

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
701 West Georgia Street
Vancouver, B.C.

Tuesday, November 9, 2010

Tenue à :

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

le mardi 9 novembre 2010

APPEARANCES / COMPARUTIONS

Wendy Baker, Q.C. Maia Tsurumi Line Christensen	Associate Commission Counsel Junior Commission Counsel Articled Student
Mark East Charles Fugère	Government of Canada
Boris Tyzuk, Q.C.	Province of British Columbia
John Hunter, Q.C.	Pacific Salmon Commission B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
Charlene Hiller	Rio Tinto Alcan Inc ("RTAI").
Alan Blair	B.C. Salmon Farmers Association ("BCSFA") Seafood Producers Association of B.C. ("SPABC") Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Tim Leadem, Q.C.	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")
Lyndsay Smith	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

APPEARANCES / COMPARUTIONS, cont'd.

David Butcher	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
Christopher Harvey, Q.C.	West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
Keith Lowes	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF") Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM") 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 ("FNC") Council of Haida Nation Métis Nation British Columbia ("MNBC")

APPEARANCES / COMPARUTIONS, cont'd.

Nicole Schabus

Sto:lo Tribal Council
Cheam Indian Band ("STCCIB")

Laich-kwil-tach Treaty Society
James Walkus and Chief Harold Sewid
Aboriginal Aquaculture Association ("LJHAH")

Heiltsuk Tribal Council ("HTC")

Musgagmagw Tsawataineuk Tribal Council
("MTTC")

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2
3 THE REGISTRAR: Order. This hearing is now resumed.
4 MS. BAKER: Thank you, Mr. Commissioner. The cross-
5 examination will continue this morning, starting
6 with Lyndsay Smith, on behalf of the Area D Salmon
7 Gillnet Association and Area B Harvest Committee.
8 Thank you.
9

10 CROSS-EXAMINATION BY MS. SMITH:

11
12 Q Mr. Kowal, I'll direct this question to you, but
13 request input from Mr. Lapointe, if you have any
14 comments or observations. And it arises out of a
15 question asked by Commission counsel yesterday
16 with regard to the impact of the **Larocque**
17 decision, and as I understood it, the question
18 related to a 2006 Federal Court of Appeal
19 decision. Is that your understanding?

20 MR. KOWAL: That's correct.

21 Q All right. And basically, the import of that
22 decision was that no longer could the DFO research
23 be funded by the resource, by fishing; is that
24 correct?

25 MR. KOWAL: That's correct.

26 Q And my recollection of your reply to a question
27 asked by Commission counsel, her question was to
28 the effect, "Has the **Larocque** decision affected
29 your test fishery?" and my recollection of your
30 evidence was that you replied, "Not directly," do
31 you recall that?

32 MR. KOWAL: That's correct.

33 Q All right. So I'm wondering if you could tell us,
34 if it didn't -- if the decision didn't impact the
35 test fishery directly, were there indirect
36 consequences from the decision?

37 MR. KOWAL: Well, the main consequence to the decision
38 is previous to the **Larocque** decision, the
39 preparation for the test fishery was conducted
40 basically by the staff of the Salmon Commission
41 consulting with the Fraser Panel as to what test
42 fisheries would be required, and then we would get
43 the, you know, the order. Once the instructions
44 were passed, then we would proceed with making all
45 the arrangements for the test fishery to be
46 conducted.

47 With the **Larocque** decision coming into play,

1 it now requires that we need to -- once we have
2 decided on the suite of test fisheries we require,
3 we then need to negotiate with DFO through a
4 memorandum of understanding to receive the funds
5 necessary to proceed with the test fisheries. So
6 there's the added administrative details that are
7 required to make the same process happen. It
8 doesn't directly affect the test fishery, but it's
9 just additional administrative requirements that
10 are required on our behalf.
11 Q All right. Is there an attendant delay or a
12 consequent delay in the process as a result of
13 that?
14 MR. KOWAL: Not usually. The test fisheries will start
15 on time. We haven't had to delay any test
16 fisheries starting. It's just an administrative
17 process we're having to conduct.
18 Q All right. Thank you. And my understanding is
19 that there is funding set for the test fishery
20 currently, but that it is to expire or run out at
21 some point in the near future?
22 MR. KOWAL: That's correct. The **Larocque** decision was
23 for a five-year period, and the **Larocque** process
24 ends after next year.
25 Q All right. And my understanding of your
26 collective evidence is that test fishing is an
27 important part of the data collection required for
28 proper monitoring and management of the fishery;
29 do you agree?
30 MR. KOWAL: Yes, it's an integral part of what we
31 require.
32 Q All right. So one of the things that we have to
33 have in place is proper funding for proper test
34 fishings; is that correct?
35 MR. KOWAL: That is correct.
36 MS. SMITH: All right. And Mr. Lapointe -- I'm going
37 to ask Mr. Lunn, to put up Ex 73 on screen. This
38 is the Synthesis of Evidence from a Workshop on
39 the Decline of Fraser River Sockeye. And I
40 believe it was Mr. Leadem who produced this
41 document yesterday.
42 Q And when it was first introduced, my recollection
43 of your evidence was essentially an acknowledgment
44 or recognition that this workshop occurred when
45 the participants were aware that this commission
46 of inquiry was in place and looking into some of
47 the issues that were under consideration at this

1 workshop; is that correct?

2 MR. LAPOINTE: Yes. The planning occurred subsequent
3 to the announcement that this inquiry would occur.

4 Q Okay. And at page 2 of the document, the members
5 of the Expert Advisory Panel are listed, and those
6 experts include Canadian and American
7 participants; is that correct?

8 MR. LAPOINTE: That's correct.

9 Q All right. And do you know how the experts were
10 identified for this workshop?

11 MR. KOWAL: Perhaps I can answer that.

12 Q Thank you.

13 MR. KOWAL: The Scientific Cooperation Committee of
14 the Salmon Commission worked to decide on the
15 members that were chosen. They were chosen for
16 their expertise in the various factors that could
17 be affecting the non return of salmon, so that's
18 how they were chosen.

19 Q All right. And the report that was produced at
20 the end of August of 2010, if I describe it as a
21 collective view of this panel, would that be fair?

22 MR. KOWAL: That's correct.

23 Q All right. And so any recommendations contained
24 in this report is, effectively, a wish list from
25 this scientific community; is that fair?

26 MR. KOWAL: These are recommendations from the
27 committee, that's correct.

28 Q All right. And the reason that I ask this is
29 that, Mr. Lapointe, yesterday, in response to a
30 question by Mr. Leadem about this document, my
31 understanding of your evidence was that obviously
32 no concrete reason was reached, but one of the
33 strong hypothesis is that it's the ocean
34 conditions in the Georgia Strait.

35 MR. LAPOINTE: With respect to 2009, that's correct.

36 Q All right. And my recollection of that statement
37 was that you followed it by saying that the
38 ability to discern beyond the conclusions set out
39 in this document, Exhibit 73, was limited by
40 having the data with regard to lifecycle of the
41 sockeye; is that right?

42 MR. LAPOINTE: That's correct.

43 Q All right. And when I read this document last
44 night, one of the occurring themes in it appears
45 to be a dearth of evidence. There is reference
46 throughout the document to the conclusions being
47 limited by available evidence, and that phrase is

1 used throughout; do you agree with that?

2 MR. LAPOINTE: Yes, I do.

3 Q All right. And so when I heard you testify that
4 the ability to discern beyond the conclusions in
5 this document is limited by the data, one of the
6 questions that occurred to me is, what would be
7 required to permit a further or stronger
8 hypothesis, and when one looks at this document,
9 for example, at page 5, there's a heading in a
10 box, called, "Main conclusions about mechanisms",
11 and just addressing your attention to the first
12 paragraph:

13
14 The Panel's judgments, summarized in Table E-
15 1, are that physical and biological
16 conditions inside the Strait of Georgia
17 during the juvenile life stage are very
18 *likely the major cause* of poor survival of
19 the cohort that returned in 2009.

20
21 And then dropping down to the last sentence of
22 that paragraph, it says:

23
24 The Panel lacked certain types of information
25 needed to identify the mechanisms more
26 specifically (as described in Section 4) and
27 has recommended future research that may lead
28 to such detailed conclusions (see Section 5).

29
30 And the research that this panel suggests as being
31 required is set out in Table E-3 in a hierarchy of
32 priority; do you agree?

33 MR. LAPOINTE: Yes, that's correct.

34 Q All right. And so if I were to ask you, what
35 would you need, or in the science community that
36 you work in, need to go beyond the conclusions?
37 Are the recommendations set out in this document
38 basically your answer?

39 MR. LAPOINTE: Yes.

40 Q And turning to a different point, regarding catch
41 estimates, my understanding is that -- well
42 perhaps I'll ask it a different way. What are the
43 sources of information that the panel uses to make
44 catch estimates?

45 MR. LAPOINTE: Catch estimates are, by and large, the
46 responsibility of the national sections of Canada
47 and the United States, national sections of the

1 panel, so from a Canadian perspective, catch
2 estimates are provided to us by, largely, members
3 of the Department of Fisheries and Oceans, so we
4 receive those estimates from them.

5 There was a time when PSE staff had a larger
6 role in estimating catch in panel waters, and that
7 was at a time when fish tickets were more of a
8 source of that estimation, but in more recent
9 years we turn more to using the creel surveys that
10 are provided by DFO. Fish tickets tend to be
11 incomplete, and so they've not been the source of
12 -- not all fish that are landed necessarily show
13 up in a fish ticket, so we've been relying more on
14 the governments to provide us their catch
15 estimation.

