

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.

Monday, December 13, 2010

**Tenue à :**

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

le lundi 13 décembre 2010

## APPEARANCES / COMPARUTIONS

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

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

David Butcher, Q.C.	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")
Tina Dion James Reynolds	Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM")
David Robbins Robert Janes Sarah Sharp	Western Central Coast Salish First Nations: Cowichan Tribes and Chemainus First Nation Hwlitsum First Nation and Penelakut Tribe Te'mexw Treaty Association ("WCCSFN")
Brenda Gaertner Leah Pence	First Nations Coalition: First Nations Fisheries Council; Aboriginal Caucus of the Fraser River; Aboriginal Fisheries Secretariat; Fraser Valley Aboriginal Fisheries Society; Northern Shuswap Tribal Council; Chehalis Indian Band; Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council; Upper Fraser Fisheries Conservation Alliance; Other Douglas Treaty First Nations who applied together (the Snuneymuxw, Tsartlip and Tsawout)
No appearance	Adams Lake Indian Band
No appearance	Carrier Sekani Tribal Council ("FNC")
No appearance	Council of Haida Nation

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

No appearance	Métis Nation British Columbia ("MNB.C.")
Tim Dickson Nicole Schabus	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
No appearance	Laich-kwil-tach Treaty Society James Walkus and Chief Harold Sewid Aboriginal Aquaculture Association ("LJHAH")
Benjamin Ralston (articled student)	Heiltsuk Tribal Council ("HTC")
Krista Robertson Lee Schmidt	Musgagmagw Tsawataineuk Tribal Counsel ("MTTC")

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3 2010  
4

5 THE REGISTRAR: The hearing is now resumed.

6 THE COMMISSIONER: Mr. McGowan.

7 MR. MCGOWAN: Thank you, Mr. Commissioner. For the  
8 record, it's Patrick McGowan. I'm counsel for the  
9 Commission. With me is Jennifer Chan, another one  
10 of your counsel. I'll just say perhaps a few  
11 brief words before we get started today, Mr.  
12 Commissioner, about the next three days.

13 The next three days will consist of evidence  
14 from witnesses proposed by a number of your  
15 aboriginal participants. The focus of the  
16 evidence over these next three days will be  
17 Aboriginal World View, Aboriginal Traditional  
18 Knowledge and Cultural Context. That will be  
19 primarily what the evidence will cover.

20 The evidence will be presented by witnesses  
21 appearing in panels. You're going to hear from a  
22 total of 14 witnesses over the next three days in  
23 the three panels which will consist of four to  
24 five witnesses each. The panels are organized  
25 roughly along geographical lines.

26 Today, Mr. Commissioner, you'll be hearing  
27 from First Nations representatives representing  
28 areas primarily in the lower Fraser. Tomorrow  
29 you'll be hearing from aboriginal panellists who  
30 represent primarily the mid and upper Fraser, and  
31 the third day we'll deal primarily with the marine  
32 and approach areas.

33 Now, it's obviously a good number of  
34 witnesses covering some important evidence we have  
35 to get through in the next few days. We'll have  
36 to all work together to ensure that we're able to  
37 cover this material in the time allotted.

38 In terms of the order of examination,  
39 Commission counsel will go first, followed by  
40 counsel for each of the panellists, and then of  
41 course, questions from the remaining participants  
42 in the room.

43 There's one issue in terms of examination  
44 that I wanted to just draw to your attention, Mr.  
45 Commissioner. The usual rule we have is that each  
46 participant group speaks with one voice. They  
47 have one counsel who'll deal with each topic or

1 each witness or panel. There is an issue that's  
2 arisen with this particular panel whereby a couple  
3 of the participant groups are going to seek leave  
4 to have two counsel, and I'll just explain that to  
5 you. The Cheam and Sto:lo are one participant  
6 group together, but we have one witness from the  
7 Sto:lo Tribal Council and one from the Cheam  
8 Indian Band. Mr. Dickson is counsel for the  
9 Sto:lo and Ms. Schabus is counsel for the Cheam,  
10 and they will each seek to lead the evidence of  
11 their own panellist. They've agreed not to ask  
12 questions of each other's witnesses and to avoid  
13 any duplication.

14 A similar issue arises with respect to the  
15 Musqueam witness and the witness from Tsawwassen  
16 First Nation who are represented by Mr. Jim  
17 Reynolds and Ms. Dion respectively, and they will  
18 also seek leave from you, Mr. Commissioner, to ask  
19 questions of their own witness, and similarly have  
20 agreed to avoid duplication and to question only  
21 their own witnesses, not each other's.

22 Commission counsel's position is it seems  
23 like a reasonable request and we're supportive of  
24 it. As I said, we have three panels to get  
25 through in three days. We've allotted one day for  
26 each. We're going to have to work hard to stay on  
27 track and make sure that we don't run over time.  
28 We're sitting from 10:00 to 4:00 each day.

29 Commission counsel has conducted an interview  
30 with each of the panellists and, in part because  
31 of the timing considerations, Commission counsel  
32 has prepared fairly detailed summaries of the  
33 information provide to us during those interviews.  
34 Each of the summaries has been reviewed by the  
35 witness and their counsel and has been distributed  
36 to all participants. Subject to any corrections,  
37 it's our intention to have each witness adopt  
38 their summaries and have those filed as an  
39 exhibit.

40 In order to help keep us on track in terms of  
41 timing, aside from introducing the witnesses,  
42 Commission counsel will rely on these summaries as  
43 its examination in chief, leaving as much time as  
44 possible for counsel for the witnesses on the  
45 panel to spend time with their witnesses.

46 As I said, Mr. Commissioner, the oral  
47 evidence you are going to hear, I understand, is



3  
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In chief by Mr. McGowan

1 going to be primarily focused on aboriginal world  
2 view, aboriginal traditional knowledge and  
3 cultural context. We're hopeful we can keep the  
4 evidence this week focused primarily on those  
5 topics. There will be topics related to the  
6 aboriginal fishery which will arise in hearings  
7 that come later in the New Year in the area of the  
8 hearings dedicated to that particular topic.

9 With that said, and subject to any questions,  
10 I would propose to have the witnesses sworn or  
11 affirmed and then proceed to introduce them and  
12 file their summaries.

13 THE REGISTRAR: You may remain seated. Do you solemnly  
14 affirm that the evidence to be given by you to  
15 this hearing shall be the truth, the whole truth  
16 and nothing but the truth?

17 I need you to speak up, please.

18  
19 (ALL PANEL MEMBERS AFFIRMED)

20  
21 THE REGISTRAR: Could you state your full name, please?

22 COUNCILLOR QUIPP: June Quipp.

23 CHIEF CHARLIE: William Peter Charlie.

24 GRAND CHIEF PENNIER: Clarence Martin Pennier.

25 CHIEF BAIRD: Kimberly Carolyn Baird.

26 MR. BECKER: Joseph Ralph Becker.

27 THE REGISTRAR: Thank you. Counsel?

28 MR. MCGOWAN: Ms. Commissioner, I'll just have a couple  
29 of brief questions to introduce the witnesses and  
30 we'll file their summaries. I'll start with you,  
31 Ms. Quipp.

32  
33 EXAMINATION IN CHIEF BY MR. MCGOWAN:

34  
35 Q You're presently a councillor for the Cheam Indian  
36 Band?

37 COUNCILLOR QUIPP: Yes.

38 Q Okay. And you previously served five years as an  
39 elected chief for the Cheam Indian Band?

40 COUNCILLOR QUIPP: Yes, I did.

41 Q And personally you're a member of the Halalt Tribe  
42 at Cheam?

43 COUNCILLOR QUIPP: Yes.

44 Q Okay. Now, we had an interview just a short time  
45 ago in fact on November 26th.

46 COUNCILLOR QUIPP: Yes.

47 Q And Commission counsel prepared a summary of that

4  
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In chief by Mr. McGowan

1 interview?

2 COUNCILLOR QUIPP: Yes.

3 Q And have you had a chance to review your summary?

4 COUNCILLOR QUIPP: I have.

5 Q And you made a couple of corrections?

6 COUNCILLOR QUIPP: Yup. Yes, I did.

7 Q Which we accepted.

8 COUNCILLOR QUIPP: Yes.

9 Q And are you able to, today, adopt the contents of  
10 your summary?

11 COUNCILLOR QUIPP: Yes.

12 MR. MCGOWAN: Mr. Commissioner, if that could be the  
13 next exhibit? That's the witness summary of  
14 Councillor June Quipp.

15 THE REGISTRAR: Exhibit number 278.

16

17 EXHIBIT 278: Witness summary of Councillor  
18 June Quipp  
19

20 MR. MCGOWAN: Thank you.

21 Q Chief Charlie, you are a member of the Chehalis  
22 Indian Band?

23 CHIEF CHARLIE: Yes.

24 Q And you're presently an elected chief of the  
25 Chehalis Indian Band?

26 CHIEF CHARLIE: Yes.

27 Q And you're the CEO also for the band's  
28 Administration and Development Corporation?

29 CHIEF CHARLIE: Yes.

30 Q And previously you were the vice-president for the  
31 Union of B.C. Indian Chiefs?

32 CHIEF CHARLIE: Yes.

33 Q And similarly, we had an interview on September  
34 21st of this year?

35 CHIEF CHARLIE: Yes.

36 Q And you've had a chance to review the summary  
37 that's been completed for that?

38 CHIEF CHARLIE: Yes.

39 Q And I understand you may have one just small  
40 correction to make?

41 CHIEF CHARLIE: Yes.

42 Q If you could direct me to the page that correction  
43 is on?

44 CHIEF CHARLIE: On page 4 underneath "Aboriginal  
45 Perspective and World Views", second paragraph,  
46 fourth line down, second sentence, "Some become  
47 the wind...". It's supposed to have been

5  
PANEL NO. 9  
In chief by Mr. McGowan

1 "winged".

2 Q So the word "wind" in the fourth line of that  
3 second paragraph should be changed to "winged"?

4 CHIEF CHARLIE: Yes.

5 Q Okay. Subject to that correction, do you adopt  
6 the contents of your summary?

7 CHIEF CHARLIE: Yes.

8 MR. MCGOWAN: Okay. If that could become the next  
9 exhibit, Mr. Commissioner.

10 THE REGISTRAR: Exhibit number 279.

11

12 EXHIBIT 279: Witness summary of Chief  
13 William Charlie

14

15 MR. MCGOWAN: Thank you.

16 Q Grand Chief Pennier, we had --

17 GRAND CHIEF PENNIER: Yes.

18 Q -- our interview on November 26th as well?

19 GRAND CHIEF PENNIER: That's right.

20 Q Okay. You're presently chief of the Sto:lo Tribal  
21 Council?

22 GRAND CHIEF PENNIER: Change that to president.

23 Q President?

24 GRAND CHIEF PENNIER: Yes.

25 Q I'm sorry about that. And the Sto:lo Tribal  
26 Council is comprised of approximately eight  
27 communities?

28 GRAND CHIEF PENNIER: That's right.

29 Q And personally you're a member of the -- is it  
30 pronounced Scowlitz First Nation?

31 GRAND CHIEF PENNIER: That's right.

32 Q Okay. Now, have you had a chance to look at the  
33 summary that we prepared?

34 GRAND CHIEF PENNIER: I have.

35 Q Okay. And are you content with the contents of  
36 it?

37 GRAND CHIEF PENNIER: Yes, I am.

38 Q Okay.

39 GRAND CHIEF PENNIER: Just changing "President" from  
40 "Chief".

41 Q Okay. So in the first -- in the second line  
42 before we get very far in, we've made our first  
43 mistake. Are you -- is Grand Chief an appropriate  
44 title for you, sir?

45 GRAND CHIEF PENNIER: That's right.

46 Q Okay. So we can address you as Grand Chief, but  
47 presently you're the president of the Tribal --

6  
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1 Sto:lo Tribal Council.

2 GRAND CHIEF PENNIER: That's right.

3 MR. MCGOWAN: Okay. Thank you for that clarification.

4 If that could be the next exhibit, then, Mr.

5 Commissioner? I'll just wait for Mr. Giles.

6 THE REGISTRAR: It'll be 280.

7

8 EXHIBIT 280: Witness summary of Grand Chief  
9 Clarence Pennier

10

11 MR. MCGOWAN:

12 Q Chief Baird?

13 CHIEF BAIRD: Yes.

14 Q You're a member of the Tsawwassen First Nation?

15 CHIEF BAIRD: Yes.

16 Q You're presently the elected chief of Tsawwassen  
17 First Nation?

18 CHIEF BAIRD: Yes.

19 Q And you've held that position for approximately 11  
20 years?

21 CHIEF BAIRD: Yup.

22 Q Prior to which, you were a council member of the  
23 Tsawwassen First Nation for six years?

24 CHIEF BAIRD: Yes.

25 Q You had an interview with Commission counsel on  
26 August 13th of this year?

27 CHIEF BAIRD: Yes.

28 Q And you've had an opportunity to review the  
29 summary from that interview?

30 CHIEF BAIRD: Yes.

31 Q And do you adopt the contents of the summary?

32 CHIEF BAIRD: Yes.

33 MR. MCGOWAN: Okay. Thank you. If that could be the  
34 next exhibit, Mr. Commissioner.

35 THE REGISTRAR: Exhibit number 281.

36

37 EXHIBIT 281: Witness summary of Chief  
38 Kimberly Baird

39

40 MR. MCGOWAN: Thank you.

41 Q Mr. Becker, thanks for being here today. You're a  
42 member of the Musqueam Indian Band?

43 MR. BECKER: Yes.

44 Q And you spent much of your life fishing from  
45 Steveston?

46 MR. BECKER: Yes.

47 Q Okay. And you're presently one of six elected

7  
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In chief by Mr. McGowan  
Cross-exam by Mr. Reynolds (MTM)

1           commissioners on the Musqueam Fisheries  
2           Commission; is that correct?  
3   MR. BECKER:  Yes.  
4   Q   All right.  You had an interview with Commission  
5           counsel on November 1st of this year?  
6   MR. BECKER:  Yes.  
7   Q   Okay.  And we prepared a summary of that  
8           interview?  
9   MR. BECKER:  Yes.  
10  Q   And you've had a chance to look at that and make  
11           any corrections?  
12  MR. BECKER:  No corrections.  
13  Q   Okay.  Thank you.  So you're content with the  
14           content?  
15  MR. BECKER:  Yes, I am.  
16  MR. MCGOWAN:  If that could be the next exhibit, Mr.  
17           Commissioner?  
18  THE REGISTRAR:  Exhibit 282.  
19  
20                   EXHIBIT 282:  Witness summary of Joseph  
21                   Becker  
22  
23  MR. MCGOWAN:  Mr. Commissioner, that will conclude the  
24           examination by Commission counsel.  There are five  
25           panellists, each who will have a separate counsel  
26           conducting their examination in chief on behalf of  
27           that participant group.  I have suggested to them  
28           that they ought to collectively attempt to get  
29           through their examinations in chief within a  
30           couple of hours, and I've left it to them to sort  
31           out the particular order and how they're going to  
32           distribute that time.  
33           So I'm not sure who is going to be going  
34           first?  Mr. Reynolds is going to be examining  
35           first, Mr. Commissioner.  
36  MR. REYNOLDS:  Mr. Commissioner, my name is James  
37           Reynolds.  I'm the counsel for the Musqueam, and  
38           as Mr. McGowan mentioned, I'd like to seek leave  
39           to examine Musqueam, and my friend, Tina Dion,  
40           will examine the Tsawwassen with Chief Baird.  
41  THE COMMISSIONER:  Thank you, Mr. Reynolds.  
42  MR. REYNOLDS:  Thank you.  
43  
44  CROSS-EXAMINATION BY MR. REYNOLDS:  
45  
46  Q   Mr. Becker, I have a few questions for you.  
47           First, I'd like to just give some further

1 background relating to you. I'll read a  
2 statement, in effect, and ask that you confirm  
3 whether it's true or not. Is it true that you've  
4 fished for most of your life?

5 MR. BECKER: Yes, it is.

6 Q That you've been a member of the Musqueam  
7 Fisheries Commission for a number of years, for  
8 about 18 years, I believe?

9 MR. BECKER: Right.

10 Q That you're a former chief?

11 MR. BECKER: Yes.

12 Q A former member of the band council?

13 MR. BECKER: Yes.

14 Q That you participate in ceremonies at the  
15 longhouse?

16 MR. BECKER: Yes.

17 Q And that you carry on the Musqueam tradition as a  
18 carver?

19 MR. BECKER: Yes.

20 Q Thank you. I'd like to acknowledge that we are in  
21 the traditional territory of the Musqueam.  
22 Please, could you tell us where the main winter  
23 village of the Musqueam was located in relation to  
24 the Fraser River?

25 MR. BECKER: It's right at the mouth of the north arm.

26 Q Thank you. And what is your understanding of the  
27 importance of fishing on the Fraser River to the  
28 Musqueam before the arrivals of the Europeans in  
29 1792?

30 MR. BECKER: Salmon has always been important, and  
31 culturally, they use it in all of the ceremonies.  
32 We use it for, like, used to preserve it for long  
33 periods of time to last till the next salmon  
34 season, so they would -- they would dry it, they  
35 would can it. So there was always lots of salmon  
36 available for our people.

37 Q Thank you. How many members of the Musqueam  
38 participate in the Fraser River fishery today?

39 MR. BECKER: Approximately -- anywhere from 40 to 100.  
40 We issued about 100 licences last year, and  
41 approximately 40 or 50 people fished.

42 Q Thank you. What about those members of the  
43 community who can't fish for themselves?

44 MR. BECKER: The Commission has a responsibility to the  
45 membership. We're elected by the membership, so  
46 we set aside a portion of our allocation to be  
47 distributed amongst the elders and the handicapped

1 first, and then we distribute it to the  
2 membership.

3 Q Thank you. And can you explain the importance of  
4 the sockeye salmon to Musqueam culture today?

5 MR. BECKER: We still use it in our longhouses. We --  
6 in our funeral, our ceremonies. So there's  
7 basically like two main ingredients that we feed  
8 people when they come to Musqueam, and that's  
9 salmon and the other is wild game.

10 Q Thank you. And the Musqueam letterhead or logo,  
11 could you describe that?

12 MR. BECKER: It's a salmon within an arrowhead with a  
13 net.

14 Q Thank you. And if I could turn to traditional  
15 knowledge, how relevant do you think that is to  
16 the management of the fishery?

17 MR. BECKER: I think traditional knowledge, given the  
18 time frame of where we are today, has to evolve.  
19 Methods of fishing have changed. Fish have  
20 changed. So we use our traditional knowledge  
21 about run size and when fish are coming, but we  
22 fish by today's methods because of the technology.

23 Q Thank you. And if I could turn to the question of  
24 management of the Fraser River fishery, what is  
25 your view on whether the Department of Fisheries  
26 adequately consults with Musqueam with respect to  
27 the fishery?

28 MR. BECKER: My view is that it's a process that needs  
29 more work. They did consult in the beginning, but  
30 now it's more of a dictatorship, in my view, where  
31 these agreements are basically "take it or leave  
32 it". If you leave it, then you're not fishing.

33 Q And how would you see Musqueam working with other  
34 First Nations in the Fraser River watershed?

35 MR. BECKER: Well, traditionally, there were two  
36 parties that Musqueam belonged to. One was the  
37 Lower Fraser Fishing Authority made up of bands  
38 from Sawmill Creek or Yale to the mouth and the  
39 Fraser Watershed. Musqueam does not belong to  
40 either of those, and I believe both of those  
41 groups have disbanded.

42 So I think a forum needs to be established  
43 and I believe the AAROM process is starting that,  
44 and hopefully, that will revive the Lower Fraser  
45 initiative anyway.

46 Q And do you see a role for a province-wide  
47 organization representing First Nations such as

1 the First Nations Fisheries Council?

2 MR. BECKER: I believe that aboriginal fisheries really  
3 needs to have one organization that represents all  
4 of the fishers. That would include rights fishers  
5 and licensed fishers. We would have to elect  
6 regional members to that group.

7 Q Thank you. And my final question is how do you  
8 think the Fraser River fishery could be better  
9 managed to ensure the sustainability of the  
10 sockeye?

11 MR. BECKER: I was going to say that's a hot potato.  
12 Mr. Commissioner, I've -- I'm a real believer in  
13 equity, and there is no equity in the way the fish  
14 are managed today. Fish are the responsibility of  
15 everyone who participates in the fishery. DFO, in  
16 their management regime, has decimated the stocks  
17 in the Fraser system. I believe that there has to  
18 be a regime or a group representing all user  
19 groups, and that's First Nations, recreational and  
20 commercial, and put our egos aside and get into a  
21 room and negotiate with one another so that there  
22 will be fish for the future, for our  
23 grandchildren.

24 I have 17 grandchildren and I'd like them to  
25 have fish in the future. The way it's going  
26 today, there won't be fish for even my children.

27 MR. REYNOLDS: Thank you, Mr. Becker. Mr.  
28 Commissioner, those are my questions for Mr.  
29 Becker. There may be other questions.

30 THE COMMISSIONER: Thank you, Mr. Reynolds.

31 MS. DION: Good morning, Mr. Commissioner, Tina Dion,  
32 D-i-o-n, for Tsawwassen First Nation.  
33

34 CROSS-EXAMINATION BY MS. DION:  
35

36 Q Chief Baird, with respect to the witness summary,  
37 is it true that your witness summary is a blend of  
38 pre-treaty and post-treaty comments that you made  
39 in your witness statement? That is, that you've  
40 spoken about the fishery for Tsawwassen First  
41 Nation in pre-treaty times as well as post-treaty  
42 times.

43 CHIEF BAIRD: Yes, that's correct.

44 Q In your witness statement, page 1, there's a  
45 reference to you becoming the lead negotiator for  
46 the treaty, negotiating the treaty. Will you  
47 please explain how it is that you came to the



1 position of lead negotiator?

2 CHIEF BAIRD: When I became chief in 1999, I also  
3 assumed the position of chief negotiator as there  
4 was no one else left in our Treaty Department to  
5 do the job, so our council agreed that I should  
6 represent our community in those negotiations.

7 Q And it's true, then, Chief, that since that time,  
8 you've been both the -- you remained as chief and  
9 have continued not only as lead negotiator, but  
10 have come on since the treaty has come into effect  
11 dealing with matters related to treaty.

12 CHIEF BAIRD: Yeah, I oversee the implementation of the  
13 treaty currently as well as being chief.

14 Q Thank you. The treaty was signed by the three  
15 parties, that is, Canada, British Columbia and  
16 Tsawwassen First Nation, on December 6th, 2007?

17 CHIEF BAIRD: Yes.

18 Q And that treaty came into effect on April 3rd,  
19 2009?

20 CHIEF BAIRD: Yes.

21 MS. DION: Mr. Commissioner, I'd like to enter as an  
22 exhibit the Tsawwassen First Nation Final  
23 Agreement dated December 6th, 2007, which came  
24 into effect April 3rd, 2009.

25 THE REGISTRAR: Exhibit 283.

26  
27 EXHIBIT 283: Tsawwassen First Nation Final  
28 Agreement dated December 6, 2007, effective  
29 April 3, 2009  
30

31 MS. DION: Thank you.

32 Q Now, Chief Baird, under the heading of "Territory"  
33 in your witness statement, the first sentence  
34 reads:

35  
36 TFN's traditional fishing territory extends  
37 from the marine areas up to the Port Mann  
38 Bridge.  
39

40 With respect to Tsawwassen's traditional  
41 territory, are you referring to the area set out  
42 in Appendix A of the Tsawwassen Final Agreement?

43 CHIEF BAIRD: Yes.

44 MS. DION: Mr. Commissioner, I'd like to enter as an  
45 exhibit the TFN appendices to the Final Agreement,  
46 specifically Appendix A, and I wonder if the  
47 Registrar wouldn't mind bringing that up.

1 THE REGISTRAR: Exhibit number 284.

2  
3 EXHIBIT 284: Appendix A to the Tsawwassen  
4 First Nations Final Agreement  
5

6 MR. LUNN: Is that the appendices document?

7 MS. DION: It is. And it will be the first Appendix A.

8 MR. LUNN: Do you have a page number for the document?

9 MS. DION: It should be if you go up -- back. There it  
10 is there, and you probably could make it one  
11 smaller, one size smaller.

