

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

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

Monday, February 28, 2011

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

le lundi 28 février 2011

APPEARANCES / COMPARUTIONS

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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.

Philip 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 ("FNC") Council of Haida Nation

APPEARANCES / COMPARUTIONS, cont'd.

No appearance	Métis Nation British Columbia ("MNBC")
Nicole Schabus	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
James Hickling	Laich-kwil-tach Treaty Society Chief Harold Sewid Aboriginal Aquaculture Association ("LJHAH")
Lisa Fong	Heiltsuk Tribal Council ("HTC")

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5

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

7 MR. MARTLAND: Mr. Commissioner, this morning we're
8 reconvening with the first commercial fishers'
9 panel, and Mr. Eidsvik is continuing his
10 questions. I have received estimates and ask
11 counsel to be as quick as they can with their
12 questions in order to ensure that we complete
13 this, although, and I'll be perhaps reminding them
14 from time to time where they're at vis-à-vis their
15 estimate.

16 There's a small point that Mr. Rosenbloom
17 drew to my attention. Mr. McEachern, one of the
18 panellists, had corrections with respect to the
19 transcript from some of his evidence from the last
20 attendance. I'll plan to address those quick
21 points during my re-examination at the conclusion
22 of other questions.

23 Mr. Eidsvik.

24 THE REGISTRAR: The witnesses are reminded that your
25 oath is still in effect.

26 MR. EIDSVIK: Good morning, Mr. Commissioner. For the
27 record, Philip Eidsvik for the Area E Gillnetters
28 and the B.C. Fisheries Survival Coalition.
29

30 CROSS-EXAMINATION BY MR. EIDSVIK, continuing:
31

32 Q Mr. Brown, if you look through the history of the
33 fishery, and you're quite familiar with it, given
34 the book you've written and all the years you were
35 on the commission, if you look through the history
36 of the fishery from the '60s to the '90s, how
37 would you describe that period?

38 MR. BROWN: Well, I would describe it as a period
39 following the Second World War as a period of
40 gradual and slow rebuilding of stocks,
41 particularly after the advent of the IPSFC in the
42 1930s and the rehabilitation work they did, and
43 the gradual development of a whole industry and an
44 entire sort of coastal network of dependency upon
45 that fishery that evolved into the modern era in
46 the '60s was then subsequently shaped somewhat by
47 the licensing programs brought under the Davis

1 Plan and limited entry, to culminating into the
2 '80s and the '90s where we saw stocks nearly
3 rebuilt, Fraser River stocks nearly rebuilt to
4 historic levels. And from thereon after, the mid
5 '90s, for a variety of reasons, we see this
6 precipitous decline in productivity and a period
7 of unprecedented political and social chaos.

8 Q Going to the period that ended in 1990, from the
9 '60s to 1990, was there a general conception in
10 the industry and in other places that we were
11 doing a pretty good job of managing the rebuilding
12 of the resource, then?

13 MR. BROWN: Well, Mr. Commissioner, I'm not sure how I
14 could quite answer that other than I would think
15 that there was a general feeling in the industry
16 that things were not perfect but that they were
17 reasonably well managed. Stocks were rebuilding
18 on the aggregate. There was always stocks of
19 concern, but there seemed to be a growing
20 sophistication within the fisheries management
21 community around how one would go about
22 identifying problems and addressing them. And I
23 would say, despite the vilification by some
24 quarters in the media and elsewhere, most
25 commercial fishermen were deeply imbued with the
26 conservation ethic. They understood that in order
27 to survive as an industry you had to buy into
28 conservation and rebuilding.

29 So I think, generally speaking, without
30 overplaying it, there was a sense that we're doing
31 okay here. And comparatively speaking to world
32 fishery problems, which I don't purport to be an
33 expert, but you read about them around the globe
34 where there's real calamitous and very, very
35 conflict-ridden types of things going on, the
36 Fraser River fishery seemed to be well managed,
37 well studied, well thought through from a process
38 point of view, and I think the fishing communities
39 of all types were fairly comfortable within that.

40 Q And I'm going to just go off on a side distraction
41 just for one second. It's often commercial
42 people, the four of you sitting there, are looked
43 upon as the rapists of the resource and not an
44 environmental bone in your body. Can you tell us
45 who fought the Moran Dam in the 1960s, long before
46 the first environmental group got formed in B.C.?

47 A Well, Mr. Commissioner, I was a former member of

1 the United Fishermen and Allied Workers Union, and
2 at a fairly young age I was deeply impressed by
3 some of the figures that I met within that union,
4 but it wasn't just limited to the union, there
5 were people outside of the union that were very
6 similar, but they were people like Homer Stevens,
7 former president of the UFAWU, a rank-and-file
8 activist by the name of Scotty Neish, who put his
9 life on hold for many years back in the 1950s,
10 campaigning along with members of the B.C.
11 Wildlife Federation and other citizens' groups,
12 long before environmental groups were even thought
13 of, to campaign against things like the Moran Dam,
14 which had been a proposal of the Provincial
15 Government of the day to dam the river upstream of
16 Hell's Gate, and would have had a terrific amount
17 of damage on all of our sockeye runs.

18 So I think the point, Mr. Eidsvik, that
19 you're leading me to, is that working class people
20 in the fishery had a deeply attached -- a deep
21 commitment to the idea of protecting the resource
22 and fighting for the resource and evolving
23 environmental consciousness about the resource,
24 and I guess without trying to be too provocative
25 here, in the more latter context it seems that
26 some of the discourse is very negative towards
27 commercial fishermen, and yet none of my
28 colleagues here, nor anybody that I met in my
29 entire career in this fishery, ever callously
30 thought, "Oh, I'll go out and fish the last fish
31 out." It's quite the opposite. Quite the
32 opposite.

33 Q Now, in every career, and you've had a long one,
34 you make -- people, no matter how good
35 intentioned, make major mistakes, and the union
36 was an advocate for transferring a lot of the
37 power of the International Pacific Salmon
38 Fisheries Commission and a lot of their duties to
39 the Department of Fisheries. Looking back, now,
40 was that a mistake?

41 A Mr. Commissioner, this is kind of a difficult
42 question. Again, I draw upon my background as a
43 unionist and a Canadian nationalist, which I'm not
44 ashamed of. When I was a younger person in the
45 industry, I would listen to people like Jack
46 Nichol, former president of the union, and Homer
47 Stevens, and a number of other pretty powerful

1 speakers, go on about the need to get a salmon
2 treaty in which Canada controlled the Fraser River
3 and controlled all of its stocks, and without
4 taking up too much of your precious time, this was
5 an ongoing, century-long problem I tried to
6 account in my book, with U.S. interceptions of
7 Canadian salmon. It totalled in the millions each
8 year. It was a series problem for the longest
9 time.

10 And so we always believed, I was brought up
11 on the belief that once Canada got a salmon
12 interception treaty for the entire coast, we would
13 be all the better off. We also believed at the
14 same time, it was a parallel process, that once we
15 got a 200-mile economic zone off the shore of
16 Canada things would start to be better for working
17 people in the fishery.

18 I still believe the principles were correct;
19 however, there are some things that happened
20 subsequently to the signing of the Canada/U.S.
21 treaty that have sort of diminished some of my
22 enthusiasm, the first thing being that whatever
23 else there may have been wrong with the old IPSFC
24 format, and as you heard Mr. Lapointe describe it,
25 this was a sharing arrangement in the panel area
26 waters, which is the lower Georgia Strait/Juan de
27 Fuca/Fraser River, where Canada and the United
28 States shared 50/50 pink salmon and sockeye salmon
29 going to the Fraser River. Whatever might have
30 been wrong with that system, it had one very, very
31 important factor that I think was very useful and
32 enduringly valuable. That was that neither
33 country could control the resource without some
34 accountability to the other. This irked me as a
35 Canadian nationalist, but looking back on it,
36 there was a balancing or a checks and balances to
37 that system that actually had a great deal of
38 merit. I'm not suggesting we would necessarily go
39 back to it, but what has bothered me subsequently
40 is that once the salmon interception treaty was
41 put in place and all of the issues of so-called
42 regulating the interceptions was in place, it was
43 believed that Canada, then, would be able to
44 unilaterally do whatever it wished with those
45 stocks, and one of the things was, we've heard
46 about it, which was the escapement add-on
47 principle that we would put more fish on the

1 grounds so that there would be more fish to be
2 caught by Canadian fisheries in the future.

3 But that also brought about a new regime
4 wherein new policies, new directives, largely from
5 Ottawa, as to who would get the fish and who would
6 get those benefits, became highly politicized and
7 highly problematic.

8 I'm sorry, I hope I haven't gone on too long
9 here, but all I'm trying to say is back in the
10 earlier days it was a narrower framework, it was a
11 50/50 sharing arrangement, there was much less
12 room for discretion or political direction, and
13 now, in my opinion at least, there's a good deal
14 more politicization in terms of how the resource
15 is used.

16 Q And that's an interesting period for, I think, the
17 commission, is things were going pretty good until
18 about 1990, and, to me, we could probably find a
19 lot of the answers of what's happened to the
20 Fraser fishery if we look at the things that have
21 changed since 1990. Now, we've seen in 1985 we
22 had the new commission takeover a lot of the -- or
23 DFO takeover a lot of the duties that were
24 formally done by the commission; is that correct?

25 MR. BROWN: Yes.

26 Q What other major changes happened about 1990 that
27 you think may have led to the collapse of the
28 fishery today, well, in the last 15 years?

29 MR. BROWN: Well, it's enormously complicated, Mr.
30 Eidsvik and Mr. Commissioner. One of the things
31 that changed, obviously, was the **Sparrow** decision
32 which, in a way, didn't change anything, but it
33 certainly changed the way things were perceived.
34 All along, in all my career, it was always noted
35 that Aboriginal people had a special right to
36 fish, and all through my career, whenever we met
37 with DFO personnel, we were always told, and
38 nobody ever disputed it, that they had a priority
39 for their food, social and ceremonial fishery.

40 After the **Sparrow** case, and I'm no expert in
41 all of this jurisprudence, the entire way in which
42 DFO seemed to operate around the Aboriginal
43 fishery seemed to change dramatically. And if I'm
44 asked, I could go into that in more detail, but
45 I'm mindful of keeping brief here. I want to go
46 to some of the other points.

47 In my research for my book, I was forced,

1 over several years, to go back into some pretty
2 deep reading in terms of some of the antecedence
3 to some of the restructuring that occurred
4 following the 1983 Royal Commission done by Dr.
5 Peter Pearse, which took the fishery from the pre
6 sort of -- well, from the 1970s era and projected
7 it into the future as we know it now, and there
8 was a profound amount of transformation. But at
9 the heart of a lot of that was a government
10 objective that was articulated first in a document
11 in 1978, commissioned by Pierre Trudeau. It was a
12 document called, Reforming Regulations, and in it
13 Trudeau asked the Economic Council of Canada to
14 answer two questions: How do we approach the new
15 economy; and, what will be the role of government
16 in it? And there was an entire chapter in that
17 report, written, incidentally, by Peter Pearse,
18 who was on the commission, that essentially said
19 that what the government needs to do is
20 rationalize the fishery based on the notion of too
21 many fishermen chasing too few fish, tragedy of
22 the commons, et cetera, et cetera, get it down so
23 it can be economically more viable, so they said,
24 and the chief objective to derive economic benefit
25 for the Government of Canada in the form of
26 economic rent; i.e. royalties or land use, so
27 there was a whole thrust to reform the fishery in
28 terms of making it more manageable, but also for
29 the government to receive rent for the fishery.

30 And I'm only half finished, but I see you're
31 nodding or wanting to move on.

32 Q I'm sorry, Mr. Brown, I'm just trying to move on.
33 I know we've got limited time --

34 MR. BROWN: I know.

35 Q -- so I'm trying to focus on if we go -- we know
36 that things were going okay until about 1990, then
37 things went off the rail, so we've seen two
38 factors so far. You've identified the change from
39 the IPFSC into the new commission and the transfer
40 of a lot of duties over to DFO. We've talked
41 about **Sparrow** and the issues that arose out of
42 that. If you had to look at any other prime
43 factor, would there be one that you could think
44 of?

45 MR. BROWN: All I can say is that I believe that,
46 looking back over time that there has been an
47 overly fixated focus on the notion that the

1 commercial fishery was the cause of all our
2 problems here. I'm not going to sit up here and
3 say that there weren't problems with the
4 commercial fishery, but I will say, looking back,
5 that there were many other factors impacting these
6 salmon, besides commercial fishing, which I do not
7 believe a case can be made for overfishing in any
8 significant way and that most of the attention and
9 most of the activity by the DFO over the last 10
10 or 15 years has focused on changing the commercial
11 fishery as though it were the sole cause and not
12 addressing many of the other problems that other
13 people have testified here have identified as the
14 problems; that is, downsizing of government; the
15 onslaught against fisheries habitat; all of the
16 lack of knowledge and information that we need to
17 properly protect these fish. And I could go on
18 and on and on, my point being that it appears that
19 the thing that DFO focused on the most was the
20 commercial fishery, which I think was overkill and
21 unfair and far too selective, but I also note it
22 was the one thing that was the easiest for the DFO
23 to do.

24 Q So if we look at the 2009 fishery, for example, I
25 brought Mr. Grout back to the 2005 fishery out of
26 a run that was roughly seven million, the
27 commercial sector caught 29,000. So it's easy to
28 see that the commercial sector had nothing at all
29 to do with the collapse in 2009, given the fishing
30 effort in 2005. Would you make that as a
31 conclusion?

32 MR. BROWN: Absolutely.

33 Q Mr. McEachern, I see you nodding your head. Would
34 you make that as a conclusion as well?

35 MR. McEACHERN: Yeah, that's correct.

36 Q In 2007 and 2008, you'd have to go back and look
37 at the brood years, and if those years were closed
38 for commercial fishing, it would be easy to say
39 commercial fishing's not a factor?

40 MR. BROWN: I do not believe commercial fishing was a
41 factor in any of those years.

42 Q So the focus on management of the commercial
43 sector, such as IQs, such as coho boxes, such as
44 fleet downsizing, is misguided in the sense that
45 it doesn't -- it's a distraction from getting at
46 the real problems? And I'm not saying that
47 there's not commercial sector problems, like with

1 coho.

2 MR. BROWN: I think that the debate about how fishing
3 rights within the commercial system should be
4 developed, particularly around the notion of
5 permanent property rights, is utterly outside of
6 the real concerns we have for the fish,
7 themselves. There are a bunch of extravagant
8 claims, in my opinion, about how this is the only
9 way in which the fishery can be properly managed.
10 I heard Mr. Grout make that point. I've heard it
11 a thousand times from all kinds of people. I
12 believe it comes from a very narrow philosophical
13 premise that the only ways human beings would do
14 the right thing is out of crass, narrow, economic
15 self-interest. I, personally, being a socialist
16 person coming from the left, quite proud of that,
17 believes that human beings are more cooperative in
18 nature than that. I believe that people left to
19 their own devices to organize cooperative
20 arrangements with proper knowledge and proper
21 opportunity will do the right thing, and to that
22 degree, Mr. Eidsvik, I would suggest that there
23 are ways to make this fishery more responsible,
24 more responsive to conversation without having to
25 enter into this whole discourse about property
26 rights and all the other things.

27 I don't want to over -- go over all what I
28 did the other day, Mr. Commissioner. There are
29 other options that don't imply such a profound
30 shift in property rights in order to control a
31 fishery in exceptional circumstances of low
32 abundance. But other than that, I don't see why
33 we would go down that road.

34 Q What I'm asking you, in really short terms --

35 MR. BROWN: Sorry.

36 Q -- is if the commissioner left here with the
37 belief that IQs would solve the problem, IQs in
38 the public commercial fishery, and he thought,
39 "Okay, my job is over. I recommended IQs in the
40 public fishery," that his job would be done and
41 the fishery would magically rebuild, is that a
42 pretty false and inaccurate conclusion?

43 MR. BROWN: I don't think there's any point me
44 repeating myself.

45 Q Okay. Thank you. I want to go to Mr. Sakich on
46 consultation issues for a minute. You've been
47 involved in the CSAB and in the IPSC (sic), I

- 1 guess it's called, the bigger group --
- 2 MR. SAKICH: Integrated Harvest Management Planning.
- 3 Q -- the Integrated Harvest Management Committee.
- 4 Other than license fee relief and funding for the
- 5 CSAB for holding meetings and the secretariat, is
- 6 there any other decision that was made by
- 7 consensus, the consensus approved at the IHPC? I
- 8 see you puzzled, Mr. Ashton; are you familiar with
- 9 that issue?
- 10 MR. SAKICH: I would like to know what you're looking
- 11 for; a lot of things happened in there.
- 12 Q Was there a consensus decision on other issues
- 13 aside from these two main points, in the IHPC,
- 14 beyond a licence holiday for the CSAB and a
- 15 secretariat? There was those two items of
- 16 consensus. Was there others that --
- 17 MR. SAKICH: This is just recent stuff?
- 18 Q Yes.
- 19 MR. SAKICH: I haven't been hanging around this process
- 20 that much, and so --
- 21 Q Maybe Mr. Ashton can answer that for me?
- 22 MR. SAKICH: This would be something recent from here?
- 23 Q No. I think I'm going to switch. I think Mr.
- 24 Ashton might know the answer to this question.
- 25 MR. ASHTON: Well, I don't know that I know the answer
- 26 beyond I can't recall any other issues that were
- 27 put up as a motion that received consensus beyond
- 28 those two that you mentioned.
- 29 Q And that's a fairly big process. I gather there's
- 30 Aboriginal groups, commercial groups, sport
- 31 groups, environmental groups in that process?
- 32 MR. ASHTON: That's correct.
- 33 Q So a tough place to get consensus?
- 34 MR. ASHTON: I think there's a diverse opinion amongst
- 35 the participants.
- 36 Q Now, Mr. Sakich, you're a strong advocate of IQs
- 37 in the fishery, can I ask you: Did the CSAB ever
- 38 send a letter promoting and saying that the fleet
- 39 had accepted IQs, to the minister, that was
- 40 forced --
- 41 MR. SAKICH: Not to my knowledge.
- 42 Q They've never sent out a letter that, at a
- 43 subsequent meeting, other people insisted that the
- 44 letter be retracted and you had to write a second
- 45 letter?
- 46 MR. SAKICH: I would have to have a look through
- 47 things. I have the records since the place

1 started and a lot of traffic has gone through, a
2 lot of letters. We did have an executive
3 director, but I have managed to keep everything
4 together. But I don't recall anything like that.
5 Q Did the CSAB ever send out a letter opposing a
6 judicial inquiry into the management of the
7 fishery?
8 MR. SAKICH: No, I don't think we sent out a letter
9 opposing that.
10 Q Did the CSAB ever send it out, a letter, without
11 the CSAB approval as a whole, opposing the
12 inquiry?
13 MR. SAKICH: I don't think so. Not that I remember.
14 Q And what's your position on this inquiry as a
15 useful force?
16 MR. SAKICH: Well, I --
17 MR. EIDSVIK: I'm almost done, Mr. Martland.
18 MR. MARTLAND: I don't want me standing to indicate any
19 concern about the witness's answer, per se. I
20 just raise as a question this, and I think we have
21 been attempting to give Mr. Eidsvik some leeway,
22 because he has some important points to identify
23 through these witnesses. We've called these
24 witnesses, as you'll recall, on allocation and
25 management of the commercial fishery in the
26 context of our hearings on this topic. Perhaps he
27 can articulate the relevance of having witnesses
28 opine on the terms of reference, or perhaps a more
29 useful way of approaching that is to tie it to a
30 particular issue.
31 MR. EIDSVIK: Thank you, Mr. Martland. Mr.
32 Commissioner, I'm simply addressing the
33 consultation issue that goes on in our industry,
34 and I gather consultation was one of the things
35 that we were asked about, and I'm asking about a
36 couple of the issues that were brought up in the
37 context of our consultation process.
38 MR. SAKICH: I want to answer that question.
39 MR. EIDSVIK: Thank you.
40 MR. SAKICH: It's something I've been waiting to do in
41 here. I don't have anything against the inquiry,
42 as you asked me, but the one thing that is of
43 great concern to me is that this is now going to
44 be extended another year, so basically this thing
45 will have been in place for, what, three years?
46 And if this is going to have any effect on other
47 work that needs to be done, if everything goes on

1 hold because of this inquiry, that becomes a real
2 concern of mine. If we have to wait for outcomes
3 to come out of here before we can move ahead with
4 some things that, again, is a concern of mine.
5 That's my opinion, and I'm allowed that one.
6 Q I think you're fully free and welcome to have all
7 the opinions you want, Mr. Sakich. My point is,
8 so you were content with the way things were
9 managed and going along? Did the CSAB have an
10 opinion on this?
11 MR. SAKICH: Okay, to explain that, the CSAB is a very
12 diverse group of people, as you know. For the
13 CSAB to come up with an opinion on an inquiry is a
14 very hard thing to do, because you would never
15 reach consensus on it, so folks were left up to
16 their own thoughts on it; nobody say no, nobody
17 said yes, we just left it alone and you can go off
18 to your other respective groups and you can
19 support it from there. But to answer for a group
20 where everybody things -- every second person in
21 there things different would not be a very smart
22 thing to do.
23 Q Okay. So given that lack of consensus, you're
24 telling the Commissioner today that no letter was
25 sent by the CSAB opposing the judicial inquiry
26 into the management of Fraser River sockeye,
27 because there was no consensus on it? That's your
28 testimony today?
29 MR. SAKICH: That is true.
30 MR. EIDSVIK: Those are the end of my questions, Mr. --
31 MR. SAKICH: Now, one other --
32 MR. EIDSVIK: -- Commissioner, thank you.
33 MR. SAKICH: Just wait a minute here. There is one
34 other thing here. Things are long ago and far
35 away, but I do not recall any letter distinctly
36 relating to being against this.
37 MR. EIDSVIK: Thank you, Mr. Commissioner. Those are
38 my questions.
39 MR. MARTLAND: Mr. Eidsvik was at or under his
40 allocation and I appreciate that. Mr. Timberg is
41 next.
42 MR. TIMBERG: It's Mr. Timberg, for Canada, with my
43 colleague, Geneva Grande-McNeill. And Mr.
44 Registrar, if we could have Tab 7 from Canada's
45 documents.
46
47

12
PANEL NO. 21
Cross-exam by Mr. Timberg (CAN)

1 CROSS-EXAMINATION BY MR. TIMBERG:

2
3 Q And Mr. McEachern, I have some questions for you
4 with respect to this e-mail. Can you identify
5 this e-mail? It looks like you sent it on June
6 8th, 2008.

7 MR. McEACHERN: It definitely looks like mine. I wrote
8 a lot of -- it would take me a while to remember
9 exactly what this is about, but it definitely
10 looks like my writing.

11 MR. TIMBERG: All right. Thank you. If this could be
12 marked as the next exhibit, please.

13 THE REGISTRAR: Exhibit 487.

14
15 EXHIBIT 487: E-mail dated June 8, 2008, from
16 Ryan McEachern to Area D Members, Subject:
17 Area D Quota Discussion Part 8
18

19 MR. TIMBERG:

20 Q And Mr. McEachern, it looks like you sent this
21 e-mail to all of the Area D Gillnet members on
22 June the 4th, 2008, and it appears that you're
23 answering a number of questions related to what I
24 think is an application for a demonstration
25 fishery for share-based management; does that
26 refresh your memory?

27 MR. McEACHERN: Yes. The e-mail on the bottom part of
28 the screen was -- I guess you guys have eliminated
29 the "to" portion, or it wasn't included, and then
30 it looks like I forwarded it to the department to
31 further some of the discussion I was having at the
32 harvest committee level with the department.

33 Q All right. And did you send this out to the Area
34 D Gillnet members?

35 MR. McEACHERN: Yes.

36 Q All right. And who are the Area D Gillnet
37 members?

38 MR. McEACHERN: The Area D Gillnet Association is a
39 society, a non-profit, that's set up to advocate
40 and lobby for Area D Gillnet fishermen. We were
41 in place before the current system of consultation
42 with the Area Harvest Committee was imposed upon
43 us, so we see ourselves as the true voice of the
44 Area D Gillnet Association. So you've got, I
45 think we have around two-thirds of the Area D
46 fishermen belong to the association.

47 Q All right. And so point number 1 here, it looks

February 28, 2011

1 like you're commenting on the results of a survey
2 in support or against share-based management, this
3 demonstration fishery; is that correct?

4 MR. McEACHERN: Just a sec. Yeah, and point number 1,
5 in particular, was dealing with the issue we have
6 around -- there's two different types of Area D
7 licenses; ones that are held by the general
8 public, and another held by the Northern Native
9 Co-Op, and it goes into a little bit of detail
10 around that issue.

11 Q All right. And it sounds like it had -- the
12 Northern Native Co-Op voted against share-based
13 management proposal; is that correct?

14 MR. McEACHERN: That's correct.

15 Q But had they voted in favour of it, then you would
16 have had your majority to implement this
17 demonstration fishery?

18 MR. McEACHERN: That's correct, of the fishermen that
19 voted, yes.

20 Q Right. And do you know if the position of the
21 Northern Native Co-Op is still against share-based
22 management, or is their position still -- has
23 their position changed since 2008?

24 MR. McEACHERN: We have had no discussion around that
25 issue.

26 Q All right. And then over the page then, page 2 of
27 3, to point 3, and so you've written this e-mail
28 to sort of to share your thoughts about the debate
29 on share-based management with your members,
30 right, the pros and the cons? Is that generally
31 what you were trying to do here?

32 MR. McEACHERN: Yeah, I think it would be fair to say I
33 hadn't written this e-mail with the intention of
34 analyzing it in this setting.

35 Q Fair enough. So paragraph 3, then, in the middle
36 line you say:

37
38 I think the trollers will try to structure
39 their fisheries to catch fish at a speed that
40 enables them to maximize quality, which is
41 really the troller niche.

42
43 Can you elaborate what you mean by that statement?

44 MR. McEACHERN: Troll fish generally frozen at sea in a
45 lot of cases is dedicated for a higher quality
46 market, so they tend to like to catch their fish
47 slower. Often they'll bleed their fish and then

1 they dress it onboard the vessel and freeze it.
2 So they're looking to get paid for all that work,
3 so they can't sell their fish at the same price
4 that the net fleet sells their fish at, which is
5 generally sold to a processor, and then those
6 costs are added later. So they like to catch fish
7 a lot slower.

8 And when there's a lot -- a large volume of
9 fish to catch, then the net fleet really starts to
10 shine and you can out-fish the trollers, in which
11 case they would look to transfer fish off of their
12 vehicles so they can continue their slow pace.

13 Q Right.

14 MR. McEACHERN: Trollers can fish -- they can catch
15 fish faster, too, but they don't like to; they
16 like to do it slower.

