

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



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

## Public Hearings

## Audience publique

**Commissioner**

L'Honorable juge /  
The Honourable Justice  
Bruce Cohen

**Commissaire**

**Held at:**

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

Tuesday, February 22, 2011

**Tenue à :**

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

le mardi 22 février 2011

## APPEARANCES / COMPARUTIONS

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

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

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

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

Nicole Schabus	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")
Lisa Fong Ming Song	Heiltsuk Tribal Council ("HTC")

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

7 MR. MARTLAND: Mr. Commissioner, we have today the  
8 first of two panels which we're referring to as  
9 perspectives panels from commercial fishers, and  
10 on the first panel we have Chris Ashton, Dennis  
11 Brown, Ryan McEachern and Peter Sakich, and they  
12 are all present.

13 Mr. Rosenbloom, I saw him on his feet a  
14 moment ago, he had one issue he's looking to  
15 identify before we have the witnesses sworn.

16 MR. ROSENBLOOM: Yes, good morning, Mr. Commissioner.  
17 I did inform Mr. Martland that I wished to raise  
18 this matter with the Commission. I stand before  
19 you in a bit of a precarious situation as this  
20 evidence is tendered before the inquiry.

21 I wish to seek the indulgence of this  
22 Commission in appreciating the inherent conflict  
23 of interest problems that could arise as evidence  
24 is tendered in respect to this panel. As you are  
25 of course aware, I appear on behalf of two gear  
26 types, gillnet and seiner. My clients have been  
27 incredibly cooperative and amicable within our own  
28 caucus, and I am hoping that there are not issues  
29 that arise that would put me in a conflict of  
30 interest. However, I cannot allow the expediency  
31 of this inquiry to in any way trump my  
32 professional responsibilities in respect to  
33 conflict of interest issues.

34 If in the course of evidence being tendered  
35 today with this panel there is the appearance of  
36 any conflict of interest that arises between the  
37 gear group, seiner and gillnet, I will be seeking  
38 from the Commission to have the matter briefly  
39 stood down, at which time I will consult with  
40 Commission counsel. Unfortunately I can't build A  
41 Chinese wall within my own being as counsel, and  
42 it may be that in a situation like that, that  
43 something would have to be worked out where I have  
44 off to two separate counsel here at this  
45 Commission to represent those two interests in  
46 respect to that issue.

47 I am not anticipating that this problem will

1           arise, but it is dependent upon the questions that  
2           are put to the panel, and of course dependent upon  
3           the responses given. I fully appreciate why the  
4           Commission at the start of this process encouraged  
5           us to build consortiums for the convenience of the  
6           Commission. However, there are moments such as  
7           today where I will be seeking from you some  
8           appreciation of the sensitivity that could arise  
9           when you talk about such matters as intrasectoral  
10          allocation and things of that sort, appreciating  
11          the profiles of my two clients.

12          Having said that, I really ask nothing more  
13          of the Commission at this point but to appreciate  
14          that if I do jump up and seek to have the matter  
15          stood down, there will be hopefully a good reason  
16          why I have done so. Thank you.

17       MR. MARTLAND: Mr. Commissioner, I'll just say to you  
18          what I said to Mr. Rosenbloom, which is that I  
19          will be suggesting rather than standing down and  
20          losing hearing time, we might try our best to  
21          address that at the break and see where we're at  
22          on the evidence. It's hypothetical at this point.

23          If I could ask that the panel be sworn, and  
24          then I'll have a few quick comments before we  
25          launch in today -- or affirmed, I'm sorry.

26  
27                               CHRIS ASHTON, affirmed.

28  
29                               DENNIS BROWN, affirmed.

30  
31                               RYAN McEACHERN, affirmed.

32  
33                               PETER SAKICH, affirmed.

34  
35       THE REGISTRAR: Would you state your full name, please.

36       MR. BROWN: Dennis Murray Brown.

37       THE REGISTRAR: Thank you.

38       MR. McEACHERN: Ryan McEachern.

39       MR. SAKICH: Peter Anton Sakich.

40       MR. ASHTON: Christopher Jeremy Ashton.

41       THE REGISTRAR: Thank you. Counsel.

42       MR. MARTLAND: Thank you. Mr. Commissioner, for these  
43          witnesses today what I will be doing is trying to  
44          pose questions to one witness, but then the nature  
45          of my questions is such that I am seeking the  
46          input I expect of all panellists on my questions.  
47          So I will try to move through them sequentially in



1 the manner that they are seated, or the order  
2 they're seated today.

3 I have asked the witnesses, and I'll ask them  
4 again now not to interrupt each other or debate  
5 directly, but rather to be responding to my  
6 questions or those of counsel. For other  
7 participants' counsel, I'll ask that they do their  
8 very best to be precise in asking questions of an  
9 individual, rather than the whole panel. I think  
10 that will be much more efficient.

11 We, to be blunt, have a very big challenge in  
12 concluding this evidence today, but our firm  
13 intention is to conclude the evidence today, even  
14 appreciating that that means it's necessarily  
15 faster than some might like. We do have the  
16 difficulty of some witnesses on this panel who are  
17 unavailable after today. This is the Commission's  
18 chance to receive their evidence.

19 Our time estimates to this point, and they  
20 don't even include everyone, total four-and-a-half  
21 hours, and we don't have four-and-a-half hours of  
22 time. So I'll be speaking with counsel and  
23 apologizing for being aggressive in pushing them  
24 around on their time estimates, but asking  
25 everyone cooperatively to do their very best to  
26 whittle down to the very few points that they feel  
27 they must address. Bearing in mind we do have a  
28 second panel in a week's time addressing, and I  
29 should signal to everyone, I expect to ask  
30 virtually the same questions in a week of that  
31 panel as I will today.

32 I have five topic areas I will be covering:  
33 allocation; SBM or share-based management, which  
34 includes ITQs or individual transferable quotas;  
35 third, selective fishing; and fourth, the DFO's  
36 consultative processes with the commercial sector;  
37 and last, a broad question or two asking  
38 panellists to step back and have a look at the  
39 future direction of the commercial fishery.

40 My plan, and I hope other counsel may see  
41 some wisdom to this, is not to be taking these  
42 panellists to specific documents. I'm concerned  
43 that may consume time and be cumbersome. I'll do  
44 my best to try to address matters with the  
45 background we have from the Policy and Practice  
46 Report, and the significant experience and  
47 knowledge these people have to approach this

1 topically.  
2

3 EXAMINATION IN CHIEF BY MR. MARTLAND:  
4

5 Q What I'd like to do is I'll ask all of the  
6 panellists in less than a minute to give an  
7 outline of their -- we have information about  
8 these people already, and what I am going to ask  
9 them to do is to give a one-minute description of  
10 their organization, or committee, or area, or any  
11 of those things, and their involvement in the  
12 commercial fishery.

13 I'll begin with Mr. Brown, and then move down  
14 the line, please.

15 MR. BROWN: Mr. Commissioner, I am a member of a third-  
16 generation fishing family. I've been involved in  
17 the industry all my life.

18 In 1980 I went to work -- or previously to  
19 that, I worked and fished in the industry, but in  
20 1980 I went to work for the United Fishermen and  
21 Allied Workers Union. From there I became a  
22 Special Advisor to the Premier of British Columbia  
23 on fisheries matters. I was a Salmon Commissioner  
24 for Canada in the 1990s. I have served on a  
25 plethora of advisory committees, all the way from  
26 the Minister's office, directly to advising  
27 Ministers, right down to the dock level with  
28 fishermen. And I've been doing this all my life,  
29 and I've waited all my life for the opportunity to  
30 speak to somebody like you about all of the things  
31 that I've learned during that time. So, thank  
32 you.

33 Q Mr. McEachern. Thank you, Mr. Brown, for meeting  
34 my one-minute target. You've set a high standard.  
35 Mr. McEachern.

36 MR. BROWN: I'm trying.

37 MR. McEACHERN: My name is Ryan McEachern. I'm a  
38 commercial gillnet fisherman, also a long family  
39 history, the fourth generation in my family to  
40 fish on the B.C. coast.

41 I operate as the Treasurer of the Area D  
42 Gillnet Association and I'm also an elected  
43 representative at the Area D Harvest Committee and  
44 the Area E Harvest Committee, and I serve on the  
45 Commercial Salmon Advisory Board as an Area D  
46 representative. I also attend the Integrated  
47 Harvest Planning Committee, the IHPC, as a member

1 of the Commercial Salmon Advisory Board.

2 Q Thank you. Mr. Sakich.

3 MR. SAKICH: Thank you. Peter Sakich. The family has  
4 been in the commercial fishing here since about  
5 1918.

6 Myself, I am a Fraser River Panel member; a  
7 Commercial Salmon Advisory Board Chair; B.C. Wild  
8 Harvest Salmon Producers Association President,  
9 that is the entity that is connected with the  
10 Commercial Salmon Advisory Board; Area H Harvest  
11 Committee; President of the Gulf Trollers  
12 Association. I've been a Director of the Mutual  
13 Marine Insurance Company for 18 years now, and  
14 President of the Degnen Bay Harbour Authority,  
15 Small Craft Harbours, Gabriola Pass; Monitoring  
16 and Compliance Panel Chair, and that's part of the  
17 Integrated Salmon Dialogue Forum; and I attend the  
18 IHPC meetings.

19 Q Thank you. Mr. Ashton.

20 MR. ASHTON: Good morning, Mr. Commissioner. Chris  
21 Ashton. I'm actually a first generation  
22 fisherman. I started fishing in 1968 and retired  
23 a couple of years ago. In my capacity as fishing,  
24 I was a crewman on seine boats and for the last 30  
25 years of my career owned and operated my own boat.

26 In 1980 I started participating in advisory  
27 boards, serving on the South Coast Advisory, the  
28 Herring Industry Advisory Board. I was a member  
29 of the Fishing Vessel Owners Association and a  
30 director there. When the recent Integrated  
31 Advisory Process started up, I became Chair of the  
32 Area B Harvest Committee for several years until I  
33 stepped down from that process in 2006. And upon  
34 retiring from fishing, I got approached by the  
35 Area B Harvest Committee to work for them as their  
36 Executive Director, which I've been in that  
37 position since 2008. I serve on the Commercial  
38 Salmon Advisory Board, the Integrated Harvest  
39 Planning Committee, and as well as I'm a member of  
40 the Fraser River Panel of the Pacific Salmon  
41 Commission.

42 MR. MARTLAND: Thank you. And indeed, Mr.  
43 Commissioner, I said I would not be going to  
44 documents and I realize there are documents I  
45 should put forward. I should say first that on  
46 our list of exhibits, number 64, 65, 66 and 67 are  
47 biographies from the witness summaries for these

6  
PANEL NO. 21  
In chief by Mr. Martland

1 witnesses. First of all, 66 on our list is  
2 already Exhibit 422, that's Mr. Sakich's  
3 biography. We have similar bios for the other  
4 gentlemen on the panel. If I could ask that  
5 those, please, become exhibits. The first on the  
6 exhibit list, number 64 for Mr. McEachern.

7 THE REGISTRAR: I'll mark these, 64 will be 451.

8 MR. MARTLAND: The next one --

9 THE REGISTRAR: Sixty-five will be 452.

10 MR. MARTLAND: Thank you.

11 THE REGISTRAR: Sixty-seven will be 453.

12 MR. MARTLAND: Thank you very much.

13

14 EXHIBIT 451: Bio of Ryan McEachern

15

16 EXHIBIT 452: Bio of Chris Ashton

17

18 EXHIBIT 453: Bio of Dennis Brown

19

20 THE COMMISSIONER: Who are they for, Mr. Registrar,  
21 please?

22 THE REGISTRAR: I'm sorry; 451 is for Mr. McEachern;  
23 452 is for Mr. Ashton; 453 is for Mr. Brown. And  
24 number 66, Mr. Sakich, is already marked as  
25 Exhibit 422.

26 MR. MARTLAND: Thank you, Mr. Giles.

27 Q The first topic I have is allocation, including  
28 both inter and intrasectoral allocation. On  
29 intersectoral allocation first, is the premise for  
30 the question, we're all familiar with the 1999  
31 Salmon Allocation Policy. There's a formula that  
32 I think you should assume, you can take it as  
33 read, that we have some understanding about the  
34 formula in particular for sockeye, pink and chum,  
35 the formula that's set out on a 95/5 percent ratio  
36 as between commercial and recreational sectors for  
37 those particular species.

38 I won't be spending time on having you  
39 describe the policy or the history leading up to  
40 it, per se. You're welcome to go there if that's  
41 relevant. What I'd like to ask you at a general  
42 level is what works and what doesn't work with the  
43 Allocation Policy. I'll begin with Mr. Brown,  
44 please.

45 MR. BROWN: Yes, Mr. Commissioner, I've had a long  
46 history dealing with catch allocation as a member  
47 of the United Fishermen and Allied Workers Union,

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1 which is one of the unique organizations along  
2 with the Native Brotherhood that represented all  
3 gear types in the industry, and it had a moral  
4 duty within its internal political framework to  
5 try to resolve catch allocation conflicts between  
6 the groups, as Mr. Rosenbloom had earlier alluded  
7 to. And as a result, it was a strong advocate for  
8 many decades for the idea of a catch allocation  
9 formula that would be based on fairness, equity  
10 and practicability.

11 And in the 1980s, I was directly tasked with  
12 the job, through a committee within the United  
13 Fishermen and Allied Workers Union called the  
14 Standing Committee on Fisheries Regulations, of  
15 spending most of the winter each year working out  
16 within the different locals and gear types a  
17 proposal for catch allocation. And I won't,  
18 obviously because we don't have very much time  
19 here, go into all of the ways we did it, but we  
20 did it through variety of ways of quantifying  
21 catch history, cycle averaging and the like.

22 And then each year that union position would  
23 be presented to a body that was then known - this  
24 is the predecessor to the Commercial Salmon  
25 Advisory Board - it was called the Commercial  
26 Fishing Industry Council, which was independent of  
27 DFO, but contracted by DFO to make one primary  
28 deliverable each year, which was a catch  
29 allocation formula that could be used each year.  
30 And for several years CFIC did that, and a catch  
31 allocation formula was up and running and it  
32 worked almost perfectly.

33 However - and I am conflating my points, Mr.  
34 Martland, here, I could go on, and I feel a little  
35 distressed about the fact that we don't have the  
36 time to go into this because it's important - in  
37 recent years, allocation of the resource in the  
38 salmon fishery has become almost dysfunctional.  
39 It's not that there aren't lots of meetings that  
40 people like my colleagues have to go to, to  
41 discuss it; not that there isn't a plethora of  
42 meetings that they have to attend to deal with  
43 integrated fishing management, and the like, but  
44 the net result is there is no fair allocation  
45 right now.

46 And I am going to finish off by saying, and I  
47 hope I will be given the opportunity at some point

1 here to explain why, because of a whole number of  
2 political policies that have been introduced in  
3 this industry since the 1990s at least, the  
4 allocation of the commercial catch has been vastly  
5 disrupted. Some of those policies would include  
6 the Aboriginal Fishing Strategy. Some of them  
7 would be weak stock management. One would be area  
8 licensing, but again I am going to try to be brief  
9 here. But my attempt at a short answer is  
10 allocation is highly problematic in the industry  
11 at this time.

12 Q Thank you. Mr. McEachern.

13 MR. McEACHERN: I'm sorry, could you repeat the  
14 specific question?

15 Q Yes. The question I had was what works and what  
16 doesn't work with the Allocation Policy, and more  
17 broadly, I suppose, with the Allocation Policy and  
18 with allocation as it's currently handled.

19 MR. McEACHERN: Are we speaking about intersectoral  
20 allocation or between the commercial fleet itself?

21 Q The question as I've approached it was  
22 intersectoral. So my introduction referred to the  
23 95/5 split between recreational and commercial,  
24 referring to the total commercial TAC for sockeye,  
25 pink and chum. That was my introduction,  
26 intersectorally if you could comment on what works  
27 and doesn't work with allocation as between  
28 sectors.

29 MR. McEACHERN: Mr. Commissioner, I don't have near the  
30 history that some of the participants do in the  
31 various field processes that we have as a  
32 background, but I am involved in the Allocation  
33 Implementation Committee as it stands right now,  
34 and we have had a few meetings of late around the  
35 95/5 issue. And the truth of the matter on that  
36 Allocation Policy is it has yet to be tested. The  
37 strength of that policy will not be revealed until  
38 the sports fleet consistently approaches or  
39 exceeds their five percent. At the moment, the  
40 policy works because the recreational catch is  
41 averaging around that five percent, so there has  
42 been no uncomfortable changes that needed to be  
43 made, if you follow the numbers that the  
44 Department has been using. So I would say as far  
45 as the 95/5 split, the future will tell whether or  
46 not that is the policy that will endure.

47 As far between different commercial groups,

1 I've been involved in the current allocation  
2 process. I don't have any of the history that  
3 some of the participants have. But we sit down  
4 and hash out who gets what, based on a combination  
5 of the Kelleher formula, and the traditional  
6 fishing that occurs in certain areas.

7 And I do feel the system is broken, mainly  
8 because it was set up around a coast-wide fishing  
9 strategy, and when we moved to area licensing, it  
10 prohibited the trades that would have happened to,  
11 like what was already referred to. The trading  
12 that would have happened between groups to make  
13 the allocation system work smoothly is no longer  
14 possible, because fish cannot be moved between  
15 certain areas. Whereas in the past there was only  
16 three major groups to do trading with: seine,  
17 gillnet and troll. Now there's eight different  
18 areas, and we never modernized the Allocation  
19 Policy when they did the area licensing.

20 So if you have an imbalance in the north, it  
21 often happens that gear types in the south have to  
22 face a hardship to satisfy the imbalance in the  
23 north, when in reality, the balance might be the  
24 other way in the south. And I could go more into  
25 that later if it's appropriate. But really the  
26 system is broken and it needs some work.

27 Q And I see now the artificial split between inter  
28 and intrasectoral allocation, it will be hard for  
29 you to maintain and these are broader topics. So  
30 perhaps I can recast the question for the last two  
31 panellists. I'll invite the first two to add  
32 anything if they feel they need to.

33 Dealing both with inter and intrasectoral  
34 allocation, could you comment on what works and  
35 what doesn't work under the 1999 Salmon Allocation  
36 Policy. Mr. Sakich.

37 MR. SAKICH: The 95/5 is very close. We went over that  
38 just a couple of months ago, and it was over the  
39 last five years. And that's how it was set up,  
40 and it balanced out within the five years pretty  
41 well there. So I think we're going to be doing  
42 that in the future here on a four year, like, a  
43 full cycle thing, rather than it will be looked at  
44 on the fifth, but it's not over enough.

45 AS far as the inter-allocation goes, what we  
46 have cannot work. It's going back in history  
47 would be fine, but we're not going back there.

1 That's when you would have fish in all of these  
2 various places throughout the years, and you  
3 didn't have the area licensing in place, so the  
4 fleet shifted around and what have. And so  
5 overall they looked at the numbers, and they came  
6 out fairly close. And now you will have some  
7 areas that will have absolutely no fish one year  
8 and lots the next year, and nothing for a couple  
9 of years.

10 So really with where we're at now, that is  
11 why there is a proposal out there to get on with  
12 the new modernized allocation formula, and that  
13 has to be done sooner rather than later, because  
14 you cannot make what we've got work.

15 Q Thank you. Mr. Ashton.

16 MR. ASHTON: Mr. Commissioner, I don't know if I have a  
17 lot to add to what my colleagues have said. I  
18 think they've highlighted much of the problems we  
19 are looking at. On the intersectoral we're  
20 looking at a growing recreational fishery that has  
21 the possibility of exceeding their five percent  
22 allocation on mainly sockeye, but it includes  
23 chums and pink salmon. So that needs to be dealt  
24 with.

25 There's an Allocation Implementation  
26 Committee that was in place several years ago and  
27 it's been reactivated in the last year, and  
28 they'll be looking at that. And in addition to  
29 that committee, there is some finances that have  
30 been earmarked by the government to modernize the  
31 entire allocation process.

32 On the intrasectoral, as Mr. Sakich just  
33 said, and we have a coast-wide allocation division  
34 of an economic pie that requires us to be able to  
35 move fish around, but we are geographically  
36 restricted by our individual licenses that if  
37 there is an imbalance, as it was explained, you  
38 can't access that fish. So we end up every year  
39 going through a process of trying to resolve  
40 differences in share of catches that aren't  
41 possible to achieve because of the structure of  
42 the area licensing in coast-wide allocation.

43 Q What I'll be doing is moving through witnesses in  
44 terms of who is up first. So, Mr. McEachern, I'll  
45 begin with you for this question. It's one of the  
46 stated pros or benefits of the Allocation Policy  
47 is that certainly in terms of intersectoral



1 allocation that there is a set of ground rules  
2 that govern year after year, that year after year  
3 you don't start from scratch and have a debate  
4 about intersectoral allocation. I'm thinking in  
5 particular on the recreational/commercial  
6 question. Could you comment on that, please.  
7 MR. McEACHERN: Yeah, that is true.  
8 Q I'm sorry, and I'll need witnesses to make sure we  
9 have the mikes on, which the red light will tell  
10 you and point it towards you.  
11 MR. McEACHERN: Sorry. Can you hear me now?  
12 Q Oh, yes, I didn't know you had one.  
13 MR. McEACHERN: Yeah, I'm a movie star.  
14 Q I know that from the Discovery Channel, actually.  
15 I've seen you fishing there.  
16 MR. McEACHERN: It is true that having the policy set  
17 out over a lengthy period of time, we don't have  
18 to redo the recreational/commercial allocation  
19 every year like we do with the gillnet, seine and  
20 troll. Having said that, part of the reason that  
21 policy works is because it hasn't been tested, and  
22 as the recreational fleet moves, they've had  
23 several individual years where they are over their  
24 five percent when we looked at the numbers.  
25 However, the rolling average has maintained very  
26 close to the five percent, and in my opinion they  
27 will exceed that on years where the Fraser sockeye  
28 is not much larger than average run.  
29 So the true test of that policy will be, how  
30 does the Department react when the five percent  
31 is exceeded. And as of right now there is no  
32 indication as to what would happen, in my view.  
33 Q Mr. Sakich, could you please comment on the  
34 stability or whether there is stability because of  
35 the Allocation Policy's what I'm calling ground  
36 rules.  
37 MR. SAKICH: Just elaborate a little bit on that for  
38 me.  
39 Q I mean that the Allocation Policy sets a formula  
40 for sockeye, pink and chum, as between  
41 recreational and commercial, so that at the  
42 beginning of the planning season, so to speak, one  
43 doesn't begin with a blank canvas at which there's  
44 a debate about what the formula should be for that  
45 year. There's sort of a set of ground rules that  
46 frames the planning for that year. That's my  
47 understanding of the process.

1 I should say, Mr. Commissioner, because we  
2 have this commercial panel ahead of Mr. Grout, in  
3 particular, we're sort of jumping ahead where we  
4 will have an explanation in greater detail on some  
5 of these topics. But I think we should do our  
6 best to go forward.

7 MR. SAKICH: On the 95/5, there is a fixed set of  
8 rules. We've been modelling through that. Are  
9 you asking about the other part of the  
10 recreational fishery?

11 Q I'm asking about the Allocation Policy, let me put  
12 to you this way: Does the Allocation Policy  
13 facilitate allocation as it's handled by the  
14 Department, because it takes certain things off  
15 the table. They're not under debate every single  
16 year.

17 MR. SAKICH: Well, you're talking about priority access  
18 to chinook and coho; is that what you're getting  
19 at?

20 Q You're welcome to address that, too. These are  
21 all part of the same piece, aren't they.

22 MR. SAKICH: Well, they are, but that is going to take  
23 some real historical work. You've got to go back  
24 into the Art May process, into the Sam Toy, and  
25 then present to today, the various different views  
26 on how that was handled and not handled, how it  
27 was agreed on and then changed. So I was not part  
28 of that process, so all I can tell you is that is  
29 dealt separately with the 95/5.

30 Q All right. Mr. Ashton.

31 MR. ASHTON: I think where the explanation needs to  
32 come on that is that on the priority access to  
33 chinook and coho, the recreational sector, if it  
34 continues to expand and grow, what it will do,  
35 having that priority, it will take away chinook  
36 and coho, or mainly chinook from the troll  
37 fishery. That in dividing up our economic pie in  
38 the allocation process, the troll sector, their  
39 main fish that they target on is chinook. So if  
40 the recreational sector has that, maintains that  
41 priority access, then they can in effect remove  
42 chinook from access by the troll fleet.