12 MR. LUNN: Certainly.

13 MS. DION:

14 Q And this, Chief Baird, is the area that you're  
15 referring to under the heading of "Traditional  
16 Area of Tsawwassen First Nation"?

17 CHIEF BAIRD: Yes.

18 Q Okay. Thank you.

19 CHIEF BAIRD: Until we get our U.S. claim done.

20 Q Now, under the heading "Cultural significance of  
21 the Fraser River sockeye and the act of fishing  
22 for it," there is, on the second paragraph, the  
23 first sentence reads [as read]:  
24

25 Salmon is one of the only resources left in  
26 TFN's traditional territory, which means it  
27 is all the more important.  
28

29 Now, here I'd like to refer you to appendix J-1 of  
30 the appendices and I have a -- should be two --  
31 page 275.

32 Sorry, Mr. Registrar, one appendices (sic)  
33 back. That's it there, J-K.

34 With respect to your reference, Chief Baird,  
35 under this section, when you're referring to the  
36 Tsawwassen First Nation fishing area, this is the  
37 area that you're talking about, J-1 of the  
38 appendices to the Tsawwassen Final Agreement?

39 CHIEF BAIRD: Yes.

40 Q Under the heading, "Interaction and Consultations  
41 with DFO", you indicate that:  
42

43 TFN has tried hard to obtain joint management  
44 powers, but DFO has always wanted to retain  
45 ultimate decision-making authority.  
46

47 Can you explain what you mean by that statement?

1 CHIEF BAIRD: Well, over the decade-plus of treaty  
2 negotiations, trying to increase Tsawwassen's  
3 jurisdiction in relation to fisheries management,  
4 we weren't successful in that we don't have a veto  
5 over any important issues or ultimate decision-  
6 making authority that extends beyond our internal  
7 organization.

8 Q And with respect to your internal organization, as  
9 a result of the treaty, Tsawwassen First Nation  
10 had, among it's many powers, it could have  
11 jurisdiction over -- it could have jurisdiction  
12 over internal fisheries matters?

13 CHIEF BAIRD: Yes.

14 MS. DION: In that regard, Mr. Commissioner, what I'd  
15 like to do is enter two documents. The first is  
16 the **Fisheries, Wildlife, Migratory Birds,**  
17 **Renewable Resources Act**, and again, I'll just  
18 repeat that. **Fisheries, Wildlife, Migratory Birds**  
19 **and Renewable Resources Act** dated April 3rd, '09.

20 Q Chief Baird, this is the **Act** at Tsawwassen First  
21 Nation which regulates fisheries among other  
22 items, but for our purposes, fisheries and the  
23 taking of fish.

24 CHIEF BAIRD: Yes.

25 THE REGISTRAR: Exhibit number 285.

26  
27 EXHIBIT 285: TFN **Fisheries, Wildlife,**  
28 **Migratory Bird and Renewable Resources Act**  
29 dated April 3, 2009  
30

31 MS. DION: The second document, Mr. Commissioner, I'd  
32 like to enter is titled **Fisheries, Wildlife,**  
33 **Migratory Birds and Renewable Resources Act** and  
34 that is the Fisheries Regulations that support the  
35 **Fisheries Act** and that is dated September 16th,  
36 2009.

37 Q Chief Baird, this Fisheries Regulation is the  
38 regulation that, among other things, regulates who  
39 in the community is entitled to fish under the  
40 **Act**.

41 CHIEF BAIRD: Yes.

42 Q And among the documents in this Regulation are all  
43 the schedules for applications for any person who  
44 may want to obtain a licence from the Tsawwassen  
45 government in respect to fishing?

46 CHIEF BAIRD: That's right.

47 THE REGISTRAR: That document will be marked as 286.

1 MS. DION: Thank you.  
2

3 EXHIBIT 286: **Fisheries, Wildlife, Migratory**  
4 **Birds and Renewable Resources Act**, Fisheries  
5 Regulations, dated September 16, 2009  
6

7 THE COMMISSIONER: Could you scroll down, Mr.  
8 Registrar? There it is. Thank you.

9 MS. DION:

10 Q Now, under the heading of "Post-Treaty Fishery",  
11 you talk about the allocation under treaty with  
12 respect to sockeye salmon, among other species,  
13 and I wonder if we could take you to Appendix J-1,  
14 J-2 and J-3.

15 MS. DION: At this point, I should mark this Appendix  
16 J-1, J-2, J-3, they're all together, as one  
17 exhibit, if you don't mind.

18 THE REGISTRAR: Exhibit number 287.  
19

20 EXHIBIT 287: Appendices J-1, J-2 and J-3  
21 from Tsawwassen First Nations Final Agreement  
22

23 THE COMMISSIONER: Sorry, Ms. Dion, just so I can  
24 follow you, I'm just going back to -- when you  
25 originally referred to J-1 --

26 MS. DION: J-1 is the map, Mr. Commissioner.

27 THE COMMISSIONER: Pardon me?

28 MS. DION: J-1 is the map, the fishing area.

29 THE COMMISSIONER: Right. But you referred to it  
30 earlier as a page number of the treaty itself, did  
31 you not?

32 MS. DION: At the bottom of each of the appendices,  
33 there's a page number.

34 THE COMMISSIONER: Right. But I'm just -- is it these  
35 are all separate documents?

36 MS. DION: Well, the appendixes as one -- it's about  
37 300 pages in total. So what I'm doing is just  
38 entering two exhibits. One is the Appendix A-1  
39 and J-1, and attached to J-1 are the allocations  
40 that I'd like to take Chief Baird to now.

41 THE COMMISSIONER: All right. Now, Exhibit 284, I had  
42 as Appendix A. Is that correct?

43 MS. DION: That's the traditional territory, that's  
44 right.

45 THE COMMISSIONER: Right. And then 287, then, will be  
46 the three appendixes that you've referred to?

47 MS. DION: That's right, J-1, 2 and 3.

1 THE COMMISSIONER: I see, okay. Thank you.

2 THE REGISTRAR: That's marked as 287.

3 MS. DION:

4 Q If we could go to J-2, appendix J-2 -- and there's  
5 always a blank page in between there so -- it's a  
6 bit strange, but -- now, this appendix J-2, Chief  
7 Baird, could you explain the total allocation for  
8 Tsawwassen First Nation as set out in J-2 with  
9 respect to sockeye salmon?

10 CHIEF BAIRD: So basically we went from -- in AFS  
11 regime with DFO into a percentage of CTAC is the  
12 model under the treaty, so one percent of the  
13 total allowable catch for Fraser River sockeye,  
14 and we had Fisheries biologists help us with the  
15 section because it's quite technical. I wouldn't  
16 be proficient to talk about the different  
17 allocation formulae for the chum, pink, et cetera  
18 -- or pink is bycatch, but regardless -- so we've  
19 changed from a more or less fixed number of about  
20 25,000 sockeye, depending on the year, to about  
21 40,000 under the treaty. Of course, that's  
22 dependent on the health of the run size.

23 So instead of an allocation no matter what  
24 the run size is, we take a percentage of the CTAC.  
25 Q Right. And that's all -- the treaty represents  
26 the final numbers for Tsawwassen. Tsawwassen  
27 can't go back and negotiate any more beyond what's  
28 here.

29 CHIEF BAIRD: No. I guess the harvest agreement goes  
30 in tandem with this as well for our economic  
31 opportunities.

32 Q Right. And the last question -- second question I  
33 have is with respect to Appendix J-3. Now, this  
34 appendix, Chief Baird, sets out the principles for  
35 calculating overages and underages, and you've  
36 talked a bit about that in your witness statement.  
37 Can you just explain, please, what the principles  
38 are and how they operate under -- for the  
39 Tsawwassen First Nation?

40 CHIEF BAIRD: Well, the principle of overages and  
41 underages is to ensure that there is no incentive  
42 to overfish or for DFO to have us underfish. And  
43 so if we catch too many fish in a given year, the  
44 following year, it would come off our next year's  
45 allocation, or vice versa. If we didn't catch  
46 enough fish, then DFO would have to up our  
47 allocation to equalize the situation.

1 Q All right. And the Tsawwassen First Nation Final  
2 Agreement is the only treaty currently, in its  
3 effective day, that was negotiated under the B.C.  
4 Treaty Commission treaty process; is that right?

5 CHIEF BAIRD: Can you repeat that?

6 Q The Tsawwassen Final Agreement is the only treaty  
7 that's now in effect that was negotiated --

8 CHIEF BAIRD: Yes.

9 Q -- under the B.C. Treaty Commission process?

10 CHIEF BAIRD: Yes.

11 Q All right. And just with respect to Appendix A-1  
12 and J-1, those two appendices are documents that  
13 were negotiated as a result of the treaty, but you  
14 are not putting those forward or Tsawwassen First  
15 Nation is not putting those forward to link to any  
16 legal claim or any claim outside of the treaty.

17 CHIEF BAIRD: No, the constitutional protections under  
18 the treaty are fine with Tsawwassen.

19 MS. DION: Right. Good. Thank you very much, and  
20 those are my questions.

21 MR. DICKSON: Mr. Commissioner, Tim Dickson, co-counsel  
22 for the Sto:lo Tribal Council and Cheam Indian  
23 Band. As with Mr. Reynolds, I ask leave that I  
24 may be allowed to direct questions to Grand Chief  
25 Pennier, and that my co-counsel, Nicole Schabus,  
26 be able to question Ms. Quipp.

27 THE COMMISSIONER: Yes, thank you, Mr. Dickson.

28 MR. DICKSON: Thank you, Mr. Commissioner.

29

30 CROSS-EXAMINATION BY MR. DICKSON:

31

32 Q Grand Chief Pennier, the Commission has heard that  
33 the Sto:lo Tribal Council is composed of eight  
34 Sto:lo bands, and that you are president of the  
35 Tribal Council. I would like you to give the  
36 Commissioner a bit of a sense of the traditional  
37 territory of the Sto:lo, obviously not in order to  
38 make any assertion here of aboriginal title, but  
39 just to situate the Sto:lo traditionally.

40 GRAND CHIEF PENNIER: For purposes of this Commission,  
41 we're talking about the river from where Kwantlen  
42 is, which is Fort Langley. They fished on that  
43 area and up into the Fraser Canyon. Some of our  
44 people used to fish up to Alexandria Bridge, which  
45 is much beyond the Sawmill Creek area.

46 Q And Sawmill Creek is around about Yale for those  
47 of us less familiar.

1 GRAND CHIEF PENNIER: It's five miles above Yale.

2 Q And currently, if you could just locate for the  
3 Commissioner where the Sto:lo Tribal Council bands  
4 have their reserves?

5 GRAND CHIEF PENNIER: Their reserves mainly are beside  
6 the river or on a tributary. Where I'm from,  
7 Scowlitz, is at the mouth of the Harrison and the  
8 Fraser and, as mentioned earlier, Kwantlen is  
9 along the Fraser down the Fort Langley area.

10 Q And as you say, Grand Chief Pennier, you're from  
11 Scowlitz, and you were chief of Scowlitz for some  
12 time?

13 GRAND CHIEF PENNIER: Yeah, chief for many years, as  
14 well as being on council for years as well.  
15 Through that process, you know, learn about the  
16 families and what they do.

17 Q And if you could just describe a little bit for  
18 the commissioner your community of Scowlitz,  
19 socio-economic conditions?

20 GRAND CHIEF PENNIER: Yeah, we have a population of  
21 approximately 300 members and we live at Lake  
22 Errock and Harrison Mills. In the past, the  
23 majority of our people depended upon the logging  
24 industry and now that's not a very good industry  
25 to be involved in, so a number of our people are  
26 unemployed from that. The majority of our people  
27 rely on social assistance for their livelihood,  
28 you know, so there's very little unemployment in  
29 our area (sic).

30 Q And could you speak a little bit to the connection  
31 that the Sto:lo have with salmon and sockeye in  
32 particular?

33 GRAND CHIEF PENNIER: Well, salmon is important to all  
34 of our people, has been for generations upon  
35 generations. We hope that it continues to be  
36 important for our generations into the future. As  
37 time has changed, we became more dependent upon  
38 the sockeye because of their abundance and, you  
39 know, where they go in to spawn. So, you know, it  
40 comes through our different territories and our  
41 reserves.

42 We use it in all of our social gatherings and  
43 our ceremonies, you know, to feed the people.  
44 It's one of the main things, and part of our  
45 teachings is to feed the people when we have our  
46 different functions.

47 Q And can you speak a little bit to the kind of

1 ceremonial and social occasions in which sockeye  
2 is important?

3 GRAND CHIEF PENNIER: We have, you know, different  
4 weddings. We have traditional weddings. We have  
5 the weddings that are, you know, you go through  
6 the province to get your -- all those different  
7 gatherings, whether it's ceremony or social.  
8 Usually you feed people fish, and there are  
9 different other ceremonies like birth, death and  
10 changing of -- into womanhood and manhood, those  
11 different kinds of ceremonies. A lot of different  
12 social gatherings were -- you know, you're having  
13 family gatherings. You're having community  
14 gatherings, you know. A lot of the time fish is  
15 one of the main staples.

16 Q Now, how did the Sto:lo fish traditionally and  
17 then if you like, you can address how they fish in  
18 modern times.

19 GRAND CHIEF PENNIER: Well, one of the early ways of  
20 fishing was through the fish weirs where they  
21 built the weirs across the rivers. Whether it was  
22 like in Harrison and other tributaries, you know,  
23 it was a better system where you could manage how  
24 much fish are going through and how much you  
25 harvest and what you're going to harvest.

26 Then you're doing your dipnetting mainly in  
27 the Canyon and you're doing some torch-lighting in  
28 the rivers so you're selective in what you catch,  
29 the fish you catch.

30 We're into modern times where we're doing the  
31 set-netting and drift-netting.

32 Q Yeah, and talk a little bit, if you would, about  
33 -- about set-netting and how that's done and  
34 drift-netting and the relation between the two and  
35 how it's changed, if you would.

36 GRAND CHIEF PENNIER: Well, of course, the set-netting,  
37 you're putting the one end of the net tied onto  
38 land or something on land, whether it's cedar  
39 trees or other trees, and you have an anchor in  
40 the river. There's been quite a change in the  
41 river lately with the gravel accretions, how  
42 that's taken away a number of fishing sites for a  
43 number of fishing families. Through that change,  
44 it led onto where people are more inclined to  
45 drift now, because they have lost their fishing  
46 sites, so...

47 Q Very good. And what kind of equipment is used in



- 1 the -- beyond the nets, but describe the boats a  
2 little bit that are used in drift-netting.
- 3 GRAND CHIEF PENNIER: Well, you need -- your power  
4 boats are, what, about anywhere from 14 to 24 feet  
5 or something like that, you know, depending on how  
6 many families you're working with to go out to the  
7 river. Then of course you have to have your motor  
8 to power it, you have to have your trailer and  
9 then all the -- you know, you're paying all kinds  
10 of money for your nets and all, you know, that  
11 goes with it, so...
- 12 Q And you've spoken a little bit to the importance  
13 of sockeye fish themselves to the Sto:lo, but can  
14 you speak a little to the importance of the active  
15 fishing, the actual activity of going out there on  
16 the water and fishing to Sto:lo people?
- 17 GRAND CHIEF PENNIER: Well, it becomes a family  
18 function. You know, you learn from your parents  
19 and your grandparents on the importance of fish.  
20 You learn about the importance of looking after  
21 yourself when you're on the river, because there  
22 are dangers out there, and you have to know where  
23 the gravel bars are, you have to know where the  
24 deep water is, the rough water, so -- you know,  
25 it's a way of making sure that you're going to be  
26 safe out there, you know, and you learn from your  
27 grandparents and parents as you're growing up.
- 28 Q Just going back to drift-fishing for a moment,  
29 you're talking about having to know where you can  
30 do a drift and, as I understand it, there are only  
31 so many places you can do a drift; is that right?
- 32 GRAND CHIEF PENNIER: That's right. The good places,  
33 you have to -- you know, you're sharing those with  
34 a number of families, and the other places, you're  
35 subject to having your net taken through different  
36 deadheads and things like that, that could lead to  
37 accidents as well. That's why it's important to  
38 know where they are.
- 39 Q Grand Chief Pennier, I understand you're not,  
40 yourself, a fisherman most of the time.
- 41 GRAND CHIEF PENNIER: No, I'm not a fisherman, and  
42 didn't have the opportunity to learn from my  
43 parents or grandparents.
- 44 Q And why was that?
- 45 GRAND CHIEF PENNIER: I went to residential school for  
46 eleven years, so that's why I didn't learn about  
47 it.

1 Q From your involvement in the community, however,  
2 have you -- have people spoken of a decline in the  
3 sockeye fishery, and if so, what impacts has that  
4 had that you've observed?

5 GRAND CHIEF PENNIER: Well, we can -- we can feel the  
6 decline in the sockeye and the other fish because  
7 we don't have that on our tables. You know, in  
8 years of abundance, the fishing families will  
9 share with the other members in the community who  
10 don't fish, and in not-so-abundant years, you  
11 know, sometimes I buy fish from my neighbours  
12 because I don't want to spend all the money with  
13 buying boats and motors and whatnot to go fishing.

14 Q And with a lower abundance of sockeye, try to give  
15 the Commissioner a sense of how that impacts on  
16 the community if you could.

17 GRAND CHIEF PENNIER: Well, when you look at Scowlitz,  
18 as an example, when the majority of our people are  
19 unemployed and there's no sockeye, our people are  
20 forced to go out to the different Safeways and the  
21 other shopping areas to buy their foods, and  
22 sometimes it's not the best quality foods because  
23 you're limited with your budget when you're on  
24 social assistance.

25 Q Very good. I'd like to shift to policy issues,  
26 and if you could, Grand Chief Pennier, speak a  
27 little bit to the main changes to DFO policy on  
28 the management of the fishery that the Sto:lo  
29 would like to see.

30 GRAND CHIEF PENNIER: You know, when we take a look at  
31 section 35.1 that talks about food, social,  
32 ceremonial, and it also talks about moderate  
33 livelihood. And in terms of the Department and  
34 the Government of Canada, there are no changes to  
35 laws or policies to reflect what's in the  
36 constitution. There has to be changes to do that,  
37 and, you know, we're talking about having a better  
38 or more authority in working with Canada to make  
39 sure that the fisheries are managed in a proper  
40 way so that it's beneficial to our people and our  
41 future generations as well as the non-Indian  
42 population as well, you know. So more better  
43 management where we're part of it.

44 Q So you're talking there about being part of the  
45 management of the fishery. The word that's  
46 sometimes used for that is co-management. Is that  
47 what you're speaking of?

1 GRAND CHIEF PENNIER: That's right, but we have to come  
2 to a common definition of what we mean by co-  
3 management in terms of where we're at with -- when  
4 we look at all kinds of different entities that  
5 are involved in fishing, there's different  
6 interpretations and we need to come up with one  
7 where we all believe that it's going to work  
8 towards making good decisions on fishing.

9 Q Well, give the Commissioner a sense, if you could,  
10 of what would need to be done to allow for greater  
11 co-management between First Nations and DFO.

12 GRAND CHIEF PENNIER: We really need to have a good  
13 negotiation or good understanding with several of  
14 the senior officials within the Department of  
15 Fisheries and Oceans at that level. Right now  
16 we're just meeting with people who come to our  
17 tables who put documents on our table and say,  
18 "This is what you're entitled to, or you're going  
19 to get." You either accept it or you don't accept  
20 it. That isn't negotiations.

21 So, you know, we talk about the right to  
22 consult. It has to be done in a good way rather  
23 than just the way it's done presently.

24 Q So if I'm hearing you there, the issue is that the  
25 DFO representatives with whom you meet don't have  
26 a mandate to negotiate and make decisions, but  
27 rather are --

28 GRAND CHIEF PENNIER: That's right, they don't. When I  
29 look back at some of the activities we were  
30 involved in over the number of years, you know,  
31 it's always been difficult to get the attention of  
32 the Minister and the Deputy Ministers. Because on  
33 a couple of occasions, we had a good fishing at  
34 Gill Bay with a number of Sto:lo people and DFO  
35 came down hard on us, of course, because we were  
36 fishing contrary to what they thought, you know.  
37 So we're trying to make sure that they listen to  
38 us, and that was one of the ways of getting their  
39 attention.

40 Another incident we had, we stopped -- or  
41 blocked the CNR tracks so we could try to talk to  
42 the Ministers and get them to come out to us to  
43 talk to us, you know, because we're saying that  
44 this is how important the fish is to us. So we  
45 use those as examples of trying to get them to  
46 come to us and talk to us so we can make better  
47 changes.

1 Q Very well. What you're speaking of there of is  
2 getting the attention of DFO and being able to  
3 speak to those who are in positions to actually  
4 make some decisions. Are there -- do you have any  
5 comments or concerns to make on the level of  
6 resourcing of First Nations so as to engage in co-  
7 management?

8 GRAND CHIEF PENNIER: The level of funding is  
9 inadequate, and it isn't distributed in a good  
10 way. You know, when I look back at 1992 when they  
11 instituted the AFS, the Lower Fraser Fishing  
12 Authority was established, or we established it,  
13 working with the bands up and down the river.  
14 Through that process, we had our guardians, we had  
15 our monitors, we had our biologists and we had  
16 people who could work in giving people good  
17 information on fishing, but with funding cutbacks,  
18 we lost the biologists, we lost the guardians, and  
19 now we're just stuck with monitors.

20 Q Yes. And so the Lower Fraser Fishing Authority is  
21 an inter-tribal organization intended, in part, to  
22 interact with DFO; is that right?

23 GRAND CHIEF PENNIER: That was what we had back in '92,  
24 '93, '94, that era, and presently we have two or  
25 three different organizations that are trying to  
26 work with DFO and presently we're working better  
27 with some of the bands up and down the river,  
28 hopefully getting to -- back to an LFA-type group.

29 Q Yes. And do you see a role, do you see it being  
30 important that there be groups such as these?

31 GRAND CHIEF PENNIER: There has to be, because it's  
32 part of our responsibilities if we want to be able  
33 to look after the salmon for our future  
34 generations, and if that's what the rest of the  
35 nations up and down the River say, then we have to  
36 be able to work together to make sure that that  
37 happens.

38 It will take a lot of time to do it, and one  
39 of the examples of people working together for the  
40 benefit of a fishery is the Northwest Indian  
41 Fisheries Commission down in Washington State.

42 Q Is that a -- is that a model that you'd put  
43 forward?

44 GRAND CHIEF PENNIER: It would be a good one to look  
45 at, yes.

46 Q And you've spoken a little bit about the history  
47 of the Lower Fraser Fishing Authority and how it

1           came to be defunct, but can you speak more about  
2           challenges that you've seen in terms of creating  
3           larger aboriginal organizations?

4       GRAND CHIEF PENNIER: Right now we have a number of  
5           different groups up and down the river like the  
6           Upper Fraser out of Prince George. We have the  
7           Shuswap out of Kamloops area. We have the mid-  
8           Fraser group and the Interior Tribal Organization,  
9           and partly us down in the lower Fraser now, and,  
10          you know, if we can come and work together, it  
11          would be a lot better for the fish.

12       Q       And what do you think can be done to encourage  
13           that creation of larger groups in cooperation?

14       GRAND CHIEF PENNIER: I think that we need to have some  
15           assistance from the government like funding, and  
16           we need to be able to hire our own biologists up  
17           and down the river so that we can all work with  
18           the same information that the Pacific Salmon  
19           Commission has.

20       Q       The Sto:lo have been seeking, as I understand it,  
21           more co-management for some time. I believe 1986,  
22           you made some efforts in that regard. Can you  
23           tell the Commissioner a little bit about that?

24       GRAND CHIEF PENNIER: Yeah, back in 1986 the Sto:lo  
25           Tribal Council worked with a consulting company  
26           and biologists and developed a co-management  
27           proposal and a number of us went back to Ottawa to  
28           meet with the Assistant Deputy Ministers to talk  
29           about it, and it didn't lead to any agreement of  
30           any kind.

