEY: No, I think that having better catch
30 information is important regardless of what kind
31 of management system you have. But it is integral
32 to, since it is the key thing. If you're managing
33 under a different system where as an Olympic-style
34 fishery, and you are monitoring other aspects like
35 escapement, it doesn't matter that if in fact
36 people go catch too much fish, as long as -- and
37 one user group gets more than another one, that in
38 fact you still can measure the escapement and shut
39 everybody down when you hit the escapement -- if
40 you're not going to hit the escapement goal.

41 So to a certain extent accurate catch
42 information is not as critical in those situations
43 as it is in a situation where in fact that is the
44 management tool, ensuring people take what they're
45 allowed.

46 Q Does anybody else have anything briefly to add to
47 this?

1 MS. SCARFO: Yeah, I wouldn't mind adding to that,
2 because I think, well, there's a few things. The
3 first thing I needed to go back to something you
4 said, which was flexibility, and I would just be
5 cautious with saying a word like "flexibility"
6 without defining what that means. Because I've
7 sat in DFO meetings where they've said "we need
8 flexibility", where basically that means we need a
9 blank cheque so that we're not accountable to
10 anything. We don't need decision rules --

11 Q I was not suggesting that that's what I meant.

12 MS. SCARFO: I know. But as soon as I heard that term,
13 obviously it sent a shiver down my back, because
14 I've been there and done that and seen that, and
15 seen what that really means is we're not
16 accountable for our decisions any more. So I
17 would say be careful to define what you mean by
18 "flexibility" before talking about it.

19 There was comments about the race for fish,
20 and I think when it comes to salmon fisheries
21 where there is a very short window of opportunity,
22 whether you're an ITQ or whether you're doing trip
23 limits, or whether you're a derby competitive or a
24 modified competitive fishery, there is a race for
25 fish because the opportunity to catch those fish
26 is extremely limited by not just the time that the
27 fish are there, but the incidental catch on either
28 side of those that would shut that fishery down.
29 So an ITQ or anything else will not avoid or
30 change the absolute nature of that fishery,
31 because that is the nature of the beast.

32 Increased property rights, as talked about,
33 including concern for First Nations, is the
34 property rights around an ITQ seem to have some
35 quasi further right than an ordinary licence does
36 that hasn't been really proven anywhere in court.
37 It is still an annual permit, and an ITQ does not
38 give you any more certainty or stability than
39 anything else, or a fleet quota does.

40 The issue around catch monitoring. An ITQ
41 has to be monitored to the individual boat. But
42 really, I haven't seen any report anywhere that
43 has said that the issue around salmon is lack of
44 monitoring, or that we're missing fish because of
45 monitoring or that there's been a decline in fish
46 because of a lack of monitoring. We've had report
47 after report that has looked into missing fish,

1 and it hasn't been because of the catch data.
2 When we look at what we're needing in our
3 fisheries is really more scientific data
4 collection of which we haven't got the funds to do
5 in most cases because it's DNA sampling or scale
6 sampling. Sorry.
7 Q That's okay.
8 MS. SCARFO: I'm trying to rush because I know you're
9 limited in time.
10 Q We're all rushing this morning. Thank you very
11 much. I'm going to turn to a couple of questions,
12 Mr. Duncan, I have for you. I'm wondering, Mr.
13 Lunn, at Tab 16 of our documents for the
14 commercial fisheries. if you could bring that
15 forward, and I'll just ask Mr. Duncan a few
16 questions as you're doing that.
17 Mr. Duncan, you know Mr. Wood, Mr. Allen
18 Wood.
19 MR. DUNCAN: Yes, I do. Yes.
20 Q And are you familiar with this document which he
21 prepared in response to Michelle James' document
22 on Native Participation in British Columbia
23 Commercial Fisheries?
24 MR. DUNCAN: I haven't really seen this, but...
25 Q All right. I have given notice of this as a
26 document that I wanted to have tabled as a
27 supplement to the evidence that Commission counsel
28 and the Crown has put forward. I'm wondering if I
29 can have that, even though the witness is not
30 aware of the document specifically.
31 THE COMMISSIONER: I'm sorry, just so I know, who is
32 the author of the document?
33 MS. GAERTNER: Allen Wood.
34 THE COMMISSIONER: Allen Wood. And does it have a
35 title, Ms. Gaertner?
36 MS. GAERTNER: "First Nations Now Get Less Than 6% of
37 Landed Value of Catch" is all I have as the title
38 for this document.
39 THE COMMISSIONER: I'm sorry, is it a one-page
40 document, or is it...
41 MS. GAERTNER: No, you'll see the document is, I think,
42 I believe five pages.
43 THE COMMISSIONER: Okay. I'm sorry, Mr. Rosenbloom?
44 MR. ROSENBLOOM: And, excuse me, could counsel indicate
45 who Mr. Wood is and his background.
46 MS. GAERTNER:
47 Q Well, Mr. Duncan, I wonder if you could do that.

1 You know Mr. Wood.

2 MR. DUNCAN: Yes, I do. I used to work with Mr. Wood.
3 He was the former Director of Policy and Planning
4 at DFO, and since retirement he's now become an
5 independent consultant.

6 Q Thank you, Mr. Duncan. And I'm doing this only
7 not as a way of checking any of the numbers. I'm
8 not sure whether I've got this. I just want to
9 ask a few questions that Mr. Wood raises in this
10 document and have you comment on them. First of
11 all, a commercial licence can be fished by First
12 Nations but not necessarily owned by that First
13 Nations. It could be owned by a processing
14 company or otherwise. You'd agree with that?

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

16 Q And there's a difference between individuals who
17 are First Nations who have a commercial licence,
18 and a First Nations communal fishing licence that
19 could be held by a First Nations organization or a
20 First Nations band, or otherwise.

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

22 Q And an individual First Nations person who has a
23 licence as an individual has the same conditions
24 and benefits of a regular commercial licence,
25 although in some circumstances there may be a
26 reduced fee; is that correct?

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

28 MR. MARTLAND: Mr. Commissioner, I'm just pointing out
29 we're at the 15-minute mark.

30 MS. GAERTNER: I'm just about finished.

31 MR. MARTLAND: Thank you.

32 MS. GAERTNER: I would like this document tendered as
33 an exhibit.

34 THE REGISTRAR: Exhibit 581.

35
36 EXHIBIT 581: Allen Wood, "First Nations Now
37 Get Less Than 6% of Landed Value of Catch",
38 May 15, 2007
39

40 MS. GAERTNER:

41 Q Mr. Morley, I have one question for you and then a
42 final question for the panel. You're aware of
43 various initiatives that First Nations and others
44 are doing to explore the transition from the sort
45 of, I'm going to use the monopoly, I don't mean
46 that in a negative way, but the emphasis, I'll use
47 that word, the emphasis of the commercial fishery

1 in the marine and encouraging commercial fisheries
2 in the Lower Mainland and further up into the
3 upland parts of the upriver. You're aware of
4 those various efforts that have been made over the
5 last while to implement that transition?

6 MR. MORLEY: I am aware of several demonstration
7 fisheries that are undertaken, yes.

8 Q Do I take it from your evidence from March 1st
9 that your industry, or the industry you represent,
10 the company, is not interested in exploring and
11 developing with First Nations upriver value added
12 products and other local markets for commercial
13 purposes? I took it from your evidence that you
14 felt that those were unsustainable, and that so is
15 it correct that you're not interested in pursuing
16 those?

17 MR. MORLEY: No, that's not correct. We're interested
18 in pursuing any businesses that can generate
19 profit for our company. I was simply pointing out
20 that in fact, and I think it's based partly on a
21 study that was conducted by a Stuart Nelson, which
22 is in Ringtail actually, it's CAN163001. And it
23 is done for the Agri-Food Trade Services for
24 Agriculture Canada entitled "Fraser River Sockeye
25 Benchmark Study, A Business Perspective on Fraser
26 Sockeye" done by Stuart Nelson and Nelson Bros.
27 Fisheries.

28 In that document - I don't know if Mr. Lunn
29 can pull it up - but in page 23 and 24 it really
30 compares the potential value of fish in various
31 parts of the Fraser River watershed, going from
32 the ocean all the way up to terminal areas. And
33 Mr. Nelson, having done extensive work in this
34 area, really suggested that if you look at the
35 kinds of returns that are potential to fishers,
36 fishermen, that the potential, even though it's
37 untested, and he said it was questionable exactly
38 what volumes you could market from the upriver
39 area, he suggested that it would generate after
40 processing and distribution expenses somewhere in
41 the range of 23 to 36 cents per pound to the
42 fishers. And in the ocean fisheries that the in
43 fact potential was to generate somewhere in the
44 range of \$1.60 to \$2.30 a pound.

45 So the context of my remarks, looking at this
46 kind of information, is that the potential income
47 for fisheries within the river is probably one-

1 fifth of the potential income to fishermen in the
2 ocean areas for any given pound of fish. And I
3 also indicated that again with the fish that die
4 on the way up the river, you probably have to send
5 one of the half-pounds of fish up to be able
6 commercially harvest one pound up the river. So
7 there's already another 50 percent discount on
8 what you can generate up there.

9 And on top of that, you are talking about
10 fisheries, the more terminal, and the more they're
11 dependent on a single population, which is what
12 environmental groups seem to want us to move to,
13 is the more variable the quantity is from year to
14 year, and the more delicate it is to try to manage
15 a business that has one big year in four years,
16 one medium size years, and two years with nothing.
17 And that is the context for my comments about what
18 may or may not be a sustainable economic fishery.

19 Q Are you familiar with the River to Plate work
20 that's being done in Chehalis?

21 MR. MORLEY: I am definitely familiar with that.

22 Q And you're familiar with the efforts that they're
23 making to try to consider some of the issues that
24 you're raising right now?

25 MR. MORLEY: I am. I mean, Chehalis is really not far
26 from other lower river fisheries. We're not
27 talking about the same kind of thing. We're
28 talking about a different species, largely chum
29 salmon. And certainly looking at the kinds of
30 terminal fishery that are being proposed on
31 sockeye salmon, it's a completely different
32 animal.

33 Q In your opinion.

34 MR. MORLEY: Well, my opinion, and the opinion of
35 people who have been involved in the commercial
36 industry for 100 years that have been, that are
37 marketing these products to customers in 22
38 countries around the world, who have an extensive
39 experience in handling fish from those kinds of
40 fisheries, in Babine Lake, for example. We're
41 completely accustomed to what we're dealing with
42 here, and the potential is definitely not as much
43 as it is with higher quality fish in ocean areas.
44 The number of potential products you can develop,
45 the kinds of markets that are available will not
46 generate the same kind of returns.

47 MS. GAERTNER: Thank you. Those are my questions, Mr.

1 Commissioner.

2 MR. ROSENBLOOM: Mr. Commissioner, I would ask that the
3 document referred to by Mr. Morley, authored by
4 Mr. Nelson, Ringtail document 16301001 (sic) be
5 marked as an exhibit. Thank you.

6 MS. GAERTNER: Mr. Commissioner, I'm curious about
7 that. This is the first time a witness has raised
8 a document that none of counsel has had notice of,
9 and I have had no ability to review it. I'm
10 sorry, Mr. Morley, if I had known, I would have
11 been happy to do that and been able to engage in a
12 dialogue with him about that, or had the
13 opportunity to have my clients review it, more
14 particularly, so...

15 THE COMMISSIONER: I would be content, Mr. Martland, if
16 that could be marked for identification purposes,
17 and that would permit counsel to discuss with
18 Commission counsel whether questions could be
19 asked of Mr. Morley in writing in response to his
20 evidence with regard to that document. And so if
21 we could have that marked.

22 And I've got a different number actually on
23 my notes than what Mr. Rosenbloom just said. I
24 had it as 163001, is it 1631001? 163001 is the
25 document; is that correct?

26 MR. ROSENBLOOM: Mr. Morley, you gave it in testimony.
27 What was the number you gave?

28 MR. MORLEY: The number I gave is 163001, which I
29 believe is --

30 MR. ROSENBLOOM: Can you just put on your mike, please.

31 MR. MORLEY: Yes. The number I gave is 163001.

32 MR. MARTLAND: Thank you. We'll speak further with
33 counsel about that. Mr. Harvey was seeking leave
34 to re-examine for five minutes.

35 THE REGISTRAR: Is it to be marked?

36 THE COMMISSIONER: For identification purposes,
37 whatever the next letter is.

38 THE REGISTRAR: Yes, that document will be marked as
39 for identification letter U.

40 THE COMMISSIONER: Thank you.

41
42 EXHIBIT U FOR IDENTIFICATION: Fraser River
43 Sockeye Salmon Benchmark Study, A Business
44 Perspective on Fraser Sockeye by Stuart
45 Nelson, Nelson Bros. Fisheries Ltd.
46

47 THE COMMISSIONER: Mr. Harvey.

1 MR. HARVEY: Yes, it's Chris Harvey for the Area G
2 Trollers and UFAWU, a brief re-examination.
3

4 CROSS-EXAMINATION BY MR. HARVEY, continuing:
5

6 Q There was a question about the one size fits all
7 concept and flexibility with the ITQ model. I
8 want to ask Ms. Scarfo whether DFO has shown a
9 willingness to recognize the flexibility that your
10 sector has requested.

11 MS. SCARFO: When it comes to implementation of ITQs,
12 the policy that DFO has told us they've been
13 working to is the same as the use of fish policy,
14 which was that you needed 67 percent of affected
15 licence holders in favour of the use of fish for
16 that kind of demonstration purpose. We haven't
17 had that in our area. In fact, I don't think most
18 of the fleet, maybe the same fleet, has had that
19 kind of support. They have demonstration
20 fisheries and implemented pilot ITQ fisheries
21 within areas. The concern is that against our
22 desires within our area, we are going to have this
23 implemented upon us.

24 There is no partial implementation of an ITQ.
25 I think somebody mentioned that the other day,
26 couldn't we just have some of the guys go ITQ and
27 the others not. You can't do that, because then
28 you've got the licensed investors, who are not
29 active fishermen, who have not gone out and taken
30 the investment risk of going out on the water and
31 put in the labour, actually receiving a large
32 portion of the fish, when there may not be enough
33 left then to go around for the rest of the fleet,
34 because in many ways we self-adjust year-to-year,
35 because we have variables each year.

36 If I have a tuna licence, a halibut licence
37 and other fisheries that I might be able to
38 prosecute, I may not go out on salmon that year
39 because the run forecast pre-season is fairly
40 marginal. So the fleet itself self-adjusts year
41 to year. If I'm on a defined ITQ, then I already
42 have a portion of that. I don't need to gear up
43 and even participate in that fishery, and on the
44 economic model that we've done, it basically shows
45 that I could not participate in the fishery and
46 end up making more money than somebody who
47 actively participates in that fishery.

1 And the costs of an ITQ fishery, because you
2 have to go to the higher level of monitoring, not
3 for conservation purposes, not to stay within the
4 overall fleet catch or quota, but because you want
5 to make sure that the other guy didn't take your
6 share. The costs of that type of monitoring so
7 far have been exorbitant, particularly when we're
8 looking at smaller and smaller amounts of fish.
9 So most of the fisheries have had to go to cameras
10 on board and more significant monitoring at the
11 dock, mandatory unloading sites, which have been
12 in the tunes of over \$10,000. And when you're
13 looking at the profit margin on a lot of these low
14 year fisheries, that would basically break the
15 viability of anyone actively participating,
16 whereas it wouldn't hurt anybody who's not
17 actively participating.

18 So the flexibility to implement, we feel
19 we're being pressured. We're being pressured
20 either by (a) not being allowed to harvest fish
21 when there are abundances like last year. A
22 record return of Fraser River sockeye, and for the
23 first time in history with that kind of level of
24 return, the West Coast of Vancouver Island that
25 has always had access to Fraser River sockeye was
26 left tied to the dock. And the sense was that the
27 pre-season forecast was set far too low. It
28 wasn't set the way it traditionally was with a
29 range of forecasts, because we always know that
30 sockeye come back in a variety of ranges.

31 And therefore we were deliberately excluded
32 because we will not go to ITQ in Area G, because
33 the fleet feels that it is not the answer to the
34 problems that have been posed. It does not
35 provide us higher value for our product. It does
36 not slow our fishery down. We've already
37 demonstrated. We've done those things. And we
38 have much more significant answers to selectivity
39 than are being proposed by DFO through ITQs. It
40 will actually add the pressure on the fishermen to
41 go out and push the limits further than they would
42 when they are fishing in the model that we are
43 now.

44 So it does exactly the opposite. We have
45 regulations for barbless hooks and everything else
46 that we need to do the selectivity. We don't need
47 to go to ITQ to achieve what it is DFO says we

1 should achieve. But we do feel that there is
2 incredible pressure on us individually and as a
3 fleet to go with a model that doesn't fit, and
4 there's pressure from outside fleets to go to that
5 model because they will reap the benefits of being
6 able to just basically purchase or own licences
7 within the area and make money renting to those of
8 us that are still actively fishing within the
9 area, which I have a boat that is actively
10 fishing, so I can speak to the costs of fisheries.

11 That it doesn't provide us what we talk about
12 within the region. It doesn't meet the needs of
13 what our local communities or First Nations within
14 the area have talked about, which is they use a
15 different term than "putter fleet", they use the
16 "mosquito fleet", which is in their aspirations
17 that we're working towards also. And that in many
18 ways we could see further erosion of adjacency of
19 licences within that region, if we go to those
20 kind of models.

21 So they don't suit the overall needs, or
22 really a lot of the stated objectives that DFO
23 has. It's in my mind, and in a lot of the fleet's
24 mind a reaction, we found another solution, we're
25 good at finding these wonderful solutions, we'll
26 downsize, we'll area licence, we'll single gear
27 licence. We've always said, you have the
28 capability of modelling out what that fishery will
29 look like in the future. We can do that. We've
30 done it ourselves, and we say it doesn't work with
31 that ITQ model the way it is, that it really is
32 not the solution. And that we've done this time
33 and time again. We've got great experience with
34 the one size fits all solution.

35 Managing a troll fishery with small local
36 First Nations communities on the West Coast of
37 Vancouver Island that were not given land in their
38 treaty settlements, that were given access to
39 resources, that have watched that continually be
40 eroded over the last 25, 35 years, that are
41 watching phenomenal amounts of money go into PICFI
42 and not really provide any security of access to
43 them into the future. Because, as you know, those
44 licences are not given to those communities.
45 They're still held by DFO and issued if they feel
46 like it on an annual basis. So there is no
47 stability. There is nothing that provides that

1 security within those areas.

2 So there is still existing -- I'm actually
3 surprised that ITQs keep coming up in the Cohen
4 Inquiry as a solution. They do not slow down the
5 fishery. In a sockeye fishery you only have a
6 small window. They don't provide you better
7 monitoring. The only monitoring they will provide
8 will be because of the competition between the
9 fishermen. They don't provide you selectivity.
10 Those are all issued with your licence regulation.
11 They don't provide stability or security of
12 access. That's a licensing issue that is
13 definitely attached to the privilege of an annual
14 licence.

15 So I'm not quite sure why we keep hearing
16 ITQs as the golden solution, but I am concerned
17 that they're being sent out as, you know, grab
18 onto this and it's the only solution that DFO
19 sees.

20 MR. MARTLAND: Mr. Commissioner, I'll just point that
21 we're past the five-minute mark. That was a very
22 productive question, but we had indicated to
23 counsel that we would be asking them to
24 discontinue their questions, or perhaps seek leave
25 from you for further time. Because we're so keen
26 on completing the commercial fishing evidence, I
27 appreciate this leaves almost everyone with
28 further questions that they would wish to ask. I
29 don't know if Mr. Harvey has any further point
30 that he wished to cover?

31 MR. HARVEY: No, I have no further questions.

32 MR. MARTLAND: And I do appreciate that.

33 Now, having said that, Ms. Gaertner raised
34 with me, and it's in the nature of a correction of
35 evidence or clarification of evidence, given Mr.
36 Lunn has a transcript from the last occasion, and
37 if it's agreeable, there is one question just to
38 correct or clarify one part of the evidence I
39 think may be helpful, and I would support her
40 asking that question.

41 MS. GAERTNER: Thank you, Mr. Martland and Mr.
42 Commissioner. It's very brief.

43
44 CROSS-EXAMINATION BY MS. GAERTNER, continuing:

45
46 Q Mr. Duncan, when you gave evidence on March 1st,
47 2011, the transcript is there, and at page 62 and

1 63 you were referring to Michelle James' work, and
2 is it correct that the percentages that you relied
3 on in your evidence are the percentages reflected
4 in Michelle James' work, and they do not
5 differentiate between individual First Nations
6 fishermen and communal licence holders.

7 MR. DUNCAN: We, at least I, assisted in some of this
8 work, and communal licences are not necessarily a
9 part of this equation. These would be licences,
10 full fee licences held by native people and the
11 reduced fee licences, so...

12 MS. GAERTNER: Thank you, that's helpful.

13 MR. EIDSVIK: Mr. Commissioner, one last item. If my
14 comments were intended or taken to disparage
15 Commission counsel for their work in trying to
16 bring this evidence about catch size and
17 escapement, that was not intended, and we have
18 been working and will continue to work to try and
19 get that before you in a suitable manner.

20 When I closed I had two documents to submit
21 as exhibits that arose from the previous
22 appearance of the Commission panel, and I'd like
23 to get them submitted as exhibits right now. The
24 first one is "Ignoring Market Failure in Quota
25 Leasing?" Perhaps Mr. Lunn, if you still have my
26 stick there, you could bring them up. This was
27 sent around a couple of weeks ago by Mr. Harvey,
28 and the second one is "Abdicating Responsibility:
29 The Deceits of Fishery Policy" by Daniel Bromley,
30 those two documents I'd like to submit as exhibits
31 and have them marked.

32 MR. LUNN: I'm sorry, the first document, do you have a
33 tab number which Mr. Harvey used in his list of
34 documents? That would assist.

35 MR. MARTLAND: Can I suggest, Mr. Commissioner, that we
36 have a discussion amongst counsel on this issue
37 and that may be more productive than using hearing
38 time. I'm not saying no, but rather that we just
39 defer this and allow other counsel to understand
40 what the documents are. And if that's -- and I
41 don't see anything, I don't take it from Mr.
42 Eidsvik's suggestion, that there's a particular
43 question he needs to ask of these --

44 MR. EIDSVIK: No.

45 MR. MARTLAND: -- panel members before they're
46 dismissed.

47 MR. EIDSVIK: That's correct, Mr. Commissioner.

33
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1 THE COMMISSIONER: All right.

