

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:

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Federal Courthouse
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Vancouver, B.C.

Tuesday, June 28, 2011

Tenue à :

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

le mardi 28 juin 2011

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No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
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No appearance	Seafood Producers Association of B.C. ("SPABC")
No appearance	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
No appearance	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
No appearance	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

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John Gailus 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); Adams Lake Indian Band; Carrier Sekani Tribal Council; Council of Haida Nation ("FNC")
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Ming Song Lisa Fong Benjamin Ralston	Heiltsuk Tribal Council ("HTC")

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1 Vancouver, B.C./Vancouver
2 (C.-B.)
3 June 28, 2011/le 28 juin 2011
4

5 THE REGISTRAR: The hearing is now resumed.

6 MS. CHAN: Good morning, Mr. Commissioner. It's
7 Jennifer Chan for the Commission today, and with
8 me is Patrick McGowan.

9 The Policy and Practice Report number 18,
10 entered yesterday, describes at some length the
11 Department of Fisheries and Oceans' policies and
12 programs for aboriginal fishing. Today we intend
13 to build on some of the information contained in
14 that PPR, particularly on the topics of province-
15 wide and watershed-wide aboriginal fisheries
16 organizations, many of which participate in and
17 are funded through DFO's Aboriginal Aquatic
18 Resource and Oceans Management program, which
19 you'll hear today referred to as AAROM, the
20 Aboriginal Fishery Strategy, which you may hear
21 referred to as AFS, and the Pacific Integrated
22 Commercial Fisheries Initiatives which you may
23 also hear referred to as PICFI.

24 DFO's current approaches to developing co-
25 management processes with First Nations, including
26 through the forum and roadmap processes, is also
27 something that we're intending to cover today.

28 We'll spend just over a day and a half with
29 today's panel of witnesses and plan to begin the
30 next panel after tomorrow's afternoon break. So
31 I'll begin by introducing the panel to you, and if
32 I could please have them sworn or affirmed?

33 THE REGISTRAR: Good morning, gentlemen.
34

35 RUSS JONES, Affirmed.

36
37 GRAND CHIEF SAUL TERRY, Affirmed.

38
39 NEIL TODD, Affirmed.

40
41 BARRY HUBER, Affirmed.
42

43 Would you state your name, please?

44 MR. HUBER: Barry Huber.

45 MR. TODD: Neil Todd.

46 GRAND CHIEF TERRY: Grand Chief Saul Terry.

47 MR. JONES: Russ Jones, I'm Chief Nang Jingwas.

1 THE REGISTRAR: Thank you. Counsel?

2 MS. CHAN: Thank you.

3

4 EXAMINATION IN CHIEF BY MS. CHAN:

5

6 Q So, Mr. Barry Huber, let me introduce you first.

7 MS. CHAN: Mr. Lunn, if we could have the c.v. of Mr.

8 Barry Huber brought up, please. It's at the

9 Commission's list of documents number 6.

10 Q While that's happening, Mr. Huber, you've been a
11 DFO employee since 1977; is that right?

12 MR. HUBER: That's correct.

13 Q And at that time, you're a fishery officer and
14 that was when fishery officers were generalists?

15 MR. HUBER: That's correct.

16 Q You've been a resource manager and you were that
17 from 2000 to 2004?

18 MR. HUBER: Yes.

19 Q And after that you became an Aboriginal Affairs
20 Advisor primarily in the B.C. Interior?

21 MR. HUBER: Well, initially they were called
22 implementation officers, and then it evolved.

23 Q Thank you. And, in that role, you were an early
24 supporter of co-management arrangements with First
25 Nations; is that right?

26 MR. HUBER: That's correct.

27 Q And as part of that role, or in some part in
28 recognition of your work in building relationships
29 with aboriginal peoples, you were a recipient of
30 the Deputy Minister's Commendation?

31 MR. HUBER: That's correct.

32 Q And since 2010, you've been on a special
33 assignment to lead building a co-management
34 structure with First Nations in the Fraser
35 watershed and marine approach areas; is that
36 right?

37 MR. HUBER: That's correct.

38 Q And that's together with other program and policy
39 work related to aboriginal fishing?

40 MR. HUBER: Yes.

41 MS. CHAN: If we could have Mr. Huber's c.v. marked as
42 the next exhibit, please?

43 THE REGISTRAR: That will be Exhibit 1178.

44

45 EXHIBIT 1178: *Curriculum vitae* of Barry
46 Huber

47

1 MS. CHAN: Thank you.

2 Q I'll skip over now to Grand Chief Saul Terry.
3 Good morning, Grand Chief Saul Terry. You're a
4 returning witness and you appeared mid last
5 December as a panellist during the hearing on
6 Aboriginal Worldview, Cultural Context and
7 Traditional Knowledge; is that right?

8 GRAND CHIEF TERRY: I'm sorry?

9 Q Let me just repeat. Grand Chief Saul Terry, I
10 just wanted to remind the Commissioner that you
11 are returning as a witness here and you had
12 appeared last December as a panellist for us on
13 the hearings on the topic of Aboriginal Worldview,
14 Cultural Context and Traditional Knowledge?

15 GRAND CHIEF TERRY: That's right.

16 MS. CHAN: Thank you. Mr. Commissioner, just for you
17 reference, the witness summary for Grand Chief
18 Saul Terry has been entered as an exhibit, and
19 that's Exhibit 293.

20 Q Grand Chief Terry, you're also a member of the
21 Stl'atl'imx Nation?

22 GRAND CHIEF TERRY: That's correct.

23 Q And, in particular, from the community of the
24 Bridge River Band near Lillooet?

25 GRAND CHIEF TERRY: Yes. In our language, Xwisten.

26 Q Thank you. And you are currently the CEO of the
27 Intertribal Treaty Organization?

28 GRAND CHIEF TERRY: Currently.

29 Q And you're also serving as a commissioner on the
30 Pacific Salmon Commission?

31 GRAND CHIEF TERRY: That's correct.

32 Q And you are also a former president of the Union
33 of B.C. Indian Chiefs, and you held that position
34 from 1983 to 1998?

35 GRAND CHIEF TERRY: Yes.

36 MS. CHAN: Thank you. We also have a c.v. for Grand
37 Chief Saul Terry, and that's listed at the First
38 Nations Coalition's list of documents at 120.

39 Q Grand Chief Saul Terry, do you recognize this
40 document on the screen as your c.v.?

41 GRAND CHIEF TERRY: Yes.

42 MS. CHAN: Thank you. Could we have that entered as
43 the next exhibit, please?

44 THE REGISTRAR: Exhibit 1179.

45

46 EXHIBIT 1179: *Curriculum vitae* of Grand
47 Chief Saul Terry

1 MS. CHAN:

2 Q And Mr. Neil Todd, we also have a c.v. for you,
3 courtesy of the First Nations Coalition at their
4 documents number 119.

5 Mr. Todd, you are an operations manager for
6 the Fraser River Aboriginal Fisheries Secretariat;
7 is that right?

8 MR. TODD: That's correct.

9 Q And you're also, and have been for the past 15
10 years, a part-time fisheries technical and policy
11 advisor for the Nicola Tribal Association?

12 MR. TODD: Yes.

13 Q And you were also a negotiator on the Fisheries
14 Chapter at the Lheidli T'enneh treaty negotiation
15 table?

16 MR. TODD: I was.

17 Q And that treaty specifically included provisions
18 related to sockeye salmon?

19 MR. TODD: Yes, it did.

20 Q Thank you. And which party did you represent in
21 those negotiations?

22 MR. TODD: I was working for and with the Lheidli
23 T'enneh Band.

24 Q Thank you. Mr. Todd, do you recognize this
25 document on the screen as your c.v.?

26 MR. TODD: Yes, I do.

27 MS. CHAN: Thank you. If we could have that marked as
28 the next exhibit, please?

29 THE REGISTRAR: Exhibit 1180.

30

31 EXHIBIT 1180: *Curriculum vitae* of Neil Todd

32

33 MS. CHAN: Mr. Lunn, if we could have document number
34 19 on the Commission's list brought up, please.

35 Q Now, Mr. Todd, the Fraser River Aboriginal
36 Fisheries Secretariat, care of the Nicola Tribal
37 Association, is a signatory for the AAROM program;
38 is that right?

39 MR. TODD: Yes, that's correct.

40 Q And do you recognize the document on the screen as
41 your Association's AAROM agreement for the year
42 2009 to 2010?

43 MR. TODD: Yes, I do.

44 MS. CHAN: Thank you. And, as an example for the
45 Commissioner of these agreements, if we could have
46 that marked as the next exhibit, please?

47 THE REGISTRAR: Exhibit 1181.

1 EXHIBIT 1181: Amended AAROM agreement for
2 2009 to 2010
3

4 MR. TODD: Excuse me?

5 MS. CHAN: Yes.

6 MR. TODD: This isn't the actual agreement or the
7 original agreement. This is an amendment to that
8 agreement, this particular document.

9 MS. CHAN:

10 Q Thank you for that clarification. So this is an
11 amendment that contributed further funds to the
12 original agreement; is that right?

13 MR. TODD: Correct.

14 MS. CHAN: And if we could just go to the next page,
15 Mr. Lunn, and the page after that.

16 Q We see here an explanation of that amendment, is
17 that right, that you're discussing where there was
18 a previous agreement on or about May 28th, 2009
19 and it was amended again, and with a final volume
20 -- or final amount of funds being \$750,700; is
21 that correct?

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

23 MS. CHAN: Thank you very much. Mr. Lunn, if we could
24 have document number 20 of the Commission's list
25 brought up, please.

26 Q Now, Mr. Todd, as part of FRAFS involvement in the
27 Aboriginal Aquatic Resource and Oceans Management
28 program, your organization is required to submit
29 regular contribution progress reports; is that
30 correct?

31 MR. TODD: That's correct.

32 Q Do you recognize the document on the screen as an
33 example of such a progress report submitted on
34 behalf of FRAFS?

35 MR. TODD: Yes, I do.

36 MS. CHAN: Thank you. If I could have that marked as
37 the next exhibit, please?

38 THE REGISTRAR: Exhibit 1182.
39

40 EXHIBIT 1182: AAROM Contribution Progress
41 Report January 31, 2010
42

43 MS. CHAN:

44 Q Moving on to you, Mr. Jones.

45 MS. CHAN: If we could have the First Nations
46 Coalition's document 116 brought up, please?

47 Q Now, Mr. Jones, you're a Haida hereditary chief

1 from Skidegate on Haida Gwaii; is that correct?
2 MR. JONES: Yes, it is.
3 Q Thank you. And, in 1988, you achieved a Master's
4 Degree in Fisheries from the University of
5 Washington?
6 MR. JONES: Yes.
7 Q And you've been an active fisheries consultant for
8 the past 20 years?
9 MR. JONES: That's right.
10 Q And you're also a policy analyst for the Haida
11 Fisheries Program with the Council of the Haida
12 Nation?
13 MR. JONES: Yes, I am.
14 Q And you're also a council member on the First
15 Nations Fisheries Council; is that correct?
16 MR. JONES: Yes, that's right.
17 Q And, in that capacity, you represent the Haida?
18 MR. JONES: Yes, I represent the Haida and the area of
19 Haida Gwaii.
20 Q Thank you. And you also serve as a Commissioner
21 on the Pacific Salmon Commission?
22 MR. JONES: Yes, I do.
23 Q Thank you. Now, do you recognize the document on
24 the screen as your c.v., Mr. Jones?
25 MR. JONES: Yes, I do.
26 MS. CHAN: If we could have that marked as the next
27 exhibit, please?
28 THE REGISTRAR: Exhibit 1183.
29
30 EXHIBIT 1183: *Curriculum vitae* of Russ Jones
31
32 MS. CHAN: If we could have the Commission's list of
33 documents at number 16 brought onto the monitors?
34 Q Mr. Jones, this is another example of AAROM
35 agreements for the Commissioner. Do you recognize
36 on the screen a document that's the AAROM
37 agreement for the First Nations Fisheries Council
38 for the year 2009 to 2010?
39 MR. JONES: Yes. And similar to the previous question
40 about FRAFS, this is an amendment to our
41 agreement.
42 Q Mm-hmm. Thank you.
43 MS. CHAN: If we could have that marked as the next
44 exhibit, please?
45 THE REGISTRAR: Exhibit 1184.
46
47

7
PANEL NO. 49
In chief by Ms. Chan

1 EXHIBIT 1184: AAROM agreement for First
2 Nations Fisheries Council for 2009 to 2010
3

4 MS. CHAN:

5 Q And similar to FRAFS, the FNFC is also required to
6 submit regular progress contribution reports; is
7 that correct?

8 MR. JONES: Yes.

9 MS. CHAN: If we could have the Commission's list of
10 documents at number 17 brought up, please? Thank
11 you.

12 Q Do you recognize this as that contribution report?

13 MR. JONES: Yes, I do.

14 Q Or an example of one at least.

15 MR. JONES: Yes.

16 MS. CHAN: Thank you. If I could have that marked as
17 the next exhibit, please?

18 THE REGISTRAR: Exhibit 1185.
19

20 EXHIBIT 1185: Contribution Report issued by
21 FNFC
22

23 MS. CHAN:

24 Q Now, that we have that out of the way, I'd like to
25 start, Mr. Huber, with discussing with you some of
26 the previous management agreements that DFO has
27 reached with First Nations. By that, I'm
28 referring to the 1993 Fraser Watershed Agreement.

29 MS. CHAN: We have that at our list of documents at
30 number 9, please, Mr. Lunn.

31 Q Now, Mr. Huber, do you recognize this document as
32 an agreement or fisheries management agreement, as
33 one can guess from the title, covering the Fraser
34 watershed?

35 MR. HUBER: I do.

36 Q Thank you. Now, if we look at page 2 of the
37 agreement, we see that it sets out a purpose.
38 Right where it says 3.1, it reads:
39

40 The purpose of this agreement is to provide
41 for a coordinated approach to the
42 conservation, protection and enhancement of
43 fisheries, fish and fish habitat of the area
44 including fish health and quality and
45 allocations.
46

47 Is that your understanding of the intent of this

June 28, 2011

1 agreement and how it was implemented?

2 MR. HUBER: That is correct.

3 Q Thank you. Now, I understand that this - and I
4 won't bring you through it - but that this
5 agreement set up a steering committee for the
6 implementation of this agreement, a technical
7 committee for the understanding and gathering of
8 technical information, and as well, a monitoring
9 and enforcement committee. All three of these
10 committees included First Nations and DFO
11 committee members; is that correct?

12 MR. HUBER: That's correct.

13 MS. CHAN: Thank you. Now, we've also heard that --
14 Mr. Commissioner, actually, I should point you to
15 paragraphs 97 to 104 of the Policy and Practice
16 Report which described this agreement in a bit
17 further detail.

18 Q But, Mr. Huber, I understand not all First Nations
19 in the Fraser watershed area that were intended to
20 be covered by this agreement signed onto it; is
21 that correct?

22 MR. HUBER: That's correct.

23 Q Could you explain what you know of that situation
24 as far as why there might have been some
25 discontent with the agreement or why there was
26 reluctance to sign onto it?

27 MR. HUBER: Well, the agreement, first of all, there
28 was some wording in the agreement that some of the
29 First Nations didn't find acceptable, and the way
30 the agreement was introduced -- the whole
31 changeover in fact, after the **Sparrow** case, and
32 while it was rather hastily introduced and, I
33 guess you would say, coercively in my mind, in the
34 sense that you had to sign this watershed
35 agreement in order to get funding through AFS
36 agreements. So if you didn't agree with the
37 content of the agreement or the process, then you
38 were eliminated from the opportunity to access
39 funds through the AFS program.

40 So some of the groups viewed this agreement
41 as divisive because some of the members of their
42 communities would sign on, and some, because of
43 the disagreements, didn't. So there's some
44 validity I think to that concern.

45 Q So there were some groups that signed on, but were
46 there many that didn't because of those concerns
47 that you just expressed?

1 MR. HUBER: Well, in the Fraser watershed, there were
2 two main groups that didn't. That were the
3 Stl'atl'imx and the N'laka'pamux Nation Tribal
4 Council.

5 Q And, Mr. Todd, I understand you're also familiar
6 with this agreement. Did you have anything you
7 wanted to add to those concerns?

8 MR. TODD: No. I think Barry Huber is certainly more
9 familiar with the agreement and the process that
10 was used to try to implement it than I am. No, I
11 have nothing further to add.

12 Q Thank you. Grand Chief Saul Terry, Mr. Huber just
13 mentioned the Stl'atl'imx Nation as one of the
14 groups that did not sign onto the Fraser Watershed
15 Agreement. I understand that's the group that
16 you're a member of. Did you have anything you
17 wanted to add to the concerns that you might have
18 had with this Fraser Watershed Agreement?

19 GRAND CHIEF TERRY: The only thing I would add is that
20 he indicates that it was divisive.

21 Q Mm-hmm.

22 GRAND CHIEF TERRY: The main reason is that it was
23 requesting that we would give over our authority
24 to the federal Minister of Fisheries, and our
25 respective nations in Stl'atl'imx And N'laka'pamux
26 did not wish to do that or acknowledge that
27 wording in the agreement, so we couldn't proceed
28 with signing it.

29 Q And is that a concern that you would have today if
30 there was a new co-management arrangement to be
31 developed?

32 GRAND CHIEF TERRY: It continues to be a problem, yes.

33 Q Thank you. And, Mr. Jones, just to not leave you
34 out of that, if you had anything to add to
35 concerns about the Fraser watershed agreement?

36 MR. JONES: I was involved for the Haida in negotiating
37 an AFS agreement around the same time, and I think
38 it is important to have flexibility for
39 negotiating terms and I understand that was one of
40 the barriers in the case of the Fraser.

41 Q Thank you. Now, Mr. Huber, I understand that the
42 1993 Fraser Watershed Agreement had a termination
43 date within it, and when it elapsed on March 31st,
44 1999, it was not renewed; is that correct?

45 MR. HUBER: That's correct.

46 Q And has there been any type of Fraser Watershed
47 Agreements similar to that put in place since

1 then?

2 MR. HUBER: No, though we've had a number of -- we've
3 made efforts to renew an agreement or develop a
4 new one, but in the absence of that, we
5 incorporated wording in our AFS agreements that
6 accommodate some of the -- or addressed some of
7 the issues that were in the watershed agreement.

8 Q And primarily would you characterize those issues
9 as was it a matter of allocations or the
10 flexibility, as we heard, or was there anything in
11 addition to that?

12 MR. HUBER: Well, the key thing in the new template -
13 and I led the development of the template prior to
14 the one we're introducing - is we did address some
15 of the wording concerns that First Nations had.
16 We got approval to remove the clause about the
17 authority of the Minister, and the justification
18 for that removal was that the courts have ruled on
19 that and we didn't need to, so to speak, rub in
20 First Nations' faces the Minister's authority.

21 Q Thank you.

22 MR. HUBER: So there were other things related to
23 management of the fisheries that were covered in
24 the new template. So it addressed a lot of the
25 issues, but not the working together which is what
26 the watershed agreement was meant to do.

27 MS. CHAN: If I could have the Fraser Watershed
28 Agreement marked as the next exhibit, please.

29 THE REGISTRAR: Exhibit 1186.

30
31 EXHIBIT 1186: Fraser Watershed Agreement

32
33 MS. CHAN:

34 Q Mr. Huber, would you consider this Fraser
35 Watershed Agreement as an early attempt at co-
36 management with First Nations?

37 MR. HUBER: Well, I'm not sure when it was introduced,
38 that that was the clear intent. The intent was
39 that we had to, as a result of the court decisions
40 and the government policy, we had to change our
41 relationship in the Department on how we worked
42 with First Nations, and Ottawa came out to the
43 regions and made sure it happened.

44 So the Ottawa staff, the Deputy Minister,
45 Bruce Rawson at the time, was directly involved
46 and the senior staff as well, and I worked with
47 them through the negotiation process. So let's

1 just say there was a firm hand given to the
2 changes the Department needed to make.
3 MS. CHAN: Thank you. If we could have document number
4 13 from the Commission's list brought up, please.
5 MR. LUNN: Thirteen?
6 MS. CHAN: Thirteen, please. Now, what's being brought
7 up is the Integrated Aboriginal Policy Framework.
8 Q Mr. Huber, do you recognize this as a DFO document
9 from 2006?
10 MR. HUBER: It's 2005 to 2010, is that the date on it?
11 Q I believe it's 2006 to 2010. If we just go to the
12 next page --
13 MR. HUBER: Okay, yes, that's correct, yes.
14 Q And then one after that action (sic)?
15 MR. HUBER: Yeah.
16 Q Thank you. Actually, in staying on this page --
17 actually, if we go to page 2 -- or page 1, it
18 states, "The purpose..." just on the third
19 paragraph down. It states here that:

20
21 The purpose of the [this] Integrated
22 Aboriginal Policy Framework is to provide
23 guidance to DFO employees in helping to
24 achieve success in building on our relations
25 with Aboriginal groups.

26
27 So, Mr. Huber, based on that purpose, is it your
28 understanding that DFO was continuing its efforts
29 in 2009 to build relationships in co-management
30 with First Nations?

31 MR. HUBER: Absolutely.

32 Q Can I bring you to page 20 of this document,
33 please? I would just like to get a better
34 understanding of what that word "co-management"
35 means for DFO. I see here on page 20 that there
36 is a definition of "co-management" provided right
37 at the top there, and it says that co-management
38 is:

39
40 ...the sharing of responsibility and
41 accountability for fisheries management
42 between Fisheries and Oceans Canada and
43 resource users. Co-management will
44 eventually encompass the sharing of authority
45 for fisheries management.

46
47 It goes on to say that:

1 It is the policy of DFO to shift from top-
2 down, centralized management of the fisheries
3 resource by the Department to a shared
4 stewardship of the resource that includes the
5 development --
6

7 Or, sorry:

8
9 -- devolution of certain fisheries management
10 authorities to resource users.
11

12 Mr. Huber, could you elaborate on this definition
13 of co-management? Is that the understanding of
14 co-management that you have in your day-to-day
15 operations and what does it mean to have
16 devolution of certain fisheries managements
17 authorities to resource users?

18 MR. HUBER: First of all, in the federal service I
19 don't know if there's one definition fits all, so
20 there's two aspects if the Department is going to
21 have one definition. But the other part of it is
22 we're working with First Nations to build these
23 co-management relationships. So, in my mind, part
24 of that engagement is trying to reach agreement on
25 what co-management is.

26 So certainly I would use that as a guide and
27 -- I mean there's concern about sharing or joint
28 authority, but in my mind, that already exists,
29 and First Nations are interested in having a much
30 larger say in that sharing of authority.

31 The second question is devolution of certain
32 fisheries authorities. There is some things you
33 might have devolution, but in the First Nations -
34 and I would agree with this view - they already
35 have authorities, so I think it's part of the co-
36 management. Building this is working with the
37 First Nations to define that in the way of rules
38 and responsibilities.

39 Q And, just to clarify, some of those authorities
40 that you mean already exist. Do you want to
41 clarify what some of those authorities are you're
42 referring to?

43 MR. HUBER: Well, even the courts have said, for
44 example, on their fisheries, they can fish by
45 their preferred means, subject to conservation, of
46 course. So that's where we work together. So
47 they choose their fisheries. We have agreements

1 where they decide who fishes in their fisheries.
2 Then they can withdraw those fishing privileges
3 and they can allow others to fish. And they have
4 other authorities that would need further
5 discussion, but that they would like to
6 incorporate as well.

7 Q Thank you. And are those types of authorities set
8 out in the aboriginal fisheries agreements and the
9 conditions of licence?

10 MR. HUBER: Some of them, yes.

11 Q Thank you. And, just to clarify, I heard you say
12 that this was a guide and that there was not
13 necessarily a one-size-fits-all definition of co-
14 management. Is that true also for within DFO?

15 MR. HUBER: That is true, yes.

16 Q Okay. So this definition in the Integrated
17 Aboriginal Policy Framework isn't to be taken as
18 the definitive DFO definition?

