

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



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

## Public Hearings

## Audience publique

**Commissioner**

L'Honorable juge /  
The Honourable Justice  
Bruce Cohen

**Commissaire**

**Held at:**

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

Friday, August 19, 2011

**Tenue à :**

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

le vendredi 19 août 2011

## **APPEARANCES / COMPARUTIONS**

Patrick McGowan Jennifer Chan Patrick Hayes	Associate Commission Counsel Junior Commission Counsel Document Reviewer
Mark East Charles Fugere	Government of Canada ("CAN")
No appearance	Province of British Columbia ("BCPROV")
No appearance	Pacific Salmon Commission ("PSC")
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
No appearance	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
No appearance	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
No appearance	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")
No appearance	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

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

No appearance	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
No appearance	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")
Leah DeForrest	Western Central Coast Salish First Nations: Cowichan Tribes and Chemainus First Nation Hwlitsum First Nation and Penelakut Tribe Te'mexw Treaty Association ("WCCSFN")
Brenda Gaertner Crystal Reeves	First Nations Coalition: First Nations Fisheries Council; Aboriginal Caucus of the Fraser River; Aboriginal Fisheries Secretariat; Fraser Valley Aboriginal Fisheries Society; Northern Shuswap Tribal Council; Chehalis Indian Band; Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council; Upper Fraser Fisheries Conservation Alliance; Other Douglas Treaty First Nations who applied together (the Snuneymuxw, Tsartlip and Tsawout); Adams Lake Indian Band; Carrier Sekani Tribal Council; Council of Haida Nation ("FNC")
Joseph Gereluk	Métis Nation British Columbia ("MNBC")

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

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

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1  
PANEL NO. 54  
In chief by Mr. McGowan

Vancouver, B.C./Vancouver  
(C.-B.)  
August 19, 2011/le 19 août  
2011

1  
2  
3  
4  
5  
6 THE REGISTRAR: The hearing is now resumed.

7 MR. MCGOWAN: Good morning, Mr. Commissioner. It's the  
8 continuation of the aboriginal fishing hearings.  
9 It's the final panel for that section of the  
10 hearings. On this panel we have two witnesses:  
11 on my left is Kaarina McGivney, and on my right is  
12 Julie Stewart, both from the Department of  
13 Fisheries and Oceans.

14 I'll just start with a few brief questions to  
15 introduce them to you after they've been sworn.

16 THE REGISTRAR: Good morning. Would you just turn your  
17 microphones on, please? Thank you.

18  
19 KAARINA MCGIVNEY, affirmed.

20  
21 JULIE STEWART, affirmed.

22  
23 THE REGISTRAR: Would you state your name, please?

24 MS. MCGIVNEY: Kaarina McGivney.

25 THE REGISTRAR: Thank you.

26 MS. STEWART: Julie Stewart.

27 THE REGISTRAR: Thank you. Counsel?

28 MR. MCGOWAN: Thank you. Could we have our Tab 33,  
29 please. It should be the c.v. of Ms. McGivney.

30  
31 EXAMINATION IN CHIEF BY MR. MCGOWAN:

32  
33 Q Ms. McGivney, you're presently the Director of the  
34 Salmonid Enhancement Program?

35 MS. MCGIVNEY: Yes, I am.

36 Q And that's in the Ecosystems Management Branch?

37 MS. MCGIVNEY: Yes, it is.

38 MR. LUNN: Sorry, you're going to have to turn on your  
39 microphone when you're speaking.

40 MS. MCGIVNEY: Sorry.

41 MR. LUNN: Thank you.

42 MR. MCGOWAN: For the record, she answered in the  
43 affirmative to the last couple of questions.

44 Q You joined the Department of Fisheries and Oceans  
45 initially in 1985?

46 MS. MCGIVNEY: Yes, I did.

47 Q And with the exception of a brief period with

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2  
PANEL NO. 54  
In chief by Mr. McGowan

1 Indian and Northern Affairs, you've been  
2 continuously with the Department since that time?  
3 MS. MCGIVNEY: Yes.  
4 Q Prior to holding your present position, you held a  
5 number of positions in the Treaty and Aboriginal  
6 Policy Directorate?  
7 MS. MCGIVNEY: Yes, I did.  
8 Q Most recently as the Director of the Treaty and  
9 Aboriginal Policy Directorate?  
10 MS. MCGIVNEY: Yes.  
11 Q And you've concluded that position in August of  
12 2010.  
13 MS. MCGIVNEY: Yes.  
14 MR. MCGOWAN: If that could be marked as the next  
15 exhibit, please? If we could have Tab 34 on the  
16 screen?  
17 THE REGISTRAR: This is Exhibit 1418.  
18  
19 EXHIBIT 1418: *Curriculum vitae* of Kaarina  
20 McGivney  
21  
22 MR. MCGOWAN:  
23 Q The document on the screen now, is that the  
24 description for the position you held as Director  
25 of the Treaty and Aboriginal Policy Directorate?  
26 MS. MCGIVNEY: Yes, it's the description of the --  
27 MS. MCGIVNEY: Thanks. Could that be the next exhibit,  
28 please?  
29 THE REGISTRAR: Exhibit 1419.  
30  
31 EXHIBIT 1419: Job description for Director  
32 of Treaty and Aboriginal Policy Directorate  
33  
34 MR. MCGOWAN: If we could please have our Tab 56 on the  
35 screen which should be Ms. Stewart's c.v.  
36 Q Ms. Stewart, you hold a law degree from the  
37 University of Victoria which you obtained in 1988?  
38 MS. STEWART: Yes.  
39 Q You were called to the bar of Ontario in 1990?  
40 MS. STEWART: Yes.  
41 Q You joined the Department of Fisheries and Oceans  
42 in 1992?  
43 MS. STEWART: Yes.  
44 Q Your present position is as Director of the  
45 Pacific Integrated Commercial Fishery Initiative,  
46 sometimes called PICFI?  
47 A Yes.

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1 Q And that position is situated in Ottawa; is that  
2 correct?

3 MS. STEWART: Yes.

4 MR. MCGOWAN: If Ms. Stewart's c.v. could be the next  
5 exhibit, please?

6 THE REGISTRAR: Exhibit number 1420.

7

8 EXHIBIT 1420: *Curriculum vitae* of Julie  
9 Stewart

10

11 MR. MCGOWAN: I'm going to start by asking the panel  
12 some questions about access and allocation and  
13 matters related to food, social and ceremonial  
14 fishing.

15 Q I'm going to direct my questions to you, Ms.  
16 McGivney initially.

17 MS. MCGIVNEY: Okay.

18 Q Does the Department have a policy to provide  
19 priority access to First Nations to Fraser sockeye  
20 for food, social and ceremonial purposes?

21 MS. MCGIVNEY: Yes, it does.

22 Q Does the Department have a definition for food,  
23 social and ceremonial, an operating definition?

24 MS. MCGIVNEY: There's no specific -- the definition  
25 for food, social, ceremonial that the Department  
26 works within is providing fish for those purposes,  
27 for domestic use. It's not to be sold.

28 Q Does the Department have anywhere articulated in  
29 any of its policy documents the meaning of the  
30 word "social" or the word "ceremonial"?

31 MS. MCGIVNEY: No, it hasn't.

32 Q If there's no clear definition articulated, how  
33 are your resource managers supposed to set about  
34 negotiating numbers that provide for those  
35 purposes?

36 MS. MCGIVNEY: Our resource managers are negotiating  
37 access arrangements for food, social, ceremonial  
38 purposes, and through those negotiations, they  
39 consider a variety of factors and the First  
40 Nations bring forward their interest in these  
41 regards.

42 Q Okay. When resource managers enter into  
43 negotiations, they go in with a mandate provided  
44 to them?

45 MS. MCGIVNEY: Yes, they do.

46 Q And that mandate includes a number?

47 MS. MCGIVNEY: Yes, it does.

1 Q And is that number provided from Ottawa or is it  
2 developed in the region?

3 MS. MCGIVNEY: Initially the -- prior to 2007, those  
4 mandates were developed in -- approved in Ottawa.  
5 Since 2007, the individual specific mandates for  
6 the individual First Nations are determined by the  
7 RDG in Pacific Region.

8 Q Now, you've said that these numbers are arrived at  
9 through negotiation. That's negotiation with the  
10 First Nations group, correct?

11 MS. MCGIVNEY: The agreement -- the numbers agreed to  
12 in the agreements are arrived at through  
13 negotiations.

14 Q So the food, social, ceremonial allocation, is it,  
15 in part, the product of the strength or skill with  
16 which the negotiation was handled by the First  
17 Nations?

18 MS. MCGIVNEY: It's a result of the negotiation, and  
19 there's -- certainly the DFO managers are going in  
20 with a mandate within which they can work and they  
21 work with the First Nation to come to an agreed  
22 number.

23 Q Okay. You told me that there were a number  
24 factors that were considered in coming up with an  
25 appropriate food, social, ceremonial allocation  
26 for any particular group. I wonder if you can  
27 explain to the Commissioner what those factors  
28 are.

29 MS. MCGIVNEY: The factors that are considered, there's  
30 a range of factors considered in terms of coming  
31 up with the food, social, ceremonial allocations.  
32 Some of those factors are the population, looking  
33 at the fish resources that are available to those  
34 First Nations, looking at how those fish resources  
35 -- the status of those fish resources, the breadth  
36 of the different species that are available, what  
37 recent harvests have been of those species,  
38 looking at including interest expressed by the  
39 First Nation with regards to the various species,  
40 the availability and access of other First Nations  
41 to those same species. So there's a broad range  
42 of factors that come into play in terms of  
43 determining the allocation.

44 Q Thank you. Does the Department also consider what  
45 a reasonable food need would be for the  
46 populations that it's being provided for?

47 MS. MCGIVNEY: Identifying a need is a challenge, a

- 1 food, social, ceremonial need is a challenge.  
2 First Nations themselves often have not come  
3 forward with quantifying that need. What we do is  
4 negotiate towards access for food, social,  
5 ceremonial purposes and coming up with an  
6 allocation that would provide for that.
- 7 Q Is it the Department's intention that the number  
8 provided for food, social, ceremonial access in  
9 the communal licence is a genuine reflection of  
10 what is actually needed for food, social and  
11 ceremonial purposes?
- 12 MS. MCGIVNEY: As best as we can, we are working  
13 towards coming up with a number for access for the  
14 food, social, ceremonial. We look at a number of  
15 factors and, as best as we can, come up with  
16 something that would provide for that access and  
17 address those interests.
- 18 Q One of the factors you mentioned that is  
19 considered in arriving at numbers for food, social  
20 and ceremonial access is previous harvest. Do I  
21 take it from that, that there's an assessment done  
22 of previous harvests as one of the indicators of  
23 what the need might be?
- 24 MS. MCGIVNEY: The previous harvest is one of the  
25 factors considered in coming up with those, and  
26 reflects the interests and the access by the First  
27 Nation to that stock and species, and so reflects  
28 some of that interest in terms of food, social,  
29 ceremonial purposes.
- 30 Q When the Department is considering previous  
31 harvest as one of the factors, does it take into  
32 account any information that might suggest that  
33 some of the previous harvest may have been sold  
34 rather than used for food purposes or domestic  
35 purposes?
- 36 MS. MCGIVNEY: Whether those -- are you referring to  
37 those allocations that might have been under  
38 economic opportunities?
- 39 Q No, I'm referring to those fish that may have been  
40 harvested pursuant to a licence affording access  
41 for FSC purposes.
- 42 MS. MCGIVNEY: So we look at what's been harvested for  
43 food, social, ceremonial purposes. Food, social,  
44 ceremonial fish are not meant to be sold, so the  
45 -- I'm struggling a little bit with your question.
- 46 Q Do I take it from your answer that there's no  
47 consideration or exploration done when looking at

- 1 previous harvest as one of the factors as to  
2 whether or not any of the FSC fish may have been  
3 sold?
- 4 MS. MCGIVNEY: If we have evidence that they were sold,  
5 then I believe the Department -- there would be  
6 action taken. If we have evidence in that regard,  
7 it would be considered.
- 8 Q Okay. In your position as the Director of the  
9 Treaty and Aboriginal Policy Directorate, did you  
10 receive information from Conservation and  
11 Protection that suggested that fish caught  
12 pursuant to FSC licences by some bands may have  
13 been sold?
- 14 MS. MCGIVNEY: There are some specific circumstances  
15 that were brought to my attention.
- 16 Q And did you take that into account when applying  
17 the previous harvest factor to develop numbers for  
18 FSC access or FSC negotiations?
- 19 MS. MCGIVNEY: That's one of the considerations in our  
20 guidelines for looking at how allocations might be  
21 negotiated, so that is one of the things that  
22 could be considered when we have that information.  
23 In terms of -- I think that's it.
- 24 Q In the time that you held your position, were any  
25 -- did the Department take the position that any  
26 allocations should be reduced on the basis of  
27 evidence that previous harvest had been sold?
- 28 MS. MCGIVNEY: No, not that I recall.
- 29 Q In taking into account as one of the factors  
30 previous harvest, has the Department considered  
31 the possibility that this sort of analysis might  
32 serve as an incentive for some First Nations to  
33 increase their harvest in order to create a  
34 pattern of higher harvest?
- 35 MS. MCGIVNEY: Is the question that by increasing their  
36 harvest, that that would provide a basis for a  
37 higher allocation in the future?
- 38 Q Yes.
- 39 MS. MCGIVNEY: That's a possibility in terms of how the  
40 First Nations might be approaching it. What we  
41 are looking at is what that actual harvest is, and  
42 that that is being reflective of their food,  
43 social, ceremonial use.
- 44 MR. MCGOWAN: Could we have Exhibit 1189, please, page  
45 23. That's the document page, not the ringtail  
46 page.
- 47 Q The document I'm having brought up on the screen,

1 Ms. McGivney, is the First Nations Fisheries  
2 Action Plan, created in part, I think, by the  
3 First Nations Leadership Council. Is that a  
4 document you're familiar with?

5 MS. MCGIVNEY: Yes, I am.

6 MR. LUNN: Could you give me the page number one more  
7 time, please?

8 MR. MCGOWAN: Certainly, 23, the document page.

9 MR. LUNN: Thank you.

10 MR. MCGOWAN: Just for anyone else who's looking for  
11 it, it's at Tab 18 of our documents.

12 Q This is the page which sets out some of the action  
13 items set out in this plan. If you look at the  
14 second arrow on the left, that action item is:

15  
16 Increase, food, social and ceremonial use to  
17 increase baseline calculations used by  
18 governments in developing their mandates.

19  
20 Is that an action or a direction that you were  
21 familiar with?

22 MS. MCGIVNEY: I recall it being one of the points in  
23 the First Nations Panel Action Plan.

24 MR. MCGOWAN: If that can -- that's already an exhibit.  
25 We'll move on from there.

26 Q We talked a minute ago about ceremonial use and  
27 social use. Are you able to articulate any  
28 working definition for the Commissioner of either  
29 of those two words?

30 MS. MCGIVNEY: I guess from the ceremonial perspective,  
31 some of the items that might be coming forward  
32 from a social -- or ceremonial perspective are  
33 weddings or funerals or births and celebrations  
34 around those events. First Nations have a culture  
35 of celebrating and utilizing fish in those  
36 celebrations, so there's an interest in us, in  
37 terms of the Departmental approach to coming up  
38 with allocations, we are working towards  
39 negotiating with First Nations an overall number  
40 for food, social, ceremonial, that then they can  
41 manage that full use within these various  
42 interests, different purposes within the food,  
43 social, ceremonial, that they would manage that  
44 overall allocation to meet that broad need.

45 Q Okay. And social, can you similarly give some  
46 examples?

47 MS. MCGIVNEY: Social is a little bit more difficult,

1 but some of the social events that First Nations  
2 might hold. We don't have a clear definition of  
3 that.

4 Q Okay. Are you aware that there's been some  
5 confusion amongst the resource managers or looking  
6 for assistance from upper management as to how to  
7 apply those two terms when developing mandates or  
8 issuing licences?

9 MS. MCGIVNEY: Yes. And that's part of the reason why  
10 we've been moving towards trying to work with  
11 coming up with one overall allocation that  
12 addresses those food, social and ceremonial uses  
13 so that First Nations, themselves, can decide  
14 amongst themselves how they want to kind of  
15 apportion that.

16 MR. MCGOWAN: If we could have our Tab 39, please.

17 Q This is an email from you to Diane Trager, and it  
18 encloses an email from Heather James in the  
19 Resource Management portion of the Department.  
20 I'm just going to read the first sort of  
21 substantive paragraph of her email near the bottom  
22 of the page.

23  
24 DFO area staff are concerned about escalating  
25 levels of ceremonial catch in the Lower  
26 Fraser. There is a growing number of  
27 requests to fish for ceremonial purposes  
28 during the week when there is communal  
29 fishing during the weekend. There are no  
30 guidelines on which should be considered  
31 appropriate criteria/circumstance for  
32 ceremonial harvest.

33  
34 And then you, in your email to Diane Trager say:

35  
36 Are you coordinating a process to address  
37 this issue?

38  
39 Was there a process to address that issue of  
40 confusion and, if so, what was the outcome from  
41 that process?

42 MS. MCGIVNEY: I can't recall the specific process, but  
43 my recollection is that the outcome is that what  
44 we were trying to achieve was that the First  
45 Nations to be coordinating the food, social,  
46 ceremonial access as one unit, and that First  
47 Nations would work within that allocation and plan

1           for their various foods, social and ceremonial --  
2           what components of the harvest would go to those  
3           different elements.

4           Q     Did the process that was undertaken result in any  
5           sort of policy direction to resource managers to  
6           assist them in applying these terms?

7           MS. MCGIVNEY: Not that I can recall, other than that  
8           direction that we should be working towards just  
9           one allocation that First Nations could then plan  
10          for within that.

11          MR. MCGOWAN: Thank you. If that could be the next  
12          exhibit, please.

13          THE REGISTRAR: Exhibit 1421.

14  
15                   EXHIBIT 1421: Email chain between Kaarina  
16                   McGivney, Diana Trager and Heather James

17  
18          MR. MCGOWAN:

19          Q     One of the other factors which you've listed for  
20          the Commissioner was population. Does the  
21          Department make an effort to obtain an equal or  
22          balanced allocation as between First Nations based  
23          in part on population?

24          MS. MCGIVNEY: Population is one of the factors that  
25          are considered, but it's not the only factor. So  
26          therefore, because there's different populations,  
27          but there's different other -- many of the other  
28          factors are also different between First Nations,  
29          that we're not applying a per capita, if that's  
30          what you're suggesting.

31          Q     Other factors being generally equal, so First  
32          Nations situated in similar regions in the  
33          province with similar access to other resources,  
34          in a situation like that, does the Department  
35          attempt to have a balanced or equitable  
36          allocation?

37          MS. MCGIVNEY: The allocations are determined through  
38          the negotiations with the First Nations, and First  
39          Nations may have expressed different interests,  
40          may have different access to different species or  
41          different situations in their communities. So  
42          therefore there is variability within that.

43          MR. MCGOWAN: Thank you. Could we have our Tab 45,  
44          please? Now, there's actually a letter included  
45          in this tab and I don't propose to mark the  
46          Department of Justice's correspondence.

47          Q     This is a chart that you've seen before, Ms.

1           McGivney?

2           MS. MCGIVNEY: Yes.

3           MR. MCGOWAN: Mr. Commissioner, there's been some, on a  
4           couple of occasions, issues arisen with respect to  
5           band populations. Mr. Eidsvik entered a document  
6           at some point, but its origin was somewhat  
7           uncertain. So I'm proposing to have this document  
8           marked. It was provided by Canada through their  
9           correspondence of March 8th.

10           Sorry, I'm just being told that this may  
11           actually be an Exhibit 1221, we've just  
12           determined. Can we pull up 1221, please, Mr.  
13           Lunn, and make sure it's the same document?

14           MR. LUNN: Certainly. Yes, we're just confirming here  
15           that it's been marked as well.

16           MR. MCGOWAN: Thank you.

17           Q     Ms. McGivney, just for the Commissioner's benefit,  
18           this is chart of population data of **Indian Act**  
19           bands that receive licences and allocations to  
20           harvest Fraser sockeye salmon, and the data in the  
21           chart was obtained from the band registry  
22           maintained by Indian and Northern Affairs?

23           MS. MCGIVNEY: Yes.

24           Q     Thank you. Now, we've taken a quick look at these  
25           numbers and at some of the allocations. There  
26           seems to be, sort of at a cursory look, some wide  
27           disparity between bands who, at first glance,  
28           appear to be similarly situated in the Lower  
29           Fraser ranging from sort of -- we'll just do a per  
30           capita analysis and accept there's a number of  
31           variables. But just looking at that for a second,  
32           ranging from some situations where it's five per  
33           capita, five fish per capita, and others where  
34           there's over 60 sockeye allocated.

35           In the Upper Fraser, we see as little as five  
36           or even less than that sometimes, and in other  
37           cases, as many -- numbers exceeding 100 fish per  
38           capita. I wonder if you can explain what the  
39           rationale might be for such a wide disparity in  
40           the FSC access that's allocated pursuant to  
41           communal licences?

42           MS. MCGIVNEY: So as I indicated earlier, there's a  
43           number of factors. For instance, Fraser sockeye  
44           are not the only fish harvested by some of these  
45           groups. Some of these groups may have a variety  
46           of other species available to them, other species  
47           of salmon, other species of non-salmon. So the

1 interest in the groups with regards to Fraser  
2 sockeye, the overall allocations might vary  
3 between different stocks and species.

4 Also different groups have different  
5 interests. There's groups who have access to  
6 different kinds of resources and they have  
7 different needs in terms of access to other  
8 species besides fish in terms of food needs, et  
9 cetera. So there's a variety of factors that come  
10 into play.

11 Q Thank you. From the Department's perspective, and  
12 I'm not asking you to tell us what the state of  
13 the law is, but I'm asking you to tell us what the  
14 Department's operating assumption is moving  
15 forward. Is it the case that the Department  
16 operates on the assumption that First Nations in  
17 this province, at least in the Fraser watershed,  
18 have the right to access Fraser sockeye for food,  
19 social and ceremonial purposes?

20 MS. MCGIVNEY: The Department has taken a policy  
21 approach to providing food, social, ceremonial  
22 access and that policy approach was based on  
23 looking at the main elements of the sort of having  
24 some historic fishing practices. It originally,  
25 with the -- when the AFS program was introduced,  
26 negotiations were conducted with groups where  
27 there was some of that. But within the AFS  
28 agreements, it's very clear that both the First  
29 Nations and the Department, there's a line that  
30 indicates this is not an acknowledgement or -- not  
31 an acknowledgment of the rights. So it doesn't  
32 implicate -- provide any direction whether these  
33 are rights or not.

34 Q Is the Department's approach to providing economic  
35 access with respect to First Nations to not do so  
36 on a priority basis unless a right has been proven  
37 in court?

38 MS. MCGIVNEY: Yes.

39 Q I'm going to turn now to some questions related to  
40 the PICFI program. Some of those will be for you,  
41 Ms. Stewart, and Ms. McGivney, I would invite you  
42 also to weigh in on some because obviously you  
43 have a long history of experience with matters  
44 related to the program as well.