43 And under the current policy, what we will be  
44 required to do is the net fleet's main fish that  
45 they're only allowed to catch is sockeye, pinks  
46 and chum, under the current policy they would have  
47 to give up some of their sockeye or chums or

1           whatever to the troll fleet, where they could be  
2           accessed under the current area licensing. So  
3           what would affect the troll fleet is a loss of  
4           chinook would eventually have a domino effect by  
5           removing sockeye out of the net fleet.

6           Q     Mr. Brown.

7           MR. BROWN: Yes. Mr. Commissioner, I would agree with  
8           my colleagues on the narrow topic of the  
9           recreational commercial split, but I think that's  
10          one of the least problematic of our problems. I'm  
11          not disagreeing with what they're saying.

12          I would say that not only is there not any  
13          rules, Mr. Martland, for allocation in this salmon  
14          fishery, there's not even any rules on how to  
15          conserve the resource between sectors. There's a  
16          multitude of standards for different user groups.  
17          I would say that there is absolutely chaos in  
18          terms of the ground basis for how fish are  
19          allocated to the commercial sector between the  
20          other sectors right now.

21          I am really challenged to be able to cover  
22          these kind of complicated subjects. If you would  
23          indulge me for a moment, I sat down several years  
24          ago and wrote a book. I don't bring this up out  
25          of vanity or ego. It took me four years to write  
26          it without a single penny given to me, out of my  
27          own pocket, in my own time, trying to address the  
28          wreckage that has been left behind in this salmon  
29          fishery, to the best of my ability. There are  
30          chapters that go on in great length about subjects  
31          like allocation and the politicization of those  
32          allocations, and the way in which the  
33          disequilibrium in this industry has come about.

34          I would argue that there is all kinds of  
35          nice-sounding formulas, processes, which are  
36          growing like mould all over the place, and in  
37          terms of how to talk about these things, but the  
38          end product, both from the point of view of  
39          conserving this resource and allocating it fairly  
40          between people, on the basis of not only  
41          aboriginal rights, but just the general notion of  
42          what the public right to fish is, and what  
43          reasonable expectations would be from people who  
44          invest their lives through their careers and  
45          through financial investment in this industry  
46          would be, it is an absolute catastrophe. It is  
47          not working. It is not happening.

1           And if I were given time, I would get into  
2           some of the political antecedents that have  
3           brought that about. They have been policies  
4           driven from Ottawa. They have been policies  
5           driven from forces extraneous to the fishery. And  
6           yet I will go back to the testimony you heard from  
7           Carl Walters last week, Dr. Walters, when he  
8           talked about the people that paid the price for  
9           this disequilibrium, for these failed allocations.  
10          We're not deputy ministers, ministers,  
11          politicians, cabinet ministers, fisheries  
12          officers, all of the staff who get well paid at  
13          DFO and the academics and the plethora of people  
14          who talk about it. It was fish harvesters, people  
15          like these gentlemen up here. And they are  
16          constantly lectured about the need to make  
17          sacrifices for the good of the resource. And as  
18          Dr. Walters pointed out to you last week, some of  
19          the things that were done in the name of proper  
20          management, actually did serious harm to the  
21          resource.

22          So again, Mr. Martland, please, I'm having a  
23          difficult time keeping brief here because this is  
24          decades of politics that's gone on, but my answer  
25          to you is no, there isn't good ground rules for  
26          allocation and there's chaos out there, and it has  
27          expressed itself in what I titled my book, "The  
28          B.C. Salmon Wars".

29          Q       Thank you. I'll move into a further question,  
30          which I'll try to frame as a forward-looking  
31          question. And I'll begin with Mr. Sakich, and  
32          I'll ask this of all panellists. What should  
33          happen with allocation, either the Allocation  
34          Policy or allocation generally, and if you're able  
35          to put that in specific terms, either immediate or  
36          long-term things that how this should be handled.

37          MR. SAKICH: Amongst the commercial fishers?

38          Q       You're free to answer that inter or  
39          intrasectorally.

40          MR. SAKICH: I'll go with that one. Basically, you're  
41          going to have to have a mechanism to share this  
42          out amongst yourselves, like history are what  
43          dreams are made of; vision is what you've to do in  
44          the future. I don't see the industry getting any  
45          younger people in it or anything like that

46          Last year was a good example. Because you're  
47          locked in, in the areas, there was a surplus of

1 fish in one area and it flowed pretty freely  
2 between a couple of gear types under a new sort of  
3 a pilot fishery that had taken place for a couple  
4 of years. And that is where I see it having to  
5 go. I don't see going into share base or ITQs as  
6 an enemy. I see it as a restarting of this  
7 fishery in a different way.

8 I think you have to have a vision to be able  
9 to go out into the future. Whether the industry  
10 with weak stocks in various different places will  
11 ever be able to support any great labour force  
12 again, I think is near impossible. So you're  
13 going to have different mechanisms to deal with  
14 it. It's not going to be what it used to be.

15 Q Thank you. Mr. Ashton.

16 MR. ASHTON: Well, a number of years ago there was a  
17 process that's referred to as SCORE. The  
18 commercial groups met for a couple of years and  
19 tried to resolve allocation issues. And we've  
20 recently, I think I mentioned, been notified that  
21 there's going to be another funding for a  
22 modernization of the allocation process, and I  
23 imagine we're going to sit down in I hope not  
24 exactly the similar venue as SCORE was. It was  
25 supposed to be a consensus-based decision-making  
26 process, and didn't really arrive at a consensus.  
27 There was a majority/minority report basically  
28 saying some groups wanted to have share-based  
29 fisheries, and others wanted to have the status  
30 quo and nothing was resolved out of that. We were  
31 still stuck in exactly the same rut as far as  
32 allocation goes, and the division of fish. There  
33 needs to be a real sober second thought applied to  
34 this problem.

35 And there is solutions, but I think we're  
36 going to have to spend a considerable amount of  
37 time dealing with all the complexities of the  
38 issue.

39 Q Mr. Brown, in your view, what should happen with  
40 allocation?

41 MR. BROWN: The first thing you have to do is address  
42 what Dr. Walters addressed. You heard him in his  
43 testimonies last week tell you that between 1995  
44 and 2009 no less than 25 million Fraser River  
45 sockeye, which is what we're talking about, could  
46 have been harvested without any damage to any weak  
47 stocks. That includes the celebrated Cultus and

1 all the other topics that you heard, early-timing  
2 Late Run fish, Early Stuart, all of the so-called  
3 stocks of concern, 25 million sockeye could have  
4 been harvested.

5 And I know that there are people, some of  
6 them up in this panel, will try to imply that I  
7 want to go back to some kind of folksy time in the  
8 past. No, that's not what I'm saying. I'm saying  
9 that right now, in the present moment, 25 million  
10 fish could have been harvested by all people,  
11 First Nations, commercial fishermen, recreational  
12 fishermen, and it wouldn't have done any harm.

13 That, Mr. Commissioner, is what our problem  
14 is. We have politicized the fisheries management  
15 to such a point under the rubric of conservation,  
16 which has been distorted and perverted from what  
17 it used to be in the textbook term of  
18 conservation, which is protecting the resource and  
19 wise use. It has gotten so politicized and so  
20 perverted, and if I was given the time, I could  
21 explain and I could name the names, and I could go  
22 through it point by point. But we are no longer  
23 harvesting what we could, and a very viable  
24 fishery could have taken place, notwithstanding  
25 what my colleagues are saying here. There's many  
26 nuances about how you could adjust.

27 But there could have been a fishery without  
28 harm to the stocks. In fact, there wasn't. And  
29 what happened is what Dr. Walters and Dr. Woodey  
30 told you last week, the stocks did the opposite to  
31 what the party line from DFO was saying. They  
32 didn't rebound and improve, they declined  
33 calamitously. And so when you ask me what we  
34 should be doing, the question, Mr. Martland, as  
35 briefly as I can put it is de-politicizing,  
36 getting rid of all these extraneous policies which  
37 have come in and undermined what was once a very  
38 well-managed fishery.

39 Q Mr. McEachern.

40 MR. McEACHERN: I'm sorry, can you repeat the question?

41 Q The question is what should happen with  
42 allocation, and if you have any specific immediate  
43 or long-term things that you think should be  
44 occurring, should be changed.

45 MR. McEACHERN: Yeah. I think, Mr. Commissioner, we  
46 should move towards a longer-termed defined  
47 allocation for each stakeholder. The current

1 process of redefining the various shares for  
2 various gear types annually is -- is cumbersome,  
3 and it makes it difficult to plan from a business  
4 point of view, if one year you are going to  
5 achieve a 40 percent of a Fraser commercial  
6 allocation, and then the next year you would only  
7 receive 20 percent due to a difference in the  
8 fishing in the north. In my view, those  
9 percentages should be fixed for a longer period of  
10 time, and that would need to be done through the  
11 proper process, of course.

12 The other thing that I'd like to speak to is  
13 currently when we're dealing with allocations,  
14 it's always allocation of the target stock, and  
15 like we've heard from my colleagues, it's not so  
16 much the target stock that's been driving access  
17 to fish lately, whether that is the correct way to  
18 do it or not, I don't see that changing in the  
19 near future. We are tied into a number of  
20 policies that are driving us more and more towards  
21 addressing weaker stocks and bycatch issues.

22 And one of the key things I would like to see  
23 incorporated into the Allocation Policy that would  
24 guarantee the sustainability of the resource for  
25 my generation, is that with every allocation that  
26 is set out to every user, everybody that takes a  
27 target fish out of the water should also be  
28 allocated a certain percentage of weak stocks or  
29 bycatch. Whereas right now what happens is you  
30 have a target allocation of the fish that you're  
31 supposed to catch, and then the Department manages  
32 the weak stock impacts and the bycatch impacts.  
33 And you often have a certain group that has made a  
34 number of changes to make their fishery more  
35 selective or avoid bycatch. But those impacts  
36 that were freed up by the responsible use of the  
37 resource just get eaten up by another group that  
38 might not be as responsible.

39 So because allocation is all about access to  
40 fish, if you had a set allocation of your bycatch  
41 that you had to stick to, to achieve, and that  
42 means that the groups would need to be allocated  
43 their traditional level that they would need to  
44 prosecute their fishery. If you need "X" amount  
45 of Cultus Lake sockeye to catch a million Fraser  
46 fish, then that becomes your allocation, as well.  
47 And that means if you become more responsible,

1 then you get better access. If you become less  
2 responsible, you lose access. But it doesn't  
3 impact the other stakeholders. In my view that's  
4 one of the changes that should be made.

5 Q Let me move to the topic of share-base management  
6 or ITQs. They do mean different things. Again,  
7 if you'll take as background the description  
8 that's set out in the Policy and Practice Report,  
9 and if you could assume for the purpose of our  
10 discussion that we have some understanding at a  
11 general level of what SBM refers to, and what some  
12 of the stated advantages and disadvantages of that  
13 management system are.

14 I'm going to ask, and I'm going to begin this  
15 question with Mr. Ashton and move through the  
16 witnesses. Some of you may have direct experience  
17 with ITQs as run through demonstration projects by  
18 the Department. I think all of you have awareness  
19 about ITQ demonstration projects. Rather than  
20 asking for any comment on the merits of SBM or  
21 ITQs, if you could begin by briefly setting out  
22 your experience or background with those  
23 demonstration projects and ITQs. Mr. Ashton.

24 MR. ASHTON: Mr. Commissioner, before I get to  
25 specific examples, I think it might benefit to  
26 kind of explain how we got here from, I guess, the  
27 mid-1990s. Up until that time we had, I guess, a  
28 single licence on each vessel participating in the  
29 fishery. They could fish anywhere in B.C., and  
30 generally most areas of the province, well, the  
31 marine areas, were open every week. They usually  
32 opened on a Sunday evening and you'd have a day or  
33 two days or three days, and the fishery was  
34 managed at that time basically by what was seen  
35 being caught at the time. They did pre-season  
36 projections, but a lot of the management took  
37 place in-season, with abundances being observed.

38 The seine fleet at that time was  
39 approximately just a little over 500 boats. There  
40 were several thousand gillnetters, 1,500-plus  
41 trollers, maybe more than that.

42 We had what might, you've heard the  
43 description I guess in fish management as the  
44 portfolio effect. We had somewhat of a portfolio  
45 effect in fishing, because you had so many areas  
46 that you could actually fish, the effort wasn't  
47 really that concentrated. It was quite spread out



1 all over the coast and there was places that were  
2 quite good fishing, places that weren't so good  
3 fishing. Like some of the fishermen through  
4 communications with their friends would find out  
5 they may be in the right spot and they'd spend  
6 half the fishing week running from where they were  
7 to where they thought the fishing was better, and  
8 found out at the end of the week that they ran  
9 away from the good spot.

10 Anyways, in the mid-1990s, I guess  
11 specifically 1994, we had one of those events, I  
12 guess that's been noted and studied, a very large  
13 run. It was 17 million, it was about the second  
14 largest since 1958, well, actually since the 1913  
15 slide. All the fish was going down the outside of  
16 Vancouver Island, and a large portion down the  
17 inside of Vancouver Island. At one point I think  
18 we had a bit of a warm water event off the West  
19 Coast, and fish turned around and headed back up  
20 around the inside of Vancouver Island, were coming  
21 down Johnstone Straits. The fishing up north had  
22 kind of waned.

23 A lot of the fleet headed down to Johnstone  
24 Strait. There was all this talk about really  
25 great fishing down there, and we had I think what  
26 Mr. Lapointe referred to as sloshing, where the  
27 fish don't run on a continuous migration. They  
28 get partway through Johnstone Strait and they turn  
29 around and kind of move back and forth. So the  
30 fish weren't moving through. You had a large  
31 concentration of fish, a large concentration of  
32 boats. And the fishing was really good, but  
33 unfortunately we caught a few too many.

34 The Fraser Panel met, recognized the problem,  
35 shut down the fishery. We had pretty good  
36 escapement for most of the stocks that year, but  
37 the Adams River had a little bit of excess fishing  
38 pressure on it and had not a terrible escapement,  
39 but it had been lower than a number of years. It  
40 was somewhere close to 900,000. And that brought  
41 in the Fraser Report, and the infamous 12 hours  
42 away from wiping out the Adams River run, which  
43 was a bit of a stretch. There was no time that  
44 the fleet would have been fishing in any 12-hour  
45 period that they would have jeopardized that run,  
46 but it was a good sound bite.

47 That prompted a huge amount of change. The

1 Mifflin Plan came in. The fleet was rationalized.  
2 They had buyback programs. They brought in area  
3 licensing so now instead of having one licence you  
4 could fish all over the coast, you only had a  
5 licence for one area. If you wanted to fish as  
6 you had before, then you'd be required to buy out  
7 one of your fellow fishermen, and we referred to  
8 it as cannibalizing the fleet.

9 We'd been accused up until that time of  
10 probably over-capitalizing on our equipment.  
11 People built nicer, bigger boats, because fishing  
12 was good. They had some excess money. They spent  
13 some money on gear to make them more efficient,  
14 and we were trying to out-compete with each other.  
15 And I don't believe that we were overharvesting  
16 the resource. We usually caught what was given to  
17 us under the management by the Fraser Panel.

18 Q I wonder if I could just direct you back to --

19 MR. ASHTON: Okay.

20 Q And I appreciate you're trying to give a context,  
21 and I'm trying --

22 MR. ASHTON: Yes.

23 Q -- not to be too brief. But we are stuck with the  
24 challenge of our day and trying to make sure --

25 MR. ASHTON: Right.

26 Q -- that people who can't be here tomorrow aren't  
27 left out floating in the air. So the question I  
28 had was if you could describe your involvement and  
29 experience in ITQ demonstration projects, please.

30 MR. ASHTON: I was trying to get to that.

31 Q I'm sorry.

32 MR. ASHTON: Yes. Yes. So we became faced with a lot  
33 of challenges, as I said, a shrinking fleet, and  
34 shrinking opportunities, and a totally different  
35 direction of management. DFO said we had to  
36 conserve stocks and managed to, in our opinion,  
37 maybe a little bit on the extreme side.

38 I guess our first experience with an ITQ-type  
39 system came right at that time period.

40 Barkley Sound is the other major south coast  
41 sockeye fishery and in the mid-'90s was producing  
42 fairly good runs. And at that time the management  
43 out there said that they were going to stop  
44 managing on the pre-season expectations, which  
45 gave us those weekly fisheries. Every week we'd  
46 have a fishery in Alberni Inlet for one day. And  
47 they said we're changing that to manage on what we

1 see each week. So from being able to catch part  
2 of the entire run, they said this week anticipate  
3 that 100,000 fish will be available and that's for  
4 the seine fleet, the gillnet fleet, recreational  
5 and aboriginal.

6 And the seine fleet was told, "We won't open  
7 for 300 seine boats to come out there. If you  
8 guys can figure out a way to limit your catch,  
9 then we'll let you fish." And at that time we  
10 said "If we can't all fish, then we won't fish."  
11 So that went on for about ten years, and the  
12 gillnet fleet benefited greatly out of that,  
13 because we weren't out there catching our share of  
14 the fish.

15 And finally the light went on. And we went  
16 out there, myself and a couple of other people  
17 from the south coast seine fleet, met with the  
18 area manager and said "What do we have to do?  
19 We're losing a lot of fish." And he said "Limit  
20 your fleet. Come up with some way to limit your  
21 fleet." So we met with ourselves and said, "Well,  
22 what if we fish in a pool," kind of like quasi  
23 ITQ, and approached the manager again, said "Would  
24 this work?" And he says, "Well, if I give you a  
25 target catch of 40,000 fish, can you limit that."

26 So we formed ourselves into small, what we  
27 referred to as working groups. Each working group  
28 selected one or two boats, depending on what their  
29 share of the fish was, and then started going out  
30 and fishing in Barkley Sound, and continued, or  
31 re-established fishing for that share. So that  
32 was our first initial attempt at an ITQ fishery.

33 The second one came in 2005 when we were  
34 having similar problems with our chum salmon  
35 fishery in Johnstone Strait, and we were trying to  
36 -- the biggest problem there was more one of  
37 processing capacity. We were in a situation where  
38 we were getting two one-day openings in October  
39 for our chum salmon, and each of those openings we  
40 could probably catch several hundred thousand chum  
41 salmon. You're getting three or so million pounds  
42 of fish hitting the docks in one day, the next day  
43 after the fishery. And it's impossible to produce  
44 a high quality product if that much poundage hits  
45 the processing companies. They, like the fishing  
46 industry, have had their capacity reduced because  
47 of economics.

1           So that's sort of the genesis of us getting  
2           into it. We talked about how we could, you know,  
3           through that adaption to try and spread out the  
4           harvest through the chum fishery. We talked about  
5           how could we do it in the salmon fishery because  
6           of the same thing, economics, opening up  
7           opportunities. And I guess the biggest critical  
8           part in the sockeye fisheries are the fact that  
9           the seine fleet can catch quite a sizeable amount  
10          of fish in a very short period of time.

11          We have always been hampered by when they're  
12          trying to do management early in the season, or  
13          sometimes throughout the season of identifying a  
14          large enough volume of fish to allow us to have a  
15          fishery where they feel they can be confident that  
16          we wouldn't be taking too much. So having an ITQ  
17          system, you basically are saying to the  
18          Department, tell us how much fish we can catch,  
19          we'll organize ourselves how we want to take it.

20          So last year the first allocation came out,  
21          it was several hundred fish per licence. So  
22          there's only a handful of boats. They would take  
23          all that allocation for that week and put it on a  
24          few boats and harvested. So we did get access to  
25          that fish. Otherwise we might have missed quite a  
26          number of potential openings and gone out and  
27          harvested, I guess, way too much to economically  
28          handle at the time.

29          Q       And I take from that answer, Mr. Ashton, you are  
30          in support of an SBM approach?

31          MR. ASHTON: Well, I was trying earlier, I was trying  
32          to paint a picture where we were.

33          Q       Mm-hmm.

34          MR. ASHTON: The kind of fisheries we used to have.  
35          How many vessels were participating. It was a  
36          different way from what we have now. We had a lot  
37          of access around the coast. We had infrastructure  
38          everywhere. We had packers that would come and  
39          take our fish. You could go to numerous places to  
40          obtain fuel and supplies. You could remain out  
41          fishing.

42          Now, most of that has disappeared, and so  
43          we've basically been forced to change and adapt.  
44          And under the current state of how fish are being  
45          allocated out through management policies, it just  
46          seems like it is a more adaptive way to fish. It  
47          meets some market needs, and frankly it's probably

- 1 in the state that our fishery is right now, in the  
2 opinion of people I represent, that's the  
3 direction they'd like to go, it seems.
- 4 Q Thank you. For the remaining panellists, I'm  
5 going to, because I think that was an answer that  
6 combined a discussion of experience with  
7 demonstration projects and the merits of ITQs.  
8 Mr. Brown, I'm going to try and merge those two  
9 into one question. Part 1 is to describe your  
10 experience with ITQ demonstrations; part 2 of the  
11 question is to comment on whether, and offer your  
12 views on whether the commercial salmon fishery  
13 should move to an SBM model, why or why not.
- 14 MR. BROWN: Mr. Commissioner, through Mr. Martland, may  
15 I respectfully ask if we are finished with the  
16 subject of intra and intersectoral allocation?
- 17 Q Well, I don't have further questions for you, but  
18 other counsel may.
- 19 MR. BROWN: Well, without appearing to be obstreperous,  
20 I would just like to go on the record that I  
21 didn't even begin to get an opportunity to speak  
22 about that topic. So I will move on with respect  
23 to your current question.
- 24 Q And I'll note your point. Thank you.
- 25 MR. BROWN: But I am a little distressed that, and if  
26 you'll forgive me here, I have been one of the few  
27 people who has attended this hearing day after  
28 day, and I have listened in some cases for several  
29 days to witnesses from the Government of Canada go  
30 on, often incomprehensibly, about their fields of  
31 expertise, et cetera, and here we are, expected to  
32 deal with vastly complicated issues and we're  
33 railroading along. And again, Mr. Martland, I  
34 appreciate your time limit, but this is very, very  
35 difficult for me.
- 36 Q And I'll simply ask you, Mr. Brown, to do your  
37 level best.
- 38 MR. BROWN: I will do my level best.
- 39 Q I appreciate those weaknesses, and I accept your  
40 point.
- 41 MR. BROWN: But I have to appeal to you, Mr.  
42 Commissioner, that it is very unsatisfactory to  
43 move along at this pace.  
44 Now, to go back to your question. I think  
45 the question is wrongly phrased when you introduce  
46 in the question the word "ITQ" right off the bat.  
47 I think what I could answer better is have I had

1 experience with different ways of working within  
2 the fish harvesting community to structure the  
3 fishery in such a way that it can be more risk  
4 averse, and target on the target species that has  
5 been referred to, and produce a better outcome  
6 from the fishery. And I would say, yes, I have,  
7 and it has been in a variety of different ways.

8 I could go back, and like Mr. Ashton talk  
9 about my earlier history with the UFAWU, dealing  
10 with non-transferable quotas in the herring  
11 fishery as early as the 1980s, and a whole variety  
12 of history since then. But I'll confine my  
13 remarks specifically to where I'm currently  
14 working, with the Area E Harvest Committee, around  
15 a series of ways in which we could slow the  
16 fishery down, and make it more risk averse. This  
17 would include a number of different options.

18 It includes things that have been typical to  
19 the management toolbox for many years, which is  
20 gear restriction, time and area restriction, the  
21 way in which nets are hung, so that they can avoid  
22 certain species, and be more efficacious in terms  
23 of releasing bycatches. It has been the practice  
24 of the gillnetters that are here to invest  
25 considerable amounts of money in putting live  
26 tanks on their vessels so that species of concern  
27 can be resuscitated and released. You heard about  
28 that yesterday. There has been options that have  
29 been put forward by fish harvesters around shorter  
30 sets, and so on.

31 In addition to that, there has been a  
32 proposal which I have been directly involved with,  
33 to work around a share-based quota system,  
34 specifically in Area E, but it could work  
35 anywhere, that is non-transferable. And most of  
36 the people that I've worked with have gone to  
37 great effort to develop that scheme without any  
38 financial resources. And the end product of the  
39 experience is to sit in a variety of different  
40 rooms with a large number of DFO people, all of  
41 whom are well paid, all of whom who have  
42 infrastructure, research capability and capacity  
43 behind them, and when we put forward the option of  
44 a non-transferable fleet quota, which we would say  
45 to them - we have said to them - no matter what  
46 the TAC is, you tell us what the TAC is.

