

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.

Monday, July 4, 2011

Tenue à :

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

le lundi 4 juillet 2011

APPEARANCES / COMPARUTIONS

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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")
No appearance	Conservation Coalition: Coastal Alliance for Aquaculture Reform Fraser Riverkeeper Society; Georgia Strait Alliance; Raincoast Conservation Foundation; Watershed Watch Salmon Society; Mr. Otto Langer; David Suzuki Foundation ("CONSERV")
No appearance	Area D Salmon Gillnet Association; Area B Harvest Committee (Seine) ("GILLFSC")

APPEARANCES / COMPARUTIONS, cont'd.

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Keith Lowes	B.C. Wildlife Federation; B.C. Federation of Drift Fishers ("WFFDF")
Tina Dion	Maa-nulth Treaty Society; Tsawwassen First Nation; Musqueam First Nation ("MTM")
John Gailus Sarah Sharp	Western Central Coast Salish First Nations: Cowichan Tribes and Chemainus First Nation Hwlitsum First Nation and Penelakut Tribe Te'mexw Treaty Association ("WCCSFN")
Brenda Gaertner Leah Pence	First Nations Coalition; First Nations Fisheries Council; Aboriginal Caucus of the Fraser River; Aboriginal Fisheries Secretariat; Fraser Valley Aboriginal Fisheries Society; Northern Shuswap Tribal Council; Chehalis Indian Band; Secwepemc Fisheries Commission of the Shuswap Nation Tribal Council; Upper Fraser Fisheries Conservation Alliance; Other Douglas Treaty First Nations who applied together (the Snuneymuxw, Tsartlip and Tsawout); Adams Lake Indian Band; Carrier Sekani Tribal Council; Council of Haida Nation ("FNC")
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APPEARANCES / COMPARUTIONS, cont'd.

Tim Dickson	Sto:lo Tribal Council Cheam Indian Band ("STCCIB")
No appearance	Laich-kwil-tach Treaty Society Chief Harold Sewid, Aboriginal Aquaculture Association ("LJHAH")
Krista Robertson	Musgamagw Tsawataineuk Tribal Council ("MTTC")
Ming Song Lisa Fong Benjamin Ralston	Heiltsuk Tribal Council ("HTC")

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PANEL NO. 50
In chief by Mr. McGowan

Vancouver, B.C. /Vancouver
(C.-B.)
July 4, 2011/le 4 juillet 2011

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

6 MR. MCGOWAN: Good morning, Mr. Commissioner. For the
7 record it's Patrick McGowan, with me is Jennifer
8 Chan, we're counsel for the Commission. Today we
9 have a new panel before you. The panel will be
10 dealing with topics related to Aboriginal fishing.
11 Just to introduce you to the panel, Mr.
12 Commissioner, from left to right. On my far left
13 we have Mr. Ross Wilson, moving to the right, Mr.
14 Ernie Crey, Mr. Marcel Shepert and Mr. Barry
15 Rosenberger. Mr. Rosenberger has been a witness
16 here previously.

17 Perhaps before we get started we could have
18 the witnesses sworn.

19 THE REGISTRAR: Good morning, gentlemen. Would you put
20 your microphones on, please. Mr. Rosenberger,
21 we'll consider your affirmation is still in
22 effect, you have been affirmed before. For the
23 remainder of you, I will do the affirmation.

24
25 BARRY ROSENBERGER, recalled.

26
27 ROSS WILSON, affirmed.

28
29 ERNIE CREY, affirmed.

30
31 MARCEL SHEPERT, affirmed.

32
33 THE REGISTRAR: Would you state your name, please.

34 MR. WILSON: Ross Wilson.

35 THE REGISTRAR: Thank you.

36 MR. CREY: Ernie Crey.

37 THE REGISTRAR: Thank you.

38 MR. SHEPERT: Marcel Shepert.

39 THE REGISTRAR: Thank you. Counsel.

40 MR. MCGOWAN: Thank you.

41
42 EXAMINATION IN CHIEF BY MR. MCGOWAN:

43
44 Q Starting with you, Mr. Shepert, you're a
45 professional mediator, facilitator and negotiator?

46 MR. SHEPERT: That's correct.

47 Q You are the Coordinator of the Upper Fraser

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PANEL NO. 50
In chief by Mr. McGowan

1 Fisheries Conservation Alliance, sometimes called
2 the UFFCA?
3 MR. SHEPERT: Was.
4 Q You were formerly. And you're the former
5 Executive Director of the Fraser River Aboriginal
6 Fisheries Secretariat, sometimes called FRAFS?
7 MR. SHEPERT: That's correct.
8 Q You continue to assist FRAFS as a facilitator?
9 MR. SHEPERT: Yes.
10 Q You sit as a Canadian member on the Pacific Salmon
11 Commission's Fraser River Panel?
12 MR. SHEPERT: As an observer.
13 Q As an observer, thank you. And as the Upper
14 Fraser representative on the Integrated Harvest
15 Planning Committee.
16 MR. SHEPERT: That's correct.
17 Q Thank you. And what First Nation band do you
18 belong to?
19 MR. SHEPERT: I belong to the Wet'suet'en First Nation.
20 Q Thank you. Mr. Wilson, you're a member of the
21 Heiltsuk Nation?
22 MR. WILSON: Yes.
23 Q You're currently the Director of the Heiltsuk
24 Integrated Resource Management Department?
25 MR. WILSON: Yes.
26 Q You've held a number of previous postings, some of
27 which include Chief Counsellor for the Heiltsuk
28 Tribal Council?
29 MR. WILSON: Yes.
30 Q And the Aquatic Manager for Heiltsuk Integrated
31 Resource Management Department?
32 MR. WILSON: Yes.
33 Q You currently sit on a number of boards and
34 committees, including the Co-management Working
35 Group for the First Nations Fisheries Council?
36 MR. WILSON: Correct.
37 MR. MCGOWAN: And if we could just first of all have
38 Mr. Shepert's bio marked, which I neglected to do,
39 that's at our Tab 21.
40 THE REGISTRAR: That will be Exhibit number 1244 (sic).
41 MR. MCGOWAN: Thank you.
42
43 EXHIBIT 1245: Biography of Marcel Shepert
44
45 MR. MCGOWAN: Thank you. And if the next exhibit could
46 be Mr. Wilson's biography, which we now see on the
47 screen.

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PANEL NO. 50
In chief by Mr. McGowan

1 THE REGISTRAR: Exhibit 1245 (sic).

2
3 EXHIBIT 1246: Biography of Ross Wilson

4
5 MR. MCGOWAN: Thank you.

6 Q Mr. Crey, you're a member of the Sto:lo Nation?

7 MR. CREY: That's correct.

8 Q You worked for the Department of Fisheries and
9 Oceans as an Aboriginal Advisor from 1984 to 1990?

10 MR. CREY: I did.

11 Q Your current role is as Fisheries and Policy
12 Advisor for the Sto:lo Tribal Council?

13 MR. CREY: That's correct.

14 Q You're a member of the Fraser River Aboriginal
15 Fisheries Secretariat Executive Committee?

16 MR. CREY: I am.

17 Q You're also a member of the Fraser Valley
18 Aboriginal Fisheries Society, sometimes called
19 FVAFS?

20 MR. CREY: Yes.

21 Q And you're an alternate member on the Monitoring
22 and Compliance Panel of the ISDF?

23 MR. CREY: That's correct.

24 Q And you've also previously served as a member of
25 the Pacific Salmon Commission's Fraser River
26 Panel.

27 MR. CREY: That's correct.

28 MR. MCGOWAN: Thank you. And if Mr. Crey's biography
29 could be the next exhibit.

30 THE REGISTRAR: Exhibit number 1246 (sic).

31
32 EXHIBIT 1247: Biography of Ernie Crey

33
34 MR. MCGOWAN:

35 Q And if we could please have Exhibit 323. Mr.
36 Rosenberger, you have been here before and been
37 introduced, so I'll just briefly remind the
38 Commissioner. You have been with the Department
39 of Fisheries and Oceans since the late '70s?

40 MR. ROSENBERGER: That's correct.

41 Q You're presently the Area Director for the BC
42 Interior?

43 MR. ROSENBERGER: That's correct.

44 Q A position you've held since 2002?

45 MR. ROSENBERGER: That's right.

46 Q And you're also since 2009 the Canadian Chair of
47 the Fraser River Panel?

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1 MR. ROSENBERGER: That's correct.

2 MR. MCGOWAN: As I said, Mr. Commissioner, Mr.
3 Rosenberger's c.v. is Exhibit 323. It's been
4 previously marked.

5 Q Mr. Shepert, I'd like to start with you, please,
6 with a couple of questions about the Upper Fraser
7 Fisheries Conservation Alliance. Now, the
8 Commissioner is familiar with that organization,
9 it's detailed in a document prepared by the
10 Commission. But I wonder if you could just
11 briefly describe for the Commissioner your
12 understanding of this AAROM body's purpose.

13 MR. SHEPERT: Thank you. Well, the way that I
14 understand the Upper Fraser Fisheries Conservation
15 Alliance is that it was formed out of necessity
16 for the 23 member bands that formed the membership
17 back in the sort of early 2000s. There was a real
18 need that was identified of supporting one another
19 in conservation and management of the salmon on
20 the Fraser. So out of that need most of the bands
21 from Williams Lake north had, you know, had not
22 been receiving their food, social, ceremonial
23 fisheries, and therefore found that by working
24 together as a collaborative that they would have a
25 better chance in trying to get the numbers back to
26 their natal streams in the upper watershed.

27 So it was formed out of necessity, and it's
28 been quite successful. It was also formed to, you
29 know, look at some sort of mandated representation
30 issues, and to reduce funding competition in the
31 upper watershed.

32 Q And how long has that organization been in
33 existence?

34 MR. SHEPERT: I think its incorporation was in '05 or
35 '06, something like along those lines. So we're
36 looking at about six years now in operation.

37 Q And is it funded primarily through DFO's AAROM
38 program?

39 MR. SHEPERT: Primarily, but not exclusively.

40 Q And I wonder if you can just briefly articulate
41 for the Commissioner some of the benefits that you
42 observed flowing from the organization of First
43 Nations in a sub-regional body like this.

44 MR. SHEPERT: So the benefits, as I see them, have been
45 better coordination of activities in the Upper
46 Fraser. A strategic plan was developed six or
47 seven years ago before we were even incorporated.

1 It's an extensive document, it's about 120 pages,
2 which breaks the watershed into five sub-regions,
3 which are based on watersheds. And so we were
4 able to do that.

5 We were able to pool our resources and our
6 expertise. We have now I think on staff up to at
7 any given time between three and five biologists,
8 which we share. And the benefits have been
9 incredible.

10 We have community fisheries liaisons
11 representing each of the communities which report
12 back at forums. We hold about eight general
13 meetings a year and they roam around the watershed
14 and they bring issues together. And our agendas
15 are always very highly focused and usually deal
16 with specific issues, whether it be preparing for
17 a fishery on any given year. So for '09, which
18 this is all about, we would have got together
19 sometime early in the spring to start talking
20 about stocks of concern and all of the technical
21 issues and looking for mutual areas of support and
22 development of positions. So I think it's been
23 very effective from that way.

24 Q Thank you. Could we please have Commission's
25 document 29 on the screen. You talked about the
26 program being financed primarily through the AAROM
27 program. I just want to ask you, on the screen
28 right there, is this a copy of the AAROM agreement
29 that sets out the funding and other matters
30 related to the Upper Fraser Conservation,
31 Fisheries Conservation Alliance?

32 MR. SHEPERT: This is an agreement, but I notice that
33 it also is an amendment.

34 MR. MCGOWAN: Okay. Thank you, if that could be the
35 next exhibit.

36 THE REGISTRAR: Exhibit 1247 (sic).

37
38 EXHIBIT 1248: Aboriginal Aquatic Resource
39 and Oceans Management Program (AAROM)
40 Collaborative Management Contribution
41 Agreement, 2009-2010
42

43 MR. MCGOWAN:

44 Q And the UFFCA is required to file progress reports
45 periodically?

46 MR. SHEPERT: Yes.

47 Q Could we please have Tab 30 from our documents.

1 And is this an example of one of the progress
2 reports that has been prepared and filed?

3 MR. SHEPERT: Yes.

4 MR. MCGOWAN: If that could be the next exhibit,
5 please.

6 THE REGISTRAR: Exhibit 1248 (sic).

7

8 EXHIBIT 1249: Upper Fraser Fisheries
9 Conservation Alliance 2009/10 Collaborative
10 Management Agreement December 2009
11 Contribution Progress Report
12

13 MR. MCGOWAN:

14 Q Mr. Crey, I'm going to turn to you now and ask you
15 a couple of questions about the Lower Fraser
16 Fisheries Alliance. Is this a fairly new body?

17 MR. CREY: It is. We've worked for the better part of
18 the year putting the body together.

19 Q Okay. I wonder if you could just very briefly
20 describe to the Commissioner what it is and how it
21 might be similar or different from the UFFCA.

22 MR. CREY: The Lower Fraser Fisheries Alliance has an
23 assembly, a political assembly, that has mandated
24 a committee, the Executive Committee of the Lower
25 Fraser Fisheries Alliance. That's where it
26 derives -- the Executive Committee derives its
27 mandate. All 29 First Nations on the Lower Fraser
28 River are participants. And there's expressions
29 of interest from other First Nations to join in.
30 It's been around for about a year. We've spent a
31 lot of time on internal organizational matters,
32 putting the organization together, laying out a
33 vision and goals for the organization, and also
34 we've spent a fair amount of that time this part
35 year working closely with representatives of DFO.

36 Q Okay.

37 MR. CREY: And they do participate in the Lower Fraser
38 Fisheries Alliance. They have people that sit at
39 the table with us, and so it's -- it's a bit of a
40 work in progress, but we're well -- well on our
41 way to having a body on the Lower Fraser River
42 that coordinates meetings between and amongst the
43 First Nations themselves and in turn works with
44 representatives, employees of the Department of
45 Fisheries and Oceans. And of course the focus and
46 the interest is the Lower Fraser fishery.

47 Q Right.

- 1 MR. CREY: And how it might be -- how it might be
2 managed now and on into the future.
- 3 Q So this organization has both Tier 1 and Tier 2
4 aspects to it?
- 5 MR. CREY: It does.
- 6 Q And it's funded primarily through the AAROM
7 program?
- 8 MR. CREY: That's correct.
- 9 Q Thank you. Mr. Wilson, does the -- do the
10 Heiltsuk belong to an AAROM organization?
- 11 MR. WILSON: The Island and Marine Aquatic Working
12 Group.
- 13 Q Okay. And do you also have some connection to
14 IMAWG?
- 15 MR. WILSON: Yes.
- 16 Q And IMAWG stands for...
- 17 MR. WILSON: Island and Marine Aquatic Working Group.
- 18 Q Thank you. I've got so many acronyms here,
19 sometimes I forget what they stand for. The first
20 AAROM body that you mentioned is somewhat
21 different than the previous two we spoke about; is
22 that right?
- 23 MR. WILSON: Actually it's the same, sorry.
- 24 Q Is it. Okay. And is the IMAWG organization
25 distinct or does it carry out a very much a
26 similar function, as well.
- 27 MR. WILSON: Same function.
- 28 Q Okay, thank you. Mr. Rosenberger, you attend
29 meetings with -- at least in the Upper Fraser,
30 with the UFFCA?
- 31 MR. ROSENBERGER: That's correct.
- 32 Q And you also attend meetings with a number of
33 other First Nations fishery-related organizations?
- 34 MR. ROSENBERGER: That's correct.
- 35 Q In an average year, approximately how many
36 meetings would you have with First Nations
37 fisheries organizations or First Nations about
38 fishing.
- 39 MR. ROSENBERGER: Personally, probably 20 to 30.
- 40 Q And is it similar numbers for you, Mr. Crey and
41 Mr. Shepert?
- 42 MR. SHEPERT: The question is how many meetings I go to
43 with DFO in the room?
- 44 Q Yeah, in a year.
- 45 MR. SHEPERT: Yeah, I would concur, something along
46 those lines.
- 47 Q A similar experience for you, Mr. Crey?

1 MR. CREY: That few? It feels like more, but yeah, I'd
2 say, you know, 30 to 40 meetings annually with DFO
3 in the room.
4 Q Mr. Wilson, do you have a similar experience, or
5 are you...
6 MR. WILSON: Oh, no, much less.
7 Q Mr. Rosenberger, with respect to these
8 organizations we've been speaking about, like the
9 Upper Fraser Fisheries Conservation Alliance or
10 the Lower Fraser Fisheries Alliance, is it the
11 Department's intention that they can at least in
12 part satisfy their consultation obligations by
13 engaging with these AAROM bodies as opposed to
14 with the individual bands?
15 MR. ROSENBERGER: That's correct.
16 Q And I take it that's because in DFO's view it's
17 easier to consult in aggregates?
18 MR. ROSENBERGER: Well, it might be easier to consult
19 in aggregates, but the objective is to try to get
20 an integrated plan, so it's better to bring all
21 parties to the table.
22 Q Okay.
23 MR. ROSENBERGER: So that's the overriding objective.
24 Q And to the extent the Department is moving towards
25 a co-management relationship with First Nations,
26 is it their desire to accomplish that similarly by
27 engaging with aggregates?
28 MR. ROSENBERGER: That's correct.
29 Q Okay. Mr. Shepert, speaking of the Upper Fraser
30 Fisheries Conservation Alliance, does that
31 organization view itself as being a consultative
32 body that speaks on behalf of the -- its member
33 organizations when engaging with DFO?
34 MR. SHEPERT: So is it mandated, is that the question?
35 Q Yes.
36 MR. SHEPERT: Is it mandated to speak on behalf of its
37 representatives --
38 Q Yes.
39 MR. SHEPERT: -- at that table? No.
40 Q Okay. What about the Lower Fraser Fisheries
41 Alliance, Mr. Crey?
42 MR. CREY: Well, the Lower Fraser Fisheries Alliance
43 has a -- has a mandate and it has a set of terms
44 of reference. I wouldn't go so far as to suggest
45 that it speaks for the First Nations collectively
46 on the Lower Fraser River, but it does work
47 between and amongst the First Nations,

1 cooperating, planning, discussing issues of
2 importance in the fishery, or for the communities
3 in the fishery. Looks at helpful projects of a
4 scientific nature or a study nature that might be
5 helpful. Reports back to the assembly, the Lower
6 Fraser Fisheries Alliance Assembly, which are the
7 communities. But in the Fraser Valley, the
8 consultation have to include the communities
9 themselves, and it's the LFFA is not a one-stop
10 shopping spot for DFO, but it plays a key and it's
11 an important role.

12 Q Okay.

13 MR. CREY: On the Lower Fraser.

14 Q And, Mr. Wilson, does that similarly describe the
15 mandate of IMAWG with respect to the Heiltsuk?

16 MR. WILSON: No, currently IMAWG is relatively new, so
17 they haven't created that structure yet.

18 Q Okay.

19 MR. WILSON: But that's the plan.

20 Q Okay. Mr. Rosenberger, I take it the Department's
21 aware of the position of these organizations, that
22 they don't speak, they're not mandated to speak on
23 behalf of their member bands; is that fair?

24 MR. ROSENBERGER: That's correct.

25 Q With respect to any of these AAROM groups, or any
26 of the other AAROM groups that exist, is -- sub-
27 regional bodies, is the flow of money to any of
28 these organizations contingent upon them being
29 able to agree to engage with DFO on behalf of
30 their member organizations?

31 MR. ROSENBERGER: No, it is not.

32 Q Is there a hope that ultimately some day sub-
33 regional AAROM bodies like the UFFCA will develop
34 into representational bodies which could speak on
35 behalf of their member bands?

36 MR. ROSENBERGER: That's correct.

37 Q From DFO's perspective?

38 MR. ROSENBERGER: That's correct.

39 Q And I'll ask the rest of the panel. Is it the
40 hope of those organizations or the First Nations
41 that belong to them that ultimately they will hand
42 over authority and mandate these organizations to
43 deal with DFO on behalf of their member bands?

44 MR. SHEPERT: Yes.

45 Q Okay.

46 MR. CREY: I would say that's part of the longer term
47 -- a longer term goal of the First Nations on the

1 Lower Fraser River.

2 MR. WILSON: I agree.

3 Q And what would have to happen, what's going to
4 have to occur in your view to move these
5 organizations to the stage where they are mandated
6 to speak on behalf of their member bands? I'll
7 perhaps open that up to -- why don't we start with
8 you, Mr. Shepert?

9 MR. SHEPERT: Well, there's a number of things that
10 have to happen. I think some of this was touched
11 on in the past, but certainly, you know, the --
12 the ability of the First Nations within the Upper
13 Fraser to have that, to be able to mandate
14 somebody to negotiate on their behalf is going to
15 be a very tricky manoeuvre, but that's what's
16 going to have to happen if the AAROM is going to
17 be more of a meaningful consultative body. Then
18 the First Nations internal governance structures
19 would have to be more solidified and, you know,
20 the -- you know, more clarity would have to be
21 sought around what is -- what is actually going to
22 be negotiated away at those tables. So that would
23 be the number one starting point.

24 But also from the other side is the
25 commitment from the Department of Fisheries and
26 Oceans to the long-term viability of these bodies,
27 and a meaningful relationship based on, you know,
28 improved decision-making within the regions. And
29 you know, I would say stable funding flows, less
30 bureaucracy, there would be a number of things
31 that would have to be in place in order for these
32 things to be more effective.

33 Q Okay. Mr. Crey, do you have anything to add?

34 MR. CREY: I would agree with Mr. Shepert. The
35 arrangements we currently have with the Department
36 of Fisheries and Oceans are year-by-year. And
37 some of the discussions -- or some of the -- I
38 think what we're looking for that would give
39 impetus to the kind of thing that Mr. Shepert has
40 just described is ultimately getting a clear
41 signal from the Department of Fisheries and Oceans
42 that they're prepared to help sustain these bodies
43 for the longer term, that it's not, Mr.
44 Commissioner, just a year-by-year arrangement for
45 funding, and for talk, but that they're in it for
46 the long term. And a very clear signal of the
47 direction in which they would like to go and of

1 course first and foremost in our minds these days
2 is the notion and the concept of co-management.
3 Q Yes.
4 MR. CREY: So we're waiting for a clear signal that
5 from the Department of Fisheries and Oceans or the
6 Government of Canada that that's where they
7 ultimately want to go.
8 Q Thank you. Mr. Wilson, do you have anything to
9 add to that?
10 MR. WILSON: A few points. Long term funding, capacity
11 development, authority, structure of IMAWG has to
12 be created to provide our attendance, consultation
13 with First Nations communities and commitment from
14 DFO.
15 Q Thank you, sir. Mr. Rosenberger, presently
16 significant aspects of pre-season and in-season
17 management are accomplished through the Fraser
18 River Panel and through IHPCs. How do you see the
19 sub-regional organizations feeding into those
20 processes, moving forward?
21 MR. ROSENBERGER: You mentioned the Panel, and then you
22 mentioned a different process.
23 Q Yes.
24 MR. ROSENBERGER: Maybe you could clarify the question,
25 please.
26 Q Presently there's First Nations representation -
27 let's start with the Fraser Panel - on the Fraser
28 Panel, is that correct, and those members are
29 appointed by DFO?
30 MR. ROSENBERGER: That's correct.
31 Q Do you see DFO handing over the appointment
32 duties, selection duties to First Nations
33 organizations in the future?
34 MR. ROSENBERGER: What we're striving for on
35 appointments to any of the panel processes is
36 First Nations to provide lists of two or three
37 potential candidates. The selection of the
38 individual to sit on there is at the discretion of
39 the Regional Director General and the Department.
40 Q Okay. Okay, thank you. Mr. Shepert, I wanted to
41 ask you about the geographic -- and Mr. Crey and
42 Mr. Wilson about the geographic organization of
43 the AAROM bodies. Mr. Shepert, first of all, is
44 it your expectation, given the hope that these
45 bodies ultimately can become mandated to deal with
46 DFO on behalf of their member bands, that they
47 will be involved in co-managing the resource on

1 behalf of the First Nations with DFO?

2 MR. SHEPERT: Yes.

3 Q Presently is the UFFCA organized or the sub-
4 regional AAROM bodies like the LFFA or the Lower
5 Fraser Fisheries Alliance and the UFFCA, are they
6 organized geographically along the same Nation
7 lines as the ITO?

8 MR. SHEPERT: No.

9 Q Okay. Are they organized according to the same
10 geographic regions that are used by the FNFC?

11 MR. SHEPERT: No.

12 Q If those bodies are also going to be involved
13 moving forward in the co-management relationship,
14 are these geographic differences going to cause
15 difficulties?

16 MR. SHEPERT: I suppose they could. You know, the
17 things are not happening all succinctly. Things
18 are happening in a timeline.

19 Q Yes.

20 MR. SHEPERT: So AAROM came along. AAROM was an
21 opportunity, so there was an organization and a
22 move to organize in order to meet the sort of the
23 parameters that were laid out essentially within
24 those agreements.

25 Q Yes.

26 MR. SHEPERT: So, you know, after seven years or six
27 years of working together we have a very effective
28 working relationship. What happens now with the
29 new mandated organization, such as First Nations
30 Fisheries Council, or any of the other, ITO, for
31 example, remains to be seen. I think that there's
32 strong support for those organizations in the
33 Upper Fraser and the relationship how it plays out
34 over the next years is going to be critical in
35 terms of stability, and as a consequence providing
36 the kind of sustainability that we're looking for
37 in this Commission.

38 Q Thank you. Mr. Crey, maybe I'll just give you an
39 opportunity, then, to weigh in on the relationship
40 between these bodies and broader watershed-type
41 bodies or province-wide bodies like the ITO and
42 the FNFC and the different geographic
43 organizations that they have.

44 MR. CREY: One of the reasons we put the Lower Fraser
45 Fisheries Authority together and got a mandate
46 from the Lower Fraser Fisheries Assembly, these
47 would be the chiefs and councils in assembly, was

1 first of all to organize the communities on the
2 Lower Fraser River.