31                Back in -- the Sto:lo are part of the treaty  
32           process, and in 2000 and 2001, we were talking  
33           about negotiating an Interim Measures Agreement on  
34           fishing, so we went through a lot of work with  
35           having a lawyer, having a biologist, and having a  
36           working group, and having members of the DFO sit  
37           together to talk about an Interim Measures  
38           Agreement on fishing, but it didn't really get  
39           anywhere because -- I guess part of the statement  
40           was that it was -- if it was going to lead to  
41           treaty, then why would we negotiate a treaty?

42       Q       And what would the advantages of being able to  
43           enter into an Interim Measures Agreement be, do  
44           you think?

45       GRAND CHIEF PENNIER: Well, it would really set out the  
46           roles and the responsibilities of not only the  
47           First Nations and DFO, but it would also help with

1 the commercial fishermen and sports fishermen,  
2 because through that Interim Measures Agreement,  
3 there was three different levels of groups being  
4 formed to take a look at the fishing issue.

5 Q Grand Chief Pennier, you're aware, of course, that  
6 there's a distinction that's been drawn between  
7 food, social and ceremonial fish, and fish that  
8 can be sold. How is that distinction viewed  
9 within the Sto:lo community and, if you can speak  
10 to them, and what's your sense of how it's viewed  
11 among First Nations more broadly?

12 GRAND CHIEF PENNIER: Well, when we look at -- you  
13 know, we have to come to an agreement about what  
14 we mean by "food, social and ceremonial".  
15 Presently, we haven't really put our definition  
16 in, as far as I -- the Tribal Council hasn't put  
17 our definition in front on the Department of  
18 Fisheries and Oceans. You know, how we mean we  
19 want to fish to those three aspects of it, and on  
20 a larger scale. We should be doing that so that  
21 it becomes clear to all First Nations and the  
22 government how -- what "food, social, ceremonial"  
23 means and how we can fish to it and protect it.

24 MR. DICKSON: Grand Chief Pennier, those are my  
25 questions. Thank you very much.

26 GRAND CHIEF PENNIER: Okay.

27 MR. MCGOWAN: Mr. Commissioner, Ms. Pence will be  
28 questioning the next witness. Her estimate is  
29 approximately 30 to 40 minutes. She could either  
30 get started, or we could take the morning  
31 adjournment now.

32 THE COMMISSIONER: We can take the morning adjournment.

33 MR. MCGOWAN: Thank you, Mr. Commissioner.

34 THE REGISTRAR: The hearing will now recess for 15  
35 minutes.

36  
37 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

38 (PROCEEDINGS RECONVENED)

39  
40 THE REGISTRAR: Order. The hearing is now resumed.

41 MS. PENCE: Mr. Commissioner, for the record, I'm Leah  
42 Pence, P-e-n-c-e, for the First Nations Coalition.  
43 And with me is my co-counsel, Brenda Gaertner.

44  
45 CROSS-EXAMINATION BY MS. PENCE:

46  
47 Q Chief Charlie, I wonder if you could take us for a

1 moment out of this courtroom and back to where  
2 your people fish and describe where that is and  
3 what that looks like?

4 CHIEF CHARLIE: Chehalis -- or Chehalis, today we -- we  
5 live on the Harrison River, which is a tributary  
6 into the Fraser River. We're about two, two-and-  
7 a-half miles maybe or so to the Fraser River. Our  
8 tradition territory is the Harrison Lake, Chehalis  
9 Lake, coming down onto the Harrison River and bits  
10 and pieces on the Fraser River.

11 Q Mm-hmm.

12 CHIEF CHARLIE: We have a number of tributaries or  
13 spawning channels or sloughs that are on the  
14 Harrison River. We live in what people call  
15 terminal spawning grounds. So there's -- just on  
16 the reservation alone there's nine spawning  
17 channel.

18 Q And what time of year do your people fish for  
19 sockeye?

20 CHIEF CHARLIE: For sockeye, would be the summer runs  
21 but we were -- we're also able to get sockeye on  
22 the Harrison into the fall.

23 Q Can you tell the Commissioner a little bit more  
24 about the traditional fishing methods that your  
25 people used and continue to use today?

26 CHIEF CHARLIE: Traditional fishing methods for  
27 Chehalis would have been spearing and fishing with  
28 a net. Those would have been some of the primary  
29 ones. If you go back a little bit further there  
30 might have been some, as Grand Chief Pennier  
31 explained, some of the fish weirs. Today, we  
32 still fish with a net, either with a set net or  
33 with a -- people call a driftnet fisheries, as  
34 well as torch-lighting. So we've taken back our  
35 -- our traditional or selective fishing in the  
36 fall time with the spears.

37 Q Can you tell the Commissioner just a little bit  
38 more about what you mean when you say this is a  
39 selective traditional method, these various  
40 methods?

41 CHIEF CHARLIE: The selective way of fishing would be  
42 in the fall time, again, the Harrison River is a  
43 very shallow river.

44 Q Mm-hmm.

45 CHIEF CHARLIE: If you go back a bit further as well,  
46 our people would have went right out to the Fraser  
47 River to spear and/or to torchlight. And --



1 Q Can you describe what torch-lighting is for us?

2 CHIEF CHARLIE: A torchlight would be on your dugout  
3 canoe, you would have a fire. You would put some  
4 sand in the middle of your canoe in a box. You'd  
5 gather the pitchy wood up and you would build a  
6 fire right in the middle of your canoe. That fire  
7 would attract the salmon, as you were poling up  
8 and down in the shallow parts of the river and  
9 then you could choose -- pick -- select the salmon  
10 that you would like.

11 Q And how have these traditional fishing methods  
12 changed over the years?

13 CHIEF CHARLIE: Well, actually, we've just now been  
14 allowed again to torchlight in the last few years.  
15 It was actually banished for -- for a number of  
16 years by DFO. And so we -- we were saying that --  
17 they were saying in the -- for conservation that  
18 it was -- wanted to protect the fish and so didn't  
19 allow torch-lighting. We were finally able to  
20 kind of assert ourselves and say we -- this is  
21 actually a really selective way, a good way of  
22 harvesting fish.

23 Q Could you describe for the Commissioner some of  
24 the ceremonies that Chehalis holds to honour the  
25 salmon?

26 CHIEF CHARLIE: Salmon...

27 Q Or perhaps I can reframe it. Some of the  
28 ceremonies that Chehalis holds that involve  
29 salmon.

30 CHIEF CHARLIE: Sure. Again, going back to the summary  
31 that is here and I -- the Council mentioned that  
32 this was a pretty detailed summary. It's actually  
33 a pretty brief summary of some of the discussions  
34 that had happened, you know, so there was a lot of  
35 information that was shared in a short period of  
36 time. And this is just kind of a glimpse of it.  
37 The same with any of the ceremonies that we have  
38 that would be to honour the salmon, people and/or  
39 as salmon is used in our ceremonies.

40 We have a -- from my understanding from some  
41 of our history from our stories and our legends  
42 that we have in the beginning of time when the  
43 world was first created, between the -- between  
44 the sun and the moon, when those feelings and  
45 emotions came together when the world was first  
46 created, we were all equal and the same. And  
47 through that evolution -- through evolution from



1 that time, some took different shape and different  
2 form and some became the winged, some became the  
3 four-legged, some became the plant people and the  
4 root people, some became the ones that swim in the  
5 rivers and the ocean and some became human. There  
6 was an agreement in time that all our relations,  
7 all living things, they would give themselves to  
8 us as humans because we were the weakest. They  
9 would give themselves for food, shelter, clothing,  
10 utensils and for medicine. And alls they had  
11 asked for in return was to be respected and to be  
12 remembered. And so when the salmon return in the  
13 beginning of the year, we have a ceremony to give  
14 thanks and gratitude to the salmon people for  
15 returning and giving themselves to us again. It's  
16 a part of that agreement of paying respect and  
17 giving gratitude.

18 Other parts of the year, as Chief Pennier  
19 explained, there's other ceremonies for many, many  
20 different things: for death, for life, for change  
21 of life, for weddings, for namings. There's all  
22 kinds of ceremonies that go on where we would have  
23 salmon that is served to the people because salmon  
24 is such a vital part of who we are as a people.  
25 And we were supposed to share the wealth of your  
26 land. And for who we are, as the Stó:lō people,  
27 we are the salmon people, we're the river people.  
28 And food has been our -- main part of our diet for  
29 so many years so that's the wealth according to  
30 our agreement with everything is what we're  
31 supposed to share.

32 Q And Chief Charlie, is some of what you've just  
33 described here, would that be considered, forgive  
34 my pronunciation, but Snowoyelh and what's known  
35 as the law of everything to put it kind of simply?

36 CHIEF CHARLIE: The simple translation of Snowoyelh is  
37 that -- means the law of everything . Snowoyelh is  
38 a really big word in our -- in our language. It  
39 would take a number of pages to define Snowoyelh.  
40 It's our laws of how we were supposed to live in  
41 harmony with all living things, how we were  
42 supposed to be stewards of all living things,  
43 again going back to that agreement with all our  
44 relations. But it's also how we were supposed to  
45 get along with each other. It's how we were  
46 supposed to get along as -- as xwelmxw, or as  
47 human beings. It's how you raise your children.

1 It's how you conduct yourself and behave at  
2 different stages of your life and the different  
3 roles and responsibilities that come at different  
4 stages of life. So it's a really big word that  
5 would take a long time to kind of describe the  
6 Snowoyelh.

7 Q I'd like to ask you about another word that's  
8 often hard to give a specific definition to and  
9 perhaps you can talk to what this word might mean  
10 to you. And that word is "stewardship". What  
11 does stewardship mean to you and how do you  
12 exercise stewardship?

13 CHIEF CHARLIE: Stewardship, again, goes back to that  
14 relationship with all living things. But it's  
15 also how everything is connected and how  
16 everything is interconnected. And so when we talk  
17 about this salmon that is the -- we say that it's  
18 our -- our greatest resource after our children.  
19 Who we are and where we come from is our greatest  
20 resource is that salmon. But everything has  
21 impacts on everything. And so logging practices,  
22 they have impacts on the salmon, how we harvest,  
23 how we gather and what we take from the -- the  
24 land or the water has impacts on everything else.  
25 So a true stewardship is how we conduct ourselves  
26 as humans on the land that's going to ensure that  
27 all things -- all living things carry on.

28 Q Could you provide the Commissioner with some  
29 examples of stewardship practices that you see at  
30 Chehalis and what might happen if those practices  
31 aren't adhered to?

32 CHIEF CHARLIE: Going back to kind of again Snowoyelh  
33 and stewardship, we understand that we live on the  
34 spawning grounds and the salmon return to us. And  
35 we are struggling with the jurisdiction and the  
36 mandate that DFO might have and how they choose to  
37 enforce that. And getting around to is what we --  
38 on our communities, we've had some that would go  
39 out fishing -- illegally fishing or poaching in  
40 the -- some of the terminal grounds. And there  
41 are council that have taken a real stand on this,  
42 that this is a communal right; it's not an  
43 individual right. It belongs -- that great  
44 resource belongs to all of us and belongs to our  
45 future generations like you heard some of the  
46 other panel members talk about how they want to  
47 look after the salmon so that their grandchildren,

1 great-great grandchildren all have the same thing.  
2 And so it's up to all of us to work together to  
3 protect that.

4 But in the past, again, leading back to this  
5 poaching of the salmon, some of our members were  
6 out fishing and we kept -- continued to call on  
7 DFO to enforce their jurisdiction and to put a  
8 stop to it. And we'd call in ourselves and says  
9 there's -- you know, there's this illegal fishing  
10 going on and has been going on for a number of  
11 years till finally Council had enough and we said  
12 -- finally, we sent letters out and said, you  
13 know, there's going to be repercussions of what  
14 you're doing. And so we sent letters to the  
15 individuals. We hired somebody to sit out there  
16 in the river to see who was out there. Sent  
17 letters to the gentlemen. The majority of them  
18 stopped but there was a handful that didn't. And  
19 as a result of that, they -- we -- in Chehalis, we  
20 banished a few of our own members. The banishment  
21 had a term on it, though. They could come back to  
22 the community. They could come back to the  
23 community in a year's time to explain themselves  
24 and to make amends and make commitments to how we  
25 -- they were going to work with us in protection  
26 or stewardship of this resource.

27 Q Thank you. You've spoken a little bit about this  
28 but I wonder if you could just explore for us,  
29 when you're exercising stewardship or when you're  
30 practising your laws, Snowoyelh, who are you  
31 thinking about? Are you thinking about only  
32 what's happening right now or are you thinking  
33 about next season? How far are you thinking? Who  
34 are you responsible to?

35 CHIEF CHARLIE: Again, in stewardship -- again, in  
36 stewardship, in Snowoyelh, is that we were  
37 supposed to look after all things so that at least  
38 seven generations behind us have the same thing.  
39 And we always say that we don't want to be the  
40 generation that is responsible for losing  
41 something, especially the salmon, and so we look  
42 after that. But it's also a part of the  
43 Snowoyelh, how you're supposed to look after it so  
44 that those that are around you have access to the  
45 same thing. And Grand Chief Pennier touched on  
46 it, how some fishing -- fishermen would share  
47 their -- their gift or their -- yeah, they're

1           gifted fishermen so they would share that with  
2           others in their communities that maybe couldn't  
3           get out. But we were also supposed to have been  
4           thinking about our neighbours. We were supposed  
5           to have been thinking those that are further down  
6           the line or up the line, depending on where you  
7           are. And so we've quite actively done this on the  
8           Harrison River with certain runs of fish that go  
9           by us up the Lillooet River.

10          Q        Thanks. I'd like to ask you to describe your  
11           people's relationship to salmon for food, social  
12           and ceremonial purposes and to comment on this  
13           term, this FSC term, that we've come to know.  
14           What does "fishing for FSC" really mean to you?

15          CHIEF CHARLIE: Again, it's -- some of the panel  
16           members before me described a little bit about  
17           food, social and ceremonial and how it's a term  
18           that has been coined or imposed upon us, and maybe  
19           with good intentions but again how it's been  
20           practised and how it's been looked at and  
21           sometimes been used might not be what it was  
22           supposed to be. And so food, social and  
23           ceremonial, fish is supposed to have been to  
24           practice our Aboriginal right to access the fish  
25           to look after ourselves for our main source of  
26           food and diet for life but also for -- for  
27           ceremony.

28                   And we do -- we do it in some of our  
29           discussions with -- again, DFO came out to our  
30           community and said -- wanted to talk about this  
31           FSC and said that they would like us to only --  
32           only to use this FSC for death -- to use it at  
33           times of death and loss in our communities. We  
34           just kind of told them, I said, life is just as  
35           important as death and that how do we -- how do we  
36           -- or who are we to define what a ceremony is to  
37           our communities and to our people. These  
38           ceremonies, when we call upon our ancestors and we  
39           call upon our neighbours and our respected  
40           relatives and friends to come to a ceremony, have  
41           a right to -- to be able to share in that -- that  
42           great resource of the salmon, what we were  
43           supposed to share with them, according to our law.

44          Q        Thank you. Could you speak a little bit about how  
45           salmon contributes to the health -- physical  
46           health, community health of your people?

47          CHIEF CHARLIE: Physical community health, as well as

1 spiritual well being, again, today where, you  
2 know, Grand Chief Pennier touched a little bit  
3 about the social conditions in our communities and  
4 how we rely upon that resource of the salmon to --  
5 as a -- you know, main part of our diet because we  
6 have limited resources -- a lot of our community  
7 members have limited resources to go to the  
8 stores. But again, that salmon when you -- it's  
9 been a major part of your diet for so many  
10 generations, for so many years, thousands of years  
11 and it becomes a part of you and becomes -- if you  
12 -- if you will, it becomes soul food, it becomes  
13 medicine. And it becomes such a main part of our  
14 diet that you -- you crave for it. We get quite  
15 anxious for it when the fishing season comes upon  
16 us and the different kinds of fishing.

17 So we look forward to the -- all the  
18 different runs of fish and the different ways that  
19 we would preserve it or prepare it or use it. So  
20 the -- also -- and it's really difficult to  
21 explain but there's one example I have of how it  
22 becomes medicine, becomes soul food, is that at  
23 one time my grandmother was very, very -- you're  
24 going to have to apologize -- I might be a  
25 storyteller in my time so I can only tell things  
26 through a story.

27 My grandmother was very, very ill and she was  
28 not able to keep things down and it was going on  
29 three weeks, four weeks, and she was getting very  
30 fragile and frail and she couldn't keep any food  
31 down. But she kept saying that she was wishing  
32 for sturgeon soup. So finally I was able to find  
33 a chunk of sturgeon and I brought it to my  
34 grandfather on my dad's side. And my grandfather  
35 cooked some soup for her. I picked it up later  
36 and brought it to my grandmother and she ate the  
37 soup. Had about three or four feeds of it. And  
38 then she got better. She started eating again and  
39 started carrying on again and she was quite well  
40 again for sometime.

41 A number of months again, maybe nine or ten  
42 months later, same thing happened, my grandmother  
43 became very ill, couldn't stomach anything,  
44 couldn't keep anything down and we knew a little  
45 bit earlier this time. Again, I went and picked  
46 up a piece of sturgeon to my -- brought from my  
47 grandfather and I -- this time, I sat with him, as

1 he prepared the food and again brought it to my  
2 grandmother and I sat with her and we had sturgeon  
3 soup together and again she got better.

4 And so when they talk about it becomes such a  
5 mainstay of your diet for so many generations for  
6 so long that you start to crave for it, it becomes  
7 soul food or medicine. And we have the same use  
8 for different parts of the fish and different runs  
9 of fish. So whether that's the -- the sockeye or  
10 whether that's the chum or whether that's the  
11 sturgeon or, you know, the different kinds of  
12 fish, we have different uses for them.

13 Q Thank you. The Commissioner's been hearing a lot  
14 about traditional ecological knowledge, sometimes  
15 referred to as TEK. And I wonder if you could  
16 provide him with some examples of some of the  
17 indicators that you use in your territory to know  
18 when it's time to go fishing.

19 CHIEF CHARLIE: I'm a fisherman. I've been fishing  
20 most of my life, since I can remember. I go out  
21 on the water and it's -- the actual practice of  
22 fishing is -- is a medicine. So for me to go out  
23 on the water it's medicine. If anyone -- if  
24 anyone -- if you have different gifts or different  
25 hobbies or different things that you're good at,  
26 and when you -- the reason why you have that  
27 hobby, whatever you're good at, you do that  
28 because it's peace of mind. It's medicine for  
29 you. It's a way to clear your mind, clear your  
30 spirit. And you do that and you make things with  
31 your hands. For fishermen, it's the same thing.  
32 Hunters, they describe it in a similar way.  
33 People that play sports do all these different  
34 things the same way. That's the same thing for  
35 fishermen.

36 When I was fishing and I went to my  
37 grandfather who would -- into his '90s would mend  
38 all of his sons and his grandsons' nets. And I  
39 went to him one day and -- getting ready for  
40 fishing. And he was -- he actually gave me heck  
41 because I wasn't bringing my nets to him but then  
42 he started saying what was in the water. He  
43 started saying, "Son, this is the fish that's in  
44 the water and this is where you're going to find  
45 them. And this is the kind of gear or this is the  
46 kind of net you need to fix to go and catch the  
47 fish.

1           And so I looked at my grandfather and I said,  
2           "Gramps, like how do you know? You haven't been  
3           on the water for ten years." And he's -- he  
4           looked around and he took a look at some plants  
5           and he said, "Do you see these plants? When they  
6           grow, that's the fish that comes the same time."  
7           And he started pointing out different birds and  
8           different animals and he said -- and he started  
9           talking about the different animals that become a  
10          part of that system. And he becomes so a part of  
11          who they are just by what's going on around him,  
12          the time of the year, the heat, the -- the  
13          animals, the plants. They're just so connected.  
14          Our elders would know what was in the water or  
15          when they were on their way according to the  
16          environment or the plants or the animals.

17          Q       And do you have suggestions on how this type of  
18          knowledge that you learned from your grandfather  
19          and your elders can be incorporated into fisheries  
20          decisions and fisheries management today?

21          CHIEF CHARLIE: Yeah, I definitely think that in  
22          fisheries management the traditional knowledge  
23          needs to be taken into consideration, needs to be  
24          used. Everything evolves and everything is so  
25          connected, as I say, and the -- our people have a  
26          long, long history of use of the land and the  
27          resources that are around us. Kind of another  
28          example of the traditional knowledge is that I  
29          have a cousin that works at the Weaver Creek  
30          Spawning Channel. He's been there for 35 years.  
31          And he would work with the Simon Fraser University  
32          and they would come out and they would kind of  
33          look at the salmon and he would just be walking  
34          with these scientists, I guess, or educated people  
35          and he would point out some of the fish on the  
36          beach and he'd say, "This one spawned. This one  
37          didn't spawn but it tried to." And he would just  
38          look at a fish and he'd say.

39          So SFU would take some scale samples and do  
40          other tests and they'd come back in a couple of  
41          months and verify what my cousin told to them. So  
42          he had -- that kind of knowledge is what was  
43          passed on to him by his father and by our  
44          grandfather and by our great-grandfather so  
45          there's that real connection to the -- to the land  
46          and to the fish in knowing how to better -- best  
47          look after it. We think that by incorporating



1           that traditional knowledge with the technology and  
2           the tools or the -- of today, it's kind of where  
3           it needs to evolve to.

4           Q     Thank you. Based on your observations, generally  
5           speaking, how would you say that the levels of  
6           sockeye returning to your territory are different  
7           now than what they were when you were young?

8           CHIEF CHARLIE: A few different ways, I guess. By  
9           being a fisherman up until -- not taking into  
10          consideration this last year but before that,  
11          being a fisherman on the water we -- there was  
12          times when we would go out fishing and you'd --  
13          you'd get pretty tired. When the fish are there  
14          -- our grandfather said, "When they're there,  
15          that's when you fish and you have to stay at it  
16          and you work at it. You stay out there." So we  
17          would actually, you know, camp out right on the  
18          water. And you'd fish 20-something hours a day  
19          and you'd be tired. You'd be tired of gathering  
20          and harvesting and doing what we would do.

21          Up until a few years ago, we would -- we  
22          would -- again, as Grand Chief Pennier explained,  
23          different fishing methods had to be used because  
24          of different conditions that are around us so we  
25          had -- it was more driftnet fisheries. And  
26          there's only certain spots that you could fish.  
27          And so we would spend our time on the water. You  
28          would wait three or four hours to do one drift.  
29          And so we'd be sitting on the beach resting,  
30          suntanning and getting fat and not even getting  
31          tired because you maybe, if you were lucky, you  
32          got three or four drifts in, in one day. And the  
33          reason I say we'd get fat 'cause other guys would  
34          bring out their -- their deer meat and their  
35          pepperonis and everything and we'd just sit on the  
36          beach waiting for your turn to fish, not like the  
37          way it used to be.

38          Again, going back to that -- my grandfather,  
39          he was a -- he was a great fisherman. And going  
40          back about 15 or 18 -- I don't know how many years  
41          ago, my -- for a number of years, my grandfather  
42          used to say to us, he goes, "Oh, you poor kids.  
43          You have no more fish." This was going back 20  
44          years ago when we thought we had a few fish. And  
45          then he would talk about the great runs of salmon  
46          that would come on the -- the Fraser and its  
47          tributaries. He said you could see the water



1 change colour when these schools of fish would  
2 come in. And so the -- over my grandfather's time  
3 and my time and then you could start to see the  
4 decline in the salmon, the continuous decline in  
5 salmon for a hundred years.

6 Q Chief Charlie, in your summary of evidence, you  
7 refer to some of the -- the pressures from various  
8 fishers and I think you -- you call it the  
9 "conflict on the water". What do you mean when  
10 you talk about the conflict on the water?

