

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



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

## Public Hearings

## Audience publique

**Commissioner**

L'Honorable juge /  
The Honourable Justice  
Bruce Cohen

**Commissaire**

**Held at:**

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

Friday, January 21, 2011

**Tenue à :**

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

le vendredi 21 janvier 2011

## **APPEARANCES / COMPARUTIONS**

Wendy Baker, Q.C. Maia Tsurumi Line Christensen	Associate Commission Counsel Junior Commission Counsel Articled Student
Hugh MacAulay Jonah Spiegelman	Government of Canada
Boris Tyzuk, Q.C. Tara Callan	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")
Charlene Hiller	Rio Tinto Alcan Inc. ("RTAI")
Alan Blair	B.C. Salmon Farmers Association ("BCSFA")
No appearance	Seafood Producers Association of B.C. ("SPABC")
No appearance	Aquaculture Coalition: Alexandra Morton; Raincoast Research Society; Pacific Coast Wild Salmon Society ("AQUA")
Tim Leadem, Q.C.	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
Don Rosenbloom	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

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

Anila Srivastava	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")  West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
Keith Lowes	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF")
No appearance	Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM")
No appearance	Western Central Coast Salish First Nations: Cowichan Tribes and Chemainus First Nation Hwlitsum First Nation and Penelakut Tribe Te'mexw Treaty Association ("WCCSFN")
Brenda Gaertner Leah Pence	First Nations Coalition: First Nations Fisheries Council; Aboriginal Caucus of the Fraser River; Aboriginal Fisheries Secretariat; Fraser Valley Aboriginal Fisheries Society; Northern Shuswap Tribal Council; Chehalis Indian Band; Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council; Upper Fraser Fisheries Conservation Alliance; Other Douglas Treaty First Nations who applied together (the Snuneymuxw, Tsartlip and Tsawout)
No appearance	Adams Lake Indian Band
No appearance	Carrier Sekani Tribal Council ("FNC")
No appearance	Council of Haida Nation

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

No appearance	Métis Nation British Columbia ("MNB.C.")
Nicole Schabus	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
No appearance	Laich-kwil-tach Treaty Society Chief Harold Sewid Aboriginal Aquaculture Association ("LJHAH")
Lisa Fong Benjamin Ralston	Heiltsuk Tribal Council ("HTC") Articled Student
No appearance	Musgamagw Tsawataineuk Tribal Council ("MTTC")

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PANEL NO. 12  
In chief by Ms. Baker (cont'd)

Vancouver, B.C. /Vancouver (C.-B.)  
January 21, 2011/le 21 janvier 2011

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

5 MS. BAKER: Thank you. I think your mics need to be  
6 turned on.

7 THE REGISTRAR: May I remind counsel (sic) that they're  
8 still under oath.

9 MS. BAKER: The witnesses.

10 THE REGISTRAR: I mean the witnesses.

11 MS. BAKER: We're not under oath.  
12

13 EXAMINATION IN CHIEF BY MS. BAKER, continuing:  
14

15 Q All right, just a couple of things, Mr. Grout.  
16 This is follow-up from when you testified on  
17 Monday. You had indicated in your testimony that  
18 when the second draft of the IFMP was prepared you  
19 weren't sure if it got posted on the internet or  
20 not. Have you had a chance to look into that?

21 MR. GROUT: Oh right, yes, I did check on that. We do  
22 post the second draft of the IFMP on our  
23 consultation secretariat.

24 Q Thanks. Mr. Rosenberger, when we broke on Monday,  
25 we were discussing the roles of Canada and the  
26 Fraser River Panel once the season begins. And  
27 just to recap, can you outline what the decisions  
28 are that are made by the - just at an overview  
29 level - what the decisions are that are made by  
30 the Fraser River Panel in-season?

31 MR. ROSENBERGER: The panel is responsible for any run  
32 size -- adopting any run size changes, management  
33 adjustment changes, the harvesting in Canada on  
34 commercial fisheries within panel waters, and the  
35 fisheries in the U.S. side of -- in panel waters.

36 Q Okay. And what are the decisions that the  
37 Department of Fisheries and Oceans is responsible  
38 for, in-season?

39 MR. ROSENBERGER: And Canada would be making changes to  
40 the -- or adopting and managing the fisheries,  
41 commercial fisheries outside of panel waters and  
42 all recreational and First Nations fisheries.

43 Q You've already described how often the Fraser  
44 River Panel and the technical committee meet in-  
45 season, and when Mr. Lapointe was here we reviewed  
46 examples of the data presented by the PSC staff to  
47 the panel in-season, and when we were reviewing

1           that data with Mr. Lapointe, we referred to a  
2           document known as the Record of Management  
3           Strategies. We looked at the 2009 document, and  
4           that's now Exhibit 330, and I think it's in your  
5           second volume of materials. Have you got that?

6           MR. GROUT: Yeah, 25.

7           MS. BAKER: So I don't know if this is more appropriate  
8           for Mr. Grout or for Mr. Rosenberger, but what is  
9           that document, and who prepares it?

10          MR. ROSENBERGER: It's a document prepared by the  
11          Department of Fisheries and Oceans, so it's an  
12          internal prepared document, and what it does is  
13          summarizes all the information for the season of a  
14          management, so we put in there all our the pre-  
15          season information. The key points to it are the  
16          in-season decisions that we make, so what  
17          information do we have on each given decision-  
18          point day, so all the technical information, the  
19          debate that might have gone on, the variety of  
20          views, at times, are recorded, and so the  
21          decisions that we made, and then subsequently  
22          fisheries that are planned out of that, so it's a  
23          document that chronicles an entire year for the  
24          Fraser River Fishery.

25          Q       And once it's put together, how is it used? Why  
26          do you do it?

27          MR. ROSENBERGER: Well, it's an excellent reference  
28          document. So fish managers, the resource  
29          managers, biologists, people like myself, will  
30          take this document with them to planning sessions.  
31          So you'll take a look and you'll have a good sense  
32          about what are your issues in a given year, so  
33          that if you need to make changes or corrections or  
34          you want to adapt for future years. It's part of  
35          what we call our adaptive management process,  
36          which is -- links into things like Wild Salmon  
37          Policy.

38                 And in particular, when you get out and you  
39          start looking back on cycle years, so in the case  
40          of the '09 year, when somebody's in 2013 and  
41          thinking, you know, "What are we doing? Why did  
42          we do what we're doing? How does this compare?"  
43          It will be an excellent reference material for  
44          them.

45          Q       Is it a public document?

46          MR. ROSENBERGER: I believe it is, yes. It's posted in  
47          the department.



1 Q Okay. And it contains, amongst a lot of other  
2 materials, it also contains all the materials that  
3 were prepared by the Salmon Commission for the  
4 technical committee and the Fraser River Panel  
5 meetings?

6 MR. ROSENBERGER: Yeah, it's fairly large, as you can  
7 see in this one, and it has all of the materials  
8 from each meeting, you know, in which case, as  
9 we've talked about earlier, it's usually twice a  
10 week, and pre-season planning document, post-  
11 season review meeting information, things like  
12 that.

13 Q Okay. So I want to ask you some questions about  
14 the in-season process, and I'm going to ask these  
15 questions from your perspective as the chair of  
16 the Canadian caucus on the Fraser River Panel. We  
17 did spend quite a bit of time with Mr. Lapointe  
18 going through all the technical information, so  
19 I'm not necessarily going to take you back through  
20 all of that. And as I understand it, the  
21 technical committee reviews the initial technical  
22 data provided by the Salmon Commission staff; is  
23 that fair?

24 MR. ROSENBERGER: In most cases that's the first point  
25 of review.

26 Q Okay. And then following that technical committee  
27 meeting, is there a meeting of the Canadian  
28 caucus?

29 MR. ROSENBERGER: In most cases, yes.

30 Q Okay. And who's -- or what happens in those  
31 caucus meetings?

32 MR. ROSENBERGER: We'll get an update from the tech  
33 chair, in most cases, and review the information,  
34 usually highlighted to issues of change, so if  
35 there's a potential run size change, management  
36 adjustment change, timing, whatever it might be  
37 that might affect decisions that we want to make,  
38 either in adopting a change or in potential  
39 impacts towards fisheries.

40 So we have that debate around the technical  
41 information, then we tend to focus on our  
42 opportunities for fisheries, and each of the  
43 groups between the managers and the  
44 representatives of the different groups, we try to  
45 formulate what our options might be in our  
46 fisheries and what we might be looking to  
47 recommend when we get into the bilateral panel

1 meeting.

2 Q Are any PSC staff at that meeting?

3 MR. ROSENBERGER: No.

4 Q Who is at that meeting?

5 MR. ROSENBERGER: The Canadian caucus, so that's Fraser  
6 Panel members, Canadian side. The Tech Committee  
7 members, and not necessarily all of them. And  
8 either in-person or on phone we tend to have a  
9 number of the Fraser River Integrated Management  
10 Team people, so that's departmental managers.

11 Q Okay. Fishing - you described them as  
12 opportunities - but fishing plans or opportunities  
13 are discussed. How are those fishing options  
14 developed; what's the process?

15 MR. ROSENBERGER: We look at what the total allowable  
16 catch to Canada would be, what our first -- we'd  
17 start, usually, with what our First Nations  
18 fisheries are, so how many fish we need to pass  
19 either into -- pass Mission as part of the gross  
20 escapement plans for fisheries in Lower River,  
21 which is around that area, or looking into the  
22 marine waters. So when we understand what that  
23 might mean to each of the stock groupings and  
24 their potential fisheries, is there TAC leftover,  
25 total allowable catch, leftover for -other users,  
26 recreational and commercial.

27 And then if it's apportioned out, you know, a  
28 relative amount of fish, and then you get into the  
29 planning for what your options might be if there's  
30 -- obviously, if there's lots of fish, then  
31 there's more opportunities that you might be  
32 considering, more locations. For example, the  
33 seine fishery in the south coast, you know,  
34 whether you want to be fishing in Juan de Fuca  
35 Straits as well as Johnstone Straits, so diversion  
36 rates, abundance off the river, so there's various  
37 locations, time, effort, that kind of stuff.

38 Q And it's probably an obvious question, but a  
39 fishing plan, like when you're talking about these  
40 fishing plans or options, it would be something  
41 like, "We want to allow 'X' number of fish to be  
42 caught in a quota fishery in a particular area, in  
43 a particular week," or, "A particular area fishery  
44 will be open for a certain number of hours."  
45 Those are what we're talking about when we're  
46 talking about plans?

47 MR. ROSENBERGER: That's correct.

1 Q Okay. Are the decision rules that are set out in  
2 the IFMP used in this decision-making within the  
3 Canadian caucus?

4 MR. ROSENBERGER: That's correct. So our Integrated  
5 Fisheries Management Plan has our domestic rules  
6 and principles in there, so some of those apply to  
7 the international side of thing, so our escapement  
8 objectives, for example. But Canada also has  
9 additional objectives. We have fishery objectives  
10 in the 2010 year around earliest timed Early  
11 Summer stocks. We had additional actions that  
12 Canada was taking around Cultus, for example, so  
13 we are looking into managing more than the four  
14 stock groupings, or have some other domestic  
15 objectives that we need to bring into play. So  
16 it's always formed part of our Canadian planning.

17 Q Okay. And in-season, can the Canadian caucus  
18 recommend plans which are outside the IFMP  
19 decision rules?

20 MR. ROSENBERGER: We discussed, again, in 2010, we  
21 discussed options, when circumstances were  
22 substantially different than what was expected in-  
23 season, in this case around the late run timing as  
24 an aggregate, all of the fish were, but then what  
25 that meant to Cultus, what were the Cultus  
26 rebuilding objectives from a process that's  
27 described in the Integrated Fisheries Management  
28 Plan versus the rules that we established in the  
29 Integrated Fisheries Management Plan, to try to  
30 meet that objective, and was there opportunity, so  
31 we started discussing in there, and then  
32 subsequently it was a broader discussion.

33 So yes, we do look at other -- we do look at  
34 implications out of those rules or principles.

35 Q Okay. And in 2010, as an example, did you  
36 ultimately make a decision that varied -- or  
37 making fishing plans that varied from the decision  
38 rules that were in the original IFMP?

39 MR. ROSENBERGER: We did, but we -- just to be clear,  
40 that those aren't recommendations or decisions  
41 that we made in the Fraser caucus side of things.  
42 Once that group decided that it was worth  
43 exploring further, we needed to go and prepare  
44 briefing notes to the minister and Ottawa people  
45 to get concurrence that we could make a change to  
46 the Integrated Fisheries Management Plan.

47 Q Okay. So any change like you've just described,

1           would require an approach to the minister before  
2           you could go ahead with the plan that --

3 MR. ROSENBERGER: That's correct.

4 Q       -- was like that? Okay. And did you consult with  
5       different stakeholder groups before making that  
6       change to the IFMP in 2010?

7 MR. ROSENBERGER: Yes, we did, around the Cultus  
8       decision time? Yes, from the discussion that was  
9       raised in caucus, it was decided that it was worth  
10      exploring, so the Department of Fisheries and  
11      Oceans prepared some information that we were  
12      using inside the caucus, as well as internally in  
13      this region, so, in this case, it was myself and  
14      Jeff and others briefing up to the regional  
15      director general, getting concurrence that we  
16      would consider this type of an approach. We were  
17      briefing Ottawa, and at the same time I took  
18      consultations to some of the First Nations in the  
19      area most affected, as have been described as the  
20      key, First Nations from the larger Fraser  
21      aggregate of First Nations that they would be the  
22      place to consult. So we talked with the Sto:lo  
23      groups and --

24 MR. GROUT: The other group is Soowahlie --

25 MR. ROSENBERGER: Soowahlie, thank you.

26 MR. GROUT: -- whose territory includes Cultus Lake.

27 Q       Okay. Yesterday, when we were -- or earlier this  
28       week, when we were meeting with Mr. Lapointe, we  
29       talked about the pre-season fishing plans that are  
30       developed with -- by the PSC staff before the  
31       season begins, so that he talked about his fishing  
32       planning model. Do the results of those pre-  
33       season fishing planning models have a role in-  
34       season when you're developing the fishing plans?

35 MR. ROSENBERGER: They do. First, I would say that PSC  
36       staff doesn't develop the fishing options. Those  
37       are developed by both of the countries. The model  
38       is managed by the PSC, but the options that are  
39       presented into there are what Canada brings, or  
40       the U.S. brings in to the -- to populate the  
41       model.

42           And then, on your question, yes, it does help  
43       us to formulate the options that we would be  
44       looking at, but the vast majority of fisheries are  
45       defined by in-season data, and so they're often  
46       different. You know, if the timing is earlier,  
47       later, or one stock is, you know, more or less

1 abundant than you expect. So it's the in-season  
2 data that drives the decisions, but it does help  
3 us to get a sense of when we should be doing  
4 something if it was as per the conditions that we  
5 populated the model with.

6 Q I think you already mentioned that you do look at  
7 the different decisions that are being  
8 contemplated for First Nations, FSC fisheries at  
9 the time you're -- or within the Canadian caucus  
10 you bring those decision possibilities forward; is  
11 that right?

12 MR. ROSENBERGER: That's correct.

13 Q And is the Canadian -- does the Canadian caucus  
14 get its information about FSC fisheries from the  
15 Integrated Management Team that's a part of that  
16 caucus?

17 MR. ROSENBERGER: Well, the proposed fisheries around  
18 the First Nations are generally brought by myself  
19 from the information that I have, as the chair of  
20 the Fraser Integrated Management Team, so that  
21 knowledge, so we cover them all off.

22 Q Okay.

23 MR. ROSENBERGER: If there's specifics about what we  
24 might be planning somewhere, then one of the staff  
25 members would elaborate more as needed.

26 Q Okay. And again, decisions that -- I will be  
27 dealing more with the Fraser River Integrated  
28 Management Team in some detail, so this is more  
29 just a flagging of points. In the Canadian  
30 caucus, do you consider decisions that are being  
31 made on commercial openings outside panel waters  
32 and also First Nations economic fisheries?

33 MR. ROSENBERGER: All of the fisheries -- for -- this  
34 is maybe in the reverse, but hopefully you get  
35 what you want. The First Nations food, social and  
36 ceremonial fisheries, the department provides  
37 essentially information in an update so that  
38 people understand what stocks, you know, we're  
39 harvesting, potential impacts, and so we  
40 understand what might be leftover for available  
41 catch.

42 The commercial fisheries and the licensed  
43 areas, the First Nations economic fisheries and  
44 the rec fisheries are essentially debated in the  
45 room as to how to make them all fit together for,  
46 you know, essentially optimum performance or  
47 meeting the objectives that people bring to the

1 table. But -- so all other fisheries, whether  
2 they're in the panel waters from the Canadian side  
3 or outside, are discussed.

4 Q Okay. Do discussions happen between the Canadian  
5 and the U.S. chairs outside of the full bilateral  
6 panel meetings?

7 MR. ROSENBERGER: Yes.

8 Q And why do you have those discussions outside of  
9 the bilateral meetings?

10 MR. ROSENBERGER: To try to get a sense of the scope of  
11 the issues that each party might be bringing, and  
12 whether, you know, either party is -- presumably  
13 they're being briefed on the same technical  
14 information, so what, you know, whether they may  
15 or may not be looking to adopt a run size change.  
16 The information is provided to us with some  
17 uncertainty to it, so the bounds to it. Does it,  
18 you know, is it making sense? Do we need to look  
19 at other information requests that we might want  
20 to have before we make decisions?

21 And then each party is trying to give the  
22 other one a heads up as to the fisheries that  
23 they're proposing, so we'll have a -- you just  
24 have a longer chance to think about them and  
25 debate them within your caucus before sitting in  
26 the panel. We often break in the panel to go and  
27 consider each other's fishery proposals, but it  
28 helps to give just more or an opportunity to do  
29 that.

30 Q All right. Currently, the Fraser River Panel only  
31 makes decisions on fisheries that occur before  
32 Mission, is that -- like marine areas and then in-  
33 river before Mission?

34 MR. ROSENBERGER: The panel, that's correct, in the  
35 panel waters.

36 Q Okay. But under the treaty, the panel waters  
37 actually extend beyond Mission; isn't that right?

38 MR. ROSENBERGER: That's correct.

39 Q So is it just by convention, or maybe by the fact  
40 that traditionally commercial harvests haven't  
41 been above Mission, that you haven't -- that the  
42 Fraser River Panel hasn't made decisions on those  
43 fisheries?

44 MR. ROSENBERGER: That's pretty well the way -- it's  
45 just the evolution is that as the department has  
46 been working and creating First Nations economic  
47 fisheries above Mission, the panel has not taken

1           on the role of adopting or having to authorize  
2           those fisheries.

3           Q     If the commercial fisheries above Mission became  
4           more significant, do you anticipate there may be a  
5           change in the interest of the Fraser River Panel  
6           to become involved in the management of those  
7           fisheries?

8           MR. ROSENBERGER: Well, there's a potential for sure.  
9           At this point, the U.S. has been strongly  
10          supportive of Canada moving more of its fisheries  
11          terminally, that the less fish that's taken before  
12          their fisheries is their interest here. So being  
13          more terminal in our harvesting or a higher  
14          proportion of the fish harvested terminally from  
15          Canada as the allowable catch, at this point  
16          they've identified as in their interests and they  
17          support that. So whether they would want to be --  
18          have more of a say in the adopting or authorizing  
19          those fisheries, at this point they haven't made  
20          any moves that that would be in their interests or  
21          they would want to do that.

22          Q     Okay. And then on the -- in the bilateral  
23          meetings of the Fraser River Panel, who speaks for  
24          Canada? Who's the decision-maker for Canada?