3 Q Mm-hmm.

4 MR. CREY: And there's acknowledgment that ultimately
5 we'll have to look at coordinating our efforts
6 with other First Nations in the watershed, and
7 also our efforts with First Nations in what are
8 called the approach waters to the Fraser River.
9 So while we're not at that stage yet, where
10 there's a representative group throughout the
11 watershed, there's acknowledgment between and
12 amongst the groups that we're eventually going to
13 be working towards coordinating our efforts
14 throughout the watershed and in the approach
15 areas.

16 Q Thank you. Mr. Wilson, did you have anything to
17 add to that?

18 MR. WILSON: We can see value in the Fish Council
19 representing the Central Coast. There has to be
20 some work involved first, but with the -- with the
21 IMAWG it would be a challenge, because currently
22 the IMAWG represents First Nations outside of the
23 Fraser River and that's a lot of bands both on the
24 Island, on the Mainland, up to the North, the
25 Haida Gwaii, so it would be a challenge.

26 Q Thank you. Mr. Rosenberger, we've heard about
27 some of these First Nations fishery organizations
28 today and some of the processes that are in
29 existence that result in meetings and DFO working
30 together with First Nations. We've heard about
31 the FNFC and FRAFS, and the Commissioner has heard
32 about the Forum and Roadmap processes that work
33 through that. He's heard about the ITO, and now
34 some of these sub-regional bodies, the UFFCA, the
35 LFFA and the IMAWG. Do you find that with
36 engagement, the Department engaging with so many
37 different organizations that there's to some
38 degree a duplication of effort that occurs?

39 MR. ROSENBERGER: There is in some parts of it, that's
40 right.

41 Q Okay. Do you have any suggestions as to how any
42 inefficiencies that exist might be better managed?

43 MR. ROSENBERGER: Well, the objectives that the
44 Department is striving for is that there be an
45 overarching body for either geographic areas or
46 for certain species management. And that there
47 would be sub-regional groups underneath that that

1 would report up, and then there are the bilateral
2 or more local interactions that are -- occur. And
3 so it's a package of all of this that needs to go
4 on to be -- to form the consultations, to meet the
5 obligations. But that a structure like that would
6 feed on information and objectives at the various
7 levels so that the uppermost body would be able to
8 assist and work cooperatively, co-management,
9 wherever we end up with that, in a process that
10 that would be the place where there would be
11 opportunities for co-management in a more
12 integrated way, as opposed to a number of
13 separate, and sometimes proposals that they
14 conflict to a significant degree.

15 So that's the structure that we're striving
16 for and we're hoping that through the Roadmap and
17 some of the other processes we will get to there,
18 and the Forum, as you mentioned, is part of how
19 we're trying to make those decisions at the stage
20 we're at right now. We understand that the fish
21 come back on an annual basis and we need to make
22 decisions and we don't have all of the structures
23 in play. That may or may not be the structure
24 that would be there in the long term.

25 Q And you spoke of an overarching organization.
26 Moving forward, is the Department working towards
27 that being the FNFC or the ITO, or happening
28 through the Roadmap process, or is that not
29 something the Department is going to determine?

30 MR. ROSENBERGER: Well, we don't have a determination,
31 and I don't believe that it's the Department alone
32 that can make that kind of determination. As
33 you've heard from the other three members of the
34 panel here, is that the First Nations need to work
35 through a number of these different aspects. So
36 what we're striving for in the Roadmap Process is
37 to bring this broader group of people together to
38 get to a process that we will all agree to.

39 Q Okay. Maybe Mr. Shepert, I'll ask you the same
40 question. In terms of an overarching organization
41 to which these more regionally based ones may
42 feed, is that, in your view, going to be through
43 the ITO, the FNFC or some other -- something else
44 developed through the Roadmap, or some other
45 process or body?

46 MR. SHEPERT: Well, you know, given the amount of
47 resources and time that have been given to

1 processes like Roadmap, which I'm familiar with, I
2 think that most people would agree that at some
3 point that there would be an organization like
4 that in place so that we could have efficiency in
5 decision-making, yet we're away from that at this
6 particular time. There's been a lot of work put
7 into it. The Roadmap has been in existence since
8 '08 - is it '08? - yes, since '08, so there's a
9 lot of time and energy. So and I think people are
10 coming to the table, so that tells you there's a
11 strong signal for some kind of an organization to
12 take on that role. Now, what it looks like and
13 how much longer that would take, I don't know at
14 this particular time.

15 Q Thank you. Do either of the other panellist have
16 anything to add?

17 MR. WILSON: It's currently difficult for me to be
18 attending these meetings because of my location,
19 and I don't have the budget to do that. So to
20 form a structure that would provide our input and
21 carry on that workload for us would extremely
22 benefit my Nation.

23 MR. CREY: I think the First Nations understand and
24 acknowledge that eventually there's going to have
25 to be, as Mr. Rosenberger described it, as an
26 overarching arrangement, where there can be
27 discussions mediated through that body with the
28 Department of Fisheries and Oceans. And I think
29 what we're looking for right now is a signal, an
30 incentive, a commitment on the Department of
31 Fisheries and Oceans that would give the kind of
32 impetus that's needed to get there and have
33 particular signposts along the way, or particular
34 targets along the way that we can sort of measure
35 our progress to getting there. But that remains
36 to be seen.

37 Q All right. I take it you're all, Mr. Wilson, Mr.
38 Crey and Mr. Shepert, all supportive of increased
39 involvement of First Nations in management of the
40 Fraser sockeye fishery. And, Mr. Crey, you spoke
41 about needing a signal from the Department,
42 perhaps a sign or a commitment. Is that sort of
43 what you're looking for, some sort of a commitment
44 and articulating what's on the table to be had?

45 MR. CREY: I am.

46 Q Okay.

47 MR. CREY: Because in the programs that I've managed on

1 the Lower Fraser, the work that I've done on the
2 Lower Fraser, we've gotten a few times to a
3 critically important place in our working
4 relationship with the Department of Fisheries and
5 Oceans, in what one might describe as a proposal,
6 a proposition from the bands on the Lower Fraser
7 to pursue co-management. And before those
8 arrangements could be concluded, often the
9 Department would withdraw from the process.

10 Q Right.

11 MR. CREY: And I can talk later about one example in
12 particular. So this time, this time out, what I'm
13 looking for, and I think what our communities are
14 looking for is a clear commitment that the
15 Department is in pursuit of co-management, that
16 they're going to support it, that there's going to
17 be resourcing for it, and that it's something of
18 substance, and that it doesn't evaporate from --
19 or slip through our fingers at the -- at the last
20 moment.

21 Q Mr. Shepert and Mr. Wilson, do you agree with
22 that?

23 MR. SHEPERT: Further, also, when talking about
24 incentives, there, you know, there are a number of
25 things that would bring First Nations to the
26 table. Of course, improved and increased
27 decision-making at the regional level would be one
28 of the signals that we would be looking for in
29 terms of that, and as Ernie has already pointed
30 out, it's the -- it's the commitment also to a
31 streamlined process that's multiyear in its scope,
32 so that we know that isn't going to be going
33 anywhere. So I agree generally with what Mr. Crey
34 has already said.

35 Q Thank you. Mr. Wilson?

36 MR. WILSON: I agree.

37 Q Thank you. Can we please have Exhibit 493, page
38 75 of that document, and, Mr. Shepert, I think
39 it's a document you'll be familiar with, it's Our
40 Place at the Table. And you were one of the
41 authors of this document?

42 MR. SHEPERT: Correct.

43 Q If we could just highlight the bottom right
44 quarter, under the heading "Recommendation 3".
45 You spoke in your evidence about DFO needing to
46 provide incentives, and one of the incentives
47 that's proposed here under "Recommendation 3":

1 Recommendation 3: First Nations themselves
2 must address intertribal allocations.
3

4 And if we just head down to the second paragraph
5 there:
6

7 Incentives are required to ensure that such
8 cooperation occurs. One incentive that would
9 ensure all [First] Nations come together to
10 work out allocations would be that everyone
11 agrees or no one fishes.
12

13 Do you still support that as one possible
14 incentive?

15 MR. SHEPERT: I think that that's a possible incentive,
16 yes.

17 Q Okay. Mr. Crey, do you have any comment on that
18 as a potential incentive to encourage First
19 Nations to work together in sorting out
20 allocations?

21 MR. CREY: That would be an incentive, undoubtedly.

22 Q Mr. Wilson?

23 MR. WILSON: Yes.

24 Q How -- what work has been done amongst First
25 Nations themselves, perhaps without even the
26 assistance of DFO, in the last few years to
27 address this recommendation, to your observation,
28 Mr. Shepert?

29 MR. SHEPERT: What work has been done to address this
30 particular one. So in other words, what you're
31 asking is that...?
32

33 Q

34 Recommendation 3: First Nations themselves
35 must address intertribal allocations.

36 MR. SHEPERT: Right. So DFO came to First Nations in
37 2008 expressly through a letter asking First
38 Nations that in the foreseeable future we're going
39 to be into sort of low run -- low runs on the
40 Fraser, therefore we would request a meeting to
41 come together, which has now been called the Forum
42 process. The Forum process was there to talk
43 about sort of how First Nations see, in times of
44 low abundance, sharing what small surpluses there
45 may be to meet their FSC needs. Well, that's one
46 of the things that's been underway. Now, that
47 process is still going. It's now in its third,

1 going into its fourth year, and, you know, we're
2 still talking about times of low abundance.

3 So the discussion has been, we've been able
4 to come up on an agreement how to deal with Early
5 Stuart, for example. There's been to some degree
6 a small amount of - what's the word I'm looking
7 for - that they agree collectively to deal with
8 Early Summer, but there's no agreement on a
9 majority of the Early Summer runs and also the
10 Summer and Lates.

11 So to get to your question, there's never
12 been an incentive, nobody's been told by the
13 Department yet, "Look, if you don't come to this
14 table, you can't really have any fish."

15 Q Okay.

16 MR. SHEPERT: So, but, you know, there's -- there's
17 talk and there is something afoot.

18 Q In terms of moving forward with First Nations, I'm
19 hearing from you that you want the Department to
20 step up and engage more. And often where the
21 First Nations -- is it not difficult for them to
22 do so if they don't -- if First Nations haven't
23 sorted out which organization they ought to be
24 dealing with and what the structure of that
25 organization is and how it's going to work, you
26 know, amongst the First Nations themselves?

27 MR. SHEPERT: So is it difficult for DFO to figure out
28 who to deal with and does that cause, you know,
29 some more (indiscernible - overlapping speakers).

30 Q Is that part of what's stalling this movement
31 towards co-management or joint management?

32 MR. SHEPERT: I would say a part of it is that.
33 Certainly not all of it, but certainly a part of
34 it is that, yes.

35 Q Is one of the challenges that is faced on both
36 sides of the issue representative authority, those
37 attending the meetings, whether they be the
38 Roadmap or the UFFCA, not having the authority to
39 speak on behalf of those they're there for, from
40 the First Nations perspective, on behalf of their
41 member bands, and perhaps from the DFO not having
42 sufficient authority to engage in meaningful
43 discussions.

44 MR. SHEPERT: Yes.

45 Q Okay. Mr. Crey, do you have anything to add to
46 that?

47 MR. CREY: I would think it's much more of the latter.

1 There's a lot of uncertainty in the First Nations
2 representatives about what the mandate is of the
3 DFO employees that are sitting across from us at
4 any given time. There's a lot of uncertainty
5 about what their mandate is, and what kind of
6 negotiations they can have with the First Nations,
7 and where those negotiations might lead to. So
8 we're looking for more clarity from the Department
9 of Fisheries and Oceans.

10 And I think if we get to the stage where
11 there is a definite mandate that is given to folks
12 like Barry Rosenberger and others, and Barry
13 Huber, folks that come and talk to us and invite
14 us into these processes, which we most certainly
15 want to be part and parcel of, of course, because
16 we're talking ultimately about co-management and
17 that means work with the Government of Canada.
18 But often we're looking for clarity on the part of
19 the government. And once we see that they have
20 clear mandates, and they're committed to realizing
21 certain goals and objectives with us, I think that
22 that would be the impetus that the First Nations
23 would need to sort out internally who will be
24 representing whom and where and when and for what
25 purposes.

26 Q Thank you. Mr. Wilson?

27 MR. WILSON: Just thinking about your Recommendation 3
28 on the --

29 Q Yes, certainly.

30 MR. WILSON: -- computer here, and the example I could
31 use is the request from last year, a band on the
32 Upper Fraser requested no fishing the Early
33 Stuarts.

34 Q Yes.

35 MR. WILSON: There was no problem from our community,
36 which is in the Central Coast of B.C., which has
37 first -- not first access, but early access to the
38 passing stock. And we stayed away from fishing
39 the Early Stuarts.

40 Q So you're offering that as an example of First
41 Nations working together to sort out allocation
42 issues.

43 MR. WILSON: Yes.

44 Q Thank you for that. Mr. Rosenberger, do you have
45 anything to add to the issue that we were just
46 dealing with down the panel, and that is the
47 representational authority issue and the mandate

1 issue.

2 MR. ROSENBERGER: I think this is a -- one of the clear
3 issues that needs to be resolved for both parties
4 to be able to move forward.

5 Q And is the Department similarly committed to
6 moving towards involving First Nations to a
7 greater degree in management of the resource?

8 MR. ROSENBERGER: Yes.

9 Q And maybe I'll start with you, Mr. Rosenberger,
10 and then I'll give the rest of the panel an
11 opportunity to weigh in on this question, and it's
12 this: I wonder if you can offer to the
13 Commissioner your views on how the greater
14 involvement of First Nations and management of the
15 Fraser River sockeye will improve management of
16 the resource or benefit the sustainability of
17 Fraser sockeye?

18 MR. ROSENBERGER: The -- with mandated representation,
19 and clear allocations and clear responsibilities
20 from all parties involved, the -- I believe that
21 there would be opportunities and ability to be
22 able to make tradeoffs and decisions where
23 currently there's a number of conflicting
24 objectives and goals amongst the First Nations,
25 and sometimes between the First Nations and the
26 Department. So the, you know, if we get to those
27 levels, decisions around some of the issues about
28 who can access and where they can access, and the
29 example that Mr. Wilson just provided, we have
30 some First Nations groups that supported and
31 endorsed the harvesting by Heiltsuk in the Fraser
32 River fish last year, in territories that are not
33 their claimed area, and others from within the
34 Fraser River that didn't agree with that kind of a
35 scenario. And moving forward on trying to make
36 decisions on how you would bring those forward, if
37 we have, as I mentioned, a mandated process, then
38 I think it would be clear on how to move forward
39 on some of those kinds of issues.

40 Q Maybe we'll move down the line. The importance
41 of, or the significance of the involvement of
42 First Nations in managing the resource for the
43 sustainability of Fraser sockeye.

44 MR. SHEPERT: Thank you. It's an excellent question,
45 and I think that from my perspective I've been
46 involved in the management for 15 years plus.
47 I've worked on the ground. I talked to my son

1 last night and we were bringing up pictures of the
2 days when I was out breaking beaver dams, trying
3 to get fish through, whether they were chinook or
4 sockeye or whatever, I mean, and then slowly
5 working my way up into the management, and then
6 eventually into policy, and so on.

7 I have a really good relationship, and I
8 understand, and I think one of the things that's
9 very critical from my perspective is the technical
10 relationship between the two organizations.
11 Whether they be UFFCA, DFO, Lower Fraser,
12 Heiltsuk, the relationship needs to be nurtured in
13 the regional, in the regions, a technical
14 relationship based on trust, and from that
15 trusting relationship based in the regions, I
16 think the common purpose is what Barry was getting
17 to, is the development of a common purpose. From
18 that common purpose everything should flow. And
19 so, in other words, setting escapement targets in
20 common, whether they're -- and dealing with
21 conservation units in common with a common
22 purpose. I think from that perspective,
23 sustainability is a slam dunk.

24 We do have a lot of conflicting areas, so it
25 starts with a program of science that is both
26 agreed to by both parties, and then from there I
27 think everything else, including the policies to
28 support those agreements would automatically lead
29 to the sustainability of the resource.

30 Q You talk about the relationship needing to be
31 nurtured and the development of the common
32 purpose. Can you offer a sort of an example in
33 concrete terms of how that's going to lead to more
34 fish or better sustainability of the fish?

35 MR. SHEPERT: So I work a lot with my colleagues on the
36 Skeena, and although the Skeena is not perfect, I
37 think that the Skeena offers us some insights into
38 how certain aspects of the fishery, for example,
39 they have had problems with chinook and with coho
40 in the past. I know that the regional managers on
41 the Skeena sit down with the Skeena Watershed
42 Authority, which is comprised of all the First
43 Nations working there. They sit down and they
44 develop a program of science. They agree on what
45 the priorities are, and obviously the priorities
46 have something to do with weak stock management.

47 And then so from that particular point of

1 view, then resources are sought collectively
2 between the First Nations and the Department of
3 Fisheries and Oceans, and then the program of work
4 is set out accordingly. So it's always based on
5 the weakest stocks where the money and the
6 resources would go to. There's no quibbling,
7 there's no -- there's competitiveness about
8 resources, it's work collaboratively. And I think
9 that that model is one that I myself have always
10 looked up to, and I think that the Fraser has a
11 lot to learn from that.

12 And as I said, it's not perfect. There's
13 still stuff going on on the Skeena. But they tend
14 to have more cohesion, more buy-in, the science
15 between Dr. Gottesfeld and the scientist within
16 the Department in some cases is exemplary, and I
17 think is showing real leadership. And they've
18 been able to sustain, for example, Nanika and
19 other stocks, which I've seen, where here they
20 tend to go off the radar. Where if there was a
21 good relationship, we have lots of weak stocks in
22 the Upper Fraser that need attention, that we need
23 to sit down and have an agreement upon, agree on a
24 program of work, and I think that the
25 sustainability will take care of itself.

26 Q Thank you for that example. Mr. Crey, I wonder if
27 you'd like to weigh in on the significance of
28 First Nations involvement to the sustainability.

29 MR. CREY: Well, there were two examples that come to
30 mind. One was, I believe, Marcel in 1996 when the
31 First Nations up and down the entire length of the
32 watershed agreed on the importance of conserving
33 the Early Stuart and came up with a conservation
34 and harvest plan. And after we did our work as
35 First Nations at our own table, we finally met
36 with DFO and together with DFO we settled on a
37 plan for that particular season. So that was
38 early on. That was in the latter '90s.

39 And then more recently, although, Mr.
40 Commissioner, it's a step away from sockeye, the
41 Lower Fraser First Nations were approached by the
42 First Nations of the Nicola Valley, and what
43 they're on about is conserving Early chinook, and
44 they came and met with us, and urged us to adopt a
45 plan, rather, a conservation plan for those fish.
46 And central to it, of course, was not fishing.
47 And after some lengthy discussions, after

1 reviewing the information we had about these
2 stocks, scientific information, we eventually
3 agreed with them. And this spring, while we might
4 have been out in other seasons, past seasons far
5 earlier fishing for chinook, this year we didn't.
6 We worked closely with those folks.

7 We also went with those folks to the
8 Department of Fisheries and Oceans and felt that
9 Fisheries and Oceans could contribute to this
10 conservation effort by curtailing the recreational
11 fishery off the southern end of Vancouver Island,
12 and make that part of the overall contribution to
13 a conservation effort for these particular stocks
14 of Early time chinook. To DFO's credit, it did
15 make some minor adjustments. Of course we were
16 insisting they do more. So maybe that's for a
17 future season.

18 So those are two important examples that come
19 to mind, and of course we want to see that
20 approach extended more broadly to other stocks of
21 fish, most especially sockeye throughout the
22 Fraser.

23 Q Thank you. You mentioned the 1996 agreement.
24 That was an agreement between First Nations about
25 sharing an allocation?

26 MR. CREY: Yes, that's correct.

27 Q And have First Nations been able, since 1996, in
28 any of the years of low abundance, to come to a
29 similar agreement where they were all --

30 MR. CREY: Yes.

31 Q -- in agreement?

32 MR. CREY: We did that, again where Early Stuart
33 sockeye are concerned. Right now, as we speak, as
34 it were, we're reflecting on the importance of
35 conserving Early Stuart, the Early Stuart run,
36 this very season. And so the Lower Fraser is --
37 has met and discussed how we might approach this.
38 So we're right now engaged with the Department of
39 Fisheries and Oceans on a conservation plan for
40 Early Stuart, one that would allow us to fish, for
41 example, for chinook and avoid taking the Early
42 Stuart sockeye. So we're in the midst of those
43 discussions right now.

44 Q Thank you. Mr. Rosenberger, since -- I'll just
45 come right back to you, Mr. Shepert.

46 MR. SHEPERT: Okay.

47 Q Since 1996, and let's talk about 2007 to 2009 when

1 there were runs of low abundance, was the
2 Department presented by on behalf of First Nations
3 with a sharing agreement that could simply be
4 adopted, or did DFO have to impose an allocation
5 strategy in those years?

6 MR. ROSENBERGER: We have not received a document for
7 sharing on other stocks in other years. The
8 Department has provided options for how to make
9 those sharing arrangements within each of those
10 last three or four years, and which obviously
11 wasn't needed in 2010. And the format that the
12 Department would follow and the rules and
13 principles that they would use have been provided
14 to the First Nations.

15 Q Thank you. Mr. Shepert, you wanted to add
16 something.

17 MR. SHEPERT: I just want to -- I think because the
18 Early Stuart is such a -- it's got a lot of
19 profile, I just wanted to also highlight in 2007
20 or '08, the Upper Fraser Fisheries Conservation
21 Alliance commissioned a study, a limnology study,
22 to find out what the heck was going on with Early
23 Stuart sockeye. And so we had Dr. Levy do a
24 report for us, and through the course of that, a
25 number of recommendations were generated out of
26 that report.

27 One of the recommendations, in order to
28 rebuild the Early Stuart sockeye, one of the
29 things that we were pushing for was to do a
30 fertilization of Stuart Lake. Now, when that
31 report was brought out, the First Nations in the
32 Upper Fraser had a traditional ceremony. It was
33 brought out with a lot of, you know, media and so
34 on. It was obviously a priority. We want to
35 rebuild this run.

36 The recommendation coming from the report was
37 we need to fertilize the lake. In order to
38 fertilize the lake you need about a million
39 dollars and you need to do it fairly quickly,
40 because we were on the cusp of a high return, or
41 the highest in a long time. However, you know,
42 the report went to the Department of Fisheries and
43 Oceans along with a letter and what we got back
44 was, "Not a priority, it wasn't really" -- plus
45 "The report wasn't conclusive enough," and so on
46 and so forth.

47 So what I was trying to highlight here is I

1 think again in a situation where we would have sat
2 down and we would have had, you know, a good
3 agreement, a good working relationship, perhaps we
4 could have worked on this problem. Because the
5 problem is still there. It's -- the stocks are
6 not rebounding, even though we're offering them a
7 lot of protection. So the recommendation was
8 fertilize the lake, give the juveniles a fighting
9 chance because they get a lot more groceries, so
10 that they can leave and they're fat and fit.
11 However, that is still sitting out in the ether
12 and has never been followed up upon, and I know
13 it's still, you know, cause for tension for First
14 Nations, going "Why is this not happening?"

15 So and I think again in putting it into
16 sustainability terms, there was a great
17 opportunity that I think was lost, and I think we
18 need to think about that in the future.

19 Q Thank you. Mr. Wilson, I want to make sure you
20 have an opportunity to weigh in on the important
21 question of the connection between First Nations
22 involvement in the management of the resource and
23 sustainability.

24 MR. WILSON: I concur with Mr. Shepert and Mr. Crey.
25 But I would add that because of our location
26 there's a unique opportunity that we could provide
27 some on-the-ground information, in-season
28 management issues, DNA, stock size, location.
29 It's something that the Upper Fraser or the whole
30 Fraser River system could take advantage of.

31 Q Are you suggesting that the Heiltsuk are better
32 placed or better able to carry out this work, and
33 in some way by doing so, it provide greater
34 benefit to the Fraser sockeye than if the work was
35 carried out somewhere else or by somebody else?

36 MR. WILSON: Well, on the ocean side, both the
37 management and the sustainability issues, but the
38 Haida, as well.

39 Q Thank you. I'm going to turn now and ask you a
40 couple of questions about AFS agreements. Mr.
41 Rosenberger, is the negotiation of AFS agreements
42 each year a time-consuming matter for you and your
43 staff?

44 MR. ROSENBERGER: Yes.

45 Q And does it similarly put significant time and
46 resource burdens on First Nations, Mr. Crey, the
47 negotiation of AFS agreements on an annual basis.

1 Does it -- Mr. Rosenberger was saying it takes a
2 significant amount of time for he and his staff.
3 Is it similarly a burden for First Nations to
4 engage in the negotiation of these on an annual
5 basis, AFS agreements.
6 MR. CREY: Sorry, I was just a little confused about
7 the choice of terminology. Right now --
8 Q If I've got the terminology wrong, please help me.
9 MR. CREY: Okay. What we do spend a lot of time with
10 DFO talking about before the season gets underway
11 is a Comprehensive Fisheries Agreement.
12 Q Yes.
13 MR. CREY: And if you're using those terms
14 interchangeably, the answer would be, yes, it's --
15 Q Okay.
16 MR. CREY: -- demanding of our time. But AFS properly
17 is a program that offers funding, and a number of
18 our communities in the Valley get AFS funding,
19 Aboriginal Fisheries Strategy funding.
20 Q yes.
21 MR. CREY: It was the inaugural program back in the
22 early '90s, but now a lot of attention is actually
23 focused on AAROM-related funding initiatives
24 programs.
25 Q Okay, thank you. If we could just have document
26 28 brought up on the screen, please. You were
27 correcting my terminology, so maybe it's an
28 appropriate time to come to this agreement, which
29 is the Comprehensive Fisheries Agreement, is it
30 not, for a number of bands, including yours?
31 MR. CREY: Well, not my community, but generally with a
32 goodly number of the Sto:lo communities, the bands
33 between Port Mann Bridge and Sawmill Creek in the
34 Fraser Canyon.
35 MR. MCGOWAN: If that could be the next exhibit,
36 please.
37 THE REGISTRAR: Mr. McGowan, before we go ahead and
38 mark that, we've just discovered that we, in our
39 rush to get everything done on Thursday, we missed
40 a number this morning.
41 MR. MCGOWAN: Yes.
42 THE REGISTRAR: So the number we started with this
43 morning, we started with 1244, which was the last
44 number on Thursday. So 1244 now becomes 1245,
45 1245 becomes 1246, 1246 becomes 1247, 1247 becomes
46 1248, 1248 becomes 1249. The exhibit that you are
47 now calling for will be 1250. Sorry for that

1 error.