11 CHIEF CHARLIE: As well, again, and -- in times the way  
12 that things have evolved, there's been more and  
13 more pressures from other groups wanting more  
14 access or greater access to the -- this great  
15 resource that we have. It's a major part of who  
16 we are. Again, I was just thinking about them --  
17 the Musqueam, as Joe was speaking, and remember  
18 going back 20 or so years ago when the -- it was  
19 the Musqueams that were having conflict on the  
20 water with commercial groups. And there was some  
21 conflict and real tension between the commercial  
22 fishery groups and -- and Musqueam and others that  
23 were in this area. We do know that more and more  
24 of that's been pushed further and further up into  
25 the Fraser and -- and now we have these -- in our  
26 territory, it's the sport fishing groups. And  
27 there's hundreds of them that are on the water and  
28 tensions in the last number of years between First  
29 Nations fishermen and sporting groups has just  
30 been escalating and escalating and it's been  
31 pretty -- it's gotten pretty bad. My one example  
32 of that would be, again, I'm a fisherman and I go  
33 out for peace of mind. I go out to -- for fish to  
34 feed my family but I also go out there for  
35 medicine. For my role today as a chief, I get  
36 pretty stressed out, have so much different things  
37 and so I go on the water for peace of mind.

38 This one time when I went out in the water,  
39 you might have followed some of it in the media  
40 where the -- heard about one of the chiefs that  
41 got shot by a pellet gun. That was me. I was  
42 fishing on the water and we were waiting our turns  
43 to drift. Again, I was waiting three hours or  
44 something, sitting on the beach waiting for our  
45 turn to drift, and we started developing a bit of  
46 a relationship between some of the sporting  
47 groups. But they're not all out there for -- to

1 follow some rules or different things that are put  
2 into place and there are some that are out there  
3 really for conflict and their own interests and  
4 they're not very diplomatic about it. And if  
5 somebody came and set their boat in a drift -- in  
6 a driftnet fisheries, your net is moving and you  
7 have to fish in the bars. And so some of the  
8 sporting groups were setting up their -- their  
9 boats and fishing there and we'd go and ask them  
10 to move and they would move.

11 Except when it came my time to fish, this  
12 boat wouldn't move. And so when our net was  
13 coming down, we -- our net wrapped around their  
14 boat and all of our gear was all tangled up  
15 between the two boats. And things escalated so  
16 that there was a lot of yelling and screaming and  
17 cursing going back and forth to each boat. There  
18 was me and my brother and then there was two  
19 gentlemen on the other boat. The gentlemen from  
20 the other boat picked up a dip net and he started  
21 clubbing my brother with it. My brother's a big  
22 guy and he -- so I stepped up at the front and I  
23 was giving him a paddle to defend himself and my  
24 brother just said, "Huh, that don't hurt." Just  
25 when I looked across, the guy from behind the boat  
26 in the back of the boat where I was at as well,  
27 picked up a knife and he started coming at me.  
28 And it was a filet knife. So if you're on a boat  
29 and you're pretty close quarters, I got, of  
30 course, pretty frightened.

31 At the time I didn't know about it because  
32 the adrenaline and everything else was going on.  
33 So I started giving my brother the paddle. I kept  
34 the paddle for myself and I picked the paddle up.  
35 Just as I picked the paddle up, he picked up a  
36 gun. And alls I could see was a gun and he  
37 started pointing it at me. And I seen these hands  
38 going like this so I knew he was shooting. I'm  
39 not the kind of guy that would run. Guys that  
40 know me from sport and that, I'm usually not the  
41 kind of guy that would run. If I could have ran  
42 that day, I would have 'cause alls I saw was a  
43 gun. And I felt something hit me, graze me in the  
44 chin 'cause I was ducking and bobbing. I felt  
45 something hit me and I come up swinging with my  
46 paddle and I clubbed the gum -- gun out of his  
47 hand and I picked up the paddle and there was more

1 cursing going on. So he picked up a bigger gun  
2 and some of the guys -- Native guys on the -- from  
3 the beach seen what was going on so -- sorry --  
4 they came up and they kind of surrounded this  
5 boat.

6 Finally, the -- the older gentlemen said --  
7 finally talked some sense into the younger guy and  
8 said maybe they should leave. So we untangled  
9 their boat. I was leaning off the back of our  
10 boat and you know what a net is like in the prop  
11 and so I was leaning off the back of -- and I  
12 untangled their prop out of the -- out of our net.  
13 And then as soon as I did that, they sped away.  
14 And so I started to untangle our prop. Just when  
15 I was able to do that, my brother hollered at me  
16 to hang on. And I looked up and this boat that I  
17 just untangled came by and it rammed us. And I  
18 just grabbed onto the motor and hung on. And if  
19 my brother didn't holler at me I would have  
20 probably been in the water in the net and in a  
21 whole lot of trouble.

22 And then he proceeded -- last moment, he  
23 didn't ram us. So at the last minute he turned  
24 and just kind of hit us but with enough impact and  
25 then sped away. We got to the beach and was  
26 trying to fix our net because it got all ripped up  
27 from it being in the props. And I started talking  
28 to the guys and I said, "Holy cow, if that was a  
29 real gun I'd have been dead." I'd have been dead  
30 for trying to practice my Aboriginal right to  
31 fish, trying to feed my family, trying to come out  
32 here for medicine.

33 Q Chief Charlie, sorry, I don't mean to interrupt  
34 but I wonder if you could fast-forward to some of  
35 the talks that you've been engaging in with what  
36 you've called the sporty groups or the  
37 recreational fishing groups and what kind of  
38 progress is being made on that front now.

39 CHIEF CHARLIE: As a result of that, we -- I got a  
40 number of calls not only from our own community  
41 but from other -- other First Nations communities  
42 saying, you know, "Just give us the word. We'll  
43 leave. Like we're out there. We're with you.  
44 Like we'll arm ourselves. We're going to bring  
45 our guns out there and we're going to do this and  
46 that." And I said, you know, "Hang on, you guys.  
47 We're not going to deal with this in this manner.

1 We're going to try to deal with it in a different  
2 manner." And so, I, myself, committed to meeting  
3 with some of these sporting groups because we were  
4 just developing a relationship around a fishing  
5 trail that goes through parts of my reservation  
6 for access for sporting groups to go through. So  
7 we were already in some discussions. And so I  
8 knew the groups and so we came together and I made  
9 a commitment that we were going to try to find  
10 ways of getting along on the water.

11 And I committed myself. I attended the first  
12 six or seven, eight meetings by myself and I  
13 didn't subject our council member, whose portfolio  
14 that was or our fisheries' coordinators to those  
15 -- to those meetings. Things evolved eventually  
16 to a place where they've been good but it was  
17 very, very difficult because in the meetings some  
18 of the sporting groups were saying that we have  
19 equal rights. First time they mentioned that I  
20 said -- I let it go by but I talked to the guys  
21 that were trying to chair the meeting and mediate.  
22 And I just said, you know what? I'll let that  
23 comment go by this time.

24 I said, "But you have to address it. If you  
25 don't, I'm going to." And so it came up again and  
26 I looked at the chairs and I just said, "You know  
27 what? We don't have equal right. Aboriginal  
28 fisheries have an Aboriginal court-protected right  
29 to fish and you have a privilege." And so cooler  
30 heads prevailed and some of the other guys talked  
31 some sense into one guy that continued to say  
32 that. And then we stayed at it. And then they  
33 kept asking, "Where's the other sport -- where's  
34 the other Native fishermen? Like where's the  
35 other guys?" We had some commitment from other  
36 First Nations to be there but in the early goings,  
37 they weren't there. And I just kind of told them  
38 again, I said, "You know what? I'm here. And I  
39 could leave. Then who are you going to have?" So  
40 we should consider starting with this small group  
41 and expanding and building on that." Chehalis, we  
42 have a fairly big area where we fish on the  
43 Fraser, from what we call Hooknose just below the  
44 Agassiz/Rosedale Bridge to Island 22. So we fish  
45 a really big area, along with the Scowlitz.

46 So I said, you know, "We can start here and  
47 when others are ready to come on we could build

1           some success." And so we made a real commitment  
2           to -- to those meetings and I -- I believe more  
3           and more First Nations are at the table now, as  
4           well as a number of other sporting groups. And  
5           I've kind of backed out and I go when I can but  
6           now our fisheries coordinator and our portfolio-  
7           holder attend the meetings.

8           Q     Thank you. Chief Charlie, my final questions to  
9           you are about co-management or joint management.  
10           And I wonder if you can explain to the  
11           Commissioner what -- what the term "co-management"  
12           or "joint management" -- you let me know what you  
13           prefer -- what that means. What's your definition  
14           of that? What's your vision for co-management?

15          CHIEF CHARLIE: Again, as a few of the panel members  
16           described earlier about the practice of today  
17           where there's -- an agreement is brought forward  
18           to us and kind of put on a table and said, "Sign  
19           this or you don't really have anything," we think  
20           that co-management needs to be where we can  
21           actually sit down with a -- and come up with ways  
22           of going forward, whether it's in harvesting. But  
23           co-management needs to be across the board. It  
24           needs to be co-management of harvesting but also  
25           stewardship of enhancement and a protection of the  
26           waterways or spawning grounds. It needs to be  
27           all-inclusive of everything and not just  
28           harvesting.

29          MS. PENCE: Thank you. Those are my questions.

30          MS. SCHABUS: Mr. Commissioner, for the record, Nicole  
31           Schabus, S-c-h-a-b-u-s, first initial N., counsel  
32           -- co-counsel for STC and Cheam. Mr.  
33           Commissioner, with your leave, I would ask to be  
34           allowed to direct questions to Councillor June  
35           Quipp.

36  
37          CROSS-EXAMINATION BY MS. SCHABUS:

38  
39          Q     Councillor Quipp, can you please tell us your  
40           Halq'eméylem name and what it means?

41          COUNCILLOR QUIPP: Yes, my Halq'eméylem name is Sioliya  
42           and it -- it means the great spirit protector.  
43           And how I got the name was traditionally we go to  
44           our families or they come to us and talk about  
45           Indian names. And these are names that we have to  
46           earn and then end up having have to live up to  
47           them. So it took me a long time. I've only had

1 my Indian name for a couple of years, as I -- I  
2 wasn't sure if I could live up to it so it took me  
3 a while to accept an Indian name. But it does  
4 mean great spirit protector and it reflects a lot  
5 of the work that I've done over the years in my  
6 lifetime.

7 Q And I understand that name was bestowed on you in  
8 a ceremony in your smokehouse -- in a traditional  
9 ceremony --

10 COUNCILLOR QUIPP: Yes.

11 Q -- in your smokehouse?

12 COUNCILLOR QUIPP: Yes.

13 Q Now, just to clarify, the people at Cheam are part  
14 of the Stó:lō Nation and specifically the Halalt  
15 Tribe. Could you please describe the territory  
16 that the Halalt Tribe is responsible for,  
17 especially along the Fraser River?

18 COUNCILLOR QUIPP: Well, our -- for our history, our  
19 tribe, in particular, the Halalt Tribe, I think we  
20 believe a lot in the -- the -- we go a lot with  
21 the kinship ties, you know, the waterways and  
22 stuff that -- that we used as -- you know, prior  
23 to contact. We had a territory that sustained our  
24 lifestyle and so we go right from Hunter Creek,  
25 which is just in between Popkum and Hope, down  
26 just west of Chilliwack, which is the Halalt Tribe  
27 and all through that area along the Fraser River.

28 Q Now, could you please explain in which areas your  
29 people fish and which fishing techniques you use?

30 COUNCILLOR QUIPP: We have several fishing areas.  
31 Number one, we -- we do our main fishing area for  
32 -- the main fishers in Cheam is around the Cheam  
33 Beach and in that area from Jespersen Road to  
34 Hunter Creek. But we also have, as I explained  
35 and I may repeat it over and over about the  
36 kinship ties that we have with -- you know, with  
37 other groups. We have family sites in Yale, as do  
38 other families from the Stó:lō territory. I also  
39 am fortunate that myself and my direct descendants  
40 have fishing areas up in Union Bar, which is just  
41 above the Hope Bridge. My husband is from the  
42 Union Bar Reserve. And other members of our  
43 family ever since I can remember have fished up  
44 and I think Kat described it as the Alexandra  
45 Bridge. I call it Spuzzum. But my knowledge --  
46 my recollection is that we fish that area as well.

47 Q And you used different fishing techniques up

1 towards the canyon and then --

2 COUNCILLOR QUIPP: Yes, in the canyon because it's so  
3 steep and the -- the eddies, we call them, the  
4 pools where we set out nets are so small that we  
5 use poles and pulleys to set the nets there. It's  
6 just -- it's called a set net but -- at one time  
7 our people used dip nets but I don't really recall  
8 until such time that it was banned by the  
9 Department of Fisheries. And so we ended up using  
10 nets -- set nets with pulleys down in Cheam. We  
11 do two different methods of fishing. There's  
12 drifting. And we also do set nets, set net being  
13 a net tied up to shore.

14 Q Now, according to your Indigenous laws and  
15 knowledge, what have you been taught about your  
16 peoples' relationship with the salmon?

17 COUNCILLOR QUIPP: Well, that we have to respect it.  
18 It's a really big part of our lives and I think we  
19 face that -- that dilemma and I think really came  
20 to realize what our connection was to the salmon  
21 in 2009 when to our -- our devastation and our  
22 shock, we only had one opening for sockeye salmon.  
23 And it was really hard because a lot of our people  
24 didn't even get a chance to preserve any of the  
25 sockeye that year.

26 And as a result, a lot of our people, you  
27 know, really suffered throughout the year. I have  
28 a sister that provides food and myself and -- her  
29 and I, we provide a lot of food to our community  
30 members. And a lot of that food -- like my  
31 sister, although I don't know how she disperses  
32 the food that, you know, I provide to her, her  
33 comment at a health meeting was that four months  
34 out of the year, many of our people live on  
35 nothing but salmon. You know, that's the only  
36 food they have.

37 Q And I was just going to ask you to clarify. When  
38 you say -- when you provide food, you're referring  
39 to mainly salmon, right? And could you just speak  
40 to the kind of -- to the families that your sister  
41 would provide food to and what they need that food  
42 for?

43 COUNCILLOR QUIPP: Well, they're families. We have  
44 many families that are -- are on Social Assistance  
45 and normally they have food for a week in their  
46 house. After that, they're -- you know, they're  
47 quite desperate and lucky to get a meal a day. So



1           anyway, she provides -- people come to her house  
2           and she cooks for them and -- and provides food  
3           for them if -- her door is always open for -- for  
4           anyone that needs a meal.

5           Q     And can you please explain the central role that  
6           the sockeye salmon plays in regard to the culture,  
7           spirituality, livelihood and also the economies --  
8           the Indigenous economies of your people?

9           COUNCILLOR QUIPP: Well, the sockeye have always been  
10          an important part in -- in my life -- our  
11          lifestyle in our community. And even, you know,  
12          we use it to dry. We smoke it. We can it and  
13          now, since 1990, we actually freeze it, which is a  
14          real culture shock for me to have to eat frozen  
15          fish. But now, even today it's more of a -- I  
16          really guard and I use the word "hoard" my frozen  
17          fish which I never, ever thought I would do  
18          because it's so important that we have that. We  
19          do -- in particular, my family because I came from  
20          a very large family. My mother took pride in  
21          volunteering our services to people. And so we've  
22          all become caterers, we cook -- we cook for  
23          ceremonies, we do volunteer cooking.

24          And almost any meal we cook, I think anybody  
25          can vouch that in Cheam we always provide salmon  
26          at our ceremonies. And we've always used the  
27          sockeye as part of our economic -- it's always  
28          been a part of our sustenance in our lives. Like  
29          I said, our communities live in poverty. And I  
30          come from a family of 17 siblings. So growing up,  
31          that was a real big part of, you know, the  
32          lifestyle that my mom -- my mother and father had  
33          to -- to live was to -- to catch the salmon and  
34          actually sell a lot of it in order to -- to  
35          provide other food for the family and clothing.

36          Culturally, we have a longhouse in our  
37          community that again we ensure that there's enough  
38          salmon to put away to feed the people that come  
39          into our longhouse. For those that don't  
40          understand what we're talking about, longhouses,  
41          in the wintertime we have gatherings and usually  
42          weekly gatherings where we feed anywhere up to  
43          three or 400 people. And sometimes during the  
44          week, we have families that live in the longhouse  
45          that we provide that salmon for them, as well as  
46          wild meat.

47          And so I just kind of wanted to, you know,



1 touch on -- on the difference between hunting and  
2 fishing in a comparison to try and make people  
3 understand that we feel that we're being really  
4 harassed with the salmon regulations and whatnot  
5 because it's a good economic benefit for other  
6 people than First Nations. With the hunting, it  
7 has never been -- we've never been really harassed  
8 that much with the hunting. We can still hunt all  
9 year around. We don't have to have a license.  
10 But we still sell -- we still sell some of the --  
11 we eat the meat mostly but we sell a lot of the  
12 parts from the -- from the animals, like  
13 moccasins, you know, and I'm sure everyone's seen,  
14 you know, the beautiful work that comes out of  
15 tanned hides. And we've never been harassed.  
16 We've never been restricted from selling those  
17 items that are made from the hides, as we are with  
18 the sockeye. Or any of the salmon so...

19 Q And I'm going to ask you -- so what I'm hearing  
20 you say is you've always had an economy that's  
21 been based on the salmon. I'm going to ask you  
22 about the changes in abundance of salmon that  
23 you've seen in your lifetime alone and how that  
24 has impacted your people.

25 COUNCILLOR QUIPP: Well, it's a real -- over the last  
26 couple years, or few years, there's -- there's  
27 always an anxiety, you know, when it comes to  
28 fishing. And especially for myself, I've fished  
29 all my life. I processed fish all my life. I've  
30 taught my children, my grandchildren and now I'm  
31 teaching my great-grandchildren the meaning of the  
32 salmon, how important it is to us, how we can't  
33 waste that kind of food and that I never, ever, as  
34 a child, ever thought that I'd be so worried as I  
35 am today in wondering if there's going to be  
36 salmon next year, how much we have to put away.  
37 We've got, you know, six freezers where we smoke  
38 fish, we can fish and we freeze it. And those  
39 freezers are all full. So it's really  
40 important --

41 Q And I'm just going to stop you there. What do you  
42 keep a lot of that fish for and what does it serve  
43 for throughout the year?

44 COUNCILLOR QUIPP: As I explained, it's for many  
45 reasons. Like I said, we do catering jobs, we  
46 cook for funerals and we cook for ceremonial  
47 gatherings. I think two weeks ago I cooked for

1 four days for a memorial. And there was up to  
2 five or 600 people there that we fed at least a  
3 hundred people for the first few days and then  
4 five or 600 for the last day that -- every day, we  
5 -- we set the table and we -- we put out salmon on  
6 the table, along with the wild meat and other food  
7 that we provide.

8 Q And also, I take it for the smokehouse at Cheam?

9 COUNCILLOR QUIPP: And the smokehouse. We have -- we  
10 have our own longhouse at Cheam and, like I said,  
11 we provide -- the fish that's in our freezers now,  
12 most of it goes to our longhouse. Because of the  
13 people that gather there, the people that live  
14 there, we make sure that we have enough salmon  
15 there, both canned, smoked and -- or -- and frozen  
16 for -- to -- we take pride in being able to serve  
17 the salmon to -- to the people with our longhouse.

18 We also have other ceremonies that we've --  
19 annually, this year, we -- we missed it but for  
20 the last five years, we -- we had a relationship-  
21 building barbecue down at our beach. And we  
22 invited -- we've had the Department of Fisheries,  
23 the RCMP and the -- the invitation has been open  
24 to other First Nations to -- and even to the local  
25 people in our community. We put an ad in the  
26 paper, come and see how we fish. You know, let's  
27 -- let's get rid of this myth that we have a wall  
28 of death of nets across the river. And so what we  
29 do is we -- we have a barbecue right from noon  
30 till about five o'clock and we serve salmon and --  
31 and anything else that goes with it. And it's  
32 free of charge. It's just come and see us, come  
33 and get to know us and let us get to know you and  
34 so...

35 Q I'm going to ask you some questions now also  
36 relating to -- a little bit more to policy and  
37 implementation. How do you feel that the  
38 Department of Fisheries and Oceans deals with your  
39 culture, rights and connection with the salmon?

40 COUNCILLOR QUIPP: I believe they're in denial. They  
41 totally ignore it. They don't have a mandate to  
42 deal with our culture. They don't have a mandate  
43 to deal with -- they do. They don't use it. A  
44 real good example is during our -- one of the  
45 areas -- ceremonies I did neglect was the first  
46 salmon ceremony. And we asked for a ceremonial  
47 permit for one fish for that ceremony and we were

1 denied and --

2 Q Just to clarify, which year was that?

3 COUNCILLOR QUIPP: This year. Last year -- starting, I  
4 think, two years ago, you know, it's really  
5 upsetting when you use the term "FSC" because it's  
6 a terminology that's used to explain maybe or  
7 justify, you know, some decisions that are made in  
8 the Department that, to me, aren't really  
9 justifiable. There -- no one's ever -- no one's  
10 ever defined "social". Now, the Department in the  
11 last two years has been taking it upon themselves  
12 to define our ceremonies. And the only ceremony  
13 they recognize with us right now is our funerals.  
14 You have to die before we can get a ceremonial  
15 permit to --

16 Q To get fish?

17 COUNCILLOR QUIPP: -- to set the table. And like I  
18 said, I requested a social permit one of the --  
19 the events I do, I guess, during the fishing  
20 season is I've had for the last ten or 15 years  
21 now, I have invited people to my home and to our  
22 community in Cheam to can fish for their elders,  
23 for their families. And we have about -- I'd say  
24 about ten different groups from ten different  
25 communities, as far away as Fort St. John coming  
26 into our community canning fish for their -- their  
27 people up there because by the time the fish get  
28 to their spawning grounds they're almost not  
29 edible.

30 And so the one year I put in for ceremonial  
31 permit for this type of event was it was denied  
32 because they said it was just under food fishery.  
33 So then I requested a social ceremony and --  
34 permit and -- or a social permit and I never even  
35 got the -- you know, the respect of an answer on  
36 that one. So still, we're -- we still don't know  
37 what "social" means when you talk about "FSC". To  
38 me, it's -- and we've discussed this lots in our  
39 community, that it's an easy way for the  
40 Department to try and justify some of their  
41 decisions -- or they think they're justifying  
42 their decisions.

43 Q And when you refer to "decisions" that will be  
44 decisions to limit fisheries?

45 COUNCILLOR QUIPP: Yes.

46 Q Now, in regard to your relationship or  
47 communication with the DFO, do you feel there is

1 room to take your concerns into account?

2 COUNCILLOR QUIPP: Not the way the -- the system's set  
3 up. You know, I really -- in our discussions, we  
4 talk about the regulations, the guidelines that  
5 the Department of Fisheries or any government  
6 organization has to follow. And quite often, the  
7 decisions that are made by them are -- are more --  
8 they follow some guidelines, although we've never  
9 seen the Department of Fisheries guidelines on  
10 consultation.

11 They'll come to a meeting or we'll go to a  
12 meeting and we discuss our concerns and they go  
13 nowhere. I believe that in order for, you know,  
14 us to be even able to come to some reconciliation  
15 with the Department of Fisheries, we have to  
16 really look at the guidelines that are set out for  
17 the -- the government and make sure that they  
18 include us as part of the discussions that -- and  
19 I think I might be jumping ahead here but the --  
20 you know, the management of the fishery that we  
21 really don't have, you know, any part in the  
22 management of the fishery.

23 We may go sit at the table and have  
24 discussions with DFO but they always come with a  
25 mandate. And they always come with the thought  
26 that the person that comes to a meeting with us is  
27 so low on the totem pole they don't have any  
28 decision-making authority in order to -- you know,  
29 even say we -- we might have a level playing field  
30 at negotiating some kind of an agreement that we  
31 could all agree with.

32 Q Now, I take your people have made substantive  
33 proposals to DFO about a more sustainable  
34 management of the salmon?

35 COUNCILLOR QUIPP: One of the areas we talked about and  
36 -- and I -- at one time, DFO had a term -- they  
37 change their terminology all the time but they had  
38 this term that they -- they used was "risk  
39 aversion management plan". And the explanation to  
40 that risk -- what that means is if they wanted  
41 60,000 salmon to return to the spawning grounds,  
42 then they should -- they would have to make sure  
43 that 120,000 salmon got by instead of just 60. So  
44 our recommendation from our community was that  
45 they use that same formula for the Indigenous  
46 people along the river to ensure that the highest  
47 court decisions in Canada are followed, that if --

1 if they're allotting us 600,000 for the Stó:lō  
2 people, then they should make sure that there's  
3 1,200 or 1.2 million getting -- getting by past  
4 the commercial fisheries. And I think that should  
5 be really considered when they're doing their --  
6 their total allocation catch for any other user  
7 groups.

