

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



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

## Public Hearings

## Audience publique

**Commissioner**

L'Honorable juge /  
The Honourable Justice  
Bruce Cohen

**Commissaire**

**Held at:**

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

Wednesday, December 15, 2010

**Tenue à :**

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

le mercredi 15 décembre 2010

## APPEARANCES / COMPARUTIONS

Patrick McGowan Jennifer Chan	Commission Counsel Commission Counsel
Mark East Jonah Spiegelman	Government of Canada
Boris Tyzuk, Q.C.	Province of British Columbia
No appearance	Pacific Salmon Commission
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
No appearance	B.C. Salmon Farmers Association ("B.C.SFA")
No appearance	Seafood Producers Association of B.C. ("SPAB.C.")
No appearance	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Judah Harrison, 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")
No appearance	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

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

David Butcher, Q.C.	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
No appearance	West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
No appearance	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF")
James Reynolds Derek Christ	Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM")
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")
Leah Pence	First Nations Coalition: First Nations Fisheries Council; Aboriginal Caucus of the Fraser River; Aboriginal Fisheries Secretariat; Fraser Valley Aboriginal Fisheries Society; Northern Shuswap Tribal Council; Chehalis Indian Band; Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council; Upper Fraser Fisheries Conservation Alliance; Other Douglas Treaty First Nations who applied together (the Snuneymuxw, Tsartlip and Tsawout)
No appearance	Adams Lake Indian Band
No appearance	Carrier Sekani Tribal Council ("FNC")
Terri-Lynn Williams Davidson	Council of Haida Nation

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

Joe Gereluk	Métis Nation British Columbia ("MNB.C.")
Nicole Schabus	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
James Hickling	Laich-kwil-tach Treaty Society James Walkus and Chief Harold Sewid Aboriginal Aquaculture Association ("LJHAH")
Krista Robertson Lee Schmidt	Musgamagw Tsawataineuk Tribal Counsel ("MTTC")
Lisa Fong Benjamin Ralston (articled student)	Heiltsuk Tribal Council ("HTC")

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1  
PANEL NO. 11 (Affirmed)  
In chief by Mr. McGowan

1 Vancouver, B.C. /Vancouver (C.-B.)  
2 December 15, 2010/le 15 décembre  
3 2010  
4

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

6 MR. McGOWAN: If we could we have the panel sworn.

7 THE REGISTRAR: Do you solemnly affirm that the  
8 evidence to be given by you at this hearing shall  
9 be the truth, the whole truth and nothing but the  
10 truth?

11 MR. NAKNAKIM: I do.

12 CAPTAIN DUCOMMUN: I do.

13 PRESIDENT GUUJAAW: I do.

14 THE REGISTRAR: I need a verbal...

15 CHIEF NEWMAN: I do.

16 CHIEF MOUNTAIN: I do.

17 THE REGISTRAR: Thank you. And your name, sir.

18 MR. NAKNAKIM: Rod Naknakim.

19 CAPTAIN DUCOMMUN: Gary Ducommun.

20 PRESIDENT GUUJAAW: Guujaaw.

21 CHIEF NEWMAN: Edwin Newman.

22 CHIEF MOUNTAIN: Robert Mountain.

23 THE REGISTRAR: Thank you.

24 MR. McGOWAN: Thank you. Mr. Commissioner, as has been  
25 the practice for the last few days, Commission  
26 counsel's examination in chief will consist  
27 primarily of introducing the witnesses and having  
28 witness summaries marked, which will amount to the  
29 lion's share of our examination in chief. I am  
30 going to start on the left and move to the right.  
31

32 EXAMINATION IN CHIEF BY MR. McGOWAN:  
33

34 Q First we have Mr. Rod Naknakim. Sir, you are a  
35 member of the Cape Mudge Indian Band?

36 MR. NAKNAKIM: That's right.

37 Q And you are currently the chief negotiator for  
38 Laich-Kwil-Tach Treaty Society?

39 MR. NAKNAKIM: That's right.

40 Q And the Laich-Kwil-Tach Treaty Society is made up  
41 of three bands, I understand?

42 MR. NAKNAKIM: That's right.

43 Q And those are Cape Mudge, Campbell River, and  
44 Kwiakah?

45 MR. NAKNAKIM: That's right.

46 Q Okay. And you had an interview with Commission  
47 counsel on December 7th of this year.

2  
PANEL NO. 11  
In chief by Mr. McGowan

1 MR. NAKNAKIM: Yes.  
2 Q Okay. And we prepared a summary of that and  
3 you've had a chance to review that?  
4 MR. NAKNAKIM: Yes.  
5 Q Okay. If we could have that document brought up,  
6 please. I've just got it on the screen here.  
7 You've reviewed this and do you adopt its  
8 contents?  
9 MR. NAKNAKIM: Yes, I do.  
10 MR. MCGOWAN: Okay, thank you.  
11 If that could be marked as the next exhibit,  
12 please, Mr. Registrar.  
13 THE REGISTRAR: Exhibit 297.  
14 MR. MCGOWAN: Thank you.

15  
16 EXHIBIT 297: Witness Summary of Rod Naknakim  
17

18 MR. MCGOWAN:  
19 Q Next is Mr. Ducommun.  
20 CAPTAIN DUCOMMUN: Yes.  
21 Q Sir, you are here on behalf of the Métis Nation?  
22 CAPTAIN DUCOMMUN: That's correct.  
23 Q You're a professional biologist?  
24 CAPTAIN DUCOMMUN: That's correct.  
25 Q And presently you're the Director of Natural  
26 Resources for the Métis Nation?  
27 CAPTAIN DUCOMMUN: Yes.  
28 Q And you had an interview with Commission counsel  
29 on November 17th of this year?  
30 CAPTAIN DUCOMMUN: That's correct.  
31 Q And you've reviewed the summary that we produced  
32 of that?  
33 CAPTAIN DUCOMMUN: I have.  
34 Q And are you content with its contents?  
35 CAPTAIN DUCOMMUN: There are a couple of fairly minor  
36 changes.  
37 Q Okay. If you could maybe just take a moment and  
38 take the Commissioner through the changes that  
39 you'd like to make, identifying the page and the  
40 particular change.  
41 CAPTAIN DUCOMMUN: Okay. Page 1, last paragraph. The  
42 sentence says:  
43  
44 The buffalo remains an important part of  
45 Métis history and cultural events, and some  
46 Métis are now involved in efforts to recover  
47 buffalo populations in Alberta.

3  
PANEL NO. 11  
In chief by Mr. McGowan

1           It should actually read "historically Métis were  
2           involved in efforts to recover buffalo  
3           populations." Period.

4           Q     Thank you for that correction.

5           CAPTAIN DUCOMMUN: Second page, under "Historic and  
6           modern participation in the fishery", last  
7           sentence:

8  
9                     Many Métis have family connections in First  
10                    Nations, and rely on these connections for  
11                    opportunities to fish.

12  
13           I would just insert "and sometimes rely on these  
14           connections for opportunities to fish."

15           Q     Thank you.

16           CAPTAIN DUCOMMUN: Will I -- will I be challenged with  
17           word-smithing? Second-last paragraph:

18  
19                     Aboriginal people have always believed that  
20                    salmon feed the environment where they live.

21  
22           Rather than "environment" --

23           Q     Okay. Let me just make sure. You're on the  
24           second-to-last paragraph on page 2?

25           CAPTAIN DUCOMMUN: Yes, that's correct.

26           Q     And the third line of that?

27           CAPTAIN DUCOMMUN: Yes. So:

28  
29                     Aboriginal people have always believed that  
30                    salmon feed the environment where they live.

31  
32           Rather than "feed the environment they live".

33           Q     Right. Thank you.

34           CAPTAIN DUCOMMUN: Last paragraph, last sentence.

35           Q     On the same page?

36           CAPTAIN DUCOMMUN: Yes.

37           Q     Okay. So still on page 2, the last paragraph of  
38           your witness summary.

39           CAPTAIN DUCOMMUN: In part:

40  
41                     ...recommendations related to listings and  
42                    recovery plans directly to the Minister of  
43                    Environment...

44  
45           Rather than "to directly the Minister".

46           Q     Thank you.

47           CAPTAIN DUCOMMUN: And that's it.

4  
PANEL NO. 11  
In chief by Mr. McGowan

1 Q Okay. So with those changes made, are you  
2 prepared to adopt the contents of your summary?

3 CAPTAIN DUCOMMUN: I am.

4 MR. MCGOWAN: Thank you for that, sir.

5 If we could have that marked as the next  
6 exhibit, please.

7 THE REGISTRAR: Exhibit 298.

8 MR. MCGOWAN: Thank you.

9

10 EXHIBIT 298: Witness Summary of Gary  
11 Ducommun  
12

13 MR. MCGOWAN:

14 Q Guujaaw, you are President of the Council of the  
15 Haida Nation?

16 PRESIDENT GUUJAAW: President of the Haida Nation.

17 Q President of the Haida Nation. Thank you. And  
18 that -- and the Council of the Haida Nation is the  
19 body that governs the Haida Nation; is that  
20 correct?

21 PRESIDENT GUUJAAW: Yes.

22 Q Okay. And you also -- you've also held the  
23 position of Firekeeper for their Hereditary Chiefs  
24 of Haida Gwaii?

25 PRESIDENT GUUJAAW: Yes.

26 Q Okay. And you had an interview with Commission  
27 counsel on September 8th of this year?

28 PRESIDENT GUUJAAW: Must have been.

29 Q In September of this year.

30 PRESIDENT GUUJAAW: Yes.

31 Q We produced a summary. Have you had a chance to  
32 review it?

33 PRESIDENT GUUJAAW: Yes.

34 Q Okay. And are you prepared to adopt the contents  
35 of your summary?

36 PRESIDENT GUUJAAW: One change. On page 3, second to  
37 the bottom it says "abundance of salmon stocks".  
38 In that instance I was speaking of herring stocks.

39 Q Okay. Let me just see. I'm on page 3 of the  
40 summary, and you're on the -- which paragraph?

41 PRESIDENT GUUJAAW: Second to the bottom.

42 Q Yes, I see that. On the first line, the word  
43 "salmon" should be replaced with "herring"?

44 PRESIDENT GUUJAAW: Yes.

45 Q Okay. Thank you for that correction. Aside from  
46 that, are you content with the contents?

47 PRESIDENT GUUJAAW: Yes.

5  
PANEL NO. 11  
In chief by Mr. McGowan

1 MR. MCGOWAN: If that could be marked as the next  
2 exhibit, please.

3 THE REGISTRAR: Exhibit 299.

4  
5 EXHIBIT 299: Witness Summary of President  
6 Guujaaw  
7

8 MR. MCGOWAN:

9 Q Chief Edwin Newman. Sir, you are a Hereditary  
10 Chief and Elder of the Heiltsuk Nation?

11 CHIEF NEWMAN: That's right.

12 Q And you've held many community and political  
13 positions over the years with the Heiltsuk Nation  
14 and other organizations?

15 CHIEF NEWMAN: That's right.

16 Q And a number of those are highlighted in your  
17 witness summary?

18 CHIEF NEWMAN: That's right.

19 Q Okay. And have had a chance to review that  
20 summary with your counsel?

21 CHIEF NEWMAN: I've looked at it, yes.

22 Q Okay. And are you content with the contents?

23 CHIEF NEWMAN: Not really. I think there's a few  
24 things and have to deal with as we go along.

25 Q Okay. Let me ask you this. Are you content that  
26 the summary is accurate, but that you may want to  
27 expand on certain things in your evidence?

28 CHIEF NEWMAN: That's right.

29 Q Okay. If the summary could then be marked as the  
30 next exhibit, please.

31 THE REGISTRAR: Exhibit 300.

32  
33 EXHIBIT 300: Witness Summary of Chief Edwin  
34 Newman  
35

36 MR. MCGOWAN:

37 Q Chief Robert Mountain, you are an elected  
38 Councillor of the Namgis First Nation?

39 CHIEF MOUNTAIN: Yes, I am.

40 Q Okay. And you're also a Heredity Chief of the  
41 Mamalilikula First Nation.

42 CHIEF MOUNTAIN: Mamalilikula.

43 Q Okay. Mamalilikula, is that closer?

44 CHIEF MOUNTAIN: Yes.

45 Q Okay. Thank you. You're also the local Outreach  
46 Fisheries Coordinator for Musgamagw and  
47 Tsawataineuk Tribal Council?

6  
PANEL NO. 11  
In chief by Mr. McGowan  
Cross-exam by Mr. Hickling (LJHAH)

1 CHIEF MOUNTAIN: The Musgamagw Tsawataineuk Tribal  
2 Council, that's right.

3 Q Thank you. All right. We produced a summary of  
4 the interview that you had with Commission counsel  
5 on November 16th of this year?

6 CHIEF MOUNTAIN: That's right.

7 Q And have you reviewed that?

8 CHIEF MOUNTAIN: Yes, I did.

9 Q Okay. And are you prepared to adopt the contents  
10 today?

11 CHIEF MOUNTAIN: Yes, and probably expand on it as well  
12 as we go along.

13 MR. MCGOWAN: Thank you very much, sir.

14 If that could be the next exhibit.

15 THE REGISTRAR: Exhibit 301.

16

17 EXHIBIT 301: Witness Summary of Chief Robert  
18 Mountain

19

20 MR. MCGOWAN: Thank you, Mr. Commissioner, those are my  
21 questions for the panel.

22 THE COMMISSIONER: Thank you.

23 MR. MCGOWAN: I believe Mr. Hickling is going to  
24 conduct the first examination of the panel.

25 THE COMMISSIONER: Yes.

26 MR. HICKLING: Good morning. I am going to follow a  
27 similar pattern of questions that was established  
28 by Ms. Pence yesterday.

29 THE COMMISSIONER: Could you identify yourself for the  
30 record, please.

31 MR. HICKLING: Yes. My name is James Hickling, spelled  
32 H-i-c-k-l-i-n-g, and I am representing the Laich-  
33 Kwil-Tach Treaty Society, and the other members of  
34 the Standing Group are - excuse me - the  
35 Aboriginal Aquaculture Association and Chief  
36 Harold Sewid.

37

38 CROSS-EXAMINATION BY MR. HICKLING:

39

40 Q Mr. Naknakim, I wonder if you could briefly  
41 describe your own experience in the fishing  
42 industry.

43 MR. NAKNAKIM: Yeah. I was born and raised in Cape  
44 Mudge. There is no river there, but our people  
45 have always been strongly involved in the fishing  
46 industry. I pretty much grew up on a seine boat  
47 with my grandfather, Harry Assu. I started going

1 out with him on the boat since I was eight years  
2 old, and I continued right through until I  
3 finished university.

4 The whole -- I don't know where to start on  
5 this, but the whole -- the whole village has  
6 always been involved. My grandfather told me  
7 about his father, Chief Billy Assu, who helped get  
8 the people in the village involved in the salmon  
9 fishing industry, and in fact we started buying  
10 gas boats in the 19-teens, to troll and gillnet.

11 Then 1921, Chief Billy Assu was successful in  
12 getting the regulations to the Department of  
13 Fisheries and Oceans changed to allow us to go  
14 seine fishing. And I guess in the heyday, you  
15 would see up to 40 seine boats being operated out  
16 of our village, and just about the same with the  
17 Campbell River Band.

18 Today, now, there's probably less than half a  
19 dozen, just because of the nature of the industry,  
20 how it's gone.

21 Q And you have participated in several organizations  
22 that deal with fishing issues. Could you say  
23 something about that.

24 MR. NAKNAKIM: Yeah. I guess my first experience has  
25 been with the Native Brotherhood of BC. The  
26 Native Brotherhood was designed somewhat like a  
27 union, where the members paid the dues and had a  
28 delegate system for each of the branches. And our  
29 branch was the Cape Mudge-Comox-Qualicum Branch.  
30 And I got involved fairly early in being a  
31 delegate to the annual conventions. I got  
32 involved in writing a lot of their resolutions.  
33 And those were very enjoyable, because we got to  
34 know everybody on the coast that's in the  
35 industry.

36 The -- later on after I became a lawyer, I  
37 got hired to set up the Native Fishing Association  
38 as the Executive Director, which had money, about  
39 \$11 million to lend out to Native fishermen to buy  
40 boats and licences. And then later on I got on  
41 the Board and became Chair of that organization  
42 for a while.

43 During my career as a lawyer, I got involved  
44 with our fishermen in the Johnstone Strait and was  
45 a co-chair of the Area 13 Salmon Seiners  
46 Association, which had one mandate now as to  
47 address the Department of Fisheries and Oceans.

1 And I was particularly proud of that organization,  
2 because it managed to get about seven or eight  
3 groups together that never normally spoke to each  
4 other, in fact, actually fought with each other.  
5 It got us all together to deal with DFO's  
6 policies, and on openings and closures.

7 I'm currently involved with the Aboriginal  
8 Aquaculture Association as an advisor. That  
9 organization, its main objective is to build the  
10 capacity for First Nations to get involved in  
11 aquaculture. What's happened is a lot of the boat  
12 owners that are still hanging on their boats in  
13 the industry can't just make it on salmon and  
14 herring any more. They've got to diversify and  
15 keep their boats active. And that's -- that's  
16 what I'm trying to do there.

17 I used to be the -- well, I still am, I  
18 guess, the advisor to the A-Tlegay Fisheries  
19 Society, which has five member bands: the three  
20 that belong to our Treaty Society, plus Comox and  
21 Tlowitsis. And those other two bands have  
22 overlapping areas with us where we have shared  
23 territory and we work together and we work  
24 together. And the main objective there is to try  
25 and build our capacity to deal with Department of  
26 Fisheries and Oceans, and to keep statistics on  
27 our fishing and our food, social and ceremonial  
28 fish.

29 MR. HICKLING: Thank you. Mr. Commissioner, I'd like  
30 to ask Mr. Naknakim a few questions about the area  
31 in which LKTS is centred, and I'd like to refer to  
32 this map. It's -- the Commission circulated it a  
33 couple of weeks ago. I've put copies on all  
34 counsels' desk, and multiple copies with Mr.  
35 McGowan. And I see Mr. Lunn's brought it up on  
36 the screen.

37 Q Rod, do you have a copy of this?

38 MR. NAKNAKIM: It's on the screen in front of me.

39 MR. HICKLING: Oh, thanks. I want to emphasize, Mr.  
40 Commissioner, that we're not relying on this map  
41 to establish the boundaries of Laich-Kwil-Tach  
42 territory. It was just a convenient map for us to  
43 use to provide an overview of the Johnstone Strait  
44 area.

45 Q Mr. Naknakim, if we started at the southern end,  
46 of the territory where it joins Vancouver Island,  
47 the first two islands there are Denman and Hornby.



1 MR. NAKNAKIM: Yeah, territory goes down to around  
2 Qualicum River, then all the way up to Eve River  
3 on Vancouver Island.

4 Q Right. I just want to focus on the geographical  
5 features of the Johnstone Strait area. If you  
6 travel up from -- from those islands, you pass  
7 through some open water and then you come to  
8 another big island.

9 MR. NAKNAKIM: Yes.

10 Q That's Quadra Island?

11 MR. NAKNAKIM: That's right.

12 Q And the southernmost tip of Quadra Island is  
13 called -- how do we do this?

14 MR. NAKNAKIM: Well, pointing out up there.

15 MR. MCGOWAN: Mr. Commissioner, I provided the witness,  
16 or had the witness provided with a laser pointer  
17 so he can identify for you where he's speaking of,  
18 and I'd perhaps just ask counsel to ensure it's  
19 described on the record adequately.

20 THE COMMISSIONER: Thank you.

21 MR. NAKNAKIM: Quadra Island, right about there. Do  
22 you want to do this?

23 MR. HICKLING:

24 Q Okay. And there's a ribbon of water between  
25 Quadra Island and Vancouver Island. What --  
26 what's that body of water called?

27 MR. NAKNAKIM: Yeah, that's about halfway up of Quadra  
28 Island you'll see the narrowest point there, and  
29 it's called Seymour Narrows, and that's generally  
30 considered where Johnstone Strait starts. And it  
31 goes all the way up that narrow, along -- the  
32 stretch along the East Coast of Vancouver Island.

33 But the thing about Seymour Narrows, it's got  
34 very strong tides. And just above it, there's two  
35 bays, there's Plumper Bay which is the first bay  
36 just above the Seymour Narrows, and then just  
37 above that is Deepwater Bay.

38 Now, we've been doing a lot of research in  
39 our Treaty Society and we've come across a lot of  
40 fish traps all over the place. And in these two  
41 bays there were fish traps that date hundreds of  
42 years back. And there's no significant river in  
43 those bays. So we think those fish trips were  
44 designed to fish -- I mean, catch passing stock  
45 that's going to the Fraser.

46 Then when the cannery got started in  
47 Quathiaski Cove, the owner set up modern fish

1 traps in the 19-teens, and it was there  
2 particularly to catch sockeye that's going in the  
3 Fraser. And there is correspondence verifying  
4 that. And what he talked about is the particular  
5 quality of the fish at that point. He was able to  
6 get the best prices there because it had the  
7 highest oil content. Once it went further down  
8 into the Gulf, it started losing that quality.

9 We have other fish traps further up towards  
10 the mainland that we think are designed for  
11 passing stocks, as well. And of course we have a  
12 number of fish traps in mouths of some of the  
13 rivers there, all along the mainland.

14 Our -- our Origin Story and Flood Story is on  
15 the mainland about -- that's about 30 miles north  
16 of Campbell River on the mainland on a mountain.  
17 And we moved south, and north, I guess we moved  
18 all over the place, but mainly in and around  
19 Johnstone Strait. We just basically lived off of  
20 Johnstone Strait.

21 Q Thank you. And could you briefly describe how the  
22 geography of Johnston Strait influences the  
23 migration of the Fraser River sockeye?

24 MR. NAKNAKIM: Well, we got pretty good at catching the  
25 -- particularly sockeye, which is the main, main  
26 -- it's got the highest value in terms of sales.  
27 And we all -- all our different families have  
28 different setting spots, you know, we know where  
29 the Assus fished, the Louises, the Dicks and the  
30 Roberts, Kwak sisters. We pretty much had our own  
31 kind of areas where we fished. And those areas  
32 were identified by certain stages of the tide.  
33 You can't -- you can't just set anywhere and catch  
34 the fish. It's usually on low water slack that  
35 you have to set at these spots, and you get very  
36 good sets.

37 Those places are still being used by those  
38 families today, by the way.

39 Q When the salmon are migrating south through the  
40 Johnstone Strait area do they -- is it your  
41 experience that they swim through north to south  
42 in one continuous --

43 MR. NAKNAKIM: Not all the time. They'll go back and  
44 forth along the Straits. Sometimes they'll hang  
45 around for quite a while, but once it starts  
46 raining harder, they'll just shoot right through.

47 Q I'd like to ask you a few question about the

1 cultural connection between the Laich-Kwil-Tach  
2 and fishing. Can you describe briefly the  
3 significance of fishing to the Laich-Kwil-Tach  
4 people.

5 MR. NAKNAKIM: Well, I think we're all the same on the  
6 coast, actually. The fishing has been a central  
7 part of our identity. You know, we're the same as  
8 everybody else. We, despite the potlatch being  
9 prohibited and outlawed, until '72 we still  
10 potlatched right through, my grandfather on my  
11 father's side particularly. He used to have -- he  
12 used to have big speakers outside his house. He  
13 had a big house, and he'd have hymns playing, but  
14 inside he'd be potlatching with the elders. And  
15 we've been able to keep this alive amongst our  
16 people.