2 MR. MCGOWAN: Thank you, Mr. Giles. And, Mr.
3 Commissioner, I'm just going to suggest that Mr.
4 Giles update the exhibit list and that will be
5 updated for the use of all counsel.

6 THE REGISTRAR: Yes, that's already been done.

7 MR. MCGOWAN: Thank you.

8

9

EXHIBIT 1250: Comprehensive Fisheries
Agreement for Sockeye, Pink and Chum Salmon,
2009-2010

10

11

12

13 MR. MCGOWAN:

14 Q I see looking at this that the duration of the
15 Comprehensive Fisheries Agreement is for a single
16 year. Mr. Crey, I'll start with you. Do you
17 support the negotiation of Comprehensive Fisheries
18 Agreements or AFS agreements that have a longer
19 time period of effectiveness?

20 MR. CREY: I do, and I've often been asked to, on
21 behalf of the Sto:lo communities to advocate for a
22 longer-term, sometimes referred to as multiyear
23 agreements between DFO and the bands on the Lower
24 Fraser, the Sto:lo communities.

25 Q And I wonder if you could just tell the
26 Commissioner why you think that would be
27 beneficial?

28 MR. CREY: Because the communities in this kind of
29 arrangement that are year-to-year, they don't have
30 the security of knowledge that there will be an
31 agreement in the very next year. In other words,
32 the Department is committing to an arrangement
33 that would cover in this example here, that fiscal
34 year and that fiscal year only. There's no
35 commitment on the Department's part to go the next
36 year and the year thereafter, and so forth. So it
37 creates a lot -- it lends itself to a lot of
38 uncertainty. The bands are not able to come
39 together and engage in long-term planning. And a
40 plan that would include a significant and
41 meaningful consultative role with the Department
42 of Fisheries and Oceans, because there's only a
43 commitment to work for that -- for that particular
44 fiscal year and that fiscal year only.

45 Q Thank you. Mr. Rosenberger, has the Department
46 considered the prospect of entering into multiyear
47 agreements?

1 MR. ROSENBERGER: We have, and we do have some
2 multiyear agreements at present.

3 Q Okay. And moving forward, is the Department's
4 plan to increase the use of multiyear agreements,
5 or has that been determined?

6 MR. ROSENBERGER: It is, yes.

7 Q Thank you. Mr. Rosenberger, is it fair to say
8 that a number of the allocations of Fraser sockeye
9 that are negotiated, either through AFS agreements
10 or set out in Comprehensive Fisheries Agreements
11 have remained relatively constant for a number of
12 years.

13 MR. ROSENBERGER: That's true.

14 Q When these allocations were initially set, I
15 wonder if you can explain the process that the
16 Department went through to determine an
17 appropriate allocation.

18 MR. ROSENBERGER: In the initial period most of the
19 work and some of the actual negotiations and the
20 leadership came from individuals from Ottawa. The
21 information that we took into account were the
22 harvests in recent periods at the time, so this is
23 information from the late '80s into the early
24 '90s, and the period of trying to establish the
25 allocations were in that -- starting around that
26 1992 period with most groups. The groups that
27 were using geographic areas, so there's, at the
28 time, we came off of the period when the harvest
29 in a number of given areas were from individuals
30 who may or may not have been members of the
31 community that subsequently is the holder of the
32 communal licence for a given area. So trying to
33 understand some of those dynamics of who fished in
34 what areas, where they would -- whether they'd be
35 allowed to stay fishing there, or needed to move
36 to other areas. Looking at the stocks, in the
37 case of the Fraser, looking for stocks of concern
38 and management issues, and then issues like
39 population trends, some of the goals and
40 objectives that were being raised on the -- in the
41 first few years through the land claim treaty
42 process defined most of the background type of
43 information that was used.

44 Q Okay. Was the Department attempting to arrive at
45 a number that reflected a genuine food, social,
46 ceremonial need of any particular -- of the
47 particular group that was allocated the number?

1 MR. ROSENBERGER: That's the objective, yes.

2 Q Okay. What information was available to the
3 Department about -- at that time about food needs
4 or social and ceremonial needs?

5 MR. ROSENBERGER: Well, the harvest group might have
6 had, so when I mentioned here earlier about some
7 of the stocks of concern, and has been raised by
8 the other gentlemen here on the panel, we'd been
9 in a period of a number of years of restrictions
10 or closures around Early Stuart. So you had --
11 you have people who had a desire to fish on a
12 given stock. You had some closure or restricted
13 periods, so how did that weigh into their ability
14 to be able to access their desire to harvest and
15 in locations.

16 So where people -- how do those scenarios
17 play out against an area where, you know, somebody
18 may have had quite unrestricted fishing with
19 strong populations coming back to them, and
20 presumably significant opportunity in order to be
21 able to meet their needs. So those types of
22 things are weighed in trying to understand what
23 the allocation should be. First Nations -- many
24 First Nations provided their goals, their
25 objectives from their desires from allocations and
26 that information was looked at in a number of
27 different ways.

28 MR. MCGOWAN: Can we have Exhibit 303 up, please.

29 MR. LUNN: 303.

30 MR. MCGOWAN:

31 Q Mr. Wilson, I'm going to ask you about this
32 document. It was previously entered and I think
33 it's probably something you're familiar with, and
34 I wonder if we can just scroll down to the next
35 page. Do you recall the Heiltsuk doing some work
36 to -- and maybe if we can actually go right to the
37 end of the document, the last page. Do you recall
38 the Heiltsuk doing some work to attempt to
39 identify and articulate the specific food needs
40 for various resources in their area?

41 MR. WILSON: Yes.

42 Q Okay. And is this the document that set out the
43 product of that work?

44 MR. WILSON: I'm not sure. I wasn't around when the
45 document was created.

46 Q Okay. Mr. Rosenberger, do you get documents like
47 this from any of the First Nations in your area?

- 1 MR. ROSENBERGER: Some First Nations groups. Some
2 First Nations groups over the years have provided
3 some form of documentation to their request.
4 Others have just provided a fixed number without
5 documentation to their desires.
- 6 Q Does the Department on its own do any work to
7 determine what a reasonable need is for food,
8 social and ceremonial use for any particular band?
- 9 MR. ROSENBERGER: We've looked at --
- 10 Q Or group of bands.
- 11 MR. ROSENBERGER: We've looked at various options.
12 There have been a number of papers prepared by
13 various individuals for various reasons. The
14 Department has not done a lot of work themselves
15 in trying to define this type of work for a
16 specific area, and the rationale for that is that,
17 you know, groups have other species that they can
18 harvest of fish that we have a concern about.
19 They have other species, whether it be, you know,
20 moose or deer or some other food source. So how
21 they want to balance that out and what their needs
22 are, you know, it's that -- some people call it
23 the breadbasket approach. So taking a look at
24 that, the Department hasn't done necessarily a lot
25 of work.
26 We have looked to see what some of the
27 numbers that are available for groups, so what
28 they've harvested, versus their population, do
29 they appear to be in a -- you know, similar ratio,
30 or are some of them quite different and then why
31 they might be different. I would think there
32 might be even more work done that way in a land
33 claim treaty process. But on the -- trying to do
34 the annual allocations, not that type of an
35 activity.
- 36 Q The -- in the Lower Fraser, there's an allocation
37 given of approximately 300,000 for a large number
38 of bands; is that correct?
- 39 MR. ROSENBERGER: Well, the allocation, I'm not certain
40 it's 300,000. That number is available on the
41 Integrated Fisheries Management Plan each year,
42 and as Mr. Crey pointed out earlier, I believe
43 there's 29 bands in the Lower Fraser.
- 44 Q Once the allocation is made to so many bands, does
45 DFO get involved in sorting out which band gets to
46 harvest which piece of that allocation, or is that
47 left to the First Nations?

1 MR. ROSENBERGER: For the most part our objective is to
2 leave that to the First Nations. That's one of
3 what we believe to be the responsibilities and
4 accountabilities of the First Nations to determine
5 amongst themselves how that should be fished and
6 how it could be or should be shared amongst their
7 people.

8 Q Mr. Crey, does the provision of a large allocation
9 pose problems for First Nations, or have they in
10 the Lower Fraser been able to sort out a method
11 for determining who gets to harvest which piece of
12 the larger allocation?

13 MR. CREY: There are a number of agreements on the
14 Lower Fraser. There's not a single agreement.
15 The Harrison Watershed Authority, which is
16 principally Scowlitz and the Chehalis First
17 Nations, they make separate arrangements for a
18 quantum of fish with the Department. This is
19 something that's occurred relatively recently.
20 And it's been the case in the past that there's a
21 broad allocation for the Lower Fraser River. But
22 again into sub-groupings, one of them Musqueam,
23 Tsawwassen, and a category called "Others", which
24 I take it to mean, for example, the Burrard First
25 Nation, and so forth, who may gain access to
26 Fraser River sockeye. And then of course there's
27 the -- what's commonly referred to as the Sto:lo
28 allocation generally, which would be from the Port
29 Mann Bridge to Sawmill Creek in the Fraser Canyon.

30 It's not so much that the bands discuss and
31 agree between and amongst themselves which
32 communities will catch how many fish, so much as
33 it's a regulated fishery that includes a weekly
34 harvest plan, if there are fish -- fisheries
35 conducted on a weekly basis. The fisheries, of
36 course, are not an open-ended affair, you can
37 start fishing now and just continue to fish, you
38 know, they are licensed. They're communal
39 licences and they specify where the fisheries
40 might take place, the type of gear that's
41 employed, and the Department, along with the
42 planning committees that are assembled under the
43 agreement know how much fish might be removed in a
44 given opening at different reaches in the
45 watershed.

46 So it's not so much that we agree to specific
47 allocations for each First Nation. That's how

32
PANEL NO. 50
In chief by Mr. McGowan
Questions by the Commissioner

1 things operate on the Lower Fraser, at least from
2 Port Mann Bridge to Yale.

3 Q Thank you. Mr. Shepert, did you have anything to
4 add from the perspective of the Upper First Nation
5 bands?

6 MR. SHEPERT: Only that we've not gone through any
7 exercise to distinguish what the protein
8 requirements or the food numbers are at this
9 particular time, no.

10 MR. MCGOWAN: Thank you. Mr. Commissioner, I note the
11 time. I wonder if this might be an appropriate
12 time for the morning break.

13 THE COMMISSIONER: Just before we recess, I'm sorry.

14 MR. MCGOWAN: I'm sorry, the Commissioner has a --

15 THE COMMISSIONER: Just before we recess.

16 MR. MCGOWAN: Yes.

17

18 QUESTIONS BY THE COMMISSIONER:

19

20 Q Just so I don't lose the thought, perhaps Mr. Crey
21 could start. In the description you've just
22 given, Mr. Crey, of what I believe you mean is the
23 current arrangement you've described, how might
24 that, at least in your thought, how might that be
25 different under a co-management scheme?

26 MR. CREY: Well, thank you for that question, Mr.
27 Commissioner. When it comes to the notion of co-
28 management and allocations, I take a far broader
29 approach to the whole issue. Quickly, without
30 going on at any great length, I think that what we
31 need to do is reflect on the report, Our Place at
32 the Table. We need to take some of those
33 recommendations seriously.

34 I think we need to look at broader
35 allocations of the sockeye as between non-
36 Aboriginal and Aboriginal interests. Once that's
37 accomplished, then it falls to the First Nations
38 to work between and amongst themselves with the
39 Department on allocating the larger Aboriginal
40 share of the annual runs of sockeye. That's how I
41 see it in the broadest possible terms.

42 If we're able to move there, I have every
43 confidence the First Nations can work it out
44 between and amongst themselves, how many fish will
45 be caught where, and by whom, and for what
46 purposes, but it would be the Aboriginal
47 allocation. And that would help solve a lot of

1 some of the more perplexing and some of the
2 irritants in the fishery right now where people
3 concern themselves with whether or not fish are
4 being sold or not.

5 I think what we need to -- the place we need
6 to move to is a broad Aboriginal allocation where
7 the fish are then allocated by the First Nations
8 between and amongst themselves. And we then
9 arrive at a place where we have an Aboriginal
10 fishery that has a larger allocation than sub-
11 regional allocations, which the First Nations
12 would enjoy the harvest in. Thank you.

13 THE COMMISSIONER: I would invite any other panel
14 member who might have a view on that.

15 MR. ROSENBERGER: Thanks, Mr. Commissioner. I think
16 the part that Ernie provided in the idea that we
17 have clear allocations for all, and his
18 description of the First Nations versus the non-
19 First Nations, I think is an important step. And
20 the objective and clearly is one of the issues
21 right now of how the First Nations share amongst
22 themselves. So as Mr. Crey described it, there's
23 an opening so as to speak, there's a planned
24 fishery area, geographic area and gear and things
25 like that, and there are a number of First Nations
26 currently who come into that process with a
27 communal licence. It may not be the same for, you
28 know, their allocations, they're striving to for
29 -- the objective the Department has is that they
30 would strive and be the ones making those sharing
31 arrangements and it not be the role of the
32 Department. And I think that's how some of the
33 management is occurring today. But moving
34 forward, those clear shares between First Nations
35 and non-First Nations is an important step.

36 MR. SHEPERT: I would only add that right now from my
37 perspective, coming from the Upper Fraser, that
38 the management regime, even allocation regimes are
39 kind of turned on their head. I believe that a
40 good functioning system has to start at the
41 headwater and work its way down. That way you
42 have the ability, because the inextricable
43 relationship between the First Nation and the fish
44 itself, that the management and the allocation
45 hence has to start at the top, in other words,
46 meeting the needs of the people. If you're
47 talking about overall allocations of fish for

1 food, social, ceremonial, and for economic
2 purposes, it stands to reason to me in my way of
3 thinking that it must start from the top. Because
4 the people that are closest and linked to those
5 watersheds know what it needs to for it -- to
6 survive, because it's done that since millennia,
7 but also, they're there. They're on the ground.
8 So they would know how much food that they might
9 need out of a particular run. And working in
10 conjunction with DFO to get the science down
11 straight, then you would be able to more
12 accurately reflect. And I would say, by virtue,
13 the sustainability would just fall from that.

14 I don't know if that makes sense. If you
15 need clarification, I'm prepared to do that. But
16 that's kind of my thinking around this issue.

17 Q Mr. Wilson.

18 MR. WILSON: Thank you, Mr. Commissioner. I see value
19 in what Mr. Shepert is saying, and only add that
20 the bands along the route outside of the Fraser
21 River could play a big part, a huge part in the
22 process. And because they -- they're there,
23 they're available, and I think that the
24 information that we can give to the bands in the
25 Fraser River would be invaluable.

26 THE COMMISSIONER: Thank you. We'll take the break,
27 thank you.

28 MR. MCGOWAN: Thank you, Mr. Commissioner.

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: The hearing is now resumed.

36 MR. MCGOWAN: Thank you, Mr. Commissioner.

37
38 EXAMINATION IN CHIEF BY MR. MCGOWAN, continuing:

39
40 Q Gentlemen, the Commissioner has heard some
41 evidence previously about a clause that is
42 negotiated in some communal licences which is
43 known as the "mortally-wounded clause". As I
44 understand that, it permits fishers to retain non
45 target species, perhaps for which the fishery is
46 closed, if the fish were just caught during an
47 open fishery as mortally wounded.

1 Mr. Rosenberger, is that sort of a fair
2 summary of what these clauses attempt to
3 accomplish?

4 MR. ROSENBERGER: The clause was designed around -- we
5 had a period of time, particularly around the
6 Early Stuart sockeye management where we had
7 extensive closures or restricted fishing, and at
8 the same time as co-migrating other species - in
9 this case primarily chinook - and there was quite
10 a bit of interest from the First Nations to
11 continue those fisheries. So in trying to
12 formulate plans, minimizing impacts on Early
13 Stuarts, so instead of having a total closure to
14 all fishing, we looked at other options. So it
15 was different types of gear and things like that.

16 You still resulted in some impact to, in this
17 case, the Early Stuart sockeye, and so where
18 people were accessing those fish, the idea is that
19 they would return all live fish to the water where
20 they could, but if they had fish that were dead or
21 thought to have very little chance for survival,
22 that they should keep those and help to meet the
23 food, social, ceremonial needs.

24 So the department has a few different types
25 of clauses in some of the communal licences and
26 agreements on how to try to best cover that off.
27 That's the rationale behind it.

28 Q Okay. Mr. Crey, from a First Nations perspective,
29 how does the clause like this fit with First
30 Nations and your First Nations Worldview; that is,
31 the idea that once a fish is caught and is already
32 dead, it doesn't need to be thrown back but can be
33 kept and consumed?

34 MR. CREY: I would say that that's an accurate
35 reflection. Where we've moved to -- sorry, of the
36 First Nations perspective, it's an accurate
37 reflection.

38 Q Yes.

39 MR. CREY: Where we've moved to, now, with the
40 Department, Mr. Commissioner, is we're looking at
41 arrangements where the number of mortalities that
42 might occur be monitored closely. In other words,
43 there'd be a ceiling to the number of mortalities
44 that might be induced, or the number of fish that
45 might die. So we're in discussions with the Lower
46 Fraser on that very issue right now.

47 Q Mr. Rosenberger, has the presence of this clause

1 from your observation caused enforcement
2 challenges or led to unintended harvest?

3 MR. ROSENBERGER: I'm aware of people indicating that
4 they believe that there's been some unintended
5 harvest. There's at least one example that I'm
6 aware of. But, for the most part, I think it's
7 tried to meet the intent of what we were striving
8 for and, as Mr. Crey has pointed out, we're
9 looking at trying to modify this into the future
10 to move away from some of the uncertainty or
11 potential impacts to conservation. So I think
12 we've been able to make some progress on it.

13 Q What magnitude of fish have been taken pursuant to
14 this type of clause?

15 MR. ROSENBERGER: Again, as Mr. Crey just pointed out,
16 the process that we're using and have for the last
17 two or three years, is taking the Early Stuart
18 sharing arrangements, so in the case of planning
19 for 2010, for this year, we have a mid-point
20 forecast number of 17,000. Our objective is to
21 try to protect 90 percent of that population.

22 So we take a look at the test fishing impacts
23 which are usually in around two percent on that
24 size of a stock. So we're planning for about
25 eight percent impact, and we use the sharing
26 arrangement that we have from the Early Stuart
27 agreement that was largely developed by the First
28 Nations as we heard earlier, and carried forward
29 with some modifications to today.

30 So those impacts to the Early Stuarts are
31 shared out geographically. In this case, in the
32 Lower Fraser, they would be entitled to some
33 portion of that -- I think it's roughly 1300 or
34 1400 fish this year, so it's probably in the range
35 of 200 or 300 fish. So they need to figure out
36 how to work that into their objective of trying to
37 maximize harvest of Chinook. So looking at gear
38 impacts, and if you want to have rates, mortality
39 rates, for example, of using dip nets and beach
40 seines where it's down in the half a percent range
41 versus gillnets that have about a 60 percent
42 mortality, so try to work through those types of
43 management arrangements in order to be able to
44 best utilize this encounter and mortality factor.

45 Q Okay. You mentioned the dip nets with a fairly
46 low mortality rate in your answer right there. In
47 2009, are you aware of an example where a

1 significant number of fish were taken in a dip net
2 fishery as mortally wounded?

3 MR. ROSENBERGER: I am.

4 Q And how many are we talking about?

5 MR. ROSENBERGER: The total harvest in that particular
6 area was in the 6,000 to 7,000 range.

7 Q Okay. And those fish were kept ostensibly
8 pursuant to a clause like the mortally-wounded
9 clause?

10 MR. ROSENBERGER: That's correct.

11 Q And these were Fraser sockeye?

12 MR. ROSENBERGER: That's correct.

13 Q I wanted to ask you about one other clause that is
14 sometimes found in fishing agreements or an
15 arrangement that exists in fishing agreements.
16 That's the concept of dual fishing. As I
17 understand it, there are certain challenges that
18 have been identified - at least by some - with
19 respect to FSC fishing and commercial fishing
20 taking place on the same boat at the same time, or
21 one after the other without a landing in between.
22 Is that an issue that you have some familiarity
23 with, Mr. Rosenberger?

24 MR. ROSENBERGER: I do.

25 Q Okay. I wonder if you could offer your thoughts
26 on any challenges associated with the concept of
27 dual fishing that the Department has identified?

28 MR. ROSENBERGER: I think you started on the path in
29 describing that people are fishing for two
30 different purposes, in this case commercial at the
31 same time as food, social, ceremonial. So the
32 areas they get the fish, the gear they get to use
33 might be different if they had -- by each of the
34 licences. So there's concerns and issues that we
35 thought about of areas that might be closed to
36 commercial fishing, but not necessarily closed to
37 food, social, ceremonial, the allocation of those
38 fish, where they're going to be offloaded and
39 managed, and how the sharing arrangements might
40 occur from the given vessel.

41 But they also offer a number of
42 opportunities. If we had the commercial venture
43 operating where it was releasing all these non-
44 target species but the First Nations were going to
45 be out with another licence following up shortly
46 thereafter, what's the release mortality rate that
47 would occur in the commercial fishery? What's the

1 added impact of that food, social, ceremonial
2 fisheries?

3 So what we're striving to do here is trying
4 to meet two objectives and many fisheries programs
5 have challenges to be thought about in their
6 management implications, but hopefully the
7 objective here is to work through some of those,
8 and we've largely tried to do it on a limited
9 basis to work through so we don't end up with
10 significant problems that were unanticipated until
11 we can get some concurrence on how it might
12 operate.

13 Q I wonder if any of the other panel members have
14 comments on either the benefits or challenges
15 associated with dual fishing? Mr. Crey or Mr.
16 Wilson, it may be more for the two you.

17 MR. CREY: Yes, thanks. I think this notion of the
18 dual fishery is one that occurs in marine waters.
19 There aren't dual fisheries on the lower Fraser
20 insofar as I'm aware of. So I think it's really a
21 phenomena of marine-based fisheries, arrangements
22 that the Department has attempted to sort out with
23 the First Nations in the approach waters.

24 Q Thank you. Mr. Wilson, do you have any comment?

25 MR. WILSON: Yes. There are opportunities to engage in
26 dual fishing in the marine waters, and one of the
27 challenges with the fishery - and actually one of
28 the benefits of the fishery - is that knowing the
29 fisherman has a quota, and quite often he goes
30 over his quota. So if there's an opportunity for
31 the excess fish to go to FSC, then they would go
32 about (sic) a dual fishing licence.

33 Q Thank you, sir. And just one final question
34 coming back to the co-management issue. I'm about
35 to start with Mr. Rosenberger and move down the
36 panel.

37 We've talked today about the involvement of
38 First Nations in management of the resource and
39 moving forward to attaining that. Mr. Rosenberger,
40 from the Department's perspective, what role --
41 where do other harvesters or interested parties
42 fit into this scheme?

43 MR. ROSENBERGER: Co-management I don't think the
44 concept is for First Nations and the Department
45 only. The idea of co-management is arrangements
46 that we're striving for to integrate everyone. So
47 we have an objective of a fishery for all. We're

1 looking to try to bring all parties together. The
2 co-management arrangements that we're striving for
3 with First Nations are one aspect of that, but
4 we're also trying to bring all parties to the
5 table in processes like the Integrated Fisheries
6 Management Plan development through groups like
7 the Integrated Harvest Planning Committee.

8 So the longer-term objective is co-management
9 across all parties that are participating in
10 fisheries or have interest in fisheries.

11 Q Thank you. Mr. Shepert?

12 MR. SHEPERT: Well, I think, given the fiduciary
13 responsibility of the federal government, in this
14 case, I think that my understanding in the way
15 that things are falling out is that a strong Tier
16 1 process - in other words, a First Nation to
17 First Nation process - with a strong First Nation
18 to government relationship is the cornerstone for
19 improved decision-making, for improved and better
20 relationships amongst all the parties.

21 But I do think it has to go in that order. I
22 think that having a good stable governance within
23 the First Nations and then with the government
24 itself is going to be very beneficial and very
25 positive to developing later what we refer to in
26 the business as the Tier 3, which are the other
27 parties.

28 Q Thank you. Mr. Crey?

29 MR. CREY: I would agree with Mr. Shepert. Right now,
30 we're working hard, overtime actually, to build a
31 strong Tier 1 level process. The Department
32 encourages that in a number of different ways.
33 For example, they're funding organizations to do
34 that kind of work. And often at Tier 2 level
35 meetings, this is when the First Nations meet
36 jointly with DFO, sometimes the daily agenda is
37 divided between Tier 1 meetings where the First
38 Nations discuss issues between and amongst
39 themselves, and in the afternoon, DFO is brought
40 into the room and then we're in Tier 2 mode.

41 So we're working hard to strengthen Tier 1
42 and Tier 2, but, Mr. Commissioner, I'd like folks
43 to understand that in the lower Fraser,
44 notwithstanding our strong desire to strengthen
45 the Tier 1 and 2 level relationships between and
46 amongst ourselves and our work with the Department
47 of Fisheries and Oceans, we're well on our way on

1 the lower Fraser to inaugurating working
2 relationship with sport and commercial fishing
3 interests.

4 For example, we've collaborated with the
5 commercial fishermen. What had been known as the
6 Commercial Salmon Advisory Board, they went out
7 and caught a large number of sockeye, raised a
8 substantial amount of funds, the purpose of which
9 was to drive those monies, those resources, into
10 protecting and conserving Cultus Lake sockeye
11 salmon. So money was spent on programs such as
12 milfoil removal from the lake, removing predators
13 from the lake that would consume juvenile salmon
14 once they've passed the egg stage. They've
15 hatched out and they're now immature fish. There
16 are predators in the lake. So out of that fund
17 that these good commercial fishermen helped raise,
18 we undertook those types of programs in the Cultus
19 Lake proper, and also work with the nearby lab and
20 hatchery facility on Cultus Lake sockeye.