2 MR. EIDSVIK: Thank you, Mr. Martland.

3 MR. MARTLAND: Thank you. Mr. commissioner, I'm in
4 your hands with respect to a morning break. We
5 started earlier today. The hearing, I'm prepared
6 to commence with the direct examination.

7 THE COMMISSIONER: Yes, please do.

8 MR. MARTLAND: Thank you. So on that note this panel
9 is now concluded.

10 THE COMMISSIONER: I want to express my appreciation
11 once again, Ms. Scarfo, Mr. Duncan, Mr. Morley,
12 for being so gracious to accommodate the request
13 of this Commission to return this morning. I know
14 it takes time out of your busy lives and I'm
15 extremely grateful that you were willing to do so,
16 so thank you very much again.

17 MR. MARTLAND: Thank you. Mr. Commissioner, the next
18 witness and the last witness on the Commercial
19 Fishing hearings is Lisa Mijacika, and she is
20 present now.

21 THE COMMISSIONER: Just take five? We'll just stand
22 down for five minutes to get this organized.
23 Thank you.

24 MR. MARTLAND: Thank you.

25 THE REGISTRAR: The hearing will now stand down for
26 five minutes.

27

28 (PROCEEDINGS ADJOURNED FOR BRIEF RECESS)

29 (PROCEEDINGS RECONVENED)

30

31 THE REGISTRAR: The hearing is now resumed.

32 MR. MARTLAND: Thank you, Mr. Commissioner. The next
33 witness is Lisa Mijacika, if she could be
34 affirmed, please.

35

36 LISA MIJACIKA, affirmed.

37

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

39 A My name is Lisa Ann Mijacika.

40 THE REGISTRAR: Thank you. Counsel?

41 MR. MARTLAND: Thank you.

42

43 EXAMINATION IN CHIEF BY MR. MARTLAND:

44

45 Q Ms. Mijacika, I'll ask Mr. Lunn to pull up number
46 52 from the exhibit list that Commission counsel
47 circulated. This indeed is a substituted

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Lisa Mijacika

In chief by Mr. Martland

1 document, or a redacted document. Ms. Mijacika,
2 you recognize that as being your resumé or c.v.;
3 is that right?

4 A Yes, I do.

5 MR. MARTLAND: I'd ask that be marked as an exhibit,
6 please.

7 THE REGISTRAR: Exhibit 582.

8 MR. MARTLAND: Thank you.

9

10 EXHIBIT 582: Resumé of Lisa Mijacika

11

12 MR. MARTLAND:

13 Q And I'll do my best to summarize your background,
14 and I'll ask a long question, but please correct
15 anything I have wrong.

16 In brief, I understand that you have been
17 with the DFO since 1990. By way of background,
18 you have a sociology degree from UBC, that you
19 work primarily with the DFO, first of all as a
20 program analyst supporting the licensing policy
21 and program development, and that in your time
22 there you've worked in a number of different
23 positions, and with relevance to commercial
24 licensing, that includes serving as the
25 Department's liaison officer for the Pacific
26 Region Licence Appeal Board, or PRLAB from the
27 period of 1992 to 2000; is that correct?

28 A Yes, that's an accurate reflection of my
29 background.

30 Q Furthermore, as Program Implementation Officer for
31 the Pacific Fisheries Adjustment and Restructuring
32 Program in the period of 1998 to '99, as Acting
33 Chief of the Pacific Fishery Licensing Unit in
34 2001, 2002, and most recently in the range of 2009
35 to 2010, Acting Manager of Business and Client
36 Services.

37 A Correct.

38 Q And what is your current position, please?

39 A My current position is Resource Manager of
40 Pelagics.

41 Q Thank you. In terms of the handling of -- in
42 terms of how the Department handles commercial
43 licensing, which will be the focus of my questions
44 today, and everyone's I expect, I take it that the
45 licensing is handled within the Pacific Fishery
46 Licence Unit, and specifically the Business and
47 Client Services Branch.

1 A Yes. The Pacific Fishery Licence Unit reports
2 through Business and Client Services, and we have
3 three offices: one in Vancouver, one in Nanaimo
4 and one in Prince Rupert.

5 Q And the branch that I was referring to itself is
6 within Fisheries and Aquaculture Management?

7 A Yes.

8 Q Thank you. Rather than asking you to provide an
9 introductory lecture, or "licensing 101" type of
10 presentation, what I'll do my best in my questions
11 to do is presume that we have some understanding
12 of licensing through the Policy and Practice
13 Report or PPR. That document is part of the
14 record here. It's been made an exhibit in these
15 proceedings.

16 So what I'll be trying to do is take you to
17 some specific points. Having said that, what I
18 would like to do at the outset is ask a few more
19 general types of questions.

20 First of all, it is said that salmon -- that
21 the commercial salmon fishery is a limited entry
22 fishery. Could you explain how that is the case,
23 and how licensing puts that into effect?

24 A Licence limitation was introduced in the
25 commercial salmon fishery in 1969. What that
26 meant is the Department limited the number of
27 licences and participants in the fishery by
28 implementing of eligibility criteria that the
29 vessels had to meet in order to be eligible for
30 issuance of a licence. I believe there was 5,870
31 licences eligible at the time.

32 What the Department would have done is
33 required interested participants or vessels to
34 apply for the licence, would review the
35 applications on the basis of the eligibility
36 criteria, and then inform those that were eligible
37 and those that were ineligible for meeting that
38 criteria, and accordingly afterwards we issued
39 category A salmon licences and B licences to
40 eligible vessels.

41 Q In terms of just the layperson's understanding of
42 it, unlike, one supposes, a driver's licence or,
43 for that matter, a recreational fishing licence
44 where a person can walk up and apply and
45 presumably receive, if they're entitled to it,
46 they could receive that licence.

47 Commercial fishing licences are not -- their

- 1 new licences aren't simply created or issued on
2 application. Rather, it's a question of renewing
3 licences to the vessels that have previously had
4 them; is that correct?
- 5 A Yes. There's a record of all the eligible vessels
6 and the licences that they hold in their licensing
7 system. So we would keep track of all of the
8 vessels, all of the fishermen, all of the data
9 with respect to those vessels and fishermen, and
10 which eligibilities they hold, including salmon,
11 and assign a number specific to each one of those
12 licences.
- 13 Q And if I were a commercial fishing vessel owner
14 and fisher, and were looking to continue salmon
15 fishing - let's assume I have a commercial salmon
16 fishing licence and I'm looking to continue that -
17 I take it that on an annual basis I would have to
18 apply for renewal of my licence.
- 19 A Yes. There's a requirement for in order to
20 maintain eligibility for the licence, you have to
21 apply annually and submit the required licence fee
22 for issuance of the licence. With salmon, the
23 licensing year is April 1 to March 31st, so the
24 requirement would need to be met by March 31st of
25 that calendar year in order to maintain licence
26 eligibility.
- 27 Q And the licence application, you mentioned the
28 three office locations. I take it, it can be done
29 at those locations. Are there other ways it can
30 be done?
- 31 A Applications can be submitted in the mail and/or
32 in person to any of those licence offices.
- 33 Q What authorizations are required? Is it simply a
34 matter of the vessel having a renewed licence, or
35 are there other authorizations or requirements
36 that have to be met before, in my example, I head
37 off again to fish salmon.
- 38 A Well, the licence officer that would receive an
39 application would verify all of the information on
40 the application. For example, with salmon
41 licences, they're held by vessels, so the vessel
42 owner and who is the contact and representative
43 for that vessel would have to be applying and sign
44 the application in order for it to be approved.
45 The fee would have to be submitted and any other
46 information with respect to designating or, in the
47 case of salmon, vessel-based salmon licences, they

1 would have to submit to attach the licence to the
2 appropriate vessel, because the licence is held by
3 that vessel and it has to meet all of the
4 requirements associated with that licence, i.e.
5 the right length, overall length for the vessel
6 that they apply with.

7 Q Is there a screening of the applicant? The person
8 who comes forward to renew a commercial fishing
9 licence, does the Department screen that by
10 looking, for example, if there's a history or a
11 problem of non-compliance with fishing regulations
12 or difficulties in the past? Is there any
13 screening of the applicant?

14 A No. When an applicant applies, the Department
15 looks with respect to the licence, so whatever we
16 do have, information in our licensing system on
17 each licence and vessel. Should there be any
18 specific requirements associated with that
19 licence, the licence officer would be made aware
20 of that at the time that they review and verify
21 the licence application. But generally, we look
22 at what's associated with that licence in that
23 particular year. We don't look at previous years
24 or previous requirements unless there's something
25 with respect to an estate and/or seizure of a
26 vessel or some extenuating situation.

27 Q And I'll ask you a question. The PPR's on screen
28 so I can perhaps use the document to do this.

29 MR. MARTLAND: Page 19 of the report, Mr. Lunn, I
30 expect, will take us in the middle of the page to
31 paragraph 51, and it's that paragraph I'll ask the
32 question based on.

33 Q I should add this, Ms. Mijacika, at the end of my
34 questions, you'd offered some comments and
35 clarifications and corrections about the PPR, and
36 I'll try and give those points off and I'll ask
37 you about those at the end, all in one go.

38 With respect to the comments here, the
39 comment that's made in the PPR is that, in
40 practice, commercial salmon licence suspensions do
41 not occur. Similarly, DFO licensing staff do not
42 consider **Fisheries Act** or licence violations in
43 renewing an annual licence. Is that accurate?

44 A Yes. The licence officer is the delegated person
45 based on the Ministry of Fisheries and Oceans
46 authority to review the application and issue it
47 based on the requirements for that year.

1 Q And I take it there are other responses. The
2 question of suspending or denying a licence isn't
3 the only tool in the toolbox, so to speak. There
4 is an enforcement fisheries officer type of a
5 response that is open to address the situation of
6 the person with the bad track record of not
7 following regulations, for example.

8 A Yes. If there's a violation based on not meeting
9 specific licence conditions, our C&P, which is our
10 Conversation & Protection Unit would be
11 responsible for reviewing that violation and
12 pursuing it pursuant to the penal provisions under
13 the **Fisheries Act**. That would not be Licensing's
14 responsibility.

15 Q Thank you.

16 MR. MARTLAND: Mr. Lunn, if I could please go to number
17 53 on the exhibit list, this should be a 1994
18 Pacific Coast Commercial Licensing Handbook.

19 Q Am I right that that's what this is? This is the
20 1994 Commercial Licensing Handbook?

21 A Yes.

22 MR. MARTLAND: I'd ask this be marked as an exhibit,
23 please.

24 THE REGISTRAR: Exhibit 583.

25
26 EXHIBIT 583: Pacific Coast Commercial
27 Licensing Handbook, 1994
28

29 MR. MARTLAND: This dates to 1994, and provides some
30 very basic information about the licensing program
31 or process, really, for the Pacific coast. Is
32 there -- and, indeed, I'll turn to the next
33 document first. Number 54 on the Commission's
34 list of exhibits is entitled, "The Draft". At
35 least it's stamped as being a draft as a
36 commercial licensing policy review of the
37 Commercial Licensing Policy Handbook from 2008.

38 Q Do you recognize that document?

39 A I do.

40 Q What is that document? Is it an update of the
41 document I just showed you from 1994?

42 A This is an updated version based on the changes
43 that have taken place with licensing practices and
44 rules since the time of the original document. So
45 this one has not been published or made available
46 to the public.

47 MR. MARTLAND: All right. I'd ask this be marked,

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In chief by Mr. Martland

1 please, Mr. Registrar, as the next exhibit, the
2 2008 document.

3 THE REGISTRAR: Exhibit 584.

4 MR. MARTLAND: Thank you.

5

6 EXHIBIT 584: Pacific Region Commercial
7 Licensing Policy Review (Commercial Licensing
8 Policy Handbook) Draft 2008

9

10 MR. MARTLAND:

11 Q It says -- I think your answer, as well as the big
12 stamp of "Draft" tell us this is not a final
13 document. What is the status of this document to
14 your understanding?

15 A It's still being worked on. There's a review
16 taking place of current licensing rules and
17 practices and the intent is to -- if there's any
18 change made, to update this handbook and make it
19 available to the public to have an understanding
20 of all of Pacific region's licensing policies.

21 Q And to pick up on that comment, there are two
22 documents I'll show you that really go in
23 sequence, so I'll start with number 55 on the
24 Commission's list. May 2010 is the date of this
25 document, Pacific Region Licensing Rules, Options
26 for Change, Discussion Paper. There's also a
27 September version of this paper.

28 Could you first confirm that this is a
29 document that describes -- does that describe part
30 of the review process that you were mentioning?

31 A Yes, it does. It's a discussion paper that is in
32 draft form that's intended to be sent out to
33 licence holders and vessel owners to consider some
34 possible proposals for change to licensing rules.

35 MR. MARTLAND: I'd ask that this number 55 from May
36 2010, be marked as an exhibit, please.

37 THE REGISTRAR: Exhibit 585.

38

39 EXHIBIT 585: Pacific Region Licensing Rules
40 - Options for Change - Discussion Paper May
41 2010

42

43 MR. MARTLAND:

44 Q And if I could then go to the next number on the
45 list, number 56, because it looks very similar. I
46 don't know that this version is in ringtail at
47 this point or not. I don't know that I have a

1 number for it. But this seems to be basically the
2 same document, but September 2010?

3 A Yes. This is a draft that's been updated after
4 further review, and provided to senior management
5 for consideration of release.

6 MR. MARTLAND: And if I might ask that this be marked
7 as the next exhibit, number 56 from the list.

8 THE REGISTRAR: Exhibit 586.

9
10 EXHIBIT 586: Pacific Region Licensing Rules
11 - Options for Change - Discussion Paper
12 September 2010
13

14 MR. MARTLAND:

15 Q Why don't I try to work from the number 56 on the
16 list and ask you a few questions about that.
17 Indeed, to do it, I'll to turn to page 2 of this
18 document. This comes from an internal review of
19 licensing rules, I understand, from 2008/2009 to
20 look at modernizing the rules, to look at reducing
21 the level of complexity in dealing with different
22 requirements and obligations; is that fair?

23 A That sounds reasonable, yeah.

24 Q And looking at the first full paragraph:

25
26 As a result of the review, the Pacific
27 Fishery Licence Unit has proceeded with
28 amendments to administrative processes for
29 vessel registration and salmon stacking
30 applications.
31

32 Effective September 1, 2010, the application
33 to register a new commercial fishing vessel
34 will no longer require the submission of a
35 survey done in accordance with DFO Vessel
36 Measurement Guidelines.
37

38 That's a change that's taken place?

39 A This hasn't been implemented yet. It was proposed
40 to be, but because this was not -- this version
41 was not approved, we haven't implemented those two
42 options.

43 Q That's helpful. And what is that -- that's, at
44 this point, still under consideration; is that
45 right?

46 A Yes.

47 Q I take it the idea there is simply to take away

1 the requirement that the commercial vessel itself,
2 the application of a new vessel requires that the
3 vessel owner provide a survey to document, I
4 suppose, its length primarily?

5 A Right. As I mentioned before, with salmon
6 licences, they have a length restriction where you
7 have to -- the vessel has to -- in order for the
8 licence to be issued, the vessel has to meet a
9 certain overall length. The Department keeps
10 track of those overall lengths based on vessel
11 survey reports that fishermen have marine
12 surveyors do and submit to the Department so that
13 we can keep records.

14 At this point, we pretty much have records of
15 all the overall lengths for the majority of the
16 boats unless it's a new boat. So this particular
17 recommendation is to get out of that business and
18 to use Transport Canada's overall length that are
19 on record with their registry for new boats.

20 Q Right. The next full paragraph:

21
22 In addition, stacking of commercial salmon
23 licences is now permitted at any time during
24 the licensing year.

25
26 What's the status of that?

27 A There's still a stacking application, except
28 commercial salmon category A licences are not --
29 are limited to applying for stacking during the
30 salmon season.

31 Q Mm-hmm.

32 A So there's a deadline for submission of
33 applications before the salmon season. The intent
34 was to remove that restriction and allow for
35 stacking any time during the year, which some
36 other category licences are currently permitted to
37 do.

38 Q And in the bullet points that are under the --
39 towards the bottom of the page there, there's a
40 mention of a number of options that are under
41 consideration. I won't review those in any
42 detail. They're set out in this document.

43 But if we then flip ahead to about page 6, I
44 think in fact page 7, of this document has a
45 feedback questionnaire, and I take it the aim was,
46 as you've said, to have a discussion paper, to
47 send it out along with the questionnaire to invite

- 1 those with an interest in this to provide their
2 input that way; is that right?
- 3 A Right. It would be part of the consultation so
4 that we could take a collaborative approach,
5 collate the feedback that we get back from vessel
6 owners and licence holders, and then have further
7 discussions through our consultative process with
8 advisory boards and all the affected fleets to
9 discuss the results.
- 10 Q And that document has not been -- or, sorry, that
11 process has not taken place yet?
- 12 A It has not started yet, no.
- 13 Q Is there a timeline or do you have an expectation
14 of when that may occur?
- 15 A No, I don't, because it'll be subject to approval
16 of release of this document and then the
17 consultation plan that would proceed as a result
18 of that.
- 19 Q If I might turn to number 57 from the Commission's
20 list, and I -- the question here, the broader
21 question, is to get an understanding of the
22 guidance that is given to the Licensing Unit staff
23 in particular. Am I right to say that this, the
24 upper left of the document, it says "PFLU Pacific
25 Fisheries Licensing Unit Manual, Salmon Category A
26 for 2010, 2011." Is that what this is, really, is
27 a manual or a guidance document for staff?
- 28 A Yes. It's an amalgamation of the information on
29 how licence officers -- what they should be aware
30 of, what are the licensing requirements, what is
31 the current management plan for the salmon
32 fishery, the steps that they would go through in
33 order to issue the licence.
- 34 MR. MARTLAND: If I could ask this be marked as the
35 next exhibit, please.
- 36 THE REGISTRAR: Exhibit 587.
- 37
- 38 EXHIBIT 587: Pacific Fisheries Licensing
39 Unit Manual - Salmon - Category A, 2010-2011
40 Salmon
- 41
- 42 MR. MARTLAND:
- 43 Q And indeed, without going into detail, there's
44 points in this document where it actually has a
45 checklist for the staff member to check the boxes
46 and ensure that all the steps have been taken; is
47 that right?

- 1 A Right. It's very important that licence officers
2 don't make errors with respect to issuing
3 licences.
- 4 Q Stepping back from this document, what happens in
5 a situation where the licence, a commercial salmon
6 licence is not renewed in a given year, that this
7 person or the vessel registrant simply does not
8 show up to seek renewal of the licence? Does it
9 lapse?
- 10 A Well, the vessel would still hold that licence
11 eligibility, and what we would do is the Licensing
12 Unit would proceed to send a letter to the vessel
13 owner advising that they hadn't met the
14 requirement by the appropriate deadline and that
15 their eligibility may lapse should we not receive
16 the appropriate fee for that year.
17 Should they not respond, they will then be
18 sent another letter advising them that their
19 eligibility is lapsing and they will have to go to
20 the Pacific Region Licence Appeal Board for
21 consideration for issuance of that licence so that
22 the Minister could consider it.
- 23 Q In practice, does that situation happen or
24 people --
- 25 A It happens very rarely.
- 26 Q -- are diligent, in general, in renewing their
27 licences?
- 28 A Most fishermen are very diligent about applying
29 for their licence regardless of whether they're
30 going to participate in the fishery or not.
- 31 Q And I appreciate there's no rule of automatic --
32 no entitlement for automatic renewal of the
33 licence but, again, in practice, is it fair to say
34 the licence holder who's coming back to seek
35 renewal of the licence, it wouldn't be turned
36 down?
- 37 A That's right. Provided that he met all the
38 licensing requirements, the licence would be
39 issued. Sometimes there's unique circumstances
40 where there's change in ownership of the vessel or
41 he vessel is a total loss or some circumstances
42 happen and it may hold up issuance of the licence
43 until other requirements are met.
- 44 Q Are there licences that are held in an inventory
45 but not actively used --
- 46 A There --
- 47 Q -- by the Department?

1 A There are licences that we relinquish through the
2 Allocation Transfer Program or through the PICFI
3 program, Pacific Integrated Commercial Fisheries
4 Initiative, where these licences will create a
5 party ID in our licensing system, and these
6 licences, upon relinquishment, will be placed into
7 or issued by that party ID which is our inventory.
8 Then upon redistribution of those licences to
9 eligible First Nations, they will then be issued
10 to the First Nations party ID and no longer be in
11 inventory.

12 But after the year is over, those licences
13 will then go back into inventory and possibly be
14 redistributed in a different fashion the following
15 year.

16 Q And I wonder if I might go to Tab 58, number 58 on
17 the list of exhibits and picking up on that point.
18 This is a memorandum to the Regional Director
19 General from 2009. It has to do with the
20 Department's unallocated commercial salmon
21 licences. I'll simply read to you from the point
22 in the summary box, but not the handwritten point.

23
24 The Department's inventory of unallocated
25 salmon licences has increased to 156
26 commercial licences distributed across all
27 the commercial salmon fleets as a result of
28 ongoing Departmental programs to buy back
29 licences.

30
31 In recent years, the Department has used
32 licences and inventory to provide commercial
33 fishery access to First Nations via
34 demonstration fisheries.

35
36 For 2009, as in recent years, a key priority
37 for unallocated licences will be to provide
38 commercial access to First Nations for
39 demonstration fisheries in inland areas. Any
40 remaining unallocated licences would be
41 available to provide individual commercial
42 licences to coastal First Nations under the
43 Allocation Transfer Program (ATP), to address
44 specific needs for additional commercial
45 salmon shares in priority areas (e.g.
46 Cowichan, Goldstream or Lower Fraser), or
47 could remain unused.

1 Could you comment on how this process works and
2 whether this is an accurate description of it?

3 A I haven't seen this briefing note. It looks like
4 a draft, and an old one from 2009. I believe this
5 describes the process with respect to the licences
6 that are issued to First Nations on the interior
7 demo fisheries, which currently is approximately
8 197 licences, so it's changed a bit from the
9 number that's in here.

10 Q Sure.

11 A As far as the process goes, I'm not an expert, or
12 my area is not with respect to administering the
13 process for ATP or PICFI. I don't work in either
14 of those two areas.