17 But there always is salmon part of the  
18 potlatch, you know, to feed. But more than that,  
19 there's songs. My brother's wife is a twin, and  
20 she -- she owns a salmon dance with her twin  
21 sister. Because that's what we do is, you know,  
22 give that to the twins. And of course it's got  
23 all kinds of carvings of salmon. They're on  
24 everything, like totem poles and plaques and our  
25 walls and our button blankets, and there's songs  
26 about it, dances about it. But you know it wasn't  
27 just the salmon, but it was everything kind of  
28 integrated together.

29 So our people, we make our living off of the  
30 salmon, so it's pretty important to us. We -- we  
31 want to make sure they come back every year  
32 because -- because we've got members that still  
33 have heavy investment in the industry, and we're  
34 -- and that's what we're trying to concentrate on  
35 is -- is to keep them in the industry. We don't  
36 want to be removed from the water. We've got to  
37 be part of the water, because that's how we keep  
38 healthy, and, yeah.

39 Q You mentioned some of the fish traps that you  
40 believe were used to harvest passing stock. I  
41 wonder if there were any other traditional fishing  
42 technologies that you used for fishing salmon.

43 MR. NAKNAKIM: Yeah, there -- you know, we did a lot of  
44 research and there's evidence from those explorers  
45 that they -- when they went through our territory,  
46 they would see nets drying, you know. We had  
47 large canoes that we fished on. We -- we had

1 hooks, all kinds of design of hooks. And when the  
2 industry started, in the 19-teens, my grandfather  
3 designed his own spoon to troll with. You know,  
4 we just knew how to -- how to adapt to our  
5 different circumstances.

6 Q I'd like to ask if conservation has played a role  
7 in Laich-Kwil-Tach fishing practices.

8 MR. NAKNAKIM: Most definitely. You know, we've faced  
9 -- the first -- the first real big closure, I  
10 guess, and I wasn't involved in the herring  
11 industry but my grandfather was. Tells me the  
12 story when him and Tommy Hunt went to see B.C.  
13 Packers and to shut down the herring industry, and  
14 it did get shut down for 20 years, because they  
15 were fishing it out. And with the help of the  
16 company, they were able to persuade DFO to do  
17 that.

18 Then in I think it was '80s, when we put the  
19 ribbon boundary in, in Johnstone Strait. They  
20 wanted to close us down, but we -- we convinced  
21 DFO we can stay open and still fish if we marked  
22 off certain areas in Johnstone Strait that we  
23 wouldn't fish in. And they call it a ribbon  
24 boundaries. And we still don't fish there today,  
25 and we're the ones that initiated that effort.

26 Q So the ribbon boundaries are areas that are off  
27 limits to Laich-Kwil-Tach fishing and they  
28 allow passing --

29 MR. NAKNAKIM: All commercial fishing.

30 Q -- and they allow passing stock to travel through  
31 Johnstone Strait.

32 MR. NAKNAKIM: Yeah.

33 Q I'd like to ask you a few questions about  
34 traditional knowledge. Is there a particular  
35 skill-set or knowledge that's required to fish  
36 effectively in Johnstone Strait?

37 MR. NAKNAKIM: Yeah, it's not the easiest place to fish  
38 because of the strength of the tide. I mean, back  
39 in the earlier day you could lose your net, if you  
40 fish -- fish in the wrong place or the wrong stage  
41 of the tide. And the timing of the set is all the  
42 difference in the world on whether you're going to  
43 get any fish at all.

44 My grandfather always amazed me on how well  
45 he knew the water, and when the fish were coming  
46 and how many. We'd be waiting out there on the  
47 boat and there'd be some killer whales going by.

1 He'd stand up on the seat on the -- on top of the  
2 cabin and whistle at them. And they'd come up to  
3 wherever they are, and then pretty soon they're  
4 rubbing against the boat, and then they're passing  
5 on.

6 But what my grandfather was famous for is  
7 predicting the size of the run that's coming in.  
8 And he'd often get into fights with DFO. He'd be  
9 in their office telling them to open it, there's a  
10 big run coming, and quite often he was right.  
11 That amazed me.

12 And our guys, they got to know which run was  
13 which, you know, just by looking at the fish, the  
14 size generally, and sometimes the spots. I knew  
15 when I was in my teens. I forget now, but I knew  
16 back then. I could tell generally some of the --  
17 some of the differences on the sockeye and that.

18 Q And how is traditional knowledge about fishing  
19 passed down to younger generations?

20 MR. NAKNAKIM: Well, it's getting more and more  
21 difficult because of the lack of fishing itself.  
22 You know, they're -- take, for instance, we didn't  
23 have food fish for the last five years and this  
24 year we -- we managed to get some. But -- but now  
25 they've got the fishing industry down to hours,  
26 being open for hours for the whole season. You  
27 know, 12-hour openings. It's pretty hard to make  
28 a living. It's pretty hard to teach the younger  
29 generation because you're not willing to take the  
30 chance on a greenhorn. You want your most  
31 experienced guy there so that you can use that 12  
32 hours and nothing goes wrong.

33 So but it has generally been passed down. I  
34 fully expected to be a fisherman when I grew up,  
35 just like my cousin, Brian. But I went and got an  
36 education instead. The different families, they  
37 teach their kids how and where -- where to fish,  
38 how to build a seine net and all of that.

39 Q I'd like to ask if Laich-Kwil-Tach traditional  
40 knowledge has a role currently in DFO decision-  
41 making and if DFO is making use of that knowledge.

42 MR. NAKNAKIM: I'm not the best one to answer that,  
43 because I'm not on the Board with A-Tlegay, but  
44 all of our fish, that goes through A-Tlegay. But  
45 apparently they've developed the relationship with  
46 DFO for collecting statistics, and they're  
47 reported, we report all of our food fish that we

1 catch each season, by species and quantity, and  
2 name, name the families they go to.

3 We are trying to build our credibility up  
4 with DFO to get into management decision in the  
5 local area. It's important for us to deal one-on-  
6 one with DFO, because Johnstone Straits always  
7 seems to be a controversial place in terms of the  
8 rest of the coast. And that's probably just the  
9 location and the fact that a lot of fish can be  
10 caught out of there.

11 Q I'd like to ask you a few question about FSC  
12 fishing. Beginning with if you could briefly  
13 describe the ways in which FSC fishing is  
14 important to Laich-Kwil-Tach today.

15 MR. NAKNAKIM: Oh, we -- we rely on all kinds of fish,  
16 not just the salmon, but we've got -- we've got  
17 lots of other types of marine resources in our  
18 area. And we like to catch it, whether it be cod  
19 or halibut or herring and shellfish. We've got  
20 that, but the -- it's really important to all of  
21 our families that we get that, and it always has  
22 been, even before the *Sparrow* decision, where that  
23 decision was made as a right. We used to -- when  
24 we come -- before we come in with our seine boats,  
25 set aside a few hundred fish for the village to --  
26 to get their food fish.

27 Q I understand that Laich-Kwil-Tach manages its FSC  
28 allocation through the A-Tlegay Fisheries Society.  
29 I wonder if you could describe how that works.

30 MR. NAKNAKIM: Yeah. We used to be all together in  
31 Johnstone Straits with the First Nations north of  
32 us, but we split off of it and created our own  
33 fisheries society called A-Tlegay. But we all  
34 have the same communal licence for sockeye, and I  
35 think it's somewhere around 80,000 pieces.

36 Q And from there you divide them up between the five  
37 participant First Nations?

38 MR. NAKNAKIM: Well, it's up to -- the way we catch our  
39 fish, food fish for our five bands, is each of the  
40 families take the responsibility to look after  
41 their own families with their different boats.

42 Q And you're using modern boats and gear to --

43 MR. NAKNAKIM: Yeah.

44 Q -- harvest FSC fish.

45 MR. NAKNAKIM: Yeah. Quite often our guys are  
46 contracted by other bands further down on the  
47 South Island to catch their food fish for them.

1 Q Is there anything you would do to improve the FSC  
2 fishery?

3 MR. NAKNAKIM: Well, I know it's always been  
4 controversial, but I personally am against selling  
5 of food fish. You know, and I'm not against  
6 selling. Just that I think it's a management  
7 issue. You know, if you're going to -- if you're  
8 going to catch fish for the purpose of selling, we  
9 should be able to issue a licence for that person  
10 for the purpose. But food fish should be for the  
11 people and not be sold.

12 Q I'd like to talk a little bit about -- okay. I  
13 wonder if you could very briefly describe the  
14 connection between Laich-Kwil-Tach Indian reserves  
15 and the modern fishery, or your fishing practices.

16 MR. NAKNAKIM: Well, the way -- the way we always  
17 believed that the Department of Indian Affairs  
18 limited the size of our reserves. We tried to get  
19 bigger reserves, but you take our -- the biggest  
20 reserve in our district, the Cape Mudge Reserve,  
21 is around 1,200 acres. And what we said -- had  
22 the surveyor set aside was about double that, and  
23 the same with -- we needed a bunch of other  
24 reserves. We were told by Indian Affairs that we  
25 can't have it because we don't make a living off  
26 the land, and we make our living off the sea. And  
27 they granted our reserves, we've got about a dozen  
28 reserves and they vary from ten acres up to the  
29 1,200 acres. Most of them are between 100 and 200  
30 acres. But they're located for the purpose of  
31 providing us access to our marine resources.

32 Then after that it was all said and done,  
33 given to us, we find we're alienated from these  
34 marine resources by the Department of Fisheries  
35 and Oceans. It's like Indian Affairs didn't have  
36 any right to make a commitment like that to us.  
37 So we kind of feel that, you know, there's an  
38 obligation on the Crown to provide access to our  
39 marine resources in Johnstone Strait so we can  
40 make a living.

41 MR. HICKLING: Mr. McGowan has asked me to conclude.  
42 I've just got three more questions.

43 Q Could you -- we've heard over the past couple of  
44 days about some new organizations like the ITO and  
45 the First Nations Fisheries Council, and I wonder  
46 if you could provide your view on -- on those  
47 organizations and their role.

1 MR. NAKNAKIM: Yeah, we have a representative on the  
2 Fisheries Council, but you know, we've had a hard  
3 time dealing with issues between our First  
4 Nations. You know, we're definitely in the  
5 commercial fishing industry. We want to be able  
6 to make a living there within our territory, and a  
7 lot of issues come up about that.

8 We're not against any of these organizations,  
9 but what we do want is the right to make our own  
10 representations. We don't want them to -- to be  
11 representing us. We want to represent ourselves  
12 directly with government.

13 Q Thank you. Another point that's been raised by  
14 other participants is the suggestion that the  
15 fishery might move towards a terminal fishery.  
16 And I wonder what's your view on that?

17 MR. NAKNAKIM: Well, that will push us right out of the  
18 industry. We're not against anybody getting their  
19 fish, but we still would like to make a living in  
20 the Johnstone Strait area.

21 Q And I just have two more quick questions. Are  
22 there any other processes or forums that you think  
23 Laich-Kwil-Tach should be invited to participate  
24 in?

25 MR. NAKNAKIM: Well, the Fraser Panel, my cousin was  
26 telling me we don't have a technical person on the  
27 Fraser Panel for -- for the Coast. And I think  
28 that's the most powerful decision-making body on  
29 the Coast is the recommendations that come out of  
30 there.

31 Q And just one concluding question, could you  
32 describe what you see as Laich-Kwil-Tach's future  
33 role in the fishery?

34 MR. NAKNAKIM: Well, I think the biggest complaint over  
35 all these years that we've had is their licensing  
36 system. It's basically blocked just about all of  
37 us on the Coast out of the fishing industries.  
38 When they changed the -- the "A" licence to  
39 restrict it to just salmon, I don't think that  
40 most of our people on the Coast understood that.  
41 Before the Davis Plan, you could catch everything  
42 under that one licence, and I think we should be  
43 issued a licence like that, for us to be able to  
44 make it in the -- in the -- any industry.

45 MR. HICKLING: Thank you. That concludes my questions,  
46 Mr. Commissioner. There's one other item I'd  
47 like to address. I have a binder of documents



1 that I'd like to have marked as an exhibit. There  
2 are 19 documents. The binder is indexed and  
3 tabbed. Most of the documents are public  
4 documents prepared by Crown officials and obtained  
5 from archival sources during research for  
6 litigation and other processes. Two of the -- the  
7 last two documents are extracts from books on  
8 aboriginal fishing.

9 These documents concern the allocation of  
10 Indian reserves as fishing stations around the  
11 turn of the century and the government policies in  
12 force at that time.

13 We have circulated the documents about nine  
14 or ten days ago, and we provided copies to the  
15 Commission for uploading onto Ringtail.

16 We also wrote to the Commission late last  
17 week to propose that the documents be entered as  
18 exhibits by consent. I don't propose to take Mr.  
19 Naknakim through the documents today, but we would  
20 like to have them entered as exhibits so that we  
21 can rely on them if necessary when the Commission  
22 hears evidence on the history of the regulation of  
23 aboriginal fisheries in the New Year.

24 MR. MCGOWAN: Yes, Mr. Commissioner. I understand and  
25 I believe my friend has circulated to counsel for  
26 all participants a letter asking whether any  
27 participant raises objection to these documents  
28 going in, I think it's ostensibly by consent. The  
29 Commission is nor aware of any response to that  
30 request.

31 I take it from what my friend has said that  
32 he's asking the documents go in, but does not  
33 intend to put them to his witness today. I might  
34 suggest, Mr. Commissioner, that it may be useful  
35 if he's seeking to have such a large bulk of  
36 documents go in that he address the issue of their  
37 relevance to your mandate, and how it is that he  
38 intends to use them in the future in the hearing,  
39 or expects you to use them. I don't want to take  
40 up a bunch of our hearing time to do today that --  
41 today to do that, because I know we're tight on  
42 time. But I wonder if you might find some further  
43 information on that helpful before receiving the  
44 documents.

45 THE COMMISSIONER: What I would suggest, Mr. McGowan,  
46 and Mr. Hickling, is that this list, which I  
47 presume all participants' counsel have, of what

1 are described as a document index. What I would  
2 suggest is that we take the next letter  
3 available for identification purpose, we identify  
4 -- use that letter, whatever it is. Mr.  
5 Registrar, what is the next letter?

6 THE REGISTRAR: "R".

7 THE COMMISSIONER: Thank you. If we use R1 through 19  
8 for identification purposes, that in the interim  
9 at your convenience, Mr. Hickling, if you could  
10 provide Commission counsel with a letter outlining  
11 your submission with respect to the relevance of  
12 these documents, for the purposes of this  
13 Commission's mandate, and then if and when you do  
14 come back and refer to some of these documents, at  
15 that time if there's no opposition they could be  
16 marked. But at that time if Commission counsel  
17 have a submission to make, they could make it at  
18 the time you're intending to put the document to a  
19 witness.

20 MR. MCGOWAN: I'm certainly content with that, Mr.  
21 Commissioner, and it may well be that -- that my  
22 friend does intend to put these documents to a  
23 witness down the road and they can go in through  
24 the usual course, but I'm content with your  
25 suggestion.

26 THE COMMISSIONER: So it would be R1 through 19 marked  
27 for identification purposes, and Mr. Registrar can  
28 have a copy of this document index so that that  
29 can be noted in his records as "R" through -- 1  
30 through 19.

31 THE REGISTRAR: It will be so marked.

32 MR. HICKLING: Thank you.

33 THE COMMISSIONER: Thank you.

34  
35 MARKED R1 FOR IDENTIFICATION: Memorandum  
36 dated March 1, 1874 by D. Laird, federal  
37 Minister of the Interior and Superintendent  
38 General of Indian Affairs  
39

40 MARKED R2 FOR IDENTIFICATION: Memorandum  
41 dated August 17, 1875 from Geo. A. Walkem,  
42 Attorney General for the Province of British  
43 Columbia to the provincial Lieutenant  
44 Governor in Council  
45  
46  
47

1 MARKED R3 FOR IDENTIFICATION: Letter dated  
2 October 1, 1875 from I.W. Powell, federal  
3 Indian Commissioner for BC to the  
4 Superintendent General of the Department of  
5 Indian Affairs  
6

7 MARKED R4 FOR IDENTIFICATION: Extract from  
8 Annual Report of the Department of the  
9 Interior for the Year Ended June 30, 1876, at  
10 pp. xv-xvi  
11

12 MARKED R5 FOR IDENTIFICATION: Memorandum of  
13 Instruction, dated August 25, 1876, from D.  
14 Laird, federal Minister of Interior, to the  
15 Dominion Commissioner  
16

17 MARKED R6 FOR IDENTIFICATION: Memorandum of  
18 Instruction, dated October 23, 1876, from Sir  
19 Charles Good, Deputy Provincial Secretary, to  
20 G.M. Sproat, Esq., Reserve Commissioner  
21

22 MARKED R7 FOR IDENTIFICATION: Transcript of  
23 Letter dated November 6, 1878, from G.M.  
24 Sproat, Reserve Commissioner, to W.  
25 Buckingham, Deputy Minister of the Interior  
26

27 MARKED R8 FOR IDENTIFICATION: Letter dated  
28 October 29, 1886, from Peter O'Reilly,  
29 Reserve Commissioner, to Wm. Smith,  
30 provincial Chief Commissioner of Lands &  
31 Works, enclosing Minutes of Decision dated  
32 October 8, 1886  
33

34 MARKED R9 FOR IDENTIFICATION: Letter dated  
35 October 30, 1886, from P. O'Reilly, Reserve  
36 Commissioner, to the Superintendent General  
37 of Indian Affairs  
38

39 MARKED R10 FOR IDENTIFICATION: Excerpts from  
40 the Annual Report of the Department of Indian  
41 Affairs, for the years 1887, 1888, 1890 and  
42 1896  
43

44 MARKED R11 FOR IDENTIFICATION: Excerpts from  
45 the Annual Report of the Department of Indian  
46 Affairs for the Year Ended 31st December,  
47 1887

1 MARKED R12 FOR IDENTIFICATION: Letter dated  
2 May 28, 1888, from Ashdown H. Green, Surveyor  
3 to the Indian Reserve Commission, to the  
4 Superintendent General of Indian Affairs  
5

6 MARKED R13 FOR IDENTIFICATION: Report dated  
7 October 12, 1899, from R.H. Pidcock, Indian  
8 Agent for the Kwawkewith Agency, to the  
9 Superintendent General of Indian Affairs  
10

11 MARKED R14 FOR IDENTIFICATION: Report dated  
12 September 16, 1900, from R.H. Pidcock, Indian  
13 Agent for the Kwawkewith Agency, to the  
14 Superintendent General of Indian Affairs  
15

16 MARKED R15 FOR IDENTIFICATION: Report on the  
17 Kwawkewith Agency  
18

19 MARKED R16 FOR IDENTIFICATION: Transcript of  
20 testimony given to the McKenna-McBride  
21 Commission on August 22, 1913  
22

23 MARKED R17 FOR IDENTIFICATION: Letter dated  
24 February 17, 1934, from Geo. Pragnell,  
25 Inspector of Indian Agencies for BC to Major  
26 Motherwell, Supervisor of Fisheries  
27

28 MARKED R18 FOR IDENTIFICATION: Excerpt from  
29 Newell D. (1993), *Tangled Webs of History:  
30 Indians and the Law in Canada's Pacific Coast  
31 Fisheries*  
32

33 MARKED R19 FOR IDENTIFICATION: Excerpt from  
34 Assu H. and Inglis J. (1989), *Assu of Cape  
35 Mudge: Recollections of a Coastal Indian  
36 Chief*  
37

38 MS. ROBERTSON: Mr. Commissioner, Krista Robertson,  
39 counsel for the Musgamagw Tsawataineuk Tribal  
40 Council, which henceforth I will refer to as the  
41 "MTTC".  
42

43 CROSS-EXAMINATION BY MS. ROBERTSON:  
44

45 Q Chief Mountain, *Gilakasla!* Could you please  
46 describe the four member Nations of the MTTC.  
47

CHIEF MOUNTAIN: The four members are the

1 Kwicksutaineuk, Gwawaenuk, the Namgis and the  
2 Kingcome Band, and they're all in -- Gilford is  
3 comprised of two bands, Ah-Kwa-Mish, as well, too,  
4 but they're amalgamated.

5 Q Thank you. And could you please describe the  
6 general territory, the shared territory of these  
7 four Nations.

8 CHIEF MOUNTAIN: Yeah. The shared territory of the  
9 Tribal Council is generally what is referred to as  
10 the Broughton Archipelago up in the northeast end  
11 of Vancouver Island. It's between the mainland  
12 and Vancouver Island.

13 Q Thank you. And could you please tell us about  
14 your experience fishing as a child. Who taught  
15 you how to fish, where did you fish, what methods  
16 did you use?

17 CHIEF MOUNTAIN: Well, as a child, I was -- I basically  
18 lived on a boat with my parents and my  
19 grandparents, doing all kinds -- all types of  
20 fishing in our -- our rivers of our territory  
21 where we would go in and there were still some  
22 traps in some of these rivers that we would use,  
23 weirs and traps, that we'd go and check. When I  
24 was young, I didn't know where they were, but as I  
25 grew older, I found out that they were in our  
26 general territory in Knight's Inlet area where  
27 we'd go and collect fish. But a lot of my time  
28 was spent on a commercial boat with my grandfather  
29 and my father, table-seining. But a lot of other  
30 collection of food was our food and social and  
31 ceremonial, where we drag-seined in our river, and  
32 that was part of my upbringing.

33 Q And those rivers you described as being in the  
34 Broughton Archipelago area?

35 CHIEF MOUNTAIN: Yeah, basically they were in some of  
36 the local streams in Viner Sound, in Ahta Creek  
37 and Charles Creek and in Call Inlet and Protection  
38 Creek, general streams in the close vicinity of  
39 Village Island.

40 Q Thank you. Have you ever observed or caught  
41 Fraser River sockeye in the rivers that you fished  
42 in as a child?

43 CHIEF MOUNTAIN: At the time I knew that there was a  
44 difference, but I didn't know that they were  
45 Fraser. But you could clearly tell that the  
46 Fraser River fish and the timing of the year,  
47 fishing in June and July, that the Fraser River

1 fish were a lot larger than the local stocks. The  
2 local stocks were a lot smaller in our creeks,  
3 basically six to eight pounds, and the fish that  
4 we caught in the local streams and the Fraser  
5 River fish that were also caught following the  
6 local stocks were at least ten to 12 pounds and  
7 slightly different colour.

8 Q So were you observing then adult Fraser River  
9 sockeye on their migration southward in these  
10 areas?

11 CHIEF MOUNTAIN: Yeah. We basically, when we did catch  
12 them, we kept them. We didn't throw them back.  
13 But a lot of -- a lot of people didn't care. They  
14 were -- just want their food fish. And a lot of  
15 the fish that we caught in the Nimpkish River, I  
16 think at least 20 or 30 percent of the food fish  
17 we catch, if we caught 200, you'd probably catch  
18 about 60 of them would be the Fraser River fish  
19 when we drag-seine.

20 Q Thank you. And, Chief Mountain, can you speak  
21 about the changes that you've observed in our  
22 lifetime in the stocks that spawn in the MTTC  
23 traditional territory.

24 CHIEF MOUNTAIN: A lot of concerns are brought about,  
25 about the assessment done in the creeks. We've  
26 done a lot of work, and I've walked quite a few of  
27 these streams where a lot of them aren't recorded  
28 now. But we used to always see 20,000, 30,000  
29 fish in some of these smaller streams. And then  
30 in bigger streams like Kingcome and Wakeman and  
31 you'd see basically 100,000, 200,000 fish in these  
32 streams. And even in the Nimpkish there used to  
33 be 100,000, 200,000, but historically there was  
34 1.2 million in the Nimpkish River alone. That was  
35 just for sockeye, not counting the chums, coho and  
36 springs.

