

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.

Wednesday, May 18, 2011

Tenue à :

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

le mercredi 18 mai 2011

APPEARANCES / COMPARUTIONS

Patrick McGowan Jennifer Chan	Associate Commission Counsel Junior Commission Counsel
Mitchell Taylor, Q.C. Jonah Spiegelman	Government of Canada ("CAN")
Boris Tyzuk, Q.C.	Province of British Columbia ("BCPROV")
No appearance	Pacific Salmon Commission ("PSC")
Chris Buchanan	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
No appearance	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
No appearance	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Judah Harrison	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
Don Rosenbloom	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

APPEARANCES / COMPARUTIONS, cont'd.

Phil Eidsvik	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
Christopher Harvey, Q.C.	West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
Keith Lowes	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF")
No appearance	Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM")
Sarah Sharp	Western Central Coast Salish First Nations: Cowichan Tribes and Chemainus First Nation Hwlitsum First Nation and Penelakut Tribe Te'mexw Treaty Association ("WCCSFN")
Anja Brown Leah Pence	First Nations Coalition; First Nations Fisheries Council; Aboriginal Caucus of the Fraser River; Aboriginal Fisheries Secretariat; Fraser Valley Aboriginal Fisheries Society; Northern Shuswap Tribal Council; Chehalis Indian Band; Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council; Upper Fraser Fisheries Conservation Alliance; Other Douglas Treaty First Nations who applied together (the Snuneymuxw, Tsartlip and Tsawout); Adams Lake Indian Band; Carrier Sekani Tribal Council; Council of Haida Nation ("FNC")
No appearance	Métis Nation British Columbia ("MNBC")

APPEARANCES / COMPARUTIONS, cont'd.

Tim Dickson	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
No appearance	Laich-kwil-tach Treaty Society Chief Harold Sewid, Aboriginal Aquaculture Association ("LJHAH")
No appearance	Musgamagw Tsawataineuk Tribal Council ("MTTC")
No appearance	Heiltsuk Tribal Council ("HTC")

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4

5 THE REGISTRAR: The hearing is now resumed.
6

7 RANDY NELSON, recalled.
8

9 SCOTT COULTISH, recalled.
10

11 MR. ROSENBLOOM: Thank you very much. Good morning.
12 For the record, my name is Don Rosenbloom,
13 appearing on behalf of Area D Gillnet, Area B
14 Seiner.
15

16 CROSS-EXAMINATION BY MR. ROSENBLOOM, continuing:
17

18 Q Gentlemen, I have about five further questions to
19 ask you during the time allotted for my cross-
20 examination. The first one is to you, Mr. Nelson.
21 I may have not caught this correctly in your
22 testimony in chief yesterday morning, but I
23 believe you said something to the effect -- and we
24 don't yet have a transcript I should say, and so
25 I'm not reading obviously from a transcript. I
26 believe you said that reports about illegal
27 activities by your staff were presented to
28 resource managers, who either didn't want to do
29 anything about it, or didn't know what to do about
30 it. Is that the gist of some testimony you gave
31 yesterday morning?

32 MR. NELSON: That's the gist of the examples that I
33 provided yesterday, and it is a fairly frequent
34 occurrence.

35 Q Can we learn more about that, those occurrences.
36 Explain to us what exactly happens with your
37 staff. I assume that they come across illegal
38 activity, violations, as they see it, of the
39 **Fisheries Act**. What then transpires?

40 MR. NELSON: Well, I guess with the information that I
41 provided yesterday, a lot of our patrol time and
42 effort is focused on closed time. But in the
43 cases that, or the examples that I provided
44 yesterday, it was during open time and our
45 officers in the course of doing their licence
46 checks, checking for validation of people on the
47 water, they would count some of the fish that they

1 see in the vessels, and accumulate that
2 information, and then go to the resource manager
3 with it.

4 Q And then what happens in many cases?

5 MR. NELSON: Well, in cases where I've done it and in
6 the cases that I cited yesterday, the one in the
7 Lower Fraser that I cited yesterday, the fishery
8 officers took it to the resource manager in charge
9 of estimating the catch, and the feedback was,
10 well, you know, it could have been this, could
11 have been that. But there was a discussion, and
12 after that the final word on it was we will --
13 it's been raised and it will be discussed as a
14 next resource management conference call.

15 Q And then could I assume you never hear anything
16 more about it?

17 MR. NELSON: No. Yeah, there was nothing further that
18 I knew of happened in that case.

19 Q Can you explain to us from your perspective why
20 these resource managers are not backing up your
21 staff and pursuing matters that are raised by C&P?

22 MR. NELSON: Well, I can't explain it totally, but I do
23 know that sometimes it's the information back is
24 -- they have a defined model and have certain
25 sampling procedures involved in it, but what we
26 provide them is hard to extrapolate on and what
27 that might mean in the entire overall catch.

28 That's sort of the gist of the discussion back.
29 But let's find a way to use it. Like, let's, as I
30 stated yesterday, I think one solution might be to
31 put some rigorous random sampling process into the
32 catch monitoring system where fishery officers go
33 out and check a sample site that they can then
34 inject into their formulas to account for some of
35 this what we view is underreporting of catch.

36 Q And the problems you've just testified about are
37 quite frequent?

38 MR. NELSON: In my experience, yes, and what's reported
39 to me, yes.

40 Q Yes.

41 MR. NELSON: And not to -- in all fisheries, like,
42 there is a tendency for everybody to underreport.
43 I mean, that's -- if they're told they have a
44 total allowable catch of "X", well, if you report
45 your numbers accurately and get there sooner,
46 you're not going to catch as many fish as the next
47 guy to you who might be getting away with it.

- 1 Q Thank you very much. You testified briefly
2 yesterday about two programs that I would like to
3 have you expand upon your evidence. One is the
4 Charter Patrol program and the other is the Marine
5 Enforcement Officer program under the Coast Guard.
6 Let's take the first of those programs. The
7 Charter Patrol program, you testified yesterday
8 that this program had been in existence but was
9 terminated. Was that terminated around the year
10 2000?
- 11 MR. NELSON: I don't remember exactly, but I know the
12 numbers were lower and lower and lower, to the
13 point like there was 37, I think is the number I
14 quoted yesterday at one time is what we had on the
15 coast, and I don't know the exact year where it
16 became zero.
- 17 Q Now, I'm told it was quite an effective program.
18 Do you agree with that?
- 19 MR. NELSON: I think it was in two counts: another set
20 of eyes and ears for us dealing in compliance
21 work, and certainly was vital for resource
22 management and gathering better catch information.
- 23 Q Can you tell the Commissioner a little bit more
24 about this program. How did it operate, who were
25 your -- who were the parties on these patrol
26 boats?
- 27 MR. NELSON: I didn't work much -- I'll provide a
28 little bit of perspective and then maybe ask Scott
29 to add something. He worked on the coast, as
30 well. Essentially they are vessels that are owned
31 by private people, you know, in the 30, 40, 50 --
32 30- to 40-foot range generally, and it will be
33 perhaps one or two people on the boat. And they
34 worked -- they are hired under contract to the
35 Department for -- we pay, we pay them a daily
36 rate, "X" number of dollars per day for 100 days.
37 And during fishing season, these vessels will be
38 out on the water in certain areas and provide a
39 service to us of gathering catch information and
40 basically observing, recording, reporting
41 incidents that they might see back to C&P.
- 42 Q Are these boats licensed boats?
- 43 MR. NELSON: No, these were privately owned vessels for
44 the most part. Now, Scott, do you have...
- 45 MR. COULTISH: Yeah, that's correct. There were a
46 combination of types of vessels where they would
47 provide a service and then be allowed to fish as

1 payment, and provide us the fish that they would
2 harvest after a period of time. We did this with
3 herring fisheries and others, would then be used
4 as the payment. But what Randy's described is
5 correct, as well. This program kind of
6 metamorphosized, if you want to call it, over a
7 period of time.

8 The latest version that was quite effective
9 to us was back in the middle to late '90s as Randy
10 described. A contract would go out, solicitation
11 for a contract, and a vessel and a crew would be
12 hired and paid a per diem per day. As an example,
13 I know some vessels were being paid up to about
14 \$1,800 a day, depending on the size, because
15 they'd be quite large. And these vessels were
16 primarily used for C&P enforcement purposes.
17 And they'd be out, and exactly as Randy's
18 described, our eyes and ears to augment.

19 And that was done when our -- what we called
20 the Grey Fleet, which is our Fishery Patrol
21 program that we had when I started in the '80s,
22 was in excess of 30, 35 vessels. We actually had
23 a Marine Division within the Department. And as
24 that was cut back and cut back, we were concerned
25 about on-water presence. And the last patrol
26 process, patrolmen was as I described, that
27 eventually was cut and we've now gone to the four
28 Coast Guard vessels and our use of the day boat,
29 the RHIBs. But it was a very effective program for
30 us, given again as I described yesterday, 29,000
31 kilometres of coastline.

32 Q Now, the individuals that were manning these
33 particular boats, they wouldn't have any law
34 enforcement authority, would they?

35 MR. COULTISH: In fact, some of them did. They were
36 similar to the MEO program, where they had been
37 trained. Some of our skippers and people had been
38 trained, and they would be given limited powers.
39 They could write tickets, and so on. They weren't
40 able to arrest and seize vessels, and so on, but
41 they were given limited powers. And they would
42 report directly to the detachment in the area that
43 they worked and would work in conjunction with the
44 C&P staff on the water.

45 Q And those that didn't have law enforcement
46 authority would presumably radio to your staff of
47 what they are witnessing in terms of infraction;

1 is that correct?

2 MR. COULTISH: That's right. Yes. Through their radio
3 or direct communication. They'd also work in
4 concert with the resource management, what we call
5 charter patrolmen, whose primary duty was to
6 collect catch information, hail information, and
7 would work with the resource managers when again
8 because of the lack of actual presence, patrol
9 vessel presence, they would be on there during the
10 times that the fisheries were occurring,
11 collecting this information for in-season
12 management.

13 Q So it sounds, gentlemen, as if you were getting a
14 lot of bang for the buck. Why did it stop or
15 terminate?

16 MR. NELSON: Like a lot of things, times change,
17 funding change, costs go up, funding availability
18 drops. The charters that Scott was talking about
19 where it was commercial vessels and they were paid
20 with fish, a decision, court decision, the
21 **Larocque** decision stopped that from happening. So
22 that was one thing that happened. The Department
23 has moved to individual transferrable quotas in
24 some areas, and so the derby style fisheries are
25 somewhat less. There's less fishing time out
26 there. There's a whole lot of combinations. But
27 it's probably best to ask resource manager the
28 real reason why, you know, why the numbers have
29 dropped.

30 Q All right. But from your perspective, you would
31 like to see that program re-implemented?

32 MR. NELSON: I would like to see us have some marine --
33 more marine presence, whether it be charters, or
34 the next question you had was MEOs, or we've got
35 to have some presence in the marine environment.
36 This is one tool that could work.

37 Q Now, this program, as we discuss it, related
38 exclusively to the marine area; would not have
39 related to the river?

40 MR. NELSON: I don't believe there were -- I'm not sure
41 on that. If there would, they would have been
42 just in the lower river, but I'm not sure.

43 MR. COULTISH: We actually had one vessel in this
44 program based out of Steveston, and they in fact
45 did very similar type service. It was an older
46 gentleman and his wife that were the two
47 individuals, and he actually had again limited

1 enforcement powers for a period of time. When
2 that program ended, he then focused his activities
3 under Resource Management, where he would use a
4 small inflatable to collect catch information.
5 But he was no longer involved in any type of
6 compliance or enforcement.

7 Q Well, I may be naïve, but why would this program
8 have not applied to the river area, especially
9 after the kind of evidence we heard about
10 yesterday?

11 MR. COULTISH: It was primarily related to the
12 commercial fishing, commercial fisheries.

13 Q I appreciate that, but I'm asking again, very
14 naively, why would this program not be also an
15 effective tool in terms of monitoring in the river
16 system?

17 MR. NELSON: I think it might be because in the river
18 it's a lot easier, your fishery is much more
19 concentrated and our patrol capabilities of
20 smaller vessels is much greater. Whereas the
21 charter boats were more out in the ocean where
22 it's more open water. That's what I would think.

23 Q Thank you for that. And I come now to the Coast
24 Guard element, and to the CCG Marine Enforcement
25 Officer program. Again yesterday you testified
26 that that program is also defunct, is it not?

27 MR. NELSON: Yes.

28 Q And that program was operational until
29 approximately what date, what year?

30 MR. NELSON: It started in the 90s with -- maybe I can
31 just give a little bit of background on it. The
32 Marine Enforcement Officer program was training
33 Coast Guard employees who were on the Coast Guard
34 vessels in fishery officer work. They were
35 trained, issued side arms, they were fully trained
36 and capable of doing enforcement work. There was
37 55 of those at the start of the program.

38 Now, over the course of time, some of those
39 marine enforcement officers did a lot of
40 compliance work for us. They were really keen on
41 doing the enforcement work. Ranging to the other
42 extreme where some people didn't want to do this.
43 They wanted to be -- work on the Coast Guard
44 vessels and not do enforcement. So we had a whole
45 range of willingness to assist us. But some of
46 the staff were very effective at doing their job.
47 But over the course of time, the training didn't

1 keep up and as a crew graduated into captains, the
2 captain couldn't leave the vessel. So the numbers
3 over time reduced to the point where about two
4 years ago I think we were down to 11, and in the
5 last year it's been announced that they will not
6 be doing -- the Coast Guard will not be doing any
7 enforcement work and they'll be phasing out the
8 program.

9 Q You're disappointed with that?

10 MR. NELSON: Yes, because it's again, it's another
11 presence on the water, a capability we had to do
12 compliance work. And the four main patrol vessels
13 that we have now are going to be replaced over the
14 next several years with the Mid-Shore Patrol
15 Vessels, which are a larger vessel, and we have
16 been told we should expect to put fishery officers
17 on those vessels. And I said yesterday, that's
18 going to take a lot of -- lot of staff.

19 Now, what I did do is at a meeting with the
20 former Director General of Coast Guard, I tabled
21 the idea of, okay, you said you're out of the
22 marine enforcement program, but could we consider
23 with the new Mid-Shore Patrol Vessels, having two
24 trained marine enforcement officers on board at
25 all times. In other words, two of your crew on
26 that boat have to be trained in fishery officer
27 work, but -- and we will put one uniformed fishery
28 officer on board with them. That way you can meet
29 the standard of having to have three officers to
30 do a patrol on the water, but you wouldn't have
31 the need to put three uniformed fishery officers
32 on board the vessel. Two of the crew members
33 could assist that officer whenever he's on board.
34 And if the fishery officer is not on board, then
35 the marine enforcement officers wouldn't have to
36 do enforcement work. That way, it would meet
37 their needs, and still allow us to use the Coast
38 Guard vessels without a full complement of three
39 fishery officers.

40 Q And very briefly his response?

41 MR. NELSON: "That sounds like something we could
42 consider," but that was quite some time ago, and
43 nothing has happened since.

44 Q Fair enough. I have ten minutes left, and I have
45 two --

46 MR. NELSON: Okay.

47 Q -- topics that I do want to cover. Mr. Nelson,

- 1 last occasion when you were here two, three weeks
2 ago, you and I had an exchange over this business
3 of the unpaid fines and the million dollars, and
4 your counsel yesterday in chief clarified the
5 testimony you gave previously. And I understand
6 from yesterday's testimony that you are led to
7 believe there are approximately 1,700 or 1,800
8 offenders that have not paid their fines; is that
9 correct?
- 10 MR. NELSON: That's correct.
- 11 Q All right. Now, my question to you is this.
12 Yesterday you testified that you have been able to
13 achieve some linkage between unpaid fines and
14 licence renewals. Did I not understand that?
- 15 MR. NELSON: Yes.
- 16 Q And can you tell me what is that linkage, what
17 licences are not renewable without the payment of
18 fines?
- 19 MR. NELSON: It was commercial licences that they were
20 -- I was referring to.
- 21 Q All right. And only commercial licences?
- 22 MR. NELSON: Yes, because --
- 23 Q So -- I'm sorry.
- 24 MR. NELSON: Yes, because the recreational are issued
25 by the province.
- 26 Q Yes. Now, can you foresee with the cooperation of
27 the provincial government that the structure we
28 just spoke about --
- 29 MR. NELSON: Yep.
- 30 Q -- in terms of the inability to renew a licence,
31 could, with the cooperation of the province,
32 prohibit the renewal of, for example, driver's
33 licences without the payment of fines.
- 34 MR. NELSON: That would be a wonderful thing.
- 35 Q Yes. And if that was arranged with the provincial
36 government, one would see a huge turnaround in the
37 payment of these fines, wouldn't they?
- 38 MR. NELSON: I would think so.
- 39 Q And would you -- are you aware that in the Yukon
40 Territory, albeit they do not have a provincial-
41 federal structure, that such an arrangement does
42 in fact exist in terms of payment of fishery
43 fines?
- 44 MR. NELSON: I'm not aware of that.
- 45 Q All right. Have you ever had discussions with the
46 provincial government to encompass the provincial
47 licensing system in terms of the payment of fines?

1 MR. NELSON: One of my staff has had some discussions,
2 but personally I haven't, and I know some of the
3 advice within the Department is that would be
4 really difficult to do, but let's -- I'm all for
5 it. I would love to see us try and do it, and
6 push to do it. Yes.

7 Q That would certainly add to the deterrence of
8 committing violations on the water, wouldn't it?

9 MR. NELSON: Yes. In my view, yes.

10 Q Thank you. The last area that I want to speak
11 about relates to the fiscal situation, and you
12 have given a great deal of evidence, both last day
13 and yesterday, in respect to the chronic
14 shortfalls on funding. In the PPR, and I ask Mr.
15 Lunn if he would bring this up, at page 63 of the
16 PPR, it basically documents the fiscal shortfalls
17 that you are encountering within C&P and, for
18 example, paragraph 131, 132.

19 What I don't see here, and I'm not faulting
20 the authors of this report, but I don't see
21 information about the current fiscal year. I
22 appreciate this report was dated April 19th of
23 this year, which is just 19 days in the new fiscal
24 year. I do not believe this Commission up to this
25 moment in time has the evidentiary base in respect
26 to the fiscal issues for this current fiscal year,
27 especially in the context of the Deputy Minister
28 testifying late last year about the five percent
29 cuts that she was facing from Treasury Board. I
30 wonder if you could speak to that.

31 MR. NELSON: Yeah. Yes, I can, and it's no wonder that
32 they wouldn't have the information on April 19th,
33 because we wouldn't either.

34 Q You have it now?

35 MR. NELSON: We have it now, and last week we had a
36 meeting with the Chiefs and we went over all the
37 numbers, and what we came up with in the end is we
38 were short about 500,000 or 600,000 in salary and
39 about 400 or 500 in operating money, by our
40 projections. So we looked at it and said, okay,
41 with the salary, let's address the salary
42 shortfall first, because you have to pay your
43 employees. We looked at -- we currently have five
44 vacancies in the region. We said we can't fill
45 those this year, and that will generate us part of
46 the savings.

47 That left us with about \$260,000 short in

1 salary. So then we looked at, well, how are we
2 going to make this up. We can -- the only salary
3 option we have is on overtime. We considered
4 cutting that, and then we thought, no, let's do
5 what you call risk managed, in other words, hope
6 that this year is like most in that some officers
7 will retire and some may move to other jobs, and
8 that \$260,000 shortfall in salary will accumulate
9 over the rest of the fiscal year. And I'm very
10 confident that that will happen on the salary
11 dollar side.

12 On the operating side, we've asked our Chiefs
13 to go back and rework their numbers and produce a
14 work plan with that reduction in operating money.

15 Q Right. Well, without miring ourselves too deep
16 into all these figures, is this fiscal year even
17 more challenging than last year's fiscal
18 situation?

19 MR. NELSON: Definitely. Definitely.

20 Q Significantly so?

21 MR. NELSON: Yes.

22 Q And then we are all staring down April 1st of
23 2012, and we've learned about the PICFI monies
24 being terminated. We learned about the Williams
25 money being terminated. What's the prognosis for
26 2012 in light of what you're facing even now?

27 MR. NELSON: Much worse, and that's where we could be
28 faced with a shortfall equivalent of 30-plus
29 fishery officers, so it will be much more
30 dramatic.

31 MR. ROSENBLOOM: Thank you very much for answering my
32 questions, both of you. Thank you.

33 MR. EIDSVIK: Good morning, Mr. Commissioner. Philip
34 Eidsvik for the Area E and the Fisheries
35 Coalition. It's 10:30 and I originally had an
36 hour, but I understand we're in some time
37 pressure, so I'm going to try and finish before
38 then.

39
40 CROSS-EXAMINATION BY MR. EIDSVIK:

41
42 Q Mr. Nelson and Mr. Coultish, and perhaps, Mr.
43 Nelson, you could answer these questions. And
44 we're often wondering about the importance of
45 enforcement, and for most Canadians, the only
46 interaction they're going to have with DFO is
47 through a fishery officer; is that correct?

1 MR. NELSON: In a lot of cases, yes.
2 Q Unlikely they're going to meet a DFO scientist, or
3 fishery manager or minister or deputy?
4 MR. NELSON: Not as frequently.
5 Q And most interactions with the public are pretty
6 good?
7 MR. NELSON: Yes. Yes, very good, and we've made some
8 concerted efforts at improving that, and I'd say
9 over recent yeas it's much improved.
10 Q Some can be kind of difficult?
11 MR. NELSON: Some can be extremely difficult.
12 Q Sworn at, called names.
13 MR. NELSON: Worse. Worse.
14 Q Attacked with weapons?
15 MR. NELSON: Yes.
16 Q Shot at?
17 MR. NELSON: It's -- there's been shots fired over
18 nearby fishery officers. Nobody's ever been hit.
19 Q Anybody ever take you aside and say what a great
20 job you guys have done, and complimented you?
21 MR. NELSON: Ken Malloway did, I understand, a little
22 while ago. So it does happen.
23 Q It does happen. And the importance of
24 enforcement, and if there's a species in trouble,
25 and you have a bunch of DFO scientists working and
26 some fishery managers meeting and there's papers
27 and conferences, and after many years typically
28 they decide we're going to stop fishing on the
29 species, is all that work worth anything at all if
30 there's not an enforcement presence to stop the
31 fishing?
32 MR. NELSON: It has some value. It has a very high
33 risk of not being followed, so it's, I wouldn't
34 say it's worthless, but it's, you know, once
35 people find out that there's not a presence out
36 there, the small fraction of society that breaks
37 the law will grow and grow and grow, in my view.
38 Q Do you think senior management gets how important
39 the enforcement role is?
40 MR. NELSON: Some do.
41 Q Some do. And that brings me to budgeting. We
42 talked quite a bit about that, and I'm not going
43 to bring you through all the documents because
44 you've gone over it a few times. But I wouldn't
45 mind, if you mind, Mr. Lunn, going to Exhibit 77
46 at page 60. And I'll read it while he's bringing
47 it up. At the bottom of the page it says:

1 DFO must formulate a strategy and plan that
2 will marshall (sic) the personnel,
3 facilities, equipment and communications
4 systems needed to re-establish a credible
5 enforcement deterrent. The first step in the
6 process must be a proper assessment of what
7 is required, at a minimum, to ensure adequate
8 enforcement. That cannot be achieved in the
9 context of a budget exercise. Once the
10 essential elements of an effective
11 enforcement system have been specified, then
12 and only then can the authorities look to see
13 if the available funding is sufficient. If
14 at that time it is perceived that the
15 existing budget cannot support adequate
16 enforcement capacity, DFO should be prepared
17 to reallocate priorities within the
18 Department.

