

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.

Tuesday, March 15, 2011

**Tenue à :**

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

le mardi 15 mars 2011

## APPEARANCES / COMPARUTIONS

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Boris Tyzuk, Q.C.	Province of British Columbia ("BCPROV")
No appearance	Pacific Salmon Commission ("PSC")
No appearance	B.C. Public Service Alliance of Canada Union of Environment Workers B.C. ("BCPSAC")
No appearance	Rio Tinto Alcan Inc. ("RTAI")
No appearance	B.C. Salmon Farmers Association ("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")

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Phil Eidsvik	Southern Area E Gillnetters Assn. B.C. Fisheries Survival Coalition ("SGAHC")
Christopher Harvey, Q.C.	West Coast Trollers Area G Association; United Fishermen and Allied Workers' Union ("TWCTUFA")
Keith Lowes	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF")
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 Crystal Reeves	First Nations Coalition; First Nations Fisheries Council; Aboriginal Caucus of the Fraser River; Aboriginal Fisheries Secretariat; Fraser Valley Aboriginal Fisheries Society; Northern Shuswap Tribal Council; Chehalis Indian Band; Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council; Upper Fraser Fisheries Conservation Alliance; Other Douglas Treaty First Nations who applied together (the Snuneymuxw, Tsartlip and Tsawout); Adams Lake Indian Band; Carrier Sekani Tribal Council; Council of Haida Nation ("FNC")
No appearance	Métis Nation British Columbia ("MNBC")

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No appearance	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
James Hickling	Laich-kwil-tach Treaty Society Chief Harold Sewid, Aboriginal Aquaculture Association ("LJHAH")
No appearance	Musgamagw Tsawataineuk Tribal Council ("MTTC")
Ming Song	Heiltsuk Tribal Council ("HTC")

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1 Vancouver, B.C. /Vancouver  
2 (C.-B.)  
3 March 15, 2011/le 15 mars 2011  
4

5 THE REGISTRAR: The hearing is now resumed.  
6

7 BILL DUNCAN, recalled.  
8

9 ROB MORLEY, recalled.  
10

11 KATHY SCARFO, recalled.  
12

13 THE COMMISSIONER: Mr. Martland.

14 MR. MARTLAND: Thank you. Mr. Commissioner, we're here  
15 today to complete the evidence on the Commercial  
16 Fishing hearings. There's two components. I'll  
17 just take a moment to outline them. The first  
18 component is the completion of cross-examination  
19 of what we've termed the second Commercial Fishing  
20 Perspective panel, and secondly we'll hear the  
21 evidence or receive the evidence and cross-  
22 examination of Lisa Mijacika today on commercial  
23 licensing.

24 For the panel, counsel have been very helpful  
25 in cooperating with our request for time limits  
26 and working under the time constraints we have.  
27 We had initially indicated we'd move to questions  
28 and answers provided in writing, rather than  
29 orally, and frankly people were not keen on that  
30 idea for the most part. So with one exception,  
31 we'll be proceeding in the usual fashion, and I  
32 expect within about an hour we'll be concluded  
33 with the evidence of the panel.

34 The exception is Mr. Rosenbloom, and his  
35 situation is that he had in fact prepared and  
36 submitted his questions, primarily for Mr. Duncan,  
37 although one for Mr. Morley, in advance of our  
38 decision and communication to participants that we  
39 had moved back to oral questions. We've advised  
40 participants. No one has expressed a difficulty  
41 with Mr. Rosenbloom proceeding with the questions  
42 and answers, and in the case of Mr. Duncan,  
43 counsel James Hickling has helpfully assisted in  
44 preparing the questions and answers.

45 So our first, our sequence, if you will, for  
46 the panel evidence is I expect Mr. Rosenbloom  
47 reading questions into the record, and then



1 confirming Mr. Duncan's answers, will be within  
2 about five minutes or less. Mr. Leadem for the  
3 Conservation Coalition is next, in the five- or  
4 ten-minute range. I have next Phil Eidsvik at 15  
5 minutes; Keith Lowes at five minutes; Brenda  
6 Gaertner at 15 minutes, and Chris Harvey possibly  
7 re-examining in the range of five minutes. He'll  
8 tell us obviously at that point.

9 So with that as our introduction for the day,  
10 Mr. Rosenbloom.

11 THE REGISTRAR: May I remind the panel that you are  
12 still under oath.

13 MR. ROSENBLOOM: Thank you very much. Don Rosenbloom,  
14 again representing Area D Gillnet, Area B Seiner.

15 Indeed, my learned friend is correct. I went  
16 by way of interrogatories for the last few  
17 questions that I had for this panel. Just for the  
18 record, I advanced three questions to Mr. Duncan  
19 through his counsel. I want to read into the  
20 record the questions and then Commission counsel  
21 will file the answers that have already been  
22 prepared by Mr. Duncan, and I will just confirm  
23 with Mr. Duncan that the answers are accurate to  
24 the best of his information.

25

26 CROSS-EXAMINATION BY MR. ROSENBLOOM, continuing:

27

28 Q I asked three questions of Mr. Duncan. Question  
29 1:

30

31 You provided the Commission on March the 1st  
32 in oral testimony with a brief history of the  
33 Native Brotherhood of B.C. Do you wish to  
34 elaborate further in writing?

35

36 Mr. Duncan responded to question number 1.

37 Mr. Duncan, you have looked at the responses  
38 as prepared by yourself with the assistance of  
39 counsel. That answer in question 1 is true and  
40 correct to the best of your knowledge?

41 MR. DUNCAN: That's correct.

42 Q Thank you. Question 2 that I advanced:

43

44 You testified at the same hearing on March  
45 the 1st, page 41, that as a result of the  
46 changes arising as a result of the Davis  
47 Report and the Mifflin Plan, there has been a

1                   diminished First Nation involvement in the  
2                   commercial fishery. You said:

3  
4                   Over the years, that participation has  
5                   declined. You can thank the Davis Plan  
6                   and more recently Mifflin. But the new  
7                   arrival on the scene has been DFO  
8                   through its programs. I mean, they've  
9                   always had the ATP program, and more  
10                  recently they're still in PICFI. But  
11                  there's also another player on DFO's  
12                  camp, and that's AAROM. And between  
13                  these three initiatives, they're buying  
14                  up a lot of licences.

15  
16                  I then asked:

17  
18                  Please expand on all aspects of your quota  
19                  testimony above, including the Davis and  
20                  Mifflin Plan and the programs referred to by  
21                  you following that period.

22  
23                  Again, Mr. Duncan provided a response to question  
24                  2.

25                  Mr. Duncan, you have reviewed the document  
26                  that has been provided to us of your responses.  
27                  Is the response to question number 2 true and  
28                  correct to the best of your knowledge?

29                  MR. DUNCAN: That's correct.

30                  Q     Thank you. I go to the third and last question  
31                  advanced to you. It read:

32  
33                  Provide information by way of personal  
34                  knowledge or through studies in your  
35                  possession, the extent to which First Nations  
36                  are involved in the commercial fishery and  
37                  the trickle-down effect into your  
38                  communities.

39  
40                  Again, Mr. Duncan, you provided a response to  
41                  question number 3. You have reviewed that  
42                  response. Is it true and correct to the best of  
43                  your knowledge.

44                  MR. DUNCAN: That's correct.

45                  Q     Right. I would ask that your responses 1 through  
46                  3 be filed as an exhibit to these proceedings.

47                  MR. DUNCAN: And I agree with that happening, please.

1 THE REGISTRAR: Exhibit number 577.  
2  
3 EXHIBIT 577: Bill Duncan, Answers to  
4 Questions from Don Rosenbloom, March 14, 2011  
5  
6 THE COMMISSIONER: Thank you. I just, Mr. Rosenbloom,  
7 just on page - they're not numbered - it's the  
8 second page in that portion that commences, "To  
9 provide a big picture". Do you have that in front  
10 of you by any chance? Do you have this...  
11 MR. ROSENBLUM: Yes, I do.  
12 THE COMMISSIONER: Yes. I'm not sure I've seen this  
13 term before. But in the last --  
14 MR. ROSENBLUM: Mr. Commissioner, would you mind  
15 bringing the mike a little closer if possible.  
16 THE COMMISSIONER: Oh, yes, I'm sorry.  
17 MR. ROSENBLUM: Sorry.  
18 THE COMMISSIONER: My apologies.  
19 MR. ROSENBLUM: No problem.  
20 THE COMMISSIONER: I'm sorry about that. Just on the  
21 second page. It's not numbered, but it's the  
22 second page, under "To provide a big picture",  
23 there's six dots.  
24 MR. ROSENBLUM: Yes.  
25 THE COMMISSIONER: The last what we call bullets, I  
26 guess.  
27 MR. ROSENBLUM: Yes.  
28 THE COMMISSIONER: There's a reference to "inshore  
29 putter fleet"?  
30 MR. ROSENBLUM: Yes. Well, there is, and are you  
31 wanting to ask the witness what that means?  
32 THE COMMISSIONER: That's what I was going to do, yes.  
33 MR. ROSENBLUM: Yes, I have no idea. Keep in mind  
34 these are not my responses.  
35 MR. MARTLAND: I was fully confident you would bluff,  
36 at least, Mr. Rosenbloom.  
37 MR. ROSENBLUM:  
38 Q Mr. Duncan, you have heard Commission counsel. I  
39 think you've got the document in front of you.  
40 Page 2, the last of the six bullets at the bottom  
41 of the page, "putter fleet". Can you explain what  
42 that is.  
43 MR. DUNCAN: Essentially what the putter fleet was, was  
44 that there was many fisheries, or many boats used,  
45 so they were a small fleet. They were basically  
46 skiffs and rowboats. And what they would do is  
47 they would fish and they would have someone else

1           deliver on their behalf, and then they would share  
2           the revenue that way. So it's just a collection  
3           of small skiffs and rowboats.

4       THE COMMISSIONER: Thank you.

5       MR. ROSENBLOOM: Thank you very much, Mr. Duncan. And  
6           again, then, I would ask that this document be  
7           marked as an exhibit.

8       THE COMMISSIONER: Yes.

9       THE REGISTRAR: That was marked as 577.

10      THE COMMISSIONER: 577, thank you.

11      MR. ROSENBLOOM: Thank you very much. Lastly, before I  
12           step down, I went by way of interrogatory with one  
13           last question to Mr. Morley. I am just going to  
14           read into the record the question. Mr. Morley has  
15           informed me that his Association is working in  
16           response to that question.

17      Q       My question to Mr. Morley was:

18

19                   On March the 1st you provided the Commission  
20                   at hearing with information regarding the  
21                   extent of First Nation involvement with  
22                   employment in your company. Can you kindly  
23                   provide the Commission with the same  
24                   information pertaining to the other companies  
25                   membered in the Seafood Producers  
26                   Association.

27

28                   Mr. Morley, you have received that question. I  
29                   gather you are pursuing it through your  
30                   Association; is that correct?

31      MR. MORLEY: That is correct.

32      Q       Thank you very much. And you would hope to have  
33           response to the Commission in approximately what,  
34           two weeks?

35      MR. MORLEY: Within two weeks, yes.

36      MR. ROSENBLOOM: Thank you very much. I have no  
37           further questions. Thank you.

38      THE COMMISSIONER: Thank you.

39      MR. MARTLAND: Thank you. And, Mr. Commissioner, with  
40           respect to that last point involving Mr. Morley,  
41           we'll follow up, we'll communicate with  
42           participants. I expect that may lead to an  
43           affidavit that provides the response that he has  
44           to Mr. Rosenbloom's question.

45                   There's one further point here, and I'll ask,  
46                   Mr. Lunn, with respect to the Heiltsuk's list of  
47                   documents, number 5 on that list of documents is

6  
PANEL NO. 22  
Re-exam by Mr. Martland  
Cross-exam by Mr. Leadem (CONSERV)

1 the Native Fishing Association Report on Native  
2 Involvement in Commercial Fisheries. Mr. Hickling  
3 drew this to my attention. It's referred to in  
4 Mr. Duncan's answer to Mr. Rosenbloom's question.  
5 I'd suggest that to be complete it should also be  
6 marked as an exhibit, please.

7 THE REGISTRAR: Exhibit 578.

8

9 RE-EXAMINATION BY MR. MARTLAND:

10

11 Q I should have first asked, but, Mr. Duncan, you'll  
12 recognize that as the document that you referred  
13 to in your answer; is that correct, sir?

14 MR. DUNCAN: That's correct.

15 MR. MARTLAND: Thank you.

16

17 EXHIBIT 578: Native Fishing Association  
18 Report on Native Involvement in Commercial  
19 Fisheries, April 2011

20

21 MR. MARTLAND: Next I have on the list Mr. Leadem.

22 MR. LEADEM: My name is Tim Leadem. I represent the  
23 Conservation Coalition. I apologize, I was not in  
24 attendance when you testified on March the 1st.  
25 My Junior Associate, Mr. Harrison was. He has  
26 seen fit to go off to Mexico and I have the  
27 greater pleasure of asking you questions here this  
28 morning.

29

30 CROSS-EXAMINATION BY MR. LEADEM:

31

32 Q I want to centre on questions to you, Mr. Morley,  
33 and you may recall from your discussion on March  
34 1st that you had a discussion with Mr. Boris  
35 Tyzuk, who represents the Province, concerning  
36 certification from the Marine Stewardship Council.  
37 Do you generally recall that evidence that you  
38 gave at that time?

39 MR. MORLEY: Yes, I do.

40 Q And I would suggest to you that the obtaining of  
41 the certification, the Marine Stewardship Council  
42 certification is of great benefit to the  
43 commercial fishing sector; is that correct?

44 MR. MORLEY: Yes, it is.

45 Q And the certification that was obtained is a  
46 conditional certification, is it not?

47

MR. MORLEY: Yes. As I mentioned in my testimony, it

1 is a custom in Marine Stewardship Council  
2 certifications that if you don't achieve a score  
3 of the 80 benchmark, and that you're somewhere  
4 between the 60 pass mark and the 80 benchmark,  
5 that you are required to bring your fishery up to  
6 a level that would justify the 80 score within the  
7 five-year certification period and that's done  
8 through imposing a number of conditions that need  
9 to be met.

10 Q Right. And I don't want to go through some of  
11 those conditions with you, but generally a lot of  
12 them relate to the Department of Fisheries and  
13 Oceans' obligation to implement the Wild Salmon  
14 Policy within a certain timetable; is that not  
15 correct?

16 MR. MORLEY: It's a number of elements in the Wild  
17 Salmon Policy, yes.

18 Q And there's a timetable set out for the  
19 implementation of those elements.

20 MR. MORLEY: There is an action plan that's attached to  
21 the certification that lays out a timetable for  
22 complying with each one of the conditions, yes.

23 MR. LEADEM: Right. Mr. Commissioner, I'm not going to  
24 go through this, in the interests of time, but I  
25 would refer you to my cross-examination of Jeff  
26 Grout earlier on, where I went through some of  
27 those conditions with respect to the  
28 implementation of the Wild Salmon Policy.

29 Q So as I understand it, then, Mr. Morley, in order  
30 to retain the MSC certification, it's necessary to  
31 go through this process and fulfill these  
32 conditions; is that not correct?

33 MR. MORLEY: That is correct.

34 Q And then I take it as a matter of logic, then, it  
35 would be of some benefit to the commercial fishing  
36 sector to have the Wild Salmon Policy be  
37 implemented because there is certain conditions  
38 that are attached to the certificate process, as  
39 well. Do I have that right?

40 MR. MORLEY: That's right.

41 Q And so I see this as an opportunity for  
42 environmentalists who are also concerned about the  
43 Wild Salmon Policy to cooperate with the  
44 commercial fishing sector to get the Wild Salmon  
45 Policy implemented. And certainly it's something  
46 that we have in common, would you agree with that?

47 MR. MORLEY: Yes, we have made great efforts to try to

1 work together. Once the environmental groups went  
2 through and exhausted their objections to the  
3 certification, I think they now realize that  
4 working together with us and trying to encourage  
5 DFO to do a better job is in both our interests,  
6 yes.

7 MR. LEADEM: All right, thank you. Those are my  
8 questions.

9 MR. MARTLAND: Mr. Eidsvik I have for 15 minutes.

10 MR. EIDSVIK: Good morning, Mr. Commissioner, Philip  
11 Eidsvik on behalf of the Area E and B.C. Fisheries  
12 Survival Coalition.

13 Mr. Lunn has probably been passed a number of  
14 documents that were passed around last week for  
15 all the parties. And if he could bring up the  
16 1984 New Policy for Canada's Pacific Salmon  
17 Fisheries.

18  
19 CROSS-EXAMINATION BY MR. EIDSVIK:  
20

21 Q While I'm doing that, perhaps I can ask a couple  
22 of questions of Ms. Scarfo. Ms. Scarfo, one of  
23 the issues that we've heard again and again  
24 through this Commission is the question of DFO  
25 spending, and that they have no money for science,  
26 they have no money for fisheries management. Do  
27 you have any comments on that?

28 MS. SCARFO: Yes, I guess I could comment on that,  
29 particularly post-*Larocque*, which I'm assuming  
30 you're familiar with, where the use of fish was no  
31 longer available to the Minister to fund programs  
32 and projects in the way that it had been done in  
33 the past. There's been a serious problem of  
34 finding funds to do basic science work. And I  
35 guess if you look at within the Department the  
36 budget cuts over the last number of years where  
37 you have staff basically sitting in the room that  
38 don't even have telephones or computers at  
39 sometimes. And basically the main projects that  
40 get funding are the ones that are in crises or are  
41 sexy, I guess is the best way to put it, because  
42 they have public viewpoints and are in central  
43 main Vancouver areas, whereas a lot of the other  
44 smaller ones get ignored.

45 And if you look at the allocation of not just  
46 resources, but personnel within the Department,  
47 you'll find that a lot of the personnel are busy

1 dealing with First Nations treaty issues and fish  
2 farms, aquaculture, which maybe should be under a  
3 different department, and allow the Department of  
4 Fisheries to get on with what is really their core  
5 mandate, which is fish and fisheries.

6 Q So you have problems of spending money -- the  
7 Department spending money to promote aquaculture,  
8 for example.

9 MS. SCARFO: Well, if you look at the jurisdiction over  
10 aquaculture, you kind of stop and wonder why it's  
11 actually under the Department of Fisheries. Or if  
12 you look at the amount of time that personnel  
13 spends in treaty negotiations, which maybe we'd be  
14 better off under Native Affairs (sic), which also  
15 leads to the complication of is DFO in a conflict  
16 of interest in a lot of their activities.

17 At this point under ATP, AAROM and PICFI, I  
18 think it would be safe to say that DFO is maybe  
19 one of the largest licence holders in British  
20 Columbia, in which case is it appropriate for the  
21 largest group, the largest licence holder also to  
22 be in control of allocation and management, and  
23 are their decisions really at arm's length from  
24 the process as they should be. And if they're not  
25 at arm's length, then how would you do that, would  
26 to be to remove the holding of those licences, the  
27 purchasing of those licences and put the  
28 management in DFO's hands, but remove their  
29 absolute control.

30 Q Thank you, Ms. Scarfo. The document we're looking  
31 at is obviously a June 1984 DFO document entitled  
32 "A New Policy for Canada's Pacific Salmon  
33 Fisheries". And if we go to the next page, Mr.  
34 Lunn, and the second paragraph. The Department  
35 again is dealing with a number of issues. It  
36 sounds awfully familiar to today. And the second  
37 paragraph, and I'll read it into the record:

38  
39 In response to these current difficulties,  
40 and to secure for the industry and the people  
41 in it a more stable and rewarding future, the  
42 Minister of Fisheries and Oceans is proposing  
43 a comprehensive package of legislation for  
44 the management and development of the Pacific  
45 salmon fisheries.

46  
47 And if we switch to the second page, we can see



1 DFO talks about stock rebuilding. On the third  
2 page they review some of the problems. And, Ms.  
3 Scarfo, I'm going to just target this with you.  
4 We can skip all the way to page 10, if you don't  
5 mind, Mr. Lunn. And it's the -- there we go. And  
6 the question that DFO responds to is:

7  
8 What will the relative allocations be to  
9 Indian, commercial and sport fishermen, and  
10 between gear types?  
11

12 Now, Ms. Scarfo, maybe you can quickly read that  
13 next paragraph and then tell me whether that's  
14 what's happened.

15 MS. SCARFO: Well, obviously, the defining of shares  
16 between the user groups hasn't really happened,  
17 particularly where it talks about the recreational  
18 fleet. I know in chinook/coho, for example, the  
19 allocation has more than tripled. Where it used  
20 to be a small percentage of the catch, it's now  
21 actually above and beyond the commercial catch.  
22 So there's been a significant increase without any  
23 compensation and without a defined share at this  
24 point, and no forum for that policy discussion on  
25 the defined share for the recreational fish.

26 The First Nations food fish, my understanding  
27 is the FSC fishery is defined to some degree and  
28 there is a mechanism for compensation. Whether or  
29 not that mechanism is appropriate or actually  
30 provides compensation is a separate issue.

31 Q And, Mr. Lunn, if you could turn to the 1998  
32 Promises, I think there's a document entitled  
33 that. And while I'm asking that, perhaps Mr.  
34 Duncan --

35 MR. MARTLAND: I wonder, sorry, I apologize for  
36 interrupting. I wonder, though, if no counsel  
37 raises an issue, this document's been put to the  
38 witness. I wonder if it might become an exhibit.

39 MR. EIDSVIK: Thank you, Mr. Martland.

40 THE REGISTRAR: Exhibit 579.

41  
42 EXHIBIT 579: A New Policy for Canada's  
43 Pacific Salmon Fisheries, June 1984, A  
44 Question and Answer Guide for Commercial  
45 Fishermen  
46  
47

1 MR. EIDSVIK:  
2 Q While Mr. Lunn brings that next document up.  
3 Perhaps, Mr. Duncan, if I can ask, in Alert Bay in  
4 1990 how many seiners? What kind of seine fleet  
5 did they have in Alert Bay in 1990?  
6 MR. DUNCAN: That I'm not 100 percent sure of, but I  
7 don't even want to guess. But I think there was  
8 still a good size fleet there.  
9 Q Fair to say that in Alert Bay salmon fishing,  
10 especially sockeye fishing for Fraser River salmon  
11 was a pretty big economic driver in the community,  
12 if not the biggest?  
13 MR. DUNCAN: That's correct, yeah.  
14 Q And what about today?  
15 MR. DUNCAN: Well, there isn't many boats left. So the  
16 reality is that it is not as important as it was  
17 in the past, but 2010 painted a different picture,  
18 so...  
19 Q Yes. Now, in terms of job opportunities, say  
20 comparing Vancouver to Alert Bay, a seine boat  
21 generally has a crew of five. Am I about right  
22 there?  
23 MR. DUNCAN: Yes.  
24 Q So if you take five jobs out of Alert Bay, in  
25 other words, if a seine boat disappears, what  
26 other alternative job opportunities are there in  
27 Alert Bay compared to, say, somebody living in  
28 Burnaby?  
29 MR. DUNCAN: Next to nothing.  
30 Q So it's a serious issue to lose a seiner or two  
31 out of Alert Bay?  
32 MR. DUNCAN: That's correct, yes.  
33 Q Thank you for that.  
34 MS. SCARFO: Can I just add to that?  
35 Q Yes.  
36 MS. SCARFO: Because we actually just talked about  
37 this. There was a report during the Mifflin Plan  
38 where there was a concern raised with the loss of  
39 First Nations licences, particularly at that point  
40 there was an affirmative action program within the  
41 First Nations where there was native-only licences  
42 that were being bought back in the government  
43 plan. So that in a community like Ahousaht, the  
44 drop in commercial licences was down to about  
45 approximately a third of what it had been prior to  
46 the Mifflin Plan, which we're now buying back and  
47 supposedly going to reissue.

1                   But there was a number of reports done and I  
2                   would point to the provincial government's Job  
3                   Protection Commissioner, and the Gislason Report,  
4                   which I think was called "Fishing for Answers",  
5                   which clearly demonstrated the significant  
6                   difference in a job loss in a coastal rural  
7                   community and the importance of that job to that  
8                   community and the infrastructure in that  
9                   community, as compared to a job loss in a more  
10                  urban community.

11                 Q     So when we're talking about the reserves on the  
12                   West Coast of Vancouver Island, there used to be a  
13                   fairly decent troll fleet and the impact on that  
14                   is a lot more than the reduction in the troll  
15                   fleet in Vancouver. Is that what you mean?

16                 MS. SCARFO: Yes. The fish access loss is significant.

17                 Q     Thank you. The next document is also excerpts  
18                   from various DFO documents, and I'd like to draw  
19                   your attention, Ms. Scarfo, to the first quote in  
20                   the column at the top, and I'm going to read this  
21                   into the record.

22                 MR. MARTLAND: If I might just do this, because I've  
23                   promised to warn the participants today at the  
24                   ten-minute mark I'd stand to let them know that  
25                   that's where we're at on questions. Thank you.

26                 MR. EIDSVIK: My time is up, is that what you're  
27                   telling me?

28                 MR. MARTLAND: No, 15 minutes is the time we're giving  
29                   over to these questions, so you're ten minutes  
30                   into 15 minutes.

31                 MR. EIDSVIK: Okay, thank you, Mr. Martland.

32                 Q     I'm not going to read this in, Ms. Scarfo. You've  
33                   probably had a quick view of it. This was one of  
34                   DFO's many commitments that we're going to reduce  
35                   the fleet, we're going to come up with a new plan  
36                   and everything is going to be better; is that fair  
37                   to say?

38                 MS. SCARFO: Yes, we've been reformed, remodelled,  
39                   revitalized, restructured and now we're going to  
40                   be renewed, I guess again, once again into ITQs,  
41                   which is another experiment that's going to  
42                   significantly improve everything.

43                 MR. EIDSVIK: And this is the 1999, I'd like to enter  
44                   this as an exhibit, please. Any objection from  
45                   counsel?

46                 THE REGISTRAR: Exhibit 580.

47

1  
2 EXHIBIT 580: Excerpts from DFO documents  
3 prepared by Phil Eidsvik  
4

5 MR. TIMBERG: Mr. Commissioner, I don't object to this  
6 question or to this exhibit going in. I just  
7 would like to note for the record that it's a  
8 series of excerpts created by Mr. Eidsvik, pulling  
9 from these various policies.

10 MR. EIDSVIK: Would it be useful, perhaps, then to  
11 submit the actual exhibits they come from at a  
12 later date?

13 MR. MARTLAND: Well, I think we've taken the flexible  
14 approach where we don't have people raising  
15 objections. I wonder if Mr. Eidsvik, though,  
16 could just confirm that that is indeed what this  
17 document is. It's something that he's prepared or  
18 his participant group has prepared, and it borrows  
19 from the different policies that are set out  
20 there.

21 MR. EIDSVIK: Yes, Mr. Commissioner. These excerpts  
22 are from documents that DFO provided and we  
23 prepared.

24 THE COMMISSIONER: Yes. I would appreciate it if you  
25 could put together a bibliography of those  
26 documents, and we'll attach that as 580A, if you  
27 could do that, Mr. Eidsvik.

28 MR. EIDSVIK: I'd be pleased to.

29 THE COMMISSIONER: Thank you.

30 MR. EIDSVIK: Thank you, Mr. Commissioner.

31 MR. MARTLAND: Thank you.

32 THE REGISTRAR: That will be marked as 580A, when  
33 received.

34 MR. EIDSVIK: Thank you.

35 Q The next document is an unusual document, Mr.  
36 Lunn, it's an Excel spreadsheet that was  
37 circulated a couple of weeks ago. And it's  
38 various colours. And I think it's almost the last  
39 document I'm going to have time in the limit I've  
40 got. And, Mr. Morley, perhaps you can help me on  
41 this, and I want to go back to 1992 for a minute.  
42 Do you remember a meeting in the Fisheries Council  
43 of B.C. in 1992 with Mr. Chamut, Mr. Art - I've  
44 forgotten his last name - when we were first  
45 notified of the fish that had gone missing on the  
46 Fraser River in 1992. And it was an evening  
47 meeting in your boardroom at Fisheries Council.

1 MR. MORLEY: I vaguely recall the meeting, but...

2 Q Do you recall Mr. Chamut and I've forgot the name  
3 of the second gentleman, explaining that a number  
4 of fish had gone missing. They weren't really  
5 sure what the problem was. Do you remember what  
6 you asked them at that point?

7 MR. MORLEY: You know, frankly I can't remember.  
8 Sorry.

9 Q Okay. You don't remember that Mr. Chamut  
10 suggested they either had miscounting at Mission  
11 or hot water temperatures had led to the shortage  
12 of fish, and your suggestion was that we've got to  
13 close the fisheries because we can't --

14 MR. MORLEY: I'm sorry, I don't recall the details.

15 Q Do you remember the Fisheries Council of B.C.  
16 seeking an injunction in court to have the  
17 fisheries closed?