47 Because I'll point out, Mr. Martland, that

1 you have to do that with an ITQ fishery, as well.  
2 Salmon are not like some other species. They need  
3 to be estimated at the time that the fish are  
4 available for harvest, and that can only be done  
5 with in-season testing.

6 So when you define what is available to  
7 catch, you tell us what it is, and no TAC would be  
8 too small. Our job will be to find a way to  
9 democratically and responsibly control the effort  
10 within the fishing community, in this case it  
11 would be the Area E, through a variety of methods  
12 that could be vessel quotas, but more likely it  
13 would be the kind of thing that my colleague Mr.  
14 Ashton was talking about, it could be pooling  
15 arrangements.

16 In other words, what we would say is there's  
17 10,000 fish to catch on Wednesday. We don't want  
18 370 Area E gillnetters out there. We think there  
19 could only be 30. How would you do it? And the  
20 Area E community has come up with a very, very  
21 viable and responsible and democratic way of  
22 defining what those would be, as well as proposing  
23 the notion of landing stations and various ways of  
24 monitoring. And this has been consistently  
25 rejected. And to date I have yet to hear a reason  
26 why. The best that I have heard, Mr. Martland and  
27 Mr. Commissioner, is it's not practical.

28 But that is where I feel the story is belying  
29 something else. It's not about practicality,  
30 because there's no difference between operating  
31 that kind of a non-transferable quota fishery and  
32 a ITQ fishery, none. I think that what's at stake  
33 here, or what is driving this problem or has  
34 brought us to this impasse, is the DFO is seeking  
35 ITQs for other than their stated objective, which  
36 is to conserve the resource. And if I'm given the  
37 opportunity, I will explain what those political  
38 options are.

39 But, yes, I have been involved in trying to  
40 bring about the modernization of the fishery, and  
41 I and my colleagues have been rejected  
42 consistently.

43 Q Thank you. Mr. McEachern.

44 MR. McEACHERN: I'm sorry, there was two parts to that  
45 question, Brock, can you just repeat them.

46 Q Yes. First the involvement or experience with  
47 demonstration ITQs or demonstration projects.

1           Secondly, should the commercial salmon fishery be  
2           moving to an SBM approach, why or why not.

3           MR. McEACHERN: Okay. so just to be clear, when I'm  
4           speaking to you, Mr. Commissioner, I'm speaking  
5           from my personal opinion. Although I do represent  
6           the Area D gillnet fleet at a number of functions,  
7           that's not my role here today.

8           On the ITQ issue, it's a very clear split in  
9           my fleet from those who would like to move towards  
10          that system and those who would not. So when I'm  
11          speaking in favour of share base, which I will in  
12          the second part of the question, that's my  
13          personal feelings.

14          The experience with ITQ fisheries, we got  
15          very close to having a demonstration project, a  
16          fully transferable individual quota in Area D  
17          gillnet on Fraser sockeye, and unfortunately on  
18          the year where we did all the planning, there was  
19          no commercial allocation available, so the project  
20          didn't go off.

21          And then the Department made a major change  
22          to its demonstration fishery proposals for the  
23          next year. And our proposal that was going to go  
24          ahead was going to be voluntary, where it only  
25          involved a certain portion of our fleet, those  
26          that were interested in participating in a  
27          demonstration fishery would have been allowed to,  
28          and to show any merits or any shortcomings that  
29          might arise from such a demonstration.

30          But after that, I believe, I'm not sure how  
31          the internal workings of the Department exactly  
32          work. I think it might have been the Department  
33          of Justice, somehow the Department got the idea  
34          they wouldn't be able to prosecute a fishery that  
35          was only partly ITQ and partly an open fishery.  
36          So after they made that decision, all  
37          demonstration projects around share-based  
38          management had to involve the entire fleet. And  
39          so as a Harvest Committee, we felt we could no  
40          longer pursue a sockeye ITQ in Johnstone Strait  
41          for the entire fleet, because even if we could,  
42          and it would be very questionable whether or not  
43          we would get enough support to go ahead with it.  
44          But even if we could, you would be imposing that  
45          will on the fishermen who didn't want to go that  
46          way.

47          So, yes, we got very close to a full



1 transferable quota on Fraser sockeye in Johnstone  
2 Strait. We had the approval, we did the  
3 transfers, and it was ready to go, but there was  
4 no Fraser TAC on that year. And it just escaped  
5 my mind, it might have been -- it was one of the  
6 years we didn't fish, 2007 or 2008.

7 And my personal feelings is that, yes, I  
8 think the commercial fleet should move towards  
9 more of an individual share-based management  
10 fishery.

11 Now, it's true that all of the things that  
12 you would like to achieve that the Department says  
13 are its goals are moving towards more of an ITQ  
14 system. They can be achieved under the open  
15 traditional fishery, as well. However, there are  
16 some things that can be achieved with an ITQ that  
17 in my opinion will actually happen, and in the  
18 full fleet fishery they won't. And one of the  
19 things that I feel, it would really, when you move  
20 the responsibility from a fleet level down to an  
21 individual level for your catch monitoring, your  
22 landing, your bycatch, issues like that, you will  
23 see a greater compliance, because people will feel  
24 a stronger connection to that fish as being  
25 theirs.

26 I never got to run the demonstration projects  
27 in my fleet to actually show whether that's true  
28 or not, so to me, that is just an opinion and it  
29 should be noted as such.

30 The other thing that we cannot address  
31 through fleet pooling and non-transferable quota,  
32 and demonstration fisheries, that are not  
33 transferable, is we cannot address the fact that  
34 on most years not enough fish are moving over the  
35 deck of my boat for it to be a viable fishery any  
36 more. So whatever, in my opinion, the biggest  
37 advantage for the fishermen in a share-based  
38 management is the ability to put more fish across  
39 your deck. But it's true that that's going to  
40 mean that some fishermen are no longer going to  
41 fish. So how we deal with the social  
42 ramifications of that, I think could be designed  
43 into the ITQ project, if all parties were willing  
44 to do that, but at the moment, we're not.

45 Q Mr. Sakich.

46 MR. SAKICH: Yeah, I can make it quick for you here.

47 In Area H, what we have, you know, derives out of

1 the ITQ pilot that we've been in for a few years,  
2 is we've had access, we've had economics, we've  
3 had fairness and we've had respect.

4 Now, you have to look at the situation that  
5 things are in now. Outside of some programs that  
6 are government funded, taxpayer funded, that are  
7 removing licenses out of the industry, there is  
8 still a lot of people, the average age in the  
9 industry is absolutely ancient compared to any  
10 other workplace in Canada. I think it's probably  
11 the highest, and some of these folks have no way  
12 out. Vessels aren't really up to where they  
13 should be, and lots of people have had an  
14 opportunity to be able to rent this fish out, and  
15 get something back out of it, rather than sitting  
16 with a destitute business at the wharf.

17 Now, I haven't seen anything else that has  
18 addressed that, and I just call it respect for the  
19 past as you're moving into the future. You've got  
20 to think of those things. You just can't think of  
21 yourself moving forward as I'm the only one.  
22 You're leaving a lot behind.

23 Q Thank you.

24 MR. SAKICH: And that's what we found in our small  
25 licence area, 80-some-odd licences in that area,  
26 that it has accomplished all of those things.

27 MR. MARTLAND: Thank you. Mr. Commissioner, I'm just  
28 noting that the time is 11:15 or so. We usually  
29 break at this time. We did start a little late  
30 this morning. My hope is that my questions will  
31 be another 15 or 20 minutes on other topics. I  
32 don't know if the court's preference is that we  
33 take the break now, or carry on.

34 THE COMMISSIONER: I think we should carry on. I think  
35 Mr. Brown had his hand up, did he not.

36 MR. MARTLAND: Thank you.

37 MR. BROWN: Yes, I did, Mr. Commissioner, and it's just  
38 to build on my colleague Ryan's comments. I would  
39 just like to make sure that it's clear that I am  
40 representing an association that has taken a  
41 position on this, and that's the Area E, and I  
42 used to represent another organization that took a  
43 position against it, that was the United Fishermen  
44 and Allied Workers Union.

45 With respect to Mr. McEachern, who I admire  
46 greatly, I hear him making a case for a community  
47 buy-in and the idea of the harvesters owning the

1 problems of management, and I think that's a very  
2 valid point. However, I don't think there's  
3 anything inherent about ITQs, as opposed to other  
4 forms of quotas or other forms of community-driven  
5 attempts to rationalize the fishery and make it  
6 more responsible, that's superior in this regard.

7 I'm mindful of the fact that the Nobel Peace  
8 winner or Nobel Prize winner for economics, Elinor  
9 Ostrom, in 2009 pointed out that those fisheries  
10 and farming communities which were able to  
11 collectively and as communities have buy-in and  
12 close attachments to common property resources,  
13 tend to be the best and well-managed, believe it  
14 or not. This is a refutation of the old tragedy  
15 of the commons thesis, the idea that common  
16 property is nobody's property and will ultimately  
17 be exhausted. I believe a strong case can be made  
18 on the basis of what the fishing plans - and I'd  
19 love to submit them to you - from the Area E group  
20 suggest, is that the fish harvesters would do what  
21 Mr. McEachern is suggesting, under a non-  
22 transferable quota, which is to have more buy-in.

23 But I would like to also conclude by saying  
24 that I have a great fear about a couple of points  
25 around the ITQ system. One is - and I'm no  
26 lawyer, you all are legal experts - I question the  
27 legality of taking a fishery that belongs to the  
28 public of Canada, the public right to fish, which  
29 flows from the **Magna Carta** and then saying that a  
30 person who occupies the position of Minister of  
31 Fisheries at a given time can then concoct a  
32 system by which they can bestow that fish or those  
33 fish as they could become the property of any  
34 chosen group. And I make no value judgments about  
35 who those could be. I question that. I would  
36 leave it to legal experts to think about that.

37 But I would certainly point out one thing is  
38 that at the very least, the Department of  
39 Fisheries is obliged, if it's going to go to any  
40 user group and adopt this option, to put it to a  
41 referendum as Mr. McEachern quite honestly, and I  
42 admire him for his transparency, said there's a  
43 split and there's a difference of opinion, and it  
44 should be that a referendum be conducted before  
45 you'd move down such an irrevocable road as an ITQ  
46 system. And those referendums were held, and in  
47 most of the area groups they did not succeed.

1 I understand that there's a very passionate  
2 and painful debate unresolved. I'm wondering why  
3 you would even want to get involved in that, but  
4 that notwithstanding, I think there's a huge  
5 amount of risk. Because once you move to an ITQ  
6 system, there's no going back. If you adopt the  
7 kind of options that the Area E and other  
8 harvesters are talking about, which buys into the  
9 notion of controlling the fishery but not making  
10 it transferable property, you still have the  
11 option if they don't work to move to ITQs someday.  
12 But I do not know why everybody is in such a hurry  
13 to do this.

14 I think I can make a good case to you that  
15 there are other political reasons that have  
16 nothing to do with the conservation of the  
17 resource, that inspires DFO to do that, because it  
18 makes it easier for them to achieve some of their  
19 political objectives by allocating the fish in  
20 different ways, and making it look like it was the  
21 result of a free market transfer. But that's for  
22 another time, I suppose. But I would make it very  
23 clear to you that we are entering into an era of  
24 profound change when we deal with the introduction  
25 of property rights into the fishery.

26 Q Thank you for that point. My next question is on  
27 selective fishing, and Mr. Brown, I have you first  
28 on the list as we go back to the start of the  
29 batting order. I'll try and frame this as one  
30 question, I hope not too elaborate.

31 MR. BROWN: Well, Mr. Martland, I'll be fair, because I  
32 just had a fair bit of a time. So if you want to  
33 move to one of the others, because I don't to  
34 appear like I'm dominating.

35 Q No, that's fine, I'll stick to my sequence, but  
36 thank you. So I'll have you answer this first,  
37 please. On selective fishing, if you could please  
38 describe your involvement with selective fishing,  
39 in particular the work in the 1998 to 2002, and  
40 what is more broadly and more importantly in terms  
41 of emphasis that you wish to give to this, what is  
42 the status of selective fishing. Should it be  
43 more of a priority. What specific things should  
44 happen.

45 MR. BROWN: The short answer, Mr. Commissioner, is that  
46 selective fishing is a good thing. And as I tried  
47 to point out earlier, there is abundant ways to be

1 selective. My concern with the current paradigm  
2 in which we are living in, is that selective  
3 fishing initiatives tend to be highly politicized  
4 within the Department today. Not everybody gets  
5 to go and experiment with selective fishing.  
6 Various user groups have been given types of  
7 selective options, which may or may not be  
8 technically useful. There's a whole bunch of  
9 different ways in which it's done. But my concern  
10 has been the way in which the process of people  
11 getting access or the opportunity to be selective,  
12 has been somewhat unfair and skewed. If I was  
13 given enough time, I could give examples. I'm not  
14 sure I have that time.

15 I believe that, however, that selective  
16 fishing in terms of Fraser River sockeye, which is  
17 the purpose of this inquiry, is a fairly marginal  
18 point. It gets blown out of proportion because it  
19 gets into the media and it's all part of this  
20 thesis that the commercial fishing industry is  
21 wantonly overfishing the resource, indifferent to  
22 conservation. It is not true.

23 I sat a few weeks ago or a few months ago and  
24 listened to a gentleman by the name of Terry  
25 Glavin declare that the salmon fishery in British  
26 Columbia, the Fraser salmon fishery, was a  
27 catastrophic 19th Century paradigm.

28 A couple of weeks later, I heard one of the  
29 counsel ask Mr. Mike Lapointe of the Pacific  
30 Salmon Commission if that characterization was  
31 fair, and he said unequivocally that it was not  
32 fair, and the case was made that the Fraser River  
33 sockeye fishery is one of the best managed  
34 fisheries in the world.

35 To conclude, I'll build on what Dr. Walters  
36 said. There are three specific conservation  
37 problems related to the Fraser River fishery. One  
38 is the Early Stuart, one is the Cultus Lake, and  
39 the other is the early-timing Late Run/early-  
40 migrating Late Run thing, which Dr. Woodey spoke  
41 about last week. All three of those can be  
42 managed and avoided without a hell of a lot of  
43 change in terms of selectivity, just by some of  
44 the tools we have, mostly by just the timing of  
45 the fishery.

46 So while I am in favour of selective fishing,  
47 I think that in the context of Fraser fisheries,

1           it's complicating things. It's not necessarily  
2           the answer.

3           Q     Mr. McEachern.

4           MR. McEACHERN: Sorry, I get so caught up in Dennis, I  
5           can never remember the original question. You've  
6           got to put me in front of him.

7           Q     I'll do that next, how about that. The question  
8           here on selective fishing is a few parts are  
9           involvement, whether it should be more of a  
10          priority, what should happen.

11          MR. McEACHERN: Okay. So Area D Gillnet Association  
12          was very involved in the selective fishing  
13          projects, especially when there was for a period  
14          of time there was a lot of money around for  
15          projects. And so that made it very easy to run a  
16          project if you could come up with a budget that  
17          everybody that was going to be involved in the  
18          project that was going to lose fishing time, or  
19          take a risk, could be compensated through cash.  
20          And so when that carrot became unavailable, it  
21          became much more difficult to run the selective  
22          fishing projects.

23                 Because just by their nature, most of the  
24          selective fishing demonstration projects would  
25          involve slowing down your rate of catch in some  
26          fashion. And so if you're asking people to  
27          volunteer to give up fishing access under the  
28          traditional system but have no way to compensate  
29          them, it became very difficult to get volunteers.  
30          Because fishermen are already -- and just a  
31          comment, I think it would have been much more  
32          palatable to increase our selectivity if the  
33          economics of the fishery were stable or on an  
34          incline. But as the economics were heading down  
35          and resulted to limited access and poor price, it  
36          became a bit feeling like you're being kicked  
37          while you're down.

38                 But that being said, I mean, commercial  
39          fishermen are very interested in selective  
40          fishing. And I mean, we've been selective for  
41          generations. That's not something that's new.  
42          It's just a matter of we need clear direction as  
43          to what we are supposed to be being selective for,  
44          and we can accomplish amazing things. But part of  
45          the problem with a selective fishing strategy and  
46          why it got a lot of kickback, pushback over time  
47          in my area is that it became seen as very much a

1 political tool as a way to alter the allocation  
2 formula in a back room. And whether that was true  
3 or not, that was the perception on the dock.

4 And so fishermen are very loyal and very  
5 traditional and very suspicious, and they had  
6 reason to, I think. And so we heard testimony  
7 yesterday from some of the folks that were  
8 involved in the selective fishing portfolio and  
9 projects. And I'm sure it's not related in the  
10 slightest, but it just so happens that some of  
11 those people are working for First Nations now,  
12 and that is a fact. And so when the fishermen see  
13 that, they see, well, maybe these selective  
14 fishing projects are really to take fish out of  
15 the hands of the traditional commercial fishery  
16 and move them into sexier, more emerging areas,  
17 where there's more funding for bureaucratic  
18 things, issues like that.

19 Q Mr. Sakich.

20 MR. SAKICH: I think outside of just being able to tell  
21 the species of the animal that you want to  
22 release, I think it's moved far along from those  
23 days. Some of that stuff can't even apply any  
24 more.

25 The time and area is basically driven by  
26 sampling. If you can identify a species you're  
27 not supposed to have and let it out of your net,  
28 or whatever the case is, that's fine. But this is  
29 not just a commercial issue on how robust sampling  
30 is today. Like some folks today doing the most  
31 amount of sampling are getting the least amount of  
32 rewards. In fact, we don't know who's catching  
33 what in some cases.

34 To stick more with the Fraser sockeye, it's  
35 somewhat more of an expertise. The fishing is  
36 taking place between bookends of testing,  
37 sampling, quite a bit of it. And in the first  
38 speaker's case, they would just be releasing  
39 something that's visually not something they're  
40 supposed to be keeping, like a chinook or a coho.  
41 But when you get into the other parts of the coast  
42 and the other types of fishing, outside of  
43 sockeye, and you're getting in around chinook and  
44 that, I mean, you have to question the robustness  
45 of the sampling because that is the selective  
46 fishing there, and I don't know how great that is  
47 across all users. That's something that needs to

1 be answered.

2 Q Mr. Ashton.

3 MR. ASHTON: Just by virtue of the gear that a seine  
4 boat uses, the type of net, it's always been  
5 regarded as probably the most selective way of  
6 harvesting fish. The fish swim around inside an  
7 ever decreasing sort of captive pond, and can be  
8 removed and returned safely back into the water to  
9 continue on its way. And with that kind of  
10 premise, the Department of Fisheries targeted  
11 seine boats initially a long, long time ago with  
12 being able to release coho and chinook safely back  
13 into the water, and so we were restricted from  
14 harvesting those because of the fact that we could  
15 do that.

16 In the late '90s when the selective fishing  
17 projects came along, quite a number of members of  
18 the seine fleet were directly involved and  
19 probably took a lead role in developing some of  
20 the methodologies that were employed specifically,  
21 like the revival boxes suggested and implemented,  
22 changing how we removed fish out of the net from  
23 pulling them up a stern ramp in a very large bag  
24 that compresses the fish, to bringing the fish  
25 alongside and dipping them out with what's  
26 referred to as a brailer, and sorting them in a  
27 contained area and returning them back into the  
28 water. And those have been very successful and we  
29 have a very low rate of mortality.

30 I guess reflecting on what was discussed  
31 yesterday, we had also one of our directors and  
32 several others were involved in the grid  
33 experiments back in 1999, I believe, and that ran  
34 for a couple of years, and saw a lot of merit in  
35 it. And then another individual took over the  
36 project under the lead of Dr. Hargreaves and Mr.  
37 Curry, and carried that along.

38 I guess I should take the opportunity to  
39 point out, and I kind of take exception to the  
40 memorandum that they introduced as a piece of  
41 evidence that suggested that some, I think to  
42 paraphrase, some leaders in the fishing community  
43 were opposed to continuing on with selective  
44 fishing projects, such as the knotless bunt and  
45 grid project, and that is in fact quite untrue.  
46 We had met with Dr. Hargreaves and Curry,  
47 discussed this project, and actually that happened



1 in 2004, right at the time the Harvest Committees  
2 were formed, that was in the early, well, about  
3 this time of year in 2004, the new advisory  
4 process came into being. And one of our first  
5 tasks was to vet any of the selective projects  
6 that were being proposed for the 2004 season.

7 We looked at that. There had been five years  
8 of that project being done in different ways. The  
9 grids had been changed a little bit, and knotless  
10 bunts. And the Harvest Committee looked at it and  
11 said we don't really feel that this needs any  
12 further testing, that it can work. It might need  
13 a little tweaking here and there, but part of the  
14 project proposal required it to go to a scientific  
15 review. And part of the buying-in of utilizing  
16 this equipment, is the confidence that the  
17 Department of Fisheries and biologists have in the  
18 effectiveness of the equipment as being viable,  
19 and meeting the purpose of being selective. And  
20 without that confidence from the Department, we  
21 could not see them giving us more fishing  
22 opportunities, or relaxing some of the current  
23 restrictions that were in place.

24 So that was why we rejected that proposal for  
25 that year. And what ensued after that was a  
26 series of e-mails back and forth, between myself  
27 as Chair of the Harvest Committee and Mr. Curry,  
28 and they sent that memorandum to the RDG, who did  
29 approve the project. So I just thought I should  
30 set the record straight on that.

31 Q And to follow up on that point, I see --

32 THE COMMISSIONER: Mr. Martland, we're going to take  
33 the morning break.

34 MR. MARTLAND: Yes.

35 THE COMMISSIONER: I notice Mr. Brown had his hand up.

36 MR. MARTLAND: Yes.

37 THE COMMISSIONER: So when we come back, perhaps you  
38 can...

39 MR. MARTLAND: Thank you.

40 THE COMMISSIONER: Thank you.

41 THE REGISTRAR: The hearing will now recess for 15  
42 minutes.

43  
44 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

45 (PROCEEDINGS RECONVENED)

46  
47 THE REGISTRAR: The hearing is now resumed.

1 MR. MARTLAND: Thank you. Mr. Commissioner, when we  
2 broke, Mr. Brown had identified a concern. Before  
3 he -- or at least a further point he wished to  
4 make and I'll invite him to do that.

5 I just wanted to add, to flesh out what Mr.  
6 Ashton was addressing just before we broke, he  
7 provided some evidence in response to a document  
8 that was put into evidence yesterday. I expect  
9 his counsel, Mr. Rosenbloom, will, when it's his  
10 turn in a moment, put into evidence some  
11 documentary materials that flesh out the point  
12 that he was making in his testimony, so I simply  
13 identify that, the emails that he'd referred to.  
14

15 EXAMINATION IN CHIEF BY MR. MARTLAND, continuing:  
16

17 Q Mr. Brown, please.

18 MR. BROWN: Yes. Thank you, Mr. Commissioner, for  
19 allowing me to make an additional comment here. I  
20 would just like to go back to this notion of  
21 selectivity and how it pertains to weak stock  
22 management which has become quite a predominant  
23 sort of -- I hope this is not too tendentious of a  
24 word -- it's almost like a theology in DFO right  
25 now. I don't say that to be disrespectful for the  
26 idea of being selective or being risk averse, but  
27 I think it's gone far out of proportion to where  
28 it should be.

29 I'd like to use a couple of illustrated  
30 examples of that. The biggest selectivity weak  
31 stock management cause that you've heard over the  
32 last many years, and has been developed in the  
33 media and advanced by the NGOs and others, has  
34 been the Cultus Lake fish.

35 There's a report that I study very carefully  
36 put out by an independent biologist by the name of  
37 Bill Gazey, well respected biologist, and it was  
38 peculiar to one particular year. It was when we  
39 were dealing with some of the stuff you heard last  
40 week about the by-catch limits around the Late  
41 timing sockeye and the sacrifice of large numbers  
42 of Summer run sockeye to protect these allegedly  
43 endangered stocks.

44 At that year, the return to the Cultus was  
45 something in the neighbourhood of 300 fish. It  
46 was one of the very low cycle years for the  
47 Cultus. All of the selectivity and all of the --

1 no, I shouldn't use the word "selectivity". All  
2 of the weak stock management drivers in the  
3 fishery that year had the net effect of causing a  
4 major sacrifice in the harvest of the Summer run  
5 that year, and I won't repeat all of what Walters  
6 and Woodey said to you about that, but there was  
7 no sense of proportionality out in the public  
8 discourse about what we were doing.