37 But as the years progressed, when as a  
38 Guardian, we'd be assessing these streams by foot  
39 and floating the rivers, and by helicopter or  
40 fixed plane. And there's a noticeable drop over  
41 the last 20 years of hardly any fish going into  
42 the local streams, even the Nimpkish River  
43 streams, there's drastic decline. I used to swim  
44 in pools where there'd be 20,000 sockeye in there,  
45 and later on in the years basically had 1,000 in  
46 there, you know, drastic decline in the last 20  
47 years.

1 Q Are the MTTC involved in efforts to rehabilitate  
2 some of these stocks?

3 CHIEF MOUNTAIN: There has been a lot of talk with DFO,  
4 and at one point that they wanted to put a  
5 hatchery on the Kingcome River, and talk about  
6 enhancing a lot of the other local streams in the  
7 mainland. And on the Nimpkish River, there is a  
8 hatchery, and they have been trying to keep the  
9 stock steady, but there's no money coming from DFO  
10 so there's lack of capacity for funding to  
11 actually do a lot of this enhancement projects  
12 that need to be done on the mainland and the  
13 Nimpkish River. So basically where our hands are  
14 tied; we aren't actually basically doing much at  
15 all.

16 Q Okay. What today is the main source of food  
17 fishery for the MTTC Nations?

18 CHIEF MOUNTAIN: Today everybody fishes the Johnstone  
19 Strait fishery, which is the Fraser River sockeye,  
20 because of like I said previous, all our streams  
21 have no more fish in there. You know, some of the  
22 major streams like Kingcome and Wakeman, a few  
23 years ago you had 50 and just this last year they  
24 had seven or eight hundred. So people do not want  
25 to fish those streams and lakes because they're  
26 already depleted.

27 So all the villages in the area and the other  
28 nations, like Alert -- from Alert Bay and Port  
29 Hardy, they all fish the Johnstone Strait sockeye  
30 fishery, Fraser River sockeye.

31 Q Thank you. And could you please speak about the  
32 cultural significance of salmon to the Musgamagw  
33 people.

34 CHIEF MOUNTAIN: Well, it's on the same lines as Rod  
35 has said, that it's a cultural significance for  
36 us, and a lot of our songs and dance and even our  
37 Creation Story, where we heard that how our salmon  
38 was created and how it symbolizes our culture and  
39 tradition. And also the twins in our family have  
40 their own song, the salmon dance song, which  
41 signifies their -- the abundance that we have and  
42 hopefully that we're going to get more sockeye.  
43 So we have that dance in our Big House.

44 And it's for me, growing up -- I grew up with  
45 my grandparents, and basically we lived on sockeye  
46 salmon. We would -- we would have salmon three  
47 times a day, and snacks. We'd have our dried

1 fish, and it was a staple every day when I was  
2 growing up. And it's not the same now.

3 Q Chief Mountain, we know from your witness  
4 statement that you were an Aboriginal Fisheries  
5 Guardian. You were the supervisor of that program  
6 in DFO's Area 12, which is also the Musgamagw  
7 territory. Could you in that role as a supervisor  
8 of that program, are you familiar with the test  
9 fishery in Johnstone Strait of the Fraser River  
10 sockeye?

11 CHIEF MOUNTAIN: Yes, I am.

12 Q Could you please tell us your views on the  
13 effectiveness of the test fishery as it relates to  
14 traditional knowledge, and if it's changed over  
15 time, the conduct of that test fishery.

16 CHIEF MOUNTAIN: Well, I remember way back when I was  
17 still commercial fishery at the time when DFO was  
18 doing the test fishery, and all the fishermen were  
19 wondering what DFO was doing. Why are they  
20 fishing on the bum tides, why are they opening it  
21 up and on the biggest tides when we know it's  
22 dangerous out there, and basically they would make  
23 sets at the wrong times when there's no fish. And  
24 previous to what the fishery -- test fishery is  
25 now, there's basically two boats during their  
26 sockeye, and maybe during their chum fishery,  
27 doing the test fishery, when there used to be way  
28 more test boats out there when they first started  
29 out. So you're not getting an accurate number of  
30 what is really out there.

31 And just like Rod was saying, all the elders  
32 know when there's a lot of fish out there. But  
33 the way DFO is doing the testing on the wrong  
34 tides, the backup tides, you cannot get an  
35 accurate number of what's really out there.

36 Q Thank you. Chief Mountain, are there salmon farms  
37 in the MTTC traditional territory?

38 CHIEF MOUNTAIN: Yes, there's -- currently there's 29  
39 farms out there, which are not licensed right now,  
40 but DFO has taken them over and are supposed to  
41 licence them in December. And there's one pending  
42 application for a licence, as well.

43 Q Now, recognizing we're going to have, I think, at  
44 least a week of hearings on the subject of  
45 aquaculture, I'm just going to ask you some  
46 questions in respect of your communications with  
47 DFO about the farms in your territory. Have you



1           been involved in communications with DFO about  
2           MTTC's traditional knowledge and experience that  
3           you've had observing changes in your territory,  
4           from the presence of these farms.

5       CHIEF MOUNTAIN: Yes. Around the year 1999/2000/2001,  
6           where there was a noticeable increase in these  
7           fish farms from 1,000 -- a 100,000 fish to up to  
8           500,000 or 600,000 fish, we noticed, and our  
9           traditional knowledge holders, our clam diggers,  
10          our fishermen, and people who lived out in the  
11          village, noticed a lot of changes out there to  
12          deal with all our resources, clam beds, shellfish,  
13          ground fish, and it was brought to the attention  
14          of the leadership back then.

15                So there's a big change that traditionally  
16                everybody would notice because they live out in  
17                the territory and they're on the grounds every day  
18                and fishing every day. That's their life. And  
19                they've noticed all those changes, and it's been  
20                documented and a lot of this information is  
21                brought to DFO and they do know.

22       Q       Do you feel that DFO has been responsive to these  
23                communications?

24       CHIEF MOUNTAIN: No. We bring our concerns forward,  
25                and it's the same old thing when we meet with  
26                them: "We'll come back to you," or, "We'll ask our  
27                superiors what to do," and but we do not usually  
28                hear anything back and there's no action taken.

29       Q       Thank you. Chief Mountain, are any of the MTTC  
30                member nations in an AAROM body, or receiving  
31                AAROM funding currently?

32       CHIEF MOUNTAIN: Right now I know that they MTTC  
33                bodies, none of them have, but we have all  
34                applied. And for whatever reason, DFO rejected  
35                all our applications. Like the three other bands,  
36                Kingcome, Hopetown and Gilford, applied on their  
37                own, and the Namgis applied on their own, but  
38                neither of our proposals got accepted. So, no,  
39                right now we're not -- we don't have any AAROM  
40                money.

41       Q       So currently what is your arrangement with DFO?  
42                What's your forum that you use to engage in  
43                management discussions with DFO?

44       CHIEF MOUNTAIN: A lot of our decision are is the  
45                Namgis has their own fisheries and the Kingcome,  
46                Hopetown and Gilford have their own AFS agreement,  
47                as well. So we do have, each band does have a

1 fisheries organization. And also my position,  
2 mine is strictly dealing with the resources in the  
3 territory as it pertains to fish farms. So we do  
4 have a lot of interaction with DFO from AFS  
5 agreements.

6 Q Thank you. I'm just going to conclude with a  
7 couple of questions to you around how the MTTC  
8 Nations communicate with other First Nations  
9 around the sharing of the Fraser River fishery.  
10 Are the MTTC Nations involved in forums, groups,  
11 organizations where that kind of communication  
12 happens?

13 CHIEF MOUNTAIN: Yes. We have some councillors on our  
14 band who attend a lot of these meetings in  
15 Vancouver and Richmond to do with the Fraser  
16 Panel, or the FRAWG Committee, and the IMAWG  
17 Committee. I'm not exactly sure what they stand  
18 for, I just see these acronyms on the letterheads  
19 when we receive them. But our councillors do  
20 attend them and I know the other bands have  
21 representations on them as well, so they are at  
22 the table. And just like Rod said, we are  
23 attendants, but we're not part of the decision-  
24 making body. It's just information that DFO  
25 brings to us. So we're basically not there making  
26 any decisions. We're there to listen. So that  
27 needs to change.

28 Q And have you been involved in meetings facilitated  
29 by the First Nations Fisheries Council?

30 CHIEF MOUNTAIN: Yes. I was at a few meetings at a  
31 fish council. I haven't been to all of them. I  
32 was basically there when it first started, when  
33 they created the First Nations Fishery Council  
34 Action Plan, and where we all got together to  
35 actually -- to work together with all the Coast  
36 First Nations and the Fraser River First Nations,  
37 get rid of our differences because we all know  
38 we're all fishing for the same fish, the Fraser  
39 River sockeye fish. So we had to stop pointing  
40 fingers and we had to learn to share, because the  
41 Fraser River sockeye fishery passes everybody's  
42 doorstep and spawns in a few First Nations  
43 territories. So we're all after the same thing,  
44 and we had to unite. And there was actually a  
45 meeting in Prince Rupert, where a number of us  
46 were there, and the word is we need to have unity  
47 on all this fisheries resource and conservation

27

PANEL NO. 11

Cross-exam by Ms. Robertson (MTTC)

Cross-exam by Ms. Fong (LJHAH)

1           was also the number one topic about that Fraser  
2           River fish, as well.

3       MS. ROBERTSON: Thank you, Chief Mountain. Those are  
4           my questions.

5       MR. MCGOWAN: Mr. Commissioner, Ms. Fong, who is  
6           counsel for the Heiltsuk would be questioning  
7           next. I don't know if it's your preference to  
8           take a break now.

9       THE COMMISSIONER: Sure, we'll do that.

10      THE REGISTRAR: The hearing will now recess for 15  
11           minutes.

12

13                           (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

14                           (PROCEEDINGS RECONVENED)

15

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

17      THE COMMISSIONER: Ms. Fong?

18      MS. FONG: Thank you. Lisa Fong for Heiltsuk Tribal  
19           Council.

20

21      CROSS-EXAMINATION BY MS. FONG:

22

23      Q     Chief Newman, can you give us a brief description  
24           of your background, for the Commissioner?

25      CHIEF NEWMAN: Yes. I'm a Hereditary Chief. I hold  
26           two different titles. My father was Kwagiulth and  
27           I hold the name (indiscernible) of the Kwagiulth  
28           people, and Kwifta (phonetic) from the Heiltsuk  
29           people.

30      Q     Okay. Can you describe for us when you started  
31           fishing?

32      CHIEF NEWMAN: When I came out of residential school  
33           when I was 14 years old, and I was hired by a  
34           relative in Klemtu to go fishing with him. I was  
35           a young boy then. So I've been on a seine boat  
36           since I was 14 years old. I've retired for the  
37           last 11 years from my boat. My son now runs my  
38           boat and they kicked me off. I guess they thought  
39           I was getting too old so --

40      Q     How many sons do you have?

41      CHIEF NEWMAN: I have three sons.

42      Q     And do they all fish?

43      CHIEF NEWMAN: Two of them fish on the boat. They are  
44           all fishermen. They are all commercial fishermen,  
45           but two of them fish on my boat.

46      Q     Can you briefly describe for us your political  
47           involvement on behalf of Heiltsuk?

1 CHIEF NEWMAN: Yeah, well, I was a member of the band  
2 council for a number of years, and then I served  
3 as the chief of -- elected chief of the band for a  
4 number of years. I guess I was involved in the  
5 politics of the community for over 30 years.

6 Q Okay. Were you also a participant with the Native  
7 Brotherhood of B.C?

8 CHIEF NEWMAN: Yes, I was a member of the Native  
9 Brotherhood for many years. I served on the board  
10 for a good number of years, and then I was the  
11 president of the Native Brotherhood of B.C. for 11  
12 years.

13 Q Okay. And were you also involved in the  
14 Aboriginal Fisheries Commission?

15 CHIEF NEWMAN: Yes, I was the Coastal Co-chair on the  
16 Aboriginal Fisheries Commission.

17 Q Were you -- did you have any involvement, any  
18 judicial experience?

19 CHIEF NEWMAN: Yeah, I was the first aboriginal person  
20 appointed as a magistrate in British Columbia.

21 Q Okay. How long was that?

22 CHIEF NEWMAN: Yeah, I served as a magistrate for nine  
23 years.

24 Q Thank you.

25 CHIEF NEWMAN: I was also a member of the National  
26 Fisheries Commission Committee for the Assembly of  
27 First Nations.

28 Q Thank you. Can you describe for Mr. Commissioner  
29 where the Fraser River sockeye salmon passed  
30 through Heiltsuk territory?

31 CHIEF NEWMAN: Yeah, the Fraser River sockeye and all  
32 the passing stock usually came in through the  
33 south end of Price Island, along the Price Island  
34 shore and into Milbanke Sound, across the Seaforth  
35 Channel, and to Cape Mark, down to Purple Bluff,  
36 Spider Island, Nalau Pass, Hakai Pass, and down  
37 through the outside of Calvert Island, and also  
38 went through Hakai Pass and Nalau Pass into Fitz  
39 Hugh Sound, and passed through quite a lot of our  
40 territory.

41 Q Can you now speak about the cultural significance  
42 of the Fraser River Sockeye salmon to the  
43 Heiltsuk.

44 CHIEF NEWMAN: As it's been pointed out, they sort of  
45 mixed, intermingled with our local stock, and I  
46 think all passing stocks did that. And a lot of  
47 passing stock passed through Heiltsuk's territory.

1 Like the Bella Coola stocks passed through, the  
2 Rivers Inlet stocks passed through there, and the  
3 Fraser River stocks all passed through there.

4 Q Could you explain what the nature of the  
5 traditional knowledge is with respect to the  
6 passing stock?

7 CHIEF NEWMAN: Well, our people knew when they were  
8 there, when they were passing through.

9 Q And are you -- are there, for example, creation  
10 myths or celebrations regarding the salmon?

11 CHIEF NEWMAN: Yes, there was a lot of celebrations in  
12 our family. We had what they called a barbecue  
13 dance that our people perform at the potlatches  
14 and we also had what has been talked about, too --  
15 I have twins, I have a set of twins in my family.  
16 My son has a set of twins and that's considered  
17 the lucky -- you're lucky to have that because  
18 you're always going to catch lots of salmon. And  
19 my twins are entitled to dance the salmon dance at  
20 any potlatch.

21 Q Thank you. Is there also a traditional commercial  
22 aspect to marine resources for Heiltsuk?

23 CHIEF NEWMAN: Yes, the Heiltsuk are ocean people. Our  
24 economy was based on resources, it always was and  
25 the digs in Namu showed that we'd been there for  
26 10,000 years, and I think if they went a couple of  
27 more feet, they'd find out we'd been there for  
28 20,000 years. But they found bones of salmon and  
29 different kinds of fish. Even the remains of  
30 lootooner (phonetic) were included in that dig.  
31 But our people have always been ocean people. We  
32 weren't -- we didn't migrate from the interior, we  
33 were always ocean people. And as Rod pointed out,  
34 our reserves remain small because our economy was  
35 based on the resources of the sea.

36 The **Gladstone** case was won on that basis,  
37 because what (indiscernible) recorded what they  
38 did in the old days, how they traded with other  
39 nations.

40 Q Now, with the decline of the passing stock, the  
41 salmon in particular, what sort of impacts have  
42 you observed on Heiltsuk?

43 CHIEF NEWMAN: It had a very devastating impact on our  
44 community. You know, we now have the highest  
45 social -- serious social problems that we never  
46 had before. We have a high unemployment rate, our  
47 fish plant is closed down. It wiped out our

1 trolling fleet, took away 75 percent of the  
2 earning power of our gillnet fleet, and that  
3 started the decline of our gillnet fleet.

4 Before that, we were independent people. We  
5 didn't depend on government handouts to do the  
6 things you wanted to do. We build our own houses.  
7 We didn't what they call government houses at that  
8 time.

9 After they closed Milbanke and created the  
10 problems and the loss of our -- and mismanaged our  
11 stocks in our local area, our people become  
12 totally dependent people. We did totally -- we  
13 became totally dependent on the government to do  
14 things for us.

15 It was devastating for our community. We  
16 have the highest suicide rate. Any communities on  
17 the coast have a high -- very high suicide rate  
18 amongst the young people because of that. And it  
19 also created the -- an epidemic in sugar diabetes  
20 for our people. We have a -- now have a high rate  
21 of cancer, heart problems, strokes among our young  
22 people. And we attribute it to the loss of our  
23 economic opportunities in the fishery and loss of  
24 our food that we eat -- get from the sea.

25 Q Okay. Thank you. I'm going to ask a series of  
26 questions now about joint management or co-  
27 management. In your view, currently, does joint  
28 management, and I'll use that term, "joint  
29 management" instead, of the Fraser River sockeye  
30 salmon, or the marine resources, does that exist  
31 with DFO?

32 CHIEF NEWMAN: No, no such thing as -- we do have what  
33 they call the co-management, but that issue has  
34 been in the -- on the table of the Heiltsuk for  
35 many years, even before we got a -- we agreed to  
36 an AFS agreement. The request for the joint -- or  
37 we want to take over the total management of our  
38 fishery and we put that to the government when we  
39 had our AFS and at that time, the government  
40 agreed that enforcement would be included in our  
41 co-management deal, but they withdrew that and  
42 they withdrew the funding that was going to come  
43 with it because the Civil Service Alliance of  
44 Canada was opposed to it. They felt it was a  
45 threat to the members of the Department of  
46 Fisheries and Oceans, and DFO withdrew it.

47 Q Okay. So with some of the more specific aspects

1 of joint management, in your view, what does joint  
2 management mean in terms of enforcement powers?  
3 Like, how can you give that meaning?

4 CHIEF NEWMAN: I was just looking at the copy of the  
5 Wild Salmon Policy sitting on the table out there.  
6 I was co-chairman of the native -- or Aboriginal  
7 Fisheries Commission when the Department of  
8 Fisheries of Oceans wanted to go on what they  
9 called the multi-purpose tour. And they asked the  
10 members of the B.C. Aboriginal Fisheries  
11 Commission Board if they could accompany them, and  
12 we did. But what they wanted to push was the Wild  
13 Salmon Policy. They already had it in print.

14 When our people heard that, and every Indian  
15 community wanted to, we heard the same thing. The  
16 aboriginal people wanted to be totally involved in  
17 rebuilding of the resources, totally involved in  
18 rebuilding of the habitat, and totally involved in  
19 the management of the resources.

20 Q Mm-hmm. And so with enforcement, what would  
21 "totally involved" mean for Heiltsuk?

22 CHIEF NEWMAN: The right to control openings and  
23 closes, who comes in to fish it. Because right  
24 now, we've got a -- when they closed Milbanke, it  
25 became a sports fishing area. We have thousands  
26 of sports fisherman coming there every year. Our  
27 little airstrip looks like Vancouver International  
28 in the summertime with all the sports fisherman  
29 that come in there. And we can't go fishing. We  
30 fished for one day a season for the last two  
31 seasons. How can people survive on that? And  
32 yet, we stood on the beach and watch these  
33 carpetbaggers taking boxes of fish out of our  
34 territory and we get nothing out of it. They  
35 don't even spend any money in our community. So  
36 to me, that's not right. You know, when you take  
37 away people's economic opportunities, that's not  
38 right.

39 Q Okay. So coming back to joint management, I now  
40 want to turn to FSC, so fishing for food, social  
41 and ceremonial purposes. So in your view, again,  
42 like, what does "joint management" mean in terms  
43 of an appropriate FSC management?

44 CHIEF NEWMAN: Well, the system that's in place today,  
45 where the sports fishermen are allowed to run  
46 uncontrolled in our territory, is an infringement  
47 on our title and rights to food fishery. Milbanke

1 was the bread basket of the Heiltsuk people.  
2 Today, it's hard for us to go out and get -- we  
3 don't -- because we don't just depend on the  
4 salmon, as has been pointed out here already, we  
5 depend on the halibut, the cod, and clams, and  
6 everything else that's in that ocean for our food.  
7 We live in a very high-cost area and we put a high  
8 value on the food fishing in the commercial  
9 fishery because it takes care of our people all  
10 year round.

11 Q So when you say you put a high value on your food,  
12 social and ceremonial fishery, do you also manage  
13 its conservation voluntarily?

14 CHIEF NEWMAN: Yes, there have been times when we've  
15 been forced to close certain areas in our  
16 territory to the food fishery in order to try to  
17 rebuild the stocks and we've stopped other -- we  
18 used to allow our people to come and harvest their  
19 own roe, herring roe in our territory.

20 Q Mm-hmm?

21 CHIEF NEWMAN: We've -- we also asked people to stop so  
22 we could conserve that when the herring started to  
23 decline.

24 Q Okay. I'm going to show you a document.

25 CHIEF NEWMAN: I'd like to add something else to that.  
26 We also were asked to be part of rebuilding --  
27 trying to rebuild abalone. The Department of  
28 Fisheries and Oceans, in their wisdom, created 20  
29 commercial abalone licences that were given to 20  
30 white people. They totally wiped out the abalone  
31 in our territory. We've been trying to rebuild  
32 that stock. (Indiscernible) asked if we would  
33 voluntarily stop taking abalone for the -- in the  
34 food fishery --

35 Q Mm-hmm?

36 CHIEF NEWMAN: -- and we agreed to do that, to help try  
37 to rebuild that. We haven't been able to take  
38 abalone in the food fishery for over 30 years now  
39 and, yet, we have the highest -- one of the  
40 biggest poaching operations going on in our  
41 territory in abalone and there's no enforcement  
42 out there. So we wanted to be able to put a joint  
43 -- a total management in place to look -- not just  
44 look after the commercial part of it, but to also  
45 protect the resources for the benefit of the  
46 people. We live there. We've been there for  
47 10,000 years. We're not going to go anywhere.



1                   When the Crown Zellerbach ran out of logs,  
2                   they abandoned Ocean Falls, the people left. They  
3                   left us with a mess, but we're not going to leave,  
4                   we're going to live there. And it's important for  
5                   the Heiltsuk people that they protect and rebuild  
6                   the resources that we have and that's not  
7                   happening under this system.

8                   Q     Thank you. I'm going to show you a document.

9                   MS. FONG: Mr. Lunn, if you could assist us, the June  
10                   7th, 2010 notice.

11                   Q     Chief Newman, if you could take a look at that and  
12                   tell me whether you recognize it?

13                   CHIEF NEWMAN: Yes, I recognize it.

14                   Q     Can you explain to Mr. Commissioner what it is.

15                   CHIEF NEWMAN: It was a request from the Fraser River  
16                   bands and some of the bands on Lower Vancouver  
17                   Island, to part of the Salish bands, if we could  
18                   stop the food fishery, an early Stuart run was  
19                   coming through our territory, and we agreed to do  
20                   that.

21                   Q     This was voluntary?

22                   CHIEF NEWMAN: That's right.

23                   Q     Okay.

24                   MS. FONG: I'd like to mark this as the next exhibit,  
25                   please.

26                   THE REGISTRAR: Exhibit number 302.

27

28                   EXHIBIT 302: June 7th, 2010 "Notice to all  
29                   Food fishers" document

30

31                   MS. FONG:

32                   Q     Is it your view that the current AF -- sorry, FSC  
33                   allotment in these AFC agreements is adequate for  
34                   Heiltsuk?

35                   CHIEF NEWMAN: Yeah, I've looked at that agreement  
36                   briefly. I glanced through it the other day and  
37                   if I was asked to sign it, I wouldn't sign it  
38                   because it seems to me, the number's out of whack  
39                   for the poundage and the population that we have,  
40                   and the way we're increasing so fast, it doesn't  
41                   seem to line up so --

42                   Q     Okay. And has Heiltsuk done a community needs  
43                   study to ascertain the amount, like, the FSC  
44                   allotment that would be appropriate?