25          MR. ROSENBERGER: Department of Fisheries and Oceans,  
26          so the panel chair.

27          Q     You?

28          MR. ROSENBERGER: That's me.

29          Q     All right. Once a decision is made in the Fraser  
30          River Panel about fishing plans, what's the  
31          process for implementing those decisions?

32          MR. ROSENBERGER: Well, as the panel meeting is -- ends  
33          and we've made decisions around specific  
34          fisheries, the Fraser Integrated Management Team  
35          members, so the Department of Fisheries and Oceans  
36          managers, would need to then either create  
37          variation notices or some -- whatever the legal  
38          instrument is to authorize a given fishery. So we  
39          might have all the details already worked out, and  
40          that's easy. Sometimes we hold, again, another  
41          Canadian caucus, FRIMT, meeting, to work through  
42          some of the details. And for some of the  
43          fisheries, the non panel water fisheries, where  
44          it's less specific what the -- will occur,  
45          particularly around some of the First Nations  
46          fisheries, the managers will then go and have a  
47          meeting with the fishing working group of that

1 given First Nation area and work through details.  
2 It might be that they're planning a fishery for 24  
3 hours on the weekend, but you don't know what the  
4 hours are, or you might be targeting a set amount  
5 of fish, and so those kind of details could be  
6 worked out later. And then they'll all need to  
7 create the legal instruments to authorize any  
8 fisheries.

9 Q Okay. Could I have the PPR5 brought up? If you  
10 could turn to page 100? At paragraph 271, we've  
11 set out some of the implementation of process for  
12 decisions made in the panel, and if I could just  
13 take you down to the second to last sentence that  
14 begins:

15  
16 For commercial fisheries, the Area Resource  
17 Managers generate the fishery notices as well  
18 as the variation orders...

19  
20 Is that accurate, or did we miss something?

21 MR. ROSENBERGER: I think it looks accurate. So these  
22 are created by local resource managers. The  
23 commercial and recreation ones are all approved  
24 through the salmon office, so Jeff's portion of  
25 this, in headquarters, and then there's a sign-off  
26 on some of these by RDG, and it looks correct.

27 Q Okay. Are the area P and C staff involved in the  
28 variation orders?

29 MR. ROSENBERGER: No.

30 Q Okay.

31 MR. ROSENBERGER: I mean, they'll -- not in having to  
32 create them, but there's often a discussion with  
33 them about here -- I mean, there's notification to  
34 them for sure. There's some discussions about  
35 options, sometimes, in the creation of a fishery,  
36 but they don't have to help in drafting.

37 Q Okay.

38 MR. GROUT: But I believe, Barry, the Area C and P  
39 staff do sign off on the completed variation order  
40 for the commercial fisheries.

41 Q Okay. Thanks. And then, at paragraph 272, second  
42 sentence, the line reads, "These fishery" -- so  
43 we're talking, here, about fishing plans for First  
44 Nations, FSC and economic opportunity fisheries.  
45 We say that:

46  
47 The fishery plans are subsequently reviewed



1 and must be approved by the Fraser River  
2 Integrated Management Team and by the  
3 Regional Director General.  
4

5 Is that correct?

6 MR. ROSENBERGER: Right. That's essentially myself and  
7 then through to the RDG, yeah.

8 Q Okay. So are they approved by the Regional  
9 Director General?

10 MR. ROSENBERGER: Definitely there's a notice of all  
11 the fisheries, and that's -- there's not a formal  
12 sign-off on the -- like there is with a variation  
13 order or some of the other notices.

14 Q So it's not an approval as much as it's just an  
15 information to the RDG?

16 MR. GROUT: There's not a formal approval on these  
17 fisheries by the RDG. The communal licenses would  
18 be issued by the area offices.

19 Q Okay. Thanks. Now, I'd just like to get into the  
20 Integrated Management Team process. Can you give  
21 me anymore detail on how decisions are made for  
22 opening FSC fisheries? You've just touched a  
23 little bit on it.

24 MR. ROSENBERGER: Well, it's a large number of meetings  
25 and places, and it's actually quite different  
26 between sort of three general geographic areas, so  
27 marine, lower Fraser and the BC Interior. On the  
28 B.C. Interior side of it, most of the licences  
29 that are issued are - it's one licence and it  
30 covers the whole period of the fishery. There's  
31 very little change over time.

32 And so there are weekly meetings, often for  
33 information, or if there's a need to -- for a  
34 conservation concern or some other aspect to make  
35 a significant change. In the Lower Fraser and  
36 some of the areas even up to Lillooet, the  
37 management can be much more on a weekly basis. So  
38 there are fisheries harvest committees from the  
39 First Nations that meet with the DFO resource  
40 managers, and those groups are meeting at least  
41 once, and often twice a week to try to go through,  
42 as this information is changing, and look for  
43 opportunities. So there's that give and take.

44 From the FRIMT side of things, the  
45 coordination that I'm providing into the process,  
46 is you're often giving some guidance for the  
47 group, but they need to go and look at the

- 1 specific circumstances in the area to have the  
2 fishery -- instead of saying, you know, "You're  
3 open" -- "You have to open on Wednesday from 10:00  
4 till 4:00," it might be a lot better for them to  
5 open on Wednesday from 4:00 till midnight. Or,  
6 you know, that might be in their interest to come  
7 there. So the department doesn't -- this is -- is  
8 -- many of these fisheries are jointly managed and  
9 the group -- the local groups need to decide  
10 what's in their best interest to try to have their  
11 fisheries and understand their own circumstance.
- 12 Q Okay. Are there parameters set around the target  
13 amounts of fish that will be caught?
- 14 MR. ROSENBERGER: Yeah, but usually it's the amounts of  
15 fish, and general times, so that we don't get  
16 conflict of gear fishing on top of each other, but  
17 the more details are created locally.
- 18 Q Okay. By your resource managers in collaboration  
19 with relevant groups?
- 20 MR. ROSENBERGER: That's right.
- 21 Q Okay. And what about recreational openings? How  
22 is that process managed?
- 23 MR. ROSENBERGER: Each of the areas has, again, the  
24 south coast, lower Fraser and Interior has either  
25 a recreational coordinator/manager or a key person  
26 targeting to their recreational fisheries, but a  
27 number of them have larger involvement. So those  
28 fisheries, we're looking at, again, less variation  
29 on a weekly basis. It's usually much more, when  
30 do we think we can get started, in particular, in  
31 the lower Fraser or the marine approach areas, and  
32 when might we run up against either a conservation  
33 concern of another stock or species that we've had  
34 pre-season planned.
- 35 So in cases like '09, where we never got a  
36 sockeye fishery going, or any directed sockeye  
37 fisheries, that was updates weekly, but really one  
38 decision. We did take some actions when we  
39 thought we had unacceptable levels of encounter  
40 rates, so you'll have those kinds of actions, and  
41 we'll have meetings, again with local groups, that  
42 happens once a week, and in this case on Tuesdays.
- 43 Q And ultimately those decisions on openings are  
44 debated at the Canadian caucus level?
- 45 MR. ROSENBERGER: That's correct.
- 46 Q Okay. And for First Nations economic opportunity  
47 fisheries, what's the process for that? Is it,

1           again, a discussion with resource managers and the  
2           affected First Nations?

3       MR. ROSENBERGER: Yes, that one has a bit more  
4           discussion at caucus, but it's, again, mostly  
5           defined around the abundance. But in this case,  
6           the time is the one that gets more of the  
7           discussion at caucus, where, you know, if somebody  
8           wanted to have four days to fish and you thought  
9           you could get it done in one day, what might that  
10          mean to another commercial fishery, or an FSC  
11          fisheries? So more bounds are put on in that  
12          discussion in the caucus side of things.

13       Q       Okay. And would the decision for Musqueam and  
14           Tsawwassen First Nation also be part of that  
15           process within the economic --

16       MR. ROSENBERGER: Always the economic demonstration  
17           fisheries. There's a number of them throughout  
18           the fishery.

19       MR. GROUT: Maybe just to add onto that one. The  
20           department does meet with the First Nation  
21           planning committees for each of the economic  
22           opportunity fisheries, as well, to discuss the  
23           parameters of the fishery and the number of fish  
24           they're targeting.

25       Q       Okay. And then, finally, commercial non panel  
26           area openings, how are those -- are they just  
27           decided in the caucus, or do you have other  
28           preliminary meetings on those?

29       MR. ROSENBERGER: They're mostly decided in the caucus.  
30           There are -- we have a weekly commercial  
31           conference call where all of the licensed area  
32           harvest committee reps can participate, so they  
33           get a sense of what's coming up. The Area E is  
34           often one where there's a number of different  
35           scenarios provided to us, so we try to have a  
36           process where we can gather those into the caucus  
37           meeting, but in the caucus is where those  
38           decisions are ultimately made.

39       Q       And once the decisions are made in the caucus on  
40           those areas outside of Fraser River Panel  
41           authority, is there a reporting to the panel of  
42           all those decisions and to the PSC for their  
43           information purposes?

44       MR. ROSENBERGER: Yeah, we report those in the panel  
45           meetings.

46       Q       Okay. For 2009, were there any particular issues  
47           or challenges in managing the fishery that year?

1 MR. ROSENBERGER: Lots. Right from the beginning, we  
2 had a relatively low snow pack, so we had  
3 anticipation of high levels of management  
4 adjustment, so we were anticipating from the  
5 beginning that we wouldn't be having just a normal  
6 level or an average level, which did come to pass.  
7 We ended up with some of the highest and, in some  
8 cases, record temperatures, which does affect the  
9 management adjustment by stocks.

10 We had a relatively large forecast for a  
11 Summer run stock group in sockeye and relatively  
12 weak in the other three stock groupings, so  
13 thinking about how to optimize harvest to the --  
14 to the strong stock and protect the three weaker  
15 stock groupings.

16 There was considerable discussion around  
17 Cultus and lakes as a whole, and we had a manage  
18 -- we had a plan for total allowable mortality we  
19 settled on of 20 percent, but it wasn't 20 percent  
20 of the run no matter what; it was 20 percent of  
21 the run for the purposes of trying to harvest or  
22 optimize harvest towards abundant sockeye or pink  
23 populations. So that actually came into play  
24 later in '09, when there wasn't that strength in  
25 the sockeye -- the Summer run sockeye, so it  
26 didn't mean we could go fishing. And many of the  
27 reports, actually, because of ease of reporting,  
28 it looked like there's a TAC at times when there's  
29 not, which is why Canada didn't access it, or  
30 didn't access all of it.

31 We had other stocks of concern that we've  
32 identified. Some populations, coho, Sakinaw  
33 sockeye, and Nimpkish sockeye outside of the  
34 Fraser River, but which were thought of in our  
35 whole process. And the -- so then taking all that  
36 information, we were, in the pre-season planning  
37 with the U.S., as you've mentioned earlier, in  
38 your discussions with Mike Lapointe, the pre-  
39 season management model that we use with the  
40 Fraser River Panel, we -- one of the objectives,  
41 pre-season, is to come to a consensus fishing  
42 pattern from what the U.S. is hoping to accomplish  
43 and Canada is, and there's some rules that are  
44 defined in the treaty and in the commission  
45 guidance that we use in trying to set those  
46 parameters.

47 And in this case, Canada and the U.S. could

1 not come to a consensus plan, so that's the first  
2 time that hasn't occurred, and so there was  
3 considerable uncertainty on when some of these  
4 fisheries might start. In particular, some of the  
5 low impact fisheries that -- that often do start  
6 before you have, you know, reached the mid point  
7 of the run and have a higher degree of certainty,  
8 and so where it's the Canadian FSC fisheries or  
9 some of the U.S., they call them 4B56C fisheries,  
10 but it's the Juan de Fuca area for the U.S., there  
11 was considerable uncertainty around those. So it  
12 probably didn't hit on all of them, but pre-season  
13 it was quite a difficult planning process.

14 And then in-season, right from the beginning,  
15 we had test fishery results that were  
16 significantly less than expected from most  
17 populations, but not all. So we actually had  
18 Harrison, in particular, which was extremely  
19 strong, but not on the stocks that were forecast.  
20 The 4 sub one, which is the normal strength, was  
21 actually one of the biggest collapsed stocks ever  
22 in the Fraser, but the three sub ones were a  
23 phenomenal return at that stage and subsequently  
24 returned as four-year-olds in 2010.

25 Adams, Cultus, and some of the other late run  
26 stocks returned relatively well and did well. As  
27 far as spawning escapement objectives, we met or  
28 exceeded the spawning for late run stocks. And we  
29 had a phenomenal pink return forecast and even a  
30 larger one that materialized, so the extreme  
31 temperatures in-season, the MA, and then trying to  
32 figure out how we're going to fish. So our test  
33 fisheries performed very well. We knew, in most  
34 cases, that we were not experiencing large returns  
35 of fish; in fact, substantially less than  
36 expected, so that was good.

37 In-season, we identified a problem in the  
38 IFMP that we hadn't expected, and that was in the  
39 Early Summers and Summers. We didn't have a rule  
40 that if we came back at less than escapement  
41 objective what we would do, and we do have that  
42 for, in this case, for the Early Stuarts, and it's  
43 a long established and discussed process.

44 And for the Lates we had a rule, but not for  
45 those other two stock groupings, and that created  
46 considerable problems in that these fish co-  
47 migrate, and the number of First Nations, in

1 particular, were looking to fish for chinook, and  
2 trying to access some sockeye, and we needed to  
3 make up some -- I understand if we were going to  
4 make a change in the FMP, in which case we did, we  
5 allowed some small fisheries to occur, either  
6 incidentally or directed on these Early Summer and  
7 Summer stocks.

8 So there was considerable debate and  
9 challenges in trying to figure out how to share  
10 those among -- particularly amongst the First  
11 Nations, because we don't have a sharing rule,  
12 which is one of the things we've been striving  
13 for, but in that circumstance we had a number of  
14 issues around that.

15 There may be more. I like when you ask the  
16 shorter questions.

17 Q For the issue that you just described, where you  
18 didn't have the rule for Early Summers and Summers  
19 that you had for -- or a rule like you had for  
20 Early Stuarts and Lates - they may not be the same  
21 rule for Early Stuarts and Lates - but you had a  
22 rule to deal with the issue you just described.  
23 Did you have to go back to the RDG to deal with  
24 that problem?

25 MR. ROSENBERGER: Yes, there was discussions with the  
26 RDG about options and what we should be trying to  
27 do.

28 Q And ultimately did it have to go to Ottawa?

29 MR. ROSENBERGER: I believe that the RDG briefed  
30 Ottawa, but unlike the 2010 Cultus change in plans  
31 that we talked about, we didn't -- or I'm not  
32 aware that we briefed to the same extent and got  
33 that type of a sign-off.

34 Q Was there an actual change, like a -- to the IFMP  
35 the same way there was in 2010, or was it just of  
36 management within the rules that you already had?

37 MR. ROSENBERGER: Well, the rules would have been,  
38 nobody would have a fish, and we had harvests that  
39 were in the three to five percent exploitation  
40 rate by the first -- seven percent overall in  
41 total, two percent tests -- three to five percent,  
42 probably, by those stocks as an exploitation rate  
43 that was used in mostly incidental First Nations  
44 fisheries to chinook, but some directed fisheries  
45 on sockeye. So that's a change from the plan.

46 Q All right. But it wasn't documented as a change  
47 to the plan?

1 MR. ROSENBERGER: That's correct.

2 Q Okay. Was there consultation with stakeholders  
3 about that change?

4 MR. ROSENBERGER: Within the panel there was, in the  
5 rec community, specifically on the Tuesday calls.  
6 I didn't participate when we were making that  
7 change in the commercial calls, but I'm very  
8 confident that that did occur. And then there was  
9 extensive discussions with First Nations of what  
10 we could try to do around having some of these  
11 limited fisheries in different places.

12 Q You mentioned the very high abundance of pinks in  
13 2009. What was the impact of that on the sockeye  
14 management?

15 MR. ROSENBERGER: Well, there was a significant  
16 overlap, as we saw on Monday, when you had the  
17 timing table up on the screen, and so with a  
18 return, in this case estimated at nine and a half  
19 million, half to two-thirds of that is overlapping  
20 with the sockeye, so trying to harvest those  
21 sockeye was -- trying to harvest the pinks and  
22 protecting the sockeye was a considerable  
23 challenge. One of the items that wasn't a  
24 challenge, necessarily, in the question I answered  
25 earlier, but which became a challenge in the pink  
26 fishery is the late run sockeye had been migrating  
27 in early into the Fraser for the last 10, 12  
28 years, since 1996, and creating problems. I'm  
29 sure you had some discussions around here, or will  
30 have before you're done, on en route and pre-spawn  
31 mortality of those fish changing their timing and  
32 migration behaviour.

33 In 2009, they reverted to more of a normal  
34 pattern, so they delayed in the Straits of  
35 Georgia, so that the gulf off of the Fraser River,  
36 and so there was more mixing with the pink salmon  
37 than there had been in some of the previous recent  
38 cycles, but more of a traditional pattern. So  
39 trying to harvest those fish and, in this case,  
40 get the pink harvest before coho conservation  
41 rules kick in, were challenges. So Canada was  
42 able to harvest, or did harvest, something in the  
43 range of two million of about a 10 million total  
44 allowable catch available to them, and the U.S.  
45 harvested pretty much their full allocation in the  
46 range of three-and-a-half to four million.

47 Q When you mentioned, just earlier, that the

1 Harrison stock came in strong, as, I can't  
2 remember how you described it, but if I said to  
3 you the three-year-olds were strong, but the four-  
4 year-olds were weak, is that fair?

5 MR. ROSENBERGER: That's correct.

6 Q Okay. The weak four-year-olds, would they be the  
7 same age class, then, as the other stocks that  
8 came back in such low numbers in 2009?

9 MR. ROSENBERGER: They're the same total age, but they  
10 have -- it's a unique population in the Fraser in  
11 that these are described as sub one, so they don't  
12 spend a year in freshwater. It's a unique life  
13 history. Almost all of the sockeye in the Fraser  
14 and most sockeye everywhere, spend at least one  
15 year in freshwater. In this case, these are  
16 populations that migrate in their first year out  
17 to the ocean, so they're tending to spend two,  
18 three, four months in the Fraser River. So their  
19 total age is the same, but their life history is  
20 different.

21 Q Okay. And the three-year-olds that came back  
22 strong, are they the same age class as the large  
23 numbers that came back in 2010?

24 MR. ROSENBERGER: That's correct.

25 Q Do you draw any conclusions from that?

26 MR. ROSENBERGER: There's many conclusions one could  
27 draw. But, I mean, we take a look at, you know,  
28 in our forecast in a lot of places, we take a look  
29 at inter-species productivity. So, you know, are  
30 pinks doing well one year? Are the sub one stocks  
31 doing well? What are the coho doing? And so you  
32 hope that it's going to give you some ideas,  
33 because some of those fish are spending portions  
34 of their life history together. But there's not  
35 any strong science papers that say that there's,  
36 you know, there's a specific correlation between a  
37 number of these different species or stock. So  
38 it's a positive, but it's not necessarily going to  
39 play out into, you know, the record numbers we saw  
40 in 2010.

41 Q The Wild Salmon Policy -- sorry, just moving to a  
42 new topic. The Wild Salmon Policy states that  
43 harvest management will focus on conservation of  
44 CUs. You know that?

45 MR. ROSENBERGER: That's correct.

46 Q Okay. How can management to CUs occur within the  
47 bilateral process?



1 MR. ROSENBERGER: Well, there's a number of factors  
2 there. So the Wild Salmon Policy says that we  
3 will focus towards CUs, but it also says we may  
4 manage to aggregates, and it actually expects that  
5 we will manage to a much more limited number of  
6 aggregates than all the CUs, because you have --  
7 you can have two stocks that you classify as  
8 conservation units, because they're in separate  
9 lakes and you may not have strains, so you want to  
10 keep track of them, but if their timing,  
11 productivity, distribution is all the same, you're  
12 going to manage them potentially the same.