9 On one hand, we were sacrificing millions of  
10 fish of which my colleagues all depended on for  
11 their livelihoods, and what did we save that year?  
12 Mr. Gazey estimated that the best that we were  
13 going to save was somewhere in the range of 10 to  
14 20 additional Cultus fish, something that is  
15 noble, and we might have even done it anyway. But  
16 what I'm trying to strike at here is the losses  
17 relative to the gains were very far out of  
18 proportion.

19 This is what Dr. Walters was talking about  
20 the other day, and I think very, very wisely, is  
21 there needs to be some sort of socioeconomic  
22 analysis done about if we're going to head down a  
23 path such as the theological approach to weak  
24 stock management that the Department has adopted,  
25 allegedly the Wild Salmon Policy is supposed to  
26 mitigate and balance. We at least need to tell  
27 you, Mr. Commissioner, and the public at large,  
28 what it is we're doing and, more importantly, what  
29 is the impact on people who are affected by it.  
30 That's one point.

31 But, more importantly, what is the impact on  
32 the resource as a whole? If to save 20 Cultus  
33 fish that may or may not have spawned  
34 successfully, we put five million extra fish on  
35 the Horsefly run and depressed it, and brought it  
36 down in a calamitous way, this brings you to the  
37 rhetorical question of Dr. Walters. What is  
38 precautionary? Is that precautionary, that we  
39 saved 20 fish and destroyed a run of millions?

40 I'll say in the context of another topic  
41 which is some of the selective problems or some of  
42 the weak stock problems that we have, particularly  
43 in the Cultus, have never been the result of  
44 fishing in the first place, but could be solved by  
45 other measures, including cleaning up the habitat  
46 and other factors. So I'm begging that somehow  
47 through this process, we get that sense of

1           proportionality of what we've been doing. Thank  
2           you.

3           Q     Thank you. Mr. McEachern, you had asked recently  
4           if you might be the first to go. It is your turn  
5           up for this next question. This is a general  
6           question. I think it's my last question. It has  
7           to do with the Department's consultative processes  
8           with the commercial sector.

9           The question is: What is your best advice to  
10          improve the Department's consultative processes  
11          with the commercial sector and, in particular, any  
12          comments you may have on the CSAB or Commercial  
13          Salmon Advisory Board?

14         MR. McEACHERN: Sorry, would it be possible for me just  
15          to -- are we done with selective fishing and ITQ  
16          for now?

17         Q     Yes, from my questions.

18         MR. McEACHERN: Okay.

19         Q     But you're certainly, if you have further points  
20          to make --

21         MR. McEACHERN: Well, in the interest of being brief, I  
22          might not have been totally -- there might be a  
23          little more information around the ITQ thing I  
24          should probably flesh out. My involvement in the  
25          quota demonstration fisheries is not strictly with  
26          Area D. There's also been a large group of Area E  
27          fishermen that have been promoting ITQ as a way to  
28          regain economic viability in our fishery. So I'm  
29          very involved in that from the Fraser River  
30          gillnetters as well, more from promoting it as a  
31          successful thing we should try.

32          In fact, we did actually get a fleet boat out  
33          run by the Department very recently where we  
34          actually had greater than 50 percent support for a  
35          demonstration fishery, but it was -- the reality  
36          of the timing and the lack of support from within  
37          the Harvest Committee itself, we never actually  
38          got that demonstration proposal off the ground.

39          But it would be more truthful for me to say  
40          there is a very large support for an ITQ  
41          demonstration fishery from both Area E and Area D  
42          fleets, not just Area D. I should correct that.

43         Q     Mr. Brown, I see you shaking your head "no", and  
44          I'm leery of --

45         MR. BROWN: I know. We don't want to get in a  
46          crossfire. I respect what Mr. McEachern is  
47          saying, but it has to be very clearly stated that

1 the Area E Harvest Committee does not support  
2 ITQs, and I must say - and I do this with great  
3 deference - that a lot of what Mr. Ryan is -- or  
4 what Ryan is talking about was something that was  
5 directly involving his own father and his own  
6 family members in a personal enterprise option.  
7 It is not necessarily -- I'm not saying it was a  
8 bad idea, but it is not necessarily representative  
9 of the Area E group as a whole. It's just  
10 important to make that point.

11 MR. McEACHERN: Sorry.

12 Q Yes.

13 MR. McEACHERN: Yes.

14 Q You can sense the reluctance. I think this is the  
15 last shot across the net and I'll be moving on.

16 MR. McEACHERN: Dennis -- it's true. There's a large  
17 support from the group of fishermen that I fish  
18 with around ITQ. However, we only represent a  
19 small fraction of the over 50 percent of the  
20 fishermen that voted for the project.

21 Q Let me move to the question about consultative  
22 processes and, again, the question is: What is  
23 your best advice on improving, if there's need for  
24 improvement, the DFO's consultative processes with  
25 the commercial sector, in particular welcoming any  
26 comments about the CSAB. Some of you are members  
27 of that.

28 MR. McEACHERN: Good. Mr. Commissioner, you're aware  
29 of the various different processes. Now, the  
30 struggle we have as commercial fishermen at these  
31 advisory processes is they're non-funded, so when  
32 the Commercial Salmon Advisory Board wishes to  
33 have a meeting to discuss what is the fisherman's  
34 view on a certain issue or how should we move  
35 forward, we have to first try and secure funding  
36 for the meeting.

37 The view from the Department has, in my view  
38 of the Department's view of the Commercial Salmon  
39 Advisory Board is that somehow we should magically  
40 fund our own advisory process. The other  
41 participants at that level of advisory do get  
42 funding for their processes, the Sports Fishery  
43 Advisory Board and the aboriginal people. I don't  
44 begrudge them for it, but I think we should get it  
45 as well.

46 So if there's one recommendation around the  
47 advisory process that I would hope would come out

1 of this Commission would be that the participants  
2 from the various commercial fleets should be  
3 adequately compensated for their time and their  
4 expenses. And additionally, the Department should  
5 pay for meeting venues and facilitators, and if  
6 there needs to be someone there to run the laptop,  
7 that should be funded as well. Because putting  
8 that load on the commercial fishermen at the same  
9 time that the economic viability of the fleet is  
10 on the decline has been very hard to bear.

11 So, in my view, the Department has put more  
12 and more responsibility on the advisory process  
13 for the fishermen without adequate funding; as  
14 well, without giving the advisory process any  
15 authority to deal with the issues.

16 So you've got responsibility without  
17 authority and it's a horrible situation to be  
18 stuck in because you become responsible for all of  
19 the consultation with the fishermen but, at the  
20 same, the Department will not give you the  
21 addresses or phone numbers or names of the  
22 fishermen. There's no list that you're presented  
23 when you're elected. You have to go out and make  
24 your own contacts and I think the advisors do a  
25 very good job of that within the limitations that  
26 they have.

27 I haven't been able to speak to all of the  
28 fishermen in my area because I just can't get a  
29 hold of them all. So what happens, as an advisor,  
30 you end up representing the most vocal of the  
31 fishermen in your area.

32 The other problem is you have all this  
33 responsibility for consultation and summing up the  
34 vast differences in opinion within your area, and  
35 you're supposed to take this to the Commercial  
36 Salmon Advisory Board, and so you do at a great  
37 political risk to yourself. You work out the  
38 details on the various projects, you come up with  
39 some form of consensus, you move it ahead to the  
40 Department, but you have no authority to actually  
41 implement any of your suggestions.

42 So, if the Department chooses at that moment,  
43 because of the budgetary concerns or a change in  
44 government in Ottawa, various different issues,  
45 not to proceed with your project or even hear your  
46 concerns, you've burnt up all the goodwill you  
47 might have had with the fishermen because here

1           you've caused them great personal risk to speak  
2           out, and you've used up your credence as an  
3           advisor and nothing happened.

4           Then new Department staff, new projects, new  
5           funding, and then you start again. So the  
6           Department has offloaded the advisory  
7           responsibility onto these panels without giving  
8           them the authority to make decisions or without  
9           giving them the funding to actually adequately do  
10          their job.

11          If I could, further, the actual make-up of  
12          the advisory boards themselves, I have -- if  
13          you've read my will-say, I have a problem with the  
14          make-up, and the two areas that I'm most concerned  
15          about are the union representation and the company  
16          representation on the Commercial Salmon Advisory  
17          Boards. I have no problem with the union having  
18          their say, and I have no problem with the company  
19          having their say. The problem is because the  
20          advisory processes are not funded, you have a  
21          large group of people that attend all of the  
22          meetings and every meeting are people that are  
23          getting paid in some fashion, particularly when it  
24          comes to company representatives.

25          So those seats at the Commercial Salmon  
26          Advisory Board are most likely to be filled  
27          whereas the seats of people that are not being  
28          paid are the least likely to be filled. If you  
29          look back through the minutes of the SCORE  
30          processes, you will see there was a lack of  
31          participation from groups that really should have  
32          had a lot more to say, particular in Area E and  
33          other areas where the participants were asked to  
34          volunteer their time, their expenses and their *per*  
35          *diems*. Well, you had very good representation  
36          from the fishing companies and the union whose  
37          members were being paid, either on a daily or a  
38          salary rate.

39          So there's two ways to fix that in my view.  
40          You could either change the make-up of the  
41          Commercial Salmon Advisory Board so you limit it  
42          to fishermen only, and the union and the companies  
43          would need to make their advice to the Department  
44          in a separate forum, or you could pay the  
45          independent fishermen themselves for attending  
46          these meetings so that they would be able to  
47          participate at the same level that the union or

1 the company would.

2 Q Thank you. Mr. Brown, I saw you raised your hand.  
3 I'm simply going to ask if you can hold the point  
4 till we move through the sequence. You are the  
5 last person on the list in this anyways. Thank  
6 you.

7 Mr. Sakich, please?

8 MR. SAKICH: Yeah, first of all, chairing that thing  
9 and sort of looking after its paperwork and  
10 everything on a volunteer basis, it's a little bit  
11 much. There's a lot of it. There's a lot of  
12 responsibility there. It would be impossible to  
13 put together full agendas of all sorts of items  
14 because you would need days to do that, meetings  
15 of that sort. Then folks when they're on their  
16 own for cost, coming from all over the coast, it's  
17 pretty hard to do.

18 So we sort of managed to move the meetings up  
19 so they run right beside the IHPC meetings so that  
20 covers folks from out of town. But it only gives  
21 you a day here and there. It needs to be -- it  
22 needs a full-time secretariat. It's got to have  
23 that, and they can vote in whoever they want for a  
24 Chair at that time. But there's too much business  
25 to be looked after on sort of a volunteer-type  
26 basis.

27 The other side of it, the B.C. Wild part  
28 (sic), the society to it, it's fairly smooth. It  
29 has a different terms of reference and it's not  
30 hard to be caught up on that one. That's done by  
31 an accountant. That's all put together every year  
32 and filed.

33 Then there's some other issues around there  
34 too as you're trying to do business, and it's just  
35 how this all -- does everybody arrive there? Now,  
36 before I get into this, don't consider that I'm  
37 thinking I'm telling anybody to be where we're at.  
38 I'm saying we want to be where they're at.

39 So you look at the make-up of how put your  
40 Harvest Committees and everything in there and  
41 it's done by voting, by a licence-holder. Now,  
42 this is presuming, in our minds, that all licence-  
43 holders are equal. I don't think that's quite so.  
44 You have a large First Nations corporation in the  
45 north that is able to treat licences a lot  
46 different than the rest of us. It's a  
47 corporation. We're not talking about a First



1 Nations thing here. So those licences don't have  
2 to be on a keel. They can be kept in a filing  
3 cabinet, they can be rented out, they can do all  
4 these sorts of things. The rest of us at that  
5 table can't operate that way. That, to me, is a  
6 slight. So if you are a licence-holder sort of  
7 voting in a block or whatever the case is for  
8 whatever initiatives that you're doing in there,  
9 that is somewhat unfair.

10 Now, again, I'm not saying those folks need  
11 to come where we are. We need to go where they  
12 are in that flexibility of licensing. Then we  
13 would be on the same level. That's something --  
14 it doesn't talk about that in the terms of  
15 reference. The terms of reference talks about  
16 licence-holders. They are licence-holders; it's  
17 how you're allowed to treat the licence compared  
18 to the rest of the folks. It's not the same.

19 I could be corrected, but if somebody would  
20 want to research that and just find out what we do  
21 have there, it would be a good idea. It's not  
22 something I can do.

23 Q Mr. Ashton?

24 MR. ASHTON: I guess the two bodies we're talking about  
25 is the CSAB and the IHPC; is that correct?

26 Q Yes.

27 MR. ASHTON: They both have their merits, and they both  
28 have some failings. Both bodies, the terms of  
29 reference are to reach decisions by consensus  
30 which, in many cases, almost all cases, is  
31 extremely difficult to do. We have very diverse  
32 groups of people represented at both these. The  
33 CSAB is obviously commercial, but as you've  
34 probably heard, the different gear types have  
35 different perspectives on how their fisheries  
36 should run, how the allocation process should be  
37 in.

38 There's a little bit of -- we went through  
39 the SCORE process and it really brought to the  
40 forefront that there's sort of two distinct  
41 differences of opinion on share-based managements  
42 and quotas and other things like that. It tends  
43 to still influence how people feel attending these  
44 meetings and what their comfort level is  
45 discussing situations like that, so you try and  
46 temper the meetings basically avoiding some of  
47 those subjects. Otherwise you get bogged down in

1 rhetoric and debate and accomplish nothing.

2 As Mr. Sakich pointed out, we aren't able to  
3 meet as the CSAB very effectively basically  
4 because of the financial situation. We're  
5 perceived as being a commercial entity and  
6 commercial entities often suggest that you're  
7 making money, which is quite the contrary in this  
8 business in the last 15 years.

9 People that are serving on as a  
10 representative from the Harvest Committees do it  
11 basically on a volunteer basis, so generally we  
12 get two meetings a year, sometimes three meetings  
13 a year that we try and piggy-back onto the same  
14 time frame as the IHPC so the out-of-town members  
15 - and there's quite a number of them - come,  
16 several from Prince Rupert and other places, Gulf  
17 Islands, Vancouver Island, can come to Vancouver  
18 where the meetings are held and will have their  
19 expenses paid by the IHPC who picks up your travel  
20 and hotel costs. So we're a very limited ability  
21 to meet in person.

22 The IHPC, it's a similar situation as far as  
23 a decision-making body -- there's good value in  
24 the IHPC. It's a very good forum for receiving  
25 information from DFO. We do have an opportunity  
26 to express some opinion. It's hard to sometimes  
27 relate it to that you're actually involved in  
28 consultation. Consultation sometimes would  
29 suggest that if you are expressing your viewpoints  
30 that you have a reasonable expectation that they  
31 may be regarded as valuable and being implemented,  
32 and often we don't see that.

33 What we do lack, I guess, in the IHPC is -- I  
34 think I remember a few weeks back Dr. Kristianson  
35 -- and I can't remember exactly -- I think Mr.  
36 Saito appeared, and it was put to them whether  
37 they should have the ability to have some  
38 scientific expertise brought into the process so  
39 that they have a better understanding of some of  
40 the information and they reflected that it might  
41 make the whole process very complicated. You'd  
42 have some -- instead of the elected  
43 representatives being able to voice opinions,  
44 you'd be continually going into little huddles  
45 with your technical expert to try and get an  
46 opinion.

47 I think it would be very valuable if DFO,

1 with their vast amount of technical expertise,  
2 performed that function for us, that they could  
3 give us an analysis and make it specific to the  
4 groups that are participating and saying, well,  
5 this was what this means to you. And it's  
6 basically left up to us to try and analyze a  
7 tremendous amount of information. There's some  
8 belief that we are supposed to be well enough  
9 equipped to analyze it all ourselves, see what the  
10 shortcomings are and then distribute that  
11 information to our respective constituents. It's  
12 not always the case.

13 I just wanted to bring up one point that the  
14 IHPC, working on consensus, I asked some  
15 colleagues how many instances you could ever  
16 remember that we actually had a motion put forward  
17 and reached consensus and, collectively, we only  
18 came up with two. One of them was funding. I  
19 remember it was several years ago it was brought  
20 up. The CSAB members didn't get funding to have  
21 their own meetings. They didn't have funding for  
22 a secretariat service of anything like that.  
23 Everybody in the room was quite astounded that  
24 they all funding, but we didn't have funding.

25 So there was a motion put forward and the  
26 entire IHPC passed that motion by consensus that  
27 they agreed that we should have funding.

28 The other one was for the licence holiday and  
29 I think you already heard that. We had a number  
30 of years where we basically were told pre-season  
31 that there wouldn't be any fishing opportunity.  
32 For the seine fleet, our seine licences are close  
33 to \$4,000 each; that, on top of providing ongoing  
34 maintenance to your vessel and other equipment  
35 that you need to do just to keep it up, and you do  
36 it because you have some expectation that you may  
37 get a fishing opportunity. Faced with not having  
38 one and still having to pay for that licence  
39 becomes a bit onerous.

40 I was quite taken aback actually. There was  
41 letters sent to the Minister and there was a  
42 motion passed by the IHPC and presumably a letter  
43 went from the IHPC to the Minister explaining the  
44 hardship that requirement to pay the licence fee  
45 was causing quite a few people. I noted in the  
46 PPR on commercial fishing -- I read right under  
47 the section where it said that we had made this

1 repeated request for a licence holiday and it said  
2 in the next paragraph that DFO has a challenge  
3 from the Treasury Board to meet, I guess, a quota  
4 of \$40 to \$41 million in raising licences across  
5 Canada. If they meet that target, there's, I  
6 guess, a fund there that becomes available, so  
7 they would -- at that frozen allocation or assets  
8 to their annual budget. I also noted that they  
9 never met that.

10 But I guess from our perspective, we find  
11 that a little disconcerting that we're asking for  
12 a licence holiday and we find out DFO, who we're  
13 asking for the holiday, probably has no intention  
14 of trying to back our request because they're  
15 trying to meet a target set by Treasury Board.

16 Q Thank you. Mr. Brown?

17 MR. BROWN: Thank you. I'll try to be brief. I want  
18 to go back to a couple of points that Ryan made,  
19 and I wanted to say I couldn't have put it better  
20 than Ryan did, his analysis of the advisory  
21 process up until the time he made the point about  
22 non-fishermen reps.

23 I, for one, am a non-fisherman rep at the  
24 moment, and I want to make it very clear to Ryan  
25 and everybody else, I don't get paid. I get paid  
26 nothing. I do it because there are a number of  
27 people in the industry have asked me for - based  
28 on my history and my skill set - if I would help  
29 them and I do it. I'm not the slightest bit  
30 ashamed about being a non-fishing licence-holder  
31 active fisherman when I go there because I'm  
32 guided, when I go there, both when I was a union  
33 representative - and I am no longer - and now, in  
34 an erstwhile form as an Area E representative, I'm  
35 guided by policy that was developed by fishermen  
36 through their own various meetings, some of which  
37 Ryan has attended.

38 I just want to make it clear, Mr.  
39 Commissioner, that we shouldn't get hung up on  
40 this issue of non-fishermen versus fishermen and  
41 that there's something inherently superior about  
42 either group. They can both be good and they can  
43 both be bad. I would make the observation after  
44 more than 30 years in the advisory process, that  
45 some of the most sterling examples of  
46 representative democracy that I've ever witnessed  
47 in my life. And I'm thinking about my former boss

1 and very dear friend, the late Jack Nichol and  
2 others, would go to meetings and were absolutely  
3 impressive in their intellectual grasp of  
4 subjects, were widely regarded by the Department  
5 and they weren't fishermen. They were people that  
6 learned from fishermen how to articulate their  
7 views.

8 The *quid pro quo* of that is some of the most  
9 questionable people I've ever seen in the advisory  
10 process were, nominally, working fishermen who  
11 attend meetings, hang around and get chummy with  
12 certain people in the Fisheries Department, tend  
13 to have a self-interest, and design some of their  
14 proposals and options, write correspondence  
15 attacking other people in the advisory process,  
16 calling them down. There's a lot of things that  
17 can be said -- and I don't say that's all of them.  
18 I'm just making the point that there's no inherent  
19 fetish about whether you're a fisherman or not,  
20 and I agree with Ryan very strongly that the best  
21 way to solve it is to make sure that all the  
22 people are properly resourced.

23 Now, if I may, could I move on to another  
24 point, and that is this whole issue of what is the  
25 advisory -- what is probably the biggest problem  
26 with the advisory process, and Mr. Ashton has  
27 touched on it. But just a week ago, I was sending  
28 down a number of fisheries modelling exercises  
29 that the DFO was working on in the fishery to Dr.  
30 Carl Walters in Florida. His comment was, "Even I  
31 can't understand half of these things. How the  
32 hell can working fishermen do it without the  
33 resources and without the expertise?"

34 What we're seeing in this age, particularly  
35 as Mr. Staley pointed out last week, since the  
36 advent of computers, is an absolute exponential  
37 growth in computer modelling and abstract activity  
38 that becomes at times absolutely overwhelming.  
39 And it's certainly -- I totally agree with what  
40 Ryan is saying -- a challenge for people who do  
41 not get paid and don't have the resources to go  
42 through that.

43 The other point that I don't like about the  
44 current advisory process is, as you heard from Dr.  
45 Woodey and others in the old IPFSC era, which is  
46 different -- we can't necessarily go back. Things  
47 were more simple, but we no longer have one place

1 where all decisions are made around Fraser  
2 sockeye. There's a multiple of forums. Decisions  
3 are often made in places like the Fraser Panel,  
4 and they're obviated or undermined or changed in  
5 other places. I think there is some serious  
6 structural flaws there. If I had more time, I  
7 would go into that case by case, but I think there  
8 are some serious problems.

9 I will conclude by saying the current  
10 advisory process tends to favour a top-down  
11 approach by DFO rather than a grass-roots-up  
12 approach from fishermen.

13 Q Mr. McEachern, you raised your hand.

14 MR. McEACHERN: Yeah. I'm not sure how much back and  
15 forth you're looking for here. But, I mean,  
16 obviously Dennis and I agree on a great many  
17 things in the industry, and I hate to make it seem  
18 like we disagree all the time. There's basically  
19 only two issues where we would see a major  
20 difference I think.

21 One is on the ITQ issue, and the other is on  
22 this idea of fishermen reps, and I don't want it  
23 to seem like I'm maligning non-fishermen  
24 representatives at all. I think that the ones we  
25 have do an excellent job. And there's Dennis and  
26 there's Joy and there's a number of other reps  
27 that do an excellent job for the fishermen.

28 But the problem I see from the fishermen  
29 point of view is the Department and the whole  
30 advisory process gets hooked on the convenience of  
31 having non-fishermen reps, and it is very handy to  
32 have them. But what happens is they end up  
33 advocating their responsibility to actually  
34 consult with the fishermen themselves, because it  
35 becomes much easier to have meetings in Vancouver  
36 when you have a non-fisherman rep who's not out on  
37 the boat speaking for you, and they might do a  
38 very good job of speaking for you, but they're not  
39 actually fishing themselves.

40 So the Department actually gets hooked on the  
41 convenience of having non-participating fishermen  
42 become their advisors. And in a lot of issues in  
43 mid-season, because it's so convenient, there may  
44 be a meeting where there is a majority of  
45 representatives that actually are working for a  
46 Canadian fishing company, for example, and are not  
47 fishermen at all. Because it is convenient, they

1 can do that. They don't have to contact the  
2 fishermen themselves.

3 One of the excuses, "Well, you're all out  
4 fishing." But you know what? If you had to be a  
5 fisherman to be representative and if the  
6 Department had to consult with representatives,  
7 they would find a way to properly consult with the  
8 fishermen. But having the convenience of having  
9 non-fishermen there I think has got them addicted  
10 to that system. And I'm not trying to put down  
11 Dennis' involvement at all.

12 MR. MARTLAND: Gentlemen, thank you very much. That  
13 concludes my questions to you. Certainly other  
14 counsel have a series of questions.

15 Mr. Commissioner, it's 12:25. I don't know  
16 if the preference is that we begin that -- Mr.  
17 Rosenbloom is first on the list. Thank you.

18 MR. ROSENBLOOM: Well, I suppose Mr. Rosenbloom would  
19 prefer to start right after the lunch break, but I  
20 can fill in a minute of it before lunch by  
21 indicating to you, Mr. Commissioner, that I think  
22 you detect a frustration of certain members of the  
23 panel in terms of how we have all collectively had  
24 to compress a very, very complex subject into a  
25 window of one day, and it troubles me very, very  
26 much.