45                   CHIEF NEWMAN: Yes, they have done a study to do that  
46                   and I think that it's now part of our 15-year plan  
47                   that's been put into place.

1 Q Okay.

2 MS. FONG: With the assistance of Mr. Lunn, if he can  
3 put up our next document? Thank you. And if you  
4 could flip to the next page, please, Mr. Lunn?  
5 And perhaps slowly scroll down into page 3.

6 Q Chief Newman, do you recognize this document, and  
7 if you do, can you please explain what it is?

8 CHIEF NEWMAN: Yes, I've seen it. Yes, I've seen it.

9 MS. FONG: If we can settle on page 3?

10 Q Chief Newman, can you explain what this document  
11 is?

12 CHIEF NEWMAN: Yes, it's a study that was done to  
13 determine the needs of our -- the food fishery  
14 needs of our -- the Heiltsuk people.

15 Q I notice, on page 3, it indicates the amount  
16 required for a population of 2,180 people is  
17 98,819, I believe it's pounds, of sockeye. Do you  
18 believe this to be accurate?

19 CHIEF NEWMAN: I guess it's close, but like I said, the  
20 numbers, to me -- I haven't done arithmetic on it,  
21 but, to me, they look out of whack. You know, our  
22 nation is increasing fast and the numbers there  
23 will never take care of the needs of the people.

24 Q Thank you. When you talk about the needs of your  
25 people, are you also speaking of urban members and  
26 what that means?

27 CHIEF NEWMAN: That's right. Any Heiltsuk person has  
28 the title and right to the food fishery, and we  
29 want to make sure that they have the opportunity  
30 to enjoy their right.

31 Q And to your knowledge, have there been any issues  
32 regarding obtaining fish through the food fishery  
33 right for urban members?

34 CHIEF NEWMAN: Well, this year, we tried -- with the  
35 big run of sockeye that went through our  
36 territory, we missed it. Because the sockeye goes  
37 through our territory and, like I said, I feel  
38 that we're entitled to a share of it and we should  
39 be able to take it anywhere on the migratory  
40 route. But DFO would not allow us to get more  
41 sockeye for urban members in other people's  
42 territories.

43 MS. FONG: Okay. If, Mr. Lunn, you can assist us with  
44 the next document?

45 THE COMMISSIONER: Do you wish to mark that document?

46 MS. FONG: Oh, sorry, yes, please. May we mark that as  
47 the next exhibit?

1 THE REGISTRAR: Exhibit 303.  
2 MR. MCGOWAN: Just before it's marked, Mr. --  
3 THE REGISTRAR: Oh.  
4 MR. MCGOWAN: -- Registrar. Mr. Commissioner, there's  
5 a lot of very specific information in this  
6 document and if the document is being marked  
7 simply to the extent it informs or explains Chief  
8 Newman's testimony, I don't have an objection, but  
9 I'm not sure it's appropriate to mark it for the  
10 truth of everything contained in the document.  
11 MS. FONG: We're satisfied to mark it for  
12 identification, or for the limit expressed by Mr.  
13 McGowan as we will hopefully be able to call other  
14 witnesses through Commission counsel later on in  
15 the proceeding.  
16 THE COMMISSIONER: Very well, we'll mark it as an  
17 exhibit on the understanding that counsel has  
18 reached with Mr. McGowan.  
19 MS. FONG: Thank you.  
20 THE REGISTRAR: For identification?  
21 THE COMMISSIONER: No, we'll mark it as the next  
22 exhibit.  
23 THE REGISTRAR: That will be Exhibit 303.  
24  
25 EXHIBIT 303: Document entitled, "Heiltsuk  
26 Marine Use Plan"  
27  
28 MR. MCGOWAN: Just to be clear, Mr. Commissioner, I'm  
29 not -- Commission counsel is not committing to  
30 call further witnesses to give evidence on this  
31 document. We haven't -- don't have a present  
32 intention to do so. I'll certainly discuss it  
33 with my friend.  
34 MS. FONG: Yes, we'll make that request. Thank you.  
35 And the next document, please?  
36 Q Again, Chief Newman, if you could take a look at  
37 this document and tell me whether you recognize  
38 it, and if you do, can you explain what it is?  
39 CHIEF NEWMAN: Yeah, it's an agreement that was  
40 developed, I guess, by the Department of Fisheries  
41 and Oceans between the Heiltsuk and the Department  
42 of Fisheries and Oceans.  
43 Q Oh, I think perhaps it says, "Aquatic  
44 Department --  
45 CHIEF NEWMAN: Mm-hmm.  
46 Q -- and "Dutilh (Heiltsuk for "news")," it's a  
47 newsletter?

1 CHIEF NEWMAN: Oh, yeah, I see that. Yes.

2 Q Okay.

3 CHIEF NEWMAN: The Dutilh, yeah.

4 Q And could you take a look at it and tell me  
5 whether you recognize it and what it is.

6 CHIEF NEWMAN: Yes, I recognize it.

7 Q Okay. And what is the newsletter about?

8 CHIEF NEWMAN: Our food fishery. Our food fishery  
9 and --

10 Q Okay. Of the events over this summer?

11 CHIEF NEWMAN: There's concerns from the urban people  
12 on why they didn't receive a share of the food  
13 fishery.

14 Q Thank you.

15 MS. FONG: I'd like to mark that as the next exhibit,  
16 with the same limitations expressed by Commission  
17 counsel.

18 THE REGISTRAR: Exhibit number 304.

19

20 EXHIBIT 304: Document entitled, "Aquatic  
21 Department Dutilh (Heiltsuk for news)"  
22

22

23 MS. FONG:

24 Q Chief Newman, in your experience, have you had, or  
25 are you aware of negotiations with DFO on the FSC  
26 allotment numbers in your AFC agreements?

27 CHIEF NEWMAN: Not that I recall. We always got the  
28 notices with the numbers already written into it  
29 and we always refused to sign those agreements  
30 because we didn't agree with the numbers. We  
31 didn't want anybody to put the numbers on -- we  
32 wanted to put the numbers in it.

33 Q Okay. And would they let you put the numbers in  
34 it?

35 CHIEF NEWMAN: No.

36 MS. FONG: If you could, Mr. Lunn, pull up the next  
37 document?

38 Q Okay. The next document is the Comprehensive  
39 Fisheries Agreement signed on December 9th, 2009.  
40 Do you recognize this?

41 CHIEF NEWMAN: Yes, I do.

42 Q Okay. I'm going to refer you to page 14. Okay,  
43 and page 14 reads:

44

45 Schedule B-1, Food, Social and Ceremonial  
46 Fishery.  
47

1 Do you see that, Chief Newman?

2 CHIEF NEWMAN: Mm-hmm. Yes, I was looking at this last  
3 night and, again, I thought if I had anything to  
4 do with it, I would have never signed this  
5 agreement.

6 Q Okay. I'm going to flip over. My question is  
7 with respect to a paragraph at page 15, paragraph  
8 4(b). Okay. Now, the second sentence of that  
9 paragraph reads:

10  
11 In the event that the HTC identifies an  
12 increase in the food, social and ceremonial  
13 needs of its members, during the fishing  
14 season, the Parties will review the  
15 quantities specified in the Communal Licence  
16 issued to the HTC and, if agreed by the  
17 Parties, DFO will amend the Communal Licence.  
18

19 Are you aware of any circumstance where the  
20 Communal Licence was amended to increase the  
21 number of the FSC allotment?

22 CHIEF NEWMAN: No, I don't recall any of our  
23 allocations being increased, but you know, we --  
24 every time there's a change in the amount of quota  
25 that the commercial fisherman get and the sports  
26 fisherman receive, and this happened in the  
27 halibut, with the Kelliher proposal, the halibut  
28 fishermen -- the sports fishermen wanted an  
29 increase in their allocation so Kelliher was asked  
30 by the government to negotiate a deal between the  
31 two of them, but they excluded the Indian people,  
32 we weren't even a part of that. We weren't  
33 consulted in what happened to that agreement, and  
34 how it came about. Now, today, the sports  
35 fishermen want 40 percent of the total halibut  
36 allocation. Again, nobody's come to ask us about  
37 what we think about it. And if we had, what do  
38 you call it, total management of our resources,  
39 we'd be able to control that.

40 Q Okay. But staying with the FSC fishery, let me  
41 ask you a question about that next sentence that  
42 follows:

43  
44 The quantities of fish reflected in the  
45 Communal Licence are subject to consultation  
46 each year, at which time the needs of the  
47 members of the HTC and conservation

1 requirements will be reviewed by the Parties.

2

3 Do you have any knowledge of any consultation with  
4 DFO on this?

5 CHIEF NEWMAN: I can only speak for the time I was  
6 involved in the band business, there was never any  
7 consultation, we were always told, "This is it.  
8 You sign it," or -- you know?

9 Q Thank you.

10 MS. FONG: I'd like this document marked as the next  
11 exhibit, and I'd be satisfied with the same  
12 limitations as expressed by Commission counsel.

13 THE REGISTRAR: Exhibit 305.

14

15 EXHIBIT 305: Document entitled,  
16 "Comprehensive Fisheries Agreement"

17

18 MS. FONG:

19 Q Now, coming back to joint management and what that  
20 -- you know, the aspects of what that might mean,  
21 can you tell us whether that would include not  
22 just the marine resources, but the inland, like,  
23 rivers and stream resources, in your view?

24 CHIEF NEWMAN: You mean the salmon streams inland?

25 Q That's correct.

26 CHIEF NEWMAN: Yes, it would include all of our  
27 territory. In our territory, we have over 200  
28 salmon streams and because of the problems in the  
29 Fraser and the Skeena River, less than 20 percent  
30 of the funding that DFO gives to look after  
31 streams is spent between Vancouver Island and the  
32 Skeena River. The 200 streams in the central  
33 coast have been totally abandoned. The Department  
34 of Fisheries and Oceans doesn't seem to care  
35 whether they produce salmon any more, or not.

36 Q And what would the restoration of these streams  
37 matter to the passing stock?

38 CHIEF NEWMAN: Well, it would -- we wouldn't  
39 concentrate on the passing stock so much. You  
40 know, the -- when you neglect the streams in our  
41 territory, you're forcing a dependency on the  
42 Fraser River and the Skeena River.

43 MS. FONG: Mr. Lunn, if you can assist us with the last  
44 document? We've also passed this out to counsel  
45 because I recognize it's got a lot of detail and  
46 it might be hard to see.

47 Q Chief Newman, if you could take a look at this and

1 tell me if you recognize this document and what it  
2 is, what it depicts?

3 CHIEF NEWMAN: Well, it -- that marks all the salmon  
4 streams in our territory.

5 Q Oh, sorry, can you speak into the mike?

6 CHIEF NEWMAN: I'm sorry. This is a map showing the  
7 location of our -- of all the fish-bearing streams  
8 in our territory.

9 Q Okay. And do --

10 CHIEF NEWMAN: Our salmon-bearing streams.

11 Q And do all of them bear salmon currently?

12 CHIEF NEWMAN: No, they don't. A lot of them don't  
13 produce any more because of bad logging practices  
14 that we had in our territory.

15 Q And are there -- do you know if there are  
16 restoration activities going on with these salmon  
17 streams?

18 CHIEF NEWMAN: We attempted, on our own, to try to do  
19 that. You know, some of the things I see on that  
20 agreement they want to sign is that they -- we  
21 walk the streams and try to keep them clear, but  
22 we were told not to do that, not to interfere with  
23 it.

24 Q Okay. So my last question on joint management  
25 would be for meaningful joint management, do you  
26 have any comments about how fishing licences ought  
27 to be?

28 CHIEF NEWMAN: Yes, I have some concerns about the way  
29 PICFI has been put into practice. I was at the  
30 joint -- I was at the press conference. I was  
31 invited by the Minister of Fisheries and Minister  
32 of Oceans to -- and Indian Affairs to be there.  
33 And what I heard them present jointly was  
34 something altogether different than what we see  
35 being put in place today.

36 We were told by the Department of Fisheries  
37 and Oceans that their mandate is to make  
38 everything communal. An aboriginal person will  
39 not have the opportunity to be a private owner any  
40 more, according to their process. And to me,  
41 that's not right.

42 You know, the communal system has not worked.  
43 The process through the AFS has not worked. It  
44 has not created any economic opportunities for the  
45 band members who are supposed to be using them. A  
46 lot of those licences have been leased to non-  
47 Indian people. And the government does have some

1 concerns about that because I saw some documents  
2 from the standing committee on fisheries and  
3 oceans to question why that's happening. So it's  
4 not doing what it's supposed to do, it's doing the  
5 opposite.

6 PICFI was supposed to create economic  
7 opportunities for aboriginal people. It hasn't  
8 done that. It's been changed so it's creating  
9 economic opportunities for the non-Indian people.

10 Q And just so I understand your evidence, is it the  
11 case that you say communal -- or, sorry,  
12 ownership, individual-owned licences are better  
13 than the communal system currently in place?

14 CHIEF NEWMAN: Yeah, well, the -- when we owned our  
15 licences individually, we created a lot of jobs in  
16 the community. Today, it's dead. If you go to  
17 communities like Alert Bay, Bella Bella, Klemtu,  
18 Rivers Inlet, there's no fishermen there any more  
19 because somebody created management plans that are  
20 designed to push people out of the industry, and  
21 the aboriginal people are the ones that's been  
22 pushed out. Limited entry was created to push  
23 somebody out. The quota system was created to  
24 push somebody out, the area licensing, the Mifflin  
25 buy-back program, they were all created to push  
26 somebody out and we're the victims.

27 Q Okay. Now, my last question for you today is do  
28 you believe that First Nations can negotiate with  
29 the DFO with a unified voice, with one voice? And  
30 so for example, using the First Nations Fisheries  
31 Council?

32 CHIEF NEWMAN: Yeah, I guess that -- I have to express  
33 my own personal view on it. Many times, our  
34 people have tried to put something in place to  
35 speak with one voice. It was always a dream of  
36 our ancestors that we could put something together  
37 that would speak out with one voice for the  
38 aboriginal people. The first one, the Indian  
39 Allied Tribes, went to Ottawa. As a result of  
40 that trip to Ottawa, the government put a law in  
41 place that made it illegal for Indian people to  
42 meet to talk about the issues. If three people  
43 got together and talked, that was called an  
44 illegal congregation.

45 So the Native Brotherhood was born under the  
46 umbrella of the church to try to form another  
47 organization to fight with the unified voice.



1 Again, that didn't work, it broke apart, and the  
2 Native Brotherhood of B.C. became a coastal  
3 organization.

4 Then we formed the Union of B.C. Indian  
5 Chiefs, again to speak with one voice on a line of  
6 questions. Again, that broke apart and the one  
7 issue that always broke us apart was the fishery  
8 because the coastal people have a lot to talk  
9 about when they talk about fish. The ocean is  
10 full of wealth and the aboriginal people want to  
11 share that wealth.

12 Q Mm-hmm?

13 CHIEF NEWMAN: The river systems, all they talk about  
14 is salmon. And we've tried different ways to try  
15 to put something together to speak on behalf of  
16 all aboriginal people. The B.C. Aboriginal  
17 Fisheries Commission was put in place to do that.  
18 It didn't work. Now, we've got a new one that the  
19 government is putting -- decided to fund to try to  
20 do that, but, again, I have my concerns whether  
21 it's going to work. And I was at the AGM in  
22 Prince Rupert a month ago, and some of the things  
23 I heard there created -- troubled me in ways  
24 because I do believe that the coastal people need  
25 to come together to deal with their issues in a  
26 unified way. The interior people need to come  
27 together to deal with their issues in a unified  
28 way. Because right now, the two of us are all  
29 split, we're divided. The government has a way of  
30 -- to split us, divide and conquer. They do that  
31 with funding. The AAROM funding is one source of  
32 funding that they use to divide us.

33 Many times their funding -- their funding  
34 arrangements have been designed to create  
35 divisions among our people. It's the same in the  
36 interior. There's a bit split on the Fraser River  
37 between the Fraser River bands. So we need to get  
38 together to deal with our issues together in a  
39 separate way, the coastal people and the interior  
40 people, and then they come together and deal with  
41 those issues that we have in common.

42 MS. FONG: Thank you very much, Chief Newman, those are  
43 my questions. With respect to the last document,  
44 the streams, if I could get that marked as the  
45 next exhibit and with those same limitations would  
46 be fine.

47 THE REGISTRAR: Exhibit 306.

1 EXHIBIT 306: Document entitled, "Spatial  
2 Distributions of Sockeye Streams"  
3

4 MR. GERELUK: Thank you, Mr. Commissioner and panel  
5 members. My name is Joe Gereluk. Gereluk is  
6 spelled G-e-r-e-l-u-k, and I represent the Métis  
7 Nation, British Columbia.  
8

9 CROSS-EXAMINATION BY MR. GERELUK:  
10

11 Q My question would be directed, then, of course, to  
12 Mr. Ducommun. And Mr. Ducommun, we've heard about  
13 your professional qualifications. I wonder if  
14 you'd be able to discuss your personal experiences  
15 as they relate to fisheries in B.C. for the  
16 commission?

17 CAPTAIN DUCOMMUN: Sure. I think the purpose of today  
18 is to focus more on -- on traditional knowledge  
19 and kind of world view, and I'll try to do that.  
20 I am a professional biologist, fisheries  
21 biologist. Primarily, I've been working in the  
22 fisheries field since about 1972 in British  
23 Columbia.

24 Part of the reason I became a fisheries  
25 biologist is because I was inseparable from the  
26 water when I was a young man, and I found that it  
27 was the way that I could stay out there on the  
28 water and on the land and not have to do a real  
29 job.

30 Anyway -- but I'm also a traditional  
31 knowledge holder and I -- my traditional knowledge  
32 comes in a little bit different way, I think than  
33 some of the other panellists and that is that  
34 within the Métis world, particularly in the  
35 fishing business, our old-time commercial  
36 fishermen are disappearing. I think that's  
37 probably true within all commercial fishing  
38 sectors and, you know, it's just -- it's the  
39 nature of the commercial fishery now that there  
40 just is not that many opportunities. A lot of  
41 those opportunities are corporate.

42 But one of the things that I've done over the  
43 last number of years, just out of interest more  
44 than anything, is I've actually interviewed a lot  
45 of our old commercial fishermen and our old  
46 fisheries families and also talked to people along  
47 the coast and along the major river systems from

1 our communities about their activities around  
2 traditional harvesting, including fish. So my --  
3 so as I interview them, their traditional  
4 knowledge becomes mine so it -- but it -- it's a  
5 little bit difference process than being, you  
6 know, raised in a commercial fishing family, which  
7 I wasn't. So I'll speak primarily on kind of that  
8 traditional aspect today.

9 Q All right. And I understand part of the -- your  
10 experience included working with -- as an  
11 aboriginal fisheries advisor for the Cariboo  
12 Tribal Council?

13 CAPTAIN DUCOMMUN: That's correct. I -- for a number  
14 of years, I managed the aboriginal fisheries in  
15 the mid-Fraser for the Northern Shuswap people.

16 Q And your current position with the Métis Nation of  
17 British Columbia is?

18 CAPTAIN DUCOMMUN: I'm the Director of Natural  
19 Resources so I'm responsible for all the national  
20 resource activities related to our 35 communities.

21 Q And perhaps we can just have a brief review of the  
22 Métis Nation structure as it is in British  
23 Columbia relative to where the Métis population is  
24 dispersed in British Columbia in accordance with  
25 your studies with the UBC.

26 CAPTAIN DUCOMMUN: Okay. We -- Métis Nation B.C.  
27 represents 35 chartered -- what we call chartered  
28 communities so they've signed an affiliation  
29 agreement with a provincial organization. They're  
30 distributed throughout British Columbia. There's  
31 somewhere around 10 or 12 within the Fraser  
32 watershed and between -- essentially, on the east  
33 coast of Vancouver Island. So those would be the  
34 ones that are certainly more interested in Fraser  
35 sockeye.

36 All of our communities have ballot box-  
37 elected presidents. We also have ballot box-  
38 elected regional and provincial officials.  
39 There's 11, including a women's and a youth  
40 representative. So that process allows us to --  
41 you know, to discuss issues, concerns, activities  
42 with Métis across the province. According to the  
43 2006 census, there was just under 60,000 self-  
44 identifying Métis in British Columbia, and we also  
45 have a process to identify **Powley** compliance. So  
46 according to the **Powley** decision in the Supreme  
47 Court, there's actually a definition of who a

1 Métis is so we have a process to do that.

2 Q And what percentage of the population would you  
3 say, of the Métis population, is concerned with or  
4 spread out over the Fraser watershed?

5 CAPTAIN DUCOMMUN: I would guess that there's probably  
6 in the low tens of thousands of Métis who are  
7 involved in communities within the Fraser River or  
8 along the east coast of Vancouver Island.

9 Q And one more item with respect to the Métis Nation  
10 governance structure. There is a legislation  
11 system in place and I understand there's a **Natural**  
12 **Resources Act** under which you, as the captain of  
13 the natural resources operates?

14 CAPTAIN DUCOMMUN: That's correct. We have a  
15 legislative process. We -- our legislation is law  
16 for our nation. It's passed through a two-reading  
17 process. The first reading is all of our  
18 presidents plus our 11 ballot box provincial  
19 representatives have to pass it. And our second  
20 reading is at the AGM, where all of our citizens  
21 have an opportunity to vote on it. And the  
22 **Natural Resource Act** passed at both those stages  
23 unanimously.

24 Q And the Act, itself, is concerned with  
25 conservation; is that correct?

26 CAPTAIN DUCOMMUN: It's -- conservation is definitely  
27 one of the big focuses of that Act, but also  
28 access to resources is another.

29 Q And does the Act speak to the use of fishery or  
30 other wildlife resources for food, social and  
31 ceremonial purposes?

32 CAPTAIN DUCOMMUN: The Act directs that that is the  
33 only reason for that Act. It specifically  
34 actually prohibits commercial activities and  
35 that's not to say that there may not, in the  
36 future, be commercial activities approved, but  
37 there would be a different legislative process to  
38 do that.

39 Q All right. Now, the historical perspective of  
40 Métis, from the historical perspective of Métis in  
41 British Columbia, can you describe what was the  
42 Métis relationship with the fishery in British  
43 Columbia?

44 CAPTAIN DUCOMMUN: Well, Métis people first came in the  
45 fur trade era to B.C. We are -- the earliest  
46 documents that we have go back to 1793. We know,  
47 just from some of the reading between the lines of

1 those documents, that Métis people were here  
2 before that. But there is -- one of the projects  
3 that I'm involved with with the University of B.C.  
4 is collecting historic documents from the fur  
5 trade era. We have over 20,000 documents now and  
6 some of those documents speak fairly early on to  
7 commercial fishing activities, not specifically to  
8 the fact that they were Métis, but we also know  
9 that the workers in the fur trade during the early  
10 1800s were primarily Métis people.

11 Q And how would you describe the relationship to --  
12 of the Métis people from a scientific viewpoint or  
13 a traditional viewpoint? Is there an explanation  
14 for the Métis' view of the fishery from those two  
15 perspectives?

16 CAPTAIN DUCOMMUN: Well, one of the things -- because  
17 we're a mixed race people, we tend to pull the  
18 best we can from each of our European, primarily,  
19 and First Nations roots, and one of the things  
20 that's actually reflected in our **Natural Resource**  
21 **Act** quite strongly is that we try to balance  
22 traditional knowledge with what we call western-  
23 based science and it's actually written into our  
24 process that we have to look at traditional  
25 knowledge in any decisions that we make related to  
26 national resource management.