45 Ms. Stewart, through PICFI, is the Department  
46 intending or attempting to increase the number of  
47 sockeye, Fraser sockeye caught in terminal or near

1 terminal areas in the Fraser River?

2 MS. STEWART: Yes, and I wouldn't restrict it to  
3 sockeye. It would be all salmon.

4 Q You might not be restricted to sockeye. Sometimes  
5 we are. Why is the Department making efforts in  
6 that regard?

7 MS. STEWART: To have commercial catches at terminals  
8 of the fishery is in the aid of some of our  
9 policies around conservation such as the Wild  
10 Salmon Policy. It's one way, one method of moving  
11 towards a more -- improving our ability to have  
12 fisheries that are not unduly impacting on weak  
13 stocks of salmon. You can target better with a  
14 terminal-based fishery.

15 Q Are there any other goals that the Department is  
16 hoping to achieve by transferring allocations to  
17 in-river First Nations for commercial catching?

18 MS. STEWART: It also gives inland First Nations some  
19 opportunities to have an economically-based salmon  
20 fishery that have previously not been available to  
21 them, but have been available to coastal First  
22 Nations.

23 Q Does the Department have in mind a percentage of  
24 the commercial fishery they intend to move from  
25 the marine and approach areas into the river, if  
26 we're talking about Fraser sockeye?

27 MS. STEWART: The PICFI initiative has -- we have  
28 within the PICFI initiative an intention of using  
29 the available resources for relinquishment of  
30 licences the majority of which, in the case of  
31 salmon, would be for those inland fisheries. But  
32 it's important to keep in context that coastal  
33 First Nations have more access to a diversified  
34 portfolio of species than the inland First Nations  
35 do.

36 Q How much of the commercial Fraser sockeye fishery  
37 is the Department hoping to have harvested in-  
38 river as opposed to in marine and approach areas  
39 moving forward?

40 MS. STEWART: I'm afraid I can't speak to the  
41 proportionality of the total commercial catch that  
42 would be fished in an inland fishery, but I can  
43 speak to the point that the majority of the PICFI  
44 resources, about \$100 million over five years, the  
45 majority of the resources identified for  
46 "purchasing", relinquishing access in the salmon  
47 fishery, is for the terminal fisheries to provide

1           for that catch.  
2       Q     When you say you can't speak to the proportion of  
3           the fishery that the Department will move in-river  
4           through processes like ATP and PICFI, is that  
5           because there isn't a plan that articulates that  
6           or is it for some other reason?  
7       MS. STEWART: I'm not personally aware of the  
8           proportion that it would end up resulting in. I  
9           really am not a salmon expert, so I can't speak to  
10          the way that the calculations are made with  
11          respect to coastal catches vis-à-vis inland  
12          catches.  
13       Q     As the Director of PICFI --  
14       MR. EAST: Just a -- Ms. McGivney wanted to answer.  
15       MR. MCGOWAN: Yes, I'll come to you in just a minute,  
16           Ms. McGivney. I just want to follow up with Ms.  
17           Stewart.  
18       Q     As the Director of PICFI, had a decision been made  
19           about the proportion that the Department was  
20           seeking to have moved, would you not be aware of  
21           it?  
22       MS. STEWART: Well, I can speak to the amount of PICFI  
23           resources that are being, as I said, applied to  
24           relinquishments to allow for that inland fishery.  
25       Q     Thank you. Ms. McGivney, you had a --  
26       MS. MCGIVNEY: I just wanted to --  
27       Q     You wanted to weigh in on this. Thank you.  
28       MS. MCGIVNEY: I just wanted to add, to my knowledge  
29           there's no specific plan of how much fish would be  
30           moved to inland harvest versus on marine harvest.  
31           Those are things that would come through  
32           negotiation and then the long-term sort of moving  
33           towards a share-based fishery. How things would  
34           be managed would be worked out over time.  
35       Q     With respect to salmon licences or salmon quota  
36           obtained through PICFI or ATP buy-backs, all of  
37           the PICFI licences and most of the ATP licences  
38           are being used -- that have been acquired are  
39           being used to support in-river salmon fisheries;  
40           is that correct?  
41       MS. STEWART: To this point in time, yes.  
42       MS. MCGIVNEY: Excuse me, may I...?  
43       Q     Yes, certainly.  
44       MS. MCGIVNEY: Certainly ATP has been a long-term  
45           program and there are many salmon licences that  
46           are out distributed to First Nations in marine  
47           areas that are currently there. I think Ms.

1           Stewart was referring to sort of the more recent  
2           acquisitions under ATP.

3   MR. MCGOWAN:    Could we please have our Tab 40 on the  
4           screen?

5   Q           This is an email from Angela Bate, and she worked  
6           under you on PICFI; is that right, Ms. Stewart?

7   MS. STEWART:    She doesn't report directly to me.  She's  
8           a colleague of mine who is responsible for  
9           implementation of PICFI here in Vancouver.

10  Q           Okay.  Did she report to you, Ms. McGivney?

11  MS. MCGIVNEY:    No, she's my colleague.

12  Q           Okay.  She's writing an email to Brenda  
13           McCorquodale who, at the time, was the Executive  
14           Director of the First Nations Fishery Council,  
15           copied to you, Ms. McGivney.  The first line of  
16           the email says:

17  
18                   All of the PICFI licences and most of the ATP  
19                   are being used to support in-river  
20                   demonstration fisheries.

21  
22           Can either of you confirm whether that's an  
23           accurate statement?

24  MS. MCGIVNEY:    I think this was with regards to  
25           implementing short-term use of existing licences  
26           that had not been yet allocated, so through PICFI  
27           there'd been licences acquired and not allocated  
28           because of the process of coming through to the  
29           business planning.  There were some ATP licences  
30           also that had not yet been distributed and it's  
31           those that are being referred to in this, for a  
32           short-term allocation for 2010.

33  Q           But to be clear, the PICFI salmon licences that  
34           have been acquired are being used to support in-  
35           river fisheries as opposed to marine fisheries,  
36           correct?

37  MS. MCGIVNEY:    Yes.

38  MS. STEWART:    Could I just add to that?

39  Q           Please.

40  MS. STEWART:    That we're still in the process of  
41           relinquishing licences and that will continue  
42           through this fiscal year.

43  Q           Thank you.  Ms. McGivney, I wonder if you can just  
44           explain to the Commissioner the process which one  
45           goes through to acquire a licence and then  
46           redistribute the allocation 'cause of course the  
47           quota that's obtained through the purchase of a

1 licence consists of a number of different stocks,  
2 and I take it one can't just acquire a licence for  
3 100 fish and then redistribute that to a single  
4 terminal area.

5 MS. MCGIVNEY: Yes. It is a complex process because of  
6 the stocks that are available in one fishing area  
7 versus the stocks that are available in another.  
8 Basically, because we haven't implemented a fully  
9 share-based fishery for salmon yet, in terms of  
10 moving these fish into the inland demonstration  
11 fisheries, the process that's undertaken is to  
12 look at the relative proportions of the different  
13 stocks that would be harvested in the licence  
14 that's being acquired, whether it be in Johnstone  
15 Strait or the lower river, look at the relative  
16 proportion of those stocks and then apply those to  
17 where they're being caught in the river.

18 For instance, if there was a stock for the  
19 upper Fraser River is only 20 percent of the  
20 harvest in the marine fishery, if that licence is  
21 acquired, only 20 percent of that upper river  
22 stock would be allocated for a demonstration  
23 fishery up-river.

24 MR. MCGOWAN: Thank you. Just before I move on, if I  
25 could have that last document marked as the next  
26 exhibit, please?

27 THE REGISTRAR: Exhibit 1422.

28  
29 EXHIBIT 1422: Email exchange between A.  
30 Bate, B. McCorquodale re salmon licences  
31

32 MR. MCGOWAN:

33 Q So you said to the Commissioner, if 20 percent of  
34 the stock that was covered by a licence was from a  
35 particular terminal area, the equivalent of that  
36 20 percent could be reallocated to a particular  
37 terminal area where it was heading; is that --

38 MS. MCGIVNEY: Yeah, I meant to say 20 percent of the  
39 harvest.

40 Q Yes. Yes.

41 MS. MCGIVNEY: If that stock is 20 percent of the  
42 harvest of that licence, then that's the amount of  
43 harvest that would be re-allocated up into another  
44 fishery.

45 Q How does that sort of approach take into account  
46 the fact that a number of the fish that would have  
47 been caught on the marine areas won't make it to

- 1           any terminal area because they will die as a  
2           result of en route mortality.
- 3   MS. MCGIVNEY: My understanding is it's not calculated  
4           into that element now, but the management of the  
5           Fraser sockeye does take into account a management  
6           adjustment factor in terms of being able to plan  
7           for fisheries that happened further down the  
8           gauntlet (sic) to meeting the objectives upriver.  
9           Obviously there's a lot of uncertainty in  
10          estimates throughout the system, and so for  
11          escapement purposes, that management adjustment is  
12          taken into account. Currently for the level of  
13          the fisheries, it likely falls within the error --  
14          uncertainty estimates within the management right  
15          now.
- 16   Q       So at present, there's not an additional en route  
17          mortality adjustment that's applied when the  
18          allocation is moved from marine to a terminal  
19          fishery.
- 20   MS. MCGIVNEY: Correct.
- 21   Q       As more and more of the fishery is moved into the  
22          river, if one does take into account the fact that  
23          a number of the fish will terminate en route, will  
24          it result in less fish being available to be  
25          harvested in the commercial fishery generally?
- 26   MS. MCGIVNEY: So your question is, is less fish  
27          available in which fishery?
- 28   Q       The combined commercial fishery, both communal in-  
29          river commercial fishery and -- let me put it this  
30          way: If there's 100 fish available for harvest in  
31          the commercial fishery, and those 100 fish are now  
32          going to be harvested in the terminal area, some  
33          of those 100 fish will die en route, and there  
34          will be some number less than 100 available to be  
35          caught close to the terminal areas; is that  
36          correct?
- 37   MS. MCGIVNEY: That's possible. I think the other  
38          element that needs to be considered is that those  
39          fisheries will still be subject to the same rules  
40          that we have throughout. If the fish don't show  
41          up, then there won't be the harvest.
- 42   Q       Has the Department determined whether there will  
43          be -- whether the commercial catch - and maybe,  
44          Ms. Stewart, you can answer this - have they  
45          considered whether the approach they're taking  
46          through PICFI to move fisheries into the river  
47          will result in the long term -- once a sufficient

- 1 proportion of the fishery is moved in river, will  
2 it result in less fish being available to be  
3 caught commercially?
- 4 MS. STEWART: I think it's very important in this  
5 conversation to keep in mind that we manage salmon  
6 fisheries to ensure the conservation of weak  
7 stocks, so in coastal fisheries often there isn't  
8 an opportunity to fish because weak stocks are  
9 mixing with strong stocks in any event, so that  
10 will impact on the whole consideration of how many  
11 fish get to a terminus in any event.
- 12 Q Yes. But the excess that get to terminal areas in  
13 any event, because of precautionary fishing  
14 approaches lower down, are already available to be  
15 harvested through the excess sockeye to spawner  
16 recruit requirements, ESSR; is that correct?
- 17 MS. STEWART: The point being that coastal fisheries  
18 have to take into account that there are weak  
19 stocks mixing with the stronger stocks, and so  
20 opportunities to fish that might have been  
21 available might not be available because of that  
22 mixing of the weaker stocks with the stronger  
23 stocks.
- 24 Q What's the Department's intention with respect to  
25 the priority to be applied to in-river commercial  
26 fisheries as compared to conventional commercial  
27 fisheries?
- 28 MS. STEWART: The priority for commercial fisheries, no  
29 matter where they're located, would be the same --
- 30 Q And is it --
- 31 MS. STEWART: -- in (indiscernible - overlapping  
32 voices) fishery.
- 33 Q Thank you. Is it still the intention of the  
34 Department that commercial fisheries, regardless  
35 of where they occur, ought to operate on common  
36 rules for all, or comparable rules for all?
- 37 MS. STEWART: Yes.
- 38 Q At present, in the conventional commercial  
39 fishery, there are a number of expenses borne by  
40 fishers such as the increased cost of -- some of  
41 the increased costs of monitoring in quota  
42 fisheries. The communal commercial fisheries in-  
43 river such matters as catch monitoring are borne  
44 by the Department. Is it the Department's  
45 intention to move towards fisheries which support  
46 themselves on an equivalent level moving forward,  
47 commercial fisheries?

1 MS. STEWART: Now we're in the start-up phase for  
2 commercial fisheries' enterprises, particularly in  
3 the inland fisheries where we haven't had  
4 commercial fisheries before. It wouldn't make  
5 sense for the Department to provide access for  
6 commercial fisheries in those start-up phases  
7 without providing some support for some of the  
8 catch monitoring and other elements that go on  
9 around them.

10 The future plans for the Department are  
11 something that needs to be worked out and those  
12 issues around costs of monitoring, et cetera, are  
13 an issue that needs to be addressed.

14 Q Is it the Department's intention that moving  
15 forward any commercial fisheries that operate in-  
16 river will transition to being self-sustaining and  
17 covering the usual costs associated with a fishery  
18 as a commercial operation?

19 MS. STEWART: Sorry, could you repeat that?

20 Q Is it the Department's intention, moving forward  
21 after the expiry of PICFI, that commercial  
22 fisheries operating in-river will operate like  
23 commercial operations funding the usual expenses  
24 associated with that from their profit?

25 MS. STEWART: With the end of PICFI, of course, the  
26 resources that are available would cease. There  
27 are some options that are being explored going  
28 forward, and those cover a range from potentially  
29 a new program to no program, or absorption within  
30 the Department. There's a number of options out  
31 there that are being explored, but I can't speak  
32 to what the future will hold.

33 Q One of the reasons these programs were  
34 demonstration fisheries was so the Department  
35 could assess the viabilities; is that fair?

36 MS. STEWART: Yes.

37 Q And has the Department done an assessment of the  
38 economic viability of in-river fisheries as  
39 they're presently being operated?

40 MS. STEWART: Again, there hasn't been a whole lot of  
41 experience gained so far. We had a couple of  
42 years during the period that PICFI has been in  
43 place where there were very limited commercial  
44 opportunities in those terminal fisheries. So the  
45 ability to sort of assess viability has been  
46 somewhat limited.

47 But the First Nations have done some very

1           important work in that regard and are working very  
2           closely with DFO colleagues in the B.C. Interior  
3           region on assessing them.  
4           Q     PICFI is -- yes --  
5           MS. MCGIVNEY: I was just going to add that the  
6           Department did do a study, which I was actually  
7           involved in, back in 1993 which was looking at one  
8           component of economic viability and that was the  
9           quality of the fish harvested at the time. So I  
10          just wanted to add that, that the Department had  
11          done some work in the past.  
12          Q     And the conclusion from that study...?  
13          MS. MCGIVNEY: The conclusions that I recall - it was a  
14          while ago - but that there was evidence that the  
15          quality of the fish in areas could be -- would  
16          support a canned product as well as some specialty  
17          products of smoking and roe and things like that.  
18          So there was further work. It was a very  
19          preliminary study, but part of what I think we are  
20          testing through the PICFI demonstration fisheries  
21          are more in depth in terms of quality and some of  
22          the marketability and the technical elements that  
23          would be required to make an assessment of whether  
24          it's economically viable.  
25          MR. EAST: I was just going to say just for the record,  
26          Mr. Commissioner, I believe that that document  
27          that you've referred to - Ms. McGivney just  
28          referred to - is on the First Nations Coalition  
29          list of documents, number 123, and I assume  
30          perhaps you'll get to it at some point.  
31          MR. MCGOWAN: I'm happy to have it brought up right now  
32          and I'm happy to enter it as an exhibit. I think  
33          that would be appropriate.  
34          MS. GAERTNER: It's not yet an exhibit, Mr.  
35          Commissioner. It's Tab 123 of our list.  
36          MR. MCGOWAN: Perhaps it would be appropriate to mark  
37          it as the next exhibit, Mr. Commissioner.  
38          MS. GAERTNER: It would be -- Ms. McGivney, I've got a  
39          cover sheet on it and then your report is attached  
40          to it, to the original.  
41          THE REGISTRAR: It will be marked as Exhibit 1423.  
42          MR. MCGOWAN: And, for the record, this is a report  
43          titled, "Terminal Fisheries for Late Stuart and  
44          Horsefly Sockeye, Quality and Financial  
45          Viability," and you're one of the authors of the  
46          report?  
47          MS. MCGIVNEY: Yes.

1 EXHIBIT 1423: Report titled, "Terminal  
2 Fisheries for Late Stuart and Horsefly  
3 Sockeye, Quality and Financial Viability"  
4

5 MR. MCGOWAN:

6 Q I think your microphone is off.

7 MS. MCGIVNEY: Sorry, yes.

8 Q And this is a report prepared in -- the draft here  
9 is a 1994 document which did some preliminary work  
10 looking at the commercial viability of the  
11 product?

12 MS. MCGIVNEY: Yes.

13 Q And the conclusions that you came to are set out  
14 in the body of the report?

15 MS. MCGIVNEY: Yes.

16 Q And you characterize this as preliminary work.  
17 Subsequent to 1994, has the Department continued  
18 to work in this area prior to commencing the PICFI  
19 program?

20 MS. MCGIVNEY: Not that I recall, or that I'm aware of.

21 Q Prior to making a determination to spend many  
22 millions of dollars purchasing licences to support  
23 in-river fisheries, did the Department not do any  
24 further investigations as to the commercial  
25 viability of the product that was available or the  
26 commercial viability of small inland fisheries?

27 MS. MCGIVNEY: There might -- I can't recall specifics,  
28 but I believe there was some work with some of the  
29 First Nations in terms of looking at this through  
30 some of our other programming, but I just am not  
31 recalling the specifics.

32 Q Mr. Rosenberger was asked some questions about  
33 this -- certainly, if that hasn't been marked, the  
34 next exhibit, please.

35 THE REGISTRAR: Exhibit 1424.

36 MR. MCGOWAN: I think actually it is already 1223.

37 THE REGISTRAR: Oh, I'm sorry.

38 MR. MCGOWAN: Mr. Lunn, just to confirm, the document  
39 on the page is marked 1223?

40 MR. LUNN: It's 1423.

41 MR. MCGOWAN: Oh, 1423, thank you.

42 Q Mr. Rosenberger made reference to an analysis that  
43 had been done of a fishery conducted by the  
44 Okanagan Nation Alliance. Are you familiar with  
45 that report? Yes, you're nodding.

46 MS. MCGIVNEY: Yes, I've heard of it.

47 Q And just to be clear, these are not Fraser River

1 fish, nor are the sockeye, correct, that were  
2 harvested in this fishery?

3 MS. STEWART: Those are Columbia River runs going into  
4 Osoyoos Lake.

5 Q If we could go, please, to page 18 of this  
6 document? I take it back, they are sockeye,  
7 pardon me, but they're not Fraser River sockeye.  
8 I'm at the report at our Tab 59. Maybe just start  
9 at the first page so the Commissioner can see the  
10 cover page. This is prepared for PICFI by the  
11 Okanagan Nation Alliance; is that correct?

12 MS. STEWART: Yes.

13 Q And I just thought we ought to -- now that  
14 Canada's provided us with the report after Mr.  
15 Rosenberger's testimony, or alerted us to it, I  
16 thought it would be appropriate to enter it.  
17 While we're doing that, if we turn to page 18, the  
18 document page 18. If we look at the gross margin,  
19 the very bottom line of this page, if we enlarge  
20 the chart, there are four different fisheries that  
21 appear to have taken place, the seine in Osoyoos,  
22 a troll in Osoyoos, a gillnet in the river and a  
23 gillnet in Osoyoos.

24 As I read this, I read each of those  
25 fisheries coming up at a loss ranging from \$300-  
26 some-odd to over \$16,000. Has the Department  
27 taken any steps to address this situation? Have  
28 they made a determination whether fisheries that  
29 result in losses like this will be continued to be  
30 supported moving forward after the expiry of  
31 PICFI?

32 MS. STEWART: I think there's a couple of  
33 considerations at play here. Number one, as I've  
34 said, it's very early days. There really have not  
35 been very many opportunities for the Okanagan  
36 Nation Alliance to have commercial fisheries.  
37 They're doing a lot of work on marketing and  
38 developing of markets. So I suggest that those  
39 numbers reflect the fact that this is very early  
40 days in the start-up operation.

41 I would also suggest that that's probably in  
42 line with most lines of business, whether it be a  
43 fishery or any other kind of business, that the  
44 start-up phase is not necessarily the most  
45 profitable.

46 MR. MCGOWAN: If this report could be the next exhibit,  
47 please?

1 THE REGISTRAR: Exhibit 1424.

2  
3 EXHIBIT 1424: PICFI-Okanagan Nation  
4 Alliance-Pilot Demo Fisheries 2010-2011  
5

6 MR. MCGOWAN: If we turn to our next tab, please, Tab  
7 60. This moves us into the Fraser River fishery  
8 and this was a report on "Near terminal commercial  
9 fisheries development program 2007". It appears  
10 to have been prepared by the --

11 MS. STEWART: Secwepemc.

12 Q -- Secwepemc - thank you - Fisheries Commission.  
13 And subsequent to Mr. Rosenberger testifying, the  
14 Department has alerted us to this document. So  
15 I'll perhaps just show it to you and enter it as  
16 an exhibit.

17 If we go to page 23, please, the portion  
18 where they do the assessment of -- the assessment  
19 of profitability starts, and that's document page  
20 23. The bottom of the page there:

21  
22 Potential profitability was assessed for only  
23 two fisheries that were successful in  
24 catching fish.  
25

26 If we flip over the page, it looks like they  
27 actually assessed profitability for two fisheries  
28 and one fish market.

29 So starting with the Kamloops gillnet  
30 fishery, the result of this assessment:

31  
32 The average catch of 15 chinook per night in  
33 the Kamloops Lake gillnet fishery was not  
34 sufficient for the fishery to be profitable  
35 regardless of how long it operated. The  
36 fixed cost was \$300 and the variable cost was  
37 \$900 per night.  
38

39 Is this a report you're familiar with?

40 MS. STEWART: Yes.

41 Q So that's -- and if I read it over 10 days, 150  
42 fish costing a little bit north of \$9,000 to  
43 catch.

44 MS. STEWART: Yes.

45 Q Okay. And to be clear, these were not sockeye,  
46 they were chinook.

47 Moving next to the assessment of the Thompson

1 River Late Beach seine fishery, starting at the  
2 second sentence:  
3

4 Neither the female pink catch nor the chinook  
5 catch alone was sufficient for the fishery to  
6 be profitable. However, the catch of both  
7 species taken together allowed the fishery to  
8 be potentially profitable by the second day  
9 of operations.

10  
11 And you're familiar with that conclusion?

12 MS. STEWART: Yes.

13 Q And moving to the profitability of the fish market  
14 on the next page, you'll see the chart there, and  
15 if we just flip over one page to the top of page  
16 26, we'll have the conclusion.  
17

18 Only 104 pounds of product was sold per day  
19 at an average price of \$2.69 per pound. At  
20 these sales levels, the fish market could  
21 never approach profitability.  
22

23 So my question is, given some -- some might argue  
24 were at least not immediately successful results  
25 within river fisheries -- what sort of analysis  
26 has the Department done about whether or not the  
27 growing number of in-river fisheries could  
28 potentially be profitable? Is there a document  
29 that sets out an analysis of what the Department  
30 has determined in that regard?