18 MR. MORLEY: Yes, I do.

19 Q And after the filing of the injunction  
20 application, do you remember that the Minister,  
21 then John Crosbie, closed the fishery.

22 MR. MORLEY: Yes.

23 MR. EIDSVIK: Yes, thank you. Well, perhaps we can go,  
24 and we've talked a lot about missing fish and  
25 various fishing activities, and I've brought this  
26 chart up just to review very quickly, and I think  
27 we'll start at 2008.

28 MR. MARTLAND: Mr. Commissioner, I'm sorry to interrupt  
29 Mr. Eidsvik, but if you could just clarify the  
30 source of this information.

31 MR. EIDSVIK: And I'm not asking this to be submitted  
32 as an exhibit, Mr. Commissioner. I want to submit  
33 it as something for identification. It's all  
34 summaries of information taken from the Fraser  
35 Panel Reports and prepared by the Pacific Salmon  
36 Commission, and I submit it today because we don't  
37 have yet a document highlighting this information  
38 before the Commission. And I'd like to submit it,  
39 refer to it a couple of times, and then just  
40 submit it for identification. And if any other  
41 counsel has a problem with it at a later date,  
42 I'll deal with it that way. I don't know if  
43 that's suitable with you or not.

44 MR. MARTLAND: Well, I sense some hesitation on the  
45 part of some counsel in the room. If it's a  
46 question, this document has been put up and Mr.  
47 Eidsvik may have a question. We're almost out of

1 his time allocation, I'm afraid to say, as well.  
2 If that's the situation, perhaps we can defer the  
3 use of this document by having it marked for  
4 identification only, and we can pick up on that  
5 discussion offstage. I don't know if other  
6 counsel want to state an objection more strongly  
7 at this point.

8 MS. GAERTNER: I just don't know what these numbers  
9 are.

10 MR. MARTLAND: And I don't have a clear picture of the  
11 provenance, if Mr. Eidsvik has prepared this, but  
12 based on PSC information. I think we'd want to  
13 before relying on it substantively have any input  
14 from the PSC or from counsel who have dealt with  
15 that issue.

16 MR. EIDSVIK: Mr. Commissioner, I just want to comment  
17 on my frustration on this. As that we're 16  
18 months into the Commission and we don't have basic  
19 catch and escapement data, and the important  
20 Fraser Panel Reports on a year-to-year basis  
21 before the Commission so we can refer to catch and  
22 escapement, who caught what, what was caught, how  
23 many fish got on the spawning grounds. So this,  
24 my procedure here today is a bit unusual. I'm  
25 happy to sit down, but I do want to object to this  
26 information not being before the Commission at  
27 this point, because every single person I've  
28 cross-examined, it would have been handy to have  
29 this information. But I'll withdraw my exhibit  
30 and sit down.

31 THE COMMISSIONER: Well, Mr. Eidsvik, what I would  
32 respectfully suggest you do is you, if it's  
33 convenient for you, send a letter to Commission  
34 counsel, and if you haven't done so already, and  
35 specifically request the information that you are  
36 seeking with regard to the statistics or data that  
37 you would wish the Commission to collect.  
38 Commission counsel will take that under advisement  
39 and respond to you accordingly. I don't know what  
40 this document is or what the source of the  
41 information is, and so for that reason, I think  
42 it's problematic. But my suggestion, if you wish  
43 to follow it, is to send that letter to Commission  
44 counsel and express your frustration over data  
45 that you feel ought to be before the Commission  
46 and allow Commission counsel to respond to you  
47 accordingly.

1 MR. EIDSVIK: For the record, Mr. Commissioner, I have  
2 been raising this issue for I think probably close  
3 to six months now.

4 THE COMMISSIONER: Have you formally written to  
5 Commission counsel?

6 MR. EIDSVIK: Yes, I have.

7 THE COMMISSIONER: I see. Well, if that's the case,  
8 then I will ask Commission counsel to advise the  
9 Commission in due course as to what the response  
10 ought to be to your request.

11 MR. EIDSVIK: Thank you, Mr. Commissioner.

12 THE COMMISSIONER: Thank you.

13 MR. EIDSVIK: I could use more time, but I'm out of  
14 time, so I'll sit down today, thank you.

15 MR. MARTLAND: Thank you, Mr. Commissioner. I have Mr.  
16 Lowes next; five minutes.

17 MR. LOWES: It's J.K. Lowes for the B.C. Wildlife  
18 Federation and the B.C. Federation of Drift  
19 Fishers.

20

21 CROSS-EXAMINATION BY MR. LOWES:

22

23 Q Mr. Morley, from your perspective, what does it  
24 take to maintain a sustainable commercial fishery?

25 MR. MORLEY: Basically, in order to have a sustainable  
26 commercial fishery, you need to have participants  
27 involved in it all the way through the supply  
28 chain from fishermen through processors, people  
29 who transport the fish, and people who process and  
30 market the fish, being able to have a viable  
31 profit-making business that can afford to employ  
32 people and have consistent supply and make profits  
33 so they can reinvest in the capital needed to  
34 support the business.

35 Q And what, as a processor, commitments are  
36 necessary to be made before the salmon season  
37 begins?

38 MR. MORLEY: You need to purchase your supplies,  
39 inventory. Because salmon seasons are such short  
40 periods of time, you need to be prepared for a  
41 very intense period of several weeks in which that  
42 you put out your entire production for a year. So  
43 if you're in the canning industry, for example,  
44 you need to make orders and purchase cans. You  
45 need packaging materials and other kinds of  
46 things, as well, and you also need to arrange for  
47 working capital to finance the operation.

17

PANEL NO. 22

Cross-exam by Mr. Lowes (WFFDF)

Cross-exam by Ms. Gaertner (FNC)

1 Q And in an order of magnitude basis, what kind of  
2 financial commitments are we talking about?

3 MR. MORLEY: Well, in the case of our company, it's in  
4 the millions of dollars.

5 Q Thank you. I have no more questions. Oh, and one  
6 question: And those commitments need to be made  
7 on the basis of the pre-season forecast?

8 MR. MORLEY: Yes, that's correct.

9 MR. LOWES: Thank you.

10 MR. MARTLAND: Ms. Gaertner.

11 MS. GAERTNER: Good morning, Mr. Commissioner, Brenda  
12 Gaertner, for the First Nations Coalition, and  
13 with me Crystal Reeves. I have 15 minutes to ask  
14 questions and I am confident I will be finished  
15 within that time.

16

17 CROSS-EXAMINATION BY MS. GAERTNER:

18

19 Q I am going to ask a couple of questions on share-  
20 based management, and I'll make the distinction  
21 between shared-base management and ITQs, ITQs  
22 being one form of shared-base management. I am  
23 going to ask Mr. Morley one question about  
24 sustainable fisheries, and then, Mr. Duncan, I  
25 just have a couple of questions on some of the  
26 useful work that you brought to us on numbers and  
27 participation and the fishery of native fishermen  
28 in the commercial fisheries.

29 So starting with ITQs, are you familiar with  
30 the work that was done by the First Nations panel  
31 in response to the Pearse-Larkin which is the "Our  
32 Place at the Table". Are each of you as panel  
33 members familiar with that work? And are you  
34 familiar with the recommendations that were made  
35 as a result of that? It's Exhibit 493 if we need  
36 to bring it forward and I'll take you to anything  
37 if you need it. And in particular, the First  
38 Nations Panel on Fisheries in "Our Place at the  
39 Table" said this as it relates to the "Allocation  
40 Options" at page 3 of that document:

41

42 The Panel is not recommending a single  
43 approach to allocation because different  
44 allocation options may be more appropriate  
45 for different species or fisheries or First  
46 Nations. A variety of allocation options was  
47 considered for First Nations, including



1 community quotas, an exclusive fishing area,  
2 fishing using usual and accustomed means  
3 without a fixed allocation, a fixed quota,  
4 and a percentage share of the allowable catch  
5 for a stock.  
6

7 Do you see that on that document there? That's  
8 one of the recommendations that the panel came up  
9 with.

10 And turning over to page 4 of that document,  
11 there are two recommendations in particular that I  
12 want to draw your attention to. First of all,  
13 that the third one in the column that:  
14

15 First Nations themselves must address  
16 intertribal allocations.  
17

18 And finally:  
19

20 A moratorium be placed on the further  
21 introduction of individual property rights  
22 regimes such as Individual Fishing Quotas  
23 (IFQs) unless First Nation interests  
24 including allocations in those fisheries are  
25 first addressed.  
26

27 Having that in context, I want to ask you  
28 questions with respect to what I've heard from  
29 your panel and from other panels. There clearly  
30 seems to be a variety of interest and concerns  
31 within the commercial fleet alone regarding ITQs  
32 and share-based management, or share-based  
33 licences. Would you agree that a one shoe fits  
34 all approach is not advisable as it relates to  
35 share-based management and the introduction of  
36 ITQs in the commercial fleet alone?

37 MS. SCARFO: Was that directed at anyone in particular,  
38 or just to...

39 Q No, I'd like to hear from all of you.

40 MS. SCARFO: Absolutely there is no one size fits all  
41 or one model that fits all the fisheries. In  
42 fact, even if you look at the existing fisheries  
43 that have gone to even ITQs, there's an  
44 inconsistency in how the ITQs are developed. In  
45 most of the ITQ fisheries that exist, it's based  
46 on catch history. So far in the salmon fishery,  
47 it is not based on catch history. The ones that

1 have gone to that approach have been based on  
2 equal share amongst all existing licence holders,  
3 whether they've fished in the last decade or not,  
4 or whether they've fished salmon on that licence  
5 or not. So there's an inconsistency.

6 There's also different needs and different  
7 aspirations between different fleets, and I will  
8 be the first to say that the economic efficiency  
9 model that suits the seine fishery is definitely  
10 not the same model that will suit a troll fishery.  
11 There's a different model that will fit a fleet  
12 that's predominantly at the retirement age and  
13 wants just out of the industry and doesn't really  
14 see a future, and a fleet that in particular has a  
15 fairly large First Nations component, that  
16 believes that there is the possibility of a  
17 future. And that the economic efficiency model is  
18 not the best model, that there are other models  
19 that we can work within, within our region in  
20 particular, that have a defined share, a fleet  
21 quota or an area quota that we can then model to  
22 meet the region's aspirations rather than a  
23 different model that meets a more corporate or  
24 foreign ownership type of model.

25 Q Thank you. Mr. Duncan.

26 MR. DUNCAN: I agree with Kathy to a large extent. You  
27 know, I have made the statement that in the salmon  
28 fishery there is no record of catch history of  
29 individual fishermen. And the recommendations  
30 talked about in this report about different  
31 methods that I agree with, so...

32 Q Thank you. Mr. Morley.

33 MR. MORLEY: I think that the basic concept of share-  
34 based fisheries and a basic structure applies in  
35 the same way in all fisheries that are managed  
36 according to a TAC, total allowable catch, and  
37 where harvests change from year to year or from  
38 time to time, and that providing a system which  
39 provides all participants with a defined share, is  
40 the system that works, because it does in fact  
41 take away the, quote, race to catch the fish, that  
42 is wasteful for all participants and does from  
43 time to time cause management problems and  
44 conservation problems. And I think all the  
45 evidence would support that approach.

46 There are potentially fisheries that are more  
47 location based where the species may be sedentary,

1 and not moving around, where different kinds of  
2 systems of property rights can be shown to be a  
3 better system than a, quote, share-based system  
4 that identify a space. It might be a sedentary  
5 clam bed or something that requires some kind of  
6 husbandry that could be looked at in a different  
7 sort of geographically based property rights  
8 system. But for the most part, when we're talking  
9 about the fisheries, we're talking about a share-  
10 based system applies.

11 The real issue is in terms of differences is  
12 from fishery to fishery is really around the  
13 details of how you implement it in terms of the  
14 allocation of initial shares, for example. But  
15 the basic concept is one that applies in all  
16 situations.

17 Q Mr. Morley, I recall your first day of evidence in  
18 this inquiry and we spoke at that point in time of  
19 the benefits of flexibility. Would you also agree  
20 that as it relates to share-based management and  
21 share-based licences and Fraser River sockeye,  
22 that flexibility in the approach will be useful  
23 and therefore a one size fits all will not be  
24 useful?

25 MR. MORLEY: I think in order for commercial fisheries  
26 and businesses to work properly, that the business  
27 system needs to be a consistent and one size fits  
28 all, with the basic regulations, and structure of  
29 the competitive structure needs to be one that  
30 applies equally to all participants, so that, but  
31 I don't know --

32 Q So you're looking for something transparent and  
33 fair.

34 MR. MORLEY: No, I'm looking for something that the  
35 rules are the same for all commercial enterprises,  
36 because that's the basis on which our economy  
37 works properly. And if you make it different and  
38 create different rules for different people, that  
39 you are not in fact providing the best opportunity  
40 for the greatest economic benefit to all the  
41 participants.

42 Q All right. One more question on ITQs  
43 particularly. We've heard a number of times and  
44 bear with me, I can't remember if exactly it was  
45 this panel or panels with the Department of  
46 Fisheries and Oceans, or other panels of  
47 commercial representatives, but a number of times

1 we've heard that management of the fishery, in  
2 particular this Fraser River sockeye fishery,  
3 would be particularly improved, the management,  
4 and as it relates to monitoring. Would you agree  
5 with this observation, that ITQs are not a cause  
6 or not necessarily a vehicle for improved dockside  
7 monitoring programs, or other endeavours, but  
8 rather an incentive for commercial fisheries to do  
9 it. So it's not necessary to improve dockside  
10 monitoring programs and other endeavours to have  
11 ITQs. It's just the incentive that might  
12 encourage commercial fisheries to do that.

13 MR. MORLEY: I'd put it the other way around, that in  
14 fact because the major way in which fisheries are  
15 managed under a share-based or ITQ system is to  
16 provide each participant with a defined amount of  
17 harvest to take, that actually ensuring that they  
18 stay within that harvest is critical to the  
19 success of that system, and so it's to have  
20 ironclad catch information is really the most  
21 important management tool in that system. So if  
22 you don't have a system, whether it's dockside  
23 monitoring, or whether it's onboard monitoring,  
24 whatever, to ensure that people stay within their  
25 shares, then the system falls apart. So it's a  
26 requirement more so than an incentive.

27 Q But surely dockside monitoring and improved catch  
28 monitoring is not dependent on ITQs.

29 MR. MORLEY: No, I think that having better catch  
30 information is important regardless of what kind  
31 of management system you have. But it is integral  
32 to, since it is the key thing. If you're managing  
33 under a different system where as an Olympic-style  
34 fishery, and you are monitoring other aspects like  
35 escapement, it doesn't matter that if in fact  
36 people go catch too much fish, as long as -- and  
37 one user group gets more than another one, that in  
38 fact you still can measure the escapement and shut  
39 everybody down when you hit the escapement -- if  
40 you're not going to hit the escapement goal.

41 So to a certain extent accurate catch  
42 information is not as critical in those situations  
43 as it is in a situation where in fact that is the  
44 management tool, ensuring people take what they're  
45 allowed.

46 Q Does anybody else have anything briefly to add to  
47 this?

1 MS. SCARFO: Yeah, I wouldn't mind adding to that,  
2 because I think, well, there's a few things. The  
3 first thing I needed to go back to something you  
4 said, which was flexibility, and I would just be  
5 cautious with saying a word like "flexibility"  
6 without defining what that means. Because I've  
7 sat in DFO meetings where they've said "we need  
8 flexibility", where basically that means we need a  
9 blank cheque so that we're not accountable to  
10 anything. We don't need decision rules --

11 Q I was not suggesting that that's what I meant.

12 MS. SCARFO: I know. But as soon as I heard that term,  
13 obviously it sent a shiver down my back, because  
14 I've been there and done that and seen that, and  
15 seen what that really means is we're not  
16 accountable for our decisions any more. So I  
17 would say be careful to define what you mean by  
18 "flexibility" before talking about it.

19 There was comments about the race for fish,  
20 and I think when it comes to salmon fisheries  
21 where there is a very short window of opportunity,  
22 whether you're an ITQ or whether you're doing trip  
23 limits, or whether you're a derby competitive or a  
24 modified competitive fishery, there is a race for  
25 fish because the opportunity to catch those fish  
26 is extremely limited by not just the time that the  
27 fish are there, but the incidental catch on either  
28 side of those that would shut that fishery down.  
29 So an ITQ or anything else will not avoid or  
30 change the absolute nature of that fishery,  
31 because that is the nature of the beast.

32 Increased property rights, as talked about,  
33 including concern for First Nations, is the  
34 property rights around an ITQ seem to have some  
35 quasi further right than an ordinary licence does  
36 that hasn't been really proven anywhere in court.  
37 It is still an annual permit, and an ITQ does not  
38 give you any more certainty or stability than  
39 anything else, or a fleet quota does.

40 The issue around catch monitoring. An ITQ  
41 has to be monitored to the individual boat. But  
42 really, I haven't seen any report anywhere that  
43 has said that the issue around salmon is lack of  
44 monitoring, or that we're missing fish because of  
45 monitoring or that there's been a decline in fish  
46 because of a lack of monitoring. We've had report  
47 after report that has looked into missing fish,

1 and it hasn't been because of the catch data.  
2 When we look at what we're needing in our  
3 fisheries is really more scientific data  
4 collection of which we haven't got the funds to do  
5 in most cases because it's DNA sampling or scale  
6 sampling. Sorry.  
7 Q That's okay.  
8 MS. SCARFO: I'm trying to rush because I know you're  
9 limited in time.  
10 Q We're all rushing this morning. Thank you very  
11 much. I'm going to turn to a couple of questions,  
12 Mr. Duncan, I have for you. I'm wondering, Mr.  
13 Lunn, at Tab 16 of our documents for the  
14 commercial fisheries. if you could bring that  
15 forward, and I'll just ask Mr. Duncan a few  
16 questions as you're doing that.  
17 Mr. Duncan, you know Mr. Wood, Mr. Allen  
18 Wood.  
19 MR. DUNCAN: Yes, I do. Yes.  
20 Q And are you familiar with this document which he  
21 prepared in response to Michelle James' document  
22 on Native Participation in British Columbia  
23 Commercial Fisheries?  
24 MR. DUNCAN: I haven't really seen this, but...  
25 Q All right. I have given notice of this as a  
26 document that I wanted to have tabled as a  
27 supplement to the evidence that Commission counsel  
28 and the Crown has put forward. I'm wondering if I  
29 can have that, even though the witness is not  
30 aware of the document specifically.  
31 THE COMMISSIONER: I'm sorry, just so I know, who is  
32 the author of the document?  
33 MS. GAERTNER: Allen Wood.  
34 THE COMMISSIONER: Allen Wood. And does it have a  
35 title, Ms. Gaertner?  
36 MS. GAERTNER: "First Nations Now Get Less Than 6% of  
37 Landed Value of Catch" is all I have as the title  
38 for this document.  
39 THE COMMISSIONER: I'm sorry, is it a one-page  
40 document, or is it...  
41 MS. GAERTNER: No, you'll see the document is, I think,  
42 I believe five pages.  
43 THE COMMISSIONER: Okay. I'm sorry, Mr. Rosenbloom?  
44 MR. ROSENBLOOM: And, excuse me, could counsel indicate  
45 who Mr. Wood is and his background.  
46 MS. GAERTNER:  
47 Q Well, Mr. Duncan, I wonder if you could do that.

1           You know Mr. Wood.

2 MR. DUNCAN: Yes, I do. I used to work with Mr. Wood.  
3 He was the former Director of Policy and Planning  
4 at DFO, and since retirement he's now become an  
5 independent consultant.

6 Q Thank you, Mr. Duncan. And I'm doing this only  
7 not as a way of checking any of the numbers. I'm  
8 not sure whether I've got this. I just want to  
9 ask a few questions that Mr. Wood raises in this  
10 document and have you comment on them. First of  
11 all, a commercial licence can be fished by First  
12 Nations but not necessarily owned by that First  
13 Nations. It could be owned by a processing  
14 company or otherwise. You'd agree with that?

15 MR. DUNCAN: That's correct, yeah.

16 Q And there's a difference between individuals who  
17 are First Nations who have a commercial licence,  
18 and a First Nations communal fishing licence that  
19 could be held by a First Nations organization or a  
20 First Nations band, or otherwise.

21 MR. DUNCAN: That's correct, yeah.

22 Q And an individual First Nations person who has a  
23 licence as an individual has the same conditions  
24 and benefits of a regular commercial licence,  
25 although in some circumstances there may be a  
26 reduced fee; is that correct?

27 MR. DUNCAN: That's correct, yeah.

28 MR. MARTLAND: Mr. Commissioner, I'm just pointing out  
29 we're at the 15-minute mark.

30 MS. GAERTNER: I'm just about finished.

31 MR. MARTLAND: Thank you.

32 MS. GAERTNER: I would like this document tendered as  
33 an exhibit.

34 THE REGISTRAR: Exhibit 581.

35  
36           EXHIBIT 581: Allen Wood, "First Nations Now  
37           Get Less Than 6% of Landed Value of Catch",  
38           May 15, 2007  
39

40 MS. GAERTNER:

41 Q Mr. Morley, I have one question for you and then a  
42 final question for the panel. You're aware of  
43 various initiatives that First Nations and others  
44 are doing to explore the transition from the sort  
45 of, I'm going to use the monopoly, I don't mean  
46 that in a negative way, but the emphasis, I'll use  
47 that word, the emphasis of the commercial fishery

1 in the marine and encouraging commercial fisheries  
2 in the Lower Mainland and further up into the  
3 upland parts of the upriver. You're aware of  
4 those various efforts that have been made over the  
5 last while to implement that transition?

6 MR. MORLEY: I am aware of several demonstration  
7 fisheries that are undertaken, yes.

8 Q Do I take it from your evidence from March 1st  
9 that your industry, or the industry you represent,  
10 the company, is not interested in exploring and  
11 developing with First Nations upriver value added  
12 products and other local markets for commercial  
13 purposes? I took it from your evidence that you  
14 felt that those were unsustainable, and that so is  
15 it correct that you're not interested in pursuing  
16 those?

17 MR. MORLEY: No, that's not correct. We're interested  
18 in pursuing any businesses that can generate  
19 profit for our company. I was simply pointing out  
20 that in fact, and I think it's based partly on a  
21 study that was conducted by a Stuart Nelson, which  
22 is in Ringtail actually, it's CAN163001. And it  
23 is done for the Agri-Food Trade Services for  
24 Agriculture Canada entitled "Fraser River Sockeye  
25 Benchmark Study, A Business Perspective on Fraser  
26 Sockeye" done by Stuart Nelson and Nelson Bros.  
27 Fisheries.

28 In that document - I don't know if Mr. Lunn  
29 can pull it up - but in page 23 and 24 it really  
30 compares the potential value of fish in various  
31 parts of the Fraser River watershed, going from  
32 the ocean all the way up to terminal areas. And  
33 Mr. Nelson, having done extensive work in this  
34 area, really suggested that if you look at the  
35 kinds of returns that are potential to fishers,  
36 fishermen, that the potential, even though it's  
37 untested, and he said it was questionable exactly  
38 what volumes you could market from the upriver  
39 area, he suggested that it would generate after  
40 processing and distribution expenses somewhere in  
41 the range of 23 to 36 cents per pound to the  
42 fishers. And in the ocean fisheries that the in  
43 fact potential was to generate somewhere in the  
44 range of \$1.60 to \$2.30 a pound.

45 So the context of my remarks, looking at this  
46 kind of information, is that the potential income  
47 for fisheries within the river is probably one-



1 fifth of the potential income to fishermen in the  
2 ocean areas for any given pound of fish. And I  
3 also indicated that again with the fish that die  
4 on the way up the river, you probably have to send  
5 one of the half-pounds of fish up to be able  
6 commercially harvest one pound up the river. So  
7 there's already another 50 percent discount on  
8 what you can generate up there.

9 And on top of that, you are talking about  
10 fisheries, the more terminal, and the more they're  
11 dependent on a single population, which is what  
12 environmental groups seem to want us to move to,  
13 is the more variable the quantity is from year to  
14 year, and the more delicate it is to try to manage  
15 a business that has one big year in four years,  
16 one medium size years, and two years with nothing.  
17 And that is the context for my comments about what  
18 may or may not be a sustainable economic fishery.

19 Q Are you familiar with the River to Plate work  
20 that's being done in Chehalis?

21 MR. MORLEY: I am definitely familiar with that.

22 Q And you're familiar with the efforts that they're  
23 making to try to consider some of the issues that  
24 you're raising right now?

25 MR. MORLEY: I am. I mean, Chehalis is really not far  
26 from other lower river fisheries. We're not  
27 talking about the same kind of thing. We're  
28 talking about a different species, largely chum  
29 salmon. And certainly looking at the kinds of  
30 terminal fishery that are being proposed on  
31 sockeye salmon, it's a completely different  
32 animal.

33 Q In your opinion.

34 MR. MORLEY: Well, my opinion, and the opinion of  
35 people who have been involved in the commercial  
36 industry for 100 years that have been, that are  
37 marketing these products to customers in 22  
38 countries around the world, who have an extensive  
39 experience in handling fish from those kinds of  
40 fisheries, in Babine Lake, for example. We're  
41 completely accustomed to what we're dealing with  
42 here, and the potential is definitely not as much  
43 as it is with higher quality fish in ocean areas.  
44 The number of potential products you can develop,  
45 the kinds of markets that are available will not  
46 generate the same kind of returns.

47 MS. GAERTNER: Thank you. Those are my questions, Mr.

1 Commissioner.

2 MR. ROSENBLOOM: Mr. Commissioner, I would ask that the  
3 document referred to by Mr. Morley, authored by  
4 Mr. Nelson, Ringtail document 16301001 (sic) be  
5 marked as an exhibit. Thank you.

6 MS. GAERTNER: Mr. Commissioner, I'm curious about  
7 that. This is the first time a witness has raised  
8 a document that none of counsel has had notice of,  
9 and I have had no ability to review it. I'm  
10 sorry, Mr. Morley, if I had known, I would have  
11 been happy to do that and been able to engage in a  
12 dialogue with him about that, or had the  
13 opportunity to have my clients review it, more  
14 particularly, so...

15 THE COMMISSIONER: I would be content, Mr. Martland, if  
16 that could be marked for identification purposes,  
17 and that would permit counsel to discuss with  
18 Commission counsel whether questions could be  
19 asked of Mr. Morley in writing in response to his  
20 evidence with regard to that document. And so if  
21 we could have that marked.

22 And I've got a different number actually on  
23 my notes than what Mr. Rosenbloom just said. I  
24 had it as 163001, is it 1631001? 163001 is the  
25 document; is that correct?

26 MR. ROSENBLOOM: Mr. Morley, you gave it in testimony.  
27 What was the number you gave?

28 MR. MORLEY: The number I gave is 163001, which I  
29 believe is --

30 MR. ROSENBLOOM: Can you just put on your mike, please.

31 MR. MORLEY: Yes. The number I gave is 163001.

32 MR. MARTLAND: Thank you. We'll speak further with  
33 counsel about that. Mr. Harvey was seeking leave  
34 to re-examine for five minutes.

35 THE REGISTRAR: Is it to be marked?

36 THE COMMISSIONER: For identification purposes,  
37 whatever the next letter is.

38 THE REGISTRAR: Yes, that document will be marked as  
39 for identification letter U.

40 THE COMMISSIONER: Thank you.

41  
42 EXHIBIT U FOR IDENTIFICATION: Fraser River  
43 Sockeye Salmon Benchmark Study, A Business  
44 Perspective on Fraser Sockeye by Stuart  
45 Nelson, Nelson Bros. Fisheries Ltd.  
46

47 THE COMMISSIONER: Mr. Harvey.

1 MR. HARVEY: Yes, it's Chris Harvey for the Area G  
2 Trollers and UFAWU, a brief re-examination.  
3

4 CROSS-EXAMINATION BY MR. HARVEY, continuing:  
5

6 Q There was a question about the one size fits all  
7 concept and flexibility with the ITQ model. I  
8 want to ask Ms. Scarfo whether DFO has shown a  
9 willingness to recognize the flexibility that your  
10 sector has requested.

11 MS. SCARFO: When it comes to implementation of ITQs,  
12 the policy that DFO has told us they've been  
13 working to is the same as the use of fish policy,  
14 which was that you needed 67 percent of affected  
15 licence holders in favour of the use of fish for  
16 that kind of demonstration purpose. We haven't  
17 had that in our area. In fact, I don't think most  
18 of the fleet, maybe the same fleet, has had that  
19 kind of support. They have demonstration  
20 fisheries and implemented pilot ITQ fisheries  
21 within areas. The concern is that against our  
22 desires within our area, we are going to have this  
23 implemented upon us.