17 Q Right. And can you describe, for the benefit of
18 all of us, the difference between where a troller
19 then would catch one of their fish to get a higher
20 quality return as compared to, say, a seine
21 fishery, where they would sell their fish, just so
22 we can understand a bit of the business and the
23 market behind the sales?

24 MR. McEACHERN: Well, the seine fishery, most of that
25 -- the vast majority of that fish gets sold to
26 fish companies where it gets processed onshore,
27 and it's destined for the more general use market.
28 And so if you were looking for top quality, sushi-
29 grade fish, with very little bruising or marring,
30 each fish is handed individually, you would look
31 for more of a troll fish. But there are specialty
32 operators in both seine and gillnet fisheries
33 which also specialize in quality. But just as a
34 whole, the seine fishery generally goes for
35 volume.

36 Q Right. And so where would a troll fisher sell
37 their product at the end of a fishing period?

38 MR. McEACHERN: Well, there are some buyers that
39 specialize in troll fish, so they would be buying
40 off trollers, and a lot of the trollers, also
41 independent operators, sell directly into
42 restaurants and hotels.

43 Q And what's the difference in return that you get?
44 What's the added value? Do you have a sense of
45 that?

46 MR. McEACHERN: I'm not a troll fisherman or a seine
47 fisherman, but my instinct would be anywhere from

1 50 percent to twice as much per pound.

2 Q Okay, thank you. And paragraph 4 you talk about
3 scrutiny on catch numbers and data for all
4 sectors, and can you explain the importance of
5 this increased scrutiny on the catch data?

6 MR. McEACHERN: Sorry, can you rephrase the question?

7 Q Yes. Can you explain for us what the view is --
8 your views with respect to increased scrutiny on
9 catch numbers and data and the relevance of
10 improving that system?

11 MR. McEACHERN: I guess there's been a lot of finger-
12 pointing around data and who's catching what
13 lately, especially in the period of time since we,
14 you know, since the mid 90s, and part of the
15 frustration as a commercial fisherman, is I'm very
16 honest with my numbers. We have a very strenuous
17 system of filling out logbooks and keeping track
18 of our catch. So to hear ourselves as a fleet
19 being accused of having poor catch numbers or
20 cheating or lying is frustrating, and when I go to
21 a lot of these meetings we get looked down on
22 because of our catch numbers not being accurate
23 enough.

24 So I think what I was getting at is, in this
25 paragraph, is we need a way to try and increase
26 the public confidence in our numbers, especially
27 when I go to a meeting where a lot of these newer
28 fisheries that we're having to fish around
29 subscribe to a more strenuous stock-side
30 monitoring, which we don't have in our fishery.
31 The reality is we don't need it for accuracy sake,
32 but we might need it for public perception sake.
33 That was what I was getting at.

34 Q Okay. Thank you. And if we could turn to
35 paragraph 8 on page 3, you have a comment about
36 under an ITQ system there's less boats moving out
37 to the grounds, and would you agree that under a
38 share-based management it provides an ability for
39 the fleet to adjust itself to determine which boat
40 should go out fishing and which not, depending on
41 the total allowable catch?

42 MR. McEACHERN: Yeah, that is the major benefit, yes.

43 Q And can you comment on the cost of gasoline to
44 operate a boat? I understand it can be a very
45 high cost in the commercial fishery, and I'd just
46 like to hear your opinion on the cost of running a
47 boat.

1 MR. McEACHERN: Sure. So most of the commercial
2 vessels are actually diesel, but the analogy is
3 the same; the cost of running a vessel has gone up
4 astronomically in my generation, yes.

5 Q And what's the impact of that?

6 MR. McEACHERN: Well, every other industry that's
7 affected by fuel prices is able to not -- sorry, a
8 lot of industries are able to pass their costs on.
9 For instance, if you were trucking potatoes from
10 Idaho to Los Angeles and the cost of fuel went up,
11 you just increase the cost of trucking, whereas
12 the commercial fisherman, they're -- all of the
13 input costs go into the fish product and then the
14 fisherman ends up with whatever's leftover at the
15 end. So there's really no way in passing on the
16 cost of increased fuel onto the price of your
17 fish.

18 One of the ways we've been trying to think of
19 how to deal with that would be to -- if there was
20 a way, number one, to catch your fish with less
21 boats, then you save fuel, or if you could somehow
22 have more independent control over your fish that
23 you catch when you catch them, and maybe you could
24 slow down your fuel burn that way. For instance,
25 if you didn't have to, you know, rush to an area
26 that was farther away but you could catch them
27 closer to your home port, because you knew they'd
28 be coming by at a later date, then that would save
29 fuel.

30 Q Right. And pooling of licenses may also assist
31 that reduction of cost?

32 MR. McEACHERN: Right. That's just another -- pooling
33 and ITQ are both just ways of trying to get more
34 fish on less boats.

35 Q Okay. Thank you.

36 MR. BROWN: Excuse me?

37 Q Yes?

38 MR. BROWN: Am I permitted to make a comment?

39 Q I only have a few minutes, if I could direct my
40 questions --

41 MR. BROWN: Well, it would be very brief. I don't
42 disagree with what Mr. McEachern's saying, but I
43 would want to emphasize or reiterate, or at least
44 be given the opportunity to say that you can do
45 all of these things regarding fuel cost-efficiency
46 measures, et cetera, without ITQs; there are other
47 options

1 Q Thank you.

2 MR. BROWN: I just don't want to leave it as though
3 that is the only way you can go about saving fuel
4 costs, et cetera.

5 Q Thank you. And I note that you attached, at
6 paragraph 9 to this affidavit (sic) a copy of a
7 document called, Sustaining America's Fisheries
8 and Fishing Communities, which has been entered
9 already at Exhibit 481. And if, Mr. Registrar, we
10 could have Exhibit 481, please?

11 And you encourage your members to read this
12 document. So is it your view that this document
13 is helpful in setting out some of the issues with
14 respect to the debate?

15 MR. McEACHERN: Yes.

16 MR. TIMBERG: Thank you. And then if we could turn to
17 Exhibit 14 -- Tab 14, please, in Canada's binder.

18 Q And Mr. McEachern, this is a letter from DFO,
19 attention Ryan McEachern and the Area D Harvest
20 Committee, sent February 18th, 2010, with respect
21 to Commercial Demonstration Fishery Proposal.
22 Have you seen this letter before?

23 MR. McEACHERN: Yes.

24 MR. TIMBERG: And if we could have that marked as the
25 next exhibit, please.

26 THE REGISTRAR: Exhibit 488.

27
28 EXHIBIT 488: Letter dated February 18, 2010,
29 from Department of Fisheries and Oceans, to
30 Area D Harvest Committee, attention Ryan
31 McEachern, Subject: Commercial Demonstration
32 Fishery Concept Proposal(s)
33

34 MR. TIMBERG:

35 Q And can you clarify whether the Area D Gillnet
36 Association did submit a proposal for a
37 demonstration share-based fishery in 2010?

38 MR. McEACHERN: On Fraser River sockeye?

39 Q Yes.

40 MR. McEACHERN: No.

41 Q Okay. And can you describe the discussions around
42 why that did not take place?

43 MR. McEACHERN: The department made it clear that we
44 would have to have another survey of our licence
45 holders --

46 Q Right.

47 MR. McEACHERN: -- and at the time I asked for

1 clarification of how we were going to treat the
2 Northern Native Co-Op licences --

3 Q Right.

4 MR. McEACHERN: -- which are substantially different
5 than ours. I could go into detail on that, but
6 it's probably not important. And without hearing
7 any direction from the department about what would
8 be viewed as a clear majority of fishermen and
9 without hearing any direction as to how we were
10 going to deal with the Northern Native Licenses, I
11 decided that a further survey of my fleet would
12 only cause more tearing apart of our group, which
13 has managed to stay very friendly and able to work
14 together through a lot of these issues, even
15 though we have strong support and strong
16 opposition to ITQs within our fleet --

17 Q Right.

18 MR. McEACHERN: -- and there's a large group of people
19 who are fairly neutral.

20 Q All right. And so just looking at this letter, at
21 the bottom of this page, DFO offered to assist
22 with the survey of your group, but you decided
23 not to pursue that for the reasons you just gave?

24 MR. McEACHERN: That is correct.

25 Q Okay. Thank you. And I have some general
26 questions with respect to changes in the market
27 conditions for commercial fishers, so I'm open to
28 some views from the panel with respect to some of
29 these questions.

30 Would you agree that there's been increased
31 competition, worldwide, for sockeye salmon in the
32 last 20 years; is that a general statement that
33 you can agree with, there's been increased
34 competition from Chile, Norway, Alaska and Russia?
35 Mr. Sakich?

36 MR. SAKICH: I don't know if you have any sockeye
37 coming out of Chile, but you have an awful lot of
38 them coming out of Alaska, Bristol Bay and those
39 areas, and they can flood the market pretty good
40 before we even get there. They're an earlier time
41 than our coast.

42 Q I see, because they catch their fish sooner in the
43 season?

44 MR. SAKICH: Yes. And I don't know what's going on
45 over towards Russia, but there's issue with large
46 pink catches, too, in south east Alaska and over
47 towards the Russian side, now, as well.

1 Q All right.

2 MR. SAKICH: A few years ago, at one of the Fraser
3 Panel meetings, or just a general PST meeting, not
4 a Fraser Panel open one, it was shown with the
5 changes in the climate how they were starting to
6 get pinks and other types of salmon up into some
7 of these areas in big numbers where they have not
8 been for a gazillion years. So some of that's
9 being harvested.

10 Q All right. And I'd like your view, Mr. Sakich, on
11 the importance of the MSC process, the Marine
12 Stewardship Council process. Is that important
13 for the ability of the commercial fishers to sell
14 their fish?

15 MR. SAKICH: You're talking about the MSC, the Marine
16 Stewardship Certification?

17 Q Yes, thank you.

18 MR. SAKICH: I think it is very important. I don't
19 think you can get any fish out of this country
20 without it, now, can you?

21 Q And I'd just like your views, then, on why it's
22 important? If you could just elaborate on why
23 it's important?

24 MR. SAKICH: Well, it meets a criteria of
25 sustainability. There's a lot of hoops you've got
26 to jump through to get that, and you basically --
27 I don't think you're going to achieve that without
28 a full accountability for your fisheries, and that
29 -- there's a whole bunch of things in that. We
30 could go on for an hour about that.

31 Q Right.

32 MR. SAKICH: It would be everything from monitoring to
33 meeting stock assessment criteria and on and on it
34 would go.

35 Q All right.

36 MR. SAKICH: It has to be a sustainable fishery to meet
37 that MSC.

38 Q All right. Thank you. Okay. Mr. Sakich --

39 MR. BROWN: Mr. Timberg, are you moving off of the
40 point of --

41 Q Yes, I am.

42 MR. BROWN: I had my hand up, and I thought you had
43 acknowledged, but maybe you don't want to hear my
44 view, but I did hear you say you wanted the panel,
45 as a whole, to address this topic. Am I able to
46 speak, or...

47 Q If you can limit your --

1 MR. BROWN: Why is it that I have to limit? I'm just
2 asking you, may I speak? I'll try to be brief.
3 Q All right. If you could be brief, please. Thank
4 you.

5 MR. BROWN: There is changes in the world salmon
6 market, there's no question about that, but I
7 don't draw the same inference, which you seem to
8 do, is that because salmon markets are changing we
9 have to completely and utterly disrupt the entire
10 historical foundation of the commercial fishery in
11 British Columbia with all of its social benefits
12 and all that it did to support coastal
13 communities, i.e. where you were driving at in
14 your leading questions a moment ago about ITQs, et
15 cetera.

16 I would say that one of the big things that
17 we have, Mr. Commissioner, in our favour in Canada
18 is Canada has a comparative advantage in that we
19 have a highly regarded product image around the
20 world, Canadian-sought salmon and, particularly,
21 Canadian labels, are considered the top of the
22 mark. We are closer, in some cases, to markets
23 than some of our so-called competitors. Mr.
24 Sakich talked about Alaska, and there are vast
25 volumes of fish coming out of Alaska, but at very,
26 very inferior product levels and at very, very
27 high cost, comparatively speaking, to ours. It
28 takes about 10 days for a Packard to run from
29 Bristol Bay, which is practically up near the
30 Arctic, to processing plants, because they don't
31 have the capacity in Bristol Bay and a lot of it
32 is processed in Prince Rupert. That's an added
33 cost, it's a loss in quality.

34 The case I'm making is that the Canadian
35 salmon can be very competitive, are very highly
36 regarded, but I would argue that because of some
37 of the politics in the industry over the last many
38 decades, which includes, also, the undermining of
39 former collective bargaining processes that once
40 occurred in the industry and the ability of people
41 in the industry and the ability of people in the
42 industry to share some of the wealth that's been
43 created by this resource have been disrupted.

44 And I would also argue that the prime way in
45 which you can keep competitive in the world salmon
46 market is by keeping the product in the market, by
47 having shelf space for your product, by having the

1 ability for the consumer to recognize it and see
2 it.

3 When you come along and do what has been done
4 to the fishery over the last several years and you
5 have some years where, for example, in 2010 you
6 had 38 million fish return and only less than 30
7 percent are harvested, you diminish the supply and
8 you undermine your ability to maintain your market
9 share.

10 You're looking impatient at me, Mr. Timberg,
11 but I think --

12 Q Well, Mr. --

13 MR. BROWN: -- these are --

14 Q Yeah.

15 MR. BROWN: -- important points that need to be made.

16 Q I appreciate your comments, Mr. Brown. I do have
17 a limited period of time this morning for my
18 questions --

19 MR. BROWN: Yes.

20 Q -- and I have a number of things to cover, so I'd
21 like to move on, if that's --

22 MR. BROWN: Okay, well, I'll defer to you, but
23 there's --

24 Q Thank you.

25 MR. BROWN: -- many other points that I could make and
26 I think they should, at some point, be made --

27 Q And we're all working on that.

28 MR. BROWN: -- without leaving the impression that the
29 only way you can become competitive is through an
30 ITQ system.

31 Q Thank you.

32 MR. BROWN: I don't agree with that.

33 Q Mr. Sakich, you are the co-chair of the Commercial
34 Salmon Advisory Board; is that correct?

35 MR. SAKICH: That's right.

36 Q And we've heard some concerns about the difficulty
37 of reaching consensus and the difficulty of
38 decision-making at the CSAB. I'd be interested in
39 your views on how you would improve the CSAB
40 decision-making.

41 MR. SAKICH: Well, consensus is very hard to work with.
42 I would think that if the folks that are elected
43 in this country to run the country are setting the
44 example, they're not doing it by consensus. I
45 don't think that would work.

46 Q Okay.

47 MR. SAKICH: They expect it to work for us, and it's

1 extremely hard to work. And I don't say that it's
2 all that bad of a thing. A little bit of both
3 somehow might be a good thing. But we went
4 through an exercise with professionals, what would
5 be blocking, what wouldn't be blocking, when you
6 come to achieve consensus, and it gets very
7 complicated.

8 Q Right.

9 MR. SAKICH: It's very time-consuming. I guess if
10 you're on the payroll and you can sit there and
11 you can argue about this for a whole year to make
12 one point, fine, but we're not.

13 Q Right. And does the CSAB, would that organization
14 like to have decision-making authority; is that
15 something you're seeking?

16 MR. SAKICH: That's a difficult question. Decision-
17 making on what? There's so many things that are
18 coming through there, and sometimes I think that
19 may be a question of things, too; what should it
20 be dealing with and what shouldn't it be dealing
21 with.

22 Q Right.

23 MR. SAKICH: You know, every day it's something new.
24 It's just like a minefield. Somebody wants
25 something, somebody wants something else, so
26 probably in some case the safest to do is not
27 anything, sometimes, because you just can't
28 fulfill what everybody wants.

29 Q Do you have a scope of the subjects that you think
30 the CSAB could provide recommendations on? Do you
31 have some topics that you think that the CSAB
32 should (indiscernible - overlapping speakers) --

33 MR. SAKICH: Well, I think that's something, you know,
34 I wouldn't want to answer that, because I think
35 that's something that the group would need to
36 wrestle down with itself, just who's going to do
37 what and how. And for me to, just as a non-
38 engaging chair, almost, to say what it should be
39 would be not right.

40 Q All right. Thank you. If we could move to Tab 11
41 of Canada's documents, please. And Mr. Sakich, if
42 we could -- or Mr. Commissioner, if we could turn
43 to -- or Mr. Registrar, if we could turn to the
44 second page, there's a forward. And this is a
45 forward by yourself, Mr. Sakich, that you're the
46 Monitoring and Compliance Panel Chair; is that
47 correct?

1 MR. SAKICH: That's right.

2 Q And can you identify this document for us?
3 Perhaps we could go back to the front page, Mr.
4 Registrar?

5 MR. SAKICH: This was put together by the Monitoring
6 and Compliance Panel over about a year and a half
7 or so.

8 Q All right.

9 MR. SAKICH: Through many meetings.

10 MR. TIMBERG: All right. If this could be marked as
11 the next exhibit, please?

12 THE REGISTRAR: It's already an exhibit.

13 MR. TIMBERG: Oh, it is.

14 THE REGISTRAR: It's Exhibit Number 428.

15 MR. TIMBERG: Thank you.

16 Q So if you could -- page 13 has a list of the
17 summaries, if we could turn there. So Mr. Sakich,
18 can you help us by describing what the conclusion
19 was to this report and the next steps?

20 MR. SAKICH: We're still going, and since we have put
21 this document out, Fisheries and Oceans have now
22 put one very similar out. There's a lot of
23 crossing in the -- you know, there are a lot of
24 paralleling in the two documents. And I guess
25 what our next move is going to be, I really --
26 we're going to try and pull together a meeting
27 here fairly soon to address the cost-effectiveness
28 of monitoring. That's one of the issues with it,
29 why it's a hard sell, because it's so expensive.

30 Q Right.

31 MR. SAKICH: And we're going to try and work around
32 that, and not everybody will be doing this exactly
33 the same way, and so it's innovation, cost-
34 effectiveness, that sort of -- that's our next
35 move on this, now.

36 Q All right. Thank you. And I have one final
37 series of questions this morning. Mr. Registrar,
38 if we could have Exhibit 454.

39 And Mr. Ashton, when you were here last you
40 put in a series of documents with respect to the
41 issue of knotless bunts, and if we could turn to
42 the next page, please, and this is a letter you
43 wrote to Mr. Gordon Curry, on June 30th, 2004, and
44 the bottom of the first paragraph you concluded
45 that the committee does not endorse or support the
46 selectivity project in 2004; isn't that correct?

47 MR. ASHTON: That's correct.

1 Q And at the bottom you believe that further
2 expensive experiments are not necessary?

3 MR. ASHTON: I believe it also says in there that we
4 had met and part of this program was that when
5 enough information had been gathered through the
6 various years of testing this equipment that it
7 would be subjected to a PSARC review.

8 Q Right.

9 MR. ASHTON: And we had our directors look at the
10 information and they felt that there had been
11 enough, and what was proposed for continuing that
12 program in 2004, we didn't believe was going to
13 add any significant new information that would
14 change how the project would be viewed.

15 Q Okay. Thank you.

16 MR. ASHTON: You know, a PSARC review is, I guess, they
17 present a paper and it's reviewed. It's a peer-
18 review process. And I might add that our Harvest
19 Committee, made up of 12 members, two of them are
20 processors, but the other 10 of them are
21 fishermen, and we probably have about 400 years of
22 knowledge in the fishing industry, collectively,
23 together, and I think that would be regarded as a
24 peer-review of our own.

25 Q Okay. Thank you. If we could turn to the next
26 page, the letter of July the 5th, 2004, and Mr.
27 Curry wrote back to you, and at the start of the
28 second paragraph he states that he has:

29
30 ...witnessed a significant amount of acrimony
31 towards Mr. Paul Brajcich and DFO staff
32 supporting this project over the past few
33 years.
34

35 And you would agree with that?

36 MR. ASHTON: That would be Mr. Curry's opinion.

37 Q And I guess I'm asking you, would you agree with
38 his opinion that there's a significant amount of
39 acrimony with respect to the grids and knotless
40 bunts project?

41 MR. ASHTON: I really couldn't comment on that. I've
42 known Mr. Brajcich for a long time, his father as
43 well, was a significant fishermen that was in the
44 business when I started fishing over 40 years ago.

45 Q All right. Thank you. If you could then turn to
46 the next page, a letter of July 11th, 2004. And
47 at the end of the letter, the last paragraph, you

1 conclude, saying that you're looking forward to:

2
3 ...a comprehensive review of [the] project at
4 a post season meeting to assess whether the
5 implementation of this equipment will afford
6 the benefit of increased fishing access to
7 the Area B fleet.

8
9 Correct?

10 MR. ASHTON: That's correct?

11 Q Yeah. And so you were seeing this selective
12 fishing technique as a way of increasing fishing
13 access?

14 MR. ASHTON: If it was deemed to be acceptable and
15 viable and affordable, then we would look at it as
16 something that could be adopted.

17 Q All right. Thank you.

18 MR. ASHTON: It had to go to that review.

19 MR. TIMBERG: And if we could then, Mr. Registrar, I
20 have one new series of documents that Mr. Curry
21 provided over the weekend and we disclosed this
22 morning, if that could be pulled up? It's an
23 e-mail from Gordon Curry to Chris Ashton, on
24 January 17th, 2005. And at the bottom of the
25 page, if you could show the from and to line,
26 thank you. Yes.

27 Q And so this is from Gordon Curry and it's to Chris
28 Cue and yourself, Mr. Ashton?

29 MR. ASHTON: Yes.

30 Q Okay. And attached to this e-mail there were
31 three documents, a grid meeting agenda from
32 December 4th, 2004; a grid study; and some grid
33 notes of Mr. Brajcich?

34 MR. ASHTON: That's correct.

35 MR. TIMBERG: If this document could be marked as the
36 next exhibit, please.

37 THE REGISTRAR: Did you want that marked as one
38 document?

39 MR. TIMBERG: I'll suggest that the first page be
40 marked as the number, and then the next three will
41 have letters.

42 THE REGISTRAR: Marked as Exhibit 489, will be the
43 e-mail --

44 MR. TIMBERG: And then over the page --

45 THE REGISTRAR: The presentation notes will be 489A;
46 the selective fishing meeting document will be
47 489B; and the selective grids will be 489C.

- 1 EXHIBIT 489: E-mail dated January 17, 2005,
2 from Gordon Curry to Chris Cue and Chris
3 Ashton, Subject: Selective Fishing - Grids &
4 Knotless Bunts
5
6 EXHIBIT 489A: Presentation Notes from Paul
7 and John Brajcich, dated December 2004
8
9 EXHIBIT 489B: Selective Fishing Meeting-
10 Seine Grids and Knotless Bunts - Agenda and
11 Results, dated December 8, 2004
12
13 EXHIBIT 489C: Selectivity Grids in the
14 Salmon Seine Fishery of B.C. - Project
15 Summary, dated December 2004
16
- 17 MR. TIMBERG: All right.
18 Q And so there was a post-season review held on
19 December 8th, with respect to the grids and
20 knotless bunts; is that correct?
21 MR. ASHTON: That's correct.
22 A And then 489A sets out some of the notes of the
23 presenters; is that correct?
24 MR. ASHTON: I believe so. I haven't had a chance to
25 read through all this, so...
26 Q All right. And then if we could go to 489B, these
27 are the minutes of the meeting on December the
28 8th. In attendance was yourself, and at the
29 bottom it reads -- it talks about the selective
30 fishing policy, and it goes on in that paragraph
31 to talk about a need for a review of the evolution
32 of grids and knotless bunts.
33 And if we could go to 489C, this, then, is
34 the project summary. And have you seen this
35 document before? This was provided to you at the
36 meeting.
37 MR. ASHTON: I haven't read the one that you have,
38 here, but I did attend that meeting and I would
39 have had that material.
40 Q All right.
41 MR. ASHTON: It's somewhat similar to the one that was
42 presented in June, I think it was June 18th, 2004.
43 I think it's quite similar.
44 MR. TIMBERG: All right. I'll just let this document
45 speak for itself, Mr. Commissioner. It has
46 pictures of the grids and how it, in short, allows
47 the small fish to escape and it saves the larger

1 fish.

2 Q You'd agree with that summary, Mr. Ashton?

3 MR. ASHTON: Yes, it does let the smaller fish escape.
4 It doesn't allow fish of different species of the
5 same size escape, so that was one of the
6 complicating factors.

7 MR. TIMBERG: All right. And then Mr. Registrar, if we
8 could move to my final document, which is dated
9 February 1st, 2005.

10 Q And I'm not sure, Mr. Ashton, if you received this
11 document. This is from Mr. Curry, and it
12 summarizes the results to date with respect to the
13 work on grids in combination with knotless bunts.

14 MR. ASHTON: I don't recall. I may have received that,
15 but I can't -- that's quite a few years ago and I
16 can't recall it.

17 Q All right. Would you agree that the results to
18 date with respect to the benefit of knotless
19 bunts, in combination with knotless bunt web can
20 do the following, that they can allow the escape
21 from the bunt of a high percentage of immature
22 salmon; are you aware of that?

23 MR. ASHTON: I'm aware of that. A lot of the testing
24 that took place was out in Area 20, and by
25 regulation our nets are -- the bunt portion of the
26 net is required to have 100 millimetre four-inch
27 bunt, which allows a significant amount of
28 juvenile fish to swim through those. It was after
29 extensive research done over a number of years of
30 testing different sizes, so the grids let the fish
31 through the large mesh bunt. The normal bunt
32 that's used in all other areas in the salmon
33 fishery is 70 millimetres, so it's quite a bit
34 smaller.

35 Q Right. So you would agree with that comment?

36 MR. ASHTON: Well, yes. I mean, it's quite obvious.

37 MR. TIMBERG: Okay. If this document, then, perhaps,
38 could just be marked as the next exhibit?

39 THE REGISTRAR: It will be marked as Exhibit 490.

40

41 EXHIBIT 490: Paper, titled, Grids and
42 Knotless Bunts Update, by Gordon Curry, dated
43 February 1, 2005
44

45 MR. TIMBERG: And those are all my questions, Mr.
46 Commissioner.

47 MR. MARTLAND: Mr. Commissioner, I'm grateful to Mr.

1 Harrison for the Conservation Coalition, who took
2 my request to heart and trimmed his questions down
3 to zero. Mr. Harvey is next.

4 MR. HARVEY: Chris Harvey, for the Area G Harvest
5 Committee and the UFAWU.

6
7 CROSS-EXAMINATION BY MR. HARVEY:
8

9 Q First, some questions for Mr. McEachern, just
10 questions of detail relating to how ITQs -- how
11 fishing businesses are managed. Is it common for
12 fishermen to operate their fishing businesses
13 through a closely-held company such that usually
14 the boat and the licence is owned by the company?