16 Q Okay. And when I was reviewing my notes, my
17 recollection of your evidence was that the Fraser
18 Panel has no authorization with regards to the
19 recreational fishery; is that right?

20 MR. LAPOINTE: That's correct.

21 Q So does that mean that their catches are not
22 contained in the information that is provided for
23 the catch estimates?

24 MR. LAPOINTE: No. We receive catch estimates for all
25 fisheries that might have some potential impact on
26 Fraser sockeye, including recreational fisheries,
27 including fisheries in Alaska. The reference to
28 regulation means that the panel does not exert any
29 bilateral decision on whether or not a
30 recreational fishery would be opened or closed.

31 Q All right. And so is that answer also applicable
32 to your reference to the Fraser Panel having no
33 authorization of First Nations?

34 MR. LAPOINTE: Yeah, it's the same reference. There's
35 no regulatory authority with respect to First
36 Nations fisheries in Canada.

37 Q All right. And is catch numbers from that
38 fishery, as well, included in the catch
39 assessment?

40 MR. LAPOINTE: Yes.

41 Q So does Canada provide the same information as the
42 Americans provide?

43 MR. LAPOINTE: It depends on what you mean by "the
44 same". The sources of the catch estimates, the
45 techniques used to generate the catch estimates
46 differ between the two countries, but they both
47 provide catch estimates.

1 Q All right. And those catch estimates cover all
2 users of the fishery?

3 MR. LAPOINTE: Yes.

4 Q All right. And just following up on area touched
5 on at the end of yesterday with regard to the
6 number of 15-1/2 million fish unaccounted for in,
7 I believe, a 16-year period, and there was
8 discussion of high water temperature as being a
9 potential cause; do you recall that?

10 MR. LAPOINTE: Yes.

11 Q I'm wondering, during that period, were there
12 carcasses found by your scientists consistent with
13 that?

14 MR. LAPOINTE: We don't survey the watershed for
15 carcasses. That would be something that would
16 come under Canada's purview, but it's pretty well
17 understood now, and there's actually a published
18 paper I could probably point you to, that you
19 don't tend to see level of bodies that you'd
20 expect when you have a large mortality, and that's
21 simply because sockeye carcasses don't float for
22 very long, and so you'd have to have a pretty
23 significant, dedicated program to monitoring a
24 very long period of time, and even then you'd only
25 see the ones that float.

26 MS. SMITH: Thank you, those are my questions.

27 MS. BAKER: Mr. Commissioner, I think the next
28 participant who will be asking questions is the
29 First Nations Coalition with Brenda Gaertner.

30 MS. GAERTNER: Thank you. For the record, Brenda
31 Gaertner, and with me, Leah Pence, for the First
32 Nations Coalition.

33 I just wanted to start this morning with a
34 housekeeping matter, particularly in response to
35 Ms. Baker's comments yesterday. She suggested, on
36 the record, yesterday, and it is true, that we all
37 received a letter from Brian Wallace first thing
38 Monday morning, with the proposed requirement that
39 all the participants provide a week's notice of
40 any documents we intend to rely upon. Now, I
41 need, also, therefore, to put on record that the
42 First Nations have concerns regarding this request
43 and note that although the Commission staff,
44 themselves, are doing a very -- doing their best
45 and working their hardest, they have not, also,
46 been able to manage to meet that standard as of
47 yet in this inquiry.

1 There are a significant volume of documents
2 which are already in Ringtail. There is also a
3 very tight timeframe in which you are also trying
4 to hold this inquiry on very complex matters. And
5 so it is my observation, Mr. Commissioner, that
6 relying on an adversarial process for the work
7 that you have ahead of you is a hard enough task.
8 Relying on increased stress and pressure on the
9 participants in order to participate in this
10 inquiry is not sustainable and should be dealt
11 with in a very precautionary manner before there
12 are cracks that start appearing in this inquiry
13 that could be quite significant.

14 And this is especially true as we move into
15 the hearings going forward that are going to be
16 increasingly technical in nature and will require,
17 as best we can, input from our clients on a
18 regular basis.

19 And so I don't want to air any more of these
20 concerns at this time and in this place. I've
21 spoken to Ms. Baker this morning, and I'm
22 suggesting that we try a management conference
23 amongst counsel to air some of the concerns that
24 are becoming more real as we experience this
25 inquiry and participate in it as best we can. I
26 don't imagine it will take too long. I would
27 prefer, if we can, to schedule it at a time when
28 we're already scheduled for hearings, because the
29 down time is definitely needed for preparation.

30 And so if that's something, and I understand
31 Ms. Baker is very content to take that suggestion,
32 then I would prefer that happen, and if we can't
33 sort some of these issues ourselves, then we'll
34 have to return to you for some guidance.

35 MR. BUTCHER: I would join in that request. I've sent
36 a letter, or dictated a letter to Mr. Wallace with
37 similar comments, and I think it would be very
38 helpful for us to have a management conference at
39 this point . It is getting very, very difficult
40 for the participants to keep up with the pace of
41 this process.

42 MS. BAKER: I can advise, Mr. Commissioner, that we
43 have talked internally about having another
44 management meeting with counsel, and I let Ms.
45 Gaertner know this morning, so it's on the agenda,
46 and we expect to be communicating with people
47 about that, suggesting perhaps meeting before a

1 hearing day an hour earlier or an hour after,
2 whatever, but we will find some time to do that in
3 short order, because we know that that's something
4 that people need to talk about.

5 THE COMMISSIONER: Thank you.

6 MS. GAERTNER: Thank you. Now, turning to the topic of
7 this panel and having to listen to the evidence
8 that had been provided yesterday and the questions
9 of the Commission, I'm going to work very hard to
10 stay at the 70,000 foot level and keep my
11 questions that way and not get into the details of
12 harvest management or the complexities associated
13 with that, or in the causes of decline for the
14 stocks.

15 I'm really trying to make sure that Mr.
16 Commissioner and all of our working knowledge
17 regarding how the PSC works with the parties,
18 Canada and the U.S. and that world is clarified as
19 best we can.

20 Many of the structural questions, I think,
21 will be questions you'll be able to handle, but I
22 note, Mr. Commissioner, that both Mr. Sprout and
23 Barry Rosenberger, and Mr. Sprout being the former
24 head of commissioners, and Mr. Rosenberger the
25 present chair of the Fraser Panel, are witnesses
26 that will be still back on the stand - if we want
27 to use that language - later in the inquiry, and
28 so if these are questions that are more
29 appropriately placed to them, I'll leave it in the
30 hands of these witnesses.

31 And also, I think it's important for the
32 witnesses, and for you to know, Mr. Commissioner,
33 that Mr. Russ Jones, who is an alternate
34 commissioner, and Mr. Marcel Shepert, who is a
35 member of the Fraser Panel, are part of First
36 Nations Coalition that I represent, and I am also
37 hoping that they will have the opportunity to
38 provide information to you directly as a witness,
39 and so some of the questions and issues may be
40 more appropriately placed with them, also.

41 And so just with those notes of introduction,
42 I'll begin my questions of this commission.

43
44 CROSS-EXAMINATION BY MS. GAERTNER:

45
46 Q I want to, first, touch on and provide some
47 clarification around Canada's involvement in the

1 PSC and how the staff and the commissioners and
2 the panel operate. And yesterday it was suggested
3 that it's sort of like a board of directors, and I
4 guess I have a little bit of problems with that
5 metaphor because, really, there are equal votes
6 between Canada and the U.S., and clearly not equal
7 sharing of the stocks, and so there is a nuance
8 associated, or equal responsibilities, with
9 respect to that stock; is that a fair observation?

10 MR. KOWAL: If you're referring to the reference to
11 Fraser stocks --

12 Q Yes.

13 MR. KOWAL: -- the stock proportion is not equal,
14 although the Salmon Commission is responsible for
15 all five species of salmon, and the sharing of
16 other stocks is not in that same proportion, so
17 that that -- if that clarifies that issue?

18 Q Thank you, yes, that's true. And my questions are
19 totally going to be focused on the Fraser River
20 stocks, bear with me on that, but that's the focus
21 of this inquiry.

22 Is it fair to say that one of the purposes
23 and goals of the treaty, from Canada's
24 perspective, is to keep the U.S. fisheries, which
25 occur in panel waters, and in particular the
26 Washington State panel waters, to fish, as they
27 fish on the Fraser River sockeye, to an agreed
28 sharing arrangement? That it's a marine fishery
29 that occurs outside of Canada's jurisdiction, and
30 that one of the goals, of course, in the treaty,
31 is that through the treaty they can get to a
32 particular share that that marine fishery will
33 access?

34 MR. KOWAL: Well, the shares are negotiated between the
35 two countries, and that is prescribed in the
36 treaty as it stands.

37 Q But one of the goals of Canada, because they don't
38 have jurisdiction over that fishery, and it's one
39 of the only fisheries they don't have jurisdiction
40 over, other than that which is accessed in Alaska,
41 is to attempt level of certainty around the level
42 of access and the time of access that that fishery
43 will have on Fraser-bound stocks?

44 MR. KOWAL: I would assume that would be a goal. Those
45 discussions do take place in the Fraser Panel.

46 Q And is it fair to say that through the Pacific
47 Salmon Treaty and the Annex, that there is a

1 tweaking of the method by which DFO has used to
2 establish some of the measures of control over
3 that fishery over the years, a fishery which has
4 been, in the past, quite volatile and adversarial
5 in nature?

6 MR. KOWAL: I'm not sure I understand what you mean by
7 "tweaking".

8 Q Well, how they operate now, and I'll take you
9 through those, perhaps, but how they operate now
10 and how they operated 20 years ago has changed.