13 But, if they're -- you know, if something in  
14 there is different, then you're going to look and  
15 manage them potentially different. So there's --  
16 creating aggregates is really a given in the way  
17 that all these populations have some degree of  
18 overlap. It's trying to understand what would be  
19 the best aggregation of the stocks.

20 Within Canada, as I mentioned earlier, we  
21 take some of the populations - might have some  
22 rules for Canada/U.S. in the four timed groupings  
23 - but Canada is under no obligation to stay there.  
24 In recent years, we've managed a finer suite of  
25 distinction. And so Cultus is one. I mentioned  
26 this last year, the -- and has been for a number  
27 of years. The earliest time miscellaneous part of  
28 the Early Summers. So there's different actions  
29 can be taken, and they have been taken.

30 And around any of the populations we've been  
31 starting to move more towards some of the terminal  
32 harvests. So even in 2009, some of the food,  
33 social and ceremonial harvests that occurred was  
34 in the Harrison, discreet from the Fraser after  
35 they'd broken off, and was in the Thompson after  
36 the late run, in this case the Shuswap population  
37 had segregated. So Canada has a fair amount of  
38 discretion there.

39 Within the Canada/US process, the four  
40 aggregates, you know, are probably the best way -  
41 not necessarily as four, but some aggregation -  
42 and matching them to the timing through the marine  
43 distribution is -- their distribution through the  
44 marine timing is the key way that we use to  
45 manage.

46 Q I'm going to read a part of the policy to you, and  
47 if you want me to pull it up on the screen, let me

1 know and I'll do that. But at page 33 of the  
2 policy document, which is Exhibit 80, it says  
3 that:

4  
5 The Wild Salmon Policy will not preclude  
6 fisheries operating on population aggregates  
7 that include numbers CUs, but increased  
8 attention to all of the units within the  
9 aggregate will likely require significant  
10 changes to current management practices.

11  
12 Are you familiar with that language?

13 MR. ROSENBERGER: That's right, yes.

14 Q Okay. What's being done in response to that? How  
15 is current management meeting this objective?

16 MR. ROSENBERGER: Well, we're in the process of doing a  
17 number of things, and some of them are done. So  
18 we've got the CU definition paper out, so we've  
19 defined what is a CU for all the different  
20 populations in B.C., for all the different  
21 species. And there still is some discussion  
22 around some of those. We had this around Fraser  
23 sockeye here just in November, where, you know,  
24 one year there was five sockeye in the Tête Jaune  
25 Cache area of the Fraser, so it shows as a CU,  
26 but, really, is it a CU? It's never been observed  
27 before or after. So we do have good documentation  
28 about whether it exists or not.

29 But after that, we've got a status paper, so  
30 a - not a status paper - a benchmark that is  
31 currently in draft, but it was at our PSARC  
32 process - that Jeff can correct me on what that's  
33 changed to in a second, if you need it - it's our  
34 science review process within Canada. And so  
35 trying to establish what would be the rules that  
36 we would use to set the benchmarks for each of  
37 these populations, so that helps to drive  
38 potential harvest and TAM rules, total allowable  
39 mortality rules. We have the wild -- we have our  
40 Fraser River Sockeye Escapement paper, which was  
41 somewhat at the beginning of the Wild Salmon  
42 Policy, and we've made a number of changes on that  
43 so that we can take a look at stocks on an  
44 individual stock basis within aggregates to the  
45 19, not necessarily to all 35 of them. And so how  
46 we wanted to bring that into play, that Canada is  
47 working on.

1                   So there's a number of pieces that are in the  
2 process right now that some of them are being  
3 utilized and some are not. The Wild Salmon  
4 Policy, though, as a whole, also talks about, you  
5 know, these aggregates developing processes for  
6 consultation and bringing people together and  
7 trade-off of decisions in trying to meet the, you  
8 know, the shared views of everyone, and so trying  
9 to get those processes in play is a big part of  
10 what we're trying to do, as well, as to what --  
11 what are our common objectives that we're striving  
12 for.

13           Q       DO you see the process as moving towards a set of  
14 rules, then, to govern the process, or something  
15 different?

16       MR. ROSENBERGER: Well, I think it's within -- largely  
17 within the kinds of processes we've got, but we're  
18 going to need to adapt them in some ways. But  
19 whether it's specific rules or it's principles  
20 that are guiding you I think is the part that  
21 we're going to need to see, moving forward. I  
22 think we have a little bit of both right now, and  
23 I'm not certain that one way or the other meets  
24 all the criteria. And I say that because we just  
25 spent the last year and a half, I was trying to  
26 lead the renegotiation of the Fraser chapter.  
27 When you start trying to think of all the  
28 different variables that are out there and setting  
29 a rule for it, it was very hard for, in this case,  
30 within the Canadian caucus to come to consensus,  
31 or between Canada and the U.S. but we did fairly  
32 well in coming together in what the principles  
33 should be that would drive us or guide us, I  
34 should say, not drive us, in the decision-making  
35 that we want to move forward on.

36                   And then you need to use all that best  
37 information. Everybody had, you know, brings  
38 knowledge to that table.

39           Q       Moving to another related, but different topic,  
40 which is protection of weaker stocks, is it fair  
41 to say that there's an assumption that if you  
42 manage to the dominant stocks needs, you will  
43 protect the weaker stocks at the same time, or we  
44 don't have specific data on the smaller stocks in  
45 a group?

46       MR. ROSENBERGER: Let me see if I've got that right.  
47                   If we manage to the large populations, we'll

1 protect the small ones, that that is an assumption  
2 you have?

3 Q Well, yeah. I mean, you don't -- you can't do --

4 MR. ROSENBERGER: I would say it's the opposite --

5 Q -- rules --

6 MR. ROSENBERGER: -- but maybe I missed the question.

7 Q You can't do rules for the very, very small  
8 stocks. You don't have, necessarily, data for  
9 more than the 19 large stocks, for example?

10 MR. ROSENBERGER: Well, the 19 stocks are not  
11 necessarily large. Cultus is not large, in recent  
12 times. It's the stocks that you can identify  
13 discreetly in some way, in many cases, or that  
14 you've been monitoring for a long period of time.  
15 So it's within the 19 populations they all have  
16 the same datasets, the same periods of time.  
17 Scotch Creek, for example, had very few fish in it  
18 before the 1970s, and today it's got hundreds of  
19 thousands of them. You know, they were probably  
20 always present and they've colonized in a bigger  
21 way for a number of changes. That one I can  
22 actually tell you why, but some of them I  
23 couldn't.

24 In the case of the -- so you have the 19  
25 populations, and does that give you enough  
26 understanding across the 30-some, I think is a  
27 better question.

28 Q Okay.

29 MR. ROSENBERGER: But you cannot manage and set  
30 exploitation rates to the largest, most abundance  
31 populations and expect to protect the weakest  
32 ones, if that was the question. But on the weaker  
33 ones, we can set proxies for them. We need to  
34 study them in ways to understand how does the  
35 proxy -- how accurate is the proxy in trying to  
36 protect that particular population.

37 MR. GROUT: Maybe if I could add a bit to what Barry  
38 was saying? In the escapement memos that we  
39 produce each year, and some of these are in the  
40 exhibits, Tab 11 in our binder here, the Model  
41 Overview and Summary of 2009 Planning Simulations.  
42 When we're looking at harvest rules for Fraser  
43 sockeye and the shapes of those rules, we're also  
44 musing the model to calculate the performance of  
45 the individual stocks in the model relative to  
46 spawning benchmarks that we've laid out, so we can  
47 look at the probability that those populations are

- 1 going to be blow a particular benchmark. We need  
2 to do more work to line those benchmarks up with  
3 the Wild Salmon Policy work that Barry mentioned  
4 that -- in the paper that was presented this past  
5 fall, but we are trying to explicitly account for  
6 the populations and the harvest rules that we're  
7 laying out for these management units as well.
- 8 Q And if you manage the dominant -- so just to flip  
9 it around, I think I got things a bit backwards  
10 when I was asking the question. If you manage the  
11 dominant stocks to protect the weaker stocks, the  
12 assumption is that it will protect all the stocks  
13 within that group?
- 14 MR. ROSENBERGER: With the right set of rules it  
15 should.
- 16 Q Okay. And is that an assumption that has been  
17 used in managing the late runs to protect Cultus?
- 18 MR. ROSENBERGER: That's correct. So that -- I mean,  
19 that's where even though you might have had --  
20 well, just last year we had a total allowable  
21 mortality -- total allowable catch level  
22 exploitation rate for Late runs that would have  
23 been in the 40-some percent, but from Cultus we  
24 didn't -- you could follow that and use that  
25 assumption, or you could use a different  
26 assumption. So in some years it's better to use  
27 even -- even the year before. The Lates actually  
28 met their exploitation -- or met their escapement  
29 objective, but in the -- if you followed 20  
30 percent, or some other number, would you have  
31 gotten there? So I think you have to set the  
32 rules that think about that small population,  
33 taking it into account. So my point here is  
34 you're not going to necessarily be able to harvest  
35 all of the total abundant stocks, but they could  
36 still be a proxy that you understand what the  
37 implications are.
- 38 Q Has there been any science work done to support  
39 that assumption that the managing the dominant  
40 stocks to protect the weaker stocks will protect  
41 all within the group?
- 42 MR. ROSENBERGER: You asked that question kind of the  
43 same way you asked it before. Is there science  
44 that the large population is going to protect the  
45 small one? No, but --
- 46 Q No, no, if you manage -- is there science to  
47 support the theory -- the assumption that if you

1 manage the dominant group to protect the smaller  
2 group, like, for example, if you manage late runs  
3 to Cultus, that it will actually protect all of  
4 the stocks that are within the late run stock  
5 group?

6 MR. ROSENBERGER: Okay, we're not trying to manage the  
7 dominant stock -- the aggregate dominant stock to  
8 do that. In this case, we're trying to find a  
9 proxy, which is -- so does it match in timing,  
10 productivity, distribution and different fisheries  
11 that's the most similar, and then trying to set  
12 the rules for what can Cultus sustain, and  
13 applying that to the dominant stock. But you're  
14 using the dominant stock to measure it, because  
15 you can find it. So you're trying to set the  
16 rules around Cultus, but if you were going to go  
17 find Cultus to know whether you were measuring it  
18 properly and were successful, you wouldn't find  
19 them.

20 So in the case of 2010, with 20-some million  
21 Lates returning, 25 -- 24 million or whatever is  
22 the total, but 20 million to the Adams/Weaver,  
23 which was the proxy, and expecting something in  
24 the ten, fifteen thousand, twenty thousand range,  
25 you know, we'd be sampling to five, six, ten  
26 thousand fish at a time instead of the hundred to  
27 three hundred we strive for, so does that make  
28 sense? You don't need to kill that many fish to  
29 know that you're making the right decision, so you  
30 use the proxy to make that calculation.

31 Q All right. Moving to a new topic, and this is, I  
32 think, directed to Mr. Grout. I wanted to talk to  
33 you about the Fraser River In-River Management  
34 Model. Can you describe what that model is? And  
35 we do have available the Southern Endowment Fund  
36 Proposal, if that's of some use in reviewing the  
37 issue. That's at Tab 5 in your binder, CAN  
38 003645. It's just a short concept document, but  
39 perhaps you can describe for us what that model is  
40 and what's being developed there?

41 MR. GROUT: I'm certainly not an expert on all the work  
42 that's been done on this particular model, but my  
43 understanding comes from presentations, a couple  
44 of annual presentations. I've sat in on the work  
45 that's been done here, primarily by researchers at  
46 SFU. And they're looking at whether they can  
47 develop a more explicit model to look at finer

1 scale resolution on escapement objectives, perhaps  
2 at the CU level or finer scale resolution.  
3 They're looking at the consequences, potentially,  
4 of inaccurate or imprecise information on the CU  
5 run size timing and migration rates, and the  
6 ability to perhaps deliver harvest to some of the  
7 terminal areas, taking into account the best  
8 available information they've got.

9 So they're also trying to factor in where the  
10 discrepancies between estimates of Mission and  
11 upstream might take place, and this -- we've got a  
12 mortality component to the model.

13 So this is really an effort to try and build  
14 a much more complex model of the Fraser Watershed  
15 for looking at the migration of the fish and how  
16 we might achieve objectives, if they were  
17 specified for more terminal areas. And this is  
18 quite a different approach than what's been done  
19 in the Fraser spawning initiative. The model we  
20 use there does not specify where the harvest occur  
21 or who -- or by who and how they might be  
22 allocated. So this potentially would be a tool  
23 that you might be able to look at that sort of  
24 thing over time.

25 Q Is the Department of Fisheries and Oceans involved  
26 in this project?

27 MR. GROUT: Yes. We meet regularly with the  
28 researchers to discuss the progress of the work  
29 and they ask for feedback on incorporating various  
30 different components that they might want to be  
31 looking at in their research.

32 Q And has the department made any decisions about  
33 whether this is something that they would pursue  
34 when the work is done, or is it still too early?

35 MR. GROUT: I think this is still a work in progress,  
36 and as I said, so far we're just getting updates  
37 on how the work's progressed and what additional  
38 work needs to be done, so we haven't, to my  
39 knowledge, moved to a spot where we would be  
40 contemplating policy changes, at this point.

41 Q And where is this model or this project in the  
42 development of it? Is it completed; is it being  
43 tested; or is it still being developed?

44 MR. GROUT: My understanding is it's still in the  
45 development stages, at least that's where the  
46 discussion was at the last time I attended a  
47 meeting on this, which was last year.

1 MS. BAKER: All right, thank you. I should mark this  
2 as an exhibit.

3 THE REGISTRAR: Exhibit number 337.

4  
5 EXHIBIT 337: Southern Boundary Restoration  
6 and Enhancement Fund Project Concept 2008  
7

8 MS. BAKER:

9 Q Moving to a new topic, when Mr. Lapointe was here,  
10 some questions were raised around over-escapement,  
11 or that phenomena which has been described as  
12 over-escapement. Just to summarize, it's been  
13 suggested by people, including Carl Walters, that  
14 escapement under current policies, and perhaps  
15 going back as far as the 1987 rebuilding strategy,  
16 allowed escapements to be too high on certain  
17 stocks and that the high number of spawners has,  
18 for a variety of reasons, negative impact on  
19 productivity on certain of the larger runs. Are  
20 you familiar with that theory?

21 MR. ROSENBERGER: Yeah, well, Carl's been involved in  
22 two or three papers on this, and media reports,  
23 which are not all consistent, but I have heard him  
24 state some of those claims.

25 Q There's also a suggestion that continued high  
26 numbers of spawners on certain stocks could result  
27 in a serious loss of productivity, or a potential  
28 collapse of those stocks; have you heard that  
29 argument as well?

30 MR. ROSENBERGER: I have.

31 Q Do you agree that those are potential impacts from  
32 high levels of escapement on certain stocks?

33 MR. ROSENBERGER: Well, productivity has been shown to  
34 decline at very high levels, or even higher levels  
35 of escapement, so I think a key is being aware  
36 that if you want to have the highest recruits per  
37 spawner, you probably want to have a relatively  
38 low level of number of spawners that's those --  
39 those given fish will get the best places to spawn  
40 and have the, you know, best food to eat, and  
41 whatnot, but there's a lot of inherent risk with  
42 that style of management, and that's not the  
43 management policy that's adopted by the  
44 department.

45 As far as a collapse goes, there is a paper  
46 that Carl was one of the co-authors on that the  
47 department asked to be written that showed, after



1 review, of 20-some sockeye populations and a  
2 number of pink populations, that there is no  
3 catastrophic collapse or loss of stocks, at least  
4 within the Fraser, and it might have been a larger  
5 area of review than just Fraser River population.

6 So I don't think we've seen that occur  
7 anywhere, and, you know, I don't agree that there  
8 would necessarily be a loss of the total  
9 population, or a catastrophic loss, but you'd  
10 definitely see a decreased productivity at the  
11 higher end, and that's, you know, most stock  
12 recruitment relationships show that as you get to  
13 higher levels of spawn. And so, again, there's  
14 other things that come into play of environmental  
15 and other factors that you're striving for, as  
16 opposed to just to fisheries production.

17 MR. GROUT: Maybe if I could --

18 Q Yeah.

19 MR. GROUT: -- just add a couple points to what Barry  
20 said? So the report Barry referred to was by the  
21 Pacific Fisheries Resource Conservation Council.  
22 I believe it was done in 2004, on the over-  
23 escapement issue.

24 In terms of the decrease in production as the  
25 number of spawners increases, that a key element  
26 of the models we're using in the Fraser sockeye  
27 spawning initiative, whether it's a Ricker  
28 variation of the model, or a Larkin-style variant  
29 to the model. We're using the best available data  
30 we've got to try and develop the model fits, but  
31 the models generally do contemplate decreased  
32 production as the number of spawners increases.  
33 It's not necessarily across all stocks, though.  
34 So there may be some populations that can get to  
35 large spawner abundances, but other ones may not.  
36 So management rules we're developing are  
37 contemplating the performance of all of the stocks  
38 in the model and are not necessarily just focused  
39 on one.

40 Q Since high mortalities began to be observed on the  
41 late run stocks in the 1990s, the department has  
42 implemented low harvest rates on the late runs to  
43 ensure that sufficient escapement occurred on the  
44 spawning grounds; is that correct, as a summary?

45 MR. ROSENBERGER: Yes, it's -- the exploitation rates  
46 were decreased largely to account for that -- the  
47 required management adjustment needed to ensure --

1 or attempt to ensure escapement objectives.

2 Q And the late runs also now tend to overlap more  
3 significantly with the summer runs than they did  
4 previously; is that fair as well?

5 MR. ROSENBERGER: That varies between years and cycle  
6 lines.

7 Q Is it fair that they have - they do tend to  
8 overlap more with summers in the -- since they  
9 stopped holding -- or since they stopped holding  
10 in the mouth of the Fraser?

11 MR. ROSENBERGER: Sorry, I didn't get the question  
12 there. In the marine side of things, we've seen  
13 very little change in the timing, so the timing  
14 between Summers and Lates in the marine area  
15 hasn't changed noticeably. Again, there's  
16 obviously variations between years or within  
17 years. The timing entering into the river has had  
18 more of an overlap with that -- not having that  
19 delay to the same extent. And just I mentioned  
20 earlier, but in -- for 2009, and in 2010, the fish  
21 have reverted back to more of their traditional  
22 delay of four to six weeks in the gulf before they  
23 enter. They're not up to six weeks, yet, but I  
24 think we've been sitting in the three, four weeks  
25 each of the last two years. So that does vary  
26 between years.

27 Q All right. And is it the case that more fish are  
28 reverting to their old patterns, but not all,  
29 there's still a significant amount that are  
30 entering the river early?

31 MR. ROSENBERGER: There is fish that are still entering  
32 early. In the last year in particular, it would  
33 not have been significant, it would be quite a  
34 small fraction.

35 Q Okay. Do you agree that the low harvest rates on  
36 late runs has resulted also in low harvest rates  
37 on the summer runs where those summer runs overlap  
38 with the late runs?

39 MR. ROSENBERGER: That's correct.

40 Q Okay. Has the resulting reduced harvest rate on  
41 the summer runs resulted in levels of spawners on  
42 the summer runs which are high enough to impact  
43 productivity?