24 There is no partial implementation of an ITQ.  
25 I think somebody mentioned that the other day,  
26 couldn't we just have some of the guys go ITQ and  
27 the others not. You can't do that, because then  
28 you've got the licensed investors, who are not  
29 active fishermen, who have not gone out and taken  
30 the investment risk of going out on the water and  
31 put in the labour, actually receiving a large  
32 portion of the fish, when there may not be enough  
33 left then to go around for the rest of the fleet,  
34 because in many ways we self-adjust year-to-year,  
35 because we have variables each year.

36 If I have a tuna licence, a halibut licence  
37 and other fisheries that I might be able to  
38 prosecute, I may not go out on salmon that year  
39 because the run forecast pre-season is fairly  
40 marginal. So the fleet itself self-adjusts year  
41 to year. If I'm on a defined ITQ, then I already  
42 have a portion of that. I don't need to gear up  
43 and even participate in that fishery, and on the  
44 economic model that we've done, it basically shows  
45 that I could not participate in the fishery and  
46 end up making more money than somebody who  
47 actively participates in that fishery.

1           And the costs of an ITQ fishery, because you  
2 have to go to the higher level of monitoring, not  
3 for conservation purposes, not to stay within the  
4 overall fleet catch or quota, but because you want  
5 to make sure that the other guy didn't take your  
6 share. The costs of that type of monitoring so  
7 far have been exorbitant, particularly when we're  
8 looking at smaller and smaller amounts of fish.  
9 So most of the fisheries have had to go to cameras  
10 on board and more significant monitoring at the  
11 dock, mandatory unloading sites, which have been  
12 in the tunes of over \$10,000. And when you're  
13 looking at the profit margin on a lot of these low  
14 year fisheries, that would basically break the  
15 viability of anyone actively participating,  
16 whereas it wouldn't hurt anybody who's not  
17 actively participating.

18           So the flexibility to implement, we feel  
19 we're being pressured. We're being pressured  
20 either by (a) not being allowed to harvest fish  
21 when there are abundances like last year. A  
22 record return of Fraser River sockeye, and for the  
23 first time in history with that kind of level of  
24 return, the West Coast of Vancouver Island that  
25 has always had access to Fraser River sockeye was  
26 left tied to the dock. And the sense was that the  
27 pre-season forecast was set far too low. It  
28 wasn't set the way it traditionally was with a  
29 range of forecasts, because we always know that  
30 sockeye come back in a variety of ranges.

31           And therefore we were deliberately excluded  
32 because we will not go to ITQ in Area G, because  
33 the fleet feels that it is not the answer to the  
34 problems that have been posed. It does not  
35 provide us higher value for our product. It does  
36 not slow our fishery down. We've already  
37 demonstrated. We've done those things. And we  
38 have much more significant answers to selectivity  
39 than are being proposed by DFO through ITQs. It  
40 will actually add the pressure on the fishermen to  
41 go out and push the limits further than they would  
42 when they are fishing in the model that we are  
43 now.

44           So it does exactly the opposite. We have  
45 regulations for barbless hooks and everything else  
46 that we need to do the selectivity. We don't need  
47 to go to ITQ to achieve what it is DFO says we

1 should achieve. But we do feel that there is  
2 incredible pressure on us individually and as a  
3 fleet to go with a model that doesn't fit, and  
4 there's pressure from outside fleets to go to that  
5 model because they will reap the benefits of being  
6 able to just basically purchase or own licences  
7 within the area and make money renting to those of  
8 us that are still actively fishing within the  
9 area, which I have a boat that is actively  
10 fishing, so I can speak to the costs of fisheries.

11 That it doesn't provide us what we talk about  
12 within the region. It doesn't meet the needs of  
13 what our local communities or First Nations within  
14 the area have talked about, which is they use a  
15 different term than "putter fleet", they use the  
16 "mosquito fleet", which is in their aspirations  
17 that we're working towards also. And that in many  
18 ways we could see further erosion of adjacency of  
19 licences within that region, if we go to those  
20 kind of models.

21 So they don't suit the overall needs, or  
22 really a lot of the stated objectives that DFO  
23 has. It's in my mind, and in a lot of the fleet's  
24 mind a reaction, we found another solution, we're  
25 good at finding these wonderful solutions, we'll  
26 downsize, we'll area licence, we'll single gear  
27 licence. We've always said, you have the  
28 capability of modelling out what that fishery will  
29 look like in the future. We can do that. We've  
30 done it ourselves, and we say it doesn't work with  
31 that ITQ model the way it is, that it really is  
32 not the solution. And that we've done this time  
33 and time again. We've got great experience with  
34 the one size fits all solution.

35 Managing a troll fishery with small local  
36 First Nations communities on the West Coast of  
37 Vancouver Island that were not given land in their  
38 treaty settlements, that were given access to  
39 resources, that have watched that continually be  
40 eroded over the last 25, 35 years, that are  
41 watching phenomenal amounts of money go into PICFI  
42 and not really provide any security of access to  
43 them into the future. Because, as you know, those  
44 licences are not given to those communities.  
45 They're still held by DFO and issued if they feel  
46 like it on an annual basis. So there is no  
47 stability. There is nothing that provides that

1 security within those areas.

2 So there is still existing -- I'm actually  
3 surprised that ITQs keep coming up in the Cohen  
4 Inquiry as a solution. They do not slow down the  
5 fishery. In a sockeye fishery you only have a  
6 small window. They don't provide you better  
7 monitoring. The only monitoring they will provide  
8 will be because of the competition between the  
9 fishermen. They don't provide you selectivity.  
10 Those are all issued with your licence regulation.  
11 They don't provide stability or security of  
12 access. That's a licensing issue that is  
13 definitely attached to the privilege of an annual  
14 licence.

15 So I'm not quite sure why we keep hearing  
16 ITQs as the golden solution, but I am concerned  
17 that they're being sent out as, you know, grab  
18 onto this and it's the only solution that DFO  
19 sees.

20 MR. MARTLAND: Mr. Commissioner, I'll just point that  
21 we're past the five-minute mark. That was a very  
22 productive question, but we had indicated to  
23 counsel that we would be asking them to  
24 discontinue their questions, or perhaps seek leave  
25 from you for further time. Because we're so keen  
26 on completing the commercial fishing evidence, I  
27 appreciate this leaves almost everyone with  
28 further questions that they would wish to ask. I  
29 don't know if Mr. Harvey has any further point  
30 that he wished to cover?

31 MR. HARVEY: No, I have no further questions.

32 MR. MARTLAND: And I do appreciate that.

33 Now, having said that, Ms. Gaertner raised  
34 with me, and it's in the nature of a correction of  
35 evidence or clarification of evidence, given Mr.  
36 Lunn has a transcript from the last occasion, and  
37 if it's agreeable, there is one question just to  
38 correct or clarify one part of the evidence I  
39 think may be helpful, and I would support her  
40 asking that question.

41 MS. GAERTNER: Thank you, Mr. Martland and Mr.  
42 Commissioner. It's very brief.

43  
44 CROSS-EXAMINATION BY MS. GAERTNER, continuing:

45  
46 Q Mr. Duncan, when you gave evidence on March 1st,  
47 2011, the transcript is there, and at page 62 and

1           63 you were referring to Michelle James' work, and  
2           is it correct that the percentages that you relied  
3           on in your evidence are the percentages reflected  
4           in Michelle James' work, and they do not  
5           differentiate between individual First Nations  
6           fishermen and communal licence holders.

7       MR. DUNCAN: We, at least I, assisted in some of this  
8           work, and communal licences are not necessarily a  
9           part of this equation. These would be licences,  
10          full fee licences held by native people and the  
11          reduced fee licences, so...

12       MS. GAERTNER: Thank you, that's helpful.

13       MR. EIDSVIK: Mr. Commissioner, one last item. If my  
14          comments were intended or taken to disparage  
15          Commission counsel for their work in trying to  
16          bring this evidence about catch size and  
17          escapement, that was not intended, and we have  
18          been working and will continue to work to try and  
19          get that before you in a suitable manner.

20                When I closed I had two documents to submit  
21          as exhibits that arose from the previous  
22          appearance of the Commission panel, and I'd like  
23          to get them submitted as exhibits right now. The  
24          first one is "Ignoring Market Failure in Quota  
25          Leasing?" Perhaps Mr. Lunn, if you still have my  
26          stick there, you could bring them up. This was  
27          sent around a couple of weeks ago by Mr. Harvey,  
28          and the second one is "Abdicating Responsibility:  
29          The Deceits of Fishery Policy" by Daniel Bromley,  
30          those two documents I'd like to submit as exhibits  
31          and have them marked.

32       MR. LUNN: I'm sorry, the first document, do you have a  
33          tab number which Mr. Harvey used in his list of  
34          documents? That would assist.

35       MR. MARTLAND: Can I suggest, Mr. Commissioner, that we  
36          have a discussion amongst counsel on this issue  
37          and that may be more productive than using hearing  
38          time. I'm not saying no, but rather that we just  
39          defer this and allow other counsel to understand  
40          what the documents are. And if that's -- and I  
41          don't see anything, I don't take it from Mr.  
42          Eidsvik's suggestion, that there's a particular  
43          question he needs to ask of these --

44       MR. EIDSVIK: No.

45       MR. MARTLAND: -- panel members before they're  
46          dismissed.

47       MR. EIDSVIK: That's correct, Mr. Commissioner.

33  
Lisa Mijacika  
In chief by Mr. Martland

1 THE COMMISSIONER: All right.

2 MR. EIDSVIK: Thank you, Mr. Martland.

3 MR. MARTLAND: Thank you. Mr. commissioner, I'm in  
4 your hands with respect to a morning break. We  
5 started earlier today. The hearing, I'm prepared  
6 to commence with the direct examination.

7 THE COMMISSIONER: Yes, please do.

8 MR. MARTLAND: Thank you. So on that note this panel  
9 is now concluded.

10 THE COMMISSIONER: I want to express my appreciation  
11 once again, Ms. Scarfo, Mr. Duncan, Mr. Morley,  
12 for being so gracious to accommodate the request  
13 of this Commission to return this morning. I know  
14 it takes time out of your busy lives and I'm  
15 extremely grateful that you were willing to do so,  
16 so thank you very much again.

17 MR. MARTLAND: Thank you. Mr. Commissioner, the next  
18 witness and the last witness on the Commercial  
19 Fishing hearings is Lisa Mijacika, and she is  
20 present now.

21 THE COMMISSIONER: Just take five? We'll just stand  
22 down for five minutes to get this organized.  
23 Thank you.

24 MR. MARTLAND: Thank you.

25 THE REGISTRAR: The hearing will now stand down for  
26 five minutes.

27

28 (PROCEEDINGS ADJOURNED FOR BRIEF RECESS)

29 (PROCEEDINGS RECONVENED)

30

31 THE REGISTRAR: The hearing is now resumed.

32 MR. MARTLAND: Thank you, Mr. Commissioner. The next  
33 witness is Lisa Mijacika, if she could be  
34 affirmed, please.

35

36 LISA MIJACIKA, affirmed.

37

38 THE REGISTRAR: Would you state your name, please?

39 A My name is Lisa Ann Mijacika.

40 THE REGISTRAR: Thank you. Counsel?

41 MR. MARTLAND: Thank you.

42

43 EXAMINATION IN CHIEF BY MR. MARTLAND:

44

45 Q Ms. Mijacika, I'll ask Mr. Lunn to pull up number  
46 52 from the exhibit list that Commission counsel  
47 circulated. This indeed is a substituted



34  
Lisa Mijacika  
In chief by Mr. Martland

1 document, or a redacted document. Ms. Mijacika,  
2 you recognize that as being your resumé or c.v.;  
3 is that right?

4 A Yes, I do.

5 MR. MARTLAND: I'd ask that be marked as an exhibit,  
6 please.

7 THE REGISTRAR: Exhibit 582.

8 MR. MARTLAND: Thank you.

9

10 EXHIBIT 582: Resumé of Lisa Mijacika

11

12 MR. MARTLAND:

13 Q And I'll do my best to summarize your background,  
14 and I'll ask a long question, but please correct  
15 anything I have wrong.

16 In brief, I understand that you have been  
17 with the DFO since 1990. By way of background,  
18 you have a sociology degree from UBC, that you  
19 work primarily with the DFO, first of all as a  
20 program analyst supporting the licensing policy  
21 and program development, and that in your time  
22 there you've worked in a number of different  
23 positions, and with relevance to commercial  
24 licensing, that includes serving as the  
25 Department's liaison officer for the Pacific  
26 Region Licence Appeal Board, or PRLAB from the  
27 period of 1992 to 2000; is that correct?

28 A Yes, that's an accurate reflection of my  
29 background.

30 Q Furthermore, as Program Implementation Officer for  
31 the Pacific Fisheries Adjustment and Restructuring  
32 Program in the period of 1998 to '99, as Acting  
33 Chief of the Pacific Fishery Licensing Unit in  
34 2001, 2002, and most recently in the range of 2009  
35 to 2010, Acting Manager of Business and Client  
36 Services.

37 A Correct.

38 Q And what is your current position, please?

39 A My current position is Resource Manager of  
40 Pelagics.

41 Q Thank you. In terms of the handling of -- in  
42 terms of how the Department handles commercial  
43 licensing, which will be the focus of my questions  
44 today, and everyone's I expect, I take it that the  
45 licensing is handled within the Pacific Fishery  
46 Licence Unit, and specifically the Business and  
47 Client Services Branch.

March 15, 2011

1 A Yes. The Pacific Fishery Licence Unit reports  
2 through Business and Client Services, and we have  
3 three offices: one in Vancouver, one in Nanaimo  
4 and one in Prince Rupert.

5 Q And the branch that I was referring to itself is  
6 within Fisheries and Aquaculture Management?

7 A Yes.

8 Q Thank you. Rather than asking you to provide an  
9 introductory lecture, or "licensing 101" type of  
10 presentation, what I'll do my best in my questions  
11 to do is presume that we have some understanding  
12 of licensing through the Policy and Practice  
13 Report or PPR. That document is part of the  
14 record here. It's been made an exhibit in these  
15 proceedings.

16 So what I'll be trying to do is take you to  
17 some specific points. Having said that, what I  
18 would like to do at the outset is ask a few more  
19 general types of questions.

20 First of all, it is said that salmon -- that  
21 the commercial salmon fishery is a limited entry  
22 fishery. Could you explain how that is the case,  
23 and how licensing puts that into effect?

24 A Licence limitation was introduced in the  
25 commercial salmon fishery in 1969. What that  
26 meant is the Department limited the number of  
27 licences and participants in the fishery by  
28 implementing of eligibility criteria that the  
29 vessels had to meet in order to be eligible for  
30 issuance of a licence. I believe there was 5,870  
31 licences eligible at the time.

32 What the Department would have done is  
33 required interested participants or vessels to  
34 apply for the licence, would review the  
35 applications on the basis of the eligibility  
36 criteria, and then inform those that were eligible  
37 and those that were ineligible for meeting that  
38 criteria, and accordingly afterwards we issued  
39 category A salmon licences and B licences to  
40 eligible vessels.

41 Q In terms of just the layperson's understanding of  
42 it, unlike, one supposes, a driver's licence or,  
43 for that matter, a recreational fishing licence  
44 where a person can walk up and apply and  
45 presumably receive, if they're entitled to it,  
46 they could receive that licence.

47 Commercial fishing licences are not -- their

- 1 new licences aren't simply created or issued on  
2 application. Rather, it's a question of renewing  
3 licences to the vessels that have previously had  
4 them; is that correct?
- 5 A Yes. There's a record of all the eligible vessels  
6 and the licences that they hold in their licensing  
7 system. So we would keep track of all of the  
8 vessels, all of the fishermen, all of the data  
9 with respect to those vessels and fishermen, and  
10 which eligibilities they hold, including salmon,  
11 and assign a number specific to each one of those  
12 licences.
- 13 Q And if I were a commercial fishing vessel owner  
14 and fisher, and were looking to continue salmon  
15 fishing - let's assume I have a commercial salmon  
16 fishing licence and I'm looking to continue that -  
17 I take it that on an annual basis I would have to  
18 apply for renewal of my licence.
- 19 A Yes. There's a requirement for in order to  
20 maintain eligibility for the licence, you have to  
21 apply annually and submit the required licence fee  
22 for issuance of the licence. With salmon, the  
23 licensing year is April 1 to March 31st, so the  
24 requirement would need to be met by March 31st of  
25 that calendar year in order to maintain licence  
26 eligibility.
- 27 Q And the licence application, you mentioned the  
28 three office locations. I take it, it can be done  
29 at those locations. Are there other ways it can  
30 be done?
- 31 A Applications can be submitted in the mail and/or  
32 in person to any of those licence offices.
- 33 Q What authorizations are required? Is it simply a  
34 matter of the vessel having a renewed licence, or  
35 are there other authorizations or requirements  
36 that have to be met before, in my example, I head  
37 off again to fish salmon.
- 38 A Well, the licence officer that would receive an  
39 application would verify all of the information on  
40 the application. For example, with salmon  
41 licences, they're held by vessels, so the vessel  
42 owner and who is the contact and representative  
43 for that vessel would have to be applying and sign  
44 the application in order for it to be approved.  
45 The fee would have to be submitted and any other  
46 information with respect to designating or, in the  
47 case of salmon, vessel-based salmon licences, they

1 would have to submit to attach the licence to the  
2 appropriate vessel, because the licence is held by  
3 that vessel and it has to meet all of the  
4 requirements associated with that licence, i.e.  
5 the right length, overall length for the vessel  
6 that they apply with.

7 Q Is there a screening of the applicant? The person  
8 who comes forward to renew a commercial fishing  
9 licence, does the Department screen that by  
10 looking, for example, if there's a history or a  
11 problem of non-compliance with fishing regulations  
12 or difficulties in the past? Is there any  
13 screening of the applicant?

14 A No. When an applicant applies, the Department  
15 looks with respect to the licence, so whatever we  
16 do have, information in our licensing system on  
17 each licence and vessel. Should there be any  
18 specific requirements associated with that  
19 licence, the licence officer would be made aware  
20 of that at the time that they review and verify  
21 the licence application. But generally, we look  
22 at what's associated with that licence in that  
23 particular year. We don't look at previous years  
24 or previous requirements unless there's something  
25 with respect to an estate and/or seizure of a  
26 vessel or some extenuating situation.

27 Q And I'll ask you a question. The PPR's on screen  
28 so I can perhaps use the document to do this.

29 MR. MARTLAND: Page 19 of the report, Mr. Lunn, I  
30 expect, will take us in the middle of the page to  
31 paragraph 51, and it's that paragraph I'll ask the  
32 question based on.

33 Q I should add this, Ms. Mijacika, at the end of my  
34 questions, you'd offered some comments and  
35 clarifications and corrections about the PPR, and  
36 I'll try and give those points off and I'll ask  
37 you about those at the end, all in one go.

38 With respect to the comments here, the  
39 comment that's made in the PPR is that, in  
40 practice, commercial salmon licence suspensions do  
41 not occur. Similarly, DFO licensing staff do not  
42 consider **Fisheries Act** or licence violations in  
43 renewing an annual licence. Is that accurate?

44 A Yes. The licence officer is the delegated person  
45 based on the Ministry of Fisheries and Oceans  
46 authority to review the application and issue it  
47 based on the requirements for that year.

1 Q And I take it there are other responses. The  
2 question of suspending or denying a licence isn't  
3 the only tool in the toolbox, so to speak. There  
4 is an enforcement fisheries officer type of a  
5 response that is open to address the situation of  
6 the person with the bad track record of not  
7 following regulations, for example.

8 A Yes. If there's a violation based on not meeting  
9 specific licence conditions, our C&P, which is our  
10 Conversation & Protection Unit would be  
11 responsible for reviewing that violation and  
12 pursuing it pursuant to the penal provisions under  
13 the **Fisheries Act**. That would not be Licensing's  
14 responsibility.

15 Q Thank you.

16 MR. MARTLAND: Mr. Lunn, if I could please go to number  
17 53 on the exhibit list, this should be a 1994  
18 Pacific Coast Commercial Licensing Handbook.

19 Q Am I right that that's what this is? This is the  
20 1994 Commercial Licensing Handbook?

21 A Yes.

22 MR. MARTLAND: I'd ask this be marked as an exhibit,  
23 please.

24 THE REGISTRAR: Exhibit 583.

25  
26 EXHIBIT 583: Pacific Coast Commercial  
27 Licensing Handbook, 1994  
28

29 MR. MARTLAND: This dates to 1994, and provides some  
30 very basic information about the licensing program  
31 or process, really, for the Pacific coast. Is  
32 there -- and, indeed, I'll turn to the next  
33 document first. Number 54 on the Commission's  
34 list of exhibits is entitled, "The Draft". At  
35 least it's stamped as being a draft as a  
36 commercial licensing policy review of the  
37 Commercial Licensing Policy Handbook from 2008.

38 Q Do you recognize that document?

39 A I do.

40 Q What is that document? Is it an update of the  
41 document I just showed you from 1994?

42 A This is an updated version based on the changes  
43 that have taken place with licensing practices and  
44 rules since the time of the original document. So  
45 this one has not been published or made available  
46 to the public.

47 MR. MARTLAND: All right. I'd ask this be marked,

Lisa Mijacika  
In chief by Mr. Martland

1           please, Mr. Registrar, as the next exhibit, the  
2           2008 document.

3           THE REGISTRAR: Exhibit 584.

4           MR. MARTLAND: Thank you.

5

6                         EXHIBIT 584: Pacific Region Commercial  
7                         Licensing Policy Review (Commercial Licensing  
8                         Policy Handbook) Draft 2008

9

10          MR. MARTLAND:

11          Q     It says -- I think your answer, as well as the big  
12                 stamp of "Draft" tell us this is not a final  
13                 document. What is the status of this document to  
14                 your understanding?

15          A     It's still being worked on. There's a review  
16                 taking place of current licensing rules and  
17                 practices and the intent is to -- if there's any  
18                 change made, to update this handbook and make it  
19                 available to the public to have an understanding  
20                 of all of Pacific region's licensing policies.

21          Q     And to pick up on that comment, there are two  
22                 documents I'll show you that really go in  
23                 sequence, so I'll start with number 55 on the  
24                 Commission's list. May 2010 is the date of this  
25                 document, Pacific Region Licensing Rules, Options  
26                 for Change, Discussion Paper. There's also a  
27                 September version of this paper.

28                         Could you first confirm that this is a  
29                 document that describes -- does that describe part  
30                 of the review process that you were mentioning?

31          A     Yes, it does. It's a discussion paper that is in  
32                 draft form that's intended to be sent out to  
33                 licence holders and vessel owners to consider some  
34                 possible proposals for change to licensing rules.

35          MR. MARTLAND: I'd ask that this number 55 from May  
36                 2010, be marked as an exhibit, please.

37          THE REGISTRAR: Exhibit 585.

38

39                         EXHIBIT 585: Pacific Region Licensing Rules  
40                         - Options for Change - Discussion Paper May  
41                         2010

42

43          MR. MARTLAND:

44          Q     And if I could then go to the next number on the  
45                 list, number 56, because it looks very similar. I  
46                 don't know that this version is in ringtail at  
47                 this point or not. I don't know that I have a

1           number for it. But this seems to be basically the  
2           same document, but September 2010?

3       A     Yes. This is a draft that's been updated after  
4           further review, and provided to senior management  
5           for consideration of release.

6       MR. MARTLAND: And if I might ask that this be marked  
7           as the next exhibit, number 56 from the list.

8       THE REGISTRAR: Exhibit 586.

9  
10                   EXHIBIT 586: Pacific Region Licensing Rules  
11                   - Options for Change - Discussion Paper  
12                   September 2010  
13

14       MR. MARTLAND:

15       Q     Why don't I try to work from the number 56 on the  
16           list and ask you a few questions about that.  
17           Indeed, to do it, I'll to turn to page 2 of this  
18           document. This comes from an internal review of  
19           licensing rules, I understand, from 2008/2009 to  
20           look at modernizing the rules, to look at reducing  
21           the level of complexity in dealing with different  
22           requirements and obligations; is that fair?

23       A     That sounds reasonable, yeah.

24       Q     And looking at the first full paragraph:

25  
26                   As a result of the review, the Pacific  
27                   Fishery Licence Unit has proceeded with  
28                   amendments to administrative processes for  
29                   vessel registration and salmon stacking  
30                   applications.  
31

32                   Effective September 1, 2010, the application  
33                   to register a new commercial fishing vessel  
34                   will no longer require the submission of a  
35                   survey done in accordance with DFO Vessel  
36                   Measurement Guidelines.  
37

38                   That's a change that's taken place?

39       A     This hasn't been implemented yet. It was proposed  
40           to be, but because this was not -- this version  
41           was not approved, we haven't implemented those two  
42           options.

43       Q     That's helpful. And what is that -- that's, at  
44           this point, still under consideration; is that  
45           right?

46       A     Yes.

47       Q     I take it the idea there is simply to take away

1 the requirement that the commercial vessel itself,  
2 the application of a new vessel requires that the  
3 vessel owner provide a survey to document, I  
4 suppose, its length primarily?

5 A Right. As I mentioned before, with salmon  
6 licences, they have a length restriction where you  
7 have to -- the vessel has to -- in order for the  
8 licence to be issued, the vessel has to meet a  
9 certain overall length. The Department keeps  
10 track of those overall lengths based on vessel  
11 survey reports that fishermen have marine  
12 surveyors do and submit to the Department so that  
13 we can keep records.

14 At this point, we pretty much have records of  
15 all the overall lengths for the majority of the  
16 boats unless it's a new boat. So this particular  
17 recommendation is to get out of that business and  
18 to use Transport Canada's overall length that are  
19 on record with their registry for new boats.

20 Q Right. The next full paragraph:

21  
22 In addition, stacking of commercial salmon  
23 licences is now permitted at any time during  
24 the licensing year.

25  
26 What's the status of that?

27 A There's still a stacking application, except  
28 commercial salmon category A licences are not --  
29 are limited to applying for stacking during the  
30 salmon season.

31 Q Mm-hmm.

32 A So there's a deadline for submission of  
33 applications before the salmon season. The intent  
34 was to remove that restriction and allow for  
35 stacking any time during the year, which some  
36 other category licences are currently permitted to  
37 do.

38 Q And in the bullet points that are under the --  
39 towards the bottom of the page there, there's a  
40 mention of a number of options that are under  
41 consideration. I won't review those in any  
42 detail. They're set out in this document.

43 But if we then flip ahead to about page 6, I  
44 think in fact page 7, of this document has a  
45 feedback questionnaire, and I take it the aim was,  
46 as you've said, to have a discussion paper, to  
47 send it out along with the questionnaire to invite



- 1           those with an interest in this to provide their  
2           input that way; is that right?
- 3       A     Right. It would be part of the consultation so  
4           that we could take a collaborative approach,  
5           collate the feedback that we get back from vessel  
6           owners and licence holders, and then have further  
7           discussions through our consultative process with  
8           advisory boards and all the affected fleets to  
9           discuss the results.
- 10       Q     And that document has not been -- or, sorry, that  
11           process has not taken place yet?
- 12       A     It has not started yet, no.
- 13       Q     Is there a timeline or do you have an expectation  
14           of when that may occur?
- 15       A     No, I don't, because it'll be subject to approval  
16           of release of this document and then the  
17           consultation plan that would proceed as a result  
18           of that.
- 19       Q     If I might turn to number 57 from the Commission's  
20           list, and I -- the question here, the broader  
21           question, is to get an understanding of the  
22           guidance that is given to the Licensing Unit staff  
23           in particular. Am I right to say that this, the  
24           upper left of the document, it says "PFLU Pacific  
25           Fisheries Licensing Unit Manual, Salmon Category A  
26           for 2010, 2011." Is that what this is, really, is  
27           a manual or a guidance document for staff?
- 28       A     Yes. It's an amalgamation of the information on  
29           how licence officers -- what they should be aware  
30           of, what are the licensing requirements, what is  
31           the current management plan for the salmon  
32           fishery, the steps that they would go through in  
33           order to issue the licence.
- 34       MR. MARTLAND: If I could ask this be marked as the  
35           next exhibit, please.
- 36       THE REGISTRAR: Exhibit 587.
- 37
- 38                   EXHIBIT 587: Pacific Fisheries Licensing  
39                   Unit Manual - Salmon - Category A, 2010-2011  
40                   Salmon
- 41
- 42       MR. MARTLAND:
- 43       Q     And indeed, without going into detail, there's  
44           points in this document where it actually has a  
45           checklist for the staff member to check the boxes  
46           and ensure that all the steps have been taken; is  
47           that right?