15 Q Mm-hmm.

16 A So I could only give you a very broad perspective
17 on how this process takes place.

18 Q That's fine, and I won't be heading into that.
19 Although this looks like a draft because there's
20 handwriting, I won't ask you to play handwriting
21 expert, but that may in fact be Ms. Farlinger's
22 handwriting. On the fourth page of the document,
23 it is signed by her, so it may look like a draft
24 but I understand this to be a final document.

25 MR. MARTLAND: Despite the limited evidence the witness
26 had on this, I would ask this be marked as an
27 exhibit, please.

28 THE REGISTRAR: Exhibit 588.

29
30 EXHIBIT 588: Memo for RDG (Info Only) 2009
31 Plan for Valuation and Use of the Dept's
32 Unallocated Commercial Salmon Licences
33

34 MR. MARTLAND: Mr. Commissioner, with respect to our
35 timing this morning, it's about ten minutes before
36 11:00. I'm content to continue. I don't know if
37 the preference is that we take --

38 THE COMMISSIONER: Please continue.

39 MR. MARTLAND: Thank you. I'll do that, and perhaps
40 we'll aim for the regular break time of about a
41 quarter past 11:00.

42 Q With respect to a different topic, I have a
43 question or two about area reselections. I take
44 it that term of and "area reselection" refers to a
45 situation where the Department, on an occasion by
46 occasion basis, may allow licence holders to
47 effectively play musical chairs or switch to a

1 different area, albeit one within the same gear
2 type that they already have a licence for, so a
3 gillnet licence holder, for example, might have an
4 opportunity to reselect to a different area. Is
5 that an accurate, albeit simple, way to understand
6 what reselection is?

7 A All salmon licences have permanent gear selection
8 and they also have had to elect an area as of the
9 Mifflin Plan back in 1996. There were a number --
10 I guess three times since then that vessel owners
11 have been given the opportunity to elect a
12 different area, so they would submit an
13 application for area reselection. Within a
14 certain time frame, those applications would have
15 been mailed to them by the Licensing Unit,
16 received and verified and it's possible that a
17 number of licences have changed areas since the
18 original selection.

19 The last one that we did I believe was 2007,
20 2006, 2007, which is up for review in 2012 for
21 possibility, through consultations with the salmon
22 industry, for another option for area reselection.

23 Q And I don't have it at my fingertips, but I think
24 the PPR makes reference to the 2007 reselection
25 remaining in effect. But I take it, just so I'm
26 clear about the status of this, in 2007 there was
27 an opportunity for people to reselect. At the
28 conclusion of that, they're now stuck, or at least
29 there's no opportunity for people to reselect.
30 There may be one in 2012, or it'll be considered
31 at that point.

32 A There is an opportunity for licences to change
33 areas through the stacking application process --

34 Q Mm-hmm.

35 A -- where vessel owners can stack two licences
36 together to have the option to fish a combination
37 of gear and areas. Then the licence that is being
38 stacked can be applied for an area change at that
39 time, and also some flexibility in an increase in
40 length as well. Other than that, there is no
41 other opportunity that I'm aware of for
42 reselecting areas.

43 MR. MARTLAND: Just to understand a little more about
44 reselections, let me go to number 62 on the
45 exhibit list, and this, for the benefit of
46 participants, the initial document, I think, had
47 some personal information about a licence holder.

1 We've since been provided a different version that
2 takes that information out of the second or third
3 page of the document, so I expect Mr. Lunn has
4 that version, as -- that we'd be proposing we use.
5 Q Just to move through this fairly quickly, the
6 first page from - March 13th, 2007, is the stamp
7 on it - that's the covering letter that would have
8 gone out to vessel owners or licence eligibility
9 holders describing the area of reselection
10 process; is that correct?
11 A Yes.
12 MR. MARTLAND: And unless other counsel or the
13 Commission has a different view, I'll move through
14 all of these and be suggesting they become marked
15 as one exhibit.
16 Q The next page - because they really do fit
17 together - is the application for an area
18 selection.
19 A Yes.
20 Q The following page is general information.
21 There's a summary of about four or five pages in
22 that the salmon area summary, process, and then an
23 FAQ or "frequently asked questions" description.
24 In this case, the FAQ is specifically to the troll
25 area selection; is that correct?
26 A Yes. This was because trolls had -- salmon troll
27 licences had a different time frame in order to
28 apply for an area reselection.
29 MR. MARTLAND: I'll ask that this be marked as an
30 exhibit, please.
31 THE REGISTRAR: Exhibit 589.
32
33 EXHIBIT 589: Letter from P. Sprout to Salmon
34 Vessel
35
36 MR. MARTLAND: I wonder if I might use the Policy and
37 Practice Report, please, Mr. Lunn, page 9. It
38 should have paragraph 14. By way of introducing
39 this, just to narrate on the record, I'll be
40 picking up on the points that are in the bullet,
41 the bullet points there. But it's helpful to have
42 the whole paragraph 14 before us, because the
43 origin of some of these suggestions is the 2005
44 Pacific Fisheries Reform Initiative and, related
45 to that -- sorry, it's stated there [as read]:
46
47 The announcement followed reports from the

1 joint federal and provincial task group on
2 post-treaty fisheries, which is the Treaties
3 and Transition Report, and the First Nations
4 panel on fisheries are placed at the table.
5

6 Which is also an exhibit in these proceedings.

7 I should also just state that Exhibit 14,
8 which is the summary of past reports and
9 recommendations - I won't go to it - but the
10 reference there is page 231 which goes to the
11 Pearse and McRae "Treaties in Transition" paper.
12 So all of that is a very long-winded way of
13 introducing the few points that I have to ask you
14 about.

15 The first recommendation that was proposed
16 that's set out there, number -- the first bullet
17 point [as read]:
18

19 Extending commercial licences for longer
20 terms, even as long as 25 years.
21

22 What I'll ask you to do is please comment on both
23 the merits and the status of those proposals.

24 A My understanding of this proposal is to provide
25 longer-term security and stability to those that
26 participate in the fishery by allowing them a
27 privilege that provides a longer-term access to
28 the fishery that they participate in. Currently,
29 our practice is to issue annual licences because
30 -- well, under the **Fisheries Act** and the
31 Regulations, the Minister does have the authority
32 to issue up to nine-year licences, actually.
33 There's that term up to nine years.

34 However, all of the licence fees would have
35 to be collected up front. We don't have the
36 authority to take instalment payments from
37 eligible licence holders or vessel owners without
38 a regulation change, which we have been looking
39 into nationally. The Department is considering
40 ways of doing that. So whether it's practical to
41 have a 25-year licence at this point for vessels
42 that have -- regardless of the fee for any
43 fisherman that participates in the fishery, and
44 some quota fisheries, their fees can be as high as
45 ten, \$20,000. They would have to pay all of this
46 fee up front.

47 So, in that sense, it's not practical, which

1 is one of the reasons why there hasn't been a lot
2 of movement on this. There's been suggestions to
3 use five-year licences or at least something that
4 provides a longer-term stability for access to the
5 resource. Like I say, we have been looking into
6 ways to do that.

7 Q So the up-front payment is a real problem with
8 moving to that sort of a model. That could be out
9 of reach for vessel operators.

10 A Right. And I think that's something that's just
11 within our current restrictions that people don't
12 quite understand. So it might look as a good
13 option on the face value of it, but when it
14 actually comes to implementing it, it's not going
15 to be very practical.

16 We also have some other restrictions on us
17 where we can't receive -- for example, we allow
18 fishermen to pay with credit card, but we can only
19 take payments up to just under \$5,000, \$4,999.
20 So, as you can see, if you had to pay more than
21 that, I don't know how practical it would be to
22 pay these kind of licence fees.

23 So it is something that we're limited to
24 that. Like I say, we're looking into how we would
25 provide that flexibility and change our
26 regulations accordingly.

27 Q I take it part of the rationale behind that sort
28 of longer-term licence would be that it,
29 theoretically, would give a commercial vessel
30 operator some sort of an asset that they could
31 borrow against, for example, or take a loan
32 against, the fact that they have a licence that's
33 25 years in length, that it gives them some
34 stability or security. But, in practice, you're
35 often, in your various roles, you've dealt often
36 with the licence holders. Has that been expressed
37 to you as a point of concern that people are
38 unhappy they can't borrow against their licence,
39 for example?

40 A It depends on the situation where a lot of
41 licences, they're owned -- there's partnership
42 arrangements or arrangements with fish companies.
43 There can be often a number of vessel owners
44 involved with a particular licence. Generally,
45 also, they participate in other fisheries so they
46 may have access to quota or they may have access
47 to participate in other fisheries which increases

1 the value of their fishing operation. So it
2 really depends on their fishing operation.

3 I know that there are some fisheries that
4 have moved, for example, to permanent quota, like
5 groundfish fisheries where there is a lot of
6 interest from the participants to move to party-
7 based licences and longer-term licences to
8 considering that they have permanent quotas that
9 they reallocate between licences, so it provides
10 for that ability to secure more funding for quota
11 to be considered something similar to property, in
12 their minds.

13 The Department still considers licences a
14 privilege, though. They're not a right or
15 property, but obviously for a lot of fishermen,
16 there's a value in the licence and quotas
17 associated with it, so...

18 Q Let me ask you about the second bullet there [as
19 read]:

20
21 Considering a shift to personal rather than
22 vessel licences, especially where individual
23 quotas are implemented.

24
25 Again, asking the question of -- if you could
26 please comment on the merits and perhaps easier,
27 the first question is the status of that. I take
28 it that shift has not happened.

29 A It hasn't happened in the salmon fishery. But
30 there are current licensing structures different
31 for every fishery, and there are a number of
32 fisheries that their participants hold party-based
33 licences as opposed to vessel-based licences.
34 There is this current climate to move to party-
35 based licensing for everything.

36 It's something that the Department could do.
37 Basically it means instead of the vessel holding
38 the licence, the individual or company holds the
39 licence, similar to communal -- commercial
40 licences or category N licences in the salmon
41 fishery, where the flexibility that would provide
42 is instead of being attached to the vessel, which
43 can restrict you, you would be able to designate
44 whatever vessel you want. There may still be some
45 length restrictions and some other policies around
46 it, but it would provide a little more
47 flexibility.

1 Also, that sense of it's conducive to, like,
2 quota-managed fishery where it gives you what you
3 were mentioning earlier, some permanency or some
4 sense of holding something as an individual or
5 company as opposed to it having to be attached to
6 a vessel, that once that vessel -- something
7 happens to it or it's transferred or whatever, you
8 wouldn't have access to it.

9 Q Do you think it would be a good thing to move to
10 personal or party-based licensing, or are there
11 reasons to say with the vessel-based system?

12 A It's something we certainly could do, but we would
13 have to look at the impacts, and we would have to
14 look at implementing it in a fair fashion, where
15 we're considering all of the fleets and all of
16 those fisheries that are vessel-based and look at
17 what that would then mean to the licensing
18 structure. But it's definitely doable.

19 Q I'm going to be brave and skip over the ITQ point
20 and go to the fourth one [as read]:

21
22 Ensuring transferability of licences so that
23 old fishers could retire and young fishers
24 could enter the business.

25
26 Could you comment on -- that's a broad type of
27 recommendation of something that should -- beyond
28 the agenda. Could you comment on that, please?

29 A Well, we have transferability in the majority of
30 the fisheries, whether it's in vessel-based
31 fisheries (sic). They would apply to do a
32 permanent replacement so a new owner can then hold
33 the licence that's attached to that vessel by
34 doing the replacement. Party-based, we have what
35 we call a nomination process which is basically
36 transferability where it can be the licence holder
37 would elect to nominate someone else in their
38 place to hold the licence.

39 So this particular recommendation is pretty
40 much already been adopted by the Department except
41 the exceptions are spawn on kelp and clam
42 fisheries.

43 Q And I take it in terms of any demographic issues
44 with the age of commercial fishers, those aren't
45 -- are those issues that -- there's nothing
46 specific in licensing that needs to change to
47 address that. That may be a problem, but there's

1 no obvious solution in licence reform?

2 A No. If an application is made to new -- I mean,
3 retiring from the fleet and/or new entrants coming
4 in, is whoever is then going to own the boat. If
5 a vessel replacement is done, that's how the
6 transaction takes place. Now you've got a new
7 entrant into the fishery to replace the old one.
8 You just don't have new licences.

9 Same with nomination. If it's a party-based
10 licence, someone else is just taking the place of
11 the existing licence holding in a limited fishery
12 as well. So I'm not sure if I answered your
13 question there.

14 Q It's helpful, thank you. I'd like to ask you some
15 question next about licence buy-backs and
16 relinquishments.

17 THE COMMISSIONER: Mr. Martland, I wonder just before
18 you go there, if I could just ask the witness a
19 question. Paragraph 14 that's on the screen in
20 front of you, Witness, refers to April 2005, and
21 the management initiative, a reform initiative
22 called "Pacific Fisheries Reform". I don't think
23 we need the document brought up on the screen. It
24 is an exhibit. Then Mr. Martland just took you
25 through those bullets, or some of the bullets,
26 under 14.

27 I just want to get clarification. Perhaps we
28 can bring that document up, Mr. Lunn. It's the
29 Pacific Fisheries Reform Exhibit. The number I'm
30 not sure; there it is.

31 MR. LUNN: Document 269.

32 THE COMMISSIONER: That document is entitled "The
33 Discussion Paper on the Implementation of Pacific
34 Fisheries Reform." Is that the document you're
35 referring to or is being referred to in paragraph
36 14?

37 A That is the document they're referring to as well
38 as the Pearse-McRae report, "Treaties and
39 Transition", yeah.

40 THE COMMISSIONER: I'm taking a literal interpretation
41 of a discussion paper on the implementation of
42 Pacific Fisheries Reform. So, to me, a discussion
43 paper means just that. It's a document which is
44 circulated for discussion purposes.

45 A Right.

46 THE COMMISSIONER: Am I correct in that understanding?

47 A Yes. And it -- what the reflection of that -- the

1 points that they made or some of the objectives
2 and general principles that are a part of this
3 discussion paper.

4 THE COMMISSIONER: So those bullets that Mr. Martland
5 took you to are part of that discussion?

6 A Correct.

7 THE COMMISSIONER: Okay. What's confusing me is
8 paragraph 15, the next paragraph in the PVR (sic).

9 A Right.

10 THE COMMISSIONER: I don't understand what that means.

11 A What it means is a lot of our current programs and
12 policies are guided by Pacific Fisheries Reform
13 Principles. We currently operate under what we
14 call Pacific Fisheries Renewal which adopts a lot
15 of these similar principles.

16 It's mentioned in that discussion paper that
17 you brought up earlier. A lot of the guiding
18 principles about consistency, transparency in our
19 rules, providing stability, looking at
20 opportunities for fishermen to self-adjust, be
21 more self-reliant for more economically prosperous
22 fisheries.

23 THE COMMISSIONER: Right.

24 A And so fisheries reform feeds into a lot of that
25 -- our current initiatives that -- PICFI, for
26 example, and other initiatives. That's the
27 linkage to Pacific Fisheries Reform, but it is an
28 old document, 2005.

29 THE COMMISSIONER: So the bullets that Mr. Martland
30 took you to, if I understand your evidence
31 correctly, are simply considerations. They're not
32 policies that have been adopted by the DFO.

33 A Right. They're things for us to consider for
34 future licensing policy and practices. They are
35 recommendations, basically, from the Treaties and
36 Transition that they tied into to -- feeded (sic)
37 nicely, in their perspective, with Pacific
38 Fisheries Reform. I think that's why the
39 connection. That's the way I look at it, but --
40 so in terms of whether we've had to adopt these
41 four principles, or these four - whatever you want
42 to call them - considerations, the Department
43 would look at that with respect to the current
44 circumstances of each fishery and sustainability
45 requirements and looking at a consistent approach
46 to apply to all fisheries.

47 THE COMMISSIONER: All right. Just so I'm up to date

1 then, we have the April 2005 document. Is there
2 something more recent that reflects upon the
3 bullets that are set out in paragraph 14?

4 A I haven't seen any recent documents that have
5 these four specific recommendations or principles
6 in them. It's been replaced, like I say, by other
7 documents that we may have on our website when we
8 refer to fisheries renewal, or a lot of the
9 principles that we use in the PICFI program.

10 THE COMMISSIONER: I'm just trying to get a complete
11 understanding of what the current status is of the
12 activities of the DFO around, for example, these
13 items that are listed in paragraph 14.

14 A Right. The first one we haven't been able to make
15 much progress on, but are considering. The second
16 one has already taken place in a number of
17 fisheries but not with respect to salmon.

18 The third one, as you probably heard through
19 the last few months, there's a number of
20 initiatives around managing fisheries through
21 share-based management, moving away from
22 competitive fisheries and to having a share-based
23 management approach and individual quotas and
24 pooling arrangements, for example, is used in the
25 herring fishery. IQs are used in ground fish and
26 a number of other fisheries and on a pilot basis
27 in the salmon fishery for those involved in
28 demonstration.

29 The last one, I believe we've already pretty
30 much have this in effect under our current
31 practices and policies in licensing. It just has
32 not been extended to every fishery. That's how I
33 look at it.

34 THE COMMISSIONER: Thank you very much.

35 MR. MARTLAND:

36 Q With respect to licence buybacks and licence
37 relinquishment - and we won't go into great detail
38 on the history of the different programs - but I
39 think it may be helpful to ask you for a general
40 understanding of the main initiatives that the
41 Department has had, I think mainly aimed at
42 reducing the size of the commercial fleet in the
43 province, and in some of the cases, that sort of
44 policy direction or decision to try to reduce the
45 capacity of a fleet is done, in part, through
46 licences and by setting up the situation where
47 there's simply less licence -- the capacity is

1 reduced because there are less licences being
2 fished, being actively used.

3 Could you help us to understand the main
4 licence buyback programs that have been put in
5 place, let's say, from about 1994 onwards?

6 A Well, there's the 1996 Mifflin Plan, voluntary
7 salmon licence fleet reduction where vessel owners
8 would apply voluntarily to retire their licence.
9 The objective of the Department was to see an
10 immediate decrease in the number of licences in
11 the salmon fishery in 1998, to pursue some of our
12 conservation objectives and to adjust the fishery
13 to be more aligned with the declining salmon
14 stocks and opportunities.

15 We also had the Canadian fisheries adjustment
16 restructuring program in 1998, which also a large
17 element of that was a certain amount of money that
18 was set aside specifically to retire and again
19 reduce the fleet with the objective of up to half
20 of the licences, again, to meet the objectives of
21 reducing the capacity so that there was a better
22 economic opportunity for those that were remaining
23 in the fishery and to provide fishermen with an
24 opportunity to retire or to get out of the
25 fishery.

26 Those were the two main retirement programs,
27 meaning that the licences were permanently retired
28 and not issued again in any fashion, so the
29 capacity was removed from the fleet permanently.

30 Q And are there other types of initiatives where
31 it's not a retirement, per se, but rather,
32 notionally, a redirection of the fishing effort to
33 another part or another sector or another --

34 A Right.

35 Q -- group of people, and if you could describe
36 that, please?

37 A We refer to those as licence relinquishment
38 programs. Two of the current ones that are
39 mentioned in here that you're aware of are the
40 Allocation Transfer Program and the PICFI program
41 where the objective of the Department is to
42 increase participation by First Nations in
43 integrated fisheries, and not just salmon, all
44 fisheries, by relinquishing licences and/or quota,
45 and redistributing that access and those
46 allocations to First Nations.

47 Q Just so I'm clear on the terminology, you've

1 referred to licence retirement as being the sort
2 of reducing the capacity of the fleet as licence
3 relinquishment in the context of things like PICFI
4 where it's not a question of reducing the number
5 of licences, but making use of that fishing power
6 in a different way or reallocating --
7 A Right, it's a transfer of the access.
8 Q And then there's a licence -- how does the term
9 "licence buyback" -- does it cover both of those
10 other categories, or is that a different --
11 A Yeah, industry uses the term --
12 Q (Indiscernible - overlapping voices).
13 A -- licence buyback to basically refer to -- and
14 the Department has used it too. Buyback is just a
15 way of saying retirement and/or relinquishment.
16 It's a way of saying the Department is offering
17 to, based on specific payment, receive a licence
18 and relinquish -- there's a relinquishment
19 agreement associated with it where the fishermen
20 would apply and relinquish all rights and
21 everything that's associated with that licence.
22 So they're both, in that sense, in the term
23 "buyback". You could refer to either one. Most
24 people just use that term. They don't make the
25 distinction.
26 MR. MARTLAND: Mr. Commissioner, I note the time. I
27 wonder if we might take the break.
28 THE COMMISSIONER: Thank you very much.
29 THE REGISTRAR: The hearing will now recess for 15
30 minutes.
31
32 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)
33 (PROCEEDINGS RECONVENED)
34
35 THE REGISTRAR: Order. The hearing is now resumed.
36
37 EXAMINATION IN CHIEF BY MR. MARTLAND, continuing:
38
39 Q Ms. Mijacika, I was asking you about licence
40 buybacks, to use that as the broader of the
41 different terms we are using just for this -- for
42 present purposes, and what I would like to do is
43 ask for your general comments on the successes and
44 failures, or the strengths and weaknesses of the
45 different programs that you've described in a
46 quick way today.
47 A With respect to licence retirement, as I mentioned

1 before, the objective is -- the objective of the
2 programs in the '90s was to reduce the number of
3 licences in the fishery and also provide fishermen
4 with an avenue to get out of the fishery. And at
5 that time consideration was given to applications
6 based on the value of the fishery. There was a
7 committee that was set up that looked at the
8 vessels, different considerations with respect to
9 each application, whether licences were tied, they
10 were single licences being retired, there was a
11 priority ranking of considering applications,
12 single first, licences attached to other licences,
13 licences attached to other licences in other
14 fisheries.

15 So I think the objectives were clearly met in
16 that under the first program approximately 19
17 percent of the licences retired and the second one
18 another 40 percent. So we were successful in
19 significantly reducing the number of licences in
20 the salmon fishery which you would hope would have
21 had a good impact on the viability of those that
22 were remaining and more in line with the resource
23 at the time.

24 With respect to relinquishment programs that
25 I've referred to that are happening in more recent
26 years, the objective there, as I mentioned, is to
27 increase and transfer access to First Nations to
28 increase their access and their participation in a
29 number of fisheries, and those applications are
30 considered, again, on the basis of the value for
31 money to the Department, but also our priorities
32 and what our budget is for the program, and also
33 the demands of First Nations looking at what their
34 interests are so that we could work
35 collaboratively together to meet some of those
36 needs for First Nations.