19
20 Has that been done?

21 MR. NELSON: Not in my experience.

22 Q The way Mr. Fraser stated it out, it's actually
23 backwards. First you get a budget and then you're
24 told this is how much you can enforce, whereas he
25 said tell us how much you need to enforce and
26 we'll find the money for you.

27 MR. NELSON: I guess with the Fraser, there had been
28 some information pulled together on what some of
29 our needs were to do a credible program, as there
30 were in 2005. And for a short time I would say we
31 were achieving some of those results. But it's
32 the long-term permanent solution that has to be
33 achieved, and these have tended to be temporary.

34 Q Now, you've had other peoples and other parties
35 saying we need more money for enforcement, and
36 that would include organizations such as the
37 people that I'm here for today, the Area E
38 fishermen have been saying more money for
39 enforcement. Mr. Coultish, I see you nodding your
40 head.

41 MR. NELSON: Sorry, are you asking me if I've heard
42 that?

43 Q Yeah, if you've heard from other groups that we
44 should be supporting more enforcement in DFO.

45 MR. NELSON: I think through meetings, through the
46 Integrated Salmon Fisheries Dialogue and the
47 Integrated Harvesters Planning Committee, the

1 feedback is from all user groups generally, and
2 the public, that they ask for more enforcement.
3 Now, we can't -- we can't be behind every tree and
4 along every section of river, but I think there's
5 a balance. And in my view, we're on the low end
6 of the scale; certainly not what public expects
7 from us.

8 Q Mr. Lunn, if I could go to Exhibit 605 at page 49,
9 please.

10 MR. COULTISH: Just an addition to that, Mr.
11 Commissioner, during my service as Area Chief of
12 the North Coast, which is the general duty uniform
13 officers, as a result of the interactions I used
14 to have with many of the organizations, the fleet,
15 the industry, I would attend on behalf of the
16 Department many of the industry meetings, and
17 there wasn't a one that I attended, after and
18 discussions with regards to our program, that I
19 wouldn't be approached by individual members
20 expressing what could they do to assist us in
21 obtaining additional funding for our program. And
22 on many of them, motions would be passed with the
23 idea of requesting from the Department, from the
24 Minister, stabilizing additional funding for our
25 group, for C&P.

26 Q What I've brought up, the next exhibit is a House
27 of Commons report in 2004, and at the bottom,
28 second to the bottom paragraph it says --

29 MR. NELSON: I see that, it jumped out at me.

30 Q Yes:

31
32 Secondly, the Committee proposes that the
33 Government of Canada...

34
35 And I like the last sentence:

36
37 An amount of \$25 to \$30 million would be a
38 good start.
39

40 Now, that was the Bloc Québécois, the Liberals,
41 the NDP, and the Conservatives. So what I'm
42 saying is your pleas for enforcement dollars have
43 been made at the political level, they've been
44 made at the stakeholder level, they've been made
45 inside the system through you and your associate
46 fishery officers, and yet we're still in trouble
47 on enforcement. Do you feel like this is just a

1 never-ending battle? It must be a bit
2 demoralizing.

3 MR. NELSON: Yes, but I'm persistent.

4 Q Ah, okay. If we could go to the PPR13 at page
5 125, please.

6 MR. COULTISH: Sorry, Mr. Commissioner, yesterday I
7 exhibited what I could call a little bit of
8 passion for when I was talking about the fact
9 that, you know, people love us and, you know, we
10 need some money, and leave us alone. And when I
11 say that, this line of questioning, and is exactly
12 that type is, and these recommendations is that
13 for those of us in this business, that we've been
14 here, you know, a long time, we see this, these
15 recommendations, these comments, over and over
16 from people well above our pay grade, and our
17 wisdom, probably. And it is very frustrating for
18 us when we face what we're facing, as an example
19 this year and next, understanding the expectations
20 the people of Canada that place upon us, that we
21 see and meet and talk about every day in the
22 communities, and are asked what can we do to help
23 you. So I think there's a huge amount of support
24 for us, other than maybe in the exact locations or
25 in places that we need it.

26 MR. NELSON: And I think I mentioned yesterday, too,
27 along that. I'm concerned about the fishery
28 officers who are out there in the field every day
29 and are fielding these constant questions like,
30 "Why aren't you out there more and more?" And
31 have to continue to try and do the job under
32 extremely stressful situations. So it's tough.

33 Q Mr. Lunn's been kind enough to bring up this
34 graph, and I was curious when I was looking at it.
35 What the heck is the "NCR"?

36 MR. NELSON: National Capital Region. So that's the
37 Ottawa part of the Department.

38 Q What type of fisheries do they have in the NCR?

39 MR. NELSON: Well, it's the senior management segments
40 of all the Department. So it was put in there, it
41 really isn't relative or relevant to the three
42 marine, the three East Coast marine areas, and
43 Central & Arctic was put on there, too, because it
44 is a region, just but it's quite different than
45 the marine ones.

46 Q Well, I guess I'm wondering, there's no billion
47 dollar commercial fishery there, there's no

- 1 aboriginal fisheries, you don't need helicopter
2 overflights, night patrols, and there's no 400,000
3 recreational fishermen, yet we have in Ottawa a
4 fairly big expenditure --
- 5 MR. NELSON: Let's keep in mind that this is a
6 percentage of the Ecosystems and Fisheries
7 Management, so the numbers may not be --
- 8 Q May not be significant?
- 9 MR. NELSON: Yeah, they may not be as significant. I
10 could check and find that out, but I'm not sure --
11 it was just to show the percentages within the
12 program.
- 13 Q Thank you. I guess the next question I'm trying
14 to figure out is do you think the Minister and the
15 other, some of the other bodies that do oversight,
16 such as the Parliamentary and Senate Fisheries
17 Committee, are accurately advised on a regular
18 basis about enforcement issues. And the reason I
19 ask that is our system of government is set up so
20 it's accountable through the Minister, and those
21 committees are set to be oversight. And I've
22 always wondered whether the Minister knows.
23 And perhaps if we could go to, Mr. Lunn,
24 Coalition documents at Tab 9. And this is to do
25 with the 1994 fishery, and we are going back a bit
26 but I think a little bit of history is
27 appropriate. So if look at the first quote in
28 that cover page, it's Minister of Fisheries --
- 29 MR. DICKSON: Sorry, Mr. Eidsvik, if you don't mind me.
30 Mr. Commissioner, this is a document that appears
31 to be a collection -- oh, sorry, it's Tim Dickson,
32 for the record. It appears to be a collection of
33 quotes put together by the Fisheries Survival
34 Coalition, and I'm just, I'm not sure of their
35 source. It, as I say, it seems to be put together
36 as an advocacy piece by the Coalition, and I'm
37 just not sure how helpful that is for you.
- 38 MR. EIDSVIK: Do you remember the Minister of Fisheries
39 stating that in '94, Mr. Nelson, something like
40 that?
- 41 MR. NELSON: I don't remember that quote. I honestly
42 don't. I don't know if Scott does.
- 43 MR. COULTISH: No, I couldn't say at all on this one.
44 No.
- 45 Q Well, perhaps we can move on. Following in 1994
46 there was a number of leaks from papers and
47 documents released by fishery officers, and that

1 led to a fairly large public outcry, and finally
2 led to a meeting between fishery officers and the
3 Minister; is that correct?

4 MR. NELSON: Yes.

5 Q Did you attend that meeting?

6 MR. NELSON: I chaired it on behalf of the fishery
7 officers.

8 Q Were you there also, Mr. Coultish?

9 MR. COULTISH: Yes.

10 Q How many times -- did it help resolve -- did the
11 Minister finally get a grasp on the enforcement
12 troubles you were facing?

13 MR. NELSON: Yes.

14 Q And how many times have you met with our various
15 Ministers since that time?

16 MR. NELSON: I met the current Minister once in Regina
17 at a troop graduation just briefly, but that's --
18 that's all that I remember since that.

19 Q And that's it since 1994. And it took a fairly
20 big crisis to get the meeting in '94.

21 MR. NELSON: Yes.

22 Q If we could go to Exhibit 77, Mr. Lunn, at page
23 xii. While we're doing that, perhaps I can ask,
24 is the head of Enforcement in Ottawa, does he have
25 an enforcement background?

26 MR. NELSON: The current person in the chair?

27 Q Yes.

28 MR. NELSON: He has some background in Environment
29 Canada, but I'm not sure it was compliance
30 related.

31 Q So not a fisheries officer worked up through the
32 ranks.

33 MR. NELSON: No, definitely not.

34 Q At page xi, and if we go down partway through, and
35 it's the second-to-last paragraph, the second
36 sentence, and it says:

37
38 Well into the 1994 salmon season, when
39 reports of abnormal numbers of missing
40 sockeye were made public, some DFO officials
41 were in a state of denial as to the existence
42 of a problem.

43
44 And that was the reason I brought up Mr. Tobin's
45 information. And do you believe the Department
46 was in a state of denial about enforcement in
47 1994?

1 MR. NELSON: Yes, and has been there occasionally
2 since.

3 Q Yes. Given the instructions for cuts coming up,
4 would you say the Department is still in a bit of
5 a state of a denial about the level and the
6 commitment you need for enforcement?

7 MR. NELSON: Well, I guess, I also recognize that the
8 overall, you know, government has to be fiscally
9 responsible, but in my view, the cuts to the core
10 program, that is the last -- takes the last face
11 that is facing the public all the time and trying
12 to deal with the compliance issues, I think that's
13 gone beyond what public expectations are, below
14 what expectations are.

15 Q Now, in the -- you talked a bit about yesterday,
16 about the enforcement in the public commercial
17 fishery. Is there a particular violation, serious
18 violation problem you need fixed there?

19 MR. NELSON: In, sorry, which?

20 Q In the public commercial fishery?

21 MR. NELSON: In the public commercial fishery, well, I
22 view all the commercial fisheries -- there are,
23 I'd maybe ask Scott in his experience on the
24 coast, but there are -- I do have some compliance
25 numbers. If Scott can answer a question, I'll
26 see, I think I wrote something down about some
27 compliance numbers here, but I have to check.

28 MR. COULTISH: I would suggest that the single biggest
29 -- well, two issues: one is licence conditions
30 and their enforceability, and DFO presence on the
31 water are primarily the two issues. We generally
32 have a good compliance rates with our commercial
33 fisheries, other than when we get into things such
34 as selective fisheries on weak stock, release of
35 prohibited species by certain gear groups can be a
36 problem, and again at the end of the day when it
37 boils down to compliance, we find that in most
38 cases compliance is at an acceptable rate when
39 we're present, when there's a DFO presence.

40 MR. NELSON: I did find the numbers I was thinking
41 about, and this is from South Coast, which is
42 Johnstone Strait, Vancouver Island area, and in
43 the comments to me were South Coast troll fishery
44 - this is from 2010 - was very, or the trollers
45 were basically very compliant except where dual
46 fishing was involved. And in the net fishery
47 there was about a 10 percent non-compliance issue.

- 1 In the recreational fishery there was seven
2 percent non-compliance issue with problems arising
3 in Port Alberni and Gold River. So that was some
4 statistical information.
- 5 Q That helps me a little bit. The ten percent that
6 you talked about in the commercial sector, what
7 particular type of offence is that?
- 8 MR. NELSON: I don't know that.
- 9 Q Not offhand, okay.
- 10 MR. NELSON: Yes.
- 11 Q And in the recreational fishery, is there a
12 particular problem there that needs to be fixed?
13 I see you nodding your head, Mr. Coultish.
- 14 MR. COULTISH: Well, again experience, what we found
15 with the general, I would say, compliance or the
16 -- in the general public in many cases is that
17 people who are travelling from long distances, and
18 I'll speak to my experience on the North Coast
19 primarily, but as well as other parts of the
20 province I've worked in, when people are
21 travelling long distances, spending a lot of
22 money, they want to go home with something. And
23 we're finding more and more that people simply
24 will do or get -- will get enticed to do whatever
25 it takes. Now, this isn't everybody. I mean,
26 this is, when I say the "creep", that is the
27 compliance, the non-compliance creep from those
28 people who are generally very good people, the
29 ones that are the offenders, the ones that are in-
30 flowing, that they can see it and hear it and so
31 on, are starting to creep into that generally good
32 compliance people. And this is in every fishery.
33 There's no questions about it.
- 34 Q Thank you for that. Now I'm going to turn to the
35 enforcement in the aboriginal fishery. Mr.
36 Nelson, in 1986 you were a pretty young officer, I
37 think. You probably didn't have any grey hair
38 then?
- 39 MR. NELSON: No, that's right.
- 40 Q What year did you join the Department as a fishery
41 officer?
- 42 MR. NELSON: 1977, January.
- 43 Q Oh, okay. Were you surprised at the level of
44 confrontation in some areas between aboriginal
45 fishermen and the Department?
- 46 MR. NELSON: Very much so.
- 47 Q Was there an awareness inside the Department at

1 the time that the illegal sale of food fish was
2 growing and quite widespread?
3 MR. NELSON: What I remember from back then, there were
4 problems in the illegal sales of FSC. I couldn't
5 say I could remember back if it was growing, the
6 same, or where it was in relation to that time
7 period.
8 Q Mr. Lunn, perhaps we could pull up Tab 7, please.
9 MR. NELSON: I was around in the '82 Pearse Commission
10 Report and some of the findings in there seemed t
11 indicate that.
12 Q Are you familiar with this document, Mr. Nelson?
13 MR. DICKSON: Sorry, Mr. Eidsvik. Mr. Commissioner, I
14 object to this -- sorry, it's Tim Dickson, for the
15 record. I object to this document being put
16 forward to these witnesses. It appears to be
17 transcript -- it purports to be a transcript of
18 some sort of meeting at which neither of these two
19 officers is listed. It's not indicated on the
20 document in any way how this alleged transcript
21 was taken. It's utterly hearsay in respect to
22 these officers and totally inappropriate, in my
23 respectful submission.
24 MR. EIDSVIK: I don't think -- Mr. McGowan, perhaps I
25 could respond a little bit, and I know I'm going
26 to get a fair amount of objections on this next
27 section, but my time keeps being --
28 MR. MCGOWAN: I'll just stop you, Mr. Eidsvik, for a
29 second.
30 MR. EIDSVIK: Yes.
31 MR. MCGOWAN: Usually it's my practice to wait till
32 I've heard the question to object and it may be
33 that the appropriate thing would be for Mr.
34 Eidsvik to state the question he seeks to put to
35 the witness. Perhaps if there's sensitivity
36 around individual names, perhaps not naming any
37 names, but explain to the Commissioner the
38 question you intend to ask and perhaps parties can
39 weigh in after they know where you're heading.
40 MR. EIDSVIK: I think before we do that.
41 Q Mr. Nelson, were you familiar with this sting
42 operation?
43 MR. NELSON: I'm familiar with some of the names in --
44 MR. MCGOWAN: Mr. Nelson, I'm sorry, I'm just going to
45 stop you.
46 MR. NELSON: Yes.
47 MR. MCGOWAN: There's been an objection and I think we

1 have to resolve that before you go any further,
2 Mr. Eidsvik. So perhaps if you could state what
3 your question is going to be and we can hear from
4 Mr. Dickson and anybody else who wishes to speak
5 to it.

6 MR. EIDSVIK: There's a number of questions that arise
7 out of this document. It's one of the early
8 looks, and it goes back to 1989, that goes to the
9 scale and the practice and the ability to move
10 large quantities of food fish. Perhaps if my
11 friends are willing to concede that the illegal
12 sale of food fish has been a tremendous problem
13 that took tremendous DFO resources from 1989 on,
14 I'm quite happy to set aside the document.

15 MR. DICKSON: I don't take my friend's suggestion
16 there, and I do maintain my objection to this
17 document. As I say, it's hearsay. I doubt, I
18 doubt very much that my friend is going to be able
19 to establish in a meaningful way the basis for
20 this transcript. But I do say this, as well, that
21 it's not appropriate in the context of this
22 inquiry. And I refer, of course, to the finger-
23 pointing sort of limitation on the questions that
24 you wrote into your ruling on the interpretation
25 of the terms of reference. And I just submit that
26 this is getting a little off course from where
27 this inquiry ought to be.

28 THE COMMISSIONER: Mr. Eidsvik, I think you are going
29 to run into these difficulties. What we're
30 dealing with here is process and the
31 responsibilities that these officers carry out on
32 their daily duties, and within the Department, how
33 they deal with specific areas that they might be
34 concerned about, or that they are charged with the
35 responsibility for pursuing. So questions to them
36 of a process, and if it includes illegal sales,
37 for example, a matter that arose yesterday, then I
38 would suggest to you that that would be an
39 appropriate area to ask them about, but going back
40 into these documents do not assist me a great
41 deal.

42 So if you want to deal with the process side
43 and the area of responsibility, for example, if
44 they have any statistics about how a certain area
45 that you are concerned about has grown over the
46 period of ten years or 20 years, they can advise
47 the Commission about how that element of their

1 work has grown or diminished. I think that's
2 fair. But to go into documents that are hearsay
3 that go back 20 or 25 years, I don't think are
4 much help to me.

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

6 Q Are you aware that in the Lower Fraser, going back
7 at least two decades, the illegal sale of food
8 fish has been a tremendous problem for the
9 Department?

10 MR. NELSON: Yes, it has. And from talking with staff
11 in the area, the level of sophistication has
12 increased, and some of the techniques used has
13 increased as well.

14 Q While I ask you the next question, perhaps, Mr.
15 Lunn, you could pull up Exhibit 729 at page 18.
16 Has there been a number of times where fishery
17 officers were instructed not to lay charges or not
18 to move, enter into a certain area, where
19 enforcement actions were compromised by fishery
20 managers?

21 MR. NELSON: Sorry, the last part of the question
22 was...?

23 Q Where enforcement action was compromised by
24 fishery managers.

25 MR. NELSON: It has happened, yes.

26 Q On this particular document at page 18 in the
27 middle column, there's the first bullet:

28
29 Fishery officers had been instructed not to
30 lay charges while delicate negotiations about
31 fishing Agreements were ongoing.

32
33 That's been -- was a source of controversy at the
34 time, I understand?

35 MR. NELSON: And I'm not sure -- where is this from
36 again?

37 Q This is the 1992 Peter Pearse report into the
38 missing fish in 1992.

39 MR. NELSON: Yeah, I don't know where specifically
40 they're referring to in that statement.

41 Q I think it's a general conclusion that he was
42 making.

43 MR. NELSON: It's certainly possible. And somebody
44 provided that information to them, I don't
45 remember who it was, or what it was in relation
46 to. I don't know if Scott has any idea?

47 MR. COULTISH: Well, not in reference particularly to

1 this document, but I'm aware of a circumstance in
2 the last several years where this has occurred.
3 MR. EIDSVIK: And if I could go to Tab 9, Mr. Lunn, at
4 page 19.
5 THE COMMISSIONER: I'm sorry, which tab is it?
6 MR. EIDSVIK: Tab 9 in our set of documents, page 19.
7 Q Now, this is meeting record, as the title states.
8 Do you recognize --
9 MS. BROWN: I'm sorry, Mr. Eidsvik, Anja Brown for the
10 First Nations Coalition. Mr. Commissioner, I
11 believe Mr. Dickson's objection with respect to
12 Tab 9 still stands. And I simply say that the
13 Coalition also has concerns about this entire tab.
14 There are a number of documents, excerpts of
15 documents, we question the relevance of them, and
16 also the timing of them.
17 MR. EIDSVIK: I think I'll establish the relevance as I
18 go along, Mr. Commissioner. This problem of no-
19 charges orders is a long-standing problem, and
20 perhaps I can put that question again, but I don't
21 think it will go properly without the evidence and
22 the documents.
23 THE COMMISSIONER: Well, I'm not sure that you want to
24 establish relevance as you go along. Perhaps you
25 could tell me what is the relevance of this
26 document, or these line of documents to this
27 hearing.
28 MR. EIDSVIK: In 1992 there was a -- it was very
29 controversial about whether the fishery officers
30 had issued no-charges orders. The Department
31 argued, said that hadn't happened. Then we saw
32 the same thing mentioned again in 2004, and we've
33 heard the same instructions. I'm trying to
34 establish is this a bigger problem inside the
35 Department. Is there the will to enforce certain
36 fisheries. Is it even across fisheries.
37 THE COMMISSIONER: Why don't you just ask the question?
38 MR. EIDSVIK: I think the documents provide context for
39 the question, Mr. Commissioner.
40 THE COMMISSIONER: Well, I think you can ask these
41 officers if they have any knowledge about the
42 history of the matter you're relating to now, and
43 then ask them the question you want to ask them.
44 MR. EIDSVIK: Perhaps I can go to Exhibit 605, Mr.
45 Commissioner, at page 77.
46 Q Now, if we go back to 1992 -- sorry, we'll start
47 at the top, the first quotation. This is the

1 Minister of Fisheries speaking in 1993. He says,
2 "...with respect to the sale of fish," we are not
3 doing this - and he's referring to the aboriginal
4 commercial fishery - we're not doing this because
5 we have to do this because of **Sparrow**:
6

7 We are doing this because we think it's the
8 best public policy because we know that for
9 years . . . The Aboriginals have been taking
10 the fish and selling the fish in great
11 quantities. It's an experiment to see
12 whether this is a better way to do it...
13

14 So here we have the Minister of fisheries summing
15 up the point that I've been bringing to you so
16 far, the level and scale of illegal sales were
17 such that they decided to try legalizing as a
18 means to control and get a handle on it. Do I
19 have that correct, Mr. Nelson?

20 MR. MCGOWAN: Well, with respect, Mr. Commissioner, I'm
21 not sure this is the time to be reading documents
22 and making submissions. If Mr. Eidsvik has a
23 question to put to the witness, a proposition he
24 wants the witness to either adopt or speak to or
25 expand upon, I don't object to that line of
26 questioning, but simply pulling up documents and
27 reading documents and suggesting to the Commission
28 that they support a point and then moving on, I
29 submit, is not particularly helpful.
30

31 MR. EIDSVIK:

32 Q Based on your experience, did Mr. Minister Crosbie
33 have it correct, Mr. Nelson?

34 MR. NELSON: Well, what I believe what was being
35 referred to here is the initial pilot sales that
36 were started on the Fraser River, and in the first
37 couple of years the pilot sales had mandatory
38 landings with them, and from what I recall in
39 talking -- oh, I didn't work in the area where
40 this happened, talking to officers that did, the
41 catch information during those initial pilot sales
42 compelled First Nations to bring all their catch
43 and have it recorded, and thought that that
44 information was actually fairly accurate. What
45 happened after that was agreements were not
46 reached, and later on economic opportunity sales
47 were commenced.

Q And I'm going to go back to the question that I

1 wanted to put to you. Have you ever heard of in
2 addition to the no-charges orders, where charges
3 had been laid and subsequently dropped, due to
4 interference, political interference by a Minister
5 or by a fishery manager, or somebody else in the
6 aboriginal fishery?

7 MR. NELSON: I know of cases where charges have had to
8 be dropped for a whole number of reasons.
9 Sometimes it's because the resource manager had
10 opened a fishery with the belief they had proper
11 conservation concerns -- open or closed a fishery
12 believing they had proper conservation, and
13 subsequently deemed they weren't able to, and that
14 happened a lot. And it used to happen a lot more
15 as you go back in history. But since line
16 reporting it's happened less, because we're able
17 to speak out and be heard a little more about some
18 of the problems we have with the **Regulations**.

