

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.

Thursday, February 24, 2011

Tenue à :

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

le jeudi 24 février 2011

APPEARANCES / COMPARUTIONS

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

APPEARANCES / COMPARUTIONS, cont'd.

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

APPEARANCES / COMPARUTIONS, cont'd.

No appearance	Métis Nation British Columbia ("MNBC")
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	Heiltsuk Tribal Council ("HTC")

TABLE OF CONTENTS / TABLE DES MATIÈRES

	PAGE
JEFF GROUT (recalled)	
Cross-exam by Mr. Timberg (cont'd)	1
Cross-exam by Mr. Tyzuk	15
Cross-exam by Mr. Harrison	20
Cross-exam by Mr. Rosenbloom	23
Cross-exam by Mr. Harvey	43
Cross-exam by Mr. Eidsvik	72

EXHIBITS / PIECES

<u>No.</u>	<u>Description</u>	<u>Page</u>
482	Letter from Ron Kadowaki to Dave Barrett dated August 13, 2007	6
483	Pacific Commercial Fishing Fleet-Financial Profiles for 2007, Feb 25 2009 [Prepared by Nelson Bros for DFO] - NonRT	56
484	Briefing-A Cautionary Tale About ITQ Fisheries, 2009, Ecotrust Canada	63
485	Pinkerton and Edwards, The Elephant in the Room - The Hidden Costs of Leasing Individual Transferable Fishing Quotas, February 2009	63
486	Industry and Coastal Communities - Socioeconomic Review, undated, prepared by S&H Consulting for Nuu-chah-nulth Tribal Counsel	65

EXHIBITS FOR IDENTIFICATION / PIÈCES POUR L'IDENTIFICATION

S	Socioeconomics of Individual Transferable Quotas in Community-Based Fisher Management	71
---	---	----

1
Jeff Grout
Cross-exam by Mr. Timberg (cont'd) (CAN)

1 Vancouver, B.C. /Vancouver
2 (C.-B.)
3 February 24, 2011/le 24
4 fevrier 2011
5

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

7 MR. MARTLAND: Mr. Commissioner, I know Mr. Timberg is
8 just about to start again. I just thought I would
9 just identify that some of the estimates for time
10 for questions of Mr. Grout this morning have gone
11 up somewhat. I'm still optimistic that if
12 everyone's efficient and counsel adjusts and are
13 as efficient as they can, that we should be able
14 to complete this evidence today.
15 Mr. Timberg?

16
17 JEFF GROUT, recalled.
18

19 MR. TIMBERG: Yes. Good morning. Mr. Timberg for
20 Canada. Mr. Registrar, if we could go back to
21 Exhibit 481, please? And then page 25 of 36.
22

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

25 Q Mr. Grout, when we finished off yesterday
26 afternoon, we were on this document, Sustaining
27 America's Fisheries and Fishing Communities, and I
28 was wondering if you could explain some of the
29 helpful points in here with respect to ensuring
30 fairness for fishermen and communities.

31 A Well, one of the concerns, I guess, that have been
32 identified around the movement to catch share
33 sorts of programs or the effects that those
34 systems might have in terms of effects on
35 fishermen and employment, coastal communities,
36 things like that, so the report does identify a
37 number of the concerns related to those specific
38 issues, as well as some of the ways that the
39 design of catch share style programs might be able
40 to address some of those concerns.

41 Q Okay. And at page 24 of 36 there's a table and is
42 that -- can you help us out as to whether this
43 table of concerns and different design options is
44 of assistance?

45 A Well, I think a general point needs to be made
46 that these catch share programs are different
47 depending on the fishery and the reason for that

February 24, 2011

1 is there are a number of different ways you can
2 design them. And so what this table is showing is
3 -- are examples of potential public interests in
4 how the catch share program is designed and
5 potential ways you might consider addressing those
6 and how you design the fishery.

7 So the first one relates to the historic
8 industry structure, for example, concerns around
9 keeping small boat fleets active in the fishery.
10 Some of the design elements around that that have
11 been worked on are concentration limits on how
12 much quota, for example, might be held to maintain
13 some level of participation, maybe maximums on the
14 amount you can lease. They've also done other
15 things on having vessels catch a certain amount
16 before they're allowed to access more quota.

17 Also, other issues here around stewardship
18 and that point I raised about catch limits and the
19 monitoring elements of the program. We've got
20 localized management and economic benefits, so
21 this is -- you can look at how the trading works
22 across zones and maybe even historic gear types,
23 setting up limits around those, provisions to have
24 owners on board in some cases, various other
25 things.

26 On the other side of some of those are the
27 economic efficiency and there are those that would
28 argue that you should allow as much transfer as
29 possible so the fishery is economically efficient
30 and so, you know, various rules around those.

31 Finally, around governments and bureaucratic
32 costs, there may be minimum sizes of trades that
33 would be allowed, so you're not having a whole
34 bunch of transactions for very tiny amounts of
35 quota, for example. How much role does the
36 government have in the trades? Is there an
37 independent source or board for -- or marketplace
38 for where the trading can occur, those sorts of
39 ideas, so there's quite a bit of different design
40 options that can be explored in these programs to
41 address a variety of the concerns that have been
42 raised.

43 Q Thank you. Can you describe the -- Mr. Dennis
44 Brown testified on Tuesday and he raised concerns
45 about share-based management and possible problems
46 with concentration by corporate interests. Could
47 you -- I'd like to ask you two questions with

1 respect to that. First, can you describe for the
2 assistance of the commissioner the present makeup
3 of the fleet with respect to concentration by
4 corporate owners of licences and/or quota?

5 A I didn't bring specific data with me to support an
6 answer to that question and perhaps if it's of
7 interest we could do that later, but in the salmon
8 industry, depending on the fleet, there are
9 substantial degrees of concentration already in
10 some of the fleets. An example there would be in
11 the seine fleet. Quite a number of the seine
12 vessels are controlled by certain companies,
13 Canadian Fishing Company is an example.

14 The amounts of licences held by various other
15 interests vary in the other fleets. Another
16 example might be the Northern Native Fishing
17 Corporation, which holds substantial numbers of
18 gillnet licences in the salmon fleet. So there
19 are a variety of concentrations, right down to
20 sort of the individual owner/operator single
21 licence holders in the fleet.

22 Q And in the move to share-based management, what
23 are some of the design options that could address
24 that concern? Or are there?

25 A Well, in terms of how you set the program up, as
26 I've stated before you can look at a variety of
27 different ways to address that. It really depends
28 on one of the key elements, I guess, in designing
29 the ITQs or quota management is the "T" part of
30 that equation and how much transferability you
31 might allow. Some have argued for full
32 transferability as much as the marketplace would
33 determine. Others have suggested there should be
34 strong limits on that to maintain more of an
35 owner/operator presence in the fleet.

36 An example that we've looked at in one of our
37 demonstrations in the chinook fishery in the
38 northern troll has been they've explored a couple
39 of different options, starting with a percentage
40 of the TAC that could be accumulated by an
41 individual vessel to address concerns about
42 concentration of the quota. More recently they've
43 looked at having a hard limit on the amount of
44 fish that could be caught before further
45 reallocations can be made or other quota
46 accumulated. So there's a variety of different
47 ways to address those sorts of objectives in

1 designing these kinds of programs.

2 Q Thank you.

3 THE COMMISSIONER: What was the exhibit that you just
4 referred to?

5 MR. TIMBERG: This is Exhibit 481.

6 THE COMMISSIONER: Thank you very much.

7 MR. TIMBERG: And Mr. Registrar, if we could then move
8 to Exhibit 269. And if we could go to page 3 of
9 28.

10 Q Mr. Grout, yesterday we spoke about this Pacific
11 Fisheries Reform document from September 2005. I
12 was wondering if you could perhaps just quickly
13 explain for us the announcement from the minister
14 of the fisheries back on April 14th, 2005 and how
15 that announcement grounds this document.

16 A The document, you'll notice, is dated September of
17 2005 so this document was produced after the
18 minister announced a blueprint for change in the
19 management of Pacific fisheries, called Pacific
20 Fisheries Reform. The announcement was intended
21 to address a number of continuing problems related
22 to the sustainable management of fisheries
23 resources and, in particular, while it's a broader
24 scope to the initiative here, the commercial
25 salmon fishery was of particular note, as well.
26 Poor economic performance was cited, particularly
27 in the salmon fishery. We've got aspirations from
28 First Nations for increased economic access. So
29 the paper wasn't intended to flesh out the vision
30 associated with the minister's earlier
31 announcement.

32 MR. TIMBERG: All right. Thank you. If we could then
33 move to, Mr. Registrar, to Canada's binder, Tab 9
34 and CAN006616.

35 Q And Mr. Grout, this is a letter dated August 13th,
36 2007 to the Commercial Salmon Advisory Board from
37 Mr. Ron Kadowaki. And could you identify this
38 document and explain what it is?

39 A This is a letter that was sent by our Director of
40 Pacific Fisheries Reform at the time, Ron
41 Kadowaki, to Dave Barrett, who is the interim
42 executive director of the -- at the time of the
43 Commercial Salmon Advisory Board, providing
44 further instruction for the SCORE process which
45 had been initiated with the Commercial Salmon
46 Advisory Board to provide advice back to the
47 department and the Province and others on the

1 reforms for the Pacific salmon fishery.

2 Q And at the bottom of the second paragraph, it sets
3 out that DFO seeks to clarify or obtain advice on
4 four questions. Could you clarify what those four
5 questions are that DFO sought answers to?

6 A The questions lay out the specific details
7 relating to the feedback the department was
8 expecting to receive in the SCORE report. The
9 first was we were looking for advice on management
10 for commercial salmon fleets that provides the
11 flexibility of the fleets to respond, conservation
12 objectives, in an economically viable and
13 sustainable manner. Also provides ability to fund
14 associated fishery monitoring programs in the long
15 run.

16 We were also looking for a definition of
17 catch shares for all commercial salmon fishing
18 fleets to provide greater certainty and stability,
19 and additional flexibility in structuring those
20 fisheries, including the potential to have shares
21 move between fleets.

22 The third one was looking to have the
23 framework and advice developed in a way that would
24 be consistent with share-based fisheries conducted
25 by First Nations either under treaty or otherwise,
26 where the parties have an equal opportunity to
27 harvest their shares with similar rules, common
28 conservation objectives.

29 And then finally, looked for specific advice
30 on what sorts of mechanisms you might use to allow
31 those transfers of shares to occur, either between
32 fleets or from the commercial fleets to the First
33 Nations and in this case, if there's a voluntary
34 licence retirement, which would retire commercial
35 licences and provide the shares associated with
36 those to First Nations in a fair and transparent
37 manner.

38 Q All right. And we're going to turn to the SCORE
39 report next, which is the outcome of these four
40 questions. But before we do that, I was just
41 wondering if you could just comment briefly on the
42 -- on whether it's important to have an integrated
43 commercial fishery with -- amongst First Nations
44 and non-First Nations.

45 A This is one of the key elements of the reform
46 initiative we're looking at. One of the main
47 reasons for that is to provide certainty and

1 stability around the shares for all the
2 participants in the fishery. We're also looking
3 for ways to improve the conservation performance
4 of these fisheries and that could be through
5 moving shares between fleets or from fleets to
6 First Nations, potentially moving some of the
7 harvest from mixed stock fishing areas into more
8 inland areas, and also having the fisheries
9 operate with similar rules and priority in terms
10 of the commercial harvest.

11 MR. TIMBERG: Thank you. So, Mr. Registrar, if we
12 could then go to Exhibit 472.

13 A It would -- just as a general comment, it would be
14 helpful if I had the exhibit number and the tab in
15 the binders I've got here --

16 MR. TIMBERG: Oh, sorry.

17 A -- because I don't have the --

18 MR. TIMBERG: Tab 35 --

19 A Thank you.

20 MR. TIMBERG: -- in the commission's binder.

21 THE REGISTRAR: Before moving forward, do you wish to
22 have that last document marked?

23 MR. TIMBERG: Yes, I do. Thank you. I apologize.

24 THE REGISTRAR: It will be marked as Exhibit number
25 482.

26

27 EXHIBIT 482: Letter from Ron Kadowaki to
28 Dave Barrett dated August 13, 2007

29

30 MR. TIMBERG:

31 Q Are you with us, Mr. Grout?

32 A Yes. Thank you.

33 Q Perhaps just to refresh us, if we could turn to
34 page Roman Numeral III, the executive summary. If
35 you could just refresh our memory as to the
36 purpose of the executive summary here, what the
37 summary is.

38 A The summary is -- well, the process, the SCORE
39 reports came from a process. It was facilitated
40 by Diamond Management Consulting with the
41 Commercial Salmon Advisory Board. The questions
42 or the response of the report was looking for ways
43 to provide advice to the department and the
44 province beginning in the Fall of 2006 in terms of
45 supporting the further Pacific Fisheries Reform
46 and the Pacific Integrated Commercial Fisheries
47 Initiative, as well as addressing specific

1 a sense of the outcome.

2 A Well, it's a complicated discussion here and maybe
3 the report goes into some more of the details, but
4 it's -- there were two clear groups that they
5 managed to put together in the group during the
6 process here.

7 They were initially meeting all together and
8 then realized they could make some progress with
9 the two groups meeting separately. One of the
10 groups, as I pointed out earlier, held the view
11 that the commercial salmon industry needed to move
12 towards a share-based management approach with
13 ITQs as the potential tool to facilitate that.
14 The other group was opposed to that. They wanted
15 to see the active fisherman maintain the strong
16 role in the fishery and have the ability to
17 continue to do that and using some of the existing
18 mechanisms, for example, the annual review of
19 shares for the various fleets to make adjustments
20 as required.

21 Q All right. Well, thank you. Mr. Registrar, if we
22 could then move -- I'd like to just clarify the
23 record as to -- we're going to be moving to
24 Exhibit 461 and Mr. Grout, can you just clarify?
25 My understanding is that there have been two
26 surveys of the commercial fleet with respect to
27 their views on share-based management?

28 A Yes. We did talk about those yesterday, but these
29 were done in 2008, the first one was in April of
30 2008, and it was a survey requested by the area
31 harvest committees from Area B, D and H in respect
32 to the salmon scoping report here that was done by
33 Davlin Pacific. So they were looking for advice
34 from their harvest committees on that specific
35 proposal.

36 Q And for the record, that's -- so that's Exhibit
37 461 is the first one. And then the second survey,
38 I believe, is Exhibit 468, Mr. Registrar, if we
39 could have that pulled up. And Mr. Grout, if you
40 could explain the second survey?

41 A Well, the second survey was done in the Fall of
42 2008. It was initiated by the department,
43 Resource Management specifically. I had a lead in
44 developing the survey. We did the survey and sent
45 the forms to all of the licence holders in all
46 eight of the commercial salmon fleets, asking for
47 their advice on whether they would support their

1 harvest committees working with the department on
2 developing share-based management approaches for
3 the specific stocks in the area. So there were in
4 the survey questions an opportunity to answer yes
5 or no for the major stocks that are harvested in
6 each of the eight commercial licence areas. So
7 there were differences among the stocks. This
8 exhibit provides an overview of the survey
9 results.

10 Q Right. And we went through that yesterday.

11 A Yes.

12 Q Those results. So I won't do that today. But I
13 just wanted to clarify those were the two surveys
14 that have taken place.

15 I'd like to then move on to a discussion you
16 had yesterday with commission counsel with respect
17 to the allocation policy. And there you spoke
18 about the allocation policy in 21 production areas
19 in the allocation policy and I thought it would be
20 helpful if you could explain where those 21
21 production areas are and to help us out with that,
22 Mr. Registrar, I was thinking about Exhibit 444
23 might be of assistance, which are the maps. And I
24 understand that Appendix 4 to the IFMP, Exhibit
25 445, may also be of assistance.

26 I'm not sure if we could do a split screen on
27 that or perhaps if everybody has their own map, so
28 we don't need the maps up on the screen, and we
29 just go to Appendix 4 of Exhibit 445. Just
30 getting a page reference for Appendix 4.

31 MR. LUNN: It's 169 of 234.

32 MR. TIMBERG: Oh, okay. Thank you.

33 Q All right. So the question is, Mr. Grout, can you
34 clarify where the 21 production areas are that are
35 mentioned in the allocation policy?

36 A Well, the 21 production areas relate to the
37 intrasector allocations for the commercial salmon
38 fleet, and looking at the Appendix 4 document
39 here, if we could move to the next page, Mr. Lunn.
40 The linkage here with the maps is for each of
41 these 21 production areas, so you see starting
42 with the -- the linkages are to the area-based
43 licences for each of the commercial salmon fleets,
44 so you can see in -- just linking this table then
45 to the maps that are available, you can see one of
46 the production areas for North Coast sockeye
47 refers to Area 1, 3 to 5, 101 to 105, and those

- 1 would correspond to numbers on the maps for the
2 Area A seine, Area C gillnet and Area F troll. So
3 this table can be used to match up with the map.
4 So you see what -- in this case it's sockeye from
5 those areas being accessed by those three fleets
6 and you can compare that then to the maps that are
7 available to see which areas. In this case, it's
8 primarily related to Skeena and Nass sockeye.
- 9 Q All right. And so just so we can do one example,
10 just so we can get that, for the Area A seine
11 then, at Exhibit 444 we'd go to the Area A seine
12 map and then we've got numbers 101 to 105 and is
13 that -- those are the numbers that are on this map
14 then at --
- 15 A That's correct. So for the Area A seine and the
16 Area C gillnet, they're primarily harvesting in
17 portions of Areas 3, 4 or 5 for Skeena or Nass
18 sockeye. There are specific regulations that
19 would be announced on which sub-areas would be
20 open within there. 101 to 105 would primarily be
21 referring to where the Area F troll fleet might
22 take or access the North Coast sockeye in some
23 years.
- 24 Q Okay. Thank you. And with respect to the
25 allocation policy, could you then -- what are the
26 challenges then of using area licensing with the
27 coast-wide allocation policy?
- 28 A That's been one of the key challenges with
29 implementing the policy for the commercial salmon
30 fleets. If you recall from yesterday's
31 discussion, we are working towards allocations on
32 a coast-wide basis by gear type - so 40 percent
33 for the seine, 38 percent gillnet, 22 percent
34 troll. In terms of the allocations that roll up
35 into those, the policy is blind to where the
36 harvest might occur in each of those areas.
- 37 So to use an example for the seine fleets,
38 it's unlikely, but it -- you could have a
39 situation where one of the seine fleets, either A
40 in the north or B in the south, just because of
41 the harvests available in the area, are harvesting
42 the lion's share of the seine fleet coast-wide
43 share and the other seine fleet is not.
- 44 Q And that's because of the location of the salmon?
- 45 A That's correct.
- 46 Q All right.
- 47 A So you can have quite substantive imbalances

1 between the fleets that are making up a given
2 share, either gillnet, seine or troll.

3 Q And so the location of the salmon migrating is --
4 complicates this matter.

5 A Area-based licensing has restricted the areas
6 where each of the different fleets can access
7 their fish, so that's certainly one of the
8 challenges.

9 Q And then can you explain how you work to correct
10 imbalances in the coast-wide shares?

11 A One of the things we do, and I explained the
12 negotiation that occurs with the Commercial Salmon
13 Advisory Board in April of each year yesterday,
14 what we try and do is look at adjustments to the
15 percentage shares for individual fleets or each of
16 the eight fleets in the areas they're harvesting
17 to see if we can try and iron out or come closer
18 to the 40/38/22 percent target.

19 The reality is is you tend to -- or to make
20 -- balance large differences, there's only a few
21 key spots in this matrix where you can actually do
22 that. And the reason for that is the troll
23 fleets, Area F and G, are primarily harvesting
24 chinook in the aggregate abundance-based
25 management areas outlined under the Pacific Salmon
26 Treaty. Those chinook can't be moved to other
27 fleets. Those are high-value chinooks, so those
28 have in recent years inflated the troll share
29 above the 22 percent and made it challenging to
30 balance.

31 In addition, chinook are more valuable than
32 sockeye, so you need a lot of sockeye to balance
33 out those sorts of imbalances. You'll recall
34 chinook equivalents were upwards of five sockeye
35 equalling one chinook. On the other hand, you can
36 have fleets, all three fleets that have access to
37 pink salmon, but pink salmon are worth far less
38 than sockeye equivalents than sockeye. So to try
39 and balance using pink salmon is also extremely
40 challenging, because some gear types have trouble
41 catching a lot of pinks, for example, the troll
42 fleet can't -- isn't going to catch nearly as many
43 pinks as a seine fishery, and you need a lot more
44 pinks harvested to fix imbalances.

45 So what that ends up leaving us with in a lot
46 of cases is trying to balance using sockeye and in
47 places where all of the fleets have access to

1 sockeye. And one of the particular spots where we
2 spent a lot of time in recent years negotiating is
3 the fleet shares for Fraser River sockeye, given
4 that the gillnet, seine and troll fleets all have
5 access to this species in the south.

6 Q Okay. So you're balancing all of the species out,
7 all the salmon species together, and then the
8 sockeye salmon is a key salmon because of the
9 ability for the various fleets to have access to
10 it?