- 1 A Right. It's very important that licence officers  
2 don't make errors with respect to issuing  
3 licences.
- 4 Q Stepping back from this document, what happens in  
5 a situation where the licence, a commercial salmon  
6 licence is not renewed in a given year, that this  
7 person or the vessel registrant simply does not  
8 show up to seek renewal of the licence? Does it  
9 lapse?
- 10 A Well, the vessel would still hold that licence  
11 eligibility, and what we would do is the Licensing  
12 Unit would proceed to send a letter to the vessel  
13 owner advising that they hadn't met the  
14 requirement by the appropriate deadline and that  
15 their eligibility may lapse should we not receive  
16 the appropriate fee for that year.  
17 Should they not respond, they will then be  
18 sent another letter advising them that their  
19 eligibility is lapsing and they will have to go to  
20 the Pacific Region Licence Appeal Board for  
21 consideration for issuance of that licence so that  
22 the Minister could consider it.
- 23 Q In practice, does that situation happen or  
24 people --
- 25 A It happens very rarely.
- 26 Q -- are diligent, in general, in renewing their  
27 licences?
- 28 A Most fishermen are very diligent about applying  
29 for their licence regardless of whether they're  
30 going to participate in the fishery or not.
- 31 Q And I appreciate there's no rule of automatic --  
32 no entitlement for automatic renewal of the  
33 licence but, again, in practice, is it fair to say  
34 the licence holder who's coming back to seek  
35 renewal of the licence, it wouldn't be turned  
36 down?
- 37 A That's right. Provided that he met all the  
38 licensing requirements, the licence would be  
39 issued. Sometimes there's unique circumstances  
40 where there's change in ownership of the vessel or  
41 he vessel is a total loss or some circumstances  
42 happen and it may hold up issuance of the licence  
43 until other requirements are met.
- 44 Q Are there licences that are held in an inventory  
45 but not actively used --
- 46 A There --
- 47 Q -- by the Department?

1 A There are licences that we relinquish through the  
2 Allocation Transfer Program or through the PICFI  
3 program, Pacific Integrated Commercial Fisheries  
4 Initiative, where these licences will create a  
5 party ID in our licensing system, and these  
6 licences, upon relinquishment, will be placed into  
7 or issued by that party ID which is our inventory.  
8 Then upon redistribution of those licences to  
9 eligible First Nations, they will then be issued  
10 to the First Nations party ID and no longer be in  
11 inventory.

12 But after the year is over, those licences  
13 will then go back into inventory and possibly be  
14 redistributed in a different fashion the following  
15 year.

16 Q And I wonder if I might go to Tab 58, number 58 on  
17 the list of exhibits and picking up on that point.  
18 This is a memorandum to the Regional Director  
19 General from 2009. It has to do with the  
20 Department's unallocated commercial salmon  
21 licences. I'll simply read to you from the point  
22 in the summary box, but not the handwritten point.

23  
24 The Department's inventory of unallocated  
25 salmon licences has increased to 156  
26 commercial licences distributed across all  
27 the commercial salmon fleets as a result of  
28 ongoing Departmental programs to buy back  
29 licences.

30  
31 In recent years, the Department has used  
32 licences and inventory to provide commercial  
33 fishery access to First Nations via  
34 demonstration fisheries.

35  
36 For 2009, as in recent years, a key priority  
37 for unallocated licences will be to provide  
38 commercial access to First Nations for  
39 demonstration fisheries in inland areas. Any  
40 remaining unallocated licences would be  
41 available to provide individual commercial  
42 licences to coastal First Nations under the  
43 Allocation Transfer Program (ATP), to address  
44 specific needs for additional commercial  
45 salmon shares in priority areas (e.g.  
46 Cowichan, Goldstream or Lower Fraser), or  
47 could remain unused.

1           Could you comment on how this process works and  
2           whether this is an accurate description of it?

3       A     I haven't seen this briefing note. It looks like  
4           a draft, and an old one from 2009. I believe this  
5           describes the process with respect to the licences  
6           that are issued to First Nations on the interior  
7           demo fisheries, which currently is approximately  
8           197 licences, so it's changed a bit from the  
9           number that's in here.

10       Q     Sure.

11       A     As far as the process goes, I'm not an expert, or  
12           my area is not with respect to administering the  
13           process for ATP or PICFI. I don't work in either  
14           of those two areas.

15       Q     Mm-hmm.

16       A     So I could only give you a very broad perspective  
17           on how this process takes place.

18       Q     That's fine, and I won't be heading into that.  
19           Although this looks like a draft because there's  
20           handwriting, I won't ask you to play handwriting  
21           expert, but that may in fact be Ms. Farlinger's  
22           handwriting. On the fourth page of the document,  
23           it is signed by her, so it may look like a draft  
24           but I understand this to be a final document.

25       MR. MARTLAND: Despite the limited evidence the witness  
26           had on this, I would ask this be marked as an  
27           exhibit, please.

28           THE REGISTRAR: Exhibit 588.

29  
30                   EXHIBIT 588: Memo for RDG (Info Only) 2009  
31                   Plan for Valuation and Use of the Dept's  
32                   Unallocated Commercial Salmon Licences  
33

34       MR. MARTLAND: Mr. Commissioner, with respect to our  
35           timing this morning, it's about ten minutes before  
36           11:00. I'm content to continue. I don't know if  
37           the preference is that we take --

38       THE COMMISSIONER: Please continue.

39       MR. MARTLAND: Thank you. I'll do that, and perhaps  
40           we'll aim for the regular break time of about a  
41           quarter past 11:00.

42       Q     With respect to a different topic, I have a  
43           question or two about area reselections. I take  
44           it that term of and "area reselection" refers to a  
45           situation where the Department, on an occasion by  
46           occasion basis, may allow licence holders to  
47           effectively play musical chairs or switch to a

1 different area, albeit one within the same gear  
2 type that they already have a licence for, so a  
3 gillnet licence holder, for example, might have an  
4 opportunity to reselect to a different area. Is  
5 that an accurate, albeit simple, way to understand  
6 what reselection is?

7 A All salmon licences have permanent gear selection  
8 and they also have had to elect an area as of the  
9 Mifflin Plan back in 1996. There were a number --  
10 I guess three times since then that vessel owners  
11 have been given the opportunity to elect a  
12 different area, so they would submit an  
13 application for area reselection. Within a  
14 certain time frame, those applications would have  
15 been mailed to them by the Licensing Unit,  
16 received and verified and it's possible that a  
17 number of licences have changed areas since the  
18 original selection.

19 The last one that we did I believe was 2007,  
20 2006, 2007, which is up for review in 2012 for  
21 possibility, through consultations with the salmon  
22 industry, for another option for area reselection.

23 Q And I don't have it at my fingertips, but I think  
24 the PPR makes reference to the 2007 reselection  
25 remaining in effect. But I take it, just so I'm  
26 clear about the status of this, in 2007 there was  
27 an opportunity for people to reselect. At the  
28 conclusion of that, they're now stuck, or at least  
29 there's no opportunity for people to reselect.  
30 There may be one in 2012, or it'll be considered  
31 at that point.

32 A There is an opportunity for licences to change  
33 areas through the stacking application process --

34 Q Mm-hmm.

35 A -- where vessel owners can stack two licences  
36 together to have the option to fish a combination  
37 of gear and areas. Then the licence that is being  
38 stacked can be applied for an area change at that  
39 time, and also some flexibility in an increase in  
40 length as well. Other than that, there is no  
41 other opportunity that I'm aware of for  
42 reselecting areas.

43 MR. MARTLAND: Just to understand a little more about  
44 reselections, let me go to number 62 on the  
45 exhibit list, and this, for the benefit of  
46 participants, the initial document, I think, had  
47 some personal information about a licence holder.

1           We've since been provided a different version that  
2           takes that information out of the second or third  
3           page of the document, so I expect Mr. Lunn has  
4           that version, as -- that we'd be proposing we use.  
5        Q     Just to move through this fairly quickly, the  
6           first page from - March 13th, 2007, is the stamp  
7           on it - that's the covering letter that would have  
8           gone out to vessel owners or licence eligibility  
9           holders describing the area of reselection  
10          process; is that correct?

11        A     Yes.

12        MR. MARTLAND: And unless other counsel or the  
13           Commission has a different view, I'll move through  
14           all of these and be suggesting they become marked  
15           as one exhibit.

16        Q     The next page - because they really do fit  
17           together - is the application for an area  
18           selection.

19        A     Yes.

20        Q     The following page is general information.  
21           There's a summary of about four or five pages in  
22           that the salmon area summary, process, and then an  
23           FAQ or "frequently asked questions" description.  
24           In this case, the FAQ is specifically to the troll  
25           area selection; is that correct?

26        A     Yes. This was because trolls had -- salmon troll  
27           licences had a different time frame in order to  
28           apply for an area reselection.

29        MR. MARTLAND: I'll ask that this be marked as an  
30           exhibit, please.

31        THE REGISTRAR: Exhibit 589.

32  
33                   EXHIBIT 589: Letter from P. Sprout to Salmon  
34                   Vessel  
35

36        MR. MARTLAND: I wonder if I might use the Policy and  
37           Practice Report, please, Mr. Lunn, page 9. It  
38           should have paragraph 14. By way of introducing  
39           this, just to narrate on the record, I'll be  
40           picking up on the points that are in the bullet,  
41           the bullet points there. But it's helpful to have  
42           the whole paragraph 14 before us, because the  
43           origin of some of these suggestions is the 2005  
44           Pacific Fisheries Reform Initiative and, related  
45           to that -- sorry, it's stated there [as read]:

46  
47                   The announcement followed reports from the

1 joint federal and provincial task group on  
2 post-treaty fisheries, which is the Treaties  
3 and Transition Report, and the First Nations  
4 panel on fisheries are placed at the table.  
5

6 Which is also an exhibit in these proceedings.

7 I should also just state that Exhibit 14,  
8 which is the summary of past reports and  
9 recommendations - I won't go to it - but the  
10 reference there is page 231 which goes to the  
11 Pearse and McRae "Treaties in Transition" paper.  
12 So all of that is a very long-winded way of  
13 introducing the few points that I have to ask you  
14 about.

15 The first recommendation that was proposed  
16 that's set out there, number -- the first bullet  
17 point [as read]:  
18

19 Extending commercial licences for longer  
20 terms, even as long as 25 years.  
21

22 What I'll ask you to do is please comment on both  
23 the merits and the status of those proposals.

24 A My understanding of this proposal is to provide  
25 longer-term security and stability to those that  
26 participate in the fishery by allowing them a  
27 privilege that provides a longer-term access to  
28 the fishery that they participate in. Currently,  
29 our practice is to issue annual licences because  
30 -- well, under the **Fisheries Act** and the  
31 Regulations, the Minister does have the authority  
32 to issue up to nine-year licences, actually.  
33 There's that term up to nine years.

34 However, all of the licence fees would have  
35 to be collected up front. We don't have the  
36 authority to take instalment payments from  
37 eligible licence holders or vessel owners without  
38 a regulation change, which we have been looking  
39 into nationally. The Department is considering  
40 ways of doing that. So whether it's practical to  
41 have a 25-year licence at this point for vessels  
42 that have -- regardless of the fee for any  
43 fisherman that participates in the fishery, and  
44 some quota fisheries, their fees can be as high as  
45 ten, \$20,000. They would have to pay all of this  
46 fee up front.

47 So, in that sense, it's not practical, which

1 is one of the reasons why there hasn't been a lot  
2 of movement on this. There's been suggestions to  
3 use five-year licences or at least something that  
4 provides a longer-term stability for access to the  
5 resource. Like I say, we have been looking into  
6 ways to do that.

7 Q So the up-front payment is a real problem with  
8 moving to that sort of a model. That could be out  
9 of reach for vessel operators.

10 A Right. And I think that's something that's just  
11 within our current restrictions that people don't  
12 quite understand. So it might look as a good  
13 option on the face value of it, but when it  
14 actually comes to implementing it, it's not going  
15 to be very practical.

16 We also have some other restrictions on us  
17 where we can't receive -- for example, we allow  
18 fishermen to pay with credit card, but we can only  
19 take payments up to just under \$5,000, \$4,999.  
20 So, as you can see, if you had to pay more than  
21 that, I don't know how practical it would be to  
22 pay these kind of licence fees.

23 So it is something that we're limited to  
24 that. Like I say, we're looking into how we would  
25 provide that flexibility and change our  
26 regulations accordingly.

27 Q I take it part of the rationale behind that sort  
28 of longer-term licence would be that it,  
29 theoretically, would give a commercial vessel  
30 operator some sort of an asset that they could  
31 borrow against, for example, or take a loan  
32 against, the fact that they have a licence that's  
33 25 years in length, that it gives them some  
34 stability or security. But, in practice, you're  
35 often, in your various roles, you've dealt often  
36 with the licence holders. Has that been expressed  
37 to you as a point of concern that people are  
38 unhappy they can't borrow against their licence,  
39 for example?

40 A It depends on the situation where a lot of  
41 licences, they're owned -- there's partnership  
42 arrangements or arrangements with fish companies.  
43 There can be often a number of vessel owners  
44 involved with a particular licence. Generally,  
45 also, they participate in other fisheries so they  
46 may have access to quota or they may have access  
47 to participate in other fisheries which increases



1 the value of their fishing operation. So it  
2 really depends on their fishing operation.

3 I know that there are some fisheries that  
4 have moved, for example, to permanent quota, like  
5 groundfish fisheries where there is a lot of  
6 interest from the participants to move to party-  
7 based licences and longer-term licences to  
8 considering that they have permanent quotas that  
9 they reallocate between licences, so it provides  
10 for that ability to secure more funding for quota  
11 to be considered something similar to property, in  
12 their minds.

13 The Department still considers licences a  
14 privilege, though. They're not a right or  
15 property, but obviously for a lot of fishermen,  
16 there's a value in the licence and quotas  
17 associated with it, so...

18 Q Let me ask you about the second bullet there [as  
19 read]:

20  
21 Considering a shift to personal rather than  
22 vessel licences, especially where individual  
23 quotas are implemented.

24  
25 Again, asking the question of -- if you could  
26 please comment on the merits and perhaps easier,  
27 the first question is the status of that. I take  
28 it that shift has not happened.

29 A It hasn't happened in the salmon fishery. But  
30 there are current licensing structures different  
31 for every fishery, and there are a number of  
32 fisheries that their participants hold party-based  
33 licences as opposed to vessel-based licences.  
34 There is this current climate to move to party-  
35 based licensing for everything.

36 It's something that the Department could do.  
37 Basically it means instead of the vessel holding  
38 the licence, the individual or company holds the  
39 licence, similar to communal -- commercial  
40 licences or category N licences in the salmon  
41 fishery, where the flexibility that would provide  
42 is instead of being attached to the vessel, which  
43 can restrict you, you would be able to designate  
44 whatever vessel you want. There may still be some  
45 length restrictions and some other policies around  
46 it, but it would provide a little more  
47 flexibility.

1           Also, that sense of it's conducive to, like,  
2           quota-managed fishery where it gives you what you  
3           were mentioning earlier, some permanency or some  
4           sense of holding something as an individual or  
5           company as opposed to it having to be attached to  
6           a vessel, that once that vessel -- something  
7           happens to it or it's transferred or whatever, you  
8           wouldn't have access to it.

9           Q    Do you think it would be a good thing to move to  
10           personal or party-based licensing, or are there  
11           reasons to say with the vessel-based system?

12           A    It's something we certainly could do, but we would  
13           have to look at the impacts, and we would have to  
14           look at implementing it in a fair fashion, where  
15           we're considering all of the fleets and all of  
16           those fisheries that are vessel-based and look at  
17           what that would then mean to the licensing  
18           structure. But it's definitely doable.

19           Q    I'm going to be brave and skip over the ITQ point  
20           and go to the fourth one [as read]:

21  
22                    Ensuring transferability of licences so that  
23                    old fishers could retire and young fishers  
24                    could enter the business.

25  
26           Could you comment on -- that's a broad type of  
27           recommendation of something that should -- beyond  
28           the agenda. Could you comment on that, please?

29           A    Well, we have transferability in the majority of  
30           the fisheries, whether it's in vessel-based  
31           fisheries (sic). They would apply to do a  
32           permanent replacement so a new owner can then hold  
33           the licence that's attached to that vessel by  
34           doing the replacement. Party-based, we have what  
35           we call a nomination process which is basically  
36           transferability where it can be the licence holder  
37           would elect to nominate someone else in their  
38           place to hold the licence.

39                    So this particular recommendation is pretty  
40                    much already been adopted by the Department except  
41                    the exceptions are spawn on kelp and clam  
42                    fisheries.

43           Q    And I take it in terms of any demographic issues  
44           with the age of commercial fishers, those aren't  
45           -- are those issues that -- there's nothing  
46           specific in licensing that needs to change to  
47           address that. That may be a problem, but there's

1 no obvious solution in licence reform?

2 A No. If an application is made to new -- I mean,  
3 retiring from the fleet and/or new entrants coming  
4 in, is whoever is then going to own the boat. If  
5 a vessel replacement is done, that's how the  
6 transaction takes place. Now you've got a new  
7 entrant into the fishery to replace the old one.  
8 You just don't have new licences.

9 Same with nomination. If it's a party-based  
10 licence, someone else is just taking the place of  
11 the existing licence holding in a limited fishery  
12 as well. So I'm not sure if I answered your  
13 question there.

14 Q It's helpful, thank you. I'd like to ask you some  
15 question next about licence buy-backs and  
16 relinquishments.

17 THE COMMISSIONER: Mr. Martland, I wonder just before  
18 you go there, if I could just ask the witness a  
19 question. Paragraph 14 that's on the screen in  
20 front of you, Witness, refers to April 2005, and  
21 the management initiative, a reform initiative  
22 called "Pacific Fisheries Reform". I don't think  
23 we need the document brought up on the screen. It  
24 is an exhibit. Then Mr. Martland just took you  
25 through those bullets, or some of the bullets,  
26 under 14.

27 I just want to get clarification. Perhaps we  
28 can bring that document up, Mr. Lunn. It's the  
29 Pacific Fisheries Reform Exhibit. The number I'm  
30 not sure; there it is.

31 MR. LUNN: Document 269.

32 THE COMMISSIONER: That document is entitled "The  
33 Discussion Paper on the Implementation of Pacific  
34 Fisheries Reform." Is that the document you're  
35 referring to or is being referred to in paragraph  
36 14?

37 A That is the document they're referring to as well  
38 as the Pearse-McRae report, "Treaties and  
39 Transition", yeah.

40 THE COMMISSIONER: I'm taking a literal interpretation  
41 of a discussion paper on the implementation of  
42 Pacific Fisheries Reform. So, to me, a discussion  
43 paper means just that. It's a document which is  
44 circulated for discussion purposes.

45 A Right.

46 THE COMMISSIONER: Am I correct in that understanding?

47 A Yes. And it -- what the reflection of that -- the

1 points that they made or some of the objectives  
2 and general principles that are a part of this  
3 discussion paper.

4 THE COMMISSIONER: So those bullets that Mr. Martland  
5 took you to are part of that discussion?

6 A Correct.

7 THE COMMISSIONER: Okay. What's confusing me is  
8 paragraph 15, the next paragraph in the PVR (sic).

9 A Right.

10 THE COMMISSIONER: I don't understand what that means.

11 A What it means is a lot of our current programs and  
12 policies are guided by Pacific Fisheries Reform  
13 Principles. We currently operate under what we  
14 call Pacific Fisheries Renewal which adopts a lot  
15 of these similar principles.

16 It's mentioned in that discussion paper that  
17 you brought up earlier. A lot of the guiding  
18 principles about consistency, transparency in our  
19 rules, providing stability, looking at  
20 opportunities for fishermen to self-adjust, be  
21 more self-reliant for more economically prosperous  
22 fisheries.

23 THE COMMISSIONER: Right.

24 A And so fisheries reform feeds into a lot of that  
25 -- our current initiatives that -- PICFI, for  
26 example, and other initiatives. That's the  
27 linkage to Pacific Fisheries Reform, but it is an  
28 old document, 2005.

29 THE COMMISSIONER: So the bullets that Mr. Martland  
30 took you to, if I understand your evidence  
31 correctly, are simply considerations. They're not  
32 policies that have been adopted by the DFO.

33 A Right. They're things for us to consider for  
34 future licensing policy and practices. They are  
35 recommendations, basically, from the Treaties and  
36 Transition that they tied into to -- feeded (sic)  
37 nicely, in their perspective, with Pacific  
38 Fisheries Reform. I think that's why the  
39 connection. That's the way I look at it, but --  
40 so in terms of whether we've had to adopt these  
41 four principles, or these four - whatever you want  
42 to call them - considerations, the Department  
43 would look at that with respect to the current  
44 circumstances of each fishery and sustainability  
45 requirements and looking at a consistent approach  
46 to apply to all fisheries.

47 THE COMMISSIONER: All right. Just so I'm up to date

1           then, we have the April 2005 document. Is there  
2           something more recent that reflects upon the  
3           bullets that are set out in paragraph 14?

4        A     I haven't seen any recent documents that have  
5           these four specific recommendations or principles  
6           in them. It's been replaced, like I say, by other  
7           documents that we may have on our website when we  
8           refer to fisheries renewal, or a lot of the  
9           principles that we use in the PICFI program.

10       THE COMMISSIONER: I'm just trying to get a complete  
11           understanding of what the current status is of the  
12           activities of the DFO around, for example, these  
13           items that are listed in paragraph 14.

14       A     Right. The first one we haven't been able to make  
15           much progress on, but are considering. The second  
16           one has already taken place in a number of  
17           fisheries but not with respect to salmon.

18           The third one, as you probably heard through  
19           the last few months, there's a number of  
20           initiatives around managing fisheries through  
21           share-based management, moving away from  
22           competitive fisheries and to having a share-based  
23           management approach and individual quotas and  
24           pooling arrangements, for example, is used in the  
25           herring fishery. IQs are used in ground fish and  
26           a number of other fisheries and on a pilot basis  
27           in the salmon fishery for those involved in  
28           demonstration.

29           The last one, I believe we've already pretty  
30           much have this in effect under our current  
31           practices and policies in licensing. It just has  
32           not been extended to every fishery. That's how I  
33           look at it.

34       THE COMMISSIONER: Thank you very much.

35       MR. MARTLAND:

36       Q     With respect to licence buybacks and licence  
37           relinquishment - and we won't go into great detail  
38           on the history of the different programs - but I  
39           think it may be helpful to ask you for a general  
40           understanding of the main initiatives that the  
41           Department has had, I think mainly aimed at  
42           reducing the size of the commercial fleet in the  
43           province, and in some of the cases, that sort of  
44           policy direction or decision to try to reduce the  
45           capacity of a fleet is done, in part, through  
46           licences and by setting up the situation where  
47           there's simply less licence -- the capacity is

1 reduced because there are less licences being  
2 fished, being actively used.

3 Could you help us to understand the main  
4 licence buyback programs that have been put in  
5 place, let's say, from about 1994 onwards?

6 A Well, there's the 1996 Mifflin Plan, voluntary  
7 salmon licence fleet reduction where vessel owners  
8 would apply voluntarily to retire their licence.  
9 The objective of the Department was to see an  
10 immediate decrease in the number of licences in  
11 the salmon fishery in 1998, to pursue some of our  
12 conservation objectives and to adjust the fishery  
13 to be more aligned with the declining salmon  
14 stocks and opportunities.

15 We also had the Canadian fisheries adjustment  
16 restructuring program in 1998, which also a large  
17 element of that was a certain amount of money that  
18 was set aside specifically to retire and again  
19 reduce the fleet with the objective of up to half  
20 of the licences, again, to meet the objectives of  
21 reducing the capacity so that there was a better  
22 economic opportunity for those that were remaining  
23 in the fishery and to provide fishermen with an  
24 opportunity to retire or to get out of the  
25 fishery.

26 Those were the two main retirement programs,  
27 meaning that the licences were permanently retired  
28 and not issued again in any fashion, so the  
29 capacity was removed from the fleet permanently.

30 Q And are there other types of initiatives where  
31 it's not a retirement, per se, but rather,  
32 notionally, a redirection of the fishing effort to  
33 another part or another sector or another --

34 A Right.

35 Q -- group of people, and if you could describe  
36 that, please?

37 A We refer to those as licence relinquishment  
38 programs. Two of the current ones that are  
39 mentioned in here that you're aware of are the  
40 Allocation Transfer Program and the PICFI program  
41 where the objective of the Department is to  
42 increase participation by First Nations in  
43 integrated fisheries, and not just salmon, all  
44 fisheries, by relinquishing licences and/or quota,  
45 and redistributing that access and those  
46 allocations to First Nations.

47 Q Just so I'm clear on the terminology, you've

1 referred to licence retirement as being the sort  
2 of reducing the capacity of the fleet as licence  
3 relinquishment in the context of things like PICFI  
4 where it's not a question of reducing the number  
5 of licences, but making use of that fishing power  
6 in a different way or reallocating --  
7 A Right, it's a transfer of the access.  
8 Q And then there's a licence -- how does the term  
9 "licence buyback" -- does it cover both of those  
10 other categories, or is that a different --  
11 A Yeah, industry uses the term --  
12 Q (Indiscernible - overlapping voices).  
13 A -- licence buyback to basically refer to -- and  
14 the Department has used it too. Buyback is just a  
15 way of saying retirement and/or relinquishment.  
16 It's a way of saying the Department is offering  
17 to, based on specific payment, receive a licence  
18 and relinquish -- there's a relinquishment  
19 agreement associated with it where the fishermen  
20 would apply and relinquish all rights and  
21 everything that's associated with that licence.  
22 So they're both, in that sense, in the term  
23 "buyback". You could refer to either one. Most  
24 people just use that term. They don't make the  
25 distinction.  
26 MR. MARTLAND: Mr. Commissioner, I note the time. I  
27 wonder if we might take the break.  
28 THE COMMISSIONER: Thank you very much.  
29 THE REGISTRAR: The hearing will now recess for 15  
30 minutes.  
31  
32 (PROCEEDINGS ADJOURNED FOR MORNING RECESS)  
33 (PROCEEDINGS RECONVENED)  
34  
35 THE REGISTRAR: Order. The hearing is now resumed.  
36  
37 EXAMINATION IN CHIEF BY MR. MARTLAND, continuing:  
38  
39 Q Ms. Mijacika, I was asking you about licence  
40 buybacks, to use that as the broader of the  
41 different terms we are using just for this -- for  
42 present purposes, and what I would like to do is  
43 ask for your general comments on the successes and  
44 failures, or the strengths and weaknesses of the  
45 different programs that you've described in a  
46 quick way today.  
47 A With respect to licence retirement, as I mentioned

1 before, the objective is -- the objective of the  
2 programs in the '90s was to reduce the number of  
3 licences in the fishery and also provide fishermen  
4 with an avenue to get out of the fishery. And at  
5 that time consideration was given to applications  
6 based on the value of the fishery. There was a  
7 committee that was set up that looked at the  
8 vessels, different considerations with respect to  
9 each application, whether licences were tied, they  
10 were single licences being retired, there was a  
11 priority ranking of considering applications,  
12 single first, licences attached to other licences,  
13 licences attached to other licences in other  
14 fisheries.

15 So I think the objectives were clearly met in  
16 that under the first program approximately 19  
17 percent of the licences retired and the second one  
18 another 40 percent. So we were successful in  
19 significantly reducing the number of licences in  
20 the salmon fishery which you would hope would have  
21 had a good impact on the viability of those that  
22 were remaining and more in line with the resource  
23 at the time.

24 With respect to relinquishment programs that  
25 I've referred to that are happening in more recent  
26 years, the objective there, as I mentioned, is to  
27 increase and transfer access to First Nations to  
28 increase their access and their participation in a  
29 number of fisheries, and those applications are  
30 considered, again, on the basis of the value for  
31 money to the Department, but also our priorities  
32 and what our budget is for the program, and also  
33 the demands of First Nations looking at what their  
34 interests are so that we could work  
35 collaboratively together to meet some of those  
36 needs for First Nations.

37 So again, it's been ongoing. PICFI started  
38 in 2008 and is in place until 2012, currently, so  
39 these programs are picked -- ATP has been in place  
40 for a number of years and it's the number of  
41 licences that were retired over the years have  
42 increased and, you know, objectives of moving from  
43 some fisheries to others, you know, we've been  
44 successful in increasing and meeting the demands  
45 of some First Nations to get more involved in pool  
46 -- in quota fisheries and to increase their  
47 economic returns. So in that sense, it's been



1 successful as well.

2 Q You've heard, no doubt, criticisms about some of  
3 these programs. I suppose one of the broad ones  
4 would be -- some raise a concern about a shift  
5 towards terminal fisheries and eroding traditional  
6 commercial fishing. Could you comment on that  
7 concern? Is that something you've heard?

8 A I think we have -- anyone working within the  
9 Department has heard some of that concern with  
10 respect to the salmon industry, but we also are  
11 aware that there are a whole bunch of other issues  
12 and problems around this fishery where we've --we  
13 also hear the other side of things from fishermen  
14 that without an absence of licence retirement or  
15 licence relinquishment programs, there's no other  
16 willing buyer, I guess you could say, for their  
17 licence, or no other way for them to retire or to  
18 get out of the fishery, so in that sense it gives  
19 them that option.

20 The price that's generally paid for salmon  
21 licences in the more recent programs is less than  
22 what they would have gotten in the '90s, which is  
23 unfortunate, but that's also reflective of what's  
24 going on in the market and the reduced catches in  
25 value or their declining licence revenues are, I  
26 guess you could say, in this fishery. So it's  
27 reflective of that.