37 So again, it's been ongoing. PICFI started
38 in 2008 and is in place until 2012, currently, so
39 these programs are picked -- ATP has been in place
40 for a number of years and it's the number of
41 licences that were retired over the years have
42 increased and, you know, objectives of moving from
43 some fisheries to others, you know, we've been
44 successful in increasing and meeting the demands
45 of some First Nations to get more involved in pool
46 -- in quota fisheries and to increase their
47 economic returns. So in that sense, it's been

1 successful as well.

2 Q You've heard, no doubt, criticisms about some of
3 these programs. I suppose one of the broad ones
4 would be -- some raise a concern about a shift
5 towards terminal fisheries and eroding traditional
6 commercial fishing. Could you comment on that
7 concern? Is that something you've heard?

8 A I think we have -- anyone working within the
9 Department has heard some of that concern with
10 respect to the salmon industry, but we also are
11 aware that there are a whole bunch of other issues
12 and problems around this fishery where we've --we
13 also hear the other side of things from fishermen
14 that without an absence of licence retirement or
15 licence relinquishment programs, there's no other
16 willing buyer, I guess you could say, for their
17 licence, or no other way for them to retire or to
18 get out of the fishery, so in that sense it gives
19 them that option.

20 The price that's generally paid for salmon
21 licences in the more recent programs is less than
22 what they would have gotten in the '90s, which is
23 unfortunate, but that's also reflective of what's
24 going on in the market and the reduced catches in
25 value or their declining licence revenues are, I
26 guess you could say, in this fishery. So it's
27 reflective of that.

28 So there's a whole bunch of circumstances.
29 Q There's also been a concern expressed in some
30 situations, people have voiced a criticism that
31 because there's no open sharing of the information
32 on who's being paid for their licence, there can
33 be an appearance of favouring some people over
34 another. Could you respond to that criticism?

35 A Sorry, can you repeat that?

36 Q The concern being that some people are favoured in
37 the licence buyback or retirement or
38 relinquishment process and that may be a concern
39 arising from or aggravated by the -- my
40 understanding is that the price paid to a
41 particular licence holder who's giving up their
42 licence isn't something that's published.

43 A Right, there might be just an average. I mean,
44 all fishermen, all licence holders and vessel
45 holders have the same equal opportunity to apply
46 under the program. They can apply for
47 relinquishment of their vessel-based and/or a

1 portion of their licences on their boats, the --
2 if they hold permanent quota they can apply just
3 for relinquishment of the quota.

4 Consideration, the Department has to look at
5 what their request for payment is and how
6 reasonable that is with respect to the advice that
7 we receive from consultants on the current
8 industry conditions, and we look at the requests
9 that have been made to us by First Nations in
10 their current business plans or in the information
11 that's received on what the demand may be, and we
12 also have to look at considering overall how many
13 licences are submitted under a current round and
14 look at how we may best allocate the budget that
15 we have available for that round, so...

16 MR. MARTLAND: And to learn more about the number of
17 licences that are out there, I wonder if we might
18 turn to number 61, Mr. Lunn, on our list of
19 proposed exhibits? And I think the first page
20 tells us this is the 2010 Commercial Licence
21 Status Report for the Pacific Region; is that
22 correct?

23 A Right.

24 MR. MARTLAND: If this could be marked as an exhibit,
25 please.

26 THE REGISTRAR: Exhibit 590.

27
28 EXHIBIT 590: 2010 Commercial Licence Status
29 Report - Pacific Region
30

31 MR. MARTLAND:

32 Q And on the second page of that document, under
33 Salmon, there's a few subheadings; gillnet, seine
34 and troll, different categories of licences, and
35 it gives -- why don't I choose the first one
36 across the line is the salmon gillnet in Area A --
37 sorry, for category A licences. In this case, it
38 gives the current eligibility as 928, and then the
39 licences in the period issued in the last column
40 is 856.

41 Just at a general level, the question would
42 be: What does the difference between eligibility
43 and the licences issued reflect?

44 A Can you just go up to the top of the document
45 where it shows -- okay, so this document is off
46 the website, so the inner column is the current
47 number of eligibilities, and then what it will

- 1 show on these other two outside columns is the
2 licences issued for that period up until when this
3 report was printed.
- 4 Q Sure.
- 5 A So I actually have more up-to-date numbers than
6 this that show a more accurate reflection of
7 exactly how the licences were issued.
- 8 Q Okay. And I guess the general question I have is
9 that between, let's use the 928 versus 856 just as
10 an example, there's nothing magic about the salmon
11 gillnet versus others for this question, but is
12 the difference there that there is a higher number
13 of eligibilities than there are licences actually
14 issued because the Department is holding some?
- 15 A There may be a number of things. For gillnets --
16 this lumps all the areas together, it doesn't
17 break it down by area, so for the salmon gillnet
18 that you're using for an example, it'll have all
19 the C, D, and E licences in the eligibility. This
20 is the number of licences that have been applied
21 for and issued, if they're regular licences and/or
22 reduced fee. Not all licences are applied for by
23 the eligible vessel owners.
- 24 Q And indeed, just to follow up, because I see
25 you're looking at a different paper document, and
26 I take it --
- 27 A Yeah.
- 28 Q I'm holding up a document which we've circulated
29 to participants, and I'll just confirm, Mr. Lunn,
30 that the commissioner has a copy, too? And
31 indeed, that may be something he has available on
32 the screen. We were provided this yesterday by
33 Department of Justice counsel. Could you tell us
34 what this document is, please?
- 35 A This document is just a spreadsheet that I asked
36 the Pacific Fishery Licence Unit to put together
37 for me that would accurately show all of the
38 licence eligibilities for the various salmon
39 licence category areas broken down by the number
40 that are communal, commercial, full fee and the
41 reduced fee, which includes Category N licences
42 and then the grand total.
- 43 Q And the grand total reflects all of the licences
44 for that gear, let's use this first row, seine
45 Area A, that's the totality of Area A licences?
- 46 A Right. That's the maximum number for Area A based
47 on that gear and area selections, yeah.

61
Lisa Mijacika
In chief by Mr. Martland

1 MR. MARTLAND: Is there a further breakdown -- let me
2 ask before I forget, if I might ask this be marked
3 as the next exhibit.

4 THE REGISTRAR: Exhibit 591.

5
6 EXHIBIT 591: 2010-2011 - Salmon Area
7 Spreadsheet Report (by fee type)
8

9 MR. MARTLAND:

10 Q Do you have any breakdown within the full fee or
11 reduced fee categories as to what proportion is
12 First Nations as opposed to non First Nations? Or
13 is that information that is available?

14 A Well, there's 254 Category N licences which are
15 included in that reduced fee column. But what
16 that means is you've got -- I haven't had an
17 opportunity to explain this yet, but you have
18 Category A salmon licences which are licences
19 issued with respect to vessels. You've got
20 Category A licences issued in respect of vessels
21 owned by individual aboriginal fishermen based on
22 an election that they made to pay a reduced fee.
23 So those licences are still part of the commercial
24 fishery, it just happens that they have to be
25 issued in respect of a vessel owned by an
26 Aboriginal fisherman.

27 Then you've got your N licences which also
28 can pay a reduced fee that are eligible by the
29 Northern Native -- or held by the Northern Native
30 Fishing Corporation, who then designates a vessel
31 to participate in the fishery, and those are
32 elect, like I say, the reduced fee, and they're
33 also party-based, as opposed to vessel-based.

34 And then you've got your Category AF
35 licences, which are your salmon licences that are
36 communal commercial, so they're issued with
37 respect to a first -- issued to a First Nation.
38 They're also party-based, and they're tied,
39 generally, to either an Aboriginal Fisheries
40 Strategy Contribution Agreement or to a PICFI
41 business plan.

42 Q Thank you.

43 A Participation in the commercial fishery as well.

44 Q Thank you. Turning to a different topic, and the
45 second-to-last topic, which is the PR that --

46 THE COMMISSIONER: Mr. Martland, I wonder, just before
47 you go there, I just, again, I have one quick

1 question to ask the witness on the PPR, if I
2 could? If that could be brought up, Mr. Lunn,
3 thank you.

4 Again, back to the PPR. If I could just ask
5 you, just so I understand the context of your
6 answers, at paragraph 10 there's a reference to
7 the Mifflin Plan there --

8 A right.

9 THE COMMISSIONER: -- and then some bullets, which
10 you'll see. And the last bullet reads:

11
12 The Plan was also intended to reflect DFO's
13 more conservative risk-adverse management,
14

15 do you see that?

16 A Right.

17 THE COMMISSIONER: I don't know what it means by "was
18 also intended," but what I wanted to ask you was:
19 Was that the core principle of the Mifflin Plan,
20 the conservation element?

21 A Well, one of the objectives of the Mifflin Plan
22 was to align the current makeup of the fleet with
23 the fact that there was decline in the stocks and
24 the available harvest opportunities.

25 THE COMMISSIONER: Right.

26 A So it was to address that concern. So I think
27 that's why that's referencing that.

28 THE COMMISSIONER: So that was - I'm using the word
29 "core", but whatever term you want to use - main
30 principle or central principle for the Mifflin
31 Plan?

32 A Yes, it's definitely one of the central
33 principles.

34 THE COMMISSIONER: And then it refers, in paragraph 11,
35 to some adjustments, and then, in paragraph 12, it
36 mentions two major licence retirement programs.
37 Again, there's an acronym of CFAR, et cetera, et
38 cetera, and then paragraph 13 talks about since
39 '96. But what I wanted to ask you was: With
40 regard to paragraph 12, is this a continuation of
41 that core principle or central principle, or is
42 there another principle at work here?

43 A Well, reducing the fleet capacity is intended to
44 try and achieve that overall principle, and the
45 first program, Mifflin, addressed that to -- there
46 was only 80 million set aside for the licence
47 retirement element of the program, where it became

- 1 apparent to the Department that it hadn't
2 significantly reduced the number of licences
3 enough. So in the following program in 1998,
4 there was actually 200,000 allocated for a
5 retirement program to try and achieve that same or
6 more significant reduction.
- 7 THE COMMISSIONER: But again, is it operating on the
8 same central principle of conservation?
- 9 A Right. To align with the abundance of the current
10 resource, yes, the number of participants.
- 11 THE COMMISSIONER: And then in paragraph 16, it's
12 addressing the ATP.
- 13 A Right.
- 14 THE COMMISSIONER: And what was the core principle that
15 led to the ATP?
- 16 A The ATP comes out of the Aboriginal Fisheries
17 Strategy. Again, a program that has the objective
18 of working with the First Nations to increase
19 their participation and allow for suitable harvest
20 opportunities based on the availability of the
21 resource. So ATP was introduced under the AFS
22 Strategy to look at ways of retiring from the
23 existing fleet in order to meet that objective.
- 24 And the program has evolved over a number of
25 years and it's now actually integrated with the
26 PICFI program. So it's objectives without knowing
27 the details of when it was set up and what they
28 were looking for. There's been a number of
29 different objectives that have guided what
30 licences they -- are selected under ATP, so I
31 guess I'm not the best person to explain how it's
32 changed over the years.
- 33 THE COMMISSIONER: Okay. Thank you.
- 34 MR. MARTLAND:
- 35 Q If I might just correct, or at least to confirm, I
36 think you misspoke with you said 200,000, and
37 paragraph 12 talks about the second program --
- 38 A Oh, million?
- 39 Q 200 million?
- 40 A Yeah.
- 41 Q That's what's there on the sheet, I presume --
- 42 A Sorry.
- 43 Q That's okay.
- 44 A I apologize for that.
- 45 Q Let me turn to PRLAB, the Pacific Region Licence
46 Appeal Board, which you have --
- 47 THE COMMISSIONER: Did you mark this, Mr. Martland?

1 Did we mark the spreadsheet?

2 MR. MARTLAND: Yes, I think it was. I wonder if I
3 could just confirm?

4 THE REGISTRAR: That's 591.

5 MR. MARTLAND: Thank you.

6 A I know I just wanted to mention -- I know I didn't
7 answer your specific question about this table and
8 the percentage that is issued to First -- or I
9 can't remember your question exactly, but it's a
10 very difficult question to answer without taking
11 into account what I was trying to mention before,
12 that there are a number of participants in the
13 fishery that happen to be aboriginal that are
14 issued these reduced-fee licences or are part of
15 the component of the full fee licences, and
16 without adding up the numbers and calculating the
17 percentages I wouldn't know. So I just wanted to
18 answer that.

19 Q On the PRLAB, you served as liaison officer of the
20 Board from '92 to 2000, I won't take you through
21 the PRLAB process at this point; I think it's
22 described in the Policy and Practice Report, but
23 perhaps what I can do is gain some understanding.
24 In practical terms, how is the PRLAB used? What
25 are the most common situations where a licence
26 holder is, so to speak, knocking on the door of
27 the PRLAB looking for some assistance or relief?

28 A Currently, licensing officers and the Manager of
29 Licensing can exercise the Minister's discretion
30 in issuance of licence, but any time a fisherman
31 is dissatisfied with one of our rules or wants to
32 request an exception from it, the only avenue is
33 to go directly to the Minister through this
34 independent body, the Pacific Region Licence
35 Appeal Board, which will consider the case and
36 make recommendations to the Minister.

37 So the intent is to consider the merits of
38 the case, provide enough information to make a
39 balanced decision on a case-by-case basis. And
40 with respect to salmon - you didn't ask
41 specifically - but I know that a number of --
42 there are a number of different exceptions that
43 are requested. The majority of them are to do
44 with having some flexibility around our rules with
45 length restriction. If a fisherman, for example,
46 wants to buy a boat that's a few feet longer than
47 the overall length restriction of the current

1 licence or his current vessel that holds the
2 licence, that application would be denied by the
3 licensing unit, so he would have to go to the
4 appeal Board to ask for an exception and explain
5 his personal circumstances as to why he would like
6 an exception to that.

7 Same with area selection, where they'd like
8 to change their area for whatever extenuating
9 circumstances or reasons, or would like to
10 transfer a licence in a fishery that doesn't have
11 transferability, or would like to split a licence
12 from another -- combined his fishing operation.
13 Generally, it's because fishermen have upgraded or
14 acquired other boats or licences and are
15 restricted by the current policies, so the Board
16 will -- is in a better situation to consider those
17 circumstances and then forward a recommendation to
18 the Minister for a decision.

19 Q In terms of the process, I take it the applicant
20 can make submissions in writing or in person
21 before the PRLAB, before the Board, but that the
22 Board's recommendation to the Minister is
23 confidential; that's not communicated to the
24 applicant?

25 A The Board's recommendation to the Minister is
26 protected. Once a decision is made, the
27 appellant, which is what we refer to whoever's
28 filed the appeal, can request a copy of what the
29 Board recommended to the Minister so he has a
30 better understanding of the decision, because
31 generally they'll just receive a letter from the
32 Minister, the deputy Minister, saying, "Here's the
33 result of your appeal." So it's general practice
34 for them to request more information.

35 Q And it's ultimately the Minister who's making the
36 decision, as opposed to the Board; is that right?

37 A Correct, because the Minister has absolute
38 discretion under s. 7 of the **Fisheries Act**.

39 Q The PRLAB, I understand, has the ability to make
40 -- not simply deal with the case, the individual
41 case before it, but to make a policy
42 recommendation of a broader nature; is that
43 correct?

44 A It is within the Pacific Region Licence Appeal
45 Board's terms of reference to request that the
46 Minister consider exceptions to policy when
47 they've heard -- generally, it only happens if

1 they've heard a number of appeals based on the
2 same policy and they feel some precedent may have
3 been set, so consideration should be made to
4 changing that policy, but that doesn't happen very
5 often.

6 Q And that Board is not involved in allocation at
7 all, is it?

8 A Right. It's only to do with dissatisfaction with
9 licensing decisions.

10 Q I'd like to just, fairly quickly, take you through
11 some criticisms that have been made about how the
12 PRLAB conducts its hearings process. One
13 complaint is that it's a slow process that can
14 take a long time, and that because the Board
15 doesn't have an ability to grant interim release,
16 such as a short-term interim licence while an
17 appeal is outstanding, it can leave the fisher,
18 the appellant, in the position of losing a fishing
19 season if they're -- let's say they've changed to
20 a longer vessel length, they can't get the
21 variance or they can't move an appeal through and
22 get the answer from the Minister in time, they may
23 have to sit out a season. Can you comment on that
24 concern?

25 A I can see how some fishermen may have that
26 concern, but in absence of going through the
27 appeal process, they've been denied something, so
28 they don't really have any other recourse. The
29 other issue is it's just one of those issues with
30 the administrative burden of things that have to
31 be presented to the Minister for decision. It
32 takes time, there's a process that it has to go
33 through in order for the Minister to make a
34 decision.

35 In absence of going through the Board, before
36 1979, when the Board was established, fishermen
37 would have to go directly to the Minister on a
38 case-by-case basis and submit a letter to the
39 Minister, which I think people can understand,
40 without knowing the circumstances, without having
41 an independent body to consider those
42 circumstances, would be even more difficult for
43 the Minister to make a balanced decision and a
44 quick decision. So, in fact, it actually ends up
45 more timely. I know that's hard for people to see
46 that, but based on the bureaucratic system, you
47 know, it is --

1 Q Compared to the alternative.

2 A -- more timely to do it this way.

3 Q Let me ask you about transparency and some of the
4 concerns arising under that topic heading, are
5 that the Board's recommendation is something that
6 is not communicated, it may be available after the
7 fact, but it's not communicated to the appellant,
8 that, indeed, the DFO can make submissions or
9 provide information that goes to the Board, and
10 yet the appellant may not have access to it, they
11 may not see the Department's advice or the
12 briefing process to the Board.

13 Could you comment on those concerns, please?

14 A DFO's submission to the Licence Appeal Board is
15 generally to give them a very good understanding
16 of what our current policy or practice and
17 management measures are in that fishery. So, for
18 example, if they're asking for an exception to
19 vessel replacement rules, the Department is going
20 to want to make sure that the Board has a good
21 understanding of how those rules are applied and
22 to that particular fisherman's case or fishery
23 that he's involved in. So that's the intent of
24 providing those submissions.

25 And also looking at the impact or if there's
26 particular data or information that would be of
27 the Board's interest to have an understanding of
28 how many other licences are involved, how many
29 other things should be considered -- to take into
30 consideration when making that decision, because
31 it may have some impact. Those things are
32 outlined for the Board. It's up to the Board,
33 then, how to weigh that information in making
34 their recommendations.

35 It can be provided to the appellant after the
36 decision is made. Appellants can request a copy
37 of their file and the contents of it, which would
38 include that information.

39 Q My last few questions are on the question of the
40 licence fees for commercial licences. I
41 understand that there's a licence fee review
42 process that has started, I think, in 2007, and is
43 underway still; is that correct?

44 A Yes. The Minister of Fisheries and Oceans did
45 commit, in 2007, to reviewing the current fee
46 structure and trying to align them more with the
47 current market and economic conditions and

1 resource conditions of the fisheries nationally,
2 so overall looking at all the licences in all
3 regions.

4 Q What's the status of that and why has it taken so
5 long without running its course?

6 A The status of that is that a comprehensive package
7 has been presented to the Minister to consider
8 some options on how to restructure the fees to
9 make them more balanced across all the different
10 fisheries. What would have to happen, though, is
11 there would have to be approval for that and then
12 corresponding regulation changes would have to be
13 made to implement those proposals and extensive
14 consultations would be required with those that
15 are affected, and under the **User Fee Act** there's
16 also separate regulatory requirements that the
17 Department would have to meet to ensure that we've
18 adequately consulted and looked at the impact of
19 making those fee changes.

20 Q And am I right that at this point the
21 consultations you mentioned, that process has not
22 taken place?

23 A It hasn't taken place in a formal way other than
24 through our existing advisory boards. A number of
25 fisheries have asked for the status of this
26 particular initiative and why it's not moving,
27 because of their concerns about fees not being
28 aligned with what their current revenues are. It
29 is an inadequate, you know, an inequity in our
30 current structure, and so there's been a lot of
31 pressure on us, but still, there hasn't been a
32 decision made by the Minister that we can move
33 forward on.

34 MR. MARTLAND: Ms. Mijacika, I don't have further
35 questions, so thank you. And I'll ask Ms. Grande-
36 McNeill to address you next.

37 Q I'm sorry, there's one further point. Ms. Grant
38 luckily caught for me. I'd said to you, earlier
39 on, that I would move to the Policy and Practice
40 Report and review some of the feedback that you
41 had on the PPR, so that will take a few more
42 minutes, but I'd like to do that now.

43 And what I'll try to do is move through this
44 document to particular paragraph numbers. I may
45 ask for assistance in finding the page number for
46 Mr. Lunn's benefit, but paragraph 3 - because I
47 have references to paragraphs - paragraph 3, if it

Lisa Mijacika

In chief by Mr. Martland

Cross-exam by Ms. Grande-McNeill (CAN)

1 suits you, and please suggest otherwise, if it
2 suits you I'll simply go to the paragraph and
3 invite any comments or clarifications you have
4 about it.

5 I think you had a point in relation to
6 paragraph 3 to the effect that the word
7 "immediately" should be inserted before "prior to
8 1969"?

9 A And sorry, where would the "immediately" go?
10 Prior to --

11 Q "Immediately prior to 1969," the point being that
12 historically there were times when licences were
13 limited, for example, Aboriginal and Japanese --

14 A Oh, okay.

15 Q -- fishers could not purchase a licence.

16 A That makes sense. I think the other point with
17 respect to that, though, is provided that they had
18 a vessel, which isn't mentioned in there, too.

19 Q Right, because it's --

20 A To participate in the fishery. But yes, that's
21 fine.

22 MR. MARTLAND: In the interests of efficiency, Mr.
23 Commissioner, what I'm going to suggest we do is
24 that I not provide through those questions and
25 I'll speak with counsel for Canada. I may simply
26 be asking them to move through some of these
27 points, but I'll speak with them at the midday
28 break. If I might, on that basis, conclude my
29 questions and ask Canada to proceed with theirs?
30 Thank you.

31 MS. GRANDE-McNEILL: Geneva Grande-McNeill for Canada,
32 with Tim Timberg.

33

34 CROSS-EXAMINATION BY MS. GRANDE-McNEILL:

35

36 Q Ms. Mijacika, you've indicated that licensing in
37 the Pacific Region is managed by the Pacific
38 Fishery Licensing Unit, and can you explain for us
39 what the general role of that unit is in
40 licensing?