8 Q Now, we've heard about and questions have been  
9 asked about processes. And I take it there's some  
10 concerns with processes. But also, in order for  
11 any process to work, what do you feel are the  
12 substantive requirements that should be met  
13 regarding Indigenous peoples and your knowledge?

14 COUNCILLOR QUIPP: Someone here earlier mentioned that  
15 we needed our own biologists, you know, and it  
16 sparked something with me that, yeah, we do need  
17 our own biologists 'cause we do have several  
18 biologists and -- you know, within our Indigenous  
19 people now. But I really believe that not just  
20 biologists that have had academic training through  
21 university but we have many, many people that have  
22 lived on the river, that have fished all their  
23 lives, that have a lot of knowledge.

24 And I think Willy touched on a lot of the  
25 different signs and symbols that we use when --  
26 when we're -- you know, when we're getting ready  
27 to go fish and I agree with those. And a lot of  
28 those, I don't even really give out at this  
29 particular time. To me, it's -- it's traditional  
30 knowledge. But we've -- I think a good example  
31 I'd like to give is we've been involved with  
32 gravel removal from the river and -- and again,  
33 that's just another area where we look at how any  
34 development impacts, you know, our fishing or our  
35 lifestyle.

36 And we -- we have developed, going way back  
37 to when my father was chief, he did develop gravel  
38 plans. When he was the chief, we removed gravel.  
39 I think in our history way back we had cobbler --  
40 cobble courtyards. But most recently, we removed  
41 gravel from one of the bars and in that gravel  
42 plan, and I think DFO has taken credit for it now,  
43 but during that -- those gravel plans that were  
44 being developed, we built some jetties to enhance  
45 the fishing pools -- fishing -- where fish come  
46 and rest and feed. And because those are also our  
47 -- a lot of them are our fishing sites. And so

1           when we develop gravel plans, we develop them  
2           always keeping in mind the habitat.

3       Q     And just to close off, how do you see Indigenous  
4           involvement in decision-making or what level  
5           should -- at what level should you be involved in?

6       COUNCILLOR QUIPP: At every level. You know, I think  
7           we have to be there from the beginning. What's  
8           happened over the last -- in my lifetime of, you  
9           know, negotiations, agreements and whatever with  
10          -- with any government is that they present us  
11          with a proposal. They present us with an  
12          agreement. And then we may get to make changes,  
13          we may not. But I think we have to go right from,  
14          you know, the planning, the development of  
15          guidelines, the development of legislature,  
16          changes, if necessary, and we also have to be able  
17          to be sitting at the table to make a decision and  
18          not leave it up to the RDG having the final say.

19       MS. SCHABUS: Thank you. Those are all my questions.

20       MR. MCGOWAN: Yes, Mr. Commissioner. That concludes  
21          the examinations in chief. It might be an  
22          appropriate time for the lunch break.

23       THE COURT: Thank you very much.

24       THE REGISTRAR: The hearing is now adjourned until 2:00  
25          p.m.

26  
27                               (PROCEEDINGS ADJOURNED FOR NOON RECESS)

28                               (PROCEEDINGS RECONVENED)

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

31       MR. MCGOWAN: Yes, Mr. Commissioner. We're now at the  
32          stage of commencing cross-examination. Mr. East  
33          for Canada is going to go first. I understand he  
34          is going to try and keep himself within half an  
35          hour, if he can.

36       MR. EAST: Good afternoon, Mr. Commissioner, my name is  
37          Mark East, again the Department of Justice. As  
38          Mr. McGowan has said, I will attempt and make  
39          every effort to keep my questions within half an  
40          hour, recognizing that we will have some hearings  
41          in the New Year on this issue, and many of the  
42          issues we're discussing today I suspect will be  
43          discussed at that time, as well.

44  
45       CROSS-EXAMINATION BY MR. EAST:

46  
47       Q     Thank you, everybody on the panel, for coming

1 today. Just as an introduction, I am going to  
2 probably ask questions of you as individuals, but  
3 I just invite you to jump in and to answer the  
4 questions as a collective as I go forward, because  
5 many of the questions I'm going to ask, I'm going  
6 to try to frame them in such a way that to  
7 encourage input from all of you.

8 One of the things that I'd like to discuss in  
9 the time that I have is this issue of co-  
10 management. And I heard what Chief Pennier said  
11 about the definition of being co-management - I'm  
12 putting words in your mouth, I suppose - but it  
13 could have been the eye of the beholder: It's  
14 something that needs to be defined. And I was  
15 just wondering if you've heard of this structure  
16 that's used to define the levels of management as  
17 the tier system. There's Tier 1, Tier 2 and Tier  
18 3. Is that a terminology that's used by -- within  
19 First Nations communities to describe the  
20 different levels of engagement between -- between  
21 First Nations and between First Nations and DFO?  
22 Chief Pennier.

23 GRAND CHIEF PENNIER: I've heard about Tier 1, Tier 2  
24 and 3, but I'm not too familiar with all of it. I  
25 know that Tier 1 is amongst ourselves, and Tier 2  
26 is with DFO, and I'm not too sure of what T3 is,  
27 whether it's with commercial and sport, or...

28 Q I guess Tier 3 would be with essentially all the  
29 other fishers, including commercial and  
30 recreational. That's my understanding, so...

31 GRAND CHIEF PENNIER: Yeah, good.

32 Q I'd like to focus a little bit on what we would  
33 call Tier 1, and perhaps as a first document I'd  
34 like to look, it's actually -- and this is a  
35 question for Ms. Quipp. And it's related to your  
36 witness summary, Ms. Quipp, just as an  
37 introduction. And this is the exhibit. So it's  
38 the "Witness Summary" of Ms. Quipp, Exhibit 278.

39 So if you go to page 2. I'm just curious and  
40 would like to follow up on a comment under the  
41 heading "FSC fishery". And if you look at the  
42 second line it says:

43  
44 Councillor Quipp explains that the Cheam band  
45 falls under the collective FSC allocation for  
46 the Stó:lō Peoples. She advises that the  
47 various tribes do not discuss among



1                   themselves how to divide up the allocation.  
2

3                   I just want to clarify when you refer to the  
4                   tribes, the "various tribes", Ms. Quipp, is that  
5                   the peoples, the tribes of the Sto:lo Nation, or  
6                   is that the tribes of the Fraser generally?

7                   COUNCILLOR QUIPP: Of the Sto:lo Nation or the ones  
8                   that, you know, like when we talk about Sto:lo  
9                   Nation, Katzie is usually included in the  
10                   allocation that we get, and then goes right up to  
11                   Yale. So those are the ones that I would be  
12                   talking about.

13                   Q    Okay. So within the Sto:lo community of nations,  
14                   Sto:lo tribes, if you're not discussing among  
15                   yourselves how many fish -- how to divide up the  
16                   allocation, how do you know, then, at the end of  
17                   the fishing season that you've met the allocation  
18                   that's been provided to the Sto:lo group, Sto:lo  
19                   Nation?

20                   COUNCILLOR QUIPP: We have one -- we have the only  
21                   monitoring program in the world where we have all  
22                   of our fish counted so that at the end of the  
23                   season all of our tallies go into DFO and they  
24                   know how many fish we got in each community, as  
25                   well as the -- all of Sto:lo.

26                   Q    So each of the Sto:lo tribes, or Sto:lo bands  
27                   reports their catch monitoring to DFO and that's  
28                   how you know how -- to what extent that all the  
29                   Sto:lo First Nations have met their allocation?

30                   COUNCILLOR QUIPP: Yeah, it's done every week as soon  
31                   as the fishing times that we've been allocated are  
32                   over, then the stats go in right away.

33                   Q    Okay. I'll probably return to this in a minute if  
34                   I have time, but I just want to ask at the bottom,  
35                   and I think at that same page, you refer to that:

36  
37                   The Cheam have their own catch monitors --

38  
39                   - that's the very last sentence -

40  
41                   -- who record numbers of fish as they come  
42                   in. The catch monitors then pass those  
43                   numbers along to the band office and in turn  
44                   DFO.

45  
46                   COUNCILLOR QUIPP: Each community has their own catch  
47                   monitors --



1 Q Okay.

2 COUNCILLOR QUIPP: -- normally throughout the season.

3 Q Okay. So it would be a requirement of DFO to  
4 essentially collect all these numbers and to  
5 ensure that the allocations are met, that the  
6 allocations are fished to and not exceeded?

7 COUNCILLOR QUIPP: Yes. And they do, otherwise they  
8 refuse to pay the -- the \$60,000 or whatever it  
9 is, annually, they refuse to pay it until all of  
10 those reports are in.

11 Q Okay. And just as an aside, my understanding that  
12 Cheam in particular hasn't had a catch monitoring  
13 program for the last two years; is that right?

14 COUNCILLOR QUIPP: No, we haven't signed an agreement  
15 for the last two years.

16 Q Okay.

17 COUNCILLOR QUIPP: But I think the catch monitors,  
18 they're probably still out there anyway.

19 Q Okay. That was a preface for a more general  
20 question for the panel, and that is in a poor run  
21 year where there are concerns that there simply  
22 not be enough fish to meet all of your  
23 communities' needs, what is your vision for how  
24 the First Nations will ensure -- your vision of  
25 all the First Nations on the Fraser River will  
26 ensure that the fish are shared equitably among  
27 the nations on the Fraser River. And I'd throw  
28 that open to anybody on the panel.

29 CHIEF BAIRD: I think one first step to ensure that  
30 doesn't happen would be to provide the test  
31 fishery to First Nations. That would be a very  
32 positive measure to ensure that if there isn't any  
33 fish beyond the test fishery, that First Nations  
34 would have access to those fish that are caught  
35 in-season as a starting point.

36 MR. BECKER: As a rule a percentage that was proposed  
37 by DFO for First Nations to -- to try and see if  
38 we could come to some agreement on it, and that  
39 was starting at 25 percent and allowing another as  
40 it went up the river. Though there was no  
41 agreement on it, I believe that if -- if First  
42 Nations could rely on the information that was  
43 given to them, because it's not the first time  
44 that we've come close not to meet our FSC needs.  
45 But we're always suspect of -- of the numbers that  
46 are being given to us by the Department. Because  
47 there's test fisheries going on in the Straits,

1 test fisheries going on on the West Coast of  
2 Vancouver Island, and those fish are going  
3 somewhere, they're actually being sold.

4 So what we're saying is that -- and I believe  
5 what -- in what Kim is saying, give those fish to  
6 First Nations, thereby reduce the amount that --  
7 the impact on First Nations, and then let us try  
8 and decide if -- if we believe there's not enough  
9 fish, and if there isn't then we'll work out that  
10 percentage and we'll start meeting with First  
11 Nations up along the -- the watershed.

12 Q Okay. Anybody else?

13 MR. BECKER: I don't believe you can impose it --  
14 impose from the federal side --

15 Q Right.

16 MR. BECKER: -- a percentage we and Musqueam could --  
17 would have to share.

18 Q Chief Charlie.

19 CHIEF CHARLIE: It's Mark?

20 Q Yes.

21 CHIEF CHARLIE: Thanks, Mark, for your questions.  
22 There's a couple of comments for, I think, the  
23 ones that you have asked for the tiers. Again,  
24 I'm not as intimately involved in the fisheries at  
25 a higher political level, but I definitely think  
26 that the tiers need to be across the board. And  
27 so that if we're going to talk about monitors in  
28 relationship to the -- amongst the different  
29 tiers, then I think that it should also be in the  
30 same question.

31 So June mentioned a bit about the monitoring  
32 system that First Nations are using that is not  
33 with the other user groups. There is no counting  
34 for other user groups. And so this tiers -- tier  
35 system needs to be somehow clear and concise and  
36 some clear mandates that should go across the  
37 different tiers.

38 I think the question around the low stocks  
39 and the low numbers, and I agree, last year we --  
40 or, yeah, it was last year early in the season  
41 that the numbers of the early Chinooks weren't  
42 returning.

43 Q Mm-hmm.

44 CHIEF CHARLIE: And we were wanting to have our first  
45 salmon ceremony to pay respect. And it was  
46 actually one of the test fishery out of Albion  
47 that gave us a feel of the early Chinook, what we

1 call a squawkum (phonetic). Squawkum is that  
2 first fish, and it's like the -- and it's like the  
3 most prized fish of our people, the king of the  
4 fish, if you will, the one that you pay respect  
5 to, and the one that you have a ceremony for,  
6 because they're the first ones to return to the  
7 people. And once you have your ceremony for them,  
8 it's like they are supposed to go back and let the  
9 rest know that they're still being respected, so  
10 that the other numbers can happen, so the others  
11 will return. And so that kind of collaboration  
12 amongst the test fisheries and other user groups  
13 should definitely be out there. We should learn  
14 how to spread that out, rather than it being sold  
15 somewhere else. It should go for some of those  
16 sacred uses.

17 Another example of the test fisheries and  
18 paying respect, I guess, to the low returns, in  
19 Chehalis we had a catch for some chum and DFO said  
20 for commercial use. So they give us these numbers  
21 and our guys went out and they said, well, there's  
22 not enough fish. We're not going to fish if  
23 there's no fish in the water. And then it was  
24 told to us that we needed to use those numbers.  
25 We needed to go out and catch those numbers. Our  
26 fishermen came back very adamantly to the band  
27 office and said "We're not going to fish if the  
28 fish aren't there."

29 And so the proper tests that need to happen  
30 before allocations are given out should be a  
31 collaborative approach amongst all groups of this  
32 co-management that you were talking about. So  
33 that's what co-management would mean. It's not  
34 just the divvying up of numbers, dealing out cards  
35 and saying "This is how much fish you're going to  
36 get, and you're going to get." The co-management  
37 really needs to be for stewardship and  
38 enhancement, and then what goes back to that.

39 So there's user groups in our fishing -- in  
40 our salmon enhancement numbers and some of the  
41 commercial opportunities that we get, some of  
42 those dollars there are marked to go back into  
43 enhancement, and are other groups doing that?  
44 Should other groups be doing that same thing,  
45 putting "X" amount of their catch or their  
46 resources that they make, they should be putting  
47 it back into enhancement, as well.

1                   So that's co-management.

2           Q       Okay. Mr. Becker.

3           MR. BECKER: Mark, could I just go back to your Tier 1,  
4           Tier 2 and Tier 3?

5           Q       Yeah.

6           MR. BECKER: In 1992 when the Lower Fraser was  
7           negotiating with the Department of Fisheries and  
8           Oceans on the first AFS agreement, in the end of  
9           that process, the other user groups were invited  
10          into that meeting. And I think we went two days  
11          without any kind of a consensus being reached  
12          between the user groups and First Nations. So it  
13          has been tried, but there was never any kind of an  
14          agreement. Just to let you know that part.

15          Q       Yeah. No, that's helpful, and I'll probably  
16          return if I have time to what I guess you would  
17          call a Tier 3, and that's something that you  
18          brought up, Mr. Becker. I'd be interested at  
19          some point in discussing, if we have time, your  
20          ideas and vision for how all user -- all fishers  
21          on the water can get together in some kind of what  
22          we would call a Tier 3 initiative, Fraser-wide, to  
23          manage and co-manage the fishery, including DFO.

24          One thing I want to focus on, though, is some  
25          of the -- what you see is perhaps some of the  
26          challenges in getting all of the various First  
27          Nations on the Fraser together into one kind of  
28          collaborative management organization. I wondered  
29          if I could just ask you, based on just a quote I  
30          found in one of the -- one of the documents that  
31          we -- that we have in our -- on our database, and  
32          it's -- Mr. Registrar, it's actually -- it's Tab  
33          12 of our list of documents, Canada's list of  
34          documents and the CAN number is CAN056656.

35          So this is a paper -- maybe I should  
36          introduce it. It's a paper, it's called "Review  
37          of the Fraser River Aboriginal Fisheries  
38          Secretariat". Now, I understand that most of your  
39          First Nations, or all of them are -- at least  
40          participate in the Fraser River Aboriginal  
41          Fisheries Secretariat?

42          COUNCILLOR QUIPP: I think a lot of these organizations  
43          that are put together, there are certain groups  
44          that participate and they're -- not all First  
45          Nations participate and not all of the leaders  
46          participate. Quite often, and especially in Tier  
47          1, I think it ended up being a lot of the

1 technical people from different communities and we  
2 don't all have technical people, ended up at these  
3 meetings and DFO was calling it consultation. And  
4 so they sort of in my mind, in our community  
5 didn't really work out. Because when our -- if  
6 any of our leaders went, they were unsure of what  
7 role they actually played in those Tier 1  
8 meetings. And I think that's the way it was sort  
9 of ending up in our community -- for our  
10 community, anyway.

11 Q My understanding of -- and my imperfect  
12 understanding of this organization, it provides  
13 technical and communication support for First  
14 Nations. It's not intended to be a representative  
15 body. I wanted to take you to -- however, I  
16 wanted to take you to a quote from the document.  
17 It's at page 5 of the document. And this is a --  
18 it appears to be a paper done by a consultant for  
19 this organization. And it's page 5, under "Review  
20 Results". And I just want to read you the first  
21 paragraph under "Tier 1", and this is where some  
22 of the terminology of tiers comes in. I just want  
23 to get your impression of -- your comments on this  
24 paragraph. I'm just going to read it out:

25  
26 One of the most problematic issues addressed  
27 in each of my previous Reviews --

28  
29 - and that's a reference to some earlier papers  
30 that this consultant has done -

31  
32 -- is the serious division that exist amongst  
33 Fraser River First nations. I noted then  
34 that the hard feelings that exist between  
35 some Nations and Bands made it difficult to  
36 get everyone to the table. These  
37 relationship problems were then and remain  
38 today, complex, rooted in a variety of  
39 sources: treaty issues, AFS issues, harvest  
40 vs. conservation issues, and others.

41  
42 And it's that last sentence that I'd like to have  
43 some of your comments on. What are some of the  
44 issues that make it difficult, at least according  
45 to this person, as to why communities on the  
46 Fraser have a difficulty in getting along? First  
47 of all, do you agree with that?

1 COUNCILLOR QUIPP: I agree. I agree there's a lot of  
2 conflict within First Nations, and in my  
3 experience, my witnessing of how the Department of  
4 Fisheries has acted within our meetings, they go  
5 from one community to another, and we know for a  
6 fact that they've gone up to the -- the  
7 communities up -- what I call the Thompson area,  
8 and above the Spuzzum Bridge, and they misinform  
9 some of the First Nations there. When this has  
10 happened in the past, I know we at Cheam have  
11 written letters to some of those First Nations and  
12 asked them, "Come and sit with us and find out,  
13 you know, what's going on." So that's one of the  
14 biggest problems I see is that, you know, it's  
15 easy for -- for the Department to travel all over  
16 the province and spread rumours or whatever, or  
17 misconceptions to other First Nations. And it's  
18 easy for us to believe some of the stuff they're  
19 spreading.

20 Q Chief Baird?

21 CHIEF BAIRD: I think there's lots of reasons why  
22 there's First Nations' conflict and I think it  
23 comes down to, in my view, undefined fishing  
24 rights. And I think that when you have  
25 collaborative sessions that just turn out into  
26 venting sessions that don't really result in any  
27 true co-management, and there's no strong  
28 foundation between the federal government and the  
29 First Nations, there's no partnership there.  
30 There's nothing to hang our administrative  
31 arrangements on, in my perspective. And, you  
32 know, when you talk about ceilings on allocations  
33 that seem arbitrary to First Nations and a lack of  
34 clarity of how those are even arrived at. And the  
35 lack of capacity within First Nations to engage in  
36 these issues at different times in their different  
37 communities, those are all elements that don't  
38 help the situation.

39 And if going forward we want to have a more  
40 robust ability to work together in a Tier 1 type  
41 of fashion, then we need to have sort of rules of  
42 engagement that everyone understands, agrees to,  
43 and has input on, so that there's meaning to be --  
44 there's real meaning to be in those sorts of  
45 forums, in my view.

46 Q Mm-hmm. I wanted to ask if you've been involved  
47 or heard of some -- the recent initiatives on the

1 Fraser River. One of them is called, and I'll  
2 always get this wrong, I always kind of call it  
3 "the Forum", but it's the Fraser River Forum on  
4 Conservation and Harvest Planning. Are you aware  
5 of this initiative that I believe started in 2008?

6 CHIEF CHARLIE: Mark?

7 Q Yes, sorry.

8 CHIEF CHARLIE: Sorry, I don't know the last question.  
9 I'm not aware of it. But I was just going back to  
10 your Tier 1, and the way you read something from  
11 this report. And I read down further in the  
12 report, that would have been my comments. So if  
13 you go down to paragraph 3 and it talks about:

14  
15 However, recent positive changes...

16  
17 Q And this is -- I'm glad you're pointing it out. I  
18 was going to go back to that and maybe we can go  
19 back to that now. Thank you very much, Chief  
20 Charlie, because I think that's important. If we  
21 can go back to that same -- same paragraph, and go  
22 down to the third:

23  
24 However, recent positive changes in  
25 attitudes, brought on by projected declines  
26 in fish stocks, the prospect of increasing  
27 competition from "approach" Bands (Vancouver  
28 Island Bands are arguing that they be given  
29 access to in-river fishing), projected in-  
30 river commercial fisheries, the demise of  
31 the --

32  
33 - I think that's the BC Fisheries Coalition -

34  
35 - BCFC, dissatisfaction with the bi-lateral  
36 process and other issues, has resulted in a  
37 recent resurgence of interest in attending  
38 Tier 1 meetings...

39  
40 Now, this was in 2007, but would that be your view  
41 today?

42 CHIEF CHARLIE: Yes.

43 Q That there's been a recent resurgence?

44 CHIEF CHARLIE: I think so. I was at an All Chiefs  
45 meeting a couple of months back and there was a  
46 few fishermen that came together that had been  
47 working on this Tier 1, came to do a report

1 together to the All Chiefs meeting that was held  
2 at the Joe Mathias Centre. I don't remember  
3 exactly which date. But we had somebody there  
4 from the Coastal, and we had somebody there from  
5 the Sto:lo, and the other one was from the Fraser  
6 Canyon. And in their own comments before starting  
7 they said these guys have been involved in  
8 fisheries for quite some time. I don't know if I  
9 should say their names, it probably doesn't  
10 matter, but it was Chris Cook, Ken Malloway and  
11 Fred Sampson, Chief Fred Sampson were the ones  
12 that came and did the report together. And they  
13 both -- they all three had been heavily involved  
14 in fisheries for a number of years and came and  
15 said they've come to do this report together,  
16 standing in unison to advocate on behalf of all  
17 First Nations for co-management of fish, and the  
18 resource of the fish. And they stood together and  
19 gave a report together, and they said not long ago  
20 they would have been poking -- pointing fingers at  
21 each other and arguing amongst each other about  
22 what numbers they were given and how they were  
23 being played against each other. And this time  
24 they stood up together to look after the  
25 stewardship of the fish.

26 GRAND CHIEF PENNIER: And if I can add to that. There  
27 is an initiative in this year that where we're  
28 trying to bring the Fraser group together to work  
29 together, yeah, it's happening.

30 Q Is that the Lower Fraser -- I think its name  
31 recently changed, but it's the Lower Fraser  
32 Fisheries Alliance?

33 GRAND CHIEF PENNIER: That's right.

34 Q Okay. And that's a -- that's an organization I  
35 understand it's still in development, it's in its  
36 development stages?

37 GRAND CHIEF PENNIER: Yeah, there's still development,  
38 but they're gathering more interest from the  
39 communities up and down the river.

40 Q And that's -- that's an initiative that DFO funds  
41 through its AAROM program?

42 GRAND CHIEF PENNIER: That's right.

43 MR. EAST: Okay. And there's something similar, well,  
44 I won't ask you this, but something similar for...  
45 I wonder if we could turn to -- first of all,  
46 perhaps I should mark this document that we have  
47 on the screen as an exhibit, Mr. Commissioner.