31 MS. STEWART: I'm not aware of any document that's been  
32 written that sort of assesses these results.  
33 Again, I would say we're in early days of these  
34 fisheries and it does take some exploration.  
35 There hasn't been a commercial fishery in any of  
36 these areas before, so there's some exploration  
37 around what kind of product is most marketable and  
38 not necessarily just a flesh market but also the  
39 roe, or dried product, that sort of thing.

40 So there's a lot of exploration that's  
41 happening just to test out where the market could  
42 go and could grow. There would also be a lot of  
43 potential streamlining that could take place or  
44 improvements in the way that production takes  
45 place to narrow that margin.

46 Q You say that none of these commercial fisheries  
47 were taking place previously. In-river commercial

1            fisheries through pilot sales and economic  
2            opportunity fisheries have been occurring since  
3            1992; is that right?

4        MS. STEWART: Those are in the area where the river is  
5            quite broad, and there are gillnet fleets in that  
6            area as well. The Okanagan fishery and the  
7            Secwepemc fishery and up in the middle and upper  
8            reaches of the Fraser have not had commercial  
9            salmon fisheries.

10           So the fishery is a little -- it's quite  
11           different in comparison to food, social and  
12           ceremonial fishery. It has to be conducted in a  
13           different way, so those explorations are happening  
14           now.

15        Q        The fisheries you were referring to in the wider  
16            part of the river were for -- they were authorized  
17            sales fisheries and have been taking place since  
18            the early '90s, correct?

19        MS. STEWART: Yes, with the Sto:lo, Musqueam,  
20            Tsawwassen First Nations.

21        Q        You say that these fisheries are --

22        THE COMMISSIONER: Ms. Gaertner?

23        MS. GAERTNER: Mr. Commissioner, I'm not sure if you're  
24            going onto another topic or not, but this is a  
25            report that's been completed by my client, and I  
26            need to stand up so the record is clear. In both  
27            of the previous questions, when Commission counsel  
28            took the witnesses to the profitability of the  
29            fisheries, he failed to read the remaining  
30            sentences in the same paragraph that reflect when  
31            breakeven points are found and the observations on  
32            that.

33           So I think for the record, I think it's  
34           important that the two sentences following the  
35           sentence that was written -- so on page 24, he  
36           read the first two sentences. Below the graph it  
37           reflects:

38  
39                    However, if the production rate could be  
40                    raised to an average of...

41  
42           And it continues. Then on the second reference  
43           when he goes to page 26, he read the first  
44           sentence and the second sentence. However, he  
45           doesn't read the next sentence which refers to a  
46           breakeven point even at that point in time and the  
47           observations that are made.

1 I think for the record, at least that should  
2 be reflected.

3 MR. MCGOWAN: Certainly. I'm happy to cover that.

4 Q If we turn back to page 26 of the document, the  
5 fish market that was conducted was able to sell  
6 104 pounds at 2.69 per pound. Do you see that?

7 MS. STEWART: Yes.

8 Q The next paragraph goes on to break even, that  
9 would potentially be reached after eight days of  
10 sales if the sales per day could be tripled, and  
11 the sales price increased from 2.69 to \$4.00 a  
12 pound. That was the conclusion, correct?

13 MS. STEWART: Yes.

14 Q And if we turn back to the Kamloops gillnet  
15 fishery which operated for ten nights with a \$900  
16 a night cost, catching 150 fish. If we go down  
17 below the chart we see the conclusion:

18  
19 However, if the production rate could be  
20 raised to an average of 20 chinook per night  
21 the fishery could potentially break-even by  
22 the fifth night. Alternatively, if the price  
23 per pound...could be raised to \$4.00 per  
24 pound, the fishery could...break even in 5  
25 nights.

26  
27 That's the conclusion as to what would need to  
28 happen in order for these fisheries to break even,  
29 those changes.

30 MS. STEWART: According to this report, yes.

31 MR. MCGOWAN: If that could be the next exhibit,  
32 please?

33 THE REGISTRAR: Exhibit 1425.

34  
35 EXHIBIT 1425: Near Terminal Commercial  
36 Fisheries Development Program 2007, Final  
37 Report, Apr 2008 [Secwepemc]  
38

39 MR. MCGOWAN:

40 Q Now, Ms. Stewart, you said that you were in the  
41 early days, but PICFI is set to expire shortly,  
42 and do I take it there's no guarantee of any  
43 continuing funds to support these fisheries?

44 MS. STEWART: That's right.

45 Q What plan does the Department have in place to  
46 work with these First Nations on these fisheries  
47 to continue to ensure improvement so that they

1           will be commercially viable operations or  
2           alternatively to support them if they're not self-  
3           sustaining?  
4   MS. STEWART: We're doing work now, some analyses that  
5           we're providing to senior management and decisions  
6           will be made on the future programming that might  
7           be available or what the options might be.  
8   Q       What's the anticipated timeline?  
9   MS. STEWART: Certainly before the end of PICFI.  
10  Q       Has that work commenced?  
11  MS. STEWART: Yes.  
12  Q       Have there been any preliminary conclusions as to  
13           what the Department's intentions are with respect  
14           to continuing to grow in-river commercial  
15           fisheries?  
16  MS. STEWART: There's work ongoing and those  
17           discussions haven't been concluded and I can't  
18           speak to them.  
19  Q       Has the Department come to any preliminary  
20           conclusion as to whether it can, from a financial  
21           perspective, continue to support these fisheries  
22           without funds from PICFI?  
23  MS. STEWART: Again, that's discussions that are  
24           happening at senior management levels.  
25  Q       Have you been part of those discussions?  
26  MS. STEWART: Some of them, yes.  
27  Q       Leaving aside the discussion, as the Director of  
28           PICFI who's been involved for the last five years,  
29           what conclusions have you come to as to whether  
30           the Department can continue to fund and support  
31           these in-river fisheries without the continuation  
32           of PICFI?  
33  MS. STEWART: Certainly there would be challenges. As  
34           you can see, there are definitely investments that  
35           have to be made on an ongoing basis in both  
36           conducting the fisheries and doing the research  
37           that the ONA and the Secwepemc reports have  
38           enunciated.  
39  Q       PICFI, in its long form, is Pacific Integrated  
40           Commercial Fisheries Initiative. What does the  
41           word "integrated" refer to?  
42  MS. STEWART: With respect to commercial fisheries, one  
43           of the objective of PICFI is that commercial  
44           fisheries that are carried out by First Nations  
45           and by non-aboriginal people be integrated so that  
46           they're conducted following common and transparent  
47           rules. I'll leave it at that.

1 Q What's the Department's position on whether the  
2 increasing in-river fisheries -- is it the  
3 Department's intention to make them available to  
4 First Nations only, or is it the Department's  
5 intention to create in-river fishing commercial  
6 opportunities for non-First Nation organizations  
7 or individuals, or has the decision been made?

8 MS. STEWART: No decision has been made.

9 Q Has the Department turned its mind to that issue?

10 MS. STEWART: In this current PICFI initiative, that  
11 was not something that was contemplated.

12 Q Is one of the challenges faced by First Nations  
13 attempting to operate in-river commercial  
14 operations, the number of fish that have been  
15 making it upriver in a number of the recent years?

16 MR. COMMISSIONER: Mr. McGowan, I wonder if you could  
17 use the microphone? We're just not hearing you.

18 MR. MCGOWAN: Certainly, I apologize.

19 Q Is one of the challenges faced by First Nations  
20 attempting to operate commercial fisheries in-  
21 river the number of fish that have been making  
22 their way upriver in recent years?

23 MS. STEWART: I would suggest that that's probably a  
24 challenge for all salmon fisheries, but with  
25 respect to interior fisheries, that's definitely  
26 an issue. As fish go in their migratory patterns  
27 to the various terminus, those that are available  
28 to be harvested as you go up the system sort of  
29 get fewer as you go up.

30 So the outcome of that, I guess, in terms of  
31 the fisheries that are happening in those areas is  
32 finding the right mix of products to be provided  
33 to the market, and identifying markets. All of  
34 the things that have been enunciated in these two  
35 reports that you've referred to are the kind of  
36 considerations that the First Nations are  
37 undergoing with respect to those fisheries,  
38 because it is different from the coastal  
39 fisheries.

40 MR. MCGOWAN: Thank you.

41 Q I'm going to turn now, Ms. McGivney, to ask you  
42 some questions about the aboriginal fisheries  
43 framework. If we could have our Tab 38 brought up  
44 on the screen, please?

45 THE COMMISSIONER: Mr. McGowan, I don't mean to  
46 interrupt, but I don't know when you want to take  
47 the break. If this is a short set of questions,

1 we can continue on. If you're going to be longer,  
2 we could take the break now.

3 MR. MCGOWAN: I think we can take the break now, Mr.  
4 Commissioner.

5 THE COMMISSIONER: All right.

6 THE REGISTRAR: The hearing will now recess for 15  
7 minutes.

8

9 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)  
10 (PROCEEDINGS RECONVENED)

11

12 THE REGISTRAR: Hearing is now resumed.

13

14 EXAMINATION IN CHIEF BY MR. MCGOWAN, continuing:

15

16 Q Thank you. Ms. McGivney, just before we -- and  
17 Ms. Stewart, just before we broke, I was asking  
18 you about some questions and we went to a couple  
19 of reports on profitability or economic analyses  
20 of the fisheries created through the PICFI  
21 program. Now, a number of the -- the licences  
22 that have been obtained to support these fisheries  
23 were all relinquished through a buy-back program  
24 voluntarily; is that correct?

25 MS. STEWART: Yes.

26 Q Okay. Has there been -- I've been asking you  
27 about questions about an economic analysis of the  
28 viability of in-river demonstration fisheries;  
29 have you -- has the department conducted an  
30 analysis of that type with respect to any of the  
31 conventional commercial fisheries in recent times  
32 for the purposes of doing a comparison?

33 MS. STEWART: I know that there are some reports that  
34 have been produced on exactly that question, the  
35 coastal fisheries, the economic viability, and  
36 those have been done over the years.

37 Q And has the department engaged in the process of  
38 doing any sort of comparison or comparative  
39 analysis?

40 MS. STEWART: I'm not personally aware if there's a  
41 comparison document that's been produced.

42 Q Ms. McGivney, are you?

43 MS. MCGIVNEY: No, I'm not aware.

44 Q If we could have our Tab 38, please? Ms.  
45 McGivney, this document entitled "Aboriginal  
46 Fisheries Framework", that's a document you're  
47 familiar with?

- 1 MS. MCGIVNEY: Yes, I am.  
2 Q I wonder if you could explain for the commissioner  
3 -- I'll start who drafted this document?  
4 MS. MCGIVNEY: This document was drafted through a  
5 coordinated effort of work between the region and  
6 national headquarters. It was drafted from a  
7 series of different decks that were prepared to  
8 explore the ideas around this aboriginal fisheries  
9 framework and this is the culmination of that. So  
10 in terms of the actual people, I contributed to  
11 this. Robert Lamirande contributed to this. He's  
12 a national headquarters treaty policy person. And  
13 a number of other people contributed in different  
14 ways, but this was a document that was approved by  
15 our minister in the Fall of 2009.  
16 Q It was -- the drafting was a coordinated effort  
17 then between Ottawa and the Pacific Region?  
18 MS. MCGIVNEY: Yes.  
19 Q Is the document intended primarily to apply to the  
20 Pacific Region or to apply nationally?  
21 MS. MCGIVNEY: To -- it's intended to apply to B.C.  
22 Q And when was the document finalized to the best of  
23 your recollection?  
24 MS. MCGIVNEY: To the best of my recollection it was in  
25 the Fall of 2009.  
26 Q Is this document --  
27 MR. MCGOWAN: I'm going to ask, Mr. Commissioner, some  
28 of these questions may sound a little bit leading.  
29 I'm trying to tread cautiously to make sure we  
30 don't get into areas that cause Mr. East some  
31 concern.  
32 Q Is this document the culmination of work which  
33 took place through a process that's known as the  
34 Coastwide Framework?  
35 MS. MCGIVNEY: Yes.  
36 Q Okay. What was the -- what's the purpose of this  
37 document?  
38 MS. MCGIVNEY: The purpose of this document was a  
39 recognition that -- there were a number of factors  
40 that have changed the context within which we  
41 manage aboriginal fisheries and the treaty  
42 negotiations. The policies that we've had in  
43 place for management of aboriginal fisheries were  
44 brought in in 1993 and then more recently - I've  
45 forgotten the date - I think it's 2007 the  
46 integrated aboriginal policy framework.  
47 Over this time we've had new legislative

1 context, the **Oceans Act** and **SARA** Act have come in.  
2 We've had new legal input in terms of different  
3 court cases that have come. Certainly the status  
4 of the resource has changed. There's been a big  
5 change in terms of environmental climate,  
6 conditions, et cetera. And on the treaty front, I  
7 think there's been a sort of a recognition that  
8 the programs that we have had in place were meant  
9 to be a bridge to treaty and with the objective  
10 that treaty was kind of the end point that we  
11 would be getting to. And I think at this point  
12 we've realized that the treaty process is going --  
13 has not moved as quickly as was originally  
14 anticipated and that in the near future, we're  
15 still likely to have to deal with First Nations in  
16 treaty and First Nations out of treaty. And so  
17 the context of this report was to kind of bring  
18 that together to review, look back at those  
19 policies in the context that we're going to have  
20 to move forward with managing the fishery in a  
21 context that has both treaty First Nations and  
22 non-treaty First Nations.

23 Q Was it the Coastwide Framework process that  
24 ultimately led to this document?

25 MS. MCGIVNEY: Yes.

26 Q Okay. I wonder if you can, in general terms,  
27 explain to the commissioner the process undertaken  
28 through the Coastwide Framework?

29 MS. MCGIVNEY: The concept under the Coastwide  
30 Framework was to look at what the overall  
31 expectation was at the end of treaties in terms of  
32 what the actual allocations might be for First  
33 Nations versus non-First Nations, the expectation  
34 that we needed to work towards a fishery that had  
35 room for all within it and what the actual  
36 outcomes might be of aboriginal shares versus non-  
37 aboriginal shares.

38 There was an element of looking at the  
39 changes within the treaty process and how  
40 fisheries arrangements were working within the  
41 fisheries within the treaty process and how those  
42 would integrate with other processes for managing  
43 aboriginal fisheries.

44 Q That process was an internal process conducted by  
45 DFO over a period of years?

46 MS. MCGIVNEY: Yes. And we also work closely with  
47 Department of Indian and Northern Affairs.

1 Q Throughout that process there were many documents,  
2 perhaps thousands, which set out the progression  
3 of the department's thinking; is that fair?

4 MS. MCGIVNEY: Yes.

5 Q Is this document a document -- tell us how this  
6 document relates to those other documents and does  
7 it represent a summary of the conclusions reached  
8 by the department through that process?

9 MS. MCGIVNEY: Yes. This is a document that brings --  
10 that basically reflects the outcome of all of  
11 those other documents. It received the approval  
12 of our minister and this is the current status of  
13 our policy with regard to this issue.

14 Q Did this document set out in a general way or  
15 specific way the department's position as  
16 determined through the Coastwide Framework  
17 process?

18 MS. MCGIVNEY: Yes, it does.

19 Q Does the document set out in all ways that have  
20 been determined the intended direction or proposed  
21 approach of the department to managing aboriginal  
22 fisheries?

23 MS. MCGIVNEY: Yes, it does to the point where we  
24 arrived at with that -- I think the other thing in  
25 terms of timing is this document was approved in  
26 2009 and it was shortly after that that this  
27 commission was announced and there's a recognition  
28 that further development, there's still further  
29 development required of this and that that will be  
30 informed by the outcome of this commission.

31 Q Is this the most recent version of the document  
32 then?

33 MS. MCGIVNEY: Yes.

34 Q And it's in the form here as approved by the  
35 minister?

36 MS. MCGIVNEY: Yes, I believe so.

37 Q Either prior to it being approved by the minister  
38 or subsequent to that, has the department engaged  
39 any of the other resource users or First Nations  
40 in the consideration of this document or the  
41 conclusions reached in it?

42 MS. MCGIVNEY: Not directly on the specific document;  
43 however, the department has engaged with First  
44 Nations and commercial industry and recreational  
45 fishers as a regular course of business. This  
46 document -- it reflects a lot of what came out  
47 through a variety of different reports and

1 discussions the joint task group and the First  
2 Nations fisheries panel which led to the Pacific  
3 Fisheries Reform initiative of the department that  
4 then also the First Nations Fisheries Panel and  
5 the First Nations Fisheries Action Plan. We have  
6 ongoing bilateral discussions with First Nations  
7 and so all of those messages that come through  
8 those things were considered in developing this,  
9 but the actual consultation on the document has  
10 not occurred.

11 The other thing I wanted to mention was also  
12 there was a process, I think it was 2009, called  
13 the Common Table where Canada, B.C. and the First  
14 Nations Fisheries Summit gathered to discuss  
15 elements around treaty and some of the roadblocks  
16 to moving forward in treaty and some of the ideas  
17 that were brought forward with that were also  
18 considered through this process.

19 Q As a result of the conclusions or determinations  
20 expressed in this document has the department  
21 created any new broad policies or amended any of  
22 the key policies related to aboriginal fishing  
23 subsequent to this document being approved?

24 MS. MCGIVNEY: Not -- there's not been any formal  
25 changes at this point. I think that this lays out  
26 further work to be done, but there have not been  
27 specific policies that have been changed at this  
28 point as a result of this.

29 Q So the 1993 policy and the subsequent integrated  
30 aboriginal policy framework remain in the form  
31 they were prior to this document at present?

32 MS. MCGIVNEY: Yes.

33 Q And you made reference to the Common Table in  
34 2008. I think my recollection is it was -- or  
35 2009. I think my recollection is it was 2008; do  
36 you -- are you...?

37 MS. MCGIVNEY: Whatever --

38 Q Okay.

39 MS. MCGIVNEY: -- the documents say. My memory is  
40 just... But I wasn't sure which year.

41 MR. MCGOWAN: We have a reference in the Policy and  
42 Practice Report on page 111, Mr. Commissioner.  
43 Perhaps I'll just put that on the record.

44 Q I'd like to turn now to the document and ask you  
45 some specific questions about it and just sort of  
46 move through it. Starting at the top under the  
47 fisheries environment, the first statement:

1 Fish is a key element of federal treaty  
2 offers...

3  
4 And it carries on from there into the first  
5 bullet:

6  
7 Food, social, ceremonial allocation details  
8 that are embedded in treaties...

9  
10 Which, of course, are enduring. Does this  
11 document anywhere in it, the aboriginal fisheries  
12 framework, go any lengths to articulating in any  
13 more detail the department's definition of food,  
14 social or ceremonial?

15 MS. MCGIVNEY: Further than this definition here? Not  
16 that I know.

17 Q Okay.

18 MS. MCGIVNEY: The document -- I don't believe so.

19 Q I'd like to move to the second bullet. It said:

20  
21 The negotiation and implementation of First  
22 Nation fishing arrangements in B.C. treaties  
23 have become increasingly challenging. In  
24 recent years, several issues have emerged  
25 including...

26  
27 And it's the first two on there I wanted to ask  
28 you about.

29  
30 Fish allocations in recent B.C. treaties  
31 have raised concerns that, if  
32 allocations are extrapolated to all  
33 groups, opportunities for non-commercial  
34 (sic) and recreational fisheries would  
35 be significantly curtailed.

36  
37 Is that a concern that you became aware of in the  
38 early stages of finalizing some of the treaties?

39 MS. MCGIVNEY: This is a concern that was raised more  
40 publicly.

41 Q Sorry. I'll just -- I'll stop you. I see Ms.  
42 Schabus has a comment.

43 MS. SCHABUS: Yes, Mr. Commissioner, just for the  
44 record, my friend read in non-commercial and non-  
45 recreational fisheries but it's non-aboriginal  
46 commercial and recreational fisheries.

47 MR. MCGOWAN: Thank you for that correction. I misread

1 the paragraph.

2 Q In any event, it is as it's stated on the document  
3 and if -- perhaps you could just articulate the  
4 concern that was raised there and the department's  
5 response.

6 MS. MCGIVNEY: So the concern has been raised by others  
7 and that given the existing treaties, if that was  
8 to be extrapolated to other aboriginal groups that  
9 there may not be enough allocation for non-  
10 aboriginal purposes. That was one of the concerns  
11 that had been raised. The department has looked  
12 at -- through the aboriginal fisheries framework,  
13 there's an element that does address allocations  
14 looking at a broad end point. None of the  
15 materials that the department had suggested that  
16 this would, in fact, be a concern but the  
17 information that was being raised publicly was  
18 that there was an interest in having an  
19 identification of what the end point might be.

20 Q Okay. Thank you. Was that one of the -- were  
21 these concerns one of the factors that led to the  
22 department engaging in the Coastwide Framework  
23 process?

24 MS. MCGIVNEY: Yes.

25 Q I'm going to come back to one of the bullets there  
26 later on, but for this -- at this point I'd like  
27 to jump down to the heading "B. Aboriginal  
28 Fisheries Framework" and it says:

29  
30 The Aboriginal Fisheries Framework (the  
31 Framework) --

32  
33 And I'll just stop there. That reference is to  
34 this very document, is that right?

35 MS. MCGIVNEY: Yes, it is.

36 Q All right.

37  
38 The Aboriginal Fisheries Framework provides a  
39 more coherent, policy-based approach to  
40 addressing Aboriginal participation in B.C.  
41 fisheries and managing Section 35 rights,  
42 both inside and outside of treaty.

43  
44 So there's reference to the framework providing a  
45 more coherent and policy-based approach. Is it  
46 this two-and-a-half-page document that provides  
47 the more coherent and policy-based approach?

1 MS. MCGIVNEY: It's -- I think this document lays out  
2 the basic framework and there's more work to be  
3 done to lay out that policy.

4 Q How does this policy in this -- in this two and a  
5 half pages provide a more coherent and policy-  
6 based approach to addressing aboriginal  
7 participation in the fishery?

8 MS. MCGIVNEY: I think it's the context that we would  
9 be managing to a future that includes both treaty  
10 and non-treaty First Nations and that we would  
11 look at the policy within -- the policies within  
12 that context.

13 There's key principles within this. There's  
14 having the broad allocation end points identified  
15 and the options of looking at new approaches to  
16 manage that would lead to providing this clearer  
17 policy-based approach to moving forward. So  
18 there's still more work to be done to support  
19 getting to that.

20 Q Okay. I take it from this bullet and what you've  
21 just said that the department has determined that  
22 a more coherent and policy-based approach was  
23 required.

24 MS. MCGIVNEY: Yes.

25 Q What was the problem with the old approach that  
26 the department identified?

27 MS. MCGIVNEY: I think the challenges with the old  
28 approach was the context that I indicated earlier,  
29 that we have been working towards a paradigm  
30 essentially where treaties would provide all the  
31 certainty and the clarity and the programs that we  
32 had were just an interim measure to get there and  
33 that now we're recognizing that treaties aren't  
34 going to come along as quickly and some First  
35 Nations may not even be interested in treaties;  
36 that we have a future that is going to involve  
37 both treaties and non-treaties and we need to  
38 review our policies and programs in that light.