15 MR. McEACHERN: You mean a personal company or a large
16 company?

17 Q Yeah, a personal company.

18 MR. McEACHERN: Yeah, I believe so.

19 Q Yeah. And quotas as well, I expect, are held in
20 the same way; is that right?

21 MR. McEACHERN: There's a pretty strong mixture, I
22 think, between people who personally own their
23 things solely and those who own them as a small
24 company with their wife or kids or something like
25 that.

26 Q Okay. Does DFO regulate the ownership of those
27 companies?

28 MR. McEACHERN: I don't know.

29 Q You've never experienced DFO questioning who owns
30 the shares of the company that owns the --

31 MR. McEACHERN: No.

32 Q -- licence?

33 MR. McEACHERN: No.

34 Q And ITQs are freely bought, sold and leased; is
35 that correct?

36 MR. McEACHERN: My experience is with herring ITQ; I
37 don't have any experience with salmon, sorry.

38 Q All right. I see. Your family group of licences,
39 did you say, are held in the Area C, that's the
40 northern gillnet, and the Area D, southern
41 gillnet?

42 MR. McEACHERN: Actually, we, after relicensing, we had
43 to buy licenses in all three areas. Area E as
44 well.

45 Q C, D and E, all right. And those are all non ITQ
46 areas; is that correct?

47 MR. McEACHERN: That's correct. There's been no ITQ

1 gillnet fisheries to date.
2 Q Yeah. When these votes occur on licenses, does
3 your family vote all its licences in the same way?
4 MR. McEACHERN: Well, when the votes come from the
5 department, you get one vote per licence --
6 Q Yes.
7 MR. McEACHERN: -- and so just, I'm not sure how other
8 companies would handle that, but we generally sit
9 down as a group and come up with an answer and
10 they are all voted the same way, yes.
11 Q Yes. Similar to the Northern Native Co-Op?
12 MR. McEACHERN: Right. I'm not familiar with whether
13 the fishermen of the Northern Native Co-Op
14 actually participate in the process, but our
15 fishermen do.
16 Q Yeah. And to your knowledge, I expect Canfisco
17 vote their licenses in the same way?
18 MR. McEACHERN: I have no idea, sorry.
19 Q All right. Mr. Sakich, you're an Area H troller;
20 is that correct?
21 MR. SAKICH: That's right.
22 Q There are 89 troll licenses in Area H; is that
23 correct?
24 MR. SAKICH: A couple less maybe now, but around there.
25 Q And am I right in that about 50 to 60 actually
26 participate while the others lease out their quota
27 or have sold it to others?
28 MR. SAKICH: I don't think there's any selling, because
29 I don't think you own anything, this is a pilot --
30 A I see.
31 MR. SAKICH: -- and it is rented, in some cases been
32 given, and I would think the licenses on the
33 vessels that aren't showing up, they're basically
34 because they're involved in other offshore fishes,
35 like tuna, things like that, and they don't want
36 to make the trip in.
37 Q But they all have equal ITQ shares in this
38 demonstration in Area H; is that correct?
39 MR. SAKICH: That's right.
40 Q So they would lease out their ITQs to others?
41 MR. SAKICH: Yeah. We have two pilots running there,
42 just for your information, and they're not run at
43 the same time. The particular one you're
44 referring to is done by the piece of fish. We
45 have a pilot up and running that is a time block
46 quota as well that we use in the fall months, on
47 chum, and that is where you're trading time, not

1 actual fish.
2 Q Trading time in the sense of trading ITQs, or --
3 MR. SAKICH: That's right.
4 Q -- (indiscernible - overlapping speakers).
5 MR. SAKICH: Yeah, you're given so many days each to
6 start with and you have to assemble those days
7 that work for you into a certain block.
8 Q Right. Is this the way it operated in 2010, that
9 your Area H was initially allotted five percent of
10 the sockeye allocation?
11 MR. SAKICH: No. That is by the piece. That is by the
12 percentage of the catch.
13 Q Sorry, in Area H how was the ITQ allotted in Area
14 H in 2010? How was it allotted?
15 MR. SAKICH: Well, when there was an identified TAC
16 early in the season --
17 Q Yes.
18 MR. SAKICH: -- I think our first allotment was 250
19 fish per licence, something like that.
20 Q Yes, okay.
21 MR. SAKICH: And they changed as the total allowable
22 catch changed.
23 Q Yes. And am I right in thinking the Area H
24 trollers were not able to catch their ITQs because
25 the fishery closed?
26 MR. SAKICH: Well, you're dealing with -- they were not
27 able to catch it, no, because you're dealing with
28 such an anomaly of a year for the amount of fish
29 that's thrown at you in such a short time.
30 Q Yes. Troll fishing is done at a rather slow pace,
31 whether it's ITQ or under TAC arrangement; is that
32 right?
33 MR. SAKICH: It could be, but it is a slower way to
34 catch fish --
35 Q Yes.
36 MR. SAKICH: -- but don't confuse one thing, when I
37 went back to what I said a minute ago, that when
38 there was a TAC identified that a first
39 identifiable catch for Area H was 250 fish per
40 boat --
41 Q Yes.
42 MR. SAKICH: -- that is a lot better than being thrown
43 out there and in five days you see a -- catch what
44 you want and then leave.
45 Q Yes. But in the sockeye fishery, when it turned
46 up in large numbers, the Area H trollers were
47 unable to catch their TAC; that's correct, isn't

1 it?

2 MR. SAKICH: That's right.

3 Q And that would have been the same whether it was
4 -- well, it was an ITQ fishery, but it would have
5 been the same if it was not an ITQ fishery,
6 correct?

7 MR. SAKICH: Well, you definitely wouldn't have caught
8 your own, and the difference is, is the ones you
9 didn't catch, if you could get somebody else in a
10 seine boat to catch them for you, that was done,
11 because we have a B and H integrated fishery.

12 Q Yes, all right. But I guess the point is this,
13 that the ITQs did not slow down the pace of
14 trolling when the sockeye turned up in large
15 numbers in 2010?

16 MR. SAKICH: No, it didn't.

17 Q All right. Mr. Brown, I have some questions for
18 you. The ITQ market that you've referred to in
19 the leasing market for ITQs, is it basically an
20 unregulated market?

21 MR. BROWN: Yes.

22 Q Yes. ITQs essentially become financial assets
23 gifted by DFO to the first generation of licence
24 holders?

25 MR. BROWN: That's exactly right.

26 Q Yes.

27 MR. BROWN: And I'd also add that there's nothing
28 pertaining to those ITQs that obliges the owner of
29 those ITQs to do anything in terms of paying rent
30 or return, other than possible income tax, I
31 suppose, to the real owners of the resource, which
32 is the people of Canada.

33 Q The opportunity to fish is created by the licence;
34 am I correct in that?

35 MR. BROWN: Yes.

36 Q What the ITQ adds to that, am I correct, is a free
37 gift in perpetuity of a defined share of the
38 common property fishery resource?

39 MR. BROWN: Yes. And that is fundamentally different
40 than a limited entry licence, as you point out. A
41 limited entry licence, which is an obviously
42 necessary thing, we can't all go commercial
43 fishing, the resource won't stand it, so we all
44 agree that we have to have a socially acceptable
45 way of determining who shall participate, but it
46 doesn't confer anything other than the option to
47 participate. So if you're a fisherman, you would

1 then have to rely on your own competitive skill
2 and knowledge and equipment, et cetera, et cetera,
3 but it doesn't give you any set amount.

4 An ITQ is a fundamentally different approach.
5 It gives you not only property and fish before
6 they're even landed, but it gives them -- it gives
7 you the opportunity to treat that as property over
8 an extended period of time, thus enhancing the
9 speculative and marketable value.

10 One, in these days, might not be too inclined
11 to go and buy a limited entry salmon licence,
12 given the upheaval in the industry and the poor
13 prospects. So that has tended to keep speculation
14 and inflation in fishing privileges somewhat low
15 in these days. Earlier on, there was considerably
16 more speculation.

17 But that was the point I was trying to make
18 in the last session, about this burden of
19 capitalization which has now been imposed on this
20 industry since primarily beginning in 1969, but
21 extending exponentially since 1990, with the
22 introduction of all these different quota
23 fisheries, which solves the problem for certain
24 people in DFO, particularly people that sit in
25 ivory towers and stare into computers and take a
26 paycheque, saying they're managing a fishery, as
27 you've heard abundant testimony here, it solves
28 their problem in that they can say, "Oh, we have
29 less people to have to worry about out there," and
30 so on and so. It makes life easier for them.

31 But I'm not the slightest bit interested in
32 making life easier for DFO managers. I am
33 interested in the fish, and I am interested in
34 fish harvesters. And I think the ITQ system does
35 very little to help them and, as I said last time,
36 Mr. Commissioner, this capital burden is enormous
37 and will stay with us over generations and will
38 put perpetual pressure on the resource. That's
39 even before we've gotten into ITQs on salmon. It
40 will get worse when we do that.

41 So I plead with everybody to consider that we
42 do not go down that option and look at other
43 alternatives.

44 Q In terms of regulation, it seems to me the ITQ
45 shares, as you've described them, are essentially
46 a tradable asset that is gifted by DFO to the
47 first generation fishermen, correct?

1 MR. BROWN: Yes.

2 Q It's not unlike the shares in a company in the
3 sense that they can be traded?

4 MR. BROWN: Yes.

5 Q Except with shares in a company you've got stock
6 market regulation. Have you got any similar
7 regulation?

8 MR. BROWN: No. You do not have regulation, and if I
9 may, I'd like to, Mr. Harvey, just also, and Mr.
10 Commissioner, point to a secondary or tertiary
11 problem in that the way in which DFO has
12 approached the criteria for determining who will
13 be eligible for ITQs in the various fisheries has
14 been problematic, to say the least.

15 Generally speaking, what has happened is a
16 group of fishermen sit down with DFO, not
17 necessarily in concert with all of the
18 participants in the fishery, and they work out a
19 system. It will usually be based on some kind of
20 landing performance over a set period of time, and
21 those that are lucky enough, or who qualify for
22 that criteria are, as you say, Mr. Harvey, they're
23 gifted with the quota. Those who, for whatever
24 reason, don't, are out, and that has been a
25 concern of mine. I think that there has been
26 politics around that and there has been
27 controversy over that.

28 Also, I have been a little bit troubled when
29 I hear only the voice, it seems to me, in a lot of
30 the public pronouncements by DFO, of the
31 proponents of ITQs being those who are the ones
32 who are in favour of this, and they cite the fact
33 that there's overwhelming votes in some sectors.
34 Let's be real here. When you give somebody the
35 opportunity of an ITQ, you're giving them the
36 opportunity to print money, so it's quite often
37 that you'll see people operating in self-interest
38 around this subject. But I don't look at it that
39 way, and many of us in the industry don't in the
40 sense that we were put here and elected to be here
41 to represent all the participants in the industry,
42 and we have to articulate those who are less
43 advantaged, who have less access to capital, or
44 may have been plain, outright discriminated
45 against in terms of the criteria for determining
46 those quotas.

47 Q Now, you say that DFO and the licence holders sit

1 down and work it out. Is there any involvement of
2 the fisheries-dependent communities in this
3 dialogue?

4 MR. BROWN: No. Fishing communities have long
5 articulated their concerns, Mr. Commissioner,
6 about this. And as I tried to say in my last
7 session to you, when somebody sells a quota out of
8 a small village, like Sointula or Prince Rupert,
9 or Hartley Bay or Qualicum, or any other place,
10 it's more than just a personal transaction on the
11 stock market or in the economy. It impacts those
12 coastal communities profoundly, because when those
13 jobs or those catches go, whole series of
14 ancillary and tertiary industries and interests
15 are hurt.

16 So coast communities, to the best of my
17 knowledge, have been arguing that if quotas are to
18 be defined in the fishery, that there needs to be
19 some perspective or some ability for communities
20 to secure those quotas, and there's been quite a
21 bit of work done on this, both on the west coast
22 and the east coast, where there's, I think the
23 principle, if I'm correct, is the Adjacency
24 Principle, where there would be some notion that
25 if a quota for salmon was being allocated in
26 perpetuity, that somehow or other there would be
27 some attachment to the traditional fishing areas
28 in close proximity where people had fished for a
29 long time.

30 Q Okay. There are obviously enormous socioeconomic
31 implications to an ITQ system being inaugurated in
32 a fishery. Do you think the DFO fishery managers
33 are equipped and competent to deal with those
34 broad socioeconomic implications?

35 MR. BROWN: That's a tricky question, because I think
36 there are people in the DFO who are equipped.
37 They are trained economists. I'm not so certain
38 that all of their analysis comes to the light of
39 day. I think that most of the people that do the
40 talking about ITQs these days are people like Jeff
41 Grout and others that you've heard. Sometimes it
42 would be senior people, like Paul Sprout, and what
43 they focus on almost to exclusion, is that it
44 makes life easier for them. And so be it.
45 They're very eloquent and they make that case.
46 Less votes means an easier time for these fish
47 managers, presumably.

1 However, I don't believe that those fish
2 managers, most of whom are biologists, or some of
3 them are just pure bureaucrats, have all that
4 great of an insight into socioeconomic impacts,
5 and that was my other point, building on what Dr.
6 Walters had said in his testimony, that needs to
7 be done here. We're dealing with very profound
8 socioeconomic and political shifts here, and when
9 they are codified as property, there's no going
10 back. DFO can't say, "Oh, we're going to just
11 test it out." They're kind of getting away with
12 that, now, with all these fancy terms about pilots
13 and all the rest. But once it goes through that
14 doorway of property there's no going back, and if
15 DFO recognized that it made a mistake and
16 something was wrong, if it tried to, it would be
17 vulnerable to vast lawsuits and all kinds of
18 complications.

19 So I would go back to what Dr. Walters was
20 saying, and I don't think I'm taking any liberty
21 here, I heard him very clearly say that when you
22 go down the road of these major changes, both in
23 terms of the management of the resource, i.e. weak
24 stock management, or into changes around fishing
25 rights, you should be doing a full and transparent
26 socioeconomic analysis, and that has not been
27 done.

28 MR. HARVEY: Mr. Commissioner, I note the time.

29 THE COMMISSIONER: Thank you.

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

32
33 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

34 (PROCEEDINGS RECONVENED)

35
36 THE REGISTRAR: The hearing is now resumed.

37
38 CROSS-EXAMINATION BY MR. HARVEY, continuing:

39
40 Q Mr. Brown, over the weekend, I took the
41 opportunity to have a look at your book. I'd like
42 to compliment you on it, a very thorough
43 description from the ground, as it were, as to
44 what was happening in the fishing industry in the
45 1995 to 2005 period. I note it was published in
46 2005.

47 One thing struck me, and I'd like to read a

1 passage from page 134. What struck me is that the
2 issues that you're speaking of now were issues
3 brought to the attention of Parliament about 15
4 years ago. Page 134, the passage reads:
5

6 On April 28, 1996, a large group representing
7 fishermen's organizations, coastal
8 communities and environmentalists travelled
9 to Ottawa. The highlight of the lobby was
10 the appearance before the Parliamentary
11 Standing Committee on Fisheries of the media
12 personality and environmentalist David
13 Suzuki, who had family roots in commercial
14 fishing. He confessed that it was strange
15 for him to work with commercial fishermen,
16 since he had been "beaten up by a few of them
17 a number of times," but he believed he and
18 the fishermen were of one mind.
19

20 There's a quote:
21

22 "We know that change must come, and I think
23 the people in this delegation are prepared to
24 pay a price to protect the future -- but not
25 by the Mifflin Plan."
26

27 He went on, and then you've got two paragraphs
28 which I'll just read from his presentation. David
29 Suzuki said:
30

31 I'm a biologist and I fear for the future of
32 wild organisms that are being shoe-horned
33 into agendas being set by politicians and
34 economics, not biology. What is a biological
35 problem gets fractured into bureaucratic
36 subdivisions that ensure the fish will never
37 be properly dealt with as a single entity and
38 therefore protected properly. We believe
39 local communities will be the unit of
40 survival into the future, communities with a
41 shared stake in the quality of the air, the
42 water, the soil, and biodiversity...Their
43 future, it seems to me, is our best hope for
44 the planet. Fishers have knowledge that
45 cannot be duplicated by science.
46

47 Politicians come and go. Government experts

1 and bureaucrats seem immune from long-term
2 accountability for their decisions. Local
3 communities aren't immune to consequences of
4 these decisions. I believe they must have an
5 opportunity for their knowledge and advice to
6 be heard and acted upon...The concentration
7 of licences in corporate hands at the expense
8 of small boat owners may maximize
9 profitability and the ease of management, but
10 it sure doesn't maximize jobs or the
11 viability of local communities.
12

13 Now, that passage from your book connotes
14 that that speech was made by Mr. Suzuki on April
15 28th, 1996. I note that on December 18th, 1996,
16 the **Oceans Act** was passed, and I'm going to read
17 you a passage in that and ask you whether that
18 changed anything [as read]:
19

20 In exercising the powers and performing the
21 duties and functions assigned to the Minister
22 under this **Act**, the Minister
23

24 (a) shall cooperate with affected aboriginal
25 organizations, coastal communities and
26 other persons or bodies.
27

28 Since that time, have you seen any
29 significant amount of consultation between DFO and
30 coastal communities?

31 MR. BROWN: The short answer is no. I would argue that
32 things have -- that the gap between coastal
33 communities and their interests, both First
34 Nations communities and non-First Nations
35 communities, has widened with DFO's almost
36 singular obsession with the idea of somehow or
37 other rationalizing the resource into hands of a
38 smaller and smaller group based largely on the
39 ideological thinking of one man. That's Dr. Peter
40 Pearse, who has been on the scene for more than 40
41 years. His great opus was the Royal Commission
42 report of 1983 where he argued for a lot of these
43 reforms based on his thesis of the "tragedy of the
44 commons" and the idea that common property is
45 nobody's property and the only way to rationally
46 conduct economic affairs is through private
47 interest devices.

1 Pearse has subsequently written another
2 report in 2005. What I find really interesting is
3 in more recent times, there's all this veneer
4 about conservation that's been layered upon it,
5 that we need to do all this rationalizing for the
6 good of the fish when, in fact, in the earlier
7 eras, Pearse never hardly discussed conservation.
8 It was always about economic rationality.

9 But as Dr. Suzuki said in that eloquent
10 passage which I quoted in my book, there's more to
11 all of this than simply the bottom line. There's
12 more to all of this than just economic
13 rationality. Salmon and humans are
14 interconnected. They have been for thousands of
15 years with First Nations people, and they have
16 been in multiple generations in my family and
17 other fishing families. There is a profound link
18 between the two and it's expressed in things like
19 the UN principles of adjacency, the idea that
20 people who live closest to the resource have a
21 great affinity and concern with it.

22 That's not because they're angels. It's
23 because they are the ones who are most affected if
24 something goes wrong with the resource.

25 Q Now, Mr. Brown, the principle of adjacency which
26 you just mentioned is also mentioned in the **Oceans**
27 **Act** passed at the end of 1996. Have you seen,
28 since that time, any greater adherence or any
29 significant adherence to the adjacency principle
30 by DFO?

31 MR. BROWN: No, I have not.

32 Q There's a --

33 MR. MARTLAND: Mr. Commissioner, I just want to
34 identify for Mr. Harvey's benefit, he's in the
35 last few minutes of his time estimate. Thank you.

36 MR. HARVEY: Yes. I'd like Exhibit S brought up,
37 please, Mr. Lunn.

38 Q This is the Parzival Copes socioeconomic analysis
39 of ITQs and I see from the beginning, the paper
40 addresses the difference between two diametrically
41 opposed approaches, co-management approaches.
42 First, community-based fishery management and
43 market-based individual transferable quota
44 management. He has a socioeconomic evaluation in
45 this paper at page 5, Mr. Lunn.

46 I'm going to ask you at the end, Mr. Brown,
47 whether this is consistent with your views. Page

1 5 under the heading "CBM versus ITQs", CBM being
2 community-based management [as read].
3

4 With community-based management (CBM) and
5 individual transferable quotas (ITQs)
6 attracting so much attention, it is important
7 to understand the key differences between
8 them. These management approaches reflect
9 very different views on what fisheries are
10 all about. We must consider how they compare
11 in meeting the current as well as the future
12 needs of vessel owners, crew members,
13 processing plant workers, and their
14 communities. What is good and what is not,
15 must be viewed from many angles.
16

17 Et cetera.

18 In the course of the paper, he makes the
19 point that -- he discusses the various
20 socioeconomic implications of ITQs such as you've
21 mentioned. He discusses the capacity reduction
22 which we've heard about as being a consequence of
23 ITQs and says, on page 11:
24

25 The capacity reduction that may be
26 facilitated by an ITQ system is likely to
27 generate financial benefits, but distribution
28 of those benefits is widely considered to be
29 inequitable. The first generation of quota
30 holders receives a windfall in the form of
31 "free" ITQ from the government - a mechanism
32 which, as noted above, seems to have been
33 adopted to convince current vessel owners to
34 accept ITQ schemes. Later generations must
35 buy or lease quota at high prices from the
36 original holders, and indeed may be unable to
37 afford to get into the fishery at all.
38

39 That's, I think, consistent with what you've
40 been saying, is that right, Mr. Brown?

41 MR. BROWN: Yes, it is, and I would just add that Dr.
42 Copes is a Vancouver resident -- West Vancouver
43 resident and he's considered one of the world's
44 leading authorities on the subject, and it would
45 be with the greatest respect, Mr. Commissioner,
46 that I encourage you to acquaint yourself with his
47 work along with those who are on the other side of

1 the fence, like Dr. Pearse.

2 I would also wonder whether it would not be a
3 good idea that as opposed to people like my
4 colleagues here and myself who are hardly expert,
5 that there be testimony or at least some
6 investigation into this topic with those kinds of
7 experts, given that the inquiry wants to open the
8 door into this discussion.

9 But I would say that Dr. Copes' points are
10 very well taken in terms of the affinity between
11 communities and the well-being of the resource.
12 You also heard Mike Lapointe very eloquently in
13 his testimony talk about the fact that we, as
14 humans, are part of the ecosystem and that we
15 interact with these creatures and we have a role
16 and a place with them, and they, in many ways,
17 depend on us. Having strong community interest in
18 the salmon fishery means perhaps that one doesn't
19 go about ravishing timber slopes in the forest
20 industry or spew poisonous chemicals into the
21 waterways and so on and so forth.

22 I won't belabour the point, but I would want
23 to go to the one point, Mr. Harvey, and I can't
24 see it on the screen there, but where Dr. Copes
25 talked about an essential triad; that's my word,
26 not his. He talked about biology, economics and
27 social benefits of the fishery. He has taught me,
28 and I've read hundreds and hundreds of papers on
29 this subject, that one of the things that a good
30 resource management regime should stress is
31 balance between all three.

32 It has been Dr. Copes' analysis - and perhaps
33 you can see it for yourself and make your own
34 conclusions - that DFO chronically gets the triad
35 out of balance, the three-legged stool out of
36 balance. At one point in history, they're using
37 economic development/job creation as the primary
38 motive of the fishery and they go too far, perhaps
39 in some cases, in over-harvesting, over-
40 capitalizing, too many licences. I have a whole
41 chapter in my book about how licensing got out of
42 control over the best interest of working
43 fishermen in this province.

44 In another situation, they go, oh, we need to
45 be more biologically sensitive. So then you get
46 into things, some of the more distorted version of
47 the biodiversity argument which you heard Dr.

1 Walters critique.

2 My only point for saying this is I think Dr.
3 Copes' analysis is correct, that we need to
4 balance all three. You can't do it to the
5 exclusion of one over the other. But it tends to
6 be the temptation, I think, in the political
7 operatives that control DFO to seek favour in a
8 given moment. If it's biology that's the flavour
9 of the month today, that's what we'll do and we'll
10 hopefully get Brownie points for that. Or if it's
11 looking like we're saving costs or whatever, we'll
12 go with that. You need all three, and you need
13 the balance.

14 Q Yes. Yes. One point he makes is the -- towards
15 the end at page 18 is that ITQ systems are
16 inflexible because once they're in place, they're
17 difficult to dismantle. He does attribute the
18 collapse of the Atlantic fishery, in part, to the
19 inflexibility brought about in that fisheries
20 management regime by ITQs.

21 MR. HARVEY: I wonder if this paper could be marked,
22 please, as the next numbered exhibit. Is that
23 acceptable, Mr. Timberg? We had it, at your
24 request, a lettered exhibit.

25 MR. TIMBERG: Yes.

26 THE REGISTRAR: The "for identification" caveat will be
27 removed and that will be marked as Exhibit 491.

28
29 EXHIBIT 491: Socioeconomics of Individual
30 Transferable Quotas in Community-Based Fisher
31 Management
32

33 MR. MARTLAND: I'll just point out again the time, Mr.
34 Commissioner. In order for us to complete this
35 panel's evidence, which we're truly seeking to do,
36 I will need to have other counsel -- move other
37 counsel through their questions as soon as we're
38 able. Thank you.

39 MR. HARVEY: Well, that being so, I will sit down.
40 Thank you.

41 MR. MARTLAND: I have Mr. Lowes next.

42 MR. LOWES: Thank you, Mr. Commissioner. J.K. Lowes
43 for the B.C. Wildlife Federation and the B.C.
44 Federation of Drift Fishers.

1 CROSS-EXAMINATION BY MR. LOWES:

2
3 Q Is there another book here, Mr. Brown?

4 MR. BROWN: Probably. I'm not sure I'm up for writing
5 it. It's awfully hard work.

6 Q The book was published in 2005?

7 MR. BROWN: Yes.

8 Q When did you start it?

9 MR. BROWN: In 2001.

10 Q And why did you start it?

11 MR. BROWN: Oh, well, I'm not sure I know how to say
12 this, but after all the things that happened in
13 the industry, I guess I came close to the brink of
14 maybe what would be called a breakdown in terms of
15 my personal life. Everything that I'd ever
16 believed in and everything that I knew had more or
17 less come to a halt. I was very upset, and I
18 don't want to bore you with that, but I tried to
19 come to terms with what had happened, and I
20 couldn't get it out of my system.

21 So rather than getting angry, I thought,
22 well, maybe I'll try to write notes down. One
23 thing led to another and it became kind of an
24 exercise in therapy. I will readily admit that
25 many people in society won't agree with my
26 conclusions, and my good friends here on the panel
27 will have different perspectives. But it was a
28 heartfelt attempt to come to terms with what --
29 everything I knew in my life and my family. My
30 father was a fisherman, my brother and family
31 members, and so it was my attempt to try and
32 describe what happened.