41 A The Pacific Fishery Licence Unit is the general
42 register for licensing in the Pacific Region, so
43 it's responsible for delivery of all licensing
44 programs for the commercial, recreational and
45 aboriginal sectors. The licence unit issues the
46 licence documents and the conditions that go with
47 the documents. It maintains all the data on the

- 1 fishermen, the vessels and the licences, and also
2 collects the revenue associated with those
3 licences.
- 4 Q And that's for all fisheries in the Pacific
5 Region, is that right, all species?
- 6 A Yes.
- 7 Q And who drafts the conditions of licence?
- 8 A The conditions of licence are drafted by the
9 fishery resource managers who are responsible for
10 proper management and control of a particular
11 fishery. A number of conditions are drafted based
12 on the current management measures in the fishery,
13 i.e. the quantities, species of fish, monitoring
14 program requirements. These conditions are then
15 vetted through our regulations unit to ensure that
16 they can be enforced under the current **Fisheries**
17 **Act** and **Regulations**, and then provided to the
18 licensing unit to be issued with the licence
19 documents.
- 20 Q Thank you. Now, I just want to ask you a few
21 questions about categories of licences. I know
22 you've briefly touched on this already. But Mr.
23 Lunn, if we could have number 19 on Canada's list?
24 If you scroll ahead to page 2. Well, first, I
25 should say, Ms. Mijacika, do you know what this
26 document is?
- 27 A Yes, I do. This is the **Pacific Fishery**
28 **Regulations**.
- 29 Q And I see here we're looking at Schedule 2, and
30 using this document on page 2, can you describe
31 what the current categories of licences are?
- 32 A This one doesn't have the salmon licences. Are
33 you wanting to --
- 34 Q Perhaps we can scroll up.
- 35 A This page that he's got here. I think it's on
36 page --
- 37 Q On page 2, yes.
- 38 A Oh yeah, there it is. So as I mentioned before,
39 you've got your Category A salmon licences, which
40 are issued in respect of vessels, and fees that
41 are charged by the Department for access to the
42 resource are based on the length of the vessel,
43 less than 9.1 metres, or greater than, and then
44 also a separate fee for those that are for purse
45 seine gear.
- 46 There's the Category A salmon issued in
47 respect to a vessel owned by the Indian and

1 Northern Native Fishing Corporation, which is the
2 Category N licence that you'll see in some
3 reports. Again, these are based on length.
4 They're primarily gillnet licences, but there's a
5 reduced fee that's required for them based on the
6 schedule and the size of the boat.

7 Salmon licences issued in respect of vessels
8 held by an Indian, which I talked to you, I don't
9 like using that word, I apologize; we currently
10 use First Nations and/or Native fisherman, but any
11 rate, in here it's "Indian". So there's an
12 election that's made by individuals that opt to
13 pay a reduced fee based on their status, and these
14 are the fees that are issued with respect to those
15 -- or charged with respect to those licences.

16 These are also vessel-based licences, just
17 like the Category A, the Category N licence that I
18 mentioned in the wrong order is a party-based
19 licence issued to the Northern Native Fishing
20 Corporation.

21 Also in this, we outline the licences that
22 are issued in the trans-boundary rivers, the Taku
23 and Stikine Rivers. These are not administered,
24 though, by our Pacific Fishery Licence Unit.

25 Q Thank you. And I see item 5 there is the Category
26 C licence listed in column 1 of Part 2 of this
27 schedule. What's a Category C licence?

28 A A Category C licence is also limited under
29 licences issued to about 500 vessels that
30 authorize participation in the Schedule 2
31 fisheries that are listed in Part 2 of Schedule 2
32 of these regulations.

33 MS. GRANDE-McNEILL: And perhaps Mr. Lunn - sorry - if
34 we can just turn to page 5 of this document?

35 Q And are these the species you're referring to?

36 A Yes. There's eight species. The other thing to
37 keep note of, though, is these eight species refer
38 to a Schedule 2 species, are also inherent in the
39 privileges that are issued for all other vessel-
40 based licences, so a salmon licence, a halibut
41 licence, any other vessel-based licence also is
42 authorized to harvest these species, and the
43 Category C licence is a specific licence just
44 authorizing those species and nothing else.

45 Q Thank you. And can you explain for us why the
46 Category N licence was introduced?

47 A The Category N licence was introduced by the

1 Department based on the -- again, the objective
2 was to increase participation by individual Native
3 fishermen. What happened was the B.C. Packers, at
4 the time, relinquished a number of licenses and
5 boats and money was provided by the Department of
6 Native Affairs (sic) to then manage that
7 transaction and the licences were then being held
8 by the Northern Native Fishing Corporation, which
9 would control those licences and designate them to
10 vessels and make lease arrangements or
11 arrangements with individual Native fishermen so
12 that they had the opportunity for one of those
13 licences, so it provided some control over some
14 guaranteed participation in the salmon fishery for
15 those that made arrangements with the Northern
16 Native Fishing Corporation which, at the time, was
17 believed to be a viable option that would be less
18 costly to the individual fisherman, and it also
19 gave them an opportunity, whether they held a boat
20 or not, to try and participate. So it was more
21 flexible, I guess, in that sense.

22 Q And the PPR, I think, briefly describes how under
23 ATP a commercial licence may be purchased by the
24 department and reissued as a communal commercial
25 licence, with is the AF licence you've just
26 described, to a First Nation. How does a communal
27 commercial licence differ from any other category
28 of commercial salmon licence?

29 A The main thing with communal commercial Category F
30 licences is they're party-based. There's still
31 length restrictions involved with the licences,
32 but the First Nation that's issued the licence has
33 to designate a vessel that meets that, as opposed
34 to it being tied to the vessel. So it's not tied
35 to the other licences that may be held on that
36 vessel. There also isn't the same annual
37 requirement to pay a licence fee to maintain
38 eligibility. What will happen is the licence is
39 issued pursuant to a contribution agreement with
40 the First Nation. There may be some fees involved
41 there, or pursuant to a business plan or an
42 arrangement that has been made under the PICFI
43 program. So it's different in that sense, that
44 it's party-based and not tied to other licences
45 and doesn't have the same fee requirements.

46 Q And paragraph 23 of the PPR describes Vessel
47 Registration Cards and states that a Fisher

1 Registration Card may be issued by DFO on an
2 annual, five-year, or temporary basis. Is that
3 still true?

4 A We currently only issue one-year, annual, FRCs to
5 collect better data on fishermen, so to issue them
6 annually and charge the applicable \$60 fee. We do
7 also, if there's a replacement required because
8 it's lost, we also still issue replacement
9 temporary licences, I guess you could call them,
10 but we don't do the five-year anymore. I think
11 the last year we did that was nineteen ninety -- I
12 don't know off the top of my head.

13 Q That's okay.

14 A Anyways, the other part of your question is that
15 Vessel Registration Cards are basically if a
16 vessel is new, which was mentioned earlier. The
17 vessel has to register and meet registration
18 requirements, a fee will be charged of \$50, and
19 the vessel will be registered with the Department
20 and issued a receipt, but we don't actually issue
21 a registration certificate. When another licence
22 is issued to the boat at the time that they
23 receive those licences, that will be considered
24 their registration as well, so we don't issue a
25 separate document and each boat is assigned a VRN
26 number, which is their Vessel Registration Number.

27 The last line of that paragraph says:

28
29 ..salmon licences are annual and expire on
30 December 31st...

31
32 In fact, it's actually March 31st.

33 MS. GRANDE-McNEILL: Thank you. And Mr. Lunn, if we
34 could have Exhibit 591.

35 MR. LUNN: Would you like to mark the exhibit?

36 MS. GRANDE-McNEILL: No, I don't think it's necessary,
37 as it is regulations. Thank you.

38 Q So you've already described for us what this table
39 is showing and you've also just now described for
40 us the different categories of licences, and can
41 you link those categories to the types of licences
42 listed at the top of this table?

43 A So communal commercial is Category AF, full fee is
44 A, reduced fee is -- we refer to them as AI, and,
45 yeah, that's --

46 Q And then I understand within that reduced fee
47 there is also the N licence?

- 1 A Correct, yeah, which is included in that reduced
2 fee, the totals for N licences to be included in
3 the reduced fee column.
- 4 Q Okay. And do you know when this information is
5 accurate to?
- 6 A Last week I requested this report.
- 7 Q Okay. And we've also heard evidence on licences
8 in DFO inventory that are through the PICFI or ATP
9 programs to be redistributed to First Nations. Do
10 you know how many licences are in DFO's inventory
11 currently?
- 12 A The number of licences in DFO inventory can
13 fluctuate, because it's based on what licences are
14 relinquished at the time. The last request when I
15 asked of the ATP and PICFI to put together numbers
16 for me, there was 349 salmon licences in
17 inventory, which would include for different
18 purposes.
- 19 Q And I see here the grand total of commercial
20 salmon licences is 2,220. Are these inventory
21 licences in addition to that, or are they included
22 within that?
- 23 A No, they're included, because there's no increase
24 in the number of -- this is the total of salmon
25 licences. It's actually 2,221 is the total of all
26 salmon licences.
- 27 Q And what's the one?
- 28 A I have to mention it just because of accuracy
29 purposes, but there is one licence where the
30 vessel owner opted not to choose an area or gear,
31 so we can't put him anywhere with that licence in
32 this table.
- 33 MS. GRANDE-McNEILL: Thank you. And I wanted to ask
34 you a few questions about the licensing fees, and
35 sorry, Mr. Lunn, if we can have number 19 on
36 Canada's list again? And page 2. Sorry, 2 of 5.
37 Thank you.
- 38 Q And I'll just ask you to confirm, Ms. Mijacika, if
39 these are the current licence fees.
- 40 A Yes. Thank you.
- 41 Q Now, the PPR indicates that the current licence
42 fees were set in 1998. Had they increased or
43 decreased at that time?
- 44 A The current licence fee structure that's reflected
45 in these regulations actually was established in
46 1996, but the Department amended the salmon
47 licence fees in 1998 to make them more reflective

1 of the declining licence revenues, or the fishing
2 revenues in the salmon fishery. So there was an
3 amendment to the regulations made in 1998 that
4 actually reduced the licence fees to make them
5 more in align with the landed values of -- a
6 percentage of the landed value of the fishery at
7 that time.

8 Q And why have they not been changed since then?

9 A Again, this goes to what I mentioned a little bit
10 earlier from the commission's questions with
11 respect to an overall review of all the fees. We
12 haven't established a new formula or an accepted
13 new fee structure that's been approved by the
14 Minister. It's our intent to do that, to updated
15 the fees to be more reflective of current market
16 conditions and to possibly be updated on a regular
17 basis, to be more fair and equitable, and there's
18 proposals and options being considered, but
19 nothing that's been finalized that's yet ready to
20 be provided as a new package for to update or
21 change this fee schedule.

22 Q And the PPR also states that licence fee relief,
23 either through a refund of fees or a licence fee
24 holiday, have not occurred for Pacific salmon
25 harvesters since 1999. Why is that?

26 A DFO doesn't have the authority to waive fees. We
27 would require that authority through the Treasury
28 Board. We also don't have the authority to remit
29 or refund existing fees that we've collected
30 because it results in a revenue shortfall which we
31 are then required to absorb, so we also don't have
32 a budget or a specific program set aside for that
33 purpose. So a specific request would have to be
34 made to Treasury Board in order to do that.
35 That's one reason.

36 Another reason is there's this interest for
37 this in a number of fisheries where they're seeing
38 declines in their revenue and would like -- or in
39 their markets or their access to markets. So
40 applying a fairness principle, we would have to
41 look at how this would be applied to a number of
42 different fisheries to make them more in balance
43 with what's happening in the current circumstances
44 of the fishery.

45 So there's a general appetite for the
46 department not to do that for one fishery and not
47 looking at others and just doing one-offs, and if

1 we did do a one-off, as I mentioned before, we
2 would then be responsible in the region to come up
3 with the revenue to support that, and in this
4 current environment that we're in with fiscal
5 budget constraints, we just don't have the support
6 to do that or the revenues to do that.

7 Q So you've referred to target revenues. Are you
8 referring to the frozen allotment issue?

9 A Currently, what frozen allotment -- the Treasury
10 Board withholds or holds back a certain
11 appropriation of -- or DFO money until such time
12 that we can deposit similar or the same amount
13 into the Consolidated Revenue Fund, then they'll
14 release those funds for the department to then
15 spend on their programs.

16 So, for example, with licensing revenues, we
17 have a target that we're supposed to be achieving
18 and we haven't been. We've been falling short of
19 it for a number of years by at least seven million
20 dollars nationally, which then, you could say,
21 impacts in that way; we're not receiving our full
22 revenue to spend on our programs, so all the more
23 reason to restructure.

24 Q So the frozen allotment seems to link revenue from
25 licence fees with DFO's operational funds, and
26 does DFO actually view licence fees as cost
27 recovery?

28 A No. The current licence fee structure is based on
29 access to the resource, so fishermen pay a rent
30 for access to participate, and then our programs
31 are designed around that access, but there's no
32 direct linkage with the revenues we receive from
33 their fees, since it goes into the Consolidated
34 Revenue Fund, and then how we administer the funds
35 that we use for our programs.

36 Q And what's the Consolidated Revenue Fund?

37 A General revenue, Receiver General of Canada.

38 Q And do you know what revenue Pacific commercial
39 salmon licences generate annually?

40 A It's just under two million, in Pacific Region.

41 MS. GRANDE-McNEILL: Now, I want to move on and ask you
42 a few questions about licensing of share-based
43 salmon fisheries, but I'm noticing the time.

44 Perhaps this is a good time to take the break?

45 THE COMMISSIONER: We have a --

46 MS. GRANDE-McNEILL: A few minutes?

47 THE COMMISSIONER: We have about another five minutes,

1 if you want to use it.

2 MS. GRANDE-McNEILL: Okay.

3 Q How does licensing of the demonstration share
4 fisheries work in salmon?

5 A As I mentioned before, licensing is responsible
6 for issuing licence documents and it's the
7 conditions of licence that will indicate the quota
8 associated with the demonstration fishery, so the
9 allocation under the quantities and species of
10 fish that will show up as a percentage of the
11 total allowable catch.

12 So from licensing's point of view, they would
13 still issue the licence documents. Fishermen
14 would then, if there was a quota system where
15 amendments were required to show the actual
16 quantity of fish or any changes in that quantity
17 of fish, those amendments would be issued by a
18 different area that are under the fish management
19 group.

20 MS. GRANDE-McNEILL: And perhaps just to illustrate
21 this, Mr. Lunn, if we could have Exhibit 476? And
22 if we go to page 3 of the pdf.

23 A So it's actually section 1 here.

24 Q And looking at section 1, so this is -- sorry, can
25 we just go back up to the top for a moment? So
26 this is Conditions of 2010/2011 Salmon Area B
27 Licence, and I understand there was a
28 demonstration quota fishery in Area B --

29 A Correct.

30 Q -- that year? If we can scroll back down to page
31 3, I'm looking at section 1. Can you just
32 describe for us how this relates to what you just
33 said?

34 A So this section 1, it says, under point (2) for
35 example:

36
37 The TAC for quota fisheries will be
38 posted...DFO office...The TAC may be modified
39 in-season...

40
41 So what this does is under (e) for sockeye salmon,
42 in point number 1, this licence would have this
43 percentage of the total allowable catch. What
44 that percentage is and quantity is not listed
45 here, but it allots to a certain amount of fish.

46 This is an equal allocation or a percentage
47 that each one of the licences that we issue would

1 have. So what would happen subsequent to this
2 document is this particular licence holder would
3 receive an amendment that if this number changes
4 or, I believe under the last demonstration, there
5 was the opportunity to reallocate quota between Bs
6 and H licences, et cetera, that would result in an
7 amendment being required, because then there would
8 be a change in the amount.

9 So this just authorizes that there's that
10 percentage of the catch allocated to that -- or
11 associated with that particular licence.

12 Q And so I understand for the other salmon species
13 there, there was no quota fishery, and so the
14 limit is no limit?

15 A Right. It would be worded differently in this
16 section.

17 Q Right. Then, if there is no TAC for a given
18 species in a given year, in theory, then, the
19 quota is zero in terms of number of pieces that
20 can be --

21 A right.

22 Q -- harvested?

23 A Right.

24 Q And I think you've just mentioned, but in the
25 demonstration fisheries in salmon to date, the
26 quota attached to each licence is an equal share?

27 A It has been, yes.

28 Q And these licences expire annually?

29 A Yeah. They're issued, the licence period is April
30 1 to March 31.

31 Q And the quota and other conditions of licence can
32 be changed by the Department annually as well?

33 A Right. They can be updated in-season.

34 MS. GRANDE-McNEILL: Thank you. This is probably --

35 A It's based -- yeah.

36 MS. GRANDE-McNEILL: -- a good time to break.

37 THE COMMISSIONER: Okay, thank you.

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

40

41 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

42 (PROCEEDINGS RECONVENED)

43

44 THE REGISTRAR: The hearing is now resumed.

45 MS. GRANDE-McNEILL: Geneva Grande-McNeill for Canada
46 with Tim Timberg.

47 I have two areas left to cover with Ms.

1 Mijacika, the first being Pacific Region Licence
2 Appeal Board and sanctions and the second being
3 her recommendations for or possible changes to
4 licensing.
5

6 CROSS-EXAMINATION BY MS. GRANDE-McNEILL, continuing:
7

8 Q Ms. Mijacika, paragraph 50 of the PPR states that:
9

10 In practice, commercial salmon licence
11 suspensions do not occur and the preferred
12 practice is for fisheries officers to charge
13 a licence holder for a violation of the
14 **Fisheries Act**.
15

16 Do you agree with that characterization?

17 A The minister has the authority under the **Fisheries**
18 **Act** to sanction or suspend or cancel licences,
19 however her -- his or her ability to do so is
20 limited based on some Supreme Court decisions. I
21 think it's -- there's a **Matthews**, I believe 1998
22 decision. At any rate, the minister basically is
23 limited to consider if there's a violation from
24 one year, a past violation that occurred, say, for
25 example, in 2010, consideration for the
26 application in 2011 shouldn't be considering a
27 violation from the previous year when considering
28 applications in subsequent year. It's not
29 considered to be a good practice.

30 It's better to go through the penal
31 provisions that are outlined in the **Fisheries Act**
32 and pursue a charge against the fisherman as
33 opposed to for whatever violation of the
34 conditions of licence or whatever the infraction
35 was as opposed to withholding his access -- or
36 withholding the licence which is access to
37 participate in the fishery.

38 Q And why does the licensing unit not track or take
39 into account licence condition or regulation
40 violations in issuing or reissuing licences?

41 A The licensing unit's responsibility is to ensure
42 that the applicant meets all the licensing
43 requirements, not to look at possible infractions
44 or to in any way be judge or jury with respect to
45 whether a fisherman has done something wrong or in
46 violation. The focus is on issuing the licence
47 for the current year.

1 Q And you've already described for us how the
2 Pacific Region Licence Appeal Board or PRLAB makes
3 recommendations directly to the minister, who
4 makes the ultimate decision?

5 A Yes.

6 Q Is that right? And is that a process that could
7 be changed?

8 A It would require updates of changes to the
9 **Fisheries Act**. There has been some consideration
10 given to a tribunal established to look at -- to
11 replace the appeal board and deal with appeals on
12 licences and to deal with allocation issues, but
13 that would require amendments to the **Fisheries Act**
14 and that has not been approved or gone through
15 cabinet, so...

16 Q And you've also described for us how the PRLAB is
17 the only avenue for an exception to the licensing
18 rules and I'm wondering what the success rate of
19 applicants is.

20 A For appeals that are based on extenuating
21 circumstances, the success rate can be quite high.
22 It can be up to 70 percent of the appeals are
23 approved, so it's in the fishermen's interest to
24 go through the appeal process if they feel that
25 strongly to receive an exemption from whatever the
26 policy is.

27 Q And the PPR also mentions at paragraph 53 that
28 appeals are heard in camera, and why is that?

29 A Appeals are heard where it's just the appellant
30 and/or his or her counsel, the appeal board and an
31 individual from the department that will
32 administer the process to discuss and protect
33 circumstances and the information, the personal
34 and financial information that the fisherman
35 provides at the hearing. Oftentimes they'll
36 discuss their catch information or information
37 about their finances or their personal
38 circumstances that we hold in confidence or is
39 just -- it stays within the hearing.

40 Q And the PPR also mentions at paragraph 52 that the
41 recommendation of the board to the minister is
42 confidential. Is that recommendation made after
43 the hearing?

44 A Yes.

45 Q And you've also mentioned that appellants can
46 request their file, and what's contained in the
47 file that they can request?

- 1 A Whatever submission they've provided to the
2 department to go to the appeal board, the original
3 decision denying whatever their request was from
4 the department, any information that the
5 department has provided to the appeal board to
6 further explain or to provide information on its
7 policies and practices, a copy of the board's
8 recommendation to the minister and then the final
9 decision or letter that the applicant receives
10 back from the ministers or -- and/or whoever's
11 been delegated to send a letter in response.
- 12 Q And are appellants informed of their right to
13 request this information?
- 14 A They're advised as part of the package that goes
15 to them or if they ask, that this is available to
16 them. I think there's some Q and A's around the
17 appeal board that describe this in particular,
18 that you can request a copy of the board's
19 recommendation and/or other material.
- 20 Q And is there any right of re-appeal or
21 reconsideration from the minister's decision?
- 22 A Under the Pacific Region Licence Appeal Board's
23 terms of reference, the board can grant re-appeals
24 on the basis of new information being provided, so
25 if a fisherman's appeal is denied, they can apply
26 for a re-appeal to have the information
27 reconsidered but it's up to the board whether to
28 grant that re-appeal for the -- for it to be
29 forwarded again to the minister, so it's possible
30 they could deny the request.
- 31 Q Thank you. And so my last question for you is
32 going forward, what changes do you think should be
33 made to licensing in salmon and why?
- 34 A I think, as with all fisheries, a lot of our
35 licensing policies and rules are old. They're
36 from the '70s, '80s. These fisheries have
37 evolved, the circumstances and the sustainability
38 requirements and the different fisheries and how
39 we manage them have changed over time and
40 oftentimes the rationale for the reasons for these
41 policies have been the circumstances have changed
42 so that the rationale no longer is relevant.
- 43 What comes to my mind is some of the
44 proposals after we reviewed our current rules, the
45 discussion paper that we discussed this morning.
46 The intent of that, after the review, looking at
47 ways to apply some consistency, provide more

1 opportunity based on the concerns that are
2 expressed by fishermen, individual fishermen,
3 commercial and aboriginal harvesters to consider
4 those requests and to look at ways to update those
5 policies to be more consistent, less complexity,
6 more up-to-date, based on the current
7 circumstances in the fishery, and a number of
8 those such as flexibility on vessel replacements,
9 so allowing for some flexibility to replace a
10 boat, so they're not limited if they need to
11 adjust or upgrade their fishing operation or they
12 want to diversify into other fisheries, and, you
13 know, allowing some flexibility there, as well as
14 allowing for some flexibility on splitting
15 licences that may be combined on boats so that
16 there is opportunity to do that. It's easier for
17 fishermen to adjust their fishing operations as
18 long as we also consider no increased capacity
19 around the Schedule 2 species that I mentioned
20 earlier today, so with some other rules but to
21 allow that flexibility. To look at removing those
22 Schedule 2 species from the Pacific Fishery Regs
23 and creating separate licence categories for those
24 species, so that we're managing more efficiently,
25 we're looking at fisheries separately as opposed
26 to having the Schedule 2 on all vessel-based
27 licences, there's definitely a, you know, a
28 concern in a number of those Schedule 2 fisheries
29 that we start moving to that are control and
30 having a separate fleet that's licensed.