11 MR. KOWAL: The operations have changed over time.

12 Q Now, it's fair to say Canada, in its work with the
13 PSC, and in the process, in particular, of
14 establishing the TAC, the goal, and it's
15 specifically set out in the Annex, is to establish
16 the TAC as it relates to the 16-percent share that
17 the U.S. holds, Canada is not required to fish
18 their TAC?

19 MR. LAPOINTE: That's correct.

20 Q And it's also fair, in the present management,
21 that it's only the U.S. that has overages and
22 underages?

23 MR. LAPOINTE: As described in paragraph 8, that's
24 correct. I believe it's paragraph 8.

25 Q And that nowadays, with respect to the U.S.'s
26 underages, it's only when they haven't caught
27 their share and they can establish that we've done
28 something directly to impact their inability to
29 collect their shares, that that applies?

30 MR. LAPOINTE: I believe that is certainly one of the
31 conditions, and that probably is contained in the
32 guidance document, the provisions for how the U.S.
33 would determine an underage, and that's one of the
34 provisions for sure.

35 Q Thank you. It's also, now, the present practice,
36 with respect to spawning escapements, it's my
37 understanding that it's now clear that the setting
38 of spawning escapement targets, is a matter
39 strictly for Canada and, in particular, DFO to do?

40 MR. LAPOINTE: That's correct.

41 Q And that one of the -- and perhaps more -- I don't
42 want to suggest that the setting of those spawning
43 escapement targets aren't something relevant to
44 the Fraser Panel, because you'll agree with me
45 that what happens is once those spawning
46 escapement targets are set, it comes to the Fraser
47 panel to develop preseason plans based on those

1 spawning escapement targets, correct?
2 MR. LAPOINTE: It does develop the preseason plans for
3 the bilateral management. There are obviously
4 other preseason plans that go on domestically in
5 Canada.
6 Q And it's those preseason plans, if reached by
7 agreement, that will result in both parties,
8 Canada and the U.S., in doing the annual
9 devolution to the Fraser Panel for the in-season
10 management that they do?
11 MR. LAPOINTE: Yes, it's the agreement on the plan that
12 results in the transfer powers to the panel from
13 the parties.
14 Q And that occurs annually?
15 MR. LAPOINTE: Yes.
16 Q And so obviously it's important for the work of
17 the in-season management for agreement of the plan
18 to be reached?
19 MR. LAPOINTE: Yes.
20 Q Now, I also wanted to make it clear - or help get
21 clear - I'm not going to make it clear - help get
22 it clear that around how the staff of the PSC and
23 the commissioners worked. As I understand it, the
24 staff work for the commission, they don't work
25 directly for the parties? And perhaps Mr. Kowal
26 can --
27 MR. KOWAL: That's correct.
28 Q -- clarify my understanding there? And that the
29 commission is an independent party or body that
30 works for both of the countries?
31 MR. KOWAL: Yes.
32 Q And it's each country maintains a significant
33 amount of responsibility associated with the work
34 regarding Fraser River stocks and, in particular,
35 the domestic obligations associated with that?
36 MR. KOWAL: Yes.
37 Q That's not the work of the commission in any way?
38 MR. KOWAL: That's correct.
39 Q And I just want to use an example of this just to
40 bring this home, not in any way as a criticism,
41 but it's my understanding that conference that you
42 held with respect to the 2009 fisheries was
43 actually a conference that you were directed to
44 hold by the commissioners; that's not something
45 you, as staff, can independently choose to do?
46 MR. LAPOINTE: That's correct.
47 Q Now, with that backdrop, and I think it's an

1 important backdrop, it's also fair to say that the
2 U.S. and Canada have, through the work of the
3 Fraser Panel, tried to become clear on the work
4 that the commission can do to assist the parties
5 in creating more predictable fisheries.

6 And I want to just make sure that I've got
7 the basics of that down, and the basics, as I
8 understand it, as it relates to the Fraser Panel,
9 is that you reach the preseason plan we've just
10 talked about based on Canada's escapement targets,
11 and then you -- and then, if you can, by
12 consensus, do that, you then provide in-season
13 run-size estimates and then, in a postseason
14 environment you provide analysis based on those
15 first two tasks?

16 MR. LAPOINTE: Yes, but just to be clear, when you used
17 the word "commission" in that context, you're
18 talking about the commission staff; is that
19 correct?

20 Q That's right.

21 MR. LAPOINTE: Okay. That's correct.

22 Q That's exactly right. It's commission staff, and
23 in these cases, it's the Fraser Panel, in
24 particular, that are charged with these
25 obligations?

26 MR. LAPOINTE: That's correct.

27 Q And that those in-season run-size estimates are,
28 first of all, very time-sensitive work? It can be
29 something that's adjusted in any particular week,
30 never mind just weekly?

31 MR. LAPOINTE: Yes, multiple times in the same week,
32 potentially.

33 Q And that once agreement with respect to those run-
34 sizes is reached by the panel, then those run-size
35 estimates are used for all of the fisheries
36 accessing Fraser River sockeye fisheries?

37 MR. LAPOINTE: That's correct.

38 Q And so they're used for all of the Washington
39 State fisheries in panel waters?

40 MR. LAPOINTE: That's correct.

41 Q And they're also used by Canada in all of their
42 in-season -- in all of the domestic fisheries that
43 they may hold, be it commercial, recreational or
44 First Nation?

45 MR. LAPOINTE: That's my understanding.

46 Q And is it fair to say that it's an ongoing concern
47 by Canada that if there isn't agreement with the

1 U.S., that they might simply go out fishing and
2 that that would be an ever increasing concern,
3 given Canada's increased concerns about
4 conservation?

5 MR. LAPOINTE: I think that would be a question better
6 directed to someone from Canada.

7 Q All right. Is it also fair to say that those run-
8 size estimates and the decisions that flow from it
9 are just one of the pivotal decisions that are
10 made during in-season and the management of the
11 fisheries?

12 MR. LAPOINTE: Yes.

13 Q And it's also fair to say that the openings that
14 are completely dependent on those run-size
15 estimates can have significant effects all along
16 the migratory routes that the sockeye travel?

17 MR. LAPOINTE: Yes.

18 Q And, in particular, it could have significant
19 effects on both the sustainability of the weak
20 stocks and the access by Fraser First Nations
21 people up in the higher reaches of the migratory
22 route?

23 MR. LAPOINTE: Yes.

24 Q Thank you. I want to turn, now, to some comments,
25 and just again, to provide some, hopefully,
26 improved clarity on the involvement of First
27 Nations people in the commission, and by that I
28 mean as commissioners or the panel. And I want to
29 turn specifically to PPR-4, page 24. And while
30 we're doing that, I just want to begin by making a
31 distinction I make, and see whether you'll agree
32 with this or not, between people who are First
33 Nations, or have training in First Nations issues,
34 and people that would carry a mandate or represent
35 tribal matters; would you agree with that
36 distinction?

37 MR. LAPOINTE: Yes, I would.

38 Q And, first of all, it's my working understanding,
39 and again, I'd like clarity on this, that all of
40 the individuals you identified yesterday as First
41 Nations are appointed by Canada to be either a
42 commissioner or a member of the Fraser Panel, and
43 not by First Nations; is that correct?

44 MR. KOWAL: That's correct.

45 Q And that, in fact, their oath of office, as a
46 commissioner or as a member of the panel, is an
47 oath of office to Canada; is that correct?

1 MR. KOWAL: That's correct.

2 Q And would you also agree, and is it to your
3 knowledge, that none of the people that are
4 commissioners or members of the panel, carry a
5 mandate from the tribes along the entire
6 migratory route, and that it would be misleading,
7 as suggested by the Policy and Practice Report, to
8 suggest they "represent" First Nations?

9 MR. KOWAL: That's probably a fair representation.

10 Q You would agree with me?

11 MR. KOWAL: Yes.

12 Q That it could be misleading to suggest they
13 represent First Nations?

14 MR. LAPOINTE: I've certainly heard those views
15 expressed by the First Nations' representatives on
16 the Fraser Panel.

17 Q Now, I'm not suggesting, and I don't want to
18 suggest that it's not important to have them there
19 and that they can provide some useful information,
20 I just think it's extremely important for the
21 Commissioner to know that they do not represent
22 all the tribes on the Fraser River or those that
23 access the Fraser River stocks.

24 Because you'll also agree with me that it's
25 been your experience at either the commission
26 level or at the staff level, that given the
27 breadth of the First Nations who access these runs
28 and their locations along these runs, clearly
29 their interests are not always the same?

30 MR. LAPOINTE: That would be a correct observation.

31 Q I'm not sure whether this is something you could
32 speak to, but I'm wondering - I definitely will
33 put it to the DFO representatives at the
34 commission - but do you think, from your working
35 knowledge at the commission and on the panel, that
36 it would be useful to have a clearly mandated
37 process where First Nations are present in those
38 scenarios with mandates from the tribes and along
39 the rivers?