27 Q All right. Now, there is a concern about Métis  
28 having legal rights, or not, to fish, and as a  
29 result, has there been a change in the manner in  
30 which Métis people fish in British Columbia?

31 CAPTAIN DUCOMMUN: Well, Métis, up till -- my  
32 understanding, from interviews I've done and my  
33 own personal observations, even in this -- in the  
34 1970s, was that we tended to fish more opening up  
35 until about the last 20 or 30 years when kind of  
36 the crunch came and people all of a sudden were  
37 paying attention to missing fish and Métis became  
38 more -- I don't know, I've got a pretty strong  
39 word for the way DFO treats us, but, you know, we  
40 were forced underground, essentially.

41 We -- Métis fishing was in a lot of ways not  
42 unlike some of the First Nations fishing, where it  
43 was a social, communal activity and now it's  
44 really an individual kind of an activity in most  
45 cases. In some cases, because we're related by  
46 family in First Nations, you know, some -- in some  
47 cases, Métis fish under First Nations rights,

1           essentially.

2           Q     Okay. When you talk about the First Nations  
3           connection to Métis, and it's a familial  
4           relationship, is that what you're saying?

5           CAPTAIN DUCOMMUN: In a lot of cases it is because  
6           Métis families have been over 200 years in this  
7           province and because in the early, you know, 70 or  
8           80 years of that, there was no European women,  
9           there was a lot of intermarriage between Métis  
10          men, primarily, and First Nations women and we see  
11          those families. And my family is a perfect  
12          example, I have lots of relatives on reserves in  
13          the interior of B.C. who are status Indians but  
14          who carry, essentially, the same Métis bloodline  
15          as myself.

16          Q     Now, how the Métis, as far as you're -- to your  
17          knowledge, been included in any federal or  
18          provincial policy programs concerning the salmon  
19          fishery in British Columbia?

20          CAPTAIN DUCOMMUN: No.

21          Q     Has there been any effort by the Métis to become  
22          involved with the salmon fishery in British  
23          Columbia?

24          CAPTAIN DUCOMMUN: There's been effort to become  
25          involved in discussions around the management of  
26          salmon, and there's also been efforts to, you  
27          know, identify opportunities for Métis fishing.

28          Q     And the results of those efforts?

29          CAPTAIN DUCOMMUN: Essentially, no response. I mean,  
30          we get responses, but it's, you know, "Go to  
31          court, prove you have rights and we'll talk to  
32          you."

33          Q     Are you talking federal -- sorry, I mixed them up,  
34          federal and provincial response?

35          CAPTAIN DUCOMMUN: Well, DFO. Yeah, DFO, at this  
36          point, I'm speaking to.

37          Q     And then you've talked about traditional  
38          knowledge, what is your view about how the  
39          traditional knowledge, from the Métis perspective,  
40          should be used with respect to salmon fishery?

41          CAPTAIN DUCOMMUN: Well, I think we've -- you know,  
42          we've run the course of using science alone to  
43          develop management practices around managing these  
44          fish, and I think that one of the things that  
45          we've missed, and certainly, I've heard that from  
46          other panellists this morning, is that there has  
47          been no consideration of traditional knowledge in

1 the mix. I think that, you know, number one,  
2 there's value to some traditional knowledge, but  
3 number two, and I spoke to it in my statement, was  
4 that the real value is engaging aboriginal people,  
5 and we believe that Métis have something to  
6 contribute to the management of salmon along the  
7 Fraser, and one of the things that that might be  
8 is that we have interests along the entire  
9 migration route of those fish, and so we have a  
10 different kind of a view than some First Nations  
11 who kind of have a piece along the route where  
12 they have interests.

13 Q And you, in your statement, or your written  
14 statement also talked about a merging of  
15 scientific and traditional knowledge. Can you  
16 expand on that?

17 CAPTAIN DUCOMMUN: Well, that was my science-based  
18 background, but you know, we understand, I think  
19 aboriginal people understand that fish, not only  
20 just being part of the ecosystem they belong to,  
21 they're a key part, salmon in particular and that,  
22 you know, the ecology of any area where they  
23 exist, it really depends on them. So everything  
24 -- you know, everything that walks, swims or flies  
25 is going to eat a salmon at sometime in its life,  
26 it seems like, in British Columbia, and beyond  
27 that, you know, the plants and the trees, as well,  
28 really require those nutrients when they come back  
29 from the sea. And one of the things that we're --  
30 and I think DFO has known for a long time because  
31 they've actually artificially added nutrients to  
32 sockeye lakes for quite a number of years, but I  
33 think that's one place where traditional knowledge  
34 and science are starting to agree, that, "Yeah, we  
35 actually need more fish into these watersheds in  
36 order to maintain that cycle."

37 Q And would you be able to evaluate, or could you  
38 evaluate the value of sockeye as a food fish as  
39 compared to other salmon as food fish?

40 CAPTAIN DUCOMMUN: Well, I think Métis consider it to  
41 be high, possibly the highest and I think that  
42 goes back traditionally that, you know, sockeye,  
43 pound for pound, if you were going to subsist on  
44 salmon, you would probably want sockeye because of  
45 the oil content and the fact that it's high  
46 calorie and -- but that doesn't mean that other  
47 species weren't used.

1 Q The Métis is part of some Government of Canada  
2 initiatives and, in particular, to endangered  
3 species. Can you talk a little bit about that?

4 CAPTAIN DUCOMMUN: Well, the -- under the **Species at**  
5 **Risk Act**, there is a traditional knowledge  
6 component and it's one of the examples that I used  
7 where DFO might want to look, and that is there's  
8 actually two aspects there where aboriginal and  
9 traditional knowledge is incorporated. One is in  
10 a aboriginal traditional knowledge subcommittee,  
11 which advises, essentially, scientists about  
12 technical issues, and the other is in what's  
13 called the NACOSAR which actually advises the  
14 Minister on traditional knowledge issues related  
15 to species at risk. So there is some processes  
16 out there in other jurisdictions where traditional  
17 knowledge is incorporated.

18 Q Have you sat on -- you, personally, sat on those  
19 subcommittees?

20 CAPTAIN DUCOMMUN: I sit on the NACOSAR Board on behalf  
21 of Métis.

22 Q Now, with respect to your interactions with the  
23 Department of Fisheries and Oceans, we spoke about  
24 it briefly, but do you find a difference between  
25 the way the West Coast -- or the British Columbia  
26 Métis are treated with respect to West Coast  
27 fisheries as compared to other provincial Métis  
28 organizations are treated with fisheries in other  
29 provinces?

30 CAPTAIN DUCOMMUN: Well, it's our understanding that  
31 Métis organizations in other provinces have  
32 agreements with Department of Fisheries in other  
33 areas, and it's one of the things that we've  
34 identified is that, you know, there's lots of  
35 places where we would like to work with DFO that  
36 are not related to catching fish, but we're being  
37 kept away from that because of this notion that  
38 the **Powley** rights don't apply to Métis in British  
39 Columbia. And you know, it's interesting that in  
40 that way, the government has treated Métis  
41 differently than First Nations because a lot of  
42 First Nations case law is applied across the  
43 country the day that it's announced in the Supreme  
44 Court, but in the case of Métis, it's not.

45 Q Is there another effect, though, of DFO not  
46 consulting with the Métis with respect to harvest  
47 numbers, for instance?



1 CAPTAIN DUCOMMUN: Well, we -- I mean, I think DFO  
2 ignores the fact that we are harvesting, we're not  
3 sitting and waiting for them to allow us to fish.  
4 A lot of it's off the radar. A lot of is using  
5 other processes, but our own estimate, based on  
6 the 2006, we did a natural resource use survey and  
7 we had 1,600 respondents and we applied that, you  
8 know, to the demographics from the 2006 census.  
9 We estimated somewhere around 100,000 sockeye from  
10 the Fraser would be a reasonable estimate of what  
11 the harvest is. But because DFO won't talk to us,  
12 they are missing a component of the aboriginal  
13 fishery which really puts -- you know, creates a  
14 deficit in that dataset for them.

15 Q And you also speak about a holistic view that DFO  
16 should take in the approach to salmon fishery in  
17 B.C. Can you describe or expand on that?

18 CAPTAIN DUCOMMUN: Well, I think, you know, there has  
19 to be some connectivity between management, you  
20 know, habitat protection, you know, water  
21 licensing, aquaculture, and right now, it's a  
22 silo'd approach and I don't believe that, in many  
23 cases, different groups within the Department  
24 talk, but the reality is is that there's a  
25 multitude of reasons why we're in the situation  
26 we're in. We're not going to find, you know, the  
27 silver bullet of why sockeye salmon have  
28 disappeared. You know, they've disappeared  
29 because there's a lot of pressures, you know, from  
30 habitat, from water use, from aquaculture, from  
31 fisheries and, you know, we have to really look at  
32 the big picture and try to figure out where -- you  
33 know, what are the big contributors and how do we  
34 deal with them, but also what are the smaller  
35 contributors to the reason why we can't recover  
36 these stocks?

37 Q And has there been any investigation by the Métis  
38 Nation with respect to the reason for the sockeye  
39 -- or the decline in sockeye over the last few  
40 decades?

41 CAPTAIN DUCOMMUN: Well, I mean, I think we have some  
42 ideas but, you know, really, it's just management  
43 issues. It's -- you know, we're -- I guess  
44 there's a big concern, a bigger concern about what  
45 global warming is doing to these stocks, and if,  
46 in fact, it is one of the bigger contributors,  
47 then we may have some difficulty in recovering

1 those fish, but, you know, sockeye salmon have  
2 proven to be fairly resilient. I mean, the  
3 Horsefly sockeye run after the gold rush was down  
4 to 500 in the peak year and it's come back to, you  
5 know, a few millions in the peak year in some  
6 years now. So I mean, they can recover, but they  
7 need the habitat, they need the water quality,  
8 they need -- which includes no pollution. And DFO  
9 has to really look at -- you know, for instance,  
10 we have a process right now where there's a major  
11 pipeline talking about crossing upper Fraser River  
12 watersheds, a huge major pipeline and there  
13 doesn't seem to be any process in place to  
14 actually say, "Well, you know, the Fraser sockeye  
15 are so important, there's certain things that  
16 we're not going to allow to happen within the  
17 watershed because of the risks to their, you know,  
18 future." And so I think, you know, in one case,  
19 habitat protection in DFO is going to be involved  
20 in evaluating that pipeline, but are they really  
21 talking to anybody else in DFO about what that  
22 might do to impact the future of that stock?

23 Q Thank you.

24 MR. GERELUK: We had -- Mr. Commissioner provided a  
25 copy of the **Natural Resources Act** and I'm seeking  
26 to have this entered as an exhibit at this time in  
27 this proceeding.

28 THE COMMISSIONER: Very well.

29 THE REGISTRAR: Exhibit number 307.

30  
31 EXHIBIT 307: Métis Nation British Columbia  
32 **Natural Resource Act**  
33

34 MR. GERELUK:

35 Q Is there anything you wish to add, Mr. Ducommun,  
36 to this discussion?

37 CAPTAIN DUCOMMUN: I don't think so at this time.

38 MR. GERELUK: Thank you very much. That will be the --  
39 my questions.

40 THE COMMISSIONER: Thank you.

41 MR. MCGOWAN: It seems to be an appropriate time to  
42 break for lunch, Mr. Commissioner.

43 THE COMMISSIONER: Thank you.

44 THE REGISTRAR: The hearing is now adjourned until  
45 2:00 p.m.

46  
47 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

(PROCEEDINGS RECONVENED)

1  
2  
3 THE REGISTRAR: The hearing is now resumed.  
4 MS. WILLIAMS-DAVIDSON: (Speaking Haida language).  
5 Terri-Lynn Williams-Davidson representing the  
6 Council of the Haida Nation. I just want to begin  
7 by expressing my gratitude and honour for being in  
8 the presence of the witnesses today sharing your  
9 knowledge about the Aboriginal Worldview.

10  
11 CROSS-EXAMINATION BY MS. WILLIAMS-DAVIDSON:  
12

13 Q Guujaaw, you are the President of the Haida  
14 Nation. What is that position?

15 PRESIDENT GUUJAAW: Just before I start, Your Honour, I  
16 want to tell your recorder I've got a little bit  
17 of a speech issue. I'm in the middle of a dental  
18 thing, so if they don't understand something I  
19 say, they could certainly get it clarified.

20 The Council of Haida Nation is the governing  
21 body of Haida Gwaii, and is organized by our  
22 people in such a way that includes democratically-  
23 elected council and president and vice-president.  
24 It includes some representation from our two  
25 villages and also the hereditary chiefs from about  
26 18 different villages where our people originate  
27 from.

28 Q How long have you held that position?

29 PRESIDENT GUUJAAW: It's 11 years now, and still a  
30 couple of years on my mandate.

31 Q Have you held other positions within the Haida  
32 Nation in the past?

33 PRESIDENT GUUJAAW: Yes, I have. It is mentioned that  
34 I worked with the hereditary chiefs as firekeeper,  
35 and I worked with the Council of Haida Nation, and  
36 I also worked in management. Before that,  
37 basically I was carver and trapper and those sort  
38 of things.

39 Q And what is the mandate of the Council of the  
40 Haida Nation?

41 PRESIDENT GUUJAAW: It's to restore our title to Haida  
42 Gwaii, to look after the lands and the waters  
43 around us in the meantime, to ensure that our  
44 rights continue through the generations. It's one  
45 thing to have the right to fish, but it's also  
46 necessary that we have fish to exercise those  
47 rights, so a lot of the effort is in protecting

1           those resources.

2           Q     I'd like to ask you to share knowledge about the  
3           origins of the Haida people.

4           PRESIDENT GUUJAAW: The story in our origins is  
5           speaking about a time before human beings had  
6           existed, that it talks about the whole earth being  
7           covered by water, and schoolagette (phonetic)  
8           comes out on a rock in the southern part of our  
9           island, and the elaquans (phonetic) also comes out  
10          near that rock, and those are the ones who give  
11          birth to the ancestors of the two different -- the  
12          Raven and the Eagle Clans.

13          Q     Do you have an idea of when that might have taken  
14          place?

15          PRESIDENT GUUJAAW: It goes well before the Ice Age  
16          that we're familiar with. The archaeological  
17          evidence I think goes back about 14,000 years, and  
18          before that, it would be pretty hard to find any  
19          evidence because it'll be under water because of  
20          the changing sea levels, though there has been  
21          some work and artefacts found underwater.

22          Q     Meaning that that was an area that was occupied in  
23          the past?

24          PRESIDENT GUUJAAW: Yes. And the way the archaeology  
25          was carried out was taking the most probable areas  
26          where there was rivers and lakes and those sort of  
27          things, but we also have stories that talk about  
28          the time when the Hecate Strait was dry and our  
29          people lived in more of a tundra type of  
30          condition. That was in the last Ice Age. That  
31          part of our story is proven out by science.

32          Q     Is there anything in the oral history record about  
33          the change in that landscape?

34          PRESIDENT GUUJAAW: Yes, yeah, there was a time when  
35          there was no trees at all and our people lived,  
36          wore skins and used grasses and things to live so  
37          the culture that we see today has evolved and  
38          changed with the landscape.

39          Q     And how does that origin affect -- and those ties  
40          to Haida Gwaii affect the respect or the  
41          relationship with the land and the sea and the  
42          salmon?

43          PRESIDENT GUUJAAW: Well, the -- what we consider to be  
44          the Haida culture, most people would look at totem  
45          poles and canoes and hear the songs and dances and  
46          think that that is Haida culture. But in itself,  
47          it isn't the culture. The culture is the

1 relationship to the land and those are ways of  
2 expressing and celebrating that relationship.

3 Q I'm wondering if you would share some examples of  
4 how we would show that respect in that  
5 relationship, say, to salmon?

6 PRESIDENT GUUJAAW: Well, we do still practice the  
7 first salmon ceremonies and, like our neighbours,  
8 we try to always make sure that the first  
9 consideration is for the survival of the stocks.  
10 So that would be the first thing that we have to  
11 consider.

12 Q Are there any supernatural beings that are charged  
13 with taking care of the salmon?

14 PRESIDENT GUUJAAW: That is -- at the top of each creek  
15 is a supernatural called -- we called them "Creek  
16 Woman", and they regulate the water and look after  
17 the salmon as they come and go.

18 Q Are you aware of any gifts that Haida people  
19 received from the supernatural beings?

20 PRESIDENT GUUJAAW: Well, I think we consider that --  
21 you know, certainly our place on the earth is a  
22 gift from the supernatural beings, but to be more  
23 specific, we know now the whole sequence of the  
24 arrival of plants on the Haida Gwaii, from the  
25 first tree. And we had one clan who had claimed  
26 the crest of the first tree because they were the  
27 ones who found it. It is a pine, and they had the  
28 right to wear them at potlatches. Again, very  
29 recently - you know, in the last 10 or 15 years -  
30 science has been able to lay out the whole  
31 sequence of the arrival of plants and confirm  
32 that, you know, it arrived at that time. Our  
33 people would have been here when that -- when that  
34 happened.

35 But one that I have experience with is a  
36 canoe I built, canoes, and basically the canoe-  
37 building had gone out of practice for some time,  
38 and we had to back-engineer it, basically, going  
39 into the forest and finding some in different  
40 stages of completion and looking at old ones that  
41 had survived and are sitting in museums. There's  
42 some in the museums.

43 To do that, we blueprinted some of the old  
44 ones and we had a shipwright do that and he was  
45 amazed to find that the tolerance of the -- and  
46 accuracy of the canoes, the old canoes were within  
47 sixteenths of an inch which -- you know, even a

1 modern wooden boat builder couldn't be any closer  
2 than that.

3 That was given to our people. It was made  
4 out of a single tree, carved in one shape with the  
5 expectation that it changes when it's steamed  
6 open. Once it's steamed, the ends come up and the  
7 sides go down giving it more stability and  
8 manoeuvrability. Those were the first marine  
9 craft with a flared prow. In fact, you know, at  
10 the time of contact when the first British and  
11 Spanish ships had come around, they were quite  
12 blunt instruments in comparison to our Haida  
13 canoe. It was around 1900 that the first schooner  
14 was built with a flared prow like that, and it was  
15 inspired by the big canoe in New York.

16 So our people had learned from the  
17 supernaturals who had taken the first canoe  
18 builder -- and I should say that before that,  
19 there was some kind of rudimentary dugouts that  
20 existed there. This story is probably -- the  
21 first cedar arrived about 5000 years ago, so we  
22 figure it's about three or four thousand years ago  
23 that this happened. It basically took them  
24 through the different steps.

25 So I built canoes based on what we learned  
26 from the old ones, and was pretty astonished at  
27 the technology used in getting those things to the  
28 point that we recognize them.

29 Up to that point, there was -- our people  
30 were actually isolated on Haida Gwaii after the  
31 Ice Age because, as the ice on the continent had  
32 caused the edges to bulge up and that's why the  
33 Hecate Strait was dry. As the waters -- as the  
34 ice melted, the melt waters out of the Skeena, The  
35 Nass, the Stikene, Kitimat River and all these  
36 other ones where it would have been pretty  
37 torrential waterways. Eventually as the ice let  
38 its weight off the continent, the islands kind of  
39 sunk into it.

40 So, for this reason, our language is an  
41 isolate language (sic).

42 Q And what impact did the canoes have on fishing in  
43 Haida Gwaii?

44 PRESIDENT GUUJAAW: Well, our commerce generally, it  
45 gave our people the ability to move back and  
46 forth. So our people travelled all over the  
47 coast. There's accounts of certainly far into

1 Alaska, but also into California. We had stories  
2 that described our people going to a place where  
3 they -- to the west where they used colourful  
4 clothes and ate maggots, which I figure is rice.

5 Q Just to come back, what impact did the canoes have  
6 on fishing technology, or where we fished?

7 PRESIDENT GUUJAAW: Well, certainly from that point,  
8 you know, they talked about a time when people who  
9 didn't have the canoes would send branches out  
10 into the -- into the ocean and trigger a hook to  
11 fall. So afterwards, certainly we had the ability  
12 to cover a lot of country and, you know, the  
13 access to move further was available to our people  
14 for, you know, offshore fishing.

15 Q And when you say "offshore fishing", did that  
16 include fishing for Fraser River sockeye salmon?

17 PRESIDENT GUUJAAW: Yes. You know, I think that it's  
18 kind of a misnomer to consider that interception  
19 fishing because the migration route right from the  
20 place that they're born to coming back certainly  
21 is part of their life cycle, and along the way  
22 they're eaten by killer whales and sea lions and  
23 other fish, and certainly the indigenous people  
24 who are along the coast in the route were  
25 legitimate recipients of those fish.

26 Q And relative to streams like the Fraser River,  
27 will you speak about the number and sizes of  
28 streams for salmon, sockeye salmon in Haida Gwaii?

29 PRESIDENT GUUJAAW: Well, we're on an island so  
30 relative to the Fraser, the Skeena, or some of the  
31 other mainland rivers, we have small streams which  
32 were tended to by fish weirs. The fish weir  
33 fishing was changed again by -- in the early days.  
34 I think it's an important factor here. Our people  
35 numbered, you know, somewhere around 10,000  
36 people. That's an estimate. The population had  
37 dropped down to 600 people, and it was at that  
38 point when colonialism stepped in there.

39 It was during that point of low population  
40 when actually the federal government had issued  
41 fishing nets and outlawed the weirs.

42 Q Have there been any impacts of logging on the  
43 streams in Haida Gwaii, salmon streams?

44 PRESIDENT GUUJAAW: Yes. That was a pretty contentious  
45 few decades for our people, fighting against the  
46 logging to protect our rivers. In the last little  
47 while, we've succeeded in protecting fully half of

1 the landscape of Haida Gwaii, and included is all  
2 the watersheds in those areas. But at the same  
3 time, we didn't surrender the rest to industry.  
4 We've changed the rules so that there would be a  
5 lot more consideration for the wildlife and fish  
6 and the cultural use of it.

7 Q Do Haida people have food fishing permits from  
8 DFO?

9 PRESIDENT GUUJAAW: No.

10 Q Do they have any permits to fish?

11 PRESIDENT GUUJAAW: No. For a while, our people did  
12 get food permits and, you know, then it became  
13 pretty evident, like the Department of Fisheries'  
14 efforts were really on our people. They weren't,  
15 you know, while -- like, for instance, I was  
16 charged and convicted for taking 27 pink salmon,  
17 and got two days in jail, while the commercial  
18 fleet took 750,000 fish out of that same  
19 watershed.

20 Other people were harassed, and it just came  
21 to the point where we see them basically, you  
22 know, in the '60s, I guess, when the big tree farm  
23 licences were given out. It was commonplace for  
24 them to take gravel from the river bottoms and use  
25 it for building roads. My own father told me  
26 about times when there were so many salmon eggs  
27 and seagulls on the road that, when they were  
28 going to work, they couldn't pass through without  
29 hitting seagulls.

30 Q I'm wondering if we could just shift to the last  
31 area here and speak about the Haida experience  
32 with management and with co-management.

33 PRESIDENT GUUJAAW: Yeah, just before that, I wanted to  
34 say something about, you know, why we have been in  
35 discussions with the Government of Canada, why  
36 this goes on.

37 So the difference between the rest of Canada  
38 and British Columbia is that in the rest of  
39 Canada, the -- whether the treaties were right or  
40 wrong, there was processes set out across Europe,  
41 basically, who was colonizing the world, and the  
42 British had their own particular set of rules, and  
43 there was other conventions that described how the  
44 race into the un-European parts of the world would  
45 be divvied up. Basically there has been no  
46 surrender of our title west of the Rockies, so  
47 therefore the people in each of their own regions



1 still maintain aboriginal rights. You know,  
2 that's a word that's familiar with the  
3 constitution and things like that, but it's not  
4 necessarily the way that we would describe it.