19 As far as direction to officers to not charge
20 or not patrol, there's a whole lot of factors that
21 come in to weigh there. And in some cases, very
22 rarely, if there are some sensitive negotiations
23 going on, we will keep that in mind. We're not
24 saying to our officers "Don't go out there," but
25 "Be aware, you know things are a little tender out
26 there. Let's approach this and work with them."

27 And another issue that can pop up is if
28 there's a safety concern. And I actually did on
29 one occasion, only on one specific location for a
30 day or two, I can't remember exactly when it was,
31 but I directed that we just not go and do any
32 enforcement in that area because of the -- just
33 the anxiety and the risk of confrontation.

34 Q Perhaps, Mr. Lunn, if you could bring up Exhibit
35 606 at page 35. Have you ever, Mr. Nelson, is
36 there much audits going on. The mandatory landing
37 program we understand from the evidence is that
38 the fish generally gets counted pretty well. The
39 key to that program is attendance at those
40 mandatory landing programs. Has there been any
41 audits done of that? How many people are actually
42 attending the MLP sites?

43 MR. NELSON: I don't know of any audit that's been done
44 on it. I don't know if Scott has any answer.

45 MR. COULTISH: I'm not aware of anything recently, but
46 when the pilot sales programs were implemented,
47 and particularly on the Fraser River, C&P staff

1 actually were tasked at that time to, if you want
2 to say, do an audit, and that is the number of
3 fishermen that were actually seen during patrol
4 time versus the number of fishermen who actually
5 landed.

6 As well as at that time the First Nations
7 Sto:lo implemented an Aboriginal Fishery Guardian
8 program, which was very comprehensive, that DFO
9 C&P was involved in with training, and so on, and
10 worked quite closely with them. They, too, would
11 assist and do a great deal of work on that. And
12 we were very confident in the numbers and the
13 compliance at that time. That's no longer in
14 effect.

15 Q This is the 2004 report by Brian Williams, the
16 former Chief Justice of B.C., and in the third
17 paragraph down in the last sentence, I want to ask
18 you about this particular thing. He says:

19
20 It seems perverse that the policy decision
21 not to enforce the laws against illegal sales
22 undoubtedly encouraged both clandestine
23 harvest and inflation of the legal FSC catch
24 by those who wished to profit from the sale
25 of some of their Section 35 fish.

26
27 Mr. Williams calls it perverse, but wouldn't that
28 be a natural outcome of an instruction not to lay
29 charges, that people would continue to break the
30 law?

31 MR. NELSON: It certainly would increase the risk of
32 them doing it, yes.

33 Q If I could go to PPR at page 55, Mr. Lunn.

34 MR. COULTISH: Mr. Commissioner, sorry, could I just
35 add in the Lower Fraser when I commented about the
36 Aboriginal Guardian Program, it wasn't just the
37 Sto:lo that implemented, the Musqueam band also
38 implemented a process that was very comprehensive,
39 as well.

40 Q At page 55 and the issue that I want to get there,
41 is the -- in the first paragraph, paragraph 106,
42 and it's the question of illegal sales activity
43 being especially difficult. Can you tell me why
44 it's so difficult to deal with illegal sales of
45 food fish?

46 MR. NELSON: Well, I'll give a little bit, and then
47 I'll ask Scott to follow up. But the difference

1 between an illegal fish and a legally caught fish
2 is indistinguishable by looking at them. That's
3 one of the most important things. So to prove an
4 illegal sale, you must prove where it came from,
5 and that can be difficult. Just because somebody
6 has a bunch of fish in their truck and they're
7 driving along the Fraser River, you can't assume
8 that those fish are from the Fraser River.
9 You have to be able to prove beyond a reasonable
10 doubt where they came from. That's one of the
11 biggest difficulties in doing the illegal sales
12 work is determining exactly where they came from.
13 When they were caught is another issue, and who
14 caught them and all those factors. But, Scott,
15 perhaps...

16 MR. COULTISH: Yeah, the issue that we're facing today
17 as Randy described is very complex. When general
18 patrol officers are out, the idea or the
19 opportunity of seeing cash changing hands is very,
20 very limited. As well, because of the legislation
21 that's in place that prevents us from breaking the
22 law, other than through authority under Bill C24
23 s. 25 of the **Criminal Code**, we must be authorized
24 to engage in activities, an officer must be
25 designated by the Minister, and we do have such
26 people. But only those can actually engage in the
27 type of covert activity where a sale is made to
28 that person.

29 But when it comes to the complex sales, and
30 that is large volumes, we're dealing with
31 companies, businesses, where a product may be
32 delivered and the actual sale, transfer of cash or
33 funds, is made in many different ways,
34 electronically, through bank transfers, through
35 ways of storage versus fish, and so on. So it
36 becomes very complex and that's exactly the reason
37 why we need to mature into an organization that
38 has the ability to track and forensically audit
39 and go after those types of processes.

40 Q Perhaps I could move to page 58 of the
41 (indiscernible - overlapping speakers).

42 MR. NELSON: I'd just add one point, too, on the
43 difficulties in illegal sales is most people like
44 fish, and if they can get a good deal, they'll do
45 it. For every person selling fish, there's
46 probably 50 or 100 buying. And it's, as described
47 with Scott, it's just to catch the actual

1 transaction in hand is extremely difficult.
2 Q Yes. I want to ask about Project Ice Storm for a
3 minute here, at paragraph 119. And so Consulting
4 and Audit reviewed your audit of those plants, and
5 it came pretty close to two million pounds of FSC
6 sockeye, and this is October when you did the
7 audit. So I want to ask some questions around
8 this. So this audit would not include fish that
9 went across the border, food fish that went across
10 the border. You wouldn't have caught it in a cold
11 storage plant in Canada.
12 MR. NELSON: I'd have to ask Scott to answer that. I
13 don't believe so, but it's suspected to be FSC. I
14 don't think it was -- we can validate every piece
15 of that.
16 MR. COULTISH: What we have seen here is fish that was
17 encountered in facilities in the Lower Mainland.
18 There is at times and has been through other
19 projects the realization of substantial amounts of
20 FSC harvested in the Fraser River, particularly in
21 the area from Hope downstream, that is transported
22 or has been transported across into the U.S.
23 Q Okay. And the number of fish in cold storage
24 would not include fish that was sent to Alberta or
25 other provinces.
26 MR. COULTISH: Not prior to counting, no.
27 Q Right, not prior to counting.
28 MR. NELSON: It wouldn't include any fish outside of
29 what was in cold storage. Yes.
30 Q No fish that was shipped overseas.
31 MR. NELSON: If it was, no.
32 MR. COULTISH: No.
33 Q No fish that was sold illegally door-to-door.
34 MR. NELSON: No.
35 MR. COULTISH: Well, again, we can't speak to what was
36 done with this fish subsequent to being counted,
37 but this figure represents the fish that we
38 discovered or encountered in the facilities during
39 the investigation.
40 Q I'm just trying to determine what quantity of fish
41 would be in the facilities, versus the quantity of
42 fish that was used or could have not been caught
43 under an FSC licence, but not in a facility at
44 October 15th. And so obviously fish that was
45 removed prior to the date of the audit would not
46 be included in the audit.
47 MR. COULTISH: Correct.

1 MR. NELSON: That's correct.
2 Q Any fish stored in home freezers that was caught
3 under an FSC licence obviously not caught in that
4 audit.
5 MR. NELSON: That's correct.
6 Q Any fish that are canned at home, obviously not
7 caught in that audit.
8 MR. NELSON: Correct.
9 Q Now, what's the weight of an average Fraser
10 sockeye?
11 MR. NELSON: Five, six pounds.
12 Q Yeah, five-and-a-half pounds, fairly good guess.
13 Yeah. Now, when they're in the cold storage
14 facilities, were all the fish processed at least
15 to the point where they were headed and gutted?
16 MR. NELSON: I'd have to ask...
17 MR. COULTISH: Yes. Yeah, there was, from what I
18 understand, speaking to the people involved, by
19 far the majority of fish, and I wasn't personally
20 there, was processed and in some cases to a point
21 where it was packaged in small packages, smoked,
22 and so on.
23 Q Well, I'm going to stay at the fairly simple
24 point, if you head and gut a sockeye, it's roughly
25 about a 25 percent body weight decrease.
26 MR. COULTISH: That's correct.
27 Q So that brings our average weight of a sockeye in
28 cold storage to about four-and-a-quarter pounds if
29 we take the -- and if you take the two million in
30 storage and divide it by four-and-a-quarter,
31 that's 470,000 sockeye in cold storage in October.
32 MR. COULTISH: Yes, that's correct. That's pretty
33 close to it, yeah.
34 Q And if they were filleted and stored in little
35 packages, it would probably represent a larger
36 number of fish. And what are the costs of
37 processing and keeping fish in cold storage? Do
38 you know what the cost per pound of heading and
39 gutting is?
40 MR. COULTISH: Well, it varies. There's a process and
41 a term called -- I'm just trying to remember it
42 now, dock tally, or something such as that, and
43 it's a percentage applied to the amount of product
44 that the person has in -- there's various ways of
45 doing it, but generally it's either a price per
46 the amount in the facility, a percentage -- again,
47 I wouldn't be able to be very specific with that.

1 Q But there's additional costs for heading and
2 glazing.
3 MR. COULTISH: Oh, yes.
4 Q For filleting, glazing and freezing subsequent to
5 processing, smoking, vacuum packaging has its own
6 cost, and there's monthly storage fees; is that
7 correct?
8 MR. COULTISH: That's correct, yes.
9 Q And they can be substantial.
10 MR. COULTISH: Depending on the amount and how long you
11 keep it and what you've done to it, yes.
12 Q Now, so we have two million dollars (sic) worth of
13 processed sockeye in cold storage plants in
14 October. What do you think the market value of
15 that is roughly?
16 MR. COULTISH: Sorry? Two million pounds.
17 Q Two million pounds, that's correct.
18 MR. COULTISH: Yes.
19 Q What do you think the market value of headed,
20 gutted, and I know it's tough. Let's just assume
21 it's all headed, gutted rather than processed.
22 MR. COULTISH: Well, it shouldn't be a market value if
23 it's FSC, but commercially many times the amount
24 that's -- that would be there, as far as cost. I
25 mean, a commercial -- commercial sockeye in -- I'm
26 going to say I'm going to be speculating, simply
27 because of what I've seen it. We didn't do an
28 analysis on the actual cost of what it would be
29 worth. But two million pounds of sockeye, if it
30 were -- depending on the type and how it was done,
31 to be commercially sold would be very valuable,
32 very valuable.
33 Q And what happened to the fish that was in that --
34 in those plants?
35 MR. COULTISH: A further review that was done in 2006,
36 late spring, early summer, showed that about 60 to
37 70 percent of that product had been moved. It was
38 no longer in the facilities.
39 Q Perhaps -- and I want to talk about catch
40 monitoring for a minute, and then I have one more
41 issue and I'll be done. Yesterday you gave us
42 some examples of differences between hauls and
43 reported catches. I wonder if we go to Tab 62,
44 Mr. Lunn, please. And while we're bringing that
45 up, perhaps I can ask questions. When fishery
46 officers are hired, do they have to sign certain
47 forms and declarations concerning conflicts of

1 interests, and interests in commercial fishing?
2 MR. NELSON: Yes.
3 Q And what would those declarations require? For
4 example, are you allowed to have a commercial
5 fishing boat and be a fishery officer?
6 MR. NELSON: No.
7 Q Are you allowed to own a processing plant and be a
8 fishery officer?
9 MR. NELSON: There's conflict of interest guidelines.
10 I know it's specific on commercial licences. I
11 don't know if Scott has any idea, if you were to
12 have shares, or something in a plant, you'd
13 probably have to declare that. I don't know if
14 that...
15 MR. COULTISH: You have to disclose and you cannot
16 derive a direct income from anything that would be
17 attributed to the -- that would be deemed to be a
18 conflict in this case, commercial or recreational
19 type industries, as well.
20 MR. EIDSVIK: Okay. I wonder if it would be
21 appropriate, Mr. Commissioner, if those documents,
22 declarations could be filed (indiscernible -
23 overlapping speakers) the Commission.
24 THE COMMISSIONER: I'm sorry, I apologize, Mr. Eidsvik.
25 Which declarations are you speaking?
26 MR. EIDSVIK: The declarations that the fishery
27 officers sign concerning the conflict of interest
28 provisions.
29 MR. NELSON: Our oath when we go through our training,
30 I guess, if...
31 MR. COULTISH: Also under the -- that would be through
32 our Ethics and Values Group out of DFO, there is a
33 declaration that we sign that we need to disclose
34 any conflict of interests. That would be what I
35 think you'd be looking for.
36 MR. EIDSVIK: Yes. I think those documents would
37 assist the Commission, if that's possible.
38 THE COMMISSIONER: Just perhaps I can leave it with
39 Commission counsel to determine if there is a
40 sample document along the lines that you're
41 speaking of that could be filed.
42 MR. EIDSVIK: Yes. Not your specific document, a
43 sample document, that's correct, Mr. Commissioner.
44 MR. MCGOWAN: Yes, Mr. Commissioner, we'll follow up
45 and review the document. I'm not sure I'm
46 persuaded at this point that it has any relevance
47 to your mandate, but we'll certainly receive any

1 document Mr. Eidsvik produces, or Canada produces,
2 and review it for that purpose.
3 MR. EIDSVIK: We're at the break and I have one more
4 issue to cover, Mr. Commissioner. Would you like
5 to take the break?
6 THE COMMISSIONER: How much longer will you be, Mr.
7 Eidsvik?
8 MR. EIDSVIK: I think probably five minutes.
9 THE COMMISSIONER: Then I think you should proceed,
10 thank you.
11 MR. EIDSVIK: Okay.
12 Q Tab 62 is an audit of the Area 1 native catch sent
13 from Bert Ionson. Have you see this document or
14 heard about this particular audit? This is a DFO
15 document.
16 MR. NELSON: Yeah, this, I'd have to have a quick look
17 at it here. I may have scanned through it in the
18 binders, but it doesn't ring a bell with me.
19 Q Do you know a Herb Redekopp?
20 MR. NELSON: Yes.
21 Q Credible fishery officer?
22 MR. NELSON: Yes.
23 Q Long-time fishery officer in the Fraser River?
24 MR. NELSON: Yes.
25 Q Well, I think the audit is interesting, this -- he
26 is the first email at the bottom of the page --
27 MR. DICKSON: Sorry, Mr. Eidsvik, it's Tim Dickson
28 again. It seems that Mr. Eidsvik's embarking on a
29 questionable seek to have Mr. Redekopp's comments
30 in this email put into evidence. Mr. Nelson has
31 just indicated, I believe, that he's not familiar
32 with the document. He's certainly not an
33 addressee on it. I note, as well, that in the
34 first paragraph it's speaking of the chinook
35 salmon fishery, and that's an issue, one of the
36 few issues you're not asked to address in this
37 inquiry, and I suggest that this document is not
38 helpful.
39 MR. EIDSVIK: I think the catch reporting and accuracy
40 of the catch reporting system is the entire key
41 focus of this inquiry.
42 MR. MCGOWAN: Mr. Commissioner, part of the problem is
43 the witness is being asked about a document that
44 they're not familiar with. While it's true that
45 Mr. Eidsvik provided notice of the documents, that
46 he intended to use during cross-examination, that
47 list contained 70 documents, many of which were

1 hundreds of pages long. The Commission requested
2 that Mr. Eidsvik identify for the witnesses the
3 specific documents and portions of them he might
4 be taking the witnesses to, so that the review of
5 them could be reasonably accomplished, and that
6 didn't happen. So I'm not sure how much
7 assistance it is to you for Mr. Eidsvik to ask the
8 witnesses about a project they're not familiar
9 with, or a document they haven't had an
10 opportunity to review.
11 THE COMMISSIONER: So far he's just put the document to
12 the witness. I haven't heard his question. So if
13 he could ask the question, then I'd have some
14 sense of what the relevance is.
15 MR. EIDSVIK:
16 Q In this particular document there's a review of
17 catches in an aboriginal fishery in the Lower
18 Fraser River, and Mr. Redekopp concludes that for
19 every fish reported, there's three fish not being
20 reported. Have you had experience or had that
21 type of knowledge and heard of those kinds of
22 things?
23 MR. NELSON: Yes.
24 MR. COULTISH: Yes.
25 Q Now, this is an interesting document, though, it's
26 1999, a fairly serious audit. Did it -- anything,
27 did you hear anything about it? Did it float
28 through the system? Did you ever hear whether any
29 change was made in the policy?
30 MR. NELSON: I don't remember. If it would help the
31 Commissioner, Mr. Redekopp is here. I don't know
32 if it's relevant -- I can't say, looking, thinking
33 back to '99 that I recall an audit. There's been
34 so many things on these topics over the years, and
35 I can't place this one, I'm (indiscernible -
36 overlapping speakers).
37 Q This is the kind of audit, though, that catch
38 reporting in your group you could do as fishery
39 officers.
40 MR. NELSON: Absolutely.
41 Q And the reliance on hails that Mr. --
42 MR. NELSON: Sorry, I say absolutely.
43 Q Sorry.
44 MR. NELSON: If we were funded to do them, yes.
45 Q I want to go for a minute to and close here on
46 recommendations.
47 MR. COULTISH: Can I just make a comment, just for

1 clarity's sake, sir. Understanding that in some
2 of the economic fisheries that are now present
3 that First Nations participate in where there are
4 more stringent guidelines, landing stations and
5 others, the catch reporting in fact is much better
6 than what I would suggest still remains in the
7 aboriginal -- or in the FSC fishery. So there has
8 been moves, significant moves through the PICFI
9 process, in fact, catch reporting in these
10 fisheries, in these economic fisheries and others
11 are much better than what we see in the FSC
12 fishery.

13 Q Yeah, this document relates to an FSC fishery.
14 FSC fisheries are -- most days of fishing on the
15 Fraser River are FSC fisheries, aren't they?

16 MR. COULTISH: Yes, that's correct.

17 Q I want to go to recommendations for a minute and
18 close with that. There's been numerous studies,
19 and you've heard the same recommendations from
20 peers about enforcement, same recommendations from
21 the Standing Committee, and again from Williams,
22 and I know that one of the recommendations in
23 Fraser he said that effective enforcement. Mr.
24 Nelson, would effective enforcement look
25 differently to than perhaps an accountant in
26 Ottawa?

27 MR. NELSON: I would imagine so. I mean, unless an
28 accountant took the time to have discussions with
29 some fishery officers and C&P staff, I don't know
30 how they could, unless they had some background in
31 it.

32 Q And how do you measure effective enforcement?

33 MR. NELSON: It's very difficult to measure, because
34 you don't know what you're not finding.

35 Q So in some ways that's a bit of a meaningless
36 recommendation.

37 MR. NELSON: I think when I testified yesterday on the
38 2005 Williams, we are confident that the funding
39 that we received is providing us an effective
40 program, and as I stated, there could be a hundred
41 thousand fish disappearing, but certainly not
42 millions, in the funding we've had specifically on
43 the Fraser River to patrol the closed time and get
44 a handle on.

45 Q I'm getting to the point would it be helpful for
46 the Commissioner to recommend that he have -- you
47 set a specific number of fisheries officers, we

- 1 need 250 fisheries officers, and we need "X"
2 amount of funding for O&M every year, and that way
3 that could be measured. Would that be helpful for
4 you? Mr. Coultish, I see you nodding your head.
- 5 MR. NELSON: It would take some time to put together,
6 but, you know, that -- yeah.
- 7 Q What I'm saying is if you're going to do
8 something, you need to be able measure it, and the
9 Parliamentary Standing Committee and the Senate
10 Committee needs to be able to measure the
11 recommendations coming out of this Commission.
- 12 Now, I can go back to illegal sales of food
13 fish. I'm not going to bring you to it because of
14 time, but Exhibit 77 at page 59, the Fraser
15 Report, concluded that the repeal of the
16 regulation concerning non-native possession of
17 food fish caused serious enforcement problems.
18 Would you agree with that?
- 19 MR. NELSON: At the time it was -- the laws were
20 changed. Prior to that you could not be in
21 possession of food fish unless you were a First
22 Nation. So obviously it made it much more
23 complicated to try and prove.
- 24 Q Do you know why that regulation was changed,
25 repealed?
- 26 MR. NELSON: I believe it was for constitutional
27 reasons, but I'm not sure.
- 28 MR. COULTISH: Yeah, there was a challenge on the
29 **Constitution** and it was deemed to be
30 unconstitutional.
- 31 Q And I think I've asked you before, when you go
32 down to a dock and there's a tote of commercial
33 fish, public, legally caught, and a tote of FSC
34 fish, and you pick a fish out of either one, you
35 can't tell the difference, can you.
- 36 MR. NELSON: No.
- 37 Q No. In the -- prior to about 1984 there was a
38 regulation required the marking of aboriginal food
39 fish by cutting the snout and the dorsal fin off.
40 If that regulation was still in place, you could
41 pick that fish out and right away tell it's a food
42 fish; is that correct?
- 43 MR. NELSON: Yeah, you could, but, I mean, it would
44 give you a much greater degree of likelihood, I
45 mean, it would seem that a commercial fisherman
46 could cut them -- you'd still have to prove where
47 it came from, but it was a tool that was very

1 valuable for us at the time.

2 Q If you went down to a commercial processing plant
3 and there was a tote full of food fish that were
4 marked versus the tote stored in by John Smith,
5 commercial fisherman, you could tell the
6 difference and right now you can't; is that
7 correct?

8 MR. NELSON: That's correct. Marking fish product in
9 any means would benefit. I don't know if that's a
10 possibility.

11 Q Now, if there was a regulation like that and a
12 truck operated by a person who had food fish on
13 board, caught under a food fish licence, didn't
14 have the snout and dorsal fin cut off, charges
15 could be laid for that and were in the past; is
16 that correct?

17 MR. NELSON: They were in the past, yes.

18 Q So you didn't actually have to trace the food fish
19 and see the actual moment of sale, because you
20 could prosecute non-native possession, you could
21 prosecute somebody who had caught it under a food
22 fish licence but hadn't marked it as food fish.

23 MR. NELSON: It would be possible. I mean, laws have
24 changed a lot over time. There used to be a law
25 that said you couldn't transport aboriginal-caught
26 fish below the Mission boundary into the non-tidal
27 area. So you would just simply have vehicles
28 crossing the lines. But all those are -- that's
29 long ago, and I don't think --

30 Q Well, setting aside constitutional issues, whether
31 they're valid or not, in -- and I think it's
32 important to do that, because we obviously have a
33 fishery that the evidence shows is fairly out of
34 control and we need a means to get it under
35 control. Would those tools be of assistance?

36 MR. NELSON: I think there are more modern tools that
37 would be -- there are more modern ways of doing
38 it. You know, cutting the nose and dorsal fin off
39 was quite an infringement, if you will, on First
40 Nations. It was one of their -- one of the
41 challenges. There could be a way to mark, as we
42 talked yesterday. Perhaps in cold storage plants
43 there has to be some means of more accurately
44 tracking all fish in their plants, and very
45 strict, stringent guidelines around that.

46 Q And if you -- if somebody put food fish in a can
47 at a commercial processing plant, if it had

1 stamped on the can along with the numbers that the
2 processing plants put on, "This is aboriginal food
3 fish, illegal sale," or "Sale is illegal", you
4 could always determine whether the can was food
5 fish or commercial fish.

6 MR. NELSON: I think they do that with some
7 recreational-caught fish. If it's canned, they'll
8 stamp, have a -- it will be right on part of the
9 tin, it will say "Not for sale". So that means
10 it's there for canning.