28 So there's a whole bunch of circumstances.  
29 Q There's also been a concern expressed in some  
30 situations, people have voiced a criticism that  
31 because there's no open sharing of the information  
32 on who's being paid for their licence, there can  
33 be an appearance of favouring some people over  
34 another. Could you respond to that criticism?

35 A Sorry, can you repeat that?

36 Q The concern being that some people are favoured in  
37 the licence buyback or retirement or  
38 relinquishment process and that may be a concern  
39 arising from or aggravated by the -- my  
40 understanding is that the price paid to a  
41 particular licence holder who's giving up their  
42 licence isn't something that's published.

43 A Right, there might be just an average. I mean,  
44 all fishermen, all licence holders and vessel  
45 holders have the same equal opportunity to apply  
46 under the program. They can apply for  
47 relinquishment of their vessel-based and/or a

1 portion of their licences on their boats, the --  
2 if they hold permanent quota they can apply just  
3 for relinquishment of the quota.

4 Consideration, the Department has to look at  
5 what their request for payment is and how  
6 reasonable that is with respect to the advice that  
7 we receive from consultants on the current  
8 industry conditions, and we look at the requests  
9 that have been made to us by First Nations in  
10 their current business plans or in the information  
11 that's received on what the demand may be, and we  
12 also have to look at considering overall how many  
13 licences are submitted under a current round and  
14 look at how we may best allocate the budget that  
15 we have available for that round, so...

16 MR. MARTLAND: And to learn more about the number of  
17 licences that are out there, I wonder if we might  
18 turn to number 61, Mr. Lunn, on our list of  
19 proposed exhibits? And I think the first page  
20 tells us this is the 2010 Commercial Licence  
21 Status Report for the Pacific Region; is that  
22 correct?

23 A Right.

24 MR. MARTLAND: If this could be marked as an exhibit,  
25 please.

26 THE REGISTRAR: Exhibit 590.

27  
28 EXHIBIT 590: 2010 Commercial Licence Status  
29 Report - Pacific Region  
30

31 MR. MARTLAND:

32 Q And on the second page of that document, under  
33 Salmon, there's a few subheadings; gillnet, seine  
34 and troll, different categories of licences, and  
35 it gives -- why don't I choose the first one  
36 across the line is the salmon gillnet in Area A --  
37 sorry, for category A licences. In this case, it  
38 gives the current eligibility as 928, and then the  
39 licences in the period issued in the last column  
40 is 856.

41 Just at a general level, the question would  
42 be: What does the difference between eligibility  
43 and the licences issued reflect?

44 A Can you just go up to the top of the document  
45 where it shows -- okay, so this document is off  
46 the website, so the inner column is the current  
47 number of eligibilities, and then what it will

- 1 show on these other two outside columns is the  
2 licences issued for that period up until when this  
3 report was printed.
- 4 Q Sure.
- 5 A So I actually have more up-to-date numbers than  
6 this that show a more accurate reflection of  
7 exactly how the licences were issued.
- 8 Q Okay. And I guess the general question I have is  
9 that between, let's use the 928 versus 856 just as  
10 an example, there's nothing magic about the salmon  
11 gillnet versus others for this question, but is  
12 the difference there that there is a higher number  
13 of eligibilities than there are licences actually  
14 issued because the Department is holding some?
- 15 A There may be a number of things. For gillnets --  
16 this lumps all the areas together, it doesn't  
17 break it down by area, so for the salmon gillnet  
18 that you're using for an example, it'll have all  
19 the C, D, and E licences in the eligibility. This  
20 is the number of licences that have been applied  
21 for and issued, if they're regular licences and/or  
22 reduced fee. Not all licences are applied for by  
23 the eligible vessel owners.
- 24 Q And indeed, just to follow up, because I see  
25 you're looking at a different paper document, and  
26 I take it --
- 27 A Yeah.
- 28 Q I'm holding up a document which we've circulated  
29 to participants, and I'll just confirm, Mr. Lunn,  
30 that the commissioner has a copy, too? And  
31 indeed, that may be something he has available on  
32 the screen. We were provided this yesterday by  
33 Department of Justice counsel. Could you tell us  
34 what this document is, please?
- 35 A This document is just a spreadsheet that I asked  
36 the Pacific Fishery Licence Unit to put together  
37 for me that would accurately show all of the  
38 licence eligibilities for the various salmon  
39 licence category areas broken down by the number  
40 that are communal, commercial, full fee and the  
41 reduced fee, which includes Category N licences  
42 and then the grand total.
- 43 Q And the grand total reflects all of the licences  
44 for that gear, let's use this first row, seine  
45 Area A, that's the totality of Area A licences?
- 46 A Right. That's the maximum number for Area A based  
47 on that gear and area selections, yeah.

61  
Lisa Mijacika  
In chief by Mr. Martland

1 MR. MARTLAND: Is there a further breakdown -- let me  
2 ask before I forget, if I might ask this be marked  
3 as the next exhibit.

4 THE REGISTRAR: Exhibit 591.

5  
6 EXHIBIT 591: 2010-2011 - Salmon Area  
7 Spreadsheet Report (by fee type)  
8

9 MR. MARTLAND:

10 Q Do you have any breakdown within the full fee or  
11 reduced fee categories as to what proportion is  
12 First Nations as opposed to non First Nations? Or  
13 is that information that is available?

14 A Well, there's 254 Category N licences which are  
15 included in that reduced fee column. But what  
16 that means is you've got -- I haven't had an  
17 opportunity to explain this yet, but you have  
18 Category A salmon licences which are licences  
19 issued with respect to vessels. You've got  
20 Category A licences issued in respect of vessels  
21 owned by individual aboriginal fishermen based on  
22 an election that they made to pay a reduced fee.  
23 So those licences are still part of the commercial  
24 fishery, it just happens that they have to be  
25 issued in respect of a vessel owned by an  
26 Aboriginal fisherman.

27 Then you've got your N licences which also  
28 can pay a reduced fee that are eligible by the  
29 Northern Native -- or held by the Northern Native  
30 Fishing Corporation, who then designates a vessel  
31 to participate in the fishery, and those are  
32 elect, like I say, the reduced fee, and they're  
33 also party-based, as opposed to vessel-based.

34 And then you've got your Category AF  
35 licences, which are your salmon licences that are  
36 communal commercial, so they're issued with  
37 respect to a first -- issued to a First Nation.  
38 They're also party-based, and they're tied,  
39 generally, to either an Aboriginal Fisheries  
40 Strategy Contribution Agreement or to a PICFI  
41 business plan.

42 Q Thank you.

43 A Participation in the commercial fishery as well.

44 Q Thank you. Turning to a different topic, and the  
45 second-to-last topic, which is the PR that --

46 THE COMMISSIONER: Mr. Martland, I wonder, just before  
47 you go there, I just, again, I have one quick

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1 question to ask the witness on the PPR, if I  
2 could? If that could be brought up, Mr. Lunn,  
3 thank you.

4 Again, back to the PPR. If I could just ask  
5 you, just so I understand the context of your  
6 answers, at paragraph 10 there's a reference to  
7 the Mifflin Plan there --

8 A right.

9 THE COMMISSIONER: -- and then some bullets, which  
10 you'll see. And the last bullet reads:

11  
12 The Plan was also intended to reflect DFO's  
13 more conservative risk-adverse management,  
14

15 do you see that?

16 A Right.

17 THE COMMISSIONER: I don't know what it means by "was  
18 also intended," but what I wanted to ask you was:  
19 Was that the core principle of the Mifflin Plan,  
20 the conservation element?

21 A Well, one of the objectives of the Mifflin Plan  
22 was to align the current makeup of the fleet with  
23 the fact that there was decline in the stocks and  
24 the available harvest opportunities.

25 THE COMMISSIONER: Right.

26 A So it was to address that concern. So I think  
27 that's why that's referencing that.

28 THE COMMISSIONER: So that was - I'm using the word  
29 "core", but whatever term you want to use - main  
30 principle or central principle for the Mifflin  
31 Plan?

32 A Yes, it's definitely one of the central  
33 principles.

34 THE COMMISSIONER: And then it refers, in paragraph 11,  
35 to some adjustments, and then, in paragraph 12, it  
36 mentions two major licence retirement programs.  
37 Again, there's an acronym of CFAR, et cetera, et  
38 cetera, and then paragraph 13 talks about since  
39 '96. But what I wanted to ask you was: With  
40 regard to paragraph 12, is this a continuation of  
41 that core principle or central principle, or is  
42 there another principle at work here?

43 A Well, reducing the fleet capacity is intended to  
44 try and achieve that overall principle, and the  
45 first program, Mifflin, addressed that to -- there  
46 was only 80 million set aside for the licence  
47 retirement element of the program, where it became

- 1           apparent to the Department that it hadn't  
2           significantly reduced the number of licences  
3           enough. So in the following program in 1998,  
4           there was actually 200,000 allocated for a  
5           retirement program to try and achieve that same or  
6           more significant reduction.
- 7       THE COMMISSIONER: But again, is it operating on the  
8           same central principle of conservation?
- 9       A     Right. To align with the abundance of the current  
10           resource, yes, the number of participants.
- 11       THE COMMISSIONER: And then in paragraph 16, it's  
12           addressing the ATP.
- 13       A     Right.
- 14       THE COMMISSIONER: And what was the core principle that  
15           led to the ATP?
- 16       A     The ATP comes out of the Aboriginal Fisheries  
17           Strategy. Again, a program that has the objective  
18           of working with the First Nations to increase  
19           their participation and allow for suitable harvest  
20           opportunities based on the availability of the  
21           resource. So ATP was introduced under the AFS  
22           Strategy to look at ways of retiring from the  
23           existing fleet in order to meet that objective.
- 24           And the program has evolved over a number of  
25           years and it's now actually integrated with the  
26           PICFI program. So it's objectives without knowing  
27           the details of when it was set up and what they  
28           were looking for. There's been a number of  
29           different objectives that have guided what  
30           licences they -- are selected under ATP, so I  
31           guess I'm not the best person to explain how it's  
32           changed over the years.
- 33       THE COMMISSIONER: Okay. Thank you.
- 34       MR. MARTLAND:
- 35       Q     If I might just correct, or at least to confirm, I  
36           think you misspoke with you said 200,000, and  
37           paragraph 12 talks about the second program --
- 38       A     Oh, million?
- 39       Q     200 million?
- 40       A     Yeah.
- 41       Q     That's what's there on the sheet, I presume --
- 42       A     Sorry.
- 43       Q     That's okay.
- 44       A     I apologize for that.
- 45       Q     Let me turn to PRLAB, the Pacific Region Licence  
46           Appeal Board, which you have --
- 47       THE COMMISSIONER: Did you mark this, Mr. Martland?

1 Did we mark the spreadsheet?

2 MR. MARTLAND: Yes, I think it was. I wonder if I  
3 could just confirm?

4 THE REGISTRAR: That's 591.

5 MR. MARTLAND: Thank you.

6 A I know I just wanted to mention -- I know I didn't  
7 answer your specific question about this table and  
8 the percentage that is issued to First -- or I  
9 can't remember your question exactly, but it's a  
10 very difficult question to answer without taking  
11 into account what I was trying to mention before,  
12 that there are a number of participants in the  
13 fishery that happen to be aboriginal that are  
14 issued these reduced-fee licences or are part of  
15 the component of the full fee licences, and  
16 without adding up the numbers and calculating the  
17 percentages I wouldn't know. So I just wanted to  
18 answer that.

19 Q On the PRLAB, you served as liaison officer of the  
20 Board from '92 to 2000, I won't take you through  
21 the PRLAB process at this point; I think it's  
22 described in the Policy and Practice Report, but  
23 perhaps what I can do is gain some understanding.  
24 In practical terms, how is the PRLAB used? What  
25 are the most common situations where a licence  
26 holder is, so to speak, knocking on the door of  
27 the PRLAB looking for some assistance or relief?

28 A Currently, licensing officers and the Manager of  
29 Licensing can exercise the Minister's discretion  
30 in issuance of licence, but any time a fisherman  
31 is dissatisfied with one of our rules or wants to  
32 request an exception from it, the only avenue is  
33 to go directly to the Minister through this  
34 independent body, the Pacific Region Licence  
35 Appeal Board, which will consider the case and  
36 make recommendations to the Minister.

37 So the intent is to consider the merits of  
38 the case, provide enough information to make a  
39 balanced decision on a case-by-case basis. And  
40 with respect to salmon - you didn't ask  
41 specifically - but I know that a number of --  
42 there are a number of different exceptions that  
43 are requested. The majority of them are to do  
44 with having some flexibility around our rules with  
45 length restriction. If a fisherman, for example,  
46 wants to buy a boat that's a few feet longer than  
47 the overall length restriction of the current

1 licence or his current vessel that holds the  
2 licence, that application would be denied by the  
3 licensing unit, so he would have to go to the  
4 appeal Board to ask for an exception and explain  
5 his personal circumstances as to why he would like  
6 an exception to that.

7 Same with area selection, where they'd like  
8 to change their area for whatever extenuating  
9 circumstances or reasons, or would like to  
10 transfer a licence in a fishery that doesn't have  
11 transferability, or would like to split a licence  
12 from another -- combined his fishing operation.  
13 Generally, it's because fishermen have upgraded or  
14 acquired other boats or licences and are  
15 restricted by the current policies, so the Board  
16 will -- is in a better situation to consider those  
17 circumstances and then forward a recommendation to  
18 the Minister for a decision.

19 Q In terms of the process, I take it the applicant  
20 can make submissions in writing or in person  
21 before the PRLAB, before the Board, but that the  
22 Board's recommendation to the Minister is  
23 confidential; that's not communicated to the  
24 applicant?

25 A The Board's recommendation to the Minister is  
26 protected. Once a decision is made, the  
27 appellant, which is what we refer to whoever's  
28 filed the appeal, can request a copy of what the  
29 Board recommended to the Minister so he has a  
30 better understanding of the decision, because  
31 generally they'll just receive a letter from the  
32 Minister, the deputy Minister, saying, "Here's the  
33 result of your appeal." So it's general practice  
34 for them to request more information.

35 Q And it's ultimately the Minister who's making the  
36 decision, as opposed to the Board; is that right?

37 A Correct, because the Minister has absolute  
38 discretion under s. 7 of the **Fisheries Act**.

39 Q The PRLAB, I understand, has the ability to make  
40 -- not simply deal with the case, the individual  
41 case before it, but to make a policy  
42 recommendation of a broader nature; is that  
43 correct?

44 A It is within the Pacific Region Licence Appeal  
45 Board's terms of reference to request that the  
46 Minister consider exceptions to policy when  
47 they've heard -- generally, it only happens if



1           they've heard a number of appeals based on the  
2           same policy and they feel some precedent may have  
3           been set, so consideration should be made to  
4           changing that policy, but that doesn't happen very  
5           often.

6           Q     And that Board is not involved in allocation at  
7           all, is it?

8           A     Right. It's only to do with dissatisfaction with  
9           licensing decisions.

10          Q     I'd like to just, fairly quickly, take you through  
11          some criticisms that have been made about how the  
12          PRLAB conducts its hearings process. One  
13          complaint is that it's a slow process that can  
14          take a long time, and that because the Board  
15          doesn't have an ability to grant interim release,  
16          such as a short-term interim licence while an  
17          appeal is outstanding, it can leave the fisher,  
18          the appellant, in the position of losing a fishing  
19          season if they're -- let's say they've changed to  
20          a longer vessel length, they can't get the  
21          variance or they can't move an appeal through and  
22          get the answer from the Minister in time, they may  
23          have to sit out a season. Can you comment on that  
24          concern?

25          A     I can see how some fishermen may have that  
26          concern, but in absence of going through the  
27          appeal process, they've been denied something, so  
28          they don't really have any other recourse. The  
29          other issue is it's just one of those issues with  
30          the administrative burden of things that have to  
31          be presented to the Minister for decision. It  
32          takes time, there's a process that it has to go  
33          through in order for the Minister to make a  
34          decision.

35                 In absence of going through the Board, before  
36          1979, when the Board was established, fishermen  
37          would have to go directly to the Minister on a  
38          case-by-case basis and submit a letter to the  
39          Minister, which I think people can understand,  
40          without knowing the circumstances, without having  
41          an independent body to consider those  
42          circumstances, would be even more difficult for  
43          the Minister to make a balanced decision and a  
44          quick decision. So, in fact, it actually ends up  
45          more timely. I know that's hard for people to see  
46          that, but based on the bureaucratic system, you  
47          know, it is --

1 Q Compared to the alternative.

2 A -- more timely to do it this way.

3 Q Let me ask you about transparency and some of the  
4 concerns arising under that topic heading, are  
5 that the Board's recommendation is something that  
6 is not communicated, it may be available after the  
7 fact, but it's not communicated to the appellant,  
8 that, indeed, the DFO can make submissions or  
9 provide information that goes to the Board, and  
10 yet the appellant may not have access to it, they  
11 may not see the Department's advice or the  
12 briefing process to the Board.

13 Could you comment on those concerns, please?

14 A DFO's submission to the Licence Appeal Board is  
15 generally to give them a very good understanding  
16 of what our current policy or practice and  
17 management measures are in that fishery. So, for  
18 example, if they're asking for an exception to  
19 vessel replacement rules, the Department is going  
20 to want to make sure that the Board has a good  
21 understanding of how those rules are applied and  
22 to that particular fisherman's case or fishery  
23 that he's involved in. So that's the intent of  
24 providing those submissions.

25 And also looking at the impact or if there's  
26 particular data or information that would be of  
27 the Board's interest to have an understanding of  
28 how many other licences are involved, how many  
29 other things should be considered -- to take into  
30 consideration when making that decision, because  
31 it may have some impact. Those things are  
32 outlined for the Board. It's up to the Board,  
33 then, how to weigh that information in making  
34 their recommendations.

35 It can be provided to the appellant after the  
36 decision is made. Appellants can request a copy  
37 of their file and the contents of it, which would  
38 include that information.

39 Q My last few questions are on the question of the  
40 licence fees for commercial licences. I  
41 understand that there's a licence fee review  
42 process that has started, I think, in 2007, and is  
43 underway still; is that correct?

44 A Yes. The Minister of Fisheries and Oceans did  
45 commit, in 2007, to reviewing the current fee  
46 structure and trying to align them more with the  
47 current market and economic conditions and

1 resource conditions of the fisheries nationally,  
2 so overall looking at all the licences in all  
3 regions.

4 Q What's the status of that and why has it taken so  
5 long without running its course?

6 A The status of that is that a comprehensive package  
7 has been presented to the Minister to consider  
8 some options on how to restructure the fees to  
9 make them more balanced across all the different  
10 fisheries. What would have to happen, though, is  
11 there would have to be approval for that and then  
12 corresponding regulation changes would have to be  
13 made to implement those proposals and extensive  
14 consultations would be required with those that  
15 are affected, and under the **User Fee Act** there's  
16 also separate regulatory requirements that the  
17 Department would have to meet to ensure that we've  
18 adequately consulted and looked at the impact of  
19 making those fee changes.

20 Q And am I right that at this point the  
21 consultations you mentioned, that process has not  
22 taken place?

23 A It hasn't taken place in a formal way other than  
24 through our existing advisory boards. A number of  
25 fisheries have asked for the status of this  
26 particular initiative and why it's not moving,  
27 because of their concerns about fees not being  
28 aligned with what their current revenues are. It  
29 is an inadequate, you know, an inequity in our  
30 current structure, and so there's been a lot of  
31 pressure on us, but still, there hasn't been a  
32 decision made by the Minister that we can move  
33 forward on.

34 MR. MARTLAND: Ms. Mijacika, I don't have further  
35 questions, so thank you. And I'll ask Ms. Grande-  
36 McNeill to address you next.

37 Q I'm sorry, there's one further point. Ms. Grant  
38 luckily caught for me. I'd said to you, earlier  
39 on, that I would move to the Policy and Practice  
40 Report and review some of the feedback that you  
41 had on the PPR, so that will take a few more  
42 minutes, but I'd like to do that now.

43 And what I'll try to do is move through this  
44 document to particular paragraph numbers. I may  
45 ask for assistance in finding the page number for  
46 Mr. Lunn's benefit, but paragraph 3 - because I  
47 have references to paragraphs - paragraph 3, if it

Lisa Mijacika

In chief by Mr. Martland

Cross-exam by Ms. Grande-McNeill (CAN)

1 suits you, and please suggest otherwise, if it  
2 suits you I'll simply go to the paragraph and  
3 invite any comments or clarifications you have  
4 about it.

5 I think you had a point in relation to  
6 paragraph 3 to the effect that the word  
7 "immediately" should be inserted before "prior to  
8 1969"?

9 A And sorry, where would the "immediately" go?  
10 Prior to --

11 Q "Immediately prior to 1969," the point being that  
12 historically there were times when licences were  
13 limited, for example, Aboriginal and Japanese --

14 A Oh, okay.

15 Q -- fishers could not purchase a licence.

16 A That makes sense. I think the other point with  
17 respect to that, though, is provided that they had  
18 a vessel, which isn't mentioned in there, too.

19 Q Right, because it's --

20 A To participate in the fishery. But yes, that's  
21 fine.

22 MR. MARTLAND: In the interests of efficiency, Mr.  
23 Commissioner, what I'm going to suggest we do is  
24 that I not provide through those questions and  
25 I'll speak with counsel for Canada. I may simply  
26 be asking them to move through some of these  
27 points, but I'll speak with them at the midday  
28 break. If I might, on that basis, conclude my  
29 questions and ask Canada to proceed with theirs?  
30 Thank you.

31 MS. GRANDE-McNEILL: Geneva Grande-McNeill for Canada,  
32 with Tim Timberg.

33

34 CROSS-EXAMINATION BY MS. GRANDE-McNEILL:

35

36 Q Ms. Mijacika, you've indicated that licensing in  
37 the Pacific Region is managed by the Pacific  
38 Fishery Licensing Unit, and can you explain for us  
39 what the general role of that unit is in  
40 licensing?

41 A The Pacific Fishery Licence Unit is the general  
42 register for licensing in the Pacific Region, so  
43 it's responsible for delivery of all licensing  
44 programs for the commercial, recreational and  
45 aboriginal sectors. The licence unit issues the  
46 licence documents and the conditions that go with  
47 the documents. It maintains all the data on the

- 1 fishermen, the vessels and the licences, and also  
2 collects the revenue associated with those  
3 licences.
- 4 Q And that's for all fisheries in the Pacific  
5 Region, is that right, all species?
- 6 A Yes.
- 7 Q And who drafts the conditions of licence?
- 8 A The conditions of licence are drafted by the  
9 fishery resource managers who are responsible for  
10 proper management and control of a particular  
11 fishery. A number of conditions are drafted based  
12 on the current management measures in the fishery,  
13 i.e. the quantities, species of fish, monitoring  
14 program requirements. These conditions are then  
15 vetted through our regulations unit to ensure that  
16 they can be enforced under the current **Fisheries**  
17 **Act** and **Regulations**, and then provided to the  
18 licensing unit to be issued with the licence  
19 documents.
- 20 Q Thank you. Now, I just want to ask you a few  
21 questions about categories of licences. I know  
22 you've briefly touched on this already. But Mr.  
23 Lunn, if we could have number 19 on Canada's list?  
24 If you scroll ahead to page 2. Well, first, I  
25 should say, Ms. Mijacika, do you know what this  
26 document is?
- 27 A Yes, I do. This is the **Pacific Fishery**  
28 **Regulations**.
- 29 Q And I see here we're looking at Schedule 2, and  
30 using this document on page 2, can you describe  
31 what the current categories of licences are?
- 32 A This one doesn't have the salmon licences. Are  
33 you wanting to --
- 34 Q Perhaps we can scroll up.
- 35 A This page that he's got here. I think it's on  
36 page --
- 37 Q On page 2, yes.
- 38 A Oh yeah, there it is. So as I mentioned before,  
39 you've got your Category A salmon licences, which  
40 are issued in respect of vessels, and fees that  
41 are charged by the Department for access to the  
42 resource are based on the length of the vessel,  
43 less than 9.1 metres, or greater than, and then  
44 also a separate fee for those that are for purse  
45 seine gear.
- 46 There's the Category A salmon issued in  
47 respect to a vessel owned by the Indian and

1 Northern Native Fishing Corporation, which is the  
2 Category N licence that you'll see in some  
3 reports. Again, these are based on length.  
4 They're primarily gillnet licences, but there's a  
5 reduced fee that's required for them based on the  
6 schedule and the size of the boat.

7 Salmon licences issued in respect of vessels  
8 held by an Indian, which I talked to you, I don't  
9 like using that word, I apologize; we currently  
10 use First Nations and/or Native fisherman, but any  
11 rate, in here it's "Indian". So there's an  
12 election that's made by individuals that opt to  
13 pay a reduced fee based on their status, and these  
14 are the fees that are issued with respect to those  
15 -- or charged with respect to those licences.

16 These are also vessel-based licences, just  
17 like the Category A, the Category N licence that I  
18 mentioned in the wrong order is a party-based  
19 licence issued to the Northern Native Fishing  
20 Corporation.

21 Also in this, we outline the licences that  
22 are issued in the trans-boundary rivers, the Taku  
23 and Stikine Rivers. These are not administered,  
24 though, by our Pacific Fishery Licence Unit.

25 Q Thank you. And I see item 5 there is the Category  
26 C licence listed in column 1 of Part 2 of this  
27 schedule. What's a Category C licence?

28 A A Category C licence is also limited under  
29 licences issued to about 500 vessels that  
30 authorize participation in the Schedule 2  
31 fisheries that are listed in Part 2 of Schedule 2  
32 of these regulations.

33 MS. GRANDE-McNEILL: And perhaps Mr. Lunn - sorry - if  
34 we can just turn to page 5 of this document?

35 Q And are these the species you're referring to?

36 A Yes. There's eight species. The other thing to  
37 keep note of, though, is these eight species refer  
38 to a Schedule 2 species, are also inherent in the  
39 privileges that are issued for all other vessel-  
40 based licences, so a salmon licence, a halibut  
41 licence, any other vessel-based licence also is  
42 authorized to harvest these species, and the  
43 Category C licence is a specific licence just  
44 authorizing those species and nothing else.

45 Q Thank you. And can you explain for us why the  
46 Category N licence was introduced?

47 A The Category N licence was introduced by the

1 Department based on the -- again, the objective  
2 was to increase participation by individual Native  
3 fishermen. What happened was the B.C. Packers, at  
4 the time, relinquished a number of licenses and  
5 boats and money was provided by the Department of  
6 Native Affairs (sic) to then manage that  
7 transaction and the licences were then being held  
8 by the Northern Native Fishing Corporation, which  
9 would control those licences and designate them to  
10 vessels and make lease arrangements or  
11 arrangements with individual Native fishermen so  
12 that they had the opportunity for one of those  
13 licences, so it provided some control over some  
14 guaranteed participation in the salmon fishery for  
15 those that made arrangements with the Northern  
16 Native Fishing Corporation which, at the time, was  
17 believed to be a viable option that would be less  
18 costly to the individual fisherman, and it also  
19 gave them an opportunity, whether they held a boat  
20 or not, to try and participate. So it was more  
21 flexible, I guess, in that sense.

22 Q And the PPR, I think, briefly describes how under  
23 ATP a commercial licence may be purchased by the  
24 department and reissued as a communal commercial  
25 licence, with is the AF licence you've just  
26 described, to a First Nation. How does a communal  
27 commercial licence differ from any other category  
28 of commercial salmon licence?

29 A The main thing with communal commercial Category F  
30 licences is they're party-based. There's still  
31 length restrictions involved with the licences,  
32 but the First Nation that's issued the licence has  
33 to designate a vessel that meets that, as opposed  
34 to it being tied to the vessel. So it's not tied  
35 to the other licences that may be held on that  
36 vessel. There also isn't the same annual  
37 requirement to pay a licence fee to maintain  
38 eligibility. What will happen is the licence is  
39 issued pursuant to a contribution agreement with  
40 the First Nation. There may be some fees involved  
41 there, or pursuant to a business plan or an  
42 arrangement that has been made under the PICFI  
43 program. So it's different in that sense, that  
44 it's party-based and not tied to other licences  
45 and doesn't have the same fee requirements.

46 Q And paragraph 23 of the PPR describes Vessel  
47 Registration Cards and states that a Fisher

1 Registration Card may be issued by DFO on an  
2 annual, five-year, or temporary basis. Is that  
3 still true?

4 A We currently only issue one-year, annual, FRCs to  
5 collect better data on fishermen, so to issue them  
6 annually and charge the applicable \$60 fee. We do  
7 also, if there's a replacement required because  
8 it's lost, we also still issue replacement  
9 temporary licences, I guess you could call them,  
10 but we don't do the five-year anymore. I think  
11 the last year we did that was nineteen ninety -- I  
12 don't know off the top of my head.