40 MR. KOWAL: I think that would be a decision that the
41 parties would have to make for their own affairs.

42 Q Also, then, just a couple more questions on
43 representation and participation by First Nations.
44 I just want to turn to the makeup of the Fraser
45 Panel, and if I've done my calculations right, if
46 I use the panel members and the alternates,
47 there's two from DFO and three -- two or three,

- 1 depending on how you interpret Mr. Assu from the
2 First Nations, one from rec, and six or seven from
3 the industry; is that your working knowledge of
4 the makeup of the Fraser Panel?
- 5 MR. LAPOINTE: It certainly would be what's referred in
6 the PPR document on page 36, I believe, so yeah,
7 that's consistent.
- 8 Q And would you agree with me that that makeup is
9 largely a fact of history and that primarily when
10 it started and as it began, the commissioner's
11 work and the Fraser Panel's work was largely
12 attentive to the interests of industry?
- 13 MR. LAPOINTE: Partly. I think it may also be a
14 reflection of the mandate. So the mandate of the
15 panel does not include direct jurisdiction over
16 First Nations' fisheries, and so that may also be
17 a factor in the representation.
- 18 Q It's clear that that mandate doesn't determine
19 which commercial fisheries will be open, either;
20 it simply determines when there's enough available
21 catch for Canada to determine an open fishery for
22 the commercial fishery?
- 23 MR. LAPOINTE: That's correct, but there is a more
24 direct link in terms of at least the panel water
25 commercial fisheries in terms of regulatory
26 control.
- 27 Q Is it also fair to say that, going forward, given
28 the conservation concerns that Canada is working
29 with, with respect to the Fraser River stocks, and
30 given the challenges associated with implementing
31 the Wild Salmon Policy, that it may actually be
32 useful to have people from -- more people from the
33 Fraser River, itself, then from industry?
- 34 MR. KOWAL: That would be Canada's decision as they
35 proceed forward.
- 36 Q So you're suggesting that that's something I
37 better -- that's better pursued with Mr. Sprout or
38 Mr. Rosenberger?
- 39 MR. KOWAL: That's correct.
- 40 Q All right. And just turning, briefly, to the work
41 of the technical committee responsible to the
42 Fraser Panel. And again, we referred to -- or as
43 referred to Mike Staley's work on the technical
44 committee, yesterday, it's clear that on the
45 technical committee no one is representing anyone
46 in particular; is that correct?
- 47 MR. LAPOINTE: That's correct.

1 Q And, in fact, the guidelines of -- the bylaw
2 guidelines for the PSC, for the technical
3 committee, make that a requirement?

4 MR. LAPOINTE: That's correct as well.

5 Q They also make it a requirement that you clearly
6 distinguish between technical and biological
7 issues and policy issues; is that correct?

8 MR. LAPOINTE: That's correct.

9 MS. GAERTNER: I'm wondering, Mr. Commissioner, whether
10 or not it would be useful -- I think, going
11 forward, he's confirmed the evidence, so I don't
12 know if I need the document for his, but I think
13 it would be useful for you to see the document.
14 In the Pacific Salmon Commission bylaws there is a
15 document that provides the guidance and the
16 obligations of the members of the technical
17 committee, and so I'd like to tender that as an
18 exhibit. I'll tender the Pacific Salmon
19 Commission Bylaws as an exhibit, and the
20 guidelines are attached, and these are documents
21 that have been referenced in the materials to
22 date, and I don't believe should come as a
23 surprise to anybody.

24 THE REGISTRAR: Exhibit 76

25
26 EXHIBIT 76: Pacific Salmon Commission Bylaws

27
28 THE COMMISSIONER: Ms. Gaertner, are they already in
29 the system, that Mr. Lunn has access to?

30 MS. GAERTNER: Yes. He's going to bring it to your
31 attention in half a second, and then I'm going to
32 take you to page 14 of that document.

33 THE COMMISSIONER: Thank you.

34 MS. GAERTNER: Magic. Sorry, I'm still an old fogey
35 and rely on paper.

36 Q And you'll see that those are guidelines for the
37 conduct of the technical committee members. Those
38 were the guidelines I was referring you to
39 earlier; is that correct? And you'll see that at
40 the third paragraph, under the:

41
42 Individual Committee Members Shall Serve as
43 Scientists, Not as Advocates For Their
44 Respective Agency Positions

45
46 It makes it clear that they cannot represent
47 directly, or indirectly, their clients?

1 MR. LAPOINTE: That's correct.

2 Q And that they are -- that in - in the paragraph
3 before it, your work is to clearly and:

4
5 ...carefully define and distinguish
6 technical/biological problems and policy
7 issues.

8
9 MR. LAPOINTE: That's correct.

10 Q Thank you. I just want to briefly, and again, I'm
11 not sure about your experience on this one, and if
12 it doesn't work we'll see if we can get the right
13 witness - I just want the Commissioner to know the
14 contrast between how Canada and the U.S. operate
15 at the panel. In particular, it's my working
16 knowledge that there are four decision-makers
17 represented within the U.S. commissioners on the
18 Fraser Panel. There's the decision-makers
19 representing the Federal Government, there are
20 decision-makers on behalf of the Washington and
21 Oregon States and Alaska and the tribes, but each
22 of them carry obligations within their caucus and
23 that they do absolutely require consensus amongst
24 them in order for a position to be taken by that
25 party; is that working knowledge correct?

26 MR. KOWAL: I wasn't clear whether you were referring
27 to the commissioners or you were referring to the
28 panel members.

29 Q Is there a distinction there?

30 MR. KOWAL: There is a distinction.

31 Q Could you explain that?

32 MR. KOWAL: The commissioners would fit the description
33 you did talk about.

34 Q So at the commission level there are four
35 decision-makers, and consensus amongst all of
36 those are required in order for a position of the
37 U.S. to take?

38 MR. KOWAL: That's correct.

39 Q And tell me, how is it different at the Fraser
40 Panel?

41 MR. KOWAL: The Fraser Panel basically has -- I could
42 ask Mike to describe it, but --

43 MR. LAPOINTE: Sure, I'll take it. It's just the main
44 distinction would be the fact that Oregon is not
45 represented on the Fraser River Panel.

46 Q Ah.

47 MR. LAPOINTE: So there are three.

1 Q Great. Perfect.

2 MR. LAPOINTE: But it is my understanding that those
3 three parties; federal, Washington State; and
4 tribal representatives, do have to reach consensus
5 for the Fraser River Panel -- the United States
6 section of the Fraser River Panel, to bring
7 forward a position.

8 Q Thank you. I think that -- that's very helpful.
9 My next line of questions is really lines of
10 questions around -- I often describe them as
11 proving a negative. I just want you to bear with
12 me as I confirm what you don't do and you don't
13 have responsibility for.

14 You'll agree with me that the legal
15 responsibilities of the Canadian Crown is to
16 recognize and reconcile Aboriginal and treaty
17 rights and to consult and accommodate, under
18 Canadian law, regarding the impacts of any of the
19 commissioner's decisions or the Fraser Panel
20 decisions, is something, to date, that the
21 Department of Fisheries and Oceans Canada have
22 assumed as full responsibilities and are not the
23 responsibilities of either the Fraser Panel or the
24 commission?

25 MR. HUNTER: I'm sorry, Mr. Commissioner, but that's a
26 legal question. It's not really a fair question
27 for the panel.

28 MS. GAERTNER:

29 Q Well, on an operating basis, do you operate with
30 any obligations associated with the consultation
31 with First Nations?

32 MR. LAPOINTE: Not that I'm aware of. Only through the
33 panel or the commission.

34 Q And it's fair to say that the kind of expertise
35 that may be required to do such an activity is not
36 something that's found within the Commission staff
37 or the commissioners, necessarily?

38 MR. LAPOINTE: That would be correct.

39 Q Yesterday, if I heard Mr. Butcher correct, he made
40 the suggestion that given the increasing demands
41 of fisheries management and the changing
42 fisheries, that somehow -- that one of the ways
43 forward would be for the PSC to assume
44 responsibility for all of the Fraser River
45 fisheries. Now, would you agree with me that that
46 would -- one of the impacts of such a move would
47 be that the U.S. would only have more involvement

- 1 in the fisheries of Canada?
- 2 MR. LAPOINTE: To be clear, I think what the gentleman
3 was referring to was the sentence in the document
4 of the 1994 review where John Fraser suggested
5 that the powers be vested within the Canadian
6 section of the Fraser Panel, not the bilateral
7 Fraser Panel, but I would ask the counsellor to
8 provide that, you know, correct me if I'm wrong,
9 but that was my understanding, he was referring to
10 that particular document which referenced the
11 remarks by John Fraser. So the Canadian section,
12 of the Fraser Panel, should be vested with that
13 power, no the bilateral Fraser Panel.
- 14 Q Well, the Canadian section of the Fraser Panel
15 participates at the Fraser Panel level, which is
16 at the PSC level, it's not domestic; is that
17 correct?
- 18 MR. LAPOINTE: Yes, but bilateral decisions can only be
19 made by both Canada and the United States and --
- 20 Q Right.
- 21 MR. LAPOINTE: -- I believe that Mr. Fraser's remarks
22 were referring to just the Canadian section of the
23 Fraser River Panel, which obviously does not have
24 bilateral authority.
- 25 Q All right. So maybe we'll just go with what I
26 want to make sure is clear in the suggestion,
27 which would be that, if it was suggested that the
28 Fraser Panel should -- and the commission should
29 extend their jurisdiction or responsibilities up
30 the Fraser, that that would only result in the
31 U.S. having more involvement in Canadian
32 fisheries; is that correct?
- 33 MR. LAPOINTE: That would be a fair characterization,
34 yes.
- 35 Q And, in fact, it might even suggest that the U.S.
36 would have involvement in First Nations fisheries
37 in the setting of priorities for First Nation
38 fisheries?
- 39 MR. LAPOINTE: Whether or not they would have
40 involvement in priorities would depend up on what
41 their engagement was in terms of -- I mean, they
42 might not be involved with the regulation to meet
43 priorities and not involved in priorities at all.
44 So it would depend on detail and how that was
45 implemented.
- 46 Q All right. Now, just one final comment or
47 question on this topic. Given the objection

1 already made, whether I can go this far, but
2 again, I just want to make it clear that it's
3 Canada's responsibility to respond to and, on the
4 ground, deal with the domestic fisheries within
5 their jurisdiction, including the First Nations'
6 fisheries, and that the commission does not hold
7 any direct responsibilities to First Nations, in
8 that regard?