27 It troubles me because maybe you, Mr.  
28 Commissioner, had a better grounding on these  
29 issues before you received this commission, but  
30 for the rest of us, it has taken us a long time to  
31 come to grips with some of these very, very  
32 complex issues. All I wanted to say, not so much  
33 as a complaint, but as a partial solution to the  
34 problem, is that speaking on behalf of my two  
35 clients on the panel, and I have a feeling I'm  
36 also very much speaking for Mr. Brown, who's  
37 champing at the bit to expand on his point, and  
38 I'm sure I speak for Mr. Sakich, that my client  
39 certainly would be very willing to return another  
40 day. It would be advisable when they do return --  
41 I'm not suggesting to not sit this afternoon. We  
42 should be carrying on.

43 But as Mr. Markland indicated at the start,  
44 we're doing the cart before the horse to the  
45 extent that Mr. Grout tomorrow presumably will lay  
46 out some of the schematic of the allocation system  
47 and the complexity of that issue, not to mention

1 some of the other issues as set out in his will-  
2 say, and one would have preferred to have this  
3 panel to speak after that so that, as we examine  
4 this panel, we would know to what extent you, Mr.  
5 Commissioner, would have already been provided  
6 with a schematic to fully understand the  
7 situation.

8 But not knowing to what extent Mr. Grout will  
9 even be permitted to lay out the complex web of  
10 systems that operate for these issues, we're  
11 obviously having to examine these witnesses today  
12 to bring forth some of the complexity of the  
13 issues.

14 So I say that, certainly, I invite you, Mr.  
15 Commissioner, at the end of the day to certainly  
16 approach us to reconstitute this panel an  
17 additional time to expand upon issues, especially  
18 after we have heard Mr. Grout. I know that one of  
19 the reasons we're meeting today is that, certainly  
20 with Mr. McEachern, he's out on the herring ground  
21 and could be called out tomorrow, I assume, but I  
22 know that the herring is a short season, and Mr.  
23 McEachern will make himself available at a future  
24 time as, I'm sure, will all the other panel  
25 members.

26 So I invite you, Mr. Commissioner, at the end  
27 of today to state to us if indeed you feel that  
28 you would like this panel back to give you a more  
29 fulsome explanation of some of these issues.  
30 Some, I think, will be adequately covered today,  
31 but some of them, I suggest, will not be.

32 THE COMMISSIONER: Thank you for those comments, Mr.  
33 Rosenbloom, and I think your suggestion is  
34 eminently sensible, that at the end of today,  
35 we'll assess where we're at in terms of the  
36 evidence we've been able to cover with this panel  
37 today, and try to assess how we can accommodate  
38 any concerns that you or your learned friends may  
39 have about having to return with this panel so  
40 that all of the question they want to ask of the  
41 panel can be asked, and the panel will have an  
42 opportunity to answer those points.

43 MR. ROSENBLUM: Yes.

44 THE COMMISSIONER: So can we follow up on your  
45 suggestion at the end of the day today and do just  
46 exactly what you're suggesting.

47 MR. ROSENBLUM: Yes, and I hope that at the end of the



1 day, Mr. Commissioner, that participants with this  
2 level of knowledge will feel that they have been  
3 given their day in court, as the expression goes,  
4 and have had the opportunity to really explain to  
5 you, Mr. Commissioner, some of the complex  
6 problems that they believe arise as a result of  
7 the current system.

8 THE COMMISSIONER: As I say, I agree with your point,  
9 Mr. Rosenbloom. We'll assess it at the end of the  
10 day and do our best to try and accommodate your  
11 suggestion as best we can.

12 MR. ROSENBLUM: Thank you.

13 THE COMMISSIONER: So we'll take the noon break. Thank  
14 you.

15 THE REGISTRAR: The hearing is now adjourned until 2:00  
16 p.m.

17  
18 (PROCEEDINGS ADJOURNED FOR NOON RECESS)  
19 (PROCEEDINGS RECONVENED)  
20

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

22 MR. MARTLAND: Mr. Commissioner, following the  
23 discussion just before the midday break, we  
24 canvassed with these witnesses the question of  
25 their availability in the event we can't finish  
26 today. I think that, realistically, is going to  
27 be the case. So Monday, the 28th of February is a  
28 date that these witnesses expect they can be here.  
29 That's Monday, six or so days from now. So my  
30 suggestion would be that we cover the ground we  
31 can. We'll move through the -- I'll stand up to  
32 explain who's examining or cross-examining next as  
33 we move through counsel today. I hope we can  
34 still be as efficient in using the time today as  
35 we can. Mr. Grout is here tomorrow and the day  
36 following and it may be that after his evidence,  
37 some counsel have less questions, if they haven't  
38 done their cross-examination of these witnesses.  
39 Mr. Rosenbloom raises the question of whether  
40 there may be a further question arising from that,  
41 and I just should indicate, I've said to him that  
42 if that were to occur, arising out of evidence  
43 from Mr. Grout, and that was a further question,  
44 we didn't think that would present a problem. So  
45 I'll hand over to Mr. Rosenbloom.

46 MR. ROSENBLUM: With respect, Mr. Martland, it isn't  
47 so much questions that might arise out of Mr.

1 Grout's testimony as it is where Mr. Grout has not  
2 covered certain areas that one would have  
3 anticipated he would cover, I want the opportunity  
4 to deal with it with this panel. I am limiting my  
5 examination of this panel, for example, in respect  
6 to salmon allocation, because I'm anticipating  
7 that Mr. Grout will give you, Mr. Commissioner,  
8 the schematic, as I describe it, of the system.  
9 And I don't think we should we should call upon  
10 this panel to deliver that up to you and allow Mr.  
11 Grout to do so.

12 However, in the event at the conclusion of  
13 Mr. Grout's testimony there are issues that I feel  
14 have not been covered, I think it's important for  
15 the Commission to appreciate I will reserve the  
16 right to have further opportunity of examination  
17 in chief. And I think Mr. Martland has generally  
18 agreed with that request, and he has.

19 That being the case, with your permission, I  
20 would like to proceed, firstly, as if I have to  
21 introduce myself to this panel, but I am Don  
22 Rosenbloom. I appear on behalf of two of the four  
23 of you, Area D Gillnet and Area B Seiner. I have  
24 some questions that are technically in chief for  
25 my two clients and, I guess, technically, cross-  
26 examination for the others.

27  
28 CROSS-EXAMINATION BY MR. ROSENBLOOM:

29  
30 Q I want to start with a question about allocation.  
31 Mr. Grout hopefully will deal with this in great  
32 detail, but I want to come in a very simplistic  
33 way in asking you a few questions from 30,000 feet  
34 elevation in respect to allocation. And I'm going  
35 to lead you in respect to this, and obviously if  
36 any of my colleagues take exception to me leading  
37 you, please obviously allow them to object.

38 Firstly, up to the Mifflin period of 1996,  
39 you've all testified you had a coast-wide fishery  
40 in the sense that if you held a licence, you held  
41 that licence and could fish from the Nass River  
42 down to the Fraser River; is that not correct?

43 Maybe you, Mr. Ashton, just first.

44 MR. ASHTON: Yes, that's correct.

45 Q All right. And so you, as a seiner licence  
46 holder, would have the opportunity to go out and  
47 fish the entire coast, and would there be times

1           when the openings would conflict, where you would  
2           have to make a decision whether to fish the Nass,  
3           or the Skeena, or whatever? I assume that to be  
4           the case.

5           MR. ASHTON: That was almost always the case.

6           Q     Yes.

7           MR. ASHTON: You had many choices where you could go  
8           fish.

9           Q     All right. And for you, Mr. McEachern, I assume,  
10          also, if you held a gillnet licence, you could  
11          fish from the Nass to the Fraser River?

12          MR. McEACHERN: Yes, in fact, that's exactly what we  
13          did, we would start up north and work our way down  
14          and end the season in the Fraser, yeah.

15          Q     All right. And when we were under the pre-1996  
16          system, there was a coast-wide allocation, was  
17          there not, so that, for example, you, Mr.  
18          McEachern and your seiner community -- excuse me,  
19          your gillnet community, would have been permitted  
20          a TAC for that coast-wide fishery, correct?

21          MR. McEACHERN: Yes, so it was easier to satisfy the  
22          allocation principles because if there was no fish  
23          in a certain area, you could catch up in another  
24          area to satisfy the formula.

25          Q     Yes.

26          MR. McEACHERN: Yes.

27          Q     But you were restricted to, obviously, a TAC for  
28          your gear type for the coast?

29          MR. McEACHERN: Yes.

30          Q     Right. Now, we then have the intervention of the  
31          Mifflin plan and as we have learned through the  
32          PVR and other documents, that what I will describe  
33          as balkanized the coast in the sense that it  
34          divvied up fishing in to various zones. And for  
35          example, with you, Mr. Ashton, you, as a seiner  
36          group fleet, were divided into two areas, the  
37          north area and the south area; is that correct?

38          MR. ASHTON: Yes, that's correct.

39          Q     And in connection with you, Mr. McEachern, with  
40          the gillnet fleet, I believe there are three  
41          areas, correct?

42          MR. McEACHERN: Yes, it's north of Cape Caution, and in  
43          the south coast, it's split, two areas, D and E.

44          Q     Yes, and two of the three gillnet area are  
45          represented at this inquiry because, obviously,  
46          the third gillnet area in the north does not fish  
47          the Fraser River sockeye?

1 MR. McEACHERN: That's correct.

2 Q All right. Now, forgive me for being so  
3 simplistic, but I think it's important we start  
4 from such a simple foundation. With the Mifflin  
5 Plan, you, Mr. Ashton, had to make a choice of  
6 acquiring a licence for the south or a licence for  
7 the north; is that correct?

8 MR. ASHTON: Well, you had a choice at the time the  
9 plan was implemented to designate your licence to  
10 one of those areas. And then if you felt that you  
11 wanted to fish the other area, you would be  
12 required to acquire another licence through  
13 purchasing it on the market.

14 Q Yes. Did you automatically get one licence, sort  
15 of what I'll call free of charge because you were  
16 transferring your coast-wide licence to, for  
17 example, in your case, an Area B licence?

18 MR. ASHTON: Well, that would be one way to describe  
19 it, but, actually, we kind of looked at it as your  
20 licence became fractionalized.

21 Q Yes, fractionalized, but you didn't receive any  
22 compensation for the fact it was fractionalized?

23 MR. ASHTON: No.

24 Q No. So in your case, for example, Mr. Ashton, you  
25 chose to acquire an Area B licence; is that  
26 correct?

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

28 Q Okay. Now, as a result of, again, what I refer to  
29 as a balkanization of the coast, did the system of  
30 allocation change as a result of the  
31 implementation of the Mifflin Plan? And to speed  
32 this up, am I correct in saying it did not change,  
33 it was a coast-wide allocation?

34 MR. ASHTON: That's right, it remained coast-wide in  
35 the application, but in reality, it did change.

36 Q Okay. And I have heard testimony today, certainly  
37 from Mr. Brown, and, in fact, from some of the  
38 others, that it has led to a dysfunctionality with  
39 allocation, that there's some huge problems. What  
40 I want you to speak to today and to inform the  
41 Commissioner is how has this dichotomy, this  
42 problem led to serious issues in your industry?  
43 In other words, where you hold an area licence,  
44 for example, Seine Area B, and yet, the allocation  
45 is coast wide. Could you give examples of how  
46 this has led to serious problems?

47 MR. ASHTON: Well, it leads to different problems.

1 Some of them are serious. If you only hold one  
2 licence, then you're basically restricted to  
3 putting all your eggs in one basket, so to speak.  
4 And being a South Coast Area B fisherman, there --  
5 in the last 10 years, there's been numerous  
6 occasions when there's been very little fishery  
7 opportunities available. So we've had a lot of  
8 hardship for the South Coast fisherman. There  
9 are, I believe, about 65 of Area B licensed  
10 vessels that have an Area A licence so that they  
11 fish the North Coast and the South Coast so they  
12 have another option.

13 Q All right. Let's come down again to pretty  
14 fundamental points. Firstly, the current  
15 allocation is somewhere in the vicinity of 40  
16 percent, coast-wide, 40 percent for seiner, 38  
17 percent for gillnet, and 22 percent for troll; is  
18 that correct?

19 MR. ASHTON: That's correct.

20 Q All right. Now, appreciating that that is a  
21 coast-wide allocation, let's say with seiner at 40  
22 percent, will you explain to us how that operates  
23 when you've got a licensed group of seiners in the  
24 north, a licensed group in the south, and how do  
25 you trade on that 40 percent? How is that 40  
26 percent -- how is it shared between the two area  
27 groups?

28 MR. ASHTON: Well, it's only shared in the fact that  
29 you can access fish geographically and there's, I  
30 guess, a calculation pre-season of how much you'll  
31 get of the available fish, but there's a few  
32 overriding historical allocations. In the north,  
33 the Skeena River sockeye, historically, the  
34 division has been 75 percent to the gillnet fleet  
35 and 25 percent to the seine fleet. If it's a  
36 large return to the Skeena, then the North Coast  
37 seiners can get a fair amount of economic value  
38 out of their share of the 25 percent. Usually,  
39 the rest of their fishery is comprised of pink  
40 salmon, which are, well, quite a bit lower value  
41 fish than sockeye. So the Area A fleet, if there  
42 isn't much sockeye and it's a poor year on pinks,  
43 might only get a very small share of the seine  
44 area combined allocation. So the rest of it would  
45 be derived in giving a greater allocation to the  
46 South Coast seine fleet.

47 Q So is it fair to say that in a circumstance as you

1 describe it, with this illustration, that you, as  
2 a B licence holder, would have a more productive  
3 harvest that year because you would be able to  
4 fish some of the sockeye that was really the  
5 allocation of the A licence?

6 MR. ASHTON: In theory, but for the most part, it's  
7 been the exact opposite, that we haven't had  
8 fisheries down here. I guess, to illustrate more  
9 the imbalance and how it takes place, there's been  
10 a number of years where we haven't had any sockeye  
11 returning, well, not enough to have a significant  
12 fishery up on the Skeena. So the gillnet fleet up  
13 there would not be getting much of a share of  
14 fish. And under the allocation policy, if one  
15 gillnet -- in this instance, we're talking  
16 gillnets, if the Area C gillnetters can't obtain a  
17 share of their allocation, then the other gillnet  
18 groups would increase their share. So we've had a  
19 number of instances where Area C didn't have  
20 enough fish to satisfy their allocation because  
21 there's a lack of sockeye, Area A seiners didn't  
22 have any fish that they could give to Area C, so  
23 they transferred fish from Area B to Area D and E  
24 to compensate Area C. Is that confusing?

25 Q Well, it is confusing.

26 MR. ASHTON: We find it confusing.

27 Q I know Mr. McEachern wants to speak and I'll come  
28 to him in just a moment, but what I'm trying to  
29 establish here is are we then saying that there  
30 are licence holders that end up benefiting because  
31 their fellow licence holders in the other area  
32 have not been able to meet allocation?

33 MR. ASHTON: In some instances they are. Yeah, in some  
34 instances, that's the case, but considering the  
35 lack of fisheries we've had down in the South  
36 Coast since area licensing came into effect, it's  
37 hard to say there's anybody been benefiting down  
38 in the South Coast.

39 Q All right. But the way the system currently  
40 operates, is it a situation where a licence group  
41 may not receive what was to be anticipated to be  
42 their allocation because of the lack of fish and,  
43 in turn, fishers of the other licence area end up  
44 either benefiting from it, or whatever?

45 MR. ASHTON: I guess I could probably illustrate an  
46 example that's ongoing with my friend, Mr. Sakich.  
47 He's an Area H troller, and when we do this annual

1 allocation of divvying up the economic pie into  
2 fish, the predominant allocation or access to fish  
3 that the troll group gets, so that would be the  
4 North Coast trollers and the outside Area G  
5 trollers, outside the west coast of Vancouver  
6 Island, they derive their allocation from  
7 Chinooks. And they are actually -- the value of  
8 those Chinooks is above the 22 percent, that is  
9 their coast-wide share. So when you take that  
10 calculation into effect, then Area H doesn't  
11 really have any allocation. Because of their  
12 geographic restriction, they can't go out to the  
13 outside waters to access Chinook and there isn't  
14 any Chinook on the inside waters for them to  
15 access so every year, the net fleet, Area B, D and  
16 E, share a bit of their sockeye, pink and chum  
17 allocation with Area H.

18 Q All right.

19 MR. ASHTON: I mean, they get to fish, but it's not  
20 really part of their allocation in the formula.

21 Q These are the kind of illustrations I want to  
22 bring before the Commission. Mr. McEachern, you  
23 did want to respond at one point?

24 MR. McEACHERN: Well, actually, I was going to speak to  
25 the Area H issue, the fact that it's very  
26 demoralizing to be part of a process where the  
27 Area H troll fleet doesn't actually have a right  
28 to fish on a number of years. And so what happens  
29 is you move around the net fleet and ask for  
30 donations of sockeye and pink so they can maintain  
31 a fishery because none of the fishermen want to  
32 put Area H out of the water just to satisfy the  
33 allocation policy, okay? But I think it's easier  
34 to understand the problem we got into if you look  
35 at how it would have happened prior to the Mifflin  
36 Plan, where you had fish in common that could be  
37 traded that we no longer have, right?

38 When there was an imbalance in the allocation  
39 during traditional fisheries, it would result in a  
40 gillnet or seine imbalance in the north. You  
41 could always satisfy that by transferring Fraser  
42 fish around in the south. But now we no longer  
43 have that ability so what happens is when one  
44 group suffers a hardship, you can't actually  
45 compensate that group specifically, you compensate  
46 their cousin group in the opposite geographical  
47 area, which doesn't help them in the slightest.

1 Q There's an unfairness to that?

2 MR. McEACHERN: Yes.

3 Q Yes. And appreciating that there is this  
4 unfairness, would you say that the Mifflin Plan  
5 was implemented without appreciating the problems  
6 that arise from it with allocation?

7 MR. McEACHERN: I guess I'm very happy to say that when  
8 the Mifflin Plan was being engineered, I wasn't  
9 part of the political process yet at the time. In  
10 fact, I didn't start fishing my own boat until I  
11 was 15 and I didn't really get into politics until  
12 I was around 20 and the Mifflin Plan had already  
13 started by then. So my understanding, from  
14 speaking to the various participants in the  
15 Mifflin Plan was that that was a chapter that  
16 never got finished. And my impression was there  
17 was always an intention to deal with the coast-  
18 wide allocation issue, but it never happened.

19 Q And you don't see it in the foreseeable future?  
20 There's not a dialogue going on with DFO right now  
21 in respect to that problem?

22 MR. McEACHERN: We tried to deal with that issue at the  
23 SCORE process and it turns out the commercial  
24 fleet is quite split on that issue. The split  
25 runs fairly close down the same line as the ITQ  
26 split.

27 Q I see. Mr. Brown, I think you did want to make a  
28 comment in response to my questions?

29 MR. BROWN: Yes, thank you, Mr. Rosenbloom and Mr.  
30 Commissioner. I appreciate where your line of  
31 questioning is going, Mr. Rosenbloom, in terms of  
32 how area licensing has complicated the allocation  
33 issue, and I, earlier, alluded to that fact. But  
34 I think I would make one observation, it's that  
35 while it has made it as difficult as my colleagues  
36 have said, by far the bigger factor that has  
37 undermined the commercial catch and which allows a  
38 basis of unity to still exist between all of us up  
39 here, rather than us getting into what will look  
40 like an in-house squabble, has been the dramatic  
41 way in which the overall harvest rates from the  
42 commercial catch have been reduced.

43 Now, technically speaking, those harvest  
44 rates were reduced in the name of conservation,  
45 but as I described earlier today, or I tried to  
46 describe, Mr. Commissioner, the term  
47 "conservation" is high politicized and highly



1 loaded. It is not the classic sense, textbook  
2 sense of conserving so that you perpetuate the  
3 stock from generation to generation and therein  
4 have wide use by all users, that would be First  
5 Nations, recreational fishermen, and commercial  
6 fishermen. It's gone to something quite new and  
7 quite, in my opinion, more pernicious. And as you  
8 have heard already in this inquiry, we've seen the  
9 commercial harvest rate, as Mr. Lapointe pointed  
10 out in his testimony, go from the 70-percent, 80-  
11 percent range, and in some cases, even 90-percent,  
12 as Dr. Walters has pointed out, and still sustain  
13 itself. In fact, we heard that stocks rebuilt  
14 from the 1913 Hell's Gate slide with the fleet  
15 three times larger than the one we have now, with  
16 all of these people able to fish all parts of the  
17 coast and we were able to rebuild the stocks.

18 Since then, we've gone to harvest rates where  
19 I don't know if my colleague can help me, but  
20 we're down in some years to where there's zero  
21 harvest. And in most years that we do fish,  
22 including the record-breaking 2010 return of an  
23 unheard of 38 million, I think it was, or 34  
24 million fish, harvest rates less than 30 percent.  
25 And that is by far the more pernicious and  
26 problematic issue. And if I get a chance, I'll  
27 talk about some of those things. They are things  
28 like bycatch concerns.

29 These gentlemen here have suffered greatly  
30 trying to make an impossible system work, for  
31 example, in the issue you heard two weeks ago from  
32 Dr. Woodey around the early timing Late Run fish  
33 and the Cultus stock. And the Department, in its  
34 wisdom, set out benchmarks that were allegedly  
35 risk diverse and sustainable. To this day, I've  
36 never been able to understand what science they  
37 used, or what logic, but they set them out. In  
38 the case of Cultus at one point, I think, Ryan, it  
39 was 10 percent one time and then they moved it up  
40 to 20. In the case of Late Run fish, early timing  
41 Late Run fish, help me here, Chris, at one time it  
42 was 15 percent, then it went up to 17. It's  
43 bounced around, but the fact of the matter was  
44 those bycatch limits, once they were reached,  
45 would shut everything down because the world was  
46 allegedly going to come to an end if we took any  
47 more.

1           Now, here's my point, and I'm sorry for being  
2 a little bit wordy here, but it's a complicated  
3 subject. The way in which the bycatches were  
4 "allocated," and I'm using that word in quotes  
5 because they weren't logically allocated, happened  
6 to be both spatially and temporally unfair. Some  
7 groups could catch their share of the Fraser  
8 Summer Run and still be within the Late Run catch  
9 limit, but another group, particularly the group  
10 that I'm closest to, the Area A group, where Ryan  
11 fishes, by the time they got to go and there was a  
12 vast surplus of Summer Run fish available to them,  
13 the DFO would blow the whistle and say, "Oh, we've  
14 caught all of the Late Run fish that we're going  
15 to catch for this year."

16           To add insult to injury, and I think my  
17 colleagues will back me up on this, they didn't  
18 even have a proper way of accounting for these  
19 bycatch fish.

20           You may or may not have heard about the  
21 famous Harrison River run, which has recently been  
22 building up. It's classed with the Late Run fish  
23 and it's not even technically a Late Run fish, but  
24 because it was being counted in that sort of  
25 equation, it was accelerating the clock or the  
26 meter on this bycatch and leading to severe  
27 hardships and loss of harvest.

28       Q    I thank you for that and I assume that Mr.  
29 Eidsvik, who will be asking you questions, will  
30 give you the opportunity to say anything further  
31 you want to say on those critical issues. But  
32 speaking first of the Mifflan Plan and the area  
33 fishing, I wanted to have explained to the  
34 Commission how this operated in terms of licensing  
35 and allocation.

36           I want to follow the pattern of Mr. Martland  
37 in his examination, and having spoken to salmon  
38 allocation, and I don't want to ask anything more  
39 at this point, I want Mr. Grout to bring out the  
40 evidence, and then if I have anything further, I  
41 will ask you later. In terms of ITQs, Mr.  
42 McEachern, I wonder if you will give an example or  
43 illustration to the Commission how an ITQ would  
44 work, for example, where you hold -- your family  
45 have boats that are Area E licensed boats and can  
46 you give an example where an ITQ would operate  
47 where you would not operate all of your -- let's

1 say you owned three licences in Area E. Can you  
2 explain to the Commission how this would work so  
3 that maybe you wouldn't be using all three boats  
4 in the fishery because of the lack of abundance of  
5 fish?