1 THE REGISTRAR: Exhibit number 288.

2  
3 EXHIBIT 288: Review of the Fraser River  
4 Aboriginal Fisheries Secretariat: March  
5 2007, Prepared for the Fraser River First  
6 Nations Fisheries Forum by Dr. Bob Brown  
7

8 MR. EAST:

9 Q I want to talk a little bit more about this, the  
10 Forum of -- perhaps we can go to Tab 8 in our list  
11 of -- Canada's list of documents. Now, this is --  
12 this is an internal DFO document, so I won't ask  
13 you if you're familiar with it and have seen it  
14 before. I'm interested in just reading the first  
15 paragraph just for introductory purposes:  
16

17 In 2008 it was recognized that poor  
18 forecasted returns for Fraser salmon would  
19 limit harvest opportunities and could  
20 potentially impact the ability of First  
21 Nations to harvest salmon for food, social  
22 and ceremonial (FSC) purposes. Recognizing  
23 this would pose in-season management  
24 challenges for DFO and First Nations, the  
25 Department (led by BCI) --  
26

27 - which is BC Interior Department of DFO -  
28

29 -- initiated a series of workshops to engage  
30 Fraser River First Nations regarding harvest  
31 planning for the 2008 season.  
32

33 And that started, it seems, in the next paragraph,  
34 started in January 2008.

35 My understanding is they met four times in  
36 2008 and it was that process was well-received.  
37 Did any of you participate, or do you know people  
38 who would have participated in that?  
39

40 Going maybe down to the third paragraph. The  
41 second paragraph talks about some of the meetings  
42 that the organization took part in that talked  
43 about:  
44

45 In preparation for 2009 season, the *ad hoc*  
46 transition committee --  
47

47 - they talk about -

1 -- evolved into the Interim Fraser River and  
2 Approach Working Group (IFRAWG). This  
3 working group has continued to fill the role  
4 of planning and organizing meetings and  
5 communications, with the assistance of the  
6 Fraser River Aboriginal Fisheries Secretariat  
7 (FRAFS).  
8

9 So this is essentially a -- it looks like a  
10 working group to operationalize some of the things  
11 that were discussed at these meetings of the -- of  
12 the Fraser River Forum. Do you have any  
13 familiarity with that, with that organization?

14 Okay, I'll leave that, then.

15 Have you heard of the "Roadmap Process", a  
16 process for -- well, maybe I will -- maybe Tab 6  
17 from Canada's list of documents.

18 So this is a document, again this is a DFO  
19 document, and it refers to the DFO and First  
20 Nations Salmon Roadmap Process. And the first  
21 heading says:

22  
23 Engagement and input from other First Nations  
24 Organizations (e.g. First Nations Fisheries  
25 Council, ITO)  
26

27 And you have a timeline here and you see December  
28 2010 is in the middle. On the far right, and it's  
29 very hard to see, so I'll have to get my hardcopy  
30 because I can't read what's on the screen. I just  
31 want to ask you about this process and its  
32 objectives at the end of this chart. Now I'll  
33 need my glasses.

34 "Summer 2012" on this timeline:  
35

36 A series of meetings for a potential  
37 agreement and/or implementation of the new  
38 management approach between DFO and First  
39 Nations (Fraser and Marine Approach) for  
40 Fraser Salmon.  
41

42 Are you aware of the activities of your First  
43 Nations in this Roadmap Process, this series of  
44 meetings to this objective? Okay.

45 GRAND CHIEF PENNIER: I think Ernie Crey from our group  
46 has probably attended a few of these sessions,  
47 that's about all.

1 Q Well, I just flag these now, but I'm sure that  
2 we'll return to these at further sessions of this  
3 hearing. I just wanted to ask if with your --  
4 your personal involvement and knowledge was of  
5 those -- of those processes.

6 But wouldn't you say that, I guess I'll leave  
7 it at this, that there's certainly an interest on  
8 the part of the Department of Fisheries and Oceans  
9 to work with First Nations on these Tier 1 and  
10 tier processes to improve the relationship with  
11 First Nations and to move toward a co-management  
12 process that works. Would you agree that there's  
13 at least been some efforts made in recent times to  
14 try to improve that track record?

15 COUNCILLOR QUIPP: I think I want to just stress on --  
16 on one of Kim's comments about, you know, where  
17 nothing goes anywhere, anything. You know, these  
18 meetings happen, there's meetings that happen, and  
19 so-called plans that are made, but they're never  
20 followed through. They're never implemented, and  
21 so a lot of our people get to the point where, you  
22 know, what's the sense of going.

23 You know, we go and we spend our hard-earned  
24 dollars that we do have, little dollars that we  
25 have, it creates a real hardship for us, a lot of  
26 our communities to attend, you know, these types  
27 of organizations. And yet, you know, the  
28 Department has its full staff, you know. They  
29 have all the, you know, the Justice Department and  
30 everyone that they can work with. And yet if we  
31 get a lawyer it's going to cost us an arm and a  
32 leg that we don't have. So it's really difficult,  
33 I think, when we're looking at, you know, even  
34 attending some of these.

35 When I was -- held the position of chief in  
36 my community, I never travelled to a meeting.  
37 Any meeting that we had with any government  
38 organization, they came to us and it made it so  
39 much easier for our -- even our members to  
40 participate and be part of whatever's happening  
41 here. And this is where we fall down, I think,  
42 with -- when we might have one representative  
43 going to a meeting such as this, and yet the  
44 information never really gets back to the ground  
45 level where we get our -- where I get my direction  
46 from as a leader in my community. I need to have  
47 that support from the members that elected me in

1           there. And if I don't have that support, if they  
2           don't know what's going on, we don't know what's  
3           going on, we can't present that to them. And so  
4           there's a real big flaw right there that lack of  
5           capacity is one of them, you know, that we -- we  
6           really can't afford to be sending representatives  
7           probably to all of these meetings.

8           Even now, you know, at one time we used to be  
9           able to meet with the Deputy Minister who would  
10          come out from Ottawa. Now we meet with people  
11          such as the Resource Management, who have no  
12          authority to make decisions. And it's really hard  
13          for us to believe something's going to happen,  
14          something positive's going to happen and come out  
15          of something like this.

16 CHIEF CHARLIE: Mark?

17 Q       Yes.

18 CHIEF CHARLIE: Can you ask that question again?

19 Q       Yeah. If I can remember. Now I'm trying to  
20          remember how we got to where we are.

21 CHIEF CHARLIE: Was there attempts to do...

22 Q       I guess what I'm -- what I'm -- and maybe just to  
23          paraphrase what I've heard, it's a real challenge  
24          to create these organizations. You create these  
25          processes, these ideas, but it's very difficult to  
26          implement them on the ground.

27 CHIEF CHARLIE: I was just looking for your question  
28          again.

29 Q       Well, where I was asking about is does your --

30 CHIEF CHARLIE: Is there attempts to do --

31 Q       -- knowledge involve -- oh, okay. Thank you.

32 CHIEF CHARLIE: Has the Department made attempts to --

33 Q       Do you agree that the Department has made attempts  
34          through these initiatives that I've just referred  
35          to, and just generally, to try to engage First  
36          Nations on processes for co-management in a system  
37          within -- for First Nations to talk to each other,  
38          but also for First Nations to engage with DFO?

39 CHIEF CHARLIE: Mark, you know how earlier a few of the  
40          panel members had made some comments that DFO  
41          would come to them with some of the less senior  
42          bureaucrats and come with a -- a letter with no  
43          mandate to kind of talk or negotiate and just  
44          expect a signature. And then we were saying, you  
45          know, we need to talk to the people that have some  
46          authority, then it can make some decisions on the  
47          ground. That goes both ways.

1 Q Mm-hmm.

2 CHIEF CHARLIE: And so that if the -- if DFO is coming  
3 to First Nations and wanting to develop on co-  
4 management structure, then they need to talk to  
5 the ones that have that authority in First Nations  
6 communities, and not one-off them -- what they  
7 call one-off and go and talk to somebody and say,  
8 "Well, we consulted with First Nations, but we  
9 don't know who they were and what authority they  
10 had, but we consulted with First Nations." You  
11 need to go to the chiefs and to the leaders and  
12 those that have that mandate and jurisdiction to  
13 do those discussions.

14 And I think I've heard about this "Roadmap"  
15 again, but it was more at a technical level. If  
16 they're going to talk about things that are put  
17 into structure, what it's going to be, if you  
18 will, a co-management discussion, then it should  
19 be with the proper people.

20 Q Sorry, Chief Baird.

21 CHIEF BAIRD: Yeah, I just want to say that our manager  
22 of our Resource Department would typically attend  
23 some of these meetings, and she's always  
24 scratching her head wondering where it's best to  
25 spend her time, because she could go to a meeting  
26 probably every day of the week.

27 Q Mm-hmm.

28 CHIEF BAIRD: So there's that aspect of it. And to be  
29 clear, my view, it's really complicated, the  
30 interface between Department of Fisheries and  
31 Oceans and First Nations, because there's the pre-  
32 season planning stuff, which in some ways we have  
33 time for. Then there's the in-season chaos that  
34 really strained relationships, and then there's  
35 enforcement on top of that. And then you throw  
36 into the mix those First Nations that are in the  
37 treaty process, and likely there's no mandate at  
38 the treaty negotiation table from DFO, because  
39 there hasn't been one for several years. It's the  
40 sort of schizophrenic relationship because it's  
41 interfacing at so many levels.

42 So while it is complicated, it is encouraging  
43 to hear that DFO's interested in building  
44 relationships and co-management. Because I don't  
45 see that word on that "Roadmap" myself. So having  
46 being aware of that would allow First Nations to  
47 adequately resource themselves to participate in

1           those opportunities, in my view.

2           Q     Yes, Mr. Becker.

3           MR. BECKER: We've got to build a relationship rather  
4           than proceed on this document.

5           Q     Okay.

6           MR. BECKER: The question about is the Department in  
7           our opinion striving to make relations between  
8           First Nations and DFO better? No. Ideas such as  
9           this "Roadmap" pit First Nations against First  
10          Nations. And I'm going to give you a good example  
11          that goes back to one of your questions before,  
12          and I didn't want to open a can of worms here.

13          Mr. Commissioner, all along this coast there  
14          are numerous runs of salmon, numerous rivers where  
15          these salmon spawn. First Nations in the North  
16          have their own. The Central Coast have their own.  
17          Vancouver Island has its own. And the Fraser  
18          River has its own. It's with the depletion of all  
19          of these, or most of these spawning channels and  
20          spawning rivers in the North and in Central Coast,  
21          on Vancouver Island, and now the Department has  
22          the audacity to come to the Fraser River First  
23          Nations and say "Make room for all of your  
24          cousins". That's the mentality that we deal with.  
25          And you ask the Lower Fraser their views on this,  
26          and have we made it clear over the years. And,  
27          Mark, I'm sure if you read the historical records  
28          going back to 1992, you know what the Lower  
29          Fraser's views are of sharing salmon with people  
30          who have depleted their own resources in the North  
31          and Central Coast.

32          And you also have pit commercial fishers of  
33          Indian ancestry against us rights fishermen. And  
34          some of those people we've tried to meet over the  
35          years. We could never come to a consensus on how  
36          we should sit together. But First Nations  
37          themselves have tried this. Now you've got the  
38          Department trying to say here's a new document.  
39          And I don't believe that Musqueam would  
40          participate in it. We've tried all of these  
41          things before.

42          So, Mr. Commissioner, it's the shortage of  
43          salmon that forces DFO to come out with documents  
44          like this to impose on First Nations.

45          MR. EAST: Mr. Commissioner, perhaps I should mark this  
46          document that's on the screen as an exhibit.

47          THE REGISTRAR: Exhibit 289.

1 EXHIBIT 289: DFO and First Nations Fraser  
2 Salmon "Roadmap" Process, December 2010  
3

4 MR. EAST: And I believe that I -- on our document on  
5 Tab 8, I should mark that as an exhibit, as well,  
6 Three Year Strategic Approach to Developing a Co-  
7 management Process for Fraser River Salmon.

8 THE REGISTRAR: Two hundred and ninety.  
9

10 EXHIBIT 290: Three Year Strategic Approach  
11 to Developing a Co-management Process for  
12 Fraser River Salmon: First Nations Component  
13 - Draft September 27, 2009  
14

15 MR. EAST: I'm mindful of the time. I would like to  
16 ask one more question, but -- and throw this open  
17 to the panel.

18 We've heard -- I've heard you say that one of  
19 the concerns your communities has is the fact that  
20 DFO engages you by sending you officials that are  
21 at a lower level who don't have the authority to  
22 make decisions, they don't have a mandate. And  
23 I've heard what you said, Chief Pennier, about how  
24 co-management has perhaps different definitions.  
25 But at a minimum does co-management entail perhaps  
26 a political level of engagement, but also there's  
27 a place for the technical and operational level  
28 where the biologist -- any kind of discussion that  
29 needs a biologist is by definition in my mind  
30 technical in nature. And do you agree that DFO  
31 and First Nations have to engage at that level, as  
32 well, and that the meetings that take place now  
33 are valuable for that reason?

34 GRAND CHIEF PENNIER: Well, it's important that we do  
35 have our own biologists to feed us the proper  
36 information, and it's okay for technicians to meet  
37 with technicians. But for decision-makers, they  
38 have to meet with the decision-makers, as well.  
39 Because, you know, it's fine to try to build a  
40 relationship. This is in relation to your  
41 previous question. But a relationship with chiefs  
42 and technicians, minor technicians, doesn't really  
43 fit the need because you've got to have the deputy  
44 ministers come out and say okay, let's get  
45 serious. We're going to talk about co-management,  
46 and this is how we want to do it. Start at that  
47 level, instead of just sending us papers about --

1 which are meaningless to us in the end, you know.

2 CHIEF BAIRD: I just want to quickly add that  
3 Tsawwassen's context is a bit different now in the  
4 post-treaty world. We have a joint fisheries  
5 committee that sort of formalizes the process  
6 about how the technical gets discussed, how the  
7 operational aspects get rolled out, and what to do  
8 if there's disagreement.

9 I don't -- I mean, it's early days in this  
10 process for Tsawwassen so far. And I don't know  
11 that we've got it perfect, but it's a step towards  
12 the right direction, and sort of formalizing our  
13 relationship with DFO in a way that is workable  
14 and has access points from the political to  
15 technical and the operational, and even  
16 enforcement.

17 COUNCILLOR QUIPP: In my experience, you know, when --  
18 when we have technicians that are involved with  
19 fisheries and that, having the technicians  
20 involved sometimes creates confusion in regards to  
21 consultation when -- and we've experienced it very  
22 clearly in the last couple of years where we had  
23 some of our fisheries technicians working at the  
24 band office. And the Department of Fisheries made  
25 some decisions, and when we asked them about  
26 consultation, they told us they talked to our  
27 technicians.

28 So there has to be a clear line. I think  
29 that the technicians -- we take direction from our  
30 members, our communities, as leaders in our  
31 community. We give direction to the technicians  
32 in our community. And there's a big difference  
33 there. So that, you know, if the technicians are  
34 getting involved, we have to make it very clear to  
35 the Department of Fisheries that if they're being  
36 involved with our technicians, it definitely is  
37 not consultation.

38 CHIEF CHARLIE: I agree with your comments, and I agree  
39 with Grand Chief Pennier, his analogy of that, as  
40 well, you know, so decision-makers meeting with  
41 the chiefs, and technicians meeting with  
42 technicians, and some of those being biologists.  
43 But I think you also need to put in there is the  
44 traditional knowledge. Right? So again we talked  
45 a bit about the traditional knowledge of how  
46 everything is connected and we really need to  
47 consider that in going forward if it's going to be



1 true co-management.

2 MR. EAST: Well, I'll leave it there. Thank you very  
3 much for your thoughtful questions, and that  
4 concludes my questions, Mr. Commissioner.

5 MR. MCGOWAN: Mr. Commissioner, I think the next  
6 participant with questions is Mr. Harrison for the  
7 Conservation Coalition.

8 MR. HARRISON: Thank you, Mr. Commissioner. For the  
9 record, Judah Harrison, last name, H-a-double-r-i-  
10 s-o-n. And so the panel knows, I represent a  
11 group of conservation groups, environmental non-  
12 governmental organizations, and one individual  
13 named Otto Langer.

14  
15 CROSS-EXAMINATION BY MR. HARRISON:

16  
17 Q I have very few questions for you and I am going  
18 to direct my question to Chief Charlie, but I am  
19 interested to hear everybody's opinion if they  
20 have an opinion on this subject matter.

21 You just this morning, and just now you spoke  
22 about traditional ecological knowledge and  
23 traditional aboriginal knowledge. I'm wondering  
24 if you can give the Commission a sense of  
25 traditional ecological knowledge or your own  
26 personal knowledge with respect to habitat and  
27 habitat loss, as well as alterations in habitat in  
28 your traditional territory.

29 CHIEF CHARLIE: Thanks, Judah. How much time they said  
30 you had? Half an hour?

31 Q I believe you have as much time as you want. I'm  
32 the one who's limited.

33 CHIEF CHARLIE: Okay. Thanks, Judah, and I think  
34 that's the exactly going back to some of the  
35 traditional knowledge of the impacts and how  
36 everything affects everything.

37 I was sharing with our -- with our council  
38 and with some of our group and our community,  
39 around wanting to restore some of the spawning  
40 channels or the sloughs in our community that have  
41 been dramatically impacted by bad logging  
42 practices in the past. And one slough in  
43 particular is my grandfather's slough, they called  
44 it William Phillips Slough, and there is no more  
45 water in there.

46 Every spawning channel in our community is  
47 named after an elder because when the Indian Agent

1 at the time came through, the family that was  
2 living there at the entrance to the slough, he  
3 just kind of gave that name of that slough, named  
4 it after the elder at the time. And so they're  
5 named after all -- so we have Ed Leon Slough,  
6 Jimmy Charlie Slough, Billy Harris Slough, John  
7 Mack Slough, and so on, named after different  
8 families that lived there.

9 All of these spawning channels now are filled  
10 with silt, just from bad practices. That silt  
11 then comes into the -- into the Harrison River,  
12 which has impacted the Harrison River and the  
13 spawning channels that are there. And you see  
14 those same impacts on the Fraser River, again of  
15 all of the gravel build-up that is on there.

16 Like my grandfather says, we have about 100  
17 years -- well, sorry, this is not from my  
18 grandfather. This one comes from some of our  
19 technicians in the office. They say we have some  
20 records that go back about a hundred years about  
21 Chehalis was working with DFO a hundred years ago.  
22 And DFO would pay our -- our men in our community  
23 to go out and break beaver dams. And my  
24 grandfather just said, "Oh, that happened a long  
25 time ago, even before DFO came." Because there  
26 was a wealth of beavers and they would dam up all  
27 of the sloughs, these spawning channels. And what  
28 our people would do in the past is they would go  
29 at times and break the beaver dams to allow the  
30 salmon in to spawn. Then of course you know how  
31 the beavers work, they build it back up. And then  
32 they would just leave that until it was time for  
33 the smolts to return, to go out to the ocean, and  
34 then the men would go back in, break the beaver  
35 dams down, and allow the smolts to -- to go out,  
36 let them build up, let them build up their  
37 strength.

38 The build up, or the bad logging practices  
39 again goes more than just the logging on the land,  
40 and it also goes to the putting of log booms into  
41 the water, and what those tugboats do on the  
42 Harrison River. It's not just the sediment that  
43 comes off of the logs, but it's the big wakes that  
44 these boats make on the shallow river, and they're  
45 going and they're washing away banks, and our land  
46 is eroding. And again all of that what erodes  
47 goes back into the water and just creates silt and

1 muck, which is not good for the salmon.

2 Again, the cycle that we -- the ecology cycle  
3 that we don't really -- we try our best to  
4 understand and make projections on, and DFO is  
5 just like anyone else, has made some bad  
6 projections.

7 Again, if you look at some of the traditional  
8 knowledge of how the elders used to think about  
9 the return of certain things, according to  
10 everything else around it - sorry, I talk with my  
11 hands - and so the pussy willows. When the pussy  
12 willows arrive and when the robins come back, and  
13 then when there's a little black bird that hops  
14 around at our -- we call our swimming holes, where  
15 you go for your spiritual bath, when those things  
16 come around again, that's when that early spring  
17 salmon comes back, the squawkum. So you look for  
18 those signs before you actually go out.

19 So they would do the same thing for anything  
20 that they were gathering. There were signs on how  
21 everything was interconnected.

22 There's probably lots of examples of the  
23 traditional knowledge of the ecology or the  
24 environment. Our elders used to tell, predict the  
25 weather according to Lhílheqey. Sorry for whoever  
26 is taking notes. Lhílheqey is Mt. Cheam. Mt.  
27 Cheam, she's one of our Stone People. She's the  
28 only one that was volunteered herself to be  
29 transformed to stone. We call her our "Mother  
30 Mountain". She's a sacred mountain, and she vowed  
31 to look after the Sto:lo people and their greatest  
32 resource, meaning our salmon. Our elders used to  
33 predict the weather according to the snow packs on  
34 that mountain. Now today that mountain, she goes  
35 bare. So we've seen the -- these impacts on  
36 everything around us, the snow packs, the trees,  
37 the plants, the animals, and they all have impacts  
38 on something else.

39 So I could go with a couple of more example,  
40 but I'll allow some of the others to -- I don't  
41 know if that answers your question.

42 Q Thank you. I'm interested if anyone else has  
43 anything else to say about -- around the general  
44 degradation of habitat or personal experience, I'd  
45 be very interested.

46 COUNCILLOR QUIPP: I want to reflect on, you know, we  
47 used to have and we still do have telephone

1 conferences with DFO, but the biologists would  
2 come and, you know, on and give a report about the  
3 water, the global warming and everything else.  
4 And my sister was on there one day and she had  
5 been down the river fishing, and she made a  
6 comment, and she said, "Oh, gee, the water is  
7 really warm today, but it's quite high." And so  
8 when she got on the telephone conference with the  
9 biologists from DFO, that was their exact comment,  
10 and she was so -- she just couldn't get over it.  
11 She said "You mean we have to come and get on this  
12 telephone conference to hear something that we've  
13 already noted, you know, in our daily life of  
14 exercising our rights."

15 But I have real -- it's been many years since  
16 I've talked about the developments around the  
17 area, and what impacts it does have on the river,  
18 the global warming. And it's not all due to just  
19 global warming. It's -- a lot of it's due to  
20 development and who has the final say in  
21 development, is the Department of Fisheries and  
22 Oceans.

23 So when we look at some of the decisions that  
24 are made in regards to development within our  
25 territories, it's pretty devastating sometimes  
26 that our people that have lived and -- lived you  
27 know on the earth and connected with the earth,  
28 you know, and how that great sense of belonging to  
29 the earth, have to see decisions that are being  
30 made that are really impacting our lifestyles.  
31 It's really hard for us to accept. And so we feel  
32 -- and this is one of the reasons we really,  
33 really push to have input in the decision-making  
34 of developments, of harvest plans, or whatever the  
35 -- you know, happens.

36 I'm not sure if that answers your question,  
37 but it certainly is a devastation for us to sit by  
38 and watch the depletion of the stocks, how -- how  
39 much anxiety it causes us as people, wondering  
40 what impact it's going to have on my  
41 grandchildren, my great-grandchildren, their  
42 children and grandchildren. It's going to have a  
43 really big impact if things aren't changed.

44 And as I said, you know, we've been  
45 commissioned to that. I really hope that, you  
46 know, this Commission is going to really do  
47 something because we had the Royal Commission on

1           Aboriginal Peoples and it sits on the shelf, with  
2           no implementations and no -- no regard for what's  
3           in that, the recommendations. None of them have  
4           been really even looked at. And so I'm hoping  
5           this Commission isn't going to be the same thing.  
6           Because in my heart, I'm here because I'm  
7           concerned.

8       CHIEF CHARLIE: If I could -- Judah, I'm sorry, I just  
9           was recalling a comment that was made. We had a  
10          funeral services for the late Archie Charles,  
11          Grand Chief Archie Charles, and he was a real  
12          advocate for fishing, and the dry rack fishing  
13          especially in the Fraser Canyon. And early last  
14          year some of the projections that were coming back  
15          was that they were not going to be able to go out  
16          dry rack fishing because they said the salmon  
17          hadn't returned yet. And it was Grand Chief  
18          Archie Charles that kind of said, "We need to get  
19          out dry-racking. The fish are here, or the fish  
20          are coming. I can feel it in my bones" was the  
21          direct comment. And so Grand Chief knew that. I  
22          don't know how or what indicators he had, but our  
23          people have that deep spiritual connection to the  
24          salmon. Some of these guys like Grand Chief  
25          Archie Charles just knew it. And sure enough last  
26          year, look at the returns of salmon.