33 Q And in those four years, did you do considerable
34 research to try to find out what had happened?

35 MR. BROWN: Again, you probably don't want to be bored
36 with my life story, but I spent essentially every
37 day of my life for approximately three years in
38 the Vancouver Public Library at the microfiche
39 lab, usually 12-hour days, reading everything I
40 could get my hands on. It was an intense process.
41 I learned a lot and I found out more things than I
42 probably ever wanted to know. Then I had to go
43 through the rather difficult task of trying to
44 write it. I'm not a professional writer and so it
45 was -- it was a deep experience.

46 Q You tried to find out what had happened to the
47 world that you knew.

1 MR. BROWN: In essence, and of course it's difficult
2 because I was a participant, so I'm not
3 necessarily seen as subjective and I'm not an
4 "objective" historian. But what I did note in
5 some of the historical research that I did and
6 theories that I read, put some of it in the book,
7 is that it tends to be that the small people, the
8 powerless people, who are often pushed aside in
9 times of economic upheaval, have the least
10 opportunity to voice their concerns, you know, the
11 closure of the commons and so on.

12 So it was my attempt, however pretentious it
13 might seem, to somehow capture some of that
14 experience and put it down so that at least
15 someday somebody could say, well, here's what one
16 person thought during those days, contrary to what
17 was the official party line of the DFO.

18 Q You started out your evidence last week by telling
19 the Commissioner that you'd waited 20 years to
20 give this evidence. Is that what you were getting
21 at?

22 MR. BROWN: Exactly, yes. Very appreciative of it,
23 too, as I'm sure my colleagues are.

24 Q Since writing the book in 2005, have you continued
25 to study the issues that are before this
26 Commission?

27 MR. BROWN: Yes, on a virtually unpaid basis. I don't
28 work for any organization. It's been mostly a
29 labour of love. I have been dealing with this
30 stuff almost daily ever since, and around this
31 inquiry, I've been attending, I've been writing
32 and reading, as I'm sure others are. I don't make
33 myself special. But those of us who have got
34 fishing in our blood - and I say this with the
35 utmost sincerity - can't get it out of our
36 systems, and so this is a very precious
37 opportunity for at least us to articulate some of
38 what we've gone through.

39 Q You've kept up with the literature? I think
40 you've mentioned several authors during the course
41 of your evidence.

42 MR. BROWN: I've been reading all the literature and
43 I've been the great beneficiary of what the
44 Commission has provided us in the way of
45 literature and exhibits. I've been trying to read
46 it all and have certainly benefited from that.

47 Q And you've discussed your ideas with other experts

1 or with experts in the field and, in particular,
2 some of those who've given evidence in these
3 proceedings?

4 MR. BROWN: I have talked to literally dozens, if not
5 hundreds of fisheries people over the years of all
6 walks: within the Department, in the academic
7 community, within the Pacific Salmon Commission.
8 I have referenced most of my own writing to them,
9 so that I would at least have what would be the
10 equivalent of a peer-review process so that any of
11 the criticisms that I would have, albeit I
12 understand they would be perhaps not well
13 received, are at least grounded in some of kind of
14 factual reality. I've benefited from the generous
15 amount of time that people in those fields have
16 given me.

17 This crosses all lines, biology, sociology,
18 anthropology, history, economics and including a
19 number of people who were former employees of the
20 DFO who have given freely of their time whenever
21 I've requested. So I believe I've tried to test
22 my --

23 Q In particular, you've kept up contacts with Dr.
24 Walters and Mr. Lapointe and Dr. Woodey, among
25 others?

26 MR. BROWN: All of those people, I'm on a very, very
27 cordial relationship with. They certainly don't
28 agree with me on all my points and I don't agree
29 with them, but I am very indebted, as I think a
30 number of people in our industry are, for the kind
31 of knowledge and expertise that's out there. Yes,
32 I've made it my point to keep in close contact.

33 Q Now, as I understand the basic thrust of your
34 evidence, you are saying that the history of the
35 -- the recent history of fisheries management has
36 taken place in a political paradigm; is that
37 correct?

38 MR. BROWN: Yes.

39 Q And I think you started out, in answer to some of
40 Mr. Eidsvik's questions, in describing that
41 paradigm, and you mentioned the **Sparrow** case and
42 the aftermaths of the **Sparrow** case. Then you were
43 getting on to Dr. Pearse and some of the political
44 fallout from his views. Perhaps you could
45 continue with that.

46 MR. BROWN: Well, my observation -- and I struggle with
47 this 'cause it's so complicated and I know before

1 I open my mouth, people are blowing the whistle on
2 lack of time or people want to beat you up and
3 say, well, who are you and you're not an expert
4 and all -- it's an enormously stressful business,
5 but what my observation after 35 years is, is that
6 things are fundamentally different in this age in
7 terms of how politicians, particularly, deal with
8 the fishery.

9 In an earlier time, I'm sure it was much
10 easier for managers of the resource to get
11 together with the fishing communities and within
12 DFO and make difficult decisions that sometimes
13 worked and many times they didn't work, but on the
14 whole, were -- must have been doing something well
15 because we rebuilt stocks from virtually nothing
16 in the 19 -- after Hell's Gate up to near record
17 levels in the '90s.

18 But nowadays, fisheries people, politicians,
19 managers, can't do anything without being under
20 the intense scrutiny of the media. There's often
21 excessive distortion about what's going on.
22 There's passion and acrimony that's ramped up, and
23 so it gets to be so that the fish become secondary
24 and the politics and the sort of - what's the
25 fashionable term now - the spin-doctoring, the
26 putting of the communications spin on things seems
27 to take priority over dealing both with the
28 resource itself and the impact on people.

29 Q And I believe - I too read your book - a prime
30 example of what you've just described was the
31 statement by the Honourable John Fraser that in
32 1994 the fishery was within 12 hours of disaster.

33 MR. BROWN: Yes. That phrase, I don't know if Mr.
34 Fraser thought it up himself or he had it fed to
35 him, but nevertheless was one of the most
36 inaccurate and unfortunate phrases that's ever
37 been uttered in the context of west coast
38 fisheries. But it was custom-made for a media
39 extravaganza that took that statement, which is
40 actually factually not true -- and if I had more
41 time, and I wish I did -- and I have written in my
42 book, all of what took place in the season that
43 Mr. Fraser was referring to, the 1994 salmon
44 season, can be explained.

45 There was not a fishery within 12 hours of
46 disaster. It's not physically possible to do so.
47 But why it is so upsetting to people like me that

1 it became part of the public discourse and the
2 grand narrative of some people who seek ill of the
3 commercial fishery, is that it persuaded the
4 public that something was recklessly out of
5 control when I could argue -- 'cause I was there
6 as the Minister's advisor at the time -- that
7 nothing of the sort took place. There's
8 explanations as to why that happened.

9 But after that fact, everything seemed to go
10 absolutely extremely surreal in terms of how
11 politics around the fishery is conducted because
12 of this impending disaster, which I would argue
13 was factually incorrect.

14 Q You're for incremental change or incremental
15 adaptations in the management of the fishery?

16 MR. BROWN: I think I would, as a layperson, as a
17 participant in the fishery, subscribe to Dr.
18 Walters' description which is adaptive management,
19 which is that you do things, you test them, get
20 the results back, see what worked and then do some
21 more of it.

22 But, yes, I do not believe in
23 "transformative" approaches. I think that's
24 wrong. I think it has been harmful for primarily
25 the fish, but for a lot of people. I believe in
26 incremental cautious conservative approaches, and
27 I believe that most fishermen would also agree
28 with that.

29 Q And do you also agree in focusing on increasing
30 sustainable harvests rather than micro-managing
31 diminishing returns?

32 MR. BROWN: Absolutely. When I heard Dr. Walters
33 testify before this Commission that between 1995
34 and 2005, no less than 25 million sockeye could
35 have been harvested without detriment either to
36 the major stocks or the weak stocks, I was
37 astounded. I believe that there could have been
38 more opportunity, and people could have benefited
39 and the salmon resource would have been better
40 off.

41 Actually, what is bothering me is what Dr.
42 Walters was saying is that by over-escaping, by
43 putting too many fish on the spawning grounds, we
44 actually did some serious harm to the productivity
45 of our big stocks which we'll have to live with,
46 Mr. Commissioner, for quite some time. We can't
47 undo that damage.

1 But it strikes me as absurd that we've been
2 sitting here around a paradigm that says over-
3 fishing is the problem, when I could go chapter
4 and verse proving that that has not been the case
5 and that we somehow or other have to redesign the
6 entire world around fishing privilege rights when,
7 in fact, we could have fished more, we could have
8 had more benefit, First Nations could have
9 benefited more and could have grown into greater
10 participation levels.

11 We could have - and I want to make this point
12 clear because I won't have another chance -
13 involved communities and working-class people in
14 the fishery in progressive change around how we
15 redesign the fishery. I do not sit here, and I've
16 never heard a single fisherman in all my union
17 career ever say, "Let's stick with the past," and
18 stubbornly stay in the past. All of them have
19 said, "If it can be done fairly, if it can be done
20 democratically and responsibly, we want to be part
21 of change." But that's not the way DFO has
22 approached it.

23 Q You're in favour of an inclusive fishery?

24 MR. BROWN: Absolutely. And I feel that, right now,
25 the driving imperative in the fishery is to
26 exclude people who otherwise should be in the
27 fishery and have a legitimate right to be in it.

28 Q And you're concerned of the apparent divisiveness
29 between First Nations interests and other
30 interests in the fishery?

31 MR. BROWN: Mr. Lowes and Mr. Commissioner, again, I
32 feel so pressed for time here. I heard Paul
33 Sprout testify a month or two ago about new
34 governance. I could tell you - and I wouldn't
35 repeat myself once - that I was part of a project
36 sponsored by Brian Riddell's Salmon Foundation and
37 the very highly-regarded group called the Fraser
38 Basin Council - which is a group that deals with
39 all issues in the Fraser Basin - around an attempt
40 to bring the Area E fishermen's group, which Ryan
41 belongs to, together with the lower Fraser fishing
42 interests on the Fraser around a paradigm where we
43 could somehow reintegrate the fishery on an
44 experimental basis around a small quota of chinook
45 salmon - we started small - with the one goal: to
46 try and heal our two communities. These are
47 people that once worked together, went to school

1 together, lived together and now, sadly -- and I
2 don't say this for a moment to speak against
3 aboriginal rights. Those are unequivocally
4 accepted by me and my colleagues. But we have
5 seen communities driven apart, we've seen chaos on
6 the river, we've seen the DFO lose control, and
7 we've seen two communities that have an exact
8 identity of interest - although they have
9 different histories and different cultures of
10 course - driven apart.

11 So, yes, I want to bring them together. And,
12 guess what? When we went to -- over a year's
13 worth of work, wrote those papers -- we delivered
14 them to DFO and they didn't even give us the
15 courtesy of an answer. They just gave it short
16 shrift. All that effort was discarded, and that
17 really bothers me, and I wish I had more time to
18 go into the details.

19 MR. MARTLAND: On that note, Mr. Commissioner, I would
20 point out for Mr. Lowes' benefit, he is at his
21 estimate.

22 MR. LOWES: Two questions.

23 Q First of all, Mr. Brown, having waited 20 years,
24 if you were to give advice to the Commissioner as
25 to a recommendation that he might make in his
26 final report, what would that recommendation be?

27 MR. BROWN: It would be to build a new salmon commons
28 which First Nations and non-First Nations would
29 work towards together. It would be to invest in
30 salmon enhancement again the way we once did, and
31 see salmon enhancement not as a cost, but an
32 investment in our future.

33 In terms of the generalities of the fishery,
34 I'd dispense with area licensing. I think it's
35 just an impediment and it's no longer necessary
36 with the vastly reduced fleet. I would move
37 towards a royalty system in which the old-age
38 issue of whether or not the industry is paying
39 economic rent to the owners of the resource, the
40 people of Canada, would be addressed. And
41 everybody that caught a certain amount of fish
42 would pay back to the Crown, to the owners, but it
43 would be done equally by those who catch -- per
44 volume, so big companies would be paying as well
45 as small harvesters.

46 I would get rid of the current obsession with
47 biodiversity that you've heard, and move back to

1 what Dr. Walters talked about, which is a harvest-
2 rate approach to the resource based on aggregate,
3 and not the one that is based on fixed escapement
4 policies.

5 I would try to bring all of the people back
6 together who have an interest in this fishery so
7 that we could all work together for the common
8 good of the fish.

9 Q And my final question: Of all of the issues and
10 matters and problems that you've heard about and
11 thought about facing the Fraser River sockeye
12 fishery, I suggest to you that the recreational
13 fishery is at the bottom of the list, if indeed
14 it's on the list.

15 MR. BROWN: In terms of Fraser River sockeye, yes, I
16 quite agree with you.

17 MR. LOWES: Thank you.

18 MR. MARTLAND: Thank you. Ms. Gaertner?

19 MS. GAERTNER: Mr. Commissioner, Brenda Gaertner, and
20 with me, Crystal Reeves for the First Nations
21 Coalition. I'm happy to say I only have one
22 question that might become two, depending on how
23 it goes, so I should be very short.

24

25 CROSS-EXAMINATION BY MS. GAERTNER:

26

27 Q Mr. McEachern, I'm going to start with you in this
28 question, and Mr. Ashton, if you have anything to
29 add, please do. You can rest assured that my
30 questions are mainly for Mr. Grout this afternoon
31 on this issue and not with the panel.

32 But I'm curious. It's fair to say, I would
33 think, almost reasonable to say that when DFO
34 works with you and your group on developing
35 demonstration fisheries or selective fisheries
36 that there's a cost to you and an effort that you
37 take, both in terms of actual cost and perhaps
38 professional cost in terms of trying something
39 new; is that correct?

40 MR. McEACHERN: Yes.

41 Q And is it also fair to say that while you're
42 working on those demonstration fisheries or, in
43 your case, Mr. Ashton, the selective fisheries,
44 that you're working out the details and working
45 out the problems and that, over time, you're
46 trying to perfect what you're working on; is that
47 also fair to say?

1 MR. McEACHERN: Yes.

2 Q And is it also fair to say that at the end of
3 that, you have a reasonable expectation that if
4 you've worked out those details, that that fishery
5 is going to proceed?

6 MR. McEACHERN: Yes.

7 Q And what has DFO said to you about proceeding with
8 ITQs in your fishery at this point in time?

9 MR. McEACHERN: There would need to be a--

10 Q Let me do -- let me do (sic) more precise for you
11 on that one. What have they said with respect to
12 ITQs or IQs as it relates to Fraser River sockeye
13 salmon?

14 MR. McEACHERN: Sorry, I'm still not sure how to answer
15 the question. The --

16 Q Has DFO made any promises to you as you've been
17 working on demonstration fisheries with respect to
18 ITQs or anything like that as it relates to Fraser
19 River salmon, as to when you can reasonable expect
20 that they will be proceeding with that? Have
21 they given you any expectations on any further
22 investments that you'll need to make or otherwise?
23 What have they said to you?

24 MR. McEACHERN: No, the -- it's definitely up to the
25 Harvest Committee to bring up ITQs to the
26 Department. The Department is not bringing them
27 up to me.

28 Q And so as you work with them, and trying to work
29 out the potential of using ITQs or IQs or any of
30 those types of things in Fraser River sockeye,
31 you're not building an expectation that they're
32 moving forward?

33 MR. McEACHERN: I guess I don't have that expectation
34 because of the mixed support within my own
35 community. I'm just trying to offer options.

36 MS. GAERTNER: Those are my questions.

37 Q Oh, Mr. Ashton, do you have anything to add to any
38 of that?

39 MR. ASHTON: As you know, Area B has, I guess, the last
40 year, successfully had an IQ fishery on Fraser
41 sockeye. There was no indication from DFO for
42 expectations of it being permanent. I spoke,
43 actually, with Mr. Grout recently about it, and he
44 said as long as the area Harvest Committee wished
45 to carry on as a demonstration fishery, that it
46 would be in place for any future fisheries, but
47 there's no expectation of it being permanent at

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Cross-exam by Ms. Fong (HTC)

1 the moment.

2 Q Anybody else from the panel that would like to add
3 to that?

4 MR. SAKICH: Yes. There is no guarantees in ITQs. I
5 think some people have that misconception: just
6 because you have an ITQ of Fraser sockeye does not
7 mean you're going to achieve the prescribed
8 number.

9 Q But, right now, the IQs that you're being given
10 are demonstration or experimental; correct?

11 MR. SAKICH: That's right.

12 Q That would change if they weren't.

13 MR. SAKICH: No, I don't think so. I don't think it's
14 possible just because you get an ITQ isn't going
15 to give you the right to overfish your share of
16 the resource.

17 Q Oh, absolutely. Sorry, that wasn't the intention
18 of the question. I would agree with that.

19 MR. SAKICH: And there is one other thing missing here
20 that would help Dennis' issue, and everybody
21 else's, is that we lost the right to have the true
22 types of fisheries running where you have a
23 demonstration fishery paralleling with your status
24 quo type fishery. Not having those in place does
25 not help.

26 So in the case of -- our fleet went to ITQ.
27 We went through the demo for two years, and it was
28 the folks that decided that they wanted on board
29 the type of fishery that we were having the
30 experimental fishery on, rather than the status
31 quo. So nobody was forced into anything.

32 MS. GAERTNER: Thank you. Those are my questions, Mr.
33 Commissioner.

34 MR. MARTLAND: Ms. Schabus has helpfully cut her
35 questions. Ms. Fong?

36 MS. FONG: Lisa Fong for Heiltsuk Tribal Council and
37 with me is Christian Morey.

38 Mr. Lunn, could you assist and please pull up
39 Exhibit number 317 which is the IFMP for the
40 south, and if you can move towards Appendix 4,
41 there's a chart on page 3/5. In the meanwhile, I
42 will ask Mr. McEachern a question.

43

44 CROSS-EXAMINATION BY MS. FONG:

45

46 Q As I understood your testimony on the 22nd, there
47 is the ability, between area groups, for transfers

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1 of allocation in season; is that correct?

2 MR. McEACHERN: It's part of the policy that if the
3 fish transfer -- fish move through your area and
4 you haven't been able to catch them, either due to
5 too much fish or other constraints, or just
6 political issues, that the further down -- the
7 next group along the line that shares your gear
8 type would automatically be transferred those
9 fish.

10 None of those gear -- none of those two areas
11 could catch them. Anyone else in the commercial
12 *13:47:37 fishery that's left in line would
13 receive that allocation. That's the only context
14 in which I understand that question.

15 Q Okay. And you just said "would be automatically
16 transferred." Is that the case that it's
17 automatic or is there some discretion on DFO and
18 the part of the area groups?

19 MR. McEACHERN: I might not be quite familiar enough
20 with that process. You might want to try -- Chris
21 is in the Fraser Panel. I'm not sure what
22 discussion actually happens at the Fraser Panel,
23 but my understanding as a commercial area advisor
24 is that if the fish move first to another gillnet
25 group, and if another gillnet group can't catch
26 them, then they would move to the seine fleet.

27 Q Okay. Before I go to Mr. Ashton, I'm just going
28 to ask you, Mr. McEachern, if you're aware,
29 looking at that chart there under the chart "South
30 Coast for South Coast Sockeye, Fraser River
31 Sockeye", now this is the chart for the pre-season
32 allocation for 2011 to -- sorry, 2010 to 2011. So
33 for the 2010 fishing season, do you know if there
34 were transfers of allocation and how that shifted?

35 MR. McEACHERN: Yes. There was a number of fish from
36 Area D were transferred to Area E to increase
37 their allocation but, however, they couldn't catch
38 it all either, and I think that fish probably
39 ended up being caught by Area B.

40 Q Okay. And perhaps here I can just ask Mr. Ashton
41 if he's aware of that transfer allocation in
42 relation to this graph so that he can confirm that
43 Seine B picked up the allocation when D and E
44 could not complete their uncaught catch
45 allocation.

46 MR. ASHTON: Yes, that's correct. The fish had passed
47 through Johnstone Strait which is Area D's area to

1 fish, and because of the coho closures in the
2 river that take place the day after Labour Day,
3 Area E was unable to catch it, so then that fish
4 was left -- or transferred into Area B's catch.
5 Q Okay. And then eventually, because D couldn't
6 catch it all, Seine B received the allocation.
7 MR. McEACHERN: That's correct. Or the opportunity to
8 catch it.
9 Q Correct.
10 MR. McEACHERN: We didn't catch it all.
11 MR. MARTLAND: And I should just point out, this is the
12 2009 to 2010 IFMP that's on the screen.
13 MS. FONG: Thank you.
14 MR. MARTLAND: Thank you.
15 MS. FONG:
16 Q And, Mr. Ashton, I'm just going to come back to
17 that question I'd asked Mr. McEachern. Seeing as
18 you sit on the Fraser River Panel, the transfer
19 allocation process in season, how does that occur?
20 Is that -- and what I'm asking for, the mechanics
21 of it. Is there a request at the table? Is there
22 discussion? Are the area groups represented? I
23 want to understand how much input there is in such
24 a decision.
25 MR. ASHTON: Well, primarily the Fraser River Panel,
26 Canadian caucus side, is -- its interest is to
27 look after Canadian fisheries. I guess where the
28 individuals, such as myself and Peter Sakich and
29 another gentleman, Les Rombaugh, represents
30 gillnets on the panel, and John Murray, they --
31 when we get to the point of actually having a
32 catch being allocated, then they ask for our
33 advice on how we would best determine the fishing
34 methods and the time and areas.
35 But to the question you're asking, that is
36 more of a Department of Fisheries allocation.
37 These allocations aren't through the Fraser Panel.
38 Q Okay. I understand. So what you're explaining to
39 me is that the area groups would have discussions
40 or communications with the DFO, and there would be
41 a sort of consultation as between them before that
42 decision as to the transfer allocations made; is
43 that correct?
44 MR. ASHTON: In a lot of respects, that's how it would
45 take place, but basically it's sort of *de facto*
46 process that the abundance of sockeye had already
47 passed through Area D's fishing area and wasn't

1 going to be available to Area E, so there was
2 Canadian commercial TAC available.

3 Q Okay. And are you aware, given the various
4 allocations here, was there a compensatory aspect
5 to the allocation? So, for example, when Seine B
6 was able to obtain a larger portion of the
7 allocation, was there some sort of compensation
8 that was given to D or E?

9 MR. ASHTON: No, there wasn't.

10 Q Okay. And is that an arrangement, that decision,
11 is that a private decision as between Seine B and
12 D and E, or is that something that DFO would give
13 direction on?

14 MR. ASHTON: No, they wouldn't. There's been a number
15 of instances over the years where fish have been
16 -- area fishery groups have been unable to catch
17 their share of allocation for one reason or
18 another, and it has just flowed into somebody
19 else's catch.

20 But in regards to 2010, Area B and H were
21 jointly doing an ITQ demonstration project and,
22 under the rules of that project, they were allowed
23 to transfer IQs between Area B vessels or Area H
24 vessels. It was interchangeable. But there was,
25 since Area D and E were both fishing in a derby-
26 style fishery, there was no mechanism of transfer
27 there.

28 Q Okay. But in terms of the compensatory aspect,
29 like, for example, dollars for some fish because
30 Seine B picked up some extra allocation, that gets
31 worked out between the area groups, not -- if I
32 understand your evidence correctly -- not a
33 direction from DFO?

34 MR. ASHTON: No, there is not arrangements to pay for
35 that fish.

36 Q Okay. And, Mr. Ashton, like putting aside, you
37 know, how the allocation -- how the transfer of
38 allocation might happen, would you -- would you
39 agree that it's better to have this flexibility
40 within the pre-season -- or, sorry, within the in-
41 season management to be able transfer allocation,
42 than it would be to have, for example, a rigid
43 system where these percentages would be adhered to
44 regardless of whatever is happening with the fish.
45 So would you agree that flexibility is better?

46 MR. ASHTON: Well, the flexibility often flows out of
47 what happens in-season. DFO attempts to, as well

1 as they can, to try and make sure each fishing
2 group obtains their allocation as close as they
3 can, close as is possible to do, but I don't know
4 -- I'm unsure of the direction of your question.
5 Q Oh, I'm just asking about the flexibility 'cause
6 not everyone enjoys flexibility. So I just want
7 to understand. Flexibility is a good thing as
8 opposed to rigidity where --
9 MR. ASHTON: Well, I mean --
10 Q -- it's 47.5 percent or nothing.
11 MR. ASHTON: These numbers that are set out pre-season,
12 they are target allocations. For any number of
13 reasons, a group may not obtain their allocation.
14 Q Right.
15 MR. ASHTON: Sometimes it's caught by another group for
16 reasons that were just described before.
17 Q And it's good to have that level of flexibility,
18 would you agree?
19 MR. ASHTON: Oh, yeah, yeah.
20 Q Thank you. And Mr. McEachern, would you agree
21 also that having flexibility to transfer
22 allocation within in-season is a positive thing in
23 comparison to a rigid rule that says no transfers?
24 MR. ASHTON: My feeling on it is it's very positive to
25 have that flexibility to be able to transfer the
26 fish around between the commercial fleet. I think
27 where you're going to have -- it becomes much more
28 -- because the commercial fishermen see each other
29 as common participants in the goal of catching
30 fish for Canada. If fish was to be transferred
31 outside of the commercial fleet, that would be the
32 kind of flexibility that I would have trouble
33 with.
34 Q Thank you. And, Mr. Sakich or Mr. Brown, do you
35 have any comments about the positive or
36 negativeness of flexibility versus a rigid rule?
37 Perhaps we can start with Mr. Sakich, if that's
38 okay, Mr. Brown. Thank you.
39 MR. SAKICH: The flexibility works very well. That was
40 -- in between Area H and B, something that hasn't
41 come up here, there was over -- let's say from B
42 to B, B to H, H to B, there was over a thousand
43 transfers a week or ten days before the season
44 ended that took place between those two gear
45 types. Not totally between those two gear types,
46 but in the flexibility realm there was transfers
47 all different ways. So, like I said, it might be

1 a bit of research that you would have a look at
2 that was over a thousand -- I think it probably
3 ended up around 1200, 1300 I'll bet. So that's
4 flexibility.

5 Q Thank you Mr. Sakich. And Mr. Brown?

6 MR. BROWN: Yes, Ms. Fong and Commissioner, I obviously
7 agree that flexibility is a highly desirable
8 principle and I would argue, based on my
9 historical research, that there was a lot more
10 flexibility in the past and the stocks didn't
11 collapse. In fact, they were rebuilt from Hell's
12 Gate to near record levels in the 1980s with
13 flexible management arrangements.