39 Q Jumping down to the second bullet under "B" and  
40 I'm just going to read the last sentence as a lead  
41 into the last bullet:

42  
43 The objective of the Framework is to achieve  
44 fisheries arrangements that are:

45  
46 And then --

47 MS. MCGIVNEY: Sorry? Could you -- sorry. I'm not

1           sure where you are here.

2           Q     I'm sorry.  Second bullet under the heading  
3           "Aboriginal Fisheries Framework" B on the first  
4           page.  That's right.

5                     And this is just articulating the objectives  
6           of the framework and if you just go to the last  
7           dash under that bullet:

8  
9                             - deliverable, manageable and cost-  
10                            effective over the long-term...

11  
12           Do I take this to be an indication that the  
13           department expects this new approach to be more  
14           cost-effective over the long term?

15       MS. MCGIVNEY:  That's the intent.

16       Q     How is the department intending to achieve a more  
17           cost-effective approach to managing aboriginal  
18           fishing?

19       MS. MCGIVNEY:  The approaches that we may take in terms  
20           of updating the policy and the new fisheries  
21           arrangements, we are looking to evaluate those in  
22           the context of those various options and a number  
23           of options are identified within this framework.  
24           We need to look at those in the context of cost-  
25           effectiveness and the fact that we need to develop  
26           things that are cost-effective and manageable.

27       Q     Can you give me any specific examples of what  
28           might change to lead to a more cost-effective  
29           approach?

30       MS. MCGIVNEY:  I think --

31       Q     Any major structural changes that are  
32           contemplated?

33       MS. MCGIVNEY:  Part of the challenge that had been  
34           raised was the costs related to some of the  
35           treaties where they were very small -- smaller  
36           communities, aimed at smaller communities.  The  
37           treaty process is based on groups self-identifying  
38           and initially there had -- well, one example is  
39           the Nuuchah-nulth had entered into the treaty  
40           process as a group of, I think it was 13 or 14  
41           First Nations.

42                     Over time, some of those First Nations did  
43           not agree to the AIP and in the end we ended up  
44           with a treaty with five of those First Nations and  
45           now I believe there's at least one of the First  
46           Nations within the Nuuchah-nulth that are seeking  
47           treaty on their own, as well.  So moving from

1 broader groupings of First Nations to more  
2 individual ones was creating costs associated with  
3 the treaties and there's also costs associated  
4 with the specific management arrangements that  
5 were being worked within treaties. So these were  
6 some of the things that were brought into  
7 consideration in coming forward with the thought  
8 that we need to be looking at processes that look  
9 at how we can manage -- how we're managing the  
10 fisheries as a whole and what are the support  
11 processes that we need to do that.

12 Q Thank you. If we can flip over the page to page 2  
13 of this document under the heading "Allocation  
14 Strategy" to the fourth bullet, please. If you can  
15 enlarge that bullet. Start with the first:

16  
17 B.C. First Nations' allocations (FSC and  
18 commercial), provided through existing  
19 arrangements, amount to about 30% of the  
20 salmon...

21  
22 I take it this 30 percent, there are many years  
23 when that number wouldn't be an accurate  
24 reflection of the number that were allocated to  
25 First Nations.

26 MS. MCGIVNEY: This number reflects averaging over a  
27 period of -- certain period of years and as you've  
28 pointed out, there have been some years - and I  
29 believe -- now I'm getting my -- 2009 --

30 Q Yes.

31 MS. MCGIVNEY: -- was a year where there was very  
32 little FSC harvest but whatever was harvested was  
33 primarily First Nations if not all First Nations.  
34 So when you look at this on a year-by-year basis  
35 because of the fluctuation of salmon stocks and  
36 the priority of the food, social, ceremonial  
37 access, there may be some years where in very,  
38 very low runs the First Nations share is a greater  
39 percentage. So this is looking at a series of  
40 years. I can't recall the actual years at this  
41 point, but it would depend on the period of years  
42 that is being looked at, reflecting sort of those  
43 relative abundances.

44 Q Right. So if we look at 2009 that number would be  
45 a hundred percent?

46 MS. MCGIVNEY: Yes. And it would not include  
47 commercial. It would --

- 1 Q Right.  
2 MS. MCGIVNEY: Even communal commercial. It would just  
3 be FSC.  
4 Q In 2010 it might be less than 30 percent?  
5 MS. MCGIVNEY: It would have been -- it might have --  
6 yeah, actually, I don't know what the percentages  
7 were in 2010.  
8 Q So there's wide variability depending on -- in  
9 part because of the priority of FSC from year to  
10 year if we look at it on a percentage basis?  
11 MS. MCGIVNEY: Yes. Looking at things on an annual  
12 basis, need to reflect -- will reflect the  
13 relative abundance of the stocks.  
14 Q The department has through this process identified  
15 an end point which is a number that it intends to  
16 be allocated or proposes to be allocated to First  
17 Nations; is that fair?  
18 MS. MCGIVNEY: The strategy proposes overall percentage  
19 for salmon and another percentage for non-salmon.  
20 Q There is a number somewhere.  
21 MS. MCGIVNEY: A percentage number.  
22 Q Yes. And that's what I -- it's expressed as a  
23 percentage.  
24 MS. MCGIVNEY: Yes.  
25 Q Does expressing it as a percentage cause  
26 difficulties given the wide variability of stocks  
27 and the need to prioritize FSC?  
28 MS. MCGIVNEY: This is definitely looking at what that  
29 percentage means and how that percentage would be  
30 implemented is very -- is complex. There's a  
31 number of different salmon species, for instance,  
32 just speaking of salmon and as you've indicated,  
33 the split between food, social, ceremonial  
34 allocation component of that and the commercial  
35 component of that is much more -- is complex.  
36 There's not only different species, but there's  
37 different watersheds and different interests by  
38 First Nations within that, so how to actually  
39 implement and apply that is a very complex  
40 process.  
41 Q If we just look at --  
42 MS. MCGIVNEY: Sorry, just taking into account a number  
43 of different factors.  
44 Q Just to make sure we're clear, in that bullet the  
45 strategy establishes a coastwide allocation  
46 outcome of "XX" percent for salmon. That "XX"  
47 does that include both FSC and commercial?

1 MS. MCGIVNEY: Yes, it does.

2 Q Now, as the department has done there with  
3 allocation by percentage, a number of the --  
4 several of the treaties which have either have  
5 been finalized or in the process of being  
6 negotiated contain allocations by way of  
7 percentage; is that fair?

8 MS. MCGIVNEY: The percentages in treaties that have  
9 been allocated within the treaty, the food, social  
10 -- the domestic, it's referred to as the domestic  
11 allocation, is usually identified by a formula  
12 that would involve percentages at certain run  
13 sizes and is often kept at some run size level.

14 Q When -- has the department experienced difficulty  
15 where the percentages are very small with  
16 fluctuating in-season numbers managing by way of a  
17 percentage with some groups?

18 MS. MCGIVNEY: It becomes -- the challenges of managing  
19 the fishery, because of the fluctuations, is a  
20 challenge all the time in terms of achieving  
21 allocations for all groups, for whatever groups  
22 that might be, First Nations, non-First Nations,  
23 et cetera. But we work with the best information  
24 possible and try to achieve the objectives.

25 Q One example of difficulties that were -- that  
26 arose of this type might be seen with the  
27 Tsawwassen fisheries in 2009; are you familiar  
28 with that example?

29 MS. MCGIVNEY: I recollect it vaguely, but I'm not  
30 really close to it, but I can perhaps --

31 Q Well, let me bring up the document --

32 MS. MCGIVNEY: Okay.

33 Q -- and refresh your memory and see if we can ask a  
34 couple of questions about it.

35 MR. MCGOWAN: Before we go though, could I please mark  
36 the Aboriginal Fisheries Framework as the next  
37 exhibit?

38 THE REGISTRAR: Exhibit number 1426.

39

40 EXHIBIT 1426: Aboriginal Fisheries Framework

41

42 MR. MCGOWAN: If we could turn to our Tab 49, document  
43 page 11.

44 Q Ms. McGivney, this is the Tsawwassen First Nations  
45 post-season fisheries report for 2009. You're  
46 familiar with this document?

47 MS. MCGIVNEY: Yes, I've seen it.

1 Q I'm not asking if you remember every word. I know  
2 you see a lot of documents. Just looking at the  
3 final paragraph, it articulates an example of some  
4 difficulties that arose and it appears through no  
5 fault of the Tsawwassen fishers, who appear to be  
6 making their best efforts to fish according to the  
7 terms of the treaty. It says:

8  
9 The [appropriate] Tsawwassen FSC allocation  
10 for sockeye was difficult to determine in  
11 2009 because of the large changes in the  
12 Fraser in-season estimate of Tsawwassen FSC  
13 sockeye allocation (1,610) computed just  
14 prior to TFN's second sockeye fishery on  
15 August 25th, 2009 was higher than the final  
16 Tsawwassen FSC sockeye catch. The  
17 preliminary post-season estimate of FSC  
18 sockeye allocation was 830 based on CTAC.

19  
20 So the estimate of what their allocation would be  
21 went from 1600 down to 800 causing them to have  
22 over-fished their allocation unknowingly because  
23 of the time they went fishing it was thought to be  
24 higher. Is that an example of some of the  
25 difficulties that are experienced by the  
26 department managing by percentage quotas,  
27 especially when the percentages are very small and  
28 given to different user groups?

29 MS. MCGIVNEY: I think what this is reflecting is not  
30 so much the challenge of managing to the different  
31 percentages, but it's reflecting an element that  
32 was included within the Tsawwassen treaty which is  
33 overage and underage accounting, which means that  
34 looking sort of after the fact, you've got to re-  
35 adjust based on what the expectations were. And  
36 with -- this reflects part of the challenge with  
37 that element of looking at overages and underages  
38 because the rest of the fishery is not managed on  
39 that basis.

40 So if the whole fishery was managed on a  
41 looking at some past end-of-season accounting and  
42 accounted for in that way, then there'd be systems  
43 for working overages and underages out. But right  
44 now, because we haven't moved to an entirely  
45 share-based fishery, the challenge is in coming  
46 back to the -- is looking post-season and re-  
47 evaluating. So managing to small shares for small

1 groups has some challenges with it because of just  
2 the operational nature of looking at -- managing  
3 to those levels, but I think this also reflects  
4 the challenges with the overage and underage  
5 clauses associated with the treaty.

6 Q Thank you. An overage was not applied in this  
7 instance; is that correct? I can perhaps --

8 MS. MCGIVNEY: I can't recall. I think the discussions  
9 occurred -- are --

10 Q Perhaps I'll just read you the last few sentences  
11 of this page:

12  
13 Given the large uncertainty about the  
14 abundance of sockeye returning to the Fraser  
15 River in 2009 and the record low sockeye  
16 catch by Tsawwassen First Nations fisheries,  
17 the JTC --

18  
19 Which is, I think, the Joint Technical Committee.

20  
21 -- recommended to the JFC that the 2009  
22 allocation for sockeye be set equal to the  
23 TFN sockeye catch (i.e., no carry forward for  
24 sockeye). The JFC accepted this  
25 recommendation.

26  
27 MS. MCGIVNEY: Yes.

28 Q So there was no overage applied.

29 MS. MCGIVNEY: There's no overage applied. But the  
30 discussion -- the discussion comes in because of  
31 the fact of trying to look at that clause and  
32 evaluate whether that clause is applicable or not.

33 Q So the allocation was exceeded. No overage was  
34 applied. And the allocation was adjusted to  
35 reflect that.

36 MS. MCGIVNEY: Yes. And the fishery was managed based  
37 on the best information available at the time.

38 Q Okay. I'm going to move now to ask you some -- a  
39 few questions about co-management. Through the  
40 work done through a process like the form and the  
41 Roadmap and through the Coastwide Framework  
42 process has the department arrived at a place  
43 where it is committed to engaging with First  
44 Nations in a co-management relationship with  
45 respect to management of Fraser River fisheries?

46 MS. MCGIVNEY: Sorry. Your question is is the  
47 department committed to managing in a co-

1 management --

2 Q Yes.

3 MS. MCGIVNEY: -- relationship with First Nations?

4 Q Yes.

5 MS. MCGIVNEY: I believe so. We -- there's a number of  
6 different areas where we work with First Nations  
7 to try to achieve that.

8 Q Okay. Is this a clear direction in terms of a  
9 commitment that's come to you from senior  
10 management of DFO?

11 MS. MCGIVNEY: It's a commitment that's documented in  
12 the Integrated Aboriginal Policy Framework, which  
13 outlines co-management and working together  
14 towards co-management. It's the basis for the  
15 AAROM program. It's also a key component of the  
16 Aboriginal Fisheries Strategy program and also  
17 it's a key element brought forward in the new  
18 PICFI initiative.

19 Q Are you able to articulate for the commissioner  
20 the extent of the department's commitment? To  
21 what extent is the department committed to  
22 involving First Nations in management of the  
23 fishery and to what extent does the department --  
24 where does the department sort of draw the line  
25 and say this is what we're hanging onto and  
26 managing ourselves? Or has the department landed  
27 on those matters?

28 MS. MCGIVNEY: I think this relates back to some of the  
29 basically an understanding of what is co-  
30 management, what does it involve. Certainly from  
31 a management of the fishery there are a number of  
32 different elements of co-management. There's the  
33 information about the fishers and information  
34 about the stocks. There's the planning processes,  
35 where the fisheries and the actual implementation  
36 of the fishery and the post-season evaluations, so  
37 there's a broad spectrum of elements around co-  
38 management and I think there's different areas  
39 that we work with First Nations in AFS. We work  
40 with First Nations at a bilateral level to do a  
41 number of projects and provide some of that  
42 information, some of the catch monitoring, some of  
43 the stock assessment information, et cetera. So  
44 it's a difficult question in terms of saying what  
45 extent.

46 Certainly in terms of co-management runs a  
47 full spectrum of sort of information and decision-

1 making and at what level things are occurring and  
2 certainly I think the department is willing to  
3 enter into arrangements with First Nations to try  
4 to work together to come out with jointly-agreed  
5 approaches and plans.

6 MR. MCGOWAN: If we could have Exhibit 1187, please?

7 THE COMMISSIONER: Mr. McGowan, I think Ms. Stewart had  
8 something she wanted to add.

9 MR. MCGOWAN:

10 Q Yes, certainly. Please. While we're going there,  
11 please offer...

12 MS. STEWART: I was just going to add that the PICFI  
13 initiative has resources available and is -- has  
14 as one of its objectives to facilitate co-  
15 management, not only between the department and  
16 First Nations but between First Nations and First  
17 Nations, between multi-stakeholder and First  
18 Nation collaboration, so looking at various  
19 aspects of co-management.

20 MR. MCGOWAN:

21 Q If we could go, please, to page 20 of this  
22 document. That's the document page number. And  
23 I'm looking at the top left quarter of this page  
24 under the heading "Co-Management", is this still  
25 the department's operating definition of co-  
26 management?

27 MS. MCGIVNEY: This is one of the department's  
28 approaches to it. There's been a lot of work, as  
29 Julie says, current -- more recently, looking at  
30 developing a co-management framework and trying to  
31 come up with different -- coming up with  
32 definitions. This definition is sort of a  
33 visionary definition here. It's looking towards  
34 the future of sharing authority for fisheries  
35 management. It -- currently our **Fisheries Act**  
36 does not -- limits the minister, it provides the  
37 minister with absolute discretion with regards to  
38 fisheries management decisions.

39 There's other elements though that First  
40 Nations can bring forward in terms of authorities  
41 within their own jurisdictions, for instance, the  
42 ability to authorize the fishers that are going to  
43 fish on their behalf.

44 Q The first bullet, the last sentence is:

45  
46 Co-management will eventually encompass the  
47 sharing of authority for fisheries

1 management.

2

3 Does that contemplate the minister giving up his  
4 ultimate authority, that phrase?

5 MS. MCGIVNEY: I think it does and I think at the time  
6 there had been proposals being forwarded to  
7 revisit the **Fisheries Act** that might address that  
8 co-management element.

9 Q And is there a further reflection of that thinking  
10 in the second bullet says:

11

12 It is the policy of DFO to shift from top-  
13 down centralized management of the fisheries  
14 resource by the Department to a shared  
15 stewardship of the resource that includes the  
16 devolution of certain fisheries management  
17 authorities to resource users.

18

19 Is that a further articulation of the  
20 department's, at least at the time this was  
21 drafted, intention to provide more authority to  
22 resource users and perhaps take it away from the  
23 minister?

24 MS. MCGIVNEY: Yes. And I think it also is still to  
25 some degree reflected in our current modernization  
26 of the fishery, trying to make fishers more -- you  
27 know, the shared stewardship element of it, so,  
28 yes, I think it is and it's still supported with  
29 current policies.

30 MR. MCGOWAN: If we go back to the Aboriginal Fisheries  
31 Framework, please which was, I believe, the last  
32 exhibit marked. It's Exhibit 1426. On the first  
33 page, bottom bullet.

34 MR. LUNN: Just one moment.

35 MR. MCGOWAN: It's our Tab 38 if that assists.

36 Q The bottom of the page under the heading -- page  
37 1, under the heading "Key Principles":

38

39 The Framework establishes the following  
40 overarching principles...

41

42 And then skipping ahead to the first bullet:

43

44 - the authority of the Minister of  
45 Fisheries and Oceans to manage fisheries  
46 and fish habitat is respected;

47

1           Is that -- do you take that to be the department  
2           resiling to some extent from the articulation of  
3           the definition of co-management contemplating  
4           sharing of authority?

5       MS. MCGIVNEY: I don't see it as being conflicting. I  
6       think that there's a lot of areas where there can  
7       be shared responsibility with regards to the whole  
8       spectrum of co-management that we've been talking  
9       about, but in the -- I think the **Fisheries Act** as  
10      this identifies, the minister still has to have  
11      the authority at the end. Many of these decisions  
12      or varying decisions and management of the  
13      fisheries, if groups can come together and come to  
14      consensus and recommend that to the minister, the  
15      minister is quite likely to -- if that's sort of  
16      the broad view, most likely to support a decision  
17      unless there are some other factors that haven't  
18      been brought into that consideration. But I don't  
19      see this as being contrary to that. I think  
20      groups can still work together to come to ideas.  
21      Ultimately, if there is a broad range of interest  
22      in the fishery and different views, there needs to  
23      be someone to make a final decision to move things  
24      forward. There's a timing in terms of fisheries  
25      management decisions and things have to move  
26      forward.

27      Q     In terms of moving forward to strengthen co-  
28      management relationships, from your experience  
29      over the years dealing with aboriginal fishing and  
30      in the fisheries generally, what's your assessment  
31      of the importance of effective catch monitoring  
32      and enforcement and resource management, having  
33      those in place to support a co-management  
34      relationship?

35      MS. MCGIVNEY: They're very important. They're part of  
36      the -- again, it comes back to what do we mean by  
37      co-management but to me co-management has that  
38      broader implication. What do we need to manage  
39      the fish? We need to have stock assessment  
40      information, we need to have good catch  
41      monitoring, we need enforcement, we need agreement  
42      amongst the various participants.

43      Q     Right now the approach to co-management or  
44      involving First Nations indecisions or  
45      consultation about the fisheries accomplished  
46      through AAROM bodies and through AFS to some  
47      extent; is that right?

- 1 MS. MCGIVNEY: Yes.
- 2 Q Moving forward, as the co-management relationship  
3 develops, what's the department intention with  
4 respect to these structures and these  
5 organizations? Is the department contemplating a  
6 wholesale reorganization? Is it contemplating  
7 rolling these organizations in to the  
8 relationship? Is it contemplating any change at  
9 all? Is it contemplating adding to it?
- 10 MS. MCGIVNEY: I think it's -- the relationship and the  
11 co-management framework and structures are  
12 evolving and they're being developed jointly with  
13 First Nations. I don't think the department --  
14 they need to be built jointly to have joint  
15 support and buy-in. Our programs are resilient  
16 enough that we can adjust current structures if  
17 that's necessary and if that's what comes out of  
18 that joint work together.
- 19 Q Fairly significant resources are presently  
20 expended on the AAROM program and through AFS; is  
21 that fair to say?
- 22 MS. MCGIVNEY: Yes. AAROM, the AAROM budget is in the  
23 magnitude of six to \$7 million in the Pacific  
24 Region and the AFS co-management component of the  
25 budget is around 14 million.
- 26 Q Okay. And those funds are used, at least in part,  
27 to support some of the bodies and structures that  
28 interact with the department?
- 29 MS. MCGIVNEY: Yes.
- 30 Q And I take it you're aware at least at present --  
31 maybe you can answer this question. At present  
32 are you aware of any of those bodies that take the  
33 position that they can engage with the department  
34 on behalf of their member organizations?
- 35 MS. MCGIVNEY: I'm sorry? Can you repeat the question?
- 36 Q It's a question about representative authority.  
37 Do any of these bodies engage with the department  
38 on behalf of their member nations or member bands?
- 39 MS. MCGIVNEY: Yes, I would say some do, but there --  
40 it's variable in terms of the support that they  
41 might have internally within their organization.
- 42 MR. MCGOWAN: All right. Do you -- maybe I'll just  
43 leave that there. If I might just have a moment,  
44 Mr. Commissioner?
- 45 Q Has the department done an assessment of whether  
46 increased involvement of First Nations in  
47 management of the fishery or other resource users

1           in management of the fisheries will decrease or  
2           increase expenses for the department, increase  
3           costs for the department?  
4   MS. MCGIVNEY: I don't believe there's been a specific  
5           analysis done on that.  
6   MS. STEWART: I'm not aware of any specific sort of  
7           bottom line comparison of costs; however, I would  
8           point out that the benefits for the department of  
9           being in relationships with stakeholders and First  
10          Nations in terms of buy-in to management processes  
11          and that sort of thing is also very important, so  
12          there's got to be a balance there.  
13   Q       Thank you. Do you see the move to co-management  
14          is at all impacted by the ability of the  
15          department to implement the Wild Salmon Policy,  
16          Ms. McGivney?  
17   MS. MCGIVNEY: Sorry? Does it affect the department's  
18          ability to implement the Wild Salmon Policy?  
19   Q       No, does the -- the extent to which the Wild  
20          Salmon Policy has or has not been implemented  
21          impact on the department's ability to move forward  
22          with co-management relationships?  
23   MS. MCGIVNEY: I think they go hand in hand. The need  
24          -- in order to implement the Wild Salmon Policy  
25          the more cooperation and collaboration that we can  
26          have with the various interests in the fishery,  
27          the more likelihood we're going to have the  
28          sustainability of the stocks and the support for  
29          the Wild Salmon Policy. So I think it's very,  
30          very closely linked.  
31   Q       Mr. Commissioner -- or Ms. McGivney, you've made  
32          reference to some numbers and budget numbers. I'm  
33          just going to take a moment now and enter some  
34          exhibits that provide a little more detail about  
35          that. If we could go to our Tab 52, please?  
36   THE REGISTRAR: Mr. McGowan, before you move on, you  
37          were -- on Tab 49, did you want that marked?  
38   MR. MCGOWAN: Let me just double check and make sure  
39          that's not already an exhibit. I don't believe it  
40          is. If it could be marked as the next exhibit,  
41          please.  
42   THE REGISTRAR: Yes. That'll be marked as 1426.  
43   MR. MCGOWAN: Thank you.  
44   THE REGISTRAR: Or 27, I'm sorry.  
45   THE COMMISSIONER: I'm sorry? Twenty-seven?  
46   THE REGISTRAR: Twenty-seven.  
47   THE COMMISSIONER: Thank you.