11 MR. COULTISH: The commercial halibut fishery that
12 occurs on the West Coast here has a tagging
13 program that all halibut must be tagged when it's
14 caught, when it's transported, processed, and so
15 on. The constitutional solution may be that all
16 commercial fish must be marked, tagged in some way
17 of being able then, rather than aboriginal fish
18 which has been -- that those provisions have been
19 dropped.

20 Q Suffice to say if you had the will, the budget,
21 and the regulatory tools, you could enforce this
22 fishery properly.

23 MR. NELSON: We could enforce all fisheries properly.

24 MR. COULTISH: More effectively anyway.

25 MR. EIDSVIK: Thank you. Those are my questions, Mr.
26 Commissioner.

27 THE COMMISSIONER: Thank you.

28 MR. MCGOWAN: Perhaps it's time for a short break.

29 THE COMMISSIONER: Thank you.

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

32
33 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

34 (PROCEEDINGS RECONVENED)

35
36 THE REGISTRAR: The hearing is now resumed.

37 THE COMMISSIONER: Mr. Harvey.

38 MR. HARVEY: Yes, Mr. Commissioner. It's Chris Harvey
39 for the Area G Trollers and the UFAWU. Gentlemen,
40 I --

41 THE COMMISSIONER: What's your time estimate, Mr.
42 Harvey, I'm sorry?

43 MR. HARVEY: I beg your pardon?

44 THE COMMISSIONER: What's your time estimate, please?

45 MR. HARVEY: Ten minutes.

46 THE COMMISSIONER: Thank you very much.

47 MR. HARVEY: Three of us have to get done before noon,

1 so I'll be racing.
2 THE COMMISSIONER: Okay.

3
4 CROSS-EXAMINATION BY MR. HARVEY:

5
6 Q Gentlemen, I found your evidence quite troubling
7 in two respects, one in the manner in which the
8 information you've brought to us seems to
9 undermine the validity of the science that we're
10 dealing with here, statistics, and the other, the
11 way in which it undermines the rule of law.

12 I'll deal first with the question of science.
13 These fish illegally harvested that you mentioned,
14 and the large numbers of them, are of course
15 important.

16 MR. MCGOWAN: I'm sorry to interrupt my friend. I
17 don't recall the evidence of large numbers of
18 illegally harvested. I believe the witnesses were
19 speaking with a sales issue as opposed to a
20 harvest issue.

21 MR. HARVEY:

22 Q The million-odd fish at one point and then less
23 than a million now, are those illegally harvested
24 or illegally sold?

25 MR. NELSON: What million fish are we talking here?

26 Q Well, the illegal -- illegal sales, the large
27 organized criminal activity with respect to
28 illegal sales.

29 MR. NELSON: I'm sorry, the number?

30 Q Well, is -- have I categorized it wrongly as
31 illegally caught, or can you separate it at all?

32 MR. NELSON: We have talked a lot about illegal sale of
33 legally caught fish in the aboriginal fishery. As
34 far as illegal numbers of fish, that -- or numbers
35 of fish that are related to the catch information
36 we have, we've talked about that. But I don't
37 think we've come up with a number on illegal
38 harvest that it's virtually impossible to do, and
39 if we knew what was caught illegally, we'd be
40 catching them.

41 Q Yes. Well, you've given evidence of inaccurate
42 monitoring.

43 MR. NELSON: Yes.

44 Q Yes.

45 MR. NELSON: Yes.

46 Q And I think you said in response to questions
47 about the Williams recommendation that the C&P

1 assessments be incorporated into the numbers --
2 MR. NELSON: Yes.
3 Q -- and the statistical bases.
4 MR. NELSON: Yes.
5 Q I think you said in effect that some fishery
6 resource managers do not appear to be interested
7 in doing that, or saying it doesn't fit their
8 model or whatever.
9 MR. NELSON: A combination of those.
10 Q All right. So where are those fish going? We've
11 heard in other panels that there's a large loss of
12 fish between Mission Bridge and the spawning
13 grounds, it's been categorized as DBEs. Would
14 some of that be the...
15 MR. NELSON: If there are inaccuracies in catch
16 information, that would be a place where some fish
17 would not be accounted for in our system.
18 Q Yes. All right. Is it part of your
19 recommendations, or would you recommend that the
20 C&P Branch be involved in estimating the numbers
21 of fish harvested.
22 MR. NELSON: I think it's important that we get
23 involved with funding to do some kind of an audit
24 that is incorporated into whatever system and
25 model that they have.
26 Q Yes, thank you.
27 MR. NELSON: So that we're basically testing -- we're
28 doing -- we're monitoring the monitors, for lack
29 of better words, and taking a sample to determine
30 the validity of those catches.
31 Q Yes. All right. Now, with respect to illegal
32 sales, I've just been reviewing quickly some of
33 the previous reports and previous testimonies,
34 cases which you'd be familiar with no doubt, in
35 2003, truckloads of FSC fish stopped at the U.S.
36 border. Do you recall that case? Charges laid
37 and the conviction, I think.
38 MR. NELSON: Scott?
39 MR. COULTISH: Yes.
40 Q Yes. Another case in which there was a conviction
41 for \$400,000 worth of FSC fish involving Lower
42 Fraser First Nations, sold to a broker in North
43 Vancouver?
44 MR. COULTISH: Was that the canned product?
45 Q I'm not sure. There was --
46 MR. COULTISH: I'd need to know what the actual case
47 was.

1 Q All right. There may be more than one. All
2 right, well that's -- at any rate, I think you've
3 given sufficient evidence for this Commission to
4 determine that it's a significant magnitude.
5 I want to determine just for a moment,
6 whether it's a question of insufficient funding or
7 a question of inadequate legislation. At one time
8 FSC fish was marked with the snout and dorsal fin
9 removed, and also there was an offence of a non-
10 aboriginal person possessing such FSC fish,
11 correct?
12 MR. NELSON: That's correct.
13 Q The finding of unconstitutionality, I would
14 suggest, related to removing the snout and dorsal
15 fin, it didn't relate to a non-aboriginal
16 possessing FSC fish. Do you know...
17 MR. NELSON: Yeah, I'm not sure.
18 Q All right. But at any rate, now in order to get a
19 conviction you have to prove continuity from the
20 time of catch to the time of sale.
21 MR. NELSON: That's one of the issues, yes.
22 Q That's virtually impossible to do now, isn't it,
23 in that there's no regulation of transportation,
24 no regulation of storage, no regulation of
25 processing.
26 MR. NELSON: It's difficult to do, but as I stated
27 yesterday, I think working with some regulations
28 on storage is certainly one place that we could
29 focus on working with the province.
30 Q Yes. But isn't it critically important if you're
31 going to be able to deal with this large-scale
32 illegal activity, organized illegal activity, it's
33 essential that you be given the legislative tools
34 to do your job.
35 MR. NELSON: As much as possible. It's also imperative
36 that we get funding to do it, and it's also
37 imperative that we continue not just to focus on
38 the major case, and the major investigation --
39 Q Yes.
40 MR. NELSON: -- but working with the communities and
41 the Pillar 1 activities that we talked about
42 yesterday, and building the relationships with all
43 user groups to try and change the attitudes or the
44 acceptance of illegally fishing.
45 Q Yes.
46 MR. NELSON: Because until we do that, we'll be chasing
47 a long time.

40

PANEL NO. 36

Cross-exam by Mr. Harvey (TWCTUFA)

Cross-exam by Mr. Lowes (WFFDF)

1 Q Yes. Am I right in thinking that at present
2 there's no limit on possession, no limit of
3 numbers of -- on possession of FSC fish?

4 MR. NELSON: For an individual person?

5 Q Yes.

6 MR. NELSON: No.

7 Q And there's no traceability requirement in the
8 sense no tags have to be affixed to the fish.

9 MR. NELSON: That's correct.

10 Q Would you recommend, would you be prepared to
11 recommend to this Commission that there be some
12 legislative changes in order to incorporate some
13 system of identifying FSC fish.

14 MR. NELSON: I would like to see some form of -- I
15 don't know if I would say marking is the answer,
16 but it's -- whatever we do, it has to be able to
17 account, differentiate between all user groups,
18 whether it be rec, commercial and First Nations.
19 How that's achieved, as Scott mentioned, perhaps
20 we know we could implement marking of some sort in
21 the recreation and commercial fishery. I'm not
22 sure we can legally or force that in the
23 aboriginal fishery.

24 Q Yes. And my clients on the West Coast affix a
25 chip to every single chinook salmon that they
26 catch, such that it can be identified right back
27 to the fisherman who caught it in any restaurant
28 around the world.

29 MR. NELSON: Sorry, and where was that?

30 Q That's on the West Coast of Vancouver Island.
31 They simply affix a chip to the fish.

32 MR. NELSON: Yes.

33 Q Some sort of tagging system like that for all
34 commercial and all recreational fish would go a
35 long way to assist you in getting a handle on
36 these illegal sales you mentioned, would it not?

37 MR. NELSON: Oh, absolutely.

38 MR. HARVEY: Yes. Thank you. Those are my questions.

39 THE COMMISSIONER: Thank you.

40 MR. LOWES: J.K. Lowes for the B.C. Wildlife Federation
41 and the B.C. Federation of Drift Fishers, time
42 estimate about three minutes, Mr. Commissioner.

43
44 CROSS-EXAMINATION BY MR. LOWES:

45
46 Q I have a couple of questions on what was called
47 Pillar 1. I take it Pillar 1 of your regime is

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1 really going out into the community and either
2 giving rise to or either fostering or supporting
3 the what was called the conservation ethic; is
4 that correct?

5 MR. NELSON: Yes, that's -- yes.

6 Q And you I notice have a C&P presence at all of the
7 annual general meetings of the B.C. Wildlife
8 Federation, that's a group which assists you in
9 establishing your Pillar 1 goals?

10 MR. NELSON: Yes. In fact they actively participate in
11 one of them, and that's the Rewards program.

12 Q Yes.

13 MR. NELSON: Yes.

14 Q And they effectively carry your message?

15 MR. NELSON: In my experience, yes.

16 MR. LOWES: Yes. Those are my questions.

17 MR. HARRISON: Good afternoon, Mr. Commissioner, Mr.
18 Nelson, Mr. Coultish. I will endeavour to be done
19 by noon, and thank Mr. Lowes for his quick
20 questions. My name is Judah Harrison, for the
21 record, and I am representing the Conservation
22 Coalition, which is a group of non-governmental
23 organizations and Mr. Otto Langer.

24

25 CROSS-EXAMINATION BY MR. HARRISON:

26

27 Q This question is for both of you, Mr. Coultish and
28 Mr. Nelson. Just we've been speaking about
29 various enforcement tools and I've heard
30 mentioned, you know, boots on the ground and
31 random audits. Those two tools, are they
32 essential to effective enforcement, in your view?

33 MR. NELSON: Yes.

34 Q Mr. Coultish?

35 MR. COULTISH: Yes, absolutely.

36 Q And, Mr. Nelson, yesterday I saw in the transcript
37 and also last time you were here, that you
38 referenced a drop in habitat enforcement and said
39 this was -- I mean, and we have confirmation of
40 this in Exhibits 875, 876 and 877. And you said
41 that this was a result of the EPMP program, as
42 well as directions from senior management; is this
43 correct?

44 MR. NELSON: Yes.

45 Q My question is have you received additional
46 directions from senior management to either focus
47 or not focus on certain enforcement issues?

1 MR. NELSON: Not that I can think of.

2 Q Mr. Coultish?

3 MR. NELSON: I mean, we have a system to set our
4 priorities, but nothing I've seen that says, no,
5 you shouldn't be working on that. And with the
6 EPMP it didn't say we shouldn't do habitat, it
7 said we're going to do it, take a different
8 approach and fishery officers aren't going to do
9 it as much any more, it's going to be through
10 other means, operational statements, et cetera, et
11 cetera.

12 MR. COULTISH: There have been times, where as a result
13 of direction or influence from out of Ottawa or
14 senior levels in the Pacific region, where our
15 activities have been influenced, and that would be
16 either one to pay attention or apply added
17 enforcement presence or attention to certain
18 areas, and at the same time in at least one
19 circumstances that I'm aware of in the last couple
20 of years where we were told to not apply our -- I
21 think the term was "hold your nose".

22 Q So am I correct that holding your nose or not
23 applying efforts is with respect to enforcement of
24 habitat violations?

25 MR. COULTISH: It wasn't habitat, it was fisheries
26 activity, but, no, not habitat, no.

27 Q Can you potentially clarify what that activity
28 was?

29 MR. COULTISH: It was involving negotiations that were
30 occurring with the Somass -- or sorry, First
31 Nations in the Somass area, Ahousaht and the Nuu-
32 chah-nulth area, and that that area historically
33 has been a difficult area for enforcement,
34 compliance, because of the challenges the
35 Department's had with coming up with agreements.
36 And in this particular case because the
37 negotiations were ongoing, they felt that a strong
38 presence in dealing with sales and others were --
39 was probably not the best if we were going to
40 reach an agreement, and hence we were asked to
41 limit our presence.

42 Q Okay, thank you. And my final question is to you,
43 Mr. Nelson. Yesterday a number was floated about,
44 \$14.9 million, and it was my understanding that
45 that was your estimation of the approximate
46 funding you would need to implement effective
47 enforcement.

1 MR. NELSON: The actual number of 14.9 that I mentioned
2 yesterday was the gap that would bring Pacific
3 region up to the average of 56 percent of the
4 ecosystems and fisheries management organizations.
5 In other words, we had about 30 percent, the
6 average of the other three was 56. The gap was
7 14.9 million. Through my own -- a prior process
8 to that, I calculated what some funding pressures,
9 existing funding pressures plus some additional
10 resources we would need to bring us up, and it
11 came out to roughly the same number. I think I
12 said 12 to 14 million.

13 Q So my only question is did that estimate
14 incorporate a recommitment to enforcing habitat
15 violations, or did it not include that?

16 MR. NELSON: I'd have to check. I don't believe so.

17 MR. HARRISON: Thank you very much.

18 MS. BROWN: Thank you, Mr. Commissioner. Anja Brown
19 and with me is Leah Pence, and we're counsel for
20 the First Nations Coalition. The First Nations
21 Coalition represents some of the First Nations
22 along the Fraser River, some Fraser River First
23 Nations fishing organizations, as well as the
24 Council of Haida Nation and some of the Douglas
25 Treaty First Nations.

26 MS. BROWN: My first series of questions will be
27 directed at you, Mr. Coultish.

28 MR. NELSON: Sorry, I just have one question in
29 relation to the one that was just asked.

30 I just checked, and I was mistaken. It did
31 include -- my estimates of that 15 million did
32 include 17 fishery officers for dealing with
33 habitat issues in Northeast and Southeast B.C., so
34 I was -- something was ringing a bell, and that's
35 what it was. My apologies.

36
37 CROSS-EXAMINATION BY MS. BROWN:

38
39 Q So, Mr. Coultish, I'd like to start out by asking
40 you a series of questions in relation to Project
41 Ice Storm, and we've heard quite a bit of evidence
42 about that yesterday and as well as today. And
43 then as we've heard it was a 2005 investigation,
44 and an audit that was done on cold storage
45 facilities in the Lower Mainland involving 1.9
46 million salmon that were stored by various First
47 Nations individuals and some companies. And we

1 see from Exhibit 868, and I won't take you to
2 that, but the number that we're given there is
3 that it was an estimated 1.9 million pounds, which
4 was attributed to about 345,000 pieces. If we
5 could please have Exhibit 870, Mr. Lunn, and this
6 is the Operational Intelligence Assessment, and I
7 simply note at page 5 where the "Aim" is set out.
8 It says:

9
10 To conduct a physical audit of the 2005
11 salmon harvest season of cold storage, fish
12 plants,...

13
14 And then at page 7 there's a heading that says
15 "Limitations and delimitations to the report". So
16 it indicates there the project will only focus on
17 salmon, and that:

18
19 The project is limited to all salmon caught
20 between the time periods of April 1st, 2005
21 to present.

22
23 Which would have been the writing of the report.
24 So the audit was not specific to sockeye salmon,
25 correct?

26 MR. COULTISH: That's what's written, yes.

27 Q Right. And it wasn't specific to salmon that was
28 necessarily caught on the Lower Fraser.

29 MR. COULTISH: That's correct.

30 Q Right. Isn't it also the case that cold storage
31 records don't typically require the owner of the
32 salmon to indicate where the fish was caught.

33 MR. COULTISH: That's correct.

34 Q All right. And so it was only an assumption that
35 the fish was caught on the Fraser River, correct?

36 MR. COULTISH: At the time. There were subsequent
37 sampling taken for DNA from, as I understand, many
38 of the locations, to determine source of the
39 product, and in fact this showed that these were
40 Fraser River fish.

41 Q So when you say from many of the locations, are
42 you referring to the list that we saw which was
43 Exhibit 869 where there was a list with a big
44 chunk of information redacted, is that where
45 you're indicating the samples were taken from?

46 MR. COULTISH: Yes. To clarify, I was not personally
47 involved nor supervised this particular project.

1 I've assumed the group that had, and my
2 information is that DNA sampling was taken from
3 the facilities of this product to determine
4 source, and of that the estimate of the 1.9
5 million salmon -- or sorry, pounds, was confirmed
6 to be Fraser River caught salmon.

7 Q All right. And if you were to look at Exhibit
8 869, I'm not asking you to turn it up, Mr. Lunn,
9 at this point, unless Mr. Coultish is able to
10 answer. Are you able to answer with certainty how
11 many of the entries on Exhibit 869 were
12 attributable to Lower Fraser sockeye salmon?

13 MR. COULTISH: I personally can't. That information
14 may be available from the people that were
15 involved in the investigation and I may be able to
16 determine that, but I personally don't have that
17 knowledge.

18 Q All right. So all we know is some but not all.

19 MR. COULTISH: Again I can't say that for sure. What I
20 have been told, again through -- is that the
21 product that has been identified is Fraser River
22 salmon.

23 Q And are you saying that the 1.9 million pounds
24 were identified as Fraser River salmon, or that
25 the audit was for 1.9 million pounds of salmon and
26 it's not possible to say where all that salmon
27 originated from?

28 MR. COULTISH: I believe to be accurate that the 1.9
29 million pounds of salmon was determined to be FSC
30 harvested in the Fraser River.

31 Q Now, you noted yesterday, and it's also confirmed
32 in the documents that have been entered in
33 exhibits as in respect of Project Ice Storm, that
34 notwithstanding the Department's suspicions, no
35 offences with respect to sale of that fish that
36 was audited had occurred.

37 MR. COULTISH: The project was primarily determining
38 the quantity of product of FSC held in storage.

39 Q Right.

40 MR. COULTISH: It wasn't to determine sale at that
41 time. It was more or less to, as you say, an
42 audit.

43 Q Right. And we heard evidence yesterday about the
44 ways that some of the fish that was examined in
45 the course of the audit had been processed. Some
46 of it had been glazed and fast-frozen, for
47 example, and I think you indicated in your

1 evidence yesterday that this is one of the best
2 methods to preserve the shelf life of frozen fish;
3 is that correct?

4 MR. COULTISH: Yes, that's correct.

5 Q And would you agree that another one of the very
6 effective ways to protect fish from freezer burn
7 and to maintain its shelf life is to vacuum pack
8 it?

9 MR. COULTISH: Yes, that's a method of protecting fish.
10 Yes.

11 Q You noted that some of the fish had been smoked,
12 but you don't know, or the audit didn't reveal
13 whether the fish had been smoked commercially in a
14 commercial facility, or whether it had been smoked
15 in a smokehouse or by the particular individual
16 holding the fish, correct?

17 MR. COULTISH: That's correct, and in fact that's one
18 of the primary concerns is that if the fish or
19 this fish that had been processed, that is smoked,
20 if it was simply FSC fish and to be used for
21 personal consumption, then there's no regulations
22 on how that's done. However, if it was intended
23 to be sold, then that constituted a violation
24 under the provincial legislation and posed serious
25 health threats.

26 Q Right. If it was going to be sold. But there was
27 no evidence gathered in the course of the audit
28 that indicated anything illegal was happening.
29 This was simply fish that was being stored in a
30 cold storage facility.

31 MR. COULTISH: That's correct.

32 Q Now, Mr. Coultish, do you have any personal
33 knowledge of First Nations ceremonial use of fish
34 and the extent to which food fish is used?

35 MR. COULTISH: I have extensive experience working with
36 First Nations, attending ceremonies myself on
37 numerous occasions for the nearly 29 of my
38 experience, my career.

39 Q All right. Then would you agree with me that
40 fish, in particular salmon, is a very important
41 part of First Nations ceremonies?

42 MR. COULTISH: Very much so.

43 Q Right. And do you also agree that it makes sense
44 for First Nations people to want to preserve the
45 fish that they catch and use for ceremonial and
46 food and social purposes to ensure the best
47 quality for the longest period of time.

1 MR. COULTISH: I would agree. I will also add that
2 it's been my experience working, living and
3 working around communities, First Nations
4 communities, where most of the product that they
5 utilize or most of the fish they utilize for
6 ceremonial purposes is generally processed
7 themselves through smoking, canning, preserving,
8 drying, and so on. There's no cost to this, other
9 than what they bear themselves.

10 There's no question that salmon is culturally
11 integral to our First Nations communities. And as
12 I've said, I've been to many such ceremonies where
13 that's the case. But it's my experience that the
14 majority of this fish in that way, if preserved
15 for and to be kept for a longer period of time,
16 are generally done within the community, and
17 there's in many cases set people, elders, and so
18 on, who do this, because they've done this for
19 many, many years, and they know the way, the
20 culturally historical ways of doing this, because
21 a lot of these ceremonies, the fish is handled and
22 preserved -- or prepared and served in historical
23 cultural manners. Such that the idea of having
24 large quantities of this fish preserved in a
25 method typically seen as commercial product,
26 packaged in the same ways that you would see
27 commercial product, housed in the same locations,
28 costing money to do so, to me is an anomaly when
29 it comes to that type of process.

30 Q Getting back to freezing as a way of preserving
31 fish, it's certainly obvious to all of us that one
32 can't preserve frozen fish indefinitely. It has a
33 shelf life and at some point, whether it's vacuum
34 packed or frozen in some other way, eventually you
35 can't use the fish anymore. So I suggest to you
36 it's not surprising that in June of 2006, 60 or 70
37 percent of the fish would have been removed.

38 MR. COULTISH: Again I can't question that 60-70
39 percent of the fish were removed, in fact, they
40 were. The issue is we don't know what occurred
41 with those fish, whether they in fact were clearly
42 FSC and consumed, or a portion of that was sold.
43 Our belief is given the nature and the processing,
44 the handling, the locations, and others, and the
45 people involved who owned this fish, that a
46 substantial quantity, if not all, was sold.

47 Q But you don't know that, there's no evidence --

1 MR. COULTISH: That's correct.

2 Q -- to show that.

3 MR. COULTISH: We have not obtained the evidence to
4 prosecute, you're correct.

5 Q and isn't it also equally possible that assuming
6 that was food, social and ceremonial fish, that in
7 the months that transpired from April 1, 2005
8 until June 2006, that that fish was removed from
9 time to time to time by the owners and used for
10 food, social and ceremonial purposes.

11 MR. COULTISH: That could have occurred, yes.

12 Q And you don't have any -- you don't have any
13 evidence to suggest otherwise, correct?

14 MR. COULTISH: That's correct.

15 MR. NELSON: I -- I --

16 Q And indeed --

17 MR. NELSON: I was just going to add a comment,
18 something that Mr. Coultish said yesterday about
19 there being company names and the fish being
20 changed hands. This is all about probabilities,
21 and if you look at it in what's reasonable to
22 assume. Is it reasonable to assume that several
23 hundred thousand pieces of salmon were put in cold
24 storage, fairly large costs incurred to store
25 them, and company names being put on them, names
26 changing, fish moving from plant to plant, and all
27 kinds of things happening, and is it possible that
28 it all was consumed? I would say it -- as FSC? I
29 would say it's remotely possible. It's much more
30 conceivable and likely that this large amount of
31 this fish entered the commercial market.