27                 And so it's some of that knowledge and some  
28                 of those ones that have that deep connection  
29                 that's not just to the environment, but also that  
30                 spiritual insight, if you will, that just kind of  
31                 knows. So that was Grand Chief Archie Charles  
32                 that just kind of knew, felt it in his bones that  
33                 the fish were on their way. And sure enough,  
34                 so...

35       Q       Thank you. Does anyone else have anything to say  
36                 on that?

37       CHIEF BAIRD: I'm just going to say something quickly,  
38                 and that being in an urban area, habitat loss is  
39                 of great concern. But what's also of great  
40                 concern is what are we benchmarking in relation to  
41                 the environment? I mean, it's getting to a point  
42                 where we're valuing -- valuing ditches as fish  
43                 habitat because that's almost what's left to  
44                 value, and I think we need to step back and take a  
45                 broader look at what an ecosystem needs. And I  
46                 have grave concern because it's everyone hires  
47                 their own scientific experts, and it's in some

1           ways, I think everyone talks past each other.

2           And so to me, I know that one of our elders  
3           who has passed on, who said that, "You know, to  
4           start benchmarking today's environment is not  
5           going to fix the problem, because so much loss of  
6           habitat has already occurred." So I just felt  
7           compelled to say that.

8           Q     Thank you.

9           GRAND CHIEF PENNIER: And I just wanted to add one  
10          thing to the conversation, too, because in where I  
11          come from, Scowlitz, I mentioned earlier that in  
12          the government's wisdom, they decided to riprap  
13          all the way down our reserve just to protect the  
14          farmers' fields above us. And that's caused a lot  
15          of destruction to the Fraser and to the Harrison  
16          River, as well. So you know, even though they  
17          tried to solve one problem, they're creating a lot  
18          more problems now, and that's going to impact on  
19          the fish.

20         Q     Thank you. I would like to follow up actually,  
21          based on what you just said. Being in an urban  
22          area, and your territories are in an urban area,  
23          do you believe that significant restoration has to  
24          occur, starting right now, of fish habitat?

25         GRAND CHIEF PENNIER: Oh, me? Or are you...

26         Q     Yes, sorry about that.

27         CHIEF BAIRD: I believe so. I don't think that we at  
28          Tsawwassen have the -- a clear roadmap of what  
29          restoration work needs to be done, but certainly  
30          under the treaty we have a fund that is aimed  
31          towards restoration activities and that kind of  
32          thing. So we're very much interested going  
33          forward in looking at restoration projects  
34          strategically.

35         Q     Thank you. Well, while I'm up here, I'm going to  
36          ask one more question. You just, as well, you  
37          just mentioned taking a step back and looking at  
38          the ecosystems requirement -- the ecosystem  
39          requirements of salmon generally. I'd like to  
40          ask, I mean, when you look - and this is for the  
41          entire panel, as well - but what we would call  
42          ecosystem services, and who needs to benefit from  
43          salmon. I'm wondering if you can comment on the  
44          role that salmon play in the West Coast system,  
45          and as well as other -- other needs besides just  
46          human needs for salmon.

47         CHIEF CHARLIE: Thanks, Judah. The eagles right now

1 are out on the Harrison River. There's thousands,  
2 thousands and thousands of eagles that return to  
3 the Harrison River every year. They migrate there  
4 for the salmon. And "thousands and thousands" is  
5 probably not even an exaggeration. Just saying  
6 that a couple of Novembers ago me and my youngest  
7 son were out doing a tour, we run our tour  
8 business, and on four trees alone we counted 200  
9 eagles. And these eagles return every year for  
10 the salmon.

11 The same with the bears. We were out doing  
12 -- around that same time, that same year we --  
13 before I became the chief and was doing tours, we  
14 were going and there was a big black bear laying  
15 on the beach and wouldn't even move when we were  
16 going by on the jet boat, because he was so full.  
17 He just kind of rolled over and watched us go by.  
18 And we finished our tour, and we were going back  
19 the other way, and he rolled over and watched us  
20 go by.

21 These salmon that these bears come down for  
22 and bring back, you talk to some of the foresters  
23 that are working with some of the -- some from the  
24 Simon Fraser University that work in Forestry, and  
25 they say you can actually determine which trees  
26 have had this nutrients, I guess, that come from  
27 the salmon that are so close. Going back they can  
28 -- they have ways of looking at it.

29 And so there's so many of the other animals,  
30 and again it's this kind of cycle of life, if you  
31 will, that benefit from -- from the eagles -- or  
32 sorry, from the salmon, and so there's so many.

33 This time of the year you can see a seagull  
34 sitting beside an eagle on the beach. If they  
35 were hunting, you wouldn't see that. Come  
36 February there's going to be no other birds close  
37 to the eagle because they're going to be a little  
38 bit more hungry, and then they won't get as close.  
39 And it's kind of something to watch out there and  
40 to be out there and to kind of see how everything  
41 kind of evolves in its cycle and how everything  
42 else depends upon it, as well.

43 So there's probably a few other examples, but  
44 I'll just leave it, leave it with the -- with the  
45 eagles and the bears.

46 MR. HARRISON: Those are my questions. Thank you.



1 MR. MCGOWAN: Thank you, Mr. Commissioner. I think Mr.  
2 Butcher's next. I don't know if you wanted to  
3 take a very brief break this afternoon --

4 THE COMMISSIONER: No.

5 MR. MCGOWAN: -- or carry on?

6 THE COMMISSIONER: No, carry on.

7 MR. MCGOWAN: Thank you.

8 MR. BUTCHER: I'm David Butcher. I represent the Area  
9 E Gillnetters and the Pacific Fisheries Survival  
10 Coalition. Those are obviously people who are  
11 fishing in the same part of the lower Fraser River  
12 as your groups. I have heard bits and pieces of  
13 evidence from your oral evidence and from your  
14 written summaries with respect to the degree of  
15 involvement of each of your communities in the  
16 fishery.

17  
18 CROSS-EXAMINATION BY MR. BUTCHER:

19  
20 Q And maybe I'll start with you, Chief Baird,  
21 because yours might be the simplest, because you  
22 now have the treaty. Can you tell us how many  
23 people you have in your community and how many of  
24 those are involved in the food, social and  
25 ceremonial fishery and how many are involved in  
26 the commercial fishery? And then I have the same  
27 question for each of the panel members, so that  
28 we've got that evidence from everybody. And I  
29 don't need precise numbers, but I'm interested in  
30 the scale.

31 CHIEF BAIRD: I'd say that we are about 420 members, in  
32 Tsawwassen. We have about 80 to 100 licenses,  
33 which means 80 to 100 Tsawwassen people licensed  
34 every year. And probably about 40 to 45 boats  
35 we're up to, now. And of that, I would say 80  
36 percent of those would -- maybe 75 to 80 percent -  
37 this is off the top of my head - would fish in the  
38 FSC, and upwards of 90 to 95 in sales fisheries.

39 Q And do you also have members in the regular  
40 commercial fishery as well?

41 CHIEF BAIRD: I think we might have one.

42 Q Mr. Becker, can you answer those questions for  
43 your community?.

44 MR. BECKER: We have roughly 1,300 Band members. We  
45 licensed about 100 last year. There were about 40  
46 to 50 boats out. We have upwards of a half a  
47 dozen commercial fisherman.



- 1 Q Those who have licenses in the regular commercial  
2 system?
- 3 MR. BECKER: In the privileged fishery. Purchased  
4 license to -- privilege, to me.
- 5 Q Mm-hmm. And of those fishing pursuant to your  
6 agreement with Canada, how is that divided between  
7 food, social and ceremonial and commercial?
- 8 MR. BECKER: The commission is -- decides how much fish  
9 is distributed to the elders and the handicapped,  
10 ceremonial, and how much is fished for the  
11 community, before we go fishing for ourselves.  
12 And I think that -- the information on internal  
13 distribution is confidential.
- 14 Q Internal contribution as between food, social and  
15 ceremonial and commercial?
- 16 MR. BECKER: That's what I'm saying. It's a decision  
17 that we make, as a band, and I don't think it's  
18 anyone's business on how we divide that food,  
19 social and ceremonial fish.
- 20 Q As between food, social and ceremonial and sales,  
21 is that what you mean? Or as between aspects,  
22 different aspects of food, social and ceremonial?
- 23 MR. BECKER: Food and social and ceremonial, that's  
24 confidential how we divide that amongst the Band.  
25 For commercial, we'll use the term that the  
26 Department of Fisheries uses, "economic  
27 opportunity". We take a portion of that FSC and  
28 transfer it over to sales.
- 29 Q And you're saying that's a matter that is  
30 confidential to the Band?
- 31 MR. BECKER: No, the -- for public record, you could go  
32 to the Department of Fisheries and see what  
33 Musqueam transferred.
- 34 Q Okay. So the only issue that you consider to be  
35 confidential is what you use as between food,  
36 social and ceremonial?
- 37 MR. BECKER: Right.
- 38 Q Fair enough. Sorry.
- 39 GRAND CHIEF PENNIER: As the president of the Sto:lo  
40 Tribal Council, I'm not privy to that information  
41 about how many fishermen we have in all of those  
42 communities, or who's a commercial fisherman or  
43 not, because they have their own group to discuss  
44 amongst themselves, you know, how it's -- who's  
45 going fishing and when.
- 46 Q That raises a question that was really asked of  
47 Chief Quipp earlier by Canada's counsel, from

1 something arising out of your witness statement,  
2 which seems to suggest that there isn't  
3 coordination as between members of the Sto:lo  
4 groups as to how many fish each of your groups are  
5 going to catch within your allocations. Is that  
6 fair? Is that what you're telling us, the two of  
7 you?

8 CHIEF CHARLIE: Go ahead.

9 GRAND CHIEF PENNIER: No, I was just telling you that  
10 I'm not privy to information about who is  
11 receiving permits to fish and all that sort of  
12 thing from each of the communities. It's not --  
13 Q Are either you, Chief Quipp, or Chief Charlie,  
14 able to give the Commissioner some concept of  
15 scale, or number of members, number involved in  
16 FSC, number involved in commercial activities?

17 CHIEF CHARLIE: Thanks, David. There's some questions  
18 specific numbers and details of things that I  
19 cannot answer because I just don't have the time  
20 in the day to keep a handle on all of those, and  
21 so we have technicians that would be able to give  
22 you definite numbers when its their opportunity to  
23 share that. I do know that I think we have over  
24 200 licensed, though, generally, that we hand out.  
25 I don't know how many boats. I think it was about  
26 40 boats or so, fishermen.

27 As far as the comment towards us not knowing  
28 or being coordinated on our end to know how many  
29 fishermen, we know. Our technicians would know  
30 those numbers. And we also have a method of  
31 knowing what fish come in, because, again, we're  
32 the only user group that counts and lands all of  
33 our fish.

34 So all of the fish get counted at each of the  
35 different communities through fish counters. And  
36 so I can't give you the answer right now, but if I  
37 knew you were going to ask that question, I could  
38 have -- If I had my Blackberry turned on, I could  
39 e-mail one of the technicians and ask him.

40 Q I'm sure the evidence will come out eventually.  
41 When you use the word "we", are you referring to  
42 the Chehalis or are you referring to the Sto:lo?

43 CHIEF CHARLIE: We, as far as numbers that I give you  
44 are for Chehalis fishermen, but any -- and how we  
45 count fish and how we have landing sites.

46 Q And just so it's clear, I think there are about  
47 7,000 Sto:lo members; is that correct?

1 CHIEF CHARLIE: Just Chehalis, we're 1,000 on our own.

2 So I think 7,000 would be a bit under.

3 GRAND CHIEF PENNIER: Yeah, it's a bit under. There's  
4 about 6,000 with Sto:lo Tribal Council  
5 communities, and then there's -- well, there's 24  
6 bands up in our area, so, you know, you're looking  
7 at a fairly large population.

8 Q But all included within that 6,000 number, or are  
9 there others to be added to that 6,000 number?

10 GRAND CHIEF PENNIER: That's just with Sto:lo Tribal  
11 Council with Cheam in there.

12 Q I was a little perturbed to hear what I thought I  
13 heard today, was that some of you were saying that  
14 the Department of Fisheries and Oceans still --  
15 there was still a dispute between your groups as  
16 to what constituted social and ceremonial use.  
17 Did I hear that correctly?

18 COUNCILLOR QUIPP: Yes, you did. There is still a  
19 dispute. There's no definition for "social" and  
20 so they give out permits. They give out permits  
21 for communal licenses for -- they call it FSC, but  
22 there's also ceremonial permits that are given  
23 out, but they've never given out a social permit,  
24 and nobody's ever defined what "social" means when  
25 it comes to FSC, because that's what the acronym  
26 stands for, food, social and ceremonial.

27 Q And listening to you, today, I would understand  
28 that your social and ceremonial issues would  
29 include matters relating to what I will call human  
30 lifecycle events: birth; marriage; death, those  
31 sorts of things; is that --

32 COUNCILLOR QUIPP: As well as economic, yeah.

33 Q And if I can --

34 COUNCILLOR QUIPP: Spiritual.

35 Q Spiritual, perhaps seasonal celebrations?

36 COUNCILLOR QUIPP: Yes. Or any celebrations. You  
37 know, like I mentioned earlier, that DFO has taken  
38 it upon themselves to define what our ceremonies  
39 are, and that's only funerals over the last two or  
40 three years. But one of our elders from our  
41 community has actually listed about 50 ceremonies  
42 that we actually practice, different families  
43 practice, not everybody, but different families  
44 practice different ceremonies, and yet those  
45 aren't recognized by the Department of Fisheries,  
46 when we're talking about ceremonies.

47 Q There must be a way for you, collectively, to

1 quantify that social and ceremonial need?

2 COUNCILLOR QUIPP: You know, I feed a lot of people. I  
3 feed a lot of people. I have people come from all  
4 over B.C. coming to my backyard and I supply them  
5 with whatever fish I can, because I know they need  
6 it to bring it back to their families, to bring it  
7 back to people. Someone made a comment this  
8 morning about really, you know, craving a fish,  
9 you know, and one of my elders, years ago,  
10 mentioned the fact that she -- her mouth watered  
11 whenever she knew it was the season for the  
12 salmon, and she knew they were going right by her  
13 house. It took me years to realize what that  
14 statement meant, because now I have that same  
15 watering in my mouth when I know there's salmon  
16 and I have no access to it.

17 I want to go back to your question about, you  
18 know, how we -- how we share the salmon and  
19 whether we know we have enough for our people.  
20 And our indicator for as to whether we've filled  
21 an allocation that we need, or that the needs of  
22 our people are being filled, is if we don't hear  
23 anymore complaints about one of our members  
24 getting enough salmon for the year, and I don't  
25 think we've ever gone a year where we've had, you  
26 know, a member that -- at least one or two members  
27 that come and say, "Well, I didn't get my salmon  
28 this year," because our fishers, it's a common  
29 teaching in our community that everyone gets a  
30 fair share of the salmon. And so when our fishers  
31 go out, there's quite often a member from a family  
32 grouping that goes out and fishes and provides  
33 that salmon for their family, and if they don't,  
34 some other family is more than willing to step up  
35 to the plate to do that.

36 CHIEF CHARLIE: I don't mind answering your question.

37 Q Sure.

38 CHIEF CHARLIE: You're rattling a whole bunch of  
39 questions off and I'm having a hard time keeping  
40 up and writing them all down.

41 I want to thank you for your question, and  
42 also thank you for being concerned and being  
43 perturbed, and I hope that your clientele group is  
44 as perturbed that there is no definition right  
45 now, except the definition of FSC. And so thank  
46 you for being upset about it, and I hope you hep  
47 us advocate to make sure that it is defined

1 properly with our inclusion and because -- and  
2 that's the way it needs to be. We can't have it  
3 dictated to us what a ceremony is, and that's  
4 exactly what's trying to happen. They're trying  
5 to put a definition on FSC fishing for us, and we  
6 kind of said, "No, no, we'll determine what FSC  
7 is, according to our social laws, according to our  
8 snowoyelh, according to what our spiritual needs  
9 are."

10 I don't know what faith you are, or what  
11 belief that you have, but I'm not going to tell  
12 you how to pray and how to carry on with your  
13 spiritual practices and beliefs, and that's  
14 exactly what happens when they try to define  
15 ceremonial need for us. And it's up to us to  
16 determine what an FSC is, and I think we can. I  
17 can do it for Chehalis, but it's going to be up to  
18 other nations to do that, themselves. But it  
19 needs to be all of it, FSC. So I hope you help us  
20 advocate for that.

21 Q No, I was surprised that 28 years after that  
22 phrase was defined or used by the Supreme Court of  
23 Canada that there still wasn't a common ground as  
24 to what it meant.

25 CHIEF CHARLIE: Thank you for your concern.

26 Q But Mr. Becker, you were wanting to answer  
27 something for a moment there?

28 MR. BECKER: Yeah, I just didn't accept your -- whether  
29 you were trying to describe ceremonial or social,  
30 what you -- what you were trying to say to us.

31 Q Well, one of the things I was trying to get was  
32 your -- you're the witnesses here, your idea as to  
33 what the difference was and what the definitions  
34 were.

35 MR. BECKER: Well, if you look at -- and I'm sure  
36 you've looked at many of the agreements and many  
37 of the licenses over time, what it states, and  
38 that's FSC, and what it should actually state is  
39 just "FC", because there is no definition of  
40 "social".

41 We're on record as trying to sit with the  
42 Department of Fisheries and Oceans to get that  
43 definition, and that's two years in the making. I  
44 agree that it's time that there is definition to  
45 "social". And I think it's going to take more  
46 than one First Nation to define that, though in  
47 the Supreme Court of Canada ruling it only

1 pertained to Musqueam. So we're endeavouring to  
2 resolve that question.

3 But if only Musqueam has a definition of  
4 "social" and DFO does not agree with it, then  
5 we're just wasting our time.

6 Q And at the moment, both for the Sto:lo and the  
7 Musqueam, you have what are called -- I think  
8 they're called Comprehensive Fishing Agreements  
9 that you sign each year, and they just contain one  
10 number of fish, of sockeye, that each of you can  
11 catch for that purpose? Have I described that  
12 correctly for the Sto:lo and the Musqueam, at  
13 least?

14 MR. BECKER: Yeah.

15 GRAND CHIEF PENNIER: Yeah, there's agreements that are  
16 signed, yeah, that defines the amounts of fish,  
17 yeah.

18 Q Now, the reason that I'm interested in this issue  
19 is that several of you, in your witness  
20 statements, have said that you are opposed to the  
21 prohibition on the sale of food, social and  
22 ceremonial fish. And perhaps if those --  
23 Councillor Quipp -- sorry, Grand Chief Pennier,  
24 you say, simply, that the prohibition on the sale  
25 of food, social and ceremonial fish should be  
26 eliminated. Mr. Becker, you say -- or the  
27 statement says this:

28  
29 Mr. Becker advises that Musqueam have always  
30 felt that it had a right to access food fish.

31  
32 Nobody disputes that.

33  
34 Musqueam do not propose to break the law and  
35 sell FSC, but they do want to have a  
36 definition of "social" or "societal" in FSC,  
37 which they believe is something that they  
38 should define.

39  
40 Sorry. Perhaps I can just have -- oh, sorry, Mr.  
41 Becker, you went on to say -- you say:

42  
43 He thinks it is not right that First Nations  
44 are told that if they go FSC fishing, then  
45 they cannot sell the fish to satisfy other  
46 needs. They should have that right; the fish  
47 belongs to them.

1           What I'm trying to get, collectively, from you is  
2           your evidence about why it is that you assert that  
3           ability to sell the fish that is being provided or  
4           allocated to you specifically for that purpose,  
5           i.e. the food, social and ceremonial purpose?

6           Does anybody want to answer that question?

7   MS. GAERTNER:  Sorry, Mr. Commissioner, I'd like this  
8           question posed -- if he's raising it from a  
9           witness statement, to the witness who has raised  
10          it in their witness statement, please.

11  MR. BUTCHER:

12  Q   Well, I'll ask it, first, of Mr. Becker, and then  
13          of Chief Pennier, because I think those are the  
14          witnesses who have raised it directly.

15  MR. BECKER:  Could you ask it again, please?

16  Q   Well, I'll ask it this way:  It seems to me that  
17          you're asserting that your group should have a  
18          right to sell the fish that have been allocated to  
19          you for food, social and ceremonial purposes.  Is  
20          that, in fact, your position?

21  MR. BECKER:  No.  That's my personal view, but not the  
22          Band's position.

23  Q   Why is it your personal view?

24  MR. BECKER:  I just believe that in economic times,  
25          where they are, that individuals should have that  
26          opportunity.

27  Q   What is the Band's position?

28  MR. BECKER:  No salmon.

29  Q   Chief Baird, may I ask the same position from you?

30  CHIEF BAIRD:  My personal view is that if fish have  
31          been legally caught, First Nations should be able  
32          to decide whether they eat or sell it, like any  
33          other user group does.

34  Q   Chief Pennier?

35  GRAND CHIEF PENNIER:  Well, I made this statement that  
36          the sale should be -- or the provisions, whatever,  
37          should be outlawed.  You know, it's been in the  
38          **Fisheries Act** since 1888 that we're only supposed  
39          to catch food fish, and that law has been broken  
40          for, what, over 100 years?  And it still hasn't  
41          changed, you know.  You know, our people, as I  
42          mentioned earlier, people in Scowlitz are -- had  
43          depended on an industry that's pretty well dead,  
44          now, so they really need to get some money to  
45          provide for their families, and fishing is one of  
46          those ways that they can get money to provide for  
47          them, whether it's food -- different food on the



1 table and clothes on their kids.

2 Q Do the other two of you have any comment on that  
3 issue? On the -- yes, sorry, go ahead.

4 CHIEF CHARLIE: Again, David, thank you for helping us  
5 to, I think, clarify a few things. Again, going  
6 back to kind of the traditional laws of our  
7 peoples, what we call snowoyelh, everyone is born  
8 with a different gift. Today, we're kind of  
9 forced to conform to what people think we should  
10 be and how we should be.

11 What I'm getting at is at one time you were  
12 born -- the way my uncle said it. My Uncle Buster  
13 said, "You're born with a gift. Everybody's born  
14 with a gift. That gift becomes your job. That  
15 gift becomes your place in your community" And so  
16 if you were the hunter and you went out hunting  
17 and you provided meat for those in your village  
18 and your community, and maybe you weren't the  
19 fisherman. So when it was the fisherman's turn to  
20 go out and catch fish, he brought you fish. Maybe  
21 he was gifted at working with his hands and  
22 working the cedar, working with wood. In  
23 exchange, they would share with each other their  
24 different gifts for survival.

25 Same with spiritual people. A spiritual  
26 person might not have the time, energy, or  
27 whatever, to go out and to hunt or to fish or to  
28 work with their hands. And so if I go and look  
29 for help from a schwilan (phonetic), a way of  
30 thanking that person for carrying their gift in a  
31 good way, I'll bring them something that I do. So  
32 I'm a fisherman. I'm going to bring them canned  
33 fish, I'm going to bring them smoked fish. I'm  
34 going to bring them whatever I have as a way of  
35 thanking them for the gift that I've been blessed  
36 with, thanking them for their gift in looking  
37 after me.

38 And so, yeah, those traditional laws, our  
39 social laws, need to be our social laws.

40 COUNCILLOR QUIPP: I just want to comment on the sales  
41 of fish, I guess, in regards to ours, and I really  
42 believe that social should cover that. I was  
43 asked that question, earlier, whether I felt we  
44 should be able to sell our fish out of the FSC  
45 allocation and I said, "Definitely," because it's  
46 -- depending on whether there's an abundance of  
47 salmon in the river, or whether there's only



1 enough for sustenance. You know, the **Van der Peet**  
2 case actually ruled against us in the sale of  
3 fish, but that's a case that should be reviewed,  
4 as oral evidence was not accepted in that case.  
5 And to date I've had several members, several  
6 people that have been charged with selling fish,  
7 but DFO always drops those charges before they get  
8 to the courts, and so when they end up in court  
9 they're charged with possession of fish, but they  
10 drop the sales charges. So it's definitely a  
11 concern, even on the part of DFO, to follow  
12 through the charging one of our people with  
13 selling fish.