1 EXHIBIT 1427: Final Tsawwassen First Nation  
2 Post-Season Fisheries Report 2009  
3

4 MR. MCGOWAN: So I'm at our Tab 52 which is a  
5 spreadsheet and if we can get the whole of it on  
6 the screen that would be helpful. Just the whole  
7 of the first page.

8 Q Now, this is the Pacific Region budget 2005/2006  
9 and if we look down under "Fisheries Management"  
10 the budget for your program in 2005 -- sorry, for  
11 aboriginal policy and governance in 2005/2006 was  
12 a little over 26 million?

13 MS. MCGIVNEY: Yes.

14 Q And if we skip to the last page of the chart for  
15 2009 -- or, pardon me -- yes, 2009/2010, by  
16 2009/2010 the aboriginal policy and governance  
17 budget had increased to 56 million; is that right?

18 MS. MCGIVNEY: Actually, the budget is in the column  
19 before that. That's the actual spending.

20 Q Oh, I'm sorry.

21 MS. MCGIVNEY: So it has increased to 60.

22 Q So the budget increased to 60, the actual spending  
23 had increased to 56?

24 MS. MCGIVNEY: Yes.

25 Q And to put that in context, resource management is  
26 really receiving in the neighbourhood of 20  
27 million?

28 MS. MCGIVNEY: Yes.

29 Q Okay. And conservation and protection also in the  
30 range of 20 million?

31 MS. MCGIVNEY: Yes.

32 Q Can you explain the -- what accounts for the  
33 increase of some 30 or so million dollars?

34 MS. MCGIVNEY: Okay. The major part of that increase  
35 is the introduction of the PICFI funding to  
36 support the increased access for First Nations.  
37 There's also some component of additional PICFI  
38 funding for co-management agreements, as well as  
39 during that period the funding for AAROM has been  
40 held nationally and wasn't included in the  
41 previous -- it would be transferred after the  
42 fact, so it wasn't included in the earlier years.  
43 During this time, I think it's a \$5 million more  
44 were added into the Pacific's budget for AAROM.  
45 It wasn't increased. It was just where the money  
46 comes in the table. So that explains the  
47 increase.

49  
PANEL NO. 54  
In chief by Mr. McGowan

1 Q Okay. We asked you to provide us some  
2 information, a bit of a breakdown of that, which  
3 you have done. It's found at our Tab 58.  
4 MR. McGOWAN: Maybe just before we go, we'll mark this  
5 last document as the next exhibit.  
6 THE REGISTRAR: 1428.

7  
8 EXHIBIT 1428: Pacific Region Budget  
9 2005/2006

10  
11 MR. McGOWAN: Thank you. Tab 58 please, Mr. Lunn.  
12 Q This is a breakdown of how that 56 million was  
13 allocated; is that fair, this document on the  
14 screen?  
15 MS. McGIVNEY: Yes.  
16 MR. McGOWAN: Okay. If that could be the next exhibit,  
17 please?  
18 THE REGISTRAR: 1429.

19  
20 EXHIBIT 1429: Breakdown of 2009/2010 budget  
21 for Treaty and Aboriginal Policy Directorate  
22

23 MR. McGOWAN:  
24 Q And if we look at some of the numbers here, some  
25 of this AFS money, for example, AFS co-management,  
26 the AAROM and PICFI money is not spent directly by  
27 DFO but provided to First Nations for expenses  
28 associated with those activities; is that right?  
29 MS. McGIVNEY: Yes. Everything under the grants and  
30 contributions is not money that is direct to DFO.  
31 It's for that.  
32 MR. McGOWAN: Thank you. And if we could just go back  
33 then to Tab -- our Tab 54, marking this one on our  
34 way, which I did already, thank you. Mr. Giles,  
35 did I mark that last Tab 58?

36 THE REGISTRAR: Yes, you did.

37 MR. McGOWAN: Thank you.

38 Q And this is again some further budget information  
39 which the department prepared for the commission,  
40 is that fair, dealing with funding provided to  
41 aboriginal organizations under AFS?

42 MS. McGIVNEY: Yes.

43 MR. McGOWAN: Okay. If that could be the next exhibit?

44 THE REGISTRAR: 1430.

45  
46 EXHIBIT 1430: Funding Information Regarding  
47 DFO Aboriginal Fisheries Programs

1 MR. MCGOWAN: Mr. Commissioner, those are my questions  
2 for this panel.  
3

4 QUESTIONS BY THE COMMISSIONER:  
5

6 Q I wonder if I could just, before I guess Mr. East  
7 is next, but just before he does, just to help me  
8 understand, going back to Tab 38 which has now  
9 been marked and I'm not sure I know the exhibit  
10 number. Is it 1426, is that?

11 THE REGISTRAR: 1426, correct.

12 Q And either panel member can just help me with  
13 this. Turning to that document under "New  
14 Fisheries Arrangements", I'm not sure if there's a  
15 -- page 2. And then, of course, on page 3 there's  
16 "Moving Forward". In that document under that  
17 "New Fisheries Arrangements" there's reference to  
18 regional or watershed ecosystem approaches,  
19 reliable and consistent fisheries monitoring  
20 recording and so on. There's a number of items  
21 mentioned there, including broader collaborative  
22 fisheries arrangements and so on. And then  
23 there's under "Moving Forward" there's mention of  
24 consultation, accommodation and so on.

25 What I'm just trying to understand and  
26 perhaps these panel members can't address it, the  
27 commission has heard a great deal of evidence  
28 around many of these subjects from DFO employees  
29 and others with respect to the consultations and  
30 discussions that have been going on over the past  
31 many years relating to these topics. Do I  
32 understand that to the extent that those  
33 discussions and consultations have been going on  
34 between DFO and First Nations and stakeholders  
35 that those discussions have been informed by the  
36 Coastwide Framework which you tell me is  
37 essentially summarized by the Aboriginal Fisheries  
38 Framework?

39 In other words, when DFO managers or senior  
40 managers have interfaced with First Nations or  
41 stakeholders to discuss co-management, catch  
42 monitoring, stock assessment, Wild Salmon Policy,  
43 that those discussions have been informed by the  
44 principles and the objectives that are articulated  
45 now within this document called the Aboriginal  
46 Fisheries Framework which you testified to was  
47 reflective of the Coastwide Framework?

1 MS. MCGIVNEY: I think it is probably the reverse.  
2 Those discussions have informed this development  
3 of the framework to this stage.

4 Q I see. It's the other way around. So all of  
5 those discussions then have been captured in some  
6 way or another within the language that is now  
7 used in this document?

8 MS. MCGIVNEY: The concepts have supported as the  
9 development of this document.

10 Q Can I then just then follow up with a question Mr.  
11 McGowan asked, perhaps the panel but either one of  
12 you, to the extent that I've heard evidence for  
13 months now about a variety of those subject  
14 matters being a work in progress, for example,  
15 Wild Salmon Policy not fully implemented,  
16 discussions still going on around trying to define  
17 what co-management means and other examples I'm  
18 sure you could give me much more, do those  
19 discussions and those understandings and those  
20 arrangements and the implementation of some of  
21 those subjects have to be completed before this  
22 description of new fisheries arrangements and  
23 moving forward can actually take place?

24 MS. MCGIVNEY: I think all of those processes are --  
25 there's an evolution. There's an implementation.  
26 I'm not sure there's a final sort of process with  
27 any of that. Consultations will evolve over time.  
28 The Wild Salmon Policy will be implemented over  
29 time and this Aboriginal Fisheries Framework will  
30 be revisited based on the input from this  
31 commission and moved, adjusted, potentially  
32 adjusted and moved forward as well, and so -- and  
33 I think there's a -- fisheries continue to be  
34 managed and we work with policies in the state  
35 that they are and they're going to continue to  
36 evolve over time. I wouldn't want to say that any  
37 particular piece needs to wait until another piece  
38 is completed. I think it's important that things  
39 are moving forward.

40 Q So all of those discussions you explain have  
41 informed this document but this document is not  
42 setting timetables or driving the conclusion of  
43 those processes which are ongoing.

44 MS. MCGIVNEY: Correct.

45 THE COMMISSIONER: Thank you. Mr. McGowan, is there  
46 anything arising out of that answer that you  
47 wanted to follow up before Mr. East gets on his

1 feet?

2 MR. MCGOWAN: Mr. Commissioner, perhaps I'll let Mr.  
3 East go now and consider whether I have anything  
4 in re-examination.

5 THE COMMISSIONER: Thank you.

6 MR. EAST: Mr. Commissioner, Mark East for Government  
7 of Canada and with my colleague, Charles Fugere.  
8 I have allocated to me 70 minutes and I see we're  
9 very close to lunch, so what I propose to do  
10 perhaps is ask a question following on your theme  
11 about the Aboriginal Fisheries Framework,  
12 following upon the discussion that Mr. McGowan  
13 initiated and then perhaps continue the rest of my  
14 examination after lunch.

15 So maybe I could perhaps ask a question or  
16 two now.

17  
18 CROSS-EXAMINATION BY MR. EAST:

19  
20 Q If we could go to I believe I'm similarly failing  
21 to remember the exhibit number, but I believe it's  
22 Tab 38, the Aboriginal Fisheries Framework  
23 document.

24 THE REGISTRAR: 1426.

25 MR. EAST: 1426, thank you.

26 Q And I'd like to go again to the discussion about  
27 the status of this document and this is a question  
28 for Ms. McGivney. Under the heading of "B" on the  
29 first page and I just wanted to go to the second  
30 bullet and it says -- and I'll just read the first  
31 line of the second bullet:

32  
33 The Framework will provide clear direction to  
34 address fisheries components of treaties and  
35 improve linkages between fisheries  
36 arrangements inside and outside of treaties.  
37

38 Now, Mr. McGowan asked you a question about  
39 whether this document, the Aboriginal Fisheries  
40 Framework, represents the I guess the final  
41 culmination of the Coastwide Framework. I just  
42 want to be clear on something though. Is it  
43 intended that this document will be the final  
44 product of the Coastwide Framework, this  
45 particular two-and-a-half-page document?

46 MS. MCGIVNEY: No. There's definitely more work to be  
47 done. There's more -- looking at the allocation

1 strategy and implementation of that, looking at  
2 these options that are identified for the new  
3 fisheries arrangements and some of the options  
4 identified under the "Moving Forward" so there's  
5 still more to come.

6 Q And following upon your answer from last time when  
7 you were -- and we talked about this as a  
8 framework, is it fair to say then that this is a  
9 document that expresses an intention as to where  
10 DFO wishes to go on these issues?

11 MS. MCGIVNEY: Yes.

12 Q Okay. I also wanted, and maybe this is my last  
13 question before the lunch. I just wanted to, on  
14 the same page under the same bullet, the third  
15 sub-bullet, and this is one that was read into the  
16 record by Mr. McGowan, but I want to go into it a  
17 bit further because I want to read the entire  
18 bullet into the record. It talks about:

19  
20 - deliverable, manageable and cost-effective  
21 over the long-term --  
22

23 And then the words that I want to add are:

24  
25 -- in order to mitigate the risk of post  
26 treaty litigation.  
27

28 Are you able to speak specifically about the  
29 nature of the post-treaty litigation that was of  
30 concern that was raised in this bullet?

31 MS. MCGIVNEY: My recollection, and it was awhile ago,  
32 was that it was related to the treaty arrangements  
33 that were being negotiated and that if there  
34 wasn't adequate funding or if the situations were  
35 such that the conditions of the treaty couldn't be  
36 deliverable, we needed to kind of look at that in  
37 the context of the change in terms of the  
38 resources and the fish resource, great  
39 fluctuations that we're observing today, as well  
40 as the costs that came associated with treaty and  
41 the requirements to meet the stock assessment and  
42 the catch reporting, et cetera, to ensure that  
43 there's adequate funding to be able to deliver on  
44 that.

45 Q And in the modern treaty context, had there been  
46 concerns raised by First Nations just generally  
47 about issues relating to treaty implementation,

1 modern treaty implementation?

2 MS. MCGIVNEY: Yes, there have been. I think there's  
3 been a number of treaties where -- existing  
4 treaties whereby First Nations have come back  
5 indicating that the implementation funds were not  
6 adequate to meet the obligations of the treaty.

7 Q And is that the context -- is that one of the  
8 contexts or is it the context for this bullet that  
9 we're just discussing?

10 MS. MCGIVNEY: That was the considerations there.

11 MR. EAST: That's my questions. Perhaps this is a good  
12 time to break for lunch, Mr. Commissioner.

13 THE COMMISSIONER: Thank you, Mr. East.

14 THE REGISTRAR: Hearing is now adjourned until 2:00  
15 p.m.

16  
17 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

18 (PROCEEDINGS RECONVENED)

19  
20 THE REGISTRAR: The hearing is now resumed.

21 MR. EAST: Mark East for the Government of Canada,  
22 resuming examination.

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

25  
26 Q I'd like to start the post-lunch period with the  
27 same document that we concluded with, which is  
28 document 1426. Thank you. At the bottom of the  
29 first page there was some discussion in the  
30 morning about the principles, and I just want to  
31 perhaps take a look at those just for a moment.  
32 And it says on the first line, first bullet:

- 33  
34 • The Framework establishes the following  
35 overarching principles which will guide the  
36 development and implementation of fisheries  
37 arrangements, inside and outside of  
38 treaties:...

39  
40 And I'd just like to go to a couple of these if I  
41 may, and then I'll ask a question about them. The  
42 first sub-bullet says:

- 43  
44 - the authority of the Minister of Fisheries  
45 and Oceans to manage fisheries and fish  
46 habitat is respected;

1 And we've talked about that this morning. The  
2 second bullet:

3  
4 - conservation is the first priority;

5  
6 And perhaps I'll choose one more, maybe the second  
7 bullet on the next page:

8  
9 - recognition that all resource users must  
10 be accommodated (a fishery for all);

11  
12 And I could go on and list all of them, but I'll  
13 just point out that there are some eight  
14 principles there. And my question is this: even  
15 though the document says the framework establishes  
16 the following overarching principles, are these  
17 principles new in the context of fisheries  
18 management?

19 MS. MCGIVNEY: No, many of these principles have been  
20 part of previous policies and approaches, and  
21 certainly, for instance, conservation as the first  
22 priority has been a longstanding principle for  
23 fisheries management. So these have been brought  
24 forward from all those previous processes and are  
25 continuing to be principles by which the fishery  
26 will be managed.

27 Q Thank you. Switching topics just -- and  
28 unfortunately, at some point just in my -- in the  
29 next hour I'm going to have to get into that  
30 mundane process of putting in certain documents  
31 into evidence. But I do want to follow up on  
32 some of the questions that were raised this  
33 morning. And the first one I want to talk about  
34 is the setting, the negotiation of the AFS  
35 allocations.

36 And perhaps as an illustration, if we go to  
37 the Policy and Practice Report number 18, and page  
38 41 of that document. And essentially you'll see  
39 this is a table, and it's a table entitled "2009  
40 Fraser River Sockeye Communal Licence Allocations  
41 for FSC - BC Interior". I don't necessarily need  
42 to go into any particular group, but I'm  
43 interested in the right column, and it says  
44 "Fraser Sockeye Maximum Retention Amount (in  
45 pieces)", and taking the first First Nation, the  
46 Carrier Sekani Tribal Council, there's an  
47 allocation of 17,500 pieces of sockeye. In

1 negotiating that amount, do the DFO -- I just want  
2 to clarify this, do the DFO negotiators seek an  
3 understanding from the First Nation as to how  
4 those 17,500 pieces of sockeye will be distributed  
5 within the First Nations community? That's maybe  
6 a question for Ms. McGivney.

7 MS. MCGIVNEY: As to how, no -- in terms of how those  
8 fish will be distributed to community members?

9 Q Yes.

10 MS. MCGIVNEY: No, they don't.

11 Q What is essentially DFO's interest in setting  
12 these -- these maximum retention amount  
13 allocations?

14 MS. MCGIVNEY: By having clear agreements, and I think  
15 there's a couple of things. One, by having an  
16 agreement and level of allocations agreed to, the  
17 actual management of the fishery by the First  
18 Nation is agreed and can be -- it's going to be  
19 meeting some of the needs for fish management.  
20 There'll be some catch monitoring and there's an  
21 agreed amount. The other key thing is that this  
22 also provides some stability and understanding for  
23 planning the fisheries more broadly. We know that  
24 the obligation for the FSC priority is at these  
25 particular levels.

26 Q Thank you. I'd like to go again to the same  
27 Policy and Practice Report to paragraph 133, and I  
28 apologize for not having the page number. And  
29 earlier this morning Mr. McGowan asked a question  
30 about the Excess Salmon to Spawning Requirements  
31 initiative or policy. And I just want to ask this  
32 question. I think it was done in the context of  
33 perhaps the ESSR, as it's called, being an  
34 alternative approach to the management of, I  
35 guess, excess salmon as opposed to the idea of an  
36 in-river commercial fishery. And I just want to  
37 ask this question, and I just want to bring  
38 attention to the Policy and Practice Report. Was  
39 the purpose of the ESSR to be a general policy  
40 with respect to authorizing and managing the  
41 harvest of in-river commercial or FSC fisheries?  
42 Or perhaps you can just give us some context as to  
43 what the ESSR was about.

44 MS. MCGIVNEY: The Excess Salmon to Spawning  
45 Requirements initiative was -- it may have come  
46 into play at the same time as AFS, but it wasn't  
47 necessarily linked to it. It was -- my

1 understanding is that it's primarily been applied  
2 with regards to enhancement facilities. So when  
3 there are surpluses over what might be needed in  
4 the enhancement facility, the stocks returning to  
5 the enhancement facility, then there is an  
6 opportunity to harvest surplus to that facility's  
7 requirements.

8 Q And I just want to take you to the last sentence,  
9 I think, of the page under paragraph 134. And it  
10 says:

11  
12 DFO does not intend for the ESSR to establish  
13 new ESSR fisheries to displace existing  
14 fisheries and therefore DFO will attempt to  
15 eliminate or minimize the availability of  
16 ESSRs through commercial, recreational or FSC  
17 harvesting.

18  
19 Is that your understanding?

20 MS. MCGIVNEY: Yes, and essentially what that means is  
21 that there's not an allocation, it's not part of  
22 the pre-planning. It's more a result of how the  
23 fish return and whether there's an opportunity at  
24 that time. So it's a very localized decision  
25 based on the information at that -- in that  
26 location for that particular stock.

27 Q Thank you. I'm going to switch to asking  
28 questions of Ms. Stewart now, and I want to follow  
29 up on some of the discussions and I'm sure we'll  
30 have more discussions about this as we go along.  
31 And it's about the viability, the issue of the  
32 viability of in-river commercial fisheries. And I  
33 believe your evidence is that you weren't aware of  
34 any specific DFO studies with respect to the  
35 viability of the coastal commercial fishery, but  
36 would it be fair to say that at least in some  
37 certain run years there has been a general concern  
38 with the poor economic performance of the  
39 commercial salmon fishery generally?

40 MS. STEWART: I think I actually said that I was aware  
41 that there are --

42 Q Okay, sorry.

43 MS. STEWART: -- from time to time studies done of the  
44 viability of the coastal fisheries, and that there  
45 has been a lot of concern, particularly with  
46 respect to the salmon fleet, that rising costs of  
47 things like the fuel and those kinds of expenses,

1 vis-à-vis the catch returns, the catch and low  
2 returns, are pressing fleets on that viability  
3 factor.

4 Q And would it be fair to say that some of DFO's  
5 interest in exploring an in-river commercial  
6 fishery is somewhat related, at least in part, to  
7 the recent history of poor performance in the  
8 coastal fishery?

9 MS. STEWART: That's a large part of it. There is the  
10 element of providing some economic opportunity for  
11 First Nations, but primarily the idea of having  
12 in-river fisheries is to provide for a more  
13 sustainable way of fishing, by allowing for  
14 movement of the catch effort into the inland and  
15 avoiding weak stocks. Right now, coastal  
16 fisheries are often influenced by the fact that  
17 there are weak stocks that need to be avoided.  
18 And so fishing cannot happen until those weak  
19 stocks have moved through, and that affects the  
20 viability of the commercial salmon industry. With  
21 a move to a defined share kind of a approach,  
22 which is buttressed by enhanced accountability, so  
23 catch reporting and catch monitoring so everybody  
24 knows what everybody is catching, that provides  
25 flexibility to move the activity of catching the  
26 fish to the inland areas, and so it allows for  
27 better business planning. It allows for better  
28 conservation. It allows for flexibilities for the  
29 coastal industry and the inland industry to mesh  
30 together and to work together collaboratively to  
31 maximize the fishery, really.

32 Q So implicit in that, I guess I suppose in certain  
33 years you would anticipate that perhaps the  
34 coastal marine fisheries will be for a variety of  
35 factors will be, and perhaps, for example, run  
36 availability, the coastal marine fisheries will be  
37 more successful than the in-river fisheries.

38 MS. STEWART: It could be both ways, depending on how  
39 the runs are and which -- what the mix of the  
40 stocks is at any particular time.

41 Q So hypothetically is it possible that taking these  
42 two fisheries together, the management of the  
43 fishery and the commercial fishery could cushion  
44 out the differing cyclical nature of the  
45 commercial salmon fishery, and the salmon run; is  
46 that what you're saying?

47 MS. STEWART: Yes.

1 Q The one other thing I just wanted to clarify, on  
2 the last thing, is it fair to say that implicit  
3 within this interest of moving to an in-river  
4 commercial fishery, that it's very much tied up  
5 with this interest in moving toward a share-based  
6 management system, and implementation of the Wild  
7 Salmon Policy?

8 MS. STEWART: Absolutely. Because this is a completely  
9 different way of managing salmon fisheries that  
10 we're investigating, there's some up-front work  
11 that needs to go into identifying how it would  
12 happen. The traditional commercial fishery on the  
13 coast involves large vessels fishing with certain  
14 gear types that aren't going to be applicable in  
15 inland areas. So there needs to be some  
16 exploratory work on how that can actually happen,  
17 what kind of technology you need to use, some of  
18 the timings. Lots of it, lots of detail needs to  
19 be worked out about landing sites and those sorts  
20 of things, to how you deal with the fish once  
21 they're landed. So there's an awful lot of  
22 exploratory work that needs to happen, and that's  
23 happening now in how one could use that kind of  
24 methodology in support of a move to a defined  
25 share type mechanism for managing salmon coast  
26 wide.