11 A Yes. Through a combination of fleets having
12 access, relatively good value for sockeye in terms
13 of balancing across the fleets and in past years,
14 greater abundance of sockeye to actually do that
15 balancing with.

16 Q And when you don't have sockeye, it makes
17 balancing even more difficult?

18 A It makes it extremely challenging when your pre-
19 season expectations are low for sockeye in
20 particular.

21 Q My final question on allocation policy is it might
22 be of assistance if you could use the maps and
23 point to where the -- where the production areas
24 are, where most of the Fraser River sockeye is
25 caught, so we can know where to focus our
26 attention.

27 A Fraser sockeye can be harvested by all five of the
28 southern fleets, so starting with the Area B seine
29 fleet, they're primarily harvesting and I went
30 over this yesterday, up in Area 12 and 13, also in
31 Area 29 off the mouth of the river and somewhat in
32 Area 20. So that's the seine fleet.

33 Q Okay.

34 A We've got the B -- or, sorry, the D and E gillnet
35 fleets. Area D is primarily harvesting in 12 and
36 13 and so they're reliant on Fraser sockeye
37 diverting in through the northern entrance here
38 around Vancouver Island to access those fish.

39 Next if we could do Area E. Area E, again is
40 primarily harvesting in Area 29 and in the Fraser
41 River itself for Fraser sockeye.

42 And then finally, the two troll fleets. Area
43 G troll has not harvested sockeye in a number of
44 years, but in some years they have had an
45 allocation of Fraser sockeye that they've been
46 able to harvest on the West Coast or up around the
47 top end of Vancouver Island. And finally, the

1 Area H troll is limited to the inside areas,
2 primarily 12, 13, but also in 18 and 29 for
3 accessing Fraser sockeye.

4 Q Thank you. With respect to moving on to share-
5 based management, in his evidence Ryan McEachern
6 recommended that in share-based management, it may
7 be helpful to set two targets for each fisherman,
8 one a percentage of the TAC and two a bycatch
9 limit. And he commented that having a bycatch
10 limit would increase responsible fishing. I'd
11 like your views on that suggestion.

12 A In share-based management programs that have been
13 implemented, particularly in our demonstration
14 fisheries for Fraser sockeye the focus has been on
15 specifying an individual share of the catch. In
16 catch share programs elsewhere, shares of the
17 bycatch have also been specified, as well, and the
18 ground fish fishery in B.C. is maybe an example of
19 where that's been done.

20 There would be some challenges with -- I
21 think -- well, first off, I think it's something
22 that could be effective in assisting with
23 management. It's not going to solve all of the
24 problems with salmon. There are challenges,
25 especially with species where we don't have stock
26 assessment information to either provide a
27 forecast of abundance or an in-season assessment
28 of abundance to specify a quantitative share of
29 the bycatch that you could manage to because you
30 run the risk of setting the wrong level. And if
31 you set a level that's too high and the return of
32 that particular species is low, you risk having
33 much more bycatch than you would really like.

34 Q All right. So depending on the situation, and
35 depending on the data, it may be of assistance.

36 A It's certainly something that's worthwhile to look
37 at as we move forward, but I just wanted to point
38 out that it's not something that's going to be of
39 immediate utility for a number of our populations
40 where bycatch is an issue.

41 Q Thank you. And my final question is Tuesday Mr.
42 Eidsvik, counsel for the Southern E Gillnetter and
43 Area B Harvest Committee asked Mr. Brown a
44 question with respect to the importance of
45 selective fishing and I'd like to just read this
46 question to you and that would be my last
47 question. And this is from -- I'm just reading

1 from the transcript February 22nd, page 89, lines
2 33 through 47. So the question was:
3

4 So if I could sum this up then, would it be
5 fair to say that the selective fishing
6 program has absolutely nothing to do with
7 Fraser River sockeye with the exception of
8 how do we harvest Cultus?
9

10 And then Mr. Brown's testimony was:
11

12 What I'm trying to say, and I'm not sure I'm
13 doing it very well, Commissioner, is I'm not
14 against selective fishing. I think it's
15 probably notionally a good idea. But it will
16 not be the thing that will save the day here.
17 It is something that looks to me like has
18 become a make-work project for some
19 individuals in the DFO and, of course, they
20 have a vested interest in making it appear
21 all more important. However, there is really
22 no need in order to properly manage Fraser
23 River sockeye, which is what we're dealing
24 with here, to depart radically from the old
25 traditional methods of harvest.
26

27 I'd like your views on that question and answer.

28 A Well, I would respectfully disagree with some of
29 the points that are raised there. I think as it
30 relates to the harvest of sockeye, the
31 department's moving in a direction where we're
32 increasingly taking into account the
33 sustainability of the fishery and maintenance of
34 the conservation units that contribute to Fraser
35 River sockeye.

36 The Wild Salmon Policy provides clear
37 direction on maintaining those conservation units.
38 We also have the obligations potentially under the
39 **Species at Risk Act** and I would note that a number
40 of populations, including Cultus sockeye, Sakinaw
41 sockeye and Interior Fraser coho have been
42 designated as endangered by the Committee on the
43 Status of Endangered Wildlife in Canada. They
44 weren't listed under the **Species at Risk Act** but
45 there's clearly a commitment from the department
46 to maintain these populations and try and recover
47 them, so it's extremely -- it's an extremely

Jeff Grout

Cross-exam by Mr. Timberg (cont'd) (CAN)

Cross-exam by Mr. Tyzuk (BCPROV)

1 important part of the management approach that
2 we're taking.

3 In terms of the harvest of those populations,
4 there's considerable overlap among the
5 conservation units in the Fraser sockeye fishery,
6 and what we're trying to do in setting the
7 escapement objectives for Fraser sockeye is take
8 into account the effects of our harvest rules that
9 are specified at a management unit level, and by
10 that I mean Early Stuart, Early Summer, Summer and
11 Late Run, but that take into account the potential
12 impacts on the conservation units within those.

13 A second point I would make on selective
14 fishing in relation to Fraser sockeye relates to
15 other species and Interior Fraser coho is an
16 example I've used on a number of occasions in
17 terms of managing our fisheries to avoid impacts
18 on those populations. We've also had cases though
19 where we're -- we've had very low abundance of
20 Fraser sockeye and we've tried to have fisheries
21 for Fraser sockeye during periods when we'd
22 normally be fishing -- or we've tried to have
23 fisheries for other species, for example Fraser
24 pink salmon, during time periods when we'd
25 normally be fishing for sockeye. So we've also
26 been exploring ways that we can have selective
27 harvest of pink salmon as an example, while
28 avoiding impacts on sockeye because total
29 allowable harvest has not been identified or it's
30 extremely small. And 2009 was an example of those
31 sorts of considerations.

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

34 MR. MARTLAND: Mr. Commissioner, Mr. Tyzuk is next on
35 the list.

36 MR. TYZUK: For the record, Mr. Commissioner, Boris
37 Tyzuk, T-y-z-u-k, for the Province of British
38 Columbia.

39
40 CROSS-EXAMINATION BY MR. TYZUK:

41
42 Q Mr. Grout, I'd just like to follow up with a
43 couple of questions on selective fisheries and
44 then one on SBMs in general.

45 It's our understanding from the evidence
46 we've had before that there was quite an active
47 selective fisheries program from 1998 to 2002.

- 1 Since then there hasn't been very much in terms of
2 funding. My understanding there is no person
3 who's the head of that. Yesterday you were asked
4 a question of who's responsible for implementing
5 selective fisheries, and you made an answer, you
6 talked about the salmon team and then was it the
7 Fraser River Panel Implementation Team? Do you
8 think you could expand a bit on that, please?
- 9 A Yes. The -- I'm not sure of the exact wording
10 that's been entered in the record, but I meant to
11 indicate the Fraser River Integrated Management
12 Team.
- 13 Q Okay.
- 14 A Which is a departmental group including our
15 fishery managers for all of the various areas,
16 including the Fraser Panel chair, members of the
17 Tech Committee. That group also quite often will
18 meet with the Canadian Caucus of the Fraser Panel,
19 so the Canadian representatives on the Fraser
20 Panel, to discuss ways that they might implement
21 management plans, especially at times when there's
22 a need to fish selectively.
- 23 Q Okay. But -- so but in this is there any one
24 person who has this -- you know, is responsible
25 for the policy itself? Or is it -- is the policy
26 just like a bunch of other policies you may have?
- 27 A Oh, the point I was trying to make yesterday is
28 that the policy, as far as I understand, does not
29 have one individual assigned to it. It's meant to
30 -- or it guides how the department does all of its
31 work, so our managers in designing fisheries are
32 aware of the elements of the selective fishing
33 policy and we're trying to implement that as we
34 design our programs.
- 35 Q So is there anyone who's responsible for ensuring
36 that implementation? Is there anyone who's going
37 to oversee this to ensure that the managers are
38 doing this or is it something that just kind of
39 happens and you hope that it's dealt with?
- 40 A No. I think the specific provisions that we're
41 looking at implementing as far as selective
42 fishing are concerned are rolled up and included
43 as part of the development to the Integrated
44 Fishery Management Plan each year. So specific
45 provisions for the various different fisheries are
46 outlined there, as well as considerations for
47 bycatch and the measures we may need to take at

1 different times of the year. So the annual
2 implementation of the selective fishing policy is
3 included in the Integrated Fishery Management Plan
4 as far as the guidance on how we're going to
5 implement our fisheries and selective measures
6 that may go there.

7 Included in that process is a post-season
8 review where we can look at the performance of
9 some of these activities.

10 Q Okay. Is there any work that you know of being
11 done through you or your team on development of
12 these techniques or any new techniques?

13 A I alluded to a couple of things yesterday. One is
14 I thought it would be helpful if the commissioner
15 was aware of ongoing research that's occurring.
16 And I referred to the NSERC research that's being
17 done with departmental staff, some of our science
18 staff, UBC and Carleton researchers, looking at
19 salmon migrations and selective -- or effects of
20 -- or effects of fisheries on the migration
21 success of sockeye.

22 Our DFO managers have also been involved in
23 providing advice to that group in terms of what's
24 specifically important. We've also been looking
25 at working with users and harvesters and providing
26 the objectives we're trying to achieve and
27 allowing them to come up with ways that they might
28 have their fisheries while being consistent with
29 the objectives weighed out.

30 Q Okay. Thank you. You gave an example yesterday
31 and I'm just sort of learning about fisheries
32 during the course of this hearing, but you gave an
33 example of a three-hour opening in the Fraser to
34 try to catch some sockeye. Said there were about
35 30,000. They ended up catching about 45,000.
36 Now, was that Fraser River gillnetters?

37 A Yes. The example I gave there was for the -- an
38 Area E gillnet opening in the Fraser River and I
39 believe that was somewhere around August 1st, if I
40 recall correctly.

41 Q Yes. And it was three hours. So those
42 gillnetters, am I correct in assuming that they
43 would have to have revival boxes on deck -- on
44 board?

45 A That's correct.

46 Q Okay. So in three hours, if they have that rush,
47 what likelihood would they be using those revival

- 1 boxes? Because --
- 2 A That might be a better question directed to our
3 enforcement staff. I can't provide you specific
4 information on compliance levels.
- 5 Q Okay. But if there's a three-hour opening,
6 there's a very concentrated period of time to try
7 to catch fish, our understanding is using revival
8 boxes or techniques like that takes some time. Is
9 that a fair comment?
- 10 A Again, I'm not a gillnet fisherman. I have been
11 on vessels where the fish -- the crew has been
12 very efficient at getting fish into the revival
13 boxes. I have been on vessels where the bycatch
14 has started to fill up in the revival boxes and
15 issues around releasing the fish from the revival
16 box once they've recovered while the fishery is
17 still ongoing and concerns that they may be
18 recaptured and some of those sorts of issues.
19 That's the level of my experience.
- 20 Q But the understanding we had is that selective
21 techniques such as this take more time and in a
22 three-hour fishery isn't the main focus to try to
23 get as many fish as you can, because you've only
24 got three hours?
- 25 A I think I would agree with your general assessment
26 there.
- 27 Q The last question I have is you were speaking of
28 how you're implementing shared-base management and
29 the evidence you gave is that you were trying to
30 work with willing fleets and First Nations but is
31 there any sort of a timeframe you have, like, you
32 know, three years, five years, more? Because
33 you're talking about willing fleets. If the
34 fleets aren't willing and from the tables that we
35 got some are and some aren't, so is there some
36 sort of general timeframe you have in mind here?
- 37 A In terms of moving ahead with some of the reforms,
38 there's a number of challenges that have been
39 identified, as well as philosophical opposition to
40 trying some of these different approaches,
41 particularly around individual transferable quotas
42 in some of the areas, so the department has been
43 trying to move ahead in an incremental way to this
44 point with willing fleets. I don't have -- if
45 you're asking for a firm deadline on when this has
46 to occur, I can't give you that.
- 47 Q No. But I guess given what you said, you're

1 trying to work with willing fleets. At some point
2 if the people aren't willing or they aren't split,
3 does that mean that you're not going to go ahead
4 with it? Or would you require some sort of
5 direction from on high to say we want this to
6 happen?

7 A I will say in terms of the work I do each year
8 when we send out the request for projects with the
9 fleets, we are continuing to try and talk with the
10 harvest committees in particular for fleets that
11 haven't moved ahead and try and explore ways or in
12 fisheries where we might do this. That might
13 entail trying to develop a project or perhaps a
14 fishery that's going to be a lot smaller or less
15 important to the fleet to start, so we can learn
16 something about it.

17 I referred to a small pool fishery that we
18 contemplated for Area E in 2009 and '10. It
19 wasn't going to be for a large harvest of chinook,
20 with sockeye being their most important harvest,
21 so we're continuing to try and explore ways we
22 might learn something about doing it and perhaps
23 gain some traction with the fleets around trying
24 other things.

25 Q Okay. So I mean -- so I guess what I'm hearing
26 you say is there is no real timeframe. You could
27 be in the same position five years from now, so
28 ten years after you were going down this road, you
29 could still be trying to work with fleets to try
30 to do something on the present basis; is that
31 fair?

32 A Well --

33 Q I'm not trying to be -- I'm just trying to get a
34 sense of it, because if you're working with
35 willing fleets and they're not willing or not much
36 is coming, then there's some question about
37 whether the policy is going to be implemented in
38 any significant way.

39 A Well, maybe I'll answer it this way. In other
40 fisheries that have moved to share-based
41 approaches, it typically has not been a snap where
42 it's occurred overnight and there's been a
43 substantial amount of time that's taken in some of
44 these to work out all the rules and design options
45 around how you might do it. I think for the
46 salmon demonstrations we've done, we've had a
47 number of years with projects contemplated and I'd

1 say 2010 was probably the first fair trial on a
2 substantive abundance of harvest. In years
3 previous we hadn't done a whole lot, at least on
4 Fraser sockeye. So I think we still have some
5 things to learn in moving ahead.

6 MR. TYZUK: Thank you. Those are my questions.

7 MR. MARTLAND: Mr. Tyzuk has the accuracy prize. He
8 asked for ten minutes; he was exactly ten. I have
9 Mr. Harrison for the Conservation Coalition next.

10 MR. HARRISON: Good morning, Mr. Commissioner. Good
11 morning, Mr. Grout. My name is Judah Harrison for
12 the record, H-a-double-r-i-s-o-n, and I represent
13 the Conservation Coalition which is a number of
14 not-for-profits and an individual focused on the
15 conservation of salmon.

16
17 CROSS-EXAMINATION BY MR. HARRISON:

18
19 Q I'm going to be very brief. Yesterday and just
20 now you touched on impediments to share-based
21 management absent area-wide adoption or fleet-wide
22 adoption. So yesterday you were talking about
23 Area F and how within the fleet you granted
24 science licences and allowed some parties within
25 the fleet to do share-based management and others
26 not to. Then on Tuesday we heard evidence from
27 Ryan McEachern, a commercial fisherman, that a
28 group of fishermen in his area, himself included,
29 would like to adopt share-based management and
30 they'd also like to pool their resources, but
31 under the current regulatory structure they cannot
32 do so.

33 So my question to you is are there valid and
34 sensible reasons for restricting and limiting
35 adoption of share-based management and pooling
36 resources to fleet-wide or requiring fleet-wide
37 adoption of this?

38 A Maybe you could rephrase your question. I'm
39 trying to understand --

40 Q Sure.

41 A -- specifically what you're asking me to address.

42 Q I guess I'm asking -- well, Area F and the
43 experiment that you touched on yesterday where in
44 the fleet certain members were allowed to practice
45 or do demonstration fisheries of share-based
46 management and others were not and I believe you
47 said that they were allowed to do so through the

1 use of science licences or scientific licences.

2 A That's correct.

3 Q And then from what I understand, that was changed,
4 including through the **Larocque** decision and now if
5 a fleet wants to adopt share-based management or
6 if a commercial fisherman wants to adopt share-
7 based management, they must do so only if their
8 entire fleet agrees; is that correct?

9 A Yes. That's the direction we've given to the
10 harvest committees in terms of how we, the
11 department would like to move forward with share-
12 based management.

13 Q So then my question is can you explain the
14 rationale for not allowing certain members or for
15 requiring fleet-wide agreement to such a process?
16 Can you explain rationale why a commercial
17 fisherman like Ryan McEachern, if he wants to pool
18 his resources or adopt share-based management,
19 requires fleet-wide approval?

20 A Okay. The challenge stems from the direction that
21 we're moving, which is that in implementing these
22 demonstration fisheries, we're requiring the
23 commercial licence to be used. And if we use the
24 Area D example, we don't have a way to use the
25 existing commercial licence to create essentially
26 two separate groups of individuals, one group that
27 might want to fish competitively in a derby style
28 fishery and one group that would like to fish to a
29 quota without doing things that the fleet would
30 not be willing to accept, for example, restricting
31 the -- within their Area D fishing area, which
32 areas the derby group might be able to fish in and
33 which group the ITQ group might fish in. That
34 hasn't been desirable.

35 And so the main problem is is when we use a
36 variation order to open the fishery, all of the
37 licence holders are eligible to go out and
38 participate in that opening.

39 Q So I guess I just wanted to hit on the structural
40 impediment to that and whether you think that's
41 good or whether you think it would be better to
42 allow flexibility as existed before the **Larocque**
43 decision.

44 A Well, there's two ways you can think about that.
45 One is when we were able to split the fleets up in
46 the past, it allowed us to experiment and do a
47 comparison of the two management regimes at the

1 same time and perhaps gain some buy-in for how you
2 might move ahead with doing that. On the other
3 hand, it stretches the department's resources to
4 try and do that because then your managers have to
5 manage a derby style competitive fishery and the
6 requirements there around managing the inputs,
7 doing over flights to assess effort and those
8 sorts of things they would normally do to manage
9 that fishery, in addition to managing the share-
10 based fishery, as well, which the department is
11 requirement to -- or has been managing the
12 reallocation process, issuing amendments and that
13 sort of thing. So there's pros and cons
14 associated with doing that.

15 Q Okay. Thank you. Yesterday you also confirmed
16 that to be effective, share-based management
17 requires a robust catch monitoring; is that
18 correct?

19 A That is correct. We're providing a specific share
20 to individuals or groups of individuals and you
21 need to have trust among the individuals, as well
22 as from the regulator side the specified catch
23 amounts are being adhered to.

24 Q And would you say that the current monitoring
25 requirements in the commercial salmon fishery are
26 adequate to adopt a share-based management system?
27 And if helpful, I would like it if you could
28 compare and contrast with monitoring requirements
29 in ground fish fisheries like halibut.

30 A Well, I'll start with the first part of your
31 question and maybe compare the salmon fisheries.
32 So starting with a commercial fishery in one of
33 the areas that has not gone to a demonstration, so
34 a commercial derby style fishery, for example,
35 Area D or E gillnet fleets, they have a
36 requirement to hail in their catch and complete
37 log book requirements as part of their conditions
38 of licence. Managers in assessing the catch from
39 the opening are essentially using effort profiles
40 and information on catches from individual vessels
41 to come up with a fleet-wide estimate of the
42 harvest, but there's not a census in effect in
43 terms of counting every last fish.

44 And in the demonstration fisheries, where
45 we've had a defined share specified in licences,
46 we've had a requirement of mandatory landing and
47 dockside monitoring by an independent service

Jeff Grout

Cross-exam by Mr. Harrison (CONSERV)

Cross-exam by Mr. Rosenbloom (GILLFSC)

1 provider so the fish are essentially counted or
2 weighed off against the quota amounts on their
3 licences.

4 I'm not an expert on everything that's
5 occurring in the ground fish fishery, but they do
6 have the dockside monitoring requirements and
7 validation with the independent service provider.
8 They also have additional components around
9 electronic monitoring while the vessels are at sea
10 associated with bycatch and other provisions
11 there.

12 Q Okay. Thank you very much. My final question is
13 really share-based management, a more flexible
14 fishery, selective fishing, in your opinion are
15 these essential tools and essential things that
16 need to happen in order to adhere or meet the
17 goals of the Wild Salmon Policy?