19 MR. HUBER: No. I don't know if the federal government
20 is trying to achieve that, but I would hope
21 through the work I'm doing and working with First
22 Nations, we can come up with an agreement between
23 the Department and the First Nations on what that
24 wording might look like.

25 MS. CHAN: Thank you. If I could have this document
26 marked as the next exhibit, please.

27 THE REGISTRAR: Exhibit 1187.

28

29 EXHIBIT 1187: Integrated Aboriginal Policy
30 Framework

31

32 MS. CHAN:

33 Q Now, this definition of co-management, or at least
34 your visions for co-management, if I could open
35 that up to the panel and ask each of you what you
36 envision as a co-management structure for the
37 fisheries with First Nations and DFO.

38 Mr. Todd, if we could start with you, please?

39 MR. TODD: Okay. I, and some of the people I work
40 with, we have certainly a problem with kind of
41 coming to grips with the term "co-management". It
42 does imply a collaborative or cooperative approach
43 to management of the fisheries resource, but
44 actually, as Barry indicated, there's different
45 shades of grey to that, and those sorts of details
46 will have to be worked out and hopefully will be.

47 Co-management, when I came across it during

1 my time with Lheidli T'enneh and the treaty
2 negotiation process, co-management basically
3 referred to, in a draft policy, a three-part
4 policy by the Department originally referred to
5 basically the co-management of fisheries which
6 were commercial fisheries and working with
7 industry. Industry was considered to be the
8 resource user. In fact, from that draft policy,
9 First Nations with Aboriginal Fishery Strategy
10 agreements were excluded.

11 So things have evolved since then. I think
12 we're in a period of change here, but then we'll
13 see where it goes. I have come to prefer the term
14 "joint management", because that removes some of
15 those shades of grey from the word "co-
16 management". "Joint" does, to me, imply a very
17 strong relationship of equals in making the
18 management decisions that are necessary around
19 Fraser River sockeye salmon, in this case.

20 Q Thank you. So does that vision of co-management
21 or joint management, as you prefer, does that
22 include DFO working with First Nations, or is that
23 as well including an industry as well, or non-
24 governmental organizations in a structure
25 together?

26 MR. TODD: I find that I've become a little less
27 liberal in considering that as time has gone on
28 here. I consider joint management to be between
29 the Department of Fisheries and Oceans, or the
30 Government of Canada if you will, and the First
31 Nations government. The Government of Canada, and
32 through the Department of Fisheries and Oceans, is
33 in place to look after the interests of other
34 resource users.

35 Q Thank you. And the same question to you, Grand
36 Chief Saul Terry, about what your vision of co-
37 management is for Fraser River sockeye or, if you
38 prefer a different term, joint management or
39 collaborative management.

40 GRAND CHIEF TERRY: Thank you. Yes, it's quite a
41 loaded word if we look at it closely. In terms of
42 co-management, at one point when we were
43 discussing the matters who is going to be
44 cooperating with whom here, was a question that
45 was posed by some of the chiefs. Are we expected
46 to cooperate with these various policies was a
47 question.

1 I think that raises then the question of what
2 really is being put forward here. The authority
3 and the jurisdiction of our people, as we see it,
4 is in place. However, it has not been recognized.
5 So therefore when I answered the question earlier
6 about whether or not the issue of the Minister's
7 authority was still a problem, indeed it is, and
8 we, I think, need to clear that up, in my mind,
9 because I think that there's the rub as far as the
10 Stl'atl'imx and many of the other nations are
11 concerned is we need to determine what authorities
12 are in place to be able to manage the fishery.

13 In terms of, if I could, the co-management or
14 cooperative management or joint management seems
15 to flow easier when you're talking about those
16 kind of things happening with other users. And
17 that has been one of the problems, I feel, in
18 relationship to management is that the Department
19 has, in my mind, tried to make everybody happy but
20 it's caused a problem in the resource, and to my
21 mind that's one of the difficulties that I see in
22 terms of trying to work out something here.

23 But we tried to be jealous (sic) of our
24 authority and jurisdiction and our authority to be
25 able to make decisions regarding a high priority
26 resource for our people, and that's the fish that
27 feeds them through the winter.

28 Q Thank you. The same question for you, Mr. Jones,
29 of what your vision of co-management and the
30 structure of relationships between First Nations
31 and DFO or if your vision includes others, how
32 that looks for co-management?

33 MR. JONES: So, Mr. Commissioner, I think that I agree
34 with some elements of the definition that we're
35 talking about --

36 THE REGISTRAR: Excuse me. Would you put your
37 microphone in closer, please? Thank you.

38 MR. JONES: Yes. I agree with some elements of the
39 definition, that there's shared authority and
40 responsibility between the Crown and First
41 Nations. I'd agree with Mr. Huber that the
42 definition doesn't capture the authority of First
43 Nations. So there's an essential difference
44 between co-management with the First Nations and
45 with resource users, which is referred to in the
46 definition.

47 I guess my vision - it has been captured in

1 some of the numerous First Nations documents - is
2 to have -- we're calling it a Tier 2 process
3 between First Nations and the federal government
4 or Department of Fisheries and Oceans, to address
5 kind of those -- design a co-management program
6 that's acceptable to the First Nations and the
7 Crown, because it has to accommodate First Nation
8 rights to the fishery and be consistent, I guess,
9 with the direction provided by courts. Often I
10 think if you don't start from that in the
11 beginning, you don't arrive at something that
12 works for both First Nations and the Crown.

13 You also need a Tier 1 process, which is a
14 process for First Nations to talk among themselves
15 and to kind of try to reach agreement. I think
16 that was one of the things that was lacking in the
17 Fraser agreement that we were talking about
18 earlier was First Nations didn't have enough time.
19 There was a time issue as well as kind of a
20 substance issue around the agreement.

21 We have now some functioning Tier 1 processes
22 I think which could develop into effective ways
23 for First Nations to bring input into a Tier 2
24 process, and I think we really need those in place
25 and have them properly working before we should be
26 engaging in kind of Tier 3 processes which would
27 involve other resource users.

28 But I think it does provide a framework if we
29 can reach kind of an effective Tier 2 process for
30 involving everyone and kind of developing a
31 management plan for the fishery. Thank you.

32 Q Thank you, Mr. Jones. Now, in Gwaii Haanas, I
33 understand there's a joint management board for
34 the management of the Gwaii Haanas Park; is that
35 correct? Could you explain that a little bit
36 further for the Commissioner?

37 MR. JONES: Yes. The Council of Haida Nation has
38 signed an agreement with Environment Canada to
39 manage the area known as Gwaii Haanas which is
40 both a national marine conservation area --
41 there's both a land area, so a national park
42 reserve, and now a national marine conservation
43 area. But there's an Archipelago Management Board
44 which is made up of two Haida and two
45 representatives of Gwaii Haanas, and that's
46 recently been expanded to include DFO and a third
47 Haida, which makes consensus decisions around

1 developing a management plan for that fairly large
2 area.

3 It includes kind of all activities from
4 visitors that come to the area, now with the
5 national reconsevation areas, the management plan
6 will include ecologically sustainable fisheries.
7 That approach has seemed to work quite effectively
8 where the Haida and representatives of Parks
9 Canada and DFO have been able to reach agreement
10 on a management plan and recommend it to Parks
11 Canada or DFO as well as the Haida.

12 So I think it's a way of basically getting
13 away from this problem of kind of decision-making
14 authority of the Minister. Because the Minister
15 does have decision-making authority, say under the
16 **Fisheries Act**, but so do the Haida under -- we
17 have the Haida constitution the same as -- First
18 Nations have traditional governments that they
19 also use to provide and decide on what kind of
20 arrangements are acceptable.

21 Q Thank you. Now, the next question I'd like to put
22 to each of you is to ask for your understanding of
23 how co-management might relate to or benefit the
24 sustainability or management of Fraser River
25 sockeye. Mr. Huber, if I could start with you on
26 that?

27 MR. HUBER: Well, first of all, to manage anything, any
28 of the resources, you need to work with people,
29 and to get people working together, there has to
30 be a good understanding of the issues and good
31 communications. So I view a foundation for
32 developing this communication is this co-
33 management, say on the watershed and the marine
34 approach area that we're working on, is an example
35 where you find an effective way where people can
36 communicate and where you can build relationships
37 and trust.

38 There's some key elements you need to start
39 to build this foundation, and then to manage the
40 Fraser stocks. They're complex, so you're going
41 to have to have different -- everything from
42 technical support to managers to the processes in
43 place to make decisions.

44 While we're working on this now, and as we're
45 introducing and moving away from mixed-stock
46 fisheries and moving fisheries inland for better
47 stock management and -- there's opportunities

1 there for First Nations for economic access. It's
2 even more imperative to manage these properly,
3 that we have this communications and it's still a
4 priority for all the First Nations to protect
5 their food, social, ceremonial interests, but
6 economic interests are there as well.

7 So, yes, we definitely need a structure and a
8 coordinated approach in order to achieve the
9 management needs and to address the stock issues.
10 And it's a policy of the Department or an
11 objective of the Department to have economic
12 fisheries that are sustainable. So to meet that
13 objective as well, we have to have this
14 coordination.

15 Q So just to summarize that, Mr. Huber, you were
16 saying that building of relationships, building
17 trust and having communications with other groups
18 including First Nations is something that you
19 think is a necessity for proper management of the
20 fishery. Is that what you just told us?

21 MR. HUBER: Absolutely. Without that -- like one
22 leader told me, I was just recently up in the
23 Yukon where they have treaties they're
24 implementing -- if they don't understand the
25 issue, the answer is no. So when we're getting
26 "no" answers, then we're getting conflict and then
27 we're ending up spending our time in resolving
28 conflicts and getting into litigation and all
29 kinds of unproductive things rather than working
30 together and resolving issues together.

31 Q And, to follow up, is there additional information
32 as well that's obtained through co-management or
33 collaborative management or joint management
34 processes that is required or supportive of
35 harvest management?

36 MR. HUBER: I didn't catch the first part. Is
37 there...?

38 Q Is there additional information that might be
39 obtained through co-management or collaborative
40 management that assists in harvest management?

41 MR. HUBER: Well, absolutely. The First Nations view
42 their traditional knowledge, their traditional
43 practices, it's the law, these are a priority to
44 protect. The government can't direct that, the
45 federal government. We need to work together.

46 Q Thank you. And so the same question to you, Mr.
47 Todd, about how co-management is linked to

1 sustainability in your view, or how it's
2 benefiting harvest management.

3 MR. TODD: The management of the resource requires good
4 decision-making processes. First Nations have
5 evolved with this resource that we're all trying
6 to manage here, but they've evolved with the
7 resource over the last seven or 8,000 years. Just
8 to pick up on the last statement there about
9 additional knowledge, traditional ecological
10 knowledge is integral to First Nations and it's
11 integral to the management of salmon. That has to
12 be brought to the table, and it can only be
13 brought to the table through a joint management
14 process whereby First Nations have relatively --
15 can sit at a management decision-making table as
16 equal partners in the management decision-making
17 process.

18 Therefore that's where I think joint
19 management is absolutely critical to trying to
20 ensure the survival, sustainability and hopefully
21 flourishing of Fraser River sockeye salmon.

22 Q Thank you, Mr. Todd, and just to clarify, you
23 mentioned the words "equal partners" and I just
24 wanted to understand how that fits in with the
25 authority of the Minister that we discussed
26 earlier.

27 MR. TODD: There should not be a problem with that
28 under the present policies and practices of the
29 federal government under Lands Claim Agreements,
30 such as the Inuvialuit agreement that's a joint
31 management board and it's a consensus-driven
32 process whereby, yes, the decisions made at that
33 level act as recommendations to the Minister, but
34 there's an accountability process built in such
35 that the Minister would be, other than in some
36 very, very extreme cases, would be not wise if he
37 did not follow those recommendations.

38 So the effect on the ground is equal and
39 shared joint management decision-making.

40 Q Thank you. Now, Grand Chief Terry, the question
41 to you about how co-management or collaborative
42 management or joint management, as you prefer,
43 might benefit the sustainability for decision-
44 making for Fraser River sockeye?

45 GRAND CHIEF TERRY: It really would work well if we
46 were able to realize a kind of mutual respect for
47 our areas of authority, because I think in the --

1 too often we are deferring, for example, to courts
2 to resolve disputes and resolutions to issues that
3 are of a political nature. Too often, the
4 political folks that have the authority to speak
5 to various issues of jurisdiction and authority
6 are abandoning their ability to come to the table
7 with us. We, as political leaders, elected
8 chiefs, have a mandate to discuss the issues that
9 are paramount to our people in terms of the title
10 and the rights that are being affected, left,
11 right and centre, right across this country.

12 But nobody is prepared to come to the table
13 to discuss the matter that is of critical
14 importance. We do need that kind of political
15 commitment, I feel. Then we can work out the
16 means by which we can come together and work
17 something out. I think, for example, you cited
18 the -- my friend here, Jones -- the Haida have
19 worked out an arrangement. It was a negotiated
20 arrangement between two parties. This is what
21 we're seeking, I feel, under the Intertribal
22 Treaty Organization.

23 If there is effective management going on,
24 why is our fish suffering? Why are the resources
25 suffering in our respective territories? In our
26 homelands, people are wishing they could fish to
27 be able to feed themselves, and there's a
28 different kind of an agenda in place, and we're a
29 little concerned that we're going to suffer the
30 same fate as on the east coast, or what has
31 happened already in Europe where the disappearance
32 of the fishery is -- we just need to look and we
33 see what's happened there.

34 In terms of management, then, yeah, we do
35 need somebody to speak with, but somebody that has
36 a mandate to be able to deal with the matters that
37 are of critical importance, I feel, and so I would
38 really question whether or not -- not disparaging
39 anyone in the court or this process here in terms
40 of being able to deal with matters in a court
41 process -- but political matters need to be dealt
42 with by political people and with those mandated
43 to do that. Thank you.

44 Q Thank you. Grand Chief Terry, just to follow up
45 on what you've said, I just wanted to understand.
46 So are you saying as well that there is
47 information or perhaps knowledge that First

1 Nations hold that you believe would benefit
2 decision-making for Fraser River sockeye?

3 GRAND CHIEF TERRY: Definitely.

4 Q Does that include traditional ecological
5 knowledge?

6 GRAND CHIEF TERRY: Oh, yes. We haven't really been
7 able to relay a lot of this information down
8 within these various agreements, and too often, I
9 think that our traditional knowledge is cast aside
10 in favour of "science". They're as much science
11 because they've been developed over a million --
12 through observation and experiments and
13 experience, so it's just as legitimate as somebody
14 being able to determine a female fish from a male
15 fish. Our people used to be able to do that, and
16 we were citing that in the court in 1978 when one
17 of our elders told the biologist, and the
18 biologist couldn't tell the difference. It's as
19 simple as that.

20 Q Thank you. And does some of that information that
21 you just described, does that lead to a different
22 understanding of perhaps conservation requirements
23 that might be required in harvest management
24 decisions?

25 GRAND CHIEF TERRY: I think perhaps we concentrate too
26 much on harvest management deliberations too much,
27 and then forget about the fact that these, before
28 you're able to harvest, you got to have something
29 to harvest. Right now, the habitat for the
30 species of various stocks of salmon is suffering,
31 and they're needing help out there in their
32 habitats. Their spawning areas and all of that
33 are being destroyed and I think too often the
34 stocks are being just concentrated on one specific
35 stock of fish, and then they let the other stocks
36 in the minor streams go and sacrifice those and
37 try to rely on the main source of, for example,
38 Horsefly or Quesnel or Stellako or some -- and we
39 forget about that there are maybe 25 or 30 other
40 streams around a lake that need to be preserved as
41 well as the main stem producer.

42 Q Thank you. Moving to you, Mr. Jones, did you want
43 to add anything to your understanding of how co-
44 management might assist in the sustainability or
45 decision-making in Fraser River sockeye fisheries?

46 MR. JONES: Yes, co-management has a real contribution
47 to make to sustainability of Fraser River sockeye.

1 I know, Mr. Commissioner, over the past eight
2 months you've heard about many issues such as
3 overfishing, habitat loss, climate change, species
4 at risk. Management of Fraser sockeye is very
5 complex, and I think having agreements between the
6 Crown and First Nations on how to approach it is a
7 fundamental starting point, I guess, to taking a
8 holistic approach to management.

9 I think there's a good example we have in
10 Washington State of where these issues have been
11 addressed between the tribes. The Northwest
12 Indian Fishing Commission was a group of First
13 Nations that was established after the Boldt
14 decision to work with the state and federal
15 government to address issues of harvest, but also
16 preservation of salmon in the Pacific Northwest.

17 It was as a result of a court case but the
18 Northwest Indian Commission Fishing Commission is
19 a Tier 1 process. It's 21 First Nations, 21
20 tribes, and they've moved on from basically
21 developing management plans into protecting
22 habitat, developing recovery plans for species at
23 risk. They were key in getting the Pacific Salmon
24 Treaty signed in 1985 and renewing it again in
25 subsequent years, in '89 and such, and they've
26 brought the conservation issues to the fore as
27 well as management of their 50 percent share of
28 salmon.

29 I think the things that we need to look at
30 here in British Columbia really are the -- it
31 takes political will to move ahead and make those
32 kinds of changes. It took many years for the
33 federal and state governments and the tribes
34 basically to come to agreement and respecting each
35 other's authorities and agreeing kind of to move
36 ahead in a cooperative way to address these
37 challenges that addressed all three governments.

38 MS. CHAN: Thank you. So we've heard from the panel
39 about your views on the importance of co-
40 management. I just want to shift now to some of
41 the programs or processes underway to work on co-
42 management right now.

43 If we could have document number 11 from the
44 Commission's list brought up, please? I'll be
45 discussing the forum and roadmap processes with
46 you, Mr. Commissioner. This is described briefly
47 at the PPR at paragraph 297 and following.

1 Q But this document here -- and, Mr. Huber, I wonder
2 if you recognize this as a list of discussion
3 topics at DFO and First Nations and Fraser Salmon
4 Roadmap Workshops. And this is the one for
5 December 10th of 2009. Do you recognize this
6 document?

7 MR. HUBER: Yes, I do.

8 Q Thank you. And without bringing you through the
9 entirety of this document, I see from some of the
10 headings that some of the matters up for
11 discussion include the mandate and the scope to be
12 included in discussions of co-management; is that
13 right?

14 MR. HUBER: Yes.

15 Q And also other issues such as First Nations
16 representation, the role of technical capacity and
17 support and potential models or options for co-
18 management?

19 MR. HUBER: That's right.

20 MS. CHAN: Thank you. If I could have this marked as
21 the next exhibit, please.

22 THE REGISTRAR: Exhibit number 1188.

23

24 EXHIBIT 1188: Themes for discussion at DFO-
25 First Nations Fraser Salmon Roadmap Workshop,
26 December 10, 2009
27

28 MS. CHAN: If I could have the Commission's list of
29 exhibits number 10 up, please. This is a previous
30 exhibit. It's already been entered as Exhibit
31 290. When it comes up, we'll see it's a Three-
32 Year Strategic Approach to Developing a Co-
33 Management Process for Fraser River Salmon, the
34 First Nations Component. This is a 2009 document,
35 I understand.

36 Q Mr. Huber, do you recognize this document here?

37 MR. HUBER: I do.

38 Q Thank you. Now, this document says that it's a
39 three-year engagement strategy, so does it cover
40 things like planning events and supporting various
41 organizations and processes for developing co-
42 management?

43 MR. HUBER: It does.

44 Q Now, if we turn to page 6 of this document, this
45 was a 2009 document, but I see at the top there
46 was an intention for the year 3, which is fiscal
47 year 2011/2012. Now, that's the fiscal year we're

1 in right now for DFO; is that right, Mr. Huber?

2 MR. HUBER: That's correct.

3 Q And it says at bullet 1 there, that:

4

5 The annual Visions workshop could include a
6 joint signing ceremony for the agreement
7 between DFO and First Nations on a Fraser co-
8 management process.

9

10 I wanted to ask you is this something that's on
11 track to happening right now?

12 MR. HUBER: No, we're two years behind anyway.

13 Q And what are the challenges that you've
14 experienced in trying to reach this target of
15 reaching a co-management agreement?

16 MR. HUBER: Well, the history in building the trust and
17 understanding. Brenda Gaertner wrote
18 recommendations back in 2004, and she, I think in
19 there, referred to a two-year period, and then we
20 would work on towards co-management, so that would
21 be 2006, and then I wrote this and kind of
22 envisioned three years, and now we're two years
23 behind.

24 I think we're making more progress recently
25 on the roadmap. It's sort of all of a sudden --
26 it's getting people and understanding maybe a
27 common vision and enough faith that we've done
28 enough work that we actually can work together and
29 move forward, because there are people that
30 attended the roadmap sessions that were in Douglas
31 Treaties. There were other people in -- that
32 would have nothing to do with any treaties. There
33 were others that are in the B.C. treaty process.
34 Then there's this basic need to work together.

35 So just the idea of how that would be
36 accomplished -- Chief Hope from Yale there, he, at
37 one of the earlier meetings, said he just didn't
38 -- you know, we have 150 First Nations we're
39 working with here, and the diversity of views and
40 the challenges, he didn't see how that would work.

41 We just had a workshop last week on the
42 roadmap and Chief Hope was there and he's
43 surprised we're still going, and he's seen the
44 momentum building. In fact, it's gone from not
45 wanting agreement to now we're moving to focus on
46 actually developing and framing an agreement. So
47 I can see in recent times there's a shift in

1 momentum here, and we had a lot of feedback from
2 last meeting. We had people provide comments
3 that, yes, let's get on, the time is now, the
4 majority of people were saying.

5 So we're developing a strategy, and I'm
6 hoping by -- we won't have a signing by early in
7 the New Year, the new calendar year, but I'm
8 hopeful that we're in a position that we can start
9 negotiating the details in the agreement, in a
10 watershed and approach agreement.

11 Q Do you have everyone coming to these meetings that
12 you believe need to be there, or is everyone
13 coming there with the representational authority
14 that you think might be necessary?

15 MR. HUBER: Representation is a big issue. Some of
16 them are there as representative councillors and
17 some chiefs. But what we don't have is -- we try
18 to move these meetings around. We had one in
19 Prince George and one in Campbell River, and we
20 have the greatest attendance when they're in
21 Kamloops or the Lower Fraser simply because of
22 costs. So it depends where you hold the meeting.
23 You'll have more local people attending. Then we
24 have regular attendees.

25 But there's been a lot of awareness, I'm told
26 -- Ernie Cray is in the court here, I see him. He
27 tells me that they attend and they make sure their
28 chiefs are aware of what's going on. So there are
29 others that are independent and it's less
30 available access to these meetings that may be --
31 are not as informed, but we keep the information
32 going out through the FRAFS, through the role of
33 FRAFS.

34 One of the roles is a communications vehicle,
35 so we keep updates going out on where we're at,
36 and we have working -- you know, we've got working
37 groups that have been appointed, and so the
38 process actually, when we talk about the
39 timelines, I would suggest is picking up speed
40 here. I see an opportunity now that may slip by.
41 These don't come around very often, these kind of
42 opportunities when people are coming together all
43 the way from the Fraser to the marine approach
44 areas, and we've built respectful relationships
45 and we're seeing, as a result of this work that's
46 being done, other initiatives like the groups on
47 the Island working together and building their own

1 sub-regional organizations. The Lower Fraser has
2 pulled together, I understand, 29 of the 30 First
3 Nations are now working together.

4 So all of this is starting to line up so we
5 can build a structure that we can communicate well
6 in, and have efficiency in costs and people's time
7 as well built into it.

8 Q Now, this co-management structure that you're --
9 or co-management agreement that you're discussing,
10 would this envision everyone that would be fishing
11 Fraser sockeye signing onto it, at least the First
12 Nations groups?

13 MR. HUBER: That would be unlikely. We would hope we'd
14 get the majority and we'd have to have -- one of
15 the issues -- I mean, we've got a strategy now we
16 just developed last week, but I doubt -- what
17 we're trying to do is like in the New Zealand
18 model where they just decided we got to get going
19 with the Maori, our agreement, and they led -- I
20 guess you'd say led by attraction.