44 MR. ROSENBERGER: We've been reduced recruits per  
45 spawner in -- in some of those years.

46 Q Is that a concern for the department?

47 MR. ROSENBERGER: I think it would be a concern

1 overall, and it's part of the discussion that,  
2 again, we bring to the tables in trying to  
3 establish escapements in the given year and our  
4 harvest objectives. The escapements in 2006,  
5 which were some of the largest in the last recent  
6 years, close to five million, produced the roughly  
7 30 million in 2010. So I think the people who  
8 have seen some of these larger escapements are  
9 also seeing the potential benefits that can occur.  
10 So I think there's much more to understand to know  
11 what escapement objectives that individuals would  
12 like to bring forward.

13 MR. GROUT: Maybe to add to Barry's point, as well, one  
14 of the key uncertainties, when you're looking at  
15 the best harvest rule you use for managing Fraser  
16 sockeye, is what the impact of a larger escapement  
17 is going to be. We tend to have a lot of data  
18 that's had a relative -- or lower levels of  
19 spawners relative to out at the right-hand side,  
20 which is higher spawner levels. So there's  
21 considerable uncertainty about the response of the  
22 populations that some of these higher abundances  
23 of spawners compared to at low abundance.

24 Q Okay. Thank you. And then moving to, again,  
25 another topic, this deals with the timing of the  
26 run and the timing of the harvest of the run. Is  
27 it fair to say that under the current management  
28 model you wait until you know where the peak of  
29 the run is before you tend to permit high-impact  
30 fisheries; is that a fair --

31 MR. ROSENBERGER: The majority of the fishing is  
32 targeted around the peak of the run.

33 Q Okay. Is there a concern that we have a  
34 disproportionate harvest within the run, itself,  
35 like we're not harvesting proportionately across  
36 all of the run, because if that -- it's either  
37 harvesting at the peak or at the tail of the run?

38 MR. ROSENBERGER: Well, there's a number of factors at  
39 play here, again. So we have four stock groupings  
40 that were managed in most cases, and they have a  
41 number of different CUs or populations within  
42 them. So some are -- they're not all affected  
43 equally by the harvesting, to begin with, but you  
44 hope that the stock grouping represents the  
45 majority of them, or your focus.

46 Whether you're harvesting more on the later  
47 part of the run or the earlier part of the run in

1 a given year, if you think that you've got a  
2 larger abundance early and the run subsequently  
3 doesn't materialize at the same magnitude, so in  
4 this case the second half of the run, so as to  
5 speak, then you could tend to be harvesting more  
6 on the beginning of the run.

7 So in some of the recent years, where the  
8 total returns are less than expected, sometimes  
9 you're finding that you're -- that scenario. And  
10 if the run continues to grow through time, which  
11 we saw in 2010 and was later, the harvesting was  
12 probably quite proportionate to the runs, but  
13 could be more on the later side.

14 So you can have -- over time I would suggest  
15 it probably balances out, because we're often  
16 seeing differences in any of the run, being  
17 smaller or larger, even when you think you're  
18 around the peak. But the majority of the time I  
19 think you're probably there, because the peak  
20 tends not to range once you think you've got it by  
21 more than three or four days. So each of these  
22 fisheries, assuming that they're harvesting what  
23 you're striving for, is probably driving it more  
24 and it's balanced.

25 Q I'm just going to move to the post-season process.  
26 Most of what we've talked about now has been sort  
27 of in-season work. When do you consider the  
28 beginning of the post-season phase of the year?

29 MR. ROSENBERGER: After the fisheries are completed.  
30 And at times, though, we will still have -- we  
31 could have no fisheries or very limited fisheries,  
32 but -- and still have assessment going on, so  
33 we're still trying to understand the run. So 2009  
34 would be an example of where the fisheries weren't  
35 necessarily defined when you ended, because we  
36 didn't really have any, but once we've done our  
37 assessment and our fishing side of things,  
38 generally the in-season is over.

39 Q And when does regulatory control transfer from the  
40 panel back to the domestic --

41 MR. ROSENBERGER: They're both at the same time. If we  
42 don't anticipate any further fishing, in the case  
43 of the U.S., it comes off in a staged approach, as  
44 the stocks migrate through their areas as well, so  
45 from the outside to the inside, and Canada's tends  
46 to go off as one set process, but it's similar  
47 kind of timing.

1 Q Are there any commercial fisheries that occur  
2 after the transfer of regulatory control?

3 MR. ROSENBERGER: Not for Fraser sockeye or pinks, in  
4 the panel waters, but other species there are.  
5 That's why we transfer the control, so you can  
6 harvest -- plan fisheries and have -- have  
7 fisheries for chums, primarily.

8 Q Okay. And spawning escapement, that's thought of  
9 as a post-season activity, but it occurs in-season  
10 and post-season; is that right? Sorry, the  
11 enumeration of the --

12 MR. ROSENBERGER: The in-season and post-season is  
13 usually more thought of on the harvesting side of  
14 it. So the stock assessment, in this case, the  
15 spawning ground assessment is something that's,  
16 you know, is occurring as those fish are arriving  
17 on the spawning grounds. In the case of the Early  
18 Stuart, first sock in, they're primarily being  
19 enumerated in August, late July and August, and  
20 obviously we're still in fishing mode for other  
21 populations at that time, so there's an overlap.

22 Q Okay. And once you're in the post-season phase,  
23 what does the Department of Fisheries and Oceans  
24 have to do with respect to sockeye management on  
25 the Fraser?

26 MR. ROSENBERGER: Well, we prepare three reports. One,  
27 is the Record of Management Strategies that we  
28 were talking about earlier. There's a Post-season  
29 report for the Pacific Salmon Treaty that  
30 encompasses all fisheries within the treaty, but  
31 the Fraser sockeye and pink are a component of  
32 that. And then we produce what's called a  
33 Southern B.C. Fisheries report -- that's not the  
34 right title --

35 MR. GROUT: It's the Post-Season Report for Southern  
36 B.C.

37 MR. ROSENBERGER: Post-Season Report for Southern B.C.  
38 Thanks. So the information in each of those is,  
39 well, the RMS is significantly different, but the  
40 other two, one is focused on international  
41 fisheries and not necessarily all of our domestic  
42 issues and points that we want to cover, and the  
43 southern B.C. one, which is a Canadian paper, has  
44 all of the information. So that's a key. We also  
45 have to, you know, collect up all of the  
46 biological information where we're confirming  
47 catch information from fisheries going through.

1           You know, some managers are trying to get to final  
2           information, as opposed to preliminary or some of  
3           the in-season documents. And then there's reviews  
4           of how effective, you know, were fisheries  
5           decisions, how effective were the test fishing  
6           programs and whatnot. We might have went through  
7           that in some more detail, but the Tech Committee  
8           is having reviews of some of this stuff, as is the  
9           panel, and those are presented normally in our  
10          January -- what's referred to as our post-season  
11          report at the panel, where we start to get that  
12          information presented back at the panel level and  
13          concluded in February. And then we hold post-  
14          season meetings, domestically, to go through  
15          similar kinds of reviews.

16        Q     The post-season meetings that you hold, who are  
17           those with?

18        MR. ROSENBERGER:  It's a broad range. That's probably  
19           the part I missed to begin with. But the  
20           Integrated Harvest Planning Committee we just held  
21           in the last -- two days ago, as a post-season  
22           review. So that's the aggregate of First Nations,  
23           commercial, recreational, marine conservation,  
24           caucus together. There's First Nations meetings,  
25           in an aggregate sense, being planned for next  
26           week. The sports fish is early February, and the  
27           commercial fishermen was planned for this week.  
28           So there's -- they're across all the range of  
29           people that we deal with, all of the different  
30           groups of interest, domestically, as well as the  
31           Canada/U.S. process.

32        Q     All right. There's a November meeting of IHPC; is  
33           that dealing with post-season matters?

34        MR. ROSENBERGER:  It is, but you're still in a very  
35           preliminary stage, so we often -- at that one  
36           we're more talking about people's interests and  
37           issues around the fishery or around things that  
38           they, you know -- you know, how well did something  
39           work, some -- you know, we might have tried -- the  
40           last two years we've had a couple of innovative  
41           fisheries around the Area B Seine group, and so,  
42           you know, that or some other aspects. We're  
43           trying to get issues that the various groups are  
44           -- have raised among themselves in their own  
45           thought processes. And then it gives us a chance,  
46           within the department, to collect data and do any  
47           analysis that groups might be looking for that we

1           might want to bring to the meetings that just are  
2           occurring usually in January, and along with the  
3           more formalized catch reports and escapement  
4           information, things like that.

5           Q     One of the things that you said is done is an  
6           assessment of how effective your management  
7           strategies were against your goals, and I take it  
8           one of those objectives is to meet your escapement  
9           targets?

10          MR. ROSENBERGER: That's correct.

11          Q     Do you use the pre-season targets to determine  
12                your effectiveness, or do you do an adjustment  
13                once you know -- to those pre-season targets once  
14                you know what the final run size numbers are?

15          MR. ROSENBERGER: Well, it's -- you're usually  
16                adjusting to what did you know when you're making  
17                your last in-season decisions. So you don't --  
18                once you know the final numbers, that is the final  
19                number for spawning grounds. So the target that  
20                you had, which, you know, in '09 and 2010 varied  
21                considerably from pre-season and in-season, as the  
22                run sizes changed; one year down, one year up. So  
23                it's against that objective that we're looking to  
24                see, post-season, how effective we were.

25          Q     Okay. If I could have the PPR5 brought up. I  
26                think we need a correction on this document, on  
27                paragraph 278, which is page 102. So that  
28                paragraph, 278, can you just tell us if there's a  
29                correction that needs to be made there?

30          MR. ROSENBERGER: Yeah, it would be comparing the  
31                actual escapements to the last in-season target --  
32                escapement target.

33          Q     Okay.

34          MR. ROSENBERGER: It's not the pre-season target.

35          MS. BAKER: Okay. Mr. Commissioner, I said, yesterday,  
36                that we'd take a break at 11:15 and 12:15. I see  
37                it's 11:15, now. I won't be very much longer  
38                after the break, but we should probably take our  
39                break now.

40          THE COMMISSIONER: Okay.

41          THE REGISTRAR: We will now recess for 15 minutes.

42

43                        (PROCEEDINGS ADJOURNED FOR MORNING RECESS)

44                        (PROCEEDINGS RECONVENED)

45

46

47

1 EXAMINATION IN CHIEF BY MS. BAKER, continuing:  
2

3 Q Before the break, I talked to you about how you  
4 assessed whether you met the escapement objectives  
5 in the post-season process. How do you -- but  
6 that was only one small piece. So generally, how  
7 does DFO go through its review of its management  
8 of the season against its management objectives?  
9 Like what are the objectives that you're assessing  
10 against and how do you do that analysis?

11 MR. ROSENBERGER: Most of the focus is on the -- the  
12 key initiatives or the -- the significant  
13 initiatives that we might be undertaking in a  
14 given year. So over the last couple of years,  
15 Cultus is -- spawning enumeration objectives are  
16 -- the spawning ground objectives are the key but  
17 the Cultus, I mentioned the earliest time, early  
18 summer, the -- so conservation-orientated  
19 objectives, in this case, are key factors that we  
20 look for and see how effective we were with the --  
21 the different initiatives or -- or changes that  
22 we've taken.

23 The -- on the -- the fisheries side  
24 themselves, the First Nations meeting their needs  
25 is -- is assessed. On the recreational,  
26 commercial and then within the commercial the  
27 splits on the domestic side of things, we have  
28 pre-season objectives for those. So you know,  
29 whether it's the 5 percent of the combined  
30 recreational, commercial, or between seine,  
31 gillnet, troll and the different license groups  
32 that they have. So all of that information is --  
33 is provided out and, you know, whether it might be  
34 issues that tend to be raised between the -- the  
35 sector groups of things that they would like to  
36 change then we'll, you know, take a look and see  
37 what we might do differently into the future.

38 Q And how do you assess whether you met the First  
39 Nations needs or objectives?

40 MR. ROSENBERGER: The communal licenses all have an  
41 allocation level on them so in the different  
42 various areas the -- where the fish -- did -- did  
43 they catch the fish that are in the licensed  
44 amounts? And if they didn't, were there fish  
45 available that -- that they might have been able  
46 to access those fish whether, you know, for other  
47 reasons, they may or may not have been able to?



- 1 Q Okay. And then do you create work plans in  
2 reaction to your assessment of whether you met the  
3 different objectives you just reviewed?
- 4 MR. ROSENBERGER: I'm not sure I'd use the word -- term  
5 "work plans" but what we tend to have is running  
6 lists of issues that we're, you know, looking to  
7 try to resolve as we can on somewhat of a priority  
8 basis. But if we need to be making adjustments in  
9 any given fishery or in our escapement objectives,  
10 you know, they do vary between years. In the case  
11 of the Fraser River escapement initiative, there's  
12 a number of -- of issues that have been raised  
13 over the last couple of years in particular  
14 because of these two extreme low and extreme high  
15 return years that have created some discussion.  
16 So then we'll take a look and see what we can --  
17 you know, the FRSSI modelling process and we're  
18 looking to have workshops, things like that, that  
19 can try to address those issues.
- 20 Q Okay. And earlier, you mentioned a couple of  
21 reports, the post-season treaty limit report, I  
22 think was one; is that right?
- 23 MR. ROSENBERGER: That's the -- the Pacific Salmon  
24 Treaty Report?
- 25 Q Yeah.
- 26 MR. ROSENBERGER: Yes.
- 27 Q Okay. I'm going to just take you to that. That's  
28 Tab 2 in the binder and it's CAN 032340. I might  
29 have too many zeroes there. No zero at the end,  
30 yeah. So 3234. And this is the 2009 post-season  
31 report for the PSE.
- 32 MR. ROSENBERGER: Yes.
- 33 Q And each country prepares a report like this?
- 34 MR. ROSENBERGER: That's correct.
- 35 Q Okay. And what's the function of this document?
- 36 MR. ROSENBERGER: Each country is obligated to report  
37 out against the -- its allocations and limits and  
38 conditions of the treaty by each of the chapters.  
39 So in our case, this is chapter 4, the sockeye  
40 pink chapter of the treaty, and so we need to  
41 report out on those. So we have escapement  
42 objectives, international (indiscernible - rapid  
43 speech) objectives and we report some of our  
44 domestic information in this report as well.
- 45 Q Okay. And who prepares this report?
- 46 MR. ROSENBERGER: It's a series of people, as most  
47 things within the Department of Fisheries of

- 1 Oceans. And so there's a number of different  
2 authors bringing together for the Fraser sockeye  
3 pink. We will have a lead and as it works its way  
4 through to the final in the years since I've been  
5 the chair, Jeff and I tend to be the two people  
6 that have to review it and give it its final  
7 review to get back and then it will be sent from  
8 Canada to the Pacific Salmon Commission, who then  
9 -- this is a Commission staff who then will  
10 circulate it to each other's country.
- 11 Q Does it go through any level of approval or review  
12 after the two of you have completed your work?  
13 Does it go up the chain, so to speak?
- 14 MR. ROSENBERGER: The -- each of the sections, it's  
15 expected that the panel chairs will sign off on  
16 them. And so Jeff's shop is highly involved in  
17 coordination of the whole thing.
- 18 Q You sign off. Does the -- does the minister have  
19 to see this document or approve it --
- 20 MR. ROSENBERGER: No.
- 21 Q -- before it goes? No. Are there any people  
22 external to DFO that review this before it goes to  
23 the -- to the panel process or to the PSC, I  
24 guess?
- 25 MR. ROSENBERGER: Yes, there has been some people  
26 externally reviewing parts of this one and it's --  
27 I think a lot of that is -- might be more related  
28 around this south one and Jeff coordinates that.  
29 Maybe I should let Jeff do this.
- 30 MR. GROUT: Yeah, so we have in some years identified  
31 errors in certain spots in the -- the document.  
32 And one of the ways we've tried to address that  
33 and address concerns is to identify people at the  
34 Integrated Harvest Planning Committee that have --  
35 have been interested in reviewing specific  
36 sections. So we give the report a -- it's a  
37 relatively limited distribution, you know, a  
38 handful of people that will -- from the Integrated  
39 Harvest Planning Committee that will review and  
40 provide any advice or feedback on the report  
41 before it's finalized.
- 42 MS. BAKER: Okay. Can I have that marked, please, as  
43 the next exhibit?
- 44 THE REGISTRAR: Exhibit Number 338.
- 45  
46 EXHIBIT 338: Post-Season Report for 2009  
47 Canadian Treaty Limit Fisheries

1 MS. BAKER:

2 Q And then the next document that you referred to  
3 was the post-season report for 2009 Southern B.C.  
4 Fisheries. And I think that's in Tab 16. And  
5 it's CAN 056738. Is that the document that you  
6 were referring to?

7 MR. ROSENBERGER: That's correct.

8 MS. BAKER: All right. Can I just have that marked,  
9 please, to start?

10 THE REGISTRAR: Exhibit Number 339.

11

12 EXHIBIT 339: Post-Season Report for 2009  
13 Southern BC Fisheries

14

15 MS. BAKER:

16 Q Okay. Now, who prepares this document? Is it the  
17 same team?

18 MR. ROSENBERGER: Yeah, pretty much. I mean we're  
19 trying to reduce duplication and -- and workloads  
20 but also keep consistency of -- of the  
21 information. So a number of the same people but  
22 there are more domestic issues recorded in this  
23 report than there are in the international one so  
24 there are a few more people helping to bring the  
25 information together. But in this case, Jeff has  
26 the overall coordination and sign-off to it at the  
27 end. But the sections, because they've gone  
28 through the same review, in many cases, as the  
29 Pacific Salmon Treaty Report, we have somewhat  
30 similar reviews.

31 Q Is this report developed with any external  
32 assistance?

33 MR. GROUT: As Barry points out, the report is very  
34 similar and identical in places to the -- the  
35 post-season report that's done for the -- the  
36 Salmon Treaty. The southern sections are very  
37 similar, if not identical to that report. We do  
38 remove the northern and trans-boundary fisheries  
39 here and then we make additions for some fisheries  
40 not covered by the treaty, for example, Somas  
41 sockeye. And then, as Barry mentioned, some of  
42 the domestic considerations around Fraser sockeye,  
43 for example, would be added in. We don't do a --  
44 or we haven't done a separate review externally on  
45 this -- on the southern version.

46 Q Right. And who receives this report?

47 MR. GROUT: This report's tabled at the Integrated

1 Harvest Planning Committee meeting and can also be  
2 table at our other consultation processes as well.

3 Q And do you ever get feedback from people who  
4 receive this report for request for changes or  
5 updates?

6 MR. GROUT: We can certainly -- and have had in the  
7 past errors or omissions that have been identified  
8 in the -- in the report that we've been asked to  
9 follow up on. But primarily, it's a tool for  
10 people to look forward in their planning to see  
11 what some of the issues are that they'd like to  
12 see addressed in the coming year.

13 Q And does this document find its way up the chain?  
14 Does it go to the regional director general or the  
15 minister?

16 MR. GROUT: This document does not go to the -- the  
17 minister. It's circulated to others in the  
18 department for information.

19 Q Okay. Are summaries of either of these documents  
20 provided to the minister? Is there a reporting in  
21 some way of the -- the end of the season?

22 MR. GROUT: No, most of the issues that would be of  
23 concern or of interest to the minister, if -- if  
24 they've been identified, will have been briefed on  
25 separately. So we tend to take a more targeted  
26 approach on the specific issues that are going to  
27 be of interest or implication or that the minister  
28 will need to be briefed on. And we tend to brief  
29 separately on those.

30 Q Okay. And is this document used in any internal  
31 processes within DFO, aside from the IHPC process?

32 MR. GROUT: This document's got our reporting out on  
33 our various different objectives. It would be a  
34 reference material, I guess, to some of our  
35 internal meetings.