18 A I think it's certainly consistent with the goals
19 we've got with the Wild Salmon Policy. The vision
20 laid out in Pacific fishery reform in terms of the
21 move towards share-based management would
22 certainly provide or enable the fleets to meet
23 some of those commitments around implementing the
24 Wild Salmon Policy, especially around the fleets
25 being more self-reliant, able to self-adjust.
26 We've had improved performance in terms of
27 achieving the catch objectives in those fisheries.
28 We've had those fleets also able to contribute to
29 the cost of the catch monitoring and validation of
30 the fish, which has been a concern and an
31 impediment in some of the competitive fisheries.
32 There's also elements around a share-based
33 approach that would allow you to make transfers of
34 salmon to inland areas where you might be able to
35 harvest more selectively and in particular avoid
36 some conservation units that might be weaker than
37 others.

38 MR. HARRISON: Okay. Thank you very much.

39 MR. MARTLAND: Mr. Rosenbloom for Areas D and B.

40 MR. ROSENBLOOM: Yes, Don Rosenbloom appearing on
41 behalf of Area D Gillnet, Area B Seiner.

42
43 CROSS-EXAMINATION BY MR. ROSENBLOOM:

44
45 Q Mr. Grout, thank you very much for answering the
46 questions that I have for you today. I want to
47 start following up on a question that, in fact,

1 the commissioner asked you just before Mr. Timberg
2 commenced his examination in chief yesterday and I
3 want to refer you to the exchange between the
4 commissioner and yourself and it related to a
5 question by the commissioner about co-management,
6 concepts of co-management and I would ask Mr. Lunn
7 to pull out yesterday's transcript, February the
8 23rd, page 71 and starting at line 34 and I'll
9 allow Mr. Lunn - I didn't give him any notice that
10 I would be doing this, so...

11 MR. LUNN: It will just be a moment for yesterday's
12 transcript.

13 MR. ROSENBLROOM: No problem. Thank you.

14 Q And basically while that's being done, Mr. Grout,
15 I want to read out to you the commissioner's
16 question to you and your reply and maybe again I'm
17 the only one that doesn't understand this, but it
18 begged to me a whole series of issues that, in
19 fact, should very much be the focus of this
20 inquiry, looking at vision and the future and
21 where it all goes and so I wanted you to expand
22 upon the response that you provided to the
23 commissioner last day.

24 MR. ROSENBLROOM: Mr. Lunn?

25 MR. LUNN: Yes. The page number?

26 MR. ROSENBLROOM: February 23rd, page 71. I apologize,
27 Mr. Lunn, for not giving you notice, but I only
28 just got the transcript by email, as all of us
29 did.

30 MR. LUNN: Me too. That's why it's taking a moment.

31 MR. ROSENBLROOM: Thank you.

32 Q So here we have it. And it's at page 71 and it is
33 line 34 and at line 34 I believe the commissioner
34 says:

35
36 And when you talk about co-management in that
37 topic, are you talking about some sort of
38 formalized management scheme? I'm still not
39 clear as to what is meant by co-management
40 under that particular -- you may not be able
41 to enlighten me on this because it's not your
42 document but...

43
44 You answer:

45
46 I think to go back a little bit. The
47 discussion paper is intended to outline a

1 vision for where we might go in the future
2 and lay out some of the ways we might get
3 there. We're looking at an increased role in
4 co-management but it hasn't laid out the
5 specific framework for how that will occur.
6 Some of the other exhibits with the white
7 paper, for example, are trying to further
8 describe what these things might look like.
9 But as I stated, they're still in a draft
10 stage at this point.

11
12 Full stop. And then the commissioner thanked you
13 for your response. And I thank you for your
14 response.

15 But because this Royal Commission is, in
16 part, to have a vision into the future, is not
17 only looking at the past, can you fill in from
18 your perspective what you imagine a co-management
19 -- a more developed co-management system or
20 schematic might be as we looked into the future
21 five years from now, ten years from now? Is that
22 a question you can answer?

23 A Well, I can take a shot at it. In terms of a
24 response, I might point out that in the -- some of
25 the discussion relates to the Exhibit number 269
26 which is the discussion paper on Pacific fisheries
27 reform and I think some of my thinking aligns with
28 some of the thinking that's laid out in that
29 paper.

30 Q And what year was that paper approximately?

31 A This was September of 2005.

32 Q I'm sorry. Thank you. Yes.

33 A And so in terms of your question around co-
34 management, I see the vision in terms of a way
35 forward is related to the incentives around the
36 fishery, so it's a movement from an input-
37 controlled fishery where the incentive as a
38 fisherman is to go out and catch as much as you
39 can during that opening, to one where there's a
40 clearly defined share and there's some certainty
41 and stability around that. And then the
42 harvesters can start thinking around how they
43 might add value to their share, perhaps reduce
44 costs, working with the department on ways they
45 might do some of those things.

46 So it's -- I think it's providing the
47 incentives and then providing an opportunity for a

1 much more active role of the harvesters to work
2 with -- not only with the department, but also
3 amongst themselves in finding ways that they can
4 access their shares, for example, if they're in a
5 year where they don't happen to have access to a
6 particular population that they have a share of
7 for whatever reason and finding ways that they can
8 self-adjust and become more self-reliant in moving
9 their shares around themselves.

10 Q And I assumed that your response is totally within
11 the context of a share-based management system.

12 A That's the vision and the direction in terms of
13 where we're headed.

14 Q Yes. And in the absence of moving in that direct
15 to share-based management, you do not see further
16 co-management initiatives that might be taken in
17 the fishery?

18 A Well, I don't know if I'd state it entirely that
19 way. The department's continuing to provide
20 resources to build on its co-management processes.
21 There's specific funding outlined as part of the
22 Pacific Integrated Commercial Fisheries Initiative
23 around co-management and doing work there,
24 especially the role of First Nations in the
25 process around economic opportunity and commercial
26 harvest. But we're also looking to work with the
27 fleets in an open and transparent way in terms of
28 how we move ahead. So I think I would expect that
29 to continue and broaden.

30 Q Thank you. I now want to come to this very
31 complex subject of the Mifflin Plan, divvying up
32 the coast in terms of areas, and the licensing and
33 the allocation issues and in my examination of the
34 panel of harvesters on Tuesday, I -- and others,
35 including commission counsel, raised the issues
36 that arose in terms of allocation in the context
37 of a coast-wide allocation and yet your licensing
38 being within areas or North Coast/South Coast and
39 so on. Did you ever have the opportunity since
40 Tuesday to read the transcript of the evidence
41 given by the harvesters on Tuesday?

42 A No. Unfortunately, I did not.

43 Q I don't fault you for it. I thank you. Just to
44 give you an example of the evidence, because I'm
45 going to be asking you a series of questions about
46 how we -- how DFO and how the government intends
47 to rationalize the current problems that you're

1 confronting with the Mifflin Plan and yet a coast-
2 wide allocation. I was questioning my client, Mr.
3 McEachern, who is Area D gillnet and I'm speaking
4 of the date of the 22nd of this -- February, which
5 would have been Tuesday. I have on my screen here
6 page 58 and I believe line 2.

7 And there was a whole preamble to this
8 exchange between myself and Mr. McEachern and it
9 was speaking -- many of these witnesses were
10 speaking of the dysfunctionality of the current
11 situation, of the imposition of Mifflin and yet
12 the department maintaining still a coast-wide
13 allocation and it's the best I can do in
14 articulating the general theme of some of the
15 evidence that was given on Tuesday.

16 At line 2 or line 3 I ask Mr. McEachern:

17
18 Yes. And appreciating that there is this
19 unfairness, would you say that the Mifflin
20 Plan was implemented without appreciating the
21 problems that arise from it with allocation?
22

23 Mr. McEachern answers:

24
25 I guess I'm very happy to say that when the
26 Mifflin Plan was being engineered, I wasn't
27 part of the political process yet at the
28 time. In fact, I didn't start fishing my own
29 boat until I was 15 and I didn't --
30

31 Sorry, that's not important. So going on at line
32 13:
33

34 So my understanding, from speaking to the
35 various participants in the Mifflin Plan was
36 that that was a chapter that never got
37 finished. And my impression was there was
38 always an intention to deal with the coast-
39 wide allocation issue, but it never happened.
40

41 And then we went on from there.

42 Do you generally agree, Mr. Grout, that this
43 is unfinished business, that we have the
44 implemented Mifflin Plan concept, yet the
45 allocation protocols, if I can put it that way,
46 have not kept pace with the fact that Mifflin has
47 been implemented?

1 A Well, I can't speak to directly the Mifflin Plan
2 itself, but I will say in terms of the allocation
3 framework, there's quite a bit of dissatisfaction
4 with the use of the coast-wide shares and what
5 sorts of imbalances might occur among the eight
6 area licence types as a result of trying to work
7 towards that coast-wide balance. The department
8 has sought advice from the Commercial Salmon
9 Advisory Board on how we might move forward with
10 that through the SCORE process and we've got some
11 evidence on that that's already been provided.
12 We're also -- I'd say in answer to your question
13 it continues to be an element that the department
14 would like to see more progress on. We did touch
15 on the fact yesterday that as part of the Pacific
16 Salmon Treaty mitigation there is some funding
17 available for modernizing the commercial salmon
18 allocation framework there.

19 Q Right. Thank you. And, yes, I want to speak to
20 that in a follow-up, but just before doing so, in
21 your response to me you spoke of yes, there is
22 dissatisfaction with the current situation. Is
23 that dissatisfaction not only that of my clients
24 and harvesters, but is there dissatisfaction with
25 DFO with the problems that we're speaking about
26 here?

27 A I think the department would like to see some
28 changes there, as well, that are more consistent
29 with the vision in terms of moving forward with
30 Pacific fisheries reform. To use a specific
31 example there, one of the things that we think is
32 an important element is providing certainty and
33 stability. The current framework provides
34 certainty around what the coast-wide gear type
35 shares would be around seine, gillnet and troll,
36 but there's uncertainty around what the area and
37 gear shares are within any given year and it can
38 change from year to year, and that creates
39 uncertainty which -- and uncertainty takes away
40 from the initiative or direction to creating
41 certainties and stability and allowing the
42 fishermen to make longer-term plans for managing
43 their businesses.

44 Q So do you believe that DFO would endorse the
45 concerns that fishers are generally expressing
46 about the current -- the status quo?

47 A That's a pretty broad question in terms of

1 endorsing the concerns. I'd have to know
2 specifically which ones you were wanting me to
3 address before I could reply accurately.

4 Q Well, I guess, let me put it this way. DFO would
5 endorse an aggressive direction to review and
6 reform the allocation concepts post-Mifflin?

7 A As I stated before, that is an element of work
8 that we would -- the department feels there's more
9 to be done there. There's some funding to do.
10 That is part of the Pacific Salmon Treaty
11 mitigation.

12 Q Which leads to this question, why is the funding
13 coming from the Americans? I'm familiar with the
14 fact that this -- I believe \$5 million is from the
15 Pacific Salmon Mitigation Treaty arrangements and
16 something to do with litigation with the troll
17 fleet, if I understand it correctly. But why do
18 the Americans end up funding this particular
19 domestic project of ours relating to allocation?
20 Can you just explain that to me?

21 A Well, I wasn't -- Paul MacGillivray is probably
22 best placed to answer specific questions around
23 the Pacific Salmon Treaty, but maybe just to
24 correct one statement you made, the amount of
25 money provided was \$30 million U.S. to Canada as
26 one part of the renewed provisions of the Pacific
27 Salmon Treaty. In the so-called fishing chapters
28 of the treaty chinook was one of the specific
29 items of active negotiation in the last round when
30 the renewal was done in 2008. Substantive
31 conservation concerns around chinook had been
32 identified by the parties and they were
33 negotiating reductions in the chinook harvest in
34 the large offshore chinook fishing areas that I
35 referred to as aggregate abundance-based
36 management areas.

37 There was a reduction in southeast Alaska and
38 a reduction on the West Coast of Vancouver Island
39 as part of the treaty provisions. As part of that
40 package, \$30 million U.S. was provided to Canada
41 for -- I can't remember the exact wording here.

42 Q Forgive me, Mr. Grout --

43 A A program to mitigate --

44 Q -- I don't want to interrupt you except I'm not --
45 I don't think any -- I apologize, but I don't
46 think it's terribly important right now to go into
47 all the details of that 30 million. It's a

1 portion of it has been designated to fund what
2 I'll call the --
3 MR. HARVEY: Mr. --
4 MR. ROSENBLOOM:
5 Q -- reforming of our allocation system; isn't that
6 -- not correct?
7 MR. TIMBERG: Mr. Commissioner?
8 MR. ROSENBLOOM:
9 Q Have you not testified to that?
10 MR. TIMBERG: I'd like to allow the witness to answer
11 the question. You asked a question and he's
12 answering it.
13 MR. ROSENBLOOM: Well, then I don't want my learned
14 friend, Mr. Martland, to tell me I'm over time.
15 Q Yes, go ahead.
16 A Sorry, could you repeat the question?
17 Q My question simply is this, a portion of the
18 settlement that came out of the Pacific Salmon
19 Mitigation Treaty arrangements, as I understand
20 it, is money designated for an initiative within
21 DFO to reform your allocation concepts.
22 MR. HARVEY: I'm sorry. I don't like to disagree with
23 Mr. Rosenbloom, but that wasn't the question. The
24 question was how is it that 30 million, corrected
25 from five million, 30 million was provided by the
26 Americans to fund a domestic program.
27 MR. ROSENBLOOM: Well, if that was my question, Mr.
28 Rosenbloom's not interested in the 30 million. I
29 am aware of a settlement and I know my learned
30 friend is very familiar with this particular
31 matter.
32 Q I'm simply asking there is a portion of that money
33 which has been designated for a review of the
34 allocation system, correct?
35 A One million dollars approximately of that money
36 was set aside for modernizing the commercial
37 salmon allocation framework.
38 Q My question is why are we being funded by the
39 Americans for this particular project? Why as DFO
40 not commenced this review some time ago and funded
41 it out of their own pocket?
42 A Part of the impetus for having the work done on
43 the commercial allocation framework here is the
44 bulk of the funding and the PST mitigation of
45 approximately 29 million is to be used for a troll
46 buy-back and the work around the allocation
47 framework recognizes that the troll fleets are

1 combined together in the coast-wide framework.
2 There's potential for area reselection among or
3 between areas in the future and so really, the
4 work was specifically focused around what the
5 implications are there for the buy-back on the
6 commercial allocation frameworks. We thought it
7 was important to include that as part of this
8 program.

9 Q I know we're about to have coffee break, but if I
10 can just ask you one last question before the
11 break. This funding that has been provided, is
12 DFO contributing money directly to the program
13 too?

14 A Not that I'm aware of.

15 Q And when this funding runs out, what I'll call the
16 American funding, where are we at? Is DFO
17 intending to budget to pursue and carry on with
18 this initiative?

19 A I can't provide a specific answer to that
20 question.

21 Q And so may I ask you this, are you uncertain, sir,
22 whether there is any certainty or you can bring
23 confidence to this commission that this program of
24 review will, in fact, be pursued and taken to
25 implementation?

26 A Well, I think your question presumes or would have
27 to have a presumption of what the outcome of the
28 work might be, and at this point we haven't
29 started with the work, so I can't say specifically
30 what might occur -- what might result from that or
31 what might be done afterwards.

32 Q So you can't say to my clients with any confidence
33 as to when there might be reform of this
34 particular aspect of harvest management?

35 A I can't provide the specific timelines on how that
36 program might be delivered today.

37 Q Even vague timelines?

38 A I would expect it would be in the next year or
39 two, but I can't give you the specific date when
40 we're going to start.

41 MR. ROSENBLUM: This might be the appropriate time for
42 the break, thank you.

43 THE COMMISSIONER: Just before the break, Mr.
44 Rosenbloom, just so I understand the context,
45 words like "program" are being used and so on. I
46 just want to make sure I understand exactly what
47 is within this modernization framework. You've

1 been addressing questions to the witness about it.
2 I apologize. I may be just not following --
3 MR. ROSENBLUM: No.
4 THE COMMISSIONER: -- where you're going, but if the
5 witness could just explain, what is within this
6 one million dollar ambit and the so-called
7 modernization program? What are -- exactly are
8 you talking about?
9 MR. ROSENBLUM:
10 Q And who's doing it?
11 A Well, the specific questions around this are
12 probably better addressed to somebody in our
13 policy unit that was involved in the development
14 of the program. So that's why I'm not able to
15 provide all of the specific details for you around
16 timelines and specific elements here.
17 MR. ROSENBLUM: And is commission counsel, can they
18 tell us whether we can look forward to a witness
19 coming forward that would be more appropriate to
20 answer these questions?
21 MR. MARTLAND: I'd like to speak with Mr. Rosenbloom at
22 the break and we can pick up on this.
23 MR. ROSENBLUM: Thank you.
24 MR. MARTLAND: Thank you.
25 MR. TIMBERG: I do note that Paul MacGillivray will be
26 back for the final panel and Mr. Grout has
27 mentioned that he's the person.
28 MR. ROSENBLUM: That final panel's pretty late in the
29 day, but I'm in the hands of the commission.
30 Thank you.
31 THE COMMISSIONER: I just wanted to make sure I
32 understand, Mr. Grout. You've been addressing for
33 the last couple of days questions with respect to
34 the shared-based management program. You just
35 referred a moment or so ago to Exhibit - I'll get
36 the number for you, sir - 269.
37 A Yes.
38 THE COMMISSIONER: The Fisheries Reform Program. So in
39 your answers to Mr. Rosenbloom, you've made
40 reference to those topics, but now you say you
41 can't really address or answer questions regarding
42 using your word, a program. I'm just asking --
43 I'm just trying to understand how I relate what
44 you just said to everything else you've said about
45 the hopes and desires and wishes of the DFO with
46 respect to shared-based management. Is that not
47 part of this program you're talking about? When

1 you talk about modernization of the allocation
2 policy, what exactly are you addressing?

3 A If I follow your question, you're -- or maybe I'm
4 not exactly following your question.

5 THE COMMISSIONER: All right. Let me just see if I can
6 myself do a better job. I apologize to you. I've
7 not been very articulate about this.

8 I -- it started off discussing the Mifflin
9 Plan and post-Mifflin and then Mr. Rosenbloom
10 moved to this \$30 million fund and you've
11 addressed one million dollars set aside for a
12 modernization program. And I'm just trying to
13 understand how the modernization program you've
14 mentioned relates to everything else you've been
15 talking about in terms of your vision for the
16 reform of the fishery.

17 A Okay. Well, one of the elements of the -- it ties
18 back to the allocation policy and how the area
19 gear shares are set out and currently negotiated
20 on an annual basis. There's also provisions
21 described in the allocation policy of an example
22 for what you might do if licences are bought back
23 and removed from a fleet.

24 As it relates to the Pacific Salmon Treaty
25 Mitigation funding, the funding is -- or a program
26 has been announced by the government for a buy-
27 back of licences from the troll fleet. The
28 department has recognized that doing that may have
29 some impacts on the allocation framework itself
30 and so the part of the program there was
31 specifically to deal with the impacts of the buy-
32 back or the potential impacts of the buy-back on
33 the allocation framework itself.

34 There may be elements of those discussions
35 that are more -- or can be discussed consistent
36 with the vision that's laid out in the Pacific
37 fisheries reform here with providing certainty
38 and stability around the shares and those may also
39 be able to address -- be addressed as part of
40 that.

41 MR. ROSENBLOOM:

42 Q Do you anticipate that some of the problems that
43 you could imagine that my clients speak about and
44 have testified about here would be ironed out in
45 the course of this review?

46 A That would be my expectation as one of the
47 potential outcomes.

1 MR. ROSENBLROOM: Thank you.

2 THE COMMISSIONER: Thank you.

3 MR. ROSENBLROOM: I have further questions but obviously
4 after the break. Thank you.

5 THE COMMISSIONER: Thank you, Mr. Grout. Thank you
6 very much.

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

8

9 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

10 (PROCEEDINGS RECONVENED)

11

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

13 MR. ROSENBLROOM: Thank you very much, Mr. Commissioner.

14

15 CROSS-EXAMINATION BY MR. ROSENBLROOM, continuing:

16

17 Q Mr. Grout, I have a few questions that hopefully
18 go quickly and then I have a few questions that
19 regrettably are pretty complex. Let's try to get
20 the easy ones out of the way first. I'm not sure
21 that this Commission has up to this date had
22 evidence regarding the extent to which DFO own
23 licences within each licence area. And if I am in
24 error about this or Commission counsel stands up
25 and says it's all before the record then,
26 obviously, I'll pass on it. For example, with my
27 clients, Area B, there are a number of B licences
28 and I'm informed, and please confirm this, that 26
29 of the Area B licences are owned by the federal
30 government by the Department of Fisheries. Is
31 that approximately correct?

32 A I'd be willing to agree to approximate numbers. I
33 know the numbers have been changing and there's
34 ongoing buybacks as part of the Pacific Integrated
35 Commercial Fisheries Initiative.