21 By the end of the day, through the
22 negotiation process, I understand all the Maoris
23 signed on. So we need to get going and we're not
24 going to have everybody initially, but we want to
25 -- the more we can demonstrate progress and a
26 process that serves the interest of First Nations
27 and the Department, the more likely we'll get a
28 good level of participation, a high level of
29 participation.

30 Q Have you experienced any challenges in terms of
31 developing a co-management process about agreeing
32 on the definitions of certain terms like "co-
33 management" or perhaps the food, social and
34 ceremonial fisheries?

35 MR. HUBER: Challenges in developing this?

36 Q Has that led to challenges in developing the co-
37 management process in any way?

38 MR. HUBER: Well, there are many, many challenges, so
39 we've tried to work on the communications. We
40 need the Tier 1 process is a key element that has
41 to be developed, and we had hopes through Saul
42 Terry's organization that that would happen. It
43 hasn't happened to date. So what we've done is
44 we've built into our meetings a Tier 1. Now when
45 we meet, most of our meetings, we actually build
46 in both Tier 1 and Tier 2 in the meeting so First
47 Nations can meet amongst themselves. So that's

1 helped a lot.

2 There was representation as a big issue and
3 accountability reporting back. There are funding
4 issues. There are many challenges, but as we get
5 better organized and we can start to lay it out
6 and people can see a picture of what we're talking
7 about -- it's pretty vague for most, and even in
8 our Department, most of our staff, I say it's
9 vague. Maybe I have a better picture than most
10 because I think about this all the time.

11 But I think we've got to get structured and
12 organized and more efficient in our resources, and
13 get the right people, the right committed people
14 in the process, and I'm seeing some very good
15 progress there. We've got some people with the
16 skills in the First Nation communities. In fact
17 our own Department, I would say, is facing more
18 challenges in many cases than the First Nations as
19 we have a lot of staff that need capacity built as
20 well.

21 But nonetheless, I see the opportunity now
22 and I think we need to move now.

23 Q Is coming to an agreement on the allocations of
24 the fishery something that you think is important
25 for developing co-management processes?

26 MR. HUBER: Well, until there's shares or allocations,
27 it's going to be challenged, obviously. That is,
28 I would say, the single biggest issue of conflict
29 is what those shares are.

30 If they were understood and agreed on, then
31 the focus could be -- and there would be lots more
32 flexibility in making management decisions on how
33 you access your share. You, as managers, the
34 First Nations, if they knew what that was, as long
35 as they had a plan that was conservation-based and
36 they knew what their share was, they -- I just see
37 lots more flexibility on how they harvest that
38 share and when. But they still need, obviously,
39 to be full partners in the technical information
40 and that. Irregardless (sic), they need to be
41 able to make sound decisions based on the best
42 information available.

43 Q Thank you. And, a question to you, Mr. Huber, is
44 do you have any recommendations for the Commission
45 on how this process of co-management that you're
46 working on might be supported?

47 MR. HUBER: How that would be supported in the sense

1 of...?

2 Q Is there anything that you require to -- 'cause it
3 sounds like you're working on building the
4 relationships, you're working on building the --
5 and it's a process that's been going on for
6 several years. Is there anything new or different
7 that you feel is required for this to work?

8 MR. HUBER: Well, to make it work, we need the First
9 Nations -- the key one is to get them working
10 together. There are many -- unfortunately there's
11 been some hard positions taken over the years, and
12 they are impeding progress.

13 We need to get more political involvement.
14 We've tried to get political involvement on our
15 planning and working groups, so I think a very
16 strong and helpful message would be that the
17 political engagement be increased, and that we get
18 representatives, like First Nations assign
19 representatives for their organizations that will
20 participate in the process.

21 The Department needs to maintain -- the AAROM
22 fundings have been a big help, but a lot of the
23 participation has been through funding from AFS
24 agreements. AFS funding has, since 1993 when the
25 program started, has not increased. In fact, it's
26 been cut by five percent. So, in the meantime,
27 First Nations capacity has been built, but
28 inflation has eroded that funding base.

29 We're asking more and more the First Nations
30 are to participate in the management in stock
31 assessment work, some habitat work, different
32 stewardship, catch monitoring, all of these things
33 are a demand to improve this in these areas for
34 better managing fisheries. So we need the -- and
35 I know you've heard this over and over,
36 Commissioner, the need for more resources. But at
37 least I think to maintain programs, they should
38 keep pace with inflation. That'll be a real
39 hindrance to getting this co-management, is if we
40 can have adequate participation (sic).

41 That said, if we get organized where we have
42 sub-regional AAROM bodies where the communication
43 can take place, people can travel to a meeting and
44 return the same day like the Upper Fraser
45 Fisheries Conservation Alliance, or the Lower
46 Fraser Fisheries Alliance, you can have all the
47 First Nations can be involved in travelling to a

1 meeting and returning the same day so it's cost
2 effective. We can't afford to bring everybody to
3 a watershed-wide meeting, but they could send
4 representatives from those sub-regional
5 organizations.

6 So it's, again, getting the right people that
7 are informed, that are fully employed year-around
8 so they're on top of the issues, and you can
9 communicate back to the local community. That'll
10 be a key, is the resources to build this network
11 of communications.

12 MS. CHAN: Thank you. And, for the rest of the panel,
13 I understand that your counsel is intended to
14 bring you to some of the challenges and
15 recommendations to discuss in regards to co-
16 management, and so I think, with that, that's the
17 end of my questions.

18 Counsel for the First Nations Coalition is
19 next.

20 THE COMMISSIONER: Ms. Gaertner? Did you want to take
21 the break before you start? Is that convenient?

22 MS. GAERTNER: That would be convenient if you like.

23 THE COMMISSIONER: Thank you very much.

24 THE REGISTRAR: The hearing will now recess for 15
25 minutes.

26
27 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

28 (PROCEEDINGS RECONVENED)

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

31 THE COMMISSIONER: Ms. Gaertner.

32 MS. GAERTNER: Commissioner Cohen, it's Brenda Gaertner
33 and with me, Leah Pence, counsel for the First
34 Nations Coalition. And thank you for bringing
35 those binders closer to you. We will be spending
36 some time with them. I remarked to my friends and
37 clients and colleagues, some of whom are on the
38 witness stand today, that I thought it was ironic
39 that at the beginning of the Aboriginal fishing
40 week that we had so many binders, that we've moved
41 from oral traditions into the written documents.
42 And they all smiled as they took their binders
43 home. But I've done my best to try to bring the
44 documents forward that I think will be relevant to
45 support your consideration of these matters.

46 And so in the hour-and-a-half that I have we
47 will be staying primarily on the topics that

1 Commission counsel has introduced. We're going
2 to, at the end of it, branch out to some of the
3 other topics that you've heard some evidence on
4 but we will stay to those topics. But I am going
5 to endeavour to have marked as exhibit a number of
6 documents that flesh out these topics in much more
7 detail and identify some of the challenges going
8 forward. So in each of the areas, I will be
9 bringing more documents to your attention.

10
11 CROSS-EXAMINATION BY MS. GAERTNER:
12

13 Q Mr. Jones, I'd like to start with you, if I may,
14 and I've asked Mr. Lunn to bring Exhibit 1183 back
15 on, which is your c.v. and primarily because I
16 wanted to bring to the fore a couple of other
17 qualifications that you bring as you sit here.
18 You've mentioned this morning that you have been a
19 Commissioner with the PSC for ten years. That's
20 correct?

21 MR. JONES: That's correct.

22 Q And you're also the chair of the First Nation
23 caucus of the PSC and have been from 2004; is that
24 correct?

25 MR. JONES: Yes.

26 Q And you're a council member of the FNFC but you're
27 also the chair of the Economic Access Working
28 Group of the FNFC; is that correct?

29 MR. JONES: Yes, it is.

30 Q And you were a member of the First Nations Panel
31 on Fisheries that wrote the 2004 report, "Our
32 Place at the Table"; is that correct?

33 MR. JONES: Yes.

34 Q And that was one of three First Nations
35 representatives on that panel?

36 MR. JONES: Yes, the other members were Marcel Shepert
37 and Neil Sterritt.

38 Q Thank you. And you were involved in writing the
39 Fisheries Action Plan, which we're going to go to;
40 is that correct?

41 MR. JONES: Yes.

42 Q And you're an author of numerous reports, many of
43 which are highlighted in your c.v. at page 5 and
44 6, many of which again are peer-reviewed; is that
45 correct?

46 MR. JONES: Yes.

47 Q Mr. Jones, I wonder if you would agree with me

1 that one of the expertise that you bring is not
2 only scientific but very traditional and, in that
3 way, you're one of those people that I call an
4 integrated thinker. Would you agree with me on
5 that? You try to --

6 MR. JONES: Yeah, I have a lot of experience and I
7 think I do tend to think out of the box sometimes.

8 Q Thank you. I'm going to turn you specifically to
9 provide you some -- the Commission with some
10 history of how we got to the First Nations
11 Fisheries Council. You'll recall that there was
12 the B.C. Aboriginal Fisheries Commission?

13 MR. JONES: Yes.

14 Q And what were the lessons learned with that
15 Commission that we moved into when we began to
16 form the First Nations Fisheries Council?

17 MR. JONES: The B.C. Aboriginal Fisheries Commission
18 filled an important role back in the '80s and '90s
19 of bringing First Nations together to try to
20 address common Fisheries issues. Some of the
21 problems that arose were around representation.
22 There was elected leadership but it was a fairly
23 small group and when they moved ahead on specific
24 issues, often it was hard to know whether there
25 was the support from First Nations. And I think
26 with the Fisheries Council, there's a broader
27 structure and 14 members on the Fisheries Council,
28 as opposed to there were three members on the B.C.
29 Aboriginal Fisheries Commission.

30 Q And those 14 council members on the FNFC are
31 regionally determined?

32 MR. JONES: That's correct.

33 Q And in addition to that, you have working groups;
34 is that correct?

35 MR. JONES: Yes, four working groups.

36 Q All right. I wonder if I could take you first to
37 Tab 8 of the FNFC documents to identify the B.C.
38 First Nations Fisheries Action Plan. Could you
39 identify that document, Mr. Jones?

40 MR. JONES: I know the document. Here, yes, that's the
41 correct document.

42 Q And could you give the Commissioner a bit of
43 history of that document?

44 MR. JONES: The B.C. Aboriginal Fisheries Commission
45 ceased to function and so there was a void in
46 First Nations working together on a province-wide
47 level to address Fisheries issues. The leadership

1 council, which was made up of the First Nations
2 Summit, the Union of B.C. Indian Chiefs and the
3 B.C. Assembly of First Nations brought First
4 Nations together in several dialogue sessions to
5 develop this action plan. So I participated in
6 those meetings and helped to kind of write this
7 action plan. It focused on half a dozen key
8 topics like relationships and reconciliation,
9 management, allocation, habitat protection.

10 MS. GAERTNER: Thank you. I'm wondering if I could
11 have this document marked as the next exhibit.
12 Sorry, I didn't see that.

13 THE REGISTRAR: Yes, you can. That'll be Exhibit 1189.
14 That refers to your Tab 8.

15 MS. GAERTNER: All right. So that was Tab 8.

16
17 EXHIBIT 1189: B.C. First Nations Fisheries
18 Action Plan
19

20 MS. GAERTNER:

21 Q And following from the development of the action
22 plan, we have the First Nations Fisheries
23 Council's Statement of Solidarity; is that
24 correct? And that's at Tab 9 of the First Nation
25 Coalition document.

26 MR. JONES: Yeah, and this was developed at an annual
27 assembly so we have an annual meeting where many
28 First Nations attend. And this was a document
29 that came out of the meeting in the fall of 2010.

30 MS. GAERTNER: Could I have that marked as the next
31 exhibit?

32 THE REGISTRAR: Exhibit 1190.

33
34 EXHIBIT 1190: B.C. First Nations Fisheries
35 Counsel - Statement of Solidarity on
36 Fisheries and Aquatic Resources Joint
37 Management
38

39 MR. JONES: And these meetings are attended by the
40 Department of Fisheries and Oceans so we had some
41 Ottawa staff, as well as B.C. staff attending.

42 MS. GAERTNER:

43 Q Thank you. And then if I could then take you to
44 Tab 10 of our documents? Do you recognize this
45 document?

46 MR. JONES: Yes, that's a Commitment to Action and
47 Results that was signed by the Fisheries Council

1 and the Department of Fisheries and Oceans in June
2 2010.

3 MS. GAERTNER: Could I have that marked as the next
4 exhibit?

5 THE REGISTRAR: 1191.
6

7 EXHIBIT 1191: Commitment to Action and
8 Results between the First Nations Fisheries
9 Council and Department of Fisheries and
10 Oceans
11

12 MS. GAERTNER:

13 Q And in addition, one of the commitments to action
14 included the formation of the working groups; is
15 that correct?

16 MR. JONES: Yes.

17 Q And if I could then take you to Tab 15, which is
18 the first of the terms of reference for the
19 working groups that are occurring, which is the
20 co-management working group?

21 MR. JONES: Yes, that's correct.

22 Q And is that its terms of reference?

23 MR. JONES: Yes.

24 MS. GAERTNER: Could I have that marked as the next
25 exhibit?

26 THE REGISTRAR: Exhibit 1191 (sic).
27

28 EXHIBIT 1192: First Nations Fisheries
29 Council Co-Management Working Group Terms of
30 Reference
31

32 MS. GAERTNER:

33 Q And could I then take you to Tab 16 of our
34 documents?

35 THE REGISTRAR: I'm sorry, that should be 92.

36 MS. GAERTNER:

37 Q And take you to Tab 16, which is the Economic
38 Access Working Group Terms of Reference, which
39 you're a chair of; is that correct?

40 MR. JONES: Yes, it is. And I'll just note that each
41 of these working groups also has a work plan with
42 some priority areas to work on. This was over the
43 2010/'11 fiscal year. And the work group is a
44 joint First Nation and DFO working group so it has
45 six First Nation and six DFO representatives.

46 MS. GAERTNER: So could I have that one marked as the
47 next exhibit?

1 THE REGISTRAR: Exhibit 1193.

2

3

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6

7

MS. GAERTNER:

8

Q And then turning to Tab 17 of the First Nation
9 Coalitions, you have the Working Group Terms of
10 Reference of the Section 35 or the FSC Terms of
11 Reference; is that correct?

12

MR. JONES: Yes.

13

MS. GAERTNER: May I have that marked as the next
14 exhibit?

15

THE REGISTRAR: 1194.

16

17

18

19

20

21

22

MS. GAERTNER:

23

Q And finally, at Tab 18, there's the Aquaculture
24 Working Group Terms of Reference?

25

MR. JONES: That's correct.

26

MS. GAERTNER: Could I have that marked as the next
27 exhibit?

28

THE REGISTRAR: 1195.

29

30

31

32

33

34

MS. GAERTNER:

35

Q And is it fair, Mr. Jones, to observe that these
36 four working areas were key areas that both DFO
37 and First Nations identified as requiring
38 sufficient concentration at the provincial-wide
39 level in order to move issues forward?

40

MR. JONES: Yes, those were thought to be the areas
41 that were impediments to making progress on our
42 relationship.

43

Q And finally, one other document that I'd like
44 tendered as part of the backdrop here is at Tab 13
45 of our materials. And do you recognize that
46 document, Mr. Jones?

47

MR. JONES: Yes, I do.

1 Q And what is that?

2 MR. JONES: It was a survey that the First Nation
3 Fisheries Council commissioned to assess public
4 opinion on key Fisheries issues such as food,
5 social, ceremonial fisheries and also First
6 Nations economic access to fisheries.

7 MS. GAERTNER: Could I have that marked as the next
8 exhibit?

9 THE COMMISSIONER: Exhibit Number 1196.

10

11 EXHIBIT 1196: First Nations Fisheries
12 Council Public perception audit November 10,
13 2010
14

15 MS. GAERTNER:

16 Q And is it fair to say that throughout this
17 developmental stage, if I may use those words, of
18 the First Nations Fisheries Council that it was
19 important from a First Nations perspective to
20 reach consensus with the Department on not only
21 the issues but the goals and the principles that
22 would be used to move these issues forward?

23 MR. JONES: Yes, and that's part of what the work plan
24 does. So often a discussion paper is developed
25 which might lay out principles or objectives and
26 then that goes through a Tier 1 process with First
27 Nations and then through a Tier 2 process with
28 DFO. And it generally lays out an approach,
29 whether it's to co-management or to economic
30 access or food, social, ceremonial Fisheries.

31 Q Is there anything on those that you'd like to
32 raise at this point in time? Otherwise, I'll take
33 you to the next matter.

34 MR. JONES: Yeah, I think we've made some progress on
35 all of them but I think the time commitment is
36 fairly large for those groups. They generally
37 meet monthly and so they spend quite a bit of time
38 developing their work plan but in some cases they
39 still have to get down and actually do the work.
40 I chair the Economic Access Work Group and, for
41 instance, some of the items in our action plan are
42 to try to improve the PICFI program so there are
43 First Nations issues around how that program has
44 been implemented. And so we've been striving to
45 develop better ways of implementing it. Another
46 thing has to do with trying to have that program
47 renewed for a second phase. It's a sunset program

1 that ends in March 2010.

2 THE COMMISSIONER: Ms. Gaertner, just a brief question.

3 On Tab 9 --

4 MS. GAERTNER: The Statement of Solidarity?

5 THE COMMISSIONER: It's the fifth "whereas", which
6 says:

7

8 Whereas the First Nations Fisheries Council
9 has been empowered by First Nations
10 leadership in B.C.

11

12 I just wonder if you could just clear up who's
13 being referred to there as "First Nations
14 leadership in B.C."?

15 MS. GAERTNER: Absolutely.

16 THE COMMISSIONER: Thank you.

17 MS. GAERTNER: Mr. Jones will be able to answer that
18 question for sure.

19 Q You see in the "whereas" clause that the
20 Commissioner has asked you around how you've been
21 empowered by the leadership in B.C. to implement
22 the action plan and the tasks that are associated.
23 So could you give the Commissioner the background
24 of that?

25 MR. JONES: Yeah, so this involved community dialogue
26 sessions, that an interim Fisheries Council was
27 set up. They went out and had dialogue sessions
28 in the different First Nations communities around
29 a structure for the First Nations Fisheries
30 Council. And there was a number of options given.
31 And then in the end, this structure based on 14
32 geographic areas in the province was generally
33 supported. And so there was another meeting with
34 First Nations leaders to review that and provide a
35 mandate for the Fisheries Council. Actually one
36 of the issues in the action plan was to put in
37 place a province-wide fisheries organization and
38 so the Fisheries Council has a mandate of
39 implementing the action plan.

40 THE COMMISSIONER: Thank you very much.

41 MR. JONES: And I think when I mentioned the PICFI
42 program, I said it expired in 2010 and it's
43 actually March 2012 when that sunset program ends.

44 MS. GAERTNER:

45 Q Mr. Jones, I want to take you back to 2003 now.
46 And you're familiar with the Pearse-McRae task
47 group that was announced by the federal and

1 provincial governments at that point in time?

2 MR. JONES: Yes.

3 Q And could you advise the Commissioner about the
4 First Nations response to the appointment of that
5 task group and steps that were taken after that.

6 MR. JONES: Yeah, there was concern that First Nations
7 weren't involved in developing a vision for a
8 post-treaty fishery because that was one of the
9 main tasks that was given to the -- to Peter
10 Pearse and Don McRae. So First Nations, it was at
11 the time the B.C. Aboriginal Fisheries Commission
12 and the First Nations Summit brought to their
13 membership basically, we should form our own panel
14 to basically look at those issues. And so they
15 have subsequently got some funding from the DFO to
16 do that. And three members of the panel were
17 appointed. I was one of them.

18 And we were charged with developing a First
19 Nations vision for a post-treaty fishery and also
20 kind of advising on future management or
21 allocation in terms of how we could deal with some
22 of the issues around the fisheries and provide
23 kind of long-term stability to the fisheries here
24 in British Columbia. So it was a very broad
25 mandate and we achieved that by having public
26 meetings throughout the province. I think we had
27 seven public hearings where First Nations could
28 come and make submissions to our panel. We also
29 had a number of experts who prepared various
30 reports. We had one person that prepared a report
31 on Andrew Day on the New Zealand experience. And
32 also other examples were around. I think Brenda
33 Gaertner prepared a document for us on legal
34 issues.

35 Q I'm wondering if I could take you to Exhibit 493.

36 MS. GAERTNER: Which is Tab 14 in the Commission
37 documents, Mr. Commissioner. And that is the
38 actual report that was completed called "Our Place
39 at the Table".

40 Q Mr. Jones, are you willing to agree with that,
41 from a First Nations perspective, that report was
42 a compliment to the Pearse-McRae report, that that
43 was the report that provided a fuller view of the
44 issues from your perspective or from First Nations
45 perspectives?

46 MR. JONES: Yes, it provided a First Nations
47 perspective. And the reports were different in

1 their recommendations but there were a number of
2 complimentary kind of recommendations. And one
3 had to do with allocation whereas I think the
4 Pearse-McRae report recognized it through treaties
5 there is real allocation occurring and they
6 estimated something like a third of all the fish
7 in B.C. would likely be allocated to First Nations
8 through treaties whereas that might range up to 40
9 or 45 percent.

10 The First Nations Panel recommended a 50
11 percent allocation as a way of balancing Crown
12 title with the underlying Aboriginal title. And
13 this was as an interim measure to basically move
14 forward cooperatively kind of in management of
15 fisheries. There's a half a dozen recommendations
16 in the report. One is around the allocation,
17 another is around the need for joint management.
18 And another one around food, social, ceremonial
19 fisheries that we heard quite clearly in our
20 public hearings that food, social, ceremonial
21 needs of First Nations were not being met. And
22 this was quite surprising for me, this was 14
23 years after the **Sparrow** decision, to hear that
24 there were still these issues not being addressed.

25 MS. GAERTNER: And Mr. Commissioner, if I could bring
26 to your attention the vision of the B.C. Fisheries
27 from the First Nations perspective that's found at
28 "Our Place at the Table", as found at page 2 of
29 that document. And then a summary of the
30 recommendations is found at page 4 of that
31 document. And I'll just take Mr. Jones to page 2
32 for a moment.

33 Q And have you review those principles and then
34 confirm whether those were the principles that
35 arose from your discussions throughout the
36 province and whether, in your view, those are still
37 principles that First Nations hold today as a view
38 for their fisheries going forward?

39 MR. JONES: Yes, they are. Most of those principles
40 are incorporating into the First Nations Action
41 Plan as well.

42 Q Thank you. And if we could go to the summary of
43 the recommendations that's on page 4 of that
44 document?

45 MS. GAERTNER: They're fleshed out at pages 74 and 78,
46 Mr. Commissioner, but I'm going to take Mr. Jones
47 just to the summary that's found on page 4 for our

1 purposes today.

2 Q And you've mentioned a number of them. And in
3 particular, I wanted to take you to -- you've
4 mentioned the first two already. I notice also at
5 the third bullet:

6
7 First Nations themselves must address
8 intertribal allocations.
9

10 And we haven't heard too much about that issue in
11 the work of co-management and I wonder if you
12 could expound on that?

13 MR. JONES: Yeah, I think the current approach through
14 the treaty process is for the Crown to negotiate
15 fish allocations with individual First Nations or
16 treaty groups. What we saw from looking at other
17 examples where kind of allocation was dealt with on
18 more of a nationwide basis were that First Nations
19 themselves addressing those allocations provided
20 some incentive to work together on management so a
21 prouder way of bringing First Nations together.
22 So this recommendation really is around some
23 balance between we recognize that First Nations
24 have the rights and interests and will have
25 allocations and manage the allocations but there's
26 also a need for First Nations to work together
27 basically and to address management issues.

28 And the examples I provided earlier were
29 around the Northwest Indian Fish Commission, which
30 was a Tier 1 process for U.S. tribes in the
31 Washington area to manage fish. And then also in
32 the example of New Zealand, there was a Maori
33 Fisheries Commission, which was set up by statute
34 to hold fish allocations which were provided to
35 Maori while a process for allocation among the iwi
36 or Maori tribes was developed. And the Maori
37 tribes were able to develop a framework over a
38 period of about ten years that distributes the
39 benefits among individual tribes. But the Maori
40 Commission still provides more of a central role
41 and has helped to give the Maori an important
42 place in the New Zealand fishery. They currently
43 manage something like 40 percent of all the fish
44 quotas and licences in New Zealand.