21 So whilst we're concentrating on the Tier 1
22 and Tier 2 level efforts, on the Lower River,
23 we've already begun the process of reaching out to
24 other interests in the fishery in anticipation
25 that ultimately we will be working far more
26 closely with them and the Department of Fisheries
27 and Oceans.

28 Q Thank you. Mr. Wilson, do you have anything to
29 add?

30 MR. WILSON: I concur with Mr. Shepert and Mr. Crey,
31 only to add that we're also engaged with the sport
32 fishing industry and working on impact benefit
33 agreements.

34 Q Thank you. Mr. Rosenberger, just one thing I
35 neglected to ask you when we were speaking about
36 the mortally-wounded clause. You indicated that
37 there was a harvest in a dip net fishery of 6,000
38 to 7,000 in 2009. Did that number exceed the
39 number that the Department anticipated would have
40 been mortally wounded given the fishery that was
41 conducted?

42 MR. ROSENBERGER: It did.

43 MR. MCGOWAN: Mr. Commissioner, those are my questions
44 for the panel. Ms. Gaertner will be going next.

45 THE COMMISSIONER: Just before Ms. Gaertner, I wonder
46 if I could just again ask the panel, just to
47 follow up on Mr. Crey's remarks and perhaps Mr.

1 Rosenberger, if you could just explain to me. You
2 mentioned attending 20 to 30 meetings, and I think
3 Mr. Shepert said about the same number, Mr. Crey
4 thinks it's a lot more and probably is, and Mr.
5 Wilson thought perhaps somewhat less.

6 But in the course of those meetings, you've
7 used the term Tier 1 and Tier 2, and I think Mr.
8 Crey was alluding to discussions with the non-
9 aboriginal community around some of the issues he
10 has addressed here today. If you could just
11 explain to me, on the co-management that you've
12 been discussing this morning, do you, Mr.
13 Rosenberger, when you're having your meetings,
14 bring into those discussions views with respect to
15 the future non-aboriginal involvement in a co-
16 managed system, or is that for a later date, or is
17 that something that has a different agenda to it
18 in terms of where those meetings would take place?
19 I don't have a sense, now, as to how -- you used
20 the term, I think, and I want to apologize to you,
21 I didn't write it down -- eventually you would
22 have a co-managed fishery I think. But perhaps
23 I'm misinterpreting your words.

24 Do you come to those meetings with an
25 understanding that ties together what Mr. Crey has
26 described - and perhaps Mr. Shepert - regarding
27 the future and what it holds for these different
28 fisheries?

29 MR. ROSENBERGER: On an annual basis, the comments and
30 concerns, recommendations that are put forward by
31 recreational or commercial or other non-government
32 organizations like the Marine Conservation Caucus,
33 if those issues have not been raised by them in
34 letter or some format to First Nations, the
35 Department does raise many of those in some of our
36 co-management meetings, specifically on the
37 longer-term objectives of trying to develop a more
38 robust multi-party process. I would say that
39 doesn't take up a lot of our time at this stage.
40 I'm sure it's had some discussions in the roadmap
41 process that I'm more on the periphery of and not
42 attending on all those sessions. But people who
43 attend the Integrated Harvest Planning Committee
44 have a sense of the objectives in that forum of
45 bringing people's essentially differences together
46 and how we can try to resolve them.

47 So I'm sure there's good awareness amongst

1 most of the First Nations people. Some of the
2 fisheries that we've had considerable discussion
3 on in the last couple of years, as Mr. Crey talked
4 about earlier here on early time chinook, the
5 ideas and some of the objectives that some of the
6 other groups have had, the Department has brought
7 that into the process so the First Nations are
8 hearing some of that type of dialogue.

9 So on developing the process further, I would
10 think that it would be something that we built on,
11 discussed in the roadmap process and in other
12 forums that we have that are going on. The First
13 Nations Fisheries Council is talking about how we
14 would develop broader forums like this now, and
15 probably to some degree on the Fraser, but in non-
16 Fraser areas.

17 But I would think that, at this stage, it's
18 another step that needs to occur in the overall
19 process, and that that's not the step right now,
20 other than the Integrated Harvest Planning
21 Committee where it's potentially occurring.

22 THE COMMISSIONER: Sorry, I didn't want to lose the
23 opportunity. If any of the other panel members
24 have a view, just to hear what their views might
25 be.

26 MR. MCGOWAN: Yes, certainly.

27 MR. CREY: I think what I'd like to add, Mr.
28 Commissioner, is the very good work we were doing
29 with the Commercial Salmon Advisory Board to
30 protect Cultus Lake sockeye. They did a great job
31 of fundraising by conducting a fishery. That type
32 of fishery, Mr. Commissioner, was possible before
33 a very notable decision was made at the Supreme
34 Court. I think it's commonly referred to as the
35 **Larocque** decision. Before the **Larocque** decision,
36 it was possible to undertake the kind of project
37 that we did with the Commercial Salmon Advisory
38 Board, but I understand now - and I put myself in
39 better legal hands - they advise us, as well as
40 the Department advises us, it won't be possible to
41 repeat that kind of effort in the future, which is
42 sad, but a reality we have to face.

43 So if we're going to continue our work with
44 this particular unique stock of sockeye salmon,
45 namely the Cultus Lake sockeye, we're going to
46 have to find other ways of fundraising to keep the
47 effort alive to keep this threatened stock of

1 sockeye alive and in the water for the future.
2 How we might do that is not clear yet. Where we
3 may find those resources hasn't been determined
4 yet, but it's very much an issue that's alive us.

5 THE COMMISSIONER: Thank you.

6 MR. WILSON: Mr. Commissioner, it's a little different
7 for the Heiltsuk. Up till last year, there was no
8 Tier 1 and Tier 2 process for the Heiltsuk. In
9 fact, it was the IMAWG that just started the
10 process up to last year (sic). Up to then, under
11 the AFS agreement, we were obligated to attend at
12 sectoral meetings, and there were up to 28
13 sectoral meetings that addressed the IFMPs.

14 At those meetings you had First Nations,
15 commercial, sport, any other user groups within
16 the meeting. So with the IMAWG coming in line,
17 they've started to take on some of the roles in
18 attendance to those meetings, so there would be a
19 pre-season meeting and a post-season meeting.
20 There was no in-season meeting happening on the
21 IFMPs.

22 THE COMMISSIONER: Thank you.

23 MR. MCGOWAN: Anything to add, Mr. Shepert?

24 MR. SHEPERT: No.

25 MR. MCGOWAN: Thank you, Mr. Commissioner.

26 THE COMMISSIONER: Thank you very much. Sorry, Ms.
27 Gaertner.

28 MS. GAERTNER: Good morning, Mr. Commissioner. It's
29 Brenda Gaertner and with me is Leah Pence. I
30 understand that right now I'm allocated around 65
31 minutes, so I'll get about half of it done before
32 the break and then pick up after the lunch hour.
33 I regret that I'm going to have to do a little bit
34 of background again and move into some of these
35 key topics, but I will return to the co-management
36 topic for sure.

37

38 CROSS-EXAMINATION BY MS. GAERTNER:

39

40 MS. GAERTNER: I wonder if I could go to First Nations
41 Coalition document 121.

42 Q Mr. Shepert, is this your c.v.?

43 MR. SHEPERT: Yes.

44 MS. GAERTNER: I'm wondering if I could have that
45 marked as the next exhibit. For some reason we
46 used his bio this morning rather than his c.v.

47 THE REGISTRAR: That's Exhibit 1251.

1 EXHIBIT 1251: *Curriculum vitae* of Marcel
2 Shepert
3

4 MS. GAERTNER:

5 Q And you're presently sitting on the Fraser Panel;
6 is that correct, Mr. Shepert?

7 MR. SHEPERT: Yes.

8 Q And you were a member of the FRAFS executive from
9 2002 until 2007?

10 MR. SHEPERT: Yes.

11 Q And are you now still the Executive Director at
12 the UFFCA or is that completed now?

13 MR. SHEPERT: I'm done.

14 Q Okay. But you were there for approximately six or
15 seven years?

16 MR. SHEPERT: From the inception right through till
17 about two years ago.

18 Q All right. And I'm wondering in Commission
19 counsel's questions this morning, there was - at
20 least from my hearing it - there was some
21 suggestion that these different organizations are
22 a little uncoordinated from a First Nations
23 perspective. I'm wondering if you could give the
24 Commissioner a little background as to what you
25 saw were some of the challenges when you started
26 working at the Fraser watershed level with FRAFS
27 and the sort of history of some of that challenge.

28 MR. SHEPERT: Well, the challenges were far and broad.
29 There were many challenges to face in terms of
30 working at a watershed level. I think the
31 capacity issue on both sides -- we were into an
32 attrition situation within the Department of
33 Fisheries and Oceans. I know they're trying hard
34 to bring up young and upcoming folks to take on
35 some of the responsibilities. For example, Mr.
36 Rosenberger is going to leaving here fairly
37 quickly in the next while, and there's a number of
38 them coming. So there's a lack of capacity on
39 both sides and that's been well acknowledged.

40 I think that, again, going back to some of
41 the things -- back in the inception of these
42 programs, the funding situation was extremely
43 onerous. The work required to get monies flowing
44 for these organizations was incredible. So there
45 was a lot of work. We would go probably from
46 March right through till sometimes well into June
47 and even into July where there'd be no funds

1 flowing.

2 Now, when you're working on preparing fishing
3 plans and trying to develop positions and so on
4 and so forth on the Fraser as a whole and doing
5 the science around it, you need to make sure that
6 your scientists are going to get paid, 'cause they
7 don't work if they don't get paid. So that was a
8 big problem and I think that it created some
9 tension and so on, so that was a big issue.

10 I think also going back to those early days,
11 I think that there was definitely a lack -- there
12 was not -- today I think within the Department of
13 Fisheries and Oceans, you have a lot of staff at
14 all levels, within policy, within management,
15 within science. We recognize that the world view
16 is changing and respect that, and have been around
17 long enough to understand it. But back in '02 and
18 stuff, I didn't think that there was -- you didn't
19 have across the Department a view that First
20 Nations and co-management would even work,
21 particularly in stock assessment and other areas
22 that I've always found very difficult to work
23 with. It's kind of like they have their own
24 established way of doing business and they're very
25 slow to change. So I found those very
26 challenging.

27 So in the beginning, I think that those
28 challenges, some of them have been worked through,
29 some of them still remain to be worked upon. But
30 I think that there's general concordance within
31 both Department and First Nations that this is
32 going to happen. It's just a matter of how and
33 when.

34 Q And similarly, what challenges were occurring
35 inter-tribally within the Fraser watershed when
36 you started?

37 MR. SHEPERT: Well, the inter-tribal level of course
38 has its own suite of issues. Upper Fraser, mid
39 Fraser and lower Fraser and approach indeed have
40 different needs, different ways, different
41 fisheries and they have a long history. So I
42 think that some of the challenges related to that
43 were first of all getting the players to the
44 table. I think that in the beginning stages,
45 post-*Sparrow*, '93, there was divisiveness, and I
46 think we heard some of that last week. Those that
47 signed, those that didn't, those that were --

1 Q Signed what, sorry?

2 MR. SHEPERT: Signed AFS agreements.

3 Q Thank you.

4 MR. SHEPERT: It became divisive and I think that some
5 of those divisive issues are still playing out
6 today although I think we're making traction
7 (sic). I think that the issues between the
8 different regions on the Fraser are still working
9 themselves out, how they're going to talk to each
10 other, how they're going to work together to --
11 and the betterment and sustainability of the
12 salmon.

13 Q We heard evidence last week on how FRAFS continued
14 after the Fraser watershed agreement was no longer
15 continued. What role has FRAFS continued to
16 support with respect to fisheries conservation
17 issues and management issues and how do you see it
18 evolving within a mandated Tier 1 process?

19 MR. SHEPERT: Okay, so that's a lot of question. So
20 let's --

21 Q What role does FRAFS play and how do you see it
22 evolving?

23 MR. SHEPERT: So the role FRAFS plays, well, the FRAFS
24 organization had initially a very great and
25 highly-respected scientist working on board who
26 has been around since its inception. That's Mr.
27 Mike Staley. He provides incredible technical
28 support to other technicians out in the field and
29 continues to do that. I think to a certain
30 degree, Mike is also a kind of a mentor to some of
31 the younger biologists that are coming up now
32 through the ropes, through the ladders.

33 We have, at any given time, we had Ken Wilson
34 working with the organization who was developing
35 on behalf of First Nations different papers; for
36 example, on FRSSI, the FRSSI process, the Fraser
37 River Sockeye Spawning Initiative. Because it was
38 so complex and so confusing, we needed somebody
39 who had that kind of expertise, so Ken Wilson
40 fulfilled that.

41 We now have Pete Nicklin working there. We
42 had Penny White up until recently. So the
43 technical support which goes out to the regions,
44 these are highly technical folks who work with
45 technical people more on the regions to help
46 develop their programs, to help develop their
47 positions and so on. So it's an incredible

1 support.

2 It also provided a forum for everybody to
3 come together to talk. It would set the agendas.
4 We, at one point, had a Joint Technical Committee
5 which continues to function and we'll get
6 tremendous support hopefully in the future and
7 moving forward. The Fraser Watershed Technical
8 Committee is an extremely important development
9 that came out of that and continues to be, because
10 it is looking at very highly complex and technical
11 issues, both in the past and now.

12 Q And you see those technical overviews to be
13 complementary to the work that is done at the
14 UFFCA level, or duplicative?

15 MR. SHEPERT: No, I think very much complementary. The
16 whole point is to not have duplication at the
17 watershed level, and that it is complementary and
18 supportive.

19 Q And do you also see it helpful in terms of
20 developing the scale analysis that will be
21 necessary for a Fraser watershed process?

22 MR. SHEPERT: Scale analysis, DNA. A lot of the work
23 that the Pacific Salmon Commission currently is
24 undertaking, a lot of First Nations are situating
25 themselves to be able to take on a lot of that
26 kind of work.

27 Q Actually, that's a great twist of the word "scale
28 analysis" that I mean there.

29 MR. SHEPERT: Oh. Oh, I thought you were talking about
30 scales, sorry.

31 Q That's great. What I meant there was a scale
32 analysis in terms of what decisions can be made
33 collectively and where, and what issues have to
34 be --

35 MR. SHEPERT: Right. At which scale.

36 Q And so at which scale of decision-making, sorry.

37 MR. SHEPERT: It's okay. So the question then becomes
38 is FRAFS situated to help delineate those scales
39 and to support those different scales.

40 Q And is there work actually helping to do that on
41 the ground?

42 MR. SHEPERT: Absolutely, and in my opinion, and having
43 been around it for so long, that particular
44 process is where I think that the rubber really
45 will hit the road in terms of a collaborative
46 management agreement, in terms of developing the
47 technical agenda for Fraser, for both now and into

1 the future, working with the Department in
2 developing that agenda. I think that the Joint
3 Technical Working Group is making really good
4 headway in terms of developing that. So you have
5 a DFO person and a First Nations person in Jamie
6 Scroggie and Pete Nicklin working together, both
7 scientists. They set the agendas for future
8 meetings, they do the invitations and they jointly
9 chair the meetings which I think is a great step
10 forward in terms of developing that collaborative
11 relationship and tone for development.

12 Q We heard last week from Grand Chief Saul Terry and
13 others about the efforts that he's doing with
14 respect to the ITO. How would FRAFS collaborate
15 or work with an organization that was built out of
16 the ITO, or could it?

17 MR. SHEPERT: I think it can. My perspective on it is
18 that it will continue to operate. The Joint
19 Technical Working Group and the Inter-tribal
20 Organization is continuing to try to make headway
21 in terms of developing the nation scale concept.
22 It's very easy to see that in the future, if the
23 Inter-tribal Organization were to get grounded and
24 footed and supported, that the whole FRAFS
25 organization would simply just become a part of
26 the ITO. It's a slam dunk, in my opinion.

27 Q Thank you. And then let's go a little bit further
28 and closer into history. We've heard a little bit
29 about the forum. I'd like to take you to Exhibit
30 290 which was Tab 10 of the Commission documents.
31 That document lays out a bit of the history of
32 forum. I know you know that history without
33 looking at the document. But I was curious about
34 some language that's in Exhibit 290 and then also
35 in the complementary exhibit -- I don't have the
36 number for it. It's First Nations document 82.
37 It was marked on Thursday in the flurry.

38 But the comment, and you can see it in its
39 completed draft in the final form which is Exhibit
40 290 on the bottom of the page.

41
42 Through this process, it became clear that
43 despite the efforts of DFO staff to support
44 this outcome, First Nations collectively lack
45 the capacity to develop a coordinated FSC
46 harvest-sharing plan for Fraser River salmon
47 stocks.

1 Could you give the Commissioner a little bit of
2 background as to that perspective and the
3 potential challenges that kind of perspective
4 might have brought into the discussions at forum?

5 MR. SHEPERT: So just to be clear, this document is
6 from the Department's perspective, and the
7 Department has identified that First Nations have
8 significant challenges --

9 Q Yes.

10 MR. SHEPERT: -- in terms of making this happen? Well,
11 I think that -- let's say that I support the
12 development of such a process, but I think it's
13 unfair to say that it's only the First Nations,
14 for example, that are having an issue here. I
15 think, first of all, it was right, the 2008 (sic).

16 By coming to First Nations only in times of
17 low abundance was, in my opinion, already the
18 first mistake. I mean, it was needed and I
19 understand why DFO needed to do this, because it's
20 a very, very tenuous situation for the Department
21 to be able to say, well, we're going to tell you
22 how much you get when there's no abundance. That
23 puts them in a very bad situation, so from their
24 perspective I could see why they would want to
25 have such a forum so that some of the hard work
26 could be done for them.

27 So I think that we're already off on a kind
28 of a bad footing because we're only talking about
29 low abundance. The question is when are we going
30 to sit down and talk about when there's lots of
31 fish to share? When are First Nations in the
32 upper Fraser going to actually have a chance to
33 have too many fish? I've never seen it in the 15
34 years I've worked there.

35 So I think that that got things kind off to a
36 bad start. I think that there's also capacity
37 issues within the Department. It's not just the
38 First Nations issues that we're talking about
39 here. They're spread thin. They've got good
40 staff, good well-meaning staff, yet at the same
41 time it's getting the right staff and the right
42 people in those rooms to sit down and have those
43 discussions has been sort of, I would say,
44 continuously a problem. I think that the whole
45 issue of the title and rights issue has always
46 been a bit of a sore point from that perspective
47 as well. It's never been put on the table. A lot

1 of First Nations don't find that it's helpful when
2 there's no recognition of that.

3 Again, at the end of the day, from an upper
4 Fraser perspective, it's about conservation, and
5 certainly this is about sharing fish. What about
6 the conservation of the fish? I think many people
7 want to get into that discussion, that it seems to
8 be laboured by how much for each.

9 So I think that those are some of the
10 shortcomings that I can think of offhand.

11 Q And despite these shortcomings, the forum has
12 continued to meet, we heard that, and that it has
13 continued to meet approximately four times a year;
14 is that correct?

15 MR. SHEPERT: That's correct.

16 Q And at those meetings you're now dealing with
17 operational issues as distinct from the broader
18 co-management process issues; is that correct?

19 MR. SHEPERT: Essentially I think that the forum
20 process has become the operational arm as opposed
21 to the roadmap. Roadmap is kind of the over-
22 arching looking at a long-term agreement, where
23 the forum process is about, okay, what are we
24 going to do for 2012.

25 Q And so would it be fair to characterize the forum
26 process as the developing stages of an exchange at
27 a watershed and approach level on operational
28 issues?

29 MR. SHEPERT: Yes.

30 MS. GAERTNER: Thank you. I'm wondering if I could
31 bring forward First Nation documents. I'm going
32 to work with 3, 4, 5 and 6 next.

33 Q Through your experience with the forum, is it your
34 observation -- or could you tell me your
35 observation as to the development of the capacity
36 of the First Nations during that process? Is it
37 working? Is it functional?

38 MR. SHEPERT: I think that over the last three-and-a-
39 half years, there's been a tremendous amount of
40 capacity developed with First Nations, recognizing
41 that this is a very complicated issue, that it's
42 not as easy as just screaming up and down about a
43 number or anything else. There's a lot of things
44 that have been learned in those rooms. We know
45 the difficult situation the Department is in.

46 And then also recognizing that these fish
47 need to be shared, so I think that the way that

1 the dialogue has rolled out, there's been a
2 tremendous amount of learning amongst each other
3 what -- I think that Chris Cook put it well, who's
4 a chief from the Kwakwaka'wakw (Kwakiutl) people
5 -- that prior to the forum process, relationships
6 between the coastal First Nations and the inland
7 First Nations were at a really bad point. They
8 weren't together anymore. There were no forums,
9 there was no way for them to even talk.

10 Over the last three-and-a-half years, we've
11 been able to develop a tremendous amount of
12 understanding, trust and knowledge of each other's
13 fisheries and I think that keeping those people in
14 the room is significant to sustainability.

15 Q Thank you. I wonder if you could look at the
16 document that's in front of you. Can you identify
17 this as a letter that was sent to Sue Farlinger
18 from the First Nations forum participants in
19 February of 2011?

20 MR. SHEPERT: Yes.

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

23 THE REGISTRAR: Exhibit 1252.

24
25 EXHIBIT 1252: Email from K. Malloway to S.
26 Farlinger (DFO), dated February 2, 2011
27

28 MS. GAERTNER: Mr. Commissioner, you'll see in that
29 letter the nature of the types of issues. I don't
30 think we'll get into them in detail given the
31 limited time I have with this panel, but you'll
32 recognize that the forum is sending letters to Sue
33 Farlinger, the Pacific RDG, on the IFMP process,
34 recreational fishing issues and priority FSC
35 fisheries.

36 Could I then go to document number 4.

37 Q Mr. Shepert, do you recognize this letter as the
38 response to the previous document to Chief Ken
39 Malloway of the Fraser River forum and the FRAFS?

40 MR. SHEPERT: Yes.

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

43 THE REGISTRAR: Exhibit 1253.

44
45 EXHIBIT 1253: Letter from Sue Farlinger to
46 Chief Ken Malloway dated February 22, 2011
47

1 MS. GAERTNER: And then can I go to document number 5.
2 Q Mr. Shepert, do you recognize this document as,
3 again, the response from the forum participants in
4 this continuing exchange?

5 MR. SHEPERT: Yes.

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

8 THE REGISTRAR: Exhibit 1254.

9
10 EXHIBIT 1254: Letter from Chief Ken Malloway
11 to Sue Farlinger dated March 10, 2011
12

13 MS. GAERTNER: And then go to document 6.

14 Q Mr. Shepert, do you recognize that as the response
15 of the Department to the previous letter?

16 MR. SHEPERT: Yes, I do.

17 MS. GAERTNER: May I have that marked as the next
18 exhibit.

19 THE REGISTRAR: Exhibit 1255.

20
21 EXHIBIT 1255: Letter from Sue Farlinger to
22 Chief Ken Malloway dated March 28, 2011
23

24 MS. GAERTNER: Now, may I go to Canada's document 48.

25 Q Mr. Crey and Mr. Shepert, do you recognize this?
26 I'll start with Marcel -- sorry, Mr. Shepert, do
27 you recognize this document?

28 MR. SHEPERT: I do.

29 Q And what is this?

30 MR. SHEPERT: These are the recommendations for, I
31 believe, the IFMP, are they not?

32 Q And do you recall what year that's in? Is that
33 2011 or 2010?

34 MR. SHEPERT: 2010.

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

37 THE REGISTRAR: Exhibit 1256.

38
39 EXHIBIT 1256: Recommendations to DFO from
40 the First Nations Participants of the Forum
41 on Conservation and Harvest Planning for
42 Fraser Salmon
43

44 MS. GAERTNER: And can I go to the second page of that
45 document? Mr. Commissioner, you'll see on the
46 second page a list of sockeye recommendations that
47 came from the forum to the Department.

1 Q What success did you have in achieving any of
2 these recommendations, Mr. Shepert?

3 MR. SHEPERT: Well, these came from the Department so
4 this is how you test whether or not they were
5 successful. So the first one, the window closure,
6 for example, to protect Early Stuarts for three
7 weeks was agreed to by the First Nations in those
8 rooms, and the Department has taken those
9 recommendations and they've implemented them.

10 Recommendation number 2, although from the
11 upper Fraser perspective they were pushing for a
12 lot longer, an additional three-week window
13 closure, I believe, at this particular juncture.
14 They were only afforded one week. We didn't feel
15 that this was adequate enough to protect these
16 Early Stuart stocks and I don't think that the
17 science community would disagree with that
18 although it's the best that could come out of that
19 forum process.

20 Q Could you tell me whether there's any drawbacks in
21 the present system around sending in
22 recommendations and then hoping that the
23 Department is going to respond to them and whether
24 or not you can see any room for improvement there?

25 MR. SHEPERT: I do. I understand how the process works
26 in the sense that the Department, in many ways,
27 takes all the information from all of the
28 different sectors and then it goes away and then
29 we get recommendations. We get what was accepted
30 and what wasn't, and usually some sort of a
31 rationale, although we don't understand who made
32 the decision or why the decision was made. We're
33 just simply told, "These are the recommendations
34 and this is kind of -- we heard what you said,
35 this is how it works."

36 In my opinion, there's definite room for
37 improvement. I think that, again, starting with
38 the technical agenda, setting the technical
39 agenda, working through those technical agendas at
40 the watershed, and then the sub-regions from there
41 would greatly improve understanding of how
42 decisions are made. That way, I think you'd have
43 less sort of ill will or feelings of negativity
44 from the First Nations 'cause they're not
45 understanding where decisions are made or why.