36 Q And I think it's important for the record to have
37 this information provided for all of the areas.
38 And if you don't have it at your fingertips, maybe
39 I could ask that you provide it to Commission
40 counsel and, with agreement, it would go in
41 obviously through Mr. Timberg's agreement.

42 MR. MARTLAND: Let's table that suggestion. We have a
43 witness who will be appearing on commercial
44 licensing. That may be the appropriate venue.

45 I'd suggest we set that aside and we'll speak with
46 counsel about that.

47 MR. ROSENBLROOM: All right.

- 1 Q But you would agree with me that there is a
2 significant ownership by DFO in certain licence
3 areas, not only Area B but for example my client,
4 Area D?
- 5 A The department does own a number of Area D
6 licences.
- 7 Q And then we get into this complex subject and
8 again time is so short and I don't know how to
9 deal with these things. When the Government of
10 Canada owns these licences, and let's focus on
11 Area B, you, the department, DFO, do not require
12 the operator of that licence to fish within Area
13 D? It is transferable, because you are the
14 government, to other areas, including the inland
15 fishery?
- 16 A For the licences that the department has in its
17 inventory, these are primarily from the Allocation
18 Transfer Program and the Pacific Integrated
19 Commercial Fisheries Initiative. The licences can
20 be provided to groups to fish the actual licence
21 and the associated conditions with that.
- 22 Q Yes?
- 23 A For inland demonstration fisheries, we've been
24 using those licences, for example, inland
25 demonstration fisheries in the Fraser, we'd be
26 using the share of Fraser sockeye associated with
27 an Area B licence, for example, to support the
28 shares provided for the inland demonstration
29 fishery. Those inland fisheries would be licensed
30 under the ACFLR, Aboriginal Communal Fisheries
31 Licence Regulations.
- 32 Q Right. So as if we didn't have enough complexity
33 with all the issues today, we have the added
34 complexity that with, for example, Area D
35 licences, some Area D licences are actually
36 utilized or their harvest is utilized in areas
37 other than Area D or Area B?
- 38 A That's correct.
- 39 Q And only the government has, obviously, that
40 luxury or legal right to do so?
- 41 A The department, I think I explained, has been
42 providing licences under the Aboriginal Communal
43 Fisheries Licence Regulations for any shares we're
44 providing in which case when we're doing that, the
45 licences and inventory are not being fished by
46 other groups at the same time.
- 47 Q Right. So there are a number of licences that are

- 1 really in cold storage that are owned by DFO that
2 aren't at this moment having an associated harvest
3 to them?
- 4 A No, I don't think that's entirely correct, the way
5 you've stated that.
- 6 Q Okay.
- 7 A The licences in the DFO inventory have been used
8 to support demonstration fisheries in inland
9 areas. For Fraser sockeye, we've attributed the
10 shares of Fraser sockeye for each of the Area B,
11 D, E and H licences, as the case from last year,
12 to shares for these inland projects. So in
13 essence, we're using the shares from those
14 licences to provide for similar shares in the
15 inland demonstration fisheries.
- 16 Q All right. Thank you. I may be coming back to
17 that in a few minutes. I want to deal with
18 another fairly simple matter, which is Native
19 involvement in the commercial fishery. Now, at
20 the start of your testimony, you did speak to the
21 fact that you felt one of the deficiencies or
22 shortcomings of the PPR for the commercial fishery
23 was that it didn't highlight or profile the
24 commercial Native involvement, correct?
- 25 A Yes, in working towards the integrated fishery,
26 the First Nations are an important component of
27 that.
- 28 Q Right. And I consulted with Commission counsel
29 early this morning about the fact that you were
30 with the understanding that this would be covered
31 later on in the Inquiry; is that correct?
- 32 A Well, I understand there's a First Nations panel
33 coming up later.
- 34 Q Yes. But I understand, if I understood Mr.
35 Martland correctly, that we may not be getting
36 certain evidence that is of interest to me and I
37 want to ask you a series of questions unless Mr.
38 Martland feels, with confidence, that this will
39 come out later. I would like to know if you have
40 information regarding the extent to which First
41 Nations people are participating in the commercial
42 fishery either as licence-holders or as operators,
43 deckhands? What is their involvement in the
44 commercial fishery? And I know you won't have the
45 figures necessary but...
- 46 A I can speak in general terms as to --
- 47 Q That's what I'd like.

- 1 A -- where the involvement is. And in terms of
2 commercial licences, there are First Nations that
3 have A licences, which are the regular commercial
4 licences. There's some of those that may be
5 reduced fee category of those licences. We also
6 have communal F category licences provided to
7 First Nations, as well on a communal basis. We
8 have an N category, which is for the northern
9 Native fishing corporation. These are gillnet
10 licences in Area C, D and E. In terms of other
11 involvement, we have economic opportunity
12 fisheries in the Fraser River with Musqueam and
13 Tsawwassen. The Tsawwassen fishery is part of the
14 treaty agreement or part of our harvest agreement
15 associated with the treaty that provides for
16 commercial access. We also have demonstration
17 fisheries utilizing licences in the department's
18 inventory, as we've just been discussing.
- 19 Q Yes. Can you inform me, even through your
20 counsel, is there a document within the DFO that
21 could be filed to this tribunal so we don't spend
22 a lot of time in hearing but where that document
23 will convey to the Commissioner the extent to
24 which First Nations people are involved in a
25 fishery, either as licence-holders or labouring as
26 operators or labouring as deckhands for other
27 operators? Do you know of such a document?
- 28 A I'm not aware of a specific one that I have off
29 the top of my head. There may be that information
30 that could be pulled together. It might be
31 multiple sources. Certainly, in terms of the
32 licence information for some of the A, F and N
33 licences, we could provide that relatively
34 quickly, I would think. We could probably also
35 provide a summary of the licences the department
36 holds in its inventory.
- 37 Q What about numbers of First Nations people that
38 are not licence-holders but are labouring as
39 operators or deckhands?
- 40 A I'm not aware of the specific information around
41 that.
- 42 MR. ROSENBLOOM: I wondered if I could request of the
43 Commission that the Government of Canada/DFO
44 provide that information to this Commission
45 through a filed document through Mr. Timberg in
46 due course?
- 47 MR. MARTLAND: With respect, Mr. Commissioner, I am

1 concerned that we're doing sort of a document
2 discovery through a witness process. I'm happy to
3 receive requests but I suggest that it may make
4 some sense for us to have that conversation and we
5 can respond to the request that's put forward. We
6 have a witness on licensing insofar as that's the
7 topic and it may be that we can put these things
8 together. I don't have a difficulty with Mr.
9 Rosenbloom asking if there's a particular
10 document. It's not one he's identified or that
11 we've led whether such a document exists. But I
12 think going further and making a request goes
13 beyond what's appropriate. Mr. Timberg was also
14 rising I saw.

15 MR. TIMBERG: Yes, Mr. Commissioner. The ordinary
16 process has been that participants write to
17 Commission counsel for any requests regarding
18 information or documents and the Commission then
19 handles those requests and then works to work with
20 the other participants. So this is a new strategy
21 that Mr. Rosenbloom is employing here asking a
22 witness for DFO to produce documents. In the
23 ordinary course, he would go through the
24 Commission counsel and Commission counsel would
25 handle that. I understand there is going to be an
26 Aboriginal fishing panel for a week or so. That's
27 coming up in May and I, myself, don't have any
28 knowledge about that. I'm not responsible for it.
29 Perhaps Commission counsel could enlighten us as
30 to what's coming but I can't assist in that
31 regard. So I think this may be duplicating
32 efforts that are happening behind the scenes while
33 people are preparing to bring all of the relevant
34 evidence forward.

35 MR. ROSENBLOOM: If I understood Mr. Martland correctly
36 before our morning session, the panel that you
37 speak of, Mr. Timberg, is unlikely to be speaking
38 to the commercial fishery component of First
39 Nations involvement in the fishery and that is why
40 I'm asking these questions and simply why a
41 document -- I don't want to waste a lot of time.
42 If the Commission wants a letter from me making
43 this request, I'm happy to do it that way. I just
44 think the information should be before the
45 Commission. Thank you. If I may move on.

46 Q Am I correct, sir, that you are the DFO chair of
47 the IHPC?

- 1 A Yes, I've had that role for approximately one
2 year. Prior to that, the salmon team lead and Mr.
3 Paul Ryall was chairing that committee.
- 4 Q Yes. And would you agree with me that over your
5 time and what you know of the past, that there
6 really have been only two occasions where there
7 has been a consensus reached at the IHPC and one
8 related to the waiver of licence fees and the
9 other related to assisting certain parties in
10 terms of their participation, cost of
11 participation, harvest committees and then the
12 IHPC?
- 13 A I do recall those. There may have been some
14 others as well. I seem to recall one about Early
15 Stuart sockeye but...
- 16 Q Okay. And you would agree with me that in respect
17 to those two, that both those matters, although
18 consensus was reached, unfortunately reached a
19 cinderblock wall, they never did get implemented
20 because of DFO decisions back east?
- 21 A The Integrated Harvest Planning Committee is
22 providing advice to the department, in that case,
23 in the form of consensus recommendations and then
24 the department responds to those.
- 25 Q Yes, and you're aware that in the particular
26 examples we are speaking of, both the waiver of
27 licence fee during non-fishing seasons and in
28 connection with the question of funding the
29 harvesters at some of these meetings, that there
30 was consensus reached on both occasions but the
31 DFO did not act on either of them. Do you agree
32 with that?
- 33 A Well, in terms of the licence review, we did
34 proceed with a follow-up meeting with the
35 Commercial Salmon Advisory Board. And part of our
36 response in terms of the salmon fishery was that
37 work was ongoing led nationally from Ottawa and a
38 national licence fee review and that any measures,
39 we would be part of that process. And we had a
40 Mr. Robert Elliott, I believe, connect by
41 conference to the Commercial Salmon Advisory Board
42 to discuss some of the directions that are being
43 considered there.
- 44 Q But Mr. Grout, I don't in any way want to be
45 disrespectful to you but is it not correct that on
46 both those occasions where consensus was reached
47 neither case did DFO act upon it and implement

1 what was the consensus decision of the IHPC? Yes
2 or no?

3 A In those two examples, we did not.

4 Q We have been talking over the last few days about
5 selective fishing. Firstly, no mention is ever
6 made of selective fishing initiatives done outside
7 of British Columbia, be it our Atlantic or foreign
8 selective fishing tests. Is there a reason for
9 that? Is it because the specie are so different
10 than when you're carrying out studies here, test
11 fisheries here in B.C., with our Pacific sockeye
12 that there are no equivalents in Norway or
13 Scotland or anywhere else that would be of any
14 assistance? I've not heard any mention of
15 gleaning any information from another
16 jurisdiction.

17 A I'm not an expert on that specific information so
18 that's why I haven't provided it.

19 Q Thank you.

20 MR. TIMBERG: Mr. Commissioner, just to clarify the
21 record, Dr. Hargreaves did speak about work that
22 was happening on selective fishing in the Columbia
23 River and spoke about work that he was doing with
24 them.

25 MR. ROSENBLUM: Thank you.

26 Q When you've been discussing share-based
27 management, I want to focus for a moment, and this
28 gets complex and forgive me if I'm not delivering
29 this question in a way that you're understanding.
30 I want to talk about the transfers up-river on a
31 share-based management concept. Are there not
32 complexities in making a fair calculation for the
33 accounting of the transfers up-river of a licence
34 that DFO owns?

35 A If you're asking if it's complex, I would agree.

36 Q That was the easy answer. Yes, and can you just
37 explain in as simple way as possible why you're
38 faced with that complexity? What is that
39 challenge to you in dealing with that issue?

40 A Well, the department is committed to a fair and
41 open process for providing for those transfers.
42 We don't have the specific framework for how that
43 should occur between all of the existing
44 commercial fisheries and/or inland First Nation
45 fisheries. But that said, we've also wanted to
46 explore demonstrations and inland areas. So we've
47 tried to take an approach where we recognize that

1 those harvest and inland areas should be
2 associated with a share that's been transferred
3 from the commercial fishery, in this case, through
4 one of the department's programs to purchase that
5 licence. We've provided for the licences that are
6 held by the department to be valued on an equal
7 basis in terms of a percentage share. Providing
8 those shares as a percentage of the commercial TAC
9 has been another element.

10 So it's not a fixed entitlement to a number
11 of pieces but it's a percentage reflecting the
12 variations in the total allowable catch. And I
13 think the final piece is looking at what those
14 shares would be worth in more terminal areas where
15 not all of the stocks are present or subsets of
16 the stocks are present compared to marine areas.
17 And so we've provided a framework where we've
18 essentially treated an Area B licence, for
19 example, as a component that includes all of the
20 stocks, Fraser sockeye, that might be harvested in
21 a marine area and we've tried to demonstrate how
22 the shares that we're providing in inland areas
23 are not exceeding the relative shares of those
24 individual stocks in the inland areas when we
25 provide those shares. And we have been working
26 pretty closely with the Fraser River panel,
27 including the Canadian members on that panel to
28 try and explain and show them with facts and
29 figures how that relatively complex accounting can
30 work.

31 Q It's pretty challenging stuff, isn't it?

32 A Certainly there's challenges around explaining how
33 the transfers work. I think there's some
34 acknowledgment that the general rules that we're
35 using to do that are acceptable; they're
36 consistent with some of the direction we've seen
37 from the SCORE Report where there was agreement
38 between the groups.

39 Q But in the course of that process, it can lead to
40 the prejudice of the commercial fleet out in the
41 marine area, can it not?

42 A You'll have to provide a more specific question.

43 Q All right. I'll pass on that. Now, Mr. Eidsvik,
44 I believe, will be asking you more questions in
45 regards to this business of in-river transfer so
46 I'll leave that in his capable hands. Lastly,
47 again something very complex, as I understand it

1 on a selective fishery, you base your enforcement
2 or application of fishery techniques on a formula
3 that is based upon an enumeration. In other
4 words, when it comes to bycatch, you have a model
5 that you apply and you assume that on a certain
6 catch, there will be a certain amount of bycatch,
7 as a portion of the catch that a boat may recover,
8 correct?

9 A To be more specific, I think what you're referring
10 to is some of my testimony regarding how we
11 account for impacts on Interior Fraser coho
12 relative to our 3 percent exploitation objective?

13 Q Yes.

14 A Rather than using a specific catch quantum to do
15 that, we're looking at effort in terms of number
16 of boat days or number of sets or amount of time
17 fishing in the fishery relative to a historical
18 period to try and assess the exploitation on the
19 population.

20 Q Right.

21 A So we're not using catch specifically there.

22 Q Right. So it could be a situation where a boat
23 has, in fact, no bycatch of Interior coho but it
24 will be burdened with the regulations because your
25 model says that historically that would be --
26 there'd be a certain percentage of the bycatch,
27 correct?

28 A Yeah, that's one of the downsides of using that
29 sort of approach.

30 Q Yes. And is it not also a downside if indeed you
31 are not satisfied that there is an accurate stock
32 enumeration that is taking place in connection
33 with such a fishery? In other words, are you
34 comfortable with using models in the context of a
35 stock enumeration that you might not believe is
36 effective?

37 A Well, maybe the way to answer this is when you're
38 using a model you're making a number of
39 assumptions. And to the extent that those
40 assumptions are valid and correct, your model
41 results can be reliable. So to the extent that we
42 haven't had some information for sometime or
43 there's a need to verify components of the model,
44 that can decrease your confidence in the model
45 inputs.

46 Q Yes. And would you agree with me that the current
47 state of affairs, you are not confident with that

Jeff Grout

Cross-exam by Mr. Rosenbloom (GILLFSC)

Cross-exam by Mr. Harvey (TWCTUFA)

1 model, that your enumeration is not effective
2 enough to give you confidence in that model?

3 A Well, you keep referring to enumeration, which,
4 for me, remuneration means accounting of a
5 specific number. So in the coho approach that
6 we're using, we're looking at the effort in
7 fisheries today relative to efforts in the past
8 and associated exploitation rates in that past
9 period. So really what we're using to manage
10 today is the amount of effort compared to that
11 base period. So we're not relying on specific
12 counts, as you've stated, of the number of coho
13 that might be encountered by any individual
14 vessel.

15 Q Could you imagine the system being more
16 effectively managed in terms of bycatch where
17 there'd be more confidence in the figures?

18 A Well, I mean there's different ways you could do
19 it, which would likely entail additional
20 assessment resources. So if you were able to
21 confidently assess, for example, the run size of
22 Interior Fraser coho in a similar fashion to what
23 we do for Fraser sockeye, you might be able to
24 envision a program where you could then calculate
25 what quantum of fish is associated with a 3
26 percent exploitation rate and manage the fishery
27 on that basis. That's the information that's
28 currently lacking, though. We don't have the
29 information currently to do that.

30 Q Precisely. And that would cost money, wouldn't
31 it?

32 A That's correct.

33 MR. ROSENBLOOM: Thank you. No further questions.

34 MR. MARTLAND: Mr. Commissioner, in terms of the
35 sequence of examination, by agreement, Mr. Harvey
36 and Mr. Eidsvik have switched order so Mr. Harvey
37 will be next, please.

38 MR. HARVEY: Yes. Mr. Grout, Chris Harvey for the Area
39 G Association and the United Fishermen and Allied
40 Workers' Union.

41
42 CROSS-EXAMINATION BY MR. HARVEY:

43
44 Q I would like to cover two areas with you.
45 Firstly, the effectiveness of consultation. And
46 what I will be addressing there is the widespread
47 perception amongst fishermen that responsibility

1 is downloaded without the decision-making power
2 being downloaded and that results in an
3 ineffective situation. The second point I wish to
4 cover with you relates to ITQs and I'll start with
5 that one. The impression I receive from your
6 evidence is that DFO is on a mission to
7 effectively force ITQs on the industry in spite of
8 obvious adverse socioeconomic impacts. First of
9 all, I think you have agreed as much as to say
10 that it is the DFO policy to move towards ITQs
11 throughout the industry?
12 A No, I wouldn't say that's accurate. I'd say as
13 part of the vision for Pacific Fisheries Reform,
14 we're looking at share-based management as one of
15 the directions that can go. We're looking
16 currently with implementing that direction with
17 willing fleets and exploring it through
18 demonstrations. ITQs are one of the potential
19 options that might be explored down that
20 particular path.
21 Q You refer to the traditional style of fishery as a
22 derby fishery; is that correct?
23 A Yes.
24 Q That expression, is that taken from the use of the
25 word "derby" in the context of a sports fishing
26 derby?
27 A I'm not entirely sure of the origin of the word or
28 the use in this context.
29 Q It's not a traditional word used in fisheries
30 management, is it?
31 A I've heard it used regularly.
32 Q All right. A sports fishing derby is where a
33 number of boats go out, small boats sports fishing
34 and the winner is the fisherman who catches the
35 largest fish. That's what you understand a sports
36 fishing derby to be?
37 A In some cases. I understand they can have prizes
38 for different categories of fish that might be
39 caught.
40 Q Sports fishing derbies, or all sports fishing for
41 chinook and coho at any rate, are based on
42 individual quotas, are they not?
43 A In the recreational fishery, there are
44 regulations, which restrict how many fish may be
45 harvested. In the case of chinook would be two
46 per day usually.
47 Q Two per day. And that individual quota of two per

1 day gives rise to a well-known incentive to high
2 grade? In other words, temptation on the
3 fishermen to throw away the small ones and keep
4 the big ones?
5 A Can you rephrase your question?
6 Q Well, I mean, is it well-known that there's a risk
7 in a quota such as that, which is often referred
8 to as high-grading. In other words, discarding
9 the smaller fish or less desirable fish and
10 keeping the more desirable fish.
11 A If you're asking me if I would identify that as a
12 potential concern, yes, that's something that's
13 been raised.
14 Q Yes. And that concern is also raised with respect
15 to ITQs in commercial fisheries, correct?
16 A I've heard that raised as a potential concern,
17 yes.
18 Q Yes. And the department meets that by requiring
19 electronic monitoring in some areas and the other
20 surveillance mechanisms that you've described such
21 as on-vessel monitors or shore-based monitors,
22 correct?
23 A In the salmon fishery, the use of electronic
24 monitoring is not widespread. That's more of a
25 tool that's used in the groundfish fishery. Our
26 service providers do validation of the catches
27 when they're landed.
28 Q What I've found somewhat extraordinary and I
29 invite you to comment on it, looking through the
30 documents that have been produced, is that there's
31 no, at least I wasn't able to find any, reliable
32 socioeconomic analysis of the effects of an ITQ
33 system in the commercial fishery. Now, I know
34 you've referred to the American study, Exhibit
35 481.
36 MR. HARVEY: And perhaps we could just have that
37 brought up for a moment.
38 A Excuse me, Mr. Harvey, which tab was that, please?
39 Q I don't think I've got a note of the tab number.
40 It's the document entitled "Sustaining America's
41 Fisheries and Fishing Communities". It was the
42 document that was first referred to this morning.
43 MR. HARVEY: Mr. Lunn, could we bring up 481 on the
44 screen?
45 MR. LUNN: Certainly.
46 MR. HARVEY: Thank you.
47 Q Now, the first clue I'd suggest that that's got

1 very little to do with the B.C. Fishery is that
2 that's not a B.C. fishing boat on the cover, is
3 it?
4 A I don't know where the origin of that boat is
5 from.
6 Q Well, you don't see boats like that on the B.C.
7 coast, do you?
8 A Not usually, no.
9 Q No. And turning over the page, it appears this
10 analysis was written by Lawrence J. White, who's
11 mentioned there, New York University, Deputy Chair
12 of Sterns Economic Department, et cetera. You'd
13 agree with me that this is a U.S. study?
14 A Yes, that's the contributing partners.
15 Q And it starts off the next page or two pages, "An
16 Executive Summary Dealing with the Current State
17 of America's Fisheries". Now, this document
18 doesn't clearly indicate what the comparator is
19 for ITQs, does it?
20 A Well, in this case, they were looking at
21 comparisons of these fisheries before and after
22 implementation of a share-based approach.
23 Q And we know very little about the fisheries before
24 because they are American fisheries and in some
25 cases New Zealand fisheries that are discussed in
26 this document.
27 A Yeah, there is the British Columbia Groundfish
28 Troll Individual Vessel Quota Program referred to
29 as well.
30 Q Do you consider that to be a reliable assessment
31 of that program?
32 A I'm certainly not an expert on the assessment of
33 the groundfish program.
34 Q All right. Is there a reason why the DFO has not
35 done its own study of socioeconomic impacts of
36 ITQs?
37 A In terms of the demonstration fisheries we've done
38 for salmon, we've tried to include elements of
39 that in some of the subsequent reviews of those
40 demonstration projects that have been done.
41 Q I'm talking about a long-term analysis. Perhaps
42 I'll ask you to look at a document. Have you got
43 the province's book of documents there in front of
44 you, Tab 10, yes, which is on the screen now?
45 It's entitled "Pacific Commercial Fishing Fleet
46 Financial Profiles for 2007" prepared for
47 Fisheries and Oceans by Stuart Nelson of Nelson

1 Brothers Fisheries. I'd like to ask you to look
2 at page 50, which has a section dealing with ITQs
3 - they're called IVQs in this document - in the
4 halibut fishery. Now, that's a fishery that's had
5 individual transferable quotas for in excess of 15
6 years, I think; is that correct?