13 Q That's okay.

14 A Anyways, the other part of your question is that  
15 Vessel Registration Cards are basically if a  
16 vessel is new, which was mentioned earlier. The  
17 vessel has to register and meet registration  
18 requirements, a fee will be charged of \$50, and  
19 the vessel will be registered with the Department  
20 and issued a receipt, but we don't actually issue  
21 a registration certificate. When another licence  
22 is issued to the boat at the time that they  
23 receive those licences, that will be considered  
24 their registration as well, so we don't issue a  
25 separate document and each boat is assigned a VRN  
26 number, which is their Vessel Registration Number.

27 The last line of that paragraph says:

28  
29 ..salmon licences are annual and expire on  
30 December 31st...

31  
32 In fact, it's actually March 31st.

33 MS. GRANDE-McNEILL: Thank you. And Mr. Lunn, if we  
34 could have Exhibit 591.

35 MR. LUNN: Would you like to mark the exhibit?

36 MS. GRANDE-McNEILL: No, I don't think it's necessary,  
37 as it is regulations. Thank you.

38 Q So you've already described for us what this table  
39 is showing and you've also just now described for  
40 us the different categories of licences, and can  
41 you link those categories to the types of licences  
42 listed at the top of this table?

43 A So communal commercial is Category AF, full fee is  
44 A, reduced fee is -- we refer to them as AI, and,  
45 yeah, that's --

46 Q And then I understand within that reduced fee  
47 there is also the N licence?



- 1 A Correct, yeah, which is included in that reduced  
2 fee, the totals for N licences to be included in  
3 the reduced fee column.
- 4 Q Okay. And do you know when this information is  
5 accurate to?
- 6 A Last week I requested this report.
- 7 Q Okay. And we've also heard evidence on licences  
8 in DFO inventory that are through the PICFI or ATP  
9 programs to be redistributed to First Nations. Do  
10 you know how many licences are in DFO's inventory  
11 currently?
- 12 A The number of licences in DFO inventory can  
13 fluctuate, because it's based on what licences are  
14 relinquished at the time. The last request when I  
15 asked of the ATP and PICFI to put together numbers  
16 for me, there was 349 salmon licences in  
17 inventory, which would include for different  
18 purposes.
- 19 Q And I see here the grand total of commercial  
20 salmon licences is 2,220. Are these inventory  
21 licences in addition to that, or are they included  
22 within that?
- 23 A No, they're included, because there's no increase  
24 in the number of -- this is the total of salmon  
25 licences. It's actually 2,221 is the total of all  
26 salmon licences.
- 27 Q And what's the one?
- 28 A I have to mention it just because of accuracy  
29 purposes, but there is one licence where the  
30 vessel owner opted not to choose an area or gear,  
31 so we can't put him anywhere with that licence in  
32 this table.
- 33 MS. GRANDE-McNEILL: Thank you. And I wanted to ask  
34 you a few questions about the licensing fees, and  
35 sorry, Mr. Lunn, if we can have number 19 on  
36 Canada's list again? And page 2. Sorry, 2 of 5.  
37 Thank you.
- 38 Q And I'll just ask you to confirm, Ms. Mijacika, if  
39 these are the current licence fees.
- 40 A Yes. Thank you.
- 41 Q Now, the PPR indicates that the current licence  
42 fees were set in 1998. Had they increased or  
43 decreased at that time?
- 44 A The current licence fee structure that's reflected  
45 in these regulations actually was established in  
46 1996, but the Department amended the salmon  
47 licence fees in 1998 to make them more reflective

1 of the declining licence revenues, or the fishing  
2 revenues in the salmon fishery. So there was an  
3 amendment to the regulations made in 1998 that  
4 actually reduced the licence fees to make them  
5 more in align with the landed values of -- a  
6 percentage of the landed value of the fishery at  
7 that time.

8 Q And why have they not been changed since then?

9 A Again, this goes to what I mentioned a little bit  
10 earlier from the commission's questions with  
11 respect to an overall review of all the fees. We  
12 haven't established a new formula or an accepted  
13 new fee structure that's been approved by the  
14 Minister. It's our intent to do that, to updated  
15 the fees to be more reflective of current market  
16 conditions and to possibly be updated on a regular  
17 basis, to be more fair and equitable, and there's  
18 proposals and options being considered, but  
19 nothing that's been finalized that's yet ready to  
20 be provided as a new package for to update or  
21 change this fee schedule.

22 Q And the PPR also states that licence fee relief,  
23 either through a refund of fees or a licence fee  
24 holiday, have not occurred for Pacific salmon  
25 harvesters since 1999. Why is that?

26 A DFO doesn't have the authority to waive fees. We  
27 would require that authority through the Treasury  
28 Board. We also don't have the authority to remit  
29 or refund existing fees that we've collected  
30 because it results in a revenue shortfall which we  
31 are then required to absorb, so we also don't have  
32 a budget or a specific program set aside for that  
33 purpose. So a specific request would have to be  
34 made to Treasury Board in order to do that.  
35 That's one reason.

36 Another reason is there's this interest for  
37 this in a number of fisheries where they're seeing  
38 declines in their revenue and would like -- or in  
39 their markets or their access to markets. So  
40 applying a fairness principle, we would have to  
41 look at how this would be applied to a number of  
42 different fisheries to make them more in balance  
43 with what's happening in the current circumstances  
44 of the fishery.

45 So there's a general appetite for the  
46 department not to do that for one fishery and not  
47 looking at others and just doing one-offs, and if

1 we did do a one-off, as I mentioned before, we  
2 would then be responsible in the region to come up  
3 with the revenue to support that, and in this  
4 current environment that we're in with fiscal  
5 budget constraints, we just don't have the support  
6 to do that or the revenues to do that.

7 Q So you've referred to target revenues. Are you  
8 referring to the frozen allotment issue?

9 A Currently, what frozen allotment -- the Treasury  
10 Board withholds or holds back a certain  
11 appropriation of -- or DFO money until such time  
12 that we can deposit similar or the same amount  
13 into the Consolidated Revenue Fund, then they'll  
14 release those funds for the department to then  
15 spend on their programs.

16 So, for example, with licensing revenues, we  
17 have a target that we're supposed to be achieving  
18 and we haven't been. We've been falling short of  
19 it for a number of years by at least seven million  
20 dollars nationally, which then, you could say,  
21 impacts in that way; we're not receiving our full  
22 revenue to spend on our programs, so all the more  
23 reason to restructure.

24 Q So the frozen allotment seems to link revenue from  
25 licence fees with DFO's operational funds, and  
26 does DFO actually view licence fees as cost  
27 recovery?

28 A No. The current licence fee structure is based on  
29 access to the resource, so fishermen pay a rent  
30 for access to participate, and then our programs  
31 are designed around that access, but there's no  
32 direct linkage with the revenues we receive from  
33 their fees, since it goes into the Consolidated  
34 Revenue Fund, and then how we administer the funds  
35 that we use for our programs.

36 Q And what's the Consolidated Revenue Fund?

37 A General revenue, Receiver General of Canada.

38 Q And do you know what revenue Pacific commercial  
39 salmon licences generate annually?

40 A It's just under two million, in Pacific Region.

41 MS. GRANDE-McNEILL: Now, I want to move on and ask you  
42 a few questions about licensing of share-based  
43 salmon fisheries, but I'm noticing the time.

44 Perhaps this is a good time to take the break?

45 THE COMMISSIONER: We have a --

46 MS. GRANDE-McNEILL: A few minutes?

47 THE COMMISSIONER: We have about another five minutes,

1 if you want to use it.

2 MS. GRANDE-McNEILL: Okay.

3 Q How does licensing of the demonstration share  
4 fisheries work in salmon?

5 A As I mentioned before, licensing is responsible  
6 for issuing licence documents and it's the  
7 conditions of licence that will indicate the quota  
8 associated with the demonstration fishery, so the  
9 allocation under the quantities and species of  
10 fish that will show up as a percentage of the  
11 total allowable catch.

12 So from licensing's point of view, they would  
13 still issue the licence documents. Fishermen  
14 would then, if there was a quota system where  
15 amendments were required to show the actual  
16 quantity of fish or any changes in that quantity  
17 of fish, those amendments would be issued by a  
18 different area that are under the fish management  
19 group.

20 MS. GRANDE-McNEILL: And perhaps just to illustrate  
21 this, Mr. Lunn, if we could have Exhibit 476? And  
22 if we go to page 3 of the pdf.

23 A So it's actually section 1 here.

24 Q And looking at section 1, so this is -- sorry, can  
25 we just go back up to the top for a moment? So  
26 this is Conditions of 2010/2011 Salmon Area B  
27 Licence, and I understand there was a  
28 demonstration quota fishery in Area B --

29 A Correct.

30 Q -- that year? If we can scroll back down to page  
31 3, I'm looking at section 1. Can you just  
32 describe for us how this relates to what you just  
33 said?

34 A So this section 1, it says, under point (2) for  
35 example:

36  
37 The TAC for quota fisheries will be  
38 posted...DFO office...The TAC may be modified  
39 in-season...

40  
41 So what this does is under (e) for sockeye salmon,  
42 in point number 1, this licence would have this  
43 percentage of the total allowable catch. What  
44 that percentage is and quantity is not listed  
45 here, but it allots to a certain amount of fish.

46 This is an equal allocation or a percentage  
47 that each one of the licences that we issue would

1 have. So what would happen subsequent to this  
2 document is this particular licence holder would  
3 receive an amendment that if this number changes  
4 or, I believe under the last demonstration, there  
5 was the opportunity to reallocate quota between Bs  
6 and H licences, et cetera, that would result in an  
7 amendment being required, because then there would  
8 be a change in the amount.

9 So this just authorizes that there's that  
10 percentage of the catch allocated to that -- or  
11 associated with that particular licence.

12 Q And so I understand for the other salmon species  
13 there, there was no quota fishery, and so the  
14 limit is no limit?

15 A Right. It would be worded differently in this  
16 section.

17 Q Right. Then, if there is no TAC for a given  
18 species in a given year, in theory, then, the  
19 quota is zero in terms of number of pieces that  
20 can be --

21 A right.

22 Q -- harvested?

23 A Right.

24 Q And I think you've just mentioned, but in the  
25 demonstration fisheries in salmon to date, the  
26 quota attached to each licence is an equal share?

27 A It has been, yes.

28 Q And these licences expire annually?

29 A Yeah. They're issued, the licence period is April  
30 1 to March 31.

31 Q And the quota and other conditions of licence can  
32 be changed by the Department annually as well?

33 A Right. They can be updated in-season.

34 MS. GRANDE-McNEILL: Thank you. This is probably --

35 A It's based -- yeah.

36 MS. GRANDE-McNEILL: -- a good time to break.

37 THE COMMISSIONER: Okay, thank you.

38 THE REGISTRAR: The hearing is now adjourned until 2:00  
39 p.m.

41 (PROCEEDINGS ADJOURNED FOR NOON RECESS)

42 (PROCEEDINGS RECONVENED)

44 THE REGISTRAR: The hearing is now resumed.

45 MS. GRANDE-McNEILL: Geneva Grande-McNeill for Canada  
46 with Tim Timberg.

47 I have two areas left to cover with Ms.

1 Mijacika, the first being Pacific Region Licence  
2 Appeal Board and sanctions and the second being  
3 her recommendations for or possible changes to  
4 licensing.  
5

6 CROSS-EXAMINATION BY MS. GRANDE-McNEILL, continuing:  
7

8 Q Ms. Mijacika, paragraph 50 of the PPR states that:  
9

10 In practice, commercial salmon licence  
11 suspensions do not occur and the preferred  
12 practice is for fisheries officers to charge  
13 a licence holder for a violation of the  
14 **Fisheries Act**.  
15

16 Do you agree with that characterization?

17 A The minister has the authority under the **Fisheries**  
18 **Act** to sanction or suspend or cancel licences,  
19 however her -- his or her ability to do so is  
20 limited based on some Supreme Court decisions. I  
21 think it's -- there's a **Matthews**, I believe 1998  
22 decision. At any rate, the minister basically is  
23 limited to consider if there's a violation from  
24 one year, a past violation that occurred, say, for  
25 example, in 2010, consideration for the  
26 application in 2011 shouldn't be considering a  
27 violation from the previous year when considering  
28 applications in subsequent year. It's not  
29 considered to be a good practice.

30 It's better to go through the penal  
31 provisions that are outlined in the **Fisheries Act**  
32 and pursue a charge against the fisherman as  
33 opposed to for whatever violation of the  
34 conditions of licence or whatever the infraction  
35 was as opposed to withholding his access -- or  
36 withholding the licence which is access to  
37 participate in the fishery.

38 Q And why does the licensing unit not track or take  
39 into account licence condition or regulation  
40 violations in issuing or reissuing licences?

41 A The licensing unit's responsibility is to ensure  
42 that the applicant meets all the licensing  
43 requirements, not to look at possible infractions  
44 or to in any way be judge or jury with respect to  
45 whether a fisherman has done something wrong or in  
46 violation. The focus is on issuing the licence  
47 for the current year.

1 Q And you've already described for us how the  
2 Pacific Region Licence Appeal Board or PRLAB makes  
3 recommendations directly to the minister, who  
4 makes the ultimate decision?

5 A Yes.

6 Q Is that right? And is that a process that could  
7 be changed?

8 A It would require updates of changes to the  
9 **Fisheries Act**. There has been some consideration  
10 given to a tribunal established to look at -- to  
11 replace the appeal board and deal with appeals on  
12 licences and to deal with allocation issues, but  
13 that would require amendments to the **Fisheries Act**  
14 and that has not been approved or gone through  
15 cabinet, so...

16 Q And you've also described for us how the PRLAB is  
17 the only avenue for an exception to the licensing  
18 rules and I'm wondering what the success rate of  
19 applicants is.

20 A For appeals that are based on extenuating  
21 circumstances, the success rate can be quite high.  
22 It can be up to 70 percent of the appeals are  
23 approved, so it's in the fishermen's interest to  
24 go through the appeal process if they feel that  
25 strongly to receive an exemption from whatever the  
26 policy is.

27 Q And the PPR also mentions at paragraph 53 that  
28 appeals are heard in camera, and why is that?

29 A Appeals are heard where it's just the appellant  
30 and/or his or her counsel, the appeal board and an  
31 individual from the department that will  
32 administer the process to discuss and protect  
33 circumstances and the information, the personal  
34 and financial information that the fisherman  
35 provides at the hearing. Oftentimes they'll  
36 discuss their catch information or information  
37 about their finances or their personal  
38 circumstances that we hold in confidence or is  
39 just -- it stays within the hearing.

40 Q And the PPR also mentions at paragraph 52 that the  
41 recommendation of the board to the minister is  
42 confidential. Is that recommendation made after  
43 the hearing?

44 A Yes.

45 Q And you've also mentioned that appellants can  
46 request their file, and what's contained in the  
47 file that they can request?

- 1 A Whatever submission they've provided to the  
2 department to go to the appeal board, the original  
3 decision denying whatever their request was from  
4 the department, any information that the  
5 department has provided to the appeal board to  
6 further explain or to provide information on its  
7 policies and practices, a copy of the board's  
8 recommendation to the minister and then the final  
9 decision or letter that the applicant receives  
10 back from the ministers or -- and/or whoever's  
11 been delegated to send a letter in response.
- 12 Q And are appellants informed of their right to  
13 request this information?
- 14 A They're advised as part of the package that goes  
15 to them or if they ask, that this is available to  
16 them. I think there's some Q and A's around the  
17 appeal board that describe this in particular,  
18 that you can request a copy of the board's  
19 recommendation and/or other material.
- 20 Q And is there any right of re-appeal or  
21 reconsideration from the minister's decision?
- 22 A Under the Pacific Region Licence Appeal Board's  
23 terms of reference, the board can grant re-appeals  
24 on the basis of new information being provided, so  
25 if a fisherman's appeal is denied, they can apply  
26 for a re-appeal to have the information  
27 reconsidered but it's up to the board whether to  
28 grant that re-appeal for the -- for it to be  
29 forwarded again to the minister, so it's possible  
30 they could deny the request.
- 31 Q Thank you. And so my last question for you is  
32 going forward, what changes do you think should be  
33 made to licensing in salmon and why?
- 34 A I think, as with all fisheries, a lot of our  
35 licensing policies and rules are old. They're  
36 from the '70s, '80s. These fisheries have  
37 evolved, the circumstances and the sustainability  
38 requirements and the different fisheries and how  
39 we manage them have changed over time and  
40 oftentimes the rationale for the reasons for these  
41 policies have been the circumstances have changed  
42 so that the rationale no longer is relevant.
- 43 What comes to my mind is some of the  
44 proposals after we reviewed our current rules, the  
45 discussion paper that we discussed this morning.  
46 The intent of that, after the review, looking at  
47 ways to apply some consistency, provide more



1 opportunity based on the concerns that are  
2 expressed by fishermen, individual fishermen,  
3 commercial and aboriginal harvesters to consider  
4 those requests and to look at ways to update those  
5 policies to be more consistent, less complexity,  
6 more up-to-date, based on the current  
7 circumstances in the fishery, and a number of  
8 those such as flexibility on vessel replacements,  
9 so allowing for some flexibility to replace a  
10 boat, so they're not limited if they need to  
11 adjust or upgrade their fishing operation or they  
12 want to diversify into other fisheries, and, you  
13 know, allowing some flexibility there, as well as  
14 allowing for some flexibility on splitting  
15 licences that may be combined on boats so that  
16 there is opportunity to do that. It's easier for  
17 fishermen to adjust their fishing operations as  
18 long as we also consider no increased capacity  
19 around the Schedule 2 species that I mentioned  
20 earlier today, so with some other rules but to  
21 allow that flexibility. To look at removing those  
22 Schedule 2 species from the Pacific Fishery Regs  
23 and creating separate licence categories for those  
24 species, so that we're managing more efficiently,  
25 we're looking at fisheries separately as opposed  
26 to having the Schedule 2 on all vessel-based  
27 licences, there's definitely a, you know, a  
28 concern in a number of those Schedule 2 fisheries  
29 that we start moving to that are control and  
30 having a separate fleet that's licensed.

31 So I think a combination of those things.  
32 Extensive discussions, though, will be required on  
33 any of those kind of changes, those options, and  
34 also to consider feedback on whether there's other  
35 proposals or options the department should be  
36 considering that I've heard today about party-  
37 based licensing seems to be something that could  
38 also -- you know, it's outside the scope of that  
39 discussion paper, but it's certainly something  
40 that the department could look at when analysing  
41 the feedback that we receive, doing some economic  
42 analysis about what the impact is on the viability  
43 of the different fisheries if we make these kind  
44 of policy changes. But I do think that certainly  
45 our overall direction and the initiatives that  
46 guide us right now do encourage us to look at ways  
47 to make fisheries more economically prosperous so

1           that we're -- there's viability for those that are  
2           participating in these fisheries and licence  
3           policies are a big piece of that, so...

4       Q     And so you've touched on a few things there and  
5           I'm just wondering, the first thing you mentioned  
6           was flexibility on vessel replacement and what are  
7           you referring to there?

8       A     When -- with salmon, for example, when a licence  
9           is held by the vessel, so it's vessel-based, it  
10          takes on the overall length of that vessel. It  
11          can only be then permanently transferred or  
12          replaced with another vessel that doesn't exceed  
13          that length or is shorter than that length. So  
14          that's pretty restrictive as far as being able to  
15          change boats and/or get involved in other  
16          fisheries where the licences have longer length  
17          restrictions than your salmon licence.

18      Q     And you've also mentioned flexibility on licence-  
19           splitting. And what do you mean by licence-  
20           splitting?

21      A     Well, again if you -- if a salmon licence is  
22           attached to a vessel and there's other licences  
23           that that vessel holds, they become married, so  
24           there's those vessel-based licences are attached  
25           to each other that can't be divorced except under  
26           circumstances where the fishery is a permanent  
27           quota fishery and we have developed policies with  
28           industry specifically around how to provide some  
29           flexibility for them because there is a quota that  
30           is a control to restrict the amount of harvest, so  
31           capacity is no longer as much of an issue in those  
32           fisheries.

33           So in some fisheries, for example, in  
34           halibut, they can split licences and move to  
35           longer boats that are 25 feet longer than their  
36           length, but they'll have to make sure they have a  
37           vessel-based licence or cover off the Schedule 2  
38           that I was talking about earlier to make sure  
39           there's no new boat coming into the fishery or  
40           increased capacity on those other fisheries that  
41           they would be authorized to fish under Schedule 2.  
42           That's just an example.

43           All the other fisheries, salmon, crab, prawn,  
44           just as examples, are not allowed to split and  
45           even if the licences are relinquished through the  
46           ATP or PICFI programs, PICFI also maintains those  
47           rules, so it's difficult to then redistribute

Lisa Mijacika

Cross-exam by Ms. Grande-McNeill (cont'd) (CAN)

Cross-exam by Mr. Rosenbloom (GILLFSC)

1           those licences when they can't be split and there  
2           may be some interest or a business plan for one  
3           First Nation and, you know, the whole licences  
4           will have to go as a package to wherever they end  
5           up to replace the capacity that was taken from out  
6           of the commercial side of things. So it limits us  
7           in that sense.

8           Q     Thank you very much.

9           MS. GRANDE-MCNEILL: Mr. Commissioner, I should just  
10          note one thing. You asked the witness a question  
11          about Pacific Fisheries Reform and in her answer  
12          to you she mentioned more recent Pacific Fisheries  
13          Renewal. That's a document that's not in evidence  
14          and we will work with commission counsel to have a  
15          witness follow up on the list of policies and  
16          initiatives that were discussed by Sue Farlinger  
17          in her testimony on December 16th.

18          THE COMMISSIONER: Thank you.

19          MR. MARTLAND: If you'll bear with me, Mr.  
20          Commissioner, I just want to verify my note of the  
21          sequence. Next for Ms. Mijacika I have Mr.  
22          Rosenbloom down at five minutes. Thank you.

23

24          CROSS-EXAMINATION BY MR. ROSENBLOOM:

25

26          Q     Ms. Mijacika -- do I pronounce your name  
27          correctly?

28          A     Miachika (phonetic).

29          Q     I have a history in this inquiry of not doing very  
30          well. Forgive me if I mispronounce your name.

31          A     Oh, no, it's...

32          Q     I am very -- I have a very brief series of  
33          questions for you and they relate exclusively to  
34          the subject of fee waivers to the fleet. You say  
35          in your will-say and I could lead you to it but I  
36          think it's unnecessary that -- and I'm quoting  
37          from it:

38

39                     She will describe that DFO no longer provides  
40                     fee waivers for seasons where there is no  
41                     expected or actual openings of the fishery.

42

43                     Maybe you've already informed us of this. Was  
44                     there an occasion or a period of time where DFO  
45                     did waive fees? When did they lift that  
46                     opportunity to waive fees?

47          A     It's my understanding that in 1999 and 2000 the

- 1 Department had a fee waiver disposition program  
2 where --
- 3 Q Sorry, what year was that?  
4 A 1999 and 2000.  
5 Q Thank you. Right.  
6 A So right after CFAR.  
7 Q And, of course, I'm speaking of the salmon fishery  
8 of the --  
9 A Right.  
10 Q -- West Coast.  
11 A Right.  
12 Q Do you know whether there was ever a waiver  
13 subsequent to that?  
14 A For salmon?  
15 Q Yes, for salmon, West Coast.  
16 A Not that I'm aware of.  
17 Q All right. Now, we have heard testimony already  
18 at this inquiry that there have been occasions of  
19 which the various consultative bodies here in  
20 British Columbia have made recommendation to  
21 Ottawa for a waiver of licence fee. You're  
22 familiar with the fact that that has happened from  
23 time to time?  
24 A Yes. It specifically happened in the salmon --  
25 from the salmon sector, as well as the roe herring  
26 and spawn on kelp sector.  
27 Q And you're familiar with the fact that that has  
28 been met with -- with a response from Ottawa that  
29 there is a fee review going on and as a result no  
30 action has been taken on those recommendations,  
31 correct?  
32 A Right. Because the department's intent was to  
33 look at fees overall and look at a new fee  
34 structure that would balance the fees to be more  
35 equitable across all fisheries, so to look at it  
36 as a comprehensive package, one policy for  
37 everyone.  
38 Q Right. And you spoke of that this morning, that  
39 it had implications to the entire fishery of the  
40 nation and therefore, there was a review going on.  
41 I'm informed by my clients this review has been  
42 going on for years and years; is that fair to say?  
43 A 2007 was the first year that we committed to look  
44 at the fees and since that time, there has been  
45 quite a few resources dedicated to looking at  
46 different options. The National Policy Group  
47 leads that file.

- 1 Q Do you have any sense or can you give this inquiry  
2 any sense of when there may be a decision from  
3 Ottawa in this regard?
- 4 A I couldn't say for sure when there will be a  
5 decision. I guess it would be dependent upon when  
6 the minister is prepared to make a decision on  
7 proposals that have been put before her.
- 8 Q And could I assume from your testimony that there  
9 is no fishery within this nation wherein DFO has  
10 over the last four or five years waived fees for  
11 licences?
- 12 A We don't waive fees. There are circumstances, for  
13 example, in quota fishery like spawn on kelp where  
14 there's zero quota allocated to the licence. If  
15 they have zero quota they can pay zero fee because  
16 it's a different formula for quota fisheries as  
17 opposed to competitive fisheries. So in those  
18 circumstances, some of the spawn on kelp operators  
19 will elect not to have a quota and therefore not  
20 pay a fee. That's the only kind of remedy that's  
21 in place in that particular fishery.
- 22 Q So it's your testimony that in respect to what you  
23 called competitive fishery, you do not know of any  
24 fishery within the nation where DFO has of late  
25 been waiving fees for licences?
- 26 A Well, when you say in the nation, if you're  
27 talking about Atlantic, like lobster fisheries and  
28 other fisheries --
- 29 Q I am indeed. I'm talking about the entire nation.  
30 Are there fisheries within this nation that are  
31 described by you as competitive fisheries where  
32 DFO has waived fees for licences?
- 33 A There may be specific programs set up in Atlantic  
34 Region to deal with those particular concerns and  
35 those fisheries such as Atlantic lobster. I'm not  
36 aware of the details of how that program is  
37 implemented and what fees exactly are possibly  
38 being not paid by lobster fishermen. I do know  
39 that there is funding set aside specifically to  
40 address the shortfalls of revenue that the  
41 department may incur as a result of that, whereas  
42 in Pacific Region we do not have any program like  
43 that currently set up to do that.
- 44 Q And because of your lack of familiarity with that  
45 East Coast fishery, am I -- am I correct in  
46 assuming that you cannot inform us as to how one  
47 might rationalize what they're doing in the East

- 1 Coast as opposed to their refusal to waive fees in  
2 the West Coast? Is that fair to say?
- 3 A It would be -- I think there is public policy to  
4 consider about compensating fishermen for lost  
5 harvest opportunity. I think there has been some  
6 mention and department has heard concerns about  
7 not compensating for conservation. If we have  
8 conservation objectives to be met, we shouldn't be  
9 considering compensating fishermen for the loss of  
10 that opportunity. Again, that's one view. Other  
11 than that, I can't speak specifically to what  
12 we've heard around the lobster program because I  
13 haven't been out to consult around that program in  
14 particular.
- 15 Q In --
- 16 A So I haven't heard views.
- 17 Q In the minute or two that I have left, presumably  
18 a fee is charged for a licence for the purpose  
19 that a licence holder can fish and receive some  
20 income from -- derived from that licence,  
21 exercising that licence; is that not fair to say?
- 22 A It's a fee -- it's a rent. They're paying to have  
23 access to the resource under the current  
24 structure. It's not market-based driven. That's  
25 what our intent would be if we changed the fee  
26 structure, but right now a lot of the concerns  
27 that we're hearing is markets have declined, the  
28 value for the products declined, quantity of  
29 landings have declined, the current fees just  
30 aren't in line with that, and we're hearing that  
31 message loud and clear in a number of fisheries.
- 32 Q Well, as a DFO representative, you would agree  
33 with me that it is hard for a fisher to -- it's  
34 hard to take for a fisher to be obligated to pay a  
35 licence fee in a season wherein there is a total  
36 closure in terms of harvest to that fisher; you  
37 would agree with me, wouldn't you?
- 38 A I would -- my -- I have received myself and within  
39 the department I understand there is a lot of  
40 concerns expressed about fee relief and lack of  
41 fishing opportunities, so it's definitely  
42 something that we heard on a regular basis.
- 43 Q No, but my question isn't what you hear from my  
44 clients. My question is as to your opinion as to  
45 whether it is appropriate that a licence fee be  
46 applied to a licence wherein DFO, for possibly  
47 good reason, has denied total access of the

Lisa Mijacika

Cross-exam by Mr. Rosenbloom (GILLFSC)

Cross-exam by Mr. Eidsvik (SGAHC)

1 resource for a given season?