5 Q So perhaps we could speak -- start by first  
6 speaking about your experience in managing the  
7 Copper Bay River -- Copper River.

8 PRESIDENT GUUJAAW: The Copper River is a sockeye  
9 stream and basically under the management of the  
10 Department of Fisheries. It had -- the population  
11 of fish had dropped down to a few hundred, and so  
12 our people said, you know, that's enough. We're  
13 going to lose this fishery. So they took over the  
14 management in that fishery. Our people didn't  
15 fish for several years until they were able to  
16 build the stock back up. Today it is producing  
17 salmon for one of our villages again.

18 But again, our people don't go to them for --  
19 to the Department of Fisheries for permits. They  
20 have no respect for the Department of Fisheries  
21 and their management of resources.

22 Q Are there other areas where the Haida are managing  
23 or co-managing fisheries?

24 PRESIDENT GUUJAAW: In the razor clam fishery, in that  
25 instance we manage that fishery with an agreement  
26 with the Department of Fisheries that has been in  
27 place for, I don't know, 15 or 20 years. So our  
28 people go out and make the assessments and  
29 determine how much could be taken out of there in  
30 a season.

31 Q Perhaps one of the most well-known examples of co-  
32 management is the Gwaii Haanas area. Could you  
33 speak briefly about the management structure  
34 there?

35 PRESIDENT GUUJAAW: The Lyle Island issue was well  
36 known, and occurred about 25 years ago when there  
37 was blockades. Basically our people had seen what  
38 was occurring north of there by logging, and our  
39 people blockaded and stopped the logging in that  
40 area. Eventually, the federal government came up  
41 with some money to pay off the logging companies  
42 and cut some sort of deal with British Columbia,  
43 and a separate deal with our people. Basically  
44 that one is called -- the first arrangement  
45 between the province and the federal government is  
46 called the South Moresby Agreement. The one with  
47 the Haidas is called the Gwaii Haanas Agreement.

1           In that instance, there is an agreement that  
2 all our rights remain intact. Our people have the  
3 right to hunt, fish, trap, to even live there and  
4 to cut trees and do all the things that our  
5 ancestors did which, over the thousands of years,  
6 had no adverse affect upon the land.

7           The management is really the management of  
8 the visitors into the area, and in that instance,  
9 we set up a management board made up of equal  
10 numbers of federal and Haida people, and we look  
11 at every issue and determine how many visitors  
12 should be allowed and what kind of quotas and  
13 those sort of matters. But also just to look  
14 after things like seabirds and streamside and  
15 determine what other activities are acceptable.

16 Q       You also spoke about the salmon streams being  
17 protected more recently. Is that also a co-  
18 management agreement? The more recent agreement  
19 to protect the streams under the land use area.

20 PRESIDENT GUUJAAW: Oh, in the Gwaii Haanas area, we  
21 also have -- it's only about a year now since we  
22 signed one for the marine area, and it'll be  
23 similarly managed. Another distinction in the  
24 agreement that I think should be known here is  
25 that it certainly isn't an agreement to manage a  
26 national park or national marine park. It's -- we  
27 made our land designation long before the federal  
28 government did.

29           So there's two separate authorities that work  
30 together to manage the lands. In that instance,  
31 we just agreed to disagree on the matter of who  
32 holds title to those lands.

33 Q       Just in closing, I would like you to speak briefly  
34 about negotiations with the Crown regarding  
35 salmon.

36 PRESIDENT GUUJAAW: Well, we've -- I think that most of  
37 the people in here would be more familiar with the  
38 treaty process that is in place. Basically we  
39 seen that process to be totally unacceptable to  
40 us. Such issues as land selection, you know, we  
41 don't know what -- we don't know any part of our  
42 land that we could surrender any -- all of our  
43 rights to -- in exchange for a treaty, and nor  
44 have we ever seen any place where that is an  
45 expectation of the constitution or the courts of  
46 this land.

47           I think it's basically cooked up by the

1 federal and provincial government with -- that  
2 severely limits the ability to really have any  
3 meaningful discussions on the matter of title.  
4 We're not willing to surrender our title and we  
5 don't think that's necessary for even having a  
6 relationship within Canada and determining who we  
7 are within the context of Canada. However, it  
8 requires also that Canada would have to recognize  
9 that there is aboriginal title over our lands.

10 In pursuing this, we have a case before the  
11 courts, title case, which not only -- not only are  
12 we prepared to meet the test of title as it's laid  
13 down, but also we've challenged the Crown's  
14 assertion that they have title. We're saying that  
15 they have no legitimate means to claim title to  
16 our lands, so this court is before -- or this case  
17 is before the courts.

18 We've actually put it in abeyance, coming out  
19 of another case that we did which was -- it's  
20 referred to as Haida in a lot of other cases that  
21 have used it, but we went into court with one of  
22 the bigger logging companies at the time, and we  
23 showed the court and they agreed that the  
24 processes that were in place for consultation, the  
25 processes of -- and relationship between the Crown  
26 and the aboriginal people was not being conducted  
27 in an honourable way by the Crown. The Supreme  
28 Court upheld the earlier rulings that even before  
29 any aboriginal title is proven, that the Crown has  
30 to behave properly in their dealings with the  
31 indigenous people.

32 Q Now, we just -- I'm sorry, I have one --  
33 PRESIDENT GUUJAAW: Oh, yeah, the question was about  
34 negotiation. So we put the case in abeyance and  
35 we agreed to a process which is not the treaty  
36 process. It is reconciliation and through that,  
37 we've done a number of things with the provincial  
38 government, including we, again, each have used  
39 our own authorities to set land aside to remain in  
40 its natural state. We both use our own -- if we  
41 come into this agreement with our own authorities  
42 in managing those lands, and basically, again,  
43 leaving the matter of title aside.

44 Basically that agreement, the first agreement  
45 that was done, The Gwaii Haanas agreement was  
46 challenged by an individual that it was race-based  
47 and unconstitutional and so on. The court upheld

1 that it was -- that it was innovative way to deal  
2 with a complex problem and they said it stands.  
3 It went to the -- they tried to bring it to the  
4 Supreme Court and they -- they said that the  
5 management structures are acceptable, and they  
6 were.

7 So with the federal government -- and again,  
8 I'll say that, you know, we have accomplished a  
9 lot of things in the last couple of years with the  
10 provincial government, but the federal government  
11 at our table, and at every other table, has  
12 basically stonewalled everybody on the matter of  
13 fishing, and I think this is really important to  
14 this Commission, is that basically in the last --  
15 since this Cohen Commission has been set up, they  
16 said they are going to rely upon the outcome of  
17 this process, and they're not going to do anything  
18 in the meantime. It's causing a lot of  
19 difficulties at all the negotiating tables.

20 There was some, I guess, that were close to  
21 finishing their agreements and everything has been  
22 on hold. You know, I don't know that this  
23 Commission is even mandated to try to determine  
24 what ought to happen with the fisheries.

25 Q Okay, thank you. And I just, sorry, I have one  
26 more question. You've talked about the co-  
27 management agreements between the Haida and the  
28 Crown and I just have a quick question about where  
29 there are any traditional values or principles to  
30 guide co-management or sharing of resources  
31 between First Nations on the coast?

32 PRESIDENT GUUJAAW: Our people had traded and are quite  
33 familiar with all our neighbours along the coast.  
34 We move back and forth frequently doing commerce.  
35 You know, in more recent times, in the canoe days,  
36 into Victoria and New Westminster getting trade  
37 goods.

38 But along the way, certainly we knew all of  
39 our neighbours and the Heiltsuk, for example, have  
40 brought us songs that were left there in the olden  
41 days and, as well, the Nuu-Chah-Nulth had held  
42 songs for us, the other Kwakwaka'wakw people, and over  
43 the last few years in our relationships, they've  
44 given songs back to us and we work together in  
45 various ways.

46 But if somebody comes into our territory, the  
47 protocols that we have amongst ourselves is -- and

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PANEL NO. 11

Cross-exam by Ms. Williams-Davidson (CHN)

Cross-exam by Mr. East (CAN)

1           it's just pure respect, is you go to the people  
2           who own that territory and you get permission,  
3           make arrangements on how that fishing would occur.  
4           Certainly, you know, if they say, no, that's their  
5           prerogative.

6           MS. WILLIAMS-DAVIDSON: Thank you. Those are my  
7           questions.

8           MR. MCGOWAN: Mr. East for the Government of Canada  
9           will be next.

10          MR. EAST: Mr. Commissioner, Mark East, for the  
11          Government of Canada.

12

13          CROSS-EXAMINATION BY MR. EAST:

14

15          Q        Good afternoon, Panel. I just have a few  
16          questions, probably about three different areas of  
17          questions.

18                I'd like to start with Guujaaw, if I may,  
19          just following up on your discussion just now  
20          about the different agreements. I'm particularly  
21          interested in the Gwaii-Haanas parks agreement,  
22          and I just want to maybe talk about that a little  
23          bit more. Going to your witness summary -- and  
24          that's Exhibit 299 -- I don't think I'll go to it,  
25          but you do talk about it in your witness summary.  
26          I just want to get a little bit more -- talk a  
27          little bit more about how it works. I get the  
28          sense that the Parks Management Board that's been  
29          developed by the Gwaii-Haanas agreement is a  
30          consensus-based approach where there's two  
31          representatives from the Haida and two  
32          representatives of the Government of Canada  
33          sitting on the board. Is that how that -- how  
34          that works?

35          PRESIDENT GUUJAAW: Well, you got something wrong, is  
36          that it's not a park agreement. The park is  
37          Canada's designation.

38          Q        Okay.

39          PRESIDENT GUUJAAW: We've designated it a Haida  
40          Heritage Site before that. We stood up and  
41          stopped the logging, we protected it and later  
42          made an agreement with Canada. Before that, we  
43          told them without an agreement we're not even  
44          going to let you put up an outhouse.

45                So they came into management with us. We're  
46          not going into management with them. The  
47          agreement is, yes, there's currently two of each.

1           There will be another member added. We operate  
2           mainly by consensus. If they're -- if we're held  
3           up on a particular issue, it doesn't hold up the  
4           whole agreement. Actually, in fact, the  
5           superintendent on the Parks Canada side is a Haida  
6           person and not because he's a Haida person, but  
7           because he's the best person for the job. He also  
8           sits on there.

9           Gwaii Haanas has been cited by the *National*  
10          *Geographic Traveller* magazine as the best managed  
11          protected area in North America.

12         Q     So you just answered my next questions is that by  
13               all accounts that I've heard, this is an  
14               arrangement that's working well.

15         PRESIDENT GUUJAAW: Yes, it is.

16         Q     And notwithstanding what's in the paper, I guess  
17               -- you know, the paper, the agreement that created  
18               this understanding between Canada and the Haida,  
19               really it's the product of a lot of hard work on  
20               the people involved, and a long process in  
21               developing respect and trust for the people who  
22               are involved in the process. Would you -- would  
23               that be an accurate description?

24         PRESIDENT GUUJAAW: Yes, it is.

25         Q     And I don't imagine that was easy. It probably  
26               took some time and a lot of effort to come to that  
27               position where, from what I understand your  
28               evidence, it's rare that issues get bumped  
29               upstairs. Things are resolved at the level of the  
30               board itself.

31         PRESIDENT GUUJAAW: That's right. And, you know, like  
32               to accomplish that thing, it took, you know, not  
33               only discussions at the bureaucratic, but at the  
34               political level to get there, and I think that  
35               everybody who's involved with it now, all the  
36               successive Ministers have been pretty happy with  
37               it. We've had visitors from Australia, New  
38               Zealand and up in the Northwest Territories and  
39               across Canada, and so on, to look at it as a  
40               model.

41         Q     Mm-hmm. And one of the things with the Haida that  
42               I understand -- or at least I've been told about  
43               the Haida is that they're a united community that  
44               has a real vision for, you know, where they are  
45               and where they want to go. Would you agree --  
46               would that be an accurate description?

47         PRESIDENT GUUJAAW: Well, what I would say is that we

1 basically have the full spectrum of people as any  
2 other society would, and we have our  
3 disagreements. But all of our people agree that  
4 the land has to be looked after and the culture  
5 has to continue.

6 Q And one of the things about the Haida Gwaii and  
7 the Haida, in their home, is that, from what I  
8 understand -- and this may be somewhat unique in  
9 B.C., and certainly it would be a small minority  
10 of First Nations in the same situation -- but  
11 there aren't any overlapping claims from other  
12 aboriginal -- from other First Nations to the  
13 lands of Haida Gwaii or the waters around it.

14 PRESIDENT GUUJAAW: Well, you know, the water certainly  
15 is a different issue. On the lands there is no  
16 overlapping. On the water, you know, it is a  
17 different thing. It's pretty hard to draw a line  
18 in the water and, you know, the fish and the tides  
19 and, you know, whether it's pollution or stocks  
20 passing through, feeding in our area. You know,  
21 like it's all -- it's all connected by the water.

22 Q I guess where I'm going with this is that one of  
23 the reasons that this agreement has worked so  
24 well, and I guess other agreements that you have  
25 with British Columbia, for example, is that Haida  
26 are a unified community with a unified voice, and  
27 that makes it easier to enter into conversations  
28 with the Crown, with the government, with Canada  
29 or B.C., and enter into agreements because of that  
30 unity that you have.

31 PRESIDENT GUUJAAW: Well, I think that helps when you  
32 can unify around particular issues.

33 Q And one of the reasons I bring this up is because  
34 one of the discussions we've had in the last few  
35 days is some of the challenges facing First  
36 Nations generally in B.C., is about finding that  
37 common ground and working together toward a common  
38 goal. Would you agree with me that a consensus  
39 model of management, while perhaps something that  
40 we would want to work towards, gets more  
41 challenging the more people are being brought to  
42 the table. The more chairs that are going to come  
43 up to the table, the more difficult it is going to  
44 be to obtain that consensus that you're seeking.

45 PRESIDENT GUUJAAW: Well, just to go a little further  
46 is, you know, with the provincial government, we  
47 fought them for so many years, and now we're

1 coming into places where we're actually using the  
2 Gwaii Haanas model for protection of the lands and  
3 actually for management of the forests and, you  
4 know, we've gone -- basically getting past the  
5 notion of fighting and we're trying to work  
6 together. It is -- there's complexities to it  
7 that, you know, basically we've been in battle  
8 mode for so long, we have to retool our own  
9 thinking. But, you know, we're trying to create  
10 economies now and with that relationship, it makes  
11 it a lot easier to get on to more productive  
12 things rather than fighting.

13 Q Mm-hmm, thank you. Maybe on the same theme, and  
14 I'll maybe turn my attention to asking some  
15 questions to Chief Mountain. I heard you today  
16 that you -- heard you today talk about your First  
17 Nations' interactions with DFO, and I think I  
18 heard you say that you agree that, first, it's  
19 very important for First Nations to work together  
20 and that you do so. But ultimately your community  
21 prefers, on fisheries matters anyway, to speak  
22 primarily and work directly with DFO. Is that --  
23 would that be fair?

24 CHIEF MOUNTAIN: Not really.

25 Q Okay. I'll let you answer what you're saying.

26 CHIEF MOUNTAIN: Just because of the fact that we live  
27 in a territory and we know the whole history,  
28 local knowledge of it, we would like to have that  
29 joint management where we'll be able to have the  
30 opening and closures. And just like Rod was  
31 saying in his territory, the same thing. We've  
32 got so much local knowledge about the fisheries  
33 and that, that we should be at the table instead  
34 of being told what to do.

35 Q I see, okay. And I guess it's fair to say that  
36 you can engage and talk to government, DFO, any  
37 other department, at the local level but there's  
38 no reason you can't also talk to them in these  
39 larger organizations like the FNFC or whatever,  
40 some of these larger bodies of First Nations. You  
41 can have dialogue at a number of levels; is that  
42 right?

43 CHIEF MOUNTAIN: Yes, we are, but we'd like -- we just  
44 had a meeting with DFO with a couple of days ago,  
45 and we would like -- just because our chiefs and  
46 hereditary chiefs are at our table, we'd like  
47 their decision-makers at the table too. It



1 doesn't seem to work when they send their local  
2 level people or their bureaucrats 'cause they  
3 can't make decisions like we can at the table. So  
4 it's not an equal footing.

5 Q Okay. I wanted just to ask you about -- you  
6 mention that -- I believe it was your First  
7 Nations, that the Namgis had sought AAROM funding  
8 but was denied. Was that at the Namgis First  
9 Nation separately?

10 CHIEF MOUNTAIN: Yes.

11 Q And was that because -- did they give a rationale  
12 for why that funding was rejected?

13 CHIEF MOUNTAIN: They wanted us to join an aggregate  
14 group.

15 Q And my understanding - and I'd just like to have  
16 your thoughts on this - but my understanding is  
17 that Namgis have, for this upcoming fishing  
18 season, joined the larger aggregate group to  
19 receive AAROM funding.

20 CHIEF MOUNTAIN: We were thinking about joining  
21 Nanwirkolas (phonetic), but we --

22 Q That's right.

23 CHIEF MOUNTAIN: -- haven't really signed on yet.  
24 They've come to our table, but we hadn't made a  
25 decision because we need to bring it to the  
26 people.

27 Q Thank you. Thank you for clarifying that. But I  
28 guess -- the reason I brought that up, and this is  
29 maybe turning into something that Chief Newman  
30 said about AAROM funding being divisive, and I  
31 apologize if I got this wrong, but divisive in its  
32 intent of trying to divide and conquer with First  
33 Nations.

34 My understanding of the AAROM program is that  
35 one of its purposes anyway was to fund First  
36 Nations and encourage First Nations to get  
37 together, to talk to each other, but also get  
38 together to facilitate their discussions with DFO.  
39 In that -- does that accord with your  
40 understanding of what the purposes of AAROM was  
41 and why you're seeking the funding under the AAROM  
42 program?

43 CHIEF MOUNTAIN: Our main purpose as a single nation  
44 was to access money so we can work on our  
45 resources and rivers and stuff as part of an AFS  
46 agreement, just to marry it together.

47 Q Well, maybe this is a question for Chief Newman,

1           then. My understanding is that -- and correct me  
2           if I'm wrong. Is the Heiltsuk First Nation part  
3           of what is called the "Turning Point" or North  
4           Coast Turning Point Initiative? I'm not sure if  
5           that's the latest name, but...

6 CHIEF NEWMAN: This is the Coastal First Nations now.

7           Yes, they are, in part.

8 Q        Okay. Thank you. And that's a -- that's group of  
9           DFO funds to the AAROM program, is that right, or  
10          do you -- would you know that?

11 CHIEF NEWMAN: No, I don't.

12 Q        Okay.

13 CHIEF NEWMAN: But I didn't -- my concern about the  
14          AAROM process is there was distance put in place  
15          by the Department of Fisheries and Oceans on how  
16          you would qualify to get AAROM funding. One of  
17          them was you had to form an aggregate, whether you  
18          like it or not.

19 Q        But that makes sense, in the sense that this  
20          particular --

21 CHIEF NEWMAN: It may make sense to you, but not to me.

22 Q        Okay. Well, this particular program is designed  
23          to fund First Nations to meet and get together, to  
24          have First Nations get together in a room and to  
25          form aggregates so they can speak to each other  
26          and speak to DFO. So in that sense, doesn't it  
27          make sense that that money should be used for that  
28          purpose?

29 CHIEF NEWMAN: Yeah, well, we've been trying to go at  
30          the funding through Native Fishing Association to  
31          get their coastal people together so that we can  
32          come to some kind of an agreement. Knowing you  
33          got all these different groups compete with each  
34          other, it's pretty hard to get a decent agreement  
35          out of -- do what the aboriginal people really  
36          want to do.

37 Q        Okay. Well, I'll leave that one for now, and just  
38          go maybe to my last area of clarification. I have  
39          a few more questions, and perhaps just some  
40          clarifications Mr. -- Chief Newman, on your  
41          testimony. This relates to some of the documents  
42          that your counsel brought to your attention about  
43          Heiltsuk fisheries.

44                But I just want to get some clarification  
45          about your involvement with the Heiltsuk fisheries  
46          management now. Have you been involved on the  
47          ground in Heiltsuk fisheries management in recent

1           years?

2 CHIEF NEWMAN: No, I've been out of the politics in the  
3 band for a while. My son's involved now, and  
4 there's no reason two of us being in there  
5 together. It creates problems.

6 MR. EAST: Okay. So maybe we can call up Exhibit 304  
7 again.

8 Q This is, as I understand it, the Heiltsuk -- the  
9 Heiltsuk newsletter about what happened with  
10 respect to the food fishery in 2010. I just want  
11 to clarify, were you involved at all in the events  
12 in this newsletter that are discussed in this --

13 CHIEF NEWMAN: No. You'd have to talk to Ross Wilson  
14 about that.

15 Q Okay. I'll just leave it, then. I won't ask any  
16 questions about this document or what happened  
17 that year.

18           I would like to go, though, to Exhibit 305.  
19 That's the Heiltsuk Comprehensive Fisheries  
20 Agreement, and I understand your testimony that  
21 this is a document that you don't have any  
22 personal involvement in negotiating.

23 CHIEF NEWMAN: No, but as a band member, it affects me.

24 Q Yes, definitely. Perhaps we can go, then, to page  
25 15, the same section that was referred to by my  
26 friend, s. 4(b), just to review this again. This  
27 is the section that talks about:

28  
29           In the event that the Heiltsuk identifies an  
30 increase in the food, social and ceremonial  
31 needs of its members during the fishing  
32 season, the parties will review the  
33 quantities specified in the communal licence  
34 issue to the Heiltsuk Tribal Council, and if  
35 agreed by the parties, the DFO will amend the  
36 communal licence. The quantities of fish  
37 reflected in the communal licence are subject  
38 to consultation every -- each year, at which  
39 time the needs of the members of the Heiltsuk  
40 Tribal Council and the conservation  
41 requirements will be reviewed by the parties.  
42

43           Now, my understanding is that DFO does meet  
44 with the Heiltsuk every year as part of the pre-  
45 planning, pre-season process, and it meets  
46 periodically with the Heiltsuk throughout the  
47 year.

1 CHIEF NEWMAN: It hasn't always been done in the past.  
2 The figures came out from the DFO and sent to the  
3 band to sign and to read.

4 Q Well, maybe we'll go to those figures right now,  
5 'cause I just want to -- I just want to talk about  
6 that. That's at page 17 of the documents, a  
7 couple of pages further on. There's a reference  
8 to Appendix A to Schedule B, and these are the  
9 general conditions of the communal licences. And  
10 page 19, further on, actually has the allocations  
11 set out. I think -- my understanding -- and we'll  
12 just go to the species quantity. You have the  
13 numbers for sockeye.

14 I guess when you talk about 20,000 pieces of  
15 sockeye, that includes sockeye that's harvested  
16 locally, but also sockeye that's caught from  
17 passing stocks, including ones going to the  
18 Fraser?

19 CHIEF NEWMAN: Is there -- it's everything included.  
20 Everything that goes through our territory,  
21 whether it somebody else's salmon, we claim it as  
22 it goes through our territory. We have a title  
23 right to use it.

24 Q Okay. And just to clarify, these numbers are  
25 allocations for food, social, ceremonial. This  
26 has nothing to do with commercial?

27 CHIEF NEWMAN: That's right.

28 Q Okay. Now, my understanding too, if you go back  
29 and look at all the comprehensive claims  
30 agreements over the past few years, these numbers  
31 have been pretty stable for a long time. They  
32 haven't changed much for years.

33 CHIEF NEWMAN: No. Like I say, nothing ever changes  
34 for our people. The same number comes out in the  
35 managed plan every year. We don't put it in  
36 there. The Department of Fisheries puts it in.