7 A I couldn't speak to how long the program's been in
8 place in that fishery.

9 Q All right. And some of the implications in
10 socioeconomic terms are set out, for example,
11 under "Licensing Profile" on this page, the
12 document states that:

13
14 A key feature of the halibut fleet is
15 rationalization that has occurred since
16 implementation of the IVQ system. While there
17 are 428 licences issued (including 396 L and
18 32 FL), only 181 vessels recorded landings
19 during 2007.
20

21 Now, that's an indication, is it not, of the
22 reduction in vessels and the reduction in
23 employment that has resulted from the ITQ system
24 in this fishery?

25 A I don't think I would draw that conclusion. We've
26 seen in the salmon fishery that in any given year
27 a large number of the vessels in each of the
28 salmon fleets may also not record any landings.
29 So you can see this phenomenon in both IVQ
30 fisheries, as in this case you've brought my
31 attention here to, but you also see it in the
32 salmon fleets that are competitive fisheries where
33 we're not putting individual limits on harvest in
34 place.

35 Q Yes, but the salmon fleets that are on a
36 competitive basis, the inactive licences in those
37 fleets are not deriving any income, are they?

38 A Well, in salmon, there may be cases where they may
39 not be deriving income from a salmon licence but
40 there's also other licences that can be held on
41 those vessels that they may derive their income
42 from as well.

43 Q Yes, but my point is, and perhaps it's made in
44 this document, well, let me put it this way. My
45 point is that the inactive halibut licences under
46 this quote regime would be deriving income from
47 the halibut fishery even though there's no

1 participation in the fishery because they'd be
2 leasing their quotas to active fishing vessels.

3 A You're making an assumption, which I don't have
4 any evidence in front of me to speak to.

5 Q Well, you see that's the problem I have with your
6 evidence is that it seems to be based on a lack of
7 evidence and a lack of data. If you look through
8 this, and I'll just touch upon some of the
9 elements, at page 52, just above the heading
10 "Financial Profiles", there are two bullet points.
11 The second bullet point there reads:
12

13 Within the active L fleet (168 out of 396
14 vessels) landings are highly skewed, with the
15 top 33% of vessels harvesting 59% of the fish
16 and the bottom 33% landing only 10%.
17 underlying this landings pattern is the
18 acquisition of quota by these vessels, either
19 via purchase or through annual or long term
20 leases. Quota acquisition brings a financial
21 burden (examples are shown in the following
22 section).
23

24 Would you agree with that?

25 A I would agree that that statement is consistent
26 with my understanding of what can happen.

27 Q Yes. And then further down the page under
28 "Financial Profiles", the fourth bullet point
29 there reads that:
30

31 30% of the halibut landed by each vessel is
32 assumed to be leased fish, for which a fee of
33 \$3.00 per pound was paid. Other groundfish is
34 leased in the same...
35

36 And then it mentions in the bullet point:
37

38 Crews receive 40% of the net value of the
39 catch (after variable expenses are deducted).
40

41 That would be after the lease expenses are
42 deducted as well. Is that as you would understand
43 it?

44 A Again, you're asking me to verify specific
45 evidence being provided by Mr. Nelson here. I
46 can't confirm or report otherwise on what he's
47 reported here.

- 1 Q But is this not a typical pattern of what happens
2 after ITQ systems run for a number of years, that
3 a number of vessels is run down, the cost for the
4 active vessels increases because they've got a
5 significant quota leasing cost and the income to
6 the crews is significantly diminished? Is that
7 not the inevitable consequence of an ITQ system?
8 A I think you've asked a number of points there.
9 Could you maybe just do them one at a time for me?
10 Q All right. I'll take them point-by-point. And
11 I'm asking, are these not the inevitable
12 consequences of an ITQ system? First, a
13 significant reduction in the number of active
14 vessels?
15 A Well, I wouldn't necessarily agree with the term
16 "significant" but you tend to see or you can see a
17 reduction in the number of vessels that are
18 fishing potentially.
19 Q Yes. And a related reduction in the employment?
20 A I would characterize it as changes in the
21 employment. If you're comparing it to a
22 competitive fishery where you have to go out as a
23 licence-holder to access fish, you're going to
24 need crew. Those openings tend to be shorter.
25 And in an ITQ-style arrangement, the employment
26 for the boats that are going out, tends to be for
27 longer openings. If you're asking for the net
28 change, I think it can vary with the example of
29 the various fisheries.
30 Q Does the DFO not have any analysis, any statistics
31 relating to the loss of employment consequent upon
32 ITQ systems?
33 A Your question is broadly for any fishery?
34 Q Yes.
35 A There may be such documents. Off the top of my
36 head --
37 Q Okay.
38 A -- can't provide you one at this point.
39 Q Is another one of the inevitable consequences that
40 there's a centralization or consolidation of the
41 fishery to the disadvantage of coastal
42 communities?
43 A On the information I've seen, it's been hard to
44 predict specifically which communities will be
45 more affected than others.
46 Q Is another inevitable consequence that the income
47 of the crew of the vessels is reduced because the

1 lease costs are paid out first before the crew
2 receive anything?

3 A I don't have specific figures I can give you to
4 answer that question.

5 THE COURT: Mr. Harvey, would this be a good point to
6 take a break?

7 MR. HARVEY: Oh, yes.

8 THE CLERK: The hearing is now adjourned until 2:00
9 p.m.

10 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

11 (PROCEEDINGS RECONVENED)

12
13
14 MR. HARVEY: Mr. Lunn, I wonder if we could have the
15 document back up on the screen, Financial Profiles
16 for 2007. Yes.

17
18 CROSS-EXAMINATION BY MR. HARVEY, continuing:

19
20 Q Mr. Grout, I think we were at page 53 of this
21 document. This page begins an analysis of top
22 productions here in the halibut fishery and then
23 it goes on to middle production tier and lower
24 tier. I'm just going to deal with the first and
25 the last.

26 Under the top production tier, do you see the
27 individual vessel profile set out the landings in
28 pounds, 90,000. Other groundfish total, vessel
29 prices, et cetera. Gross revenue is set out and
30 then there are a number of expenses set out:
31 fuel, \$11,250; at-sea monitoring, \$7,000; offload
32 monitor, 2,000; license, 15,000; and then quota
33 lease, 82,944. Do you see that's by far and away
34 the largest expense that's borne by halibut
35 vessels as a result of the ITQ system?

36 A Yes, I do see that.

37 Q And that's, to put that in proportion, 82,944 for
38 the quota lease. If you go down a little bit
39 more, under "Net Revenue", the crew and captain's
40 shares are listed there at 139,230. So the quota
41 leasing charge would be what the owner of the ITQ
42 receives effectively for signing a document,
43 leasing out his quota. Is that as you understand
44 it?

45 A I presume so.

46 Q And the 139,000 is what the crew and the captain
47 make for a lot of hard work out on the fishing

1 grounds. Is that as you understand this analysis?
2 A I'm sorry, what was that question?
3 Q 139,000, that figure under "Crew and Captain
4 Shares" is the income earned for active
5 participation, a lot of hard work and exercise of
6 skill, judgment, et cetera, correct?
7 A It appears the amount on that row is as you've
8 stated.
9 Q Then two pages over, we see the profile for the
10 bottom production tier. These would be the
11 smaller vessels. May well be the type of vessels
12 found on the west coast of Vancouver Island and
13 other remote communities. But here we have the
14 landings, et cetera. The quota lease charge here
15 under this profile is 13,824, and the crew and
16 captain share is 21,000. The various vessel
17 expenses have to come off that, and the earnings
18 right at the bottom - that's earnings before tax
19 and depreciation - 13,433.
20 So the actual earnings of the active
21 fishermen in the bottom tier are less than the
22 armchair fishermen owning the quota and leasing it
23 out. Do you see that?
24 A No, I don't see that. You'll have to point that
25 out to me.
26 Q Sorry, the quota leasing charge, 13,824. Do you
27 have that?
28 A Yes, I see that.
29 Q And then follow down that column right to the very
30 bottom, "Earnings EBITDA" which I believe is
31 "earnings before taxes and depreciation", 13,433.
32 A The comparison you're asking me, you'd want to
33 look at the analysis of the individuals that did
34 not fish and leased out their quota, and compare
35 that, a similar table as this one, to the
36 individuals that do that to make the comparison.
37 I would not make that comparison by looking at the
38 earnings relative to the leases here. There would
39 be other expenses associated with the individuals
40 leasing out their quotas that you'd need to
41 account for in making the comparison you're asking
42 about.
43 Q Well, there can't be very much in the way of
44 expense in holding a piece of paper evidencing a
45 quota, is there?
46 A Well, you'd have licence fees associated with the
47 halibut licence. I presume they might have some

1 fees related to insurance. I'm not sure about
2 moorage or any of those other items. I don't have
3 that specific information. All I'm pointing out
4 is if you want to make that comparison, you'd want
5 to see that laid out in a similar table.
6 Q Okay. And you haven't seen that laid out in a
7 similar table, I gather; is that correct?
8 A No, I have not.
9 Q And that's been the case ever since you began to
10 recommend use of ITQs; is that correct?
11 A I'm not clear which question you're asking me.
12 Q Well, your recommendation or your comments
13 relating to the advantages of ITQs that you've
14 given evidence of here are made in the context
15 that you have not looked at a socioeconomic
16 analysis of the effect of ITQs.
17 A Well, your questions have been directed to the
18 halibut fishery. We do have information on the
19 demonstration fisheries we've done for salmon.
20 It's not in the level of detail that's shown here
21 for the halibut fishery, but there is information
22 that we have, to the extent that we're able to get
23 it, for some of the demonstration projects that
24 were reviewed and some of those exhibits are in
25 evidence, including the Gardner Pinfold review in
26 2008 and the Gislason study of the 2006 troll
27 demonstration.
28 Q But the demonstration fisheries do not carry a
29 price for quota with them, do they? In the sense
30 that the quota isn't auctioned to those
31 participating in the demonstration. It's simply
32 given to them, isn't it?
33 A In the demonstration fisheries, all of the licence
34 holders are provided an equal share of the TAC in
35 the demonstrations we've done.
36 Q Yes.
37 A So each licence is provided an equal fractional
38 share. So if we look at the seine fleet, for
39 example, with 169 licences, everyone's given 1
40 over 169, 1/169th.
41 Q Yes.
42 A In terms of the arrangements that might be made in
43 terms of moving shares between vessels, those are
44 -- the Department is responsible for the
45 reallocations that are made and the paperwork
46 associated with that. The business part of that
47 transaction is done among the licence holders.

1 Q Yes.

2 A In the reports I cite, where individuals have been
3 interviewed, there's information that's not laid
4 out in the sort of analysis that Mr. Nelson has
5 done herewith the halibut fishery, but there are
6 examples of, for example, prices that have been
7 paid to lease quota from other vessels in those
8 demonstrations that are documented in those
9 reports.

10 Q Yes. All right. Is it fair to say that first --
11 well, let me put it this way: You're familiar
12 with the expression "first generation" and
13 "subsequent generation" quota holders in the sense
14 of first generation being those who are granted
15 quota, and subsequent generations those who have
16 to buy it from the first generation quota-holders?

17 A Yes, I am.

18 Q The first generation quota holders basically
19 receive a windfall economic gain through receiving
20 quota basically free; is that fair to say?

21 A Well, I can say that the initial allocation of
22 quota has been contentious in a number of
23 fisheries and there's been different arrangements
24 put in place in terms of how those initial
25 allocations might be granted. In terms of the
26 salmon demonstrations we've done, we've had
27 agreement from the fleets that we've worked with
28 that it should be on an equal basis among the
29 licence holders.

30 Q Equal basis, yes, but not sold to the licence
31 holders. It's given free by the Department.

32 A The Department, in licensing these demonstration
33 fisheries is providing a share of the TAC for the
34 year in the conditions of the licence.

35 Q Yes.

36 A In a competitive fishery where there is not an ITQ
37 being planned, the same licence is providing for
38 an unlimited share of the species in question when
39 the fishery is opened.

40 Q Yes, all right.

41 A In both cases, the licences are a privilege that
42 allows the licence holder to access the resource
43 for the year bounded by the dates and the licence
44 conditions.

45 Q Okay. Well, I'm not going to ask the question a
46 third time in the interest of time.

47 While we're on this report, I think it may be

1 useful to go back to page 34. There's a section
2 on the salmon troll sector. I'm just more or less
3 noting that this exists here. You see this is
4 page 34 up on the screen. The second paragraph
5 reads:
6

7 In the troll fishery vessels range between
8 35-50' and are generally crewed by 2-3
9 persons.

10
11 That's correct as far as you're aware; is that
12 right?

13 A Yes. I think the employment can vary, but --

14 Q Yes.

15 A -- generally accurate.

16 Q And the next page, or page 36, please, Mr. Lunn.
17 The second bullet point on that page reads:

18
19 The ITQ program in the north (Area F) allows
20 vessels to lease chinook allocations,
21 obviating the need for those fishermen "on
22 the fence" to go fishing in order to earn
23 income.
24

25 That's correct as far as you're aware?

26 A I'm not sure entirely what's meant by the second
27 half of that sentence, but the iTQ program allows
28 for reallocations of chinook to occur and
29 arrangements for leases could be made between
30 licence holders.

31 Q While we're there, you see the reference in the
32 next bullet point:
33

34 The winter chinook fishery in Area G
35 featuring small surpluses during poor weather
36 months, is unattractive to many vessels not
37 based in the west coast of Vancouver Island.
38

39 That's a reference to the fact that the Area G
40 fishery has been structured in a way that the
41 annual TAC is divided up into periodic allotments
42 so that the fishery continues throughout the
43 winter; is that correct?

44 A That is correct. Small amounts of the harvest
45 have occurred in the Area G fishery in the winter.
46 The majority occurs in the spring months and late
47 summer.

1 Q Yeah, yeah. But Area G is nevertheless a
2 competitive fishery.

3 A That's correct.

4 Q And the Area G Harvest Committee is overwhelmingly
5 in favour of continuing it as a competitive
6 fishery; is that correct?

7 A That's been the indications we've received from
8 the Harvest Committee, yes.

9 Q On the next page, Mr. Lunn, it's the final
10 reference I'll make. The third bullet point under
11 "Key Assumptions" reads:

12
13 A quota lease charge of \$5,000 is assumed for
14 all scenarios. This reflects the Area F
15 fishery, where vessels may lease chinook on
16 or off at a rate of about \$20 per fish.

17
18 So that -- is that about the going rate in the
19 market for quota leasing as you understand it?

20 A There is the specific reference to the lease rate
21 at least in the 2008 fishery for Area F that's at
22 my Tab 37, which is the Gardner Pinfold report,
23 and on page 15 in that report, it cites a cost for
24 -- a quota cost of about \$22 per fish.

25 Q Yes. All right. So that is the cost that the
26 person utilizing the quota has to pay to the
27 person not participating but leasing out the
28 quota; is that right?

29 A The way you've characterized that question
30 presumes that the person leasing the quota is not
31 fishing. It's possible the person may have fished
32 part of their quota so --

33 Q All right.

34 A -- it's not a given that somebody has to lease
35 their entire quota. They could lease parts of it.

36 Q Okay. In the Area G fishery at present there are
37 100 -- well, let me ask you this first about
38 trolling itself. You said that ITQs slow down the
39 fishery. Now, trolling occurs with these vessels
40 putting down their trolling poles at about a 45-
41 degree angle on each side of the vessel, moving
42 slowly through the water dragging lines with hooks
43 and lures; is that -- that's how it works?

44 A That's correct.

45 Q They move fairly slowly through the water?

46 A Sure, yes.

47 Q When a fish is caught, the hook has to be brought

1 in right away because --

2 MR. MARTLAND: I know it sounds like I may be objecting
3 to that and I'm not. But I just want to point out
4 I don't think this document's been entered as an
5 exhibit.

6 MR. HARVEY: Oh, I'm sorry.

7 MR. MARTLAND: And it's been referred to extensively.
8 I'd suggest it should be made an exhibit.

9 MR. HARVEY: Yeah, I agree with that. Thank you

10 THE REGISTRAR: Exhibit 483.

11
12 EXHIBIT 483: Pacific Commercial Fishing
13 Fleet-Financial Profiles for 2007, Feb 25th
14 2009 [Prepared by Nelson Bros for DFO] -
15 NonRT
16

17 MR. HARVEY:

18 Q When a troller catches a chinook or coho on a
19 barbless hook, it has to be brought in right away
20 and dealt with or else it gets off the hook,
21 obviously.

22 A That's correct.

23 Q That type of fishing is not slowed down by an ITQ
24 program, is it?

25 A Well, in our demonstration fishery reports, we do
26 have some evidence that the nature of even troll
27 fishing can change. In a competitive fishery, for
28 example, for sockeye, in the reports - and I might
29 refer to the 2006 report that was done by Gord
30 Gislason in June of 2007, it's at my Tab number 40
31 - he talks about the potential for trolling in a
32 competitive fishery, to be bringing fish in
33 quickly, you're trying to maximize the number of
34 fish you catch when you're out there.

35 Conversely, if you're working to a specified
36 share of the catch, there might be opportunities
37 for you to increase the value of those fish you're
38 catching by doing some additional dressing of the
39 fish or improved handling of those. I believe
40 it's that report that cites an example of that.

41 MR. TIMBERG: And just for the record, that's Exhibit
42 467.

43 MR. HARVEY:

44 Q Do you happen to know Mr. Gislason's experience
45 with trolling?

46 A Mr. Gislason is, I believe, an economist.

47 Q Yeah. Thank you. The Area G fishery is

1 structured with 165 licences; is that correct?
2 A Yes.
3 Q 63 have been inactive in the past two years; is
4 that correct?
5 A Is there a specific spot you can point me to for
6 that statement?
7 Q Well, I'm -- I think I'm referring to your
8 affidavit in the Area G litigation over the
9 mitigation fund. Do you not recall that?
10 A Well, it sounds like it may be approximately
11 correct. I've seen a lot of documents in the last
12 while so --
13 Q All right. Well, that's all --
14 A -- that's why I asked.
15 Q That's all I needed is an approximation. Of the
16 63 inactive, 14 are DFO inventory licences bought
17 back under either the ATP or the PICFI program for
18 transfer to First Nations?
19 A Sorry, you're asking if there's 14 Area G licences
20 in inventory?
21 Q Or something like that.
22 A I can't speak to the specific number from memory.
23 Q All right.
24 A I prefer to refer to it.
25 Q The Nuu-chal-nulth have requested those licences
26 repeatedly but have not been granted them. Are
27 you aware of that, or should I direct those
28 questions to a licensing person?
29 A I've not been working directly with Nuu-chal-
30 nulth.
31 Q All right. But the structure -- if an ITQ program
32 were put into effect, the 63 inactive licences
33 would receive a share of the TAC as an ITQ, would
34 they not?
35 A In the demonstration fisheries that we've been
36 doing in the other fleets, in the demonstrations
37 to date, we have provided an equal share to all of
38 the licence holders.
39 Q Yes. So if they chose to remain inactive, as they
40 may well do, they would lease their quota to the
41 active fishermen.
42 A Now, I made the point at the time, but maybe I'll
43 make it here as well. The inactivity of some of
44 those licence holders may differ from year to
45 year, so individual licence holders may be making
46 decisions on an annual basis on whether they go
47 out and fish or not. So the statistics you're

1 referring to that I provided elsewhere were
2 summary statistics and they may not be the same
3 vessels from year to year that are making
4 decisions on whether to fish or not.