9 MR. LAPOINTE: That would be my understanding, yes.

10 Q And I guess it's remiss -- I would be remiss to
11 complete this topic without asking you to observe
12 some of the challenges of the Fraser Panel's work,
13 in particular, the in-season estimates that
14 occurs. If I heard you right, yesterday, your
15 comment was - and again, if I heard you right -
16 that one of the ways that DFO's involvement with
17 respect to the pre-season estimates, is determined
18 or resolved is the fact that the DFO sits as the
19 chair of the Fraser River Panel?

20 MR. LAPOINTE: I'm not sure I quite understand the
21 comment, perhaps?

22 Q That's what I heard you say, yesterday, that --

23 MR. LAPOINTE: Could you repeat the comment, please?
24 I'm sorry, I'm just trying to understand what the
25 question is.

26 Q I'm going to see if I can get you come clearer
27 notes of your -- what I heard you say, and I'm
28 just checking this --

29 MR. LAPOINTE: Okay.

30 Q -- is that one of the ways that -- or the way that
31 you ensured DFO's involvement or consensus with
32 the in-season estimates that are determined, is
33 because DFO chairs the Fraser Panel?

34 MR. LAPOINTE: So I think the reference is probably to
35 this part of the testimony involving whether
36 Canada has a say over decisions made by the Fraser
37 River Panels, or after -- subsequent to a panel
38 bilateral decision? Is that the reference?

39 Q And that there isn't any change by DFO to those
40 preseason estimates once it's reached at the panel
41 level?

42 MR. LAPOINTE: That's correct.

43 Q That's correct. And so DFO's decisions, as it
44 relates to in-season run estimates, is confirmed
45 and determined at the Fraser Pane; is that
46 correct?

47 MR. LAPOINTE: With respect to in-season, that would be

1 correct; with respect to pre-season, there isn't
2 that same mechanism.

3 Q Right. And I am just focusing on in-season
4 decisions there.

5 All right, I have two more topics. The next
6 topic I want to turn to is what's known as the
7 Aboriginal exemption and its role in the Fraser
8 River Annex. Can you confirm with me my working
9 knowledge that the 400,000 Fraser River Aboriginal
10 -- Fraser River sockeye Aboriginal exemption was
11 first introduced in 1985 and has not changed since
12 then?

13 MR. LAPOINTE: I believe it was 1985. There is a
14 reference to 400,000 in the 1985 treaty. I just
15 don't know the extent to which it was involved in
16 the detailed calculations of TAC at that time, but
17 I believe -- I believe you're correct.

18 Q And is it fair to characterize the import of that
19 400,000 exemption as it's really a number that's
20 taken off the top that the U.S. agreed to before
21 the calculation of the TAC; is that correct?

22 MR. LAPOINTE: Yeah, I think it would be fair to say
23 that under the current arrangement the U.S.
24 Essentially accepts a 16-1/2 percent of 400,000
25 deduction from its share as the acknowledgment of
26 the importance of First Nations' fisheries in
27 Canada.

28 Q And that it doesn't reflect what Canada's view is
29 with respect to the appropriate numbers for First
30 Nations' fisheries and the need for food, social
31 and ceremonial fisheries?

32 MR. LAPOINTE: Doesn't bear any -- anything resembling
33 -- resemblance to what that -- it has no bearing
34 on that particular decision within Canada.

35 Q And that, as far as I understand, in terms of the
36 working part of that, in addition to the number
37 that's taken off top, is that historically there
38 was some disagreements with -- between Canada and
39 the U.S. as to where that exemption could be
40 caught and by which First Nations. Those are
41 somewhat resolved now, but that one of the
42 outstanding matters for negotiation is how that
43 exemption now will apply across the stocks of the
44 Fraser River sockeye; is that correct?

45 MR. LAPOINTE: Certainly there's been a change in the
46 way -- in the way that the First Nations'
47 exemption, in terms of application, is calculated.

1 It did just apply to in-river fisheries, at one
2 point, and it now applies to in-river or marine
3 fisheries, so that's been a change.
4 And the second part of your question, I'm
5 sorry, Brenda?
6 Q As I understand it, there's one item that's still
7 listed in Exhibit 67, or --
8 MR. LAPOINTE: Ah, yes.
9 Q -- which is the list of outstanding issues under
10 the Annex, and there is one item on the exemption
11 that's listed and
12 MR. LAPOINTE: Relates to the distribution, that's
13 correct.
14 Q That's correct.
15 MR. LAPOINTE: Amongst the four management groups,
16 that's correct.
17 Q So that there is some discussions going on between
18 Canada and the U.S. as to how to distribute that
19 400,000 off the top, over the four aggregates; is
20 that correct?
21 MR. LAPOINTE: That's correct.
22 Q I'm wondering if whether you would agree with this
23 observation, that in the past - and I'm not sure
24 if it's still accurate today, although it may be -
25 that one of the indirect effects of that 400,000
26 was that there was often a rush to get that caught
27 so that the U.S. marine fisheries could then
28 access the runs; is that a fair characterization
29 of how that happened in the past, or is that --
30 MR. LAPOINTE: I really don't have any --
31 Q All right.
32 MR. LAPOINTE: -- recollection of anything of that
33 nature.
34 Q Okay. I just want to ask Mr. Kowal a couple of
35 questions. Mr. Kowal, would you agree with me
36 that one of the reasons informing the postponement
37 of the substantive renegotiations of the Annex was
38 Canada's decision to embark on the Cohen
39 Commission and the possible implications and
40 benefits of any recommendations that Commissioner
41 Cohen may arrive at?
42 MR. KOWAL: I best would ask Canada that particular
43 question.
44 Q And again, I may suspect I know the answer to this
45 question, but I'll risk it. Are you aware of any
46 efforts that Canada has made with respect to
47 engaging First Nations on the renegotiations of

1 this Annex?

2 MR. KOWAL: I can't answer that question.

3 MS. GAERTNER: I'm wondering if you could bring forward
4 Exhibit 76, and, in particular, I'd like you to go
5 back to page 263, and then have ready page 261.

6 MR. LUNN: Are you talking about the bylaws?

7 MS. GAERTNER: No, I'm talking about that book that
8 went into evidence yesterday.

9 MR. LUNN: That's 75.

10 MS. GAERTNER: I'm Sorry.

11 MR. LUNN: Sorry, can you give me that page number
12 again?

13 MS. GAERTNER: Sure, it's page 263 and 261 of the book,
14 which I think is around page 281 of Ringtail.

15 Q Now, Mr. Lapointe, for some reason, Mr. Butcher
16 asked for your expertise with respect to that
17 chart, and so I need to ask a few more questions
18 and perhaps clarify a few things.

19 It's fair to say that you don't have any
20 direct knowledge or understanding of the
21 historical catches of First Nations on the Fraser
22 River; is that correct?

23 MR. LAPOINTE: That's correct.

24 Q And would it be helpful to you, when commenting on
25 the draft, for you to see, at page 261 of this
26 book, the author of the book reflects that
27 accurate records for the early years of those
28 fisheries are lacking?

29 MR. LAPOINTE: I think when I commented on the graph, I
30 simply suggested that the graph appears to
31 represent what Mr. Butcher said. I didn't comment
32 directly on whether I thought the numbers in the
33 graph were accurate or inaccurate.

34 Q I see, you were just reading the graph from a
35 scientific perspective --

36 MR. LAPOINTE: Yes.

37 Q -- and not commenting on the substance of it?

38 MR. LAPOINTE: That's correct.

39 Q All right. I'll leave this area of examination,
40 then.

41 Finally, I just want to turn very briefly to
42 the complex task ahead of us around the kinds of
43 challenges that might be associated with managing
44 for the conservation units under the Wild Salmon
45 Policy and as it relates to the four aggregates
46 that are managed presently under the commission's
47 work. First of all, would it be fair to say that

1 the U.S. will have to agree to use anything
2 broader than the four aggregates in order for
3 there to be more accurate conservation units to
4 become the work of the PSE staff?

5 MR. LAPOINTE: When you say "broader" do you mean more
6 groups?

7 Q More groups, that's right.

8 MR. LAPOINTE: It would depend upon how that is
9 implemented. So Canada could choose to try to
10 meet its obligation as to a finer level either
11 within or outside, either engage the U.S. or not
12 engage the U.S. It would depend upon what Canada
13 chooses to do.

14 Q Right. But if it was to become something that the
15 PSC staff turned their mind to, directly, we would
16 require U.S. agreement; is that correct.

17 MR. LAPOINTE: If it was going to be written into the
18 treaty that there be a management to more groups,
19 then the U.S. would have to agree to that.

20 Q And is it also fair to observe that Canada would
21 have its work cut out for them to have the U.S.
22 agree to that, because the likely result of it
23 could be, in some years, that the U.S. marine
24 fisheries would be restricted?

25 MR. LAPOINTE: Again, someone from Canada or the U.S.
26 could comment as to whether or not that would be a
27 fair characterization.

28 Q That's not something from biological perspective
29 you can comment on?

30 MR. LAPOINTE: I think the question that you -- or the
31 comment that you made was that Canada would have
32 their work cut out for them to get the United
33 States to agree --

34 Q Well, let's unpack it.

35 MR. LAPOINTE: -- so --

36 Q So if you were managing for the increased
37 conservation units, that one of the possibilities
38 associated with that is that in some years the
39 marine fisheries more curtailed; would you agree
40 with that?