45 Q And I'm going to turn to those other models with
46 you in a bit of time. I'm just going to now take
47 you to document one of the First Nations

1 Coalitions document, which is the letter from the
2 First Nations Leadership Council to The Honourable
3 Keith Ashfield. Are you able to recognize this
4 letter? It was a letter that was copied to the
5 First Nations Fisheries Council.

6 MR. JONES: Yes, I recognize that letter.

7 Q And you'll see at page 2 of that letter that the
8 First Nations are listing the key items that re
9 still needing resolution and discussion with the
10 Federal Crown and Department of Fisheries and
11 Oceans?

12 MR. JONES: Yes.

13 Q And would you agree that that list provides an
14 accurate reflection of the key matters are still
15 outstanding?

16 MR. JONES: Yes, I would. I guess the only one which
17 is not on that list is around the renewal of the
18 PICFI program. And so we had a workshop in early
19 June with First Nations where we had brought
20 support for a position that the PICFI program
21 should be renewed and additional funding should be
22 put towards transferring access to First Nations.
23 But definitely on the side of co-management and
24 implementing court decisions, these are all key
25 issues in the province.

26 MS. GAERTNER: All right. I wonder if I could have that
27 marked as the next exhibit?

28 THE REGISTRAR: That's marked as Exhibit 1197.

29
30 EXHIBIT 1197: First Nations Leadership
31 Council letter to The Honourable Keith
32 Ashfield dated June 16, 2011
33

34 MS. GAERTNER:

35 Q Commission counsel took all of the panel to the
36 issues of joint management or co-management and we
37 had initial discussion on some of the benefits
38 around co-management for the sustainability of the
39 fisheries. And as I was listening to the evidence
40 this morning, I heard about the benefits of having
41 First Nations knowledge added to the management.

42 Are there other benefits for collaborative
43 management for sustainability of fisheries in
44 addition to the traditional ecological knowledge?
45 And in particular, I'd like each of you or any of
46 you to speak on the responsibilities that First
47 Nations have and the necessity of ensuring that

1 those responsibilities have a place at the table.
2 MR. JONES: Maybe I'll start then. I think that our
3 First Nations all along the migratory route that
4 salmon take both in the coast and also up the
5 river and those First Nations also have a say over
6 the habitat in the areas and so that's kind of why
7 First Nations need to be involved.

8 And as we've seen in other areas, we provide
9 stewardship for the fish and also, as Chief Saul
10 Terry mentioned, that traditional knowledge of
11 both the territory, the fish, but also working
12 together with other groups in the watershed. I
13 know in Haida Gwaii, our Council of Haida Nation
14 has made great efforts to work with local
15 communities and develop common positions on issues
16 like protected areas. And I think on salmon
17 there's the similar opportunity.

18 Q And have you found in Haida Gwaii, for example,
19 that working collaboratively on the ground like
20 that, in fact, results in a more efficient
21 delivery of programs and services around habitat
22 protection and management, that that actually
23 works well for both, if I was to say, the more
24 strategic governments like the Department of
25 Fisheries and Oceans and the local governments
26 that are in place?

27 MR. JONES: It works very well with organizations like
28 Parks Canada, which does have more of a localized
29 management authority, where you have a park
30 superintendent who can make most of the decisions
31 around management of an area. With the Department
32 of Fisheries and Oceans, definitely a challenge as
33 being the kind of top-down way that decisions are
34 made.

35 And then also, you're not talking to
36 decision-makers and then it comes down even into
37 negotiations where the person you're talking to
38 has to get approval from somewhere else so you
39 can't really talk about real solutions to issues.
40 But in some cases, we have been able to develop
41 agreements such as the Haida Nation does have a
42 razor clam agreement basically where we have dealt
43 with share harvest of razor clams and also we do
44 surveys of the razor clams.

45 MS. GAERTNER: All right. So this morning we heard a
46 bit about from all of the panel there seemed
47 consensus that First Nations nor DFO can define

1 collaborative or joint management on their own,
2 that that requires an integration or a
3 relationship between them.

4 Before I follow up on that, I want to give to
5 the Commissioner some documents in which there's
6 been a fair bit of discussion about co-management.
7 And I'll turn first to document 11 of our binder.
8 I'm still in the First Nations Coalition
9 documents. And that's Exhibit 295.

10 Q Mr. Jones, are you familiar with this document?
11 Sorry, it's not there yet.

12 MR. JONES: Yes, I am.

13 Q And at page 3 of that document, we begin with a
14 discussion on the various -- on definitions of co-
15 management; is that correct?

16 MR. JONES: Yes.

17 Q And at page 4 and over to 5, there is a discussion
18 on what's called the "Spectrum of Engagement".
19 I'm wondering if you could speak to that?

20 MR. JONES: Yeah, you saw the Statement of Solidarity
21 on Co-Management from the fall of 2010. So First
22 Nations endorsed the idea of joint management or
23 shared decision-making with DFO. From this
24 diagram, co-management does have a spectrum from
25 advisory to kind of shared management or
26 devolution. So you might take different
27 approaches for different fisheries. If something
28 is integral to a First Nations activity then you
29 may want to share management or devolution.

30 An example would be the razor claim fishery
31 where we do pretty much most of the work on
32 management of that fishery, the Haida Nation does,
33 and we meet maybe once a year on a joint shellfish
34 technical committee and basically review what's
35 gone on in the past year and then together approve
36 a management plan for the next year. Other
37 instances where maybe we're not involved in a
38 fishery, maybe an advisory role would be
39 appropriate. But in many cases, I think a shared
40 management model is what First Nations are seeking
41 for particularly stocks where they are kind of
42 active participants in the fisheries and then also
43 have important contributions to make to
44 stewardship or decision-making around management.

45 Q Thank you. And this document was produced as part
46 of the working group on co-management and provided
47 to the Department of Fisheries and Oceans; is that

1 correct?

2 MR. JONES: Yes, it was. And I think this is something
3 in the literature which is agreed that there is
4 this broad spectrum. And I think the thing to
5 look at here is that First Nations, because of
6 their special relationship with the Crown, and
7 because of our jurisdiction, the shared management
8 approach is the most appropriate.

9 Q I wonder if I could then take you to document 14
10 of our documents.

11 THE COMMISSIONER: Is Tab 11 already an exhibit?

12 MS. GAERTNER: It is. It's Exhibit --

13 THE REGISTRAR: 295.

14 MS. GAERTNER: -- 295.

15 THE COMMISSIONER: Thank you.

16 MS. GAERTNER: Thank you.

17 Q Mr. Jones, that's a paper that was done in March
18 2011 by Julie Gardner for the B.C. First Nations
19 Communities. Are you familiar with this document?

20 MR. JONES: Yes, I am.

21 MS. GAERTNER: I wonder if I could have that marked as
22 the next exhibit?

23 THE REGISTRAR: Exhibit 1198.

24
25 EXHIBIT 1198: Capacity for Co-Management of
26 Fisheries and Aquatic Resources: A Discussion
27 Document
28

29 MS. GAERTNER:

30 Q And I wonder if I could take you to pages 9, 10
31 and 11 and then Table 2 at page 13? And I wonder
32 if you could confirm and explain, first of all,
33 the discussion on the different types of
34 governance functions that she's reviewed here and
35 how that works with co-management?

36 MR. JONES: Well, governance really is around decision-
37 making and so there's different levels. One would
38 be kind of policymaking or direction-setting. So
39 this is kind of an important place to start. And
40 I think what we found in the case of Haida and
41 forestry, for instance, was that if we're not
42 involved in the policy the forests might all be
43 gone before you sit down to talk about how you
44 address forestry. And I think the same can happen
45 with fish. And then the other important part is
46 if you do have shared decision-making, then who
47 does it and who's accountable for what? And so

1 you know agreeing on kind of how you share those
2 responsibilities is an important part.

3 And then also just in terms of institutions.
4 First Nations do need infrastructure to
5 participate fully in management. In the case of
6 Gwaii Hanaas, we have a model where Haida are
7 hired preferentially and work within the Parks
8 Canada system and so we have an archipelago
9 management board but we also have a body which
10 manages the Gwaii Hanaas area and a majority of
11 the people that work there are Haida. Another
12 model, which is more the ones that we use with
13 fisheries is where we have a Haida fisheries
14 program and the Aboriginal fisheries strategy
15 provides some resources where we have biologists,
16 we have technical staff who are involved in
17 monitoring whether we do, for instance, a program
18 on coded-wire tag coho. We have a management
19 index stream for coho. So we're involved in a
20 range of technical activities in our area that
21 support management decisions that are made.

22 I wouldn't say that we have a co-management
23 relationship with the Department of Fisheries and
24 Oceans. It's kind of on the level we'd like and I
25 think that is something that we have in the Gwaii
26 Hanaas example but we've found considerable
27 resistance and I think it has to do a lot with the
28 structure of the Department of Fisheries and
29 Oceans, this kind of top-down structure and also
30 this willingness to kind of share power, which is
31 a barrier to putting in place effective, whether
32 they're institutions or committees, to work
33 together.

34 Q I want to turn you to Tab 2 of that document
35 because we move from the functions of co-
36 management to what is often referred to as a
37 scale-based analysis and the Commissioner has
38 heard about on a couple of occasions now the
39 importance of a scale-based analysis being applied
40 to the Fraser River sockeye salmon management. Is
41 this an example of the type of scale-based
42 analysis that has already begun to be done and
43 would need to be applied in the Fraser River?

44 MR. JONES: Yes, that is. And I think some of those
45 aspects certainly have moved a little further than
46 others. And I think what we were hearing is the
47 governance side, which does need political will

1 and political direction to reach a successful
2 result.

3 Q And then finally on this topic, I want to take you
4 to document 43, which is an article you wrote in
5 2003; is that correct? 2006? Sorry.

6 MR. JONES: Yes, it is.

7 Q So I want to take you to page 26 of that document.
8 And in this document you review a number of key
9 components with respect to fisheries management.
10 In the area of co-management, you say this:

11
12 A co-management framework needs to
13 distinguish between First Nations and third
14 parties.

15
16 And I'd like to use that sentence as a lifting-off
17 point to discuss with you and then with the other
18 members of the panel the challenges associate with
19 implementing a co-management system on the ground
20 in the present context and distinguishing between
21 a Tier 2 and Tier 3 process. So first of all, you
22 agree, does that remain your view that it needs to
23 distinguish between First Nations and third
24 parties?

25 MR. JONES: Yeah, that's critical.

26 Q And why is it critical?

27 MR. JONES: I think what First Nations have found in
28 existing processes is that you're put in the
29 position of giving tacit approval to decisions
30 that undermine First Nations rights and
31 responsibilities. I think in a way it's almost
32 discrimination through equality. So First Nations
33 do have rights under the Constitution that are
34 acknowledge, prior rights, to the fishery. And by
35 forcing First Nations to participate with other
36 groups on an equal basis you're not recognizing
37 that prior right which is quite different than the
38 privilege, which is given to resource users to
39 participate in fisheries. They might be licences
40 for commercial fisheries or licences for
41 recreational fisheries.

42 It doesn't also allow the depth of discussion
43 around governance. So because of First Nations
44 ownership of land, their prior occupation of the
45 area, if you don't allow a discussion. Those
46 issues often can't be discussed in the same room
47 that you're talking about, about licences and

1 access to the resource. I think it's also because
2 of the obligations of the Crown, a fiduciary
3 obligation from the Crown, to protect those rights
4 from First Nations. That's another reason why you
5 have to have separate processes for addressing
6 some of these key issues.

7 Q Mr. Huber, maybe I'll jump out of my plan and ask
8 you to respond to this issue, which is the
9 distinction between a Tier 2 and Tier 3. And I'll
10 just give you this as a little bit of a backdrop.
11 Earlier in the evidence in front of Commissioner
12 Cohen, he heard from Rob Morley on behalf of the
13 commercial industry and I don't have my fingers on
14 the transcript but I'll summarize his evidence
15 which was that if DFO is meeting with First
16 Nations, they need to also be meeting with
17 industry at the same time, that he wasn't
18 comfortable with that. Is that the kind of
19 pressure that you receive from industry when
20 dealing with First Nations and, if so, what type
21 of response is the Department developing around
22 that issue?

23 MR. HUBER: I haven't experienced that pressure. Now,
24 maybe if I were more on the coast at this point in
25 time where the commercial presence was greater I
26 would see that. But I agree with Russ, though,
27 that we need a Tier 1 process. We've said that.
28 We see that and the Department sees the value
29 there. And the Tier 2 process, it's, as I said
30 earlier, about communication. So you have to be
31 able to communicate effectively. First Nations
32 don't feel that in a multi-disciplinary
33 environment that their interests can be fairly
34 addressed. And personally, I don't think so
35 either. Now, there are ways to improve that in my
36 mind.

37 If we get these sub-regional AAROM bodies in
38 place, and I could use the lower Fraser as an
39 example. I've seen great strides being made by
40 Ernie and others in meeting with the recreational
41 fishers because of the conflicts there have been
42 on the lower river. So through their own
43 initiative, they're starting to develop that. And
44 I've asked this question. The upper Fraser and
45 the lower Fraser of the rec fishers, "Would you
46 come to a First Nations process and engage in a
47 discussion and planning?"

1 And to me, that's one area we could improve
2 where you could have integrated conversations but
3 instead of we have the representatives from
4 industry, including recreational fishers, come to
5 a First Nations-led forum. I think there would be
6 some benefits in that. And it's very important
7 that the relationships be built between the
8 recreational fishers and the commercial industry.
9 And this just showing up at Integrated Harvest
10 Planning Committee, I don't see that happening.
11 But I see ways it could be done and improved. And
12 so you do need both but I think you have to have
13 effective Tier 2 first.

14 Q And would you agree that if you're going to
15 include them in those discussions, you have to
16 make an important distinction between receiving
17 and exchanging information with sectors like the
18 commercial industry or the recreational, but
19 reaching decision-making processes with the First
20 Nations?

21 MR. HUBER: Well, First Nations have rights and others
22 don't. And I think a lot of the recreational and
23 commercial interests, a lot of Canadians, don't
24 understand the difference there. And I think that
25 has to be clear.

26 Q Thank you. Mr. Jones, I'm just going to take you
27 back to your paper. At page 31 of that paper, you
28 list a number of priority co-management issues. I
29 wonder if you could just scroll down those and
30 determine whether or not those are still, in your
31 view, important matters that need to be considered
32 when looking at co-management issues?

33 MR. JONES: Yes, those all are.

34 Q And then just while we're here, I'd like to take
35 you to page 35 of this paper because I expect it
36 might be helpful to the Commissioner when
37 considering implementation of Wild Salmon Policy.
38 In this paper, you also look at priority habitat
39 management issues; is that correct?

40 MR. JONES: Yes.

41 Q And you list a number of key items that you think
42 need to be looked at when looking at and improving
43 habitat conditions and on-the-ground
44 implementation of habitat monitoring and
45 enforcement matters; is that correct?

46 MR. JONES: Yes.

47 Q And do you still agree that those are useful

1 priority issues, as it relates to habitat
2 responsibilities and habitat management?

3 MR. JONES: Yes, I do. But I'll just note that these
4 are all in the context of a proposal to revise the
5 **Fisheries Act**. And so I think they're general
6 concerns which affect all First Nations but
7 there's likely a number of very specific issues in
8 different watersheds, which aren't included here.

9 MS. GAERTNER: Thank you. Now, having reviewed some of
10 these materials and these documents, my
11 observation is that we have a lot of material and
12 we've got a lot of discussion about the issues.
13 And so I want to turn now, Commissioner, to the
14 difference between understanding the issues to
15 walking the talk and putting them into place. And
16 I'm going to ask the panel a number of issues
17 around what the challenges associated with this
18 are.

19 Q And I'm going to take you first to document 48 in
20 our documents. Mr. Jones, do you recognize this
21 document? You'll need perhaps to go to the second
22 page. There it is.

23 MR. JONES: Yes, I do.

24 Q And what is that document?

25 MR. JONES: It's a paper that I prepared for the
26 evaluation director at DFO as part of their mid-
27 term evaluation of the PICFI program.

28 MS. GAERTNER: And could I have that marked as the next
29 exhibit?

30 THE REGISTRAR: Exhibit Number 1199.

31
32 EXHIBIT 1199: The trajectory of Canada's
33 Pacific Coast fisheries: Are current
34 fisheries policies adequate to cope with
35 environmental, social and economic change?
36

37 MS. GAERTNER:

38 Q And at page 13 and 14 of that document, you make
39 this statement, and while he's finding it I'll
40 just read it to you:

41
42 Governance reform them is clearly what is
43 needed to deal with wicked problems such as
44 fisheries allocation and fisheries and
45 coastal sustainability.
46

47 Do you remember that statement?

1 MR. JONES: Yes.

2 Q And why did you make that statement and why do you
3 believe that that's at the core of dealing with
4 fisheries allocation and fisheries sustainability?

5 MR. JONES: Well, governance is around decision-making
6 and so that's kind of what puts in place policies,
7 as well as operational management. So it lays the
8 whole foundation for effective management. And so
9 if you're not able to resolve that at the
10 beginning, you'll always have to be going back to
11 it. That's kind of what the idea of "wicked
12 problems" are, is that you think you've solved
13 something and then a year later it comes back
14 again. And it means you really didn't solve it
15 and so that's kind of the challenge with fisheries
16 is often you make a decision and that affects what
17 you can do down the road.

18 An example would be where you start buying
19 back licences to transfer to First Nations as a
20 way of addressing First Nations access to
21 fisheries. And if you've done that once, two
22 years later, you end up you can't go down and just
23 reallocate fisheries. Industry expects you to go
24 back and do the same thing again. So there's a
25 history behind the decisions that have been made.
26 And I think with governance, if we're looking at
27 basically an approach of having an effective Tier
28 1 process between First Nations is a fundamental
29 starting point for an effective Tier 2 process
30 which involves the Department of Fisheries and
31 Oceans or other government departments. And then
32 only then can you design an effective Tier 3
33 process. And if you don't do one right, it'll
34 always keep coming back to you.

35 And just for example, I participate in the
36 Integrated Harvest Planning Committee for DFO,
37 which is kind of a central salmon management
38 advisory process. So representation by First
39 Nations is a fundamental issue in that process and
40 it's a reason why we have very poor involvement or
41 engagement by First Nations in the process even
42 though many of the things that are decided about
43 management plans infringe on First Nations rights.
44 And so that's why we really need those effective
45 Tier 1 and Tier 2 processes.

46 And I think that the forum process and the
47 roadmap process that we heard about earlier have

1 potential to provide those processes. But I
2 think, as we've heard, they're not there yet and
3 they need the kind of support basically to make
4 them successful. And political will is a key part
5 of that. And governance is around power-sharing
6 and so that's why if you don't have the political
7 direction then all the well meaning that you have
8 from the negotiators won't go anywhere unless you
9 have the means to move ahead and actually make the
10 decisions. And also to negotiate requires the
11 ability to accommodate and to listen to issues but
12 also to accommodate issues.

13 Q Thank you. And I want to take you now to document
14 11, which is already Exhibit 295, document 11 in
15 our binder, and then I want to -- you recognize
16 that paper? It's a paper that was prepared for
17 the First Nations Fisheries Council.

18 MR. JONES: Yes, I do.

19 Q All right. And I want to take you to page 11 of
20 that document. And in particular, there's a
21 listing of two policy barriers for achieving co-
22 management for aquatic resources in British
23 Columbia.

24 THE COMMISSIONER: I'm sorry. Which document are you
25 on?

26 MS. GAERTNER: Sorry. I'm in Tab 11 of our documents,
27 Commissioner.

28 THE COMMISSIONER: Thank you.

29 MS. GAERTNER: And I'm at page 11.

30 Q Do you agree that those are policy barriers for
31 achieving co-management?

32 MR. JONES: Yeah, I think those are policy barriers.
33 As I mentioned, with the example with Gwaii
34 Haanas, we've developed a mechanism where we can
35 work together to make consensus decisions, which
36 become recommendations to basically the Minister
37 of Fisheries and also the Haida Nation. And in
38 most cases, if you've gone through that process,
39 no one is going to turn it on its end so you end
40 up effectively kind of being able to co-manage
41 through a collaborative process.

42 The one thing I noticed, the other policy
43 barrier, I think, is around incentives for co-
44 management. And I think some of the incentives,
45 whether they're around the governance side or the
46 ability to address allocation issues really aren't
47 there yet. And I think that's really with the

1 forum and the roadmap process you need that, as
2 well as some oversight of the process.

3 THE COMMISSIONER: Ms. Gaertner, maybe this is the
4 wrong place to ask this question but if I can just
5 put it out there and you can deal with it, as you
6 go through these materials.

7 MS. GAERTNER: Please.

8 THE COMMISSIONER: What I'm trying to follow is, in
9 these different discussions and statements and
10 papers that exist on the topic of co-management,
11 and Mr. Jones has referred to a new governance
12 regime or model, is that concept that he's
13 addressing in his materials and in his writings
14 the result of which would mean that the existing
15 involvement of First Nations representation be it
16 on the Fraser River Panel, on the IHPC or the
17 Integrated Fisheries Management Plan and so on,
18 would no longer exist and would move or shift to a
19 different model so that even if those steps from
20 the management side continue, they would not
21 continue with First Nations representation or they
22 would have a different kind of representation
23 flowing out of a co-management model.

24 I'm just trying to line up what he's talking
25 about looking forward, what exists now and how the
26 two relate one to the other, if they relate at
27 all.

28 MS. GAERTNER: That's a fantastic question. And I
29 don't need to repeat it.

30 MR. JONES: Yes, I think it does mean that there has to
31 be the ability to make changes. So if you're
32 going to negotiate a co-management arrangement,
33 both the Department of Fisheries and Oceans and
34 First Nations have to bring to the table the
35 ability to understand each other's interests and
36 negotiate compromises to arrive at something which
37 does provide for sustainable fisheries, addresses
38 the interests of First Nations and I think
39 accommodates the interests of others in the
40 fishery.

41 And I participate, for instance, in the
42 Pacific Salmon Commission, so the Fraser River
43 Panel is not a forum which adequately accommodates
44 First Nations, in my opinion. First Nations are a
45 minority on that panel even though over the last
46 ten years I think the Fraser fishery has been
47 closed to commercial for half-a-dozen years or so

1 and the main fishery has been First Nations. It's
2 really the Fraser Panel, which is making decisions
3 on the fishery and it really needs more First
4 Nations say in what's happening.

5 I think with the forum and roadmap processes,
6 those have been processes which have been
7 developing through discussions between First
8 Nations and Department of Fisheries and Oceans.
9 And it sounds to me like they're on a trial.
10 They're not where they need to be yet and, as Mr.
11 Huber mentioned, there's barriers to getting there
12 in terms of resources, right or basically
13 flexibility and mandate for negotiators, that kind
14 of thing. But it's a start.

15 MS. GAERTNER: I'm going to pick up a little bit more
16 on that as I continue, Mr. Commissioner.

17 Q Just wanted to be clear about these policy issues
18 again. So the first one is:

19
20 The DFO cannot develop management
21 arrangements that fetter the authority of the
22 Minister.

23
24 And the other is:

25
26 The inability for DFO to develop a process
27 for the recognition of First Nations title
28 and rights.

29
30 Mr. Huber, these are classic issues that I'm sure
31 you're familiar with; is that correct?

32 MR. HUBER: Yes.

33 Q And where in your work do you feel -- what headway
34 are you making? We're going to get to some of the
35 other models that have been looked at in a bit but
36 do you agree that those are policy barriers and
37 that change needs to occur with respect to those?

38 MR. HUBER: They are barriers, although I would say
39 that the courts have been fettering the Minister's
40 authority here.