46 Q Mr. Crey, do you have anything to add to this
47 conversation at this point in time?

1 MR. CREY: Well, I'd agree -- sorry, Mr. Commissioner,
2 I didn't have my mouth beside the microphone, but
3 now I do -- what you're describing here is very
4 much "they pitch and we swing". We need to move
5 past that kind of working arrangement with the
6 Department where they come forward with
7 recommendations and we respond, and then there's a
8 long pause before we know what their next response
9 is.

10 Q Thank you.

11 MR. CREY: There are different ways that we could go
12 about doing business to deal with issues such as
13 this, and maybe we'll get there.

14 Q Thank you, Mr. Crey. Mr. Rosenberger, you know
15 this concern, is that correct, the concern that
16 First Nations raise about providing information
17 and not knowing how it's relied upon?

18 MR. ROSENBERGER: I think as Mr. Shepert pointed out,
19 the recommendations that are made by the First
20 Nations forum, whether it's collectively or any
21 individual First Nation, or groups of them, that
22 write to the Department, the Department responds
23 back on behalf of the Department acknowledging
24 receipt of the recommendations. It also
25 indicates, as Mr. Shepert pointed out, those
26 recommendations that are being adopted and those
27 that may not be or might be modified and the
28 rationale behind them.

29 So the documentation and the rationale behind
30 them I think is fairly clearly made. There's been
31 significant work - in particular, the last three
32 to four years - to make sure that that's occurring
33 in a written format so there's not
34 misunderstandings of individuals from within the
35 Department giving responses that might not be - or
36 we're concerned about not being - consistent in
37 the past. So this is one way of making sure that
38 that occurs.

39 Q And do you see a decision-making structure between
40 First Nations and DFO as an improvement to the
41 present frustrations between these two
42 governments?

43 MR. ROSENBERGER: As we talked before the break, I
44 think a structure where there's clear mandate on
45 both parties' side, clear allocations and clear
46 responsibilities to the group, so understanding
47 where decisions would be made, at what level, how

1 they would play out.

2 So just an example I would just use is these
3 recommendations, contrary to Mr. Shepert's comment
4 that these are the Department's recommendations,
5 these in fact were the recommendations made by
6 First Nations to the Department this year. In
7 these recommendations - and Mr. Shepert pointed to
8 recommendation number 2 where he didn't agree with
9 it - but in that forum, that came to us as a
10 recommendation that there was agreement. We have
11 other letters and other concerns from some groups,
12 some of them in the upper Fraser, where they would
13 like to see things differently. That's the part
14 of the process that we need to work forward and
15 get to those clear mandates, responsibilities, and
16 what decisions will be made either within the
17 watershed or approach areas in the broader
18 context.

19 Your question, if it's do we need to work on
20 a more formalized process, we do. Does it need to
21 be clear to people what it means? That's the
22 roadmap process at this stage that we're striving
23 to bring those elements together.

24 Q Thank you. I'm just wondering - it's a little off
25 my script for a second - but Barry, Mr.
26 Rosenberger, would you agree also that removing
27 the Department's role in resolving disputes
28 between the tribes would also be useful going
29 forward, and if there was another process for the
30 tribes to resolve their disputes that didn't have
31 the Department doing it, that that would be
32 helpful.

33 MR. ROSENBERGER: The First Nations clearly need to
34 have a process. If they're going to have a common
35 allocation that they're going to work through
36 sharing arrangements, they're going to have to
37 work on that side of things. Currently, when that
38 doesn't exist, the Department is left in the
39 position where they're making trade-offs at time
40 -- or adopting one recommendation versus a
41 different party's recommendation or potentially
42 deciding on a whole different one that might be
43 the Department did develop.

44 So a process amongst First Nations on how
45 they will resolve their conflicts I think will be
46 key for them in the longer term.

47 Q It would be useful them and also useful for co-

1 management; is that correct?

2 MR. ROSENBERGER: I think it's clear that that's needed
3 from their side as well as a process when we get
4 into co-management objectives.

5 MS. GAERTNER: Thank you. I'm going to go to another
6 topic now, Mr. Commissioner. Shall I use the next
7 four minutes and -- yes, I think so.

8 Q I actually am going to go to joint management.
9 Mr. Shepert, I heard your evidence this morning
10 around joint management, in particular the
11 benefits around allocation. I wonder if you could
12 speak a little bit about the value of joint
13 management to the conservation of Fraser River
14 sockeye stocks.

15 MR. SHEPERT: Well, I think, again, if I could just use
16 the same example that we have on the screen, it's
17 the one-week window closure. Barry was right,
18 there was concurrence in the room at the time -
19 Mr. Rosenberger, pardon me - there was concurrence
20 in the room at the time. Yet, at the same time,
21 knowing that the upper Fraser spent lots of time
22 demonstrating to the rest of the watershed that
23 these particular stocks of Early Summer sockeye
24 were in precipitous decline - sixteen years, in
25 fact - we have Taseko, Nadina -- my daughter is
26 named Nadina by the way, it's in my traditional
27 territory. The Nadina stocks, Taseko and Bowron
28 are on the verge of collapse.

29 So First Nations have shown -- we had the
30 biologist in the upper Fraser take all the data
31 and work it and to demonstrate and show the
32 declining trend. So conversation is the uttermost
33 importance for these stocks if we want to see them
34 in the future and have access to them in the
35 future. We recognized that something needed to be
36 done.

37 Now, coming to the forum was good. I mean,
38 the relationships have been developed. Yet, at
39 the same time, the upper Fraser First Nations felt
40 that conservation was not being taken seriously
41 enough, that more opportunities were allowed for
42 other fisheries. In this particular case, it's
43 been an issue because this goes back to the
44 Pacific Salmon Treaty with the United States.
45 There's a bit of a conundrum that the government
46 gets itself into, year in and year out, with
47 respect to the Early Summers, and that is we need

1 to get the First Nations out of the water as quick
2 as possible so that we can allow as many
3 commercial fisheries as possible.

4 So, in my opinion, this has never worked to
5 meet the conservation at the end of the day for
6 upper Fraser First Nations. We don't meet our
7 food needs. The Nadina run is in decline, the
8 Bowron and the Taseko as well. So this is a
9 classic case of how conservation, how First
10 Nations being so linked to those areas would, just
11 by their very nature, provide the conservation
12 that is necessary for future runs.

13 MS. GAERTNER: Thank you. I wonder if I could take Mr.
14 Shepert to First Nations Coalition document number
15 28.

16 Q Are you familiar with this article?

17 MR. SHEPERT: Yes

18 Q And have you reviewed it?

19 MR. SHEPERT: I did.

20 Q And you'll see that this is an article by a number
21 of scientists looking at the value of co-
22 management in a number of different countries
23 around the world; is that correct?

24 MR. SHEPERT: Yes, it is.

25 Q And it is their conclusion that co-management
26 holds great promise for successful and sustainable
27 fisheries worldwide?

28 MR. SHEPERT: Yes.

29 Q And do you agree with that?

30 MR. SHEPERT: I do.

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

33 THE REGISTRAR: Exhibit 1257.

34
35 EXHIBIT 1257: Article titled "Leadership,
36 social capital and incentives promote
37 successful fisheries"
38

39 MS. GAERTNER: I'm wondering if this is an appropriate
40 time to take the --

41 THE COMMISSIONER: All right. Yes, thank you.

42 THE REGISTRAR: The hearing is now adjourned until 2:00
43 p.m.

44
45 (PROCEEDINGS ADJOURNED FOR NOON RECESS)
46 (PROCEEDINGS RECONVENED)
47

1 THE REGISTRAR: Order. The hearing is now resumed.
2 MS. GAERTNER: Mr. Commissioner, when we finished this
3 morning, I was embarking on a discussion around
4 joint management and I just want to back up one
5 step before we continue with that and just talk a
6 little bit more about the IHPC for a minute.
7

8 CROSS-EXAMINATION BY MS. GAERTNER, continuing:
9

10 Q As I understand it, the IHPC is the active Tier 3
11 process out there right now, as it relates to pre-
12 season and the development of pre-season plans; is
13 that correct, Mr. Rosenberger?

14 MR. ROSENBERGER: That's correct.

15 Q And it's an advisory process, correct?

16 MR. ROSENBERGER: That's correct.

17 MS. GAERTNER: And Mr. Commissioner, you'll recall that
18 we spent sometime earlier in the Commission around
19 that process.

20 Q And I want to take you back to documents 3, 4, 5,
21 6 and 7 that I've marked this morning, Exhibits
22 1252 and following. And just in the interests of
23 time, I'm going to summarize the IFMP process
24 there, which is the process that the Integrated
25 Harvest Planning Committee uses to come up with an
26 Integrated Fisheries Management Plan. And at the
27 beginning of this exchange of correspondence, the
28 forum raises with the Department a clear concern
29 around inadequate consultation with First Nations
30 prior to finalizing amendments to the existing
31 IFMP.

32 In response, the RDG reflects that there are
33 timing difficulties for the Department around the
34 IFMP and the development of the IFMP and
35 recommends that the First Nations, and you'll see
36 this on page 2 of her response dated February
37 22nd, and recommends that the First Nations rely
38 on the forum process and the roadmap process. In
39 response to that in the March 10th, 2011,
40 document, Exhibit 1254, the First Nations members
41 of the forum respond at the second paragraph under
42 the IFMP, suggesting that putting the concerns
43 around the IFMP process into the roadmap planning
44 group and in the co-management working group is an
45 error, that's my language, that the IFMP process
46 is an operational problem that, together with its
47 solution, lies squarely in the lap of the

1 Department of Fisheries and Oceans. And if I can
2 take you to the bottom sentence in that paragraph:
3

4 If the Department wishes to make a serious
5 commitment to changing its IFMP process to
6 better provide for meaningful consultation
7 with First Nations, an appropriate approach
8 might be to assign the task to the joint
9 technical working group under the auspices of
10 FRAS.
11

12 Mr. Shepert, that was the technical working group
13 that you were mentioning earlier today in your
14 evidence; is that correct?

15 MR. SHEPERT: That's correct.

16 Q And in response to that suggestion, the
17 Department, in its letter of March 28th, says that
18 they appreciate the concerns around consultation
19 and appreciate the suggestion to engage a joint
20 technical working group under the auspices of
21 FRAS. "I'll ask my staff to follow up." Mr.
22 Rosenberger, what follow-up has been done since
23 March to better put into place into the joint
24 technical working group at FRAS the issues
25 surrounding IFMP and the development of those
26 plans?

27 MR. ROSENBERGER: I think the paragraph before is the
28 one that probably lays out the process. But what
29 we're looking at is the roadmap process. So
30 bringing the concerns into a broader group and not
31 just for the technical aspects of it but that the
32 points raised were both technical and policy
33 decision-type processes. So we think that the
34 roadmap is a better place to have those kinds of
35 discussions and to look at any options for making
36 change.

37 My understanding is, is that DFO staff have
38 raised this through the roadmap processes, that in
39 the case of development of the IFMP, really it's a
40 timing issue and you need to start and work you
41 way back of when you need to make those decisions
42 or striving to make the decisions and then what
43 kind of a process that you want to make to get to
44 there.

45 Q But isn't one of the concerns the exchange of
46 technical information in a timely manner?

47 MR. ROSENBERGER: That's one of them, yes.

1 Q And wouldn't working of the joint technical
2 working group assist that?

3 MR. ROSENBERGER: It might. But there's a lot of
4 issues being raised and so where do you want to
5 put the focus and what are the priorities of
6 making any changes? So the view was, is that we
7 need to look at the whole process and not just one
8 part of it and look to make changes.

9 Q And so you're going to leave the IHPC limping
10 along until the larger process works? Is that the
11 outcome of this?

12 MR. ROSENBERGER: I think there's been a number of
13 changes in both the IHPC, how it operates, and
14 also in the development of the IFMP so I think
15 that the track record to date is that there have
16 been changes and modifications, as there's
17 agreement to move forward on them.

18 Q These concerns are fairly recently voiced in
19 letter at a fairly high level. The last exchange
20 is Ms. Farlinger's letter of March 28th. Have any
21 changes been made subsequent to that?

22 MR. ROSENBERGER: Not for this year.

23 Q Mr. Shepert, do you have anything to add to this
24 dialogue?

25 MR. SHEPERT: The concern I have, as an IHPC standing
26 member since I think '04 or '05, I don't remember
27 when that process started, is it's inability to
28 deal with FSC. I've raised a number of issues
29 from the Upper Fraser perspective attending the
30 IHPC. I've been given a mandate essentially to
31 bring back as many fish as possible. Pretty
32 blanket mandate but it is a mandate. And so
33 whenever issues are raised around stocks of
34 concern, conservation, those types of things,
35 particularly Early Stuart, Early Summer, which
36 I've just mentioned earlier, I've been told by the
37 chairperson, the facilitator, that this is not the
38 place to bring that up.

39 So FSC is clearly not something that is
40 within the mandate or the purview of the IHPC. So
41 to me, the reason we're there is because we feel
42 that Upper Fraser First Nations realize that to
43 not attend is to do worse damage than by
44 attending. So we attend kind of the lesser of two
45 evils. We attend there to try to get as many fish
46 home as possible so to meet our FSC needs and to
47 meet conservation needs knowing that it's not even

1 really on the table. So this has been a
2 longstanding issue for us and until that changes I
3 don't know how these issues are going to be better
4 addressed.

5 Q All right. With that, I'll turn to the roadmap
6 process, which seems to be one of the answers to
7 the dilemma around these structural issues. And
8 I'd like to introduce documents 110 and 111 from
9 the First Nations Coalition's documents. Mr.
10 Shepert, you're familiar with the requests that
11 FRAS made to Julie Gardner to do a report on
12 roadmap; is that correct?

13 MR. SHEPERT: Yes, I am.

14 Q And is this document in front of you her summary
15 in response to that request?

16 MR. SHEPERT: It is.

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

19 THE REGISTRAR: 110 will be 1258.

20
21 EXHIBIT 1258: Fraser Salmon Roadmap:
22 Document analysis and Process Recommendations
23 Summary
24

25 MS. GAERTNER: And if I could go to 111.

26 Q And this is her document analysis and process
27 recommendations within the same group; is that
28 correct?

29 MR. SHEPERT: Yes.

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

32 THE REGISTRAR: Exhibit 1259.

33
34 EXHIBIT 1259: Fraser Salmon Roadmap:
35 Document analysis and Process Recommendations
36

37 MS. GAERTNER:

38 Q Now, without taking the time to go into the
39 document in too much detail, in a number of places
40 she refers to -- well, actually I better do this.
41 This was a summary of the written materials and
42 the processes to date. This was not a lot of
43 independent research on her part; is that correct?

44 MR. SHEPERT: Yes, it is.

45 Q Thank you. And in this paper, she uses words and
46 I can take you to the pages, if necessary, but
47 things like:

1
2 Co-management is a vague destination, an
3 ambitious journey and there is more process
4 than progress right now.
5

6 And so I'm going to turn my questions to those
7 types of concerns. Mr. Rosenberger, do DFO reps
8 at roadmap meetings to carry mandates to negotiate
9 agreements with First Nations on joint management?

10 MR. ROSENBERGER: They're working through trying to
11 come to common definitions or ranges of
12 definitions and options. I'm not aware that we're
13 at a point where we have a specific mandate that
14 we're striving for. What we're doing at this
15 point, I believe, is more exploring options that
16 might lead us to a better place.

17 Q And do they carry any mandates to make changes
18 substantively on the ground right now, as it
19 relates to your decision-making processes?

20 MR. ROSENBERGER: They bring those recommendations into
21 the broader department for consideration and we
22 have made some changes from information or
23 recommendations and options that have been
24 discussed at the roadmap.

25 Q Mr. Crey, you mentioned earlier in your
26 discussions this morning with Commission counsel
27 around the roadmap, that there needs to be some
28 kind of commitment or that you need a signal at
29 some point in time. Could you tell me what you
30 mean by that? What type of signal are you, as an
31 advisor on fisheries management, looking for? Or
32 what type of changes do you think are necessary to
33 get this going?

34 MR. CREY: Well, I would agree with the summary that
35 Julie Gardner has provided here, that is, that
36 there is a lot of process. There's a lot of talk.
37 But what I don't see and what I think is required,
38 Mr. Commissioner, is a clear signal from the
39 Department that they're definitely prepared to go
40 down the road of cooperative or co-management.
41 Insofar as the Aboriginal peoples are concerned,
42 their arrangements with the Department of
43 Fisheries and Oceans. That's what I see missing.
44 The signal isn't there yet. And if I can conclude
45 here, at the recent meeting in Campbell River, I
46 thought maybe one way of letting the Department
47 know what it is that I mean by a signal was to

1 take up the issue with the table there.

2 And DFO was present at that meeting in
3 Campbell River. And I suggested a memorandum of
4 understanding that the First Nations and the
5 Department could reach an understanding together
6 on how they would proceed towards an arrangement
7 for co-management and that both parties would sign
8 off, the Department of Fisheries and Oceans would
9 thereby give a very clear signal that it's their
10 intention to pursue co-management, not more
11 process, that it's more than talk, that there's a
12 definite vision, particular goals in mind. And in
13 turn, the First Nations, of course, too, the
14 leadership would sign off on this document and
15 commit themselves to a process.

16 Now, I won't, of course, speak at length
17 about the process. I think you would want to
18 leave some of that detailed work to a committee of
19 the parties to sketch out the precise details, the
20 roadmap of how they would get there. But that's
21 the kind of signal that I'm recommending to folks
22 back home that we need to see from the Department.
23 I mean I'm happy to show up at meetings that
24 include the attendance of people like Mr.
25 Rosenberger and Mr. Huber and all the others. And
26 I'm happy to sit in the room talking with them
27 but, in my mind, there has to be a purpose. There
28 has to be a purpose for all the talk and the
29 commitment of resources and the like and I'd like
30 those discussions to be meaningful and lead
31 somewhere. So since we're talking about co-
32 management with the Department, I want to see a
33 definite commitment from the Department's part
34 that they'll pursue co-management arrangements
35 with the First Nations.

36 Q And have you had an experience in your work with
37 the Sto:lo that informs why that type of
38 commitment is important from the get-go?

39 MR. CREY: I think I mentioned, Mr. Commissioner,
40 earlier that I'd come back to this issue. And yes
41 indeed that's the case. In 2000/2001, Mike
42 Staley, Ms. Gaertner and myself were assigned by
43 the Sto:lo Nation to work with Indian and Northern
44 Affairs Canada, their treaty negotiations office,
45 and senior people from the Department of Fisheries
46 and Oceans. We committed to meet with one another
47 and develop a co-management arrangement for the

1 Sto:lo. It would be under the hubris of an
2 interim measure. We worked solidly for a year
3 with the other parties; they were sincere folk.
4 The documents were thorough-going, described our
5 concept and notions, agreed upon with the other
6 parties about what co-management would look like,
7 how it would operate on the ground. Well, when
8 the proposal, the agreement, the suggested
9 agreement was tabled with the government, it was
10 presented to a senior negotiator with Indian and
11 Northern Affairs Canada. He, in turn, passed it
12 on to the Department of Fisheries and Oceans.

13 We waited for a response and we didn't get a
14 response for a long, long time. Eventually, we
15 did have a meeting with the senior rep or senior
16 negotiator with Indian and Northern Affairs
17 Canada, I think, in the basement near the coffee
18 shop of where Department of Fisheries and Oceans
19 was once on Hastings Street. And in a quick
20 fashion, I thought, he simply put the agreement
21 down in front of us and said in so many words,
22 "It's a no-go. Thank you very much. I've got
23 another appointment." And he left. So for that
24 year-long effort, to reach this kind of
25 arrangement with the Government of Canada, to be
26 so summarily dismissed, has to rank as one of the
27 major disappointments in my professional life.

28 Q I'm wondering now if I could take you to Exhibit
29 1220. And this was put into evidence last week
30 through Barry Huber and it's an overview of the
31 roadmap initiative that was created by the
32 Department. And I want to take you to page 3 of
33 that document where DFO summarizes the potential
34 scope of a co-management agreement. I think in
35 the evidence last week, it was clear that the
36 first paragraph seems relatively acceptable, that
37 the scope of the agreement will need to be
38 negotiated between DFO and First Nations leaders.

39 I want to take you to the list of topics for
40 consideration, a co-management agreement, and in
41 particular, I want to ask you whether the third,
42 fourth and sixth bullets create any concerns for
43 either you, Mr. Shepert, or you, Mr. Crey, around
44 the issues of holding dialogue. And perhaps if I
45 may just put this in context, as I understand it,
46 First Nations have been clear with the Department
47 that it's a decision-making structure. Could you

1 respond to the list and talk about the concerns
2 around continued dialogue?

3 MR. SHEPERT: I'd just like to say that I think Mr.
4 Crey has made it fairly clear that a lot of this
5 evolves around the issue of consultation or, in
6 this particular case, a dialogue and the lack of
7 any kind of purpose. The dialogue is clear from
8 the Department's perspective, that it's a
9 fiduciary responsibility, or a legal
10 responsibility probably better put, that they have
11 to meet some sort of test in terms of having some
12 kind of a discussion with First Nations.

13 What First Nations have been saying is we
14 want a deeper purpose. And the deeper purpose has
15 to do with conservation and management of the
16 species and dialogue isn't cutting it. And I
17 think that over the last 15 years that I've been
18 involved in it, the dialogue has definitely run
19 its course and it's now time to put some action,
20 some meat on the bone. So to just have dialogue
21 is not working.

22 Q Mr. Rosenberger, do you have any response to this,
23 or any comments you'd like to raise, as it relates
24 to the difference between decision-making and
25 dialogue and how we can get on with the work?

26 MR. ROSENBERGER: Well, I think that the document, as
27 it points out, is a scoping document so it
28 describes that we are looking to jointly negotiate
29 between DFO and First Nations, the co-management
30 arrangement. There are a number of issues that
31 people have raised so it doesn't state in there on
32 the first bullet, let's have a dialogue on
33 conservation. So it's laid out to some degree a
34 range of what might occur. So in this case, the
35 three bullets that you referred to are commercial
36 fisheries, recreational fisheries and some other
37 policy and programs.

38 So where should those occur? It may not be
39 only in the forum process or whatever follows
40 after the forum process. So one of the things
41 that we're hearing from the other panel members
42 here is that they're looking for DFO to put
43 something on the table. Well, DFO has done that
44 and what we're striving for is to try to work
45 through these and not just have DFO's ideas, try
46 to get them jointly developed and I think that was
47 the intent of this document just to try to help

1 define the scope of what is being discussed and
2 trying to lay different topics into various levels
3 of decision-making and responsibility.
4 Q All right. So let's move on then to the joint
5 management discussions around this. I can take
6 you to Exhibit 295 next. And what you'll see
7 there is that's the First Nations Fisheries
8 Council Co-Management Discussion Paper. And at
9 page 11 of that document, they identify two policy
10 challenges or barriers for the Department. The
11 first is the recognition of Aboriginal title
12 rights and responsibilities and the second is the
13 not fettering the authority of the Minister. And
14 we had quite a bit of dialogue about that last
15 week. Do you agree that those are policy
16 challenges that the Department has when looking at
17 developing co-management frameworks with First
18 Nations?
19 MR. ROSENBERGER: They're part of the policy that the
20 Department is working under so in the case of the
21 second bullet, that responsibility for the rights
22 and titles side of things are with the Department
23 of Indian and Northern Affairs, not with the
24 Department of Fisheries and Oceans.
25 Q Why do you think that, Mr. Rosenberger? Why do
26 you think that the responsibilities around title
27 and rights rest with INAC and not the Department?
28 MR. ROSENBERGER: The Indian and Northern Affairs has
29 the mandate for negotiation and working through
30 land claim treaties and processes such as that.
31 The Department of Fisheries and Oceans does not.
32 Q But you'll agree with me, of course, that the
33 Department of Fisheries and Oceans can make
34 decisions that could directly impact asserted
35 rights and title?
36 MR. ROSENBERGER: The Department does make decisions
37 that have created challenges for First Nations and
38 have been challenged in court and other places.
39 So the government collectively reviews those kinds
40 of issues but the Department of Fisheries and
41 Oceans has a mandate for managing fisheries not
42 for settling land claims treaties or other
43 processes like that.
44 Q And so might you agree that that division of
45 tasks, which is something that you're instructed
46 about, is a problem for you, also, that somehow
47 you're left to leave it to another department

1 who's not at the table when talking about
2 fisheries and fisheries rights and title issues?
3 MR. ROSENBERGER: Well, the other department is at some
4 other tables and other processes where the
5 Department of Fisheries and Oceans may or may not
6 be at. So the government collectively has to
7 bring its information together to make sure that
8 it's trying to be consistent with its policies and
9 delivery on those aspects.
10 Q Would there be a table talking about Aboriginal
11 title and rights to the Fraser River sockeye
12 salmon that the Department of Fisheries and Oceans
13 wouldn't be at?
14 MR. ROSENBERGER: You'd have to check with somebody in
15 Indian and Northern Affairs.
16 Q To your knowledge?
17 MR. ROSENBERGER: Well, I haven't got any knowledge on
18 all of the aspects that they're trying to deal
19 with.
20 Q Mr. Shepert, are you aware of any discussions? Or
21 Mr. Crey, are you aware of any discussions that
22 occur with INAC around the right to fish and the
23 right to manage fish on the Fraser River sockeye?
24 MR. SHEPERT: No.
25 Q Mr. Crey?
26 MR. CREY: No.
27 Q Mr. Wilson?
28 MR. WILSON: No.
29 MS. GAERTNER: Thank you. All right. I wonder if we
30 could have Exhibit 1203 and let's go to page 13 in
31 there.
32 Q Last week we had a discussion around PNCIMA and
33 the collaborative approach that is being pursued
34 within PNCIMA to find government-to-government
35 processes. You'll see on the screen in front of
36 you a diagram that reflects the approach that's
37 being used there. It's a government-to-government
38 process with the First Nations Governance
39 Committee being informed by individual First
40 Nations and then aggregates.
41 And you have the federal departments coming
42 into their Interdepartmental Oceans Committee and
43 then they have a bilateral coordination that
44 includes an advisory stakeholder engagement.
45 You'll see that in front of you. And I'll start
46 with you, Mr. Rosenberger. Would that type of
47 model be helpful in moving the joint management