37 Q And are you aware that, at least based on the  
38 numbers that are provided by the Heiltsuk First  
39 Nation, the Heiltsuk Tribal Council to DFO, that  
40 in the vast majority of years - and I think  
41 nominally for sockeye, but for all the other  
42 species of salmon - that the Heiltsuk Tribal  
43 Council never comes anywhere near fishing the  
44 allocations that are provided in this agreement.

45 CHIEF NEWMAN: No, things have been bad in our  
46 territory for a number of years now. For a long  
47 time now, our people have never got their food

- 1 fish allocation. We've had to depend on getting  
2 fish from Johnston Strait for the last two years  
3 now.
- 4 Q Okay. But would you -- would you agree that one  
5 of the reasons why -- probably the reason why  
6 these numbers stay the same year after year,  
7 because during the pre-season planning phase, the  
8 numbers that are reported by the Heiltsuk Tribal  
9 Council are the numbers they've caught under the  
10 -- don't approach these numbers. They don't get  
11 close to fishing their allocation.
- 12 CHIEF NEWMAN: Like I say, we haven't got anything for  
13 a few years now. There's been nothing there.  
14 Like I told you this morning, we've had one  
15 commercial opening for the last two years, one day  
16 a year.
- 17 Q I'll get back to that in a second. But -- because  
18 I do want to return to that bit of testimony. So  
19 your evidence is that with respect to these  
20 allocations for food, social and ceremonial  
21 purposes, you're not catching your allocations  
22 because the fish aren't there?
- 23 CHIEF NEWMAN: That's right.
- 24 Q Okay. So if the numbers are as low as that and  
25 the Heiltsuk, for whatever reason, are not getting  
26 close to harvesting the numbers that are there,  
27 there's no real sense in bumping up the allocation  
28 beyond a higher number than what's already there,  
29 because you're not -- you're not attaining the  
30 numbers that are there already.
- 31 CHIEF NEWMAN: Yeah, but we just want the government to  
32 know that that's what we need. And if there's  
33 sockeye passing through our territory that are  
34 bound -- a travelling stock --
- 35 Q Mm-hmm.
- 36 CHIEF NEWMAN: -- then we're entitled to get a piece of  
37 that stock that's travelling through our  
38 territory, and we should be able to take it. If  
39 we can't take it in our territory, we should be  
40 able to take it anywhere.
- 41 Q Fair enough. My understanding is, from your  
42 evidence, that the Heiltsuk are very much involved  
43 in the commercial fishery as well.
- 44 CHIEF NEWMAN: We used to be. We're down to two seine  
45 boats now and a handful of gillnet boats because  
46 of the bad management of our resources.
- 47 Q So those are the -- those are boats that are owned

1 by the Heiltsuk First Nations --

2 CHIEF NEWMAN: Yes, I own one of those seine boats, the  
3 band owns one.

4 Q Okay. If the FSC allocations are bumped up,  
5 increased, isn't it true that those numbers of  
6 fish have to come from somewhere? Isn't that  
7 taken off the top of the fish that are set aside  
8 for the commercial fishery?

9 CHIEF NEWMAN: I don't think so. I don't think they've  
10 been set aside for the commercial fishers. Nobody  
11 knew that sockeye was going to come this year.

12 Q With respect to 2010, I want to state -- based on  
13 your evidence, what I heard is that the sockeye do  
14 come into Heiltsuk territory as they pass by down  
15 -- down on their way to the Fraser River.

16 CHIEF NEWMAN: Mm-hmm, that's right.

17 Q So with respect to all the fish that were coming  
18 into the territory close to Heiltsuk, the Heiltsuk  
19 communities, my understanding is that the Heiltsuk  
20 reported a catch of 5000 sockeye.

21 CHIEF NEWMAN: This year?

22 Q This year.

23 CHIEF NEWMAN: They might have, yeah. I don't know  
24 that -- I never heard that.

25 Q I'll leave that, then. I just want to maybe talk  
26 about one last bit of your evidence, and this is  
27 on Exhibit 300. This is your witness summary.

28 You spoke today about two, I guess, annual  
29 migrations to Millbank Sound, and we just talked  
30 about one. The Fraser sockeye pass through this  
31 area and others. And the other migration is every  
32 year, I guess, the sports fishers come in to  
33 Millbank Sound. My understanding is the sports  
34 fishers like to fish like Chinook, maybe  
35 steelhead. They don't fish for sockeye salmon.

36 CHIEF NEWMAN: No, that's a myth. The sports fisherman  
37 can catch anything today. They've got the gear to  
38 take anything.

39 Q Do they catch sockeye in your experience?

40 CHIEF NEWMAN: They take sockeye, and they take chum,  
41 everything.

42 Q And is that a significant number or is that just a  
43 bycatch? Are they really after Chinook?

44 CHIEF NEWMAN: No, they take everything. They take  
45 halibut, cod, everything out of Millbank.

46 Q Okay. Well, let's take your evidence, then, that  
47 they're taking sockeye, they're taking in the same

1 numbers perhaps that they're taking some of these  
2 other fish.

3 CHIEF NEWMAN: A large part of the sockeye run is  
4 caught on troll gear, and that's what the sports  
5 fishermen use.

6 Q I guess the real point what I'm trying to get at  
7 is that you say there's been no openings in this  
8 area, Millbank, for a couple of years, and you  
9 just mentioned that just now.

10 CHIEF NEWMAN: Openings for what?

11 Q Well, this is what I'm asking you.

12 CHIEF NEWMAN: There's been no openings for commercial  
13 fishing in Millbank for over 30 years now.

14 Q Okay, that's right. So there's been no opening  
15 for commercial fishing, but you have openings for  
16 food, social, ceremonial fishing in Millbank  
17 Sound.

18 CHIEF NEWMAN: Yeah, we go out there even though the  
19 Department of Fisheries doesn't like us going out  
20 there. They were going to try and stop us one  
21 year when I was the chief of the band, and I told  
22 them, "You come and try it."

23 Q But with an allocation of 20,000 sockeye that,  
24 according to the numbers that I've seen, where you  
25 have lots of allocation room, DFO is not stopping  
26 you from going into Millbank Sound to catch  
27 sockeye for food, social and ceremonial purposes.

28 CHIEF NEWMAN: They tried. They were going to come --  
29 we're managed from Bella Coola. The fishery office  
30 in Bella Coola phoned me when I was the chief of  
31 the band and told us not -- "You couldn't go out  
32 there to fish for the sockeye passing through,"  
33 and we were going out there and force that, and I  
34 told them, "You come and try it."

35 Q When was that?

36 CHIEF NEWMAN: This was when I was chief of the band  
37 the last time. That's about ten years ago now.

38 MR. EAST: Okay. Just looking at the time. I think  
39 I'll leave the questions there. Thank you very  
40 much for your time.

41 MR. McGOWAN: Mr. Commissioner, we do have questions  
42 from several other participants. Did you want to  
43 take a very brief afternoon break?

44 THE COMMISSIONER: No, we can keep going.

45 MR. McGOWAN: Thank you. Mr. Harrison, I believe you  
46 had a question.

47 MR. HARRISON: Good afternoon. My name is Judah

1 Harrison, for the record, H-a-r-r-i-s-o-n. So the  
2 panel knows, I'm representing six non-governmental  
3 environmental organizations and one individual. I  
4 only have two questions here today.  
5

6 CROSS-EXAMINATION BY MR. HARRISON:  
7

8 Q The first one is for Chief Mountain. This  
9 morning, you were talking about in the past 20  
10 years you've noticed, walking through your  
11 territory, many changes to the local environment  
12 and to the fisheries in your territory. I wonder  
13 if you could expand upon that and tell us some of  
14 the changes you've noticed.

15 CHIEF MOUNTAIN: Mm-hmm. Most of my life, I lived on  
16 the water like I said before, and a lot of my work  
17 has been in the Mainland and in the  
18 (indiscernible) River as a fisheries guardian. I  
19 remember -- just whenever I travel, it'd be a  
20 nice, calm, hot day and you'd look out on the  
21 water and it would look like it was raining out  
22 there because of so many smolts and fry in the  
23 area, that there was just millions of them around  
24 at one point. Previous to that -- and after that,  
25 around the year 2000, it was never like that  
26 again. You wouldn't see that many fish around  
27 anymore.

28 Part of my job out there was actually to  
29 monitor the migration route of the salmon going by  
30 the fish farms, and I would sit in a boat and just  
31 watch the fish streaming by a fish farm. I'd sit  
32 in a boat for six or seven hours and just monitor  
33 fish going by. In each year, it was getting less  
34 and less and less. We weren't seeing the big  
35 schools of thousands of fry or smolts going by  
36 these fish farms anymore. We were lucky to see  
37 10, 20 or even 100 going by. So the number of fry  
38 and smolts was being drastically reduced, and they  
39 were all streaming by every fish farm out there,  
40 'cause we used to do that as part of our job just  
41 to monitor the migration route of the fry.

42 Also, in my commercial days, when we'd catch  
43 the sockeye, we always noticed that, sure, there's  
44 lice on there, where everybody says the sea lice  
45 came from the wild. They might have brought them  
46 in, you know, they had five or ten sea lice per  
47 fish. But now that they're coming through area 7



1 and 8, I know the commercial fishermen -- and I  
2 fished up there as well -- that they only had five  
3 or ten sea lice per fish. But once they come past  
4 the Port Hardy area where there's at least another  
5 10 or 12 fish farms, and also come through the  
6 Broughton area, and then you finally catch the  
7 sockeye in Johnstone Strait, that these sockeye  
8 had 50 to 100, and some people count 200 sea lice  
9 on these fish now.

10 We see them on our food fish when we're food  
11 fishing, that there's always over 50 to 100 sea  
12 lice on them. Previous to that, I noticed that  
13 all the sea lice that were on them in earlier days  
14 were five to ten. They were all the older adult  
15 sea lice, and now when they're passing the fish  
16 farms, you look on your food fish catch that  
17 you're doing at your home, that there's different  
18 stage lice -- stage lifecycles of sea lice on  
19 those fish, adults and pre-adults and copepods,  
20 and so they got these sea lice from somewhere near  
21 where we caught them.

22 There was never any sea lice on our sockeye  
23 in the Nimkus River. DFO and Alexander Morton and  
24 Marty Crocosik (phonetic) and SFU team did a lot  
25 of fry sampling around our river in the bay of  
26 Alert Bay, Kluckseewee (phonetic) area, R River  
27 (phonetic), Lewis Point, all around the river, and  
28 they found that our chum and sockeye were being  
29 affected by sea lice.

30 But there was no farm. The closest farm was  
31 over 40 kilometres away. The sea lice had to come  
32 from somewhere. They either came from off the  
33 sockeye and passed on, but we don't know where all  
34 that come -- where it's coming from. There needs  
35 to be more study on just our sockeye and our  
36 chums.

37 Q Thank you. I'm interested to hear if anyone else  
38 has personal knowledge or experience in changes  
39 long fish (sic), but I'm very cognizant of the  
40 time, so if anyone has a short thing -- something  
41 short to say about changes to the fisheries or  
42 their local environment that they've noticed in  
43 the past 20 years, I'd be interested to hear that.

44 PRESIDENT GUUJAAW: In regard to management, as Chief  
45 Mountain had stated, and the experience of Gwaii  
46 Haanas, I think that if you look at every species  
47 that the Department of Fisheries has taken care

1 of, every one of them has been almost wiped out.  
2 There's a mention of the abalone. It took them  
3 about five years to clean that out, once they had  
4 a commercial licence. Rock cod. Herring right  
5 now is at critical lows and our people fought them  
6 for years about that. I think that if -- if the  
7 management included the people of that region,  
8 certainly the issues of poaching and the local  
9 knowledge would go a long ways to supporting real  
10 sustainable fisheries, because we believe that the  
11 sea has the ability to provide for a lot of people  
12 beyond our own, but it has to be looked after  
13 properly. We think with the expertise of  
14 biologists as well as the knowledge of our own  
15 people, that that could be done.

16 But, you know, I mention the other species  
17 because this, again, is -- we're talking about the  
18 Fraser River and why is it in trouble? Just look  
19 at every other species they managed, and every one  
20 of them are in trouble as well.

21 Q Okay.

22 PRESIDENT GUUJAAW: I think a big part of the problem  
23 is that they're trying to manage it remotely. You  
24 know, they've got -- most of the fishery officers  
25 are trained in Winnipeg. You know, you can't  
26 manage a fishery that way.

27 Q Okay. Thank you. My final question is to Chief  
28 Newman directly. Your frustration is clear in  
29 many different areas throughout. I'm wondering if  
30 there are any fish farms within your traditional  
31 territory and, if so, whether you feel that you  
32 have been properly consulted on their being placed  
33 there and/or if you have sufficient say in the  
34 management of these farms.

35 CHIEF NEWMAN: No, the Heiltsuk people have a firm  
36 position on not wanting any fish farms in their  
37 territory, and we've made that quite clear to both  
38 the Department of Fisheries and Oceans and to the  
39 province. We're afraid of the damage it will do  
40 to the resource that we depend on, like the  
41 seaweed and herring spawning areas, and also the  
42 pit-lamping they do to attract feed. You know, I  
43 don't know whether anybody has ever talked about  
44 the pit-lamping that the fish farmers do to  
45 attract fry to cut down the cost of the feed for  
46 their product. But we understand that that does a  
47 lot of -- attracts a lot of fry.

1 I know when the herring fleet was allowed to  
2 pit-lamp, there were cases where a third of the  
3 load of some of those boats that pit-lamped in  
4 deep water bay and the low part of Johnstone  
5 Straits, a third of it was salmon fry. You can  
6 imagine just what a lot of damage the fish farms  
7 have been doing when they're pit-lamping for food  
8 for their salmon.

9 No, we're totally opposed to fish farms  
10 coming to our territory. We've tried to fight it  
11 at every turn. We even fought the catch read  
12 (phonetic), there's a -- put into place in Ocean  
13 Falls in our territory. That was done against our  
14 wishes.

15 MR. HARRISON: Thank you.

16 MR. MCGOWAN: Mr. Butcher? Mr. Butcher?

17 MR. BUTCHER: I'm David Butcher. I represent the area  
18 E gillnetters from the Fraser River and the  
19 Pacific Fisheries Survival Coalition.  
20

21 CROSS-EXAMINATION BY MR. BUTCHER:  
22

23 Q I have some questions first -- and I'm going to  
24 start with you, Chief Newman, about the decline or  
25 the historical involvement of aboriginal people in  
26 the commercial fleet on the central coast and the  
27 decline that you've described for us.

28 You've told us today, if I've heard you  
29 rightly, that there are just two seine boats --  
30 two seine boats and two gillnets left in your  
31 community in Bella Bella?

32 CHIEF NEWMAN: Mm-hmm.

33 Q Do I have that right?

34 CHIEF NEWMAN: That's right, yes.

35 Q Now, at the height of the commercial fleet, how  
36 many seine boats and gillnet boats were there?

37 CHIEF NEWMAN: We had at least 15 seine boats, that's  
38 company boats and privately owned boats, seine  
39 boats, and over 30 gillnet boats.

40 Q When would that have been?

41 CHIEF NEWMAN: Well, that would have been before the  
42 Millbank was closed. You know, we had that --  
43 every household had a boat at that time.

44 Q Are we talking in the 1980s, or are we talking in  
45 the --

46 CHIEF NEWMAN: Right in -- the 1980s through the --  
47 1980s, 1990s. It's been a steady decline since.

1 Q And I wonder, Chief Naknakim, and Chief Mountain,  
2 if you have similar numbers for your communities  
3 in the Alert Bay and Campbell River areas?

4 CHIEF MOUNTAIN: Yes. I've talked to a lot of the  
5 elders and also -- 'cause we did a lot of  
6 interviews for commercial use and food use and  
7 stuff, and also talked to my grandfather, that  
8 they used to -- each village out in our territory  
9 used to have -- like Ed -- Chief Ed Newman used to  
10 say, that every family had a gillnet. Outside  
11 their villages, you'd have 20, 30, 40 gillnets  
12 anchored outside of their villages. Alert Bay had  
13 the same. So each village had that many boats.  
14 So it was in the hundreds of gillnets that were in  
15 our territory.

16 The number of seine boats was up in the  
17 forties or fifties in Alert Bay, and I think  
18 there's just three left in Alert Bay right now.

19 Q And how many gillnetters left in your territory?

20 CHIEF MOUNTAIN: I could probably think of probably six  
21 or seven that are commercially fishing, and I know  
22 there's a few others who just use it for food and  
23 social.

24 Q And in the Cape Mudge/Campbell River area?

25 MR. NAKNAKIM: I think between the two bands, there's  
26 generally around 70 seiners operated out of those  
27 two villages, probably in the '50s, '60s, '70s and  
28 start declining in the '80s.

29 Q And today?

30 CHIEF NAKNAKIM: Today, there's -- I'd be surprised if  
31 there's a dozen.

32 Q And, I'm sorry, I don't think I got from you,  
33 Chief Mountain, a time when you say that your  
34 commercial fishing fleet was at its peak?

35 CHIEF MOUNTAIN: It would be around '79, '80 as well.  
36 That's when I went back to school, and I could see  
37 the decline, steady decline since then. It's in  
38 the early '80s.

39 Q And I take it -- and tell me if any of you agree  
40 or disagree with this: That there was a very high  
41 involvement of aboriginal people in your  
42 communities in the commercial fishery, firstly.  
43 Is that fair for all three communities?

44 CHIEF NEWMAN: That's right. I think a good part of  
45 the company boats were operated by aboriginal  
46 people, and a lot of our people were able to  
47 purchase their own boats.

1 Q And similarly I see you nodding, Chief Mountain.

2 CHIEF MOUNTAIN: Yes.

3 Q And Chief Naknakim?

4 MR. NAKNAKIM: Yes.

5 Q And the second position I have is that a very --  
6 it's a slightly different one but a very high  
7 proportion of people involved in the commercial  
8 fleet were aboriginal? Again, I see nods.  
9 Everybody is agreeing with that second  
10 proposition.

11 The second area that I wanted to touch on  
12 very briefly was some comments arising out of  
13 Chief Newman's comments that there is -- you  
14 raised the question of enforcement in the context  
15 of abalone.

16 CHIEF NEWMAN: Mm-hmm.

17 Q But do you have the sense that the enforcement  
18 presence in your area on the central coast is very  
19 much reduced now?

20 CHIEF NEWMAN: There is very little enforcement in our  
21 area. We don't see it. As I said, we're sort of  
22 managed from the Bella Coola community. I  
23 understand that the new facility they built in  
24 Bella Bella is worth \$7 million, and there's one  
25 guy there, one fishery officer there.

26 Q And the nearest, either side, are in Port Hardy  
27 and in Prince Rupert.

28 CHIEF NEWMAN: That's right.

29 Q So it's one guy?

30 CHIEF NEWMAN: Yeah.

31 Q Covering that area --

32 CHIEF NEWMAN: And the head manager is stationed in  
33 Bella Coola. This year on the one-day open, the  
34 fisheries enforcement weren't there. Three seine  
35 boats went into the closed area to fish, and  
36 nobody -- there was nobody there to stop it.

37 Q And if we're getting reports of pit-lamping of  
38 smolts around fish farms, DFO has nobody to  
39 enforce a violation like that.

40 CHIEF NEWMAN: Well, I don't know. I guess they --  
41 they approve of it. They must approve it, because  
42 they're part of the planning for these fish farms.

43 Q Do you, in Alert Bay, and in the Campbell River  
44 area, share the same concern about the lack of  
45 enforcement?

46 MR. NAKNAKIM: Yes, we do.

47 Q Have you got a sense of a reduction in enforcement

1 numbers? And by "enforcement numbers" I mean  
2 numbers of fisheries officers.

3 MR. NAKNAKIM: Definitely. We've got some guardians,  
4 but they can't charge people. They can only  
5 observe. We can always use more enforcement  
6 officers.

7 Q And --

8 CHIEF MOUNTAIN: Yes, in Alert Bay, when I used to work  
9 for the Department of Fisheries and Oceans as well  
10 as an aboriginal guardian and had the enforcement  
11 powers, and we had five in Alert Bay and I know  
12 they had at least 15 at Hardy. Now there's none  
13 in Alert Bay and I'm not quite sure how much in  
14 Port Hardy, but every time I go to the office, I  
15 only see four or five officers sitting around. A  
16 lot of the time when I report something, a lot of  
17 them say, "Well, we'll get back to you. We can't  
18 go out." They don't have the budget for the gas  
19 for their boats or their truck, just to get out of  
20 their office. So how can they enforce?

21 Q Guujaaw, I'm not meaning to leave you out of this.

22 PRESIDENT GUUJAAW: Yeah, I was starting to wonder.

23 Q Do you have any comments on either of those issues  
24 with respect to the reduction of your people's  
25 participation in the commercial fleet and  
26 enforcement areas -- enforcement efforts in your  
27 area?

28 PRESIDENT GUUJAAW: Our people went right from canoe-  
29 building into building schooners and then into  
30 building seine boats, and built a fleet in Masset  
31 and in Skidegate. And it correlates with our  
32 neighbours on the timing of when the -- the  
33 reduction, it had to do with the licensing  
34 schemes, but also at the same time there was --  
35 sort of as our licences dropped, so did the stocks  
36 drop, and the effort of fishing in our areas had  
37 risen by other people from other places who took  
38 over these licences.

39 But, you know, what I say in response to your  
40 issue of enforcement is, you know, we don't look  
41 forward to seeing them up there because the  
42 biggest menace out there is the Department of  
43 Fisheries. They're the ones who've been managing  
44 this thing to extinction.

45 Q You'd be in favour of enforcement, but not in the  
46 current form, is that what you're telling me?

47 PRESIDENT GUUJAAW: Well, the enforcement that they've

1 done, I mean, you know, like on one hand if  
2 they're allowing fisheries that are not  
3 sustainable, that are cleaning out the thing, and  
4 they're putting their effort into going and  
5 busting people for a few fish to bring to their  
6 family, why would we look forward to that?

7 Q It's the enforcement priorities that you  
8 criticize?

9 PRESIDENT GUUJAAW: Yeah, and, you know, like while the  
10 geoduck fishermen and the urchin fishermen are  
11 there, there seems to be a drop of abalone. We  
12 know they're at the dock selling them. You go  
13 tell the Fisheries, they basically give them the  
14 time to slip them overboard or whatever. It's --  
15 you know, it seemed pretty deliberate. But every  
16 fishery is managed -- their main people that they  
17 consult is the fishing industry, whether it's a  
18 herring industry, it's a Herring Fishery Advisory  
19 Board. If it's a crab, it's an area crab fishery.  
20 If it's urchins, if it's geoduck, all the way  
21 along, and that's why they're failing at every  
22 point.

23 MR. BUTCHER: If we could just quickly bring up Exhibit  
24 -- I think it's 303. This is another question for  
25 Chief Newman. Can we scroll down? Keep going.

26 Q Chief Newman, I don't know if you're going to be  
27 able to answer this, but this document is prepared  
28 by a Heiltsuk organization?

29 CHIEF NEWMAN: Yes, that's right.

30 Q And it seems to say that the total required for  
31 your food, social and ceremonial purposes is  
32 98,000 pounds of round weight biomass sockeye.

33 CHIEF NEWMAN: That's right.

34 Q If -- if would probably be a little light to say  
35 that a sockeye weighs about five pounds.

36 CHIEF NEWMAN: In our area, some are just four to five  
37 pounds.

38 Q And I'm using that because it makes a very simple  
39 calculation. If a sockeye is five pounds and  
40 you're estimating 100,000 pounds needed, that's  
41 about 20,000 fish, isn't it?