6 MR. McEACHERN: Sure. So what would be ideal for our  
7 group, we have a group of fishermen that fish  
8 together. There's nine of us. And six are family  
9 members and there are just close friends. And  
10 we're quite young compared to the rest of the  
11 fleet so we are looking for ways to continue this  
12 enterprise as a way of making a living. It's not  
13 a retirement project for us in the slightest. So  
14 what we would like to do, and, in fact, we've  
15 proposed this to different harvest committees, is  
16 we would like to have the flexibility to assign  
17 certain boats to fish in certain areas, and  
18 instead of sending all nine vessels to Johnstone  
19 Strait, for instance, on a given season, we might  
20 only send four vessels to catch the share of the  
21 nine vessels. And that would leave -- the savings  
22 could be accrued by the fishermen. Like because  
23 we may even send the same amount of people, but  
24 just less boats. It's not that we're trying to  
25 drive people out of the industry, but the reality  
26 is the commercial fishing vessels that we operate  
27 in Area D and Area E aren't being used to near  
28 their capacity. They've been designed, built and  
29 modelled around the fishery. Where like Dennis  
30 said, we harvested, on average, 66 percent of the  
31 runs and so now that we're at a much lower harvest  
32 rate, the boats aren't getting near enough fish  
33 across the deck to support the expenses with the  
34 exception of certain years and as far as business  
35 planning goes, you can't hope on a return like  
36 last year very often.

37 So what we would like to see is we would put  
38 less boats to certain areas and we would keep  
39 other boats in reserve and maybe only send those  
40 boats out on a large year.

41 And on a really, really small TAC, we might  
42 only send one boat and catch all nine shares with  
43 that boat. And I can understand the social  
44 ramifications of that for some people, but in our  
45 group, everybody would stay gainfully employed and  
46 fishermen operate in groups. It's not just my  
47 family that works in a group. And I think you

1 would find in a lot of cases, if you allowed the  
2 fishermen the ability to double up, a lot of the  
3 fishermen, especially those of a little bit  
4 advanced age, would gladly double up with a  
5 partner and go fishing on one boat and save that  
6 expense of the other boat.

7 It costs about \$10,000 a year to get a boat  
8 ready, licensed, insured, fuelled and fishing,  
9 whether you go fishing, or not. And sometimes the  
10 reality it the only money to be made in our  
11 industry on poor years is to save that \$10,000 on  
12 the boat that didn't go fishing. That's really  
13 what I'd like to see.

14 Q Yes. So in a situation like that with ITQ, you'd  
15 end up with the same harvest, but with more  
16 profitability to your operations --

17 MR. McEACHERN: Yes.

18 Q -- because you were fishing with less --

19 MR. McEACHERN: Yes.

20 Q -- fewer boats. Mr. Ashton, is there anything  
21 further to add, or basically Mr. McEachern covers  
22 that in terms of what would be the advantage. And  
23 in asking these questions, I appreciate that it's  
24 clearly on record in these proceedings that not  
25 everybody within your membership of B or D, I  
26 suppose, supports the ITQ. I just want to know  
27 whether there's anything more the Commission  
28 should know about how such a program would  
29 operate.

30 MR. ASHTON: Well, the dynamics of what Ryan just  
31 described are very similar in the seine fleet.  
32 Probably, you're looking at larger expenses that  
33 are incurred by operating larger vessels. We have  
34 more crew on our boats. I guess, in reflecting,  
35 in our current situation, putting 2010 aside,  
36 there really hasn't been enough fish available to  
37 be caught to keep a lot of boats operating. It's  
38 hard to find crew to operate them. And our boats  
39 need more than -- they need at least four people  
40 on them to operate safely.

41 And I guess another aspect that's sort of  
42 coming home to roost in our seine fleet is the  
43 fact that seeing it operate under a quota system,  
44 we've been able to spread our harvest out over  
45 multiple days and that provides a lot of sea time  
46 for people, which didn't use to be a factor, but  
47 there's recent provisions being put forward by

1 Transport Canada and under a safe manning  
2 regulation that crew members have to have a  
3 certain amount of certification to remain valid,  
4 to have a valid ticket to go on the wheel, to  
5 steer the boat, which was always just a normal  
6 course of events. You'd train people while  
7 they're on the boat and instruct them how to do  
8 this. Now they have to take a six to eight-week  
9 course that's quite expensive. But the most  
10 critical part is that you need a certain amount of  
11 sea time. And our fisheries were getting down to  
12 one or two days, or three days per season because  
13 we were -- I think I explained earlier, they'd  
14 wait till there was several hundreds of thousands  
15 of fish available for the Area B fleet to harvest  
16 and then they'd open it for a day, a 15-hour day.  
17 And if another allocation became available because  
18 the run was larger, then we might get another day  
19 the following week. Well, you can never get  
20 enough sea time in having two or three days  
21 fishing in a season. And under an extended  
22 fishing program that an ITQ system offers, you can  
23 get multiple days of sea time in. Hopefully,  
24 we'll be able to make the regulations and the  
25 amount of fishing time we have fit together. It's  
26 a different problem than just fish and there's a  
27 lot of other things that come into factor here.

28 Q And do I assume that the quota could be traded  
29 coast wide?

30 MR. ASHTON: No.

31 Q It would only be traded within, in your case, Area  
32 B?

33 MR. ASHTON: No, it could be traded -- we did a  
34 demonstration ITQ fishery last year in Area H, the  
35 troll fleet did a similar demonstration fishery so  
36 under the demonstration ITQ policy, you could  
37 trade it intrasectoral. So seine boats could  
38 obtain a troll allocation and troll allocation  
39 could be -- or a seine allocation could be  
40 obtained by troll through lease or some sort of  
41 sharing arrangement, it's a business arrangement.

42 Q But also you could trade Area B? If you decided  
43 not to go out on a certain season, you could trade  
44 your quota to another Area B licence holder,  
45 correct?

46 MR. ASHTON: That's correct, yeah.

47 Q And you also could trade it with your Area A

1 licence holders if you wished?

2 MR. ASHTON: No.

3 A No?

4 MR. ASHTON: No.

5 Q You would have to stick within Area B or South  
6 Coast if you were --

7 MR. ASHTON: Yeah, if it's the South, it's just the  
8 South Coast.

9 Q I understand. Thank you. Mr. Brown?

10 MR. BROWN: Mr. Rosenbloom, I wonder if you could help  
11 me. I'm loathe to try and jump in here, but I'm  
12 not sure where I could deal with this and I have  
13 no idea what anybody else is going to ask me. I,  
14 personally, feel that this whole discussion about  
15 ITQs is relatively secondary, that's personal  
16 opinion, but since we're in it now, I have yet to  
17 be able to articulate and describe some of my  
18 generic problems, notwithstanding the very  
19 persuasive arguments that Ryan has made --

20 Q Yes.

21 MR. BROWN: -- within his particular context. Is it  
22 appropriate for me to talk about this now, or  
23 where will I be able to talk about it?

24 Q May I suggest to you, Mr. Brown --

25 MR. BROWN: Yes?

26 Q -- that Mr. Eidsvik is examining and I assume he  
27 will be very much --

28 MR. BROWN: I don't know that.

29 Q Well, Mr. Eidsvik is here.

30 MR. BROWN: But you've brought it up, Mr. Rosenbloom,  
31 and with respect --

32 Q Yes?

33 MR. BROWN: -- I don't mean to be combative, but you've  
34 opened up the topic and my recollection of this  
35 morning was that I was not able, and with your  
36 good graces, we're going to get more time, but I  
37 was not able to actually address the subject in  
38 the way I'd like to.

39 Q Yeah.

40 MR. BROWN: We've heard one scenario, which I find very  
41 interesting from Ryan, but it's Ryan's scenario,  
42 it's not universal to everybody and there are  
43 other factors and other nuances that need to be  
44 brought out here.

45 Q Yes, may I respond to you, Mr. Brown, by making  
46 the following points? First of all, Mr. McEachern  
47 made very clear he was giving an example of where

1 it would benefit him and him alone.

2 MR. BROWN: And this is what provokes me to --

3 Q And he has also made very clear there is a  
4 controversy within your industry whether it is a  
5 favourable direction, or not. I'm not the one  
6 that brought this topic up, it has been a topic at  
7 this inquiry from Day 1. It's in the PPR, in the  
8 report. It is in the will-says of the witnesses  
9 that are before you today at this panel.

10 MR. BROWN: Yes.

11 Q And so it has to be canvassed because it happens  
12 to be --

13 MR. BROWN: Well, then may I canvass it now?

14 Q Well, just let me consult for a moment with Mr.  
15 Eidsvik. I want to make sure, Mr. Brown, you do  
16 have your say.

17 MR. BROWN: Thank you.

18 Q But I'm assuming it's going to be done through Mr.  
19 Eidsvik. Learning that Mr. Eidsvik was not going  
20 to ask you a question about that, with leave of  
21 the Commission, I will, of course, allow you to  
22 respond to this issue. I wonder if you'd make it  
23 as tight as possible.

24 MR. BROWN: I will try. I would do one of two things,  
25 with respect, Commissioner. I would either try to  
26 do it now and take a few moments, or if you can  
27 give me a slot somewhere else, I'll do it then. I  
28 mean, I don't want to disrupt your line of  
29 questioning, but I hope you appreciate what my  
30 dilemma is here.

31 MR. MARTLAND: No, I appreciate Mr. Brown's concern  
32 that he wasn't -- I think his sense of it was he  
33 wasn't given a chance. I apologize if it wasn't  
34 clear through my question this morning. I had  
35 aimed to throw that ball in the air and allow you  
36 to take a swing, but you've made it clear that you  
37 haven't had the chance to do that. This is the  
38 opportunity. We don't have a forum in the context  
39 of panel evidence for people to provide a speech  
40 or to --

41 MR. BROWN: Not a speech.

42 MR. MARTLAND: -- claim time, per se, so the premise  
43 has been, and Mr. Rosenbloom's followed this, to  
44 put questions to panellists. You've expressed  
45 that you have something to add. I think it's  
46 appropriate that you have that chance now.

47 MR. BROWN: I'll try not to make a speech. I do not

1 believe that ITQs are the panacea for the fishery.  
2 It is not the answer we're seeking here. I do not  
3 believe that ITQs always work the way the  
4 proponents of ITQs have allegedly claimed they  
5 would. ITQs are nothing more than an economic  
6 contrivance or a device. They have nothing to do  
7 with biology, they have little to do with the  
8 sociodynamics of the industry.

9 I want to give you two salient examples of  
10 what not to do with ITQs. The first one occurred  
11 in British Columbia prior to 1990. It was the  
12 first ITQ brought into British Columbia, Mr.  
13 Commissioner. It was on the abalone fishery.  
14 Within a very short order, the abalone fishery was  
15 fished to the collapse point. It has never  
16 recovered. It was under an ITQ system.

17 There are worldwide examples, which I won't  
18 go into, but I could, about ITQ fisheries having  
19 problems around the world, but perhaps the biggest  
20 and the most notorious that has ever hit the  
21 world's headlines was that of the northern cod  
22 disaster in Newfoundland. It shook the Canadian  
23 society to its very core. That fishery was  
24 operated on an ITQ system. It had a different  
25 name. It was called enterprise allocation, but  
26 the fishery was fished to the point of the  
27 greatest resource management calamity in Canadian  
28 history.

29 I am not in favour of ITQs because ITQs can  
30 be what we refer to as busted. There's quota  
31 busting, i.e. people fish beyond the quota level.  
32 And I'm trying to be brief, here, Mr. Rosenbloom.  
33 There is the phenomena of high-grading, where  
34 people will be given a certain amount of fish to  
35 catch, but when they see that the fish that  
36 they're catching are small or maybe not the  
37 optimum, they'll throw them overboard and keep  
38 fishing.

39 There is all the arguments about observers,  
40 but that is another factor, is that observers  
41 bring a new cost to the fishery to preclude some  
42 of those problems and further complicate the costs  
43 that are being brought on this fishery.

44 ITQs are advantageous, as Ryan has said, and  
45 I think in a very benign way, I want to  
46 distinguish, because he's just a true, a fourth-  
47 generation fishing family and him and his family I



1 have a huge amount of respect for, but they have  
2 an advantage because they do have a number of  
3 licenses and they happen to be demographically  
4 better off than the average, ordinary fishermen I  
5 know, and that's because of their skill and their  
6 enterprise. I don't mean that in a pernicious  
7 way. But they have the ability to take advantage  
8 of an ITQ system and have a return on their  
9 investment much greater than the average person.

10 But I'm far more concerned, Mr. Rosenbloom  
11 and Mr. Commissioner, about the bigger threat,  
12 which is large corporations, i.e. the Pattison  
13 Group and others, that have vast amounts of  
14 capital, being able to take over the fishery  
15 because we've now turned the whole idea of who  
16 shall catch the fish and how it will be caught to  
17 the free market.

18 I believe that the best use of this resource  
19 should not be solely driven by economics. It  
20 should have economic consideration, obviously,  
21 because we want to maximize the value, but I do  
22 not believe, based on the cultural history of  
23 coastal B.C., the First Nations interest in this  
24 fishery, the sports fishermen's interest in this  
25 industry, that the industry or the resource should  
26 be sold to the highest bidder. So I have an  
27 extreme concern about the issue of corporate  
28 concentration.

29 Q Okay. Just stop there for a second. On corporate  
30 concentration, can you tell me why there isn't the  
31 same danger of corporate concentration where a  
32 corporation can go out and buy the existing  
33 licenses under our current system? What's the  
34 difference between a corporation buying an Area A  
35 licence, as opposed to buying an ITQ interest?

36 MR. BROWN: Well, there is a difference because with a  
37 limited-entry licence, all it is is an opportunity  
38 to fish, but with a quota, it's a set amount of  
39 fish that you own before it's caught. With a  
40 licence, you don't have anything. If you're like  
41 Ryan and you're a talented, enterprising young  
42 fisherman, you're going to catch more than  
43 somebody who isn't. So they don't confer the same  
44 rights of property in advance, which was what I  
45 was coming to in my next --

46 Q But they confer the right to fish?

47 MR. BROWN: I was coming to my next point, Mr.

1 Rosenbloom --

2 Q Yes. Thank you.

3 MR. BROWN: -- and that is capitalization in the  
4 industry. When the Davis Plan came in in 1969,  
5 which is not that long ago for some of us, the  
6 capitalization and pieces of paper that gave you a  
7 privilege to fish was zero. The only  
8 capitalization in the industry was in the boats  
9 and the gear, and it was very modest. It was well  
10 below \$10 million.

11 When I was writing my book, *Salmon Wars*, in  
12 2005, I wrote a letter to the Minister, or the  
13 Regional Director, asking him the estimated  
14 capitalization of the fishery. I was told they  
15 didn't have a full handle on it, but they told me  
16 that they estimated it at \$1.7 billion. Most of  
17 those capital costs came after what was known as  
18 the Vision 2000 paper in 1990, when the old salmon  
19 A licence, which used to allow people like my  
20 father, when he was alive and fishing, to fish all  
21 species, was parcelled off into, literally, dozens  
22 of sub-categories, all of which went onto various  
23 forms of quota and all of which began to  
24 exponentially grow in capitalization.

25 I want to plead with you, all of you, and  
26 particularly you, Mr. Commissioner, to recognize  
27 that those increased capital costs will weigh  
28 heavily on the industry.

29 And I will also point out that they do not  
30 fall on the original people who have been bestowed  
31 these paper assets who happened to fortuitously be  
32 in the right place at the right time and somehow  
33 or other qualified for those ITQs. It's a  
34 windfall for those people.

35 It's when you come to next generation or the  
36 next person in line to buy these licences that  
37 that millstone of capitalization will haunt you.

38 I'm moving fast, but the next point that I  
39 would like to make around ITQs is the area of  
40 leasing out quotas, the armchair fishermen. The  
41 idea that we can create a rentier class that  
42 doesn't turn a wheel, but is able to make  
43 tremendous amounts of money off of leasing out  
44 quotas as a form of rent. And that rent doesn't  
45 go back to the owners of the resource, it's taken  
46 by people in private hands.

47 I also have, and I'm concluding now, a fear

1 that the ITQ system, if not carefully constructed  
2 could even lead to the dire situation of foreign  
3 ownership of our resource. Even though the fish  
4 belong to all the people of Canada, conceivably,  
5 in a purist laissez-faire model, you could have  
6 the Republic of China, or whatever, come and buy  
7 all of our fish and we'd never see them.

8 Now, of course, that might be an  
9 extraordinary way to put it, I will point out,  
10 however, if we have to go to quotas, and this is  
11 the second half of what I'd like to say, there are  
12 some things that might make them somewhat more  
13 palatable. There are some gentlemen in this room  
14 from Newfoundland today who can tell you that back  
15 on the east coast, they have moved in some areas  
16 to quota fisheries, but they've done some things  
17 that I think are well worth considering. They put  
18 an owner/operator provision in, they put in what  
19 is called the fleet separation policy so corporate  
20 concentration is not allowed.

21 I'm going to stop and I'm going to say that  
22 was a very, very abbreviated summary of my  
23 concerns, but I think you can tell by my passion  
24 that I feel it's a huge issue and there's more  
25 than just me shares these concerns. As I've  
26 talked to Brock many times, there is a host of  
27 academics around the world who are concerned about  
28 this and I don't think that I'm qualified to  
29 really talk about it. There are others that the  
30 Commission should talk to.

31 Q Right. Mr. McEachern, I think you wanted to say  
32 something?

33 MR. McEACHERN: Oh, I was just going to say  
34 notwithstanding everything that Mr. Brown has  
35 said, all of that given and said, there is still a  
36 very strong support for the ITQ between the  
37 fishermen who do catch fish and are profitable,  
38 and they've been mulling this over for a  
39 generation. And it's not something that we're  
40 going to solve today and we're not asking the  
41 Commission to solve it for us, but there are  
42 fishermen who have been spending their lifetime  
43 thinking on this issue and have come to the  
44 conclusion that they would like to try it in  
45 salmon.

46 Q Thank you. I would like to move on. Mr.  
47 Martland's examination of you then spoke to the

1           consultative process. You have described many of  
2           the problems and you and Mr. Ashton, in  
3           particular, have spoken about the lack of funding  
4           that you feel is necessary to have more effective  
5           consultation. Mr. Sato testified regarding  
6           consultation and spoke about the fatigue factor.  
7           Can you explain, being a participant in this  
8           consultative process, about the fatigue factor?  
9           What are the numbers of meetings that you're  
10          having to attend during certain concentrated  
11          periods of the year?

12       MR. ASHTON: Well, I've never tallied them up. I'd be  
13       hesitant to do so, but I could ask my wife, she  
14       keeps track, and they're considerable. But being  
15       a member of the Fraser Panel, it is considerably  
16       more during the summertime, but that's part of the  
17       panel process, but I think you're speaking more  
18       directly towards the CSAB and IHPC and other  
19       processes.

20                We meet with a number of DFO personnel who  
21       are, I guess, managers of areas that -- I think  
22       I'd probably describe it as each gear group gets a  
23       manager assigned to them that would be in charge  
24       of their fishery in various areas. So we would  
25       meet with them, as well, on a number of occasions  
26       between now and when the season starts to do  
27       planning. But I think, you know, in reality, our  
28       attendance at meetings is probably very minimal  
29       compared to our counterparts in DFO, who go to a  
30       tremendous amount of meetings. I heard testimony  
31       from Mr. Rosenberger, that he said about 60  
32       meetings a year with various stakeholder groups  
33       and I think that's a lowball number. I think  
34       there's far more meetings than that. But you  
35       know, some of them are beneficial. I mean, we  
36       need to have dialogue with Fisheries, but it  
37       almost seems like meetings are part of a process,  
38       but the process of meetings has become the  
39       process. It's almost like it's an entity unto  
40       itself and it could be streamlined, it could be a  
41       better flow of information done in different  
42       manners.

43       Q       Thank you very much. Unless there's comment from  
44       anyone else, let me move on to selective fishing,  
45       and I want to concentrate my questions with you,  
46       Mr. Ashton. And you were led through a portion of  
47       this evidence with Mr. Martland in chief.

1 Yesterday, a document was put forward as an  
2 exhibit, which was a report to the Regional  
3 Director General in 2004 in respect to selective  
4 fishing, and I just want to briefly expand upon  
5 the evidence you've already given to Mr. Martland.

6 It is correct that back in 2004, DFO  
7 approached Area B to participate in a selective  
8 fishery in respect to a bunter grid study; is that  
9 not correct?

10 MR. ASHTON: Yes, that's correct.

11 Q And is it not further correct that in the exhibit  
12 that was filed yesterday, it embeds an email of  
13 yours to DFO wherein you informed DFO that Area B  
14 is not supportive of that particular project; is  
15 that correct?

16 MR. ASHTON: That's correct.

17 Q And is it not further correct, if I may lead you  
18 at this point, that last evening, you went home  
19 and reviewed what I'll call your record of the  
20 emails in respect to that particular issue with  
21 the bunt grid study?

22 MR. ASHTON: Yes, that's correct.

23 Q And is it not further correct that as a result of  
24 that, you have provided me with a series of emails  
25 and letters between you and DFO subsequent to the  
26 email embedded in the exhibit yesterday that  
27 further elaborates on the reasons why Area B was  
28 opposed to this particular project?

29 MR. ASHTON: Yes, that's correct.

30 MR. ROSENBLOOM: Yes, and Mr. Commissioner, to speed  
31 everything up, I provided this packet of documents  
32 to Mr. Martland this morning. I also provided it  
33 to counsel, Mr. Timberg on behalf of the  
34 Government of Canada. He is approving of this  
35 packet going into evidence, albeit without,  
36 obviously, the proper notice because it only came  
37 to our attention yesterday. Mr. Martland?

38 MR. MARTLAND: Yes, and I saw Mr. Timberg, it looked  
39 like he might be getting up, as well. I'll just  
40 place on record that the RDG memo that my friend  
41 refers to is Exhibit 440. We don't need to bring  
42 that up, but that's just so that we're clear on  
43 the record what we're talking about. There is, in  
44 the Commission's Rules of Procedure, a requirement  
45 for a week's notice, and Mr. Rosenbloom, of  
46 course, is dealing with a situation where the  
47 issue arose in the course of evidence yesterday,

1 and then he provided those documents to us this  
2 morning. I understand they've been copied. Some  
3 participants may not have received or looked at  
4 them, and I see a few raising concerns about it.  
5 My suggestion would simply be that rather than  
6 marking those as an exhibit now, let's have those  
7 circulated. I understand there may be a copy that  
8 Mr. Lunn has prepared. And perhaps by the time  
9 Mr. Rosenbloom has concluded, they can become an  
10 exhibit.

11 MR. ROSENBLOOM: Thank you. Or alternatively, even  
12 greater courtesy to my learned friends, if since  
13 this panel is returning, I would maybe suggest,  
14 Mr. Martland, I put it in for identification now  
15 so that it's at least there and then after counsel  
16 has reviewed it, it can go in as evidence,  
17 assuming --

18 MR. MARTLAND: I think it's six of one and a half dozen  
19 of the other.

20 MR. ROSENBLOOM: You're happy to do it now, in which  
21 case the document's being circulated now and  
22 hopefully, by the end of the day, it gets filed.

23 Q And without taking up a lot of the Commission  
24 time, Mr. Ashton, I gather these documents speak  
25 for themselves and set out Area B's concerns in a  
26 substantive way in terms of this particular study;  
27 is that correct?

28 MR. ASHTON: Yes, that's correct. I think at the time,  
29 and I felt yesterday when it was submitted as a  
30 document, that it leaves the impression that we  
31 weren't amenable to selective fishing projects or  
32 being engaged in selective fishing practices,  
33 which was not the case. It outlines in the emails  
34 that went back and forth between myself and Mr.  
35 Curry that several of our directors at the time  
36 had been involved in a previous study. It was  
37 part of the same study. They found that they were  
38 engaged in some other activities and passed it  
39 along to Mr. Brajcich, who took over the project.  
40 And it continued on and on for a number of years.  
41 And part of that project requirement was that it  
42 be reviewed, a science review, PSARC review when  
43 they'd gathered enough information. And we met,  
44 as we were asked to do, and discuss it and felt  
45 that enough information had been gathered to have  
46 a review done and that what they had proposed to  
47 engage in in 2004 wouldn't really add any

1 significant information that would benefit the  
2 analysis of the project.

3 So that was where we came from and we met in  
4 -- we were asked for a meeting subsequent to that  
5 first email and we met with Mr. Curry, Dr.  
6 Hargreaves, Paul Brajcich, the proponent, his  
7 father, and a Jim Thomas from J.O. Thomas &  
8 Associates, who's a biologist and a contractor who  
9 looks after various projects, and they represented  
10 and explained what their project was going to  
11 entail that year. And we listened to them, asked  
12 them questions. They asked questions of us and we  
13 said we'd get back to them.