1 model for government-to-government decision-making
2 on Fraser River sockeye forward?
3 MR. ROSENBERGER: I'm not familiar specifically with
4 the PNCIMA process to any in-depth knowledge but I
5 think PNCIMA is one model that should be looked at
6 and there are others. Mr. Shepert raised here
7 earlier this morning things like the Skeena
8 process. So I think there's different places and
9 we need to take a look at all of those types of
10 models and what works, what doesn't work and what
11 is it from, for example, this process that would
12 be applicable to the Fraser salmon management and
13 take a look at trying to build that into part of
14 what the roadmap process is trying to strive for.
15 Q Mr. Shepert, do you think that model would work on
16 the ground?
17 MR. SHEPERT: In my job, I do a lot of modelling. I do
18 these on a regular basis. I like this model. I
19 think it makes sense. I think on many levels the
20 PNCIMA are laying groundwork for future
21 development. So from my perspective, this is a
22 good model.
23 Q Would any of the other panel members like to add
24 to that or are we good to go on that?
25 MR. WILSON: I'm a Steering Committee Governance member
26 so I support this model.
27 Q Mr. Crey?
28 MR. CREY: This would be helpful.
29 MS. GAERTNER: Thank you. I'd like to turn now to
30 First Nations document 109.
31 MR. EAST: Just before we begin on this document, Mr.
32 Commissioner, and I've discussed this with Ms.
33 Gaertner, this is another one of the documents
34 that Canada has inadvertently disclosed and we
35 assert privilege over this document. It's a
36 document or duplicates of it that are included in
37 Canada's written submissions in response to the
38 Heiltsuk First Nations motion for production.
39 This is a document relating to AFS mandate
40 information and it contains information about
41 those mandates so we object to this document going
42 into the record.
43 MS. GAERTNER: Mr. Commissioner, I'm content to await
44 your ruling on that. I'd like to ask questions
45 not specifically on the document but keep a note
46 that this is where I would have referred to the
47 document and should it be the outcome of the

1 application that we're allowed to use these
2 documents I'll pursue it specifically.
3 Q Mr. Rosenberger, do you agree that agreements with
4 First Nations regarding such things as FSC
5 allocations, increased commercial access,
6 increased involvement in management decisions and
7 increased involvement in Wild Salmon Policy
8 implementation would decrease conflict during the
9 in-season management and decrease enforcement
10 requirements?
11 MR. ROSENBERGER: Well, that would be the objective
12 from them and I think that there's clear examples
13 of where that has occurred and so that is what
14 we're striving for.
15 Q Do you also agree that it'll increase efficiencies
16 and the likelihood of conservation units?
17 MR. ROSENBERGER: Your question is not clear.
18 Q Sorry. Would you also agree that these types of
19 agreements, these comprehensive agreements with
20 First Nations throughout the watershed, including
21 the migratory route, would not only result in
22 efficiencies but would also increase the
23 likelihood of the conservation of the Fraser River
24 Sockeye Conservation Units?
25 MR. ROSENBERGER: Yes.
26 Q Sorry. It's a long sentence. Do you also agree
27 that there would be a better assurance of a
28 manageable and orderly fishery?
29 MR. ROSENBERGER: Again, that would be one of the goals
30 that we'd be striving for.
31 Q And any of the other panel members, would you
32 agree that that would be the goal that these types
33 of agreements would strive for?
34 MR. SHEPERT: Yes, I do think that they would lend
35 themselves to stability and, therefore,
36 sustainability.
37 MR. CREY: And we'd participate for that reason.
38 MR. WILSON: Yes.
39 Q Thank you. I have about ten or 15 minutes later
40 and, Mr. Shepert, I've got some work with you
41 specific to the Upper Fraser that I need to do and
42 so I'm going to try to do that over the next ten
43 minutes and then return more generally to
44 recommendations. One of the issues the
45 Commissioner has heard about the harvest
46 management hearings was about DFO's management
47 system and, in particular, decisions made at both

1 the international level and the Fraser watershed
2 level based on four aggregates. And I wonder if
3 you could comment on the impact of aggregate
4 management to the Upper Fraser First Nations and
5 how that system has affected the number and type
6 of fish returning to the Upper Fraser?

7 MR. SHEPERT: Case in point. Early Summer, again,
8 Nadina, Bowron, Taseko precipitous declined 16
9 years, part of an Early Summer aggregate that gets
10 managed as such and, therefore, in my opinion, has
11 never been afforded the conservation and
12 protection that it needs to rebuild. It's a
13 serious concern and continues to be a serious
14 concern even as we're preparing for this fishery
15 for this year. Secondly, even in the Summer Run
16 component of stocks destined for the Upper Fraser,
17 we have others that are not doing quite as well.
18 Late Stuart, which are part of the Summer Run
19 component, Mr. Commissioner, are showing some
20 pretty startling signs in the last few years. You
21 would have a number of scientific reports to
22 probably back this up.

23 But we're seeing those also going down while
24 we're allowing large commercial fisheries on some
25 of these stocks while they're not doing as well
26 as, say, the Chilko or maybe even the Horsefly
27 every other year, every third or fourth year,
28 where we're having large mixed stock fisheries on
29 them. Well, we know in the Upper Fraser that the
30 smaller CU levels are not responding. So the
31 aggregate base management system is clearly not
32 working at any level.

33 Q And do you believe that the Fraser River Panel's
34 practice of analyzing the stocks and returns based
35 on aggregates is consistent with DFO's ecosystem
36 or Wild Salmon Policy?

37 MR. SHEPERT: No.

38 MS. GAERTNER: I wonder if I could have First Nations
39 document 81.

40 Q Mr. Shepert, have these types of concerns been
41 raised with the Department over the years?

42 MR. SHEPERT: Yes.

43 Q And I'm now showing you a document in which you've
44 raised these concerns with the Marine Stewardship
45 Council; is that correct?

46 MR. SHEPERT: Yes.

47 MS. GAERTNER: Could I have that marked as the next

1 exhibit?

2 THE REGISTRAR: Exhibit number 1260.

3

4 EXHIBIT 1260: Upper Fraser Fisheries
5 Conservation Alliance email to Marine
6 Stewardship Council
7

8 MS. GAERTNER:

9 Q Mr. Shepert, I couldn't find a date on that
10 although I notice that it was copied to Mr. Paul
11 Sprout, who was the regional director general. Do
12 you recall what year this letter was sent?

13 MR. SHEPERT: This probably is going back to at least
14 '09, maybe even '08. This was in response to the
15 Marine Stewardship Council. They want to make
16 Fraser salmon sustainably caught so they want to
17 give it the certification of sustainability and we
18 have some objections about that. So that's what
19 this letter was about.

20 Q Thank you. We've also heard evidence from Mark
21 Saunders and others regarding the development of
22 the Wild Salmon Policy and the implementation of
23 it.

24 MS. GAERTNER: I'd like to go to Exhibit 945A.

25 Q The Department did an inventory of meetings with
26 some of the Fraser River groups on Wild Salmon
27 Policy and I'd like to take you to the page
28 regarding the UFFCA. And you'll see that there
29 are a number of meetings listed there. To your
30 knowledge, have there been substantive discussions
31 with the UFFCA on how to implement the Wild Salmon
32 Policy on the ground other than FRSSI?

33 MR. SHEPERT: No.

34 Q And does that raise concerns for you?

35 MR. SHEPERT: Yes, it does.

36 Q And what are those concerns?

37 MR. SHEPERT: The Wild Salmon Policy was broadly
38 supported by First Nations when it first hit the
39 ground in '99 and then again in 2002 and then DFO
40 really started to ramp things up around 2004 to
41 2006, somewhere in there. My dates are a little
42 bit sketchy. I apologize for that. Somewhere in
43 there, things started to ramp up. The policy was
44 received broadly. People like in concept the Wild
45 Salmon Policy, it having recognized that we're
46 still working in aggregate-based management.
47 There's been no move to more CU tighter management

1 of the conservation units.

2 I think the paper was sent away to some
3 academic somewhere to develop benchmarks, which
4 are the upper and lower thresholds. I didn't see
5 a lot of engagement with certainly Upper Fraser
6 First Nations and our technical staff in
7 developing some of those benchmarks. They were
8 done in a vacuum and then presented in a
9 consultation format. So the meaningful input that
10 First Nations sought in terms of development of
11 those things was not there.

12 I can talk about the next phase, step two,
13 which is the development of the biological
14 indicators. And then, of course, you've got the
15 ecosystem indicators. I don't know anything about
16 those anymore. They just seem to languish
17 somewhere. I don't know if there's going to be
18 more discussion about those or what they're going
19 to look like. We certainly have a deep interest
20 in developing those. We are one of the
21 indicators, as people. And if we're not healthy
22 then certainly the fish aren't healthy and we've
23 seen that.

24 And then finally, of course, it's about how
25 you're going to implement all of that stuff.
26 Well, we know that that's step four and we know
27 that the First Nations are a deep pillar in this
28 thing, one of the key pillars of the house that
29 this policy is built on. Yet, at the same time,
30 there has been no discussion in terms of how to
31 implement this stuff. We, in the Upper Fraser,
32 for example, have developed a five, ten-year
33 strategic plan based on watersheds. There are
34 five watersheds in our area and those watersheds,
35 we believe, are the key to managing the salmon
36 that come from those areas.

37 Now, my understanding is that we're moving to
38 some kind of a freshwater something-or-other in
39 the Wild Salmon Policy, which hasn't been ruled
40 out, which really doesn't make sense from our
41 perspective. So the lack of engagement in the
42 Wild Salmon Policy is very concerning to us. And
43 we've spent a lot of time talking about FRSSI but
44 that also comes with it's own suite of issues and
45 problems.

46 Q And, boy, that's a mouthpiece. Do you want to
47 speak about FRSSI any longer or should I move on?

1 Do you want to raise any concerns about FRSSI?
2 MR. SHEPERT: Well, again, just the fundamental flaw in
3 FRSSI. Upper Fraser had commissioned a well-
4 respected scientist named Ken Wilson to do an
5 analysis of the FRSSI process. We've presented
6 that to the Department. The Department knows full
7 well where we stand on it. Fundamental flaw is
8 the issue around aggregates and still using
9 aggregates in this model. So from the very get-
10 go, First Nations have had some major problems,
11 not to mention stationarity (sic) and other
12 issues. And the way that the data is used. I
13 mean I could go on.

14 The report, I think, may even be one of the
15 exhibits in this process. But suffice it to say
16 there's deep problems with the FRSSI process
17 certainly if you want to bring the First Nations
18 onboard. And I have to say I do have to respect
19 that the Department is trying to do well. We've
20 had them up, this particular January 27th last
21 year was done. We had Paul Ryall in attendance
22 and certainly senior managers were there to attend
23 these meetings. But again, it was more of a
24 consultation and not really to bring us into the
25 fold and to welcome and to implement this policy
26 in a good and meaningful way.

27 MS. GAERTNER: Mr. Commissioner, for your information,
28 Exhibit 413 is the report that Mr. Shepert was
29 referring to. I'm really running out of time so
30 I'm going to move right on.

31 Q Mr. Shepert, we've also heard in this inquiry a
32 number of witnesses talk about or be asked
33 questions around terminal fisheries and the
34 development of economic access opportunities up-
35 river. I'm wondering if you've been involved in
36 assessing the viability of such fisheries?

37 MR. SHEPERT: I have.

38 MS. GAERTNER: Could I have Canada, Tab 21?

39 Q Is this a report that you're familiar with?

40 MR. SHEPERT: My name's on it.

41 Q Does that mean yes?

42 MR. SHEPERT: Yes, it is.

43 MS. GAERTNER: Could I have this marked as the next
44 exhibit?

45 THE REGISTRAR: Exhibit 1260.

46
47

1 EXHIBIT 1261: Final Reporting Compilation -
2 Market Planning and Coordination Support for
3 Mid and Upper Fraser Demonstration Commercial
4 Fishery Projects - 2009/10
5

6 MS. GAERTNER:

7 Q And from your perspective, is the fish marketable
8 that are caught up-river during terminal or near
9 terminal fisheries?

10 MR. SHEPERT: Yes, they are.

11 Q And what's necessary to make them viable?

12 MR. SHEPERT: I've thought a lot about this problem and
13 the way that it's a perception issue. I think
14 that we've been into about 120 years of sort of a
15 commercial *status quo* where it's believed the
16 silver bright is the only fish to consume for
17 consumers. I think if consumers understood fully
18 that by waiting and allowing the fish to migrate
19 further up, that there's tremendous merit, they're
20 more sustainable, as they peel off the main stem
21 Fraser and make their way up their natal streams.
22 The closer you catch them to those areas, the more
23 sustainable you can be. And that's what the First
24 Nations have known for a long time. You can
25 choose between males and females. You can let
26 more females escape. You can take more males. So
27 that that particular piece is very self-evident.
28 What we're talking about here is the marketability
29 of the products. And the products that we have
30 been able to generate in the Upper Fraser have
31 been excellent.

32 I've taken them to some of the finest places
33 here in Vancouver: Choices, Meinhardt. It's all
34 in the report. But we went around and, yeah, we
35 might not be able to compete toe-to-toe on terms
36 of the lox market. That's kind of sewn up. But
37 we've developed a dry and hot-smoked and putting
38 them into Cryopacs. We've had incredible response
39 from hotels and hotel chains that would love to
40 have something like that to put in their gift
41 baskets to give away. They were asking, "When can
42 we buy this product?" Well, we were just doing
43 the market surveys so I found that at Meinhardt
44 and Choices, the feedback was incredible and
45 positive in terms of, yes, we can market these
46 products, no problem, particularly knowing that
47 they're more sustainable.

- 1 Q And so what in place is necessary for the capacity
2 to do so?
- 3 MR. SHEPERT: Fish. We need numbers to make that
4 happen. We need to have numbers of fish in the
5 Upper Fraser to allow these things to happen. We
6 have tried and I know the Department has been very
7 supportive. They've given licence. But every
8 year we get a licence, we want to do a
9 demonstration, we want to get out and catch some
10 of these fish in the terminal areas. They're not
11 there. They're caught either before or they're
12 not showing up for whatever reason. So we really
13 haven't had a chance to really sink into this but
14 there's been a lot of work. We know where the
15 sites are to catch them. We have the logistics in
16 place now. We've worked to some degree with
17 industry. And we're very confident that in the
18 future these fisheries will be and will be
19 incredible for B.C.
- 20 MS. GAERTNER: All right. I'm going to beg the
21 indulgence and ask a few more questions because
22 it's the only opportunity I have to ask questions
23 of Mr. Shepert.
- 24 Q We've talked about the AAROM process. We've
25 talked about the fact that you are in AAROM and
26 there has been some concerns. I heard in the
27 questions from Commission counsel this morning
28 that the AAROM processes are not identical
29 regionally to the ITO or any of those things. In
30 your view, is there a way of evolving the AAROM
31 bodies to reflect the types of nation-to-nation
32 discussions that are occurring on a mandate level?
- 33 MR. SHEPERT: Absolutely.
- 34 Q And Mr. Rosenberger, do you also see the benefit
35 of making sure that the AAROM has enough
36 flexibility to evolve so that it can reflect
37 mandated structures?
- 38 MR. ROSENBERGER: AAROM has adopted already a number of
39 times and I think it's flexible enough to be able
40 to try to make changes for a number of different
41 groups' aspirations.
- 42 MS. GAERTNER: I'm wondering if I could just go to
43 First Nations document number 80?
- 44 MR. MCGOWAN: Perhaps just while we're doing that, Mr.
45 Commissioner, I know Ms. Gaertner is doing her
46 level best to get through her examination in the
47 time allotted. We're now over that and the

1 unfortunate reality is that, by continuing, she
2 will be using somebody else's time. We have
3 allotted all of the time that we have available so
4 I'll just ask that she conclude as quickly as she
5 possibly can.

6 MS. GAERTNER: Thank you.

7 Q Is this a letter that you wrote to Kaarina
8 McGivney on the AAROM process and the concerns
9 around that?

10 MR. SHEPERT: Yes.

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

13 THE REGISTRAR: Exhibit 1262.

14
15 EXHIBIT 1262: Upper Fraser Fisheries
16 Conservancy Alliance letter to Kaarina
17 McGivney
18

19 MS. GAERTNER:

20 Q I need to go briefly. Mr. Shepert, you have
21 talked a number of times about the importance of
22 having technical groups working together and
23 you've used the word "Science". You're also
24 familiar with the traditional ecological knowledge
25 that First Nations carry?

26 MR. SHEPERT: Yes.

27 Q And when you were speaking this morning earlier
28 about the necessity to get technical people
29 together, does that also include the place for
30 traditional ecological knowledge?

31 MR. SHEPERT: Yes.

32 MS. GAERTNER: And if I could have document 71 of the
33 First Nations Coalition's.

34 Q This is a document you're familiar with?

35 MR. SHEPERT: Two-Eyed Seeing. Yes, I am familiar.

36 Q And what's the value of that document for the
37 Commissioner in terms of understanding how
38 traditional ecological knowledge could be brought
39 to bear for sockeye salmon management?

40 MR. SHEPERT: I think I just want to say, firstly, that
41 traditional ecological knowledge has been given a
42 lot of lip service over the last 15 years since
43 I've been in this. I've attended four and five-
44 day seminars and workshops and international and
45 so on and so forth and I haven't seen a lot of it
46 other than a lot of academic papers. I've
47 actually been published in a book for university

1 about this subject. It was specifically around
2 aquaculture but the bottom line is that it needs
3 to be started. So I've given some thought to it
4 and one of the things that I've thought about is
5 the connection between DFO Science and TEK, to me,
6 is a slam dunk. I think that a lot of the
7 hypothesis statements that are being generated by
8 DFO scientists could be supported and, in fact,
9 even generated new hypotheses based on traditional
10 ecological knowledge. I see it as the starting
11 point, not the end point but the starting point,
12 for a really robust technical and scientific
13 program on the Fraser River.

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

16 THE REGISTRAR: 1263.

17
18 EXHIBIT 1263: Integrated Science and Two-
19 Eyed Seeing: Walking and Talking Together
20

21 MS. GAERTNER:

22 Q And just finally, my last question before I sit
23 down is around the Fraser River Panel. Or
24 actually, I have two questions. The first
25 question is, I was slightly confused when I heard
26 the number at around 30 meetings. Is that what I
27 heard earlier? Does that include the Fraser River
28 Panel meetings? I know you meet weekly or more on
29 that. Were you including that when you were
30 including your numbers?

31 MR. SHEPERT: For me, yes, I would include that in my
32 number personally.

33 Q All right. Now, we've had evidence from Mr.
34 Rosenberger already on the Fraser River Panel and
35 from Mr. Paul Sprout. And in particular, Paul
36 Sprout gave evidence about his personal opinion
37 that at least 50 percent of the representation of
38 the Fraser Panel should be First Nations. Mr.
39 Rosenberger, in your previous evidence, you
40 weren't quite willing to commit to a 50 percent
41 but you did talk about increased participation.
42 Mr. Shepert, could you speak on the benefits of
43 increasing First Nations representation at the
44 Fraser River Panel, as it relates to in-season
45 management?

46 MR. SHEPERT: I think the benefits of having increased
47 participation are taking a lot of the stress off

1 of one single person like myself and my colleague,
2 Ken Malloway, who is a Sto:lo. It's very
3 difficult for us to purport to represent First
4 Nations issues while I'm clearly very bias towards
5 the Upper Fraser. There are people in the Mid
6 Fraser who have not participation whatsoever, who
7 have different, as I've said earlier, Upper,
8 Middle, sort of Lower and then approach slightly
9 different viewpoints on these issues. And it's
10 very difficult to be but one. So I think, as a
11 nominal starting point, that a 50 percent
12 representation by the First Nations on those
13 panels would send a very clear signal, as speaking
14 of Mr. Crey and signals, would be a great signal.
15 And that's why I think Paul Sprout really believed
16 in that. I think Mr. Sprout really saw the
17 benefit of having such a make-up on the panel as
18 bringing more peace, more harmony and better
19 decision-making and outcomes and would probably be
20 a lot less stress on DFO.

21 Q And Mr. Rosenberger, what is the concern that you
22 have around increasing to 50 percent?

23 MR. ROSENBERGER: I don't necessarily have a concern
24 around moving specifically to 50 percent or any
25 other number. I think at this point what we're
26 striving for or I would be looking for is, as we
27 were talking about here earlier, a process whereby
28 First Nations provided mandated representative
29 individuals to participate so that we hopefully
30 remove some of the issues that Mr. Shepert has
31 just described.

32 MS. GAERTNER: I'm going to stop at this point, Mr.
33 Commissioner. I had hoped to take them to
34 recommendations but I'm sure that we will be able
35 to take that from their evidence.

36 THE COMMISSIONER: Thank you.

37 MR. MCGOWAN: Mr. Commissioner, perhaps just before Ms.
38 Gaertner sits down, I have a matter that perhaps
39 we should inquire about with respect to Exhibit
40 1258 and 1259. Those are the Julie Gardner
41 summary and process recommendations documents that
42 were filed. Both of those documents contain
43 editing. The second of them contains significant
44 editing and I thought perhaps we should just have
45 that editing explained for the record.

46 MS. GAERTNER: I don't think there's editing; there's
47 redacting and the redacting includes legal advice

1 sought and responses and references to that.

2 THE COMMISSIONER: Ms. Fong?

3 MS. FONG: Lisa Fong for Heiltsuk Tribal Council. And
4 with me are my co-counsel, Ms. Ming Song and Mr.
5 Benjamin Ralston.

6

7 CROSS-EXAMINATION BY MS. FONG:

8

9 Q My questions are for you, Mr. Wilson. You served
10 three terms as chief councillor for the Nation on
11 Heiltsuk Tribal Council, correct?

12 MR. WILSON: Yes.

13 Q What years were those?

14 MR. WILSON: 2002 to 2006.

15 Q You testified just now that you sit on the PNCIMA
16 First Nations Governance Steering Committee. And
17 you stated that Heiltsuk approved of that
18 governance structure. Can you tell me why
19 Heiltsuk would approve of that particular
20 governance structure?

21 MR. WILSON: Well, a number of reasons. But one of the
22 big reasons is one of the recommendations is to
23 look at planning.

24 Q And is there anything else about its particular
25 governance structure, for example, the First
26 Nations status as it relates to the federal
27 government or the provincial government that makes
28 it attractive for Heiltsuk?

29 MR. WILSON: Well, I sit on the steering committee and
30 the membership of the steering committee are made
31 from the federal, provincial and First Nations
32 governments. So you're looking at owners at the
33 tables, not users.

34 Q Thank you. Is there another place where, for
35 example, Heiltsuk are treated as users, as opposed
36 to owners, in meetings?

37 MR. WILSON: IFMP.

38 Q Thank you. Okay. I also understand that you
39 currently sit on the Central Coast Indigenous
40 Resource Alliance; is that correct?

41 MR. WILSON: Yes.

42 Q How many nations are represented in that alliance?

43 MR. WILSON: Four nations in the central coast, the
44 Heiltsuk, the Wuikinuxv, the Kitasoo and Nuxalk.

45 Q What work does that alliance do?

46 MR. WILSON: It's basically a body that supports the
47 First Nations initiatives and there are technical

- 1 reps and political reps on that body.
2 Q Does it deal with marine works?
3 MR. WILSON: Yes, and specifically marine use planning
4 as well.
5 Q Okay. I also understand that you sit on the
6 Central Coast Commercial Fishing Association. And
7 again, what are the nations represented by that
8 association?
9 MR. WILSON: The same Central Coast Bands.
10 Q And what work does that association do?
11 MR. WILSON: The creation of the Central Coast
12 Commercial Fishing Association was due to the
13 requirements of the PICFI application, to access
14 licensing. So the members at the organization are
15 the economic development arms of the nations.
16 Q Thank you. Now, I'd like to move to HIRMD. I
17 understand HIRMD is the Heiltsuk Integrated
18 Resource Management Department; is that correct?
19 MR. WILSON: Yes.
20 Q Okay. And in relation to the management of
21 Aboriginal fisheries, what does HIRMD do?
22 MR. WILSON: Well, one of the departments within HIRMD
23 is the Aquatic Department. And that department is
24 responsible for the negotiations and
25 implementation of the AFS agreement. We also look
26 after the Salmon Enhancement Program, the Marine
27 Use Plan Process and we attend to internal and
28 external fishery issues. For example, a Gladstone
29 Reconciliation Process.
30 MS. FONG: Thank you. Mr. Lunn, could you please pull
31 up Exhibit 305?
32 Q Mr. Wilson, do you recognize this document?
33 MR. WILSON: Yes, that's our CFA for 2009.
34 Q The Comprehensive Fisheries Agreement, also known
35 as an AFS agreement?
36 MR. WILSON: Correct.
37 MS. FONG: Okay. Mr. Lunn, if we could please go to
38 page 13?
39 Q Mr. Wilson, can you explain to us what's at
40 Schedule A?
41 MR. WILSON: What you see in front of you is a map of
42 the Heiltsuk Territory, as tabled with the Treaty
43 Office. It also identifies how our fisheries and
44 projects within the AFS take place.
45 MS. FONG: Mr. Lunn, if you could advance the next
46 page, please?
47 Q Mr. Wilson, this Schedule B-1, this deals with the

1 terms under which the FSC fishery takes place?

2 MR. WILSON: Yes.

3 MS. FONG: Okay. Mr. Lunn, if you could advance to the
4 next page, please?

5 Q My questions are with respect to paragraph 4(b),
6 Mr. Wilson. It reads:

7
8 During the term of this agreement, the HTC
9 agrees to manage fishing by its members to
10 fishing, as set out in this schedule and the
11 rest of this agreement. In the event that
12 the HTC identifies an increase in the food,
13 social and ceremonial needs of its members
14 during the fishing season, the parties will
15 review the quantity specified in the communal
16 licence issued to the HTC and, if agreed by
17 the parties, DFO will amend the communal
18 licence. The quantities of fish reflected in
19 the communal licence are subject to
20 consultation each year at which time the
21 needs of the members of the HTC and the
22 conservation requirements will be reviewed by
23 the parties.
24

25 So Mr. Wilson, am I correct in my understanding
26 that paragraph 4(b) provides for consultation in
27 two different situations. First, if there's in-
28 season need to amend the communal licence to add
29 to FSC; is that correct?