5 In a competitive fishery, every licence has
6 an eligibility that -- and they can make a
7 decision on whether they participate in the
8 opening or not.

9 Q Is the philosophical divide that you mentioned
10 frequently a divide between inactive licence
11 holders who would like to have some income,
12 notwithstanding their inactivity, and those who
13 are active and would prefer not to bear the
14 expense of leasing quota.

15 A I'm not sure if I have information that I can
16 characterize the opinions and ascribe them to
17 whether the licence holders may be active or not.
18 I think certainly for active fishermen in
19 competitive fisheries currently, some of those
20 fishermen may be good competitors, and one of the
21 concerns that's been raised is if they're fishing
22 to a share, they wouldn't be able to use their
23 skill to catch more fish than others.

24 Q All right. On the subject of socioeconomic
25 analyses, I asked my junior yesterday to key in
26 "socioeconomic analysis" and "ITQ" in the ringtail
27 database for this Commission, and the only
28 document which came up when he did that was a
29 document which I emailed around this morning and
30 I'd ask Mr. Lunn to bring it up. It's a document
31 entitled "Socioeconomics of Individual
32 Transferable Quotas."

33 MR. TIMBERG: Mr. Commissioner, I have not seen this
34 document yet. If I could have a moment?

35 MR. MARTLAND: I think that's appropriate that Mr.
36 Timberg have the time to look at it. It was
37 circulated as soon as we've received it, and I
38 haven't yet canvassed with counsel for Canada
39 whether they have a difficulty with this matter
40 being presented to the witness.

41 I don't know if Mr. Harvey is able to dance
42 around that and cover other ground. Thank you.

43 MR. HARVEY: I'll dance around it. Thank you.

44 Q I'd like to ask, Mr. Grout, if you've -- do you
45 have a binder there with the Area G documents in
46 it?

47 A Yes, I do.

1 Q I'd like to just refer you to and mark some
2 documents in this line. First of all, at Tab 8, a
3 document by Ecotrust. Now, this -- I'm assuming
4 Mr. Harrison will not mind me using a document
5 produced by one of his clients. Ecotrust have
6 done an analysis here of the effect on ITQs, and
7 it begins by stating, under the graph:

8
9 Individual transferable quotas (ITPs) are
10 being promoted as a panacea for global
11 fisheries. However, analysis of B.C.
12 fisheries raises serious questions about this
13 new economic approach.
14

15 It then deals with a number of things. I think in
16 the interest of time, I'll not be able to deal
17 with them in any more -- anymore than simply
18 skipping through. This is an analysis, though,
19 which uses B.C. as a case study.

20 Are you aware of this analysis, Mr. Grout, or
21 were you aware of it before it was produced?

22 A No, I saw it for the first time when I received
23 the exhibits.

24 Q All right. Well, I'll just skip through the
25 headings. On the third page, there's what is
26 called "Lesson 1: ITQs promote leasing, not
27 ownership." It states:

28
29 It is often stated that ITQs provide
30 fishermen with "a secure asset which confers
31 stewardship incentives"...By owning a
32 financial stake in the fishing quota,
33 fishermen have an incentive to maintain the
34 value of the secure asset through responsible
35 fishing practices. That's the theory.
36

37 In reality, ITQs have not promoted ownership
38 by active fishermen in BC. Rather, ITQs have
39 promoted absentee ownership and quota
40 leasing. Once vessel owners are gifted their
41 initial quota, many subsequently retire or
42 cease to be active fishermen. Instead of
43 fishing, these "armchair fishermen" earn
44 income from the proceeds of quota lease fees.
45 By way of example, the pilot ITQ fishery in
46 northern chinook salmon, almost half the
47 quota was leased from 2005 to 2007. Unlike

1 several other jurisdictions such as Alaska
2 and Atlantic Canada, there are no owner-
3 operator rules in BC restricting or even
4 regulating the ownership leasing...
5

6 Et cetera.

7 And it mentions the halibut fishery. In the
8 paragraph dealing with the halibut fishery, it
9 says that:

10 In 1993, 19 percent of the quota was
11 temporarily transferred from one vessel to
12 another during the year. (Fishermen lease
13 quota by temporarily transferring the
14 ownership of quota). By 2008, the ratio
15 skyrocketed to 106 percent of the TAC,
16 evidence of high levels of leasing. Today,
17 lease fees are effectively charged on almost
18 every pound of halibut quota in B.C.
19
20

21 I think it makes the point somewhere here that
22 that makes the B.C. industry less competitive
23 internationally.

24 On the next page, yeah, high cost of leasing.
25 If we just go down, a paragraph there beginning:

26 However, by far the greatest volume of
27 leasing is motivated by lucrative quota lease
28 fees. In some cases, processors even lease
29 and then sublease quota, passing all the
30 costs to fishermen. Working fishermen are
31 increasingly becoming "tenants" who pay
32 exorbitant rents to landlords or "sealords"
33 who own the quota. The lucrative leasing
34 has, in turn, driven up the price of
35 purchasing quota making ownership
36 prohibitively expensive for many fishermen.
37
38

39 That I take it is something you did not
40 consider when you were giving your evidence about
41 the benefits of ITQs?

42 A I think that's one of the important considerations
43 in terms of how ITQs are designed.

44 Q All right.

45 A ITQs are intended to reduce the number of vessels
46 that are out trying to access the fish.

47 Q Yes.

1 A So by nature, there are a reduced number in most
2 of these cases of vessels going out to harvest the
3 resource. Overall, in terms of cost to the
4 fishery as a whole, when you have reduced vessels
5 chasing the same number of fish, it makes for a
6 fishery that's more efficient.

7 But the points you're raising about the costs
8 of leasing quota are some of the important
9 considerations in how the systems are designed.

10 Q Yes.

11 A But that's one of the understood outcomes of the
12 shift to more of a share-based management
13 approach.

14 Q Yes. Is the fact that the number of vessels is
15 reduced through ITQs, is that something that makes
16 the management by your Department easier?

17 A Well, we have seen, to use a specific example, in
18 2010, and unfortunately I don't think I can
19 provide specific information in terms of an
20 exhibit, but in the seine fishery where we have
21 169 vessels, when the fishery was open, we saw
22 much -- far fewer than the full fleet going out on
23 any given day. In the reports I've seen this
24 summer, it was usually in the neighbourhood of
25 about 30 vessels out at any given time.

26 Q Yeah. So is the ease created by ITQ something
27 that -- does that account for why the Department
28 appears to be pushing ITQs on the industry?

29 A I think there's a number of challenges around the
30 management and implementation of share-based
31 approaches. It certainly gives the Department
32 greater certainty that harvest targets will be
33 achieved in a more precise way. The fisheries
34 have been open longer, though. There's
35 requirements for the Department to help manage
36 reallocations around quota. We've also had to be
37 involved in the monitoring and compliance from the
38 enforcement perspective, so there are different
39 costs, I guess, associated with the management of
40 these fisheries.

41 Q All right. All right. Well, I just don't have
42 the time to take you on, on every point. I'll
43 just -- if we go through this document to Lesson
44 2, they just mention:

45
46 ITQs give fishermen a false sense of
47 security.

1 Lesson 3:

2
3 ITQs facilitate privatization.

4
5 Lesson 4:

6
7 ITQs increase capitalization.

8
9 MR. HARVEY: And this, Mr. Lunn, if we could just look
10 at this page.

11 Q The box on the left indicates the relevant costs,
12 the capital that's devoted to licences and quotas
13 in green, and vessel and equipment in blue, giving
14 an idea of the capital intensivity of this system
15 of management.

16 The next page, the Lesson number 5:

17
18 Quota leasing hurts the financial performance
19 of working fishermen.

20
21 I think we've dealt with that. Lesson 6:

22
23 ITQs don't enhance sound science and
24 monitoring.

25
26 They mention high grading problems and other
27 things that go with ITQs. Lesson 7:

28
29 ITQs have safety problems of their own.

30
31 Which is interesting.

32 The top paragraph on that page there beside
33 the graph -- I'm sorry, the page beside the graph
34 reads:

35
36 More seriously, the high cost of buying and
37 leasing ITQs bleeds income away from working
38 fishermen causing boats to go out with
39 inexperienced or insufficient crewmen which
40 can lead to accidents. At a 2007 FishSafe
41 B.C. workshop, "quota fisheries issues" and
42 too few crew on vessels were identified as
43 two weaknesses among many that need to be
44 addressed to improve fish safety.

45
46 Then finally at the bottom of that page, the 8th
47 lesson, Lesson 8:

1 Sound science and co-management underpin
2 fisheries sustainability.
3

4 It makes the point that ITQs cannot prevent over-
5 fishing, et cetera.

6 As I say, I can't deal with all that, but I
7 take it that this is material that you had not --
8 I think you've said this -- you were not
9 previously aware of?

10 A That's correct.

11 MR. HARVEY: Could this be marked, please, as the next
12 exhibit?

13 THE REGISTRAR: Exhibit 484.

14
15 EXHIBIT 484: Briefing - A Cautionary Tale
16 About ITQ Fisheries, 2009, Ecotrust Canada
17

18 MR. HARVEY: So we can mark it.

19 Q If we go back to Tab 4, there's another document
20 entitled "Marine Policy, The Elephant in the Room:
21 The Hidden Costs of Leasing Individual
22 Transferable Fishing Quotas." This also is a
23 local study, in the sense of a B.C. study. I
24 think it's by a person from Simon Fraser
25 University, and it deals with similar problems
26 associated with ITQs. Were you aware of this
27 document, Mr. Grout?

28 A I had a look at it when I saw it in the exhibits
29 provided.

30 Q That was the first time you looked at it; is that
31 right?

32 A That's correct.

33 MR. HARVEY: Could that be marked, please, as the next
34 exhibit?

35 THE REGISTRAR: Exhibit 485.

36
37 EXHIBIT 485: Pinkerton and Edwards, The
38 Elephant in the Room - The Hidden Costs of
39 Leasing Individual Transferable Fishing
40 Quotas, February 2009
41

42 MR. HARVEY:

43 Q Now, I just want to close off by dealing with
44 something about -- say something about
45 consultation. The Exhibit 267 is a document
46 entitled "Framework for Improved Decision-Making".
47 It's also in our binder at Tab 3. This has been

1 referred to before, of course, as it's exhibited.

2 I note that the -- on page 4, there's a
3 reference to the Auditor General having noted that
4 the Department needed to improve processes for
5 consulting with the province and stakeholders and
6 communities. That's the second paragraph to the
7 bottom. Towards the end of this paper, there's a
8 reference to a pilot project - this is at page 20
9 - a pilot consultation project set up -- it's page
10 20 of the document. You'll see the paragraph at
11 the bottom states:
12

13 The Department of Fisheries and Oceans is
14 committed to move forward in a more
15 coordinated ecosystem-based approach to the
16 management of fisheries and oceans resources
17 consistent with the spirit and intent of the
18 **Oceans Act**. Therefore, on a pilot basis, the
19 Department will support the development of a
20 multipartite local management body on the
21 west coast of Vancouver Island. Primary
22 goals for area-based multi-stakeholder bodies
23 should include --
24

25 And they're all set out. And then there's
26 reference on the next page to the west coast of
27 Vancouver Island pilot.

28 That's the West Coast Vancouver Island
29 Aquatic Management Board, I think; is that
30 correct?

31 A Yes.

32 Q That Board involves, among others, First Nations,
33 particularly Nuu-chah-nulth First Nation; is that
34 correct?

35 A I don't work directly with the board itself.

36 Q All right. There's a document in the binder at --
37 I'm sorry. There's a report commissioned by the
38 Nuu-chah-nulth First Nation. Yes, it's at Tab 9
39 of the binder titled "Industry and Coastal
40 Communities - Socioeconomic Review Prepared for
41 the Nuu-chah-nulth Tribal Council by S&H
42 Consulting". Have you seen that document before?

43 A No, I haven't.

44 Q At the third -- let's see, this is the third page
45 in, page 0004. The page number is at the bottom
46 of the page. There's reference -- there's a
47 section dealing with "Adjacency Principle and

1 Accessibility". There's a quote there from the
2 **Oceans Act**.

3
4 Whereas Canada recognizes that the oceans and
5 their resources are for significant
6 opportunities for economic diversification
7 and the generation of wealth for the benefit
8 of all Canadians, and in particular for
9 coastal communities.

10
11 And then on the next page, it deals with the
12 Area-Based Aquatic Management Board. There's
13 quite a discussion here about the -- and I won't
14 go into, in the interest of time, the creation of
15 the Aquatic Management Board as a consultative
16 body including communities and First Nations.

17 MR. HARVEY: I wonder if that could be marked as the
18 next exhibit, please.

19 THE REGISTRAR: Exhibit 486.

20
21 EXHIBIT 486: Industry and Coastal
22 Communities - Socioeconomic Review, undated,
23 prepared by S&H Consulting for Nuu-chah-nulth
24 Tribal Counsel
25

26 A I haven't been asked that question about the
27 Aquatic Management Board, but I'm wondering if I
28 might state where the Department does its harvest
29 planning primarily.

30 MR. HARVEY:

31 Q All right. Well, let me ask you one question
32 first. This Management Board was set up with seed
33 funding from the Department of Fisheries and
34 Oceans, was it not?

35 A I'm not aware of the details of how the Board was
36 established.

37 Q All right. You were about to tell me that the
38 board -- the Department doesn't pay much attention
39 to this Board, I expect.

40 A No, I'm saying that I'm not the Departmental
41 expert on the Aquatic Management Board.

42 Q All right. Okay. You were asked -- and this
43 relates to the operation of this Board. You were
44 asked earlier today about the \$30 million that was
45 provided by the U.S. for a mitigation program. Do
46 you recall that?

47 A Sorry, you're asking if I recall the discussion

- 1 earlier today?
- 2 Q Yes.
- 3 A Yes.
- 4 Q And I think, if I can summarize your explanation,
5 the U.S. -- a large part of the chinook off the
6 west coast of Vancouver Island and the west coast
7 of the Charlottes is bound for U.S. rivers.
- 8 A I don't believe I made that statement this
9 morning.
- 10 Q All right. Well, are you aware of that fact, that
11 72 percent of the chinook, I believe, off the west
12 coast of Vancouver Island are U.S. origin chinook.
- 13 A I haven't spoken directly to that evidence. It
14 wouldn't be accurate to state necessarily that
15 that's the case in the northern troll. I know
16 that at certain times of year, there can be high
17 proportions of U.S. origin populations in the west
18 coast of Vancouver Island fishery.
- 19 Q All right. But, at any rate, in 2009, by reason
20 of an agreement under the auspices of the Pacific
21 Salmon Treaty, a 50 percent reduction in the TAC
22 in Area G was imposed by the Department; is that
23 correct? Approximate 50 percent reduction in TAC
24 of chinook.
- 25 A In terms of the agreement, there was a 30 percent
26 reduction in the total chinook harvest in the west
27 coast of Vancouver Island ABM fishery. The
28 Department then applies the allocation policy and
29 it did result in a larger reduction in the Area G
30 fishery based on priorities for First Nation food,
31 social, ceremonial fisheries and recreational
32 fisheries.
- 33 Q Yes. The overall 30 percent reduction was applied
34 only to the commercial sector, leaving the First
35 Nations food, social, ceremonial and recreational
36 sector harmless; is that correct?
- 37 A In that particular year. In any given year, we're
38 going to be applying the allocation policy in
39 determining the harvest amounts for each of the
40 groups.
- 41 Q All right. Well, assuming the FSC and
42 recreational continue to have a priority, the U.S.
43 requested reduction, and the agreed reduction will
44 be applied only to Area G commercial trollers;
45 correct?
- 46 A Again, that's not entirely accurate. Depending on
47 the year, there could be a situation where we have

- 1 to look at reductions in the recreational fishery,
2 and possibly in the event of very low abundance,
3 even in the First Nation fishery.
- 4 Q All right. But we've gone through -- we're into
5 the third year of the reductions and there've been
6 no reductions to any sector other than Area G so
7 far, pursuant to this international agreement.
- 8 A That's correct.
- 9 Q And, in return, the U.S. provided \$30 million for
10 a mitigation program, correct?
- 11 A \$30 million was provided by the United States.
- 12 Q Yes. And the west coast Vancouver Island Aquatic
13 Management Board was tasked by the Department to
14 come up -- or to recommend a program for the use
15 of that \$30 million, correct?
- 16 A I was not the lead on the development of the
17 mitigation program or the use of the funds.
- 18 Q All right. But you are aware that the community
19 reps on that Board, the First Nation reps, the
20 processing sector reps and the municipal and
21 regional district governments, together with the
22 Area G fishermen, came up with a consensus that
23 the funds should go to the Area G fishermen, who
24 had suffered the reduction, in order to assist
25 them in restructuring.
- 26 MR. TIMBERG: Mr. Commissioner, if I can just interrupt
27 for a moment. This issue that Mr. Harvey is
28 pursuing on cross-examination is a matter that's
29 been litigated in the **Kimoto** litigation and
30 there's been a decision rendered in the B.C.
31 Supreme Court.
- 32 It seems like he's relitigating that matter
33 here, and I question the relevance of it to the
34 terms of reference with respect to this Commission
35 with respect to Fraser River sockeye. So I would
36 perhaps ask him to remain focused on what's before
37 us in this forum.
- 38 MR. HARVEY: Well, I thank Mr. Timberg for reminding me
39 of the focus. The only correction I make is that
40 it was the federal court that rendered the
41 decision in the **Kimoto** case. But the relevance is
42 as to the consultation process.
- 43 Q I just want to establish, Mr. Grout, that the
44 consensus of the West Coast Vancouver Island
45 Aquatic Management Board was rejected by the
46 Department.
- 47 A Again, I was not the lead in the consultation

1 process or the evidence or information that came
2 from that process. You'd be better advised to
3 direct your questions to perhaps Mr. Macgillivray
4 or one of the members of the policy group that
5 were involved in that work.

6 MR. HARVEY: I'd like Exhibit 470 brought up, and this
7 is the final one that I'll be dealing with.

8 Q This document, at page 006, "Strategic Plan for
9 Salmon Management", 006, there's a paragraph
10 relating to Area G, and this gets back to the ITQ,
11 but it's relevant to the mitigation fund and the
12 consultation. Area G, it says:

13
14 Area G - This is a highly polarized fleet
15 divided into those who believe that fishermen
16 should have to actively fish their allocation
17 to benefit and those who support an ITQ
18 approach. The elected...Harvest Committee is
19 dominated by the former group and has
20 rebuffed any attempt by the minority to
21 discuss demonstration fishery options with
22 DFO fishery managers in spite of the results
23 of the survey...Reducing the size --

24
25 And this is the sentence I want to ask you about.

26
27 Reducing the size of this fleet through
28 Pacific Salmon Treaty mitigation program may
29 cause the fleet to reconsider.

30
31 Now, reducing the size of the fleet through
32 the mitigation program refers to the fact that the
33 DFO wish to use the \$30 million apart from \$1
34 million for the modernizing the allocation policy,
35 wish to use the balance of the \$30 million for the
36 purpose of extinguishing troll fishing licences,
37 not only on the west coast of Vancouver Island
38 Area G, but also in Area F and Area H; is that
39 correct? That's what that refers to in that
40 sentence?

41 A This is a piece of a discussion that occurred
42 around potential prospects for the various fleets
43 in the future.

44 Q But:

45
46 Reducing the size of the fleet through the
47 Pacific Salmon Treaty mitigation program...

1 Refers to the DFO's program of using the bulk of
2 the \$30 million to reduce the size of the troll
3 fleet.

4 A The context of the discussion here was looking at
5 future potential for share-based management. We
6 have some survey results that indicated that
7 roughly half of the fleet might be interested --
8 roughly half of the licence holders might be
9 interested in having their Harvest Committee
10 discuss share-based management approaches with the
11 Department.

12 If the fleet composition changed in the
13 future as a result of a reduction under the
14 mitigation program, there might be different
15 perspectives on whether they wanted to proceed or
16 not.

17 Q So the Department is using the \$30 million to
18 reduce the size of the Area G fleet in the hopes
19 that that will bring them around to accepting
20 ITQs?

21 A No. The 30 million mitigation was announced as
22 part of a package that the Minister announced to
23 reduce troll licences as part of a reduction in
24 the chinook harvest that occurred on the west
25 coast.

26 Q Mr. Grout, the communities and the processors and
27 the other marine interests and the Regional
28 Districts and the west coast of Vancouver Island
29 have not been consulted specifically with respect
30 to ITQs, have they? They're not included in the
31 consultative body that is considering the
32 Department's ITQ proposals.