41 MR. LAPOINTE: It would depend, again, upon the
42 specifics about how those conservation units were
43 being implemented. It would depend upon what the
44 specific scenario is that Canada or the U.S., or
45 whatever the agreement would be, the proposal, to
46 implement that particular policy.

47 Q Mr. Kowal, I wonder if you could advise whether or

1 not the topic of increasing from four aggregates
2 to a more complex conservation unit has been
3 tabled at the commissioner's work?

4 MR. KOWAL: Not at this point.

5 Q All right. Finally, I just want to ask a little
6 bit about pre and in-season run-size estimates. I
7 just want to - and I don't mean this as a
8 criticism by any means, I think run-size estimates
9 is a very complicated business - but I want to see
10 whether you will agree with me that run-size
11 estimates are exactly that, they're estimates,
12 they're not guaranteed numbers in the bank?

13 MR. LAPOINTE: I agree.

14 Q And that those estimates are becoming more and
15 more difficult to rely upon, given the variables
16 that are affecting the salmon in present climate
17 conditions and river conditions; is that correct?

18 MR. LAPOINTE: There's certainly a perception that
19 they're becoming more variable. I haven't
20 actually looked at the data to determine if they
21 are becoming more variable, but there certainly is
22 a perception that they're becoming more variable.

23 Q And is it fair to say that in any particular year
24 that you can have up to 25 to 30% adjustments that
25 occur at the end of the year, two-year in-season
26 estimates?

27 MR. LAPOINTE: In certain circumstances they certainly
28 have had postseason run sizes differ from in-
29 season run sizes by that amount, at that order of
30 magnitude, sure.

31 Q And it's also fair to say that in years of
32 scarcity that that kind of error can be quite
33 significant for long-term sustainability; is that
34 correct?

35 MR. LAPOINTE: Certainly it's conceivable, depending
36 upon the decisions that are made, you know, with
37 respect to the run sizes that are -- that occur in
38 those years.

39 Q And again, I think it's because of the increased
40 variables you're working with that are not in the
41 control of humans, necessarily; is that correct?

42 MR. LAPOINTE: Again, I know that there is a perception
43 that there is a greater variance in the run-size
44 estimates, but whether that is, in fact, correct
45 or not, you know, certainly our impacts, potential
46 impacts of changing conditions on the survival of
47 fish and -- but, you know, to some extent those

1 have occurred in history all along. I think part
2 of it is we're just a little bit more in
3 perception, in tune to these changes, now, perhaps
4 because, you know, more folks are involved, or the
5 complexity has changed, and so forth.

6 Q And it's also fair to say that our marine
7 fisheries and the abilities to catch those fish
8 have been developed over time, also, and we can do
9 -- we can access a fair bit of the run in one or
10 two days of openings now; is that correct?

11 MR. LAPOINTE: Certainly the potential is there in a
12 derby-style fishery, if that was to occur, to
13 access a larger fraction of the run. In the last
14 few years there's been a move away from that and
15 marine fisheries is more towards quota-based
16 fisheries, in which case the risk is much less,
17 because you can determine the exact quota that the
18 particular fleet might be fishing to. But the
19 power, the fishing power is certainly there.

20 Q And really, what I'd like to suggest to you is
21 nothing more than, again, in this ever-increasing,
22 changing world, even all of the work we've done on
23 preseason and in-season estimates, it's something
24 that, given the changing conditions, we need to
25 take care with and be cautionary about; is that
26 correct?

27 MR. LAPOINTE: We have to be aware of all the sources
28 of uncertainty in both the in-season and the
29 preseason estimates. And to the extent we can
30 change the way we do things to decrease that
31 uncertainty, it certainly would be desirable.

32 MS. GAERTNER: Thank you very much. Those are my
33 questions.

34 THE COMMISSIONER: Ms. Gaertner, just before you close
35 off, there were just -- just from, again, the
36 general context of your asking it, but I might
37 just ask: The witness mentioned that, I'm sorry,
38 the catch estimates he - this may have been just
39 prior to your questioning - catch estimates were
40 provided by DFO and then, when you were examining
41 the witness, he talked about the spawning
42 escapement targets, that are also provided by DFO.
43 I just wonder if we could just get some sense of
44 the timing of receipt, and without drilling down
45 too deeply, just how this information is supplied
46 to all of those within the commission that require
47 this information? So timing of receipt --

1 MS. GAERTNER: Sure I'd be happy to pursue that --
2 THE COMMISSIONER: Thank you very much.
3 MS. GAERTNER: -- kind of detail.
4 MS. GAERTNER:
5 Q Mr. Lapointe, I think this is the matter in your
6 hands. As I understand it, the preseason spawning
7 escapement targets are a preseason discussion that
8 occurs in order for planning preseason; is that
9 correct?
10 MR. LAPOINTE: That's correct.
11 Q And that most of Canada's work with respect to
12 that is now being done by FRSSI, the new
13 initiative on setting preseason targets; is that
14 correct?
15 MR. LAPOINTE: Yes, Fraser River Sockeye Salmon
16 Initiative.
17 Q Thank you. And that's something that I anticipate
18 the Commissioner will hear much about in the weeks
19 to come with respect to harvest planning; is
20 that --
21 MR. LAPOINTE: I understand it's on the calendar, yes.
22 Q Thank you. And then, the catch estimates are
23 something that occurs in-season and postseason; is
24 that correct?
25 MR. LAPOINTE: That's correct.
26 Q And so those catch estimates are done differently
27 for every one of the fisheries; is that correct?
28 MR. LAPOINTE: There are probably some that are done
29 similarly, but there are different methodologies
30 for different fisheries.
31 Q And again, those are something that is really in
32 the purview of Canada's responsibilities?
33 MR. LAPOINTE: On the Canadian side, that's correct,
34 yes.
35 Q That's right. And it's fed in weekly to the
36 Fraser River Panel?
37 MR. LAPOINTE: More frequently than weekly. Usually
38 within a short duration after the closure of
39 fishery, sometimes in less than 24 hours we would
40 have initial catch estimates, and then they are
41 refined over the course of time. But it's very
42 frequent
43 MS. GAERTNER: Is that helpful, Mr. Commissioner?
44 THE COMMISSIONER: It is, thank you very much, Ms.
45 Gaertner.
46 MS. GAERTNER: All right.
47 MS. SCHABUS: Mr. Commissioner, Nicole Schabus,

1 representing joint participant groups Sto:lo
2 Tribal Council and Cheam. I have an indication
3 from Commission counsel that I should indicate to
4 you I'm going to be 20 minutes or more, and so I'm
5 in your hands regarding the break.

6 THE COMMISSIONER: If it's convenient for you, we could
7 take the break now, and then, when we come back,
8 you can complete your examination. Is that
9 convenient?

10 MS. SCHABUS: It's fine with me.

11 THE COMMISSIONER: Thank you very much.

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

14
15 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

16 (PROCEEDINGS RECONVENED)

17

18 THE REGISTRAR: Order. The hearing will now resume.

19 MS. SCHABUS: Gentlemen, the questions are basically to
20 both of you.

21 THE REGISTRAR: Name, please.

22 MS. SCHABUS: Sorry. Again, Nicole Schabus, S-c-h-a-b-
23 u-s, first initial N., counsel for participant
24 group 18, Sto:lo Tribal Council and Cheam Indian
25 Band.

26

27 CROSS-EXAMINATION BY MS. SCHABUS:

28

29 Q So generally my questions are going to be for both
30 of you. Feel free to answer accordingly, although
31 I think the first questions are going to be more
32 for Mr. Kowal.

33 Yesterday, I think it was actually Mr.
34 Lapointe who said it, but you indicated that the
35 chair of the Canadian caucus to the Fraser River
36 Panel has always been a person from DFO. And I
37 just want to point out, for the U.S. it has
38 actually been a Tribal representative; is that
39 correct?

40 MR. KOWAL: No; the representative for the U.S. changes
41 each year.

42 Q Yeah.

43 MR. KOWAL: And it rotates between the Tribal
44 representatives and the government.

45 Q Correct. And what I'm just trying to establish is
46 that sometimes it actually has been a Tribal
47 representative, namely, Lorraine Loomis, fisheries

1 manager for the Swinomish Tribe, right?
2 MR. KOWAL: That's right.
3 Q And she has been -- she is currently the co-chair
4 of the Fraser River Panel, and she also chairs the
5 U.S. caucus?
6 MR. KOWAL: That's correct.
7 Q And she also chaired the Bilateral Fraser River
8 Panel before?
9 MR. KOWAL: She has.
10 Q Now, you can tell, from the U.S. Tribal
11 participation in the Pacific Salmon Commission,
12 that they're trying to implement co-management of
13 the fisheries with the tribes?
14 MR. KOWAL: A lot of the change in the chairmanship for
15 the U.S. Fraser River Panel is based on the **Boldt**
16 decision.
17 Q And you are seeing them implementing that,
18 actually, also, at the level of participation in
19 the Pacific Salmon Commission and under the
20 treaty, right?
21 MR. KOWAL: Yes.
22 Q And the U.S. has made substantive efforts to
23 implement that decision in their work under the
24 commission?
25 MR. KOWAL: Correct.
26 Q Now, under that decision, the tribes have direct
27 participation in management decisions and are
28 entitled of up to 50 percent of harvestable runs
29 in usual and accustomed fishing areas, right?
30 MR. KOWAL: That's correct.
31 MR. LAPOINTE: Excuse me, the current chair arrangement
32 within the United States, with respect to Fraser
33 sockeye, I believe, is two-thirds of the catch
34 goes to the tribes and one-third goes to non
35 Indians.
36 Q Okay. Now, the Pacific Salmon Commission has
37 directly interacted with U.S. tribes, conducting
38 programs together, for example, the Northwest
39 Indian Fisheries Commission, correct?
40 MR. LAPOINTE: I'm sorry, could you repeat the
41 question?
42 Q The Pacific Salmon Commission has been directly
43 interacting with U.S. tribes conducting programs
44 together with the Northwest Indian Fisheries
45 Commission, as an example?
46 MR. LAPOINTE: Yes. So, for example, there are
47 employees of the Northwest Indian Fisheries

1 Commission that are, in fact -- well, the chair of
2 the U.S. Tech -- Fraser River Panel Tech
3 Committee, Gary Graves, is an employee of the
4 Northwest Indian Fisheries Commission.