30 MR. WILSON: Yes.

31 Q

32 And then the annual consultation for the
33 numbers of FSC fish.
34

35 MR. WILSON: Correct.

36 MS. FONG: Can we now advance to page 19, Mr. Lunn?

37 Q Mr. Wilson, on page 19, in the middle of the page,
38 there's a heading "Salmon", a subheading, "Species
39 Quantity" and then it reads:

40
41 This licence authorizes fishing for the
42 following species and quantities: sockeye,
43 20,000 pieces.
44

45 Is it your understanding that this is the FSC
46 allotment for sockeye for Heiltsuk?

47 MR. WILSON: Yes.

- 1 Q And would it be also Heiltsuk's understanding that
2 this allotment would include Fraser River sockeye
3 salmon?
- 4 MR. WILSON: That's right.
- 5 Q Have you ever been advised otherwise, that it
6 doesn't include Fraser River sockeye salmon?
- 7 MR. WILSON: No.
- 8 MS. FONG: Now, if we could please go to page 46, Mr.
9 Lunn?
- 10 Q Mr. Wilson, page 46 reads, "Schedule G-1, Project
11 Summary". Am I correct that this section of the
12 AFS agreement sets out all the projects in which
13 is part of this agreement?
- 14 MR. WILSON: Yes.
- 15 MS. FONG: Okay. And if we could go to page 50,
16 please, Mr. Lunn?
- 17 Q And as an example then of how this summary works,
18 if we could drop down to "(j), Stream Enhancement
19 and Restoration". Next to that, there's a number,
20 \$54,254. And the subheading there is "Emily Lake
21 Hatchery". And again, that number is repeated.
22 Am I correct that this is the funding amount for
23 Emily Lake Hatchery in the FS agreement?
- 24 MR. WILSON: Yes, that's our annual budget.
- 25 MS. FONG: Okay. Mr. Lunn, if you could advance to the
26 next page, please?
- 27 Q Now, near the middle of the page, there's two. It
28 says, "2 - Food, Social and Ceremonial Fisheries
29 Management". And then under that, there's a sub
30 (a):
31
32 FSC planning and negotiations (Allocations,
33 Areas, Identification of Capacity
34 Requirements Et Cetera).
35
- 36 But on the right-hand side, I don't see a matching
37 number to that. What does that mean in this
38 agreement?
- 39 MR. WILSON: There's no funding to engage in that
40 activity.
- 41 Q Does that mean that Heiltsuk is not interested in
42 engaging in FSC planning and negotiations?
- 43 MR. WILSON: Very interested.
- 44 Q Okay. So the lack of funding is not for want of
45 interest. Is that what you're telling us?
- 46 MR. WILSON: Yes.
- 47 MS. FONG: Thank you. If now, we can flip over to page

1 52, please? Thank you.
2 Q And at the bottom of page 52, I see a total
3 number, which is \$252,087. Is that the total
4 amount for all the projects, Mr. Wilson?
5 MR. WILSON: Yes, it is.
6 Q And is that amount sufficient for the fisheries
7 management work that Heiltsuk wants to do?
8 MR. WILSON: Wants to do. That amount is not adequate.
9 Q Okay. Or I should say needs to do.
10 MR. WILSON: Yes.
11 Q Is that still the answer, it's not adequate?
12 MR. WILSON: Yes.
13 Q Okay. So I mean if that wasn't enough money, why
14 did you sign this?
15 MR. WILSON: Well, bottom line is our Tribal Council
16 can't afford to fund such a program like this.
17 And if that's the case, we wouldn't be engaging
18 these activities.
19 Q So if you wouldn't sign this agreement then
20 there's no money to do this work?
21 MR. WILSON: That's correct.
22 MS. FONG:
23 Q Okay. Now, I'd like to turn to the Fraser River
24 salmon. Does the Fraser River sockeye salmon pass
25 through Heiltsuk waters?
26 MR. WILSON: Yes, it does.
27 MS. FONG: Okay. Mr. Lunn, if you could assist us by
28 pulling up map at Tab 10, please? And if we could
29 have a laser pointer, please? Thank you.
30 Q Now, Mr. Wilson, I'm going to ask you to describe
31 these arrows and these routes and tell us where
32 the Fraser River sockeye salmon swim through
33 Heiltsuk Territory.
34 MR. WILSON: Okay. This is the heart of the central
35 coast, or Heiltsuk Territory. And if you look
36 inside the small table there, that's the community
37 of Bella Bella. So you have the community of
38 Bella Bella. And if you look west to the top left
39 corner, that small island at the top left is Price
40 Island.
41 In the orange arrows, you'll see the
42 indication of the route of the Fraser River
43 sockeye salmon. Now, I have to quantify this by
44 saying this doesn't happen every year. This is
45 what our fishermen have noticed over the years.
46 So you look at the route. The route goes up on
47 the east side of Price Island up to the end of

1 Queen Sound and down back, it comes down south
2 through the mouth of the Seaford Channel and down
3 along the Bardswell Group and further south into
4 Queen Sound.

5 The yellow arrows indicate the favourite
6 spots of the sport fishing industry. The pink
7 arrows are indications of favourite spots of our
8 food, social, ceremonial fishers. I also want to
9 go up to that top corner and indicate that this is
10 also a favourite spot for our fishermen when
11 they're jigging and watching for the Fraser River
12 sockeye.

13 MS. FONG: Mr. Lunn, if we could have the next map,
14 please, which is Tab 8.

15 MR. LUNN: Would you like to mark this?

16 MS. FONG: We'll mark these later.

17 MR. WILSON: Okay. This is the map of the view of the
18 lower part of Heiltsuk Territory. If you look at
19 the top left, that's Queen Sound and Goose Island
20 there. The orange arrows indicate the route of
21 the Fraser River sockeye. They'll come down south
22 and sometimes go in through Hawkeye Pass or
23 outside of the Calvert Island and they'll mingle
24 along in and around the east side of Calvert
25 Island and head south. The two pink arrows are
26 favourite spots from the seine boat fishermen when
27 the sockeye was in high abundance. I also want to
28 stay looking north to the Goose Island on the top
29 left there.

30 That one arrow that's on the bottom end of
31 Goose Island is the goslings. That's a favourite
32 jigging spot. And if you go a little further up
33 Goose Island on the west side, there's another
34 favourite jigging spot there as well. So again,
35 our fishermen, when they're out looking for the
36 Fraser River passing through, they're out there
37 jigging for bottom fish. And they have --they're
38 observing the area and when they see the fish
39 coming in, they'll set the nets.

40 You won't see it on this map but on the
41 bottom end of Goose Island and on Duck Island,
42 which is a small island just at the south of it,
43 there are two Indian reserves. The location of
44 these Indian reserves are very strategic. It
45 created access for our specific chiefs to go out
46 to the area to access many species of fish,
47 including the sockeye as it's passing through.

1 The blue arrow is the Hawkeye Beach sport fishing
2 camp.

3 MS. FONG: Thank you, Mr. Wilson. Could I get those
4 two maps marked as the next exhibit, please?

5 THE REGISTRAR: Exhibit 1264 for map at Tab 8. And at
6 Tab 9, 1265.

7
8 EXHIBIT 1264: Map at Tab 8

9
10 EXHIBIT 1265: Map at Tab 9

11
12 MS. FONG:

13 Q Mr. Wilson, what's your source of knowledge for
14 the routes that you just explained to us of the
15 Fraser River sockeye? Is it your own personal
16 knowledge or is it from elsewhere?

17 MR. WILSON: Well, it's personal knowledge and from our
18 fishermen. When I was a young boy, I was working
19 with my grandfather on the gillnetter. So we
20 would be out on the Goose Island banks as well.
21 And when I was a teenager, I fished for my uncle
22 on a seine boat. I also received this information
23 through our fishermen who had told me many times
24 that the Goose Island area was very important to
25 them during the commercial fishery days. They
26 would go outside and fish the stocks.

27 They would be fishing off of what they called
28 a combination trawler/gillnetter. So they would
29 trawl for the salmon. When they saw the huge
30 number of sockeye coming in, they would then use
31 their nets. But the company saw that it was a
32 very important site as well. They would allow the
33 fishermen go inside to Anchorage and then the
34 companies would send the packers out. The packers
35 would pick up the fish but they would also give
36 the fish boats fuel, food and any other amenities
37 so they could stay out as long as the stocks were
38 out there.

39 Q And Mr. Wilson, how do your fishermen know when
40 it's Fraser River sockeye salmon, as opposed to
41 some other fish?

42 MR. WILSON: Well, the big one is the size. The local
43 sockeye are very small. And we all know the size
44 of the Fraser River. Plus the colour. The colour
45 is different.

46 Q Thank you. And for how long has Heiltsuk fished
47 the Fraser River sockeye salmon?

1 MR. WILSON: Well, our fishermen and elders have told
2 us for as long as they can remember.

3 Q Mr. Wilson, before you came here today, I asked
4 you to take a look at the Policy and Practice
5 Report that was created by Commission counsel. In
6 your review, do you have any comments regarding
7 the allocation of the Fraser River sockeye salmon?

8 MR. WILSON: Yes, there's an error in it. Their tables
9 indicated three regions that access the Fraser
10 River sockeye. And those tables indicate which
11 Bands have access to the Fraser River sockeye.
12 And the Heiltsuk are not on that list.

13 MS. FONG: Thank you. And just for the Commissioner's
14 reference, that's pages 37 to 40 of the Policy and
15 Practice Report, just because there's not a lot of
16 time to go there. I note the time. Mr.
17 Commissioner, this would be an appropriate time
18 for a break in my questioning or I can continue
19 for another ten or 15.

20 THE COMMISSIONER: You can continue, Ms. Fong, thank
21 you.

22 MS. FONG: Thank you.

23 Q Mr. Wilson, does Heiltsuk fish any other type of
24 salmon?

25 MR. WILSON: Other type? You mean chum, pink, coho?

26 Q Sorry. I mean other sockeye.

27 MR. WILSON: Oh, yes, our local stocks.

28 Q Okay. And so why not? Rather than going out and
29 fishing the Fraser River sockeye salmon, why not
30 just fish your FSC catch of 20,000 pieces all from
31 you local stock?

32 MR. WILSON: Because our local stocks couldn't stand
33 that pressure. We would extirpate them. We would
34 fish them. We would fish them right out.

35 Q Okay. Then let me ask you the other side of that
36 question. Why not just fish your 20,000 pieces
37 off the Fraser River sockeye salmon?

38 MR. WILSON: Well, there's a number of reasons. We
39 heard Mr. Shepert earlier talk about the
40 conservation issues. We're just as concerned as
41 everybody getting access for food, social and
42 ceremonial. In fact, when they asked for a no-
43 fish on the Early Stuarts we complied with it.
44 The other issues are weather. It's weather-
45 determined because when you fish out on the open
46 ocean and you get caught out there, you can get in
47 trouble. In fact, we've lost lives because our

1 fishermen passed the fish capacity stock. And the
2 other one is accessibility. I mean I showed you
3 some arrows on a map that our fishermen had a
4 history of fishing those sites. I also said we
5 didn't fish them every year. But that fish, they
6 don't follow a direct path. They could be 50
7 miles off shore and we would never know they were
8 there. So it's about accessibility as well.

9 Q So in mitigating for those kinds of issues, are
10 there ways of improving the strength of the local
11 sockeye stocks?

12 MR. WILSON: Well, I think you can look at conservation
13 hatcheries.

14 Q Okay. And does Heiltsuk have one?

15 MS. FONG: Okay. I'm just going to take us to the next
16 document, which is Heiltsuk document number 39,
17 please.

18 Q Mr. Wilson, this is the Aboriginal Fisheries
19 Strategy Annual Report 2007 to 2008. Do you
20 recognize this document?

21 MR. WILSON: Yes, I do.

22 Q Does Heiltsuk receive this from DFO?

23 MR. WILSON: Yes, we do.

24 MS. FONG: Okay. Mr. Lunn, if we could advance to page
25 10 of the document. And 10 is marked on the
26 bottom right-hand corner. That's it. Thank you.

27 Q Mr. Wilson, halfway down this page, it reads:

28
29 Heiltsuk Fisheries Program Tankeeah River
30 Sockeye Rebuilding Project, A Story of
31 Commitment, Leadership and Success.

32
33 How is Tankeeah River related to Emily Lake?

34 MR. WILSON: Well, the Tankeeah River provides the
35 brood stock for Emily Lake Hatchery.

36 MS. FONG: Okay. And Mr. Lunn, if we could go to the
37 next page, please?

38 Q And I'm just reading from the top of this page:

39
40 In the early 1990s, the Heiltsuk Band Council
41 instructed the Fisheries Program to explore
42 opportunities for sockeye enhancement.
43 Sockeye is a keystone species for the First
44 Nations and declines in sockeye returns to
45 local rivers and the difficulty in meeting
46 food fish needs were of great concern.

1 Is that still of great concern to Heiltsuk, Mr.
2 Wilson?

3 MR. WILSON: Yes, it is.

4 MS. FONG: Thank you. If we can go to the next page,
5 please, Mr. Lunn? Now, halfway down the page
6 where it starts, "The DFO management", if you can
7 continue. That's it. Thank you.

8 Q

9 The DFO management target for sockeye
10 escapement to the river is 5,000 and when the
11 Heiltsuk started the enhancement program, the
12 annual counts were below 500 making it a
13 priority for stock rebuilding efforts.

14 Mr. Wilson, are you in agreement with those
15 numbers?

16 MR. WILSON: Yes.

17 MS. FONG: Thank you. Then if we could go to the next
18 page, Mr. Lunn?

19 Q And under the heading, "Leadership and Teamwork",
20 that last paragraph, I'll start with that second
21 sentence after "combine this".

22 There were a few years when little or no work
23 occurred but in 2001, the project was brought
24 back online and had a couple of years of
25 encouraging results. Then in 2003, Mike Reid
26 took the helm, building on the momentum, and
27 there has been no looking back.

28 I'll just stop there for one moment. Do you know
29 who Mike Reid is, Mr. Wilson?

30 MR. WILSON: Mike Reid is my field supervisor.

31 Q

32 Mike Reid has stepped up to the plate and
33 taken responsibility for the project,
34 providing intelligent, reasoned and
35 consistent leadership. As well, his previous
36 experience in construction and in the fishing
37 industry, combined with his practical hands-
38 on approach to the job, has resulted in
39 constant improvements to the field program
40 and hatchery site that have increased
41 survivals and production capacity.

42 And now I'm going to drop down under "Success" to
43 that last full paragraph there.

1 The stock rebuilding progress speaks for
2 itself. Since 2001, the Tankeeah
3 sockeye/Emily Hatchery team, has consistently
4 been able to meet egg targets from 25,000 to
5 100,000 care for the developing eggs and
6 alevins over the winter and release healthy
7 sockeye fry back to Tankeeah Lake for the
8 following spring. For most of these years,
9 the survival from egg to release has been
10 very respectable. More importantly, there's
11 concrete evidence that these fry are
12 surviving contributing to increases in adult
13 abundance and returns to the river. In the
14 spring of 2004, all the fry from the 2003
15 brood were given an external mark. The
16 adipose fin was removed prior to being
17 transported and released to the Tankeeah
18 Watershed.

19
20 In this way, when adults returned in 2006 and
21 2007, every fish captured for brood stock
22 and/or fully visible in the water could be
23 identified as being from wild or enhanced
24 origin. The results were impressive and
25 beyond any expectations providing the crew
26 with the best measure of success they could
27 ask for. Over the past several years, adult
28 abundance has risen to a level where the
29 fisheries program had endorsed limited food
30 fish catches and still get over 3,000 fish at
31 the spawning grounds. With their goal for
32 the Tankeeah sockeye so close at hand, the
33 crew is in the enviable position to consider
34 when they will turn their enhancement efforts
35 to another salmon stock in need. Good for
36 them and good for salmon.

37
38 Mr. Wilson, the one thing it doesn't tell us is,
39 do you know what the actual number of the return
40 rates are?

41 MR. WILSON: About 6 percent, 6,500.

42 Q Okay. So there is some fishing allowed in the
43 Tankeeah system?

44 MR. WILSON: Yes, we generally allow our membership to
45 take 2,000, maybe 2,500 pieces.

46 Q Okay. And is that for FSC fishing?

47 MR. WILSON: Yes, the Tankeeah and the Emily Lake

- 1 workload is specific to FSC fishing.
- 2 Q Thank you. And do you know when and if the
3 Tankeeah system will be self-sustainable?
- 4 MR. WILSON: It's our opinion that in the next three
5 years, we'll be seeing evidence of that.
- 6 Q Now, earlier in this hearing, we heard some
7 concerns regarding enhanced fish and the lack of
8 biological diversity. Does the Emily Lake
9 Hatchery somehow address this?
- 10 MR. WILSON: Oh, yes, we do. When we select for the
11 brood stock, we select fish at random. We don't
12 select size, colour or anything. We just grab
13 what's there and take them over to the hatchery.
14 We also engage in a matrix system when we're
15 fertilizing.
- 16 Q Okay. And just to confirm again, this hatchery
17 costs \$54,000 in accordance with your FAS
18 agreement?
- 19 MR. WILSON: Correct.
- 20 Q All right. And has it always cost that much?
- 21 MR. WILSON: No, when the Tribal Council noticed that
22 there was a concern with the access to the FSC
23 numbers, they contacted, through the fisheries
24 program, DFO to request funding to do Emily Lake
25 Hatchery. At the beginning, there was no support
26 for it. So Council, a lot of its program dollars,
27 went out and created the building and started the
28 hatchery system.
- 29 Q Are there any other potential sockeye salmon
30 conservation hatcheries on Heiltsuk Territory?
- 31 MR. WILSON: Yes, there are. There are about 200
32 salmon streams. About 50 of those streams could
33 have an enhancement for sockeye.
- 34 Q Okay. And out of those 50, how many are currently
35 being fished for FSC or otherwise?
- 36 MR. WILSON: About four.
- 37 Q About four of them. And the ones that aren't, why
38 aren't they being fished for FSC or otherwise?
- 39 MR. WILSON: Well, for a number of reasons but the two
40 big ones are restoration needs and enhancement, of
41 course.
- 42 Q Okay. And what's the difference between
43 restoration and enhancement?
- 44 MR. WILSON: Well, restoration is physical work in the
45 streams and enhancement was just to catch the
46 brood stock to engage in the hatchery system.
- 47 Q Okay. Can you tell us about a stream system

1 called Kwakusdis?

2 MR. WILSON: Kwakusdis?

3 Q Yes.

4 MR. WILSON: It's a small system just very near the
5 Tankeeah Watershed as well, too. But it currently
6 has four species of salmon, which is sockeye,
7 pink, chum and coho. In the mid-'80s, the
8 Department of Fisheries engaged in a stream-
9 cleaning operation and Kwakusdis was one of those
10 streams. And they basically had a project that
11 cleared out the lower reaches of all woody debris
12 and boulder clusters. It was their opinion that
13 by doing that, they'd created an easier route for
14 the sockeye to get up to their natal system, I
15 mean their spawning habitat.

16 Q And is that a problem today then?

17 MR. WILSON: It's a huge problem.

18 Q Why is that?

19 MR. WILSON: Well, the hydrology of the lower reaches
20 created a problem not only of the embankments of
21 the river but it's washed out all the spawning
22 habitat for the chum and the pink. And over the
23 past few years, we've been noticing that the chum
24 and the pink have made their way up into the
25 sockeye spawning grounds and they're spawning over
26 that habitat.

27 Q Okay. So what would be required to fix that?

28 MR. WILSON: Well, restoration. Get back to the lower
29 reaches and created that habitat so the chum and
30 pink can have a place to go.

31 Q Do you have a sense of how much that would cost?

32 MR. WILSON: Lower reach, 500 metres, maybe a little
33 more, probably about \$40,000.

34 MS. FONG: Mr. Lunn, could you please pull up Heiltsuk
35 document 86? Thank you.

36 Q Mr. Wilson, do you recognize this document?

37 MR. WILSON: Yes, this budget here was developed by
38 Mike Reid.

39 Q For...?

40 MR. WILSON: Oh, sorry, for the restoration work on the
41 Kwakusdis.

42 MS. FONG: Thank you. I'd like this marked as the next
43 exhibit, please.

44 THE REGISTRAR: Exhibit 1266.

45

46 EXHIBIT 1266: Microsoft Excel spreadsheet
47 indicating Restoration Project Costs

1 MS. FONG:
2 Q Mr. Wilson, once restored, could Emily Lake then
3 act as a hatchery for Kwakusdis?
4 MR. WILSON: Yes.
5 Q Okay. Does it require additional infrastructure?
6 MR. WILSON: Well, not at the moment because we have
7 the rearing tubs and the plumbing to address the
8 overload.
9 Q So is there any added cost if Kwakusdis were to be
10 restored and then brought into the hatchery system
11 at Emily Lake?
12 MR. WILSON: Well, on top of the 40,000 for the
13 restoration work, you'd look at another 10,000 for
14 admin work and maintaining the hatchery over the
15 winter.
16 Q Okay. Now, has Heiltsuk asked for funding to
17 either restore or enhance Kwakusdis?
18 MR. WILSON: Yes.
19 Q Okay. Within the AFS funds or outside the AFS
20 funds?
21 MR. WILSON: We asked outside initially and they just
22 turned and told us that it had to be within AFS
23 funding.
24 Q Okay. And did you have a discussion with them
25 about whether it could be within the AFS funds
26 then?
27 MR. WILSON: They were saying it was up to us within
28 those. We could move projects around if we wanted
29 to.
30 Q Okay. And so why haven't you moved projects
31 around to fund this?
32 MR. WILSON: Because the current projects we have are
33 fully met. If we had excluded one of the
34 operations, for example, FSC monitoring, that
35 would lose out on the end and you wouldn't be able
36 to do that project.
37 Q Okay. So do you have any recommendations for this
38 Commission as to what should be done regarding
39 these conservation hatcheries?
40 MR. WILSON: Look at funding possible four systems in
41 the central coast. Two would need restoration
42 work and the other two would need just
43 enhancement.
44 Q Okay. And because this is a Fraser River Sockeye
45 Salmon Commission, how does funding these
46 conservation hatcheries assist with the
47 conservation of the Fraser River sockeye salmon?

1 MR. WILSON: Well, currently we fish the Fraser River
2 sockeye. It actually subsidized our needs from
3 our local systems. So whatever we can catch at
4 the local systems and when we start to shut off
5 those systems, we then turn to the Fraser for the
6 rest of our allocation.

7 MS. FONG: Thank you. Mr. Commissioner, I'll be moving
8 into a different section now. Would you care for
9 a break or can I continue?

10 THE COMMISSIONER: We'll take a break.

11 MS. FONG: Thank you.

12 THE REGISTRAR: The hearing is recessed for ten
13 minutes.

14
15 (PROCEEDINGS ADJOURNED FOR AFTERNOON RECESS)
16 (PROCEEDINGS RECONVENED)
17

18 THE REGISTRAR: The hearing is now resumed.

19
20 CROSS-EXAMINATION BY MS. FONG, continuing:
21

22 Q Mr. Wilson, is there in-season management data
23 from DFO as the Fraser River sockeye salmon are
24 swimming through Heiltsuk territory?

25 MR. WILSON: No.

26 Q Now, you had mentioned earlier to Ms. Gaertner
27 that perhaps there was data that Heiltsuk could
28 provide to assist the other First Nations. Is
29 there something that DFO can do to assist in that
30 sort of data collection and delivery?

31 MR. WILSON: Well, they could provide a budget within
32 the AFS agreement that would allow us to do, for
33 example, test fishing out there, DNA studies,
34 identify when a stock is going through, how many
35 days it takes to go through. There's a number of
36 opportunities that are there.

37 Q Is Heiltsuk experienced with test fishing?

38 MR. WILSON: Yes.

39 Q Can you explain what the experience is?

40 MR. WILSON: Well, it's with the larger seine boat. So
41 you basically just go out and catch the salmon
42 that are passing through.

43 Q Okay, now I'm going to move to consultation and
44 FSC. Has Heiltsuk ever sought an increase in the
45 FSC sockeye numbers in-season?

46 MR. WILSON: Yes, last year.

47 Q Okay. Can you tell us what happened last year?

1 MR. WILSON: When we found out the numbers that were
2 hitting the Johnstone Strait area were starting to
3 climb, there was a discussion at our tribal
4 council to engage in a nation-to-nation agreement.
5 There was an opportunity for one of our
6 membership, who was fishing down in the Johnstone
7 Strait area, to catch that fish and deliver it to
8 the community. And there was a nation-to-nation
9 agreement and we caught 20,000 pieces, which was
10 delivered to Bella Bella.

11 Q Did anything happen after that?

12 MR. WILSON: Yes. As soon as the numbers were heard,
13 our urban members were asking that we would do the
14 same, and so we engaged with DFO on the
15 possibility of doing a similar arrangement, and it
16 was at every turn that we talked to DFO it was,
17 "No, if you want to get your allocation, it has to
18 come out of Area 7 and 8," which is identified in
19 the AFS Agreement, but if we wanted to do another
20 nation-to-nation agreement, the allocation that we
21 caught would come off that host nation's
22 allocation.

23 Q Okay, so just to back that up sequentially, when
24 did you talk with DFO, first?

25 MR. WILSON: It was after we received the fish from the
26 Johnstone Strait area.

27 Q Who did you talk to?

28 MR. WILSON: We talked to a resource manager, Kristin
29 Wong.

30 Q Okay. And what did she tell you?

31 MR. WILSON: Those exact details of Area 7 and 8 and
32 the nation-to-nation agreement on the allocation
33 numbers.

34 Q And why didn't you talk to -- why didn't Heiltsuk
35 talk to her before, in relation to the first
36 nation-to-nation agreement?