27 Q Thank you. And just on my last question on this  
28 topic, we had some discussion and I think it was  
29 in relating to an email regarding the allocation  
30 of relinquished commercial fisheries to support an  
31 in-river demonstration fishery, and I just wanted  
32 to follow up on that a bit. The licences that  
33 were -- had been relinquished and had been  
34 allocated to support the in-river demonstration  
35 fisheries, was that -- did that represent a kind  
36 of a permanent allocation of those licences to an  
37 in-river demonstration fishery? And I'll ask that  
38 to either Kaarina, or sorry, Ms. McGivney or Ms.  
39 Stewart.

40 MS. STEWART: Like I said, we're still at the  
41 exploratory sort of phase of moving towards a  
42 defined share type arrangement. So, no, there's  
43 been no decisions made about whether that's the  
44 right approach to take or not. We need to have  
45 the information and be able to assess it and look  
46 at it over a period of time. So we're, you know,  
47 we're now in the process with the support of PICFI

1 and being able to explore how viable it is, how  
2 workable it is, as a solution to the fact that if  
3 you look at the numbers and you look at the trends  
4 over the years, the coastal salmon fishery is not  
5 -- certainly not as robust as it has been in past  
6 years. And in light of that, we're looking for a  
7 new methodology, a new mechanism for managing that  
8 fishery.

9 Q Thank you. On my last follow-up question from  
10 this morning's discussion, specific to this  
11 morning's discussion, the discussion about  
12 overages and underages, I wouldn't mind going to  
13 Exhibit 1279, and I believe this was put into  
14 evidence at the last hearing by Mr. Rosenberger,  
15 and it's Canada's response to treaty fishery  
16 questions. And I'd like to go to the last page,  
17 page 17, the last response. And here in response,  
18 the question that was asked by Commission counsel  
19 to Canada was this:

20  
21 Will treaties continue to allow overages and  
22 underage? If yes, what will prevent or  
23 provide disincentive for multiple "overages"  
24 from taking place in years of low abundance?  
25

26 And this is what was -- this is, and I won't read  
27 the whole thing, but I'll just read the first  
28 couple of lines and ask you, Ms. McGivney, to  
29 comment. It says:

30  
31 No. The preferred approach to managing FSC  
32 fisheries is to establish management plans  
33 and contingencies that promote effective  
34 delivery and harvesting of allocations in a  
35 manner consistent with the treaty obligation.  
36 Overage and underage provisions, while  
37 theoretically attractive, do not necessarily  
38 serve their intended purpose in a consistent  
39 manner across the highly variable and often  
40 unpredictable abundance levels that salmon  
41 typically exhibit.  
42

43 Is this your understanding of DFO's current  
44 approach and preference with respect to  
45 negotiating overages and underages?

46 MS. MCGIVNEY: Yes, it is.

47 Q Okay. If I could move now to --

1 THE COMMISSIONER: What exhibit was that, I'm sorry?

2 MR. EAST: I'm sorry?

3 THE COMMISSIONER: What exhibit was that?

4 MR. EAST: Oh, it's 1279.

5 THE COMMISSIONER: Thank you.

6 MR. EAST:

7 Q Perhaps we can go to Canada's Tab 60. And I'm  
8 sorry, I got this out of order. Perhaps we should  
9 go back to the Policy and Practice Report,  
10 paragraph 115. And this is what the -- under the  
11 heading of "Strengthening Our Relationship", and  
12 this is a reference to a document:

13  
14 In the spring of 2002, DFO officials met with  
15 Aboriginal groups interested in the AFS to  
16 "find out what works, what does not work, and  
17 what can be changed over the short and long  
18 term to make the AFS more efficient and  
19 effective." In the Strengthening Our  
20 Relationship report, DFO summarized the  
21 benefits of AFS and concerns regarding AFS  
22 that arose from those discussions.

23  
24 I'd like to go to that report now, if I may, and  
25 that's the one I just indicated at Canada's Tab  
26 60.

27 First of all, Ms. McGivney, or Ms. Stewart,  
28 for that matter, were either of you involved in  
29 these discussions that took place, it looks like,  
30 in 2002? Perhaps we can go to the first line  
31 under "Overview":

32  
33 In the spring of 2002 officials with  
34 Fisheries and Oceans Canada participated in a  
35 series of meetings with aboriginal groups  
36 interested in the Aboriginal Fisheries  
37 Strategy (AFS).

38  
39 Were you involved in that process?

40 MS. MCGIVNEY: I was involved in that process.

41 Q And what was the, I guess, the intention at the  
42 time or what was the impetus, I suppose, for these  
43 discussions?

44 MS. MCGIVNEY: The Aboriginal Fisheries Strategy has  
45 been ongoing since 1992. Some time had passed,  
46 and it was an opportunity to kind of review what  
47 we had been hearing from First Nations, a number

1 of First Nations, when they wanted to be able to  
2 go further into the relationship of working  
3 together, and work on different levels. We  
4 reviewed sort of broad elements of the program and  
5 this review and the discussions around it then led  
6 to the beginning of the AAROM program, and a  
7 submission for that.

8 Q Perhaps we can just go to the next page and it  
9 says here on the -- it says specifically in the  
10 paragraph here before the bullets:

11  
12 Specifically DFO proposes the following:

13  
14 And then the second bullet:

- 15  
16 • A new aquatic management initiative that  
17 provides eligible Aboriginal groups with the  
18 capacity to better participate in areas of  
19 DFO responsibility...

20  
21 So this is the reference to AAROM that you were  
22 just...

23 MS. MCGIVNEY: Yes, it is.

24 MR. EAST: Could I have this marked as an exhibit.

25 THE REGISTRAR: Exhibit number 1431.

26  
27 EXHIBIT 1431: Strengthening Our  
28 Relationship, The Aboriginal Fisheries  
29 Strategy and Beyond, October 2003 [DFO]  
30

31 MR. EAST:

32 Q If we can go now to Canada's Tab 34, please. In  
33 the last -- in the hearings before, Mr. Huber and  
34 Mr. Rosenberger, there were a number of documents  
35 relating to some DFO work with respect to the  
36 policy and practice around the management of the  
37 AFS fishery, and I just wanted to flesh out the  
38 record on this for some context. And so I just  
39 want to bring up this document. Is this a  
40 document that you recognize, Ms. McGivney?

41 MS. MCGIVNEY: Yes, it is.

42 Q And do you recognize what this document is and  
43 what it would have been used for?

44 MS. MCGIVNEY: This document identifies some of the  
45 draft guiding principles with regards to food,  
46 social, ceremonial access. This was brought out  
47 in fall dialogue sessions and I believe it was

1 brought out in two different years. I think there  
2 was one in 2005, as well as a follow-up session in  
3 2006. In -- in these -- we had sessions in the  
4 fall, compensation sessions in the fall that would  
5 bring together a number of the issues that the  
6 Department wanted to consult with stakeholders on  
7 it, and it would include sessions directly with --  
8 bilateral sessions with First Nation groups, as  
9 well as third party issues. This was brought  
10 forward and discussed with First Nations at that  
11 time.

12 Q And perhaps we can go to page 3 of this document,  
13 please. And we heard about this, I think, earlier  
14 this morning, that the April 2005 DFO Action Plan  
15 for Reform of Pacific Fisheries, is this -- is  
16 that a reference to the Pacific Fisheries Reform  
17 initiative?

18 MS. MCGIVNEY: Yes. It was an action plan that came  
19 out fisheries reform, which was a response by our  
20 Minister in response to the two documents that  
21 have been produced by the reviews by the joint  
22 task group and by the First Nations Fishery Panel.

23 Q And so this slide suggested or states that DFO at  
24 that time in the Action Plan made commitments, and  
25 specifically number 2:

26  
27 DFO will work with First Nations to develop a  
28 mutually agreeable framework for negotiating  
29 appropriate levels of fisheries resources for  
30 FSC purposes.

31  
32 So is this document part of that process?

33 MS. MCGIVNEY: Yes, it was.

34 Q And perhaps we can go to the next page. And the  
35 first bullet:

- 36  
37 • Agreed-upon general guiding principles will  
38 be the basis for a mutually agreeable  
39 framework for negotiating FSC access.

40  
41 Is that's what's discussed, these guiding  
42 principles, is that the context in which -- is  
43 that the general guiding principles that are  
44 discussed in this bullet?

45 MS. MCGIVNEY: Yes.

46 Q And maybe we could just go to page 5, and to:

47

- 1           • Input from fall 2005 sessions, AFS  
2           discussions, and the First Nations Panel  
3           Report was reviewed and formed basis of eight  
4           DRAFT general guiding principles for  
5           discussion.  
6

7           Then:  
8

- 9           • DFO is seeking input on these draft  
10          principles as a basis for a mutually  
11          acceptable framework for negotiating FSC  
12          access.  
13

14          Did that consult or that engagement process take  
15          place?

16   MS. MCGIVNEY: Yes, it did.

17   Q          And the eight guiding principles, and perhaps we  
18          can go further into the document to page 6. I'll  
19          just give an example of these. Number 1:  
20

21               Processes and decisions regarding FSC access  
22               (amount and fishing area,) should honour  
23               Canada's obligations to First Nations.  
24

25          And 2:  
26

27               Aboriginal fishing for FSC purposes should  
28               have first priority in management decisions,  
29               after conservation, over other user groups.  
30

31          I won't necessarily go on and go to all of them.  
32          Are these principles still principles that inform  
33          DFO's -- DFO officials today?

34   MS. MCGIVNEY: Yes.

35   MR. EAST: Perhaps I can have that marked as an  
36          exhibit.

37   THE REGISTRAR: Exhibit 1432.  
38

39               EXHIBIT 1432: First Nations Access to Fish  
40               for FSC Purposes, Draft Guiding Principles,  
41               Fall 2006 [DFO]  
42

43   MR. EAST:  
44

45   Q          I now want to go to a document that we already  
46          have into evidence. I just want to bring it up  
47          again, it's Exhibit 1226. And this is a document  
                that we've discussed previously, and it's

1 referring to the "First Nations Access to Fish for  
2 Food, Social and Ceremonial Purposes, Part I:  
3 Pacific Region Operational Framework". Can you  
4 just give an explanation of what this document is?

5 MS. MCGIVNEY: This is an internal document that was  
6 created to provide some guidance to our staff with  
7 regards to the processes for negotiating food,  
8 social, ceremonial allocations.

9 Q And if we could just go to page 3, please. And  
10 the first paragraph, I just want to start where it  
11 says "It is very important" -- perhaps just start  
12 that whole sentence:  
13

14 As FSC access decisions can have very  
15 significant legal implications for the  
16 Department, for negotiation of Treaties, and  
17 for neighbouring First Nations, it is very  
18 important that FSC access requests be  
19 evaluated using a consistent approach, and  
20 with a common set of criteria. As well, it  
21 is important that there is a common  
22 understanding of the administrative tools and  
23 processes for managing FSC access in the  
24 Region...  
25

26 And then just jumping down:  
27

28 This Operational FSC Framework describes the  
29 following three...components:  
30

31 And I'll go through them quickly:  
32

- 33 1) administrative tools for managing FSC  
34 fisheries...  
35
- 36 2) roles and responsibilities...  
37

38 And:  
39

- 40 3) approval processes...  
41

42 Is that essentially what this document does is  
43 sets out those three components?

44 MS. MCGIVNEY: Yes, it does.

45 Q And this is a document that DFO officials are  
46 using now?

47 MS. MCGIVNEY: Yes, they are.

1 Q One of the things you'll see in these documents, I  
2 just want to ask this now, they often all say  
3 draft. Some of them you'll see have a watermark  
4 draft. Why is that, and does that necessarily  
5 mean, notwithstanding that, are these documents  
6 that are still being actively used within DFO?

7 MS. MCGIVNEY: They are being used. They're documented  
8 as draft because they had been initially approved  
9 to look at it on an interim basis, and have not  
10 gone through a broader formal approval process  
11 through -- through national processes.

12 Q Thank you. I just wanted to move on, put a few  
13 more documents in this area in. Perhaps,  
14 although, it would be useful to go to another  
15 document that's already in evidence. It's Exhibit  
16 1225. Now, this is dated May 2nd, 2006 and it's  
17 called "Trial Implementation of Evaluation  
18 Framework". Can you explain what as opposed to  
19 the operational framework what the evaluation  
20 framework is?

21 MS. MCGIVNEY: The operational framework was more about  
22 the processes and rules and responsibility, and  
23 the tools that were available. The evaluation  
24 framework identifies a series of questions,  
25 different -- questions under some different  
26 criteria that are being considered in terms of  
27 being able to address potential changes to access  
28 for food, social, ceremonial purposes. And so  
29 what it does is it provides consistent  
30 information, consistent approach in terms of the  
31 kinds of information that are reviewed in bringing  
32 forward to decision makers to make those  
33 decisions.

34 Q And perhaps we should go over to the next page.  
35 And down at the bottom in italics, it refers to, I  
36 guess, three "FSC Access issues":

- 37  
38 - allocation changes;  
39  
40 - fishing area changes;  
41  
42 - requests for commercial &/or recreational  
43 closures.  
44

45 Are these the access issues that this process or  
46 this -- the documents are referring to?  
47 MS. MCGIVNEY: Yes, they are.

1 Q And then finally, page 7 -- sorry, the next page.  
2 I just want to go the first and third bullet. So  
3 this evaluation framework, according to this:

- 4  
5     ▪ Identifies basic criteria (issues and  
6         questions) that need to be considered in  
7         evaluation of each request;

8  
9 And thirdly, the third bullet:

- 10  
11     ▪ Is not prescriptive; must provide flexibility  
12         to address unique circumstances of each  
13         request;

14  
15 So therefore this evaluation framework is  
16 something in place whenever there's a request for  
17 change in the FSC access, according to what was --  
18 we just looked at in the second slide.

19 MS. MCGIVNEY: Yes, it's looking -- it was to be  
20 applied for when there were requests for changes,  
21 and...

22 Q Well, why would it say in the third bullet it's  
23 not meant to be prescriptive and must provide  
24 flexibility to addressing the circumstances?

25 MS. MCGIVNEY: There's not a -- what it is, is really a  
26 compilation of information. There's no -- there's  
27 no decision made out of this framework. It just  
28 provides information on consistent -- consistently  
29 in terms of all of the factors to be considered,  
30 so that then the decision-makers can review --  
31 review it in that context.

32 Q Thank you. And just to follow up on this theme  
33 again, if we can go to Exhibit 1227, please, and  
34 go to page 2. Is this the access and evaluation  
35 and decision framework that was referred to in the  
36 deck?

37 MS. MCGIVNEY: Yes.

38 Q And if I can just go down to the bullet that says  
39 -- the list that says in the middle of the page:

40  
41         The evaluation frameworks consist of four  
42         general criteria, each with several  
43         "indicators" (specific issues or questions)  
44         nested beneath.

45  
46         Are these the basic criteria that are used with  
47         respect to -- to assessing all the access requests

1           that we talked about?

2 MS. MCGIVNEY: Yes.

3 Q       Perhaps we can go to a new document, Canada Tab  
4       35, please. Is this document an appendix to the  
5       one we just looked at, Exhibit 1227?

6 MS. MCGIVNEY: Yes, it is.

7 Q       And is this the package that is used to evaluate  
8       requests for allocation change under AFS?

9 MS. MCGIVNEY: Yes, it is.

10 Q       And if you go over to page 2, this document  
11       provides the templates to be used by the Fisheries  
12       officials in seeking a temporary permit change to  
13       fish mandate?

14 MS. MCGIVNEY: Yes, it does.

15 Q       And is that memorandum to the RDG. And then maybe  
16       just going as an example, over to page 4. Is this  
17       the chart or the framework that's used by  
18       Fisheries officials to assess the criteria -- with  
19       the criteria to assess the allocation, request for  
20       allocation change?

21 MS. MCGIVNEY: Yes, it is.

22 MR. EAST: Perhaps I can have this one marked as an  
23       exhibit.

24 THE REGISTRAR: Exhibit number 1433.

25

26           EXHIBIT 1433: First Nations Access to Fish  
27           for Food, Social and Ceremonial Purposes,  
28           Part 2A: Pacific Region Evaluation and  
29           Decision Framework, Request for Allocation  
30           Change, May 2006  
31

32 MR. EAST:

33 Q       If I can go now to Canada's Tab 36, please. And  
34       this again is just part 2B. Is this another  
35       appendices to the evaluation framework?

36 MS. MCGIVNEY: Yes, it is.

37 Q       And this one relates to request for -- it's  
38       somewhat different than mine, it says "Request for  
39       Commercial and/or Recreation Closure". So this is  
40       the -- this is the package, or the document that  
41       would be used to assess a request for a commercial  
42       or recreational closure to facilitate FSC access?

43 MS. MCGIVNEY: Yes.

44 Q       Can I then have Canada's Tab 37, please.

45 MS. MCGIVNEY: It seems to me --

46 Q       Yes.

47 MS. MCGIVNEY: I think the Part B, my understanding was

1 "B" would have more about the fishing area.  
2 MR. EAST: And that was -- there seems to be, Mr.  
3 Commissioner, there seems to be a bit of a mix-up,  
4 because the document that I have as Part 2B  
5 relates to a very similar document, but it relates  
6 to Request for Change to Fishing Area, which is  
7 the one I wanted to go to. But clearly there's  
8 been a mix-up in the documents and I'll need to  
9 work with that with Mr. Lunn at the break.

10 Perhaps we can move on, then. Perhaps if I  
11 could -- if I could at least for this Part 2C, if  
12 I could have that marked as an exhibit.

13 THE REGISTRAR: Exhibit 1434.

14  
15 EXHIBIT 1434: First Nations Access to Fish  
16 for Food, Social and Ceremonial Purposes,  
17 Part 2C: Pacific Region Evaluation and  
18 Decision Framework, Request for Commercial  
19 and/or Recreational Closure to Facilitate FSC  
20 Access, May 2006  
21

22 MR. EAST:

23 Q I'd like to go now to Canada's Tab 44, please.  
24 And this is a document referring to the FSC Launch  
25 Group, and it's a DFO Policies and Practice. Can  
26 you please just explain what this document is and  
27 roughly - it doesn't seem to be dated - when this  
28 would have been produced.

29 MS. MCGIVNEY: I can't recall the dates, sorry. It  
30 just seems like time flies all the time. But we  
31 have been working with the Fisheries Council, so  
32 the reference to FSC -- can I go up to the top,  
33 what's the wording at the beginning.

34 THE COMMISSIONER: Can you go to the top, John.

35 MR. EAST: Can you go to the top of the document.

36 MS. MCGIVNEY: The FSC Launch Group was an agreement  
37 with the Fisheries Council representatives and DFO  
38 to work together on a group to talk about food,  
39 social, ceremonial access and issues. And so the  
40 Department prepared this document to basically  
41 outline some of the key policy approaches, and  
42 some of the guidelines and considerations that we  
43 take into account when we're looking at the food,  
44 social, ceremonial fishery. And so this was meant  
45 as an opportunity to -- a document to help to  
46 contribute to those discussions. My understanding  
47 is that the process is still ongoing, so this

1 would have been in 2010, I believe, or 2009, I'm  
2 not sure, early 2010, perhaps. Those discussions  
3 are still -- my understanding is they're still  
4 continuing, there's still work going on with DFO  
5 and the First Nations Fisheries Council to talk  
6 about these food, social, ceremonial access issues  
7 between them.

8 Q So you say, then, in this document,  
9 notwithstanding its relatively informal  
10 appearance, kind of, it's a good snapshot of DFO's  
11 approach, at least its approach, policies and  
12 Practices to FSC management.

13 MS. MCGIVNEY: Yes. And it was approved by the  
14 Regional Director and Fish Management. it didn't  
15 go through any real formal approvals.

16 MR. EAST: Perhaps I could have that marked as an  
17 exhibit.

18 THE REGISTRAR: Exhibit 1435.

19  
20 EXHIBIT 1435: FSC Launch Group - DFO  
21 Policies and Practice  
22

23 MR. EAST:

24 Q And going to Canada's Tab 45, and this is a  
25 slightly different -- at the very top talks about  
26 the "FSC Priority Launch Crew". Can you explain  
27 what that is?

28 A It's the same group that I was referring to, which  
29 was basically initiating that discussions around  
30 what we could work together on in creating a --  
31 actually now I'm recalling that we were also going  
32 to create a joint work plan of how to proceed on  
33 working together to discuss and come to some  
34 understandings about food, social, ceremonial  
35 access. So these, this document was actually  
36 identifying how what policies DFO currently has  
37 that refers to the priorities of food, social,  
38 ceremonial fishing. You can see that we -- it's  
39 included within our management for aboriginal  
40 fishing, but it's also included within our -- the  
41 Allocation Policy, and it's also included within  
42 the Wild Salmon Policy.

43 And then down below there was some specific  
44 references to different ways that DFO recognizes  
45 and implements that priority, the types of tools  
46 that they might use.

47 MR. EAST: Thank you. Perhaps can I have that marked

1 as an exhibit, please.

2 THE REGISTRAR: Exhibit 1436.

3 THE COMMISSIONER: And the tab number, please, John.  
4 Which tab number is it?

5 MR. LUNN: Tab 45.

6 THE COMMISSIONER: Thank you.

7

8 EXHIBIT 1436: FSC Priority Launch Crew -  
9 Follow up

10

11 MR. EAST:

12 Q I'd like to move now maybe to Ms. Stewart and talk  
13 a little bit about PICFI, if I may. Perhaps we  
14 can go to Canada's Tab 65, please. And, Ms.  
15 Stewart, this appears to be a DFO deck about  
16 PICFI, referring to 5-Year Plans for the PICFI  
17 Steering Committee, December 12th, 2008. Are you  
18 familiar with this document?

19 MS. STEWART: I'm familiar with it, yeah.

20 Q What is the PICFI Steering Committee?

21 MS. STEWART: The PICFI Steering Committee is a DFO  
22 committee and comprised of senior and middle  
23 management at both the regional and the national  
24 level, who provide a policy and direction  
25 function for PICFI. I could go into membership,  
26 if you want, but that's the synopsis.

27 Q I think that's sufficient for our purposes. I  
28 just want to go to page 2, please. And it refers  
29 to the four elements -- are these the four  
30 elements, or what you'd call the four components,  
31 four elements of PICFI?

32 MS. STEWART: Yes, generally those are the four  
33 elements. Within the capacity building element  
34 there's a little bit of breakdown into different  
35 kinds of capacity building, but those are the four  
36 general elements.

37 Q I would like just to explore a bit what's covered  
38 by each one of these headings, and perhaps to do  
39 that I can go to a slide for each. And if I could  
40 go to page 7, please. Are these essentially the  
41 three objectives of what we call enhanced  
42 accountability. Could you maybe expand on what  
43 each of these three objectives are.

44 MS. STEWART: Sure. So the first objective is:

45

46 Increased and sustainable...Monitoring and  
47 Catch Reporting...with a focus on...salmon.

1 Partly this is in aid of fisheries management,  
2 writ large, but it's also in aid of a move on the  
3 salmon front to define share type mechanism for  
4 management. There has been a lot of work done in  
5 identifying enhanced accountability processes and  
6 mechanisms for better certainty around what is  
7 being caught, which provides more certainty for  
8 fisheries management, writ large.

9 The second one, enhanced compliance  
10 monitoring, that is not so much the -- maybe I'll  
11 back up. The first -- the first bullet refers to  
12 monitoring and catch reporting by harvesters.