5 Q And you also have programs like tagging,
6 monitoring programs with them? Or you've had
7 them?

8 MR. LAPOINTE: There probably are circumstances where
9 maybe the southern fund has funded programs that
10 are conducted by that group, but I'm not aware of
11 the details.

12 Q Now, the U.S. tribes conduct the test fishery, or
13 some of the test fishery, right?

14 MR. LAPOINTE: There is a test fishery in an area
15 called Neah Bay, which is out on outer Juan de
16 Fuca Strait on the United States side, that is
17 conducted by the Macah Tribe.

18 Q In Canada, there's no test fishery conducted by
19 First Nations, correct?

20 MR. LAPOINTE: There is involvement of First Nations in
21 a number of test fisheries. There's Brian Assu is
22 a test fisherman for us in Area 13, so Southern
23 Johnstone Straits. See if I can get all the other
24 names. Gordie Wasden is a test fisherman in
25 Northern Johnstone Straits. And Norman Stauffer
26 is another test fishermen who is Northern
27 Johnstone Straits. So there are test fishermen
28 who are conducting -- that are affiliated with
29 Aboriginal groups that are part of the test
30 fisheries in both countries.

31 Q Now, regarding the test fishery in Canada, it's
32 contracted out, right?

33 MR. KOWAL: That's correct.

34 Q SO it's not conducted by DFO vessels, or anything
35 like that?

36 MR. KOWAL: Not the ones that are prosecuted on behalf
37 of the Salmon Commission.

38 Q In the past, they were able to sell their catch to
39 cover costs and more. It could be that they would
40 actually recover more than cost, right?

41 MR. KOWAL: Well, if they're under contract to us, the
42 proceeds from the sale of the fish would have come
43 to us.

44 Q Now that it's funded by DFO, what happens with the
45 catch?

46 MR. KOWAL: The catch -- that depends on the particular
47 contract. I mean, the contract for us, the catch,

1 which is usually small, which is based on numbers
2 of fish that are harvested mainly in gillnets,
3 which are dead on -- after they are harvested, or
4 used for scientific purposes, those are then sold
5 by the Salmon Commission.
6 Q You say small amounts, but overall it is a
7 substantive amount of fish that comes to -- that
8 is caught that way, like over 100,000 fish in test
9 fisheries on an annual basis, right?
10 MR. LAPOINTE: That number is consistent with a level
11 of harvest we've seen in some recent years.
12 Q Now, the treaty does not take into account the
13 principle of priority resource allocation?
14 MR. LAPOINTE: I'm not sure what you mean by that.
15 There is a priority established in the treaty, as
16 reflected in paragraph 10, so -- but I'm not sure
17 what you mean by "priority of allocation," I'm
18 sorry.
19 Q Priority resource allocation, giving priority to
20 Aboriginal fishery, especially for food, social
21 and ceremonial purposes.
22 MR. LAPOINTE: That would be covered under the domestic
23 allocation objective in the treaty, so it would be
24 up to Canada to ensure that its domestic
25 priorities were achieved under its domestic
26 allocation.
27 Q But there is no such principle set out in the
28 treaty, right?
29 MR. LAPOINTE: Under domestic allocation it would be
30 whatever principles apply to that particular
31 country, so there --
32 Q As the third objective or third priority?
33 MR. LAPOINTE: As the third objective, that's correct.
34 Q Who provides the preseason run-size estimates?
35 MR. LAPOINTE: Canada, thru DFO.
36 Q Yeah. Now, these preseason run-size estimates are
37 used to making management decisions until certain
38 in-season estimates become available?
39 MR. LAPOINTE: There are very few fisheries that are
40 opened or closed based on preseason forecasts.
41 Typically, it takes some sort of an in-season
42 update to open a fishery. There would be
43 potentially some limited food, social and
44 ceremonial fisheries that might be open prior to
45 an in-season update, and occasionally there are
46 small level catches, for example, the commercial
47 fishery in Area 5 in the United States, small

1 travel fishery, might be open prior to an in-
2 season update, but primarily there's -- I wouldn't
3 know a fraction of the catch, but I would suggest
4 probably, you know 90 percent of the catch might
5 be taken following an in-season update, something
6 like that. It's a very fraction of the total
7 requiring some sort of an update.

8 Q Now, regarding early estimates overall, and I
9 think we've already established that there is
10 problems, and I'll go into more detail with that
11 with in-season estimates, but there have been
12 situations in recent years where you had higher
13 estimates, including in-season estimates, for
14 returns that later had to be adjusted, to the
15 detriment of in-river fisheries?

16 MR. LAPOINTE: We've certainly had years where in-
17 season estimates were higher than postseason
18 estimates, and we've also had years when in-season
19 estimates were lower than postseason estimates.
20 In both directions we've had deviations.

21 Q 2009?

22 MR. LAPOINTE: 2009, I don't think the postseason
23 estimates were actually substantially different
24 from the in-season estimates. We knew we had a
25 very small run right from the beginning, and the
26 panel took action accordingly.

27 Q Now, I'd like to take you back to Exhibit number
28 74. I hope that is the Fraser Panel Report 2005.
29 And we've already -- and specifically to the issue
30 of difference between estimates, and I think
31 that's important to point out. And I'd like to
32 take you specifically to page 62 in report, or 64
33 -- 68 on the pdf.

34 MR. LUNN: Thank you.

35 MS. SCHABUS: And this is dealing with in-season
36 estimates. I'm going to have you have to zoom in
37 on the first third of page.

38 MR. LUNN: Certainly.

39 MS. SCHABUS:

40 Q And I'll just briefly ask you about the issues
41 that you have encountered with in-season estimates
42 and reliability of in-season estimates, that you
43 have seen an increasing problem regarding
44 predictability in that regard; you'd agree with
45 that?

46 MR. LAPOINTE: With respect to the predictability that
47 in-season estimates provide of what is estimated

1 postseason?

2 Q Correct.

3 MR. LAPOINTE: So with respect to, as outlined
4 yesterday, with respect to differences between
5 this potential spawning escapement number shown in
6 this table and the spawning escapement number
7 which generates this difference, as was outlined
8 yesterday, those differences have increased over
9 time.

10 Q And like especially for the in-season
11 applicability, there is an issue with attributing
12 it to the appropriate species, right? There are
13 some problems with that?

14 MR. LAPOINTE: On pink salmon years, we do have
15 challenges in terms of trying to estimate the
16 proportion of sockeye and pink, and that's used to
17 partition out the Mission total to sockeye and
18 pink.

19 Q So I'd like to briefly take you to that summary
20 paragraph that we see on the screen.

21
22 In 2005 there was a substantial difference
23 [of] (4,690,000 fish) between the estimates
24 of potential spawning escapement (Mission
25 escapement minus catch upstream...) and
26 arrivals on the spawning grounds,
27

28 Right?

29 MR. LAPOINTE: That's correct.

30 Q And you were taken to that issue, specifically,
31 regarding 2005, yesterday. Now, on the post-
32 season analysis:
33

34 ...suggest that approximately 60% of this
35 difference can be attributed to biases in
36 species composition assessments obtained from
37 in-river gillnet test fisheries that were
38 applies to Mission acoustic estimates to
39 [determine] total sockeye passage.
40

41 Correct?

42 MR. LAPOINTE: That's correct.

43 Q So you would agree with me that that is obviously
44 a very substantive gap?

45 MR. LAPOINTE: Yes, on pink salmon years.

46 Q Correct. And then it runs through the remaining
47 percentages that were expected, and basically the

1 remaining seven percent of the difference is
2 unexplained, so that's really what we're dealing
3 with?

4 MR. LAPOINTE: In the case of post-season accounting,
5 it would be - and somewhere in this appendix it
6 probably gives a number - but so this is
7 explaining the difference that we observed in-
8 season?

9 Q Yes.

10 MR. LAPOINTE: The numbers that I think that were being
11 referred to in the table yesterday - and I don't
12 know exactly which page it was - where what's
13 remaining is not accounted for by the bias. So
14 enroute losses at one million fish, that would
15 still be a --

16 Q No, and --

17 MR. LAPOINTE: -- that would be still be part of the
18 difference -

19 Q Of course.

20 MR. LAPOINTE: -- that ends up in the accounting.

21 Q I understand that.

22 MR. LAPOINTE: Right.

23 Q But it's actually the difference between in-season
24 accounting and the issues that you have with in-
25 season predictions and postseason estimates.

26 Now, so I take it you agree with the
27 conclusion that is set out in the panel report
28 here?

29 MR. LAPOINTE: I agree that we were able to explain the
30 difference, 4.6 million, in the manner that's
31 outlined in Table 1.

32 Q And it shows a couple of things, that what we are
33 dealing with and what you've correctly referred to
34 as the Mission estimates, especially for the
35 species specificity are very much estimates,
36 right?

37 MR. LAPOINTE: Yes, that's an estimate.

38 Q And there is especially problems in ensuring that
39 they are attributed to sockeye salmon,
40 specifically? In this case, pink would have been
41 counted as sockeye, right?