14 I would make this one observation, and I make
15 it both as a union leader over many years, but as
16 an Area E harvest member at the moment, elected to
17 that position by commercial fishermen, that there
18 is very little flexibility in DFO's current
19 approach. I have, all too often, heard fishermen,
20 for one, under great duress, tell me, "Dennis, I
21 don't like ITQs. I have concerns about them.
22 But, you know, when we were at the DFO last week,
23 they said if we don't move to ITQs, we're not
24 going to fish again." That is not a good way to
25 be flexible. It's not a good way to bring buy-in
26 from fishermen. It's kind of a form of coercion.

27 I have heard repeatedly DFO officials - Mr.
28 Grout being one of them - that constantly go on
29 saying unless you people can meet certain
30 standards and meet certain pre-conceived notions
31 about how we'd like to see the fishery managed,
32 it's going to be very difficult for us to open it.

33 Now, he may or may not be right about that,
34 but I tend to think that there's a bit of an
35 overstatement here in terms about the fact that
36 the only way you can get flexibility in managing
37 the fishery is by changing property rights to the
38 fishery. I think there is a plethora of ways one
39 can be flexible about both managing to risk-averse
40 conservation target and allocation targets without
41 doing that. This is the point that I've been
42 trying to make, and I hope I'm not overly
43 repetitive, is that we've seen a diminishment of
44 flexibility options within the Department, within
45 the Department's toolbox, which have been known
46 for many, many decades, because after 2005, Dr.
47 Peter Pearse wrote a report and said we should

1 move to ITQs, and that was adopted by the Minister
2 of Fisheries of the day, and it's become the party
3 line.

4 I would like to go back to the time where
5 politics and all of these other concepts were put
6 to the back and we really do what you're just
7 saying: Look at what is the best thing to do in a
8 given situation in a pragmatic and flexible way
9 and see if we can work it out. I think we can.

10 MS. FONG: Thank you. Those are my questions.

11 MR. MARTLAND: Thank you. Mr. Commissioner, I'm
12 mindful of the time. We're almost in the last few
13 moments, I think, of dealing with this evidence.
14 There's no further cross-examination. I have one
15 very quick set of questions for Mr. McEachern that
16 I think are properly re-examination that Mr.
17 Rosenbloom identified for me. If I might lead --
18 and I'd welcome anyone to object.
19

20 RE-EXAMINATION BY MR. MARTLAND:

21
22 Q Mr. McEachern, I take it that through counsel, you
23 read the transcript of your first day of testimony
24 here before the Commission last week and
25 identified four specific errors in the transcripts
26 referring to the testimony that you were part of
27 that day?

28 MR. McEACHERN: Yeah, myself, and there's just one
29 minor error with Dennis Brown's too.

30 Q And I'd like to take you through those very
31 quickly. Page 38 -- and I'll simply read these
32 into the record and we can pick up the discussion,
33 if any, arising.

34 Page 38, line 32 of the transcript for
35 Tuesday, the 22nd of February. Fleet "boat", b-o-
36 a-t, should be replaced with fleet "vote", v-o-t-
37 e.

38 MR. McEACHERN: Roger. Sorry, yes.

39 Q All right. I didn't mean to move you into
40 different lingo. Page 60, line 10, that's where
41 Mr. Brown testified and I think referred to you,
42 or Mr. McEachern and commented about Area E, but
43 the transcript provides "Area A".

44 MR. McEACHERN: Yeah, he did say "E". That's just a
45 typo or something.

46 Q All right. Page 78 --

47 MR. MARTLAND: And Mr. Lunn, I don't need you to try

58

PANEL NO. 21

Cross-exam by Mr. Harvey (TWCTUFA)

Cross-exam by Mr. Rosenbloom (cont'd) (GILLFSC)

1 and move as fast as I'm going.

2 Q But page 78, line 5, there's reference to
3 "kingfish", one word, but I take it that should
4 refer to Canadian Fish, the company?

5 MR. McEACHERN: Yeah, that's a funny mistake, that one.

6 Q All right. Page 79, line 38, the word "to", t-o,
7 should be "t-o-o". I think you made a comment
8 about something that affected you "too".

9 MR. McEACHERN: Yeah, just that the hardship was
10 including myself as well. So that should be the
11 inclusive "too" as in t-o-o.

12 MR. MARTLAND: Mr. Commissioner, those are the quick
13 points I wanted to address. Mr. Rosenbloom
14 identified that he had very short questions on re-
15 examination, and then we're finished with this
16 panel.

17 MR. ROSENBLoom: I'll be a minute or less, Mr.
18 Commissioner.

19

20 CROSS-EXAMINATION BY MR. ROSENBLoom, continuing:

21

22 Q Mr. Ashton, much has been said about the bunt grid
23 study where DFO approached your group and there
24 was correspondence back and forth. Last day we
25 put in a bundle of documents in terms of your
26 correspondence. I want to refer you very, very
27 briefly to Exhibit 489.

28 MR. ROSENBLoom: Mr. Lunn can put that before you. I
29 think you'll see it there on the screen.

30 Q Sir, in an email, Mr. Curry writes to you January
31 17th, 2005. He says in the middle paragraph of
32 that email:

33

34 A meeting was held in Vancouver on December 8
35 to review progress on grids and knotless
36 bunts since 1999 and to review the results
37 from 2004.

38

39 This gear has shown compelling results and
40 will be further analyzed through the
41 development of a PSARC paper due for May 8th,
42 2005.

43

44 Is it your understanding, sir, that that study was
45 never done in 2005?

46 MR. McEACHERN: That's my understanding. I don't
47 recall ever hearing any more about it.

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1 Q So it's your understanding that not only was the
2 study not done in 2005, but it's never been done
3 since?

4 MR. McEACHERN: I don't believe so.

5 MR. ROSENBLOOM: Thank you. I have no further
6 questions.

7 MR. MARTLAND: Mr. Commissioner, that concludes the
8 evidence from this panel.

9 THE COMMISSIONER: Just before you go, there, I just
10 wonder -- I want to raise with you, Mr. Martland,
11 and see whether Mr. Harvey and Mr. Lowes would
12 agree, but I don't have a copy and I haven't seen
13 a copy of Mr. Brown's book, I don't believe. But,
14 in any event, at least today, reference was
15 actually made from some pages of that book, and
16 I'm wondering whether the pages, at least, that
17 were referred to and read to the witness - he is
18 the author of those pages - should not be at least
19 marked for identification, if not, as an exhibit.

20 MR. MARTLAND: I think that's an appropriate
21 suggestion, Your Honour -- I'm sorry, Mr.
22 Commissioner. I wonder if I might suggest that if
23 those in the room are in agreement, we can discuss
24 among counsel how we're best to put that in as an
25 exhibit and then look to do that this afternoon,
26 if we're able.

27 THE COMMISSIONER: Yes, that's fine.

28 MR. MARTLAND: Thank you.

29 THE COMMISSIONER: You're now done with this panel?

30 MR. MARTLAND: Yes, and I was simply going to canvass
31 with respect to the timing for when we might
32 reconvene in the afternoon and Mr. Grout's
33 evidence.

34 THE COMMISSIONER: I would prefer, given the time, to
35 reconvene at 2:00. We could reconvene at ten to
36 2:00 if that's convenient for everyone in the
37 room.

38 MR. MARTLAND: If I could request that, please. Thank
39 you.

40 THE COMMISSIONER: That's fine. I would, before we
41 leave -- and I presume we're going to leave now,
42 is that...?

43 MR. MARTLAND: That's right.

44 THE COMMISSIONER: I want to express my gratitude to
45 Mr. Brown, Mr. McEachern, Mr. Sakich and Mr.
46 Ashton for their attendance here on Friday -- or
47 last week, I should say, and here again today.

1 I'm grateful that you were able to do that and
2 that you were willing to participate in the way
3 that you have and for the time that you've taken
4 on behalf of this Commission and the public to be
5 here and give your views and answer the questions.
6 So thank you all very much for that.

7 If we have nothing further, then, with this
8 panel, they may be excused. You're welcome to
9 stay, of course. They don't have to; we do. So
10 we'll give them that option. We'll be back at ten
11 to 2:00. Thank you.

12 THE REGISTRAR: The hearing is now adjourned until ten
13 to 2:00.

14
15 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
16 (PROCEEDINGS RECONVENED)

17
18 JEFF GROUT, recalled.

19
20 MR. EIDSVIK: Philip Eidsvik for the Area E Gillnetters
21 Association and B.C. Fisheries Survival Coalition,
22 for the record.

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

25
26 Q Mr. Grout, there's been a number of days talked
27 about IQs and again this morning we spent a lot of
28 time on IQs, and the IQs in the commercial, public
29 commercial troll and the seine sectors and
30 gillnet. Can you tell the Commissioner how the
31 lack of IQs in these fisheries can explain how 15
32 million sockeye have disappeared between Mission
33 and the spawning grounds in the last, well, since
34 about 1990? Can you tell him how IQs in our fleet
35 cause that problem, the lack of IQs?

36 Probably because that's a tough question,
37 maybe I can move on one more time. Then maybe you
38 can tell us, I mean, we've had a difficult time in
39 the management of the fishery since about 1990.
40 Can you tell us how IQs in the public commercial
41 fishery would have cured some problem that the
42 public commercial fishery has done since 1990 to
43 put the fishery in the shape that it's in.

44 A Well, in terms of the share-based approach and
45 we've used ITQs in some of the Fraser River
46 sockeye fisheries, Area B and H notably, and what
47 we've seen in those fisheries in particular is a

- 1 better ability to manage to a specific share of
2 the catch in those fleets.
- 3 Q No, excuse me, Mr. Grout, I didn't ask you what we
4 are talking about the future. I'm asking what did
5 those fleets do between, say, about 1990 and 2009
6 to create the problem that this Commission's
7 meeting today. Was there overfishing in the
8 public? Did they not put enough fish to Mission?
9 I'm trying to get specifically what problem in the
10 management of the commercial fleet between 1990
11 and 2005, the brood year for 2009, can be cured by
12 putting IQs in there, what problem in that fleet?
- 13 A Well, we're looking at using a Pacific fisheries
14 reform and the move to a share-based approach to
15 address a number of issues in terms of how the
16 fishery is managed.
- 17 Q I understand you're trying to change how the
18 fishery is managed for the future. I'm trying to
19 understand what problem in the management of the
20 fishery that caused the collapse of Fraser River
21 sockeye could have been cured if there had have
22 been IQs prior -- between 2005 and 1990.
- 23 A Well, if you're asking me for -- well, maybe I can
24 ask you. Is your question, are you asking me what
25 role commercial fishing potentially had in the
26 decline of Fraser River sockeye?
- 27 Q Well, that's probably a good place to start.
28 That's the first question.
- 29 A Well, in terms of that question, Science staff in
30 the Department are better placed to explore that
31 hypothesis, amongst others, that might explain
32 the cause of the decline. Certainly in a recent
33 workshop that was chaired by Dr. Randall Peterman
34 and David Marmorek, they did not -- the
35 participants at that workshop did not feel that
36 fishing was a likely cause of the poor return that
37 we saw in 2009, at least in the findings in that
38 workshop.
- 39 Q That's helpful, and it's just a lot of us are
40 thinking that all the time we're spending on IQs
41 kind of distracts us from finding out the real
42 reasons of the decline of Fraser River sockeye.
43 Now, one other question on that. Is DFO imposing
44 IQs in the aboriginal commercial fishery on the
45 Fraser River?
- 46 A Well, we're working with willing fleets as far as
47 potential different management approaches, so we

- 1 have not imposed ITQs or IQs on any of our
2 commercial fleets at this point. In terms of a
3 share-based approach, we are managing economic
4 opportunity fisheries, for example, in the Fraser
5 River to a defined share of the commercial total
6 allowable catch, which is specified as a
7 percentage.
- 8 Q Okay. And that's pretty well the same for Area E
9 fleet. Area E's managed to a percentage of the
10 defined TAC, isn't it?
- 11 A We do have a fleet share specified --
- 12 Q Okay.
- 13 A -- for Area E, as well.
- 14 Q That helps. You talked in your testimony about an
15 experiment that you ran with Area E in 2002 where
16 there was a short fishery that had a catch
17 allocation of 30,000 and caught 45,000. You were
18 quite critical of that. Was there an unexpectedly
19 high number of fish in the river at the time?
- 20 A Well, the point I was making there was that it's
21 very challenging to control the various different
22 parameters that you might use in setting up a
23 fishery opening, including the numbers of fish
24 that might be in the river.
- 25 Q Forgive me for interrupting. The question I was
26 just asking, was there an unexpected --
- 27 MR. TIMBERG: Mr. commissioner, if the witness could be
28 allowed to answer the question, please. Mr.
29 Eidsvik keeps interrupting him while he's
30 answering.
- 31 MR. EIDSVIK: My problem is, is the question, we have
32 little time and I'm trying to get out the answers
33 to the questions that I want. And I'm sorry, Mr.
34 Grout, if I am interrupting you, and I apologize
35 for that. But I guess I --
- 36 MS. TIMBERG: But I'd like to resolve this, and if you
37 ask a question, I think the witness is entitled to
38 provide an answer.
- 39 MR. EIDSVIK: Here's the question. I'll repeat my
40 question.
- 41 Q Was there an unexpectedly high number of fish in
42 the Fraser River at the time of that experiment?
43 That was my question.
- 44 A It's possible there was a higher abundance than
45 expected at the time when that fishery occurred.
- 46 Q In 2002 we had a gross escapement over ten million
47 fish, didn't we?

1 A I'd have to look at the specific data for that
2 year.

3 Q I won't bring you to the document because it will
4 take some time. But it is an exhibit, the 2002
5 Fraser Panel Report.

6 Now, Jim Woodey, in his testimony, said that
7 in 2002 there was a lengthy dispute about how to
8 deal with the early entry of Late run sockeye. He
9 said that DFO was advised by himself and other
10 people in the industry that one way to deal with
11 the problem was to let Area E crop the early entry
12 fish, because the vast majority of them would die
13 before they spawned. You were in fisheries
14 management at that time. Do you remember any of
15 those discussions?

16 A Yes, I do.

17 Q And why didn't DFO take Mr. Woodey's advice?

18 A Well, that was back when we were really coming to
19 grips with the sort of problems we had in terms of
20 early entry of Fraser sockeye into the Fraser
21 River. There was certainly some evidence to
22 suggest that some of these early entry fish may
23 not survive to spawn, but there was no evidence
24 that they were all not going to survive to spawn,
25 for example. So there was a reluctance to
26 undertake a sort of management approach where you
27 would try and harvest all of the fish coming into
28 the river early. There were still concerns at
29 that time about Cultus Lake sockeye, for example.

30 Q Yeah. I don't think anybody was saying we should
31 harvest all of the Late run, but there was, I
32 think, pretty serious discussions about how long
33 should we keep harvesting those early entry fish,
34 knowing the ones that hit the river the earliest
35 will be the most likely to die and the ones that
36 come in at the normal time will be the most likely
37 to survive. Can you offer any expansion on what
38 you just said?

39 A Well, I think since that time there's been a
40 considerable amount of work with radio and
41 acoustic tagging to try and further improve the
42 sort of information that we can get about the
43 timing and migration success of these different
44 salmon.

45 Q But at the time in 2002 Mr. Woodey's advice was
46 disregarded. We put 10 million fish on the
47 spawning grounds and there was a considerable loss

1 of economic opportunity for the commercial sector
2 and for aboriginal groups and for recreational.
3 Is that fair to say?

4 A Yes, that's the potential outcome there.

5 MR. EIDSVIK: Thank you.

6 MR. MARTLAND: Mr. Commissioner, I'll just point out
7 Mr. Eidsvik is hearing the completion of his
8 estimate of time. Thank you.

9 MR. EIDSVIK: That's good. I only have a couple more
10 things to go over fairly quickly.

11 Q Mr. Hargreaves, in his testimony last week, he
12 said that, referring to a revival box:

13
14 Properly designed, a revival tank can bring
15 back fish that are by all intents and
16 purposes, even by the experts, the fishermen
17 themselves, dead. Fishermen ranked them as
18 dead. They're in the net, they come aboard,
19 they're dead. You put them in a revival
20 [box] and up to 90 percent of those fish will
21 revive and become fully functional again.

22
23 In your testimony last week you said that you
24 didn't ask or have a regulation for aboriginal
25 fishermen in the river to have revival boxes
26 because there's a cultural practice not to waste
27 salmon that have been killed. Now, I guess if Mr.
28 Hargreaves is right, we don't really know if
29 they're dead or not when they're brought on board;
30 is that correct? Do you agree with Mr.
31 Hargreaves?

32 A Maybe you could rephrase your question. I thought
33 I heard more than one question there.

34 Q Okay. Do you agree with Mr. Hargreaves' point
35 that coho coming on board, you don't really know
36 if they're dead, and a revival box, even ones that
37 appear to be dead, revival box can revive 90
38 percent of them.

39 A Oh, I think Mr. Hargreaves is an expert on this
40 matter, and he's done a bunch of the research.
41 Certainly not all of the coho that you bring on
42 board are going to be in a dead sort of condition.
43 A number of them will be still fighting actively.

44 Q So of the ones that are dead, Mr. Hargreaves says
45 you can revive 90 percent. Do you agree with
46 that?

47 A If that was his statement that he's made. I will

1 point out that in the Integrated Fisheries
2 Management Plan we've summarized the information
3 stemming from the selective fishing studies and we
4 do have a release mortality of 60 percent that's
5 applied in the gillnet fishery and can be as low
6 as 40 percent, depending on other factors.

7 Q And I'm harping on the point that we've been over
8 a few times and it's the absence of revival boxes
9 in the aboriginal fleet when we're in the chum or
10 sockeye fishery, and the absence of a regulation
11 saying throw all fish overboard. You say that
12 aboriginal fishermen can keep the coho because
13 they're aware which ones are dead and they
14 wouldn't waste fish. And it seems we've got a
15 fisheries practice on a really important bycatch
16 of fish that's based on a cultural factor that I
17 don't know where it comes from. Have you heard
18 any studies about that cultural practice?

19 A Well, you've misrepresented to begin with what I
20 stated, and what I stated last week was that
21 revival boxes are required in the First Nation
22 fishery for the larger vessels over 30 feet.
23 There are also provisions in the Area E licence
24 conditions for vessels that are under 30 feet
25 which allow for different release practices from
26 the revival boxes.

27 Q So your testimony here today is that not all
28 vessels in the regular all citizens commercial
29 fleet need revival boxes. Is that what you're
30 saying?

31 A No, it is not. I said, and we can go to the
32 licence conditions, I believe we've seen them.
33 There's an exhibit with Area E licence conditions,
34 so I'm happy to point you to the spot. But I
35 stand by my earlier testimony that revival boxes
36 are required in the commercial fishery. There are
37 provisions for vessels smaller than 30 feet to
38 have different design or ability to release fish
39 from those boxes.

40 Q In your explanation for why aboriginal fishermen
41 were allowed to keep dead sockeye, you said it was
42 because -- and I'll read your words:

43
44 And one of the reasons there is cultural
45 practice not to waste salmon that have been
46 killed.
47

1 Now, Mr. Hargreaves illustrates that we can't
2 really tell what's been killed, so a revival box
3 was handy. And I'm wondering, there's a policy
4 and a regulation and a practice on coho, which
5 really serious conservation issue, that appears
6 that you've built it on a cultural practice, and
7 I'm just wondering what do you have to
8 substantiate that cultural practice you referred
9 to?

10 A This cultural practice has come up in discussions
11 with the First Nations involved that have
12 requested licence conditions to allow for
13 retention of fish that are, the words used,
14 "mortally wounded".

15 Q And you're probably aware that there's other
16 academic theory out there that would say that the
17 cultural practice so far as wasting fish between
18 aboriginal communities and other communities are
19 probably the same, because nobody likes to waste
20 fish.

21 A Yes, I've heard that.

22 MR. EIDSVIK: Those are all my questions. Thank you,
23 Mr. Commissioner.

24 MR. MARTLAND: Ms. Gaertner.

25 MS. GAERTNER: Mr. Commissioner, Brenda Gaertner, and
26 with me Crystal Reeves for the First Nations
27 Coalition.

28 I am going to, as I am wont, start with a
29 little brief story to open this examination. Last
30 week, when I thought I was going to have the
31 opportunity of asking Mr. Grout some questions, I
32 had the crazy coyote arrive at my office in the
33 morning, but in the form of Grand Chief Saul
34 Terry. Now, you've met Grand Chief Saul Terry as
35 a witness and also up in his homeland, in the
36 Stl'atl'imc, Bridge River. And we had a moment,
37 and I reminded him what we were speaking about
38 that day and the next couple of days, and his
39 comments, and I'm sure he'll say them directly to
40 you if they become relevant, but his comment was,
41 "Well, that the Department is somewhat challenged
42 by their own history when it comes to allocation."
43 And so I asked him what he meant by that. And we
44 only had a few seconds, but he said that having
45 established for decades a fishery that is in the
46 marine, and having industrial fisheries developed
47 - this is all common knowledge so it's not as if

1 I'm giving evidence - that they've had quite
2 abilities to harvest the fish that quite a long
3 streak, and now the law requires that conservation
4 and FSC fisheries have changed that established
5 fishery. And so that by that way the Department
6 is challenged by their own history.

7 So that was the story I was going to tell you
8 last week, but I had the weekend to think about
9 it, and I wondered really why it was that Grand
10 Chief Saul Terry has come and given me, and he
11 gave me the title to these questions, and the
12 title to these questions are "outstanding
13 business".
14

15 CROSS-EXAMINATION BY MS. GAERTNER:
16

17 Q And Mr. Grout, I want to also start by letting you
18 know that you probably hear this up at negotiating
19 tables more often than this type of setting. And
20 it's an important practice that my clients have
21 asked me to use here, and I think it's important,
22 which is that sometimes we have to work the issues
23 hard but not the people hard. And so we've got
24 some things to do today. You may ask a number of
25 times why I'm asking you these questions. They
26 are not directly from your own personal
27 experience, I don't think, but you are here to
28 talk about allocation on the part of the
29 Department of Fisheries and Oceans, and as you
30 know, that's sometimes quite a contentious issue
31 amongst the harvesters of the resource. And
32 there's some history that I need Mr. Commissioner
33 to know about, and I'm going to have to do it
34 through you, because you're the witness. So bear
35 with me on some of those and we'll go through them
36 as quickly as we can and we'll get to where we
37 need to go.

38 And so I'm going to start with Exhibit 264,
39 which is the Allocation Policy of the
40 Department's, and I'm going to take you to page
41 15. And, Mr. Commissioner, at page 15 of the
42 Allocation Policy, Exhibit 264, we begin to get
43 the fundamental principles that guide the
44 Department of Fisheries and Oceans as it relates
45 to fisheries management.

46 And you'll agree with me, Mr. Grout, that we
47 start with conservation. And that's the overall

1 allocation, legal responsibility that the Minister
2 has under the **Fisheries Act**; is that correct?

3 A Yes.

4 Q So it's not really a policy, per se, it's a legal
5 requirement.

6 A That's correct.

7 Q And then we go to Principle 2 on the next page,
8 and again the second principle that we're talking
9 about here is they call it First Nations, but you
10 describe it as being the food, social and
11 ceremonial requirements and treaty obligations.
12 And again you'll agree with me that that's not so
13 much a principle as a legal requirement. Would
14 you agree with me on that?

15 A Yes.

16 Q All right. And then the third principle and the
17 fourth principle which we'll talk about in a
18 little bit more detail. We go then to the common
19 property resource, and then allocations between
20 recreational and commercial. So you're with me on
21 that, that's a policy you're familiar with and
22 you've given some evidence of.

23 Let's start first with conservation. Will
24 you also agree with me that allocations for
25 conservation purposes, and I'm stressing the word
26 "allocations" there, are becoming more and more
27 sophisticated and perhaps more and more difficult
28 as we begin to implement the Wild Salmon Policy
29 and begin to understand how we're going to
30 allocate for conservation purposes on the Fraser
31 River sockeye salmon and the conservation units.
32 That's definitely outstanding business and a fair
33 bit of challenge going forward; is that correct?

34 A Well, I have heard from First Nations and others
35 about the methods the Department uses to set
36 conservation objectives for Fraser sockeye and the
37 challenges that the groups have in terms of
38 understanding the Fraser River Sockeye Spawning
39 Initiative model and process.

40 Q And you'll agree with me, and perhaps this isn't
41 something you're at all familiar with, that as it
42 relates to the implementation of the Wild Salmon
43 Policy, we're clearly at the infancy stage and we
44 haven't got to Strategy 4 in any kind of depth
45 where we deal with the socioeconomic issues around
46 conservation; is that correct?

47 A I think we have some examples of where that's been

- 1 done, but I certainly explain there'll be more
2 cases of that, as well, to come in the future.
- 3 Q All right. And then we go next to Principle 2,
4 which is the First Nations, legal priorities for
5 FSC and treaty obligations. Will you agree with
6 me that as it relates to the allocation of FSC in
7 practice, many First Nations do not agree with the
8 allocations and do not think that they're adequate
9 and absolutely believed there is more discussion
10 and consultation that's required between DFO and
11 the allocations for FSC?
- 12 A Yes, I think that's accurate.
- 13 Q And are you aware of any ongoing and immediate
14 processes that would result in consensus on the
15 allocations for the FSC fisheries?
- 16 A Well, there's a number of ways that the Department
17 would go about doing that. Probably some of the
18 specifics are better asked of some of our Treaty
19 and Aboriginal Policy Directorate folks, but
20 certainly treaty negotiations would form part of
21 that. We do work with groups in the Lower Fraser
22 in particular around developing comprehensive
23 fisheries agreements where allocations would be a
24 specific topic of discussion with those groups.
- 25 Q And you're aware that DFO doesn't recognize an
26 aboriginal, i.e., a Section 35 Commercial Fishing
27 right unless it's in a treaty or it's been proven
28 in court; is that correct?
- 29 A Yes, that is our practice.
- 30 Q And you'll also agree, and we'll go next to
31 Principle 3, and it leads from the FSC priorities,
32 that we're dealing with a fully subscribed
33 commercial fishery.
- 34 A That's correct.
- 35 Q The limited entry licensing.
- 36 A Yes.
- 37 Q So it's a little bit of a stretch to think of
38 fisheries as a common property resource in those
39 settings, isn't it, especially as it relates to
40 the commercial fishery?
- 41 A Well, it's common property in that the fish in the
42 water are the common property of the people of
43 Canada, and the licenses provided by the Minister
44 provide a privilege to harvest those fish.
- 45 Q But it's not up to any individual to be able to
46 easily go and commercially fish. They have to
47 acquire these expensive commercial licenses at

- 1 this point in time. It's not common property for
2 them to be able to go and fish commercially.
- 3 A A license would be required, yes.
- 4 Q And it's a fully subscribed commercial fishery.
- 5 A I would say that's accurate.
- 6 Q And so where I'm going, Mr. Grout, and again I
7 don't think it is -- is that in order to
8 reallocate for FSC fisheries, or in order, I mean,
9 to allocate for FSC fisheries, or to allocate for
10 First Nations in order to access commercial
11 fisheries, you actually need to reallocate, don't
12 you.
- 13 A Well, you asked about FSC and then you said
14 commercial. So FSC allocations come before any
15 commercial or recreational allocations that occur.
16 They're first in priority after those. In terms
17 of additional commercial access, it's been the
18 Department's approach to transfer access from the
19 existing commercial fishery.
- 20 Q Right. And in fact if you -- so it's a
21 reallocation or as you said a transfer. We're
22 probably using different words to say the same
23 thing.
- 24 A Yes, for commercial access for First Nations.
- 25 Q And if you were actually going to increase the
26 allocation for FSC fisheries, that has to come
27 from somewhere, doesn't it?
- 28 A That's correct.
- 29 Q And so it would either have to come from the
30 commercial fishery or the recreational fishery; is
31 that fair to say?
- 32 A Yes.
- 33 Q Okay. So now I want to take you, if I may, to
34 Exhibit 269, and that's --
- 35 A Sorry, Ms. Gaertner, can you give the tab numbers,
36 too, as well, please.
- 37 Q Oh, I could try.
- 38 A Oh, you don't have that?
- 39 Q I've picked and choose them. Where I'm going to
40 go is Exhibit 264, which is the Allocation Policy
41 for Pacific Salmon, October 1999. I always think
42 I've done well if I've got the exhibit numbers.
43 Sorry about that, you've got it?
- 44 A Sorry, I only have the tab numbers when I'm
45 looking in mine, so, okay, thanks.
- 46 Q He's got it. And so I'm going to spend a little
47 bit of time with this in a couple of ways. So

1 let's start with a little bit of history, a little
2 bit of background. This Pacific Fisheries Reform,
3 the 2005 -- oh, sorry.