33 A I'm sorry, could you repeat the list of
34 individuals and groups?

35 Q Communities in the west coast of Vancouver Island,
36 local governments on the west coast of Vancouver
37 Island and the processing and infrastructure
38 interests on the west coast of Vancouver Island.

39 A I'm probably not in the best position to provide
40 that answer, but I know Mr. Kadowaki in his
41 capacity of Director of Pacific Fisheries Reform
42 in 2005 did extensive consultations around the
43 province, around Pacific fishery reform. I
44 suspect some of the individuals and groups you
45 mentioned were in attendance at some of those
46 meetings, but I can't speak to the specific
47 details.

1 Q Are you aware that the communities, and
2 specifically the First Nations communities on the
3 west coast of Vancouver Island are very much
4 opposed to both the ITQ proposal and the fleet
5 reduction proposal?

6 A I'm aware of the views of the First Nations as
7 they pertain to ITQs.

8 Q As being adverse.

9 A I'm aware that a number of First Nations have
10 concerns about ITQs.

11 MR. HARVEY: Yes. All right. Those are my questions.
12 Thank you. Except I should -- I think there's a
13 document that I -- or maybe perhaps more than one
14 document that I should be marking. I think maybe
15 it's just the one that Mr. Timberg wanted to have
16 a look at.

17 MR. TIMBERG: Mr. Commissioner, if my friend would like
18 to enter this into evidence today, I will object
19 to that for the following reasons: The rules
20 require seven days' disclosure of any documents
21 used for cross-examination.

22 This morning I was provided with a new
23 document from Mr. Phil Eidsvik, and he had the
24 courtesy of sharing that with me, and one from Ms.
25 Brenda Gaertner, who also shared that with me.
26 Those two documents I will not be opposing that
27 they be tendered at the last minute contrary to
28 the rules.

29 This document that Mr. Harvey is seeking to
30 have tendered was not provided to me until the
31 middle of the afternoon in the midst of the
32 hearing process, so I've not had a chance to speak
33 to my witness or to get any instructions as to any
34 potential prejudice contained in this document.
35 My submission will be that there's prejudice to
36 the hearing process as it's going to cause delay,
37 and it will encourage last minute disclosure of
38 documents if he's permitted to enter it at this
39 point in time.

40 So that's my position. In the event you
41 would like to proceed with this document, I'd ask
42 for an adjournment so I could speak to -- and have
43 leave to speak to my witness about this document.

44 MR. HARVEY: Yes. If there's any prejudice, I won't
45 push it at this time, but it may be that we'll see
46 Mr. Grout again. I would like to at least have it
47 marked for identification at this stage.

1 THE COMMISSIONER: Yes, I was going to suggest, Mr.
2 Timberg and Mr. Harvey, that it be marked for
3 identification purposes and if Mr. Grout does
4 return, then perhaps it can either follow that Mr.
5 Harvey can ask his questions and Mr. Timberg will
6 have an opportunity in re-examination to follow
7 that through, or renewed submissions could be made
8 with respect to its relevance in this proceeding.

9 So could that document be brought up, Mr.
10 Lunn, so that we can make sure we're talking about
11 the right document. Is this the document that
12 you're talking about, Mr. Harvey?

13 MR. HARVEY: No. No, I'm sorry...

14 MR. MARTLAND: Mr. Commissioner, this document was
15 circulated by email this morning from Mr. Harvey's
16 associate, and the indication on the email was
17 that it would go to members on the commercial
18 panel, one of these prospective panels, as opposed
19 to this witness. So I know it's gone out
20 electronically to participants on that footing. I
21 don't know if we have an electronic copy here.

22 THE COMMISSIONER: Yes, it's on the screen.

23 MR. MARTLAND: Oh, thank you.

24 THE COMMISSIONER: So if we could mark this document,
25 "Socioeconomics of Individual Transferable Quotas
26 in Community-Based Fishery Management" as the next
27 letter exhibit for identification.

28 THE REGISTRAR: That will be S for identification.

29
30 EXHIBIT S FOR IDENTIFICATION: Socioeconomics
31 of Individual Transferable Quotas in
32 Community-Based Fisher Management
33

34 MR. MARTLAND: Mr. Commissioner, the next participant
35 is Area E and the B.C. Fishery Survival Coalition,
36 Mr. Eidsvik.

37 MR. EIDSVIK: Good afternoon, Mr. Commissioner. My
38 name is, for the record, Phillip Eidsvik with the
39 Area E Gillnetters and the B.C. Fishery Survival
40 Coalition. I just want to say for the record that
41 I'm not counsel. I haven't said that, and I've
42 been treated like I am, and I appreciate that.
43 But I just thought it was important to get on the
44 record that I'm not a lawyer. I'm a fisherman by
45 profession.

46 Do we usually take a break at 3:15, Mr.
47 Commissioner? Okay.

1 THE COMMISSIONER: Yes.

2

3 CROSS-EXAMINATION BY MR. EIDSVIK:

4

5 Q Mr. Grout, I'm wondering, how many fish can a
6 seiner catch in a day?

7 A That would depend on a number of factors.

8 Q Such as...?

9 A It would depend on perhaps where they're fishing,
10 the abundance of the populations in the area, all
11 sorts of variables. The number of sets they're
12 making, perhaps. Local abundance of the fish.

13 Q So in this year you said we were down to roughly
14 about 30 seiners from 165 Area B licence seiners;
15 is that correct?

16 A That's correct. I was just giving a rough
17 approximation of the number of vessels that I was
18 seeing reported out operating on a given day
19 during the fishery.

20 Q Do you know how many people work on each seiner?

21 A The crews can vary. I was out on Johnstone
22 Straits this year and you see reports in the past
23 of maybe four to five on a vessel, but it looked
24 like on a number of the boats there were maybe
25 more than that this year.

26 Q So if we go 165 times five, we're about 825 people
27 working on the seine boats, normally? If you look
28 at the Area B fleet total?

29 A Well, typically I don't think we would see all of
30 the licenses out on a given opening.

31 Q So you're saying that even now, prior to the ITQ,
32 there was fewer vessels?

33 A Yeah, there were certainly licenses the
34 department's holding in our inventory would not be
35 out participating in the fishery, and for a
36 variety of reasons not all of the eligible licence
37 holders are going to show up at any given opening
38 in the past.

39 Q So prior to the government, DFO, acquiring these
40 licences, if we go back to, say -- well, let's go
41 back to about 1996, you've been around for a while
42 - how many seiners would we have seen on a Fraser
43 River opening?

44 A Actually, '96 was before my time with the
45 department.

46 Q So you don't know how big the fleet was prior?

47 A I don't have specific numbers with me. I know

- 1 over the course of the buybacks at that time there
2 was about a 50 percent reduction in the fleet as a
3 whole, including all gear types. I don't know the
4 specific seine numbers.
- 5 Q Okay. So say if there was a 50 percent reduction
6 in seine, so from '96 we went from 165 times two
7 is 330 licences, then we drop to 165, and in this
8 year, a very big Fraser sockeye year, fair to say,
9 this year, 2010?
- 10 A Yes, extremely large.
- 11 Q And we dropped to 30, so we've gone from about 300
12 vessels to 30?
- 13 A No, I wasn't making that statement. I was
14 commenting on how many vessels were out on any
15 individual day. I wasn't commenting on the total
16 number of vessels in the fleet that might have
17 been active over the course of the fishery.
- 18 Q So do you know how many vessels would have been
19 active out of that 165?
- 20 A I have that information in my office, but I can't
21 remember what it is off the top of my head.
- 22 Q If the fleet was to go with IQs, what would the
23 seine fleet look like in 10 years?
- 24 A I think it's tough to project what might happen.
25 We've had two demonstrations with the Area B
26 fleet, and really they were almost two extreme
27 conditions. In 2008, they fished for two days and
28 they caught, I just have the number for the B, D,
29 and H harvest together, but it was, I think, about
30 fifteen or sixteen thousand in 2008. The seine
31 fleet fished for two days. Very few of the
32 vessels went out. In 2010 it was quite a large
33 fishery.
- 34 Q So in other words, DFO hasn't done a study that
35 projects what the fleet would look like 10 years
36 from now, if individual transferable quotas were
37 introduced?
- 38 A No, we have not.
- 39 Q So when the department is saying that there is
40 certainty and stability, it may be certainty and
41 stability for the people who are left after the
42 fleet has cannibalized itself, but not necessarily
43 for the people now sitting on the beach, because
44 there's no more boat fishing?
- 45 A In terms of I can maybe take you back to the
46 discussion paper on Pacific Fisheries Reform, on
47 page 23 in that document it does talk about

- 1 transferability and what the potential might look
2 like in the future. I think one of the points we
3 make there is that in the competitive fishery, as
4 it stood in 2005, there were (sic) quite a poor
5 financial situation and there was need for further
6 reduction in the fishing fleet, even in the
7 absence of some of the other pressures, so present
8 harvests and levels of abundance of the fish could
9 not support the fleet that was there. It's one of
10 the potentials of reforming the fishery was a
11 potential reduction in the fleet.
- 12 Q So the fishery was pretty well heavily reformed in
13 '96/'97, you said, about a 50 percent reduction
14 across the fleets. Any promises made by the
15 minister about the future of the people that were
16 remaining after fleet reduction in '96/'97? Did
17 you ever hear anything like, "It's not a sunset
18 industry. The fish will be there for the people
19 who remain behind," that sort of stuff, did you
20 ever hear those promises and commitments of
21 certainty and stability?
- 22 A I can't speak to the specific words you're using.
- 23 Q So no comment on those words at all? No comment
24 that the minister made assurances or promises that
25 there would be better fishing opportunities and
26 new areas opened?
- 27 A I can't speak to the specific words the minister
28 was using at that time.
- 29 Q But you're confident on the IQ plan that it will,
30 indeed, bring certainty and stability to the
31 people that are left?
- 32 A One of the intentions of the plan in looking at
33 the demonstration fisheries, is looking to see if
34 that can be improved with the demonstration
35 approaches we're looking at.
- 36 Q This is maybe why some of the fishermen are a
37 little bit troubled, because have you ever heard a
38 fishermen saying, "Well, promises were made by the
39 department, but not kept"? And now, again, of
40 course, there's been promises made about certainty
41 and stability and they're thinking, "Geez, can I
42 trust the department that time?" Have you heard
43 those types of comments from fishermen?
- 44 A I've certainly heard concerns from fishermen that
45 they don't necessarily trust the department. I
46 wouldn't characterize the items laid out in the
47 vision for reforming the Pacific fishery as

- 1 promises; it's laying out, as I said, a vision for
2 the future of the fishery, and we've been using
3 demonstration fisheries to explore how some of
4 these things might work.
- 5 Q So if the vision at fleet reduction, though, was
6 certainty and stability, you can say that that
7 certainly hasn't happened from 1998 to this year,
8 2009?
- 9 A Sorry, maybe you could rephrase your question?
- 10 Q If there were promises made by DFO to sell fleet
11 reduction -- were you aware fleet reduction was
12 pretty controversial?
- 13 A Yes.
- 14 Q Okay. So if the department made promises that it
15 was -- good things would come out for the people
16 who stayed behind, who stayed in the industry,
17 that hasn't happened in the last 10, 15 years,
18 since '97, I guess, was when area licensing was
19 introduced?
- 20 A Well, there were significant concerns at the time.
21 The coho conservation concerns were a substantive
22 one. There was a recognition that the fleets were
23 too large for the available harvest. That was one
24 of the drivers behind reducing the number of boats
25 in the fleet. Certainly the abundance of salmon,
26 as a natural resource, is something that
27 fluctuates from year to year. The thinking was
28 that by reducing the number of licences you would
29 reduce the number of boats chasing after the
30 resource available, but we've seen, with Fraser
31 sockeye, reduced abundances since that time, on
32 average.
- 33 Q So we've seen, and let's take the optimistic and
34 generous view, good intentions by the department,
35 as you said, in the 2005 fisheries reform paper,
36 good intentions, but people shouldn't put too much
37 weight in them, because things can happen, such as
38 conservation issues?
- 39 A Yes, we're harvesting a natural resource and there
40 are fluctuations from year to year, so as part of
41 the vision, we're looking at ways that we can look
42 at structuring the fishery to give the licence
43 holders the ability to self-adjust to those
44 conditions.
- 45 Q Okay. When do interior coho start to run up the
46 Fraser River?
- 47 A Typically, well, it depends where you're fishing,

- 1 but typically you'll see some entering the river
2 in August, and then into September and October.
- 3 Q And what part of August? What part of August?
4 Early August; mid August; late August?
- 5 A I don't have a specific run timing curve in front
6 of me, but we do implement, in our Fisheries
7 Management Plan, a window closure in the Fraser
8 River to try and protect the coho migration, and
9 that's typically implemented beginning around the
10 Labour Day weekend. There will be some coho
11 migrating prior to that, but the majority of the
12 run comes after that point.
- 13 Q And how long has that closure been in place, that
14 Labour Day weekend closure; can you remember?
- 15 A How many years?
- 16 Q Yes. It might be before --
- 17 A I'd have to look back at the plans.
- 18 Q It might be before your time, maybe? So it may be
19 before you took over and assumed a role in salmon
20 management prior to 2002? Was it in place in
21 2002?
- 22 A I'd want to look at our management plan to check.
- 23 Q You talked about the cost of fishery management
24 and the necessity that DFO is going to have to
25 continue to download some costs on the fleet. Can
26 you fill me in a bit on why this is necessary,
27 because I think the DFO budget is still about
28 roughly the same every year, or has there been
29 pretty major cuts?
- 30 A I'm not an expert on the overall DFO budget, so I
31 can't speak to that.
- 32 Q So you just know there's a necessity to download
33 costs onto the fleet, though?
- 34 A There's certainly some drivers around improving
35 the confidence in the catch estimates, for
36 example. The fleet is deriving a benefit from the
37 resource, and one of the elements of the Pacific
38 Fishery Reform is to have mechanisms whereby the
39 fleets are deriving income from the resource or
40 paying for some of the costs associated with that.
- 41 Q So you talked about *Larocque*, I guess, has had an
42 impact as well, on the flexibility of DFO to, say,
43 use fish to finance the department; is that
44 correct? Or scientific work?
- 45 A That's accurate.
- 46 Q Now, I'm not asking you to comment on what this
47 means, but has any fisherman ever raised the

1 British Columbia Terms of Union to you, term 5E,
2 which states:

3
4 Canada will assume and defray the charges for
5 the following services:

6
7 E. Protection and Encouragement of
8 Fisheries.
9

10 Have you ever heard any fisherman raise that?

11 A No, I have not.

12 MR. EIDSVIK: I expect the lawyers here will be
13 familiar with it, but I raise it to your attention
14 today, Commissioner, because I don't think it
15 ended up in the legislative framework that was
16 submitted to the commission, and I think it's a
17 really important item that we could have great
18 debates about as we go along, I expect.

19 Q The value of a Fraser River sockeye is an
20 interesting issue. How much did seine vessels get
21 paid for it in Johnstone Straits this year; any
22 idea?

23 A We typically get that information from Mr. Gord
24 Gislason, who does a report on the value of the
25 harvest from the previous year. We typically
26 would get that in March or April of the season
27 following the fishery.

28 Q Can you tell me how much a seiner would have got
29 for sockeye in 2008, when they had a fishery?

30 A We probably have that information.

31 Q You don't know off the top of your head?

32 A I don't recall off the top of my head, no.

33 Q How much a Fraser gillnetter would get for
34 sockeye, off the top of your head?

35 A No, I don't have those numbers handy, off the top
36 of my head.

37 Q How much a processor would get for one at
38 wholesale, if they sold it to the Superstore or
39 fresh to Japan or anything?

40 A No, I do not.

41 Q How much a retailer would sell for a customer -- a
42 salmon to a customer?

43 A I don't recall the specific prices, no.

44 Q So I guess I can say that economic considerations
45 in the management of the fishery aren't that
46 important if you don't know the price that it's
47 being sold? Or am I being unfair to you?

1 A We'd be using the prices for specific purposes
2 around our allocation framework, for example.

3 Q I'm sorry, I missed that?

4 A We'd be using pricing information around the
5 allocation framework exercise, which is what I'm
6 familiar with. In terms of economic performance
7 in the fishery, we've tended to use catch as a
8 proxy in a number of our analyses.

9 MR. MARTLAND: Mr. Commissioner, I note the time. I
10 wonder if I might suggest the break at this point?

11 THE COMMISSIONER: All right.

12 MR. MARTLAND: Thank you.

13 THE REGISTRAR: The hearing will now recess for 15
14 minutes.

15

16 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

17 (PROCEEDINGS RECONVENED)

18

19 THE REGISTRAR: The hearing is now resumed.

20 MR. MARTLAND: Mr. Commissioner, just as we reconvene,
21 I thought I might take a moment to look ahead to
22 scheduling. As everyone here knows, we have
23 fallen somewhat behind in our optimism on progress
24 through witnesses this week. Where that leaves us
25 is as follows, and Mr. Lunn will be sending a note
26 to participants later today which is very helpful.

27 We had already said, and we will stay with
28 the plan, that on Monday morning, February 28, we
29 will have Commercial Panel No. 1, the four
30 gentlemen who were here earlier this week, will be
31 returning and we'll be completing their cross-
32 examination in the first part of the day, the
33 first half of the day, Monday. We have arranged
34 to have Mr. Grout return for cross-examination and
35 the completion of his evidence on the 28th in the
36 afternoon. So Monday has become really a clean-up
37 day.

38 The witness previously scheduled for Monday,
39 Lisa Mijacika, on commercial licensing, we will
40 simply set her evidence aside. We're working on
41 identifying a new date. We expect to have that
42 and communicate that very soon, which when we'll
43 reconvene to have her evidence received. And then
44 on Tuesday, the 1st of March, we will be back on
45 our schedule with Commercial Panel No. 2. Thank
46 you.

47

1 CROSS-EXAMINATION BY MR. EIDSVIK, continuing:
2

3 Q Welcome back, Mr. Grout. So we talked about
4 Interior Thompson River coho. We had a closure
5 after usually around Labour Day weekend, or
6 shortly after that. Have I got that about right?

7 A That's correct.

8 Q So in Area E, in the lower Fraser River, during
9 the month of July and August what other salmon
10 species are in the river?

11 A During that time of year you primarily have
12 sockeye, you can have pink salmon in odd years for
13 Fraser River pink salmon, and chinook salmon are
14 the three primary species. You may find small
15 numbers of coho or chum in those months in very
16 low abundance usually at that time of year, as
17 well.

18 Q Yesterday I guess I asked you about the associates
19 possibly the other day, about revival boxes in the
20 public commercial fishery, and this morning you
21 testified that - I think it was this morning, it
22 could have been yesterday, the days run together
23 here - that vessels over 35 feet in both fisheries
24 have to have revival boxes; is that correct?

25 A I believe it was my evidence that there was a size
26 of vessel where revival boxes were required over
27 35 feet in the First Nations fishery. I didn't
28 make that same statement for the commercial one.
29 I believe that revival boxes are required for all
30 the vessels in the -- or I stated that they were
31 required for all the vessels in the Area E fleet.

32 Q Yes. And you said that the reason why they're not
33 required in vessels under 35 feet in the
34 aboriginal fleet is safety issues?

35 A I believe vessel stability can be affected by
36 having the revival box, a large amount of water,
37 and some of those smaller boats.

38 Q Where there's a special licensing category, for
39 vessels in the Area E fleet that are under 30
40 feet, which tells me there's quite a few Area E
41 vessels under 35 feet; is that correct?