2 A The difficulty when answering that is it's not my  
3 decision.

4 Q I appreciate that.

5 A It would have to be a decision made by senior  
6 management to allow for that kind of exception for  
7 fees to be waived or for there to be any sort of  
8 relief.

9 I can say that within just the fisheries that  
10 I manage, there is certainly concern for that, but  
11 in absence of having a program set up or some  
12 funds to address the loss of revenue, that's going  
13 to then take away from how the funds that we need  
14 to manage the fisheries and the other programs  
15 that we have, so it puts us in a difficult  
16 position.

17 Q Yes. I appreciate the position I'm putting you  
18 in, in asking this opinion, but it's fair to say  
19 that you at least recognize the legitimacy of the  
20 controversy that surrounds this very issue, do you  
21 not?

22 A I think it is certainly a management issue that is  
23 on the department's radar to try and make some  
24 movement on for sure.

25 MR. ROSENBLOOM: I thank you very much for answering my  
26 questions.

27 MR. MARTLAND: Mr. Commissioner, I have Mr. Eidsvik on  
28 the list next, and our hope is that by three  
29 o'clock, his questions and Mr. Harvey's will be  
30 completed. I think that would give them in the  
31 range of 20 minutes apiece.

32 MR. EIDSVIK: Thank you, Mr. Commissioner. Philip  
33 Eidsvik for the Area E and Coalition.

34

35 CROSS-EXAMINATION BY MR. EIDSVIK:

36

37 Q Good afternoon, Ms...?

38 A Mijacika.

39 Q Thank you. What date -- Exhibit 591, if Mr. Lunn  
40 could bring that up for us again. I'm looking for  
41 an exact date on that table. You said it was last  
42 week. I wonder if you could tell us what day.

43 A Whatever date was Friday.

44 Q Okay.

45 A Last Friday is when I received this information  
46 from licensing and forwarded it.

47 Q That's fine. That's all I needed. Now, do you

- 1 know what the aboriginal participation rate at DFO  
2 is, inside Triple Nickel?
- 3 A Sorry?
- 4 Q What is the aboriginal participation rate at DFO?
- 5 A Average -- I'm not understanding that.
- 6 Q Well, sorry, but we talked a lot about today about  
7 the purpose of PICFI and the aboriginal  
8 participation rate in the commercial fishery. I'm  
9 just kind of curious, what's the aboriginal  
10 participation rate at DFO?
- 11 A Well, in absence of crunching these numbers, it's  
12 pretty hard to come up with a percentage.
- 13 Q No, I'm sorry, I mean right in DFO's offices in  
14 the people you work with.
- 15 A How many --
- 16 Q How many aboriginal employees? Percentagewise, do  
17 you know?
- 18 MS. GAERTNER: Mr. Commissioner...?
- 19 A Well --
- 20 THE COMMISSIONER: I'm sorry?
- 21 MS. GAERTNER: I'm just wondering what the relevance of  
22 this question is.
- 23 MR. EIDSVIK: Mr. Commissioner, I think it's highly  
24 relevant. We're talking about the creation of  
25 jobs and aboriginal participation in areas that  
26 are under the Department's control, and one of the  
27 main objects of the program is to increase  
28 aboriginal participation in the commercial  
29 fishery. And for comparison purposes, I think  
30 it's really useful to see what the participation  
31 rate is inside the department, and I think it goes  
32 to our place at the table in all the reports that  
33 have been brought up this morning.
- 34 A I --
- 35 MR. EIDSVIK:
- 36 Q But you can say you don't know and we can move on.
- 37 A Well, I do -- there are people who work within the  
38 Department that happen to be of aboriginal status  
39 in the areas specifically that work in different  
40 area offices. Of the ones I know with respect to  
41 licensing, there's at least two out of the 12 or  
42 15 licensing staff.
- 43 Q Okay. That's helpful. I guess we'll have to get  
44 the data on that. Now, if we look at the table up  
45 there, Exhibit 591, if I do my math correctly, and  
46 we add up column -- the communal commercial and  
47 the reduced fee, it's about 816 licences out of



1           2,220 plus the one, so we have an aboriginal  
2 participation rate of about 36 percent, my math.  
3 Anybody challenge my math on that? I'm not real  
4 good at math. Is that about right?  
5       A    I think your math's probably right on the numbers,  
6 but when you talk about aboriginal participation  
7 rate, I mean, of the licence holders who pay a  
8 reduced fee, you know, you're -- a lot of those  
9 fishermen are commercial fishermen that happen to  
10 be of, you know, aboriginal status but they're  
11 still participating in commercial fishery.  
12       Q    I guess --  
13       A    So I find that a bit --  
14       Q    Thank you. I guess that's --  
15       A    It's not how we describe, I guess is what I'm  
16 saying, within the Department.  
17       Q    So do you mean that --  
18       A    It's an election to pay a lesser fee on the basis  
19 of voluntarily electing to do so.  
20       Q    I'm not a Canadian of aboriginal ancestry. Would  
21 I be eligible for that reduced fee?  
22       A    No.  
23       Q    Okay. So the people that are eligible for that  
24 reduced fee are Canadians of aboriginal ancestry?  
25       A    That qualify under the **Indian Act**, yeah.  
26       Q    Right. So they participate in the public  
27 commercial fishery as Canadians of aboriginal  
28 ancestry but you say they're not aboriginals? I'm  
29 sorry, I'm confused.  
30       A    No, I'm just clarifying the -- or how the type of  
31 terminology that we use within the department.  
32 There may also be some people who participate with  
33 a full fee licence that happen to have -- to meet  
34 that same requirement --  
35       Q    Right.  
36       A    -- but they haven't elected a reduced fee or it's  
37 not a Category N licence that falls under the  
38 reduced fee --  
39       Q    Yeah.  
40       A    -- that they're operating under.  
41       Q    Okay. We're going to get to that in a second, but  
42 if I was to look at the number of licences  
43 identified as being issued to Canadians of  
44 aboriginal ancestry, we could include the communal  
45 commercial and the reduced fee; is that correct?  
46       A    You could include that. Yes.  
47       Q    Okay.

- 1 A The communal commercial, though, the distinction  
2 needs to be made that those are issued to First  
3 Nations, so communal or First Nations groups that  
4 are a party in their own, as opposed to an  
5 individual.
- 6 Q All right. I understand that. And maybe I can  
7 follow it up with one question. So let's take Ron  
8 Sparrow, if he had a -- qualified for reduced fee  
9 licence and he's fishing in the public commercial  
10 fishery under reduced fee licence --
- 11 MR. MARTLAND: I object.
- 12 MR. EIDSVIK: Why?
- 13 MR. MARTLAND: It's not a -- I'm going to suggest this.  
14 If there's a certain line of questions -- and  
15 there's a certain latitude to asking general  
16 questions. I think if we're moving into speaking  
17 about an individual, a real individual, we're into  
18 a whole separate ball game. So perhaps there's a  
19 way Mr. Eidsvik can reformulate a question that  
20 doesn't take us into -- I'm mindful of a question  
21 that's premised on someone who may or may not be  
22 part of our process or have counsel. I think  
23 there's a concern of obvious appearance in that  
24 situation.
- 25 MR. EIDSVIK: Okay. Let me restate that and I thank  
26 the commission counsel for that point.
- 27 Q An aboriginal -- Canadian of aboriginal ancestry  
28 fishing under the reduced fee licence, his  
29 identity as an aboriginal person is not reduced or  
30 impaired simply because he fishes in the public  
31 commercial fishery, is it?
- 32 A I'm not quite sure I understand what the question  
33 is there.
- 34 Q I'll move on. Thank you.
- 35 A The Department keeps record of the election and  
36 would track the licence as reduced fee election  
37 unless the fisherman asked to reverse that  
38 election which has happened on occasion, as well,  
39 where they would go before the appeal board to try  
40 and do that, so...
- 41 Q Okay. In the reduced fee -- sorry, in the full  
42 fee licences, I gather that there's a number of --  
43 an undetermined number of licences that are held  
44 by Canadians of aboriginal ancestry or by  
45 aboriginal controlled corporations, as well, that  
46 you haven't identified there; is that correct?
- 47 A There may be some, but the Department doesn't keep

- 1 track of licences that way where we try to track  
2 percentage of commercial licences that are issued  
3 or held by aboriginals or individuals that may be  
4 part of a corporation that happened to be  
5 aboriginal.
- 6 Q Okay. Thank you.
- 7 A We don't --
- 8 Q Does -- and your table doesn't show full fee  
9 licences that are operated by Canadians of  
10 aboriginal ancestry such as the ones owned by  
11 Jimmy Pattison, Canadian Fish, for example? It  
12 only shows licence holders, it doesn't show  
13 vessels that may be owned by somebody but operated  
14 by an aboriginal?
- 15 A Well, they're all vessel-based licences, so  
16 whoever owns the boat has control over the  
17 licences, so there's various different vessel  
18 owners that may hold -- may own the boats that  
19 hold these licences.
- 20 Q Okay.
- 21 A So that's --
- 22 Q Now, I was unsure about the licences held in PICFI  
23 and other inventories, are they included in that  
24 column, communal commercial?
- 25 A The ones that -- yes.
- 26 Q Okay.
- 27 A They are.
- 28 Q That helped. I wasn't clear when you answered the  
29 question this morning. Does your table take into  
30 account the licences issued under the Nisga'a and  
31 Tsawwassen treaties, the communal licence issued  
32 there?
- 33 A I'm not -- I don't have enough detail on the  
34 licences that are issued for those two treaties.
- 35 Q Does your table take into account commercial  
36 licences issued to aboriginal groups participating  
37 in the separate commercial fisheries on the Fraser  
38 such as the Musqueam, Tsawwassen, Sto:lo or  
39 Burrard or other groups?
- 40 A If they've been allocated by the inventory or  
41 through ATP or PICFI as communal commercial  
42 licences, they'll show up in these numbers.
- 43 Q I'm sorry, maybe perhaps you misunderstand me.  
44 Would a licence issued to the Musqueam for the  
45 purpose of fishing in the commercial fishery on  
46 the Lower Fraser, their separate commercial  
47 fishery, would that show up in this table?

- 1 A I'm not familiar enough on what those licences  
2 entail for the Musqueam, so...
- 3 Q Okay. I guess --
- 4 A And it's partly I don't want to give you the wrong  
5 information there.
- 6 Q And what about scientific licences or ESSR  
7 licences that are issued to aboriginal groups?
- 8 A They're not included in this table.
- 9 Q They're not included. So if we look at the bare  
10 numbers in the table at 36 percent we can say  
11 including aboriginal-operated vessels, ESSR,  
12 scientific and other licences, that the  
13 participation rate is probably higher than 36  
14 percent?
- 15 A You could do that, but, like I say, the Department  
16 doesn't do that.
- 17 Q Is there a reason why the Department doesn't  
18 collect that data?
- 19 A I'm not saying we don't have that information.  
20 I'm saying it's depending on how you use that  
21 information or what the purpose is for. Generally  
22 with licensing you collect licensing information  
23 for the purposes of licensing. You don't use it  
24 for other purposes.
- 25 Q Now, has DFO ever done any analysis of the  
26 negative impacts of licences, these buy-back  
27 programs on the public commercial fleet, for  
28 example, what is the impact on a crew member who  
29 wants to buy a licence in the public commercial  
30 fleet, but because licence values are escalated by  
31 the PICFI program he might not be able to buy  
32 into, has DFO ever looked at that question of  
33 whether PICFI increases or reduces licence values?
- 34 A I'm not familiar if we have looked at specifically  
35 that example with crew members, but I do know that  
36 there are a number of consultants who provide some  
37 analysis and papers with respect to how the  
38 program is moving along and the value of licences  
39 and how it's changed over time. I know with the  
40 previous retirement programs we did canvass those  
41 who participated in the program or who applied and  
42 weren't accepted, what their views were on the  
43 program and the parameters of it, so we have done  
44 some -- we've, you know, sought some feedback  
45 around that but not necessarily your specific  
46 example.
- 47 Q On the -- of course, these are all commercial

- 1           licences, so it doesn't show aboriginal  
2           participation in the food fishery, of course,  
3           which is exclusive for them or the allocations in  
4           there. But if you added up aboriginal food  
5           allocations plus all these various types of  
6           licences, Pearse-McRae, the recommendation was a  
7           minimum 50 percent aboriginal share of the  
8           fishery, but you could see that we're rapidly  
9           approaching in the area of 50 percent? Would you  
10          go that far or you say no?
- 11         A    I would say that that's something that the -- we  
12            would have to take a good, close look at and  
13            management, whoever's involved with management of  
14            the fishery specifically for salmon would be best  
15            to address that question.
- 16         Q    Given the numerous initiatives to make -- assist  
17            aboriginal people in the fishery, is -- would that  
18            be an important issue for you as a licence person  
19            to try and determine? I know it's an interest for  
20            us. I don't know if it's an interest for others.
- 21         A    Again, if there was requests, specifically to  
22            licensing to help work on particular papers or  
23            policy documents the Department's doing. Other  
24            than that, licensing wouldn't have a lot of  
25            influence or interest in that.
- 26         Q    So then as it stands, there's no, I guess, one  
27            document I can go to that would say here's the  
28            total aboriginal participation rate in the salmon  
29            fishery in British Columbia, no one document that  
30            I can find all that information?
- 31         A    I don't know of one document, but I don't know --  
32            that might be a good question to ask others.  
33            There's a possibility that that has been done.
- 34         Q    Okay. I'm on now to communal licences and other  
35            licences. Are all licences purchased through buy-  
36            backs issued as communal licences in the last --  
37            or --
- 38         A    Communal commercial, yeah.
- 39         Q    If you -- if a PICFI or an ATP licence is bought,  
40            is it -- when it's reissued, is it issued always  
41            as a communal licence?
- 42         A    It's reissued as, yeah, a Category F. Some of  
43            them don't -- aren't distributed though. They  
44            stay in inventory for the year.
- 45         Q    Okay. Is there a requirement in a communal  
46            licence to ensure that the licence is fished by  
47            Canadians of aboriginal ancestry?

- 1 A I'm not sure. You'd have to look at the  
2 agreements that are made at the time that the  
3 First Nations issued the licence. There's AFS  
4 contribution agreements.
- 5 Q So no requirement that you know of though?
- 6 A I haven't looked closely at one of those  
7 agreements in a long time, so I'm not sure exactly  
8 what the requirements are for -- I know that they  
9 have to designate specific individuals from the  
10 First Nation to participate under the licence.
- 11 Q Okay. In the case of -- I know DFO has acquired a  
12 number of licences in IQ fisheries such as halibut  
13 and crab and -- or, sorry, halibut and sablefish  
14 and other licences.
- 15 A Mm-hmm.
- 16 Q Have you any sense of -- does DFO track how those  
17 licences are used in the sense of are they leased  
18 out or are they fished? Do they create jobs in  
19 communities or is it a lease revenue issue?
- 20 A We have a policy branch that does look at the  
21 impact of quotas and, for example, when we went to  
22 ground fish integration program, some work was  
23 done on how the fisheries have changed with going  
24 to permanent quota and the other elements of that  
25 program to do with monitoring and other things and  
26 how the fleet changed over time. So there has  
27 been some work done to that effect.
- 28 I can't remember your specific part of the  
29 question though about --
- 30 Q I was thinking -- sorry, specifically, if an  
31 aboriginal group or organization acquires, say, a  
32 sablefish licence.
- 33 A It would be reissued as a communal commercial  
34 sablefish licence.
- 35 Q Now, do -- are those licences fished or are they  
36 leased out, can you tell me that?
- 37 A Some of them --
- 38 MS. GAERTNER: Sorry, Mr. Commissioner, I don't see  
39 that this is relevant to the terms of reference or  
40 to Fraser sockeye salmon.
- 41 MR. EIDSVIK: I think -- what I'm trying to do is  
42 establish the success of the communal licence  
43 program. I note the Crown referred to "Our Place  
44 at the Table" earlier this morning, which talked  
45 about a number of licences. But I can reword that  
46 in the context of the salmon fishery to make it  
47 easier.

- 1 Q If a seine licence is issued to an aboriginal  
2 organization, do you know if those licences are  
3 fished or are they leased in terms of the IQ  
4 fishery? What I'm trying to find out are these  
5 licences creating jobs or producing revenue for  
6 aboriginal Canadians?
- 7 A Could be either.
- 8 Q You don't know.
- 9 A There are situations where the First Nation does  
10 have to designate a vessel that meets the length  
11 restriction for that licence. It could be a  
12 vessel that is part of the community. It could be  
13 a vessel that arrangements have been made with  
14 another party. Those are details that get worked  
15 out through issuance of the licence with that  
16 particular First Nation.
- 17 Q Does DFO track this information?
- 18 A We have information on where the licence is  
19 designated on an annual basis. As far as that  
20 type of analysis, like I said, there certainly  
21 hasn't -- I haven't seen a request to do that kind  
22 of analysis.
- 23 Q Sorry, I'm -- again, the point I'm trying to  
24 understand is are these -- is this program  
25 creating aboriginal jobs in places like Ahousaht  
26 and Alert Bay and Campbell River? Or is it a --  
27 or a licence which is then leased to a corporation  
28 such as Canadian Fish? That's what I'm trying to  
29 get at and --
- 30 A There are no --
- 31 Q -- I guess the answer is the Department doesn't  
32 track this?
- 33 A Well, there are a number of other requirements  
34 under the aboriginal agreements, so there's other  
35 ways in which the First Nation may be doing those  
36 things that you've mentioned, participating or it  
37 may be creating employment or -- I mean, I can  
38 even think of examples in commercial fisheries  
39 where that happens, for example, in spawn on kelp  
40 where, you know, a whole community can be  
41 participating in --
- 42 Q Sorry. I got cut off a minute ago. We were  
43 talking about salmon.
- 44 A So -- I know, but I'm just saying with salmon, the  
45 same thing. I mean, without knowing the specific  
46 details around that particular licence and what  
47 arrangements or what the First Nation is doing,

- 1           it's pretty hard to answer that.
- 2       Q     Okay. "Our Place at the Table" was brought up a  
3           couple of times today and as was Pearse-McRae and  
4           I was -- and I don't know whether you can answer  
5           this, but aboriginal groups retained and  
6           instructed and directed the authors of First  
7           Nations "Our Place at the Table", but the public  
8           commercial fleet did not retain or instruct Mr.  
9           Pearse or Mr. McRae; would you be able to answer  
10          that question?
- 11       A     No. I'm not sure what the specific question is  
12          from what you just --
- 13       Q     I'm just trying to understand if -- obviously the  
14          "Our Place at the Table" was written for and on  
15          behalf and by aboriginal organizations to put  
16          forth the aboriginal perspective.
- 17       A     Right.
- 18       Q     Does Pearse-McRae reflect the attitude of the  
19          commercial fishing fleet or were they retained by  
20          government to provide a report?
- 21       A     I wouldn't know --
- 22       Q     Okay.
- 23       A     -- the details of that.
- 24       Q     Thank you. Now, licence fees haven't come down  
25          for -- in the salmon fishery since 1998, I gather,  
26          despite a fairly steep decline in the fishery.
- 27       A     Yeah. The same fees have been in place since  
28          1998.
- 29       Q     Now, one thing that I wanted to ask, and I don't  
30          know whether I can, and I'm sure counsel will  
31          assist me, is is your ability to increase licence  
32          fees impacted by the **User Fee Act**?
- 33       A     Yes. Any time there's a change in a fee or an  
34          increase, the requirements under the **User Fee Act**  
35          will kick in. So that means more consultation,  
36          whatever processes are in place for the **User Fee**  
37          **Act**.
- 38       Q     Are you familiar with the requirements under that  
39          Act?
- 40       A     A little bit.
- 41       Q     Do they -- are they required to go to Parliament  
42          for an increase in a licence fee?
- 43       A     Yes, we -- any -- it's a regulatory change, so...  
44          And you have to do a regulatory impact assessment  
45          statement.
- 46       Q     Okay. Now, do -- do aboriginal communal licences,  
47          do they pay licence fees?



- 1 A Not in the same fashion that -- under the  
2 aboriginal communal commercial regs that they're  
3 issued pursuant to there is no specific fee. But  
4 under an AFS agreement that is made with the First  
5 Nation there may be some other fees that are  
6 arranged with the First Nation.
- 7 Q Can you give us a -- based on the 379 communal  
8 commercial licences I see there, can you tell us  
9 what kind of fees are being paid in total?
- 10 A I couldn't without -- you'd have to do some  
11 analysis on that.
- 12 Q Now, does PICFI pay licence fees on licences held  
13 in inventory? Or DFO pay licence fees on the  
14 licences held in inventory?
- 15 A No, we issue them -- when they're in inventory,  
16 they're held in that party ID until such time that  
17 they're issued or distributed to a First Nation  
18 where whatever arrangement is then made under the  
19 agreement with the First Nation, that's when it  
20 would --
- 21 MR. MARTLAND: Mr. Commissioner, I'm raising not to  
22 object, but simply in my cuckoo clock role to  
23 remind Mr. Eidsvik of the time.
- 24 A My understanding is there is going to be an  
25 aboriginal fishing panel, as well, an aboriginal  
26 fishing panel, as well, an aboriginal licensing, I  
27 think a lot of these questions could also be  
28 directed and answered there, as well.
- 29 MR. EIDSVIK:
- 30 Q Okay. That'll be helpful. I just have a couple  
31 more and I should be done fairly quickly. The fee  
32 for -- there's other charges -- if I'm a  
33 commercial fisherman, I go down to DFO to renew  
34 their commercial gillnet licence for the Fraser  
35 River, are there other fees that you ensure I pay  
36 before you'll issue the licence? And, of course,  
37 I'm referring to the log book fee.
- 38 A Well, one, there's also the fisher registration  
39 card fishermen -- if it's -- whoever's involved  
40 with the operation or is going to fish will have  
41 to have a registration. There are some fees that  
42 the fishermen will pay directly to acquire a log  
43 book. We'll do a log book check to ensure that  
44 they've received their log book, but we don't  
45 collect the fee.
- 46 Q But you --
- 47 A It goes to whoever's administrating the log book

Lisa Mijacika

Cross-exam by Mr. Eidsvik (SGAHC)

Cross-exam by Mr. Harvey (TWCTUFA)

1 program.

2 Q And I guess that's an interesting issue for a lot  
3 of people, is that DFO will refuse to issue a  
4 commercial fisherman their licence based on what a  
5 private third party -- what -- based on whether  
6 they have paid or not paid a private third party.

7 A It's a monitoring requirement so that we can  
8 ensure that we have the information that's  
9 required under the conditions of licence. So, for  
10 example, log books give us catch and effort  
11 information. It's very relevant to the department  
12 that we have that information.

13 And what you're trying to say, for example,  
14 if a fisherman missed acquiring his log book and  
15 didn't fish and then wanted to fish the next year  
16 or something was outstanding with his log book,  
17 it's still possible his licence would be issued in  
18 the following year, and then the Department would  
19 proceed to look at what kind of violation or what  
20 kind of information could be sent to the fisherman  
21 to try and collect the information that we  
22 require.

23 MR. EIDSVIK: Mr. Commissioner, I do have about another  
24 15 minutes, looking through, and I can see Mr.  
25 Martland anxiously waiting for me to get down. So  
26 I'd like to -- I'll sit down now, but if there's  
27 an opportunity before the end of the day, I  
28 wouldn't mind finishing my questions.

29 Thank you, Mr. Commissioner.

30 MR. MARTLAND: Mr. Commissioner, from my estimate for  
31 Mr. Harvey, if we have him proceed now and then  
32 move to break, if I might suggest.

33 THE COMMISSIONER: Yes.

34  
35 CROSS-EXAMINATION BY MR. HARVEY:

36  
37 Q Ms. Mijacika, it's Chris Harvey for the Area G  
38 Trollers and the United Fishermen and Allied  
39 Worker's Union. I'd like to ask you primarily  
40 about Exhibit 588, which is the memorandum for the  
41 regional director general that was put in earlier.  
42 I thought this was described as a memorandum to  
43 the minister, but it seems to -- is it properly  
44 headed, a memorandum to the -- for the --

45 A It's a note to the RDG, it looks like.

46 Q And it's signed by Susan Farlinger. I see, that  
47 was before she was RDG.

- 1 A So, yeah, the regional director would be  
2 forwarding this to the regional director general.
- 3 Q Yes.
- 4 A So that's why her signature would be on it.
- 5 Q I see. All right. The -- it indicates that  
6 there's been an increase in the licences and  
7 inventory to 156 and it describes the priority to  
8 using those to provide access inland and then for  
9 other reasons. But I find this somewhat confusing  
10 and I want to ask you some questions about it.  
11 The last page of the document, perhaps that could  
12 be looked at and you could explain that. The --  
13 this deals with the total of the 156 licences we  
14 see there in inventory. There's a second column,  
15 unique licences required, and then there's a third  
16 column, remaining in DFO inventory. Is the 106,  
17 the middle column, is that the ones used to shift  
18 allocation inland?
- 19 A I wouldn't know for sure because I haven't  
20 actually seen this document before or what  
21 analysis was done to put the table together, so...
- 22 Q I see.
- 23 A I'm not sure what they mean by unique licences  
24 required.
- 25 Q Yes. But there are quite a number of licences  
26 remaining unused and that would appear -- I'm just  
27 wondering whether that is the last column, the 50  
28 licences. Do you know?
- 29 A Well, there would always be some that haven't been  
30 distributed.
- 31 Q Yes. All right.
- 32 A I know the last report that I looked at there was  
33 around 26 that -- remaining from PICFI that hadn't  
34 been distributed --
- 35 Q Yes.
- 36 A -- just even for 2010, so...
- 37 Q Yes. Well, there's -- if we look at the Area G  
38 licences, that's the group I represent, there's  
39 six licences in inventory and six licences  
40 remaining. I thought the figure was greater than  
41 that, but I'm told that there simply have been  
42 Area G licences that have been bought back through  
43 the -- one program or other, and have not been  
44 reissued to the coastal First Nations groups; are  
45 you aware of that?
- 46 A Not specifically, no.
- 47 Q All right.

1 A There are, you know, a number of people that work  
2 in -- on these two programs that work in the PICFI  
3 group --

4 Q I see.

5 A -- that would probably be able to answer those  
6 questions.

7 Q I see. All right. If we could go back to page 1,  
8 there's a -- right at the bottom, the last bullet  
9 point. It identifies a -- what seems to be a  
10 stark political choice. It says that:

11  
12 Licenses acquired by ATP in recent years have  
13 primarily been retained in the Departments'  
14 inventory to provide for First Nations inland  
15 demonstration fisheries. However, coastal  
16 First Nations have expressed interest in  
17 obtaining additional commercial salmon  
18 licences through the program.

19  
20 So that identifies the choice between shifting  
21 allocation inland or increasing or maintaining the  
22 fisheries dependent communities, the First Nations  
23 communities on the coast. But I don't see any  
24 direction in here as to how that choice is to be  
25 made or who makes it.

26 A Well, there would have to be some sort of  
27 objectives and criteria that is considered under  
28 the program on how to make those decisions.

29 Q Are those objectives published anywhere to your  
30 knowledge?

31 A Not -- I don't -- I'm not familiar with how those  
32 decisions are specifically made, what criteria is  
33 used, so...

34 Q There's no consultative body that assists in that  
35 decision, is there?

36 A I don't -- I'm not sure.

37 Q All right.

38 A You would have to ask the people responsible for  
39 the program.

40 Q All right. The -- all right. This document does  
41 indicate though that a choice has been made as a  
42 first priority to shift commercial fishing access  
43 inland; would you agree with that?

44 A Is it one of the adopted recommendations at the  
45 end of the document?

46 Q Well, it's in the summary, the third bullet point  
47 in the summary, the first sentence.

- 1 A Yeah. Actually, we usually refer to what's being  
2 decided also at the bottom of the document, the  
3 last recommendations, next steps or  
4 recommendations on the last page, whatever is  
5 being proposed for decision.
- 6 Q Well, it --
- 7 A So that's --
- 8 Q That's the curious thing. This document doesn't  
9 seem to propose anything for decision.
- 10 A When you go to the bottom... So these next steps.
- 11 Q But there's no indication of what decision has to  
12 be made or who's to make it, is there?
- 13 A Well, there's a number of next steps that the  
14 department will be taking as a result of this, so  
15 this outlines what those would be.
- 16 Q But as to the decision, whether coastal First  
17 Nations should get the licences or whether they  
18 should be shifted inland, whereas we heard earlier  
19 this morning the fish are of much lesser value,  
20 there's no indication of who makes that choice or  
21 on what basis here, is there?
- 22 A Without reading it in detail and going through it,  
23 I couldn't really answer that question.
- 24 Q Yes.
- 25 A I do know that obviously the areas where this  
26 would take place, area meaning Lower Fraser and/or  
27 interior and other senior managers within the  
28 Department would be making those decisions.
- 29 Q So they're not decisions that the minister makes?
- 30 A It's possible if recommendations are put forward  
31 to the minister.
- 32 Q All right. The PICFI licences I think you  
33 explained are issued to First Nations groups on an  
34 annual basis and they may not be issued the  
35 following year, may or may not be issued the  
36 following year?
- 37 A Well, they revert back to the inventory at the end  
38 of the year, once there's no longer need from --
- 39 Q Yes.
- 40 A -- the First Nation.
- 41 Q So --
- 42 A They may end up being redistributed to the same  
43 First Nation or another First Nation the following  
44 year.
- 45 Q But do I understand you correctly there's no  
46 equivalent of the licence eligibility that applies  
47 for regular commercial licences?