4 A Thanks.

5 Q I've got the wrong document. 2005 document from
6 the Department was in response to two reports that
7 they had received, the Joint Task Group report
8 from Pearse/McRea, and Our Place at the Table from
9 the First Nations Panel; is that correct?

10 A Yes.

11 Q And this was the Department's response and the way
12 forward from the Department's perspective; is that
13 also correct?

14 A Yes. There was an announcement from the Minister
15 and then also a discussion paper at about the same
16 time.

17 Q All right. And you'll agree with me that at page
18 3 of that report, one of your goals from the
19 Department's perspective was that First Nations
20 fishing interests be defined and reconciled with
21 the interests of all Canadians.

22 A That's correct. That was part of the vision.

23 Q And at page 6 and 7 of the document, and in
24 particular at the top of page 7, there is a change
25 -- or at least it looks like there's a change in
26 what the federal government is saying there, and
27 you'll see that it says:

28
29 The federal government believes that
30 comprehensive treaties negotiated in the BC
31 Treaty Commission process will ultimately
32 secure the place of First Nations in the
33 fishery but given the slow pace of treaty
34 negotiations, interim arrangements will be
35 necessary to foster relationships between
36 First Nations and other harvesters that are
37 conducive to the collaborative problem
38 solving and decision-making necessary in
39 well-managed fisheries.

40
41 Right? That was a decision that was reflected
42 here as they're not waiting for treaties, so not
43 so much that you've been now instructed to pursue
44 interim arrangements; is that correct?

45 A Yes, it does say they will be necessary.

46 Q And there is:

47

1 A commitment to increasing First Nations'
2 access to economic fisheries is a key
3 component of these interim arrangements...

4

5 A Yes.

6 Q And that:

7

8 In fully allocated fisheries, this will
9 require the transfer of licence
10 eligibilities, or allocations...

11

12 A That's correct.

13 Q All right. So before we deal with a couple of
14 other details, I want to talk briefly about your
15 experiences on the demonstration fisheries and the
16 efforts that have been made to try to reallocate
17 some of the allocation from the marine fisheries
18 into the river in particular, the Fraser River.
19 You're familiar with some of those demonstration
20 fisheries and things that are going on, on the
21 Fraser River?

22 A Yes, that's correct.

23 Q Do you agree with me that they're learning lots of
24 lessons as we go along?

25 A Yes. I think we've learned more in some years
26 than others, just given the fluctuating abundance
27 and availability of the commercial TAC for Fraser
28 River sockeye.

29 Q And one of the things that the Department and
30 First Nations are realizing, and this would
31 probably not be rocket science for the First
32 Nations, is that there has to be respect and not
33 competition between the FSC fisheries and any of
34 the commercial fisheries that the aboriginal
35 fishermen are going to participate in, that that's
36 a likely good first principle?

37 A Maybe you could rephrase, I think in this
38 question.

39 Q In order for a commercial fishery by aboriginal
40 people on the Fraser River to proceed, that one of
41 the principles will be that there can't be
42 competition with FSC fisheries, but rather respect
43 between the needs for FSC and commercial.

44 A The Department in working with the First Nations
45 that are doing these projects, we've emphasized
46 the need to ensure that FSC harvests are taken
47 care of prior to the commercial fishery occurring.

1 Q They also are willingly respecting conservation
2 requirements and are welcoming selective
3 fisheries; is that correct?

4 A Yes.

5 Q They're happily including the desire to refine
6 river stock assessments to address those
7 conservation requirements?

8 A I think there may be additional work required on
9 some of the stock assessment, especially in some
10 of the more terminal areas in some cases.

11 Q Clearly there's more work, and that was my next
12 one, that there needs to be more information and
13 more time to clearly identify all that would be
14 necessarily for an economically viable fishery.
15 That's another thing that's outstanding yet.

16 A Yes. Certainly there are a number of things that
17 we would need to continue to work on.

18 Q Mr. Commissioner, I'm going to take Mr. Grout
19 briefly to Exhibit 450. You've seen this document
20 before. Are you familiar with the River to Plate
21 work that's been going on in the Chehalis and
22 other areas? It's actually all the way up the
23 river.

24 A I have had discussion at not all of the meetings
25 they've had, but at some of the meetings I've been
26 present.

27 Q And in this document they detail a lot of the
28 things that you've just been able to confirm, so I
29 don't need to take you to that, but I'd like you
30 to go to page 10 of the actual document, page 16
31 in Ringtail. And you'll see just to the bottom,
32 the last two sentences, beside the graph. It's
33 not actually -- and I just want to present this
34 statement to you, Mr. Grout:

35

36 A successful inland commercial fishery will
37 need to be capable of handling a mixture of
38 species and be equally adept at valuing their
39 catch regardless of the species and quality
40 composition. Therefore, allocation planning
41 for experimental commercial fisheries in-
42 river would consider a mix of these species
43 in each project.

44

45 I wonder if you could respond to that, give us
46 your thoughts on that. It's definitely something
47 that they've concluded as a result of the work

- 1 that they've done on these experimental fisheries.
2 A Well, I think with some of these inland fisheries,
3 and they've been in a number of areas around the
4 Fraser watershed, we've had one for a number of
5 years in the Chehalis/Scowlitz territory in the
6 Harrison River, just in the lower river. We've
7 had a project up in the Secwepemc First Nation
8 area in the Thompson, Kamloops Lake area. And
9 then we've had other projects in the Quesnel,
10 Chilko, as well as some of the other areas. I
11 think one of the challenges, particularly for
12 Fraser sockeye, will be differences in abundance
13 from year to year, so there may be stronger years
14 where there's substantial numbers of fish
15 available, followed by off-cycle years where the
16 abundance is much lower. Having access to other
17 species may help from year to year, but pink
18 salmon also returns on odd years, so we
19 contemplate even years where there's not going to
20 be pink harvest. And then there's potential for
21 chinook and chum, depending on the area. Chum
22 primarily in the Lower Fraser, given that they
23 don't really migrate up through the Fraser Canyon,
24 and chinook in some areas, depending on whether
25 they can harvest the particular chinook stocks
26 while avoiding some of our stocks of concern.
- 27 Q So although we're going to get to this at a
28 principle level, it's a good example of the
29 importance of making sure there's flexibility when
30 looking at the approaches that we're going to use
31 for these types of commercial fisheries, given
32 locations, given the variabilities of abundance,
33 given -- I mean, those two alone require
34 flexibility, would you agree with me on that?
- 35 A Yes, I think that's accurate in terms of the way
36 the statement's wording here.
- 37 Q Thank you.
- 38 A In terms of a successful inland fishery.
- 39 Q All right. Then the next exhibit I'd like to take
40 you to, Mr. Grout, is Exhibit 468, which you were
41 taken to in your evidence earlier. Oh, again
42 you're going to want the tab number.
- 43 MR. MARTLAND: No, and I'll just try to help. I think
44 it should be Tab 29 of the binder.
- 45 MS. GAERTNER: Thank you, Mr. Martland.
- 46 Q And that's a presentation that I believe you were
47 part of, or you were at, at the Ops Committee on

1 Defined Shares for Salmon Management?

2 A I wasn't at the discussion at the Ops Committee,
3 but I did assist with some of the information and
4 the presentation.

5 Q And I'd like to take you to Ringtail page 14. And
6 I wondered if you can confirm whether I've read
7 this chart correctly. But as it relates to Fraser
8 River sockeye and the particular demonstration
9 fisheries that are being reviewed there, we've got
10 a total of about 2.4 percent of the commercial
11 catch that we're dealing with here; is that
12 correct?

13 A In this case, and for the particular year, for
14 Fraser River sockeye it's about 2.4 percent of the
15 commercial TAC.

16 Q And is there any particular year that it gets
17 higher than that at this point in time, or is that
18 pretty (indiscernible - overlapping speakers).

19 A 2010, which is the year when we had the most
20 substantive demonstration projects, we used the
21 licenses available in the Department's inventory,
22 and I believe the share of the commercial sockeye
23 TAC available was about 12 to 13 percent.

24 Q So again if I was to go back to the outstanding
25 business, we've still got a fair bit of work in
26 transferring any meaningful amount of the sockeye
27 allocation into the river, and into the hands of
28 the aboriginal people. Is that a fair assessment?

29 A Well, I think 12 to 13 percent is quite a
30 substantial amount, and some of the groups in
31 the --

32 Q In a year like 2010?

33 A Yes.

34 Q To be fair. But in the other years we're about
35 2.5 percent.

36 A Well, part of the issue around providing shares
37 was in some of these earlier projects the First
38 Nations were specifying specific quantum of fish.
39 So these are the percentage share of those. We
40 were in 2010 and moving forward where we've had
41 additional licences accumulated by the Pacific
42 Integrated Commercial Fisheries Initiative, and
43 we're trying to provide all of the share
44 associated with those licenses.

45 Q And there are some challenges. There's capacity
46 issues, there's learning how the commercial
47 fishery is going to work, all of the things we've

1 talked about.

2 A That's correct.

3 Q It's a work in progress.

4 A Yes.

5 Q All right. I just want to ask you a few questions
6 around demonstration fisheries, and then we're
7 going to go to share-based management fisheries.

8 You'll agree with me that it's realistic or
9 reasonable, perhaps, if we want to use that word,
10 that when you begin a demonstration fishery and
11 you begin to do the work around a demonstration
12 fishery, and clean up any of the challenges that
13 it is likely or intended to move towards a fishery
14 that could be useful in the future, and
15 potentially a permanent fishery; is that correct?

16 A Yes. In terms of the demonstration fishery
17 approach we're taking with First Nations in the
18 B.C. Interior and Lower Fraser in particular,
19 we've been trying to line up those demonstration
20 fisheries with the business plans that have been
21 submitted as part of the Pacific Integrated
22 Commercial Fisheries Initiative.

23 Q Thank you. And it's also a reasonable expectation
24 in the commercial fishery that if you're working
25 with them to develop demonstration fisheries and
26 working out the challenges and stuff that it's
27 likely to end up in a more permanent fishery; is
28 that correct?

29 A I think there's probably a ways to go before we'd
30 look at making some of these changes permanent.
31 But the end of the road, that would certainly be
32 something that we, if we were going to go down
33 that road, we'd be out consulting on the changes
34 that we were contemplating.

35 MS. GAERTNER: Thank you. Mr. Commissioner, and Mr.
36 Lunn, I'd like you to bring forward the documents
37 we have listed on our list of documents between
38 document number 5 through document number 10.

39 Q Mr. Grout, these are a series of documents and
40 exchanges between the Council of the Haida Nation,
41 who is one of my client base, and the Department
42 of Fisheries and Oceans. I'm not sure whether or
43 not prior to coming here today you've had a chance
44 to look at these or not. They have been on our
45 list for quite a while, and they're an exchange of
46 correspondence in which the Council of Haida
47 Nation are raising concerns precisely on this

1 issue, on the issue of the use of demonstration
2 fisheries in the North Coast troll fishery. Are
3 you familiar with this issue and the Haida's
4 concerns?

5 A I wasn't involved directly in the exchange of
6 correspondence here.

7 Q Can you speak to any of this correspondence
8 whatsoever?

9 A No, it was before I came into my current role for
10 the most part.

11 MS. GAERTNER: Then I'll ask it generally. Mr.
12 Commissioner, I would like these to be marked
13 exhibits. They are documents that have gone
14 between the Haida and the Department of Fisheries
15 and Ocean on demonstration fisheries. I suggest
16 they be as a bundle marked as one exhibit, because
17 they are all to this topic. I was concerned
18 whether or not Mr. Grout would be able to answer
19 any questions on these. I'll ask him general
20 questions on them. It is quite likely that if
21 there are representatives from the Council of
22 Haida Nations later in the inquiry, that they'll
23 want to speak to this issue. So if we could mark
24 the group as an exhibit.

25 MR. MARTLAND: Yes. Mr. Commissioner, I pause only to
26 see if other counsel raise any concerns.
27 Certainly the notice was provided with respect to
28 these documents. That's important. We haven't
29 taken a strict view of admissibility of exhibits
30 as might be done in the course of a trial where
31 the witness can necessarily speak to the
32 particular documents. I, from a quick review,
33 understand that some of these pertain to the North
34 Coast troll as opposed to South Coast, but I
35 presume the relevance comes in vis-à-vis
36 consideration of demonstration projects and the
37 like. Ms. Gaertner's nodding yes. We don't take
38 issue if no participant has a concern.

39 MS. TIMBERG: I'm just wondering which tabs you're
40 seeking to put into evidence.

41 MS. GAERTNER: Five through 10 of my list.

42 Q Mr. Grout, let's just talk it about more broadly,
43 since the specifics are going to be challenging.
44 The concern that First Nations often have, I'm
45 wondering if you've experienced it, is that
46 they're concerned (a) that the demonstration
47 fisheries that are occurring in the commercial

1 fisheries are not fisheries that DFO takes the
2 step of consulting with them on. Can you speak to
3 that?

4 A In terms of the demonstration fishery approach
5 that we're taking, each of the demonstrations has
6 been for one year only. We have done some of them
7 again from year to year. But the term of each
8 demonstration is only for a year. And we consult
9 on those through our existing consultation
10 processes, including the ones that we use to
11 develop our Integrated Fisheries Management Plan.
12 We do put a summary of the proposals for
13 demonstrations for the commercial area fleets,
14 commercial fleets, any proposals we have there, as
15 well as our First Nation demonstrations do go into
16 the Integrated Fisheries Management Plan for
17 consultations.

18 Q Well, can you also speak on the concern the First
19 Nations raise which is that while they were
20 temporary in nature, while through a demonstration
21 fishery, they often lead to more permanent
22 fisheries in place, based on the expectations of
23 the commercial fishermen who have invested in
24 them, and based on DFO's ongoing commitment to
25 those commercial fishermen through the
26 demonstration process.

27 A Well, I can speak to the salmon fisheries and we
28 have not moved to make any of our demonstrations
29 permanent. So it has been annual demonstrations
30 at this point.

31 Q And so if you stopped implementing those
32 experimental fisheries, there would be no concerns
33 and no complaints by the commercial fishermen and
34 DFO would have clean hands?

35 A No, I don't think I was stating that. Before the
36 Department would move to make any of the
37 arrangements we've contemplated under our
38 demonstration fisheries, there would be need to be
39 substantial consultation on that move.

40 Q And it's fair to say that, for example, for the
41 Haida, that they've seen demonstration fisheries
42 and commercial fisheries in halibut go from
43 demonstration to permanent; is that correct?

44 A I can't speak to the halibut fishery.

45 MS. GAERTNER: All right.

46 MS. TIMBERG: Mr. Commissioner, I've reviewed the five
47 documents that Ms. Gaertner seeks to have marked

1 as an exhibit. I'm satisfied that they go in,
2 subject to our ability to -- I note there's a
3 number of letters, for example, to Paul Sprout,
4 and there may be, I would presume there will be a
5 document in response that's not been included
6 today. So I am satisfied with these going in,
7 subject to our ability to file additional letters
8 that are relevant to these at a later date.

9 MS. GAERTNER: Of course I have no difficulty with
10 that, and you'll see there is a letter from Paul
11 in here, so I have endeavoured to try to give the
12 whole package and if I haven't, I'm happy to have
13 it. I'm not trying to prove this as directly
14 factual. It's a good example of some of the
15 challenges and concerns around this approach.

16 MR. MARTLAND: Mr. Commissioner, just so we have a
17 record that's clear, what I'd suggest we might do
18 then with Mr. Giles' assistance, is work through
19 this list. Number 5 on Ms. Gaertner's letter is a
20 letter to Mr. Sprout. I'm happy to pass the baton
21 to her if she wants to walk us through.

22 MS. GAERTNER: I can do that.

23 MR. MARTLAND: And have these numbered as exhibits as
24 we go, so that they're the ones looking to have
25 forward. Thank you.

26 MS. GAERTNER: Happy to. Tab 5 is a letter dated April
27 12th, 2005 from the Council of Haida Nations to
28 Paul Sprout as the Regional Director General.

29 THE REGISTRAR: We will mark that as 492.

30
31 EXHIBIT 492: Letter from the Council of
32 Haida Nations to Paul Sprout, RDG, dated
33 April 12, 2005
34

35 MS. GAERTNER: And then on behalf of the Council of
36 Haida Nations, their legal counsel, Amanda Pinder
37 and in particular Louise Mandell writes a letter
38 to the Minister on May 24th, 2005.

39 THE REGISTRAR: As these are related, I will mark that
40 as 492A.

41
42 EXHIBIT 492A: Letter from Louise Mandell for
43 Council of Haida Nations to Minister, DFO
44 dated May 24, 2005
45

46 MS. GAERTNER: The Department of Fisheries and Oceans,
47 I have two response letters. One from Paul Sprout

80
Jeff Grout
Cross-exam by Ms. Gaertner (FNC)

1 dated June 15th, 2005 to the Council of Haida
2 Nations.

3 THE REGISTRAR: Exhibit 492B.

4
5 EXHIBIT 492B: Letter from Paul Sprout to
6 Council of Haida Nations dated June 15, 2005

7
8 MS. GAERTNER: And then June 16th, similarly, it's a
9 response from Paul Sprout to Ms. Mandell of June
10 16h, 2005.

11 THE REGISTRAR: Exhibit 492C.

12
13 EXHIBIT 492C: Letter from Paul Sprout to
14 Louise Mandell dated June 16, 2005

15
16 MS. GAERTNER: Actually I have to go one more document.
17 It's a good thing we did this. September 6th,
18 2005 is a letter to Guujaaw, who is the President
19 of the Council of Haida Nations from the Minister
20 of the time,

21 THE REGISTRAR: Exhibit 492D.

22
23 EXHIBIT 492D: Letter from Minister, DFO, to
24 Guujaaw, President, Council of Haida Nations
25 dated September 6, 2005

26
27 MS. GAERTNER: And, please, if I may, I'd like also the
28 next document, which is -- oh, sorry, April 12th,
29 2005, same document as the first one. I should
30 have done this differently, but it has all the
31 attachments.

32 THE REGISTRAR: I don't have that one. April 12th, you
33 say?

34 MS. GAERTNER: 2005.

35 THE COMMISSIONER: Is that item number 4?

36 THE REGISTRAR: Exhibit 492E will be your Tab number
37 10.

38
39 EXHIBIT 492E: Enclosure to the letter from
40 the Council of Haida Nations to Paul Sprout,
41 RDG, dated April 12, 2005

42
43 MS. GAERTNER: I think we're good to go.

44 MR. LUNN: Tab 4, I was just unclear if we're marking
45 that as the next and last document.

46 MS. GAERTNER: Is Tab 4 the April 12th, 2005 letter.
47 Yes. That's been marked.

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1 THE REGISTRAR: That will be 492F.
2

3 EXHIBIT 492F: Letter from the Council of
4 Haida Nations to Paul Sprout, RDG, dated
5 April 12, 2005 with attachments
6

7 MR. MARTLAND: Ms. Gaertner can correct me, but for the
8 benefit of counsel who may have prepared binders
9 or have a list based on her letter to
10 participants, I understand the Tab 10 as provided
11 to participants was the enclosure to the letter at
12 Tab 5, and I will just confirm. Thank you.

13 MS. GAERTNER: That's correct. That's my working
14 knowledge.

15 Mr. Registrar, what exhibit was that, the
16 first exhibit number, the whole of the bundle.
17 The bundle is Exhibit...

18 THE REGISTRAR: 492.

19 MS. GAERTNER: Thank you.

20 THE REGISTRAR: A through to F.

21 MS. GAERTNER: All right. My next topic, Mr.

22 Commissioner, is on share-based management.

23 Q Mr. Grout, I want to start with just a general
24 conversation with you, and then we'll get into a
25 couple of specifics. ITQs or IVQs are just one
26 form of many forms of selective base management,
27 and there are things like community development
28 quotas, community based quotas, all those other
29 different types of share-based management; is that
30 correct?

31 A Yes. I believe you used the word "selective base
32 management", though, at the beginning.

33 Q Oh, share based.

34 A I think you meant share base.

35 Q Share base, thank you.

36 A Yes.

37 Q And this morning we had put into evidence Exhibit
38 491, which is an article by Parzival/Copes, that
39 was in my recollection or reading was done in
40 about 2004. And at page 2 of that exhibit, I'm
41 going to take you to a paragraph where he's, you
42 know, at the beginning he's doing a fairly general
43 summary of some of the issues, and it begins with:
44

45 While the above reality seems generally
46 accepted, this is where the agreement ends.
47 There are two main contrasting visions of co-

1 management. On the one hand, there are those
2 who view the fishery as a cornerstone of the
3 coastal economy, and of coastal life in
4 general, and so co-management as a tool for
5 careful planning... These people will tend to
6 opt for a planned approach to co-management,
7 likely through what is called community-based
8 management. Others, who seek market-based
9 approaches to management, tend to consider
10 persons who currently hold marketable
11 individual quotas as the legitimate
12 stakeholders in the fishery, in whose
13 interest the fishery should be managed.
14 While the variety and complexity of fishery
15 conditions leaves room for many different
16 options in structuring fishery management,
17 the most important debate regarding the
18 choice of management system seems to be
19 associated with the approaches identified
20 above: community-based management and
21 market-based individual transferable quota
22 (ITQ) management.
23

24 Do you agree with him in a general way that that's
25 a good way of looking at or dividing up the
26 various options under share-based management?

27 A I think that captures some of the discussion. I'm
28 not sure if I agree with all of the points made
29 there. I think co-management is an important
30 element in both approaches.

31 Q In the article, he continues on. Are you familiar
32 with this article? Have you spent any time
33 studying the differences through his eyes?

34 A I don't believe I've seen this particular article
35 by Mr. Copes.

36 Q Mr. Commissioner, Mr. Copes then goes on to
37 describe the fundamental differences between
38 community between-based fisheries management and
39 ITQs, and I'm going to take you to a couple of
40 places. I'm going to go to Ringtail page 5, in
41 particular under the title, "A Contrast in Value
42 Systems":
43

44 With community-based management (CBM) and
45 individual transferable quotas (ITQs)
46 attracting so much attention, it is important
47 to understand the key differences... What is

1 good and what is not, must be viewed by many
2 angles:...

3
4 So he goes through all of that in that first
5 paragraph. Do you see that, Mr. Grout? He then
6 goes on to say:

7
8 First, in exploring the nature of CBM and
9 ITQs, it is of interest to note that in
10 theory, both could be used in the same
11 fishery. This is because CBM is more of a
12 framework for organizing fishery management
13 at the local level, while ITQs represent a
14 very specific way of dividing up a Total
15 Allowable Catch (TAC).

16
17 I'm going to stop there and ask if you can comment
18 on that.

19 A Well, I'm trying to read quickly here as you ask
20 questions. I understand the ITQ component of his
21 discussion. I'd want to go back and read further,
22 though, to see everything that he's including in
23 community-based management. It's not entirely
24 clear to me whether he's just referring to a
25 community-based quota in that case, or something
26 that's different.

27 Q He is including community-based quotas in the
28 community-based management.

29 A I'm sorry. Could you repeat your question again?

30 Q So then I want to know what your views on that are
31 -- Mr. Grout, what I'm going to, and maybe I'll
32 just do that, is why is it that the Department is
33 only looking at ITQs and are not looking at
34 community-based quotas, or any of the broader
35 quotas when looking at reallocating or changing
36 the commercial fishery quotas?

37 A Well, in terms of the demonstration fisheries,
38 we've done, we have had some ITQ programs in the
39 commercial fleets, as you know it. The
40 demonstrations we've had with First Nations in
41 inland areas have been communal in nature. So the
42 allocation is provided in a licence and it can be
43 fished communally. so I think the inland
44 demonstration fisheries are perhaps an example of
45 a communal quota.

46 Q Next as a backdrop to the issue on allocations, I
47 want to take you now to Our Place at the Table,

1 which is document number 11 on our list. And I'm
2 not sure whether you have that in front of you or
3 not, Mr. Grout, so I brought another --

4 A Yes, I do.

5 MS. GAERTNER: Oh, you do. Mr. commissioner, I'm going
6 to hand you a copy of this document if I may. If
7 you have any difficulty with that, it's a large
8 document, and both this witness and elsewhere
9 through this inquiry I'll be going back to that.

10 Q Mr. Grout, that's the report that went to the
11 Department of Fisheries and Oceans from the First
12 Nations Panel prior to the Fisheries Reform of
13 2005; is that correct?

14 A Yes.

15 Q And I'm going to now take you first to the
16 "Executive Summary", which begins at Ringtail page
17 3, and I'm just going to ask you to walk through
18 that for a moment. You get a sense of the types
19 of issues that in this document the First Nations
20 Panel is going to, and then I'm going to take you
21 specifically to page 3, where we deal with
22 allocation.

23 And specifically under the title called
24 "Allocation Options" you have paragraph there from
25 the First Nations Panel in which they are clearly
26 saying to the Department they are:

27
28 ...not recommending a single approach to
29 allocation because different allocation
30 options may be more appropriate for different
31 species or fisheries or First Nations. A
32 variety of allocation options was considered
33 for First Nations, including community
34 quotas, an exclusive fishing area, fishing
35 using usual and accustomed means without a
36 fixed allocation, a fixed quota, and a
37 percentage share of the allowable catch for a
38 stock.