36 Q I mean there --

37 MR. ROSENBERGER: Maybe I could just add. Like, we use  
38 it in FRIMT, the Fraser River Integrated  
39 Management Team. I think it has -- gets  
40 discussions occasionally at the Salmon Working  
41 Group but the -- you know, from Fraser sockeye  
42 management we're looking at this and our -- our  
43 team and thinking about what it is that we want to  
44 look at moving forward so it forms the basis of  
45 some of our discussions in planning for each of  
46 our -- our sessions. Again, as Jeff pointed out,  
47 we often use it as a tool to help us move forward

1           on a summary of the previous years much like the  
2           way more -- much more internally but they are  
3           record of management strategies by the department  
4           often over a longer period of time.

5       Q     Okay. Are there any specific decisions that are  
6           required of the department in the post-season  
7           process in terms of sort of management of the  
8           Fraser sockeye?

9       MR. ROSENBERGER: No, I don't think so. I mean the --  
10          preparing these reports, making sure that people  
11          are informed, using that to help us move forward  
12          and on our next season of management is the key  
13          objectives. The key sign-off types of things are  
14          done by, you know, fisheries regulations or that  
15          side of things in-season.

16       MS. BAKER: I think those are the end of my questions  
17          for these two witnesses. Thank you.

18       THE COMMISSIONER: Ms. Baker, if it's convenient now, I  
19          just had a couple of questions that --

20       MS. BAKER: Yeah.

21       THE COMMISSIONER: -- you might want to follow up on.  
22          And one is -- you may have said it, Mr.  
23          Rosenberger, and I may have missed it. In between  
24          the post-season process and starting the pre-  
25          season management process, what activity is there  
26          between the Fraser River Panel or between the DFO  
27          and the stakeholders? In other words, what goes  
28          on between the post-season, just describe the  
29          reports, and the pre-season planning, that  
30          generates discussion between the DFO or the Fraser  
31          River Panel and the stakeholders?

32       MR. ROSENBERGER: Well, it's -- it's not a clear cut-  
33          off line that at one point you're in post-season  
34          and the next point you're in pre-season. So we --  
35          so these processes are really iterative, as they  
36          work their way through. As we had the post-season  
37          -- the last in-season meeting in the Fraser Panel,  
38          which, in this year was October, when we -- with  
39          the data that we collected out of that, we held a  
40          Fraser caucus and Fraser Integrated Management  
41          Team joint meeting in November to help us prep on  
42          some of our work planning coming into the next  
43          cycle year, to review some of our objectives, to  
44          look at where some of our issues were that we want  
45          to be thinking about in trying to prep in going  
46          into the January meeting.

47                   And so when we had the -- the January Pacific

1 Salmon Treaty meeting, which tends to be this one  
2 weeklong called "post-season meeting" each year,  
3 the -- again, in prep for that one, on the Monday  
4 of that week, we got together as the Canadian  
5 Caucus and FRIMT -- some FRIMT participation and  
6 the Tech Committee to prepare ourselves for the --  
7 that week and our post-season review. In this  
8 case, in the year we just went through, on the  
9 November -- November -- on the Thursday, as we  
10 ended some of our discussions with the U.S., we  
11 took the opportunity again to spend a few hours on  
12 trying to work on some things. We tend to have a  
13 meeting now looking forward on this cycle. We  
14 will hold a meeting, probably a conference call,  
15 in late January or in the first week of February,  
16 at least the week before the February planning  
17 session and moving ourselves forward and, again,  
18 trying to narrow our -- our list of issues or get  
19 all of our issues together that we want to be  
20 raising bilaterally or that we can work on  
21 domestically.

22 We have that which is really the start of the  
23 next planning cycle supposedly for us in February  
24 but we'll still be doing a lot of post-season  
25 accounting and review. We hold a meeting in  
26 April, the caucus/FRIMT together, using one or two  
27 days before we get together with the Fraser Panel  
28 has two pre-season planning meetings, one in April  
29 and usually one in -- in June. So we'll take  
30 opportunity to have a more in-depth session  
31 usually in April to try to make sure it links to  
32 our domestic planning and often have more of a  
33 conference call in June. So there's sort of  
34 iterations. We try to link them close together,  
35 usually always trying to do our Canadian side of  
36 things.

37 And then there's links because many of our  
38 domestic planning processes whether it's the  
39 Integrated Planning Team or the licensed area  
40 groups or even the First Nations groups, the  
41 Fraser Panel participants are usually all on those  
42 other processes. That's where they, you know,  
43 came from or, you know, had the interests or been  
44 elected or represented from. So there's linkages  
45 there and in most cases those individuals and  
46 myself or -- or the other Canadian member of the  
47 panel have an awful lot of emails and phone calls,

1 interactions, that are going on a regular basis  
2 like in the hundreds of exchanges in a given year.  
3 Q I wonder if, looking at Exhibit 318 might help as  
4 well to outline some of the meetings that take  
5 place in the -- in the fall and into the new year.  
6 Is that helpful as well?

7 MR. ROSENBERGER: That's our advisory process. I'm not  
8 certain if all the panel meetings are on there.

9 Q No, I think also the Commissioner was asking how  
10 you engage the stakeholder groups in the post-  
11 season process as well.

12 MR. ROSENBERGER: Yeah, that's -- so this is a schedule  
13 that we create and update a few times in a year  
14 about where all of our meetings are and how we try  
15 to link them together and -- and who the key  
16 contact people are.

17 THE COMMISSIONER: The other came up in Mr. Lapointe's  
18 evidence, both last fall and more recently, but  
19 just assuming for the moment that a legal  
20 framework would permit the panel to make all  
21 decisions with respect to the fishery, not just in  
22 panel waters but what are -- what are your views  
23 on the advantages or disadvantages of the panel  
24 having that kind of responsibility?

25 MR. ROSENBERGER: Well, there would be many more things  
26 that the panel would have to meet and review on.  
27 And the system we have today, you know, does allow  
28 us the flexibility to have, you know, a number of  
29 iterations and back and forth domestically, in  
30 particular, thinking around a number of our First  
31 Nations fisheries and our First Nations food,  
32 social, ceremonial, as well as even the economic  
33 ones where trying to get all of the -- the timing  
34 and the linkages of all these fisheries. We  
35 always talk in the lower Fraser. There's only --  
36 there's not enough days in the week and if we  
37 could get eight or nine, we might be able to get  
38 them all in. Bu the -- trying to -- trying to get  
39 all these fisheries lined up, if you had to get  
40 them where they're actually approved by the panel  
41 and come back for that -- that sign-off, I think  
42 that could be -- slow the process up in a number  
43 of ways.

44 And from the U.S. side, I'm not certain that  
45 they have all the knowledge, you know, required so  
46 there might be a fair bit of education side.  
47 Within the U.S. system, and this is an example of

42

PANEL NO. 12

In chief by Ms. Baker (cont'd)

Cross-exam by Mr. MacAulay (CAN)

1           why this may or may not be an appropriate way to  
2           go, they have fisheries that they call ceremonial  
3           and -- ceremonial and subsistence, which is  
4           somewhat consistent with our food, social,  
5           ceremonial. Within their -- their legal  
6           framework, they're allowed to have the tribes, as  
7           they call themselves down there, are allowed to  
8           sell all of their fish. But when there -- when  
9           there's not enough fish like in 2009, they tend to  
10          hold their ceremonial subsistent fisheries without  
11          panel approval. And that's okay. We understand  
12          they're doing that and it tends to be for amounts  
13          of, you know, one, two, 3,000. In that year, I  
14          think they took 4,300 or 4,500 fish in total. And  
15          so it's spread out. They're for their ceremonies.  
16          They're for, you know, a funeral or something that  
17          needs to come up. And to try to be able to have a  
18          panel on standby for literally hundreds of  
19          licenses that could be issued in a year but it's  
20          usually in the tens of licenses for special  
21          occasions, I think the panel would have a real  
22          struggle trying to operationalize (sic) all of  
23          that kind of a process.

24                 I think on the scheme of how we work today,  
25          both in the Canadian caucus and in the panel, we  
26          have a lot of discussion about these fisheries,  
27          whether or not we're approving them. Every  
28          fishery has some degree of discussion at the panel  
29          or in the caucus to make sure that people are  
30          aware and they're linking them and that they're  
31          making decisions that are not inconsistent that  
32          would be causing conflict. So it might be more a  
33          process side of it would the bigger issue but  
34          there's probably a learning curve for -- for both  
35          sides.

36          THE COMMISSIONER: Thank you.

37          MS. BAKER: Thank you. Then the next counsel up is Mr.  
38                 MacAulay for Canada.

39          MR. MacAULAY: Mr. Commissioner, for the record, Hugh  
40                 MacAulay for the Government of Canada. With me is  
41                 my colleague, Jonah Spiegelman.

42

43          CROSS-EXAMINATION BY MR. MacAULAY:

44

45          Q         Mr. Grout and Mr. Rosenberger, I have a few  
46                 questions for you to explore in more detail a  
47                 couple of the topics that Ms. Baker asked you



1 about, specifically pre-season forecasting and  
2 consultation and advisory processes, which Mr.  
3 Commissioner asked you about as well. And then  
4 I've got a series of questions for you about DFO  
5 policies and initiatives and how they influence or  
6 are reflected in the management of Fraser sockeye  
7 fisheries.

8 So starting with revisiting a couple of  
9 topics that you've spoken to, but the first of  
10 those being pre-season forecasting. I'd ask that  
11 document number 1 on Canada's list, Tab 1, that  
12 is, be brought up. It's a document titled "Pre-  
13 Season Run Size Forecast for Fraser River Sockeye  
14 and Pink Salmon in 2009". The first bullet under  
15 the heading "Summary" sets out the median forecast  
16 for Fraser sockeye in 2009 and sets that median  
17 forecast at 10.6 million fish. This was -- the  
18 figure, 10.6 million, as I recall it, attracted  
19 considerable attention through the 2009 fishing  
20 season. I note -- and I'll ask you to elaborate  
21 on this in a second but on the following page,  
22 page 2, the second bullet provides a bit of a  
23 caveat to that median forecast highlighting the  
24 high uncertainty associated with these forecasts.  
25 Is this the -- is this the key document with  
26 respect to the forecast -- the pre-season  
27 forecast, that is, for Fraser River sockeye in  
28 2009?

29 MR. ROSENBERGER: It is, yes.

30 Q And who prepares this document for DFO?

31 MR. ROSENBERGER: Sue Grant is the lead author but  
32 there's four or five authors. They would be  
33 probably listed at the top of the document. So  
34 there's people bringing different expertise and  
35 whatnot into it. There is one external person  
36 that has been involved the last couple years from  
37 the Pacific Salmon Commission, Kathleen (sic)  
38 Michielsens.

39 Q Mr. Rosenberger, can you describe, if you're  
40 familiar with it, the review process for this  
41 document?

42 MR. ROSENBERGER: Until 2009 or -- and in this  
43 particular document, there is a science review,  
44 which was formally called PSARC process, that  
45 reviewed the methodology and was affirmed in 2004  
46 or 2005, I believe. Actually, it's on the bottom  
47 of -- the way it's highlighted on the screen so

1           it's Cass et al in 2006. It lays out the  
2           procedures for computing the various different  
3           models and there's a large number of models that  
4           are available to each of the -- or not all  
5           available to each one of them but the 19 stock  
6           groupings and then the miscellaneous populations  
7           have a different process. So in this case, Sue  
8           Grant, who is a stock assessment biologist from  
9           the Fraser area, produces this and has to follow  
10          that -- did follow and has to follow that  
11          methodology so that it can get reviewed through  
12          the process and signed off for a given year.

13        Q     And what use is made of this document?

14        MR. ROSENBERGER: It's key for us in pre-season  
15          planning and also in our in-season works in  
16          understanding the linkages of timing,  
17          distribution, stocks of concern. So it -- in this  
18          case, as it talks about in the summary part near  
19          the top of this page, where the vast majority of  
20          the fish coming back were summer runs, relatively  
21          small amounts into the other stock groupings. So  
22          it gives us that relative magnitude and  
23          understanding about which stocks we think we can  
24          harvest. In this case, it would have been summer  
25          runs and then which stocks are more likely to be  
26          of concern, which were the other three stock  
27          groupings.

28        Q     As is widely known, the actual total return of  
29          Fraser sockeye in 2009 fell far short of the 10.6  
30          median forecast. Were there any stocks that  
31          exceeded their forecast in 2009?

32        MR. ROSENBERGER: Yes, the Harrison was substantially  
33          above expectations. I'm not certain I have the  
34          numbers. The forecast was around 69,000 and I  
35          believe we were in a two to 300,000 return so it  
36          was -- it was off and not on the -- we expected  
37          the large return in age fours versus age threes,  
38          as I described earlier. The Adams River return  
39          was 30, 40,000, the normal -- or the Adams Shuswap  
40          stock grouping and I believe it was more in the  
41          20,000 range. And the Cultus stock, which ended  
42          up with a final fence count of around 900, 950  
43          adults from a brood year of 100 was probably  
44          fairly -- well, forecast-wise, this one is high  
45          uncertainty. That might not have exceeded  
46          forecast but it definitely exceeded most people's  
47          expectations. So there is some stocks most of

1           them were in the late timing group.

2 MR. MacAULAY: I'd ask that this document be marked as  
3 the next exhibit.

4 THE REGISTRAR: Exhibit Number 340.

5

6                   EXHIBIT 340: Pre-Season Run Size Forecasts  
7                   for Fraser River Sockeye and Pink Salmon in  
8                   2009  
9

10 MR. MacAULAY: Could I have pulled up Tab 2 at Canada's  
11 list of documents?

12 Q   And Mr. Grout and Mr. Rosenberger, there's a  
13 binder with these in hard copy before you.

14 MR. ROSENBERGER: Yeah, thank you.

15 Q   This is a document titled "Pre-Season Run Size  
16 Forecast for Fraser River Sockeye Salmon in 2010".  
17 This, as I understand it, is the 2010 version of  
18 the document that we were just looking at for  
19 2009?

20 MR. ROSENBERGER: It's the same purpose, to be the pre-  
21 season forecast but it's prepared significantly  
22 different in that this document sets out new  
23 methodology. In this case, they added three or  
24 four new models to be used in making the  
25 predictions and reviewing their accuracy. So like  
26 the Cass 206 paper, this paper changes or adds to  
27 the methodology and had to go through a more  
28 rigorous science review, as well as bringing out  
29 the forecast information.

30 Q   And Mr. Rosenberger, was this document prepared by  
31 Sue Grant and the other people that you mentioned  
32 earlier?

33 MR. ROSENBERGER: That's correct. I think there's one  
34 or two different authors between the tiers.

35 Q   Could you further describe the change in  
36 methodology? I appreciate that Ms. Grant will be  
37 a witness in the coming weeks. But just in  
38 general terms. And I'm trying to keep my  
39 questions to you at a very high level given that  
40 you're just providing the overview. But could you  
41 describe, sorry, the change in methodology?

42 MR. ROSENBERGER: What Sue and others did was -- we'd  
43 been discussing in the 2009 year, even before the  
44 -- the poor return, that we were -- we knew we  
45 were in a period of decreasing productivity and it  
46 was largely because of the discussions that went  
47 on around 2008, which at the time had had the

1 lowest marine survivals that we'd had record for  
2 in the Fraser dataset. And looking at trying to  
3 expand the range of models and options to be used  
4 in forecasting. And so in this case, there was  
5 models that were -- they truncated the dataset so  
6 they used a portion of it and so there's four-year  
7 models, eight-year models and common filter models  
8 were added as options into the -- into those that  
9 could be used for making the predictions. And  
10 then in the review process evaluating their  
11 effectiveness in timeframes to what actually  
12 occurred.

13 MR. MacAULAY: Thank you. I guess before I leave it,  
14 could we mark that as the next exhibit? That's  
15 the 2010 run size forecast.

16 THE REGISTRAR: Exhibit 341.

17  
18 EXHIBIT 341: Pre-Season Forecasts for Fraser  
19 River Sockeye Salmon in 2010  
20

21 MR. MacAULAY:

22 Q One final question about pre-season forecasting.  
23 And Mr. Commissioner is going to hear further  
24 evidence later in these hearings regarding the  
25 allocation of DFO resources. But I was wondering  
26 if you could provide just in general terms a sense  
27 of how many DFO resources perhaps expressed as  
28 full-time employees or equivalent are dedicated to  
29 pre-season run size forecasting for Fraser  
30 sockeye?

31 MR. ROSENBERGER: In this case, with trying to develop  
32 new methodologies and reviewing, you know, various  
33 other options that are available, there was  
34 considerable interaction between, in this case,  
35 DFO staff and a number of people from Simon Fraser  
36 University. So there's -- there's probably eight  
37 or ten people providing some information. There's  
38 three or four key authors from the department side  
39 and we had significant support from Kathleen (sic)  
40 Michielsens, as I described in the 2009 one. As  
41 we moved into 2010, Dr. Randall Peterman from SFU  
42 and some of his people and some of the work he'd  
43 done in looking at different types of  
44 methodologies for forecasting and their accuracy  
45 and uses was considerable going into this. But we  
46 have people who are bringing the escapement side  
47 of the information so our biologists that are

1 coordinated and running the field operations as  
2 well as -- and tend to be the same people who are  
3 then evaluating that data that goes into -- into  
4 these -- the datasets. So it -- there's a lot of  
5 different people but there's a few key authors. I  
6 think in this case there were four or five key  
7 authors on this document for the transition.

8 Q Thank you. The other topic, as I mentioned, that  
9 I'd just like to explore in a little bit more  
10 detail with you that you've already responded to  
11 questions from Ms. Baker about is sort of  
12 consultation advisory processes.

13 MR. MacAULAY: And I'd ask that document number 3 on  
14 Canada's list of documents be brought up.

15 Q These questions, I think, are perhaps better  
16 directed to you, Mr. Grout, but I invite Mr.  
17 Rosenberger to add to anything that you wish to  
18 say. You are, as you've expressed, the chair of  
19 the Integrated Harvest Planning Committee, the  
20 IHPC, as it's known?

21 MR. GROUT: That's correct. Although at times in the  
22 past the salmon team lead has had that role as  
23 well.

24 Q The terms of reference date from May of 2005 but  
25 are they still reflective of current realities?

26 MR. GROUT: Yes, they are.

27 Q I'd like to take you to page 3 near the bottom. I  
28 guess the formal name of this IHPC is the South  
29 Coast IHPC. That's the IHPC that deals with  
30 Fraser sockeye?

31 MR. GROUT: The IHPC usually meets together with both  
32 the northern and the southern reps in the same  
33 room. The south and north groups meet separately  
34 for the post-season review. So the meeting that  
35 Barry referred to that occurred last -- or this  
36 past week with the south -- was just the South  
37 Coast IHPC.

38 Q Thank you. Under South Coast IHPC, there are  
39 listed the representations essentially for the  
40 various component parts so six representatives for  
41 the CSAB, three for the SFAB, two for the MCC.  
42 That's the Marine Conservation Caucus. And four  
43 First Nation representatives. And one ex-officio  
44 from the Province of British Columbia. Is that  
45 still how the representation is working?

46 MR. GROUT: That's correct. The department has been  
47 doing some work around how we might improve the

1 First Nations representatives in the process. We  
2 have had interest from a number of groups, First  
3 Nations groups in increasing First Nation  
4 participation. And in fact, we've -- for example,  
5 the Sto:lo have -- we've invited an observer from  
6 that group to sit on the committee in the interim  
7 while we figure out a longer-term process for  
8 appointing representatives.