- 1 A I'm not understanding the question. Sorry?
- 2 Q Well, you explained that with regular commercial  
3 licences, there was a licence eligibility and the  
4 records are kept by the department.
- 5 A Right.
- 6 Q And so even though the licences are annual,  
7 there's an eligibility record, correct?
- 8 A Right. And the First Nations are also parties  
9 within the licensing system, so when the licence  
10 leaves inventory and is issued to a First Nation  
11 we do keep track of that in our system.
- 12 Q But does that give rise to an eligibility that  
13 that First Nations group can rely on for the  
14 following year, just as an individual licence  
15 holder can rely on an eligibility?
- 16 A There's -- currently PICFI is doing short-term  
17 distributions of these licences. They're looking  
18 at ways to do longer term and have longer term  
19 arrangements with First Nations but there hasn't  
20 yet been decisions on how that will take place.
- 21 Q So at the moment, there's no business security  
22 that goes with the annual allocation of the -- of  
23 a PICFI licence to a First Nations group?  
24 Correct?
- 25 A I'm not sure how to answer that because there may  
26 be still some benefits within that year. Or I  
27 guess it would depend on how many licences or how  
28 they're participating, how -- in what way, so...
- 29 Q I was using that more in the sense of the security  
30 that a person needs to invest in a fishing vessel  
31 or fishing gear or -- and to maintain a business  
32 year after year.
- 33 A Well, part of it is, too, in looking at ways to  
34 develop that capacity or find ways for First  
35 Nations as part of their business plan to  
36 demonstrate how they've done that or could do that  
37 in the future, so...
- 38 Q The -- it -- so each of these licences, the 156  
39 licences, is that -- well, that's just the  
40 unallocated licences. How many licences are there  
41 in total, PICFI and ATP licences?
- 42 A I'm not sure what's referred to in this particular  
43 document, but from the report that I requested  
44 last week, I was advised that there was 349 salmon  
45 licences currently held in inventory, but it can  
46 fluctuate and change with new relinquishments that  
47 come through.

- 1 Q Oh, yes. Thank you. And does the Department  
2 require and consider a business plan with respect  
3 to -- annually with respect to each of those  
4 licences?
- 5 A Business plans are used under the PICFI program,  
6 but again, I'm not sure on the exact details for  
7 each licence.
- 8 Q All right. Can you give this commission any idea  
9 of the DFO budget allocation that is used with  
10 respect to determining the allocation of PICFI  
11 licences?
- 12 A I think that question is best answered by the  
13 PICFI program or someone that works in Treaty and  
14 Aboriginal Policy.
- 15 Q All right. I note that there's no reference to  
16 any socioeconomic analysis in the memorandum 588;  
17 would your answer again be that that question  
18 should be referred to somebody else if I were to  
19 ask you is there any socioeconomic analysis that  
20 goes into the decision as to whether to issue  
21 licences to coastal First Nations or inland First  
22 Nations?
- 23 A It's -- we do have a policy group that would  
24 provide advice or possibly do some of that  
25 analysis in support of the PICFI program.
- 26 Q Who's the head of that group?
- 27 A Currently Jennifer Nener is the acting director.  
28 Angela Bate is the director responsible for the  
29 PICFI program.
- 30 Q All right. Well, I'll wait until we get to them.  
31 The -- finally, you corrected in your evidence the  
32 policy and practice report paragraph 3 by  
33 inserting the word "immediately" and I think the  
34 point -- and the point, if my note is correct, was  
35 that there was a period when aboriginal persons  
36 and Japanese could not obtain licences? Is that  
37 what you said?
- 38 A I'm not familiar with what our policies were prior  
39 to 1969.
- 40 Q All right.
- 41 A It's well before my time with the department, so I  
42 wouldn't want to give you the wrong information  
43 there.
- 44 Q So if I were to suggest to you the correct  
45 information is that there was a period in the  
46 1920s when the Japanese, under what was referred  
47 to as an Oriental Exclusion Policy, were

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Cross-exam by Mr. Harvey (TWCTUFA)

Cross-exam by Ms. Gaertner (FNC)

1           disentitled to licences, but there was no  
2           equivalent program ever with respect to -- or  
3           aboriginal people? You --

4       A     I'm not even aware of those circumstances that  
5           you've just referred to with Japanese actually,  
6           so...

7       Q     All right.

8       A     I wouldn't know how to answer that.

9       MR. HARVEY: All right. Well, thank you for clarifying  
10           that. Those are my questions.

11       MR. MARTLAND: Mr. Commissioner, I'd suggest we go to  
12           break and we're on track to conclude by four  
13           o'clock today. Thank you.

14       THE REGISTRAR: Hearing will now recess for 15 minutes.

15

(PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)

16

(PROCEEDINGS RECONVENED)

17

18

19       THE REGISTRAR: The hearing is now resumed.

20

21       MS. GAERTNER: Mr. Commissioner, Brenda Gaertner for  
22           the First Nations Coalition, and with me, Crystal  
23           Reeves. Thank you for attending here today, Ms.  
24           Mijacika, and I have a number of questions of you.  
25           I anticipate my timing will be no more than 30  
26           minutes.

26

27       THE COMMISSIONER: Are you the last examiner?

27

28       MS. GAERTNER: I believe I'm close to the last, if not  
29           the last.

28

29       MR. MARTLAND: Yes, I believe she's the last and as you  
30           heard, Mr. Eidsvik requested, if there's time  
31           left, to use it, but that's right, there's no  
32           other counsel at this point, and I understand  
33           Canada did not examine re-examination, nor do we.

30

31

32       CROSS-EXAMINATION BY MS. GAERTNER:

32

33

34       Q     I just wanted to clear up a couple of things that  
35           came up this afternoon. You've been asked  
36           questions about the issuing of licences under  
37           PICFI and to my understanding, licences are  
38           actually not issued to the First Nations, they're  
39           used as part of an agreement under PICFI for an  
40           annual basis. And so they exercise the rights  
41           under the licence, but they're not necessarily  
42           issued directly, have I got that right?

41

42       A     Well, they're distributed to the First Nations so  
43           they do show up as issued, actually, in our system

42

43



- 1 and to that party ID we have for the First Nations  
2 so that's why I used that word, but your  
3 description is accurate on how it happens.
- 4 Q Thank you.
- 5 A The process.
- 6 Q And I also got from your evidence, and I'm not  
7 going to ask a lot of questions of it, you know,  
8 that there are others that are more familiar with  
9 the PICFI process, but are you also familiar with  
10 the process that First Nations must go through to  
11 use it, they have to file expressions of interest  
12 that are reviewed, business plans, there's a full  
13 programming or a bureaucratic process before they  
14 can access to exercising those licences; is that  
15 correct?
- 16 A There is a process. I'm not able to really  
17 describe in full detail, though, so I may be  
18 limited --
- 19 Q We'll leave that for other witnesses.
- 20 A Yes.
- 21 Q All right. I want to just see if you could be  
22 helpful to us in understanding the overarching  
23 amounts of money that have been used for either  
24 retirement of licences or relinquishment of  
25 licences. We've heard a number of concerns that  
26 the commercial fishery or representatives of some  
27 of the commercial fishery at least have about  
28 DFO's budgets and otherwise, and I thought it  
29 would be useful for the Commissioner to just have  
30 a overarching picture of the amount of money that  
31 has gone to the buyback or relinquishment of  
32 licences. So I'm going to start with paragraph 12  
33 of the Policy and Practice Report. And in your  
34 evidence today, you confirmed that there were two  
35 steps taken in 1996 and 1998 that resulted in a  
36 total, as I understand, of \$195 million being  
37 spent on licence retirements in salmon; is that  
38 correct?
- 39 A The Mifflin, I think, was just under 80 million,  
40 and then an additional 195 under CFAR so that's  
41 actually almost 300, under two separate programs.  
42 Like, there was almost 200 million spent so it's  
43 about 280 million.
- 44 Q Sorry, the last sentence in the PPR has a total of  
45 \$195 million being spent in that. Is that not  
46 correct?
- 47 A For CFAR, for the 1998 program, that's the way I

- 1 understand that paragraph.
- 2 Q Oh, I see. So you add, then, 195 --
- 3 A Yeah.
- 4 Q -- and 78.5?
- 5 A That's what I was thinking in terms of overall,
- 6 your question was around the two retirement
- 7 programs.
- 8 Q Okay. Let's start there. And that's for sure for
- 9 salmon retirement; is that correct?
- 10 A Just salmon retirement, yeah.
- 11 Q Okay. And then next we go to the Allocation
- 12 Transfer Program, and that's talked about at
- 13 paragraph 17 of the PPR. We don't actually have
- 14 amounts there so much and so I'm wondering if you
- 15 could help us with that. As I understand it,
- 16 there's, approximately, 6 million per year that's
- 17 been used for the purchase of licences; is that
- 18 correct?
- 19 A For ATP?
- 20 Q Yes.
- 21 A Sounds correct, but it would include a number of
- 22 licences, not just salmon.
- 23 Q And that's occurred since 2000 and --
- 24 A I think it's 1994.
- 25 Q 1994, sorry. And the first licence that was
- 26 brought back was in 1995; is that correct?
- 27 A That sounds accurate, yeah.
- 28 Q So \$6 million per year since 1995, and 6 million
- 29 times 16 years, approximately, so that gets us 96
- 30 million?
- 31 A Okay.
- 32 Q And there is -- we need to make a note that that
- 33 may not necessarily be all for salmon; is that
- 34 correct?
- 35 A Under ATP, it wouldn't be all for salmon.
- 36 Q All right.
- 37 A There may only be up to five percent, actually,
- 38 for salmon.
- 39 Q Okay. And then we have, as I understand it, in
- 40 reference there, is the PICFI program, and is it
- 41 your understanding that the overall budget for the
- 42 PICFI program is, approximately, 175 million?
- 43 A That sounds accurate, yeah.
- 44 Q And it's our best information to date that the
- 45 Department is allocating is about \$115 million of
- 46 that 175 for licence buybacks, is that your
- 47 understanding?

- 1 A I don't know for sure. I wouldn't be able to --  
2 yeah. That's a question for the PICFI folks.
- 3 Q Well, if I was to advise you that Angela Bate, in  
4 a recent meeting with the First Nations Fisheries  
5 Council, advised them that, approximately, \$115  
6 million of the \$175 million of the program was  
7 going to be used for licence buybacks or licence  
8 acquisition, would you be able to rely on that  
9 number?
- 10 A Sure, that sounds good, then.
- 11 Q All right. So that's 115 million for that. And  
12 are you aware that under the AAROM program,  
13 there's also monies that are being used for  
14 relinquishment of licences?
- 15 A I understand there is. I don't know how much,  
16 though.
- 17 Q If I was to suggest to you, on the DFO website,  
18 with respect to the AAROM, that \$4.09 million was  
19 used for that, could we rely on that number?
- 20 A If it's on the website, it's likely accurate. It  
21 may be subject, though, to changes depending on  
22 the year.
- 23 Q And then the additional amount of money that I'm  
24 aware of is the Northern Native Fisheries buyback  
25 that we've heard in the evidence today, and that  
26 was done -- granted in 1982, but that was \$11.8  
27 million that was spent on buybacks at that point  
28 in time?
- 29 A I know there -- I'm not sure about the 11.8  
30 million. I know there was a number of equivalent  
31 boats and licences close to the 254 that were  
32 relinquished, and Department of Indian and Native  
33 (sic) Affairs, actually, was responsible for the  
34 funds for that, not DFO.
- 35 Q Okay. So we can -- let's take that out of the  
36 total, then, for a moment in terms of DFO's  
37 budget. So if I was going to suggest to you that  
38 over \$400 million has been spent on licence  
39 buyback and retirement programs since the 1996  
40 program, does that sound approximately right to  
41 you?
- 42 A Based on what we just discussed, it sounds close,  
43 yes.
- 44 Q And with the exception of the first two programs,  
45 all of the remaining programs are being processed  
46 through the Department of Fisheries and Oceans  
47 with a goal of increasing aboriginal participation

- 1 in the fishery?
- 2 A And integrated fisheries, yes, commercial  
3 fisheries.
- 4 Q Do you know, roughly, what proportion of DFO's  
5 budget, on an annual basis, this money is?
- 6 A No, I couldn't answer that question. I'm not even  
7 sure of what our exact budget is. That's a  
8 question for Corporate Services, for our financial  
9 people.
- 10 Q Thank you, that's helpful.
- 11 MS. GAERTNER: I think, Mr. Commissioner, it's useful,  
12 I believe, for you at least to get a sense overall  
13 as to the amount of money that's being spent in  
14 the commercial fishery for these matters.
- 15 Q Moving now to what's Exhibit 588, and I did hear  
16 your evidence today, and I just want to confirm  
17 that -- I'll ask you a couple of questions with  
18 respect to this, but I appreciate this is not a  
19 document that you're familiar with, but at  
20 bullet 2 on page 3 of the document, we begin to  
21 have a discussion around -- and I'll just say that  
22 given that this was on the list of documents to be  
23 discussed today, I'd anticipated you would be able  
24 to answer some of the questions arising in this  
25 matter. Maybe I'll just say are you familiar and  
26 can you speak to issues that the Department is  
27 considering when dealing with the reallocation or  
28 transfer of a licence that's acquired on a mixed  
29 stock to a fishery and a single stock licence? So  
30 if you bought a licence in the marine commercial  
31 fishery that's a licence that allows them to  
32 access Fraser River salmon across a mixed stock, I  
33 think they're going to move it into the inland  
34 fisheries and they're going to access only a  
35 single stock, are you aware of the issues and  
36 considerations that the Department is using when  
37 considering that complex allocation?
- 38 A No, I'm not involved in that decision making.  
39 Again, I believe someone in the areas and/or the  
40 PICFI program, or the treaty and aboriginal policy  
41 shop would be best to address those  
42 considerations.
- 43 Q Do you have specific people that you would  
44 recommend we address these questions to?
- 45 A I would talk to the Lower Fraser Area Director,  
46 which is Diana Trager, the -- I've mentioned  
47 Angela Bate already. I believe, also, our current

- 1 treaty -- or we call it TAPD, Treaty and  
2 Aboriginal Policy Director, Sarah Murdoch, but  
3 Kaarina McGivney was the director at the time that  
4 a lot of these programs were set up and some of  
5 these decisions.
- 6 Q Okay. Thank you very much.
- 7 MS. GAERTNER: I wonder if I can now switch to another  
8 area, which if you could bring Exhibit 586, Mr.  
9 Lunn, and if we go to -- we actually spent -- I'll  
10 just get my copy of that.
- 11 Q We spent a little bit of time in evidence already  
12 today talking about this and the issues  
13 surrounding the types of changes the Department is  
14 considering with respect to licensing and  
15 monitoring. Were these changes in relation to  
16 concerns that industry raised with the Department  
17 directly, or how did these proposed changes come  
18 about?
- 19 A It's a combination of all of the requests that we  
20 received over the years from individual fishermen,  
21 both aboriginal or communal commercial and  
22 commercial, as well as industry advisory groups  
23 and associations. And then also after doing our  
24 own review internally and discussing these issues  
25 with management and our internal groups, a lot of  
26 these proposals came out of those discussions.
- 27 Q And if these changes would be made and we're still  
28 in something like the PICFI or otherwise and a  
29 licence is then purchased, would those conditions  
30 also be transferred, travel with the licence? So  
31 if you institute any of these licence  
32 requirements, would they travel with the licence  
33 that's been purchased for reallocation?
- 34 A The intent is for that to happen. Currently, the  
35 PICFI works within the current licensing rules and  
36 practices so it would be presumed that if these  
37 changes were in place and there was some  
38 flexibility, that that would go along with  
39 whatever's associated with the licence at the time  
40 of relinquishment.
- 41 Q And do these guiding principles and some of the  
42 options you're considering, when I read them, it  
43 seemed to be that they're assuming that some kind  
44 of share-based quotas or ITQs are in place. Am I  
45 correct in that?
- 46 A There are share-based in number of the fisheries  
47 that this would apply to. In salmon, there is an

- 1           indication around the demonstration fisheries that  
2           are currently on a pilot basis.
- 3       Q     And given that these conditions would be changed,  
4           are you aware of DFO's practices in consulting  
5           directly with First Nations on any proposed  
6           changes to these licensing rules and policies?
- 7       A     This document is just the first step in getting  
8           out a questionnaire that would be distributed  
9           broadly. So it would be sent, as well, to First  
10          Nations, and then there would be a number of  
11          discussions that would take place through our  
12          consultation plan, which would include through our  
13          existing bilateral process and through other  
14          workshops and other processes that we would put  
15          together to make sure we're adequately consulting  
16          with everybody on this.
- 17      Q     So you're confirming that DFO intends to consult  
18           with First Nations regarding changes to these  
19           licences, or proposed changes to these licences?
- 20      A     To those that would be impacted from the communal  
21           commercial licences, yes.
- 22      Q     Including those that may receive transferred  
23           licences with these conditions?
- 24      A     There would be -- this information would be made  
25           available to a very broad distribution, which  
26           would include those First Nations.
- 27      Q     Okay. I'd like, now, to go to Exhibit 584, page  
28           16, at the bottom of page 16, you'll see a  
29           sentence beginning, "Up until 2008 ...," and in  
30           that sentence, the document references and  
31           describes a contracted, independent program  
32           coordinator and licence eligibility retirement  
33           selection committee composed of aboriginal  
34           individuals and commercial fishing interests  
35           reviewing all applications. And those are the  
36           applications under the ATP. Are you familiar with  
37           that?
- 38      A     I am familiar that we did have a committee such as  
39           that. I haven't presented any information to this  
40           committee before. I'm not sure of its terms of  
41           reference.
- 42      Q     Do you know why it ended in 2008?
- 43      A     Not for certain. I know that the two programs  
44           were integrated into the PICFI program so that  
45           likely had something to do with it.
- 46      Q     At Canada Tab 5 is a document I'd like to take you  
47           to now. I understand it didn't go into evidence

- 1 yet, but I would like to tender it into evidence  
2 with you and take you to page 2 of that document.  
3 And at page 2 of that document, there's a  
4 reference to an independent access relinquishment  
5 team which will advise DFO regarding values of  
6 licence eligibility and/or quota. Do you know  
7 anything about this team?  
8 A Not enough detail. I do know that some  
9 consultants are hired with respect to providing  
10 advice to PICFI, but I think that question's best  
11 answered by PICFI.  
12 Q So you don't know the proposed composition of this  
13 team, you don't know how they might transition  
14 from the work of the LERSC or any of those other  
15 aspects?  
16 A Yeah, I couldn't speak to them, no.  
17 Q So you don't know whether First Nations will be  
18 represented on that committee?  
19 A I don't know for sure that it's actually  
20 committee. I think it's a select team of those  
21 that are consulted to provide us advice.  
22 MS. GAERTNER: I just need one minute, Mr.  
23 Commissioner.  
24 Q Just one last question, and this is just a detail  
25 question, if I've heard your evidence correctly  
26 this morning and this afternoon, as a matter of  
27 practice, DFO does not consider **Fisheries Act** or  
28 licence violations in renewing an annual  
29 commercial licence; have I got that right, that  
30 that's not a consideration?  
31 A If a particular licence holder or vessel owner is  
32 charged or has committed a violation, it doesn't  
33 withhold issuance of a licence unless the court  
34 orders us to withhold the licence.  
35 Q And are you aware that in First Nations  
36 expressions of interest under PICFI, or otherwise,  
37 their monitoring and catch reporting history and  
38 otherwise are all considered when DFO moves  
39 forward with considerations of their PICFI  
40 applications?  
41 A It may be one of PICFI's criteria, or consider an  
42 application or development of the business plan.  
43 Q And does that sound a little bit inconsistent to  
44 you?  
45 A Sorry, which -- what -- sorry?  
46 Q Well, that you don't consider violations of the  
47 commercial fisheries, or anything else, when

1 renewing their annual licences at all, unless the  
2 court directs you to, but that whether or not a  
3 First Nations is generally meeting all of the  
4 requirements or otherwise is considered even  
5 before they get in the door with the PICFI  
6 application?

7 A Well, I mentioned earlier today, though, too, that  
8 there are other monitoring requirements that  
9 fishermen or commercial licence holders have to  
10 meet, as well, before their licence may even be  
11 issued. Some of them, for example, are involved  
12 in a fishery where there's monitoring requirements  
13 and they have to be registered with the service  
14 provider that would provide dockside and at-sea  
15 validation. So there's a number of requirements  
16 that commercial licence holders will have to meet,  
17 as well.

18 Q Has there ever been a non-renewal -- have you ever  
19 not renewed commercial licences as a result of a  
20 **Fisheries Act** violation?

21 A There has been circumstances where the Minister  
22 has previously sanctioned or suspended licences.  
23 Not in recent years. It may not have necessarily  
24 been with respect to a violation. You'd have to  
25 know the circumstances of an individual case, but  
26 it has happened in the past. It's not been a  
27 general practice to do so since the late '90s.

28 Q Adopted by exceptional -- thank you.

29 MS. GAERTNER: Those are my questions, Mr.  
30 Commissioner. And I note I'm early.

31 THE COMMISSIONER: Yes.

32 THE REGISTRAR: Do you wish that to be marked?

33 THE COMMISSIONER: Unfortunately, Mr. Rosenbloom's not  
34 here to find that out.

35 MS. GAERTNER: I'm sure I'll let him know tomorrow.

36 THE REGISTRAR: Did you wish your document to be  
37 marked?

38 MS. GAERTNER: Oh, yes, please.

39 THE REGISTRAR: It will be Exhibit 592.

40 MS. GAERTNER: Thank you.

41 THE COMMISSIONER: I'm sorry, 592?

42 THE REGISTRAR: Yes.

43 THE COMMISSIONER: Thank you.

44

45 EXHIBIT 592: Information about the  
46 Commercial Fishing Licence Eligibility and  
47 Quota Relinquishment Process, January 2011



1

2

MR. MARTLAND: Mr. Commissioner, Mr. Eidsvik had requested if there was time remaining, he didn't cover as much ground as he'd hoped. I'm in your hands with that request.

6

THE COMMISSIONER: I think he said he had 10 more minutes, is that right? Five more minutes?

8

MR. MARTLAND: Five, great. Thank you.

9

MR. EIDSVIK: Thank you, Mr. Commissioner. Mr. Eidsvik, for the record.

10

11

CROSS-EXAMINATION BY MR. EIDSVIK, continuing:

12

13

14

Q You referred to a decision about licence sanctions. Were you referring to the Federal Court of Appeal decision in **Canada and Matthews**, in 1999, where the court said that the Minister kind of had to pick one or the other, he either had to do licence sanctions, but once there was a prosecution undertaken that he was no longer eligible to do that? Is that a decision you're referring to, **Matthews**?

22

23

A That's the decision I was referring to.

24

25

A I'm not aware of the details of the decision, though, other than that general --

26

27

Q Yeah, I don't intend to get into detail on a court decision in this -- I'm sure that --

28

29

A I wouldn't want to say.

30

31

Q -- everybody in here will jump on me if I do so. I wanted to very quickly go over the PRLAB, and about how many appeals in the last five years?

32

33

A They're significantly reduced, actually, in the last five years. I wouldn't know off the top of my head, but I would say just a few hundred.

34

35

Q Okay. And for someone who, say, wants to split a licence, a salmon licence, that is married, a PRLAB decision in his favour or her favour could have a big impact on their financial status?

36

37

A It could have an impact on what their preferred -- or their fishing operation, yes.

40

41

Q Yeah. And I just want to go through quickly. Is a public notice issued when a licence appeal is filed and there's going to be a hearing on a licence appeal?

42

43

A No.

44

45

Q Okay. Does the advisory -- say that there's a

- 1 licence appeal affecting an Area E licence, would  
2 the Area A Gillnetters or the Area E Association  
3 be advised?
- 4 A No third parties are advised of appeals that are  
5 being heard or invited to participate in the  
6 process. It's strictly the appellant.
- 7 Q And you said that sometimes DFO people will show  
8 up at a PRLAB if it's an issue of concern?
- 9 A There's always a liaison officer that administers  
10 the hearing and provides information to the Board.  
11 Any of the information from other DFO people is  
12 generally provided in writing and that person  
13 would then present the information to the Appeal  
14 Board.
- 15 Q Did I hear you correctly say that that always  
16 happens?
- 17 A That a liaison officer is attending the meeting?
- 18 Q No, that a -- say that the licence issue is  
19 concerning Area E, would the person in charge of  
20 Area E always have input into that decision?
- 21 A The liaison officer would ask the salmon manager  
22 working on that particular licence or area for  
23 verification on whatever the circumstances are.
- 24 Q Okay.
- 25 A Something like area selection, though, it's pretty  
26 clear what our policies have been and the  
27 information.
- 28 Q And no matter who you are, what type of licence  
29 you hold, everybody's treated the same in that  
30 process?
- 31 A Any licence holder that's not satisfied with the  
32 licensing decision can go through the process and  
33 the same procedural fairness or guidelines are  
34 applied to every individual.
- 35 Q Have you heard complaints about some fishermen  
36 calling it the DFO star chamber?
- 37 A I haven't heard that specific one.
- 38 Q Okay. You've heard complaints about the process?
- 39 A I have heard complaints about the process, yes.
- 40 Q Okay. Thanks. I want to quickly shift onto  
41 aboriginal communal licences, but I'm thinking you  
42 might not be able to answer these questions so  
43 it's fine if you can't, we'll bring it up in the  
44 next one. And I'm referring to aboriginal  
45 communal licences that govern the fisheries in the  
46 Lower Fraser River, and do you issue those  
47 licences through your licensing office?

- 1 A The communal licences, no.
- 2 Q Okay. So if you're a fisherman, say, in the  
3 Musqueam-only commercial fishery, you don't  
4 necessarily need -- you don't need to go to your  
5 office to get a vessel licence or a personal  
6 licence?
- 7 A That's the individuals --
- 8 Q It's separate?
- 9 A -- in the areas that would be -- that work on the  
10 aboriginal fisheries strategy, or the issues in  
11 the areas would be involved with the arrangement  
12 that's made with the First Nations and the  
13 agreement, and the issuance of a licence.
- 14 Q So the agreement contains the provisions for  
15 licensing persons and vessels, not the fishery  
16 regulations that govern what I call the public  
17 commercial fishing fleet?
- 18 A Well, there's aboriginal, commercial fishing  
19 licence regulations that are different than the  
20 Pacific fishery licence regulations that we went  
21 over this morning.
- 22 Q Okay.
- 23 A Yes.
- 24 Q But you don't manage the ACFLRs with respect to  
25 the issuance of licences for vessels and people  
26 through your office?
- 27 A If the licences are -- it's complicated. If they  
28 are issued to a First Nation under the ATP and the  
29 PICFI program, then the licensing system does  
30 track those licences.
- 31 Q Okay. But with respect to the commercial  
32 fisheries for Musqueam, Tsawwassen, Stó:lō and the  
33 Lower Fraser, your office doesn't handle those  
34 licences?
- 35 A That's my understanding, yeah.
- 36 Q Okay.
- 37 MR. EIDSVIK: Those are my questions. Thank you, Mr.  
38 Commissioner. Thank you, Ms. Mijacika, for  
39 answering the questions.
- 40 MR. MARTLAND: Mr. Commissioner, that concludes the  
41 evidence on commercial fishing. I believe we can  
42 be adjourned until 10:00 a.m. tomorrow and I'll  
43 note also that at 9:15 at tomorrow, for counsel,  
44 there's a meeting in this room. Thank you.
- 45 THE COMMISSIONER: Thank you, Mr. Martland, and thank  
46 you to all counsel who are here today. And thank  
47 you very much for appearing here and for your

1 willingness to answer questions. The Commission  
2 is very grateful for that. Thank you.  
3 A Well, thank you. I hope it was helpful.  
4 THE COMMISSIONER: And we're adjourned, then, until 10  
5 o'clock tomorrow morning.

6  
7 (PROCEEDINGS ADJOURNED TO WEDNESDAY, MARCH  
8 16, 2011, AT 10:00 A.M.)  
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I HEREBY CERTIFY the foregoing to be a true and accurate transcript of the evidence recorded on a sound recording apparatus, transcribed to the best of my skill and ability, and in accordance with applicable standards.

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Pat Neumann

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2 and accurate transcript of the evidence  
3 recorded on a sound recording apparatus,  
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