39
40 And so the panel was clear and you've read this
41 document, they clearly look at various different
42 options with respect to allocation and options for
43 allocations going forward, correct?

44 A Yes.

45 Q And at the bottom of page 6 in the
46 "Recommendations", they recommend:

47

1 A moratorium be placed on the further
2 introduction of individual property rights
3 regimes such as Individual Fishing Quotas
4 (IFQs) unless First Nation interests
5 including allocations in those fisheries are
6 first addressed.
7

8 You agree that that's there.

9 A Yes, I see that.

10 Q So why is it, Mr. Grout, that we don't have FSC
11 allocations looked after, we don't have
12 conservation allocations looked after, but it
13 seems important and vital for the Department to be
14 moving forward with individual quotas in the
15 commercial fisheries at this time. Why are we
16 doing that first before we look after these other
17 priorities?

18 A Well, you've stated that we haven't taken care of
19 conservation priorities or First Nation food,
20 social, ceremonial priorities, as well. Those are
21 the -- in order of priority, conservation comes
22 first. So we are dealing with the conservation of
23 the resource and providing for food, social and
24 ceremonial harvest. We've got a clear set of
25 decision rules for Fraser River sockeye,
26 describing how that will work.

27 I did want to point out that this report was
28 considering all of the fisheries in B.C., and it
29 wasn't just directed at Fraser sockeye, for
30 example, but other salmon, as well, as well as
31 other marine species.

32 In terms of we would be considering different
33 ways of reforming the fishery, in terms of the
34 commercial fishery, we think moving to a share-
35 based approach can improve the conservation
36 performance in terms of fishing the specific
37 quantum of harvest. We also think that that can
38 assist with achieving food, social and ceremonial
39 objectives, as well.

40 Q On just that second one, how would it do that?
41 Would it provide for an easier buyback? Is that
42 what we're doing?

43 A In terms of the food, social and ceremonial
44 fishery, we are ensuring that a portion of the
45 total allowable harvest is provided for food,
46 social and ceremonial fishery. So the point I was
47 making is if you have a system where your

1 commercial TAC is less likely to be exceeded, that
2 can help with the performance of your
3 conservation, as well as food, social and
4 ceremonial objectives.

5 Q One of the concerns that First Nations have around
6 the movement to ITQs in advance of at least their
7 comfort zone around FSC, is that as you know, it
8 creates a more privatized proprietary interest in
9 the licence holder, and therefore a more
10 expensive, potentially more valuable licence.
11 You'll agree with me on that, that that's a
12 concern the Department is aware of?

13 A I would agree that that concern has been raised,
14 but certainly looking at the evidence on values of
15 the licenses in salmon fisheries, that certainly
16 hasn't been something we've seen. And I can say
17 specifically there, using the area of troll
18 fishery as an example, the licence values have
19 declined from 2005 to 2009. There's a report on
20 the Department's website called the West Coast
21 Fishing Fleet, which is an analysis of commercial
22 licenses quota and, sorry, vessels, by Nelson
23 Brothers Fisheries. And in the area of troll
24 fishery, the value of the licences have declined
25 despite the introduction of an ITQ demonstration
26 fishery there, and I think that's primarily been
27 driven by reduction in the total allowable
28 commercial harvest of chinook.

29 Q I may not have gotten that correct. So it's more
30 the quota values that become valuable, as distinct
31 from the actual licence. Is that...

32 A In terms of salmon demonstration fisheries, there
33 isn't a separate or permanent quota associated
34 with the licence. In terms of the annual licence
35 document that's provided to harvesters, the change
36 has been on the chinook in the Area F from a no
37 limit on the licence conditions, to a fractional
38 share of the commercial TAC. That licence is a
39 privilege that's provided on an annual basis. So
40 the value I'm referring to is the licence value.

41 Q And so is it your evidence that the Department has
42 fully grasped and have dealt with the potential
43 problem associated with reallocating from the
44 commercial fishery into the aboriginal fishery,
45 and the potential of increased costs in the
46 buyback?

47 A I think we've heard that concern, and at this

1 point we're just doing the demonstration fisheries
2 on a temporary basis for one year at a time. We
3 have not allowed permanent reallocations of quota
4 that have crossed over on years.
5 Q And what is the Department's anticipation in terms
6 of timing on the increased used of ITQs in the
7 commercial fishery?
8 A As I --
9 Q As it relates to Fraser River sockeye.
10 A As I provided information previously, we don't
11 have a fixed deadline or target for when that
12 might occur.
13 Q And so you're open to waiting until all these
14 other matters are addressed?
15 A Certainly that's a possibility that can be
16 considered here.
17 Q Have you made any commitments with respect to
18 that, to First Nations?
19 A In terms of waiting until -- sorry, maybe you
20 could...
21 Q Until their issues, as it relates to the
22 allocations for conservation and the allocations
23 for FSC and the movement to increase their
24 commercial, the percentage of commercial catches.
25 Are you going to wait until those priority issues
26 are addressed before you move forward with ITQs in
27 the commercial fishery?
28 A Sorry, there were -- you asked a number of points
29 in that question. Maybe you could repeat the
30 ones.
31 Q Sure. So as you know, I've gone through a couple
32 of the priority obligations that you have, both in
33 law and in principle, which are the conservation
34 issues, and the FSC issues. And we've talked
35 about that there is outstanding business as it
36 relates to both of those. Now we've moved to what
37 you're doing in demonstration fisheries in the
38 commercial fishery and I've raised with you and
39 you've confirmed that First Nations have raised
40 concerns with the Department about moving too
41 quickly as it relates to those and have not yet
42 addressed the priority allocations. Are you
43 prepared to commit on behalf of the Department
44 that you will not be moving forward as it relates
45 to ITQs until those matters are addressed?
46 A No, I'm not prepared to make that commitment.
47 MS. TIMBERG: Mr. Commissioner, I'd just like to

1 clarify the record, that Mr. Grout can only speak
2 -- he can't speak on behalf of the entire DFO. He
3 can only speak with respect to his position and
4 the knowledge he has with respect to DFO's
5 policies.
6 MS. GAERTNER: Absolutely. I want to, if I may, go to
7 document 14 and 15 on our list, and I've just got
8 a couple of things left to finish up.
9 THE COMMISSIONER: Ms. Gaertner, I'm sorry --
10 THE REGISTRAR: Do you wish to mark number 11?
11 MS. GAERTNER: Yes, please.
12 THE COMMISSIONER: What are we marking, Mr. Registrar?
13 THE REGISTRAR: That will be item number 11.
14 MS. GAERTNER: Our Place at the Table, the document I
15 (indiscernible - overlapping speakers).
16 THE COMMISSIONER: Thank you. I was just going to ask.
17 THE REGISTRAR: It's 493.
18 THE COMMISSIONER: 493, thank you.
19
20 EXHIBIT 493: Our Place at the Table: First
21 Nations in the B.C. Fishery, a report by the
22 First Nation Panel on Fisheries dated May
23 2004
24
25 MS. GAERTNER:
26 Q Mr. Grout, when you were here last week, you gave
27 a little bit of evidence on DFO's vision for
28 shared stewardship and as it relates to
29 allocations and I just have two more areas I want
30 to ask questions about. And one is in particular,
31 I'm not sure if this got into evidence last week.
32 I don't believe so. It's the presentation that
33 was provided by the Department of Fisheries on
34 Stability, Transparency and Predictability in
35 Allocation in November of 2010. You're familiar
36 with that document?
37 A Yes, I have seen it before.
38 Q And were you present at the meeting in which this
39 was presented to the First Nations Fisheries
40 Council in November of last year?
41 A No, I was not.
42 Q But you are aware of this document and the
43 presentations that DFO has given to First Nations
44 based on this?
45 A The document and the consultations were developed
46 by our national staff in Ottawa.
47 MS. GAERTNER: I'm wondering if I could have this

1 marked as an exhibit. Again, it's been on our
2 list of documents and counsel are familiar with
3 it.

4 THE REGISTRAR: Exhibit 494.

5
6 EXHIBIT 494: DFO presentation on Stability,
7 Transparency and Predictability in
8 Allocation, November 2010
9

10 MS. GAERTNER:

11 Q Mr. Commissioner, I'll take Mr. Grout again now to
12 Tab number 15. I expect you may not know this
13 document if you weren't familiar with the first
14 one, but I'll try. I have to let you know that
15 the document listed in our Tab 15 appears to be a
16 document dated January 27th, 2010. That is
17 incorrect. My client advises that that date is
18 incorrect, and if we need to have that *viva voce*,
19 I'm sure somebody with the FNFC will be giving
20 evidence later. That's a document in response to
21 the November 26h presentation. January 27, 2011
22 is the correct date of that document.

23 THE COMMISSIONER: So not the date that's on the
24 document.

25 MS. GAERTNER: That's right. It's going to come back
26 to haunt me. The document is dated January 27,
27 2010, you know, that wonderful difficulty in
28 January, like making sure that we've got the right
29 years. That's what we're seeing there.

30 THE COMMISSIONER: Thank you.

31 MS. GAERTNER: That's all. And it's response of the
32 First Nations Fisheries Council to the November
33 26th document.

34 Q And Mr. Grout, I'm going to take you particularly
35 to the last paragraph on the first page, where the
36 First Nations Fisheries Council advises the
37 Department about how important it would be to have
38 [as read]:

39
40 ...more comprehensive discussions to take
41 place through workshops or discussions that
42 would engage First Nations more broadly in
43 these discussions and allow for proper
44 analysis and feedback.

45
46 You'll agree with me that that's what the First
47 Nations Fisheries Council has advised the Deputy

1 Minister as of January 27, 2011 regarding any
2 changes in allocation issues.

3 A That looks like what is stated there.

4 MS. GAERTNER: May I have both of those documents
5 marked as an exhibit. I think we did the first
6 one already.

7 THE COMMISSIONER: Number 15 will be marked as 495.

8 And the next one is --

9 MS. GAERTNER: You've done shared stewardship in 494.

10 THE REGISTRAR: We've done that one already.

11 MS. GAERTNER: Yes.

12

13 EXHIBIT 495: First Nations Fisheries Council
14 response to DFO presentation of November 2010
15 dated January 27, 2011

16

17 MS. GAERTNER: Finally, and I asked for leave of other
18 counsel on Friday, Mr. Commissioner. I have two
19 more documents I'd like to bring to your
20 attention. And I appreciate they're as it relates
21 to the halibut fishery, but they're definitely on
22 ITQs. And I understand from counsel that there
23 aren't any difficulties with me now introducing
24 these documents. The first is an announcement by
25 the Minister and the second is a letter in
26 response to the Minister as it relates to ITQs in
27 Pacific Halibut Fishery. And if I could have
28 those marked as the next exhibit.

29 THE REGISTRAR: 496.

30

31 EXHIBIT 496: Announcement by the Minister,
32 DFO, and letter from First Nations Summit in
33 response re ITQs in Pacific Halibut Fishery

34

35 MS. GAERTNER:

36 Q Mr. Grout, given that they're halibut, I'm not
37 expecting that you'll have any direct knowledge of
38 this, but I want to raise with you and have you
39 respond to the concern that's being raised by the
40 First Nations Summit in this case directly with
41 the Minister in response to the recent
42 announcement on halibut ITQs, which is that in
43 their view the divvying up of the spoils between
44 the commercial and sports fisheries' interests
45 prior to the AFS priorities being addressed fails
46 to meet DFO's legal obligations. And I'd like you
47 to respond to that as it relates to the Fraser

1 River sockeye.

2 A Well, I did have a chance to look briefly at the
3 document here, and I maybe would note that there
4 are two fact sheets and a question and answer
5 sheet that were also associated with the one
6 document on the statement by the Minister. The
7 Department does continue to be committed to
8 meeting food, social and ceremonial obligations
9 before providing for access to a commercial total
10 allowable catch, and that's consistent with how we
11 manage salmon, as well as other species.

12 Q I'm just having difficulty, and I know my clients
13 do, and so I wonder if you could help us, that if
14 you continue to improve and provide proprietary-
15 like interests at ITQ levels in the fisheries,
16 prior to the reallocation occurring, that that is
17 going to create a more expensive or more difficult
18 reallocation for the Department of Fisheries.
19 Could you respond to that?

20 A Well, I'll answer the question this way. When we
21 issue a licence for one of our commercial
22 demonstration fisheries, prior to that -- and
23 maybe is there an exhibit with the Area B licence
24 conditions that I could refer to here?

25 MR. MARTLAND: Mr. Commissioner, I believe there is. I
26 think we put in area conditions for Area B, should
27 be Exhibit 476, number 49, Mr. Grout, in your
28 binder and number 49 on the list of exhibits, for
29 2010/2011.

30 A I stated it in words earlier but I thought it
31 might be helpful. So it's on page 3 of this
32 exhibit. You can see under the number 1, species
33 of fish that re permitted to be taken. So this is
34 a licence that was issued for an ITQ fishery for
35 Fraser sockeye, but you can see at 1(a) for
36 "Chinook Salmon, no limit"; "Chum Salmon, no
37 limit"; "Coho" and "Pink, no limit"; and skipping
38 to (f) is "Sockeye Salmon (Area 23)" which is
39 Somass sockeye, "no limit".

40 The Department is managing the fisheries with
41 no limit to a commercial total allowable catch.
42 And we're doing that by setting the open time, and
43 any vessel that chooses to participate in that
44 opening can harvest salmon in essentially no limit
45 on the quantity until the fishery is closed.

46 Conversely, where we have a demonstration
47 fishery with an ITQ, what we're doing is providing

1 an opportunity to harvest the same quantum of
2 fish, but in a different fashion. In this case
3 we're specifying at (3) for "Sockeye Salmon",
4 excepting in the Somass, which would be Fraser
5 sockeye on this licence, .28698 percent of the
6 TAC. So this is an annual licence issued for the
7 year and it provides a share of the TAC.

8 In both cases before and after we did the
9 demonstration, we were using this to manage to the
10 same commercial total allowable catch that was
11 available. We're just using two different ways to
12 do that.

13 I'm not sure what the date was on this
14 licence, but I think it's up on page 1 at the top,
15 this covers the period April 1st to March 31st,
16 2011.

17 MS. GAERTNER:

18 Q So help me, Mr. Grout, if you may. I'm wondering
19 how that response to my client's concerns that the
20 ITQs are only going to provide more expensive
21 proprietary interests for the purposes of
22 reallocation.

23 A Well, the licence itself provides a privilege to
24 harvest for the year. In terms of Fraser River
25 sockeye management, we're taking the run size,
26 we're subtracting off the numbers of fish required
27 for conservation purposes to meet the escapement
28 target. We're subtracting off from the total
29 allowable catch amounts for food, social and
30 ceremonial purposes that are outlined in the
31 communal licenses for Fraser sockeye, roughly one
32 million fish. And then we're using these
33 commercial licence conditions to describe how the
34 harvest can proceed for any commercial TAC that's
35 identified.

36 One of the main driver, and I used Area F as
37 an example of licence values in the sockeye
38 fisheries, are prospects for the total allowable
39 catch for the populations. Certainly possible
40 that they could increase in the future, but as
41 we've seen in Area F, they've decreased over the
42 last four or five years.

43 Q All right. My last area of questions, and there's
44 only a few of them, are to help, to give you an
45 opportunity to respond to some of the
46 recommendations the First Nations Coalition reps
47 will maybe presenting to the Commissioner on

1 allocation later in the hearing, and have your
2 thoughts on those, well, since you're here now.

3 The first is that there needs to be more
4 flexibility to address allocation/reallocations
5 and that prior to the reallocations to FSC and to
6 First Nations commercial fisheries the Department
7 should await introducing ITQs. Is there any
8 danger in that, Mr. Grout? Is there any concerns
9 that you have with respect to that?

10 A In terms of waiting to introduce ITQs?

11 Q ITQs in Fraser River sockeye salmon.

12 A Well, as I've indicated, we've been exploring the
13 potential to look at these ITQs for a number of
14 reasons. One I've talked about improved
15 conservation performance in terms of fishing to a
16 specific quantum of catch. There's also evidence
17 that can increase the economic performance of the
18 fishery. We are doing the demonstration fisheries
19 just using the annual licence privileges provided
20 by the commercial licences, and we have not made
21 any move to a more permanent implementation of
22 this at this point.

23 Q And so would you agree that if the Commissioner
24 was to -- would you agree with a recommendation
25 that said that prior to introducing fleet-wide
26 quota fisheries, that those other steps will first
27 be taken?

28 A Sorry, the other steps being...?

29 Q Reaching agreements with First Nations as it
30 relates to FSC allocations and transferring
31 commercial opportunities to First Nation fisheries
32 inland, upriver.

33 A Sorry, if you could repeat your question.

34 Q I'm giving you an opportunity to respond to a
35 recommendation that First Nations, some First
36 Nations' representatives will be providing to the
37 Commissioner, and that is that there would be no
38 introduction of fleet-wide quota fisheries in
39 Fraser Sockeye salmon until FSC allocations have
40 reached agreements with First Nations -- the
41 Department has reached agreements with First
42 Nations on FSC allocations and that there has been
43 adequate reallocations of commercial fisheries
44 upriver.

45 A Well, I guess in terms of the FSC allocations, the
46 Department's continuing to work to try and provide
47 opportunities to access those FSC allocations. It

1 is an allocation priority before the commercial
2 access occurs. And so we're ensuring that there's
3 enough fish to provide for those FSC
4 opportunities. In terms of our demonstration
5 fishery approach, and our Pacific Integrated
6 Commercial Fisheries Initiative, we are continuing
7 to purchase licenses from commercial licence
8 holders to provide increased opportunities for
9 economic purposes for First Nations. So I see
10 that work as continuing.

11 Q I just have one final question, which is where in
12 DFO's decision-making process would the decision
13 to proceed with ITQs in the Fraser River sockeye
14 salmon be made? Is it at the Salmon Working
15 Group, is it at this Team, is it at the RDG level,
16 is it at the ministerial level, where is that
17 decision made right now?

18 A In terms of the ITQs we've done, these are done as
19 demonstration fisheries and we do our consultation
20 on those as part of our Integrated Fishery
21 Management Plan development. The approval
22 process, then, that we use is through the approval
23 of the Integrated Fishery Management Plan,
24 although in some cases we have had separate
25 briefing notes indicating the planning work we're
26 doing on the demonstrations directly. But
27 ultimately the signoff on the IFMP is with the
28 Minister of Fisheries.

29 Q And so if the decision was made to go from
30 demonstrations to a fleet-wide ITQ, where would
31 that decision be made?

32 A Sorry, are you referring to a specific timeframe
33 for that, or...

34 Q Yeah. Where in DFO, at what level of your
35 decision-making process is decisions around
36 timeframes for introducing ITQs in this Fraser
37 River sockeye and the approach as to whether or
38 not it's going to be fleet-wide, where in that
39 decision-making process is that decision going to
40 be made?

41 A I would expect that the briefing on that sort of
42 decision, given that it's likely to be
43 controversial, would most likely be required at
44 the ministerial level.

45 Q And so that would require a briefing from the RDG
46 in the province here to the Minister?

47 A Yes.

1 MS. GAERTNER: Those are my questions, Mr.
2 Commissioner.

3 MS. TIMBERG: Mr. Commissioner, Ms. Gaertner entered
4 into evidence at Exhibit 496 a news release with
5 respect to a ministerial briefing note -- or a
6 statement by Gail Shea, the Minister of Fisheries.
7 I'm wondering if that should also be entered into
8 evidence.

9 MS. GAERTNER: I think it is part of the package
10 already.

11 MS. TIMBERG: I wasn't clear if both documents were
12 part of that exhibit.

13 MS. GAERTNER: Yes.

14 MS. TIMBERG: They are. Okay, thank you.

15 MR. MARTLAND: Mr. Commissioner, just to look ahead, I
16 think we're on -- we need to finish at four
17 o'clock. Mr Grout has a commitment, as well.
18 We're on track to do that. I wonder if I might
19 request a ten-minute break, as opposed to 15 for
20 us to do that.

21 THE COMMISSIONER: Very well.

22 MS. TIMBERG: Thank you.

23 THE REGISTRAR: The hearing will now recess for ten
24 minutes.

25

26 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

27 (PROCEEDINGS RECONVENED)

28

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

30 MR. MARTLAND: Mr. Commissioner, in the time that
31 remains, Ms. Fong will begin, then Ms. Schabus and
32 then Mr. Timberg re-examining. That will complete
33 Mr. Grout's evidence.

34 MS. FONG: Mr. Commissioner, Lisa Fong for Heiltsuk
35 Tribal Council and with me is Christian Morey,
36 articled student. Mr. Lunn, thank you for pulling
37 up that document. If you could, please, proceed
38 to Appendix 4.

39 THE COMMISSIONER: What exhibit was this?

40 MS. FONG: Sorry. It's Exhibit 445. And the first
41 page of Appendix 4. Yes, that's it right there
42 with the bullets. Thank you.

43

44 CROSS-EXAMINATION BY MS. FONG:

45

46 Q Mr. Grout, this morning we had evidence from
47 commercial fishermen that there's the ability to

1 transfer uncaught allocation in-season and,
2 specifically, they spoke about the 2010 fishing
3 season and the transfer of allocation at that
4 time. And I'm just looking at the IFMP from the
5 south, which is what's on the screen, Appendix 4,
6 and the bullets I understand are operational
7 guidelines. And it's that last bullet I'm
8 interest in. Thank you. And it reads:

9
10 If after spawning escapement objectives are
11 met, and despite best efforts, it becomes
12 apparent that an area licence group is unable
13 to achieve its target allocation, subject to
14 conservation requirements, uncaught balances
15 will be given first to the same gear type in
16 a different licence area and, second to
17 different gear types in a manner that
18 reflects their relative target allocations.

19
20 Now, given what's been told to us about these
21 transfer allocations, are you able to tell me,
22 this operational guideline, is that what allows
23 for these transfer of uncaught allocations in-
24 season?

25 A This is referred to in the Allocation Policy as
26 well. So if one of our eight commercial area gear
27 fleets can't access its share, for example, the
28 Area D Gillnet, then that harvest, if possible,
29 would be transferred to Area E, which is also a
30 gillnet fleet, using the Fraser sockeye example.
31 If it turned out that it couldn't be transferred
32 to Area E for perhaps a conservation reason, then
33 it could go to the Area B seine fleet or the Area
34 H troll fleet, to use an example.

35 Q Right. And that description that you've given of,
36 I think it was D to E to B, is what happened this
37 summer?

38 A That's correct.

39 Q Thank you. So my other question for you is
40 understanding how this operational guideline
41 works. So as a matter of process, is it typically
42 something that's raised by the area group or is it
43 something that DFO raises? Like who raises this?

44 A In terms of that 2010 example?

45 Q For example, like when there is a transfer
46 allocation that's appropriate, who raises it?

47 A In the case of the Fraser River sockeye, this

- 1 would be discussed with the Canadian Caucus
2 members of the Fraser River panel and then the
3 Fraser River Integrated Management Team. So it's
4 an in-season decision that's made by that group.
- 5 Q And is it the group that advises you that there is
6 a need or is it something that DFO monitors and
7 becomes aware of?
- 8 A It's a two-way street there. The group would be
9 aware of those potential issues and the department
10 would discuss it with them. It's ultimately the
11 department that's going to make a decision,
12 though.
- 13 Q Okay. And when you say it's the department that
14 ultimately makes the decision, do you also
15 incorporate into that decision-making information
16 or input from the particular area groups that are
17 affected?
- 18 A In terms of the in-season example here for Fraser
19 sockeye, it's all done within the Fraser River
20 panel process, the Canadian part of the Fraser
21 River panel, including the DFO chair and co-chair
22 and the Canada Caucus members. And then the
23 Fraser River Integrated Management Team, which
24 includes a number of our area management staff,
25 would be involved.
- 26 Q Okay. And my memory, and if I'm wrong you can
27 correct me, is that that process, this in-season
28 process happens quite quickly. So if there is a
29 transfer that is identified as being appropriate
30 when you're in-season, there are regular, I
31 believe almost daily, meeting so decisions can be
32 made quite quickly so that there is an efficiency
33 and a meaningfulness to any sort of result to, for
34 example, the Area B seiners, that, yes, you can go
35 and increase your allocation now.
- 36 A Well, they typically don't meet every day there
37 but the Fraser River panel in-season can make
38 decisions quickly, at least the Canadian Caucus
39 piece and the Fraser River Integrated Management
40 Team I was referring to. And once they make a
41 decision, they'd put together fishing plans that
42 would then be either reviewed at the Fraser panel
43 with the U.S. and the Pacific Salmon Commission.
- 44 Q So are you able to say to me, just sort of
45 generally, from beginning to end, like from
46 becoming aware that the issue has arisen that a
47 transfer might be appropriate of allocation to the

- 1 actual announcement to the area group that you're
2 going to get this transfer, are we talking days?
3 Weeks? Hours?
- 4 A I haven't been directly involved in the Fraser
5 River panel process for a number of years but it
6 can be done very quickly. I would think once a
7 decision is made to do it, it can be done very
8 quickly. I'm not sure but I suspect the Fraser
9 panel had been talking about it for a period of
10 time but I couldn't give you the exact number of
11 days.
- 12 Q Okay. Thank you. And just so I understand, I
13 also understood that there was, if I understood it
14 properly, there's no compensation scheme when
15 there's a transfer of uncaught allocation such
16 that the group that's giving away their uncaught
17 allocation is not being compensated for it.
- 18 A No, as I stated before, we try and make the
19 transfer to the same gear group, if we can, to
20 respect the coast-wide allocation framework. But
21 if that's not possible, it goes to any other gear
22 that could harvest the fish. And there's not a
23 catch-up/make-up provision as part of the
24 allocation framework.
- 25 Q Okay. But is there a position that DFO takes that
26 there can't be a catch-up or a make-up agreement
27 between the area groups? Well, I guess it
28 wouldn't be catch-up or make-up but some kind of
29 compensatory arrangement between them?
- 30 A There have not been those arrangements.
- 31 Q Okay. And are you aware if DFO would prohibit
32 that or that's just within their private realm, if
33 they were to, for example, compensate each other
34 financially?
- 35 A I'm not aware of that kind of discussion taking
36 place.
- 37 Q Okay. Now, coming back to this operational
38 guideline, is it correct to say that the goal of
39 the operational guideline is to assist commercial
40 fishermen in being able to catch the total
41 commercial allocation?
- 42 A Yes, that would be part of it. And then the other
43 piece is trying to respect the coast-wide shares
44 for each of the commercial fleet or commercial
45 gears, seine, gillnet and troll.
- 46 Q Okay. And in your view, having this kind of an
47 operational guideline, which allows for

Jeff Grout

Cross-exam by Ms. Fong (HTC)

Cross-exam by Ms. Schabus (STCCIB)

1 flexibility by allowing transfers of uncaught
2 allocation in-season, is this a good operational
3 guideline in comparison to one that doesn't allow
4 for any flexibility where, for example, the pre-
5 season percentages are set and then there's just
6 no movement?