32 MR. COULTISH: I'll also add that prior to that Ice
33 Storm investigation there was another
34 investigation that was conducted where we found
35 the same individuals as was encountered in the
36 next year in Ice Storm. Individuals who are First
37 Nations members bringing product into a commercial
38 processing facility, cold storage, and no
39 documentation of this product was held, kept, and
40 in fact the person, the owner of that facility,
41 was charged through the province. These same
42 people, product was found in Ice Storm, same
43 individuals, companies associated to them, large
44 quantities. So again we did not prosecute anybody
45 from Ice Storm, but we have very strong
46 information that we would believe that these same
47 individuals, as well as others, who are bringing

1 this fish in, much of it if not all of it, at a
2 price, and the question is then very clearly is
3 could have all of that product, that amount have
4 been consumed in that period of time, or could it
5 have been sold?
6 Q Well, that's really the critical question, isn't
7 it, and unfortunately we don't have a member of a
8 First Nations community on this panel to address
9 that very question. However, we have the exhibits
10 and we have your evidence. Exhibit 869, my
11 colleague has just tallied it up, and the owners
12 of the product that was subject to the audit tally
13 up to 49 individuals and companies. Do you know
14 if any of the product was held in the name of
15 particular First Nations?
16 MR. COULTISH: I personally don't. I'd have to go back
17 to the original file and have a look at that.
18 Q All right. Are you aware that some First Nations
19 process and hold large amounts of fish on behalf
20 of their members, in particular elders and widows
21 and other people who aren't able to obtain fish
22 for themselves?
23 MR. COULTISH: I wouldn't be surprised that that
24 occurs.
25 Q Right. And we have no evidence to the contrary,
26 correct?
27 MR. COULTISH: No. No, that's right.
28 Q In terms of the fish, again, the fish being
29 largely gone by June, isn't that something that
30 one would expect, given that in June the holders
31 of this fish have the opportunity to go out
32 fishing and to obtain a fresh supply of food,
33 social and ceremonial use. There's no point in
34 keeping it much longer than that.
35 MR. COULTISH: I can't make those assumptions, I'm
36 sorry. That may be a reasonable explanation, but
37 I can't assume that. That may be very valid.
38 Q Right. But I think you agreed earlier that fish
39 degrades the longer it's been frozen, correct?
40 MR. COULTISH: Well, for that product that is handled
41 in that manner, product that has been canned or
42 vacuum packed and frozen, I'm not an expert in
43 shelf life, but that can be held longer than just
44 even -- even just glazed fish.
45 Q Right. And would you also agree that fresh fish
46 is preferable to frozen fish?
47 MR. COULTISH: Absolutely.

1 Q Now, you're not aware of any cold storage
2 facilities that are located on reserves in the
3 Lower Mainland at this time, are you?

4 MR. COULTISH: I'm not aware of any commercial
5 operations, no.

6 Q Right. So any aboriginal person or First Nation
7 that wants to freeze or store their fish, and
8 isn't able to do so at home, and that may have to
9 do simply with the freezing capacity if one has a
10 large amount of food, social and ceremonial fish,
11 wouldn't it make sense then to utilize the
12 services of a cold storage facility to do that?

13 MR. COULTISH: That may be very true. It's been my
14 experience that most or a great deal of FSC fish
15 is processed in a manner that it's not left in a
16 glazed manner. It's either smoked, dried, canned,
17 pickled. It's been my experience that for in-
18 season use they'll keep it that way, they'll glaze
19 it or they'll keep it in that type of condition,
20 but if it's going to be longer-term, i.e., over
21 the winter, and so on, in most cases it's dealt
22 with as I've described, rather than glazed in that
23 manner.

24 Q Now, Mr. Nelson, I have some questions for you.
25 You indicated in your evidence yesterday that the
26 Pacific region -- and this was in response to
27 questions not in respect of Project Ice Storm. It
28 was a response to later on in the day in respect
29 of the challenges that you had in doing the work
30 that you need to do. And if I heard your evidence
31 correctly, you had noted that in the Pacific
32 Region there are more bands and First Nations than
33 any other region in Canada, correct?

34 MR. NELSON: Yes.

35 Q And are you able to say with any degree of
36 certainty how many First Nations there are in
37 B.C.?

38 MR. NELSON: I should have that number. I know there
39 are close to 200 bands, and I'm not sure of the
40 number.

41 Q Okay. And my client advises me that there are 97
42 Indian bands along the Fraser River, and of that
43 there are 36 bands on the Lower Fraser. Do you
44 agree with that number, or does it sound generally
45 accurate to you?

46 MR. NELSON: It's close. I've heard numbers from 92 to
47 97, it's in that range. Yes.

1 Q Right. And without getting into any specifics,
2 would you agree that that reasonably represents
3 thousands of aboriginal people?

4 MR. NELSON: Yes.

5 Q Some of the bands are small, some of them are
6 quite large, and we have instances where people
7 are living on reserve and off reserve.

8 MR. NELSON: Yes.

9 Q All right. My next question is really to both of
10 you, and I simply want to confirm, is it correct
11 that the Department has no data on the extent of
12 the use of food, social and ceremonial salmon?

13 MR. NELSON: Sorry, you say no data on the use?

14 Q Is it correct that you currently don't have any
15 data that shows the extent of food, social and
16 ceremonial use of salmon by First Nations along
17 the Fraser River, to be specific.

18 MR. NELSON: I believe there is some information, but I
19 don't have it.

20 Q All right.

21 MR. COULTISH: One of the important points I think that
22 is that in the past the Department, I've
23 personally been involved in this, where we've
24 actually approached First Nations groups, asking
25 them to quantify to us how many fish, for
26 instance, each individual or each family would
27 utilize throughout the year, as part of their
28 food, social and ceremonial use, to give us an
29 idea when it came down to things like allocations.
30 We have simply never been provided that
31 information. So it's very difficult for us to
32 make any assumptions that an average First Nations
33 person would consume two 200 pieces a year.
34 Simply put, they've refused to give us that
35 information as part of our management practices of
36 the fishery.

37 So we understand that salmon on the Fraser
38 River is a cultural integrity, integral part of
39 the culture, but we've never been given to
40 information to quantify what they believe is what
41 they require.

42 Q Right. And you've indicated that you've attended
43 some ceremonies that have been hosted by First
44 Nations, and Mr. Nelson has also provided evidence
45 of attending ceremonies. And if I recall your
46 evidence correctly, Mr. Nelson, did you indicate
47 that you were personally part of the Pulling

1 Together canoe journeys?

2 MR. NELSON: I have participated in one of them, yes.

3 Q Right. And so you would have travelled from First
4 Nations community to community --

5 MR. NELSON: Yes.

6 Q -- and being hosted there.

7 MR. NELSON: Yes.

8 Q And I expect that you would have been feasted and
9 probably served salmon prepared in a variety of
10 ways, correct?

11 MR. NELSON: In some of those, but I didn't encounter
12 any of the fish that were processed or packaged in
13 commercial product. In one area, sorry, I should
14 say that in one band that I have gone to they did
15 have vacuum packed, it looked like commercially
16 packaged sockeye salmon, and this is on the Fraser
17 River, but embedded in the plastic was the words
18 "Not for sale". And I really complimented on that
19 method of packaging, because clearly that
20 identified it as FSC, they chose -- that band
21 chose to mark it themselves.

22 But I have not encountered any commercially
23 processed product at those feasts. Did they take
24 it out of packaging, or -- I've never seen any
25 fish other than that that appeared to me to be
26 commercially processed at feasts that I've been
27 involved in.

28 Q Right. My question really is more to your
29 personal experience in having been hosted in First
30 Nations communities and experienced salmon as a
31 food source that was served to you and the
32 other --

33 MR. NELSON: Yes.

34 Q -- guests there.

35 MR. NELSON: Yes.

36 Q And --

37 MR. NELSON: Not just salmon, but shellfish, crab.

38 Q Right.

39 MR. NELSON: Yes.

40 Q All sorts of traditional foods and probably non-
41 traditional foods, as well.

42 MR. NELSON: Yes.

43 Q All right. And my client advises me that in the
44 course of longhouse ceremonies on the Lower Fraser
45 that may take place over a series of many months,
46 through the course of exchanging food for
47 potlatches, that may be taking place in other

1 areas of the coast, that there's inter-tribal
2 trade, that there's salmon served at funerals and
3 weddings and that at times anywhere from hundreds
4 to thousands of people can be served salmon.
5 Salmon is also typically served, I'm advised, at
6 meetings and the sorts of events that Mr. Nelson
7 testified to yesterday and that were highlighted
8 in Exhibit 880, so in the meetings and in the
9 first salmon ceremonies that were -- that we heard
10 of in respect of the Tsawwassen First Nation.

11 So salmon is an important food source, and I
12 think you both agree to that, but we've heard Mr.
13 Coultish say that you don't have information with
14 respect to the numbers.

15 MR. NELSON: Yes.

16 Q But you both agree --

17 MR. MCGOWAN: I'm just going to interrupt my friend.

18 There was an awfully long what started to sound
19 like a submission. I'm not sure if there's a
20 question arising from those propositions.

21 MS. BROWN:

22 Q The question really is that given the extent of
23 food, social and ceremonial use, and the fact that
24 we are looking at an area here that encompasses
25 thousand of aboriginal people, what I'm putting to
26 you is that it would be safe to assume that the
27 fish that was captured by the audit was used for
28 food, social and ceremonial use.

29 MR. NELSON: In my view it wouldn't be safe to assume
30 that. It would be a possibility, and I would view
31 it as remote one, that a large percentage of that
32 fish was consumed as FSC, based on the information
33 provided, the packaging. You mentioned about
34 bands in the Interior. I've never encountered --
35 worked in the Interior for 25 years, I've never
36 encountered or heard of bands storing any of their
37 fish, FSC fish, in cold storage. We have followed
38 and tracked some that went for illegal sale and
39 ended up in cold storage. But I've never -- I
40 don't know of any bands -- if they are, there's
41 not very much of it.

42 Q And you've not asked that question, have you?

43 MR. NELSON: No.

44 MR. COULTISH: And I'd like to add a couple of points.

45 Three years ago when I was still the Chief of the
46 North Coast, the Okanagan bands organized a canoe
47 journey, and as part of that canoe journey there

1 were a number of our officers in the Pacific
2 region that attended. In fact, I believe Randy
3 may have attended that, as well. It was held in
4 Penticton. As part of the feast, because we had a
5 canoe, we required -- we were, the Department, was
6 required to provide fish. And in doing so with
7 the First Nations, they indicated that they didn't
8 have sufficient quantities of salmon, fresh salmon
9 or salmon to be able to handle that feast, hence
10 in fact I went up to a supplier, a commercial
11 supplier in Prince Rupert, because this was in
12 early July, and bought 150 pounds of sockeye
13 salmon to - sorry - to have at that feast.

14 Second of all, the point that you raise with
15 regards to First Nations, as part of the -- one of
16 the avenues that the Department supplies First
17 Nations are permits, because all fisheries must be
18 licensed, is what's referred to as a ceremonial
19 licence. And this is where somebody in the
20 community or the community requires fish for
21 communal -- or sorry, ceremonial purposes. It
22 could be a funeral, it could be a wedding, could
23 be a tournament, a gathering. Licences are issued
24 by the Department for that, for an individual or a
25 group of individuals to harvest fish for that
26 ceremony. And there are lots and lots of those
27 permits, or licences issued. I can't speak to the
28 number that was issued last year, or two years
29 ago, but I am certainly familiar that there are
30 many, many of those.

31 So that gives the First Nations the ability
32 that whenever there is fish in the river, from the
33 time the chinook begin to enter until the last
34 fish is -- they can harvest, and there is a quota
35 attached to that. They are then able to harvest
36 and utilize that fish.

37 So the First Nations that I'm aware of,
38 particularly on the Fraser, but in our part of the
39 country, the Lower Fraser, and up in through to
40 Hope and that area, Sto:lo and so on, utilize this
41 for many, many of their ceremonies throughout the
42 year, throughout the time that fish is in. So the
43 need to stockpile large volumes of fish is not
44 required during that time. It would be the winter
45 months that they may be doing that. But then
46 again, that's what these ceremonial licences also
47 provide some avenue for.

1 THE COMMISSIONER: Ms. Brown, I note the time. How
2 much longer are you going to be?

3 MS. BROWN: Well, we've been allotted an hour, Mr.
4 Commissioner, so I expect to stick closely to my
5 time estimate and I'll be another half hour after
6 we resume.

7 THE COMMISSIONER: All right. Is it convenient, then,
8 to resume at two o'clock?

9 MS. BROWN: Yes.

10 THE COMMISSIONER: Thank you.

11 MR. MCGOWAN: Yes, Mr. Commissioner, just so you know,
12 that there may be some brief re-exam by Canada and
13 myself, but Ms. Brown and Mr. Dickson and Ms.
14 Sharp have agreed to sort out amongst themselves
15 how to divide the rest of the time, and I'm
16 certainly content for them to do that.

17 THE COMMISSIONER: All right.

18
19 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
20 (PROCEEDINGS RECONVENED)

21
22 THE REGISTRAR: The hearing is now resumed.

23 MS. BROWN: Thank you, Mr. Commissioner.

24
25 CROSS-EXAMINATION BY MS. BROWN, continuing:

26
27 Q Mr. Coultish, I have one last question to you
28 arising from the Project Ice Storm audit. This
29 Commission has heard from Chief Charlie of
30 Chehalis and on December 13th of 2010, he spoke of
31 salmon as a sole fish used at ceremonies and other
32 events. And he also provided a witness statement,
33 which has been entered as Exhibit 279.

34 MS. BROWN: And I'm not asking to go to that, Mr. Lunn.

35 Q I'm simply referring to that statement and his
36 evidence there were he indicated that his family
37 uses five deep freezers to preserve spring salmon.
38 So they have five deep freezers full of spring
39 salmon and conceivably they have other freezers
40 for all the various other traditional foods that
41 they harvest and freeze. So I suggest that that
42 gives a sense of the volume of fish that this
43 particular family preserves. And I'm asking you
44 whether you would agree that using a cold storage
45 facility would certainly be a feasible option for
46 First Nations' families that don't have the
47 ability or the room in their homes to have one or

1 two or even five deep freezers.

2 MR. COULTISH: It may.

3 Q Isn't one of the stereotypical assumptions that
4 Project Ice Storm was premised on that First
5 Nations can't afford to use cold storage
6 facilities?

7 MR. COULTISH: I don't think the Project was premised
8 on anything other than trying to determine the
9 amount of FSC salmon harvested from the Fraser
10 River located in cold storage and processing
11 facilities. I can't speak to anything that would
12 have been premised but the purpose of that was, as
13 an audit, to determine the amount being stored.

14 Q Right. If I heard your evidence correctly
15 yesterday, though, you did say that one of the
16 reasons that the Special Investigations Unit and
17 you believed that the storage of these large
18 amounts of fish was indicative of potential
19 commercial use, as opposed to FSC use, was because
20 it was in a cold storage facility, which is
21 expensive; is that correct?

22 MR. COULTISH: Well, a combination. We had evidence to
23 show that persons involved in the FSC fishery with
24 large volumes of fish were bringing them to these
25 facilities. We also, through inspections, knew
26 that much of this fish was processed and contained
27 in a manner exactly consistent with fish that had
28 been harvested commercially and intended to be
29 sold. So from that, we felt that an audit was
30 required to determine the amount of FSC fish being
31 stored and potentially sold into the commercial
32 market.

33 Q All right. I have some questions now for you, Mr.
34 Nelson, in relation to compliance rates and hours
35 spent by C&P on that area.

36 MS. BROWN: Mr. Lunn, could you turn up, please,
37 document 9 of our list?

38 Q Now, Mr. Nelson, do you recognize this? This is a
39 PowerPoint presentation from January 19th, 2010,
40 which summarizes the program results for salmon.

41 MR. NELSON: This is a document that a couple of the
42 people that report to me would have prepared for
43 attendance so I have seen it, intended for the
44 audience at the Integrated Harvest Planning
45 Committee.

46 Q And was this a presentation that you delivered?

47 MR. NELSON: I don't think it was me that delivered it.

1 It was most likely Herb Redekopp or John Lewis.
2 Q Okay. But it's a document that you're familiar
3 with, correct?

4 MR. NELSON: I've seen it.

5 MS. BROWN: Yes. Could this be marked as the next
6 exhibit, please?

7 THE REGISTRAR: Exhibit 882.

8
9 EXHIBIT 882: Pacific Region, Conservation
10 and Preservation - 2009 Program Results
11 (Salmon) presented to IHPC January 19, 2010
12 [PowerPoint DFO]
13

14 MS. BROWN:

15 Q And if I could take you, Mr. Nelson, to page 17,
16 please? And this is a graph which says at the
17 top, "Lower Fraser Salmon Fisheries from April
18 1st, '09 to January 12th, 2010". And it indicates
19 there the various fishery categories and then
20 across the chart on the top, "Fishery Officer
21 Effort Hours, Percentage of Total Effort",
22 "Checks", "Violations" and "Compliance Rate". And
23 going down the Compliance Rate column, we see for
24 "commercial troll" it says that there were nine
25 fishery effort hours but it says zero checked. So
26 can you explain what that means if there were nine
27 effort hours but zero checks?

28 MR. NELSON: I don't understand why the nine hours
29 because there was no commercial troll fishery in
30 that area. It may have been a mis-entry by an
31 officer or it could have been some checks of some
32 trollers who landed in the lower Fraser area. I'm
33 not sure.

34 Q All right. So it's your understanding that there
35 was no commercial salmon troll fishery during that
36 time period?

37 MR. NELSON: Right.

38 Q So the 100 percent compliance rate is a little bit
39 misleading because there was no fishery, correct?

40 MR. NELSON: Again, the nine hours of effort, if they
41 checked a couple of boats and they were in
42 compliance, it's not inaccurate; it's a very small
43 sample.

44 Q Okay. Well, it says "zero checks" but --

45 MR. NELSON: Yeah, I don't know. I can't explain the
46 nine hours so...

47 Q All right. So we see a compliance rate of 88

1 percent amongst the commercial salmon nets,
2 Aboriginal salmon 88 percent, Aboriginal salmon
3 economic 80 percent compliance, recreational
4 salmon non-tidal 91 percent and recreational
5 salmon tidal 77 percent.

6 MR. NELSON: Right.

7 Q And do you agree with the statistics that we see
8 here?

9 MR. NELSON: I'm assuming they were pulled from our
10 system, which is as good as the information that
11 goes into it. So the officers that retrieved this
12 -- I didn't retrieve it -- I'm assuming they got
13 the right information.

14 Q Right. And you'd agree that it shows a good
15 compliance rate by the various users and, in
16 particular, for my clients' interests amongst the
17 Aboriginal users?

18 MR. NELSON: Well, I don't view even numbers of 12 and
19 20 and 23 percent as good. That's a lot of
20 illegal activity.

21 Q Well, I'm looking at the percentages.

22 MR. NELSON: Yeah, I am, too. The non-compliance rate
23 on the far right says "commercial salmon 12
24 percent non-compliance, Aboriginal 12 percent,
25 Aboriginal salmon economic 20 percent,
26 recreational salmon 9 percent, recreation salmon
27 tidal 23 percent".

28 Q Right.

29 MR. NELSON: Those numbers are high, as far as I'm
30 concerned, and require some attention.

31 Q And given that the recreational salmon tidal
32 fishery had a 23 percent non-compliance rate, was
33 there any corresponding change to enforcement?

34 MR. NELSON: I don't know that. It's important one
35 other thing we take into account is, what's the
36 impact to the resource? And somebody with a
37 commercial salmon net can impact the resource far
38 greater than a person with a rod and reel in one
39 instance. So maybe for comparison sake, if you
40 had a hundred recreational fishers and 20 of them
41 are breaking the law, and a lot of the ones we're
42 talking there are barbed-hook violations or things
43 like that, rather minor in nature and not
44 impacting the resource as greatly as somebody with
45 a net who may be catching hundreds of fish. So
46 you have to be very cautious when looking at non-
47 compliance rates as far as just comparing them one

1 against the other.

2 Q Right. And you'd agree with me that this chart
3 doesn't really give us any information about the
4 exact nature of the violation since we only see
5 numbers here?

6 MR. NELSON: That's correct. And with any of them.
7 Like some of the commercial ones, some of the
8 Aboriginal ones might have been fishing outside
9 the time or minor in nature as well. I don't know
10 that.

11 MS. BROWN: Right. Mr. Lunn, could you turn up Exhibit
12 880, please? And if we could go to page 18,
13 please?

14 Q And just to refresh your memory, Mr. Nelson, this
15 was the 2009/2010 Fraser Coastal Highlights that
16 you spoke to in evidence yesterday. And slide 18
17 there talks about some of the violations. It
18 notes 176 violations during closed time patrols
19 and indicates there the majority of the violations
20 encountered were in the recreational fishery. So
21 this PowerPoint or this particular slide coincides
22 with the other document that I just brought you
23 to.

24 MR. NELSON: I'm not sure. It says 176 violations
25 during closed time patrol but it doesn't say what
26 fishery that's related to. It says the majority
27 of the violations were encountered in the rec
28 fishery. These are just some numbers that I don't
29 think they directly correlate to that table.

30 Q And do you know if the information that we see on
31 this slide was specific to the Fraser?

32 MR. NELSON: I don't know that for sure but I'm
33 assuming it is because that's what the whole title
34 of the document was.

35 Q All right. I'd like to ask you some questions
36 about priorities. And we've heard a lot of
37 testimony about C&P's efforts that are directed
38 and focused at Aboriginal fishing and also on the
39 sale of fish. My questions really are with
40 respect to how Aboriginal fishing has become the
41 priority that it has within C&P especially in
42 light of the heat map and the other materials that
43 we've seen in these proceedings so far.

44 MR. NELSON: Okay. Sorry. The question was...?

45 Q Why is it that Aboriginal fishing is the high
46 priority that it appears to be based on your
47 evidence?

1 MR. NELSON: It's as the direction from the 2005
2 Williams review. An area was identified that was
3 a problem and probably one of the reasons is in
4 three of the subsequent years there have been very
5 low fish returns so there hasn't been much
6 commercial or recreation opportunities and the
7 fish that are in the river generally are -- First
8 Nations are the only ones that would have access
9 to it for three of the last five years. In a year
10 like last year where we had the magic year,
11 everybody had lots of fish. So our focus of
12 attention, it wasn't as important to be concerned
13 about some fish, as it is in years of low returns.

14 Q And what are the other high priority areas for C&P
15 right now?

16 MR. NELSON: I'd have to refer to the documents to be
17 accurate. But I know that the new taking over
18 aquaculture industry, the enforcement of the
19 aquaculture industry and management of that is a
20 priority. Habitat is still a priority. There's
21 **Oceans Act** rain-protected -- like everything's
22 there. The relative priority, I'd have to refer
23 to the documents to get that for you.

24 Q All right. I've got a few questions for you now
25 on catch monitoring. And we've heard evidence
26 yesterday and today as well about concerns that
27 C&P has with respect to catch monitoring and that
28 you feel that there need to be better catch
29 numbers.

30 MR. NELSON: Yes.

31 Q Did I capture your evidence correctly there?

32 MR. NELSON: Yes.

33 Q Last week, this Commission heard from Matt Parslow
34 and Les Jantz. Do you know those two individuals
35 or know of them?