31 So I think a combination of those things.
32 Extensive discussions, though, will be required on
33 any of those kind of changes, those options, and
34 also to consider feedback on whether there's other
35 proposals or options the department should be
36 considering that I've heard today about party-
37 based licensing seems to be something that could
38 also -- you know, it's outside the scope of that
39 discussion paper, but it's certainly something
40 that the department could look at when analysing
41 the feedback that we receive, doing some economic
42 analysis about what the impact is on the viability
43 of the different fisheries if we make these kind
44 of policy changes. But I do think that certainly
45 our overall direction and the initiatives that
46 guide us right now do encourage us to look at ways
47 to make fisheries more economically prosperous so

1 that we're -- there's viability for those that are
2 participating in these fisheries and licence
3 policies are a big piece of that, so...

4 Q And so you've touched on a few things there and
5 I'm just wondering, the first thing you mentioned
6 was flexibility on vessel replacement and what are
7 you referring to there?

8 A When -- with salmon, for example, when a licence
9 is held by the vessel, so it's vessel-based, it
10 takes on the overall length of that vessel. It
11 can only be then permanently transferred or
12 replaced with another vessel that doesn't exceed
13 that length or is shorter than that length. So
14 that's pretty restrictive as far as being able to
15 change boats and/or get involved in other
16 fisheries where the licences have longer length
17 restrictions than your salmon licence.

18 Q And you've also mentioned flexibility on licence-
19 splitting. And what do you mean by licence-
20 splitting?

21 A Well, again if you -- if a salmon licence is
22 attached to a vessel and there's other licences
23 that that vessel holds, they become married, so
24 there's those vessel-based licences are attached
25 to each other that can't be divorced except under
26 circumstances where the fishery is a permanent
27 quota fishery and we have developed policies with
28 industry specifically around how to provide some
29 flexibility for them because there is a quota that
30 is a control to restrict the amount of harvest, so
31 capacity is no longer as much of an issue in those
32 fisheries.

33 So in some fisheries, for example, in
34 halibut, they can split licences and move to
35 longer boats that are 25 feet longer than their
36 length, but they'll have to make sure they have a
37 vessel-based licence or cover off the Schedule 2
38 that I was talking about earlier to make sure
39 there's no new boat coming into the fishery or
40 increased capacity on those other fisheries that
41 they would be authorized to fish under Schedule 2.
42 That's just an example.

43 All the other fisheries, salmon, crab, prawn,
44 just as examples, are not allowed to split and
45 even if the licences are relinquished through the
46 ATP or PICFI programs, PICFI also maintains those
47 rules, so it's difficult to then redistribute

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Cross-exam by Mr. Rosenbloom (GILLFSC)

1 those licences when they can't be split and there
2 may be some interest or a business plan for one
3 First Nation and, you know, the whole licences
4 will have to go as a package to wherever they end
5 up to replace the capacity that was taken from out
6 of the commercial side of things. So it limits us
7 in that sense.

8 Q Thank you very much.

9 MS. GRANDE-MCNEILL: Mr. Commissioner, I should just
10 note one thing. You asked the witness a question
11 about Pacific Fisheries Reform and in her answer
12 to you she mentioned more recent Pacific Fisheries
13 Renewal. That's a document that's not in evidence
14 and we will work with commission counsel to have a
15 witness follow up on the list of policies and
16 initiatives that were discussed by Sue Farlinger
17 in her testimony on December 16th.

18 THE COMMISSIONER: Thank you.

19 MR. MARTLAND: If you'll bear with me, Mr.
20 Commissioner, I just want to verify my note of the
21 sequence. Next for Ms. Mijacika I have Mr.
22 Rosenbloom down at five minutes. Thank you.

23

24 CROSS-EXAMINATION BY MR. ROSENBLOOM:

25

26 Q Ms. Mijacika -- do I pronounce your name
27 correctly?

28 A Miachika (phonetic).

29 Q I have a history in this inquiry of not doing very
30 well. Forgive me if I mispronounce your name.

31 A Oh, no, it's...

32 Q I am very -- I have a very brief series of
33 questions for you and they relate exclusively to
34 the subject of fee waivers to the fleet. You say
35 in your will-say and I could lead you to it but I
36 think it's unnecessary that -- and I'm quoting
37 from it:

38

39 She will describe that DFO no longer provides
40 fee waivers for seasons where there is no
41 expected or actual openings of the fishery.

42

43 Maybe you've already informed us of this. Was
44 there an occasion or a period of time where DFO
45 did waive fees? When did they lift that
46 opportunity to waive fees?

47 A It's my understanding that in 1999 and 2000 the

- 1 Department had a fee waiver disposition program
2 where --
- 3 Q Sorry, what year was that?
4 A 1999 and 2000.
5 Q Thank you. Right.
6 A So right after CFAR.
7 Q And, of course, I'm speaking of the salmon fishery
8 of the --
9 A Right.
10 Q -- West Coast.
11 A Right.
12 Q Do you know whether there was ever a waiver
13 subsequent to that?
14 A For salmon?
15 Q Yes, for salmon, West Coast.
16 A Not that I'm aware of.
17 Q All right. Now, we have heard testimony already
18 at this inquiry that there have been occasions of
19 which the various consultative bodies here in
20 British Columbia have made recommendation to
21 Ottawa for a waiver of licence fee. You're
22 familiar with the fact that that has happened from
23 time to time?
24 A Yes. It specifically happened in the salmon --
25 from the salmon sector, as well as the roe herring
26 and spawn on kelp sector.
27 Q And you're familiar with the fact that that has
28 been met with -- with a response from Ottawa that
29 there is a fee review going on and as a result no
30 action has been taken on those recommendations,
31 correct?
32 A Right. Because the department's intent was to
33 look at fees overall and look at a new fee
34 structure that would balance the fees to be more
35 equitable across all fisheries, so to look at it
36 as a comprehensive package, one policy for
37 everyone.
38 Q Right. And you spoke of that this morning, that
39 it had implications to the entire fishery of the
40 nation and therefore, there was a review going on.
41 I'm informed by my clients this review has been
42 going on for years and years; is that fair to say?
43 A 2007 was the first year that we committed to look
44 at the fees and since that time, there has been
45 quite a few resources dedicated to looking at
46 different options. The National Policy Group
47 leads that file.

- 1 Q Do you have any sense or can you give this inquiry
2 any sense of when there may be a decision from
3 Ottawa in this regard?
- 4 A I couldn't say for sure when there will be a
5 decision. I guess it would be dependent upon when
6 the minister is prepared to make a decision on
7 proposals that have been put before her.
- 8 Q And could I assume from your testimony that there
9 is no fishery within this nation wherein DFO has
10 over the last four or five years waived fees for
11 licences?
- 12 A We don't waive fees. There are circumstances, for
13 example, in quota fishery like spawn on kelp where
14 there's zero quota allocated to the licence. If
15 they have zero quota they can pay zero fee because
16 it's a different formula for quota fisheries as
17 opposed to competitive fisheries. So in those
18 circumstances, some of the spawn on kelp operators
19 will elect not to have a quota and therefore not
20 pay a fee. That's the only kind of remedy that's
21 in place in that particular fishery.
- 22 Q So it's your testimony that in respect to what you
23 called competitive fishery, you do not know of any
24 fishery within the nation where DFO has of late
25 been waiving fees for licences?
- 26 A Well, when you say in the nation, if you're
27 talking about Atlantic, like lobster fisheries and
28 other fisheries --
- 29 Q I am indeed. I'm talking about the entire nation.
30 Are there fisheries within this nation that are
31 described by you as competitive fisheries where
32 DFO has waived fees for licences?
- 33 A There may be specific programs set up in Atlantic
34 Region to deal with those particular concerns and
35 those fisheries such as Atlantic lobster. I'm not
36 aware of the details of how that program is
37 implemented and what fees exactly are possibly
38 being not paid by lobster fishermen. I do know
39 that there is funding set aside specifically to
40 address the shortfalls of revenue that the
41 department may incur as a result of that, whereas
42 in Pacific Region we do not have any program like
43 that currently set up to do that.
- 44 Q And because of your lack of familiarity with that
45 East Coast fishery, am I -- am I correct in
46 assuming that you cannot inform us as to how one
47 might rationalize what they're doing in the East

- 1 Coast as opposed to their refusal to waive fees in
2 the West Coast? Is that fair to say?
- 3 A It would be -- I think there is public policy to
4 consider about compensating fishermen for lost
5 harvest opportunity. I think there has been some
6 mention and department has heard concerns about
7 not compensating for conservation. If we have
8 conservation objectives to be met, we shouldn't be
9 considering compensating fishermen for the loss of
10 that opportunity. Again, that's one view. Other
11 than that, I can't speak specifically to what
12 we've heard around the lobster program because I
13 haven't been out to consult around that program in
14 particular.
- 15 Q In --
- 16 A So I haven't heard views.
- 17 Q In the minute or two that I have left, presumably
18 a fee is charged for a licence for the purpose
19 that a licence holder can fish and receive some
20 income from -- derived from that licence,
21 exercising that licence; is that not fair to say?
- 22 A It's a fee -- it's a rent. They're paying to have
23 access to the resource under the current
24 structure. It's not market-based driven. That's
25 what our intent would be if we changed the fee
26 structure, but right now a lot of the concerns
27 that we're hearing is markets have declined, the
28 value for the products declined, quantity of
29 landings have declined, the current fees just
30 aren't in line with that, and we're hearing that
31 message loud and clear in a number of fisheries.
- 32 Q Well, as a DFO representative, you would agree
33 with me that it is hard for a fisher to -- it's
34 hard to take for a fisher to be obligated to pay a
35 licence fee in a season wherein there is a total
36 closure in terms of harvest to that fisher; you
37 would agree with me, wouldn't you?
- 38 A I would -- my -- I have received myself and within
39 the department I understand there is a lot of
40 concerns expressed about fee relief and lack of
41 fishing opportunities, so it's definitely
42 something that we heard on a regular basis.
- 43 Q No, but my question isn't what you hear from my
44 clients. My question is as to your opinion as to
45 whether it is appropriate that a licence fee be
46 applied to a licence wherein DFO, for possibly
47 good reason, has denied total access of the

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1 resource for a given season?

2 A The difficulty when answering that is it's not my
3 decision.

4 Q I appreciate that.

5 A It would have to be a decision made by senior
6 management to allow for that kind of exception for
7 fees to be waived or for there to be any sort of
8 relief.

9 I can say that within just the fisheries that
10 I manage, there is certainly concern for that, but
11 in absence of having a program set up or some
12 funds to address the loss of revenue, that's going
13 to then take away from how the funds that we need
14 to manage the fisheries and the other programs
15 that we have, so it puts us in a difficult
16 position.

17 Q Yes. I appreciate the position I'm putting you
18 in, in asking this opinion, but it's fair to say
19 that you at least recognize the legitimacy of the
20 controversy that surrounds this very issue, do you
21 not?

22 A I think it is certainly a management issue that is
23 on the department's radar to try and make some
24 movement on for sure.

25 MR. ROSENBLOOM: I thank you very much for answering my
26 questions.

27 MR. MARTLAND: Mr. Commissioner, I have Mr. Eidsvik on
28 the list next, and our hope is that by three
29 o'clock, his questions and Mr. Harvey's will be
30 completed. I think that would give them in the
31 range of 20 minutes apiece.

32 MR. EIDSVIK: Thank you, Mr. Commissioner. Philip
33 Eidsvik for the Area E and Coalition.

34

35 CROSS-EXAMINATION BY MR. EIDSVIK:

36

37 Q Good afternoon, Ms...?

38 A Mijacika.

39 Q Thank you. What date -- Exhibit 591, if Mr. Lunn
40 could bring that up for us again. I'm looking for
41 an exact date on that table. You said it was last
42 week. I wonder if you could tell us what day.

43 A Whatever date was Friday.

44 Q Okay.

45 A Last Friday is when I received this information
46 from licensing and forwarded it.

47 Q That's fine. That's all I needed. Now, do you

- 1 know what the aboriginal participation rate at DFO
2 is, inside Triple Nickel?
- 3 A Sorry?
- 4 Q What is the aboriginal participation rate at DFO?
- 5 A Average -- I'm not understanding that.
- 6 Q Well, sorry, but we talked a lot about today about
7 the purpose of PICFI and the aboriginal
8 participation rate in the commercial fishery. I'm
9 just kind of curious, what's the aboriginal
10 participation rate at DFO?
- 11 A Well, in absence of crunching these numbers, it's
12 pretty hard to come up with a percentage.
- 13 Q No, I'm sorry, I mean right in DFO's offices in
14 the people you work with.
- 15 A How many --
- 16 Q How many aboriginal employees? Percentagewise, do
17 you know?
- 18 MS. GAERTNER: Mr. Commissioner...?
- 19 A Well --
- 20 THE COMMISSIONER: I'm sorry?
- 21 MS. GAERTNER: I'm just wondering what the relevance of
22 this question is.
- 23 MR. EIDSVIK: Mr. Commissioner, I think it's highly
24 relevant. We're talking about the creation of
25 jobs and aboriginal participation in areas that
26 are under the Department's control, and one of the
27 main objects of the program is to increase
28 aboriginal participation in the commercial
29 fishery. And for comparison purposes, I think
30 it's really useful to see what the participation
31 rate is inside the department, and I think it goes
32 to our place at the table in all the reports that
33 have been brought up this morning.
- 34 A I --
- 35 MR. EIDSVIK:
- 36 Q But you can say you don't know and we can move on.
- 37 A Well, I do -- there are people who work within the
38 Department that happen to be of aboriginal status
39 in the areas specifically that work in different
40 area offices. Of the ones I know with respect to
41 licensing, there's at least two out of the 12 or
42 15 licensing staff.
- 43 Q Okay. That's helpful. I guess we'll have to get
44 the data on that. Now, if we look at the table up
45 there, Exhibit 591, if I do my math correctly, and
46 we add up column -- the communal commercial and
47 the reduced fee, it's about 816 licences out of

- 1 2,220 plus the one, so we have an aboriginal
2 participation rate of about 36 percent, my math.
3 Anybody challenge my math on that? I'm not real
4 good at math. Is that about right?
5 A I think your math's probably right on the numbers,
6 but when you talk about aboriginal participation
7 rate, I mean, of the licence holders who pay a
8 reduced fee, you know, you're -- a lot of those
9 fishermen are commercial fishermen that happen to
10 be of, you know, aboriginal status but they're
11 still participating in commercial fishery.
12 Q I guess --
13 A So I find that a bit --
14 Q Thank you. I guess that's --
15 A It's not how we describe, I guess is what I'm
16 saying, within the Department.
17 Q So do you mean that --
18 A It's an election to pay a lesser fee on the basis
19 of voluntarily electing to do so.
20 Q I'm not a Canadian of aboriginal ancestry. Would
21 I be eligible for that reduced fee?
22 A No.
23 Q Okay. So the people that are eligible for that
24 reduced fee are Canadians of aboriginal ancestry?
25 A That qualify under the **Indian Act**, yeah.
26 Q Right. So they participate in the public
27 commercial fishery as Canadians of aboriginal
28 ancestry but you say they're not aboriginals? I'm
29 sorry, I'm confused.
30 A No, I'm just clarifying the -- or how the type of
31 terminology that we use within the department.
32 There may also be some people who participate with
33 a full fee licence that happen to have -- to meet
34 that same requirement --
35 Q Right.
36 A -- but they haven't elected a reduced fee or it's
37 not a Category N licence that falls under the
38 reduced fee --
39 Q Yeah.
40 A -- that they're operating under.
41 Q Okay. We're going to get to that in a second, but
42 if I was to look at the number of licences
43 identified as being issued to Canadians of
44 aboriginal ancestry, we could include the communal
45 commercial and the reduced fee; is that correct?
46 A You could include that. Yes.
47 Q Okay.

- 1 A The communal commercial, though, the distinction
2 needs to be made that those are issued to First
3 Nations, so communal or First Nations groups that
4 are a party in their own, as opposed to an
5 individual.
- 6 Q All right. I understand that. And maybe I can
7 follow it up with one question. So let's take Ron
8 Sparrow, if he had a -- qualified for reduced fee
9 licence and he's fishing in the public commercial
10 fishery under reduced fee licence --
- 11 MR. MARTLAND: I object.
- 12 MR. EIDSVIK: Why?
- 13 MR. MARTLAND: It's not a -- I'm going to suggest this.
14 If there's a certain line of questions -- and
15 there's a certain latitude to asking general
16 questions. I think if we're moving into speaking
17 about an individual, a real individual, we're into
18 a whole separate ball game. So perhaps there's a
19 way Mr. Eidsvik can reformulate a question that
20 doesn't take us into -- I'm mindful of a question
21 that's premised on someone who may or may not be
22 part of our process or have counsel. I think
23 there's a concern of obvious appearance in that
24 situation.
- 25 MR. EIDSVIK: Okay. Let me restate that and I thank
26 the commission counsel for that point.
- 27 Q An aboriginal -- Canadian of aboriginal ancestry
28 fishing under the reduced fee licence, his
29 identity as an aboriginal person is not reduced or
30 impaired simply because he fishes in the public
31 commercial fishery, is it?
- 32 A I'm not quite sure I understand what the question
33 is there.
- 34 Q I'll move on. Thank you.
- 35 A The Department keeps record of the election and
36 would track the licence as reduced fee election
37 unless the fisherman asked to reverse that
38 election which has happened on occasion, as well,
39 where they would go before the appeal board to try
40 and do that, so...
- 41 Q Okay. In the reduced fee -- sorry, in the full
42 fee licences, I gather that there's a number of --
43 an undetermined number of licences that are held
44 by Canadians of aboriginal ancestry or by
45 aboriginal controlled corporations, as well, that
46 you haven't identified there; is that correct?
- 47 A There may be some, but the Department doesn't keep

1 track of licences that way where we try to track
2 percentage of commercial licences that are issued
3 or held by aboriginals or individuals that may be
4 part of a corporation that happened to be
5 aboriginal.
6 Q Okay. Thank you.
7 A We don't --
8 Q Does -- and your table doesn't show full fee
9 licences that are operated by Canadians of
10 aboriginal ancestry such as the ones owned by
11 Jimmy Pattison, Canadian Fish, for example? It
12 only shows licence holders, it doesn't show
13 vessels that may be owned by somebody but operated
14 by an aboriginal?
15 A Well, they're all vessel-based licences, so
16 whoever owns the boat has control over the
17 licences, so there's various different vessel
18 owners that may hold -- may own the boats that
19 hold these licences.
20 Q Okay.
21 A So that's --
22 Q Now, I was unsure about the licences held in PICFI
23 and other inventories, are they included in that
24 column, communal commercial?
25 A The ones that -- yes.
26 Q Okay.
27 A They are.
28 Q That helped. I wasn't clear when you answered the
29 question this morning. Does your table take into
30 account the licences issued under the Nisga'a and
31 Tsawwassen treaties, the communal licence issued
32 there?
33 A I'm not -- I don't have enough detail on the
34 licences that are issued for those two treaties.
35 Q Does your table take into account commercial
36 licences issued to aboriginal groups participating
37 in the separate commercial fisheries on the Fraser
38 such as the Musqueam, Tsawwassen, Sto:lo or
39 Burrard or other groups?
40 A If they've been allocated by the inventory or
41 through ATP or PICFI as communal commercial
42 licences, they'll show up in these numbers.
43 Q I'm sorry, maybe perhaps you misunderstand me.
44 Would a licence issued to the Musqueam for the
45 purpose of fishing in the commercial fishery on
46 the Lower Fraser, their separate commercial
47 fishery, would that show up in this table?