41 Q The courts have been informing the Minister's
42 authority?

43 MR. HUBER: Well, by that I mean the priority access,
44 different court decisions, clearly the Minister
45 has not only authority but he has responsibilities
46 to look after First Nations interests and be aware
47 of them. And our policies and programs, we have

1 to be careful that those rights are addressed and
2 respected. So although he has authority, he also
3 has responsibilities to First Nations.

4 So I look at that and when I think about this
5 and fettering the authority, I don't know, we need
6 to negotiate some better wording in the co-
7 management agreement where there is respect for
8 both authorities. And I think Haida is a good
9 example how they've tried to address that issue
10 where both parties recognized that each other had
11 authority. So I would hope we move away from
12 fettering the authority to something more
13 collaborative and respectful.

14 Q All right. And the second policy barrier that's
15 mentioned there is the inability of DFO to develop
16 a process for recognition of title and rights.
17 You're familiar with that challenge in your day-
18 to-day work; is that correct?

19 MR. HUBER: That's correct. And the province has
20 probably made greater gains than DFO in that
21 regard. But I would like to think that our
22 political leaders could meet and come up with
23 something together. Obviously, there's some
24 recognition there. Going back when we just issued
25 food fish licences to First Nations, I couldn't
26 get one. They obviously had rights that I didn't
27 or any other non-Aboriginal person didn't have a
28 right of access there. So in paper and in
29 practice we've long recognized there's some
30 special rights there. So I think we need to make
31 that step. That's a barrier that I don't think
32 would be too hard to overcome if people would get
33 together, the political leaders, and address that.

34 Q And would you agree that the approach that's been
35 used in the past whereby DFO advises First Nations
36 that they have to wait for treaty or land claims
37 agreements to have the issues of their rights
38 addressed is also a barrier that needs to be
39 addressed?

40 MR. HUBER: Definitely.

41 Q And do you agree that that's a matter that, if not
42 addressed, could jeopardize the sustainability of
43 Fraser River sockeye salmon?

44 MR. HUBER: Well, I mean the Department's got a
45 conservation mandate. And if they stick to that,
46 we should be able to protect the salmon. But it's
47 this whole relationship of working together and

1 First Nations exercising their role meaningfully
2 in that process. So it's more than just DFO
3 arbitrarily making conservation decisions, if
4 you're going to make it work.
5 Q Right. And we can't wait for treaties for that to
6 happen; is that correct?
7 MR. HUBER: No, absolutely not. Someone thought
8 treaties when AFS started and resolve most of them
9 in nine years. I don't know where they were when
10 they thought that.
11 Q Optimistic perhaps.
12 MR. HUBER: I'm optimistic but realistic.
13 MS. GAERTNER: All right. I want to just do a couple
14 of document things before we conclude. I'll try
15 to finish this in the next five minutes.
16 Q Mr. Jones, we've heard from you about the Gwaii
17 Haanas marine area and their agreements. I'd like
18 to take you to document 50 of our materials. And
19 that's already Exhibit 908 but is that the recent
20 agreement that extends the original 1993 agreement
21 to now include the marine area?
22 MR. JONES: Yes.
23 Q And does that include the recognition of mutual
24 assertions that you were speaking about?
25 MR. JONES: Yes, it does.
26 Q And a delegated authority with the Board to
27 provide recommendations?
28 MR. JONES: Yes.
29 Q Then I'd like to take you to document 51. And
30 this is an agreement that Haida have reached with
31 the Province of British Columbia; is that correct?
32 MR. JONES: Yes, it is.
33 Q And in that document, is there reciprocal
34 acknowledgments of the assertions both of the
35 Provincial Crown and the Haida Nation?
36 MR. JONES: Yes.
37 Q And have you found that to be a useful model for
38 moving forward in the present arena of government-
39 to-government agreements?
40 MR. JONES: Yes, and I'll just say that this was
41 founded also on an approach of shared decision-
42 making and the province's new relationship policy
43 and leadership by the premier were fundamental to
44 kind of getting this type of arrangement in place.
45 Q Thank you.
46 MR. JONES: And it also resulted in significant
47 conservation benefits. It really dealt with land

1 use and logging in Haida Gwaii and so it basically
2 provided a conservation regime and also kind of
3 shared benefits for First Nations for Haida.

4 MS. GAERTNER: Could I have that marked as the next
5 exhibit?

6 THE COMMISSIONER: Tab 50? Are you talking about Tab
7 50?

8 MS. GAERTNER: It is already marked as an exhibit.

9 MR. LUNN: No, this is 51.

10 THE COMMISSIONER: Oh, 51.

11 MS. GAERTNER: I know but Commissioner is asking me
12 about document 50 and that's Exhibit 908.

13 THE COMMISSIONER: Right. Thank you very much.

14 MS. GAERTNER: And document 51 is now going to be...?

15 THE REGISTRAR: 1200.

16

17 EXHIBIT 1200: Kunst'Aaguu - Kunst'Aavah
18 Reconciliation Protocol

19

20 MS. GAERTNER:

21 Q And then I'd like to take you to documents 52 and
22 53. You recognize that document, Mr. Jones?

23 MR. JONES: Yes, I do.

24 Q And what is that?

25 MR. JONES: It's an agreement that Council of Haida
26 Nation is part of the Coastal First Nations, which
27 is now Great Bear Initiative Coastal First
28 Nations. And so this was an agreement with the
29 Department of Fisheries and Oceans to work
30 together on developing an integrated management
31 plan for the Pacific North Coast Integrated
32 Management Area, which is a very large area that
33 goes from northern Vancouver Island to the Alaska
34 border and the Fisheries and Oceans has a mandate
35 under the **Oceans Act** to do that and the Council of
36 Haida Nation is working with a number of First
37 Nations on a government-to-government basis with
38 the Department of Fisheries and Oceans to develop
39 that plan. And the province recently became a
40 signatory to this agreement.

41 MS. GAERTNER: Could I have that marked as the next
42 exhibit?

43 THE REGISTRAR: Exhibit 1201.

44

45 EXHIBIT 1201: Memorandum of Understanding on
46 Pacific North Coast Integrated Management
47 Area Collaborative Oceans Governance

1 MS. GAERTNER:
2 Q And document 53 includes all of the appendices, as
3 I understand it? That's not our document 53.
4 MR. JONES: Yeah, that's a PNCIMA area.
5 Q Oh, that's the area?
6 MR. JONES: Yeah, that dark blue area that we're
7 developing the collaborative management plan.
8 Q I want to take you to page 13 of document 53.
9 MR. LUNN: I'm sorry. I don't think I have that
10 document. The one I have marked as 53 is the map
11 that I pulled up. I see it's 13 pages but...
12 MS. GAERTNER: You just don't have it?
13 MR. LUNN: No.
14 MS. GAERTNER: Okay. We'll work on that over the lunch
15 break and maybe it's all in that one document. Do
16 you have the exhibits attached to that one?
17 MR. LUNN: No, I see it's just three pages.
18 MS. GAERTNER: Three pages. All right. I'll come back
19 to that. Let's just mark two more documents, if I
20 may. I want to go to document 49.
21 Q Mr. Jones, are you familiar with this document?
22 MR. JONES: Yes, I am.
23 Q And this is a document in which you review a
24 number of different fisheries collaborative
25 management processes both here and around the
26 world?
27 MR. JONES: That's right.
28 MS. GAERTNER: May I have this marked as the next
29 exhibit?
30 MR. JONES: And I'll just mention that this kind of
31 expanded on the information that was provided in
32 "Our Place at the Table". And it does involve a
33 number of initiatives underway in British Columbia
34 and also several other areas.
35 THE REGISTRAR: Your Tab 49 will be marked as Exhibit
36 1202.
37
38 EXHIBIT 1202: Working Models for Fisheries
39 Collaborative Management
40
41 MS. GAERTNER:
42 Q And at page 35, of that document, you're actually
43 reviewing the Fraser Watershed process. That
44 begins at page 33. And you conclude with a number
45 of key challenges. And then over to page 36, you
46 raise three key components of where we need to go
47 in the future; is that correct?

1 MR. JONES: That's right.

2 Q Do you maintain those as being the key challenges
3 and how we need to move forward now?

4 MR. JONES: Yes, and I think there has been some
5 progress over the last few years but I think
6 there's still quite a ways to go. So I agree that
7 those are still key challenges.

8 Q and when you talked about political will, you're
9 referring to political will on the part of both
10 First Nations and the Department of Fisheries and
11 Oceans; is that correct?

12 MR. JONES: Yes, that's correct. But I think it also
13 is the willingness to negotiate and to understand
14 each other's interests and also to make
15 compromises.

16 Q You mentioned earlier in your evidence today the
17 importance of incentives. Is that sort of the
18 inspiration behind moving political will from your
19 perspective?

20 MR. JONES: That is part of it. What's the incentive
21 to develop management plans if there's no share of
22 fish or your authority basically to look after
23 habitat is not recognized, or you can't
24 participate in protecting in the stewardship of
25 your area?

26 MS. GAERTNER: All right. I note the time, Mr.
27 Commissioner. I'll pick up the issue of
28 incentives and move forward this afternoon.

29 THE COMMISSIONER: All right. Thank you.

30 THE REGISTRAR: The hearing is now adjourned till 2:00
31 p.m.

32

33 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

34 (PROCEEDINGS RECONVENED)

35

36 THE REGISTRAR: Hearing is now resumed.

37 THE COMMISSIONER: Ms. Gaertner, I apologize having to
38 interrupt just for a moment. I just -- I
39 mentioned to commission counsel this morning that
40 an unforeseen personal family matter has required
41 my attention for tomorrow morning, and because I
42 don't know exactly how the day is going to come
43 together, I thought it would be probably more
44 convenient to speak with him about postponing
45 tomorrow's panel until Thursday or the completion
46 of this panel until Thursday. And I believe he
47 has spoken briefly with commission -- with

1 participants' counsel. I regret having to do that
2 because I know how hard you all prepare for these
3 hearings and how dedicated and diligent you are
4 with respect to your preparation, but I simply
5 can't avoid this.

6 So I've suggested to the commission counsel,
7 Mr. McGowan, that after the hearing this
8 afternoon, he would speak with you again to sort
9 out any details around assisting as best we can to
10 meet your convenience. So thank you very much.

11 MS. GAERTNER: I understand. It's completely workable
12 for the First Nations representatives to
13 reschedule that way.

14 THE COMMISSIONER: Thank you, Ms. Gaertner.

15
16 CROSS-EXAMINATION BY MS. GAERTNER, continuing:
17

18 Q When we left off at lunch, we were working with
19 First Nations counsel's document 53, and we needed
20 to make sure we had the right document. I
21 understand we now have that; is that correct? And
22 for the record, it's the same document as what we
23 had at 52, except it includes all of the
24 appendices related to the PNCIMA model and I'd
25 like to have that marked as the next exhibit.

26 THE REGISTRAR: Exhibit 1203.
27

28 EXHIBIT 1203: Memorandum of Understanding on
29 Pacific North Coast Integrated Management
30 Area Collaborative Oceans Governance
31

32 MS. GAERTNER:

33 Q And I'd like to take Mr. Jones to page 13 of that
34 document, which is Figure 5, and Mr. Jones, this
35 is the model that is being used in the PNCIMA
36 work; is that correct?

37 MR. JONES: Yes, that's correct.

38 Q And for the purposes of our discussions here, of
39 relevance or importance this is the model that
40 includes a number of different First Nations
41 organizations; is that correct?

42 MR. JONES: Yes, it does. It includes First Nations
43 all the way from Northern Vancouver Island to
44 Haida Gwaii and the Prince Rupert area.

45 Q And so that's reflected in the far right-hand
46 corner of the governance model there?

47 MR. JONES: Yes. And the First Nations there have

1 agreed to work together with a -- through a
2 governance committee, so there's four members of
3 the governance committee from the Haida Gwaii, the
4 Prince Rupert area, the Central Coast and then
5 also the North Vancouver Islands area and then
6 those governance committee representatives sit on
7 a steering committee which is made up of federal
8 and provincial agencies and then also the four
9 governance committee representatives and I think
10 also some new additions to that, you know, are the
11 Province of B.C. this January and then also the
12 Mamwacolis (phonetic) First Nations group from
13 North Vancouver Island.

14 Q So that's -- and that's reflected in the Pacific
15 Interdepartmental Oceans Committee would have both
16 the federal and the provincial governments there
17 now?

18 MR. JONES: That's the -- the Interdepartmental Oceans
19 Committee is a federal/provincial committee which
20 has input to the bilateral coordination. So the
21 government-to-government process involves First
22 Nations, the federal government and the provincial
23 governments. And that's within a steering
24 committee and then there's also a -- here it says
25 secretariat, but the new name is the planning
26 office and so again, that's made up of
27 representatives of the different government
28 agencies, including First Nations.

29 Q And this model also includes, as noted in there, a
30 mechanism for stakeholder engagement working with
31 third parties; is that correct?

32 MR. JONES: That's right. And that was developed
33 jointly through the -- you know, the planning
34 office and the steering committee so it includes
35 forums that are held throughout the area twice a
36 year. There's also currently working groups being
37 set up to work on specific issues. Fisheries is
38 one of the issues. And then also there's some of
39 the existing advisory processes. Also there's
40 mechanisms to provide input, I guess, to the
41 marine plan for the PNCIMA area. That's kind of
42 what the -- what we're all working towards is an
43 integrated marine use plan for the PNCIMA area.
44 And then the schedule for doing that is currently
45 for June 2012 to have a draft plan which can be
46 recommended to governments for approval.

47 Q Thank you. All right. I want to shift the

1 conversation from the possible models that we've
2 talked about.

3 We spoke this morning about the importance of
4 political will, both on the part of First Nations
5 and on the part of the Department of Fisheries and
6 Oceans, and began to talk about the issue of
7 incentives. Grand Chief Saul Terry, you spoke
8 briefly this morning about the importance of
9 conservation and sustainability, somewhat, of
10 course, as a priority to the issue of allocation.
11 Could you expand on the types of incentives that
12 First Nations in the Fraser River watershed and
13 the Interior, those that you work closely with and
14 represent, what type of incentives they would like
15 to see as it relates to habitat in any kind of co-
16 management regime?

17 GRAND CHIEF TERRY: I guess you're asking me that in
18 the event that we're able to sit down and with a
19 good agreement bilaterally either on a nation-to-
20 nation or a government-to-government basis, so
21 certainly it -- the matter of addressing the issue
22 of habitat is -- would be part of the discussion.
23 Improving the habitat, you know, in terms of
24 enhancement development for the stocks of fish in
25 our respective territories, certainly that would
26 be -- an ability to do that would be an incentive.

27 Q And Mr. Todd, from your work with the various
28 First Nations on the Fraser River would you also
29 see that that type of habitat assessment or -- I'm
30 going to use the words habitat assessment,
31 rehabilitation and revitalization, all three of
32 those things, would it be an important route to
33 both ecosystem-based management and the Wild
34 Salmon Policy implementation?

35 MR. TODD: Yes, I agree that it would. There's a
36 certain amount of that work being undertaken by
37 some First Nation groups with the capacity to do
38 it. There doesn't at this time seem to be
39 linkages, at least directly, to seeing the
40 benefits or the results of that work, but it's
41 work that has to be done and it will help -- it'll
42 be one of the factors leading to the restoration
43 of ecosystem viability.

44 Q And a clear collaborative management process or
45 structure or governance structure would make that
46 easier for implementation?

47 MR. TODD: That would make it a lot easier, for sure.

1 Yes.

2 Q And Mr. Huber, would you agree with that?

3 MR. HUBER: Yes. The -- I think another thing with the
4 habitat though -- I had something in mind and I
5 lost it. But -- oh, is the referral system for
6 First Nations. A lot of developments are being
7 referred to them and they don't have the capacity
8 to respond, so somewhere where you have to build
9 that support in there.

10 Q And just on that front from a Department of
11 Fisheries and Oceans perspective, from an
12 incentive perspective, would you agree that a
13 clear collaborative management process that's
14 worked out with First Nations would help you
15 better meet your legal and constitutional
16 obligations?

17 MR. HUBER: Definitely, yes.

18 Q And would it help you better manage the fishery
19 that's your responsibility to manage?

20 MR. HUBER: It would, yes.

21 Q Now, Mr. Jones, in your discussions earlier you've
22 mentioned on a number of occasions the issue of
23 allocation. I want to take you to the
24 recommendation that's found at Our Place at the
25 Table and it's particularly the recommendation as
26 it relates to allocation and while -- that's
27 commission Tab 14, Exhibit 493. We can go just to
28 the recommendations. I think they're on the third
29 page, if I've got that right. No. Keep going.
30 Four. There it is.

31 And you'll see the recommendation as it
32 relates to allocation after, of course, the
33 priority of FSC:

34
35 As a starting point and as an interim
36 measure, Canada take immediate steps to
37 allocate to First Nations a minimum 50 per
38 cent share of all fisheries, with the
39 understanding that this may eventually reach
40 100 percent in some fisheries.
41

42 Now, as it relates to Fraser River sockeye salmon
43 we know, for example, in the Early Stuarts that
44 any allocations have already clearly reached -- if
45 there is any allocations to catch Early Stuart,
46 that often is a hundred percent to the First
47 Nations. Why did the First Nations panel think

1 that that was a critical component of moving
2 forward towards co-management?

3 MR. JONES: I think it comes back to First Nations
4 interests in the fishery, you know, which is, you
5 know, stems from occupation and use of the fish
6 from, you know, time immemorial. And I think with
7 -- as Dr. Harris yesterday, you know, talked about
8 kind of the historical, I guess, the law in a lot
9 of ways minimized kind of our access to that fish.
10 And so what this is trying to do is to seek some
11 reconciliation, you know, towards -- on the First
12 Nations access to fish.

13 I think the 50 percent, you know, comes from
14 recognizing that we're trying to balance
15 aboriginal title with Crown title and here it's
16 put in terms of an interim measure because there
17 is a treaty process, you know, to negotiate
18 shares, you know, between First Nations, you know,
19 in kind of long-term agreements. But right at
20 this point, where shares are relatively small, the
21 PICFI program is currently providing something
22 like eight or nine percent of -- retiring about
23 eight or nine percent of all licences and quotas
24 and transferring that to First Nations. That's
25 really just a start, you know, in terms of, you
26 know, what's required to provide incentives to
27 involve First Nations both so they have economic
28 benefits from a fishery, but also that there is
29 incentive to engage in collaborative management
30 activities.

31 Q Mr. Huber, what steps have DFO taken to secure a
32 mandate to negotiate such reallocations for the
33 Fraser River First Nations or the First Nations
34 along the Fraser River migratory route?

35 MR. HUBER: It's all developmental right now through
36 PICFI, building the foundation. The working
37 relationship between the First Nations and their
38 -- the fish that have been harvested through the
39 PICFI program are fish that have been purchased
40 from the commercial fleet, but it's not, like,
41 treaty-type commitments in the sense of committed
42 in agreement, a long-term agreement. And then, of
43 course, under AFS, the ATP program is -- fish been
44 bought out and they're also allocated under the FS
45 program to First Nations.

46 Q So when you go to Roadmap meetings and talk about
47 moving towards a co-management regime, do you have

1 a mandate to have discussions about reallocation?
2 MR. HUBER: We're not talking about that, no.
3 Q And so do you agree that that's a problem for
4 moving forward on co-management, given the --
5 MR. HUBER: Not --
6 Q -- clear --
7 MR. HUBER: -- at this point.
8 Q You don't believe it's a problem?
9 MR. HUBER: Not at this point. It will become but at
10 this point in the developmental stage, I don't
11 think it is.
12 Q And Mr. Todd, what do you say to that? Do you
13 agree that that's not a problem that he has an
14 allocation, or is it going to be a necessary part
15 of these discussions?
16 MR. HUBER: Me or...?
17 Q No, I'll start with Neil.
18 MR. TODD: It's definitely going to have to be a
19 necessary part of the discussions. I don't think
20 that it has to be finalized in a huge rush.
21 There's still a lot of -- as far as I'm aware
22 anyway, there's still quite a few other things
23 that -- issues and topics of discussion to clear
24 out of the way, but if -- if the department
25 doesn't acknowledge explicitly to First Nations
26 that allocation and access are out there as a goal
27 to be achieved through developing a joint
28 management process, if that's not clear pretty
29 darn soon, then I don't think that the -- I think
30 the progress made to date is probably going to
31 stall.
32 Q Mr. Jones, do you have anything to add, give the
33 work that you did at Our Place at the Table?
34 MR. JONES: I think over the last few years, you know,
35 there have been conservation issues, you know,
36 with Fraser sockeye and, you know, there have been
37 sometimes limited, the fishery has been limited to
38 food, social, ceremonial fisheries, so I agree
39 that over the last few years, you know, it makes
40 sense, you know, to focus on the conservation and
41 kind of the management. But there still is some
42 allocation. It's, you know, implicit, you know,
43 in food, social, ceremonial fisheries.
44 And then as the -- for instance, last year
45 when there was a very large return of Fraser
46 sockeye, you know, that was the -- when there was
47 an opportunity there was several economic

1 opportunities, fisheries that took place in the
2 Fraser. It was kind of the first time that the
3 PICFI program had been put in place to, you know,
4 retire licences and transfer allocations to the
5 Interior. I know there were some successful
6 fisheries.

7 I think it does provide kind of, in my view,
8 you know, an incentive, you know, for First
9 Nations to engage in management and there I'll
10 just draw on, you know, some of the examples I've
11 mentioned before with the Northwest Indian Fish
12 Commission. It was only after Judge Boldt, you
13 know, ruled that the tribes were entitled to up to
14 50 percent of salmon that they organized
15 themselves into a management body, the Northwest
16 Indian Fish Commission and then there was all
17 those benefits that flowed from that, you know,
18 from -- they managed their own fisheries, but they
19 also, you know, were involved in conservation and
20 also habitat measures, as well.

21 And I think, you know, the reason, I guess,
22 we identified this in Our Place at the Table -
23 and, you know, I've worked with the Haida Nation
24 and other First Nations for 20 years, and every
25 meeting you go to, that's what I hear, is
26 basically we've lost access to the fishery. You
27 know, we used to be -- have fishing communities
28 where our young people would learn from, you know,
29 going out with their father or their grandfather.
30 And the licensing regime that's been put in place,
31 you know, particularly on the Coast, you know, has
32 excluded First Nations through that fishery and
33 it's been through a kind of a market mechanism.

34 This PICFI program is a way of trying to
35 redress, you know, some of those policies and how
36 they affected, you know, the access of my people
37 to the fishery. Of course, in the Fraser, you
38 know, we heard from Dr. Harris that this happened
39 a hundred years ago, you know, when the weirs were
40 made illegal, right, and the sale of fish was made
41 illegal, we were limited to a food, social,
42 ceremonial fishery. So these steps that the
43 department has taken through the PICFI program are
44 the first step to addressing those longstanding
45 injustices. And they're also -- they have to
46 continue, or we will be basically just -- we won't
47 be able to resolve some of these longstanding

1 issues.

2 By identifying 50 percent, we're saying that
3 this is kind of a significant share of the
4 existing fishery. PICFI is a first step, but as I
5 mentioned, that's a sunset program. It ends in
6 March 2012. We had a meeting with First Nations -
7 this is First Nations from the Coast and from the
8 Interior - in June 2nd and 3rd in Richmond where
9 we talked about the PICFI program and where we're
10 going and there was support from all 55
11 representatives attended for renewal of the PICFI
12 program. We're looking for a little over \$400
13 million basically to go into continuing the
14 efforts that are started, efforts towards co-
15 management but also efforts towards retiring
16 licences and quota and transferring those to First
17 Nations.

18 And, Mr. Commissioner, it would make a great
19 deal of difference if you saw the benefit of that
20 and made some clear recommendations about a
21 continuation, you know, of those kinds of efforts
22 that, you know, have started. I know too if the
23 -- you know, with the Roadmap process, you know,
24 one of the things which was not mentioned -- I
25 think we've heard that over the last two years or
26 so there's been some progress and I think a lot of
27 that has to do with the fact that there is a
28 commission that's looking -- doing an inquiry on
29 Fraser sockeye and that's provided impetus to the
30 Department of Fisheries and Oceans to move ahead.