42 A I'm not aware of that specific provision, no.

43 Q Are you aware that there's vessels under 35 feet
44 in the Area E fleet?

45 A I'm not sure of the exact number, but certainly
46 there would be some.

47 Q So are you saying that then there's two sets of

- 1 safety standards? What's safe for the aboriginal
2 commercial fisherman is not -- I'm kind of
3 confused why you'd say it's a safety issue for
4 them, but not a safety issue for the Area E fleet.
5 A I'm not aware of any safety issues being raised
6 from the vessels in the Area E fleet. At least I
7 haven't been made aware of those sorts of issues.
8 Whereas I have been made aware of the reasoning
9 for that in the First Nations fishery.
10 Q So a 35-foot, 30-foot boat is different than one
11 fleet versus another, a 30-foot boat?
12 A I can't speak specifically to the differences in
13 the vessels in the two fleets.
14 Q Do you know that whether the aboriginal commercial
15 fleet has a blanket exemption from running
16 survival boxes during the sockeye fishery?
17 A Sorry, in which fishery are you referring to?
18 Q During the sockeye fishery, the aboriginal
19 commercial fishery below the Fraser during the
20 sockeye fishery until the end of August roughly.
21 Are you aware of that?
22 A So the question is whether there's an exemption to
23 run a revival box.
24 Q That's correct, for all aboriginal vessels in the
25 commercial fishery during the sockeye fishery,
26 during the targeted sockeye fishery.
27 A It's my understanding that vessels with revival
28 boxes are required to run them.
29 Q Okay. So you don't do licence conditions then for
30 the aboriginal fishery?
31 A No, I do not. That's done in our area offices.
32 Q So you do licence conditions for what I call the
33 "public commercial" or the "all citizens fleet",
34 but not the aboriginal fleet.
35 A I work specifically on the conditions for the
36 eight area gear types for the commercial fleet.
37 Q Okay. That's helpful, thank you. On bycatch,
38 maybe you can help me and tell me why gillnetters
39 in the all citizens fleet in the lower Fraser
40 River are prohibited from keeping bycatch such as
41 coho?
42 A Coho is a stock of concern. It's been designated
43 endangered. We're managing the fisheries to
44 minimize impacts on those populations, either
45 through avoidance or releasing them unharmed where
46 we can.
47 Q Why not let them keep the ones that are dead and

- 1 throw the live ones back, but keep the dead ones.
2 That's what the aboriginal fishery does in that
3 part of the river.
- 4 A That's a good question. One of the challenges
5 with that is enforcement and compliance is a
6 challenging issue there. And setting up
7 conditions around retaining dead fish is difficult
8 to enforce without having an enforcement officer
9 essentially observing the whole fishing activity.
- 10 Q Yes, but it's okay in the aboriginal commercial
11 fleet below Mission to keep dead coho?
- 12 A We, as I mentioned, when I discussed this
13 previously, there are provisions, or the
14 requirement is to release all viable coho, where
15 coho have been mortally wounded. There is an
16 allowance to retain those to be used for food,
17 social and ceremonial purposes, and it's
18 attributed to the communal amounts for that
19 species. And one of the reasons there is cultural
20 practice not to waste salmon that have been
21 killed.
- 22 Q I see. So there's a cultural practice that you
23 attribute to the aboriginal community, but not to
24 an aboriginal fisherman fishing in the commercial
25 fishery the very next day.
- 26 A The regulations are different in the commercial
27 fishery, the coho must be released as a condition
28 of licence, so it is different.
- 29 Q The reality is if you were allowed to keep dead
30 ones a lot more, there would be a lot more dead
31 coho; fair to say?
- 32 A Certainly I think that's one of the concerns that
33 have been raised around enforcing that particular
34 condition.
- 35 Q Now, if there's a conservation issue on coho, why
36 wouldn't it apply in the case of even an
37 aboriginal food fishery?
- 38 A In terms of the fisheries we do have for salmon,
39 we're keeping track of, and using a model-based
40 approach, keeping track of the fishing effort and
41 the impacts associated with that in the model
42 relative to our three percent exploitation
43 objective.
- 44 Q There was a judgment that I always enjoyed
45 reading, and the judge was talking about grizzly
46 bear skins. And somebody had sold a grizzly bear
47 skin and he claimed he sold it because it was

- 1 killed in self-defence. And the judge commented,
2 "If I allowed you to sell grizzly bear skins that
3 were killed in self-defence, a lot more grizzly
4 bears would be killed in self-defence." Is this
5 the same sort of thing?
- 6 A I think you've identified a challenge which is
7 ensuring that the provisions of the licence are
8 being adhered to. Certainly if somebody doesn't
9 want to comply with that, there could be ways more
10 fish are killed, so there's a disincentive
11 potentially there.
- 12 Q Now, you said one of the additional concerns that
13 we have during the Fraser sockeye fishery, and I
14 wrote down three of them, you said Cultus,
15 Interior coho, which we've talked about a bit, and
16 Sakinaw. Can you explain to the Commissioner
17 where Sakinaw Lake is?
- 18 A Sakinaw Lake is a coastal lake.
- 19 Q Sechelt help?
- 20 A I believe it's Area 16 vicinity.
- 21 Q Now, have you given any research into why the
22 Sakinaw stock declined? Were you aware there was
23 a dam there at the front of the lake?
- 24 A I am aware there's a dam at that lake, yes, and I
25 understand there's a fish passage over that, as
26 well, a facility to allow that.
- 27 Q So you're confident that the dam has no impact on
28 the ability of Sakinaw fish to get up there and
29 spawn?
- 30 A Well, there was a recovery team that was put
31 together that looked at the potential threats to
32 Sakinaw sockeye. I wasn't part of the team that
33 did that work, so I can't speak to the relevance
34 of each of the specific threats.
- 35 Q You talked about Sakinaw sockeye in the context of
36 selective fishing. Where would we have to fish
37 Sakinaw sockeye to separate them from the rest of
38 the Fraser River run?
- 39 A One of the challenges with fishing for sockeye is
40 there isn't an ability to distinguish one sockeye
41 population from another. So we've really looked
42 at time and area closures for protecting some of
43 the weaker sockeye populations. So for example,
44 for Sakinaw we'd try and avoid fishing in Sabine
45 Channel for example.
- 46 Q And how many Sakinaw sockeye have recently come
47 up, I'm not familiar with the number, perhaps you

- 1 are, the last three years. Do you know those
2 numbers?
- 3 A Extremely, extremely low, handfuls of fish. I'm
4 not sure what the 2010 return was.
- 5 Q So it was a handful, less than 1,000?
- 6 A Yeah, it would be, you know, in the tens or less
7 then ten in some years.
- 8 Q Less than ten. Very difficult on a 20 million or
9 30 million Fraser sockeye run to separate out ten
10 Sakinaw sockeye, you could say.
- 11 A Well, by separate out, I'm not sure how you might
12 do that.
- 13 Q Well, you've said that selective fishing was one
14 of the keys to the management of the fishery in
15 the future, and you said that Sakinaw sockeye was
16 one of the reasons why we had to go selective.
17 I'm assuming you have a plan to separate them out.
- 18 A As I stated, one of the -- because you can't
19 separate it from other sockeye they're migrating
20 with, that we more look at time and area closures.
- 21 Q On the buyback programs, are you aware of any of
22 the prices paid for halibut or sable fish or that
23 kind of quota per pound?
- 24 A No, I'm not.
- 25 Q Do you expect that if the fishery went IQ that
26 licence prices would go up, or price per pound
27 would go up?
- 28 A Which fish are you referring to?
- 29 Q I'm talking in salmon. If it followed the trend
30 of the halibut fishery, the geoduck fishery, the
31 sable fish fishery, the trawl fishery, licence
32 values have increased substantially from their
33 pre-IVQ days; is that true?
- 34 A I'm not aware of the specific information for that
35 fishery.
- 36 Q I'm puzzled though, Mr. Grout, because what we're
37 telling everybody and the DFO is arguing for is
38 putting this ITQ program in the fishery, and it
39 seems there's an awful lot of data missing in the
40 salmon fishery. And I'm puzzled. Say you're a
41 young guy and you're trying to decide do you get
42 into the salmon fishery or not, and DFO's one hand
43 saying this is going to be good, but there's these
44 other things out there, like what's the licence
45 price going to do, should I take that job as a
46 crew member, because I might never be able to buy
47 in the fishery. I just haven't seen any research

1 on that. Do you know about any?

2 A The information we've got from the salmon fishery
3 has primarily been derived from the demonstration
4 fishery projects that we've done. Since 2005 we
5 have a relatively limited number of those
6 projects, and in some years when we had projects
7 planned they didn't proceed given low abundance.

8 MR. EIDSVIK: Thank you. I'll move on. At this
9 point, Mr. Commissioner, I wanted to add in an
10 excerpt from the 2004, Mr. Lunn, an excerpt from
11 the 2004 Fraser Panel Report. I did pass it out
12 this morning. It's pretty non-controversial
13 material. I found the Fraser Panel reports, their
14 annual reports are wonderful pieces of evidence
15 for anybody studying sockeye, and I put myself in
16 the hands of anybody who objects to it.

17 MR. MARTLAND: Mr. Commissioner, I have cautioned Mr.
18 Eidsvik and can caution other participants. We've
19 tried to take a measured approach where documents
20 are identified and proposed as exhibits running
21 afoul of the one week of notice. That is the case
22 with this document. On the other hand, it is what
23 would seem to be a relatively straightforward
24 excerpt from a report from the PSC. So on that
25 basis unless other counsel raise concerns, we're
26 not objecting to the admission of this. I just
27 want to place on record that I expect to object if
28 this continues. If there are continued late
29 documents being identified, I think that we're
30 trying to run a process that doesn't operate that
31 way. Those are my few comments. I'm not
32 objecting to this.

33 MR. EIDSVIK: And, Mr. Commissioner, I've asked for two
34 additional documents, and I'm not going to ask for
35 them to be submitted today, but perhaps Mr. Lunn
36 can bring it up and I can show Mr. Commissioner
37 why I've asked for it. It's the FRS XI.

38 MR. MARTLAND: If, just in the interest of efficiency,
39 if my friend isn't asking to have those entered as
40 exhibits today, I've welcomed him to contact us
41 and put our minds around whether those should
42 become exhibits and how that might occur. If
43 they're not necessary to his questions today, I
44 suggest we can have that discussion offline, so to
45 speak.

46 MR. EIDSVIK: That's acceptable and it's helpful, and I
47 apologize for bringing it up. One of the key

1 points that we're trying to establish in the
2 Commission is who caught what, where was it
3 caught, and I find despite excellent work by the
4 Commission staff, that we're missing some of this
5 data that would be very helpful in pretty well
6 every cross I've done. So I look forward to
7 working it out with Commission staff on this.

8 Perhaps we can go to Exhibit 74.

9 Q Mr. Grout, while we're doing that, in 2009 there
10 was no commercial fishery, public commercial
11 fishery; is that correct?

12 A That's right. We did not have a commercial
13 fishery opening in 2009.

14 Q I'll come back to the 2004 document in a moment.
15 So there's a graph on page 26 that's useful,
16 of the document. It's the page 26 in the actual
17 document itself, not the -- there we are.

18 Now, if we look at that graph we can see
19 Fraser sockeye extremely low levels after the
20 Hell's Gate slide, and then in 1960s, early 1960s
21 we of course hit very low levels again. And then
22 we did some -- well, somebody did some really good
23 work. I wasn't around then, and successfully
24 rebuilt the run to starting to approach historical
25 levels by the 1990s. Maybe you can help me. Were
26 there IVQs in operation in the Fraser River
27 sockeye fishery during that period from 1960 to
28 1990?

29 A No, there were not.

30 Q And the size of the fleet, you've testified
31 already, was at least double the size that it is
32 today?

33 A Certainly relative to the buybacks that occurred
34 in the mid to late '90s.

35 Q So then it's possible to rebuild the Fraser River
36 sockeye fishery from very low levels without ITQs?

37 A You're making a correlation that I don't see in
38 this figure. This is showing the run size of
39 Fraser sockeye over time, and for all of the years
40 that are shown on this figure there was a
41 competitive fishery. The licensing structure did
42 change in the late '60s, early '70s to limit entry
43 vessel based licensing. So I'm not sure what
44 conclusion you're trying to ask me to come to now.

45 Q Well, Mr. Grout, I think I'm asking a fairly
46 simple question. The fishery at 1960, if we look
47 at the graph, was at very low levels. By 1990 it

- 1 was approaching historical levels. Was the
2 fishery rebuilt? And maybe that's a place to
3 start, during that period from 1960s to early
4 1990s, according to that graph.
- 5 A So your question is whether the fishery was
6 rebuilt or not, or the abundance of Fraser river
7 sockeye?
- 8 Q Whether the Fraser sockeye stock was rebuilt from
9 the 1960s to the 1990s.
- 10 A Well, I think in terms of your question there's
11 been considerable discussion about what the
12 optimum abundance of Fraser sockeye is, and what
13 the capacity of some of these spawning areas are.
14 And as part of the Fraser sockeye spawning
15 initiative modelling work that's been done,
16 there's been considerable effort expended at
17 trying to figure out what's the appropriate model
18 for determining what sort of level of abundance
19 the Fraser sockeye should be managed to.
- 20 Q Mr. Grout, that's not the question I'm asking.
21 I'm just trying to understand if we look at the
22 graph from 1960, it's obviously at quite low
23 levels, about five million it looks like the run
24 size on average. Now, by 1990 we see run sizes at
25 the peak of about 25 million. Is that a
26 rebuilding or not?
- 27 A Rebuilding to me, and correct me if I'm wrong, but
28 it sounds like you're trying to ask me to assess
29 the abundance in the '90s, relative to some other
30 objective that you haven't stated. If you're
31 asking me to agree that the abundance of Fraser
32 sockeye has increased over that time period, I'm
33 willing to agree to that.
- 34 Q Thank you. The abundance was increased, despite
35 there being no IVQ program and a fishing fleet
36 that was twice the size at least of where it is
37 today; is that correct?
- 38 A Yes, that is correlated with the same time period
39 here.
- 40 Q So am I really stretching the bow that far to say
41 that it's possible to rebuild the Fraser sockeye
42 run from very low levels without an ITQ or IVQ
43 program?
- 44 A You're asking me to draw a conclusion from facts
45 that, quite frankly, aren't necessarily here in
46 the figure.
- 47 MR. EIDSVIK: Mr. Commissioner, I'm going to move on,

- 1 but I think my point is clear.
- 2 Q Maybe I can take it as a slightly different way,
3 as well. You've said that -- or at least the DFO
4 seems to be pushing IVQs quite hard as the
5 solution to the problems besetting the fishery
6 today; is that fair to say?
- 7 A Well you've used the word IVQ, which I take to
8 mean "individual vessel based" quota.
- 9 Q Or ITQ.
- 10 A And I've been using the wording "share based
11 management" approaches. We have had examples of
12 ITQ demonstrations, but there's other examples of
13 share based management approaches.
- 14 Q So I guess the point I'm getting at is we don't
15 necessarily need ITQs, IVQs or SBMs to rebuild the
16 Fraser sockeye fishery from fairly low levels,
17 given the experience we saw from 1960 to 1990?
- 18 A You're trying to, I mean, what you're stating is
19 there has been some -- or you're stating that the
20 way the fishery has been managed as a competitive
21 fishery over that time period and you have been
22 stating here that the size of the run is
23 increased. And I get the sense that you are
24 trying to make me, or suggesting there's a linkage
25 there, then, between having a competitive fishery
26 and abundance of Fraser sockeye, and I'm not
27 willing to agree to that point. I don't think
28 there's a cause and effect there.
- 29 Q I wasn't suggesting there was a cause and effect.
30 All I'm suggesting is that with a competitive
31 fishery it's not impossible to rebuild the Fraser
32 River sockeye run from low levels.
- 33 A You're drawing again, you're making a conclusion
34 that the fishery was responsible or not for that
35 increase in abundance that we see there.
- 36 MR. EIDSVIK: Okay. If we go to page 27 of the same
37 document, that would be useful. Thank you, Mr.
38 Lunn. It's a little bit hard to read.
- 39 Q If we could focus on what I'm trying to get, and
40 my eyes aren't as good as they should be, if you
41 can go to the top line perhaps, Mr. Grout, it
42 might be helpful if you read it. The Canadian
43 commercial catch, can you tell us what the
44 Canadian commercial catch on Fraser River sockeye
45 was in 2005?
- 46 A 129,400.
- 47 Q And what was the exploitation rate?

1 A It says two percent of the run.

2 Q Now, in 2009 there was no commercial fishery; is
3 that correct?

4 A That's right.

5 Q So obviously the commercial fishery in 2005 isn't
6 the source of the problem in 2009, isn't the
7 source of why there was no commercial fishery in
8 2009. 2005 is the brood year, correct?

9 A The majority of Fraser sockeye are age four, and
10 so, as such, over 90 percent or 95 percent of the
11 returns in 2009 would have come from spawners in
12 2005.

13 MR. EIDSVIK: Perhaps we can go to the bottom of the
14 page, Mr. Lunn.

15 Q So here we have a total run of 7.077 million; is
16 that correct?

17 A Yes.

18 Q And the gross escapement at Mission of 6.06
19 million.

20 A Yes.

21 Q So if the commercial fleet had have not caught
22 that 129,000 sockeye, we would have put up
23 6,150,000 or so if -- my math is not very good.
24 So what I'm saying is that two percent caught by
25 the commercial fleet in 2005 had nothing to do
26 with why the fishery was closed in 2009, based on
27 these numbers.

28 A Perhaps you could rephrase your question, just so
29 I'm sure I'm understanding it correctly.

30 Q Well, the fishery, there was no commercial fishery
31 for the coastal fleet in 2009. In 2005 the brood
32 year, the coastal commercial fleet caught 129,000
33 sockeye out of a seven million run. If you were
34 to look for the reason why there was no fishery in
35 2009, you wouldn't be looking at the commercial
36 fleet in 2005, their fishing activities; is that
37 correct?

38 MR. MARTLAND: I'm going to take the pause to raise
39 this concern. This is a witness where the notice
40 we have provided to participants and the premise
41 for the evidence being led is allocation and the
42 related topics. We're moving into different
43 terrain. I don't have a difficulty if we're
44 dipping toes into those waters, but I'm concerned
45 that this may be a topic where the witness and
46 participants weren't provided notice in advance
47 that this was the focus of questions. Now, as I

1 say, if it's one or two questions, and knowing
2 that Canada hasn't risen to their feet, I don't
3 propose to object. But if we're continuing down
4 this line, I will raise that objection.

5 MR. EIDSVIK: It is one of the important issues, and I
6 know when I came here a day ago I thought we were
7 just talking about allocation, and instead we've
8 heard testimony about IQs, how IQs are necessary
9 to lead to the production and safety and
10 sustainability of the fishery, and this is
11 directly on topic, Mr. Commissioner.

12 THE COMMISSIONER: Thank you, Mr. Eidsvik. I think the
13 way we'll finish the afternoon is this way, in
14 fairness to the witness and to you, Mr. Eidsvik.
15 If the witness feels he can answer your question,
16 then I would invite him to answer it. If he feels
17 he needs some time to think about your question
18 before he answers, I will grant him that time to
19 do so. I don't want either you or he to feel that
20 you've been taken by surprise in any way about the
21 scope of this area. But as I say, if he feels he
22 can answer it, then certainly I would invite him
23 to do so, otherwise I would grant him the
24 opportunity to think about it, and perhaps when he
25 returns he can then advise you about his answer.

26 MR. EIDSVIK: Thank you, Mr. Commissioner. I note the
27 time. Perhaps it's a good time for...

28 THE COMMISSIONER: Well, I'm just going to invite the
29 witness, if he feels he can answer it, fine. If
30 not, if he wishes to think about that, I'll give
31 him that opportunity.

32 A Sorry, before we started I think I'd asked you to
33 rephrase or repeat the question, so maybe you
34 could do that.

35 MR. EIDSVIK:

36 Q Yes. Well, there can be many causes for why 2009
37 there was no public commercial fishery. If you go
38 back and look at the commercial activity,
39 commercial fishing activity in 2005, the brood
40 year, having only caught 129,000 sockeye out of
41 7.1 million sockeye, you can't really say that the
42 commercial, public commercial fishing fleet on the
43 coast is responsible for no commercial fishing in
44 2009.

45 A Okay. I think I understand the question. I mean,
46 the driver for whether there's a commercial
47 fishery or not in 2009 was the escapement

1 objectives that have been laid out in the IFMP,
2 and then the allocation priorities associated with
3 those. So in setting out those plans, we're not
4 looking at 2005 specifically in setting out the
5 escapement plan for the 2009 fishery.

6 MR. EIDSVIK: Is it a good time for our break?

7 THE COMMISSIONER: Yes.

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

9 THE COMMISSIONER: The hearing is now adjourned for the
10 day and will resume Monday at ten o'clock.

11
12 (PROCEEDINGS ADJOURNED AT 4:05 P.M. UNTIL
13 MONDAY, FEBRUARY 28, 2011 AT 10:00 A.M.)
14
15
16
17
18

19 I HEREBY CERTIFY the foregoing to be a true
20 and accurate transcript of the evidence
21 recorded on a sound recording apparatus,
22 transcribed to the best of my skill and
23 ability, and in accordance with applicable
24 standards.
25
26
27

28 _____
29 Susan Osborne
30 Registered Court Transcriber
31
32
33
34

35 I HEREBY CERTIFY the foregoing to be a true
36 and accurate transcript of the evidence
37 recorded on a sound recording apparatus,
38 transcribed to the best of my skill and
39 ability, and in accordance with applicable
40 standards.
41
42
43

44 _____
45 Karen Acaster
46 Registered Court Transcriber
47

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

7
8
9
10 _____
11 Diane Rochfort
12 Registered Court Transcriber
13
14
15
16
17

18I I HEREBY CERTIFY the foregoing to be a true
19 and accurate transcript of the evidence
20 recorded on a sound recording apparatus,
21 transcribed to the best of my skill and
22 ability, and in accordance with applicable
23 standards.

24
25
26
27 _____
28 Karen Hefferland
29 Registered Court Transcriber
30
31
32
33
34

35I I HEREBY CERTIFY the foregoing to be a true
36 and accurate transcript of the evidence
37 recorded on a sound recording apparatus,
38 transcribed to the best of my skill and
39 ability, and in accordance with applicable
40 standards.

41
42
43
44 _____
45 Pat Neumann
46 Registered Court Transcriber
47