14 You know, in B.C. we still hold the concept  
15 that we haven't sold, ceded or surrendered this  
16 province, yet. I've seen no bill of sale that the  
17 government owns the salmon. To date, we still own  
18 it, we still should have the jurisdiction over  
19 that fish.

20 Q So I take it, from your answers collectively, that  
21 there's a broad support among the panel for those  
22 who continue to sell food, social and ceremonial  
23 caught fish; is that a fair summary?

24 MR. BECKER: I disagree.

25 CHIEF BAIRD: Saying whether it should be allowed for  
26 sale versus what people are doing now are kind of  
27 two different topics, in my view. In the  
28 Tsawwassen context, we took a smaller food, social  
29 and ceremonial allocation under the treaty to have  
30 a larger sale component within our harvest  
31 agreement for that trade-off. So I disagree with  
32 how you categorized it.

33 Q Does anybody agree?

34 CHIEF CHARLIE: I don't agree with your  
35 characterization.

36 Q Chief Baird, you may not be able to answer this  
37 question yet, but do you think your fisheries  
38 issues are going to be much simpler for your  
39 people now you have a treaty? Is it just too soon  
40 to tell that?

41 CHIEF BAIRD: I think it's soon, but I think there are  
42 signs that we have better ways of dealing with the  
43 Department of Fisheries and Oceans on some of our  
44 matters. We'll have internal issues to sort out  
45 as our population grows and our number of fish  
46 don't continue to grow, so I see those internal  
47 issues becoming more complicated over time.

1           But we have multi-year agreements that have  
2 sorted out our allocation. Our funding has  
3 inflators. It's the first time AFS funding is  
4 getting a boost, so to speak, through our fiscal  
5 finance agreement under the treaty.

6           So there are some things that are  
7 improvements, I would say, to the status quo, and  
8 my only hope is that the status quo for everyone  
9 else improves no matter what way they decide to  
10 go.

11 Q       I heard, I think it was Chief Charlie, say that  
12 you banished people for illegal fishing. Have any  
13 of the other groups done that or taken steps  
14 against people who have been fishing illegally?  
15 And I see, Mr. Becker, you're shaking your head in  
16 the negative for the Musqueam?

17 COUNCILLOR QUIPP: I guess I'd like to also have  
18 addition -- a definition of illegal fishing. Like  
19 I just mentioned, we still have jurisdiction. We  
20 still have not ceded, surrendered or sold our  
21 Province of B.C., yet.

22 Q       Well --

23 COUNCILLOR QUIPP: And the reason I am responding to  
24 this is because we have about 15 or 20 of our Band  
25 members that have been in court for the last 10  
26 years and are still on those same old cases that  
27 are happening and there's still no answer as to  
28 whether it's illegal or not. So I'd like to know  
29 what the definition of "illegal fishing" is.

30 Q       Well, Chief Charlie, it was you, I think, who used  
31 that phrase --

32 CHIEF CHARLIE: Mm-hmm.

33 Q       -- and perhaps you can help us by telling us when  
34 it was that you, as a community, imposed those  
35 sanctions?

36 CHIEF CHARLIE: Banishment from our community was,  
37 again, the rationale behind that was our own  
38 social law in our own community. Again, reminding  
39 you that we live on terminal spawning grounds in  
40 the Harrison River, and there is spawning sloughs  
41 that are there, and some of the activities that  
42 were going on were within the spawning channels.  
43 And our people say that you do not fish where they  
44 reproduce, just like you don't hunt when it's  
45 mating season, and you don't shoot does.

46           And so it was under those conditions that it  
47 was going against our social laws within our

1 community as to where and how they were harvesting  
2 fish at the time.

3 And so I appreciate you asking to clarify  
4 that, because that's exactly the way it was.  
5 Again, we're hoping that we're showing stewardship  
6 and we're showing that we're willing to manage in  
7 a certain way the resource that comes back to us,  
8 and we're hoping that other groups will do the  
9 same thing, that co-management means conservation,  
10 it means stewardship, and it means enhancement.  
11 And so that's what we were looking after, was the  
12 conservation and the stewardship of the fish.

13 Q I have some questions about the LFFA. Maybe, Mr.  
14 Becker, you can answer this question. Can you  
15 tell us why that organization collapsed, from your  
16 perspective?

17 MR. BECKER: No, I can't.

18 Q What happened to it?

19 MR. BECKER: Actually, I can only give you what  
20 happened at Musqueam, because we were part of it,  
21 and Musqueam made a decision to withdraw from that  
22 organization and become an independent First  
23 Nations and negotiate on its own. So I don't know  
24 what happened after that and why it did collapse.

25 Q Why was that? Was that a dispute over allocation?

26 MR. BECKER: No, it wasn't.

27 Q What was it?

28 MR. BECKER: The decision of our political people at  
29 the time were to become independent.

30 Q And anybody else?

31 GRAND CHIEF PENNIER: Well, all I know is that there  
32 was a reduction in budgets for the LFFA, then  
33 there was a loss of those guardians and a loss of  
34 those biologists and other staff, and all that  
35 remained was the monitors.

36 Q And Mr. Becker, you made mention, earlier, of a  
37 hope, perhaps, of some means to bring all of the  
38 user groups together. I heard that with interest.  
39 How would you suggest that might happen?

40 MR. BECKER: I think we have to leave our egos at home.  
41 I look around the room out there and I seen one of  
42 the gentlemen -- one of your clients that -- that  
43 was part of the -- one of the groups that we used  
44 to try and negotiate with. We have the  
45 recreational fishers that we had in the same room  
46 with the commercial people. We had First Nations  
47 from the Fraser Watershed. We had First Nations

1 from the approach, from the marine groups. And we  
2 thought we could make headway on it. It could not  
3 get past the recreational fishers and the  
4 commercial fishers.

5 Q Does anybody else have a comment on that question?

6 CHIEF BAIRD: I think that sort of body has to have  
7 legal and political legitimacy with the parties  
8 that would be involved in it, whether it be the  
9 federal Department of Fisheries and Oceans and  
10 First Nations, and to that regard I think it would  
11 need legislation and formalized agreement about  
12 what it would look like and what it would  
13 accomplish and what the roles and responsibilities  
14 of everyone involved in it would be.

15 Q Anybody else?

16 GRAND CHIEF PENNIER: Well, there has to be change in  
17 the way that the department is going to recognize  
18 the right to fish. Presently, it doesn't  
19 recognize it.

20 Q Chief Charlie or Chief Quipp? I see you writing  
21 furiously, Chief Quipp. I don't know if that's --  
22 if you're making notes for the answer or something  
23 completely different.

24 COUNCILLOR QUIPP: I'll give you an answer, I guess, my  
25 opinion, and I'm answering to the question about  
26 the LFFA. I know that was a really big step for  
27 us to have the, you know, our own Aboriginal  
28 guardians, but I think it became too much of  
29 political arena, having the guardians, some of the  
30 staff. I think there was a lack of funding. That  
31 organization was developed with the pilot sales  
32 agreement in 1992, and when the pilot sales  
33 agreement kind of dwindled, so did the LFFA.

34 CHIEF CHARLIE: I was just generally agreeing with  
35 Chief Kim Baird. I think that it needs to be a  
36 clear structure and a clear system that's set up  
37 with proper mandates.

38 Q And I get the sense that you've collectively lost  
39 confidence with DFO; is that fair, that that's not  
40 the body to carry this out?

41 COUNCILLOR QUIPP: I don't think I've ever gained  
42 confidence in DFO.

43 MR. BUTCHER: Thank you. Those are my questions.

44 MR. MCGOWAN: Mr. Lowes, do you have a question?

45 MR. LOWES: Good afternoon. I act for the B.C.  
46 Wildlife Federation and the B.C. Federation of  
47 Drift Fishers. My name is Lowes. I have a couple

1 of questions, and I'd like to start with Chief  
2 Charlie.

3

4 CROSS-EXAMINATION BY MR. LOWES:

5

6 Q Chief, I was impressed with your terminology when  
7 you referred to the fish and fishing as medicine.  
8 I take it that you get a great deal of spiritual  
9 and emotional sustenance from being outdoors and  
10 catching fish?

11 CHIEF CHARLIE: Sorry, I missed your name.

12 Q Keith.

13 CHIEF CHARLIE: Keith.

14 Q Yeah. Since we're all on first-name basis here.  
15 Lowes.

16 CHIEF CHARLIE: Thanks, Mr. Lowes. Yes.

17 Q It's an important part of your life, I took it,  
18 from your answer?

19 CHIEF CHARLIE: Do you want a short answer or a longer  
20 answer?

21 Q I want the long answer.

22 CHIEF CHARLIE: Yeah, I think being outdoors, being  
23 connected with all things is very, very important.  
24 And one of my roles in my family and my community  
25 might be as a teacher, and so I always talk about  
26 -- to those that are coming behind me, walking in  
27 a similar way, to have respect for all living  
28 things and to pay respect to all living things and  
29 to only take what you need and to share the rest.

30 Q And would you recommend that medicine for  
31 everyone?

32 CHIEF CHARLIE: Yeah, we should go right now.

33 Q And in particular, my clients?

34 CHIEF CHARLIE: Yes.

35 Q Yes. And, in fact, that's what they get, for the  
36 most part, out of their activity, isn't it, "re-  
37 creation"? Isn't that what you're looking for,  
38 "re-creation"? Not looking for; finding?

39 CHIEF CHARLIE: I don't really understand your  
40 definition of re-creation or --

41 Q I'll leave it. When was this pellet gun incident?

42 CHIEF CHARLIE: Not this past summer, the summer  
43 before.

44 Q And do I take it from your evidence that after it  
45 was over you set up a series of meetings? Was it  
46 you who set up the series of meetings?

47 CHIEF CHARLIE: Yeah, I called upon our fishing

1 consulting at the time to help call together a  
2 group, yes.

3 Q Yeah. And do they continue to today? Are you  
4 still having those meetings?

5 CHIEF CHARLIE: Yes, the next one is on January 11th,  
6 if you plan on attending?

7 Q Have they done the trick? Have they calmed the  
8 waters, no pun intended?

9 CHIEF CHARLIE: Yes, I think they have, but if -- also  
10 calmed the waters, but also given some clear  
11 definition about the different uses. And so if  
12 you're hinting that there's the same and that it  
13 is the same right. I don't think it is; I think  
14 it's a little bit different.

15 Q Well, that leads me into next question. You  
16 mentioned the word "privilege", and I noticed Mr.  
17 Becker talked about the privileged fishery.  
18 What's the difference, as far as you're concerned,  
19 between -- well, first of all, are you saying that  
20 non Aboriginal people have no right to fish?

21 MR. BECKER: They purchased the privilege to fish.

22 Q Yeah --

23 MR. BECKER: We have an Aboriginal right guaranteed to  
24 us under the constitution, s. 35(1).

25 MR. MCGOWAN: Well, Mr. Commissioner, I wonder if what  
26 we're starting to engage in, here, is asking the  
27 witnesses for a legal opinion?

28 MR. LOWES: No, no, I won't. I just want to know what  
29 the word means to the witness.

30 CHIEF CHARLIE: Me?

31 Q Yes.

32 CHIEF CHARLIE: Yeah, I think that there -- we  
33 definitely have an Aboriginal right to fish.

34 Q No, no doubt about that. But what -- I'm looking  
35 at the -- I want the meaning of the other word,  
36 the "privilege".

37 CHIEF CHARLIE: It is -- under s. 35, we have an  
38 Aboriginal right to fish, and I think that those  
39 that are non Aboriginal have a privilege to be  
40 able to be out on the water that they purchase  
41 through a licence or through a derby, or through  
42 whatever process that they used to get there.

43 Q I see. So you think, and Mr. Becker, you think,  
44 that non Aboriginal fishermen are buying something  
45 from the government, is that --

46 MR. MCGOWAN: Well, Mr. Commissioner, again, I'm not  
47 sure whether it makes a difference whether he's

1 asking the witness for a legal opinion or their  
2 opinion about a legal matter. It's either a legal  
3 opinion or it may not be relevant.

4 Q Well, my understanding --

5 MR. MCGOWAN: So I don't think there's much use in  
6 pursuing this.

7 MR. LOWES: My understanding is that the whole reason  
8 for these -- for this panel was to get a sense of  
9 a world view, and clearly this is part of a world  
10 view.

11 MS. GAERTNER: Mr. Commissioner, I share the concern of  
12 Commission counsel on this matter. I think we are  
13 getting into the area of what's a legal opinion or  
14 not and what does a privilege under the legal  
15 system mean or not. I don't think that the  
16 clients here are in a position to be able to speak  
17 for Mr. Lowes' clients as to what they think they  
18 hold. I don't think we're getting very far in  
19 this question.

20 MR. LOWES: I won't pursue it. It's not worth the  
21 argument.

22 Q The thrust of my question, really, Chief Charlie,  
23 was that my understanding of your evidence was  
24 that once the dispute or the argument got past the  
25 question of rights and privileges and into, "How  
26 are we going to fish together in the same place,"  
27 the meeting got better?

28 CHIEF CHARLIE: Yes.

29 MR. LOWES: I have no more questions.

30 MR. MCGOWAN: I think Mr. Janes may be the last  
31 participant -- or counsel with some questions.

32 MR. JANES: Good afternoon, everybody. I have  
33 relatively few questions and it would be helpful  
34 if we could have --

35 THE REGISTRAR: Name, please?

36 MR. JANES: Sorry. Robert Janes. I'm here for the  
37 Western Coast Salish First Nations.

38 It would be helpful if we could have Chief  
39 Baird's witness statement up, Exhibit 281, I  
40 believe.

41

42 CROSS-EXAMINATION BY MR. JANES:

43

44 Q And, first, I'd like to turn to page 1 of Chief  
45 Baird's witness statement, and the comments which  
46 you actually started to elaborate on a bit earlier  
47 with respect to the significance of urbanization

1 in your territory. And I believe it's, excuse me,  
2 towards the bottom you say:  
3

4 Salmon is one of the only resources left in  
5 TFN's traditional territory, which means it  
6 is all the more important. Fishing is one of  
7 last ways that TFN community can practice its  
8 culture, so people are very involved.  
9

10 And I take it that that reflects, in part, the  
11 effects of urbanization limiting the ability to  
12 pursue things like the traditional hunt or to  
13 engage in certain traditional gathering practices  
14 simply because places like Vancouver, Delta and  
15 such like that are sitting on top of some of your  
16 traditional territory, now?

17 CHIEF BAIRD: That's right, yes.

18 Q And so, therefore, when we look at the range of  
19 activities which would have made up your way of  
20 life in the past, fishing is probably the most  
21 easily accessible of the resource-gathering  
22 activities?

23 CHIEF BAIRD: That's right.

24 Q And so as a means of maintaining your culture as  
25 an urban or suburban First Nation, the effects of  
26 urbanization have increased the importance and  
27 significance of the fishery from that perspective?

28 CHIEF BAIRD: Yes.

29 Q And I take it that even if we look at your modern  
30 treaty, the reality of urbanization and its effect  
31 on the hunting right as reflected in the fact that  
32 I believe the hunting right is described in some  
33 ways as a diminishing right due to the ongoing  
34 effects of urbanization?

35 CHIEF BAIRD: Yeah.

36 Q The second thing I want --

37 CHIEF BAIRD: And our forestry chapter is one page.

38 Q Yes.

39 CHIEF BAIRD: It took more trees to print the treaty  
40 than we have in our territory, so...

41 Q I expect that maybe commercial orchards might  
42 have a better chance of giving you forests?

43 CHIEF BAIRD: Perhaps.

44 Q I'd next like to turn to an issue that the panel  
45 has been put through for the last few minutes, or  
46 probably for the last hour and a half, actually,



1 around some of the commercial issues. And I'd  
2 like to turn to page 3 of your witness statement,  
3 Chief Baird. And you say this, or I guess it's  
4 you being -- are quoted as saying this:

5  
6 Chief Baird finds the restriction -

7  
8 -- that is, the ban on selling FSC fish --

9  
10 - paternalistic, and her personal view is  
11 that it is nobody's business what people do  
12 do with their own fish.

13  
14 And then you go on to say -- actually, let's stop  
15 there for a moment. Could you elaborate a bit on  
16 why you find it to be paternalistic and what you  
17 mean by that?

18 CHIEF BAIRD: I can only repeat what I said earlier, in  
19 that if a fish is legally caught, that it's no  
20 one's business what people do with it. If they  
21 decide to eat it or to sell it, I think that's  
22 their business.

23 Q Do you see any kind of inconsistency between sale  
24 of fish and your traditional way of life and  
25 culture?

26 CHIEF BAIRD: No. It's complicated in that sustenance  
27 in our culture has evolved over time. So those  
28 interactions have evolved as well. So if you were  
29 to look at our rights, if they were frozen in  
30 time, then people might -- you've heard the  
31 argument that you should go fishing in cedar nets  
32 in your canoe if you want, but presumably you  
33 could do that seven days a week and you wouldn't  
34 be limited to four-hour fishing openings and those  
35 sorts of things. So I think having -- being able  
36 to live off fish, however that translates into  
37 modern times, is relevant and logical, in my view.

38 Q And I'm going to suggest it's not just in reaction  
39 to modern --

40 MR. MCGOWAN: I'm sorry, Mr. Janes, I just see Mr.  
41 Lowes on his feet.

42 MR. LOWES: I don't know how my friend is going to  
43 pursue this, but I rise to just make the point  
44 that what's good for the goose is good for the  
45 gander, and if we're getting into the area of  
46 Aboriginal rights, then I'm taking the same  
47 position as my friends took with respect to me.

1 MR. JANES: To be clear, I haven't asked any questions  
2 with respect to rights. I've certainly asked the  
3 question about whether certain activities were  
4 consistent with their cultural practices.

5 MR. LOWES: Well, with great respect, My Lord, I spent  
6 a week in the Court of Appeal yesterday -- or last  
7 week, dealing with that very issue, and whether  
8 that has evolved into a right to sell.

9 MR. JANES: To be very clear, I'm just not asking --  
10 I'm not going to ask you to make any findings with  
11 respect to Aboriginal rights. I'm not asking any  
12 of the witnesses to comment on Aboriginal rights.  
13 I'm just asking practically, in terms of their  
14 world view and their culture, whether or not  
15 certain activities, and in particular this  
16 question of the sale of FSC fish and the sale of  
17 fish, is inconsistent with the way in which  
18 they've practiced -- carried out their way of  
19 life.

20 THE COMMISSIONER: My only concern, Mr. Janes, is just  
21 that the answers may be just half a loaf. It's a  
22 complex world in which you and your learned  
23 friends deal when it comes to those kinds of  
24 issues, and I'm not sure covering it in five  
25 minutes in the way you're tending is going to be  
26 all that helpful.

27 MR. JANES: It may -- I think there's a problem -- the  
28 problem may be there in terms of the time  
29 constraints that we're facing, but it is a  
30 significant issue for our clients, and certainly  
31 their have been two counsel who have put a number  
32 of questions with respect to sale and the way in  
33 which sale is carried out and way in which sale  
34 plays a role in the view that these people have,  
35 today, of the way in which DFO interacts with  
36 them, the way in which they're having problems  
37 procuring compliance of individuals in their  
38 community and such like that, and in fairness to  
39 the witnesses and in fairness to my client,  
40 Commissioner, I submit at least with the time that  
41 we've been allocated we should be able to touch on  
42 the matters and deal with them to the extent that  
43 we can.

44 THE COMMISSIONER: I believe questions have already  
45 been posed to the panel members regarding that  
46 topic, Mr. Janes. I'm not sure where you're  
47 heading with this topic.

1 MR. JANES: I'm simply, for the purpose of cross-  
2 examination, trying to clarify the meaning of  
3 certain -- and the significance of certain  
4 passages in Chief Baird's witness statement.  
5 That's --

6 THE COMMISSIONER: If it's just a matter of clarifying  
7 something she's already said, I'm okay with that.  
8 If you're going beyond that, then I think Mr.  
9 Lowes' objection is reasonable and fair.

10 MR. JANES: As you're the commissioner, I'll clearly  
11 defer to that.

12 Q And just let me, then, go back to your statement,  
13 Chief Baird, and I would like to move onto the  
14 second part of the passage that I put to you a few  
15 moments ago, and I want to try to connect the two.  
16 You say here:

17  
18 Clearly fishermen need to invest in gear, and  
19 therefore need a way to raise capital.

20  
21 Now, I'm going to suggest to you that this ties  
22 into the fact that the cost -- there is a cost  
23 associated with carrying out even the food, social  
24 and ceremonial fishery as the Department of  
25 Fisheries and Oceans runs it today?

26 CHIEF BAIRD: Yes, especially with --

27 MR. MCGOWAN: I'm sorry to interrupt, Mr. Commissioner.  
28 I accept that Mr. Janes is engaged in a cross-  
29 examination, but it's starting to sound, to me, a  
30 little bit like a friendly cross-examination, and  
31 if that's the case, I wonder if it might be more  
32 helpful to you if the questions weren't leading.

33 MR. JANES: I'm happy to do that.

34 Q Would you expand upon what the significance of  
35 that is in terms of its relationship to the costs  
36 of the food, social and ceremonial fishery?

37 CHIEF BAIRD: Well, the way the fisheries have evolved  
38 and the technologies involved in relation to First  
39 Nations have to participate in the fishery safely,  
40 it does have associated costs, whether it's the  
41 boat and the gear and the fuel and the motor and  
42 all those sorts of things. Especially, we've sort  
43 of evolved from a mosquito fleet, if you will, to  
44 small modest gillnetters that have greatly  
45 increased safety, and that's been through the AFS  
46 program and people being able to reinvest in tier  
47 vessels so that they are in more sea-worthy

1 vessels to fish in.

2 Q And what would you see being able to sell FSC fish  
3 do -- in terms of being able to address this cost  
4 issue associated with the FSC fishery?

5 CHIEF BAIRD: Well, if there was more reliance on the  
6 ability to make income from the fish that come in  
7 that wasn't subject to a year-to-year agreement  
8 that can be taken away from DFO at a whim, or  
9 First Nations won't sign because of things  
10 potentially being imposed on it, it would make it  
11 much easier for the participants to be able to  
12 plan, over the long term, their participation in  
13 the fishery in a safe way, with the proper gear,  
14 and build capacity in the participants in the  
15 fishery, ultimately, I think.

16 MR. JANES: Thank you. Those are my questions.

17 THE COMMISSIONER: Thank you, Mr. Janes.

18 MR. MCGOWAN: Does anyone else have questions?

19 Commission counsel has no questions in re-  
20 examination. That, I think, concludes our day,  
21 Mr. Commissioner. We'll commence tomorrow  
22 morning, I believe, at 10:00 a.m., with panellists  
23 representing the mid and upper Fraser.

24 THE COMMISSIONER: Thank you, counsel. Thank you very  
25 much to each and every one of the panel members  
26 for attending this afternoon. Thank you.

27 THE REGISTRAR: The hearing is now adjourned for the  
28 day and will resume at ten o'clock tomorrow  
29 morning.

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31 (PROCEEDINGS ADJOURNED TO TUESDAY, DECEMBER  
32 14, 2010, AT 10:00 A.M.)  
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1 I HEREBY CERTIFY the foregoing to be a  
2 true and accurate transcript of the  
3 evidence recorded on a sound recording  
4 apparatus, transcribed to the best of my  
5 skill and ability, and in accordance  
6 with applicable standards.  
7  
8  
9

10 \_\_\_\_\_  
11 Diane Rochfort  
12

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18 with applicable standards.  
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21

22 \_\_\_\_\_  
23 Karen Acaster  
24

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30 with applicable standards.  
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34 \_\_\_\_\_  
35 Pat Neumann  
36

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41 skill and ability, and in accordance  
42 with applicable standards.  
43  
44  
45

46 \_\_\_\_\_  
47 Karen Hefferland