13 The second is compliance with licensed terms  
14 and conditions, and agreements, and fishing plans.  
15 So this is more the conservation and protection  
16 element, so surveillance of catch to ascertain  
17 when there's unauthorized harvesting or sale, or  
18 whatever is going on.

19 The third piece of the -- of these objectives  
20 has to do with traceability, and this goes to  
21 identifying when fish are caught and moved into  
22 processing plants and then subsequently moved into  
23 the marketplace. This element refers to  
24 mechanisms for tracing that fish, and it's largely  
25 in aid, and a lot of the focus has been in recent  
26 times on certification requirements. Some of the  
27 markets to which the B.C. fish harvesters sell are  
28 now looking for this kind of a traceability and  
29 eco certification kind of mechanism. And it has  
30 greatly impacted on the B.C. fishing industry and  
31 its ability to play in those markets.

32 Q Thank you. Perhaps just on this deck before I  
33 mark it as an exhibit, I'd like to jump ahead to  
34 page 24. And this is something that was touched  
35 upon this morning, and I just want to go into the  
36 first bullet:

37  
38 Given approximate licence and landed values,  
39 need for flexibility and desire to transfer  
40 salmon shares upstream a notional split of  
41 15% salmon and 85% non-salmon has been  
42 adopted to guide access acquisition to  
43 advance First Nation and DFO interests.

44  
45 Does that reflect what DFO's approach was, at  
46 least at the time of this deck?

47 MS. STEWART: Yes. And that's referring to the

1 percentage of the resources available for access  
2 acquisition. So 15 percent of those resources,  
3 and there's approximately \$100,000 which was  
4 identified at the outset for access acquisition,  
5 would be identified for salmon, which is  
6 reflective of values of the fishery.

7 Q And what would be, I suppose, I guess the  
8 rationale between this split and this -- is there  
9 an underlying policy purpose for the split as it  
10 is set out there?

11 MS. STEWART: So it does -- it does reflect the split  
12 in value of the commercial fishery in B.C., writ  
13 large. I guess a couple of other points that I  
14 would make is that in designing PICFI there was an  
15 emphasis on diversification of holdings for First  
16 Nations. So in coastal areas where there's access  
17 to fisheries other than salmon, our objective was  
18 to facilitate the building of fishing enterprises  
19 that would have a diversified portfolio so that  
20 there's an ability for those enterprises to  
21 weather some of the variabilities particularly  
22 that one finds with salmon. So that was -- that  
23 was definitely part of the thinking in the  
24 development of the access acquisition element of  
25 PICFI.

26 MR. EAST: Could I have this document marked as an  
27 exhibit, please.

28 THE REGISTRAR: Exhibit number 1437.

29  
30 EXHIBIT 1437: Pacific Integrated Commercial  
31 Fisheries Initiative (PICFI) 5-Year Plans,  
32 PICFI Steering Committee, December 12, 2008  
33

34 MR. EAST:

35 Q One of the components illustrated here is the co-  
36 management aspect, and I want to talk a little bit  
37 about that. Perhaps we can go to Canada's Tab 62,  
38 please. And if you look at the title, and I don't  
39 expect to spend a lot of time on this document,  
40 the title says "PICFI - Co-Management Year 4 Work  
41 Plan (2010-11)". Is this a document you  
42 recognize, Ms. Stewart?

43 MS. STEWART: I do recognize it, yes.

44 Q Perhaps we can go to page 3, and I just want to go  
45 to the Table number 1 at the bottom. And it says  
46 PICFI co-management funding in thousands of  
47 dollars from 2007 up to 2011-2012. Does this

1 represent money flowing through PICFI for the co-  
2 management component, and I believe that's in  
3 British Columbia?

4 MS. STEWART: That would be the amount identified for  
5 the co-management element by year.

6 Q Thank you. And maybe go to the next page for  
7 Table 2. And would this be a similar table,  
8 perhaps broken down more by category than Table 1?

9 MS. STEWART: This would be the -- yes, the breakdown  
10 by year for the various types of work.

11 MR. EAST: Thank you. Perhaps I can have that marked  
12 as an exhibit, please.

13 THE REGISTRAR: Exhibit 1438.

14  
15 EXHIBIT 1438: PICFI - Co-Management Year 4  
16 Work Plan (2010-11) (Draft January 2010)  
17

18 MR. EAST:

19 Q And if I could go to Canada's Tab 46, please.  
20 Now, this is a document off the DFO website. Do  
21 you recognize this document, Ms. Stewart?

22 MS. STEWART: Yes. Yes, I do.

23 Q It appears to be a list of what it says "PICFI  
24 Consultations Workshops and Meetings". Can you  
25 just give us a brief description. First of all,  
26 have you attended any of these meetings and also,  
27 you know, what was the purpose and intention  
28 generally of these meetings?

29 MS. STEWART: I did attend some of those meetings. The  
30 purpose and intent of them varies. You'll see  
31 down at the bottom of that table it sort of works  
32 from the most recent to earlier meetings. So  
33 you'll see that there were a number of meetings in  
34 2007-2008, which were largely aimed at information  
35 -- providing information to First Nations and to  
36 others with respect to the elements of PICFI, what  
37 the objectives were, that sort of thing. There  
38 were some technical design work that was  
39 undertaken by DFO in conjunction with some of the  
40 First Nation organizations at various times. And  
41 then as we progressed through time, the focus of  
42 the meetings moved from more of an informational  
43 Q&A design kind of discussion to particular points  
44 with respect to implementation.

45 Maybe you could scroll to the front page  
46 again.

47 So you'll see that there were some fairly

1 pointed meetings with respect to various pieces of  
2 PICFI. For example, the Economic Access Working  
3 Group Community Dialogue Session. That took place  
4 not too long ago and I actually attended that  
5 meeting, and that was -- the purpose of that  
6 meeting was to talk about in a scenario of the  
7 sunsetting of PICFI, what First Nations might want  
8 to see, going forward.

9 Co-management Workshop was with respect to  
10 the development of the framework for co-management  
11 and how First Nations saw the -- how co-management  
12 ought to be formulated for the Department vis-à-  
13 vis DFO and stakeholders. So there were a number  
14 of different kinds of objectives coming out of  
15 those meetings, but if I could summarize, I would  
16 say it went from the more information and general  
17 into the more specific and pointed topics.

18 MR. EAST: Can I have that marked as an exhibit.

19 THE REGISTRAR: Exhibit 1439.

20  
21 EXHIBIT 1439: DFO website printout, Pacific  
22 Integrated Commercial Fisheries Initiative  
23 (PICFI), News and upcoming Events, Fishery  
24 Monitoring and Catch Reporting Consultations  
25

26 MR. EAST:

27 Q And then maybe going to Canada's Tab 43. And this  
28 is one of the meetings that's referred to in the  
29 previous document. Is this an example of the kind  
30 of -- this is a Meeting Record, Access and  
31 Distribution Workshop, October 27, 2020. Is this  
32 an example of a meeting that would have been  
33 funded by PICFI and that was listed on the  
34 previous document?

35 MS. STEWART: Yes.

36 MR. EAST: Can I have this marked as an exhibit,  
37 please.

38 THE REGISTRAR: Exhibit 1440.

39  
40 EXHIBIT 1440: Meeting Record, Access and  
41 Distribution Workshop, October 27, 2010  
42

43 MR. EAST:

44 Q I'm mindful of the time. I'm just going to jump  
45 ahead here, and that will be Canada's Tab 54,  
46 please. Now, I understand this is a document that  
47 is from the DFO website. Do you recognize this,

1 Ms. Stewart?

2 MS. STEWART: Yes.

3 Q And it's PICFI and ATP Relinquishments, and I  
4 understand it's substantially similar to Table 7  
5 and 8 in the Policy and Practice Report. Is this  
6 the most recent description that you have of the  
7 licence relinquishment under PICFI and ATP in  
8 these recent years?

9 MS. STEWART: This is the most recent enunciation of  
10 it, yes.

11 MR. EAST: Perhaps I could have that marked as an  
12 exhibit.

13 THE REGISTRAR: Exhibit number 1441.

14

15 EXHIBIT 1441: DFO website printout, PICFI  
16 and ATP Relinquishments January 2008 to  
17 December 2010

18

19 MR. EAST:

20 Q And if we can go to Canada's Tab 8. And this is  
21 another document that appears to be from a DFO  
22 website. Do you recognize this document, and this  
23 is, I guess, a question both for Ms. Stewart and  
24 Ms. McGivney.

25 MS. STEWART: I recognize it.

26 Q And it appears to be Statistics on Commercial  
27 Fishing Licence Eligibilities and Quota Acquired  
28 by DFO Pacific Region via Voluntary  
29 Relinquishment. And if you look at sub A, it  
30 says:

31

32 Number of Commercial Fishing Licence  
33 Eligibilities Acquired (salmon only)

34

35 And it appears that the column is a bit out of  
36 whack, but it goes from 1992/93 to 2010/11. Is  
37 this a document that fairly reflects the number of  
38 licences, salmon licences acquired under these  
39 programs to this date?

40 MS. STEWART: To this date, I would have to take a look  
41 at the date. There are relinquishment rounds that  
42 happen on a periodic basis, and I just can't  
43 remember what the date of this document was and  
44 where it fits, vis-à-vis relinquishment rounds.

45 Q It appears to be the end of fiscal year 2011

46 MS. STEWART: So we're currently -- it may not be quite  
47 accurate. There was a relinquishment round that

1           was being finalized right at the very end of last  
2           fiscal year, so it may be out a little bit. And  
3           we're currently in another relinquishment round.

4       Q     And over to the next page, if I may, it refers to  
5           dollar "Expenditures on licence eligibilities  
6           (salmon only)". Again is this something that you  
7           recognize and can -- can confirm?

8       MS. STEWART: Again that would be a little -- it would  
9           be adjusted a little bit for activity that  
10          happened afterwards.

11       MR. EAST: Perhaps I could have this marked as an  
12          exhibit.

13       THE REGISTRAR: Exhibit 1442.

14  
15                   EXHIBIT 1442: DFO website printout,  
16                   Statistics on Commercial Fishing Licence  
17                   Eligibilities and Quota Acquired by Fisheries  
18                   and Oceans Canada, Pacific Region via  
19                   Voluntary Relinquishment  
20

21       MR. EAST:

22       Q     Can I go now to Canada's Tab 16, please. And I  
23           just want to introduce this document and I wanted  
24           to ask some questions about the Integrated  
25           Aboriginal Contribution Management Framework, and  
26           I guess it's for Ms. Stewart again. Can you just  
27           give us a brief description about what this  
28           framework is and what's it intended to do?

29       MS. STEWART: So the Integrated Aboriginal Contribution  
30           Management Framework is a framework for the  
31           management of contributions. By the terms of  
32           grants and contributions funding are that it has  
33           to be particular accountabilities for the use of  
34           public monies, et cetera. And so what we have  
35           here is a framework that applies to all of the  
36           programming for aboriginal fisheries that DFO has.  
37           It has a number of different elements to it, one  
38           of which is a common template agreement that would  
39           -- that's used for contribution agreements with  
40           First Nations, regardless of under which program  
41           that agreement is entered into. So it's got  
42           consistent provisions and in particular I've  
43           mentioned that it has consistency with respect to  
44           two schedules, one which is the projects that are  
45           being undertaken by the First Nations, or the  
46           aboriginal group, and the reporting. So there's  
47           some consistency there.

1           One of the things that we've heard over the  
2 years from First Nations and aboriginal  
3 organizations is that there has been inconsistency  
4 from the -- from program to program with respect  
5 to what they were expected to report on, how they  
6 were expected to report, at what level of detail,  
7 et cetera. So as part of the framework, we have  
8 tried very hard to bring some commonality to that  
9 and bring some streamlining so that it's just  
10 easier and simpler for all parties, both First  
11 Nations administrations and for the Department to  
12 sort of be talking with one voice and talking as  
13 the same language.

14           There's also integrated terms and conditions.  
15 So the terms and conditions that apply to grants  
16 and contributions, or in this instance it's only  
17 contribution programming, the terms and conditions  
18 are the same. So it's the same kinds of costs  
19 that we have been authorized to provide funding  
20 for, the same recipients, the same kinds of  
21 activities. And so there's some commonality  
22 there.

23           There's also what's called a recipient  
24 assessment tool, and this is meant to identify the  
25 level of governance and administrative capacity  
26 within an aboriginal organization of First Nations  
27 to manage the contribution. And it provides a  
28 level of flexibility that's commensurate with that  
29 group's capacity and their history with the  
30 Department to have more variability and a freer  
31 hand on how they can use that money.

32           So it's sort of a -- as First Nations move  
33 along the continuum of greater and greater ability  
34 to manage financial matters, the capacity within  
35 their governance structures to do that, we can  
36 provide more and more flexibility on how much  
37 money can be moved from one project to the next,  
38 et cetera, et cetera.

39 Q       Thank you. And this deck is essentially a kind of  
40 summary of the framework?

41 MS. STEWART: Yes.

42 MR. EAST: Can I have that marked as an exhibit,  
43 please.

44 THE REGISTRAR: Exhibit 1443.

45  
46           EXHIBIT 1443: Integrated Aboriginal  
47 Contribution Management Framework

1 MR. EAST:

2 Q And just quickly on the same theme, Canada's Tab  
3 50. Is this the template agreement that you were  
4 referring to as established under the IACMF?

5 MS. STEWART: Yes. So you can see that there are some  
6 variabilities from program to program just because  
7 some provisions aren't necessary, depending on the  
8 program. But the majority of this agreement is  
9 very, very similar and as I said earlier, most  
10 importantly the schedules with respect to what --  
11 how reporting will be undertaken are quite  
12 consistent.

13 MR. EAST: Can I have that marked as an exhibit please.

14 THE REGISTRAR: Exhibit 1444.

15

16 EXHIBIT 1444: Agreement template established  
17 under Integrated Aboriginal Contribution  
18 Management Framework

19

20 MR. EAST: I'm rapidly coming down to the end of my  
21 time, so I just want to put in one other document.  
22 Perhaps if I could have one moment, Mr.  
23 Commissioner.

24 MR. MCGOWAN: Mr. Commissioner, I'm going to suggest we  
25 take the afternoon adjournment now. We can sort  
26 out the time we have remaining and how it's going  
27 to be used for the rest...

28 THE COMMISSIONER: Thank you. I'm just having some  
29 difficulty with this microphone getting closer to  
30 me. So let me see if I can move to it. Thank you  
31 very much.

32

33 QUESTIONS BY THE COMMISSIONER:

34

35 Q I just want to go back to, just for clarification  
36 again, if I can go back to Exhibit 1437, I think  
37 it is, and page 24 of that particular exhibit.  
38 Right. I think Ms. Stewart spoke to this. Under  
39 "Species Diversity" for salmon there's a  
40 reference, I think, counsel, it's up there, too,  
41 but it says:

42

43 - acquisition of salmon must remain in-step  
44 with shares being contemplated in the  
45 Coastwide Framework.

46

47 Excuse the way I'm putting this to you, Ms.

1           Stewart, because I'm not exactly sure how to query  
2           you on this, but is this an example of where the  
3           coastwide framework would be informing this aspect  
4           of this program? And I ask that because earlier  
5           Ms. McGivney had indicated to me that these  
6           existing programs and policies that are ongoing  
7           are in fact informing the coastwide framework.  
8           And is this an example where the coastwide  
9           framework is informing this program?

10        MS. STEWART: Well, maybe I'll let Kaarina speak to her  
11        intentions first.

12        MS. MCGIVNEY: Actually, just this word that there's an  
13        element in terms of the Aboriginal Fisheries  
14        Framework with the end-point allocation, which has  
15        been identified, and there's -- I think I spoke to  
16        the fact of how that is implemented, and there's a  
17        lot of factors to consider. But in the middle  
18        term for moving forward with more detail, it is  
19        being used to inform access, increased access  
20        issues now so it's being considered in that light.

21        Q     All right.

22        MS. MCGIVNEY: Does that help?

23        Q     I'll have to tell you that next week. I'm not  
24        sure. What I'm trying to understand is how does  
25        one know what is being contemplated within the  
26        Coastwide Framework? What document tells this  
27        room what is being contemplated within the  
28        Coastwide Framework?

29        MS. MCGIVNEY: I think the Aboriginal Fisheries  
30        Framework identifies the allocation strategy with  
31        a broad -- with the overall target of "XX" for  
32        salmon. And so it has to be in line with that  
33        overall objective, so that's what this is  
34        (indiscernible - overlapping speakers).

35        Q     That's what this is referring to. All right,  
36        thank you.

37                Oh, and just one other -- again, just one  
38        other question I have while you're at it. If  
39        there is a hierarchy of importance within the DFO  
40        structure, where does a framework fit as opposed  
41        to a policy or a program?

42        MS. STEWART: So I think, and maybe Kaarina might want  
43        to weigh in as well. But I think when we use the  
44        terminology of framework, we're talking about sort  
45        of an overarching approach, as opposed to the  
46        detail and the application. Is that fair to say?

47        MS. MCGIVNEY: Yes, I think so. I think the framework

1 would include elements of that, but the  
2 implementation policies would guide the  
3 implementation, policies are the -- a framework is  
4 more process and rules and responsibilities, and  
5 policies would -- they almost combine together,  
6 because the policies would probably include a  
7 number of principles and elements, so there is a  
8 bit of a melding here.

9 MS. STEWART: Yes. But a framework is the sort of the  
10 30,000-foot approach, whereas the policies are  
11 going to drill down a little bit more. So  
12 objectives, key principles, that sort of thing  
13 would be enunciated in a framework more than the  
14 actual application in a particular situation or  
15 on-the-ground implementation, which would be  
16 housed in a policy.

17 THE COMMISSIONER: Thank you. We'll take the break,  
18 thank you.

19 THE REGISTRAR: The hearing will now recess for ten  
20 minutes.

21  
22 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)  
23 (PROCEEDINGS RECONVENED)  
24

25 MR. MCGOWAN: Mr. Commissioner, perhaps just before we  
26 continue I'll briefly address a timing issue. We  
27 have -- Mr. East has used the time that he was  
28 allotted and is seeking an additional ten minutes.  
29 We're faced with a situation where after Mr. East,  
30 Mr. Lowes has approximately 20 minutes of  
31 questioning, which leaves us short for the day.  
32 Mr. Eidsvik was scheduled to go next, but has -- a  
33 matter has arisen, and he was unable to be here.  
34 Next in line would be Ms. DeForrest for the  
35 Western Central Salish and then Ms. Gaertner, both  
36 of whom were caught by surprise by this  
37 information which only came to them late yesterday  
38 afternoon. So I'm not going to suggest that they  
39 carry on today.

40 What I am going to propose is that given that  
41 we have the time available, rather than break  
42 early, that Mr. East get the extra ten minutes he  
43 is seeking, Mr. Lowes carry on, and if there's  
44 some time left at the end of the day, I understand  
45 Ms. Gaertner has some preliminary questions which  
46 she could start with. I understand her position  
47 to be that she doesn't want that to take her -- to

1 change her place in the line-up for the next day.  
2 But if we've got the time, she'd like the  
3 additional time to use, and I think that sounds  
4 reasonable.

5 MR. EAST: Mr. Commissioner, I have no more than ten  
6 minutes of questions, and probably less.  
7

8 CROSS-EXAMINATION BY MR. EAST, continuing:  
9

10 Q The document that was just on the screen was the  
11 one that -- we realized the error, this is the  
12 document that I intended to list and which we  
13 didn't, but we found it. And I just want to put  
14 this to Ms. McGivney. This is "Part 2B", this is  
15 another one of these appendix to the Evaluation  
16 Framework, Ms. McGivney?

17 MS. MCGIVNEY: Yes, it is.

18 Q And this is the one for the Request for FSC  
19 Fishing Area Change to Facilitate FSC Access.  
20 Perhaps we can go to I believe it is page 4 -- the  
21 next page actually, Criteria 3.1 and 3.2. And  
22 we've had some discussions about issues relating  
23 to change of fishing area. That's the page.

24 So if you look in the column on the left,  
25 "Criteria and Indicators considered", and 3.1,  
26 are these -- the question here is:  
27

28 Is there a protocol arrangement in place  
29 between the requesting FN and the "host" FN?  
30

31 And 3.2:

32  
33 Will approving this request affect  
34 "manageability" of the fishery?  
35

36 Are these examples of the kinds of questions that  
37 the DFO officials need to ask internally in  
38 considering an approval of a request to change a  
39 fishing area?

40 MS. MCGIVNEY: Yes, these are some of the questions.

41 Q And certainly the recommendations that come out of  
42 this document, they are taken up to the RDG for  
43 approval?

44 MS. MCGIVNEY: Yes, they are.

45 MR. EAST: Perhaps I can have this marked as an  
46 exhibit.

47 THE REGISTRAR: Exhibit 1445.

1 EXHIBIT 1445: First Nations Access to Fish  
2 for Food, Social and Ceremonial Purposes,  
3 Part 2B: Pacific Region Evaluation and  
4 Decision Framework, Request for FSC Fishing  
5 Area Change to Facilitate FSC Access, May  
6 2006  
7

8 MR. EAST:

9 Q Earlier this morning, Ms. McGivney, you referred  
10 to the Common Table, and I just want to go to  
11 Canada's Tab 55. And I believe this is referred  
12 to briefly in the Policy and Practice Report. And  
13 you'll see here the date of June 3, 2008 and it  
14 says "Fisheries Overview for Common Table". Ms.  
15 McGivney, do you recognize this document?

16 MS. MCGIVNEY: Yes, I do.

17 Q And is this DFO's presentation that it made to the  
18 Common Table?

19 MS. MCGIVNEY: Yes, on June 3rd.

20 MR. EAST: And I'd like to mark this as an exhibit,  
21 please.

22 THE REGISTRAR: Exhibit 1446.  
23

24 EXHIBIT 1446: Fisheries Overview for Common  
25 Table, June 3, 2008  
26

27 MR. EAST:

28 Q And if we could go to the Policy and Practice  
29 Report, page 40, please. And this is a table of  
30 licence allocations for groups on the Lower  
31 Fraser, and I just want to focus a little bit on  
32 the sixth line, and this is -- I probably will  
33 pronounce this incorrectly, but it's the Hwiltsum  
34 as I understand it. And I believe -- are you  
35 familiar with this group, Ms. McGivney?

36 MS. MCGIVNEY: Yes, I am.

37 Q And I believe that they are one of the groups that  
38 are participant in this inquiry. Do you know, and  
39 I'm interested in the reference to the column that  
40 says "Licence Holder". Is it correct that the  
41 Hwiltsum are an AFS or FSC licence holder?

42 MS. MCGIVNEY: No, it is not.

43 Q Do they have an allocation?

44 MS. MCGIVNEY: There have been an allocation put aside  
45 to consider their access with other First Nations.

46 Q So they're not a licence holder, but they have an  
47 allocation. Can you just kind of maybe explain a

1           little bit more context around, for example, are  
2           the Hwiltsum, are they a band as described under  
3           the **Indian Act**?

4       MS. MCGIVNEY: No, they are not a band as described  
5           under the **Indian Act**. But they have requested  
6           access to fishing and we have been encouraging  
7           them to work with other First Nations that have  
8           agreements in order to access their fish, and in  
9           doing those arrangements, we would be willing to  
10          provide an additional allocation to those groups.