42 CHIEF NEWMAN: How many?

43 Q It's about 20,000 fish.

44 CHIEF NEWMAN: Yes.

45 Q And that's exactly the number that's provided for  
46 in your fisheries agreement that was introduced  
47 into evidence by your counsel.

1 CHIEF NEWMAN: I didn't see that.

2 Q Well, it was introduced by Canada's counsel. That  
3 round weight means the full weight of the fish  
4 caught with guts and all.

5 CHIEF NEWMAN: That's right.

6 MR. BUTCHER: Maybe we can bring up Exhibit 305, and go  
7 to page 17.

8 CHIEF NEWMAN: You understand we're talking about food  
9 fish here, not commercial.

10 MR. BUTCHER: Oh, I'm aware of that.

11 CHIEF NEWMAN: Okay.

12 MR. BUTCHER: Keep going down to the numbers. Maybe  
13 it's on page 19.

14 MR. McGOWAN: Page 19.

15 MR. BUTCHER: Yeah.

16 Q You see that the number of allowance -- allowed  
17 sockeye for you in the middle of that agreement is  
18 exactly the number that -- or more or less exactly  
19 the number that your own people say you need.

20 CHIEF NEWMAN: Yeah, that's -- I think that's the  
21 number they put into the 15-year plan.

22 Q Your problem is not with the number in the  
23 document, it's with the number that you've been  
24 allowed to catch or been able to catch.

25 CHIEF NEWMAN: Well, personally, my position there was  
26 personal this morning. I didn't agree with those  
27 numbers. They're too low.

28 Q Okay. But I'm trying to suggest to you that they  
29 are the numbers that have been put forward by your  
30 own organization.

31 CHIEF NEWMAN: Yes, but I'm a member of the band and I  
32 disagree with it.

33 Q Okay. Maybe we should just scroll down a little  
34 bit more just so we see this as well. There's  
35 also a 22,000 pound allowance for halibut and  
36 another 22,000 pound allowance for groundfish in  
37 -- for food, social and ceremonial fish in that  
38 agreement. I just want -- that's correct, isn't  
39 it?

40 CHIEF NEWMAN: Yes, that's not very a many for a  
41 community the size of Bella Bella. You know, we  
42 live off the land 'cause we're forced to. It's a  
43 high-cost area and our people do a lot of food-  
44 fishing. Our young people are fully involved in  
45 the food fishery in Bella Bella.

46 Q I'm going to ask you this question and I'm -- I've  
47 seen the -- and it's now in evidence -- the treaty



1 with the Tsawwassen that allows them one percent  
2 of the Canadian total allowable catch. I've seen  
3 the agreement with the Sto:lo that allows them  
4 5.25 percent, I think, of the total allowable  
5 Canadian catch. Do you get the sense, Chief  
6 Newman, that there's been a shift from the  
7 permissible fishing effort of your people on the  
8 Central Coast to the people in the -- the  
9 aboriginal people in the Fraser Valley?  
10 CHIEF NEWMAN: Try that again? I didn't quite follow  
11 you.  
12 Q Do you get a sense that your people have lost  
13 available fishing effort because of fishing  
14 allowances given to --  
15 CHIEF NEWMAN: And you're talking about the commercial?  
16 Q -- the aboriginal people in the Fraser Valley?  
17 CHIEF NEWMAN: And you're talking about the commercial?  
18 Q Both, social and ceremonial and commercial uses by  
19 aboriginal people in the Fraser Valley?  
20 CHIEF NEWMAN: I know that through the --  
21 MR. MCGOWAN: I'm sorry to interrupt. I just see Ms.  
22 Schabus has risen, Mr. Commissioner.  
23 MS. SCHABUS: Yes. Mr. Commissioner, I'm just hoping  
24 to clarify that, and my objection would be that I  
25 don't think that the witness is qualified to  
26 actually comment on the allocation of other  
27 aboriginal peoples. I don't think my friend has  
28 properly put it to him. And absent establishing  
29 that the witness is actually aware of those  
30 allocations, I would object to that question going  
31 forward.  
32 MR. BUTCHER: I'm wondering if my friend is saying that  
33 I've misstated the allocations, 'cause I don't  
34 believe I have.  
35 MS. SCHABUS: Well, my point is that the witness is not  
36 one who would be qualified to actually comment on  
37 those numbers, and wouldn't be aware of them. So  
38 that is my objection.  
39 MR. BUTCHER: I'll ask it without reference to the  
40 numbers.  
41 Q I've heard you, Chief Newman, say that we're not  
42 even able to catch probably one quarter of our  
43 requirement for food, social and ceremonial  
44 purposes. Have I summarized your evidence  
45 properly?  
46 CHIEF NEWMAN: I really don't understand your question.  
47 It's hard to --

1 MR. BUTCHER: Okay. I'll leave it. I'll leave it at  
2 that. Thank you.

3 PRESIDENT GUUJAAW: No more questions for me?

4 MR. MCGOWAN: Ms. Schabus has a few minutes of  
5 questions.

6 MS. SCHABUS: Yes, just a few brief ones. For the  
7 record, Nicole Schabus, counsel for Sto:lo --

8 THE COMMISSIONER: Ms. Schabus, just a moment, sorry.  
9 Madam Reporter, are you okay to go for another few  
10 minutes? Are you? Are you sure? Okay. Thank  
11 you very much.

12 MS. SCHABUS: Thank you, Mr. Commissioner.

13 MR. MCGOWAN: Thank you. Ms. Schabus has a few minutes  
14 of questions.

15 MS. SCHABUS: Yes, just a few brief ones. For the  
16 record, Nicole Schabus --

17 THE COMMISSIONER: Ms. Schabus, just for --

18 MS. SCHABUS: -- counsel for Sto:lo --

19 THE COMMISSIONER: Ms. Schabus, just a moment.

20 MS. SCHABUS: Sorry.

21 THE COMMISSIONER: Madam Reporter, are you okay to go  
22 for another few minutes?

23 THE REPORTER: Yes, thank you.

24 THE COMMISSIONER: Are you? Are you sure?

25 THE REPORTER: Yes.

26 THE COMMISSIONER: Okay. Thank you very much.

27 MS. SCHABUS: Thank you, Mr. Commissioner. Chiefs,  
28 gentlemen, leaders, I am co-counsel for Sto:lo  
29 Tribal Counsel and the Cheam Indian Band, and I  
30 actually just have two brief clarifying -- or  
31 questions, and one was partially answered, but I'm  
32 still going to put that question to Chief  
33 Mountain.

34

35 CROSS-EXAMINATION BY MS. SCHABUS:

36

37 Q You were commenting on the decline that you've  
38 seen in your local fish stocks, and based on your  
39 experience and indigenous knowledge, could you  
40 comment on the reasons for the decline of your  
41 local stocks?

42 CHIEF MOUNTAIN: The local stocks, from what we know,  
43 is a lot of the rivers were over-logged and the  
44 commercial fishery that allowed the -- to catch --  
45 target those fish and over-catch them, and another  
46 factor is the fish farms that the sea lice are  
47 evident on them.

1 MR. MCGOWAN: Mr. Commissioner, I note my friend asked  
2 the question quite carefully, and that was "Based  
3 on your traditional knowledge, can you inform the  
4 Commissioner about the reasons for the decline,"  
5 but perhaps my friend could just clarify the basis  
6 of the answer that was just given and whether it  
7 was based on that traditional knowledge she asked  
8 for or some other information that came to the  
9 witness perhaps through hearsay.

10 MS. SCHABUS: I'll actually put it to the witness in  
11 that context.

12 Q Obviously, you are a person who has extensive  
13 experience as an indigenous person with the  
14 fishery and you've seen that decline, and does  
15 your traditional knowledge actually speak, for  
16 example, to the effect how habitat alteration,  
17 both in the marine and in the river context and  
18 ecosystem actually affects those stocks, and if  
19 you can speak to that?

20 CHIEF MOUNTAIN: Yes, like I said, I was Aboriginal  
21 Guardian and we walked and enforced a lot of the  
22 forest range practice codes, when it used to be in  
23 effect back in the day. We used to walk those  
24 streams and check for habitat degradation and  
25 spawning bed degradation, if there's sediment --  
26 too much sediment in the spawning beds or too many  
27 beaver dams or too many logs crossing too many  
28 dams, you know, we'd look for anything in the  
29 streams that we went, and if it needed  
30 rehabilitation, we would do it; if it was no harm  
31 to the stream or fish getting by, we would just  
32 leave it, but, yeah, we did a lot of that  
33 rehabilitation during our assessments of the  
34 rivers, counting the fish and rehabilitating them.

35 Q And my second question is to the panel as a whole,  
36 and based on Canada's point about problems in  
37 building consensus, probably more western systems,  
38 but I want to take you and ask you to, based on  
39 your indigenous experience, speak to indigenous  
40 consensus-building mechanisms that you have within  
41 your communities and within your indigenous  
42 nations, how you build consensus, and also how you  
43 have interacted and built such consensus according  
44 to your traditional protocols amongst the  
45 indigenous nations and obvious understanding if  
46 you have a consensus-building process and you make  
47 decisions and you're decision-makers and how that

1           could be employed in a different kind of regime of  
2           dealing with the fisheries from an Aboriginal  
3           perspective?

4       MR. NAKNAKIM: I'll try at this. If you're talking  
5           about building a body that's going to represent  
6           one voice for all First Nations in British  
7           Columbia and fish, I don't think you're ever going  
8           to get there. We've, my group, I've got three  
9           nations in my treaty group, have just finished a  
10          mediation process between ourselves, and we came  
11          out with two products. One product was an  
12          agreement on how to approach sharing our lands.  
13          And the second document was an internal dispute  
14          resolution process. Now, to get to that point, we  
15          had to change our discussion to be based totally  
16          on our values, and that was a tough discussion.  
17          In that sharing formula agreement, what it does is  
18          it creates a safe place to have very tough  
19          discussions where we try our best to come to an  
20          agreement.

21                 And on an internal dispute resolution  
22          process, we identify what the problem is, first,  
23          then it goes to our, what we call, unity group,  
24          which will then decide what process that issue  
25          needs to be settled on. So we determine the  
26          process after the problem is identified. From  
27          what I understand on a normal mediation process,  
28          they make the problem fit the process; here, we've  
29          reversed it, we make the process fit the problem.

30                 So I think those are key points that all of  
31          us First Nations, with the responsibilities of  
32          representing our communities, must talk to each  
33          other on these issues.

34                 Now, the way we talk, now, is business, and  
35          it's too early to talk business on these tough  
36          issues. That's what I think.

37                 In any event, if we ever get there with a big  
38          organization, we don't want that organization  
39          being the voice with government. We want it to  
40          open doors for us so we can advocate, ourselves,  
41          in our own local area and make our own decisions.

42       Q         And I want to put it to the panel that I just want  
43           to clarify, I wasn't suggesting a provincial  
44           organization or western style; I was actually  
45           asking exactly what you spoke to, about your  
46           indigenous laws and how you would communicate  
47           amongst indigenous nations as decision-makers.

1 PRESIDENT GUUJAAW: Well, I think that, first of all,  
2 each of our people within their own territories  
3 are the ones who live with the consequences of any  
4 decision there, and certainly each of us would  
5 have to be representing ourselves in any kind of  
6 forum like that, that there's certain things that  
7 indeed it would be fairly straightforward to get  
8 consensus on the matters of looking after the  
9 land, looking after the fish, and those sort of  
10 things, are common to all of our nations.

11 And so to arrive at that point would be the  
12 simple part of it, and then to address our needs  
13 in a way other than as you've seen with the  
14 Heiltsuk where basically someone else writes a  
15 prescription and sends you some numbers, and that  
16 would never do for us, it would -- you know, it  
17 doesn't do for them or anybody else. And, you  
18 know, it's not that we want more, but we want to  
19 be sure that our people are looked after.

20 Commerce is an ancient thing on the coast.  
21 It isn't something that started up with fishing  
22 licenses. Our people fished and traded and did  
23 all those things for thousands of thousands of  
24 years amongst the different nations and amongst  
25 ourselves. There's people who specialize in  
26 different kind of fishing and people who provided  
27 for other people with other -- that had other  
28 things to trade, and it's just normal course of  
29 events that commercial fishing would be a way that  
30 our people would make a livelihood.

31 But, firstly, I think that important to all  
32 the people on the coast is that our people are  
33 provided for in their homes. So certainly those  
34 sort of things I think are simple things that we  
35 all agree upon, principles we all agree upon and  
36 could easily work from there, but we would have to  
37 be representing ourselves.

38 THE COMMISSIONER: Ms. Schabus, I --

39 MS. SCHABUS: I understand. I just wanted to leave it  
40 -- I have no more questions.

41 THE COMMISSIONER: Thank you very much.

42 MS. SCHABUS: I just wanted to see if any of the panel  
43 members -- I think one of the chiefs still wanted  
44 to speak, but I have no further questions, Mr.  
45 Commissioner.

46 CHIEF NEWMAN: No. My position is that we have to come  
47 together on our own, to kind of put a position in

1 place that will work for our people, because the  
2 systems that DFO is trying to force on Aboriginal  
3 people don't work and never has. And the sooner  
4 they quit interfering with how we deal with each  
5 other, the better for us. They should just give  
6 us the money to put something together and get the  
7 hell out of the way.

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

9 MR. MCGOWAN: Mr. Commissioner, I believe Ms. Robertson  
10 is the only counsel with additional questions,  
11 although I see Ms. Fong standing up. Did you want  
12 to carry straight through or did you want to take  
13 a short break?

14 THE COMMISSIONER: No, I want to give Madam Reporter a  
15 five-minute break, and then we'll have 10 minutes  
16 left and remaining counsel can divide up the 10  
17 minutes.

18 MR. MCGOWAN: Yes. Thank you, Mr. Commissioner.

19 THE COMMISSIONER: Thank you.

20 THE REGISTRAR: Court will recess for five minutes.

21

22 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

23 (PROCEEDINGS RECONVENED)

24

25 MR. MCGOWAN: Yes, Mr. Commissioner. Counsel for the  
26 other participants have concluded. There's a  
27 couple of counsel who are seeking to ask questions  
28 in re-exam. Ms. Robertson has discussed with me  
29 the questions she wants to ask, and Commission  
30 counsel feels it's a fair question.

31 MS. ROBERTSON: Krista Robertson, counsel for the  
32 Musgamagw Tsawataineuk Tribal Council.

33 Mr. Lunn, if I can ask you to pull up the  
34 Comprehensive Fisheries agreement?

35

36 CROSS-EXAMINATION BY MS. ROBERTSON, continuing:

37

38 Q Now, this is just a point of clarification arising  
39 from the testimony given by the panel. And I'm  
40 going to put the question to Chief Mountain. So  
41 this is -- I'll just describe it. It's the  
42 Comprehensive Fisheries Agreement.

43 THE COMMISSIONER: What exhibit number is it?

44 MS. ROBERTSON: Pardon me, it's actually on Ringtail.

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

46 MS. ROBERTSON:

47 Q So this is a Comprehensive Fisheries Agreement

1           between - the acronym is the MTMMS - and those are  
2           three of the four nations of the MTTC; is that  
3           correct, Mr. Mountain?

4           CHIEF MOUNTAIN: Yes, it is.

5           Q     And this is an agreement from this year, as you  
6           can see the duration is April 2009 to March 2010.  
7           So Mr. Lunn, if you could please go to page 13 of  
8           the agreement.

9                     Chief Mountain, can you see there on the  
10           screen, it says -- if you can just enlarge, just  
11           at the top of the page there - this is the  
12           Aboriginal communal fishing licence for what is  
13           called the Johnstone Strait First Nations; do you  
14           see that there?

15          CHIEF MOUNTAIN: Yes.

16          Q     Now, Mr. Lunn, if we can just scroll down to the  
17           very bottom of the page. And you can stop there,  
18           thank you. You can see there's a definition of  
19           the Johnstone Strait First Nations there?

20          CHIEF MOUNTAIN: Yes.

21          Q     And Chief Mountain, can you see (a) and (b)? You  
22           can see there's eight nations there. Mr. Lunn, if  
23           you can just go to the top of the next page.  
24           Chief Mountain, you'll see item (c) there is  
25           another six nations there? And I think you'll  
26           recognize the nations as being -- that group of  
27           nations are the four member nations of the MTTC.

28                     So would you agree that is -- the number of  
29           that definition defines which nations are covered  
30           by this single communal fishing licence -- food  
31           fishing licence?

32          CHIEF MOUNTAIN: Yes.

33          Q     Mr. Lunn, if you would go to page 17, now. And  
34           that visual is fine there. Maybe if you could  
35           just, then, please just enlarge the numbers there  
36           under "Salmon", the heading, "Salmon". Chief  
37           Mountain, can you see there that the allocation of  
38           sockeye salmon for all of those 14 nations who are  
39           grouped under the heading "The Johnstone Strait  
40           First Nations" is 80,000?

41          CHIEF MOUNTAIN: Yeah.

42          Q     So would you agree, then, that the total  
43           allocation for those 14 nations for sockeye is  
44           80,000?

45          CHIEF MOUNTAIN: Are you asking if that's enough or is  
46           that just --

47          Q     I'm just asking if, on the face of the

1 agreement --

2 CHIEF MOUNTAIN: Yeah.

3 Q -- that is the allocation for the communal food  
4 fishing licence?

5 CHIEF MOUNTAIN: As this agreement says, yes.

6 MS. ROBERTSON: Thank you, that is my question.

7 MR. MCGOWAN: I wonder if you wanted the agreement  
8 marked.

9 MS. ROBERTSON: Sure, we can mark it as -- I wasn't  
10 sure, if it's already in Ringtail, but if --

11 MR. MCGOWAN: Mr. Commissioner, I believe if my friend  
12 wants it as evidence she can rely on later in the  
13 hearing, or in submissions, it ought to be marked.

14 MS. ROBERTSON: Thank you. I'll have it marked, then.

15 THE REGISTRAR: It will be Exhibit Number 308.

16

17 EXHIBIT 308: Comprehensive Fisheries  
18 Agreement between Her Majesty the Queen and  
19 MTMMS, for the period April 2009 to March  
20 2010  
21

22 MS. WILLIAMS-DAVIDSON: I have one quick question for  
23 Mr. Ducommun. You mentioned in your testimony  
24 that --

25 THE COMMISSIONER: I'm sorry, counsel, you have to at  
26 least put your name on the record --

27 MS. WILLIAMS-DAVIDSON: I'm sorry.

28 THE COMMISSIONER: --or we won't have it.

29 MS. WILLIAMS-DAVIDSON: I'm sorry.

30 THE COMMISSIONER: Thank you very much.

31 MS. WILLIAMS-DAVIDSON: (Haida language spoken) Terri-  
32 Lynn Williams-Davidson, counsel for the Council of  
33 the Haida Nation.  
34

35 CROSS-EXAMINATION BY MS. WILLIAMS-DAVIDSON, continuing:  
36

37 Q Again, Mr. Ducommun, you talked about the Métis  
38 people being a blend of Aboriginal and European  
39 concepts, and I wanted to know whether the Métis  
40 share the sort of motherhood or value of concept  
41 of -- that Aboriginal people have of giving  
42 respect to the people of the land and the protocol  
43 of seeking permission before utilizing a land or  
44 resource, because I think this is relevant to how  
45 we look at developing sharing and co-managing  
46 principles between First Nations and the Métis.

47 CAPTAIN DUCOMMUN: There's a two-part answer to that.



1 Our history does not show that -- that agreement  
2 type or request for permission, but at the same  
3 time, we definitely recognize, you know, the  
4 territories of Aboriginal First Nations people.  
5 We have no problem with that. And what we, in  
6 British Columbia in particular, do not claim  
7 territories, what we claim is a right to feed our  
8 families, the way we have for sometimes 12 or 14  
9 generations in this province.

10 MS. WILLIAMS-DAVIDSON: Okay, thank you.

11 MS. FONG: Lisa Fong, for Heiltsuk Tribal Council, and  
12 I just have two short questions on re-direct.

13 Mr. Lunn, if you could please pull up Exhibit  
14 303, the third page, and if you have the facility  
15 to do it, also page -- sorry, first page of 301,  
16 which is the witness summary of Chief Newman.

17 MR. LUNN: Did you say Newman?

18 MS. FONG: Yes, Chief Newman, the first page.

19 MR. LUNN: I think it's Exhibit 300.

20 MS. FONG: Sorry, it's 300. And then what I -- yeah,  
21 303, and the third page, where you see the group  
22 -- where you see the list at the third page.  
23 Okay, there we go.

24

25 CROSS-EXAMINATION BY MS. FONG, continuing:

26

27 Q My question is for Chief Newman on re-direct.  
28 Chief Newman, if I can direct your attention to  
29 your witness summary. Now, your witness summary,  
30 under the heading "Nation/Territory", second  
31 paragraph, it reads:

32

33 Chief Newman is a member of the Heiltsuk  
34 First Nation, which currently has 2500 on and  
35 off reserve members.

36

37 Do you see that, Chief Newman? And then comparing  
38 that to the other document, and that was page 3 of  
39 the Community Needs Study, I'm now looking at that  
40 line item for sockeye salmon, the 98,000 pounds,  
41 and then right above that it says "Now, population  
42 2180". Do you see that?

43

44 My question to you is this: Do you know  
45 which of these numbers is more up-to-date?

45

46 CHIEF NEWMAN: Well, the 2,200, I think it's more up-  
to-date, although I don't agree; I think it's more

1           like 2,5000, 2,600 people. You'd have to look at  
2           the census or the numbers in the Band office to  
3           find out the true number that -- which should go  
4           in there.

5           Q     Okay, so I understand your evidence to be the  
6           2,500 would be more accurate?

7           CHIEF NEWMAN: That's right.

8           Q     Thank you. My second question is this. It  
9           pertains to a question that Mr. East asked you,  
10          and Mr. East stated that in 2010, so this year,  
11          Heiltsuk reported a 5,000 number catch of FSC  
12          salmon, and then he suggested, as I understood,  
13          DFO wasn't stopping Heiltsuk from fishing for  
14          more, for example, in Millbanke, so for fishing  
15          for the balance of their 20,000 pieces allotted in  
16          the FSC agreement.

17          So my question is this: Chief Newman, do you  
18          know why Heiltsuk didn't fish for that full 20,000  
19          pieces of FSC salmon as it was passing by your  
20          territory, given the massive run this year?

21          CHIEF NEWMAN: Nobody knew that that massive run was  
22          going to come through. It was through before we  
23          found out about it.

24          MS. FONG: Thank you very much. Those are my  
25          questions.

26          MR. MCGOWAN: Commission counsel has no questions in  
27          re-examination.

28          THE COMMISSIONER: Thank you very much. To each and  
29          every member of the panel, I want to thank you for  
30          coming here, today, to, through your voices, bring  
31          your viewpoints and your answering of those  
32          questions that were put to you by counsel. I  
33          thank you very much for taking the time to do  
34          that.

35          I also want to thank Participants' counsel  
36          once again for cooperating with Commission counsel  
37          to ensure that we could complete the evidence in  
38          the last three days on the estimated times, and  
39          I'm very grateful to all of you for your  
40          cooperation.

41          We're now adjourned until 10:00 a.m. tomorrow  
42          morning. Thank you.

43          THE REGISTRAR: The hearing is now adjourned until  
44          10:00 a.m. tomorrow morning.

45

46                 (PROCEEDINGS ADJOURNED TO THURSDAY, DECEMBER 16,  
47                 2010, AT 10:00 A.M.)

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 Pat Neumann  
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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 Irene Lim  
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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 Diane Rochfort  
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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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46 \_\_\_\_\_  
47 Karen Hefferland