31 I think it would be very helpful if there was
32 some oversight of that process. I know here, you
33 know, there is opportunity to bring issues, so
34 someone like yourself, who's become familiar with
35 the fishery, you know, could certainly help to
36 resolve -- break log jams. This was something
37 that worked in the United States with the Boldt
38 decision.

39 Like after the Boldt decision, the parties,
40 you know, which would be the tribes, the federal
41 government and the state government, they weren't
42 used to working together and numerous issues came
43 up and Judge Boldt basically oversaw the process
44 and when disputes came up, they would bring those
45 issues to him and they would -- they reached
46 resolution on those issues, and it helped
47 basically to keep the process moving and also to,

1 you know, achieve the results that were in the
2 interests, long-term interests, of all the
3 parties.

4 Q So those are two recommendations that you're
5 asking that he consider?

6 MR. JONES: Yes.

7 Q So I'm just... Mr. Huber?

8 MR. HUBER: If I could just add, just to clarify, I
9 agree with Russ. That allocation issue is
10 important at this time.

11 Unfortunately, when PICFI started and we were
12 moving away from the mixed stock fishery or
13 reducing the harvest rates, we went into this
14 period when there just wasn't fish available. So
15 for many of the First Nations in the Interior,
16 there was it was hard for them to see talking
17 about development of economic fisheries in the
18 Interior when they felt their own food fisheries,
19 traditional fisheries, were being threatened. So
20 what I should qualify is say I think there should
21 be concurrent development that we should keep
22 moving with developing the co-management
23 framework, 'cause that framework is what you're
24 going to want to work within as these new
25 opportunities come along. And that will make a
26 more orderly transition.

27 But I wanted -- I didn't want to see us while
28 we're waiting for allocation decisions hold up
29 building the co-management framework or structure
30 that I think is needed.

31 Q They're hand-in-glove.

32 MR. HUBER: Yes.

33 Q Anybody else on this topic? Grand Chief Saul
34 Terry?

35 GRAND CHIEF TERRY: When you ask about incentives, I
36 think it's important that, you know, there's a lot
37 of things to be addressed and I believe that
38 dysfunction is not exclusive to the aboriginal
39 community. And I think that if we're looking for
40 incentives, we've got to find ways and means to be
41 able to get around a lot of the difficulties that
42 we've encountered over the years. And I think
43 that the matter of, for example, of allocation is
44 nothing new to be addressed for our people.

45 In -- for example, in the 1940s and early
46 '50s, there were times when our people were
47 restricted from fishing for our food. And to me,

1 I think some of that -- you know, what is the
2 management of the sockeye fishery been done? For
3 whom perhaps it is being done? And for a lot of
4 years I feel that it has been for industry, other
5 than aboriginal people. We've been -- you know,
6 there's no incentive to get involved with
7 something where you're not being considered as
8 part of the game.

9 And I think that for many years, we've been
10 making efforts to emphasize that we do need to
11 become and integral part of this whole process and
12 therefore, to me incentive would be more along the
13 lines of political matters that need to be
14 addressed. Talking about a program, PICFI, a
15 program, when in fact our people need an economic
16 resolution to the situation we find ourselves in.

17 And fishery is one of those resources that
18 perhaps could provide that, certainly. But --
19 and, you know, we look at, as well, the matter of
20 our culture. I think Russ here just touched on
21 the fact that our people are losing their -- a lot
22 of their culture because of the fact that there's
23 no resource upon which they could utilize the
24 passing on of practices and traditions within the
25 fishery. And those kind of incentives need to --
26 you know, to somehow be looked at and how are they
27 going to be accommodated, you know? And not even
28 speaking about the folks that are really into the
29 spiritual aspects from the resource, as well.

30 So, you know, if we're looking at incentives,
31 we got to go beyond the matter of enhancement
32 projects like habitat development and restitution
33 or improving the environment. I think it's got to
34 be far more reaching out -- far-reaching than
35 that.

36 Q Thank you. In the interest of time, I'm going to
37 have to leave this topic of incentives, but before
38 I do that, I'd like to just go to First Nations
39 Coalition's documents 117 and 118 -- 117 and 118.
40 Mr. Jones, these are communiqués that have -- the
41 First Nations Council have produced; do you
42 recognize these?

43 MR. JONES: Yes, I do.

44 MS. GAERTNER: May I have 117 marked as the next
45 exhibit?

46 THE REGISTRAR: Exhibit 1204.

47

1 EXHIBIT 1204: First Nations Fisheries
2 Council April 2011 Communiqué
3

4 MS. GAERTNER: And 118?
5 THE REGISTRAR: 1205.
6

7 EXHIBIT 1205: First Nations Fisheries
8 Council June 2011 Communiqué
9

10 MS. GAERTNER:

11 Q And in 118 at page 3 it's the report from your
12 economic access community dialogue sessions; is
13 that correct?

14 MR. JONES: Yes, it is. And I guess you'll see there
15 that the -- what we are looking for in kind of a
16 second round of the PICFI program, you know, would
17 be to bring the share of First Nation -- the First
18 Nations' share of commercial fisheries to 33
19 percent, so the current PICFI program is something
20 like eight or nine percent and that the -- so it
21 is looking at renewal of the program for something
22 like \$425 million. And I guess one thing to point
23 out is something like \$610 million was spent on
24 the East Coast after the Marshall decision, right
25 through the Marshall response initiative and also,
26 you know, to transfer access, you know, to First
27 Nations on the East Coast. So this would be kind
28 of an initial step at balancing kind of that --
29 those interests here on the West Coast.

30 Q Thank you. Mr. Huber, I have a couple of
31 questions for you that relate to just clearing up
32 some matters that arise under the -- from the
33 Policy and Practice Report. I wonder if I could
34 go to that now and in particular, paragraph 277.
35 You'll see there -- I'm not sure if you've had a
36 chance at all to look at this Policy and Practice
37 Report. It's a long one, so you may not have had
38 the opportunity, but these are documents that the
39 commission produces and this is my opportunity to
40 see if we need to correct or shift these. But
41 you'll see in paragraph 277 there's the
42 suggestion:
43

44 DFO considers participation in the Integrated
45 Fisheries Management Plan process to be the
46 basic form of fisheries co-management.
47

1 Do you agree with that statement and do you think
2 that that needs to be changed?

3 MR. HUBER: Yeah, I wouldn't agree with that. I think
4 the Wild Salmon Policy comes closer to the mark,
5 Step 4, if you look in the provisions in there
6 where it talks about integration and -- but it
7 also talks about how to get there. So, yeah, I
8 think it's got to be a lot more comprehensive than
9 what's written there.

10 Q And, in fact, the work that's underway directly
11 with First Nations is the basic form of fisheries
12 co-management that you're pursuing; is that
13 correct?

14 MR. HUBER: A much broader scope and a lot more
15 structured, yes.

16 Q And similarly, at the -- if you continue in that
17 paragraph:

18
19 However, according to DFO, "fisheries co-
20 management exists in its most advanced form
21 under Canada's various land claims
22 settlements where co-management is
23 legislated.

24
25 Do you agree with me that that should not be the
26 only form in which advanced co-management is
27 obtained?

28 MR. HUBER: Well, I would like to -- I would think that
29 by working with First Nations we can do something
30 better than that. We can, you know, achieve
31 something more satisfactory. I'm not sure from
32 what I've seen in treaties that there aren't room
33 for improvements there, and we're going to be in a
34 situation where we're going to be working with
35 First Nations where there's some negotiating
36 treaties. Some never will. And, of course, some
37 will have treaties, so I think what we're working
38 on is something that will accommodate the various
39 interests and enable us to manage the fisheries
40 together.

41 Q Thank you. I want to take you now to First
42 Nations Coalition's document 106. This is again a
43 question for you, Mr. Huber.

44 MR. LUNN: I have three CAN numbers under that tab.

45 MS. GAERTNER: Yes. You'll have to -- yeah, we'll have
46 to start just to get the -- well, we'll try to
47 mark them all together as one.

1 MR. LUNN: Okay.
2 MS. GAERTNER:
3 Q Mr. Huber, I see that you're a recipient of the
4 email that's attached -- that's on there and if
5 you go to the third page into that, you'll see
6 that it includes an attachment of the overview of
7 co-management in DFO Pacific Region Context and
8 Key Issues. Is that something that you recognize?
9 MR. HUBER: There's been many emails along that line.
10 Q Okay. Sorry. So if you go past -- out of the
11 email now, the second Ringtail document in the
12 bundle, as I understand this is a presentation
13 that was, from the materials, reading the
14 materials, this appears to be a presentation that
15 was made at an internal meeting of DFO in July of
16 2010 on co-management?
17 MR. HUBER: That's right. It was generated by Corey
18 Jackson.
19 Q And you were at that meeting and you -- and this
20 is a familiar presentation to you?
21 MR. HUBER: To be honest, I don't know if I was at that
22 meeting. There was so many meetings I'm at and I
23 don't get to all of them.
24 Q All right. So if I could take you back to the
25 front page, you'll see that you're a recipient of
26 this presentation?
27 MR. HUBER: I would, yes.
28 MS. GAERTNER: All right. Could I have that marked as
29 the next exhibit?
30 THE REGISTRAR: Exhibit 1206.
31 MS. GAERTNER: And could I mark both the email and the
32 presentation? They can be "A" and "B" if you
33 want.
34 THE REGISTRAR: "A" and "B". Are they connected?
35 MS. GAERTNER: Yes.
36 THE REGISTRAR: They are? Okay. Well, the first one
37 we'll mark as 1006-A (sic) and the second one
38 1006-B (sic)
39 MS. GAERTNER: 1206?
40 THE REGISTRAR: I'm sorry, 1206-A and 1206-B.
41 MS. GAERTNER: Thank you. And then if we could go to
42 page 2 -- hold on. Sorry, Mr. Commissioner. If I
43 can just have a moment.
44 THE REGISTRAR: Brenda, I need to correct, too. That
45 should be 1206 and 1206-A. I'm sorry.
46
47

1 EXHIBIT 1206: Email - Subject: RE: DFO Co-
2 Management Workshop/Planning Session
3

4 EXHIBIT 1206-A: Overview of Co-Management in
5 DFO Pacific Region: Context and Key Issues
6

7 MS. GAERTNER:

8 Q And then if -- actually, here's where it happens.
9 If you see the third Ringtail document there is
10 the agenda for this meeting. And Mr. Huber, you
11 mention that you go to a lot of meetings. I can
12 commiserate with you on that, but are you sure you
13 weren't at this meeting?

14 MR. HUBER: I --

15 Q This appears to have been a fairly important
16 meeting, given the --

17 MR. HUBER: I'm pretty sure I was at that meeting, now
18 that I'm --

19 Q Thank you.

20 MR. HUBER: -- looking at the content there. Yes.

21 MS. GAERTNER: Thank you very much. Could I have that
22 agenda marked as -- it can be in the same group
23 document.

24 THE REGISTRAR: That'll be marked as 1206-B.
25

26 EXHIBIT 1206-B: DFO Strategic Planning
27 Session Re: Co-Management
28

29 MS. GAERTNER:

30 Q And you'll see from the agenda or I see from the
31 agenda that in the morning discussions you have a
32 discussion on the presentation, but then in the
33 afternoon you go on to do some brainstorming on
34 the development of a co-management framework; is
35 that correct?

36 MR. HUBER: Yes.

37 Q Could you tell me how far DFO has gone in
38 developing and their understanding of the scope
39 and the purpose and the guiding principles and the
40 operational elements and considerations for co-
41 management?

42 MR. HUBER: Well, we've -- I mean, there's been a
43 number of iterations and it's -- and even -- and
44 more recently -- it continues to develop. We had
45 a Roadmap meeting last week where some new ideas
46 were generated, so -- and there's another meeting
47 even as this meeting is here today on co-

1 management that Corey Jackson is on. So it's
2 evolving as we make progress in our work with
3 First Nations, both through the Roadmap and with
4 the First Nations Fisheries Council co-management
5 working group and, of course, internally we're,
6 you know, advancing our ideas based on the work
7 we're doing.

8 Q And how are you getting your mandates for
9 proceeding forward on co-management?

10 MR. HUBER: Well, right now I've -- well, we have our
11 internal communications, but we're also -- have a
12 focus group is what I'd call it, where we even
13 have Ottawa staff engaged, so that we want to make
14 sure the communication between the -- for as far
15 as the Fraser and the marine approach co-
16 management goes, that we're engaged with area
17 staff with regional headquarters staff and with
18 Ottawa. So -- and Corey Jackson and I, on an
19 ongoing basis, update staff more broadly, but we
20 want to have a focus group so that as this
21 develops and issues come up, we've got clear lines
22 of communication all the way to Ottawa.

23 Q Great. I want to just -- well, if you could keep
24 that forward. Mr. Huber, in 2003 and 2004 the
25 FRAFS and the Department of Fisheries and Oceans
26 commissioned a paper regarding recommendations
27 associated with the watershed agreement; do you
28 recall that?

29 MR. HUBER: Yes.

30 Q And I wonder if I could have First Nations
31 Coalition document 37? Do you recognize that
32 paper?

33 MR. HUBER: Yes.

34 Q And is that the paper that was commissioned by the
35 department and by FRAFS?

36 MR. HUBER: Yes.

37 MS. GAERTNER: Could I have that marked as the next
38 exhibit?

39 THE REGISTRAR: 1207.

40
41 EXHIBIT 1207: Establishing a Fraser
42 Watershed Process
43

44 MS. GAERTNER:

45 Q And if I could go to the last page of that
46 document, there's 13 recommendations that were
47 presented in that paper. You'll recall that?

1 MR. HUBER: Yes.
2 Q You're familiar with this paper. Do you continue
3 to work with it?
4 MR. HUBER: I do.
5 Q Thank you.
6 MR. HUBER: It's a good paper.
7 Q Sorry. Right at the end is the recommendations.
8 Can I have it and I'll keep going with the
9 questions?
10 MR. LUNN: There's a three-page edition --
11 MS. GAERTNER: That's right.
12 MR. LUNN: -- Appendix E to this. Is that what you
13 want to go to?
14 MS. GAERTNER: That's right. That's exactly it.
15 Q At recommendation 4, Mr. Huber, is the
16 recommendations for the Department of Fisheries
17 and Oceans and it's over on page 2. There are
18 three recommendations, one of which is to secure a
19 commitment to resource that process and begin the
20 necessary long-term budget planning for it. How
21 well has the department done on that?
22 MR. HUBER: Very well.
23 Q How have you secured the commitment to resource
24 the watershed process and the long-term budget
25 that's required for it?
26 MR. HUBER: Well, we have resources from AFS, AAROM and
27 the PICFI program. The PICFI program has been the
28 co-management part of the PICFI program has really
29 helped us in the development and expand this
30 option, but AAROM and AFS funding helps people
31 attend the meetings and participate and helps, you
32 know, the process with communications and
33 administrative services.
34 Q So looking forward in terms of developing and
35 maintaining the capacity that would be required to
36 implement a co-management regime, do you agree
37 that that long-term budget planning is going to be
38 necessary so if PICFI is sunsetted, that we're
39 going to have some trouble?
40 MR. HUBER: It's definitely going to be an issue. And
41 I've -- looking at costing, I think the first
42 thing we're going to have to do is look at what we
43 can do with the existing AFS and AAROM resources,
44 but that'll be an issue definitely.
45 Q All right. And then the second recommendation is
46 that you obtain flexible mandates. How well are
47 you doing in obtaining the flexible mandates that

1 are necessary to negotiate the complex components
2 of a co-management regime?

3 MR. HUBER: The question that First Nations often ask
4 us at these meetings is how far the department's
5 willing to go. It's my experience over the years,
6 and I'm somewhat resistant to drawing that line.
7 I have seen over the years where we might have
8 been asked that question and when I look back,
9 we've passed -- you know, we've gone further than
10 we might have gone at one time. Because of the --
11 you know, there's politics on the First Nations
12 side and the department side, so I'm more one to
13 develop things -- believe in developing things
14 incrementally. Get a vision, get ideas on the
15 table, you know, keep making progress but not be
16 too positional. And it seems to me we've
17 implemented a lot of change once the comfort level
18 is there and people both in the department and
19 with First Nations are comfortable that the
20 changes that are being made are for the benefit of
21 the parties.

22 Q All right. And then the third is the transparent
23 and engaged chain of authority. That's where we
24 were just speaking in terms of being clear who in
25 Ottawa is going to be necessary in order to effect
26 the types of change that co-management would
27 require and who in region and how are you going to
28 access those during these negotiations. How well
29 have you done on that?

30 MR. HUBER: Well, I'm well aware of it. I've read that
31 paragraph a number of times.

32 Q What's -- sorry.

33 MR. HUBER: That's Nadia Bouffard's shop in Ottawa,
34 she's the Director General for Aboriginal Policy.
35 That would be our linkage to Ottawa and she sits
36 with the Deputy Minister. So what we want to do
37 is keep her updated and there will be points in
38 time where - especially if we get to the point in
39 January where we are in a position to begin
40 negotiation, we've actually advanced it that far -
41 then we're going to have to secure firmer mandates
42 at the senior levels.

43 Q We've heard on a number of occasions the value of
44 having a champion, somebody who has the clear ear
45 of Ottawa and in the case of the First Nations
46 would have the clear ear of the leadership in --
47 of the First Nations. Do you see that as a

1 valuable component of trying to negotiate out a
2 co-management arrangement?

3 MR. HUBER: Absolutely.

4 Q And would others agree?

5 MR. JONES: I think that's an essential part. And I'd
6 just give an example, with the development of the
7 PICFI program they identified Pat Chamut, who was
8 Assistant Deputy Minister in Ottawa at the time,
9 he'd been the Regional Director General here. You
10 know, he knew First Nations issues intimately.
11 You know, he was also involved in the Ottawa
12 process and he was able to bring kind of that --
13 the recommendations from Our Place at the Table,
14 you know, along with Pacific fisheries reform
15 through, you know, to get this new PICFI program,
16 which was addressing kind of additional resources
17 to provide commercial access to First Nations, as
18 well as the co-management and accountability and
19 such. I think for the Fraser process, I think
20 that is essential. You know, I know that there
21 are certainly some of the past Regional Director
22 Generals here, you know, could do that kind of --
23 fulfil that kind of function.

24 Q All right. If we had that dedicated leadership
25 and we had incentives and we had the necessary
26 funding. I know those are all ifs, but if we had
27 those, Mr. Huber, from -- and Mr. Todd, from your
28 work at Roadmap, how much time do we need to get
29 this done?

30 MR. HUBER: Well, I'm retiring next Spring so...

31 Q Well, that's -- but isn't that -- Mr. Huber, isn't
32 that significant, given the longstanding
33 relationship you have? Is there somebody that's
34 being trained up to step in your shoes?

35 MR. HUBER: Well, this came up last week and what I
36 would like -- because of the pending funding
37 crunch that's coming up, not that I'm retiring
38 that matters - we've got a lot of good people -
39 but the -- I would like to see this advanced by
40 next Spring to the point that we can demonstrate
41 to Ottawa and our staff and the region, that we
42 need to continue this process. There's going to
43 be priority-setting. There's only so much funding
44 and the department is going to have to make some
45 hard choices in what they're going to fund.

46 I would like to see that this -- we've made
47 enough progress and there's enough support from

1 the First Nations leadership and from the
2 department that this continues and we complete the
3 task of building this management structure, this
4 collaborative management, co-management, shared
5 joint management, whatever it come -- we agree to
6 call it. But I'd like to see this completed. To
7 me it's essential. It's essential for our staff.
8 We cannot manage the workloads when we're
9 scattered and not structured. We need agreements
10 and people need to know what the responsibilities
11 are.

12 So everybody, I think, will benefit from
13 completing this work. So whether we can do it
14 with the resources we'll have come April 1st next
15 year or not, I don't know, but I do know that I
16 would argue and make the case that this is an
17 essential work activity that needs to be completed
18 both in the region -- we've made a lot of
19 progress. We've spent a lot of money and the
20 relationships are being built and it would be, I
21 think, a real loss if we didn't continue.

22 Q Mr. Huber, what do you have to -- sorry, Mr. Todd,
23 what do you have to say about timing? How long do
24 you think it'll take?

25 MR. TODD: I think it's going to take, at a guess,
26 about at least three and a half years to get to a
27 point where both parties know whether an actual
28 working relationship, a joint management
29 agreement, is possible. I don't know that it
30 would be -- the terms of that agreement would be
31 negotiated by that time. I don't think so. I
32 think it's going to take a little longer than
33 that. But I think we will get to a -- what I
34 would call an end point of really knowing whether
35 we've hit a dead end and have to try something
36 else or whether we can proceed. I'm optimistic
37 that we would be proceeding on this course.

38 I think it would be valuable if this
39 commission of inquiry sees the value in what's
40 being talked about here today and throws its
41 weight behind that, I guess. I think that would
42 help in terms of the funding aspects. I guess I'm
43 a little bit pessimistic about the timeline, just
44 because of funding. We know that that's a
45 constraint in this present day and in Canada as a
46 whole.

47 I'm also wary of trying to expect too much

1 too fast from the First Nations side of things.
2 It took ten years for the tribes in the U.S. to
3 get it all together where they became an effective
4 Tier 1 organization. We're just really starting
5 to scratch the surface here within the Fraser
6 watershed in that regard. Through the efforts of
7 Grand Chief Saul Terry here, there's been some
8 good first steps made, but there's a long way to
9 go. And so therefore, I would just caution people
10 to not be in too much of a rush. But I think
11 three and a half years is pretty much a best guess
12 guesstimate as to we'll know. We'll know then as
13 to whether or not we're going to get into it or
14 whether we have to try something else.

15 Q And Mr. Jones made a comment earlier about the
16 value of having a third party like Commissioner
17 Cohen or otherwise to have the parties, both First
18 Nations and the Department of Fisheries and
19 Oceans, report to over a consecutive period.
20 Would you agree that that would be useful.

21 MR. TODD: I agree that that would be very useful.
22 There's a lot of things over the years that have
23 not progressed as well as or eventually -- as they
24 could have and eventually maybe even fell apart,
25 because there was not a checks and balance. There
26 was not a referee to go to and to help solve
27 issues and little roadblocks and log jams as they
28 occur, which they will do, having somebody like
29 that in a position to have the mandate to help
30 solve those things for the parties as they go
31 along will give it, the whole process, the best
32 chance of success.

33 MS. GAERTNER: Thank you. I'd like to have the
34 Appendix E to that paper that has the 13
35 recommendations marked as the next exhibit.

36 THE REGISTRAR: Yes, we'll mark that as 1207-A.

37
38 EXHIBIT 1207-A: Appendix E - Thirteen
39 Recommendations for achieving a First
40 Nation/DFO Fraser Watershed Process
41

42 MS. GAERTNER: Thank you. Mr. Commissioner, my time is
43 well up. I had a few other items that I wanted to
44 clear up and if there's any opportunity for that
45 before we finish the panel, that would be great,
46 but I better sit down. Thank you very much for
47 the time, gentlemen.

1 MR. MCGOWAN: Mr. Commissioner, the Province of British
2 Columbia and Canada have switched spots, so Mr.
3 Tyzuk will be next.

4 MR. TYZUK: Boris Tyzuk for the Province of British
5 Columbia.

6
7 CROSS-EXAMINATION BY MR. TYZUK:
8

9 Q Gentlemen, I want to follow on some of the
10 questions that Ms. Gaertner and others have asked.
11 I must say you have shortened my list of
12 questions, Ms. Gaertner.

13 MS. GAERTNER: Can I have some of your time?

14 MR. TYZUK: Won't go that far. But it has been quite
15 helpful.

16 Q I would like to go to Exhibit 1198, please, Mr.
17 Lunn, and it's more just to get a bit more of an
18 understanding - and Mr. Jones, this is your paper,
19 I believe, and if we go to page 35.

20 MR. LUNN: Perhaps that's the wrong document.

21 MR. TYZUK: What?

22 THE REGISTRAR: You said 1135?

23 MR. TYZUK: No, I -- sorry, 1198.

24 THE REGISTRAR: 1198.

25 MR. TYZUK: Is that it? The Jones one? No. I've got
26 the wrong number down. Okay. 1199? It's the
27 working models. I'm sorry. Oh, 1202. Okay. I
28 can't even say I was close. And, yes, if we go
29 here to page 35, please.