14 Q I don't need too many details because your --

15 MR. ASHTON: No, okay.

16 Q -- material that we're going to file as an exhibit  
17 speaks for itself. Is it fair to say that Area B  
18 generally is supportive of selective fishing  
19 initiatives?

20 MR. ASHTON: Yes, we're -- I think I said earlier this  
21 morning that some of our members were very  
22 proactive. They were out in front of the crowd,  
23 thinking up some selective projects that would  
24 facilitate or enhance our ability to continue  
25 fishing.

26 Q Thank you. I have two last areas to briefly  
27 examine upon. The first is we've heard a lot  
28 about First Nation participation in fisheries  
29 generally. Is it fair to say, focussing both on  
30 Area D and Area B, that there is a significant  
31 First Nation component to your licence area?  
32 Focussing first on you, Mr. Ashton, can you inform  
33 the Commission to what extent First Nation  
34 participation takes place with Area D -- excuse  
35 me, Area B fishing?

36 MR. ASHTON: Well, it's still significant. In absolute  
37 numbers, it used to be much larger, but currently,  
38 now, there are 27 -- well, just to put it in  
39 perspective, there's 169 Area B licences. DFO  
40 owns quite a few of them now. Next to Pattison  
41 Group, DFO's the largest single licence holder.  
42 Anyways, there's 142 active Area B licences that  
43 would be attached to a boat that could go fishing  
44 today.

45 Of those 142, there are 27 licences, boats  
46 that are owned wholly by First Nations  
47 individuals. There's another 27 that are operated

1 for whichever owner owns them. So that makes up  
2 54 vessels out of the 142 so it's more than 33,  
3 about 37 percent.

4 Q So we're talking about First Nation licence  
5 holders. We're talking about those that are  
6 operators, First Nations people that are operators  
7 operating for people that are non-native that own  
8 the licence, correct?

9 MR. ASHTON: Yeah, there's a significant fleet in  
10 Campbell River that a lot of the vessels and  
11 licensed vessels are owned by Canadian Fishing  
12 Company, and the majority of those are operated by  
13 First Nations.

14 Q And then presumably, there are also First Nation  
15 people that might work as deckhands on licences  
16 held by non-native people?

17 MR. ASHTON: I'd say, probably, on average, there's one  
18 or more individuals that are First Nations on the  
19 rest of the boats.

20 Q All right. Now, to give the Commission some  
21 perspective of First Nation involvement in the  
22 commercial fishery, because I don't think we've  
23 heard this evidence yet, there are obviously other  
24 spin-offs in terms of First Nation benefit from  
25 the commercial fishery, I assume, with the  
26 producers, the processors, I should say?

27 MR. ASHTON: I don't know if I could knowledgeably  
28 speak to that, but I know, in the past, before we  
29 had this rationalization, there was a significant  
30 presence. There used to be processing facilities  
31 all over the coast and a lot of those were in  
32 areas that were near various locations that had a  
33 lot of First Nations people there, and a lot of  
34 the people that worked in those facilities were  
35 involved in it.

36 Q And I'll direct questions to Mr. Morley in due  
37 course because he'll probably --

38 MR. ASHTON: Yeah, he would have a better concept of  
39 it.

40 Q He'd have a better idea? And the First Nation  
41 community that are licence holders have their own  
42 association called the --

43 MR. ASHTON: There's the Aboriginal Vessel Owners'  
44 Association.

45 Q Yes?

46 MR. ASHTON: Some of them are -- I don't know if they  
47 all are with that group, or there's Native



1 Brotherhood of B.C. and that's another aboriginal  
2 group.

3 Q And we've had Mr. Assu before us. He would be a  
4 prime example of a First Nation person holding a  
5 commercial licence under Area B?

6 MR. ASHTON: That's correct.

7 Q Thank you. Mr. McEachern, I wonder if you'd  
8 respond to the same question and give us, again,  
9 without exact figures, a sense of the First Nation  
10 participation in the commercial fishery in the  
11 context of Area D?

12 MR. McEACHERN: Yes, sorry, Mr. Commissioner, I don't  
13 have exact numbers, but I do, in Area D, we have  
14 -- there's 362 licences for Area D, and of those,  
15 the Department's bought up 33 through this PICFI  
16 initiative, which leaves 329. And of those 329, I  
17 think 57 of them are owned by the Northern Native  
18 Co-op, but that's a little bit of a different  
19 animal. That's a licence that they just -- like  
20 Peter mentioned before, a paper licence doesn't  
21 have to be on a specific boat, it can be leased to  
22 a different native every year if they require. So  
23 that might be a little different, although that is  
24 First Nation participation in Area D so there's --

25 Q And that is a Licence N, is it not?

26 MR. McEACHERN: Sorry, I'm not exactly sure about the  
27 licences. Dennis says yes, so it's probably true.  
28 So the 57 of those. And then amongst the rest of  
29 the fleet, there is a strong First Nations  
30 presence both in the fishermen and the deckhands,  
31 but I would -- it's fair to say that with the  
32 number of initiatives that have occurred lately,  
33 that participation probably has been declining  
34 because there's less incentive for the First  
35 Nations people to hold a commercial fishing  
36 licence if they're going to receive commercial  
37 fishing rights through some other avenue. It  
38 becomes a duplication there. They don't need an  
39 Area D licence if they're able to have an economic  
40 opportunity so they tend to fire that licence into  
41 the buyback to get the cash and then they get an  
42 economic opportunity, as well.

43 Q So within your Area D, there are First Nation  
44 people working the boats of the Northern Native  
45 Co-op and there are also First Nation people that  
46 are holding B licences in their own right?

47 MR. McEACHERN: Oh, yes.

1 Q Excuse me, D licences in their own right?

2 MR. McEACHERN: Oh, yes. Yes.

3 Q Yes. Now, my last questioning is in the area of  
4 socioeconomic impact of the commercial fishery. I  
5 have made application to the Commission for a  
6 socioeconomic impact study to be done, but up to  
7 this point, I have not been successful and still  
8 working on it. But in the expectation that I  
9 don't get my way and there isn't a socioeconomic  
10 impact study provided to the Commission, this may  
11 be my last opportunity to you, Mr. Ashton, and  
12 you, Mr. McEachern, and then others if they wish  
13 to contribute.

14 Can you explain to the Commission the  
15 socioeconomic contribution that a healthy  
16 commercial fishery offers, both obviously to the  
17 fishing fleet, but also to the community at large,  
18 and secondly, what are the impacts when you go  
19 through a period such as 2007 to 2009? Mr. Ashton  
20 first.

21 MR. ASHTON: Well, I started off this morning  
22 describing how things were in the good old days,  
23 and I guess that would -- on the beneficial side  
24 of economics, that was then things were healthy,  
25 people were making money, communities were built  
26 around the fishing industry all over this coast.

27 And without going into a lot of expanding on  
28 that, I think drawing the picture about where  
29 things have gone, recently, you could say it's  
30 been devastating. There's a lot of communities  
31 that hardly have any fishermen that are active  
32 today. Alert Bay comes to mind as a prime  
33 example. They used to have a huge fleet there and  
34 it's mainly a native community, and I don't know  
35 the numbers for sure. There's only several seine  
36 boats there, a handful of gillnetters. They used  
37 to have shipyards, a huge community that fished.  
38 It's gone. And there's a number of other ones,  
39 Port Hardy was another very large fishing  
40 community. It's changed and it is a town that has  
41 got some facilities. They do fish farm processing  
42 there and other species, but the smaller  
43 communities have really, as I say, been  
44 devastated.

45 It's caused incredible hardship on a lot of  
46 people. There's families that have sort of just  
47 fallen apart. You know, it's hard to describe

1 what happens to people who, when they lose their  
2 entire livelihood, what takes place. They've got  
3 economic ruin, they've got dysfunctional families.  
4 You get a lot of alcoholism and drugs enter into  
5 the picture. People get despondent, they lose  
6 their self dignity. It's a really sad situation.  
7 And you know, unfortunately, I mean, I -- Mr.  
8 Brown has brought up a number of issues, I guess,  
9 reflecting back on what Dr. Walters said, about 20  
10 to 25 million fish could have been harvested, in  
11 his opinion, without compromising rebuilding  
12 strategies and endangering some of our weak  
13 stocks. And that amount of fish would have been  
14 probably enough to keep our industry afloat, and  
15 it's gone. I mean, it's just lost opportunity.  
16 People have bailed out.

17 There was a mention of PICFI. It's a current  
18 government program. I think the Commission's  
19 heard about this. It's an initiative of about  
20 \$180, \$170, I think, came from the government to  
21 mainly buy up capacity and transfer it back into  
22 First Nation communities that have really lost a  
23 lot of a capability to be engaged in the fishing  
24 industry. And that's about the only buyer in  
25 town. So we've gone from having a healthy  
26 industry where you had economic opportunity,  
27 social fabric that's involved in it, and it  
28 attracted young people into the industry that  
29 would be deckhanding on seiner/gillnetter/troller.  
30 If they liked the lifestyle, and it was really a  
31 lifestyle, they'd have an incentive to remain in  
32 it and invest and for the people in it, that are  
33 still remaining in it now, I mean, there are no  
34 young people there to sort of take over. And we  
35 basically have one buyer in town and that's the  
36 government through any of these buyback programs.  
37 It's devalued people's assets down to nothing.

38 And you know, for an industry looking  
39 forward, it's really difficult, unless we see some  
40 things change, to see where anybody's going to  
41 come out of this in a respectful manner.

42 Q I thank you for your thoughtful comments. Mr.  
43 McEachern, then I'll offer it to the other two,  
44 and then I've completed my examination. Mr.  
45 McEachern?

46 MR. McEACHERN: Yeah, I guess I just second everything  
47 from the seiner point of view, except maybe in

1 gillnet it would be even a little worse because I  
2 think there's a fair bit more company money in the  
3 seine fleet and the gillnet fleet is largely  
4 private owned, I think. As far as I know, there's  
5 only -- kingfish only owns two licences out of a  
6 1,000 so this is mostly families and generally  
7 speaking, in gillnet, there hasn't been a lot of  
8 new participation in the last generation so --

9 Q New what? I didn't hear you.

10 MR. MCEACHERN: Sorry, Don, I should move this up. Not  
11 a lot of new participation in the last generation  
12 so most of these people that are feeling the pinch  
13 are from fishing families. And so I guess because  
14 fishing has been part of your culture in your  
15 family for a long time, it's very hard on you to  
16 -- and when people say, "Oh, I heard you didn't go  
17 fishing this year," so it really -- you really  
18 feel like fishing is something that you should be  
19 proud of. It should be an industry that -- and we  
20 did. For generations, it was something that you  
21 could take pride in, being a good fisherman. And  
22 I think one of the things, one of the results of  
23 this current trend of bashing on the commercial  
24 fishermen and, you know, automatically, people  
25 say, "Oh, it's due to over-fishing. This is due  
26 to over-fishing. That's due to over-fishing."  
27 And the science doesn't support it at all. And  
28 what's happened is you lose the ability to have  
29 pride in the fact that you're a fisherman. So  
30 from a cultural point of view, it's been very  
31 damaging, the spin the Department's put on the  
32 failure of a number of these runs when how could  
33 it be over-fishing if we don't have any money?  
34 The reason the fishermen are in such poor shape is  
35 because we didn't go fishing, and we didn't go  
36 fishing because we want to conserve the resource  
37 for the future generations. So you get hammered  
38 because you didn't go fishing and you don't have  
39 the money, and then you get socially hammered  
40 because you get demonized in the press and the  
41 Department lets people spout off that it was due  
42 to over-fishing.

43 But I mean, as far as the economic sense,  
44 myself, I'm young, I love to fish. I'm a very  
45 good fisherman. I would love to make my living  
46 fishing. However, I could do something else,  
47 myself personally, and there is a group of the

1 population in the fishing community that is my age  
2 that would be able to shift into something else if  
3 they come down with a hammer and shut the fishing  
4 down for everyone. But there is a large group of  
5 people, and Dennis has mentioned it already, they  
6 are not going to be able to switch to do anything  
7 else. So what we've done by restricting their  
8 fishing access is, basically, said, "You'll be  
9 poor for the rest of your life." And more than  
10 that, "The asset that you've saved for, or your  
11 grandfather, or your great-grandfather has bought  
12 into and kept up, running all these generations,  
13 will become worthless." And that's the effect of  
14 the last 10, 15 years.

15 Q Thank you. Just briefly, in terms of the 2007 to  
16 2009 year, what did you witness as the economic  
17 hardships to your fleet?

18 MR. McEACHERN: Well, basically, the amount of money  
19 you spend on new gear, new technology, and new  
20 safety equipment disappears entirely. So it's  
21 just a matter of hanging on. So what happens in  
22 the small boat operator fleet like the gillnet  
23 fleet that I fish in, in the last 10 years, people  
24 have pulled money out of other enterprises to  
25 support their fishing business because they didn't  
26 want to let it go, right? If you let it go too  
27 far, then you're no longer a fisherman and you  
28 can't ever fish again. So what they've done is  
29 they've pulled money out of their house, out of  
30 their land, out of their wife's job, out of money  
31 they would have been saving to give to their kids  
32 and they've poured that back into the business to  
33 keep it afloat because fishermen have faith that  
34 the fish will come back. It's just a matter of  
35 hanging on and fighting for our access, but it  
36 went on so long that there was a number of  
37 families that lost everything. And it's been -- I  
38 mean, it's hard for me to -- I can't imagine how  
39 it could be any -- it would have been -- I can't  
40 imagine how it could be any worse. It would have  
41 been easier if they just said, you know, "You're  
42 never going to fish again."

43 Q Thank you. Thank you very much. Mr. Sakich, do  
44 you have anything to add on this business of  
45 socioeconomic impacts of a healthy or unhealthy  
46 fishery?

47 MR. SAKICH: Well, you may not like it, but

1 socioeconomic impacts have been on the coast,  
2 here, since Day 1. If you'll take a good look  
3 around the coast, you'll see ruins that are 100  
4 years old that were pulled out then and it has  
5 been subject to that hugely. The only difference  
6 is is that there was other work on the coast  
7 outside of fishing, it was never just fishing that  
8 kept everybody going. In some cases, some people  
9 they fished many different fisheries and they  
10 covered them all. Lots of people didn't. They  
11 logged, they worked with wood products, all sorts  
12 of things. Those things are gone so that makes it  
13 worse.

14 So I would say socioeconomic impacts aren't  
15 just a recent thing, they go back a long ways. I  
16 don't know if I could capitalize on a few years  
17 being the whole cause of a socioeconomic collapse  
18 because it has collapsed over and over and over  
19 again.

20 When I started fishing, the first thing you  
21 had to do when you got off a boat was get a job  
22 because you didn't make a lot of money.

23 Q Thank you very much. And lastly, Mr. Brown, if  
24 you could try to keep it fairly tight because I'm  
25 well over my time.

26 MR. BROWN: I'm sorry, I'll try to be brief, Mr.  
27 Rosenbloom. Mr. Commissioner, I only have a  
28 couple of points to add. First of all, I'd like  
29 to compliment my colleagues, Mr. Ashton and  
30 McEachern for being so eloquent on this topic. I  
31 would just add one small point to what Mr. Ashton  
32 was saying about the sociological impact in  
33 coastal communities when a licence is either no  
34 longer fished or surrendered to a buyback. It's  
35 more than just the loss of a licence in a town  
36 like Sointula, Alert Bay, Hartley Bay, Ahousaht,  
37 Prince Rupert, or any number of coastal  
38 communities. When that licence leaves that small  
39 and fragile socioeconomic community, an important  
40 flow of capital and income from that village or  
41 that location goes. And what that does is it  
42 leads to further tertiary effects. The less  
43 people fishing or, as Mr. Sakich says, involved in  
44 other resource industries that have been under  
45 onslaught, as well, like logging and mining, the  
46 less need for school teachers, the less need for  
47 small shopkeepers, the less need for doctors and

1 the rest. And you start to see a rather alarming  
2 implosion in these tiny, fragile micro economies.  
3 And I would tell you with the deepest amount of  
4 passion that the biggest impact has fallen on  
5 First Nations people, and that's really, truly,  
6 seriously bad. And when Mr. Duncan speaks next  
7 week, I'm sure he'll get into that.

8 So that's one point. The second thing is I  
9 would just say to you, Mr. Rosenbloom, I will do  
10 anything to support you in your quest to keep  
11 alive this call for a socioeconomic impact  
12 analysis. I think, as Dr. Walters said two weeks  
13 ago, it is really, truly alarming that the DFO  
14 went down the path of this major paradigm shift,  
15 totally destabilizing an entire coastal fishery  
16 allegedly because of conservation goals. As Dr.  
17 Walters described it, a billion dollar experiment,  
18 and I want to underline that word, "experiment."  
19 That is a pernicious word in this context. And  
20 they did not bother to really, truly quantify the  
21 effects. And Dr. Walters so eloquently put it,  
22 DFO staff people didn't lose a single penny. They  
23 didn't lose a paycheque. People sitting in NGOs,  
24 I'm sorry, I've got to get it off the chest, I've  
25 waited 20 years for this, Mr. Rosenbloom. These  
26 people didn't pay a penny. The people who paid  
27 the price were the fish harvesters and the coastal  
28 communities of this coast, and I plead with you  
29 that we call for that analysis to be done. Thank  
30 you.

31 MR. ROSENBLOOM: I thank you very much, and that  
32 completes examination in chief, other than  
33 reserving the right to ask further questions after  
34 Mr. Grout has testified, but hopefully, I won't  
35 have to. Thank you.

36 MR. MARTLAND: And Mr. Commissioner, I note the time.  
37 Perhaps just because I don't want to forget it,  
38 that document should, I'd suggest, be made an  
39 exhibit proper. I don't think that there's any  
40 concerns raised. I see no one rising. I'd ask  
41 that become the next exhibit, please.

42 THE COMMISSIONER: For the record, counsel, you said  
43 "that document," but it's a bundle of documents,  
44 is it not?

45 MR. MARTLAND: I'm sorry. It is a number of documents.  
46 I don't know if my friends have a different  
47 suggestion, whether Mr. Rosenbloom's content to

1           have it go in as one document, being materials  
2           from Mr. Ashton?  
3   MR. ROSENBLOOM: Yes, I am content. I've already  
4           informed Mr. Lunn that I'm prepared to have it as  
5           one document.  
6   THE RECORDER: Microphone, please. Microphone.  
7   MR. ROSENBLOOM: Yes, I am content to have it as one  
8           document. Thank you.  
9   THE COMMISSIONER: And then my suggestion is we'll take  
10           the break and when we come back, I think you or  
11           your learned friend should read into the record  
12           what the documents are that are being filed as  
13           part of that exhibit.  
14   MR. MARTLAND: Thank you.  
15   MR. ROSENBLOOM: I will do so. Thank you.  
16   THE REGISTRAR: The hearing will now recess for 15  
17           minutes.  
18  
19                   (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)  
20                   (PROCEEDINGS RECONVENED)  
21  
22   THE REGISTRAR: Hearing is now resumed.  
23   MR. ROSENBLOOM: Thank you, Mr. Commissioner. Just  
24           very, very quickly, to introduce the packet of  
25           documents now circulated, I believe, without  
26           anyone opposing the introduction of this evidence  
27           and to identify the documents, Mr. Ashton, if you  
28           will -- sorry, Mr. Timberg. Do you have something  
29           to say?  
30   MR. TIMBERG: I'd just like, subject to Canada's right  
31           to reserve the right to -- in the event there are  
32           other documents that are relevant, we'll tender  
33           those on Monday, as we'll review these with Gordon  
34           Curry and Dr. Hargreaves.  
35   MR. ROSENBLOOM: You'll have my cooperation. Thank  
36           you.  
37  
38   CROSS-EXAMINATION BY MR. ROSENBLOOM, continuing:  
39  
40   Q   Mr. Ashton, this packet of documents starts with  
41           an email from yourself to R. Brahniuk; is that  
42           correct?  
43   MR. ASHTON: Brahniuk, yes.  
44   Q   Yes. And that is dated -- it's 2004, 05-13-04,  
45           correct?  
46   MR. ASHTON: Yeah, May 13th, 2004.  
47   Q   And then we have a letter, the second document,



1 June 30th, 2004, your letter to Mr. Curry?

2 MR. ASHTON: That's correct.

3 Q We then have as the third document in the packet

4 Mr. Curry's reply to you dated July 5th, 2004?

5 MR. ASHTON: Correct.

6 Q We then have you getting the last word in a letter

7 to Mr. Curry dated July the 11th, 2004?

8 MR. ASHTON: Correct.

9 Q And lastly, we have a document which is headed

10 "Fishery Notice". It is dated July 12th, 2004.

11 This is a notice to the industry that they are

12 going ahead with this project?

13 MR. ASHTON: That's correct. They have a website and  
14 they put out fishery notices to all gear types and  
15 commercial, recreational. They've got one for the  
16 aboriginal community and that's their standard  
17 notice to industry.

18 Q Right. And what we learned from that document is  
19 in spite of your general -- your refusal to  
20 support this particular project, it went ahead  
21 anyway?

22 MR. ASHTON: That's correct.

23 MR. BROWN: If this packet of documents could be marked  
24 as one exhibit?

25 THE REGISTRAR: Those five documents will be marked as  
26 Exhibit number 454.

27

28 EXHIBIT 454: Bundle of 5 documents re  
29 Selectivity Grids in Knotless Bunts - dated  
30 May 5, 2004 to July 12, 2004

31

32 MR. ROSENBLOOM: Thank you very much, Mr. Commissioner.  
33 That concludes my examination in chief, thanks.

34 MR. MARTLAND: Mr. Eidsvik is next.

35 MR. EIDSVIK: Good afternoon, Commissioner. My name is  
36 Philip Eidsvik and I'm with the Area E Gillnetters  
37 Association and the B.C. Fisheries Survival  
38 Coalition. And I'm probably going to run past  
39 time today, so I'll get started into some of the  
40 issues.

41

42 CROSS-EXAMINATION BY MR. EIDSVIK:

43

44 Q And I want to clean up a couple of issues that  
45 were left from yesterday to start off with, and  
46 this issue of unattended gillnets that was raised  
47 by Mr. Hargreaves, who said he noticed fishermen

1 on the coast leaving gillnets unattended, would  
2 you or any other gillnet fishermen anywhere  
3 fishing on Fraser sockeye leave their net out in  
4 the middle of the river or the middle of the  
5 Johnstone Straits and go tie up for the night?  
6 Mr. Ryan McEachern?

7 MR. McEACHERN: No. That's never happened in my  
8 experience.

9 Q Is it fair to say that's patently ridiculous?  
10 What would happen if you left it in the middle of  
11 Johnstone Straits?

12 MR. McEACHERN: Well, you'd never find it again for one  
13 thing. They don't stay in one place. The problem  
14 is like in Johnstone Straits, the current moves,  
15 you kind of -- anywhere from two or three knots  
16 one way and the other way, and across and there's  
17 a lot of traffic, so, no, you never get further  
18 than -- well, maybe from here to that wall from  
19 your Scotchman. That would be, you know, very  
20 unusual. Plus, as a condition of licence, I think  
21 you have to stay within that, so...

22 Q Yes. Same thing on the fishing gillnet on the  
23 river?

24 MR. McEACHERN: The river is even more dramatic,  
25 because -- well, all you here live locally. You  
26 could imagine you can't leave your river -- your  
27 net in the river. That's -- usually in the river  
28 you hardly ever even leave the end. It's usually  
29 tied to your boat at all times and if you let --  
30 untie it from one end, you're just moving to the  
31 other end.

32 Q And it turned out that he based a statement on one  
33 incident that he saw in Port Alberni. Is there  
34 anybody in Port Alberni that's allowed to tie to a  
35 log boom or a dock during the fishery?

36 MR. McEACHERN: Well, the First Nation fishery in Port  
37 Alberni operates under -- I'm not sure what  
38 regulations they operate under, but they do anchor  
39 their nets and tie to the shore, but that's --  
40 that's not the group of people that he was talking  
41 about, I don't think.