9 MR. ROSENBERGER: I might just add to that one that  
10 there are a number of people who participate or  
11 attend who attend as observers, somewhat as Jeff  
12 described, although that one is more formalized in  
13 what they're doing. But there are a number of  
14 other people who attend, most of them First  
15 Nations, but to make it clear, they're not  
16 representatives. They're, I think, really trying  
17 to understand the process and whether -- to what  
18 degree they might want to engage and how.

19 Q Thank you. And I'd like to bring you back to that  
20 point because I note in the terms of reference, as  
21 you've noted I'm sure, after the phrase "Four  
22 First Nations Representatives", there is a note  
23 and it says:

24  
25 In 2004, interim appointments by DFO will be  
26 based on recommendations made by major  
27 Aboriginal groups active in the south. For  
28 longer-term appointments, DFO will continue  
29 to work with Aboriginal groups to identify a  
30 suitable process.

31  
32 Mr. Grout's alluded, I think, to that process but  
33 could you describe it in more detail? What's  
34 happened since this perhaps? And what work is  
35 ongoing?

36 MR. ROSENBERGER: I could try to answer that. So we  
37 have a -- we started the First Nations forum on  
38 conservation and harvest planning about four years  
39 ago bringing together the southern approach, First  
40 Nations groups, with all those within the Fraser.  
41 And in getting that process off the ground, we  
42 ended up forming a group to try to manage the  
43 process so a combination of First Nations and DFO  
44 people. That steering committee, if you would,  
45 has -- has now broken away into a group that's  
46 trying to build a longer-term process that we can  
47 agree on collectively that would have people, you

1 know, defined as representatives in this process  
2 or, you know, to the Pacific Salmon Treaty  
3 processes or whatever, as well as linkages between  
4 the forum and sub-regional groups and domestic  
5 issues and things like that. So that's -- our  
6 objective is working on that. And some people  
7 have referred to it as the roadmap process.

8 MR. MacAULAY: I'd ask -- well, perhaps before I do  
9 that, I'll just ask the terms of reference for the  
10 IHPC be marked as the next exhibit.

11 THE REGISTRAR: 342.

12  
13 EXHIBIT 342: Integrated Salmon Harvest  
14 Planning Committee (IHPC) Terms of Reference  
15

16 MR. MacAULAY: And then I'd ask that Exhibit 289 be  
17 brought up.

18 Q Mr. Rosenberger, you describe the road -- roadmap,  
19 I should say, work. This is a document that's  
20 already been entered as an exhibit. Is this  
21 reflective of that work that you described?

22 MR. ROSENBERGER: That's one part of it, yes.

23 Q Could you describe what else is involved and how  
24 that's going to improve the IHPC representation  
25 from First Nations?

26 MR. ROSENBERGER: So the overall objective is to try to  
27 develop -- jointly develop our approved-upon  
28 consultation co-management process between First  
29 Nations affecting Fraser stocks and the Department  
30 of Fisheries and Oceans. So there's a -- there  
31 has been a time list of different issues put  
32 together so, you know, what do you do about a  
33 decision on who gets to fish in a given location  
34 versus policies being developed so that there's --  
35 the idea there is that there's a range of kinds of  
36 issues that could come forward. And you're trying  
37 to match that with where do they fit in the  
38 process so what's, you know, a regional  
39 initiative? What's a watershed type of an issue?  
40 What's a sub-region versus a much more localized  
41 process? And how do the First Nations see  
42 themselves as amalgamating? So we have a funding  
43 and strategy process called the Aboriginal  
44 Resource -- it's AAORM. What does it stand for?  
45 I lost it.

46 MR. GROUT: Aboriginal Aquatic and Oceans Resource  
47 Management.

1 MR. ROSENBERGER: Thank you. So we have -- so that's a  
2 key that's helping to facilitate these types of  
3 developments of overall process. So one of the  
4 kinds of things that the department is bringing to  
5 this is that we would like to see representative  
6 people appointed to programs or -- to like the  
7 Integrated Harvest Planning Committee or to Fraser  
8 Panel or to whatever so that promoting that  
9 there's responsibilities of taking information  
10 back, seeking input, you know, clarifying what's  
11 required, as opposed to somebody being there as an  
12 individual who really then can only state that  
13 they represent themselves. So that's the longer-  
14 term objective here we're trying to develop.

15 Q Thank you.

16 MR. GROUT: And Hugh, I wouldn't mind adding one point  
17 just related to the First Nation process and I  
18 don't think it's been made before. But the  
19 Integrated Harvest Planning Committee is not  
20 intended to be the body where negotiation of food,  
21 social and ceremonial fisheries occurs. What  
22 we're trying to do there is to improve the  
23 coordination of the different fishing plans. And  
24 to the extent that the First Nation participants  
25 can identify issues that may affect fishing plans  
26 for themselves and for others, that would --  
27 that's one of the intentions of the group. I have  
28 been talking with the -- the current  
29 representatives at the Integrated Harvest Planning  
30 Committee over the past year about ways we might  
31 improve the representation there. And we don't  
32 have a clear process laid out at this point. I  
33 think it's one of the topics that may be discussed  
34 at the First Nations Fisheries Council. But there  
35 -- there is an interest in making sure that  
36 there's active participation in the group and a  
37 recognition of the value of participation there.

38 Q Thank you. This is a general question but I hope  
39 -- I hope it's a helpful one. Could you describe,  
40 in general terms, some of the contributions that  
41 have been made by -- and I'll walk you through it,  
42 I guess, First Nations participants in the IHPC  
43 process in terms of changes to the IFMP or  
44 improvements to the management of Fraser River  
45 sockeye fisheries?

46 MR. ROSENBERGER: Well, I think there's been lots of  
47 improvements and changes and the IHPC is probably



1 not the key place where some of that's gone on.  
2 But from within First Nations fisheries and the  
3 IFMP development, the Integration Fisheries  
4 Management framework, you know, back before --  
5 around 1990/'92, each individual First Nations was  
6 licensed separately and pretty much to go fishing  
7 wherever they wanted to. The department, in  
8 working with First Nations groups, have developed  
9 what's referred to as often "band licensing" but  
10 it may be much larger than a given First Nation.  
11 It could be groups of First Nations. And those  
12 groups of First Nations have taken over the  
13 management, in this case, so it's a co-management  
14 process within a given area so they define who  
15 gets to be the participants, you know, what types  
16 of gear should be used, you know, when fisheries  
17 should be occurring, that kind of thing, so that  
18 they're -- they're the ones that are defining the  
19 management within that given area within, you  
20 know, an agreed-upon objective, which is, you  
21 know, potentially a number of fish or the number  
22 of fish in the communal license or a weekly  
23 expectation, things like that. And so it's -- you  
24 know, that's moved forward in joint data  
25 management collection so the catch monitoring  
26 programs.

27 In some cases, there has been at times joint  
28 enforcement programs. I'm much less familiar with  
29 those but in years gone by there was some. And  
30 then moving forward, so with -- with the processes  
31 we created this, what was for a while, a watershed  
32 agreement and so we're trying to expand into the  
33 broader form process. So getting more explicit  
34 input into escapement objectives, understanding  
35 their needs by some of the individual stocks and  
36 stock groupings and actions that we might want to  
37 take and collectively work towards. So it's --  
38 you know, it's fairly well developed now but  
39 there's lots more we would like to do here in  
40 moving forward and trying to get that as, you  
41 know, an established process.

42 Q I'd like to ask you the same question with respect  
43 to the other participants and the other sectors  
44 that participate in the IHPC process. So same  
45 question essentially with respect to the  
46 commercial sector, the CSAB. What contributions  
47 have they made through their input to improvements

1           in the management of Fraser River sockeye  
2           fisheries?

3       MR. ROSENBERGER: I'm somewhat -- you know, everybody's  
4       contributing to some of the same places but as you  
5       get into these processes, you get a much clearer  
6       understanding about, you know, individual group's  
7       objectives. So they've created a vision document,  
8       I believe, is the title for it but -- so getting a  
9       clear idea about, you know, their longer-term  
10      objectives so, again, they're inputting into  
11      escapement goals, objectives, harvest rates. And  
12      so how do they fit? And then also in our case  
13      within the maximum 5 percent commercial sport  
14      sharing arrangement that occurs so, you know, how  
15      do they see that occurring and, in this case, you  
16      know, they don't like we're closed, we're open,  
17      we're closed, we're open every other day that a  
18      commercial fishery might go through.

19           So you know, how do you ensure that you're  
20      trying to meet their, you know, opportunity type  
21      of objectives and less sometimes focused on a  
22      number. But if you're thinking you're going to  
23      bump up against a number, what can you do? So the  
24      interactions like -- you know, they -- helping to  
25      define. Should it be, you know, two-a-day limit  
26      or one-a-day limit or closed somewhere, those  
27      kinds of things? We've done a number of joint  
28      studies together. They've helped to define our --  
29      some of our released mortality studies that were  
30      -- were -- you know, we were using from another  
31      area that may not have been appropriate and, you  
32      know, they've given us advice on what they would  
33      like to see. So we work on some of that kind of  
34      stuff together so -- you know, I think it's  
35      overall improvement, you know, to be more  
36      selective, more -- you know, individual stock or  
37      -- or species orientated.

38      MR. GROUT: Maybe just to add, Hugh, to what Barry  
39      said, the groups are able to come to the IHPC and  
40      put on the table issues that I think are regional  
41      in nature and that affect potentially the fishing  
42      plans of others. We have seen the -- to give  
43      specific examples for Fraser sockeye, in 2006, the  
44      IHPC struck a subcommittee dealing with the  
45      appropriate management response for Cultus Lake  
46      sockeye. And so there we saw a development of the  
47      committee where each of the -- the groups from the

1 IHPC were represented to try and find a way  
2 forward to propose some options that would provide  
3 for the recovery of Cultus sockeye but also  
4 provide for fishing opportunities for -- for some  
5 of the various different groups. So that's --  
6 that's one example that we could maybe get into  
7 some more detail on.

8 The commercial and the recreational groups  
9 have also worked with each other in an allocation  
10 implementation committee, which is focused on how  
11 the allocation policy itself is operationalized.  
12 And one of the issues around sockeye, in  
13 particular, is the -- providing stable  
14 opportunities for the recreational fishery but  
15 recognizing that sockeye, pink and chum are the  
16 primary source of harvest for the commercial  
17 fishery. So the allocation policy refers to a 5  
18 percent cap on the recreational fishery over time.  
19 And certainly, in some recent years, the  
20 recreational fishery itself has been over on an  
21 individual year but not necessarily over time. So  
22 that's been one of the issues that the sectors  
23 themselves have worked closely on, on trying to  
24 figure out responses to specific issues.

25 MR. MacAULAY: Thank you. Mr. Commissioner, it's just  
26 past 12:15. I understand the plan was to take a  
27 break at 12:15. I'm in your hands.

28 THE COMMISSIONER: How much longer will you be, Mr.  
29 MacAulay?

30 MR. MacAULAY: I'll be quite a while yet, probably  
31 another half an hour or so.

32 THE COMMISSIONER: We'll take the break now then.

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

35 (PROCEEDINGS ADJOURNED)

36 (PROCEEDINGS RECONVENED)

37  
38 MR. MacAULAY: Mr. Commissioner, for the record again,  
39 Hugh MacAulay for the Government of Canada. I  
40 understand that counsel for the Government of  
41 British Columbia has a matter to raise with you,  
42 and I defer to her.

43 MS. CALLAN: Mr. Commissioner, Callan, C-a-l-l-a-n,  
44 initials T.E., appearing on behalf of Her Majesty  
45 The Queen in re the Province of British Columbia.  
46 An issue has arisen with respect to the

1 December 8, 2010 order that the province may need  
2 to seek clarification on in the next little while.  
3 We hope to be able to discuss it first with our  
4 friends and -- at the next all-counsel meeting -  
5 although I understand Mr. Blair won't be available  
6 so we might have to discuss alternative dates -  
7 and we'll try to seek some sort of agreement on  
8 the issue. However, it's likely that we might  
9 have to address it down the road in front of  
10 yourself.

11 This issue is in respect to the fish health  
12 database. We expect to be able to comply with  
13 that component of the order.

14 The issues arising with respect to the fish  
15 necropsy orders, so basically when a fish dies in  
16 the province and one of the veterinarians is  
17 interested in diagnosing what occurred to this  
18 particular fish, they send it to the Animal Health  
19 Centre, and we are going to be producing the  
20 electronic records. But there are some paper  
21 documents that form the basis of what ultimately  
22 becomes the electronic documents, and the Province  
23 would -- will likely be seeking clarification on  
24 whether those are included in the order.

25 THE COMMISSIONER: Thank you.

26 MR. BLAIR: Mr. Commissioner, just briefly, Alan Blair  
27 appearing for the B.C. Salmon Farmers'  
28 Association. I've had discussions with the  
29 provincial counsel as well as the federal counsel  
30 on the issue of our collective document production  
31 for today, and I understand what the issue is.  
32 The discussion can certainly go ahead on Tuesday  
33 in my absence. My junior will be here, and I've  
34 indicated what our position would be on the issue  
35 of clarification. So the discussion can go ahead  
36 on Tuesday in my absence.

37 A meaningful discussion amongst all of the  
38 counsel would have to occur on another day, but my  
39 assistant will be able to outline what our  
40 client's view is with respect to the clarification  
41 the province seeks.

42 THE COMMISSIONER: Thank you, Mr. Blair.

43 MR. BLAIR: Thank you.

44 MR. LEADEM: Sorry, Mr. MacAulay, if I just might --  
45 sorry, Mr. Commissioner, I don't want to take up  
46 valuable time from this hearing. I just want to  
47 go on record that I have had some discussions with

1 my colleagues from the Province, Mr. Prowse  
2 predominantly, who has indicated that they have  
3 found a realm of paper documents and requested  
4 that I take a position with respect to the  
5 production of those paper documents.

6 Reading your order for production of the  
7 records, it does not make a distinction between  
8 electronic records and paper records, so I took  
9 the position that the paper records ought to be  
10 produced as well in the interest of having as  
11 fulsome a record as we can.

12 I will raise this with other counsel at the  
13 meeting, but I think that relates to the issue  
14 that, at least insofar as I've been apprised of  
15 it, that relates to the issue with respect to the  
16 documents.

17 THE COMMISSIONER: Thank you.

18  
19 CROSS-EXAMINATION BY MR. MacAULAY, continuing:  
20

21 Q Mr. Grout and Mr. Rosenberger, before we broke I  
22 was asking you about contributions made through  
23 the IHPC process by the participant groups, and  
24 just for the sake of completeness - and it's  
25 important that we are complete on this - Mr.  
26 Grout, I think you alluded to the recreational  
27 sector in passing in some of your comments about  
28 contributions from the commercial sector.

29 But, to both of you, what contributions, in  
30 terms of improvements to the management of Fraser  
31 River sockeye fisheries have been made by the  
32 recreational sector through their representatives  
33 on the SFAB?

34 MR. GROUT: The SFAB has got a substantial consultation  
35 process for bringing in feedback from local  
36 committees up into the sub-regional or southern  
37 board and then into the main board of the SFAB.  
38 These views are brought forward to both the IHPC  
39 and also to the Fraser River Panel. So we would  
40 have input from the SFAB as part of the IHPC  
41 process from the SFAB.

42 Q And the same question in terms of input and  
43 changes, improvements that have been made to the  
44 management of Fraser River sockeye fisheries from  
45 MCC, the Marine Conservation Caucus representing  
46 environmental groups. Could you comment on that?

47 MR. GROUT: I think the MCC representatives at the IHPC

1 have been effective at bringing their views  
2 forward on the management of Fraser sockeye.  
3 They've asked for and received presentations on  
4 the implementation of the Wild Salmon Policy and  
5 have views that they're able to share with the  
6 other representatives at the Integrated Harvest  
7 Planning Committee.

8 The Department does also try and arrange a  
9 separate meeting with the group to go over the  
10 IFMP each year as well. So they're active  
11 participants at the IHPC process.

12 Q Thank you. So I'd like to turn now to, as I  
13 indicated in my introductory comments, to some  
14 questions touching on some DFO policies and  
15 initiatives and how they're reflected in -- or how  
16 they influence the management of Fraser River  
17 sockeye fisheries. These questions are going to  
18 be general and high level in keeping with the  
19 nature of your testimony.

20 The first topic area I'd like to ask you  
21 about is the Salmonid Enhancement Program, and  
22 there will be testimony at later hearings  
23 regarding enhancement generally speaking, but the  
24 Salmonid Enhancement Program, or SEP as it's often  
25 known, could you describe for Mr. Commissioner  
26 just in general terms what that's about and its  
27 relevance for Fraser sockeye?

28 MR. ROSENBERGER: The Salmonid Enhancement Program is  
29 rather large in B.C. in a lot of different places,  
30 but as far as sockeye is concerned, there is not a  
31 lot of enhancement around the sockeye/pink  
32 populations. The significant broader components  
33 are work that's been done on passage over the  
34 years, which is very significant, things of --  
35 like Hell's Gate fish ladders. So there's a  
36 number of different fish ladders in key  
37 constriction areas, passage problem areas along  
38 the Fraser and/or tributaries.

39 There's also four spawning channels that are  
40 active today. They're on relatively small systems  
41 -- or that's not the -- they're relatively small  
42 on the systems that they're on, so ones on the  
43 Dina, Weaver, the Quesnel and Gates Creek. There  
44 were a couple of other ones that we didn't find  
45 effective and so no longer use.

46 But the key thing on some enhancements in  
47 recent years has been the work on Cultus, so the

1 Cultus sockeye problem. Both the more traditional  
2 enhancement and, in the case of taking eggs and  
3 raising fry or smolts and releasing them, as well  
4 as during the period of very, very high pre-spawn  
5 and en route mortalities that we're up in the 90  
6 percent range. So this is some of the work that's  
7 occurred with the early migration timing.

8 We initiated a Captive Brood Program, and so  
9 we've held adults through their whole life history  
10 to be able to make sure that we maintained genetic  
11 diversity but also maintained the population. So  
12 in the case of Cultus, the Salmonid Enhancement  
13 Program has been a significant component of that  
14 rebuilding strategy.

15 Q Just picking up, Mr. Rosenberger, on Cultus  
16 sockeye, from a fisheries management perspective,  
17 why is rebuilding Cultus sockeye so important?

18 MR. ROSENBERGER: Well, it's a conservation unit so  
19 it's a distinct population, and the Wild Salmon  
20 Policy, as well as the overall objectives of the  
21 Department are trying to maintain maximum  
22 diversity and population size and structure, so  
23 it's important to have diversity of all  
24 populations, given climate changes or -- anything  
25 that's, you know, the fish need to adapt to,  
26 you're looking to try and have the maximum base.  
27 So every population has a degree of importance in  
28 that.

29 MR. GROUT: If I could --

30 A Mr. Grout?

31 MR. GROUT: -- on the points Barry was making about the  
32 Cultus sockeye recovery, our enhancement staff  
33 have worked very closely with, first, the recovery  
34 team and then the conservation team for Cultus  
35 sockeye. They've done a substantive amount of  
36 work in the release strategies of the sockeye that  
37 they've released into Cultus Lake.

38 So Barry alluded to the Captive Brood Stock  
39 Program which is eggs collected from adults and  
40 reared to adulthood entirely in the hatchery  
41 before their offspring are released, but there's  
42 also been an enhancement component as well, which  
43 are more conventional hatchery production where  
44 you release fry or smolts, and have done quite a  
45 bit of work on marking those juveniles that  
46 they've been releasing to assess what the  
47 appropriate release strategy should be.

1           So the initial thinking was that it was  
2           important to produce smolts, but more recent work  
3           has shown that you can get higher production by  
4           having a release strategy of fall fry, for  
5           example, going out into the Lake.