30 Q And I'd just like to, in the -- under
31 "Challenges", and we -- this came up a bit in Mr.
32 Todd's answers right here about how long it would
33 take, and we're talking about this lack of a
34 political process. I guess I'd like your views,
35 Mr. Jones, on what sort of a challenge do you see
36 this as and how long do you think you could get
37 the majority of First Nations to agree to this
38 type of a process? Or do you think that given the
39 experiences in the past you could?

40 MR. JONES: Maybe I'll give an example. You know, with
41 the First Nations Fishery Council, you know, we
42 developed an action plan, you know, in the
43 leadership council, basically took charge of that,
44 and then they established an interim council that
45 took -- and then over two years they developed an
46 organizational plan, you know, for the new
47 commission, and then the commission was formed

1 after two years. It's now been operating another
2 year and a half or two years since then. So I
3 think it does take -- you know, kind of
4 organization is not something that, you know, to
5 be a legitimate organization I think you have to
6 take the time to make sure that people who are
7 participating, are -- understand exactly what
8 they're doing. You know, you have to develop your
9 goals and your objectives so, you know, you know
10 why you're there. And then you also have to
11 figure out how you're going to address the issues
12 you want. And that all takes time.

13 Once you have an effective organization, I
14 think you can see all the things that you can do
15 and I think the Northwest Indian Fish Commission
16 is a perfect example, you know, of the many issues
17 that they deal with now. You know, besides
18 salmon, you know, they deal with shellfish and
19 ground fish management, they deal with **Endangered**
20 **Species Act**, they -- so I think they're -- but, I
21 think if you try to rush this initial process, I
22 think you might not end up with a -- kind of an
23 effective organization.

24 I guess in terms of -- you've got to think
25 when you see that challenge too, I mean, this was
26 written back in -- four or five years ago, right,
27 and I think there have been some -- there have
28 been developments since then. At that time I
29 think the Fraser Aboriginal Fisheries Secretariat
30 was still there, but even that process, the
31 technical process, was faltering, right, because
32 it didn't have the political support and I think
33 some of those dynamics have changed somewhat. I
34 think -- I'm encouraged by, you know, what I've
35 heard in terms of some of the recent developments.

36 Q Okay. And just to follow on in that, with the
37 First Nations Fisheries Commission, we've heard a
38 bit about it, but what sort of a mandate do they
39 have? Do they -- does the mandate extend to
40 dealing with allocation issues on behalf of First
41 Nations or is it more on sort of an upper level
42 relating to government? Or is it setting some
43 things out that then the membership can look at?
44 I guess the real question is is the First Nations
45 Fisheries Commission in a position to make binding
46 commitments on behalf of its members with respect
47 to everything from allocations to what their

1 rights and title might be to technical issues?
2 Big question. Maybe you can give me little
3 snippets of that or --

4 MR. JONES: Yeah, I think you're asking really about
5 what the role is of the First Nations Fishery
6 Council, you know, relative to individual First
7 Nations or other First Nations organizations. And
8 I think it is a -- it is a balance, right, because
9 as you know, the -- it's individual First Nations
10 that have aboriginal rights and title. It's not
11 the First Nations Fisheries Council. But there is
12 a -- the First Nations see the need for some
13 coordination on a provincial level and that's --
14 and we've gone through a process to build support.
15 You know, we have a -- we have a mandate. You
16 know, we have an action plan. And some issues
17 like -- like we wouldn't go and the fishery
18 council, I don't think, would necessarily be
19 involved in an allocation for Fraser River
20 sockeye, I think. And because there are other
21 organizations such as this foreign process which
22 are -- and the Roadmap process which are seeking
23 to address those kinds of issues, kind of over the
24 long term.

25 We are currently in a process, the fishery
26 council is, of developing kind of memorandum of
27 understandings, you know, with different -- like
28 the members of the leadership council, you know,
29 and also in the medium term, I guess with some of
30 the AAROM bodies, just in terms of what the
31 council does and what the other regional
32 organizations might do. But that's going to take
33 some time, as well.

34 I guess the bottom line is that the fishery
35 council, you know, does operate from a -- through
36 a consensus process, you know, among the
37 representatives and that -- so we can't take
38 positions, you know, that are contrary to a First
39 Nations -- or the organization that's there
40 wouldn't be able to -- might fall apart.

41 Q All right.

42 MR. JONES: And it doesn't mean that, you know, there's
43 not that you can't -- that there's not going to be
44 issues that those kinds of issues that just have
45 to be -- you have to have creative ways of dealing
46 with those issues. And I think the same has
47 happened with other organizations. I know with

1 the Northwest Indian Fish Commission, you know, on
2 issues of allocation, some tribal members have
3 gone to court against other members, you know,
4 about the allocations there and sometimes they're
5 successful and sometimes they're not, but I mean
6 having some form of mediation or dispute
7 resolution, you know, is a way of kind of
8 addressing the kinds of issues that you're talking
9 about, if you actually get to that point.

10 Q Okay. And on that -- and on the allocation issue,
11 because it's one that we've been -- talked about
12 -- that's been talked about a fair amount. I
13 believe in recommendation 3 of the report - was it
14 Exhibit 493, which was the --

15 MR. JONES: First Nations Panel Report?

16 Q Yeah. Yeah. And there you talk about First
17 Nations dealing with intertribal -- or inter-First
18 Nations allocations. Is there -- how do you
19 foresee that occurring? And then I'd ask that of
20 the other members of the panel, as well.

21 MR. JONES: Well, just as an example, earlier this
22 month, you know, as part of this workshop we had
23 -- I'm the chair of the Economic Access Work
24 Group, you know, one portion of that workshop, you
25 know, was to discuss intertribal sharing. And so,
26 you know, we were looking at principles, right.
27 We were also looking at, you know, how it might
28 apply -- work differently in different fisheries
29 and we got support for moving ahead with a kind of
30 a discussion paper to put something more formal,
31 you know, for discussion among First Nations.

32 I know with the -- in New Zealand, you know,
33 they took ten years to work out intertribal
34 allocation among the iwi, the different Maori
35 tribes. I know with the Northwest Indian Fish
36 Commission, they had to do that quite quickly, and
37 they came up with a kind of an understanding on
38 how they're going to share the 50 percent among
39 themselves, because the court told them that if
40 they didn't then they couldn't manage the fishery,
41 it would be the state or federal government
42 managing the fishery.

43 And then, I think, their intertribal sharing
44 has evolved over time since then. So it's not
45 necessarily something that all has to be dealt
46 with at once.

47 Q Yeah. And, sorry, I think you said there were 21

1 tribes --

2 MR. JONES: That's correct.

3 Q -- there? And how many First Nations would be
4 involved in the Fraser River sockeye allocation
5 process?

6 MR. JONES: I'd probably defer to Mr. Todd.

7 Q Mr. Todd?

8 MR. TODD: Or Grand Chief Saul --

9 Q Oh, sorry, or Grand Chief Terry on that?

10 GRAND CHIEF TERRY: Yes. We're looking at eight
11 nations that would be involved. Those -- by
12 nations, I mean collective communities coming
13 together and forming their nations. And
14 currently, for example, we've been working up to
15 and have now five of the nations coming together
16 and we comprise about 64 communities and numbering
17 about 36,000 people right now.

18 Q And that's with the intertribal treaty --

19 GRAND CHIEF TERRY: That's right.

20 Q -- Association. Now, on that, in terms of those
21 groups coming together, what sort of mandate -- or
22 have the individual, if I can call them, First
23 Nations given to the wider nation? Or, I guess,
24 what do you envisage and what has happened to
25 date?

26 GRAND CHIEF TERRY: We are currently working on having
27 the nation representatives been provided with the
28 authority or the mandate to make decisions that
29 would be binding on each in particular nation.
30 And then they come to a table and share that with
31 the other nation representatives, as well. And so
32 they -- we are working on that model of decision-
33 making and we think it is the most practical way
34 to go about it, not only politically but also
35 financially or economically, as well. So... yeah.

36 Q And you said you -- of the -- how many would you
37 -- you said you would envisage eight. Now, would
38 that be for the entire -- both the marine, the
39 lower, and the Upper Fraser?

40 GRAND CHIEF TERRY: No, that would be from the mouth of
41 the Fraser on right up to the farthest reaches of
42 the Fraser River and Columbia River systems.

43 Q So from the Musqueam right up to the Carrier
44 Sekani tribal council?

45 GRAND CHIEF TERRY: That's right.

46 Q Thank you. And the -- there were some questions
47 from the commissioner this morning and I'd just

1 like to follow up on that with all of you. In
2 terms of this co-management model, and I'll call
3 it that for now, co-management, shared management,
4 joint management, Mr. Huber, that you're working
5 on and what's coming from the First Nations
6 Fisheries Council and what Grand Chief Terry has
7 talked about, how would all those fit into the
8 existing processes that are there, that Canada has
9 obligations under the Pacific Salmon Treaty, the
10 Fraser River Panel, the IHPC, the Integrated
11 Fisheries Management Plan? How would all of this
12 fit into those in general and then specifically
13 with respect to the First Nations representation?
14 Grand Chief Terry, would you like to start that
15 one, please?

16 GRAND CHIEF TERRY: Thank you. Yes, the commissioner
17 had asked a question earlier on, as well, about
18 how our organizing and talking about these matters
19 here would affect current structures and we've
20 been in the -- making the representation that
21 along the river system, that our people be --
22 represent themselves to the Fraser River Panel and
23 that we would be able to do that utilizing the
24 system that is there and so we would be choosing
25 our representatives to that particular table. And
26 as was indicated earlier, it is currently we feel
27 unfair representation that exists there now and I
28 think that we need to have a close look at how
29 that -- the intertribal organization could perhaps
30 fill these positions on a much more fair and just
31 way.

32 Q Now, is that for the Fraser River Panel as well as
33 the Pacific Salmon Commission?

34 GRAND CHIEF TERRY: Well, the Fraser River Panel is
35 part of the treaty.

36 Q Yes.

37 GRAND CHIEF TERRY: So, yeah, it's part of the
38 management system of the --

39 Q Yeah. Okay.

40 GRAND CHIEF TERRY: -- PSC.

41 Q Mr. Jones?

42 MR. JONES: I'll just add, you know, some of these
43 processes that are in place are, you know, with
44 Integrated Harvest Planning Committee, that's a
45 relatively new process. It was something that was
46 put in place, you know, after the Pearse-McRae
47 report and Our Place at the Table report, and it

1 was, you know, kind of a -- meant to be an
2 integrated province-wide process with third
3 parties. And the mandate is fairly limited. You
4 know, it focused on developing an integrated
5 management plan for the next year, you know, for
6 the salmon fishery.

7 What I see, you know, through the Tier 1 and
8 Tier 2 processes is that the scope is much larger,
9 because you are dealing with more fundamental
10 issues around the fishery and it will inform those
11 other processes. Maybe those other processes need
12 the change. I'd also point out that with the
13 Fraser River Panel they're currently -- there's a
14 negotiation that started, you know, for the
15 renewal of that annex and it was -- the
16 agreement's been carried over for two years and so
17 it's to be renegotiated again after this
18 commission delivers its findings. And so there is
19 an opportunity to look at, you know, what kind of
20 changes would be necessary, you know, to support
21 better First Nations engagement or whether it's
22 consultation or accommodation of First Nation
23 interests, you know, through that Pacific Salmon
24 Treaty process.

25 Q Mr. Todd, do you have anything to add to that?

26 MR. TODD: I think I got my personal thoughts off on a
27 slight tangent there, but it was in relation to
28 the Fraser River Panel. I think that if I can try
29 to come back to your question, and to take up
30 where Chief Saul Terry left off there, it's
31 probably too soon to say just how current
32 management processes and functions will change as
33 a result of a joint management agreement for
34 Fraser River sockeye salmon or from Fraser River
35 salmon as a whole, I should say, so it's a little
36 too soon to predict. But the one thing that's --
37 I think is pretty safe to say is that there will
38 be much better management decision-making
39 processes.

40 And you asked about the Fraser Panel. Mr.
41 Jones just explained that the IHPC is sort of
42 something else again and very, very limited in
43 scope. But the Fraser River Panel is an important
44 decision-making -- in-season, particularly in-
45 season decision-making body for the prosecution of
46 fisheries and if the First Nations interests were
47 better represented at that panel, I can guarantee

1 you there would be better decisions made. The
2 panel is very largely influenced by commercial
3 interests and sort of the commercial aspect of the
4 sport fishing interests and sometimes that leads
5 to some interesting decisions.

6 2009, the year that we're kind of concerned
7 with here, I think, Mr. Commissioner, the Fraser
8 River Panel made a decision to open fishing by
9 First Nations in the Fraser River on Early Summer
10 run sockeye. They did so without knowing, having
11 any idea of what the in-season run size estimate
12 was. First Nations refused to go fishing, because
13 they needed better information than that. It's
14 just an example.

15 Q Mr. Huber? May as well.

16 MR. HUBER: Well, the work the First Nations Fisheries
17 Council is doing now, it's a relatively new
18 organization and the work we're doing with the
19 Roadmap, the forum process is an annual planning
20 process that involves the Fraser and the marine
21 approach area First Nations and we've actually
22 implemented that now, 'cause it worked and it was
23 supported. It'll be part of a -- the bigger --
24 the Roadmap, it's much more comprehensive. It
25 deals with things like stewardship and so we, in
26 the planning processes, we've got with the First
27 Nations Fisheries Council, we've got the co-
28 management working group, so we have DFO staff and
29 First Nations staff working together on that.

30 On the Roadmap process, we have -- or, rather
31 First Nations Fisheries Council representatives on
32 the planning group there, so we're making sure the
33 communication's there. We're meeting together to
34 sort out who's doing what, 'cause we're trying to
35 avoid duplication of effort, so by getting a good
36 team - and we do have a very good team of people
37 working together that have been appointed to these
38 -- to the working group and the co-management
39 working group and the Fraser Roadmap planning
40 group and so we will look at how we can work
41 effectively to build this co-management model.

42 The First Nations Fisheries Council is
43 focused on the region as a whole and if you look
44 at the framework, you -- they will be looking at
45 how these different things that are going on fit
46 together. And for the -- and the Roadmap will be
47 part of the provincial framework eventually, if it

1 succeeds in building a co-management structure,
2 collaborative management structure for the Fraser
3 marine approach area. You saw the PNCIMA already
4 for the North Coast.

5 So you can see, pieces are in development and
6 there's efforts being made by people to sort this
7 out so that we're not duplicating effort, but
8 we're also making sure there's mutual support to
9 get the work that needs to be done, and then
10 eventually, you know, I think we'll come out of
11 all this like how appointments are made to the
12 Fraser Panel, that may change. The Fraser Panel
13 will be there. Maybe the numbers of people on the
14 panel will change and how they're appointed, but
15 through this process we're trying to develop,
16 we'll find a much more effective way and much more
17 satisfactory way for First Nations to make those
18 appointments.

19 Q One last area that I want to get into and we've
20 spent a lot of time, you've focused on Tier 1 and
21 the First Nations Fishery Council is about that
22 and the ITO and other things and Tier 2 and the
23 joint management, and we've often heard about --
24 we've had a little bit of talk about Tier 3, which
25 I guess as I understand it, would include all
26 those who have an interest in the fishery, be they
27 the commercial fishers, the recreational fishers,
28 ENGOs and the public in general.

29 Now, in what you're talking about, what role
30 does Tier 3 have here? Or how do you envisage a
31 Tier 3, since this is -- you've mentioned it.
32 It's part of the whole process. May I start with
33 you, Grand Chief Terry?

34 GRAND CHIEF TERRY: Thank you. Yes. It's a -- it's
35 certainly a process that needs to be considered as
36 to how it will fit in on a nation -- in our
37 proposal, we've carried out a number of workshops
38 in which we discuss, for example, governance. We
39 also discuss policy development and policy-making
40 and then we also looked at relationship-building.
41 And that falls into that category. And for the
42 intertribal fishery treaty, it called for some
43 kind of relationship to be developed which would
44 safeguard the salmon to be returning back into our
45 territories because of the need for that
46 sustenance. And if we were able to get that
47 relationship going, then I think we would

1 certainly be able to convey the importance of it.
2 But we're at, one might say, in early stages of
3 development and it has not been an easy go of it
4 since January of 2009 and there continues to be
5 grave difficulties in pursuing our objective of
6 being able to have our voice heard as structured
7 on a nation-by-nation basis.

8 So it's been a challenge, but one of the
9 things that I, as a leader in there, is I'm
10 insisting that we go at our own pace because we
11 feel that it is too important a matter to be
12 rushed into and then -- and then find that we have
13 problems in terms of proceeding with the
14 development, whether it be on a -- between
15 ourselves as nations and maybe your historian,
16 perhaps, and -- or have an interest, but we've
17 encountered politically, socially and
18 economically, tremendous impacts to our peoples.
19 And many of that has to be overcome and dealt
20 with. At the same time, we're trying to resolve
21 some of these land and resource issues that need
22 to be addressed, as well. So it's a difficult row
23 to hoe, but I think it would be good to look at
24 third-party involvement.

25 Q Mr. Jones?

26 MR. JONES: Yes, I think third parties, you know, those
27 users with an interest in the fishery need to be
28 involved in developing management plans and having
29 input. I think that's a given. And it just
30 really is what is -- you know, what's -- when
31 should they be involved, when the issues are First
32 Nations issues?

33 And I'll just give an example from the
34 Integrated Harvest Planning Committee where food,
35 social, ceremonial fisheries are outside the
36 scope, you know, of that fishery, so allocations
37 for First Nations for that purpose aren't part of
38 what -- the plan. What's supposed to happen
39 instead is DFO is supposed to have bilateral
40 meetings with First Nations and try to resolve
41 those issues. But what we've seen is that to a
42 large extent, those discussions basically haven't
43 been effective so they haven't been -- they
44 haven't resulted in the changes that First Nations
45 want. The First Nations Fisheries Council does
46 have a food, social, ceremonial working group
47 together with DFO. It's a collaborative group.

1 And so that group has developed the work plan, but
2 they still have not made significant progress on
3 many of the issues. And I think the reason is is
4 that food, social, ceremonial purposes do have
5 potential to impact commercial or recreational
6 fisheries which, you know, do have a lot of say
7 and I think in how fisheries are managed. And
8 that's just another reason, you know, why building
9 these effective Tier 1 and Tier 2 processes is
10 important.

11 You pointed out -- you'd referred to the
12 paper I did on working models for collaborative
13 management. In there I looked at existing Tier 1,
14 Tier 2 and Tier 3 processes and you'll see that
15 there's several failed Tier 3 processes from
16 British Columbia. One was the Fraser Watershed
17 process and the other was the Skeena Watershed
18 process. And the reason those processes failed
19 was because there reached a point where the
20 Department of Fisheries and Oceans wasn't willing,
21 I guess, to negotiate the hard issues, you know,
22 that had to be dealt with in the watershed, or to
23 provide the incentives to deal with the hard
24 issues.

25 But having kind of a strong Tier 2 process or
26 Tier 1, you know, could have resolved those issues
27 to a point, I think, that would have probably
28 possibly made those other processes successful.
29 So it's just a different approach, you know, to --
30 I mean, you know where you want to get to but, you
31 know, if you don't put the building blocks in
32 place, you're not going to get -- you know, you're
33 reducing your chance of getting there.

34 MR. TYZUK: Thank you. Those are my questions, Mr.
35 Commissioner.

36 THE COMMISSIONER: Thank you.

37 MR. MCGOWAN: This might be an appropriate time for a
38 short break, Mr. Commissioner.

39 THE COMMISSIONER: Thank you.

40 THE REGISTRAR: Hearing will now recess for ten
41 minutes.

42
43 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
44 (PROCEEDINGS RECONVENED)
45

46 MR. EAST: Mr. Commissioner, Mark East, for the
47 Government of Canada. I'm here with my co-

1 counsel, Charles Fugère. I have 60 minutes in
2 total, so I'll use the first 30 minutes now and
3 the second half, I guess, first thing on Thursday
4 morning.

5 Most of my questions this afternoon are going
6 to be for Mr. Huber. What I would like to do in
7 the half hour that I have today is maybe step back
8 a bit away from the aspirational co-management
9 discussion we're having and return to it on
10 Thursday. I guess today what I'd like to do is
11 talk a little, get back into the trenches with
12 respect to the whole issue of consultation, and
13 particularly DFO's consultation with First
14 Nations. Because as I understand it, that's still
15 the world that we're in at the moment, as all the
16 parties seem to be working a Fraser Watershed, or
17 a coast-wide co-management process. So I'd like
18 to spend a bit of time on that.

19
20 CROSS-EXAMINATION BY MR. EAST:

21
22 Q First of all, perhaps I'd like to call up Tab 2 of
23 Canada's documents. I'd like to show this to you,
24 Mr. Huber. Now, this is a document called
25 "Exploring New Governance Approaches to Salmon in
26 BC: Current Advisory Processes" and it's by
27 someone named Andrew Day Consulting. I think his
28 name has come up earlier. And this is, it says:

29
30 A report prepared for the Department of
31 Fisheries and Oceans and the Integrated
32 Salmon Dialogue Forum.

33
34 And we've heard about that process in other
35 hearing dates. Mr. Huber, have you seen this
36 before, this document?

37 MR. HUBER: Yes, I have. I haven't -- I'm aware of it,
38 and I've glanced through it.

39 MR. EAST: I'd like to mark that as an exhibit, please.

40 THE REGISTRAR: That will be Exhibit 1208.

41
42 EXHIBIT 1208: Exploring New Governance
43 Approaches to Salmon in BC: Current Advisory
44 Processes and the Integrated Salmon Dialogue
45 Forum, Andrew Day Consulting
46
47

1 MR. EAST:

2 Q I'd like to go to page 5, first of all, because
3 there's a useful chart that I wanted to actually
4 to show to you, Mr. Huber, and in the dark --
5 you'll see in the top there's three, there's four,
6 five columns. On the left there's -- and I
7 understand the way this is set up is that this is
8 the different levels of engagement between
9 government and First Nations. And so you have
10 "Local", "Eco-regional (Larger Basin)" areas,
11 "North - South Coast, Yukon", "Pacific Regional/
12 Coastwide" and "National and International". Is
13 that a useful way of explaining the different
14 levels of engagement that government has with not
15 only First Nations but with other bodies?

16 MR. HUBER: It could be helpful to understand the
17 different engagements we have. Yes.

18 Q And I'm particularly interested in the dark row
19 starting at the far left, and it talks about
20 "First Nations bi-lateral discussions and
21 consultations", then it's "First Nations aggregate
22 discussions and consultation", and then "First
23 Nations Fishery Council" under "Pacific Regional".
24 Is that, like would you agree that that's a
25 representative description of the different levels
26 of engagement that DFO has at a macro level with
27 First Nations in B.C.?

28 MR. HUBER: Well, yes, we do have -- it's in the case
29 of the Watershed, the Roadmap and the Forum
30 process, it's even broader.

31 Q And the Forum Roadmap process would be another
32 example of a Pacific Regional or coast-wide
33 process, I guess.

34 MR. HUBER: Well, it wouldn't be coast-wide, but it
35 would be -- it's an area, I guess a sub-region,
36 you might call it a sub-regional.

37 Q Okay. Well, I don't want to spend too much time
38 on this document, I just thought it was a -- I
39 want to return to it for other reasons later.

40 Perhaps we'll just go to page 4, the previous
41 page on the document. And here, using the same
42 format, would you agree that these are all
43 different kinds of organizations or bodies with
44 whom the Department of Fisheries engages,
45 consults, and otherwise works with?