- 1 A I'm not familiar enough on what those licences
2 entail for the Musqueam, so...
- 3 Q Okay. I guess --
- 4 A And it's partly I don't want to give you the wrong
5 information there.
- 6 Q And what about scientific licences or ESSR
7 licences that are issued to aboriginal groups?
- 8 A They're not included in this table.
- 9 Q They're not included. So if we look at the bare
10 numbers in the table at 36 percent we can say
11 including aboriginal-operated vessels, ESSR,
12 scientific and other licences, that the
13 participation rate is probably higher than 36
14 percent?
- 15 A You could do that, but, like I say, the Department
16 doesn't do that.
- 17 Q Is there a reason why the Department doesn't
18 collect that data?
- 19 A I'm not saying we don't have that information.
20 I'm saying it's depending on how you use that
21 information or what the purpose is for. Generally
22 with licensing you collect licensing information
23 for the purposes of licensing. You don't use it
24 for other purposes.
- 25 Q Now, has DFO ever done any analysis of the
26 negative impacts of licences, these buy-back
27 programs on the public commercial fleet, for
28 example, what is the impact on a crew member who
29 wants to buy a licence in the public commercial
30 fleet, but because licence values are escalated by
31 the PICFI program he might not be able to buy
32 into, has DFO ever looked at that question of
33 whether PICFI increases or reduces licence values?
- 34 A I'm not familiar if we have looked at specifically
35 that example with crew members, but I do know that
36 there are a number of consultants who provide some
37 analysis and papers with respect to how the
38 program is moving along and the value of licences
39 and how it's changed over time. I know with the
40 previous retirement programs we did canvass those
41 who participated in the program or who applied and
42 weren't accepted, what their views were on the
43 program and the parameters of it, so we have done
44 some -- we've, you know, sought some feedback
45 around that but not necessarily your specific
46 example.
- 47 Q On the -- of course, these are all commercial

- 1 licences, so it doesn't show aboriginal
2 participation in the food fishery, of course,
3 which is exclusive for them or the allocations in
4 there. But if you added up aboriginal food
5 allocations plus all these various types of
6 licences, Pearse-McRae, the recommendation was a
7 minimum 50 percent aboriginal share of the
8 fishery, but you could see that we're rapidly
9 approaching in the area of 50 percent? Would you
10 go that far or you say no?
- 11 A I would say that that's something that the -- we
12 would have to take a good, close look at and
13 management, whoever's involved with management of
14 the fishery specifically for salmon would be best
15 to address that question.
- 16 Q Given the numerous initiatives to make -- assist
17 aboriginal people in the fishery, is -- would that
18 be an important issue for you as a licence person
19 to try and determine? I know it's an interest for
20 us. I don't know if it's an interest for others.
- 21 A Again, if there was requests, specifically to
22 licensing to help work on particular papers or
23 policy documents the Department's doing. Other
24 than that, licensing wouldn't have a lot of
25 influence or interest in that.
- 26 Q So then as it stands, there's no, I guess, one
27 document I can go to that would say here's the
28 total aboriginal participation rate in the salmon
29 fishery in British Columbia, no one document that
30 I can find all that information?
- 31 A I don't know of one document, but I don't know --
32 that might be a good question to ask others.
33 There's a possibility that that has been done.
- 34 Q Okay. I'm on now to communal licences and other
35 licences. Are all licences purchased through buy-
36 backs issued as communal licences in the last --
37 or --
- 38 A Communal commercial, yeah.
- 39 Q If you -- if a PICFI or an ATP licence is bought,
40 is it -- when it's reissued, is it issued always
41 as a communal licence?
- 42 A It's reissued as, yeah, a Category F. Some of
43 them don't -- aren't distributed though. They
44 stay in inventory for the year.
- 45 Q Okay. Is there a requirement in a communal
46 licence to ensure that the licence is fished by
47 Canadians of aboriginal ancestry?

- 1 A I'm not sure. You'd have to look at the
2 agreements that are made at the time that the
3 First Nations issued the licence. There's AFS
4 contribution agreements.
- 5 Q So no requirement that you know of though?
- 6 A I haven't looked closely at one of those
7 agreements in a long time, so I'm not sure exactly
8 what the requirements are for -- I know that they
9 have to designate specific individuals from the
10 First Nation to participate under the licence.
- 11 Q Okay. In the case of -- I know DFO has acquired a
12 number of licences in IQ fisheries such as halibut
13 and crab and -- or, sorry, halibut and sablefish
14 and other licences.
- 15 A Mm-hmm.
- 16 Q Have you any sense of -- does DFO track how those
17 licences are used in the sense of are they leased
18 out or are they fished? Do they create jobs in
19 communities or is it a lease revenue issue?
- 20 A We have a policy branch that does look at the
21 impact of quotas and, for example, when we went to
22 ground fish integration program, some work was
23 done on how the fisheries have changed with going
24 to permanent quota and the other elements of that
25 program to do with monitoring and other things and
26 how the fleet changed over time. So there has
27 been some work done to that effect.
- 28 I can't remember your specific part of the
29 question though about --
- 30 Q I was thinking -- sorry, specifically, if an
31 aboriginal group or organization acquires, say, a
32 sablefish licence.
- 33 A It would be reissued as a communal commercial
34 sablefish licence.
- 35 Q Now, do -- are those licences fished or are they
36 leased out, can you tell me that?
- 37 A Some of them --
- 38 MS. GAERTNER: Sorry, Mr. Commissioner, I don't see
39 that this is relevant to the terms of reference or
40 to Fraser sockeye salmon.
- 41 MR. EIDSVIK: I think -- what I'm trying to do is
42 establish the success of the communal licence
43 program. I note the Crown referred to "Our Place
44 at the Table" earlier this morning, which talked
45 about a number of licences. But I can reword that
46 in the context of the salmon fishery to make it
47 easier.

- 1 Q If a seine licence is issued to an aboriginal
2 organization, do you know if those licences are
3 fished or are they leased in terms of the IQ
4 fishery? What I'm trying to find out are these
5 licences creating jobs or producing revenue for
6 aboriginal Canadians?
- 7 A Could be either.
- 8 Q You don't know.
- 9 A There are situations where the First Nation does
10 have to designate a vessel that meets the length
11 restriction for that licence. It could be a
12 vessel that is part of the community. It could be
13 a vessel that arrangements have been made with
14 another party. Those are details that get worked
15 out through issuance of the licence with that
16 particular First Nation.
- 17 Q Does DFO track this information?
- 18 A We have information on where the licence is
19 designated on an annual basis. As far as that
20 type of analysis, like I said, there certainly
21 hasn't -- I haven't seen a request to do that kind
22 of analysis.
- 23 Q Sorry, I'm -- again, the point I'm trying to
24 understand is are these -- is this program
25 creating aboriginal jobs in places like Ahousaht
26 and Alert Bay and Campbell River? Or is it a --
27 or a licence which is then leased to a corporation
28 such as Canadian Fish? That's what I'm trying to
29 get at and --
- 30 A There are no --
- 31 Q -- I guess the answer is the Department doesn't
32 track this?
- 33 A Well, there are a number of other requirements
34 under the aboriginal agreements, so there's other
35 ways in which the First Nation may be doing those
36 things that you've mentioned, participating or it
37 may be creating employment or -- I mean, I can
38 even think of examples in commercial fisheries
39 where that happens, for example, in spawn on kelp
40 where, you know, a whole community can be
41 participating in --
- 42 Q Sorry. I got cut off a minute ago. We were
43 talking about salmon.
- 44 A So -- I know, but I'm just saying with salmon, the
45 same thing. I mean, without knowing the specific
46 details around that particular licence and what
47 arrangements or what the First Nation is doing,

- 1 it's pretty hard to answer that.
2 Q Okay. "Our Place at the Table" was brought up a
3 couple of times today and as was Pearse-McRae and
4 I was -- and I don't know whether you can answer
5 this, but aboriginal groups retained and
6 instructed and directed the authors of First
7 Nations "Our Place at the Table", but the public
8 commercial fleet did not retain or instruct Mr.
9 Pearse or Mr. McRae; would you be able to answer
10 that question?
11 A No. I'm not sure what the specific question is
12 from what you just --
13 Q I'm just trying to understand if -- obviously the
14 "Our Place at the Table" was written for and on
15 behalf and by aboriginal organizations to put
16 forth the aboriginal perspective.
17 A Right.
18 Q Does Pearse-McRae reflect the attitude of the
19 commercial fishing fleet or were they retained by
20 government to provide a report?
21 A I wouldn't know --
22 Q Okay.
23 A -- the details of that.
24 Q Thank you. Now, licence fees haven't come down
25 for -- in the salmon fishery since 1998, I gather,
26 despite a fairly steep decline in the fishery.
27 A Yeah. The same fees have been in place since
28 1998.
29 Q Now, one thing that I wanted to ask, and I don't
30 know whether I can, and I'm sure counsel will
31 assist me, is is your ability to increase licence
32 fees impacted by the **User Fee Act**?
33 A Yes. Any time there's a change in a fee or an
34 increase, the requirements under the **User Fee Act**
35 will kick in. So that means more consultation,
36 whatever processes are in place for the **User Fee**
37 **Act**.
38 Q Are you familiar with the requirements under that
39 Act?
40 A A little bit.
41 Q Do they -- are they required to go to Parliament
42 for an increase in a licence fee?
43 A Yes, we -- any -- it's a regulatory change, so...
44 And you have to do a regulatory impact assessment
45 statement.
46 Q Okay. Now, do -- do aboriginal communal licences,
47 do they pay licence fees?

- 1 A Not in the same fashion that -- under the
2 aboriginal communal commercial regs that they're
3 issued pursuant to there is no specific fee. But
4 under an AFS agreement that is made with the First
5 Nation there may be some other fees that are
6 arranged with the First Nation.
- 7 Q Can you give us a -- based on the 379 communal
8 commercial licences I see there, can you tell us
9 what kind of fees are being paid in total?
- 10 A I couldn't without -- you'd have to do some
11 analysis on that.
- 12 Q Now, does PICFI pay licence fees on licences held
13 in inventory? Or DFO pay licence fees on the
14 licences held in inventory?
- 15 A No, we issue them -- when they're in inventory,
16 they're held in that party ID until such time that
17 they're issued or distributed to a First Nation
18 where whatever arrangement is then made under the
19 agreement with the First Nation, that's when it
20 would --
- 21 MR. MARTLAND: Mr. Commissioner, I'm raising not to
22 object, but simply in my cuckoo clock role to
23 remind Mr. Eidsvik of the time.
- 24 A My understanding is there is going to be an
25 aboriginal fishing panel, as well, an aboriginal
26 fishing panel, as well, an aboriginal licensing, I
27 think a lot of these questions could also be
28 directed and answered there, as well.
- 29 MR. EIDSVIK:
- 30 Q Okay. That'll be helpful. I just have a couple
31 more and I should be done fairly quickly. The fee
32 for -- there's other charges -- if I'm a
33 commercial fisherman, I go down to DFO to renew
34 their commercial gillnet licence for the Fraser
35 River, are there other fees that you ensure I pay
36 before you'll issue the licence? And, of course,
37 I'm referring to the log book fee.
- 38 A Well, one, there's also the fisher registration
39 card fishermen -- if it's -- whoever's involved
40 with the operation or is going to fish will have
41 to have a registration. There are some fees that
42 the fishermen will pay directly to acquire a log
43 book. We'll do a log book check to ensure that
44 they've received their log book, but we don't
45 collect the fee.
- 46 Q But you --
- 47 A It goes to whoever's administrating the log book

Lisa Mijacika

Cross-exam by Mr. Eidsvik (SGAHC)

Cross-exam by Mr. Harvey (TWCTUFA)

1 program.

2 Q And I guess that's an interesting issue for a lot
3 of people, is that DFO will refuse to issue a
4 commercial fisherman their licence based on what a
5 private third party -- what -- based on whether
6 they have paid or not paid a private third party.

7 A It's a monitoring requirement so that we can
8 ensure that we have the information that's
9 required under the conditions of licence. So, for
10 example, log books give us catch and effort
11 information. It's very relevant to the department
12 that we have that information.

13 And what you're trying to say, for example,
14 if a fisherman missed acquiring his log book and
15 didn't fish and then wanted to fish the next year
16 or something was outstanding with his log book,
17 it's still possible his licence would be issued in
18 the following year, and then the Department would
19 proceed to look at what kind of violation or what
20 kind of information could be sent to the fisherman
21 to try and collect the information that we
22 require.

23 MR. EIDSVIK: Mr. Commissioner, I do have about another
24 15 minutes, looking through, and I can see Mr.
25 Martland anxiously waiting for me to get down. So
26 I'd like to -- I'll sit down now, but if there's
27 an opportunity before the end of the day, I
28 wouldn't mind finishing my questions.

29 Thank you, Mr. Commissioner.

30 MR. MARTLAND: Mr. Commissioner, from my estimate for
31 Mr. Harvey, if we have him proceed now and then
32 move to break, if I might suggest.

33 THE COMMISSIONER: Yes.

34
35 CROSS-EXAMINATION BY MR. HARVEY:

36
37 Q Ms. Mijacika, it's Chris Harvey for the Area G
38 Trollers and the United Fishermen and Allied
39 Worker's Union. I'd like to ask you primarily
40 about Exhibit 588, which is the memorandum for the
41 regional director general that was put in earlier.
42 I thought this was described as a memorandum to
43 the minister, but it seems to -- is it properly
44 headed, a memorandum to the -- for the --

45 A It's a note to the RDG, it looks like.

46 Q And it's signed by Susan Farlinger. I see, that
47 was before she was RDG.

- 1 A So, yeah, the regional director would be
2 forwarding this to the regional director general.
- 3 Q Yes.
- 4 A So that's why her signature would be on it.
- 5 Q I see. All right. The -- it indicates that
6 there's been an increase in the licences and
7 inventory to 156 and it describes the priority to
8 using those to provide access inland and then for
9 other reasons. But I find this somewhat confusing
10 and I want to ask you some questions about it.
11 The last page of the document, perhaps that could
12 be looked at and you could explain that. The --
13 this deals with the total of the 156 licences we
14 see there in inventory. There's a second column,
15 unique licences required, and then there's a third
16 column, remaining in DFO inventory. Is the 106,
17 the middle column, is that the ones used to shift
18 allocation inland?
- 19 A I wouldn't know for sure because I haven't
20 actually seen this document before or what
21 analysis was done to put the table together, so...
- 22 Q I see.
- 23 A I'm not sure what they mean by unique licences
24 required.
- 25 Q Yes. But there are quite a number of licences
26 remaining unused and that would appear -- I'm just
27 wondering whether that is the last column, the 50
28 licences. Do you know?
- 29 A Well, there would always be some that haven't been
30 distributed.
- 31 Q Yes. All right.
- 32 A I know the last report that I looked at there was
33 around 26 that -- remaining from PICFI that hadn't
34 been distributed --
- 35 Q Yes.
- 36 A -- just even for 2010, so...
- 37 Q Yes. Well, there's -- if we look at the Area G
38 licences, that's the group I represent, there's
39 six licences in inventory and six licences
40 remaining. I thought the figure was greater than
41 that, but I'm told that there simply have been
42 Area G licences that have been bought back through
43 the -- one program or other, and have not been
44 reissued to the coastal First Nations groups; are
45 you aware of that?
- 46 A Not specifically, no.
- 47 Q All right.

1 A There are, you know, a number of people that work
2 in -- on these two programs that work in the PICFI
3 group --

4 Q I see.

5 A -- that would probably be able to answer those
6 questions.

7 Q I see. All right. If we could go back to page 1,
8 there's a -- right at the bottom, the last bullet
9 point. It identifies a -- what seems to be a
10 stark political choice. It says that:

11
12 Licenses acquired by ATP in recent years have
13 primarily been retained in the Departments'
14 inventory to provide for First Nations inland
15 demonstration fisheries. However, coastal
16 First Nations have expressed interest in
17 obtaining additional commercial salmon
18 licences through the program.

19
20 So that identifies the choice between shifting
21 allocation inland or increasing or maintaining the
22 fisheries dependent communities, the First Nations
23 communities on the coast. But I don't see any
24 direction in here as to how that choice is to be
25 made or who makes it.

26 A Well, there would have to be some sort of
27 objectives and criteria that is considered under
28 the program on how to make those decisions.

29 Q Are those objectives published anywhere to your
30 knowledge?

31 A Not -- I don't -- I'm not familiar with how those
32 decisions are specifically made, what criteria is
33 used, so...

34 Q There's no consultative body that assists in that
35 decision, is there?

36 A I don't -- I'm not sure.

37 Q All right.

38 A You would have to ask the people responsible for
39 the program.

40 Q All right. The -- all right. This document does
41 indicate though that a choice has been made as a
42 first priority to shift commercial fishing access
43 inland; would you agree with that?

44 A Is it one of the adopted recommendations at the
45 end of the document?

46 Q Well, it's in the summary, the third bullet point
47 in the summary, the first sentence.

- 1 A Yeah. Actually, we usually refer to what's being
2 decided also at the bottom of the document, the
3 last recommendations, next steps or
4 recommendations on the last page, whatever is
5 being proposed for decision.
- 6 Q Well, it --
- 7 A So that's --
- 8 Q That's the curious thing. This document doesn't
9 seem to propose anything for decision.
- 10 A When you go to the bottom... So these next steps.
- 11 Q But there's no indication of what decision has to
12 be made or who's to make it, is there?
- 13 A Well, there's a number of next steps that the
14 department will be taking as a result of this, so
15 this outlines what those would be.
- 16 Q But as to the decision, whether coastal First
17 Nations should get the licences or whether they
18 should be shifted inland, whereas we heard earlier
19 this morning the fish are of much lesser value,
20 there's no indication of who makes that choice or
21 on what basis here, is there?
- 22 A Without reading it in detail and going through it,
23 I couldn't really answer that question.
- 24 Q Yes.
- 25 A I do know that obviously the areas where this
26 would take place, area meaning Lower Fraser and/or
27 interior and other senior managers within the
28 Department would be making those decisions.
- 29 Q So they're not decisions that the minister makes?
- 30 A It's possible if recommendations are put forward
31 to the minister.
- 32 Q All right. The PICFI licences I think you
33 explained are issued to First Nations groups on an
34 annual basis and they may not be issued the
35 following year, may or may not be issued the
36 following year?
- 37 A Well, they revert back to the inventory at the end
38 of the year, once there's no longer need from --
- 39 Q Yes.
- 40 A -- the First Nation.
- 41 Q So --
- 42 A They may end up being redistributed to the same
43 First Nation or another First Nation the following
44 year.
- 45 Q But do I understand you correctly there's no
46 equivalent of the licence eligibility that applies
47 for regular commercial licences?

- 1 A I'm not understanding the question. Sorry?
- 2 Q Well, you explained that with regular commercial
3 licences, there was a licence eligibility and the
4 records are kept by the department.
- 5 A Right.
- 6 Q And so even though the licences are annual,
7 there's an eligibility record, correct?
- 8 A Right. And the First Nations are also parties
9 within the licensing system, so when the licence
10 leaves inventory and is issued to a First Nation
11 we do keep track of that in our system.
- 12 Q But does that give rise to an eligibility that
13 that First Nations group can rely on for the
14 following year, just as an individual licence
15 holder can rely on an eligibility?
- 16 A There's -- currently PICFI is doing short-term
17 distributions of these licences. They're looking
18 at ways to do longer term and have longer term
19 arrangements with First Nations but there hasn't
20 yet been decisions on how that will take place.
- 21 Q So at the moment, there's no business security
22 that goes with the annual allocation of the -- of
23 a PICFI licence to a First Nations group?
24 Correct?
- 25 A I'm not sure how to answer that because there may
26 be still some benefits within that year. Or I
27 guess it would depend on how many licences or how
28 they're participating, how -- in what way, so...
- 29 Q I was using that more in the sense of the security
30 that a person needs to invest in a fishing vessel
31 or fishing gear or -- and to maintain a business
32 year after year.
- 33 A Well, part of it is, too, in looking at ways to
34 develop that capacity or find ways for First
35 Nations as part of their business plan to
36 demonstrate how they've done that or could do that
37 in the future, so...
- 38 Q The -- it -- so each of these licences, the 156
39 licences, is that -- well, that's just the
40 unallocated licences. How many licences are there
41 in total, PICFI and ATP licences?
- 42 A I'm not sure what's referred to in this particular
43 document, but from the report that I requested
44 last week, I was advised that there was 349 salmon
45 licences currently held in inventory, but it can
46 fluctuate and change with new relinquishments that
47 come through.

- 1 Q Oh, yes. Thank you. And does the Department
2 require and consider a business plan with respect
3 to -- annually with respect to each of those
4 licences?
- 5 A Business plans are used under the PICFI program,
6 but again, I'm not sure on the exact details for
7 each licence.
- 8 Q All right. Can you give this commission any idea
9 of the DFO budget allocation that is used with
10 respect to determining the allocation of PICFI
11 licences?
- 12 A I think that question is best answered by the
13 PICFI program or someone that works in Treaty and
14 Aboriginal Policy.
- 15 Q All right. I note that there's no reference to
16 any socioeconomic analysis in the memorandum 588;
17 would your answer again be that that question
18 should be referred to somebody else if I were to
19 ask you is there any socioeconomic analysis that
20 goes into the decision as to whether to issue
21 licences to coastal First Nations or inland First
22 Nations?
- 23 A It's -- we do have a policy group that would
24 provide advice or possibly do some of that
25 analysis in support of the PICFI program.
- 26 Q Who's the head of that group?
- 27 A Currently Jennifer Nener is the acting director.
28 Angela Bate is the director responsible for the
29 PICFI program.
- 30 Q All right. Well, I'll wait until we get to them.
31 The -- finally, you corrected in your evidence the
32 policy and practice report paragraph 3 by
33 inserting the word "immediately" and I think the
34 point -- and the point, if my note is correct, was
35 that there was a period when aboriginal persons
36 and Japanese could not obtain licences? Is that
37 what you said?
- 38 A I'm not familiar with what our policies were prior
39 to 1969.
- 40 Q All right.
- 41 A It's well before my time with the department, so I
42 wouldn't want to give you the wrong information
43 there.
- 44 Q So if I were to suggest to you the correct
45 information is that there was a period in the
46 1920s when the Japanese, under what was referred
47 to as an Oriental Exclusion Policy, were

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Cross-exam by Ms. Gaertner (FNC)

1 disentitled to licences, but there was no
2 equivalent program ever with respect to -- or
3 aboriginal people? You --

4 A I'm not even aware of those circumstances that
5 you've just referred to with Japanese actually,
6 so...

7 Q All right.

8 A I wouldn't know how to answer that.

9 MR. HARVEY: All right. Well, thank you for clarifying
10 that. Those are my questions.

11 MR. MARTLAND: Mr. Commissioner, I'd suggest we go to
12 break and we're on track to conclude by four
13 o'clock today. Thank you.

14 THE REGISTRAR: Hearing will now recess for 15 minutes.

15

(PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

16

(PROCEEDINGS RECONVENED)

17

18

19 THE REGISTRAR: The hearing is now resumed.

20

21 MS. GAERTNER: Mr. Commissioner, Brenda Gaertner for
22 the First Nations Coalition, and with me, Crystal
23 Reeves. Thank you for attending here today, Ms.
24 Mijacika, and I have a number of questions of you.
25 I anticipate my timing will be no more than 30
26 minutes.

26

27 THE COMMISSIONER: Are you the last examiner?

27

28 MS. GAERTNER: I believe I'm close to the last, if not
29 the last.

28

29 MR. MARTLAND: Yes, I believe she's the last and as you
30 heard, Mr. Eidsvik requested, if there's time
31 left, to use it, but that's right, there's no
32 other counsel at this point, and I understand
33 Canada did not examine re-examination, nor do we.