42 MR. LAPOINTE: That's correct. Hydroacoustic estimates
43 just estimate total targets. There's no ability
44 within the technology of the method to distinguish
45 species based on hydroacoustics, so we rely on
46 test fishing to partition those estimates.

47 Q Now, there are no management adjustments, or DBs

1 calculated for pink salmon?

2 MR. LAPOINTE: That's correct.

3 Q Because there are actually, no estimates -- you
4 don't have the estimates required for such a
5 calculation; the abundance plus Mission cannot be
6 accurately assessed, and spawning ground
7 numerations are not conducted, right?

8 MR. LAPOINTE: That's correct.

9 Q And so you actually still can't give us reliable
10 numbers of how many fish that went through Mission
11 were pink and how many were sockeye?

12 MR. LAPOINTE: We can provide a reliable estimate of
13 the sockeye; we can't provide a reliable estimate
14 of the pinks.

15 Q The changes in migration patterns either early or
16 late migration caused significant problems for the
17 in-season estimation?

18 MR. LAPOINTE: You mean upstream migration?

19 Q Yeah.

20 MR. LAPOINTE: When the late run began migrating
21 upstream early, in that case, their behaviour at
22 Mission also created problems for us, initially.
23 They would mill at the site, meaning they would
24 pass by our hydroacoustic estimates more than
25 once, and with the older technology we couldn't
26 distinguish direction of travel, but now we can,
27 and that's been in place since about 2000 or so,
28 2002, so that behaviour creates less of a problem
29 for us now than it did, say, five, six, seven,
30 eight years ago.

31 Q But you'd still agree that changes in migration
32 patterns combined with the problem in actually
33 predicting species composition, caused serious
34 problems for in-season predictions?

35 MR. LAPOINTE: Yeah, so on pink years, which, in case
36 folks are not familiar, pink salmon run into the
37 Fraser every odd year, not every year, so it's
38 only in odd years, the change in the migration
39 pattern of the sockeye has resulted in more of the
40 migration of sockeye overlapping with the pinks
41 and, in fact, the pinks have also changed their
42 migration, and they're coming in earlier as well.
43 So there's more time in the Fraser River when our
44 programs are operating when pinks and sockeye are
45 together than there used to be.

46 Q And let's just specify: for 2005, the issue was
47 actually the pinks were early; the sockeye were

1 late?

2 MR. LAPOINTE: That's right; the pinks were very early
3 and the sockeye were extraordinarily --

4 Q Were very late.

5 MR. LAPOINTE: -- late. Extraordinarily late.

6 Q Now, there is no independent indigenous -- there
7 was no independent indigenous participation in the
8 negotiation of the treaty?

9 MR. LAPOINTE: I'm not aware of who was participating
10 in the negotiation of the treaty.

11 Q Sorry?

12 MR. LAPOINTE: I'm not aware of the details of who was
13 participating in the negotiations of the treaty
14 and --

15 Q Okay. And I understand you -- neither of you were
16 around then, but you were around when the new
17 agreements -- one of you might have been --
18 actually, just 2009 you were both around, right?
19 But there was no consultation with indigenous
20 peoples from Canada at the -- and from -- with
21 indigenous peoples from Canada directly at the
22 level of the Pacific Salmon Commission, right?

23 MR. KOWAL: When the negotiation is on between the
24 parties, it's between the parties that are -- the
25 discussions take place.

26 Q Sure. But I'm going to put it to you that under,
27 for example, multilateral environmental
28 agreements, they have caucuses for indigenous
29 peoples where such are recognized as rights
30 holders and they have independent standing of the
31 parties and can, as such, participate in those
32 negotiations. That is not the case for the
33 negotiations for the Pacific Salmon Treaty,
34 correct?

35 MR. KOWAL: I'm not sure who are part of the Canadian
36 delegation and the national caucuses for these
37 negotiations.

38 Q But there is no -- and I agree with that, and
39 we've already spoken about nationally appointed
40 members and that they are appointed by Canada, but
41 what I'm trying to point out is there's no
42 independent indigenous participation, no
43 indigenous caucus, where indigenous peoples have
44 an input as rights holders with separate standing?

45 MR. KOWAL: No; the negotiations are between Canada and
46 the U.S.

47 MS. SCHABUS: Those are all my questions.

1 MS. BAKER: Mr. Commissioner, I have one point of
2 clarification coming out of the evidence, and I
3 just want to make sure the evidence is clear.
4

5 RE-EXAMINATION BY MS. BAKER:
6

7 Q Mr. Lapointe, when Mr. Leadem was asking you
8 questions, he put it to you that -- he asked you
9 whether a member of the PSC sits in on the Fraser
10 River Panel, and you replied, "Rarely," only if
11 the topic was with respect to renegotiation of
12 some issue and it would be very rare. I just
13 wanted to clarify: Did you understand that
14 question to refer to commissioners or commission
15 staff of the PSC?

16 MR. LAPOINTE: When I hear PSC, I generally assume
17 Pacific Salmon Commission and commissioners. So
18 it helps, for clarification, if people are asking
19 about "staff", to use the word "PSC staff", and I
20 think that is a very consistent, potential point
21 of confusion, so thank you for clarifying that.

22 Q So in your answer, was your answer referring to
23 commissioners or to staff?

24 MR. LAPOINTE: To commissioners.

25 Q Okay. And do staff of the PSC have an involvement
26 at the Fraser River Panel?

27 MR. LAPOINTE: Of course.

28 MS. BAKER: Okay. There was two other housekeeping
29 matters. Mr. Butcher referred to a document,
30 which is the 1994 Fraser River Sockeye Problems
31 and Discrepancy Report, but it wasn't marked as an
32 exhibit, and for the record we probably should
33 have that marked as an exhibit. It's been pulled
34 up on the screen by Mr. Lunn.

35 THE REGISTRAR: Number 77.
36

37 EXHIBIT 77: Fraser River Sockeye 1994
38 Problems and Discrepancy Report
39

40 MS. BAKER: And one final pure housekeeping point, in
41 the Policy and Practice Report there is a
42 typographical error that needed -- I meant to
43 correct and I forgot. So if you turn to the
44 Appendix II to the report, which is actually --
45 the correction needs to happen on page 33 of the
46 document, itself. Appendix II sets out chapter 4
47 from the Annex 4. And there's a --

1 THE COMMISSIONER: Which exhibit are you on?

2 MS. BAKER: It's the PPR, page 33. It's on the screen.

3 You'll see, at the top, where it has (c) as the
4 sub -- it says (c) is "Achieve domestic
5 objectives" - no, don't move it - then right below
6 is an "(a)"; that should really be an "11" and the
7 paragraph below should be a "12", and the
8 paragraph below that should be a "13", so that's
9 just a typographical error. But if we're
10 referring to this document at some point in the
11 future, we should make that correction so it
12 accurately reflects the language of chapter 4 from
13 Annex 4 of the treaty.

14 THE COMMISSIONER: I now have that on my screen. Can
15 you just repeat that, please?

16 MS. BAKER: Yes, (a), the sub (a) which you see sub (a)
17 reads, "The Fraser River Panel shall manage its
18 fisheries," that really should be 11, paragraph
19 11, and the paragraph which is 11 should really be
20 12, and 12 should really be 13. So that record
21 should be corrected.

22 Mr. Commissioner, unless there is anything
23 arising out of the questions and answers given,
24 those are -- we're finished with these witnesses
25 for today.

26 THE COMMISSIONER: Is there anything arising from
27 participants' counsel?

28 Just a couple of brief matters. I may have
29 missed it, Ms. Baker, but I'm not sure if we have
30 all Commission counsel on the record as yet, but
31 perhaps we can just -- your colleagues --

32 MS. BAKER: Yes, I think I did identify them on the
33 first day, but I can do that again. It's Maia
34 Tsurumi and Line Christensen.

35 THE COMMISSIONER: Thank you. I thank Ms. Gaertner and
36 Mr. Butcher for raising a point, and I'm confident
37 Ms. Baker will take that back to senior Commission
38 counsel and steps will be taken to address your
39 comments, and I thank you for that.

40 I take it, Ms. Baker, that the issue of the
41 test fisheries will come back when the matter
42 resumes with regard to some of the details
43 surrounding the --

44 MS. BAKER: Yes, all of those details --

45 THE COMMISSIONER: Right.

46 MS. BAKER: -- will be brought out in later evidence,
47 absolutely.

1 THE COMMISSIONER: Well, Mr. Kowal and Mr. Lapointe,
2 thank you very much for making yourself available
3 yesterday and today. I think, Mr. Lapointe, you
4 are probably going to see more of this room than
5 you would like to, but I gather you are going to
6 be back at some point.

7 MR. LAPOINTE: I believe that's correct, sir.

8 THE COMMISSIONER: So I thank you for yesterday and
9 today. And do I understand, Ms. Baker, that we
10 are now adjourned until Tuesday morning of next
11 week; is that correct?

12 MS. BAKER: That's correct.

13 THE COMMISSIONER: Okay. Then thanks to counsel. We
14 will now adjourn until 10:00 a.m. on Tuesday,
15 November the 16th. Thank you very much.

16 THE REGISTRAR: The hearing is now so adjourned.

17
18 (PROCEEDINGS ADJOURNED AT 11:39 A.M. TO
19 TUESDAY, NOVEMBER 15, 2010, AT 10:00 A.M.)
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23
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26

27 I HEREBY CERTIFY the foregoing to be a
28 true and accurate transcript of the
29 evidence recorded on a sound recording
30 apparatus, transcribed to the best of my
31 skill and ability, and in accordance
32 with applicable standards.
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Karen Hefferland
38 Registered Court Transcriber
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