11       Q       So again I guess the key point I just want to  
12           emphasize, they are under the heading "Licence  
13           Holder" under PPR, it's not quite correct to say  
14           that the Hwiltsum are a licence holder.

15       MS. MCGIVNEY: Correct.

16       Q       I'd like to go now to PPR at paragraph 228,  
17           please. And it says there, I just wanted to ask  
18           you a question about this statement, and this is  
19           the Lheidli T'enneh, I guess it's a draft final  
20           agreement, that the Lheidli T'enneh, do they have  
21           a final agreement in force at the moment?

22       MS. MCGIVNEY: No, they do not.

23       Q       In this agreement that is discussed in the Policy  
24           and Practice report, it talks about harvest  
25           levels, it says:

26  
27                   Harvest levels vary between agreements and  
28                   range from an abundance-based two percent of  
29                   the first 250,000 Canadian Total Allowable  
30                   Catch for the Lheidli T'enneh...to a fixed  
31                   0.13366 percent of all Canadian Total  
32                   Allowable Catch for the Maa-Nulth First  
33                   Nations.

34  
35           And I just want to talk about -- ask questions  
36           about both agreements. But first going to the  
37           Lheidli T'enneh Indian Band, is it correct to say  
38           that in that agreement, the Lheidli T'enneh would  
39           have received two percent of the first 250,000 of  
40           the Canadian total allowable catch for sockeye  
41           salmon?

42       MS. MCGIVNEY: In the agreement it's listed as that.  
43           But you'll note that Fraser or "Sockeye Salmon" is  
44           capitalized, and therefore is in the definitions  
45           and is defined as those sockeye that are above  
46           Naver Creek, which are essentially those stocks  
47           originating in the Lheidli T'enneh treaty area.

1 Q Well, perhaps we can just go there. It's Canada's  
2 Tab 68. And this is the draft Lheidli T'enneh  
3 Final Agreement, and this is not an agreement  
4 that's in force at the moment?

5 MS. MCGIVNEY: Correct.

6 Q Perhaps we can go to page 27 in Ringtail.  
7 Unfortunately the version that you have is  
8 somewhat different from mine. If we can go to the  
9 Table to Contents, please.

10 MR. LUNN: Sure.

11 MR. EAST: And scroll down to under "Fisheries". I'm  
12 just trying to find where we are as far as harvest  
13 levels, "Salmon Harvest Levels" is at page 103,  
14 103 of the document.

15 MR. LUNN: Correct.

16 MR. EAST:

17 Q And it says here at paragraph 31:

18

19 In any year, the Lheidli T'enneh Harvest  
20 Level for Sockeye Salmon is:

21

22 a. when the Canadian Total allowable Catch  
23 for Sockeye Salmon is 250,000 Sockeye  
24 Salmon or less, two percent of the  
25 Canadian Total Allowable Catch...

26

27 And I believe you were referring to the fact that  
28 "Sockeye Salmon" is capitalized there.

29 MS. MCGIVNEY: Yes, as is "Total Allowable Catch", they  
30 both are in the definitions and the definition for  
31 Sockeye Salmon is more restrictive than all  
32 sockeye salmon in the Fraser River.

33 Q So the number that we're talking about is  
34 obviously two percent of Total Allowable Catch of  
35 Sockeye Salmon and the Canadian total allowable  
36 catch of sockeye salmon entirely would be much  
37 higher than the number which is actually referred  
38 to here.

39 MS. MCGIVNEY: Yes.

40 Q With respect to the Maa-Nulth Final Agreement, is  
41 the allocation for Fraser River sockeye salmon  
42 capped in the Maa-Nulth Final Agreement?

43 MS. MCGIVNEY: I believe it's identified as a share --

44 Q With no -- with no maximum...

45 MS. MCGIVNEY: -- without -- with no maximum.

46 Q And I believe the number that we looked at was  
47 .13366, it's in the Policy and Practice Report in

1 the provision we just -- we just looked at.

2 In 2010, which as everybody knows was quite a  
3 robust year for sockeye salmon, do you have a  
4 sense or can you give us a sense of how many --  
5 under this provision, how many fish the Maa-Nulth  
6 would have harvested under the treaty?

7 MS. MCGIVNEY: Having done a rough calculation, but  
8 based on the -- the treaty allocation arrangement,  
9 and given the high -- the TAC in 2010, which was a  
10 record year, I think the harvest would have been  
11 less than 18,000 fish, the allocation would have  
12 been less than 18,000 fish, somewhere between  
13 17,000 to 18,000 fish.

14 Q In most years, I would say a quote/unquote  
15 "normal" run year, if we can say such a thing  
16 exists, is it fair to say that the number would  
17 obviously be somewhat less than that?

18 MS. MCGIVNEY: Yes. It would be related to the TAC,  
19 whatever the TAC is, then it would be the portion  
20 would be smaller.

21 MR. EAST: Thank you. Those are my questions, Mr.  
22 Commissioner.

23 THE REGISTRAR: Did you wish that last document to be  
24 marked, Mr. East?

25 MR. EAST: Yes, please.

26 THE REGISTRAR: That will be marked as Exhibit 1447.

27  
28 EXHIBIT 1447: Lheidli T'enneh Final  
29 Agreement, October 29, 2006  
30

31 MR. LOWES: J.K. Lowes for the B.C. Wildlife Federation  
32 and the B.C. Federation of Drift Fishers.  
33

34 CROSS-EXAMINATION BY MR. LOWES:  
35

36 Q I'm interested in the relationship between the  
37 Aboriginal Fishing Policy as you've described it  
38 today, and aboriginal fishing rights. And perhaps  
39 I can start my questions with you, Ms. Stewart.  
40 You're a lawyer.

41 MS. STEWART: Yes.

42 Q yes. And presumably you've kept up with the  
43 development of the law with respect to aboriginal  
44 fishing rights over the last 20 or so years?

45 MS. STEWART: Insofar as in my capacity and my  
46 positions as concerned I have, although I am not  
47 an expert in aboriginal fishing law.

- 1 Q No, I'm not asking you whether you are, nor am I  
2 going to ask you any questions about what it is.  
3 What I'm interested in knowing is to what extent  
4 and how is the policy that you've described today  
5 informed by the jurisprudence as it develops over  
6 time.
- 7 MS. STEWART: Our policies are -- DFO certainly seeks  
8 in developing its policies and implementing  
9 policies to do so in accordance with guidance that  
10 -- that has been enunciated by the courts over the  
11 years.
- 12 Q Is there an institution or a mechanism by which  
13 that's done?
- 14 MS. STEWART: I would say that's done through we are  
15 provided advice by the Department of Justice,  
16 which we consider, of course, in the development  
17 of policies.
- 18 Q And is that advice given on a routine basis or is  
19 that if and when sought by the Department of  
20 Fisheries and Oceans?
- 21 MS. STEWART: Well, it's certainly sought on the  
22 development of policies. If you're asking whether  
23 there's sort of institutionalized process, there  
24 are management committees within the Department,  
25 which include Department of Justice advisors.
- 26 Q Well, I guess the thrust of my question is really  
27 whether there is some sort of mechanism to monitor  
28 the jurisprudence as it develops.
- 29 MS. STEWART: Well, the Department of Justice does  
30 that, and as I said, we do have Department of  
31 Justice advisors who participate in our management  
32 boards and our other internal structures.
- 33 Q Oh, I see, and they're seconded in some way to the  
34 Department of Fisheries?
- 35 MS. STEWART: Yes. Yes.
- 36 Q Yes. And how is that -- how does that advice or  
37 that information or that input get filtered down  
38 to the managers at the various levels?
- 39 MS. STEWART: We have committees within the Department  
40 that deal with legal -- legal risk management  
41 issues. And participation on that -- those bodies  
42 informs throughout the Department. So the  
43 information flows as it normally would in a  
44 Department.
- 45 Q Well, let me take a concrete example. Let's take  
46 a notion like priority. Is there a mechanism  
47 whereby the DFO is kept abreast of the

1           jurisprudence as it develops with respect to the  
2           meaning and application of that notion?  
3   MS. STEWART: Yes, through these internal committees.  
4   Q   Yes, and...  
5   MS. STEWART: Where the Department is made aware of  
6           jurisprudence that evolves, and some of the  
7           topics, the subjects that are being discussed.  
8   Q   Yes. You've said the Department is made aware.  
9           Now, who in the Department, and how made aware, is  
10          my question?  
11   MS. STEWART: I guess officials within the Department  
12           become aware by a number of methods. Number one  
13           is the information that's provided to participants  
14           on these committees that I've referred to, when  
15           made aware of jurisprudence would take that back  
16           with them to their branches and act on it as need  
17           be. But also in the other direction, as branches  
18           are developing policies or have questions that  
19           arise in whatever circumstances, whether it be  
20           comments made in correspondence or in meetings, or  
21           however that question comes to be, officials  
22           within the Department are then able to ask for  
23           advice from the Department of Justice. So I guess  
24           there'd be a number of different ways that  
25           departmental officials might be made aware of  
26           jurisprudence.  
27   Q   I'm interested in the question of the notion of a  
28           relinquishment in the PICFI transfer process, if I  
29           can call it that. My understanding is that  
30           something is relinquished by someone in the  
31           commercial fishery, and then, as a result, there's  
32           an allocation made upriver to an economic  
33           opportunity fishery for aboriginal people; do I  
34           have that correct?  
35   MS. STEWART: Well, first of all, I'll just clarify  
36           that PICFI is much more than inland demonstration  
37           fisheries.  
38   Q   All right.  
39   MS. STEWART: That's one part.  
40   Q   Yeah, but let me keep my question to that part,  
41           okay?  
42   MS. STEWART: Okay.  
43   Q   What is it that's relinquished?  
44   MS. STEWART: So DFO has mechanisms for the  
45           authorization of fishing licences; one requires by  
46           virtue of the legislation to have a licence in  
47           order to commercially fish.

- 1 Q Yes. And those are annual licences; is that  
2 correct?
- 3 MS. STEWART: Those are issued annually.
- 4 Q And at the discretion of the Minister?
- 5 MS. STEWART: That's right.
- 6 Q Right. So the licensee, what does the licensee  
7 relinquish?
- 8 MS. STEWART: The licensee relinquishes their fishing  
9 licence.
- 10 Q An annual licence.
- 11 MS. STEWART: Right.
- 12 Q And as a result, there's an allocation made up the  
13 river. Is that made on an annual basis, or is  
14 that made on a longer-term basis?
- 15 MS. STEWART: The -- it's not a one-for-one. It's not  
16 that one person relinquishes the licence which  
17 provides them authority to fish in coastal  
18 fishery, coastal salmon fishery, and one licence  
19 is issued in an inland fishery. Licences are  
20 relinquished from licence holders. The capacity  
21 that's identified with those licences, the fishing  
22 capacity, is then available to be fished in  
23 another fishery. It's on a yearly basis that that  
24 effort, catch effort is identified for those  
25 inland fisheries. It's not a permanent -- there  
26 have been no permanent decisions with respect to  
27 those -- the establishment of those fisheries on  
28 an ongoing basis. So there have -- there is no --  
29 it's not a parity situation.
- 30 Q No, and I'm not asking you whether -- I'm not  
31 suggesting it's a parity, but my understanding is  
32 that this relinquishment mechanism is a mechanism  
33 by which a transfer is made of fishing effort from  
34 a mixed-stock fishery to a more terminal fishery.  
35 Is that not the objective of this program?
- 36 MS. STEWART: It's definitely an objective. One of the  
37 objectives is to relinquish effort in the coastal  
38 fishery to allow for demonstration fisheries in  
39 inland waters.
- 40 Q And if the demonstration fisheries are successful,  
41 then presumably it will allow for some sort of a  
42 permanent treaty-based or policy-based fishery in  
43 the inland fishery that was successful; is that  
44 correct?
- 45 MS. STEWART: That's a potential.
- 46 Q Yes.
- 47 MS. STEWART: I guess one of the important points that

1 I would make is that DFO has made a policy  
2 decision that where it is going to provide  
3 commercial fisheries access to First Nations, that  
4 it does so where -- to mitigate the impact on  
5 existing licence holders or quota holders,  
6 depending on the fishery, in this case, licence  
7 holders in the commercial fishery. So the purpose  
8 of the voluntary relinquishment element of PICFI  
9 is so that existing licence holders, if they so  
10 choose, can offer up relinquishment of their  
11 licence, and then DFO is then able to use the  
12 access that related to that licence for other  
13 fisheries.

14 Q Yes. But once that licence is gone from the  
15 public fishery, it's gone for good, isn't that  
16 correct?

17 MS. STEWART: Well, again, I would say that it's --  
18 there is the ability to provide for fisheries in  
19 other areas, and within the parameters of a  
20 defined share approach for salmon fisheries, writ  
21 large, it would allow for flexibility that doesn't  
22 exist today.

23 Q No, but we don't have a defined share approach  
24 right now, do we?

25 MS. STEWART: We don't have it now.

26 Q No.

27 MS. STEWART: But that's something that we're  
28 exploring.

29 Q No, and licences are being taken out of the -- are  
30 being taken out of the public fishery for  
31 reallocation to an in-river fishery.

32 MS. STEWART: Again, I would just point out that  
33 relinquishment is voluntary.

34 Q Yes, but that licence is lost not just to the --  
35 to the present licence holder, but it's lost to  
36 the future of people who want to participate in  
37 the public fishery, isn't it?

38 MS. STEWART: Well, again, I would -- I would say that  
39 when you look at fisheries management, writ large,  
40 the purpose of exploring these in-river  
41 demonstration fisheries is in aid of ascertaining  
42 whether defined share, or how a defined share  
43 mechanism might work for salmon fisheries. Right  
44 now there are lots of constraints that are  
45 impacting on the coastal salmon fishery and there  
46 have been downward trends in its viability.  
47 We're looking for a new way of doing

1 fisheries management that's going to provide more  
2 stability and more certainty and ability for  
3 coastal salmon fleets to do more long-term  
4 business planning, look for synergies between --  
5 with the inland licence holders, First Nations who  
6 are fishing in inland areas. Because once you've  
7 dealt with weak stocks and the Wild Salmon Policy  
8 and you can -- you have a mechanism for moving  
9 effort --

10 Q Okay. What's driving --

11 MS. STEWART: -- then it provides a lot of flexibility  
12 within those.

13 Q What's driving this, is it the weak stock  
14 management or is it the economic opportunities?

15 MS. STEWART: Well, I think that they're both  
16 connected.

17 Q And how are they connected?

18 MS. STEWART: They're connected in that the coastal  
19 salmon fisheries are impacted by weak stock. We  
20 have a Wild Salmon Policy which constrains the  
21 ability to fish in coastal areas where weak stocks  
22 are mixing with -- with other stocks. And so  
23 there's some -- fisheries are precluded or effort  
24 is precluded by weak stocks.

25 Q Okay.

26 MS. STEWART: And avoidance of weak stocks. And so  
27 those coastal fisheries, those coastal fleets are  
28 impacted by weak stocks. They're not able to fish  
29 when weak stocks are moving through. So this is  
30 the functionality of the demonstration fisheries  
31 and defined shares, is to find a new mechanism for  
32 allowing for fisheries while also ensuring that  
33 we're not impacting on those weak stocks.

34 Q And let's get into the concern that the  
35 Commissioner expressed earlier today. It seems to  
36 me that you're talking about exactly the same  
37 thing, pile of issues that the witnesses dealing  
38 with the Wild Salmon Policy were talking about,  
39 except you're starting from the other end. Which  
40 is the tail and which is the dog? I mean, what's  
41 the prime objective, creating economic fisheries  
42 upriver to help aboriginal people? or is it to --  
43 is it part and parcel of weak stock management?

44 And is there any -- and is there any  
45 correspondence, is there any connection between  
46 the people who are looking at this from your  
47 perspective, the perspective of the Aboriginal

1 Policy, and the people who are looking at it from  
2 the perspective of broader fisheries management,  
3 like the Wild Salmon Policy people.  
4 MS. STEWART: I don't think that the two are exclusive.  
5 Q No, they're not exclusive at all.  
6 MS. STEWART: I think that the demonstration fisheries  
7 provide an opportunity for us to explore new  
8 mechanisms for addressing management around weak  
9 stocks, and at the same time it's allowing First  
10 Nations in inland water some opportunities for  
11 some socioeconomic development, so...  
12 Q Okay. Would you agree with me that a successful  
13 commercial fishing industry is more than just  
14 harvesting; to processing and marketing?  
15 MS. STEWART: Yes.  
16 Q Yes. And in -- in your viability studies, have  
17 you taken any advice or done any -- had any  
18 discussions with the existing processing and  
19 marketing industry that's existed in this province  
20 for in excess of 150 years?  
21 MS. STEWART: The discussions with respect to the  
22 design of PICFI predate my involvement, but I  
23 believe that there were some discussions in the  
24 formative years of PICFI with the processors.  
25 Q With people like Mr. Morley from the Canadian  
26 Fishing Company?  
27 MS. STEWART: Again, it predates my time. I can't  
28 speak to who...  
29 Q Yes. Well, I suggest very strongly that the  
30 Department has not had such discussions and that  
31 the viability experiments are confined to the  
32 small groups who want the fishery; isn't that  
33 correct?  
34 MS. STEWART: When you look at the amount of catch  
35 effort that is being moved into the inland waters,  
36 it's a proportion, it's a small proportion of the  
37 salmon industry overall. So I would just say that  
38 -- I wouldn't want to make such a blanket  
39 statement, because there is an awful lot of salmon  
40 fishing that's happening on the Coast, and in fact  
41 demonstration fisheries in aid of defined shares  
42 are being explored in some of the coastal fleets,  
43 as well. It's not restricted to inland fisheries.  
44 Q Is there a timeline for this demonstration  
45 program? Are there standards that have to be met?  
46 Is somebody going to make a report as to whether  
47 these things are successful or not, and if so,

1           when, and who?

2 MS. STEWART: Well, the end of PICFI comes at the end  
3 of this fiscal year and there will be a summative  
4 evaluation at the end of that program.

5 Q       Okay.

6 MS. STEWART: I can't speak to any other evaluations  
7 that Resource Management might be undertaking.

8 Q       All right. Let me turn to something else. The  
9 term, I'm interested in the meaning of the term  
10 "co-management" as you use the term "co-  
11 management", and also you, Ms. McGivney. Is the  
12 term used differently as it applies to aboriginal  
13 groups or First Nations, as distinct from  
14 commercial fishing associations or recreational  
15 fishing associations, or do you use it in the same  
16 way? Do you mean the same thing by co-management?

17 MS. MCGIVNEY: Co-management is a term that has a lot  
18 of different interpretations by different people  
19 in terms of --

20 Q       Yeah, I want yours.

21 MS. MCGIVNEY: -- in terms of, I think that there's a  
22 broad range in different elements of co-  
23 management, as I described earlier today, and  
24 different elements of that. And that applies to  
25 -- it's about management of the fishery, and it's  
26 about management with partners, and there's  
27 different elements that might be covered under  
28 different -- with different partners.

29 Q       Like what?

30 MS. MCGIVNEY: Pardon?

31 Q       Like what?

32 MS. MCGIVNEY: For instance, planning of the food,  
33 social, ceremonial fishery, and the plan  
34 associated with that would be with the First  
35 Nations involved.

36 Q       Obviously.

37 MS. MCGIVNEY: Planning a gillnet fishery would be done  
38 with gillnet fishers in terms of some of the  
39 elements of how that fishery might be implemented,  
40 but then there's the need for the broader  
41 integration of managing that. Because of the  
42 gauntlet that Fraser sockeye go through, there's  
43 elements that affects in each fishery that affect  
44 other fisheries. And so that's another component,  
45 another element of co-management at a different  
46 level, a different scale, that needs to be  
47 considered and worked out with all those that are

1 participants within that.  
2 Q Yeah, you're talking about the mechanics of the  
3 particular fishery, that the partner, in quotes,  
4 is involved in; is that right? That's what you're  
5 going to talk about.  
6 MS. MCGIVNEY: That's one element. Planning, planning  
7 the broader fishery, there's a whole process at  
8 the IHPC. There's mechanics, there's planning,  
9 there's looking at the actual operations of the  
10 fishery, as well.  
11 Q Okay. How about you, Ms. Stewart. When you talk  
12 about co-management with First Nations people, and  
13 talk about co-management with commercial groups or  
14 recreational groups, are you talking about the  
15 same thing? And if not, what's the difference?  
16 MS. STEWART: Again, there's a continuum, and probably  
17 if you ask everybody in this room what their  
18 definition of co-management is, they'd have a --  
19 Q Yeah, I'm asking you.  
20 MS. STEWART: -- different response. So for me, co-  
21 management is participatory management,  
22 involvement in decision making, involvement in the  
23 implementation of decisions and policies, and it  
24 does cover the continuum.  
25 We have advisory bodies in the development of  
26 fishing plans, for example. The participants in  
27 that particular fishery play a very important role  
28 in the development of the plan, and it, I guess,  
29 from DFO's perspective, co-management facilitates  
30 better management because you've got buy-in. If  
31 you've got people at the table who have an  
32 opportunity to bring their point of view forward,  
33 it facilitates better fisheries management.  
34 Q And that applies to everyone who uses and relies  
35 on the fishery.  
36 MS. STEWART: Right.  
37 MR. LOWES: Thank you. Mr. Commissioner, I wonder if I  
38 might ask your indulgence. I, too, was taken by  
39 surprise about the timing today, and I'm just  
40 wondering if I might five minutes or so, not  
41 today, but on the 2nd, just in case.  
42 THE COMMISSIONER: Thank you, Mr. Lowes.  
43 MR. MCGOWAN: Mr. Commissioner, it appears despite our  
44 best efforts we have been unable to leave any  
45 extra time for Ms. Gaertner today, so I propose we  
46 should adjourn to the 2nd, and make our best  
47 efforts to get through the rest of the line-up on

1           that day.

2   THE COMMISSIONER: Thank you very much. We're  
3           adjourned until Monday, this coming Monday at  
4           10:00 a.m.; is that correct?

5   MR. MCGOWAN: Yes, Mr. Commissioner. The hearings will  
6           adjourn until Monday at 10:00 a.m. This panel  
7           will be adjourned until September 2nd at 10:00  
8           a.m.

9   THE COMMISSIONER: Well, my appreciation to the panel  
10           members for returning on September the 2nd. Thank  
11           you both very much.

12   THE REGISTRAR: The hearing is now adjourned until  
13           Monday at 10:00 a.m.

14  
15                   (PROCEEDINGS ADJOURNED TO AUGUST 22, 2011 AT  
16                   10:00 A.M.)

17  
18                   I HEREBY CERTIFY the foregoing to be a  
19                   true and accurate transcript of the  
20                   evidence recorded on a sound recording  
21                   apparatus, transcribed to the best of my  
22                   skill and ability, and in accordance  
23                   with applicable standards.

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28                   Diane Rochfort

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30                   I HEREBY CERTIFY the foregoing to be a  
31                   true and accurate transcript of the  
32                   evidence recorded on a sound recording  
33                   apparatus, transcribed to the best of my  
34                   skill and ability, and in accordance  
35                   with applicable standards.

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40                   Susan Osborne

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

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Pat Neumann

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