46 MR. HUBER: Yes.

47 Q And you'll see some that involve First Nations in

- 1 that list. For example, under "Pacific Regional",
2 you'll see the First Nations Fisheries Council is
3 one example.
- 4 MR. HUBER: Yes.
- 5 Q Okay. I'd like to move on and just talk a little
6 bit more about DFO's consultation arrangements and
7 I will return to this document later. Perhaps we
8 can go to Tab 27 of Canada's documents. Now, this
9 is an Excel spreadsheet and I'm not sure if you
10 can see it on this document, but the title we have
11 on Canada's list of documents is "BC Interior Area
12 First Nations Consultation Record 2007-2010". Is
13 this something that you recognize? Is this
14 something that you've seen before?
- 15 MR. HUBER: Well, we do -- we're supposed to track all
16 our meetings on a spreadsheet. Some of us have
17 different spreadsheets and some of us have a
18 number of meetings we haven't put on spreadsheets,
19 including myself.
- 20 Q So this is an example, I suppose, of a record-
21 keeping mechanism that DFO has.
- 22 MR. HUBER: It is.
- 23 Q And just maybe -- and I don't propose to go
24 through this document, but as you can see the way
25 it's organized is it has the dates of the
26 consultations -- or that I guess when we talk
27 about consultations, I should clarify. Does this
28 record meetings, phone calls, emails, that kind of
29 -- that kind of thing, engagement, points of
30 contact with First Nations?
- 31 MR. HUBER: It would for sure record in-person
32 meetings. Often phone calls, I would suspect,
33 aren't entered on there, but...
- 34 Q Okay. And you can see that under "Group" a list
35 of the individual First Nations in some cases that
36 the DFO consults with and is listed on here?
- 37 MR. HUBER: Yes.
- 38 Q And when it says "All BCI North", do you know is
39 that a group of First Nations? Is that all First
40 Nations in BCI North? Is that what that's
41 supposed to show?
- 42 MR. HUBER: Where are we looking?
- 43 Q Sorry, under -- this is under "Group".
- 44 MR. HUBER: "All BCI North", that would have been a
45 fan-out of an email you would have sent out to the
46 various contacts.
- 47 Q I see. So that would be like a distribution list?

1 MR. HUBER: Yeah, it would be from Williams Lake north.
2 Q Okay. And just down at the bottom you see there's
3 numerous sheets on this list. And maybe, for
4 example, if you go to 2009, "BCI North 2009", at
5 the bottom of the Excel chart, I guess another
6 question. Does this represent all the points of
7 contact and consultations that...

8 MR. HUBER: No.

9 Q This is just a snapshot, I would suppose?

10 MR. HUBER: It is. I mean, we are supposed to keep
11 records. We're supposed to even type records and
12 it's just a -- our workload issues, it's just not
13 possible.

14 MR. EAST: And I guess the one reason I wanted to go
15 here, I guess, in "BCI North 2009", and it
16 unfortunately doesn't show up in this copy, but my
17 count there was 234 entries, just on that one
18 chart alone. Is that -- does that sound about
19 right? I guess it's hard to -- yeah, I will
20 withdraw the question without having the actual
21 number in front of you.

22 Can I mark that as an exhibit.

23 THE REGISTRAR: Exhibit 1209.

24
25 EXHIBIT 1209: BC Interior Area First Nations
26 Consultation Record 2007-2010, spreadsheet,
27 DFO
28

29 MR. EAST: Can I go to Tab 28, please of Canada's
30 documents.

31 MR. LUNN: Tab 28?

32 MR. EAST: Yes.

33 Q And this is another Excel chart. And what I'm
34 going to do here, Mr. Huber, is just put a few
35 documents in and maybe come back and talk about
36 the consultation process more generally. Would
37 you agree that this is a similar type chart, but
38 this is for the Lower Fraser area?

39 MR. HUBER: Yes.

40 Q And I don't know if you can see it here, but there
41 appears to be split up into three areas, mouth to
42 the Port Mann Bridge, Port Mann to Sawmill Creek,
43 and there's a separate entry for the Cheam First
44 Nation. Is that your understanding about how
45 these things are organized, at least for the
46 purpose of consultation tracking?

47 MR. HUBER: You know, I'm not -- I'm not familiar how

1 they group their --

2 Q Okay.

3 MR. HUBER: Other than they should be recording.

4 MR. EAST: Okay. And so if I can mark this Tab 28 as
5 an exhibit, please.

6 THE REGISTRAR: That will be 1210.

7

8 EXHIBIT 1210: Lower Fraser First Nations
9 Consultation Record 2005-2010, spreadsheet,
10 DFO

11

12 MR. EAST:

13 Q And if we can go to Canada's Tab 49, please. And
14 this is a much smaller document, but it's entitled
15 "Overview of South Coast First Nations", I think
16 it's actually a two-page document, but I'll just
17 leave it, this is just the one half. But this is
18 "Overview of South Coast First Nations
19 Consultations" and it's referencing a group called
20 I-M-A-W-G, or IMAWG. And you'll see at the bottom
21 under the asterisk it says IMAWG means "Island
22 Marine and Aquatic Working Group". Are you
23 familiar with that group?

24 MR. HUBER: Yes.

25 Q And that's an AAROM body located on the south
26 coast of the Island?

27 MR. HUBER: It's currently in development, yes.

28 Q So this is a document that records certain
29 consultation meetings with this group on the south
30 coast?

31 MR. HUBER: That's what they're doing there, yes.

32 Q I can't tell if this is, on this one page, I have
33 to go to the second page, if these are meetings or
34 contacts, but based on the statement that says
35 "Location", it appears that these are meetings
36 that take place?

37 MR. HUBER: They would be, yes.

38 Q Yes. And if you go back to the first page, I just
39 want to note on the last at the bottom it says
40 under -- this is 2010 dates:

41

42 Week of July 12th to approximately end of
43 September.

44

45 Conference calls.

46

47 All South Coast Nations - discussion and

1 question and answer calls.

2

3

Perhaps we can go to the next page, the second
page of the document.

4

5

6

Calls are conducted at minimum on a weekly
basis to provide technical updates and
discuss FSC fishing plans.

7

8

9

10

In years of low abundance or in the event of
eminent FSC closures calls are conducted on a
daily or as-needed basis.

11

12

13

14

In 2010 calls were only conducted on a weekly
basis since FSC fishing was not limited by
run size.

15

16

17

18

Is this something that is typical for DFO
engagement with First Nations during the peak run
times?

19

20

21

MR. HUBER: It is. We, in the Fraser, we have Mike
Staley who sits on the Fraser Panel, a technical
expert. On Thursdays in the afternoon, First
Nations are invited to phone in, including the
marine approach areas, and get updates from Mike.
He's under contract with FRAFS and with the FRAFS,
the Fraser River Aboriginal Fisheries Secretariat,
his role is to provide technical support and
advice for First Nations.

22

23

24

25

26

27

28

29

30

MR. EAST: Okay. I'd like to mark this document as an
exhibit, please.

31

32

THE REGISTRAR: 1211.

33

34

EXHIBIT 1211: Overview of South Coast First
Nations Consultations

35

36

37

MR. EAST:

38

Q And just a couple more documents I want to refer
to. Actually, it's one that's already been put
into evidence, I believe it's Exhibit 945A. I
just want to identify this document again. This
is an Inventory of Meetings Related to Fraser
Sockeye Planning and WSP implementation. Are you
familiar with this document? Did you have any
involvement in it?

39

40

41

42

43

44

45

MR. HUBER: No, I haven't.

46

47

Q Okay.

1 MR. HUBER: No, it's just basically a record.

2 Q So this is another record of the types of
3 consultations and meetings that DFO engages in?

4 MR. HUBER: That's correct.

5 Q Okay.

6 MS. GAERTNER: I'm wondering, the issue of consultation
7 is a legal conclusion, and I'm wondering if Mr.
8 East is asking for a legal conclusion or if he's
9 asking for confirmation of meetings.

10 MR. EAST: Yeah, what I'm doing here, Mr. Commissioner,
11 is just getting a sense of what DFO does with
12 respect to engaging First Nations. I'm not asking
13 for Mr. Huber to give a legal conclusion as to
14 whether these are consultation or not. I just
15 want to get the fact of the engagement that DFO
16 has, and we'll leave to argument the question of
17 whether this constitutes consultation.

18 I'd like to go to -- so that's already in
19 evidence. So if we can go to Tab 296, please.

20 MR. LUNN: Would that be Exhibit 296?

21 MR. EAST: I'm sorry, Exhibit 296. Thank you.

22 Q And this is a document that came in, I think, in
23 the Aboriginal world view hearings, and it's just
24 a list prepared by DFO of AAROM groups, Fraser
25 River and South Coast groups. Do you recognize
26 this document as essentially a list of
27 organizations, First Nations organizations funded
28 under AAROM, the AAROM program?

29 MR. HUBER: I'm not familiar with all that are funded,
30 but if it's from -- it's departmental produced,
31 and it's a document they've used to track that, I
32 assume it's correct.

33 Q One group that we've talked about today is not on
34 there, and I'm just curious about it, is the
35 Intertribal Treaty Organization. Is this -- does
36 that organization receive funding through AAROM?

37 MR. HUBER: Yes.

38 Q Okay. Maybe I should be asking that question of
39 Chief Terry. Does the Intertribal Treaty
40 Organization or the group, that group receive
41 funding from DFO?

42 GRAND CHIEF TERRY: We finally received funding this
43 past fiscal year, and we made application in
44 October and we received the funds in March.

45 Q March of this year.

46 GRAND CHIEF TERRY: March of 2011.

47 Q 2011.

1 GRAND CHIEF TERRY: Yes.

2 Q Okay. So this document appears to be dated August
3 2010 so that perhaps would explain why the
4 Intertribal Treaty Organization does not appear on
5 this document.

6 I'd like to go now to the Policy and Practice
7 Report, page 121. That's PPR18. There's a
8 reference in paragraph 288 to the Consultation
9 Best Practices guide for the Department of
10 Fisheries and Oceans and there's a six-step
11 process for consultation. Mr. Huber, can you
12 confirm that this is roughly the approach that
13 would be taken by DFO in these consultations or
14 these meetings and engagements with First Nations?

15 MR. HUBER: When we're more on a formal -- some of the
16 consultation wouldn't follow that. Some of the
17 consultation is to negotiate the agreements, and
18 you're just getting together. You might call it
19 consultation and it is in a forum, but if you're
20 -- this is generally if you're going to deal with
21 a specific issue that's come up, the format we
22 would use, yes.

23 Q And would this document have been prepared by an
24 organization or a department within DFO called the
25 Consultation Secretariat?

26 MR. HUBER: That's correct.

27 Q And can you just -- I don't think the Consultation
28 Secretariat's referred to in the Policy and
29 Practice report. So perhaps if you could just
30 give us a sense of what that department is and
31 what it does within DFO.

32 MR. HUBER: Well, the Department, especially with all
33 the court decisions, we had to improve our
34 consultations. So a number of us when it was
35 initiated helped develop -- one of the jobs was to
36 develop this best practices guide. It came out
37 before the Federal Government of Canada and INAC
38 came out with the consultation guidelines that are
39 -- that are existing, and have just been updated
40 recently. So we used this. And the lady that was
41 -- Jay Hartling was the Lead at the time this was
42 developed, she also went to Ottawa and helped
43 Ottawa with developing a national guideline.

44 Q Okay, thank you.

45 MR. HUBER: So they -- I mean, our secretariat in
46 addition to helping develop these guidelines, they
47 helped staff with training, they helped coordinate

1 different consultations. Like we had fall
2 consultations where each year for a few years we
3 would go around the province and consult on a
4 number of things, issues at one time, and they
5 also helped track, you know, meetings, keep track
6 of a calendar, the different engagements that are
7 ongoing and that.

8 Q Okay. One more document I want to put to you, and
9 then I'm going to ask you some questions about
10 consultation or what DFO considers to be
11 consultation, and that is Tab 24 of Canada's
12 documents. And this is a document that is dated,
13 as you can see, March 2011, so it's relatively
14 recent. And do you recognize this document?

15 MR. HUBER: Yes.

16 Q "Aboriginal Consultation...Updated Guidelines for
17 Federal Officials".

18 MR. HUBER: Yes.

19 Q Perhaps we can go to PPR18, page 124. And I'll
20 return to this document and mark it as an exhibit.
21 But I just want to -- there's a reference in
22 paragraph 290 to the February 2008 Interim
23 Guidelines. Are you -- can you say that the March
24 2011 document that I just referred to is actually
25 the next iteration, I guess, of this document
26 that's referred to in paragraph 290?

27 MR. HUBER: It would be. I didn't -- I haven't read
28 this latest document.

29 MR. EAST: Okay. Perhaps I could just note this and
30 mark Tab 24 as being -- as an exhibit, please.

31 THE REGISTRAR: That will be Exhibit 1212.

32
33 EXHIBIT 1212: Aboriginal Consultation and
34 Accommodation, Updated Guidelines for Federal
35 Officials to Fulfill the Duty to Consult,
36 March 2011
37

38 MR. EAST:

39 Q Now, stepping back a bit, Mr. Huber, based on
40 documents and some discussion we've had today,
41 does DFO allocate a large part of its -- oh, maybe
42 put it this way: to what extent does DFO allocate
43 resources to consultations with First Nations?

44 MR. HUBER: It's a big part. We have --

45 Q Yes.

46 MR. HUBER: -- legal obligations there, so it's a big
47 part of the work we do. What percentage of time,

1 is that what you're...

2 Q I'm interested particularly in what we talked
3 about in that earlier document about bilateral,
4 the process of bilateral consultations with First
5 Nations, and I think we heard today that there is
6 some 150 First Nations that harvest Fraser
7 sockeye. There are a number of aggregates of
8 First Nations, and a number of different bodies
9 and fora that DFO attend. So I just want to get a
10 sense from you if you can maybe take the time that
11 we have remaining today to just talk about the
12 different processes that DFO engages in, in a
13 typical year, to consult with First Nations,
14 starting in a typical year. How does this work?

15 MR. HUBER: Well, at the band level, and the tribal
16 council level, it's up to the First Nation to
17 advise us how they want us to engage, whether they
18 want an individual -- some tribal councils will
19 say to engage, like the Southern Carrier, directly
20 with each of their member bands, and others want
21 us to work with the collective. And then of
22 course there's the independent bands. So we take
23 direction from the local Aboriginal organizations
24 on how to engage.

25 But for sure the local resource managers will
26 work with each of the First Nations to look at
27 their local fisheries, because communal licences
28 are issued, either as part of a fisheries
29 agreement or -- and if there's no agreement,
30 they're still issued. But based on consultations
31 that need to occur annually.

32 And as you get into the broader picture, like
33 the sub-regional AAROM bodies, like the Upper
34 Fraser Fisheries Conservation Alliance, they -
35 Marcel is here - but I think about ten times a
36 year they would meet. So sub-regionally, and even
37 Saul Terry with Stl'atl'imx, Saul and I used to
38 co-chair a management and technical -- well, we
39 co-chaired the management team there for an
40 agreement we had with Stl'atl'imx, and we met --
41 tried to meet monthly, but probably ten times a
42 year for a few years. We were piloting new ideas
43 on how to communicate effectively and engage with
44 the communities.

45 So we, the larger the aggregate, I would say
46 the more engagement we have on at least a sub-
47 regional level.

1 And well, we work at the regional level, the
2 First Nation Council, we meet regularly in a
3 number of different forums.

4 Q So from a DFO perspective, meeting with aggregates
5 of First Nations has certain benefits as far as I
6 guess efficiencies both in time and in resources?

7 MR. HUBER: Absolutely. We just don't have the
8 resources any more to meet with every First
9 Nation.

10 Q At the same time, is it true that DFO by necessity
11 defers to the First Nations as to how, you know,
12 they present themselves for the purposes of
13 consultations?

14 MR. HUBER: That is correct.

15 Q I'd like to take you back to the original
16 document, it's Canada's Tab 2 that I looked at
17 today, and it's page 32 of the document. And just
18 an interesting observation. Now, we've heard
19 today, I think, from a number of the people on the
20 panel that very forcefully the interests First
21 Nations have on the Tier 2 government-to-
22 government discussions. And I think, I want to
23 ask you, Mr. Huber, if this is consistent with
24 what has been discussed today. It's the fourth
25 bullet under "5.28 Participation". So this is the
26 consultant's findings:

27
28 First Nations view their mandates as being at
29 their local territory level.

30
31 And stopping there, I guess "local territory
32 level", that could be at the First Nation or
33 aggregate level. Has that been your experience?

34 MR. HUBER: That's correct.

35 Q This is the opposite of DFO, whose mandates
36 largely come from national and Pacific
37 regional levels.

38
39
40 Would you agree with that

41 MR. HUBER: Yes.

42 Q While some Nations work in aggregate groups
43 at ecoregional and coastwide levels --

44 - and bringing in those concepts in this
45 document -
46
47

1 -- aggregate bodies generally may not have a
2 clear mandate when it comes to decision-
3 making. This is a fundamental issue that
4 affects the advisory process structure.
5

6 Is that something that you would agree with?

7 MR. HUBER: Yes.

8 Q So perhaps recasting that and going back to the
9 discussion we had, and I know we have about five
10 minutes and I want to start talking about the
11 Forum and Roadmap, is it one of the fundamental
12 issues for DFO is that, first of all, there's an
13 interest on the part of DFO to developing
14 structures where DFO can engage with First Nations
15 at an aggregated level. Would you agree with
16 that?

17 MR. HUBER: Yes.

18 Q And in preferably as large an aggregated level as
19 possible, Fraser-wide, or coast-wide?

20 MR. HUBER: Well, we would engage, I guess, for
21 different reasons. If it's sharing and exchanging
22 information, those large aggregates work well for
23 that. For decision-making and authority, well,
24 Saul and I don't agree on everything. I guess
25 that's safe to say, Saul. But one area that would
26 be helpful is Saul's vision of the Nation with the
27 authority to make the decisions, as opposed to the
28 individual First Nations. That would, to me, be
29 appealing to the government, because it would be
30 much more efficient use of time and resources, and
31 in the case of Saul, with respect to his vision
32 of, you know, the decision-making governance.

33 Q And you'd agree that essentially, though, perhaps
34 with assistance from the Government of Canada in
35 terms of funding, this is really an issue for
36 First Nations to resolve amongst themselves, and
37 perhaps this is a question I can ask for all the
38 panel, anybody who wants to jump in.

39 MR. HUBER: The challenge would be in many First
40 Nations view they are individual First Nations.
41 As the authority, and I think in the first case,
42 Russ, you could ask Russ on this, in the case of
43 the First Nations Fisheries Council, they were --
44 their documentation to that, that the authority
45 lies with the individual First Nation. But
46 certainly if they negotiate, the groups
47 themselves, and advise us that the authority lies

1 at the tribal level, we would -- we would
2 recognize that.

3 Q And the follow-on from that is that until such
4 time as First Nations are able to present that
5 united front in a co-management process to DFO,
6 that there will be a role for DFO in being -- a
7 role for DFO as ultimately being responsible for
8 the management of the fishery. Would you agree
9 with that?

10 MR. HUBER: I would agree with that to -- I would put
11 some caveats on that. First Nations have a role
12 there, as well.

13 Q No, I wasn't suggesting they don't have a role,
14 but just that to the extent that until such time
15 as the First Nations are able and as to determine
16 issues amongst themselves, there will be a role
17 for DFO to work with the various First Nations
18 groups in order to -- and I'm seeking your views,
19 and I will seek the views of the panel probably
20 when we resume on Thursday, but a role for DFO to
21 be involved in -- I don't want to say arbitrating,
22 but essentially managing the fishery for the
23 interests of all the different First Nations
24 groups in consultation with them.

25 MR. HUBER: Yes.

26 Q Okay. I'm going to maybe just mark one document,
27 and then as a starting point for the discussion on
28 Thursday. It's Commission Tab 12, I believe,
29 Commission document Tab 12. And one of the things
30 I'm going to want to discuss when we get back on
31 Thursday morning is the difference between -- and
32 get into the Forum and Roadmap process. First of
33 all, this document, do you recognize it, it's from
34 the date of January 18th, 2011?

35 MR. HUBER: Yes.

36 Q Is it a DFO document?

37 MR. HUBER: That was put together at the FRAFS.

38 Q So this is a FRAFS document. Did DFO have
39 participation in it?

40 MR. HUBER: We do. There's a Bilateral Executive
41 Committee that DFO sits on.

42 MR. EAST: Okay. I'm just interested -- first of all,
43 perhaps I can mark that as an exhibit.

44 THE REGISTRAR: Exhibit 1213.

45

46 EXHIBIT 1213: Terms of Reference, January
47 18, 2011, FRAFS

1 MR. EAST:

2 Q I'm just going to ask one question, and then I'll
3 leave this for today. And it refers to the Forum
4 having its origins in 2007 and in 2008, and DFO
5 calling First Nations together to discuss some
6 issues. Can you just explain what those issues
7 were? What was it that inspired this
8 organization?

9 MR. HUBER: Well, stocks were down and predicted to be
10 low and to the extent that there wouldn't be
11 commercial fisheries and there wasn't sufficient
12 Fraser salmon to meet First Nations FSC needs, so
13 that meant sharing arrangements had to be made.
14 We had made a lot of effort in 1996 and actually
15 achieved that for Early Stuart. But this was even
16 more extensive, a lot of stocks were expected to
17 be low. And so there was real need to work with
18 the First Nations that harvest Fraser salmon, and
19 that included the marine approach areas. So we
20 envisioned this idea of getting representatives
21 from all the Fraser and approach areas together to
22 talk about the issue and see what we could, you
23 know, come up to, come up with in the form of a
24 sharing plan.

25 Q Because as I think we've heard, up until that
26 point, there wasn't any process or organization
27 where this could occur, this kind of discussion.

28 MR. HUBER: That's correct. Although under the FRAFS
29 we do have a Technical Committee that's been
30 ongoing for years, where technicians from the
31 watershed get together and meet and discuss
32 issues. But because of this was going to put
33 limitations on First Nations harvest, we needed
34 political engagement, as well, a decision-maker.

35 MR. EAST: Okay. I think I'll mark this document, and
36 then conclude my questions for today. Did I
37 already do that?

38 THE REGISTRAR: You've already marked it.

39 MR. EAST: I usually forget, so if I did it twice, I
40 should get it. Those are my questions.

41 THE COMMISSIONER: Mr. East, is that the first page of
42 the document that's on the screen?

43 MR. EAST: This is the -- I understand it was a
44 bilateral -- sorry the document that we just
45 marked, I believe that was a bilateral document.

46 MR. HUBER: Yes, it initiated, the initial meeting was
47 a bilateral session.

1 MR. EAST:

2 Q Sorry, about the document itself, though, who
3 drafted and prepared the document?

4 MR. HUBER: This "Terms of Reference" here?

5 Q Yeah, just the document, the overview paper says
6 "Forum on Conservation", or the "Terms of
7 Reference", I'm sorry.

8 MR. HUBER: Yeah. This was just the most recent
9 iteration that was sort of finalized by the FRAFS
10 executive in January.

11 Q Okay.

12 MR. HUBER: There had been some earlier drafts sort of
13 sitting there incomplete.

14 MR. EAST: I'll pick this up then on Thursday.

15 THE COMMISSIONER: Thank you.

16 MR. McGOWAN: Mr. Commissioner, I believe we're
17 adjourning then till Thursday morning at 10:00
18 a.m.

19 THE COMMISSIONER: Correct. Thank you very much.

20 THE REGISTRAR: The hearing is now adjourned until
21 Thursday at 10:00 a.m.

22

23 (PROCEEDINGS ADJOURNED TO JUNE 30, 2011 AT
24 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.
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10 _____
11 Diane Rochfort
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13 I HEREBY CERTIFY the foregoing to be a
14 true and accurate transcript of the
15 evidence recorded on a sound recording
16 apparatus, transcribed to the best of my
17 skill and ability, and in accordance
18 with applicable standards.
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23 Karen Acaster
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26 true and accurate transcript of the
27 evidence recorded on a sound recording
28 apparatus, transcribed to the best of my
29 skill and ability, and in accordance
30 with applicable standards.
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35 Susan Osborne
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37 I HEREBY CERTIFY the foregoing to be a
38 true and accurate transcript of the
39 evidence recorded on a sound recording
40 apparatus, transcribed to the best of my
41 skill and ability, and in accordance
42 with applicable standards.
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47 Pat Neumann