6           They've also worked closely on the recovery  
7           -- with the recovery team to try and maximize the  
8           genetic diversity of the population so they've  
9           done quite a bit of novel work around the matrix  
10          models used to ensure that they're not doing  
11          damage to the population in a genetic sense from  
12          the sorts of mating strategies that they're using  
13          in the hatchery as well. So it's been a very  
14          integrated part of the team's activities.

15        Q    Mr. Grout, I just want to pick up on something  
16           that you referred to in one of your earlier  
17           responses. I think you were referring to this.  
18           Could you describe the Cultus sockeye structure of  
19           decision-making process, or the structure of the  
20           decision-making process that was applied to Cultus  
21           sockeye, and perhaps as a preface to your  
22           response, for those of us who aren't familiar with  
23           structured decision-making processes, if you could  
24           just describe what that is and then how it was  
25           applied to Cultus.

26        MR. GROUT: Right. So I did refer to this in an  
27           example of the Integrated Harvest Planning  
28           Committee trying to work together on a common  
29           problem. So we had Cultus sockeye which was a  
30           stock of concern. It had been recently listed by  
31           COSEWIC as endangered, and the Department was  
32           working on developing recovery actions for this  
33           population.

34           There were strong divergent opinions at the  
35           Integrated Harvest Planning Committee about what  
36           level of harvest might be appropriate for the  
37           population from very low levels to -- with the  
38           Marine Conservation Caucus and some First Nations  
39           supporting up to much more substantial harvest  
40           which was a view that the Commercial Salmon  
41           Advisory Board had.

42           We embarked upon a structured decision-making  
43           process which is essentially -- and it was with  
44           the assistance of an external consulting group.  
45           It was a way to try and structure the interests of  
46           the parties and evaluate those using a rigorous  
47           framework. So there's a number of steps from



1 clearly outlining what the purpose was for the  
2 activities, the objectives you might use to assess  
3 it, then it moved into constructing alternative  
4 management actions or collections of actions that  
5 people thought would be important from different  
6 levels of harvest, but it also was able to look at  
7 activities in Cultus Lake, for example, removing  
8 predators or perhaps removing milfoil in the lake,  
9 and also the enhancement activities, and then  
10 using a model to assess the potential performance  
11 of those.

12 The process essentially tried to work down  
13 the options, taking into account uncertainties to  
14 see if the group could find some common ground.  
15 So they weren't able to get all the way to a final  
16 recommendation on what might be done, but they  
17 were able to identify elements of common ground  
18 which led to some further work between the  
19 Commercial Salmon Advisory Board and First Nations  
20 further out in the Fraser Valley.

21 Q Could you describe what DFO's objectives are in  
22 terms of rebuilding Cultus and whether or not  
23 they're being met?

24 MR. GROUT: The objectives for Cultus sockeye were  
25 originally developed by the recovery team that was  
26 put together under the auspices of the **Species At**  
27 **Risk Act**. When the Cultus sockeye were not listed  
28 under the **Act**, the work of the recovery team was  
29 picked up and summarized in a conservation  
30 strategy for Cultus sockeye.

31 There were a number of nested objectives for  
32 the population with two key objectives dealing  
33 with low abundance. One is to ensure the  
34 population has an average population size of about  
35 1,000 with no fewer than 500 in any given year.  
36 The second objective related to trying to grow the  
37 population over time, and we wanted to see  
38 generational growth in the population across four  
39 years. Certainly looking at the historical data  
40 for Cultus, when you've had three of the four  
41 cycle lines growing, the population has grown  
42 overall, so some indicators for that objective.

43 The third objective related to improving the  
44 classification of Cultus from endangered to a  
45 less-threatened category.

46 The group was not able to come to agreement  
47 on sort of a fourth-level objective which might be

1 a broader level of abundance for the population  
2 although the report that the group did, did lay  
3 out a number of different metrics you might look  
4 at to try and assess that.

5 Q Thank you.

6 MR. GROUT: In terms of performance of the population,  
7 2010 is an example where we looked -- given the  
8 much larger abundance of salmon returning this  
9 year, we did go back and look at the likelihood of  
10 meeting the recovery objectives, and in  
11 particular, recovery objective 1 and 2. Based on  
12 the scenarios we looked at, we thought that we  
13 could meet objectives 1 and 2, and in particular,  
14 we calculated how many effective spawners we  
15 thought we would need.

16 We looked at the pre-spawn mortality, so fish  
17 that had made it up to Cultus Lake but had  
18 survived to spawn in the recent decade. We  
19 determined how many fish we thought we needed to  
20 get to the Cultus Lake fence consistent with those  
21 recovery objectives. Based on that, there was a  
22 decision and a briefing of the Minister in season  
23 to provide some additional flexibility over the  
24 objectives that were laid out in the IFMP.

25 Q Thank you. Before we leave Cultus sockeye, I just  
26 would ask that the Harvest Management Policy and  
27 Practice Report, number 5 I guess it is, be  
28 brought up. If I could take you, Mr. Grout and  
29 Mr. Rosenberger to page 112. This is table 4, and  
30 specifically the column that provides the  
31 exploitation rate for Cultus sockeye from 2009 and  
32 years before.

33 My purpose in asking you this question is  
34 just really to flag that there's an issue here  
35 with respect to some of these calculations. Some  
36 of the numbers, as you'll note, are large. We  
37 will come back with other witnesses to delve into  
38 some of these numbers, but perhaps Mr.  
39 Rosenberger, could you just describe some of the  
40 issues around the calculation of the Cultus  
41 exploitation rate? These numbers, by the way,  
42 come from, as I understand it, from the PPR. They  
43 come from the Pacific Salmon Commission.

44 But if you could just describe sort of the  
45 issues around the calculations?

46 MR. ROSENBERGER: Well, there's two things for me. One  
47 is that the column furthest to the right under

1 "Cultus Percent", those are not the numbers that  
2 we use from the Pacific Salmon Commission data as  
3 far as Fraser Panel work or not provided by the  
4 Department, so there's an inconsistency of  
5 information I think being exchanged here.

6 On the -- specifically the sum of the data in  
7 2008 is an example I'd use. The 71 percent  
8 exploitation is not the exploitation rate, again,  
9 that the Pacific Panel -- the Pacific Salmon  
10 Commission datasets that I rely on and work, and  
11 our tech group relies on. I think the number is  
12 in a 14 percent range. The difference in this  
13 one, in some discussions with some of the people  
14 trying to understand, is that the fish that were  
15 harvested -- or, in this case, the Salmon  
16 Commission considered to be harvested were fish  
17 that were taken from the fence to those fish that  
18 return terminally as potential spawners and were  
19 used as part of the Salmonid Enhancement Program,  
20 so fish that were either taken for part of the  
21 captive brood or for part of the more normal  
22 hatchery operations were removed from the  
23 potential spawner counts and added to the harvest  
24 side of things. In low return years is why some  
25 of those numbers are higher.

26 There's also data problems in this  
27 calculation on this sheet in some of these years  
28 where the -- what we've described to some degree,  
29 and I'm sure others have, of the en route  
30 mortality, which is the difference between  
31 estimates that we calculate. In this case, the  
32 Cultus stock was calculated at the same time as  
33 Weaver, but they made a decision, as I understand  
34 it from the Salmon Commission staff, that there  
35 wasn't any -- that difference between estimates  
36 should be all accounted against Weaver and not  
37 against Cultus. So in this case, they've over-  
38 estimated the impacts to one population and under  
39 to another one.

40 But this is not the datasets that we use in  
41 the process within the Fraser Panel. We do have  
42 some data issues and getting -- and getting, you  
43 know, from preliminary numbers to near-final  
44 numbers to final numbers, you know, and the same  
45 in catch and escapement and whatnot. And then  
46 staff at the Salmon Commission have to apportion  
47 that across their datasets.

1           We have a working group within the Technical  
2 Committee to try to identify all these and to  
3 clarify them. Many of them are off by 10 and 15  
4 fish, which doesn't create significant  
5 differences, but in some cases there are. So we  
6 are looking to try clean that up.

7           But, as a whole, you know, a key is that  
8 there's Late run harvest that occurs within the  
9 Fraser River above Cultus, and so you would never  
10 expect to see - and it doesn't, in current  
11 practice - a Cultus exploitation rate higher than  
12 a Late run exploitation rate. So unless you're  
13 having a terminal fishery in anywhere that the  
14 numbers show up like that, probably there's a  
15 calculation issue. There needs to be some  
16 clarification of the data and what's included.

17           Another note I would make is that this  
18 structured decision-making process and the  
19 recovery team that Jeff noted, I spent  
20 considerable time trying to come to a best set of  
21 data for their purposes, and so that's also  
22 available through the -- they've made two reports,  
23 but the underlying datasets that they have -- so  
24 there's a number of places where we could provide  
25 other datasets that would be different than this  
26 one, but hopefully would provide clarity.

27 Q       Thank you, Mr. Rosenberger, and that's very  
28 helpful. As I say, we'll come back.

29           Mr. Grout, did you have something --

30 MR. GROUT: Maybe just to add a couple of observations  
31 to what Barry said. One thing you do see, the  
32 discrepancies aside that Barry's mentioned, is  
33 that in the recent decade, as part of the recovery  
34 activities for Cultus sockeye, we have made  
35 substantial reductions in the exploitation rates  
36 on that population.

37           It might be also useful to point out that in  
38 season when we're managing these stocks, we're  
39 using -- because Cultus sockeye are so  
40 infrequently sampled, given their low abundance in  
41 the fisheries, we are assessing the exploitation  
42 rate on Cultus using a proxy from the Late run  
43 group to do that.

44 Q       Thank you. I'd like to, as indicated earlier,  
45 seek your views on various DFO policies and  
46 initiatives and how they influence or are  
47 reflected in the management of Fraser River

1 sockeye fisheries. One is -- and I'd ask that  
2 Exhibit 266 be brought up -- DFO's policy for  
3 selective fishing in Canada's specific fisheries.  
4 If you could just describe in general terms what  
5 this policy is about and how it is implemented in  
6 terms of the management of Fraser River sockeye  
7 fisheries.

8 MR. GROUT: Well, maybe I'll start, and Barry might  
9 have something to add here. But the policy for  
10 selective fishing has guided our management around  
11 the fisheries. You'll see, similar to the Wild  
12 Salmon Policy, conservation is the top priority  
13 here in terms of the principles, and it's trying  
14 to move our fisheries to ways that can either  
15 avoid harvests of stocks of concern, either  
16 through time or area closures, or avoid them  
17 through uses of specific gear, or if, in cases  
18 where we can't do that, the fish can be released  
19 unharmed either at the water or before they're  
20 landed, or through techniques on the vessels  
21 themselves. It does indicate there'll be  
22 increasing movement to more selective fisheries  
23 and that can affect potential opportunities moving  
24 forward.

25 In terms of how we operationalize the policy,  
26 it's directly related to how we manage a number of  
27 our fisheries, especially for Fraser sockeye.  
28 We're keeping an -- or a sense of the potential  
29 bycatch implications on other stocks that are  
30 present when we're fishing for Fraser sockeye, so  
31 Coho, interior Fraser Coho is an example where  
32 we're making assessments of potential mortalities  
33 on those stocks in the fisheries that are directed  
34 at Fraser River sockeye

35 We're keeping a tabulation in the south coast  
36 of our overall management objective of three  
37 percent exploitation on Coho using a spreadsheet  
38 model that tracks release mortality rates and  
39 impacts on those stocks in the various different  
40 fisheries.

41 Q A very similar question regarding DFO's allocation  
42 policy for Pacific salmon, and that's already been  
43 marked as Exhibit 264, if we could just bring that  
44 up so people can remember what it looks like.  
45 Again, just if you could describe in very general  
46 terms that policy and how it's implemented in the  
47 management of Fraser sockeye fisheries.

1 MR. GROUT: This policy is a key document in how we  
2 manage our salmon resources and Fraser sockeye is  
3 no exception here. It outlines the key principles  
4 for how we're going to manage with conservation as  
5 the top priority.

6 After conservation, we've got First Nations  
7 harvest for food, social and ceremonials fisheries  
8 as having priority over all other uses. It  
9 acknowledges the common property nature of the  
10 resource, and then it speaks to the allocation for  
11 the recreational fishery which is a priority for  
12 Chinook and Coho relative to commercial fisheries.  
13 But for sockeye, pink and chum, it provides for  
14 stable access and there's, as we discussed earlier  
15 this morning, there's a cap on the recreational  
16 harvest of sockeye coast-wide of five percent over  
17 a multi-year time period.

18 The policy then recognizes commercial  
19 fisheries' priority for sockeye, pink and chum,  
20 given that, in the past, the majority of their  
21 harvest has been made up from those stocks. Just  
22 rounding that out, Coho and Chinook are provided  
23 when abundance permits.

24 Then finally, it also lays out how the  
25 allocations will be distributed between the  
26 different commercial gear types. So it's a very  
27 important element of how we manage Fraser sockeye.

28 Q Thank you. Some of the previous reviews and  
29 reports that have looked into Fraser sockeye  
30 issues have identified monitoring and reporting  
31 issues as areas where improvement could be made.  
32 Could you describe what efforts are being made by  
33 DFO to improve the monitoring of and reporting in  
34 Fraser sockeye fisheries?

35 MR. GROUT: Fishery monitoring and catch reporting is  
36 an important element of how we manage our  
37 fisheries. Obviously having good catch  
38 information is important as far as the assessment  
39 of where we're at relative to the total allowable  
40 catch in season. We've made a number of -- or a  
41 number of reforms to how we collect the  
42 information moving through time. We did release a  
43 policy paper for the commercial fishery around  
44 fishery monitoring and catch reporting.

45 The Department's continued to try and move  
46 towards enhanced accountability as part of the  
47 Pacific Integrated Commercial Fisheries

1 Initiative, and that's helped to support a number  
2 of elements in the various different fisheries.  
3 To give some examples, we've tried to provide  
4 alternative ways for providing harvest log  
5 information using electronic log books. We've  
6 also made improvements to the licence conditions  
7 to -- for example, in the past year, to have hail-  
8 in and hail-out provisions which requires the  
9 gillnet fleets now to announce when they're going  
10 out fishing, and also when they're done fishing  
11 which provides for some additional compliance  
12 auditing opportunities.

13 As we've moved into a number of more defined  
14 share fisheries, for example, some of our  
15 demonstration projects and economic opportunity  
16 fisheries for First Nations in the Lower Fraser,  
17 for example, we've implemented mandatory landing  
18 and dockside monitoring, verification of the  
19 catches relative to their harvest shares in those  
20 fisheries.

21 MS. BAKER: Mr. Commissioner, I just -- I know this is  
22 an important area, but I did want to flag that we  
23 are doing a section in the hearings on both  
24 commercial and recreational issues, including  
25 catch monitoring and changes, improvements, et  
26 cetera, in catch issues. So it's important to  
27 flag it, but I'm a little bit concerned that we  
28 don't go too far down that road because we will  
29 have a number of days dealing with that issue in  
30 quite a bit of detail.

31 MR. GROUT: Thanks.

32 MR. MacAULAY: Thank you, Ms. Baker, and I won't pursue  
33 that any further.

34 MR. GROUT: I just wanted to make one further point,  
35 and that's the Department is currently working on  
36 a catch monitoring framework document that I  
37 understand is being -- really shortly that we'll  
38 be seeking feedback from all our clients, and it  
39 sets out the catch monitoring principles that  
40 would be -- we would look to have them place  
41 across all fisheries.

42 MR. MacAULAY: Thank you, Mr. Grout. And I'm very  
43 mindful of Ms. Baker's very astute point that a  
44 lot of this is going to be the subject of further  
45 hearing, so I'm trying to keep it at a very high  
46 level, but I want to give Mr. Grout and Mr.  
47 Rosenberger, as two of DFO's more experienced

1 fisheries managers, an opportunity to at least  
2 provide an overview on some of these issues. But  
3 I'll be as brief as I can.

4 Q On that note, Mr. Grout and Mr. Rosenberger, other  
5 fisheries' models and terminal fisheries, just a  
6 couple of questions. First, could you describe  
7 why commercial fisheries on the coast of British  
8 Columbia are where they are?

9 MR. ROSENBERGER: A lot of that's historical. If you  
10 turn back the clock 300 years, or whatever it  
11 might be, most of the commercial fisheries were  
12 inland where they were providing -- they were fish  
13 that were being provided to fur-trading companies  
14 and new settlers or whatever into the various  
15 areas, so a lot of the harvest was occurring in  
16 rivers and various places.

17 But starting the mid-1800s, there were  
18 canneries and salting facilities being  
19 established, and most of those were near the  
20 mouths of rivers because they were trying to  
21 provide fish that was going to Europe or other  
22 places. So where they became established is where  
23 the majority of the fisheries were. So in that  
24 era, most of the fish was harvested near the mouth  
25 of the river near terminal areas.

26 Then, over time, as fleets developed and  
27 capacity and boats being able to move about the  
28 coast, not -- essentially industrialization, so  
29 having motors instead of relying on sails and  
30 being towed around and whatnot. Fleets began to  
31 be able to go out and seek out the fish instead of  
32 waiting for the fish to come back to a given  
33 location.

34 So where they were successful in that  
35 endeavour with different fisheries changed things,  
36 so you know, we've gone through primarily gillnets  
37 to traps at given times, to the troll, seine,  
38 gillnet that are the primary commercial fisheries  
39 today that have a high degree of mobility, you  
40 know, to where they're at.

41 So we're trying to move away from just some  
42 of that history at this point and trying to  
43 establish fisheries that are much more focused to  
44 these broader Wild Salmon Policy principles and  
45 sustainability, so that's why we're looking at  
46 trying to move some of these fisheries back into  
47 more terminal areas in recent years. With our



1 demonstration fisheries, at this stage, we're  
2 trying to make some of that kind of transition.

3 In a number of fisheries, particularly on the  
4 Fraser, some of the harvest in years recently, and  
5 some of the periods of review when there was  
6 significant harvesting and -- for example, of  
7 Gwaii Haanas and troll north coast, some seining  
8 north coast, Reynolds Sound, Purple Bluff -- which  
9 I'm not certain that that's just a local name, but  
10 it's in the central coast Bella Bella area, the  
11 west coast of Vancouver Island. Those fisheries  
12 often occurred at a time well in advance of much  
13 of the assessment fisheries testing done by the  
14 Pacific Salmon Commission or the Department.

15 Given the uncertainties in returns and the  
16 variability of returns in years, in the last 15,  
17 20 years, many of those fisheries are curtailed  
18 and in one case, we have a request from the  
19 Pacific Salmon Commission to not fish too far away  
20 from assessment points because of the added  
21 uncertainty that it's creating.

22 So we're trying to move the fish more  
23 terminally generally to try to be more confident  
24 in run sizes and be more -- make appropriate  
25 decisions.

26 Q This Commission has heard some testimony regarding  
27 what's known as Pacific Integrated Commercial  
28 Fisheries Initiative, or PICFI for short, and  
29 also, as I understand it, Pacific fisheries  
30 reform. Could you describe what each of those two  
31 initiatives --

32 MS. BAKER: Sorry. I know PICFI will be covered again  
33 in another topic coming up. I'm just -- I'm just  
34 a little bit concerned about how we could end up  
35 doing several weeks of hearings and what we only  
36 have is a couple of days.

37 MR. MacAULAY: I appreciate that, Ms. Baker, and I'll  
38 skip that question.

39 If I could ask that Exhibit 185 be brought  
40 up? This is a document that's titled "A Fishery  
41 Decision-Making Framework Incorporating the  
42 Precautionary Approach".