7 A In this particular case, it provides a mechanism
8 to move area gear shares, which otherwise wouldn't
9 exist.

10 Q And do you have a view as to whether this is
11 positive, like something better than not allowing
12 for any movement?

13 A Yes.

14 MS. FONG: Thank you. Those are my questions.

15 MS. SCHABUS: Mr. Commissioner, Nicole Schabus; I'm
16 counsel for Sto:lo Tribal Council and the Cheam
17 Indian Band, co-counsel.

18

19 CROSS-EXAMINATION BY MS. SCHABUS:

20

21 Q Mr. Grout, I have a few questions for you and I'll
22 start off with a few points of clarification and
23 then questions regarding implementation of policy
24 and allocation. So just to start off and to make
25 sure we are on the same page when it comes to
26 terms and words that we use, when we talk about
27 "commercial fishery", we talk about the area
28 harvesters that engage in large-scale commercial,
29 industrial fishery, correct?

30 A When I'm talking about the commercial area gear
31 types, I'm referring to the gear types, A through
32 H, describing the different seine, gillnet and
33 troll fleets.

34 Q And that sometimes also gets referred to as "area
35 harvesters", right?

36 A Potentially.

37 Q I think they refer to themselves like that. We've
38 heard it. Now, when you compare that to
39 Aboriginal fisheries, say, in the Fraser River
40 specifically and specifically above Mission, the
41 area harvesters, in comparison, have a much larger
42 capacity to catch large amounts of salmon in a
43 short period of time.

44 A Sorry. That sounded like you were making a
45 statement.

46 Q No, I'm asking you. I'm asking you if you would
47 agree. When you compare the Aboriginal fishery in

- 1 the Fraser River, especially above Mission, area
2 harvesters in comparison have a much larger
3 capacity to catch large amounts of salmon in a
4 short period of time.
- 5 A I don't think I would agree with that statement
6 generally. If you were to look at a troll
7 fishery, for example, the harvest rates, I'd say,
8 are perhaps less than on a catch-per-unit effort
9 basis than some of the harvests we've seen in the
10 area from Mission to Sawmill in the Fraser. So it
11 would really depend on the commercial fleets
12 you're comparing.
- 13 Q Sure. So let's compare Area E Gillnet fishery.
- 14 A It would be good to have specific numbers for a
15 given year but I'd say both of those areas have
16 the capacity to harvest large amounts of fish.
- 17 Q But what I'm talking to you about is large amounts
18 of fish in a shorter period of time when looking
19 at fleet size and the size of the boats,
20 specifically. You'd agree that they actually have
21 a larger capacity to catch large amounts of fish
22 in a shorter period of time?
- 23 A Well, you're asking me to make a comparison
24 between the number of commercial gillnet boats
25 that might go out on an opening in the lower part
26 of the Fraser River to the number of set nets that
27 might go out, for example, on a fishery in the
28 Mission to Sawmill area, and the number of
29 driftnets that also might be operated by First
30 Nations in that area. So I don't have a specific
31 quantitative comparison I can give you on that but
32 they both have the capacity to remove large
33 amounts of fish per unit of time when both
34 fisheries are open.
- 35 Q Now, here's my question. For example, we were
36 talking specifically about the use of revival
37 boxes. Now, even in an Aboriginal fishery, if you
38 have a larger vessel, about 35 feet, there is a
39 requirement of a revival box, right?
- 40 A I believe it's at 30 feet but I could be mistaken
41 about that. I believe my earlier comments were
42 that it was at 30 feet, requirement for revival
43 box.
- 44 Q Okay. Now, when it comes to like an Aboriginal
45 fishery operated by individuals of families, they
46 often have much smaller boats like small aluminum-
47 shell boats. Now, in that context, a revival box

- 1 would be a safety issue?
- 2 A That's correct. Most of the vessels are smaller
3 than 30 feet in the First Nation fishery,
4 especially in that area.
- 5 Q And you'd have a concern about safety issues in
6 that regard?
- 7 A Yes, I understand the concerns relate to vessel
8 stability having a revival box containing water.
9 There may be also -- well, that's the main one.
- 10 Q Instability. Now, when it comes to intersectoral
11 allocations, DFO, I understand distinguishes three
12 sectors, Aboriginal, commercial and recreational,
13 right?
- 14 A That's correct.
- 15 Q Now, I think it's fair to characterize two of them
16 as stakeholders, commercial and recreational, and
17 one of them as rights holders, namely, the
18 Aboriginal sector?
- 19 A Yes, food, social and ceremonial rights.
- 20 Q So those are constitutionally-protected rights to
21 fish, right?
- 22 A That's correct.
- 23 Q Now, Aboriginal title and rights are actually the
24 only constitutionally-protected property rights in
25 Canada. You'd agree with me on that as well?
- 26 A Yes.
- 27 MR. TIMBERG: Mr. Commissioner, I think my friend is
28 going into legal questions and I'd object to that.
- 29 MS. SCHABUS: I'm ready to move on.
- 30 Q But speaking about that difference between rights
31 holders and stakeholders, you would agree that
32 they play a different role in decision-making
33 processes?
- 34 A Yes, that's correct. The department has bilateral
35 consultations with First Nations about their
36 fishing plan.
- 37 Q And when you're dealing with a rights holder, that
38 also comes along with decision-making power in
39 those processes? Or rights holders have decision-
40 making powers when it comes to management
41 decisions, right?
- 42 A In terms of fisheries, the Minister is the
43 ultimate authority as far as decision-making goes.
- 44 Q That's the DFO position.
- 45 MR. TIMBERG: Mr. Commissioner, again, I think my
46 friend is verging into legal discussions here that
47 are inappropriate for this witness.

- 1 MS. SCHABUS: I'm fine to move on.
- 2 Q Now, I have a question to clarify when it comes to
3 in-season management. The Fraser River panel
4 determines if there will be a commercial opening,
5 correct?
- 6 A For fisheries in Panel waters, that's correct.
7 For Canadian fisheries that are not in Panel
8 waters, the decision is made by the Department of
9 Fisheries and Oceans. But we'll typically review
10 those at the Fraser River panel.
- 11 Q But even in Panel waters, it's actually DFO that
12 determines the conditions for the opening, right?
13 Like duration of the opening, gear type location?
- 14 A That's correct.
- 15 Q Now, when it comes to openings for Aboriginal
16 fishery, especially for food, social and
17 ceremonial purposes, those are the responsibility
18 of the DFO?
- 19 A That's correct.
- 20 Q And it's the responsibility of the DFO to ensure
21 priority resource allocation for those purposes,
22 right?
- 23 A That is consistent with our allocation priorities,
24 yes.
- 25 Q So you could have an opening for Aboriginal
26 peoples for FSC purposes even if there is a closer
27 on the Fraser River panel?
- 28 A If your question is whether we can have food,
29 social and ceremonial fisheries when commercial
30 fisheries or recreational fisheries are closed,
31 the answer is yes.
- 32 Q Now, it's the practice of the DFO for Aboriginal
33 economic fishery to only open it when there's a
34 commercial opening, right?
- 35 A That's not entirely true. We're trying to manage
36 those fisheries using similar rules in priority.
37 It does not necessarily mean they're going to fish
38 at the exact same time. In the case of Fraser
39 sockeye, we'd be looking to fish for the same
40 stocks and species that the commercial total
41 allowable catch had been identified for.
- 42 Q So under the allocation, under the commercial TAC?
- 43 A If I haven't been clear, when there's a commercial
44 total allowable catch identified, we would have
45 fisheries for commercial, as well as economic
46 opportunities on the same populations that the
47 total allowable catch had been identified for.

- 1 Those fisheries may not occur at exactly the same
2 time.
- 3 Q Correct. But only when there is a Fraser River
4 panel opening. When the Fraser River panel has
5 deemed the fisheries open for commercial purposes?
- 6 A Again, the decision on the economic opportunity
7 openings do not require -- my recollection is a
8 bit fuzzy here. That would be a better question
9 for Mr. Rosenberger, the Fraser panel chair, but
10 typically at the panel, we'd be informing the
11 Fraser panel of our fishing plans, including for
12 economic opportunities. I'm just trying to recall
13 now whether there's an approval for those
14 fisheries in the lower part of the Fraser River in
15 Panel waters. I can't recall off the top of my
16 head.
- 17 Q Now, when it comes to the lower Fraser, DFO does
18 no longer sign fisheries agreements with
19 individual First Nations. You insist on
20 comprehensive fisheries agreements with larger
21 groups, right?
- 22 A Generally, that's been the approach. We have had
23 agreements, for example, with Musqueam, which is
24 an individual First Nation as well.
- 25 Q A larger First Nation. Now, when it comes to
26 those comprehensive fisheries agreements that you
27 signed with larger groups, they are assigned on an
28 annual basis?
- 29 A Yes, that's my understanding. These are
30 negotiated annually with our staff in the areas.
31 Usually, the area director leads those
32 discussions.
- 33 Q So they're not long-term agreements, right?
- 34 A I believe, well, the recent ones have just been
35 for one year. I can't speak to what's been done
36 in the past.
- 37 Q Now, the incentive to sign those comprehensive
38 fisheries agreements is the economic opportunities
39 under them, right?
- 40 A I'm sorry. I missed the start of your question.
- 41 Q Sorry. The incentive to sign comprehensive
42 fishery agreements is the economic opportunities
43 under them, right?
- 44 A That would be one part of the agreements. I
45 believe there are other components around catch
46 monitoring, food, social and ceremonial, fishery
47 allocations as well, to name a couple. I'm not

1 the expert on all of the elements on those
2 agreements.
3 Q No, that's why I was speaking to an incentive.
4 Now, some bands in an area will sign and you'll
5 refer to them as "signatory bands"?
6 A That's correct.
7 Q And others will not sign and you refer to them as
8 "non-signatory bands", right?
9 A That's correct.
10 Q But DFO still considers the overall FSC allocation
11 for the area to be under that agreement?
12 A I can't speak to that specific question.
13 Q Okay. So --
14 MR. MARTLAND: And Mr. Commissioner, I just simply
15 raise as a question whether some of these are
16 topics that may arise more properly under later
17 sections of our hearings plan.
18 MS. SCHABUS: And Mr. Commissioner, I'm just trying to
19 set that out now because we've been told that Mr.
20 Grout is not going to be back to be examined on
21 allocation issues. So I wanted to just clarify
22 those because I needed to clarify that in order to
23 ask my allocation questions. But I'm ready to
24 move to the specific questions.
25 Q Now, Mr. Grout, your position now is one of
26 regional resource manager for salmon, right?
27 A That's correct.
28 Q So I think it's fair to say that you work on
29 different processes dealing with the different
30 sectors, commercial, recreational and Aboriginal?
31 A That's correct.
32 Q And you apply departmental policies on the ground
33 in regard to salmon harvest management and
34 allocation?
35 A Personally, I'm not usually doing that. It's
36 usually carried out through our area offices and
37 our area staff.
38 Q Okay. But actually when looking at your c.v., it
39 specifically sets out that it is your role to
40 ensure that those departmental policies, I guess,
41 are applied consistently across the sectors,
42 right?
43 A That's correct.
44 Q Now, I think that's where it's been getting a
45 little bit confusing for all of us because we're
46 dealing with so many policies at once. And if I
47 can just recap with you a little bit. When it

1 comes to the commercial fishery, you now have
2 area-based management, right, since the Mifflin
3 Plan? You also have, since 1999, the discussion
4 paper, which you now refer to as your Allocation
5 Policy, right? And then you have the 2005 vision
6 paper, which now is the policy that you would say
7 you're applying for share-based management, right?
8 A Yes, the area-based licensing was put in place in
9 1996. You referred to the Allocation Policy as a
10 discussion paper. There was a discussion paper on
11 the Allocation Policy but then it's been
12 formalized as the Allocation Policy.
13 Q Yeah, same paper.
14 A Well, there was an initial discussion paper on
15 that and then the Allocation Policy was finalized
16 from that discussion paper.
17 MS. SCHABUS: And that would be our Exhibit 264, if we
18 could just briefly bring it up to ensure that we
19 are all on the same page?
20 MR. MARTLAND: And just on that note, I'd like to
21 confirm. I think the premise of the question may
22 have not quite captured, as I understood it, the
23 evidence related to a discussion paper, which
24 separately led to what we're referring to as the
25 Allocation Policy. But they're distinct
26 documents. I believe they're both in evidence.
27 MS. SCHABUS: Correct.
28 Q So you have, as the result of that discussion
29 paper now, the Allocation Policy, which is called
30 "A New Direction", right? Now, you have to read
31 that together with other policies like the 1998
32 Selective Fishing Policy, which you referred to as
33 an input-oriented policy, right?
34 A I'm not sure if I stated it as such.
35 Q Well, you made that distinction between input-
36 oriented and output-oriented policies, right?
37 A No, I wasn't referring --
38 Q Or approaches?
39 A -- to policies there. I was referring to types of
40 approaches you might use in implementing the
41 principles in the policy.
42 Q Correct, okay. So if I were to ask you to show me
43 one comprehensive and consistent policy and show
44 me a policy manual that you apply when it comes to
45 harvest management and allocation, there is not
46 one comprehensive document?
47 A The Allocation Policy itself is the primary driver

1 on our harvest management decisions.

2 Q And yet we've spent a lot of time also speaking
3 about the vision document and the vision paper for
4 share-based management, which is also driving the
5 approach you're applying in fisheries management,
6 right?

7 A It's laying out a vision for how we might change
8 in the future, that's right.

9 Q Now, which policies play into that for Aboriginal
10 peoples for harvest management and allocation?
11 Which additional policies are there for Aboriginal
12 peoples?

13 A There may be a number. You're probably best to
14 ask that question to our director of Treaty and
15 Aboriginal Policy. I can't speak well to all of
16 them.

17 Q But yet you are the one who is responsible for
18 actually applying those policies consistently
19 across sectors when it comes to harvest management
20 and allocation, correct?

21 A Again, my primary responsibility is for laying out
22 and consulting on the Integrated Fisheries
23 Management Plans and the consultation processes
24 that are associated with those. There's
25 considerable input and work done by our area staff
26 and meeting bilaterally with First Nations in
27 developing the agreements that we have with First
28 Nations.

29 Q So when it comes to the Integrated Fisheries
30 Management Plan, a lot of that is based on pre-
31 season forecasts, right, the information that you
32 have in there?

33 A No, for Fraser sockeye, the Integrated Fishery
34 Management Plan includes information on the pre-
35 season forecast but it also includes the decision
36 rules we're going to use that cover a range of
37 abundance for Fraser River sockeye. So we
38 recognize that the pre-season forecast
39 distribution may not capture the full range of
40 potential returns in all cases. The decision
41 rules themselves do cover that full range of
42 abundances and the potential outcomes that may
43 occur.

44 Q Now, the consultations regarding the Integrated
45 Fisheries Management Plan occur pre-season, right?
46 So the majority of those consultations are
47 actually in pre-season when we all we're operating

- 1 from is that pre-season forecasting?
- 2 A We do have, in terms of our pre-season planning, a
3 series of consultations that lead up to the
4 development and production of the Integrated
5 Fisheries Management Plan. There's a number of
6 processes that we use in-season around
7 implementing that plan, including with First
8 Nations. For example, in the Fraser River, we've
9 got a weekly call that's set up to explain
10 information from the Fraser River panel. We've
11 got fishery planning committees that are part of
12 the comprehensive agreements there.
- 13 Q And the information line is what you were
14 referring to just now?
- 15 A Pardon me?
- 16 Q The information line, right, is what you were just
17 referring to, the call regarding to share
18 information, right?
- 19 A That's correct. That's just an example of some of
20 the processes we use in-season.
- 21 Q Now, when it comes to intersectoral allocations,
22 right, I'd like to discuss that with you also in
23 light of priority resource allocation. And I
24 think it's fair to think of priority resource
25 allocation kind of like a permit, not so
26 dissimilar from Maslow's Pyramid of Needs where
27 you have basic physiological needs at the bottom
28 and then you move up in the scale of needs. Now,
29 at the bottom of that priority resource allocation
30 is conservation, correct?
- 31 A Sorry. I was thinking back to my first year of
32 psychology class. I do remember hearing about the
33 pyramid. So I must admit I lost your question
34 there at the end.
- 35 Q Sorry. But I think it's helpful to think about it
36 like a pyramid and apart from Maslow. But our
37 priority resource allocation pyramid has at the
38 bottom of it conservation, correct?
- 39 MR. MARTLAND: I'm going to interject in the psychology
40 discussion to simply say we're pressing against
41 our time. Mr. Timberg does have examination.
42 Perhaps departing from Maslow and moving back to
43 questions in the time would be appreciated. Thank
44 you.
- 45 MS. SCHABUS: I'm right there.
- 46 Q So at the bottom of priority resource allocation
47 is conservation, right?

- 1 A Well, I mean if we're going to use a pyramid as an
2 analogy I think conservation is the top priority
3 so that would be at the top.
- 4 Q Sure, okay. First priority, conservation. That
5 clearly has an Aboriginal dimension, traditional
6 knowledge being key to *in situ* conservation.
7 You'd agree with that?
- 8 A I would agree that that is a component of the
9 considerations in setting out the escapement
10 objectives for Fraser sockeye.
- 11 Q And now, when it comes to the sectors and priority
12 resource allocation, we have Aboriginal and then,
13 after it, commercial and recreational, right?
- 14 A That's correct.
- 15 Q Now, the majority of the commercial area harvest
16 happens in marine areas or at the mouth of the
17 Fraser River, correct?
- 18 A For Fraser sockeye, yes.
- 19 Q Sure. And before those runs are ever subject or
20 open to an Aboriginal harvest in the Fraser River,
21 especially above Mission then, right? So this
22 commercial area harvest will occur before the same
23 runs are ever subject and open to an Aboriginal
24 harvest in the Fraser River, especially above
25 Mission?
- 26 A Not necessarily. We have a window closure that's
27 in place for Early Stuart sockeye. There are some
28 limited FSC fisheries that can occur then. We
29 typically have had some communal, food, social and
30 ceremonial openings in the marine waters, as well
31 as in the Fraser River in a number of years prior
32 to any commercial harvest.
- 33 Q Now, if there is an area of commercial harvest,
34 right, that will impact the amount of fish that's
35 available for an Aboriginal harvest up-river?
- 36 A Potentially, in that the fish that otherwise would
37 have been there being removed, in terms of making
38 decisions, we're trying to ensure that the amount
39 of fish removed is not inconsistent with our
40 objectives for providing for salmon to reach the
41 spawning grounds and for food, social and
42 ceremonial harvest.
- 43 Q Now, if there is, though, an over-harvest, by area
44 harvest, is in the commercial fisheries or
45 conservation concerns escalate after their
46 harvest, it impacts Aboriginal peoples in-river
47 and their ability to exercise their right to fish?

- 1 A It can potentially do that.
- 2 Q Now, you calculate a management adjustment into
3 fisheries allocations to try and secure certain
4 returns to the spawning grounds, right?
- 5 A Yes, management adjustments are used to account
6 for the difference between Mission and upstream
7 spawning areas and taking into account
8 correlations with environmental variables to try
9 and improve the achievement of those escapement
10 objectives.
- 11 Q But you do not calculate in a similar adjustment
12 or buffer to ensure that there is sufficient fish
13 available for Aboriginal peoples to fish in the
14 Fraser River? You don't have a similar adjustment
15 or buffer calculated in?
- 16 A No, not explicitly.
- 17 Q It could be done, right?
- 18 A Potentially.
- 19 Q Now, there's also the case, and I'm sure you've
20 heard complaints raised about the issue of
21 openings for signatory bands of comprehensive
22 fisheries agreements but not for non-signatory
23 bands so that they can meet their FSC needs?
- 24 A Sorry.
- 25 Q I'm asking you if you've heard about the issue and
26 the concern raised about openings for signatory
27 bands to comprehensive fisheries agreements or
28 fisheries openings for signatory bands under
29 comprehensive fisheries agreements but not for
30 non-signatory bands so that they can fulfill their
31 FSC needs?
- 32 A I'm not aware of that. It would help if I had a
33 specific example to go with your question. I'm
34 not sure I'm following it.
- 35 Q Okay. I'll give you a specific example. For
36 example, if you're looking in the Fraser River,
37 you have non-signatory and signatory bands, right?
38 There can be cases where an opening is done for
39 signatory bands, who can also fish for economic
40 opportunity and at the same time there's no
41 opening for non-signatory bands. You'd agree with
42 that?
- 43 A There would not be an opening for economic
44 purposes for the non-signatory bands in that case.
- 45 Q But there's also cases where there's just simply
46 no opening for the non-signatory bands but there
47 is an opening for signatory bands.

110
Jeff Grout
Cross-exam by Ms. Schabus (STCCIB)
Re-exam by Mr. Timberg

1 A I'm not aware of specific examples of that.

2 Q Okay. I have one last point or issue that I want
3 to raise. When it comes to the vision document in
4 2005, that was in response to partly the
5 Pearse/McRae report, right?

6 A You're referring to the Pacific Fisheries Reform
7 discussion paper?

8 Q Correct. Now, this ITQ approach that was
9 recommended by Pearse and McRae was initially
10 recommended for a post-treaty era, right?

11 A I believe in that report they were recommending
12 immediate implementation in the Pearse and McRae
13 report.

14 Q The Pearse/McRae report actually focuses on a
15 vision for fisheries in a post-treaty era?

16 A That's right. But I think your question was when
17 they recommended implementing ITQs. And my
18 recollection was is they recommended implementing
19 it as soon as possible.

20 MS. SCHABUS: Those are all my questions.

21 MR. TIMBERG: I have three questions for re-direct, Mr.
22 Grout. It's Mr. Timberg for Canada.

23

24 RE-EXAMINATION BY MR. TIMBERG:

25

26 Q Don Rosenbloom, last week, on cross-examination,
27 asked you if you had any examples of consensus
28 reached at the IHPC meetings and you spoke about
29 one, waiver of licence fees, two, the payment of
30 CSAB members to attend and provide a secretariat,
31 and you also mentioned a consensus was reached on
32 Early Stuart sockeye salmon but you were not given
33 the opportunity to explain that third example.
34 And so I'd like to ask you now to explain that
35 third example.

36 A Well, the context is a bit foggy at this point but
37 the two examples were given of the IHPC raising
38 consensus and I just cited a third example related
39 to Early Stuart sockeye and support for a motion
40 that had been put forward by one of the First
41 Nation representatives, Marcel Shepert, related to
42 the Early Stuart sockeye. And there were some
43 specific details around that motion, a consensus
44 that we captured in our minutes. So I just put it
45 out as another example.

46 Q All right. And so just so I understand, so there
47 was agreement on the Early Stuart sockeye and

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- 1 plans to manage that fishery?
- 2 A Yeah, at this point, the details are slipping my
3 mind here. I can't remember the exact points that
4 they raised there.
- 5 Q All right. Thank you. Mr. Harvey, last week,
6 presented a number of documents to you with
7 respect to analysis for loss of employment and
8 other socioeconomic analysis. So my question to
9 you is, who at DFO or what department at DFO would
10 normally deal with any economic analysis
11 information?
- 12 A We have a policy group that handles the economic
13 analysis work that's done internally. They do
14 quite often use external consultants to assist
15 with that as well. It's not my primary area of
16 expertise or responsibility, though.
- 17 Q And who leads that policy group?
- 18 A Currently, it's Jennifer Nener.
- 19 Q Okay. And she's located in Vancouver?
- 20 A In Vancouver at the regional headquarters
21 building.
- 22 Q And is there a national part of that?
- 23 A There is but I can't give you the lead at this
24 point.
- 25 Q Thank you. And my final question is, just now
26 Brenda Gaertner suggested that a recommendation
27 should be made that further steps with respect to
28 implementing share-based management not take place
29 until DFO has completed negotiations with First
30 Nations on both FSC and commercial access to the
31 fisheries. So my question for you is,
32 approximately how many First Nations are there in
33 B.C. who are reliant on Fraser River sockeye
34 salmon? If you could just give us a general
35 overview of that, both perhaps coastal First
36 Nations and then interior First Nations.
- 37 A Well, it's a large number, well over a hundred. I
38 couldn't give you the specific number. They would
39 be the approach areas to the Fraser River. Fraser
40 sockeye have also been in the south so on the west
41 coast of Vancouver Island and the approaches in
42 through Johnstone Straits. There have been years
43 where Fraser sockeye have also been harvested by
44 First Nations in the north as well, in the Haida
45 Gwaii and in other parts in the north and then
46 within the Fraser River itself, all the way up
47 through the Fraser River into the Prince George

1 area.

2 MR. TIMBERG: All right. Thank you. Those are all my
3 questions.

4 MR. MARTLAND: Mr. Commissioner, that concludes Mr.
5 Grout's evidence. I have just one moment of
6 comments with respect to our schedule moving
7 forward.

8 THE COMMISSIONER: Before you do that, Mr. Grout,
9 you've been here before and I don't know if you're
10 coming back on another panel. But I just want to
11 express the appreciation of the Commission for
12 your willingness to return these often times to
13 the Commission witness box and for your
14 cooperation in answering the questions of counsel.
15 Thank you very much.

16 A You're welcome.

17 MR. MARTLAND: Mr. Commissioner, we will return
18 tomorrow at 10:00 a.m. with the second Commercial
19 Fishers Perspectives Panel. Two updates on the
20 schedule, which I'll communicate now. One, that
21 we have made a shift only today to combine two
22 parts of our recreational evidence. So
23 Wednesday's witnesses, Ms. Sneddon and Ms. Adams,
24 will be combined on a panel with Thursday's
25 witness, Mr. Tadey. We thought that was a more
26 productive and efficient way to go about leading
27 that evidence. So that will be one panel for two
28 days with all three witnesses Wednesday and
29 Thursday this week. The second update is to
30 advise that the witness that initially had been
31 scheduled for today, Lisa Mijacika, on commercial
32 licensing, has now been scheduled for March the
33 15th. Her evidence will be led that day. Thank
34 you.

35 THE COMMISSIONER: Thank you very much. We'll now
36 adjourn. Thank you.

37 THE REGISTRAR: The hearing is now adjourned for the
38 day and will resume at ten o'clock tomorrow
39 morning.

40
41 (PROCEEDINGS ADJOURNED TO MARCH 1, 2011, AT
42 10:00 A.M.)
43
44
45
46
47

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