42 Q That's what I understood. I want to go to Exhibit  
43 441 for a moment, please, the final page on it.  
44 That was the audit into the selective fishing.  
45 And it's the very last page, 24 of 24. And if you  
46 look at the top part of the page, these are the  
47 lessons learned from -- that were -- showed up in

1           this draft audit report and I think -- I'm going  
2           to read in the first recommendation, one of the  
3           lessons learned in the audit report said use:

4  
5           ...the 5% TAC to initiate the development and  
6           implementation of gear and fishing method and  
7           standards for selective fishing in a  
8           proactive manner by collaborating with  
9           harvesters. Assess the necessity of the 5%  
10          TAC application on annual bases according to  
11          its goals and discontinue the practice when  
12          it outlives its purpose.

13  
14          Mr. Ashton, perhaps you can help me when you saw  
15          the response the DFO had when your harvester group  
16          said no, don't do this, we don't think it's  
17          useful, you've done it for four years, we don't  
18          want to continue it. Would you say at that point  
19          this recommendation was fairly accurate?  
20          Discontinue the practice when it outlives its  
21          purpose?

22          MR. ASHTON: That was part of the reason that we didn't  
23          see the value in continuing it. It was also that  
24          year, I think, the Area B's projected TAC was  
25          about 600,000 fish, so there was not a lot of fish  
26          for 150-odd seine boats to share around and we  
27          felt that the amount of our share of that TAC was  
28          being devoted to a project that we didn't support  
29          was unreasonable.

30          Q        The last recommendation on that same page:

31  
32                 Ensure that formal evaluations are conducted  
33                 to assess the scientific validity of the  
34                 experiments undertaken under the TAC sharing  
35                 arrangement and build on that work to develop  
36                 standards.

37  
38          Did you feel that there was sufficient scientific  
39          work done on assessing whether those things were  
40          useful or not? Was that one of the reasons why  
41          you said let's not continue this, because we don't  
42          think the science is -- am I getting that right or  
43          have I got that wrong?

44          MR. ASHTON: No. Actually, the way we assessed it,  
45          they had gathered sufficient information and  
46          experimented with different shaped grids and  
47          different types of net and there was a requirement

1           for that piece of equipment to be moved ahead to  
2           be utilized on a widespread basis, that it be  
3           subjected to a formal PSARC review - it's now  
4           called CSAP science review - because you need a  
5           buy-in from both groups. You need the fishermen  
6           to think it's worthwhile and it's got validity to  
7           it, but you also need the science community to  
8           verify that in their minds that they feel that it  
9           would meet the selective fishing requirements to  
10          actually be a useful tool.  
11          Q       So in other words you think both of these  
12                recommendations are valid recommendations?  
13          MR. ASHTON: I would say so, yes.  
14          Q       Now, this draft audit report was never turned into  
15                a complete audit report and we saw evidence  
16                yesterday where Mr. Hargreaves and Mr. Curry  
17                objected strongly to the content of the report.  
18                Can I ask you, was your association ever asked to  
19                comment on the draft audit report?  
20          MR. ASHTON: I can't recall it, no.  
21          Q       Mr. Sakich, do you remember?  
22          MR. SAKICH: On this particular report?  
23          Q       Yes.  
24          MR. SAKICH: No, I can't remember that.  
25          Q       Mr. Ryan (sic)?  
26          MR. McEACHERN: No.  
27          Q       Mr. Brown?  
28          MR. BROWN: No.  
29          Q       That concludes my analysis on that particular  
30                point.  
31                One of the things I need to do is I'm trying  
32                to put some of the activities that we've been  
33                discussing here in the context of the reason why  
34                we're in the room, Mr. Commissioner, in the  
35                context of what's -- what led to the decline of  
36                the Fraser sockeye and the collapse of the  
37                fisheries that we all care about and depend on.  
38                And Mr. Brown, if -- Mr. Hargreaves said yesterday  
39                without the money for selective fishing, there  
40                would be no fishery in the future if the  
41                government doesn't continue to fund that program;  
42                do you think that's a valid statement?  
43          MR. BROWN: Can I ask you in what context? Was he  
44                referring to Fraser River sockeye or...? I didn't  
45                hear that testimony so...  
46          Q       I'll --  
47          MR. BROWN: It would help if I knew what particular --

1 Q I'm asking you as a general principle, in the  
2 absence of funding for the selective fishing  
3 program that was -- ran from about '98 to 2004, so  
4 if that program is not re-instituted and funded,  
5 are Fraser River sockeye doomed?

6 MR. BROWN: Oh, okay. No. Quite frankly, that's --

7 MR. TIMBERG: Mr. Commissioner, just if I may correct  
8 for the record, I don't believe that was Dr.  
9 Hargreaves' evidence. I think he was saying that  
10 selective fishing was important. He wasn't  
11 referring to the selective fishing program. So  
12 that's my recollection of his evidence yesterday.  
13 He wasn't referring to the program. He was  
14 talking about selective fishing as a technique.

15 MR. BROWN: Well, in that regard, I would still say no.

16 MR. EIDSVIK:

17 Q Thank you, Mr. Brown. In terms of --

18 MR. BROWN: Could I -- sorry. Could I also add one  
19 thing? I hope I'm not repeating myself. In the  
20 specific context of Fraser River sockeye, I think  
21 it's almost irrelevant. We do not have a big  
22 requirement to be particularly selective with  
23 Fraser River fishery, with the Fraser River  
24 fishery. It's been managed for over a century  
25 well. We saw history where the fishery, based on  
26 the aggregate stock management units that Mr.  
27 Lapointe talked about quite successfully done.

28 That notwithstanding, we do have a few  
29 specific conservation problems, but as Dr. Walters  
30 pointed out, most of those can be dealt with  
31 without a whole bunch of esoteric selectivity  
32 initiatives, simply by designing the traditional  
33 fishery and timing it in such a way that you avoid  
34 the worst of the problems, the first one being the  
35 Early Stuart fishery which Dr. Walters testified  
36 -- both Dr. Walters and Woodey testified. You  
37 deal with that one very easily, because it comes  
38 in independently of all the other stocks. And  
39 there has not been a commercial fishery on Early  
40 Stuart fish for as long as -- I don't know, help  
41 me here Ryan, but decades. The only fishery that  
42 occurs on the Early Stuart is the First Nations  
43 fishery. But it is easily sort of separated.

44 And then you have the problem of the early  
45 migrating Late Run fish which, Mr. Commissioner,  
46 you were struggling, I remember, two weeks ago to  
47 get all that straightened out, but you heard from

1 the world's leading authorities, Dr. Woodey and  
2 Dr. Walters, that it was all for naught anyway,  
3 because they all died. And it wasn't until I  
4 heard Dr. Woodey's testimony -- I thought I knew a  
5 fair bit about fish, but I did not know what he  
6 testified two weeks ago when he said that Fraser  
7 River sockeye are absolutely biologically unique  
8 and it must be the function of selective evolution  
9 in that they can only be in fresh water for six  
10 weeks.

11 He went on to describe Lake Washington,  
12 Skeena River stocks and a whole number of other  
13 stocks that can reside in fresh water longer, and  
14 he said, I think if I got it right, that these  
15 fish when they were in fresh water longer than six  
16 weeks or they go into fresh water for a longer  
17 period, they get this parasite which seems to be a  
18 natural phenomenon in the Lower Fraser River, so  
19 that --

20 Q Okay --

21 MR. BROWN: -- sorry, that means that you didn't need  
22 to be selective there. That leaves you with the  
23 Cultus, which can be parcelled off, because the  
24 Cultus actually is a very long timing period run  
25 and goes well into the Fall and most of the  
26 encounters of the very few encounters that you  
27 would have of Cultus sockeye in the Summer Run  
28 fishery, which is the mainstay of the fishery,  
29 would be so insignificant as Mr. Lapointe's very  
30 words and testimony to go back and look, he said  
31 it would be like looking for a needle in a  
32 haystack.

33 So I don't know, Mr. Eidsvik, what it is that  
34 we're trying to be so selective about around  
35 Fraser River fish, sockeye.

36 Q I think you've opened up the issue that I was  
37 trying to get to on the selective fishing point.  
38 Our first major run of salmon to hit the Fraser  
39 River, of course, is Early chinook; is that  
40 correct?

41 MR. BROWN: Yes.

42 Q Any sockeye fisheries during the Early chinook  
43 fishery?

44 MR. BROWN: No.

45 Q Then we have the Early Stuart run, the commercial  
46 sector that you're involved with doesn't normally  
47 fish the Early Stuart run. Early Summers, do we

1           have -- are we trying to protect coho or steelhead  
2           or any time during the Early Summer run?  
3   MR. BROWN: Early Summers are generally not harvested  
4           at -- they're generally left. There's some  
5           cyclical fluctuations and details but generally  
6           speaking, most of the harvest is focused around  
7           the Summer run.  
8   Q       I guess, Ryan, did you have something to add to  
9           that? Mr. McEachern?  
10   MR. McEACHERN: No. I'm just saying yeah, there's no  
11           bycatch concern on the Early Summer fishery if  
12           there is one.  
13   Q       Is there a -- sorry, is there a bycatch of other  
14           salmon species during the Early Summer run?  
15   MR. McEACHERN: No.  
16   Q       Is there a bycatch of other salmon species in  
17           August during the Summer and beginning of the  
18           Lates aside from Cultus that we've heard about  
19           already?  
20   MR. BROWN: Very little.  
21   Q       Why has the fleet, the gillnet fleet, and in the  
22           river closed at the Labour Day weekend for many  
23           years?  
24   MR. BROWN: It is closed and with the agreement of the  
25           industry, I might add, through many years to  
26           protect Thompson River coho.  
27   Q       Any other species besides coho?  
28   MR. BROWN: Well, I would assume that that time is the  
29           beginning of the migration of the Cultus. The  
30           Cultus come in over a long period of time, but  
31           you'd probably start to see at that time of year  
32           the first of the Cultus.  
33   Q       So if I could sum this up then, would it be fair  
34           to say that the selective fishing program has  
35           absolutely nothing to do with Fraser River sockeye  
36           with the exception of how do we harvest Cultus?  
37   MR. BROWN: What I'm trying to say, and I'm not sure  
38           I'm doing it very well, Commissioner, is I'm not  
39           against selective fishing. I think it's probably  
40           notionally a good idea. But it will not be the  
41           thing that will save the day here. It is  
42           something that looks to me like has become a make-  
43           work project for some individuals in the DFO and,  
44           of course, they have a vested interest in making  
45           it appear all more important. However, there is  
46           really no need in order to properly manage Fraser  
47           River sockeye, which is what we're dealing with

1 here, to depart radically from the old traditional  
2 methods of harvest.

3 MS. SHABUS: Mr. Commissioner, I'm going to object and  
4 I'm going to raise an issue, I think, with  
5 commission counsel in this regard. I think we  
6 should encourage the witnesses and probably also  
7 the representative for the participant group to  
8 actually focus on giving evidence about issues  
9 that they have expertise on, like commercial  
10 fishing rather than making submissions or  
11 paraphrasing evidence of scientists, et cetera.  
12 It almost comes down to blanket statements and  
13 paraphrasing evidence that has been given by  
14 scientists in a specific context.

15 I would really encourage, in order to be  
16 fair, also to other participant counsel who are  
17 focusing the evidence on the issue at hand, which  
18 is commercial fishing. And I have no problem with  
19 questions being asked about how selective  
20 fisheries practices are being employed when it  
21 comes to commercial fisheries, et cetera, or the  
22 problems we see thereby, but I think this is not  
23 the place for witnesses to actually make  
24 submissions or blanket statements in that regard.  
25 And we've been listening to it for quite awhile  
26 now, Mr. Commissioner.

27 MR. EIDSVIK: Mr. Commissioner --

28 MR. MARTLAND: Mr. Commissioner, I'm interrupting, but  
29 I'm going to go ahead and do it anyways. The  
30 basis on which these witnesses were called was to  
31 provide perspectives from commercial fishers and I  
32 haven't raised-- haven't gotten to my feet to  
33 this point because I haven't heard questions that  
34 go beyond the bounds of that. We may be getting  
35 close to the point and Ms. Shabus has identified  
36 that concern. I hope Mr. Eidsvik will proceed  
37 with that in mind. But these are witnesses that  
38 are here to give their perspectives on -- and in  
39 this case those were a series of questions leading  
40 to a view on the relevance of the selective  
41 fishing policy.

42 If it's the case that a particular witness is  
43 not an expert or doesn't have the experience, that  
44 would presumably go to the weight of that evidence  
45 as opposed to whether or not it could be received  
46 in this context.

47 MS. SHABUS: For example, Mr. Commissioner, I don't



1 think the witnesses would be in a position to  
2 provide expertise on Cultus stocks, et cetera. So  
3 I'm raising it and I'm flagging it. In my  
4 submission it's been going on for quite awhile in  
5 the testimony, that it wasn't testimony per se  
6 based on their experience but paraphrasing  
7 evidence of other people in the hearing and in all  
8 fairness, I think we should focus on the evidence  
9 from the perspective of commercial fishermen. I  
10 have no problem with that, but not policy  
11 statements or paraphrasing other statements.

12 MR. EIDSVIK: Mr. Commissioner, I'm content that the  
13 evidence being put in by the commercial sector on  
14 selective fishing is useful and helpful to the  
15 commission to understand why the focus on  
16 selective fishing is not that important in the  
17 context of Fraser River sockeye and we can re-  
18 bring that evidence through somebody else. But, I  
19 mean, these gentlemen here only had a limited  
20 amount of time and this is very important. It was  
21 arguments they put to the department in their  
22 meetings with the department. I think it's very  
23 relevant for the commission to hear their  
24 perspective on necessity or no necessity of  
25 selective fishing.

26 MR. MARTLAND: With a view to moving this forward, we  
27 have an awkward situation. I think the question  
28 was asked and answered and then an objection made,  
29 so Mr. Commissioner, I don't know that there's  
30 properly a question floating in the air that has  
31 to receive your ruling.

32 I wonder, by way of trying to simply move  
33 forward, if Mr. -- if I can suggest that Mr.  
34 Eidsvik might proceed with his next question and  
35 certainly if counsel have an issue arising, they  
36 can raise and formally object. We may then ask  
37 you to finally make a ruling. Thank you.

38 THE COMMISSIONER: I'm content to go with commission  
39 counsel's position, that is to say to allow these  
40 witnesses to answer and I'll certainly receive  
41 counsel's submissions later if they feel that the  
42 answers ought to be given little or no weight for  
43 a particular reason, I'll hear those submissions.  
44 But in the meantime, I'm content to let Mr.  
45 Eidsvik complete his examination of these  
46 witnesses and for them to answer his questions.  
47 As I say, counsel will have an opportunity to make

1           submissions at a later stage as to what -- how I  
2           should -- now, if the evidence goes way far beyond  
3           what's reasonable - I don't think it has. I agree  
4           with commission counsel. I think Mr. Eidsvik's  
5           questions are appropriate and the answers may or  
6           may not fall into an area that raise concerns of  
7           counsel with respect to weight.

8           MS. SHABUS: Thank you.

9           THE COMMISSIONER: Thank you.

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

11          Q     Mr. Brown, I need to ask -- I was finished on my  
12               selective fishing but I think we just need to  
13               restate --

14          MR. BROWN: May I make one comment about that last  
15               little interchange? I hope I don't cause any  
16               trouble here, but I would like to make it clear  
17               that when I was talking about selective fishing  
18               the way you were leading the question, when I was  
19               involved in the four years of writing this book, I  
20               interviewed hundreds of experts in the salmon  
21               fishery, some of whom testified before this panel.  
22               I didn't hear these things just last week, Mr.  
23               Commissioner. I even wrote years ago about some  
24               of these concerns that I had about these things  
25               and I'm finding a fair bit of satisfaction in  
26               finding out that the experts that have far more  
27               expertise than me, I agree, are actually  
28               confirming some of the concerns which, by the way,  
29               I don't make them up off the top of my head. They  
30               are the views of many, many commercial fishermen.  
31               That was my cause and that is where I feel I have  
32               some expertise in the field.

33          Q     Thank you, Mr. Brown, for bringing the perspective  
34               of the commercial sector here. That's why you  
35               were invited to the panel and it's very helpful.

36               My next question is regarding the  
37               consultation process. Does the consultation  
38               process have anything to do with the collapse of  
39               Fraser River sockeye?

40          MR. BROWN: No.

41          Q     Does the lack of IQs (sic) have anything to --  
42               would explain the collapse of Fraser River  
43               sockeye?

44          MR. BROWN: No. And I would try to answer that by  
45               saying the whole discussion about ITQs implies  
46               that the problem around the stock collapse of the  
47               Fraser River sockeye in 2009 specifically and in

1 other years has something to do with commercial  
2 over-fishing. I will state very clearly that the  
3 2009 age class Fraser sockeye did not have any  
4 commercial fishing impacts on them in 2005 or if  
5 they had, it was a very, very miniscule harvest,  
6 and the generation before that, the four-year  
7 cycle before that there wasn't any fishery. So it  
8 wasn't commercial over-fishing that caused the  
9 collapse. Therefore, I don't believe, although  
10 it's an interesting debate about how you control  
11 and how you evolve the fishery and all the stuff  
12 we went through this morning, I don't think that's  
13 the issue at hand. I think it's more germane to  
14 look at the kind of things that you heard from Dr.  
15 Woodey and Dr. Walters about why the stock  
16 collapsed, primarily density dependency issues --  
17 Q Thank you.  
18 MR. BROWN: -- delayed dependency -- so it's not over-  
19 fishing. I want to emphasize that.  
20 Q If you were trying to decide whether over-fishing  
21 was -- by the public commercial fleet below  
22 Mission was a factor in the collapse of Fraser  
23 sockeye is there an easy way to tell that?  
24 MR. BROWN: Very easy.  
25 Q And how's that?  
26 MR. BROWN: You could just go to the Pacific Salmon  
27 Commission's website, look up who caught what,  
28 where and it's all there.  
29 Q Is there a tool they use called gross escapement?  
30 MR. BROWN: Yes.  
31 Q And what does that mean?  
32 MR. BROWN: That means the amount of fish that is past  
33 the commercial fleet where the boundary is at  
34 Mission, B.C., 40 miles up from tidewater, and  
35 that is the amount of fish that is estimated to  
36 pass that point at the hydro acoustic sounding  
37 program.  
38 Q So if the commercial fleet passed sufficient  
39 numbers of Early Stuart, Early Summer, Summer and  
40 Late Run sockeye past Mission, there's no public  
41 commercial fishing upriver from that point so in  
42 essence you could say they've done their job; is  
43 that a fair statement?  
44 MR. BROWN: Yes.  
45 Q Mr. Ashton or Mr. Sakich or Mr. McEachern, do you  
46 have anything to add to that? I think it's quite  
47 important.

1 MR. SAKICH: Let's hear your question again?

2 Q If the commercial fleet passed adequate numbers  
3 for escapement and for First Nations purposes  
4 upriver from Mission, got them as far as Mission,  
5 passed -- could you say that commercial fleet has  
6 done its job in the sense that they caught some  
7 fish or they didn't catch any but sufficient  
8 numbers of fish got to Mission?

9 MR. SAKICH: Oh, I would say so, yes.

10 Q Mr. Ashton, do you have anything to add?

11 MR. ASHTON: (No audible response).

12 Q Mr. McEachern?

13 MR. McEACHERN: No. There's nothing more we can do. I  
14 mean, we restrain for fishing to put the fish past  
15 Mission and from that point it's out of our hands.

16 Q So in other words, if you went back and looked on  
17 a year-by-year basis and said how many fish did we  
18 -- got past Mission on each cycle and if there was  
19 sufficient numbers past there, you have to look at  
20 some other reason for the collapse of Fraser River  
21 sockeye than the commercial fishing fleet, public  
22 commercial fishing fleet below Mission? Mr.  
23 Brown?

24 MR. BROWN: Yes.

25 Q I want to talk about Cultus Lake sockeye for a  
26 minute in the context of the selective fishery and  
27 what else could have been done.

28 MR. MARTLAND: Mr. Commissioner, I simply note that  
29 we're at the four o'clock point and we're at  
30 perhaps a break in Mr. Eidsvik's line of  
31 questions. I take it we should break for the day.  
32 This is a situation where we do need to reconvene  
33 with this panel. My optimism was a little high in  
34 that we might complete today. My suggestion would  
35 be the panellists have kindly agreed to return on  
36 Monday the 28th of February at 10:00 a.m. so this  
37 panel would be adjourned to continue again on the  
38 28th of February at 10:00 a.m. The hearings  
39 generally are adjourned till tomorrow morning at  
40 10:00 a.m. for the evidence of Jeff Grout.

41 THE COMMISSIONER: Mr. Eidsvik, would that be a  
42 convenient point for you to break your cross-  
43 examination?

44 MR. EIDSVIK: Of course, Mr. Commissioner.

45 THE COMMISSIONER: Thank you very much, sir.

46 Members of the panel, firstly thank you for  
47 being here today and thank you for agreeing to

1           come back on the 28th. I hope that it is  
2           convenient for all of you.

3           What I have asked witnesses in this inquiry -  
4           I think Mr. Brown may have heard me say this  
5           before - is that while you're sort of in limbo to  
6           complete your evidence, I would be grateful if you  
7           wouldn't discuss your evidence with anyone. If  
8           you have any questions about the inquiry or your  
9           testifying later on, I certainly encourage you to  
10          contact commission counsel. Just ask the  
11          question. Commission counsel may have to talk to  
12          Mr. Eidsvik about your question or may not,  
13          depending on the nature of your question, but  
14          generally speaking, I'd be grateful if you  
15          wouldn't discuss your evidence with anyone and  
16          we'll get you through the process on the 28th and  
17          then, of course, you're free to discuss your  
18          evidence thereafter. But in the meantime, I'd be  
19          grateful if you would acknowledge that and  
20          cooperate with me in that regard. So I hope that  
21          will not be a problem for you.

22          And, I'm sorry, Mr. Rosenbloom?

23       MR. ROSENBLOOM: Yes, but appreciating there's another  
24          panel tomorrow and Thursday, I do want the  
25          opportunity to consult with my clients in respect  
26          to questions that I may be putting to these panels  
27          or witnesses between now and Monday. I will  
28          hopefully respect the protocol that you have just  
29          indicated and not speak to my client about  
30          evidence that they might give commencing again on  
31          Monday, if that's acceptable to everybody.

32       THE COMMISSIONER: It is acceptable to me, Mr.  
33          Rosenbloom. I have no difficulty with the  
34          proposition you've just put forward, that is to  
35          say that you will have the opportunity to discuss  
36          with your client evidence that you may wish to put  
37          to the witness when they return, but that you  
38          wouldn't discuss evidence that they've already  
39          given. And I think that's an entirely appropriate  
40          protocol for you to follow.

41       MR. ROSENBLOOM: Thank you.

42       THE COMMISSIONER: Thank you. Mr. Eidsvik, that would  
43          apply to you, as well, sir.

44       MR. EIDSVIK: Yes. Thank you, Commissioner, I  
45          understand that and thank you for clarifying it.

46       THE COMMISSIONER: So we're adjourned then until 10:00  
47          a.m. tomorrow morning. Thank you.

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PANEL NO. 21  
In chief by Mr. Martland (cont'd)

1 THE REGISTRAR: Hearing is now adjourned until ten  
2 o'clock tomorrow morning.  
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4 (PROCEEDINGS ADJOURNED AT 4:02 P.M. TO  
5 WEDNESDAY, FEBRUARY 23, 2011 AT 10:00 A.M.)  
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February 22, 2011

1 I HEREBY CERTIFY the foregoing to be a  
2 true and accurate transcript of the  
3 evidence recorded on a sound recording  
4 apparatus, transcribed to the best of my  
5 skill and ability, and in accordance  
6 with applicable standards.  
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10 \_\_\_\_\_  
11 Pat Neumann  
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13 I HEREBY CERTIFY the foregoing to be a  
14 true and accurate transcript of the  
15 evidence recorded on a sound recording  
16 apparatus, transcribed to the best of my  
17 skill and ability, and in accordance  
18 with applicable standards.  
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23 Diane Rochfort  
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25 I HEREBY CERTIFY the foregoing to be a  
26 true and accurate transcript of the  
27 evidence recorded on a sound recording  
28 apparatus, transcribed to the best of my  
29 skill and ability, and in accordance  
30 with applicable standards.  
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34 \_\_\_\_\_  
35 Irene Lim  
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37 I HEREBY CERTIFY the foregoing to be a  
38 true and accurate transcript of the  
39 evidence recorded on a sound recording  
40 apparatus, transcribed to the best of my  
41 skill and ability, and in accordance  
42 with applicable standards.  
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46 \_\_\_\_\_  
47 Susan Osborne