43 Q Mr. Grout, Mr. Rosenberger, are you familiar with  
44 this document?

45 MR. GROUT: Yes, I am.

46 Q Could you describe how it is influencing the  
47 management of Fraser sockeye fisheries?

1 MR. GROUT: Well, this document is a document that  
2 guides the management of fisheries in Canada. In  
3 terms of Pacific salmon, it does specifically  
4 reference the Wild Salmon Policy as the way we're  
5 going to implement the precautionary approach in  
6 salmon fisheries. Really, the intention is to  
7 take into account uncertainties and specify  
8 reference points that are going to be used in the  
9 management of the resource.

10 The Fraser Sockeye Spawning Initiative in  
11 particular is making use of harvest rules that  
12 have the similar elements to the rules laid out in  
13 the precautionary approach framework, in that  
14 we've got reference point below which we're going  
15 to have minimal fishing, some increasing total  
16 allowable mortality as the run size increases, but  
17 a cap after that on the total allowed mortality to  
18 account for uncertainties, among other things.

19 So the Wild Salmon Policy is intended to be  
20 the vector that's used to implement the  
21 precautionary approach for Pacific salmon.

22 Q Thank you. This Commission has heard testimony  
23 regarding DFO's shift towards ecosystem-based  
24 management. Could you describe how ecosystem-  
25 based management is being reflected in the  
26 management of Fraser sockeye fisheries?

27 MR. GROUT: Well, there's a number of elements in the  
28 management of Fraser River sockeye that have  
29 ecosystem components to them. In some of the  
30 other fisheries, the Department manages  
31 interaction between the fishery gear and other  
32 species are key considerations, and also with the  
33 habitat.

34 With our salmon gears, for the most part,  
35 we're not impacting on the habitat or the species  
36 for the most part. There are specific examples,  
37 for example, the Area B Seine fishery off the  
38 mouth of the Fraser where we're considering  
39 boundaries that ensure the bottom of the seine  
40 nets aren't interacting with the bottom and  
41 affecting other things, juveniles of some species  
42 and crabs, for example.

43 There's considerations around bycatch in our  
44 various fisheries. So those are species that are  
45 unintended to be caught in a fishery but may be  
46 caught during the fisheries themselves, so a  
47 number of measures around that.

1           The Wild Salmon Policy also speaks to the  
2           incorporation of ecosystem status indicators as  
3           part of the overall management framework as well.

4       MR. ROSENBERGER: I might just add that -- so it's  
5           trying to bring in obviously broader objectives  
6           and so things -- whether it's **SARA** species, if  
7           there became, you know, links and there hasn't  
8           been that much defined around sockeye, but Fraser  
9           Chinook and killer whales, for example, are an  
10          example within the Fraser, so how we take that  
11          into account and what we do -- but, you know,  
12          bringing all ocean aspects into this so the  
13          various juvenile life stages and food sources and,  
14          you know, those interrelationships are things that  
15          we're trying to understand better and are bringing  
16          to account for where we do have knowledge.

17       Q       Thank you.

18       MR. GROUT: Sorry, that reminded me of one other thing  
19          and that's an increasing focus on environmental  
20          variables that may assist with our management, so  
21          we've had an increasing focus on state of the  
22          oceans' reports summarizing the performance or  
23          effects on various species of various different  
24          climatic and ocean conditions.

25          The forecast papers for Fraser River sockeye  
26          have also, in the last couple of years, tried to  
27          see if there's helpful variables, environmental  
28          variables that might be used in the forecasting  
29          process, be they environmental conditions  
30          themselves or indices of plankton or productivity  
31          for example. We haven't had a lot of success so  
32          far on that, but it's one of the areas where  
33          there's been increasing focus.

34       MR. MacAULAY: My last few questions, Mr. Commissioner,  
35          relate to the Marine Stewardship Council  
36          Certification process, and I'd ask that document  
37          number 8 on Canada's list of documents be brought  
38          up and marked as an exhibit. I should add that  
39          this is a report in three volumes which are found  
40          at Tabs 8, 9 and 10 of Canada's list, and I would  
41          recommend that all three be marked as one exhibit,  
42          or three exhibits, whatever. I just think that,  
43          for the record, that it's important probably to  
44          have all three volumes of the report.

45       THE REGISTRAR: There's three separate documents, you  
46          said?

47       MR. MacAULAY: There are. All forming one report.

1 THE REGISTRAR: Right. It will be marked as 343, 343A,  
2 343B.  
3

4 EXHIBIT 343: Report B.C. Commercial Sockeye  
5 Salmon Fisheries, Public Certification  
6 Report, Volume 1  
7

8 EXHIBIT 343A: Report B.C. Commercial Sockeye  
9 Salmon Fisheries, Public Certification  
10 Report, Volume 2  
11

12 EXHIBIT 343B: Report B.C. Commercial Sockeye  
13 Salmon Fisheries, Public Certification  
14 Report, Volume 3  
15

16 MR. MacAULAY:

17 Q And if I could go to page 200 of the first volume,  
18 just to highlight the conclusion of the process  
19 and then I'll ask you, Mr. Grout and Mr.  
20 Rosenberger, to speak a little bit about the  
21 process and some of the parties involved.

22 But the conclusion -- and this is coming from  
23 the July 2010 MSC report with respect to British  
24 Columbia sockeye fisheries. The two paragraphs  
25 under the heading "Conclusion":  
26

27 The TAVEL certification assessment team  
28 concludes that all aspects of the MSC Fishery  
29 Certification Methodology procedures were  
30 followed, that four B.C. sockeye fisheries  
31 meet the requirements of the MSC principles  
32 and criteria as a well-managed and  
33 sustainable fishery.  
34

35 I'll just stop there. Fraser sockeye is one of  
36 the four assessed fisheries; is that correct?

37 MR. GROUT: That's correct.

38 Q And then there's a paragraph that follows that  
39 says -- which speaks to the objections and we'll  
40 -- I'll ask you a question about that in a minute,  
41 but:  
42

43 After completion of the objection period and  
44 Independent Adjudicator dismissal of the  
45 objections lodged by Watershed Watch Salmon  
46 Society, David Suzuki Foundation and  
47 SkeenaWild Conservation Trust, Moody Marine

1                   Limited has determined that the Fraser  
2                   sockeye fisheries will be certified in  
3                   accordance with the Marine Stewardship  
4                   Council Principles and Criteria for  
5                   Sustainable Fisheries.  
6

7                   Could you first describe just what the MSC is?

8       MR. GROUT: The MSC is an international process for  
9                   certification of the wild capture fisheries as  
10                  sustainable. They do that by applying a rigorous  
11                  framework, or scientific framework that looks at  
12                  their three key principles of sustainability, the  
13                  environmental impact of the fishery and the  
14                  management process, and criteria related to those.

15                  The MSC uses independent certifiers to assess  
16                  the fisheries against those criteria.

17       Q       And if I understand correctly, after the  
18                  assessment there were objections, and then an  
19                  adjudication; is that accurate?

20       MR. GROUT: Throughout the process, there are  
21                  opportunities for public input and comment on the  
22                  process itself, and it also lays out an objection  
23                  period at the end of the -- when the report is  
24                  produced as well, during which time the  
25                  independent adjudicator would have to evaluate any  
26                  objections that are made.

27       Q       There are references in the document to the  
28                  "client". Who is the client through this process?

29       MR. GROUT: Well, the client is laid out on the front  
30                  page here, and at the end of the process, it's the  
31                  Canadian Pacific Sustainable Fisheries Society,  
32                  which is essentially representing the commercial  
33                  salmon industry.

34       Q       What's DFO's role through this process?

35       MR. GROUT: DFO has had quite an essential role in the  
36                  process, primarily from the perspective that we're  
37                  the fisheries regulator. So the assessors -- the  
38                  assessment team worked quite closely with the  
39                  Department in assessing the criteria that they use  
40                  to assess the fishery.

41       MR. MacAULAY: Thank you, Mr. Commissioner. Those are  
42                  my questions.

43       MS. BAKER: Thank you. The next party is the province  
44                  with Mr. Tyzuk.  
45  
46  
47

1 CROSS-EXAMINATION BY MR. TYZUK:

2

3 Q Mr. Rosenberger, I just have one question. If we  
4 could get Exhibit 3 --

5 THE REGISTRAR: Name, please?

6 MR. TYZUK: Oh, sorry, Boris Tyzuk for the Province of  
7 British Columbia.

8 Q Mr. Rosenberger, if I could turn your mind to  
9 Exhibit 330, which is the Record of Management  
10 Strategies. If we could get that back up, that  
11 was the first exhibit for the day.

12 I just want to clarify something that you  
13 said. It's my -- you indicated that it was an  
14 internal document. It's my understanding from  
15 some sources that this may not be a public  
16 document, but then you indicated that it might be  
17 a public document but -- and then I have a  
18 question mark about whether it's been posted or  
19 not. So maybe you could explain this.

20 MR. ROSENBERGER: It's a good question. So the last  
21 few years, it has not been made public. It has  
22 been made public in some past years, and has been  
23 posted. In some of those years, there was two  
24 versions to -- there was some slight changes in  
25 some parts of it, so in the last few years, my  
26 understanding is that it's not posted and  
27 generally not made public, but we do hand out  
28 copies of it to some individuals upon request.

29 Q So a member of the public, if they wanted to,  
30 could request it from you and they would get it?

31 MR. ROSENBERGER: That's correct.

32 MR. TYZUK: Thank you. I have no further questions.

33 MS. BAKER: The Salmon Commission is not here, and the  
34 B.C. Public Service Alliance of Canada is not  
35 here. Rio Tinto, no questions. B.C. Salmon  
36 Farmers' Association, I don't think they're here  
37 anymore. Seafood Producers' Association is not  
38 here, Aquaculture Coalition is not here. So we  
39 move down the list to the Conservation Coalition,  
40 Mr. Leadem.

41

42 CROSS-EXAMINATION BY MR. LEADEM:

43

44 MR. LEADEM: Leadem, initial T., for the record,  
45 appearing as counsel on behalf of the Conservation  
46 Coalition.

47 Q Gentlemen, I want to begin our discussion with

1           respect to the planning that goes into the pre-  
2           season forecast. Mr. Grout, you've mentioned, and  
3           talked at length with respect to the Integrated  
4           Harvest Planning Committee, the IHPC. That's  
5           something that you chair, is it?

6       MR. GROUT: Yes. That committee has been chaired by  
7           the salmon team leader in past, in some years, but  
8           I've -- I'm currently chairing that committee,  
9           although there are stand-ins on occasion.

10       Q     All of the meetings that take place within that  
11           committee take place with respect to the pre-  
12           season planning; is that correct?

13       MR. GROUT: The committee has got a planning cycle with  
14           four primary meetings through the year. We meet  
15           as a main IHPC group with the north and south  
16           panels in November, which is a preliminary  
17           identification of post-season issues, and it's  
18           also where we provide the salmon outlook for the  
19           coming year.

20                 We do the formal post-season reviews with the  
21           north and south committees separately in December  
22           and January respectively for north and south.  
23           Then we have a meeting in March to review the  
24           first draft of the IFMP, Integrated Fisheries  
25           Management Plan, followed by a final meeting in  
26           May to review that plan. That committee does meet  
27           in season.

28       Q     That's my point. That in season, there's a hand-  
29           off to the Fraser River Panel where the decision-  
30           making takes place; is that right?

31       MR. GROUT: For Fraser sockeye, that's correct.

32       Q     Right. Now, you talked at length with respect to  
33           the components of the Integrated Harvest Planning  
34           Committee, and you mentioned, for example, that we  
35           saw from the document that your counsel showed  
36           you, that there were a number of sectors that are  
37           represented in that committee; is that right?

38       MR. GROUT: That's correct.

39       Q     My understanding is that part of the time there's  
40           separate meetings between Department of Fisheries  
41           and Oceans and the separate sectors; is that  
42           correct?

43       MR. GROUT: Yes. The IHPC is the meeting where the  
44           various sectors come together to discuss issues of  
45           overlap and potential coordination for fisheries  
46           and concerns, but we also have a substantial  
47           consultation process outside of the IHPC as well.

1 Q And those discussions, then, would be -- for  
2 example, you would have a separate meeting with  
3 the Commercial Salmon Advisory Board, and a  
4 separate meeting with the Sport Fisheries Advisory  
5 Board; is that correct?

6 MR. GROUT: Typically there are meetings with the  
7 Commercial Salmon Advisory Board and the Sport  
8 Fishing Advisory Board as well as First Nations  
9 outside of the IHPC.

10 In my experience, the IHPC, we've also met  
11 with the Marine Conservation Caucus on a more  
12 limited basis to review the IFMP.

13 Q Right. When you meet individually with those  
14 components of the sectors, do you ever take that  
15 information back to the plenary sessions so that  
16 everyone understands where everyone else is coming  
17 from, so to speak?

18 MR. GROUT: That's one of the things we -- we try and  
19 do there. We -- the Department can summarize  
20 points of view and perspectives that we've heard  
21 from the groups at these meetings, and the groups  
22 themselves may also bring up issues that they'd  
23 like to raise with the full committee.

24 Q Now, my understanding, with respect to the IFMP,  
25 the Integrated Fisheries Management Plan is that,  
26 as you suggested, there are two times when that  
27 actual plan is brought before the IHPC, one when  
28 it's in very rough draft form; is that right?

29 MR. GROUT: That's correct. In the past, we did not  
30 have the March meeting of the IHPC and there was  
31 some concern expressed that there wasn't enough  
32 opportunity for that committee to really have an  
33 effect on the final IFMP, so we added the March  
34 meeting as an opportunity to provide comments on  
35 the first draft.

36 Q And, at that first session, then, there will be  
37 input allowed from the various sectors in terms of  
38 the pre-season forecasting and the fishing plan  
39 that's going to be developed as you approach the  
40 in-season regime; is that correct?

41 MR. GROUT: That's correct. Typically, at the March  
42 meeting of the Integrated Harvest Planning  
43 Committee we'll have a plenary session with all of  
44 the representatives from both the north and the  
45 south. And we also go into a more focused session  
46 on south-specific issues and north-specific issues  
47 in separate break-out rooms as well.



1 Q Right. And then you mentioned that there might be  
2 then another iteration of the Integrated Fisheries  
3 Management Plan that will come back before the  
4 Integrated Harvest Planning Committee in May.

5 MR. GROUT: That's correct. So we -- prior to the  
6 March meeting, roughly a week ahead, we release  
7 draft one of the plan, and then approximately one  
8 week prior to the May meeting of the IHPC we  
9 release a second draft of the plan to the  
10 committee, and also post it on our consultation  
11 secretary, one page.

12 Q And then the -- as I understand it, the IFMP then  
13 goes from that point to the Minister for sign-off?

14 MR. GROUT: There's some steps in between where the  
15 Department will be assessing the feedback that  
16 we've got from the groups. We'll be meeting --  
17 we'd meet internally to address specific issues  
18 that have been raised and make final  
19 recommendations.

20 Then we would put together briefing material  
21 and a number of briefings. For me, particularly,  
22 I'd brief to the RDG level in the Pacific Region  
23 and then the final IFMP, as well as the briefing  
24 note would be submitted to the Minister for  
25 approval.

26 Q My understanding from reading some of the template  
27 documents and some of the material for the IFMP's  
28 is that great pains were taken to describe this as  
29 a non-binding non-legal document. Do you -- is  
30 that your understanding as well?

31 MR. GROUT: Well, the IFMP is intended to lay out the  
32 key guidelines and considerations that will be  
33 used in making decisions during a fishing season.  
34 It's given all of the variables that can change  
35 in-season. What we're trying to do is lay out  
36 rules that are robust to describe how we're going  
37 to react in those situations without saying -- we  
38 can't obviously prescribe specifically how we'll  
39 react to every single situation in the plan.

40 Q Right. But to the extent that it's binding or  
41 not, it would be your view that it's not  
42 necessarily binding. It's just -- it's something  
43 that's informative and instructional, but it's not  
44 necessarily binding in and of itself; is that  
45 fair?

46 MR. GROUT: Well, there's -- in cases where the  
47 Department has found itself in a situation where

1 the guidelines or the objectives laid out in the  
2 IFMP are inconsistent with the current set of  
3 information, and maybe the approaches that are  
4 proposed, we have taken the approach of -- for  
5 those substantive issues to go back and brief the  
6 Minister and seek approval for a different  
7 decision where appropriate.

8 Q Now my understanding with respect to this  
9 particular -- if we look at the 2009 example of  
10 the IFMP that that was in fact a document that --  
11 that went to the Minister, and we saw earlier in  
12 your testimony, I think from Monday, that the  
13 Minister signed off on that particular document.  
14 Is that correct?

15 MR. GROUT: That's -- yes, she signed off on the  
16 briefing note which was approving the use of that  
17 Integrated Fisheries Management Plan.

18 Q All right. And it's my recall -- and I'm not sure  
19 of the actual exhibit number. I believe if we can  
20 pull up Tab 24 from the documents from Commission  
21 counsel.

22 MR. LEADEM: I apologize, Mr. Commissioner, I'm not  
23 sure of the actual exhibit number.

24 MS. BAKER: I think it's Exhibit 326.

25 MR. LEADEM: Thank you. Actually that's not the one I  
26 had in mind.

27 MS. BAKER: 327.

28 MR. LEADEM: There's one that had an actual note on the  
29 front. That's the one. That's the one that was  
30 actually finalized, I believe, right?

31 Q There's a note on the front of it saying  
32 "approved/" -- it looks to be "routine" with "note  
33 for Minister". Then if you can turn to the last  
34 page of that, page 5, you'll see that there's two  
35 signatures there, one from the Deputy Minister,  
36 Ms. Dansereau, and then one from the Minister, Ms.  
37 Shea. Then there's a handwritten notation by Ms.  
38 Shea, indicating, "Need to ensure we maximize  
39 opportunities for commercial fisheries."

40 To the best of your knowledge, gentlemen,  
41 that handwritten note is there from the Minister  
42 herself; is that correct?

43 MR. GROUT: That's my understanding.

44 THE COMMISSIONER: Mr. Leadem, I apologize for  
45 interrupting.

46 MR. LEADEM: Yes.

47 THE COMMISSIONER: I note the time.

1 MR. LEADEM: Oh, yes.

2 THE COMMISSIONER: If this is a convenient place to  
3 interrupt your cross-examination...?

4 MR. LEADEM: Yes, we'll come back to -- I'll probably  
5 be some length at this, this particular topic.

6 THE COMMISSIONER: All right.

7 MR. LEADEM: I'm sorry, Mr. Commissioner, I forgot we  
8 were breaking at 1:30.

9 THE COMMISSIONER: No, no, no need to apologize.

10 That's fine. I just wanted to find out from Ms.  
11 Baker, I presume we'll carry on with this panel  
12 Monday morning; is that correct?

13 MS. BAKER: That's correct. We have this panel  
14 scheduled for Monday and in fact for Tuesday as  
15 well.

16 THE COMMISSIONER: Oh, I see. It would be helpful, if  
17 it's convenient for counsel, just -- I know she  
18 has asked before, but if you could just indicate  
19 to her your time estimates, at least for those who  
20 are here, to her before you leave. I think that  
21 would be helpful for our planning on Monday. We  
22 can revisit that on Monday morning, but that would  
23 give Ms. Baker an opportunity over the weekend to  
24 do some forward planning. Thank you very much.  
25 Have a nice weekend.

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

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(PROCEEDINGS ADJOURNED AT 1:29 P.M. TO  
JANUARY 24, 2011 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 Karen Hefferland  
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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  
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23 Karen Acaster  
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26 true and accurate transcript of the  
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28 apparatus, transcribed to the best of my  
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30 with applicable standards.  
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35 Diane Rochfort  
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