37 MR. WILSON: Well, we understand the nation-to-nation
38 agreement is outside of the DFO AFS Agreement, and
39 they really don't have anything to do with it.

40 Q Okay. So after you talked to Ms. Wong, did you
41 talk to anybody else at DFO?

42 MR. WILSON: Well, when we started to -- we heard about
43 the requirements for us to access additional fish.
44 I talked to Susan Anderson Behn, who is the IMAWG
45 -- basically she's the worker bee for IMAWG. She
46 connected us with Randy Brahniuk and Greg Thomas,
47 and also one of our urban council members, Jim

1 White. Susan was also on the conversation as the
2 note-taker.
3 Q Okay. And who are Greg Thomas and Randy Brahniuk?
4 MR. WILSON: They're DFO staff.
5 Q Okay. And who's Mr. White?
6 MR. WILSON: Again, an urban council member.
7 Q Okay. Can you --
8 MR. WILSON: For the Tribal Council.
9 Q Sorry. Could you recount to us the telephone
10 discussion, please?
11 MR. WILSON: Well, basically, both Greg and Randy had
12 identified the fact that we couldn't fish outside
13 Area 7 and 8, and if we did do a nation-to-nation
14 agreement the numbers that we would get would come
15 off the host nation's allocation.
16 Q Do you remember anything else about that
17 discussion?
18 MR. WILSON: The fact that they couldn't accommodate us
19 because it's within a treaty process.
20 Q Did they explain to you what they meant by that?
21 MR. WILSON: No, they didn't.
22 Q Okay. Now, you had just told us that someone was
23 taking notes. Who was that?
24 MR. WILSON: Susan Anderson Behn.
25 Q Did you see notes that she had taken?
26 MR. WILSON: Yes.
27 Q How soon after the discussion did you see those
28 notes?
29 MR. WILSON: Shortly after.
30 Q And when you saw them, did you identify whether
31 they were accurate or complete?
32 MR. WILSON: They were accurate, but not complete.
33 Q Okay. Mr. Lunn, could you please pull up Heiltsuk
34 document 97.
35 Mr. Wilson, can you take a look at this
36 document and tell me if you recognize it?
37 MR. WILSON: Yes, I do.
38 Q What is it?
39 MR. WILSON: It's that conversation, the notes on the
40 conversation I had with Mr. Jim White, Greg Thomas
41 and Randy Brahniuk.
42 Q Okay. Mr. Lunn, if you could go to the second
43 page, please. I'm just going to ask you some
44 questions, Mr. Wilson. At the top of that page
45 there's Greg Thomas's name, and then there's a
46 colon, and then it reads:
47

1 We do not consider that Northern First
2 Nations have any access to Fraser sockeye.
3 The allocation that is listed for FSC in your
4 communal licence is stock and species
5 specific. The basket of fish which Heiltsuk
6 can have access to, under the conditions of
7 the communal licence, is defined by DFO.
8

9 Do you remember him saying this, or something to
10 this effect during the telephone discussion?

11 MR. WILSON: Yes.

12 Q Okay. And do you agree with his statement?

13 MR. WILSON: No, that's not what it says in our AFS
14 Agreement.

15 Q Okay. And then next on the notes there is the
16 heading, Randy Brahniuk, and underneath that it
17 reads:
18

19 The Marine Area First Nations do not all have
20 access to Fraser salmon for FSC. There's a
21 total amount in the per-season planning of
22 260K Fraser sockeye for use as FSC. That
23 number cannot be changed in season, no matter
24 how abundant the Fraser fish are.
25

26 Do you remember Mr. Brahniuk saying that or
27 something to that effect during the discussion?

28 MR. WILSON: Yes.

29 Q And did you agree with him?

30 MR. WILSON: No, we didn't.

31 Q Okay. And why is that?

32 MR. WILSON: Well, because that's not what it says
33 within the IFMP and our AFS Agreement.

34 Q Okay. Mr. Lunn, if you could pull up Exhibit 349.
35 Actually, alongside would be great, if you could
36 manage that. And if we could go to page 76 of the
37 107 pages and look for paragraph 5.3.

38 MR. LUNN: It'll just be a moment.

39 MS. FONG: Thank you.

40 Q So Mr. Wilson, is there -- this is the IFMP North.
41 Is there something in this IFMP North that tells
42 you that the in-season communal licence can be
43 amended?

44 MR. WILSON: Sorry, I'll have to pull mine up. I can't
45 see too well. Again, what page?

46 Q This is at page 76 of 107. Mr. Wilson, perhaps I
47 can assist here. Okay, paragraph 5.3 reads,

1 Communal Licence Harvest Targets. Can you see
2 that on your screen?
3 MR. WILSON: I actually have the page, I just didn't --
4 yes.
5 Q Okay. So is there something on that page that
6 tells you that communal licences can be amended
7 in-season?
8 MR. WILSON: Well, the first paragraph, the last
9 sentence says:

10
11 Communal licences can be amended in-season
12 for resource conservation purposes or to
13 increase access for FSC purposes as needed.
14

15 MS. FONG: Can we have this marked as the next exhibit,
16 please, this IFMP?

17 THE REGISTRAR: Which document is that?

18 MS. FONG: Sorry, it is exhibited, I'm advised. Thank
19 you.

20 THE COMMISSIONER: I'm not sure your document 97,
21 though, has been exhibited.

22 THE REGISTRAR: It has not.

23 MS. FONG: I'll come to exhibiting that. I'm coming
24 back to that document right now, thank you very
25 much.

26 Q Mr. Wilson, now, I'd like to go back to these
27 telephone notes and ask that Mr. Lunn advance them
28 to the next page. Now, the second person named
29 from the top is Greg Thomas, and underneath that
30 it reads:

31
32 The allocation and the area for fishing for
33 Heiltsuk are set. We have to work under the
34 Treaty Guidelines. We are restricted by that
35 policy. We have no option - no Fraser
36 Sockeye.
37

38 Mr. Wilson, do you remember Mr. Thomas making a
39 statement -- making this statement, or something
40 like it during the discussion on the telephone?

41 MR. WILSON: Yes.

42 Q Okay. And during that discussion, again, did he
43 explain to you what he meant by the restrictions,
44 either by policy or having to work under the treat
45 guidelines?

46 MR. WILSON: No.

1 Q And to your knowledge, being the director of the
2 HIRMD, do you know what he's talking about?

3 MR. WILSON: No, I don't.

4 MS. FONG: Okay, I'd ask that be marked as the next
5 exhibit, please.

6 THE REGISTRAR: You're referring to 97, now?

7 MS. FONG: Exhibit (sic) 97, yes, or --

8 THE REGISTRAR: Heiltsuk 97?

9 MS. FONG: Yes, thank you.

10 THE REGISTRAR: That will be Exhibit 1267.

11

12 EXHIBIT 1267: Notes from Conference Call on
13 August 31st, 2010, starting at 3:30 p.m.,
14 with participants Ross Wilson, Jim White,
15 Greg Thomas, Randy Brahniuk, and Susan
16 Anderson Behn

17

18 MS. FONG:

19 Q Mr. Wilson, you had just told us that Ms. Anderson
20 Behn's notes are not complete, albeit accurate.
21 Can you tell me what's missing?

22 MR. WILSON: There's a description of how we tried to
23 access the -- or increase the allocation through a
24 nation-to-nation agreement, and we provided a
25 newsletter to our urban members.

26 Q Mr. Lunn, if you could pull up Heiltsuk 19,
27 please, Exhibit 304.

28 Mr. Wilson, do you recognize this document?

29 MR. WILSON: Yes, I do.

30 Q Is this the newsletter you're speaking of?

31 MR. WILSON: Yes.

32 Q Okay. Mr. Lunn, if you could advance to the
33 second page. I notice in paragraph 1, 2, 3, 4,
34 that you had -- it indicates there:

35

36 We contacted the three (3) additional bands
37 seeking a food fish permit, but each of those
38 bands could not support our request because
39 they had already caught their food fish
40 allocation.

41

42 Mr. Wilson, is that correct?

43 MR. WILSON: That's correct.

44 Q And when you contacted these bands, did they tell
45 you what their understanding was of the
46 allocation, or what I'll call the accounting rule;
47 in other words, how the fish are counted if

1 they're caught outside of a harvest of the
2 management area in the FSC?
3 MR. WILSON: All but one band indicated the same thing
4 would happen, that if I had accessed fish from
5 their territory, that those numbers would come off
6 their allocation. But the one band was of the
7 understanding that if they caught their fish
8 outside of their traditional territory, that
9 allocation was to come off their own allocation.
10 Q Okay. After this, did DFO provide you with any
11 further response or any written document,
12 explaining to you why they refused to agree to
13 this out of management area fishing?
14 MR. WILSON: No.
15 Q And prior to agreeing to your AFS agreements, had
16 you ever been advised of this particular rule,
17 this out of management area fishing rule, plus is
18 accounting rule that comes with it?
19 MR. WILSON: No.
20 Q And from your perspective as a person that works
21 at HIRMD and has this level of experience of
22 negotiating these AFS agreements and working in
23 the environment, does that accounting rule make
24 any sense to you?
25 MR. WILSON: No, it doesn't.
26 Q And why is that?
27 MR. WILSON: Well, ours is a need. We're required -
28 well, not required - we have a membership that
29 needs food fish, and it's not identified in the
30 AFS or IFMP documents, so if we had a nation-to-
31 nation agreement, we should have access to any
32 additional fish through consultation process --
33 not consultation process, but negotiated process
34 with DFO.
35 Q Okay. What about from a conservation perspective?
36 Does that accounting rule make sense, that the
37 fish is counted against the host nation?
38 MR. WILSON: No, it doesn't.
39 Q And why is that?
40 MR. WILSON: I'm sorry, I'm misunderstanding your
41 question.
42 Q Sorry. The accounting rule, is that the fish --
43 so if Heiltsuk were permitted to catch fish
44 outside of Area 7 and 8, the accounting rule
45 you've been told by DFO is that those numbers
46 would come off the host nation.
47 MR. WILSON: Yeah.

1 Q Right. So from a conservation perspective of
2 conserving Fraser River sockeye salmon, does that
3 accounting rule make sense to Heiltsuk?

4 MR. WILSON: Well, not if the fish are in conservation
5 mode. Like the only reason we went after a
6 nation-to-nation agreement last year was because
7 of the number of fish that were passing by.

8 Q Okay. So it's not that there are too many fish --
9 or, sorry, that there are too little fish?

10 MR. WILSON: Yes.

11 Q Thank you. Mr. Rosenberger earlier gave
12 testimony, today, referencing this event in 2010,
13 saying that there were some First Nations which
14 endorsed Heiltsuk fishing outside of its
15 management area, and then I have it in my notes
16 that he said there were other First Nations on the
17 Fraser River who were against it. Are you aware
18 of any First Nation that was against Heiltsuk, in
19 2010, fishing out of its management area in order
20 to obtain that additional Fraser River sockeye
21 salmon?

22 MR. WILSON: No, that's a surprise to me.

23 Q Okay. And I'm going to turn very quickly to Mr.
24 Rosenberger, because maybe I just got my note
25 wrong there.

26 Mr. Rosenberger, you just heard my question
27 to Mr. Wilson. What First Nation was that, or
28 First Nations that opposed Heiltsuk fishing
29 outside their territory?

30 MR. ROSENBERGER: The concerns, and this was discussed
31 a fair amount this winter, in the forum process,
32 the Sto:lo raised concerns about the process about
33 who gets to make additional requests. The Upper
34 Fraser fisheries groups have made concerns -- have
35 raised concerns about this, and the -- your
36 comment about does this create conservation
37 concerns or does it make sense, the issue is that
38 all stocks, from the four stock groupings, are
39 allocated out in the management process. So if
40 somebody is taking another part of them, it needs
41 to be considered. So if you have a process and
42 you understand what you want to do, and having
43 those fish, whether it's in Heiltsuk territory, or
44 some other place, but the management approach that
45 was in play in 2010 and that we're working on
46 right now for 2011, is trying to bring into
47 account all those different stocks, conservation

1 issues, allocation. Those fish need to go to a
2 variety of places. Mr. Shepert has raised some of
3 the concerns around some specific populations over
4 and above Early Stuart that are part of some of
5 these more difficult kinds of discussions, so
6 those are a couple of them. And I believe the
7 Shuswap also raised concerns about how these
8 decisions would be made into the future.

9 Q Okay. So Mr. Rosenberger, I didn't understand you
10 properly, then. So it wasn't that they were
11 opposed to Heiltsuk in particular, and Heiltsuk's
12 situation last year in 2010 when there was such a
13 strong run; is that correct? These concerns that
14 you're raising, these are more general discussions
15 about the policy, itself?

16 MR. ROSENBERGER: Some of the concerns raised, and
17 maybe Mr. Shepert should speak for his concerns in
18 there, but not all populations -- when you look at
19 the Fraser, it's not one stock, there's a large --

20 Q I'm sorry, Mr. Rosenberger, but we're so confined
21 in time; could you must answer my question? It
22 wasn't directed at the Heiltsuk, was it, in 2010,
23 those objections?

24 MR. ROSENBERGER: Yes.

25 Q Thank you. And I'll give you an opportunity to,
26 if there's sufficient time - though I see a frown
27 from Commission counsel there - if there's
28 sufficient time to come back to that. Thank you.

29 Mr. Wilson, does the DFO consult with -- does
30 the DFO consult with Heiltsuk on their FSC
31 fishery?

32 MR. WILSON: No.

33 Q Okay. Does Heiltsuk take the position that the
34 DFO must consult on the FSC fishery?

35 MR. WILSON: That's correct.

36 Q And on what basis does Heiltsuk take that
37 position?

38 MR. WILSON: Well, for our needs.

39 Q Okay. So your AFS agreement sets out 20,000
40 sockeye pieces. Where did that number come from?

41 MR. WILSON: I'm not sure. I was going through all the
42 old documents that was created in the beginning.
43 I don't know where the number came from.

44 Q Okay. You were at HIRMD last year when the AFS
45 agreement was negotiated, correct?

46 MR. WILSON: Yes.

47 Q And you're there, now, as it's being negotiated,

1 right?
2 MR. WILSON: Yes.
3 Q So where's that 20,000 pieces coming from? What's
4 DFO telling you what that number's coming from?
5 MR. WILSON: Well, they're not telling us that -- where
6 that's coming from. It's just within past
7 agreements.
8 Q Have you asked where that number -- how that
9 number's arrived at?
10 MR. WILSON: Yes, I have. Quite a few years ago there
11 was a discussion around two percent of the total
12 allowable catch, is what the FSC numbers are, and
13 I've asked, repeatedly, to a number of DFO staff
14 members where this formula had come from, and
15 there hasn't been any documentation provided.
16 Q Okay. So apart from the 2010 incident last year,
17 has Heiltsuk asked for an increase in FSC during
18 the fishing season?
19 MR. WILSON: Yes.
20 Q Okay. Can you tell us when that was and what
21 happened?
22 MR. WILSON: Well, after last year, we met -- had a
23 phone call with Kristin Wong, our resource
24 manager, if the numbers for the Fraser River
25 sockeye was going to be just as large, we were
26 going to request an additional 5,000 pieces.
27 Q Okay. And what happened to that request?
28 MR. WILSON: She replied in an e-mail, identifying the
29 requirements of such a request.
30 Q Okay. Mr. Lunn, could you please pull up Heiltsuk
31 96. Mr. Wilson, now, you've looked at this
32 document. Is this the e-mail you're referring to?
33 MR. WILSON: Yes.
34 Q Okay, so I've read this and I'm going to be the
35 devil's advocate; why isn't this consultation?
36 MR. WILSON: Well, if you look at the -- Canada's best
37 practices for consultation and accommodation, it's
38 only one stage of that process; I think it's a
39 six-step stage.
40 Q Okay. And let me be the devil's advocate again.
41 If this is only one stage, then, you know, how can
42 you be sure it's not going to proceed through the
43 other five steps?
44 MR. WILSON: In our experiences with the Department, it
45 proceeds to a certain level and then they just
46 provide their position.
47 Q You say "proceeds" to a certain level; what do you

1 mean by that? What happens?

2 MR. WILSON: Well, if you look at the e-mail that we're
3 talking about, that would be the first stage. But
4 it's not complete, because we would need more
5 detail as to a response in a formal letter,
6 details as to what's the stock going to be this
7 year.

8 Q Are there any other steps which you say that DFO
9 doesn't typically make out?

10 MR. WILSON: Well, if you look at the actual best
11 practices agreement, from page 9 onto page 11 --

12 Q Mr. Lunn, if you could pull that up for us, it's
13 Exhibit 596.

14 MR. LUNN: Thank you.

15 MS. FONG:

16 Q And I'm sorry, Mr. Wilson, what pages are you at?

17 MR. WILSON: Page 9.

18 Q Please continue.

19 MR. WILSON: First step, Inform First Nations of Intent
20 to Consult. The second step, Information Exchange
21 (Initial Meeting). The third step, Bilateral
22 Discussions (Follow-up Meeting(s)). The fourth
23 step, First Nations' Response to DFO. The fifth
24 step, DFO responds to First Nations. And step
25 six, Issue Resolutions/Accommodations.

26 Q Okay, Mr. Wilson, but what are you saying that DFO
27 aren't doing?

28 MR. WILSON: Well, specific to that e-mail, if we get
29 to step 1:

30
31 ...provide sufficient information so that
32 First Nations can decide whether or not to
33 participate in the consultation process.
34

35 So if we look at the requirements in that e-mail,
36 it basically gives me an outline of what I would
37 need to provide their office the process to
38 review, but that e-mail doesn't give me the
39 information that I would require. If this year's
40 stocks were in conservation, we wouldn't be
41 engaging in this process.

42 Q Okay. So what about -- I'm looking ahead at Step
43 5, Step 5 towards the end, where DFO would provide
44 a written response to concerns raised during the
45 consultative process. Is this generally a step
46 that occurs?

47 MR. WILSON: No. No, it doesn't.

1 Q Do you generally receive anything from DFO:
2 MR. WILSON: No, nothing.
3 Q Okay. Now, I'm just going to turn quickly to the
4 IFMP. Does Heiltsuk consider that it's been
5 consulted in relation to the IFMP?
6 MR. WILSON: To a certain stage it is, but after that
7 it isn't.
8 Q Okay. And what stage is that?
9 MR. WILSON: Well, it's the information process, and
10 then I've attended IFMP meetings that -- where we
11 would table our position and that we would not
12 receive a reply from that -- from our position.
13 Q And is that a common experience --
14 MR. WILSON: Yes, it is.
15 Q -- through the years? Thank you. I'm just going
16 to move quickly to joint management tier. Does
17 Heiltsuk subscribe to the concept of jointly
18 managing the fisheries with Canada?
19 MR. WILSON: Yes.
20 Q Can you tell me one example you would consider to
21 be successful joint management?
22 MR. WILSON: Well, the Heiltsuk have a signed
23 management agreement with the park species, it's
24 called the Haki-Luxbalis conservancy area. The
25 creation of that agreement formed a board which
26 the Heiltsuk had 50 percent representation. That,
27 to me, is a form of joint management.
28 Q And what happens when there's disagreements at
29 that table, given it's a 50/50?
30 MR. WILSON: We haven't had that, to date, but we
31 basically sit down and compromise on the issues at
32 the table, and we also don't -- the other part of
33 that is within the agreement we don't -- we can't
34 veto the minister, so he would have final say.
35 Q So the minister would have veto, is what you're
36 saying?
37 MR. WILSON: Yes.
38 Q And that's okay with Heiltsuk?
39 MR. WILSON: We signed the agreement.
40 Q Okay. Now, in relation to joint management, do
41 you have any recommendations as to fisheries
42 enforcement in Heiltsuk territory?
43 MR. WILSON: A number of them. We have guardians who
44 have been involved in this process for quite a few
45 years. They don't have a standard training
46 process, so they're not recognized as having a
47 qualified training process. There's also -- we're

- 1 looking for authority. We want to be able to say
2 that we're owners. As owners, we want to be able
3 to manage the resources in our territory. We need
4 resources to be able to do this.
- 5 Q Mr. Wilson, I'm just going to move to the Tier 1
6 process. Now, the DFO have commented on the
7 problem of not having one person or group to talk
8 on behalf of multiple nations. Is that your
9 experience?
- 10 MR. WILSON: No, it isn't.
- 11 Q Can you give us a good example of working
12 together?
- 13 MR. WILSON: Well, I refer back to the Central Coast
14 Indigenous Resource Alliance, the membership of
15 several coast nations, that those nations are
16 engaged in a marine use planning process, and we
17 found each individual band has created their own
18 marine use plan, but up to last year we've had
19 their own individual bands -- individual plans;
20 now we have a harmonized marine use plan for the
21 Central Coast.
- 22 Q Mr. Lunn, could you please pull up document 98?
23 Mr. Lunn, if you could please go to page 4. This
24 is the Central Coast First Nations Marine Use Plan
25 Executive Summary. Do you recognize that, Mr.
26 Wilson?
- 27 MR. WILSON: Yes.
- 28 Q Okay. And at page 4 there's a description of the
29 nations that are involved in this Marine Use Plan.
30 Paragraph 3, it provides it's a harmonized
31 reflection of the goals, objectives and strategies
32 of Heiltsuk, Kitasoo, Nuxalk and Wuikinuxv
33 Nations; do you see that?
- 34 MR. WILSON: Yes.
- 35 Q So does that mean that these four nations are
36 harmonized when it comes to this particular plan?
- 37 MR. WILSON: Yes.
- 38 Q Okay. And if we can flip quickly to page 8, in
39 that first paragraph there, there's an indication
40 that there's an expectation with this group that
41 it will work with government, neighbouring
42 communities and industry to address these issues.
43 Is that, indeed, part of the plan for these four
44 nations?
- 45 MR. WILSON: Yes, it is.
- 46 Q Okay. Now, if we can just flip to page 26. And
47 Mr. Lunn, if you can take us down to the chart.

1 Yes, perfect. Okay, there are, I see, Mr. Wilson,
2 rows which set out activities and then a column
3 which sets out marine activities. My
4 understanding is that this shows activities are
5 allowed in the marine area that all four nations
6 are in agreement with; is that correct?
7 MR. WILSON: Correct.
8 Q Okay. So then dealing with this issue of, well,
9 First Nations, they can't agree between themselves
10 or work things out, one of the controversial
11 issues, of course, is aquaculture. Can you
12 explain to me what has happened in terms of how to
13 deal with this difficult issue of aquaculture
14 between four nations, when we all know, here in
15 this room, that one of those four nations is pro
16 finfish, salmon farming, and the others are not?
17 MR. WILSON: Well, one is pro, one is dead set against
18 it, and two are interested in land-based systems,
19 but when we're at the table we respect each
20 other's positions, and there's compromise at the
21 table. But if there was a position that the four
22 nations couldn't agree to it, it would not be
23 within this marine use plan process. But in
24 saying that, if one First Nation wanted to
25 establish a new site, it would have to establish
26 that site within its own marine use plan which
27 allowed aquaculture.
28 Q And that was a point that was agreed to --
29 MR. WILSON: Yes.
30 Q -- with all four nations; is that correct?
31 MR. WILSON: Yes.
32 Q As part of this marine use plan?
33 MR. WILSON: Yes.
34 Q Mr. Wilson, do you have any recommendations when
35 it comes to AFS agreements or IFMP agreements?
36 MR. WILSON: Other than following the best practices as
37 identified in the document?
38 Q Yes.
39 MR. WILSON: Hmm...
40 Q Okay, let me move to the absolute last question, I
41 promise, here, which is simply: So in your view,
42 why has DFO failed to consult or successfully
43 engage in joint management with Heiltsuk?
44 MR. WILSON: Why have they failed?
45 Q Mm-hmm.
46 MR. WILSON: Trust. They think that we can't
47 compromise. They think that we can't work

1 together as First Nations. I think there's a
2 number of issues, but those are the three big
3 ones.

4 MS. FONG: Thank you. Those are my questions.

5 THE REGISTRAR: Now, Ms. Fong, do you want your last
6 two documents marked?

7 MS. FONG: Yes, please.

8 THE REGISTRAR: Tab 96 will be marked as 1268; Tab 98
9 will be 1269.

10

11 EXHIBIT 1268: Central Coast First Nation
12 Marine Use Plan Executive Summary

13

14 EXHIBIT 1269: E-mail dated May 4, 2011, from
15 Kristin Wong to Ross Wilson, Subject:
16 Heiltsuk request to increase their FSC
17 sockeye allocation for 2011

18

19 MS. FONG: Thank you.

20 MR. McGOWAN: So Mr. Commissioner, I'm not sure there's
21 anything that Mr. East can usefully accomplish
22 with two minutes left. Perhaps we should adjourn,
23 and I understand it's 10:30 tomorrow morning.

24 THE COMMISSIONER: That's correct. Thank you.

25 THE REGISTRAR: The hearing is now adjourned until
26 10:30 tomorrow morning.

27

28 (PROCEEDINGS ADJOURNED AT 3:58 P.M. TO JULY
29 5, 2011, AT 10:30 A.M.)

30

31

32

33

34 I HEREBY CERTIFY the foregoing to be a true
35 and accurate transcript of the evidence
36 recorded on a sound recording apparatus,
37 transcribed to the best of my skill and
38 ability, and in accordance with applicable
39 standards.

40

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Pat Neumann

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1 I HEREBY CERTIFY the foregoing to be a true
2 and accurate transcript of the evidence
3 recorded on a sound recording apparatus,
4 transcribed to the best of my skill and
5 ability, and in accordance with applicable
6 standards.

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10 _____
11 Diane Rochfort
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17 I HEREBY CERTIFY the foregoing to be a true
18 and accurate transcript of the evidence
19 recorded on a sound recording apparatus,
20 transcribed to the best of my skill and
21 ability, and in accordance with applicable
22 standards.

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26 _____
27 Karen Acaster
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33 I HEREBY CERTIFY the foregoing to be a true
34 and accurate transcript of the evidence
35 recorded on a sound recording apparatus,
36 transcribed to the best of my skill and
37 ability, and in accordance with applicable
38 standards.

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