29

30

31

32

33

34

35 CROSS-EXAMINATION BY MS. GAERTNER:

34

35

36

37 Q I just wanted to clear up a couple of things that
38 came up this afternoon. You've been asked
39 questions about the issuing of licences under
40 PICFI and to my understanding, licences are
41 actually not issued to the First Nations, they're
42 used as part of an agreement under PICFI for an
43 annual basis. And so they exercise the rights
44 under the licence, but they're not necessarily
45 issued directly, have I got that right?

37

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45

46 A Well, they're distributed to the First Nations so
47 they do show up as issued, actually, in our system

46

47

- 1 and to that party ID we have for the First Nations
2 so that's why I used that word, but your
3 description is accurate on how it happens.
- 4 Q Thank you.
- 5 A The process.
- 6 Q And I also got from your evidence, and I'm not
7 going to ask a lot of questions of it, you know,
8 that there are others that are more familiar with
9 the PICFI process, but are you also familiar with
10 the process that First Nations must go through to
11 use it, they have to file expressions of interest
12 that are reviewed, business plans, there's a full
13 programming or a bureaucratic process before they
14 can access to exercising those licences; is that
15 correct?
- 16 A There is a process. I'm not able to really
17 describe in full detail, though, so I may be
18 limited --
- 19 Q We'll leave that for other witnesses.
- 20 A Yes.
- 21 Q All right. I want to just see if you could be
22 helpful to us in understanding the overarching
23 amounts of money that have been used for either
24 retirement of licences or relinquishment of
25 licences. We've heard a number of concerns that
26 the commercial fishery or representatives of some
27 of the commercial fishery at least have about
28 DFO's budgets and otherwise, and I thought it
29 would be useful for the Commissioner to just have
30 a overarching picture of the amount of money that
31 has gone to the buyback or relinquishment of
32 licences. So I'm going to start with paragraph 12
33 of the Policy and Practice Report. And in your
34 evidence today, you confirmed that there were two
35 steps taken in 1996 and 1998 that resulted in a
36 total, as I understand, of \$195 million being
37 spent on licence retirements in salmon; is that
38 correct?
- 39 A The Mifflin, I think, was just under 80 million,
40 and then an additional 195 under CFAR so that's
41 actually almost 300, under two separate programs.
42 Like, there was almost 200 million spent so it's
43 about 280 million.
- 44 Q Sorry, the last sentence in the PPR has a total of
45 \$195 million being spent in that. Is that not
46 correct?
- 47 A For CFAR, for the 1998 program, that's the way I

- 1 understand that paragraph.
- 2 Q Oh, I see. So you add, then, 195 --
- 3 A Yeah.
- 4 Q -- and 78.5?
- 5 A That's what I was thinking in terms of overall,
- 6 your question was around the two retirement
- 7 programs.
- 8 Q Okay. Let's start there. And that's for sure for
- 9 salmon retirement; is that correct?
- 10 A Just salmon retirement, yeah.
- 11 Q Okay. And then next we go to the Allocation
- 12 Transfer Program, and that's talked about at
- 13 paragraph 17 of the PPR. We don't actually have
- 14 amounts there so much and so I'm wondering if you
- 15 could help us with that. As I understand it,
- 16 there's, approximately, 6 million per year that's
- 17 been used for the purchase of licences; is that
- 18 correct?
- 19 A For ATP?
- 20 Q Yes.
- 21 A Sounds correct, but it would include a number of
- 22 licences, not just salmon.
- 23 Q And that's occurred since 2000 and --
- 24 A I think it's 1994.
- 25 Q 1994, sorry. And the first licence that was
- 26 brought back was in 1995; is that correct?
- 27 A That sounds accurate, yeah.
- 28 Q So \$6 million per year since 1995, and 6 million
- 29 times 16 years, approximately, so that gets us 96
- 30 million?
- 31 A Okay.
- 32 Q And there is -- we need to make a note that that
- 33 may not necessarily be all for salmon; is that
- 34 correct?
- 35 A Under ATP, it wouldn't be all for salmon.
- 36 Q All right.
- 37 A There may only be up to five percent, actually,
- 38 for salmon.
- 39 Q Okay. And then we have, as I understand it, in
- 40 reference there, is the PICFI program, and is it
- 41 your understanding that the overall budget for the
- 42 PICFI program is, approximately, 175 million?
- 43 A That sounds accurate, yeah.
- 44 Q And it's our best information to date that the
- 45 Department is allocating is about \$115 million of
- 46 that 175 for licence buybacks, is that your
- 47 understanding?

- 1 A I don't know for sure. I wouldn't be able to --
2 yeah. That's a question for the PICFI folks.
- 3 Q Well, if I was to advise you that Angela Bate, in
4 a recent meeting with the First Nations Fisheries
5 Council, advised them that, approximately, \$115
6 million of the \$175 million of the program was
7 going to be used for licence buybacks or licence
8 acquisition, would you be able to rely on that
9 number?
- 10 A Sure, that sounds good, then.
- 11 Q All right. So that's 115 million for that. And
12 are you aware that under the AAROM program,
13 there's also monies that are being used for
14 relinquishment of licences?
- 15 A I understand there is. I don't know how much,
16 though.
- 17 Q If I was to suggest to you, on the DFO website,
18 with respect to the AAROM, that \$4.09 million was
19 used for that, could we rely on that number?
- 20 A If it's on the website, it's likely accurate. It
21 may be subject, though, to changes depending on
22 the year.
- 23 Q And then the additional amount of money that I'm
24 aware of is the Northern Native Fisheries buyback
25 that we've heard in the evidence today, and that
26 was done -- granted in 1982, but that was \$11.8
27 million that was spent on buybacks at that point
28 in time?
- 29 A I know there -- I'm not sure about the 11.8
30 million. I know there was a number of equivalent
31 boats and licences close to the 254 that were
32 relinquished, and Department of Indian and Native
33 (sic) Affairs, actually, was responsible for the
34 funds for that, not DFO.
- 35 Q Okay. So we can -- let's take that out of the
36 total, then, for a moment in terms of DFO's
37 budget. So if I was going to suggest to you that
38 over \$400 million has been spent on licence
39 buyback and retirement programs since the 1996
40 program, does that sound approximately right to
41 you?
- 42 A Based on what we just discussed, it sounds close,
43 yes.
- 44 Q And with the exception of the first two programs,
45 all of the remaining programs are being processed
46 through the Department of Fisheries and Oceans
47 with a goal of increasing aboriginal participation

- 1 in the fishery?
- 2 A And integrated fisheries, yes, commercial
3 fisheries.
- 4 Q Do you know, roughly, what proportion of DFO's
5 budget, on an annual basis, this money is?
- 6 A No, I couldn't answer that question. I'm not even
7 sure of what our exact budget is. That's a
8 question for Corporate Services, for our financial
9 people.
- 10 Q Thank you, that's helpful.
- 11 MS. GAERTNER: I think, Mr. Commissioner, it's useful,
12 I believe, for you at least to get a sense overall
13 as to the amount of money that's being spent in
14 the commercial fishery for these matters.
- 15 Q Moving now to what's Exhibit 588, and I did hear
16 your evidence today, and I just want to confirm
17 that -- I'll ask you a couple of questions with
18 respect to this, but I appreciate this is not a
19 document that you're familiar with, but at
20 bullet 2 on page 3 of the document, we begin to
21 have a discussion around -- and I'll just say that
22 given that this was on the list of documents to be
23 discussed today, I'd anticipated you would be able
24 to answer some of the questions arising in this
25 matter. Maybe I'll just say are you familiar and
26 can you speak to issues that the Department is
27 considering when dealing with the reallocation or
28 transfer of a licence that's acquired on a mixed
29 stock to a fishery and a single stock licence? So
30 if you bought a licence in the marine commercial
31 fishery that's a licence that allows them to
32 access Fraser River salmon across a mixed stock, I
33 think they're going to move it into the inland
34 fisheries and they're going to access only a
35 single stock, are you aware of the issues and
36 considerations that the Department is using when
37 considering that complex allocation?
- 38 A No, I'm not involved in that decision making.
39 Again, I believe someone in the areas and/or the
40 PICFI program, or the treaty and aboriginal policy
41 shop would be best to address those
42 considerations.
- 43 Q Do you have specific people that you would
44 recommend we address these questions to?
- 45 A I would talk to the Lower Fraser Area Director,
46 which is Diana Trager, the -- I've mentioned
47 Angela Bate already. I believe, also, our current

1 treaty -- or we call it TAPD, Treaty and
2 Aboriginal Policy Director, Sarah Murdoch, but
3 Kaarina McGivney was the director at the time that
4 a lot of these programs were set up and some of
5 these decisions.

6 Q Okay. Thank you very much.

7 MS. GAERTNER: I wonder if I can now switch to another
8 area, which if you could bring Exhibit 586, Mr.
9 Lunn, and if we go to -- we actually spent -- I'll
10 just get my copy of that.

11 Q We spent a little bit of time in evidence already
12 today talking about this and the issues
13 surrounding the types of changes the Department is
14 considering with respect to licensing and
15 monitoring. Were these changes in relation to
16 concerns that industry raised with the Department
17 directly, or how did these proposed changes come
18 about?

19 A It's a combination of all of the requests that we
20 received over the years from individual fishermen,
21 both aboriginal or communal commercial and
22 commercial, as well as industry advisory groups
23 and associations. And then also after doing our
24 own review internally and discussing these issues
25 with management and our internal groups, a lot of
26 these proposals came out of those discussions.

27 Q And if these changes would be made and we're still
28 in something like the PICFI or otherwise and a
29 licence is then purchased, would those conditions
30 also be transferred, travel with the licence? So
31 if you institute any of these licence
32 requirements, would they travel with the licence
33 that's been purchased for reallocation?

34 A The intent is for that to happen. Currently, the
35 PICFI works within the current licensing rules and
36 practices so it would be presumed that if these
37 changes were in place and there was some
38 flexibility, that that would go along with
39 whatever's associated with the licence at the time
40 of relinquishment.

41 Q And do these guiding principles and some of the
42 options you're considering, when I read them, it
43 seemed to be that they're assuming that some kind
44 of share-based quotas or ITQs are in place. Am I
45 correct in that?

46 A There are share-based in number of the fisheries
47 that this would apply to. In salmon, there is an

- 1 indication around the demonstration fisheries that
2 are currently on a pilot basis.
- 3 Q And given that these conditions would be changed,
4 are you aware of DFO's practices in consulting
5 directly with First Nations on any proposed
6 changes to these licensing rules and policies?
- 7 A This document is just the first step in getting
8 out a questionnaire that would be distributed
9 broadly. So it would be sent, as well, to First
10 Nations, and then there would be a number of
11 discussions that would take place through our
12 consultation plan, which would include through our
13 existing bilateral process and through other
14 workshops and other processes that we would put
15 together to make sure we're adequately consulting
16 with everybody on this.
- 17 Q So you're confirming that DFO intends to consult
18 with First Nations regarding changes to these
19 licences, or proposed changes to these licences?
- 20 A To those that would be impacted from the communal
21 commercial licences, yes.
- 22 Q Including those that may receive transferred
23 licences with these conditions?
- 24 A There would be -- this information would be made
25 available to a very broad distribution, which
26 would include those First Nations.
- 27 Q Okay. I'd like, now, to go to Exhibit 584, page
28 16, at the bottom of page 16, you'll see a
29 sentence beginning, "Up until 2008 ...," and in
30 that sentence, the document references and
31 describes a contracted, independent program
32 coordinator and licence eligibility retirement
33 selection committee composed of aboriginal
34 individuals and commercial fishing interests
35 reviewing all applications. And those are the
36 applications under the ATP. Are you familiar with
37 that?
- 38 A I am familiar that we did have a committee such as
39 that. I haven't presented any information to this
40 committee before. I'm not sure of its terms of
41 reference.
- 42 Q Do you know why it ended in 2008?
- 43 A Not for certain. I know that the two programs
44 were integrated into the PICFI program so that
45 likely had something to do with it.
- 46 Q At Canada Tab 5 is a document I'd like to take you
47 to now. I understand it didn't go into evidence

- 1 yet, but I would like to tender it into evidence
2 with you and take you to page 2 of that document.
3 And at page 2 of that document, there's a
4 reference to an independent access relinquishment
5 team which will advise DFO regarding values of
6 licence eligibility and/or quota. Do you know
7 anything about this team?
8 A Not enough detail. I do know that some
9 consultants are hired with respect to providing
10 advice to PICFI, but I think that question's best
11 answered by PICFI.
12 Q So you don't know the proposed composition of this
13 team, you don't know how they might transition
14 from the work of the LERSC or any of those other
15 aspects?
16 A Yeah, I couldn't speak to them, no.
17 Q So you don't know whether First Nations will be
18 represented on that committee?
19 A I don't know for sure that it's actually
20 committee. I think it's a select team of those
21 that are consulted to provide us advice.
22 MS. GAERTNER: I just need one minute, Mr.
23 Commissioner.
24 Q Just one last question, and this is just a detail
25 question, if I've heard your evidence correctly
26 this morning and this afternoon, as a matter of
27 practice, DFO does not consider **Fisheries Act** or
28 licence violations in renewing an annual
29 commercial licence; have I got that right, that
30 that's not a consideration?
31 A If a particular licence holder or vessel owner is
32 charged or has committed a violation, it doesn't
33 withhold issuance of a licence unless the court
34 orders us to withhold the licence.
35 Q And are you aware that in First Nations
36 expressions of interest under PICFI, or otherwise,
37 their monitoring and catch reporting history and
38 otherwise are all considered when DFO moves
39 forward with considerations of their PICFI
40 applications?
41 A It may be one of PICFI's criteria, or consider an
42 application or development of the business plan.
43 Q And does that sound a little bit inconsistent to
44 you?
45 A Sorry, which -- what -- sorry?
46 Q Well, that you don't consider violations of the
47 commercial fisheries, or anything else, when

1 renewing their annual licences at all, unless the
2 court directs you to, but that whether or not a
3 First Nations is generally meeting all of the
4 requirements or otherwise is considered even
5 before they get in the door with the PICFI
6 application?

7 A Well, I mentioned earlier today, though, too, that
8 there are other monitoring requirements that
9 fishermen or commercial licence holders have to
10 meet, as well, before their licence may even be
11 issued. Some of them, for example, are involved
12 in a fishery where there's monitoring requirements
13 and they have to be registered with the service
14 provider that would provide dockside and at-sea
15 validation. So there's a number of requirements
16 that commercial licence holders will have to meet,
17 as well.

18 Q Has there ever been a non-renewal -- have you ever
19 not renewed commercial licences as a result of a
20 **Fisheries Act** violation?

21 A There has been circumstances where the Minister
22 has previously sanctioned or suspended licences.
23 Not in recent years. It may not have necessarily
24 been with respect to a violation. You'd have to
25 know the circumstances of an individual case, but
26 it has happened in the past. It's not been a
27 general practice to do so since the late '90s.

28 Q Adopted by exceptional -- thank you.

29 MS. GAERTNER: Those are my questions, Mr.
30 Commissioner. And I note I'm early.

31 THE COMMISSIONER: Yes.

32 THE REGISTRAR: Do you wish that to be marked?

33 THE COMMISSIONER: Unfortunately, Mr. Rosenbloom's not
34 here to find that out.

35 MS. GAERTNER: I'm sure I'll let him know tomorrow.

36 THE REGISTRAR: Did you wish your document to be
37 marked?

38 MS. GAERTNER: Oh, yes, please.

39 THE REGISTRAR: It will be Exhibit 592.

40 MS. GAERTNER: Thank you.

41 THE COMMISSIONER: I'm sorry, 592?

42 THE REGISTRAR: Yes.

43 THE COMMISSIONER: Thank you.

44

45 EXHIBIT 592: Information about the
46 Commercial Fishing Licence Eligibility and
47 Quota Relinquishment Process, January 2011

- 1
2 MR. MARTLAND: Mr. Commissioner, Mr. Eidsvik had
3 requested if there was time remaining, he didn't
4 cover as much ground as he'd hoped. I'm in your
5 hands with that request.
6 THE COMMISSIONER: I think he said he had 10 more
7 minutes, is that right? Five more minutes?
8 MR. MARTLAND: Five, great. Thank you.
9 MR. EIDSVIK: Thank you, Mr. Commissioner. Mr.
10 Eidsvik, for the record.
11
12 CROSS-EXAMINATION BY MR. EIDSVIK, continuing:
13
14 Q You referred to a decision about licence
15 sanctions. Were you referring to the Federal
16 Court of Appeal decision in **Canada and Matthews**,
17 in 1999, where the court said that the Minister
18 kind of had to pick one or the other, he either
19 had to do licence sanctions, but once there was a
20 prosecution undertaken that he was no longer
21 eligible to do that? Is that a decision you're
22 referring to, **Matthews**?
23 A That's the decision I was referring to.
24 Q Okay.
25 A I'm not aware of the details of the decision,
26 though, other than that general --
27 Q Yeah, I don't intend to get into detail on a court
28 decision in this -- I'm sure that --
29 A I wouldn't want to say.
30 Q -- everybody in here will jump on me if I do so.
31 I wanted to very quickly go over the PRLAB, and
32 about how many appeals in the last five years?
33 A They're significantly reduced, actually, in the
34 last five years. I wouldn't know off the top of
35 my head, but I would say just a few hundred.
36 Q Okay. And for someone who, say, wants to split a
37 licence, a salmon licence, that is married, a
38 PRLAB decision in his favour or her favour could
39 have a big impact on their financial status?
40 A It could have an impact on what their preferred --
41 or their fishing operation, yes.
42 Q Yeah. And I just want to go through quickly. Is
43 a public notice issued when a licence appeal is
44 filed and there's going to be a hearing on a
45 licence appeal?
46 A No.
47 Q Okay. Does the advisory -- say that there's a

- 1 licence appeal affecting an Area E licence, would
2 the Area A Gillnetters or the Area E Association
3 be advised?
- 4 A No third parties are advised of appeals that are
5 being heard or invited to participate in the
6 process. It's strictly the appellant.
- 7 Q And you said that sometimes DFO people will show
8 up at a PRLAB if it's an issue of concern?
- 9 A There's always a liaison officer that administers
10 the hearing and provides information to the Board.
11 Any of the information from other DFO people is
12 generally provided in writing and that person
13 would then present the information to the Appeal
14 Board.
- 15 Q Did I hear you correctly say that that always
16 happens?
- 17 A That a liaison officer is attending the meeting?
- 18 Q No, that a -- say that the licence issue is
19 concerning Area E, would the person in charge of
20 Area E always have input into that decision?
- 21 A The liaison officer would ask the salmon manager
22 working on that particular licence or area for
23 verification on whatever the circumstances are.
- 24 Q Okay.
- 25 A Something like area selection, though, it's pretty
26 clear what our policies have been and the
27 information.
- 28 Q And no matter who you are, what type of licence
29 you hold, everybody's treated the same in that
30 process?
- 31 A Any licence holder that's not satisfied with the
32 licensing decision can go through the process and
33 the same procedural fairness or guidelines are
34 applied to every individual.
- 35 Q Have you heard complaints about some fishermen
36 calling it the DFO star chamber?
- 37 A I haven't heard that specific one.
- 38 Q Okay. You've heard complaints about the process?
- 39 A I have heard complaints about the process, yes.
- 40 Q Okay. Thanks. I want to quickly shift onto
41 aboriginal communal licences, but I'm thinking you
42 might not be able to answer these questions so
43 it's fine if you can't, we'll bring it up in the
44 next one. And I'm referring to aboriginal
45 communal licences that govern the fisheries in the
46 Lower Fraser River, and do you issue those
47 licences through your licensing office?

- 1 A The communal licences, no.
- 2 Q Okay. So if you're a fisherman, say, in the
3 Musqueam-only commercial fishery, you don't
4 necessarily need -- you don't need to go to your
5 office to get a vessel licence or a personal
6 licence?
- 7 A That's the individuals --
- 8 Q It's separate?
- 9 A -- in the areas that would be -- that work on the
10 aboriginal fisheries strategy, or the issues in
11 the areas would be involved with the arrangement
12 that's made with the First Nations and the
13 agreement, and the issuance of a licence.
- 14 Q So the agreement contains the provisions for
15 licensing persons and vessels, not the fishery
16 regulations that govern what I call the public
17 commercial fishing fleet?
- 18 A Well, there's aboriginal, commercial fishing
19 licence regulations that are different than the
20 Pacific fishery licence regulations that we went
21 over this morning.
- 22 Q Okay.
- 23 A Yes.
- 24 Q But you don't manage the ACFLRs with respect to
25 the issuance of licences for vessels and people
26 through your office?
- 27 A If the licences are -- it's complicated. If they
28 are issued to a First Nation under the ATP and the
29 PICFI program, then the licensing system does
30 track those licences.
- 31 Q Okay. But with respect to the commercial
32 fisheries for Musqueam, Tsawwassen, Stó:lō and the
33 Lower Fraser, your office doesn't handle those
34 licences?
- 35 A That's my understanding, yeah.
- 36 Q Okay.
- 37 MR. EIDSVIK: Those are my questions. Thank you, Mr.
38 Commissioner. Thank you, Ms. Mijacika, for
39 answering the questions.
- 40 MR. MARTLAND: Mr. Commissioner, that concludes the
41 evidence on commercial fishing. I believe we can
42 be adjourned until 10:00 a.m. tomorrow and I'll
43 note also that at 9:15 at tomorrow, for counsel,
44 there's a meeting in this room. Thank you.
- 45 THE COMMISSIONER: Thank you, Mr. Martland, and thank
46 you to all counsel who are here today. And thank
47 you very much for appearing here and for your

1 willingness to answer questions. The Commission
2 is very grateful for that. Thank you.
3 A Well, thank you. I hope it was helpful.
4 THE COMMISSIONER: And we're adjourned, then, until 10
5 o'clock tomorrow morning.

6
7 (PROCEEDINGS ADJOURNED TO WEDNESDAY, MARCH
8 16, 2011, AT 10:00 A.M.)
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I HEREBY CERTIFY the foregoing to be a true and accurate transcript of the evidence recorded on a sound recording apparatus, transcribed to the best of my skill and ability, and in accordance with applicable standards.

Pat Neumann

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

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11 Diane Rochfort

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14 and accurate transcript of the evidence
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23 Karen Hefferland

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26 and accurate transcript of the evidence
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35 Susan Osborne

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42 standards.

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47 Irene Lim