36 MR. NELSON: I know Les Jantz fairly well. I know of
37 the other person.

38 Q All right. Mr. Parslow is the management
39 biologist in the lower Fraser and he's responsible
40 for the estimation of catch for the lower Fraser
41 First Nations food, social and ceremonial and also
42 economic opportunities fisheries. And Mr. Jantz,
43 as you may know, is the area chief of resource
44 management for the B.C. Interior region and he
45 also oversees catch monitoring programs in that
46 area. Is that consistent with your understanding?

47 MR. NELSON: I know so for Mr. Jantz. I'm not as

1 familiar with the other person.

2 Q All right. Both of these gentlemen testified last
3 week on May 11th about the levels of monitoring
4 and reporting in the First Nations food, social
5 and ceremonial fisheries. And they both testified
6 that they were generating catch estimates in the
7 90 percent accuracy range. And I'm wondering if
8 you can comment on that?

9 MR. NELSON: Obviously, I would disagree with that, as
10 would most staff in Conservation and Protection,
11 based on our observations and our examples that I
12 cited yesterday.

13 Q And Mr. Nelson, you've not ever worked in catch
14 monitoring or in resource management, have you?

15 MR. NELSON: Yes.

16 Q You have.

17 MR. NELSON: Prior to 1993, fishery officers did all
18 the catch monitoring as well so I have experience
19 in that as well.

20 Q Now, you don't agree, as you say, with the two DFO
21 witnesses that the Commission heard from. As
22 well, last week, the Commission heard from Grand
23 Chief Ken Malloway. And he testified on May 12th
24 to the accuracy and intensity of the catch
25 monitoring program that's run by the Fraser Valley
26 Aboriginal Fishery Society. You're not suggesting
27 that Grand Chief Malloway was mistaken in his
28 description of the catch monitoring programs, are
29 you?

30 MR. NELSON: If the information that has been provided
31 there is what the Department uses, it doesn't
32 matter where the numbers come from, if it's what
33 the Department has, I think it's consistent with
34 what C&P had observed, that the numbers are often
35 inaccurate.

36 Q Given this serious disconnect that you believe to
37 be occurring between what you say you department
38 or your division observes and how the resource
39 managers are doing their work, what suggestion can
40 you make for addressing that situation?

41 MR. NELSON: It was the first recommendation that I
42 read yesterday, is I believe something along the
43 lines I used were for some reason we can't seem to
44 do it ourselves; perhaps we need to be forced to
45 get together and deal with this issue. And I put
46 that in the recommendation that I suggested
47 yesterday. We need to come to terms with that, as

- 1 with a number of things, such as the whole FSC
2 allocation issue. That's where that has to start.
3 Q Now, also in your evidence yesterday, you
4 indicated that there weren't any incentives for
5 First Nations to report their catch properly. And
6 this Commission heard evidence last week that
7 there are incentives and disincentives that tie in
8 to catch reporting. And in fact, the evidence
9 that was heard was that a failure to report catch
10 can affect a First Nations' ability to renew its
11 AFS agreement or communal fisheries agreement.
12 Are you aware of that?
13 MR. NELSON: I'm aware of that but I'm also aware of
14 cases where First Nations who have signed on those
15 agreements have not provided any information to
16 the Department and they have got a subsequent
17 agreement the following year. So if it was
18 followed, I would say there would be some
19 incentive.
20 Q Also, on May 12th, there was evidence given by
21 Colin Masson. Do you know Mr. Masson?
22 MR. NELSON: Yes.
23 Q His evidence was that in the presentations that
24 he, from time to time provides to First Nations,
25 that one of the things that he informs First
26 Nations of are positive incentives attached to
27 catch reporting. For example, the ability to
28 improve collaborative relationships with DFO. And
29 would you agree that relationship-building and
30 improving collaboration between First Nations and
31 DFO is another positive incentive for catch
32 reporting to take place?
33 MR. NELSON: Absolutely. And I have invited, an
34 example is, the canoe journeys which fishery
35 officers participate in. I have invited resource
36 management staff, including Mr. Jantz and his
37 staff, and others, to participate in some of these
38 journeys to experience it. And there's only been
39 a couple of times where staff have participated
40 in. I've tried going to the regional director
41 general saying, look, we need the direction that
42 more staff should be participating in these things
43 to help build the relationship. And we are not
44 seeing their participation to the levels we would
45 like.
46 Q I've got one other question that relates to the
47 relationship between C&P and the resource managers

1 and the recommendation that you made. And I'm
2 wondering, how does line reporting get in the way
3 of your two departments being able to come
4 together and communicate effectively?

5 MR. NELSON: In my view, it doesn't but I think what
6 was one of the most important views, it is from
7 neither of us, was the departmental audit that was
8 done one year after line reporting. And it looked
9 at what progress was being made and the word
10 "integration" came up. And one of the key
11 messages in that audit was that C&P has really
12 picked up on integration with line reporting. It
13 sounds, how is that possible, when you become more
14 of a stovepipe in some people's minds?

15 It's because we, as a management team, took
16 it upon ourselves to make integration a priority
17 and were able to do that. We were not
18 experiencing that level of integration prior to
19 line reporting. So sorry, could you read me that
20 question again? I think I might have missed a
21 point. I wanted to add something but could you --

22 Q My question was just how line reporting and the
23 way line reporting works affects the ability of
24 C&P to interact and communicate effectively with
25 the resource managers.

26 MR. NELSON: In my view, it's improved it from the C&P
27 point of view but I have no control over how
28 interactive and how integrated the resource
29 management staff are with us. We try and invite
30 them and get them but it's the area director's
31 responsibility to ensure the integration happens
32 both ways. In our structure that we have now,
33 it's truly the area directors that are supposed to
34 be driving the integration of the Department. And
35 in my experience with some of these issues with
36 the resource management staff, it's not working
37 both ways.

38 MR. COULTISH: Can I comment as well?

39 Q Of course.

40 MR. COULTISH: In my service as Area Chief North Coast,
41 I had extensive relationships with and dealings
42 with resource management. One of the issues when
43 it came down to the amount and the frequency of
44 our working with resource management and First
45 Nations in particular, when negotiating or
46 discussing the terms and conditions of a potential
47 fishing agreements, harvest agreements and so on,

1 one of the comments out of resource management
2 often heard was we prefer not to have C&P present
3 because you could be a hindrance to the flow of
4 the discussions, that the First Nations see you as
5 a hindrance because you're the enforcement arm and
6 we don't want any of that done.

7 Hence, in many occasions, we weren't present.
8 Very important things such as catch monitoring and
9 RDN programs and terms and conditions of the
10 agreements being discussed and we weren't really
11 brought into it until the document was created and
12 said can you review it and pass comment. And as
13 you can imagine, that's a difficult process for us
14 as well. So many times, we've simply not been
15 included in these discussions.

16 MR. NELSON: I could add another example, too, when I
17 first came into the chair as regional chair with
18 line reporting. I'd heard about the Integrated
19 Harvesters Planning Committee, which C&P had never
20 participated in or attended and I said, well, we
21 should really be there. And the resource manager
22 said, no, they don't want you there. Well, we
23 looked into it and, in fact, they did want us
24 there and we've gone and made presentations and
25 have been at most of them since and they welcome
26 our presence. So as I've used the words "not
27 feeling the love" sometimes from resource
28 management.

29 Q I just have a few final questions on the issue of
30 accountability. And Mr. Coultish, at the end of
31 your evidence yesterday when you were speaking to
32 recommendations that you would propose, you spoke
33 of your wish to be given the money to do your work
34 and to be left alone. And this gives rise really
35 to issues of accountability. And I'm wondering if
36 you can tell the Commission, what is the existing
37 accountability framework within C&P?

38 MR. COULTISH: Well, I guess I'd suggest a little bit
39 of the passion that I feel for this process came
40 through. What I meant by that is I think what we
41 need to do within the Department is establish what
42 we believe to be, and whether it's inside or with
43 outside oversight, a program that is required for
44 not only now but the future needs of our role in
45 the organization.

46 And when I say that, fund it, provide the
47 salary, the number of individuals that we require

1 and when I say leave us alone, it's two years
2 after that occurs not to begin to erode that. As
3 far as accountability, we are highly audited, not
4 only through ourselves but through our internal
5 finance. We report on virtually every cent
6 through our internal workings that we spend from
7 salary to overtime to O&M dollars. Post-Gomery
8 Inquiry with a Conservative government is now that
9 we are highly, highly accountable and audited and
10 that's where we're at right now.

11 MR. NELSON: And the time tracking system that we have,
12 too, is not utilized by anybody else in the
13 Department.

14 Q This next question is directed to both of you and
15 I'll leave it to you to decide who should answer
16 if both of you wish to but is there a formal
17 process whereby members of the public can make
18 complaints, if there's any concern about fishery
19 officer conduct?

20 MR. NELSON: Yes, there is. And Mr. Coultish is the
21 author of that document.

22 MR. COULTISH: We had the same concerns and in fact
23 several years ago I was asked by Randy to author a
24 process. We developed a formal public complaints
25 document and process that all fishery officers in
26 the Pacific region are subject to. And as a
27 matter of fact, just recently our national
28 headquarters has taken that model with the
29 objective of creating a national public complaints
30 process.

31 Q And is there any oversight by the RCMP or any
32 other outside policing agency in the event of a
33 complaint?

34 MR. COULTISH: There are provisions for policing
35 involvement or oversight, if deemed to be
36 required, and that would probably be established
37 between the supervisor of the employee and the
38 director. And in fact, on several cases that I've
39 personally been involved in with Randy where, as a
40 result of actions of officers, we've immediately
41 contacted the RCMP to bring them in as part of an
42 investigation.

43 MR. NELSON: Depending on the level of the
44 investigation, too, we have what's called a Code
45 of Conduct. And if it's a serious enough
46 violation or accusation, the Code of Conduct
47 brings the investigators from outside the region

1 to do it; we don't do it ourselves. Or pardon me,
2 there will be one person from within region and
3 two from outside that participate in such a Code
4 of Conduct investigation.

5 MS. BROWN: Thank you. Those are my questions.

6 MR. DICKSON: Yes, Mr. Commissioner, it's Tim Dickson
7 for the Sto:lo Tribal Council and the Cheam Indian
8 Band.

9

10 CROSS-EXAMINATION BY MR. DICKSON:

11

12 Q Mr. Nelson, I want to ask you first a little bit
13 about illegal fishing. Yesterday, you described
14 the increased efforts on illegal fishing since
15 2005 and you testified that:

16

17 Since that time, I am satisfied that we have
18 a handle on closed-time fishing activity and
19 we are doing an adequate job.

20

Do you remember that?

21

MR. NELSON: Yes.

22

23 Q And I take it that illegal fishing includes over-
24 harvesting, fishing more than one's allocation; is
25 that right?

26

27 MR. NELSON: No. No, what I was referring to there for
28 the closed-time patrols that we have, we feel we
29 are doing an adequate job and can say with a high
30 degree of certainty that millions of fish are not
31 being taken. I think I used the term a hundred
32 thousand perhaps or more but certainly not in the
33 millions. What I also said is on the FSC and
34 illegal sales of fish, those are fish that are
35 taken legally but sold illegally, I said. We
36 don't have a handle on that.

37

38 Q Right. And I'll come to that in a moment. Thank
39 you, Mr. Nelson. But I want to understand, just
40 illegal fishing is fishing obviously when you're
41 not allowed to; is that correct? Fishing during a
42 closed time, taking more fish than you're allowed
43 to, that sort of thing; is that right?

44

45 MR. NELSON: Fishing during a closed time, if you are
46 caught, that would be considered fishing
47 illegally, yes.

48

49 Q And so that raises a conservation concern, I think
50 you would agree?

51

52 MR. NELSON: In years of low returns, it could, yes.
53 Not always. That's why in a year like last year

54

1 with such a large run we wouldn't focus as much
2 effort during closed times, if there was any, as
3 we would in a year, in '07, '08 and '09 when the
4 returns were much lower.
5 Q Now, illegal sales of fish. That means, as I
6 understand it, that that's the --
7 MR. NELSON: Sorry. Legal or illegal? I'm not quite
8 sure what I'm hearing when you're --
9 Q Oh, I'm sorry.
10 MR. NELSON: Okay.
11 Q You're not clear?
12 MR. NELSON: Yeah.
13 Q Illegal sales of fish means the sale of a fish
14 that was allowed to be caught but not allowed to
15 be sold?
16 MR. NELSON: Yes.
17 Q And Mr. Coultish, yesterday you testified that
18 sale is the primary root cause of illegal fishing.
19 Most illegal fish are intended to be sold. Do you
20 remember that?
21 MR. COULTISH: Yes, the sale of either illegal fish or
22 illegal harvest is the primary reason we get
23 illegal fishing activity. So the commerce from
24 illegal harvest is the root cause of that.
25 Q Yeah, and I take it that your point is that the
26 possibility of selling might motivate illegal
27 fishing?
28 MR. COULTISH: Correct.
29 Q And so increase it; is that right?
30 MR. COULTISH: Yeah, very little personal use is
31 obtained from illegal fishing. Our experience is
32 most illegal fishing is driven from sale.
33 Q And I can see a conservation concern with illegal
34 sales of fish to the extent that it motivates
35 illegal fishing; is that right?
36 MR. COULTISH: Well, I think, yes, as well, added point
37 for Randy's term is fishing outside of a licensed
38 or sanctioned process, to us, is illegal.
39 Q Right. But if a fish is caught legally, if you're
40 allowed to catch the fish, I just want to get this
41 clear, the sale of that fish does not in and of
42 itself raise a conservation concern. Would you
43 agree with that?
44 MR. COULTISH: As long as that fish has been accounted
45 for, correct.
46 Q Correct, correct. Now, I want to turn to the
47 issue of illegal sales. Mr. Melvin, he's a DFO

1 Intelligence officer based out of Kamloops; is
2 that right?
3 MR. COULTISH: He is presently the manager of the
4 Regional Intelligence Services, works out of
5 Kamloops and reports to me.
6 Q And he wrote the Project Ice Storm Intelligence
7 Assessment?
8 MR. COULTISH: That's correct.
9 Q And neither of you were involved in writing that
10 report?
11 MR. COULTISH: Speaking for myself, that's correct.
12 MR. NELSON: I don't believe so. What was the year of
13 it again, 2006?
14 Q 2005, '06.
15 MR. NELSON: Five?
16 Q Sorry, six.
17 MR. NELSON: Not the rating of it, no. You've read
18 them obviously. Are you proud of Mr. Melvin's
19 intelligence assessment for Project Ice Storm? Is
20 this the kind of intelligence report that C&P is
21 aspiring to create?
22 MR. COULTISH: I would certainly say I would respect
23 it. It raised an understanding that during that
24 time our ability to move into intelligence-led was
25 at its very early stages and what we saw with some
26 of the word that Rob did was the questions asked
27 of projects or information or intelligence.
28 Sometimes these questions are tough questions but
29 we need to ask them because again we want the
30 intelligence to lead us instead of a preconceived
31 route.
32 Q Yes, I heard you say that, Mr. Coultish, and I'll
33 get to that a little later on. But let me ask you
34 right now. Do you stand by Mr. Melvin's report in
35 Project Ice Storm? Do you stand by what he wrote
36 in that report?
37 MR. COULTISH: I have no reason not to at this point
38 understanding my involvement.
39 MR. NELSON: I would like to comment that I don't agree
40 with everything that Rob puts in reports and nor
41 do I agree with everything that every employee
42 has. Rob is a good employee and there are things
43 that I've seen in some of these that I would say I
44 don't agree with.
45 Q And does that extend to this specific report,
46 Project Ice Storm?
47 MR. NELSON: I'd have to go through it and look at it

1 and read it but I --
2 Q Did you not go through it in preparation for this
3 hearing?
4 MR. NELSON: I've gone through about three-and-a-half
5 feet of binders between Friday and today. So it's
6 imbedded somewhere in there.
7 Q Mr. Coultish, yesterday and again today, when you
8 were asked about the Project Ice Storm report, you
9 testified that most or all of the fish in the cold
10 storage facilities were processed in a manner
11 consistent with them being for commercial use as
12 in the way it was vacuum-packed or filleted or
13 processed in smaller packages. And you testified
14 that there's a cost to all of this. And I just
15 want to get the reasoning correct. As I follow
16 you, is your reasoning that the cold storage of
17 FSC fish in this volume processed in these ways
18 with this sort of cost is not consistent with FSC
19 use of fish? Is that the reasoning?
20 MR. COULTISH: That's one of them, yes.
21 Q The underlying assumption there is that this cold
22 storage of FSC fish is not consistent with First
23 Nations' patterns of use for FSC fish. That's
24 right, isn't it?
25 MR. NELSON: I think, to be clear, he said it was one
26 of them and I think I've heard him explain before
27 there are other things, such as the names of
28 people and tracking the fish afterwards that are
29 important as well. The question was very narrow
30 on just because something is in cold storage, does
31 that make it FSC? No. Or does that make it FSC
32 that's going to sale? I don't think that's
33 certainly not what I share.
34 Q Very well. Part of your reasoning then was that
35 the way that it is processed?
36 MR. COULTISH: Again, from projects that preceded this
37 one, information that we obtained from that,
38 audits that have been done in the past and the
39 information we found during this project leads us
40 to believe that a substantial portion or all, but
41 anywhere in between, could have been intended for
42 sale.
43 Q Could have been intended for sale. I thought I
44 heard it stated a little more definitively by you
45 earlier.
46 MR. COULTISH: We believe that it was intended for
47 sale.

1 Q And part of your reasoning, Mr. Coultish, is that
2 you do not believe that the cold storage of fish
3 in this way is consistent with FSC use of fish; is
4 that correct?
5 MR. COULTISH: That's correct.
6 MR. DICKSON: Mr. Lunn, could we go to Exhibit 870,
7 please?
8 Q This is Mr. Melvin's assessment of the Project Ice
9 Storm audit. Now, in this document, could you
10 please direct me to where Mr. Melvin analyzes
11 First Nations' patterns of use for FSC fish
12 because I didn't see it in there.
13 MR. COULTISH: Sorry. I don't have it here.
14 Q Do you know it? It's not that long.
15 MR. COULTISH: I've memorized it but I don't have it in
16 front of me.
17 MR. NELSON: It's probably in one of these binders, if
18 I'm directed to the right binder.
19 MR. DICKSON: Perhaps Commission counsel could help me.
20 MR. COULTISH: Actually, I think I might have it here.
21 MR. MCGOWAN: Yes, Mr. Commissioner, it's the document,
22 the paper copy will be contained in the binder
23 labelled -- I'm not sure what it's labelled at the
24 table there but it's the Commission's binder of
25 documents at Tab 22.
26 MR. DICKSON:
27 Q So what I'm looking for, Mr. Coultish, is where
28 Mr. Melvin is analyzing what C&P knows about First
29 Nations' patterns of FSC use of fish.
30 MR. COULTISH: I'm not sure that would be in here.
31 Q No, I don't think it is.
32 MR. COULTISH: Okay. I'll take your word for it.
33 Q You accept that? So has C&P gone and conducted a
34 study of how First Nations use fish for FSC
35 purposes?
36 MR. COULTISH: I'm not aware of any formal study but
37 understanding the nature of what we do, the very,
38 very close relationships that we have with First
39 Nations, the fact that we work with them and have
40 worked with them for many, many years and continue
41 to do so at every level of their fishing
42 activities, as well as the work and relationships
43 that we've developed with them in their
44 communities, I think we probably had a pretty good
45 understanding of the importance of FSC fish and
46 how it's used.
47 Q And how it's used. Well, so let's take this one

1 step at a time. You have not conducted a formal
2 study on the patterns of FSC use of fish by First
3 Nations; am I correct in that?
4 MR. COULTISH: No, the other thing I will mention, Mr.
5 Commissioner, is we have in our employ First
6 Nations fishery officers. And through that -- and
7 again, our program, the fact that we work with
8 First Nations on a very, very close manner, I
9 think, provides us a pretty good understanding of
10 what its use. Have we conducted a formal study?
11 I'm not aware of that.
12 Q Okay. So there's no report that you have that you
13 can draw on that says, hey, here's how First
14 Nations use FSC fish. Well, they don't vacuum-
15 seal it and they don't put it in cold storage. We
16 know that and they don't filet it when they store
17 it and here are the volumes that they use. You
18 don't have a report like that, do you?
19 MR. COULTISH: No.
20 Q No.
21 MR. COULTISH: No.
22 Q And again, there is no mention of that in Mr.
23 Melvin's Project Ice Storm report. He didn't turn
24 his mind to it. Do you accept that?
25 MR. COULTISH: Mr. Melvin writes what's written in
26 here. There's all sorts of other intelligence
27 that he has and information that probably isn't in
28 here.
29 Q You would accept it, though, Mr. Nelson, that Mr.
30 Melvin is very strongly coming to the conclusion
31 that this fish in the cold storage facilities is
32 for sale?
33 MR. NELSON: Yes.
34 Q Yes. And he's not addressing the issue of, well,
35 how do First Nations use FSC fish and what volume?
36 MR. NELSON: Mr. Melvin is an experienced officer who
37 lived in all parts of the region. He's lived in a
38 First Nations' community probably longer than most
39 non-Native people.
40 Q And so he may have all sorts of thoughts in his
41 head about First Nations' use of FSC fish but he
42 didn't write them down in this report, did he?
43 MR. NELSON: He's probably got a lot of things in his
44 mind that wouldn't be in six pages, absolutely.
45 Q No, I mean that's just not an issue that he
46 thought needed to be addressed in a report that is
47 going to the head of the division and the regional

1 director general on this issue, right? Am I right
2 on that?

3 MR. NELSON: I really don't understand your question
4 and where you want to go with this because these
5 are intelligence assessments. They aren't a
6 complete document that is as irrefutable evidence
7 that's going to prove something. They are an
8 assessment of information that is hopefully going
9 to lead you to gather more information and take
10 what information you have and make a proper
11 assessment on it with good analysis by people who
12 are not directly the providers of that
13 information.

14 MR. DICKSON: Well, could we go, please, to page 3, Mr.
15 Lunn?

16 Q And so here are Mr. Melvin's key findings. And
17 the first one is:

18
19 The FSC First Nations fishery on the lower
20 Fraser River is largely out of control and
21 should be considered in all contexts, a
22 commercial fishery.
23

24 I'm not hearing a lot of equivocation on Mr.
25 Melvin's part. I'm not hearing him say, gosh, we
26 should look into this, we should inquire as to
27 First Nations' use of FSC fish. I am seeing a
28 conclusion. Do you agree with that?

29 MR. NELSON: You're seeing a statement that he's
30 provided based on the information that he
31 assessed.

32 MR. COULTISH: You have to understand that, again, in
33 the preliminary use of intelligence, a term either
34 inference or a conclusion based on the analysis,
35 I'd suggest to you that in this forum, this was a
36 statement of analysis. His findings are
37 conclusions or inference, if you want to use the
38 term.

39 Q Well, I note that he uses "findings"; he does not
40 use "inference".

41 MR. COULTISH: Okay. It's mentioned in here. But in
42 the language as far as within the intelligence.

43 MR. NELSON: It says "executive summary and key
44 findings". You'll note in a couple of the items
45 they talk about key findings.

46 Q Yes, actually I do note that in item 3, he says:
47

1 Door-to-door sales of FSC salmon account for
2 a large portion of the illegal sales of
3 salmon.
4

5 This is an executive summary/key findings. I see
6 no mention of that point whatsoever in the rest of
7 the report. Do you accept that?

8 MR. NELSON: I'll take your word for it, not having
9 read it but it could be the only place it is
10 located. I don't know.

11 Q Right. It's not really summarizing, just stating;
12 do you agree?

13 MR. NELSON: No, I can't agree unless I take a detailed
14 look at it.

15 Q Fair enough. We don't have time for that.

16 MR. DICKSON: Mr. Lunn, could I turn to Exhibit 868,
17 please?

18 Q Now, this is a memo that was prepared for the
19 deputy minister and it was on this issue. I take
20 it, it was on the Project Ice Storm investigation;
21 is that correct, Mr. Coultish?

22 MR. COULTISH: Yes.

23 Q And it's dated June 6th, 2006, and I'll just note
24 that. And again, I don't see any analysis in this
25 document of patterns of First Nations' FSC use.
26 Do you accept that there isn't any? Or do you
27 want to flip through?

28 MR. COULTISH: No, no, I've seen this and there is
29 nothing in there that analyzes FSC use.

30 MR. DICKSON: Right. And Mr. Lunn, if we go to page 2
31 at the bottom, the last bullet. And over to the
32 next page, if you can get it onto one screen.
33 Thank you.

34 Q It says C&P right there at the bottom, the last
35 bullet on the page at the top.
36

37 C&P is in the process of meeting with the
38 elected Chiefs and Council for the respective
39 First Nations that have members who have
40 stored FSC salmon in the plants. The Chief
41 and Council will be informed of the result of
42 our audit and informed that DFO is hoping to
43 further track the fish by contacting
44 individual Band members.
45

46 Do you know if that was done?

47 MR. COULTISH: I don't.

1 Q You don't know.
2 MR. COULTISH: I don't.
3 MR. DICKSON: Mr. Lunn, sorry, but can we back to
4 Exhibit 870? Thank you. To the first page.
5 Q Now, that memo that I just showed you, that was
6 dated June 6th, 2006. Mr. Melvin's report is
7 November 27, 2006. So that's about five-and-a-
8 half months later, right? And again, I see no
9 mention at all in Mr. Melvin's report of any
10 discussions with First Nations on the findings of
11 this audit. Do you accept there's no mention of
12 that?
13 MR. COULTISH: In neither of the two documents that
14 I've seen.
15 MR. DICKSON: Right. And Mr. Lunn, if we go to page 8
16 of this document, please? Down at the bottom
17 there, under "Intelligence Information Gaps".
18 Sorry, just above. Thank you.
19 Q There's three points here and I take it that Mr.
20 Melvin is identifying where do we need to go from
21 here? What do we need to investigate? Where are
22 our information gaps? And you'll agree with me,
23 there's no mention there of any intention to talk
24 to First Nations about cold storage and FSC use,
25 is there?
26 MR. COULTISH: I think he mentioned he earlier, did he
27 not, in that one we just went through, that C&P
28 staff would be talking, working with First
29 Nations?
30 Q In the memorandum?
31 MR. COULTISH: Yes, it was mentioned.
32 Q I see. The memorandum to the deputy minister.
33 Yes, it was mentioned. And then I think you
34 agreed with me you don't know whether that was
35 done. And my point is, here we are five-and-a-
36 half months later than that memorandum. And Mr.
37 Melvin has not mentioned any discussions with
38 First Nations. I think you just agreed with me on
39 that. And I'm saying here where he's pointing to
40 where do we go from here, what are our next steps,
41 he is not identifying any need to go and talk to
42 First Nations people and get their take on the
43 issue, ask them about their FSC use of fish.
44 MR. COULTISH: That may be true but if he's acting in
45 an analytical capacity making recommendations,
46 that may have been outside the scope of his
47 responsibility to this project.

1 Q I see.
2 MR. COULTISH: That may have been a recommendation that
3 would have gone to senior management but I can see
4 that not being part of the scope of this project.
5 Q I see. Mr. Melvin's in the room somewhere, he's
6 writing and he's not to go out there and talk to
7 First Nations; is that right?
8 MR. COULTISH: That was not his role as analyst, no.
9 Q Okay. Well, whose role was it?
10 MR. COULTISH: I'm sorry. Whose role would it have
11 been?
12 Q Yeah, who would go and speak to First Nations
13 about this issue?
14 MR. COULTISH: I'll let Randy speak to that one.
15 MR. NELSON: Well, as we have it now, it would be
16 probably the First Nations liaison officer for the
17 particular area that they would deal with. Back
18 then I don't know if we had those in place but the
19 area chief would be responsible for the area. It
20 would be his responsibility to direct his staff to
21 conduct those meetings.
22 Q Well, do you know if that was done?
23 MR. NELSON: I don't know.
24 Q Do either or both of you know of Ernie Crey?
25 MR. NELSON: Yes.
26 MR. COULTISH: Yes.
27 Q He's the fisheries advisor at the Sto:lo Tribal
28 Council.
29 MR. NELSON: Yes.
30 MR. COULTISH: Yes.
31 Q And do you know June Quipp? She was a former
32 chief at Cheam?
33 MR. COULTISH: Yes.
34 MR. NELSON: Yes.
35 Q I believe you had spoken to her at the break. And
36 they advised me that they are not aware of one
37 meeting, not one meeting, where DFO asked them
38 about the cold storage of FSC fish. Would you
39 disagree with that? I mean do you have any
40 information of any meeting in that respect?
41 MR. NELSON: I don't.
42 Q No.
43 MR. COULTISH: Not aware of anything that was held.
44 Q Mark Hume is a journalist for the Globe & Mail,
45 you may know. He covers these hearings a lot.
46 Today's Globe contains his story on yesterday's
47 testimony by the two of you and in his report of

1 this issue he talked to Ernie Crey. He asked his
2 perspective. He did that yesterday afternoon.
3 And my question to you is, why has C&P not done
4 this?

5 MR. COULTISH: Well, with history working in the Fraser
6 River myself up until 2002 when I moved to Prince
7 Rupert, our interactions with First Nations'
8 groups on a casual, informal and formal on things
9 such as compliance, sales issues, violations by
10 their memberships was done quite often. And when
11 I say "casual, informal and formal", because we
12 interact with the First Nations' groups in that
13 manner all the time. To suggest that either Mr.
14 Crey or Ms. Quipp was not aware of our concerns
15 with regards to sale of FSC, I would think would
16 surprise me.

17 Q I see. So should they come forward and talk to
18 you in the course of this investigation over the
19 cold storage issue? Is that their responsibility
20 or is it your responsibility to go and do a
21 credible job of information-gathering and go and
22 talk to them and others?

23 MR. NELSON: I think it's everybody's responsibility.

24 Q I see.

25 MR. NELSON: You know, we can go on here a long time
26 about -- I feel there's too much attention here
27 on, is this fish being sold illegally or not? You
28 know, this is about the Fraser River sockeye. And
29 if First Nations are truly concerned about their
30 image and this fish is in cold storage, we would
31 welcome working together with them to devise
32 methods and ways that that fish can be
33 differentiated when it's in cold storage so that
34 there isn't this perception because that's clearly
35 the view that you're saying is all this fish
36 that's in there is all consumed by First Nations.
37 That appears to be what I'm hearing from you.

38 Q I'm sorry. I've just go to stop you there.

39 MR. NELSON: Okay.

40 Q I am questioning you about your assumption that
41 all of these fish, substantially all, or all of
42 these fish, were sold.

43 MR. NELSON: Yes.

44 Q That's the assumption we're talking about.

45 MR. NELSON: Yes, and if I would have been allowed to
46 finish, what I would have said is on our side we
47 believe a large percentage have been sold. So how

1 do we deal with that? That's the issue. How do
2 we deal with that? How do we come together and
3 find a way to allow these fish to be put into cold
4 storage and absolutely ensure that they're not
5 going to get into the market and the First Nations
6 won't be accused of trying to get them into the
7 market? And I gave one example of a Band where I
8 said they had vacuum-packed their fish in a
9 commercial way but in a clear package that said
10 "not for sale". To me, that's progress. That's
11 how we can work together.

12 Q So how can we find a way to come together on this
13 issue?

14 MR. NELSON: Right.

15 Q Yeah, well, the first step is for C&P to go talk
16 to them, isn't it?

17 MR. NELSON: Well, I have also seen evidence in some of
18 these readings --

19 Q Will you not agree with me that you should go and
20 talk to them on this issue?

21 MR. NELSON: We do talk to people --

22 Q On this issue.

23 MR. NELSON: -- on all issues. I don't know. I said I
24 don't know. That means I don't know.

25 Q You're the head of C&P in the Pacific region.

26 MR. NELSON: I do not know.

27 Q You're the head of Intelligence --

28 MR. NELSON: Yes.

29 Q -- Mr. Coultish.

30 MR. COULTISH: I can say, speaking with my peers, and
31 that is, the chief of the lower Fraser River and
32 from my experience personally that we are active
33 within the First Nations community. We are active
34 with their leadership when it comes down to
35 compliance when and where we can have access to
36 them. I'll suggest to you that, at any time, any
37 place, any time, we'd welcome the opportunity of
38 trying to work with our First Nations' groups'
39 leadership because in many cases I believe that
40 some of their members themselves are not abiding
41 by what the Band or the group wishes.

42 And these people themselves may be making
43 individual decisions but it affects the community
44 because that's what the right is tied to. We
45 would welcome the opportunity of being able to
46 solve some of these problems. This particular
47 operation that occurred in 2005 that stemmed from

1 a lot of information that had been gathered with
2 regards to this alleged activity simply showed
3 that there was a great deal of fish being stored
4 in a manner conducive to same type of commercial
5 product. We haven't said, we don't have the
6 proof, that it was sold. We believe a large
7 amount of it was sold.

8 Q Well, you say that, Mr. Coultish. I mean you say
9 you don't have the proof and you certainly do not.
10 I don't think anyone in this room would question
11 that. But you say that you believe 97 percent of
12 all FSC fish or thereabouts is sold. You said
13 that yesterday, did you not?

14 MR. COULTISH: The 97 percent was suggested in a forum
15 and I've said that I believe that it's close, yes.

16 Q It's close?

17 MR. COULTISH: Yes.

18 Q Okay. And my point to you is, you have not gone
19 and discussed with First Nations their patterns of
20 FSC use of fish and yet you're coming to that
21 conclusion, aren't you?

22 MR. COULTISH: I can't speak for people that I
23 personally don't supervise on the Fraser River. I
24 can speak to what my discussions have been with
25 the area chief and his --

26 Q Well, I'm just asking you about your conclusion.

27 MR. COULTISH: My conclusion is that C&P interacts with
28 First Nations communities and leadership in a
29 proactive manner, i.e., Pillar 1, in a patrol
30 activity as Pillar 2, and also, if we have to,
31 from an investigative perspective. But we do a
32 great deal of work with First Nations when it
33 comes to solving problems.

34 Q Mr. Coultish, you'll agree with me that when you
35 say 97 percent of all FSC fish is sold, the
36 implication comes very close to, well, 97 percent
37 of all Aboriginal fishers fishing FSC are selling
38 it illegally?

39 MR. COULTISH: I maintain that I believe that a very
40 large portion of the FSC fish that is harvested is
41 sold.

42 MR. NELSON: If you remember those numbers that came up
43 with the 1.9 million pounds, there was one in the
44 order of 300-and-some-thousand and one in the
45 order of 200-and-some-thousand. Those two account
46 for nearly a third of those catch. So 97 percent,
47 I didn't agree with that by the way, but if it

1 were 97 percent that doesn't mean 97 percent of
2 the First Nations fishing are doing it.
3 Q No, it may not exactly. It may not.
4 MR. NELSON: No, it wouldn't be close.
5 Q Well, it might be close. I mean we're talking
6 about FSC fishers.
7 MR. NELSON: If there are hundreds of First Nations,
8 and there are, that fish in the lower Fraser and
9 two parties account for approximately a third of
10 that amount, or 1.9 million, that leaves a whole
11 lot more that aren't involved. There's a
12 different between 97 percent of the catch and 97
13 percent of the fishers.
14 Q So would you accept that when First Nations hear
15 this conclusion from some C&P officers, that 97
16 percent of FSC fish is being sold, that that
17 breaks down trust between First Nations and DFO?
18 MR. COULTISH: No, I don't believe it breaks down
19 trust. I think it's an indicator that we have a
20 problem. From what we're seeing and what we're
21 hearing as far as catch reports, the problems that
22 we've discussed and heard with regards to catch
23 statistics, I think it's an indicator, I think
24 it's a trigger that the First Nations communities
25 themselves must have to be very concerned that if
26 they're not aware of this activity occurring it
27 doesn't mean it's not occurring, it's that maybe
28 they're not aware of it. If we're off-base --
29 Q They're just focused on the 3 percent.
30 MR. COULTISH: If we're off in our understanding, then
31 we need their help to make us understand it better
32 and that's where the collaboration comes in.
33 Q And you haven't sought their help, have you?
34 MR. COULTISH: Oh, yes. I won't agree with that, no.
35 MR. ROSENBLOOM: Excuse me, Mr. Commissioner. These
36 aren't my witnesses but I do take objection, with
37 great respect to Mr. Dickson, how he's clipping
38 off the witness, as the witness answers any given
39 question. He speaks over the witness and I think
40 in fairness to these two witnesses, that they be
41 given an opportunity to respond to each of Mr.
42 Dickson's questions before Mr. Dickson then
43 follows up with a supplementary question. Thank
44 you.
45 THE COMMISSIONER: I was just going to ask Mr. Dickson,
46 what is your time estimate, Mr. Dickson?
47 MR. DICKSON: Yes, Mr. Commissioner, I'll try to be

1 done in about 15 minutes.

2 THE COMMISSIONER: I think we're slipping into a little
3 bit of argumentative kind of to-and-fro here.

4 It's not terribly helpful to me.

5 MR. DICKSON: Very well. I apologize for that, Mr.
6 Commissioner. I certainly intend to be helpful.

7 Mr. Commissioner, would you wish to take an
8 afternoon break?

9 THE COMMISSIONER: Well, we can go another five minutes
10 and then take a short break. You say 15 minutes.

11 MR. DICKSON: This would be a convenient time because
12 then I can reorganize a little.

13 THE COMMISSIONER: All right.

14 THE COMMISSIONER: The hearing will now recess for ten
15 minutes.

16
17 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

18 (PROCEEDINGS RECONVENED)

19
20 THE REGISTRAR: The hearing is resumed.

21
22 CROSS-EXAMINATION BY MR. DICKSON, continuing:

23
24 Q Mr. Nelson, in the national strategy for C&P,
25 there's these three pillars, and Pillar 1, as I
26 understand it, encompasses activities designed to
27 build bridges with communities; is that fair
28 enough?

29 MR. NELSON: That's a good summary, yes.

30 Q They're important for building relationships and
31 trust?

32 MR. NELSON: Yes.

33 Q And are they also important to help fisheries
34 officers understand First Nations?

35 MR. NELSON: Absolutely, and First Nations to
36 understand fishery officers.

37 Q Right, both ways. And is it a requirement that
38 Intelligence officers engage in Pillar 1
39 activities, Mr. Coultish?

40 MR. COULTISH: Intelligence officers or analysts, you
41 mean?

42 Q Yes. Analysts, fair enough.

43 MR. COULTISH: Well, the people that we have presently
44 working for us that do that, engage in Pillar 1
45 activities, understanding that an industry
46 analyst, which is a true analyst, we would not
47 have them engage in that.

1 Q Dr. Mr. Melvin engage in Pillar 1 activities?
2 MR. COULTISH: Mr. Melvin has had a very extensive
3 background in working in and around First Nations.
4 In fact, worked eight years in New Aiyansh in the
5 Nass Valley, living as the senior supervisor in
6 the area and working with that community so has
7 extensive background in Pillar 1.
8 Q Well, has he engaged in Pillar 1 activities in the
9 lower Fraser --
10 MR. COULTISH: He's - he's never --
11 Q -- with First Nations?
12 MR. COULTISH: -- been posted to the lower Fraser area.
13 Q Because my clients advise me they've never heard
14 of Mr. Melvin. Would that surprise you? They've
15 never met him.
16 MR. COULTISH: He's never been involved actively in the
17 compliance and enforcement uniform patrol
18 activities on the lower Fraser. He has been
19 involved as, again, as an analyst on these
20 projects. So that may not surprise me, no.
21 Q I ask because he's doing intelligence assessments
22 on FSC fish apparently from the lower Fraser, and
23 I'm wondering whether he has experience, direct
24 experience with lower Fraser First Nations.
25 MR. COULTISH: In fact, an important role of the
26 analyst is to be as objective as possible in these
27 types of investigations, so the direct linkage or
28 experience is not required to do an intelligence
29 assessment.
30 Q I see. So Mr. Melvin does not have personal
31 experience of lower Fraser First Nations, or not
32 necessarily anyway.
33 MR. COULTISH: Not that I'm aware of.
34 Q I see.
35 MR. NELSON: He may have, but he deals with analysis of
36 information everywhere in the region.
37 Q You know, in our exchanges, I thought I heard
38 repeated reference to all your experience in
39 working with First Nations and you drawing on that
40 in this work. So I was just trying to see whether
41 Mr. Melvin, who is writing these reports, has such
42 experience of the lower Fraser First Nations.
43 MR. COULTISH: No, the work that we're talking about
44 when we talk about Pillar 1 activities with First
45 Nations groups as a whole within a region, all of
46 us are involved in that. In the lower Fraser, the
47 offices that are posted and work in this area,

1 again, are extensively involved.

2 But in this particular situation on this
3 file, Mr. Melvin was doing analysis work, i.e.
4 intelligence analysis work, and it would be in
5 fact important for him not to have been, because
6 again, we're trying to be as objective as we can
7 when we look at the information and determine
8 whether it's intelligence, and if it is, how is it
9 applied.

10 MR. NELSON: I would add, too, that an officer who
11 spends eight years living in a community like New
12 Aiyansh, I spent three years of my career there.
13 I learnt far more of the importance and
14 interaction with First Nations in my three years
15 there than I did on attending some of the Pillar 1
16 activities that I follow up on. Eight years in a
17 community like that is a very high degree of
18 experience in dealing with First Nations, albeit
19 with one. If all of our staff had eight years'
20 experience living in a First Nations community,
21 we'd be better off.

22 Q I don't want to belabour the point but that's
23 eight years' experience with the Nisga'a; is that
24 right?

25 MR. NELSON: Yes.

26 Q Very well. Mr. Coultish, yesterday you made the
27 statement -- I think you repeated it today -- I
28 think you were speaking off the cuff, but you
29 said, "The public loves us." Do you remember
30 that?

31 MR. COULTISH: Yes.

32 Q And I just want to suggest this. I think the
33 relationship might be getting somewhat better with
34 -- between C&P and some First Nations, but my
35 impression is in my -- and my instructions from my
36 clients, what I hear from them is that there are
37 still many First Nations people who would not
38 agree with your statement. Would you accept that?

39 MR. COULTISH: I would.

40 Q And I'm advised that there are many Sto:lo people
41 who regard C&P's attitude and response toward them
42 as aggressive, heavy-handed and provocative. Have
43 you heard feelings like that expressed to you?

44 MR. COULTISH: I have.

45 MR. NELSON: I would like to comment on that if I
46 could.

47 Q Very well.

1 MR. NELSON: I have had some bad experience over the
2 past, but in recent years --

3 Q Yes.

4 MR. NELSON: -- I have heard positive comments from Ken
5 Malloway, from Ernie Crey, from Grand Chief Doug
6 Kelly. All of them have recognized publicly, in
7 front of some large gatherings, some of the work
8 we've done.

9 Q Right.

10 MR. NELSON: And I think that's a fair statement.

11 Q Yes. And is it fair to say that both sides are
12 trying to improve this relationship?

13 MR. NELSON: Yes.

14 Q But there continues to be some strain.

15 MR. NELSON: And as long as we carry on and don't have
16 allocations of fish defined, and we don't have
17 some rigour to our counting and some traceability
18 and tracking, it's going to be a tough hurdle to
19 get over to get everybody pulling in the same
20 direction.

21 MR. COULTISH: And just to add to that, C&P aren't the
22 decision-makers when it comes down to the
23 management of the fishery. I would strongly
24 suggest to you that much of the anxiety and
25 aggression and/or feelings toward the organization
26 that we end up facing on the ground, in the field,
27 on the water, is as a result of decisions that are
28 well and above our handling.

29 When it comes down to the actual interaction
30 with people, we're professionals in what we do.
31 We also deal with some very, very trying times.
32 Both Randy and I have both been in very aggressive
33 situations where somebody could have quite easily
34 been injured or lost their lives over decisions on
35 fishing and other activities that weren't ours to
36 make, but we are the compliance and enforcement
37 arm of the organization. That's not to say that
38 we disagree with them, but at the end of the day
39 when the fishery has to be closed, we're the ones
40 responsible to be out there to try to do that.

41 We employ every tool in our toolbelt that we
42 can, including dialogue, Pillar 1, everything that
43 we can to try to offset that. However, at the end
44 of the day, sometimes the feelings of aggression
45 and anxiety and distrust are there.

46 MR. NELSON: I would like to add a comment. With some
47 of the groups you represent, I've had about four

1 years ago, I believe, held a healing circle with
2 some people from those communities to try to deal
3 with some of those deep-rooted feelings both of us
4 had. That was a very moving experience for me,
5 and it was good to sort of let them know what I
6 felt like, and they let me know what they felt
7 like.

8 We don't ever want to go there again --

9 Q No.

10 MR. NELSON: -- to where we had those confrontations.

11 Q That's right. But nonetheless, progress has been
12 made, but I think it's fair to say we're not all
13 the way there yet; is that right?

14 MR. COULTISH: There's always lots of good work to do.

15 Q Very well. I'm advised that the Sto:lo have begun
16 to request the presence of the RCMP on a fairly
17 regular basis because they don't feel safe with
18 fisheries officers and they want the RCMP there to
19 keep the peace. Are you aware of anything like
20 that?

21 MR. NELSON: What I am aware of is our officers working
22 closely with some of the First Nations RCMP
23 officers in communities and I haven't been told
24 that. Maybe in a specific incident, like an
25 incident on May 13th, 2003. It was a nasty day.

26 Q No, I think it's more recent than that, and I
27 think it's more regular than that. That's what
28 I'm asking anyway.

29 MR. COULTISH: I've not heard of that.

30 MR. NELSON: I haven't heard of anything like that,
31 that they want RCMP there because they don't trust
32 that fishery officers will do what?

33 Q They don't feel safe.

34 MR. COULTISH: I sit on -- up until just recently, and
35 occasionally do -- I sit on a group of RCMP and
36 other officers in an aboriginal community type
37 process --

38 Q Sorry, please continue.

39 MR. COULTISH: -- that we talk about relationships and
40 issues and intelligence that's brought in and so
41 on. The RCMP staff from various parts of the
42 province, in fact virtually the entire province
43 including the Fraser River attend, and I've yet to
44 hear that presently, and even in the recent past,
45 that RCMP are being requested to attend when DFO
46 -- that did occur just shortly after the event
47 that occurred on the Fraser River involving a very

1 serious incident that Randy alluded to in May of
2 2003. But not in recent times at all.

3 MR. NELSON: We haven't had, since line reporting
4 coincidentally, in five years, what I would class
5 as a serious confrontation with any user group.
6 Prior to that, they would happen quite regularly.

7 I would just like to point out if there is
8 somebody that truly does feel unsafe about a
9 fishery officer, it has not been brought to my
10 attention, and I would invite it so that we can
11 address it.

12 Q Very well. I have one more question, and then I
13 wish to yield the podium.

14 Mr. Coultish, you spoke this morning about
15 the Sto:lo aboriginal fishery guardian program,
16 and yesterday Mr. Nelson recommended the
17 restoration of the aboriginal fishery guardian
18 program. My simple question is do you support
19 that recommendation, Mr. Coultish?

20 MR. COULTISH: Absolutely. Absolutely.

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

22 MR. EIDSVIK: Mr. Commissioner, I want to raise a point
23 and apply for a document to be put back in and
24 reviewed for a moment. It was Tab 7 of the
25 documents we submitted, and it was in the
26 expectation that evidence would be led that there
27 was no sales of FSC fish, and the document is a
28 transcript of a sting operation between DFO and a
29 senior aboriginal chief, and they describe how
30 much fish they're selling illegally, how it's
31 sold, how it's moved from processing plants to
32 processing plant. I understand Mr. Nelson is
33 familiar with it, but he can't attest to the
34 transcript.

35 I think it would be appropriate to identify
36 it, have him review it, and then advise perhaps in
37 writing that indeed it is a valid transcript.
38 Because it goes right to the heart of this issue
39 that we've spent the whole day discussing, and I
40 think the Commission would be short-changed if it
41 didn't have it.

42 MR. SPIEGELMAN: Mr. Commissioner, Jonah Spiegelman for
43 the Government of Canada. It's my position that
44 Mr. Eidsvik had his opportunity to ask questions.
45 He didn't pursue the document in the face of
46 objections when it was his turn, and I think it's
47 not proper to reopen the evidence now.

1 MR. MCGOWAN: Mr. Commissioner, I take the position
2 that nothing that's come out in evidence since Mr.
3 Eidsvik asked his questions has opened the door to
4 this document. Furthermore, I question the
5 utility or the relevance of the document. It's
6 from 1989. It deals with a very specific
7 incident. We have no information about the source
8 of the document. If it came from a criminal
9 prosecution or a criminal disclosure, it may well
10 have been provided to Mr. Eidsvik in breach of an
11 implied undertaking.

12 There are a number of issues surrounding this
13 and, in my submission, it would not assist you in
14 any way in fulfilling your mandate.

15 THE COMMISSIONER: Sorry, Mr. Eidsvik, did you have
16 anything else you wanted to add?

17 MR. EIDSVIK: I think I've said my piece.

18 THE COMMISSIONER: I'm going to not accede to your
19 request, Mr. Eidsvik. Thank you very much.

20 MS. SHARP: Mr. Commissioner, it's Sarah Sharp for the
21 Western Central Coast Salish First Nations,
22 participant group 15. Commission counsel has
23 indicated they need 15 minutes for re-examination,
24 so I will be about 20.

25 THE COMMISSIONER: I think that puts us out of time,
26 then.

27 MS. SHARP: Oh, sorry. Sorry, I will be ten minutes.
28 Okay. I did the math a little too early, I guess.

29
30 CROSS-EXAMINATION BY MS. SHARP:

31
32 Q You both work for DFO in the Conservation and
33 Protection Program?

34 MR. NELSON: Yes.

35 MR. COULTISH: Yes.

36 Q Okay. And if we go to the Policy and Practice
37 Report from today, Figure 1, this shows the
38 architecture of the DFO program?

39 MR. LUNN: Do you have a page number for that?

40 MS. SHARP: Sorry, it's page 6.

41 MR. LUNN: Okay.

42 MS. SHARP:

43 Q We see that Conservation and Protection falls
44 within the Ecosystems Fisheries Management area?

45 MR. NELSON: Yes.

46 Q And the Sustainable Fisheries and Aquaculture?

47 MR. NELSON: Yes.

- 1 Q And Conservation and Protection has a
2 responsibility to guard against harm to the
3 resource that fall within the mandate of the
4 Department of Fisheries and Oceans?
5 MR. COULTISH: Yes.
6 Q You're concerned about the conservation and
7 sustainable use of the resources?
8 MR. NELSON: The work that we do helps achieve the
9 sustainable fisheries.
10 Q At paragraph 4 on page 4, we see that:
11
12 Today, C&P's role is to promote and maintain
13 "compliance with legislation, regulations and
14 management measures implemented to achieve
15 the conservation and sustainable use of
16 Canada's aquatic resources, and the
17 protection of species at risk, fish habitat
18 and oceans."
19
20 Do you contest that's your mandate?
21 MR. NELSON: No. No, that's correct.
22 Q Okay. So this includes prohibiting against the
23 release of prohibited species?
24 MR. NELSON: Sorry, the release of...?
25 Q Prohibited species. You don't want prohibited
26 species being released into the environment?
27 MR. NELSON: Aquatic invasive species is what
28 you're...?
29 Q Yeah.
30 MR. NELSON: Yeah, that's correct.
31 Q Okay. And the protection of vulnerable species?
32 MR. NELSON: **Species at Risk Act**, yes.
33 Q Okay. You want to ensure that they're not caught
34 incidentally or deliberately?
35 MR. NELSON: The resource managers will provide us what
36 they want in the way of fishing plan, and if the
37 goal is to not allow the catch of a prohibited or
38 protected species, we enforce the decisions they
39 make to manage that.
40 Q Okay. And to protect the habitat against the
41 release of hazardous and deleterious substance?
42 That falls within your jurisdiction?
43 MR. NELSON: Yes, where it's silt. If it's chemicals
44 or others, it's Environment Canada.
45 Q Okay. And all of these things help to conserve
46 and protect the fisheries?
47 MR. NELSON: Yes.

1 Q In terms of catch, your concern is -- for
2 conservation and protection is concerned about the
3 numbers of fish that are caught?
4 MR. NELSON: Yes. The concerns about the catch is to
5 ensure it's accurate, because the management
6 decisions are based on what is total allowable
7 catch. If those catch numbers are inaccurate,
8 then it throws the model off and could be over-
9 harvest (sic).
10 Q So patrols are important?
11 MR. NELSON: Yes.
12 Q Aerial and on the water?
13 MR. NELSON: Yes.
14 Q You've indicated you need more resources for
15 these?
16 MR. NELSON: Yes.
17 Q Okay. And knowing and protecting against the harm
18 of fish is also important?
19 MR. NELSON: Sorry, knowing and...?
20 Q Protecting against the potential harms, knowing
21 it's occurring and protecting against the
22 occurrence?
23 MR. NELSON: Yes.
24 MR. COULTISH: Yes.
25 Q Okay. So once the salmon is in the boat and it's
26 not going back, in terms of conservation and
27 protection of the species of the resource, what
28 happens after that point, it's irrelevant?
29 MR. NELSON: Well, relative -- it still alive. It
30 could be released. That's one of those clauses --
31 Q Okay. So --
32 MR. NELSON: -- that "mortally wounded" --
33 Q Putting aside catch-and-release --
34 MR. NELSON: Sorry?
35 Q Putting aside catch-and-release, so it's in the
36 boat and it's dead.
37 MR. NELSON: In the boat, once a dead fish is no longer
38 contributing to future stocks of the resource.
39 Q Okay. So whether it's sold --
40 MR. COULTISH: However --
41 Q -- or eaten --
42 MR. COULTISH: -- there may be a public safety issue
43 with regards to how that product is handled.
44 Q Okay. And is that your jurisdiction or that's
45 Health Canada?
46 MR. COULTISH: It is, but because of the nature of the
47 type of work we do and the fact that we encounter

1 this and work for the province, is something that
2 we're involved in as well.
3 MS. SHARP: Okay. Could we please go to Figure 4 of
4 the PPR on page 17.
5 Q I'm just interested in the representations that
6 we've had from this Department today as far as
7 what is of concern.
8 I understand, Mr. Nelson, that you're the
9 director of this program. We see you at the top
10 of the chart.
11 MR. NELSON: Second. Second to the top.
12 MS. SHARP: Second.
13 MR. NELSON: Yes.
14 MS. SHARP:
15 Q And, Mr. Coultish, you are one of the eight
16 different activities that are listed here?
17 MR. COULTISH: Yes. Programs within the C&P structure.
18 Q Okay. I see that you have 15 officers and two
19 analysts.
20 MR. COULTISH: Currently.
21 Q Okay. Does the program planning and analysis
22 activity have any analysts?
23 MR. NELSON: They have one position but it has not been
24 filled yet.
25 Q Okay. So looking at the distribution of resources
26 here in this table, it seems like there's quite a
27 large emphasis on the intelligence services?
28 MR. NELSON: This is just the structure at Regional
29 Headquarters. There are also five other area
30 chiefs that have all the field officers report to
31 them --
32 Q Which we have in the previous figure, Figure 3.
33 MR. NELSON: -- so it -- looking at this just alone,
34 there should be other lines if want the whole
35 structure of how we're set up.
36 Q Okay.
37 MR. NELSON: And the 15 officers in here are -- report
38 to Mr. Coultish.
39 Q Okay. And if we go to Exhibit 866, this package
40 of questions and answers that you submitted,
41 Question 4 has a summary of the hours spent in
42 activity types by area.
43 MR. NELSON: Yes.
44 Q And I also want to -- and looking at this chart,
45 I'd like you to speak to your three pillars within
46 your program. Can you please tell me which of
47 these activities relate to the three pillars?

1 MR. NELSON: Well, there could be time that -- because
2 we don't record the information by pillar, it's
3 recorded by activity, there could be Pillar 1
4 activities embedded in many of these places.
5 Public relations, of course, that's one line.
6 Patrol activity, there could be some Pillar 1
7 stuff that you're doing on your patrol. What else
8 is there? Meetings. Meetings could be some
9 Pillar 1 activities. Not likely Investigations,
10 but General Office, yeah, I guess those are the
11 main ones.
12 Q Okay. And I see that Investigations is second
13 after Other for where your hours are spent.
14 MR. NELSON: Sorry, where? Where are you at?
15 Q In the grand total, sorry, the cumulative total
16 for the --
17 MR. NELSON: Oh, on the far right, okay.
18 Q (Indiscernible - overlapping voices) far right
19 here.
20 MR. NELSON: Are you looking at the lower
21 Fraser/Interior --
22 Q Let's just look at the B.C. Interior first.
23 MR. NELSON: Okay.
24 Q So if we look there, I see that 99,000/140.3/4 [as
25 read] hours spent on Other, and then next in line
26 we have the Investigations.
27 MR. NELSON: Sorry, I'm missing -- oh, Investigations
28 is several lines up.
29 MR. COULTISH: Yeah, 79, 80 --
30 Q Yes, but in terms of quantity.
31 MR. NELSON: Oh, I see what you're saying.
32 Q Number of hours.
33 MR. NELSON: Yes, yes.
34 Q Okay. And then if we look at -- or we won't go
35 through all of them, but I'm just trying to get a
36 sense here. Is a large proportion of your energy
37 spent on these Investigations?
38 MR. NELSON: If you're asking about Pillar 1, I believe
39 the --
40 Q I'm not asking about Pillar 1.
41 MR. NELSON: Oh, okay.
42 Q I'm asking about Pillar 4.
43 MR. NELSON: Well, you did initially, though, and --
44 Q 1, 2 and 3. I was trying to get a sense of how
45 they're broken down.
46 MR. NELSON: Yeah. Five to 10, roughly, percent
47 overall as a region is Pillar 1 activities, is

1 what we try and maintain.

2 Q And Pillar 3?

3 MR. NELSON: I don't know that we have a percentage. I
4 don't know what the percentage on that is.

5 MR. COULTISH: No, that's just -- Pillar 3 has really
6 just come into itself in the last year or so,
7 couple of years. One of the things you might want
8 -- and investigations on the B.C. Interior on this
9 one is that they've had a substantial -- quite a
10 large habitat investigation that has occupied much
11 of one detachment's time.

12 Again, understanding -- we already mentioned
13 be careful with numbers, because there could be
14 quite the explanation as to what these numbers
15 mean, so...

16 Q Okay. With my last two minutes, I just want to
17 run through a few brief questions with you if I
18 could.

19 MR. COULTISH: Yes.

20 Q The enforcement of the FSC fishery has two
21 aspects; conservation goals and ensuring there's
22 no sale off the water. The FSC fishery
23 enforcement -- I'm moving topics here. Leaving
24 aside your Pillar 3 --

25 MR. COULTISH: Two of the goals, probably but maybe
26 more --

27 MR. NELSON: You know, conservation is the main -- is
28 the first goal always in --

29 MR. COULTISH: Right.

30 MR NELSON: -- DFO.

31 Q Okay. And in terms of the Pillar 3 activities,
32 are they focused on anybody other than aboriginal
33 people?

34 MR. COULTISH: Oh, yes. Yes, we have investigations
35 that occur throughout the industry. As a matter
36 of fact, as an example, one of the largest
37 investigations that we have is on abalone, and we
38 believe that the illegal harvest of abalone is
39 primarily by the commercial industry, as an
40 example.

41 Q Would you say that your representations here at
42 the panel have been representative of the effort
43 in terms of the concerns of your area, in terms of
44 the FSC fishery? We've heard a large emphasis on
45 that over the past two days. Is that the biggest
46 concern for your department that's focused on
47 conservation and protection?

1 MR. COULTISH: I wouldn't say so.
2 MR. NELSON: No, I wouldn't say so.
3 Q And yet this is a constant source of friction with
4 aboriginal people, the enforcement in this area.
5 MR. COULTISH: Can I just make a comment? In the
6 Fraser River, and particularly the lower Fraser
7 River, when it comes down to compliance with the
8 fishery - and we'll talk about recreational, First
9 Nations and commercial - the sale of FSC fish is
10 probably our biggest issue.
11 Q Okay. You have a problem with the sale of FSC
12 fish?
13 MR. COULTISH: Of course, it's illegal.
14 Q And that's part of your conservation and
15 protection mandate?
16 MR. COULTISH: Yes.
17 MR. NELSON: Yes.
18 Q As you see it.
19 MR. NELSON: As we're directed.
20 Q Okay. If we were to set aside the FSC fish, for
21 example, say, if it was allowed to be sold, just
22 as a -- if it was cut out of your concerns, you
23 would have resources to devote to many other
24 areas?
25 MR. NELSON: I would say then we would be focusing a
26 lot more attention on the accuracy of our catch.
27 That would probably become our priority.
28 Q You could have better relationships with
29 aboriginal people?
30 MR. NELSON: We can always have better relationships
31 and I think we've heard feedback from most First
32 Nations communities that we have improved, and
33 we'll try to continue to improve.
34 Q You could focus on the conservation and protection
35 of the resource?
36 MR. COULTISH: Well, I think that we try to do that
37 now. If we have the cooperation of First Nations
38 groups as well as recreational and commercial, and
39 the public at large, we'll do that. But where we
40 have problems for conservation or others, we'll
41 focus our attention on those, and that includes
42 the aboriginal fishery.
43 Q Okay, but --
44 MR. NELSON: I'd like to point out too, that we
45 mentioned I think there was 92 or 97 bands on the
46 Fraser River. I'd say our relationship is very
47 good, except for a handful.

1 Q Okay. And the kinds of evidence that's come out
2 over the past two days, you don't think that feeds
3 the culture of suspicion around this area in both
4 direction?
5 MR. NELSON: Both directions, yes.
6 Q You would say that it feeds that culture of
7 suspicion?
8 MR. COULTISH: I'm not sure of the question.
9 MR. NELSON: Yeah, I'm not sure what you mean by --
10 Q The relationships of distressed --
11 MR. NELSON: It certainly puts stress on the
12 relationships --
13 Q Sophisticated criminal operations, these things,
14 they don't feed the suspicions?
15 MR. NELSON: The good relationship work that has
16 happened is strained by things like have been
17 talked about the last two days.
18 Q Okay. I just have two quick questions. Do either
19 of you work with Douglas Treaty nations?
20 MR. COULTISH: I have. Not now, but I spent a year and
21 a half in Nanaimo.
22 Q DO you have any specific way of designating or
23 recognizing fish that are caught by these Nations?
24 MR. NELSON: No.
25 MS. SHARP: Thank you.
26 MR. COULTISH: Sorry, I'm going to clarify that. Fish
27 caught by these people are supported under a
28 communal licence. There's no physical way of
29 distinguishing them, but they are harvested under
30 a licence.
31 MS. SHARP: Thank you.
32 MR. SPIEGELMAN: Yesterday at the conclusion, or near
33 the conclusion of the Commission counsel's
34 examination of these witnesses, you asked a
35 question and requested a -- perhaps I'll just grab
36 my transcript so I can refer to it. It's on page
37 49 of the transcript for your reference.
38 But you were interested to see a document
39 that set out the detailed breakdown of the budget
40 requirements for some of the extra
41 responsibilities that C&P is facing.
42 Mr. Nelson caused such a document to be
43 prepared and it was reviewed to make sure that it
44 answered your question. I understand Mr. Lunn has
45 it up on the screen now. To be responsive to your
46 request, I would ask that it be marked as an
47 exhibit.

1 THE REGISTRAR: Exhibit 883.

2
3 EXHIBIT 883: Randy Nelson, Funding &
4 Operational Issues, Conservation & Protection
5 - Pacific Region, May 17 2011
6

7 MR. SPIEGELMAN: That's all, thank you.

8 THE COMMISSIONER: Thank you.

9 MR. MCGOWAN: I have just a couple of minutes in re-
10 examination, Mr. Commissioner.
11

12 RE-EXAMINATION BY MR. MCGOWAN:
13

14 Q Mr. Nelson, just following up on a couple of
15 questions you were just asked by Ms. Sharp about
16 your enforcement mandate on the Fraser River and
17 other places.

18 Just to clarify, your mandate is to ensure
19 compliance with legislation as drafted by others,
20 correct?

21 MR. NELSON: Yes.

22 Q Now, if we could have up, please, Exhibit 869.
23 The first matter I want to deal with, with respect
24 to this exhibit, earlier today when you were asked
25 questions by Ms. Brown, she asked you if the
26 Project Ice Storm was focused on salmon generally
27 as opposed to sockeye, and Mr. Coultish, I believe
28 it was you that said that, yes, that was the case.
29 Do you recall that evidence?

30 MR. COULTISH: Yes.

31 Q With respect to the 1.9 million number that is
32 quoted in Project Ice Storm and the memorandum to
33 the Minister, I'm wondering if looking at this
34 document, particularly the title of the document
35 and the heading of the columns, assists you in
36 answering whether that number relates to sockeye
37 or to salmon generally?

38 MR. COULTISH: Sockeye salmon.

39 Q Thank you. Now, Mr. Nelson, there was some
40 questions put to you a moment ago by Ms. Sharp and
41 you responded by saying that there are many bands
42 along the Fraser River, and your relationship with
43 many of them is very good. Both of you, at times
44 during your evidence, have made the point of
45 trying to distinguish the actions of individuals
46 from the actions of First Nations peoples
47 generally.

1 Project Ice Storm, we've spent some time
2 discussing and it's come up a number of times in
3 the examination by my various friends here. Many
4 of the questions put earlier today and, in part,
5 yesterday, use the term "First Nations" when
6 they're asking the questions. I just want to take
7 you back to this chart for a moment.

8 When I look at this, I see 80 individuals or
9 companies identified as having fish in these cold
10 storage facilities. Is that your understanding?

11 MR. COULTISH: That's the number, yeah. I don't have
12 it in front of me, but...

13 Q Yes. And there are, of course, many First Nations
14 people along the Fraser River that fish, many,
15 many First Nations people that fish; is that
16 correct?

17 MR. COULTISH: Yes, that's correct.

18 Q Do the numbers associated with these particular
19 individuals, some of whom have very large
20 quantities in cold storage, tell you anything
21 about the practices of the many other First
22 Nations fishers who may be acting and behaving in
23 different manners?

24 MR. COULTISH: Well, I think what you're alluding to is
25 there are far more people who fish on the Fraser
26 River than what is listed here. I can't speak to
27 what they would have done with their fish, but
28 these people - and I can't speak to whether all of
29 these people or companies or people associated to
30 the companies are First Nations people and fished,
31 but the information relates to FSC fish. That
32 meaning that the fish attributed to the
33 individuals would be FSC, but what I'm getting at
34 is that obviously I would suspect that there are
35 far more fishers that fished versus how many of
36 them put their fish in cold storage.

37 Q And treated them in the manner that these fish
38 were treated.

39 MR. COULTISH: That's correct.

40 Q Mr. Nelson -- maybe just before we leave that, Mr.
41 Coultish, there are many First -- well, let me
42 just ask you the question directly. There are
43 many First Nations, in your experience, First
44 Nations who fish on the river and comply with the
45 legislation.

46 MR. COULTISH: By far the majority of people do, yes.

47 Q Thank you. Mr. Nelson, you were asked a question

1 by the Commissioner yesterday about your ability
2 to -- or the prospect of sharing analysis capacity
3 with other investigative bodies. Do you recall
4 those questions?

5 MR. NELSON: Yes.

6 Q Specifically, I recall him asking you about the
7 possibility of sharing analysts and sharing
8 investigative or analysis capacity with other
9 organizations and you spoke of some particular
10 ones. Do you recall that?

11 MR. NELSON: I spoke of particular agencies?

12 Q Yes.

13 MR. NELSON: Yes, as a potential. I think I said other
14 resource agencies, Environment Canada, Canadian
15 Wildlife Service, perhaps Provincial Conservation
16 Officers service.

17 Q Yes. Is there anything about the status of
18 fishery officers, or Conservation and Protection
19 status of that organization, or the designation of
20 your officers or that body, that impacts on the
21 ability of you to share or receive information
22 from other investigative bodies?

23 MR. NELSON: Yeah, the investigative body status would
24 facilitate and make that easier to do.

25 Q Would the investigative body status increase the
26 probability of an arrangement like that being
27 workable?

28 MR. NELSON: Yes.

29 Q Can you explain to the Commissioner why that is,
30 please?

31 MR. NELSON: Well, maybe it was in the habitat
32 evidence. It seems I've answered this question
33 before, but...

34 Q Yes, no, I recall the evidence you gave in the
35 habitat.

36 MR. NELSON: Yes.

37 Q I was actually trying to tie it specifically, Mr.
38 Commissioner, to the ability of share analysts and
39 share information.

40 MR. NELSON: Yeah, I think that -- because other
41 agencies, and not just resource agencies, but
42 police agencies, sharing their intelligence with
43 us, our lack of having investigative body status
44 prevents that interchange from happening as it is
45 now, or some of it. It makes it more difficult.
46 It would ease the sharing of more information
47 between agencies, as would the implementation of

1 special provincial constable status. Those
2 together would really make it a little easier for
3 us to approach and float this concept by. That's
4 probably the best way to...

5 MR. MCGOWAN: Thank you, Mr. Nelson, and thank you Mr.
6 Coultish, both, for the time you've given the
7 Commission.

8 Mr. Commissioner, that concludes the evidence
9 for today. I believe we're adjourning until 10:00
10 a.m. on May 30th.

11 THE COMMISSIONER: Yes. Thank you, Mr. McGowan and Ms.
12 Chan for leading the evidence, and to other
13 counsel who led evidence or asked questions, and
14 particularly to Mr. Nelson who's been here twice,
15 I think, and Mr. Coultish, thank you for being
16 here and answering the questions of counsel and
17 we're now adjourned. Thank you very much.

18 THE REGISTRAR: The hearing is now adjourned until
19 Monday, May the 30th at 10:00 a.m.

20
21 (PROCEEDINGS ADJOURNED TO MAY 30th, 2011 AT
22 10:00 A.M.)
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28 I HEREBY CERTIFY the foregoing to be a true
29 and accurate transcript of the evidence
30 recorded on a sound recording apparatus,
31 transcribed to the best of my skill and
32 ability, and in accordance with applicable
33 standards.
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Karen Acaster

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.

Diane Rochfort